



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Response of the Northern Ireland Human Rights Commission to the Draft Unauthorised Encampments (Northern Ireland) Order 2004

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding or “soft law” standards developed by the human rights bodies.
2. The Commission welcomes this opportunity to respond to the consultation on the proposed Unauthorised Encampments (Northern Ireland) Order 2004 (the Order). As ever when it provides advice on the human rights compatibility of proposed legislation, the Commission would be grateful for an indication of the extent to which its views are taken into account in progressing the proposals.
3. The proposed legislation empowers police officers to direct “trespassers” to leave camps and to remove their vehicles and other property from the land; property that is not so removed may be retained or destroyed, and costs recovered. The Commission’s concern is with the adverse impact the proposed legislation is likely to have exclusively on one particular ethnic minority community in Northern Ireland: the Irish Traveller community. This response will therefore focus on the rights of the Traveller community and Government’s corresponding duty to that community.

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid.*, s.69(3).

³ *Ibid.*, s.69(4).

⁴ *Ibid.*, s.69(6).

4. It should not be necessary to remind Government that the Traveller community experiences severe hardship in many aspects of life. Some 92 per cent of Travellers leave school with no qualifications, only 11% of the community is in paid employment, the infant mortality rate is ten times the national average and life expectancy is considerably lower than for the non-Traveller population. Little progress has been made in alleviating this situation and the level of human rights protections accorded to Travellers has to date been wholly unsatisfactory. The Traveller minority also experiences hostility and discrimination: a recent survey revealed that 40% of the public did not believe the nomadic way of life traditionally followed by many Travellers to be a valid one that should be supported by Government.
5. Whatever the perceptions of the settled community may be of nomadism in general and of the Irish Traveller community more particularly, all of the international human rights standards require Governments to secure rights without discrimination and without obliging individuals to compromise their cultural or religious values. The very principle of universality of human rights requires that rights are accorded to all regardless of race, ethnicity, culture, gender, age and other status. In the case of Travellers then, Government has a duty to accord human rights protections while facilitating the nomadic way of life for those who choose to live one. Indeed from the international standards it can be deduced that nomadism is a human right in itself, because for some communities that way of life constitutes so fundamental an aspect of their culture that to deny it would render the right to cultural expression largely meaningless.
6. A number of international standards are particularly concerned with the duty of States to be proactive in protecting certain racial groups (in particular minority racial groups) and their way of life. For example, Article 2(2) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) provides that:

States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

7. Article 5 of the same Convention asserts the right to non-discrimination in the enjoyment of civil and political, and economic, social and cultural rights, including many that are especially relevant to the situation of Travellers in Northern Ireland:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic

origin, to equality before the law, notably in the enjoyment of the following rights:...

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State; ...

(e) Economic, social and cultural rights in particular:...

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;

(vi) The right to equal participation in cultural activities.

Here, of course, “housing” should be read as culturally appropriate provision including the accommodation of nomadism: we return to this below.

8. Similarly Article 4(2) of the European Framework Convention on National Minorities obliges States to:

adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

9. Article 5 then obliges States to

1. ... promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

10. The United Nations treaty monitoring bodies have consistently expressed concern at the situation of Travellers. In the Concluding Observations adopted by the UN Committee on the Elimination of Racial Discrimination in 2003 the UK was urged to ensure equal opportunities for full enjoyment of economic, social and cultural rights for the Traveller community. The Commission’s view is that this draft Order does nothing to meet that imperative, and is capable of being applied in ways that would seriously hinder the realisation of equal rights for Travellers.

11. The proposals engage a host of international human rights standards relating to housing, health, education, social security and the right to a fair trial. The United Kingdom’s international treaty obligations require the State to

safeguard these rights equally alongside the right to a nomadic or sedentary way of life.

The right to housing

12. Of immediate concern is the effect the proposed legislation will have on where Travellers live. Under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) everyone has the right to:

... an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

13. It is clear from the international standards that the right to housing extends beyond the right to ‘conventional’ housing usually required by those who choose to live a sedentary lifestyle. The corresponding duty on States, arising from the standards quoted above, is that they must endeavour to meet the accommodation needs of all within their jurisdiction.
14. Moreover, Article 2 of ICESCR calls for progressive realisation of the Covenant rights. The obligation accepted by the United Kingdom was to “take steps... to the maximum of its available resources... including particularly the adoption of legislative measures” to secure the rights of everyone “without discrimination of any kind”. The draft Order needs therefore to be considered as to its impact on the Covenant rights of the Traveller minority. The Commission’s concern is that the Order represents a regression in the provision of rights for the Traveller community. While current halting sites and encampments are by no means sufficient in terms of the facilities and services available to Travellers, the Order would essentially reduce even that current unsatisfactory provision by removing Travellers from those encampments on which they have set up homes.
15. The relevant treaty monitoring bodies are unlikely to be sympathetic to the argument that cost implications are preventing Northern Ireland from providing sites that allow people to be nomadic, given the relative wealth of the UK as a whole. Those sites must contribute to the provision of “an adequate standard of living”, which in turn requires adequate sanitation and energy supplies. It is regrettable that instead of working towards providing such essentials Government is proposing legislation which would effectively criminalise the nomadic way of life.
16. The Northern Ireland Housing Executive has recently completed an accommodation needs assessment of the Traveller community which is being used to develop and prioritise a programme of accommodation schemes, including grouped housing, serviced sites and transit sites. However, the Commission understands that Government has not yet committed any additional resources to meeting the needs identified in that exercise. That is deeply concerning given the disproportionate impact of the draft Order on the poorest and most multiply disadvantaged minority in Northern Ireland. There

appears to be no justification for enacting the legislation before culturally appropriate provision for Travellers becomes available.

17. The Commission reminds Government that the Committee on the Elimination of Racial Discrimination has asked the UK to submit more detailed information, in its next periodic report, on achievements under the State party's programmes aimed at improving housing conditions among different ethnic groups. This Commission will certainly draw the Committee's attention to the impact of the Order on the quality and quantity of housing made available to the Traveller community. However, should the Order proceed as drafted, the Commission will not await the next ICERD reporting cycle but will contact the Committee and other appropriate UN mechanisms to ensure that a watching brief is maintained.
18. It is also of relevance that a recent Court of Appeal decision⁵ ruled that the state's failure to provide shelter to a number of asylum applicants constituted a violation of Article 3 of the European Convention on Human Rights (ECHR) which states: "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*". In that case a number of asylum seekers were forced to sleep on the streets because of the state's withdrawal of benefits. The Court of Appeal ruled that section 55 of the Nationality, Immigration and Asylum Act, which authorised the withdrawal of support from asylum seekers in certain circumstances, could reduce people to such destitution that they were in imminent danger of experiencing inhuman and degrading treatment, and that this amounted to a violation of Article 3 rights.
19. Given the absence of provision of halting sites in Northern Ireland, all encampments are "unauthorised" and all persons living there are therefore liable to eviction. By the same logic as applied in the asylum seekers' case, it is conceivable that the removal of Travellers from encampments, levying of charges and destruction or retention of property could force some Travellers into homelessness and a level of destitution capable of constituting, or exposing them to, inhuman or degrading treatment.
20. Closely related to the right to housing is the right to respect for privacy and family life, home and correspondence, as enshrined in Article 8 of the ECHR and Article 17 of the International Covenant on Civil and Political Rights (ICCPR). The disruption to the lives of Travellers by removal and destruction of property by state authorities would inevitably have an adverse impact on these rights.
21. Under Article 12 of the ICCPR all individuals have "the right to liberty of movement and the freedom to choose [their] residence". This right is not unqualified: indeed Article 12(2) explicitly states that liberty of movement can be restricted by law where it is necessary to do so "to protect national security, public order..., public health or morals or the rights and freedoms of others". Any interference must be in terms that are consistent with other Covenant

⁵ *Secretary of State for the Home Department vs. Wayoka Limbuela, Binyan Tefera Tesema and Yusif Adam*, [2004] EWCA Civ 540.

rights, including the non-discrimination right defined in similar terms in Article 2(1) of the ICCPR and Article 2(2) of the sister Covenant on Economic, Social and Cultural Rights. It is rather difficult to reconcile the notion that the right to liberty of movement and residence may not be subject to distinction on racial grounds with the draft Order, which is very clearly aimed at one nomadic minority.

22. It would appear that complaints from the settled community have been a major impetus for the proposed legislation. In the Department's Explanatory Memorandum it is indicated that the draft Order aims to address "a recurring source of tension between members of the settled community and the Travelling community". The same objective might be served better by promoting tolerance of minorities, educating the settled community on the fundamental rights of all human beings and dispelling myths and prejudices held about Travellers. The settled community is economically, socially and culturally more secure and is therefore in a stronger position to lobby for legislative changes, even when that is to the detriment of vulnerable groups and individuals.
23. The Committee on the Elimination of Racial Discrimination (CERD) offers guidance as to the interpretation of the United Kingdom's obligations under its treaty, as do the other UN treaty monitoring Committees, in the form of General Recommendations or General Comments. Of relevance in this context is CERD General Recommendation no. 27,⁶ which addresses discrimination against Roma. The Committee has made it clear that the same General Recommendation applies equally to Travellers and Gypsies. States are, among other things, urged (paragraphs 31-33):

To act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing; to act firmly against local measures denying residence to an unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other facilities.

To take the necessary measures, as appropriate, for offering Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities.

To ensure Roma equal access to health care and social security services and to eliminate any discriminatory practices against them in this field.

24. This General Recommendation is particularly relevant in light of the 'measure of protection' clause in article 5 of the draft Order, which states that the senior police officer present at a scene may direct the trespasser(s) to leave the land and to remove any vehicle and other property he has with him or her if it appears to the officer that the person has one or more caravans in his or her possession or under his or her control on the land, and that there is a suitable pitch on a relevant caravan site for that caravan or each of these caravans. It is further stated that the officer shall consult with (a) the district council within

⁶ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/11f3d6d130ab8e09c125694a0054932b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/11f3d6d130ab8e09c125694a0054932b?Opendocument)

whose district the land is situated: or (b) where the trespassers are members of the Irish Traveller community, the Northern Ireland Housing Executive, as to whether there is a suitable pitch for the caravan or each of the caravans on a relevant site.

25. “Relevant site” is further defined in article 5(6) of the draft Order as

...situated within a reasonable distance of the land; or where the trespassers are members of the Irish Traveller community, provided by the Northern Ireland Housing Executive under article 28(A) of the Housing (Northern Ireland) Order 1981 (NI 3) and situated within a reasonable distance of the land.

26. The Commission draws Government’s attention to two points in relation to the provision of article 5. First, it is very important for the human rights of Travellers that Government and relevant statutory agencies draw on the advice given by the Committee on the Elimination of Racial Discrimination in terms of deciding what is a suitable alternative site. It must, as the General Recommendation makes clear, have all necessary facilities. The General Recommendation also indicates that the site should be geographically located so that Travellers have access to health and social security services, and should not be in isolated and unpopulated areas. This should offer clarity on what is referred to in the draft legislation as “within reasonable distance”. The alternative site provision should be within a reasonable distance of the existing encampment and ensure access to essential services.

27. In addition, the General Recommendation, taken with Article 12 of the ICCPR, indicates that Travellers should not be forcibly moved onto other sites even when the relevant authority, in this context the police officer or Northern Ireland Housing Executive, believes the criterion of “suitable alternative site provision” to have been met. Travellers have a right to be consulted and their preferences accommodated when the state is to provide housing. However, if the Order is enacted as drafted, any such consultation will be largely meaningless because at present the range of alternatives is limited in number and unsatisfactory. Serviced sites currently fail to offer an adequate standard of living and there is a complete absence of any authorised transit sites.

28. The case is therefore made again for postponing the enactment or at least the application of the legislation until it can safely be said that suitable authorised sites, meeting the requirements of international standards, are available.

The rights of children

29. Although the draft legislation does not allow the prosecution of persons under the age of 18, that alone is not sufficient for safeguarding the rights of children. The Commission is particularly concerned about the effects of the Order on Traveller children. Article 2 of the UN Convention on the Rights of the Child (CRC) makes it clear that Governments have a fundamental duty to all children in the safeguarding and provision of rights:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

30. Article 3(1) of the same Convention then gives signatory States very clear guidance on what is expected of them in terms of safeguarding children's rights.

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

31. The proposed Order engages a host of rights relating to children, rights which the Commission believes are compromised in the draft legislation. Children's access to education, their physical and mental well being, and their rights to privacy, family and home may be adversely affected. Government has made little progress in improving the lives of Travellers over many generations, and it is regrettable that it is introducing legislation that is likely to have a seriously detrimental impact on yet another generation of Travellers.

32. Article 27 of the CRC reads:

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

33. Far from ensuring the provision of nutrition, clothing and housing to "parents and others responsible for the child" in one of the most economically deprived communities in Northern Ireland, the proposals could result in that group being deprived of such basic provision, making it even more difficult for Traveller parents to care for their children. The effects on a child's mental health and overall emotional well-being of seeing one's home seized and being directed off land must also be taken into consideration. The Northern Ireland Housing Executive needs assessment does not constitute a sufficient means of alternative provision because Government has not given any indication of

what extra resources it will allocate to the setting up of transit sites, nor a timetable for when those sites will be available. Again, the case is made for postponing enactment or enforcement of the legislation until suitable authorised transit sites are available.

34. It is also important to note that under the international standards, children have a right to their identity and culture, and States have a corresponding duty to provide an environment in which that identity and culture can flourish. Article 30 of the CRC is of relevance here:

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

The Article 30 provision should be read with the obligation on states, under Article 4, to

...undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources.

35. By endangering, and in essence criminalising, the nomadic way of life, the proposed legislation undermines the very core of the identity and culture of Irish Travellers, even those who have for the time being opted for a non-nomadic life.

Economic implications

36. The economic and social deprivation of Irish Travellers in this jurisdiction cannot be overstated. The Commission is alarmed that the Order will provide for the recovery of any charges relating to the removal and the subsequent retention, safekeeping, disposal and destruction of vehicles seized from persons trespassing on land. In those circumstances the State will essentially be charging Irish Travellers for the destruction of their homes.

37. The Commission draws attention to Article 1, Protocol 1 of the ECHR:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

38. The Commission finds it difficult to envisage such serious and imminent danger being caused by unauthorised placement of caravans as to establish that the confiscation and destruction of Travellers' homes and other possessions is in "the general interest" and in accordance with the requirements of necessity and proportionality.

Conclusion

39. The Commission again recalls the severe deprivation of Travellers in all areas of life and urges Government to direct its efforts to improving the social and economic conditions for that racial group, instead of enacting legislation that attacks Traveller culture and identity and exposes nomadic Travellers to greater deprivation and disproportionate penalties.

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December 2004