

Saint Louis University Public Law Review

Volume 30
Number 2 *General Issue (Volume XXX, No. 2)*

Article 5

2011

On the Road to Recognition: Irish Travellers' Quest for Ethnic Identity

Kami Kruckenberg
kkruckenberg@prrac.org

Follow this and additional works at: <https://scholarship.law.slu.edu/plr>



Part of the [Law Commons](#)

Recommended Citation

Kruckenberg, Kami (2011) "On the Road to Recognition: Irish Travellers' Quest for Ethnic Identity," *Saint Louis University Public Law Review*: Vol. 30 : No. 2 , Article 5.

Available at: <https://scholarship.law.slu.edu/plr/vol30/iss2/5>

This Article is brought to you for free and open access by Scholarship Commons. It has been accepted for inclusion in Saint Louis University Public Law Review by an authorized editor of Scholarship Commons. For more information, please contact [Susie Lee](#).

**ON THE ROAD TO RECOGNITION: IRISH TRAVELLERS' QUEST
FOR ETHNIC IDENTITY**

KAMI KRUCKENBERG*

This paper explores and defends Irish Travellers' efforts to push the Republic of Ireland to recognize them as an ethnic minority group under law. Irish Travellers are a small indigenous minority group who have lived primarily in Ireland for centuries. They rank at the bottom of Irish society in rates of poverty, unemployment, life expectancy, infant mortality, health, education levels, political representation and access, and living conditions. Much like the Roma, with whom they share a nomadic tradition, Irish Travellers are in the midst of a movement to improve living conditions, fight widespread discrimination, and gain recognition as an ethnic minority group. Such recognition has important implications for their treatment under international and national law. In this paper, I compare the legal status of Irish Travellers under the laws of the Republic of Ireland with their status in the United Kingdom and Northern Ireland. Then I consider the history of Travellers' legal status in the Republic's domestic policies and Travellers' efforts at recognition through international law documents. Finally, I discuss the challenges and opportunities Irish Travellers' rights activists face in the continued movement for recognition.

* Policy Associate at Poverty & Race Research Action Council, Washington, DC. J.D., 2008, Harvard Law School. I am deeply grateful to Martha Minow for her review of an earlier draft of this article, and Robert Sidman for his unfailing support and encouragement.

TABLE OF CONTENTS

I. INTRODUCTION	303
II. A LONG AND WINDING ROAD: THE CONTEXT OF THE CAMPAIGN FOR TRAVELLER ETHNIC RECOGNITION	305
A. <i>Race and Ethnicity</i>	305
B. <i>Prosperity, Immigration and Race in Ireland</i>	307
C. <i>Anti-Traveller Discrimination</i>	308
D. <i>Traveller Ethnicity</i>	309
III. THE ROAD MORE TRAVELED: TRAVELLER ETHNIC RECOGNITION ABROAD.....	311
A. <i>United Kingdom</i>	311
B. <i>Northern Ireland</i>	312
IV. LONELY ROAD: TRAVELLER ETHNICITY IN THE REPUBLIC'S DOMESTIC POLICY	312
V. ROAD TO NOWHERE?: TRAVELLER EFFORTS AT ETHNIC RECOGNITION THROUGH INTERNATIONAL LAW	317
VI. DOWN THE ROAD: THREE MAJOR CHALLENGES AND OPPORTUNITIES IN THE STRUGGLE FOR ETHNIC RECOGNITION	320
A. <i>Expanding the Movement Beyond Irish Borders</i>	320
B. <i>Winning Hearts and Minds</i>	321
C. <i>Increasing Traveller Involvement in the Movement</i>	322

I. INTRODUCTION

When many Americans think of Ireland, they first remember the terrible poverty caused by the Irish Potato Famine; but the Ireland of the 1990s and early 2000s was a financial powerhouse, fueled by rapid economic growth over the previous two decades.¹ However, during Ireland's period of extreme prosperity, not all of the Irish benefited from the economic boom; among those were many Irish Travellers who existed in the midst of riches, yet lived in abysmal conditions. Since the onset of recession in 2008, the so-called "Celtic Tiger" has slowed considerably.² With the recent economic recession in Ireland, Irish Travellers find themselves even more vulnerable.

Irish Travellers have lived as a distinct cultural group in Ireland for several centuries and retain their own language and traditions.³ They once roamed the country in caravans of horse-drawn wagons, setting up camps as they traveled.⁴ In those days, Travellers primarily made their living from horse and donkey trading, entertaining, and tinsmithing.⁵ Today, many Travellers continue their life on the road, but mobile homes and trailers have replaced horses and wagons.⁶ There are fewer stopping grounds and society's changing needs have eliminated many of the jobs that once supported this culture on wheels.⁷

1. *The Luck of the Irish*, 373 *ECONOMIST* 3, 3 (2004).

2. John Arlidge, *Recession: The Bad Luck of the Irish*, *SUNDAY TIMES*, Mar. 29, 2009, available at <http://www.martinfrost.ws/htmlfiles/mar2009/bad-luck-irish.html>.

3. With approximately 25,000 people, Travellers only represent 0.5% of the Irish population. However, there are an estimated 25,000 Travellers living in the United Kingdom or the United States. *About Irish Travellers*, IRISH TRAVELLER MOVEMENT, <http://www.itmtrav.ie/irishtravellers> (last visited Apr. 5, 2011). Scholars differ on how long Travellers have existed in Ireland. Some have found reference to Travellers as far back as the Twelfth and even the Fifth Century. *Traveller and Roma Community*, NAT'L CONSULTATIVE COMMITTEE ON RACISM & INTERCULTURALISM, <http://www.nccri.ie/cdsu-travellers.html> (last visited Apr. 5, 2011). Others argue that Travellers always existed: "[S]ettled people . . . emerged here 'more than 800 years ago' and 'began settling.'" MARK DONAHUE ET AL., *MISLI, CRUSH, MISLI: IRISH TRAVELLERS AND NOMADISM* 16 (2005), <http://www.itmtrav.ie/uploads/MISLI-CRUSH-MISLI.pdf>. The 1551 "Acte for tynkers and pedlers" was Ireland's first anti-nomadic law, and an example of early anti-Traveller sentiment. PAVEE POINT TRAVELLERS CENTRE, *ASSIMILATION POLICIES AND OUTCOMES: TRAVELLERS' EXPERIENCE* 12 (2005), <http://www.paveepoint.ie/pdf/AssimilationPolicies.pdf> [hereinafter *ASSIMILATION POLICIES*].

4. *Accommodation*, IRISHTRAVELLER.ORG, <http://www.irishtraveller.org.uk/pavee/accommodation.htm> (last visited Apr. 5, 2011). Like the Roma, this part of Travellers' history has been alternately romanticized and vilified in mainstream depictions. *See generally*, JANE HELLEINER, *IRISH TRAVELLERS: RACISM AND THE POLITICS OF CULTURE* (2000).

5. *ASSIMILATION POLICIES*, *supra* note 3, at 12. Tinsmiths were so prevalent among Irish Travellers that the terms Tinker and Irish Traveller were used interchangeably. Today, Tinker is one of many derogatory terms for Irish Traveller. *Traveller and Roma Community*, *supra* note 3.

6. *Accommodation*, *supra* note 4.

7. *See* MARK DONAHUE ET AL., *supra* note 3, at 18 (discussing the ways in which Travellers are adapting to changing economic and political forces).

Travellers share history, language, values, customs, and traditions that differentiate them from the mainstream-settled population.⁸ Their most distinguishing trait is their nomadism. While Irish Travellers are native to Ireland, they share with European Roma (commonly referred to as Gypsies) a nomadic tradition, the prevalence of extended family living, and a history of prejudice from majority communities.⁹

In every significant way, Travellers are suffering the burdens of disadvantage. They are at the bottom of Irish society in regard to rates of poverty, unemployment, life expectancy, infant mortality, health, education levels, political representation and access, and living conditions, among others.¹⁰ As the Economic and Social Research Institute concluded, “[T]he circumstances of the Irish Travelling people are intolerable. No humane and decent society, once made aware of such circumstances, could permit them to persist.”¹¹

For these and other reasons, Travellers have begun to mobilize, building organizations and creating the foundations for a small but vocal movement. The Traveller movement is composed of a patchwork of individual Traveller activists, organizations that aim to provide direct service to meet Travellers’ needs, and several non-governmental organizations that seek to combine direct service work with political and legal advocacy.¹² One of the most important issues for the Traveller movement is their effort to secure recognition as an ethnic group in order to gain the ability to challenge their treatment under

8. *Traveller Culture*, IRISH TRAVELLER MOVEMENT, <http://www.itmtrav.ie/keyissues/myview/20> (last visited Apr. 5, 2011). They also have their own language called Cant, Gammon, or Shelta. *Id.*

9. *Traveller and Roma Community*, *supra* note 3.

10. John O’Connell, *Travellers in Ireland: An Examination of Discrimination*, PAVEE POINT TRAVELLERS CENTRE (Jan. 1998), http://www.paveepoint.ie/pav_irerac.html (last visited Apr. 5, 2011). Approximately fifty percent of Travellers die before age thirty-nine. Eoin Burke-Kennedy, *50 percent of Travellers die before age 39*, THE IRISH TIMES, June 6, 2007. Data from Ireland’s 2006 Census—taken at the height of Ireland’s economic prosperity—demonstrated that, relative to the national population, Travellers had lower levels of educational attainment, shorter life expectancy, and a higher unemployment rate (75%, compared to 9%). MICHAEL MAC GRÉIL, EMANCIPATION OF THE TRAVELLING PEOPLE: A REPORT ON THE ATTITUDES AND PREJUDICES OF THE IRISH PEOPLE TOWARDS THE TRAVELLERS BASED ON A NATIONAL SOCIAL SURVEY 2007-2008 (2010).

11. O’Connell, *supra* note 10.

12. The two most significant Travellers organizations in Ireland are Pavee Point, which was founded in 1986, and the Irish Traveller Movement, begun in 1990; however, there are several other organizations that aim to serve or lobby for Travellers. *See, e.g., About Pavee Point*, PAVEE POINT TRAVELLERS CENTRE, http://www.paveepoint.ie/pav_about_a.html (last visited Apr. 5, 2011).

international law documents, many of which offer special protections to ethnic groups and their members.¹³

Currently, the Republic of Ireland¹⁴ does not recognize the Travellers as an ethnic group that can experience racism which limits the Travellers' protection under national, European, and International law.¹⁵ Rather, Ireland defines the Traveller community as a 'social group' that experiences discrimination and poverty.¹⁶ According to the Irish Human Rights Commission, the government's position is troubling because:

[It] may place obstacles in the way of Travellers accessing all the protections of CERD [Convention for the Elimination of Racial Discrimination] and other international human rights conventions. The lack of recognition may also have implications for the application to Travellers of the EU Directive of June 2000 on Equal Treatment between Persons Irrespective of Racial or Ethnic Origin (the Race Directive).¹⁷

This lack of recognition does not just lead to lack of legal protection; it also fosters and maintains the majority view of Travellers as a socially maladjusted group instead of a community with a legitimate, unique culture.

II. A LONG AND WINDING ROAD: THE CONTEXT OF THE CAMPAIGN FOR TRAVELLER ETHNIC RECOGNITION

A. *Race and Ethnicity*

In order to legitimize colonialism, Europeans developed the concept of biological race to justify the subjugation of people in Asia, Africa, and the Americas.¹⁸ Racial categories were defined by externally visible traits, especially skin color, hair texture, facial features, and the contours and size of the head and body.¹⁹ During the eighteenth and nineteenth centuries, scientists

13. *See infra* note 99.

14. I use the terms 'Republic of Ireland' or 'Ireland' as distinguished from 'Northern Ireland.' While many Irish prefer the terms 'the north' and 'the south' as a means of expressing pan-Irish unity, the official titles offer the most clarity for a primarily American audience.

15. GOV'T OF IR., FIRST NAT'L REP. ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NAT'L MINORITIES (2001) [hereinafter FIRST NAT'L REP. ON THE FRAMEWORK CONVENTION].

16. *Id.*

17. GOV'T OF IR. & HUMAN RIGHTS COMM'N, TRAVELLERS AS AN ETHNIC MINORITY UNDER THE CONVENTION ON THE ELIMINATION OF RACIAL DISCRIMINATION: A DISCUSSION PAPER 4 (2004) [hereinafter TRAVELLERS AS MINORITY].

18. Naomi Zack, *American Mixed Race: The U.S. 2000 Census and Related Issues*, 17 HARV. BLACKLETTER L.J. 33, 40 (2001).

19. *Id.* at 38.

theorized that humans possessed racial essences that flowed through blood and determined physical, psychological, and cultural racial identity.²⁰

Despite common beliefs about race and racial identity, modern science demonstrates that “any significant biological differences between racial groupings are illusory.”²¹ As a result of the vast expansion of scientific knowledge, we now know that “human populations are not unambiguous, clearly demarcated, biologically distinct groups.”²² Additionally, scientists today agree that there is greater diversity within a supposed “racial” group than between groups.²³ In their “Statement on Biological Aspects of Race,” the American Association of Physical Anthropologists notes, “Races, in the sense of genetically homogenous populations, do not exist in the human species today, nor is there any evidence that they have ever existed in the past.”²⁴ Neither can we say that races are simply something we track by continental origins, as people have been in the process of mass migration throughout history.²⁵ To classify people by geographic origin is simply to start the clock at an arbitrary date.

Whereas the term ‘race’ historically has connoted biology, ‘ethnicity’ has traditionally been understood as a social construct that “acquires meaning only in the context of a particular set of social relationships.”²⁶ In the legal world, racism has come to mean more than just illicit preference for people on the basis of biology. For instance, Article 1.1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) defines racial discrimination as:

Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.²⁷

20. *Id.*

21. Tseming Yang, *Choice and Fraud in Racial Identification: The Dilemma of Policing Race in Affirmative Action, the Census and a Color-Blind Society*, 11 MICH. J. RACE & L. 367, 382 (2006) (citing STEPHEN J. GOULD, *THE Mismeasure of Man* (1981)).

22. *Statement on “Race”*, AM. ANTHROPOLOGICAL ASS’N (May 17, 1998), <http://www.aaanet.org/stmts/racepp.htm>.

23. Zack, *supra* note 18, at 39.

24. Ed Hagen, *AAPA Statement on Biological Aspects of Race*, 101 AM. J. PHYSICAL ANTHROPOLOGY 569, 569–70 (1996), available at <http://www.physanth.org/association/position-statements/biological-aspects-of-race>.

25. *Id.*

26. Yang, *supra* note 21, at 401.

27. International Convention on the Elimination of All Forms of Racial Discrimination art. 1.1, Dec. 21, 1965, available at <http://www2.ohchr.org/english/law/cerd.htm> [hereinafter International Convention].

The term 'ethnic origin' is not defined; however, the context of its use in addition to 'race, colour, [or] descent,' suggests that 'ethnic origin' is intended to encompass people who are distinct from national majority populations because of characteristics other than biological 'race.'²⁸

B. Prosperity, Immigration and Race in Ireland

Ethnic identity and race recently have moved toward the forefront of Irish political discourse as a consequence of a massive increase in immigration to Ireland. Ireland's economic growth during the 1990s led to previously unknown prosperity and helped convert the nation into a "country of immigration."²⁹ For the first time in its history, Ireland faced a considerable inflow of migrants—both workers and refugees or asylum seekers—from outside the European Union.³⁰ These migrants, particularly those from Africa, posed a challenge to existing Irish conceptions of race and ethnicity. Regrettably, this increased cultural diversity in Ireland has been accompanied by growing racism and xenophobic sentiment in media and public opinion.³¹ The backlash has had its most visible impact in the area of government policy towards citizenship.

In January 2003, the Irish Supreme Court removed the automatic right to permanent residence for non-national parents of Irish-born children.³² Then, in June 2004, the public overwhelmingly passed a referendum eliminating an Irish-born child's automatic right to citizenship when the parents are not Irish nationals.³³ These developments reflect a growing debate over the meaning of "Irishness."

It is not clear what impact this new racial paradigm will have on Irish Travellers' efforts toward ethnic recognition. The growth in discussion and awareness about race in Ireland could provide an opportunity for Travellers to position their goals at the center of public consciousness. Additionally, the

28. Both the UN Committee on the Elimination of Racial Discrimination (CERD) and the UN Human Rights Committee have emphasized the importance of self-identification in determining ethnic minority status. Rep. of the Comm. on the Elimination of Racial Discrimination, 45th Sess., Jan. 30, 1990, U.N. Doc. A/45/18; Supp. No. 18 (1990); U.N. Human Rights Comm., General Comment No. 23: The Rights of Minorities (Art. 27), ¶ 5.2, 50th Sess., Apr. 8, 1994, U.N. Doc. CCPR/C/21/Rev. 1/Add.5 (1994), available at <http://www.unhcr.org/refworld/docid/453883fc0.html>.

29. Martin Ruhs, *Ireland: From Rapid Immigration to Recession*, MIGRATION INFORMATION SOURCE (Sep. 2009), <http://www.migrationinformation.org/Profiles/display.cfm?ID=740>.

30. *Id.*

31. GERARD HUGHES & EMMA QUINN, EUR. MIGRATION NETWORK, IMPACT OF IMMIGRATION ON EUROPE'S SOCIETIES: IRELAND 29 (2004), available at <http://www.emn.at/immigration/docs/b05.pdf>.

32. *Id.* at 27.

33. *Id.*

increase in organizations dedicated to combating racism could help provide political support by creating a broad coalition.³⁴ On the other hand, the rapid growth of an immigrant population could mean that Travellers' concerns will be drowned out in public discourse. The new prevalence of non-white residents might reinforce perceptions of Travellers as mainstream Irish, which could have the positive impact of reducing discrimination against them. However, even if some discrimination is redirected, Travellers will continue to be targets and the net effect of the potential decreased discrimination could harm Traveller efforts to be recognized as ethnically distinct.

C. *Anti-Traveller Discrimination*

According to the European Parliament Committee of Inquiry on Racism and Xenophobia, "[t]he single most discriminated against ethnic group is the 'Travelling People.'"³⁵ 'No Travellers' signs remain in taverns and stores today,³⁶ reminiscent of the separate black and white establishments that were common in the American South before the Civil Rights Movement. With each new move, Irish Travellers face the possibility of evictions from hostile local councils.³⁷ Traveller children are bullied and teased in school, residents are openly antagonistic to them, and media scare stories promote racist attitudes.³⁸ According to a poll, seventy percent of Irish citizens would not accept a Traveller as a friend.³⁹

34. Foreign-born residents accounted for fourteen percent of the population in 2006, according to the Irish Census. *Census Shows Dramatic Rise in Non-Irish Population*, IRISH TIMES, Aug. 8, 2007, <http://www.irishtimes.com/newspaper/ireland/2007/0808/1186424880579.html>.

35. EUROPEAN PARLIAMENT, COMMITTEE OF INQUIRY ON RACISM & XENOPHOBIA, REPORT ON THE FINDINGS OF THE INQUIRY 65 (1991).

36. Robbie McVeigh, *'Ethnicity Denial' and Racism: The Case of the Government of Ireland Against Irish Travellers*, 2 TRANSLOCATIONS 90, 121 (2007), available at www.dcu.ie/~imrstr/volume1issue2/volume1issue2-6.pdf. While my research uncovered reference to modern day written signs only in the United Kingdom and Northern Ireland, in 2002 the publicans of County Mayo came together to implement a blanket ban on the sale of alcohol to all Travellers in direct defiance of national equality legislation. Tom Shiel, *Traveller pub move would 'lead to flood of court cases'*, INDEPENDENT (IRELAND), Aug. 3, 2002, <http://www.independent.ie/national-news/traveller-pub-move-would-lead-to-flood-of-court-cases-294949.html>.

37. See, e.g., Conor Kane, *'Breach of Rights' as Traveller Family Evicted*, INDEPENDENT (IRELAND), Jan. 29, 2009, <http://www.independent.ie/national-news/breach-of-rights-as-traveller-family-evicted-1618600.html>.

38. Dympna Devine et al., *Naming the 'Other': Children's Construction and Experience of Racisms in Irish Primary Schools*, 11 RACE ETHNICITY & EDUCATION 369, 373-74 (2008).

39. Brendan Koerner, *What Is an Irish Traveler?*, SLATE, Sept. 24, 2002, http://www.slate.com/articles/news_and_politics/explainer/2002/09/what_is_an_irish_traveler.html. In a recent study, over seventy-nine percent would be reluctant to buy a house next door to a Traveller, forty-one percent would be unwilling to employ a Traveller, and eighteen and a half percent would deny Travellers Irish citizenship. MAC GRÉIL, *supra* note 10.

Travellers are also subject to harassment and violence. Individual Travellers often experience verbal or physical abuse because of their identity.⁴⁰ Traveller encampments are easy targets for attack by angry members of the settled community. Anthropologist Jane Helleiner described a 1986 attack on an Irish Traveller group wherein approximately one hundred non-Travellers dragged five caravans with tractors out of a field in which they were parked.⁴¹ Such mob activities are not uncommon and continue today.⁴²

This kind of discrimination has a well-established history in the country. Irish Travellers “have so long been associated with uncleanness, vagrancy, and petty crime that they are still sometimes perceived as pathologically unfit for Irish citizenship.”⁴³ However, racism against nomadic people extends beyond Ireland. Since the 1600s, progress-oriented Western ideology has systematically encouraged sedentarism over nomadism, “denigrat[ing] nomadism *both inside and outside Europe*,” and promoting the view of nomadism as characteristic of “‘barbarous,’ underdeveloped, and ‘uncivilized’ societies.”⁴⁴ Thus, the historic discrimination towards Irish Travellers is only one part of a larger bias against nomadism.

D. Traveller Ethnicity

Despite this discrimination, the Irish government has failed to declare Travellers to be a distinct ethnic group. In the July 2003 Draft of the First National Report by Ireland to the Committee on the Elimination of Racial Discrimination, the Irish government explicitly stated,

In regard to the scope of the report it should be noted that Irish Travellers do not constitute a distinct group from the population as a whole in terms of race, colour, descent, or national or ethnic origin. However, the Government is aware that members of the Traveller Community suffer discrimination on the basis of their social origin.⁴⁵

Furthermore, the government argued that the “separate identification of Travellers in equality legislation guarantees that they are explicitly

40. *Travellers in Ireland: An Examination of Discrimination and Racism*, NAT’L CONSULTATIVE COMMITTEE ON RACISM & INTERCULTURALISM, <http://www.nccri.ie/traveller.html> (last visited Apr. 5, 2011).

41. HELLEINER, *supra* note 4, at 3.

42. *See, e.g.*, David Lynch, *Irish Travellers: The Persistence of Prejudice* (on file with Public Law Review).

43. Jim Mac Laughlin, *Nation-Building, Social Closure, and Anti-Traveller Racism in Ireland*, 33 *SOCIOLOGY* 129, 129 (1999).

44. *Id.*

45. GOV’T OF IR., DRAFT FIRST NAT’L REP. BY IRELAND TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 90 (2003) [hereinafter DRAFT FIRST NAT’L REP. TO CERD].

protected.”⁴⁶ The governmental position was also confirmed by a parliamentary question in October 2003, which restated this view.⁴⁷

Such a hard-line position was new for the Irish government, which until that point was non-committal about recognizing Travellers as an ethnic group.⁴⁸ This was reflected in the Equality Legislations of 1998 and 2000; although Travellers were not included under the ‘race ground’ for protection from discrimination, Traveller status was recognized as a separate ground for such protection.⁴⁹ The Irish government has not set out any detailed rationale for its shift, nor has it made clear what policy implications such stand may have. However, for those in the Traveller movement, this position appears to be an express denial of their culture and community. Many are afraid that the government is sending a message that it is presently less sympathetic to Traveller concerns.⁵⁰

It is possible to argue that this is a mere debate about terminology. It is true that differences in wording do not guarantee differences in the practice, experience, or recognition of exclusion. Yet, language is meaningful—how Travellers are identified in policy and legislative texts affects their treatment, the way settled people view them, how they view themselves, and particularly, their ability to seek redress under international law.⁵¹ As the Pavee Pointe Travellers’ Centre argues, “[B]ecause officialdom stops short of clearly applying the terminology of ethnicity and racism to Travellers and issues affecting them, they remain in a sort of provisional niche where they can easily become minimized [sic] or forgotten.”⁵² Policies and programs that respond to

46. *Id.*

47. NAT’L CONSULTATIVE COMMITTEE ON RACISM & INTERCULTURALISM (IR.), THE IMPORTANCE OF RECOGNISING TRAVELLERS AS AN ETHNIC GROUP: SUBMISSION TO THE JOINT OIREACTHAS COMMITTEE ON HUMAN RIGHTS 2 (2004) [hereinafter NAT’L CONSULTATIVE COMMITTEE].

48. *Id.* Ireland’s unwillingness to grant explicit recognition to Travellers as a minority ethnic group seems contradictory to its implicit recognition of Travellers through, for example, the involvement of Traveller representatives in the co-coordinating committee for the European Year Against Racism (1997), the National Consultative Committee on Racism and Interculturalism, and the Know Racism national public awareness program. *Id.* at 3–4.

49. EQUAL STATUS ACT 2000, § 3(2)(i) (Act No. 8/2000) (Ir.), available at <http://www.irishstatutebook.ie/2000/en/act/pub/0008/index.html>. Travellers are defined as a separate category under the Equal Status Act, so they do not come under the racial protection ground. *Id.* § 2(1). They are defined as “the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.” *Id.* This is a first step on the road to cultural recognition but again falls short of full recognition of Travellers as an ethnic group.

50. NAT’L CONSULTATIVE COMMITTEE, *supra* note 47, at 2–3.

51. ASSIMILATION POLICIES, *supra* note 3, at 27–37.

52. *Id.* at 11.

needs will only be effective to the extent that they take into account the culture and identity of the group concerned. Recognition would be a first step towards fighting both individual and systemic racism.

The Irish Human Rights Commission, a commission that has engaged in ongoing efforts to secure official government recognition of Traveller ethnic identity, succinctly describes the high stakes:

The Human Rights Commission . . . believes that the refusal to recognise Travellers as an ethnic minority for the purposes of CERD suggests a lack of understanding of the importance to Travellers of recognition of their culture and identity. It also, in the view of the Commission, raises concerns that sufficient weight may not be given in policy making to the need to respect and promote that culture, while the lack of recognition may place obstacles in the way of Travellers accessing all the protections of CERD and other international human rights conventions.⁵³

III. THE ROAD MORE TRAVELED: TRAVELLER ETHNIC RECOGNITION ABROAD

A. *United Kingdom*

Other jurisdictions provide examples of how Traveller identity could be understood differently. Most notably, in *O'Leary & Others v. Allied Domecq & Others*, an English court dealt with the issue of whether Irish Travellers constituted a distinct ethnic group.⁵⁴ In the 2000 case, the Central London County Court heard from a number of Irish Travellers who alleged discrimination under the Race Relations Act of 1976 claiming they had been refused service in a number of public houses in northwest London.⁵⁵ The allegation of discrimination was based on their status as Irish Travellers rather than their Irish heritage, since one of the pubs in question almost exclusively served Irish expatriates. The court proceeded to determine whether Irish Travellers constituted an ethnic minority group under the Act.

In making its decision, the court relied on a 1983 English case, *Mandla v. Dowell Lee*, wherein a court considered the meaning of the terms 'ethnic origins' and 'ethnic group' and laid out the essential and non-essential characteristics needed for a group to be considered an ethnic group in the United Kingdom.⁵⁶ The court in *O'Leary* determined that Irish Travellers met the "essential" criteria for an ethnic group under *Mandla*:

53. TRAVELLERS AS MINORITY, *supra* note 17, at 3. The IHRC was created under the Human Rights Act 2000 "to ensure that the human rights of all people are promoted and protected in law, policy, and practice." *Id.* The IHRC is Ireland's national human rights body recognized by the United Nations. *Find Out About Us*, IRISH HUMAN RIGHTS COMM'N, <http://www.ihrc.ie/about/> (last visited Apr. 7, 2011).

54. TRAVELLERS AS MINORITY, *supra* note 17, at 7.

55. *O'Leary v. Allied Domecq*, [2000] No. CL950275-79 (Cen. London Cnty. Court) (U.K.).

56. *Mandla v. Dowell Lee*, [1983] 2 A.C. 548 (H.L.) 560 (appeal taken from Eng.).

- (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive;
- (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance.⁵⁷

The court also held that Irish Travellers have several other relevant, but non-essential characteristics of an ethnic group, including “a common geographical origin, or descent from a small number of common ancestors,” as well as a common language.⁵⁸ Though the Irish Travellers do not have a common written literature, the court deemed their shared oral tradition significant.⁵⁹ The court added that Travellers are “undoubtedly a group which suffers disadvantage, discrimination and prejudice.”⁶⁰

B. Northern Ireland

In Northern Ireland, Travellers’ status as a ‘racial group’ is enshrined in the law through legislation. According to Baroness Denton, the Minister responsible for the law, the Race Relations (Northern Ireland) Order 1997 explicitly included Travellers because “of considerable lobbying during the early consultation period In the response to the proposal for a draft order there was a great urging that the legislation should make clear the status of the Irish traveller [sic] community as a separate ethnic group.”⁶¹ Under the Race Relations Order,

‘racial grounds’ . . . includes the grounds of belonging to the Irish Traveller community, that is to say the community of people commonly so called who are identified (both by themselves and by others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.⁶²

Thus, Travellers are accepted as an ethnic group in both Northern Ireland and England by all major actors, including the government—a path that the Republic of Ireland has not followed.⁶³

IV. LONELY ROAD: TRAVELLER ETHNICITY IN THE REPUBLIC’S DOMESTIC POLICY

In the early 1960’s, a combination of Irish Travellers and settled people sought to create a radical Travellers movement, based on grassroots tactics,

57. *O’Leary*, No. CL950275-79.

58. *Id.*

59. *Id.*

60. *Id.*

61. McVeigh, *supra* note 36, at 122.

62. *Id.*

63. *Id.*

seeking civil rights and self-determination through direct action, rather than legislative reform.⁶⁴ Gratton Puxon, a settled English person who grew to strongly identify with Travellers and Gypsies, was the most famous spokesperson of this controversial movement.⁶⁵ However, when Puxon was arrested on explosives charges in 1963, he left for England and set up the Gypsy Council there, effectively ending the radical movement.⁶⁶

That same year, the government issued its first explicit response to Travellers' concerns in the Report of the Commission on Itinerancy.⁶⁷ The Commission explicitly denied that "itinerants" constituted an ethnic group, and sought "to promote their absorption into the general community."⁶⁸ There is no indication that the Commission sought out the views of the Travellers in creating this policy.⁶⁹ In fact, the next two decades suggest the contrary, since the government interventions were typically described as top-down operations that were "for, rather than with, Travellers. Travellers were frequently referred to as being in need of charity rather than rights."⁷⁰

Traveller rights activism led to a change in the government policy by 1983, when the Irish Government issued the Report of the Travelling People Review Body, which eliminated the use of the word "itinerant" for "traveller" and rejected the policy of total "absorption" that the earlier Commission on Itinerancy had endorsed.⁷¹ However, despite the involvement of settled and Traveller activists,⁷² the Review Body determined that anti-discrimination legislation was too complicated because the Review Body perceived ambiguity in Traveller group identity:

The desirability of having special legislation enacted to outlaw discrimination against travellers as a minority group was examined by the Review Body. It became apparent from this examination that implementation of such legislation would be fraught with many difficulties, especially in the absence of a precise

64. *Racism in Ireland: Travellers Fighting Back*, 2 RED & BLACK REVOLUTION 22, 23 (2001), available at <http://struggle.ws/pdfs/rbr2.pdf>.

65. *Id.*

66. PAT THANE ET AL., EQUALITIES IN GREAT BRITAIN, 1946-2006, at 87 (2007).

67. GOV'T OF IR., REPORT OF THE COMMISSION ON ITINERANCY (1963).

68. EQUALITY AUTHORITY, TRAVELER ETHNICITY 67 (2006), available at http://www.equality.ie/getFile.asp?FC_ID=263&docID=556. According to the Equality Authority, this denial may actually have been an attempt to combat the racism that was so prevalent. "The Report does not explain—other than what is in this paragraph—what prompted the reference to 'ethnic group' here although it might have been intended, at least in part, as a counter to the wider community's outright rejection of Travellers as despised and racialised inferiors." *Id.* at 8.

69. See O'Connell, *supra* note 10.

70. *Id.*

71. GOV'T OF IR., REPORT OF THE TRAVELLING PEOPLE REVIEW BODY 31 (1983) [hereinafter TRAVELLING PEOPLE REVIEW BODY].

72. O'Connell, *supra* note 10.

legal definition of “traveller”. Accordingly, the enactment of anti-discrimination laws is not sought.⁷³

In 1984, responding to the Review Body report, the Irish Government created a Monitoring Committee, which from the outset called for legislation to combat discrimination against Travellers and repeated the call in each of the six reports it issued before it was dissolved in 1993.⁷⁴ Others joined in the chorus, including the National Council for Travelling People, an organization representing Traveller settlement communities.⁷⁵ The National Council adopted a Charter of Rights of Travelling People in 1984, which it presented before the Seanad, the Irish senate.⁷⁶ The Charter listed twelve rights, the first of which was the right to recognition of their distinct cultural identity: “Travellers as individuals, and as a group, have a right to realisation [sic] of their own cultural identity, indispensable for their dignity and free development as persons.”⁷⁷ In 1985, the Seanad passed a motion in response to the Charter, which welcomed the document and requested that the Government introduce the reforms required by the Charter, “as a matter of urgency.”⁷⁸

Despite the Review Body’s unwillingness to seek legislation without a definition of “traveller,”⁷⁹ Ireland’s parliament passed multiple laws that mentioned Travellers without clear definition. These included the 1988 Housing Act, the 1989 Prohibition of Incitement to Hatred Act, and the 1993 Unfair Dismissals (Amendment) Act.⁸⁰ The first, the 1988 Housing Act, was passed in response to the Government Statement of 1984, which in turn was an answer to the Charter of the National Council for Travelling People.⁸¹ The Housing Act’s section on the ‘Provision of sites for travellers’ defined Travellers vaguely as “persons belonging to the class of persons who traditionally pursue or have pursued a nomadic way of life.”⁸²

73. TRAVELLING PEOPLE REVIEW BODY, *supra* note 71.

74. EQUALITY AUTHORITY, *supra* note 68.

75. Donald Kenrick, *The Travellers of Ireland*, PATRIN (Mar. 1, 1998), <http://www.starbacks.ca/~patrin/ireland.htm>.

76. EQUALITY AUTHORITY, *supra* note 68.

77. *Id.*

78. *Id.*

79. TRAVELLING PEOPLE REVIEW BODY, *supra* note 71.

80. HOUSING ACT 1988 (Act No. 28/1988) (Ir.), *available at* <http://www.irishstatutebook.ie/1988/en/act/pub/0028/print.html>; PROHIBITION OF INCITEMENT TO HATRED ACT 1989 (Act No. 19/1989) (Ir.), *available at* <http://www.irishstatutebook.ie/1989/en/act/pub/0019/print.html>; UNFAIR DISMISSALS ACT 1993 (Act No. 22/1993) (Ir.), *available at* <http://www.irishstatutebook.ie/1993/en/act/pub/0022/print.html>.

81. EQUALITY AUTHORITY, *supra* note 68.

82. *Id.*

During discussions leading up to the Prohibition of Incitement to Hatred Act 1989, legislators considered and ultimately rejected the possibility of defining Travellers as an ethnic group.⁸³ Among legislators and activists at this time, there was widespread agreement that Travellers experienced discrimination, but individuals disagreed about whether Travellers would be protected by the Prohibition of Incitement to Hatred Act's reference to protection on the basis of ethnic origins.⁸⁴ The Minister for Justice stated that he believed the courts ought to decide, but that he considered Travellers to be protected.⁸⁵ The Minister's unwillingness to assure Travellers that they would be protected as an ethnic group spurred some to argue successfully for the inclusion of "membership of the travelling community" itself as a protected category of identity.⁸⁶ The Traveller Support Movement, a Travellers' rights organization, had actively campaigned for their inclusion in the legislation and was the key reason for the explicit mention of Travellers in the law.⁸⁷ The organization had argued for several years that Travellers constituted an ethnic group subjected to racism, yet in this instance, were only able to manage a separate category for Travellers.⁸⁸

Another public policy milestone for Travellers' attempts to achieve recognition as an ethnic group was the publication of the Report of the Task Force on the Travelling Community in 1995.⁸⁹ While it did not officially urge the Government's recognition of Traveller ethnicity, the report devoted a full section to the issue of discrimination, reflecting the past decade of Traveller activism about discrimination, as well as the growing media consciousness of the issue.⁹⁰ The report made reference to the growing tide of awareness of Travellers' ethnicity:

Academic debate and various international fora focus attention on the link between racism and cultural difference particularly in scenarios of unequal

83. McVeigh, *supra* note 36, at 90.

84. *Id.* at 93.

85. *Id.* at 94.

86. PROHIBITION OF INCITEMENT TO HATRED ACT 1989, *supra* note 80.

87. McVeigh, *supra* note 36, at 93.

88. *Id.* "Ironically, the inclusion of Travellers within the Republic's 1989 Incitement to Hatred Act gave weight to the arguments for their inclusion in the Northern Ireland Race Racial Order which in turn influenced how they were defined in the equality legislation in the Republic. Ideally, in the equality legislation the grounds of 'race' and the 'Traveller community' would have been combined in a single ground more properly named the ground of 'racism'—with Travellers named amongst the range of issues and categories covered." NAT'L CONSULTATIVE COMMITTEE, *supra* note 47, at 3.

89. GOV'T OF IR., REPORT OF THE TASK FORCE ON THE TRAVELLING COMMUNITY (1995).

90. *Id.* at 78–94. The report recognized that the discrimination against Travellers could be direct and indirect, intentional and unintentional. *Id.* at 80.

power relationships. The forms of prejudice and discrimination experienced by the Traveller community equate with racism in the international context.⁹¹

The report also urged combating discrimination with legislation, recognizing the surge of public attention towards Travellers' rights.⁹²

The Task Force report led to policy initiatives that acknowledged Travellers, such as the Equal Status Act of 2000 which contains a definition of the "Traveller community."⁹³ Under the Act, "'Traveller community' means the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland."⁹⁴

However, this recognition again fell short of full acceptance of Traveller ethnicity since "traveller community" was listed separately, rather than under the heading of racial or ethnic group.⁹⁵ "The Traveller Support Movement, which had argued vigorously in support of Traveller ethnicity, was, however, satisfied since Travellers would unambiguously be protected by legislation without [the need for] a test case to establish ethnicity."⁹⁶

In 2003, the Irish government established the High Level Group on Traveller Issues, an inter-departmental group aimed at ensuring high quality and efficient service delivery to Travellers.⁹⁷ Unfortunately, the group did not include any Travellers.⁹⁸

91. *Id.* at 79.

92. *Id.* at 81.

93. EQUAL STATUS ACT 2000, § 2, *supra* note 49.

94. *Id.* Interestingly, this definition is very similar to the characteristics that the British court in *O'Leary v. Allied Domecq* looked to in order to determine Irish Travellers' status as an ethnic group: (1) a long shared history, which distinguishes it from other groups; (2) a cultural tradition of its own. *O'Leary v. Allied Domecq*, [2000] No. CL950275-79 (Cen. London Cnty. Court (U.K.)).

95. *Id.*

96. McVeigh, *supra* note 36, at 96.

97. GOV'T OF IR., REPORT OF THE HIGH LEVEL GROUP ON TRAVELLER ISSUES 14 (2006).

98. PAVEE POINT TRAVELLERS CENTRE & IRISH HUMAN RIGHTS COMM'N, TRAVELLERS CULTURAL RIGHTS: THE RIGHT TO RESPECT FOR TRAVELLER CULTURE AND WAY OF LIFE 27 (2008) [hereinafter CULTURAL RIGHTS]. The Advisory Committee for the Council of Europe Framework Convention for the Protection of National Minorities expressed their disappointment with this fact in their 2006 Second Opinion on Ireland in 2006. COUNCIL OF EUR., ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, SECOND OPINION ON IRELAND 21 (2006). Thomas Hammarberg, the Council of Europe Commissioner for Human Rights also expressed disapproval and in a report on his 2007 visit to Ireland, Hammarberg wrote that Travellers are under-represented at all levels, specifically noting the absence of Travellers in the High Level Group on Traveller Issues, and suggested the creation of a reserved seat for a Traveller in the Seanad (Irish Senate). COUNCIL OF EUR., REPORT BY THE COMMISSIONER FOR HUMAN RIGHTS MR. THOMAS HAMMARBERG ON HIS VISIT TO IRELAND NOVEMBER 26-30, 2007, at 28-29 (2008).

V. ROAD TO NOWHERE?: TRAVELLER EFFORTS AT ETHNIC RECOGNITION
THROUGH INTERNATIONAL LAW

A major reason that Travellers' rights activists have sought the Irish government's recognition as an ethnic group is to gain the ability to challenge their treatment under international law documents, many of which offer special protections to ethnic groups and their members.⁹⁹

Traveller ethnicity needs to be recognized to ensure that Travellers can enjoy the protections and benefits that flow from these agreements alongside other ethnic groups. One key way that Travellers' advocates have sought to raise awareness is by submitting shadow reports to significant international agreements, which describe substantive ways in which the Irish state has failed to meet its obligations and specifically argue for recognition of Traveller ethnicity.¹⁰⁰

The European Framework Convention for the Protection of National Minorities ("European Framework") was ratified by Ireland in February 1995, and implemented in September 1999.¹⁰¹ The European Framework is monitored at the European Union level, and member "governments are required to submit a report on how they protect and preserve the Culture of national minorities every five years."¹⁰² In 2001, the Irish government submitted the First Report under the European Framework:

Their culture and way of life, of which nomadism is an important factor, distinguishes the Travellers from the sedentary (settled) population. While Travellers do not constitute a distinct group from the population as a whole in terms of religion, language or race, they are, however, an indigenous minority who have been part of Irish society for centuries. The Government fully

99. Examples of these international law documents include the Convention on the Elimination of All Forms of Racial Discrimination, the European Framework Convention for the Protection of National Minorities, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and others. *The Rights of Ethnic and Racial Minorities*, HUMAN RIGHTS EDUCATION ASSOCIATES, http://www.hrea.org/index.php?doc_id=360#instruments (last visited Apr. 8, 2011). Ireland has a dualist legal system, which means that international human rights treaties are not considered binding national law unless they have been incorporated through a domestic law. Of the treaties considered in this article, only the European Convention on Human Rights, which was incorporated through Ireland's European Convention on Human Rights Act 2003, is deemed binding legal authority. CULTURAL RIGHTS, *supra* note 98, at 14.

100. See, e.g., IRISH TRAVELLER MOVEMENT, SHADOW REPORT AND COMMENTARY ON THE FIRST NATIONAL REPORT BY IRELAND TO THE UN CERD COMMITTEE 3-8 (2004), available at http://www.itmtrav.ie/uploads/cerd_report.pdf [hereinafter REPORT TO UN CERD COMMITTEE].

101. COUNCIL OF EUR., FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, SIGNATURES AND RATIFICATION AND STATUS OF MONITORING WORK - 1ST, 2ND AND 3RD CYCLES (2010), http://www.coe.int/t/dghl/monitoring/minorities/6_Resources/PDF_Chart_Monitoring_en.pdf.

102. *Traveller Culture*, *supra* note 8.

accepts the right of Travellers to their cultural identity, regardless of whether they may be described as an ethnic group or national minority.¹⁰³

Travellers' rights advocates were hopeful that this statement meant that the government envisaged that Travellers would be entitled to protection under the European Framework and, by extension, Article 1.1 of CERD and the full protection offered by it.¹⁰⁴

In December 2000 Ireland finally ratified the CERD convention thirty-two years after signing it in 1968.¹⁰⁵ State parties are obliged under Article 9 to submit a report within one year of ratification to the CERD Committee, which monitors the convention.¹⁰⁶ Ireland submitted its report in time for review in March 2005.¹⁰⁷

In Ireland's report, the government categorically declared that it did not count Travellers as an ethnic group.¹⁰⁸ Indeed, rather than reporting on the treatment of Travellers in the main document, the Irish government instead only made specific report of the position of Travellers in the attachment of Appendix 1.¹⁰⁹ The government provided very little supporting content for its rejection of Traveller ethnicity, making only footnote reference to a textbook primarily aimed at first year sociology students.¹¹⁰ The government did, however, include the caveat that it was "committed to applying all the protections afforded to ethnic minorities by the CERD equally to Travellers."¹¹¹

Despite that assurance, Travellers' rights activists saw this as a rollback of the broader recognition granted to Travellers in the 2002 submission to the European Framework Convention for the Protection of National Minorities.¹¹² In its shadow submission, Irish Traveller Movement wrote,

103. COUNCIL OF EUR., REPORT SUBMITTED BY IRELAND PURSUANT TO ARTICLE 25, PARAGRAPH 1 OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES (2001), *available at* <http://www.unhcr.org/refworld/country,,COESFCPNM,,IRL,,4254f5984,0.html>.

104. REPORT TO UN CERD COMMITTEE, *supra* note 100, at 8.

105. NGO ALLIANCE, SHADOW REPORT: IN RESPONSE TO THE IRISH GOVERNMENT'S FIRST NATIONAL REPORT TO CERD UNDER THE UNITED NATIONS INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION 13 (2004).

106. International Convention, *supra* note 27, at art. 9.1.

107. Rep. of the Comm. on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention: Concluding observations of the Committee on the Elimination of Racial Discrimination: Ireland, 66th Sess., Feb. 21–March 11, 2005, U.N. Doc. CERD/C/IRL/CO/2 (March 10, 2005) [hereinafter CERD Concluding Report on Ireland].

108. DRAFT FIRST NAT'L REP. TO CERD, *supra* note 45, at 13.

109. *Id.* at 90–101.

110. REPORT TO UN CERD COMMITTEE, *supra* note 100, at 10.

111. DRAFT FIRST NAT'L REP. TO CERD, *supra* note 45, at 13.

112. FIRST NAT'L REP. ON THE FRAMEWORK CONVENTION, *supra* note 15.

[It] supports the contention of the Irish Human Rights Commission (IHRC) that the only explicable reason for such defensiveness is an attempt by the State to exclude Travellers from the individual complaints procedure under Article 14 of the Convention and the requirement to take positive measures under Article 2.2.¹¹³

While the Irish government claimed that the definition of Travellers as an ethnic group would not entitle Travellers to any additional rights or protections, to activists, the stakes of ethnic recognition were actually very high. In its shadow report, Pavee Point argued,

The continued lack of recognition of Travellers as an ethnic group and the lack of explicit acknowledgement that they experience racism . . . is a major contributing factor to the slow pace of change and the confused and sometimes contradictory policy approaches of government interventions relating to Travellers in recent years.¹¹⁴

The Travellers' rights advocates appear to have had some success. The CERD committee took note of the status of Travellers and expressed "concern at the state party's position with regard to the recognition of Travellers as an ethnic group," adding, "The Committee is of the view that the recognition of Travellers as an ethnic group has important implications under the convention."¹¹⁵ The Committee further called on Ireland to "work more concretely towards recognizing the Traveller community as an ethnic group."¹¹⁶

Meanwhile, in 2005, the Irish government submitted its second report on the European Framework.¹¹⁷ To activists, it represented a significant retrenchment from the statements made in the previous European Framework report.¹¹⁸ In it, the government responded to a specific request to provide comments regarding the issue of recognizing Travellers as an ethnic group/national minority.¹¹⁹ Ireland defended its decision not to include

113. REPORT TO UN CERD COMMITTEE, *supra* note 100, at 10.

114. *Id.* at 7. This is a general theme that the Committee has addressed on a number of occasions. General Recommendation XXIV points out that "the application of different criteria in order to determine ethnic groups or indigenous peoples, leading to the recognition of some and refusal to recognize others, may give rise to differing treatment for various groups within a country's population." Comm. on the Elimination of Racial Discrimination, Rep., General Recommendation 24, Information on the demographic composition of the population, 55th Sess., Aug. 27, 1999, U.N. Doc. A/54/18, annex V (1999).

115. CERD Concluding Report on Ireland, *supra* note 107.

116. *Id.*

117. GOV'T OF IR., SECOND STATE REPORT SUBMITTED BY IRELAND UNDER THE COUNCIL OF EUROPE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES (2005) [hereinafter SECOND NAT'L REPORT].

118. EQUALITY AUTHORITY, *supra* note 68.

119. SECOND NAT'L REPORT, *supra* note 117, at 38.

Travellers in the main body of its first and second CERD reports on the ground that Travellers were not subject to protection from racial discrimination under CERD since “they [did] not appear to constitute a distinct group from the population as a whole in terms of race, colour, descent or national or ethnic origin.”¹²⁰ The government further stated that it was not providing a “lesser level of protection to Travellers compared to that afforded to members of ethnic minorities,” but that it was “not prepared to conclude that Travellers are ethnically different from the majority of Irish people.”¹²¹

Travellers’ rights activists appear to be having success in bringing international bodies to their side. In 2007, Ireland submitted its Third Periodic Report under the International Covenant on Civil and Political Rights (ICCPR).¹²² Despite the fact that the Irish government made no mention of Traveller ethnic identity in its submission, the Human Rights Committee took pains in its Concluding Observations to address their concern that Irish authorities do “not intend to recognize the Traveller community as an ethnic minority,” encouraging Ireland to take steps to do so.¹²³

VI. DOWN THE ROAD: THREE MAJOR CHALLENGES AND OPPORTUNITIES IN THE STRUGGLE FOR ETHNIC RECOGNITION

A. *Expanding the Movement Beyond Irish Borders*

Travellers’ rights groups need to expand the movement beyond Ireland. The fact that Irish Travellers are regarded as an ethnic group in Northern Ireland and the United Kingdom suggests the possibility that international pressure could play a role in changing the Irish government’s policy stance on the issue. Travellers’ groups must realize how little public awareness exists on an international scale of Traveller concerns and attempt to raise consciousness.

One way to achieve this is for Irish Travellers’ groups in the Republic to form ties with sister organizations in Northern Ireland and the United Kingdom. Some of this work is already happening.¹²⁴ Additionally, Travellers groups should reach out to Roma groups in Europe, who are working for the

120. *Id.*

121. *Id.* at 39.

122. GOV’T OF IR., THIRD REPORT BY IRELAND ON THE MEASURES ADOPTED TO GIVE EFFECT TO THE PROVISIONS OF THE COVENANT (2007) (submitted to the Human Rights Committee under the International Covenant on Civil and Political Rights).

123. Rep. of the Human Rights Comm., International Covenant on Civil and Political Rights, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding observations of the Human Rights Committee: Ireland, 93rd Sess., July 7–25, 2008, U.N. Doc. CCPR/C/IRL/CO/3 (July 30, 2008).

124. See, e.g., *What is the Irish Traveller Movement (ITM)?*, IRISH TRAVELLER MOVEMENT, <http://www.itmtrav.ie/aboutus> (last visited Apr. 8, 2011). The ITM collaborates with Traveller groups in Britain and has member groups in Northern Ireland in addition to the Republic groups.

rights of nomads throughout the continent. While most scholars agree that Travellers and Roma do not share ethnic roots, they do share many concerns in common.¹²⁵ Some possible joint goals for Travellers and Roma include setting explicit guidelines and standards for human rights and minority rights as granted by conventions and recommendations; creating mechanisms for their implementation; raising the issue of Traveller/Roma statelessness, rights of asylum for Roma and Gypsies, and the needs of Travellers and Roma in the context of cross-border migration. Again, some Travellers' organizations are taking steps in this direction, but there is certainly more that can be done.¹²⁶

Of course, these standards and guidelines must be reworked and implemented in accordance with specific national settings, and not every issue of importance to Roma will matter to Travellers and vice versa. Much of the work in ensuring that the social problems of Travellers and Roma are addressed will happen through national and local organizations challenging the internal affairs of a given state. However, there is still a need for communal international efforts to lobby governments to apply existing human rights standards to Travellers and Roma, as working together will help both groups gain mass awareness of their issues.

B. *Winning Hearts and Minds*

Travellers have an image problem. As mentioned above, most of the world is unaware of their existence, let alone aware of their struggles. The Traveller movement needs to build such a consciousness. The task of winning hearts and minds also requires that Travellers' advocates instill the majority of Irish society with the understanding that the "Traveller problem" is a problem of the larger society—a problem of racism. The deeply embedded stereotypes and prejudices by some other Irish against the Travellers manifest in attitudes of rejection, social exclusion, and discrimination.¹²⁷ Travellers are and will remain a challenge to settled society's concepts of tolerance, equality, and identity.

This presents a quandary for the Traveller community—since settled society rejects Travellers' unique cultural experience and identity, Travellers who assert such identity while making demands for equality run the risk of fostering antagonism. However, assimilation, the alternate option, requires

125. See generally HELLEINER, *supra* note 4.

126. See *Pavee Point Programmes-Roma*, PAVEE POINT TRAVELLERS CENTRE, http://www.paveepoint.ie/progs_roma.html (last visited Apr. 8, 2011).

127. See MICHAEL HAYES, IRISH TRAVELLERS: REPRESENTATIONS AND REALITIES 115 (2006). One recent effort at encouraging Traveller acceptance was the creation of a calendar of glamorous "Traveller Beauties" by the Voice of the Traveller Magazine. *Calendar of Beauties Hopes to Break Down Anti-Traveller Stereotypes*, DAILY MAIL, Apr. 26, 2007, <http://www.dailymail.co.uk/news/article-450934/Calendar-beauties-hopes-break-anti-traveller-stereotypes.html>.

Travellers to alter or renounce their unique identity to gain acceptance and attain equal treatment.

The goal for the Traveller movement must be to make settled society understand that Travellers' desire for recognition as an ethnic minority is not disruptive at its core; on the contrary, it is a demand to be included in society. Travellers are asking to be included in Irish society as "a subject not as an object, having dignity, distinctiveness, and rights as human beings and as a group."¹²⁸ Travellers provide a unique part of Irish culture, which should be recognized as a valuable component of a diverse—rather than homogenous—Ireland.

One potential pathway for Travellers to gain ground is to build coalitions with other minority groups in the country. With the support of a coalition committed to ending all forms of racism, Travellers may have the ability to influence policy through democratic institutions and procedures, such as national and local elections and participation in decision-making bodies.

C. *Increasing Traveller Involvement in the Movement*

In addition to bolstering awareness, there also needs to be a stronger presence of Travellers within Travellers' rights organizations. Most Traveller organizations in Ireland are not actually run by Travellers themselves.¹²⁹ Some scholars have asserted that this model is based on the dangerous notion that because Travellers have been deprived through discrimination of education and skills, settled people need to assist with tasks such as financial management and public representation.¹³⁰ In fact, some have argued that this partnership model of Traveller activism actually recreates the dependency of Travellers upon settled people that the groups are trying to eliminate.¹³¹

While it may or may not be feasible for Travellers to instantaneously become the major leaders of their own movement, in order to authentically argue for the worth of Traveller identity, Travellers' rights activists must make efforts to involve more Travellers in the movement. Travellers' rights groups should attempt to attain a legitimate representation that bridges the gap

128. ANDRZEJ MIRGA & NICOLAE GHEORGHE, PROJECT ON ETHNIC RELATIONS, THE ROMA IN THE TWENTY-FIRST CENTURY: A POLICY PAPER (1997), available at http://www.per-usa.org/1997-2007/21st_c.htm.

129. Alana Lentin, *Anti-Racism in Ireland*, in *SOCIAL MOVEMENTS AND IRELAND* 190, 199 (Linda Connolly & Niamh Hourigan eds., 2006).

130. See, e.g., *id.* at 199; Martin Collins, Travellers: Culture and Identity, Address at Trinity College Dublin Seminar: Emerging Irish Identities (Nov. 27, 1999) (transcript available at http://www.tcd.ie/sociology/ethnicracialstudies/assets/documents/emerging_irish_id.pdf); Robbie McVeigh, *Is there an Irish anti-racism? Building an anti-racist Ireland*, in *RACISM AND ANTI-RACISM IN IRELAND* 211, 221 (Ronit Lentin & Robbie McVeigh eds., 2002) ("The failure to transfer power and resources to minority ethnic people was itself the symbol of 'partnership.'").

131. Lentin, *supra* note 129, at 199–200.

between the elite and often self-appointed organizational leaders and the inactive Traveller masses. One way in which this might be achieved is through a greater emphasis on democratic procedures that involve local representatives from Traveller communities.

Another area that organizational leaders should consider is the danger of assuming that the mere presence of Travellers in decision-making equates to a meaningful representation of Traveller needs and interests. It is quite easy to imagine that power imbalances because of educational levels and structural societal factors could obscure the desire of all for true partnership. Of course, Traveller ethnic mobilization is a recent phenomenon and needs time to mature; hopefully, time, commitment, and progress will help to bring about greater equality both within the Irish Traveller movement and in Irish society as a whole.

