

Out of Sight, Out of Mind:

Travellers' Accommodation in Northern Ireland

EXECUTIVE SUMMARY

March 2018



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION



Foreword

“Out of sight, out of mind”, the comment of a Councillor in Derry City and Strabane District Council neatly encapsulates the inertia and decline in developing Travellers’ accommodation and services. Our human rights investigation is the first major examination of the issue for almost a decade and the findings remain depressingly familiar. As a representative of South Tyrone Empowerment Programme noted “we have read reports from 1999 that are as relevant today, as they were in 1999. It has not moved on”. This Groundhog Day does not have to continue.

First, there are a number of important quick wins – the ‘Design Guide for Traveller Sites in Northern Ireland’ is now over 20 years old and needs updated and modernised, site licencing arrangements need to be put into effect and groundwork needs to be undertaken to ensure that the ‘Traveller Accommodation Needs Assessment’ due next year effectively involves Travellers and becomes part of a comprehensive gathering of data towards an evidence based policy approach to meeting Travellers’ accommodation needs.

In the longer term, there needs to be sufficient emergency halting, transit and serviced sites, properly supported, to meet Travellers’ needs and a pro-active and participative approach to making this happen. In line with the approach taken in the Northern Ireland Executive’s ‘Programme for Government’, this investigation charts the impact of the actions taken and omissions made by government departments and public authorities.

The inexorable impact of public policy has been to leave many Travellers with an unpalatable choice of retaining their culture while living in poor housing conditions or move into social housing. While for some Travellers, social housing is their choice of accommodation, for others it is not. Traveller culture is rich and vibrant and should be nurtured, rather than eroded through housing and other policies.

The aim of the investigation has been to use a human rights based lens to view the current circumstances applying to Travellers’ accommodation.

The investigation seeks practical immediate and longer-term answers to meet the needs for sufficient Travellers’ accommodation. The Commission will engage with all the key public bodies with a role to play and encourage effective communication with Travellers and Traveller support organisations to ensure an effective, participative and joined up approach to resolving the problems identified in the report. We will monitor the progress of our recommendations in the first instance over the next 12 months – and for those of greatest urgency over six months. We have provided an Appendix setting out the list of recommendations that apply to each public authority, so that the way forward and where responsibility lies is clear and unequivocal.

Finally, I would like to thank my colleagues Dr Hannah Russell and Fiona O’Connell who undertook the investigation and to all the public authorities, civil society organisations, Travellers and others who willingly provided their experience and knowledge. I trust their insights will bear fruit as a result of this investigation.



Les Allamby,
Chief Commissioner

Overview

Investigation Powers of the Northern Ireland Human Rights Commission

The Northern Ireland Human Rights Commission (NIHRC) was established following the Belfast (Good Friday) Agreement under the Northern Ireland Act 1998. Section 69 of the Act empowers the NIHRC to conduct investigations and to compel evidence.¹

The findings and recommendations in this report are presented in line with the NIHRC's statutory duty to review the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI).²

The Case for an Investigation

The NIHRC initiated the investigation following a scoping exercise in June 2016 that identified issues, which required further examination. These included:

- a shortage of adequate stopping sites for Roma/Gypsies and Irish Travellers;³
- a lack of social housing forcing households to move into the private rental sector;⁴
- a requirement for the NI Housing Executive to obtain site licences from local Councils for Travellers' sites;⁵
- a disparity between official figures on the Traveller population in NI;
- the existence of the Unauthorised Encampments (NI) Order 2005;⁶
- the general inadequacy of Travellers' accommodation;⁷ and
- the lack of authoritative human rights analysis of Travellers' accommodation in NI.⁸

Who are Travellers?

For the purposes of this investigation, 'Traveller' is used as an umbrella term for any member of a traditional Gypsy or Traveller community living in or travelling through NI with a long-shared history, culture and traditions that includes identifying with or continuing to practice a nomadic way of life.

¹ Sections 69(8) and 69A NI Act 1998, as amended by the Justice and Security (NI) Act 2007. During this investigation, the NIHRC did not however use its formal investigatory powers due to the high levels of cooperation from the public authorities involved.

² Sections 69(1) and 69(8A), NI Act 1998.

³ E/C.12/GBR/CO/5, 'ICESCR Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 22 May 2009, at para 30.

⁴ Ibid; E/C.12/GBR/CO/6, 'ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016, at para 49.

⁵ NIHRC, 'Written Evidence to the Committee for Social Development, NI Assembly on the Caravans Bill' (NIHRC, June 2010), at paras 20 and 21; NIHRC, 'NIHRC Submission to the UN Committee on Economic, Social and Cultural Rights 58th Session on the Sixth Periodic Report of the UK's Compliance with ICESCR' (NIHRC, April 2016), at 59.

⁶ E/C.12/GBR/CO/5, 'ICESCR Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 22 May 2009, at para 30; E/C.12/GBR/CO/6, 'ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016, at para 49.

⁷ Equality Commission NI, 'Outlining Minimum Standards for Traveller Accommodation' (ECNI, 2009), at 9-10; Safa Abdella *et al*, 'Our Geels: All Ireland Traveller Health Study' (UCD, 2010), at 46; NICEM, 'The Annual Human Rights and Racial Equality Benchmarking Report 2013/14' (OFMDFM, 2014), at 96; E/C.12/GBR/CO/5, 'ICESCR Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 22 May 2009, at para 30; E/C.12/GBR/CO/6, 'ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016, at para 49.

⁸ OFMDFM, 'A Shared Future – Policy and Strategic Framework for Good Relations in NI' (OFMDFM, 2005); OFMDFM, 'A Racial Equality Strategy for NI 2005-2010' (OFMDFM, 2005); ECNI, 'Statement on Key Inequalities in NI' (ECNI, 2007); Chris Johnson and Marc Willers (eds), *Gypsy and Traveller Law* (Legal Action Group, 2007); ECNI, 'Outlining Minimum Standards in Traveller Accommodation' (ECNI, 2009); Safa Abdella *et al*, 'Our Geels: All Ireland Traveller Health Study' (UCD, 2010); Department of the Environment, 'Planning Policy Statement 12: Housing in Settlements' (DoE, 2013); Geraldine Scullion and Sheila Rodgers, 'Traveller Voices for Change: Mapping the view of Irish Travellers on Integration and their Sense of Belonging in NI' (2014); NI Housing Executive, 'Traveller Accommodation Needs Assessment' (NIHE, 2014); NICEM, 'The Annual Human Rights and Racial Equality Benchmarking Report 2013/14' (OFMDFM, 2014); Alison Wallace, 'Housing and Communities' Inequalities in NI' (ECNI, 2015); ECNI, 'Key Inequalities in Housing and Communities' (ECNI, 2016).

What is Travellers' Accommodation?

For the purposes of this investigation, 'Travellers' accommodation' is any form of housing inhabited by members of the Traveller communities. This working definition includes grouped housing;⁹ Travellers' sites (serviced,¹⁰ serviced/transit,¹¹ transit,¹² emergency halting,¹³ co-operated¹⁴ and unauthorised¹⁵); standard social housing;¹⁶ and private rented properties.¹⁷

Human Rights Laws and Standards

The main sources of human rights laws and standards are international and regional human rights treaties. The provision and regulation of social housing and the regulation of private housing is a devolved matter in NI. Implementing human rights laws and standards relevant to Travellers' accommodation is a responsibility of public authorities.

United Nations

The main UN human rights treaty that relates to Travellers' accommodation is the International Covenant on Economic, Social and Cultural Rights (ICESCR), particularly Article 11, the right to an adequate standard of living.¹⁸ A number of other treaties are relevant to the right to adequate housing including the International Covenant on Civil and Political Rights (ICCPR);¹⁹ Convention on the Elimination of All Forms of Racial Discrimination (CERD)²⁰; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);²¹ the Convention on the Rights of the Child (CRC);²² and the Convention on the Rights of Persons with Disabilities (CRPD).²³

Broadly defined, the right to adequate housing is "the right to live somewhere in security, peace and dignity".²⁴ It is more than supplying and making housing available, the housing itself must be adequate. The ICESCR Committee has established that the right to adequate housing requires adequate:

- legal security of tenure;
- availability of services, materials, facilities and infrastructure;
- affordability;
- habitability;
- accessibility;

⁹ Grouped housing schemes are residential housing developments with additional facilities and amenities specifically designed to accommodate extended Traveller families on a permanent basis.

¹⁰ Serviced sites facilitate the permanent location of chalets, trailers or caravans.

¹¹ Serviced/transit sites are split into two with a section of permanent pitches and a section of temporary pitches.

¹² Transit sites facilitate a temporary or short-term location of caravans. They are for a maximum stay of three months.

¹³ Emergency halting sites are for the temporary or short-term location of caravans. They are for a maximum stay of 28 days.

¹⁴ Co-operated sites enable Travellers to camp on public land on a temporary basis, subject to a number of health and safety requirements. It is not a substitute for permanent or transit sites, but is a way of dealing with a humane requirement.

¹⁵ Sites that have not been authorised by the NI Housing Executive or relevant local Council.

¹⁶ Bricks and mortar social housing.

¹⁷ Bricks and mortar private rented housing and private rented caravans, trailers or chalets.

¹⁸ Ratified by the UK on 20 May 1976.

¹⁹ Articles 2, 17 and 26, International Covenant on Civil and Political Rights 1966.

²⁰ Article 5(e)(iii), Convention on the Elimination of Racial Discrimination 1965.

²¹ Article 14(2)(h), Convention on the Elimination of Discrimination against Women 1979.

²² Article 27(3), Convention on the Rights of the Child 1989.

²³ Articles 9, 28(1) and 28(2)(d), Convention on the Rights of Persons with Disabilities 2006.

²⁴ E/1992/23, 'ICESCR Committee General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 8.

- location;
- cultural adequacy; and
- freedom from forced eviction.²⁵

Council of Europe

The main human rights treaty of the Council of Europe (CoE) is the European Convention of Human Rights (ECHR). There are a number of other treaties relevant to the subject of Travellers' accommodation, including the Framework Convention on the Protection of National Minorities (FCNM), the European Social Charter 1961 and the European Social Charter (Revised) 1996.

European Union

The Charter of Fundamental Rights of the European Union (CFREU) is relevant regarding Travellers' accommodation.

The Methodology

The NIHRC launched this year-long investigation in NI on September 2016. The investigation considered Travellers' accommodation across NI and also adopted a case study approach in four local Council areas:

- Belfast (Belfast City Council);
- Craigavon and Armagh (Armagh City, Banbridge and Craigavon District Council);
- Derry/Londonderry and Strabane (Derry City and Strabane District Council); and
- Dungannon and Coalisland (Mid Ulster District Council).

The investigation involved gathering written and oral evidence from the 12 relevant public authorities,²⁶ eight civil society organisations²⁷ and 38 members of the Traveller communities in NI.²⁸

The NIHRC conducted observational visits to all of the Traveller-specific accommodation locations (serviced sites, transit sites, emergency halting site, cooperated site and grouped housing) within the four Council areas adopted as case studies.²⁹ It also conducted an observational visit in April 2017 to two Traveller sites' in Dublin, for the purposes of exploring good practice.

The Report

The 14 substantive chapters of the investigation's full report are structured around the key human rights laws and standards identified as crucial in fulfilling, respecting and protecting the right to adequate housing, in the context of Travellers' accommodation. The full report is available at www.nihrc.org.

²⁵ Ibid; E/1998/22, 'ICESCR Committee General Comment No 7: Forced Evictions', 20 May 1997.

²⁶ These were Department for Communities; Department for Infrastructure; NI Housing Executive; Apex Housing Association; Clanmil Housing Association; Radius Housing Association (formerly Fold Housing Association); Belfast City Council; Armagh City, Banbridge and Craigavon Borough Council; Derry City and Strabane District Council; Mid Ulster District Council; Equality Commission NI; and Police Service NI. The NIHRC also liaised with the NI Local Government Partnership on Travellers Issues and the NI Public Service Ombudsman. Housing associations are included as public authorities in accordance with *Weaver v London and Quadrant Housing Trust* [2009] EWCA Civ 587.

²⁷ These were An Munia Tober; Craigavon Travellers Support Committee; Housing Rights; Pavée Point; Participation and Practice of Rights; South Tyrone Empowerment Programme; Armagh Travellers Support Group; and Toybox.

²⁸ The interviewees resided in a range of accommodational types (Travellers' sites, grouped housing, standard social housing) or were experiencing homelessness from across NI.

²⁹ A breakdown by Council area of Traveller-specific accommodation in NI is provided in Appendix II. Available at: www.nihrc.org.

Each substantive chapter considers the relevant human rights laws and standards engaged, followed by an examination of the existing domestic laws and policies considered to be most relevant. Each chapter then examines the practices of the relevant public authorities and the experiences of the Traveller communities and civil society organisations, drawing on the evidence gathered. To conclude, a summation of key findings is provided.

Five recommendations are identified as requiring immediate action, these are highlighted in red. The Commission will review progress within six months (September 2018) to see whether these recommendations have been implemented. The Commission will review the implementation of the remaining recommendations, highlighted in purple, within 12 months (March 2019).

Conclusions and Recommendations

The right to adequate housing requires that Travellers' accommodation is:

- culturally adequate;
- accessible;
- habitable;
- adequate in terms of services, facilities and infrastructure;
- subject to adequate security of tenure;
- adequately safeguarded from forced eviction;
- affordable;
- adequately located;
- subject to effective participation of Travellers;
- adequately monitored;
- adequately resourced;
- not subject to discrimination;
- promotes tolerance and mutual understanding; and
- subject to an effective remedy.

In the course of this investigation, the Commission identified some existing mechanisms that, if implemented in practice, assist with fulfilling a number of these requirements. For example, the NI Housing Executive and housing associations have mechanisms in place for reporting and tracking maintenance requirements to assist with ensuring Travellers' accommodation is habitable and adequately serviced. The Police Service NI introduced a number of initiatives that promote non-discrimination, tolerance and mutual understanding. All Police Service NI officers receive early career cultural awareness training, which includes Travellers' culture. In some areas, the Police Service NI has also set up temporary Traveller-specific community projects. Furthermore, all public authorities have complaint mechanisms in place and the Equality Commission for NI offers assistance to Travellers' wishing to exercise their right to an effective remedy.

In addition, some pending positive developments may, if implemented, further assist in fulfilling some of these requirements. In November 2017, the NI Housing Executive was:

- reviewing its housing application form to include a full range of options, including Traveller-specific accommodation;
- rolling out a new Housing Options Solution model;
- introducing a live system that records prospective tenants preferences to run in parallel with its five-yearly 'Traveller Accommodation Needs Assessment'; and
- reviewing its Travellers' policy.

This should help to address accessibility issues that Travellers are facing concerning their accommodation. Regarding the promotion of habitable and adequately serviced Travellers' sites, the Department for Communities, in November 2017, was reviewing the 'Design Guide for Traveller Sites in NI'.

Nevertheless, the Commission found there were inadequacies in some laws, public authorities' policies and public authorities' practices, in the context of Travellers' accommodation in NI. It confirmed that such inadequacies can dissuade and suppress a Traveller's culture, including the ability to exercise a nomadic lifestyle. Thus, the Commission concludes that public authorities must take reasonable and prompt steps

(in addition to the existing mechanisms and positive developments highlighted), to ensure Travellers' accommodation in NI is in line with the relevant human rights standards.

As per the ICESCR, Article 11, and the European Social Charter (Revised), Article 31, public authorities should take steps to the maximum available resources to ensure that Travellers' right to adequate housing is respected, protected and fulfilled. The core obligations contained within the right to adequate housing should have immediate effect and non-core obligations should be progressively realised. In human rights terms, retrogression of the right to adequate housing is prohibited, subject to exceptional justified circumstances.

The ECHR may also be relevant, in particular Articles 2 (right to life), 3 (prohibition of torture, inhuman and degrading treatment), 8 (right to respect for private and family life) and 14 (right to non-discrimination, when exercising other ECHR rights).

Based on the Commission's findings, this executive summary identifies the inadequacies that require addressing to ensure any actual or potential violation of human rights standards in the context of Travellers' accommodation in NI are effectively remedied and their causes are addressed to prevent reoccurrence.

The first section sets out thirteen systemic issues identified by the Commission. The second section sets out the key conclusions and corresponding recommendations.³⁰

Systemic Issues

1 Domestic Legal Framework

Domestic laws and policies regarding Travellers' accommodation in NI largely satisfy human rights requirements. However, the existence of the Unauthorised Encampments (NI) Order 2005 has a disproportionate impact on the Traveller communities and threatens their nomadic culture. There are particular issues identified with respect to clarifying the legislative requirements regarding the licencing of Travellers' sites and the provision of portable accommodation (such as caravans, trailers and chalets). Additionally, public authorities are relying on a 1997 version of the 'Design Guide for Travellers' Sites in NI', as the subsequent reviews have not been published. The 1997 version lacks sufficient detail and is not sufficiently prescriptive.

2 Domestic Practice

There are persistent issues with implementing the legal framework in practice. How policy and legislation is implemented determines the outcomes for those people the policies and practice are aimed at. Across the board for all Travellers' accommodation types, the domestic laws and policies are not necessarily translating into practice, which impacts adversely on the ability of Travellers to enjoy the rights set out therein.

³⁰ A breakdown of these recommendations by the relevant public authority is provided in Appendix I of the Full Report.

3 Racial Discrimination

In the context of Travellers' accommodation, there is evidence that Travellers have been subject to discriminatory behaviours and attitudes from public authorities and the settled community. This emerges through actions, but also through inaction and general inertia regarding Travellers' issues. Negative public opinions and bias towards Travellers also impacts negatively on Travellers, in particular concerning planning applications.

4 Race Legislation

The Race Relations (NI) Order 1997 places a duty on local Councils to have due regard to the need to promote good relations. Although this broadly corresponds to human rights standards, the duty is not extended to all public authorities. Furthermore, the lack of structured race relations programmes to improve relations between the settled and Traveller communities contributes to discrimination against Travellers that has persisted for decades. This will continue to do so without proactive and systemic changes in attitude at all levels – grass roots, civil society and public authorities.

5 Resource Availability

While the NI Housing Executive maintains it is satisfied with the resources available to it for developing and maintaining Traveller-specific accommodation, the existing accommodation is insufficient to the need. In addition, spend per pitch has been reducing on an annual basis.

6 Resource and Policy Accountability

The Department for Communities allocates funding to the NI Housing Executive, but there is no robust mechanism in place for the Department to monitor how funding is allocated to Travellers' accommodation and what outcomes are being achieved.

7 Provision of Traveller-specific Accommodation

There is insufficient culturally adequate Travellers' accommodation available. In particular, the NI Housing Executive is failing to provide sufficient adequate Travellers' sites. Its actions and inaction suggest a preference for developing and maintaining bricks and mortar accommodation, over Travellers' sites. Third party objections and delays in planning often obstruct the development of required new Travellers' sites. Furthermore, the legislative framework does not enable the NI Housing Executive to provide nomadic housing structures, such as caravans, trailers or chalets. These factors are contributing to the number of Travellers moving into bricks and mortar accommodation and restricting Travellers' ability to practice their cultural traditions.

8 Monitoring Needs for Travellers' Accommodation

There is evidence that the monitoring process for Travellers' accommodation needs in NI is inaccurate. The NI Housing Executive's 'Traveller Accommodation Needs Assessment' surveys are criticised for insufficiently engaging with all Travellers in NI and not reflecting the views expressed by the Travellers that were surveyed.

9 Inadequacy of Travellers' Sites

Some Travellers' sites are inadequate in the provision of standard services and facilities (electricity, water, heating, drainage, sanitation, waste disposal). This is particularly true of Travellers' sites intended as transient in nature, but that are operating as permanent sites in practice. The lack of effective management of Travellers' sites exacerbates these problems.

10 Participation

Efforts to ensure the participation of Travellers in decision-making processes regarding accommodation by public authorities are ineffective and inadequate. There is a lack of emphasis on supporting Traveller advocates. There is also a heavy burden placed on Traveller support groups by public authorities, in terms of the roles they are expected to fulfil. These groups are also under-resourced for both their contracted role and remuneration for the additional uncontracted assistance sought by public authorities. Each of these factors is hindering Travellers' ability to represent their own views. Travellers feel ignored and feel they are not offered sufficient opportunities to raise concerns about their accommodation.

11 Information on Travellers' Accommodation

There is a general lack of information on Travellers' accommodation, such as how to access such accommodation or how to make a complaint, for instance regarding maintenance. Such information is required to enable Travellers' effective participation. Public authorities do attempt to adapt such information to Travellers' needs; however, such adaptations are largely ineffective.

12 Data Collection

There is a general lack of data and disaggregation of data regarding the Traveller population in NI, their current tenure and desired accommodation. This makes it impossible to assess whether Travellers' accommodation is sufficient and to strategically plan for the future.

13 Complaints Mechanisms

Travellers are not engaging with or availing of the formal mechanisms available to them. The relevant public authorities are not taking steps to investigate and address why this is. This means Travellers are not receiving effective redress, when required. The resulting lack of investigation into concerning acts and omissions of public authorities is also hindering the feedback processes for improving services.

Recommendations

The findings of this investigation are set out in the substantive chapters of the full report. Drawing from these findings the Commission has a number of recommendations. These highlight areas where domestic laws and policies require amendments or clarifications. They also propose practical steps that public authorities should take to ensure the vindication of the accommodation rights of Travellers in NI. These recommendations are set out below.

Five recommendations are identified as requiring immediate action, these are highlighted in red. The Commission will review progress within six months (September 2018) to see whether these recommendations have been implemented. The Commission will review the implementation of the remaining recommendations, highlighted in purple, within 12 months (March 2019).

Cultural Adequacy

Type of Travellers' Accommodation

The domestic definition of housing generally meets the ICESCR Committee's recommendation that housing is diverse and reflects cultural adequacy.³¹ The statutory duty to provide Travellers' sites and the existing policy regarding grouped housing reflects the requirement that policies appropriately enable the expression of cultural identity and diversity of housing, as required by the ICESCR, Article 11.³² However, in practice there is inadequate provision of Travellers' site and grouped housing, as required by the ICESCR, Article 11, and the European Social Charter, Article 16.³³

The criticisms of the NI Housing Executive's 'Traveller Accommodation Needs Assessments' raise a concern that there is a lack of accurate data available on existing tenure and accommodation preferences of Travellers in NI. Such data would assist with establishing need and satisfying the ICESCR, Article 11, and the European Social Charter, Article 16.

The NI Housing Executive does not provide caravans, trailers or chalets, therefore, restricting its ability to provide culturally adequate accommodation.

The NIHRC recommends:

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|---|---|
| i | The NI Housing Executive should ensure it offers the opportunity for Travellers to present their views on the cultural adequacy of their accommodation when conducting its Travellers' accommodation needs assessments. |
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Homelessness

The NI Housing Executive meets its obligation with respect to homelessness under the ICESCR, Article 11. Yet, no legislation or policy specifically deals with homelessness within the Traveller communities in NI. The negative affect on health that the lack of culturally adequate options for homeless Travellers and the prolonged period of homelessness Travellers can experience engages the ECHR, Article 8 and, in extreme cases, may engage Article 3. A violation can occur if the circumstances surrounding homelessness affecting a Traveller is severe, degrading and causes those affected to feel humiliated and debased.³⁴ Alternatively, a violation can occur if the circumstances surrounding the homelessness affects the Traveller's physical and psychological integrity, as a direct consequence of the public authorities' unjustified action or inaction. This is particularly concerning if the family unit, including children, is affected.³⁵

The NIHRC recommends:

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|---|---|
| i | The NI Housing Executive should ensure the successor strategy to the 'Homelessness Strategy for NI: 2012-2017' makes specific provision for the cultural needs of Travellers. |
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³¹ E/1992/23, 'ICESCR Committee General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 8(g).

³² Article 11, International Covenant on Economic, Social and Cultural Rights 1966; E/1992/23, 'ICESCR Committee General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 8(g).

³³ E/1992/23, 'ICESCR Committee General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 8(g); *European Roma Rights Centre v Greece*, Complaint No 15/2003, 8 December 2004, at paras 46 and 47.

³⁴ *Moldovan v Romania (No 2)* (2007) 44 EHRR 16, at para 101.

³⁵ *Storck v Germany* (2006) 43 EHRR 6, at para 149; *Connors v UK* (2004) ECHR 223, at para 82; *Botta v Italy* (1998) 26 EHRR 241, at para 34; *R (Bernard) v Enfield London Borough* [2002] EWHC 2282, at paras 33-34; *Anufrijeva v Southwark* [2003] EWCA Civ 1406, at para 43; Article 8(2), European Convention on Human Rights 1950.

Cultural Adequacy of Travellers' Accommodation

The legislative framework on the control of unauthorised encampments has a detrimental effect on nomadism. This reflects the findings of the ICESCR Committee³⁶ and was raised as a concern by the Commission during the enactment of the legislation.³⁷

Where Travellers are living in social housing, measures are taken to allow for cultural sensitivity. However, standard social housing and hostel accommodation are not culturally appropriate, as required by the ICESCR, Article 11. The lack of culturally appropriate accommodation restricts individual's free choice and interferes with their right to preserve and develop their specific cultural identities, as recommended by the CoE Committee of Ministers.³⁸ Inadequate consideration of cultural adequacy within the application and allocation process for social housing further undermines individual choice.

The NIHRC recommends:

i	The NI Housing Executive and relevant housing associations should urgently review their existing practices and policies to ensure there is sufficient practical support for Travellers transitioning from Travellers' sites to bricks and mortar accommodation. For example, ensuring that Travellers transitioning know and understand the process for accessing electricity and heating, and the process for paying household bills.
ii	The NI Housing Executive should ensure that the application and allocation process for social housing requires sufficient consideration of the cultural adequacy of accommodation offered to Travellers, in particular its location, space, family groupings and available services.

Accessibility

Scope of Statutory Duty

The Housing (NI) Order 1981 helps to promote accessible housing for all who were entitled to it, as per the ICESCR, Article 11.³⁹ However, there are concerns that some public authorities are unaware of the relevant legislation and are confused as to their obligations.

The NIHRC recommends:

i	All public authorities should consider their obligations towards Travellers in the context of the Race Relations (NI) Order 1997 and the NI Act 1998, Section 75. All public authorities should ensure that all relevant staff members are educated on the existence, relevance and effective implementation of the Race Relations (NI) Order 1997 and the NI Act 1998, Section 75, as the legislation relate to Travellers and their accommodation.
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³⁶ E/C.12/GBR/CO/5, 'ICESCR Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 22 May 2009, at para 30; E/C.12/GBR/CO/6, 'ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016, at para 50.

³⁷ NIHRC, 'Response of the NIHRC to the Draft Unauthorised Encampments (NI) Order 2004' (NIHRC, 2004).

³⁸ CoE, 'Recommendation Rec(2004)14 of the Committee of Ministers to Member States on the Movement and Encampment of Travellers in Europe', 1 December 2004, at Preamble.

³⁹ E/1992/23, 'ICESCR Committee General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 8(e).

Provision of Travellers' Accommodation

There are a variety of strategies and policies in place promoting housing, including Travellers' accommodation. This reflects the ICESCR, Article 11 requirement.⁴⁰ Some high-level strategy documents however, do not take fully into account the special needs of Travellers. This is contrary to the ICESCR Committee's recommendation.⁴¹

The NIHRC recommends:

i	The NI Housing Executive, following a robust assessment of need, should critically assess if there are sufficient serviced, transit and emergency halting Travellers' sites in NI. The NI Housing Executive and relevant housing associations should ensure there are sufficient grouped housing schemes in NI.
ii	The NI Housing Executive should ensure the Travellers' accommodation needs assessments are sufficiently robust to provide a reliable assessment of the housing needs of Traveller communities. This includes providing all Travellers in NI with adequate and accessible opportunities to participate in the assessment. The questions posed should be thorough and impartial. The NI Housing Executive should ensure that the assessment is accurate.
iii	The NI Housing Executive should review its commitments to provide Travellers' site provision in NI (for example, any relevant development plans), to ensure that need is sufficiently met.

Assessment and Allocation Process

The assessment and allocation process for Travellers' accommodation is regulated for social housing, reflecting the ICESCR, Article 11.⁴² There is evidence that Travellers continue to experience difficulties in accessing social housing, due to an inadequate allocation of housing points under the Common Selection Scheme.

There are concerns that some Travellers are unable to access private rented accommodation, due to reported racism by some landlords. This can hinder Travellers' ability to access housing to which they are entitled, as recommended by the ICESCR Committee and the ECRI.⁴³ It also suggests that public authorities are not promptly addressing the problems faced by Travellers in accessing accommodation, as recommended by the CoE Committee of Ministers.⁴⁴

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ CRI(96)43 rev, 'ECRI General Policy Recommendation No 1: Combating Racism, Xenophobia, Antisemitism and Intolerance', 4 October 1996.

⁴⁴ CoE, 'Recommendation Rec(2005)4 of the Committee of Ministers on Improving the Housing Conditions of Roma and Travellers in Europe', 25 February 2005, at para 2.

The NIHRC recommends:

i	The NI Housing Executive should introduce a social housing application form that clearly sets out all accommodation options and offers applicants the express opportunity to specify their desire for Traveller-specific accommodation.
ii	The NI Housing Executive should introduce a waiting list for serviced Travellers' sites in NI. This waiting list should be used, in partnership with the Common Selection Scheme, to allocate pitches on serviced Travellers' sites in NI.
iii	The relevant housing associations should assess how accommodation in grouped housing schemes are allocated, to ensure they maximise the available resources. They should also review the utility of grouped housing schemes as an approach to addressing housing need within Traveller communities.
iv	The Department for Communities should ensure landlords in the private rented sector are aware of their legal obligations to ensure that accommodation is accessible to Travellers without discrimination.

Habitability

Standard of Fitness

A minimum standard of fitness is set out in legislation for public and private bricks and mortar Travellers' accommodation, in line with the ICESCR, Article 11, the European Social Charter, Article 16,⁴⁵ the European Social Charter (Revised), Article 31, and the recommendations of the former CoE Commissioner for Human Rights, Thomas Hammarberg.⁴⁶ The ICESCR Committee and the European Committee of Social Rights also recommended corrective measures to address poor housing or sub-standard housing conditions and inhabitability in general.⁴⁷ There are concerns that the minimum standards set out in legislation are inadequate and are not implemented in practice.⁴⁸ There are also concerns that the standard of fitness of private rented caravans, trailers or chalets is insufficiently regulated.

⁴⁵ *European Roma Rights Centre v Greece*, Complaint No 15/2003, 8 December 2004, at paras 46 and 47.

⁴⁶ CommDH(2009)5, 'Recommendation of the CoE Commissioner for Human Rights on the Implementation of the Right to Housing', 30 June 2009, at 3.2.1.

⁴⁷ E/C.12/GBR/CO/6, 'ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016, at para 50(c); *European Roma Rights Centre v Ireland*, Complaint No 100/2013, 1 December 2015, at paras 89-92.

⁴⁸ CommDH(2009)5, 'Recommendation of the CoE Commissioner for Human Rights on the Implementation of the Right to Housing', 30 June 2009, at 3.2.1; *European Roma Rights Centre v Ireland*, Complaint No 100/2013, 1 December 2015, at paras 54-80.

The NIHRC recommends:

i	The Department for Communities should promptly publish the findings of its review on the 'Housing Health and Safety Rating System' and set out a reasonable timeframe for implementing its recommendations.
ii	The Department for Communities should carry out a prompt and thorough review of the 'Design Guide for Travellers' Sites in NI' and ensure the minimum standards are sufficiently prescriptive and reflective of human rights. It should ensure the updated guide includes the requirements that accommodation is accessible to persons with disabilities; children's play areas are provided; facilities necessary for a nomadic way of life are available; and traffic safety measures are in place. The updated guide should be published and be subject to a commitment to further periodic reviews within a reasonable timescale.

Maintenance

Measures are in place across Travellers' accommodation to ensure that a minimum standard of living conditions are maintained. This is in line with the ICESCR, Article 11, the European Social Charter, Article 16, and the European Social Charter (Revised), Article 31. However, there is evidence of some delays in maintenance across all types of Travellers' accommodation; this undermines the public authorities' adherence to these provisions.

The NIHRC recommends:

i	The NI Housing Executive and relevant housing associations should ensure all required maintenance is carried out effectively within a reasonable timeframe.
ii	The NI Housing Executive should monitor the use of Housing Benefit and take steps to ensure that the accommodation it pays for in the private sector (including caravan, chalets and trailers) are fit for human habitation, adequate and maintained to a suitable standard. This includes supporting the tenant to find suitable alternative accommodation that is safe, affordable and satisfies their cultural needs.

Adaptations

The legislative and policy framework relating to accessibility is in line with the ICESCR, Article 11, the CRPD, Article 28(1), and the European Social Charter (Revised), Article 31. However, there are concerns regarding the lack of guidance for such adaptations on Travellers' sites and whether these provisions are implemented for all Travellers' accommodation.

The NIHRC recommends:

i	The NI Housing Executive and relevant housing associations should ensure that the accommodation needs of Travellers with disabilities are addressed in line with all legislative requirements, and that moving homes is a last resort. Travellers with disabilities should be made aware of their rights regarding accommodation adaptations. This information should be disseminated in an accessible and understandable format.
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Health and Safety: Hazards

A legislative and policy framework regulates health and safety standards for Travellers' accommodation. This is in line with the ICESCR, Article 11. There are concerns regarding Travellers' sites that these protections are insufficient and are not implemented in practice.⁴⁹ This is contrary to the ICESCR, Article 11 and the CRC, Articles 3, 6(1) and 19.

Hazards on Travellers' sites can also engage the ECHR, Articles 2, 3 and 8. A violation of Article 2 can occur if the hazard poses a real and imminent threat to the life of a Traveller that the public authorities were aware of, but failed to take reasonable steps to address.⁵⁰ Article 3 may be engaged if the hazardous effect on a Traveller was severe, degrading or caused those affected to feel humiliated and debased.⁵¹ Article 8 applies if the hazard affected the Traveller's physical and psychological integrity, as a direct consequence of the public authorities' unjustified action or inaction. This is particularly the case if the family unit, including children, is affected.⁵² There is evidence of hazards, such as overcrowding and inadequate washhouses, on some Travellers' sites in NI that potentially engage ECHR, Articles 2, 3 and 8.

The NIHRC recommends:

i	The NI Housing Executive should immediately carry out health and safety assessments of all Travellers' sites and address the hazards identified. In addressing these hazards, the NI Housing Executive should ensure that washhouses on Travellers' sites are safe, fit for purpose and appropriate for NI's climate. The NI Housing Executive should conduct regular health and safety assessments of all Travellers' sites and ensure any identified hazards are adequately and promptly addressed in the future.
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Health and Safety: Fire

The legislative and policy framework broadly reflects the ICESCR, Article 11. There are concerns that, regarding Travellers' sites, these protections are insufficient and are not implemented in practice. For example, concerns were raised over the accessibility of some Travellers' sites for emergency vehicles. A number of Travellers were also not aware if there were fire safety measures for their accommodation and what they were, particularly on Travellers' sites. This is contrary to the ICESCR, Article 11 and the CRC, Articles 3, 6(1) and 19. A violation of the ECHR can occur if the fire hazard poses a real and imminent threat to the life of a Traveller that the public authorities were aware of, but failed to take reasonable steps to address.⁵³ Fire hazards on Travellers' sites engage the ECHR, Articles 2, 3 and 8.

⁴⁹ E/1992/23, 'ICESCR Committee General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 8(d); *European Roma Rights Centre v Ireland*, Complaint No 100/2013, 1 December 2015, at para 81.

⁵⁰ *Öneriyildiz v Turkey* (2004) ECHR 657; *LCB v UK* (1999) 27 EHRR 212, at para 36; *Burke v UK*, Application No 19807/06, 11 July 2006, at para 1.

⁵¹ *Moldovan v Romania (No 2)* (2007) 44 EHRR 16, at para 101.

⁵² *Storck v Germany* (2006) 43 EHRR 6, at para 149; *Connors v UK* (2004) ECHR 223, at para 82; *Botta v Italy* (1998) 26 EHRR 241, at para 34; *R (Bernard) v Enfield London Borough* [2002] EWHC 2282, at paras 33-34; *Anufrijeva v Southwark* [2003] EWCA Civ 1406, at para 43; Article 8(2), European Convention on Human Rights 1950.

⁵³ *Öneriyildiz v Turkey* (2004) ECHR 657; *LCB v UK* (1999) 27 EHRR 212, at para 36; *Burke v UK*, Application No 19807/06, 11 July 2006, at para 1.

The NIHRC recommends:

i	The NI Housing Executive and relevant housing associations should ensure that adequate fire safety measures are in place and are adhered to within all Travellers' accommodation. This includes ensuring that all fire safety measures are functional, regularly checked and reviewed. In addition, they should ensure that all tenants within Travellers' accommodation are sufficiently aware of the fire safety measures in place and of actions to be taken in the event of a fire.
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Availability of Services, Facilities and Infrastructure

Availability of Services

There is a legislative and policy framework governing Travellers' accommodation in NI, as required by the ICESCR, Article 11, and the European Social Charter (Revised), Article 31(1).⁵⁴ The regulated provision of most services regarding Travellers' accommodation is in line with the former CoE Commissioner for Human Rights, Thomas Hammarberg's recommendation.⁵⁵ However, there are some omissions in relation to electrical and postal services. Also, the guidance for Travellers' sites is not sufficiently prescriptive. The recommendation, supported by the European Committee of Social Rights, states that these standards should be applied in practice.⁵⁶ This is generally honoured regarding bricks and mortar Travellers' accommodation. Concerns arose in relation to Travellers' sites in NI. This includes unavailability of services, or significant delays in providing and adequately maintaining services. This is a particular issue on Travellers' sites, where some Travellers' experienced unsanitary conditions and rodent infestations due to irregular refuse collections. This raises issues around health and safety, contrary to the ICESCR, Article 11, and the CRC, Articles 3, 6(1) and 19. In extreme cases, this engages the ECHR, Article 2, 3 and 8.⁵⁷ Some Travellers also experienced delays or lack of access to adequate electricity and issues with accessing their post, which is contrary to the ICESCR, Article 11.

The NIHRC recommends:

i	The NI Housing Executive, in conjunction with all relevant providers, should take steps to ensure that all required services are adequately available in practice within all Travellers' accommodation and that the provision of these services is sufficiently regulated. In particular, the NI Housing Executive should work with: the local Councils to ensure Travellers have regular refuse collections; with the electricity supplier to ensure Travellers have prompt and consistent access to electricity; and with Royal Mail to ensure Travellers have adequate access to adequate postal services.
ii	The NI Housing Executive should ensure that provision of services provided to Traveller's sites reflects the actual use of the site. The public authorities should re-categorise sites when there is a change of usage to ensure that all parties are aware of the provision that is required.

⁵⁴ *European Roma Rights Centre v Italy*, Complaint No 27/2004, 7 December 2005, at para 35.

⁵⁵ CommDH(2009)5, 'Recommendation of the CoE Commissioner for Human Rights on the Implementation of the Right to Housing', 30 June 2009, at 3.2.1.

⁵⁶ *Ibid*; *European Roma Rights Centre v Ireland*, Complaint No 100/2013, 1 December 2015, at paras 54-80.

⁵⁷ E/1992/23, 'ICESCR Committee General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 14.

Availability of Facilities

There is a policy framework governing the availability of facilities for Travellers' accommodation in NI, as required by the ICESCR, Article 11, and the European Social Charter (Revised), Article 31(1). The regulated provision of most facilities regarding Travellers' accommodation is in line with the former CoE Commissioner for Human Rights, Thomas Hammarberg's recommendation.⁵⁸ However, there are some omissions. The guidance for Travellers' sites is insufficiently prescriptive. The recommendation, supported by the European Committee of Social Rights, makes clear that these standards should be applied in practice.⁵⁹ This is lacking regarding non-domestic animal facilities in standard social housing, the availability of grazing land for all Travellers' accommodation, and the provision of children's play areas in all Travellers' accommodation. This raises issues around personal safety, contrary to the ICESCR, Article 11, and the CRC, Articles 3, 6(1) and 19.

The NIHRC recommends:

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| i | The NI Housing Executive and relevant housing associations should make reasonable provision for children's play areas within Travellers' accommodation. They should also reasonably accommodate Travellers' non-domestic animals and equipment necessary for traditional trades, including through the provision of grazing land, within Travellers' accommodation. |
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Security of Tenure

Legal Security of Tenure

The domestic legal framework governing security of tenure broadly corresponds with the ICESCR, Article 11, in conferring legal security of tenure. However, there are concerns that some Travellers, particularly on transit sites, are not provided with agreements. The ICESCR, Article 11, requires public authorities to take "immediate measures aimed at conferring legal security of tenure".⁶⁰ In the Commission's view, a failure to provide tenancy agreements may constitute a violation of ICESCR, Article 11.

A number of practical barriers can negatively affect a Traveller's security of tenure and result in them fleeing their homes. This includes intimidation of Travellers by members of the settled community, or an individual Traveller's perceived incompatibility with other Travellers. There is evidence that public authorities are hesitant to assist in some such cases. This potentially engages the ECHR, Articles 2, 3, 8 and 14. These provisions require public authorities to take reasonable steps to prevent or address an actual or threatened violation by their agents or third parties, if they had known or ought to have known of such a threat.⁶¹

⁵⁸ CommDH(2009)5, 'Recommendation of the CoE Commissioner for Human Rights on the Implementation of the Right to Housing', 30 June 2009, at 3.2.1.

⁵⁹ Ibid; *European Roma Rights Centre v Ireland*, Complaint No 100/2013, 1 December 2015, at paras 54-80.

⁶⁰ E/1992/23, 'ICESCR Committee General Comment No 4: The Right to Adequate Housing', 13 December 1991, at 8(a).

⁶¹ *Moldovan v Romania (No 2)* (2007) 44 EHRR 16, at para 101; *PF and EF v UK* (2010) ECHR 2015 at paras 37 and 50.

The NIHRC recommends:

i	The NI Housing Executive and relevant housing associations should take immediate steps to ensure that Travellers on all types of Travellers' sites are provided with and sign an agreement attached to their pitch, clearly setting out their rights and responsibilities in an understandable language and format.
ii	The NI Housing Executive and relevant housing associations should take reasonable steps to ensure Travellers in standard social housing understand the tenancy agreement they are signing. This includes understanding their responsibilities as tenants and the landlord's responsibilities.
iii	The Department for Communities should promptly update, publish and adequately disseminate guidance on the security of tenure protections for Travellers living in caravans, as contained within the Caravans Act (NI) 2011.
iv	The NI Housing Executive and relevant housing associations should robustly implement processes that enable Travellers to live safely and securely in their homes without fear of intimidation. This includes conducting effective mediation and effectively implementing procedures set out in antisocial behaviour policies.
v	The Department for Communities should liaise with the Executive Office to propose an amendment of the Housing (NI) Order 2003, Article 125(6), to enable the NI Housing Executive to provide nomadic housing structures (such as caravans, trailers and chalets), if there is a need. The rents for these structures should be set at an appropriate and affordable level.

Forced Eviction

Eviction

The legislative framework provides procedural safeguards to be followed in eviction proceedings, as required by ICESCR, Article 11. The ICESCR Committee highlighted that the qualification of progressive achievement based on the availability of resources would "rarely" be relevant to forced evictions.⁶² There is evidence that procedural safeguards are not followed in practice, for example in the provision of eviction notices; the weather conditions in which evictions take place; consultation with affected groups; and provision of alternative accommodation. In the Commission's view, not following procedural safeguards may constitute a violation of ICESCR, Article 11, and the European Social Charter, Article 16. The ECHR, Article 8, is also engaged, particularly if procedural safeguards are not in place to prevent unjustified evictions;⁶³ if public authorities do not take into account the disadvantaged position of a social group (ie Travellers);⁶⁴ or if public authorities do not conduct a genuine consultation with the persons affected by an eviction on their rehousing options.⁶⁵ The Commission identified concerns relating to the robustness of procedural safeguards and the sufficiency of consultation regarding forced evictions.

⁶² E/1998/22, 'ICESCR Committee General Comment No 7: Forced Evictions', 20 May 1997, at para 8.

⁶³ *Connors v UK* (2004) ECHR 223, at para 95.

⁶⁴ *Yordanova and Others v Bulgaria* (2012) ECHR 758, at para 127.

⁶⁵ *Bagdonavicius and Others v Russia* (2016) ECHR 871, at para 107.

Some Travellers had difficulty retrieving their property, including caravans, where evictions had taken place. This was a particular issue where certain documents were not accepted as proof of ownership. This engages the ECHR, Article 1, Protocol 1. Interference with the right to property is justified if it serves a legitimate objective in the public interest⁶⁶ and is proportionate in striking a fair balance between the protection of the person's right to property and the general interest of the public.⁶⁷

The NIHRC recommends:

i	The NI Housing Executive should take reasonable steps to ensure that adequate alternative accommodation is offered close to the original place of residence, when evictions occur or Travellers' sites are lawfully closed. Particular consideration should be given to distance from schools, doctors, family members and source of livelihood for those affected.
ii	The NI Housing Executive should ensure that reasonable steps are taken to return property promptly, when evictions take place or Travellers' sites are lawfully closed. The NI Housing Executive should ensure that onerous conditions to prove ownership (for example, a requirement to provide original receipts) are not applied, particularly if there is other suitable proof of ownership.

Unauthorised Encampments

The former CoE Commissioner for Human Rights Thomas Hammarberg and the former UN Special Rapporteur on the Right to Adequate Housing Miloon Kothari recommended that criminal measures that thwart nomadism should be abolished.⁶⁸ The CoE Committee of Ministers also emphasised the importance of the use of proportionate responses to illegal encampments, including negotiations or the use of legal action.⁶⁹ Evictions for unauthorised encampments should be kept under review.⁷⁰ The ICESCR Committee recommended that the Unauthorised Encampments (NI) Order 2005 be repealed in 2016.⁷¹ The retention of the Order is contrary to the Committee's recommendation.

The Unauthorised Encampments (NI) Order 2005 specifically provides for eviction and seizure of property that have a particular impact on Travellers. The evidence suggests that the powers under the 2005 Order are used sparingly. A number of police officers reported exercising caution when relying on the powers under the 2005 Order. One of the main challenges when using the 2005 Order is a lack of alternative culturally appropriate accommodation. The evidence also suggests that the threat or actual use of the powers under the 2005 Order, in particular seizure of caravans, negatively affects the nomadic lifestyle of Travellers.

The Department for Communities accepts that the powers under the 2005 Order has a particular impact on Travellers in NI, but has no plans to repeal it. This position does not comply with the ICESCR Committee's recommendation in 2016.

⁶⁶ *James v UK* (1986) ECHR 2, at para 45.

⁶⁷ *Spjorring and Lönnroth v Sweden* (1982) ECHR 5, at para 69.

⁶⁸ CommDH/Speech(2007)16, 'Joint Statement by CoE Commissioner for Human Rights Thomas Hammarberg and UN Special Rapporteur on the Right to Adequate Housing Miloon Kothari: Governments Should Take Positive Steps to Protect the Housing Rights of Roma in Europe', 24 October 2007.

⁶⁹ CRI(2011)37, 'ECRI General Policy Recommendation No 13: Combating Anti-Gypsyism and Discrimination against Roma', 24 June 2011, at para 6 (d) and (e).

⁷⁰ CommDH(2006)1, 'Final Report by Mr Alvaro Gil-Robles, CoE Commissioner for Human Rights, on the Human Rights Situation of the Roma, Sinti and Travellers in Europe', 15 February 2006, at 40.

⁷¹ E/C.12/GBR/CO/6, 'ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016, at para 50(d).

The NIHRC recommends:

i	The Department for Communities should repeal the Unauthorised Encampments (NI) Order 2005.
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Location

Planning

There is a legal and policy framework regulating the planning process, which makes specific provision for applications for Traveller-specific accommodation, this reflects the ECRI's recommendation.⁷² However, there are concerns in terms of the implementation of the planning policies. There is evidence that public perceptions and discriminatory views within local Councils are unduly influencing planning decisions. The process for applying for the approval of Traveller-specific accommodation is subject to significant delays. These delays are inhibiting the development of Travellers' accommodation, particularly Travellers' sites. This is contrary to the CoE Committee of Ministers' recommendation.⁷³

Additionally, there are concerns regarding the accessibility of the planning process. These concerns are contrary to the CoE Committee of Ministers' recommendation to enable Travellers to pursue their lifestyles.⁷⁴

The NIHRC recommends:

i	Local Councils should take reasonable steps to prevent undue delays in the planning application process relating to Travellers' accommodation. They should also ensure that all planning decision-making processes are fair, impartial and transparent.
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Site Licences

Reflecting the ICESCR, Article 11, and the CRC, Articles 3, 6 and 19, site licencing is a crucial safeguard for ensuring Travellers' sites in NI are adequately habitable and serviced. Yet, there is little evidence of good practice regarding licencing of Travellers' sites in NI. The regulation of this requirement is outdated and lacks clarity in terms of its applicability and scope. There is also inconsistency in terms of language and definitions between the legislation and its corresponding guidance. The statutory requirements that existed are not implemented in practice for Travellers' sites in NI. There appears to be a reluctance from the relevant public authorities to address the issue of site licences.

The NIHRC recommends:

i	The NI Housing Executive should ensure that it submits a completed application for a site licence for all Travellers' sites currently operating unlicensed within six months of the publication of this report. The NI Housing Executive should continue to be required to obtain a site licence for Travellers' sites in NI.
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⁷² CRI(2011)37, 'ECRI General Policy Recommendation No 13: Combating Anti-Gypsyism and Discrimination against Roma', 24 June 2011, at para 6(j).
⁷³ CoE, 'Recommendation Rec(2004)14 of the Committee of Ministers to Member States on the Movement and Encampment of Travellers in Europe', 1 December 2004, at para 23(ii).
⁷⁴ CoE, 'Recommendation Rec(2005)4 of the Committee of Minister to Member States on Improving the Housing Conditions of Roma and Travellers in Europe', 23 February 2005, at II(3); CoE, 'Recommendation Rec(2004)14 of the Committee of Ministers to Member States on the Movement and Encampment of Travellers in Europe', 1 December 2004, at Preamble.

ii	The Department for Infrastructure should review the legal and policy framework concerning site licences. This should include the development of a model site licence setting out the minimum standard of provision and safety requirements for each type of Travellers site in NI, along with enforcement powers for any breach.
iii	Local Councils should take proactive reasonable steps to ensure Travellers' sites are licenced when required. Local Councils should regularly monitor the licencing of Travellers' sites and be aware when sites require a licence, whether they are licenced and when the licence will expire. Local Councils should ensure all licences meet the minimum standard of provision and safety as required by the model licence, developed by the Department for Infrastructure.

Participation

The local Council's 'Local Development Plans' and the Department for Communities' 'Design Guide for Travellers' Sites' in NI' reflect the Advisory Committee on the FCNM and CERD Committee's recommendations.⁷⁵ The pending creation by the Executive Office of a thematic group on Roma, Gypsies and Travellers, when implemented, will adhere to the Advisory Committee on the FCNM's recommendation.⁷⁶ However, the legislative provision and policies of effective participation of Travellers is limited, at times outdated, and does not sufficiently require direct consultation.

Reflecting the Advisory Committee on FCNM's recommendation, public authorities have measures in place to ensure consultations and information on Travellers' accommodation are adapted to reflect Travellers' needs.⁷⁷ Yet, the information available can be inadequate and the measures taken are not always effectively implemented. This indicates public authorities are not adequately trained on effective engagement, as recommended by the CERD Committee.⁷⁸ Additionally, public authorities are not ensuring that the effective participation of Travellers is adequately resourced, as recommended by the CoE Committee of Ministers and Advisory Committee on FCNM.⁷⁹

There are concerns that public authorities' consultations are ineffective. This is contrary to the recommendations from the UN and CoE that consultation with Travellers should be full and meaningful,⁸⁰ with effective channels for communication aimed at providing continuing and substantive dialogue,⁸¹ and that Travellers have a substantial influence on decisions.⁸²

The NIHRC recommends:

⁷⁵ ACFC/31DOC(2008)001, 'CoE Advisory Committee on the FCNM: Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs', 27 February 2008, at paras 32-36; CERD Committee, 'General Recommendation XXVII: Discrimination against Roma', 16 August 2000, at para 43.

⁷⁶ ACFC/31DOC(2008)001, 'CoE Advisory Committee on the FCNM: Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs', 27 February 2008, at paras 73 and 74.

⁷⁷ ACFC/31DOC(2008)001, 'CoE Advisory Committee on the FCNM: Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs', 27 February 2008, at paras 9, 21 and 72; P6_TA(2005)0151, 'European Parliament Resolution on the Situation of the Roma in the European Union', 28 April 2005, at paras 24 and 26.

⁷⁸ CERD Committee, 'General Recommendation XXVII: Discrimination against Roma', 16 August 2000, at para 45.

⁷⁹ CoE, 'Recommendation CM/Rec(2008)5 of the Committee of Ministers to Members States on Policies for Roma and/or Travellers in Europe', 20 February 2008, at Appendix, section II, para 6; ACFC/31DOC(2008)001, 'CoE Advisory Committee on the FCNM: Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs', 27 February 2008, at para 21.

⁸⁰ CommDH/Speech(2007)16, 'Joint Statement by CoE Commissioner for Human Rights Thomas Hammarberg and UN Special Rapporteur on the Right to Adequate Housing Miloon Kothari: Governments Should Take Positive Steps to Protect the Housing Rights of Roma in Europe', 24 October 2007.

⁸¹ ACFC/31DOC(2008)001, 'CoE Advisory Committee on the FCNM: Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs', 27 February 2008, at para 11.

⁸² Ibid, at para 19.

i	The NI Housing Executive should ensure Travellers are represented on its consultation forum and the Housing Community Network. It should also ensure consultations with Travellers are meaningful and effective when consulting on planning provision for new and when developing existing Travellers' accommodation.
ii	All local Councils should be active members of the NI Local Government Partnership on Travellers Issues and should give consideration to developing or strengthening Traveller Forums to consider issues relating to Travellers, including accommodation.
iii	The Department for Communities should liaise with the Executive Office on establishing the proposed thematic working group on Roma and Travellers. The work of this group should have sufficient focus on Travellers' accommodation.
iv	The Executive Office and all relevant public authorities should ensure Traveller support groups are adequately resourced for the work they carry out.

Monitoring

Management of Travellers' Accommodation

Legislation and guidance is in place to govern the management of Travellers' accommodation. Yet, there are concerns that these are not implemented in practice, particularly for Travellers' sites. This is contrary to the CERD Committee's recommendation that there is effective oversight of Travellers' accommodation and the ICESCR, Article 11, requirements that effective monitoring have immediate effect.⁸³

The NIHRC recommends:

i	The NI Housing Executive should take reasonable steps to ensure its staff are accessible on a daily basis to Travellers, particularly regarding transit and emergency halting Travellers' sites.
ii	The NI Housing Executive should effectively manage Travellers' sites. Travellers should be required to sign a tenancy agreement before moving into Travellers' accommodation. This includes transit and emergency halting Travellers' sites. The NI Housing Executive should have mechanisms in place to ensure this is a speedy and efficient process. It should not subject Travellers to delays in accessing culturally adequate accommodation with adequate services and facilities.

Resources

There is no evidence that public authorities explicitly consider human rights standards when allocating financial resources to housing. The evidence does not clearly demonstrate compliance with ICESCR, Articles 2 and 11. The general depletion of social housing stock and increasing levels of need suggests retrogression.

⁸³ CERD/C/GBR/CO/21-23, 'CERD Committee Concluding Observations on the Twenty-first to Twenty-Third Periodic Reports of UK of Great Britain and NI', 26 August 2016, at para 25(a); E/1992/23, 'ICESCR Committee General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 13.

Figures show an increase in the number of pitches on Travellers' sites, but these are not all available in practice. This suggests a failure to progressively realise the right to adequate housing. A risk of retrogression is indicated by the decrease in spend per unit on Travellers' accommodation, particularly where mitigation measures are not in place.

A comparison with Scotland and Wales indicates lower spending on Travellers' sites in NI. In Scotland's case, this presumes spending on grouped housing in NI is excluded from the figures. This suggests that it is possible to give a greater priority to Travellers' sites and implies a failure to use maximum available resources. The principle of progressive realisation requires that provision is extended. For example, an extension of the Supporting People Programme would be an indicator of progressive realisation. In contrast, the denial of funding to Traveller support groups may indicate retrogression, unless mitigating measures are in place.

The former UN High Commissioner for Human Rights, Navanethem Pillay, explicitly requires that the implementation of ICESCR rights must be transparent, should establish accountability mechanisms, and should ensure access to information.⁸⁴ However, the evidence suggests non-compliance with these requirements. Public authorities' data collection on population figures is inconsistent and inadequate. Financial data is inconsistently recorded, making it difficult to analyse trends over time. The Department for Communities allocates funding to the NI Housing Executive, but an effective mechanism that requires the Department to proactively monitor how funding is allocated to Travellers' accommodation does not exist in practice.

The NIHRC recommends:

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| i | The Department for Communities should ensure regular, independent, effective, thorough and proactive monitoring of public spending in relation to the provision of Travellers' accommodation. Data relating to the provision of all Travellers' accommodation and financial data should be consistent, centralised, and effectively disaggregated. Data should be publicly available. |
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Non-discrimination and Equality

Prohibition on Racial Discrimination

Human rights law requires public authorities to protect non-discrimination and equality.⁸⁵ This requires public authorities to tackle discrimination by both public⁸⁶ and private actors.⁸⁷ Human rights law prohibits both direct and indirect discrimination.⁸⁸ Standards from UN committees and the European Court of Human Rights make clear that not every differentiation is prohibited discrimination.⁸⁹ If there is an objective and reasonable justification for the differentiation, then there is no breach of human rights law.⁹⁰

⁸⁴ E/2009/90, 'Report of the High Commissioner for Human Rights on Implementation of Economic, Social and Cultural Rights', 8 June 2009, at para 33.

⁸⁵ Article 2(1), International Covenant on Economic, Social and Cultural Rights 1966; Article 26, International Covenant on Civil and Political Rights 1966; Article 14, European Convention on Human Rights 1950; Human Rights Committee, 'General Comment No 18: Non-discrimination', 10 November 1989, at para 1.

⁸⁶ E/C.12/GC/20, 'ICESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights', 2 July 2009, at paras 8 and 9.

⁸⁷ Ibid, at para 11; CERD Committee, 'General Recommendation XXVII: Discrimination against Roma', 16 August 2000, at para 31.

⁸⁸ *Timishev v Russia* (2005) ECHR 858, at para 56; *Oršuš v Croatia* (2010) ECHR 337, at para 149.

⁸⁹ E/C.12/GC/20, 'ICESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights', 2 July 2009, at para 11; CERD Committee, 'General Recommendation XXVII: Discrimination against Roma', 16 August 2000, at para 31; *Stec and Others v UK* (2006) ECHR 393, at para 5.

⁹⁰ *Stec and Others v UK* (2006) ECHR 393, at para 5.

The Race Relations (NI) Order 1997 addresses the prohibition on discrimination in NI. This broadly complies with human rights standards.⁹¹ In particular, the clear extension to cover all public functions meets the recommendations of the ECRI.⁹² However, the Equality Commission NI has recommendations for ensuring better compliance with such standards.

The Race Relations (NI) Order 1997 enables the Equality Commission NI to issue codes of practice for employment and housing. Although a code in respect of the elimination of racial discrimination in employment was first issued in 1999, an equivalent has not been issued in respect of housing.

Despite the existing protections, some Travellers' in NI felt that they were regularly subjected to racial discrimination, in particular in the private rented sector.

The NIHRC recommends:

- i The Equality Commission NI should issue a code of practice on the elimination of discrimination in housing. This should include the private rented sector.

Tolerance and Mutual Understanding

Promotion of Tolerance and Mutual Understanding

Legislation and policies are in place to combat prejudice and to promote understanding, tolerance and friendship among different ethnic groups. This is required by the CERD, Article 7, and set out in the UNESCO Declaration of Principles on Tolerance.⁹³

The NI Act 1998, Section 75(2), places a duty on public authorities to “have regard to the desirability of promoting good relations” between persons of different racial groups, which is weaker than the requirements in the human rights standards. The Race Relations (NI) Order 1997, Article 67, places a duty on local Councils to have due regard to the need to promote good relations. This language broadly corresponds to human rights standards.

There is some evidence of dialogue with Travellers, in line with the UN Declaration on the Culture of Peace and the Durban Declaration.⁹⁴ There are concerns that this dialogue is not sufficiently continuing, substantive or intercultural, as recommended by the Advisory Committee for the FCNM and the CoE Committee of Ministers.⁹⁵

⁹¹ Article 2, International Covenant on Economic, Social and Cultural Rights 1966; Article 2(1), Convention on the Elimination of All Forms of Racial Discrimination 1969; Article 5(2), Convention on the Rights of Persons with Disabilities 2006; Article 4, Framework Convention on the Protection of National Minorities 1998; E/C.12/GC/20, 'ICESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights', 2 July 2009, at paras 38 and 39.

⁹² CRI(2003)8, 'ECRI General Policy Recommendation No 7: National Legislation to Combat Racism and Racial Discrimination', 13 December 2002, at para 7.

⁹³ Article 1(1), UNESCO Declaration on Principles of Tolerance, 16 November 1995.

⁹⁴ A/RES/53/243 A, 'UN General Assembly Resolution: Declaration on a Culture of Peace', 13 September 1999; UN Declaration on a Culture of Peace; A/CONF.189/12, 'Durban Declaration', 8 September 2001.

⁹⁵ ACFC/311Doc(2008)001, 'CoE Advisory Committee on the FCNM: Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life in Public Affairs', 5 May 2008, at para 11; CoE, 'Declaration on the Committee of Ministers on the Rise of Anti-Gypsyism and Roma and Racist Violence Against Roma in Europe', 1 February 2012, at para VI.2.iv.

The NIHRC recommends

i	The Department for Communities should liaise with the Executive Office to propose an amendment of the Race Relations (NI) Order 1997, Article 67, to extend the duty contained within to all public authorities. This duty requires appropriate arrangements to be made with a view to securing that the various functions of the relevant public authority are carried out with due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity, and good relations, between persons of different racial groups.
ii	The Department for Communities and Department for Infrastructure should liaise with the Executive Office in implementing the Racial Equality Strategy. The strategy should consider how to adequately promote tolerance and understanding between Travellers and the settled community in NI. It should also require all the relevant public authorities to report on such actions.

Effective Remedy

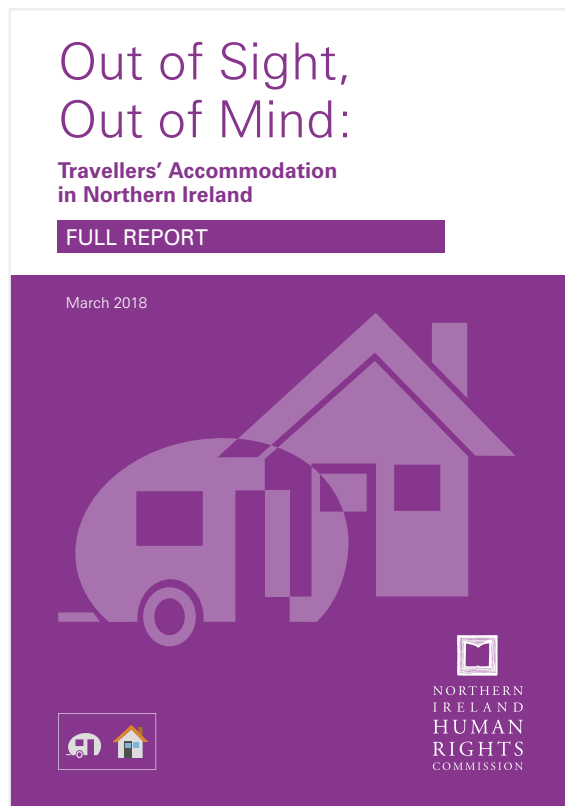
Internal and independent effective remedies for public authorities regarding Travellers' accommodation are regulated and implemented. This reflects the ICESCR, Article 11; ICCPR, Article 14; CRPD, Article 13; and ECHR, Articles 6 and 13.⁹⁶ However, it appears that measures are required to ensure such remedies are accessible to Travellers in NI. For example, the Commission found that Travellers rarely utilised the Department for Communities', Department for Infrastructure's, NI Housing Executive's, the housing associations', or local Councils' internal complaints handling processes.

The NIHRC recommends:

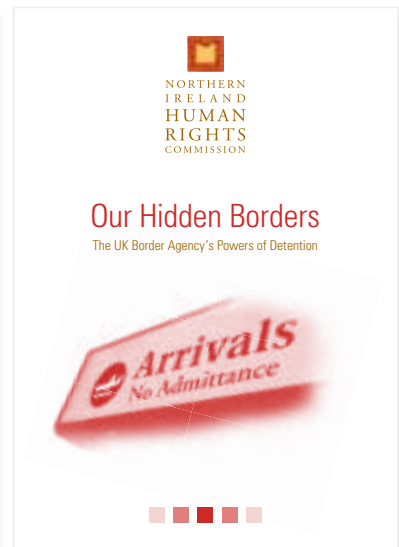
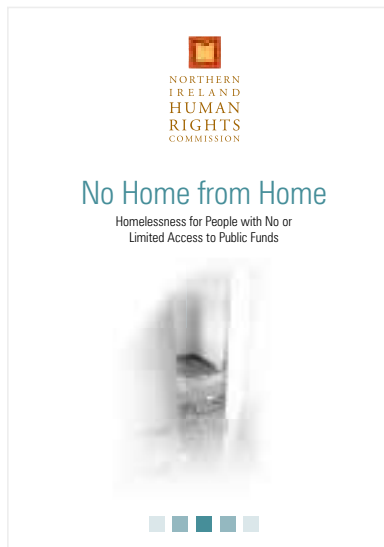
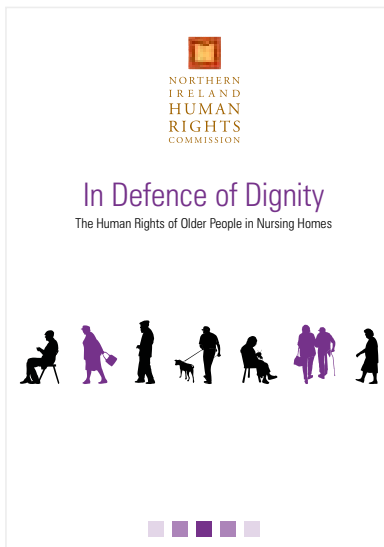
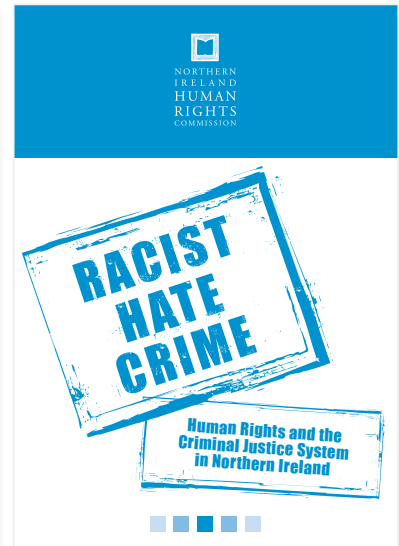
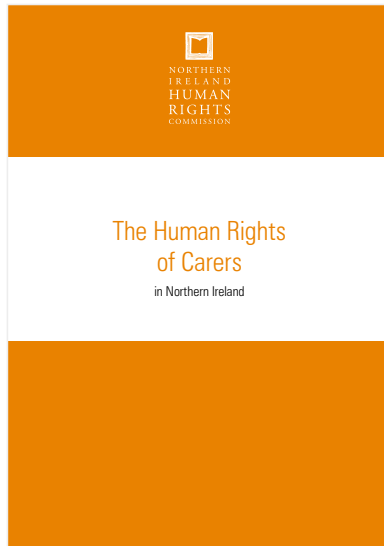
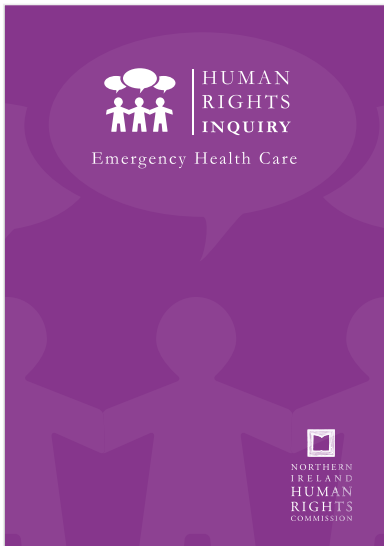
i	All public authorities should take proactive reasonable steps to support Travellers through the complaints process. This includes ensuring Travellers are aware of the existence of such mechanisms, what their purposes are, how to make a complaint, and the different stages of the process.
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⁹⁶ E/1992/23, 'ICESCR Committee General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 17.

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