RESPONSE TO THE PUBLIC CONSULTATION ON THE DRAFT TRAVELLER CHILD IN EDUCATION ACTION FRAMEWORK

A. Introduction

1. The Northern Ireland Human Rights Commission (the NIHRC) pursuant to Section 69 (1) of the Northern Ireland Act 1998 reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights. In accordance with this function the following statutory advice is submitted to the Department of Education (DE) in response to the consultation on the Draft Traveller Child in Education Action Framework (the Draft Action Framework).

2. The NIHRC bases its position on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 (HRA) and the treaty obligations of the Council of Europe and United Nations systems. The relevant international treaties in this context include:

- The European Convention on Human Rights, 1950 (ECHR) [UK ratification 1951];
- The Universal Declaration of Human Rights, 1948;
- The United Nations Convention on the Elimination of all forms of Racial Discrimination, 1966 (UNCERD) [UK ratification 1969];
- The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) [UK ratification 1976];

1 Northern Ireland Act 1998, S.69(1).
• The Council of Europe Framework Convention for the Protection of National Minorities, 1995 (FCNM) [UK ratification 1998].

3. In addition to these treaty standards there exists a body of ‘soft law’ developed by the human rights bodies of the United Nations and the Council of Europe. These declarations and principles are non-binding but provide further guidance in respect of specific topic areas. The relevant standards in this context include:

  • The European Commission against Racism and Intolerance Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies;
  • The European Commission against Racism and Intolerance Recommendation No. 10 on combating racism and racial discrimination in and through school education.
  • The Committee of Ministers Recommendation CM/Rec (2009)4 on the education of Roma and Travellers in Europe;
  • The Committee of Ministers Recommendation CM/Rec (2012)9 on mediation as an effective tool for promoting respect for human rights and social inclusion of Roma.

4. The Northern Ireland (NI) Executive is subject to the obligations contained within these international treaties by virtue of the United Kingdom’s ratification. In addition, Section 26 of the Northern Ireland Act 1998 requires compliance with international obligations.

5. The NIHRC further recalls that Section 24 (1) of the Northern Ireland Act 1998 requires that all acts of the NI Assembly are compatible with the ECHR.

6. The NIHRC advises that the Action Framework and the forthcoming Traveller Education Support Service (TESS) Delivery Plan should be underpinned by all relevant international human rights standards and that due reference should be made to the application of the ECHR in domestic law through the HRA.

7. The NIHRC welcomes the DE’s endorsement of the principles agreed by the Taskforce on Traveller Education (the Taskforce) and the commitment to act in order to achieve the goals contained in the Taskforce recommendations. The NIHRC further broadly welcomes the Draft Action Framework as a first step in the implementation of this commitment to the promotion of equality of opportunity for Traveller children.
Travellers and the Right to Education: compliance with international human rights standards

8. The most efficient method of ensuring that the standards of international human rights law are not infringed is for Government to be mindful of the principles underpinning international human rights law throughout the entire decision-making process. In relation to Travellers and the right to education there are six principles of note.

9. First, the NI Executive is legally obligated to respect, protect and fulfill the right to education as protected by international human rights treaties ratified by the UK Government.²

10. Second, international standards, ratified by the UK Government and binding on the NI Executive, require the NI authorities to take steps “with a view to achieving progressively the full realization” of the right to education.³ This duty requires that deliberate, concrete and targeted steps must be taken towards the full realization of the right.⁴ The DE is obligated to “take positive measures that enable and assist individuals and communities to enjoy the right to education”.⁵ In addition, the DE is required to provide for individuals who “for reasons beyond their control” are unable to “realise the right themselves by the means at their disposal.”⁶

11. Third, to ensure the progressive realization of the right to education, ICESCR, Article 2(1) requires that the NI Executive invest “a maximum of available resources”. In General Comment No. 3, the UN Committee on Economic, Social and Cultural Rights stated that “even in times of severe resources constraints... the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes.”⁷

12. Fourth, the Office of the UN High Commissioner for Human Rights has developed a human rights based approach for the realization of individual rights. A human rights based approach highlights the

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² ICESCR, Arts. 13 and 14; UNCERD, Art. 5(e)(v); Council of Europe’s European Social Charter, Art. 30; UNCRC, Arts. 28 and 29. The right to education is further protected in Article 26 of the Universal Declaration of Human Rights and Article 2 of the First Protocol to the ECHR.
³ ICESCR, Art. 2.
⁴ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3 on The nature of States Parties obligations, para 2.
⁵ UN Committee on Economic, Social and Cultural Rights, General Comment No. 13 on The right to Education (1999) para. 46.
⁶ Ibid, para. 47.
⁷ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3 on The nature of States parties obligations, para 12.
need for government to respect the principles of “participation, empowerment, non-discrimination, transparency and accountability and to always devote paramount attention to the most vulnerable in society”. The participation rights of children are further specifically protected under UNCRC, Article 12, which defines these rights as the right to express their views freely in all matters affecting them.

13. In this regard the NIHRC welcomes the Department’s commitment that the Action Framework be developed and implemented in close cooperation with representatives of the Traveller community. The Commission commends the valuable contribution made by Traveller parents to the work of the Taskforce and notes that in order to comply with the human rights based approach full participation of Traveller children and their parents must continue.

14. As noted by the Taskforce and the DE, parents also have an important role to play in children’s participation in education. In this regard the Committee of Ministers of the Council of Europe emphasised that “Schools should make strong efforts to engage Roma and Traveller parents in school activities to enhance mutual understanding. When involving parents, the school must respect their values and culture and acknowledge their contribution to the education of their children.”

15. Fifth, as explained by the UN Committee on Economic, Social and Cultural Rights the “best interests of the student shall be a primary consideration” in the provision of education that is available, accessible, acceptable and adaptable.

16. Sixth, the Government is obligated to take measures to ensure that the full right to education is enjoyed by all in a non-discriminatory manner. In accordance with UNCERD, Article 5, the Government has committed

“to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to

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10 UN Committee on Economic, Social and Cultural Rights, General Comment No. 13 on The right to Education (1999), paras 6 and 7.
11 See ICESCR, Art. 2, UNCRC Art. 2.
Strategic Delivery and Partnership

17. The Draft Action Framework states that “it is aimed to have the [TESS] fully operational by April 2013”, however, Annex A to the Draft Action Framework lists a number of actions assigned to the TESS, which it states will have been completed in 2012, without providing concrete information as to the current status of either the TESS or these actions. Given the significance of the TESS to the achievement of the goals of the Action Framework, the Commission can only undertake a full assessment of the potential implications of the Framework and its human rights compatibility when the TESS delivery plan is available and progress in the establishment of the TESS, and its future composition and workplan is clarified.

18. The absence of adequate information regarding measurable attainment goals and the commencement or completion of actions scheduled for 2012 in the Draft Action Framework has further hindered the NIHRC’s ability to make a complete assessment of the Framework’s human rights compatibility.

Monitoring and Evaluation: Budget Allocation

19. In its Concluding Observations on the UK’s third and fourth periodic reports the UN Committee on the Rights of the Child recommended that there is a need to

“Invest considerable additional resources in order to ensure the right of all children to a truly inclusive education which ensures...”

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12 See also, UNCERD, Art. 7. The requirement to ensure non-discrimination with regard to the right to education is further set out through the interaction of Article 14 of the ECHR with Protocol 1 Article 2. See also Council of Europe CM/Rec (2009) 4 on the education of Roma and Travellers in Europe, Appendix, para. 1: “Educational policies aiming at ensuring non-discriminatory access to quality education for Roma and Traveller children should be devised at national level. These policies should be formulated with a view to guaranteeing access to quality education with dignity and respect, based on the principles of human rights and on the rights of the child. Existing educational policies need to be reviewed to identify actual and potential hinderances preventing Roma and Traveller children from enjoying full rights in the field of education.”

13 Draft Action Framework at p. 12 and Annex A.

14 Draft Action Framework, p. 15: “Key to the successful delivery of the overall Action framework however will be the TESS Delivery Plan.”

15 In particular an assessment of the adequacy of the responses regarding Access to Educational Opportunities, Ambitions and Expectations, and Attainment and Achievement in the Draft Action Framework has been hindered by this lack of information.
the full enjoyment to children from all disadvantaged, marginalized and school-distant groups”\textsuperscript{16}

20. Specifically addressing the education of Travellers the Committee of Ministers of the Council of Europe stressed that “Educational policies for Roma and Traveller children should be accompanied by adequate resources...” \textsuperscript{17}

21. The NIHRC notes that despite clear recognition of the barriers preventing Traveller children from enjoying their right to education, the DE states that “it is realistic to assume that there will be very limited additional investment to support [the Action Framework’s] implementation”. \textsuperscript{18}

22. In order to ensure the progressive realization of the right to education, the ICESCR requires that the NI Executive invest “a maximum of available resources”. \textsuperscript{19} While recognising that the “Action Framework has been developed and launched during an extremely challenging financial period”\textsuperscript{20} the NIHRC recalls the Human Rights Council’s 2009 resolution noting that “global economic and financial crises do not diminish the responsibility of national authorities in the realization of human rights.”\textsuperscript{21}

23. The NIHRC advises that a human rights impact analysis should be conducted to assess how any policy decision, resource reallocation or review of funding arrangements might impact on the NI Executive’s ability to fulfil their obligations under international human rights law and in particular Article 13 of ICESCR.

24. In this regard, the NIHRC recalls in particular the UK Treasury guidance for appraisal and evaluation of spending (the ‘Green Book’), which recommends that a distributional impact analysis be carried out during the appraisal of any financial policies and proposals to consider their impact on the NI Executive’s ability to

\textsuperscript{16} UN Committee on the Rights of the Child, Concluding Observations: The United Kingdom of Great Britain and Northern Ireland (2008) para. 67 (b)
\textsuperscript{17} Council of Europe CM/Rec (2009) 4 on the education of Roma and Travellers in Europe, Appendix, Para. 4.
\textsuperscript{18} Draft Action Framework, p. 17.
\textsuperscript{19} UN Committee on Economic, Social and Cultural Rights, General Comment 20 on Non-discrimination in economic, social and cultural rights (Art. 2 Para 2) (2009), para 38. In General Comment No. 20, the Committee on Economic, Social and Cultural Rights stated that “economic policies, such as budgetary allocations and measures to stimulate economic growth, should pay attention to the need to guarantee the effective enjoyment of the Covenant rights without discrimination.”
\textsuperscript{20} Draft Action Framework, p. 17.
fulfil its obligations under the international human rights treaties and refers specifically to ICESCR.

25. The NIHRC emphasises that currently available resources should be better targeted and the educational needs of Travellers must be built into the DE’s priorities in order to ensure that resources are utilised effectively. The Boards of Governors and Principals of schools should also be required to ensure targeted allocation of any additional resources they receive per Traveller child in each financial year.22

**Improved School Attendance**

26. By virtue of the UK’s ratification of the UNCRC, the NI Executive is legally obligated to take “measures to encourage regular attendance at schools and the reduction of drop-out rates”.23 To ensure the full access of Travellers to the right to education, the Council of Europe’s Committee of Ministers has stated that “Special provisions for preventing school drop out and stimulating the return to school of those who did not finish compulsory education should be made available.”24

27. The NIHRC welcomes the proposed development of an inter-Board strategy to improve attendance of Traveller pupils and the review of Schedule 13 of the Education and Libraries (Northern Ireland) Order 1986. The timely and effective implementation of these measures will play an important role in ensuring the full enjoyment of the right to education for Travellers in Northern Ireland.

28. The NIHRC advises that the DE should consider the benefits of mediators working between Traveller communities and public institutions, as recognized by the Committee of Ministers, “notably in terms of improved school attendance and access to quality education”.25

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23 UNCRC, Art. 28, 1(e). See also, UN Committee on Economic, Social and Cultural Rights, Concluding Observations: The United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories (2009) para. 36: “the State party undertake further studies on the correlation between school failure and social environment, with a view to elaborating effective strategies aimed at reducing the disproportionate dropout rates affecting minority pupils.”
24 Council of Europe CM/Rec (2009) 4 on the education of Roma and Travellers in Europe, Appendix, para. 11.
Inclusion, Integration and Interculturalism

29. The Irish Traveller community is specifically identified in the Race Relations Order as a racial group which is protected against unlawful racial discrimination.\(^{26}\) By virtue of the UK’s ratification of the UNCERD the NI Executive has a legal duty

“to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethical groups.”\(^{27}\)

30. The NIHRC notes that the proposed actions in the areas of teacher training\(^{28}\), review of resource and learning materials\(^{29}\) and review of the practice of providing Traveller specific school transport\(^{30}\) should be tailored in order to satisfy this legal duty to address racial discrimination and promote understanding, tolerance and friendship.

31. The NIHRC welcomes the proposed development of an online Coordination Training Tool for the professional development of teaching professionals.\(^{31}\) The NIHRC notes that this tool should further compliance with the Committee of Ministers’

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\(^{26}\) Race Relations Order (Amendment) Regulations (Northern Ireland) 2003. However, in its most recent Opinion on the UK in 2011, the Advisory Committee on the Framework Convention for the Protection of National Minorities, regretted “that the education system in all regions still lacks cultural sensitivity for the specific background and needs of Gypsies and Travellers”, at para 172.

\(^{27}\) UNCERD, Art 7. See also, Framework Convention for the Protection of National Minorities, Art. 6.1: “The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.”

\(^{28}\) Regarding teacher training the Committee on the Framework Convention for the Protection of National Minorities in its Third Opinion on the UK stressed that “It is essential to develop teacher training on the history, culture and specific needs of Gypsies, Travellers and Roma and to ensure that schools are more sensitive to their cultures.”, 2011, para. 177.

\(^{29}\) In order to fulfil their obligations with respect to the right to education under international human rights law State Parties must ensure that education is acceptable. Acceptability means that the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents. UN Committee on Economic, Social and Cultural Rights, General Comment 13 on The Right to Education (1999) para 6.

\(^{30}\) The DE should consider the case law of the European Court of Human Rights regarding policies that were held to constitute discrimination against Roma. Oršuš v Croatia no. (GC) 15766/03 [2010] ECHR; DH v Czech Republic (GC) no. 57325/00 [2008] ECHR.

\(^{31}\) Draft Action Framework, p. 6.
recommendation that: “Educational authorities should ensure that all teachers, and particularly those working in ethnically mixed classes, receive specialised training on intercultural education, with a special regard to Roma and Travellers.” ³²

32. The Committee on the Rights of the Child noted that “Bullying is a serious and widespread problem, which may hinder children’s attendance at school and successful learning.”³³ Thus, the NIHRC recalls and draws attention to the fact that the promotion of tolerance and respect should also address the serious problem of racist bullying directed towards Traveller children, a concern that has been raised by numerous UN and European treaty bodies.³⁴ The NIHRC advises that the Action Framework should address this issue directly as a matter of specific concern for Traveller children.

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³² “Such training should be included in officially recognised programmes and should be made available in various forms, including distance and online learning, summer schools, etc.” Council of Europe CM/Rec (2009) 4 on the education of Roma and Travellers in Europe, Appendix, Para. 6.
³⁴ UN Committee on the Rights of the Child, Concluding Observations: The United Kingdom of Great Britain and Northern Ireland (2008) Para. 24: “In practice certain groups of children, such as: Roma and Irish Travellers’ children... continue to experience discrimination and social stigmatization”. See also, Para. 67 (f); Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities in its Third Opinion on the United Kingdom, June 2011, para 172; Concluding Observations of the Committee on the Elimination of Racial Discrimination on the United Kingdom of Great Britain and Northern Ireland (2011) recommendation 23: “encourages the State party to take all necessary steps to eliminate all racist bullying and name-calling in the State Party’s schools.”; and European Commission against Racism and Intolerance, Report on the United Kingdom, fourth monitoring cycle, 2009, para. 161: “ECRI again recommends that particular attention be devoted to combating bullying directed against Gypsy, Roma and Traveller children, and draws attention to the importance both of training teachers in the history and culture of Gypsies, Roma and Travellers and of promoting a greater awareness of these amongst children and society in general.”