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**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Independent Expert on minority issues.**

REFERENCE: AL Poverty (1998-11) Health (2002-7) Minorities (2005-4)  
IRL 2/2013

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Independent Expert on minority issues pursuant to Human Rights Council resolution 17/13, 15/22, and 16/6.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **alleged persistently deteriorating health condition of Irish Travellers in Ireland**.

According to the information received:

While health inequalities in Ireland are addressed within the overall context of the Government's policy on social inclusion outlined in the National Action Plan on Social Inclusion 2007-2016, and the National Partnership Agreement "Towards 2016" Irish Travellers allegedly continue to experience systematic denial of the right to the enjoyment of the highest attainable standard of physical and mental health in Ireland.

It is reported that inadequate access to, and poor quality of, such underlying determinants of health as accommodation, education and employment, coupled with experiences of poverty, discrimination and racism are the main contributors to the deteriorating health condition of Irish Travellers. It is further reported that the 2010 "All Ireland Traveller Health Study" commissioned by the Department of Health and Children revealed how the poor health status among Irish Travellers has deteriorated over the last years, widening the gap in life expectancy with the general population.

Moreover, it is alleged that austerity measures adopted recently by the Government may further impact negatively on the health condition of Irish Travellers. In this connection, it is further alleged that the Irish Government has progressively reduced the health budget for Irish Travellers resulting in a loss of designated personnel and resources in health services and a decrease in the availability of crucial health services for the community.

It is also alleged that the refusal by the Government to acknowledge Irish Travellers as an ethnic group has had a negative impact on the collection of health data on Irish Travellers, thus causing poor health outcomes, and has impeded an effective monitoring and prevention of discrimination against them.

While we do not wish to prejudge the accuracy of these allegations, we would appreciate information from your Excellency's Government on the steps taken by the competent authorities with a view to ensuring the right to the enjoyment of the highest attainable standard of health of all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities. This right is enshrined, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights – ratified by Ireland on 8 December 1989 – which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all States parties to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially the most vulnerable or marginalized sections of the population, without discrimination.

In this connection, the Committee on Economic, Social and Cultural Rights in its General Comment No. 14 provides that the right to health contains both freedoms and entitlements and holds that States are required to respect, protect and fulfil the right to health. The Committee further reiterates the Covenant's prohibition of any discrimination in the realization of the right to health on the grounds of national or social origin, health status, and civil, political, social or other status (para.18). The principle of non-discrimination applies to all aspects of the right to health and constitutes an immediate obligation (para.30).

Furthermore, General Comment No. 14 also holds that the right to health extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment (para.4). In this regard, States have an obligation to ensure equal access for all to the underlying determinants of health (para.36).

Moreover, as with all other rights in the Covenant, there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources (para.32) As explained by the Committee on Economic, Social and Cultural Rights, an example of a 'deliberately retrogressive measure' would be a general

decline in living conditions, “*directly attributable* to policy and legislative decisions by States Parties, and in the absence of accompanying compensatory measures” (General Comment No. 4 para. 11). Examples of retrogressive measures might include the adoption of policy or legislation with a direct or collateral negative effect on the enjoyment of rights by individuals, or unjustified reductions in expenditures devoted to implementing public services that are critical for the realization of economic, social and cultural rights (see also A/HRC/17/34 para. 18).

Similarly, State parties to the Covenant have an immediate minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of all economic, social and cultural rights (General Comment No. 3, para. 10). The obligation to achieve these minimum essential levels of rights enjoyment is not dispensed with during times of crisis and recovery; States must demonstrate that every effort has been made to use all resources that are at its disposal, in an effort to satisfy, as matter of priority, minimum essential levels and to protect the most disadvantaged and marginalized members or groups of society by adopting relatively low-cost targeted programmes (See the CESCR’s statement on allocation of resources E/C.12/2007/1, paras. 4 and 6; and General Comments No. 3 para. 12, No. 12 para. 28 and No. 14 para. 18).

Participation in decision-making processes must also be an integral component of any policy, programme or strategy related to the right to health (General Comment No.14, para.4). In considering whether there has been a violation, the Committee will examine whether there was “genuine participation of affected groups in examining the proposed measures and alternatives”, whether the measures were directly or indirectly discriminatory, and whether the measures will have “an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security” (General Comment 19 para. 42).

In this connection, we would like to recall the report of the Special Rapporteur on extreme poverty and human rights (A/HRC/17/34/Add.2), which reiterates that it is not sufficient to simply rely on mainstreaming Irish Travellers within the Irish health system. Addressing structural disadvantage requires affirmative action to eliminate conditions which have caused or helped to perpetrate inadequate access to health services in the past. The independent expert urged Ireland to develop, with the meaningful participation of the Irish Traveller community, a new National Traveller Health Strategy in order to support the Irish Traveller community’s enjoyment of the right to health on equal footing with the rest of Irish society (para.76). She further highlighted Ireland’s obligation to ensure that any programmes or policies which are integral to delivering essential services (e.g. health care and social assistance) are protected, to the greatest extent possible, from reduced expenditure, recognising that reductions to disability services, community and voluntary services, and Traveller support, as well as cuts to social protection, all have the potential to impede the delivery of essential services to the most vulnerable. She recommended that even during times of severe resource constraints, Ireland must demonstrate that every effort has been made to use all resources that are at its disposal, in an effort to satisfy, as matter of priority, minimum essential levels of human rights (para. 27 and 28) and that with the meaningful participation of the Traveller community, a new National Traveller

Health Strategy should be developed in order to support the Traveller community's enjoyment of the right to health on equal footing with the rest of Irish society (para.76). .

In this connection we would further like to draw the attention of your Excellency's Government to the existence of the Guiding Principles on extreme poverty and human rights (A/HRC/21/39), adopted by the Human Rights Council by consensus at its 21<sup>st</sup> session (resolution 21/11), in particular paragraphs 18 to 22 and 81 to 82.

In addition, we would like to draw your attention to the concluding observations that the Committee on the Elimination of Racial Discrimination issued in 2011 (CERD/C/IRL/CO/3-4) in which it recommended that Ireland take concrete measures to improve the livelihoods of the Traveller community by improving access to health care, among other aspects. Furthermore, the Committee recalled General Comment No. 8 on the principle of self-identification and recommended that Ireland continue to engage with the Traveller community and work concretely towards recognizing Travellers as an ethnic group. The Human Rights Committee in its concluding observations of 2008 (CCPR/C/IRL/CO/3) also recommended that Ireland take steps to recognize Travellers as an ethnic minority group.

In view of the above, we wish to draw the attention of your Excellency's Government to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 4.1 of the Declaration establishes that: "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law." Article 4.5 further provides that: "States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country." We would also like to draw your attention to article 5.1 of the Declaration which provides that "National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities."

Lastly, we would like to recall on the 2011 report of the Universal Periodic Review on Ireland (A/HRC/19/9). In this regard, your Excellency's Government accepted to continue pursuing appropriate policies designed to provide for equal opportunities to members of the Irish Traveller's community, with special focus on access to health care, education and housing, including ensuring Irish Travellers' participation in public life related decision-making process (recommendation 106.32).

In light of the above, we urge your Excellency's Government to take all necessary measures to ensure the protection and full enjoyment of the right to the highest attainable standard of health for all persons, including Irish Travellers, in accordance with international standards.

Moreover, it is our responsibility under the mandates provided by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation in addressing the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide the details, and where available the results, of any consultations which may have been carried out to ensure most careful consideration of all alternatives with respect to the health condition of Irish Travellers. If no consultations have taken place, or if they have been inconclusive, please explain why.
3. Please provide information on the measures taken to ensure the enjoyment of the right to the highest attainable standard of health, including the underlying determinants of health, for Irish Travellers.
4. Please provide details of the domestic monitoring mechanisms and safeguards that are in place to ensure that your Excellency's Government is allocating the maximum of its available resources to the realization of social and economic rights, in particular of Irish Travelers, and that minimum essential levels of these rights are being upheld?

Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Maria Magdalena Sepúlveda Carmona  
Special Rapporteur on extreme poverty and human rights

Anand Grover  
Special Rapporteur on the right of everyone to the enjoyment of the  
highest attainable standard of physical and mental health

IZSÁK Rita

Independent Expert on minority issues