

The Gypsy and Traveller communities' housing dispute against the Localism Tenet – Social and Cultural definition of Gypsy and Traveller status and gender issues

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1. Background of Gypsy people

This chapter will focus on English Romany Gypsy community as a separate cultural ethnic group. The migration of Romany groups through Europe to Great Britain happened approximately 600 years ago and the first documentation of Gypsy people was in Scotland in the 15th century 1492. (Dawson, 2005). The English, Scottish and Welsh do not refer to themselves as “Roma”. As a matter of fact by investigating carefully within the lines of the text of several sources and documents, we have found that a strategy for the inclusion of Gypsies, Travellers and Roma as separate categories in ethnic monitoring data is needed in order to understand the impact of government policies on Gypsy, Traveller and Roma communities. In addition, we also recommend that *“a specific policy for Gypsy and Traveller communities in relation to cultural heritage land use should be contained within any strategy, separate to Roma accommodation issues which are different.”* This is explained in our book of recommendations *Adjustments to communication devices within law and planning frameworks dealing with Gypsy and Traveller accommodation in the UK* recommendations 8 & 9).

It is important to cover origin and to identity and to clarify the ‘specific’ community that is being covered by our study. The historic background covers the onset of discrimination both overt and covert. It will also discuss the historical background within English Law of the differing definitions of Gypsy in relation to the Town and Country Planning Act 194, the Race Relations Act 1976 (now amalgamated into the Equalities Act 2010) and the relatively recent amendment to section 225 to the Housing Act 2004. Further developments in legislation until today have anyhow followed a series of varied interpretations of the first definitions.

In our previous study and report we had similarly the opportunity to mention changes in legislation and/or intentions for change as it is currently taking place. However, we have discovered that several planning applications are still rejected, although the Government has pledged to regulate these matters as soon as possible, as noted in their 'Progress Report' published in April 2012.¹ Unfortunately we found that any criticism expressed and promises made by the Ministerial Working Group in this Progress Report were not to be honoured.² On 29th October 2014 the Friends, Families and Travellers (FFT) were finally provided with information that no meetings of the Ministerial Working Group had taken place since April 2012; no meetings have been scheduled in the official records of the Department of Communities and Local Government (DCLG). The Government "cover up" was established on 05/11/2014 and published in an article with the title 'Picklesgate – Government covers up their Roma neglect' (www.gypsy-traveller.org, accessed on 05/11/2014).

We have three definitions in English law, thus, it is clear, that the term "Gypsy" is often contested and Gypsies are often described and controlled by people who are not "Gypsies". Therefore the authors will use the term Gypsy as the ethnic definition for Romany Gypsy families whose ancestors originated in India and not as "gypsy for the purpose of planning law" or gypsy as lifestyle choice, although they will discuss the main issues revealed by the attempts of policy and framework definitions; these latter have been ruthlessly obstructing a large number of judicial decisions related to planning applications in the last few years. In fact these policies and decision-making have favoured discrimination mainly against Gypsy and Traveller women; the gender issue is still significant in all discussions and ongoing opposition of the lawmakers who often enforce their laws without considering fine lines between legal obligations and socio-cultural traditions, which are different from other ethnic groups in the UK.

¹ This report with the title *Progress report by the Ministerial Working Group on tackling inequalities experienced by Gypsies and Travellers* is available at www.communities.gov.uk; it was accessed on 02/11/2014.

² In an article with the title 'Picklesgate – Government covers up their Roma neglect' which was published in www.gypsy-traveller.org, we see that initially the Government was asked by the European Commission to produce a Roma Integration Strategy, but they declined to do this. Instead a Ministerial Working Group chaired by Eric Pickles MP published only one 'Progress Report' in April 2012. Then, the Ministers declared that they had held meetings, but they were not able to disclose any other details, because they needed "free space" and, according to them, any disclosure of information "could harm the frankness and candour of internal discussion."

Thus, we think that it is useful to set out a historic time line clarifying at certain points whereby the community started to suffer from discrimination, were left out and ignored through the default of legislation and practice and when they were also targeted by specific laws with the culmination of the latest Localism Act 2011. This resulted in excessive influence and favouritism towards the so-called 'Settled Communities' of the locals and frustrating consequences for the family lives of the Gypsy and Traveller communities.

1.1. Historic Background in the UK – The definition

Gypsy history is essentially an oral one, not set down in books. However the non Gypsy community have their own idea of Gypsy people often imagined and portrayed through art, poetry, literature and a plethora of Gypsy research studies of people from outside. They often strengthen the stereotype because a prejudiced person's preconceived views are often based on hearsay rather than on direct evidence and *"are resistant to change even in the face of new information"*. (Giddens, 1997, p212)

It is notable within mainstream textbooks that there is very little about Gypsy people and the influence of Gypsy culture within the wider community in Great Britain. And This is evidenced by examples including the influence of the Romany language (known as Romanes by the community) on the English language, the importance of Gypsy work in agriculture and the fact that many of the community lost their lives fighting in both the First and Second World Wars respectively.

The Romany Gypsy people first appeared in Scotland in the middle of the 15th Century; the first recorded reference to 'Egyptians' appears in 1492 when an entry in the book of the Lord High Treasurer records a payment to Peter Ker of 4 shillings (Dawson, 2005). The families then started to migrate through England and into Wales. The word Gypsy came from the mistaken belief that Gypsy people came from little Egypt or the Middle East. In early transcripts families were referred to as Egyptians (Lucas, 1982) and the community often referred to themselves as Egyptians hence the word Gypsy.

The community has experienced the ascription of others through four centuries, the latter part of this century being the most damaging; indigenous populations do not see themselves represented in texts, or if they do see themselves they often do not recognise the representation (Tuhiwai-Smith, 1999). As a political movement we struggle against it, families at the side of the road do not understand it, non Gypsy lay people do not understand it and neither do many academics who simply say it's a racist argument (Acton, 2006). All that is demanded is an identity that sits with cultural and social practice.

However Gypsy people have their own narratives as to who we are and from where we came. There are Gypsy oral traditions that say that Gypsy people were 'about in the Lords day' and that we are 'one of the lost tribes of Israel.'

My grandmother would explain in great detail (according to the author's appreciation), how the tribes left the holy land; some became Jews, some became Gypsies and others were the Indian tribes in America. The legend that Gypsy people were made to wander because they forged the nails to crucify Christ, has many versions worldwide. Many oral histories talk of the Holy Land and Egypt.

Gypsy people continue the oral tradition and it is the 'others' that have constructed meaning to community in where they stand. Books state that the origin of Gypsy people was first traced through language and that the Gypsy people actually originated in India, the Romany language being derived from Sanskrit. It was established as early as 1760 that the Roma Gypsy communities had their origin in India. *"In 1760 a student from Western Hungary at Leiden University in the Netherlands overheard students from India converse about the Sanskrit language. Certain Sanskrit words reminded him of a language used by Roma workers on his father's estate"*. (Hancock, 2002, p10)

So, historically there have been labels the first one, these *"outlandish people ... [the] Egyptians."* King Henry VIII proclaimed the first law in England enacted against Gypsy people in 1530, an Act Concerning Egyptians. This was overtly a law targeting Gypsy people as a race of people, by stating that *"Diverse and outlandish people calling themselves Egyptians have gone from place to place and used great and subtle means to deceive the people, bearing them in hand that they by palmistry*

could tell men's and women's fortunes." (An Act Concerning Egyptians 22 Henry V111, c. 10)

Further legislation followed, when the first act had not brought about the desired effect: the Act for the Punishment of Vagabonds was introduced (Act 1, Edward VI, c. 3, 1547):

"Until this our time it hath not had the success which hath been wished but partly by foolish piety and mercy of them which would save seen the said Godly laws executed, partly by the perverse nature and long accustomed idleness of the persons given to loitering, the said Godly statutes hitherto hath had small effect, and idle and Vagabond persons being unprofitable members or rather enemies of the Commonwealth hath been suffered to remain and increase Public." (Aschrott 1856 Section 1 Early Legislation p4)

Under the Egyptians Act 1554, Queen Mary complained of the Egyptians "*Un Godly ways*" and who were "*plying their devilish and naughty practices and devises*" (Lucas 1882). So, a series of laws were introduced by Parliament in the years of 1563, 1572, 1576, 1597 and 1601 (Briscoe, 2011). Each Act was in response to changing times; enclosure of land for rearing of sheep had caused many villagers to migrate to the towns looking for work as well as Gypsies trying to survive in difficult circumstances (Plumb, 1973). The 1597 Act, for example, was targeted at "*vagabonds and sturdy beggars and counterfeit Egyptians*"; "*the undeserving poor*" were subject to very harsh treatment.

There is no doubt that the Poor laws of Elizabethan England were very hard for a variety of people, not just Gypsies. But, the Egyptians Acts specifically targeted Gypsies as a separate population. The 1554 Act targeted the whole community not just because of way of life. To be an Egyptian was punishable by death, as it was for those found in the "*fellowship or company of Egyptians*" (Kendrick & Puxon, 1972), thereby making a distinction between groups of Travellers of people on the road. In 1650's, there were hangings of the "Egyptians" in Suffolk. At this time other "Egyptians" were transported to America for slavery. In 1713, an Act for reducing the laws relating to rogues, vagabonds, sturdy beggars and vagrants brought the Acts into one statute. This is known as Anne's Statute, the Vagrancy Act 1714. Gypsies were included in this statute, but not by name. They are covertly covered by being

nomadic and by telling fortunes and if anyone could not give their place of birth, or did not work, they were to be taken as “*apprentices or servants*” to Her Majesty’s Plantations or any British Factory “*beyond the seas for seven years*” (Dawson, 2005).

These acts were not repealed for over two hundred years. Therefore, England had two centuries of persuading its population to the evils of the Gypsies as a race. It also gave the population a sense of deserving and undeserving poor. People who were displaced and went looking for work under the Dissolution of the Monasteries (1536-1541), no doubt joined Gypsy people as outcasts. Nevertheless anti-Gypsy legislation was gradually repealed and the Gypsy community became invaluable as workers in the fields, for instance, they worked in the strawberry fields and harvested the hops. “*Eighteenth and nineteenth-century Britain was much more dependent on seasonal and tramping labour than it has since become*”. (Emsley et al, www.oldbaileyonline.org, 05/04/2014). Farming was not yet mechanised in this period and there needed to be many hands to get varying harvests in. The notion that Gypsy families were on the move all year round has never been correct, with families having winter stops, with examples in the area around Seven Dials in St Giles in the Fields and Norwood in Surrey (Emsley et al, 2013). However the travelling way of life started to become under threat. During the 18th century, between 1755 and 1815, 5.9 Million acres (2.4 million hectares) had been enclosed by 4000 acts of Parliament, the Enclosure Acts. The land base was getting smaller and going into a few hands. There was a fear that all communal land would disappear and there was a decision to legislate to save village commons (Plumb, 1973). The Commons Act 1876 was an Act had an impact on the way of life. As life and law changed, the Gypsies adapted. Enclosure ensured land went into private ownership and with it some traditional stopping places also disappeared.

In the Victorian era, the deserving poor were those who were poor through no fault of their own, either because of illness, accident or age, or because there was no work available for them (perhaps because of a factory closure for example) (Woodhorn, 2012).

The undeserving poor were those who were deemed poor because of way of life or being alcoholic. “*Many of the poorest in Britain are subject to deeply negative*

assumptions and extremely unflattering stereo types, which are so widely and consistently held that, the British public is much less sympathetic towards the poor than might otherwise be expected.” (Dorey, 2010, p333).

The Gypsies have left subtle traces on history; it was Scots Gypsy Travellers that gathered the Flax to make the sail for Nelson’s Ship, the Victory (The Victory Sail Exhibition Portsmouth Historic Docks). Children today can buy “lollipops” or “toffee-apples” (literally red apples from the Romany lolli red and pob apples). There is a long history here, which has been largely ignored, due to a pre-occupation of nomadic accommodation and ‘lifestyle’ issues. The lack of knowledge about the Gypsy people helps to support myth, stereotype and misunderstanding and fuels resentment.

Covert racism developed over time; for example, words carried forward from the poor laws and Egyptians Acts, to the Vagrancy Act 1824, targeted the Gypsy community without naming them:

“... every Person committing any of the Offences herein-before mentioned, after having been convicted as an idle and disorderly Person; every - Person pretending or professing to tell Fortunes, or using any subtle Craft, Means, or Device, by Palmistry or otherwise, to deceive and impose on any of His Majesty's Subjects; every Person wandering abroad and lodging in any Barn or Outhouse, or in any deserted or unoccupied Building, or in the open Air, or under a Tent, or in any Cart or Wagon...” (Vagrancy Act s1V p699)

There was no thought at this time to the notion of families still living in waggons or even wanting to stop in waggons as a cultural preference. A Methodist preacher by the name of George Smith studied the Gypsy and Traveller populations; he was responsible for many canal boat children been taken into care (Toulmin, 2007). He wrote a small information pamphlet; it did not take long for him to ascribe his own thoughts and construct who a Gypsy was:

“I would say, in the first place, that it is my decided conviction that the Gipsies were neither more nor less, before they set out upon their pilgrimage, than a

pell-mell gathering of many thousands of low-caste, good for nothing, idle Indians from Hindustan.” (Smith, 1880, p5)

George Smith develops his theory on Gypsy identity further and affirms that Gypsies are *“Dregs of society that will one day put a stop to the work of civilisation, and bring to an end the advance in arts, science, law and commerce that have been making such rapid strides in the country”* (Smith, 1880, p193). George Smith did not differentiate between Gypsy and Showmen; to a certain degree, there was less of a distinction in those days, as many Romany Gypsy families had side shows and funfairs. The targeting of the poorer Gypsy and Traveller people threatened the Showman way of life also, as some of the Showmen were Romany Gypsy in origin and others were families that had followed a travelling way of life for hundreds of years.

In 1889 the Showmen rallied to fight the Moveable Dwelling Bill brought forward by George Smith. The formation of the United Kingdom Showman and Van Dwellers' Protection Association in 1889 was and still is the decisive and important event in the history of travelling. Show people as a community, (Toulmin, 2007) and through this, founded the Showman's Guild, which is a well-organised network of regional guilds; it became quite strong in the struggle for traditional Traveller rights, but then evolved and distanced themselves as a distinct culture separate to English Gypsy people or Irish Travellers. However this first struggle saw van dwellers fighting back in a political struggle in unison between Gypsies and Showmen.

The National Assistance Act 1948 (NAA) did not consider the Gypsy Traveller community, at that time. Families had verbal agreements with farmers, landowners for winter yards and many were outside the system brought in by the National Insurance Act 1946 (NIA). This act abolished the poor law system and guaranteed help to those who were homeless. There was no programme to assist Gypsy people to register within this system. Many did not know birth dates; birthdays were not celebrated until relatively recently. People worked when they could work but work was not regular; times were hard, as it was for many people post war. Places where families had been allowed to stop, whilst the first and second wars were being fought, also started disappearing in the late forties. Whilst families who applied for

conventional housing were assisted, through the NAA and subsequent homeless legislation, Gypsies who remained on the road travelling were not. Norman Dodds became an avid campaigner and Lord Avebury (at the time Eric Lubbock), who was bringing forward a Private Member's Bill on mobile homes, took up the campaigning.

In later years the mechanisation of farming meant that the Gypsy population had to adapt to other trades and some found themselves migrating from rural areas to be close to towns and cities for work. In the nineteen fifties and sixties many families also transferred from the traditional horse to the first caravans or trailers, as Gypsies prefer to call them, many of the older generation referring to the modern caravan as 'tin cans'.

Statute law which covertly discriminated against Gypsies came into being as the Fraudulent Mediums Act 1951, which made it an offence to tell fortunes. It carried within it words echoing from the older laws. It is notable that this Act was repealed by the Consumer Protection from Unfair Trading Regulations 2008. But caution here, one is unable to advertise that they are a fortune teller. Although this has always been a traditional trade; advertising must now state "*for entertainment purposes only.*" (Consumer Protection 2008). This has been a very renowned way for Gypsies to earn a living and the trading law has been subject to criticism, for example, from the Spiritualist church, who do not consider foretelling an entertainment, but, this is part of the belief of their church.

The Enclosures of Commons Act, the subsequent Highways Act of 1959 (HA), followed by the Caravan Site Control and Development Act 1960 (CSCDA), caused hardship to many families as men returned to winter quarters to find their families gone. Farmers and land owners were frightened of reprisals as their land may not have the requisite Caravan Sites Licence.

There has always been a misconception that Gypsy families travelled all the year through. In reality, there was always a winter yard and for many the travelling period would not be until March through to late October. The base from which to travel is not a new notion. Farmers and others afraid to let families stay on land without the mandatory sites licence, a requirement of the (CSCDA) had no alternative but to turn families away. The Caravan Site Control and Development Act 1960 (CSCDA) definition stated clearly that Gypsies are "*persons of nomadic habit of life, whatever*

their race or origin, but does not include members of an organised group of travelling showmen, or persons engaged in travelling circuses, travelling together as such". (Circular 1/06, Planning for Gypsy and Traveller Sites DCLG, 2006)

"Whatever their race or origin" has been somewhat of an anomaly and as will be discussed later came about through case law. Between the CSCDA 1960 and 1968, three things happened:

- There was a movement from traditional stopping places that were now prohibited;
- There was movement from sites without sites licences;
- And, there was an increase in confrontation.

In the past it has been the case that, if and when an authority figure appeared, most families would just move on, no arguing and a 'keep your head down' philosophy. But as families found themselves in an untenable position, there was confrontation that ended in injury and death. *"I remember being a child of about 9 or 10, when I heard the discussion about deaths of children in Brown Hills in the West Midland."* (Author)

A statutory duty to provide sites for Gypsies came through the Caravan Sites Act 1968 (CSA). There was respite, but great difficulty in obtaining the provision that was needed. In reality only one third of district and borough councils provided accommodation under this Act. The Cripps report 1977 identified that obtaining sites was extremely problematic and indeed only 38% of local and district authorities had identified and provided sites when the statutory duty under the CSA 1968 was repealed by the Criminal Justice and Public Order Act 1994 (CJPOA).

During the eighties, many young people took to the road dipping their toe in a nomadic lifestyle. Some homeless people joined hippy groups known as the 'peace convoys'. In 1985, this resulted in tensions and an incident referred to, as the 'Battle of the Bean field' (news.bbc.co.uk/onthisday/hi/dates/stories, 1985, accessed 01/04/2014).

The CJPOA 1994 was brought in with the intention to stop the 'peace convoys'. There was concern that the traditional communities should not come under this Act, but again it was brought in with the knowledge that it could affect and cause hardship

to ethnic Gypsies and Irish Travellers. We have the situation now where settled non Gypsy people, who took to the road, want to be defined as gypsies for the purposes of planning law, causing yet another further description that Gypsy people do not accept. The case law from the legal argument has left us with an unsatisfactory definition.

After lobbying by Gypsy and Traveller (Non-governmental organisations) NGO groups the 1/94 circular followed (Department of the Environment Circular 1/94, Welsh Office 2/94) and this put the onus on the Gypsy community to provide their own sites. It did not deliver due to tedious criteria, which was difficult to meet. Evictions increased along with a return of the problems seen in the 1960s.

This was summed up very eloquently in a short history by Sedley J.A in the Post Criminal Justice 1994 *Act of Atkinson*. This passage is quite famous for its summing up of a potted history of Gypsy & Traveller families:

“It is relevant to situate this new and in some ways draconic legislation [CJPOA 1994] in its context. For centuries the commons of England provided lawful stopping places for people whose way of life was or had become nomadic. Enough common land had survived the centuries of enclosure to make this way of life sustainable, but by section 23 of the Caravan Sites and Control of Development Act 1960 local authorities were given the power to close the commons to travellers. This they proceeded to do with great energy, but made no use of the concomitant power given to them by section 24 of the same Act to open caravan to compensate for the closure of the commons. By the Caravan Sites Act 1968, therefore, Parliament legislated to make the section 24 power a duty, resting in rural areas on county councils rather than district councils (although the latter continued to possess the power to open sites). For the next quarter of a century there followed a history of non-compliance with the duties imposed by the Act of 1968, marked a series of decisions of this court holding local authorities to be in breach of their statutory duty; but to apparently little practical effect. The default powers vested in central government, to which the court was required to defer, were rarely if ever used.”

“The culmination of the tensions underlying the history of non-compliance was enactment of the sections of the Act of 1994. There followed, in section 80(1), the wholesale repeal of the material part, Part II, of the Caravans Sites Act 1968”. (*R v Lincolnshire County Council ex p Atkinson* at 533-534, 1996)

1.2. Gypsies as an ethnic group

In England after a historic struggle the Gypsy community are now recognised as a distinct ethnic group and are covered by the Equalities Act 2010 and relevant race legislation (The 1976 Race Relations Act).

This was brought about by a case brought forward by Gypsy people who were recognised through the legal principle of the Mandla Criteria. The Mandla case originally involved the Sikh community.

1.2.1. Mandla Criteria:

The Mandla criteria are as follows:

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

In addition to those two essential characteristics the following characteristics are, relevant:

- (3) Either a common geographical origin or descent from a small number of common ancestors;
- (4) A common language, not necessarily peculiar to the group;
- (5) A common literature peculiar to the group;
- (6) A common religion different from that of neighbouring groups or from the general community surrounding it;

(7) Being a minority or being an oppressed or a dominant group within a larger community. (*CRE v Dutton* [1989] 1 All ER 306)

However to achieve the status for the purpose of planning law, others constructed their 'label' upon the community once again. The ethnic definition in law was weakened by others perception of the community. Gypsy people and Gypsies were to be defined by certain trades and moving about for work, not by social and cultural movement inherited by tradition and heritage.

2. Legislation and frameworks related to Gypsy definition

The authors of this report would like to clarify a few important points about their research methodology. This is because there has been an intense production of main legislation documents at national levels in England and Wales conjointly in the last few decades. However, most of the 'local' information about our topic can be found mainly in legal documents of planning appeals. And although there is intense activity of appeals recently, very few decisions were made about final approvals; almost every case has been proved to be time consuming and costly. But, the most important thing is that, locally both regional and city councils avoid keeping a lot of information in their archives, especially about planning rejections.

And perhaps Parliamentary Acts, such as the Localism Act, have been so powerful that they empowered the so-called 'locals' to quash easily cases of Gypsy and Traveller sites planning applications; this is because national law became a powerful weapon for 'localism'. In localism, a paradox transpires, which is evident also in the planning frameworks in the last few years; everything has to be distinct about spaces and places for locals. Instead of uniting locals, the 'localism' agenda keeps dividing the local community by considering planning issues with Gypsy and Traveller sites completely out of the main National Planning Policy Framework and in a detached supplementary document of only few generic content pages.

In our previously published national report in April 2014, we have inserted an Appendix A at the end of that document, where all terminology and typology concerning the national and local levels of UK legal system is shown in its entirety

and it is also colour coded according to general instructions as a result of discussions during all partners' meetings. In our report and its appendix, it is notable that, as "primary" legislation of acts relating to "constitutional" matters, the authors analysed 6 main acts, which are the most relevant to housing and accommodation issues and proposed solutions. EU Regulation does not appear to have a direct effect to UK Gypsy and Traveller cases of appeals, etc., unless it refers to Equality and Human Rights matters brought to the European Court of Human Rights (ECHR) directly by the claimants and scrutinised by the judge against Article 8 of European Court of Human Rights. This is rare due to the hidden agenda concerning gender issues in the national legislation, for example, where European Court rulings have recognised national detachment as far as planning framework and employment rules' issues are concerned.

Byelaws in the UK legal system are quite inexistent. Therefore a number of publications referring to a variety of guidance texts and, in particular those published by the Office of the Deputy Prime Minister try to set some order. In fact, there are questions rarely raised in Parliament about these issues. In our national report we had included and checked a series of 14 documents which were presented by the Labour Housing Minister Yvette Cooper³, after she was questioned in the Parliament in 2006; most of them are very brief facts sheets and generic guidance to regulations. However recent updates from the Department for Communities and Local Government show alarming information in "Table P138: District planning authorities - Planning decisions on Major and Minor traveller caravan pitches by authority - Year ending December 2013".⁴ For example, in Derby and Derbyshire Dales no planning applications were discussed (approved and/or rejected) at all. Obviously this specific trend is currently discouraging research on these matters. Therefore, the authors have concentrated in East Midlands mainly by considering nearby local authority jurisdictions; they also thought that South East of England

³ Yvette Cooper said: "Local authorities are not identifying enough appropriate locations either for private or public sites". Available at:

<http://www.planningportal.gov.uk/general/news/stories/2006/feb/2006-02-Week-2/gypsyandtrav>. Accessed on 23.03.2014. Accessed on 15/11/2014

⁴ The table has been officially published at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294525/Planning_Applications_October_to_December_2013_England.pdf

presents a good number of cases to be analysed and discussed. (See also general map of all European countries and areas attached to the whole European project).

Nation	Regional Level	N. Docs	Local Level	N. Docs
UK	South East	1	Kent	33
	East Midlands	1	Leicester	18

Table 1: The table above shows the numbers of documents considered by the authors in their national report.

Our numbers of documents has been also included in the cumulative table of documents from all partner countries in this research project. (See also our book of recommendations *Adjustments to communication devices within law and planning frameworks dealing with Gypsy and Traveller accommodation in the UK*).

2.1. Planning and housing definitions

In planning law there is a definition brought forward from the now defunct 1968 Caravan sites Act. Case law informed the definition the *Mills v Cooper* case 1967 whereby, subsequent case law now requires that Gypsies are actively seeking work as a requisite to prove their ‘gypsy status’. Please note that in planning law, Gypsy is spelt with a lowercase ‘g’ and this causes confusion, as Romany Gypsies are now recognised as an ethnic group.

In planning law, being a “gypsy” is determined at the time of a planning application and is not based on ethnic lines, but in how you are living your life at the time of the planning application. Consequently, there have been various anomalies, for example, a mother might be found by planning law not to be a ‘gypsy’ and instead one of her children is “found” to be a “gypsy”! Subsequently, case law has brought about some very unsatisfactory cases, although the definition within the Planning Circular 01/2006 has tried to rectify past judgments. Irish Travellers also have to

prove “gypsy” status but they are not Gypsies as they have a completely separate origin, Ireland not India. How the media use the words Gypsy adds to the confusion. In planning law, “*Gypsies and Travellers*” means:

“Persons of a nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependents' educational or health needs or old age have ceased to travel temporarily or permanently, but excludes members of an organised group of travelling show people or circus people travelling together as such.” (Circular 01/06 Planning for Gypsy and Traveller 2006).

This circular has now been withdrawn, although the definition remains within the new Planning Policy Framework [2010 onwards]. However, the definition is still based on travelling for the purposes of work and this discriminates against women who often do not go out to work, in the traditional ‘travelling to seek work’ sense. There have been some cases, all involving women, who have lost their ‘status’ as (planning-law) gypsies, but they are ethnically Gypsies. (Please, see Medhurst case, further on). More recently, the statutory Housing Act (2004, s225) stipulates that there should be a Gypsy and Traveller Accommodation Needs survey undertaken periodically. This definition also includes Showmen [referred in the legislation as Show people] as they were in danger of having their accommodation needs ignored. Many Showmen families have been on the road for generations, some have Romany roots. But arguably, they are also a distinct cultural group, at the moment not recognised in law.

The Housing definition goes wider still, as it is notable in section 2.2 further on.

2.2. Statutory Housing Act 2004 (C. 34)

We also referred to the Statutory Housing Act 2004 (C.34) specifically in both our national report and our book of recommendations, since this Act had proclaimed and prepared the road for many other successive acts and frameworks in a row during the entire decade as well as in anticipation of the latest developments in planning legislation of today. Between the acts and regulations following, we considered the Planning Act 2008 and the very recent Planning Policy Framework (still under

development). This is a very comprehensive document divided in parts with several chapters in each part, which are again divided in numbered sections, such as section s225 in Chapter 5 of Part 6, which introduces “other provisions about housing”; it is obvious that, by stating these provisions as “other” ones, the act opens the road towards issues of “otherness” in housing. Nevertheless, the “otherness” as prescribed here shows its rather discriminatory character rather than meaning “inclusivity” in the housing law definition.

The intentions of the Housing Act 2004, chapter 34 are visibly described in its preface:

“... to make provision about housing conditions; to regulate houses in multiple occupation and certain other residential accommodation; to make provision for home information packs in connection with the sale of residential properties; to make provision about secure tenants and the right to buy; to make provision about mobile homes and the accommodation needs of **gypsies** and **travellers**; to make **other** provision about housing; and for connected purposes.” [18th November 2004] (Housing Act 2004, p.1)

In its Part 1, Housing Act 2004 introduces assessment of housing conditions; it is interesting that specific terminology starts building up, as we go through this document. The authors should like to emphasise on these ‘terms’ as words enforced by law and order; it is also important to compare some parts of this document between them in order to understand discriminatory behaviours of the authorities towards certain factions to inhabit accommodation which is not necessarily houses “in brick and mortar” (and especially social housing). And although Housing Act 2004 intends to regulate Social Housing and Private Initiative, it still separates “*Accommodation needs of **gypsies** and **travellers***” from the needs of the rest of the residents of either existing or new urban sprawl areas by enforcing “*duties of local housing authorities*” in section s225. This is to satisfy “*accommodation needs of **gypsies** and **travellers***” and to offer “*Guidance* in relation to section 225”. Of course the words “*gypsies*” and “*travellers*” show with lowercase ‘**g**’ and ‘**t**’ to accentuate the fact that perhaps Gypsies and Travellers should not be considered as ethnic groups, thus, in strong contradiction with all Equality Acts and recent Planning Policy Frameworks, (although we shall see that serious misunderstandings and deviances

transpired when especially the Secretary of State recalled some planning application and rejected appeals in the last couple of years by interpreting both laws and previous decisions in his own particularly stubborn way).

The authors separate deliberately and highlight some words inside the most relevant acts and frameworks in order not only to discuss inclusive and exclusive uses of special terminology, which has been adopted by the central government and the Houses of Parliament and Lords, but also to examine how these meanings of some words have been transferred in the local frameworks, and also if they have been kept integral or have been overruled at the end through the scrutiny of specific law cases.

As a matter of fact the following excerpt needs perhaps a lot more attention, when we shall refer to this during the discussion of our case studies/law cases:

“Under section 225 of the Housing Act 2004 housing authorities have a duty to assess the needs for housing of **gypsies and travellers**. That assessment is to be undertaken against a definition of **gypsies and travellers** which is provided within The Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (England) Regulations 2006. That provides in regulation 2 as follows:

“2 For the purposes of section 225 of the Housing Act 2004 (duties of local housing authorities: accommodation needs of **gypsies and travellers**) '**gypsies and travellers**' means-

(a) persons with a cultural tradition of nomadism or of living in a caravan; and

(b) all other persons of a nomadic habit of life, whatever their race or origin, including-

(i) such persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age, have ceased to travel temporarily or permanently; and

(ii) members of an organised group of travelling showpeople or circus people (whether or not travelling together as such)".

(*McCann v Secretary of State for Communities and LG* [2009] EWHT 917 (Admin), par. 8)

There is no ethnic definition intended here, although by default there arguably is, by using the words “Gypsy” and “Traveller” with lower case letters.

Some terms have been easily passed from Housing to Planning, not only because of their flexible appeal in proposals and solutions, but also because of their ambiguity and inflexibility. In fact, by asserting words, such as ‘gypsies’ and ‘travellers’, Housing Act 2004 sets clearly some precedents of incoherence, which obviously still persist in procedures, guidelines and professional practices and, as shown in its schedules at the end of the document (pp208-312). Moreover, in section 270 we see that:

“...this Act extends to England and Wales only...Any amendment or repeal made by this Act has the same extent as the enactment to which it relates, except that any amendment or repeal in –

the Mobile Homes Act 1983 (c. 34), or

the Crime and Disorder Act 1988 (c. 37),

extends to England and Wales only.”⁵

It is important to make reference to and analyse the data in Part 6 – ‘*Other provisions about housing*,’ although we have got s225 and s226 in Chapter 5 and as ‘*Miscellaneous*’. And from this point and further on, the authors will use diacritical marks in order to highlight and emphasise special words, meanings and/or metaphors in housing and planning law etymology. For example, as a starting point, in s225 it is emphasised that local housing authorities have got now ‘duties’ to carry out “*assessment of the ‘accommodation needs of gypsies and travellers residing in or resorting to their district*” (Housing Act 2004 (c. 34), p.179). Thus, Gypsies are not considered as an ethnic group in s225, but as people ‘residing’; that means they are

⁵ In s270, we find a short title, commencement and extent of Housing Act 2004 (c. 34) and it is clear that it is introduced to England and Wales; Scotland is outside of this Act as this country follows its own patterns regulated by the Scottish Parliament. Instead “*s228 and Schedule 12 come into force on such day as the National Assembly of Wales may by order appoint*” (Housing Act 2004, c. 34, Part 7 *Supplementary and final provisions*, s270, (7). The excerpt above can be also found in s270, (12): pp206-207.

for some reason 'located in' and perhaps can be a member of the community of the place where they need accommodation. On the other hand they may be 'resorting' (= frequently visiting) and being on the move for a job, etc. It is important that the Housing Act 2004 talks about 'duties', of the local authorities who 'must' carry out an assessment of the accommodation needs, but again this may happen "*when undertaking a review of housing needs in their district under section 8 of the Housing Act 1985 (c. 68)*" (Housing Act 2004 (c. 34), p179). A 'review' is not compulsory though and may be carried out when the local authorities think that there is a need to expand and develop social housing in the main plans. Gypsies and Travellers are not included or are not necessarily included in these processes. The local authorities should release land for accommodation purposes according to the Planning Frameworks, but this does not happen very often, as particularly the sites close to the Green Belt have been always contested.

In fact in a very recent article published in Planning Resource online⁶, we find that some key roles are by definition very powerful in these processes, such as the Communities Secretary. We shall refer to notorious Eric Pickles and the called-in planning applications and the Planning Inspector, as an arbitrator of appeals recovered by the Communities Secretary. The Communities Secretary expressed clearly his reluctance to approvals for land to become Travellers' sites on green belts; it was found, according to this article that the Communities Secretary delayed recovering of appeals relating to these sites on green belts and perhaps did not 'check' properly that "*government planning policies were interpreted correctly.*" (*Ibid.*) And, of course, in this article, we come across a surprising statement from Communities Minister Brandon Lewis who "*announced that Pickles would recover more appeals relating to traveller sites on green belts*" and "*...some councils were failing in their duty under the National Planning Policy Framework (NPPF) to allow ...inappropriate development in the green belt only in very crucial circumstances*" (*Ibid.*).

There are a few interesting and alarming points raised above, such as the numbers of appeals of cases concerning Gypsy and Traveller sites which are considered as

⁶ This article makes it clear that "*...there are currently [in January 2014] 250 traveller-related appeals awaiting a decision, with some more than two years old*" according to official figures released. This article with the title 'Traveller planning decisions are being delayed for up to two years' was published on 30 January 2014 and was written by John Geoghegan.

very complicated by the Communities Secretary who has been often getting confused by planning inspectors uncritically adhering to the rules of the green belt and biodiversity protection, as we explain further. The Communities Secretary is allowed to be flexible or inflexible, according to his/her own judgement and 'interpretation' of extremely open planning policies (as also seen in law case studies). Although councils are not helpful; they do not allow 'inappropriate', thus, 'incongruous' and 'hazardous' developments of sites for accommodation of 'gypsies' and 'travellers' (considered as 'others' in a community, not as legitimate ethnic groups any longer) in proximity of green belts by opposing what the Housing Act 2004 and Planning Act 2008 may say and order them to do. The metaphor of a Gypsy site to be 'inappropriate' allows opposing members of the community to find stronger support in their cases against these sites and generates a lot more conflict and racist exploitation.

Instead, in Housing Act 2004 (c.34), s225 states clearly in point (2) that "*...a local authority are required under section 87 of the Local Government Act 2003 (c. 26) to prepare a strategy in respect of the meeting of such accommodation needs*" (Housing Act 2004, (c. 34), p.179). The local authority must take the strategy into account in exercising their "functions" and as "*functions*" includes functions exercisable otherwise than as a local housing authority" (*Ibid.*). These 'functions exercisable otherwise' remind us of the Community Minister's confirmation that councils 'must' allow "*...inappropriate development in the green belt only in very crucial circumstances*", as part of these particular allowance. In fact the local authorities should decide about 'crucial circumstances', about 'accommodation needs' in the provision of 'caravan' sites and in cases of 'disabled facilities grant' (as in s224 of the same Housing Act 2004). They should provide "*qualifying park homes*", which should substitute 'caravans' and, then, a 'pitch' should substitute 'land' (*Ibid.*).

As a Statutory Instrument, 2006 No. 3191 (C. 111), Housing Act 2004 (Commencement No. 6) (England) Order 2006 was officially 'commenced' on 27th November 2006 by the Secretary of State for Communities and Local Government.⁷

⁷ <http://www.legislation.gov.uk/uksi/2006/3191/made>. Accessed on 28/03/2014

In the same official document and at the bottom of it, we can find an ‘explanatory note’, which “*is not part of the Order*” and in which we find out:

“This Order brings sections 225 (duties of local housing authorities: accommodation needs of gypsies and travellers) and 226 (guidance in relation to section 225) of, and paragraph 47 of Schedule 15 (housing strategies and statements under section 87 of the Local Government Act 2003) to, the Housing Act 2004 into force in England on 2nd January 2007.” [This means that Housing Act 2004 commenced after quite three years from its enactment in the Parliament.] (www.legislation.gov.uk/uksi/2006/3191, accessed 28/03/2014)

2.3. Planning Act 2008 and latest Policy Planning Frameworks

We see that Planning Act 2008 Chapter 29 has been introduced as:

“An Act to establish the Infrastructure Planning Commission and make provision about its functions; to make provision about, and about matters ancillary to, the authorisation of projects for the development of nationally significant infrastructure; to make provision about town and country planning; to make provision about the imposition of a Community Infrastructure Levy; and for connected purposes. [26th November 2008]” (Planning Act 2008 (c. 29), p.1)

Planning Act 2008 introduces the Infrastructure Planning Commission and defines Commissioners’ code of conduct and fees. In Part 2, we can find all details about National Policy statements by the Secretary of State who “...*must carry out an appraisal of the sustainability of the policy set out in the statement*”. (Planning Act 2008, *Part 2 – National policy statements*, p. 3)

It is important to note the following:

“The policy set out in a national policy statement may in particular—

- (a) set out, in relation to a specified description of development, the amount, type or size of development of that description which is appropriate nationally or for a specified area;
- (b) set out criteria to be applied in deciding whether a location is suitable (or potentially suitable) for a specified description of development;
- (c) set out the relative weight to be given to specified criteria;
- (d) identify one or more locations as suitable (or potentially suitable) or unsuitable for a specified description of development;
- (e) identify one or more statutory undertakers as appropriate persons to carry out a specified description of development;
- (f) set out circumstances in which it is appropriate for a specified type of action to be taken to mitigate the impact of a specified description of development". (Planning Act 2008, *Part 2 – National policy statements*, p3)

The excerpts above show clearly that the Secretary of State has not only full responsibilities about setting up national policy, but also about deciding on locations 'suitable' or 'unsuitable' for certain development and setting necessary criteria to be applied during appraisal processes and reviews (as we see in s6 of Part 2 of Planning Act 2008).

We can also find out that the "*Secretary of State must review each national policy statement whenever the Secretary of State thinks it appropriate to do so*". This means that s/he has full control on timing of policy reforms which are so important for communities and local authorities being supportive (or non-supportive at times) to certain developments directly controlled by national policy.

In recent years (and still in progress) the Secretary of State decided that the national planning policy has to change, because things changed rapidly since a worldwide economic collapse had occurred since 2008 and a strong recovery could be still a remote vision. However no further positive response or reaction has come yet from

the Secretary of State when he discusses and decides about planning applications being recalled by him.

It is also important to consider *Part 6 — Deciding applications for orders granting development consent, Chapter 5 — Decisions on applications* in Planning Act 2008 (c. 29). In section 103, we can find that, in some cases “*the Secretary of State is, and meaning of, decision-maker*”, as follows:

“(1) The Secretary of State has the function of deciding an application for an order granting development consent where—

(a) in a case within section 74(2), the Secretary of State receives the Panel’s report on the application, or

(b) in a case within section 83(2)(b), the Secretary of State receives the single Commissioner’s report on the application.

(2) In this Act “decision-maker” in relation to an application for an order granting development consent—

(a) means the Panel that has the function of deciding the application, or

(b) where the Council or the Secretary of State has the function of deciding the application, means the Council or (as the case may be) the Secretary of State.” (Planning Act 2008 (c. 29), *Part 6 — Deciding applications for orders granting development consent, Chapter 5 — Decisions on applications, s103, pp54-55*).

In section 104 we find what the Panel and Council must regard in relation “*to an application for an order granting development consent*” (Planning Act 2008 (c. 29), *Part 6 — Deciding applications for orders granting development consent, Chapter 5 — Decisions on applications, s104, p55*).

We also wish to note what the considerations must be by the Secretary of State in deciding the application and especially that: “... *the Secretary of State must have regard to- ... (c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State’s decision.*” (Planning Act 2008 (c. 29), *Part 6 — Deciding applications for orders granting development consent,*

Chapter 5 — Decisions on applications, s105, p56). [This means that the Secretary of State may have to bring his own opinion a lot more in the judicial decisions rather than the application of laws in their own fairness.]

We now discuss the latest Planning Framework Amendments, known as National Planning Policy Framework (NPPF), and published by the Department for Communities and Local Government in March 2012.⁸

In the Ministerial foreword of National Planning Policy Framework (NPPF), Rt Hon Greg Clark MP, Minister of Planning, states:

“The purpose of planning is to help achieve sustainable development. Sustainable means ensuring that better lives for ourselves do not mean worse lives for future generations.

Development means growth. We must accommodate the new ways by which we will earn our living in a competitive world. We must house a rising population, which is living longer and wants to make new choices. We must respond to the changes that new technologies offer us. Our lives, and the places in which we live them, can be better, but they will certainly be worse if things stagnate.”

(National Planning Policy Framework, *Ministerial foreword*. March 2012, Department for Communities and Local Government, p. i)

The Minister recognizes the fact that it is time for ‘change’, as economic recovery is still slow and the housing market is in standstill; we can understand that the intention is to ‘house’ the people of the entire country, to also consider ageing population, but it is obvious that the main intention is to avoid older linguistics of multi-cultural and ethnicity context. There is quite a lot to praise about British historic environment, with reference to ‘buildings’ and ‘landscape’, ‘towns’ and ‘villages’; the policy maker plays more with ‘sentimental’ issues of the population (the ‘locals’), which are related mostly to ‘romantic’ walks and life in the ‘Green Belt’; there is an accentuation of what Green Belt means to a sustainable community. The capital letters ‘G’ and ‘B’ in

⁸ The document/publication in PDF format is also available at www.communities.gov.uk. Accessed on 20/10/2014

these key words get the attention of everybody. Now most people should fight passionately to preserve the 'Green Belt', whatever it takes, even if that battle could cost an immense amount of money and efforts for some parts of the community, or better, in the 'neighbourhoods', where finally people want to 'house' themselves.

In fact the entire document is filled with superb and passionate ideas expressed in words which either exclude or include people and their needs and according to their ethnic origin; inclusion and/or exclusion depends from one's personal feelings and interpretation. At the very beginning, the document introduces us on how we can achieve 'sustainable' development; there is more emphasis on 'sustainable' rather than mere 'planning' developments. 'Sustainable' as a word is the contemporary term that we can attach to everything, but not to lengthy and money consuming legal battles related to planning applications and mistakes of the policy makers and/or final decision mediators.

In a brief summary and at the beginning of National Planning Policy Framework (NPPF - we shall continue to use the abbreviation format of it in this chapter) we can find that:

“1. The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system only to the extent that it is relevant, proportionate and necessary to do so. It provides a framework within which **local people** and **their accountable councils** can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities.

2. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions. Planning policies and decisions must reflect and where appropriate promote relevant EU obligations and statutory requirements [such as European Court of Human Rights – ECHR).

3. This Framework does not contain specific policies for nationally significant infrastructure projects for which particular considerations apply. ... National policy statements form part of the overall framework of national planning policy, and are a material consideration in decisions on planning applications”. (NPPF, *Introduction*, s1-s3, p1)

It is obvious that local authorities and the ‘local’ people always have to play a key role in planning decisions, as we see in a footnote (‘small print’ text) at the bottom of the same page that precisely states: “... *In relation to neighbourhood plans, under section 38B and C and paragraph 8(2) of new Schedule 4B to the 2004 Act (inserted by the Localism Act 2011 section 116 and Schedules 9 and 10) the independent examiner will consider whether having regard to national policy it is appropriate to make the plan*” (NPPF, *Introduction*, s1-s3, p1). We shall discuss ‘localism’ further, as our case studies also refer to these particular issues of planning applications being very often rejected by uncontrollable ‘localism’.

And the most astonishing item is the following though:

“4. This Framework should be read in conjunction with the Government’s planning policy for traveller sites. Local planning authorities preparing plans for and taking decisions on travellers sites should also have regard to the policies in this Framework so far as relevant”. (NPPF, *Introduction*, s4, p1)

This is all that the NPPF offers to Gypsies and Travellers! It takes us back to previous mistakes and painful legal battles again. However, if we read through NPPF lines, we discover the truth: this document as a whole is a bombshell to human rights and genuine sustainable communities. The local authorities now are only compelled to take care of the economic growth mostly by revamping the housing market at any cost:

“50. To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:

- plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families

with children, older people, people with disabilities, service families and people wishing to build their own homes) ...”(NPPF, *Achieving sustainable development*, s50, p13)

The policy maker sets the context in favour of ‘sustainable development’ and also wants local authorities to deliver ‘high quality’ of ‘a mix of housing’; it does not refer to any ‘mix of ethnicities’ or ‘mixed cultures’; there is no sign of linguistics of ‘positive’ discrimination. The discussion is about ‘local’ demand, ‘affordable housing’ and highlights only ‘mixed’ and ‘balanced’ communities. So, you can be mixed up inside a community, but watch out if you are going to destabilize (‘unbalance’) the ‘locals’ life’!

We can see that new homes can be supplied, but the local communities should be aware of the following:

“52. The supply of new homes can sometimes be best achieved through planning for larger scale development, such as new settlements or extensions to existing villages and towns that follow the principles of Garden Cities. Working with the support of their communities, local planning authorities should consider whether such opportunities provide the best way of achieving sustainable development. In doing so, they should consider whether it is appropriate to establish Green Belt around or adjoining any such new development.” (NPPF, *Achieving sustainable development*, s52-s53, pp13-14)

We see that local planning authorities, including planning inspectors, have to choose between preserving the Green Belt, which is close to new developments and the developments proposed. Green Belt is quite a ‘sacred’ and dominant space, which surrounds the built environment in England and Wales. And then, beware of ‘inappropriate development’ of residential ‘gardens’ which may cause ‘harm’ to the ‘local’ area, such as ‘gardens/pitches’ [of Gypsies and Travellers, missing words]; they can ‘harm’ [health and safety, missing as well] the ‘local’ area that belongs to locals only! Gypsies and Travellers are now just ‘travellers’, as tactlessly shown once only at the beginning of this important planning policy document. Then, they get another supplementary document to see what the future is for their own separate cases/applications. Of course this separation does not happen because of inclusive and fair treatment.

2.4. Localism Act 2011 and the Localism Tenet

The Localism Act 2011 was introduced on 15th November 2011 and since then, several substantial orders have been provided locally to give more power to local authorities and communities.

In fact Localism Act 2011(c. 20) briefly is:

“An Act to make provision about the functions and procedures of local and certain other authorities; to make provision about the functions of the Commission for Local Administration in England; to enable the recovery of financial sanctions imposed by the Court of Justice of the European Union on the United Kingdom from local and public authorities; to make provision about local government finance; to make provision about town and country planning, the Community Infrastructure Levy and the authorisation of nationally significant infrastructure projects; to make provision about social and other housing; to make provision about regeneration in London; and for connected purposes”. (Localism Act 2011 (c. 20), p.1)

Thus, in Chapter 1, *General Powers of Authorities*, we can see:

- “(1) A local authority has power to do anything that individuals generally may do.
- (2) Subsection (1) applies to things that an individual may do even though they are in nature, extent or otherwise—
 - (a) unlike anything the authority may do apart from subsection (1), or
 - (b) unlike anything that other public bodies may do.
- (3) In this section “individual” means an individual with full capacity.
- (4) Where subsection (1) confers power on the authority to do something, it confers power (subject to sections 2 to 4) to do it in any way whatever, including—

- (a) power to do it anywhere in the United Kingdom or elsewhere,
- (b) power to do it for a commercial purpose or otherwise for a charge, or without charge, and
- (c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

(Localism Act 2011 (c.20), Part 1 – *Local Government*, Chapter 1 – *General powers of authorities*, s1, pp1-2)

Although the word ‘power’ dominates most of the sections of this Parliamentary Act, words, such as ‘boundaries’ and ‘post-commencement limitation’ mean clearly ‘prohibition’, ‘restriction’ or other limitation imposed by a statutory provision.

According to the Local Government Association, the key measures of the act can:

“... be grouped under four main headings:

- new freedoms and flexibilities for local government
- new rights and powers for communities and individuals
- reform to make the planning system more democratic and more effective
- reforms to ensure decisions about housing are taken locally”.⁹

Thus, Localism Act 2011 is the fundamental document upon which subsequent planning frameworks, such as National Planning Policy Framework 2012 and beyond, have built their strengths. Localism Act 2011 showed its own weaknesses, in some aspect, when it became too supportive to the community rights. The Local Government Association proclaims that this act is the one that “*enshrined in law a*

⁹ The details of Localism Act 2011 and summaries of the main parts related especially to community rights are explained in the web pages set up the Local Government Association (LGA) at <http://www.local.gov.uk/localism-act>. Inside the web pages in regard of this act, individuals and community groups can find a link to a *Plain English Guide to Localism Act* as well as a document with the title *Empowering councils to make a difference-general power of competence-annex case studies* in PDF format; these case studies often show triumphant locals who have managed to block planning applications which could be ‘harmful’ to surrounding Green Belt and their neighbourhood; ‘gypsy pitches’ are between their preferable targets.

new set of rights for communities”: the community ‘right to challenge’, the community ‘right-to-bid’ and the community ‘right to build’. Nevertheless the ‘right to challenge’ often becomes quite a ‘lethal’ weapon and also creates more conflict and severe damages to the links amongst members of the same community, such as, for example, Gypsies, Travellers and the so-called ‘locals’.

Localism Act 2011 in combination with an amended and comprehensive National Planning Policy Framework (NPPF) could have been a ground-breaking piece of legislation, and especially because of its clear support to neighbourhood planning and the community right to build. The act has been introduced to encourage communities to get involved in planning for their areas by creating their own plans and policies to guide new development. In some cases local communities managed to grant planning permission for certain types of development, such as, for example, projects to create new Green Belt surrounding buildings and infrastructure. But then again, by challenging groups of their own community, people made ruthless use of all legal apparatuses available for their wrong reasons to ‘challenge’ most of the times.

In some recent publications, such as *The Localism Act: An LGIU Guide (Updated September 2012)* published by the Local Government Information Unit (LGIU), we find three distinct parts: powers and governance, planning and social housing. In *Powers and Governance*, community ‘rights to challenge’ and ‘community assets’ are explained. These are separated from the guidance to community right to build orders and the duty to co-operate, now parts of the *Planning* section. Instead there is a good guidance dedicated to homelessness and self-financing in the *Social Housing* part. However disappointment is expressed in a comment by LGIU which is also particularly highlighted inside this publication:

“The general power will be broader in scope than the well-being power. It being subject to constraints in other legislation should in principle prove less of a burden than might be feared from experience of the well-being power.

Despite Eric Pickles [the Secretary of State for Communities and Local Government mentioned before in our study] claim in his speech at LGA conference in July 2012, that “*The Act’s general power of competence is*

already being used up and down the country every day of the week”, there must be some doubt about how widely it is used and understood so far...

... It is disappointing that the Government has not made a commitment to review existing legislation and weed out unnecessary restrictions. It will be up to councils to make applications to remove limits in other areas of local government law. It is additionally unfortunate that the process for introducing changes to other legislation has been made quite onerous and therefore expensive of time for local authority officers and civil servants; despite this it is important not to forget the possibility of lobbying for change”.¹⁰

The Communities and Local Government (CLG) association had also published a Good Practice Guide, *Designing Gypsy and Traveller Sites* in May 2008¹¹ which is available at CLG web site. This guide makes use of paragraphs 12-19 of *Planning Policy Statement 3: Housing* (PPS3) to stress the importance of good design in developing high quality new housing, as it is explained in these paragraphs. The guidance is intended: “... [for] *local authorities who wish to develop a new site, or refurbish an existing one, [for] registered social landlords who wish to develop or refurbish ... a site, [for] private developers or architects working with site developers [and] people who will be living on a site and are participating in its design*”. (*Designing Gypsy and Traveller Sites-Good Practice Guide*, Communities and Local Government (CLG) 2008, p7)

¹⁰ The publication with the title *The Localism Act: An LGiU Guide-Updated September 2012* is a document published by LGiU and available at www.lgiu.org.uk/blog [Accessed on 20/10/2014]; LGiU is a local government think tank and membership organisation with nearly 200 local authorities and others subscribing to its networks. In fact this think tank is affiliated with other associations, such as National Self Build Association, for example, who often lobby policy makers (and pressure) about issues related to self-organising communities challenging the right to self-build. One of the authors of this study has been in contact with these organisations during a recent European funded Leonardo Lifelong Learning research project on *Self Build Processes in European countries- Italy-Belgium-United Kingdom*.

¹¹ Available at www.communities.gov.uk. Accessed on 20/10/2014

3. Case Studies

3.1. Case Study A: From the abolition of the Regional Spatial Strategy 2010 to the growth of the Localism Act 2011

By using the Localism Act, local residents' groups have emerged to fight, usually successfully, *“against Traveller and Gypsy attempts to establish legal sites – and all this despite the fact that local authorities have failed to provide the necessary statutory pitches”*¹²

It is not a new thing for residents to join together in force against Gypsy/Traveller sites; however the Localism Act gives them a stronger voice, knowing that they are often backed by the Secretary of State, who abolished the Regional Spatial Strategy plans (RSSs). These plans had ensured adequate provision in a region and meant that there were only nine regional plans for (Non-Governmental Organisations) NGOs to comment on. Abolition of the RSSs now means that NGOs' input into over 350 local and district borough plans is an impossible feat.¹³

The following are two examples of residents' associations in the Midlands. The LE4 Action Group in Leicester in the East Midlands, and Meriden RAID (Residents against Inappropriate Development) in the West Midlands. We wanted briefly to show how the latest acts and planning frameworks have not only given help to the Secretary of State to review and reject several applications for Gypsy and Traveller sites, but also reinforced the so-called Settled communities against threats to both their 'traditional' built environment (often fake copies of past architecture-not always listed) and the Green Belt which most of the times is kept there without any particular care and under threat from other more important factors, such as climate change, pollution, fly-tipping, tree diseases, etc.

There are many of these action groups across the country; they are well organised and many appear to have access to planning consultants and funding. These action groups are seen as 'localism' movement at its best, (or may be worst, depending on

¹²Erfani-Ghettani Ryan, Localism, populism and the fight against sites. Institute of Race Relations <http://www.irr.org.uk/news/localism-populism-and-the-fight-against-sites/> Accessed on 20/10/2014

¹³National Federation of Gypsy Liaison Group is the only group inputting professionally on local district and borough plans, across the East and West Midlands. The input will depend on funding.

which side you view it from). There is something unsavoury in that 'local' people are deciding who should be resident and who should not. What criteria define a local person? It has been noticeable to me (one of the authors of this case study) in over twenty years of assisting families through the planning system, how the local 'committed committee goers', may have only been residents for a short time.

We came across a variety of localism hatred cases since the beginning of our study. Most of the times the localism brutality hits innocent and vulnerable people and especially women who have been fighting for many years for their rights to have a home in a site and, with the burden of having suffered or have to suffer more than others, because of legal aid cuts as well. We have also managed to see that the so-called 'locals' use any means to prevent having Gypsy and Traveller sites in their proximity. They do not only 'pick-n-mix' words and phrases from laws and policy frameworks, but also use Internet petition sites to take their irrational battles further. Unfortunately some of these web sites have already fought good causes and got wins and gains; it would be extremely dangerous, if the locals manage to break through there as well.

3.1.1. Beaumont Leys, Leicester: East Midlands

The LE4 Action Group emerged to campaign against Leicester City Mayor Peter Soulsby's plans to establish three sites in the northwest of the city. They started by gathering 2,700 signatures (although only 713 were from residents of the city), ensuring that the council must debate the locations of the sites, potentially taking the process back to the drawing board¹⁴.

Their website states that (The LE4 Action Group at <http://le4.moonfruit.com>):

"Residents have strongly objected to proposed traveller sites in the area. We now need to focus our energy to structured actions otherwise we simply use

¹⁴*Ibid.* Erfani-Ghettani Ryan.

up valuable time in frustrating conversations about issues that we are already aware of.”¹⁵

Despite the need for identifying and creating more sites within Leicestershire the group currently states:

“We are committed to fighting the 2 proposed Gypsy/Traveller Sites that are being proposed by Leicester City Council on the County border.”¹⁶

On 30/10/2013, Leicester decision: two sites passed at Council meeting. January 2014 LE4 talk of a ‘judicial review challenge’, although the Secretary of State decided not to ‘call in’ the decision on the council owned land at Red Hill Way and Thurgaston Road.

3.1.2. Meriden RAID (Residents Against Inappropriate Development)

Meriden RAID (Residents Against Inappropriate Development) Solihull West Midlands campaigners set up a three year protest camp outside an unauthorised site; the eight caravan pitch site was set up in 2010. Within weeks, about 200 residents formed the campaign group; they also set up a camp opposite the Gypsy site which they occupied 24 hours a day until the Gypsies had to leave.

Their website advertises a series of aims, including the following:

- “To raise awareness of – and press for change in - flawed laws and regulations and promote change to ensure that local residents have equal rights.
- We want to be a model of how residents can lawfully protect themselves from forced developments which threaten to (a) ruin the local environment (b) destroy the balance of the community and (c) undermine the well-being of local people”.¹⁷

¹⁵ [Le4 Action: Home le4.moonfruit.com/](http://le4.moonfruit.com/). Accessed on 28/03/2014

¹⁶ [Ibid.le4.moonfruit.com/](http://le4.moonfruit.com/). Accessed on 28/03/2014

¹⁷ [Meriden R.A.I.D - Residents Against Inappropriate Development ...www.meridenraid.org.uk/](http://www.meridenraid.org.uk/). Accessed on 28/03/2014

In April 2013 the families at Meriden moved off after a dismissal at the High Court. Before the protest Dave McGrath, one of the organisers of RAID, knew just six other people in the village; he said: "*I moved into the village in 2009*". That is just one year before the Gypsy people arrived. This poses the question just exactly who is 'local' under 'localism'?

3.1.3. Internet petition against a family's application for extension of planning permission for a Gypsy site¹⁸

In September the temporary planning permission of 3 years for a family's site ended. A new application is awaiting a decision. The Planning Agent has not yet received the committee meeting date to make that decision. The site is in Staffordshire Moorlands District Council jurisdiction. The adventure of this Gypsy family has been filmed and is part of the ethnographic film produced by Silvia Paggi and due to be on screen in December 2014 (presentation to be in Florence, Italy, organised by the Giovanni Michelucci Foundation and the Region of Tuscany)

Part of the petition against the site reads:

"The aim of this petition is to prevent the planning permission for the residential gypsy site ... [in] Checkley. The site has had temporary permission for 3 years which expired 19th September and should have triggered enforcement action. Earlier this year, approached land owners with a view to buy adjoining land and extend the site in future to fulfil the Council's obligation to provide suitable Gypsy and Traveller sites."

(www.change.org/u/173745319, accessed on 13/11/2014)

Petitioner's comments:

"Gypsy site would spoil the surrounding countryside they always leave mess around the country"

¹⁸ The petition appears at <https://www.change.org/u/173745319>, accessed on 13/11/2014. The petition is also under the title 'Refuse planning permission for Gypsy site in Checkley' and it has been put forward by Checkley Parish Council.

“Firstly I cannot understand why the enforcement policy has not been undertaken.....The historical village has been stolen of its beautiful backdrops and scenery. The thought of extending this so called Greenfield Site would be catastrophic.”

“This will significantly devalue properties in the area, travellers need to realise the only way to integrate is to acquire proper employment, pay tax, buy or rent a property and generally operate legitimately like the rest of us.”

“This area is not suitable for these kinds of people.”

“The harm to the landscape would be too great.”

(www.change.org/u/173745319, accessed on 13/11/2014)

The main issue here could be a division between the locals as well; during our study and investigation we were able to see that several local families had written letters of support to the family applying for an extension. Our visit to the site also proved that this particular site is kept out of the people’s views, as requested by the Council (being surrounded by a high fence towards the main road; it is a shame though, because as open space and garden should be a best practice example to showcase. The facility building is at the highest standard and all caravans are very well kept and organised in such a way that no health and safety issues could emerge at any time.

3.2. Case Study B: South East England- Mrs Anne Medhurst case.

“To be a Gypsy and not be a gypsy”?¹⁹ This is the important question.

It soon became clear (post Circular 2006) that status within the law would still be a problem. Planning Inspectorate decisions weigh by fact and degree elements of an individual’s life, so that the individual may or may not benefit from the ‘gypsy status’.

The inspectors had no option to do otherwise as the case law was not eradicated by the new planning circular and to ignore the law would mean a challenge to the Court

¹⁹ “To be a Gypsy and not be a gypsy” Spencer Siobhan MBE, www.travellerstimes.org.uk/blog.aspx?c=f1b1c82c-0f3c-4edf. Accessed on 28/03/2014.

by the relevant local authority. Analysis of post 01/2006 Circular decisions illustrates this clearly.

Some decisions read bizarrely. This can be seen, for example, in the Buckland decision (2007 APP/C4615/A/07/2035836). The Inspector states:

“There is no dispute that the appellants Mr and Mrs Buckland were born as Romany Gypsies”. (Para 13)

“In the last few years they have not travelled for business purposes”. (Para15)

“...give little weight to their particular circumstances. However neither the appellants nor any other person likely to reside in the caravans proposed are elderly or suffer ill health”. (Para 17)²⁰

But, more worrying was the discussion on the Buckland children who, because they had local work on a regular basis, could not claim ‘gypsy status’ and were found not to have it in the Inspector’s opinion. One of the case law prerequisites of ‘gypsy’ status is that work is sought and not pre-arranged. The principle that, there should be some recognisable connection between the travelling of those claiming to be Gypsies in relation to seeking is found in the *Gibb* case. (*R v South Hams DC ex p Gibb* [1995] QB 158)

Gibb caused considerable disquiet to the Gypsy community, as this case involved ‘New Age’ travellers wishing to obtain ‘gypsy status’ for the purpose of planning law.

The future prospects for the Buckland children to live traditionally as a Gypsy are threatened. It has already been written within a case that they have been found not to be a ‘gypsy’ in their parents planning decision!

This is extremely worrying in particular for women. The planning circular of 01/2006 cites three grounds, where the ‘gypsy’ way of life can be ceased or held in abeyance. This is a problem as it does not cater for an individual who may have taken up a form of settled employment, but still wishes to live in a caravan or particularly for carers where they may come to a point when they are no longer carers. They may

²⁰Buckland (2007 APP/C4615/A/07/2035836)

suddenly find themselves in no man's land; they have no 'reason' to have ceased the travelling way of life.

Most of these carers, as is the tradition of many Gypsy families may be a daughter that has never married and stayed with parents to look after them; she is in an impossible position. Since she has never travelled to seek a living, she has no status within the law. It also means that employment prospects are denied to the community. Is it that we are to have no Gypsy nurses, or teachers? This is an impossible position to find one's self; that is to give up the prospect of employment for fear of losing permission for a home. This is quite an important aspect; most planning decisions issued from the Planning Inspectorate will state that the permission is only for those defined as gypsies within the law. Therefore the permission can also be lost after being gained.

It has been argued that 01/2006 definition breaches Article 8 of the European Convention on Human Rights, but this was rejected. For example, see *R (McCann) v SSCLG*²¹ and *Basildon DC* [2009] EWHC 917 (Admin)²² and *Wingrove and Brown v SSCLG and Mendip DC* [2009] EWHC 1476 (Admin). These cases have been included and analysed in our book of recommendations as well; we have referred to McCann case in several points and we found the reasons of rejection, as follows:

“Legislation should not be supportive to the claimant according to the judge who also scrutinises Article 8 of European Court of Human Rights in the case of *Chapman v The United Kingdom* 33 EHRR 18 and, as a conclusion the submission made by the claimant must fail. The judge does not recognise the right to Gypsies and Travellers to ask for the provision of sites as a mandatory obligation of the Local Authorities. No Human Rights decision is in favour of compulsory obligation to facilitate any provision of sites according to a variety of planning frameworks and legitimate objections by each EU country with specific planning regulations in their territories.” (Tracada, Spencer & Neary, 2014)

²¹ McCann decision APP/V1505/A07/2050098 at www.compasssearch.co.uk: *Planning appeal decisions*. Accessed between 10/01/2014 and 31/03/2014.

²² *The Queen on the Application of McCann v Secretary of State for Communities and Local Government, Basildon District Council* [2009] EWHC 917 (Admin)

It could also be argued that there is a breach of article 14, as it is particularly discriminatory to women. Mrs Ann Medhurst is added to a list of women's names (Interestingly all these cases are in the south of the country, where there are higher numbers of Gypsy and Traveller people).

Mrs Medhurst in *Medhurst v SSCLG and TMBC* [2011] EWHC 3576 (Admin)²³ sought to live on land that she owned. There was also a 'green belt' issue in this case. However the important fact is that, Mrs Medhurst was found not to be a 'gypsy' for the purpose of planning law. This means that she will have difficulty if she buys another piece of land, which is not in green belt, as the law stands. Although Romany Gypsy, she is not recognised within planning law to live in a caravan as it should be in her family tradition.

This case upheld that applicants applying for planning permission have to be of a 'nomadic habit' of life; this is a functional test applied to the way of life at the time of the determination of the appeal. Again if we follow through the timeline of the Medhurst case, we see that 'localism' is raising its head. Amongst many comments in the report to Tonbridge and Malling Borough Planning Committee at the consultation stage, at 5.8, we see that: "*The applicants are not local, having come from Gravesend, and provide little or no evidence of any special circumstances to support their case.*" (*Private Reps: Departure Press/Site Notices: (286/OS/124R/0X) Area 2 Planning Committee meeting of 20 August 2009*)²⁴

Special circumstances only would allow residence and then, this would only be as by the planning circular definition, the need for education or health services. But then, note that these have to be 'really special' within the Green Belt.

The report to the August Planning Committee sums up:

"In summary, Members are advised that the site is occupied by adults with no serious health issues, and there are no resident school-aged children. There is no site-specific case, in my opinion, for these persons being on this

²³All cases in these paragraphs have been accessed from Westlaw.

²⁴*Area 2 Planning Committee meeting of 20 August 2009*at: agenda.tmbc.gov.uk/akstonbridge/images/att8919.doc. Accessed on 28/03/2014

particular unauthorised site in the Green Belt.”(*Area 2 Planning Committee meeting of 20 August 2009, Para 6.28*)²⁵

Families that may be from one of the older historic settlements - and we use the word settlement in relation to the fact that the community travel pattern was from March to October and not all the year through - are somewhat doomed. The South East area has those historic settlements. Belvedere Marshes Erith, Kent, is a prime example. In 1947 there were 1,700 Gypsies on the Marshes, who dropped to 600 in the summer time (Illustrating seasonal patterns). Due to a flood, many families had to move and some reluctantly went into housing in 1953. In 1956 the remaining 700 who had held on were forcibly evicted.²⁶ (Kumar, 2011)

Kent and the South East has a high number of Gypsy and Traveller families that have been forced into housing through disappearance of traditional stopping places and lack of sites, and as we see, above floods, damage and racism of the time; one Councillor Alford stated that the Gypsies were a “blot on the landscape.” (Kumar, 2011).

Mrs Medhurst had travelled with her family growing up; but because she had spent some considerable time, recently residing in a house, like many South-East Gypsies, her claim for status fails.

The planning application, illustrates the problems of localism and the subsequent appeal and Court judgment upholds a series of unsatisfactory case law. It is extremely difficult then for families who have had for various reasons to resort to housing; lack of sites is not in the equation for these families within the deliberations of the planning inspector. If a family have deemed to have lost their “gypsy status”, they lose at the first hurdle.

²⁵*Ibid. Para 6.28*

²⁶Reena Kumar 2011 *History of Belvedere Marshes*, Bexley Times at: http://www.bexleytimes.co.uk/news/history_of_romany_gypsies_on_belvedere_marshes_1_811546
Accessed on 30/3/2014 and 05/04/2014

4. Conclusions

The authors of this specific study explored several pieces of information and official documents before deciding to concentrate on the main issues analysed and discussed in their national report and a chapter included in this e-book. By reviewing report materials and final findings they were able to make an initial selection of case studies and were able to identify key issues in current processes of planning and housing for Gypsies and Travellers in England (South East England and East Midlands specifically, regions which present often similarities). They then had to dig deeper in current recent policies and practices in order to be able to make specific comparisons rather than only selecting a large number of documents in order to create long tables. Thus, the authors' research had to be mainly qualitative rather quantitative. As a matter of fact all materials selected were once again analysed in order for the authors to be able to make ten important recommendations to change mainly points in legislation and decision-making by comparing statements and definitions included in them; this work has been mainly included in our book of recommendations.

Case law materials were scrutinised against Parliamentary Acts, Planning Policy and Local Authority Instruments. These processes have made all authors aware that, still today there are unanswered and scorching questions on 'localism' and 'gender' issues in regards to Gypsies and Travellers. In materials produced for the UK, the authors preferred to include their own interpretations to metaphors which hide inside policies and practices; they have also discovered a different situation with the rest of Europe. It is obvious that other European countries refer to Gypsy, Traveller and Roma communities as if they were the same thing. This is not the case in reality, as we recognise that each community is different. Thus, we wish to recognise diversity in the socio-cultural background of each community.

As regional data are not widely available or they have been lost, the authors' research on case studies was crucial; we focused mainly on cases that were related to localism and gender issues; we focused on England mainly where these issues are dominant and are still fought by communities of Gypsies and Travellers.

Also recent studies suggest that travelling of Gypsies and Travellers is a complex matter, as:

“Travelling is the constant lifestyle for a proportion of Gypsies and Travellers, or the lifestyle for others over extensive parts of the year. Such travelling appears to be predominantly work related. [Thus] accommodation requirements arise in/near the places where work is being carried out, and sometimes on the main routes between work places”. (CLG 2007)²⁷

In the *Localism act: an LGiU guide*, updated in September 2012, we get a clear idea, for example, of what the ‘locals’ want to see happening in the processes of applications and also rejections. In regard of notifications of decisions:

“The Act requires an authority to establish a timetable for making its decision and notifying those concerned. While the timetable must be provided within 30 days after the close of the period specified for submissions, or otherwise receiving an expression of interest, the authority is allowed to take a number of factors into account in determining a reasonable period for considering and reaching a decision. This may include the likely need to agree modifications of the expression of interest, and any commissioning cycle and decision-making processes”.²⁸

In the case studies which we scrutinised, several points as they are mentioned above were invalidated by local authorities and communities. However in the same document mentioned above, we found some kind of rejection deception expressed in several points; these points were mainly discussed in our national report. The main issue though is that controversy around the fact who should be considered as a Gypsy is still a permanent obstacle.

So, we may ask again:

To be a Gypsy and not be a ‘gypsy’? How could this materialise in planning and housing? Perhaps some new planning amendment will find a ‘finer’ solution in the

²⁷ This is an excerpt from the document found in the official website of Communities and Local Government (*Ibid.*) with the title *Preparing Regional Spatial Strategy reviews on gypsies and travellers, 2007*.

²⁸ The *Localism Act: An LGiU Guide-Updated September 2012*,(p. 17) is a document published by LGiU and available at www.lgiu.org.uk/blog Accessed on 28/03/2014

years to come. This was our intention when we made our own recommendations. There are lessons to learn though from international realities around the world and not necessarily from the Gypsy communities. In case law discussed in Canada, *R. v. Powley*, [2003] 2 S.C.R. 207, 2003 SCC 43, we have found that an ethnic group in Canada had managed to produce their own legislation.²⁹ We read about the case law that:

“The trial judge found that the members of the Métis community in and around Sault Ste. Marie have, under s. 35(1) of the Constitution Act, 1982, an aboriginal right to hunt for food that is infringed without justification by the Ontario hunting legislation. The Superior Court of Justice and the Court of Appeal upheld the acquittals.” (*R. v. Powley*, [2003] 2 S.C.R. 207, 2003 SCC 43)

We also see that:

“The term “Métis” in s. 35 of the Constitution Act, 1982 does not encompass all individuals with mixed Indian and European heritage; rather, it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, and recognizable group identity separate from their Indian or Inuit and European forebears. A Métis community is a group of Métis with a distinctive collective identity, living together in the same geographical area and sharing a common way of life. The purpose of s. 35 is to protect practices that were historically important features of these distinctive communities and that persist in the present day as integral elements of their Métis culture.” (*R. v. Powley*, [2003] 2 S.C.R. 207, 2003 SCC 43)

What a great achievement for this group who are recognised and identified as ‘distinctive’ peoples with ‘distinctive collective identity; they have the right to share peacefully a common way of life in the same geographical area with other peoples. This is what Gypsy, Traveller and also Roma communities should be aiming for: to define their own **distinctive identity** and then, make it **shared part** of any proposed law and framework in every country in Europe.

²⁹Teillet, J. (2013) Métis law in Canada, Vancouver, British Columbia, Canada: Pape Salter Teillet. Available at: www.pstlaw.ca Accessed 30/09/2014

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