



Petition PE1321

Petition by Lynne Tammi, on behalf of members of the *Young Gypsy/Travellers' Lives Project*; calling on the Scottish Parliament to urge the Scottish Government to remove the *Trespass (Scotland) Act 1865* from all future guidance on the management of Gypsy/Traveller temporary and halt sites.

Response to written submissions from A) Angus Council and B) the Scottish Government



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Young Gypsy/Travellers' Lives Project and Article 12 in Scotland – Our Response

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Reference: written submissions from A) Angus Council and B) the Scottish Government

A) Angus Council

1. Site provision

Angus Council rightly offers its recent modernisation of Tayock, Montrose as a good example of long-term site provision for Gypsy/Travellers. However, it should be noted that Tayock, Montrose is not a 'typical' long-term site and it would be disingenuous to portray it as such, given the families residing on the site have done so for decades and consider themselves - and indeed the site - as part of the wider community of Montrose, rather than part of the transient Gypsy/Traveller community.

Further, [Angus Council's] reference to Tealing as additional provision is misleading, as although the site became part of the Angus region following boundary changes in 1996, jurisdiction and therefore responsibility for the management of the site remains with Dundee City Council. Consequently, Angus Council officials have no remit to offer support to residents of the site. Tealing is not, by definition, a temporary, halt or transit site.

Angus Council, itself, in its *Local Housing Strategy* (LHS), 2004 – 2009¹, notes the shortfall in delivering 'transit sites' for Gypsy/Travellers:

'Angus Council currently meets its housing obligations to Gypsy Travellers but recent research and consultation has raised the need to improve services and policies. The Council recognises that, with existing settled provision, there is a shortfall in "transit sites". Existing facilities are inadequate and the Council needs to review policies on: allocating houses for those that wish to settle, adapting caravans, and Gypsy Traveller representation.'

Following the clearing of a temporary encampment from Angus Council land in July 2009, via use of Section 3 of the *Trespass (Scotland) Act 1865, Article 12 in Scotland* raised the shortfall in, and lack of progress on, 'transit sites' with Angus Council officials. The response, from the Head of Housing, was as follows:

'Angus Council has recently invested in upgrading and modernising the Tayock site in Montrose and provides support and assistance to travellers who are not on the official site and makes regular efforts with travellers to direct them to available pitches at the Tealing site which is a Dundee City Council run site within the Angus boundary. [...] At this time the Council is not actively pursuing the development of a transit site on Council owned land and there is no provision for works of this nature within the capital plan'.

More recently, similar concerns have been raised by *Amnesty International (Scotland)*:

'We [Amnesty International] would like to see Angus Council go further and make the information/recommendations and the Council's response to the shortfalls recognized part of the next LHS, with clear deadlines/updates on such issues as applications for funds/identification of land for transit sites, updates on any successes made so far, and further planning for future actions from there. [...] A response to the apparent need for transit pitches in the Council area should be considered urgent if this has not already been addressed'.²

Amnesty International has raised this issue with several other Local Authorities; see Appendix 1 for further information.

2. Violation of Article 30, UN CRC

Given that Angus Council cites the UN CRC as one of the major statutory and policy influences of its *'Integrated Plan for Children and Young People's Services' 2009 – 2012³* and further states therein its commitment to the Scottish Government's *'Getting it Right for Every Child'* policy, which is underpinned by the content and context of the UN CRC, we find their statement on this issue contradictory. That said, we would welcome a more comprehensive analysis of Angus Council's conclusion that use of Section 3 of the *Trespass (Scotland) Act 1865* (including charging 16 year olds and the parents of pre-school children) does not, in their opinion, violate Article 30 Of the UN CRC: *'Young people have a right to learn and use the language and customs of their families, whether or not these are shared by the majority of the people in the country in which they live.'*

B) The Scottish Government

1. Removal of the *Trespass (Scotland) Act 1865* from Scottish Government Guidelines for Managing Unauthorised Camping by Gypsies/Travellers in Scotland

Rather than 'a tool of last resort', as laid out in section 4.6 of the ACPOS *'Operational Guidance for the Management of Unauthorised Encampments of the Gypsy/Traveller Community'⁴*, anecdotal evidence indicates that Section 3 of the *Trespass (Scotland) Act 1865* is the legislation of choice for some Scottish Police Forces. See Appendix 2 for further information.

Further, as evidenced by the charging of a 16 year old boy (defined as child by the UN CRC) in Angus in July 2009, Section 3 of *The Trespass (Scotland) Act 1865* clearly makes provision for the arrest, detention and criminalisation of Gypsy/Travellers under the age of 18.

Conversely, as applied elsewhere in the UK, Section 62B(5) of the *Criminal Justice and Public Order Act 1994* (also in the Scottish Government's *'Guidelines for Managing Unauthorised Camping by Gypsies/Travellers in Scotland'*) provides a statutory [trespass] defence for Gypsy/Travellers under the age of 18 and residing with their parent or guardian. Surely then, in terms of the underpinning principles of the UN CRC, this would be the more 'appropriate' legislation of reference in future Scottish Government *'Guidelines for Managing Unauthorised Camping by Gypsies/Travellers in Scotland'*?

2. Violation of Article 30, UN CRC

The nomadic way of life is a key element within Scottish Gypsy/Traveller culture, tradition, custom and practice.

'When Travellers speak of travelling, we mean something different from what country people [settled people] usually understand by it. ... Country people travel to get from A to B. But for Travellers, the physical fact of moving is just one aspect of a nomadic mind-set that permeates every aspect of our lives. Nomadism entails a way of looking at the world, a different way of perceiving things, a different attitude to accommodation, to work and to life in general.

*This disposition to travel does not confirm stereotypes about the alleged 'shiftlessness' or 'irrationality' of Scottish Gypsy/Travellers. Rather it illustrates the continuing commitment of most Scottish Gypsy/Travellers to an ideology and practice of nomadism, despite the legal difficulties attached to travel and movement in Britain and Scotland for them as an ethnic group after the passing of the Criminal Justice and Public Order Act 1994 (Kenrick and Clark 1999, pp. 57-58). This practice of nomadism is especially evident during the warmer summer months when the fairs are on and in winter a temporary shift into housing is not that uncommon. This psychological aspect of nomadic identity remains a key element in Scottish Gypsy/Traveller ethnicity.'*⁵

Children and young people's rights case law is still developing in Scotland and the UK, and it is a costly and time consuming exercise for governments and individuals alike. However, developments at the national and international levels such as *The Children's Rights Bill (UK)*⁶ and the proposed new UN CRC optional protocol⁷ would give Scottish children and young people 'the right of remedy' - the right to argue at domestic or international levels, that Article 30 of the UN CRC, '*Young people have a right to learn and use the language and customs of their families, whether or not these are shared by the majority of the people in the country in which they live.*' makes provision for the protection of a nomadic lifestyle and consequently that the use of Section 3 of the *Trespass (Scotland) Act 1865* violates that right, an action that could be costly and time consuming for the Scottish Government. Surely, then, it would be prudent of the Scottish Government to remove the *Trespass (Scotland) Act 1865* from '*Guidelines for Managing Unauthorised Camping by Gypsies/Travellers in Scotland*'?

¹ <http://www.angus.gov.uk/lhs2004/LocalHousingStrategy2004.pdf>

² <http://www.amnesty.org.uk/content.asp?CategoryID=10419>

³ <http://www.angus.gov.uk/ac/documents/IntegratedPlanforChildren09-12.pdf>

⁴ http://www.acpos.police.uk/Documents/Policies/ED_GypsyTravellerGuide_2008_11.pdf

⁵ Clark, C., (2006) , *Defining Ethnicity in a Cultural and Socio-Legal Context: The Case of Scottish Gypsy-Travellers*, Scottish Affairs, No. 54, (pp 39-67)

⁶ <http://www.crae.org.uk/protecting/uk-law.html>

⁷ <http://www.crin.org/resources/infodetail.asp?id=22274>

Appendix 1: Amnesty International - Research and Recommendations

Amnesty International (Scotland) has recently undertaken research into the discrimination towards and indeed the problems faced by Scottish Gypsy/Travellers in today's society, and are currently writing to each Local Authority in Scotland individually with their recommendations. This research was carried out in order to ascertain whether or not some of the recommendations of the 2001 report by the *Equal Opportunities Committee* of the Scottish Parliament have been met (*'Enquiry into Gypsy Travellers and Public Sector Policies'*, June 2001). *Amnesty International* state that the situation facing Scottish Gypsy/Travellers raises basic human rights concerns, particularly in areas such as housing, education, health care and the pursuit of their traditional way of life. We at *Article 12 in Scotland* believe their findings to be particularly relevant to this hearing, as many of the issues raised are directly connected to the fact that the transient Scottish Gypsy/Traveller community are constantly being forced to move from site to site (impacting upon their lives and indeed livelihoods); highlighting once again, the urgent requirement for many more, well equipped, transient and Local Authority sites. The following information also shows the need for Local Authorities to embrace the Scottish Gypsy/Traveller community and consider them properly as part of their local communities, instead of simply moving them on to the next jurisdiction. The following pages of Appendix 1 contain a very brief synopsis of *Amnesty International's* concerns and recommendations, with regard to Aberdeenshire, Angus, Argyll and Bute, Moray and Highland Councils.

Article 12 in Scotland is extremely grateful to *Amnesty International (Scotland)* for providing us with this information. Full copies of the letters written to Local Authorities by *Amnesty International* can be requested via the link below:

<http://www.amnesty.org.uk/content.asp?CategoryID=10419#travellers>

a) Aberdeenshire Council

The following concerns and recommendations have been made to Aberdeenshire Council (10th of June, 2010):

- Lack of a dedicated Gypsy Traveller Liaison Officer (GTLO), with distinct and separate roles to that of Site Manager.

A dedicated GTLO - with separate and distinct duties from those of Site Manager and other council workers - would liaise with *all* Gypsy/Travellers, including those living in bricks and mortar housing, helping to build trust and properly assess the needs of the Scottish Gypsy/Traveller community. The GTLO would also assist in alleviating tensions between the settled community and the Gypsy/Traveller community. *Amnesty International* would also like to see Aberdeenshire Council resume their partnership with the *Gypsy Traveller Education and Information Project* (GTEIP) and consider working with other related community organisations.

- A review of the Tenancy Agreement for the Greenbank Travellers' Site in Banff.

Amnesty International would like to see the use of the *Model Tenancy Agreement* developed by the former *Advisory Committee on Scotland's Travelling People*. Aberdeenshire Council operates a seasonal let, within which there are no written provisions for setting out the rights and responsibilities of each party; nor is there any evidence of security of tenure, procedures for raising a complaint, or details of helpful organisations *outwith* Aberdeenshire Council. The *Missive of Lease* used by Aberdeenshire Council at present is currently under review.

- Implementation of the recommendations made in the Craigforth Grampian research report (*'Accommodation Needs Assessment of Gypsies/Travellers in Grampian 2008-2009'*) commissioned by Aberdeenshire Council, with particular attention to housing and community development planning.

Amnesty International would like to see Aberdeenshire Council planning for the future with clear deadlines, designated departments and officers with allocated responsibilities - for example: application for funds, identifying suitable land for transient pitches and assessing how to properly meet the needs of Scottish Gypsy/Travellers, living both on sites, and in bricks and mortar housing. *Amnesty International* has also suggested that Aberdeenshire Council might consider a rent and service charge review, falling in line with charges for Council housing.

- An urgent response to the need for transient pitches within the area run by Aberdeenshire Council.

- The consideration of Scottish Gypsy/Travellers within Aberdeenshire Council's current *Race Equality Scheme* (RES) needs to be updated.

Amnesty International believes that Aberdeenshire Council's current RES (2008-2011) gives little consideration to the circumstances and needs of Scottish Gypsy/Travellers as an ethnic group. It is hoped that the *Multi Equalities Scheme* - which appears to still be in the development process - along with other equalities documents, will make distinct and achievable targets relating to all the points raised above. *Amnesty International* would also like to see any planning with regard to Race Equality done via consultation with the Scottish Gypsy/Traveller community.

b) Angus Council

The following concerns and recommendations have been made to Angus Council (7^h of June, 2010)

- Lack of a dedicated Gypsy Traveller Liaison Officer (GTLO), with distinct and separate roles to that of Site Manager.

Angus Council currently employ a Site Manager for their official site, this person also assumes the role of GTLO. These two roles are completely different and are separated clearly within the *Equal Opportunities Committee's* Guidelines. *Amnesty International* would like to see Angus Council implementing two distinct roles – the work of a GTLO is extremely important and, where carried out properly, very time consuming (liaising with Scottish Gypsy/Travellers not only on Local Authority sites, but on roadside camps and in bricks and mortar housing), and should therefore not be impeded by the day-to-day duties of running a site.

- More action needs to be taken in considering Scottish Gypsy/Travellers within Angus Council's *Local Housing Strategy* for future planning documents.

Amnesty International would like to see continued consultation with the Gypsy/Traveller community on this matter. They also state that the Tenancy Agreement for Angus Council's official site is in good order.

- An urgent response to the need for transient pitches within the area run by Angus Council.

Targets for this must be reviewed regularly, and planning for both local and transient sites should cover a wide range of detailed issues.

- A deeper consideration of the needs and circumstances of Scottish Gypsy/Travellers within Angus Council's next *Race Equality Scheme* (RES).

Angus Council's current RES shows that some thought has indeed been given to Scottish Gypsy/Travellers, however, *Amnesty International* would like to see more specific aims with future reviews. Another point *Amnesty International* would like to see covered is a commitment by Angus Council to tackle negative media stereotyping in their area.

c) Argyll and Bute Council

The following concerns and recommendations have been made to Argyll and Bute Council (16th of June, 2010)

- Lack of a dedicated Gypsy Traveller Liaison Officer (GTLO), with distinct and separate roles to that of Site Manager.

Argyll and Bute Council currently have no dedicated GTLO, due to the responsibilities of site management being transferred to a Local Housing Association. *Amnesty International* would like Argyll and Bute Council to urgently employ a suitable person for the role of a separate GTLO, who would work with both the Council and the Scottish Gypsy/Traveller community in the area and also help to manage good relations between the Council/settled community and Gypsy/Travellers.

- Council responsibility to Scottish Gypsy/Travellers living in their area.

There are large numbers of Scottish Gypsy/Travellers living in Argyll and Bute to whom the Council has a responsibility, and indeed a duty, to ensure high standards of service (even where accommodation management has been passed over to a Housing Association). Regular consultation about tenancy agreements between the council and the Gypsy/Traveller community should be in place - as should regular reviews, in order to ensure they comply with national guidelines. *Amnesty International* would also like to see the implementation of a *Model Tenancy Agreement*.

- Argyll and Bute Council should put into practice all recommendations made by the Craigforth West of Scotland Region research commissioned by the Council (2007).

More transient sites are needed in this area, and considering the popularity of this region (the rate of occupancy for the three local sites is 90%), *Amnesty International* believe this to be a matter of urgency, and would also like to see the Council consulting with, and planning for, local Scottish Gypsy/Travellers living in bricks and mortar housing, and those staying in temporary roadside camps and future transient sites.

- There needs to be continuous planning and reviews of the circumstances and service needs of Scottish Gypsy/Travellers with regards to planning documents. In particular, the Council's *Local Housing Strategy* and *Equalities and Diversity Scheme*.

With regard to the *Local Housing Strategy*, previous actions and their outcomes/successes should be reviewed and independently assessed for their success, and deadlines should be put in place for future action. *Amnesty International* also states that Argyll and Bute Council only recognise the needs for planning and housing/accommodation for this community within its *Equalities and Diversity Scheme* (within the *Local Housing Strategy*), and believes that provisions need to be made for a much wider range of needs.

d) Highland Council

The following concerns and recommendations have been made to Highland Council (21st of June, 2010)

- Lack of a dedicated Gypsy Traveller Liaison Officer (GTLO), with distinct and separate roles to that of Site Manager.

Within the Highland region, the Site Manager assumes the responsibility for liaising between Scottish Gypsy/Travellers, The Highland Council, the local community (levels of racial harassment towards Gypsy/Travellers in the Highlands have been documented in the Highland Council's *Racial Equality Scheme*) and other relevant agencies. A dedicated GTLO would play an essential role in improving access to housing and support, one of the aims set out in Highland Council's *Multi Agency Action Plan* (2008). *Amnesty International* would like to see the employment of a dedicated GTLO viewed as a matter of urgency.

- A review, through consultation with the local Scottish Gypsy/Traveller community, of the tenancy agreements for all four local sites.

Amnesty International would like to see a *Model Tenancy Agreement* put in place, including: details of security of tenure, availability of legal advice outwith the Highland Council and for the tenancy agreement to be available in a range of different formats.

- A needs assessment of the accommodation requirements of Scottish Gypsy/Travellers in *all* types of accommodation.

This assessment should look at the need for more transient sites and additional permanent sites for the large population of Scottish Gypsy/Travellers living in this area, and also for Gypsy/Travellers visiting from other parts of the UK and Ireland.

- Regular reviews of the *Local Housing Strategy* and *Multi Agency Action Plan* should be in place to ensure that the needs of the local Scottish Gypsy/Traveller community are continually being identified, assessed and met.

e) Moray Council

The following concerns and recommendations have been made to Moray Council (21st of June, 2010)

- Lack of a dedicated Gypsy Traveller Liaison Officer (GTLO), with distinct and separate roles to that of Site Manager.

Amnesty International would like to see the employment of a dedicated GTLO by Moray Council, who would have a wide range of duties such as identifying land and funding opportunities for official sites – actions which were included in a recent Craigforth Grampian needs assessment commissioned by Moray Council. There have recently been an increasing number of Scottish Gypsy/Travellers staying at roadside camps in the area, heightening tensions between the transient and settled communities. Moray Council have a responsibility to both these communities, and therefore need to prioritise funding for potential sites (through consultation with the Scottish Gypsy/Traveller community).

- Once suitable land has been identified and funding put in place, Moray Council should consult with local Scottish Gypsy/Travellers on putting in place a Model Tenancy Agreement and Allocation Policy.

Amnesty International considers that part of Moray Council's duty in its provision of accommodation services, is to ensure that Scottish Gypsy/Travellers are consulted on tenancy agreement.

- The consideration of the needs and circumstances of Scottish Gypsy/Travellers is required in order to address community relations between the Gypsy/Traveller community, and the local, settled community.

Amnesty International would like to see Moray Council planning for a wide range of services and activities which would not only be of benefit to the Scottish Gypsy/Traveller community, but also be of relevance to their culture. *Amnesty International* would like to see awareness raising of council workers and positive media profiling of the Gypsy/Traveller community.

- There is a real need for continuous planning and detailed reviews of the circumstances and service needs of the Scottish Gypsy/Traveller community within planning documents, such as Moray Council's *Local Housing Strategy*. Within annual reviews, past actions should also be independently assessed for their success, and deadlines for departments/persons should be clearly defined for future courses of action.

Moray Council should recognise a broad range of issues such as: applications for funding for official sites, supporting local Scottish Gypsy/Travellers if they wish to apply for funding to set up private sites and the planning of types/sizes of potential sites.

Appendix 2: A Personal Testimony by Justine Wilson

My name is Justine Wilson, and I'm a twenty year old Scottish Gypsy/Traveller. My family and I live a transient lifestyle, moving around and living in different areas of Scotland throughout the year. We live respectfully of other people, their property and their communities, yet we are continually being asked to move on from where we are staying by the police and local authorities. On numerous occasions those in power have used the *Trespass (Scotland) Act 1865*, citing Clause 3, as a means of trying to oust us from our camps. Personally, I don't think that it is at all fair for the *Trespass (Scotland) Act 1865* to be used today – we are living in a completely different century to the one in which it was created, and as a result this piece of legislation is now totally out-dated. It would seem that those in power have found a loop-hole in the law, and are using it to their advantage in order to move us on when we have done nothing wrong.

We were staying in Argyll last October/November (2009) when we were asked to leave immediately by the police and local council, who used the *Trespass (Scotland) Act 1865* as their reason. The local community had not complained about us, so this was purely a case of the local authorities wanting to rid their area of our camp. Luckily my Dad knows his rights and stood his ground, so we were eventually left alone – we think that they didn't want to incur any court costs. I felt like we were being bullied and disrespected by the local council because they wanted to move us on to another jurisdiction, so that – as they see it – we would then be someone else's 'problem'. Attitudes of the police and local councils differ in each area. We are hardly ever offered any real help, advice or support – just told to move on.

There is a lot of animosity between the police and local authorities, and the Gypsy/Traveller community. In many instances I feel like they just want to cause trouble and conflict, and I firmly believe that around 95% of the time we are asked to move on purely because of the fact that we are Gypsy/Travellers. At the start of the year we were staying on a road-side camp in Argyll. This camp was up an old back-road with many lay-bys. Every day new people – who were not Gypsy/Travellers - would arrive to spend some time there 'wild camping', but we were the only ones who were asked to leave.

As a result of being moved on all the time, it is very difficult for me to feel settled. I can only really stay in jobs for a couple of weeks at a time as it's very hard to find somewhere else to stay in the area once you've been moved on. I am always forced to leave jobs and new friends. It is also really hard to socialise with other young people from the Gypsy/Traveller community, as they are moved on all the time too, and are therefore never in the same place for very long. Moving around all the time can also have an effect on a person – or family's – ability to earn a living. Luckily my Dad's business is quite well established within the areas in which we move, but it can be hard for other families, as once camped in an area they start and commit to jobs (for example, landscaping), but are then moved on and are either unable to finish their work, or have to travel miles in order to complete a job. The issue of

incomplete, shoddy or rushed work is one that many people from the settled community use as a reason to think ill of Gypsy/Travellers.

I also believe that there is a real need for more, better equipped, local authority sites - sites on which families would actually want to live. It *does* depend on the area, but many council sites are in an awful mess and are unfit for any human to live on – this is why we are forced to stay on roadside camps. Any good council sites are full up – they tend to be taken over by one family, as whenever another pitch on the same site comes up, the same family will take it - therefore no-one else can get in. Again, the council is not at all helpful on this matter. I would definitely stay on a decent council site, but there are simply not enough transient pitches. Indeed, life is much easier for those staying on sites than for those moving around and staying on roadside camps, and they can not only develop more relationships outwith their family unit, but they can access better education and health care facilities and gain more headway in terms of employment. It would be much easier if we could stay somewhere within a town, as access to fresh water, washing facilities and so on would be much closer to hand. However, we have to stay either on industrial estates or somewhere outside the town, as we generally get harassed and abused too much by the public otherwise.

In conclusion, I firmly believe that the *Trespass (Scotland) Act 1865* impedes my traditional way of life. Everyone has the right to live as their beliefs dictate – as long as they are not causing harm to others – this is not the case for those living within the Gypsy/Traveller community, and the *Trespass (Scotland) Act 1865* is a big part of the reason why.