



European
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COUNCIL OF EUROPE
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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

19 April 2013

Case No. 1

European Roma Rights Centre v. Ireland
Complaint No. 100/2013

COMPLAINT

Registered at the Secretariat on 16 April 2013

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I PARTIES

I.1 State Party

1. Ireland signed and ratified the Revised European Social Charter and accepted the collective complaint mechanism on 4 November 2000. This followed signature of the 1961 European Social Charter on 18 October 1961 and its ratification on 7 October 1964.¹

I.2 Complainant organisation

2. This complaint is brought by the European Roma Rights Centre (ERRC), an international non-governmental organisation with consultative status with the Council of Europe and entitlement to submit collective complaints under Article 1(c) of the Additional Protocol of 1995.
3. The complaint is based on research undertaken from 2005 to present in close collaboration with the Irish Traveller Movement (ITM), a national network of organisations and individuals working within the Traveller community.²

II STATEMENT OF ALLEGED VIOLATIONS

4. This collective complaint alleges that the Government of Ireland has not ensured the satisfactory application of Article 16 and Article 30 of the Revised European Social Charter (RESC or Charter), particularly with respect to accommodation for Travellers in Ireland. In addition, many of the actions and omissions of the Government have violated the rights of child Travellers to social, legal and economic protection (Article 17). This complaint alleges that, notwithstanding these freestanding violations, the rights ought also be read in conjunction with Article E of the Charter, which guarantees that the rights are to be secured without discrimination on the ground of association with a national minority/ethnic background.

II.1 ECSR jurisprudence

5. The right to housing is treated as a means for securing the social, legal and economic protection and full development of the family (Article 16), as well as the right to protection against poverty and social exclusion (Article 30). As the ECSR has observed, there is an important degree of overlap between the various RESC articles safeguarding the right to housing. Thus, in its decision in *ERRC v Bulgaria*, the ECSR noted that:

[...] as many other provisions of the Charter, Articles 16 and 31, though different in personal and material scope, partially overlap with respect to several aspects of the right to housing. In this respect, the notions of adequate housing and forced eviction are identical under Articles 16 and 31.³

6. The ECSR's expanding jurisprudence on the right to housing defines it as a set of rights beyond the mere entitlement to a house. 'The right to housing permits the exercise of many other rights – civil and political as well as economic, social and cultural. It is also of central importance to the family.'⁴ The ECSR has made it clear that the right to housing should be interpreted as a right to *adequate* housing.

¹ Available at

http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/SignaturesRatifications_en.pdf

² <http://www.itmtrav.ie/>

³ No. 31/2005 *ERRC v Bulgaria*, "Decision on the Merits", 18 October 2006, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp, 6.

⁴ No. 15/2003 *ERRC v Greece*, "Decision on the Merits", 8 December 2004, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp, 8.

7. In its decision on the merits in *ERRC v Bulgaria*, regarding Article 16, the ECSR held that:

Article 16 guarantees adequate housing for the family, which means a dwelling which is structurally secure; possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; is of a suitable size considering the composition of the family in residence; and with secure tenure supported by law.⁵ The temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period.⁶ Furthermore the obligation to promote and provide housing extends to security from unlawful eviction.⁷

8. The ECSR has also held that the right to housing, as protected under Articles 16 and 31, might entail different obligations on the part of Member States vis-à-vis different groups and that special, positive action measures might have to be implemented.⁸
9. The ECSR has also made it clear that although meeting their obligations in respect of the right to housing is a highly demanding undertaking in terms of time and resources, Member States should nevertheless form and implement realistic plans. In *ERRC v Bulgaria*, the ECSR noted that ‘the enjoyment of certain fundamental rights requires a positive intervention by the state’⁹ and identified necessary legal and practical measures for effective protection.
10. Housing is a prerequisite to the prevention of social exclusion and poverty under Article 30. According to the ECSR, living in a situation of poverty and social exclusion violates the dignity of human beings.¹⁰ For these reasons Article 30 requires Member States to ‘adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach.’¹¹ Moreover, ‘adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy.’¹²

⁵ *Ibid.*, paragraph 24.

⁶ *No. 31/2005 ERRC v Bulgaria*, “Decision on the Merits”, 10.

⁷ *No. 15/2003 ERRC v Greece*, “Decision on the Merits”, 5-8.

⁸ The Committee states in *ERRC v Bulgaria* that: “Article E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in the absence of objective and reasonable justifications (see paragraph E, Part V of the Appendix), any individual or groups with particular characteristics benefit in practice from the rights in the Charter. In the present case this reasoning applies to Roma families. Moreover, as the Committee stated in stated in the Autism-Europe decision (*Autism-Europe v. France*, Complaint N° 13/2002, decision on the merits of 4 November 2003, § 52), ‘Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all’ [...] In all its submissions the Government emphasised that Bulgarian legislation provides adequate safeguards for the prevention of discrimination. However, the Committee finds that in the case of Roma families, the simple guarantee of equal treatment as the means of protection against any discrimination does not suffice. As recalled above, the Committee considers that Article E imposes an obligation of taking into due consideration the relevant differences and acting accordingly. This means that for the integration of an ethnic minority as Roma into mainstream society measures of positive action are needed.” *No. 31/2005 ERRC v Bulgaria*, “Decision on the Merits”, 11-12. Confirmed in *No. 62/2010 FIDH v Belgium*, “Decision on the Merits”

⁹ *Ibid.*, 10.

¹⁰ Statement of Interpretation on Article 30, see in particular Conclusions 2003, France.

¹¹ *No. 33/2006, International Movement ATD Fourth World v France*, “Decision on the Merits”, 4 February 2008, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp, 40.

¹² *Conclusions of the European Committee of Social Rights* “2005: European Social Charter revised”, Slovenia, Articles 8, 11, 14, 17, 18, 23, 25, 27, 30 and 31 of the Revised Charter, 51.

11. The measures should be of a quality and quantity adequate to the nature and extent of poverty and social exclusion in the country concerned.¹³
12. Lastly, the ECSR has shown increasing concern about the issue of culturally appropriate housing. Noting that some Roma/Travellers in Europe still engage in an itinerant lifestyle. In the complaints filed by the ERRC the ECSR has held Greece, Italy, France and Belgium in violation of Article E, in relation to the insufficiency and inadequacy of the halting sites available to Roma/Travellers.¹⁴
13. In respect of the general right to education enshrined in Article 17, the ECSR has made clear that education must be accessible and effective and that particular attention must be paid to ensure that children from vulnerable groups must benefit from such education.¹⁵ The Irish Traveller Movement's members have reported that cuts to school transport provision for Travellers is having a seriously detrimental effect on the ability of Traveller children to attend school.

II.2 Other international legal standards relating to the right to housing

14. A number of provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)¹⁶ provide protection of core elements of the right to adequate housing. According to European Court of Human Rights (ECtHR) case law, the purposeful destruction of property might under certain conditions amount to inhuman and degrading treatment.¹⁷ Furthermore, in *Moldovan and others v Romania* (No. 2), the ECtHR held that the responsibility of the respondent state under Articles 3 and 8 was engaged by the unacceptable living conditions of Roma following the destruction of their houses to which state agents had acquiesced.¹⁸ Article 8(1) of the ECHR provides the following guarantees: 'Everyone has the right to respect for his private and family life, his home and his correspondence.' Article 8's protection encompasses *inter alia* the following rights: the right of access,¹⁹ the right of occupation²⁰ and the right not to be expelled or evicted, and is thus intimately bound with the principle of legal security of tenure.²¹ Furthermore, the ECtHR has developed the concept of 'positive obligations' extensively within its Article 8 jurisprudence, under which a Contracting State must not only restrict its own interferences to what is compatible with Article 8, but may also have a positive obligation to protect the enjoyment of those rights and secure the respect for those rights in its domestic law.²²

¹³ European Committee of Social Rights, *Conclusions of the European Committee of Social Rights*, Statement of Interpretation on Article 30, all countries.

¹⁴ *No. 15/2003 ERRC v Greece*, "Decision on the Merits", 13; *No. 27/2004 ERRC v Italy*, "Decision on the Merits", 12; *No. 51/2008 ERRC v France*, "Decision on the Merits", 23; *No. 51/2008 ERRC v France*, "Decision on the Merits", 23; *No. 62/2010 FIDH v Belgium*, "Decision on the Merits", 83, 121.

¹⁵ http://www.coe.int/t/dGHI/monitoring/Socialcharter/Theme%20factsheets/FactsheetEducation_en.pdf

¹⁶ The ECHR entered into force in Ireland on 3 September 1953.

¹⁷ See *Mentes and Others v Turkey (Article 50)*, Application No. 23186/94, 24 July 1998, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58206> and *Selcuk and Asker v Turkey*, Application No. 23184/94 23185/94, 24 April 1998, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58162>.

¹⁸ *Moldovan and Others v Romania*, Application No. 41138/98 and 64320/01, 12 July 2005, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69670>, paragraphs 113-114.

¹⁹ *Wiggins v United Kingdom*, Application No. 7456/76, 13 D & R 40 (1978), 8 February 1978, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-74362>.

²⁰ *Ibid.*

²¹ European Commission of Human Rights, *Cyprus v Turkey*, Application No. 6780/74 and 6950/75, 26 May 1975, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-74811>.

²² For example, *Costello-Roberts v United Kingdom*, Application No. 13134/87, 25 March 1993, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57804>, para 26. See also, *Connors v United Kingdom*, Application no. 66746/01, 27 May 2004, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61795>, where the Court found a violation of

15. Significantly, the ECtHR has recognised the right for a minority with a long tradition of following a travelling lifestyle to occupy and live in caravans as an intrinsic part of their way of life, protected by Article 8.²³
16. Ireland is also bound by the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁴ in particular Article 11(1),²⁵ that addresses the right to an adequate standard of living, and General Comments²⁶ No. 4²⁷ and No. 7²⁸ where the United Nations Committee on Economic, Social and Cultural Rights (CESCR) further clarifies what the right to adequate housing entails. Its interpretation of Article 11 of the Covenant is reflected in the jurisprudence of the ECSR and its interpretation of the RESC.
17. Other international treaties and bodies that address the right to adequate housing include the Convention on the Rights of the Child (CRC),²⁹ the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),³⁰ the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),³¹ the UN Commission on Human Rights³² and the UN Sub-Commission on Prevention of Discrimination of Minorities.³³

Article 8 requirements in a case involving the failure to provide adequate legal security of tenure to a family of English Gypsies.

²³ *Chapman v United Kingdom*, Application No. 27238/95, 18 January 2001, para 129, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59154>, para. 73.

²⁴ Portugal ratified the ICESCR on 31 October 1978. International Covenant on Economic, Social and Cultural Rights, available at <http://www2.ohchr.org/english/law/cescr.htm>.

²⁵ Article 11(1) of the ICESCR.

²⁶ CESCR, *The right to adequate housing (Art. 11.1): General Comment 4*, para 8, E/1992/23, annex III, available at: <http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?OpenDocument> and CESCR, *The right to adequate housing (Art. 11.1): forced evictions: General Comment No. 7* para. 9 E/1998/22, annex IV, available at:

[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+7.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument). General Comments Nos. 4 and 7 state that all persons should possess a degree of security of tenure which guarantees legal protection against forced evictions, harassment and other threats.

²⁷ The CESCR defines in its General Comment 4 para. 8 “adequate housing” as housing enjoying “sustainable access to natural and common resources, clean drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage facilities, refuse disposal, site drainage and emergency services.” Moreover, housing should be “affordable and habitable.” Habitability consists of “allocating adequate space and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors.” Adequate housing must also ensure the “physical safety of residents.” Furthermore, housing must be accessible to those entitled to it. The location of the housing facilities must allow “access to employment opportunities, health care services, schools, childcare services and other social facilities.” Finally, housing “should not be built on polluted sites or in immediate proximity to pollution sources that may threaten the right to health of the residents” and should also be culturally adequate. CESCR, *General Comment 4*.

²⁸ The CESCR defines forced evictions in its General Comment No. 7 as “the permanent or temporary removal against their will of individuals, families and/or communities from their homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” CESCR, *General Comment 7*.

²⁹ Article 27 CRC assigns state responsibility to provide material assistance, including housing, to children and assist parents to implement this right. Ireland ratified the CRC on 28 September 1992.

³⁰ Article 5(e)(iii). Ireland ratified the ICERD on 29 December 2000.

³¹ Article 14(2). Ireland ratified the CEDAW on 7 September 2000.

³² The UN Commission on Human Rights has affirmed that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to housing. UN Commission on Human Rights, Resolution 1993/77, (E/CN.4/RES/1993/77) paragraph 1, 10 March 1993, available at: http://www.unhabitat.org/downloads/docs/1341_66115_force%20evic%20chr1.htm.

³³ The Sub-Commission has reaffirmed that forced eviction constitutes a gross violation of a broad range of human rights, including the right to adequate housing. See UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. Forced Evictions: Sub-Commission resolution 1998/9 (E/CN.4/SUB.2/RES/1998/9), 20 August 1998, paragraph 1, available at: http://www.unhabitat.org/downloads/docs/5670_2252_E.CN.4.Sub.2.RES.1998.9.En.htm.

18. The Article 28 of the CRC and Article 13 of the ICESR also enshrine the right to education, requiring availability and accessibility.

II.3 The ban on discrimination - including ethnic and racial discrimination - in access to housing

19. In addition to the Preamble to the ESC and Article E of RESC, a number of other Council of Europe standards ban racial discrimination and this area of law has recently been extended. According to international human rights law ethnic minority status is based on self-identification³⁴. Irish Travellers have been campaigning for state recognition of their ethnic minority status for many years and international human rights and equality institutions have recommended that the state formalise the situation.³⁵ In 1994, the Council of Europe adopted the Framework Convention for the Protection of National Minorities,³⁶ to which Ireland has been a party since 1999.³⁷ In its third report the Irish Government stated that ‘While members of the Traveller community are not considered to be a national minority in Ireland, successive governments have recognised the special position of Irish Travellers in a range of legislative, administrative and institutional provisions’³⁸
20. In addition, in 2000, the Council of Europe opened for signature Protocol 12 to the European Convention on Human Rights which provides a freestanding ban on discrimination in the realisation of any right secured by law.³⁹ Prior to the entry into force of Protocol 12, the ECtHR has undertaken to significantly strengthen the ban on racial discrimination under the ECHR’s existing Article 14 provisions. In a string of cases (such as *Nachova v Bulgaria*, *Cobzaru v Romania*, *Angelova and Iliev v Bulgaria*), the ECtHR developed the obligations of states under Article 14. Furthermore, the ECtHR has recognised that discrimination may have indirect as well as direct effect.⁴⁰ Most recently, in its *Yordanova v Bulgaria*, the ECtHR found that a removal order for the eviction of a Romani community in Bulgaria which ‘was based on legislation which did not require the examination of proportionality and was issued and reviewed under a decision-making procedure which not only did not offer safeguards against disproportionate interference but also involved a

³⁴ Committee on the Elimination of Racial Discrimination General Comment No. 8 22/08/1990.

³⁵ See ‘Traveller Ethnicity: An Equality Authority Report’, Equality Authority July 2006 and ‘Travellers as an ethnic minority under the Convention on the Elimination of Racial Discrimination: A Discussion Paper’ Irish Human Rights Commission, 24 March 2004.

³⁶ Framework Convention for the Protection of National Minorities, available at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/157.htm>.

³⁷ Relevant articles of the Framework Convention include articles 3(1), 4(1), 4 (2) and 6(2).

³⁸ Third Report Submitted by Ireland pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, Strasbourg 18 July 2011 ACFC/SR/III (2011) 004, p. 2.

³⁹ Ireland signed the Protocol on 4 November 2000, thus expressing political will to be bound by it. Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.2000, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/177.htm>.

⁴⁰ See European Court of Human Rights, *Thlimmenos v Greece*, Application No. 34369/97, 6 April 2000, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58561>, para. 44, where the Court held that: “[it has] so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification [...]. However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.” The Court has upheld this principle in later cases such as in European Court of Human Rights, *Chapman v the United Kingdom*, Application No. 27238/95, 18 January 2001, para 129, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59154>

failure to consider the question of “necessity in a democratic society” would amount to a breach of Article 8.⁴¹

21. Moreover, the European Union has adopted several Directives on the scope and dimensions of anti-discrimination laws in the European Union. In particular, the Race Equality Directive includes, at Article 3(1)(h), a ban on discrimination in relation to housing.⁴²

III STATEMENT OF RELEVANT DOMESTIC LAW

22. Over the last two decades, the Government of Ireland has steadily introduced housing legislation that obliges local authorities to provide halting sites and other accommodation for Travellers.⁴³ At the same time, Ireland has passed increasingly regressive evictions legislation, whereby speedier and harsher forced evictions are permitted against Travellers living by the roadside or in other informal situations. These eviction laws have been passed and used despite the fact that the Government has singularly failed to implement housing legislation to provide adequate and formal halting sites and other accommodation to Travellers. Here follows an outline of the principal relevant legislation currently in force.

III.1 ‘Criminal Trespass Legislation’: Public Order Act 1994 (as amended)

23. In 2002, the Government of Ireland amended the Criminal Justice (Public Order) Act 1994 (‘Public Order Act’) in order to facilitate the eviction of persons ‘entering and occupying land without consent’. The legislation permits the police (Gardai) to direct individuals to immediately leave land and remove all objects they had brought onto the land. While earlier housing legislation had restricted evictions if no alternative accommodation was available, such conditions are not included in the Public Order Act. The amendment is known colloquially as the ‘criminal trespass legislation’.
24. Section 19C of the Public Order Act, as amended by section 24 of the Housing (Miscellaneous Provisions) Act, 2002, now reads:
- (1) A person, without the duly given consent of the owner, shall not—
 - (a) enter and occupy any land, or
 - (b) bring onto or place on any land any object, where such entry or occupation or the bringing onto or placing on the land of such object is likely to—
 - (i) substantially damage the land,
 - (ii) substantially and prejudicially affect any amenity in respect of the land,
 - (iii) prevent persons entitled to use the land or any amenity in respect of the land from making reasonable use of the land or amenity,
 - (iv) otherwise render the land or any amenity in respect of the land, or the lawful use of the land or any amenity in respect of the land, unsanitary or unsafe,
 - (v) substantially interfere with the land, any amenity in respect of the land, the lawful use of the land or any amenity in respect of the land.
 - (2) A person who contravenes subsection (1) shall be guilty of an offence.
 - (3) Where a member of the Garda Síochána [police officer] has reason to believe that a person is committing or has committed an offence under subsection (1) the member—
 - (a) may demand of the person his or her name and address,

⁴¹ *Yordanova v Bulgaria*, Application No. 25446/06, 24 September 2012, para 144, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110449>

⁴² Council Directive 2000/43/EC, 29 June 2000, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisln/2000_43_en.pdf.

⁴³ See, in particular, section 13, Housing Act 1988 and the later Housing (Miscellaneous Provisions) Act 1992 as amended by the Housing (Traveller and Accommodation) Act 1998 and the Housing (Miscellaneous Provisions) Act 2002.

- (b) may direct the person to leave the land concerned and to remove from the land any object that belongs to the person or that is under his or her control, and
(c) shall inform the person of the nature of the offence in respect of which it is suspected that person has been involved and the statutory consequences of failing to comply with a demand or direction under this subsection.
25. A person who refuses to provide their name or address to or comply with the direction of a police officer is guilty of an offence (section 19D). Section 19E enables the police to arrest such a person without a warrant⁴⁴ while section 19F empowers the police to remove, store and dispose of the person's property, which, in the case of nomadic Travellers, includes their home.⁴⁵ If an affected person is able to retrieve their property, a fee is charged for the removal and storage. The penalties for violation of the law include imprisonment and fines. Section 19G(1) provides that 'A person guilty of an offence under this Part shall be liable on summary conviction to a fine not exceeding €3,000 (now €4,000, under section 22 in conjunction with schedule 2 of the Intoxicating Liquor Act, 2008) or to a term of imprisonment not exceeding one month or to both.'
26. The legislation also effectively provides for a presumption of guilt. The court is to assume that the person lacked consent to remain on the land as required by section 19C. Section 19G(2)(1) states that: 'In any proceedings for an offence under this Part it shall be presumed until the contrary is shown that consent under this Part was not given.' During any criminal proceedings, a defendant is also largely prevented from raising any claim under civil law with respect to the ownership of the land.⁴⁶
27. It is widely believed by Traveller groups that the legislation was specifically aimed at Travellers and came about as a direct result of an illegal encampment on the banks of the river Dodder in Dublin in 2001. In 2001 during Parliamentary debate in the Dáil and Seanad, in reply to a question concerning whether or not he had met '...a delegation from South Dublin County Council to discuss the illegal

⁴⁴ Section 19E provides that: 'A member of the Garda Síochána may arrest without warrant a person— (a) who fails or refuses to give his or her name and address when demanded under section 19C(3)(a) or gives a name or address which the member has reasonable grounds for believing is false or misleading; (b) who fails to comply with a direction given under section 19C(3)(b); or (c) whom the member finds committing an offence under section 19C(1).'

⁴⁵ Section 19F reads in part:

(1) Where a person fails to comply with a direction under section 19C(3)(b), a member of the Garda Síochána may remove or cause to be removed any object which the member has reason to believe was brought onto or placed on the land in contravention of section 19C(1) and may store or cause to be stored such object so removed....

(4) An object removed and stored under this section shall be given to a person claiming possession of the object if, but only if, he or she makes a declaration in writing that he or she is the owner of the object or is authorised by its owner to claim it or is, for a specified reason, otherwise entitled to possession of it and, at the discretion of the Commissioner, the person pays the amount of any expenditure reasonably incurred in removing and storing the object.

(5) The Commissioner may dispose of, or cause to be disposed of, an object removed and stored under this section if—

(a) the owner of the object fails to claim it and remove it from the place where it is stored within one month of the date on which a notice under subsection (3) was served on him or her, or

(b) the name and address of the owner of the object cannot be ascertained by reasonable enquiry.

(6) Where the Commissioner becomes entitled to dispose of or cause to be disposed of an object under subsection (5) and the object is, in his or her opinion, capable of being sold, the Commissioner shall be entitled to sell or cause to be sold the object for the best price reasonably obtainable and upon doing so shall pay or cause to be paid to the person who was the owner of the object at the time of its removal, where the name and address of the owner can be ascertained by reasonable enquiry, a sum equal to the proceeds of such sale after deducting there from any expenditure reasonably incurred in its removal, storage and sale.

⁴⁶ Section 19H states:

(1) Notwithstanding any statutory provision or rule of law to the contrary, the jurisdiction of the District Court shall not, in summary proceedings in relation to an offence under this Part, be ousted by reason solely of a question of title to land being brought into issue.

(2) Where in summary proceedings in relation to an offence under this Part a question of title to land is brought into issue, the decision of a justice of the District Court in the proceedings or on the question shall not operate as an estoppel in, or a bar to, proceedings in any court in relation to the land.

Traveller encampment at the Dodder [in Dublin in 2001]...', the Minister for the Environment and Local Government asserted that he had and that: "The council representatives [had] outlined the difficulties encountered by the authority as a result of the large scale unauthorised encampments by Travellers...". The Minister then concluded that, "[t]he necessity for any changes in the legislative provisions regarding unauthorised encampments...will be considered".⁴⁷

28. The amendment was strongly criticised by its minority opponents in the Dáil (parliament), who pointed to the draconian nature of this legislation and its correlation to the insufficient provision of Traveller accommodation under the weak provisions of the 1998 Act: "The Housing (Traveller Accommodation) Act, 1998, provided for the adoption by local authorities of five year plans to accommodate Travellers within their catchment area...That legislation was to provide for sufficient Traveller accommodation within a five year timeframe. The Act was passed in 1998. We have now reached the latter end of that timeframe. Of the 2,200 purpose provided Traveller accommodation places on halting sites or group housing schemes, only a little over 100 have been provided to date. The principal problem of illegal or unauthorised Traveller encampments remains due to the provision of insufficient accommodation, notwithstanding the passing of the required legislation."⁴⁸ Furthermore, the criminal trespass legislation was rushed through the Dail (parliament) as was noted by sitting members of the House "This is an incredible way to attempt to progress legislation in Dáil Éireann. It is highly insulting to the elected representatives of all the Irish people to present such a far-reaching measure that most of us received a few hours before the debate and to attempt to ram it through the Dáil, after a few hours of discussion."⁴⁹

III.2 'Section 10 Notices': Housing (Miscellaneous Provisions) Act 1992 as amended by the Housing (Traveller and Accommodation) Act 1998 and the Housing (Miscellaneous Provisions) Act 2002

29. Specific legislation for the removal of *temporary* dwellings was introduced in Section 10 of the Housing (Miscellaneous Provisions) Act 1992. 'Temporary dwelling' is defined to mean 'any tent, caravan, mobile home, vehicle or other structure or thing (whether on wheels or not) which is capable of being moved from one place to another, and (a) is or was used for human habitation, either permanently or from time to time, or (b) was designed, constructed or adapted for such use'.
30. In 1998, this Act was amended by the Housing (Traveller Accommodation) Act 1998 to ensure Travellers had access to sufficient alternative accommodation in the event of an eviction as prescribed for in the legislation. It was further amended in 2002 by the Housing (Miscellaneous Provisions) Act 2002 to provide more precise clarification in section 10, subsection ©, and, additionally, to extend the circumstances under which a housing authority may serve notice under that subsection to cases where only the 'use and enjoyment' of nearby amenities are affected. Section 10 now permits evictions of Travellers in the following circumstances:

⁴⁷ <http://debates.oireachtas.ie/dail/2001/11/27/00186.asp>

⁴⁸ Dáil Éireann - Volume 551 - 27 March, 2002, Housing (Miscellaneous Provisions) (No. 2) Bill, 2001: Report and Final Stages (Mr Eamon Gilmore). <http://www.oireachtas-debates.gov.ie/D/0551/D.0551.200203270010.html>

⁴⁹ Dáil Éireann - Volume 551 - 27 March, 2002, Housing (Miscellaneous Provisions) (No. 2) Bill, 2001: Report and Final Stages (Mr Joe Higgins) <http://www.oireachtas-debates.gov.ie/D/0551/D.0551.200203270010.html>

(1) Where, without lawful authority, a person erects, places, occupies or otherwise retains a temporary dwelling in a public place⁵⁰ and such temporary dwelling—

(a) is within a five mile radius of any site provided, managed or controlled by a housing authority under section 13 of the Act of 1988 (as amended by the Housing (Traveller Accommodation) Act, 1998), or any site provided or managed under section 6 and the temporary dwelling concerned could, in the opinion of the housing authority within whose functional area such temporary dwelling has been erected, placed, occupied or otherwise retained, appropriately be accommodated on that site, the housing authority may serve a notice on that person requiring that person, within a specified period, to remove the said temporary dwelling to the said site,

(b) is, in the opinion of the housing authority concerned—

(i) unfit for human habitation due to lack or inadequacy of water supply, sanitation or other essential services, or

(ii) likely to obstruct or interfere with the use of public or private amenities or facilities, or the maintenance of such amenities or facilities, or

(iii) likely to constitute or constitutes a significant risk to personal health, public health or safety,

and such temporary dwelling could, in the opinion of the housing authority within whose functional area such temporary dwelling has been erected, placed, occupied or otherwise retained, appropriately be accommodated on any site provided, managed or controlled under section 13 of the Act of 1988 (as amended by the Housing (Traveller Accommodation) Act, 1998), or any site provided or managed under section 6, the housing authority may serve a notice on that person requiring that person, within a specified period, to remove such temporary dwelling to the said site,

(c) is within a one mile radius of any site provided, managed or controlled by a housing authority under section 13 of the Act of 1988 (as amended by the Housing (Traveller Accommodation) Act, 1998), or any other traveller accommodation provided, managed or controlled by a housing authority under the Housing Acts, 1966 to 1998, or any traveller housing accommodation provided or managed under section 6 and the housing authority within whose functional area such temporary dwelling has been erected, placed, occupied or otherwise retained is of the opinion that, whether by reason of being one of a number of such temporary dwellings or otherwise, such temporary dwelling—

(i) is causing a nuisance or obstruction to the occupants of that site or traveller accommodation or to the occupants of any other dwelling or dwellings within a one mile radius of that site or that traveller accommodation, or

(ii) creates a risk to the quality of water, sanitary, electrical or other services associated with that site or traveller accommodation or any other dwelling or dwellings within a one mile radius of that site or traveller accommodation, or

(iii) obstructs or interferes with the use or enjoyment by any person of any public or private amenity or any public or private facility or the maintenance of any such amenity or facility, within a one mile radius of that site or traveller accommodation,

the housing authority concerned may serve notice on that person requiring that person, within a specified period, to remove the said temporary dwelling, (iii) creates a risk to the quality of water, sanitary, electrical or other services associated with that site or traveller accommodation or other dwellings within the vicinity of that site or traveller accommodation

⁵⁰ This is defined in Section 10(14) as: 'any street, road or other place to which the public have access whether as of right or by express or implied permission and whether subject to or free of charge and any property or other land owned or occupied by or leased to a public authority'.

but where the site specified in a notice under paragraph (a) or paragraph (b) is a site provided by a housing authority other than the housing authority serving such notice or a body standing approved for the purposes of section 6, such notice shall not be served until the consent of the housing authority or body concerned to such service has been obtained.

31. In summary, a housing authority (in most instances the local authority) can evict Travellers living in caravans in three circumstances under section 10(1) of the Act. First, if the caravan of the Traveller is located within 5 miles (8.05 kilometres) of an approved halting site that the housing authority believes could accommodate the Travellers (Section 10(1)(a)). Second, if the site on which the caravan is currently located is unfit for human habitation, obstructs a public or private amenity or constitutes a health and safety risk. However, the eviction cannot be carried out if the Traveller cannot 'appropriately be accommodated' on an official halting site (Section 10(1)(b)). Third, if the Traveller caravan is located within 1 mile (1.61 kilometres) of an approved halting site and the housing authority is of the opinion that the occupants of the caravan are causing nuisance to or a risk to water supplies or public facilities of any dwellings within a one-mile radius, or are interfering with the use or enjoyment of private or public facilities within a one-mile radius (Section 10(1)(c)). It is notable that no provision exists for the provision of alternative accommodation under the third scenario.⁵¹
32. The Section 10 notices must contain the following information:
- (a) the location of the site to which the temporary dwelling relates;
 - (b) the location of the site to which the temporary dwelling is required to be removed, or where a notice is served under subsection (1)(c), that the temporary dwelling is required to be removed to at least a distance of one mile from the specified site;
 - (c) the period, being not less than 24 hours from the time at which the notice is served, within which the requirements of the notice are to be complied with; and
 - (d) the statutory consequences of failure to comply with the requirements of the notice.
33. The authority may enforce the provisions of the notice⁵² and the owner of the caravan can retrieve the vehicle upon proof and payment of a fee for the reasonable costs of the removal and storage.⁵³ A housing authority may dispose of a caravan after one month unless it is recovered or placed on a lawful site (Section 10(9)). Section 10(10) permits the housing authority 'to sell the temporary dwelling for the best price reasonably obtainable' and remit any proceeds to the owner after the deduction of costs reasonably incurred the removal, storage and sale and 'any expenditure incurred by that or another housing authority in the provision of the temporary dwelling'. Section 10(12) provides penalties of fines not

⁵¹ Indeed, Section 10(c) is closely modelled on the original 1992 provisions whereby caravans could be removed without the offer of alternative accommodation. The only substantive difference is that the distance from a halting site was reduced from 5 miles to 1 mile.

⁵² Section 10(5) (again, as amended by the Housing (Traveller Accommodation Act, 1998, section 32, provides:

Where, in the opinion of the housing authority, the requirements of a notice under subsection (1) have not been complied with in all or any respects, then, without prejudice to any other provisions of this section, the authority may, without further notice, remove or procure the removal of the temporary dwelling—

- (a) to the site specified in the notice or, where a notice is served under subsection (1)(c), to a location that is not less than one mile from the site referred to in that subsection, or
- (b) where they are for any reason prevented from so doing, to another location for storage by or on behalf of the authority....

⁵³ Section 10(8).

exceeding £1,000 or imprisonment up to one month or both in circumstances if a person fails to remove their temporary dwelling in accordance with a notice or obstructs a housing authority in carrying out their functions under section 10.

II.3 Roads Act 1993

34. The police and other authorised persons can evict Travellers under the Roads Act 1993. The relevant sections of the law are comparable to the Public Order Act, although the roads legislation is less detailed. Section 69 of the Roads Act 1993, states that:

(1)(a) Any person who without lawful authority erects, places or retains a temporary dwelling on a national road, motorway, busway or protected road shall be guilty of an offence.

(b) Any person who without lawful authority or the consent of a road authority erects, places or retains a temporary dwelling on any other prescribed road or prescribed class, subclass or type of road shall be guilty of an offence.

(c) A consent under paragraph (b) may be given by the road authority subject to such conditions, restrictions or requirements as it thinks fit and any person who fails to comply with such conditions, restrictions or requirements shall be guilty of an offence.

(2) An authorised person may remove a temporary dwelling from a national road, motorway, busway, protected road or any other prescribed road or prescribed class, subclass or type of road.

(3) An authorised person may store, or procure the storage of, a temporary dwelling removed by him under subsection (2).

(4) Where the name and address of the owner of a temporary dwelling removed and stored under this section can be ascertained by reasonable inquiry, the road authority concerned or the Commissioner shall serve a notice upon the owner informing him of the removal and storage and of the address of the place where the temporary dwelling may be claimed and recovered, requiring him to claim and recover it within one month of the date of the service of the notice and informing him of the statutory consequences of his failure to do so.

(5) A temporary dwelling removed and stored under this section shall be given to a person claiming the temporary dwelling if, but only if, he makes a declaration in writing that he is the owner of the temporary dwelling or is authorised by its owner to claim it and, at the discretion of the road authority concerned or the Commissioner, pays the amount of the expenditure reasonably incurred in removing and storing the temporary dwelling.

(6) The road authority concerned or the Commissioner may dispose, or procure the disposal, of a temporary dwelling removed and stored under this section if—

(a) the owner of the temporary dwelling fails to claim it and remove it from the place where it is stored within one month of the date on which a notice under *subsection (4)* was served on him, or

(b) the name and address of the owner of the temporary dwelling cannot be ascertained by reasonable inquiry.

(7) A temporary dwelling shall not be disposed of under this section within six weeks of the date of its removal under this section.

(8) The provisions of this section are without prejudice to the functions of a public authority under any other enactment.

(9) In this section—

“*authorised person*” means—

(a) a person authorised in writing by a road authority for the purposes of this section;

(b) a member of the Garda Síochána;

“*temporary dwelling*” means any tent, caravan, mobile home, vehicle or other structure or thing (whether on wheels or not) which is capable of being moved from one place to another (whether by towing, transport on a vehicle or trailer, or otherwise), and—

(a) is used for human habitation, either permanently or from time to time, or

(b) was designed, constructed or adapted for such use,

but does not include any such temporary dwelling—

(i) used by a State authority, road authority, local authority or a statutory undertaker during the course of works on, in or under a national road, motorway, busway, protected road, or any other prescribed road or prescribed class, subclass or type of road, or

(ii) used in connection with a fire or other emergency.

35. The roads legislation allows the local authority to confiscate a caravan home without prior notice. It is sufficient under the Act that a notice later be displayed in the local Garda station. The legislation takes no account of the reasons for the presence of the temporary dwelling and there is no possibility or opportunity of providing a lawful excuse in advance of the seizure of the temporary dwelling. While the legislation states that it only applies to temporary dwellings located on the roadside without consent and consent may be applied for subject to conditions there is in fact no known mechanism for Travellers to apply for such consent and the Traveller organisations are unaware of any Traveller who has successfully applied for such consent.

III.4 Planning and Development Act 2000

36. Planning authorities (local authorities) are authorised to demolish or remove structures, which would include caravans, under section 46 of the Planning and Development Act 2000, where these constitute 'unauthorised developments'.⁵⁴ Section 46 was left untouched by the substantial Planning and Development (Amendments) Act 2010. A notice must be served within seven years of the commencement of the unauthorised development,⁵⁵ specifying the location of the structure or land and the steps that will be required to be taken within a specified period, including the demolition, removal, alteration or replacement of any structure.⁵⁶ The notice must also invite any person served with the notice to make written submissions or observations to the planning authority, with at least 4 weeks from the date of service of the notice given for this purpose.

In considering whether to proceed with the action, which can include eviction of a Traveller, a planning authority, in deciding whether to confirm a notice pursuant to this section, shall consider:

- (a) the proper planning and sustainable development of the area,
- (b) the provisions of the development plan,
- (c) the provisions of any special amenity area order, any European site or other area designated for the purposes of section 10(2)© relating to the area, and
- (d) any other relevant provision of this Act and any regulations made thereunder.⁵⁷

Notably, there is no requirement to consider the human rights of the persons involved.

37. Unlike the Public Order Act, a notice can be appealed within eight weeks of the date of service of the notice to the Board established under the Act.⁵⁸ Upon the withdrawal of the appeal or it being decided in favour of the planning authority, demolition, removal or other relevant action may proceed. If a person served with a notice fails to comply with the requirements of the notice he or she shall be guilty of an offence (Section 46(11)).

⁵⁴ Section 46(1) provides: (1) If a planning authority decides that, in exceptional circumstances-

(a) any structure should be demolished, removed, altered or replaced,

(b) any use should be discontinued, or

(c) any conditions should be imposed on the continuance of a use,

the planning authority may serve a notice on the owner and on the occupier of the structure or land concerned and on any other person who, in its opinion, will be affected by the notice.

⁵⁵ Section 46(2) states that subsection (1) 'shall not apply to any unauthorised development unless the notice under this section is served after seven years from the commencement of the unauthorised development.' This provision is somewhat confusing due to the use of the word 'after'. In the context, the word has been understood as 'within'.

⁵⁶ Section 10(3).

⁵⁷ Section 46(5).

⁵⁸ Section 46(6).

38. Furthermore, under section 160⁵⁹ of the 2000 Act the local authority may seek an injunction compelling a person to remove a temporary dwelling from land owned by them if it does not comply with planning requirements. It is very difficult for most Travellers to comply with these planning requirements. Many planning guidelines state that an applicant must be from the local area. Travellers who were or are traditionally nomadic will find this to be an insurmountable obstacle as they can only show a tie to the general locality in most circumstances but not the particular town. Grounds for refusal have also included the assessment that caravan homes are prejudicial to public health and injurious to public amenities. This is contradictory to the Housing (Traveller Accommodation) Act 1998, which allows for the provision of halting site accommodation for caravans by the state.

III.5 Local Government (Sanitary Services) Act 1948

39. The demolition of 'unsanitary structures' is permitted under the Local Government (Sanitary Services) Act 1948, upon the provision of an order/bye-law by a sanitary authority (in most cases, a local authority).⁶⁰ Non-compliance with the notice is an offence and a person shall be liable on summary conviction to a fine not exceeding €1,269.74.⁶¹ A second or subsequent conviction under this provision in relation to the same temporary dwelling, "the Court may, in addition to or in lieu of imposing a fine, order the forfeiture of the temporary dwelling to the sanitary authority concerned and thereupon that authority may take possession of the temporary dwelling and dispose of it by sale, destruction or otherwise as they think fit". This sanction, which may be – and has been – used to destroy a home carries no explicit statutory requirement to take into account human rights provisions. A sanitary authority may request a member of the Garda Síochána to assist them in the exercise of their certain powers. It is notable that the only requirement in relation to notification of the existence of an Order made by is that, 14 days after an order has come into force, the local authority (or sanitary authority) is required to publish a copy of the order in a newspaper circulating in the area. However, there does not appear to have any requirement to erect signage. Nor does there appear to be any requirement to give notice prior to issuing a summons and bringing a prosecution in court for breach of the order/bye-law. Alternatively, a court itself, rather than a local authority, can make an order itself prohibiting the erection of a temporary dwelling in a particular location, and failure to comply with that order becomes an offence.

⁵⁹ 160(1) Where an unauthorised development has been, is being or is likely to be carried out or continued, the High Court or the Circuit Court may, on the application of a planning authority or any other person, whether or not the person has an interest in the land, by order require any person to do or not to do, or to cease to do, as the case may be, anything that the Court considers necessary and specifies in the order to ensure, as appropriate, the following: (a) that the unauthorised development is not carried out or continued; (b) in so far as is practicable, that any land is restored to its condition prior to the commencement of any unauthorised development; (c) that any development is carried out in conformity with the permission pertaining to that development or any condition to which the permission is subject. (2) In making an order under *subsection (1)*, where appropriate, the Court may order the carrying out of any works, including the restoration, reconstruction, removal, demolition or alteration of any structure or other feature.

⁶⁰ Section 31.

⁶¹ The fine was increased to the amount of IR£1,000 by section 113 of the Environmental Protection Agency Act, 1992, amending section 31 of the Local Government (Sanitary Services) Act 1948. Article 1 of Council Regulation (EC) No. 2866/98 of 31 December 1998 confirmed that the conversion rate between the Irish punt and the euro was fixed at IR£0.787564 to €1, and so IR£1,000 equates to €1,269.74.

III.6 Public Health (Ireland) Act 1878, as amended by the Environmental Protection Agency Act 1992

40. This Act allows the local authority to serve a notice on a person residing in a caravan in its functional area requesting that they 'abate the nuisance'. Failure to do so to their satisfaction may result in an application before the District Court.
41. Under Section 111, "[i]f the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice, is, in the opinion of the [district council], likely to recur on the same premises, the [district council] shall cause a complaint relating to such nuisance to be made before a justice, and such justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction."
42. If a local authority considers that a temporary dwelling is causing a nuisance under the above Act they can apply to the court for an order to remove it. There is no requirement that the housing requirements of its occupiers be considered by the court and no provision is made to re-house those affected.
43. Where such a public health nuisance is found to exist, the district council has the power to issue an abatement notice or a prohibition notice or both. These notices can be served either on the creator of the nuisance, or on the owner or the occupant of the place from where the nuisance is emanating. If the notices are not complied with, the local authority will issue a fine. Alternatively, the local authority might complete the works in default and charge the owner or creator of the nuisance for the cost. It will do this in particular where the creator of the nuisance cannot be found and it is clear that the nuisance does not result from the owner's actions.

IV VIOLATIONS OF ARTICLES 16, 17 AND 30 IN CONJUNCTION WITH ARTICLE E

IV.1 BACKGROUND: TRAVELLERS IN IRELAND

44. Travellers are an indigenous and nomadic group who can be back traced to the 12th century or even earlier.⁶² According to the 2006 Census in Ireland, there are approximately 22,369 Irish Travellers, amounting to 0.5% of the population.⁶³ A 2010 government-commissioned report on Traveller health amended that figure to 36,224.⁶⁴ According to the figures released in the 2011 Census the number of Traveller families living in Ireland has increased by 32 per cent from the 2006 figure of 22,435 to 29,573. It is possible that this figure does not necessarily indicate an increase in Traveller population, rather an increase in the number of people identifying as Travellers. The Irish Traveller Movement believes that the numbers of Travellers living in Ireland is significantly higher than the figures referred to in the Census with large numbers of people not identifying as Travellers due to the potential racism and discrimination Travellers face in Irish society.
45. The Traveller People Review Body stated in 1983 that Travellers:

⁶² See Niall Crowley 'Travellers and Social Policy', in Suzanne Quinn, Patricia Kennedy, Anne O'Donnell and Gabriel Kiely (eds.), *Contemporary Irish Social Policy* (Dublin: University College Dublin Press, 1999), pp. 243-265, at 244. [NB that there is now a new edition of this book.]

⁶³ See http://www.cso.ie/census/census2006results/volume_5/vol_5_2006_complete.pdf.

⁶⁴ *All Ireland Traveller Health Study: Demography & Vital Statistics: Part A of Technical Report 2*, September 2010, p.10, available at: http://www.dohc.ie/publications/aiths2010/TR2/AITHS2010_TechnicalReport2_HR_PartA.pdf?direct=1.

[A]re an identifiable group of people, identified both by themselves and by other member of the community (referred to for convenience as the 'settled community') as people with their own distinctive life style, traditionally of a nomadic nature but not now habitual wanderers. They have needs, wants, and values which are different in some ways from those of the settled community.⁶⁵

46. Accommodation is commonly recognised as being central to Traveller tradition, encompassing the traditions of 'those [Travellers] who are constantly on the move, those who move out from a fixed base for a part of the year, and those who are sedentary for many years and then move on.'⁶⁶ Mary Robinson, former President of Ireland and United Nations High Commissioner for Human Rights, affirmed the important link between Traveller culture, housing and human dignity:

When we talk about the Travelling community it's not just a question of whether they want housing or whether they would prefer serviced halting sites. It's that they want their culture recognised, they want their dignity respected, they want to be full citizens of this country.⁶⁷

IV.2 EVICTIONS

47. This complaint alleges that the legislative regime and the *de facto* situation in Ireland as regards the eviction of Travellers amount to breaches of Articles 16, 17 and 30 of the Charter, read alone or in conjunction with Article E. In particular, the following amount to breaches singly and/or cumulatively: the three legal regimens which ostensibly govern the evictions of Travellers are used arbitrarily and interchangeably. It is submitted that this very lack of transparency of process amounts to – or at least contributes to – violations of the Charter. In any event, it is submitted that the following laws amount to breaches of the Charter, either individually or in combination. Furthermore, the ways in which these laws are applied in practice amount to violations. In respect of Article 17, it is alleged that ongoing evictions of families must have an impact the accessibility and the effectiveness of education. On some occasions it is impossible for children to attend school following and eviction, particular examples of which can be seen at paragraphs 81, 86 and 87 below. In all cases, the trauma of eviction impacts negatively on the ease of access to and the effectiveness of education.

IV.2.i LEGISLATION ON EVICTIONS

Public Order Act

48. Section 19 of the Public Order Act (see paragraphs 21-24 above) permits the Gardai (the national police) to summarily evict families occupying land in circumstances where the owner has not consented to their presence. The eviction can be executed without the need for formal documentation, including a court order, summons or even an arrest warrant. Those convicted can be fined €3,000 or imprisoned or both. A caravan can also be seized or impounded and the Traveller family thus be rendered homeless; an accused person cannot put forward a specific defence as to why they had occupied the land. Furthermore, where no prosecution follows the eviction no record is kept of the event by the police and therefore no details or figures on such evictions can be traced. The provisions violate the Charter both on their face and in practice, as will be analysed below.

⁶⁵ Report of the Traveller People Review Body (1983), cited in *Report of the Task Force on the Travelling Community* (Pn.1726, July 1995) ('Task Force Report'), p. 71.

⁶⁶ Task Force Report, p. 72.

⁶⁷ President Mary Robinson, Speech to the Joint Irish Association/DTEDG Seminar, Dublin, December 1990, cited in Task Force Report, p. 74.

49. While the government is clearly entitled to ensure that public and private lands are protected from trespass, the Public Order Act fails to respect the human rights of Travellers. This legislation of itself is incompatible with Article 16 and 30 since it contravenes the specific requirements set out by the Committee in *ERRC v Greece* that: (i) the criteria for illegal occupation must not be unduly wide (i.e., unreasonable or disproportionate); (ii) there must be due process in cases of evictions, consistent with the rights of those affected; (iii) there must be respect for nomadic lifestyle; and (iv) laws concerning access to housing must not be discriminatory. It is submitted that each of these requirements are violated with regard to the Public Order Act, as set out below.

Law is unduly wide (unreasonable and disproportionate)

50. First, Sections 19A-G of the Public Order Act are unduly wide. On its face, the law cannot be considered reasonable or proportionate to a legitimate aim, such as preventing trespass, due to a lack of objective justification. The current accommodation circumstances of Travellers and the availability of other laws to regulate trespass and anti-social behaviour deprive the law of any claim to reasonableness and proportionality. The law fails to explicitly restrict the carrying out of evictions to exceptional circumstances and is phrased in vague and uncertain terms, meaning that its provisions can be invoked in a wide variety of situations.
51. Sections 19A-G were introduced at a time when the government had already acknowledged that over 1,000 Traveller families were camped on public lands and were waiting for the authorities to provide them with accommodation in accordance with the Housing (Traveller Accommodation) Act 1998. Implementation of the 1998 Act as remains severely lacking. There is nothing in the law to restrain the exercise of the Gardai's purported powers even in circumstances where the housing authority may be in breach of its statutory obligations to the persons affected. The mere 'entry and occupation' of land without consent under section 19C(1)(a) constitutes a criminal offence.
52. Therefore, in one sweep of the legislative pen, the homes of some of the poorest and most vulnerable families in Ireland were essentially declared illegal and the occupants subject to arrest, imprisonment and the loss of their homes. The law also rewards local authorities who have not complied with their legal obligations under the Housing (Traveller Accommodation Act) 1998, since they could move Traveller families who are waiting for housing accommodation away from the area of the local authority. Travellers are essentially made criminally liable for the failure of the government to fulfil its obligations towards them.
53. The lack of reasonableness can be most clearly seen by comparing Sections 19A-G with the 'Section 10 notices' that can be issued under the Housing (Miscellaneous Provisions) Act 1992. Section 10 notices allow eviction of Travellers but under tightly circumscribed circumstances. Evictions can only proceed if there is appropriate accommodation available elsewhere or the affected persons are within one mile of an existing halting site – although, as submitted below, this provision has been abused in practice.
54. Professor Binchy, a former Irish Human Rights Commissioner and Regius Professor of Law at the University of Dublin, Trinity College notes that there is a panoply of other laws that could be used to address large-scale encampments and any anti-social behaviour that might flow from them:

The mischief which s. 19C is professedly designed to address – the damage caused by the assembly of large numbers in one place – is already subject to wide-ranging criminal and civil sanctions.⁶⁸

55. The law also suffers from vagueness in its formulation, which may enlarge the scope and reach of the provision. An alternative to the straightforward offence of entry and occupation upon land is the offence of being 'likely' to substantially damage the land, substantially affect an amenity on the land, prevent persons using the land or amenities on the land, render the use of the land unsanitary or unsafe or substantially interfere with the land or any amenity on the land (see section 19C(1)(b)). This harm may be caused through the entry, occupation or bringing onto or placing on the land of an object. The use of the word 'likely' means that a person does *not* have to cause any *actual* harm. Rather, the mere *potential* for harm constitutes an offence. This is not to say that the *likelihood* of causing damage should be excluded from criminal law (it may be appropriate in cases of drink-driving, for example), but the wording in the current case means that the police have a very low burden to satisfy in concluding that a criminal offence has been committed. Professor Binchy states, 'The likelihood of detrimental effect is so subjective and elastic a requirement as to make it, in practice, impossible for a trespasser to stay once he or she has been told to leave by the Garda.'⁶⁹
56. In short, it is submitted that the eviction provisions of the Public Order Act are unreasonable and disproportionate in that: there was no objective need for their enactment; they are incompatible with other obligations of the Irish government; they are unduly vague; and they fail to restrict evictions to circumstances that would be consistent with international human rights law.

Lack of due process consistent with the rights of those affected

57. The law violates almost all of the ordinary requirements found in protections against forced eviction, and indeed in most criminal legislation. In essence, the law permits extra-judicial and summary eviction of Travellers living informally on public and private land.
58. First, the Gardai are not required under Section 19A-G to provide any *notice* to the affected persons or secure a court order in advance. There is not even a requirement for a warrant to be issued for the person's arrest. While summary arrest may be necessary in some circumstances, the fact that a person's home is at stake means that, even if an eviction is justified, a reasonable notice period is necessary for families to adjust their lives in terms of accommodation, employment, education and access to basic services such as health care.
59. Second, the law does not afford the affected person any *defence*. It is pertinent to examine Section 2(1) of the Criminal Damage Act 1991 (Ireland), which states:

A person who *without lawful excuse* damages any property belonging to another intending to damage any such property or being reckless as to whether any such property would be damaged shall be guilty of an offence' (emphasis added).

Under the Criminal Damage Act, a 'lawful excuse' is a *belief*, whether justified or not, by the accused person that the owner of the property consented or would have consented had they known about the possible damage or circumstances or that the damage was done to protect themselves, another

⁶⁸ William Binchy, 'The criminal trespass legislation: implications for human rights protection in Ireland: a one-day seminar at Trinity College Dublin on Tuesday, 23rd July 2002' University of Dublin, 2002.

⁶⁹ *Ibid.*.

person or other property and such protection was necessary in the circumstances.⁷⁰

60. Further, Section 10 Notices in essence provide for a lawful excuse since a Traveller can claim that no alternative accommodation is available. However, the Public Order Act provides no such provision for lawful excuses. There is nothing to restrain the exercise of the powers of the Gardai. This is so even in circumstances where the housing authority may be in breach of its statutory obligations to affected Travellers or the removal of the dwelling would give rise to some significant detriment or injury which are particular to their circumstances.
61. Third, the Public Order Act reverses the onus of proof in relation to whether consent was given to a person to reside on the land. Section 19G(2) provides that:

In any proceedings for an offence under this Part it shall be presumed until the contrary is shown that consent under this Part was not given.

Such a reversal of proof for one element of the offence calls into question the fundamental premise of the presumption of innocence and certainly the notions of fairness and equality of arms, particularly where accused persons are generally highly disadvantaged persons with limited financial and other resources and in circumstances in which it ought to be relatively simple for the state to establish the presence of consent.

62. Fourth, the legislation effectively denies an affected person an opportunity for judicial review. If the police believe that a person has committed the offence of trespass under the Act, they can be summarily evicted. Moreover, the affected person will instead be forced to face criminal proceedings. In these circumstances, it is not surprising that most Travellers move on in the face of orders from the police, despite the lack of alternative halting sites.
63. Fifth, Travellers are confronted with the loss of their property, including their home.
64. Sixth, there is no provision in the legislation requiring police to take account of the infringement of other rights, particularly the right to health and education. Summary eviction can have debilitating consequences for ill and elderly persons, children, and others who may require access to ongoing medical services or stability in order to recover from disease. Eviction may also have devastating consequences for the education of children and young persons.
65. Seventh, the Public Order Act fails to provide for any system of provision of alternative accommodation, in particular halting sites. Again this legislation sees an erosion of the rights (theoretically) provided for under Section 10 Notices provide for such alternative accommodation and the Traveller Accommodation Act obliges local authorities to provide both *permanent halting sites and transient sites*, there is no obligation on the police under the Public Order Act to ensure that Travellers have an alternative site to go to.
66. Eighth, in some counties, the use of the Public Order Act has resulted in the loss of priority for some Travellers in the local authority waiting lists for accommodation. According to the ITM, families are 'forced to leave a local authority area due to the use of the 1994 Act against them, they lose priority on

⁷⁰ See Sections 6(2)-(5).

that local authority's housing list or may completely lose communication with the local authority and could be removed from the waiting list.'⁷¹

67. In light of the above arguments, it is submitted that the Public Order Act fails to ensure due process that is consistent with the rights of the affected persons.

Lack of respect for nomadic lifestyle

68. The law is also an attack on the nomadic culture of many Travellers and has essentially largely criminalised nomadism. The right of Travellers to a nomadic lifestyle has been recognised as a right by the Committee as well as the European Court on Human Rights and the Ministers of the Council of Europe (paragraph 48 above). The criminalisation of trespass under the Public Order Act, particularly in combination with the failure to provide both permanent halting sites and transient sites, means that those Travellers without access to any halting sites effectively face the choice of discontinuing a nomadic lifestyle or committing acts of criminality and having their home (their caravan) seized. For the remainder of nomadic Travellers who have access to permanent, temporary or emergency accommodation, the complete failure of the government to provide transient sites means that nomadism is almost impossible to practise legally in Ireland, since very few halting sites are available in the country for such purposes, despite the clear provisions of the Traveller Accommodation Act.
69. The legislation also puts significant pressure on Travellers to accept non-Traveller-specific housing, as it serves as an obstacle to their being able to be provided with Traveller-specific accommodations (such as group housing or halting sites). In practice, this leads to forced assimilation (see paragraphs 89 and following below).

Discrimination

70. The Public Order Act indirectly discriminates Travellers, since it deprives them of their accommodation rights in practice. While the law is not explicitly aimed at Travellers, it is clear that its greatest impact will be upon those groups who do not have access to legal accommodation, namely Travellers and other homeless persons. The law also practically prevents Travellers from being able to practice their nomadic life. The ERRC is not aware of any instances of this procedure being used against anyone else but Travellers.
71. In addition, there is sufficient evidence of racism against Travellers by the police force. In March 2005, the Human Rights Office of the police force issued a damning indictment of police officer attitudes, particularly in relation to Nigerians and Travellers. The fifteen recommendations of the report were accepted by the Police Commissioner – including undertaking a human rights impact assessment of all existing policy and operational procedures and the need to identify and tackle institutional racism – but evictions under the Public Order Act have still continued.

Section 10 Notices

72. As with the Public Order Act, it is submitted that the regime for evictions set out in Section 10 of the Housing Act 1992 (see paragraphs 27-31 above) is incompatible with Articles 16 and 30 of the Charter. Incorporating amendments from 1998 and

⁷¹ National Traveller Accommodation Consultative Committee to the Minister for Housing and Urban Renewal, *Review of the Operation of the Housing (Traveller Accommodation) Act*, Dublin, June 2004 ('NTACC Report'), p. 70, available at <http://www.enviro.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,14966,en.pdf>.

2002, there are three different provisions under Section 10 that provide for evictions:

- Section 10(a) permits eviction by a local authority of Travellers who live within 5 miles of a halting site that, in the opinion of the housing (local) authority, could accommodate the temporary dwelling, in most cases a caravan. The Travellers are to be served a notice which requires them to move to that halting site.
- Section 10(b) permits eviction by a local authority where the Travellers' dwelling is unfit for human habitation due to lack of essential services, is likely to obstruct public and private amenities, or causes a significant risk to health and safety. Further, there must be a site managed by the authority to which the Travellers can be relocated. A notice must then be served on the affected Travellers.
- Section 10(c) simply permits a local authority to evict Travellers encamped within one mile of an existing site managed by the local authority where the temporary dwelling: (i) is causing a nuisance or obstruction to the occupants of that site or of any dwelling within a one-mile radius of the site; (ii) 'creates a risk to the quality of water, sanitary, electrical or other services' associated with that site or traveller accommodation or other dwellings within a one-mile radius of that site; or (iii) interferes with the use, enjoyment, or maintenance of any public or private facility or amenity within a one-mile radius of the traveller accommodation. The local authority may issue a notice and the Travellers must move. No appropriate alternative accommodation must be provided.

73. On first reading, the provisions in section 10 adopt a more nuanced approach to evictions than does the Public Order Act. However, the law is not consistent with the Charter prohibition on forced evictions since it lacks due process and has been inappropriately used in practice.

Lack of due process

74. The Section 10 notices do not conform to the Charter for four key reasons. First, there is no requirement upon the local authority to consult with the Travellers over alternatives to eviction and the local authority is not required to take into account relevant circumstances, such as the circumstances of the original occupation, the contacts the family may have with local services and schools and whether any of the occupants may be elderly or ill.
75. Second, the notice requirement for Section 10 Notices is 'not less than 24 hours'. It is difficult to conclude that such a provision constitutes reasonable notice, given the consequences of eviction and the difficulties in relocating, particularly under section 10(c) where no alternative accommodation must be provided. In the case of section 10(a) notices, one month's notice may be appropriate since the family would be residing within five miles of an available halting site.
76. Third, there is no provision for a speedy legal appeal to the evictions. Travellers can lodge a legal complaint, and in some cases have been successful, but this takes a significant amount of time and legal costs are generally prohibitive.
77. Fourth, the legislation glaringly fails to provide for alternative and appropriate accommodation when an eviction proceeds. Under section 10(a) this is required but is doubtful whether it is available in practice. With Section 10(b) notices, alternative accommodation must be provided within the *local authority area*, yet this may mean relocation to a different city or town and the circumstances of such relocation must be made consistent with human rights norms. Section 10(c) is the

most problematic clause where there is no requirement at all for alternative accommodation or protection from homelessness. The notice must simply specify that the Traveller must move one mile from the present location.

IV.2.ii EVICTIONS IN PRACTICE

78. In addition to the legislation on evictions being *prima facie* contrary to the Charter, both statistics and a wealth of case studies demonstrate that the way legislation is used is contrary to the Charter too. The following represent just some of the evictions undertaken under the above-mentioned legislation over the past several years, which, unless stated, have been documented by ITM and the ERRC. It is difficult to assess the full impact as national records are not kept. Figures obtained by the Irish Times through the Freedom of Information Acts showed that between 1 June 2000 and 31 May 2003 a total of 1030 Traveller families were served Section 10 notices⁷². In 2005 Pavee Point used the Freedom of Information Acts to request similar information but the response was disappointing and made it difficult to construct any national overview.
79. **Mahon Rd, County Cork, May 2003:** Members of An Garda Síochána came with a tow-truck following orders from Cork City Council under Section 10 Housing (Miscellaneous Provisions) Act 1992 to evict six families illegally encamped on a halting-site laneway. Five of the families left but one family rejected the request and their 'children's trailer' was then seized. Inside this trailer were the clothes of the children together with their schoolbooks. Some children locked themselves inside the remaining caravan, while others removed the wheels of the van so it could not be towed. After five hours, the Gardai left, promising to return. The older son slept in the boot of a car parked next to the trailer; three of his brothers slept in other cars on the site. Others had taken their children to a women's refuge. The disruption prevented the older son from sitting his exams for a Junior High School Certificate, with the exams due to be held the week after the eviction.
80. **South County Dublin, December 2002:** A family reported that on the morning of Christmas Eve, 2002, police arrived to evict them from a field under Section 19 of the Criminal Justice (Public Order) Act 1994 as amended by Housing (Miscellaneous Provisions) Act 2002. The family pleaded that the eviction take place after Christmas, but the request was refused. It was also raining heavily during the day. The police proceeded to remove the caravan from the field and deposited it approximately 20 kilometres away from the original site. The caravan was damaged during the incident.
81. **Ennis, County Clare, June 2011:** A family with six children including a six week old baby suffering with a heart condition and awaiting heart surgery were served with a 'section 10' eviction notice while camped on council ground. The caravan was lifted onto the back of the impound truck with the children still inside. The family moved on but was served with another notice at their next location on Friday 1 July. Telephone calls were made on their behalf stressing the importance of the weekly visits from the public health nurse and requesting that the eviction be halted until Monday to give them a chance to source emergency accommodation. This was denied to the family. When the defective notice was challenged in the High Court it was met with cross proceedings for an injunction. The matter was settled.

⁷² Joe Humphreys, 'When a child's bed is a car boot: Increasing numbers of Travellers are being evicted, but are the local authorities targeting the real problem', *The Irish Times*, 19 July 2003, p. 53.

82. **Balbriggan, County Dublin, June 2009:** A mother and her ten children were homeless and camping at a halting site in Balbriggan, North Dublin. Riot police arrived to evict the family and they moved that day to a halting site that had been closed down in the neighbouring council area of Drogheda. On the very same day the mother and her ten children were evicted from this location. In order to avoid another eviction the mother moved her family to a field off the road and a few weeks later she was served with a notice under the Public Health Act 1878. The notice issued by the council required her to move on within 24 hours despite the fact that the Act only permits an eviction on the basis of a court order. Only once a solicitor from the Irish Traveller Movement intervened did the Council call off the eviction.
83. **Blanchardstown, County Dublin, September 2009:** A couple living on a halting site were served a 'section 10' notice. The husband had recently been released from hospital with a serious heart condition. He was extremely weak, weighing only 5 stone. When the caravan was lifted onto the trailer the husband attempted to go back in to retrieve his heart medication and was physically restrained by those evicting him.
84. **County Waterford, January 2009:** The Irish Independent reported⁷³ the eviction of a Traveller family of five from a halting site in Waterford City, and had not been offered alternate permanent accommodation. Two of the children (18-month-old twins) had serious health issues: both had Down's Syndrome and bronchitis, and one of the twins had a hole in her heart for which she was soon to have major surgery.
85. **Various locations, to May 2005:** The Irish Times reported⁷⁴ the situation of one Traveller family with eight children, who had been evicted 27 times in 13 years in seven different counties, under the 2002 anti-trespass legislation. Living by the side of the road, they had been unable to stay in one authority's jurisdiction long enough to be granted 'indigenous' status and be placed on a council housing list. Their only offer of housing was a transient site 20 miles from where their children were attending school, and from the hospital where their haemophiliac son was receiving treatment. They had tried to rent private housing, but had not found anyone willing to rent to the family.
86. **Rathkeale, County Limerick, November 2010:** A lone parent with two children, aged 1 and 10, was forced to take up residence in a lane way after a house that had been assigned to her was burned down prior to her moving in. (It is believed that the neighbours found out that Travellers were moving into the house and so they burnt it down.) In order to force her out of the lane way, the local council placed boulders at the front and rear of her caravan so that she was unable to move her car and in turn she could not get her child to school and she missed a scheduled doctor's appointment for her son.
87. **Bishopstown, County Cork, May 2011:** A family became homeless as result of an illegal eviction from private rented accommodation in which the family were evicted once the landlord found out their ethnic identity. The family approached the Traveller Accommodation Housing and Community Directorate at city hall and was told they were 'too busy for her'. As a result the family were forced to reside in a caravan on an unauthorised site in very

⁷³ 'Breach of rights' as Traveller family evicted' *Irish Independent*, 29 January 2009
<http://www.independent.ie/national-news/breach-of-rights-as-traveller-family-evicted-1618600.html>

⁷⁴ 'No room on councils' housing list for traveller family' *Irish Times*, 23 May 2005
<http://www.irishtimes.com/newspaper/ireland/2005/0523/1116025817817.html>

unsatisfactory conditions and their four-year-old daughter could no longer attend her preschool.

88. **County Clare, 2012:** A family was served with Injunctive proceedings requiring them to remove their caravans from the side of the road. The family has a severely disabled child. The local authority did not provide safe, reasonable alternative accommodation for the family.
89. **County Wexford, July 2012:** A family with young children fled a difficult situation in Dublin. One of the family had serious mental health problems. The family were not in a position to return to Dublin. The local authority in Wexford initially refused to deal with the family's application for housing. Numerous section 10 notices issued as the family had no choice but to reside on the roadside illegally. Eventually as a result of advocacy by Irish Traveller Movement accommodation workers the matter was resolved.

IV.3 STANDARD OF HOUSING AND PROVISION OF TRAVELLER ACCOMMODATION

90. The Government of Ireland has been aware of the lack of accommodation for Travellers since the 1960s and, since 1998, they have recognised the need for culturally appropriate accommodation (see details in the following sections). Despite the development of strategies and the enactment of legislation, Ireland has: (i) failed to provide sufficient accommodation for Travellers, in particular Traveller-specific accommodation – namely permanent halting sites, group housing and transient halting sites; (ii) failed to develop a strong and enforceable legislative framework to ensure that the Traveller accommodation programmes are implemented, including failing to amend planning and zoning laws to ensure that land can be easily acquired and utilised for Traveller accommodation; and (iii) failed to ensure that Traveller halting sites are habitable and environmentally safe and that there is sufficient and affordable access to basic services such as water, sanitation, electricity and waste disposal. This complaint alleged that each violation, which will be considered in turn, amounts to breaches of Articles 16 and 30 of the Charter, read alone or in conjunction with Article E.

IV.3.i FAILURE TO PROVIDE SUFFICIENT ACCOMMODATION

91. As far back as 1963, the Commission on Itinerancy identified the housing problems of Travellers. But the Commission largely recommended an assimilationist policy. Not until the enactment of section 13 in the Housing Act, 1988, which stated that local authorities may provide and manage halting sites, was there positive legislation. In turn this was favourably interpreted by courts to impose a specific obligation on local authorities to provide halting sites. In the 1991 case of *University of Limerick v Ryan*,⁷⁵ Justice Barron found that the local authority breached the Act by failing to provide housing, holding that,

As a matter of construction of section 13, it seems to me that the statutory obligation to provide a caravan site for travellers is identical to the statutory obligation to provide dwellings for those of the settled community. The only difference lies in the nature of the housing to be provided.

However, other cases in the early 1990s reflected that the provision of such accommodation was insufficient.⁷⁶

92. In the mid-1990s, the government commenced a new round of legislative and strategic activity in order to address the large numbers of Travellers living by the

⁷⁵ Unreported, High Court, 21 February 1991.

⁷⁶ For example, *Co. Meath VE v Joyce* [1994] 2 ILRM 210 and *O'Brien v Wicklow* Unreported, High Court, *ex tempore* judgment, 10 June 1994.

roadside and without suitable halting sites. In 1995, the government-appointed Task Force on the Travelling Community reported that there was inadequate accommodation for the 1085 Traveller households who resided on the roadside. Another 257 households were found to be living on temporary sites that lacked basic services such as toilets, electricity and proper washing facilities.⁷⁷ The Task Force recognised that the availability and adequacy of Traveller accommodation was central to all aspects of Traveller life in Ireland; without it ‘improvements in educational and health provision will be difficult to undertake.’⁷⁸ The report acknowledged the close connection between Traveller accommodation and Traveller identity and recommended that the design of Traveller-specific accommodation⁷⁹ ‘reflect the distinct culture and identity of this group.’⁸⁰

93. The Task Force recommended the provision of 3,100 units of additional Traveller accommodation by the year 2000.⁸¹ This was to include 2,200 halting site bays and transient bays and 900 units of standard housing and group housing. The Task Force Report also called for a network of transient halting sites, with electricity, running water, sewage disposal and refuse collection, across the country.⁸² In cases of unauthorised Traveller encampments, ‘local authorities should be required to deal sensitively with such cases and use the option of eviction only as a last resort.’⁸³ The Task Force Report recognised that ‘the provision of Traveller specific accommodation is the desired option of many Travellers; for them it cannot therefore be viewed as an interim solution prior to settlement.’⁸⁴ In addition, it recommended the establishment of a Traveller Accommodation Unit in the national government, which would ensure the implementation of Traveller accommodation programmes, but this particular recommendation was not accepted as part of the ensuing legal and policy reforms despite repeated requests from Traveller organisations.
94. In 1998, this strategy was reflected in the Housing (Traveller and Accommodation) Act. The Housing (Traveller Accommodation) Act 1998 mandated that every local housing authority had to adopt a five-year Traveller Accommodation Programme, which must include provision for transient sites. The programmes were to be fully operational by 2000 and implemented by 2004. The Act explicitly required that the provision of accommodation had to be done in such a way that it met the distinct needs of Travellers and ‘address the accommodation needs of travellers other than as their normal place of residence and having regard to the annual patterns of movement by travellers’ (ss. 10(3)(b) and (c)). The range of accommodation had to include standard local authority housing, group housing, permanent caravan parks, transient halting sites and emergency provision. It also mandated that there should be provision ‘for the annual patterns of movement by travellers’ (s. 10(3)(c)). The local housing authorities were obligated to ‘take any reasonable steps as are necessary’ (s. 16(1) to implement the accommodation programmes. However, there are no sanctions or penalties in the Act if the local authorities do not implement the accommodation programmes.
95. Notwithstanding these targets, in 2011, the situation remains dire, as illustrated by the following statistics and case studies of families awaiting accommodation,

⁷⁷ Task Force Report, above n. 65, p. 55.

⁷⁸ *Ibid.*, p. 5.

⁷⁹ Traveller specific accommodation includes group housing, permanent halting sites and transient sites: *ibid.*, p. 101.

⁸⁰ *Ibid.*, p. 109.

⁸¹ *Ibid.*, p. 16.

⁸² *Ibid.*, p.18.

⁸³ *Ibid.*, p. 18.

⁸⁴ *Ibid.*, p. 101.

whose situations are often considerably worsened by being subjected to evictions whilst waiting.

96. Only four local authorities namely; Donegal, Westmeath, Leitrim, and Sligo have transient sites in operation in their functional area. None of these transient sites are operating as transient sites, instead they are being used for emergency accommodation. This fact combined with the use of indigenous clauses which require a connection to the area in order for families to get priority on the housing list has a serious effect on nomadism, an important part of Traveller culture. A serious decline in nomadism was noted in a recent report which states that: '[t]his trend no doubt is aggravated by the smaller numbers of temporary halting sites and an almost complete absence of services for transient or nomadic families.'⁸⁵ The Department of the Environment, Community and Local Government do not calculate transient accommodation delivery. The Report of the Task Force on the Travelling Community (1995) recommended that 1,000 transient units of accommodation were needed to accommodate nomadism. This is clearly not being prioritised by local authorities.⁸⁶
97. Standard Local Authority Housing: the number of Traveller families living in Standard Local Authority Housing has steadily increased over the 9-year period 2000-2009 from 2,110 to 3,300 families; this represents a rise of 56%.⁸⁷ The most significant increase as per the 2011 Annual Count was in County Meath increased from 82 to 111 families.
98. Private Houses assisted by Local Authority: the number of families has increased by 289% in the 9-year period 2000-2009 from 123 to 479.⁸⁸
99. Private rented accommodation: this is the most alarming count with an increase of 555 in the period 2009 - 2011 this followed a greater than twelve-fold increase in the 7-year period 2002-2009, from 162 families to 2,003 families. Nineteen of the 34 Local Authorities show an increase, The increase of 555 families living in private rented accommodation in the past two years clearly shows Local Authorities' preference for offering Travellers private rented accommodation over Traveller-specific accommodation.⁸⁹
100. Halting sites: Local Authorities are steadily decreasing the provision of halting sites through the country – there has been a decrease of 132 families accommodated in halting sites in the three year period 2006-2009. Counties such as Kildare and Clare which have amongst the highest increases in numbers of families in private rented accommodation also show the greatest decreases in numbers of families in halting sites. Twenty five Local Authorities show decreased numbers over the past two years. County Cavan, does not have any halting sites and Longford, Laois, Louth, Limerick, Clare, Donegal, Wexford, Kildare, Monaghan, Kerry and Sligo have shown decreases of between 100% and 28%.⁹⁰ The number of families in halting sites as per the 2011 Annual Count was 920, down 79 since 2009.

⁸⁵ Burke-Wood and Mathews, "The State of Traveller Accommodation: A Review on the 10th Anniversary of the Traveller Accommodation Programmes" 2010 Report commissioned by the Irish Traveller Movement.

⁸⁶ Irish Traveller Movement, *Report on Traveller Accommodation 2002-2009*, January 2011, p. 5.

⁸⁷ *Ibid.*, p. 2.

⁸⁸ *Ibid.*, p. 3.

⁸⁹ Irish Traveller Movement, *Report on Traveller Accommodation 2002-2009*, January 2011, p. 4.

⁹⁰ *Ibid.*, p. 3.

101. Unauthorised halting sites⁹¹: there are 327 families living in unauthorised halting sites, in conditions that are often unsafe, overcrowded and in most cases lacking in the most basic of facilities, such as water, sanitary and electricity services. In ten Local Authorities the number of unauthorised halting sites has either increased or remained the same when compared with the previous year.⁹²
102. Sharing Accommodation: there are 492 families (approximately 1900 people) estimated to be sharing accommodation. This figure represents an increase of 102 families since the 2009 Annual Count. In some cases families are living three families to a house or, three trailers in a small bay with upwards of 16 people using one portable toilet. The combined total of shared accommodation and unauthorised sites amounts to approximately 4,000 people living in at best, basic and at its worst, hazardous and deplorable conditions throughout Ireland, despite the Traveller Accommodation Programmes locally. A considerable number of those families are waiting to be accommodated for many years with little hope of any change soon.⁹³
103. Population Growth: the returns of 2011 identify 9,535 Traveller families residing in the Republic of Ireland, however this is a very significant underestimation according to the All Ireland Traveller Health Study (September 2010) which estimates the then figure at 10,618 families. A rise of 42% in the Traveller population is highlighted in the returns from the Department of the Environment, Community and Local Government over the 9 years 2000-2009 analysed in the Irish Traveller Movement Report on Accommodation (2011). The Task Force on the Travelling community estimated a rise of 4% per annum in the Traveller population; this therefore shows the population has surpassed the estimated growth, even without taking account of the 1,675 families not enumerated, as described. According to the figures released in the 2011 Census, the number of Traveller families living in Ireland has increased by 32% from the 2006 figure of 22,435 to 29,573.⁹⁴
104. Traveller Accommodation programmes are not meeting the needs of many Traveller families identified within, this situation is exacerbated by the growth in the Traveller population, which is not taken into account. In the period 2002 – 2009 there has been an increase of 2,654 Traveller families in need of accommodation nationally. The total accommodation provided by local authorities over the 2006-2009 period represents an increase of 6% however in this time the Traveller population has increased by 16%.⁹⁵

IV.3.ii FAILURE TO CREATE A SUFFICIENTLY STRONG LEGISLATIVE FRAMEWORK

105. There is an absence of an absolute requirement in the Traveller Accommodation Act 1998 on local authorities to implement accommodation programmes. Section 16 requires local authorities to 'take any reasonable steps as are necessary for the purpose of such implementation', and the concern has been raised that the section is not breached, despite the failure to provide any housing, if the authorities can argue that they have done all that is reasonable. The European Commission on Racism and Intolerance reported on Ireland that:

One of the main barriers to improvement of the situation as regards accommodation is reported to be the unwillingness of local authorities to provide accommodation and

⁹¹ A site that has been set up without the permission of the State or a site that was previously operational but that the State has now closed.

⁹² Irish Traveller Movement, *Report on Traveller Accommodation 2002-2009*, January 2011, p. 4.

⁹³ Irish Traveller Movement, *Report on Traveller Accommodation 2002-2009*, January 2011, p. 3.

⁹⁴ See para. 44 above on the accuracy of these numbers.

⁹⁵ *Ibid.*, p. 5.

resistance and hostility among local communities to planned developments, often resulting in injunctions and court cases. In this respect, it has been commented that the fact that no sanctions are provided for in the Housing (Traveller Accommodation) Act against authorities who do not take measures to provide accommodation for Travellers may weaken its effectiveness.⁹⁶

106. The NTACC Committee has argued that there may be good reasons for delay such as the failure to complete a compulsory purchase order of land for an accommodation programme or the lack of funds. However, fourteen years after the enactment of the law, such a 'reasonableness approach' cannot be appropriate and an absolute obligation, potentially combined with penalties, is now required.

IV.3.iii FAILURE TO ENSURE ADEQUACY OF EXISTING SITES

107. Ireland has also failed to ensure adequate living conditions on Traveller halting sites, even when these are official sites, particularly in relation to access to basic services, habitability and protection from environmental hazards and their location in terms of access to education and employment.
108. There are numerous and serious problems across the country regarding health, pollution, safety and overcrowding. There are severe problems with lack of adequate sanitary services, the absence of electricity supply or inconsistent supply and the lack of services available to people with disabilities. 'Six permanent halting sites reported having people with disabilities living on the sites in an absence of services, with two sites in particular commenting on the bad condition of the site.'⁹⁷
109. Overcrowding is of particular concern and is most notable on temporary sites. 'While a total of 121 units were counted across temporary sites, 199 families are reported to be living there. This discrepancy between the total number of temporary halting site bays and the families reported to live there would indicate that overcrowding is a serious issue in this accommodation type.'⁹⁸
110. The geographic isolation of sites with lack of access to public transport and school bus services is also prevalent. 'There were 9 accounts of sites being located in isolated locations without public transport and/or a footpath for walking, with some surveys reporting dangerous road conditions specifically.'⁹⁹ It is noted that cuts to the School Transport System are severely affecting Traveller children who often have no alternative means of getting to school.
111. Furthermore, the land used for sites is often not entirely suitable for housing: 'near industrial estates (Cork and Kilkenny); near a factory (Wexford); near a used or disused dump (Cork North and Clare); by a river (Carlow and Waterford); with sewage and water contamination problems nearby (Roscommon); with unsafe gas levels (Limerick); near a dual carriageway (Cork North) or motorway (Cork South).'¹⁰⁰ These locations result in rat infestation, flooding and problems with water sanitation. 'There is at least one death directly related to the dangerous quality of the site: the death of a child, from a rock fall on the site

⁹⁶ European Commission against Racism and Intolerance, *Second Report on Ireland*, 23 April 2002 (Strasbourg: Council of Europe, 2002), p. 22, para. 72, available at http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_02/02_CbC_eng/02-cbc-ireland-eng.pdf

⁹⁷ Burke-Wood and Mathews, "The State of Traveller Accommodation: A Review on the 10th Anniversary of the Traveller Accommodation Programmes" 2010 Report commissioned by the Irish Traveller Movement p. 3.

⁹⁸ *Ibid.*, p. 3.

⁹⁹ *Ibid.*, p. 4.

¹⁰⁰ *Ibid.*, p. 4.

located beside a cliff. That site has been officially condemned but not yet closed and an extended family is still in residence there.¹⁰¹

112. ITM reports a worrying trend very recent years in relation to an increase in the installation of CCTV cameras on halting sites. There have been a number of reports of CCTV cameras being installed recording children as they play and looking into caravans, there is concern in relation to child protection issues resulting from the collection of the images of children and unwarranted interference with private and family life.
113. The threat of fire, aggravated by overcrowding and the presence of a locked height barrier at many of the sites to which families do not have a key, is also notable. While limited numbers of local authorities provide keys to the height barrier to residents a significant proportion do not: 'While a number of returned surveys stated specifically that in instances where families do not have a copy of the key to the barrier, emergency services had access to a master key. However, another survey said the barrier had been broken by emergency services to gain access, raising questions about the availability of a master key.'¹⁰²
114. The 2010 All Ireland Traveller Health Study states: 'Considerable numbers of families who lived in Group Housing or sites reported a lack of footpaths, public lighting fire hydrants and safe play areas, the latter being unavailable for 77.5% of ROI and 79.9% of NI respondents. A quarter of families (24.4% ROI and 24.8% NI) considered where they lived to be unhealthy or very unhealthy and again appreciable numbers (26.4% ROI and 29.0% NI) considered their place of residence unsafe.'¹⁰³ This is borne out in the report's statistics on doctor-diagnosed illnesses amongst the Traveller population as against the general population¹⁰⁴.
115. **Spring Lane Halting Site, Cork City, County Cork:** Spring Lane is a halting site situated on the outskirts of Cork City. The site is located at the bottom of a deep slope, although to enter the site one must climb up a steep hill. Spring Lane is located between motorways. Ongoing sewage problems and rat infestation are a hazard to all inhabiting the site, especially children. There are no heating in the units and the site is poorly equipped and dilapidated. The site is potholed and dangerous to navigate. The walls separating the bays are broken and families are living in an extremely close proximity to one another.
116. **St Margaret's Halting Site, Ballymun, County Dublin:** the most pressing issue on this site is the lack of consistency with the electricity. Between November 2009 and February 2010 they occurred on a daily basis. The failure of the electricity supply has caused serious problems to residents, including one who is constantly attached to a nebuliser and oxygen machine to enable her to breathe. When the electricity goes off, so does the machine. A number of the children on the site have suffered with pneumonia, believed to be caused by the poor condition on site. The site partially opens out on to a very busy main road. There is no street lighting and no footpath which is dangerous considering the presence of children and the proximity of the busy road. There are two children on site with degenerate disease and the site is not wheelchair accessible. The site is 13 years old and has

¹⁰¹ Ibid., p. 4.

¹⁰² Burke-Wood and Mathews, "The State of Traveller Accommodation: A Review on the 10th Anniversary of the Traveller Accommodation Programmes" 2010 Report commissioned by the Irish Traveller Movement p. 4.

¹⁰³ *All Ireland Traveller Health Study: Demography & Vital Statistics: Part A of Technical Report 2*, September 2010, p.46, available at:

http://www.dohc.ie/publications/aiths2010/TR2/AITHS2010_TechnicalReport2_HR_PartA.pdf?direct=1

¹⁰⁴ Ibid., p. 65.

not been refurbished since it was built. Rent of €14 per week is payable to the local authority.

117. **Ballymaley Halting Site, Galway Road, County Clare:** the service units on the site are in an extremely poor and dangerous state of repair. Ceilings are collapsed, wires are so much exposed, that they are hanging halfway between what is left of the ceiling and the floor. The insulation padding in the ceilings is in a similar condition. At the time of a visit in 2010, the shower had been broken for 9 months and, despite having reported it to the local authorities, no one had come to fix it, and so the families were forced to take their children to the local swimming pool to shower in a clean and hygienic environment. The bathroom leaked for months and it was not until it collapsed that it was dealt with by the local authority. The site is extremely isolated. There is no public transport and it is located a quarter of mile over the limit for the school bus run. One family has no car and relies on neighbours for support. The family has four children under the age of six. There is no recreational area for children and, at the time of the 2010 visit, the children were playing with a broken car. A few years ago there was constant security on site put in place by the Local Authority. The security guard was an ex-member of An Garda Siochana and constantly interrogated those who went into and out of the site. The council refused the residents access to the key to the height barrier on the site effectively meaning that access could not be provided for large vehicles such as fire brigade trucks and ambulances in case of emergency. The height barrier was removed by the residents out of frustration and has not since been replaced. The site was built in April 2003 and has never been refurbished. As no heating is provided, they are reliant on gas and oil heaters which are not only expensive but dangerous to run. The residents pay €30 a week in rent to the local authority.
118. **Cloncarlin Halting Site, Monasterevin, County Kildare:** this site is in an extremely isolated rural location. The site is three miles from the nearest shop/town in Monasterevin. There is only one way into the site and one way out. The old road that made the site more accessible was closed when the new bypass was built. The family living on the site felt so secluded that they acquired a dog for their protection. There is a service unit with unheated showers. The mother in the family has been sick and on medication from the lack of heat in the service unit that also contains the toilets and laundry area. The family pays the local authority €26 a week to live at the site.
119. **Long Pavement, Limerick City, County Limerick:** there are 50 children on site and the road the site opens out on to is notorious for joyriding. There is no path directly outside the site and residents must walk out on to a main road, with no pavement or footpath, to exit the site by foot. Despite refurbishment two years ago the residents continue to live in an unsafe environment. The deplorable lack of fundamental facilities is resulting in severe health conditions in both children and adults alike. One resident's wife died from Weil's disease, caused by microorganisms found in rat urine. Long Pavement is built on a dump and the rat infestation is rife. Lack of drainage, water logging and poor structures contribute to the problem.
120. **Toppins Field, Limerick City, County Limerick:** the site is situated between two empty fields, where illegal dumping is a serious problem. On the site there are highly inadequate and unmaintained service units. The unit containing the toilets is exposed with no doors. It is rat-infested, damp and cold. The ceilings are unsafe and falling in and the wiring is exposed and open to the elements. One family interviewed said there has been no caretaker on the site in 12 months. In their caravan there was a constant sound of water, which came from the boiler

which was overflowing and flooding the caravan. This was extremely unsafe, especially as there was a toddler present in the house at the time. The family managed the leak by collecting the water in a baby's bath, which had to be emptied several times a day. There is a small, highly inadequate and unmaintained toilet. This toilet is used by two adults and their 16 children. One woman and her four children are constantly ill with kidney infections, asthma and bronchitis. Residents were repeatedly promised that refurbishment and upgrading to the site would be completed by September 2009. Despite on-going requests from residents to the council for renovation, to date there has been no action by the local authority. The rent payable to the council varies between €25 and €60 per week and is taken directly from the residents' social welfare payment.

121. **Bawney's Bridge Halting Site, County Limerick:** the site is located beside the Grassland Fertiliser Plant. In 2009, the local authority commissioned a Health and Safety Authority Report with a view to carrying out works on the site. The report was obtained by local Traveller workers under the Freedom of Information Act. The report of 9 January 2009 stated that the site on which the families were living was located in Zone 1, which the report advised is an area in which there should be no "residential, office or retail" units as the Health and Safety Authority had categorised the plant as an explosion hazard recommending a 350 metre exclusion. Following several expressions of concern from residents of the site to the local authority there is still no confirmation for these families that it is safe to reside there.
122. **Ballinacullia Halting Site, County Roscommon:** on a visit to the site in 2010, water was found to be pouring out of the toilet door in the service unit continuously. Due to cold weather, the water had been freezing and one woman, who was 4 months pregnant at the time, had slipped the previous week. There are no laundry facilities. A resident reported receiving an electric shock from one of the power sources. On one occasion when using the water to brush her teeth her mouth broke out in blisters. Now they do not use the water. They do not have a regular supply of electricity to their bay. They have suffered from frequent stomach upsets and facial rashes since moving onto the site.
123. **Moyne Park Halting Site, Baldoyle, County Roscommon:** in late 2012 residents reported problems in accessing basic services and sanitation. They reported cuts in electricity, lack of hot water and generally hazardous conditions, including holes in paths, exposed nails and glass on the ground.
124. **Bunclody Halting Site, County Wexford:** The County Council installed CCTV cameras on the site. The residents allege that the cameras were looking into their bays and that representatives of the local authority spoke through loudspeakers attached to the cameras when the children were playing. ITM made representations on behalf of the families. The direction of the cameras was changed following the representations, but remain present. It is also to be noted that the site lacks sufficient lighting. The local authority have continuously ignored requests to install lighting and older and more vulnerable residents and their families are not in a position to walk around the site safely after night-fall.

V SUMMARY

In consideration of the above, the ECSR is respectfully asked to find Ireland to be in violation of the following provisions of the Revised European Social Charter alone and/or in conjunction with Article E:

- 1) Articles 16 and 30 in respect of evictions, in particular the following taken separately and/or cumulatively:
 - i) the non-conformity and inadequacy of national legislation on evictions;
 - ii) the arbitrarily interchangeable use to the national legislation;
 - iii) the practice of forced evictions of Travellers
- 2) Articles 16 and 30 in respect of substandard housing conditions, in particular taken separately and/or cumulatively:
 - i) the failure to provide sufficient accommodation to Travellers;
 - ii) the failure to create a sufficiently strong legislative framework in respect of Traveller accommodation;
 - iii) the failure to ensure the adequacy of existing sites.
- 3) Article 17 in respect of the negative impact of evictions and inadequate accommodation on children's wellbeing and, in particular, their school attendance.

125. The ECSR is respectfully requested to direct the payment of costs incurred in the preparation of this report, to be detailed in due course.

Dezideriu Gergely
Executive Director
European Roma Rights Centre

16 April 2013