



European  
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COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

**15 July 2014**

**Case No. 4**

**European Roma Rights Centre (ERRC) v. Ireland**  
Complaint No. 100/2013

**RESPONSE BY ERRC TO THE GOVERNMENT'S  
SUBMISSIONS ON THE MERITS**

**Registered at the Secretariat on 30 June 2014**



## I INTRODUCTION

1. The European Roma Rights Centre ('ERRC') wishes to acknowledge at the outset of these observations the key role of Aoife Nolan and Malcolm Langford, both then of the Geneva-based Centre on Housing Rights and Evictions, in relation to drafting the original complaint in this matter. The ERRC also wishes to reiterate its thanks to the Irish Traveller Movement (also referred to as 'ITM'), whose contribution to these Observations was vital. For ease of reference, the observations follow the same structure as the Government's Observations in defence ('GO').
2. In response to § 2 GO, the ERRC reiterates its position that the Government of Ireland has not ensured the satisfactory application of Article 16 and Article 30 of the Revised European Social Charter. The State's note that it has not adopted Article 31 is not relevant — neither did the ERRC assert such a fact, nor, as the Government concede, does it diminish Ireland's responsibility in relation to adequate housing and forced evictions.

## II APPLICABLE PRINCIPLES OF INTERNATIONAL LAW

3. In response to §§ 4-5 GO, the ERRC reaffirms its contention that Ireland, both in general and in the particulars given, has violated the Charter, leading to the perpetuation of a system of social exclusion and unacceptable living conditions where Travellers are subject to discrimination, receive inadequate services, and live in a state of fear and insecurity.

### II.1 ECSR Jurisprudence

#### II.1.i The duty to protect the family and the right to adequate housing

4. At § 7 GO, when addressing the State's responsibility to protect the rights of the family and provide adequate housing, the Government misleadingly frame their argument by emphasising that Article 16 does not *'impos[e] on States an obligation of "results"'*, extrapolating from the Committee's case law under Article 31. The ERRC recalls that the Committee itself did not leave the matter at that: just after the quoted excerpt from the Committee's case law, the Committee *'note[d] that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form'*.<sup>1</sup> Indeed, the reasoning of the Government — that they should be judged by their efforts alone — tracks the French Government's reasoning the Committee was condemning in the cited report. In the preceding statement in the same paragraph, however, the Committee cautioned against purely theoretical 'frameworks' which had little positive effect on the ground: *'the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full*

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<sup>1</sup> FEANTSA v France, Complaint No. 39/2006, Decision on the Merits, 5 December 2007, § 55.

effect to the rights recognised in the Charter'.<sup>2</sup> Furthermore, the ERRC does not merely complain about the inadequate provision of accommodation and the inadequate framework in place to ensure the rights of Travellers; the ERRC also complains about violations of what are best described as negative obligations not to subject Travellers to unlawful evictions: '*the obligation to promote and provide housing extends to security from unlawful eviction*'.<sup>3</sup>

5. The ERRC does not have any specific comments in response to §§ 8-10 GO except to note that the Government's statements must be read in the light of the principles set out directly above.
6. What the Government assert at § 11 GO is not correct. Examples of Traveller specific accommodation without basic amenities and that are overcrowded are outlined in the complaint and in these observations.
7. As set out below, much of the Traveller specific ring-fenced budget discussed at § 12 GO has not been used by the State in the provision of Traveller specific accommodation; the Government admit that there is a significant under-spend. As set out further in this document, issues in relation to value for money have not been assessed or analysed by the State, despite recommendations from members of the National Traveller Accommodation Consultative Committee ('NTACC'). The complaint and these observations show that there are a large number of families living in conditions that fail to meet minimum standards under the Charter.

## II.1.ii Evictions

8. The ERRC accepts the overall summary of the Committee's case law at §§ 13-14 GO, but notes, as set out in the complaint, that Irish legislation permits evictions which do not meet the criteria for forced evictions described in the Committee's jurisprudence. The Government have also omitted to cite recent significant developments within the Council of Europe in the area of forced eviction. On 17 October 2013, the European Court of Human Rights ('ECtHR') delivered its (now final) judgment in *Winterstein v France*, setting out the principles governing forced evictions under Article 8 of the European Convention on Human Rights ('ECHR') (the right to respect for private life, family life and home).<sup>4</sup> The ECtHR noted in particular the right to have an independent tribunal determine the lawfulness of an eviction, a requirement which, under related ECtHR case law which also emerged since the collective complaint was lodged, must happen before an eviction takes place.<sup>5</sup> According to the ECtHR, forced evictions of Travellers are prohibited unless those being evicted are provided with alternative accommodation, except in cases of *force majeure*.<sup>6</sup> The ERRC respectfully submits that this ECtHR case law informs the relevant principles under the

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<sup>2</sup> *Id.*, § 47.

<sup>3</sup> ERRC v Bulgaria, No. 31/2005, Decision on the Merits, 30 November 2006, § 10.

<sup>4</sup> *Winterstein v France* (application no.27013/07), Judgment, 17 October 2013, § 148.

<sup>5</sup> *Rousk v Sweden* (application no.27183/04), Judgment, 25 July 2013, § 139

<sup>6</sup> *Winterstein v France* (application no.27013/07), Judgment, 17 October 2013, § 159.

Charter<sup>7</sup>. As set out in the complaint, notably under the Criminal Justice (Public Order) Act 1994 as amended ('the Public Order Act'), this is not guaranteed under Irish legislation.

9. The ERRC contests the Government's claim at § 15 GO that in practice local authorities comply with their obligations under the Charter. As set out elsewhere in these observations, the Government have not outlined where, when or how, when carrying out evictions, local authorities comply with these obligations. The Government's response refers to generalisations and recommendations in relation to evictions, but, as set out below, the Government are not in a position to refute the claim that evictions are carried out in a manner inconsistent with the Charter. The domestic legislative framework does not provide for compliance with the Charter.

### **II.1.iii Article 30 and the right to protection from poverty**

10. The ERRC accepts what is stated at §§ 16-18.

### **II.1.iv Children and the Right to Education**

11. The ERRC accepts what is stated at § 19 GO.

### **II.2 Other international legal standards**

12. No response is needed to § 20 GO.

### **II.3 Discrimination in access to housing**

13. No response is needed to § 21 GO.

## **III. BACKGROUND TO THE COMPLAINT**

### **III.1 General Government Policy on Travellers in Irish Society & III.1.i Traveller Culture**

14. In response to the Government's assertions at §§ 22-27 GO that Travellers are treated well in Irish society, ITM reports that the recent local elections in Ireland once again highlighted the endemic and casual nature of racism and anti-Traveller discrimination in Ireland by the individuals responsible – without sanction in the event of non-performance – to provide Traveller accommodation. A review of the election campaign literature in the recent local authority elections shows some candidates actively promoting anti-Traveller propaganda

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<sup>7</sup> The Committee considers itself bound to not depart from international human rights norms, in particular to the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights. See §68-69 of International Movement ATD Fourth World v France, No. 33/2006, Decision on the Merits, 4 February 2008, stating "The Committee considers that Article 31 must be considered in the light of relevant international instruments that served as inspiration for its authors or in conjunction with which it needs to be applied. This applies above all to the European Convention on Human Rights. The Committee is particularly concerned that its interpretation of Article 31 is fully in line with the European Court of Human Rights' interpretation of the relevant provisions of the Convention."

as a means of getting votes and securing election. For example, Dublin South candidate Josepha Madigan actively promoted her campaign with a stance against the long planned proposal to develop a halting site at Mount Anville in her constituency. Ms Madigan publicly described the plans as '*a dreadful waste of taxpayers' money*' (the site that she was referring to had been purchased for the purpose of providing Traveller specific accommodation almost twenty years earlier).<sup>8</sup> In South County Dublin, another Fine Gael candidate, Emer Higgins, told residents that she '*was delighted*' to announce that proposed Traveller accommodation would not proceed.<sup>9</sup> This was as a result of the County Council deciding not to proceed with the purchase of ten partially-built dwellings that were to be a Traveller group housing scheme. The Fine Gael party (the largest in government) have not dismissed either of these candidates who were successful in attaining and retaining seats in the most recent local elections.

15. In Donegal, a Fianna Fáil Councillor, Cllr. Sean Mc Eniff spoke with journalist Niall Delaney about Travellers on Ocean FM on 17 January 2013. Cllr. Mc Eniff was opposing the purchase of a house for a Traveller family who had been awaiting accommodation for over a decade in Donegal. Cllr. McEniff said: '*The situation is Niall, I think there should be an isolated community of them some place. Give them houses and keep them all together*'. Subsequent to Cllr. Mc Eniff making these comments, the house which was purchased at a cost in excess of €200,000 was destroyed in a fire started by members of the non-Traveller community living in Donegal.<sup>10</sup> The Irish Traveller Movement organised protests and asked that the leader of Fianna Fáil dismiss Cllr. Mc Eniff. Instead, Cllr. Mc Eniff was successfully supported by Fianna Fáil in the recent local elections where he retained his seat.
16. It is clear that politicians belonging to parties that have (at least until the last local elections) been in control of local authorities since the foundation of the State are united in their acquiescence towards the discriminatory stance taken by its members on issues relating to Travellers. These recent events are part of a broader pattern of anti-Traveller prejudice that sets the stage for the violations alleged in the collective complaint (see also, below, § 52).

### III.1.ii Traveller Status

17. The Irish authorities have consistently and categorically denied Travellers recognition as an ethnic group, which is key to providing them protection. It is therefore inaccurate to say, as the Government do at § 28 GO, that domestic and EU legislation protects Travellers. ITM, together with all of the national Traveller organisations, have campaigned for twenty years for recognition of Travellers as an ethnic minority group. Despite fulfilling anthropological and sociological criteria for ethnicity recognition, and disregarding the fact that Irish Travellers are recognised as an ethnic minority group in Northern Ireland and Great Britain, Ireland continues to refuse to recognise Travellers as an ethnic minority group.

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<sup>8</sup> <http://www.broadsheet.ie/2014/03/05/the-traveller-card/> retrieved 25 June 2014

<sup>9</sup> <http://www.broadsheet.ie/tag/emer-higgins/> retrieved 25 June 2014

<sup>10</sup> <http://www.thejournal.ie/micheal-martin-travellers-donegal-councillor-795595-Feb2013/> retrieved 25 June 2014

18. The All Party Joint Oireachtas (parliamentary) Committee on Justice, Defence and Equality has recommended unanimously that Travellers be recognised as an ethnic minority group. That report is, at present, being considered by the Minister for Justice and Equality.
19. The Council of Europe has addressed the issue of Traveller ethnicity previously. At point 31 of the Second Opinion of the Advisory Committee on the Framework Convention on National Minorities, the Advisory Committee confirmed that the principle of self-identification, and not State policy, should be used in determining the existence or otherwise of an ethnic group; the Irish Government were advised to refrain from making unfounded denials of Traveller ethnicity.<sup>11</sup>
20. The Government contend at § 28 GO that Travellers are adequately protected by domestic law. However, the practical effect of the legislative protections referred to by the Government has been found weak and subject to domestic political whim, in effect creating a two-tier equality and human rights domestic framework. In 2003, the Irish Government weakened the practical effect of the Equal Status Act in a manner that had a disproportionate effect on Travellers.<sup>12</sup> Cases involving access to licensed premises were moved from the Equality Tribunal to the District Court, resulting in changes to the manner in which cases were dealt with, including complainants being potentially liable for legal costs and cases being heard in public. This has had a serious effect on the number of cases taken by Travellers under the Act. Since adoption of the amendment, the legal unit of the Equality Authority report that they had failed to win a single case under the 2003 Act.<sup>13</sup> In the application of international human rights instruments and European Union directives there is further ambiguity. For example, lack of recognition means that Travellers are not automatically covered under the EU Race Directive,<sup>14</sup> which makes frequent reference to the need to be implemented in accordance with national law; the Irish Government is not automatically required to provide protection for Travellers under the domestic implementing legislation. As a result of extensive lobbying, Travellers were only included on the grounds of 'individual' protection under the Equal Status Act 2000 (as amended and extended). Successive Irish Governments, when responding to international requests to have Travellers recognised as an ethnic group, repeatedly submit, as the Government have submitted here, that Travellers are protected by the domestic provisions implementing the Race Equality Directive and other anti-racism legislation. While it is hoped that Travellers are protected by the Directive, this is far from certain. The Irish Human Rights Commission also identifies that potential difficulties may arise where

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<sup>11</sup> *'The Irish authorities should refrain from conclusive statements affirming that Travellers do not constitute an ethnic minority in so far as such a position is not based on clear criteria and does not form a dialogue with the minority concerned, taking into account the principle of self-identification stemming from Article 3 of the Framework Convention'*. Strasbourg 30 October 2006, Advisory Committee on the Framework Convention on the Protection of National Minorities ACFC/OP/II (2006) 007.

<sup>12</sup> s. 19 Intoxicating Liquor Act 2003 changed the venue for Equal Status Act cases from the Equality Tribunal to the District Court.

<sup>13</sup> Brian Merriman of the Equality Authority speaking at conference on 23 October 2012, The Future of Anti-Discrimination Law in Ireland, Irish Council for Civil Liberties (ICCL).

<sup>14</sup> Council Directive 2000/43/EC, 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

- individual Travellers might seek to place direct reliance on the Directive in domestic proceedings, or to impugn the State's transposition of the Directive.<sup>15</sup>
21. When any new legislation is introduced to protect minorities the Oireachtas can decide to include or exclude Travellers as they wish. For example, if the Oireachtas were to introduce hate crime legislation, they would have to specifically mention Travellers as they would not automatically be included under ethnic grounds. This is not an unfounded fear; both the Press Council and Prohibition of Incitement to Hatred Bill did not initially include Travellers in their protections until long campaigns by Traveller groups successfully lobbied for their inclusion.
  22. The Government's assertion at § 29 GO that '*everyone has the right to be free from discrimination and that we all benefit from living in a more equal society*' does not reflect reality in Ireland. The State has cut the funding for equality and rights agencies by 69% since the financial crisis began.<sup>16</sup> Despite these cuts, statutory agencies did not even spend their entire allocations. In relation to Equality, 28% of the allocated budget was not spent by State agencies.<sup>17</sup> In particular, the State has reduced the budget for Traveller education by 86.6%.<sup>18</sup>

### III.1.iii Traveller Education

23. In response to § 30, see, below, § 147.

### III.1.iv Traveller Health

24. In contrast to what the Government assert at § 31 GO, the Irish Traveller Movement reports that endemic individual and institutional racism experienced by Travellers is reflected in their outcomes in terms of unemployment, health, inequality, low educational attainment and poor and inadequate living conditions. Travellers' experience of access to relationships of care, respect and solidarity with wider society are often characterised by tension, disrespect and abuse. Travellers' experience of disadvantage was confirmed in the All Ireland Traveller Health Study showing that, on average, Traveller men live 15 years less and Traveller women 11.5 years less than their respectively settled peers, suicide among Travellers is six times the national average, and there is 84% unemployment among Travellers (Census 2011).
25. In response to § 32 GO, the ERRC asserts that the provision of funding alone does not secure the '*provision of suitable and secure accommodation for the Travelling*

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<sup>15</sup> IHRC, Submission on the Recognition of the Traveller Community as an Ethnic Minority, January 2013

<sup>16</sup> Harvey B., 2013, Travelling with Austerity. Report by Pavee Point retrieved from [http://www.paveepoint.ie/tempsite3/wp-content/uploads/2013/10/Travelling-with-Austerity\\_Pavee-Point-2013.pdf](http://www.paveepoint.ie/tempsite3/wp-content/uploads/2013/10/Travelling-with-Austerity_Pavee-Point-2013.pdf) (accessed 17 June 2014)

<sup>17</sup> Harvey B., 2013, Travelling with Austerity. Report by Pavee Point retrieved from [http://www.paveepoint.ie/tempsite3/wp-content/uploads/2013/10/Travelling-with-Austerity\\_Pavee-Point-2013.pdf](http://www.paveepoint.ie/tempsite3/wp-content/uploads/2013/10/Travelling-with-Austerity_Pavee-Point-2013.pdf) (accessed 17 June 2014)

<sup>18</sup> Harvey B., 2013, Travelling with Austerity. Report by Pavee Point retrieved from [http://www.paveepoint.ie/tempsite3/wp-content/uploads/2013/10/Travelling-with-Austerity\\_Pavee-Point-2013.pdf](http://www.paveepoint.ie/tempsite3/wp-content/uploads/2013/10/Travelling-with-Austerity_Pavee-Point-2013.pdf) (accessed 17 June 2014)



*Community'*, particularly when much of that funding goes unspent; nor does the '*complex and costly*' nature of the goals allow for indefinite deadlines—the margin of appreciation cannot be stretched so far as to lose its essential meaning, resulting in a perpetual state of rights' denial to the vulnerable Travelling Community. In *Autism-Europe v France*, (Complaint No 13/2002, "Decision on the Merits" of 4 November 2003, § 53), this Committee stated that the time of implementation must be reasonable; that progress, in order to be compliant, must be measurable; and that the allocation of resources must be the maximum of those available. The ERRC contends that the progress has been found wanting, and merely citing resources allocated (and not spent) is not enough, particular when funding has been reduced and the funding made available has not been used. The details of funding cuts and underspends are included below (see, notably, § 60).

### **III.2.i A Co-ordinated Framework**

26. At §§ 33-38 GO, the Government have failed to establish that the scheme set up by the 1998 Act is effective. The Government also attempt to examine the 1998 Act in isolation. The 1998 Act and its effectiveness must be examined in the wider legislative framework, including the Public Order Act.
27. The assertion that the system has been effective and has resulted in advances in the provision of accommodation to Travellers does not address the failure of the system to meet its targets some fourteen years later. The failure in the provision of Traveller specific accommodation is set out below in these observations. The Government's response, it is submitted, clearly demonstrates the inadequacies of the Act. The observations below in relation to the 'co-ordinated framework' look at the assessment of need and provision of transient accommodation.

### **Assessment of Need**

28. It is noted that local authorities are obliged to conduct an assessment of need and, on the basis of the results of the assessment, to formulate and adopt a Traveller Accommodation Programme ('TAP'). It is further noted that, in conducting an assessment, the Council must have regard to a summary of social housing needs assessments. Among the problems with the assessment and provision functions exercised by local authorities are the wide variation in the effect, the accuracy of the assessment process and the serious obstacles to the actual provision of Traveller specific accommodation.
29. In preparation for the 2014-2018 TAPs, the Minister of State for Housing (DECLG) issued Circular Housing 26 of 2013, directing local authorities on the preparation of their plans. Among the directions and advice given, it stated that '*Housing authorities should undertake such additional consultation with Traveller families and any relevant Traveller support group in their functional area, to ascertain a comprehensive picture of existing and projected need for housing accommodation for Traveller families over the period of the new programme*'.<sup>19</sup>

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<sup>19</sup> Circular Housing 26 of 2013 directing local authorities on the preparation of their TAPs.

30. According to the Irish Traveller Movement’s analysis of the 2014-2018 TAPs adopted by every local authority area, only nine local authorities<sup>20</sup> followed this guidance from the Minister and carried out a survey linking in with Travellers and Traveller groups. Of these, only Dublin City Council completed a comprehensive survey in conjunction with the local Traveller groups, assessing Traveller needs door-to-door using an agreed survey. Twelve<sup>21</sup> local authorities indicated in their TAPs that they carried out their assessment based only on the Social Housing Assessment May 2013; this assessment was based only on the number of applications made. The Irish Traveller Movement is concerned that this assessment excluded numerous families.
31. Difficulties with the assessment process have been highlighted for some time. A report, prepared by the Irish Traveller Movement on the request of the Chair of the NTACC on the Operation and Effectiveness of the Local Traveller Accommodation Consultative Committees in 2010,<sup>22</sup> indicated that 17 Traveller representatives out of 34 local authority areas did not agree with the manner in which the assessment of need was carried out. Three indicated that there was no assessment used to identify the accommodation needs of Travellers for the 2009-2013 TAP. Problems with the means by which the assessment process is conducted appear to continue in many local authority areas.
32. An analysis of the Traveller Accommodation Plans 2014-2018 found that five<sup>23</sup> local authorities have not enumerated the number of families who were assessed or even were eligible for social housing assessment as specified by the Social Housing Assessment Policy 2011. Of the thirty local authorities, five<sup>24</sup> did not list planned delivery or targets to respond to the accommodation need of Travellers.
33. In the light of what is stated above, the Government’s assertion that the TAPs ‘are formulated in a manner which places a heavy emphasis on consultation with the Travelling Community’ (§ 34 GO) cannot be considered accurate. The Final Report of the Fourth NTACC<sup>25</sup> referred to a report presented to the Committee by the Irish Traveller Movement which highlighted a number of concerns of Traveller representatives in a number of areas, including ‘attendance, frequency and efficacy of meetings and understanding of Traveller issues’.

### Provision of transient accommodation

34. Local authorities are specifically required to have regard to the provision of transient sites when preparing TAPs, as the Government point out at § 33 GO.

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<sup>20</sup> Local authorities: Clare, Dún Laoghaire–Rathdown, Fingal, Kildare, Sligo, South Dublin, Cork City and Dublin City.

<sup>21</sup> Local authorities who based their Assessment of Need on the Housing (Misc) Act 2009: Carlow, Cavan, Cork County, Galway County, Kerry, Kilkenny, Laois, Louth, Mayo, Meath, Monaghan, Tipperary, Wicklow

<sup>22</sup> Report on the Operation and Effectiveness of the Local Traveller Accommodation Consultative Committees (2010), Irish Traveller Movement, for the National Traveller Accommodation Consultative Committee, April 2011, attached as **Annex 1**.

<sup>23</sup> Local Authorities that did not enumerate numbers of families assessed: Mayo, Co. Waterford, Wexford, Wicklow and Limerick City and County.

<sup>24</sup> Local Authorities which did not list targets or planned delivery in the 2014 – 2018 TAP: Cavan, Waterford County, Wexford, Cork City and Limerick City

<sup>25</sup> National Traveller Accommodation Consultative Committee, Final Report of the Fourth NTACC.

The approach varies from local authority area to local authority area; however the fact remains that in the Task Force Report 1995,<sup>26</sup> a need for 1,000 fully operational transient sites was identified. In Ireland at present there are no transient sites operating as transient accommodation (see collective complaint, § 96). It is understood that 47 units of transient accommodation were constructed but not one unit is operating as functioning transient accommodation units. In the recent TAPs, local authorities have addressed transient accommodation provision in the following local authority areas as follows:

- a. In Carlow, Cork Co., Kilkenny, and Meath, there was no request for transient accommodation according to the TAP, despite the fact that the areas are visited by nomadic families at certain times of the year; for example Borris Fair in Carlow is visited by Traveller families who would historically have stayed in Borris in caravans for the duration of the fair.
- b. Transient bays exist in Carlow (2), Limerick (Rathkeale site), Donegal and Westmeath. These bays are being used as emergency or de facto permanent accommodation for Traveller families
- c. According to the TAPs, there was no need for transient provision in Cavan, Dún Laoghaire-Rathdown, Waterford Co., and Cork City (which promised to work with adjoining authorities), despite the fact that the areas are visited by nomadic families at certain times of the year
- d. Cavan, Fingal and Galway recognised a need for regional provision of transient sites; however there is no solid commitment to construct the transient site.
- e. There is a planned transient site in Clare; however it is indicated that there is no money to construct the site.
- f. Donegal, South Dublin and Wexford are reviewing the need for transient housing, but there does not appear to be any commitment to develop and maintain fully functioning transient sites.
- g. In Dún Laoghaire-Rathdown, Longford, Louth, Meath, Roscommon and Wicklow, there are no plans to provide transient accommodation sites.
- h. Fingal and Tipperary are awaiting direction from the national authorities. The Irish Traveller Movement has been calling on a national strategy relating to the provision of transient accommodation for some time.
- i. There was no mention of transient accommodation by Kerry, Leitrim, Offaly and Sligo.
- j. Kildare indicated that opinion was divided over the provision of transient sites, despite the fact that the Irish Traveller Movement has been providing support to Traveller families staying in Kildare for short periods for whom functioning transient accommodation would be appropriate.
- k. Laois will consider transient sites but has not committed to securing funding.
- l. Transient sites are indicated as being an option in Monaghan, although the Irish Traveller Movement is not in a position to comment on the function of any transient site there.
- m. Family visitors are welcome in Cork and Waterford Cities but the local authority does not have functioning transient sites.

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<sup>26</sup> Available at <http://www.lenus.ie/hse/bitstream/10147/45449/1/7868.pdf>.

## Other matters under the national framework

35. One fundamental problem with the operation of the Housing (Traveller Accommodation) Act 1998 is that the Act does not include sanctions for local authorities who fail or refuse to provide Traveller specific accommodation, even where the local authority fails to spend funding allocated by Government towards Traveller accommodation. The NTACC, described at § 34 GO, has no authority to ensure local authorities are meeting their targets in their Traveller Accommodation Plans and no mechanism to impose sanctions unless the current strategy is reassessed by the Minister. In fact the European Commission against Racism and Intolerance said in its Second Report on Ireland (23 April 2002) that *'the fact that no sanctions are provided for in the Housing (Traveller Accommodation) Act 1998 against authorities who do not take measures to provide accommodation for Travellers may weaken its effectiveness'*.<sup>27</sup>
36. The Report on the Workshop of National Traveller Committees 2012<sup>28</sup> noted that the ability of the NTACC *'to secure implementation of the accommodation programme was questioned and the most frequent question posed was how the NTACC could function efficiently without having the ability to place sanctions on non-cooperative or under-delivering local authorities'*.
37. The National Traveller Monitoring Advisory Committee (NTMAC) has indeed taken steps seeking to coordinate the workings of the various national committees, as indicated at § 36 GO. However it suffers from a lack of significant civil servant or political engagement, with the lack of attendance by senior civil servants being a significant issue. The NTMAC, unlike the NTACC, is not a statutory body, and so there is no onus on State representatives or civil servants to adopt the recommendations of the NTMAC and there are no sanctions for the non-implementation of the NTMAC's findings.
38. While Travellers participate on National Committees, the impact of their participation on these committees is undermined by the fact the authorities are not obliged to implement or give effect to the findings and recommendations of the Committees.
39. A survey of members of the Irish Traveller Movement found the following in relation to attendance at Local Traveller Consultative Committee LTACC meetings. Of the groups surveyed and to the best of the knowledge of the Irish Traveller Movement, a Traveller has never been chair of an LTACC and a Traveller has never been chair of the NTACC.
  - a. **Blanchardstown Traveller Development Group.** Attendance at LTACC meetings is sporadic and unpredictable. A Traveller has never been chair of the group's local LTACC.
  - b. **Fingal Travellers** Notice of meetings is always short, for example, members may be informed on a Thursday for a Monday meeting meaning that

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<sup>27</sup> 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](http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_02/02_CbC_eng/02-cbc-ireland-eng.pdf)

<sup>28</sup> McCarthy, O., Report on the Workshop of National Traveller Committees (2012), Report for the Department of Equality and Justice, attached as **Annex 2**.

members may not be in a position to attend. To the knowledge of the Group, a Traveller has never been chair of the LTACC.

- c. **Wicklow Travellers.** People regularly skip meetings. A Traveller has never been chair of the LTACC.
  - d. **Offaly Traveller Movement** There is a good attendance by Councillors apart from one or two who are seldom if ever seen at meetings. A Traveller has never been chair of the LTACC.
40. According to the Irish Traveller Movement's analysis of the TAPs, each Council reports consultations with LTACC regarding their TAP. However, Dún Laoghaire-Rathdown places a caveat that they will not take into consideration any opinions from the LTACC regarding accommodation on temporary or emergency sites.

### III.2.ii Measurable progress

41. The Government have conceded that they have not met their own targets in relation to the provision of Traveller accommodation, the most stark indication of the failure being the fact that in the 1995 Task Force Report identified a need for the provision of 1,000 units of transient accommodation, the State has to date, provided 47 units, none of which are operating as transient accommodation units. The ERRC contends that this is not 'clearly measurable progress'.
42. When considering the Government's sanguine assessment of the previous TAPs, the Committee should keep in mind that the TAPs for 2014-2018 clearly state that the following councils failed to meet their targets set out in their 2009-2013 Programme: Clare County Council, Dún Laoghaire-Rathdown County Council, Laois County Council, Louth County Council, Roscomman County Council, Wexford County Council, Galway City Council and Waterford County Council. None of the 33 Authorities/Councils who framed TAPs indicate whether or not they have been accountable to the Minister having failed their targets, nor were there any sanctions mentioned for local authorities who had failed to meet their targets.
43. Mayo County Council and Meath County Council indicate that they met their 2009-2013 Programme targets of providing accommodation to Travellers not by constructing or refurbishing any Traveller Specific accommodation but instead by providing private rented accommodation. As discussed later in these observations, provision of private rented accommodation is not a permanent or satisfactory method of providing Traveller accommodation.
44. In relation to meeting previous TAP targets in their Traveller Accommodation Programmes 2014-2018, Cork County Council, Fingal County Council, Galway County Council and Offaly County Council failed to specify their previous Programme targets or whether they had met them.
45. The Government have conceded that it has not met its own targets in relation to the provision of Traveller accommodation, the most stark indication of the failure being the fact that the 1995 Task Force Report<sup>29</sup> identified a need for the provision of 1,000 units of transient accommodation; the State has, to date,

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<sup>29</sup> Report of the Task Force on the Travelling Community.

provided 47 units, none of which are operating as transient accommodation units. The ERRC contends that this is not *'clearly measurable progress'*.

46. At §§ 39-44 GO, the Government point out that despite an increase in the number of Traveller families, there has been a decrease in the numbers of Travellers living on unauthorised sites. The Government take this as an encouraging sign. The ERRC responds that the real explanation is that draconian laws and policies incompatible with the Charter are forcing Traveller families into forms of accommodation – such as private-rented accommodation – that are not suitable to their way of life.
47. In response to the statistics listed in § 40 of the Government's observations, it is critical that the annual count figures not be considered in isolation. While the reduction in the number of families living on unauthorised sites without access to basic facilities is to be welcomed, the reduction is not indicative of a success in the provision of Traveller accommodation. The figures reflect the influence of the introduction of criminal and other legislation referred to in the collective complaint and discussed below, resulting in families being forced out of their nomadic way of life; the NTACC Annual Reports in 2002 and 2003 highlight this issue. The amendment to the Public Order Act in 2002 is largely responsible for the decrease in the number of families living in unauthorised sites, a decline in nomadism and the increase and continuation of families sharing accommodation. The 2002 NTACC Annual Report illustrates the commence of the decline: *'The number of families on unauthorised sites decreased over the same period, from 1,017 families at the end of 2001, to 939 families in 2002'*.<sup>30</sup> The 2003 NTACC Annual Report further notes the decline in families living on unauthorised sites while noting the increase in the number of families sharing accommodation:

*The Committee is pleased by the decrease in the number of families living on unauthorised sites, down to 788 units at the end of 2003 from 939 units at the end of 2002. It is appreciated, however, that while the number of Traveller families living on unauthorised sites decreased this year, the number of Traveller families living in temporary sites and those sharing facilities increased in the same period. These families remain in need of suitable accommodation and this issue must continue to receive ongoing attention.*<sup>31</sup>

It is important to note that while the number of families living on unauthorised sites has decreased, in recent years there has been a marked increase in the number of families sharing accommodation. The difficulties and concerns relating to families sharing accommodation was highlighted as far back as the 2007 NTACC annual report: *'It would be worrying if the number of families sharing all types of accommodation continued to increase, as sharing, by its nature, puts pressure on already limited resources and can worsen living conditions'*.<sup>32</sup> The 2010 NTACC Annual Report comments on the number of families sharing housing: *'The number of families sharing housing also showed an increase in 61 families and now stands at 451 families. While some of those sharing are doing so in perfectly acceptable conditions there are also those who are sharing overcrowded accommodation and these families, and those on unauthorised*

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<sup>30</sup> NTACC Annual Report 2002

<sup>31</sup> NTACC Annual Report 2003

<sup>32</sup> NTACC Annual Report 2007

sites, should continue to be prioritised by local authorities'.<sup>33</sup> Despite the concerns expressed by the NTACC, the annual count figures show the number of families sharing accommodation has increased steadily from 451 families in 2010 to 663 families in 2013. The concerns set out in the NTACC reports relating to the number of families sharing accommodation continue to affect Travellers with many families living in cramped conditions, with a number of generations living together creating tensions and stress.

48. The Government's assertion at § 41 GO that 9,581 families are in secure accommodation is misleading. It is assumed that this figure emanates from the 2012 annual count and was calculated by subtracting the number of families living on unauthorised sites from the total number of families. To assert that these families are living in secure accommodation is misleading for the following reasons:
- a. Included in the figure of 9,581 are the 2,289 families living in private rented accommodation. The NTACC in its 2008 Annual Report indicated that families living in private rented accommodation do not have security of tenure: '*Families accommodated with the assistance of rent supplement are not so secure*'.<sup>34</sup> The security of tenure is further undermined in a property market where house prices (as the Government admit) and residential rents are increasing rapidly and dramatically, particularly in large urban centres where large numbers of Travellers reside. Even where a family living in private rented accommodation have accrued so-called Part 4 rights under the Residential Tenancies Act 2004, entitling them to a four year tenancy, the tenancy can be terminated if the landlord is selling the house.
  - b. Included in the figure of 9,581 is the 604 families described as sharing accommodation. To describe this type of accommodation as secure is misleading. Families sharing accommodation do not in the vast majority of cases have any security of tenure and in many instances live in constant fear of eviction with little or no access to basic services. Concerns about families sharing accommodation were identified and highlighted by the NTACC as far back as 2007, as noted above.
49. The number of Traveller families who were without accommodation according to the annual count in 1999 was 1,207<sup>35</sup>; the number of families without accommodation as per the annual count<sup>36</sup> in 2013 and who are sharing accommodation or living on unauthorised sites is 1,024. This does not reflect a significant improvement in relation to the accommodation of Travellers.
50. In response to § 42 GO, the authorities, as set out at §§ 42-45 above, have failed to provide Traveller specific accommodation in accordance with their own targets. There is a major trend which the Government cite proudly: the number of Traveller families living in private rented (i.e. not living in Traveller specific) accommodation has increased and the number of families living in Traveller specific accommodation has steadily decreased over the past decade. This is the result of Travellers being forced out of their nomadic way of life by a combination

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<sup>33</sup> NTACC Annual Report 2010

<sup>34</sup> NTACC Annual Report 2008

<sup>35</sup> Department of Environment Annual Count 1999

<sup>36</sup> Department of Environment Community and Local Government Annual Count 2013

of a lack of Traveller specific accommodation and legislation which criminalises (and otherwise renders impossible) nomadism in Ireland. It is argued, as in the collective complaint, that this violates Travellers' Charter rights by forcing them to abandon nomadism. The Government claim that Travellers are leaving or not applying for Traveller specific accommodation; the reasons for this are discussed elsewhere in these observations (see below, § 72) but, in brief, research establishes that failings on the part of local authorities, and not changes in the way of life of Travellers, have driven down the number of families opting for Traveller specific accommodation.

51. In relation to the State's assertion of the success of the second round of TAPs, the 2008 Annual Report of the NTACC indicates the following: *'Following the trend of 2006 and 2007, the accommodation option recording the largest increase in 2008 was again the private-rented sector, up a further 373 to 1,516 families. It has to be noted that this is occurring in the context of the slower rate of provision of local authority standard housing and Traveller specific accommodation in some areas'*. The NTACC report rightly attributes the increase in private rented accommodation to the failure of local authorities to provide Traveller specific accommodation.
52. In response to the Government's statistics at § 43 GO, in the year 2000 the Minister for Housing and Urban Renewal was advised: *'While there are difficulties with some of the mechanisms used to calculate the current and future requirements, the overall figure of in excess of 3,600 units, having regard to the increase in the population overall, appears to be satisfactory in terms of the number of units [of Traveller accommodation] nationally'*.<sup>37</sup> The Government's contention that 2,027 units of Traveller specific accommodation were created or refurbished clearly misses this target (and, of course, re-furbished units do not increase the total number). Furthermore, as discussed earlier, a need was identified by the authorities several years ago for 1,000 units of transient accommodation (see collective complaint, § 96); as set out in the collective complaint, today there is not one single site in Ireland operating as a unit of transient accommodation. Those which are described as transient accommodation are actually being used as emergency sites (collective complaint, § 96).
53. In response to § 44 GO, families living in private rented accommodation do not have adequate security of tenure and are not permanently accommodated, as explained above. The Government's assertion that its legislative measures to improve Traveller equality and access to basic services are effective is not corroborated. Travellers report that they continue to experience significant obstacles in accessing private rented accommodation; these problems have increased following the increase in rents and the accommodation crisis in Ireland's urban centres.<sup>38</sup> Mícheál Mac Gréil in his 2011 text *Pluralism and*

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<sup>37</sup> Report to the Minister for Housing and Urban Renewal by the National Traveller Accommodation Consultative Committee on the 5 Year Traveller Accommodation Programmes Adopted by Local Authorities in 2000

<sup>38</sup> <http://www.focusireland.ie/about-homelessness/resource-centre/press/press-releases/698-focus-ireland-research-shows-government-cuts-to-rent-supplement-have-forced-some-people-to-become-homeless> retrieved 25 June 2014



*Diversity in Ireland*<sup>39</sup> demonstrated an increase in anti-Traveller prejudice, in particular in the context of access to accommodation. At Table 13.7 in the publication, responding to the scenario “Would be reluctant to buy a house next door to a Traveller?”:

- in 1977 70% agreed; and
- in 2007-08 79.6% agreed.

This represents an increase in anti-Traveller prejudice in particularly in the context of access to accommodation despite the various legislative anti-discrimination measures introduced by the State and undermines the Government’s assertions at § 44 GO that it has succeeded in improving the status of the Travelling Community. In the light of these statistics and in the absence of evidence from the Government showing that landlords are willing to rent to Travellers, the ERRC invites the Committee to disregard the Government’s assertion that the increase of Travellers in private rented accommodation is a positive sign. Instead it is, as set out further below, a symptom of policies (mainly the combination of a lack of Traveller specific accommodation and draconian legislation criminalising nomadism) that violate the Charter rights of Travellers.

54. In the 2014-2018 TAPs, there has been an increase in the number of Traveller families who have gained access to private rented accommodation. The 2011, 2012, and 2013 annual counts estimated that 2,558, 2,818 and 2,717 Travellers respectively were living in private rented accommodation. Mayo County Council project that they will have to accommodate 50 families in this type of accommodation and Meath County Council project that they will have to accommodate 160 families in this type of accommodation. These are the highest projections for private rented accommodation from all Councils across the State. However, Mayo County Council and Meath County Council did not detail, in their TAP, what accommodation types the Travellers living in their areas would prefer, nor did they commit to construct or refurbish any Traveller specific accommodation.
55. Concerning the Government’s claim in § 45 GO that they supports Travellers’ nomadic lifestyle, the ERRC notes in the most recent TAPs 2014-2018, only ten Councils made reference to the Caravan Loans and Grants schemes in their TAPs. Four of these - Cork City Council, South Dublin County Council, Offaly County Council and Waterford City Council - have all suspended or limited further grants or loans under the scheme because it was *‘not viable economically and any resumption of the scheme will be dependent on significant increases in levels of repayment of outstanding loans’*. The caravan loan scheme is discussed further at § 64.
56. In response to § 46 GO, a sample of member groups surveyed by the Irish Traveller Movement in 2014 contradicts the State’s assertion that all units of Traveller specific accommodation are located within a reasonable distance to public services and schools or serviced by Outreach programmes. Here are examples from ITM’s research:

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<sup>39</sup> Mac Greil M, (2011) *Pluralism & Diversity in Ireland, Prejudice and Related Issues in Early 21<sup>st</sup> Century Ireland*

- a. Blanchardstown Traveller Development Group advise that there are 21 units at St Mary's/St Christopher's and 10 units at Barnlodge with little or no access to services.
- b. Fingal Travellers Organisation advise that the only halting sites in North East Fingal within two kilometres of public transport are Gardiner Hill and Lissenhall. All other sites including; Moyne Park, Collinstown Park, Stockhole, Ardla and Matt Lane require a long walk without public lighting or footpath to reach a population centre or public transport.
- c. Galway Traveller Movement advise that in Galway County the Capira Transient Site is very isolated in a rural area with no services and is situated on an extremely narrow rural road, the nearest urban centre being approximately seven kilometres away with no public transport serving the site.
- d. Creggane is located in a very rural area with no services including no bus services, shops or schools in the area.
- e. Ballydavid halting site is situated in Athenry urban area; however it is not served with street lighting or speed ramps despite requests from the families living on the site rendering pedestrian access in winter or late at night dangerous.
- f. In Galway City there are two sites, Carrabrown transient and temporary sites, that are geographically isolated. The sites are located in an industrial area predominantly occupied by warehouses, composting facilities, and a disused landfill. There is no residential infrastructure, no footpath and no public transport serving the sites. The families living on the sites have been living on the temporary site for almost four years and some families have been living on the transient site for over a decade. While both sites are officially described as temporary and transient, the families' occupation of the sites is de facto permanent. The speed limit on the road is 100 kilometres per hour and the residents' requests for a warning sign advising motorists that they are approaching a residential area have been consistently ignored by the Council. Galway Traveller Movement have advised that they understand that the Outreach programmes referred to in the State's response include the programmes operated by them and the Education and Training Board on Carrabrown Sites. These outreach programmes involve after-school support and other related programmes. These Outreach services, while welcome, do not address the geographic isolation of the sites and do not counter the allegation relating to geographical isolation.
- g. Offaly Traveller Movement have advised that the largest unofficial site in Kilmucklin Clara is very isolated. Families without cars do not have access to public transport. The bus service does not stop near the site.
- h. Kildare Traveller Action Group have advised that one site in the county is geographically isolated and that there is no public transport servicing the site.
- i. Wicklow Travellers advise that there are units that are geographically isolated with a very poor bus service a few kilometres away.
- j. Kerry Travellers advise that Brennan's Glen, where there are Traveller units, is in an isolated valley on the main Killarney-Tralee Road. There is no bus stop there.

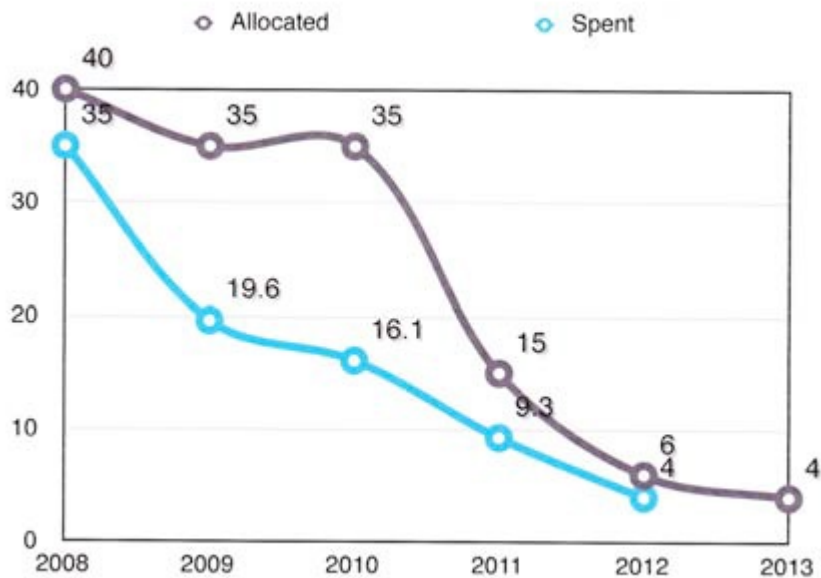
57. In relation to the Government's assertion that all Traveller specific accommodation has access to basic amenities including water and electricity, the ITM's survey reveals the following:
- a. Fingal Travellers Organisation advise that waste disposal has been discontinued at the Gardiner Hill site and that water and toilet facilities are inadequate.
  - b. Galway Traveller Movement in Galway County report Creggane families suffering from power cuts and low water pressure. In Galway city six families sharing on one site do not have access to water, electricity or refuse disposal facilities.
  - c. Wicklow Travellers report one site where the families only have access to a portable toilet.
  - d. Kildare Traveller Action Group report that one two-bay site does not have access to water or electricity.
  - e. Traveller Visibility Group (Cork City) report that in St Anthony's Park there are consistent problems with water pressure and hot water supply, and that at Spring Lane Halting Site the electricity supply is unsafe and is constantly cutting out as there are 34 families sharing basic facilities developed for 10.
  - f. Ballyfermot Traveller Action Project report that at a site at Labre Park, there has been no waste disposal service since Dublin City Council privatised the service.
58. In response to § 47 GO, all councils indeed notified their intention to prepare a TAP in the local newspapers. However, online access to the draft TAPs was not uniform across the State with TAPs inaccessible online in the following counties: Longford, Westmeath, Carlow and Wexford.
59. The commitments and promises made in § 48 GO are of little use to the Travellers in Ireland who are suffering breaches of the Charter. The lack of sanctions or powers vested in the NTACC or LTACCs and the lack of real and meaningful participation for Travellers is problematic. The racism expressed by politicians that goes unchecked creates a hostile environment for the provision of Traveller accommodation. In relation to particular provision for culturally appropriate accommodation for Travellers in the TAPs for the 2014-2018 period, Clare County Council specify in their TAP that any accommodation provided will be for '*accommodation purposes only*' and '*will not serve traditional economic activities engaged in by the Traveller community*' such as '*keeping of horses and scrap*'. Donegal County Council indicates that lack of funding means they are unable to construct Traveller Specific Accommodation. Overall, the Irish Traveller Movement reports that the State has failed to make sufficient progress in relation to the provision of culturally appropriate accommodation. In particular it has failed to maintain and manage halting site accommodation and to provide operative transient sites. This demonstrates a lack of commitment towards the provision of culturally appropriate accommodation.

### **III.2.iii Maximum Use of Available Resources**

60. The Government have omitted key information starting at § 49 GO. The aggregated figure of spending up to 2012 is misleading, given that the budget

allocated for Traveller accommodation has fallen from €40 million in 2008 to €3 million in 2014, a decline of 93%. A further problem which was admitted by the Government in their observations is that substantial parts of the (now meagre) allocation are unspent. The following table<sup>40</sup> was included in Brian Harvey's Report Travelling to Austerity illustrates the decrease in the capital Traveller accommodation budget from 2008 to 2013.

Chart 3: funding for Traveller accommodation €m



Source: Dail Eireann, Debates, 6th December 2012, 857-8; 12th February 2013, 267. 2013 allocation reported but not confirmed.

61. The proportion unspent was set out in the report and is reproduced below.

Table 5: Proportion Traveller accommodation budget spent<sup>41</sup>

Year	Spent	Unspent
2008	88%	12%
2009	56%	44%
2010	46%	54%
2011	62%	38%
2012	66%	34%
<i>Figures rounded.</i>		

62. This gives an average figure of 63.6% of the budget spent, or, conversely, 36.4% unspent. If we measure the total cut according to the amount actually spent then the overall reduction is higher. This underspend has occurred at a time when the

<sup>40</sup> Harvey B., 2013, Travelling with Austerity. Report by Pavee Point retrieved from [http://www.paveepoint.ie/tempsite3/wp-content/uploads/2013/10/Travelling-with-Austerity\\_Pavee-Point-2013.pdf](http://www.paveepoint.ie/tempsite3/wp-content/uploads/2013/10/Travelling-with-Austerity_Pavee-Point-2013.pdf) (accessed 17 June 2014)

<sup>41</sup> Id.

2011 national housing needs survey found that 1,824 Traveller households are in need of accommodation.

63. In relation to the monies spent, as listed by the Government at § 50 GO, in the Final Report of the Fourth NTACC, there was talk about asking the 'Value for Money Unit' within the Department of the Environment and Local Government to carry out a value-for-money study on Traveller accommodation. Ironically, due to a failure to allocate resources to the project within the Value for Money Unit it was not possible to carry out this study.<sup>42</sup> The issues of value for money in the development of Traveller specific accommodation has been raised by Traveller organisations for many years. The Government cannot rely upon their own failure to ensure that value for money is attained in State expenditure when Travellers and Traveller organisations have been calling on the State to ensure that best value for money is obtained and it, in turn, refuses to examine these concerns.
64. In response to § 51 GO, there is contradictory evidence. The Department of Environment reports that they provide 100% capital funding for Traveller Specific Accommodation '*including permanent, temporary, emergency and transient halting sites*'. Yet in their recent TAPs, Clare County Council and Donegal County Council indicate that they may be unable to provide Traveller Specific Accommodation due to lack of funding. In relation to the caravan loan scheme, it has been taken up unevenly by local authorities. Laois County Council made seven caravan loans between 2000 and 2005, while County Offaly reports 66 loans under this scheme between 2000 and 2012. The programme in County Offaly was suspended in 2012 and no applications for the scheme are currently being accepted. The 2014-18 TAP for County Laois does not include caravan loans among its provisions, only similar support for the purchase of a house. In 2004, the NTACC, in its report to the Minister for Housing and Urban Renewal reviewing the operation of the Housing (Traveller Accommodation) Act 1998, found that it lacked the data to report on the caravan loans and grants scheme, and recommended it receive a separate review. What little evidence there is at present indicates a small programme that has primarily served to replace caravans (rather than purchase new ones) for those already living in a caravan on an approved halting site. It does not appear to be currently active, at least not in several counties. The Government's main citizen-information web portal, [www.citizensinformation.ie](http://www.citizensinformation.ie), does not list it among available 'Housing Grants and Schemes'. Moreover, what support there may be for the ownership of caravans does little to address the primary problem of the lack of caravan bays on halting sites, the prohibition of caravans on group housing schemes, and the near impossibility of pulling in at the roadside anywhere in the State.
65. In relation to the ring-fenced funding stream mentioned in § 52 GO, the underspend on the Traveller specific funding stream is evidence, it is submitted, of an unwillingness on the part of local authorities to provide for Traveller specific accommodation.
66. In response to the Government's observation at § 53 GO, as stated above the capital budget for Traveller specific accommodation has been cut significantly

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<sup>42</sup> NTACC Final Report of the Fourth NTACC

from €40 million in 2008 to €3 million in 2014. These cuts have taken place despite the fact that there is an urgent need for Traveller specific accommodation.

67. The idea that any level of underspend should not be seen as a reflection of Ireland's commitment on the issue (as the Government contends in § 54) is contradicted by the fact that political parties, many of which controlled and continue to control local authorities, failed to expel members disseminating anti-Traveller propaganda.
68. The Government assert that the Department of Environment provides 100% capital funding for Traveller specific accommodation (§ 51), whilst conceding that there has been a level of underspending by local authorities of allocated resources. The reasons for the failure to provide Traveller specific accommodation given by the Government range from national fiscal constraints (§ 55 GO), the increase in the number of Traveller families (§ 56 GO) to the increasingly uneven distribution on a national level of demand for Traveller specific accommodation. These specific assertions are considered elsewhere in this response. The nexus appears to be very weak and in places irrational. In reality, underspending by local authorities is fundamentally due to a lack of will, including political will, on the part of local authorities to provide Traveller accommodation and thereby fulfil their obligations under the Charter. In any event, there is no one who has any control over the local authorities' failure to fulfil their responsibilities and spend the funds allocated to them. This is clear from domestic court judgments concerning the provision of Traveller Accommodation. While most of the judgments predate the commencement of the 1998 Act, they demonstrate a lack of willingness on the part of local authorities to provide Traveller specific accommodation. These cases also demonstrate lack of sanctions, both legislative and judicial<sup>43</sup> for local authorities who underspend. The courts remain powerless under the current legislation. The LTACCs, NTACC or other similar agency could easily be empowered to impose further sanctions where directed resources in areas are not spent and the Traveller accommodation is found to be inadequate. This would result in a focussed strategy which would ensure that all resources allocated for Traveller specific accommodation would be applied in full for that purpose. It would be a fair and reasonable manner of ensuring that local authorities effectively carry out their statutory functions.
69. The failure of local implementation of Traveller accommodation programmes is similar to that found in *International Federation of Human Rights (FIDH) v. Belgium*:
- The Committee notes that the Government refers to policies designed to encourage local authorities to set up sites to accommodate Travellers and the efforts being made to help to finance the establishment of sites. These measures are particularly limited in scope, however, and are clearly not sufficiently conducive for the number of sites to increase satisfactorily as only a few municipalities have expressed their desire to arrange for the temporary accommodation of Travellers (for instance only seven of the Walloon Region's*

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<sup>43</sup> (1996) 3 I.R. 195 Laffoy J; (1997) 31.R. 402; (1996) 3 I.R. 195.

262 municipalities have done so). Only the Flemish Region has adopted a strategic action plan but it seems destined for failure as fewer than 100 of the 750 places planned for residential sites have actually been set up.<sup>44</sup>

### III.2.iv Reasonable time period

70. The Government's contention at § 55 GO that their failure to meet their targets falls within their margin of appreciation is unreasonable where the State has failed to spend its own allocated budget specifically provided to meet those targets. Local authorities from across the State completed TAPs for the 2014-2018 period. Most of these TAPs reported lack of funding as a barrier to reaching the targets as set out in previous Programmes.
71. In relation to difficulty in obtaining suitable land, claimed at § 56 GO, housing authorities are vested with powers enabling them to acquire land for the purposes of accommodation through compulsory purchases. It is unreasonable for the State to rely upon increasing property prices during a period of prosperity to defend its failure to provide Traveller specific accommodation, particularly when, as indicated above, the State has refused to conduct a value-for-money study in relation to the provision of Traveller specific accommodation. In these circumstances, randomly selected cost-per-unit figures do not justify a failure to fulfil the State's responsibilities under the Charter.
72. Concerning the Government's plea of ignorance in § 57 GO as to why Travellers leave Traveller Specific Accommodation, the Government will be aware of the Report of the Housing Agency and the National Traveller Accommodation Consultative Committee on '*Why Travellers leave Traveller-specific accommodation*'. KW Research & Associates (2014)<sup>45</sup> concluded Travellers have left Traveller specific accommodation mainly due to issues relating to site location, lack of support from the local authorities, and hostility from local residents and the wider community. The ERRC urges the Committee to consider this report carefully. At page 31 of the report, the authors note that local authorities and Travellers agree that Travellers leave these sites for four main reasons: feuding and intimidation; issues related to site location, design and management; poor relations with the local authority; and particular personal circumstances. The Government cannot seriously claim, in the light of this report, that the phenomenon of Travellers leaving sites is a mystery to them or that the State's responsibility is not engaged by most of these factors. In particular, the current design of Traveller sites (which effectively eliminated any opportunities for Travellers to engage in self-employment) contributes to a lack of accommodation, increasing stress levels on sites. This in turn leads to feuding amongst the Traveller Community. The Local Authorities' response appears to be to isolate members of the Community and in extreme circumstances to close the site. The serious substandard condition of the sites is not being addressed by

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<sup>44</sup> Complaint No. 62/2010, Decision on the Merits, 21 March 2012, § 118.

<sup>45</sup> KW Research & Associates, "Why Travellers Leave Traveller-Specific Accommodation?", National Traveller Accommodation Consultative Committee, Housing Agency, April 2014, available at <http://www.environ.ie/en/PublicationsDocuments/FileDownload,37993,en.pdf>, attached as **Annex 5**.

authorities. According to the report, both local authorities and Travellers believe that relationships between local authorities and Travellers at a local level are generally poor. Some Travellers believed that things were being set up to fail, in order to facilitate a process of assimilation and fragmentation of Traveller culture. Travellers believe that there should be clear documented protocols outlining how transfers and relocations within Traveller specific accommodation should be handled.

73. In response to § 58 GO, Travellers consulted for the report by KW Research referred to directly above disagreed that there is an overprovision of Traveller specific accommodation within their area. They noted the overall rise in the total Traveller population and the levels of overcrowding and sharing occurring within the Traveller Community. The Community who were consulted said that they were so desperate for suitable accommodation that they ticked all of the options on their housing application, not just their preference.
74. Travellers often opt for private rented accommodation as a means of escaping the difficulties encountered on local authority halting sites (as outlined in the report referred to at § 72 above), particularly younger Travellers. The Travellers interviewed said that they believed that if the issues identified in relation to halting sites were addressed, the attractiveness of private rented accommodation would be significantly diminished. The report indicates that Travellers recognise that private rented accommodation is often not the answer to their housing needs and is not considered a long term solution for many Traveller families.
75. In response to the Government's observations at § 59 GO, while extensive resources are being deployed in respect of accommodation for Travellers (as opposed to Traveller specific accommodation), the overall effect (and, it appears, the purpose) is to shunt Travellers into permanent housing and reduce the number of Traveller families who live an itinerant lifestyle. As an example, as of 2014, the English Homes and Communities Agency, under their Affordable Housing programme's Traveller Pitch Funding, has currently allocated £58,147,771 for funding of both new sites as well as improving existing ones.<sup>46</sup> This funding does not include Greater London, whose Authority handles their own programming within their jurisdiction. According to a recent government count, as of January 2014, the current number of Traveller caravans in England is 19,500.<sup>47</sup>

#### **IV Relevant Domestic Law**

76. In response to § 60 GO, the ERRC affirms its submission that the legislation on evictions is incompatible with the Charter. The State has failed to meet its own targets in relation to the provision of halting site and other Traveller specific accommodation. In circumstances where the State has failed to provide sufficient

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<sup>46</sup> "Traveller Pitch Funding allocations March 2014", Homes and Communities Agency, available at <http://www.homesandcommunities.co.uk/ourwork/traveller-pitch-funding>

<sup>47</sup> "Count of Traveller caravans: January 2014, England", Department for Communities and Local Government, available at <https://www.gov.uk/government/publications/traveller-caravan-count-january-2014>



levels of Traveller specific legislation, the State has continued to introduce and enforce draconian evictions legislation against Travellers.

#### IV.1 The Criminal Justice (Public Order) Act 1994 (as amended)

77. The Government overstate what they describe in § 61 as a ‘typographical error’ in the ERRC’s complaint. The ERRC is aware that the phrase ‘*where such entry or occupation or the bringing onto or placing on the land of such an object...*’ applies both to section 19C(1)(a) of the Public Order Act as it does to section 19C(1)(b); this is clear from the inclusion of the words ‘*such entry or occupation*’. The impugned legislation violates the Charter because of the vague, disjunctive criteria set out in the second subparagraph of section 19C(1). Any situation (and this appears to be by design) in which a Traveller occupies land can be interpreted as being ‘*likely to... 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*’ or ‘*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*’. The Government claim that the provision only comes into play when the land or its amenity is being substantially damaged or interfered with, but the legislation states that an offence is committed where such damage or interference is ‘*likely*’.
78. Contrary to the Government’s assertion in § 62 GO, the legislation can be used where in the opinion of a member of An Garda Síochána that the ‘*entry or occupation or the bringing onto or placing on the land of such object is likely to substantially damage or interfere with land or its amenity*’ (emphasis added). As set out later in this document, there are a number of difficulties between the Traveller Community and members of An Garda Síochána; in that context, affording this discretion without guidelines or a central register of evictions is highly prejudicial to Travellers. However, the State, in refusing to acknowledge that there is a need for criteria governing the operation of the powers indicates at § 92 GO that the ‘*likelihood of damage cannot be assessed by a series of specific rules*’.
79. In response to § 63 GO, the ERRC maintains that the reversed burden of proof on the issue of the owner’s consent violates the presumption of innocence.
80. What is relevant for the purposes of the Charter, is not the fair-trial consequences of that reversal of the burden of proof, but rather the consequences for forced evictions, carried out through arresting Travellers and seizing their homes. Because the burden is on Travellers to show that they have the consent of the owner, who may or may not be available, the Gardaí are particularly likely to proceed with an eviction at the time of arrest, in accordance with sections 19E and 19F. The Irish Human Rights Commission in its amicus curiae submissions in the case of *Lawrence & others v Ballina Town Council & Others* (July 2008)<sup>48</sup> discuss the effect of the provisions:  
*It would therefore appear that it is necessary for an accused to show that he or she actually had consent to enter onto and occupy the lands in question*

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<sup>48</sup> <http://www.ihrc.ie/enquiriesandlegal/amicuscuriae/criminaltrespass.html>

*and he or she may not rely upon a mistaken belief, however reasonable that such consent had been granted. This seems to have the effect of displacing the presumption of mens rea and leads to the worrying prospect that a person possessed of an ‘innocent mind’ upon entry into and occupation of the land in question may not be protected from conviction. Issues arise regarding the compatibility of such a state of affairs with the guarantee of a fair trial pursuant to Articles 38 of the Constitution, with the right to the vindication of one’s good name and the right to liberty pursuant to Articles 40.3 and 40.4 of the Constitution respectively.*

81. The ERRC notes the recent case law of the European Court of Human Rights finding that people facing eviction have a right to have the proportionality of that eviction determined by an independent tribunal, before the eviction takes place, even if they have no right to occupy the land under domestic law. See, e.g., *Winterstein v France* (judgment of 17 October 2013), § 148(δ) (*‘La perte d’un logement est une atteinte des plus graves au droit au respect du domicile. Toute personne qui risque d’en être victime doit en principe pouvoir faire examiner la proportionnalité de cette mesure par un tribunal indépendant à la lumière des principes pertinents qui découlent de l’article 8 de la Convention, quand bien même son droit d’occuper les lieux aurait été éteint par l’application du droit interne. Cela signifie, entre autres, que lorsque des arguments pertinents concernant la proportionnalité de l’ingérence ont été soulevés par le requérant dans les procédures judiciaires internes, les juridictions nationales doivent les examiner en détail et y répondre par une motivation adéquate’*); *Rousk v Sweden* (judgment of 25 July 2013), § 139 (*‘in order to ensure that the remedies and procedural safeguards existing in domestic law were in fact available and sufficient, not only in theory but also in practice, the eviction should have been postponed until the underlying contentious issues had been resolved’*). The ERRC submits that these principles should inform the interpretation of the Charter.<sup>49</sup> As a matter of domestic law (particularly sections 19E and 19F), once the police have decided that the occupation of land is contrary to section 19C(1), there is no right to have the decision to arrest and seize property challenged by a court before they take place, and there is no requirement for the Gardaí to consider the proportionality of their actions.
82. The Government’s response is inconsistent. They argue at § 63 GO that *‘it is for the prosecution to prove these ingredients of the offence beyond all reasonable doubt’*. However, they admit at § 94 that the legislation does not need to be prosecuted to be effective. This ‘effectiveness’ is the result of the difficulties that families encounter in seeking legal representation and the fact that many families move on from the unauthorised site upon being warned, without recourse to legal advice or support. The reality is that Travellers, upon being advised that the legislation applies to them, move on, as the Government admit at § 94 is the intended result. This means that for many families whose occupation may not have been illegal, and in any event whose eviction would be incompatible with the Charter, their opportunity to defend themselves is limited and the risk they run of unannounced arrest and eviction is considerable.

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<sup>49</sup> See above, note 7.

83. In response to § 65 GO, the complaint is that the mere existence of this power in law, regardless of the discretion exercised, is sufficient to violate the Charter. The provision leaves many Travellers in Ireland perpetually vulnerable to summary eviction. In any event, the power is in fact used against Travellers, as stated elsewhere. The law is not narrowly tailored to accomplish the purpose – *‘to protect property from unjust attack’* – that the Government ascribe to it; other provisions of Irish criminal law already protect property sufficiently. Furthermore, contrary to the Government’s assertions, there is nothing in the Irish legal order that designates this power as a *‘reserve power’* to be used only after other powers have been exhausted. The rights protected under the Charter cannot depend on the discretion of the police to favour one power over another, without appropriate judicial oversight.
84. The Government have also failed to comment on the allegation that the legislation is indirectly discriminatory against Travellers and is used against Travellers in greater numbers than members of the non-Traveller community, despite the fact that, logically, it is difficult to see who, other than Travellers or the homeless, would be targeted by the legislation (see collective complaint, § 70), and the parliamentary debates on the legislation showed from the outset that the legislation would disproportionately affect Travellers (see collective complaint, § 27). The Irish Traveller Movement has contacted the Garda Commissioner, in the absence of a central register of evictions for details of the evictions used against members of the Traveller Community employing the 2002 legislation. However, the Commissioner has not, in advance of the submission of this document, replied with the information requested.

#### **IV.2 Section 10 of the Housing (Miscellaneous Provisions) Act 1992 (as amended)**

85. No response is needed to § 66 GO.

#### **IV.3 Section 69 of the Roads Act 1993**

86. In response to §§ 67-71 GO, the collective complaint stated clearly (at § 35) that section 69 of the Roads Act 1993 allows for eviction without any prior notice, which is the basis on which it is criticised. While the ERRC accepts the road-safety imperatives behind the act, the case law of the European Court of Human Rights cited above and the Charter, require that some proportionality assessment take place and that an opportunity to challenge the eviction before an independent tribunal prior to the eviction is provided. As set out in the complaint, the legislation takes no account of the reasons for the presence of the temporary dwelling and there is no possibility of providing a lawful excuse in advance of the seizure of the dwelling.
87. The ERRC notes that the legislation refers to prescribed roads or prescribed classes of road. It is the understanding of the ERRC that the scope of the legislation can be extended by statutory instrument to include other parts of the road network.
88. In response to the Government’s denial of discriminatory effect at § 69 GO, the comprehensive legislative framework permitting summary evictions, taken with

the absence of a network of functioning transient sites, creates specific obstacles for Travellers who wish to lead a Travelling lifestyle. While the provision is apparently neutral, it is not open to the Government to argue, particularly in the absence of a central register of evictions, that the provision does not have a disparate impact on Travellers: they are specifically left without appropriate accommodation and so find themselves particularly affected by this legislation.

89. In response to § 70 GO, and as set out in the original complaint, there is no known mechanism for Travellers to apply for consent. Traveller organisations are unaware of any Traveller who has successfully applied for such consent. The Government have not provided any evidence of any Traveller who has successfully obtained such consent.
90. The Irish Traveller Movement has indicated, contrary to the Government's assertion at § 71 GO that Notices under the Roads Act have only been used in Counties, Carlow, Dublin City and Westmeath, that ITM has advice to families in Monaghan and Clare who received such notices. Copies of the notices served on the 19<sup>th</sup> day of March 2013 and the 11<sup>th</sup> of November respectively are attached as **Annex 3** and **Annex 4**. The Irish Traveller Movement has been providing the recipients of these notices with advice and support; it is simply fortuitous that the organisation is in possession of the notices and can contradict the Government's assertion in this regard. These omissions demonstrate the consequences of the State failing to maintain a central government register of evictions.

#### **IV.4 Sections 46 & 160 of the Planning and Development Act 2000**

91. In response to §§ 72-74 GO, the ERRC contests the Government's argument that the complaint mischaracterises the import of the relevant provisions. The Irish Traveller Movement contacted the Department of Environment Heritage and Local Government seeking details of the number of instances in which the legislation was used against Travellers. The Department failed to respond to this request in advance of the submission. The Government cannot rely on the inability of the ERRC to produce data in the Government's possession.

#### **IV.5 Local Government (Sanitary Services) Act 1948**

92. At § 75 GO, the Government do not contradict the assertions relating to the operation of the Act. The collective complaint alleges that there do not appear to be any requirement to erect signage, nor does there appear to be any requirement to give notice prior to issuing a summons and bring a prosecution. The Irish Traveller Movement is aware of the provision being used against members of the Traveller Community. Again, in the absence of a central register of evictions the Government cannot rely on its own failure to collect and analyse data in its defence.

#### IV.6 Section 111 of the Public Health (Ireland) Act 1878 as amended

93. The ERRC reaffirms its view, in response to § 76 GO, that the above legislation forms part of a comprehensive suite of legislative measures to impede the exercise of Travellers' way of life; that suite of measures should be considered as a whole.

#### V IRELAND'S REPLY TO THE ALLEGED VIOLATIONS OF ARTICLES 16, 17 AND 30 IN CONJUNCTION WITH ARTICLE E

##### V.1 The Scope of the Complaint

94. The Government's assertion at § 77 GO that the majority of Travellers are 'settled' is not accepted. The fact that the majority of Travellers do not reside in temporary accommodation is not necessarily as a result of a lack of desire to live a nomadic lifestyle, but rather the fact that the State has rendered nomadism impossible through draconian evictions legislation and a failure to provide operating and functioning transient accommodation. A reduction in nomadism is also a result of assimilationist policies dating back to the Commission on Itinerancy Report in 1963<sup>50</sup>.
95. The ERRC does not accept the Government's claim at § 78 GO. The complaint does not only concern Travellers living in temporary accommodation; it concerns families who are prevented from exercising their way of life as a result of the failure of the State to comply with its own targets combined with draconian evictions legislation. In 2013 the number of families who were without any housing support, and who were sharing accommodation or living on unauthorised sites was 1,024. This represents a large number of families living in an extremely vulnerable accommodation situation.
96. The Irish Traveller Movement contacted some of its member groups asking whether there are families living in their areas who would like to be nomadic but feel they cannot be:
- Kerry Travellers:** 53 families would like to be nomadic but feel they cannot be.
  - Ballyfermot Traveller Action Project:** The vast majority of Traveller families would like to have the option to be nomadic.
  - Traveller Visibility Group:** Most families would like to be nomadic but the group does not have an exact figure on this.
  - Blanchardstown Traveller Development Group:** Following years of assimilationist policies and evictions legislation, nomadism is not in the thinking of Travellers as there is no option to explore this possibility.
  - Fingal:** All of the Travellers in the area would like to be nomadic but feel they cannot be.
  - Offaly Traveller Movement:** 87.3% of Travellers surveyed in the area said they have been affected by laws that have made it illegal for Travellers to travel freely. The majority of respondents expressed a need to travel but felt

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<sup>50</sup> [http://itmtrav.ie/uploads/publication/ITM\\_Review\\_of\\_the\\_1963\\_Commission\\_on\\_Itinerancy.pdf](http://itmtrav.ie/uploads/publication/ITM_Review_of_the_1963_Commission_on_Itinerancy.pdf)

unable to do so because *'the Gardaí and Council will move you on anywhere you try to stop'*. Respondents described discrimination and intimidation from official agencies when travelling, one person describing how *'we are moved from place to place like animals'*; another explained that *'when my family were travelling around we were moved around like dogs from place to place, all we got was: you people shouldn't be here, go back to where you came from'*. Some respondents described how even when they explained to the council that their children were currently enrolled in local schools, they were still moved on.

97. Many Travellers speak of the criminalisation of their traditional nomadic way of life causing them to *'live on top of each other'*. This ghettoisation is felt to be a major cause of conflict within the Traveller community as families are unable to move on and make a camp somewhere new: *'I travelled for almost 40 years and if two families didn't get on, one would just move off. This law that stops us travelling is a bad thing, we all get stuck in the same place and problems blow up into bigger things'*.
98. In response to § 79 GO, the ERRC reiterates that Travellers are an ethnic group (see above, § 17-21). Travellers identify as an ethnic group and that they are widely recognized as forming an ethnic minority which requires special protection under human rights law. See, e.g., *Winterstein v France*, § 148(ζ) (*'Enfin, la vulnérabilité des Roms et gens du voyage, du fait qu'ils constituent une minorité, implique d'accorder une attention spéciale à leurs besoins et à leur mode de vie propre tant dans le cadre réglementaire valable en matière d'aménagement que lors de la prise de décision dans des cas particuliers; dans cette mesure, l'article 8 impose donc aux États contractants l'obligation positive de permettre aux Roms et gens du voyage de suivre leur mode de vie'*, emphasis added). Under the Race Relations (Northern Ireland) Order 1997, the Traveller community is included as a racial group.<sup>51</sup> The Scottish Government recognise Travellers as an ethnic group.<sup>52</sup> The Government's observations are clearly out of step with the view of Travellers in Ireland and of the authorities in neighbouring jurisdictions which share a common legal tradition and where Travellers also live.
99. In any event, Article E of the Charter does not require a group to be considered a racial or ethnic group in order to be protected against discrimination. Being a Traveller, the ERRC submits, would, if not considered a racial or ethnic identity, be considered an 'other status'.

## V.2 Evictions

100. In response to § 81 GO, the impact of the impugned legislation has been to criminalise Travellers' nomadic way of life in the absence of the operating network of 1,000 transient sites as called for in the 1995 Taskforce Report (see collective complaint, § 96).
101. The ERRC contests the Government's assertion at § 82 GO, for the reasons set out above.

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<sup>51</sup> Section 5(2).

<sup>52</sup> Scottish Government Race Equality Statement, available at <http://www.scotland.gov.uk/Topics/People/Equality/18934/RaceEqualityStatement>.

102. In response to § 83 GO, the wider context includes the failure of the State to meet its own targets in relation to the provision of Traveller accommodation, including halting site and transient site accommodation. The difficulties created by the State are further compounded by its failure adequately to manage and maintain Traveller specific halting site accommodation as set out in the report “Why Travellers Leave Traveller Specific Accommodation”<sup>53</sup> and as detailed elsewhere in these observations.

### **V.2.i Legislation on evictions**

#### **The Criminal Justice (Public Order) Act 1994**

103. In response to § 85 GO, the ERRC reiterates that it does not interpret section 19C(1) as criminalising occupation of land without the consent of the owner in the absence of one of the five criteria listed in that provision. The ERRC’s complaint is that the five criteria, and particularly the last two, are so vague — particularly when coupled with the unclear standard of ‘likelihood’ — as to ensure that in any case where Travellers occupy land which and cannot prove to the Gardaí investigating that they have the owner’s consent, they can be evicted.
104. In response to § 86 GO, the ERRC emphasises that the Garda PULSE system is a police database. It is not designed to monitor interferences with housing rights by the police, such as evictions. The ERRC’s concern is that there are no records that could be used to monitor the compatibility with fundamental rights of these evictions, which are carried out by the police without any prosecutorial or judicial supervision. The Government indicated that it was incorrect to say that no record of eviction is kept where this is not followed by prosecution. There are indeed figures relating to the numbers of times that the section has been used. As explained below, however, these figures do not illustrate the number of times that the section has been used against members of the Traveller community. This assertion by the Government also contradicts § 141 where the Government admit that there is no central government record of evictions. Furthermore, the Irish Traveller Movement wrote to the Garda Commissioner seeking details of the number of times that the section was used against members of the Traveller Community and the circumstances in which it was used but the information was not forthcoming in advance of the submission of these observations.

#### **The allegation that the law is unduly wide and is unreasonable and disproportionate**

105. The ERRC reiterates, in response to § 87 GO, that the problem with section 19C is not that it criminalises mere entry and occupation, but that the conditions which make such entry and occupation unlawful are so vague as to capture all Travellers who enter and occupy land where they cannot prove to the Gardaí that they have the owner’s consent.
106. In response to the Government’s observations at §§ 88-89, the ERRC stands firmly by its statement in § 52 of the collective complaint: any Traveller who has

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<sup>53</sup> See, above, note 45.

entered and occupied land belonging to another and who cannot prove to the Gardaí that (s)he has the owner's consent can be summarily evicted, and her/his property seized, without any judicial safeguards or supervision. It is no help to Travellers to say that one of the five conditions must be fulfilled before the Gardaí evict them. Given that many Travellers – due to inadequate Traveller-specific accommodation in Ireland – are left with no choice but to make their homes on such sites, it will always be open to the Gardaí to claim that these Travellers are *'substantially interfer[ing] with 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'*. Indeed, the Gardaí are empowered to evict as long as they think it is 'likely' that there will be such an interference. It is misleading for the Government to argue that *'Mere encampment of a temporary dwelling on land without consent does not fulfil the criteria'* (§ 90 of the Government's Observations). A person spending one night in a camping tent in someone's garden will probably not trigger the offence; but the Government are aware that Travellers moving their caravans, families, horses, and/or property onto land will reach the low threshold under the legislation: they are *'likely to cause'* (§ 92 GO) the kind of interference section 19C describes, giving the Gardaí a sufficient basis to use their powers to evict. As to the Government's assertion that the provision is not *'unreasonable and disproportionate'*, the ECtHR case law cited above shows that it is: proportionality (under art.8 ECHR) demands prior, judicial consideration of the proportionality of every eviction, regardless of the rights of those being evicted to occupy the land on which they are living. The Government cannot rely on the *'vindication of] property rights'* (§ 89 of the Government's Observations) to allow for evictions without any procedural safeguards.

107. The ERRC highlights that the problem with this legislation from the perspective of the Social Charter is not the possibility of prosecution under section 19C (which of course poses difficulties otherwise from a human rights perspective), but the power to evict people summarily from their homes through the use of powers of arrest and seizure under sections 19E and 19F. The legislative history of the provision sent the signal to Gardaí that the legislation was to be used against Travellers (see §§ 27-28 of the collective complaint).
108. The Government argue that *'it is both it is both reasonable and proportionate that a Court make the assessment and that the parties be able to argue the likelihood of damage given the property in question and the nature of the occupation'* (§ 92 GO). The ERRC agrees. However, the Gardaí are not required to secure the approval of a court before proceeding with an eviction under this legislation. By the time the matter gets before a court – which is by no means a guarantee because there may not be a prosecution or time to judicially review the police action – it is too late. The eviction has taken place. An acquittal is no remedy because it does not deal with the breach of housing rights, and there may still be a fee to pay under section 19F(4) to retrieve their property.
109. The implicit faith the Government place in the Gardaí to treat Travellers fairly, and on which much of their argument hangs (particularly at § 92 GO), ignores significant concerns in relation to the issue of racial profiling within An Garda Síochána and the attitudes relating to Travellers within the Gardaí. In terms of Travellers' interactions with the Gardaí, the Irish Traveller Movement reports



that many Travellers do not feel they are treated with respect when they need to use Garda stations (e.g. lack of eye contact, unfriendly manner, Gardaí casually dropping into an unrelated conversation that they know the person's family members who have criminal records, or otherwise making innocent people feel criminalised and racially profiled). This negative relationship is not only noted by members of the Irish Traveller Movement; it is borne out by research carried out by An Garda Síochána in the past. In 'Public Attitudes Survey & Traveller/Ethnic Minority Communities attitudes Survey to An Garda Síochána' (2007), whereas 14% of the general population were 'very satisfied' with the service provided by An Garda Síochána, only 5% of Travellers were; and more tellingly, while 16% of the population were 'dissatisfied', 26% of Travellers were, with 22% of Travellers 'very dissatisfied' (as opposed to 3% of general population).<sup>54</sup> In an independent human rights audit of An Garda Síochána the researchers found that '*Officers and members (of An Garda Síochána) expressed negative views about some communities, in particular Travellers, and the Nigerian community*' and found '*allegations about levels of criminality among the Traveller and the Nigerian communities were made at every level of those taking part in this survey, with very little hard evidence provided to substantiate them*'. The chapter in this audit on Human Rights and Operational Policing concluded: '*on the basis of this audit it seems clear that there is institutional racism within An Garda Síochána in its dealing with certain groups in the community and in the absence of organisational structures which would identify and deal with what is a very fundamental abuse of human rights*'.<sup>55</sup> Academic research on the poor relationships between Travellers and An Garda Síochána also highlights the scale of the problem.<sup>56</sup>

110. While the Government argue that the legislation is not targeted at Travellers in genuine need of accommodation, there is no defence of necessity or reasonable excuse in the legislation (arising, for example, from a lack of Traveller specific accommodation). Sections 13 and 8(1)(b) (the sections that prohibit criminal trespass simpliciter) provide for reasonable excuse yet in Section 19C(1) the Oireachtas (parliament) did not provide the same. Although the legislation could affect people other than Travellers, the provision is clearly indirectly discriminatory against Travellers. As Oran Doyle in Constitutional Equality Law submits '*The measure, although neutral on its face, effects a discrimination between Travellers and non-Travellers in that Travellers will be penalised for pursuing their way of life, while non-Travellers will not be*'.<sup>57</sup>
111. The Government argue that the provision is justified by reference to the State's duty to protect public health and public order. It was submitted by the Irish

<sup>54</sup> Report of the High Level group on Traveller Issues, March 2006  
<http://www.justice.ie/en/JELR/HLGReport.pdf/Files/HLGReport.pdf>

<sup>55</sup> Public Attitudes Survey & Traveller/Ethnic Minority Communities attitudes Survey to An Garda Síochána (2007)

<http://www.garda.ie/Documents/User/communiquedec2007.pdf>

<sup>56</sup> An Garda Síochána Human Rights Audit, Ionann Management Consultants, June 2004  
[http://www.minelres.lv/reports/ireland/PDF\\_Ireland%29Comhlamh\\_GardaHRreport.pdf](http://www.minelres.lv/reports/ireland/PDF_Ireland%29Comhlamh_GardaHRreport.pdf)

<sup>57</sup> Doyle, O. (2004) *Constitutional Equality Law*. Dublin: Thomson Roundhall, p 237

Human Rights Commission in its amicus curiae submissions in the case of *Lawrence & others v Ballina Town Council & Others* (July 2008):<sup>58</sup>

*It is therefore submitted that Section 19C(1) is a disproportionate response to the legitimate aim of protecting private owners of land from unauthorised encampments. It purports to criminalise persons who, like the applicants, have no real alternative but to enter public lands which are owned by a public housing authority. The wrong committed by persons who enter public lands could be addressed without recourse to criminal sanction. Section 19C(1) does not, therefore, respect the notion of minimal restraint but, rather, constitutes an unnecessarily obtrusive invasion of the legitimate interests of nomadic persons seeking a place to reside.*

112. The Government's observations at §§ 90 and 94 GO appear to be contradictory. It is noted in § 94 GO that in order for the offence to be effective it does not need to be prosecuted. The Government do not address the fact that the majority of notices served under the legislation do not result in prosecution,<sup>59</sup> but it is clear from § 94 GO that this is part of the design of the legislation: for the Government's purpose the legislation is effective in that the families are moved on from the unauthorised site without court intervention. While this may serve to satisfy the short term goal of clearing the land upon which the encampment is located, it does not serve to address the greater accommodation needs of the families nor does it establish that those families against whom the legislation was invoked were in fact guilty of the offence.
113. In response to § 93 GO, the ERRC notes that the Government cannot rely on the individual discretion of local authorities not to call the police. The collective complaint raises the fact that many local authorities do not provide, inter alia, transient sites for Travellers. The Government have already conceded (§ 54 GO) that local authorities do not spend a large portion of the funds set aside for Traveller-specific accommodation. Nor has the State provided any statistics to corroborate this assertion and have admitted at § 141 GO that it does not hold a central government record of evictions.
114. The ERRC is particularly concerned about the Government's statement at § 94 GO. The Government misunderstands the concept of proportionality, which concerns the suitability of measures in relation to their legitimate aim. The decision not to prosecute people under a particular provision of criminal law does not make it proportionate, particularly when the very existence of the law leaves people in a situation of uncertainty as to their fundamental rights. See, mutatis mutandis, *Modinos v Cyprus*.<sup>60</sup> What the Government is describing in § 94 is a situation where a threat of disproportionate punishment (summary eviction) leads to a low level of offending. It is the threat of summary eviction in section 19F that forces so many Travellers into overcrowded accommodation or compels them to abandon their way of life.

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<sup>58</sup> <http://www.ihrc.ie/enquiriesandlegal/amicuscuriae/criminaltrespass.html>

<sup>59</sup> Criminal Prosecutions 364. Deputy Patrick Nulty asked the Minister for Justice and Equality the number of persons who have been prosecuted each year, in tabular form, pursuant to the offence of section 19D of the Criminal Justice (Public Order) Act 1994, as inserted by the Housing Miscellaneous Provisions Act 2002; and if he will make a statement on the matter. [24184/12] The response is attached hereto in an appendix.

<sup>60</sup> *Modinos v Cyprus* (application no.15070/89), Judgment, 22 April 1993, §§ 23-24.

## The alleged lack of due process consistent with the rights of those affected

115. In response to § 96 GO, the ERRC reaffirms its contention that section 19 of the Public Order Act violates the most basic tenets of due process necessary to provide security to the rights of those affected, and is a clear violation of the Charter. As stated above, what is particularly relevant for the Committee's purposes is how the legislation permits summary evictions without notice or oversight by courts.

## Notice periods and defences

116. In response to § 97 GO, it is not sufficient that the police have the power to issue notice periods under the legislation; for the legislation to be compatible with the Charter, it is necessary for them to have a duty to give notice sufficient to allow for a legal challenge. While the legislation does not preclude longer notice periods, the fact that the legislation does not provide for them is the issue. As there are no guidelines or criteria provided in relation to the operation of the legislation, the fact that the Government indicate that the police can provide notice periods does not cure this fundamental defect in the legislation. In order to comply with the Charter, police must (inter alia) have the duty to provide a reasonable notice period.<sup>61</sup>
117. If by '*specific unfairness*' (§ 97 GO) the Government mean that the ERRC has not pointed to specific cases, the ERRC notes that it is enough for the Committee to find a violation of the Charter on the basis of the legislation alone. The absence of a requirement to give notice is enough to result in a breach. As set out earlier, it is the existence of this legislation that is coercing Travellers into abandoning their way of life
118. The Government's answer to the fact that a Traveller cannot resist eviction under section 19C is to point out, at § 98 GO, that other legislation, when applied, does provide a means of resisting eviction. The Government then claim that the latter is used more often than the former. That does not cure the defect in section 19, whose use does not depend on the prior attempted use of less draconian measures.
119. At § 99 GO, the Government accuse the ERRC of '*inviting this Committee to trump the property rights of the landowner with the right of an Irish Traveller to erect temporary dwellings, irrespective of the damage caused*'. It is the opposite: the ERRC accuse Ireland of allowing property rights of the landowner to trump the Charter rights of Travellers. The impugned legislation allows for the summary eviction – without any judicial supervision or proportionality analysis – of people suffering from the failure of the State to provide Traveller specific accommodation. The ERRC is asking the Committee to examine the proportionality of the measure, in this regard effectively criminalising people

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<sup>61</sup> See International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 62/2010, Decision on the Merits, 21 March 2012, at § 163, stating "To comply with the Charter, legal protection for persons threatened by eviction must be prescribed by the law and include: . . . an obligation to fix a reasonable notice period before eviction."

who are in occupation of property often as a direct result of the failure of the State to provide Traveller specific accommodation including transient sites. At the time that the legislation was introduced there were over 1,000 Traveller families without accommodation, and at present there are over 1,000 families without accommodation. The legislation has remained in place and the accommodation situation has not improved. The ERRC invites the Committee to find that the imbalance between landowner rights and Traveller rights breaches the Charter, due to the lack of adequate safeguards against eviction, and particularly the low threshold under which arrest and eviction are allowed. The imbalance can be redressed in a way that complies with the Charter and ensures respect for the rights of Travellers and landowners. If the Ireland wishes to maintain the section 19C offence, it must provide adequate safeguards including, inter alia, a reasonable notice period, a lawful excuse in cases where there is nowhere else lawfully to go, an opportunity for those facing arrest and eviction to have the proportionality of that measure tested by an independent tribunal and re-housing of those evicted. As pointed out in the collective complaint (§§ 59-60), other, similar laws in Ireland provide for such safeguards, even when property rights are at stake. The European Court of Human Rights has not hesitated to redress the balance in this way when national courts in Europe have given absolute priority to the rights of landowners at the expense of the fundamental rights of Roma and Travellers (see above, § 8).

### **The onus of proof**

120. In response to § 100 GO, the presumption that Travellers lack the consent of the owner of the land leaves them vulnerable to summary eviction by Gardaí in a way that breaches the Charter. The Committee is referred back to the IHRC's comments on the questionable constitutionality of the reversed burden of proof (see above, § 111).

### **The possibility of judicial review**

121. The Government argue at § 101 GO that judicial review of evictions under section 19 is available and that an application can be made for interim relief. The Government invoke the judgment in *McDonagh v Kilkenny County Council* [2011] 3 IR 455, where interim relief was provided. However, the possibility of making such an application for an injunction depends on there being sufficient time between the making of a direction under section 19C(3)(b) and the arrest and/or seizure of property under sections 19E and 19F. The legislation does not require there to be any significant delay between the 19C(3)(b) direction and action under 19E and/or 19F. To put it plainly, the Gardaí can approach Travellers whom they suspect are occupying land (with which they are likely to interfere...), direct them to move on, and, when they refuse, and fail to produce evidence to rebut the presumption that they do not have the owner's consent to be there, immediately seize their homes; the Travellers may, in the meantime, have already been arrested in accordance with section 19E(3) on suspicion of committing an offence under 19C(1). Judicial review is not in any event a viable

option for people in circumstances where their homes are at risk of being confiscated, they are economically vulnerable and often encounter difficulties in accessing legal representation. The Irish Traveller Movement has an independent Law Centre funded by philanthropic donations; the State does not provide any funding to the Law Centre and therefore does not ensure its viability. The mere possibility of judicial review as a remedy to people does not serve as a defence for the Government when there is no automatic suspensive effect, no other guarantee that the Gardaí will wait long enough to allow those facing eviction to seek legal advice, and no support for Travellers to take such proceedings.

### **The alleged loss of homes**

122. At § 102 GO, the Government describe the threat of loss of home as a ‘*theoretical possibility*’. For the Committee to find a violation of the Charter, however, it is sufficient for domestic law to provide the police a power to summarily evict someone:

*To comply with the Charter, legal protection for persons threatened by eviction must be prescribed by the law and include: an obligation to consult the affected parties in order to find alternative solutions to eviction; an obligation to fix a reasonable notice period before eviction; a prohibition to carry out evictions at night or during winter; accessibility to legal remedies; accessibility to legal aid; compensation for illegal evictions.<sup>62</sup> (emphasis added)*

In contrast to these legal protections, under Irish law the direction may be to vacate the property, but under section 19F, the authorities can immediately seize the property (i.e. Travellers’ homes) upon refusal to follow the direction. The Travellers concerned can also be arrested in the meantime. That amounts to summary eviction. The Government admit at § 141 GO that they hold no central record of evictions. If the Government were to hold a central record of evictions, they could substantiate their claim that seizure of homes is only a ‘theoretical possibility’. Member groups in the Irish Traveller Movement have in any event advised of evictions taking place and caravans being impounded. One incident referred to a caravan almost being impounded, the impounding was only avoided as a result of the actions of the family refusing to leave the caravan. Details are set out at § 187 of this document and at § 79 of the collective complaint. In the absence of a central government record of evictions and impoundments, the Government cannot counter the assertion that caravans are impounded.

### **The alleged requirement that the legislation should take into account infringement of other rights and the fact that the Public Order Act does not require an assessment of alternative accommodation**

123. At § 103 GO, the Government claim that requiring the Gardaí to take into account the fundamental rights of the people concerned would undermine the

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<sup>62</sup> International Federation of Human Rights (FIDH) v. Belgium at § 163.

effectiveness of the law by preventing Gardaí from responding urgently to breaches of property rights. They invoke art.1 of Protocol 1 ECHR. The case law of the European Court of Human Rights directly contradicts this view. The right to property is never so urgent as to justify summary evictions of Travellers without a proportionality assessment except in cases of *force majeure*. See *Winterstein*, § 159 (*‘La Cour souligne à cet égard que de nombreux textes internationaux ou adoptés dans le cadre du Conseil de l’Europe insistent sur la nécessité, en cas d’expulsions forcées de Roms et gens du voyage, de leur fournir un relogement, sauf en cas de force majeure’*). The impugned legislation does not limit itself to cases of *force majeure*. Indeed, the Government indicate at § 104 GO that it is often local authorities, and not landowners, who initiate complaints against Travellers, undermining the argument that urgent action is needed to vindicate landowner rights. The ERRC also notes the Government’s concern about the arbitrary application of the law. In the absence of guidance to Gardaí, however, and the admission at § 94 GO that the authorities do not have to prosecute for the legislation to be effective, the ERRC claims that the provision itself already contains a recipe for arbitrariness.

124. The Government rely at §§ 104-105 GO on recommendations and good practice as sufficient safeguards against violations of the Charter arising out of the use of section 19 powers. In the absence of safeguards enshrined in law, these recommendations and practices cannot prevent the finding of a violation of the Charter. As this Committee has found previously in *International Federation of Human Rights (FIDH) v. Belgium* (cited above): *“To comply with the Charter,... when evictions do take place, they must be: carried out under conditions which respect the dignity of the persons concerned; governed by rules of procedure sufficiently protective of the rights of the persons; accompanied by proposals for alternative accommodation”*<sup>63</sup> (emphasis added). The Government have not provided evidence of protocols or procedures used by local authorities in relation to practice. The Government have not provided any evidence that the recommendations of the National Traveller Accommodation Consultative Committee have in fact been implemented or monitored.
125. The ERRC is not suggesting, as the Government purport at § 105 GO, that the use of the Public Order Act on its own alters the affected person’s status on the housing list. However, this can be the knock-on effect: Travellers affected by the Act can be forced to leave the local authority area because they have nowhere else to go, and once the families have left the local authority area the families can lose their place on the housing list.

### **The alleged lack of respect for nomadic lifestyle**

126. In response to the Government’s statement to the contrary at § 106 GO, the ERRC maintains its assertion that nomadism has been criminalised in Ireland due to the combination of a lack of adequate Traveller-specific accommodation (in particular lack of transient sites) and section 19. The reduction in the number of families who are leading a nomadic way of life is not a symptom of declining

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<sup>63</sup> *International Federation of Human Rights (FIDH) v. Belgium* at § 163.

nomadism but a result of legislation such as section 19 and practices incompatible with the Charter. Despite the efforts described in the Government's Observations, which amount essentially to '*requesting housing authorities to make every effort to consider the provision of Transient sites*', only four counties currently provide transient sites, all of which are being used for emergency housing. The only choice for many who wish to lead a nomadic lifestyle is to secure the consent of landowners to live on their land or trespass. As a result, nomadism in Ireland is indeed impossible unless one is prepared to face the threat of eviction and prosecution or can secure and immediately prove that one has the consent of the landowner. The subjective way the legislation is applied together with the lack of notice periods and the lack of adequate and suitable transient accommodation render nomadism impossible for many Traveller families. In relation to nomadic families the Irish Traveller Movement has received information (set out above at § 96) from some of its member groups, who indicate that there were Travellers living in their area who would like to be nomadic but cannot as a result of the legislative framework and the lack of transient sites.

127. The report referred to at § 107 GO, when examined in the context of the huge increases in the numbers of families living in private rented non-Traveller specific accommodation, demonstrates the brutal efficiency of section 19C in criminalising nomadism. Again, there are still significant gaps in the provision of Traveller specific accommodation
128. Information provided by the Irish Traveller Movement above contradicts the Government's assertions at §§ 108-109. The Irish Traveller Movement's analysis of the TAPs for the 2014-2018 period showed that Cavan County Council, Donegal County Council, Galway County Council, Leitrim County Council, South Dublin County Council, North/South Tipperary Council and Waterford County Council do not believe that providing transient accommodation is a local issue. These councils suggest that transient sites, if required, should be provided as a national network of sites. The following information shows the approach of other councils:
  - a. Kildare County Council state that they recognise the nomadic nature of Travellers but also suggest that the responsibility of providing transient accommodation should not fall on the local authority even though they currently have 20 Traveller families living on the roadsides.
  - b. Dún Laoghaire-Rathdown County Council, Longford County Council and Mayo County Council state that providing permanent accommodation for Travellers is their priority.
  - c. Fingal County Council also reports that financial constraints require them to prioritise the provision of permanent accommodation over any other kind of accommodation.
  - d. Clare County Council is considering the development of a transient site in their area. However, the transient site will only be available to Traveller families for a short period of time and by prior arrangement with the Council only which may not be a realistic caveat.
  - e. Cork City Council, Cork County Council, Dublin City Council, Kerry County Council, Limerick County Council, Meath County Council, Monaghan County

Council, Offaly County Council, Roscommon County Council, Sligo County Council and Wexford County Council report that there is no need for transient accommodation in their areas.

- f. Kerry County Council and Offaly County Council do not mention transient sites at all in their Traveller Accommodation Programme reports.
  - g. Kilkenny County Council reported that there was no need for a transient site in Kilkenny because transient sites 'do not meet Traveller culture of nomadism' and Traveller families who use these sites may 'refuse to move on' or 'cause trouble in the local area'.
  - h. Louth County Council and Westmeath County Council report that they will not consider the provision of transient sites due to estate management issues.
129. The Government have not disclosed the policy referred to in § 110 or explained how it is implemented or monitored; they appear to be referring to practice (as opposed to policy), but cannot substantiate even that claim. The State indicates that '*in most cases Local Authorities will seek to consult and negotiate with affected persons in advance of using eviction legislation to come to a fair arrangement*' (emphasis added). There is no obligation on officials to engage in a consultation process. This is not sufficient to prevent a breach of the Charter. In any event, the Irish Traveller Group have collected examples contrary this alleged 'policy':
- a. **Blanchardtown Traveller Development Group** report that local authorities have failed to offer solutions in cases of evictions and when the Group tried to discuss the matter, the authority failed to engage
  - b. **Laois Travellers** report that in all cases they know, no support of any kind, including alternative accommodation, was offered. The Traveller organisation was not consulted or warned and the notices were served on a Friday, thereby reducing the possibility of the Group being in a position to provide and receive advice on the matter.
  - c. **Offaly Traveller Movement**, in relation to two evictions, report that no prior notice was received by them and that the persons involved were given 24 or 48 hours' notice.
  - d. **Traveller Visibility Group Cork** report in relation to the evictions it has been dealing with that no attempt was made to consult with them with regard to the eviction prior to notice being served.
130. In response to § 111 GO, the failure to provide transient sites together with draconian evictions legislation has rendered it impossible for Travellers to be nomadic. The State has not to date conducted an attitudinal study of Travellers, seeking their views in relation to nomadism and the decline of nomadism.
131. In relation to the decline in nomadism mentioned in § 112 GO, the failure of the local authorities to adequately to manage sites together with the failure of the State to provide transient accommodation contributes to the decrease in nomadism, as set out above. It is submitted that reliance upon housing applications is not enough to conclude that there is a decline in the wish for people to lead a nomadic lifestyle. As was set out in the report "Why do Travellers leave Traveller Specific Accommodation" cited above, the failure to



maintain and manage Traveller specific accommodation was found to contribute to the decline in people applying for Traveller specific accommodation.

### **The allegation of discrimination**

132. In response to § 113 GO, the ERRC maintains and reasserts its discrimination complaint—the provision is indirectly discriminatory against Travellers. The Government do not contradict the ERRC’s claim that only Travellers have been affected by section 19C. Indeed, it remains impossible to see who, besides Travellers and the homeless, would be targeted by this legislation. The ‘preferred’ use of section 10 notices does not cure the discriminatory effect of section 19: as set out above, Travellers fear the consequences of the legislation and so abandon or significantly modify their way of life. As far as institutional racism within the police force is concerned, the Government give no indications of how many Travellers have been recruited to the police force. Given the Government’s assertion that Travellers are not a racial or ethnic minority, the ERRC is also sceptical that the efforts undertaken to tackle institutional racism in the Gardaí can have any effect on discrimination against Travellers.
133. At § 114 GO, the Government again argue that the impugned legislation is compatible with the Charter because of the discretion of the police and local authorities not to invoke it. For the reasons set out above, this is inadequate.
134. In response to § 115 GO, the Children’s Ombudsman’s Report is awaited in relation to the removal of two Roma children, one in Athlone and another in Tallaght, following the well-publicised ‘Maria case’ in Greece. The United Nations Universal Periodic Review process identified the need for the State to introduce legislation making racial profiling illegal:
- 108.2. Enact laws and design plans and strategies in the area of combating racism, racial discrimination, and racial profiling and investigate relevant cases to ensure provision of reparations to victims;*
  - 108.10. Legislate against racial profiling and strengthen its efforts to promote the humane treatment of migrants and people of non-Irish origin by law enforcement officers;*
  - 108.11. Consider adopting measures to prohibit any form of racial profiling by police and law enforcement officials;*
  - 108.12. Adopt legislation that prohibits any form of racial profiling and furthermore strengthen its efforts to promote the humane treatment of migrants and people of non-Irish origin by the Garda Síochána and other law enforcement personnel in accordance with international human rights law;*
  - 108.13. Strengthen its laws to prohibit racial profiling and strengthen its efforts to promote humane, dignified and non-selective treatment for migrants and other persons who are not of Irish origin.<sup>64</sup>*

### **Section 10 Notices under the Housing (Miscellaneous Provisions) Act 1992**

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<sup>64</sup> [http://www.upr-info.org/sites/default/files/document/ireland/session\\_12\\_-\\_october\\_2011/recommendations\\_to\\_ireland\\_2012.pdf](http://www.upr-info.org/sites/default/files/document/ireland/session_12_-_october_2011/recommendations_to_ireland_2012.pdf)

135. As the Government insist at § 116 GO and elsewhere, section 10 of the 1992 Act should not be understood in isolation, but should be examined in the context of the State failing to reach its own targets in relation to the provision of Traveller specific accommodation and the failure to maintain and manage Traveller specific accommodation as set out in the Report, “Why Travellers leave Traveller Specific Accommodation?”.
136. In response to § 117 GO, the use of section 10 in this context, where local authorities are aware that there are issues in relation to the maintenance and management of sites or where there is a failure to deliver Traveller specific accommodation is inappropriate, particularly where no alternative accommodation is readily available.
137. The notices referred to at § 118 GO are served where families have no alternative accommodation available to them and the Council are not under any obligation to provide them with alternative accommodation. The Government state that it needs a ‘*degree of flexibility*’ in order to ‘*re-house Travellers living in conditions unfit for human habitation*’. The ERRC reiterates that evicting Travellers from such a situation must only be used as a last resort and when alternative housing is provided. See *Winterstein v France*, § 159.
138. The ERRC notes that the State has not yet adopted the recommendations of the NTACC, mentioned in § 119 GO, in relation to the use of section 10 Notices. The Government have not explained their failure to adopt those recommendations.

#### **Alleged lack of due process**

139. The Government have not substantiated their claim of fulfilling their obligations under the Charter ‘*in practice*’, asserted at § 120 GO. In any case, these requirements cannot be a mere matter of policy and practice, but must be enshrined in law. If it is merely a practice and custom, there is too high a degree of flexibility leading to inconsistent application and arbitrary or otherwise unjustifiable exercise of this power. The ERRC reiterates that the mere lack of proper legislation and provisions to protect against abuse is reason alone for finding a violation of the Charter.

#### **The obligation to consult the affected person**

140. Again, the Government have provided no evidence of the claimed ‘*general practice*’ (§ 121 GO) of consulting the persons affected before issuing a notice. In the absence of a central government register of evictions or a specific regulatory framework in relation to consultation, the Government’s cannot substantiate their argument. The Government admit that there is no statutory obligation for consultation, highlighting a significant gap in the overall legislative framework for the protection of Travellers. Consultation with the affected people is such an integral part of a rights-respecting framework that is cannot be left merely to the general practice of the local authorities. Furthermore, consultation cannot be considered genuine and fair when it is initiated after the notice has been served. In this way, the State undermines the rights of the affected persons to respond

on equal footing and play a role in the negotiation process. This is particularly dangerous in the cases of Travellers because of their specific vulnerability.

141. The flaws in the needs-assessment process described at § 122 GO are set out above at §§ 28-33.

### **The period of notice**

142. In summary and response to § 123 GO, the Government have provided no evidence of the use of the practice of giving more than 24 hours' notice. In the absence of a central government register of evictions, the Government's response is not evidence of practice and, in any event, the mere existence of discretion is not enough to avoid a breach of the Charter. The requirement to give no more than 24 hours' notice cannot be seen as reasonable and, again, the Government cannot simply rely on the purported and unsubstantiated claim of the local authorities' practice of providing more notice.

### **The appellate mechanism**

143. The fact that two cases have been taken by two individual litigants, as mentioned by the Government at § 124 GO, does not provide evidence of effective access to justice. Injunctions are costly and even in cases where litigants enjoy pro bono legal advice, there are significant outlays incurred in taking injunction proceedings, including stamp duty on Court documents. The costs of stamp duty<sup>65</sup> on court documents are often borne by the litigant even where solicitors and barristers are providing their time on a pro bono basis. For families with very little money these costs can act as a significant barrier. The Irish Traveller Movement Independent Law Centre, which is not State-funded, takes approximately ten strategic cases a year. The Law Centre is not in a position to provide advice and representation to all Travellers who may have an action relating to a notice. In a handful of cases Travellers may be in a position to access pro bono legal assistance; however the pro bono network in Ireland is in its infancy and the network is not evenly distributed across the country. The Government also admit that there has been only a single case where a preliminary injunction has been granted, highlighting the extreme difficulty for Travellers to obtain interim measures to prevent their being evicted.

### **The alleged lack of adequate provision of alternative and appropriate accommodation**

144. The Government admit at § 125 GO that it is not a requirement that families be offered alternative accommodation. In this, they are now in breach of clear case law from the ECtHR (*Winterstein v France*, § 159) and, it is argued, the Charter.
145. The Government have provided no evidence to corroborate, either at § 126 GO or elsewhere, their assertion that authorities avoid providing alternative accommodation far from where the family are parked. In the absence of a central

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<sup>65</sup>The schedule of fees can be found at:

<http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/E2EC1E98DFE91E5C802576D9005EA990?opendocument&l=en> (retrieved on 20 June 2014).

government register of evictions, the Government are not in a position to deny the allegation made by the ERRC in this regard.

146. The Government have provided no evidence to support their assertion at § 127 GO that making it mandatory to provide alternative accommodation would hamper the objective pursued by the legislation.

### **The alleged violation of Article 17 – interference with education of the child.**

147. It is telling that the Government rely on data only up to 2012 at § 129 GO. Since the cutbacks to Traveller education began, the targeted service, the Visiting Teacher for Travellers Service, which collated data on Traveller children's education, has been disbanded. Since then no reliable data is available, although anecdotally members of the Irish Traveller Movement say that since this support and others were removed in 2012, Traveller participation has decreased at primary and post-primary levels. According to the report 'Travelling with Austerity', 86.6% of the funding<sup>66</sup> has been removed from the Traveller education budget. Here is an overview of what has changed:

- a. The Visiting Teacher Service for Travellers ('VTST'), 40 posts, ceased in September 2011, with a saving of €2.4 million.
- b. The system of Resource Teachers for Travellers ('RTT'), ceased on the same date. The complement of RTTs was 710 full-time employees (of which 488 in primary education and 222 secondary in secondary education). To compensate for their withdrawal, 141 alleviation posts were made available (at a cost of €8.4 million), so a totally of 569 posts were lost. The savings were €34 million.
- c. All 33 Senior Traveller Training Centres, with about a thousand students, were closed in June 2012, with participants invited to participate in other educational programmes such as the Back to Education Initiative.
- d. Enhanced capitation funding for Traveller children was substantially cut.
- e. Additional school transport support ceased in 2010.

Also from that report:

*Although the Department of Education and Skills undertook to monitor the consequences of the withdrawal of these services, no such information is yet available, nor is there information on other educational initiatives that help Traveller children, such as afterschools, pre-schools or youth club. Traveller organisations report that the loss of the visiting and resource teacher service means not only the loss of a dedicated services but that there is no system to alert schools to young Travellers in need of education: there are 'plenty of people who the [National Education and Welfare] Board does not know about.*

Despite recent attempts to introduce an ethnic identifier in schools, the State does not know how many Traveller children are in school, let alone anything about their participation.

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<sup>66</sup> Harvey B., 2013, Travelling with Austerity. Report by Pavee Point retrieved from [http://www.paveepoint.ie/tempsite3/wp-content/uploads/2013/10/Travelling-with-Austerity\\_Pavee-Point-2013.pdf](http://www.paveepoint.ie/tempsite3/wp-content/uploads/2013/10/Travelling-with-Austerity_Pavee-Point-2013.pdf) (accessed 17 June 2014)

148. Enrolment figures of course do not equate with participation and outcome. Merely enrolling children does not mean that they are succeeding in the education system. Indeed, the only survey carried out by the inspectorate into Traveller children's experience and outcomes was damning (while applauding the then 100% enrolment in primary school and almost 100% transfer to post primary).
149. In relation to the Government's assertion at § 130 GO that the use of section 10 notices is a form welfare provision, the nexus between evicting Traveller families and their welfare is difficult to understand. Members of the Irish Traveller Movement report that families under threat of eviction are often forced to keep children home from school to assist in protecting the family from the authorities taking their caravans. One member recalls a Traveller's son in County Kildare, where the family have been living on an unauthorised site while the State refused to accommodate them, asking her as she picked him up from school '*Is the trailer still there Mammy?*'. For the State to argue that eviction notices are a welfare provision in circumstances where it has failed to meet its own targets appears cynical. It is also concerning that the Government view the provision of accommodation for Travellers as distributive. This reinforces the very unilateral approach that is apparent in the lack of genuine consultation as well as in the inadequacy of Traveller-specific accommodation (in particular, the lack of transient sites). Furthermore, under the Charter, re-housing and providing accommodation generally cannot and should not be '*applied as a welfare provision*' (§ 130 GO), but rather must be protected and informed by a rights-respecting framework.
150. In response to § 131 GO, the Irish Traveller Movement's members indicate that a number of families have encountered difficulties accessing the school transport system. The Government's statements at § 131 GO ('*All authorised halting sites in Ireland are either within a reasonable distance to a school or provided for under a School Transport Scheme*') are also contradictory to what they admit at § 208 ('*The site is admittedly outside the school transport area but the family in question have been seen driving their own vehicles to and from the site*').
151. In response to § 132 GO, the Government admit that the particular school transport provisions that were offered to Travellers were withdrawn. Members of the Irish Traveller Movement have indicated that this has had a significant impact on participation levels in schools. As the State has removed the data collection facilities referred to at § 147 above, it is not in a position to counter the ERRC's assertion in this regard. The State should not be entitled to rely on its decision to discontinue the collection of important data in relation to Traveller education in its defence. The ERRC contends, contrary to the Government's claim, that under the Charter, budget constraints cannot be used to justify inadequate protection of rights, particularly when it comes to the rights of children.
152. The Government claim broadly at § 133 GO that when Traveller-specific accommodation sites are not '*sufficiently close to local schools... alternative arrangements are put in place*'. Irish Traveller Movement members indicate that the provision of school transport from Traveller specific accommodation is not available in many locations; again, the Government confirm this at § 208 GO.

## The alleged violation of Article 30

153. The State has not provided any evidence, at § 134 GO or elsewhere, of the positive effects of the use of the section 10 Notice procedure. The idea of redistributing people through eviction procedures without consultation and with very little notice appears manifestly incompatible with the Charter, particularly when applied to a vulnerable group such as Travellers. Likewise, the Government does not elaborate on what it claims is ‘appropriate consultation’, which is worrying when viewed in light of the previous contentions that consultation is left to local authorities’ policies and practices, and the fact that consultation begins after notice is served. As the Government put it, “*frequently notices served are subsequently negotiated*” (§ 121 GO, emphasis added). It is difficult to imagine a fruitful, open consultation once a notice has already been issued.

## Other legislation referred to in the Collective Complaint

154. The ERRC notes that its arguments in relation to the two impugned pieces of legislation discussed above apply equally to the other legislation described in the complaint: they allow for evictions without ensuring that the safeguards the Charter imposes are in place. The ERRC asks that the Committee not look at these pieces of legislation in isolation but view them as a comprehensive suite of legislation, which has the effect of rendering nomadism imposing for Travellers living in Ireland.

### V.2.ii Evictions in Practice

155. The Government have not provided evidence of the practice described at § 136 GO. In the absence of a central register of evictions and procedures around evictions, it is impossible for the Government to prove that local authorities exercise their discretion to consult with Travellers.
156. At § 137 GO, the Government cite data about Traveller families being moved to secure accommodation, but in the absence of a central register of evictions, and in the light of the funding cuts to the Community Development Sector, it is impossible to know whether the use of section 10 notices complied with Charter standards. The cuts to the Community Development budgets (-42.3%)<sup>67</sup> have resulted in the Support projects that assisted Travellers and provided support closing or being understaffed. In these circumstances, the use of section 10 notices appears less like the ‘welfare measure’ the Government imagines and more a method of coercion.
157. In relation to the Government’s observations at §§ 138-139 GO, the ERRC stands by its allegations. The abuses which Travellers suffer are the clear result of an

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<sup>67</sup> Harvey B., 2013, Travelling with Austerity. Report by Pavee Point retrieved from [http://www.paveepoint.ie/temp/site3/wp-content/uploads/2013/10/Travelling-with-Austerity\\_Pavee-Point-2013.pdf](http://www.paveepoint.ie/temp/site3/wp-content/uploads/2013/10/Travelling-with-Austerity_Pavee-Point-2013.pdf) (accessed 17 June 2014)

inadequate legal framework, which does not require adequate consultation or notice. Many of the member groups of the Irish Traveller Movement indicate that as the groups were not consulted and the families did not have access to legal advice, the specific legislative sections were not known to the families or the groups. The Government's observation highlights the need for the State to provide access to legal advice, representation and support to these families and the need to provide further resources and training to the community development sector, which has endured significant cuts.

158. Again, if the State kept a central government record of evictions, it would have the necessary data (which could be anonymised) to refute the ERRC's allegations about particular evictions. The Government's observations at § 140 GO are an admission that they are not in a position to do so.
159. It is not enough to assert that Ireland is in compliance '*in practice*', as the Government allege at § 141 GO, without being able to demonstrate that this is the case. It is noted that the State has agreed to bring the question of monitoring evictions to the NTACC for consideration. It is vital that this register be put in place in order to ensure Ireland's compliance with the Charter.
160. There are indeed fora for dialogue with Travellers, as indicated at § 142 GO; however, there are no consequences if the views of those participating are not effected or implemented.
161. The Government essentially ask the Committee, at §143 GO, to trust that there are no significant breaches of the Charter, despite the fact that the ERRC has produced evidence to the contrary, the Government can produce no evidence of compliance, and Irish legislation does not contain the safeguards necessary to ensure that widespread breaches do not take place.

### **V.3 STANDARD OF HOUSING AND PROVISION OF TRAVELLER ACCOMMODATION**

162. Problems with the 'assessment of needs' process that the Government describe at § 145 GO are set out at § 28-33 above.

#### **V.3.i The Alleged Failure to Provide Sufficient Accommodation**

163. The misleading nature of the figures described at § 146 GO has already been discussed above at § 60. The amount spent on Traveller accommodation has trailed off considerably despite, as the Government admit, Ireland's Traveller population more than doubling (§ 147 GO). It is not accepted that the failed projections explain the Government's failure to meet their targets. The reasons for this failure are set out earlier in this document and are attributable to the State.

#### *Families still on unauthorised sites*

164. The ERRC would of course favour a reduction in the number of people living in unauthorised accommodation, and for people to be able to travel if they so wish to a network of properly managed and serviced functioning sites over people being forced to live on unauthorised sites. However, the reduction of people

living in unauthorised sites, when examined in the context of the huge increases in people living in private rented accommodation and standard housing, should not necessarily be regarded as a positive step, as it is at §§ 149-150 GO; rather it demonstrates the success of the State's assimilationist policy in relation to Traveller accommodation, enabled in large part by draconian legislation described in the collective complaint which deters Travellers from continuing their way of life. It is noted that in 2013, 1,024 Traveller families were without accommodation.

165. The Government have not provided evidence to corroborate their assertion at § 151 GO that the families living on the unauthorised sites were there by choice. These observations set out earlier the reasons why this is not the case.
166. While the Housing (Traveller Accommodation) Act 1998 may prescribe the strategies to be pursued in meeting the housing needs of Travellers, as affirmed at § 152 GO, as the Government admit and these observations show, the State has failed to provide the full range of accommodation options in many local authority areas to Travellers.
167. As discussed elsewhere in these observations, the fact that '*the vast majority of Travellers are already accommodated in social housing and the private rented sector*' (§ 153 GO) is not proof that they prefer these forms of accommodation or that they are a solution compatible with their Charter rights.

#### *The alleged decline in the provision of halting site accommodation*

168. Details from the report "Why Travellers Leave Traveller Specific Accommodation?"<sup>68</sup> are set out elsewhere in this document and will assist the Committee in assessing the credibility of the assertions at § 154 GO. In relation to the State's assertion at § 154 GO that there is no demand for halting site accommodation in the counties set out in the footnote, the Irish Traveller Movement is aware for example of a number of applications for halting site accommodation in Laois, and this is reflected in the Laois TAP (2014-2018).

#### *Increase in Travellers living in private-rented accommodation and standard Local Authority Housing*

169. The ERRC maintains its claim that the alleged '*decline in nomadism*' (§ 155 GO) is a result of Irish legislation and State action and inaction, resulting in breaches of the Charter. Irish government policies affecting nomadism, leading to its decline, are numerous and long-standing. Local authorities were given the power to regulate '*temporary dwellings*' under the Local Government Act 1925, with a specific eye to dealing with '*those itinerants who are in the habit of dwelling temporarily on road margins*' (according to the Minister for Local Government upon the introduction of the Local Government (Sanitary Services) Bill, 1947).<sup>69</sup> Helleiner identifies the start of official efforts in Galway to '*put itinerants out of*

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<sup>68</sup> See above, note 45.

<sup>69</sup> Bhreatnach, Aoife, *Becoming Conspicuous: Irish Travellers, Society and the State 1922-70*, Dublin: UCD Press, 2006, at 61.



the area' in legislation of the 1930s.<sup>70</sup> The 1963 Report of the Commission on Itinerancy was critical of itinerant forms of accommodation and advocated for settlement: *'The first major step towards a solution of many of the problems arising from the itinerant way of life will be taken when the itinerant family can be settled or permitted to settle in a house or on a camping site where they can stay indefinitely if they so desire'*.<sup>71</sup> According to Bhreatnach, despite the provision of camping sites, *'the eventual aim of the absorption programme was settlement in houses'*.<sup>72</sup> In the 1960s and 1970s, Travellers' requests for serviced camping sites were frequently ignored and instead camping was increasingly policed and prosecuted.<sup>73</sup> Nomadic practices were discouraged and actively thwarted through the elimination of safe places to stop. Bhreatnach has noted that in the 1960s, *'campsites...were cleared by court order. To prevent Travellers returning, the corporation [Cork City] erected concrete posts on the edges of the footpath'*.<sup>74</sup> There were explicit plans to *'erect houses where trespass by itinerants occurs'*. Similarly, Helleiner has documented this practice in Galway City in the 1980s: *'city workers "closed up" existing and potential parking spots in the city by placing large boulders along roadsides and in other undeveloped areas'*.<sup>75</sup> Local authorities across the country employed *'compulsory purchase, redevelopment or landscaping and court orders'* to prevent unauthorised encampments.<sup>76</sup> Helleiner also gives example of 1986 court injunction to remove 16 Traveller families *'from two camps located on land slated for recreational development'*.<sup>77</sup> The Travellers' arguments for their right to camping accommodation rather than settled housing were not accepted by the City or court.<sup>78</sup> These and similar decisions follow the 1980 Supreme Court judgment in *MacDonald v Feely (City and County of Dublin)* which *'established the right of Travellers to be offered accommodation when threatened with eviction but had also ruled that housing authorities' obligations to Travellers were fulfilled by the offer of tigeens [small houses], flats, or houses, rather than serviced camping space'*.<sup>79</sup> Such practices continue to this day. Sites that were regularly occupied by travelling families into the 1970s in County Offaly have since been earthed up. Three sites that were commonly used for camping in Newbridge, County Kildare, have been developed into housing estates. In Cork City, dozens of concrete boulders were installed as recently as February 2014 along a road where Travellers had been stopping, accompanied by signs reading *'Parking of Temporary Dwellings Prohibited'*. The 2002 Housing (Miscellaneous Provisions) Act (amending the Public Order Act) criminalised trespass on public and private lands. In addition to its literal exercise by police, the Act has successfully served

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<sup>70</sup> Helleiner, Jane, *Irish Travellers: Racism and the Politics of Culture*. Toronto: University of Toronto Press, 2000.

<sup>71</sup> Bhreatnach at 110.

<sup>72</sup> *Id.* at 111.

<sup>73</sup> Helleiner, see generally, Chapter 4.

<sup>74</sup> Bhreatnach at 123.

<sup>75</sup> Helleiner at 103.

<sup>76</sup> Bhreatnach at 123.

<sup>77</sup> Helleiner at 103.

<sup>78</sup> *Id.* at 103-104.

<sup>79</sup> *Id.* at 104.

to instil fear into Travellers that any nomadic practices bring risk to their persons and property, including harassment, criminal charges or impounding of a caravan. So significant is the impact of local and national policy on Travellers' nomadic practices, that it has been cited as a prime motivator of organised political activism for Travellers' rights more generally.<sup>80</sup> Group housing estate developments are not designed to accommodate caravans, and in some instances caravans and trailers are not permitted on grouped housing scheme sites (e.g. Dún Laoghaire-Rathdown). The ERRC therefore maintains its view that the decline in nomadism is directly attributable to almost a century of Irish government policy that sought – and still seeks today – to curb nomadic practices and limit spaces where temporary dwellings can legally exist.

170. The Social Housing Needs Assessment, on which the Government rely at § 156 GO, does not accurately reflect the attitudes of Travellers. According to the Irish Traveller Movement's information, South Dublin Council identifies a gross need requirement of 166 Traveller families; of which 35 families expressed a preference for group housing and 61 families expressed a preference to live on halting sites. In September 2013, Louth County Council noted that of 16 Traveller families it consulted with 14 families expressed the preference to live in Group Housing. Sligo County Council identified 29 Traveller families; 20 families expressed a preference to live in group housing and four families expressed a preference to live on halting sites. The study "Why Travellers Leave Traveller Specific Accommodation?" (see above, note 45), examines the reasons that many Travellers choose to live in private rented or standard housing. The report concluded that *'Travellers would generally prefer to live in Traveller specific accommodation but when their options were limited they might settle for private rented'*.<sup>81</sup> Difficulties that Travellers face when living in private rented accommodation are set out: *'It is also the case that Travellers who are used to living in larger family groups in Traveller specific accommodation often find it difficult to adapt to living away from families, while neighbours may not be very accepting of having Travellers next door'*.<sup>82</sup> It was further noted that *'Consultees argued that often a Traveller family's preference for private rented accommodation is however driven by a desire to escape the problems associated with Traveller specific accommodation. Others argue that it was less of a preference and more of a choice of last resort when there are no Traveller specific accommodation options available'*.<sup>83</sup> The Government are surely aware of this report and its conclusions.
171. The Government's information at § 157 GO is incorrect, highlighting the deficiencies in the evidence and data relied upon by the Government in its response generally. In its recent consultation in relation to its TAP, Cavan County Council received a submission from the Cavan Traveller Movement indicating that a number of Traveller families would prefer Traveller Specific Accommodation rather than Standard Housing. The Cavan TAP for 2014-2018 indicates that such requests will be accommodated where vacancies arise or by

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<sup>80</sup> Helleiner, see generally.

<sup>81</sup> "Why Travellers Leave Traveller Specific Accommodation?" at 27, see above, note 45.

<sup>82</sup> Id. at 28.

<sup>83</sup> Id.

the construction/purchase of Traveller specific units. Laois County Council reported in their TAP 2014-2018 that they received submissions for 37 Traveller families who would prefer to live on halting sites. However, the Council only project for the accommodation need of 21 of these families as the others *'have not applied for accommodation'*.

172. In response to the Government's belief in the *'increasing accessibility of the private rented sector to Travellers'* (§ 158 GO), the ERRC refers the Committee to § 53 above. The lack of data comes from the Government, who have failed to carry out a comprehensive attitudinal survey of Travellers and rely instead on data which directly contradicts the current round of TAPs, direct evidence from Travellers, and the Government-commissioned report ("Why Travellers Leave Traveller Specific Accommodation?", see above, note 45).
173. While there may be assistance for those preferring private rented accommodation, as set out at § 159, as explained above, Traveller families encounter significant difficulties in accessing private rented accommodation and this is not a secure or suitable option for many Traveller families.
174. The difficulties with the assistance schemes for enabling a nomadic lifestyle, cited by the Government above, have already been outlined (see above, § 65). The support for nomadic lifestyle claimed by the Government is not substantiated by the evidence.

#### *Sharing accommodation*

175. The Government assert vaguely at § 161 that Traveller families choose to live together without addressing the evidence in the collective complaint of dangerous overcrowding. Galway County Council, for example, estimate in their 2014-18 TAP that there are at least 12 Traveller families living *'involuntarily'* with other Traveller families.
176. The Government grossly understate the problem with transient sites at §§ 162-63. As set out at § 96 of the collective complaint, a need for 1,000 transient units was identified in 1995 and there is no properly-functioning transient site in Ireland today. The Government seem to suggest that this massive failure is somehow the result of tensions within Traveller communities or lack of demand. The reality of transient sites is set out above (§ 34). Here, it is sufficient to note that it is now obvious that consultation with Travellers rarely results in Travellers' preferred options being implemented, and the failure to implement nearly 20 year-old recommendations must be attributed to the State.
177. In response to §§ 164-165 GO, LTACCs are in place in all councils but, for example, as explained at § 40 above, Dún Laoghaire-Rathdown Council excludes its LTACC from taking part in specific discussions such as planning and activities regarding accommodation on temporary or emergency sites.
178. The Knock situation described at § 166 GO is hardly a success: there is no transient site there despite the need for one.

#### *Difficulties in providing Traveller-specific accommodation*

179. The Government's pleas of lack of resources in relation to Traveller specific

accommodation at §§ 168-169 GO are again rejected in the light of the failure to carry out a value-for-money exercise (see above, § 63). In relation to difficulties in obtaining land in reasonable proximity to amenities, local authorities have powers to compulsorily acquire land. The Government have not provided any evidence at § 169 of any particular difficulties encountered in finding land suitable for the construction of Traveller specific accommodation.

180. The Government's assertion, again, at § 170 GO that Travellers are to blame for leaving their accommodation is contradicted by the Government-commissioned report "*Why Travellers leave Traveller-specific accommodation*".<sup>84</sup>

### *Summary*

181. It is not open to the Government to claim that it is within its margin of latitude and has achieved measurable progress (§§ 171-174 GO) when it has failed both to meet its own targets and to spend the money set aside to meet them.

### **V.3.ii The Alleged Failure to Create a Sufficiently Strong Legislative Framework**

182. The ERRC maintains its view that the lack of political will and the lack of sanctions for local authorities failing to provide accommodation have breached the Charter. The true facts behind the statistic quoted at § 176 GO have been discussed above at § 52. While the Government cite various reporting and consultation mechanisms at §§ 178-179, the reality is that these are failing, mainly because the LTACCs and the NTACC do not have any power to ensure that their recommendations are implemented.

### **V.3.iii The Alleged Failure to Ensure Adequacy of Existing Sites**

183. The Government's assertions at §§ 180-186 GO have already been contradicted above with specific examples (see above § 57). There is no evidence to corroborate the Government's claim that overcrowding is the result of expanding families (§ 183 GO). The increase in overcrowding, as set out in the collective complaint and in these observations, appears to be the result of families involuntarily forced to share accommodation. The Government also provide no evidence of their assertion at § 185 that local authorities are assisting Travellers with disabilities. As far as § 187 GO is concerned, the ERRC stands by its allegations.

### **SUMMARY**

184. The Government provide only partial figures about spending on Traveller accommodation, neglecting to highlight that such spending has decreased 93% since 2008 and that there have been considerable underspends by local authorities. The Government's general claims as to the situation of Travellers do not match the reality on the ground: Travellers live in overcrowded, substandard

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<sup>84</sup> See, above, note 45.

conditions and there are few plans in place to improve the situation. The Government rely heavily on the placement of Travellers on private rental accommodation as a sign of progress, when in fact it is a symptom of a combination of draconian legislation criminalising nomadism and a lack of Traveller specific accommodation.

185. The Government rely on unsubstantiated promises that local authorities and police will not go as far as domestic legislation allows in carrying out forced evictions with little or no notice or access to justice. In reality, Travellers are subjected to a comprehensive suite of legislation, leaving police and local authorities ample options to evict them without notice, without providing alternative accommodation and without judicial oversight.
186. The ERRC stands by the breaches alleged in the collective complaint.

## VIII Response to Annex I

### VIII.1 Specific Allegations of unlawful evictions

187. **Mahon Rd, County Cork, May 2003** (§ 195 GO): The Government do not dispute the events surrounding the eviction. The Irish Traveller Movement has been in contact with Chrissie Sullivan of the Traveller Visibility Group who has indicated that the incident complained of resulted in the family being broken up and led to extreme crisis. Many of the children suffer from drug addiction and other serious mental health problems. Some of the children ended up incarcerated with members of the extended family ending up in foster care. The fact that this family were in a particularly vulnerable situation does not justify the eviction they suffered; the family needed and, under the Charter, were entitled to greater support.
188. **South County Dublin, December 2002** (§ 196 GO): The Government indicated at § 86 GO that where the Gardaí are involved in an incident of this kind, a record is kept on the PULSE system. No attempt has been made by the Government to access this information, it seems. The eviction took place in the Clondalkin area. As the Government are aware, the local Traveller group shut down on Christmas Eve 2013. The Irish Traveller Movement has contacted a former employee of the Clondalkin Traveller Development Group who advised that the files have been archived and it has not been possible to retrieve them in time for these submissions.
189. **Ennis, County Clare, June 2011** (§ 197 GO): The family referred to in the complaint are a traditionally nomadic family who are presently homeless, living on an unauthorised site adjacent to a motorway in Kildare. The family are often served with eviction notices in Kildare and their family's accommodation situation has not been resolved.
190. **Balbriggan, County Dublin, June 2009** (§ 198 GO): The Government have not provided any evidence of the alleged harassment. The family did seek legal advice in relation to the second eviction as set out in the complaint; however, this does not reduce the impact of the incident for the family.
191. **Blanchardstown, County Dublin, September 2009** (§ 199 GO): The Irish Traveller Movement is advised by its member group in the area that the incident did in fact take place. The incident took place at Porterstown Halting Site.

192. **County Waterford, January 2009** (§ 200 GO): The family are currently homeless and are sharing accommodation, living in a portacabin in the backyard of the house of a relative. Two of their children have died, one through drowning, since this occurred. In Waterford, Mary Stokes, the Joint Coordinator of Waterford Traveller Community Development Project, advises that the LTACC has only been meeting sporadically over the past three to four years.
193. **Various locations, to May 2005** (§ 201 GO): The collective complaint included a link to a newspaper article, now attached as **Annex 6**, identifying the families.
194. **Rathkeale, County Limerick, November 2010** (§ 202 GO): The Irish Traveller Movement insists that the boulders were placed on either side of the family's caravan. The Government do not deny other elements of the details of the eviction.
195. **Bishopstown, County Cork, May 2011** (§ 203 GO): The Irish Traveller Movement has contacted the Traveller Visibility Group in Cork who advise that their records indicate the name of the family. The ERRC can seek permission to disclose the name of the family if the Government wish. The fact that the State has no record of the incident clearly highlights the need for a central government register of evictions.
196. **County Clare, 2012** (§ 204 GO): The family's accommodation circumstances have not been resolved. The family are nomadic between Clare and Kildare and have been living in unauthorised sites for the past number of years. The State has failed to meet the family's accommodation needs.
197. **County Wexford, July 2012** (§ 205 GO): The Council refused to deal with the family as a result of the operation of the 'indigenous' clause, allowing them to claim that the family were not their responsibility. As set out in the complaint, the matter was only resolved following intervention and representations by the Irish Traveller Movement.

### **VIII.2 Specific Allegations regarding Halting Site Standards**

198. **Spring Lane Halting Site, Cork City, Co. Cork** (§ 206 GO): Despite the Government's assertion that they are working to resolve these issues and develop a medium-term plan, the Housing Authorities in the recent TAP have only made a general statement of intent to deliver a plan. The Council has not made a specific commitment to deliver a plan. The Council has not set targets as per national guidelines around the delivery of Traveller accommodation and the improvement of accommodation for the residents of Spring Lane. In relation to the walls separating the bays being in disrepair, it is noted that an independent architect's report in 2012 advised that the walls should be demolished. In relation to issues around sewage, two independent reports highlight that sewage is a problem and that the whole sewage system on the site is not functioning. Rodents on the site remain a problem; while the local authority may have rodent baiting on the site, environmental health reports on the site have indicated that as long as the local authority's ineffective management of waste persists, rat infestation will continue to be a problem.
199. **St Margaret's Halting Site, Ballymun, County Dublin** (§ 207 GO): The Government have not contradicted the assertions that the electricity supply is

- not consistent, nor have they contradicted the specific allegations made in the complaint. The site is overcrowded at present.
200. **Ballymaley Halting Site, Galway Road, County Clare** (§ 208 GO): The Government's admission that this site is outside the school transport area contradicts § 46 GO.
201. **Cloncarlin Halting Site, Monasterevin, County Kildare** (§ 209 GO): ITM were advised by Kildare Traveller Action Group that the family requested that particular site as a result of a lack of alternative Traveller specific accommodation in the area. The local authority has indicated previously that the site is not suitable for the family on medical grounds; however, as a result of the failure of the local authority to provide alternative Traveller specific accommodation, the family continue to live on the site. The specific allegation in relation to dogs remains. The family contend that the showers are not adequate. The Government seem to confirm that the local authority has not provided heating for the family. There is a boiler on the site that has been broken and that the local authority consistently refuses to repair. One caravan uses a stove contained within a hut adjacent to the caravan and the other caravan has no heating whatsoever. One of the residents suffers from mental health difficulties and has attempted suicide on five occasions; the resident attributes these mental health difficulties to the isolation of the site.
202. **Long Pavement, Limerick City, County Limerick** (§ 210 GO): The site referred to has been providing permanent accommodation to families despite the fact that the site was designed as a temporary site. The Government have not addressed the following allegations:
- a. The road adjacent to the site is still used for joyriding.
  - b. The site does not have a footpath and families continue to walk out on a main road with no pavement or footpath.
  - c. The complaint refers to the refurbishment noted by the Government; however, the site continues to suffer from constant flooding in winter.
  - d. Families are required to live with only basic amenities and have to wash their clothes outside.
  - e. Rat infestation continues to be a problem on the site.
  - f. The Government have not contradicted the assertion that the site was constructed on an old landfill.
203. **Toppins Field, Limerick City, County Limerick** (§ 211 GO): The Council did complete some refurbishment work on the site; however, not all of the bays were refurbished and the site does not comply with the State's own Department of Environment Community and Local Government Guidelines. Many of the residents living on the site have been seeking a group housing scheme for many years, as they are unhappy with the standard of the site.
204. **Bawney's Bridge Halting Site, County Limerick** (§ 212 GO): This site is overcrowded and, as a result of the site being in close proximity to a fertilizer plant, it cannot be extended. The families, many of whom are elderly and immobile, have sought a Group Housing Scheme for many years; however the State has failed to provide them with such a scheme. The State's Health and Safety Authority has indicated that the site is safe; however, the residents are concerned about the effects of living in an area that has been deemed to be

- unsafe for further residential development.
205. **Ballinacullia Halting Site, County Roscommon** (§ 213 GO): While the Government admit that there have been a number of problems on the site, the local authority has refused to complete refurbishment works on the site as part of the TAP for 2014-2018. It is further noted that the needs of the family were referred to in a submission for the TAP by County Roscommon Traveller Health Programme, but the local authority continues to refuse to complete the remedial works and has not included any commitment to refurbish the site in the TAP. The site is referred to in the TAP as follows: *'Ballynacullia, Roscommon – Basic Serviced Site. The emergency site at Ballynacullia currently caters for two families who are awaiting the provision of permanent accommodation in the area'*.
206. **Moyne Park Halting Site, Baldoyle, County Dublin** (§ 214 GO): The information in the complaint is specific. The complaint refers to issues with electricity, hot water, holes in the paths, and exposed nails and glass on the ground. The Irish Traveller Movement is advised that the problems in Moyne Park set out in the complaint persist. The Government do not respond to those issues.
207. **Bunclody Halting Site, County Wexford** (§ 215 GO): The operation of the CCTV cameras has been resolved following representations made by the Irish Traveller Movement Independent Law Centre. The cameras had been pointing into families' bays and Council officials were speaking to children through loudspeakers installed at the CCTV cameras as the children played on the site. This clearly identified the need for policies to be in place in relation to the operation and installation of CCTV cameras on halting sites, with particular reference to children protection and privacy concerns. The local authority has not installed any lights serving bays, despite the fact that the residents have been requesting lights on the site for the past number of years. One child sprained her arm and broke her finger as a result of falls suffered at night around the unlit bays. The child's mother fell approximately eighteen months ago while walking around the unlit bays at night. Following these incidents, representations were made to install lights but no lights were installed.



## TABLE OF ANNEXES

### Annex Document

1. Report on the Operation and Effectiveness of the Local Traveller Accommodation Consultative Committees (2010), Irish Traveller Movement, for the National Traveller Accommodation Consultative Committee, April 2011.
2. McCarthy, O., Report on the Workshop of National Traveller Committees (2012), Report for the Department of Equality and Justice.
3. Notice served pursuant to s. 69 of the Roads Act 1993 to a family in County Monaghan.
4. Notice served pursuant to s. 69 of the Roads Act 1993 to a family in County Clare.
5. KW Research & Associates, "Why Travellers Leave Traveller-Specific Accommodation?", National Traveller Accommodation Consultative Committee, Housing Agency, April 2014.
6. Irish Times, '*No room on councils' housing list for traveller family*', 23 May 2005.