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

28 February 2014

Case No. 3

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

**SUBMISSIONS OF THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 14 February 2014



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

14 February 2014

EUROPEAN ROMA RIGHTS CENTRE

V

IRELAND

Complaint 100/2013

OBSERVATIONS IN DEFENCE OF IRELAND

Lodged with the Secretariat on 14 February 2014

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I INTRODUCTION

1. On 16 April 2013 the European Roma Rights Centre (ERRC) lodged with the European Committee on Social Rights (ECSR) a collective complaint against Ireland. By decision dated 1 July 2013 the ECSR declared the collective complaint to be admissible and invited the Government of Ireland to submit its observations in Defence. Time was extended for delivery of the within observations to 14 February 2013.
2. Ireland admits paragraphs 1-3 of the Collective Complaint, save to note that Ireland has not adopted Article 31 of the Revised European Social Charter (RESC) relating to the right to housing.¹ Rather, Ireland is subject to the duty to protect the family under Article 16. While noting the reduced scope of Article 16 in housing matters as compared to the right in Article 31, Ireland further notes that the Committee has previously decided that the right to adequate housing and the obligations in respect of forced eviction are identical in Articles 16 and 31.²
3. For ease of reference, Ireland responds to the matters raised in the Collective Complaint *seriatim*. Save as expressly admitted herein, the Collective Complaint is denied in its entirety.

II APPLICABLE PRINCIPLES OF INTERNATIONAL LAW

4. By way of general reply to paragraph 4 of the Collective Complaint, for the reasons outlined below, Ireland denies the ERRC's allegations in general and in the particulars given. Further, Ireland pleads that the ERRC has not established the particulars of the specific breaches complained of.
5. Rather, Ireland submits that it has ensured satisfactory application of Articles 16, 17, 30 and E of the Revised European Social Charter (RESC), particularly with respect of accommodation for Travellers in Ireland. By putting in place and implementing a

¹ See Declarations contained in the instrument of ratification and in a letter from the Permanent Representation of Ireland dated 4 November 2000 deposited on 4 November 2000.

² No. 31/2005 *ERRC v Bulgaria*, "Decision on the Merits" of 18 October 2006 at paragraph 17; No. 61/2010, *ERRC v Portugal*, "Decision on the Merits" of 30 June 2011.

framework systematically improving the living conditions of Travellers, Ireland ensures that the social arrangements provided effectively lead to and reinforce social inclusion.

II.1 ECSR Jurisprudence

6. Save as set out below, paragraphs 5 to 11 of the Collective Complaint are admitted. Ireland sets out below the ECSR's jurisprudence applicable to the present complaint. It is respectfully submitted that Ireland is in full compliance with same.

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

7. The Committee has recognised that the wording of Article 31 (and, it is submitted, the commensurate obligation in Article 16) is not to be interpreted as imposing on states an obligation of "*results*". Rather, States must: adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving goals laid down by the Charter; maintain meaningful statistics on needs, resources and results; undertake regular reviews of the impact of the strategies adopted; establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage; and pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.³
8. The Committee has found that States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance, in particular with regard to the balance to be struck between the general interest and the interest of a specific group, and the choices which must be made in terms of priorities and resources.⁴ Moreover, national authorities are better placed to evaluate the needs of their country.⁵
9. The Committee has also recognised that some Articles of the Revised Charter present significant long-term goals for contracting States. Where the achievement of a goal is

³ *FEANTSA v France*, Complaint No. 39/2006, "Decision on the Merits" of 5 December 2007 at paragraphs 53-54.

⁴ *ERRC v Bulgaria* (note 2); see also *Ilaşcu & Ors v Moldova & Russia*, ECtHR, 8 July 2004, paragraph 332.

⁵ *ERRC v Bulgaria* (note 2); see also Application No 36022/97 *Hatton & Ors v United Kingdom*, ECtHR, 2 October 2001, paragraph 96.

exceptionally complex and particularly expensive, a State is obliged to take measures that: allow it to achieve the objectives in a reasonable time; with measurable progress; to an extent consistent with the maximum use of available resources.⁶ In respect of the right to housing, States are required to take legal action, make available resources and introduce the operational procedures necessary to give full effect to the specified rights.⁷ In particular, States are afforded a relatively wide margin as to what constitutes a reasonable time period, varying on the facts of the case: the Committee has found, for example, that a timeframe of 8 years did not exceed the State's margin.⁸

10. The Committee has also noted that, under Article E, it is essential that the particular needs of Travellers be discerned and taken into consideration through the provision of culturally appropriate housing.⁹ This requirement to address the specific needs of Travellers extends to planning decisions.¹⁰
11. Ireland ensures that structurally secure dwellings are provided which are safe from a sanitary and health point-of-view. These dwellings possess basic amenities (such as water, heating, waste disposal, sanitation facilities and electricity); are not overcrowded;¹¹ and are located such that they facilitate access to employment and public services.¹²
12. Not only has Ireland has made every effort to provide adequate accommodation for Travellers in a manner consistent with the above-recited jurisprudence, but it also provides a second source of ring-fenced funding for Traveller-specific accommodation which operates in tandem with the Social Housing budget afforded to all citizens of Ireland. As will be seen, the Complainant has not established that a significant number¹³ of Travellers are living in conditions that fail to meet minimum

⁶ *ERRC v Bulgaria* (Note 2) at paragraph 37; *Autism-Europe v France*, Complaint No 13/2002, "Decision on the Merits" of 4 November 2003, paragraph 53.

⁷ *ATD v France*, Complaint No 33/2006, decision on the merits of 5 December 2007, paragraph 61.

⁸ *ERTF v France*, Complaint No. 64/2011, "Decision on the Merits" of 24 January 2012.

⁹ In *FIDH v Belgium* Complaint No 62/2010, "Decision on the Merits" of 21 March 2012, emphasis was placed on the importance of ensuring differentiated treatment for the caravan lifestyle of Travellers – see paragraph 120.

¹⁰ *FIDH v Belgium* (Note 9) at paragraph 135.

¹¹ *ERRC v Greece*, Complaint No. 15/2003, "Decision on the Merits" of 8 December 2004 at paragraph 24.

¹² *ERRC v Portugal*, Complaint No. 61/2010, "Decision on the Merits" of 30 June 2011, paragraph 41.

¹³ *ERRC v Greece*, (Note 11) at paragraphs 39-43.

standards: it is pleaded that the contrary is the case. Accordingly, no breach of Article 16 has been established.

II.1.ii Evictions

13. The ECSR has acknowledged that the illegal occupation of a site or dwelling may justify the eviction of the illegal occupants.¹⁴ This is permitted insofar as the criteria for illegal occupation are not unduly wide; evictions are carried out in accordance with the applicable rules of procedure and that these are sufficiently protective of the rights and respect the dignity of the persons concerned.¹⁵
14. The Committee has laid out a number of duties that should be placed on the authority carrying out the evictions, including obligations to: genuinely consult those affected prior to eviction; attempt to find alternative solutions to eviction; provide adequate and reasonable notice before eviction; provide information on the eviction;¹⁶ adopt measures to re-house in alternative and not substandard¹⁷ accommodation¹⁸ or to financially assist persons concerned (or to compensate victims of illegal eviction¹⁹); provide access to legal remedies; provide legal aid to those challenging unlawful evictions; ensure that evictions are prohibited at night or during the winter.²⁰ Where 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.²¹ The Committee have also found that Article 16 in conjunction with Article E requires that those Travellers with a caravan lifestyle should be taken into

¹⁴ *ERRC v Greece*, (Note 11) at paragraph 51.

¹⁵ *FEANTSA v France*, (note 3) at paragraph 85.

¹⁶ General Comment No 7 of the UN Committee on Economic, Social and Cultural Rights on the Right to Adequate Housing.

¹⁷ *ERRC v Bulgaria*, (note 2).

¹⁸ *FEANTSA v France*, (note 3) at paragraph 163.

¹⁹ *ERRC v Bulgaria* (Note 2).

²⁰ *ERRC v Italy*, Complaint No. 27/2004, "Decision on the Merits" of 7 December 2005, paragraph 41; *FIDH v Belgium* (Note 9), paragraph 163; *COHRE v France*, Complaint No. 63/2010, "Decision on the Merits" of 28 June 2011, paragraph 42.

²¹ *FIDH v Belgium*, (Note 9) at paragraph 163.

consideration in evictions as they naturally run a higher risk of eviction due to the precarious nature of their occupancy.²²

15. Irish local authorities, when carrying out evictions against illegal occupants, comply with these obligations and the Collective Complaint does not set out any verified case to establish otherwise.²³

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

16. Article 30 requires Contracting Parties to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families to, inter alia, housing and education, and to review these measures with a view to adaptation.
17. In *International Movement ATD Fourth World v France*, the Committee characterised the duty of States under Article 30 to be to:

"adopt an overall and co-ordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights. There should also exist monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. This approach must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach".²⁴

²² *FIDH v Belgium* (Note 9) at paragraph 166.

²³ In the case of 18 county councils (Carlow, Clare, Dun Laoghaire/Rathdown, Fingal, Galway City, Galway County, Kerry, Kilkenny, Leitrim, Limerick City, Longford, Mayo, Roscommon, Sligo, South Dublin, Westmeath, Wexford and Wicklow) consideration was given to the case circumstances and to whether alternative accommodation was available. In the case of Kilkenny County Council, Roscommon County Council, South Dublin County Council and Wexford County Council, when section 10 Notices were served, an interagency approach was taken to address any issues caused by the eviction. Galway City Council worked with Galway Traveller Movement to ensure continued access to services. In the case of two county councils, Westmeath and Dun Laoghaire/Rathdown, the evictions took place during the summer where education was not a factor.

²⁴ *International Movement ATD Fourth World v France*, Complaint No. 33/2006, "Decision on the Merits" of 4 February 2008 at paragraph 40.

18. This overall approach, requiring allocation of adequate resources, should include measures targeting the specific needs of vulnerable groups.²⁵ As with all Charter rights, the three criteria (reasonable timeframe, measurable progress and financing consistent with the maximum use of available resources) apply.

II.1.iv Children and the Right to Education

19. The Committee has held that the right to education under RESC is one which must be available, accessible, acceptable, adaptable²⁶ and effective and (where necessary in order to ensure equal access to education) must make special provision for children from vulnerable groups.²⁷ The Committee has also been guided by the internationally recognised principle of the considering "*the best interests of the child*",²⁸ such that States must systematically consider how children's rights and interests are or will be affected by their decisions and actions.

II.2 Other international legal standards

20. Ireland admits paragraphs 14 to 18 of the Collective Complaint.

II.3 Discrimination in access to housing

21. Ireland admits paragraphs 19 to 21 of the Collective Complaint.

III BACKGROUND TO THE COMPLAINT

22. Ireland cherishes the heritage and culture of its Travelling community and actively endeavours to support their nomadic lifestyle wherever possible. Over the last two decades, Ireland has made measurable progress in improving the status and living conditions of Travellers and has invested significant portions of the public funds in order to achieve this goal.

²⁵ *FIDH v Belgium* (Note 9) at paragraph 203.

²⁶ *Mental Disability Advocacy Centre v Bulgaria*, Complaint No. 41/2007, "Decision on the Merits" of 3 June 2008 at paragraph 37.

²⁷ *Médecins du Monde Internationale v France*, Complaint No. 67/2011 of 11 September 2012 at paragraphs 129 and 132.

²⁸ *DCI v the Netherland*, Complaint No. 47/2008, "Decision on the Merits" of 20 October 2009 at paragraph 38.

23. In the early 1990s the Irish government appointed a Task Force on the Travelling Community in order to ascertain the scope of the problems affecting Travellers in order to take a proactive approach in resolving them. This Task Force made extensive recommendations that formed the basis of Ireland's strategy in this area.²⁹

III.1 General Government Policy on Travellers in Irish Society

24. The Government of Ireland remains strongly committed to a policy of promoting Traveller culture, welfare and education.

III.1.i Traveller Culture

25. The Department of Justice and Equality is committed to promoting Traveller culture and supporting measures to improve communication between Travellers and the general population. The Department funds a number of initiatives intended to promote positive communications.
26. Each year the Department sponsors events around Traveller Pride Week, a week-long celebration of Traveller culture. Traveller Pride Week aims to bring facets of Traveller culture to the general public, raise awareness in the local media and celebrate what is unique about Traveller culture for example tin crafts, storytelling, horses, songs and music. In 2013, the Department provided funding of €17,600 to a committee of the National Traveller organisations for national events.
27. For the past two years the Department has also made grants available to the Local Traveller Interagency Groups for events/activities which promote positive Traveller culture. As part of the application process the groups have to specify how Travellers are involved in organising the event and how they will promote the event in the local media. The funding in 2013 was €45,700.

²⁹ See Report of the Task Force on the Travelling Community (1995): **Annex Error! Reference source not found.**

III.1.ii Traveller Status

28. Irish legislation giving effect to EU directives and international conventions explicitly protects Travellers. This includes the Equality Act 2004, Prohibition of Incitement to Hatred Act 1989, the Unfair Dismissals Acts, the Employment Equality Acts and the Equal Status Acts, all of which specifically identify Travellers by name as a group protected. The Department of Social Protection, through its Social Inclusion Division, has a role in co-ordinating the *National Action Plan for Social Inclusion 2007 – 2016*.
29. The Programme for Government 2011 – 2016 states that equality is at the heart of what it means to be a citizen in our democracy and that the Government believes that everyone has the right to be free from discrimination and that we all benefit from living in a more equal society. With regard to the Traveller community, the Programme commits the Government to promoting greater co-ordination and integration of delivery of services to the Traveller community across Government, using available resources more effectively to deliver on principles of social inclusion, particularly in the area of Traveller education.

III.1.iii Traveller Education

30. Ireland has made advances in the area of Traveller Education since the publication of the Report and Recommendations for a Traveller Education strategy in 2006. Between 2005 and 2012, the number of Traveller children enrolled in post-primary education has risen by 46%. Further, a programme is in place where €70m is being provided to 852 schools participating in the Delivering Equality of Opportunity in Schools programme. The National Traveller/Roma Integration Strategy notes that the supports provided with this funding are “*particularly important to members of the Traveller and Roma Communities to mitigate against school absenteeism and early school leaving*”.³⁰

³⁰ See National Traveller/Roma Integration Strategy (2011): **Annex 16**.

III.1.iv Traveller Health

31. The Traveller Health Committee was established in 1998, and comprises the Department of Health Staff, members of the HSE and representatives of Traveller Organisations. This Committee developed the “Traveller Health – A National Strategy 2002-2005” which continues to guide policy in the area.³¹ Further, the Department of Health and Children commissioned the All Ireland Traveller Health Study in 2007.³² The HSE also runs a National Traveller Health Advisory Forum, including Traveller representation.

III.2 The Provision of Traveller Accommodation in Ireland

32. The provision of suitable and secure accommodation for the Travelling Community is a priority for the Irish Government. Its efforts in this area are fully compliant with the standard required by the Committee for the achievement of complex and costly goals.³³

III.2.i A Co-ordinated Framework

33. In 1998, Ireland adopted the Housing (Traveller Accommodation) Act. The system established under the 1998 Act has proven to be effective and has resulted in considerable advances in the provision of accommodation for Travellers and in the standard of the same. Under the said Act, each Local Authority is obliged to conduct an assessment of the housing needs of Travellers living in their administrative area who qualify for social housing support and to also have regard to any summary of social housing assessments prepared under Section 21(c) of the Housing (Miscellaneous Provisions) Act 2009.³⁴ Then, on the basis of the results of this assessment, each Local Authority must formulate and adopt Traveller Accommodation Programmes every 5 years in consultation with Local Traveller Accommodation Consultative Committees and considering submissions from the

³¹ **Annex 14.**

³² **Annex 15.**

³³ See Note 6.

³⁴ Section 6, Housing (Traveller Accommodation) Act 1998: **Annex 2.**

public.³⁵ Local authorities are specifically required to have regard to the provision of transient sites when preparing Traveller Accommodation Programmes (TAPs). Should a local authority fail to adopt their programme by the date specified by the Minister for this adoption, the local area manager is required to do so.³⁶ Local Authorities are then required to take any reasonable steps necessary for securing the implementation of the programmes.³⁷ Annual Reports are compiled on the implementation of programmes and authorities which fall behind on in their targets are asked to account to the Minister.³⁸

34. The Traveller Accommodation Programmes are formulated in a manner which places a heavy emphasis on consultation with the Travelling Community. The National Traveller Accommodation Consultative Committee (NTACC) was established under sections 19 and 20 of the 1998 Act to advise the Minister – in particular, with regard to "*general matters concerning the preparation, adequacy, implementation and co-ordination of traveller accommodation programme*".³⁹ Local Traveller Accommodation Consultative Committees were also established under the Act⁴⁰ to ensure liaison and consultation between local authorities and local Travelling communities must be consulted regarding Traveller Accommodation Programmes⁴¹
35. Finally, policy relating to the provision of services to Travellers is coordinated on a national level through a number of high level committees. First, the High Level Group on Traveller Issues (under the aegis of the Cabinet Committee on Social Inclusion) focuses on coordinating policy and engages in an interagency approach to improving the integrated practical delivery of public services to Travellers. This body includes representatives from all government Departments, the Health Services Executive, the Irish Prison Service and Local Authority representatives. Its recommendations have resulted, *inter alia*, in the creation of County Development Board Traveller Interagency Groups in each Local Authority area so as to improve consultation with Travellers and improve the provision of services to Travellers in a local area. The

³⁵ Section 7, Housing (Traveller Accommodation) Act 1998: **Annex 2.**

³⁶ Section 14, Housing (Traveller Accommodation) Act 1998: **Annex 2.**

³⁷ Section 16, Housing (Traveller Accommodation) Act 1998 **Annex 2.**

³⁸ Section 31, Housing (Traveller Accommodation) Act 1998 **Annex 2.**

³⁹ Section 19, Housing (Traveller Accommodation) Act 1998: **Annex 2.**

⁴⁰ Section 21, Housing (Traveller Accommodation) Act 1998: **Annex 2.**

⁴¹ Section 6, Housing (Traveller Accommodation) Act 1998 **Annex 2.**

interagency approach to improving local delivery has produced the following benefits – it has: established a dedicated local coordination mechanism; established a more broad based local forum which can support engagement with Traveller representatives; highlighted the contribution that all local agencies can make to the integrated approach; established a means for developing best practices in Traveller related service delivery; and, highlighted employment as an area where particular progress can be made.⁴²

36. Another important body in Ireland's Traveller policy framework is the National Traveller Monitoring and Advisory Committee which was established in 2007. It provides an inclusive forum for all of the social partners and seven out of its twenty nine members are Traveller representatives. This has provided a very positive context for dialogue and for pursuing the overall effort to deliver better outcomes for Travellers. This body coordinates a number of National Traveller consultative committees including the NTACC and reports key concerns to the Minister for Justice every 2 years.⁴³
37. Other national committees also exist including the Traveller Education Strategy Advisory and Consultative Forum, the Traveller Health Advisory Committee and the Traveller Health Advisory forum, along with a FAS Special Initiative for Travellers.
38. The success of Ireland's Traveller Accommodation Programmes can be largely attributed to this coordinated approach which emphasises Traveller participation.

III.2.ii Measurable progress

39. The three successive rounds of Traveller Accommodation Programmes have achieved clearly measurable progress and a fourth round is set to begin in 2014.
40. The improvements achieved by the Traveller Accommodation Programmes are well illustrated by data from Annual Count of Traveller Families. In 1999, 1,207 families

⁴² Revised European Social Charter, 8th National Report (Ireland), 8th June 2011.

⁴³ The National Traveller Monitoring and Advisory Committee delivered its first report to the Minister in December 2009: **Annex 26**.

(25.2% of all Traveller families) were living on unauthorised sites. This figure has steadily declined over the years to: 939 in 2002; 601 in 2004;⁴⁴ 594 in 2007; and, 444 in 2010,⁴⁵ representing 5% of Traveller families. As of the 2012 Count, this figure is at 330 families, representing 3.33% of all Traveller families.⁴⁶ This 72.6% reduction has been achieved notwithstanding a doubling in Traveller families in the decade to 2010.⁴⁷ The provisional figures for 2013 are broadly in line with the 2012 figures. These figures will be published by the end of the first quarter of 2014 and furnished to the National Traveller Accommodation Consultative Committee for their views. These will also be published alongside the previous years' figures on the Department's website.

41. This substantial reduction is despite a huge increase in the overall number of Traveller families from 4,790 in 1999 to at least 9,911 in 2012 (an increase of over 100%). A total of 9581 families were in secure accommodation as of 2012 compared to 3583 families in 1999 (an increase of 167%). The number of Traveller families accommodated by or with the assistance of Local Authorities increased by 55% (from 3583 families in 1999 to 5568 families in 2012).
42. During the first Traveller Accommodation Programme (2000 – 2004) alone, some 1,371 additional Traveller families were provided with permanent, secure accommodation. The second programme (2005 – 2008) resulted in 775 units of new and refurbished Traveller-specific accommodation while also accommodating an additional 458 families in standard local authority housing.⁴⁸ The third Traveller Accommodation Programme (2009 – 2013) had, by the end of 2012, provided 1488 units of accommodation to Traveller families across a range of housing types including standard local authority housing, Traveller-specific accommodation and families accommodated through the Rental Accommodation Scheme or in voluntary housing. This represents the achievement of 72% of the target set for all Local

⁴⁴ 3rd Report submitted by Ireland pursuant to Article 25(2) of the Framework Convention for the Protection of National Minorities, 18 July 2011, ACFC/SR/III(2011)004 at paragraph 53.

⁴⁵ 3rd Report submitted by Ireland pursuant to Article 25(2) of the Framework Convention for the Protection of National Minorities, 18 July 2011, ACFC/SR/III(2011)004 at paragraph 53.

⁴⁶ Although this figure is an increase on the 327 Traveller families on such sites as of the 2011 Count, this should be viewed in light of the 3.8% increase in the number of Traveller families nationally in 2012.

⁴⁷ European Committee of Social Rights, Conclusions 2011 (Ireland) of January 2012 at page 15.

⁴⁸ Based on comparison of Annual Count 2005 against Annual Count 2008.

Authorities. The total figure achieved by the 3rd Traveller Accommodation Programme will not be available until later in the year when the statistics regarding outputs achieved by local authorities is received. A fourth round of Traveller Accommodation Programmes is being prepared and copies of these programmes will be forwarded to the Committee upon completion. The adoption date for the fourth round of Traveller Accommodation programmes has been set as 30 April 2014.

43. This represents a total of 4,092 units of new or refurbished accommodation provided by the scheme between 2000 and 2013. In particular, a total of 2,027 units of Traveller-specific Accommodation were created or refurbished between 2000 and 2011. There were also 97 single instance purchases of Traveller accommodation in this period.⁴⁹ The Report of the National Traveller Accommodation Consultative Committee shows that 58 units of Traveller-specific Accommodation were constructed or refurbished in 2012 and 3 units were purchased.⁵⁰ Finally, a further 51 units were provided in 2013, including the purchase of 1 house for a Traveller family.
44. There has also been a considerable increase in the number of Traveller families gaining access to Private Rental Accommodation – now 2,829 families as of 2012. This unprecedented increase can be understood as reflecting Ireland's success in its endeavours to improve the status of the Travelling Community in society via a host of legislative measures⁵¹ as, traditionally, few Travellers who wished to could gain access to private rented accommodation.
45. Local Authorities also actively assist Travellers in the pursuit of a nomadic lifestyle through established loan and grant schemes which help families to purchase caravans.⁵² Under the Caravan Loans and Grant scheme, which was introduced in February 2000,. A loan up to a maximum of €6,350 is available for the purchase of a new / second-hand caravan. There is also a grant element (calculated at 10% of the

⁴⁹ Department of the Environment, Community and Local Government, Social and Affordable Housing and Housing Statistics Bulletin (available at <http://www.environ.ie/en/Publications/StatisticsandRegularPublications/HousingStatistics/FileDownload,15291,en.xls>): **Annex 12**.

⁵⁰ National Traveller Accommodation Consultative Committee, Annual Report (2012): Annex 10.

⁵¹ See paragraph 28 above.

⁵² See Circular Letters No. TAU 1/2000 dated 7 February 2000 and TAU 1A/2000 dated 18 October 2000: **Annex 25**.

purchase price of the caravan, subject to a €640 maximum) is intended to further assist Travellers purchasing a caravan for the first time. The Department also provides for the recoument of local authority costs when replacing caravans in emergency circumstances and provides up to 50% of the value of a replacement mobile in emergency situations.

46. All Traveller-specific Accommodation in Ireland is located within a reasonable distance to public services and schools or serviced by outreach programmes.⁵³ Further, all official halting sites in Ireland are provided with basic amenities including water and electricity though in some cases heating and waste disposal are paid for by the tenants. Sites have caretakers charged with the maintenance of these services. The Health and Safety of all Local Authority housing sites is monitored according to Department of Environment Guidelines and this includes rodent-baiting where appropriate.
47. Section 9 of the Housing (Traveller Accommodation) Act 1998 provides that draft accommodation programmes must be made available for public inspection, and this must be advertised in local newspapers.
48. Ireland recognises that even greater progress has yet to be made and Ireland wishes to reemphasise its firm commitment to providing suitable, secure, and permanent accommodation which is culturally appropriate for all its Travelling people. As previously stated, Ireland will forward copies of the forthcoming Traveller Accommodation Programme 2014-2018 upon adoption.

III.2.iii Maximum Use of Available Resources

49. Since the inception of the framework under the 1998 Act, the Irish government has allocated significant portions of the national budget towards realising its goal of providing permanent and secure accommodation for all Travellers.

⁵³ For instance, in the Galway City Council administrative area, outreach programmes operate on 1 halting site which is relatively more isolated than the others.

50. Overall, the State allocated €353.63m to the provision of Traveller-specific Accommodation between 2002 and 2012.⁵⁴ This represents a substantial investment per capita, exceeding – for example – that of France.⁵⁵ The first Traveller Accommodation programme was provided at a cost of €130m. The second programme cost in excess of €142m.
51. The Department of the Environment provides 100% capital funding for Traveller-specific accommodation including permanent, temporary, emergency and transient halting sites, Group Housing Schemes for Travellers, recoupment to local authorities of 50% of the cost of providing caravans to Travellers in emergency cases, a special grant of €3,810 payable to Travellers for the first time purchase of a house (this first-time buyers grant is no longer available to any other citizen as this was removed a number of years ago) and a special grant of 10% of the cost, up to a maximum of €640, to a Traveller family purchasing a caravan for the first time and a loan up to a maximum of €6,350 to enable a Traveller family to purchase their own mobile home. It further provides for the purchase/construction of single houses for Travellers in exceptional circumstances.
52. The provision of a ring fenced funding stream, separate from, and additional to, the main social housing programme, for the provision and maintenance of Traveller-specific accommodation is also clear evidence of positive discrimination in terms of housing policy. In addition, Travellers are also eligible for, and receive, accommodation under the Social Housing framework.
53. The amounts allocated to this purpose have been reduced in recent years due to the financial crisis in Ireland which resulted in recession as well as consequent expenditure reductions. The Irish Government was placed under considerable pressures to reduce public expenditure across all sectors and this regrettably but

⁵⁴ Dáil Éireann, 16th October 2013, Reply of Minister for the Environment, Community and Local Government (Ms. J. O'Sullivan) to Questions Nos 43690/13, 43691/13 and 43692/13. (Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013101600063?openDocument#WRD02750>, visited 29 January 2013): **Annex 28**.

⁵⁵ France, which has a much larger population than Ireland, allocated €288m to Traveller-specific Accommodation between 2000 and 2009 – see responses of the French Government to Complaint No. 64/2011, paragraph 32.

inevitably impacted upon the attainment of Ireland's goals with regard to Traveller accommodation.

54. Ireland concedes that there has been a level of under-spending by Local Authorities of these allocated resources and some €70.77m (20%) of the funds allocated for this purpose were not recouped by Local Authorities. Notwithstanding this, the total spend on Traveller-specific accommodation was still equivalent to France (and thus the per capita spend remained greater by a considerable magnitude). Any underspend on Traveller-specific accommodation should not be seen as an indicator of the level of Ireland's commitment to this issue. There are a number of factors which have contributed to delays in the implementation of the Traveller Accommodation Programmes despite the *bona fide* efforts of the housing authorities which resulted in this under-spending which will be detailed below. These factors have been fully considered in consultation with Traveller representatives on the National Traveller Accommodation Consultative Committee. Furthermore, as previously stated, Travellers are accommodated also under separate social housing budgets (in local authority housing and private rented accommodation).

III.2.iv Reasonable time period

55. While it is clear that Ireland has achieved tremendous progress in the 15 years since the enactment of the Traveller Accommodation Act 1998, it is conceded that it has not yet met its overall target of providing for all Travellers in its jurisdiction. However, this is reasonable in the circumstances given both severe fiscal constraints and a number of other factors which have contributed to this delay. Therefore, this delay must be considered as being within Ireland's margin of appreciation for the achievement of a complex and costly objective.⁵⁶
56. In particular, it must be noted that the number of recorded Traveller families has more than doubled in 15 years. Further, given Ireland's emphasis on consultation with the Traveller communities in question (many of whom have opposed siting options), it has proven difficult to obtain suitable land in reasonable proximity to amenities.

⁵⁶ The Committee has previously decided that such long delays can be within the state's margin of appreciation – see *ERTF v France*, Complaint No. 64/2011, decision on the merits of 24 January 2012, paragraph 105.

Moreover, during the decade immediately previous to 2008, Irish land prices increased dramatically. Together, these caused the cost per unit of Traveller-specific Accommodation to vary widely across different localities. For example, in 2009, the provision of 2 units of halting site accommodation in South Tipperary cost €291,543 per unit whereas, in 2010, 10 units created in Fingal were provided at €159,963 per unit.

57. In addition, Travellers have in a number of cases left Traveller-Specific Accommodation vacant without warning and subject to dereliction and vandalism.⁵⁷ This creates even greater difficulty to the task of ensuring adequate accommodation is provided and research is being conducted to ascertain why this occurs.
58. Finally, and following on from that point, there is an increasingly uneven distribution of demand for Traveller-specific Accommodation across Housing Authorities. Many authorities report vacancies in their halting sites and a lack of waiting applicants whereas other authorities are inundated with applications. To provide for all Travellers in every part of the country, Ireland would effectively have to provide a surplus of Traveller-specific Accommodation in all Local Authority areas, which is an unreasonable demand in its current economic climate. Thus, the Irish Housing Agency, commissioned by the National Traveller Accommodation Consultative Committee, is undertaking a study to ascertain why Travellers leave their accommodation vacant. The results of this study are to become available later in 2014 and this information will be critical for Ireland in assessing how to proceed with the provision of Traveller-specific Accommodation. Provisional data arising from the research shows an average national vacancy rate of approximately 23% across all types of Traveller Accommodation. Conclusions cannot be drawn until the final report is received, and we reserve the right to make further observations upon the completion of the said report.

III.2.v Summary

⁵⁷ See the Annual Report of the National Traveller Accommodation Consultative Committee (2012), page 12: **Annex 10**.

59. Ireland has, within a reasonable time period, made measurable progress in making maximum use of available resources in providing for accommodation for Travellers. Together with significant expenditure (notwithstanding severe fiscal constraints) there are clear statutory requirements, a systemic approach of consultation, strategic development, and consistent monitoring by central government of implementation by local (housing) authorities. Ireland is proudly and profoundly committed to continuing this effort to ensuring adequate culturally-specific housing is provided for Travellers.

IV RELEVANT DOMESTIC LAW

60. In respect of paragraph 22 of the Collective Complaint, over the last two decades Ireland has legislated to oblige local authorities to provide halting sites and other accommodation for Travellers. Ireland denies that the evictions legislation is either regressive per se or implemented in a regressive way. As will be seen below, Ireland denies that it has failed to implement housing legislation to provide adequate and formal halting sites and other accommodation to Travellers.

IV.1 The Criminal Justice (Public Order) Act 1994 (as amended)⁵⁸

61. The Complainant's understanding of the provision by which persons may be evicted for criminal trespass appears to be based on a fundamental misreading of the legislation. That misreading arises from a typographical error in the Complainant's recitation of the relevant provision. Contrary to the matters alleged at paragraph 23 to 28, Section 19C(1) of the Public Order Act as amended by section 24 of the Housing (Miscellaneous Provisions) Act 2002 instead provides:

“(1) A person, without the duly given consent of the owner, shall not –

(a) enter and occupy any land, or

(b) bring onto or place on any land any object,

⁵⁸ Annex 3.

where such entry or occupation or the bringing onto or placing on the land of such object is likely to –

- (i) substantially damage the land,*
- (ii) substantially and prejudicially affect any amenity in respect of the land,*
- (iii) prevent persons entitled to use the land or any amenity in respect of the land from making reasonable use of the land or amenity,*
- (iv) otherwise render the land or any amenity in respect of the land, or the lawful use of the land or any amenity in respect of the land, unsanitary or unsafe,*
- (v) substantially interfere with the land, any amenity in respect of the land, the lawful use of the land or any amenity in respect of the land.”*

62. Thus, whereas the ERRC have put forward a version of the text which implies that any entry or occupation of land without consent is *ipso facto* an offence, the correct rendering above makes clear that only where the land or its amenity is being substantially damaged or interfered with is an offence committed. Entry and occupation without the consent of the owner is not an offence in Irish law.

63. Nor does the legislation provide for a presumption of guilt as alleged at paragraph 26. This would, if true, be unconstitutional and void in Ireland’s own legal order. As a matter of proof, it is for the prosecution to establish (a) that the accused entered and occupied the land, or that brought onto or place onto the land an object, and (b) that the land or its amenity was substantially damaged, prejudicially affected or substantially interfered with in the manner set out at Section 19C(1)(i)-(v). It is for the prosecution to prove these ingredients of the offence beyond a reasonable doubt. It is for the accused to rebut the presumption that he did not have the consent of the owner:

if he does so, even if the ingredients of the offence are otherwise proven by the prosecution, the accused cannot be convicted.

64. That consent of the owner constitutes part of the Defendant's defence is entirely appropriate given the state of knowledge of an occupier of land of the owner's consent: moreover, in practice, police aid will be sought by the landowner and evictions and prosecutions commenced only on that basis. A presumption that the owner has not consented to occupation is not comparable with a presumption of guilt of an offence involving damage.
65. With reference to paragraph 27 of the Complaint, the legislation is of general application and does not target Travellers in genuine need of accommodation but was, rather, specifically aimed at the destruction of property.⁵⁹ Although it is evident from the parliamentary debates surrounding the enactment that large scale trader encampments were an impetus for the Bill, it is clear that the Act would apply to all such traders, irrespective of Traveller status. It is a reserve power used with discretion to protect property from unjust attack, and is not in any way a substitute for the Section 10 Notice provisions or the ordinary form of provision of authorised halting sites to Travellers.

IV.2 Section 10 of the Housing (Miscellaneous Provisions) Act 1992 (as amended)⁶⁰

66. The legislative provisions surrounding Section 10 of the Housing (Miscellaneous Provisions) Act 1992 amended are accurately set out by the ERRC at paragraphs 29-33 of its Complaint. These provisions shall be explored later in these Observations.

⁵⁹ The parliamentary debate surrounding the enactment focussed on the issue of large scale trader encampments which had caused damage to local areas. The occupants of these camps had permanent accommodation elsewhere but had caused damage to land purely through commercial activity. Dáil Éireann – Volume 551 – 27 March 2002, Housing (Miscellaneous Provisions) (No.2) Bill, 2001: Report and Final Stages (Ms Olivia Mitchell). <http://www.oireachtas-debates.gov.ie/D/0551/D.0551.200203270010.html>: **Annex 29**.

⁶⁰ **Annex 4**.

IV.3 Section 69 of the Roads Act 1993⁶¹

67. Section 69 of the Roads Act 1993 is accurately set out by the ERRC at paragraph 34 of its Complaint. However, contrary to paragraph 35, section 69 of the Roads Act 1993 is a provision for a net purpose: to promote road safety by avoiding obstruction of major public roads, and to protect those erecting temporary dwellings.
68. The provision does not apply to all public roads; rather, it applies only to national roads, motorways, busways or protected roads. In Ireland, there are some 99,000 kms of public roads, of which some 5,500kms are national roads and 93,500kms are regional and local roads – the latter is not within the scope of s.69. Thus, less than 6% of the public road network currently comes within the scope of s.69.
69. The provision is objectively justified and is proportionate to the end to be achieved. It is entirely neutral with regard to culture, ethnic or religious viewpoints. The repeal of s.69 would have serious road safety implications and a potential cost in terms of human health and safety for both those living in temporary dwellings by the roadside and road users at high speed. It is not aimed at travellers but at any person who places a temporary dwelling by the roadside.
70. In addition, the legislation expressly provides that anyone can apply to a road authority for permission to erect a temporary dwelling on a public road, but it is patent that only in very rare circumstances would the erection of a temporary dwelling on such public roads be safe for traffic and the public at large.
71. This provision, like section 19C of the Criminal Justice (Public Order) Act 1994 forms part of a discrete set of provisions which deal with discrete dangers associated with unlawful encampments. It is not a general provision dealing with or providing generally for the housing of Travellers in Ireland. Out of all 34 County and City Councils, only three (Carlow, Dublin City, and Westmeath) have issued notices under this Act to Traveller families, resulting in four caravans being removed.

⁶¹ Annex 5.

IV.4 Sections 46 & 160 of the Planning and Development Act 2000⁶²

72. The legislative provisions surrounding Section 46 and 160 as set out by the ERRC at paragraphs 36-38 of its Complaint are admitted. However, the ERRC mischaracterise their import.
73. These are specific remedial legislative provisions to be utilised in the enforcement of planning law in respect of unauthorised developments. The planning policies of local authorities include provision for Travellers, and themselves adequately take into account their rights (which is not challenged in the within complaint). The rational calculus of these remedial (ie, enforcement) provisions are to implement planning policy, which can and does include social housing and dwellings for Travellers.
74. Moreover, the ERRC fail to demonstrate how their use against members of the Irish Travelling community have infringed the Revised Charter.

IV.5 Local Government (Sanitary Services) Act 1948⁶³

75. The legislative provisions concerning the removal of unsanitary structures set out at paragraph 39 of the Complaint are admitted. This is a discrete and specific legislative provision to protect human health (including the human health of Travellers). The ERRC fail to demonstrate any use (or significant use) contrary to the Revised Charter of the provision against members of the Irish Travelling community.

IV.6 Section 111 of the Public Health (Ireland) Act 1878 as amended⁶⁴

76. The legislative provisions concerning the removal of a public health nuisance set out at paragraph 41 of the Complaint are admitted. However, once more, at paragraphs 40, 42 and 43 the ERRC attempt to characterise a very specific provision (in this case providing a mechanism for public redress of public health nuisances howsoever

⁶² Annex 6

⁶³ Annex 7.

⁶⁴ Annex 8.

caused) as having a specific impact upon the Irish Traveller Community, which they fail to substantiate.

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

77. The figures set forth at paragraph 44 of the Collective Complaint are admitted. However, it is important to note that the majority of the 29,573 residents identifying as Travellers in the 2011 Census are settled and do not reside in temporary accommodation. Even where Travellers live in temporary accommodation, most do not live a nomadic lifestyle: the overwhelming majority live in halting sites provided by the Irish State or in otherwise authorised halting sites. Accordingly, whilst historically Travellers can be described as a nomadic group, Travellers today are not: rather, their cultural identity is with a group characterised by historical nomadism.
78. Consequently, the Collective Complaint concerns not Travellers as a whole, nor even the majority of Travellers, nor yet the majority of Travellers in temporary accommodation, but a small subset of Travellers who make temporary dwellings on private property.
79. Moreover, whilst Ireland admits that Travellers (like many minorities) can and do suffer discrimination which Ireland seeks to combat and prevent, Travellers are not an ethnic or racial group.

V.2 Evictions

80. Ireland denies paragraph 47 of the Collective Complaint. In particular, Ireland denies that the eviction legislation in Ireland or the *de facto* situation with regards to the eviction of Travellers is in violation of Articles 16, 17 or 30 of the RESC, whether read alone or in conjunction with Article E.

81. The relevant legislation is used to address the differing situations for which each was intended.
82. Section 19 of the Criminal Justice (Public Order) Act 1994 is objectively justified by the purpose of the legislation (the property rights of landowners not to have their land substantially damaged) and is proportionate to this justification. The provisions of other legislation referred to earlier in the Complaint (which do not deal with evictions) are likewise justified by the purpose of protecting public health, and are proportionate thereto.
83. Far from what is alleged, Section 10 of the Housing Act 1992 serves the purpose of furthering the legitimate housing policies of the State with regard to Travellers, and must be read in the wider context of State policy and provision for Travellers in temporary accommodation.
84. Moreover, the usage of the legislation is compliant with the Committee's jurisprudence.

V.2.i Legislation on evictions

The Criminal Justice (Public Order) Act 1994

85. Contrary to paragraph 48 of the Collective Complaint, Section 19C of the Criminal Justice (Public Order) Act 1994 provides that a criminal offence is created only where entry and occupation of a property without consent is causing or is likely to cause harm to land or its amenities or interfered with the use or enjoyment of the same. The ERRC's characterisation of the Public Order Act as one "*to summarily evict families occupying land in circumstances where the owners has not consented to their presence*" is fundamentally misleading. This misunderstanding permeates the ERRC's analysis of Ireland's compliance with the requirements set out by the Committee in *ERRC v Greece*.⁶⁵ As will be seen, none of the requirements are violated with regard to the Public Order Act, which is designed to and appropriately

⁶⁵ As detailed in note 11 above.

protects the property rights of landowners protected under Article 1 of Protocol No 1 of the ECHR and balances same against the rights of illegal occupants.

86. Moreover, it is incorrect to say that no record of eviction is kept where this is not followed by prosecution.⁶⁶ The recorded crime figures would only be revised if the matter was determined not to be criminal - for most crimes this would require the withdrawal of a complaint, the conclusion of an investigation or the outcome of court proceedings.

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

87. The ERRC understand that *“the mere ‘entry and occupation’ of land without consent under section 19C(1)(a) constitutes a criminal offence.”*⁶⁷ They further understand that the substantial damage or interference with the land or its amenity constitutes an *“alternative”* offence.⁶⁸ This is a basic misreading of the text of the offence, and is reflected in the manner in which the text was set out at paragraph 24 of their Complaint. The ERRC’s entire analysis of this provision at paragraphs 50 to 56 of the the Collective Complaint hinges on this misunderstanding.
88. For that reason, the statement at paragraph 52 that *“in one sweep of the legislative pen, the homes of some of the poorest and most vulnerable families in Ireland were essentially declared illegal and the occupants subject to arrest, imprisonment and the loss of their homes”* is untrue, as was the allegation that *“Travellers are essentially made criminally liable for the failure of the government to fulfil its obligations towards them”*.
89. The provisions are specifically tailored to deal with situations where entry and occupation is causing or is likely to cause a substantial deleterious effect. They are of equal application to and for the benefit of the entire population and are not targeted at Travellers in genuine need of accommodation. They are therefore justified by

⁶⁶ Moreover, contrary to the allegation in the Collective Complaint, the Gardaí record all events that appear to have been criminal incidents. Therefore Garda PULSE system includes incidents that never go to prosecution.

⁶⁷ Collective Complaint, paragraph 51.

⁶⁸ Collective Complaint, paragraph 55.

reference to the State's duty to vindicate property rights and to protect public health and public order.

90. Both the objective justification and the proportionality of the provision are encapsulated by the limited circumstances in which the offence arises, which is that an offence can be proven only where prosecutor can establish that trespass is likely to substantially damage the land, substantially affect an amenity on the land, prevent persons using the land or amenities on the land, render the use of the land unsanitary or unsafe or substantially interfere with the land or any amenity on the land. Mere encampment of a temporary dwelling on land without consent does not fulfil the criteria. The provision is not unreasonable and disproportionate, as it takes into account the legitimate interests of property owners whose land is occupied without their consent and is subject to damage.
91. Contrary to paragraph 54 of the Complaint, and the academic quotation therein, section 19C is not strictly designed to address assemblies of large numbers: there is nothing in the text of that provision to suggest that is the aim, nor has it been used for that purpose.⁶⁹
92. Furthermore, the provisions of the Criminal Justice (Public Order) Act 1994 are in no way vague. The use of the words "*likely to cause*" is not meant to mean and are not treated as meaning a "*mere potential*" of harm but is rather to be understood as meaning that the harm is more probable than not. The rarity with which the provisions are used show that this is not treated as a low burden by the police. Moreover, the likelihood of damage to property or the amenity of varying types and uses of land cannot be assessed by a series of specific rules. Rather, 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.

⁶⁹ With the exception of use of this provision to disband an "Occupy" group at the Central Bank in March 2012. The protesters had caused damage to the public space outside the Central Bank and had erected unauthorised temporary dwellings. The legislation has not been otherwise used for this purpose.

93. Indeed, nor is the provision one which arises to be considered in any meaningful way in practice: even where there is likely to be damage to property, local authorities utilise Section 10 notices under the Housing (Miscellaneous Provisions) Act 1992 rather than involve the police as was recommended by the National Traveller Accommodation Consultative Committee.
94. Another aspect of the proportionality is that the offence does not need to be prosecuted for the direction to be effective. This has the effect of reducing criminalisation of offenders.

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

95. Contrary to paragraphs 57 to 67 of the Collective Complaint, the provisions of the criminal trespass legislation do not violate the requirements of due process.
96. The ERRC contend that provisions of this nature should incorporate: a reasonable notice period; defences (notably of lawful excuse); a requirement to consider other rights affected by the evictions and a requirement that no eviction take place if the affected person has no alternative accommodation.⁷⁰ These requirements reflect those laid out in the *ERRC v Italy* decision.⁷¹

Notice periods and defences

97. Moreover, in respect of the notice period, the legislation does not preclude notice periods being given by police according to the circumstances of the particular case (ie, having regard to the factors identified by paragraph 58 of the Complaint and where the continuation of the occupation for a further short period will not substantially damage or interfere with the amenity of the land). The ERRC does not make any founded complaint of specific unfairness.
98. Furthermore, as the ERRC point out at paragraph 60 of the Collective Complaint, Section 10 Notices (which are utilised by local authorities in preference to the

⁷⁰ See the Collective Complaint, paragraphs 57 – 67.

⁷¹ See note 20 above.

criminal trespass legislation) do provide for a lawful excuse where no alternative accommodation is available. The Criminal Justice (Public Order) Act is of specific and limited use only where property is likely being damaged. Should the Irish Traveller have a right to a remedy (including to housing authority dwellings), those can be availed of – but they are justly separate from a State enabling lawful authorities to prevent damage being caused to property by an illegal occupier.

99. Finally, contrary to paragraphs 58 to 60, these requirements would be inconsistent with the objectives of the Act as they would permit ongoing damage or interference with the land or its amenities. In particular, it is unclear how either a mandatory notice period or a defence of "*lawful excuse*" framed as a subjective belief of the occupant could be reconciled with the property rights of a landowner not to have his land substantially damaged or its amenity substantially affected. Unlike section 2(1) of the Criminal Damage Act 1991, the criminal trespass legislation concerns damage caused by ongoing presence on property. The ERRC are, effectively, 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.

The onus of proof

100. Contrary to paragraph 61 of the Collective Complaint, there is no general reversal of the onus of proof (see paragraph 63 above). Section 19C of the Criminal Justice (Public Order) Act is a general provision dealing with all persons subject to the criminal process, and no special mechanism above and beyond normal criminal legal aid need be provided in the provision itself.

The possibility of judicial review

101. Contrary to paragraph 62 of the Collective Complaint, prior judicial approval to evictions is not required in circumstances where judicial review can be availed of. Affected persons can and have been granted interim relief against police action under

the criminal trespass legislation, (notwithstanding that the applicants were unsuccessful at plenary hearing).⁷²

The alleged loss of homes

102. The ERRC set out a theoretical possibility of loss of property. They have alleged no seizure of any home to substantiate it. Rather, the directions given by the police would simply be the vacation of the property.

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

103. General criminal legislation cannot be effective if the ingredients of (or defences to) an offence pursuant to which immediate action is required to be taken (such as eviction) are subject to a police officer being required to exercise discretion by balancing the objects of the legislation against complex considerations of general policy. This is a recipe for arbitrary application of law. Section 19C of the Public Order Act is aimed at discrete and specific circumstances requiring a degree of urgency so as to vindicate the property rights of a landowner (which are protected by, *inter alia*, Article 1 of Protocol 1 of the European Convention of Human Rights).
104. Whilst under section 19C complaints may be made to the Irish police by any person, where local authorities initiate a complaint it is, as stated by the Local Authorities, the practice of local authorities to consult with the illegal occupant before engaging in the use of the public order provisions and in this way they comply with the Committee's case law. Indeed, the National Traveller Accommodation Consultative Committee have issued recommendations to be followed by Local Authorities in making use of the legislation which include requirements to consider the housing status of those affected before using their powers: where the affected persons are awaiting local

⁷² *McDonagh v Kilkenny County Council* [2011] 3 IR 455: **Annex 32**.

authority housing, the use of section 10 of the Housing (Traveller Accommodation) Act 1998 is preferred.⁷³

105. Under the National Traveller Accommodation Consultative Committee recommendations, and contrary to paragraph 66 of the Collective Complaint, use of the Public Order Act does not alter the affected person's status with regards to housing applications in that local authority's area and neither do indigenous clauses in the Traveller Accommodation Programmes operate in this manner. This is the uniform position of Irish Local Authorities.

The alleged lack of respect for nomadic lifestyle

106. The Public Order Act has not criminalised nomadism as has been alleged by the ERRC⁷⁴ but has created a mechanism whereby trespass likely causing damage or substantial interference to land or amenities thereon can be swiftly dealt with.
107. The National Traveller Consultation Committee Annual Report 2011 notes that *“the number of families on unauthorised sites has reduced from over 25% of all families in 2000 to 3.4% of all families recorded in 2011.”*⁷⁵ In addition, the Report states that *“significant gains have been made in Traveller accommodation since the enactment of the Housing (Traveller Accommodation) Act, 1998.”*⁷⁶
108. As has been outlined above,⁷⁷ the Department of the Environment provides 100% capital funding for Traveller-specific accommodation including permanent, temporary, emergency and transient halting sites, Group Housing Schemes for Travellers, recoupment to local authorities of 50% of the cost of providing caravans to Travellers in emergency cases, a special grant of €3,810 payable to Travellers for the first time purchase of a house and a special grant of 10% of the cost, up to a maximum of €640, to a Traveller family purchasing a caravan for the first time. It further provides for the purchase/construction of single houses for Travellers in exceptional circumstances.

⁷³ See Report by the NTACC, Review of the Operation of the Housing (Traveller Accommodation) Act 1998 (2004), pages 72 – 73: **Annex 9**.

⁷⁴ See the Collective Complaint, paragraph 68.

⁷⁵ Report of the National Traveller Accommodation Consultative Committee (2011), page 13: **Annex 10**.

⁷⁶ Ibid, page 8.

⁷⁷ See paragraph 51 above.

109. Further, in August 2013, in preparation for the Fourth Traveller Accommodation Programmes 2014-2018, a memorandum was issued requesting housing authorities to make every effort to consider the provision of Transient sites, as required by the Housing (Traveller Accommodation) Act 1998, when preparing Traveller Accommodation Programmes. Further, a recommendation was made to local authorities to have regard to Guidelines on Transient Sites issued in 2000 which suggested a number of required features and made additional suggestions for such sites.⁷⁸
110. As a matter of policy, in cases involving the eviction of Travellers, Section 10 notices under the Housing Act 1992 are used. As will be outlined below, that provision was designed to ensure the proper distribution of Traveller families on authorised sites. Moreover, 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.
111. The ERRC's suggestion that nomadism is impossible in Ireland is an exaggeration. As there is no agreed definition of nomadism, it is unclear how many Traveller families in Ireland may be defined as nomadic. Nor can the ERRC's allegations regarding Ireland's alleged failure in respect of nomadic travellers be made out or responded to.
112. Nomadism, as it is broadly understood, may be in decline in Ireland as many Local Authorities report a lack of demand in their area for halting site bays and transient bays. As the use of the Public Order legislation does not affect applications for Traveller-specific Accommodation in the responsible Local Authority's area, it cannot be said that this forces Travellers to apply for standard housing. In 2009 a circular was issued from the Department of Environment to all local authorities requesting that where an indigenous policy is included in a Traveller Accommodation Programme, that it is applied correctly and, in particular, is not used to prevent the assessment of an application for accommodation from a member of the Traveller community.⁷⁹

⁷⁸ Department of the Environment and Local Government, Guidelines for Accommodating Transient Traveller Families (2000): **Annex 24**.

⁷⁹ Circular TAU4/2009 issued 13/10/2009: **Annex 35**.

The allegation of discrimination

113. The provisions of the Public Order Act do not discriminate against Travellers.⁸⁰ The provisions target a category of unlawful conduct having deleterious effects on the land in order to vindicate the property rights of the landowner concerned.
114. It is however accepted that the Committee have stated that Article E requires special consideration of the vulnerability of Travellers to eviction due to their caravan lifestyle.⁸¹ Section 10 notices, which are the preferred procedure where Travellers are involved, are designed to address this vulnerability and are in fact the mechanism normally used in respect of Travellers. The criminal trespass legislation is designed to vindicate the property rights of landowners in those exceptional circumstances where property is likely being damaged and, in the case of Travellers, where Section 10 Notices are inappropriate.
115. The Human Rights Audit of Irish police in 2005 did identify a number of statements made by some police officers that could have been seen as evidence of institutional racism. The recommendations in this report have been followed. In particular, the Gardaí have placed a new emphasis on community engagement, involvement and partnership with the establishment of liaison networks to build relationships with ethnic communities including 390 trained Ethnic Liaison Officers. They have also sought to recruit members from more diverse backgrounds by lowering barriers that have traditionally stood in their way (though this was hampered by the moratorium on recruitment that operated from 2009 to 2013).

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

116. Section 10 of the 1992 Act (as amended by Section 32 of the Housing (Traveller Accommodation) Act 1998 cannot, as the ERRC suggest, be understood in isolation. Rather, it is part of a co-ordinated national approach aimed at ensuring that Travellers

⁸⁰ See the Collective Complaint, paragraphs 70 – 71.

⁸¹ See note 22 above.

who are identified by the Annual Count as living on unauthorised sites are provided with accommodation by the Local Authority concerned.⁸²

117. The provision was originally required to address the parking of Travellers of their dwelling vehicles on unauthorised sites where spaces were available in nearby halting sites. Section 10 notices gave Local Authorities direct powers to prevent unauthorised parking while ensuring maximum usage of halting sites that had been provided at the public expense. This is a legitimate policy goal consistent with the State's support for the nomadic lifestyle of Travellers.
118. After the amendment in 1998, the notices were given a greater degree of flexibility so as to re-house Travellers living in conditions unfit for human habitation as well as to protect the quality and standard of existing Traveller-specific Accommodation. The provisions are also designed to prevent nuisance to or harassment of the residents of Traveller accommodation by illegally parked caravans, which members of the Traveller community themselves wished to be addressed. For example, Wicklow County Council gave reasons for serving section 10 Notices which included the fact that local Travellers objected to other Travellers parked near existing accommodation schemes. Between 2010 and 2013, 17 section 10 Notices were served.
119. Further, the Review of the Operation of Housing (Traveller Accommodation) Act 1998, a report commissioned by the NTACC, recommended the NTACC should examine the issue of developing guidelines around the use of Section 10 notices. The Department will bring this to the new NTACC, who have just been recently appointed, for consideration in bringing this issue forward.

Alleged lack of due process

120. Ireland rejects the ERRC allegations that the Section 10 notice system lacks a sufficient grounding in due process.⁸³ In practice all requirements set by the Committee under the *ERRC v Italy* decision are met.⁸⁴ The ERRC confuses a lack of

⁸² As outlined in paragraphs 33 to 34 above.

⁸³ See the Collective Complaint, paragraphs 74 – 77.

⁸⁴ See note 20.

statutory specificity with a failure of Ireland's obligations. Once again, this highlights the theoretical nature of much of the ERRC's complaint.

The obligation to consult the affected person

121. Although no statutory obligation exists, it is the general practice of Local Authorities, whether express or customary, to consult with the persons affected before issuing a notice. These consultations take into account the factors mentioned by the ERRC at paragraph 74 of the Collective Complaint. Indeed, frequently notices served are subsequently negotiated and the number of actual evictions under such notices is significantly lower than the number of notices served.⁸⁵
122. The needs of Ireland's travellers are also considered in the *Social Housing Needs Assessment Report* which takes place every 3 years. It considers the needs of all Traveller families so as to facilitate the adoption of Traveller Accommodation Programmes. This assessment and the subsequent Traveller Accommodation Programmes are the subject of lengthy consultation with committees on local and national levels.

The period of notice

123. The statutory minimum notice requirement is admitted to be not less than 24 hours. However, as stated above, in general practice, a detailed consultation takes place. Consequently, the actual and effective notice period is much longer.⁸⁶ For example, Wexford County Council state that the 24 hour notice period has never been enforced.

The appellate mechanism

⁸⁵ For example, although 9 Section 10 notices were issued in Clare in 2012, only 1 temporary dwelling was removed as alternative solutions were sought. It is the practice of that Council to expedite the housing applications of affected persons where this is applicable.

⁸⁶ For example, in Carlow County Council, families are always consulted first, and all four notices were negotiated. In Leitrim, there were negotiations pre and post 2008 and 2009 evictions, resulting in alternative accommodation. In Longford, there have been no section 10 Notices, and the Council try to mediate wherever possible as to accommodation options to avoid using Gardai. In Westmeath and South Dublin, checks were first conducted into whether noticees had alternative accommodation.

124. Contrary to paragraph 76, speedy legal recourse is both possible and effective. There have been at least two reported cases of injunctions being granted against s.10 notices (though one of these was overturned on appeal):⁸⁷ injunctions are a rapid interim relief usually obtained on an *ex parte* and same or next-day basis. The efficiency and cost of Irish legal proceedings is not a matter for complaint under the ECSR. However, there are many Irish solicitors and barristers who offer assistance to impecunious persons on a *pro bono* or conditional fee basis.

The alleged lack of adequate provision of alternative and appropriate accommodation

125. Finally, the adequacy of the provision of alternative and appropriate accommodation is an ongoing concern for Ireland and, as will be detailed below, every effort is being made. It is reiterated that it is common practice for a Local Authority to offer alternatives to the affected person.

126. That the alternative accommodation provided under s.10(1)(b) may be some distance away from where the family is illegally parked is in practice avoided. That subsection comes into operation where the dwelling is unsafe and the move is aimed primarily at ensuring the welfare of the affected family.

127. While Section 10(1)(a) and Section 10(1)(b) of the Act of 1992 make the provision of alternative accommodation mandatory, Section 10(1)(c) does not. This is because this latter provision is used in situations where it is necessary to prevent interference with an existing site in circumstances of similar urgency to the Public Order Act. As such, a requirement that alternative accommodation need be available would hamper the objective pursued by the legislation.

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

128. No specific allegation in respect of interference with the education of the child is made.

⁸⁷ These were *O'Donoghue v Clare County Council* (See: **Annex 31**, Court Order) and *O'Reilly v Waterford City Council* (unreported decision of Teehan J in the Circuit Court of 22 January 2009 (overturning an injunction by the District Court)).

129. Ireland reiterates that it has made considerable advances in the provision education for Traveller children in recent years.⁸⁸ This is clear from the 46% increase in the number of Traveller children enrolled in post-primary education between 2005 and 2012. Further, €70m is being provided as funding for the Delivering Equality of Opportunity in Schools programme. The Traveller Roma Integration Strategy notes that the supports provided with this funding are “*particularly important to members of the Traveller and Roma Communities to mitigate against school absenteeism and early school leaving*”.
130. Moreover, Ireland identified in its Report and Recommendations for a Traveller Education Strategy 2006 that the threat of eviction without notice of those families living on unauthorised sites has the potential for a negative impact on Traveller education. However, the Section 10 Notice system is best understood and is applied as a welfare provision, utilised to ensure the distribution of the Traveller population in a manner which ensures the best possible access to services and amenities on authorised sites.
131. All authorised halting sites in Ireland are either within a reasonable distance to a school or provided for under a School Transport Scheme. Thus it is beneficial to Traveller children's education to be relocated in this manner so as to be able to attend school on a more stable basis. The (2006) Report makes a number of recommendations in relation to the specific educational needs of Traveller children. A recommendation is made that school transport for “*Traveller pupils should be provided on the same conditions as for settled pupils, unless there are exceptional special circumstances, when special transport would be provided as a positive action measure.*”
132. Currently, school transport for Traveller children is provided for under the same schemes as settled pupils and subject to the same distance criteria for eligibility (3.2kms for Primary/ 4.8kms for Post-Primary). Exceptional schemes that once operated in this area were phased out due to constraints on the Irish budget caused by

⁸⁸ As outlined in paragraph 30.

the economic crisis and subsequent expenditure reductions.⁸⁹ This was done gradually and the implementation of the changes was deferred by a whole school year to give adequate notice. The distance criteria applies equally to settled children and, in the year of its introduction, 5000 settled children at primary level were also affected by the changes. However, Traveller children meeting the distance criterion from their school of attendance were allowed to retain transport eligibility to that school even in circumstances where the school was not the nearest school.

133. In any event, most Traveller-specific accommodation sites are sufficiently close to local schools for this not to create difficulties or, where this is not the case, alternative arrangements are put in place (for example, Galway City Council serves a slightly more remote halting site with various outreach programmes).

The alleged violation of Article 30

134. No specific breach of Article 30 is identified by the ERRC. The Section 10 Notice system is, in fact, an element of a co-ordinated overall approach towards meeting the housing needs of Travellers.⁹⁰ The number of Travellers in need of accommodation are assessed via an Annual Count of Traveller Families and Section 10 notices (after appropriate consultation) are used to redistribute families to more suitable sites. This is a measure targeting Travellers in consideration of their needs as a vulnerable group in Irish society.⁹¹

Other legislation referred to in the Collective Complaint

135. The other legislation mentioned by the collective complaint includes the Roads Act 1993, the Planning and Development Act 2000, the Local Government (Sanitary Services) Act 1948 and the Public Health (Ireland) Act 1878 (all as amended). No alleged violation of the RESC have been submitted in relation to these Acts.

⁸⁹ See Department of Education and Skills. A Value for Money Review of the School Transport Scheme (2011), paragraph 7.13: **Annex 26**.

⁹⁰ See paragraph 33 to 34.

⁹¹ See paragraph 18.

V.2.ii Evictions in Practice

136. In practice, Irish Local authorities consult with affected persons and the majority of section 10 notices, under section 10(1)(a) or section 10(1)(b), are negotiated.
137. Moreover, the ERRC ignores the background to the use of these Section 10 Notices. Under the first Traveller Accommodation Programme 2000 – 2004, 1,371 Traveller families were provided with permanent and secure accommodation. The use of section 10 notices was a core element of the process by which Travellers were encouraged to relocate to these new dwellings.
138. In addition, the ERRC makes a number of allegations against specific local authorities which Ireland refutes.⁹² The ERRC accounts omit many relevant details which are essential to understanding the nature of the circumstances involved. The ERRC appears not to have knowledge of many of these cases, but relies instead on hearsay or third party information (including press reports). Such is not evidence which can substantiate the serious allegations of violations of the RESC which are made.
139. Moreover, not alone are the allegations not specific as to facts, they do not in every case identify which legislative base was used, and how it was used. Such examples cannot and do not bear out the alleged violation of the RESC by specific legislative provisions.
140. Finally, the Councils responsible are obliged to respect duties of confidentiality in respect of the individuals. These are not complaints actioned by the individuals nor does the ERRC purport to represent them. Ireland cannot disclose confidential details of individual family circumstances and of use of legislative provisions (particularly provisions constituting criminal offences) in circumstances where the affected individuals are not party to these proceedings. Accordingly, none of these specific examples can ground any alleged violation of the RESC.

⁹² See paragraphs 195 to 204 for details Ireland's responses to these allegations: **Annex 1**.

141. Ireland considers that it is, in practice, fully compliant with its obligations in respect of evictions under Article 16 of the Revised Charter. However, Ireland admits that there is no central government record of evictions, and therefore no permanently maintained and aggregated data concerning consultation, alternative accommodation solutions, notice, or the timing of evictions.⁹³ As a matter of priority, Ireland intends to bring this issue forward for consideration by the NTACC for possible remedial action.
142. In respect of its national formulation and monitoring of policy in respect of evictions, Ireland's central government relies upon close dialogue between Departments of its central government and the responsible local (housing) authorities and, where applicable, the police (An Garda Síochána): formal mechanisms for this interagency and intergovernmental co-operation in respect of Travellers are set out above, and include dialogue with Traveller's representatives.
143. Consequently, whilst Ireland is unable to verify that in each and every instance its policy outlined in these Observations is implemented, the ERRC have not established any verifiable breach of the Revised Charter and/or any breach involving significant numbers of Travellers. This is particularly the case given the significant progress made in delivering adequate housing to Travellers in Ireland.

V.3 STANDARD OF HOUSING AND PROVISION OF TRAVELLER ACCOMMODATION

144. Contrary to paragraph 90 *et seq* of the Collective Complaint, Ireland has made considerable advances in the area of the provision of accommodation for its Traveller Community. Ireland is in full compliance with Articles 16 and 30 of the Charter whether or not read in conjunction with Article E.
145. This had been largely achieved through the framework put in place by the Housing (Traveller Accommodation) Act 1998 which requires Housing Authorities to draw up

⁹³ For example, the figure provided by the ERRC of 1030 such notices served between 1 June 2000 and 31 May 2003 does not necessarily equate to the number of evictions in this period. However, national data is not available.

and implement Traveller Accommodation Programmes based on assessments of the need for Traveller Accommodation in their area.⁹⁴

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

146. Significant progress has been made in the provision of accommodation for the Irish Traveller Community since the Housing Act 1988 created a positive duty on Local Authorities to provide and manage Traveller Accommodation including Halting Sites. Over the years 2002 – 2012, €353.63m was allocated for the provision of Traveller-specific Accommodation.
147. While the progress achieved has admittedly not been in line with the recommendations of the Task Force on the Travelling Community in 1995 in some aspects, it is important to note this report's projections did not have the benefit of foresight. Not only has Ireland's Traveller population more than doubled since the publication of the report, but the country has also gone through recession and subsequent expenditure reductions.
148. The ERRC has criticised a number of aspects of Ireland's efforts to house its Traveller Community via the Traveller Accommodation Programmes.⁹⁵

Families still on unauthorised sites

149. The 1999 Annual Count of Traveller families estimated that 1,207 families (25.2% of all Traveller families) were living on unauthorised sites. As of the 2012 Count this figure is at 330 families.⁹⁶
150. This significant improvement is despite a huge increase in the overall number of Traveller families from 4,790 in 1999 to at least 9,911 in 2012 (an increase of over

⁹⁴See paragraphs 33 to 34. For a more detailed view on the adoption of Traveller Accommodation Programmes see: Department of Environment, Heritage and Local Government, Memorandum on the Preparation Adoption and Implementation of Local Authority Traveller Accommodation Programmes 2014 – 2018 (July 2013): **Annex 21**.

⁹⁵ See the Collective Complaint, paragraphs 95 – 104.

⁹⁶ Although this figure is an increase on the 327 Traveller families on such sites as of the 2011 Count, this should be viewed in light of the 3.8% increase in the number of Traveller families nationally in 2012.

100%). It is Ireland's avowed intention to reduce the number of families without access to basic services and amenities to zero. However, at present, it is clear that measurable progress has been achieved.

151. Moreover, the progress of each Local Authority is monitored by the Government. In 2011, the 7 Local Authorities with the highest number of families on unauthorised sites were asked to account for this. Local Authorities reported that the majority of families were there by choice and without Local Authority involvement. Travellers are free to express a preference for any form of accommodation through the assessment of needs process. The vast majority of Travellers are accommodated in standard housing, as evidenced from the Annual Count.
152. Ireland recognises the challenges in meeting the full range of accommodation options which are required to meet the housing needs of Travellers. To overcome these challenges, Ireland introduced the Housing (Traveller Accommodation) Act, 1998 which prescribes the strategies to be pursued in meeting the housing needs of Travellers. This Act, and the provision of Traveller-specific Accommodation, positively discriminates in favour of the Traveller community.
153. Government policy is that the full range of accommodation options should be available for Travellers. These include standard social housing including that provided by voluntary bodies and Traveller-specific accommodation. Travellers are also entitled to purchase their own accommodation where they have the resources to do so as well as being entitled to have access to accommodation in the private rented sector. It is open to Travellers to freely choose from the housing options. Latest figures from Annual Count of Traveller Families reveal that the vast majority of Travellers are already accommodated in social housing and the private rented sector.

The alleged decline in the provision of halting site accommodation

154. Ireland notes that the provision of halting site accommodation has declined in recent years in direct response to a decrease in demand. Seven Local Authorities report that they do not have a waiting period for halting site accommodation⁹⁷ and there are some vacancies on existing sites. Due to Ireland's economic difficulties, the issue of Traveller-specific Accommodation going unused is considered to be one of critical importance and the Housing Agency are conducting a study into this issue so as to better inform policy makers.

Increase in Travellers living in private-rented accommodation and standard Local Authority housing

155. The decline in nomadism alleged by the ERRC is in no way attributable to any policy of the Irish government. Every 3 years housing authorities are directed to carry out an assessment of those currently needing housing in their areas and the type of housing requested.

156. The 2011 *Social Housing Needs Assessment* shows that requests for Traveller-specific Accommodation make up a particularly low proportion of the overall figure and that no such accommodation was requested in a number of housing authority areas. Of 1824 Traveller families seeking accommodation in 2011, 1789 applications identified that their needs could be met by standard local authority/voluntary housing. Early figures for the 2013 Assessment indicate that 2% of household on the housing waiting list require Traveller-specific accommodation.⁹⁸ The majority of those who qualified for Social Housing (89%) did not have a specific accommodation requirement.

157. In particular, County Cavan has seen no demand whatsoever for Traveller-specific Accommodation and allocates its housing budget as such. Laois County Council also received no applications for halting site accommodation in the preparation of its

⁹⁷ Including Carlow, Cavan, Clare, Cork County, Donegal, Dun Laoighaoire/Rathdown, Galway County, Laois, Leitrim, Sligo and Wexford.

⁹⁸ Housing Agency, Social Housing Needs Report 2013 – Preliminary Results: **Annex 13**.

Traveller Accommodation Programme 2009 – 2013. It would be an unjustifiable waste of resources – particularly in times of economic difficulty – to provide halting site accommodation in areas where it is not wanted.

158. Given that no alternative data has been presented which could draw the results of the *Social Housing Needs Assessment* into question, it is more reasonable to attribute the increase in Travellers accommodated in private rental accommodation to the increasing accessibility of the private rented sector to Travellers due to Government efforts to combat discrimination.
159. Where a preference is expressed for private rented accommodation, assistance is often offered through Rent Supplements (currently being allocated to 2475 Traveller families) or through the Rental Accommodation Scheme (now assisting 212 Traveller families) according to the Annual Count 2012.
160. Where a preference for nomadic lifestyle is expressed, Local Authorities often assist families in purchasing caravans. Ireland has developed a number of grant and loan schemes which are aimed at embracing the nomadic lifestyle of its Travelling community.⁹⁹

Sharing Accommodation

161. Ireland accepts that the number of families sharing accommodation has increased in recent years but in many cases this occurs due to families choosing to live together as they expand which is a feature of traditional Traveller culture. Efforts are made via negotiation and the Section 10 Notice system to prevent harmful overcrowding.
162. There have been a number of setbacks in the provision of transient sites owing to disagreement on a local level often with concerns expressed by settled Traveller communities.¹⁰⁰

⁹⁹ See Circular Letters No. TAU 1/2000 dated 7 February 2000 and TAU 1A/2000 dated 18 October 2000 which outline the nature of these schemes and the aid available: **Annex 25**.

¹⁰⁰ This has been a feature of many attempts to establish such sites including in Dun Laoighaoire/Rathdown, Kilkenny, Limerick City, Limerick County, Mayo and Wexford.

163. Where transient sites are provided they have seen very little demand. Further progress in this area requires detailed consultation with indigenous Traveller families and National Traveller groups and every effort is being made to ensure this takes place.
164. Ireland's legislative framework for the provision of Traveller Accommodation places a great emphasis on consultation so as to avoid creating conflict in local communities. To this end, Sections 21 and 22 of the Housing (Traveller Accommodation) Act 1998) provide that Local Traveller Accommodation Consultative Committees must be in place.
165. Moreover, when assessing the accommodation needs of Travellers, Housing Authorities are required under s.6 of the Housing (Traveller Accommodation) Act 1998 to have regard to both need for transient sites and the view of the Local Traveller Consultative Committee concerned.
166. It is hoped that, through consultation and negotiation with all concerned groups, the complex issue of transient sites will be resolved. Evidence of the success of this approach can be seen from the efforts to provide transient sites for the Knock novena – an annual religious pilgrimage.¹⁰¹

Difficulties in providing Traveller-specific Accommodation

167. Shortfalls in the provision of Traveller-specific Accommodation must be considered in light of the greater level of costs and difficulties associated with this accommodation in comparison to standard local authority housing. These difficulties have already been alluded to but bear some repetition here.¹⁰²
168. In particular, it is often difficult to obtain suitable land in reasonable proximity to amenities. This causes the cost per unit of Traveller-specific Accommodation to vary widely across different localities.

¹⁰¹ For details see The Annual Report of the National Traveller Accommodation Consultative Committee (2012) page 10 : **Annex 10**.

¹⁰² See paragraph 55 to 58.

169. For example, in 2009, the provision of 2 units of halting site accommodation in South Tipperary cost €291,543 per unit whereas, in 2010, 10 units created in Fingal were provided at €159,963 per unit. The cost of developing Traveller-specific accommodation can be significantly higher than the provision of standard housing for a number of reasons such as: difficulties obtaining suitable sites close to amenities; the provision of security; and, delays.
170. In addition, in a number of cases, Traveller-specific Accommodation has been made vacant without warning, and accommodation has been subject to dereliction and vandalism.¹⁰³ This creates even greater difficulty to the task of ensuring adequate accommodation is provided and research is being conducted to ascertain why this occurs.

Summary

171. Although some aspects of the current situation with regards to the provision of accommodation to Travellers need continued investment on Ireland's behalf, it cannot be said that Ireland is in violation of its duties under the RESC.
172. It is recalled that the obligations under the RESC are not ones of "result" and that under the decision of the Committee in *ERRC v Bulgaria* States are afforded some latitude where the achievement of these obligations is particularly costly and complex.¹⁰⁴
173. Ireland's efforts clearly represent measurable progress achieved through the maximum use of available resources. Whether this has been achieved in a reasonable time should consider factors such as Ireland's economic difficulties and the growth in the Traveller population.

¹⁰³ See the Annual Report of the National Traveller Accommodation Consultative Committee (2012), page 12: **Annex 10.**

¹⁰⁴ See note 6.

174. These same efforts have been undertaken as part of a coordinated overall approach towards the elimination of poverty which gives special consideration to the needs of Travellers.¹⁰⁵

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

175. Ireland reject the allegation that the absence of an absolute requirement to implement the Traveller Accommodation Programmes amount to a breach of Article 16.¹⁰⁶

176. Further, it is denied that Local Authorities are unwilling to provide accommodation. Between 2000 and 2011, 2027 units of Traveller-specific Accommodation were either created or refurbished by Local Authorities under their Traveller Accommodation Programmes.¹⁰⁷ The rate of creation of new units declined in recent years not due to unwillingness but due to severe national fiscal constraints caused by economic recession, high debt to GDP and consequent reductions in budgetary expenditure. Moreover, prior to this period of fiscal constriction, there were significant difficulties in procuring suitable lands.¹⁰⁸

177. Under the 3rd Traveller Accommodation Programme (2009 – 2013), the combined target of local authorities was to provide 2075 units of accommodation to Traveller families to the end of 2012. However, unavoidable constraints which were unforeseen at the time of the adoption of the programme have arisen which include the severe and prolonged economic recession Ireland experienced and the expenditure reductions which was necessitated by consequent budgetary imbalances.¹⁰⁹ By the end of 2012, 1488 units had been provided representing 72% of the target to the end of 2012. This figure will have increased when the 2013 figures are available.

¹⁰⁵ See paragraphs 16 to 18.

¹⁰⁶ See the Collective Complaint, paragraph 106. This has been an element of the Committee's jurisprudence – see paragraph 13 above.

¹⁰⁷ *Social and Affordable Housing*, Housing Statistics Bulletin, 11 November 2013 – available at <http://www.environ.ie/en/Publications/StatisticsandRegularPublications/HousingStatistics/> (visited 26/11/13):

Annex 12.

¹⁰⁸ See Report by the NTACC, Review of the Operation of the Housing (Traveller Accommodation) Act 1998 (2004), pages 30 – 31: **Annex 9.**

¹⁰⁹ See Report by the NTACC, Review of the Operation of the Housing (Traveller Accommodation) Act 1998 (2004), paragraph 5.9.6: **Annex 9.**

178. Section 16 of the Housing (Traveller Accommodation) Act 1998 requires the relevant housing authority to take any reasonable steps as are necessary for securing the implementation of the programme. Annual reports on the implementation of the plans must be compiled under s.31 so as to allow for the monitoring of programmes. Authorities which fall behind in their targets are asked to account for this to the relevant Minister. The Government's Department for Environment, Community and Local Government also provides Progress Reports to the NTACC on an annual basis.
179. An absolute obligation to create halting sites would place undue pressure on Local Authorities to act and may result in unfavourable long-term outcomes. If tension does exist in the local communities, it is best to approach the provision of halting sites by involving all relevant actors in the decision-making process rather than construing the State's obligation as one of results only. It is for this purpose that Local Traveller Accommodation Consultative Committees were established under the Housing (Traveller Accommodation) Act 1998. An evaluation of these Local Committees carried out in 2000 recognised that their principal strength was that they facilitate the participation of Travellers in the preparation of accommodation plans.¹¹⁰ In 2014, each local authority will form a new Local Traveller Accommodation Consultative Committee, where legislation requires that local Travellers and Traveller bodies shall not be less than 25% of the total membership of the committee.

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

180. Contrary to paragraphs 107 to 124 of the Collective Complaint, which are denied, official halting sites in Ireland provide adequate access to all basic amenities as well as services for people with disabilities where these are requested.

In General

181. The ERRC impugn the adequacy of official halting sites in Ireland with regard to their provision of basic amenities, alleged overcrowding, the suitability of sites, alleged

¹¹⁰ Department of the Environment and Local Government, *Evaluation of Local Traveller Accommodation Consultative Committees* by the National Traveller Accommodation Consultative Committee (October, 2000): **Annex 17**.

effects of poor housing conditions on Traveller health,¹¹¹ access to education and employment and the provision of services for occupants with disabilities.

182. First, all official halting sites in Ireland are provided with basic amenities including water and electricity though in some cases heating and waste disposal are paid for by the tenants. Sites have caretakers charged with the maintenance of these services. The Health and Safety of all Local Authority housing sites is monitored according to Department of Environment Guidelines and this includes rodent-baiting where appropriate.
183. Second, overcrowding can occur when several generations of an expanding family share bays in a halting site. These situations are monitored carefully in consultation with those affected and on the overwhelming majority of sites in the country there is no overpopulation.
184. Third, the allegation that official sites are geographically isolated is an exaggeration. Most sites are within a reasonable distance to towns and schools. Where this is not the case, transport schemes are in operation.
185. Fourth, Local Authorities provide assistance to persons with disabilities through a number of means including the provision of grants in some cases and by making adaptations to caravans or halting site bays on request.
186. Finally, Traveller health continues to be a priority area for Ireland and approximately €10m was spent in this area in 2012 alone via specialised Traveller Health Units. As the majority of Travellers are accommodated in the same standard local authority housing as other social housing recipients, the alleged causative link with poor health is not proven.

¹¹¹ See the Collective Complaint, paragraphs 107 – 124.

Specific Allegations

187. In particular, the ERRC's complaints relating to specific halting sites are not founded on sufficient information or evidence: in particular, the allegations are not supported by precise facts. Nor are the complaints made by, or on behalf of, the individuals concerned. Ireland would therefore like to reiterate its objections to the admissibility of such allegation generally¹¹² while directing the Committee's attention to results of its investigations into these allegations.¹¹³

VI CONCLUSION

188. For the detailed reasons given above, contrary to the Collective Complaint, and in particular the Summary thereof, Ireland's policies to date in this area cannot be considered to be in violation of Articles 16, 17 or 30 of the RESC, in conjunction with Article E or otherwise. Rather, Ireland has made measurable progress through maximum use of available resources.

189. Rather, Ireland has, in reasonable time, made measurable and considerable progress through maximum use of available resources to achieve a significant long-term goal of adequate housing for Travellers which was exceptionally complex and particularly expensive Ireland adopted the necessary legal, financial and operational means of ensuring steady progress towards Charter goals has been made.

190. By its Annual Count, it has maintained meaningful statistics on needs, resources and results. By its Traveller Accommodation Programmes, it has established clear timetables for the achievement of objectives at each stage; by the same Programmes, it undertakes regular reviews of the impact of the strategies adopted and adjusts to ensure the goals are achieved. Ireland will forward the next multi-annual strategic framework, copies of the 2014-2018 Traveller Accommodation Programmes, when available

¹¹² Paragraphs 138 to 140 above.

¹¹³ See paragraphs 206 to 214: **Annex 1**.

191. Ireland has made available significant *per capita* financial resources, and introduced a systemic framework across government for ensuring provision of adequate housing, with monitoring by central government of the implementation by local authorities of multi-annual strategic plans.
192. Moreover, Ireland pays close attention to the impact of the policies adopted on each of the categories of persons concerned, and in particular the most vulnerable: the numbers of Travellers accommodated by State resources has substantially increased; in respect of both numbers and improvements in standards, continued progress is being made across all range of housing (including and in particular culturally appropriate accommodation); in respect of the most vulnerable Travellers, consistent annual progress has been made in respect of Travellers living in unauthorised accommodation, with substantial reductions in the last decade.
193. Ireland considers that the scale of the difficulties it faced in the late 1990s, together with the unforeseen growth in the Traveller population in the decade since, justifies as reasonable the time period since the first Traveller Accommodation Programme in 1999. Any delay in the implementation of measures to date is to be attributed to Ireland's recent severe fiscal constraints, and the considerable efforts Ireland's authorities have made to consult Travellers in the implementation of housing and planning policy.
194. In summary, Ireland is committed to continuing those efforts to achieve adequate housing for the entire Traveller community in Ireland. It is making and will continue to make measurable progress in reasonable time to an extent consistent with the maximum use of available resources. Ireland therefore considers the present complaint to be unfounded.

VII TABLE OF ANNEXES

Annex	Document
1.	Ireland's responses to specific allegations in the Collective Complaint
2.	Housing (Traveller Accommodation) Act 1998 (as amended)
3.	Criminal Justice (Public Order) Act 1994 (as amended)
4.	Housing (Miscellaneous Provisions) Act 1992 (as amended)
5.	Roads Act 1993
6.	Planning and Development Act 2000
7.	Local Government (Sanitary Services) Act 1948
8.	Public Health (Ireland) Act 1878 (as amended)
9.	Report by the NTACC, Review of the Operation of the Housing (Traveller Accommodation) Act 1998 (2004)
10.	National Traveller Accommodation Consultative Committee Annual Reports 2010 – 2012
11.	Annual Count of Traveller Families 2010 – 2012
12.	Department of the Environment, Community and Local Government, <i>Social and Affordable Housing</i> , Housing Statistics Bulletin (11 November 2013)

13. Housing Agency, Housing Needs Assessments 2005, 2008, 2011 and preliminary results for 2013 (EXTRACTS).
14. Traveller Health Advisory Committee, *Traveller Health – A National Strategy 2002 – 2005*.
15. Department of Health and Children, *All Ireland Traveller Health Study* (2010)
16. National Traveller/Roma Integration Strategy (2011)
17. Department of the Environment and Local Government, *Evaluation of Local Traveller Accommodation Consultative Committees* by the National Traveller Accommodation Consultative Committee (October, 2000)
18. Department of the Environment and Local Government, *Guidelines for the Operation of Local Traveller Consultative Committees* (LTACCs) as Recommended by the National Traveller Accommodation Consultative Committee (April, 2001)
19. Department of Education and Skills, *Recommendations for a Traveller Education Strategy* (2006)
20. Department of Justice and Equality, *Report on the Workshop of National Traveller Committees* (2012).
21. Department of the Environment, Heritage and Local Government, *Memorandum on the Preparation, Adoption and Implementation of Local Authority Traveller Accommodation Programmes 2014 – 2018* (July, 2013).
22. Circular 26/13, *Traveller Accommodation Programmes 2014 – 2018* (August, 2013).

23. Department of the Environment and Local Government, *Guidelines: Residential Caravan Parks for Traveller.*
24. Department of the Environment and Local Government, *Guidelines for Accommodating Transient Traveller Families* (2000)
25. Circular Letters No. TAU 1/2000 dated 7 February 2000 and TAU 1A/2000 dated 18 October 2000.
26. Department of Education and Skills. A Value for Money Review of the School Transport Scheme (2011).
27. Report of the National Traveller Monitoring and Advisory Committee (2009).
28. Dáil Éireann, 16th October 2013, Reply of Minister for the Environment, Community and Local Government (Ms. J. O'Sullivan) to Questions Nos 43690/13, 43691/13 and 43692/13.
29. Dáil Éireann – Volume 551 – 27 March 2002, Housing (Miscellaneous Provisions) (No.2) Bill, 2001: Report and Final Stages.
30. Report of the Task Force on the Travelling Community (1995)
31. *O'Donohogue v Clare County Council* (unreported judgment of O'Keefe J in the High Court of 1 July 2011).
32. *McDonagh v Kilkenny County Council* [2011] 3 IR 455
33. Circular Letter TAU/4/2009 dated 13th October 2009.

VIII ANNEX I

VIII.1 Ireland's responses to Specific Allegations of unlawful evictions

195. **Mahon Rd, County Cork, May 2003:** The ERRC did not mention that the affected persons had previously been tenants of the Council and had left that arrangement on bad terms. They were later granted a house by Cork City Council only to leave it badly damaged and again in arrears.¹¹⁴
196. **South County Dublin, December 2002:** The Council has no record of these alleged events.¹¹⁵ It is unable to substantiate them, nor has the ERRC identified the family in any manner which can give rise to location of information.
197. **Ennis, County Clare, June 2011:** In this case, the caravan was parked close to a roundabout on a public road. There is no record of the caravan being impounded and the case was settled in the High Court. The family were later provided with private rented accommodation.¹¹⁶
198. **Balbriggan, County Dublin, June 2009:** The reason the police attended the eviction in this case is because the site's security personnel had been harassed by the affected family when they attempted to repossess the bay on the day before.¹¹⁷ If it were the case that the authorities operated in breach of the law, remedies are available – as was seen by the Council's cancellation of the second attempted eviction after legal representations were made.
199. **Blanchardstown, County Dublin, September 2009:** Ireland has been unable to respond to the allegation regarding this halting site as the Collective Complaint did not identify the family concerned with a sufficient degree of specificity.¹¹⁸

¹¹⁴ Collective Complaint, paragraph 79.

¹¹⁵ Collective Complaint, paragraph 80.

¹¹⁶ Collective Complaint, paragraph 81.

¹¹⁷ Collective Complaint, paragraph 82.

¹¹⁸ Collective Complaint, paragraph 83.

200. **County Waterford, January 2009:** The family in this case had been accommodated by Waterford Council in a group housing scheme until a family disagreement led them to move out and illegally occupy a bay in the adjacent halting site. A section 10 notice was served against which they were granted an interim injunction but this was later overturned upon full judicial hearing. Alternative accommodation was then sought for them by the Council responsible.¹¹⁹
201. **Various locations, to May 2005:** The complaint does not disclose sufficient information to respond to.¹²⁰
202. **Rathkeale, County Limerick, November 2010:** The laneway in which this family's caravan was parked had been closed on request by the residents. The boulders to which the complaint refers were placed on either end of the lane and not on either side of the family's caravan.¹²¹
203. **Bishopstown, County Cork, May 2011:** The Council has no record of these alleged events. It is unable to substantiate them, nor has the ERRC identified the family in any manner which can give rise to location of information.¹²²
204. **County Clare, 2012:** The responsible Council states that only one of the occupants of the caravan in this case was seeking alternative accommodation. Moreover, there was no mention of a disabled child in either correspondence or the injunction proceedings.¹²³
205. **County Wexford, July 2012:** In this case, the responsible Council in Wexford did not process an application for housing in that local area because the affected family had given a number of questionable and unsubstantiated reasons for their move from Dun Laoghaire. Subsequently, they were provided with accommodation on compassionate grounds and now officially reside in Wexford while remaining

¹¹⁹ Collective Complaint, paragraph 84.

¹²⁰ Collective Complaint, paragraph 85.

¹²¹ Collective Complaint, paragraph 86.

¹²² Collective Complaint, paragraph 87.

¹²³ Collective Complaint, paragraph 88.

illegally parked in the Dun Laoghaire local area, some 80 kilometres away.¹²⁴ The use of the Section 10 notices was entirely reasonable in the context of illegal parking on the roadside.

VIII.2 Specific Allegations regarding Halting Site Standards

206. **Spring Lane Halting Site, Cork City, Co. Cork:** Spring Lane is an example of overcrowding by the generational increase of Travellers: Housing Authorities are working to resolve these issues and develop a medium term plan. Cork City Council have stated that this site is in fact serviced by a rodent specialist on a monthly basis. Also while the site does require some renovation, the Council states the walls separating the bays are actually in disrepair due to the residents. The halting is not between motorways but on a slip road. The issues with sewage on the site are denied.¹²⁵ At the time of submissions, other health and safety concerns have arisen on this site due to extreme weather conditions in this region of the country and these are being investigated and dealt with.
207. **St Margaret's Halting Site, Ballymun, County Dublin:** Dublin City Council have offered the residents of this halting site alternative accommodation but this offer was rejected. The problems with regard to the electricity on site have been caused by massive overuse and residents tampering with the meters. There have been no reports of pneumonia on site. In addition, the Council notes that the site is only 13 years old and it is unusual for a site to need refurbishment after such a short time.¹²⁶
208. **Ballymaley Halting Site, Galway Road, County Clare:** This site was severely damaged during the freezing weather in January 2010 but repairs were performed as soon as was possible. The site is admittedly outside of the school transport area but the family in question have been seen driving their own vehicles to and from the site. In addition, there is no security guard and one has never been present. Residents were offered a key for the security barrier but declined.¹²⁷

¹²⁴ Collective Complaint, paragraph 89.

¹²⁵ Collective Complaint, paragraph 115.

¹²⁶ Collective Complaint, paragraph 116.

¹²⁷ Collective Complaint, paragraph 117.

209. **Cloncarlin Halting Site, Monasterevin, County Kildare:** The site is admittedly isolated but the family residing there requested that site after encountering difficulties elsewhere. This family, as far as the Council knows, always had dogs. The showers on site are adequate and various types of heating arrangements have been tried after oil heaters on site were tampered with.¹²⁸
210. **Long Pavement, Limerick City, County Limerick:** The narrative in the complaint relates to the site before it was fully reconstructed in 2008. The site is no longer a landfill and rodent baiting is included in the maintenance. The coroner's verdict in the case of the death that is mentioned was inconclusive.¹²⁹
211. **Toppins Field, Limerick City, County Limerick:** Once again, the information alleged by ERRC is considerably out of date. This site was refurbished in 2011 and is subject to a maintenance routine that includes rodent-baiting.¹³⁰
212. **Bawney's Bridge Halting Site, County Limerick:** While this site is located near a fertiliser factory, the halting site is currently not at any risk of harm.¹³¹
213. **Ballinacullia Halting Site, County Roscommon:** The Council admits there have been a number of problems caused by illegal behaviour on site. However, repairs and maintenance are being performed.¹³²
214. **Moyne Park Halting Site, Baldoyle, County Dublin (not Roscommon as stated):** Ireland is investigating this allegation.¹³³ There is a lack of specific information to identify the alleged problems, and to whom they were allegedly reported.
215. **Bunclody Halting Site, County Wexford:** The provision of CCTV cameras was raised and agreed at a meeting between Wexford County Council officials and residents of the Halting Site held on 19th November 2009. The CCTV cameras

¹²⁸ Collective Complaint, paragraph 118.

¹²⁹ Collective Complaint, paragraph 119.

¹³⁰ Collective Complaint, paragraph 120.

¹³¹ Collective Complaint, paragraph 121.

¹³² Collective Complaint, paragraph 122.

¹³³ Collective Complaint, paragraph 123.

complained of were not looking into the bays and the speaker was used only once as a test. The lighting issues on site are caused by vandalism.¹³⁴

¹³⁴ Collective Complaint, paragraph 124.