The Irish Traveller Movement is a national membership organisation representing Travellers and Traveller organisations across Ireland founded in 1990. One of its core principles and objectives is to challenge the racism that Travellers face in Ireland, promoting integration and equality within Irish society. It is thus with over 23 years of experience of policy analysis that we report to the Fourth Periodic Examination of Ireland under the International Covenant on Civil and Political Rights. The within written submission discusses four broad areas, Traveller ethnicity, Traveller accommodation, hate speech and equality.

**Recognition of Travellers as an ethnic minority**

The State has failed in any meaningful way to comply with the recommendation of the UN Human Rights Committee in its concluding observations in 2008 that Ireland “should take steps to recognise Travellers as an ethnic minority group.” Para 793 of Ireland’s 4th Periodic Report repeats the State’s continued denial of ethnicity “Irish Travellers do not constitute a distinct group from the population as a whole in terms of race, colour, descent or national or ethnic origin,” without providing a comprehensive rationale.

Travellers satisfy the standard legal and sociological criteria for recognition as an ethnic group and are recognised as such by the British and Northern Irish authorities as separate from non-Traveller Irish people.

The Irish Government has never satisfied the burden of proof in its failure to recognise Travellers’ right to self-identify.

Irish human rights and equality bodies, the Irish Human Rights Commission and the Equality Authority have both recommended the Government recognise Traveller ethnicity. The U.N. C.E.R.D. Committee and the Advisory Council on the Council of Europe Framework Convention on the Protection of National Minorities have consistently criticised the Irish State’s approach in addressing the campaigns of Irish Travellers to have their ethnicity recognised.

In response to Irish Traveller Movement concerns (Oct 2012) UN High Commissioner for Human Rights Ms Navanethem Pillay stated “While there is no universally accepted definition of what constitutes a minority under international law, there are certain criteria that should be taken into account when discussing this issue, including the self-identification of persons belonging to a specific group, such as the Irish Travellers. At the same time it is important to note that an existence of a minority is a matter of “fact”, not of “law”, as was affirmed already at least in 1930 in the Greco-Bulgarian Communities case before the Permanent Court of Justice. Furthermore, the applicability of Article 27 of the International Covenant on Civil and Political Rights as well as the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, inspired by this article, is not subject to official recognition of a minority by a State.

The official recognition by a State of a minority group can be however be instrumental in securing all human rights of all its members; it can also contribute to the stability of a State. OHCHR supports all efforts that would result in a higher protection of the human rights of Irish Travellers in Ireland and wider.²

At para 794 of the 4th Periodic Report, the State again reiterates justification of denial by pointing to the fact that membership of the Traveller Community is already considered a separate ground for the purpose of equality legislation. An example of the inadequacies of that protection is found in the application of the EU Race Directive, a legal instrument where ethnicity is the material basis for legal protection. The Traveller community is protected on the same basis as race, ethnicity or nationality under domestic equality legislation and included under the Equality Act 2004, which is the transposing legislation for the Directive. However, there may be circumstances in which an individual Traveller might seek to place direct reliance on a Directive in domestic proceedings. Reliance on CJEU jurisprudence in interpreting the Equal Status Acts (as amended) has been challenged³, while the applicability of the Directive was not considered by the Courts in that instance, there is a lack of legal clarity on the issue. This lack of legal clarity is due to the failure of the Irish State to recognise Traveller ethnicity, denying Travellers an automatic entitlement to rely on CJEU jurisprudence in the development of the protections of the Race Directive or indeed to seek to impugn the State’s transposition of the Directive for whatever reason. While it is presently unclear whether Travellers, in the absence of State acceptance of ethnicity, might rely on the Race Directive, it is submitted that, based on the objective evidence available, a domestic court, or indeed the Court of Justice of the European Union, would find that Travellers are indeed protected by the Race Directive. It would be an unfortunate circumstance for the State to find itself seeking to exclude the protections of EU equality law to an identified national minority that experiences, and is vulnerable to, significant levels of discrimination⁴.

Thus despite the intention of international bodies to protect all relevant minority groups, a two-tier human rights protection exists in Ireland with some minority groups covered for immediate and automatic protection under the international human rights framework and others, not.

The Irish Traveller Movement and other human rights organisations presented to the all-party Joint Oireachtas (Parliamentary) Committee on Justice, Defence and Equality⁵, a final report of which has been sent to the Irish Minister for Justice and Equality unanimously recommending that Travellers be recognised as an ethnic minority group⁶. However, recommendations of this Committee are not binding on either the Minister or the Government. A national conference (September 2012) convened by the National Traveller Monitoring and Advisory Committee entitled “Ethnicity and Travellers: An Exploration” to debate ethnicity issues (while proving comprehensive for Travellers and their desire for ethnicity recognition), unfortunately suffered from an absence of engagement from civil servants and Government representatives.

The Government has never explained clearly using objective criteria and international standards why it denies Traveller ethnicity. Five years after a strong recommendation from the UN Human Rights Committee, there is no clear Government policy statement nor commitment on the issue, much less any timetable set, or draft legislation published. In the interim, a progressive step during Ireland’s UPR report Nov 2011 was Ireland’s renewed position of giving “serious consideration” to the granting of such recognition. However there has been a lack of progress since that time.

³ http://www.courts.ie/judgments.nsf/6681dee4565ecf2c80256e7e0052005b/d0a44d0fbe3f1c5a802578e8002e4c36?OpenDocument&Highlight=0.Stokes
² Irish Traveller Movement submission to Joint Oireachtas Committee on Justice and Defence, February 2013 (http://itmtrav.ie/publication/submissions, retrieved 18 March 2014)
Accommodation

No legislative remedy regarding the provision of specific accommodation requirements of Traveller families has been initiated by the State since the Human Rights Committee last recommended this course of action in its concluding observations 2008. Traveller accommodation and related issues are now the subject of a Collective Complaint to the European Social Committee.  

The Irish Traveller Movement and others are gravely concerned that the failure of local authorities to meet targets in accommodation plans, the underspend of capital Traveller accommodation budgets provided and the unprecedented cuts to these budgets, have worsened Travellers’ living conditions with many living in unauthorised accommodation, overcrowded conditions, and sharing with families on official halting sites. Currently an estimated 1394 Traveller family units are required and yet the current allocation for capital investment in Traveller accommodation is €3 million (2014) reduced from an estimated €70 million per annum (being the allocated budget from 2000-2009). This position is in stark contrast to the Government’s insistence that it has ensured that adequate financial assistance is provided to local authorities for Traveller accommodation.

From 2007-2012 over €50 million of the Traveller accommodation budget was under spent by local authorities despite the ongoing need for Traveller accommodation. This issue was raised at a hearing of the Oireachtas (Irish Parliament) Committee on the Environment, Culture and the Gaeltacht (May 14th 2013) and the Minister was called upon “to request all local authorities to provide detailed explanations on why they have not drawn down their allocations for traveller housing." The All Party Committee recommended that Regulations be introduced by Government to require local authorities to explain if they do not draw down or spend money allocated for Traveller accommodation.

The National Traveller Accommodation Strategy which is underpinned by the Housing (Traveller Accommodation) Act, 1998 requires local authorities to provide culturally appropriate accommodation in all its forms; 14 years later, there has been considerable failure of delivery.

Contrary to the State’s assertion in the 4th Periodic Report at para 968, the Government has not ensured that there is an adequate legislative, financial or oversight system regarding the provision of Traveller accommodation which it says is the responsibility of local authorities. It has been noted that Ireland is generally considered “excessively centralised” by international standards - indeed a recent unpublished Council of Europe report found the Department of the Environment was able to exercise a “great deal of control” over local authorities who had “limited discretion on how to spend money.” However, in relation to Traveller accommodation the Department of Environment has imposed no sanctions or provided alternative remedies to address the slow progress in addressing the accommodation needs of Travellers. The overseeing National Traveller Accommodation Consultative Committee appointed by the Minister to monitor progress has no authority to ensure local authorities are meeting their targets in their Traveller Accommodation Plans and also has no mechanism to

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9 “These local authorities should be required to outline what steps they have taken in attempting to provide housing to members of the Travelling Community, how and why these steps have failed, what plans they have to correct the situation and to provide the housing required and the timeframe within which they intend to provide this housing.”

impose sanctions. In fact, the European Commission against Racism and Intolerance said in its Second Report on Ireland (23 April 2002) that “the fact that no sanctions are provided for in the Housing (Traveller Accommodation) Act 1998 against authorities who do not take measures to provide accommodation for Travellers may weaken its effectiveness.”

Ireland refers at para 798 of the 4th Periodic Report to the March 2011 assessment of accommodation needs which it claims revealed a “major preference among Travellers for standard housing rather than permanent halting sites.” This assessment which was based on housing applications, concluded that 60% of Travellers require standard housing. Traveller organisations contend that this statistic is misleading for many reasons, not least that in many local authority areas there was no Traveller specific accommodation available (or there is a longer waiting time) and thus the Traveller applicant is often advised not to choose Traveller specific accommodation as a preference. In other local authority areas, where the Traveller specific accommodation is not properly managed and/ or in poor condition, families are left with no real choice but to choose standard housing. Many families expecting this to be a temporary solution are now deemed to be adequately housed under the 2011 Social Housing Assessment Regulations and thus removed from the housing list.

Due to the concerns which arose from the flawed interpretation of the need for Traveller accommodation (March 2011), the Irish Traveller Movement made a submission to the Department of Environment, Community and Local Government (October 2012) detailing concerns of the little, if any, consideration given to the cultural accommodation needs of Travellers within the development of Traveller assessment policy.

Despite concerns raised, the Department of Environment, Community and Local Government commissioned a National Housing Assessment (April 2013) by the Housing Agency which relied on findings from housing applications obtained from local authorities rather than on consultation with Travellers, undermining the actual need and the process required.

The number of families who resorted to private rented accommodation increased from 162 families in 2002 to 2,829 in 2012. In interpreting the reason for this increase, the Irish Traveller Movement notes that Travellers are often left without an alternative choice but to take up private rented accommodation in a standard house in what they expect to be a temporary solution. It is also noted that many Travellers report, that in filling out assessment applications that they are informed by Local Authority staff that no Traveller specific accommodation will be built within the foreseeable future. It follows that if an Assessment of Need is based on a false representation of preferences, the resultant Traveller Accommodation Programme (TAP) reflects these misleading preferences.

There are also concerns that there are no sanctions imposed on local authorities failing to implement their TAPs. In order to avoid TAPs being viewed by local authorities as merely aspirational documents central government must exercise a more vigorous form of control and impose sanctions where TAPs are not implemented.

Under the Housing (Traveller Accommodation) Act 1998, local authorities are required to provide transient sites to facilitate the nomadic culture of Travellers. To date, while 47 Transient bays were constructed in Ireland, none of these bays are now operating as transient bays - all are being used for emergency and temporary accommodation with some families having lived in “transient” bays for over a decade. Ireland is clearly failing to adhere to its own legislative requirements to provide for Traveller specific accommodation and nomadic culture.

It is noted that (2014-2018) Traveller Accommodation Programmes (TAPs) have been prepared and finalised by local authorities, while there has not, as yet, been a complete analysis of each of the Programmes, the following patterns have been noted:

- An over reliance on standard housing and private rented accommodation to meet accommodation targets.
- Where Traveller specific accommodation has been identified as a need, in many cases, the strategy to meet this need appears to be from existing units of Traveller specific accommodation.

• There is no provision for transient accommodation in most of the TAPs
• No coherent strategies to address the needs of new family formations in the lifetime of the TAPs which will result in further overcrowding and site management issues and families living on the roadside.
• Indigenous clauses are legally problematic as they remove the entitlement from Travellers to be assessed for accommodation.

We are concerned about the potential impact of the Local Government Act 2014 on the challenging of eviction notices through judicial review (due to the huge increase in the number of “reserved” functions, where elected councillors perform decisions as opposed to County Managers and Local Authority Staff) and believe this will unfairly affect Travellers.

Hate Speech

Hate speech is used to intimidate and degrade vulnerable communities and to inflame prejudices against them and historically it has been shown to be dangerously effective in doing so. The Prohibition of Incitement to Hatred Act 1989 is an under-utilised piece of legislation riddled with major weaknesses. The only legislation that specifically criminalises racist crime is the Prohibition of Incitement to Hatred Act. The Public Order legislation and the Non–Fatal Offences against the Person Act 1997 (as amended) can be used to prosecute racially motivated offences. However these pieces of legislation do not contain any specific provisions in relation to racially aggravated offences and/or aggravated sentencing where the crime is racially motivated.

The Irish Traveller Movement supported a complainant involved in an unsuccessful prosecution under the Prohibition of Incitement to Hatred Act 1989. The prosecution related to the creation of a Facebook page containing extremely offensive and dangerous language directed at Travellers on a date between October and November 2009. Under ‘Information/description’ on the page, was written: “Instead of using animals for shark bait, they could use knack babys [sic]. Also as food at feeding time in the zoo. And for testing new drugs and viruses.” The accused who it is understood admitted being the creator and author of the page, sent the page to three of his friends and eventually, the page had 644 members. The State’s prosecution failed, highlighting inadequacies in the legislation and the structures in place to criminalise and prosecute hate speech.12

Discrimination

Travellers continue to suffer high levels of racism and discrimination with many documented incidents of discrimination directed towards Travellers. It is noted that a number of Judges have been reported making discriminatory remarks relating to Travellers causing offence and upset.13. The effect of the Equal Status Acts in protecting Travellers was significantly undermined following the introduction of s.19 of the Intoxicating Liquor Act 2003 changing the venue for cases under equality legislation relating to access to and provision of goods and services on or at licensed premises from the Equality Tribunal to the District Court. There are concerns that there has been a significant reduction in the number of Travellers taking cases relating to access to licensed premises.14

Indirect Discrimination


Irish equality law protects against indirect discrimination, which may occur where an apparently neutral provision puts a person (who is a member of a protected group under the legislation)\textsuperscript{15} at a particular disadvantage compared with other persons.\textsuperscript{16} The Irish Traveller Movement has been campaigning for the abolition of rules granting preferential treatment to the children of past pupils as it creates a barrier for Traveller children accessing school places. Many Traveller parents with children of school-going age would not have attended second–level education thus creating a barrier for the Traveller child applicant in accessing a school place. The Irish Traveller Movement welcomes the Houses of the Oireachtas Joint Committee on Education and Social Protection Report on the Draft General Scheme of the Education (Admission to Schools) Bill 2013, where the Committee recommended that rules affording preferential treatment to the children of past pupils in accessing schools should be abolished.

\begin{footnotesize}
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\item \textsuperscript{15} Section 3(2) \textsuperscript{16} Section 3 Equal Status Act 2000 as amended by Section 48 Equality Act 2004. Available at: http://www.irishstatutebook.ie/2004/en/act/pub/0024/print.html#sec48
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