

**INTERIM FOLLOW-UP RECOMMENDATIONS:ECRI REPORT ON IRELAND**

**(5th Monitoring Cycle)**

**About the Reporting Organisation**

Pavee Point Traveller and Roma Centre is a national NGO committed to the realisation of human rights for Irish Travellers and Roma in Ireland. Established in 1985, the aim of Pavee Point is to contribute to the improvement in quality of life and living circumstances for Travellers and Roma by working for social justice, solidarity and human rights.

**Our Submission- August 2021**

Our submission provides a brief update regarding Ireland’s implementation of the two interim follow up recommendations issued by ECRI during the 5th monitoring cycle in 2019 as they relate to Travellers and Roma in Ireland.[[1]](#footnote-2) Pavee Point welcomed that ECRI prioritised the recommendations concerning the lack of use of Traveller accommodation funds, as well as the need for the State to urgently prioritise and address the development and enactment of hate speech and crime legislation. We urge ECRI to take the following information into consideration in its work of monitoring Ireland’s implementation of these priority recommendations.

This submission is accompanied by Pavee Point's submission in March 2021 to the Joint Oireachtas (Parliamentary) Committee on Key Issues Affecting the Traveller Community regardingaccommodation, providing a more detailed update on accommodation issues impacting Travellers in Ireland (attached with this submission).

**For further information, please contact:**

Pavee Point Traveller & Roma Centre, 46 Charles Street Great, Dublin 1, Ireland

[www.paveepoint.ie](http://www.paveepoint.ie)

**Ronnie Fay, Co-Director             Martin Collins, Co-Director**

ronnie.fay@pavee.ie  martin.collins@pavee.ie

Tel: +353 1 878 0255   Tel: +353 1 878 0255

1. **ECRI Recommendation No.35 – Hate Speech and Crime Legislation in Ireland**

*1.1 Overall Observations since ECRI’s last Examination of Ireland*

Travellers and Roma experience persistent racism and discrimination, in intersection with discrimination on the basis of gender and other equality grounds. Both Roma and Travellers are subjected to hate crime and hate speech on a daily basis by private and public actors.In 2020, the EU Fundamental Rights Agency (FRA) conducted a survey on Rights and Living Conditions of Travellers in Ireland as part of a wider European study.[[2]](#footnote-3) They found that among all surveyed Traveller and Roma groups, Irish Travellers (52%) experience the third highest rate of hate-motivated harassment (such as offensive comments on the street or online).

Irish Network Against Racism’s (INAR) iReports on Racism in Ireland[[3]](#footnote-4) have consistently found low levels of reporting by Travellers. In 2020, 11% of discrimination cases reported to INAR were by Travellers, with almost no reports of hate crime or other racist incidents made by Travellers. From Pavee Point’s work with members of the communities and Traveller and Roma organisations, weknow that hate speech and hate crime against Travellers and Roma often goes under-reported due to barriers such as low language and literacy levels and distrust of authorities.

* 1. *Observations in Relation to Proposed Draft Heads of Criminal Justice (Hate Crime) Bill 2021*

The Government undertook a consultation process in 2019-2020 regarding hate speech and crime legislation. This resulted in the production of aGeneral Scheme Criminal Justice (Hate Crime) Bill 2021 which was opened up for further consultation in summer of 2021. The Bill will be discussed at parliamentary (Dáil) level where it will be raised for approval, amendments or rejection before the end of this year.Pavee Point, along with other civil society organisations, welcomed the consultation process as well as the draft Heads of Bill, which for the first time includes Travellers as an ethnic minority group. The following gives an account of our observations of the Bill:

* We welcome that the Bill notes the inclusion **of broad categories** of race; colour; nationality; religion, ethnic or national origin; sexual orientation; gender; and disability. The legislation specifically acknowledges Traveller ethnicity which is vital to ensuring the legislation is accessible and inclusive of Travellers.
* We suggest that the **definition of hatred**[[4]](#footnote-5) used should be in line with international standards, including the European Commission Against Racism and Intolerance and the UN Special Rapporteur, and to consider the removal of the words ‘significant’ and ‘magnitude’ from the proposed definition (otherwise a strong definition), as these words could leave the law open to interpretation and could severely restrict the successful use and proportionality of the law.
* We welcome the **definition of ‘incitement to hatred’** as it covers both the “real or perceived” association with a protected characteristic, which means the onus is not on the victim to prove membership of a protected group. This definition also goes further than previous legislation, as it will be an offence to incite hatred, as well as “being reckless as to whether such communication will incite”
* We welcome that the **definition covers communications “by any means”** to ensure that hate speech by any medium, including online hate speech, is covered under the law. This is particularly important for Travellers and Roma, as online hate speech targeting both communities is endemic in Ireland.
* We urge the inclusion of **a demonstration and a motivation test** of hatred.Currently, the Bill lists eight bias indicators that can be taken into account when determining the likelihood that an incident was motivated by hate. These bias indicators would be better placed in a good practice guide to accompany the act and be circulated to the judiciary, Gardaí and relevant NGOs. There should be an effective legal remedy through the inclusion of both a demonstration and a motivation test of proof for hate crime offences, where demonstrations of hate (such as hostile language, gestures, communications etc) would be admissible as evidence of demonstrating hostility. Relying on a motivation test alone could result in difficulties in enforcing the legislation and lead to low levels of prosecution, as with the Incitement to Hatred Act 1989.
* Wesuggest that the legislation should aspire to use, for example, a similar approach to section 28 of the England and Wales Crime and Disorder Act 1998 which includes both motivation and demonstration tests, stating:

An offence is ‘*racially or religiously aggravated for the purposes of sections 29 to 32 … if— (a)at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of a [racial or religious group]; or (b)the offence is motivated (wholly or partly) by hostility towards members of a [racial or religious group] based on their membership of that group*.

*1.3 Additional Measures Needed in Conjunction with Hate Crime Legislation*

Pavee Point believes strongly that hate crime and hate speech cannot be addressed in a vacuum and that the new legislation should merely be one tool within a wider, holistic approach to tackling institutional and structural racism and other prejudices within Irish society. In preventing and addressing hate speech and hate crimes against minority ethnic groups, it is necessary for the Government to roll out special measures alongside the legislation.

The Government has recently set up an Anti-racism Committee which is tasked with drafting a National Action Plan against Racism (NAPAR). Due for publication late 2021, it is crucial that the NAPAR will include associated actions and special measures thatsupport the implementation of the Bill, including:

* Set and monitor annual targets to reduce the number of race hate crimes against protected groups, including members of the Traveller and Roma communities
* Provide training to all Gardaí and Criminal Justice Personnel on hate speech and hate crime and its impacts on all the protected categories named in the legislation
* Develop mechanisms to gather and publish disaggregated data regarding the prosecution and sentencing of hate crimes in line with human rights standards,
* Create a public awareness campaign to encourage members of the public to report hate crimes, considering the needs of the different protected groups
* Publish guidelines on the investigation, prosecution of hate crime, and working with victims, witnesses or offenders in a case involving a hate element.
* Ensure anti-racism education and training for An Garda Síochána includes anti-Traveller and Roma racism and discrimination and targets recruits/trainees and officials at all levels
* Build trust and confidence among Traveller and Roma communities in the Gardaí’s commitment to respond effectively to their complaints of race hate crime, including a commitment to a diverse Garda recruitment policy inclusive of Travellers and Roma
1. **ECRI Recommendation No.71 –Spending of Traveller Accommodation Budgets**

Pavee Point welcomed the ECRI recommendation to find a solution to the failure by LocalAuthorities to use and fully spend Traveller accommodation budgets. However, we regret that such solutions are yet to be found or implemented, and little has changed since the recommendation was issued. No sanctions have been introduced for Local Authorities which fail to deliver Traveller accommodation under the Housing (Traveller Accommodation) Act 1998 or spend the allocated budgets, nor have alternative arrangements been made to remove the responsibility of Traveller accommodation provision from Local Authorities.

The persistent and deteriorating accommodation crisis among Travellers has been greatly exacerbated by Ireland’s ongoing housing and homeless crisis and the COVID-19 pandemic.[[5]](#footnote-6)Despite the Traveller accommodation budget having slowly increased,[[6]](#footnote-7) a significant portion of Traveller accommodation budgets remain unspent by Local Authorities every year.A recent Equality Review by the Irish Human Rights and Equality Commission shows that between 2008 and 2018, of €168.8 million allocated to local authorities for Traveller specific accommodation, just two thirds (€110.6 million) was drawn down.[[7]](#footnote-8)For the first time since 2014, the full available budget was drawn drown in 2020 but it was spent on upgrades/maintenance of existing Traveller accommodation and COVID-19 mitigation measures.[[8]](#footnote-9) No new accommodation or units were provided despite the fact that 15% of Travellers are estimated to be homeless.[[9]](#footnote-10)

In 2019, an independent Expert Group on Traveller Accommodation made 32 recommendations for the Government, including a recommendation to overhaul all relevant legislation and policies which impact on accommodation provision for Travellers.[[10]](#footnote-11)A key policy implementation mechanism was established to progress the recommendations in the form of an Expert Committee. ThisCommittee prioritised fourout of the 32 recommendations, but no update is available as to progress in implementing the four recommendations.

In July 2021, Irish Human Rights and Equality Commission published its Equality Review of Traveller accommodation provision by Local Authorities.[[11]](#footnote-12)The Review reconfirmed the issues already known, including, drawdown of Traveller accommodation budgets; poor information gathering to inform decision making; spending on refurbishment and renovation instead of new accommodation; lack of forward planning for actual and future Traveller accommodation needs; and Travellers being forced into social housing.As part of the review, IHREC has made a number of recommendations for Local Authorities. Each Local Authority is required to report to IHREC by end of August 2021 and specify the actions already taken or intended actions within a specific timeframe in their efforts to provide Traveller accommodation.

The issue of Traveller accommodation in the context of human rights was further highlighted in 2021 when the Ombudsman for Children’s Office (OCO)published their investigation into theliving conditions in a Local Authority run halting site where 66 Traveller children and their families were living.[[12]](#footnote-13)The investigation found a number of serious issues, including inadequate sanitation, extreme overcrowding, persistent rodent infestations, inadequate heating systems, unsafe electrical works and a high rate of childhood illness caused by the living conditions. The investigation found that the LocalAuthority failed to consider the best interests of the children and did not meet their obligations in relation to Traveller accommodation provision. The OCO issued a number of recommendations, including that the commitments made by the Local Authority are overseen at CEO level.

In relation to ensuring Traveller accommodation budgets are fully spent and Travellers are provided with safe, adequate and culturally appropriate accommodation, we urge the Government to urgently and in consultation with Traveller civil society to implement solutions to the issues, particularly:

* ensure full implementation of the recommendations by an Independent Expert Group on Traveller accommodation, including overhauling legislation and policies which impact on accommodation provision for Travellers
* introduce sanctions for Local Authorities which fail to deliver Traveller accommodation under the Housing (Traveller Accommodation) Act 1998 or spend the allocated budgets, or remove the responsibility of Traveller accommodation provision from Local Authorities
1. **Concluding Comments & Other Related Observations**

Although not directly related to thetwo specific recommendations for which ECRI requests priority implementation from the authorities of Ireland, we offer the following brief summary update on a number of items raised in our initial submission to ECRI.Over the past three years, with the dedicated work of Traveller and Roma civil society, there have been some positive developments in terms of Traveller and Roma rights. Traveller ethnicity was recognised by the State in 2017 and recently the Government has made commitments to a number of targeted strategies for Travellers and Roma:

* The new iteration of the National Traveller and Roma Inclusion Strategy is under development, with a commitment to a more outcomes focused approach
* The programme for government committed to the development of a dedicated Traveller Education Strategy to tackle education inequality faced by the community
* The new Pathways to Work strategy commits to the development of a Traveller and Roma training and employment plan
* The National Traveller Health Action Plan is in its final stages and should be ready for publication in the near future
* Currently, a dedicated Traveller DSGBV pilot project is being implemented
* The National Action Plan Against Racism and the new Hate Speech/Hate Crime legislation are under development

However, these commitments need to be progressed with urgency. Persistent and rising levels of racism and discrimination experienced by Travellers and Roma, as well as the disproportionate impact of COVID-19 on Traveller and Roma communities, make it imperative that measures to protect and promote the rights of Travellers and Roma are prioritised. During the pandemic, we have seen greater collaboration between state agencies, NGOs, and communities to tackle the crisis. While there has been some rolling back with this approach by the State, we hope that this way of working and addressing Traveller and Roma inequalities will continue during and after the pandemic.

In particular, we note the following areas of concern which overlap with the two specific recommendations for the ECRI Interim Follow up process:

1. Racism and Discrimination: We remain concerned at the persistent, as well as increased reports during the COVID-19 pandemic, of anti-Traveller and Roma racism. To address these issues, we welcome the government’s commitment to consultation for the development of a**National Action Plan Against Racism** and hope the plan will address the specificities of anti-Traveller & Roma racism. This must be finalised as a matter of urgency and implemented across government departments.
2. Health: Travellers and Roma experience stark health inequalities when compared to the general population. The pandemic has greatly exacerbated this and increased vulnerability to contracting and becoming ill with COVID-19. It is welcome that the first ever **National Traveller Health Action Plan** (NTHAP) is under development, however, there are significant delays with its publication. We remain concerned about the monitoring and implementation framework and resources to be afforded to its implementation.

Roma face additional challenges due to the absence of a **Roma health infrastructure**, dedicated health workers, and interpretation supports within the health service. We need to ensure that health workers for Roma are appointed in each Community Health Care Service area as a matter of urgency, as committed to in the Health Service Executive’s National Service Plan.

1. Education: Despite the educational disadvantages faced by Travellers and Roma, the only explicit targeting of Travellers in education to date has been in higher education. In the context of the pandemic and its associated school closures, the risk of deepening educational disadvantage among Travellers and Roma needs to be urgently tackled through both targeted and mainstream policy measures. The development of Ireland’s first ever **National Traveller Education Strategy** needs to be brought forward urgently and address educational disadvantage covering all levels from early years onwards.
2. Employment: We regret that Travellers and Roma have not been named as target groups in key mainstream employment policy initiatives, and that no dedicated strategy has been developed to address the significant levels of discrimination in employment and unemployment faced by Travellers and Roma. Targeted and mainstream measures that are adequately resourced are needed, and such measures need to be incorporated into post-covid resilience and recovery plans.
3. Habitual Residence Condition (HRC): We remain concerned at the disproportionate and discriminatory impact of the application of the HRC on members of Roma communities in accessing basic social protections, including child benefit. This has had a particular impact on Roma families during the pandemic. Due to restrictive practices of DEASP, many Roma do not meet the HRC criteria, even those who have been living in the country for several years. This places many families, especially women and their children in extreme poverty, and makes it difficult for Roma women suffering from domestic and sexual violence to seek support and protection.
4. Ethnic Equality Monitoring: It is vital that the Government collect, analyse and disseminate disaggregated data by ethnicity and gender across all relevant administrative systems in line with human rights standards, and use this data to inform Ethnic Equality Monitoring and equality proof state policies, budgets and programming. In line with state policy and legislation, the Government has committed to developing a system of ethnic data collection across state departments and agencies, however, progress has been incredibly slow, with resistance from some departments and agencies.
1. The two specific recommendations for which ECRI requests priority implementation from the authorities of Ireland are the following:

• Rec No 71: ECRI strongly recommends that a solution is found to the issue of failure by local authorities to use funding allocated for Traveller accommodation. Possibilities include imposing dissuasive sanctions on local authorities for failure to spend allocated funding, or removing the responsibility for Traveller accommodation from local authorities and placing it under the authority of a central housing commission.

• Rec No 35: ECRI strongly recommends that new hate speech and hate crime legislation is enacted in consultation with relevant civil society actors. Inspiration should be taken from ECRI’s GPR Nos. 7 and 15, and hate based on the following grounds should be included: race, colour, ethnic/national origin, citizenship, language, religion, sexual orientation and gender identity. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report [↑](#footnote-ref-2)
2. EU FRA (2020) Travellers in Ireland https://fra.europa.eu/sites/default/files/fra\_uploads/fra-2020-roma-and-travellers-survey-country-sheet-ireland\_en.pdf EU FRA (2020) Roma and Travellers in six countries https://fra.europa.eu/en/publication/2020/roma-travellers-survey [↑](#footnote-ref-3)
3. INAR (2020) iReport Reports of Racism in Ireland <https://inar.ie/wp>content/uploads/2021/03/2020\_iReport.pdf [↑](#footnote-ref-4)
4. proposed definition in the Heads of Bill: “hatred” means detestation, significant ill will or hostility, of a magnitude likely to lead to harm or unlawful discrimination against a person or group of people due to their association with a protected characteristic” [↑](#footnote-ref-5)
5. Overcrowding among Travellers is 7 times the national rate, [Central Statistics Office, *Census 2016, Profile 8*](file:///C%3A%5CUsers%5CNuala%5CDownloads%5CIrish%20Travellers%20Ethnicity%20and%20Religion%2C%20http%3A%5Cwww.cso.ie%5Cen%5Ccsolatestnews%5Cpressreleases%5C2017pressreleases%5Cpressstatementcensus2016resultsprofile8-irishtravellersethnicityandreligion);and 15% of Travellers are homeless, Department of Housing, Planning and Local Government, *Total Number of Traveller Families in all categories of Accommodation*, 2018. [↑](#footnote-ref-6)
6. The Traveller accommodation budget fell from €40m in 2008 to €4m in 2013 in Harvey, B., *Travelling with Austerity: Impacts of cuts on Travellers, Traveller Projects and Services,* Dublin, Pavee Point Publications, 2013. The budget has slowly increased since 2013 and now stands at €15.5m in 2021. [↑](#footnote-ref-7)
7. IHREC, [*Equality Review- Provision of Traveller Accommodation by Local Authorities,*](https://www.ihrec.ie/our-work/equality-review)2021. [↑](#footnote-ref-8)
8. Thanks in part to the efforts of the Department of Housing, Local Government and Heritage to simplify procedures the 2020 Traveller accommodation budget was fully drawn down - Eoin O Broin in the Joint Oireachtas Committee on Housing, Planning and Local Government in November that ‘The refurbished units are important but the spend in this area highlights that the new units that are needed are not being provided, which is the reason homelessness among Traveller families is much higher than for others.’ Joint Oireachtas Committee on Housing, Planning and Local Government, 13 November 2019. [Available here](https://www.kildarestreet.com/committees/?id=2019-11-13a.461&s=Traveller+homelessness+segment%3A7601845#g482). [↑](#footnote-ref-9)
9. Department of Housing, Planning and Local Government, *Total Number of Traveller Families in all categories of Accommodation*, 2018, Department of Housing, Planning and Local Government. [↑](#footnote-ref-10)
10. Independent Expert Group on behalf of the Minister of the Department of Housing, Planning and Local Government, *Traveller Accommodation Expert Review,* 2019. [↑](#footnote-ref-11)
11. In 2019, the Commission invited each of the 31 local authorities in the State to undertake a review of their provision of Traveller accommodation. The equality reviews focus on failures nationally to draw down ring fenced capital budget to meet obligations on Traveller specific accommodation. The local authorities were invited to conduct a review of the practices, procedures and other relevant factors in relation to the drawdown of capital funding and the provision of Traveller-specific accommodation services, IHREC, [*Equality Review- Provision of Traveller Accommodation by Local Authorities,*](https://www.ihrec.ie/our-work/equality-review)2021.  [↑](#footnote-ref-12)
12. The Ombudsman for Children’s Office (OCO), [*No End in Site; An investigation into the living conditions of children living on a local authority site*](https://www.oco.ie/news/ombudsman-for-childrens-office-launches-no-end-in-site-an-investigation-into-the-living-conditions-of-children-on-a-local-authority-halting-site/)*,* May 24 2021.A Traveller Advocacy Group (TAG) initially contacted the Ombudsman for Children’s Office (OCO) in 2018 about conditions at the local authority run halting site. Eleven families then came forward and made complaints about persistent problems. Other problems reported included safety concerns about access to the site; illegal dumping nearby; inconsistent and inadequate waste disposal; a lack of safe play areas for children and housing applications not being progressed. [↑](#footnote-ref-13)