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# 1 Reality vs. Rhetoric: An Analysis of the Implementation Gap in Provision of Traveller-specific Housing in Ireland.

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*Keywords: Irish Traveller Community, housing rights, implementation gap, minority rights Traveller-specific accommodation, housing policy, local governance.*

## 1.1 Introduction:

Historically, Traveller accommodation has been a contentious and controversial area of public policy in Ireland.<sup>1</sup> In *Housing Law, Rights & Policy*, Kenna notes that such controversies have created a situation where there are many issues, noting that these are:

[A]pparent gaps, weaknesses and strengths of government policy: the overall approach adopted by the government in relation to Traveller accommodation; the position of Travellers in Irish society and more recently, the gap between the policy agreed upon at a national level and implementation at a local level.<sup>2</sup>

As a result, of such gaps, many Travellers have become forced to live in sub-standard and inhumane conditions.<sup>3</sup> These subpar living conditions were exacerbated during the economic crisis. Acts of austerity hit social housing provisions and the rights of minorities particularly hard, highlighting significant and marked divergences between policy, legislative and design improvements in Traveller accommodation in recent years. However, the most obvious of these divergences remains between the provisions of the domestic legal provisions applicable to Traveller housing rights and how this has been realized in practice, with huge disparities evident between agreed policy and legislation at national level and the implementation of this policy by the local authorities.

### 1.1.1 Research Questions & Approach:

This chapter outlines the current legal framework in place in Ireland, which provides for provision of Traveller-specific accommodation, exploring the scope of the *1998 Act*. ‘Traveller-specific accommodation’ and the right to culturally appropriate housing. This will then be juxtaposed with the current situation faced by many Irish Travellers in accessing suitable housing, revealing the significant disparities between what the law states vs. how the law is implemented at a local level. The ‘lived experience’ of many Irish Travellers reflects that domestic legislation has failed to ensure an adequate standard of Traveller-specific

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<sup>1</sup> P. Watt & K. Charles, *Ireland – RAXEN National Focal Point thematic Study, Housing Conditions of Roma and Travellers* (Vienna, European Union Agency for Fundamental Rights, 2009) available at: < [https://fra.europa.eu/sites/default/files/fra\\_uploads/596-RAXEN-Roma-Housing-UK\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/596-RAXEN-Roma-Housing-UK_en.pdf) > (accessed 27 May 2019).

<sup>2</sup> P. Kenna *Housing Law, Rights and Policy*, Dublin, Clarus Press, 2011, p. 807.

<sup>3</sup> The Carrickmines Tragedy was highly reflective of the stigma and ill-treatment faced by many members of the Community. After a fire in a mobile home resulted in 11 deaths (including an unborn child), the remaining members of the family were given a temporary halting site location nearby, on which to settle for the time being. In response, the local community blocked the entrance to the proposed site, citing that: “It’s just not a suitable site for Travellers,” “We just don’t want them here,” and, “No one in the country would accept this.” For more see: <[www.irishtimes.com/news/social-affairs/carrickmines-fatalities-anger-distilled-from-shock-and-grief-1.2404029](http://www.irishtimes.com/news/social-affairs/carrickmines-fatalities-anger-distilled-from-shock-and-grief-1.2404029)> (accessed 27 May 2019)

accommodation, resulting in huge disparities between the rhetoric of the relevant legal instruments, and the reality faced by many of the Community. This juxtaposition reveals a significant implementation gap.

In assessing and exploring the impact of such a gap upon the Irish Traveller Community, this chapter is informed by a socio-legal approach, which highlights the full extent of the implementation gap through analysis of recent statistical data regarding the poor accommodation standards of Irish Travellers. In analyzing the causes of this growing implementation gap, this paper contributes to understanding as to justifications (or lack thereof) for the significant issues with provision of culturally appropriate accommodation for Irish Travellers, ultimately asking why the Act has failed to meet the growing need for accommodation suitable for the unique cultural needs of the Irish Traveller Community.

This will be explored in the following structure:

1. Introduction
2. Who are the Irish Traveller Community?
3. 'Rhetoric': The Legislative Framework.
  - a. The *1998 Act*
  - b. Limitations of the *1998 Act*.
  - c. Relevant International Law.
4. 'Reality': The 'lived experience' of the Irish Traveller Community
  - a. The effects of austerity upon provision of Traveller accommodation:
  - b. Political Will and Execution of the *1998 Act*.
5. Reality vs Rhetoric: Exploring the Implementation Gap.
6. Conclusion.

## 1.2 Who are the Irish Traveller Community?

The Irish Traveller Movement<sup>4</sup> defines the Traveller Community as:

[A]n indigenous minority who, historical sources confirm, have been part of Irish society for centuries. Travellers long shared history, cultural values, language, customs and traditions make them a self-defined group, and one which is recognizable and distinct. Their culture and way of life, of which nomadism is an important factor, distinguish them from the sedentary (settled) population.<sup>5</sup>

The most recently available census figures, note that the total number of Irish Travellers in April 2016 was 30,987 representing 0.7 per cent of the general population. This figure was an increase of 5.1 per cent on the 2011 figure of 29,495.<sup>6</sup>

Like the majority of ethnic minority groups, Travellers often face exclusion and stigma from the general 'settled population'<sup>7</sup> and are at a higher risk of experiencing poverty and having high levels of

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<sup>4</sup> The Irish Traveller Movement is a national network of organizations and individuals working within the Traveller Community. It is the main national partnership organization for the Community in Ireland.

<sup>5</sup> ITM Legal Resource Pack, p13. Available at: <<<http://itmtrav.ie/wp-content/uploads/2017/03/ITM-Legal-Pack.pdf>> (accessed 28 May 2019)

<sup>6</sup> Note, that there are significant difficulties in obtaining exact figures relating to the Traveller population. Traditionally an exceptionally private Community, and owing to the fact that many Travellers who identify as such chose not to disclose this fact for fear of discrimination and prejudice (D. Watson, O. Kenny, F. McGinnity, 'A Social Portrait of Travellers in Ireland (No. 56)', 2017, *Research Series ESRI*)

<sup>7</sup> The settled population is generally, what Travellers would denote non-Traveller members of Irish Society as, originating on the basis of a distinction between the general Irish population as settling or residing generally in one place and the Travelling Community moving around as a nomadic group.

housing need or dependence on social renting. They also experience poorer quality housing, have more affordability issues and difficulties in accessing private rented sector accommodation.<sup>8</sup> Travellers are often forced to live in sub-standard accommodation and in overcrowded circumstances: 91% of Travellers surveyed were without central heating, 25.3% had no sewage facilities in their home, and some 26.4% were without piped water.<sup>9</sup> The *All Ireland Traveller Health Study* also found that significant numbers of families in group housing or authorized halting sites reported lack of footpaths, public lighting, fire hydrants and safe play areas (play areas were unavailable for 77.5% of respondents).<sup>10</sup> Further undermining the health and safety of Traveller families were issues such as rats (a problem for 33.1% of families) and being too close to a main road (a problem for 47.5% of families).<sup>11</sup>

Owing to their unique cultural status as a traditionally nomadic societal group, and recently recognized ethnic minority,<sup>12</sup> the accommodation needs of Travellers are very specific. Cultural traditions such as nomadism, living in extended family units, and the Traveller tradition of keeping horses, all raise specific accommodation needs. Traveller-specific is thus any form of housing occupied by members of the Traveller community, in practice this can mean settled or ‘mainstream’ housing, official and unofficial halting sites, transient sites<sup>13</sup> and group housing schemes. Halting sites are either official (managed by the relevant local authority) or unofficial in nature and are classified as accommodation facilities designed for Traveller-specific housing needs. Halting sites are generally designed for mobile homes, and are constructed in ‘bays’ which are connected to electricity and water. Sites with water, site maintenance, lighting, sewage and waste treatment facilities are often called serviced bays or serviced sites. An authorized or serviced halting site is one provided for and managed by a local authority under the *1998 Act*.

In particular, the family composition of Traveller households is very different to those in the general population, with Travellers often living in extended family units – such closeness has a direct effect on the type of accommodation, which is considered culturally appropriate. This difference in family composition is reflected in recorded statistics which note that 50% of Traveller women had given birth to five or more children, in stark contrast to just under 1 in 20 (4.2%) of settled women in this age group. More than 1 in 4 Irish Traveller households had six or more persons compared with less than 1 in 20 households in the State overall.<sup>14</sup> Furthermore, many Traveller households had more than one family (2.5% compared with 1.1%)

<sup>8</sup> B. Harvey, *Travelling with Austerity*, Dublin, Pavee Point Publications, 2013.

<sup>9</sup> Central Statistics Office, Irish Census Report 2016, Chapter 6 ‘Ethnicity & Irish Travellers’ available at: <[www.cso.ie/en/media/csoie/releasespublications/documents/population/2017/Chapter\\_6\\_Ethnicity\\_and\\_irish\\_travellers.pdf](http://www.cso.ie/en/media/csoie/releasespublications/documents/population/2017/Chapter_6_Ethnicity_and_irish_travellers.pdf)> (accessed 27 May 2019).

<sup>10</sup> Our Geels: All Ireland Traveller Health Study: Summary Finding, ‘All Ireland Traveller Health Study, 2010, p. 122 available at: <[www.ucd.ie/t4cms/AITHS\\_SUMMARY.pdf](http://www.ucd.ie/t4cms/AITHS_SUMMARY.pdf)> (accessed 27 May 2019).

<sup>11</sup> *Id.*

<sup>12</sup> Traveller Ethnicity was formally recognized by the Irish State in March 2017. For more on why this recognition was so important, and for more on Traveller ethnicity generally see, K. Holland, ‘What does Traveller ethnicity mean?’, *Irish Times*, 1 March 2017, available at: <[www.irishtimes.com/news/social-affairs/q-a-what-does-ethnic-recognition-mean-for-irish-travellers-1.2993526](http://www.irishtimes.com/news/social-affairs/q-a-what-does-ethnic-recognition-mean-for-irish-travellers-1.2993526)> (accessed 27 May 2019); ‘A study carried out by the Royal College of Surgeons and the University of Edinburgh revealed last month that that Irish Travellers emerged as a distinct ethnic group long before the Great Famine. The study found that while Travellers originally descended from the general Irish population, they are now very distinct from it. The research suggests that Traveller origins may in fact date as far back as 420 years to 1597; while the author of the study said Travellers are today more genetically different from the settled Irish as are the Spanish.’

<sup>13</sup> Halting sites are preferable for those few Travellers who follow nomadic lifestyles as they may include transient bays which make allowances for movement of caravans.

<sup>14</sup> Census of Population 2016 – Profile 8 Irish Travellers, available at: <[www.cso.ie/en/releasesandpublications/ep/p-cp8iter/p8iter/p8itd/](http://www.cso.ie/en/releasesandpublications/ep/p-cp8iter/p8iter/p8itd/)> (accessed 27 May 2019).

residing in the same residence, in a practice commonly known as ‘doubling up’.<sup>15</sup> Travellers also tend to marry at a younger age, with 33.4% of those aged 15-29 married, in comparison to just 8.2% of the settled community. This tendency to marry at a young age, coupled with the fact that Traveller women have, on average 4.7 children each (compared to an average of 2.9 for settled women) has resulted in a rapidly growing demand for housing directly attributable to the Community’s high growth rate. As a result, overcrowding is a common and endemic issue for many Traveller families. This is evidenced by the high number of families ‘doubling-up’ in halting sites.<sup>16</sup>

### 1.3 ‘Rhetoric’: The Legislative Framework.

Over the last two decades, the Government of Ireland has steadily introduced housing legislation that obliges local authorities to provide halting sites and other accommodation for Travellers. This is in line with developing international human rights policy, which recognizes the importance of ‘culturally appropriate’ housing for minority ethnic groups such as Travellers and Roma.<sup>17</sup> The Ireland RAcism and XEnophobia Network National Focal Point thematic Study, Housing Conditions of Roma and Travellers Report (RAXEN Report) notes that such domestic developments to recognize this have been ‘significant.’<sup>18</sup> Historically, however, national policies focused on the provisions of Traveller accommodation were rather disjointed or based on perpetuating stereotypes about the Traveller Community. This is reflected in the fact that Travellers were known officially as ‘Itinerants’ until relatively recently in Irish domestic policies e.g. *The Commission on Itinerancy* (1963)<sup>19</sup> and the *Travelling People Review Body* (1983).<sup>20</sup> Such policies focused on assimilation of Travellers into settled culture on the presumption that ‘the problems of Travellers could be solved by encouraging them to assimilate into settled culture by abandoning nomadism and moving into standard houses’<sup>21</sup>

Unfortunately, a full consultative approach to the supply of Traveller accommodation, which was inclusive of members of the Community and their unique heritage and culture, was not created until 1995. The result of this collaborative examination of the needs of Travellers was the groundbreaking *Report of the Task Force on the Travelling Community*, published in 1995, which recommended legislative change to accommodate Traveller specific accommodation needs more comprehensively at a national level.<sup>22</sup> As a

<sup>15</sup> Pavee Point Submission to the Oireachtas Housing Group, 2016, available at: <[www.paveepoint.ie/wp-content/uploads/2015/04/PP-Final-Traveller-Accommodation-Presentation-to-Oireachtas\\_RF-4.pdf](http://www.paveepoint.ie/wp-content/uploads/2015/04/PP-Final-Traveller-Accommodation-Presentation-to-Oireachtas_RF-4.pdf)> (accessed 27 May 2019).

<sup>16</sup> Housing Agency Review of Funding for Traveller-Specific Accommodation and the Implementation of Traveller Accommodation Programmes, RSM, Dublin, at p. 38 “In 2017, 1,115 families were recorded as sharing accommodation, more than four times the number recorded in 2002 (249 families).”

<sup>17</sup> See Advisory Committee of the Framework Convention on the Protection of National Minorities, *Third Opinion on Ireland* ACFC/OP/III (2012)006 at 137; See also ECtHR case law which recognizes the ‘unique needs of the Travelling Community’ such as *Buckley v. UK* (1996) ECLI:CE:ECHR:1996:0925JUD002034892; *Chapman v United Kingdom* (2001) ECLI:CE:ECHR:2001:0118JUD002723895, para. 99; and more recently the seminal case of *Winterstein v. France* (2013) ECLI:CE:ECHR:2013:1017JUD002701307.

<sup>18</sup> Watt & Charles, *supra* note 1, p. 17.

<sup>19</sup> Commission on Itinerancy. Report of the Commission on Itinerancy. Dublin: The Stationery Office; 1963, available at: <<http://hdl.handle.net/10147/324231>> (accessed 27 May 2019).

<sup>20</sup> Travelling People Review Body, 1983 Report, Dublin: the Stationery Office; 1983, available at: <<http://hdl.handle.net/10147/46682>> (accessed 27 May 2019).

<sup>21</sup> M. Norris & N. Winston, ‘Housing and Accommodation of Irish Travellers: From Assimilationism to Multiculturalism and Back Again’. *Social Policy & Administration*, Vol. 39, 2005, pp. 802–821.

<sup>22</sup> Taskforce on the Traveller Community, 1995. Report of the Taskforce on the Traveller Community. Government of Ireland, available at <<https://www.lenus.ie/handle/10147/560365>> (accessed 27 May 2019).

result, the (*1998 Act*), which is now generally acknowledged as the legislative framework for Traveller accommodation in Ireland, came into force.

### 1.3.1 *The 1998 Act.*

The *1998 Act* is the first piece of domestic legislation to explicitly recognize the unique accommodation needs of the Traveller Community. This need is highlighted as central to the provision of Traveller specific housing as, ‘the distinct needs and family circumstances of [T]ravellers.’<sup>23</sup> Recognizing the nomadic nature of Traveller culture and allowing for provision of such transient sites, ‘to address the accommodation needs of travellers other than as their normal place of residence and having regard to the annual patterns of movement by Travellers.’<sup>24</sup> The range of accommodation had to include standard local authority housing, group housing, permanent caravan parks, transient halting sites and emergency provision. It also mandated that there should be provision ‘for the annual patterns of movement by Travellers’ (Section 10(3) (c)). The local housing authorities are further obligated to ‘take any reasonable steps as are necessary’ (Section 16(1)) to implement the accommodation programs. However, there are no sanctions or penalties in the *1998 Act* if the local authorities do not implement the accommodation programs, which have caused significant issues for residents in local authorities who underperform under the Traveller Accommodation Programmes (TAPs).<sup>25</sup>

The *1998 Act* is also unique in the manner in which it recognizes the need to include community voices in the process of providing improved accommodation for Travellers, amending and extended the previous legislation to facilitate this. Central to this framework are the TAPs, which outline aims and targets for local authorities and illustrate how improved provision of accommodation can be forged for the Travelling Community.<sup>26</sup> Other key provisions of the *1998 Act* include, s 6, which provides that local authorities will assess the accommodation needs of Travellers in their functional area and which will provide for a range of accommodation to meet the identified needs (section 10). The *1998 Act* was, and remains, therefore the first policy, which fully recognizes Traveller-specific accommodation to be a legitimate part of an overall approach to Traveller accommodation within the jurisdiction. The *1998 Act* places a statutory duty on local authorities to provide for Traveller accommodation. The Department of Housing, Planning, Community and Local Government (DHPCLG) supports this work by ensuring that there are adequate administrative structures in place to assist local authorities with this duty, these include policy creation, legislation and allocation of funds. Since the *1998 Act* was brought in, there have been three cycles of the TAP completed, with the fourth cycle (2014-2018) concluding recently.

An important strand of the *1998 Act*, which was stressed during drafting, was the need to include Traveller representatives in a consultative manner. The *1998 Act* provides for the appointment of a National Traveller Accommodation Consultative Committee (NTACC), who advise on means through which maximum participation of Travellers can be achieved in the provision of accommodation as well as general

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<sup>23</sup> *Housing (Traveller) Accommodation Act 1998* sec. 3(b).

<sup>24</sup> *Id.*

<sup>25</sup> This will be considered in detail in section 5 of this piece.

<sup>26</sup> Under Sec. 17, each TAP should be reviewed in each three-year period or at such time as directed by the Minister (Sec. 17).

matters relating to the accommodation programs.<sup>27</sup> Members of the NTACC include all relevant stakeholders, including national Traveller groups and representatives from the Department of Justice and Department for Housing. The work of the NTACC is complemented at a local level by Local Traveller Accommodation Consultative Committees (LTACCs).<sup>28</sup> LTACCs are comprised of local Traveller groups and representatives. The LTACCs promote Traveller representation and consultation in the provision and management of Traveller accommodation to members of the relevant local authority.

### 1.3.2 *The limitations of the Act 1998*

The RAXEN Report<sup>29</sup> highlights the importance of the *1998 Act*, noting, ‘significant attempts at a national level to improve the untenable situation for many Travellers.’<sup>30</sup> However, the efficiency of the *1998 Act* and its ability to ensure a good quality of Traveller-specific accommodation has become increasingly questioned in recent years. A survey of 40 halting sites undertaken in 2008 showed that the majority (33 out of 40) of these halting sites and group housing schemes had some form of environmental hazard nearby. Furthermore, only one-quarter of the Traveller population live in Traveller-specific accommodation and the number of families accommodated in such facilities is rapidly decreasing. More specifically, despite the *1998 Act* and complimentary national policies aimed at the creation of access to accommodation for the Traveller Community, little has changed since 1963, with roughly the same amount of Travellers living in unauthorized and unregulated halting sites. As a direct result of these deficiencies in provision of Traveller-specific accommodation, the *1998 Act* has come under fire. The majority of such criticisms stem from a perceived failure in the drafting of the *1998 Act* to include sanctions. Coupled with what some consider to be problematic phrasing owing to the onus placed on local authorities to take ‘any reasonable steps as are necessary to implement the TAP’ under s16(1) of the *1998 Act*.

O’Donovan in particular has commented on these limitations. Noting that a number of ‘negative trends’ are prevalent within the *1998 Act*, including ‘the failure to secure timely, adequate provision of Traveller accommodation since 1998,’ perceiving this issue to stem from the ‘language of reasonableness’ included in the *1998 Act*, while also noting its failure to expressly include cultural rights. O’Donovan draws further attention to the judicial oversight required in enforcing the provisions of the *1998 Act*, highlighting the toothlessness of such a requirement in light of the judiciary’s reluctance to engage with positive obligations under the *1998 Act*, deferring instead to the Executive under the separation of powers doctrine.<sup>31</sup> He argues that these deficiencies in the language of the statute have created a system which is slow to implement TAPs, over relying on social housing stock in place of Traveller-specific accommodation such as halting sites.<sup>32</sup>

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<sup>27</sup> *Id* Sec. 19.

<sup>28</sup> *Id* Sec. 21.

<sup>29</sup> Watt & Charles, *supra* note 1.

<sup>30</sup> *Id*.

<sup>31</sup> D. O’Donovan ‘Breaking the cycle of discrimination?’ Traveller/Roma housing exclusion and the European Convention on Human Rights’. *International Journal of Discrimination and the Law*, Vol. 16, 2016, pp. 5–23.

<sup>32</sup> *Id*.

It is suggested here however, that such critique of the *1998 Act*, while clearly valid, is perhaps downplaying the role of local authorities to deliver on Traveller-specific accommodation. While the *1998 Act* is by no means perfect, and certainly is in need of some reform, the fault for the current situation faced by Travellers in securing and enforcing their right to Traveller-specific accommodation falls to the “gap between policy agreed at national level and implementation at a local level.”<sup>33</sup>

### 1.3.3 *Relevant International Law.*

The provisions of the *1998 Act* are largely in line with a proliferating body of case law at a European level, recognizing the vulnerable nature of Travellers and Roma across Europe, and the steps that states must take to respect the unique lifestyle, culture and accommodation needs of such minority communities. Despite the fact that there is no obligation under the European Convention on Human Rights (ECHR) for universal provision of housing, the European Court of Human Rights (ECtHR), has become an unlikely arena for expanding recognition of rights to ‘culturally appropriate’ housing. In particular, a combination of Article 3 and 8 read in conjunction with Article 14 have recognized a number of important principles for Traveller housing rights, where the Court has repeatedly stressed that “[A]s a result of their turbulent history and constant uprooting [they] have become a specific type of disadvantaged and vulnerable minority ...they therefore require special protection.”<sup>34</sup>

Such special protections include the need for member states to ‘respect the lifestyle of Travellers’ and the imposition by the Court of ‘a positive obligation to facilitate their way of life.’ The Court has also recognized that Article 8 secures a right to ‘culturally appropriate’ housing owing to the unique cultural heritage of nomadism and residing in caravans:

The occupation of a caravan is an integral part of the identity...even where they no longer live a wholly nomadic existence...measures affecting the stationing of caravans affect their ability to maintain their identity and to lead a private and family life.<sup>35</sup>

The Court has thus repeatedly recognized that a caravan qualifies as a home for the purposes of the Convention.<sup>36</sup>

In recognizing such rights, the Court has been careful to note that proportionality remains a key consideration in finding whether or not an ECHR breach has occurred, and in considering whether authorities have weighed up the competing issues and given relevant and sufficient reasons for their decisions.<sup>37</sup> The Court has also noted the financial implications of the imposition of the aforementioned positive duty, recognizing the wide margin of appreciation afforded to states in such matters. Holding however that this margin is narrower where the right in question is crucial to securing effective enjoyment of Article 8.<sup>38</sup> As a result, Article 8 can be viewed as ‘requiring states to create a coordinated framework for

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<sup>33</sup> Kenna, *supra* note 2.

<sup>34</sup> *D.H. and Others v. the Czech Republic* (2007) ECLI:CE:ECHR:2007:1113JUD005732500 para. 182.

<sup>35</sup> *Chapman v United Kingdom*, *supra* note 17.

<sup>36</sup> *Id*; see also, *Stenegry & Adam v. France* (2007) ECLI:CE:ECHR:2007:0522DEC004098705.

<sup>37</sup> *Chapman v United Kingdom*, *supra* note 17.

<sup>38</sup> *Winterstein v. France*, *supra* note 17, para. 75.



the provision of culturally appropriate accommodation.<sup>39</sup> The ECHR and its application by the ECtHR is therefore an important complementary tool for those analyzing recognized Traveller-specific accommodation and the rights which stem from this.<sup>40</sup>

#### 1.4 Reality: The ‘Lived-Experience’ of the Irish Traveller Community:

As the previous section reflects, the *Housing (Traveller Accommodation) Act 1998* was seen to be a groundbreaking step in the right direction for the provision of Traveller-specific housing in Ireland. The TAP based system, which devolved the responsibility of supplying, monitoring, and maintaining Traveller housing to Local Authorities, was welcomed. The system, with its apparent focus on consultation and local focus would enable a root and branch approach to housing provisions, an approach, which was largely considered by Travellers and those working for provision of Traveller-specific housing as best practice. This importance of momentum in implementing the provisions of the *1998 Act* was highlighted in the first monitoring report which noted the slow progress in meeting ongoing and proliferating demands within TAPs:

Progress in the actual provision of new accommodation has been very slow... accommodation provision has not kept pace with increasing demand over the past five years and the Committee would like to emphasize in the strongest terms the importance of having the local Traveller Accommodation Programmes delivered in a way that clears the backlog in Traveller accommodation.<sup>41</sup>

It is submitted therefore, that the *1998 Act*, while not perfect (a lack of enforcement in the case of underperformance of local authorities to provide Traveller-specific accommodation has proven problematic), is not the cause of the significant underperformance in providing Traveller-specific accommodation. The views of the NTACC reports reflect this; with the consensus being that issues with implementation rather than the *1998 Act* itself is causing the backlog. The factors that have created this underperformance and the detrimental effect, which they have had upon the functioning of the *1998 Act*, will be explored in this section. This explores how these factors, namely austerity and this lack of political will, and local objections have resulted in a proliferating accommodation crisis for the Travelling Community.

##### 1.4.1 The effects of austerity upon provision of Traveller accommodation:

The austerity policies and contractionary budgets required by the terms of Ireland’s bailout resulted in hugely disproportionate cuts, which directly affected the supply of essential Traveller-specific services. The Traveller accommodation budget alone was cut from €40m in 2008 to €4m in 2013 – a cut of 90%.<sup>42</sup> Such

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<sup>39</sup> For more on Traveller housing rights and culturally appropriate accommodation under the ECHR see O’Donovan, *supra* note 31.

<sup>40</sup> Domestic cases such as have made use of these ECtHR cases to enforce the Article 8 rights of a severely disabled Traveller girl living in a wholly unsuitable caravan. In this case, the Supreme Court held that there could be a positive duty to provide ‘where special circumstances cause a direct interference of a serious kind in family life’ – *Mary O’Donnell v. South Dublin County Council* [2007] IEHC 204

<sup>41</sup> The First Progress Report of the Committee to monitor the Taskforce Report is available at: <<http://justice.ie/en/JELR/TaskForceRpt1.pdf/Files/TaskForceRpt1.pdf>> (accessed 27 May 2019) p. 13.

<sup>42</sup> K Holland, ‘Review of Traveller Accommodation to be Carried Out’, *Irish Times*, 7<sup>th</sup> July 2017, available at: <[www.irishtimes.com/news/social-affairs/review-of-traveller-accommodation-to-be-carried-out-1.3109857](http://www.irishtimes.com/news/social-affairs/review-of-traveller-accommodation-to-be-carried-out-1.3109857)> (accessed 27 May 2019).

hugely detrimental cuts to Traveller accommodation budgeting were further proliferated by an overall underspend of 36% in the budget allocated from 2008-2012. As a result, of these severe and widespread austerity policies, there were significant and marked divergences between policy, legislative, and design improvements in Traveller accommodation during this period.

Unfortunately, it is difficult to know the full extent to which Traveller's accommodation rights were undermined or limited by Ireland's austerity policies. As a community, Travellers are private, and most of the data, which we have to analyze, is based on Government documents, such as the censuses. As a result, it is difficult to assess the full and total extent of austerity upon such rights, however it is widely accepted that Travellers, among other minority groups were hit disproportionately hard by the associated cuts and contractionary measures.<sup>43</sup>

Pavee Point<sup>44</sup> highlighted the effects that reliance on such official State reports has on consideration of austerity and its' effect on the Community. In a Presentation to the Oireachtas Committee on Housing and Homelessness in 2016, the organization outlined the limitations, which such reports place upon our understanding and interpretation of the effects of austerity:

Government statistics obscure the reality of Traveller accommodation. For example, the in the NTACC annual reports their categories include 'sharing' of houses and halting bay sites, in reality 'sharing' is a euphemism for Travellers living in conditions in chronic overcrowding, the term 'basic' service bays refers to sites that are often flooded, rate infested and lacking in everything but basic facilities such as shared taps.<sup>45</sup>

Pavee Point further noted that the wider effects of the recent housing crash and correlating accommodation crisis have resulted in situations where many members of the Traveller Community feel no choice but to abandon their traditional accommodation and nomadic heritage, and move into social housing or private rented accommodation.<sup>46</sup> This is supported by Department of Environment reporting, which highlight that there has been a significant decrease in the three-year period of 237 Traveller families in private rented accommodation and a correlated increase of 200 families sharing houses.<sup>47</sup> There was also an increase of 173 families on unauthorized sites during that time.<sup>48</sup> The *Annual Count of Traveller families in local authority and local authority-assisted accommodation in 2016* found that, of 6,109 Traveller families identified, 5,575 families were in accommodation provided by or with assistance from a local authority. Of these, 3,229 were in standard local authority housing, 762 were in local authority group housing, 450 were in private houses assisted by local authorities, 199 were in housing provided by voluntary bodies with local authority assistance, and 935 were housed on local authority halting sites. The remaining 534 families were on

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<sup>43</sup> Harvey, *supra* note 8.

<sup>44</sup> A key national Traveller Rights organization.

<sup>45</sup> Watt & Charles, *Supra* n.18

<sup>46</sup> CSO, *Supra* n.9

<sup>47</sup> Annual Traveller Count, Department of the Environment, 2015, available at: [www.housing.gov.ie/sites/default/files/publications/files/total\\_number\\_of\\_traveller\\_families\\_in\\_all\\_categories\\_of\\_accommodation-2016-02-05\\_table\\_2.pdf](http://www.housing.gov.ie/sites/default/files/publications/files/total_number_of_traveller_families_in_all_categories_of_accommodation-2016-02-05_table_2.pdf) (accessed 27 May 2019).

<sup>48</sup> *Id.*

unauthorized sites.<sup>49</sup> It is clear that Traveller families are responding to the continued effects of the accommodation crisis by relocating to sites that are already overcrowded, unsafe and inhabitable. This can create conditions for internal conflict, fire hazards, unnecessary accidents and conflict with residents living in close proximity,<sup>50</sup> further undermining accommodation rights and proliferating an already untenable situation.

#### 1.4.2 *Political Will and Execution of the 1998 Act:*

As outlined above, local authorities have a statutory responsibility under the *1998 Act* for assessing the accommodation needs of the Travelling Community and for the preparation, adoption and implementation of five yearly TAPs in their respective catchment areas.<sup>51</sup> These TAPs inform strategy for the provision of provision of Traveller-specific accommodation, such as group housing and halting sites) over the five year period.

A 2017 Housing Agency report shows that the Traveller housing targets have not been met at any point since they became compulsory for local authorities in 1998.<sup>52</sup> The report, commissioned by the Department of Housing, found that Traveller housing & accommodation targets have yet to be met, since the *1998 Act* legislated for such targets. The report also outlines that more than €55 million for Traveller accommodation remains unspent since 2000 and that just 68 per cent (6,394) of the 9,390 units of Traveller promised since 2000 have been provided, meaning that of the €410.1 million allocated to Traveller housing from 1998-2018, that only €355.7 million has been spent on Traveller housing to date.<sup>53</sup>

Although, initially, targets set by TAPs were largely positive (in the first set of targets, covering 2000-2004, some 90 per cent were delivered.), by the second round of TAPs this initial commitment to achieving targets had waned, with some 78 per cent of the 2005-2008 targets being achieved. This increased slightly during the recession period of 2009 to 2013 period, with 80 per cent of targeted provisions being achieved.<sup>54</sup> However, this dropped significantly within the most recent and current accommodation programs (2014-2018) and to date just 39 per cent of the TAPs goals have been delivered, with local authorities only providing 1,856 units out of a target 3,056 units for delivery by the end of next year.<sup>55</sup> To date, in 2018, the allocated budget was said to have included allocation of 110 new accommodation units, yet of these promised 110 units none of have materialized.

The Housing Agency report highlighted that despite an increase in funding for Traveller accommodation being promised this year,<sup>56</sup> that major obstacles such as local resident objections<sup>57</sup> and

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<sup>49</sup> 'Annual Count of Traveller Families in 2016 in all categories of Accommodation,' Department of Environment Annual Housing Reports, available at: <[www.housing.gov.ie/housing/special-housing-needs/traveller-accommodation/annual-count-traveller-families-2016-all](http://www.housing.gov.ie/housing/special-housing-needs/traveller-accommodation/annual-count-traveller-families-2016-all)> (accessed 27 May 2019).

<sup>50</sup> *Id.*

<sup>51</sup> S.10

<sup>52</sup> Housing Agency, *Supra* n16.

<sup>53</sup> The Housing Agency Report (2017) *Ibid* At 9

<sup>54</sup> K Holland, 'Settled residents should no longer be consulted on Traveller homes – advocates', *Irish Times*, 15<sup>th</sup> September 2017, <[www.irishtimes.com/news/social-affairs/settled-residents-should-no-longer-be-consulted-on-traveller-homes-advocates-1.3222501](http://www.irishtimes.com/news/social-affairs/settled-residents-should-no-longer-be-consulted-on-traveller-homes-advocates-1.3222501)> (accessed 27 May 2019).

<sup>55</sup> Department of Environment, *Supra* n.47

<sup>56</sup> Funding has been increased to €12 million euro in 2018, from ca. €9 million in 2017.

<sup>57</sup> Part 8 of the Planning and Development regulations, 2011 is available here: <[www.irishstatutebook.ie/eli/2001/si/600/made/en/print#part8](http://www.irishstatutebook.ie/eli/2001/si/600/made/en/print#part8)> (accessed 27 May 2019).

inherent racism among local authority staff and councilors have effectively blocked deliverance of such targets in some areas. Fanning noted that this could be characterized as a “politics of exclusion among the local authorities to whom ‘the Traveller problem’ had been devolved.”<sup>58</sup> The issue here lies with the fact that the current planning framework for Traveller accommodation such as halting sites, has resulted in significant public backlash.<sup>59</sup> While halting sites are exempt from standard planning permission applications, the current planning legislation, particularly Part 8 of the *Planning and Development Regulations 2001* have proved to be a significant hurdle for local authorities who chose to develop new sites. Under Part 8, there is a public consultation arrangement, which allows residents objections to stymie the planning process.<sup>60</sup>

In the Stakeholder consultation attached to the report, it was noted that national Traveller representative groups feel that while there is sufficient funding available to deliver Traveller-specific accommodation, that this has not been executed owing to issues with local authorities, who are:

[N]ot willing to meet their responsibilities to deliver Traveller-specific accommodation such as group housing, halting sites or transitory sites...impeding progress at a local level (including) local planning issues and objections from settled residents...[representatives] believe that elected members are campaigning against Traveller accommodation in order to win elections...and that there is a lack of motivation for the implementation of TAPs<sup>61</sup>

The same study spoke to a number of local authorities who also noted that at a national level there was an issue in implementing TAPs under the *1998 Act* owing to lack of political will:

There is sufficient funding made available to deliver Traveller accommodation. Representatives stated that they believe the issue is that local authorities are not willing to meet their responsibilities to deliver Traveller-specific accommodation such as group housing, halting sites or transitory sites for Travellers who are nomadic.<sup>62</sup>

The representatives from the respondent local authorities noted that this willingness to ensure ‘effective implementation of TAPs depends on the person with direct oversight within the local authority and whether they are resistant to providing Traveller accommodation.’<sup>63</sup> This has been recognized by the newly appointed Traveller Accommodation Expert Group (TAEG), who expressed dismay at the current state of Traveller accommodation provisions within the State, recognizing that ‘the issue of Traveller accommodation provision is solvable considering the small size of the Traveller population compared to the national population.’ Speaking to the Oireachtas Joint Committee on Housing, Planning and Local Government (Joint Committee) Chair of the TAEG, Professor Michelle Norris, noted that the issue with a failure to provide Traveller-specific accommodation is not owing to poor legislative framework, but rather rests with the lack of engagement from local authorities: “The policy and funding nationally has improved, been honed

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<sup>58</sup>B Fanning, *Racism and social change in the republic of Ireland*, Manchester, Manchester University Press, 2010 p. 145.

<sup>59</sup> The aftermath of the Carrickmines fire is a good example of the resistance faced by Traveller groups seeking emergency accommodation; For more detail refer to *supra* note 3.

<sup>60</sup> Housing Agency, *Supra* n.16

<sup>61</sup> Department of Environment, *Supra* n.47 at 5.2

<sup>62</sup> *Id* at 18

<sup>63</sup> *Id* at 5.4

and reformed much over the past 20 years. The issue is thus with the implementation of the policy, particularly the differences between various local authorities.<sup>64</sup>

The stifling effect which lack of political will has had upon Traveller accommodation at a local governance level was further recognized by the Joint Committee when meeting with the TAEG.<sup>65</sup> The Joint Committee noted that ‘prejudice operating at a community, political and management levels is one of the key factors’ to be overcome in bridging this implementation gap between the *1998 Act* and provision of Traveller accommodation in practice. In recognizing the effects, which such prejudices have within local authorities and their provision of accommodation services, the members stressed the importance of the cause and effect of the stagnation of the *1998 Act*:

When we have a conversation about Traveller accommodation or lack thereof, we are having a conversation about human rights and the denial of human rights.... a spotlight must be shone on the lack of both action and spending by local authorities, followed by proposals on how to address that.<sup>66</sup>

It is clear therefore, from the relevant Stakeholders that barriers within local authorities against the Traveller population has made it increasingly difficult for Local Authorities to meet their obligations under the *1998 Act*. In its Second Report on Ireland, the European Commission on Racism and Intolerance further highlighted that:

One of the main barriers to improvement of the situation as regards accommodation is reported to be the unwillingness of local authorities to provide accommodation and resistance and hostility among local communities to planned developments, often resulting in injunctions and court cases. In this respect, it has been commented that the fact that no sanctions are provided for in the Act against authorities who do not take measures to provide accommodation for Travellers may weaken its effectiveness.<sup>67</sup>

The impact of both austerity policies and the effect of a lack of implementation at a local authority level have clearly resulted in widespread and endemic issues meeting targeted provisions for Traveller-specific accommodation, and for utilizing available funding. The effect of which can be clearly reflected in statistics, which paint a dramatic picture, showing that number of Traveller families living on unsafe, un-serviced, and unauthorized sites has increased by almost 50 per cent in two years.<sup>68</sup> The amount of Traveller families living by the side of the road has increased by 66% in 5 years and in 2017, there were 1700 families living in overcrowded or dangerous accommodation.<sup>69</sup> The 2015 count, published by the Department of the

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<sup>64</sup>Oireachtas Joint Committee on Housing, Planning and Local Government Debate 6<sup>th</sup> November 2011, available at: <[www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_housing\\_planning\\_and\\_local\\_government/2018-11-06/3/](http://www.oireachtas.ie/en/debates/debate/joint_committee_on_housing_planning_and_local_government/2018-11-06/3/)> (accessed 27 May 2019).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> European Commission against Racism and Intolerance, *Second Report on Ireland*, 23 April 2002, Strasbourg, Council of Europe, 2002, p. 22, para. 72, available at: <[http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle\\_02/02\\_CbC\\_eng/02-cbc-ireland-eng.pdf](http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_02/02_CbC_eng/02-cbc-ireland-eng.pdf)> (accessed 27 May 2019).

<sup>68</sup> J Power, ‘Number of Traveller families in overcrowded housing doubles’, *Irish Times*, 8<sup>th</sup> August 2017, <[www.irishtimes.com/news/ireland/irish-news/number-of-traveller-families-in-overcrowded-housing-doubles-1.3179597](http://www.irishtimes.com/news/ireland/irish-news/number-of-traveller-families-in-overcrowded-housing-doubles-1.3179597)> (accessed 27 May 2019).

<sup>69</sup> *Id.*

Environment, shows that the number of Traveller families on unauthorized sites increased from 361 in 2013 to 445 in 2014 and 534 in 2015 year. The amount of families sharing housing, or “doubling up,”<sup>70</sup> increased from 663 in 2013 to 727 in 2014 and 862 in 2015.<sup>71</sup>

In contrast, however, the numbers in private rented accommodation fell from 2,717 in 2013 to 2,480 in 2015. The numbers in social housing remained steady at 5,574 in 2013 and 5,575 in 2015. In all, there were 9,899 Traveller families in 2013, and 9,997 last year.<sup>72</sup> The annual counts submitted by local authorities revealed that, in 2015, 8,099 Traveller families were accommodated across the State. Of these, a little less than a quarter (22 per cent) were living in Traveller-specific accommodation (halting sites or groups housing), almost half (45 per cent) were accommodated in non-Traveller-specific housing (i.e. standard social rented, voluntary and co-operative housing, etc.), and a third (33 per cent) were in other accommodation types (i.e. private rented, unauthorized sites, etc.).<sup>73</sup>

This disparity between the law in theory and the reality in practice has been recognized by a number of international treaty bodies such as the UN Committee for the Elimination of Racial Discrimination recommended that Ireland should take all necessary measures to improve access for Travellers to accommodation suitable to their lifestyle. Noting that the enactment of offences relating to the occupation of land in the *Housing (Miscellaneous Provisions) Act 2002* has in the case of Travellers, compounded issues such as prejudice; enforced assimilation and the legal enablement of forced evictions are further consequences.<sup>74</sup>

The UN Committee on the Rights of the Child, echoed this in 2016, stating that they were ‘[D]eeply concerned about the structural discrimination against Traveller and Roma children, including as regards their access to education, health and an adequate standard of living.’ Traveller households in mobile or temporary accommodation with no access to adequate water and sanitation facilities, or safe and appropriate play areas.<sup>75</sup>

Within regional human rights monitoring systems, the Council of Europe has been particularly vocal regarding the poor accommodation many Roma and Traveller Communities are subjected to. Recommendation 4 (2005) of the Committee of Ministers to Member States on Improving the Housing Conditions of Roma and Travellers in Europe, which stresses the importance of housing strategies designed to target and eradicate discrimination of Roma and Travellers.<sup>76</sup> This was followed up by Recommendation CM/Rec (2008) 5 of the Committee of Ministers to Member States on Policies for Roma and/or Travellers in Europe, where the Committee outlined the importance of independent review of local

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<sup>70</sup> Doubling up’, where families move caravans beside other family caravans or houses because they can’t find their own sites

<sup>71</sup> The First Progress Report of the Committee to monitor the Taskforce Report *Supra* n.41

<sup>72</sup> *Id*

<sup>73</sup> The First Progress Report of the Committee to monitor the Taskforce Report *Supra* n.41

<sup>74</sup> UPR Housing Factsheet. Ireland’s civil society UPR Stakeholder Report. ‘Your Rights. Right Now’ was submitted to the UN on 21 March 2011, available at:

[www.rightsnow.ie/assets/5/BF5CD61F-D046\\_1F8743679751A8A83D8\\_document/11\\_Right\\_to\\_Housing\\_Completed.pdf](http://www.rightsnow.ie/assets/5/BF5CD61F-D046_1F8743679751A8A83D8_document/11_Right_to_Housing_Completed.pdf) (accessed 27 May 2019).

<sup>75</sup> *Id*.

<sup>76</sup> Recommendation Rec (2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805dad2c](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805dad2c) (accessed 27 May 2019).

authorities/government agencies tasked with the implementation of any aspect of Roma/Traveller accommodation and services provision more widely.<sup>77</sup>

Clearly therefore the legislation while sufficiently designed to ensure adequate provision of culturally-appropriate accommodation for Travellers is undermined in practice, with many local authorities failing to implement agreed policy. This implementation gap is compounded by the lack of impetus for local authorities to adequately implement the provision of the *1998 Act*. Most strikingly, there are no sanctions, when Local Authorities do not deliver on the TAPs, and there are no alternative remedies to address the slow progress on addressing the accommodation needs of Travellers.<sup>78</sup>

This lack of ‘teeth’ has attracted much criticism from organizations and individuals working with Travellers, such as Pavee Point and the European Commission against Racism and Intolerance stated, “The fact that no sanctions are provided for in the Housing (Traveller Accommodation) Act 1998 [sic] against authorities who do not take measures to provide accommodation for Travellers may weaken its effectiveness.”<sup>79</sup> Further outlining that the onus for improving this system and ensuring that Local Authorities commit to provision of quality accommodation in upon the State at a regional not local level;

<sup>80</sup> The Committee stressed the impact of poor accommodation upon affected children, raising significant concern about the high numbers of

Further efforts are required to involve local authorities in the implementation of the National Traveller/Roma Integration Strategy pertaining to housing to meet the needs of the Travellers. In this connection, the national authorities should envisage introducing measures binding on local authorities and raising awareness among the general public of Traveller accommodation rights and promote respect thereof.<sup>81</sup>

## 1.5 Reality vs Rhetoric: Exploring The Implementation Gap.

The issue of an implementation gap is one, which is rife throughout most human rights systems and even domestic legal systems globally. Characterized as disparities between the legal rhetoric and the lived reality of those protected by the instrument in question. In order to be actionable and accessible, ratification of international human rights instruments must be supported by domestic legislation to give effect to the provisions in question within the national legal system. In dualist systems such as Ireland, such provisions need to be supported by national policy and administrative changes to incorporate these international human rights into actionable rights for citizens. Implementation gaps are particularly prevalent in attainment of socio-economic rights in particular, owing to the nature of such rights, and their means of development and

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<sup>77</sup> Recommendation CM/Rec(2008)5 of the Committee of Ministers to member states on policies for Roma and/or Travellers in Europe (Adopted by the Committee of Ministers on 20 February 2008 at the 1018th meeting of the Ministers’ Deputies) available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805d3e1c](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d3e1c) (accessed 27 May 2019) at VIII; Monitoring and evaluating the implementation of the strategy

<sup>78</sup> The overseeing NTACC appointed by the Minister to monitor progress also has no authority to ensure Local Authorities are meeting their targets in their Traveller Accommodation Plans and also has no mechanism to impose sanctions.

<sup>79</sup> Housing Agency, *Supra* n.16

<sup>80</sup> UN Committee on the Rights of the Child Concluding Observations on the combined third and fourth reports of Ireland, March 1, 2016, available at:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/039/97/PDF/G1603997.pdf?OpenElement> (accessed 27 May 2019) para 69.

<sup>81</sup> *Id.*, p.8.



implementation, requiring States to recognize, respect, promote, and fulfil required obligations, recognizing minimum core obligations and ensuring progressive realization of the rights in question.<sup>82</sup>

Chapman and Russell describe issues with implementing housing rights, as is the case with other socio-economic rights, as one of the most difficult concepts in attainment, noting the issues surrounding definitions and identification of State obligations such as ensuring minimum core content as “bridging the gap, as it does, between lofty goals and available resources.”<sup>83</sup> Allowances are therefore made, in securing socio-economic rights, for the expense incurred by States in recognizing and securing such rights, through progressive realization. Certainly, the Traveller accommodation budget, while still not at pre-recession levels<sup>84</sup> is no longer as acute an attributable cause. The impact of the financial crisis on such budgets is however still bandied about by some local authorities massively underperforming in their TAPs. In their 2014-2018 TAP, Cork County Council stated that:

Since the adoption of the previous Traveller Accommodation Programme in 2009, the funding available for Housing Capital Programmes has declined significantly. As a direct consequence of these significant reductions, expectations will have to be realistic in the drafting and implementation of the plan. Cork City Council will have to ensure maximum efficiency and value for money in its attempts to meet Traveller specific accommodation needs over the duration of the five-year Programme.<sup>85</sup>

What is interesting about the usage of such justifications is that while the cuts implemented were, as the above local authority states, ‘significant,’ many local authorities, including the above, failed to draw down the majority of available funds. In fact, amongst the 31 local authorities within the State, only two local authorities had in fact drawn down the full available funds to them in 2018 at the time of writing. It is hard therefore to consider funding to be a valid justification for such underperformance of TAPs nationally when only €1.7 million of an available €12 million fund for Traveller-specific accommodation had been used by local authorities by October of 2018 - despite demand being at an all-time high. It is clear therefore that the failure of many local authorities to deliver Traveller-specific accommodation rests with a lack of political will, as opposed to a financial deficit, or confusion as to what their responsibilities are under the *1998 Act*. In determining that the responsibility for underperformance of the *1998 Act* and failure to meet prescribed targets of Traveller-specific accommodation lies with the local authorities there is a clear implementation gap, which is unusual in its basis. This is owing to the fact that many implementation gaps relating to provision and securing of housing rights stem from a lack of funding and while a lack of financial resources cannot be used to justify failure to secure minimum core rights, in reality, such financial deficits are often the cause of a gap in housing rights protections.

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<sup>82</sup> D Bilchiz, *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights* Oxford, Oxford University Press, 2007.

<sup>83</sup> A Chapman & S Russell (eds.) *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, Antwerp, Intersentia, 2002 p. 8.

<sup>84</sup> The budget for 2018 was €12 million, as opposed to €4 million in 2015. B Harvey, *Travelling with austerity - impacts of cuts on Travellers, Traveller projects and services*. (Dublin, Pavee Point, 2013)

<sup>85</sup> Cork City Council Traveller Accommodation Programme 2014-2018 p. 3



It is prudent to identify the type of implementation gap at play here. The issue of implementation gaps in their varying incarnations has been extensively examined elsewhere and thus is not warranted here, however a brief overview of the common types of gap, as noted by Professor Alice McDonald, is useful in analyzing the implementation gap between the *1998 Act* and the realization of Traveller-specific Accommodation here.

McDonald notes that ‘causes of non-execution are identified as falling into two categories: ‘principled’ and ‘dilatory’ non-execution. ‘Principled’ non-execution, the authors suggest, occurs when states resist execution because of ‘deep-seated politico-philosophical disagreements with the Court’s interpretation of a particular provision, or with the concept of international supervision per se.’ The UK’s highly documented resistance to implementing ECtHR judgments relating to the blanket ban on prisoner enfranchisement is an example of ‘principled’ non-execution. ‘Dilatory’ non-execution, which according to McDonald has much broader scope, applying where the dispute is not related to a legal principle, but instead is attributable to ‘problematic attitudinal and/or organizational resistance’ to implementation and failure to organize the organs of the state in an ‘effective, accountable, and rights-respecting way.’<sup>86</sup> In considering the implementation gap currently present in Ireland regarding provision of Traveller-specific accommodation, it is clear that such a gap, relating to underperformance by the relevant local authorities is a case of dilatory non-execution of legislation.

The functioning of the *1998 Act* in theory was recognized by the European Social Rights Committee (ESRC) in the collective complaint brought by the European Roma Rights Centre (ERRC) against Ireland, for the substandard and appalling state of Traveller-specific accommodation. In this complaint, the ERRC submitted that the ‘substandard’ levels of housing and local authority under spending and underperformance are ‘due to a lack of will including political will to provide Traveller specific accommodation.’<sup>87</sup> The ESRC recognized that the problem lay at an administrative level. Noting that unanimously that there was a violation of Article 16 of the Social Charter on the grounds of insufficient provision of accommodation for Travellers, finding however, unanimously that there is no violation of Article 16 of the Social Charter regarding the legislative framework on Traveller accommodation.<sup>88</sup> The ESRC reiterated the failure of local authorities to exercise their duties under the *1998 Act*, also finding unanimously that there had been violation of Article 16 of the Social Charter on the grounds many Traveller sites are in an inadequate condition. The ESRC noted however, that the gaps in provision of Traveller-specific accommodation were not attributable to the

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<sup>86</sup> A McDonald, [Tackling non-implementation in the Strasbourg system: the art of the possible?](https://www.ejiltalk.org/tackling-non-implementation-in-the-strasbourg-system-the-art-of-the-possible/#more-15202), EJIL Talk!, (Blog Post) 28 April 2017 <<https://www.ejiltalk.org/tackling-non-implementation-in-the-strasbourg-system-the-art-of-the-possible/#more-15202>> (Last accessed 29<sup>th</sup> May 2019)

<sup>87</sup> Decision on the merits: European Roma Rights Centre (ERRC) v. Ireland, Complaint No. 100/2013, para. 42.

<sup>88</sup> The ERRC submitted that the Government had failed to develop a strong and enforceable legislative framework to ensure that the Traveller accommodation programmes are implemented, including failing to amend planning and zoning laws to ensure that land can be easily acquired and used for Traveller accommodation. In particular it argues that the obligation on local authorities under Section 16 of the Travellers Accommodation Act 1998 is simply to ‘take any reasonable steps as are necessary for the purpose of such implementation’ is too weak, no consequences ensue for local authorities should they fail to provide accommodation.’ (*Id* para. 73). The ESRC however disagreed, and held that consideration of such underperformance lay with the respondent Government: ‘the Committee considers that in delegating the obligation to meet the needs for accommodation adapted for Travellers to the local authorities, the Government has not absolved itself of its above mentioned obligations in international law and that it is a matter for the state concerned to determine what measures are necessary to ensure that local authorities or other bodies fulfil their statutory duties. Therefore the Committee holds that there is no violation of Article 16 of the Charter on this ground.’ (*Id* para 79.)

1998 Act itself, unanimously finding that the legislation was not at fault.<sup>89</sup> It is deductible from this, that it is the implementation of the legislation, which the ESRC found to be at fault. This is particularly clear from the Separate Dissenting Opinion of Petros Stangos:

“The Committee found that the concrete practices and measures pursued or adopted by the Irish Government resulting in an insufficient number of housing solutions for Travellers, the persistently poor upkeep of a significant number of halting sites.”<sup>90</sup>

The factors that have attributed or directly caused such a gap have been a key concern throughout this article. The recognition of Stakeholders of, ‘the unwillingness of local authorities to provide accommodation and resistance and hostility among local communities to planned developments,’<sup>91</sup> is highly indicative as to the main attributive factors causing this implementation gap. It is widely recognized, therefore, that despite initial teething issues with the 1998 Act,<sup>92</sup> the 1998 Act itself and its provisions are generally fit for the purpose, and that the problem is a lack of political will in implementing policy for Traveller-specific housing at a local authority level. This is confirmed by the minority of local authorities who have succeeded in implementing TAPs and providing for both new developments of halting sites, group-housing schemes and transient sites.

Most recently, this underperformance has been recognized as high priority for the recently appointed TAEG, who are examining why such issues are occurring, and are exploring whether sanctions or other such tools of persuasion could encourage local authorities who are falling behind on their duties under the 1998 Act to get their act together as it were.<sup>93</sup> In appointing the group, the Minister for Housing noted the issues surrounding provisions of accommodation stating that he is keen to implement the recommendations of the TAEG once these are released in May 2019:

Bring back your recommendations’ and yes, I will act on them. As a Department our remit is to provide accommodation. There are people with nowhere, on a temporary site or on an unauthorised site or who are waiting for a house, so we want more activity [in providing Traveller accommodation]<sup>94</sup>.

Consequently, as the TAPs enter into their fourth cycle this coming year, it is hoped that some progress will be made as a result of the aforementioned increased monitoring of Traveller accommodation rights by the TAEG and external bodies such as the ESRC and the UN Committee on the Rights of the Child.

That there is a wider homelessness crisis occurring across Ireland cannot be ignored, and the sheer level of those relying on social housing has undoubtedly placed local authorities under considerable pressure to meet demand for housing services. The backlash against the Traveller Community in light of such scarcity

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<sup>89</sup> *Id*

<sup>90</sup> *Id*, Separate Dissenting Opinion of Petros Stangos.

<sup>91</sup> *Supra* n.18

<sup>92</sup> *Id*.

<sup>93</sup> Fanning *Supra* n.58

<sup>94</sup> K Holland, ‘Minister vows to improve living conditions on Traveller sites’, *Irish Times*, 4<sup>th</sup> January 2019, available at: <<https://www.irishtimes.com/news/social-affairs/minister-vows-to-improve-living-conditions-on-traveller-sites-1.3746908>> (accessed 29 May 2019).

in housing stock is at crisis point.<sup>95</sup> Recently, in the Irish Presidential Election, Candidate Peter Casey saw a 20% rise in opinion polls after diminishing Travellers' ethnic minority status and objecting to state funds being allocated to Traveller-specific accommodation, stating that, "Travellers should not be recognised [sic] as an ethnic minority because they are basically people camping in someone else's land."<sup>96</sup> This backlash, coupled with a worrying trend of Traveller rights being used to stir up hatred has resulted in the procurement of Traveller accommodation becoming highly politicized.<sup>97</sup> In light of the unique nature of this problem, and in recognition of such issues with securing policy based outcomes it is argued that sanctions or increased impetus for non-performing local authorities is the way forward in efforts to meet the growing needs for Traveller-specific housing in Ireland.

## 1.6 Conclusion:

This piece reviewed the legal framework for provision of Traveller-specific accommodation in Ireland under the *1998 Act* in light of an increasingly vast implementation gap between the rhetoric of the legislation and the reality for those in the Traveller Community. In finding this implementation gap, this piece explored the 'lived experience' of the Community, asking why despite a sustained policy to respect Traveller culture and recognition of their unique housing needs had the legislation repeatedly fallen short. An examination of the legal framework, coupled with an overview of the common criticisms levelled at the *1998 Act* revealed a troubling trend of underperformance by many local authorities in providing the Traveller Community with appropriate specific accommodation. Clear issues with the implementation of the *1998 Act* were found to be directly attributable to a lack of political will to implement change. The implementation gap was thus recognized as 'dilatatory, which was highlighted as a relatively unique occurrence within the securing of housing rights specifically, and socio-economic rights more broadly, within which the financial burden of securing such rights can slow progression'

As a result, of this implementation gap, many Travellers have become forced to live in sub-standard and inhumane conditions, with those living in subpar conditions at worryingly high levels in 2018.<sup>98</sup> These subpar living conditions were exacerbated during the economic crisis, as associated acts of austerity hit social housing provisions and the rights of minorities such as the Irish Traveller community particularly hard. However, with recently increased funding, and a marked failure by local authorities to draw down funds it is clear that the provision of Traveller accommodation under the *1998 Act* has been restricted by ambiguities and underperformance at a local level.

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<sup>95</sup> 'Irish Travellers are 22 times more likely than White Irish to experience discrimination in accessing private services.' For more see F McGinnity *et al.*, 'Who experiences discrimination in Ireland?' Evidence from the QNHS Equality Modules, Human Rights and Equality Commission/ESRI, 2017 < <https://www.ihrec.ie/app/uploads/2017/11/Who-experiences-discrimination-in-Ireland-Report.pdf>> (accessed 29 May 2019)

<sup>96</sup> K. Doyle, 'Presidential candidate Peter Casey sparks outrage with his 'racist' remarks on Travellers,' *The Independent*, 17<sup>th</sup> October 2018< <https://www.independent.ie/irish-news/presidential-election/listen-presidential-candidate-peter-casey-sparks-outrage-with-his-racist-remarks-on-travellers-37428508.html>> (accessed 29 May 2019)

<sup>97</sup> Yet, it is important to note that under the *1998 Act*, that Traveller-specific accommodation is funded by a separate budget and that this budget is consistently underspent at a local authority level.

<sup>98</sup> Housing Agency, *Supra*. n.16



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