



TEJP

TRAVELLER EQUALITY & JUSTICE PROJECT

Submission to the Seanad Public Consultation Committee
on ‘Travellers, towards a more equitable Ireland Post
Recognition.’

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Traveller Equality & Justice Project Submission: Seanad Public Consultation Committee “Travellers towards a More Equitable Ireland Post Recognition.”

Submission on Strand 2, Dialogue and Traveller Social Inclusion: Address the stigma, prejudice, discrimination, racism, social exclusion and identity erosion experienced by Travellers

a) Introduction:

The Traveller Equality and Justice Project at the Centre for Criminal Justice & Human Rights is a new partnership between the Cork Traveller Women’s Network and the School of Law, University College Cork. The key focus of the Traveller Equality and Justice Project (hereinafter TEJP) is recognition of the high levels of sustained discrimination which the Traveller Community are subjected to in Ireland. Such discriminatory treatment is exacerbated when legislation is not fit for purpose and legal responses are inaccessible for Travellers. The partnership, which is the first of its kind, is supported through an IRC New Foundations Award.

b) Submission Structure:

On 1 March 2017 the Irish State formally recognised the ethnicity of Irish Travellers:

“I hope that today will create a new platform for positive engagement by the Traveller community and Government together in seeking sustainable solutions which are based on respect and on an honest dialogue.”¹

While the Irish State’s long overdue recognition of Traveller ethnicity was and is still welcomed. It is suggested that the recognition has resulted in a stagnation of positive developments both in policy and relevant legislation pertaining to the Traveller Community. It is submitted that for the welcomed recognition of Traveller ethnicity to be more than a gesture, that there needs to be a ‘Traveller proofing’ of key legislative provisions and policy, which are currently not fit for purpose.

TEJP wishes to draw the Committee’s attention to ongoing barriers to the Traveller Community in the following key priority areas, within which the current provisions for Travellers fall far below international legal standards:

- Discrimination & Equality Legislation
- Increased racism and hate speech in the digital age
- The Criminal Justice System
- Housing Policy
- Incorrect Language Usage

c) Legislative Reform Proposals:

1. **Discrimination:** Travellers are explicitly named as a protected group under Ireland’s equality legislation (*the Employment Equality Acts 1998 and 2004* and the *Equal Status Act 2000 and 2015*). Despite this, 40% of Travellers have experienced discrimination in accessing health services, 62% of Travellers have experienced discrimination at school, 55% of Travellers have experienced discrimination at work and 61% of Travellers have experienced discrimination in a shop/restaurant/pub. Research shows that such discriminatory treatment extends beyond the provisions of goods and services and includes interactions with State agencies and Traveller women report experiencing abusive, discriminatory and racist language and physical violence ill-treatment by An Garda Síochána.²

It is clear therefore that the current anti-discrimination system is not fit for purpose and as a result the effectiveness of this protection is undermined by:

- *The Intoxicating Liquor Act 2003*, which has resulted in an erosion of Travellers’ access to justice by moving Equal Status cases involving licensed premises to the District Court.
- Internalisation of discrimination: “Just the way it is.” A report conducted by the Traveller Movement (UK) notes that 77% of Travellers surveyed sought no assistance when they experienced discrimination, noting that such experiences are ‘a fact of (Traveller) life.’
- ‘Repeat Offenders.’ Licensed Premises who have lost cases in the District Court, ignoring the rulings and continuing to discriminate by refusing service or entry to Travellers. For those individuals who represent themselves, this can be exceptionally demoralising e.g. ‘what’s the point?’

¹ Taoiseach, Enda Kenny, speech on recognition of Traveller ethnicity

² Kelleher et al., All Ireland Traveller Health Study, University College Dublin & Department of Health & Children, 2010

Recommendations:

Government needs to ensure adequate protection from discrimination to Travellers and review both implementation and enforcement of the *Equal Status Acts*, *Employment Equality Acts* and the provision of legal aid to discrimination cases. While TEJP recognises that this is a civil issue, the role of Gardai in responding in a culturally aware and fair manner to such incidents must be improved. Many publicans rely upon the loophole provided by s15 of *Equal Status Acts 2000-2015* and call the Gardai – however, when Travellers ask for records of such incidents to be made such requests are often denied, as it is a ‘civil issue’. TEJP recommends that Traveller Cultural Awareness Training be mandated for all public servants and members of An Garda Síochána, with resourcing of Traveller organisations to provide such training. Furthermore, the Judicial Studies Institute must foster culturally awareness within the Courts by organising seminars and lectures on Travellers and racial discrimination.

2. **Legislation on Trespass** undermines the nomadic traditions of the Traveller Community: Section 24 of *the Public Order Act* as amended by *the Housing (Miscellaneous Provisions) Act 2002* criminalizes trespass on public and private land. Nomadism plays an important and historical part of Traveller life and *the Act* makes it an offence to be on public or private lands. Implementation of this act represents a failure by authorities to consider challenges faced by the Traveller community. The use of these powers combines with the lack of stopping places, lack of adequate sites etc leads to criminalisation of a key component of Traveller heritage.³

Recommendations: TEJP recommends the appeal of s24 owing to its prohibitions on nomadism which is a core element of Traveller identity traditionally and to consider provisions for ‘negotiated stopping’.⁴

3. **Racism & Hate Speech:** The Legislation which addresses racist crime is the *Incitement to Hatred Act, 1989*. However, this act has long been recognised as being inadequate and ineffective for dealing with racist crime as it relates to “incitement” and not racist crime. As a result, it can be difficult to prove intent and secure a prosecution.⁵ Furthermore, the penalties do not reflect the seriousness of the crime. The Act does not specifically include racism on the internet, which is currently causing increasing problems in inciting hatred against Travellers e.g. Facebook, Twitter etc. Recently and in the aftermath of the presidential elections, there has been a surge in anti-Traveller rhetoric on Facebook and, on public engagement-based radio shows. The toothlessness of the *1989 Act* is compounded by the leniency with which the Broadcasting Authority Ireland investigates and sanctions racism in the media. There are also issues surrounding visibility as judgments, of District and Circuit Courts where these cases are held, are not recorded (unless reported in local media), so there is little visibility of outcomes. *The Criminal Law (Hate Crime) Bill*, together with the accompanying ‘Out of the Shadows’: Legislating for Hate Crime in Ireland Report, was presented to the Government in 2015 by the Hate and Hostility Research Group following a recommendation from The National Steering Group Against Hate Crime. To date, the Government has failed to take steps to introduce it into law, leaving minorities in Ireland without protection.

Recommendations: The TEJP recommend that strong legislation such as *The Criminal Law (Hate Crime) Bill* surrounding hate speech and racism be expedited. Ireland must also make itself fully compliant with the International Bill of Rights, the EU Framework Decision on Racism and Xenophobia, the Victim’s Directive, the 2001 UN Durban Declaration on Racism, and the recommendations of the ECRI, the OSCE and the FRA and implement the CERD Committee’s General recommendation XXXI on the prevention of racial discrimination in the criminal justice system with a focus on data collection by an independent body for the purposes of identifying trends in racial discrimination

TEJP supports ENAR’s recommendations for establishment of a National Action Plan against Racism, across all state functions, institutions and policy areas, to be driven and monitored by a statutorily guaranteed and independent National Consultative Committee on Racism and Interculturalism (NCCRI). We further recommend comprehensive strategies for the inclusion of the most marginalised, including Travellers and Roma, and comprehensive human rights reform of all policing and criminal justice functions in Ireland, with respect to hate crime and policing a multi-ethnic society. To achieve this the State must ensure An Garda Síochána receive training on how to handle reports of racist crime, including relevant legislation and proper recording and ensure that An Garda Síochána build better relationships with the Traveller and Roma community and carry out

³Reported decline in nomadism - https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2018/2018-10-01_spotlight-traveller-accommodation-the-challenges-of-policy-implementation_en.pdf See pages 31-32 of the report.

⁴ <https://environmentjournalonline.com/articles/report-how-negotiated-stopping-is-alleviating-the-housing-crisis-for-gypsies-and-travellers-in-leeds/>

⁵Coalition Against Hate Crime, ENAR <http://enarireland.org/the-national-steering-group-against-hate-crime/>

awareness-raising with the Traveller community on how to report racist crime. Establishing an independent Judicial Council, which would also ensure training is provided for Judges in cultural competence including anti-racism training provided in partnership with Traveller and Roma organisations⁶ is also vital.

d) Policy Reform:

- 1. Criminal Justice:** Pavee Point notes that ‘Travellers do not enjoy equal treatment in the criminal justice system and they often receive disproportionately severe sentences in comparison to the majority population.’⁷ The All Ireland Traveller Health Study confirmed that Travellers are over-represented in prison compared to the non-Traveller population. Travellers comprised 4.6% of the prison population whilst equating to only 0.9% of the Irish population. The study found that the risk of a Traveller man being imprisoned was at least 5 times that of a non-Traveller man.⁸

Over-representation of Traveller Women in Detention: Although Travellers account for 0.6% of the overall population in Ireland, they account for 22% of the female prison population.⁹ The risk for a Traveller woman being imprisoned is 18 to 22 times higher than that of the general population and the majority of Traveller women are sent to prison for non-violent, poverty related offences.¹⁰ Most Traveller women in prison have a background of social and educational disadvantage, unemployment, homelessness, illiteracy, racial discrimination, mental health problems and/or drug and alcohol dependency and have also experienced domestic violence from a current or previous partner.¹¹ The Irish Prison Service Strategic Plan 2016-2018 and Joint Irish Prison Service and Probation Service Strategic plan 2015-2017 contain actions to respond to the particular needs of Travellers in prison.¹² However, to date, the State hasn’t introduced any measures to address the over-representation of Traveller women in prison or the contributing factors that increase their risk of imprisonment.

Recommendations:

In order to recognise and address the disproportionate amounts of Travellers currently within the Irish prison system, there needs to be a renewed focus on alleviating disparate outcomes between Travellers and other prisoners with a particular focus on reintegration and recognition of the unique cultural impacts which incarceration has in particular upon the Traveller Community:

- Ensure that that the Judicial Studies Institute organise seminars and lectures on Travellers.
- Involvement of Traveller and Roma voluntary organisations and other voluntary organisations, alongside the Probation Service, funded to support Travellers on leaving prison and to work with Traveller communities to address factors such as stigma surrounding drug use and offending behaviour.
- Strengthened supports available to families of Travellers in the prison system to minimise the harms done to them during their family members imprisonment, and in supporting the person in prisons return to the community/family.
- Provision of TCAT and other appropriate training and supports to prison and probation staff to ensure appropriate responses to Travellers in the prison system.

The high numbers of Traveller women in the Irish Prison system is particularly concerning and it is therefore recommended that the State must introduce measures to address the over-representation of Traveller women in prison, with focus on addressing the factors which increase their risk of imprisonment. This requires improved access to, and provision of, appropriate prison-based services which can offer Travellers supports and rehabilitative interventions. In addition, as advocated by the Travellers in Prison Initiative a peer-support model should be adopted to help strengthen self-identity and self-advocacy for Travellers in prison.¹³

⁶ ENAR <http://enarireland.org/proposed-hate-crime-legislation/>

⁷ Pavee Point, Submission to the Department of Justice & Equality Regarding its Strategic Statement, October 2014 <<http://www.paveepoint.ie/wp-content/uploads/2013/11/Pavee-Point-Submission-to-Department-of-Justice-and-Equality-with-exec-summary.pdf>> (accessed 29th May 2019)

⁸ *Ibid.*

⁹ Irish Prison Service cited in Travellers in Prison Initiative, http://ssgt.ie/travellers_in_prison.html.

¹⁰ Irish Independent, ‘Women’s prisons over capacity as inmates committed for minor offences, warns Irish Penal Reform Trust’, 21 November 2013, <http://www.independent.ie/irish-news/womens-prisons-over-capacity-as-inmates-committed-for-minor-offences-warns-irish-penal-reform-trust-29773032.htm>

¹¹ Irish Prison Service cited in Travellers in Prison Initiative, http://ssgt.ie/travellers_in_prison.html.

¹² Irish Prison Service and The Probation Service, Joint Irish Prison Service & Probation Service Strategic Plan 2015-2017, http://www.irishprisons.ie/images/pdf/jointstrat_english.pdf.

¹³ Lalor, T., *Travellers in Prison Initiative: Ethnic Identifiers in Irish Prisons*, TPI, March 2017 at p.1 <https://www.ssgt.ie/wp-content/uploads/2017/11/TPI-Ethnic-Identifiers-in-Irish-Prisons-Book.pdf>

- Prison should be considered as the **last resort** for Traveller women convicted of an offence. Alternatives to custody should be prioritised including Community Service Orders. There should be a presumption against short sentences of less than 12 months.¹⁴
- Travellers should have **equal access** to all supports, along with specialise Traveller oriented supports both inside and outside the prison system
- The judiciary should be provided with intercultural and anti-racism training.¹⁵

2. **Traveller Specific Housing:** The current Local Authority focused model which is currently in place for the provision of Traveller-specific accommodation under the *Housing (Traveller Accommodation) Act 1998* has resulted in a significant implementation gap between what the *Act* provides for in theory, and what Councils provide in practice.

Provision of Traveller accommodation is incredibly contentious within many Local Authorities, as evidenced by high levels of conflict, gross underspend and failure to secure culturally appropriate accommodation nationally.

Reform is needed to address issues within:

- **The Planning process** (Part 8) allows for objections from residents and political pressure to be applied. Such failures were highlighted by the ‘Review of Funding for Traveller Specific Accommodation and the Implementation of Traveller Accommodation Programmes’ which highlighted Part 8 and its requirement for public consultation to present a major barrier for delivery of Traveller accommodation.
- **Restoring funding to pre-recession levels.**
- **Underspend and lack of accountability within the Traveller Accommodation Programmes:** Historically, there has been a consistent failure by Local Authorities to draw down funds to provide Traveller-specific accommodation. There are currently no sanctions in place for Local Authorities who fail to meet their TAPs and draw down allocated funding.
- **Tensions over Local Authority needs assessment at odds with Travellers’ preferences** — tends to produce higher demand for standard accommodation rather than Traveller-specific as Travellers, disillusioned with the abilities of Local Authorities to supply Traveller-specific accommodation, opt for standard housing in a bid to expedite their access to a safe, secure home.
- **Emergency Accommodation:** Travellers are 11 times more likely than Settled People to become homeless and 22 times more likely to be discriminated against by landlords. There are 4,460 people currently living in overcrowded accommodation with health and safety risks.

Note: current context not helping — overall housing crisis hindering the delivery of Traveller accommodation. However, it is imperative to stress that specific funding is set aside for securing Traveller accommodation and this has been consistently underspent throughout the lifecycle of the current TAP system.

Recommendations:¹⁶

It must be stressed that barriers to provision of Traveller-specific accommodation are solvable given the size of the Community and the general improvements to policy, legislation and funding supports. The core issues lie within implementation of legislation and policy. These issues are intrinsically tied to a lack of political will at a local level, in addressing the issues a shift towards strengthened Executive Function is vital.

Some possible recommendations could be around:

- **Improved Executive Functions:** TAPs should be an Executive function for local authority management not a reserved function of Councillors – which results in an unnecessary politicisation of provision of Traveller-specific housing. All decisions on Traveller accommodation should be moved from the Local Authority to An Bórd Pleanála on a temporary basis (such as the current approach to Strategic Housing Zones). Part 8 of *Planning and Development Regulations 2001 – 2015* allows public consultation on Halting Site planning applications and is a key problem that must be resolved – TEJP submits that Part 8 is contrary to the State’s international obligations and results in a restriction of Traveller rights as a result of public pressure. This is directly contrary to *L.R. et Al v. Slovakia* No 31/2002, U.N Doc CERD/C/66/D/31/2003 and the Anti-discrimination Directive 2000/43/EC. An amendment to the

¹⁴ This approach has been adopted in Scotland - <https://www.gov.scot/news/reducing-ineffective-short-prison-terms/>

¹⁵ This was proposed by the IPRT – IPRT, *Travellers in the Irish Prison System: A Qualitative Study* 2014 http://www.iprt.ie/files/IPRT_Travellers_Report_web.pdf

¹⁶ TEJP notes that the Expert Group is conducting a 20-year review of the working of the 1998 Act and it’s expected to report in next few months. It is hoped that the report will provide tangible and actionable solutions to the Traveller accommodation crisis.

Planning and Development (Housing) and Residential Tenancy Act 2016 would circumvent Part 8, moving such decisions to An Bórd Pleanála, The State therefore needs to amend planning regulations and to take effective steps to progressively realise the right to culturally appropriate housing for Travellers. Focus should lie on securing culturally appropriate accommodation as a priority in recognition of Travellers as an ethnic minority. Recognition of this, requires respect for nomadic practices and creation of transient sites and halting sites to prevent further erosion of Traveller ethnic identity in line with international human rights obligations *Winterstein v. France* no 27013/07, Art 17 CFREU which are binding upon the Irish State through the *European Convention on Human Rights Act, 2003* s. 2.

- **Accountability:** Imposing sanctions on local authorities who fail to realise obligations, create a centralised body to oversee implementation
- **Respond to Traveller Families in Emergency Accommodation:** Traveller-specific emergency accommodation hubs need to be provided in each local authority in recognition of the high-levels of Travellers currently homeless. There needs to be an increased usage of County Managers using the emergency powers available to them to provide emergency accommodation for families living on unsafe roadsides while they await permanent accommodation provisions. Halting sites which have been closed must be refurbished and reopened to provide for the high demand for accommodation.

e) Other Considerations:

Incorrect Ascription:

Unfortunately, policy documents, legislation and media coverage often use the incorrect form ‘travellers.’ Owing to the recognition of Travellers as a unique ethnic minority the correct form is ‘Traveller’ as words that identify nationalities or ethnic groups must be capitalised.

The sustained impact of this incorrect usage is widely recognised within Traveller rights organisations and within the Community itself. The Community consider that a significant part of this incorrect usage is intentional and is a direct effort to deride or ‘put down’ a recognition of the Community’s unique ethnic identity and culture.¹⁷ Both the *Housing (Traveller Accommodation) Act 1998*, and the *Employment Equality Act, 1998* use ‘traveller’ instead of the correct ‘Traveller.’¹⁸ Furthermore, many Traveller Accommodation Programmes and correspondence from Local Authorities use the incorrect ‘traveller.’

Recommendation: The TEJP suggests that an immediate recommendation for changing the ascriptions in all relevant legislation and policy documents should follow, in recognition of the damage which incorrect usage imparts upon the Traveller Community. Usage of correct terminology and the integration of recognition and correct terminology into all relevant policy, legislative and other documents and approaches is a positive commitment to taking the recognition and running with it in a positive and engaged way,

f) Concluding comments:

TEJP welcomes the focus of the Seanad Public Consultation Committee on Travellers: Towards a more equitable Ireland post recognition" public consultation. While the 2017 recognition of Traveller ethnicity was a welcomed development, it has done little to improve the vast and sustained inequalities faced by many Travellers in their day-to-day lives. It is submitted that for recognition of Traveller ethnicity to be more than a gesture, that there needs to be a ‘Traveller’ proofing of a key legislative provisions and policy, which as outlined above, are currently not fit for purpose.

Any questions relating to this submission or further comments can be directed to our Coordinator, Samantha Morgan Williams at samantha.williams@ucc.ie

¹⁷ H., Jones, ‘Zero Tolerance’ approach to incorrect written ascription of Gypsies and Travellers,’ Leeds Gate, 2012

<<https://leedsgate.co.uk/%E2%80%98zero-tolerance%E2%80%99-approach-incorrect-written-ascription-gypsies-and-travellers>>

¹⁸ “traveller” means a person to whom section 13 of the Act of 1988 (as amended by this Act) applies.” S 2(1) of the *Housing (Traveller Accommodation) Act 1998*

“that one is a member of the traveller community and the other is not (in this Act referred to as “the traveller community ground”).” S.2(i) *Employment Equality Act, 1998*

It must be recognised here that the Equal Status Acts use the correct ‘Traveller.’