

Shadow Report to GREVIO

Implementation of Istanbul Convention in Ireland

August 2022

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► Overview of all the recommendations

Article 7, Comprehensive and co-ordinated policies:

1. The State must work with and build both capacity and resources for civil society and NGOs to engage meaningfully with all aspects of the TNS that involve them.
2. The State should strengthen monitoring of the implementation of the TNS through the establishment of an Oireachtas Committee or a Victims Commissioner/Ombudsman with adequate resources and powers.

Article 8, Financial resources:

3. The State must provide sufficient, sustainable, multi-annual funding to ensure that civil society and NGOs are able to function effectively to maintain their programmes of work.
4. The State must recognise that funding provided to NGOs allows for their investment in infrastructure and business skills.

Article 10, Co-ordinating body:

5. The State must ensure that the oversight structures for the new agency are sufficiently robust to deliver on its central aim of a zero tolerance of DSGBV in our society.
6. The new agency should continue to build on the collaborative approach applied to the design of the TNS when working with civil society and NGOs.

Article 11, Data collection and research:

7. The State must ensure a 'gold standard' of data collection is implemented across all relevant agencies as a matter of urgency.
8. In line with the Convention's Article 11 standards, the State must ensure that data is disaggregated by age, gender, ethnicity, disability and relationship between victim/survivor and perpetrator.
9. The strategic actions outline in the Department of Justice's 2018 Data & Research Strategy must be progressed, with a particular urgency attached to Strategic Action number 2 and the advancement of the data hub.
10. The State must ensure that the Sexual Violence Survey (SVS) will be repeated on a regular basis to assess the prevalence over time. The experience of minority groups must also be captured in a regular manner.

Article 13, Awareness raising:

11. The State must provide specific and ongoing funding for public national awareness campaigns to develop a national shared understanding of DSGBV in addition to the meaning and importance of sexual consent.
12. Civil society and NGOs should be included in the design and delivery of campaigns and related materials and/or campaigns should be run in conjunction with them.

- 13. The campaigns must be inclusive, especially to groups that lack representation, and be accessible to all.**

Article 14, Education:

- 14. The review of Junior Cycle RSE should conclude before the end of 2022 and a revised curriculum, in line with NCCA recommendations should be implemented for all students in that cycle by the end of academic year 2022-23.**
- 15. RSE should be taught in all formal State education curricula in an age and developmentally appropriate way, and include sexual health and risks, consent and understanding boundaries, what a healthy relationship looks like, negative stereotypes and how to stay safe in the real world and online.**
- 16. Civil society and NGOs should be included in the design and delivery of teaching materials relating to DSGBV.**
- 17. Teachers – both specialist and general – should receive adequate training to ensure that they can deliver education and formation to their students in the area of relationships, consent and the prevention of sexual violence.**

Article 15, Training of professionals

- 18. All professionals who interact with victim/survivors of sexual violence including medical, legal, judicial personnel, An Garda Síochána, educators and social workers must be adequately trained and engage in constant updating of their training to ensure that victims of sexual violence can engage in the justice system without re-traumatisation and that they are empowered to give their best evidence as they seek access to justice.**
- 19. Members of An Garda Síochána and in particular its Divisional Protection Service Units should be adequately trained.**

Article 25, Support for victims of sexual violence

- 20. Adequate long-term funding must be provided by the State to ensure the quality and availability of specialist services to all victims/survivors. The funding must also enable the services to support the numbers of victims'/survivors presenting.**
- 21. The State must work collaboratively with agencies providing specialist services to identify and remove barriers so that victims/survivors with multiple, intersectional needs can access the support and protection they need.**
- 22. Implement all the actions in Supporting a Victim's Journey: A plan to help victims and vulnerable witnesses in sexual violence cases.**

Article 36, Sexual Violence including rape

- 23. The State should press for the speedy implementation of legislation to implement the Minister for Justice's recent commitment to abolish the defence of so called 'honest belief' which includes irrational and unreasonable belief, as well as the commitments to seek evidence that consent was present and to provide for expanded legal aid.**

24. The consent awareness raising campaign should include a research/ working group element to further consider the meaning of consent in sexual activity including a review of sexual coercion.

Article 40, Sexual Harassment

25. Provide a comprehensive, up to date study on the prevalence of sexual harassment in Irish life and culture.
26. Explore the expansion of existing employment legislation to address prevailing barriers to accessing justice in the current scheme.
27. Ratify the International Labour Organisation No 190 Violence and Harassment in the World of Work Convention.
28. Provide alternative pathways to reporting workplace sexual harassment that provide further safeguards for victim/survivors.
29. Develop and implement the Night-Time Economy Charter to ensure the safety of employees and patrons.
30. Enact the Online Safety and Media Regulation Bill and ensure it entails robust compliance and enforcement mechanisms.

Article 45, Sanctions and measures

31. A sentencing database, where information is stored on a national basis on sentences handed down for various offences and is available to the public should be introduced as a matter of urgency.
32. The Judicial Council's Committee on Sentencing Information and Guidelines should be fully resourced and funded to develop suitable methodologies for developing guidelines and asked to address and publish sexual offence guidelines as a matter of urgency.

Article 49, General obligations

33. Incentivise early engagement of trial parties and active avoidance of delays in trials.
34. Ensure there are sufficient judges and court accommodation to adjudicate sexual offence trials so that they can be heard without undue delay.
35. Introduce guidance for juries to address pre-existing biases, stereotypes, and assumptions they may have, whether conscious or unconscious, preferably to be given at the start of a trial but with judicial discretion to repeat it when needed.
36. Provide training to judges and legal professionals on how to use guidance appropriately and meaningfully.

Article 54, Investigations and evidence

37. Introduce strict time limits for applications to adduce sexual history evidence or to seek counselling records and ensure adequate notice is given to the Victim and to the Legal Aid Board to allow them to engage appropriate counsel.

38. Any legal practitioner furnishing advice or representation to a victim of sexual violence should have received appropriate certified training on best practice in representing victims/survivors.
39. Representation should continue during questioning of victims/survivors on sexual experience evidence to ensure it is fair and that a victim is not re-traumatised through the process.
40. Introduce a definition of 'sexual history evidence' in law to prevent such evidence from being inappropriately or inadvertently admitted.
41. Prioritise the promised review of the use of counselling notes by the defence in sexual offence trials.

Article 56, Measures of protection

42. Make available free legal advice and information for anyone reporting or considering reporting any type of sexual offence.
43. Maintain provision of legal advice and information throughout the trial process, as well as legal advocacy for complainants where needed.
44. Clear, relatable language should be used in order for the advice and information to be accessible.
45. Ensure that the use of screens and video link for adult victim/survivors to give evidence at trial is made available in all courthouses.
46. In order to vindicate the rights of the victim/survivor provide legal representation be provided throughout the trial.
47. At a minimum victims/survivors of any type of sexual violence should be allowed to avail of accessible, timely legal advice that is not contingent upon a prosecution being instigated.
48. Implement all the actions in Supporting a Victim's Journey: A plan to help victims and vulnerable witnesses in sexual violence cases.

► About Dublin Rape Crisis Centre

The mission of Dublin Rape Crisis Centre (DRCC) is to prevent the harm and heal the trauma of all forms of sexual violence in Ireland.¹ DRCC has been at the forefront of the Irish response to sexual violence for more than 40 years.² That response includes:

- Running the National 24-Hour Helpline and associated services;
- Providing individual advocacy, counselling and other support;
- Accompaniment and support services for those attending the Sexual Assault Treatment Unit (SATU) and those reporting to An Garda Síochána or attending court;
- Data collection and analysis on trends and issues relating to sexual violence.

As a frontline service provider, DRCC works with and supports people who have been directly affected by sexual violence including online abuse. DRCC are also committed to eliminating its tolerance through education, awareness raising, advocacy and policy analysis.

► Irish Context

The Istanbul Convention³ is a Council of Europe Convention on preventing and combating gender-based violence against women and domestic violence. Ireland ratified the Convention on the 8th of March 2019.⁴ The ratification of the Convention obliges the Government to address such violence fully in all its forms and to take measures to prevent violence against women, protect its victims and prosecute the perpetrators.⁵

In anticipation of and since its ratification of the Convention, Ireland has adopted legal changes aligning its laws with the Convention's provisions, including the enactment of the Female Genital Mutilation Act 2012, the Domestic Violence Act 2018, the transposition of the EU Victims of Crime directive through the Criminal Justice (Victims of Crime) Act 2017, the Criminal Law (Sexual Offences) Act 2017, the Criminal Law (Extraterritorial Jurisdiction) Act 2019, the Harassment, Harmful Communications and Related Offences Act 2020, and the Criminal Procedure Act 2021.

¹ For more information see Dublin Rape Crisis Centre website at: <https://www.drcc.ie/about/>

² For more information on DRCC 40th anniversary see: <http://bearfootproductions.com/work/dublin-rape-crisis-centre-40th-anniversary>

³ Council of Europe, Convention on Preventing and Combating Violence against Women and Domestic Violence ('Istanbul Convention') (adopted 11 May 2011, entered into force 1 August 2014) (CETS 210) <https://www.coe.int/en/web/istanbul-convention/about-the-convention>

⁴ Dublin Rape Crisis Centre (2019) *DRCC welcomes Istanbul Convention ratification by Government on International Women's Day 2019*: Available at:

<https://www.drcc.ie/news-resources/press-release-the-drcc-welcomes-istanbul-convention-ratifica/>

⁵ <https://www.coe.int/en/web/istanbul-convention/about-the-convention>

In addition, there have been policy initiatives. The Programme for Government of the Current Government (2019) recognised domestic, sexual and gender-based violence (DSGBV) as an epidemic that needed to be tackled urgently.⁶

Ireland has also enacted three National Strategies on DSGBV and their accompanying Action Plans. The First Strategy (2010–2014) was published in 2010⁷, the Second Strategy (2016–2021) in 2016⁸ and the Third National Strategy (TNS) (2022–2026) was published in June 2022.⁹ The establishment of a monitoring committee to oversee the second strategy's implementation facilitated a certain level of dialogue and information sharing among state agencies and offered frontline organisations the opportunity to engage in the implementation and monitoring efforts. According to the review conducted in preparation of the TNS, 41% of the actions promised during the Second National Strategy were completed, with the majority (55%) being described as 'ongoing'.¹⁰

The recent publication of the Third National Strategy on Domestic, Sexual and Gender-Based Violence (TNS) together with an implementation plan of actions¹¹ is regarded as a significant attempt towards moving Ireland further towards meeting its full obligations under the Istanbul Convention. This includes a commitment to establish an integrated whole-of-government national response through the creation of a new statutory agency.¹² This is a welcome progression.¹³ In addition, the process of consultation on the strategy, including a concept of 'co-design' was more participative than had been the case previously and identified the need for government to work with civil society and non-governmental agencies (NGOs) in the design and implementation of its strategies.

In addition to legislative change and the establishment of National Action Plans to address DSGBV, there have also been a number of other policy developments. In 2020, the Department of Justice published *Supporting A Victim's Journey: A Plan to Help Victims and Vulnerable Witnesses in Sexual Violence Cases*¹⁴, to advance the recommendations of a

⁶ Department of the Taoiseach (2020). *Programme for Government: Our Shared Future*. Pg. 86. Available at: <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>

⁷ Cosc, the National Office for the Prevention of Domestic, Sexual & Gender-based Violence (2010). *First National Strategy on Domestic, Sexual & Gender-Based Violence - 2010 - 2014*. Available at: <https://www.justice.ie/en/JELR/Final%20Electronic%20NS%20full%20doc%203%20March.pdf/Files/Final%20Electronic%20NS%20full%20doc%203%20March.pdf>

⁸ Cosc, the National Office for the Prevention of Domestic, Sexual & Gender-based Violence. (2016). *Second National Strategy on Domestic, Sexual & Gender-Based Violence - 2016 - 2021*. Available at: <https://www.justice.ie/en/JELR/Second%20National%20Strategy%20on%20Domestic,%20Sexual%20and%20Gender-based%20Violence%202016%20-%202021.pdf/Files/Second%20National%20Strategy%20on%20Domestic,%20Sexual%20and%20Gender-based%20Violence%202016%20-%202021.pdf>

⁹ Department of Justice (2022). *Zero Tolerance: Third National Strategy on Domestic, Sexual & Gender-Based Violence 2022 - 2026*. Available at: https://www.justice.ie/en/JELR/DOJ_DSGBV_Strategy_Web.pdf/Files/DOJ_DSGBV_Strategy_Web.pdf

¹⁰ *Ibid* pg.32

¹¹ Department of Justice (2022). *Zero Tolerance: Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan*. Available at: https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf

¹² *Ibid*

¹³ Dublin Rape Crisis Centre (2022) *Ambitious strategy on gender-based violence can pave way to Zero Tolerance society*: Available at: <https://www.drcc.ie/news-resources/ambitious-strategy-on-gender-based-violence-can-pave-way-to/>

¹⁴ Department of Justice (2020). *Supporting a Victim's Journey: A Plan to help victims and vulnerable witnesses in sexual violence cases*: Available at: https://www.justice.ie/en/JELR/Pages/Supporting_a_Victims_Journey

Working Group established in 2018 to *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* (The O'Malley Report).¹⁵

A participative democracy initiative, a Citizens' Assembly on Gender Equality, was established to consider gender equality and make recommendations to the Irish Parliament (the Oireachtas) to advance gender equality. It identified DSGBV as a barrier to gender equality. The Assembly's recommendations were published in the *Report of the Citizens' Assembly on Gender Equality 2021*.¹⁶ An Oireachtas Committee on Gender Equality has been established to consider the report and make recommendations to Government.

As part of its commitments under the Programme for Government, in 2021, the Department of Justice, in consultation with the Department of Children, Equality, Disability, Integration and Youth published an Audit Report.¹⁷ The report sets out findings and recommendations arising from a review of the effectiveness of the current structures in place to oversee policy and its implementation in the area of DSGBV. It found that the then current strategy was "*deficient in many ways and the [then current] implementation structure was ineffective in driving implementation and holding organisations to account*".¹⁸ That report was an initial step and part of the consultation on the TNS which has now been launched by the Minister for Justice, in conjunction with the Taoiseach and the Minister for Children, Equality, Disability, Inclusion and Youth.¹⁹

At the start of the COVID-19 pandemic, President of GREVIO, Marceline Naudi called on State Parties "*to do their utmost to ensure continuity in service provision and to keep offering support and protection to women and girls at risk of violence, with the involvement of all relevant actors: law enforcement agencies, social services, the justice sector, specialist support services and all relevant ministries*".²⁰

The 'Still Here'²¹ campaign was Ireland's national awareness raising campaign to get the word out that services continued, at the time of greatest COVID restriction.

The campaign was developed and funded by the Department of Justice in collaboration with a number of frontline services including Women's Aid, Safe Ireland, Dublin Rape Crisis Centre, Rape Crisis Network Ireland, National Women's Council of Ireland and the Men's

¹⁵ Tom O'Malley et al. (2018). *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences*: Available at:

https://www.justice.ie/en/JELR/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf/Files/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf

¹⁶ Citizen's Assembly on Gender Equality (2021) *Report of the Citizens' Assembly on Gender Equality*. Available at: <https://www.citizensassembly.ie/en/previous-assemblies/2020-2021-citizens-assembly-on-gender-equality/about-the-citizens-assembly/report-of-the-citizens-assembly-on-gender-equality.pdf>

¹⁷ Department of Justice (2021) *Domestic, Sexual and Gender-based Violence. An Audit of Structures*. Available at: https://www.justice.ie/en/JELR/DSGBV_Audit_Report.pdf/Files/DSGBV_Audit_Report.pdf

¹⁸ *Ibid* p.4

¹⁹ Department of the Taoiseach (June 28th 2022) <https://www.gov.ie/en/press-release/5b6b5-government-publishes-zero-tolerance-strategy-to-tackle-domestic-sexual-and-gender-based-violence/>

²⁰ Marceline Naudi (March 24th 2020) *For many women and children, the home is not a safe place*. Available at: <https://rm.coe.int/grevio-statement-covid-24-march-2020/pdfa/16809cf55e>

²¹ *Still Here* Domestic Abuse Awareness Campaign TV Advert <https://www.youtube.com/watch?v=VTcVbHpCTVQ>

Development Network. A strength of the ‘Still Here’ campaign was its link to An Garda Síochána’s (the national police force) ‘Operation Faoiseamh’ campaign.²²

The focus of that campaign was to reassure victim/survivors that An Garda Síochána was on hand to provide assistance to them during the pandemic restrictions and to send a message to perpetrators that they would be prosecuted. The announcement by Tusla,²³ the Child & Family Agency, that sexual and domestic violence services would be supported as one of its three priorities, reassured the DSGBV sector that those they work for and with were not being forgotten. The recognition by these and other State agencies of the COVID-19 impact on the sector was vital in allowing them to continue their work with victim/survivors throughout the pandemic.

► **About the submission**

DRCC is pleased to submit a shadow report to GREVIO, the independent expert monitoring body for the implementation of the Council of Europe Convention on preventing and combatting violence against women and domestic violence (Istanbul Convention), as part of Ireland’s review under the Convention. The purpose of this report is to contribute to the dialogue between the Irish Government and GREVIO, about the first baseline evaluation of the implementation of the Istanbul Convention in Ireland.

DRCC is a member of the Irish Observatory on Violence Against Women which is chaired by the National Women’s Council (NWC)²⁴ and has also contributed to the shadow report compiled by the Irish Observatory and endorses that report.

This report to GREVIO focuses on issues relating to sexual violence and relates to several articles across different chapters of the Convention. These were selected as they highlight the state obligations relating to the main issues that are relevant to the work of DRCC, namely:

- **Chapter II Integrated policies and data collection**

Article 7, comprehensive and coordinated policy; article 8, financial resources; article 10 coordinating body; and article 11, data collection and research.

- **Chapter III Prevention**

Article 13, awareness raising; article 14, education and article 15, training of professionals.

²² *Operation Faoiseamh*. See: <https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2021/december/operation-faoiseamh-an-garda-siochana-still-here-to-listen-to-help-and-to-protect-.html>

²³ Tusla, Child & Family Agency (2020). *Tusla Update on Services during Covid-19*: <https://www.tusla.ie/news/tusla-update-on-services-during-covid-19-pandemi/>

²⁴ For more information see the National Women’s Council website at: https://www.nwci.ie/discover/what_we_do/building_the_womens_movement/convening_and_chairing_womens_rihts_groups/national_observatory_on_violence_against_women

- **Chapter IV - Protection and support**

Article 25, support for victims of sexual violence.

- **Chapter V - Substantive law**

Article 36, sexual violence including rape; article 40, sexual harassment; and article 45, sanctions and measures.

- **Chapter VI - Investigation, prosecution, procedural law and protective measures**

Article 49, general obligations; article 54, investigations and evidence; and article 56, measures of protection.

► **Chapter II Integrated policies and data collection**

Article 7 – Comprehensive and co-ordinated policies

1 Parties shall take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer a holistic response to violence against women.

2 Parties shall ensure that policies referred to in paragraph 1 place the rights of the victim at the centre of all measures and are implemented by way of effective co-operation among all relevant agencies, institutions and organisations.

3 Measures taken pursuant to this article shall involve, where appropriate, all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society.

It is clear from recently undertaken research that in order to combat DSGBV the need for ongoing inter-agency communication and collaboration between government agencies, regional and local authorities, civil society and NGOs is vital.²⁵ One major issue identified by the research into the *Audit of Structures* was the fragmentation across and within parties that deal with DSGBV. That fragmentation included a lack of coordination and progress in implementation, misalignment of policy objectives, practices and resources, and disconnections between functions, services and people.

Despite the findings of the Audit, the TNS with its accompanying implementation plan based on a recognition that to be effective it requires a whole of government approach, co-ordinated actions overseen by government and led by a single department, is a significant step forward. The TNS has adopted a model of co-design and co-production with civil

²⁵ Department of Justice (2021) *Domestic, Sexual and Gender-based Violence. An Audit of Structures*. Available at: https://www.justice.ie/en/JELR/DSGBV_Audit_Report.pdf/Files/DSGBV_Audit_Report.pdf

society and NGOs which recognises the important role they have in achieving the aims of the strategy and holding the State to account in fulfilling those aims. The failure to co-design effectively in past strategies meant that objectives and aims were not met.

The State must ensure that both lead and support agencies have clear guidelines and protocols to follow, to achieve their stated goals. In order to scale up to meet the need of survivors in a timely way, civil society and NGOs need to have access to supports to build their capacity.

The TNS does not include any external accountability mechanism in relation to monitoring the implementation of the Strategy. Consideration must be given to addressing this significant gap.

Recommendations:

- 1. The State must work with and build both capacity and resources for civil society and NGOs to engage meaningfully with all aspects of the TNS that involve them.**
- 2. The State should strengthen monitoring of the implementation of the TNS through the establishment of an Oireachtas Committee or a Victims Commissioner/Ombudsman with adequate resources and powers.**

Article 8 – Financial resources

Parties shall allocate appropriate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the scope of this Convention, including those carried out by non-governmental organisations and civil society.

Notwithstanding the additional €4.9million funding allocated to organisations supporting victims of abuse and crime for 2022,²⁶ civil society and NGOs in the DSGBV sector do not receive multi-annual funding stream for services to be able to plan ahead. The sector also relies heavily on charitable donations and fundraising events to keep services operating, all of which were greatly impacted during the COVID-19 pandemic.

A lack of resources and insufficient funding of the DSGBV sector has contributed to a history of silos and tensions between NGOs in a process that has been described as being “pitted” against each other for funding.²⁷ The absence of sufficient, sustainable, multi-

²⁶ Department of Justice (2021). *Minister McEntee announces details of funding for organisations supporting victims of abuse and crime to mark 16 days of activism against gender-based violence*: See at: <https://www.justice.ie/en/JELR/Pages/PR21000286>

²⁷ Department of Justice (2021) *Domestic, Sexual and Gender-based Violence. An Audit of Structures*. Pg. 27. Available at: https://www.justice.ie/en/JELR/DSGBV_Audit_Report.pdf/Files/DSGBV_Audit_Report.pdf

annual funding impacts civil society and NGOs ability to recruit and retain staff and runs a risk that NGOs like DRCC will be unable to meet the vital counselling and therapeutic needs of victim/survivors of rape and other sexual abuse in a timely way. It also puts a significant and unwarranted strain on those organisations' resources – a large part of which is their people.

The TNS and implementation plan was accompanied by a budget. That budget commitment over the five years of the strategy is welcome. It did not however take into account the full cost to NGOs of providing the required services. To ensure that the TNS strategy can succeed and lead to a healthier, safer Ireland, the State must adequately resource Rape Crisis Centres and other NGOs on whom the State depends to part-deliver its strategy.

If the strategy is successful, there will be an increased demand for services. Many of the NGOs and support services identified within the TNS have not had the funds to invest in infrastructure and business skills which will be required by them to scale up to meet demand while maintaining good governance and regulation. There is need for the State to recognise that funding allocation must also allow for investment in areas such as business planning, management, communication, marketing and human resources.

Recommendations:

- 1. The State must provide sufficient, sustainable, multi-annual funding to ensure that civil society and NGOs are able to function effectively to maintain their programmes of work.**
- 2. The State must recognise that funding provided to NGOs allows for their investment in infrastructure and business skills.**

Article 10 – Co-ordinating body

- 1 Parties shall designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by this Convention. These bodies shall co-ordinate the collection of data as referred to in Article 11, analyse and disseminate its results.*
- 2 Parties shall ensure that the bodies designated or established pursuant to this article receive information of a general nature on measures taken pursuant to Chapter VIII.*
- 3 Parties shall ensure that the bodies designated or established pursuant to this article shall have the capacity to communicate directly and foster relations with their counterparts in other Parties.*

The fragmented structures identified by the audit of DGBV services²⁸ illustrated how policy and legislation sit within a separate government department to those providing funding and overseeing the provision of DSGBV services. The development of the TNS and Implementation Plan²⁹ for Zero Tolerance of such violence is based on a recognition that to be effective it requires: -

- A whole of government approach;
- Co-ordinated action overseen by government and led by a standalone State agency;³⁰
- Co-design and co-implementation with a range of agencies, some statutory and many non-governmental.³¹

The accountability and oversight mechanisms within the previous strategies lacked structures to adequately encourage state agencies to achieve an end goal of eliminating DSGBV. The need for a central focal point in government to coordinate all necessary actions for combating DSGBV is welcome. The governing legislation underpinning the new agency must be sufficiently wide-ranging and robust to ensure that an integrated cross-departmental response is used to deliver on a zero tolerance of DSGBV in our society.

Recommendation:

- 1. The State must ensure that the oversight structures for the new agency are sufficiently robust to deliver on its central aim of zero tolerance of DSGBV in society.**
- 2. The new agency should continue to build on the collaborative approach applied to the design of the TNS when working with civil society and NGOs.**

²⁸ Department of Justice (2021) *Domestic, Sexual and Gender-based Violence. An Audit of Structures*. Available at: https://www.justice.ie/en/JELR/DSGBV_Audit_Report.pdf/Files/DSGBV_Audit_Report.pdf

²⁹ Department of Justice (2022). *Zero Tolerance: Third National Strategy on Domestic, Sexual & Gender-Based Violence 2022 – 2022*. Available at: https://www.justice.ie/en/JELR/DOJ_DSGBV_Strategy_Web.pdf/Files/DOJ_DSGBV_Strategy_Web.pdf

³⁰ Ibid p.3

³¹ Ibid p.41

Article 11 – Data collection and research

- 1 For the purpose of the implementation of this Convention, Parties shall undertake to:
 - a. collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention;
 - b. support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention.
- 2 Parties shall endeavour to conduct population-based surveys at regular intervals to assess the prevalence of and trends in all forms of violence covered by the scope of this Convention.
- 3 Parties shall provide the group of experts, as referred to in Article 66 of this Convention, with the information collected pursuant to this article in order to stimulate international co-operation and enable international benchmarking.
- 4 Parties shall ensure that information collected pursuant to this article is available to the public.

Preventing and combating violence against women and domestic violence requires evidence-based policy-making. This implies effectively documenting the magnitude of violence by producing robust, comparative data in order to guide policy and to monitor the implementation of measures to address the problem.³²

While previous Strategies were committed to establishing a bottom line ‘gold standard’³³ of data collection and analysis by all agencies working in the area of DSGBV and included a number of actions in relation to data and disaggregation of data by gender, progress was disappointing. The data collection commitments were not realised during the lifetime of that strategy and hampered the level at which results could be measured.

The only dedicated study of sexual violence in Ireland conducted in 2002, The SAVI Report: Sexual Abuse and Violence in Ireland, found that 42% of women and 28% of men experienced some form of sexual abuse/assault in their lifetime.³⁴ A more recent study sought to identify what proportion of Irish adults experienced sexual violence, and to what extent different forms of sexual violence are associated with adverse psychosocial

³² GREVIO (2011). *Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, Explanatory report CETS 210 Pg. 14, para 74. Available at: <https://rm.coe.int/ic-and-explanatory-report/16808d24c6>.

³³ Cosc, the National Office for the Prevention of Domestic, Sexual & Gender-based Violence. (2016). *Second National Strategy on Domestic, Sexual & Gender-Based Violence – 2016 – 2021*. Action 3.600. Available at: <https://www.justice.ie/en/JELR/Second%20National%20Strategy%20on%20Domestic,%20Sexual%20and%20Gender-based%20Violence%202016%20-%202021.pdf/Files/Second%20National%20Strategy%20on%20Domestic,%20Sexual%20and%20Gender-based%20Violence%202016%20-%202021.pdf>

³⁴ Hannah McGee, Rebecca Garavan, Mairéad de Barra, Joanne Byrne & Ronán Conroy. *The SAVI Report: Sexual Abuse and Violence in Ireland* (Liffey Press 2002). <http://www.drcc.ie/wp-content/uploads/2011/03/savi.pdf>

outcomes. The results suggest that approximately one-in-three (34.4%) of Irish adults experienced some form of sexual violence.³⁵ In November 2018, the Department of Justice and the Central Statistics Office (CSO) announced the launch of a new study on sexual violence,³⁶ which is due to be published in 2024.³⁷ This welcome new survey will provide prevalence data on DSGBV, however, disaggregated data on minority groups will not be available when the main report is being published. The absence of prevalence data on DSGBV in relation to minority groups is concerning.

Data and information gaps not only limit the ability to understand the scale of DSGBV in Ireland but to assess its performance and progress in line with international human rights obligations:

- UN Convention on the Elimination of All forms of Discrimination against Women;³⁸
- UN Convention against Torture;³⁹
- UN Sustainable development goals.⁴⁰

When official statistics do not detail the level and depth of sexual crime, it is impossible to determine the extent of the problem. The CSO gathers data from An Garda Síochána's (AGS) database, 'PULSE', which is marked 'Under Reservation' meaning that the CSO has concerns about data completeness and accuracy.⁴¹

In publishing the 2018 Data & Research Strategy,⁴² the Department of Justice recognises the need for a greater breadth and depth of understanding in the analysis of data from across the criminal justice system. Developing the Criminal Justice Operational Hub as set out in Strategic Action 2⁴³ would enable the efficient and secure exchange of appropriate data and

³⁵ Vallières, F. et al (2020). *Sexual violence and its associated psychosocial effects in Ireland*. Available at:

<https://mural.maynoothuniversity.ie/15111/1/PH-Sexual-violence-2020.pdf>

³⁶ Department of Justice (2018). Press release available at: <https://www.gov.ie/en/press-release/db6139-department-of-justice-and-equality-and-the-central-statistics-office/>

³⁷ Central Statistics Office on Sexual Violence Survey (SVS)

<https://www.cso.ie/en/surveys/surveysunderdevelopment/sexualviolencesurveysvs/>

³⁸ CEDAW concluding observations on Ireland. March 2017

19. The Committee recommends that the State party (d) Take measures to collect data which should, inter alia, be disaggregated by sex, gender, ethnicity, disability and age, in order to inform policy and programmes on women and girls, as well as assist in tracking progress in the achievement of the Sustainable Development Goals

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/IRL/CO/6-7&Lang=En

³⁹ UNCAT concluding observations on Ireland August 2017

32. The Committee recommends that the State party: (b) Ensure the full implementation of the National Strategy on Domestic, Sexual and Gender-based Violence 2016-2021, including by gathering data on the extent of such violence

https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_COC_IRL_28491_E.pdf

⁴⁰ Targets and indicators for Sustainable Development Goal 5.2, requiring "Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation" require comparative data as evidence. <https://unstats.un.org/sdgs/metadata/?Text=&Goal=5&Target=5.2>

⁴¹ Central Statistics Office: <https://www.cso.ie/en/methods/crime/statisticsunderreservationfaqs/>

⁴² Data & Research Strategy 2018-2020 Supporting delivery of "A safe, fair and inclusive Ireland" (July 2018)

https://www.justice.ie/en/JELR/Department_of_Justice_and_Equality_Data_and_Research%20Strategy_2018-2021.pdf/Files/Department_of_Justice_and_Equality_Data_and_Research%20Strategy_2018-2021.pdf

⁴³ Ibid. Pg. 7.

information within the Justice and Equality Sector. The integration of data from across the criminal justice system would provide a unique view of offender interactions within the system from beginning to end which could further inform policy and practice.⁴⁴

Data collected needs to be relevant and co-ordinated. To achieve this, the categories in which data is collected must be the same as the categories used by the agencies working in the area. A practice that has evolved, is that data is collected for specific purposes, rather than being collected as part of an integrated system designed to prevent DSGBV. Government agencies such as the judiciary, the police, the health sector and social welfare services have data systems in place for the internal recording needs of the agency, but that data is seldom comparable across the agencies. As a result, the State does not have the evidence it needs to chart attrition and to better reform processes. In order to get a picture of the extent of DSGBV, State agencies urgently need to agree on definitions and methods of data collection in order to enhance comparability across the different data areas and to share their data and its analysis.

Ultimately, what is needed is comprehensive, robust, disaggregated data on all forms of DSGBV so that the true extent of the problem can be fully understood. Action 4.3 of the TNS sets out a commitment to develop enhanced coordination of data collection strategies. Much of the detail in relation to how these actions in particular about how *‘to address the data linking challenges, and propose any legislative amendments to address any barriers to enabling the lawful exchanged of data’*⁴⁵ will be progressed, rest with the establishment of the new agency.

Recommendations:

- 1. The State must ensure a ‘gold standard’ of data collection is implemented across all relevant agencies as a matter of urgency.**
- 2. In line with the Convention’s Article 11 standards, the State must ensure that data is disaggregated by age, gender, ethnicity, disability and relationship between victim/survivor and perpetrator.**
- 3. The strategic actions outline in the Department of Justice’s 2018 Data & Research Strategy must be progressed, with particular urgency attached to Strategic Action number 2 and the advancement of the data hub.**
- 4. The State must ensure that the Sexual Violence Survey (SVS) will be repeated on a regular basis to assess the prevalence over time. The experience of minority groups must also be captured in a regular manner.**

⁴⁴ *Developing an Evidenced Based Approach using Research and Analysis: The Department of Justice’s Strategy* (conference paper delivered by Gurchand Singh, Chief Information Officer) see pgs. 6 to 11: https://acjrd.ie/images/PDFs/annual-conference/ACIRD_Conference_Report_2018_-_Unlocking_the_Power_of_Data_-_pdf

⁴⁵ Department of Justice (2022). *Zero Tolerance: Third National Strategy on Domestic, Sexual & Gender-Based Violence 2022 – 2022*. Pg. 45. Available at: https://www.justice.ie/en/JELR/DOJ_DSGBV_Strategy_Web.pdf/Files/DOJ_DSGBV_Strategy_Web.pdf

► Chapter III – Prevention

Article 13 Awareness Raising

1 Parties shall promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women’s organisations, where appropriate, to increase awareness and understanding among the general public of the different manifestations of all forms of violence covered by the scope of this Convention, their consequences on children and the need to prevent such violence.

2 Parties shall ensure the wide dissemination among the general public of information on measures available to prevent acts of violence covered by the scope of this Convention.

The level of awareness in Irish society of what constitutes sexual violence is relatively low. Myths and stereotypes abound. There is a lack of public debate and educational programmes are inadequate for young people in the education system.

Irish law and policy identify sexual violence as an absence of consent and sexual offences are also framed in the context of consent. In 2020, noting a too-slow shift in thinking on the topic, DRCC commenced a sustained, committed campaign to bring about a national conversation on consent. As part of that, in the first ever research of its kind in Ireland, DRCC conducted research in 2021 on Irish societal attitudes to consent in the context of sexual activity and found that 70% of those surveyed identified that Ireland had a problem with consent⁴⁶. Among contributing factors, the research showed that Irish attitudes included the belief that consent can be ignored as well as a lack of understanding around the right to withdraw consent.⁴⁷ It found inhibitions around talking about sex and a lack of clarity in all age groups on people’s own, and their partners attitude to and confidence about sexual activity.

As part of the TNS, the Department of Justice has committed to progressing a national campaign on consent.⁴⁸ DRCC has shared its research findings with the Department of Justice which has provided funding for DRCC’s further work on this campaign in 2022. This funding is welcome and has permitted further research and development of the campaign by DRCC which will in due course also be shared with the Department.

The Convention obliges governments to promote and conduct awareness-raising campaigns in conjunction with civil society and NGOs. Prior to this, many civil society and NGOs including DRCC and the State itself have led intermittent awareness raising initiatives particularly on International Women’s Day and around the 16 Days of Action

⁴⁶ Dublin Rape Crisis Centre (2021) *Research shows most people believe Ireland has a problem with consent*. Available at: <https://www.drcc.ie/news-resources/news/research-shows-most-people-believe-ireland-has-problem-with/>

⁴⁷ Ibid

⁴⁸ Department of Justice (2022). *Zero Tolerance: Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan*. Action 1.1.5, pg. 5. Available at: https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf

against Gender-Based Violence.⁴⁹ The Government's 2020 campaign 'No Excuses' was focused on gender-based violence: in particular sexual harassment.⁵⁰ In the same year, DRCC conducted a campaign focused on clarity and communication in sexual relationships, using the hashtag #100consent, teaming up with 22 of Ireland's most popular TikTokers to spread that important message.⁵¹

The TNS has specifically committed the Government to a national campaign on consent⁵² in conjunction with specialist and frontline services. To implement these actions, the State must provide specific and ongoing funding for public national awareness campaigns to develop a national shared understanding of DSGBV, in addition to the meaning and importance of sexual consent. Civil society and NGOs must be included in the design and delivery of campaigns and related materials if objectives and aims are to be met.

Recommendations:

- 1. The State must provide specific and ongoing funding for public national awareness campaigns to develop a national shared understanding of DSGBV in addition to the meaning and importance of sexual consent.**
- 2. Civil society and NGOs should be included in the design and delivery of campaigns and related materials and/or campaigns should be run in conjunction with them.**
- 3. The campaigns must be inclusive, especially to groups that lack representation, and be accessible to all.**

Article 14 – Education

1 Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.

2 Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.

⁴⁹ See <https://www.drcc.ie/policy-advocacy/campaigns/>

⁵⁰ See <https://www.justice.ie/en/JELR/Pages/PR20000263>

⁵¹ '#100consent. #100PERCENT - be 100% or it's not consent'. Available: <https://www.drcc.ie/policy-advocacy/campaigns/100consent/>

⁵² Department of Justice (2022). *Zero Tolerance: Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan*. Action 1.1.5, pg. 5. Available at:

https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf

The previously cited SAVI Report (2002), found that one in four adults experienced sexual violence in their lifetime.⁵³ Nonetheless, to this day, many children and young people do not receive adequate formation and education in their school years. The educational curriculum and Relationships and Sexuality Education (RSE) programme in particular, needs to aim concretely and specifically to protect children and young people in Ireland from having similar negative experiences. As was identified by an Oireachtas Committee in January 2019, the current curriculum developed in 1999,⁵⁴ is outdated and it does not place a sufficient emphasis on Social, Personal and Health Education and Relationships and Sexuality Education (SPHE/RSE). As a result, key topics such as consent, relationships, sex education, gender identity and pornography are not systematically addressed in schools.

As teachers are one of the key constituents influencing quality implementation of the RSE program⁵⁵ they need to have the appropriate training and time to provide that education. In order to train educators who can deliver gender-sensitive teaching methods in school, in youth groups, and in many other varied settings, sufficient resources must be made available, materials must be kept up to date and accessible to optimise the learning of children and young people. Training for teachers in examining their own attitudes and beliefs in the areas and themes that arise in the curriculum should also be provided as a core topic. Currently, teachers may choose to undertake additional courses such as DRCC's BodyRight Programme⁵⁶ but may struggle to integrate their learning into the already crowded State curriculum.

A review of the curriculum with wide consultation was undertaken by the State's own advisory National Council for Curriculum and Assessment (NCCA) and published in December 2019.⁵⁷ Its recommendations have not been implemented in any structured way into the school curriculum although that body continues to develop educational materials, on some of which DRCC's education team have been consulted.

DRCC acknowledges the objectives relating to education in the TNS,⁵⁸ and the actions to "resource, support and implement the updated, Primary Junior and Senior cycle SPHE/RSE

⁵³ Hannah McGee, Rebecca Garavan, Mairéad de Barra, Joanne Byrne & Ronán Conroy. *The SAVI Report: Sexual Abuse and Violence in Ireland* (Liffey Press 2002). <http://www.drcc.ie/wp-content/uploads/2011/03/savi.pdf>

⁵⁴ The Irish Examiner (2019). *Report to call for reform of Ireland's 20-year-old sex education programme*: See: <https://www.irishexaminer.com/news/arid-30900823.html> and Joint Committee on Education and Skills Report on RSE (2019). Available at:

https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_education_and_skills/reports/2019/2019-01-29_report-on-relationships-and-sexuality-education_en.pdf

⁵⁵ WHO 2017. *Training matters: A framework for core competencies of sexuality educators*: Available at: https://www.euro.who.int/_data/assets/pdf_file/0003/337593/BZgA-training-framework.pdf

⁵⁶ See: <https://www.drcc.ie/services/education-training/courses/bodyright-facilitator-training-programme/>

All in all, there are approx. 40 voluntary programmes available to teachers, but none are sanctioned/ authorised/ promoted by the Department of Education.

⁵⁷ National Council for Curriculum and Assessment (2019). *Report on the Review of Relationships and Sexuality Education in Primary and Post-Primary Schools*. Available at: <https://ncca.ie/media/4462/report-on-the-review-of-relationships-and-sexuality-education-rse-in-primary-and-post-primary-school.pdf>

⁵⁸ Department of Justice (2022). *Zero Tolerance: Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan*. Action 1.3, pg.11. Available at: https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf

curriculum specification in all schools”,⁵⁹ to “provide education and awareness and referral information for teaching staff and management in primary and secondary level education in relation to gender equality and DSGBV.....”,⁶⁰ and to “deliver age-appropriate DSGBV awareness and education programmes to young people no longer involved in the formal educational system, in non-formal educational settings such as sports and youth settings and/or in state care using a community development approach”.⁶¹

On 18 July 2022, the Minister for Education announced a review of the Relationships and Sexuality Education Programme for the Junior cycle (approx. 12-16-year olds) and is reported as saying that it was ‘a step in the right direction’.⁶² The announcement was also linked to the TNS.

In the view of DRCC, the failure to implement a comprehensive modern programme of sexuality and relationship education is a failure to protect the rights of children and young people in Ireland to an education which respects the development of their personality, physical and mental abilities and their preparation to live in a society of tolerance and equality.⁶³ DRCC recommends the speedy conclusion of the review and the implementation of a modern, fit for purpose programme as a core, mandatory element in all schools immediately. DRCC recommends that civil society and NGOs be included in the design and delivery of teaching materials relating to DSGBV as the implementation plan is rolled out.

Recommendations:

- 1. The review of Junior Cycle RSE should conclude before the end of 2022 and a revised curriculum, in line with NCCA recommendations should be implemented for all students in that cycle by the end of academic year 2022-23.**
- 2. RSE should be taught in all formal State education curricula in an age and developmentally appropriate way, and include sexual health and risks, consent and understanding boundaries, what a healthy relationship looks like, negative stereotypes and how to stay safe in the real world and online.**
- 3. Civil society and NGOs should be included in the design and delivery of teaching materials relating to DSGBV.**
- 4. Teachers – both specialist and general – should receive adequate training to ensure that they can deliver education and formation to their students in the area of relationships, consent and the prevention of sexual violence.**

⁵⁹ Department of Justice (2022). *Zero Tolerance: Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan*. Action 1.3.1, pg. 11. Available at:

https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf

⁶⁰ Ibid, Action 1.3.2, pg. 11

⁶¹ Ibid, Action 1.3.3, pg. 12

⁶² Irish Examiner (2022). *Consent and Pornography to be part of Revamped Sex Education*. Available at:

<https://www.irishexaminer.com/news/arid-40920554.html>

⁶³ The UN Convention on the Rights of the Child Article 28 and 29

Article 15 – Training of professionals

1 Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.

2 Parties shall encourage that the training referred to in paragraph 1 includes training on co-ordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases of violence covered by the scope of this Convention.

The impact of the trauma of sexual violence is not well understood and is not adequately discussed in many of Ireland’s institutions including the justice system. Other institutions, including education as noted above, but also medical or social care personnel or those delivering public services often fail to appreciate the impact of the trauma of sexual violence on a person entitled to and in receipt of services. Victim/survivors of sexual violence must have access to all the specialised support they need and those providing the support should be adequately resourced to provide them.

Failure to properly train all professionals who interact with victim/survivors of sexual violence can result in unnecessary re-traumatisation. Victim/survivors who come forward to report the harm and/or crimes of sexual violence benefit significantly if all personnel involved in providing frontline services to them including medical personnel, legal personnel (including the Courts service of Ireland), educators and social workers (including Tusla) are adequately trained.

In addition, deeply engrained attitudes and biases relating to sexual activity and gender stereotypes can blind professionals and service providers to the harm or crime and can lead to an inappropriate response.

- **Justice system**

An Garda Síochána (AGS) are often the first point of contact by the victim/survivor in the justice system and their approach is of particular importance to victims of crime. According to their website,⁶⁴ AGS aim to deliver a consistently high level of service to every victim of crime by providing a respectful, reassuring, responsive and reliable service in a non-discriminatory manner. AGS have made significant progress in recent years in building understanding on the particular vulnerability of victim/survivors of sexual violence and the establishment of Victim Liaison Officers and Victim Services is welcome. So too is the establishment and roll out to every Garda Division a Divisional Protective Service Units (DPSUs)⁶⁵ where specially trained and equipped Gardaí can offer a manifestly most effective and efficient service – as witnessed by DRCC’s accompaniment service which

⁶⁴ <https://www.garda.ie/en/victim-services/>

⁶⁵ AGS Divisional Protective Service Units now Operational Nationwide (2020). See: <https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2020/september/an-garda-siochana-divisional-protective-services-units-now-operational-nationwide-.html>

supported circa 200 in 2021 reporting crime. DRCC also welcomes the clear policy focus of the AGS on building better investigation systems.

However, gaps remain. All DPSUs are not fully staffed with trained personnel. Outside of those units, those reporting crime cannot be assured a consistent service from front line Gardaí. Despite the enormous growth in cybercrime, insufficient numbers of Gardaí are trained and allocated to the investigation of such crime. Little or no advance has been made in building risk assessment tools. Specialist services such as DRCC are not included in the design or the delivery of AGS training, although on occasion, a representative (including DRCC personnel) may be invited to provide some input on an ad-hoc basis.

A 2018 Commission on the Future of Policing, the recommendations of which were largely accepted by Government, identified that from the time of recruitment, police education should not only teach the duties and responsibilities of police officers and the skills and competencies needed to carry out those duties and responsibilities, it should also instil the cultural values needed: high ethical and professional standards, respect for human rights and a culture of continuous learning and improvement.⁶⁶ In the context of this report, training on how to deal with this group of vulnerable victim/survivors needs to extend to all AGS personnel, sworn and civilian at appropriate levels, must be trauma informed and conscious of the particularly investigative skills required. This programme should be set out clearly and monitored for effectiveness as it progresses.

- **The Courts**

As the O'Malley Report (2020) points out, victims of sexual offences may be particularly vulnerable in the court system. While there have been some initiatives towards training over the last couple of years – mentioned below – there is as yet no systematic, agreed approach which would build the necessary skillsets in lawyers (including judges) dealing with the investigation and prosecution of sexual offences.⁶⁷

As mentioned, some initiatives have been undertaken. On foot of *Supporting A Victim's Journey*, the Department of Justice implementation plan which followed the O'Malley Report (2020)⁶⁸ a working group of Department personnel together with specialist civil society and NGOs and the legal educators has discussed what is required for trainee lawyers as well as for practitioners. Both the solicitors' and barristers' training schools have engaged in certain education initiatives in building trauma awareness. The DPP's office has engaged in trauma informed training for a number of years.

⁶⁶ Commission on the Future of Policing in Ireland (2018). *Future of Policing*. Para. 20.2. Available at: <http://www.policereform.ie/en/POLREF/Pages/PB18000006>

⁶⁷ This is also recommended in Tom O'Malley et al., *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences*. Paras 10.10 and 10.15 available at: https://www.justice.ie/en/JELR/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf/Files/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf

⁶⁸ Department of Justice (2020). *Supporting a Victim Journey: Implementation Plan*. Available at: https://www.justice.ie/en/JELR/Pages/Supporting_a_Victims_Journey_Implementation_Plan

The Judicial Council has also conducted innovative training for newly appointed judges.⁶⁹ DRCC has been invited to make presentations to both the Judicial Council and Law Society training. These initiatives are welcome but training programmes need to be designed in consultation with those who work with victim/survivors and need to extend to all those professionals who interact with them.

DRCC acknowledges the TNS addresses training of professionals and support staff, including medical, social worker, educationalists, legal, mental health, homeless services, carers and people who work in residential and day-care centres, local authority and approved housing bodies, staff working in direct provision centres and immigration related services.⁷⁰ The staffing and training of An Garda Síochána and Gardai in the DPSU's is also addressed,⁷¹ as well as the judiciary, the Courts Service and the legal profession.⁷²

Recommendations:

- 1. All professionals who interact with victim/survivors of sexual violence including medical, legal, judicial personnel, An Garda Síochána, educators and social workers must be adequately trained and engage in constant updating of their training to ensure that victim/survivors of sexual violence can engage in the justice system without re-traumatisation and that they are empowered to give their best evidence as they seek access to justice.**
- 2. Members of An Garda Síochána and in particular its Divisional Protection Service Units should be adequately trained.**

► Chapter IV - Protection and support

Article 25 – Support for victims of sexual violence

Parties shall take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims.

There are 16 specialist Rape Crisis Centres around Ireland, geographically based. They have evolved over the years. DRCC is the oldest, in place since 1979 and, by virtue of its location in the capital, the largest of these Centres. The Centre provides a number of specialised

⁶⁹ Mary Carolan (September 17th 2021). *New to the bench judges to be trained for the first time*. Available at: <https://www.irishtimes.com/news/crime-and-law/new-to-the-bench-judges-to-be-trained-for-the-first-time-1.4676043>

⁷⁰ Department of Justice (2022). *Zero Tolerance: Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan*. Action 1.4.1, 1.4.2, pg. 13. Available at: https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf

⁷¹ Ibid. Action 3.5.1, pg.38

⁷² Ibid. Action 3.1.1, pg. 31

services to victim/survivors of sexual violence, their supporters and professionals. These services include: -

- The National 24-Hour confidential Helpline with associated interpretation and text and webchat services;
- Therapy to adults and, with parental consent, to 16-17-year-old young people;
- Associated client support services to assist with the non-therapeutic needs of clients;
- Accompaniment to Dublin's Sexual Assault Treatment Unit at the Rotunda Hospital;
- Accompaniment, information and support to those reporting into the Justice system; and
- Education and training courses to volunteers and other professionals who do or who may encounter victim/survivors of sexual violence in the aftermath of rape.

In addition, the Centre engages in analysis which feeds into information to politicians and policy makers and in campaigns for prevention of sexual violence and law reform.

Commissioned by Tusla, the Child and Family Agency, who receive funding from the Department of Children Equality Disability Integration & Youth (DCEDIY), DRCC runs the State's National 24-Hour Helpline, a free and confidential listening and support service for anyone who has been raped, sexually assaulted, sexually harassed or sexually abused at any time in their lives. It is staffed by telephone counsellors and is accredited by the Helplines Partnership (a nationally recognised quality standard body).⁷³ The helpline operates 24 hours a day, 7 days a week in English. In addition, there is a text service for those who are deaf or hard of hearing, and, thanks to a mixture of State and public funding in the last few years, it now offers live interpreting in more than 200 languages and a webchat service.⁷⁴ It has a quality mark awarded by the UK based Helplines Partnership.

In 2020, the Helpline received 13,438 contacts, with 6,451 calls being first-time contacts.⁷⁵ The Helpline is staffed by a mixture of paid staff and specially trained volunteers.

DRCC provided 6,010 therapy appointments to 570 clients in 2020.⁷⁶ While some clients who can afford it will pay a contribution, therapy and counselling services are free to all those who need it. Please see a note on the impact of COVID 19 below. However, ever before COVID – a time when numbers seeking therapy spiked,⁷⁷ DRCC did not have capacity to meet demand and has a waiting list at any given time of over 200 people. While those who seek help following a recent rape are likely to be seen within 1-3 weeks of requesting an appointment, those who present with a history of more distant abuse may have to wait for several months to be seen, though they will have access to the Helpline in the meantime.

⁷³ See <https://www.helplines.org/helplines-standard/what-is-the-helplines-standard/>

⁷⁴ See <https://www.drcc.ie/services/helpline/>

⁷⁵ See DRCC Annual Report 2020. Available at: https://www.drcc.ie/assets/files/pdf/drcc_2020_infographic.pdf.

⁷⁶ Ibid.

⁷⁷ *Dublin Rape Crisis Centre needs 1million of public funding to maintain work.* Available at:

<https://www.breakingnews.ie/ireland/dublin-rape-crisis-centre-needs-1m-in-public-fundraising-to-maintain-work-1041771.html>

This is unsatisfactory but would require a significant scaling up of services to address this need.

In 2020, Tusla provided new funding to enable DRCC employ a Client Support Officer on a pilot part-time basis. Their role was to provide social work and personal advocacy for clients of the Centre who needed help with practical issues beyond therapy. That work proved to be worthwhile, dealing with issues such as housing, social welfare, asylum process and access to services. The role was extended to full time in 2021 and is being continued. Numbers have been quite small – approx. 34 people in 2021 – but clients helped have needed a number of interventions, often across several issues.

While accompaniment to the Sexual Assault Treatment Unit at the Rotunda Hospital in Dublin was curtailed due to COVID restrictions in 2020, DRCC's accompaniment service accompanied 300 people in 2019 and gave support to 240 family and friends of those victim/survivors.⁷⁸ Problems experienced in previous years when the SATU had to close on occasion due to insufficient staffing have not recurred in the last few years. A national review of SATU policy was published in 2019⁷⁹ and implementation of recommendations of that review have improved the consistency of what was already a very good specialised service. DRCC is represented on the implementation working group.

Following on the recommendations of the previously mentioned O'Malley Report and the subsequent implementation plan: *Supporting a Victim's Journey*,⁸⁰ DRCC's SATU accompaniment service and supporting those reporting crime to AGS or going to court has expanded significantly with new funding from the Department of Justice in 2020. From having a single part-time person employed to do that work and also train and manage a number of volunteers, DRCC now employs a number of people, all part-time at the moment, still working with dedicated volunteers to manage the administration and to provide a consistent presence in the central criminal court in Dublin. Work continues on re-structuring and expanding that function.

- **COVID-19**

Restrictions caused by the pandemic in 2020 and 2021 had a significant impact on DRCC services.⁸¹ Fortunately, the Centre had obtained some private and some national lottery funding in previous years which meant that there was an adequate IT infrastructure to support remote working including continuing operation of the National Helpline. All DRCC services continued throughout restrictions even though therapy staff and clients had to create new ways of engaging with clients by phone and video while restrictions were in place and accompaniment and other support personnel had to provide remote support as courts were closed and movement was restricted.

⁷⁸ See DRCC Annual Report 2020. Available at: https://www.drcc.ie/assets/files/pdf/drcc_2020_infographic.pdf

⁷⁹ Department of Health (2019). *Review of the National Sexual Assault Treatment Units*. Available at: <https://www.gov.ie/en/publication/e9ee89-department-of-health-policy-review-of-the-national-sexual-assault-tr/>

⁸⁰ https://www.justice.ie/en/JELR/Pages/Supporting_a_Victims_Journey_Implementation_Plan

⁸¹ See DRCC Annual Report 2020: https://www.drcc.ie/assets/files/pdf/1559_drcc_annualreport_web.pdf

In the height of the restrictions, the Helpline was somewhat quieter than usual although, as restrictions lifted, it became busier than usual. Those taking calls found that while there might have been less calls, those calling were more anxious and the calls were more intense. Many later reported that they could not call because of lack of privacy and space. This was a problem for some therapy clients also with some having to speak to their therapist from their car or other uncomfortable places because they had no space at home.

Both Tusla/ Department CEDIIY and the Department of Justice were quick to confirm to DRCC and other support services that these services were regarded as essential. Both departments, and later the Department of Rural and Community Affairs through Pobal, made emergency grants available to enable the Centre to purchase telephones, laptops, safety equipment for the Centre that allowed it to get all the additional equipment that was needed and continued to be needed as DRCC had to continue to build and upgrade equipment in the Centre and for remote working.

In addition, the same 2 State agencies engaged with DSGBV services to promote awareness that the services were continuing, particularly through the 'Still Here' campaign⁸² which was conceived and designed by the Department of Justice in consultation with the services. For victim/survivors of domestic violence, AGS 'Operation Faoiseamh'⁸³ was a pro-active connection to those whom AGS recognised might be at risk of domestic violence and was an effective reminder. By contrast, many victim/survivors of sexual violence did not feel that they could report during pandemic restrictions and often felt that they would be blamed where, for example, abuse occurred in a place outside a person's restricted area. The number of reports of sexual offences fell during the height of the restrictions but has since increased.

The specialist support services are vital to victim/survivors of sexual violence. Sufficient funding must be provided by the State to ensure the quality and availability of services to all victim/survivors. The funding should be sufficient to allow the services to support the numbers of victim/survivors presenting. Funding should also provide for the long-term planning and sustainability of the rape crisis centres.

Due regard to the intersectionality of the needs of all victim/survivors must be taken into account in order to achieve equality of outcomes. Many victim/survivors may have one or more barriers to accessing services, e.g. their immigration/asylum status, their membership of the Traveller or Roma community, their LGBTQI status. The State must work collaboratively with agencies providing specialist support services to identify and remove barriers so that victim/survivors with multiple, intersectional needs can access the support and protection they need.

Both in relation to disclosures for victim/survivors of sexual violence seeking help for themselves, and reporting into the justice system, there is a trend which suggests that the numbers are increasing and will continue to increase which will require a significant

⁸² See <https://www.stillhere.ie/>

⁸³ See: <https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2020/june/operation%20faoiseamh%20-%20domestic%20abuse%209th%20june%202020.html>

scaling up of the services available in the health and justice systems. DRCC acknowledges the inclusion of actions in the TNS for DSGBV on improving services for victim/survivors of sexual violence⁸⁴ which are based on the recommendations in *Supporting a Victim's Journey: A plan to help victims and vulnerable witnesses in sexual violence cases*.⁸⁵ The new strategy must be ambitious in scale if it is to meet this significantly rising need.

Recommendations:

- 1. Adequate long-term funding must be provided by the State to ensure the quality and availability of specialist services to all victim/survivors. The funding must also enable the services to support the numbers of victim/survivors presenting.**
- 2. The State must work collaboratively with agencies providing specialist services to identify and remove barriers so that victim/survivors with multiple, intersectional needs can access the support and protection they need.**
- 3. Implement all the actions in *Supporting a Victim's Journey: A plan to help victims and vulnerable witnesses in sexual violence cases***

► Chapter V – Substantive law

Article 36– Sexual violence, including rape

1 Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

a engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;

b engaging in other non-consensual acts of a sexual nature with a person;

c causing another person to engage in non-consensual acts of a sexual nature with a third person.

2 Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.

An announcement by the Minister for Justice in July 2020 that the law on consent, knowledge, and belief in rape cases will be strengthened by providing that the accused's defence that he believed the complainant was consenting has to be objectively reasonable,

⁸⁴ Department of Justice (2022). *Third National Strategy on Domestic, Sexual and Gender Based Violence 2022–2026 – Implementation plan*, Actions 2.4.6 to 2.5.1, pgs. 26–28. Available at:

https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf

⁸⁵ Department of Justice (2019). *Supporting a Victims Journey, A plan to help victims and vulnerable witnesses in sexual violence cases*. Available here:

https://www.justice.ie/en/JELR/Supporting_a_Victims_Journey.pdf/Files/Supporting_a_Victims_Journey.pdf

while still taking a defendant's personal circumstances into account⁸⁶ has been widely welcomed.⁸⁷ Currently under Irish law a man is not guilty of rape if he honestly believed that he had a woman's consent, regardless of whether that belief is objectively reasonable.

The current statutory definition of consent⁸⁸ gives a non-conclusive list of reasons where consent will be deemed to be absent. While a useful list, academics have argued that the current legislation could be expanded to provide a broader understanding of sexual coercion, thus acknowledging that there are threats other than force which can obviate sexual choice.⁸⁹

Recommendation:

- 1. The Government should press for the speedy implementation of legislation to implement the Minister for Justice's recent commitment to abolish the defence of so called 'honest belief' which includes irrational and unreasonable belief, as well as the commitments to seek evidence that consent was present and to provide for expanded legal aid.**
- 2. The Consent awareness raising campaign should include a research/ working group element to further consider the meaning of consent in sexual activity including a review of sexual coercion.**

Article 40 - Sexual Harassment

Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.

There are two legislative frameworks in place that address sexual harassment within the workplace in Ireland. The first is the recently revised *Code of Practice on Sexual Harassment and Harassment at Work*, which gives practical guidance on how to prevent it and what an

⁸⁶ Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022 General Scheme, Head 3. Available at: [https://www.justice.ie/en/JELR/general-scheme-of-the-criminal-justice-\(sexual-offences-and-human-trafficking\)-bill-2022.pdf/Files/general-scheme-of-the-criminal-justice-\(sexual-offences-and-human-trafficking\)-bill-2022.pdf](https://www.justice.ie/en/JELR/general-scheme-of-the-criminal-justice-(sexual-offences-and-human-trafficking)-bill-2022.pdf/Files/general-scheme-of-the-criminal-justice-(sexual-offences-and-human-trafficking)-bill-2022.pdf) and Cate McCurry (August 12th 2022) *Change in rape defence is 'starting point' in reform of sex offence laws* <https://www.independent.ie/irish-news/crime/change-in-rape-defence-is-starting-point-in-reform-of-sex-offence-laws-academics-say-41908233.html>

⁸⁷ Opinion pieces by Noeline Blackwell July 30th 2022 <https://www.irishtimes.com/health/2022/07/30/promised-reform-to-rape-law-brings-hope-for-more-trust-in-rape-cases/> and August 12th 2022 <https://www.independent.ie/irish-news/crime/change-in-rape-defence-is-starting-point-in-reform-of-sex-offence-laws-academics-say-41908233.html>

⁸⁸ Section 48 of the Criminal Law (Sexual Offences) Act 2017

⁸⁹ Dr. Susan Leahy (2021). *The realities of rape trials in Ireland: perspectives from practice* 2021. Pg. 14. Available at: <https://www.drcc.ie/news-resources/resources/the-realities-of-rape-trials-in-ireland/>

employer should do if it occurs.⁹⁰ The second is the *Employment Equality Acts 1998–2015*, currently under review⁹¹ that contain the statutory definitions of sexual harassment, which focus on the impact that the conduct or behaviour has on the victim. And yet there is limited data available about the scope and implications of workplace sexual harassment in Ireland. According to the SAVI Report, some form of sexual harassment was experienced by 16.2% of women and 12.6% of men within the last 12 months of the survey being conducted.⁹² Whilst seemingly conservative statistics, it is important to recognise that this study was conducted in 2002, which suggests a lack of understanding for what sexual harassment is and the harm that it can cause.

While not a rigorous research piece, in 2018 DRCC examined the lived experiences of those who had endured sexual harassment and abuse, including in the workplace. Of the 912 participants who were surveyed, 712 (75.7%) experienced sexual harassment.⁹³ Of the 712 respondents who reported experiencing sexual harassment, 421 experienced the harassment in their place of employment (59%)⁹⁴. This was 44.7% of the total surveyed. Despite the frequency that sexual harassment occurred, only 16.5% reported formally.⁹⁵

DRCC acknowledges the commitment of the TNS to ratify the International Labour Organisation No 190 Violence and Harassment in the World of Work Convention, which specifically addresses DSGBV and harassment in the workplace.⁹⁶

A 2014 survey conducted by the European Union Fundamental Rights Agency found that 19% of Irish women reported experiencing sexual harassment, a figure comparable to the EU average of 21% (FRA Report, 2014).⁹⁷ A more recent study which sought to identify what proportion of Irish adults have experienced sexual violence⁹⁸ found that 31.1% experienced sexual harassment across their lifespan.⁹⁹ Sexual harassment was the most common form of sexual violence experienced during adolescence, adulthood, and across the lifespan.¹⁰⁰ These statistics highlight the need for more up to date, government led data gathering to ensure Ireland understands how to prevent, combat, and provide justice to those whom have experienced sexual harassment.

⁹⁰ Irish Human Rights and Equality Commission, Code of Practice on Sexual Harassment and Harassment at Work (February 2022). Available at: https://www.ihrec.ie/app/uploads/2022/03/Codes-of-Practice-Sexual-Harassment-FA_Digital.pdf

⁹¹ Consultation on the Review of the Equality Acts (2021). Available at: <https://www.gov.ie/en/consultation/066b6-review-of-the-equality-acts/>

⁹² Hannah McGee, Rebecca Garavan, Mairéad de Barra, Joanne Byrne & Ronán Conroy. *The SAVI Report: Sexual Abuse and Violence in Ireland* (Liffey Press 2002). <http://www.drcc.ie/wp-content/uploads/2011/03/savi.pdf>

⁹³ Dublin Rape Crisis Centre (2021) *Sexual Harassment and Abuse in the Workplace*. Available at: <https://www.drcc.ie/news-resources/resources/sexual-harassment-and-abuse-in-the-workplace/>

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Department of Justice (2022). *Zero Tolerance: Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan*. Action 1.7.5, pg. 19. Available at: https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf

⁹⁷ European Union Agency for Fundamental Rights (2014). *Violence against women: an EU-wide survey*. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf

⁹⁸ Vallières, F. et al (2020). *Sexual violence and its associated psychosocial effects in Ireland*. Available at: <https://mural.maynoothuniversity.ie/15111/1/PH-Sexual-violence-2020.pdf>

⁹⁹ Ibid. Pg. 11.

¹⁰⁰ Ibid. Pg. 14.

As previously stated, the CSO is currently gathering fresh prevalence data which is unlikely to be available before 2023/2024.¹⁰¹

Despite lacking up to date, comprehensive data, current information suggests that the prevalence and pervasiveness of sexual harassment is far greater in Irish life and culture than previously indicated. Recent surveys conducted in the arts community¹⁰² and the legal profession¹⁰³ as well as reports on the defence forces¹⁰⁴ all highlighted bullying and harassment including sexual harassment previously undisclosed.

The disparity between prevalence and reporting suggest that there are existing barriers in legislation and implementation in regards to accessing justice, particularly in the workplace. Expansion of existing employment legislation would be useful to address the issue of reporting, as well as providing alternative pathways to reporting such as an anonymous helpline or app or viewing workplace sexual harassment as a workplace health and safety issue rather than a discrimination issue.¹⁰⁵

DRCC welcomes the Department of Justice's plans to develop a charter for the night-time economy sector to stamp out sexual violence and harassment. It is intended that those working in pubs, nightclubs, and other night-time venues will be provided training on how to identify and prevent sexual harassment and assault.¹⁰⁶ Furthermore, the TNS references the government's intent to also '*audit the types of safety actions needed to make the variety of leisure and recreation spaces and those engaging and working in the Night-Time Economy safer (including in the 'gig' economy and arts and cultural spheres) to make them safer for both patrons and staff*'.¹⁰⁷

In relation to the digital space and sexual harassment, the DRCC notes the TNS intent to enact the Online Safety and Media Regulation Bill, which will establish a Media Commission and an Online Safety Commissioner.¹⁰⁸ These initiatives must be accompanied with robust compliance and enforcement mechanisms including a right of appeal and access to the Media Commission where tech companies fail to redress wrongs.

¹⁰¹Sexual Violence Survey (SVS). Available at:

<https://www.cso.ie/en/surveys/surveysunderdevelopment/sexualviolencesurveysvs/sexualviolencesurveyfaqs/>

¹⁰² Report finds 'culture of harmful workplace behaviour across Ireland's arts sector'. Available at:

<https://www.irishtimes.com/culture/report-finds-culture-of-harmful-workplace-behaviour-across-ireland-s-arts-sector-1.4706697> and SPEAK UP: A Call for Change. Towards creating a safe and respectful working environment for the arts

(October 2021). Available at: https://www.irishtheatreinstitute.ie/wp-content/uploads/2021/10/ITI-Speak-Up-A-Call-for-Change-Report-Oct2021_Final_WEB.pdf

¹⁰³ Law Society tackles bullying, harassment and sexual harassment in the solicitors' profession (October 2021)

<https://www.lawsociety.ie/gazette/top-stories/2021/10-october/law-society-programme-to-tackle-bullying>

¹⁰⁴ Women of Honour (September 2021) Listen at: <https://www.rte.ie/radio/radio1/women-of-honour/>

¹⁰⁵ Dublin Rape Crisis Centre (2021) *Sexual Harassment and Abuse in the Workplace*. Pgs. 10-12. Available at:

<https://www.drcc.ie/news-resources/resources/sexual-harassment-and-abuse-in-the-workplace/>

¹⁰⁶ Irish Examiner (2022) *Justice Minister to Roll Out Late-Night Charter to Tackle Harassment and Assault*.

<https://www.irishexaminer.com/news/politics/arid-40863104.html>

¹⁰⁷ Department of Justice (2022). *Third National Strategy on Domestic, Sexual and Gender Based Violence 2022-2026 - Implementation plan*. Action 1.6.2. Available at:

https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf

¹⁰⁸ Department of Justice (2022). *Third National Strategy on Domestic, Sexual and Gender Based Violence 2022-2026 - Implementation plan*., Action 1.5.1. Available at:

https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf

There must be participation by social media companies and conglomerates and a broad programme of public education needs to be put in place.

Recommendations:

1. Provide a comprehensive, up to date study on the prevalence of sexual harassment in Irish life and culture.
2. Explore the expansion of existing employment legislation to address prevailing barriers to accessing justice in the current scheme.
3. Ratify the International Labour Organisation No 190 Violence and Harassment in the World of Work Convention.
4. Provide alternative pathways to reporting workplace sexual harassment that provide further safeguards for victims/survivors.
5. Develop and implement the Night-Time Economy Charter to ensure the safety of employees and patrons.
6. Enact the Online Safety and Media Regulation Bill and ensure it entails robust compliance and enforcement mechanisms.

Article 45 – Sanctions and measures

1 Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition.

In Ireland, there is limited available data and research on sentencing which means that it is difficult for victim/survivors and policy makers alike to understand whether sexual offences are consistently sentenced by effective and proportionate sentences. A project called the Irish Sentencing Information System commenced at the turn of the century seems to have been abandoned at the time of the economic recession.

Sentencing Guidelines have been set for certain offences including rape and a Sentencing Guidelines and Information Committee of the Judicial Council was established in June 202¹⁰⁹. However, because of the lack of meaningful data, the Judicial Council has engaged the University of Strathclyde to carry out research on various methodologies. A final report appears to be awaited¹¹⁰.

¹⁰⁹ Judicial Council (2020). *Sentencing Guidelines*. Available at: <https://judicialcouncil.ie/sentencing-guidelines/>

¹¹⁰ Ibid

Meanwhile, the lack of a dataset on how existing guidelines are interpreted by individual judges means that victim/survivors, the general public and legal practitioners have no reliable evidence as to sentencing in general. The previously cited O'Malley Report, and a reported survey of judges themselves have called for guidelines to be established for sexual offences.¹¹¹

Recommendations:

1. A sentencing database, where information is stored on a national basis on sentences handed down for various offences and is available to the public should be introduced as a matter of urgency.
2. The Judicial Council's Committee on Sentencing Information and Guidelines should be fully resourced and funded to develop suitable methodologies for developing guidelines and asked to address and publish sexual offence guidelines as a matter of urgency.

► Chapter VI - Investigation, prosecution, procedural law and protective measures

Article 49 – General obligations

1 Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.

2 Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective.

▪ Delay

Delay is a significant issue in the investigation and prosecution of sexual violence offences. In a snapshot survey done by DRCC following the publication of the O'Malley Report, those who had experienced the criminal justice system identified delay and uncertainty as the single biggest problem in the investigation and prosecution of sexual offences. This is borne out by experience of accompanying victim/survivors to court over decades who often find court trials equally if not more traumatic than the abuse which gave rise to the

¹¹¹ Judges say sentencing guidelines are most needed for sex crimes. Available at: <https://www.independent.ie/irish-news/courts/judges-say-sentencing-guidelines-are-needed-most-for-sex-crimes-and-fatal-driving-offences-amid-proof-of-error-41223648.html>

offences. Even without the complications of the pandemic, many cases take years to go through the criminal justice system and have a significant impact on both the victim/survivor and accused. The O'Malley Report identified the rights of victims to proceedings without undue delay under Victim Rights legislation and in the Irish constitution.¹¹²

The closure of much court work over the period of the pandemic and the disruptions that took place if a person involved was ill or absent, as well as the difficulty of empanelling jurors meant that trials of serious sexual offences such as rape have been seriously delayed and some victim/survivors whose cases were investigated before COVID are still awaiting a trial date.

- **Case management**

Improved court management so that trials proceed when listed as the rule would assist in reducing delay and unnecessary appearances in court by victim/survivors. The Criminal Procedure Act 2021 was commenced or activated in February 2022 but it is unclear to DRCC to what extent it is being used to date. It would permit pre-trial applications relating to sexual experience evidence/ production of notes and the like to be considered as preliminary matters.

A Judicial Planning Working Group has been convened to consider, amongst other things, whether there are sufficient judges. DRCC is of the view that there are not sufficient judges available to hear sexual offences trials and recommends that the number of judges be increased. This of course has consequences for the accommodation of those judges and personnel to support them. However, the current delays are excessive and harmful to the victim/survivors of those offences.

DRCC acknowledges the TNS intends to address delay in the prosecution of sexual violence cases.¹¹³

- **Pre-existing biases, stereotypes, and assumptions**

Ingrained/pre-existing biases, stereotypes, and assumptions influence juries, whether conscious or unconscious. When victims are testifying in sexual violence cases, the potential impact of the 'real victim' stereotype is clear. If they do not conform to what is expected of a 'real victim' (e.g. they have reported immediately, they are at all times clear and consistent and have not engaged in what may be perceived as 'risky' behaviour such as excessive alcohol or illegal drug consumption) then this may colour their testimony in the eyes of jurors. For this reason, it is vital that the potential impact of rape myths is tackled within the court-room.

¹¹² Tom O'Malley et al. (2018). *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences*: Chapter 9

¹¹³ Department of Justice (2022). *Third National Strategy on Domestic, Sexual and Gender Based Violence 2022-2026 - Implementation plan*. Actions 3.3.4, 3.3.10, pgs. 36 and 37. Available at: https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf.

In other jurisdictions, courts have introduced guidance to assist judges in directing juries to overcome them such as the English Crown Court Compendium.¹¹⁴ This guidance can also help to mitigate the sheer volume of information facing jurors in some trials. Guidance for juries to address rape myths should be introduced, preferably to be given at the start of a trial but with judicial discretion to repeat it when needed. Training to judges and legal professionals on how to use guidance appropriately and meaningfully should also be provided.

Recommendations

1. Incentivise early engagement of trial parties and active avoidance of delays in trials.
2. Ensure there are sufficient judges and court accommodation to adjudicate sexual offence trials so that they can be heard without undue delay.
3. Introduce guidance for juries to address pre-existing biases, stereotypes, and assumptions they may have, whether conscious or unconscious, preferably to be given at the start of a trial but with judicial discretion to repeat it when needed.
4. Provide training to judges and legal professionals on how to use guidance appropriately and meaningfully.

Article 54 – Investigations and evidence

Parties shall take the necessary legislative or other measures to ensure that, in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary.

A significant concern for victim/survivors in sexual offence trials is that they will be questioned about their sexual history or experience. Such questioning is very traumatic and intrusive for victim/survivors. The admissibility of sexual history evidence is regulated in Irish Law.¹¹⁵ An application to admit such evidence is made to the judge in the absence of the jury and the intention to make an application should be made by the defence before, or as soon as practicable after, the commencement of the trial.¹¹⁶

¹¹⁴ D Maddison et al (2021). *The Crown Court Compendium Part I: Jury and Trial Management and Summing Up*. Available at: <https://www.judiciary.uk/wp-content/uploads/2020/12/Crown-Court-Compendium-Part-I-December-2020-amended-01.02.21.pdf>

¹¹⁵ Section 3 of the Criminal Law (Rape) Act 1981 (as amended), Available at: <https://www.irishstatutebook.ie/eli/1981/act/10/section/3/enacted/en/html>

¹¹⁶ Criminal Law (Rape) Act 1981, section 4A(2) (as amended by section 34 of the Sex Offenders Act 2001) Available at: <https://www.irishstatutebook.ie/eli/2001/act/18/section/34/enacted/en/html>

The victim/survivor is notified of the application¹¹⁷ at the time of the application but there is no obligation to give advance notice although as the Criminal Procedure Act 2021 beds in, this should change. Where an application to receive such evidence is made and granted, the victim will become entitled to legal representation for the duration of the application only. The representation does not by law extend to representation during the period of the actual taking of the evidence. The representation is funded by the State's civil legal aid scheme.

DRCC is not aware of any published data on how regularly these applications are made, or what proportion are granted when made.

The O'Malley Report has recommended that where an application to admit sexual history evidence is successful, the victim/survivor's legal representative should continue to represent them while the questioning is taking place.¹¹⁸ This is an important added protection which would help to ensure that any questioning on sexual history evidence goes no further than is necessary and is in accordance with the leave provided by the trial judge. DRCC welcomes the commitment by the Minister for Justice to introduce legislation to extend legal representation for the victim/survivor while the questioning is taking place in the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022.¹¹⁹

The Legal Aid Board¹²⁰ which is to be tasked with providing this legal representation, is the State's civil legal aid and family mediation mechanism. In addition, it is the intention of the Department of Justice that victims of sexual offences should be entitled to seek legal advice as their case progresses. There is no dedicated criminal law unit within the Legal Aid Board which operates mainly in the civil courts. Such a unit, to develop expertise and experience on criminal law matters and on sexual offences and the particular vulnerabilities of victims of sexual crimes in particular, will need to be established and properly resourced in order to provide an adequate service.

There is also a gap in the legislation whereby victims in sexual assault trials other than rape/ aggravated sexual assault trials are not afforded separate legal representation for the purposes of an application to adduce sexual history evidence. Relevant legislative provisions need to be amended to provide 'separate legal representation (and the associated right to legal aid) to all trials for sexual assault offence.'¹²¹ This recommendation should be acted on as a matter of priority to ensure equal protection for all victims in sexual

¹¹⁷ Criminal Law (Rape) Act 1981, section 4A(3) (as amended by section 34 of the Sex Offenders Act 2001) Available at: <https://www.irishstatutebook.ie/eli/2001/act/18/section/34/enacted/en/html>

¹¹⁸ This was recommended by the O'Malley Report: *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences*, (Dublin: Department of Justice and Equality, 2020). Para 84. Available at: https://www.justice.ie/en/JELR/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf/Files/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf

¹¹⁹ Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022 General Scheme Head 5. Available at: [https://www.justice.ie/en/JELR/general-scheme-of-the-criminal-justice-\(sexual-offences-and-human-trafficking\)-bill-2022.pdf/Files/general-scheme-of-the-criminal-justice-\(sexual-offences-and-human-trafficking\)-bill-2022.pdf](https://www.justice.ie/en/JELR/general-scheme-of-the-criminal-justice-(sexual-offences-and-human-trafficking)-bill-2022.pdf/Files/general-scheme-of-the-criminal-justice-(sexual-offences-and-human-trafficking)-bill-2022.pdf)

¹²⁰ See <https://www.legalaidboard.ie/en/>

¹²¹ Section 3 of the Criminal Law (Rape) Act 1981 (as amended) Para 6.10 Available at: <https://www.irishstatutebook.ie/eli/1981/act/10/section/3/enacted/en/html>

offence cases. The Minister for Justice has committed to introducing legislation to close this gap in the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022.¹²²

Finally, a definition of ‘sexual history evidence’ in law should be introduced to prevent such evidence from being inappropriately or inadvertently admitted.¹²³

- **Disclosure of victims’ counselling records**

Issues surrounding the disclosure of victims’ counselling records is now a feature of many rape trials in Ireland. These records are regularly sought in court by the defence to attack the veracity or credibility of a victim’s report to the Gardaí. In anticipation that such an application may be made by the defence, the investigating Garda or the Director of Public Prosecutions will often ask the complainant/victim to waive their right to privacy on those records. The complainant/victim will often do so,¹²⁴ to assist an investigation or fearing that failure to do so may prevent a prosecution proceeding.

While legislation in 2017 allows for a judge in the course of a trial to examine whether or not records should be given to the defence¹²⁵ it is of limited value as it does not apply to the normal situation where the counselling notes have already been given to the prosecution who then must notify the defence and allow the notes to be inspected by the defence.

There is no provision for free legal advice to victim/survivors to deal with any such request. Many victim/survivors find this breach of their privacy extremely upsetting and it can act as a barrier to reporting crime.¹²⁶ This type of evidence is rarely if ever sought in other traumatising crime and seems to be unique to the records of victims of sexual offences.

DRCC acknowledges the TNS provides for an examination and review of the rationale for the disclosure of counselling notes.¹²⁷

¹²² Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022 General Scheme Head 5. Available at: [https://www.justice.ie/en/JELR/general-scheme-of-the-criminal-justice-\(sexual-offences-and-human-trafficking\)-bill-2022.pdf/Files/general-scheme-of-the-criminal-justice-\(sexual-offences-and-human-trafficking\)-bill-2022.pdf](https://www.justice.ie/en/JELR/general-scheme-of-the-criminal-justice-(sexual-offences-and-human-trafficking)-bill-2022.pdf/Files/general-scheme-of-the-criminal-justice-(sexual-offences-and-human-trafficking)-bill-2022.pdf)

¹²³ Dr Susan Leahy (2021). *The realities of rape trials in Ireland: perspectives from practice*. Pg.29 Available at: <https://www.drcc.ie/news-resources/resources/the-realities-of-rape-trials-in-ireland/>

¹²⁴ Ibid. Pgs. 31-33.

¹²⁵ Criminal Law (Sexual Offences) Act 2017 Available at: <https://www.irishstatutebook.ie/eli/2017/act/2/enacted/en/html> Section 39 of the 2017 Act inserted this new regime into section 19A of the Criminal Evidence Act 1992.

¹²⁶ *Victim of Sexual Violence Recommends Changes to the Justice System*. Available at:

<https://www.irishtimes.com/news/crime-and-law/victim-of-sexual-violence-recommends-changes-to-justice-system-1.4524206> 30/3/2021. Extract from the report: “There would never be an incidence where the counselling records of a victim would be requested if he had broken into my house, savagely attacked me, stolen all of my things. There would be no question that my counselling records [be disclosed],” she said.

¹²⁷ Department of Justice (2022). *Third National Strategy on Domestic, Sexual and Gender Based Violence 2022-2026 - Implementation plan*. Action 3.3.7, pg. 36. Available at: https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf.

Recommendations:

1. Introduce strict time limits for applications to adduce sexual history evidence or to seek counselling records and ensure adequate notice is given to the Victim and to the Legal Aid Board to allow them to engage appropriate counsel.
2. Any legal practitioner furnishing advice or representation to a victim of sexual violence should have received appropriate certified training on best practice in representing victim/survivors.
3. Representation should continue during questioning of victim/survivors on sexual experience evidence to ensure it is fair and that a victim is not re-traumatised through the process.
4. Introduce a definition of 'sexual history evidence' in law to prevent such evidence from being inappropriately or inadvertently admitted.
5. Prioritise the promised review of the use of counselling notes by the defence in sexual offence trials.

Article 56 – Measures of protection

1 Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:

a providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;

c informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case;

d enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;

e providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;

i enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.

- **Legal Supports**

Current provision of legal supports (outside the specific case of representation during an application by the defence to admit sexual history evidence or counselling records) is very basic. Victim/survivors may receive initial and general information on the trial process as well as a possible court familiarisation visit from a member of the investigation team or from a victim accompaniment and support service such as that run by DRCC. A lack of information on the legal process and on general information on what to expect at the trial can further marginalise the victim/survivor. DRCC is currently working on a Department of Justice funded project to build web resources for victim/survivors and their supporters¹²⁸.

Free legal advice and information for anyone reporting or considering reporting sexual violence should be provided. As mentioned above, there is a promise to introduce this through the aegis of the Legal Aid Board. The provision of legal advice and information should be maintained throughout the trial process, as well as legal advocacy for victim/survivors where needed. Clear, relatable language should be used in order for the advice and information to be accessible. Court familiarisation visits should be made available to all victim/survivors. This will give them some sense of the surroundings they will find themselves in for the duration of the trial.

DRCC again acknowledges the inclusion of actions in the TNS on improving services for victim/survivors of sexual violence¹²⁹ which are based on the recommendations in *Supporting a Victim's Journey: A plan to help victims and vulnerable witnesses in sexual violence case*.¹³⁰ The new strategy must be to the forefront in the implementation of the recommendations and proposals for reform set-out in this plan.

- **Special measures**

The traumatic impact of crimes of sexual violence on the victim/survivor can often hamper the delivery of best evidence at the trial. Especially as they will have to give evidence in front of the perpetrator. For this reason, and recognising that a victim of sexual offences can be vulnerable by reason of having to go through the trial process, existing measures for victim protection need to be more widely used.

Among these are the use of screens and video links to enable victim/survivors to give evidence remotely to reduce the risk of being re-traumatised. While there is existing legal provision for these special measures, the reality is that these are not widely used. Where the witness is a child, evidence can be given by video link. However, screens or video links for adult victim/survivors are rare. Even if an application is made, many courthouses are not equipped to hear evidence with these special measures. Given the rapid development of technology, every courthouse, at every level, should have such facilities in place.

¹²⁸ Minister McEntee announces details of funding for organisations supporting victims of abuse and crime to mark 16 days of activism against gender-based violence (November 2021) See: <https://www.justice.ie/en/JELR/Pages/PR21000286>

¹²⁹ Department of Justice (2022). *Third National Strategy on Domestic, Sexual and Gender Based Violence 2022-2026 - Implementation plan*. Available at:

https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf

¹³⁰ Department of Justice (2019). *Supporting a Victims Journey, A plan to help victims and vulnerable witnesses in sexual violence cases*. Available here

https://www.justice.ie/en/JELR/Supporting_a_Victims_Journey.pdf/Files/Supporting_a_Victims_Journey.pdf

DRCC acknowledges the TNS provides action on system changes in all statutory bodies to enhance support for vulnerable witnesses in court proceedings.¹³¹

- **Legal representation of the victim/survivor**

Victim/survivors are not legally represented in the Irish legal system, apart from as already stated when evidence of previous sexual history is introduced. While many, including victim/survivors, view the prosecuting lawyers as their lawyers, the role of the prosecution is to represent the State. In most crimes, the absence of representation for the victim does not impede justice. The role of the victim is to give their evidence of the crime and for the most part, their credibility and reputation is not at stake. For the most part too, the only link between the accused and the victim will be the criminal offence. This is not the case in sexual violence trials. For the most part, the victim and the accused are known and may have an existing familial, intimate or community relationship. And, as stated previously, the main evidence in the trial will be the evidence of the victim which, if disputed, will be vigorously and thoroughly cross-examined and dissected by the accused's expert legal team.

The victim/survivor, without legal representation, without legal preparation for the evidence they will give is therefore uniquely disadvantaged in such a case. The presence of legal representation to limit such applications/questioning to legitimate limits (and indeed limit applications to introduce evidence on sexual history and access to counsellor notes) would greatly enhance the capacity of victim/survivors to give their best evidence but is not currently available.

Many victim/survivors of sexual violence will be placed in an unacceptable position where a trial which depends largely on whether a jury believes their account of an event beyond reasonable doubt or believes that of the accused, and where one of those parties is represented by expert, experienced legal representatives and the other is not represented at all and has had no legal preparation for that trial. In order to vindicate the rights of the victim/survivor we recommend that legal representation be provided throughout the trial. At a minimum victim/survivors of any type of sexual violence should be allowed to avail of accessible, timely legal advice that is not contingent upon a prosecution being instigated.

Recommendations

- 1. Make available free legal advice and information for anyone reporting or considering reporting any type of sexual offence.**
- 2. Maintain provision of legal advice and information throughout the trial process, as well as legal advocacy for complainants where needed.**

¹³¹ Department of Justice (2022). *Third National Strategy on Domestic, Sexual and Gender Based Violence 2022–2026 – Implementation plan. Action 3.3.4, pg. 36.* Available at: https://www.justice.ie/en/JELR/DOJ_DSGBV_IMP_Plan_Web.pdf/Files/DOJ_DSGBV_IMP_Plan_Web.pdf

3. Clear, relatable language should be used in order for the advice and information to be accessible.
4. Ensure that the use of screens and video link for adult victim/survivors to give evidence at trial is made available in all courthouses.
5. In order to vindicate the rights of the victim/survivor provide legal representation be provided throughout the trial.
6. At a minimum victim/survivors of any type of sexual violence should be allowed to avail of accessible, timely legal advice that is not contingent upon a prosecution being instigated.
7. Implement all the actions in Supporting a Victim's Journey: A plan to help victims and vulnerable witnesses in sexual violence cases

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