



Dublin Rape Crisis Centre

Submission to the Joint Oireachtas Committee on Gender Equality

4 March 2022

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Executive Summary

Chapter 10: Domestic, Sexual and Gender-Based Violence

Implementation of assembly recommendations 37 – 40 requires:

- In the years it will take the new DSGBV agency to build, an ad-hoc agency should be established to ensure there is no risk to side-lining any of the work in the DSGBV sector;
- Specific and ongoing funding for public national awareness campaigns to develop a national shared understanding DSGBV in addition to the meaning and importance of sexual consent;
- Training for all legal professionals including the judiciary is vital to ensure consistent practice and that the regulation of examination and cross-examination of victim/survivors in these trials is always appropriately trauma-informed and sensitive to the specific vulnerabilities of these witnesses;
- Introduce a robust informed consent process to ensure that victim/survivors do not consent to the disclosure of their counselling records without full knowledge of their entitlement to object to this and to let the judge decide on what, if any, disclosure should be made. This informed consent process should be supported by the entitlement to legal advice;
- There is a question as to the merit of sexual history evidence. If it is essential to the rights of the accused, then further research should be commissioned to identify whether the current latitude given to the accused needs to be restrained;
- Reinstate and resource the sentencing database known as the Irish Sentencing Information System (ISIS);
- Statutory funding to cover the full cost of providing DSGBV services should be allocated on a multi-annual basis to ensure consistency of service for those who need them;
- Establish a statutory office to promote and vindicate the rights of victim/survivors of crime through the appointment of a Victims' Commissioner.

Chapter 7: Leadership in Politics, Public Life & the Workplace

Implementation of assembly recommendation 24 requires:

- The Establishment of an Online Safety Commissioner that is effectively resourced;
- The inclusion within the OSMR Bill of an Individual Complaints Mechanism so people have somewhere to go for help when a platform does not act efficiently or effectively on an issue;
- Ensure that Gardaí have the knowledge and resources needed to implement the legislation that currently exists, including the new crimes identified in the Criminal Law (Sexual Offences) Act 2017 and the Harassment, Harmful Communications and Related Offences Act 2020.

Chapter 8: Norms & Stereotypes and Education

Implementation of assembly recommendations 27 & 28 requires:

- The recommendations published in 2019 by the NCCA for primary and post-primary schools should be implemented immediately;
- Training for teachers in examining their own attitudes and beliefs in the many areas and themes that arise in the curriculum because of the substantial evidence that exists of a high prevalence of bias and misunderstanding of what constitutes sexual violence in society.

Chapter 11: Gender equality principle in law and policy

Implementation of assembly recommendations 43 & 44 requires:

- In order to understand the nature, prevalence and impact of all forms of DSGBV, the data action of the next national strategy must include the regular collection, communication and analysis of quantitative and qualitative data, disaggregated by variables;
- Equality budgeting must be placed on a statutory footing.

About Dublin Rape Crisis Centre

Dublin Rape Crisis Centre (DRCC) aims to prevent the harm and heal the trauma of all forms of sexual violence in Ireland. We provide services including running the National 24-Hour Helpline, one-to-one therapeutic counselling and other supports to survivors; accompaniment to those attending Sexual Assault Treatment Units, Garda stations and court; and education, training and advice to a wide range of people. In addition, we use our expertise and experience to provide reports, analysis and policy proposals to those tasked with action on behalf of victim/survivors of sexual violence. Through our work in the DRCC, we see first-hand the life-long consequences of the trauma and harm caused by sexual violence of all kinds. These serious consequences negatively impact health, families, relationships, social well-being, education and work.

About the submission

DRCC is pleased to provide comment to the Joint Oireachtas Committee as part of the Committee's examination of the recommendations made by the Citizens' Assembly on Gender Equality. Saturday April 24th 2021 is a noteworthy date in the lives of women across Ireland for the 45 recommendations made by the Assembly to achieve a more equal society. Their recommendations range from institutional reform through to the elimination of a tolerance for gender-based violence in our society to specific reforms for better services and structures. In our submission to this Committee we will focus specifically on those recommendations that are most relevant to the work of Dublin Rape Crisis Centre and how implementation can be achieved.

Context

We will never have gender equality while sexual violence continues. In 2020, as in previous years, about 80% of those who contacted the National 24-Hour Helpline run by our centre were women. About 90% of those who availed of our therapeutic services were women. While sexual violence is no respecter of gender and while the power imbalance in relationships can impact on all genders, the impact of sexual violence on women as a gender is disproportionate to their representation in the population. Harmful gender stereotypes and roles imposed on us from birth and ingrained in us throughout our lives mean that we are not always equal in relationships and/or in sexual relations. We must address why a power imbalance between people can result in acts of sexual violence. The importance of all sexual activity being consensual and equal cannot be underestimated for a person. Personal safety and respect, both inside and outside the home, is essential to ensure a person's full and effective participation in all areas of life. We in DRCC have long called for a multi-faceted approach to dealing with the problem of sexual violence. The suggestions made by us to the Assembly in our submission accord closely with the 4 chapters and 9 recommendations set out below. The full text of those recommendations can be found in the appendix on pages 7 and 8.

Chapter 10: Domestic, Sexual and Gender-Based Violence

Within the Report of the Assembly, it is chapter 10 and recommendations 37 through 40 that align closely with the vision, the mission and the work of DRCC. Although domestic, sexual and gender-based violence (DSGBV) was not initially included in the Oireachtas resolution, once it was given due consideration the Assembly through their recommendations conveyed why DSGBV is a gender equality issue.

We welcomed the recent announcement by Minister McEntee of the establishment of a new statutory agency to oversee the implementation of the government's approach to tackling DSGBV. We are however some 12/18 months away that agency taking charge of delivering the solutions we know exist and who will be able to oversee the bigger picture in an organised way.¹ Currently there are a number of public initiatives, strategies, plans, services that stretch across a number of government departments and agencies who all do their own bit but don't have the full handle on the issue.

It is essential to promote awareness through campaigns and education to ensure that the public are fully informed of the various forms of DSGBV. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)² obliges governments to promote and conduct awareness-raising campaigns in conjunction with civil society organisations. Awareness, prevention and education campaigns aimed at eliminating the tolerance of DSGBV in society must be both inclusive and accessible by all. Real Consent³ commissioned by DRCC is the first national study of its kind to examine attitudes to and understanding of sexual consent in Ireland across all adult age groups. A collaborative campaign now under way in DRCC is grounded in equality, leading to a deeper understanding of consent, the impact of gender inequality on sexual violence and the impact of sexual violence on survivors and their communities.

The credibility and reputation of the complainant in a sexual offences case is regularly the main focus of the defence of an accused person. Thus, harmful stereotypes about how a person looked or dressed can influence how an investigation and trial proceeds. This in turn means that victim/survivors of sexual violence may be reluctant to access appropriate remedies in our legal and justice system.⁴ It is vital that legal professionals including the judiciary working within sexual offence trials receive appropriate training on best practice in the treatment of victim/survivors.

Issues surrounding the disclosure of victim/survivors' counselling records is now a feature of most rape trials in Ireland. In the Criminal Law (Sexual Offences) Act 2017⁵, a regime to regulate disclosure of counselling records was introduced for the first time in Ireland. However, a victim/survivor may waive the application of this scheme and permit disclosure of their counselling records without going through this process.⁶ And many do to facilitate prosecution. This waiver provision has significantly undermined the potential of the new regime for disclosure of counselling records to protect victim/survivors from being questioned about private matters within their counselling notes.

In 2009⁷, research was undertaken on behalf of the DRCC, which was based on an analysis of 40 rape cases tried in the Central Criminal Court between 2003 and 2009. The study showed that judges granted defence application to introduce evidence about the sexual history of rape victims experience pursuant to Section 3 of the Criminal Law (Rape) Act 1981⁸ very frequently, despite the highly prejudicial nature of the reasons being offered by the defence. One commonly used defence argument was that the victim/survivor was promiscuous.

¹ <https://www.irishtimes.com/news/crime-and-law/state-s-response-to-domestic-and-sexual-violence-to-be-overseen-by-new-agency-1.4802347>

² Istanbul Convention – Article 13 <https://rm.coe.int/168046031c>

³ <https://www.drcc.ie/news-resources/news/research-shows-most-people-believe-ireland-has-problem-with/>

⁴ Law Reform Commission, 'Knowledge or Belief concerning Consent in Rape Law' (2019) pgs. 7-16.

<https://www.lawreform.ie/fileupload/Reports/LRC%20122-2019%20Knowledge%20or%20Belief%20Concerning%20Consent%20in%20Rape%20Law.pdf>

⁵ Section 39 of the 2017 Act inserted this new regime into section 19A of the Criminal Evidence Act 1992.

⁶ Section 19A (17) of the Criminal Evidence Act 1992 (as amended).

⁷ Bacik et al (2010) *Separate Legal Representation in Rape Trials* DRCC Conference

⁸ <http://www.irishstatutebook.ie/eli/1981/act/10/section/3/enacted/en/html>

This sort of argument unfortunately strengthens myths about rape and has the potential to undermine the victim/survivor's evidence in court. Such unnecessarily aggressive cross-examination and the inappropriate introduction of evidence of victim/survivor's sexual history, results in an unduly traumatic court experience for victim/survivors. The trial judges who preside over sexual offence trials and the legal professionals who prosecute and defend these cases play a vital role in ensuring fair treatment of victim/survivors while they give their testimony. Thus, it is vital that **any judge or legal professional working within these trials have received appropriate training on key concepts such as, but not limited to, consent, rape myths, and unconscious biases.**

One of the things that victim/survivors want to know when they engage in the criminal justice process is what the outcome is likely to be. They will of course know that the defendant may be acquitted or convicted however, **in the absence of sentencing guidelines and a sentencing database, it is hard for them to know the consequences of a conviction.** Report 1 of the Sentencing Guidelines and Information Committee of the Judicial Council⁹ of Ireland has stated that **sentencing data in Ireland still has profound limitations.**

No one size fits all but our experience as an RCC of over 40 years highlights that decent, proper services must be conceived in a victim/survivor centred way so that:

1. **Those delivering the services are trained and understand the emotional, traumatic impact of sexual assault and harassment,** preferably in specialist services where they don't have to keep reporting and re-living the sexual assault again and again - particularly true for children and especially vulnerable people; and
2. **Services are available in a timely way** – be that health care or counselling within a short time frame, or getting a case to court within a reasonable timeframe.

DRCC along with member organisation of the Victims' Rights Alliance (VRA)¹⁰ have long been lobbying for the establishment of a Victim/Survivors Commissioner who is dedicated to protecting and upholding victim/survivors' rights. The appointment of a dedicated Commissioner for victim/survivors of crime would ensure their voices and experiences were at the forefront of decision making in addition to proactively shaping a balanced and fair criminal justice system.

Implementation of assembly recommendations 37 to 40 requires:

- In the years it will take the new DSGBV agency to build, **an ad-hoc agency should be established to ensure there is no risk to side-lining any of the work in the DSGBV sector;**
- **Specific and ongoing funding for public national awareness campaigns** to develop a national shared understanding DSGBV in addition to the meaning and importance of sexual consent;
- **Training for all legal professionals including the judiciary** is vital to ensure consistent practice and that the regulation of examination and cross-examination of victim/survivors in these trials is always appropriately trauma-informed and sensitive to the specific vulnerabilities of these witnesses;
- Introduce a robust informed consent process to ensure that victim/survivors do not consent to the disclosure of their counselling records without full knowledge of their entitlement to object to this and to let the judge decide on what, if any, disclosure should be made. This informed consent process should be supported by the entitlement to legal advice;
- There is a question as to the merit of sexual history evidence. If it is essential to the rights of the accused, then further research should be commissioned to identify whether the current latitude given to the accused needs to be restrained;

⁹ <https://judicialcouncil.ie/assets/uploads/1st%20Interim%20Report.pdf>

¹⁰ <https://victimsrightsalliancedotcom.wordpress.com/>

- Reinstatement and resource the sentencing database known as the Irish Sentencing Information System (ISIS);
- Statutory funding to cover the full cost of providing DSGBV services should be allocated on a multi-annual basis to ensure consistency of service for those who need them;
- Establish a statutory office to promote and vindicate the rights of victims of crime through the appointment of a Victim/Survivors' Commissioner.

Chapter 7: Leadership in Politics, Public Life & the Workplace

DRCC have a strong interest in recommendation 24 contained within Chapter 7 given that many of the women and men accessing DRCC services who are victim/survivors of sexual violence, may have also been harmed as a result of technology used to harass or humiliate them. Online gender-based sexual violence can have profoundly negative effects on a person. This more recent type of sexual violence is already proving to be quite prevalent, particularly towards young women.¹¹ Online sexual violence includes:

- Non-consensual sharing of intimate images and videos;
- Online exploitation, coercion and threats;
- Online sexual harassment;
- Sextortion; and
- Unwanted online sexual conduct.

DRCC are particularly concerned about the limited relief and remedies available to those who survive the abuse as well as the limited options for holding those who carry out that abuse to account. We are part of an online safety campaign coordinated by the Children's Rights Alliance (CRA) to make the internet a safer and more positive place for everyone. The publication of the Online Safety and Media Regulation Bill (OSMR) presents a huge opportunity to bring about the changes to make the online world safer. It has the potential to put an end to the age of self-regulation by big tech and social media giants and create a level of accountability that is sorely needed. The legislation as it stands needs to be amended to include an individual complaints mechanism. When an online platform fails to respond to a complaint in a timely way or if a person is unsatisfied with the response, there needs to be recourse. An individual complaint mechanism allows a person to raise a complaint with the Online Safety Commissioner who has the power to investigate the complaint and where necessary, compel the platform to remove the content or take other appropriate actions. The absence of an individual mechanism denies individuals a personal right of access to justice and requires them to depend on the good will of the industry and/or those advocacy organisations with whom the digital companies choose to engage. We hear from people who have asked social media platforms to remove harmful content to no avail. They found it a very distressing experience and it compounded the detrimental impact on their mental health and wellbeing.

An Garda Síochána are responsible for investigating and prosecuting these offences, it is important that they are sufficiently equipped and resourced to deal with these issues. The Commission on the Future of Policing identified¹² the need for An Garda Síochána to build its cyber capacity. Personnel need to be trained and allocated specifically to investigate these types of crime.

¹¹ According to a 2018 European Parliament Report, 1 in 5 young women in the EU have experienced online sexual harassment [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604979/IPOL_STU\(2018\)604979_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604979/IPOL_STU(2018)604979_EN.pdf)

¹²

[http://www.policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf](http://www.policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland(web).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland(web).pdf) See para 20-24

Implementation of assembly recommendation 24 requires:

- The Establishment of an Online Safety Commissioner that is effectively resourced;
- The inclusion within the OSMR Bill of an Individual Complaints Mechanism so people have somewhere to go for help when a platform does not act efficiently or effectively on an issue;
- Ensure that Gardaí have the knowledge and resources needed to implement the legislation that currently exists, including the new crimes identified in the Criminal Law (Sexual Offences) Act 2017 and the Harassment, Harmful Communications and Related Offences Act 2020.

Chapter 8: Norms & Stereotypes and Education

From our experience delivering DRCC's BodyRight programme – a sexual violence awareness and prevention programme for young people - we know that **much of the harm of sexual violence is caused by people's lack of knowledge and capacity to cope with their society.** This is particularly true for children and young people of every gender. Recommendations 27 and 28 recognise the importance of ensuring the curriculum include topics such as consent, gender power dynamics and DSGBV and that continuous professional development of educators promote equality and diversity. The last comprehensive prevalence study: Sexual Abuse and Violence in Ireland (SAVI) Report found that one in four adults experience sexual violence in their lifetime¹³. In light of this knowledge, the educational curriculum and Relationships and Sexuality Education (RSE) programme in particular needs to aim concretely and specifically to prevent future generations from having similar negative experiences. Thus, **an RSE programme that covers sexual health and risks, as well as teaching children and young people about consent and understanding boundaries, what a healthy relationship looks like, negative stereotypes and how to stay safe in the real world and online, will ensure they have a good foundation of knowledge on which to make informed decisions.**

We also believe that **children at primary level need to learn how to build the concepts of respect and consent into their young thinking and vocabulary.** It is important to start such conversations at an early age, to build consistently on the information provided so that children and young people grow up understanding everyone's right to bodily autonomy – including their own. Providing basic information at a young age establishes the foundation on which more complex knowledge can be built up over time.

Teachers are one of the key constituents influencing quality implementation of RSE programmes;¹⁴ so 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 schools, in youth groups, and in many other and varied settings, **sufficient resources must be made available, materials must be kept up-to-date and accessible to optimise the children and young people's learning.**

Implementation of assembly recommendations 27 & 28 requires:

- The recommendations published in 2019 by the NCCA for primary and post-primary schools should be implemented immediately.¹⁵

¹³ The SAVI Report (2002) *Sexual Abuse and Violence in Ireland* Hannah McGee, Rebecca Garavan, Mairéad de Barra, Joanne Byrne and Ronán Conroy. <http://www.drcc.ie/wp-content/uploads/2011/03/savi.pdf>

¹⁴ WHO 2017 *Training matters: A framework for core competencies of sexuality educators.*

is a need for comprehensive, robust and disaggregated data on all forms of gender-based violence in Ireland so that the true extent of the problem can be fully understood <https://ncca.ie/media/4462/report-on-the-review-of-relationships-and-sexuality-education-rse-in-primary-and-post-primary-school.pdf>

- Training for teachers in examining their own attitudes and beliefs in the many areas and themes that arise in the curriculum because of the substantial evidence that exists of a high prevalence of bias and misunderstanding of what constitutes sexual violence in society.

Chapter 11: Gender equality principle in law and policy

Attempts to increase gender equality are being hampered by the lack of robust data collection to allow us fully understand DSGBV in its various forms and a lack of gender and equality proofing of budgetary decisions. The Assembly in recommendations 43 and 44 recognised the need for both – better data and gender budgeting to advance women’s equality.

Demand for DRCC services in 2020 saw us deliver 6,010 counselling and support appointments, provide support for 150 people in our justice accompaniment service and engage with 13,438 contacts on our helpline. With 2,9861 sexual offences being reported in 2020, we believe that the prevalence of sexual violence is very much currently underestimated.¹⁶ Given that quality data collection is a core requirement of many European and International obligations to which Ireland is committed, there is a real need for comprehensive, robust and disaggregated data on all forms of gender-based violence so that the true extent of the problem can be fully understood

A 2019 OECD Scan¹⁷ of equality budgeting in Ireland cited a strong and high-level commitment in Ireland to promote equality. It also found that the Irish Government faces a number of hurdles in rolling the initiative out more broadly because government departments are not obliged to equality proof their public spending decisions.

Implementation of assembly recommendations 43 to 44 requires:

- In order to understand the nature, prevalence and impact of all forms of DSGBV, the data action of the next national strategy must include the regular collection, communication and analysis of quantitative and qualitative data, disaggregated by variables;
- Equality budgeting must be placed on a statutory footing.

Conclusion:

Through their comprehensive recommendations the Assembly have highlighted how much remains to be done, but they also offer a clear pathway for achieving a more equal society including one free from gender-based violence. The words used by the Assembly in their open letter to the Oireachtas are striking and very clear:

There is no place in our society for gender-based violence. We support the aspiration of the Istanbul Convention to create a Europe free from violence against women and all forms of domestic violence. We want our Government to work actively towards this goal.”

¹⁶ Central Statistics Office, Recorded Crime Victims 2020 <https://www.cso.ie/en/releasesandpublications/ep/p-rc/recordedcrimeq42020/>

¹⁷ OECD Scan: Equality Budgeting in Ireland (2019) <https://www.oecd.org/gov/budgeting/equality-budgeting-in-ireland.pdf>

Appendix

Chapter 10: Domestic, Sexual and Gender-Based Violence

Recommendation 37: All Government action to prevent and counter domestic, sexual and gender-based violence should be coordinated by a Cabinet Minister with direct responsibility for implementation of a national strategy.

Recommendation 38: Eliminate tolerance in our society of domestic, sexual and gender-based violence by developing and implementing awareness, prevention and education campaigns which may include children of an appropriate age on:

- (a) The impact and harm caused by domestic, sexual and gender-based violence.
- (b) Supports available to victims/survivors.

Recommendation 39: Support justice for victims/survivors by:

- (a) Reviewing and reforming the courts system – including the family courts – to better protect and support victims/survivors of domestic, sexual and gender-based violence and their dependents and remove barriers to justice.
- (b) Developing guidelines and specialist training for judges and lawyers regarding the treatment of victims/survivors, including the exclusion of the consideration of sexual history, character, attire and counselling/medical records.
- (c) Introducing tougher sentences and rehabilitation programmes for the perpetrators of domestic, sexual and gender-based violence and sexual crimes.
- (d) Providing specialised confidential health care and other support services for victims/survivors including legal representation.
- (e) Putting in place a Victims/Survivors Commissioner as an independent advocate and voice for victims/survivors.

Recommendation 40: Ensure sufficient publicly funded provision of beds, shelters and accommodation for victims/survivors of domestic, sexual and gender-based violence across the country and their dependents in line with the Istanbul Convention

Chapter 7: Leadership in Politics, Public Life & the Workplace

Recommendation 24: Strengthen legislation, reporting and monitoring of press and social media by:

- (a) Holding technology and social media companies accountable for immediately removing online content that constitutes sexual harassment, bullying, stalking, sexually violent or abusive content that they have identified or about which they have been informed.
- (b) Penalising and eliminating hateful and abusive language, including on the basis of gender, with regular reviews to ensure legislation keeps pace with technological advances.

Chapter 8: Norms & Stereotypes and Education

Recommendation 27: Curriculum review and development should:

- (a) Promote gender equality and diversity.
- (b) Explicitly cover gender power dynamics, consent and domestic, sexual and gender-based violence – both online and offline – within the revised Relationships and Sexuality curriculum.

Recommendation 28: All levels of the education system from pre-school to third level, led by the relevant Government Department, should:

- (a) Ensure that initial education and continuing professional development for staff includes modules promoting gender awareness and gender-sensitive teaching methods.
- (b) Monitor policies and practices – including school inspection and whole school evaluation – through the lens of gender equality and report regularly on trends and outcomes by gender.

Chapter 11: Gender equality principle in law and policy

Recommendation 43: Ensure data gathering on key gender equality issues (including care), regular publication of such data and remedial action where necessary.

Recommendation 44: Reflecting international best practice, require gender impact assessment of all proposed legislation and legislate for equality budgeting across all Government bodies including local authorities.