

# RAPE CRISIS NETWORK IRELAND

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*Working to end sexual  
violence in Ireland*

*Agenda for Justice II:*

*Delivering on the promise  
of child protection*

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# Working to end sexual violence in Ireland



Rape Crisis Network Ireland (RCNI) warmly welcomes the establishment of the Oireachtas Joint Committee on Child Protection. Our expert submission, *Agenda for Justice II: Delivering on the promise of child protection*, is intended to support the work of this important group and additionally further stimulate and contribute to the wider public debate.

Alongside the work of this Joint Committee it is vital that all of society remains engaged with furthering knowledge of child abuse. An aware society is a pre-requisite in prevention of further sexual violence against children and in gaining justice for those against whom crimes of sexual violence are perpetrated. For that reason we offer the RCNI submission to the Oireachtas Committee to the Irish public. Wider informed debate on the recommendations and questions we raise can contribute to the changes necessary, not simply at a legislative level but at all levels of our communities and society.

Rape Crisis services (RCCs) have been accompanying survivors of sexual violence through the criminal justice system through-out Ireland for over 25 years. Over 50% of RCC clients are survivors of child sexual abuse.

Rape Crisis Network Ireland is the national member-owned, policy, service support and campaigning organisation committed to the elimination of all forms of sexual violence through effecting political, cultural and social change.

This RCNI submission draws on expertise gathered from:

- our 16 member Rape Crisis Centres and their 25 years of experience,
- consideration of International experience regarding sexual violence, particularly comparable judicial systems by our Legal Co-ordinator,
- independent research commissioned by ourselves and others and
- our own expert analysis.

The RCNI look forward to participating in further informed debate over the coming months. In the run up to the next general election we will be especially interested to see how addressing Sexual Violence is considered and committed to in the Programmes for Government put forward by our political leaders.

Fiona Neary  
*Executive Director*





## Author's Forward

It has been my great pleasure, in conjunction with my colleagues and peers within, and beyond the RCNI, to 'translate' the experience, wisdom and courage of survivors (and their supporters) of childhood sexual violation into this Agenda for Justice II.

This Agenda urges reforms in legislation, practice and policy that would transform the judicial arena into which we entrust arguably the most vulnerable members of our community. The unique opportunity afforded by this All-Party Committee to deliver on our moral, legal and Constitutional promise of child protection is worthy of all of our best endeavours, affording as it does the chance for us to live up to those responsibilities. We saw the strength of the feelings expressed by the public over the past summer. Translating those feelings into real and meaningful change is our challenge. This document represents the RCNI's commitment to our participation to that process.

**Kate Mulkerrins**

*RCNI Legal Coordinator*

September 2006.

# Executive Summary

Below is a listing of the RCNI recommendations under each of the Committee's terms of reference. Please refer to the full document which follows for the rationale behind each point.

## Terms of Reference 1.

*Review the substantive criminal law relating to sexual offences against children;*

### **RCNI Recommendations:**

- 1.1** A statutory definition of 'consent' as it relates to sexual contact.
- 1.2** Require any 'mistaken belief in consent' to be an objectively reasonable one.
- 1.3** Preclude the defence of mistaken belief in consent in the case of under 13s.
- 1.4** Overhaul the Incest Act 1908 to reflect the modern family.
- 1.5** Distinguish between sexual exploitation and teenage non-exploitative sexual exploration.
- 1.6** Establish a new offence of child sexual abuse which would criminalise 'passive assault'.
- 1.7** Stop the defendant representing themselves in person in cases of sexual violation.
- 1.8** Make non-compliance under the Sex Offenders Act 2001 an "arrestable offence".

## Terms of Reference 2.

*Examine the issues surrounding the age of consent in relation to sexual offences;*

### **RCNI Recommendations**

- 2.1** Retain the current age of consent.

## Terms of reference 3.

*Examine criminal justice procedures relating to the evidence of children in abuse cases;*

### **RCNI Recommendations**

- 3.1** Require all vulnerable complainants to be considered eligible for 'Special Measures'.

## Terms of reference 4.

*Consider the implications arising from and the consequences of the Supreme Court decision of 23 May 2006 in the CC case;*

### **RCNI Recommendations**

- 4.1** Undertake national research into awareness and attitudes to child sexual abuse.
- 4.2** Address the loss of trust in the justice system and/or confusion around the law through public awareness measures.
- 4.3** Advertise the age of consent and its obligations, protections and responsibilities.
- 4.4** Ensure all children receive child protection education in our schools.

## Terms of reference 5.

*Examine the desirability or otherwise of amending the Constitution to deal with the outcome of the CC case and-or to provide for a general right of protection for children;*

### **RCNI Recommendation**

- 5.1** Enshrine the UN Convention on the Rights of the Child into our Constitution.

## Terms of reference 6.

*Make such other recommendations on the protection of children as shall to the committee seem appropriate;*

### **RCNI Recommendations**

- 6.1** Appoint, train and resource Specialist Investigative Gardaí.
- 6.2** Appoint, train and resource Specialist Prosecutors.
- 6.3** Require Judicial education on sexual violence to be a pre-requisite to hearing cases of sexual violence.
- 6.4** Ensure adequate court facilities to complainants in cases of sexual violence.
- 6.5** Ensure a sufficient number of suitably qualified Judges to expedite cases.
- 6.6** Appropriately resource pre-release risk assessment of sex offenders.
- 6.7** Implement national notification procedures to keep victims informed.
- 6.8** End the DPP's current "no reasons for decisions" policy.

# RCNI Submission to the Oireachtas Joint Committee on Child Protection

## 1. Review the substantive criminal law relating to sexual offences against children;

### 1.1 Adopt a modern and appropriate statutory definition as to what is meant by ‘consent’ as it relates to sexual contact.

Ireland has no statutory definition of consent. A statutory definition of consent, as adopted in other jurisdictions<sup>1</sup>, inherently protects and upholds the sexual autonomy of the individual. The RCNI strongly contend that justice in Ireland would benefit from same.

Experience in other jurisdictions has shown the additional and unexpected benefit such a reform has in the reduction in applications seeking leave to adduce aspects of the complainant’s previous sexual history in an attempt to bolster support for the defendant’s claim of “mistaken but honest belief” in consent.

### 1.2 Require any ‘mistaken belief in consent’ to be an objectively reasonable one and not merely honestly held<sup>2</sup>, and require that the evidential burden for the establishment of same is borne by those who seek to assert it.

A number of mechanisms could be considered to achieve this end not least a requirement that the defendant sought to make ‘objectively reasonable enquiries as to age and hence ‘capacity’. Current legal constructions of liability require evidence of a subjective appreciation or “advertent” fault. This leaves an honest but mistaken (even wildly mistaken) belief in consent that would not be shared by any reasonable person, as full vindication. The effect of this provision is that provided a jury are satisfied that a defendant believed he/she had consent then they must acquit. It is important to remember the defendant does not need to establish this in a positive sense but rather the prosecution must show beyond a reasonable doubt that the defendant knew that the complainant was not consenting or was (subjectively) reckless as to consent.

New Zealand, Canada and most recently England and Wales have moved away from retention of a subjective test, with a leading academic noting that:

“The fact that an unreasonable belief can exonerate by implication authorises the assumption of consent, regardless of the views of the victim

<sup>1</sup> See reform adopted in the UK (2003 Act) where consent is now defined as an agreement by choice by a person with capacity and freedom to make the choice, further reforms within the same Act require an objective assessment of “reasonableness” in the context of mistaken but honest belief in consent.

<sup>2</sup> In a remarkably consistent manner with the outcome of the High Court’s decision in respect of our law as it related to the ‘mistaken but genuine belief’ defence ‘imputed’ into our legislative provisions as they related to sexual assault (see Mrs Justice Susan Denham’s judgement) and of course more recently S.1 of the 1035 Act, the Court of Criminal Appeal of England and Wales had similarly ‘imported’ that, where the question is a mistake of fact (the ‘mistake in this particular case being based on the lie by the complainant that she was 16 (she was 14) K2000 Times LR,7th Nov) the court held that the belief need only be genuine, it need not be reasonable. Parliament’s response was to almost immediately draft legislation requiring that the prosecution must prove that the defendant did not hold a reasonable belief as to same.

or whatever they say or do. People who do not consent to intercourse should not have to see the assailants go free because of their unreasonable beliefs or attitudes. A subjective test encourages adherence to the outdated myth that women enjoy being overborne by a dominant male and that “no” really means “yes. Placing an onus on a person to ensure that their partner is consenting, with the risk of facing prosecution if they do not so ensure, is not disproportionate given the harm to the other person that results from non-consensual sex<sup>3</sup>.

### **1.3 Separate out the cases concerning pre-pubescent children and allow no defence of ‘mistake’ in such cases.**

It is perhaps illuminating to note that, civil liberty groups concerns<sup>4</sup> notwithstanding, the England and Wales legislature took the view that there should be an age<sup>5</sup> below which a child could not give consent that amounted to a legally significant consent. This of course was the position here in our jurisdiction prior to the finding of unconstitutionality re: the absence of an ‘honest mistake’ defence of the provisions of the 1935 Act as they related to females below 15. It is perhaps not to be assumed that such a finding would pertain to substantially younger children. The RCNI would submit that that age should be set at under 13.

### **1.4 A complete review and overhaul of the provisions of the punishment of Incest Act 1908, as amended, to reflect the modern nature of ‘looser’ family structures and to concentrate on the potential for abuse of position of power/authority within those structures.**

- to reflect the changing natures of ‘families’ and thus the category of persons who could stand in positions of power and authority over children of the ‘family’ e.g. Foster parents, step-parents, foster siblings, step brothers/sisters.
- Widen the categories of ‘prohibited acts’ to reflect more fully (and with a greater degree of gender neutrality i.e. include homosexual as well as heterosexual acts against males and females) the range of offences that a modern society would seek to proscribe within such settings.

It is a welcome feature of the new 2006 legislation that there is a legislative recognition of the need to broaden our parameters as to who stands in a position of authority, trust and control over children and young people. The new Act has drawn a wide definition of a ‘person in authority’ detailing that a parent, step-parent, guardian, grandparent, uncle or aunt, a person in loco parentis, a person responsible for the education, supervision or welfare of the victim<sup>6</sup> will face, on conviction, a greater penalty in respect of engaging in a sexual act with a child in such circumstances.

<sup>3</sup> Andrew Ashworth, Principles of Criminal Law, 1999 pp.354-355

<sup>4</sup> See Liberty’s concerns in Rv CICAP ex parte A [2001]2WLR1452, R v CICAP ex parte JE [2002]EWHC1050, Liberty’s Second Reading Briefing, July 2003.

<sup>5</sup> Sexual Offences Act 2003, Section 5; the offence is committed where A intentionally penetrates the vagina, anus or mouth of another person, B, with his penis and B is under 13.

<sup>6</sup> S.1(a),(b),(c) of the Criminal Law (Sexual Offences) Act 2006

This raises an interesting argument as to whether there is a continuing need for separate incest laws<sup>7</sup>. Some of the historical arguments as to why we may wish to proscribe such conduct have undoubtedly fallen from favour, most notably the eugenics argument. Many commentators, however, note that we continue to need some separate prohibition over and above any other offences that such conduct may constitute, to reflect our societal condemnation of the abuse of power and the breach of trust that such conduct inherently entails. Family structures afford ‘unique’ opportunities that may sadly be exploited by perpetrators to apply pressure and ‘groom’ children and young people for the purposes of sexual exploitation.

### **1.5 Construct our legal protective framework to reflect the difference in cases where there is age proximity and factual (albeit not ‘legal’) consent between the parties.**

There are powerful arguments in respect of the non-criminalisation of non exploitative sexual intercourse between young people, particularly in cases where those so engaged are close to the age whereby they can give legal consent. It is not necessarily helpful to penalise in these circumstances, as it may have the unintended and negative effect of preventing sexually active teenagers from accessing support and health agencies. Our view reflects this fact in that it does not automatically assume that sexual violence is always involved in underage sexual contact.

Equally it is very difficult (without lowering the age of consent to an unconscionably low level) to legislate in the area of so many variables (where the age differential between the parties is not greater than X years, where the younger party is not below Y years, where one party is not in a position of trust/ and or control/authority etc.,)

It is perhaps once again useful to look to the examples of other jurisdictions as to how they have developed their policy/legislation around this issue. We are of course mindful that other jurisdictions may not be subject to the same Constitutional/ Legislative restraints as Ireland, however, the approach of England and Wales to this issue is of particular interest as their legislative regime as it relates to Sexual Offences has so very recently been the subject of whole scale review (Sexual Offences Act 2003). This mammoth reform followed on from and was greatly informed by, a very extensive consultative process. This consultative process<sup>8</sup> comprised of both a Steering group (Home Office officials, lawyers, Charitable organisations directly involved with working with victims AND an External reference Group comprising of ‘others’ (pressure groups, children’s charities, gay and lesbian rights, medical, legal, ethical and religious interests)). Essentially they elected to retain the age of consent (at 16), retain the principle of criminality for sexual intercourse with persons below that age with persons who are themselves ‘young people’, but rely on ‘prosecutorial discretion’ to ensure that non-abusive, non-coercive, ‘factually consensual’ intercourse is not prosecuted<sup>9</sup>.

<sup>7</sup> Prof Tempkin, Do we need the Crime

<sup>8</sup> Setting the Boundaries: Reforming the Law on Sex Offences, HO2000

<sup>9</sup> Hansard 15th July 2003, col 248

Obviously the provisions governing the establishment of the office of the DPP and the ‘independence’ bestowed on that function (particularly protection from interference by the executive) would preclude such a blanket assurance being given by a member of the executive in this jurisdiction. The reality is however that just such ‘prosecutorial discretion’ is clearly operative here in any event. Our prisons are not populated with 14, 15 or 16 year olds whom had ‘factually consensual’ sexual intercourse.

The difficulty the RCNI would have with a system which would have to rely so heavily on the exercise (even though such a system would be our preferred option of dealing with this very difficult matter) of such discretion is the current system within which the prosecutorial process operates. The DPP’s ‘no reason for decisions’ policy coupled with our current methodology of data collection<sup>10</sup> means that we do not have a transparent and accountable criminal justice process within our jurisdiction. In such a context it is difficult, if not impossible, to recommend a reliance on further DPP discretion (no matter how impeccably it may be used) when it operates in this absence of external scrutiny. To ensure the requisite public confidence prosecutorial systems need not just to be fair, they need to be seen to be fair, particularly when ‘public faith’ in such institutions has been tested as sorely as of late.

## **1.6 Establish a new offence of child sexual abuse which would criminalise ‘passive assault’.**

The RCNI submit that careful consideration ought to be given to the establishment of a number of new offences. The Law Reform Commission in its 1990 recommendations suggested the offence of ‘sexual exploitation’ and this view is endorsed by Tom O’Malley who proposed (in 1996)<sup>11</sup> ‘an offence of child sexual abuse [which] would put the emphasis on acts which are abusive or exploitative’<sup>12</sup>. We make this recommendation to avoid the requirement for a technical assault to occur to constitute a Sexual Assault under the 1991 Act. As currently constituted, Sexual Assault offences could preclude criminal culpability for an adult who rather than touching a child indecently, prevails on that child to touch them [indecently]. In addition we feel this new law would encompass the proliferation of ways in which a child may be vulnerable to sexual exploitation from being ‘groomed’ on the internet, through to being required/allowed to watch pornographic material/ or actual sexual acts.

### **New law should criminalise:**

- (i) Passive assault.**
- (ii) Meeting a child following sexual grooming.**
- (iii) Engaging in sexual activity in the presence of a child.**
- (iv) Causing a child to watch a sexual act.**
- (v) Arranging or facilitating commission of a child sex offence**

<sup>10</sup> Which makes it impossible to ‘track’ a report to the Gardai through to its final outcome and thus accurately “gauge” our true rate of attrition and the particular prosecutorial rate in each and every category of crime.

<sup>11</sup> Prof. Thomas O’Malley, *Sexual Offences: Law, Policy and Punishment*, 1996

<sup>12</sup> *Ibid.*, p. 103

Albeit that many offences in our jurisdiction would be covered under the provisions of the criminal law as they relate to aiding, abetting, counselling or procuring, there are powerful reasons why we ought to consider the scope of those provisions.

## **1.7 An abolition of the Right of the Defendant to represent themselves in person and thus conduct cross examination of the child complainant in cases involving children.**

The right to represent oneself in person and therefore the right to cross examine a vulnerable witness, as happened in *DPP v Mariusz and Pawel Ludecke* in the Central Criminal Court before Mr Justice Abbott in July 2005, in a 31 day trial, is one which must be viewed as highly prejudicial to the dignity and rights of the child. When a similar tactic was adopted by Milton Brown in an English case, such was the level of outrage that the defendant was able to sack his legal team and conduct his defence in person, cross examining his victim for days (he was eventually convicted), that the law was subsequently changed following a successful campaign by Baroness Helena Kennedy QC, withdrawing the right to self-representation to defendants in rape trials<sup>13</sup>.

We have no such restriction in our jurisdiction, further we had no such sense of outrage when the 2005 case was given press coverage. When regard is given to the fact that a child complainant may have to endure cross-examination by a parent, or a teacher accused of abusing them, the very obvious ‘unfairness’ of allowing this becomes apparent.

Note: In empowering the Judge in the protection of the child witness in their courtroom from the accused, it makes little sense not to extent this same protection to all vulnerable witnesses and not to confine the reform to children alone.

## **1.8 Empowering the criminal justice system to effectively monitor ‘registered’ sex offenders by amending the Sex Offenders Act 2001.**

By increasing the current penalties for non-compliance under the Sex Offenders Act 2001 to five years, this would render non-compliance an “arrestable offence”.

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<sup>13</sup> It is interesting to note that those provisions have withstood challenge and have been held not to be contrary to Article 6

## 2. Examine the issues surrounding the age of consent in relation to sexual offences;

### 2.1 Retain the current age of consent, but implement a mechanism which ensures the non-prosecution of non-abusive, non-exploitative peer sexual exploration.

The RCNI would see the usefulness of the age of consent as primarily preventative. In the first instance it is a statement of support to teenagers about the level of protection we extend to them. It can be empowering, therefore, for young people as they explore and negotiate a sexualised adult world. The age of consent also stands as a warning to adults who would exploit children that there is a line over which society will not tolerate them crossing.

The RCNI are of the opinion that there have been no cogent arguments advanced during the public debate on this issue which would persuade our members that a change in the current age of consent was in the best interests of the young people concerned or indeed in the best interests of wider society.

To render teenagers empowered to make truly consensual choices it is imperative we divert resources into education programmes which seek to prevent the sexual exploitation of young people whilst not stifling appropriate exploration of their sexuality.

What needs to be borne in mind also is that any alterations of the heterosexual age of consent may have the effect of altering the homosexual age of consent. There were misgivings voiced in the Dáil regarding the setting of the age of homosexual consent at 17, in the passing of the Criminal Law (Sexual Offences) Act 1993 - opposition parties of the day favouring 18 (see the views as expressed by Deputy Mitchel, 432, Dáil debates 1984 (23rd June 1993)). A potentially divisive debate on this issue is unlikely to inform the wider debate that ought to assess the age of consent and the circumstances in which sexual relations with a teenage girl or boy should concern the criminal law.

### 3. Examine criminal justice procedures relating to the evidence of children in abuse cases;

#### 3.1 The RCNI recommend that children in abuse cases be statutorily entitled to the following special measures:

- **Screens around the witness box.** A screen is placed around the witness box to prevent the witness from having to see the defendant.
- **Give their evidence via live link.** The Witness can sit in a room outside the courtroom and give their evidence via a live television link to the courtroom. The witness will be able to see the courtroom and those in the courtroom can see the witness on a television screen.
- **Have their evidence in chief video recorded.** The witness' main oral evidence is videotaped and played to the court.
- **Have the judges and counsel removal their wigs and gowns.** The judge and lawyers in the court do not wear gowns and wigs so that the court feels less formal.
- **Give their evidence in private.** Ensuring that when children are giving their evidence that members of the public are not allowed in the court room.
- **Use of communication aids.** For example an alphabet board.
- **Examination through an intermediary.** An intermediary is someone who can help a witness understand questions that they are being asked, and can make his or her answers understood by the court.

### 4. Consider the implications arising from and the consequences of the Supreme Court decision of 23 May 2006 in the CC case;

Tom O'Malley referred to the potential abolition of the offence of unlawful carnal knowledge as one which would leave an, 'unconsonable void in the legal regime for protecting girls from sexual exploitation'<sup>14</sup>

We had that 'unconsonable void' albeit for a brief period of time (until the passing of the 'New Act') following the CC decision. It is perhaps impossible to fully appreciate the implications which arose as a result of the loss of trust in the justice system and/or confusion around the law arising from the debate surrounding the CC case. Certainly Rape Crisis Centres throughout the country reported a great many clients/ex-clients/ members of the public contacting them in dismay at what they perceived as the 'system's failure'. Garda statistics for the quarter (April, May, June 2006) showed a 47% drop in the reporting of carnal knowledge incidents on the same quarter the previous year,<sup>15</sup> perhaps demonstrating how many cases were impacted by the change in legislation.

This systemic failure occurred on top of the pre-existing conditions namely the highest recorded rate of attrition in cases of sexual violence comparative to 20 of our European neighbours and a "striking .. decline in the proportion of sex crimes reported resulting in proceedings being taken<sup>16</sup>". Two thirds of all files submitted in the 1970s resulting in proceedings being commenced while currently approximately only one third do so. The impact on the complainant that "their" case is not being proceeded with must be viewed by reference to crimes of sexual violence, which are by their very nature, crimes of the most profound abuse of power. That the complainant experiences a further sense of powerlessness through the judicial system is well documented.

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<sup>14</sup> O'Malley, op cit

<sup>15</sup> Numbers in this category are low and the statistics cannot deal with the reasons behind any drop or rise in reporting.

<sup>16</sup> Dr. Ian O'Donnell, Director, Institute of Criminology, UCD

## The Legacy of the CC case:

- a. An 'unconsonable void' which rocked the public's confidence in the ability of our judicial system to effectively deal with child sex abuse.
- b. Public alienation from their justice system which gave the appearance of being malleable to serving convicted rapists and helpless to act in defence of victims. In addition the public debate around the law was at times dangerously impenetrable to the non legal or expert public.
- c. Increased public awareness of the age of consent. However, it was unfortunate that the issue of the differential treatment of boys and girls came to dominate debate.
- d. The establishment of a defence of 'honest' (though not necessarily reasonable) consent.
- e. An increased likelihood that very young complainants are now going to face cross examinations as to their previous sexual histories<sup>17</sup>
- f. As a consequence of the new Act we ironically, as the Minister pointed out, have rendered a 'schoolmate' close in age who **knows** information about the other party with whom they are engaging with in such factually, though of course not legally 'consensual' sexual activity, (for instance what year/class they are in at school) to be in a substantially more challenged position to rebut the presumption that he/she knew that the other party was below the age of consent than a stranger (who may be substantially older than the child- and who may have 'met' the child online in a chat room etc.).

### The RCNI would strongly recommend the following to address implications b and c.

- 4.1 **Undertake national research into levels of public awareness** into issues of child sexual abuse and attitudes towards sexual violence and child abuse.
- 4.2 **Resource and roll out a multi media public awareness campaign to address the loss of trust in the justice system** and/or confusion around the law arising from the debate surrounding the CC case.<sup>18</sup>
- 4.3 **Put in place a public awareness campaign to ensure general knowledge within the population of the new age of consent** and obligations, protections and responsibilities concerning same.
- 4.4 **Make modules protecting children from child abuse and empowering them in knowing and asserting their bodily integrity, and respecting others', compulsory in our schools.**

<sup>17</sup> Here again the impact of a subjective analysis of recklessness as to consent is evident. A defendant asserting an "honest but mistaken belief in consent" is more likely to be successful in getting leave to adduce evidence of a complainant's previous sexual history (to show the basis of that "honest belief", for example, by reference to the complainant's "known" propensity towards sexual promiscuity) than a defendant who is required to proceed in an "objectively reasonable" manner in relation to consent (there is anecdotal evidence from England and Wales that following the 2003 Act there has been a substantial decline in successful applications of leave to adduce evidence of a complainant's previous sexual history).

<sup>18</sup> The Ferns Report 2005 recommended a public awareness campaign on child abuse - a committee has been established within the HSE to take this recommendation further. The National Steering Committee on Violence Against Women has a Public Awareness sub committee. Liaising with these Committees in terms of these public awareness recommendations may be useful.

## 5. Examine the desirability or otherwise of amending the Constitution to deal with the outcome of the CC case and-or to provide for a general right of protection for children;

### 5.1 The RCNI recommend the incorporation of the Convention on the Rights of the Child be constitutionally enshrined to promote the maximum effect of our ratification of same.

This recommendation is advanced in order to 'deliver' on the Convention's proclamation that: 'childhood is entitled to special care and assistance' and in particular Article 19 states that:

'States shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical violence... including sexual abuse (and

'Such protective measures should, ... include effective procedures ... for identification, reporting, referral, investigation, treatment and follow up of instances of child maltreatment described heretofore, and as appropriate, for judicial involvement.'

The need to extend particular care to the child has been stated in:

- the Geneva Declaration of the Rights of the Child of 1924
- the Declaration of the Rights of the Child adopted by the General assembly on 20<sup>th</sup> November 1959,
- recognised in the Universal Declaration of Human Rights and
- the International Covenant on Economic, Social and Cultural Rights (Articles 23&24),

The stark statistics as outlined in the Sexual Abuse and Violence in Ireland (SAVI)<sup>19</sup> Report 2002:

- nearly half of the victims of child sexual abuse had never disclosed that abuse prior to the survey (49.6%),
- one in five women reported contact sexual abuse in childhood
- one in six men reported contact sexual abuse in childhood,
- overall one third of women reported some level of sexual abuse in childhood
- one quarter of men reported some level of sexual abuse in childhood and
- 'legal redress for sexual crimes was found to be the exception rather than the rule'

<sup>19</sup> Hannah Mc Gee et al., Sexual Abuse and Violence in Ireland: A National Study of Irish Experiences, Beliefs and Attitudes Concerning Sexual Violence, 2002

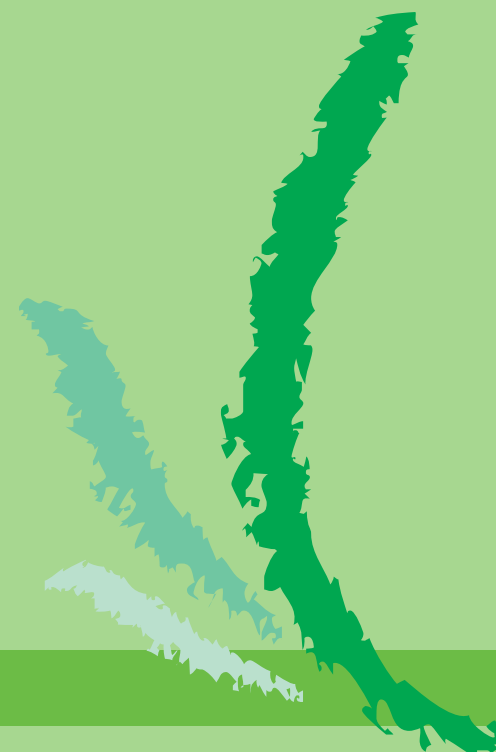
In Ireland we are a significant distance from achieving the necessary level of such protective ‘care and assistance’ for our children.

In particular the RCNI would draw the Joint Committee’s attention to the Constitutional Review Group’s recommendations and the United Nation’s Committee Report on the Rights of the Child<sup>20</sup> (CRC) in which they urge (inter alia) the, ‘State to take all appropriate measures to include the principles and provisions of the Convention thereby reinforcing the status of the child as a full subject of rights.’

Further the UN (Committee on CRC) have highlighted their concern at the lack of adequate and systematic training on the principles and provisions of the Convention for professional groups working with children such as ... judges, lawyers, police officers, teachers (and others). If such Constitutional change were to be effected, the need to implement such training ought to be fully recognised, resourced and delivered.

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<sup>20</sup> Observations of the Committee on the Rights of the Child: Ireland 04/02/98 CRC/C/15/Add.85



### 6. Make such other recommendations on the protection of children as shall to the committee seem appropriate;

**6.1 Appoint, train and resource Specialist Investigative Gardaí** permanently stationed in each policing district throughout the country specifically trained in the investigation of sexual violence, including sexual violence as it relates to children.

**Specially trained victim liaison officers (similar to SOIT officers in the Metropolitan police force of the UK) should be used in every case of rape or serious assault.** Their function would be to:

- Ensure that victims receives the highest standards of care and support at the beginning, during and completion of the investigation
- Ensure that the best possible evidence is obtained to aid the investigation and support any subsequent prosecution

Research in the UK has shown that SOIT officers can have a high impact on the victim's willingness to proceed with the case and have a significant impact on the investigation itself.

'Attrition is more likely where contact with the victim has not been consistently maintained by the police and where the victim has not been kept informed of developments in the case.'<sup>21</sup>

UK Project Sapphire additionally nominates minimum level of experience and training required for investigating officer; where the role of an investigative officer in rape cases is clearly nominated and separate to that of a SOIT officer. RCNI meetings with and visits to Project Sapphire have assured the RCNI that these measures and the specialist training supporting these nominated roles, are to be recommended.

**6.2 Appoint, train and resource Specialist Prosecutors** to be appointed to the conduct of cases of sexual violence who have undertaken appropriate levels of specialist training.

**6.3 Require Judicial education on sexual violence** to be a compulsory pre-requisite to hearing cases of sexual violence.

**6.4 Ensure the adequate provision of services in court facilities** to complainants in cases of sexual violence including separate waiting areas, restroom facilities etc.,

**6.5 Ensure the adequate provision of a sufficient number of suitably qualified Judges** to expedite cases before the courts.

**6.6 Appropriately resource pre-release risk assessment of sex offenders serving custodial sentences to facilitate suitable post release supervision.**

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<sup>21</sup> A Policy for the Investigation of Rape and Serious Sexual Assault, Project Sapphire, Metropolitan Police, 2002 P. 16

**6.7 Implement National notification procedures** to ensure that victims are advised in advance of the release from custody of offenders (either on bail or following completion of a custodial sentence) and apprised of any conditions attached to such release.

**6.8 End the DPP's current "no reasons for decisions" policy** and replace same with a mechanism that is transparent and accountable and seen to be accountable.

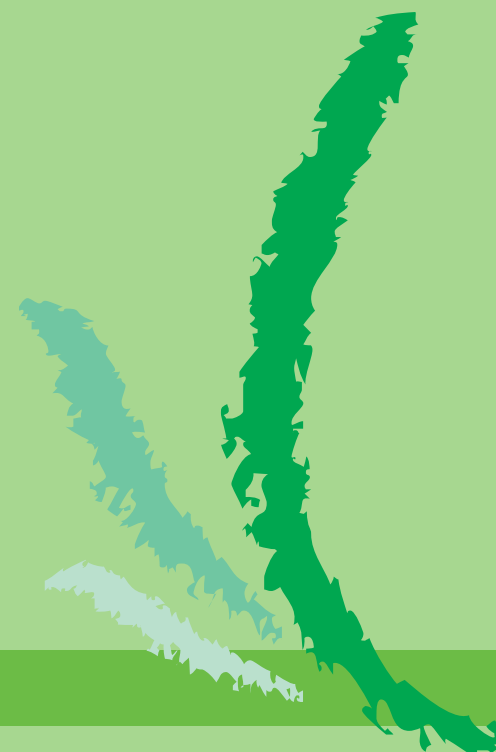
**The RCNI are calling on this committee to seek an enlargement of its remit to allow a whole scale review of our legislation, practice and policy as it relates to sexual violation of all age categories.**

Endeavouring to limit the scale of this review to 'children' alone will do a grave disservice to all victims of sexual crime including those abused as children but who are dealt with as adults (maybe due to delayed reporting, maybe as a result of entering adulthood prior to the adjudication of the matter). In addition many of the reforms called for above apply equally to sexual violence cases more generally eg. Specialist Investigative Gardaí, Specialist Prosecutors, Judicial education, a statutory definition of consent, objective reasonableness of belief in consent, to name but a few.

For these reasons and because of the need for such a review (as outlined in the RCNI's Agenda for Justice 2005) we urge the committee to seek an expansion of its remit as a matter of urgency.

## *Rape Crisis Network Ireland*

*September 2006*





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