



**RCNI Submission to Cosc National Strategy.**

**30<sup>th</sup> June 2008.**

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## Section 1. Introduction and Definition.

1.1 The RCNI welcomes the opportunity to make this submission to the development of a National Strategy on Domestic, Sexual and Gender Based Violence. The RCNI both nationally and internationally delivers a strategic leadership role towards addressing all forms of Violence Against Women. It is well positioned as a national membership organisation, with an expertise in sexual violence that is in demand in the wider public arena and has proven its capacity to contribute and advise on the necessary infrastructure for a national response. It has been identified as a key strategic player in building and delivering partnership responses. The RCNI has a pivotal leadership role in establishing a coherent policy and action response to the issue of violence against women in Ireland.

1.2 With the establishment and resourcing of Cosc in 2007 the development of a national strategy is timely. Through Cosc, the Irish State is in a position to deliver on an ambitions strategy, as Cosc is equipped to drive such a strategy. The absence of such a critical driving mechanism previously has greatly impaired and limited the potential and progress of any Violence Against Women (VAW) strategies. The National Steering committee has been a useful but insufficient mechanism to deliver the levels of societal change and cross agency commitment required to sincerely address gender based violence in Ireland.

1.3 The development of a National Strategy and its ensuing Implementation and Action Plans requires that an appropriate definition of Domestic, Sexual and Gender based Violence is utilised throughout. The RCNI recommend the continued use of the UN Definition, UN Declaration on the Elimination of Violence against Women, that has been agreed by the Irish Government, as adopted by the National Steering Committee on Violence Against Women:

*“the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in private or public life. Accordingly, violence against women encompasses but is not limited to the following:*

- a. physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women , non-spousal violence and violence related to exploitation,*

- b. Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work , in educational institutions and elsewhere, trafficking in women and forced prostitution,*
- c. Physical, sexual and psychological violence perpetrated by the state wherever it occurs.”*

1.4 The success of any National Strategy will be dependent on:

- A coordinated inter-agency framework which operates at national, regional and local levels
- Recognition of the expertise of front-line specialist service providers, amongst others
- An integrated approach, which recognizes the fundamental interconnectedness of forms of violence against women
- Sufficient and appropriate data to provide an evidence based approach
- Clarity and agreement regarding which agency, department, semi-state agency or location carries what remit and responsibility with regard to VAW
- The identification and documenting of which protocols, guidelines, strategies, training, specialization, targets, budgets, monitoring framework are required for each location with a responsibility to VAW
- The capacity to deliver leadership such that each agency/location with a remit in relation to violence against women delivers proactively and successfully on that remit.

## **Section 2. The Strengthening of Preventative Mechanisms.**

**2.1 Attitudes underpinning VAW are resistant to change and require long-term investment, alongside clear actions by Government to make perpetrators accountable. ... Interventions will only contribute to the elimination of violence if they are part of planned, coherent and coordinated prevention programmes.<sup>1</sup>**

2.2 The Irish government should adopt a comprehensive and strategic response to VAW prevention and awareness raising.

2.3 While the public health prevention model is often cited as a helpful starting point there are questions about the efficacy of this model in addressing complex social problems which go beyond the medical model.<sup>2</sup> Further research is required to ascertain best practice models.

2.4 What is agreed regarding a practice model is:

- That prevention must not only target individuals but also the social context within which VAW persists.
- The message must be coordinated across as many different levels and locations as possible.
- Intervention can be targeted universally, selectively (at identified at risk groups) or indicatively (at known victims or perpetrators).
- It can be aimed at primary (preventing the crime), secondary (preventing re-victimization through inadequate responses) and tertiary levels (preventing long term trauma through inadequate responses).

**2.5.** The RCNI recommend that Cosc lead and prioritize the primary prevention of VAW as this is the level where it is essential to have a nationally-coordinated and long-term, significantly-resourced commitment. This must go beyond risk reduction programmes and include programmes and campaigns which address the underlying causes of rape and sexual violence, such as: gender inequality, gender roles, beliefs about power and control. Activity at this level also supports and leads prevention at the other levels. The potential impact is not only a reduction in sexual violence perpetrated but better outcomes for survivors in the aftermath of an instance through:

- Increased Disclosure
- Decreased secondary trauma arising from responses of community, society and statutory agencies.
- Increased support uptake
- More perpetrators held to account

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<sup>1</sup> Erturk, J, UN Special Rapporteur on VAW, 2008

<sup>2</sup> Michigan Coalition Against Domestic and Sexual Violence, 2003

2.6 There are three steps which need to take place.

- 1. Understanding the problem and formulating evidence based action.**
- 2. Informing and training relevant professionals**
- 3. Educating the public**

## **2.7 Understanding the Problem.**

### **2.7.1 Cosc should provide leadership in research excellence**

- Establish comprehensive baselines on prevalence (SAVI is already a start in terms of SV)
- Establish comprehensive, attitudinal research on attitudes and behaviors concerning VAW which measure:
  - Levels of tolerance to VAW and sexual coercion in the population.
  - VAW as a social phenomenon as well as an individual problem/action/injury.
  - The core attitudes and behaviors of our society that facilitate the particularities of VAW.
- Repeat population research at regular intervals to monitor impact and/or change.
- More detailed investigation into areas suggested by the research, in particular vulnerability, and into marginalized groups.
- Consult stakeholders in a systematic way to ensure appropriateness of activities and optimize the chances of affecting change.
- Support and lead best practice in the data collection and monitoring of all aspects concerning VAW: Map gaps in current data collection, map comparability of data from different locations, support interagency communication in terms of data collection: Establish data collection advisory annual round table to consult on effective tracking and recording, gaps, emerging data collection needs due to changing technology including: CSO, Gardaí, National Networks, SATUs, Courts services, Probation etc.

### **2.7.2 Cosc should facilitate dissemination of research towards achieving expert analysis**

- Disseminate and publish research in full where possible
- Organize seminars and conferences on findings along with international comparisons, experience and best practice
- Consult with stakeholders in a systematic way
- Run consultations on one-off initiatives
- Inform the public debate by communicating outcomes and conversations widely.

### **2.7.3 Cosc should facilitate the formulation of effective action strategies arising out of this evidence based understanding**

- Strategies should be evidence-based, tested on target audience and evaluated for impact and effectiveness.
- Actions should target
  - Primary prevention - the prevention of the violence before it occurs;
  - Secondary prevention - the prevention of re-victimization through inadequate responses from society and agencies immediately after the violence and
  - Tertiary prevention - the long term responses after violence for the victim and perpetrator.

## **2.8 Inform the Relevant Professionals**

2.8.1 The goals of this step are to inform the relevant professionals to facilitate

- early detection of both victimization and conditions for perpetration
- disclosure
- early intervention
- appropriate survivor-focus responses
- effective investigation of crimes

### **2.8.2 Strategy**

- Maintain and care for structures of communications with stakeholder professionals who can be proactive agents in detecting and preventing VAW, including; GPs, medical staff, nursing staff, VAW NGO staff and volunteers, teachers, parents groups (in relation to schools), solicitors and lawyers, professionals working with vulnerable groups such as migrants, homeless, addicts, youth, mental health, disabled etc. HSE, social welfare and child protection staff.
- Ensure visibility of issue within the professions.
- Compile and provide guidance for professionals in terms of detection, disclosure, protection, supports and services
- Ensure appropriate training and support for professionals who are in locations where attitudes and behavior can and should be challenged
- Establish criteria and structure for community health professionals' involvement in delivery of the training of professionals.
- Ensure effective referral system through the development of profession specific protocols. Protocols to include:
  - i. clear guidance on survivor rights,
  - ii. specific professional roles,
  - iii. recommended steps to be taken in detecting, preventing and recording, and
  - iv. Referral obligations.

### **2.8.3 Map existing training and practice**

- Equip the NGO sector to deliver these objectives through funding a Training and Education coordinator in each of the two national networks who, in collaboration with the relevant professionals and experts, will have the task of:
  - Developing standardized information materials
  - Developing standardized protocols
  - Developing standardized national training
  - Coordinating regional trainers housed in services in the regions.
    - Regional trainers to
      - Deliver the standardized national training to Gardaí, teachers, youth workers, health professionals.
      - Provide on-going support to local professionals in terms of maintaining best practice, learning and local support networks.
      - Evaluate and monitor compliance with the protocols, outcomes and impact for survivors.

#### **2.8.4 Monitoring**

- Training should be piloted and evaluated.
- Appropriate VAW data should be required at the different locations
- Evaluation to include
  - Compliance with the protocols
  - Rates of detection/disclosure and
  - Referral practice and outcomes
  - Survivor satisfaction assessment should be sought.

### **2.9 Educating the Public.**

#### **2.9.1 A National Strategy must, through schools**

- Ensure the school curriculum addresses consent and sexual violence and not simply the biological functions of sexuality, by working in partnership with expert Community based trainers, the NCCA and the Department of Education and Science.<sup>3</sup>
- Work towards ensuring these aspects of the curriculum are mandatory<sup>4</sup> and that teachers are adequately supported in its delivery.<sup>5</sup>

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<sup>3</sup> While a study of 'Safe Dates' school programme found there was reduction in perpetration and victimisation over a four year period (Foshee et al 2004) there is currently insufficient evidence on the impact schools programmes on changing attitudes and in turn if those changed attitudes having an impact on changed behaviour. (Whitaker et al, 2005).

<sup>4</sup> In November 2006 one fifth of schools were not running the programme. In addition in March 2007 it was reported that 11% of schools do not teach RSE in first and second year, increasing to 20% in 3<sup>rd</sup> year, 30% in first year of leaving cert cycle and 33% by final year (Mayock, Morgan and Kitching research on the implementation of RSE). The Programme for Government has committed to 'requiring all primary schools to implement the Stay Safe programme'.

- Promote a consistency of message so that the schools' curriculum reflects the message and language of broader public awareness raising and the wider public debate.<sup>6</sup>
- Ensure community-based professionals are involved in the delivery of sex and relationship education<sup>7</sup>.

### 2.9.2 Mechanism:

- Map community sector involvement and capacity in delivering Schools education – NGOs currently involved including RCCs, DV services, IFPA, Sexual & Mental Health NGOs, Suicide prevention and anti-bullying organizations.
- Map overlapping aspect of various programmes.
- Assess feasibility of devising a combined, agreed core programme to be delivered by NGOs across the country and integrated into the curriculum.<sup>8</sup>

### 2.9.3 The National Strategy, through media

- Informed by research and collaborative working, identify priority attitudinal changes which are pivotal in preventing VAW. These should include:
  - i. Prevention through dissuading perpetrators and challenging 'risky' behavior
  - ii. Prevention through targeting vulnerable groups with risk reduction messages
  - iii. Prevention through challenging myths and stereotypes which support the perpetrator and blame the victim.
  - iv. Prevention through targeting and harnessing men as proactive allies in combating VAW
- Develop a communications strategy to affect these changes to include:
  - i. The development of public awareness tools

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<sup>5</sup> The **National Council for Curriculum Assessment (NCCA)** (Feb 2008) found that teachers were untrained and unprepared to deliver SPHE, with many feeling unable to tackle the issues; the NCCA acknowledged that teachers will require knowledge and understanding through professional development. It has acknowledged that it may be necessary to consider the notion of specialist SPHE teachers. 71% of schools said the discomfort of teachers is a major barrier to implementing sex education (Mayock, Morgan and Kitching, 2007).

<sup>6</sup> **The Share Programme** in Scotland found that their extensive sexual health education programme had no impact on outcomes in terms of rates of teenage crisis pregnancy by the time the pupils were 16. The reasons for this were posited as: 1 the lack of direction for behaviour, 2 the weak effect in relation to the more pervasive influence of the media, family, local culture and economic factors 3 the low status the programme has in schools.  
[www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1779834](http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1779834)

<sup>7</sup> The Programme for government commits to 'Involve Community Health Professionals in the delivery of Relationships and Sexual Education and provide greater support for teachers in this area through improved teaching resources and access to training'. Recent evaluated pilot programmes have included: **Carlow South Leinster RCC** ran a pilot *Knowledge, Awareness & Safety* (2007) education programme funded by the Dept of Ed and Science based on a co-facilitation model. Kerry RCC ran an evaluated pilot on

<sup>8</sup> For an evaluated pilot see Respect Project' funded by the Crisis Pregnancy Agency, planned in 2003 and rolled out 2004 & 2005.

- ii. Promotion of message consistency throughout the critical locations (including schools programmes)
  - iii. Full and persistent visibility (posters through to TV ads),
  - iv. Supporting key intervention by public figures in the public debate with the consistent messages.
  - v. Sustain message over a period of years.
  - vi. Evaluation and monitoring of impact.
- Inform survivors about the support they are entitled to and where to access same.
  - Prepare relevant agencies to respond to increased demand.

**2.9.4 Mechanism:**

Ensure consistent adequate funding for the public awareness raising.

### **Section 3. Development of Support Services for Victims.**

3.1 The 2007 UK Report Map of Gaps notes that for women subjected to violence “specialised support services are vital for their immediate safety, access to justice and ability to move on with their lives” (pg. 6). In order to appropriately plan the development of support services which meet the expressed needs of victims, with the maximum amount of available information, the following is required:

#### **3.2. All service development is in line with survivor identified required outcomes**

3.2.1 Outcomes evaluations currently form the basis for service evaluation, services planning and development in other jurisdictions and for many major funders. Outcomes evaluations can help to determine effectiveness of services<sup>9</sup> for victims. Activity levels only provide information regarding the number of survivors who utilise services, what type of services they use and how frequently they use services. Activity levels do not measure whether these services were the ones most required, that were delivered in the most appropriate manner. Outcomes evaluation needs to encompass all direct services offered by Rape Crisis Centres including immediate crisis response, advocacy, Helplines and counselling.

3.2.2 Mechanisms to deliver this action:

- National network resourced to develop standardised Outcome Evaluation tools for all rape crisis services in partnership with researchers experienced in the area
- National network and researchers funded to analyse results from the outcomes evaluation on an ongoing basis so that the results can feed into future services development
- Outcomes evaluations to be developed with other providers of services to survivors of sexual violence.

3.2.3 Impacts:

- Outcomes information will be available to local services for planning and development
- Outcomes information will be available to Regional Advisory Committees to support planning and development of services
- Outcomes information will be available nationally for planning and development
- Services can be adapted to deliver in the most effective manner

#### **3.3 Service development to be planned on a national and not only regional basis**

3.3.1 In the past, services have developed differently, in part based on regional policy variations. This contributes to an Irish version of a post code lottery for victims of sexual violence. Planning on a national basis allows for resources to be directed to the areas in

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<sup>9</sup> Riger, et al, 2002

which they are most needed. For example, by 2021 the population of those aged 15 and over is expected to increase to approximately 4,053,500.<sup>10</sup> Between now and 2021 population increases are projected to differentially affect various areas of the country. Overall, it is anticipated that the Mid-East (Meath, Kildare, Wicklow) region will grow the fastest at an average rate of 2.2% per year between now and 2021, with a larger than national average increase in those aged between 15 and 24. None of these counties have specialist sexual violence services or outreaches currently functioning. The West (Galway, Mayo, Roscommon) is projected to have the next largest average yearly increase at 1.6%. Roscommon currently has no service. External migration is expected to have a greater impact on Dublin and in the West, further increasing the demand in those areas for services in languages other than English and appropriate for those from other cultural backgrounds.<sup>11</sup> There is no evidence that rates of sexual violence vary dramatically around the country. Without nationally coordinated service development future population growth will only exacerbate existing gaps in services

3.3.2 Regional planning has also resulted in some extraordinary variance, which should be addressed as a priority. Using CSO figures, an area in the South East with a population of 420,000 is serviced by 5 Rape Crisis Centres and an annual HSE funding allocation of €782,000. A very similar region in the North East with a population of 345,000 receives a total annual HSE allocation of €167,000. The North East region is exceptionally badly served in terms of services for victims of sexual violence, with a comparable population area on six times the level of funding with 5 times the levels of services available. A population area in the Midlands of 340,000 is on HSE annual funding of €315,000, 1.8 times that of an almost exactly the same population area of the North East. Even a quick consideration of these figures demonstrates that where you happen to live in Ireland has a very high impact on the availability and accessibility of specialist sexual violence Services.

3.3.3 The old south East Health board region, which covered Waterford, Wexford, Carlow, Kilkenny, Tipperary, with an allocation of €1,800 per 1,000 in population, should be the minimum standard of funding of RCCs nationally, in the short term.

3.3.4 Please see 3.6.1 for further geographical gap information.

### **3.4 Service Development which harnesses the role of National Networks.**

3.4.1 As development of services to date has been highly fragmented and ad hoc, investment in National umbrella bodies can aid in more equitable service development.

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<sup>10</sup> This is based on M1F2 assumptions in CSO report *Population and Labour Force Projections 2006-2036*

<sup>11</sup> These figures are based on M1F2 medium projections in CSO report *Regional Population Projections 2006-2021*.

Many aspects of services, including crisis intervention, need to be resourced, co-ordinated and delivered locally. There is a benefit however, to certain aspects being conducted locally or regionally whilst coordinated, evaluated and resourced through the National network this could include some prevention projects such as RCC Garda Liaison and Training Officers, and Education Projects.

### **3.5 Service Development planning needs to take account of mapping and needs assessments already conducted or currently taking place**

3.5.1 These include:

- RCNI mapping of gaps in service availability
- Ferns 4 mapping and recommendations arising from a review of psychological support service availability and accessibility for adult survivors of child sexual abuse due to be completed later this year
- *Sexual Assault Treatment Services: A National Review* – Rationale to determine appropriate locations for future developments
- Research currently commissioned by the NE RPC regarding sexual violence survivor service needs

### **3.6 The first priority for service development needs to be to address already clearly identified gaps in existing services provision.**

3.6.1 There are two areas of already identified gaps. The first relates to geographical access. The second already clearly identified gap is access for members of minority and marginalised groups. 26% of the Irish population aged 15 and over lives in an area with no specialist sexual violence services<sup>12</sup>. The geographic and marginalised group gaps currently identified include:

- No existing specialist sexual violence services currently available in Dun Laoghaire-Rathdown, Fingal, Kildare, Meath, Wicklow, Cavan, Monaghan, Leitrim and Roscommon.
- Very limited specialist sexual violence service outreaches in South County Dublin, Laois, Longford, Clare and Tipperary North Riding
- No existing specialist sexual violence services for women in prostitution,
- Very limited specialist sexual violence services accessible to teenagers, Travellers, those with a primary language other than English, those with disabilities, and those in prison

### **3.7 All existing and new specialist sexual violence services need to meet minimum standards and be actively working towards best practice standards**

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<sup>12</sup> RCNI mapping 2008

3.7.1 Ad hoc service development and ad hoc funding of specialist services has resulted in variance in what is available in local services. Victims are not assured of the same services when contacting a service in their area. This may especially impact on accessibility for those with a disability or members of marginalised communities.

3.7.2 For example, research indicates that negative community contacts after sexual violence are associated with poorer health outcomes. Rape crisis centres can be effective agents in assisting a victim to negotiate medical and legal systems, providing vital crisis intervention and advocacy.<sup>13</sup> However, a service in one area may not provide immediate crisis support. This speaks to a need for specialist sexual violence services to adhere to minimum standards and to work towards best practice standards. Standards for specialist sexual violence services have been developed internationally, including through the Council of Europe and the State of California, USA.

3.7.3 Mechanisms:

- Resource RCNI to develop Irish-specific minimum and best practice standards for specialist sexual violence services that encompass all types of service delivery and relationship with other agencies including:
  - Immediate Crisis Response and Advocacy
  - Support
  - Helplines
  - Outreaches
  - Counselling
  - Proactive contact of survivors<sup>14</sup>
  - Involvement with other agencies also providing services to the survivor
- Minimum and best practice standards incorporated in National Umbrella body membership criteria

3.7.4 Impacts:

- Survivors assured of the same standards of service regardless of where in the country they contact a specialist sexual violence service

### **3.8 All department, agencies and organisations providing services to sexual violence survivors have relationships with each other that facilitate coordinated responses**

3.8.1 Sexual violence survivors who received coordinated assistance are more likely to obtain needed resources that facilitate their recovery.<sup>15</sup> One example often cited of such coordinated assistance is a Sexual Assault Treatment Unit. Four years ago a

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<sup>13</sup> Campbell, et al *Preventing the Second Rape*, 2001, p. 1253

<sup>14</sup> Emerging research, including a study done by Lovett, Regan and Kelly for the Home Office (No 285) in the UK, indicate that there are times when proactive contact is desired by the survivor.

<sup>15</sup> Campbell, et al *Preventing the Second Rape*, 2001, p. 1255

committee made up of members from various government departments, NGOs and private practitioners were involved in reviewing the current state of sexual violence forensic services in Ireland and making recommendations for future development. This committee was led by the Department of Health and Children. There is now a national SATU standardisation committee chaired by senior staff in the HSE working towards those recommendations. The standardisation committee members represent all of the relevant departments, agencies and NGOs. There are many other opportunities for such coordinated responses that should be exploited.

#### Mechanisms:

- Implement all of the recommendations in Sexual Assault Treatment Services: A National Review.
- Identify other opportunities for coordinated or more coordinated responses. These could include:
  - Service provision for marginalised groups who do not currently access specialist sexual violence services in population proportionate numbers.
  - Service provision for groups for whom there are no specialist sexual violence services.
  - Reporting and prosecuting of crimes
  - Services for family members of survivors
  - Services for survivors of domestic violence which included sexual violence
- Identify all of the relevant departments, agencies, organisations and stakeholders in each area
- Identify the lead department, agency or organisation for each opportunity
- With all involved departments, agencies and organisations, review the current situation and made recommendations for needed changes
- Resource relevant agencies to implement the recommendations
- Implement the recommendations

#### 3.8.3 Impacts:

- More accessible services for all survivors
- Survivors obtain all needed resources to facilitate recovery from the sexual violence
- An increase in the proposed protection performance indicator identified by the UN Special Rapporteur on Violence against Women<sup>16</sup>.
- Investment in providing services is widened beyond those currently actively involved

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<sup>16</sup> 103. - This protection indicator is “an increase in the index of support services signifying an extension of specialized protection” - Report of the Special Rapporteur on violence against women

### **3.9 Standard activity level data from every involved department, agency and organisation to be comparable**

3.9.1 Every government department, agency and NGO involved in providing services to survivors of sexual violence collects data for their own purposes. Some of this data is specific to the collecting entity. The commonality of some of the data collected would allow for the amalgamation of the information in order to develop a realistic picture of the scope and scale of service variety and usage in Ireland. Beyond that, international indicators for measuring violence against women and for measuring services require comparable data.

#### 3.9.2 Mechanisms:

- Utilise data collection mechanisms described in 2.7.1
- Cosc to utilise outcomes of HSE data collection committee
- Broaden Cosc data collection committee to include NGO input
- Agreement to be reached on comparable data between all relevant departments, agencies and NGOs
- Comparable data to be collected

#### 3.9.3 Impacts:

- Comparable data collection allows for accurate picture of service use
- Accurate activity level data can be used for examining performance indicators

### **3.10 Activity level data to be compiled with outcomes evaluation and mapping information to compare with international indicators**

#### 3.10.1 Mechanisms:

- Utilise available data to compare with victim protection indicators<sup>17</sup>
- Utilise available data over time to compare increases and decreases in service availability, accessibility and effectiveness

#### 3.10.2 Impacts:

- A better picture of how our services and outcomes compare internationally

### **3.11 Increase involvement in and funding of service provision by other relevant government agencies**

#### 3.11.1 Mechanisms:

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<sup>17</sup> These indicators have been developed by the Special Rapporteur on Violence against Women.

- Cosc interagency groups utilised to identify service provision areas that are the responsibility of various government departments
- Funding streams identified, budget heading allocated, within those government departments that are appropriate to fund services. For example, Department of Social and Family Affairs for services to the family members of survivors, or the Department of Community, Rural and Gaeltacht Affairs for services to asylum seeking survivors.

### 3.11.2 Impacts:

- Government as a whole taking more responsibility for gender based violence

## **Section 4. Dealing with Offenders**

**4.1 The first priority is the protection of survivors and the general public, not least especially vulnerable groups such as children and people with a disability.**

**4.1.1 Enact statutory vetting provisions:**

- which capture and use “soft” information as well as “hard”, and
- which make use of any parallel lists kept by statutory and/or other bodies, for example the Department of Education;<sup>18</sup>
- Ensure that Garda Central Vetting Unit is properly resourced to carry out vetting quickly and efficiently (at the moment it is seriously under-resourced);
- Ensure that GCVU operates as “one-stop shop” empowered to provide vetting services to any organisation, whether statutory or not, employing people to care for children and/or vulnerable adults, where the person(s) would be employed in roles involving them in direct unsupervised contact with either children or vulnerable adults; this is how the vetting system operates in Northern Ireland (Criminal Records Bureau):
- Ensure that there is statutory protection against proceedings for defamation for any information giver providing information to GCVU in good faith.

**4.2 Increase penalties for the more serious cases of non-compliance with Sex Offender Orders and/or notification requirements under the Sex Offenders Act 2001, (Sections 22 and 26 of SOA 2001 respectively).**

4.2.1 Currently the maximum penalty on indictment for either type of offence is five years, which might not reflect the seriousness of a particular case.

**4.3 Ensure that there is effective pre-release and post-release ongoing risk assessment of convicted sex offenders which is sufficiently resourced, so that post-release supervision would address appropriately the protection needs of the public, particularly where high risk offenders are concerned.**

4.3.1 There is increasing recognition that offender programmes, which hold the offender responsible for his offending, are a very important means of reducing risk and preventing further sexual violence, and that participation in such programmes **coupled with** demonstration of reduced risk should be incentivized.

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<sup>18</sup> “Soft” information refers to information gathered in encounters with the Gardaí (or others) which do not result in a conviction or other formal record of misbehaviour, while “hard” information refers to convictions, cautions and/or other formal findings of misconduct by e.g a former employer.

4.3.2 The Northern Ireland system of risk assessment, monitoring and supervision of sex offenders is regarded as a very useful model for this jurisdiction. It is submitted that because of our land border with Northern Ireland this is the model we should adopt, if we can at all, in order to minimize the chances of a sex offender being treated in effect more leniently than he should be (at best) or escaping official scrutiny and reoffending seriously (at worst), in either jurisdiction, precisely because the two systems differ.

4.3.3 In this jurisdiction there is no formal system of risk assessment and monitoring of high risk sex offenders either pre or post release such an equivalent to the Northern Ireland model known as Multi-Agency Sex Offender Risk Assessment Management, or MASRAM. The courts can and do attach conditions to post release supervision orders, such as attending programme sessions, and penalties are imposed for breach of these conditions. At the sentencing stage, it is the responsibility of the sentencing judge to decide the appropriate post-release supervision period and whether or not there should be conditions attached to it (attending programmes or otherwise), based on a range of factors which include the need to protect the public from serious harm from the offender.<sup>19</sup> That is the extent of current formal risk assessment.

4.3.4 The maximum penalty for breach of a post-release supervision order and/or breach of a condition of that, for example for attending programmes, is 12 months (Section 33 (1) SOA 2001). There is no sanction for breach such as the conversion of the post release supervision period into a sentence of equal length, for instance, and nor is there any incentive to participate in any meaningful way in a treatment programme.

4.3.5 In contrast, the Northern Ireland system provides not only comprehensive risk assessment but also a flexible and detailed system of incentives and deterrents. The newly enacted Criminal Justice Order (Northern Ireland) 2008 (SI 2008 No 1216) and its Explanatory Memorandum refer, in particular **Chapter 3, Articles 12-15** of the Order, (measures for the assessment of dangerous and violent sexual offenders convicted of specific offences) and **Chapter 4**, which provides new powers for the release of prisoners on licence; recall offenders to prison following breach of licence requirements; and further re-release. It is often the Parole Commissioners who will carry out the risk assessment. There are provisions for release subject to a curfew with or without electronic monitoring, and new powers for risk assessment and management which create a duty on a number of criminal justice agencies and others to assess and manage the risk posed by certain sex offenders<sup>20</sup>

4.3.6 RCNI recommends that the Northern Ireland regime is examined in detail as a possible working model with the flexibility needed to assess and monitor sex offenders

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<sup>19</sup> Sex Offenders Act 2001, section 28(2) and 30(1) and (2)

<sup>20</sup> Articles 49-51 CJO(NI)2008 SI 2008 No 1216. The Explanatory Memorandum thereto can be found at [www.opsi.gov.uk/si/si2008/em/ukxiem\\_20081216\\_en\\_1](http://www.opsi.gov.uk/si/si2008/em/ukxiem_20081216_en_1)

post-release as effectively as possible, in order to protect the public and in order to address the root causes of such offending;

4.3.7 Either the Northern Ireland model or another similar and suitable one should be adapted and adopted in this jurisdiction as a matter of urgency, and that model should include a risk assessment model such as MASRAM;

4.3.8 This would involve appropriate resourcing and training of the Probation and Welfare Service to carry out more complex supervision and monitoring. The courts would also have a role in providing rewards and sanctions, and where there is any multi-agency involvement, such as risk assessment following the NI model, the Probation and Welfare Service should have overall responsibility.

4.3.9 It would also involve adequate expert resources such as appropriate staff and offender programmes, otherwise it could not be effective in preventing further offending.

4.3.10 Such a model could be identified and implemented on an administrative pilot basis and then evaluated. Account could also be taken of the Northern Ireland experience, particularly of MASRAM; if the evaluation were positive, that is, resulted in lower rates of breach and/or recidivism, it should be adopted here.

4.3.11 It should also involve the provision of some mechanism to address the necessity for the experience and ongoing needs of the Probation and Welfare Service to be relayed both to the executive [COSC] and to the judiciary.

#### **4.4 Mechanisms for dealing with Offenders who do not have, and are unlikely to have, any criminal conviction must be developed and resourced.**

**4.4.1 There should be a national model of service delivery in the area of assessment and treatment of services for children, teenagers and adults who have exhibited sexually harmful behaviour. Policies and Procedures should be drawn up at a National level to ensure a standardised approach.**

4.4.2 The Northern Ireland MASRAM model is extending to consider non-custodial offenders. This is very significant, as the majority of offenders will never be convicted.

4.4.3 The fact that the majority of those who have exhibited sexually harmful behaviour will not be reported and will not be convicted highlights the importance of Programme for Offenders without convictions. There are a range of circumstances in which offenders may participate in assessment and programmes when their offending behaviour has not been reported in any official manner to the Gardaí. This is of particular significance as offending behaviour can commence in early life, and early intervention has a highly preventative aspect.

4.4.4 NOTA Ireland, the National Organisation for Treatment of Abusers, has most recently made recommendations which would usefully be promoted in this National Strategy. These recommendations are based on national research which demonstrated the current scarcity of services and highlight the inconsistency of approach, the lack of standardised training and the lack of outcome assessment. Current service provision is failing to meet the assessment and treatment needs of those who present significant concerns.

## **Section 5. Protection of Victims**

5.1 Offences of sexual violence in Ireland are prevalent and under-reported: according to the SAVI report (2002), about one woman in five (20.4%) has been the victim of contact sexual violence as an adult. Their impact on the individual survivor is devastating and far-reaching. Even when they are reported, there is a very high attrition rate, so that the conviction rate in the case of the most serious of these offences, rape, is about 7% of all rape offences reported to Gardaí<sup>21</sup>.

5.2 It is of the first importance that the experience of the official process be the best possible for survivors of sexual violence, and that an appropriate range of supports from the very earliest stages post-trauma onwards be provided to them. The systems which are intended to protect victims must not themselves cause further trauma (secondary victimisation) amongst those already victimised.

5.3 The sooner the evidence (both physical and personal testimony) is gathered and preserved, the better the chances are that any prosecution will result in a conviction.<sup>22</sup> However, the underlying philosophy must be that support of and respect for the survivor are paramount, that is, that the focus must not be on conviction at any price to the survivor. Once the “cost” of reporting and proceeding through the criminal justice process and beyond rises too high, the chances of withdrawal are greatly increased. Kelly, Lovett and Regan, in their 2005 study “A Gap or a Chasm? Attrition in reported rape cases”<sup>23</sup> identify factors which survivors of rape indicated would encourage them to co-operate with a criminal investigation. These included female police officers, a culture of “belief, support and respect”, being in control of the forensic examination; access to clear information at various points in the process; being kept informed about the progress of the case, and continuity of police officers and meeting these officers in person.

5.4 Another study<sup>24</sup> by Kelly, Lovett and Regan from 2004 entitled “Sexual Assault Referral Centres: developing good practice and maximising potentials”, found that proactive contact and support from support workers (including RCC workers) was associated with reduced withdrawals from the criminal justice system.

### **5.6 Multi faceted Support for Victim from Initial Post Trauma Stage: Early Assistance, Advice and Information**

#### **5.6.1 Associated Action: Enactment of Provisions Broadly Similar or Identical to those contained in Victims’ Rights Bill 2008.**

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<sup>21</sup> See Annual Report of An Garda Síochána 2004

<sup>22</sup> For support for this proposition, see for example a US study from 1999 by Kingsnorth et al, Justice Quarterly 16(2) 275-302

<sup>23</sup> UK Home Office Research Study 293

<sup>24</sup> UK Home Office Research Study 285

5.6.2 Responsibility should lie primarily with the member of an Garda Síochána charged with the responsibility of being the “chaperone officer” (see next section).

5.6.3 The HSE and the appropriate staff members have responsibility for ensuring the proper running of SATUs, in the penultimate item in this list. The District/Circuit/High/Central Criminal Court judge, as appropriate, who has responsibility for the correct application of the current bail laws and/or any measures to ensure the safety of the complainant pending, during and after trial. It is also the responsibility of the prosecuting authority, in consultation with investigating Gardaí, to raise issues of victim protection measures, objections to bail and so on, from the earliest hearing in the matter.

5.6.4 The principal victim support provisions should include:

- right of victim to be informed of the availability of health and social services and other appropriate expert support services, such as Rape Crisis Centres, for example as per Victims’ Rights Bill 2008 Section 5 (2)(c) (hereinafter referred to as VR Bill 2008);
- right of victim to be kept informed at all stages, of the identity and contact details of the member of the Garda Síochána in overall charge of the investigation in their case, the progress of their case itself, the role of the victim within the criminal justice process, court dates, purpose and outcome of each hearing, likely timelines as they evolve, and so on – (VR Bill 2008 Section 8 (1) (a) through (g) (j) refers);
- right of victim in sexual cases to be informed regarding their rights to be represented where appropriate and also to access independent legal advice in all cases involving a complaint of sexual violence;
- right of the victim to be informed as to the circumstances in which special measures may be used (giving evidence by video link or with the use of screens, for example);
- right of the victim to make a Victim Impact Statement, and have it considered by the court before sentence is passed on a convicted offender;
- right of victim to be treated with courtesy and respect by all individuals and agencies at all times, and to be consulted on change of plea and informed if charges are not brought, or later dropped, and to be informed, subject to appropriate safeguards, of the reasons why any prosecution has not been brought, or later dropped in their case;

- right of victim to be kept informed of any bail applications and parole hearings and to make representations in either case;
- right of victim to be notified of the result of any bail application, terms of any bail if granted, details of any sex offender order and/or conditions of release, any release date or escape from lawful custody of the accused/offender in their case, notice of any proposal to make a deportation order against the offender, notice of discharge from hospital of the offender if he is there detained, and the date of any court or other hearing in relation to any of these matters;
- right of victim to appropriate expert immediate medical treatment and forensic examination, to be carried out at SATU as near as possible to them, and the right of the victim to refer themselves to a SATU, irrespective of whether a complaint has been made or is intended to be made to the Gardaí;
- right of victim to have intimate samples in their case preserved, at least for a given minimum period, where no decision has yet been made as to whether to make a formal complaint to the Gardaí or not;
- provision of a confidential channel of information through which intelligence relating to a particular suspect might be relayed to the Gardaí by a complainant, without the necessity to make a decision as to whether or not to make a formal complaint;
- right of victim as far as resources permit to such medical, psychological and social care or help as he or she may require and to such other help or services capable of meeting his/her needs for shelter and support or for referral to other services better suited to assist him/her, (based on VR Bill 2008 Section 3(a));
- right of victim of sexual violence to be protected by Criminal Justice System as far as possible during the process, that is, by legislative provisions criminalising intimidation by not only the defendant but those associated with him, stringent bail conditions or custody pending trial, and so on. For example, Section 72 of the VR Bill 2008 proposes an amendment to the existing Section 26 of the Criminal Justice Act 2007, Section 26A, which sets out the power of the court to make a Protection of Person's Order against an alleged offender to protect the victim from any intimidatory behaviour by him. While we would endorse such a provision as a welcome and useful addition to the protections currently

available to any victim, we submit that the ambit of such a provision should be broadened to include PPOs against any person acting under the direction or on behalf of the alleged offender, and to provide protection for family members and others related to the complainant, in addition to the complainant him/herself;

- While the provisions of the Criminal Justice Act 2007 in relation to the bail laws are broadly welcomed, we would submit that any proven incident of victim intimidation and/or harassment, whether or not carried out by the alleged offender or by others acting on his behalf, and whether or not against the victim or against others associated with him/her, should result in the automatic withdrawal of the right to bail for the alleged offender, and that the CJA 2007 should be amended to that effect.
- As an additional protection, we submit that there should be a new specific offence of intimidating or attempting to intimidate a member of An Garda Síochána with a view to preventing or ending an investigation.
- These rights should all be underpinned by a Victims' Charter which has statutory effect and which has been compiled following widespread consultation with victim support groups and others with expertise in the area.

5.6.5 The implementation of the first four above in particular should encourage a culture of belief in, support and respect of the complainant.

### **5.7 The Initial Post Trauma Stage: Procuring the best possible evidence as early as possible should be the priority for the Investigation Team of An Garda Síochána Associated Actions:**

5.7.1 Provision of a complainant's statement which is as fresh and as full as possible. The sooner it is taken, the more details will be remembered and the more weight can be attached to them. It is very important that it is expertly taken by specially trained officers, not only for maximum probative value in court but equally importantly to ensure that the experience of the victim is as positive as possible and has no hint of the danger of re-traumatisation for him/her. This entails:

- Recruitment and resourcing of specially trained and supported Sexual Violence Officers to act as primary chaperones and liaise with other agencies, such as the investigation team. Investigation teams should be led by someone other than SVO. The SVO primary roles should be: to ensure victim is as well supported as possible, to take victim's statement as early as feasible and in as expert a way as possible with a view to maximising its impact later on in court. The experience

gained by those involved in Project Sapphire (run in London by the Metropolitan Police since 2002) is extremely valuable in this regard. This priority could be implemented by CTU together with Regional Training Officers being trained at Police Academy and cascading that training through either CTU or Templemore.

- SVO to be responsible for providing information and appropriate referrals to outside support agencies, such as Legal Aid Board and RCCs, to victim.
- SVO to be supervised by the officer in charge of the investigation and actions of the SVO to be recorded in Log Book specific to each victim.
- There should be recognition that this is an expert job, and SVOs who take it on should not thereby lose “status” within the Gardaí. This should be the responsibility not only of the officer with overall responsibility for an investigation unit specialising in combating crimes of sexual violence in a given area (see below), but also of every officer within it.
- There should also be a recognition that all officers involved in crimes of sexual violence need appropriate support to remain able to handle them without burning out, and such support should be advertised and readily available so that take up is maximised.
- There should be specialist investigators for sexual violence crimes, organised in a number of regional units, under overall supervision of Harcourt St DVSAIU with access to updated and more widely available forensic facilities, and more and more frequent training, and responsibility for operations and training and development should be given to each regional officer in charge.

## **5.8 In-service training in the area of sexual violence should be a priority, given the nature and seriousness of these crimes, and should be at different levels.**

### **5.8.1 Associated Actions:**

- Continued and increased RCC involvement in initial training of Gardaí at Templemore, so that the outcome is that **any** officer behind the desk of a Garda Station knows how to deal sympathetically and effectively with a survivor of sexual violence
- Such general initial training to be regular part of ongoing in service training at local level, to be provided by local RCC trainers in partnership with local training officers; monitored and evaluated nationally through the RCNI

## 5.9 Provision of Legal Advice to Complainants in Sex Cases

### 5.9.1 Associated Actions

- Legal advice to be available to complainants in sex cases, regardless of means, (the statutory framework for this is already almost in place).
- Legal Aid Board (LAB) could provide outreach clinics to local RCCs, staffed by qualified solicitors with extra training from RCCs in the area of sexual violence. Additionally, such a system would enhance feelings of empowerment and safety for survivors of sexual violence and would allow LAB staff opportunity to learn about effects of Sexual Violence on their clients. LAB to be responsible for this in partnership with RCCs
- Full independent legal **representation** for complainants in sexual crimes cases
- There should be a statutory obligation on the defence in a sexual crime case to make any application to adduce previous sexual history of a witness **in writing in advance of trial and to provide in advance written reasons why such an application should be granted.**

## 5.10 Other witness protections within the Courts System.

### 5.10.1 Associated Actions: Statutory Amendments and/or New Legislation.

- “Special measures”, such as video link evidence and the use of previously recorded statements, should be extended to all sexual violence complainants. At present, video link arrangements for giving evidence by complainants in sexual cases can only be provided with the leave of the court in the case of complainants over the age of 17<sup>25</sup>. Previously video recorded statements can normally be admitted into evidence under section 16 of CEA 1992 only if the witness is present in court to be cross-examined. We would submit that as long as a witness is available to give evidence by video link, there should be no necessity for them to be physically present in court, and would propose that section 16 of CEA 1992 should be amended accordingly, and that its provisions should extend to all complainants, not only those under 14 or 17, as at present.
- Physical setting: separate waiting and conference etc facilities for victims, their witnesses and supporters – Courts Service is responsible for implementation of any improvements in the fabric of court buildings. The current Courts Service Strategic Plan (2005-2008) includes provision for separate waiting facilities in all new and refurbished court buildings.

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<sup>25</sup> see section 13 of the Criminal Evidence Act 1992.

- In addition to the anonymity measures for complainants in sexual cases contained in the Criminal Law (Rape) Act 1981 and the Criminal Law (Rape)(Amendment)Act 1990 (as amended both), RCNI recommend that both complainants and witnesses should not have to have any identifying information given to an accused/offender, such as home or work address details, where to disclose such information would put the complainant and/or their witness(es) at risk of harm from the accused/offender and/or others acting on his/her behalf, and that to request a direction to that effect should be the responsibility of the prosecutor in the case, unless and until such time as the complainant has separate legal representation in court.

**5.11 DPP staff, Chief State Solicitor's Office and local State Solicitors to work together to reduce attrition rates, to be specially trained in area of sexual violence, also in how to communicate with the victim and where appropriate provide reasons for not proceeding with a prosecution<sup>26</sup> and adopt the UK Specialist Prosecutors in Sexual Violence model.**

#### **5.11.1 Associated Actions**

- DPP Office to take responsibility for the giving of reasons for their decisions, particularly where the decision is not to proceed further, subject to safeguards, and for communicating them to complainants (normally by letter, occasionally where warranted in person)
- DPP Office to be appropriately resourced to implement same
- RCNI acknowledges that detailed Guidelines for Prosecutors (which emphasize provision of information to complainants in timely fashion and which importantly sets out the complainant's right to request a pre-trial meeting with the prosecution team) are already in place, and recommends that these Guidelines be regularly updated in line with international best practice
- DPP Office to be responsible for ensuring that data on reasons for which prosecutions are not brought in sexual offences be collected and be made publicly available, so that RCNI and others can detect trends and take appropriate action/make submissions/help to determine policy for the future etc
- DPP to organize the provision of mandatory specialised training for all those involved in prosecution of sexual cases, properly resourced, RCNI to be resourced to provide expert input on the effects of sexual violence on survivors.

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<sup>26</sup> The DPP is currently carrying out a review of the policy of not giving reasons for decisions

- Provisions should be enacted to enable the DPP to appeal District Court sentences on grounds of undue leniency, as many cases of sexual abuse are heard there;
- RCNI welcome the current guidelines for prosecutors which impose on prosecuting advocate obligation to address the judge on sentence, the prosecuting advocate should address the judge on sentence in sufficient detail to ensure that the judge is aware of his powers, any proven aggravating factors in the case, the appropriate precedents (and eventually sentencing guidelines OR guideline cases), and whether any ancillary orders are appropriate (such as the placing of an offender's name on the Sex Offenders Register). He/she should also ensure that any mitigation put forward by the defence has some evidential basis, and that there is no unresolved factual conflict as to the circumstances of the case (particularly relevant on a guilty plea). Traditionally it is not the role of the prosecuting advocate to recommend a particular sentence, however in the view of the RCNI it is the role of the prosecuting advocate to do all he/she can to ensure that the sentence is an appropriate one.

### **5.12 The Judiciary should be very well informed not just on the law, sentencing powers etc in the area of sexual violence, but also on the effects of sexual violence on complainants**

5.12.1 Mandatory specialised training in area of sexual violence is very important, there should be input by RCNI and/or RCCs on effect of sexual violence on victims as well as specialised training on the criminal law and rules of evidence in relation to sexual offences.

5.12.2 Guideline Cases are one clear way forward on sentencing. Once there are one or two good guideline judgements OR a set of **formal sentencing guidelines**, consistency of sentencing should improve dramatically. The Judicial Sentencing Commission could take on either task, that is, selecting suitable cases to be the subjects of guideline judgements on sexual offences (particularly the more serious ones) OR, devising after consultation a set of sentencing guidelines for sexual offences. Our view is that the solution to disparity in sentencing should be simple to implement<sup>27</sup>. Formal Guidelines can be regularly reviewed by the Judicial Sentencing Commission.

### **5.13 Revise existing Statutory Law on Sexual Violence: The priorities for protection of survivors and the general public, especially children and vulnerable adults and the reduction of the attrition rate**

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<sup>27</sup> See as an example of how sentencing guidelines might be constructed, the UK (England & Wales) final sentencing guidelines on the Sexual Offences Act 2003 at [www.sentencing-guidelines.gov.uk/docs/0000\\_SexualOffencesAct1.pdf](http://www.sentencing-guidelines.gov.uk/docs/0000_SexualOffencesAct1.pdf)

### **5.13.1 Consent and the related question of honest OR reasonable belief in consent:**

RCNI believes that the current situation where there is no statutory definition of consent to any sexual act which might otherwise be a crime is far from ideal, leading to a lack of clarity for the complainant, the accused and decision makers (normally a jury of twelve people). The positive impact of a clear definition should also be felt outside the courtroom, preventing at least some acts of sexual violence. RCNI believe that now is the time to enact a new expanded comprehensive definition of consent which avoids some pitfalls at least of the definition used in the UK Sexual Offences Act 2003<sup>28</sup>. Some authors have identified, for instance, that the UK definition does not give any guidance as to whether the complainant must articulate their consent by words or action<sup>29</sup>. In addition, the definition might be understood as meaning that it must be decided first whether the complainant agreed by choice, and then later, whether he/she had the freedom and capacity to do so. An alternative reading is that the issues of freedom and capacity should be addressed first, leaving the question of agreement to be addressed only if either freedom or capacity is lacking<sup>30</sup>. There are further difficulties with the general understanding of such words as choice, freedom and capacity.<sup>31</sup>

5.13.2 RCNI also believes that a comprehensive definition of consent should include provision for the situation where the complainant's consent is compromised by her voluntary intoxication. While an expanded definition is not a cure-all by any means, it should help protagonists and decision makers to a common understanding of whether or not there has been consent in a wide range of situations.

5.13.3 In addition, RCNI believes that where an accused person's belief in the consent of the complainant to a sexual act is not reasonable, he/she should not be allowed to rely on it. In other words, the issue for the decision maker should not be whether the belief of the accused was honest although unreasonable and mistaken, but whether a reasonable person would have come to the same conclusion. The focus would therefore be on the conduct of the accused rather than on that of the complainant. Under the Criminal Code of Canada, for example, the onus is on the accused if he raises his belief in the complainant's consent, to show that he has taken reasonable steps to ascertain that the complainant was consenting.<sup>32</sup>

5.13.4 RCNI believes that an alternative expanded and more comprehensive definition of consent should have as its principal focus the conduct of the accused rather than that of the complainant, as far as possible, with the aim of avoiding prolonged, aggressive

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<sup>28</sup> See Section 74 of the UK Sexual Offences Act 2003: ".....a person consents if he agrees by choice, and has the freedom and capacity to make that choice".

<sup>29</sup> For example, see an article by Victor Tadros entitled "Rape without Consent", *Oxford Journal of Legal Studies*, Vol 26, No 3(2006), pp 515-543, at page 521 et seq

<sup>30</sup> Ibid.

<sup>31</sup> Ibid, at page 522.

<sup>32</sup> CC Canada Part V Sexual Offences, Article 153(5)(b)

and detailed cross-examination of the complainant on matters which are often of dubious relevance to any real issues in the case. Of course, fairness to the accused is a vital principle. However, no less important is the framing of our law as far as possible to avoid unnecessary retraumatisation of survivors of sexual violence by cross-examination, as there can be no doubt that fear of such an ordeal operates to increase the attrition rate.

5.13.5 Some guidance as to what might be included in such an expanded definition will be found at Sections 75 of the UK SOA 2003 (evidential presumptions about consent) and Section 76 *ibid* (conclusive presumptions about consent), which taken together provide a list of situations in which the absence of consent may be presumed, and except for the two rare situations outlined in Section 76, further provide that it is open to the accused to introduce sufficient evidence to show that there is an issue as to whether the complainant consented, in relation to the particular situation. This list of situations does NOT cover the situation where the complainant's capacity to consent is impaired by self-induced intoxication, but he/she is not "asleep or otherwise unconscious".<sup>33</sup> It is important to note also that the list of situations is a closed one. A more useful starting point might be the Criminal Code of Canada definition of consent<sup>34</sup> and attendant open list of situations in which consent is not obtained, adapted to take account additionally of the situation of the complainant whose capacity to consent is affected by self-induced intoxication but who is conscious.

## **5.14 Age of Consent.**

**5.14.1** RCNI believes that it is appropriate in the best interests of children and young people in particular, not to lower the age of consent to sexual intercourse from the current one of 17 for both sexes. The medical and social risks to young people, particularly young girls, of premature intercourse are well documented. The psychological and physical risks of being sexually exploited and/or abused by an older person, perhaps in a position of trust and/or authority, are also obvious for young people. Less obvious but very important is the need for our society through our laws to set standards of behaviour which provide at least some shelter for young people under constant pressure from their peers and occasionally older people and from the culture in which they find themselves, to engage, or be cajoled or coerced into engaging, in sexual activity which exposes them to risks and which may have very far-reaching negative consequences for them.

## **5.15 Absolute and Strict Liability in relation to mistake as to age.**

5.15.1 RCNI believes that in the case of sexual offences involving young people under the age of consent, in the absence of a referendum, the current law permits the situation to arise where an honest but unreasonable belief in consent might be upheld, because the decision maker only has to "have regard to" the presence or absence of

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<sup>33</sup> Section 75 (2) (d) UK SOA 2003

<sup>34</sup> Part V Sexual Offences, Article 153(2) and (3), and see Appendix 1 hereto.

reasonable grounds for that belief in deciding whether or not that belief is reasonable.  
<sup>35</sup>Young people would be better protected by a more exacting standard of behaviour, such as a burden being placed on the accused to prove that his/her belief as to the complainant's age is that of a reasonable person.

**5.16 Enact a specific offence of unlawful sexual activity by person in position of trust and/or authority against minors in their charge.<sup>36</sup>**

5.16.1 At present, there is provision only for the seriousness of this kind of sexual offence to be recognized at the level of sentence. RCNI believe that legislation should be enacted to create a specific offence of abuse of position of trust by sexual activity with a child, for example in line with the provisions of the UK Sexual Offences Act 2003 at section 16<sup>37</sup>

**5.17 Enact specific offence of voyeurism** for example one along the lines of Section 67 of the UK SOA 2003.<sup>38</sup>

**5.18 Enact more and better provisions in Immigration, Residency and Protection Bill 2008, or elsewhere, for the better protection of victims of trafficking.**

5.18.1 For a useful working model, see for example the Irish Refugee Council's draft amendments to Section 124 of the IRP Bill 2008<sup>39</sup>, in particular in relation to need for protection and security independently of whether there is an criminal investigation in place or not. It should be remembered that the fear of instant deportation arising from the insecurity of their status is the very reason why so few non EEA national victims of trafficking feel able to complain to the authorities. Also it is important to ensure that trafficking offences are clearly identified as such for data collection purposes, both for An Garda Síochána and for the Central Statistics Office.

5.19.1 Other areas of concern with the present IRP proposals are the exclusion of EU nationals who have been trafficked, the short duration of the period of "recovery and reflection", and the linking of any recognition of the victim of trafficking with an ongoing criminal investigation.

**5.20 Enact specific offence of sexual assault upon a person under a disability (other than an offence of rape or buggery)**

5.20.1 The Criminal Law (Sexual Offences) Act 1993 criminalises sexual intercourse and buggery involving a person who is "mentally impaired", with no requirement to prove

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<sup>35</sup> See Sections 2 (4) and 3(6) of the Criminal Law (Sexual Offences) Act 2006.

<sup>36</sup> Refer to and cite the appropriate section in UK SOA 2003

<sup>37</sup> The elements of the offence are intentional sexual touching by a person over 18 of a person under 18 where the person over 18 is in a position of trust in relation to the person under 18

<sup>38</sup> The elements of the offence are observing private acts knowing that the person observed does not consent to being observed, for the purpose of obtaining sexual gratification

<sup>39</sup> Ref: [www.IRC\\_Final\\_Submission](http://www.IRC_Final_Submission) Section 124 and Traf provisions\_2008(5).doc

lack of consent. There is no specific legislation criminalising any other sexual act against a person who is mentally impaired.

5.20.2 The absence of any requirement to prove lack of consent seems attractive, as it avoids the distasteful reality of a prolonged and personal harangue upon a person with a mental disability. However, the difficulty is that it is being argued that since a person with a mental disability cannot give or withhold any form of consent which would be legally meaningful, he/she does not have the mental capacity to testify in their own case. This has resulted in people with mental disabilities suffering sexual assaults and being unable to have their own evidence in the matter taken seriously enough to found a conviction against their assailant. It is suggested that one way forward would be to establish a presumption that a mentally disabled complainant has full capacity to give meaningful evidence, and also to give or withhold consent, to be rebutted only by expert evidence from a properly qualified and experienced professional which is preferred by the judge to other expert evidence on the same topic. It should be remembered that we do not discount the evidence of children, although their ability to give or withhold consent is not legally meaningful till they reach the age of 17.

5.20.3 It is further submitted that it is appropriate to afford anyone with a mental disability the full panoply of special measures that would be available to a child or young person, as it would be very harsh to submit them to the rigours of "adult" cross-examination.

### **5.21 Repeal the requirement to seek the consent of the DPP to any prosecution for marital rape under the Criminal Law (Rape) (Amendment) 1990 Act .**

### **5.22 Enact statutory provisions to prevent direct cross-examination by an accused of a complainant in a sexual case**

5.22.1 RCNI believe that the interests of the victim should have precedence over any alleged "right" of an accused person to represent themselves in a criminal court. Unfortunately, it has happened that the accused has used this privilege principally to humiliate and retraumatise the victim. In the age of legal aid for expert representation before the criminal courts, it cannot be said that any accused person is at a disadvantage if he is represented by counsel or solicitor. See for instance, Conor Hanly's analysis of the extent of this "right" and the need to discard it<sup>40</sup> "It is incumbent upon the State, however, to provide for an effective remedy for victims that does not require them to be brutalized a second time" [by cross examination by the accused in person].

### **5.23 Amend the Punishment of Incest Act 1908 to take account of current definitions of family members, such as foster-children/parents or step-children/parents.**

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<sup>40</sup> "Finding Space for Victims' Human Rights in Criminal Justice", Conor Hanly, page 24: Finding%20Space%20for%20Victim[1].pdf

**5.24 Amend Section 3 of the Child Trafficking and Pornography Act 1998 (as already amended by Section 6 of the Criminal Law (Sexual Offences) (Amendment) Act 2007), to broaden the definition of activity therein to include other non-contact acts also done with the intention of sexual exploitation of a child, such as texting, emailing, buying things including phone credit, alcohol, soft drugs, and so on.**

**5.25 Enact statutory provisions to ensure that every trial in a sexual violence matter, at least at Circuit Court level and above, is preceded by an obligatory preliminary court appearance which must be attended by all parties, analogous to the Pleas and Directions hearings system in England and Wales.**

5.25.1 At such "Plea and Directions" Hearings, trial dates could be fixed, directions on further evidence be given and all preliminary issues raised in advance of trial, thereby minimising the chances of the trial date itself being adjourned. This is particularly important in cases involving child witnesses, as it is extremely difficult for them and those responsible for them to endure even one, not to speak of repeated, avoidable adjournments caused by matters raised for the first time on the day of the trial. The presumption should be that every fixed trial date should be an effective one, subject only to matters which could not have been foreseen in advance of that date, and there should be consideration given to introducing sanctions in the event of unreasonable default. Such a system would empower judges to manage sexual violence cases proactively, and the effect of lessening delays to final hearings in this manner would be that survivors would face reduced risk of retraumatisation by the criminal justice system. This in turn is very likely to have a positive effect on the attrition rate.

**5.26 RCNI wishes to acknowledge the trauma suffered by a significant and vulnerable group of survivors of sexual violence, namely those who come to Ireland as asylum seekers, refugees or other immigrants.**

5.26.1 Many of these people have suffered severe and repeated forms of sexual violence, and our concern is to ensure that all possible measures are taken to ensure that the nature and gravity of their trauma is recognized and dealt with professionally and sympathetically by all the official agencies responsible for them, and to avoid any secondary traumatisation of this group while they are in the state, as they pass through the asylum process. We are also very much aware through our work of the special vulnerability of some of this group to sexual predators during the time that they spend in direct provision accommodation.

5.26.2 Each agency with a nominated role in this regard must have everything in place to prevent any secondary victimisation.

5.26.3 Direct provision contracts must be such that residents are not exposed to further sexual victimisation during their residency.

## **Section 6. Ensuring Effectiveness of Action.**

6.1 The success of any National Strategy will be dependent on:

- An agreed definition of what is to be addressed by the strategy
- A coordinated inter-agency framework which operates at national, regional and local levels
- Recognition of the expertise of front-line specialist service providers, amongst others
- An integrated approach, which recognizes the fundamental interconnectedness of forms of violence against women and the adoption of this approach in ancillary VAW strategies within specific policies etc
- A coordinated approach to data collection, such that each location collects sufficient and appropriate data to provide an evidence based approach and monitor performance indicators
- The capacity to share data as required
- Clarity and agreement regarding which agency, department, semi-state agency or location carries what remit and responsibility with regard to VAW
- The identification and documenting of which protocols, guidelines, strategies, training, specialization, targets, budgets, monitoring framework are required for each location with a responsibility to VAW
- The capacity to deliver leadership within their brief such that each agency/location with a remit in relation to violence against women delivers proactively and successfully on that remit.

6.2 Delivery of a Strategy will require that a very wide range of state, semi-state, private and community based agencies have explicit and agreed remits, to which each is held to account in terms of delivery on a strategy as it pertains to each location. A very useful tool to assist in this is the mapping of each and every location which has a responsibility in terms of VAW. This mapping must then specify what is required in each location in terms of:

- Remit,
- Responsibility,
- Leadership role,
- Dedicated resources, including clear budget headings for VAW responsibilities,
- Specialist roles for any staff,
- Specialist training,
- Frequency of training required,
- Policies,
- Protocols,
- Standards of Response to victims,
- A strategy,
- Guidelines,
- Data collection,
- Minimum standards,
- Performance indicators,
- Monitoring mechanisms.

6.3 The RCNI views the following as some of the priority performance monitoring required towards a National Strategy, in just three specific locations. The extensiveness of measures required in just these three examples demonstrates the how significant to a National Strategy the above mapping is.

#### **6.4 Performance Monitoring within An Garda Síochána.**

6.4.1 An important priority for An Garda Síochána is the development and implementation of a National Strategy on Sexual Violence. Once the Strategy has been developed, its implementation should be monitored effectively at every level of the criminal justice process, from the first report to the post conviction stages. The most obvious and fundamental quantitative measures of its effectiveness are increased reporting, decreased ongoing attrition and ideally increased conviction rates. However, qualitative analysis is also vital to identify the reason(s) why a matter might not have been proceeded with by the complainant, and such analysis should feed into ongoing performance reviews by An Garda Síochána

6.4.2 Effective performance monitoring mechanisms should be identified and implemented as part of the Garda Strategy, so that any failings in the investigation and chaperone roles may be addressed as quickly and efficiently as possible

6.4.3 The Garda Strategy should identify clear minimum standards and performance targets, and devise policies to achieve those standards and targets as far as possible

6.4.4 Clear and easy to follow protocols for Garda intervention at every stage of the criminal justice process should be devised in accordance with best international practice, these protocols to be reviewed regularly in the light of changing legislation, and so on

6.4.5 These protocols should identify clearly the role and responsibility of each Guard involved in the investigation of a case of sexual violence

6.4.6 The material and teaching methods used in Garda training in sexual violence at all levels should also be the subject of regular review by outside experts, to ensure that they continue to be effective as law and procedure develop, and as rates of reporting fluctuate

6.4.7 Regular performance monitoring data in the areas of training and investigation in sexual offences should be shared with COSC (whether through the NSC or some other mechanism) so that any shortcomings may be detected and addressed in a holistic way, involving other agencies as and when appropriate

## **6.5 The Office of the DPP, the Chief State Solicitor's Office and local State Solicitors**

6.5.1 Development of a specific strategy to reduce attrition rates in cases of sexual Violence

6.5.2 Identification and implementation of survivor-friendly policies

6.5.3 Identification and implementation of targets, such as incremental reduction of attrition over time

6.5.4 Collection, collation and analysis of data at each stage at which the DPP and the State Solicitors are involved, including not merely outcome details but also basic personal details of both complainant and accused and most importantly as many indications as possible as to why any case was abandoned by the complainant OR not proceeded with by the DPP

6.5.5 Publication of that data, so that interested parties may provide analysis with a view to making suggestions for improvements in the system

6.5.6 Ongoing review of the DPP's standard for prosecution: could it be that it is too high, in effect?

6.5.7 Ongoing monitoring and review of the DPP Sexual Offences Strategy to ensure that targets are being met, and where they are not, the reasons for that failure are identified and further analysed

6.5.8 Ongoing monitoring and review of the specialised training of those working for the DPP, whether as agents or as employees, to ensure that it continues to be useful and relevant

6.5.9 Ongoing feedback to COSC, through a formal mechanism, of the successes and failures of the implementation of the strategy, with a view to solutions being found with as little delay as possible

6.5.10 The RCNI wishes to acknowledge and commend the DPP's Office on the amount of information already made accessible to the public via the website and elsewhere on the work of the DPP's Office and the criminal justice system generally, and to recommend that there should be a special section on the website dedicated to survivors of sexual violence, not least because different provisions, for example on special measures, already apply to them.

## **6.5 Courts Service**

6.5.1 RCNI recommend that the Courts Service develop a specific strategy on the support of survivors of sexual violence, and as part of that strategy incorporate performance monitoring mechanisms so that the effectiveness of that strategy may be evaluated regularly and in accordance with international best practice

6.5.2 Such a strategy should include provision of up to date, accurate and user-friendly information to survivors of sexual violence who are court users, targets and mechanisms for reducing waiting times in sexual cases, particularly serious ones, and targets and mechanisms for implementing their current goal (as per the Courts Service Strategic Plan 2005-2008) of providing separate waiting facilities for complainants and their lawyers and witnesses

6.5.3 There should be regular monitoring of performance by the various actors within the Courts Service in relation to each of the objectives in the sexual violence strategy, and the results should be evaluated in the light of international best practice in relation to survivors of sexual violence;

6.5.4 Performance monitoring results should be fed back to COSC regularly through a formal mechanism, such as the NSC, so that difficulties may be identified and hopefully resolved with the minimum of delay and with the benefit of support from other agencies as appropriate

6.5.5 Regular production of a range of compiled data on sentencing in all sexual violence cases, as all levels of the courts, such that analysis of sentencing can be carried out.

## Appendix 1

### **Criminal Code of Canada, Part V, Articles 153 (2), (3), (4) and (5), *with proposed adaptations in italics***

"...Consent" means, for the purposes of this section, the voluntary agreement of the complainant to engage in the sexual activity in question..

(3) No consent is obtained, for the purposes of this section, if

(a) the agreement is expressed by the words or conduct of a person other than the complainant;

(b) the complainant is incapable of consenting to the activity, *including by reason of her voluntary or involuntary intoxication*;

(c) the accused counsels or incites the complainant to engage in the activity by abusing a position of trust, power or authority;

(d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity, or

(e) the complainant, having consented to engage in sexual activity, expresses by words or conduct a lack of agreement to continue to engage in the activity

*(f) consent was obtained by means of fraud or impersonation of another person in circumstances where it would not have otherwise have been forthcoming*

(4) Nothing in subsection (3) shall be construed as limiting the circumstances in which no consent is obtained.

(5) It is not a defence.... That the accused believed that the complainant consented to [any one or more of a list of sexual activities]....if

(a) the accused's belief arose from the accused's

(i) self-induced intoxication;

(ii)recklessness...or

(b) the accused did not take reasonable steps [ ] to ascertain that the complainant was consenting

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