



**Rape Crisis Network Ireland
Submission to Citizens' Assembly.**

**Supporting Recovery and Causing No Further Harm to Women and Girls
Pregnant from Rape**

December 2016

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1. Introduction

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence. We are the umbrella body for our member Rape Crisis Centres (RCCs). In partnership with Rape Crisis Centres and University College Dublin, we collect reliable and expert data on the nature and extent of crimes of sexual violence in Ireland and the impact on victims, including women, children and men. Our policy briefings, awareness raising, submissions and annual data reports combine decades of firsthand knowledge from the staff and volunteers working directly with victims of crimes of sexual violence, expert research and analysis and data drawn from our data collection system.

We welcome the opportunity to make this submission to the Citizens Assembly, as an agency with extensive collective knowledge of the impact of the Irish Constitution and Legislation on survivors of rape, and on survivors of a rape pregnancy.

The women and men working in Rape Crisis Centres on a regular basis support survivors and others dealing with a wide variety of issues relating to pregnancy after rape. This includes supporting girls and women who decide to continue with the pregnancy and adopt or foster, those who continue with the pregnancy and parent, and those who choose a termination. There are also a range of other longer term matters that arise out of this issue¹.

The RCNI submission is based on decades of listening to survivors of rape, incest and all forms of sexual violence, responding to survivors' needs, and thoughtful consultation across the Rape Crisis sector. It includes consideration of a range of reliable data, our sector's expertise on trauma and supporting recovery, and focused legal advice².

¹ It also includes supporting people impacted by the longer term effects of a pregnancy after rape, such as a rape victim who adopted a child born of rape 18 years ago or more and now the child is seeking contact with their birth parent, or the woman who as a 14 year old girl was pregnant as a result of incest and a family member induced a miscarriage at home, or those who know they were born of rape or of incest for example.

² RCNI submission does not in any way indicate the personal position of survivors using RCC services, staff, volunteers or communities supporting RCCs, who may and do hold diverse opinions or beliefs.

2. Sexual Violence and Reproductive Health Care Generally

42% of Irish women will experience some form of sexual violence during their life time³. This statistic has far reaching implications for health care provision. Crimes of sexual violence are crimes perpetrated on the body of the victim. For many survivors medical procedures, by their very nature, have the potential to re-traumatise. Reproductive healthcare may be especially fraught for victims of sexual violence, regardless of whether the sexual abuse is current or in the past. Given the extent of sexual violence in Ireland a guiding principle in the provision of reproductive healthcare should be that the bodily integrity, privacy, consent and choice of the patient is paramount.

3. Rape, Pregnancy and Termination in Ireland: the Evidence

Since the introduction of the 8th Amendment in 1983 the Irish public has become increasingly aware of the impact of restricted access to abortion on victims of rape and incest, with the coverage of rape pregnancy survivors cases including The Miss X Case (1992), the Miss C Case (1997), The Miss D case (2007), the Miss Y case (2014). In an Irish Time/Ipsos MRBI poll (July 2016), 67% of those polled were in favour of access to a termination in Ireland in circumstances of rape⁴. An earlier Red C poll for Newstalk (January 2016) with a similar question asking about support for legalization of termination on the grounds of rape and incest, found 78% support for such a measure.

The reality is that 10% of all Irish women will experience penetrative sexual violence in their lifetime⁵ and a proportion of them will become pregnant as a result. In 2013, 8% of females attending an RCC reported they became pregnant as a result of rape, representing 75 women⁶.

³ SAVI, 2002, Mac Gee et al

⁴ <http://www.irishtimes.com/news/politics/poll/poll-july-7th-2016>

⁵ SAVI, 2002, Mac Gee et al

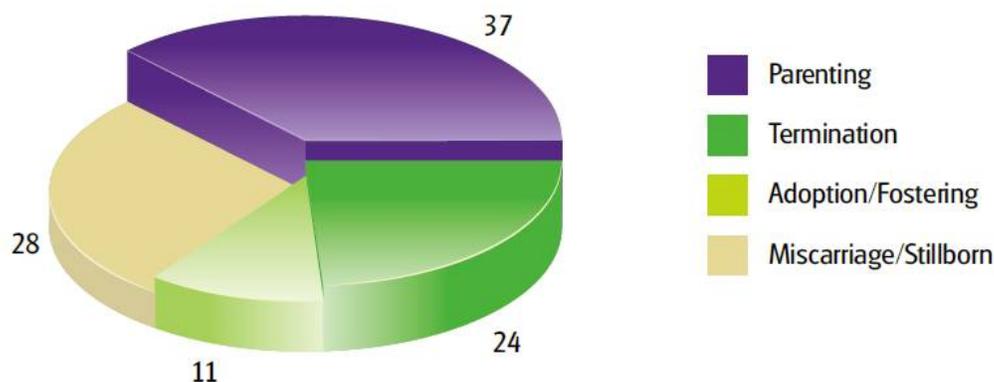
⁶ RCNI National Rape Crisis statistics 2013

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Of female survivors attending RCCs in 2014, who were raped when they were aged 8 or older, 8% of the women and girls became pregnant as a result of rape⁷. In 2015, that figure was 5%⁸. Irish national RCC data is generally in line with international data on incidents of pregnancy after rape which estimate that at least 1-5% of sexual assaults result in pregnancy⁹.

Of the 46 girls and women attending an RCC and pregnant as a result of rape in 2015:

- The majority of these survivors went on to give birth and parent (37%).
- 24% of these survivors had their pregnancy terminated.
- 11% of survivors who became pregnant had their child placed for adoption or fostering.
- 28% of these survivors miscarried or had stillbirths¹⁰.
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The figure for choosing a termination is broadly consistent with previous years of comparable RCC data, but only accounts for girls and women who became pregnant as a result of rape and attended a rape crisis centre. It is therefore likely that the numbers of girls and women in Ireland choosing to terminate a pregnancy following a rape are higher, as not all rape victims attend an

⁷ RCNI National Rape Crisis Statistics 2014

⁸ RCNI forthcoming

⁹ Holmes, M.M, et al (1996): Rape Related Pregnancy

¹⁰ RCNI forthcoming www.rcni.ie

RCC. The available data demonstrates that **girls and women in Ireland become pregnant following rape, and approximately a quarter choose to terminate their pregnancy. Termination of pregnancy is therefore a reality for Irish girls and women who are victims of rape and incest.**

Irish women and girls who are pregnant following rape and choose a termination are faced with exceptionally restrictive access to a termination in their own country. Currently termination is not an option for rape victims unless their life is at risk either physically or through suicide ideation and they can prove that. It must therefore be noted that while we talk about those who choose and had terminations there may be others who had different pregnancy outcomes, such as adoption or parenting, who in fact choose termination but had no access. In Ireland pregnancy outcomes and choices cannot be taken to be necessarily the same thing. Pregnancy outcomes, excepting miscarriage and termination, may in some instances have been the result of a lack of choice.

The lack of access to abortion for rape survivors violates international human rights standards. In *L.M.R. v. Argentina* the UN Human Rights Committee observed that refusing legal abortion in a case of rape caused the victim physical and mental suffering, so that her right to privacy and not to be subjected to torture or to cruel, inhuman or degrading treatment was violated¹¹.

4. The Evidence from RCC Specialist Expertise: The Real Needs of Girls and Women in Ireland Pregnant as a Result of Rape

For a victim an experience of rape at any life stage is an experience of complete loss of control over her body. For the duration of the rape, or rapes, the victim has no control over what is done

¹¹ See Abortion Law Reform in Ireland: A Model for Change, Mairead Enright, Vicky Conway, Fiona de Londras, Mary Donnelly, Ruth Fletcher, Natalie McDonnell, Sheelagh McGuinness, Claire Murray, Sinead Ring, Sorcha ui Chonnachtaigh <http://journals.kent.ac.uk/index.php/feministsatlaw/article/view/173> citing *LMR v Argentina* [2011] (UN Doc CCPR/C/101/D/1608/2007).

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to her body. This traumatic experience is profoundly isolating, and greatly compounded by the stigma and shame which culturally surrounds rape and sexual violence. **No act or intervention which seeks to take control from the victim after the rape can contribute to her recovery and restoration**¹².

Indeed, regardless of the extent to which this may appear to be in the best interests of the victim, taking away control causes further harm and trauma. Responses and interventions which seek to support and restore the victim of incest and rape must be centred in what the girl or woman wants to do in order to restore her integrity, her sense of herself, her sense of bodily integrity and privacy, her physical and mental health. **Listening to what the survivor needs to do in order to recover, providing information and supporting her wishes are the proven principles of supporting recovery and causing no unnecessary harm after the traumas of rape and incest.**

This includes the victim having control over who is informed about the rape, or rapes, and having the right to privacy. Responses that are not rooted in returning full agency to rape victims are likely to cause further, unnecessary, trauma and harm.

Ensuring the greatest possibly recovery from rape and rape pregnancy means that the victim feels safe, understood, supported, has all necessary information to hand, feels that her privacy and confidentiality are respected, can make the decisions that are right for her recovery, is supported in these decisions with the least disruption and invasion of privacy and is treated with dignity and respect. A non-judgmental response is essential.

Additional harm could result from being forced to become a mother, even if the child is subsequently placed into State care and/or adopted. This reasoning was key to a decision of the European Court of Human Rights that the right to a private life applies to decisions to become and not to become a parent. That judgment also addressed the special vulnerability of an

¹² See: Herman, J, Trauma and Recovery, 1992

adolescent in need of abortion services and confirmed their autonomy when it comes to their reproductive health¹³.

Recommendation 1: Women and girls who are pregnant as a result of rape require a health service response that provides information on all pregnancy options in a safe and confidential environment, maximises privacy and supports a rape victim's decision regarding her pregnancy with the least disruption to restoration of her recovery and her daily life.

5. Rape Pregnancy, the Irish Constitution and trauma, control and recovery

Current legislation in Ireland, the Protection of Life During Pregnancy Act 2013 which regulates the 8th amendment, removes control from victims of rape who are pregnant and want to terminate the pregnancy. This option is denied to a pregnant rape victim, unless she feels suicidal and is prepared to undergo assessment by three doctors who assess the girl or woman and certify that there is a real and substantive risk to the life of the girl or woman that emanates from a risk of suicide and which can only be averted by a termination. Where a rape victim is in fact suicidal as a result of a pregnancy she now has no choice in whether to undergo this assessment in order to have the possibility of a termination. All control lies in the decision making of three medical professionals, and not the girl or woman. No other legal option to obtaining a termination of a rape pregnancy is available in this country.

Therefore, in order to ensure privacy, return to bodily integrity and recovery, pregnant victims of rape and incest who choose termination are forced to:

- travel to another country and cover all costs regarding same,

¹³ P. and S. v. Poland, No. 57375/08 Eur. Ct. H.R. (2008)

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- engage with a different health system disrupting continuity of any current medical care,
- purchase private health care in another country,
- raise the funds towards this medical care,
- make all necessary arrangements for the duration of travel, including taking holiday leave or unpaid leave from employment, lose out on days of education in either school or college,
- arrange and possibly pay for childcare and/or care for other dependents such as elderly parents or others.

All of this is **highly intrusive and disruptive to** gaining recovery and compounds the impact of rape trauma. In addition given the nature of rape trauma it may be that that survivor cannot disclose to anyone and therefore is entirely on her own and unsupported. Furthermore, the criminalisation of termination of a pregnancy in Ireland likely interacts with negative social and cultural attitudes, including stigma, shame and silence, which are frequently internalised by victims of sexual violence.

It is evident that all of these barriers to accessing a termination outside of Ireland are greatly compounded by any constrained or difficult financial and personal circumstances. When a girl or woman is financially constrained and eligible for a medical card the Irish state will cover medical costs relating to continuing with a pregnancy and giving birth but will not contribute towards the medical costs of accessing a termination. As noted elsewhere access is dependent on having available a range of resources. Pregnant victims of rape may experience multiple additional barriers to taking back control and accessing a choice to terminate.

A victim of rape without the means to secure in excess of €2,000 at short notice may have to make quite drastic decisions in order to secure a termination, including possibly severe consequences such as leaving full-time education, taking out loans, becoming further financially dependent on an abuser in an abusive relationship. In these very real situations the traumatic impact of the rape is prolonged and the harmful effects on the victim's life are unnecessarily and extensively increased.

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Current restrictions on accessing a termination in Ireland are of particular concern with regards to women and girls in abusive relationships¹⁴. Research found that adolescent girls who experience intimate partner violence are 4-6 times more likely to become pregnant than girls in non-abusive relationships, and 40% of pregnant women in abusive relationships report their pregnancy was unintended, as opposed to only 8% of women in non-abusive relationships¹⁵. In 2015 85% of abusers were known to the victims attending rape crisis centres in the RCNI report¹⁶ and for adults over 18 20% of the abusers were partners or ex partners¹⁷.

In terms of barriers to traveling to get a termination her circumstances may limit her capacity to travel. She may have an impediment to mobility due to a disability which means she cannot travel independently or as noted above because barriers based on her being underage and dependent or arising out of her legal status.

Therefore, current legislation in Ireland, which prohibits the termination of a rape pregnancy at any stage, by any means, does not support the recovery of rape pregnancy survivors who are denied control, privacy and support. It is likely that current legislation prolongs and exacerbates the trauma and harm of a rape experience.

This impact reaches beyond limitation to only survivors who in fact become pregnant following rape – for a period of time all female rape victims post puberty and still fertile are exposed to the trauma of waiting to find out if they have become pregnant, and during that time are therefore exposed to the impact of prohibitive legislation which will not support their choice in one instance.

¹⁴ Silverman, JG, A & Clements, K, (2004): Dating Violence and the Associated Sexual Risk and Pregnancy Amongst Adolescent Girls

¹⁵ *ibid*

¹⁶ RCNI Rape Crisis Statistics 2015 forthcoming www.rcni.ie

¹⁷ Additionally any girl pregnant under the age of 17 is the victim of statutory rape under Irish law yet if she is pregnant as a result of that crime and seeks termination she may be subject to criminalization and punishment. Bearing in mind that she may have limited resources available to her to travel outside the state, if she seeks to access an abortion illegally in Ireland she, as with other vulnerable women, she risks up to 14 years in jail under Irish law.

Access to a termination in Ireland goes the furthest way to ensuring that a survivor of rape who becomes pregnant is caused no further trauma nor unnecessary harm in seeking to deal with the impact of the trauma on her, and in seeking the greatest possible recovery from the crimes perpetrated onto her body.

Recommendation 2: in order to ensure maximum recovery and least unnecessary harm, women and girls pregnant from rape should have access to all options regarding their pregnancy, including termination, available through the Irish healthcare system.

6 A 'Rape or Incest Ground' for Accessing a Termination is not fit for purpose

The introduction of a 'rape or incest' ground for accessing a termination legally in Ireland would mean that access must be restricted to those who, by some mechanism, are assessed or judged to meet certain requirements. This has proven both unworkable and controversial in its implementation in other countries¹⁸.

An assessment mechanism implicitly requires that a victim of rape who seeks a termination is forced to disclose the rape, as a prerequisite for consideration for eligibility. A rape victim's right to privacy is automatically removed.

In order to be considered eligible, a rape victim in addition to disclosure may then be forced to undergo some burden of assessment or provide proof as to the credibility of her disclosure. Ireland has introduced the requirement of assessment by three medical experts, of various specialties, in order to access a termination in Ireland on the basis of suicidality of the mother.

¹⁸ see Mairead Enright et al op cit

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Any such similar mechanism for the 'assessment' of rape pregnancy forces rape victim to make multiple disclosures and to undergo the adopted assessment or verification procedure.

If Ireland adopts legislation which offers a legal entitlement to termination to rape victims but requires that a rape victim report to the Gardaí or other authorities in order to access a termination, a rape victim may now be forced to engage in an adversarial legal system which the majority currently do not choose¹⁹. A rape victim could be forced to take the risk of disclosing the rape, perhaps forced to make a statement to the Gardaí, with no guarantee that they will 'pass' the assessment mechanism.

This is highly prohibitive and may mean a rape clause is simply not used by those whom it is designed to help, as those in need may seek to circumvent disclosure and loss of privacy through travel or the abortion pill if they can.

It is evident from our work with survivors of sexual violence that this would be unworkable for many rape victims. Forcing a girl or woman to disclose sexual violence and forcing her to undergo a rape verification procedure is the very opposite to supporting recovery and causing no further harm.

Any such approach causes unnecessary trauma and harm – to the extent that some, and most likely many, rape victims will not subject themselves to it and so the purpose of the rape clause will be moot²⁰.

¹⁹ For survivors using rape crisis centres (successive RCNI national statistics up to 2015 www.rcni.ie) approximately 65% do not choose to report to formal authorities. In the prevalence study, SAVI report, 2002 less than 10% of survivors reported the crimes.

²⁰ In addition we would be concerned at the negative impact a rape clause has on the general attitudes towards survivors of rape who already face suspicion, judgment and disbelief upon disclosure. An official mechanism outside of and in addition to the justice process which is designed specifically to judge the honesty of a rape survivor in her claims would be damaging and unhelpful not only to the individual involved but to efforts to foster a society that responds appropriately to all sexual violence survivors in our opinion.

Recommendation 4: RCNI recommend that rape victims have access to termination of a pregnancy on general health grounds, through the Irish health care system, with no requirement to disclose rape or participate in any rape assessment mechanism.

6. Causing no Further Harm to Pregnant Victims of Rape

Access to a termination under general health grounds in Ireland means that all survivors of sexual violence who become pregnant are treated with dignity, care and respect, in a non-invasive manner, and in safety, in any choice they may make. This means that no further unnecessary harm is caused to any victim of rape or incest regarding pregnancy after rape. Having access to a termination under the Irish health system should she so choose means the least disruption of the rape survivor's life and health care.

Recommendation 3: The RCNI is not in favour of the introduction of a separate 'rape or incest ground' as the basis for access to a termination in Ireland.

Section 8: Conclusion and Recommendations

The World Health Organisation states that "The protection of women from cruel, inhuman and degrading treatment requires that those who have become pregnant as the result of coerced or

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forced sexual acts can lawfully access safe abortion services²¹.

In this submission the RCNI has laid out that, of and women in Ireland who become pregnant following rape, between a fifth and a quarter choose to terminate their pregnancy. Termination of pregnancy is therefore a reality for Irish girls and women who are victims of rape and incest. We submit to the Citizens Assembly that the impact of current legislation is such that the traumatic impact of rape is unnecessarily prolonged, and the harmful consequences of rape on the victim's life unnecessarily and extensively increased.

We submit to the Assembly that access to a termination in Ireland on health grounds goes the furthest way to ensuring that a survivor of rape who becomes pregnant is caused no further trauma nor unnecessary harm and is supported to achieve the greatest possible recovery from the crimes perpetrated onto her body. It means that all survivors of sexual violence who become pregnant are treated with dignity, care and respect, in a non-invasive manner, and in safety, if they choose to access a termination.

We therefore recommend:

- **Recommendation 1:** Women and girls who are pregnant as a result of rape require a health service response that provides information on all pregnancy options in a safe and confidential environment, maximises privacy and supports a rape victim's decision regarding her pregnancy with the least disruption to restoration of recovery and her daily life.
- **Recommendation 2:** in order to ensure maximum recovery and least unnecessary harm, women and girls pregnant from rape should have access to all options regarding their pregnancy, including termination, available through the Irish healthcare system.
- **Recommendation 3:** The RCNI is not in favour of the introduction of a separate 'rape or

²¹ WHO/RHR/15.04: World Health Organisation, 2015

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incest ground' as the basis for access to a termination in Ireland.

- **Recommendation 4:** RCNI recommend that rape victims have access to termination of a pregnancy on general health grounds, through the Irish Health Care System, with no requirement to disclose rape or participate in any rape assessment mechanism.

We hope this submission will be of use to the Assembly and its members as you deliberate upon the issues in front of you. If we may be of any further assistance to the Assembly please do not hesitate to contact us.

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