



20th January 2017

Sexual Violence shadow report compiled by Rape Crisis Network Ireland for the UN CEDAW Ireland sixth and seventh country report, February 2017

Rape Crisis Network Ireland (RCNI) is a non-governmental policy and national level specialist in sexual violence in Ireland. We are founded, owned and governed by our member Rape Crisis Centres (RCC) which are the NGOs that provide frontline responses to survivors of sexual violence and the issue in their communities. RCNI supports RCCs, develops and coordinates specialist programmes, partners and collaborates with government departments and agencies, other NGOs, academics and institutions, engages in national interagency fora and advocates nationally on responses and prevention.

In this sexual violence focused report and in the context of other shadow reports being submitted we will only respond to Issues, 1, 8, 10 and 11.

Issue 1 information and statistics (*Note the country report does not provide statistics on violence against women under issue 1 but does provide some under issue 11.*)

1.1 RCNI very much welcome the response of the State to the need to invest in data gathering and to generate gold standard and coordinated data in this area across all relevant government departments and agencies as reflected in actions already underway in the 2nd National Strategy on Domestic, Sexual and Gender Based Violence¹. The commitment of the whole of government to better understand and make visible the issue speaks to the broader commitment to take concrete and credible steps towards primary prevention. This government has shown leadership in this endeavour.

1.2 Gaps in knowledge include **an absence of whole of population prevalence data**. The only prevalence report on sexual violence in Ireland was conducted in 2000 (the SAVI report²). **We recommend that the Central Statistics Office leads in the development in collaboration of a sexual and domestic violence module to be permanently included in the National Crime and Victimization Survey³ which runs every 3 to 4 years.**

1.3.1 The Current National Strategy has a range of actions towards the achievement of **'gold standard' data collection**.

¹ <http://www.cosc.ie/en/COSC/Second%20National%20Strategy.pdf/Files/Second%20National%20Strategy.pdf>

² <http://www.drcc.ie/wp-content/uploads/2011/03/savi.pdf>

³ http://www.cso.ie/en/media/csoie/surveysandmethodologies/crime/2015/QRcrime_victimisation.pdf

1.3.2 For the RCNI in our engagement across government and the NGO sector, our learning is that the rapidly developing data collection capacity must *only* be undertaken in a context where the same if not more effort is exerted to upskill and build a data protection infrastructure. **The risk for survivors of one without the other is a risk to their fundamental right to privacy, their access to supports and services and indeed their safety. We recommend government prioritise, locate and resource data protection capacity and infrastructure for all those engaged in data collection, including NGOs, in this area as a matter of urgency.**

1.3.3 The national strategy only commits to statutory agencies' data collection. An important source of data sits within the NGO sector and not with a state agency. We believe that the International obligations puts an onus on states to support *all* relevant data collection which would include supporting (though not compelling) relevant non statutory data collection that reaches a gold standard and is independently verified. **We would welcome the Committee's clarity on same.**

1.3.4 In Ireland 16 specialist Rape Crisis Centres provide a range of supporting services to survivors and others in the community, including face to face counselling for approximately 2,700 people per annum. Given approximately 65% of these survivors do not engage with the formal statutory authorities, the insight available from this population using NGO services is invaluable and otherwise unavailable to the State. To meet our obligations to survivors the sector built a gold standard data collection system. This is no longer supported by the State. **We recommend that government resourcing of such a system should be an obligation.**

Reporting to a formal authority

The following information relates to all survivors who attended 11 RCCs in 2015.

Graph 15: Reporting the sexual violence to a formal authority (%) n = 1,179

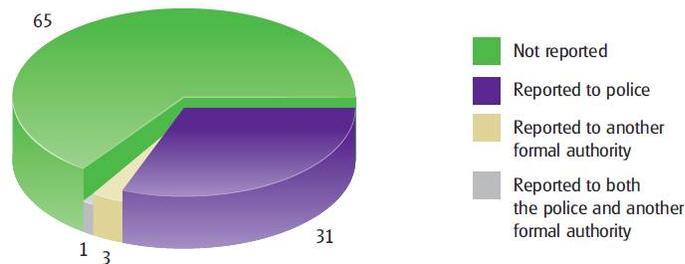


Fig 1 breakdown of whether people using rape crisis centres reported or not. This graph is from the 2015 RCNI statistical report, the figure has remained relatively consistent over the past 6 of years.

1.3.5 The work to build the rape crisis data system began in 2003 through the rape crisis owned network, the RCNI. The RCNI system developed in partnership with experts, verified by independent academics and now **promoted as gold standard by the European**

Institution on Gender Equality (EIGE)⁴ has been producing detailed public reports, providing responses to ongoing queries, facilitating academic partnerships and producing specialist research on the population of service users for over a decade. In addition to general annual statistics there are also reports on survivors with disabilities 2013, the older child 2014, asylum seekers and refugees 2014, LGBT survivors 2016⁵. The system was at its most comprehensive in 2013 with participation from 15 of 16 Rape Crisis Centres (RCCs) and the Child at Risk Ireland (CARI) service, placing an estimated 94% of all survivors using sexual violence specialist NGO services into one national system owned and governed by the rape crisis sector itself through the RCNI⁶.

1.3.6 A new agency, the Child and Family Agency (Tusla) has been given the national planning of services and funding remit under the Child and Family Act 2013. Following lengthy engagement on Tusla's data needs, Tusla requested direct access to the RCNI data base. RCNI's refusal was followed by the complete withdrawal of funding administered by Tusla to RCNI. The new statutory agency stated they wished to control such a database directly and would build their own system. In addition they invited the NGOs they fund not to input into the RCNI system further.

1.3.7 Given survivors' fundamental right to privacy and the fact that the majority of RCC survivors do not choose to report to formal authorities, as is their right under the EU Directive 2016/29⁷ the agency can only lawfully collect the most basic high level aggregate data and at that, with extreme caution. They have not to date recognised such limits to their powers⁸.

1.3.8 A critical aspect is that the agency collecting the services data, Tusla, is also the agency that controls almost the entirety of services' statutory funding so that the NGOs' status in negotiating the boundaries, as we are obligated to do under law and as is in every party's interest, is highly unequal. For example engagement on the contracts under which data would be requested and transferred, have garnered no changes and RCCs that queried aspects of the contractual obligations under advice from legal expertise and the data protection regulator have been informed that the continuation of their funding is uncertain in the absence of their signing the contracts.

⁴ <http://eige.europa.eu/gender-mainstreaming/good-practices/ireland/rape-crisis-network> 'The RCNI database has been one highly significant initiative to contribute to this required wider understanding. The development of the database from 2003 has resulted in significant learning.'

⁵ <http://www.rcni.ie/wp-content/uploads/RCNI-Finding-a-Safe-Place-LGBT-Survivors.pdf>

<http://www.rcni.ie/wp-content/uploads/RCNI-Asylum-Seekers-and-Refugees-Surviving-on-Hold.pdf>

<http://www.rcni.ie/wp-content/uploads/Older-Child-Policy-Document-FINAL.pdf> <http://www.rcni.ie/wp-content/uploads/SexualViolenceAgainstPeopleWithDisabilities2011.pdf>

⁶ see 2013 annual statistical report here <http://www.rcni.ie/wp-content/uploads/RCNI-National-Statistics-2013.pdf>

⁷ The EU Victims' of Crime Directive 2012/29 gives survivors the right to access specialist services without having to report to formal authorities.

⁸ Tusla requested data from centres in July 2016. The survey had 200 questions many of them relating to sensitive personal data on survivor demographics and incidents. Given the data gathered was from each centre and not nationally aggregated, if centres complied there would have been a significant number of low number 'aggregates' of sensitive personal categories attached to specific geographical areas transferred to Tusla,

1.3.9 Tusla have engaged on our data protection concerns and proffered assurances as to their practices and intentions but with no changes to the contracts. **Tusla cannot fulfil the role of advising NGOs on matters of conflicting obligations arising from Tusla's own actions. This is a conflict of interest.** As it stands the sector has no resources to establish and maintain capacity in the critical and growing obligations to survivors under data protection. Government needs to secure the NGO capacity in our role protecting vulnerable person's rights from erosions and threats, including those that arise from time to time, from the State itself. **We recommend that NGO data protection capacity be securely and separately funded by government.**

1.3.10 Regrettably, the State's contractual funding arrangements with RCCs and initial activities to collect data, without adequate steps in establishing the data protection parameters of such activity, has resulted in a data breach of the personal data of survivors. (Please refer to appendix for detailed complaint to Tusla). The government have failed to engage with the RCNI on this question of the fundamental right to privacy of survivors of sexual violence. It would appear that the legal advice given to Tusla has treated personal data as Intellectual Property whose ownership is to be managed and controlled, rather than through the framework of Data Protection Law where survivors remain the owners of their own histories.⁹

1.3.11 We remain committed to the aim of gold standard data collection across all relevant areas, including the NGO sector, to ensure that survivors' voices are given every opportunity to be heard at public and policy level.

Issue 8 National Infrastructure

2.1 The Irish State has a vibrant NGO sector and the Irish government has a strong record in partnership and consultation with the NGO sector. The Irish government is also adopting a commissioning approach to all service delivery currently provided by the NGO sector. The NGO sector remains watchful of the impact commissioning of services will have on our capacity to consult independently with government.

Concrete concerns already centre on the Charities Act 2009 which narrows our scope for advocacy. In Ireland charities are permitted to advocate for causes that further their charitable purpose. However, in Ireland the promotion of human rights is not regarded as a charitable activity, therefore organisations solely concerned with promoting human rights would not be considered charitable. This overarching legislative framework then sits alongside the increasingly standardised service level agreements attached to statutory funding. These claim ownership and control of the NGO's voice and knowledge, thus challenging NGO independence and capacity to advocate in a meaningful and robust manner with the State.

⁹ Tusla briefing to government released under Freedom of Information December 2016

Example 1 Intellectual property clause from a RCC contract: 'All IPR title and interests in all reports, data manuals and/or other materials (other than software) (including without limitations all and any audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purpose of this Arrangement (collectively "the Materials") (or any part thereof) shall vest in the Agency and the Provider so acknowledges and affirms. For the avoidance of doubt the Provider hereby assigns all intellectual Property Rights, title and interest in the Materials (including by way of presents assignment of future copyright) to the extent that any such Intellectual Property Rights title or interest may be deemed by law to reside in it in the Materials to the Agency absolutely.'

Example 2 in relation to advocacy activity: 'The Organisation must not use the Grant for any of the following: ... with regard to advocacy campaigns whose primary purpose is to obtain changes in the law or related Government policies, or campaigns whose primary purpose is to persuade people to adopt a particular view on a question of law or public policy. This subsection is not intended to affect the Organisation's right to utilise other sources of funding to raise awareness of issues or to run campaigns on issues of public policy directly related to the Organisation's work) or which is in conflict (as determined by the Agency) with the stated policy of the Agency; or ...'

Issue 10 Stereotypes

3.1 Stereotypes and in particular gender stereotypes remain central to the persistence of sexual violence. Naming the gendered nature of sexual violence remains subject to challenge and silencing at multiple levels. We would urge the Committee to set markers perhaps under general regulation 19 whereby governments in future demonstrate proactive leadership in promoting gender equality as a critical aspect of the analysis and response to sexual violence. This would include actively naming women as the predominant victims and men as the predominant perpetrators of sexual violence based on evidence. **Investment, infrastructure and all public activities, from government statements to awareness campaigns, should reflect the gendered nature of the crimes and be proportionate to the gender balance of victimisation and perpetration.**

Issue 11 Violence Against Women

4.1 Funding for Services – Since Ireland last reported in 2005 we have experienced considerable economic upheaval. This has impacted on funding to sexual violence services. From the economic crash of 2008 to 2014 overall the 16 RCCs experienced a 20% cut in funding from €4,969,687 to €3,980,433. In the same period RCNI experienced a 40% cut from €306,543 to €184,386 in 2014, rising to a 70% cumulative cut in 2015 at €117,291. Similar cuts were experienced in the domestic violence sector as laid out in the SAFE Ireland shadow report. Sexual Violence specialist victim support services were protected from any further cuts in 2015 and 2016.

There is no evidence that the funding removed from the RCNI and SAFE Ireland (our domestic violence counterpart) remained in the sector and was redistributed. No funding or resources have been provided to RCCs to replace the policy, guidance and practice support that RCNI traditionally provided. Compliance and oversight has strengthened and increased

considerably with new legal obligations and codes and with the welcome coherence, and with its oversight, brought about by the new national agency tasked with dedicated national DSGBV planning and service delivery.

As well as the impact to staffing and volunteers across the sector, services were impacted. A number of outreaches closed, both those serving geographically isolated locations and those directed towards particularly vulnerable groups such as asylum seekers living in direct provision. The impact of reduced capacity in centres continues to be reflected in waiting times for survivors seeking to take up counselling and support. Currently the wait for post crisis assessment and response is at least two months and up to 12 months in some centres. Some centres are running in deficit with only some having capacity to fundraise to meet that statutory funding shortfall and in effect supplement the State. **We recommend that funding be restored to at least 2008 levels as a starting point.**

4.2.1 The Criminal Law (Sexual Offences) Bill 2015, which has almost finished its passage through both Houses (the Oireachtas) as at January 2017, contains a range of measures which improve Ireland's response to sexual violence including online aspects of child sexual violence, anti-harassment orders and measures around offences against people with intellectual disabilities or mental illness and the expansion of the law's recognition of grooming. *(Note at the time of submitting - 20th January - the Bill was included on a provisional list for return to the Dail for its penultimate (Report) stage during the week of the 23rd January 2017).*

In addition the Bill offers some protections for women and girls who report sexual violence to the Gardaí. These protections include a right for victims or relevant third parties, such as counselling centres, to make application to prevent or restrict disclosure of victim counselling records. **It would be better if there were no waiver clause in the Bill allowing for these provisions to be dispensed with on consent, as this means that victims will likely still be put under pressure to give that consent.** A range of NGOs have petitioned government for an amendment giving victims a right to independent and State-funded legal advice before giving that consent. *(As of submission time that amendment has not been included).*

We very much welcome that the government it appears will amend the Bill in the final stage to include a positive definition of consent. This is a critical and positive advance.

4.2.2 Criminal Justice (Victims of Crime) Bill 2015: This Bill has just been published (December 2016). The right to Garda Accompaniment is key in this, also the right to know reasons for decisions not to prosecute and to review (already in place on administrative basis). Further, victims' rights to information about the criminal justice system and about their own case, are enumerated. In addition, special measures during investigations and in the court-room, on foot of individual assessments to identify specific protection needs, are included, and will go some way to protect privacy and protect vulnerable witnesses such as victims of sexual violence, from harm, in accordance with Article 22 of the **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of

crime. Article 23 rights include the right to give evidence otherwise than in the court room live – the Bill does give some effect to it, but there is a risk that the new measures included will not go far enough to prevent harm to all vulnerable witnesses. **We would urge the Committee to advocate for a default position that allows all women and girl victims to have the right to give evidence by video-link unless the defence can establish that it is not in the interests of justice for them to be given this opportunity, instead of leaving the issue of video-link support to the discretion of each trial judge.**

Also, the right to court accompaniment for sexual violence victims should be included in this Bill. This right is included already in the first draft (General Scheme) of the forthcoming Reformed and Consolidated Domestic Violence Bill. **We would urge government to extend this provision to victims of sexual violence and other vulnerable victims and for the Committee to examine the implementation and effectiveness of same at the next country report.**

4.2.3 One “special measure” for victim protection which needs work is the provision allowing for **the use of intermediaries in sexual (and other) violence trials**. Under current legislation, there are no regulations setting out how intermediaries should be selected, trained and registered for court proceedings, and the wording of Section 14 of the Criminal Evidence Act 1992 as amended, does not allow for anything but the questions put to the vulnerable witness, to be mediated: their responses must be direct and unmediated, which makes no sense. It should be noted that the proposed new amendments to Section 14 in the new Criminal Justice (Victims of Crime) Bill 2016, do not alter this position. **We recommend the regulation of intermediaries be addressed.**

4.2.4 Pre-recorded statements of evidence can now be admitted and stand in place of oral evidence, for some groups of especially vulnerable victims of sexual (and other) violence, in criminal cases. However, cross-examinations cannot be pre-recorded in any circumstances. In our view, **it is time that policy on best available special measures for victims moved on from the half-way house of giving evidence by video-link towards the goal of all evidence, including evidence elicited by cross-examination, being pre-recorded, so that no victim of sexual violence would have to endure the current trial by ordeal of cross-examination unrestricted and at length, in the future.** This provision would be in keeping with advances in reducing trauma within an adversarial justice system already tested in other similar systems (England and Wales, where pre-recorded cross-examinations for especially vulnerable witnesses has already been piloted, and Scotland and Northern Ireland, where these cross-examinations and other appropriate “special measures” for vulnerable witnesses, are being examined in depth.)

4.2.5 Finally, RCNI notes that the newly published **Bail (Amendment) Bill 2016** includes provisions tightening the current bail laws, so that it will be harder to get bail where a risk of committing serious offences on bail is established, providing for certain breaches of bail to be arrestable offences, and providing for evidence outlining victims’ fears of intimidation, reprisal, etc, to be taken under reporting restrictions. While these changes will go some way

towards protecting victims before and during court proceedings, **RCNI would also like to see provisions allowing for bail with conditions to be imposed before any charge is laid, and also to see a presumption in statute that bail should be denied upon conviction for a serious offence.**

4.3.1 Some administrative initiatives are underway such as very importantly, specialist teams of investigators, to be known as **Garda Regional Protective Services Units** whose main brief will be the investigation of sexual and domestic violence. These have just begun to be put into effect, it is envisaged that there will be one Unit in each of the 28 Garda Divisions.

4.3.2 Effective and appropriate **referral protocols** from the first responder (often but not exclusively the Gardaí) are critical to ensure that women and girls in trauma following sexual violence, are protected as much as possible. We understand that such protocols are being developed by the Gardaí.

4.3.3 These new measures must be **effectively and independently measured** for their impact. A mechanism of independent feedback from the cohort of relevant survivors, was established in partnership between an Garda Síochána and RCNI including 15 of the 16 Rape Crisis Centres in Ireland. The independent headline feedback statistics have been publicly available for 2013, 2014 and 2015 but as funding was withdrawn will not be available from 2016 on. Efforts to access funding to give ongoing feedback and greater insight to an Garda Síochána from the wealth of survivor feedback data available have not been backed by government. It is inadequate to replace this targeted feedback mechanism with a general population survey on attitudes to an Garda Síochána.

4.3.4 A huge issue for all victims of sexual violence, including women and girls, is the **delay at all stages of the criminal justice process. More needs to be done to address avoidable delays at each stage**, and the Government needs to dedicate resources to ensuring that there is more Court time and that it is used more efficiently. Also, time taken by the Director of Public Prosecutions to make decisions on prosecutions needs to be reduced, via increased resources if needed, and the new Garda specialist response needs to be resourced adequately at the investigation stage so that it can address and conclude investigations much sooner. More resources are needed in certain areas, such as for forensic examinations and for examinations of child sexual abuse material online, and these should be provided.

4.3.5 Training.

- a) There is no mention in Government Response, of criminal lawyers being trained, especially prosecutors – this is a serious omission;
- b) There is no mention of any timetable or blueprint for how and when this training will all happen, in the Government response;
- c) An Garda Síochána, Courts Service and Probation Services all need input from NGOs on impacts of SV and DV on their victims – without this how can training increase

awareness of the issues? Common principles are important in all training modules across different disciplines;

- d) We do not know what the whole budget for this training is, nor who controls it. It is vital that there is a co-ordinated approach to training so that the same common principles of best practice become embedded in the practice of every State agency involved with victims of sexual violence.

Appendix

Dear Sirs,

27th October 2016

We write further to the proposed and actual process of data collection by Tusla of personal data from our client the Rape Crisis Network Ireland (RCNI) and their member Rape Crisis Centres and to a report published by Tusla today entitled "Working Report on 2015 Services, Activities and Use: Towards Evidence Informed Services".

We refer in this letter to the judgments of the Court of Justice of the European Union in **Smaranda Bara and Ors v Naționale de Asigurări de Sănătate Case C-201/14** (referred to hereinafter for ease of reference as the *Bara* case), **Patrick Breyer v Bundesrepublik Deutschland Case C-582/14** (referred to hereinafter as *Breyer*) and **Maximilian Schrems v Data Protection Commissioner Case C-362/14** (referred to hereinafter as *Schrems*).

Our clients are data controllers in respect of exceedingly sensitive personal data regarding their service users, with their member Rape Crisis Centres acting both data controllers and data processors on behalf of the RCNI of that data and additional personal data.

Between April 2016 and September 2016 our client's member centres were asked to supply personal data to Tusla by way of a third Party commercial service- SurveyMonkey. We attach a copy of the relevant section of the SurveyMonkey privacy policy operative at that time for ease of reference.

You will note that the policy confirms the terms on which personal data are entered;

- 1) The data is transferred and stored on servers located in the United States
- 2) Entering data results in a contractual claim that "SurveyMonkey Europe [is] becoming the new data controller for your personal data".
- 3) That the legal basis of the transfer of data to the United States is the US-EU Safe Harbour Framework.

Following the *Schrems* judgment of 6th October 2015, the Safe Harbour adequacy decision underpinning the Safe Harbour framework was struck down with immediate legal effect. Reliance on the Commission's adequacy decision after that date is a legal nullity.

Data supplied without the benefit of prior legal advice by our client's member Centres, both in their roles as data controllers and as data processors for our client, to Tusla through this system therefore represents a disclosure of personal data to a third party without a lawful basis. Our client was extremely concerned to attend a meeting yesterday at Richmond Barracks to learn that a publication based in part on that data was being made public. Our client attempted to raise its concerns in this regard, but were told they were 'disrupting' the event. That document has now been made public.

This specific issue arises in the wider context of the efforts by Tusla to gain unqualified and therefore unlawful access to the sensitive personal data of service users.

Our client's member Rape Crisis Centres have been presented with Service Level Agreements by Tusla which includes, at paragraph 7.3 a requirement that they agree to provide Tusla 'any information as may be reasonably requested the Agency from time to time' and that they 'shall ensure they have obtained all consents, authorisations and permissions which are required by law' to 'access and disclose any personal data which is sought by the Agency'.

This represents a contractual requirement for our client's member Centres to compel consent for data disclosure from the service users of Rape Crisis Centres as a condition for their continued funding.

Such a requirement has the potential to destroy the relationship of trust between service users and the Rape Crisis Centres, and interferes with Ireland's duties under Article 8 of the EU Charter of Fundamental Rights as defined in Bara, Schrems and Breyer, the Data Protection Directive, the Data Protection Acts and the requirement under Section 40 of the Victim's Directive (Directive 2012/29/EU) to ensure that relationships between competent state Authorities and specialist victim support services are established while 'ensuring that data protection requirements can be and are adhered to'.

To date, our clients and their member Centres have sought to ameliorate the consequences of Section 7.3 of the Tusla Service level agreement by, at their own expense, providing aggregate data as a way of minimising the potential exposure of personal data.

However, following the Breyer decision of the CJEU on the 19th October 2016, the legal definition of 'personal data' now includes any data which the recipient **'has the legal means which enable it to identify the data subject with additional data which [a third party] has about that person.'**

This has left both our client and its member Centres extremely concerned in respect of the obvious conflicts between their legal obligations as data controllers and data processors and the asserted contractual obligations in the Service Level Agreement.

Our clients require urgent agreement with the State on the practices, resources and processes which will allow for lawful collection, control and sharing of victims' personal data, in the interest both of survivors and public policy interests.

In the event that no such agreement is forthcoming within 14 days of the date of this letter, we confirm that we will proceed without further notice to you to make a complaint on behalf of our client to the data protection commissioner's office regarding the ongoing unlawful processing of service users sensitive personal data.

In addition, our client reserves its right to apply to the High Court, joining Ireland and the Attorney General, seeking such reliefs as are necessary to meet its legal obligations as data controllers, including declaratory and injunctive reliefs without further notice to you.

Yours faithfully, McGarr Solicitors