



**RCNI Submission on Proposed Heads of  
Forthcoming Victims' Rights Bill 2011**

June 2011

## Rape Crisis Network Ireland

### Submission on Heads of Victims' Rights Bill 2011

**1:** Rape Crisis Network Ireland welcomes very much the opportunity to make submissions to the Minister for Justice on the appropriate Heads to be included in the new Victims' Rights Bill 2011. We note the new backdrop for this legislation will be the forthcoming EU Directive as set out in the Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, published 18 May 2011.

#### **1.0: Background to Rape Crisis Network Ireland's Support for Forthcoming Victims' Rights Bill 2011**

Offences of sexual violence in Ireland **are prevalent and under-reported**: according to the SAVI report<sup>1</sup> (2002), about one woman in five (20.4%) has been the victim/victim of contact sexual violence as an adult. Their impact on the individual victim is **devastating and far-reaching**.<sup>2</sup> It is of the first importance that the experience of the official process be the best possible for victims 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.

There is some evidence that the shorter the time between offence and report, the more likely it is that a decision will be taken to prosecute the offender.<sup>3</sup> However, the underlying philosophy must be that **support and respect for the victim are paramount**, that is, that the focus must not be on conviction at any price to the victim. 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>4</sup> identify factors which victims 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;

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<sup>1</sup> "Sexual Abuse and Violence in Ireland: the SAVI Report", (2002) McGee and others, The Liffey Press/Dublin Rape Crisis Centre

<sup>2</sup> See the table of issues mentioned in Victim Impact Statements at p 267 of "Rape and Justice in Ireland" (2009), Hanly et al, Liffey Press, a report in book form of a research project on the causes of attrition in rape cases in Ireland, commissioned by Rape Crisis Network Ireland. The greatest number of issues (negative effects of rape) were psychological, followed by trust issues, and various work-related issues.

<sup>3</sup> see for example, a study carried out in the US: "Sexual Assault: The Role of Prior Relationship and Victim Characteristics in Case Processing" (1999), Justice Quarterly Vol 16 no 2, 275-302. at page 287

<sup>4</sup> UK Home Office Research Study 293

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being kept informed about the progress of the case, and continuity of police officers and meeting these officers in person<sup>5</sup>.

Research from 2004 found that<sup>6</sup> **proactive contact and support from support workers** (including Rape Crisis Centre workers) was associated with reduced withdrawals from the criminal justice system.

In Ireland, "Rape and Justice in Ireland" (2009)<sup>7</sup> found that while the experience of rape victims with the Guards investigating their case was generally satisfactory at the time of the initial statement-taking process, many victims were less satisfied with their experience of the Guards as the case progressed. They reported difficulties with maintaining contact with the Guards and obtaining information.

To their great credit, An Garda Síochána have incorporated provisions reflecting several RAJ recommendations into the Garda Síochána Policy on the Investigation of Sexual Crime, Crimes against Children and Child Welfare, published in April 2010.<sup>8</sup>

### 1.1: Ambit of this Submission:

This submission puts forward headings for the new Victim Rights' Bill covering those victims' rights which are relevant to victims of sexual violence. It makes very little reference to statutory provisions relating to sexual offences, but focuses instead on suggestions for statutory provisions aimed at improving **current practice and procedure before, during and after the criminal justice process** in relation to complainants of sexual violence.<sup>9</sup> It does not make any recommendations on criminal sanctions, except in relation to compensation. The RCNI Submission on the White Paper on Crime No 2, Criminal Sanctions, addresses these matters.<sup>10</sup> Further, his submission does not examine sex

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<sup>5</sup> Several of these conditions are now reflected in the new "Proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime", 2011/0129, dated 18.05.2011, hereinafter referred to as "new EU Directive on Victims of Crime", for convenience, and available online at:

[http://ec.europa.eu/justice/policies/criminal/victims/docs/com\\_2011\\_275\\_en.pdf](http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_275_en.pdf)

<sup>6</sup> UK Home Office Research Study 285 by Kelly, Lovett and Regan entitled "Sexual Assault Referral Centres: developing good practice and maximising potentials",

<sup>7</sup> Hanly et al, Liffey Press, cited at note 2 above

<sup>8</sup> See online version at :

<http://www.garda.ie/Documents/User/WEB%20Investigation%20of%20Sexual%20Crime%20Crimes%20Against%20Children%20Children%20Welfare.pdf>

<sup>9</sup> <http://www.rcni.ie/uploads/RCNIagendaforJusticedraft2ndApril2009.pdf>

<sup>10</sup> RCNI Submission on White Paper on Crime Discussion Document No 2, "Criminal Sanctions", submitted to WPOC Unit in May 2010

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offender issues; these have been addressed in the RCNI 2009 Submission on the Management of High Risk Sex Offenders.<sup>11</sup>

### 1.2: 1<sup>st</sup> Proposed Head: General Definition Section

1.3: 2<sup>nd</sup> Proposed Head: General Right for all Victims of Crime: Provision re Right of Victims of Crime to be treated by all representatives of State agencies with compassion, sensitivity, dignity and respect. RCNI envisage that the wording of the new EU Directive will be followed (see Article 2).

### 1.4: 3<sup>rd</sup> Proposed Head: Statutory Provisions re An Garda Síochána and/or other Competent Authority, and Victims:

1.4.1: The Victim should have the following rights as a minimum, and the information should be supplied to him/her by a member of An Garda Síochána or other competent authority<sup>12</sup> in the first instance:

- right of victim to be informed of the nature, availability and contact details of health, psychological and social services including Sexual Assault Treatment Unit services, where appropriate and other appropriate expert support services, such as counselling, advocacy, accompaniment and other support from Rape Crisis Centres, immediately upon reporting the crime to An Garda Síochána;
- right of victim to be informed about how and where he/she may make a formal complaint to An Garda Síochána;
- right of victim to be kept informed at all stages, of the identity and contact details of the member of An Garda Síochána in overall charge of the investigation in their case, the progress of the 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.
- 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;

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<sup>11</sup>See online version at:

<http://www.rcni.ie/uploads/RCNIsubmissiononthemanagementofsexoffenders29thApril2009.pdf>

<sup>12</sup> "competent authority" is the phrase used in the new EU Directive, and would have to be defined in a preliminary definition section.

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- 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 the victim/victim to be informed as to the circumstances in which special measures may be used (giving evidence by video link, for example) and/or other protection measures, such as bail conditions;
- right of the victim to be informed (where applicable) that s/he can make a Victim Impact Statement in the event of conviction, and have it considered by the court before sentence is passed on a convicted offender;
- right of the victim to be informed about the extent and terms on which they are entitled to compensation in the criminal justice system, including time limits for making any application (this would refer in our system in essence to Criminal Injuries Compensation Scheme claims)
- If the victim is resident in another Member State, they should have a right to be informed of any special arrangements available to them to protect their interests
- The victim should be informed of all procedures for making complaints where their rights are not respected.

### 1.4.2: 4th Proposed Head: Other rights of victims in relation to An Garda Síochána:

- provision of a **specialised confidential channel** through which intelligence relating to a particular suspect might be relayed to the Gardaí by a victim, without the necessity to make a decision as to whether or not to make a formal complaint<sup>13</sup>
- right of victim **to be accompanied to Garda interview** for formal statement-taking by a person of their choice<sup>14</sup>

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<sup>13</sup> The Garda Confidential Line is now operational for all crimes: what is envisaged here is a specialised channel for intelligence to be forwarded about people suspected of sexual crime, or indeed, known or suspected to have convictions for sexual crime.

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- right of victim to **interact with the same Garda personnel** throughout the criminal proceedings, as far as practicable<sup>15</sup>
- right of victim to have **intimate forensic samples in their case appropriately stored** so as to preserve the samples and maintain the chain of custody, at least for a given minimum period<sup>16</sup>, where she or he has not yet made a decision as to whether to make a formal complaint to the Gardaí or not (Please see section 1.5 on State Health Obligations for more detail);
- right of victim to be **interviewed by a Garda of the same sex** on request
- right of victim to be supplied with **enough information** on their case to decide whether or not to request a review of any decision not to prosecute<sup>17</sup>

### 1.5: 5<sup>th</sup> Proposed Head: State Health obligations in relation to victims of recent sexual crime:

At present, appropriate HSE staff members, along with a multi-agency steering committee including An Garda Síochána and local Rape Crisis Centre are responsible for ensuring the proper functioning of Sexual Assault Treatment Units (SATUs).<sup>18</sup> Victims attending or considering attending SATUs should have the following rights, and HSE staff should ensure that they are informed of these rights, and that these rights are upheld:

- access to appropriate expert immediate medical treatment and forensic examination, to be carried out at their nearest SATU;
- right of the victim of sexual violence to refer themselves to a SATU, irrespective of whether a complaint has been made or is intended to be made to the Gardaí;<sup>19</sup>

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<sup>14</sup> This would give effect to Article 20 (c) of the new EU Directive on Victims of Crime, cited above, which also contains a proviso: "unless a reasoned decision has been made to the contrary in respect of that person".

<sup>15</sup> This is to give effect to Article 21(2)(c) on protection of vulnerable victims in EU Directive

<sup>16</sup> This period of time has not yet been defined. Once defined, it will be kept under review.

<sup>17</sup> This is to give effect to Article 10(2) of the new EU Directive

<sup>18</sup> Sexual Assault Treatment Services: A National Review (2006) - recommendation 1.1.4. This is available online at: [http://www.dohc.ie/publications/sexual\\_assault.html](http://www.dohc.ie/publications/sexual_assault.html)

<sup>19</sup> Note that the Revised Edition of the SATU Guidelines (December 2010) do include the right to refer oneself or be referred without making a formal report to An Garda Síochána first. These guidelines were signed off on by the Garda Commissioner and the Minister for Health and Children. This is the link to the online version:

<http://www.hse.ie/eng/services/Publications/services/Hospitals/sexualassaultnationalguidelines.html>

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- right of victim to such specialist medical, psychological<sup>20</sup> and social care or help as he or she may require and to be referred to such other help or services better suited to assist her/him as appropriate;

### 1.6: 6<sup>th</sup> Proposed Head: Provision of Legal Advice to Complainants in Sexual Violence Cases

- The State should ensure that **legal advice** is made available to complainants in sexual violence cases, regardless of means, from the time the crime takes place<sup>21</sup>.
- There should be publicly funded full legal **representation** for complainants in sexual crime cases, whether or not any application is made for leave to bring in evidence of any other sexual experience.

### 1.7: 7<sup>th</sup> Proposed Head: Protection for Victims during Criminal Justice Proceedings:

**In General:** **Note that** Article 17 of the new EU Directive on Victims of Crime on the Right to Protection of victims states that measures to protect victims shall include "procedures for the physical protection of victims and their family members".

#### 1.7.1: (subheading) Bail:

The District/Circuit/High/Central Criminal Court judge, as appropriate, 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.

- While the provisions of the Criminal Justice Act (CJA) 2007 in relation to the bail laws are broadly welcomed, 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 accused, and that the CJA 2007 should be amended to that effect.

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<sup>20</sup> Psychological support services are provided at SATUs by Rape Crisis Centre personnel.

<sup>21</sup> Currently, the legislation only covers legal advice "in a prosecution" (section 78 of the Civil Law (Miscellaneous Provisions) Act 2008), that is, only once a prosecution has been brought. However, the same legislation provides for the abolition of the old means test.

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- There should be no presumption in favour of bail once an accused person has been **convicted** of rape, pending sentence, and any bail granted after conviction should be subject to stringent conditions which are enforced.

### 1.7.2: (subheading) Other statutory protections for the victim during Criminal Justice Process:

- These include legislative provisions criminalising intimidation by not only the defendant but those associated with him and personal protection orders. The ambit of personal protection orders should include any person acting under the direction or on behalf of the alleged offender, and provide protection for family members and others related to the complainant, in addition to the complainant him/herself;
- As an additional protection, 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.

### 1.8: 8<sup>th</sup> Proposed Head: Statutory and Other Obligations on the DPP, his staff, State Solicitors and others acting on the instructions of the DPP:

- DPP's Office should have **statutory responsibility for the giving of reasons for their decisions**, 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).
- RCNI acknowledges the 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) already in place, and recommends that the DPP should have a **statutory responsibility** to inform the complainant of his/her right to request a pre-trial meeting **and** to request a review of a decision by the DPP not to prosecute in their case.
- DPP, through his advocate or other representative, should have a responsibility to explain to the complainant **the reasons for any directed acquittal**, or other end to the trial process, as far as known;<sup>22</sup>
- DPP should consult the complainant on any proposal from the defence to plead guilty to a lesser charge (proposed before or during a trial)<sup>23</sup>.

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<sup>22</sup> This is in order to comply with Article 4(1)(a), insofar as it refers to "a final judgment in a trial" of the new EU Directive, cited above

<sup>23</sup> This last point is analogous to point 10.6(h) of the DPP's Guidelines for Prosecutors, which includes the views of victims in the list of considerations the prosecutor should take into account in any decision to agree to a proposal advanced by the defence in relation to a plea to a lesser charge

### 1.9: The Criminal Court Process Itself: Statutory Changes Before and During Trials on Indictment to improve the experience of victims of crime as witnesses

#### 1.9.1: 9<sup>th</sup> Proposed Head: Case Management and Pre-Trial Hearings in All Trials on Indictment – A Measure to Avoid Secondary Victimization for All Victims of Crime through Unnecessary Delay Before and During Trials on Indictment

It is vital to avoid unnecessary late adjournments of Court trial dates and prolongations of trials once started, not only in the interests of the victim but in the public interest generally. This could be achieved by **enacting statutory provisions to establish the trial judge as the person responsible for the efficient Case Management of every trial on indictment.** Every trial should be preceded by an **obligatory pre-trial hearing which must be attended by all parties, analogous to the system in England and Wales.**<sup>24</sup>

A **Case Management system**, set out in statute and supplemented by more detailed Rules of Court, should put the power and duty of the trial judge to regulate the conduct of the pre-trial process as well as the conduct of the trial itself, beyond doubt. S/he need then have no hesitation to be as robust as necessary to control irrelevant, repetitive and/or gratuitously abusive or oppressive applications, examinations and/or speeches by lawyers or witnesses.

At such obligatory Pre-Trial Hearings, very many **administrative matters** and **discrete legal issues** could be determined, either by agreement between the parties or by direction of the trial judge following submissions from each party concerned. This would minimise the chances of the trial date being vacated at short notice or “cracking” because of issues which could have been resolved long before the trial date. It would also shorten the trial itself, and make the evidence more comprehensible and memorable for the jury by reducing the number of interruptions. It would also improve the victims’ experience of the criminal justice system, by avoiding the **secondary traumatisation** caused by unnecessary delay, would improve public confidence in the criminal justice system by providing faster and more efficient trials, would reduce the overall cost to the

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<sup>24</sup> There are now **at least five reports since 2003** whose consensus is that some form of pre-trial hearing system should be introduced in Ireland: see Appendix 1 for a list of the principal reports. Note also that in other criminal contexts, such as the area of white-collar crime, there is growing support among practising lawyers for such a system. See for instance the recent paper presented by Patrick McGrath BL at the 2011 Prosecutors’ Conference, organised by the Office of the Director of Public Prosecutions: [http://www.dppireland.ie/filestore/documents/PAPER\\_-\\_Patrick\\_McGrath\\_BL\\_280511.pdf](http://www.dppireland.ie/filestore/documents/PAPER_-_Patrick_McGrath_BL_280511.pdf).

In addition, the examination of the feasibility of pre-trial hearings in sexual violence cases is a listed Activity in the National Strategy on Domestic, Sexual and Gender-based Violence 2010-2014, and the Legal Issues Sub-Committee of the National Steering Committee on Violence against Women has produced proposals for a system of Case Management and Pre-Trial Hearings at the request of NSC (2011)

public purse, and would also provide the accused with another opportunity to benefit from an early guilty plea.<sup>25</sup>

Issues of **admissibility of evidence** could also be determined before the trial proper begins, by providing that they be heard at the start of the trial itself, but **before** the jury is sworn in, as recommended by the authors of the Balance in the Criminal Law Report (2007). This would also work to reduce delays and improve the flow of the evidence, and reduce the cost of jurors and to jurors of wasted time spent waiting for the determination of issues in their absence during the trial itself.

The presumption should be that every fixed trial date should be an effective one, subject only to the discretion of the trial judge to hear ex tempore applications for late adjournments in the interests of justice, and there should be consideration given to introducing sanctions in the event of unreasonable default.

### **1.9.1.2: 10<sup>th</sup> Proposed Head: Revision of existing provisions on "other sexual experience" of the complainant to avoid the risk of secondary victimisation by unnecessary reference to a vulnerable victim's personal life in court proceedings as much as possible:**

- (a) The general rule should be that applications for leave to adduce "other sexual experience" evidence are made **on notice to the trial judge, the prosecution and also the complainant, in advance of trial at a pre-trial hearing**;
- (b) Any such application should include a **clear rationale** for adducing previous sexual history, framed in terms of the statutory test;<sup>26</sup>
- (c) The judge should be alert to detect, and robust to refuse, any Section 3 application for leave that does **not** appear to be so framed;
- (d) The judge on granting such an application should impose **clear limits** on the ambit of such questioning/evidence;
- (e) There should be a **time limit, set out in Rules of Court**, by which any notice of intention to bring a Section 3 application must ordinarily be served. This would reduce uncertainty and resultant stress to complainants;
- (f) It should only be possible to serve notice of intention to make a Section 3 application **outside the time limit** if the trial judge exercises his discretion to allow such service to be served in the interests of justice;
- (g) It should be made quite clear that the role of the separate legal representative **extends from the Section 3 aspect of the pre-trial hearing, forward into the trial itself**, at least until the end of the whole of the complainant's evidence, and that it includes ensuring that the defence adheres to any restrictions on the leave given;

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<sup>25</sup> And otherwise uphold his rights: note that ECHR Article 6 rights include the accused's right to be tried "within a reasonable time" (Article 6(1))

<sup>26</sup> The new EU Directive (2011) at Article 21 (3) (c) says that vulnerable victims "shall be offered...measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence.."

- (h) The complainant should be kept informed of all developments, and the agency for informing her of each of these should be identified clearly.
- (i) Where the **prosecution wishes to adduce evidence in chief/via another witness of the complainant's other sexual experience**, the complainant should be consulted in advance and his/her wishes in this regard taken into account.

### 1.9.1.3: Other Protections for Complainants in Sexual Violence cases, within the Criminal Courts System:

- **11<sup>th</sup> Proposed Head: "Special measures"**, such as video link evidence and the use of previously recorded statements, should be extended to all sexual violence complainants.<sup>27</sup> 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>28</sup>.
- **12<sup>th</sup> Proposed Head: Right of vulnerable victim who is a complainant in a sexual case not to be subjected to direct cross-examination by an accused**

RCNI believe that these victims should not have to submit to cross-examination by **the accused in person**. Unfortunately, it has happened that the accused has exploited the role of advocate in person to humiliate and re-traumatise the victim. It cannot be said that any accused person is at a disadvantage if s/he is represented by counsel and/or solicitor<sup>29</sup>. See for instance, Conor Hanly's analysis of the extent of this "right" and the need to discard it<sup>30</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.<sup>31</sup> Other statutory provisions on case management, proposed above at paragraph 1.7.1, could put it beyond doubt that the **trial judge has the power and the duty to be**

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<sup>27</sup> This would give effect to Article 21(3)(b) of the EU Directive

<sup>28</sup> see section 13 of the Criminal Evidence Act 1992.

<sup>29</sup> There is support for this concept in this European case: Doorson vs the Netherlands<sup>29</sup>, (1996) 22 EHRR 330, at paragraph 70:

"It is true that Article 6.....does not explicitly require the interests of witnesses in general, and those of complainants called upon to testify in particular, to be taken into consideration. However, their life, liberty or security of person may be at stake, as may interests coming generally within the ambit of Article 8.. of the Convention. Such interests of witnesses and complainants are in principle protected by other, substantive provisions of the Convention, which imply that Contracting States should organise their criminal proceedings in such a way that those interests are not unjustifiably imperilled. Against this background, principles of fair trial also require that in appropriate cases the interests of the defence are balanced against those of witnesses or complainants called upon to testify".

<sup>30</sup> "Finding Space for Victims' Human Rights in Criminal Justice", Conor Hanly, page 24: Finding%20Space%20for%20Victim[1].pdf

<sup>31</sup> Note that there is a recommendation to this effect in "Rape and Justice in Ireland" (2009), Hanly et al, Liffey Press: see link to the RAJI Executive Summary: <http://www.rcni.ie/uploads/Exec-Summary.pdf>

**robust to control any inappropriate deviations into repetition/irrelevance/abuse** by any accused conducting his own defence in a sexual violence trial, but this one would ensure that there was no possibility that the complainant would have to endure the trauma of **any** questioning by the accused in person.

- **13<sup>th</sup> Proposed Head: Right of vulnerable victims who are victims of sexual crime in relation to the judge's charge to the jury:** There should be a statutory obligation on judges to instruct juries that a conclusion that the complainant acted foolishly does not of itself make her wholly or partially responsible for the rape or other sexual crime against her/him<sup>32</sup>. In the view of the RCNI, this would go some distance to scotch the prevalent myth that responsibility for guilt in a criminal trial can and sometimes should, be shared between the accused person and the complainant.
- Physical setting: **separate waiting and conference etc facilities** for victims, their witnesses and supporters are important for the wellbeing of complainants in particular over the course of criminal proceedings – the Courts Service is already responsible for implementation of improvements in the fabric of court buildings. The current Strategic Plan (2008-2011) has as one of its goals improved facilities for victims and vulnerable witnesses, and also has a target of providing video conferencing facilities in all courtrooms by 2011.
- **14<sup>th</sup> Proposed Head: Right of victim to protection from accidental contact with accused (and/or his/her supporters) in court precincts:** However, where separate accommodation is not yet available, the Courts Service should be obliged to ensure that there is a **general protocol** in place to avoid accidental contact between the prosecution witnesses, including the complainant, and the accused and/or any of his/her supporters, as far as possible. The responsibilities of each party to take steps to avoid the other could be spelt out by the trial judge at a pre-trial hearing, and clear directions given by him/her for their communication to anyone absent from the pre-trial hearing who will be present at Court on the day of the trial.<sup>33</sup>

### 1.9.2.4: 15<sup>th</sup> Proposed Head: Victims of Sexual Crime Rights in relation to Anonymity

- 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 recommends** that neither complainants nor other prosecution witnesses should 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

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<sup>32</sup> As recommended by Hanly et al in Rape and Justice in Ireland(2009), cited above

<sup>33</sup> See Article 17 (2) of the EU Directive (2011), cited above, which refers to “..measures to ensure that contact between offenders and victims may be avoided within premises where criminal proceedings are conducted..” See also Article 19, “Right to Avoidance of Contact between Victim and Offender”, to much the same effect.

responsibility of the prosecutor in the case, unless and until such time as the complainant has separate legal representation in court.

- Also in relation to anonymity, **RCNI recommends** that it be possible for the complainant to waive her own anonymity by written consent at the close of the case. At present, her anonymity can only be lifted by order of the judge.

### 1.10: Right to Compensation for the Complainant in Sexual Violence Criminal Cases

#### 1.10.1: 16<sup>th</sup> Proposed Head: From Convicted Person to Complainant by Court Order after Conviction:

Note that Section 6 of the Criminal Justice Act 1993 is not **mandatory**. There is no obligation on the sentencing judge and/or the prosecuting lawyer, to raise the issue of compensation of the complainant by the convicted person. If compensation is raised at sentence, or the judge considers it of his/her own motion, he/she must also consider the means of the convicted person to pay it. While compensation under this Section can cover a wide range of losses, it can be paid in instalments, and the convicted person can apply at any time after the sentence to have those instalments reduced, or even abolished, if his/her means diminish. These limitations mean that it is questionable whether any compensation payable to the complainant under this Section for the damage caused to him/her by the crime could be described as "fair and appropriate"<sup>34</sup>, or as "adequate"<sup>35</sup>, given the extensive and varied nature of the damage caused by sexual crime.

**RCNI recommends** as an interim measure, that this Section is amended to introduce an **obligation** on the sentencing judge to consider whether compensation may be awarded in each case, and a separate **obligation** on the lawyer representing the DPP, to raise the issue of compensation for the complainant from the convicted person before the sentencing judge before sentence is passed.

#### 1.10.2: 17<sup>th</sup> Proposed Head: Compensation for Complainants in Sexual Crime Cases under the Criminal Injuries Compensation Scheme:

This Scheme is a non-statutory means of assessing and providing a measure of State compensation to victims of violent crime. It is also questionable whether it could be said to provide either "fair and appropriate" or "adequate" compensation to these victims. It does not cover compensation for **pain and suffering**, and has many other limitations. At a minimum, the Scheme should be put on a

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<sup>34</sup> To use the wording of the 2004 EU Directive on Compensation for Victims of Crime

<sup>35</sup> To use the wording of Article 15(2) of the new EU Directive on Victims of Crime, cited above: "Member States shall take measures to encourage to provide adequate compensation to victims"

statutory basis, should include compensation for pain and suffering,<sup>36</sup> and should **relax** such exclusions and restrictions as the very short time limit (3 months after crime) and the necessity to make a report to the Guards soon afterwards, and **expunge altogether** the following: no compensation for some victims who shared accommodation with the perpetrator at the time of the crime, diminished or no compensation if the actions of the victim were held to cause or to contribute to the crime, and diminished or even no compensation if the Tribunal is satisfied that the "conduct of the victim, his character or his way of life make it inappropriate" [to make any or a full award]. In addition, consideration should be given to establishing a means by which a victim of crime may access some amount of compensation from the State, in circumstances where someone is convicted in the criminal courts of a crime of violence, but has no means to pay compensation to their victim.

### **1.11: 18<sup>th</sup> Proposed Head: Rights of Vulnerable Victims, including Victims of Sexual Violence, in relation to Specialised And General Training for Gardai, Prosecutors, Judges and Court Staff<sup>37</sup>**

**1.11.1: Gardai:** The RCNI view is that there should be an obligation on An Garda Síochána to recruit and train a cadre of Guards with **intensive specialist training in adult sexual violence issues**. At present, the Specialist Victim Interviewers cadre of officers is trained **only** to deal with child and young person victims of sexual crime, and victims with a psychiatric illness or intellectual disability ("vulnerable adults"), and people belonging to either group are interviewed **only** by officers belonging to this cadre. While we welcome this very positive development, there is no parallel **intensive<sup>38</sup> specialist training** in dealing with sexual violence issues relating to **adults**, such as intimate partner violence, alcohol issues, and so on. RCNI submits that this training should be developed and introduced without delay, and in this we are supported by the new EU Directive<sup>39</sup>. RCNI also submits that ultimately, the officers who have undergone such **intensive** training in **adult sexual violence issues** should be the **only** ones dealing with **adult** victims of **recent sexual crime**.

In addition, An Garda Síochána should<sup>40</sup> continue its efforts to ensure that all operational Guards have some **general training** in sexual violence issues. RCNI staff and Member Centres are well placed – and most willing - to continue to work with An Garda Síochána to provide information sessions to groups of operational Guards on the impact of sexual violence, repeat and secondary victimisation and how these can be avoided, and the availability and relevance of Rape Crisis supports to victims,

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<sup>36</sup> Subject of course to deductions for any award of general damages for pain and suffering in the civil courts

<sup>37</sup> Specialist training for justice personnel in sexual violence is already an objective of the Cosc National Strategy on Domestic, Sexual and Gender-Based Violence, however the new EU Directive will now impose obligations on the State in respect of general and specialist training in sexual violence for police, prosecutors, judges, Court Staff, and those involved in victim support and restorative justice services (see generally Article 24 of the new Directive, cited above).

<sup>38</sup> "intensive" means a 4 week full time course, covering specialised interviewing techniques as well as specialised theory

<sup>39</sup> See Article 21 (2)(b) and Articles 24(1), (3) and (4) of the new EU Directive, cited above.

<sup>40</sup> And we have no doubt, will do so

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through our local Centres around the country, and indeed, to develop this strand of our work further. This is already working well on an informal basis in several areas, as links are developed and maintained between local Rape Crisis Centres and local Gardai<sup>41</sup>, and it is hoped that the resources will be found to continue and develop further this vital work.

**1.11.2: Office of the Director of Public Prosecutions:** The DPP should also be obliged to organize the provision of mandatory specialised training for all those involved in prosecution of sexual violence cases, and should be properly resourced to do this. RCNI would be willing and able to provide expert input on the effects of sexual violence on victims and related matters, subject only to resources being available.

**1.11.3: Judges:** The Judiciary should be very well informed not just on the law and sentencing powers in the area of sexual violence, but also on the effects of sexual violence on complainants.

Judges who preside over sexual violence cases should have available to them **specialised information sessions in the impact of sexual violence, as well as expertise in this area of law**. Input by RCNI and/or our member Rape Crisis Centres on the effects of sexual violence on victims, and on their needs, would be an important element of that training. RCNI members are well-placed to provide such information to our judges.

While our judiciary are **independent** of our executive, and therefore it may not be appropriate to **impose a statutory obligation** on them to attend such information sessions, nevertheless all informal means to encourage them to do so should be explored.

**1.11.4: Court Staff:** The Courts Service **should be obliged** to ensure also that all its staff who interact with complainants in sexual violence cases should receive a measure of general training in sexual violence issues. RCNI would be willing to provide any assistance it can to the Courts Service in this regard, and such training would help to fulfil the State's obligations to those vulnerable victims who are victims of sexual crime, under Article 24 of the new EU Directive. Note also that as RCNI-trained volunteers already provide a Court Accompaniment service, and has done so for several years, the RCNI as a whole has available to it a detailed knowledge of the difficulties faced by complainants in sexual violence crimes who must undergo our criminal justice process.

### 1.12: Other General Rights of Victims of Crime:

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<sup>41</sup> Note that the new Garda Síochána Policy on the Investigation of Sexual Crime provides for certain officers to be responsible for liaison with local victim support organisations, such as RCCs

**1.12.1: 19<sup>th</sup> Proposed Head: Victims' Charter:** RCNI is delighted to note the intention of the Minister for Justice to put the Victims' Charter on a statutory basis, as recommended by Hanly et al in Rape and Justice in Ireland (2009), cited above.

**1.12.2: 20<sup>th</sup> Proposed Head: Victims' Right to an Independent Complaints Procedure:** RCNI recommends that the forthcoming legislation on Victims' Rights should also include provision for **an independent, easily accessible procedure** through which allegations of breach of the Victims' Charter can be examined and appropriate redress measures be taken.

**1.12.3: 21<sup>st</sup> Proposed Head: Victims' Rights of Access to Criminal Justice Process:** Measures should be taken to ensure that the forthcoming rights of victims of crime at Article 6 of the new EU Directive in relation to **interpretation and translation**, will be underpinned by statutory obligations on all the State agencies concerned. All Criminal Justice Agencies should have express obligations to ensure that **all information** is provided as far as possible in a range of languages commensurate with their users, and in a range of modalities, so that those victims who have an intellectual disability can also access that information. The use of **intermediaries** for complainants and witnesses with an intellectual disability going through the criminal justice system should be facilitated, by statutory change if necessary.

The intention behind all the recommendations in this paragraph is to give some practical effect to Article 5 of the new EU Directive on the right of victims to understand and be understood in criminal proceedings.

### **1.12.4: 22<sup>nd</sup> Proposed Head: Rights of Victims in relation to Restorative Justice**

RCNI endorses in full the rights set out at Article 11 of the EU Directive in this regard.

### **1.12.5: 23<sup>rd</sup> Proposed Head: Rights of Victims Resident in another Member State**

RCNI endorses in full the rights set out at Article 16 of the EU Directive in this regard.

### **1.12.6: 24<sup>th</sup> Proposed Head: Right of Victims to a Co-Ordinated Response from State and non State Agencies**

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All victims of crime, whether regarded as vulnerable or not, are entitled under the new EU Directive to a co-ordinated response from State and non-State agencies<sup>42</sup>. RCNI submit that the creation of a **single information access point** on the progress of a case through the criminal justice system, which could be accessed by victims themselves at any stage of the process by a **unique identifying number** which remains the same from the opening of the Garda file to the final disposal of the case at trial/sentence/appeal, would be a very great advance.

All the relevant State agencies (Gardai, DPP, Court Services) and non-State agencies (e.g. those providing accompaniment services) could feed in information under **agreed headings** into (for instance) a secure online computer system, so that at any time, the victim could put in the unique number and access that information for themselves. This would reduce the burden on the key information providers, the Gardai, (and others) as an additional and significant benefit.<sup>43</sup>

There are other benefits for the victim in having a system based on a **unique identifying number** which would stay the same from the beginning of the case to the end. These are less direct of course, but nevertheless important. These numbers could be the basis of a **data processing system** capable of tracking not just the progress of individual cases, but also of detecting **trends** over time. These trends in turn would provide a firm **evidential foundation** on which both State and non-State agencies, working together, could build future improvements in criminal justice policy at every stage of the criminal justice process, to the benefit of victims of crime in general, and to the benefit of all groups identified as **vulnerable victims** in the new EU Directive, in particular.<sup>44</sup>

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<sup>42</sup> See Article 25(2).

<sup>43</sup> An analogue of this idea is the current online visa information system, which also operates by feeding in a unique identifying number and is housed in INIS at the Department of Justice.

<sup>44</sup> Hanly et al in the Rape and Justice in Ireland research (2009), expand on this theme in the RAJI Executive Summary in their Recommendations regarding research and data collection in the Criminal Justice System, available online at <http://www.rcni.ie/uploads/Exec-Summary.pdf>

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### Appendix 1: List of Principal Reports recommending some form of Pre-Trial Procedure in Irish Criminal Courts

1. The Report of the Working Group on the Jurisdiction of the Courts: the Criminal Jurisdiction of the Courts (the "Fennelly Report") (2003), available online [http://www.courts.ie/courts.ie/library3.nsf/\(WebFiles\)/92E26C802274604280257888003CFD32/\\$file/WGJC%20Report.pdf](http://www.courts.ie/courts.ie/library3.nsf/(WebFiles)/92E26C802274604280257888003CFD32/$file/WGJC%20Report.pdf)
2. The Report of the Oireachtas Committee on Justice, Equality, Defence and Women's Rights: A Review of the Criminal Justice System (GPO, 2004), available online at <http://www.oireachtas.ie/viewdoc.asp?DocID=3067&CatID=78&StartDate=01%20January%202004&OrderAscending=0>
3. The Report of the National Crime Council, An Examination of Time Intervals in the Investigation and Prosecution of Murder and Rape Cases in Ireland from 2002-2004 (GPO, 2006), available online at [http://www.crimecouncil.gov.ie/downloads/Time\\_Intervals\\_Research.pdf](http://www.crimecouncil.gov.ie/downloads/Time_Intervals_Research.pdf)
4. Law Reform Commission Report on Criminal Appeals and Pre Trial Hearings, LRC 81-2006 (2006), available online at [http://www.lawreform.ie/\\_fileupload/Reports/Report%20Prosecution%20Appeals.pdf](http://www.lawreform.ie/_fileupload/Reports/Report%20Prosecution%20Appeals.pdf)
5. Balance in the Criminal Law Review Group Final Report (2007), online at: <http://www.inis.gov.ie/en/JELR/BalanceRpt.pdf/Files/BalanceRpt.pdf>