



**Rape Crisis Network Ireland (RCNI)**  
**submission to the**  
**Director of Public Prosecution's Reasons Project**

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10<sup>th</sup> March 2008

## Introduction

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1.1 Rape Crisis Network Ireland (RCNI) is the national umbrella body of Rape Crisis Centres (RCCs). Our membership encompasses 16 RCCs with approximately 130 staff and volunteers serving the needs of survivors of sexual violence across Ireland. Our main purpose is to work towards a society that is free from sexual violence. Last year our members delivered a direct service to thousands of survivors and supporters. The Network enhances the resources of the individual centres and proactively promotes their agenda through partnership with government and civil society in Ireland.

1.2 The Rape Crisis Network Ireland has committed to *“influence legal policy within the national arena including lobbying for legislative reform with a view to maximising the complainants experience of the judicial process, from reporting onwards”* In the development of positions from practice the RCNI draws on the expertise of staff, volunteers and the survivors themselves working together on these issues for the past 25 years.

1.3 The Criminal Justice Process involves the participation and co-operation of a number of professions / bodies. The RCNI reform agenda speaks to the need for reform within each one of these interdependent agencies including; an Garda Síochána, the Director of Public Prosecutions, the legal profession, the Judiciary, the Prison Service, Probation and Welfare and the Legislature

1.4 The RCNI welcomes the opportunity that is now afforded to it, by the invitation from the Director of Public Prosecutions for submissions on the issues relating to the giving of reasons to victims regarding decisions not to prosecute.

## **Summary**

- The RCNI has extensive experience and understanding of the challenges experienced by those who are subjected to rape and sexual assault in terms of securing justice for the crimes committed against them.
- As part of our mission within the RCNI to create a society where rape and sexual violence no longer exist, we advocate reforms within all branches of the Criminal Justice System.

## Overview

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The crimes of rape and sexual assault have an enormous impact on the victim. However there exists a very wide justice gap between the instances of rape and sexual assault and the rates at which prosecutions proceed to court.

Many victims have significant fears about bringing their complaints to An Gardaí Siochána, and for those who do, there is a very high rate of attrition, with over two thirds of cases not being proceeded to the Office of the DPP. Of the cases which, are presented to the DPP, almost two thirds are not progressed to court.

The policy of the DPP's office of not providing cogent and comprehensible reasons to complainants in the event that there is a decision not to prosecute leaves those who have been affected feeling powerless, unheard, and sometimes re-victimised.

The RCNI recognises that there are constraints on the office of the DPP in providing reasons. The Constitutional requirement to protect the good name of all citizens, could give rise to instances where to explain a decision not to prosecute could be inferred as calling into question the good name of the accused or indeed the complainant. Therefore, it may only be possible, although less than ideal, to provide individual complainants with generalised reasons, on why decisions not to prosecute are taken.

It is incumbent on us all as a society to be concerned about the gap in justice for victims of rape and sexual assault, as a result of high rates of attrition. The seriousness of rape and sexual assault combined with the low rates of cases proceeding to court, requires serious attention and a commitment to redress this imbalance.

All aspects of reasoning within the Criminal Justice System, as well as areas of weaknesses in case building, evidence gathering, victim support and the

manner in which cases are presented in court need to be subjected to ongoing review and examination in order to identify and target necessary reforms.

The RCNI strongly encourages the office of the DPP to develop a systematic approach to reviewing cases which do not proceed to court and ensuring that findings are in the public domain. A clear understanding of why cases do not meet the necessary requirements to proceed to court needs to inform efforts to improve all aspects of investigation and case building to reduce the justice gap for victims of rape and sexual assault.

## The Crime of Sexual Assault

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2.1 With over twenty five years of providing practical support to victims of sexual assault, whether those crimes occurred in childhood or adulthood, Rape Crisis staff and volunteers have consistently been aware of the low levels of reporting to the Gardaí, by victims. Research conducted for the SAVI report, along with improved systems of statistical recording by member centres, consistently highlight, the low level of reporting to the authorities of the crimes of rape and sexual assault. From the national research carried out by SAVI we know that one in five (20.4%) Irish women experience 'contact' sexual abuse as adults, yet fewer than one in ten victims in cases of sexual violence engage with the Criminal Justice System. SAVI calculates that approximately 7.8% of women and just 1% of men, who are victims of sexual assault report those crimes to the Gardaí. Of those cases reported to the Gardaí, the courts adjudicate on only 5%.<sup>1</sup> However the low level of reporting to the authorities is not something that is unique within this jurisdiction.

2.2 A great deal of academic research has identified the particular or 'unique' features of sexual crime which distinguishes it from other serious violence in particular ways, including victims experiencing potent and debilitating self-blame, the perpetrator in the majority of cases will be someone the victim knows, and the process of reporting the crime and any legal cases are often experienced as a form of re-victimisation.<sup>2</sup> *In no other crime is the victim subject to such scrutiny at trial, where the most likely defence is that the victim consented to the crime. Powerful stereotypes function to limit the definition of what counts as 'real rape'. (Kelly, Lovett & Regan 2005. p11)*<sup>3</sup>

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<sup>1</sup> Sexual Abuse and Violence in Ireland (SAVI) Report: A National Study of Irish Experience, Beliefs and Attitudes Concerning Sexual Violence, Hannah McGee, Rebecca Garavan, Mairead deBarra, Joanne Byrne, Ronán Conway, Royal College of Surgeons in Association with Dublin Rape Crisis Centre. Liffey Press; 2002

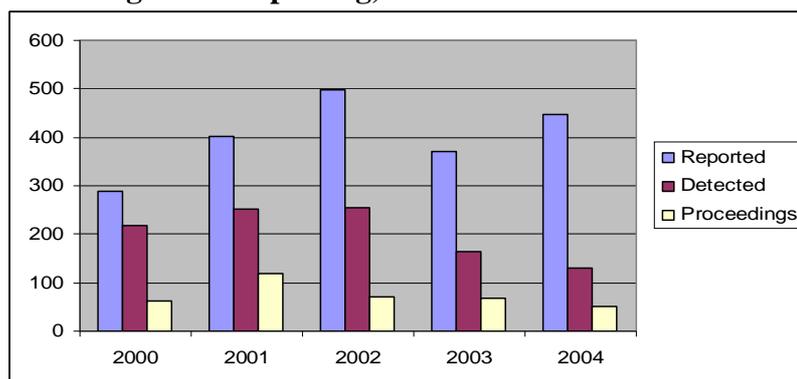
<sup>2</sup> Liz Kelly & Linda Regan. (2001) Rape: The forgotten issue *A European Research and Networking Project*. Child and Woman Abuse Studies Unit. London

<sup>3</sup> Kelly, L, Lovett J & Regan L. (2005) A Gap or a Chasm, Attrition in Reported Rape Cases. Home Office Research Development and Statistics Directorate. Available online at [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

For those who do report their experiences, Ireland in comparison to 20 other European countries, experiences the highest rate of cases “falling out of the system”, before adjudication by the courts.<sup>4</sup>

2.3 For every 100 cases reported to the Gardaí, the average rate of detection is 33%. Of those crimes detected the DPP on average will recommend that proceedings be taken in a third of those cases. Aggregating data from the Annual Reports of An Garda Síochána 2000 to 2004, we can see that the numbers of cases detected has a corresponding falling trend of the DPP recommending prosecutions. In 2004, for every 33 cases detected the DPP recommended prosecution in 11 cases. This indicates a high rate of attrition, an issue that is of serious concern to survivors of sexual crimes and to those of us who support them<sup>5</sup> as it undermines the social contract.

**Figure 1: Reporting, Detection and Prosecution of Rape, 2000-2004**



Source: Annual Reports of An Garda Síochána, 2000-2004.

2.4 Those who are subjected to Rape and Sexual assault are violated, both physically and psychologically, and often traumatised by their ordeal. They are crimes, which leave an enormous impact on the person’s sense of well-being, esteem, capacity to trust or maintain relationships. Societal myths and stereotypes often have the impact of encouraging the survivor to feel shame at what was done to them and to blame themselves. Each individual is different, but as a crime it has far reaching consequences for the victim and for society.

<sup>4</sup> Rape Still a forgotten issue; Prof Liz Kelly and Linda Regan 2005

<sup>5</sup> Agenda for Justice, RCNI

2.5 A sexual violence case, by its nature is an offence frequently committed in circumstances, which make the establishment of criminal liability extremely difficult. Therefore, conviction rates should not be the only or indeed necessarily the best measure of the effectiveness of an investigative process. It is important to note that from our experience, although those who do report to the authorities crimes of a sexual nature committed against them, do so in the hope that there will ultimately be a conviction, this is not the only outcome which is anticipated? Equally important is that the justice system is accessible, responds to them professionally and without prejudice, is transparent and holds the perpetrator to account.

2.6 Of interest here where cases are investigated and detected, a lack of information and understanding by the victim for reasons not to proceed can cause enormous distress to the individual concerned. At a more macro level, the cumulative effect of not proceeding with approximately two thirds of cases detected, raises significant questions. Without a comprehensive understanding of the reasons why files prepared do not in the opinion of the DPP meet the standards necessary for a fair prosecution, it is very difficult to identify what aspects of the investigative process can be adjusted in a way which ensures improved access to justice for victims of sexual violence.

2.7 The high attrition rate in rape cases is a cause for concern. In a society committed to the ideal of seeking justice through the law, it is of serious concern to us that so many victims of rape and sexual abuse are not afforded Justice. *“When the legal system seemingly does not or cannot produce the results we know it should then it behoves us to investigate why? – and to do so with an open mind and to make the consequential changes needed to enhance its operation”*( Professor Gerard Quinn, Dean of the Law Faculty, NUI Galway, speaking at the launch of the Attrition Research Project).

## Summary

- The crimes of rape and sexual assault can be distinguished from other violent crimes insofar as the proportion of cases that will be adjudicated by the courts is worryingly low, at only 1%.
- Unlike other crimes, legal proceedings in relation to rape and sexual assault are characterised by a high degree of scrutiny being placed on the victim. Complainants are wary about engaging with this system, and many experience the process as a re-victimisation.
- The high rate of attrition in the processing of rape and sexual assault cases, constitutes a significant justice gap.
- The policy of the DPP of not giving reasons to complainants why cases will not be prosecuted can often, unintentionally, compound the cycle of self-blame and internalisation of guilt and shame that largely surrounds sexual violence in our culture and society.
- The absence of a systematic analysis of the reasons why cases do not meet the criteria of the DPP to constitute a fair prosecution leaves a significant gap in understanding for society as a whole. Without comprehensive analysis of the reasons cases do not proceed it is very difficult to identify specific areas where reforms are required in order to address the justice gap.

## **Should the Current Policy be Changed**

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The RCNI believe the DPP should change its current policy in order to facilitate effective resource allocation, appropriate law reform and allow complainants within the system to be treated with every possible dignity.

**3.1 The RCNI strongly advocate for the DPP's office to publish comprehensive statistics regarding the number and profile of cases involving sexual violence being referred to the office.** Basic court statistics, which tell us the rate of conviction, tell us nothing as to why there is such a discrepancy between the number of cases being reported to the Gardaí and the numbers which ultimately go before the court. According to Dr. Ian O'Donnell the Deputy Director of the Institute of Criminology, UCD, since the 1970's we have seen a *"steady fall in the proportion of sex crimes reported resulting in proceedings...the decline for sex crimes has been striking because it began from a higher base and has been more relentless"*<sup>6</sup>. This trend is worrying insofar as we do not understand what the factors at play are, and how this might be most effectively addressed.

**3.2** Whilst State Solicitors and Gardaí are advised as to why cases will not proceed, this information is disseminated on a case by case basis, which leaves gaps in the understanding of how overall improvements may be made. Without collation of the reasons that inhibit cases proceeding to court there are difficulties in identifying and analysing areas where reform could be effective. In the interests of public confidence and in the interests of targeted and effective systemic reform which improves the quality of outcome for those who have reported crimes of rape and sexual assault, there needs to be more comprehensive information in the public domain as to why cases do not proceed.

**3.3 The RCNI believes that every effort should be made to inform complainants, although there are instances when the giving of reasons can only be very general, such as insufficient evidence.** The current

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<sup>6</sup> Ian O'Donnell, 2005

policy of silence on why cases do not proceed, undermines confidence in the system, and can leave victims feeling as though they have not been heard or taken seriously.

The judicial process renders the victim a witness, and ultimately quiet powerless to have any impact on the outcome. The decision to report a crime of sexual violence is often a very difficult step, particularly when the perpetrator is someone whom they know. A decision by the DPP not to proceed with a case following an investigation, in the absence of explanation is a particularly difficult outcome for the victim of such crimes. A detailed explanation of the decision not to proceed, acknowledges to the complainant the gravity of the crime committed against them, reassures them that their complaint has been heard, given due attention and seriously considered. The disempowerment felt by complainants as a result of the crimes of sexual assault and rape, are compounded by the absence of comprehensible reasons.

3.4 The RCNI understands the difficulties posed to the office of the DPP when considering the mechanisms for giving reasons. The requirement to protect the good name of the accused in the absence of a conviction is mandated by the Constitution. A person's good name is protected by the Constitution under article 40.3.2. The Supreme Court has endorsed the existing policy of the DPP's office for not giving reasons, highlighting two particular reasons, (1) The necessity to protect the good name of the putative defendant from negative connotations, in the event that there was insufficient evidence to sustain a conviction. (2) There are instances where providing reasons could compromise the anonymity of Garda sources. (*H v Director of Public Prosecutions*).<sup>7</sup>

3.5 Whilst we would welcome a system whereby the victim could be informed of the reasons not to proceed, we accept that there are difficult challenges in developing a system which is more transparent for the victim,

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<sup>7</sup> [1994] 2 IR 589

and which also meets the Constitutional obligation to protect the good name of the accused.

**3.6 The RCNI strongly advocate for a system whereby there is a regular and comprehensive review of the reasons why prosecutions do not proceed.** At a minimum, the RCNI would wish to see a system whereby files not meeting the requirements necessary to facilitate a prosecution could be subjected to analysis, on an ongoing basis. The aim would be to understand specific areas of case building and evidence gathering, which could be addressed in order to improve the quality of files being prepared for the DPP, and the subsequent likelihood of them being recommended for prosecution. These reviews need to be systematically presented to the public and remain in locations that are publicly available.

3.7 Such a process of review, would in effect mean, that there would be comprehensive learning from the experiences of victims of sexual violence, and the discrepancies between their perceptions of what has happened to them and the capacity of the Criminal Justice System to respond appropriately. In order to bridge the 'justice gap' inherent in the low rates of perpetrators of sexual violence being held to account, each step in the process of cases falling out of the system needs to be examined in detail. By focusing attention on each step in this process including the reasons why cases fail to meet the requirements of the DPP, it could be possible to develop targeted interventions aimed at narrowing this justice gap.

3.8 Whilst the difficulties of individual complainants would not be fully assuaged by the absence of fully comprehensive reasoning in their specific circumstances, the knowledge that there was a commitment to learn from their experiences would be a significant improvement on the current situation.

3.9 This publicly accessible analysis of the reasons why cases fail to meet DPP standards for prosecution in many cases, may have the benefit for the victim of depersonalising the impact of that negative decision. The cycle of self-blame and internalisation of guilt and shame that largely surrounds sexual

violence in our culture and society is currently reflected and unintentionally nurtured by the DPP's no reasons policy. This policy and lack of transparency operates to further isolate the victim. Transparency on the systemic level allows society and the individual victim the alternative of judging the 'problem' as being perhaps with the system and not necessarily with the individual victim's credibility. That the State's agents of justice should unintentionally facilitate and perpetuate a victim's feeling that they have failed somehow in being 'good enough' victims, is an ongoing difficulty.

3.10 A system of disseminating the relevant information as to why cases do not meet the requirements necessary to go before the courts would shed valuable light on any factors within the investigative process, that mitigate against the compilation of case files which meet the necessary requirements. Furthermore a more comprehensive public awareness could identify areas where specific legal reforms could reduce the rates of attrition. Such information would contribute to a greater understanding of how resources can be more effectively targeted, and what if any training requirements are necessary throughout the system.

### **Recommendations**

- **The RCNI strongly advocate for the DPP's office to publish comprehensive statistics regarding the number and profile of cases involving sexual violence being referred to the office.**
- **The RCNI believes that every effort should be made to inform complainants as to reasons, although there are instances when the giving of reasons can only be very general, such as insufficient evidence.**
- **The RCNI strongly advocate for a system whereby there is a regular and comprehensive review of the reasons why prosecutions do not proceed.**

## **Should Reasons Only Be Given To Those With A Direct Interest**

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4.1 Comparing practice in other jurisdictions we also have to be mindful of the Constitutional framework which governs any changes to practice, in the Irish context. It would seem that the Director of Public Prosecutions is constrained in regard to how detailed the reasons he may be able to give to either victims or to the public at large. To give reasons, which pertain to the availability of technical evidence might be interpreted as compromising the good name of the accused. For the DPP to say that the case against an individual was strong, but for some technicality to be problematic, could be inferred to mean that the DPP believed that the accused was guilty. To give reasons in some instances and not others could also create a situation where inferences might be made at variance with the guarantees offered by the Constitution. This would also unfortunately allow the victim to make an inference of whether or not the State believed them. Therefore, it would seem that in terms of information being given directly to complainants, it will not always be possible to provide comprehensive reasons. The RCNI believe that the DPP should provide general reasons directly to the individual. Although this situation is less than ideal from a complainant's perspective as it fails to provide cogent and comprehensible reasons, it would be an improvement on the current practice of not giving any reasons.

4.2 Whilst the provision of generalised reasons may leave gaps in the understanding of the complainant it serves as a more positive engagement than the perceived silence of the current status quo. It would constitute an acknowledgement that their complaint has been heard and considered.

**4.3 The RCNI believe that there are strong arguments to support the dissemination of the reasons for decisions beyond those with a direct interest.**

4.4 The RCNI believe that improved and systematic analysis of the reasons why cases do not proceed beyond the DPP's office, and dissemination of those reasons, would inform more effective responses to complainants.

4.5 An attrition study undertaken in England, which has the second highest attrition rate in Europe after Ireland recommended that the focus of investigation needed to emphasise enhanced evidence gathering and case building. The study also concluded that there was an overemphasis on whether the circumstances of an assault might be perceived as compromising the credibility of a complainant, should a case ever proceed to court. The findings indicated a high degree of caution and indeed pessimism within the system, particularly at the investigative stages.

4.6 Therefore the RCNI, in the interest of reform of the system, recommend that the office of the DPP consider developing increased specialisation regarding rape and sexual assault with structures in place to share learning with Gardaí involved in investigations. The prosecutorial system in relation to rape and sexual assault cases should be more specialised given the inherent difficulties progressing a complaint through to the stage where it can be adjudicated on by the courts. The RCNI would welcome a specialist division within the DPP that would focus on rape and sexual assault cases.

4.7 The RCNI further suggest that the DPP's office should consider a system of case conferencing with Gardaí early in investigations, to explore potential evidential weaknesses and whether these might be addressed through additional evidence, expert testimony or adjusted approaches to courtroom advocacy.

## **Recommendations**

**The RCNI believe that the DPP should provide general reasons directly to the individual complainant.**

- **The RCNI believe that there are strong arguments to support the dissemination of the reasons for decisions beyond those with a direct interest.**
- **The RCNI would strongly support a commitment to systemic review of why cases do not meet the criteria for prosecution.**
- **The RCNI would advocate for a system of increased specialisation within the DPP's office in relation to rape and sexual assault.**
- **The RCNI further suggest that the DPP's office should consider a system of case conferencing with Gardaí early on in investigations.**

## Should Reasons Be Given To The Public At Large

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5.1 The RCNI believe that as a society we need to have a more comprehensive understanding of sexual violence within the Criminal Justice System. Given the levels of under reporting, greater awareness and a more detailed understanding of the specific factors which may result in the DPP deciding not to proceed with a prosecution would be of benefit of all. To this end the provision of comprehensive statistical analysis, as already recommended in section 3, would be a welcome development. The publication of such information would illuminate the factors that inhibit prosecution proceedings. Furthermore it would pin-point any aspects of the investigative process which could, if addressed, enable the various arms of the justice system including an Garda Síochána, to address any weaknesses in the process of investigation that inhibits the successful compilation of a case, which meets the criteria necessary to pursue a prosecution.

5.2 The RCNI believes that it is possible to provide a comprehensive analysis of the reasons for not sanctioning adjudication by the courts in the case of sexual assault in a manner that does not publicly identify the accused. The Courts Service have appointed a Family Law reporter to “*provide reports, judgements, trends and statistics*”<sup>8</sup> from the High Court, Circuit Court, and District Court in relation to Family Law proceedings. Protocols have been developed which ensure that the utmost care is taken to protect the identity of all parties involved in the proceedings. In the case of sexual assault and rape cases being prosecuted before the courts, guidelines exist which ensure the anonymity of the complainant. Furthermore assailants may not be identified in instances where to do so would give some indication as to the identity of the complainant.<sup>9</sup> These could be the model and starting point respectively for building protocols around the release of general information on DPP decisions around sexual assault cases.

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<sup>8</sup> Coulter, Carol,. 2006

<sup>9</sup> The RCNI have recommended elsewhere that these anonymity measures should be reviewed as there are anomalies, for example whereby a defendant gains from this system of anonymity at the expense of the complainant. This is an outcome clearly contrary to the intent.

5.3 The RCNI believe that it is possible for protocols to be developed within the office of the DPP, which would permit an understanding of comprehensive decisions not to prosecute, to enter the public domain, whilst protecting the identity of the accused from the general public.

5.4 The publication of analytical reports, including case studies, offering insight as to why decisions are arrived at in a particular way would offer much greater transparency into the decision making of the DPP, whilst not compromising the good name of those accused.

5.5 The availability of such analysis, would improve public confidence and would also provide for more effective dialogue as to how reforms might be developed which would strengthen the process of preparing cases, so that they may be more likely to meet the criteria of the DPP, and be directed for prosecution.

### **Recommendations**

- **The RCNI recommend that protocols are developed to allow for the public dissemination of an analysis of the decision making of the DPP's office.**
- **The RCNI recommend that comprehensive analysis, and the publication of case studies, be undertaken in such a way as to enhance transparency, yet protect the identity of the parties involved.**
- **The RCNI recommend the publication of such analysis in an accessible manner to facilitate greater public understanding.**

## **Should Reasons Given Be General Or Detailed**

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6.1 For any complainant the decision not to prosecute is a grave disappointment, when they have taken the decision to formally seek justice. The failure to receive a comprehensive explanation that is specific to their case can create a sense of being re-victimised and add to a sense of powerlessness.

However, the reasons that the DPP may decide not to proceed with a case we can assume is largely based on an experienced legal opinion as to whether a prosecution is likely to succeed. Clearly a very wide range of factors may determine the decision of the DPP. A more in-depth analysis of those factors in particular circumstances is required to improve confidence in the system, and to facilitate informed and constructive debate of reforms required both within the process of case building and also in terms of the legal and judicial systems.

6.2 As discussed in section 4, the RCNI acknowledge the difficulties for the DPP's office in providing comprehensive reasons in all cases to individual complainants. However at a minimum, the DPP's office could offer general reasons to individual complainants, which though less than ideal, acknowledges to the complainant that their case has been duly considered.

6.3 The RCNI advocates that a comprehensive breakdown of reasons should be made public to enhance public understanding.

6.4 It is important that an analysis of why cases do not proceed is made available in a manner that is accessible, written in clear, jargon-free language. This is important in order to enhance transparency and to facilitate the public as well as the legislature to speak to the debate on areas where reforms are necessary. Such review and reporting could illuminate, in a meaningful way, the aspects of the Criminal Justice System that need to be addressed in order to improve outcomes for victims of rape and sexual assault. It is only with a

more comprehensive awareness of the obstacles to prosecution can the agenda for reform be targeted effectively and access to justice be improved for victims of rape and sexual assault.

### **Recommendations**

- The RCNI would welcome the giving of detailed reasons to complainants in cases of rape and sexual assault when decisions are taken not to prosecute, and believe this would be an important outcome for victims.
- However in light of the constraints on the office of the DPP **the RCNI recommend the giving of generalised reasons in individual cases would be an important first step and serve as a valuable communication to complainants** that their complaints had been heard.
- **The RCNI recommend that a comprehensive detailed system of review, including a jargon-free analysis of why cases do not proceed to trial, is imperative in order to inform victims, their supporters, the public at large and the legislature of the factors which inhibit prosecution.**

## **Should Reasons Be Given In All Cases Or In Certain Categories Only**

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7.1 Within the RCNI our primary concern relates to crimes of sexual violence. We strongly advocate for more informed public debate on the challenges inherent in ensuring justice for those who have been victims of rape and sexual assault. Our experience is based on our in-depth work with survivors of such attacks, and our deeply held understanding of the far-reaching and devastating effects such crimes have, not just on those who have themselves been assaulted but the further impact such crimes have on the people in their lives. Therefore we would reiterate our recommendations in section 3 to develop publicly available statistical data, review and analysis for reasons and that all complainants should receive at least general reasons for decisions.

7.2 The RCNI do not currently envisage any category of sexual offences that should be excluded from these recommendations on how the DPP might proceed with giving reasons to directly effected individuals, relevant professionals and the general public.

### **Recommendation**

- **The RCNI recommend that all aspects of reasoning within the Criminal Justice System in relation to rape and sexual assault needs to be in the public debate.**

## **How Should Reasons Be Given Without Encroaching On The Constitutional Right To A Good Name / Presumption Of Innocence**

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8.1 The RCNI acknowledge that there are difficulties for the Director of Public Prosecutions implementing a policy where reasons can be given in all instances, as was argued and accepted by the Supreme Court in *H v Director of Public Prosecutions*, “*though there might be a strong suspicion of guilt on the part of the accused, the proof of guilt would simply not be forthcoming and, therefore it would be very wrong for the Director of Public Prosecutions to make a statement to the effect that while he suspected someone was guilty of an offence he could not hope to sustain a conviction*”<sup>10</sup>

Where the reasons not to proceed with a prosecution are quite technical, the expression of such reasons may be interpreted as a breach of power on the part of the DPP.

8.2 With regard to providing reasons to the public at large, the dissemination of such information can be governed by protocols (see point 5.2) ensuring any analysis of the reasons not to proceed does not contain information, which would identify either parties involved. The dissemination of such information whether on an annual or quarterly basis, can indicate trends or issues, which arise that inhibit investigations which, can proceeding successfully to prosecutions before the courts.

### **Recommendations**

- **The RCNI recommend that protocols are developed to allow for the public dissemination of an analysis of the decision making of the DPP’s office (point 5.3).**
- **The RCNI recommend that comprehensive analysis, and the publication of case studies, be undertaken in such a way as to enhance transparency, yet protect the identity of the parties involved (point 5.4).**

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<sup>10</sup> [1994] 2 IR 589

## Summary of Recommendations

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1. The RCNI believes that every effort should be made to inform complainants as to reasons.
2. The RCNI believe that the DPP should provide general reasons directly to every individual complainant.
3. The RCNI strongly advocate for the DPP's office to publish comprehensive statistics regarding the number and profile of cases involving sexual violence being referred to the office.
4. The RCNI recommend that comprehensive analysis, and the publication of case studies, be undertaken in such a way as to enhance transparency, yet protect the identity of the parties involved.
5. The RCNI strongly advocate for a system whereby there is a regular and comprehensive review of the reasons why prosecutions do not proceed.
6. The RCNI believe that there are strong arguments to support the dissemination of the reasons for decisions beyond those with a direct interest.
7. The RCNI recommend that all aspects of reasoning within the Criminal Justice System in relation to rape and sexual assault needs to be in the public debate.
8. The RCNI recommend that protocols are developed to allow for the public dissemination of an analysis of the decision making of the DPP's office.
9. The RCNI recommend the publication of such analysis in an accessible manner to facilitate greater public understanding.
10. The RCNI would advocate for a system of increased specialisation within the DPP's office in relation to rape and sexual assault.
11. The RCNI further suggest that the DPP's office should consider a system of case conferencing with Gardaí early on in investigations.