



**IRISH
OBSERVATORY
ON VIOLENCE
AGAINST
WOMEN**

Submission

to the Law Reform Commission on areas of law to be considered for inclusion in the new Programme of Law Reform

Investigating the most appropriate
specialized domestic, sexual and
gender based violence court systems;
Moving towards a modern model.

September 2017

The National Observatory on Violence
Against Women was established in

2002 and is chaired by NWCi and comprises of 18 separate member organisations.¹ The Observatory is an independent network of grassroots and national organisations that convene quarterly to monitor progress on violence against women in Ireland. It provides a valuable space for organisations working on violence against women to share priorities and influence Government policy.

The Irish Observatory links with and has representation on the European Observatory on Violence against Women which is co-ordinated by the European Women's Lobby (EWL). The European Observatory raises visibility of the phenomenon of male violence against women and monitors commitments at local, regional, national and European level regarding violence against women as well as providing relevant data. It comprises of experts from each of the EU Member States, the European Economic Area countries and countries in the formal process for accession to the EU and neighbouring countries who are nominated at national level.

Background

Ireland signed The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (hereinafter "the Istanbul Convention") and the Government subsequently developed an action plan to enable its ratification by 2018. The second National Strategy

¹ Listed at the back of the document.

on Domestic, Sexual, and Gender Based Violence, 2016-2021, (the Strategy 2016-2021) was published in January 2016 and is being coordinated by the Cosc office. Article 49 of the Istanbul Convention obliges States to ensure that judicial proceedings in relation to gender based and domestic violence are carried “without undue delay”, and that prosecutions are “effective”.² It can be argued for two principal reasons that Irish law at present makes limited provision to ensure such outcomes.³

First, there is no fast-tracking procedure in place within the Irish courts to ensure that such matters are dealt with in an expedient or prioritised fashion. For the most part, such offences are dealt with much like any other offence that comes before the criminal courts in terms of the typical length for proceedings, the public

nature of the hearing, and the manner in which those proceedings are ultimately determined.

Secondly, the biggest practical impediments to the successful prosecution of such offences is securing the attendance of the victim in court to give evidence, due to factors such as fear, intimidation or a wish to avoid publicity. Although this issue could in part be dealt with – and a greater number of successful prosecutions brought about – by expanding some of the provisions referred to in footnote [3]. Further the courts can at present only sit in camera in limited circumstances, such as where a sexual offence is at issue. A general discretion for a court to sit in camera when dealing with the prosecution of all domestic or gender-based violence could result in higher witness attendance rates. Similarly, the ability to use video link evidence is currently confined to sexual offences and offences involving violence.⁴ Arguably this does not cover the full ambit of violence dealt with by the Istanbul Convention, and an expansion of the video link provisions could result in greater witness attendance and more effective prosecutions in relation to all matters covered by the Istanbul Convention. Finally, the ability of the prosecution to rely on a witness statement as evidence, rather than needing to call a witness, is only applicable in proceedings on indictment, i.e. in the Circuit Court or

² Article 49 – “General obligations 1 Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings. 2 Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention”.

³ However, the law does provide certain general accommodations which might impact on the effective prosecutions for such offences. These include the general discretion of a court to allow video link evidence where the offence is a “sexual offence” or involved “violence or the threat of violence” (see s. 12, Criminal Evidence Act 1992); the ability of the prosecution to tender evidence in the form of a witness statement in a trial by indictment where the witness refuses to give evidence (see s. 16, Criminal Justice Act 2006); and the ability of the court to sit in camera when dealing with sexual offences.

⁴ Although the availability of this special measure is limited at best for victims of sexual violence.

higher. However, many incidents of domestic violence are tried in the District Court – indeed, the offence of breaching a safety, protection or barring order is a summary-only offence. Expanding the circumstances in which the prosecution can rely on a witness statement instead of directly calling a witness to give evidence would likely result in a greater number of successful prosecutions for gender based and domestic violence offences, as it would allow the prosecution to proceed even where a witness faces fear or intimidation to the level that he or she refuses to give evidence.

These are potential areas where Irish law and practice might be reformed to ensure compliance with the obligations set down in Article 49. The Domestic Violence Bill 2017, deals with these to some extent, but does so purely in relation to prosecutions for the offence of breaching a protection, safety or barring order. Section 30 provides that evidence in such prosecutions may be given by video link, whilst section 31 provides that proceedings relating to these offences are to be held in camera. These limited provisions arguably do not go far enough in ensuring effective prosecution of all matters covered by the Istanbul Convention: even if the Bill is enacted, there will be no power to allow video link evidence or direct that matters be heard in camera in respect of proceedings for other offences encompassed within the Istanbul Convention, nor will there be any power at all for the prosecution to

simply proceed by relying on witness statements in the event of fear or intimidation for any matters prosecuted in the District Court. It is also noteworthy that the National Action Plan of the Strategy 2016-2021, contains no proposals for speeding up or prioritising prosecution of gender based or domestic violence offences. While Actions 2.2900 and 2.3000 of propose the creation of family law courts and complexes, this would not appear to impact to any material degree on the prosecution of criminal offences.

The development of a fast-tracking procedure within the Irish courts would ensure that such matters, as discussed above, are dealt with in an expedient or prioritised fashion. Secondly, the ability of the prosecution to rely on a witness statement as evidence, rather than needing to call a witness, would serve to fix the biggest practical impediments to the successful prosecution of such offences is securing the attendance of the victim in court to give evidence. However, while welcome, neither of these approaches fully address all the prevailing factors that contribute to Ireland's low prosecution and conviction rates as well as the high withdrawal rate of complaints concerning domestic, sexual and gender based crimes. There is an additional third avenue that forms the basis of this submission, and that would be the development of specialized domestic, sexual and gender based violence court systems.

Title of project for law reform

Investigating the most appropriate specialized domestic, sexual and gender based violence court systems; Moving towards a modern model.

What issues have arisen in relation to this area that have caused you concern?

Ireland's consistently low prosecution rates, low conviction rates, as well as the high attrition rates,⁵ concerning domestic, sexual and gender based crimes, exemplify why our traditional courts system is ineffective in dealing with these types of crimes. It is imperative that this is addressed, otherwise the recognition of new gender based offences, such as the commission of FGM on a girl or woman in Ireland and the removal of a girl or woman to a place outside the State for the purpose of FGM, sexual activity with a trafficked person, and the criminalisation of the purchase of sex, will undoubtedly be subjected to similar treatment, thereby guaranteeing similar poor outcomes. It should also be recalled that the justice system is a critical component of a comprehensive response to this type of violence. There is no offender accountability without it and, for many victims, it is an important element of

⁵ "Attrition, in cases of domestic and sexual violence, relates to the lack of progress on to completion of criminal cases, and more specifically, to the stages at which cases drop out from the criminal justice system, that is, from the initial report stage to the final stage of court proceedings." National Strategy on Domestic, Sexual and Gender-based Violence 2010-2014 included a commitment to minimise attrition in domestic and sexual violence cases, where appropriate.

their healing process. When the justice system is ineffective or unresponsive, it not only fails to support victims and keep communities' safe, but it also has the power to undermine prevention, advocacy, and other critical efforts.

What problems does this give rise to in practice?

Domestic Violence

Traditionally, both society and the legal system accepted domestic violence as a private family matter in which a husband could use force to discipline the members of his household. Society has long since evolved its thinking on this matter and our legal system has attempted to follow suit. However, while there is a growing understanding that domestic violence entails more than just physical violence, and also encompasses sexual, economic and psychological (also known as cohesive control) violence, this has not translated into increased convictions. That is because domestic violence is an extremely complex matter, involving issues of family dynamics and emotional relationships between the parties that are uncharacteristic of other crimes. These cases can be particularly challenging, often involving victims and survivors who are traumatised, have suffered serial abuse prior to reporting, are reluctant to testify, and find aspects of the adversarial system aggressive.

Therefore they require a more specialised approach.⁶

One of the main criticisms of the way the traditional system handles domestic violence cases is its inability to stem the tide of domestic violence itself, as reflected in the number of women who continue to be affected by domestic abuse.⁷ A second criticism is the general inadequacy of civil protection orders to prevent further abuse.⁸ The death-rate among women at the hands of a domestic partner illustrates a third shocking shortcoming of the legal system - its inability to identify which abusers are lethal and which ones are not.⁹ A fourth difficulty is the often cursory treatment of domestic violence cases in court. This is an unfortunate consequence of our overstretched system coupled with a lack of understanding regarding the special features of this type of crime - these cases by their nature require additional time and attention, as they often complicate otherwise straightforward situations.¹⁰ Research published as recently as 2016 on

domestic violence related criminal proceedings found that the law is being applied differently in different areas of the country. There appears to be no consistency in the way the legal system works and stereotyping remain integral to the way in which an abuse victim can be viewed and treated by that system. As responses vary so much, legal professionals find it difficult to predict outcomes for women.¹¹

All of which discourage women from engaging in the legal system. Even if they do choose to engage, the delays encountered impact on their ability to obtain justice, for as time passes, the chance a victim will abandon the case increases; she may be in danger of losing her job because of the time she must miss to attend court, feel frustrated with the process or with having to repeat her story multiple times, or experience intimidation from her abuser.¹²

Sexual Violence

Ireland's statistics on sexual crime are alarming. It is now 15 years since the publication of the Sexual Abuse and Violence in Ireland Report (SAVI).¹³

⁶ Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, Fordham Law Review Volume 68 | Issue 4 Article 8 2000.

⁷ 1 in 5 women in Ireland who have been in a relationship have been abused by a current or former partner. (O'Connor, M, & Kelleher Associates, Making the Links, Women's Aid, 1995).

⁸ The Garda Recorded Crime Statistics Report for 2010 states that there were 1,184 incidents of Breaching Domestic Violence Orders Offences in that year alone. (Central Statistics Office, Garda Recorded Crime Statistics 2006-2010)

⁹ Since 1996, there 209 women have died violently in the Republic of Ireland. 63% were killed in their own homes. (Women's Aid Femicide Media Watch, November 2016)

¹⁰ Safe Ireland Lawlessness of the Home (2014) <http://www.safeireland.ie/wp-content/uploads/SAFE-IRELAND-The-Lawlessness-of-the-Home.pdf>

¹¹ See SAFE Ireland. (2016) *In Search of Justice: Women and the Irish Legal System*. Athlone: SAFE Ireland. Available at:

http://www.safeireland.ie/safeireland-docs/INASC_SAFEIreland_report.pdf

¹² <http://www.irishlegal.com/7856/womens-aid-domestic-violence-case-delays-endangering-women-and-children/>

¹³ THE SAVI REPORT (2002) Sexual Abuse and Violence in Ireland Hannah McGee, Rebecca Garavan, Mairéad de Barra, Joanne Byrne and Ronán Conroy. Royal College of Surgeons in Ireland Commissioned by the Dublin Rape Crisis Centre <http://www.drcc.ie/wp-content/uploads/2011/03/savi.pdf> (Last accessed 18/08/2017)

Amongst its findings, the report highlights the fact that only one in ten victims of sexual crime in Ireland reports that crime. Of that one in ten, only 7% secures a conviction. So of 100 victims of sexual crime, only 10 report that crime. Barely one victim from that 100 will see their attacker convicted for their crimes, or put it another way, less than 1% of victims of sexual crime in Ireland get justice. Ireland also has one of the lowest conviction rates for sexual violence in the EU.

An analysis of the 2013 Annual Report of the Courts Service was conducted by the Irish Examiner.¹⁴ That year the Central Criminal Court dealt with a total of 567 rape cases. Seventy-three of the accused pleaded guilty, (thereby saving the court valuable time, for which they would have received reduced sentences). Of the others charged before the court, 205 defendants were sent to trial. Those trials ended with 35 convictions, and 155 acquittals. In 15 instances, the jury was unable to agree on a verdict. The rate of convictions in 2013 for all of those charged with rape was just 19%, but the rate for those who actually contested the charges was less than 7%.

The attrition rate in reported rape cases is also of huge concern. The EU Daphne project examined attrition rates in rape cases in 11 EU countries including Ireland. Attrition in reported

rape cases has risen across much of Europe over the last two decades, with two thirds of countries having marked falls in conviction rates since 2000. The report details that the level of attrition in the form of victim withdrawal throughout the Irish criminal justice process is approximately 34% in rape cases.¹⁵ There are multiple reasons as to why these cases do not continue but undoubtedly, they are influenced by factors such as delay, the alienation of the courts system, the fear of cross examination, and the prevailing attitude towards victims of sexual assault. The recent George Hook controversy highlights the complete lack of understanding around sexual assault.

Regarding delay specifically, and according to a recent paper by Tom O'Malley –

In [rape] cases disposed of in 2015, an average of 645 days had elapsed between the receipt of a return for trial and the final order in the case. Suffice it to say, therefore, that two to three years can elapse between the commission of the alleged offence and the final verdict. Bear in mind also that a person convicted of rape or any other serious offence is entitled to appeal against conviction to the Court of Appeal which also has an enormous case load and where there will

¹⁴ <http://www.irishexaminer.com/viewpoints/ourview/rape-conviction-rate-offers-no-protection-276761.html>

¹⁵ Different systems- Similar Outcomes? Tracking attrition in reported rape cases across Europe (2009) Different systems- Similar Outcomes? Tracking attrition in reported rape cases across Europe 2009.

*inevitably be some delay before the case is heard.*¹⁶

In cases concerning child sexual abuse, September of this year saw a charity that provides court accompaniment services for children affected by child sex abuse express their concerns over the length of these criminal trials.¹⁷ The charity analysed the cases of the 23 children who were subjected to child sex abuse and made use of the charity's services in 2016, finding that the average age of the child at the time of the crime was 11 and the average age at the end of criminal proceedings was 16.¹⁸

While it is to be accepted that delays are sometimes essential – due process, a fair trial, and facilitating proper investigation, the length of delays must be called into question.

What would be the potential benefits of reform of this area?

Research has shown that dedicated courts or prosecutors have improved general efficiency in prosecution of such cases and have improved the experience of survivors and their families. These courts shorten delays, improve coordination with other justice system actors such as prosecutors and probation officers, and allow judges to become knowledgeable in

issues pertinent to violence against women. Dedicated courts and prosecutors can:

- Ensure the development of expertise as all cases are dealt with by the same group of judges or prosecutors. These individuals gain a comprehensive understanding of the issues, which ensures consistency in the treatment of these cases, leading to predictability in outcome and security in the justice system.
- Ensure those working in this area are comprehensively trained on gender-based violence issues and sensitivity to survivors including marginalized survivors such as our Traveller, Roma and migrant populations. We understand from our members that women from these groups would rather attend a refuge than approach the courts. This is because the courts can be an intimidating experience, which is further exasperated by perhaps fears of prejudice, literacy issues and language barriers.
- Dedicated courts or prosecution teams may also be able to process cases more quickly, thus reducing the opportunity for the alleged perpetrator to intimidate the victim into abandoning the charges. However they will also be able to dedicate the time to these cases that they require.
- Eliminate avoidable delays in the prosecution of offenders. The

¹⁶ Tom O'Malley, Rape And Related Offences – A Legal Perspective, delivered to the Citizens Assembly, 4 Feb 2017. See <https://www.citizensassembly.ie/en/Meetings/To-m-O-Malley-Paper.pdf>

¹⁷ CARI.

¹⁸ <http://www.irishlegal.com/8484/child-sex-abuse-charity-voices-concern-over-delays-in-court-cases/>

Justice Committee on Attrition (Action 12) cites several sources who point to complainant concerns about delays in processing the case to trial stage.

- Fewer individuals dealing with these cases will deter future violence because perpetrators will know that if they abuse again, they are likely to appear before the same judge or with the same prosecutor, where they will be less able to minimize or deny the violence.
- Reduce the re-traumatization of survivors who at present may have to testify repeatedly in different courts, or testify years after the crime has occurred, thereby delaying their ability to move forward with their lives.
- Provide a comprehensive strategy for victim services, including specially-trained prosecutors, Guards, social workers, health professionals, judges, and all court personnel, including administrators.
- Potentially increase convictions, and thus justice for victims of violence.
- Eliminate contradictory orders, such as child custody orders stemming from civil domestic violence cases and criminal domestic violence cases.
- Assist in the collection of vital data in these areas, which will assist Government in determining future

policy measures. For example, currently the statistics available do not differentiate a domestic violence assault or any of the different offences with a domestic violence motivation from equivalent non-domestic violence related offence.

Any other general comments?

Specialized Court Systems

Some dedicated courts handle only cases of domestic violence, such as the United Kingdom's Specialist Domestic Violence Court Programme. Others courts, such as those in Spain, hear both criminal and civil cases. South Africa has courts which hear only cases of sexual violence.

Integrated Court Systems

The usefulness of combining civil and criminal jurisdiction in one court has also been debated. Advocates of such an approach argue that combined courts allow victims to obtain all of the relief they need at once and in one place. Allowing victims to testify for the prosecution and obtain child support in one proceeding, for example, can greatly enhance the accessibility of the court; it can be difficult for women to get time off from work, to travel, or to find child care in order to make multiple appearances. Judges who hear both the civil and the criminal sides of a case develop extensive expertise about domestic violence issues and are better informed about the case. Finally, combining courts can

ensure that civil and criminal orders do not conflict.

Pre-trial hearing / case management system

Pre-trial hearing / case management systems in relation to sexual offences could provide an early focus point where preliminarily administrative matters and/or certain legal issues would be examined and determined as far as possible in advance of a criminal trial by the judge to increase the overall efficiency of the trial itself. The need for training, both general and specific, for practitioners and professionals who come in contact with victims of sexual violence, could give rise to specialised prosecutors.

Rural Areas

In assessing models of reform, there is a need to ensure that whatever improvements are recommended, they must be applicable throughout the country, not just in Dublin. Therefore, any models investigated must look at models that can work in rural areas as well.

Conclusion

These are matters which, in the opinion of the Observatory, need to be addressed in order to ensure that domestic, sexual and gender based violence offences are prosecuted “without undue delay”, and that their prosecutions are “effective”.

Members of the Observatory

Akidwa
Action Aid Ireland
Cairde
Dublin Rape Crisis Centre
Galway Rape Crisis Centre
Longford Women’s Link
Love & Care for People
Immigrant Council of Ireland
Irish Consortium on Gender Based
Violence
National Collective of Community
Based Women’s Networks (NCCWN)
National Women’s Council of Ireland
(NWCI) – chair and convenor
Oxfam Ireland
Pavee Point Traveller and Roma
Centre
Ruhama
Sexual Violence Centre Cork
Sonas Domestic Violence Charity
Women’s Aid
YWCA Ireland

Event

The Observatory will be hosting an event:

Prosecution. Ratifying the Istanbul Convention

on

8th of December 2017

Contact Details

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