



Submission to the Courts Service

Development of Long Term Strategy for the Courts Service

13 February 2019

Introduction

Established in 1973, the National Women's Council of Ireland (NWCI) is the leading national women's membership organisation in Ireland. NWCI seeks full equality between men and women and we draw our mandate from a membership of over 180 groups and organisations across a diversity of backgrounds, sectors and locations. We also have a growing, committed individual membership.

We strive to show leadership in bringing women together to build a consensus on the kind of society we want to be a part of, and on the key values, that we believe, should be at the heart of that society. Our feminist values of equality, inclusion, respect for diversity, empowerment and meaningful participation by women in society, are shared by Irish trades union and civil rights movements.

Our Strategic Plan 2016-2020, *Driving Women's Equality*, aims to build on the progress that NWCI has helped to bring about for women in Ireland to date and sets out our vision for the future to progress key human rights and equality issues for women.

Submission Structure

We welcome the opportunity to provide input into the Development of Long Term Strategy for the Courts Service, and commend the Courts Service commitment to ensuring this strategy takes account of a wide range of views and perspectives. NWCI's comments reflect the lived experiences of the women that we have worked with and that have contacted us in huge numbers over many years.

In drafting this submission we were cognisant of the desire of the Courts Service for a Long Term Strategy that includes a vision for a modern, digitally enabled organisation that maximises the use of legal technologies in the delivery of its services and all aspects of its operations. However, in recognition of the fact that this is a future vision that stretches to 2025 and beyond, we welcome the Courts Service general instruction to include any additional matters that we considered to be of relevance.

Our submission focuses on four core areas: (1) Access to justice (2) Collection of data (3) Violence against women, and (4) Training and gender bias in legal proceedings. We believe these areas should be core to the future development of the courts service.

Role of NWCI in the implementation adopted recommendations

NWCI, as the national women's membership organisation, is committed to working towards the implementation of any adopted recommendations. Over the past 40 years, NWCI has developed strong evidence-based research resulting in the introduction of a range of policies advancing women's equality and human rights. We will continue to bring forward evidence-based proposals, the perspectives of our members and the lived experience of women on all elements of any recommendations adopted. In this way, we will work with the Courts Service, An Garda Síochána the Department of Justice and Equality and the Policing Authority to support the modernising of the justice system in Ireland which meets the needs of women and advances equality for women in Ireland.

Summary of Recommendations for Consideration

1. Access to Justice

- The new Strategy should adopt 'Access to Justice' as a key strategic priority, of which the particular complexities of women's access must be specifically named.

2. Violence against Women

- Conduct ongoing reviews to ensure the Courts Service meets its obligations under the Istanbul Convention.
- Conduct ongoing reviews to ensure that services for victims meet the requirements of the *Criminal Justice (Victims of Crime) Act 2017* and the Victims Directive.
- Upon publication evaluate and consider the recommendations of the working group of the Criminal Justice Strategic Committee as chaired by Tom O'Malley regarding the review of the investigation and prosecution of sexual offences in Ireland.
- The new family courts system, regardless of location, should offer dedicated facilities for victims to meet with support organisations and legal representatives, separate facilities for victims and perpetrators, as well as child appropriate facilities.

3. Gaps in Data Collection and Analysis

- Implement the data recommendations of the Second National Strategy on Domestic, Sexual and Gender-Based Violence 2016-2021 to establish the 'gold standard' of data collection as outlined in the Istanbul Convention.
- Harmonise and share information among relevant stakeholders (the justice system, police, social services, health services) by contributing to the development of a system of multiagency (An Garda Síochána, TUSLA, Courts Service)
- Develop a common identifier system for VAW crimes for use by An Garda Síochána, Director of Public Prosecutions and the Courts Service that can feed into statistics gathered by the CSO. This identifier system should be capable of distinguishing all possible assault, harassment, false imprisonment, sexual violence, coercion and other offences.
- Enable a qualitative analysis of case law to identify negative gender stereotypes and ways to overcome them.

4. Training and gender bias in legal proceedings

- Implement the training recommendations of the Second National Strategy on Domestic, Sexual and Gender-Based Violence 2016-2021.
- Provide high quality training on gender-based, domestic and sexual violence for members of judiciary and their support staff, in conjunction with specialist services and experts from different sectors. Training to include: (1) Trauma-informed care and coercive control; (2) The complex and inter-related nature of the specific needs of women victims of violence.; and (3) Address unconscious biases to help avoid stereotypical thinking in relation to groups of women with specific needs.
- Engage victims of VAW and support agencies in the courts service training and awareness programmes to improve awareness of the particular needs of VAW victims.
- Identify new technologies to deliver this training.

1. Access to Justice

Effective access to justice is an indispensable right enshrined in numerous instruments within the universal human rights protection system to which Ireland holds membership. The obligation not to discriminate against women and to achieve substantive equality between women and men is an essential part of these rights. The UN Committee on the Elimination of Discrimination against Women has recognised six connected key fundamentals necessary for a justice system to be responsive to gender. These are: justiciability; availability; accessibility; good quality; accountability and the provision of remedies for victims.¹ While acknowledging that accessing justice may be difficult for many people, NWCI considers that it is especially so for women, due to gender inequality in society and in the justice system.

According to the Council of Europe's *Guaranteeing Equal Access of Women to Justice* 'most cases of sex-based discrimination in which the European Court of Human Rights (ECtHR) has found a violation of Article 14 of the European Convention on Human Rights (prohibition of discrimination) have been brought by men, even though gender discrimination disproportionately affects women. Furthermore, a review of ECtHR case law reveals that the cases in which there has been a finding of discrimination on the ground of sex are by and large those in which differential treatment is explicit (e.g. labour contracts stipulating an earlier retirement age for women; parental leave not available for men). The limited jurisprudence on indirect sex-based discrimination presents a significant challenge for women's access to justice'.²

NWCI understands that not all of the measures which are needed to improve access to justice are within the control or indeed remit of the Courts Service, however, where the Courts Service can assist in improving access, it should take action. The increasing difficulty in gaining access to our justice system serves to undermine our justice system. In recognition of this, the Irish Human Rights and Equality Commission's Strategy Statement 2019 – 2021 has named as one of its four strategic areas 'Protect the rights of individual persons who face the greatest barriers to justice'.

We believe that effective access to justice must be at the forefront of our legal system.³ Excellent laws without an effective ability to invoke them are rendered meaningless. In that respect NWCI recommends that the new Long Term Strategy should adopt 'Access to Justice' as a key strategic priority, of which women's access must be specifically named. This would assist in recognising the specific barriers that women face when attempting to access the courts. Through being aware of how gender creates different roles for women and men, and by taking account of unequal power relations between women and men, the Courts Service will be better able to address different vulnerabilities experienced by different groups of women.

NWCI recommends:

- The new Strategy should adopt 'Access to Justice' as a key strategic priority, of which the particular complexities of women's access must be specifically named.

¹ See CEDAW General Recommendation on Women's Access to Justice at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_77_67_E.pdf

² This information was directly provided by the Council of Europe's *Guaranteeing Equal Access of Women to Justice* (2016) page 2.

³ IHREC Strategy Statement 2019 – 2021; <https://www.ihrec.ie/documents/strategy-statement-2019-2021/> (last accessed 13 February 2019).

2. Violence Against Women

Violence against women (VAW) is the most significant crime impacting on women internationally and in Ireland. Domestic and sexual violence is a cause and consequence of gender discrimination and it needs to be located within a gender equality framework.

In 2014, the EU Fundamental Rights Agency⁴ reported that 25% Irish women had experienced a form of physical and/or sexual violence since the age of fifteen, and 8% experience physical and/or sexual violence each year. 79% of Irish women who have experienced sexual or physical violence have never reported it to an official body⁵ and less than 3% of women students said they had ever reported their unwanted sexual experiences to An Garda Síochána.⁶ This reflects persisting stereotypical attitudes towards women and sexual violence in Irish society: 21% of Irish people think that there are understandable reasons for having sexual intercourse without consent, raping a woman; and 23% of Irish people believe women often make up or exaggerate claims of abuse or rape.⁷ Recent reports of the Central Statistics Office show an increased level of reporting of sexual offences to the Gardaí – from 1,415 in 2006 to 2,549 in 2016⁸ – but it is not clear whether the increase in the reporting is due to an increased level of crime or increased reporting of such crime.

Ireland signed the Istanbul Convention in 2015, with ratification expected in 2019. The Convention defines gender-based violence against women as violence that is directed against a woman, because she is a woman, or that affects women disproportionately. The Istanbul Convention includes numerous provisions aimed at facilitating access to justice for victims of gender-based violence, and of particular and tangential relevance to the Courts Service, includes:

- Ensure measures to protect the rights of victims of violence are secured without discrimination (Article 4)
- Provide adequate training of professionals working with victims of violence on their needs and rights and on equality (Article 15)
- Provide adequate legal information (Article 19)
- Ensure that investigations and judicial proceedings are carried out without undue delay (Article 49)
- Ensure the protection of victims at all stages of investigations and judicial proceedings (Article 56)

The EU's Directive on the rights, support and protection of victims of crime and the Criminal Justice (Victims of Crime) Act 2017 offer an opportunity to radically engage once again with the way a society addresses crime. Nevertheless, many victims continue to experience secondary victimisation by the criminal justice system.⁹ In light of the degrading and intrusive nature of domestic and sexual crimes, dignity is an especially important concern and extra

⁴ Fundamental Rights Agency (2014) *Violence Against Women: an EU-wide survey report*.

⁵ Fundamental Rights Agency (FRA) (2014) *Violence Against Women: an EU-wide survey report*.

⁶ Union of Students in Ireland (2013) *Say Something: A Study of Students' Experiences of Harassment, Stalking, Violence & Sexual Assault*. Dublin.

⁷ Eurobarometer on Gender-based Violence 2016

⁸ CSO - Crime - Recorded Crime Offences Recorded Crime Offences (Number) by Type of Offence and Year – Sexual Offences. <http://www.cso.ie/multiquicktables/quickTables.aspx?id=cja01>

⁹ Dignan 2005; Laxminarayan et al, 2013; Kunst et al, 2015, as per Tim Chapman, Martin Tansey Memorial Lecture 2018, https://www.acjrd.ie/files/Tim_Chapman_-_Martin_Tansey_Memorial_Lecture_2018.pdf

efforts are required by the Courts Service to ensure that the dignity of these victims is protected. The *Criminal Justice (Victims of Crime) Act 2017* requires actions be implemented to ensure that women who do report violence are protected from secondary and repeat victimisation, intimidation and retaliation, including discriminatory stereotyping by professionals with responsibility for supporting them.

Related to that is the ongoing work of the working group of the Criminal Justice Strategic Committee, as chaired by Tom O'Malley, which is set to provide a review of the investigation and prosecution of sexual offences in Ireland. Given that many women who are victims of rape and sexual violence speak of being further traumatised by the courts and trial process this review represents an important step in ensuring these women will not be re-traumatised by the trial process, and that perpetrators of such serious crimes can be held to account. We recommend that the Courts Service pay particular attention to the recommendations of this report when it is published at the end of the year.¹⁰ We also believe that District and Circuit courts need to review their policies and procedures with regard to the experience of domestic violence victims. We await the establishment of the new family courts and stress that this system, regardless of location, should offer dedicated facilities for victims to meet with support organisations and legal representatives, separate facilities for victims and perpetrators, as well as child appropriate facilities.

NWCI Recommends:

- Conduct ongoing reviews to ensure the Courts Service meets its obligations under the Istanbul Convention.
- Conduct ongoing reviews to ensure that services for victims meet the requirements of the *Criminal Justice (Victims of Crime) Act 2017* and the Victims Directive.
- Upon publication evaluate and consider the recommendations of the working group of the Criminal Justice Strategic Committee as chaired by Tom O'Malley regarding the review of the investigation and prosecution of sexual offences in Ireland.
- The new family courts system, regardless of location, should offer dedicated facilities for victims to meet with support organisations and legal representatives, separate facilities for victims and perpetrators, as well as child appropriate facilities.

3. Gaps in data Collection and Analysis

Accurate statistics are essential to plan, deliver and evaluate responses to crime. Data on violence against women (VAW) can be used as a tool for policy formulation and evaluation, for developing effective strategies to prevent such violence, to assess the adequacy of current service provision and to determine the quality of support provided to victims.¹¹ A number of reports in recent years – from the Garda Inspectorate, UN Treaty bodies¹², NGOs providing violence against women services in Ireland – have highlighted the need for better data collection in relation to VAW in the policing and justice system. The Istanbul Convention

¹⁰ The Terms of Reference of the Review can be accessed here: <http://www.justice.ie/en/JELR/Pages/PR18000279>

¹¹ European Institute for Gender Equality (2016) *Administrative data collection on violence against women – good practices*.

¹² Human Rights Committee (2014) 'Concluding observations on the fourth periodic report of Ireland'. https://www.ihrec.ie/download/pdf/un_hrc_concluding_observations_on_ireland_and_iccrp_24_july_2014.pdf

recognises the importance of data collection and research, with Article 11¹³ outlining minimum requirements. Ireland does not have adequate data to give us a clear picture of the extent and depth of VAW, nor are there sufficient individuals in the Courts Service to undertake data analysis. It is critical for the ongoing development of our courts service and wider policy and legislative implications to publically produce reliable and timely data at each level of our courts service and across our country.

Data across the district and circuit courts need to be comparable so it is essential that a comprehensive data system is utilised at every level. Moreover, it is impossible to determine the number of cases within the court system that are domestic violence cases because domestic violence does not have a specific criminal code and may be prosecuted under a range of criminal statutes. Furthermore, the data needs to be broken down by gender, ethnicity, age and disability. In addition to providing data, there is also an absence of shared analysis across different agencies in the justice system to determine a holistic picture of how women are engaging with the policing and justice system and where effective and appropriate interventions should be developed.

The Council of Europe has put forward proposals and recommendations to tackle gaps in research and the lack of data disaggregated by sex concerning women's access to justice. Most particularly, the Istanbul Convention contains the obligation to regularly collect information and data on the drafting and implementation of policies to prevent and combat all forms of violence against women. In that respect the Government's *Second National Strategy on Domestic, Sexual and Gender-Based Violence 2016-2021* is committed to establishing a bottom line 'gold standard' of data collection and analysis by all agencies working in the area of domestic and sexual violence. The Strategy includes a number of actions in relation to data and disaggregation of data by gender, specific to the Courts Service (in some case in tandem with other state agencies); however, there has been limited progress on these commitments to date.

NWCI Recommends:

- Implement the data recommendations of the *Second National Strategy on Domestic, Sexual and Gender-Based Violence 2016-2021*¹⁴ to establish the 'gold standard' of data collection as outlined in the Istanbul Convention.
- Harmonise and share information among relevant stakeholders (the justice system, police, social services, health services) by contributing to the development of a system of multiagency (An Garda Síochána, TUSLA, Courts Service)
- Develop a common identifier system for VAW crimes for use by An Garda Síochána, Director of Public Prosecutions and the Courts Service that can feed into statistics gathered by the CSO. This identifier system should be capable of distinguishing all possible assault, harassment, false imprisonment, sexual violence, coercion and other offences.
- Enable a qualitative analysis of case law to identify negative gender stereotypes and ways to overcome them.

¹³ Article 11 (data collection and research) includes the requirements for Ireland as a State Party to: collect disaggregated relevant statistical data at regular intervals; support research in the field of all forms of violence; endeavour to conduct population -based surveys at regular intervals to assess the prevalence of and trends in all forms of violence.

¹⁴ Department of Justice (Oct. 2017) - *Action Plan Second National Strategy on Domestic, Sexual and Gender-Based Violence 2016-2021*. Available at <http://www.cosc.ie/en/COSC/Pages/WP16000018>.

4. Training and gender bias in legal proceedings

According to research conducted by the Council of Europe “training offered to judges [and prosecutors] on matters related to gender equality is not standard practice across Europe.”¹⁵ In numerous countries it was revealed that after their appointment, neither judges nor prosecutors receive training on gender equality, gender discrimination or gender-sensitive methods they can employ in their practice. Such training should be the norm for judges and relevant court personnel.

There should also be continuous training for judges and their support staff on VAW, in conjunction with VAW victims and support services. The absence of regular training results in a lack of expertise and understanding to effectively respond to domestic and sexual violence in a consistent manner. Understandings of the complexities of VAW are constantly evolving and NWCi believes that specific attention should be paid to development and roll-out of training in trauma and in coercive control. This training should include material on the fluid, complex and inter-related nature of the specific needs of women victims of violence.

In that respect the Government's *Second National Strategy on Domestic, Sexual and Gender-Based Violence 2016-2021* includes a number of actions in relation to training specific to the Courts Service (in some case in tandem with other state agencies); however, and the work in these areas is widely welcomed.

NWCi Recommends:

- Implement the training recommendations of the *Second National Strategy on Domestic, Sexual and Gender-Based Violence 2016-2021*.
- Provide high quality training on gender-based, domestic and sexual violence for members of judiciary and their support staff, in conjunction with specialist services and experts from different sectors. Training to include: (1) Trauma-informed care and coercive control; (2) The complex and inter-related nature of the specific needs of women victims of violence.; and (3) Address unconscious biases to help avoid stereotypical thinking in relation to groups of women with specific needs.
- Engage victims of VAW and support agencies in the courts service training and awareness programmes to improve awareness of the particular needs of VAW victims.
- Identify new technologies to deliver this training.

Conclusion

NWCi welcomes the opportunity to respond to this consultation. We will continue to work with the Courts Service, An Garda Síochána, the Department of Justice and Equality and the Policing Authority to ensure that the modernisation of our justice system reflects the need for increased participation of women within the system and to ensure the Courts Service has the necessary information it needs to propel reform.

We believe improving the protection of women's human rights is underpinned by legal system reform.

¹⁵ Council of Europe Gender Equality Commission. 2013. Feasibility Study: Equal Access to Justice for Women. para. 62; The Council of Europe Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice, 7 (2017).

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