REPORT OF THE WORKING PARTY ON THE LEGAL AND JUDICIAL PROCESS for VICTIMS OF SEXUAL AND OTHER CRIMES OF VIOLENCE AGAINST WOMEN AND CHILDREN

October 1996

The National Women's Council of Ireland
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CONTENTS

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To Sue Gogan, rapporteur to the Working Party (November 1995 - April 1996), we wish to express our thanks, and to Bernadette Carton and Rosemary Gibney, WERRC, who ably assisted us in preparing the report for publication.

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Foreword

Domestic violence, rape and child abuse are terms with a multitude of meanings hiding devastated lives. This report is the culmination of more than two decades of work by women in Ireland exposing the facts of violence against women and children, providing refuge and support for those women and children and ceaselessly lobbying politicians and policy makers for change.

It is a report which should never have had to be written because it is about such a fundamental human right - the right to grow up and live in safety and security, most especially in the place you call home and among the people you call family, friends and neighbours.

Despite all the stories and reports; the first-hand testimonies; the court cases; the inconsistent sentencing and the over-crowded refuges, public attitudes and public policies have been slow to change.

The fact that thousands of Irish women and children are regularly assaulted and abused in their homes and in public should be a cause for massive public anger and demands for action. Of course, we have seen that anger from time to time, when individual cases have come to light and when the systematic abuse of children and women in supposedly safe havens such as orphanages, schools and convents has been exposed. But there has been a failure to translate that anger into insistence that the comprehensive changes needed must be implemented.

For the National Women's Council of Ireland and our affiliates, along with thousands of people throughout the country, the events which led to the establishment of this Working Party and this report were the last straw. We entered into this work with a positive commitment, on the clear understanding that the political will to make comprehensive and possibly difficult changes existed. This is not a party-political matter and women expect no less than all-party support and cross-party co-operation in moving forward.

The National Women's Council of Ireland would like to thank everyone who gave of their time and expertise, especially the members of the Working Party who took on the complex and onerous task of preparing the report, and the Minister for Justice, Nora Owen, TD for funding the initiative. To those involved directly in the legal and judicial process who met and made submissions to the Working Party, our particular thanks - their role is so crucial - and women welcome the increased level of willingness to enter into dialogue and discussion.

We hope that this report will be of particular value in formulating public policies and that it will engage a new depth of political will to find appropriate responses to a very serious problem. We also hope that it will be the last report of its kind that needs to be written.

Noreen Byrne
Chairwoman, National Women's Council of Ireland
October, 1996

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SUMMARY OF RECOMMENDATIONS

Research and Statistics

1. A **Standing Committee** be established to develop, implement and monitor a national system for the **collection of statistics** encompassing the spectrum of violence against women and children. The Standing Committee to be composed of representatives of relevant government departments, statutory and voluntary agencies, the National Women's Council of Ireland, the Garda Siochana, social workers, health workers and medical agencies.

2. All **crime statistics** published by the Garda Siochana in their Annual Report be broken down by gender. Also detailed statistics on cases reported to the **Domestic Violence and Assault Unit**, including information on how cases are handled by the Gardai, be published annually.

3. A detailed study of **attrition and conviction rates** in respect of crimes of sexual and other forms of violence against women and children be commissioned and funded by Government as a matter of urgency.

4. A **national study** of the prevalence, nature and consequences of all forms of male violence towards women and children in Ireland be commissioned and appropriately funded by Government. The national study should pay particular attention to the experiences and needs of women and of children in socially marginalised and isolated contexts, including those with physical/mental disability; Traveller women and children and members of other ethnic minorities; lesbians; those living in rural areas; homeless women, girls and children; women working in prostitution; and elderly women.

Domestic Violence

5. The Working Party fully endorses the recommendations made in the Women's Aid **Zero Tolerance** National Strategy Document (1995), as follows:

(i) that the Government set up an **Inter-Departmental Committee** to develop a long-term strategy to combat the issue of domestic violence and to develop policies and procedures for each area (such as Health & Justice). Each area would in turn, set up an Inter-agency Committee to look at their own work practices. For example, the justice committee would include members of the judiciary, legal profession, Gardai probation services, social services and Department of Justice officials. Each area would select representatives to sit on the main steering committee.

(ii) the objectives of such an Inter-department Committee would be to:

- inform, and disseminate information and network with people dealing with victims of violence;
- bring together different agencies and governmental departments, specifically so that the work done against domestic violence is consistent, well-informed and co-ordinated;
- create and facilitate a co-ordinated national policy on domestic violence;

- encourage each individual working group/agency to develop policies and procedures for responding to domestic violence;
- produce 'Good Practice Guidelines' and pilot initiatives.
- promote inter-agency training;
- promote new services and preventative measures;
- examine the connection between domestic violence and the abuse of women and children in society as a whole;
- build on the significant reforms, policy programme work of all levels of government and the community, towards improving the status of women, including the elimination of all violence against women;
- ensure that all women escaping violence have immediate access to police intervention and legal protection which prioritise safety for the women, such as safe shelter, confidential services and the longer-term resources needed to live independently and free from violence.
- there should be a cohesive multi-agency response in which all agencies recognise the need for, and are prepared to liaise on, monitoring and training in the area of support and service provision for those who come in contact with women who have been abused.

(iii) that all professional groups whose work is relevant and involves them in responding to domestic violence, should receive training about the nature of domestic violence, its effects on children, the kinds of relationships which can exist in the context of domestic violence and physical, emotional and sexual abuse.

It is crucial at all levels of inter-agency work that the voices and needs of abused women and their children are heard through the inclusion of those organisations that work directly on the ground in the provision of services.

6. Local authorities and councils should play an active part in **funding** public awareness and educational campaigns;

7. For any campaign to be effective it should be planned in conjunction with the organisations working directly with women who are being abused to ensure that their voice and experience is included. The most effective way of achieving this would be through using the proposed Inter-Departmental Committee to ensure that any public money used to **promote a Zero Tolerance campaign** would be monitored, evaluated, consistent and properly funded;

8. Education of future generations is vital if violence against women is to be eliminated from our society. A question about Women's Aid Zero Tolerance campaign in the mock Social Science paper of the 1996 Intermediate Certificate, indicates that education towards a Zero Tolerance of violence against women and children can be integrated into school curricula at all levels.

9. All **delays** in family law cases have severe emotional impact on families but where Emergency Orders are needed to protect the lives of women and children, we recommend the provision of immediate remedies in the situation of high risk.

10. We support the recommendation for **regional family courts** from the Law Reform Commission. However, if under the Circuit Court Jurisdiction, we must be sure they would be accessible from a financial and geographical perspective.

11. The Working Party recommends **specialised courts** with basic facilities such as telephones, vending machines, toilets and a children's area. Family Law should be a safe, comfortable place for women and children.

12. Arbitration Mediation: Whilst recognising the advantages of mediation in certain cases we would not recommend this procedure on any mandatory level. We would definitely not recommend mediation in an abusive situation where there is an unequal balance of power. We would have further concerns with mediation due to the lack of regulating body, accreditation and accountability.

13. In Camera ruling: The purpose of the In Camera rule was to ensure that the privacy of the litigants was ensured by holding all cases of family law in closed courts. Women's Aid and other groups believe that this policy while well-meaning has failed to make the practice of family law both visible and accountable which is not in the long-term interests of the client.

The Joint Committee on Marriage Breakdown underlined the importance of public scrutiny acting as a **check on arbitrary decision-making** in its 1985 Report,

> In Camera hearings do, however, have a detrimental side effect. Publicity is the natural enemy of arbitrariness and injustice in a legal system. Our courts, while hearing family cases, have operated without this salutory check. When decisions are made in private, members of the general public can often misunderstand what takes place in court. This can diminish confidence in the fairness of the administration of justice in this area of law (Joint Committee on Marriage Breakdown Report, 1985).

14. The Working Party believes a format must be found which provides a **balance** between the right to privacy of the litigant and the right to a fair, transparent and accountable justice system.

15. The Working Party wishes to stress the necessity for the judiciary to recognise the growing body of evidence which substantiates the above views and recommendations. This demonstrates the need for **specialist training for the judiciary**.

16. Supervised access/probation services: There is an increasing concern among the legal profession and supportive agencies such as Women's Aid that the lack of resources in the Probation service is putting women and children seriously at risk. At District Court level the **Probation Service** is totally understaffed and under-researched and there is no Probation Officer for family law cases in the Circuit Court.

17. We recommend that probation officers should be provided for the following areas:
(a) **Separation and custody cases**: where the father of the children is abusive and violent, the Courts frequently recommend supervised access. It is vital that this supervision is done by a trained professional who is aware of the dangers to the

woman and the children and that in certain cases access hours can be used to further abuse both the mother and children. It is essential to have special safe centres based on the community model developed in Britain for access to take place.

(b) **Assessment reports** on the needs of children and custody cases are prepared by probation officers. Probation officers are impartial, appointed by the Court and free to interview both parties and the children in their own homes. It is vital to have an independent, free service to assess the needs of children, particularly where the father has been abusive or violent to either the mother or the children. Women in abusive situations have found probation officers (where available) to be supportive, objective and professional in their approach. It is our view that the Probation Service is a cost effective way to deal with the needs of victims of domestic violence.

(c) The Working Party strongly recommends extending the probation services, or the setting up of an independent **Advocacy Service** for children who are victims of domestic violence.

18. Support services and research: To ensure that the courts are providing adequate protection to women and children, it is vital that their effectiveness is monitored and evaluated continually.

19. The Working Party recommends that the garda authorities should consider adopting a policy of **presumptive arrest** along the lines of that used in other countries such as the USA and Canada. A successful example of such a policy that proved to be effective in protecting women and preventing recidivism among offenders is the Domestic Abuse Intervention Project (DAIP) created in Duluth, Minnesota in 1980. We believe that Garda policy should be towards a presumption in favour of arrest unless there is 'good and clear' reason why not.

20. The problem of **'no-criming'** should be seriously addressed. The possibility of instructing officers to record incidents as "crime detected but not proceeded with" giving reasons for this, could be considered.

21. Furthermore, if a **pro-arrest policy** is to work the Garda must have the right to remand the offender in custody at least until a court hearing so that the judge can issue conditions of bail which very clearly outline protective measures for the witness, in this case wife or partner (e.g. he must find alternative accommodation until the court case).

22. For the successful prosecution of cases of domestic violence it is essential that each individual Garda who is called to the scene of a crime, does all in his/ her power to ensure the safety of the woman and her children and adopt a **clear law enforcement role** including the following procedures:

(a) The woman should be provided, not in the presence of her assailant, with **information** as to all possible sources of help and action. This should not be a substitute for any actions directed towards the offender such as arrest.

(b) Where a garda has **reasonable suspicion** that a crime has, can or will take place, the suspect should be arrested and taken to the police station, irrespective of the victim's willingness to make a statement.

(c) Where an officer has reasonable suspicion that a crime has taken place but has no tangible proof (e.g. no circumstantial third party evidence) and the victim is unwilling to make a statement, a **formal warning** should be given to the suspect that assault is a criminal offence and as such cannot be ignored.

(d) Any **evidence should be logged** e.g., physical injury, damage to property and attitude and physical state of the suspect.

(e) Where necessary the victim should be taken for **medical treatment**. If necessary she should be advised to see her doctor and her injuries should be recorded and photographed.

(f) An inquiry should be made as to the **welfare of any children**.

(g) Officers should radio the station to inquire whether a civil order is in existence, and whether there have been **previous incidents** of domestic violence.

(h) If at all in doubt about the way to proceed officers should **consult the supervising Sergeant**.

(i) **Follow up supportive action** should be taken in every single instance.

23. Inservice and ongoing training on domestic violence and the psychological effects on women and children must be provided for all gardaí. It has been recognised in other jurisdictions that this is best provided directly by agencies such as Women's Aid and Rape Crisis Centres.

24. Sentencing in relation to the offender is also crucial. If the gardaí have the powers to bring charges against violent men but the judiciary then fail to punish the perpetrator or apply totally inadequate sanctions, this only serves to deter women and frustrate the gardaí in the use of the criminal justice system in domestic violence cases. The relationship between the victim and the offender should not be an issue for the criminal justice system. It is the nature, level and extent of the violence done to the woman that should decide the severity of the sentence.

25. There must also be **consistency in issuing sentences**. Judges should have options for sentencing which include **treatment and rehabilitation** of the offender. However it is vital that all treatment programmes:

(a) have the clearly stated aim of **protecting the victim** and addressing the violent behaviour of the assailant which involves close co-operation between prosecution and victim advocates.

(b) use **model treatment programmes** which have been proven to be effective by Duluth and currently being developed by the Cork and Ross Family Centre, Male Violence Project.

(c) include the **deterrent of increased penalties** for men who re-offend.

26. Access to safe, **accessible, secure refuges** is an essential part of a crisis response to women at risk. It is recommended that:

- Systematic **financing of refuges**, based on detailed assessment of need in each Health Board area, be an immediate priority of the Department of Health.

- That the recommendations from the policy document produced by the **Federation of Refuges (1994)** be fully implemented.

- That **staff training** in refuges should include an understanding and analysis of violence against women.

- Access to **support and information** must be provided for an abused woman to allow her make an informed choice about her own and her children's future. The central importance of working within the self help model is to promote a service that will include the abused women's perspective of what support and services are needed.

- Fully trained **child care workers** must be provided for refuges.

- All refuges should be **accessible to women and children with disabilities**, and all staff should receive proper training with regard to the specific vulnerabilitity of women with disabilities.

27. The Working Party strongly recommends that a **working group be established to examine the needs of Traveller women**, and which would specifically examine the practicalities of providing a refuge which would be directly run by Traveller women for other Traveller women. Members of the Travelling Community and representatives of Traveller groups and organisations should form a significant number of such a working group as well as representatives from Women's Aid. The provision of support and practical options to women in **marginalised groups,** such as Traveller women, is vital. It is also vital that differences be respected and that models of self-help and empowerment are developed by and for Traveller women, appropriate to their cultural needs.

Rape and Sexual Assault

28. The Working Party recommends that Section 4 of the Criminal Law (Rape) (Amendment) Act, 1990 be extended to include **penetration of the anus by an object**.

29. The Working Party recommends that consideration be given to the codification of rape and sexual offences with a view to creating an offence of **'penetrative sex' (rape)** and 'non-penetrative sex' (sexual assault). These offences would have within them categories of offence. For example, under rape there would be the offences of incest and unlawful sexual intercourse with persons below a particular age. Sexual assault would have the same constituents as are found at present.

30. That the **absence of overt resistance** on the part of a complainant should never be construed by the courts as consent.

31. In rape trials, where **consent** is an issue raised by the defendant, the onus of proof should shift to the defendant to prove that he sought and obtained the consent of the complainant to sexual intercourse.

32. The Garda Siochana should develop and publicise clear policy and practice with regard to the **treatment of victims** of rape, sexual assault and other sexual offences.

33. A **Code of Behaviour** for the treatment, by all gardaí, of victims of rape sexual assault and other sexual offences should be developed and implemented within the Garda Siochana.

34. Appropriate **training**, both pre- and in-service, should be provided on a national basis for all gardaí with respect to the treatment of victims of rape, sexual assault and other sexual offences.

35. Special **Sexual Assault Units**, staffed by fully trained members of the gardaí, should be established in garda stations in major cities and towns throughout the country.

36. That the recommendation of the Law Reform Commission regarding **information and consultation** (LRC, 1988: 15) be given the force of law.

37. The Working Party strongly recommends that the procedure of a victim touching an identified assailant should be abolished, and that **identification** should be carried out using two-way mirrors.

38. The Working Party recommends, (i) that the powers of the DPP under the Prosecution of Offences Act, 1974 be reviewed in the interests of accountability so as to allow the **DPP to give reasons as to why prosecutions do not proceed**, except where it may not be in the public interest that such reasons be set out; (ii) that the DPP make available on a yearly basis, **statistics** as to the number of cases involving sexual and other violence towards women and children which are referred to his office and the outcome of such cases and (iii) that consideration be given to the establishment of a **special section within the DPP's office** to deal with the prosecution of sexual offences.

39. The Working Party recommends that where **bail** is an issue, gardaí be required to discuss with the victim(s) and their families what concerns they might have as to this

issue and what conditions, if any, they might want a court to impose on the accused if bail is to be granted.

40. The Working Party strongly recommends that a system be put in place whereby victims of crimes of domestic violence and sexual assaults are notified by the prisons or gardaí that the **release of a perpetrator** is anticipated or has taken place.

41. The Working Party recommends that the **Juvenile Liaison Scheme** be established on a statutory basis and guidelines for the use of the scheme be published also.

The Working Party further recommends that the Scheme should not be invoked in cases involving sexual offences unless the clear consent of the victim and/or the victim's parents has been obtained.

42. That a full review be undertaken by the **Courts Commission of Court Processes** relating to the trial of rape and sexual assault offences, with a view to evaluating their impact on victims and recommending appropriate procedural changes.

43. The Working Party shares the view of the Working Group on a Courts Commission that the absence of judges and resources to proceed with criminal trials (including rape trials) in the High Court and the Central Criminal Court have serious repercussions for our society. The Working Party recommends that a suitable number of **judicial appointments** be made as a matter of urgency, accompanied by the provision of adequate resources to ensure the processing of such cases without undue and damaging delay.

44. Separate, **secure waiting room facilities** should be provided for the use of the victim and her family; courts should be designed so as to ensure that the victim is not forced to be beside, near or opposite the accused; facilities for the victim to give evidence from behind a screen should be available on request.

45. The Working Party strongly recommends that the Law Reform Commission recommendation on the provision of **information to the complainant** in rape and sexual assault cases be implemented immediately. (LRC, 1988:15).

46. We further recommend that in the event of **delays** in the processing of a case either before or during the trial, the Complainant be kept fully informed of any such delays and be given the reasons for their occurrence.

47. The Working Party also strongly recommends that in addition to the pre-trial consultation arrangements for the complainant and Prosecuting Counsel as recommended by the LRC (1988:15), the Complainant should have **regular consultations with counsel** throughout the trial, and be kept fully informed of the reasons for legal arguments used and other relevant matters.

48. It is the view of the Working Party that where an accused wishes to **plead guilty** to an offence, the victim(s) should be informed immediately. Further, where a lesser plea is found to be acceptable to the DPP, the victim(s) should be notified and, in so

far as possible, an explanation as to how the decision was arrived at should be forwarded to the victim(s) by the office of the DPP.

The Working Party recommends that, where an accused pleads guilty to an offence involving violence to a woman or a child, it should be a matter of practice that a Court will not proceed to deal with the case unless satisfied that the **victim(s) has/have been informed of the plea** and given an opportunity to be present in Court.

49. Having carefully considered the issue from all perspectives, the Working Party is of the view that **separate legal representation for complainants** in rape and sexual assault cases would provide much-needed support for complainants, render the trial process considerably less traumatic for them, and would contribute significantly to bringing about an increase in the reporting of rape. We therefore recommend that mechanisms for the provision of separate legal representation, including its insertion within the legal aid system, be developed and implemented.

50. The Working Party recommends that **Victim Impact Reports** be requested for both trials and appeals; and that a list of suitably qualified professionals should be available to the court in the event that the victim is not attending a professional therapist.

All requested reports should be compiled by a qualified person in the care agency involved with the victim. The victim should agree the content and be happy that it represents the impact of the crime on her life. The judge occasionally invites the victim to give an oral account of the impact of the crime on her, her recovery process, etc. This is the only occasion the victim has a voice in the proceedings.

51. That the discretionary power of the judge to issue a **corroboration** warning be abolished as unnecessary, and as seriously undermining to the respect due to a complainant in cases of rape and sexual assault.

52. That regarding a delayed complaint, it should be compulsory for the judge to warn the jury that **delayed complaint** does not imply falsehood on the part of the complainant, as there may be good reasons why she did not complain immediately following the incident.

53. The circumstances under which evidence is admissible in relation to the complainant's **past sexual history** with other men and with the defendant should be codified.

Where the complainant's credibility is attacked by disclosing her past criminal offences or previous history, the defendant's past record or sexual history should also be disclosed.

Applications for the admissibility of the complainant's past sexual history with the defendant should be made by the defence in writing; where the judge allows such evidence, its relevance must be explained in writing, and the prosecution should receive reasonable notice in writing of its admissibility.

54. That **research** be commissioned, as a matter of urgency, to determine **sentencing patterns** in rape and sexual assault cases; such research should, as proposed by O'Malley (forthcoming) track a significant sample of cases through the criminal justice system from the time at which an alleged offence comes to the attention of the Gardai, to the time at which it is eventually disposed of (whether through *nolle prosequi*, acquittal or conviction and sentence). Such research would provide crucial information about sentencing patterns, and just as importantly, about attrition rates and the stages at which cases are concluded.

55. That **guidelines** with respect to sentencing in cases of rape, sexual assault and other sexual offences be drawn up and implemented immediately.

56. That a **Standing Commission** be established to monitor and review sentencing in cases relating to sexual violence and other forms of violence against women and children.

57. The Working Party recommends that **non-custodial options** be considered only where the offence is of a minor nature. The Working Party would endorse the view of the Supreme Court in *The People (DPP) -v- Tiernan* that the features of rape make the appropriate sentence a 'substantial immediate period of detention or imprisonment.'

The Working Party further recommends that where a Court is considering a non-custodial option there should be in-built in that option, supervision of the perpetrator within the community and a serious sanction for failing to be of good behaviour. Further, there should be available to the Courts around the country, **treatment programmes** which specifically address the use of violence by men towards women and children. In many States in the United States of America, men convicted of crimes of violence must attend such programmes and confront their violence in a serious fashion. Failure to attend such programmes is in itself a ground for the matter being brought back to Court. Resources must be made available for similar sorts of programmes in Ireland.

58. The Working Party recommends that the **grounds for appeal** be stringently defined and monitored; that **guidelines** be drawn up for the use of the appeal provisions for the DPP and the Court of Criminal Appeal and that the **number and proportion** of such cases be recorded and the grounds for the decisions on appeal be monitored and evaluated.

59. The Working Party strongly recommends that, along with the legal changes sought, **support services** for women and children who are victims of crimes of violence should be provided on a country-wide basis. These services must be accessible to women with disabilities. Further, the services and the personnel operating within the services, should be aware of regional and cultural differences between women who seek to avail of the assistance on offer. Most of all, the funding given to such organisations/individuals should be appropriate to the needs of the service.

Child Sexual Abuse

60. The Working Party recommends the extension of the definition of **incest** to cover adopted children and step-children.

61. The Working Party recommends that where the victim of incest is under twenty-one years of age, the trial of the offence should take place in the Central Criminal Court

62. The Working Party does not see the rationale for the consent of the Director of Public Prosecutions (DPP) to the initiation of proceedings for incest and we would recommend the abolition of this provision.

63. The Working Party recommends that the term **"carnal knowledge" be replaced** by the expression "sexual intercourse" as defined in Section 1 (2) of the Criminal Law (Rape) Act, 1981.

64. The Working Party recommends that the trial of offences involving girls below the age of 15 years take place in the Central Criminal Court.

65. The Working Party recommends that a new offence of **"child sexual abuse"** or "sexual exploitation" be created as a matter of urgency and in consultation with persons working with abused children.

66. The Working Party recommends that the trial of offences for **buggery** where the victim is under 15 years of age take place in the Central Criminal Court.

67. The Working Party endorses and recommends the full implementation of the recommendations contained in the **Report of the Kilkenny Investigation** (McGuinness, 1993).

68. Recognising that legal and judicial reforms alone are clearly insufficient to address many of the problems outlined, the Working Party recommends that the following measures and action be implemented or undertaken as minimum requirements in ensuring the just and **equitable treatment of women and children with disabilities** who have been subjected to crimes of sexual and other forms of violence: The Department of Justice should commission **research** on the interface between people with disabilities and the judicial system; such research should draw substantially on the accounts of people with disabilities;

69. The Department of Health should draw up and issue **guidelines** for the reporting of sexual and other abuse perpetrated against adults with disabilities.

70. The Department of Health should clarify whether children with disabilities and residential centres providing services to them are covered by the provisions of the **Child Care Act, 1991**.

71. In-service training in disability equality issues and the particular issues surrounding women and children with disabilities as victims of sexual and other crimes

of violence should be given to all appropriate personnel working in the legal and judicial system (the judiciary; lawyers; social workers; counsellors; gardaí).

72. Appropriate and accessible **counselling** and support should be offered to women and children with disabilities who are the victims of sexual and other crimes of violence. Peer counselling services should be developed.

73. Information concerning women's and children's rights, how to detect and report abuse, how to protect oneself, should become widely available in formats other than print.

All agencies used by women and children in reporting crimes and in availing of support services, such as women's refuges, rape crisis centres, well woman clinics, legal aid centres and garda stations should be made **accessible** to people with disabilities, including access for people with physical, sensory, psychiatric and learning disabilities; telephone devices for the deaf (TDDs) should be installed, and staff trained in sign language interpretation should be available.

74. All buildings used in the course of the legal and judicial process as it applies to victims of sexual and other crimes of violence should be made **accessible** to people with disabilities;

75. Where those within the legal and judicial systems have no relevant training as to the needs of disabled people, **advocacy and other supports** should be availed of from a relevant agency, such as the National Council of Disabled People.

76. The Department of Justice should consider the particular vulnerability of women and children with disabilities when drawing up sentencing criteria; **sentencing patterns** should be monitored, and particular attention should be paid to the support systems provided at reporting, interviewing and trial of crimes against women and children with disabilities.

77. Government and voluntary agencies should undertake to ensure that parents and the **public become more aware** of the damaging and debilitating effects of sexual and other crimes of violence against people with disabilities, including the way in which social prejudice compounds the problem and constitutes a form of abuse in itself.

The Justice System

78. The Working Party recommends that **information and awareness programmes**, provided by experts in the field, on all aspects of the effects and consequences of sexual and other violent crimes should become a routine element within both initial and in-service garda training.

79. The Working Party recommends that **law schools** (including the Incorporated Law Society and the King's Inns) should incorporate teaching on all aspects of sexuality, domestic violence and the law into their core curricula.

80. Recognising the independence of the judiciary, the Working Party recommends that the **judiciary should develop information and awareness programmes,** provided by experts including service providers in the field, on all aspects of the effects and consequences of sexual and other violent crimes.

81. The **attitude of the judiciary** is vital in all areas of law, but is particularly pertinent in Family Law. Reform of the system will be ineffectual if some of the judiciary do not have an awareness and understanding of the complex issues involved and women will not obtain justice in the courts.

Judges and all court personnel must appreciate the complexities of the areas of domestic violence and sexual abuse. Those working directly with abused women on the ground are continually retraining. It is impossible without specific **training on domestic violence for the judiciary** to be properly informed of this complex area. The **criteria for judicial appointment to the Family Courts should include experience and interest.**

82. Given the severe under-representation of women on the bench, the Working Party recommends that there be a committed and concerted effort by the Government towards achieving a **gender balance amongst the judiciary**.

The Media

83. The Working Party recommends that a **Code of Practice for the Reporting of Sexual and Other Crimes of Violence Against Women and Children** be drawn up, applied and monitiored by the National Union of Journalists. The Code of Practice should be drawn up following consultation with agencies and services practising in the field. While we acknowledge the difficulties of implementing a voluntary Code of Practice, we consider that the introduction and application of such a Code would contribute significantly to raising social awareness about the seriousness and prevalence of sexual and other crimes of violence against women.

The Legal Framework

84. The Working Party recommends that a comprehensive **review of the current legal framework** relating to sexual and other crimes of violence against women and children be undertaken. The review should be carried out by a specially established **National Commission** at least half of the members of which should be drawn from individuals and women's organisations working on these issues.

Three key questions should guide the work of the National Commission:

(i) Whether existing statute law is adequate and appropriate.

(ii) Why the attrition rates are so high in cases concerning violence against women and children.

(iii) How to counteract the inappropriate and unjust treatment and questioning of women, and the low credibility accorded to children as witnesses throughout the justice system.

The National Commission's review should draw on international examples of innovative and effective reform in the letter and implementation of the law.

Chapter 1 INTRODUCTION

1.1 Context and Establishment of the Working Party

The Working Party formed under the auspices of the National Women's Council of Ireland (NWCI) on an *ad hoc* basis in March 1995, as a consequence of the serious concern of its members and intense public outrage at the decision given by the Court of Criminal Appeal to reduce the sentence on the man at the centre of the 'X' case. While this was the immediate catalyst for the formation of the Working Party, many other cases had already given rise to widespread anger, and the perception that judgements and sentences handed down by the judiciary are seriously out of step with both public thinking and with readily accessible knowledge and information about crimes of sexual and other forms of violence.

The concerns of the Working Party, which includes representatives of women's organisations and voluntary sector services, lawyers and academics, are thus not recent in nature, but rather the cumulative result of almost two decades of decisions and commentaries from the Courts reflecting at best misunderstanding of the nature of sexually abusive crimes against women and children.

During those decades, the level of public understanding of such crimes has grown, not least because of the work of many women's organisations and voluntary agencies. As well as changes in public opinion, the expertise of professionals such as social workers and the Garda Siochana has developed. There is increasing acceptance by a range of statutory agencies that issues relating to the abuse of women and children are serious matters for which they hold responsibility. In many respects, changes in the law have reflected public awareness and concern and begun to provide the framework within which those with responsibilities can take appropriate action. However, discrepancies between the spirit and letter of the law and its application in practice are all too evident, which means that the difficult and painful experiences of very many women and children are exacerbated rather than alleviated by the very system through which they seek justice.

This report is the first systematic and integrated appraisal of the Irish legal and judicial system from the perspective of women and children who have been the victims of crimes of sexual and other forms of violence. The major objective of the Working Party is to draw attention to the ways in which the system still fails to provide justice and equality for women and children, and to make recommendations for reform. We are firmly of the view that with the necessary commitment and investment in infrastructure and people, a more effective and supportive system can be developed.

Following discussions with the Minister for Justice, Ms Nora Owen, TD, the Minister agreed in July 1995 to fund the report of the Working Party on the legal and judicial process as it applies to victims of sexual violence and other crimes of violence against women and children, with a view to making recommendations for positive change.

1.2 Terms of Reference

The terms of reference set out below were agreed by the Working Party and the Minister for Justice in July 1995.

1. To investigate the legal and judicial process as it applies to victims of sexual and other crimes of violence against women and children.

2. To review: (i) sentencing practice with particular reference to the body of research and knowledge which has been amassed in recent years; (ii) past recommendations that there should not be separate legal representation for victims of such crimes in the light of continuing concern.

3. To prepare and submit recommendations to Government and all other relevant bodies or groups with responsibility in the area on a range of issues including: (i) access to research, continuing information and in-service training for all those involved in the legal process; (ii) criteria for the selection of judges with particular reference to achieving gender balance; (iii) victim impact reports and their use at all stages of the legal process.

1.3 Working Methods

The Working Party began its formal deliberations in September 1995, and completed its work in August 1996. While publication of the report was originally scheduled for March 1996, the volume of submissions received, as well as the scope of its Terms of Reference and the difficulties involved in obtaining and collating information across such a broad field, obliged us to defer publication until October 1996.

A rapporteur, Sue Gogan, BL, was appointed in October 1995 for a period of six months. Due to funding constraints, this was a part-time post.

The Working Party also commissioned Celesta James, MA, to carry out a review of key research and theoretical issues relevant to its topic. Unfortunately, funding constraints prevented us from commissioning further research, and most notably in relation to sentencing. However, following discussion with Tom O'Malley of the Faculty of Law at University College Galway, existing information in the area of sentencing was reviewed by the Working Party.

The Working Party met weekly or fortnightly from September 1995 until August 1996, with additional meetings scheduled as necessary for in-depth consultations with experts in a range of areas. A Policy Review Day was held in February 1996, with the participation of Carmel Kelleher and Patricia Kelleher of Kelleher and Associates, and Liz Kelly, Child and Woman Abuse Studies Unit of the University of North London.

In keeping with one of its key aims, i.e. to focus on the experiences of women and children victims of sexual and other crimes of violence, the Working Party invited submissions from as wide as possible a range of groups and individuals. An advertisement was placed in the *Irish Independent* on 6/11/95, and Working Party members drew attention to the invitation for submissions on national and local radio.

Relevant organisations were also invited to make oral and written submissions. (See Appendices A and B).

A number of individuals with professional expertise and interest in the area addressed the Working Party, as well as representatives of a wide range of voluntary and statutory groups and organisations. (See Appendices A and B).

The oral and written submissions, as well as other consultations, were extremely valuable and illuminating. Many of those who made submissions or who generously met with the Working Party provided us with extensive documentation relating to their area of expertise.

The Working Party also requested meetings with the President of the High Court, the President of the Circuit Court and the President of the District Court.

Both the President of the High Court and the President of the Circuit Court responded to the effect that such a meeting would not be possible to arrange. The reason offered in each instance was that such a meeting would encroach on the independence of the judiciary.

On the other hand the Working Party had a fruitful meeting with the President of the District Court, His Honour Judge Peter Smithwick, and four judges of the District Court. The Working Party was impressed by the thought that went into the meeting as two of the four judges were women and both the civil and criminal practice of the District Court was reflected in the personnel present. While the bulk of criminal litigation in sexual crimes takes place in the Circuit and Central Criminal Courts, the District Court plays a very important preliminary role in this process and also deals with matters relating to bail and the taking of evidence by deposition. Further minor offences may be dealt with in the District Courts. On the civil side, the judges of the District Court play an important role in the granting of barring orders and other civil remedies arising from domestic violence.

The Working Party commends the approach taken by the President of the District Court and his colleagues in meeting with the Working Party. The sharing of views between the parties has been of assistance in the preparation of this report and will hopefully have longer term effect.

The Working Party regrets that, unlike the President of the District Court, the President of the High Court and the President of the Circuit Court felt that a meeting with the Working Party would in some way affect the independence of the judiciary. The purpose of such a meeting was not to seek to influence the actions of judges in carrying out their duties under the Constitution but rather to discuss with them the concerns of individuals and organisations as to the operation of the legal system.

The Working Party respects the constitutional independence of the judiciary but would hope, in an era where dialogue between many sections of the community is taking place, that the judiciary would see that dialogue between themselves and others would only heighten public confidence in the legal system and not lessen such confidence.

Chapter 2 TESTIMONIES: 'JUSTICE IS NOT ABOUT THE TRUTH'

We begin this report with first-hand accounts because the most profoundly silenced voices in the justice system are those of women and children, victims of sexual and other violent crimes. The testimonies in this chapter draw attention to the concrete ways in which victims can and often do feel abused and betrayed by the very process of justice itself. These testimonies are centrally important to understanding what 'justice' really means for so many victims, and why so many refuse to engage with the system at all. It matters, or it should matter to us as a society, that so many women consider the reporting of rape, domestic violence or other violent crimes against them to be a futile exercise. It should matter to us that many of those who do report such crimes feel so deeply disillusioned and disempowered by the process. If we are to develop a justice system which is genuinely attentive and responsive to the needs and rights of victims, their experiences and perceptions must be taken fully into account.[1]

'Helen'

I made my statement to a female garda in May, accompanied by my social worker. The garda pressurized me for specific dates and took all my statements that day, which took about four hours. During the four hours she popped in and out to attend to other business in the station. I felt like a criminal as when I'd to go to the toilet she had to accompany me, which I felt was an invasion of privacy. She even got my social worker to read my statement over with me while she did something else. Then when I was leaving she made the comment that my case was the 'worst' she had heard. [. . .]I never heard from the gardaí for a long time and did not receive a copy of my statement despite requesting one.

My father and brother were interviewed in July and towards the end of their interview my foster mother was asked to bring me into the station. I was petrified and was brought into a room on my own with four male detectives and the female garda. Each of the four detectives asked me a question directly after the other and I never got the chance to answer any of them. I was in a state of shock and confusion and was then asked to confront my brother and father. I was absolutely devastated and couldn't understand why I was being treated so bad when I had done nothing wrong. I ended up in tears and just about managed to ask for my foster mother. The female garda brought me into a room where my foster mother was waiting and stayed in the room whilst I was in floods of tears. I really felt as if the gardaí didn't believe me and just wanted to die. They could never have understood the fear I felt with the idea of my father being in the same room as me. I wasn't strong enough to handle his manipulation. Anyway, I agreed, through my tears, to confront my brother only the Bangarda said I didn't have to. I couldn't understand how they could inflict such pain and upset on me.

It was a long time before I heard from the gardaí again. My father and brother were walking around free whilst I was trapped and imprisoned with fear. Before moving

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[1]These testimonies have been selected from those submitted to the Working Party by individuals, and by agencies on their behalf. Names and other identifying features have been changed.

away to college in September I requested the written information I had given to the female garda to be returned to me. Eventually I got it, only some comments had been written on it which I found very hurtful.

Still the gardaí never contacted me and in December I phoned to see what the story was. The female garda told me my file would be going to the DPP within a fortnight. As the months went by my patience was growing thin and in March the following year I phoned again and was told my file had just gone to the DPP by one of the detectives. He asked me to think about how my dad would prove his innocence and when I said I didn't have to as I knew he wasn't innocent, he replied that I should think about my relationship with the Health Board when I reconciled with my father. By now I was fully convinced the gardaí did NOT believe me. I was also aware that they had not interviewed people I had implicated in my statement.

Slowly but surely my life shattered in front of my face and life for me became unbearable. The gardaí still never contacted me and around mid-September I was waiting for my social worker in a Health Centre when a detective came in looking for her. The receptionist told him she wouldn't be long as there was a girl waiting for her. He came over and asked my name and then told me in the waiting area that the DPP had decided not to prosecute. I could feel myself go numb. He also told me that my parents had been told already of the outcome and asked how did I feel. At the time I didn't feel anything except shock. Now I can't believe that I was the last to know and that I was told in a waiting area. [...]

I struggled with life for a long time and one day I was determined to receive the justice I believed I deserved. I was fully convinced that because the gardaí didn't believe me nobody did. I wrote several letters to the then minister for Justice only they replied saying my allegations of sexual assault had been fully investigated. The sentence really angered me. I had not alleged sexual assault. After all, I had been raped and suffered incest for ten years [and then] to be raped by the judicial system afterwards. Still, through my immense pain, hatred and anger I decided to make a garda complaint in December the next year. Nearly 6 months later, in May, I had heard nothing from the Complaints Board about the handling of my case. I contacted the Board myself in June and they had not received my complaint. Finally in August [over three years after the initial statement] I received a letter saying my complaint had not been sent to them by the gardaí but that they could not process the complaint as the incidents had occurred more than six months ago. They forwarded it to the commissioner who wrote and said he would look into the case. I have not heard anything back to date.

Now when I think of justice I realise it's not about the truth. [. . .] It still deeply pains me and deep down I still have this immense fear that nobody believes I was sexually abused. [. . .]

'Maire'

I'm in my twenties, finished a degree in college last year and currently run my own business. Between the ages of 9 and 12, I was sexually abused by my brother-in-law. I first told about the abuse when I was 17. I confided in my sister and it quickly filtered through to all my family. That became the start of many years of counselling.

I always wanted to give a statement to the police about the abuse, but a number of things held me back: fear of not being able to handle my own feelings as it developed; fear of my brother-in-law and my sister's reactions; fear of other people's reactions and perhaps that they would treat me differently.

Also anyone I spoke to about it felt there was no point in putting myself through the turmoil it would create, because the legal system just wasn't equipped to deal with it, which I later found out.

Finally, as my counselling was coming to an end, I knew it was something I had to do, so in June I found the courage to make a statement. I asked for a female garda and it took about three hours to make the statement. She was quite friendly, but a little inexperienced at taking these statements. I felt she could have handled the situation more delicately. I was quite upset and we were constantly interrupted by other guards in the station. [. . .]

Fairly soon after the first statement, I was contacted by a garda, who let me know they needed another, more detailed statement. I was given the option of a female garda being present, and where the statement was to be taken. I felt comfortable for the garda who had called me to take it. The second statement was easier than the first, even though it took nine hours to take. The garda was very patient and he had been dealing with abuse cases, so I felt he handled the situation very well. That was in mid-July.

The garda updated me as there were developments. When my brother-in -law gave his statement, he admitted to all-over groping or fondling or whatever one likes to call it plus oral sex, but denied rape.

At the end of February the next year, the garda rang to say that the DPP had thrown out the case. He said the time factor between the abuse and my statement was too long to prosecute. If I had given a statement when I was seventeen, five years before, it may have gone ahead. He was extremely helpful and supportive, but said there was nothing more I could do.

I rang one of my counsellors. She suggested I ring Harcourt Street Garda Station. To be honest I still don't understand how the DPP doesn't prosecute, when my brother-in-law admitted some of what I had in my statement. When I rang Harcourt Street, I spoke with a lady who deals with sexual abuse cases. She made the following points:

1. *Anything admitted in his statement, a barrister could plead that he was coerced or under duress. This seemed to be the most important point. I recall that the garda went out of his way to ensure that there was no way the statement from my brother-in-law could be seen to be taken 'under duress'. So I disagree with this possibility.*
2. *The DPP feels it's better for the victim not to have to go on the stand if a barrister could plead 'under duress'.*
3. *Because no-one else knew when the abuse took place - it wasn't black and white, therefore he simply couldn't be convicted.*

So what I ask is: how can anyone be convicted of this horrendous crime, if no third party actually witnesses the crime? With this crime that is usually the case. And if someone admits a crime, how can the DPP not prosecute, regardless of the victim's feelings at that point?

I'm not bitter with the system, I've had so much self development through counselling, that it would only hurt me to be bitter. I just don't believe in the legal system. I'm sure it has good points, but how it deals with abuse cases is a joke. I'm glad I made a statement, because I needed to do that for my own reasons. With the legal system as it is, I'm now glad that I didn't have to go on the stand. At the time though, I was extremely angry with the system.

'Joan'

I was called as a witness to [a rape trial in] the High Court. I was just a peripheral witness in the sense that I was not a witness of any of the night's events. I was shocked that the identity of the rape victim was not protected more.

When I went to the High Court in Dublin, there were approximately 18 civilian witnesses and an equal amount of gardaí, if not more. As we all sat in the hallway outside the courtroom, the victim, very distraught and accompanied by her mother and two other female relations, had to walk past us to get into the courtroom. Prior to this I did not know who the victim was. However now I knew who she was and although a number of the other witnesses knew her already, others would not have recognised her [. . .]. The victim was heavily pregnant. During the initial proceedings the woman and her relations left the courtroom and had to pass us all again still in a distraught state. She had to go through a glass door and sit at the top of a staircase to obtain some privacy, as there was nowhere else for her to go. During her evidence she had to leave the courtroom twice to compose herself. She vomited in the hallway and I have never heard anyone sob more than this young woman. I am absolutely appalled that there was no room or private place for this woman to go in what was obviously the worst experience of her life apart from the rape itself.

I am a 42 year old mother of 4 children aged between 8 and 17, three of which are girls. I have to say that if any of my girls were ever unfortunate enough to go through the horrendous experience of this young woman, I would have to think twice before going to court if this is the way the victim is treated.

I did not see the judge enter the courtroom, so there was obviously another way in.

'Julie'

After I left, I stayed at the Women's Refuge. The supervisor there was very good to me. I went for the first Barring Order when I was staying in the Women's Refuge. When I went to Court the Judge said "oh I know this girl, I can't do this case". That was before Christmas. I stayed in the Refuge for Christmas with my children, while my ex-husband was down in my house. Then I had to wait and go back again, two months later. I had to wait the whole day. I left the refuge at nine o'clock and my case was the last to be heard.

Before I left my husband, as I was leaving, he had hit me with a brush and locked the door. I had my new boots on me and I went back and gave him a kick in the leg and unlocked the door and went. He told the Judge that I was violent towards him and had kicked him in the leg.

The Judge said I was to go back and live with him for three months and he would give me a Protection Order. I said about the violence towards myself and my daughter but he said he didn't like breaking up marriages. I didn't even know what a Protection Order was at the time. I would know now. I hate that Judge. He didn't give me a Barring Order and I don't know why. I told him about the violence towards me and my daughter. When I left I got a social worker. She came to Court with me but she didn't give evidence of the violence. She had a report written but I didn't read it. She was no use to me.

A and B

This particular case concerned a serious abuse by a man of a number of young children all under the age of ten. Two of the girls, A & B, were referred to our clinic (St. Francis' Clinic) and were subsequently required to give evidence in a criminal prosecution.[2]

The first problem arose when there was a delay of over a year between the taking of statements by the gardaí and the preliminary hearing of the case. This caused untold strain to the children and their families. A lot of pressure was experienced by the children and their parents and the professionals involved to give evidence in order to secure a prosecution.

The pre-trial consultation was confusing. Meeting with appropriate solicitors was haphazard so much so that the State Solicitor failed to recognise the families of the girls and approached and discussed the case with a parent whom they mistook for a social worker. On the day of the trial, the children, their parents and the supporting professionals were in court as advised at 10 a.m. The list was read over, the Judge decided to hear the less complicated cases first necessitating the children, parents and professionals hanging around all day. There was no place to wait and the accused was also waiting in the same area - the toilet was not easily accessible and one could also meet the abuser coming or going and if it had been a boy, he could have met him in the toilet.

The length of time spent by the children in the witness box was far too long, in excess of an hour. The examination in chief was upsetting the children and their parents because of the nature of the experiences. There was no provision for the children's mothers to sit near them. The cross-examination was described by the children's parents as abusive. There was great resistance to the putting up of screens to prevent the children being in eye contact with the abuser while giving evidence.

Both Judge and barrister wore wigs and the atmosphere was in no way child friendly and was in fact intimidating.

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[2] This case was first tried in November, 1992, prior to the introduction of the use of video links in court.

C

Over four years ago our daughter, who was nine, was raped by a neighbour who was about 14 years old at the time. The assault caused her to have surgery to the vaginal area under general anaesthetic. The abuse included vaginal and anal penetration.

The incident was reported to the gardaí who investigated the matter. My wife and I made a statement as did our daughter. About four months later the gardaí called to our house and informed us that there would be no prosecution of the offender. Furthermore we were told that the offender had been dealt with under the Juvenile Liaison Scheme.

At no stage were we asked about dealing with the case this way and the first we heard about the Juvenile Liaison Scheme was when the gardaí called to our house to tell us what had happened. We were told that the offender was to undergo extensive supervision for two years and also receive counselling and attend psychiatric workshops.

We also found out that for a person to go into the Juvenile Liaison Scheme that person must admit that they committed the offence which meant that the offender had admitted raping our daughter but that the application of the Juvenile Liaison Scheme would only take place after consultation with the victim and the victim's family. At no stage did this happen in our case, this lack of consultation further added to our trauma.

We wrote to the Director of Public Prosecutions about his decision but he replied that he could not give us the reasons for the decision not to prosecute. We complained about the handling of the case by the gardaí, in particular the way we were not consulted about the application of the Juvenile Liaison Scheme to the offender but no action was taken about this. At no stage after we made the original complaint were we included in any of the actions taken by the gardaí or the prosecuting authorities.

Our daughter still suffers from this rape. We have all suffered from the way the system worked - or in this case, did not work.

Chapter 3 UNDERSTANDING THE PROBLEM: Literature Review

3.1 Introduction

In this section we highlight some of the research and theory which addresses men's violence against women and children. It includes domestic violence, rape, child sexual abuse, pornography and prostitution.[1]

- violence is endemic in women's lives and part of their everyday experience;
- globally and in individual States, recognition of the extent, urgency and complexity of the problem is a very recent phenomenon resulting from feminist activism and research;
- men are the overwhelming majority of perpetrators of violence and sexual abuse of women and of children; men use abuse, coercion and force to control women and children;
- men's violence against women and against children is not exclusive or particular to any one social class, ethnic group, age group or type of relationship;
- men's violence is not simply about isolated incidents and individual men; it is central to the maintenance and reinforcement of patriarchal relations of power;
- factors such as class, ethnicity, age, disability, sexuality or regional location, for example, mean that women's and children's experiences and needs in relation to the justice system may vary considerably;
- men's violence exists on a continuum, with connections between its many forms - physical, mental and sexual; while there are common factors underlying the various forms of abuse and violence, there are also differences which need to be identified and understood;
- male violence occurs in widely varying contexts, private and familial as well as public, and although our fear of strangers is justified, women and children are most at risk of violence and abuse from 'known' men and in their own homes;
- women's definitions and interpretations of male violence have rarely been given credibility, and often differ fundamentally from those of the law and of professionals; women's own accounts of their experiences are thus crucial in enabling us to identify and eradicate men's violence and abuse;
- the reality and prevalence of sexual and other exploitation and abuse of children have been profoundly denied by adults, women and men, in many ways;
- the oppression of women and that of children are not identically structured in every respect and should not be confused; children's profound powerlessness and status

as 'non-persons' places them at even greater risk, and denies them credibility in the adult world;

- the responses of State agencies and institutions, including the law, to men's violence against women and children, are seriously inadequate and frequently inappropriate; globally and in individual States, recognition of the extent, urgency and complexity of the problem is a very recent phenomenon resulting from feminist activism and research;

- violence is a fundamental instrument in the maintenance of oppression, injustice and inequality and will ultimately be eradicated only through massive transformation of the socio-economic, political and cultural structures of power.

3.2 Violence Against Women in Intimate Relationships (Domestic Violence)

The problem of men's violence against women in intimate relationships has emerged as a significant public issue and is beginning to be recognised as a major social problem which threatens the safety, bodily integrity and equality of every woman.[2] The few sources of statistics available in Ireland reveal a shocking level of abuse of women by their husbands and male partners (see Chapter 4).

In exploring the problem of men's violence against women in intimate relationships, several aspects must be considered:

- the socio-economic contexts of women's lives that place them in danger, and specifically patriarchal, traditional family structures and gender roles which 'privatise' women as men's property;

- the types of violence perpetrated and the impact and effects on women and on their children;

- the concept of 'domestic violence' as crime;

- public and agency responses to such violence.

Socio-economic Contexts of Women's Lives

The very structure of women's lives places them in danger given the systematic and institutionalised strategy for the sexualised oppression of women. Any comprehensive analysis of violence against women requires an understanding of social and economic structures, cultural attitudes and values, rather than of just the individuals involved, and rests within an even broader analysis of all aspects of women's lives in a male-dominated society.

Within the marriage relationship, men have historically maintained greater power over women. Because women have traditionally been confined to the home, they have been denied economic independence, and excluded from positions of public power and status outside of the family. Men's violence therefore, becomes a reflection and a reinforcement of unequal power relationships in society and serves to maintain male social control. Stanko (1990) argues that keeping women in fear of violence from men

is the best weapon for those who have little to justify their superior position and/or prestige. In such a context, therefore, violence is condoned or sanctioned by institutions and cultural beliefs which uphold the dominant position of men, the sanctity of the family and women's economic and social dependency on men.[3]

A Private Problem

There is a widespread belief that it is inappropriate to intervene in the private world of the family, deemed to be beyond the legitimate control of public agencies or the state. 'Private violence' is therefore often excused or ignored as 'natural' or 'normal'. 'Real violence' tends to be defined as that which is committed by strangers. (Kelly, 1988; Stanko, 1990). Because popular opinion sees 'domestic' violence as a private (family) matter, there has been both a silencing and diminishing of the seriousness and extent of the problem. In Ireland, this silence has been strongly maintained, given the dominant ethos of family life as sacred, private and protected from outside interference. Roman Catholic ideology is a major factor in the construction of traditional family frameworks and roles, which maintain gendered systems of dominance and subordination, control and acquiescence.[4]

Many women subjected to violence by husbands or partners do not reveal the abuse and remain in violent relationships because they have been socially conditioned as nurturers, responsible for holding the marriage and family together. Ruddle and O'Connor (1992) found that for the Irish women participating in their research, marriage was of central importance in their identity - even at the cost of violence. In their defined role as nurturers, women have learned to be self-sacrificing, taking care of the needs and emotional burdens of others, at the expense of their own well-being, and even survival.[5]

In addition to the social and familial pressures to maintain silence regarding the abuse they are enduring,[6] many women in violent relationships have no control over their own lives because they are trapped in a situation of financial dependency. Research consistently confirms that women stay in violent relationships because of fear, economic dependency, lack of support, role expectations, internalised oppression, erosion of self esteem, being worn down emotionally and physically, or a combination of these. If left unchallenged and unchanged, male violence will continue.

Some women, in order to escape abusive relationships, join the growing population of the homeless.[7] Kelleher (1992) states that there is a definite link between domestic violence and homelessness and Carlson (1990) claims that the majority of homeless Irish women with children who are questioned in hostels, report that they left home to escape violence or sexual abuse. She maintains that the psychological effects of "hostel life" include feelings of powerlessness, depression and low self-esteem.

'Stranger Danger': The Emphasis on Public Safety

It has been observed that the media, police, government agencies and most criminologists agree that public concern about violence is best focused on the strangers who make our streets unsafe.[8] Advice is centred on fear reaction strategies that encourage women to become streetwise and security conscious in order to prevent 'stranger danger' (eg, women are advised to carry personal alarm devices, enrol in self-defence courses). By focusing on (and financing) *public* safety strategies, the need for

solutions for women's safety *in the home* becomes obscured. It has also been suggested that the emphasis on 'public safety' is based on men's experience with crime rather than women's. In most adult men's experience of crime, the perpetrator is a stranger, while for women, the greatest potential of sexual or physical danger comes from known men within a so-called safe environment such as the family home.[9]

There is a clear contrast presented between the threat of the violent world outside and the cherished ideal of the safe, nurturing, loving environment in the home. The blanket belief in the home as a safe haven of security and loving relationships with intimates, is an illusion. Statistics present a far from comforting picture. International research shows that while domestic violence is increasingly being reported, only 10% to 15% of women will report assault to the police. Such reluctance indicates that reported violence is likely to gravely underestimate the true level of violence.[10]

Types of Male Violence

Mental Abuse

Men's violence against women and children involves the perpetrator exercising power over the victim by inflicting great pain, or threatening pain, in a way that is humiliating and/or degrading. Such actions have no regard for personal boundaries. A personal threat may not even be necessary to intimidate or control a woman. The social system, and institutions controlling her life may provide adequate reinforcement themselves.[11]

The fear of male violence, in itself, interferes with women's full participation in everyday life in a civilised society. The physical abuse sustained by women from men they know is usually accompanied by mental violence in the form of harassment, verbal abuse in the form of sexually derogative language, economic deprivation and social isolation, which can be more damaging in the long term than physical violence.[12]

Physical Abuse

Ruddle and O'Connor (1992) found that often the first physical attack on the woman came early in the relationship and was completely unexpected. The very unexpectedness of the violence was seen by the women as leaving them powerless either to try to prevent or stop the attack. The women expressed shock and fear and also blamed themselves for the attack. Once attacked, the violence was likely to reoccur again unexpectedly and to increase in frequency and severity. Despite appalling and frequent violence, the abuser often charms the outside world, leaving the woman emotionally isolated.

Research conducted by Women's Aid found that physical violence experienced by women results in and includes being:

- pushed or shoved
- bruised
- bitten
- beaten up
- scratched
- kicked
- head butted
- broken bones
- miscarriage

- broken teeth
- forced sex
- rape
- strangled or choked
- knocked unconscious
- hit with something
- thrown against something
- permanent eye damage
- thrown down the stairs
- damage to property
- threats about children

'Domestic' Violence as Crime

The problem of men's violence against women is so common - and yet so private. Although there is hardly a street in the world where domestic violence is not taking place, in most cases it is viewed as a lesser form of violence (crime) than the 'spectacular' violence (crime) on the streets.

'Domestic violence' is the term most commonly used to describe violence in intimate relationships between women and men. However, this term is unsatisfactory in that it de-genders such violence by failing to acknowledge the unequal relations of power between perpetrator and victim. The use of the word 'domestic' trivialises, privatises, and de-criminalises the violence, reinforcing perceptions that it is a private matter and thus beyond the remit of the State and the law. Phrases such as 'spouse abuse', 'family violence', 'couples in need of help' and so on are just as evasive. These apparently harmless turns of phrase deny men's agency and responsibility and contribute powerfully to the paradoxical construction of women as at once victims and as responsible for their own fate. We know, however, that the vast majority of violence in intimate relationships and in the home is men's violence against women and children.

Men use many forms of sexual intimidation which are mistakenly perceived as 'harmless' because they are common, ordinary, everyday experiences. Arguments for so-called acceptable levels of male violence contribute to confusion within the social system's response to men who commit the abuse. Similarly, the construction and practice of heterosexual masculinity as active/aggressive has been challenged by feminists. Dobash and Dobash (1992) contest the widely accepted perception that "a man is only a man" when he is dominating and controlling a woman. Women's Aid and other feminist activists have campaigned to raise awareness of the extent and prevalence of domestic violence and have challenged the notion that because a relationship exists between the perpetrator and victim it is a 'lesser' assault than an assault by a stranger.

Public and Agency Response to Men's Violence Against Women

There is a serious lack of support services for women subjected to male violence. Women are prevented from seeking help from agencies, family and friends because of social and economic constraints and cultural factors. Many professions have failed to recognise domestic violence as a serious crime and have failed to develop adequate professional responses.

In Ireland, public response is hindered by inadequate funding for the provision of resources and for research on the real extent of the problem. This is confirmed through repeated requests by most agencies for increased financial allocations.

Refuges

In Ireland, as elsewhere, refuges are seen as the major source of help and support and as a safe place where someone will listen without judgement or blame. Women's Aid (1995) state that access to adequate and safe refuge is essential for women and children who are being physically, sexually and mentally abused in their own homes. They stress that a refuge must provide a safe environment run on a self-help and empowerment model. When women use refuges, research has shown that it impacts on men's behaviour by reducing, and sometimes stopping the violence. Men recognise that their abuse will not be tolerated.[13]

Garda (Police) Response

Because of the way 'crime' is defined in a patriarchal society, many researchers have noted that police authorities were unsympathetic or reluctant to arrest men who were accused of being violent towards their partners.[14] At times, police saw domestic violence as less than 'real police work'. Kelleher and Associates and O'Connor (1995) state 'that when police give an ineffectual response to violence against women in the home, it tends to condone the behaviour of the abuser and reinforce his conduct as 'normal'. If police do not offer unconditional protection to women, they tend to imply that the victim is a guilty participant'.

In their investigation of the gardaí's treatment of incidents of domestic violence, Morgan and Fitzgerald (1992) found that the most common outcome of the gardaí's visit to the scene of the violence was that 'the victim was advised what to do'. Morgan and Fitzgerald also revealed that the most apparent role perceived by gardaí responding to incidents of domestic violence was one requiring sensitivity and understanding, that is, a counselling or peace-maker role. This response is confirmed by Casey's (1987) research, even though the women who called for the gardaí expected them to act as 'law enforcers', that is, to arrest and/or charge their partners.

According to Morgan and Fitzgerald, the gardaí are now developing a strictly policing approach and a more pro-arrest policy comparable to practice in relation to non-domestic violence. Such an approach is crucial in that it conveys to the assailant that violence is unacceptable. To the victim, the message communicated is that she need not put up with this abuse.

Studies have found that the threat of arrest reduces the risk of violence to women and children.[15] Some research shows that the fear of experiencing personal humiliation actually decreased men's violence in the home. The claim that fearing arrest will make violence worse in the future is unfounded. Sherman and Berk (1984) showed in their research that regardless of how the court treated the case, the actual arrest produced a deterrent effect upon the man charged. Furthermore, contrary to popular opinion, research shows that women who file charges against the men who abuse them actually followed through with the charge.[16]

Response from Social Workers

Kelleher and Associates and O'Connor (1995) found that violence against women in the home has not yet been identified as a special issue in need of attention by the social work service and that no written guidelines on social work practice relating to domestic violence existed. According to them, the Eastern Health Board has had to prioritise cases due to the demand on its service and they see their priority cases as being mainly concerned with child abuse and child protection. A similar finding is reported in the research of McWilliams and McKiernan, (1993).

Response From Medical Agencies

Kelleher and Associates and O'Connor (1995) found that a large proportion of domestic violence cases enter the hospital system through the Accident and Emergency (A & E) Department. Dealing with domestic violence is a significant part of the work of the medical social worker attached to the A & E Department. Warshaw (1993) found however, that most women are sent home without additional medical or social service follow-up, and suggests that the constraints of a busy emergency room and the low rate of detection and intervention by medical staff of abusive relationships leads to ignoring battering and women's requests for help. As a result of similar findings and based on their belief that training for medical personnel precipitates effective response to women who have experienced violence from men, Cronin and O'Connor (1993) promoted a training programme for the staff in the A & E Department of St. James' Hospital in Dublin. Findings indicate that training has had an impact on women's disclosure of violence.[17]

McWilliams and McKiernan (1993) report that over half of the women in their research went to their GP seeking help regarding the abuse they suffered from men. Of these women, only one-third found the GP to be helpful. Reasons for the lack of help varied from non-disclosure, busy surgeries, GPs who are hard to approach, and doctors who did not ask about the injuries. The research revealed that GPs' main response was to prescribe anti-depressants or to pass on the problem to another agency. Ruddle and O'Connor (1992) found that for the women in their research who had attended their GP, most went solely for medical attention and had received treatment or been referred on to hospital. One-fourth had been prescribed tranquillisers and one woman in their research said that her 'lady doctor' told her that "what happens in the bedroom is private".[18]

Need for an Inter-Agency Response

There is overwhelming agreement by Irish and international service providers and researchers on the need for a strategy at an inter-agency level. So as to avoid duplicating or counteracting solutions, specific information on the activities and services provided by relevant local voluntary and state agencies needs to be integrated.

3.3 Men's Violence Against Children

While it is beyond the scope of this report to explore all of the complex facets of child abuse, it is important to note that the issue raises uncomfortable questions about 'adult power and responsibility, the structure of the western nuclear family, fatherhood, motherhood, masculinity and male sexuality', as well as about the myths and fictions surrounding childhood.

Kelly *et al.*(1996) summarise the crucially important insights into the sexual abuse of children over the past two decades as including the following:

- males are the vast majority of sexual abusers of children;
- children are most likely to be abused by a male that they know;
- abuse takes a range of forms, occurs in varying contexts, and within a diversity of relationships;
- individuals and agencies have frequently failed to respond appropriately to cases of sexual abuse, often blaming the victim and excusing the offender;
- these findings are echoed in the knowledge developed over the last 20 years about male abuse of adult women.

Below, we indicate some aspects of the problem of child sexual abuse, bearing in mind that the abuse and exploitation of children, is both far more widespread and more varied in form than research or records reflect.[19] Recent Irish experience confirms this, as revelations continue to emerge about the appalling physical, psychological and sexual abuse of children in families, schools, care institutions and so on.

Social Awareness and Intervention

The family-centred ideology of Irish society has led to an unwillingness on the part of the State to problematise the care of children, and a marked reluctance to politicise the issue.[20]

One of the most significant events in the history of children's welfare in Ireland occurred when the details of the Kilkenny incest case became known. The implications of the Kilkenny case went far beyond the (lack of) intervention by professionals. Issues of public accountability and the prevalence and status of child abuse as a social problem became extremely formidable. The widespread disclosure of the extreme physical and sexual abuse suffered by the daughter and her mother in the Kilkenny case left the public and professionals in no doubt about the nature of men's violence as a social problem in Ireland.

Inquiries into child abuse generally have three main objectives. First, to set out the central facts. Second, to critically outline the role and function of the agencies concerned and the nature and quality of their relationships. Third, to produce recommendations for future professional action. Ferguson (1994), in examining these three objectives is satisfied that the Kilkenny Report (McGuinness, 1993) achieves these objectives. The fact that the Kilkenny case prompted such a sharp social and political reaction is not because it was the first of its kind, but rather, because there had not previously been such an inquiry into the Irish child protection system. The Kilkenny case shows that the State has an important role to play in providing the kinds of information that will promote lay people's knowledge, confidence and trust in child protection services.[21]

The significant number of controversies and crises centering on issues of socio-sexual control in Ireland since the early 1980s have been noted, as have the repercussions for the Catholic Church and Irish society as a whole. Almost daily, the media reveal yet another accusation of child sexual abuse and the Dublin Rape Crisis Centre notes that a substantial rise in requests for counselling follows sustained media attention.[22]

Making the Links and Naming the Child Sexual Abuser as Male

A clear link between domestic violence and sexual and other abuse of children has been found in several studies.[23] In her study of Irish refuges, Casey (1989) found that 28% of mothers mentioned that their children had been severely beaten by their partners, and while 'cycle of abuse' explanations for all forms of sexual abuse have been contested as simplistic and partial, some studies have found a statistical link between women who were abused as children and women who are abused as adults.[24]

With regard specifically to the sexual abuse of children, prevalence studies in the USA and in Britain have found that the percentages for adult female abusers are between 5 and 7%.[25] In Ireland, McKeown and Gilligan (1991) found that in 90% of the confirmed cases in their study, the perpetrator of the sexual abuse was male. They also found that 3 out of 4 children who had been sexually abused were female.

Children as Witnesses

The field of child abuse has been dominated by the issue of physical abuse of children. More recently, attention has begun to focus on sexual abuse of children, triggered by a dramatic increase in awareness programmes and disclosures of sexual victimisation. An emerging area of research still in its infancy is emotional abuse and psychological maltreatment.[26] There is still considerable controversy about the role of child protection services for children who are witnesses to domestic violence. Mandated interventions through legislation, such as reporting responsibilities are vague or non-existent.

> The needs of children in families of domestic violence are rarely considered except when in cases of 'child protection'. Often children are seen by service providers to be part of the battered women's responsibility and added to the complexity of finding safety, appropriate housing and financial support. Children who are witnesses rather than victims of violence, in our experience are not considered to be at risk so no intervention happens (Women's Aid Submission on Mandatory Reporting, 1996).

Women who are being abused are mothering in a crisis situation and must be given support to cope as opposed to being blamed for their partners' abusive behaviour. Women's fear of losing their children by being declared an incompetent parent is a further trauma added to the abuse they have suffered at the hands of their partners. Women's Aid (1995) have urged agencies to embrace the philosophy that 'women's protection is child protection'.

Child Sexual Abuse and the New Emphasis on a Therapeutic Ideology

The trend in recent years shows that the focus of child sexual abuse is seldom centred on the perpetrator of the violence but rather on the effects upon the child. While this

emphasis is vital for the child who has suffered the abuse (or adult dealing with her own childhood experience), it has tended to deflect the attention of professionals and researchers from the source of the violence, i.e., the perpetrator. Increasingly, incest is portrayed more as a medical issue than as a social problem. Seldom do survivors' accounts of incest speak of male violence, or of the deliberateness of that violence. Incest is being framed through medical or mental health ideology, with professionals, and the public, calling for treatment of the 'illness'. Armstrong (1996) maintains that incest has been co-opted and reformulated by the therapeutic ideology as an illness in women, to be treated, and as a prediction of illness in children.[27]

While it is confirmed that child sexual abuse contributes immensely towards the deprivation of emotional growth and autonomy, the victimisation and 'treatment' models are inadequate in eliminating men's sexual abuse of children. Such models shift responsibility from the male perpetrator to the victim/survivor, thus re-defining the problem and reinforcing a 'logic of victimology'.[28]

Issues of Blame and Responsibility

Women are regularly made to carry the burden of blame and disapproval for 'failing' to protect children from sexual abuse in families, and accused of 'colluding' with the perpetrator. This once again shifts attention from the fact that fathers, stepfathers, grandfathers, uncles and brothers continue to sexually abuse children in family contexts, and that it is they who bear the responsibility for this criminal behaviour. Despite legislative change and some increase in service provision, assumptions about the 'natural' right of men to exercise power over women and children persist, and as a direct consequence, women and children continue to be physically, mentally and sexually abused. The work of feminists in Ireland since the 1970s has been crucial in bringing about significant changes in attitudes and perspectives and in contributing to the development of the legislative and institutional frameworks necessary to combat this violence.[29] However, Hyden and McCarthy (1994) note society's simultaneous 'prohibition and promotion' of men's violence, that is, public condemnation of such violence accompanied by systemic reluctance to (a) clearly attribute responsibility to the perpetrators, (b) dispense sanctions, (c) develop coherent strategies to combat and prevent violence, and (d) failure to provide adequate and appropriate services/support for women and children who have been victimised.

Reviewing the causes and effects of male sexual violence against children confirms and parallels the causes and effects of other forms of male violence discussed here: whether in relation to women or to children (or to both), sexual violence is used by men as a way of securing and maintaining the relations of dominance and subordination which are central to the patriarchal order. This does not mean, however, that the interests of women and children are always identical. Kelly (1992) emphasises that while women have achieved formal equality with men in many countries, this is not true of children who remain without legal status.

3.4 Rape

Although the numbers of women reporting rape and sexual assault to the police have risen steadily over the past decade, rape as a crime is still profoundly underreported Low reporting rates are paralleled by even lower rates of conviction in rape cases.

Lees (1996) found that while the numbers of rapes being reported has risen, the proportion of reported rapes in Britain resulting in a conviction has more than halved over the past decade.[30]

The reasons why women are now somewhat more likely to report rape to the police include women's own perceptions of the seriousness of the offence, as well as an increase in their expectation of being believed by the police. However, it is also possible that there may have been an actual increase in the prevalence of rape.

One of the most powerful reasons why women continue *not* to report rape to the police is their perception that the whole Criminal Justice process will be traumatic, long-drawn out and ultimately fruitless. Furthermore, Scully and Marolla (1993) found that of the convicted rapists they interviewed, most felt that rape was a 'rewarding, low-risk' act, because of the known low conviction rate.

In 1992, Lavinia Kerwick courageously made a public statement condemning the Judge who had adjourned sentence for a year on the man who had raped her. The Judge's decision was based on the fact that, *inter alia*, the rapist had a clean record with good references from his employer. Lavinia Kerwick appealed publicly to the Minister for Justice and subsequently some procedural changes were introduced. However, the Judge's decision was not overturned. The case confirmed for many women their perception that the Criminal Justice system is based on profoundly unequal power relations, in which women are consistently framed as the losers (Kennedy, 1992).

In Ireland, discussion of rape has tended to focus on medical and legal issues, while qualitative research involving women's experiences of rape is rare. Up until the 1970s, most research on rape had a psychological rather than a sociological basis. Researchers typically looked at individual rapists rather than for cultural and social explanations of rape. Feminist researchers have highlighted the need to focus on the structures and myths through which rape and sexual violence against women are reproduced and legitimated.[31]

Following on the work of Rape Crisis Centres over many years, in her discussion of rape victims within the Irish legal context, Fennell (1993) states that in addition to obstacles such as social stigma or difficulty in obtaining evidence, women are also victims of myths regarding their behaviour, their credibility and their precipitation of the offence. She notes the persistent strength of myths about 'natural' male sexuality and 'ordinary sexual intercourse'.

Rape and the Law

The division of rape by the law into two or more forms (e.g. 'common law rape', rape under Section 4 of the 1990 Act, and 'statutory rape') and the distinction made in Irish criminal law between rape, sexual assault and 'aggravated sexual assault', diffuses the issue and deflects attention away from the damage done by men. It concentrates on rape as a descriptive incident rather than on the woman who has been violated and on her subsequent injury.

Both O'Malley (forthcoming) and Fennell (1993) in their discussions of the law on rape in Ireland indicate the restrictive definition of rape and note that it has long been the subject of controversy. O'Malley refers to the fact that many of those campaigning for rape law reform, including the Law Reform Commission (1988) and Rape Crisis Centres, were strongly of the view that the definition of rape should be broadened to include other sexual assaults involving bodily penetration. The traditional concept of common law rape, however, has been upheld, with a new variant ('rape under Section 4') being added, resulting in the present coexistence of two rape offences.

Women's and Men's Perspectives on Rape and the Issue of 'Consent'

A crucial problem regarding rape concerns the issue of consent. The word 'no' may not pose a problem in court if the complainant is considered 'respectable' and her attacker is a 'stranger'. The situation is more complicated if the woman is not considered 'respectable' for some reason, or if she has adopted a passive role in order to minimise the potential physical violence accompanying the rape. She may then be accused of co-operating with being raped. Stanko (1985) argues that the notion of legal consent around rape has been defined by male presumptions about women's sexual behaviour, that is, finding pleasure by being pressed into submission. Fennell (1993) notes that as long as the dominant understandings of masculinity as aggressive and femininity as passive remain central to heterosexual relations, difficulties will arise in relation to rape trials. Fennell asserts that the current Irish legal construction of rape is based on male assumptions, which also determine the treatment of the credibility of the rape victim. Women are 'told' when, how, if and to what extent, they have been violated.[32]

Marital Rape

In Ireland, spousal or marital rape was exempted until the introduction of Section 5 of the 1990 Rape Amendment Act. Rape Crisis Centres sought the removal of the exemption arguing that it was illogical and unfair that a man living in a stable relationship with a woman to whom he was not married was liable to prosecution for rape, whereas a husband, by mere fact of marriage, was not. Furthermore, in terms of the woman's experience as a victim, rape by her husband may be as degrading, painful and traumatic as rape by a stranger, not least because of the breach of trust and confidence it involves.

The Professionalisation and Medicalisation of Rape

A professional model which encourages women to behave as if the rape never happened or to trust men because distrust is viewed as unreasonable and problematic, demonstrates a grave misperception of the everyday negotiations women must undertake for their personal safety. Foley (1994) cautions against ignoring the real issue of men's violence against women and the adoption of a social services approach to working with women which turns them into 'social problems'. Feminist and women-centred agencies such as Rape Crisis Centres and Women's Aid have fundamentally rejected this model and challenged the resistance of professionals to recognising the full reality and effect of male sexual violence and the power systems and ideologies that encourage and condone it. Instead, they have developed more holistic systems of support networks and services for survivors of men's violence.

3.5 Pornography

Pornography is highly relevant to the present report given its ever-widening availability and acceptability, debates about its effects on individuals and society and specifically about the links between pornography and violence. However, with the exception of Corcoran's (1992) and Moane's (forthcoming) valuable discussions, the topic has been largely neglected in Irish research, despite feminist debate and campaigns over many years. Moane (forthcoming) observes that very few women appear to be aware of the prevalence of pornography, or its contents.

Pornography is a multi-billion dollar industry, which is estimated to be at least as big as the video and music industries combined. Research in Europe and North America reveals around 60% of men as regular users of pornography.[33]

Regardless of the context of women's lives, pornography operates to differentiate women from men by representing men in positions of power and influence over women. These positions are ones which are often abusive and/or violent. Schlesinger, *et al.* (1992) conclude that women are likely to feel more vulnerable, less safe and less valued members of our society if, as a category, they are with some frequency depicted as those who are subjected to abuse through the media of pornography. Russell (1993) determines that sexual objectification, common to pornography, portrays human beings - usually women - as depersonalised sexual things, rather than as multi-faceted human beings deserving equal rights with men, and defines pornography as all types of materials that combine sex with the abuse or degradation of women: it is the sexualisation or eroticisation of dominance and submission.

Large numbers of children are caught up in the sex industry internationally, yet research and debate rarely focus on the exploitation and abuse of children in pornography. Exploring the ways in which child sexual abuse and child pornography reinforce each other, Kelly (1992) looks at the concrete harm done to children in both the production and use of pornography, and raises the issue of the more generalised consequences of the existence and availability of child pornography and the sexualisation of children in the Western media (see also Kelly *et al.*, 1996).

The Council of Europe (1993) collected information by means of a questionnaire sent out to Member States and submitted a report entitled, *Sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults*. In it, the Council suggests an alarming transformation of children and adults into consumer objects. The report recognises sexual exploitation and abuse for profit-making as a significant social problem and characterises it by a high degree of invisibility and mobility.

The Council of Europe observes that this abusive exploitation is often associated with early sexual abuse within the family or outside of it and is underestimated by the criminal justice, welfare and educational agencies.

Impact and Effects of Pornography

In an extensive review of research exploring the effects of exposure to pornography, Moane (forthcoming) found substantial and consistent evidence of links between the production and use of pornography and violent behaviour. She notes that:

- consumption of pornography is associated with an increase in aggressive attitudes to women, and greater acceptance of myths about rape, eg, that women like to be raped;
- repeated linking of sex and violence in pornography and media leads to the eroticisation of violence, so that non-sexual violence becomes sexually arousing to men;
- consumption of pornography may increase a proclivity to rape or sexual assault in some men.

Impact and Effects for Children

A pattern of mutually reinforcing connections is clearly evident in the production and use of child pornography:

> Child sexual abuse is not 'caused' by child pornography, rather the pornography is the record of abuse which has already taken place. It may then be used to justify and/or facilitate further abuse which in turn may result in the production of more child pornography (Kelly, 1992).

Reviewing the literature on the impacts of sexual exploitation and abuse (including pornography and prostitution) on children, Kelly *et al.* (1996) note Finkelhor's (1986) explanatory framework which includes *traumatic sexualisation, stigmatisation, betrayal and powerlessness*, and *enforced silence*.

Disassociation was found by Kelly *et al.* (1996) to be a core response to traumatic events both at the time of their occurrence and over time. Briere (1992) defines disassociation as 'a defensive disruption in the normally occurring connections among feelings, thoughts, behaviour and memories consciously or unconsciously invoked to reduce psychological distress'. Kelly *et al.* observe that while disassociation has been noted primarily in relation to child sexual abuse, it is also a common coping strategy for women who have been subjected to rape and/or domestic violence, or who have been involved in pornography or prostitution. It explains why so many women and children remain silent about their abuse, or find it so difficult to talk about their experience. Inability and/or unwillingness to talk about the experience can lead to children in particular being seen and treated as 'unco-operative' witnesses by professionals. They conclude that 'children's involvement in sexual exploitation exacerbates shame, humiliation and powerlessness', and note that for many children the knowledge that there is a visual record of their abuse (i.e. pornography) is impossibly painful.

3.6 Prostitution

Prostitution as Violence

Barry (1995) observes that 'when the human being is reduced to a body, objectified to sexually service another, whether or not there is consent, violation of the human being has taken place'. She analyses the connections between specific forms of sexual exploitation, such as sexual violence and abuse, 'sex tourism', pornography and prostitution, arguing that women's sexuality is prostituted in and through practices which violate women's human rights to dignity and equality.

Barry and others formed the Coalition Against Trafficking in Women to develop an international human-rights instrument, the Convention Against Sexual Exploitation. The Convention recognises sexual violence and prostitution as forms of sexual exploitation, which subordinates women as a group, violates human dignity and the right to equality, inflicts grave harm and often takes the extreme forms of sexual slavery, torture mutilation and death. It calls upon States Parties to punish all perpetrators of sexual exploitation and to redress the wrongs done to their victims through penal, civil, labor and administrative sanctions.[34]

In their report on the sexual exploitation of children, Kelly *et al.* (1996) also explore the connections between pornography, prostitution and trafficking, defining them as forms of sexual exploitation and abuse. Finding very substantial evidence internationally of such exploitation, they note that although international law and conventions provide a basis for action to combat such exploitation, most regional and national governments have 'failed to make children's rights and quality of life a priority', thus effectively legitimating violations of children's rights, including explicit forms of abuse and violence.

Prostitution and the Experience of Violence

While constituting an explicit form of violence in itself, sexual and other forms of violence against women working as prostitutes are also endemic. O'Neill (1994; 1996) found that women experienced severe sexual and physical violence overwhelmingly at the hands of clients, pimps and domestic partners, although other women and unknown assailants were involved in some cases. Women reported rapes, and extreme and brutal violence as well as verbal abuse and threats. The women surveyed tended to talk about the violence in a matter-of-fact way, perhaps because 'they have become socialised to accept violence as part of life'.[35]

In Ireland, O'Connor (1995; 1996) found that 55% of the clients of women working as prostitutes behaved violently towards them, with beatings, a broken jaw, near strangulation and cuts requiring stitches cited among the injuries. She also found that many of the women were reluctant to contact the police when attacked, with 83% stating that they would only report an attack if they were very badly hurt. Provisions on soliciting and loitering, in particular, in the new legislation relating to prostitution (Criminal Law (Sexual Offences) Act, 1993) have had the effect of seriously deterring women from reporting violence to the gardaí, for fear of being charged. One woman interviewed stated that 'it has always been dangerous, but it has increased. Clients are aware the law has changed and that women don't want to go to the police'.

Such violence and abuse function to further undermine and marginalise prostitute-identified women, partly due to the absence of State action against violence against women, because in many ways women working in prostitution are seen as 'deserving victims'. Women working in prostitution have 'throwaway' status, which is paradigmatic of the status and experience of women as a subordinated group:

> The prostitution of sexuality is the continuous reconfiguring of sex 'on men's terms' to sustain women's subordination (Barry, 1995).

3.7 Conclusion

The term 'victim' suggests a static, universal and unalterable state. However, victimisation involves a process of becoming, resisting and surviving an event or series of events. Most surely, those women and children who survive the violence of men are challenging the profound and persistent injustice to which they are subjected by dominant ideologies, politics and institutional structures and practices.

Legislation is a crucial instrument in seeking to end violence, but it cannot achieve this aim alone, in and by itself. The law must be part of an *integrated approach* to addressing the problem of male violence in all its complexity. Legal and judicial frameworks, social and economic policy, professional principles and practice, education and training, as well as social and cultural attitudes, must be developed which enable the shocking nature and extent of men's violence towards women and children to be ended, once and for all.

Notes

1. Key insights and findings of feminist work on male violence over the past three decades are: see for example, Barry, 1995; Dobash and Dobash, 1979; 1992; Hanmer and Maynard, 1987; Kelly, 1988; 1992; 1996; Hester, Kelly and Radford, 1996; Kelly *et al.*, 1996; Stanko, 1990.
2. See for example Cronin and O'Connor, 1993; Kelleher & Associates and O'Connor, 1995; McWilliams and McKiernan, 1993; O'Connor and Wilson, 1995.
3. Dobash and Dobash, 1992; McWilliams and McKiernan, 1993; Maynard, 1993; Kelly, 1988.
4. See Bunch and Carrillo, 1992; Kelleher and Associates and O'Connor, 1995; McWilliams and McKiernan, 1993; Ruddle and O'Connor, 1992; Smyth, 1996; Kelly, 1988.
5. Ruddle and O'Connor, 1992.
6. Hegarty, 1993; Shanahan, 1992.
7. Focus Point, 1989; Carlson, 1990.
8. Bart and Moran 1993; Stanko 1990; Baird 1988.
9. Hanmer and Saunders, 1993; Schlesinger *et al.*, 1992.
10. Casey, 1987; Cronin and O'Connor, 1993; Kelleher and Associates and O'Connor, 1995; McWilliams and McKiernan, 1993; Morgan and Fitzgerald, 1992; Ruddle and O'Connor, 1992; Women's Aid, 1995.
11. Baird, 1988; Hough, 1990; see Dobash *et al.*, 1995.
12. O'Casey, 1987; Ruddle and O'Connor, 1992; Kelleher and Associates and O'Connor, 1995; Stanko, 1990.
13. Dobash and Dobash, 1992; Ruddle and O'Connor, 1992; Stanko 1990.
14. Casey, 1987; Montgomery, 1991; Ruddle and O'Connor, 1992; Women's Aid, 1995.
15. Gelles and Conte 1990; Williams and Hawkins 1989; Sherman and Berk 1984, Shanahan 1992.
16. Ruddle and O'Connor 1992; Dobash and Dobash; 1992; Kelleher and Associates and O'Connor; 1995; Pence; 1989.
17. Kelleher and Associates and O'Connor 1995.
18. See also Bradley, *et al.* n/d.
19. Driver, 1989; Kelly et al., 1996.

20. McCullagh, 1991; Ferguson, 1994.
21. See also Gilligan, 1993.
22. Smyth, 1995; Carroll, 1995; Moore; 1995.
23. Stark and Flitcraft, 1988; Forman and McCleod, 1996.
24. Kelly, 1992,1996; McWilliams and McKiernan, 1993; Ruddle and O'Connor, 1992; Hegarty, 1993.
25. See Kelly, 1996.
26. Brassard *et al.*, 1987.
27. See also Radford and Stanko, 1996.
28. Radford and Stanko, 1996; Jacobs, 1993.
29. Smyth, 1996; O'Malley, forthcoming.
30. Fennell, 1993; Lees and Gregory, 1993; Leonard, 1993; Russell, 1993; Scully and Marolla, 1993; Shanahan, 1992.
31. Leonard, 1993.
32. See O'Malley, forthcoming, and Fennell, 1993 for a comprehensive description and discussion of the legal aspects of the 'consent' issue in Irish rape laws.
33. Itzin, 1992; Moane, forthcoming.
34. See Barry, 1995; United Nations, 1993.
35. Hoigard and Finstad (1992).

CHAPTER 4 STATISTICAL INFORMATION

4.1 Gathering Information

Our knowledge of the prevalence, extent and consequences of men's violence against women and children is fragmented and partial. Such violence is certainly far more extensive than official statistics reveal since crimes of sexual and other forms of violence, against both adults and children, are seriously underreported.

Measurement of men's violence against women and children is recognised internationally as being exceptionally difficult for a number of reasons.[1] In Ireland, where no national statistics are currently available, the reality of a 'dark' or hidden figure of violent abuse of women and children is especially acute.

The often overlapping factors which explain, although they cannot justify, the profound gaps in our knowledge include the following:

- the historical subordination of women, maintained by a patriarchal system of laws, institutions, attitudes and practices, ensured that the abuse of women was ignored, denied, minimised or rationalised;[2]

- public awareness of and concern about the problem is thus a recent phenomenon, emerging only since the 1970s as a result of feminist research and activism which developed new perspectives and strategies to enable women to deal with the effects of violence and to combat its prevalence;

- although rape has long been on the statute books as a crime, other forms of male violence, such as sexual harassment, domestic violence, pornography, and child sexual abuse have only begun to be identified as highly prevalent and serious offences;

- society's *de facto* legitimation of men's use of violence to dominate and control women and children by refusing to acknowledge its existence and take action to stop it;

- dismissive, inadequate and/or inappropriate police responses to women's attempts to report men's violence, their reluctance to intervene in 'domestic' violence, and low charge/arrest rates, have been a serious deterrent to the reporting of these crimes;

- denial of credibility: women consistently say that they do not expect to be believed, or to be treated with respect and sensitivity by either the police or the courts;

- the problem of credibility is especially acute in the case of children, who have no legal status and are utterly without power in the adult world;[3]

- women's perceptions of the failure of the legal and judicial system to dispense justice (evident in low conviction rates, inconsistent and lenient sentencing, and misogynist comments by some lawyers and judges), as well as the social, emotional and sometimes financial cost of pursuing a case further deter women from doing so;

- some of the powerful reasons for women's silence about violence include their well-justified fear of intimidation and further abuse, their concern for their safety and that of their children, their economic dependency on men, the social stigma of disclosing abuse by a husband/father, and shame and embarrassment at violations of their sexual and bodily integrity.

4.2 Sources of Statistical Information

There are no national, comprehensive numerical-statistical data available in Ireland on the prevalence and nature of the continuum of men's violence and its effects on women or on children. Such information must therefore be sought from a variety of sources including:

- Findings of national, area-based and local surveys of particular forms of violence;

- Annual Reports of service/support providers, including Health Boards, voluntary sector agencies etc;

- Annual Report of Garda Siochana;

- Statistical information published in Government and other State agency reports;[4]

- Media articles and reports;

- Academic research.

4.3 Statistics

4.3.1 The statistics cited here refer in all cases to women as an undifferentiated social group. Across the spectrum of violence to women and to children in Ireland, no systematic statistical information is available in respect of numerous social groups, such as women or children with disabilities, lesbians, women and children in the Travelling community and in other ethnic minorities, elderly women, women or children in isolated rural areas.

4.3.2 Rape and Sexual Assault

Incidence of Rape/Sexual Assault

- Rape and sexual assault continue to be underreported to Rape Crisis Centres, and are seriously underreported to the gardaí,[5] although reporting rates have improved.

- While a total of 191 rapes of women were recorded by the Garda Siochana for 1995, the Dublin Rape Crisis Centre notes that only 28% of people seeking counselling in the DRCC in 1995 had reported the crime to the gardaí. The DRCC estimates the true annual rate of rapes of women to be in the region of 700.

- The number of calls to the Dublin Rape Crisis Centre concerning rape and sexual abuse has increased from 76 in 1979 to over 6,000 in 1995 (see *Fig. 1*).

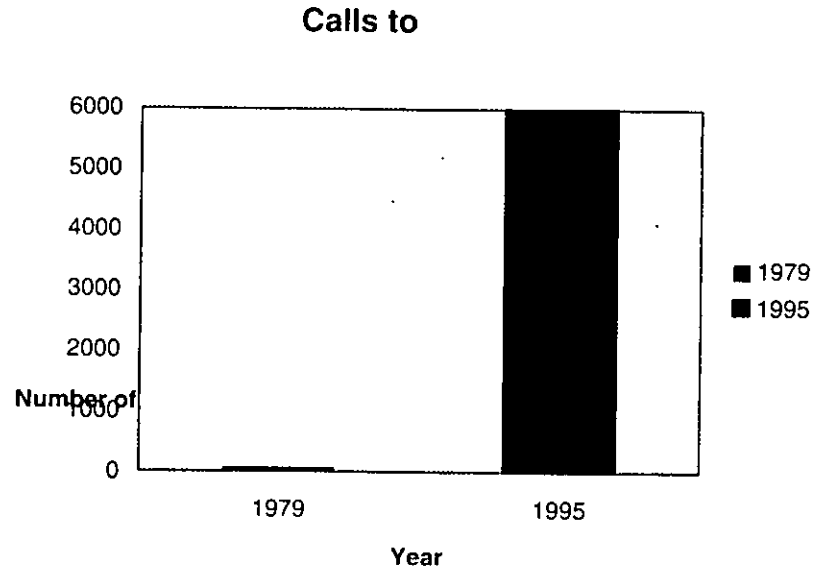

Fig. 1

- The number of rapes being reported to the gardaí has more than doubled since 1990, from 89 to 191 in 1995 (see *Fig. 2*).

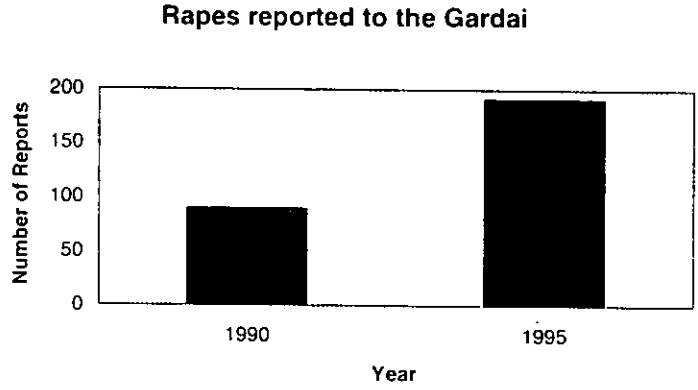

Fig. 2

- The Garda Siochana Annual Report records a massive increase of 43% in the number of reported sexual offences for 1995, as compared with an increase of 9% for 1994 (Garda Siochana, 1994 and 1995).

- Garda crime statistics for 1995 record a total of 923 known sexual offences, and 768 detected offences. This compares with 546 known offences and 549 detected

offences in 1994, and 590 known offences and 479 detected offences in 1993. 88% of all known offences in 1995 were in the categories of Sexual Assault, Aggravated Sexual Assault and Rape of Females (89% in 1994).

- In 1991, fewer than one per cent of cases recorded by Clonmel RCC had been reported. Limerick RCC estimated that an average of 10% of cases were reported to the gardaí, while in Cork, the average reporting rate is estimated at about 25%.

Types of Incident dealt with by DRCC

- In 1995, DRCC dealt with a total of 6096 calls on its 24 hour telephone crisis line - ie, an average of 508 calls monthly, as compared with an average of 430 calls monthly for 1994.

- Of the 2,894 first time calls to the Rape Crisis Centre, 46% concerned rape. Child sexual abuse accounted for 54% of calls with 40% relating to adult rape and sexual assault, and 6% relating to both. The vast majority of callers (83%) were women.

- Of the clients attending the Rape Crisis Centre for therapy in 1995 (452), 57% (260) reported rape or adult rape *and* child sexual abuse. 90% of those clients were women.

Attrition/Conviction Rates [6]

- As we have seen, the vast majority of rapes and sexual assaults are never reported to the gardaí. However, while 40% to 60% of those that are reported lead to criminal proceedings, only a tiny percentage actually result in a conviction.

- Figures for 1994 and 1995 indicate that while the numbers of rapes reported to the gardaí are increasing, the numbers of prosecutions have fallen, as have convictions.

- Of 184 rapes reported to the gardaí in 1994, criminal proceedings were commenced in 78 (42%) cases. There were four convictions on indictment (2% of total cases reported), with 14% of those referred for trial still pending. One charge was dropped, another was adjourned *sine die*, 61 (33%) cases were still pending in the District Court. No proceedings were in process for 78 of the cases reported (42%).

- In 1995, 191 rapes were reported to the gardaí. Criminal proceedings were commenced in 66 cases (35%). There was one conviction on indictment (0.5%), one *nolle prosequi*, and 9 cases were still pending.

- 53 cases were still pending in the District Court (28%), where one conviction was also recorded. No proceedings were in process for 86 of the crimes reported. (45%)

- Of a total of 997 Rapes and 'Indecent Assaults on Females' reported to the gardaí for the years 1990, 1991 and 1992, criminal proceedings were commenced in just 59% of cases.

- In the 5-year period 1986-1991, a total of 493 rapes were reported to the gardaí. 249 rape cases were tried before the Courts; 37 convictions were obtained (ie, 7%) (Connolly, 1993).

- Of all cases of adult rape dealt with by the DRCC in 1994, just under 30% of cases were reported to the gardaí, 5% of cases were dropped, while 17% were pending.

- Only 1% of all adult rape cases dealt with by the DRCC in 1994 resulted in a conviction.[7]

4.3.3 Violence Against Women in Intimate Relationships

Prevalence of Domestic Violence

- The national survey conducted by Women's Aid[8] found that the majority of Irish women know a woman who has been subjected to violence by a partner, with 18% of those surveyed reporting that they themselves had been subjected at some time to some form of violence.

- The Women's Aid study notes that the 'rate of reported violence is likely to underestimate the true level of violence'.[9]

- In 1995, Women's Aid received over 10,000 calls to its National Helpline Service.

- In a survey of 335 women attending four separate general practices, about 15% of the eligible women who completed the written questionnaire had reported suffering physical abuse from their male partners. No class difference was found in respect of the prevalence of violence.[10]

Effects of Domestic Violence

- The Women's Aid national survey found that violence in intimate relationships is extensive.[11] Of the women surveyed:

  13% were subjected to mental cruelty
  10% were subjected to actual physical violence
  9% were threatened with physical violence
  4 % were subjected to sexual violence
  2% had their pets, property and other items damaged

- A pilot study of women admitted to a large A & E unit in a Dublin hospital found that of 81 women disclosing abuse on at least one admission, 46 revealed a long history of abuse; in 78% of these cases, the alleged offender was a husband or male partner.[12]

Reporting and Conviction Rates

- More than 5000 calls were handled by the newly-established Garda Domestic Violence and Sexual Assault Investigative Unit in the Dublin Metropolitan District in 1994.

- Garda crime statistics for 1995 record a total of 3986 reported incidents of domestic violence. 21% of reported incidents resulted in an arrest, 13% in a person being charged, and 11% of the total resulting in a conviction.

- There are notable variations in arrest rates between Districts. For example, only 18% of incidents resulted in arrests in the Dublin Metropolitan area as compared with 26% in Districts outside the DMA. Conviction rates are similar, i.e. 10% in the DMA as compared with 12% for all other Districts combined.

- The number of domestic violence cases before the district courts in Dublin has almost doubled since the introduction of the Domestic Violence Act which came into force in March 1996. In 1994/95, an average of 74 Barring Orders a week were sought, as compared with 122 a week in the period April-May 1996. (Women's Aid, June 1995)

4.3.4 Murder/Manslaughter

- In the first five months of 1996, the number of women murdered exceeded the total number for 1994 and 1995 (*The Irish Times*, 29/05/96).

- Ten women were murdered or suffered violent deaths in the period from January to May of 1996, as compared with a total number of eight women murdered in both 1994 and 1995 (Garda Siochana, 1994, 1995).[13]

- Seven of the women killed in 1996 were killed in their home or domestic situation.[14]

- The majority of the murdered women were under the age of 50, although one was 86 years old, and another was only 13 years of age.

4.3.5 Sexual Abuse of Adults with Disabilities

As stated above, virtually no research has been carried out on violence towards women or children with disabilities in Ireland. However, in a survey of care/training agencies to investigate the extent of sexual abuse of disabled adults, James (1992) found that:

- the vast majority of alleged abusers were male
- the vast majority of reported incidents were of female victims[15]
- the abuser is almost always known to the victim
- people with 'mental handicap' may be particularly vulnerable to sexual abuse.

4.3.6 Child Sexual Abuse

Prevalence

There are no Irish national statistics on the prevalence of child sexual abuse.

Kelly et al. (1996) note that relatively little is currently known about children's lives generally, and far more is known about children as perpetrators of crime, than their victimisation. This is reflected in the Annual Report of the Garda Siochana.(1994) in

which statistical information relating to juvenile crime is far more extensive and detailed than that relating to sexual and other crimes against children. It should also be noted that there is no one offence called 'Child Sexual Abuse', but rather a series of offences, some of which are age specific and apply only to children, some to both adults and children.[16] Criminal statistics are thus highly fragmented in this regard and mask the prevalence of sexual offences against children.

Although most sexual abuse of children goes unreported,[17] we know beyond any shadow of a doubt that it is endemic in our society. For example, in every Irish rape crisis centre the largest number of clients are adult survivors of child sexual abuse, ranging in age from 17 to 70,[18] with numbers of telephone callers rising steeply following television and other media coverage of child sexual abuse cases. The Health Boards have similarly been recording huge increases in child sexual abuse cases since it has become a public issue.

Despite increased public awareness and improved child protection services, the Law Reform Commission (1990) report on Child Sexual Abuse notes that 'there exist at present serious inhibitions to reporting and that a major contributing factor is the absence of clear legal authority for so doing'. Further contributory factors to the massive underreporting of Child Sexual Abuse include:

- persistent socio-cultural resistance to recognising the reality and prevalence of the sexual abuse of children;

- profound resistance to identifying the sexual abuse of children by men in familial and other caretaking relationships with children, such as fathers, grandfathers, step-fathers, uncles, brothers, institutional carers and other professionals, including religious, educational, medical and social work professionals;

- concealment by the perpetrator as an intrinsic part of the act;[19]

- the acute difficulties of children in recognising and naming sexual abuse by adults as abuse;

- the socio-culturally constructed denial of credibility to children, reinforced by society's denial of autonomy and legal status to children;

The Report of the Kilkenny Incest Investigation (McGuinness, 1993), observing that there is 'a dearth of information on child sexual abuse in Ireland,' noted that it is generally accepted that prevalence rates among female victims is in the range of 10%-20%, and around 10% in the case of male victims. Men constitute 95% of the perpetrators in cases of sexual abuse of girls, and 80% of the perpetrators where boys are victims.

Statistics

- In 1994, 61% of all calls to the Dublin Rape Crisis Centre 24 hour Crisis Line related to child sexual abuse. 37% of clients were counselled for child sexual abuse alone, and 14% for both child sexual abuse and adult rape.

- The total number of alleged cases of child abuse reported to the eight health boards has risen from 1,646 cases in 1987 to over 4,600 in 1994, an increase of over 180 % (see *Fig. 3*).[20]

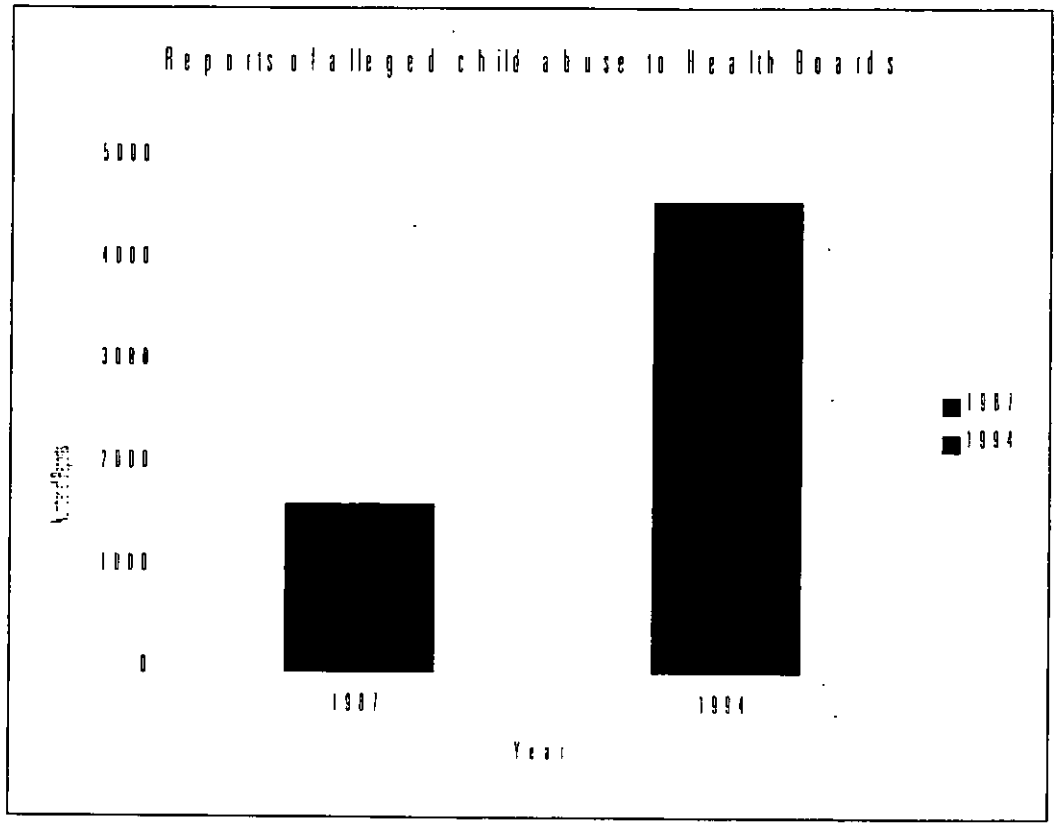

Fig.3

- In 1994, 156 cases of sexual abuse of children were reported to the Mid Western Health Board, with 38 of these being confirmed. This compares to figures for 1989 in which 71 cases resulted in 19 confirmations.[21]

- The South Eastern Health Board notes an increase of 62% in the number of cases of child sexual abuse reported to it in 1995, as compared with the previous year. 339 cases of sexual abuse were reported, with 156 confirmations and 131 cases still under investigation.[22]

- Sexual abuse cases were the largest category of cases of child abuse reported to the South Eastern Health Board in 1995, constituting 46% of the total.

- In 1988, an Eastern Health Board report noted that of 990 cases of alleged abuse known to community care teams, 52% were assessed as confirmed abuse, 40% as unconfirmed, and 5% as confirmed non-abuse. Three quarters of the children whose cases were confirmed had been abused more than once, with a quarter suffering abuse for one to three years, and a further quarter had suffered abuse for more than three years.[23]

Attrition/Conviction Rates

- 24% of cases of child sexual abuse and rape combined dealt with by the DRCC were reported to the gardaí. 9% of the cases were dropped, 10% were still

pending, and convictions were obtained in only 1% of the total number of cases reported.

- Only 7% of child sexual abuse alone cases dealt with by the DRCC in 1994 were reported to the gardaí. 2% of cases were dropped, 3% were still pending and no convictions were obtained.

- A total of 18 offences of Unlawful Carnal Knowledge Against a Girl Under 15 or Under 17 (separate offences), were reported to the gardaí in 1994. Criminal proceedings were commenced in 11 cases. One conviction was obtained. Ten cases were pending in the District Court. Six cases were recorded as 'No proceedings shown' (5.5 % conviction rate).

4.3.7 Increases in the Incidence/Reporting of Violence

In Ireland as elsewhere, it is difficult to establish definitively whether or not violence against women is actually increasing for a number of reasons:

- recording of many of these crimes dates only from the 1970s when feminist service provisions developed;

- in the voluntary sector, data-collection is hampered by the absence of adequate resources to carry out the task;

- published garda crime statistics are not consistently analysed by gender;

- no national survey of prevalence rates has been conducted by Government in Ireland;

- such crimes are widely recognised as being seriously under-reported.

However, all service providers point to the sharp rise in reporting, and many also believe that both the *levels* and *kinds* of violence against women are indeed increasing. The increase in 1996 in the numbers of women murdered is a disturbing indication of trends.

The Director of the Dublin Rape Crisis Centre, Olive Braiden, has observed that the increase in sexual crimes reported to the gardaí in 1995 (43%), reflects an increase in the number of crimes taking place, rather than a trend towards more reporting since the numbers of women actually reporting crimes to the gardaí has risen very little in the past few years (i.e., from 23-24% in the early 1990s, as compared with 28% in 1995). Ms Braiden also notes that the DRCC has found that rapists tend to be more violent and to carry out various forms of rape during one assault (*The Irish Times*, 1/08/96).

4.3.8 Prostitution

- It is estimated that there are anywhere between 100 and 600 women working in prostitution in the Dublin area. No figures or estimates are available for other parts of the country.

- In a survey of 17 women working in prostitution in Dublin, the majority (83%) were critical of gardaí attitudes towards them, and only 3 women said they would be willing to go to the gardaí if attacked by a client or pimp (O'Connor, 1995).

- 60% of those surveyed in O'Connor's 1996 study said that the levels of violence were increasing. 20% of the women had been beaten up and 11% had been forced to have sex. 40% of the women had had problems in making a client leave or in getting away from a client.[24]

4.4 Conclusions

4.4.1 That men's violence against women and children in Ireland is at crisis levels is consistently confirmed by all the available data.

We must emphasise that the information presented here refers only to reported violence, which is the tip of the iceberg. The overwhelming majority of violence against women and children is never reported to official agencies. If the true figures for 'hidden' or 'dark' crime in Ireland were to come to light, it is certainly the case that a massive proportion of such crime would be related to male violence.

The Working Party notes repeated reassurances by senior members of the Garda Siochana that, contrary to popular belief, recorded crime is actually decreasing. However, the reality is very different with respect to the criminal abuse of women and children. Rates of known sexual offences have increased, while the numbers of women violently killed in the first six months of 1996 exceeds the total number of women murdered in either 1994 or 1995.

4.4.2 The attrition and conviction rates noted for sexual offences and domestic violence are lamentable, and clearly demonstrate the signal failure of the Criminal Justice system to do justice to women and to children who have been subjected to male violence.

4.4.3 While statistics cannot in any sense convey the horror of women's and children's experiences of violence, it is a crucial element in the information framework necessary for policy development and service provision. The fragmented and partial information currently available in Ireland is grossly inadequate and constitutes a serious obstacle to developing a coordinated and coherent response to the problem of men's violence against women and children in Ireland.

4.4.4 The Working Party notes the recommendations contained in numerous reports and in the oral and written submissions made to it for the establishment of a national system of data collection with regard to men's violence against women and children.

RECOMMENDATIONS

1.. A **Standing Committee** be established to develop, implement and monitor a national system for the **collection of statistics** encompassing the spectrum of violence against women and children. The Standing Committee to be composed of representatives of relevant government departments, statutory and voluntary agencies, the National Women's Council of Ireland, the Garda Siochana, social workers, health workers and medical agencies.

2.. All **crime statistics** published by the Garda Siochana in their Annual Report be broken down by gender. Also detailed statistics on cases reported to the **Domestic Violence and Assault Unit**, including information on how cases are handled by the gardaí, be published annually.

3. A detailed study of **attrition and conviction rates** in respect of crimes of sexual and other forms of violence against women and children be commissioned and funded by Government as a matter of urgency.

4. A **national study** of the prevalence, nature and consequences of all forms of male violence towards women and children in Ireland be commissioned and appropriately funded by Government. The national study should pay particular attention to the experiences and needs of women and of children in socially marginalised and isolated contexts, including those with physical/mental disability; Traveller women and children and members of other ethnic minorities; lesbians; those living in rural areas; homeless women, girls and children; women working in prostitution; and elderly women.

Notes

1. Hanmer and Maynard, 1987; Kelly *et al.*, 1996.
2. McWilliams and McKiernan, 1993.
3. Driver, 1989; Kelly *et al.* 1996.
4. In this context, it may be noted that the National Report of Ireland to the United Nations Fourth World Conference on Women (1994) contained no statistical information on men's violence against women and chidren.
5. O'Connell and Whelan (1994) in their study of crime victimisation in Dublin found that the two main reasons why women did not report offences to the police were (i) a belief that the crime was too trivial to merit involving the gardaí and (ii) a belief that the gardaí would be unable to offer any useful assistance.
6. Attrition refers to the rate at which cases of rape/sexual assault are lost or dropped between reporting and conviction.
7. This compares with a 10% conviction rate in the UK in 1994. However, there has been a decrease of 25% in UK conviction rates since 1985 (Lees, 1996).
8. Kelleher & Associates and O'Connor, 1995).
9. McWilliams (1994) notes that violence against women in the home occurs in between one in four and one in ten families in Great Britain.
10. Bradley *et al.*, n/d.
11. Kelleher & Associates and O'Connor, 1995.
12. Cronin and O'Connor, 1994.
13. The Garda *Annual Report, 1994* provides no analysis by gender for manslaughter.
14. Dobash and Dobash (1992) note that women in England and Wales are four to nine times more likely than men to be killed by spouses, ex-spouses, co-habitees and ex-cohabitees.
15. In Canada, DAWN (Disabled Women's Network) calculated in 1992 that disabled girls are twice as likely as non-disabled girls to be sexually assaulted, and disabled women are more likely than non-disabled women to be victims of violence (DAWN, 1992).

16. Although under the Child Care Act, 1991 a 'child' is held to be a person below the age of 18, the age of 'childhood' is a shifting phenomenon. There are, for example, two categories of the offence of Carnal Knowledge in Irish law: one against girls (but not boys) under the age of 15, and the other against girls (but not boys) under the age of 17. There is no offence called Carnal Knowledge against adults.
17. Viinikka, 1989.
18. Shanahan, 1992.
19. McKeown and Gilligan, 1988.
20. Department of Health, 1996.
21. Mid-Western Health Board, 1996.
22. South Eastern Health Board, 1996.
23. Shanahan, 1992.
24. O'Connor, 1996.

CHAPTER 5 THE LEGAL AND JUDICIAL SYSTEM

5.1 Introduction

There have been some important reforms in the legal response to abused women in Ireland during the last 15 years. However, these reforms are piecemeal, having been developed on an *ad hoc* basis. There has never been a comprehensive review of the entire area, and consequently, laws are dispersed throughout a large number of statutes, many of them dating as far back as the second half of the 19th century.

Unfortunately, there is ample evidence that the civil and criminal justice systems do not deal effectively with crimes of violence against women and children. Many women state that their experiences with the police, judiciary and court system are so negative that they actually make it harder for women and children to leave abusive men. Domestic violence and rape in marriage are, for example, the only crimes where the victim must continue to live with the abuser for a period of 6-18 months because of the inadequacies of the court system.

The case of Lavinia Kerwick in 1992 highlighted the massive difficulties still encountered by victims of rape despite successive law reforms. Following the judge's postponement of sentence for the man who had raped her, Lavinia Kerwick spoke about her feelings of anger and betrayal by the legal and political systems, and called on the Minister for Justice to take action:

> I'm appealing to the Minister for Justice to bring this back up for retrial. I'm begging him from the bottom of my heart, if he has any consideration for girls and for me, and for people who will probably go through it tonight, if he has anything in him at all, please, I'm begging him to bring it back up.' (cit. in Shanahan, 1992).

Too many women describe their journeys through the legal system as adding painfully to the trauma of the original abuse.

In this section, we set out the main provisions of the law relating to violence and sexual violence against women and children, outline the main issues and problems arising from both legislation and procedures, and make recommendations for change to ensure justice and protection for women and children and the elimination of violence and sexual violence against them.

5.2 Violence Against Women in the Home

5.2.1 The Historical Context

> ..... *there remain no legal slaves except the mistress of every house* (John Stewart Mill, 1869)

What has changed since the 19th Century and how much? Irish Law and English Law have been tied together for centuries and it is only in recent decades that our legal system has begun to develop along a separate path. However, the philosophical principles of our legal system are held in common with those of England and a great part of the Western World as influenced by Britain under colonial rule. As previously discussed, in Chapter 3, the root causes of men's violence against women are to be found in the unequal power relations between women and men. These inequalities are still reflected in our present day legal system and legal institutions.

Until the late 19th or early 20th century, women had little or no access to education. Working class women were employed mainly as servants, while upper and middle-class women carried on professions only in extraordinary circumstances and then usually in the teaching of young women. They did not, as Virginia Woolf pointed out in *A Room of One's Own* travel alone or go out unaccompanied. When a woman married, her property passed to the control of her husband. It was not simply her property, it was her entire being. She was a 'chattel', in every sense owned by her husband. This thinking remains at the heart of much of our legal system. The legal ownership of women and children by their husbands and fathers fostered the physical and mental abuse of women and children which has continued from generation to generation and is still with us today.

Property and personal status within our society have had and continue to have an inter-dependent relationship. Historically, married women without property rights or education had no personal status. Her status such as it was, was entirely derived from her husband. Therefore, she was completely at his mercy. As late as 1840, Mr Justice Coleridge observed: "There can be no doubt of the general dominion which the law of England attributes to the husband over the wife" (Cockrane's case, 1840). That dominion included the technical right of a husband to physically abuse his wife under the pretext of 'chastisement'. He was also entitled to restrict her movements. It was not until 1891 that the husband's right to use physical restraint and violence was abolished in a case entitled *R. v Jackson* (1891, 1QB 671). The legacy remains in a cultural sense.

Not only were women, and particularly married women, without rights in relation to property but they had little or no rights in relation to their children. Children were the property of their father. Even on a father's death, legal custody of children did not pass to the mother but to the guardian appointed by the father's will. The lack of property, the implicit threat of loss of children, inability to earn a living through cultural circumstances and lack of education ensured that women stayed with even highly abusive partners - a situation which in many respects and aspects is still with us. Indeed it is still with us in many respects for almost identical reasons, despite social and economic changes.

It was not until 1935 in England that married woman were accorded the same legal capacity as unmarried women. The thinking which denied women legal rights, allowed and even encouraged the physical abuse of women as a legitimate means of control, denied them their natural bond with their children, deprived them of education, means, status and freedom, and derived its moral authority not only from the legal system but even more powerfully from God as interpreted by the Church. The Church's moral influence still permeates the thinking of our educational institutions, of our government and culture.

If the issue of domestic violence is not placed in its proper historical context it can too easily be regarded as a problem of certain kinds of men (those with violent tendencies who by implication are "uncommon", i.e., sadistic or brutish men). If violence against women is viewed in this way, no long term solutions can evolve.

5.2.2 The Legal Framework

Relevant Legislation
Dublin Police Act, 1862
Offences Against the Person Act, 1861
Criminal Damage Act, 1991
Domestic Violence Act, 1996

Criminal Law
The description 'domestic violence' while convenient to describe certain abhorrent behaviours can often mask the true criminality and seriousness of the violent actions. The term 'domestic' is of itself useful in serving to locate and identify the problem but it can also do a grave disservice to women by belittling the criminality of the act. All too often in fact 'domestic violence' leads to maiming and death. The law does allow for domestic violence, in common with all other types of violence to be criminally prosecuted. Rarely however, does the law prosecute cases of domestic violence. By hardly ever prosecuting such cases, the State communicates a message that 'domestic violence' is different from other types of violence, less serious, something private and indoors and, most importantly from the perpetrator's perspective, that 'you can get away with it'.

However, not all cases of domestic violence should be prosecuted. Because of the nature of the crime, its familial setting and the complexity of the relationships surrounding it, each case needs to be separately assessed. A public high profile pro-arrest policy is advocated in all cases of violence. Arrest does not however, necessarily and inevitably lead to prosecution. Where serious violence has occurred, causing gross bodily harm, where weapons of any sort have been used or where an offender has re-offended, the remedy of criminal prosecution should be considered by the gardaí in consultation with the victim. In deciding whether or not to prosecute, regard must be had to the circumstances of each particular family and the effects of a possible conviction emotionally and financially. The victim must be given advice and support to enable her to be an effective witness and, in addition, there should be counselling and support services available to the victim and family.

In order to establish this level of response to the problem of 'domestic violence', there has to be a Government commitment to a co-ordinated, fully-funded programme dealing with violence against women in all its manifestations. The human cost and the financial cost of not having such a co-ordinated, fully-funded programme is incalculable. Violence against women costs the State millions in health care, child care and social welfare costs to mention but some. More importantly, however, there is also the loss to society of women contributing to their full capacity and, quite often, the children of those women.

Accordingly, in tandem with a pro-arrest policy, we would also recommend that the gardaí have a pro-prosecution policy, particularly in cases of aggravated violence or for repeat offenders. However, such a pro-prosecution policy must be integrated with a fully co-ordinated, fully-funded programme responding to all aspects of the problem of violence against women if there is to be any progress in tackling the problem.

This section outlines statutory law, and indicates the main issues and problems, indicating recommendations for change. Cases involving violence against women in the home are governed by principles of Criminal Law, Common Law and Civil Law, both ancient and modern, and also by the Law of Evidence and Constitutional Law. The main legislation which can be evoked in cases of domestic violence is as follows:

Offences Against the Person Act (1861)
At Common Law, a man who assaults his wife, or any woman, can be charged with 'common assault'. (This includes threatening actions where the woman feels she will be physically hit though there is no contact between the parties). Under Section 47 a person can be charged with more serious assaults of occasioning actual bodily harm (ABH: breaking of skin, blood, blood spills.) Gardaí have only powers of arrest for grievous bodily harm (GBH) which involves life threatening situations (Section 18.).

Criminal Damage Act (1991)
Under Section 12 of the Criminal Damage Act, 1991, a member of the Garda Siochana may arrest without warrant a person whom s/he believes is about to damage property or s/he suspects has been guilty of such an offence. For the purpose of arresting, a garda may enter by force if need be and search where s/he suspects the person to be. Under the new Domestic Violence Act, 1996, garda powers of arrest and entry have been considerably strengthened.

Domestic Violence Act (1996)
There are three types of remedies available under this Act.

(i) Protection Order (Section 5)
A Protection Order is an interim order which prohibits the violent person from further violence and threats of violence and must be grounded on an application for a barring order. A Protection Order can be obtained *ex parte* (that is, without officially notifying the other party or issuing formal proceedings) by attending at the local court house and swearing a document called An Information.

(ii) Safety Order (Section 2)
This is an Order of the court which prohibits the violent person from further violence or threats of violence. It does not oblige that person to leave the family home. If the parties live apart, the Order prohibits the violent person from watching or being in the vicinity of the home.

(iii) Barring Order (Section 3)
This is an Order which requires the violent person to leave the family home up to a maximum period of three years if made by the District Court.

Who is Protected?
A person can apply for protection under the new law if they come within one of the following categories:

- *Married couples*: a married person can apply for protection against violence by their spouse.

- *Cohabiting couples*: where a couple are not married to each other but are living together, one partner can apply for protection against violence by the other partner. The protection available depends on how long they have been living together and on who owns the family home. If they have been living together for 6 months during the past year, they can apply for a Safety Order. If they have been living together for 6 months during the past 9 months they can get a Barring Order, unless the violent partner owns the family home in full, or the abuser has greater ownership rights.

- *Parents*: a parent can apply for protection against domestic violence by their own child if the child is over 18. The parent can get a Barring Order, unless the adult child owns the homes in full, or has greater ownership rights than the parent. The parent can also get a Safety Order if a Barring Order is not available.

- *Others living together*: An individual can apply for protection against violence by someone over 18 years who lives with them, if the Court decides that the relationship is not primarily based on a contract. For example, two relatives living together could be covered. An individual coming under this heading may apply to court for a Safety Order but will not qualify for a Barring Order.

- *Children*: A child can apply because of direct violence towards her/him or a carer may apply on behalf of a child in their care.

5.2.3 Inherent Problems with the Current Domestic Violence Act

Couples who are not living together are not covered by any legal remedy at present, e.g. where there is a child of the relationship, a violent father exercising his rights of access also has opportunity to continue to harass and terrorise the mother of the child.

It is not clear just what the legal basis is for a specific time period of residing together as set out in the 1996 Act: for instance, a couple who have lived together for 3 months are not covered under the current legislation.

There are no reasons why there should be different legal requirements to qualify for a Safety or a Barring Order. This will cause confusion. In addition whilst lesbian and gay couples may be able to seek a Safety Order they cannot seek a Barring Order. A Barring Order cannot be sought by a person who has a lesser legal interest than the violent partner in the communal property, i.e., a 45% interest VS 55% interest, even when there are joint children of the relationship. This proviso in the Act has the potential to exclude large categories of women. The problems identified here, ie, the requirement for a period of living together, contractually based relationships and legal ownership of property, arise from the proprietorial system of law based on the historical ownership of women as goods and chattels.

5.2.4 Developing An Effective Approach: An Inter-Agency Response

A woman who experiences violence at the hands of her partner may speak to several people before she resorts to the law. These people range from friends through family and neighbours social workers, priests, gardaí, doctors and solicitors. The attitudes, education and training of all these people will influence the way they respond to the victim and will help or hinder her significantly.

Domestic violence is a complex problem requiring the combined and co-ordinated efforts of people from different professional backgrounds and the community. A comprehensive range of services and options are required, alongside legal and policy measures. Legal remedies for domestic violence, for instance, can only work if they go hand in hand with the provision of safe, temporary and permanent housing, and vice-versa. Police policies which encourage the arrest of violent men are only effective if backed up by adequate support and services for the abused partner.

As domestic violence affects all aspects of women's and children's lives, responsibility for providing services and support falls across a range of government departments. As a result, government responses to domestic violence can be fragmented if they are not co-ordinated. This fragmentation is further exacerbated by the wide range of organisations and professionals dealing with the issue in isolation.

There is an urgent need to develop an inter-agency approach involving practitioners from all relevant sectors to look at the problem of violence in the home with a view to developing a long term co-ordinated strategy. This has worked successfully in other countries, particularly in the United Kingdom and Canada (Women's Aid, 1995).

RECOMMENDATION

5. The Working Party fully endorses the recommendations made in the Women's Aid **Zero Tolerance** National Strategy Document (1995), as follows:

(i) that the Government set up an **Inter-Departmental Committee** to develop a long-term strategy to combat the issue of domestic violence and to develop policies and procedures for each area (such as Health & Justice). Each area would in turn, set up an Inter-Agency Committee to look at their own work practices. For example, the justice committee would include members of the judiciary, legal profession, gardaí, probation services, social services and Department of Justice officials. Each area would select representatives to sit on the main steering committee.

(ii) the objectives of such an Inter-department Committee would be to:

- inform, and disseminate information and network with people dealing with victims of violence;
- bring together different agencies and governmental departments, specifically so that the work done against domestic violence is consistent, well-informed and co-ordinated;
- create and facilitate a co-ordinated national policy on domestic violence;
- encourage each individual working group/agency to develop policies and procedures for responding to domestic violence;
- produce 'Good Practice Guidelines' and pilot initiatives.
- promote inter-agency training;
- promote new services and preventative measures;
- examine the connection between domestic violence and the abuse of women and children in society as a whole;
- build on the significant reforms, policy programme work of all levels of government and the community, towards improving the status of women, including the elimination of all violence against women;
- ensure that all women escaping violence have immediate access to police intervention and legal protection which prioritise safety for the women, such as safe shelter, confidential services and the longer-term resources needed to live independently and free from violence.
- there should be a cohesive multi-agency response in which all agencies recognise the need for, and are prepared to liaise on, monitoring and training in the area of support and service provision for those who come in contact with women who have been abused.

(iii) that all professional groups whose work is relevant and involves them in responding to domestic violence, should receive training about the nature of domestic violence, its effects on children, the kinds of relationships which can exist in the context of domestic violence and physical, emotional and sexual abuse.

It is crucial at all levels of inter-agency work that the voices and needs of abused women and their children are heard through the inclusion of those organisations that work directly on the ground in the provision of services.

5.2.5 Zero Tolerance and Public Awareness Campaigns

Public awareness campaigns against domestic violence and for the empowerment of women have a vital role to play in transforming both individual men's attitudes and behaviour, and those of society in general.

The Canadian Government has conducted a campaign against violence against women over the last seven years. Research recently released suggests that they have been successful, both in changing attitudes and increasing awareness. The Canadian research suggests that one-off campaigns on their own do not bring about the attitudinal changes that are needed, and suggests that there needs to be a long-term commitment to conduct public education campaigns over a number of years.

A similar campaign was conducted by the Edinburgh District Women's Unit, the first crime prevention initiative in that country on the issue of violence against women. Indications from street surveys showed wide-spread public support for, and awareness of the campaign. Women's Aid in Great Britain, Northern Ireland and the Republic of Ireland ran similar campaigns. Here in the Republic, an outdoor advertising campaign was organised and a national petition and leaflets distributed in 1995. This resulted in the collection of 100,000 signatures condemning violence against women and children in the home and supporting the promotion of a Zero Tolerance culture (Women's Aid, 1995).

Again as part of their *Zero Tolerance, A National Strategic Plan*, Women's Aid adapted the concept in 1995 of promoting a Zero Tolerance culture in Ireland, learning from the experiences of other countries. Women's Aid is currently negotiating with government departments and commercial outlets for funding for an ongoing, long-term strategic campaign in 1997.

RECOMMENDATIONS

6. Local authorities and councils should play an active part in **funding** public awareness and educational campaigns;

7. For any campaign to be effective it should be planned in conjunction with the organisations working directly with women who are being abused to ensure that their voice and experience is included. The most effective way of achieving this would be through using the proposed Inter-Departmental Committee to ensure that any public money used to **promote a Zero Tolerance campaign** would be monitored, evaluated, consistent and properly funded;

8. Education of future generations is vital if violence against women is to be eliminated from our society. A question about Women's Aid Zero Tolerance campaign in the mock Social Science paper of the 1996 Intermediate Certificate, indicates that education towards a Zero Tolerance of violence against women and children can be integrated into school curricula at all levels.

5.2.6 Family Law System

It is generally acknowledged by those working within the area of Family Law that there is a crisis in regard to delays in the court system. The situation in Family Law in Ireland was described by the Law Reform Commission in its *Consultation Paper on Family Courts* (1994) as a system in crisis:

> The Courts are buckling under the pressure of business. Long family law lists, delays, brief hearings, inadequate facilities and over-hasty settlements are too often the order of the day (Law Reform Commission, 1994).

RECOMMENDATIONS

9. All **delays** in Family Law cases have severe emotional impact on families but where Emergency Orders are needed to protect the lives of women and children, we recommend the provision of immediate remedies in the situation of high risk.

10. We support the recommendation for **regional family courts** from the Law Reform Commission. However, if under the Circuit Court Jurisdiction, we must be sure they would be accessible from a financial and geographical perspective.

Physical conditions/facilities in the courts: Women in abusive situations find the ordeal of court hearings very traumatic and this is certainly not helped by the current experience of those who have to appear at hearings of family law cases. The existing system where there are no special family courts and in some places no special time set aside for family law hearings means that women can be in criminal courts with no facilities, no private consultation rooms and often in full view of the abuser.

RECOMMENDATIONS

11. The Working Party recommends **specialised courts** with basic facilities such as telephones, vending machines, toilets and a children's area. Family law should be a safe, comfortable place for women and children.

12. Arbitration/Mediation: Whilst recognising the advantages of mediation in certain cases we would not recommend this procedure on any mandatory level. We would definitely not recommend mediation in an abusive situation where there is an unequal balance of power. We would have further concerns with mediation due to the lack of regulating body, accreditation and accountability.

13. In Camera ruling: The purpose of the In Camera rule was to ensure that the privacy of the litigants was ensured by holding all cases of family law in closed courts. Women's Aid and other groups believe that this policy while well-meaning has failed to make the practice of family law both visible and accountable which is not in the long-term interests of the client.

The Joint Committee on Marriage Breakdown underlined the importance of public scrutiny acting as a **check on arbitrary decision-making** in its 1985 Report.

> In Camera hearings do, however, have a detrimental side effect. Publicity is the natural enemy of arbitrariness and injustice in a legal system. Our courts, while hearing family cases, have operated without this salutory check. When decisions are made in private, members of the general public can often misunderstand what takes place in court. This can diminish confidence in the fairness of the administration of justice in this area of law (Joint Committee on Marriage Breakdown Report, 1985).

14. The Working Party believes a format must be found which provides a **balance** between the right to privacy of the litigant and the right to a fair, transparent and accountable justice system.

The rights/protection of children: A study by Stark and Flitcraft (1988) which examined the medical records of children who were being abused for indicators of violence towards their mothers, found that 45% of the children had mothers who were also being physically abused.

There is a growing body of research which suggests that children are generally significantly affected by violence towards their mothers, whether or not they have themselves been physically abused. Kelleher & Associates and O'Connor (1995) found that 64% of women said their children had witnessed violence. The problems experienced by children who have witnessed domestic violence can include depression, anxiety, hyperactivity, aggression and somatic symptoms associated with stress such as asthma's.

RECOMMENDATIONS

15. The Working Party wishes to stress the necessity for the judiciary to recognise the growing body of evidence which substantiates the above views and recommendations. This demonstrates the need for **specialist training for the judiciary**.

16. Supervised access/probation services: There is an increasing concern among the legal profession and supportive agencies such as Women's Aid that the lack of resources in the Probation service is putting women and children seriously at risk. At District Court level the **Probation Service** is totally understaffed and under-researched and there is no Probation Officer for family law cases in the Circuit Court.

17. We recommend that probation officers should be provided for the following areas:
(a) **Separation and custody cases**: where the father of the children is abusive and violent, the Courts frequently recommend supervised access. It is vital that this supervision is done by a trained professional who is aware of the dangers to the woman and the children and that in certain cases access hours can be used to further abuse both the mother and children. It is essential to have special safe centres based on the community model developed in Britain for access to take place.

(b) **Assessment reports** on the needs of children and custody cases are prepared by probation officers. Probation officers are impartial, appointed by the Court and free to interview both parties and the children in their own homes. It is vital to have an independent, free service to assess the needs of children, particularly where the father has been abusive or violent to either the mother or the children. Women in abusive situations have found probation officers (where available) to be supportive, objective and professional in their approach. It is our view that the Probation Service is a cost effective way to deal with the needs of victims of domestic violence.

(c) The Working Party strongly recommends extending the probation services, or the setting up of an independent **Advocacy Service** for children who are victims of domestic violence.

18. Support services and research: To ensure that the courts are providing adequate protection to women and children, it is vital that their effectiveness is monitored and evaluated continually.

5.2.7 Garda Siochana and Law Reform

It has been apparent to groups such as Women's Aid that the administration and enforcement of the law has been largely ineffective, firstly in providing protection for victims of violence and secondly, in acting as a deterrent for perpetrators of violence.

Legal protection through the application and enforcement of the law by gardaí is essential in combating violence against women in the home. When gardaí intervene in cases of domestic violence they force what is seen as a very private matter out into the public arena. They are also the only twenty-four hour call-out agency with a law enforcement role. They can, through their attitudes, support the women, condemn the perpetrator's behaviour and by enforcing the law, show that this behaviour is criminal.

However, rushed proceedings can have a negative effect on the quality of justice. There is often pressure on women to rush decisions. A rushed decision to allow access can endanger a woman's life. Agreements may also be made instead of Orders warranted. The former is of little use when broken in the middle of the night. The lack of an Order can hinder the gardaí and place the woman in further danger.

A Garda Siochana policy on Domestic Violence Intervention was introduced in April 1994. This policy document sets out a pro-arrest policy procedure for the gardaí and states that the primary role of the gardaí should be one of protection and law enforcement. However, Kelleher & Associates & O'Connor (1995) found that the practice on the ground does not always reflect the stated aims as set out in the policy. Gardaí continue to express views which include the following:

- that domestic violence is a private family matter
- that they are unclear about their powers of arrest
- that it is futile to arrest because so few court convictions are handed down by the judiciary.

Furthermore, it is the experience of groups working on the ground that both Gardai and the Judiciary continue to underestimate the serious risk of injury despite recent reports from both St. James's and Beaumont Hospitals which clearly demonstrate the level of injuries to women.

Only in the most severe instances do the police deal with cases of violence against women by their husbands or partners under criminal law and themselves initiate a prosecution against the offender. This inevitably means that if the police are unwilling to prosecute, the responsibility for taking action devolves on to the woman.[1]

We believe there is a need to ensure that domestic violence remains within the sphere of criminal investigation, albeit with a degree of flexibility.

RECOMMENDATIONS

19. The Working Party recommends that the garda authorities should consider adopting a policy of **presumptive arrest** along the lines of that used in other countries such as the USA and Canada. A successful example of such a policy that proved to be effective in protecting women and preventing recidivism among offenders is the

Domestic Abuse Intervention Project (DAIP) created in Duluth, Minnesota in 1980. We believe that Garda policy should be towards a presumption in favour of arrest unless there is 'good and clear' reason why not.

20.. The problem of **'no-criming'** should be seriously addressed. The possibility of instructing officers to record incidents as "crime detected but not proceeded with" giving reasons for this, could be considered.

21.. Furthermore, if a **pro-arrest policy** is to work the garda must have the right to remand the offender in custody at least until a court hearing so that the judge can issue conditions of bail which very clearly outline protective measures for the witness, in this case wife or partner (e.g. he must find alternative accommodation until the court case).

22.. For the successful prosecution of cases of domestic violence it is essential that each individual Garda who is called to the scene of a crime, does all in his/ her power to ensure the safety of the woman and her children and adopt a **clear law enforcement role** including the following procedures:

(a) The woman should be provided, not in the presence of her assailant, with **information** as to all possible sources of help and action. This should not be a substitute for any actions directed towards the offender such as arrest.

(b) Where a Garda has **reasonable suspicion** that a crime has, can or will take place, the suspect should be arrested and taken to the police station, irrespective of the victim's willingness to make a statement.

(c) Where an officer has reasonable suspicion that a crime has taken place but has no tangible proof (e.g. no circumstantial third party evidence) and the victim is unwilling to make a statement, a **formal warning** should be given to the suspect that assault is a criminal offence and as such cannot be ignored.

(d) Any **evidence should be logged** e.g., physical injury, damage to property and attitude and physical state of the suspect.

(e) Where necessary the victim should be taken for **medical treatment**. If necessary she should be advised to see her doctor and her injuries should be recorded and photographed.

(f) An inquiry should be made as to the **welfare of any children.**

(g) Officers should radio the station to inquire whether a civil order is in existence, and whether there have been **previous incidents** of domestic violence.

(h) If at all in doubt about the way to proceed officers should **consult the supervising Sergeant**.

(i) **Follow up supportive action** should be taken in every single instance.

23.. Inservice and ongoing training on domestic violence and the psychological effects on women and children must be provided for all gardaí. It has been recognised in other jurisdictions that this is best provided directly by agencies such as Women's Aid and Rape Crisis Centres.

24.. Sentencing in relation to the offender is also crucial. If the gardaí have the powers to bring charges against violent men but the judiciary then fail to punish the perpetrator or apply totally inadequate sanctions, this only serves to deter women and frustrate the gardaí in the use of the criminal justice system in domestic violence cases. The relationship between the victim and the offender should not be an issue for the criminal justice system. It is the nature, level and extent of the violence done to the woman that should decide the severity of the sentence.

25.. There must also be **consistency in issuing sentences**. Judges should have options for sentencing which include **treatment and rehabilitation** of the offender. However it is vital that all treatment programmes:

(a) have the clearly stated aim of **protecting the victim** and addressing the violent behaviour of the assailant which involves close co-operation between prosecution and victim advocates.

(b) use **model treatment programmes** which have been proven to be effective by Duluth and currently being developed by the Cork and Ross Family Centre, Male Violence Project.

(c) include the **deterrent of increased penalties** for men who re-offend.

5.2.8 Women's Refuges

Countrywide access to adequate, safe refuge is essential for women and children who are being physically, sexually and mentally abused in their own homes. A refuge must provide a safe environment run on the self-help and empowerment model which has proved to be effective across the world.

RECOMMENDATIONS

26.. Access to safe, **accessible, secure refuges** is an essential part of a crisis response to women at risk. It is recommended that:

- Systematic **financing of refuges**, based on detailed assessment of need in each Health Board area, be an immediate priority of the Department of Health.

- That the recommendations from the policy document of the **National Federation of Refuges (1994)** be fully implemented.

- That **staff training** in refuges should include an understanding and analysis of violence against women.

- Access to **support and information** must be provided for an abused woman to allow her make an informed choice about her own and her children's future. The

central importance of working within the self help model is to promote a service that will include the abused women's perspective of what support and services are needed.

- Fully trained **child care workers** must be provided for refuges.

- All refuges should be **accessible to women and children with disabilities**, and all staff should receive proper training with regard to the specific vulnerabilitity of women with disabilities.

27.. The Working Party strongly recommends that a **working group be established to examine the needs of Traveller women**, and which would specifically examine the practicalities of providing a refuge which would be directly run by Traveller women for other Traveller women. Members of the Travelling community and representatives of Traveller groups and organisations should form a significant number of such a working group as well as representatives from Women's Aid. The provision of support and practical options to women in **marginalised groups,** such as Traveller women, is vital. It is also vital that differences be respected and that models of self-help and empowerment are developed by and for Traveller women, appropriate to their cultural needs

5.3 RAPE AND SEXUAL ASSAULT

5.3.1 Relevant Legislation

Offences Against the Person Act, 1861
Criminal Law Amendment Act, 1935
Criminal Law (Rape) Act, 1981
Criminal Law (Rape) (Amendment) Act, 1990
Criminal Evidence Act, 1992

5.3.2 Offences

Rape Rape is defined in the Criminal Law (Rape) Act, 1981, as 'unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it' where the man knows that the woman does not consent, 'or he is reckless as to whether she does or does not consent'.

In the event of a man believing that a woman was consenting to sexual intercourse, the jury must have regard for the 'presence or absence of reasonable grounds for such a belief'.

Rape under Section 4 This new offence came about as a result of campaigning by Rape Crisis Centres and an examination of the law by the Law Reform Commission in 1988 as to whether the existing legal definition should be extended to take into account what many people, especially women, saw as a limited definition of the sexual violation of one person by another.

Whereas the definition of rape was traditionally confined to vaginal intercourse only, the Criminal Law (Rape) (Amendment) Act, 1990 introduced a new offence known as 'Rape under section 4'. This means a sexual assault that includes: (a) penetration (however slight) of the anus or mouth by the penis, or (b) penetration (however slight) of the vagina by any object held or manipulated by another person.

A further difference between the two Acts is that while the definition of rape under the 1981 Act refers only to rape committed by a man against a woman, section 4 of the 1990 Act refers to penile penetration of the anus or mouth of either a woman or a man, while penetration of the vagina by an object may be committed by either a man or a woman. However, the 1990 Act does not include the penetration of the anus by an object.

The Criminal Law (Rape) (Amendment) Act, 1990 also determined that rape, rape under section 4 of the 1990 Act and aggravated sexual assault must be tried in the Central Criminal Court.

Aggravated Sexual Assault Sections 2 and 3 of the Criminal Law (Rape) (Amendment) Act, 1990 provide for the offences of Aggravated Sexual Assault and Sexual Assault, replacing the separate offences of indecent assault upon a female and indecent assault upon a male. Both offences may apply to either men or women.

Aggravated Sexual Assault means a sexual attack involving serious violence or the threat of serious violence, or that causes injury, humiliation or degradation of a grave nature.

Sexual Assault This is not defined by the Act. However, in practice it means a sexual attack with a less serious level of violence. It must involve (a) an assault, and (b) circumstances of 'indecency'.

An assault means an act by which a person intentionally or recklessly causes another person to apprehend (fear) or to actually undergo violence. In principle, there does not need to be physical contact, so that the man who reaches out to touch a woman's breast without her consent may commit a sexual assault as well as the man who actually touches her breast. However, O'Malley (forthcoming) notes that in practice, most cases of sexual assault involve battery.

Since there is no statutory definition of 'indecency', whether or not the act was 'indecent' is in practice a matter for the judge or jury to decide on the facts of the particular case. A forced kiss in one instance might be considered a simple assault while in another case it might constitute an indecent (sexual) assault.

It is not an assault for a person to invite or compel a child or adult to touch, for example, their genitalia.

As with rape, consent must be absent for there to be a sexual assault.

It is a matter for the Director of Public Prosecutions (DPP) to decide whether a person is charged with sexual assault or with rape. If there is doubt as to whether penetration

took place, even though the victim feels that she has been raped, the DPP may decide to charge the accused only with sexual assault.

In the case of a violent assault, but where no penetration took place, the accused may now be charged with Aggravated Sexual Assault.

Consent The most contentious aspect to the current definition of rape is the requirement that consent was not present at the time of the sexual intercourse. The Criminal Law (Rape) Act, 1981 provided no definition of 'consent', although the Law Reform Commission recommended that a statutory definition be set out as follows:

> 'Consent' means a consent freely and voluntarily given and, without in any way affecting or limiting the meaning otherwise attributable to these words, a consent is not freely given if it is obtained by force, threat, intimidation, deception or fraudulent means.
>
> A failure to offer resistance to a sexual assault does not constitute consent to a sexual assault. (LRC, 1988)

The 1990 Act did, however, include the following provision:

> Section 9 - It is hereby declared that in relation to an offence that consists of or includes the doing of an act to a person without the consent of that person, any failure or omission by that person to offer resistance to the act does not of itself constitute consent to the act.

The question of consent is a matter which is thus left to the jury to decide on the facts of a particular case. Section 2 of the 1981 Act stipulates that the evidence must show that the man knew that the woman was not consenting to sexual intercourse or that he was reckless as to whether the woman was consenting or not. The jury may have regard to the presence or absence of reasonable grounds for such a belief on the part of the man which is taken into consideration with other relevant matters in a particular case.

The practical effect of proving the absence of consent during sexual intercourse is to have a subjective examination of the circumstances from the point of view of the man. If the jury find that the man honestly believed that the woman was consenting to the sexual intercourse, then he must be acquitted.

Marital Rape Exemption Spouses are no longer immune from charges of rape or sexual assault. Prior to the 1990 Act, a husband could not be prosecuted for the rape of his wife. The Criminal Law (Rape) (Amendment) Act 1990 abolished this exemption. However, a prosecution can only be instituted by, or with the consent of the Director of Public Prosecutions. This appears to be due to concerns that married women would use this provision to institute proceedings against their husbands during the course of marital disharmony.

Capacity The Criminal Law (Rape) (Amendment) Act 1990 also abolished the exemption relating to the capacity of boys and young men to commit rape. At

common law, a boy under the age of 14 years was considered incapable of committing rape. Such a boy could be convicted of other sexual offences as long as sexual intercourse was not involved. The law now recognises what victims, gardaí and rape counsellors have known for a long time: youth is not a bar to rape.

Related Offences

(i) A person may be charged with attempting to commit rape and aiding and abetting the commission of rape. It is of note that a woman may be charged in aiding and abetting the commission of rape.

(ii) A person who is found guilty of burglary with intent to commit rape faces a maximum sentence of 14 years imprisonment. The law requires that it must be proved that the man entered as a trespasser into the building and had the intention to commit rape. Therefore the man who is invited into a house but later assaults a woman therein is likely to be charged with sexual assault, rape or attempted rape.

5.3.3 Court Jurisdiction

The Criminal Law (Rape) (Amendment) Act, 1990 provides that the offences of rape, rape under Section 4, attempted rape, aiding and abetting rape, and burglary with intent to commit rape shall be tried in the Central Criminal Court, as well as Aggravated Sexual Assault. This court is situated only in Dublin and the judges that preside over trials for such offences are judges of the High Court.

A charge of sexual assault may be dealt with in the District Court or on indictment in the Circuit Court. The decision to allow a prosecution for sexual assault to go ahead in the District Court is made on the recommendation of the Director of Public Prosecutions, with the consent of the Judge of the District Court. It is usually on the basis that the facts reveal a 'minor offence'.

The question of what constitutes a 'minor' offence is a matter which has troubled the courts since the ratification of the Irish Constitution which allows, under Article 38, for the trial of minor offences in a court of summary jurisdiction, i.e. the District Court. In the case of sexual assault, the decision to deal with a case in the District Court rests with the Director of Public Prosecutions in the first instance and ultimately with the Judge of the District Court. For these parties to correctly determine whether a sexual assault is indeed 'minor', it is extremely important that at the time of making the decision to prosecute the offence in the District Court, all relevant facts be available to the DPP and the Judge. This means that the investigating gardaí should have all the necessary statements including medical statements placed before the DPP/Judge. Further, the victim or victim's parents in the case of a child, should be made aware that the case might be dealt with in the District Court and their views should be canvassed in this regard prior to the making of the final decision.

5.3.4 Punishment

- Rape is a felony punishable by penal servitude for life.

- Rape under section 4 and Aggravated Sexual Assault are felonies, punishable by life imprisonment.[2]

- Sexual assault is a felony, punishable by a maximum term of five years imprisonment.

5.3.5 Court Procedures

Court Access Rape and Aggravated Sexual Assault cases are now heard in the Central Criminal Court. Access to the court during a trial is now severely restricted to those directly involved in the case. The press is allowed to be present.

Corroboration The Criminal Law (Rape) (Amendment) Act, 1990 states that the judge may, at his discretion, warn the jury of the danger of conviction on uncorroborated evidence.

Past Sexual History The sexual history of a victim of a sexual assault offence, including rape, is only permitted to be introduced into a trial with the leave of the Judge. Under the 1990 Act, the 1981 Act was extended to include any previous sexual history with the accused, as well as any other person. Application to allow such evidence should be made at the start of the trial, in the absence of the jury, but it may be made during the course of the trial if matters arise which were not anticipated at the outset.

The application to introduce such evidence should prove that the evidence is relevant. If it is simply being introduced to discredit the victim, it will not be allowed. However, it may be introduced if it goes to show that the accused understood the victim to be consenting. This would be particularly so where the victim and the accused had a previous relationship, sexual or otherwise.

Evidence In trials involving sexual offences, evidence may be given by a witness through a live television link where the person is under 17 years of age, unless the court sees good reason to the contrary, or in any other case, with the leave of the court. This was primarily introduced to allow for the video recording of the evidence of children, but the court may be requested in the case of an adult to allow an adult witness to give evidence by way of video link.

The Criminal Evidence Act, 1992 also sets out the circumstances in which a spouse/former spouse is competent and compellable to give evidence.

Legal Aid The Legal Aid Board have stated that victims who wish to seek advice about a rape trial would be eligible to apply for legal aid and avail, if qualified, of the legal services of the Board. However, there has been no uptake of this offer. The Rape Crisis Centres consider that the service is of no value to victims of rape.

5.3.6 Problems with Current Law and Procedures

> 'They were coming out with things that were just unbelievable. The whole point of it seemed to be to run me down. There was

> photographic evidence of my injuries but the jury was not allowed to see it due to a technicality. Then they had a doctor who had never examined me but who had read the reports and who said that my injuries should have been worse. It didn't come out that I was afraid he was going to kill me. I was covered in bruises and my lip was cut. How bad did my injuries have to be?' When the jury's decision was announced, "Tom" was found not guilty of rape. "Eileen" decided that she would be better off dead. 'I left the court that day and I just didn't see the point of going on, except that I knew how bad my family would take it' (Shanahan, 1992).

The effective prosecution of rape and sexual assault is an essential element in the elimination of violence against women. Furthermore, from the victim's point of view, how cases are handled throughout the criminal process is clearly of great importance.

As we have seen, only a small number of rape cases are ever reported to the gardaí, with even smaller numbers leading to criminal proceedings. The proportion of reported cases resulting in convictions is in the order of 1%. There is a widespread perception that sentencing in rape cases is both inconsistent and lenient, while women routinely describe their experiences of the criminal justice system as being difficult, even traumatic, and deeply unsatisfactory.

There are a number of serious problems with the law governing rape and sexual assault, relating both to its conceptualisation and formulation, and to procedural and administrative practices.

(i) Statute Law

Largely due to the campaigning and lobbying of the Rape Crisis Centres and other women's groups and organisations, the law has been significantly changed over the past 15 years. However, reform has occurred in a piecemeal fashion, leading to the co-existence of two separate statutes - the Criminal Law (Rape) Act, 1981 and the Criminal Law (Rape) (Amendment) Act, 1991 - enumerating four different categories of offence: rape, rape under section 4, aggravated sexual assault, and sexual assault. Furthermore, although many of the reforms to statute law - especially the Criminal Law (Rape) (Amendment) Act, 1990 - appear to provide a framework in which the rights of the defendant to a fair trial are protected without sacrificing the achievement of justice for the complainant, the interpretation and implementation of the law may be very different from its formal content (see O'Malley, forthcoming).

Questions of Definition

Historically, rape has been defined from a male perspective, with women's perspectives and accounts of their experiences being heavily scrutinised, marginalised or altogether absent. Definitions are rooted in patriarchal perceptions of what constitutes 'normal' heterosexual activity and of the 'natural' and appropriate sexual roles of men and of women, premised on aggressive male appropriation and possession of the woman and female acquiescence and passivity.

The 1981 and 1990 Acts define the crime of rape in significantly different if not actually incompatible ways. The 1981 Act provides a gender-specific definition

(women are raped by men), and focuses exclusively and narrowly on sexual intercourse understood as penetration of the vagina by the penis. The 1990 Act is gender-neutral (women or men may be raped) and alters the definition of rape to include penetration of a variety of orifices by objects as well as by the penis.

Neither Act explicitly recognises rape as an *inherently violent sexual act*. The shifting emphases on penetrative acts, and on the use of aggression (i.e., assault) as distinct from coercion (i.e., absence of consent) are confusing and fail to provide a clear definition of rape as a crime which is *always both sexual and violent*, whether penetration actually occurs or not, and whether it is accompanied by physical damage or not.

In the case of the *DPP v Tiernan* (1988), for example, the Supreme Court noted, *inter alia*, that 'rape is a gross attack upon the human dignity and the bodily integrity of a woman and a violation of her human and constitutional rights'. The Court added, however, that this is so 'even when it is committed without any aggravating circumstance'. Fennell (1993) observes that 'it seems that women victims are still differentially regarded dependent on whether they have been subjected to an aggravated rape, or a rape without any "additional" violence'. We also note the use of the term 'forcible rape' by the Court, whereas the meaning of rape *already* contains the notions of coercion, force and 'lack of consent'. This indicates a serious misperception of the fundamental basis of the crime.

The characterisation of rape and sexual assault as 'gender-neutral' crimes in the 1990 Act was widely welcomed as a significant advance on previous legislation. However, while feminist professionals and academics deplore the brutality of male rape, and recognise the need for separate statute law governing its perpetration, 'gender-neutral' legislation has the unfortunate effect of 'neutralising' the reality of unequal power relations between men and women expressed through men's sexual violence to women. Statistics, academic research and women's own accounts of sexual violence consistently confirm that rape is a crime overwhelmingly perpetrated by men against women, children and other men. The equal treatment of women and men within statute law does not reflect or appropriately address a socio-cultural reality in which power relations are specifically gendered and seriously unequal.

The explicit recognition of rape as an inherently violent sexual act and the question of 'gender-neutral' legislation, as well as other questions of definition, require the most careful consideration so that justice may be achieved for both complainants and defendants.

The Current Legal Framework

The laws relating to rape, sexual assault and other forms of violence against women are to be found in the common law and various statutes, some dating back to the 1800s. Rape and sexual offences are found in 1935, 1981, 1990 and 1993 Acts. Assaults are covered by the common law and the 1861 Act. Incest is dealt with in a 1908 Act and a 1995 Act. Video link provisions are to be found in a 1992 Act. As we enter the next century it is time to consider a full review of the current legislation and in particular its efficacy in the courts today.

There is a case to be made for the codification of the laws relating to sexual offences. This would include the offences themselves as well as the relevant procedural provisions that exist for these offences. Further, the relevant evidential rules would also be included in such new legislation. There is precedent in other areas of law for such a rationalised approach. For instance, the Social Welfare (Consolidation) Act, 1981 was an effort to bring together all relevant matters under one heading. Also the Child Care Act, 1991 is seen as the framework for child protection legislation.

Consent

The issue of consent is central to the crime of rape. The victim states that she did not consent to the act in question. The accused states that she did consent, or he believed she consented.

Lees (1996) observes that the main reason why rape law is so unsatisfactory is 'the failure of judges to adopt a modern communicative model of sexuality which implies that there must be some positive responses by both parties'.

Present law puts the onus on the prosecution to prove a woman did not consent and that the man knew that, or was reckless. Without obvious signs of injury, it is very difficult for a woman to prove she did not consent. Even when there are such injuries, the defence may argue that the woman was consenting to rough sex. Further, when a woman adopts a passive role in order to minimise the potential physical damage accompanying the rape, she may then be accused of 'co-operating' with being raped. The absence of overt resistance on the part of a victim should never be construed as indicative of consent (see case of *DPP v Brophy*, discussed below). Judges should be aware that women who do not actively resist, or say nothing, do not necessarily want to have sex, but may acquiesce because they see no alternative.

In Australia, for example, the Victoria Parliament passed an amendment to its Crimes Act which requires a judge, in relevant circumstances, to direct the jury that 'the fact that a person did not say or do anything to indicate free agreement to a sexual act is normally enough to show that the act took place without the person's free agreement'. The South Australian Supreme Court has indicated that where a man has received signals of non-consent, he can no longer assume that the woman is consenting. He must inquire.

Legislation in Canada requires defendants in rape cases to demonstrate that they sought consent. If this were a requirement here it would change the meaning of consent in a radical way and remove any requirement in relation to force or duress.

RECOMMENDATIONS

28. The Working Party recommends that Section 4 of the Criminal Law (Rape) (Amendment) Act, 1990 be extended to include **penetration of the anus by an object**.

29. The Working Party recommends that consideration be given to the codification of rape and sexual offences with a view to creating an offence of **'penetrative sex' (rape)** and 'non-penetrative sex' (sexual assault). These offences would have within them

categories of offence. For example, under rape there would be the offences of incest and unlawful sexual intercourse with persons below a particular age. Sexual assault would have the same constituents as are found at present.

30. That the **absence of overt resistance** on the part of a complainant should never be construed by the courts as consent.

31. In rape trials, where **consent** is an issue raised by the defendant, the onus of proof should shift to the defendant to prove that he sought and obtained the consent of the complainant to sexual intercourse.

(ii) Procedures and Administration

Police Response

Research shows consistently that women do not report cases of rape and sexual assault to the police for fear of being (a) disbelieved, (b) humiliated and embarrassed by inappropriate questioning, (c) re-victimised/traumatised by police handling of the report, and (d) through lack of confidence in the willingness or ability of the police to take appropriate action.[3]

In Ireland, although there have been real improvements over recent years in the response of the gardaí, it is still the case that the majority of women who have been raped do not report to the gardaí, despite the encouragement and support they receive from the Rape Crisis Centres. The reforms implemented to date have not thus been sufficient, or have not been consistently implemented, to change the perceptions of women who have been raped or sexually assaulted. For example, while a woman is entitled to have a woman garda present during the investigation, complainants are not consistently informed of this entitlement, while in rural garda stations, on occasion, there may be no female garda available.

(a) ***Policy and Treatment of Rape Victims*** The gardaí have no stated policy with regard to the treatment and support of victims of sexual offences, and no special arrangements for the handling of such cases have been put in place. For example, the Working Party notes that the Garda *Annual Report* for 1994 refers victims of crime to the Irish Association of Victim Support, which the Report notes was initiated by a retired garda, and for which a telephone contact number is provided. It is incomprehensible that no reference is made in the *Report* to the Rape Crisis Centres, or to the Sexual Assault Unit at the Rotunda Hospital in Dublin.

RECOMMENDATIONS

32. The Garda Siochana should develop and publicise clear policy and practice with regard to the **treatment of victims** of rape, sexual assault and other sexual offences.

33. A **Code of Behaviour** for the treatment, by all Gardai, of victims of rape sexual assault and other sexual offences should be developed and implemented within the Garda Siochana.

34. Appropriate **training**, both pre- and in-service, should be provided on a national basis for all Gardai with respect to the treatment of victims of rape, sexual assault and other sexual offences.

35. Special **Sexual Assault Units**, staffed by fully trained members of the gardaí, should be established in garda stations in major cities and towns throughout the country.

(b) ***Provision of Information for Victims*** The provision of information about the progress of their case is a primary need for victims. The Joint Committee on Women's Rights (1983) expressed shock at hearing of cases 'where women first heard of the trial and conviction of their assailants when they read about it in the newspapers'.

While the situation has improved somewhat over the past few years, it is still dependent on the efforts made by individual gardaí to keep victims informed of the progress of their case. In many instances, victims clearly do not receive the understanding and consideration which is their due. O'Malley (forthcoming) comments that the perspective of the victim should be given precedence, adding that 'very often the gardaí may fail to contact the victim because they genuinely feel that there is nothing new to report'. Yet it can make all the difference for a victim to be contacted periodically, if only to be informed that there is nothing new to report'.

The Law Reform Commission (LRC, 1988:15) recommended that 'the complainant be kept fully informed by the gardaí of developments and that she be afforded access to the solicitor and counsel acting for the prosecution before the hearing of the case in court'. They also recommended that there be improved pre-trial consultation arrangements between complainant and counsel and a pre-trial familiarisation course for the complainant. The LRC further recommended that a booklet explaining all of the circumstances attending the investigation and prosecution of sexual offences should be available for victims. Although agreed by the Oireachteas, these procedural changes were not given the force of law. The then Minister for Justice, Mr Ray Burke, TD, commented in the Dail (4/12/1990) that there was 'no need for these provisions to be included in the [Criminal Law (Rape) (Amendment)] Bill'.

RECOMMENDATION

36. That the recommendation of the Law Reform Commission regarding **information and consultation** (LRC, 1988: 15) be given the force of law.

(c) ***Identity Parades*** Under present procedures, there is a requirement that the victim should touch the person she identifies. Victims are very frightened by this procedure.

RECOMMENDATION

37. The Working Party strongly recommends that the procedure of a victim touching an identified assailant be abolished, and that **identification** should be carried out using two-way mirrors.

Decision to Prosecute

From the statistics cited, the approach to prosecution appears to be one of extreme caution. Furthermore, cases have been dropped for reasons which are unclear, and in some instances apparently without informing the complainant. The decision to prosecute is made by the Director of Public Prosecutions who is not allowed by the provisions of the Prosecution of Offences Act, 1974 to explain his reasons why a particular prosecution will proceed or not.

RECOMMENDATION

38. The Working Party recommends, (i) that the powers of the DPP under the Prosecution of Offences Act, 1974 be reviewed in the interests of accountability so as to allow the **DPP to give reasons as to why prosecutions do not proceed**, except where it may not be in the public interest that such reasons be set out; (ii) that the DPP make available on a yearly basis, **statistics** as to the number of cases involving sexual and other violence towards women and children which are referred to his office and the outcome of such cases and (iii) that consideration be given to the establishment of a **special section within the DPP's office** to deal with the prosecution of sexual offences.

Bail

An accused who has been charged with an offence or offences is entitled to bail unless it can be shown to the satisfaction of the court that he/she is likely not to appear at the hearing of the trial or that he/she is likely to interfere with witnesses.

Bail can only arise where a charge has been preferred against a person. Thus, where there is an investigation in progress and a suspect is interviewed and makes an admission, unless that person is charged with an offence, bail or its denial, does not arise. Therefore, situations arise where a father/stepfather admits to sexually assaulting his children and/or other children in a formal statement to the gardaí. The gardaí may, and more frequently do, send the file to the Director of Public Prosecutions for consideration as to whether charges will be brought and the man is released without charge. This man is free to return to his home and community without any sanctions or supervision and this situation may continue for months before charges are brought. Or it may be, despite the admission, that charges never arise.

Even where charges are brought, an accused may be released without conditions and return home to the scene of the very crimes with which he is accused. Clearly, where a victim is known to an accused, there is a greater chance of undue influences being brought to bear on the victim(s) by an accused and therefore a condition restricting contact between the parties until the trial is disposed of should be a condition applicable as a matter of course in such cases where the victim(s) and the accused are known to one another.

Another area of concern which was raised with the Working Party is related to this area but is not covered by bail. A person who has been sentenced to a period of detention may be released earlier than the expected date of release. It has been the experience of some victims to meet the man who attacked them out and about at a time when the victim(s) expected this person to be in custody. This is obviously a distressing experience and the trauma of such meeting might have been reduced if the women had even been aware that the perpetrator was at liberty.

RECOMMENDATIONS

39. The Working Party recommends that where **bail** is an issue, gardaí be required to discuss with the victim(s) and their families what concerns they might have as to this issue and what conditions, if any, they might want a court to impose on the accused if bail is to be granted.

40. The Working Party strongly recommends that a system be put in place whereby victims of crimes of domestic violence and sexual assaults are notified by the prisons or gardaí that the **release of a perpetrator** is anticipated or has taken place.

Juvenile Liaison Scheme
Juveniles under the age of seventeen years who commit crime may be considered for inclusion on the Juvenile Liaison Scheme. The usual factors which are considered when deciding whether the Scheme will be used are (i) whether the young person is a first offender; (ii) the nature and gravity of the crime; (iii) the age of the offender and other relevant information which may include the victim's attitude.

The main condition for disposal of an offence is that the young person admits his/her involvement in the crime. If the young person does this and the decision is taken to deal with that person under the Scheme, no criminal prosecution is brought and the case is dealt with outside of the courts. For the young person this means that they do not have a criminal conviction. The type of supervision involved will depend on the nature of the crime and what is happening in a particular young person's life. Therefore, a young person in school might not have the same level of supervision under the Scheme as a young person who is not attending school. The length of time a young person spends under supervision is also a matter for the gardaí.

The Scheme has been in operation since 1963. It is not a statutory scheme.

RECOMMENDATION
41. The Working Party recommends that the **Juvenile Liaison Scheme** be established on a statutory basis and guidelines for the use of the Scheme be published.

The Working Party further recommends that the Scheme should not be invoked in cases involving sexual offences unless the clear consent of the victim and/or the victim's parents has been obtained.

Court Processes
Rape Crisis Centres, complainants in rape and sexual assault cases, and numerous researchers have characterised the trial process as constituting a second ordeal for the complainant, as bad as the rape itself. Criticisms refer to both specific rules and procedures (dealt with in detail), as well as the ethos of the legal system, and the attitudes towards and prejudices against women which persist on the part of those responsible for the conduct of rape and sexual assault cases. These include, the prevalence in court of negative myths about rape which hold the complainant responsible for men's violence, and victim-blaming statements detrimental to women.

RECOMMENDATION
42. That a full review be undertaken by the **Courts Commission of Court Processes** relating to the trial of rape and sexual assault offences, with a view to evaluating their impact on victims and recommending appropriate procedural changes.

Long Delays Between the Incident and Trial.
At present, there are frequently long delays in the processing of cases for trial. This appears to apply particularly to cases of rape, where the Working Group on a Courts

Commission found that of a total of 40 rape cases listed in December, 1995, only seven had a firm date fixed for trial. 29 of these cases had been adjourned, two were arraigned, and two had provisional dates.[4] Such delays are a source of great distress and anxiety to complainants and their families, and should not be tolerated.

RECOMMENDATION

43. The Working Party shares the view of the Working Group on a Courts Commission that the absence of judges and resources to proceed with criminal trials (including rape trials) in the High Court and the Central Criminal Court have serious repercussions for our society. The Working Party recommends that a suitable number of **judicial appointments** be made as a matter of urgency, accompanied by the provision of adequate resources to ensure the processing of such cases without undue and damaging delay.

Inadequate and Inappropriate Court Facilities

Inappropriate court facilities which force the victim into physical proximity or visual contact with the accused are deeply upsetting to victims and should not be tolerated in our courts.

RECOMMENDATION

44. Separate, **secure waiting room facilities** should be provided for the use of the victim and her family; courts should be designed so as to ensure that the victim is not forced to be beside, near or opposite the accused; facilities for the victim to give evidence from behind a screen should be available on request.

Lack of Information About the Progress of the Case

Rape Crisis Centres have been strongly critical of the inadequate or non-existent provision of information on the court process, stressing its damaging and disempowering effects on the victim. Responsibility for the provision of information regarding the court process lies with the prosecution. However, despite some recent improvements, many victims find that right up to the day of the trial they still have no information on how the trial will progress, or even if there will be a trial, and on what their role will be. O'Malley (forthcoming) notes that the prosecution's reluctance to inform victims of progress for fear of consciously or otherwise ending up 'coaching' the victim, is unfounded: a clear dividing line can be drawn between informing a victim about the nature of the proceedings, and telling her what to say in answers to questions put to her during trial.

RECOMMENDATIONS

45. The Working Party strongly recommends that the Law Reform Commission recommendation on the provision of **information to the complainant** in rape and sexual assault cases be implemented immediately (LRC, 1988:15).

46. We further recommend that in the event of **delays** in the processing of a case either before or during the trial, the complainant be kept fully informed of any such delays and be given the reasons for their occurrence.

47. The Working Party also strongly recommends that in addition to the pre-trial consultation arrangements for the complainant and prosecuting counsel as

recommended by the LRC (1988:15), the complainant should have **regular consultations with counsel** throughout the trial, and be kept fully informed of the reasons for legal arguments used and other relevant matters.

The above recommendations are minimum requirements for complainants in cases of rape and sexual assault. However, the Working Party is of the view that separate legal representation for complainants is both more just and more efficient (see below).

Guilty Pleas

The decision of an accused person to admit to a crime or series of crimes by pleading guilty is obviously a course of action which brings relief to the victim(s) of the crime(s). Furthermore, the guilty plea means that the victim(s) does/do not have to come to court, give evidence and be cross examined on that evidence.

The Courts have taken the consistent position that credit must be given to an accused where he/she has at an early stage or otherwise, stated that they would be pleading guilty. However, a guilty plea may only arise at the last moment, and the anxiety that a victim experiences about giving evidence in Court may only be relieved at a very late stage.

Further, a plea of guilty may be forthcoming only in relation to a lesser charge, for example, to sexual assault but not rape. The decision to accept such a plea is ultimately one for the Director of Public Prosecutions and not a matter for the victim. The Working Party is very concerned about the complaints received from women to the effect that they have not been consulted about the question of a plea to a lesser charge or that they have not been told why the lesser plea was acceptable to the Director of Public Prosecutions.

Where a person proposes to plead guilty, a case should not proceed unless the victim(s) has/have been informed that the accused has so pleaded. It has been the experience of some victims that a plea to an offence has been recorded and facts given when they were unaware that the case was going ahead on the date in question. Therefore, the victim(s) did not have the opportunity to be in Court and have found that the facts presented to the Court did not reflect the crime accurately or fully.

RECOMMENDATION

48. It is the view of the Working Party that where an accused wishes to **plead guilty** to an offence, the victim(s) should be informed immediately. Further, where a lesser plea is found to be acceptable to the DPP, the victim(s) should be notified and, in so far as possible, an explanation as to how the decision was arrived at should be forwarded to the victim(s) by the office of the DPP.

The Working Party recommends that, where an accused pleads guilty to an offence involving violence to a woman or a child, it should be a matter of practice that a Court will not proceed to deal with the case unless satisfied that the **victim(s) has/have been informed of the plea** and given an opportunity to be present in Court.

Lack of Legal Support or Representation for the Complainant

The issue of separate legal representation for complainants in rape trials is controversial. Several reservations and drawbacks have been noted, including the following:[4]

- it is unnecessary;
- additional cost would be incurred by the State;
- criminal trials could be complicated, especially if victim representatives had the right of intervention;
- the possibility of increased numbers of appeals based on allegations of improperly conducted trials;
- the risk of 'coaching';
- the possibly unconstitutional undermining of 'Due Process' provisions because of the presence of two counsels hostile to the interests of the accused.

It has also been argued that if the perspective of the victim were to be given due weight and recognition, and if the State were to fully assume its obligations and responsibilities vis a vis the victim, there would be no need for her to have separate legal representation.

In a criminal trial for a rape offence, the entire prosecution is undertaken by the State. The victim is regarded as the chief witnesses for the State and will be the first witness to give evidence on behalf of the State. It is possible that she, as a witness, will not have to have met either the solicitor or barrister representing the State, and she will not have had access to the Book of Evidence, which contains all other evidence to be presented at the trial. She has no rights to direct what witnesses should be called.

The responsibility of prosecution lawyers in this situation is not to the victim but to the State, and this is not to cast any aspersions on the ability of the lawyers employed by the State, but merely to make it clear that the interests of the State and the interests of the victim do not always coincide.

The reality for complainants in the present system is that the processing of rape and sexual assault cases through the Criminal Justice system exacerbates rather than alleviates the devastating effects of the crime for the victim and serves to intensify the distress experienced by complainants thus producing an experience of re-victimisation (see Connolly, 1993). Complainants report feelings of disempowerment and humiliation at their treatment throughout the process, and incomprehension, betrayal and anger at the appalling attrition and conviction rates in these cases.

The Dublin Rape Crisis Centre is strongly critical of the serious inadequacies of the present system which produces such feelings of isolation, vulnerability and guilt in victims. They have consistently argued that in the case of rape, sexual assault and other sexual offences, the non-representation of the victim is particularly unjust as the victim is the only party to the trial who has no voice. The particular circumstances of the crime of rape, its effect on the victim, and her unique treatment throughout the criminal process must be taken fully into account.

The achievement of justice for the accused should not and need not be incompatible with justice for the victim. While it is the function of the courts to ensure the defendant's right to a fair trial, this must be balanced against the courts' obligation to protect the rights of the complainant in a rape or sexual assault trial. She is entitled to be kept fully informed at every stage of the process and to be treated with respect and courtesy by all those involved at every stage of the process, from the moment when the report is made, to the final outcome of the trial.

In her extensive study of rape trials in the UK, Denmark and elsewhere in Europe, Temkin (1987) concluded that separate legal representation for the complainant is the single reform which could 'do more to improve the present system of dealing with sexual assault than any alteration in the substantive criminal law or rules of evidence'. In Norway, where complainants have a right to separate legal representation, Connolly found (1993) that the system is working well, despite the initial opposition of the Association of Norwegian lawyers.[5] In Denmark, Temkin notes that separate legal representation successfully provides support for the complainant, while the mere presence in court of a lawyer for the complainant 'is sufficient to ensure that she is properly treated'. Lengthy cross-examinations are no longer the norm, and 'victims are becoming more willing to testify in court as a result of these developments', which contribute significantly to encouraging prosecutions (Temkin, 1987).

RECOMMENDATION

49. Having carefully considered the issue from all perspectives, the Working Party is of the view that **separate legal representation for complainants** in rape and sexual assault cases would provide much-needed support for complainants, render the trial process considerably less traumatic for them, and would contribute significantly to bringing about an increase in the reporting of rape. We therefore recommend that mechanisms for the provision of separate legal representation, including its insertion within the legal aid system, be developed and implemented.

Victim Impact Reports

The introduction of Victim Impact Reports has been, on the whole, a positive measure from the victim's perspective. The judge views the report before sentencing the defendant. It is the only opportunity for the victim's voice to be heard by the court. If the judge offers the woman the choice of giving an oral report this can be very therapeutic and healing. Reports must be written by professionals experienced in dealing with the effects of sexual traumatisation. Compiling a comprehensive report requires several sessions with the victim in order to give the full effects to date and prognosis for the future.

RECOMMENDATION

50. The Working Party recommends that **Victim Impact Reports** be requested for both trials and appeals and that a list of suitably qualified professionals should be available to the court in the event that the victim is not attending a professional therapist.

All requested reports should be compiled by a qualified person in the care agency involved with the victim. The victim should agree the content and be happy that it represents the impact of the crime on her life. The judge occasionally invites the

victim to give an oral account of the impact of the crime on her, her recovery process, etc. This is the only occasion the victim has a voice in the proceedings.

Corroboration

As we have seen, there is no longer a legal requirement on judges to warn juries in rape and sexual assault trials that it is unsafe to convict on the words of the complainant alone. The corroboration warning is now left to the discretion of the judge. However, although no research has been carried out to determine how or to what extent this formal change in trial procedure is being implemented in practice, from the reports of complainants and of Rape Crisis Centres, it appears that the corroboration warning continues to be given by judges on a routine basis.

Reviewing case law in this area, Fennell (1993) notes that judicial discretion will, inevitably, be exercised 'in accordance with those judicial attitudes and beliefs which fostered the requirement in the first place'. The corroboration warning, even in its present discretionary form, rests on the gender-specific belief that 'women are prone to telling lies, and some (bad) women are especially prone to telling lies'.

The failure to prohibit the corroboration warning maintains 'the assumption of mendacity on the part of this category of witness' (Fennell, 1993) and serves to reinforce highly gendered myths and stereotypes about rape. In Australia, when the corroboration warning was left to the judges' discretion, it was found that they continued to use it. It has now been abolished there.

The power of the judge, and the powerlessness of the victim are nowhere more apparent in rape and sexual assault cases than in respect of the corroboration warning and the admissibility as evidence of the previous sexual history of the complainant. In both instances, discretion as to whether these matters will be put before the jury is vested entirely in the trial judge, who is empowered to make such decisions without any procedures of accountability such as a written explanation.

In her analysis of discretionary provisions, Adler (1987) found as follows:

> There is now overwhelming evidence from this [England] and other jurisdictions that broad discretionary schemes are, by definition, bound to fail. The crux of the problem is that there are no clear rules and judges must in the end fall back on their own beliefs and values in making these decisions.'[6]

The Working Party is also concerned that delayed complaint may be used to undermine the credibility of the complainant.

RECOMMENDATIONS

51. That the discretionary power of the judge to issue a **corroboration** warning be abolished as unnecessary, and as seriously undermining to the respect due to a complainant in cases of rape and sexual assault.

52. That regarding a delayed complaint, it should be compulsory for the judge to warn the jury that **delayed complaint** does not imply falsehood on the part of the

complainant, as there may be good reasons why she did not complain immediately following the incident.

Past Sexual History

The introduction of evidence of the complainant's past sexual history with men other than the accused has been the subject of criticism since the 1970s. This evidence was routinely used to attack the character of the complainant, and/or to demonstrate that she was sexually promiscuous.

The Criminal Law (Rape) Act 1981 introduced restrictions on the circumstances in which a complainant may be questioned about her previous sexual experience. Such evidence is now admissible only at the discretion of the trial judge. It should be noted that there is no parallel requirement, restricted or otherwise, on defendants to reveal any previous convictions or complaints made against them for rape or any other sexual offences.

At present, and as with judicial practice in relation to corroboration, nothing is systematically known about the extent and circumstances under which judges in practice grant permission for the victim's past sexual history to be introduced.[7]

O'Malley (forthcoming) notes that while the restrictions are commendable in principle, 'there is at least the possibility that defence lawyers are being permitted to engage in such questioning (i.e., about the complainant's past sexual history) more often than the text of the legislation would suggest'. Complainants report that questioning about their previous sexual history is invariably hostile. They describe defence counsels' cross-examination as aggressive, offensive and degrading. The complainant in a rape trial is not on trial, and there is no justification at any stage of the Criminal Justice process for treating her with anything less than the full courtesy and respect which are her due as a 'witness'. In her extensive study of rape trials in England, Lees concluded as follows:

> Instead of hearing about the assault and the effect it has had on [the complainant's] life, the ground rules are laid by the defence barrister, whose task is to use every means available to discredit the complainant. That is his explicit role in the adversarial process of justice. The whole process is conducted from the male perspective, from the criteria used to establish credibility and the way rape is defined to the presentation in defence evidence of all the age-old myths about mendacious and promiscuous women who make false allegations (Lees, 1996).

In Australia, the Crimes (Sexual Assault) Amendment Act and Cognate Act of 1981 in New South Wales prohibits all questioning about the complainant's past sexual history which was seen as irrelevant to her credibility, with the following exceptions and provisos: (i) evidence of sexual relations with the defendant in the immediate past; (ii) evidence showing the source of origin of semen, pregnancy or disease or which purports the defendant's assertions of mistaken identity.

Furthermore, applications for the admission of such evidence must be heard before the judge in the absence of the jury and the press, and a clear ruling must be given about

what evidence can be used and the reasoning behind it; reasonable written notice of the evidence must be given to the prosecution if any applications are granted.

Substantial law reforms introduced in Michigan, USA, in the 1980s, included the abolition of judicial discretion regarding sexual history evidence, as well as the abolition of the need for corroboration or for proof of physical force.

In Canada, the Act to Amend the Criminal Code (Sexual Assault), 1993, states that while the introduction of the complainant's sexual history is a matter for judicial discretion, the defence must submit a written application containing details which will be heard in the absence of the jury and where witnesses may be called if they wish to introduce it. Where the judge allows such evidence, he must explain its relevance in writing.

RECOMMENDATION

53. The circumstances under which evidence is admissible in relation to the complainant's **past sexual history** with other men and with the defendant should be codified.

Where the complainant's credibility is attacked by disclosing her past criminal offences or previous history, the defendant's past record or sexual history should also be disclosed.

Applications for the admissibility of the complainant's past sexual history with the defendant should be made by the defence in writing; where the judge allows such evidence, its relevance must be explained in writing, and the prosecution should receive reasonable notice in writing of its admissibility.

Sentencing

As one of its Terms of Reference, the Working Party undertook to 'review sentencing practice with particular reference to the body of research and knowledge which has been amassed in recent years'. However, the Working Party has been unable to find any systematic data relating to sentencing in relation to sexual offences, and has thus been seriously hampered in achieving its objectives in this regard.

O'Malley (forthcoming) notes that 'there is a particularly urgent need for research in the area of sentencing', while Fennell (Oral submission to the Working Party, 1996) has emphasised the unacceptable consequences for sentencing policy and practice of both the absence of guidelines and the lack of empirical research on sentencing patterns.

Although there is a maximum penalty of life imprisonment for these crimes, the public perception is that such sentences are in fact rarely ordered.

As we are all well aware, there has been considerable public outrage over both inconsistency in sentencing in rape cases and the perceived failure of the judiciary to sentence convicted rapists in a way which reflects the seriousness of the crime. Intense anger was expressed in particular at the postponed sentence in the case of the rape of

Lavinia Kerwick, and to the reduction in sentence, on appeal, of the rapist in the 'X' case.

The Working Party fully acknowledges that each case is unique, and requires to be dealt with on that basis. Furthermore, we do not advocate either mandatory sentencing at this time, nor excessively long sentences. However, we are seriously concerned at the wide disparities in sentencing which we have noted in discussions with service providers, including the Dublin Rape Crisis Centre, and in media reports. The need for guidelines is particularly acute, as the following press report of a case of sexual assault heard in the Dublin Circuit Criminal Court makes clear. The judge is reported as follows:

> He would have given a longer sentence than the 12 months he imposed on (the defendant) but an older co-accused had been jailed for 15 months by a more senior and learned judicial colleague in an another court. This had set a parameter for sentence. (*The Irish Times*, 20/07/96).

Lenient and inconsistent sentencing trivialises the experience of the victim and the damage done to her, as well as conveying the wider message that whatever the law purports to stand for, it does not in fact offer women protection against the crimes of rape and sexual assault.

The Working Party is therefore concerned to see consistent sentencing which reflects the seriousness of the crimes committed, with appropriate custodial measures, including rehabilitative treatment, for offenders. Research shows that sex offenders have a high rate of recidivism. We deplore the existence of only one rehabilitative programme for sex offenders in Ireland (i.e., in Arbour Hill).

> Society colludes with the minimisation of sexual crimes. The reality is that sexual offending is deliberate, compulsive, premeditated behaviour and needs to be addressed with specific therapeutic programmes for the offenders. Ambivalent attitudes towards women who are sexually assaulted continue to exist at all levels of society. On the one hand, rape is said to be the most serious crime next to murder; on the other hand, women in court are regarded with suspicion and scepticism and deprived of justice. Sentencing in rape cases has still to reflect the horror which public opinion feels for so serious a crime. (Olive Braiden, *The Irish Times*, 17/4/95).

RECOMMENDATIONS

54. That **research** be commissioned, as a matter of urgency, to determine **sentencing patterns** in rape and sexual assault cases; such research should, as proposed by O'Malley (forthcoming) track a significant sample of cases through the criminal justice system from the time at which an alleged offence comes to the attention of the gardaí, to the time at which it is eventually disposed of (whether through *nolle prosequi*, acquittal or conviction and sentence). Such research would provide crucial information about sentencing patterns, and just as importantly, about attrition rates and the stages at which cases are concluded.

55. That **guidelines** with respect to sentencing in cases of rape, sexual assault and other sexual offences be drawn up and implemented immediately.

56. That a **Standing Commission** be established to monitor and review sentencing in cases relating to sexual violence and other forms of violence against women and children.

Suspended Sentences

The use of non-custodial options when sentencing accused persons for crimes of violence towards women and children is a matter of concern for the Working Party and for many victims of such crimes. These options include suspended sentences; adjourned sentences (where a person remains on bail and usually under the supervision of the gardaí); probation and welfare service and community service as an alternative to custody.

It is accepted that the appropriate punishment in a given case is a matter for the trial judge based on the facts in each case. However, society is becoming more and more aware that sexual assaults, including rape and assaults within the domestic setting, are serious forms of violence. There is a greater understanding that these crimes are not just 'once off', often drink assisted occurrences, but represent acts of control, violence and disregard for the rights of women and children. The courts are seeing more and more cases which involve persistent violence over months and years. We are discovering that men found guilty of a rape or sexual offence have previous convictions for offences of a similar nature or for other crimes involving violence.

RECOMMENDATION

57. The Working Party recommends that **non-custodial options** be considered only where the offence is of a minor nature. The Working Party would endorse the view of the Supreme Court in *The People (DPP) -v- Tiernan* that the features of rape make the appropriate sentence a 'substantial immediate period of detention or imprisonment.'

The Working Party further recommends that where a Court is considering a non-custodial option there should be in-built in that option, supervision of the perpetrator within the community and a serious sanction for failing to be of good behaviour. Further, there should be available to the Courts around the country, **treatment programmes** which specifically address the use of violence by men towards women and children. In many States in the United States of America, men convicted of crimes of violence must attend such programmes and confront their violence in a serious fashion. Failure to attend such programmes is in itself a ground for the matter being brought back to Court. Resources must be made available for similar sorts of programmes in Ireland.

Court of Criminal Appeal

Following public outrage at the judgement in the Lavinia Kerwick case, a provision of the Criminal Justice Act, 1993, stipulated that the Director of Public Prosecutions may apply to the Court of Criminal Appeal to have a sentence increased where it appeared too lenient. However, no monitoring or evaluation of the new provision has been undertaken.

More generally, there is no systematic information about the number or proportion of convictions upheld or reversed on appeal, or about the grounds on which they are upheld or reversed.

The first such appeal was made by the DPP in 1994, when he asked the court to increase a 10-year sentence of penal servitude imposed by the Central Criminal Court on a man who had pleaded guilty to raping two women, and to committing buggery on one of the women, in a 24-hour period. Concurrent sentences of 10 years penal servitude had been imposed for each of the rapes and for the buggery charge. The Appeal Court judge refused to increase the sentences. The judge is reported as stating that the sentence was a substantial one in any view, and that the defendant had confessed immediately and pleaded guilty. He had been going through a particularly aberrational period, engaging in alcohol and drugs. The judge added that the trial judge had brought all the correct principles to bear in reaching his decision (*The Irish Times*, 8/11/94).

It is the view of the Working Party that this judgement highlights the difficulty of having lenient sentences reviewed in the absence of guidelines. Further, the judgement justifies a lesser sentence on the grounds of 'aberrational behaviour' related to the use of alcohol and drugs during the perpetration of the crimes. The use of alcohol and drugs may be a factor that arises during the course of the commission of an offence but the courts should be slow to consider it as any form of mitigation where acts of violence towards women and children are involved. The Working Party welcomes the introduction of the provisions of the Criminal Justice Act, 1993 but is concerned that the provisions should not be considered sufficient if, in practice, matters have not progressed since the Kerwick case.

RECOMMENDATION

58. The Working Party recommends that the **grounds for appeal** be stringently defined and monitored; that **guidelines** be drawn up for the use of the appeal provisions for the DPP and the Court of Criminal Appeal and that the **number and proportion** of such cases be recorded and the grounds for the decisions on appeal be monitored and evaluated.

Support Services

Women who are and have been the victims of crimes, sexual or otherwise, have in recent years begun to find within the community, support systems available to them as they need such help. It is the view of the Working Party that the greater awareness of such crimes brought about through the efforts of such organisations as Rape Crisis Centres, Women's Aid and other refuge groups has meant that more women have been able to make complaints to the gardaí, thereby officially recording these crimes. Further, the Working Party acknowledges that changes in garda procedures have encouraged women to report such crimes more readily.

However, the Working Party is all too acutely aware that such support services are not easily accessible for women and children outside major cities. Therefore, taking garda and legal action after an assault is more of an option when a garda station and a legal aid centre is a short walk from your doorstep. Making a complaint of rape is made less traumatic where there is a team of specially trained medical personnel in a hospital

and specially trained, preferably female, gardaí at the garda station. Counselling, accommodation alternatives and legal advice is more likely to be available after a crime to women in urban areas.

The Working Party is also aware of the difficulties that women in some sections of society experience along with the general shortcomings in this area. Therefore, the woman with a physical disability who is a victim of a crime may have the additional burden of physically being unable to get out to make the complaint, receive counselling or attend a doctor. A woman who is a member of the Travelling community who is in a violent domestic relationship may not be comfortable in a refuge with women from the settled community and may find that the services provided by the community at large do not take into consideration ethnic and cultural differences that she and her children may experience in their lives.

RECOMMENDATION

59. The Working Party strongly recommends that, along with the legal changes sought, **support services** for women and children who are victims of crimes of violence should be provided on a country-wide basis. These services must be accessible to women with disabilities. Further, the services and the personnel operating within the services, should be aware of regional and cultural differences between women who seek to avail of the assistance on offer. Most of all, the funding given to such organisations/individuals should be appropriate to the needs of the service.

5.4 Child Sexual Abuse

The legislation involving rape and related offences applies as much to children as it does to adults. Thus a man may be charges with rape or sexual assault of a child. However, the law also takes cognisance of the vulnerability of children and makes separate provision for them. The main pieces of legislation in this regard are:

The Punishment of Incest Act, 1908 (as amended)

Section 1 of the Act makes it an offence for a male to have 'carnal knowledge of a female person, who is to his knowledge his grand-daughter, daughter, sister or mother ... ' Consent is not a defence to this offence. A female over the age of 17 years who consents to an incestuous act will be guilty of an offence. Incest cannot be committed with an adopted child in the absence of a blood relationship or by a man who is in *loco parentis*. A prosecution may be commenced only by the Director of Public Prosecutions or with the consent of the Attorney General. Incest is tried on indictment in the Circuit Criminal Court, not the Central Criminal Court.

The penalty for incest is now life imprisonment regardless of the age of the female involved. Prior to the Criminal Law (Incest Proceedings) Act, 1995 where the victim was over 15 years of age, the maximum was seven years imprisonment but the law now does not distinguish between ages of the victims. In the case of a female over the age of 17 years convicted of incest, the maximum sentence is seven years imprisonment.

RECOMMENDATIONS

60. The Working Party recommends the extension of the definition of **incest** to cover adopted children and step-children.

61. The Working Party recommends that where the victim of incest is under twenty-one years of age, the trial of the offence should take place in the Central Criminal Court

62. The Working Party does not see the rationale for the consent of the Director of Public Prosecutions to the initiation of proceedings for incest and we would recommend the abolition of this provision.

The Criminal Law (Amendment) Act, 1935

Section 1 of this Act provides for two offences:

(i) "any person who unlawfully and carnally knows any girl under the age of 15 years shall be guilty of a felony and shall be liable on conviction to penal servitude for life ..."

(ii) "any person who unlawfully and carnally knows any girl who is of or over the age of 15 years and under the age of 17 years shall be guilty of a misdemeanour and shall be liable, in the case of a first conviction of such misdemeanour, to penal servitude for any term not exceeding five years ... or in the case of a second or any subsequent conviction ... to any term of penal servitude not exceeding ten years ... " As with rape, there must be proof of penetration but consent is no defence in the case of unlawful carnal knowledge. A trial for unlawful carnal knowledge takes place in the Circuit Criminal Court. Section 14 of the Act provides that consent is no defence to a charge of indecent (now sexual) assault on a person under 15 years of age. This offence involves the touching of a young person by another person but does not cover the situation where a young person touches another person such as in the case of masturbating an adult.

The *Law Reform Commission Report on Child Sexual Abuse* (LRC 32-1990) recommends the creation of a new offence of "child sexual abuse or "sexual exploitation" to replace the above Section 14 offence. They further recommend that "only sexual activity engaged in for the sexual gratification of the accused or another, or as an expression of aggression, threat or intimidation should constitute an offence." The recommendation has yet to be taken up by any government since the Report was released and the abuse found in many situations involving children can not be properly prosecuted through the courts as a result.

RECOMMENDATIONS

63. The Working Party recommends that the term **"carnal knowledge" be replaced** by the expression "sexual intercourse" as defined in Section 1 (2) of the Criminal Law (Rape) Act, 1981.

64. The Working Party recommends that the trial of offences involving girls below the age of 15 years take place in the Central Criminal Court.

65. The Working Party recommends that a new offence of **"child sexual abuse"** or "sexual exploitation" be created as a matter of urgency and in consultation with persons working with abused children.

The Criminal Law (Sexual Offences) Act, 1993
Section 3 prohibits the act of buggery with a person under the age of 17 years.

The penalty for buggery where the victim is under the age of 15 years is life imprisonment. In the case of a victim between the age of 15 and 17 years of age, the penalty is five years imprisonment on a first conviction or ten years in the case of a second or subsequent conviction.

Section 4 makes it an offence for a male person to commit an act of gross indecency with another male under the age of 17 years. The penalty is two years imprisonment.

RECOMMENDATION
66. The Working Party recommends that the trial of offences for **buggery** where the victim is under 15 years of age take place in the Central Criminal Court.

Areas of Concern
It has come to the attention of the Working Party that girls below the age of 17 years, and as young as 14 years of age, have been charged with prostitution offences. The prosecution of girls for prostitution where the males are committing serious sexual offences (unlawful sexual intercourse, sexual assault etc.) is a startling portrayal of the inequality existing in the current use of the legal system.

The Working Party is aware that many complaints of rape and sexual assault involving children have not been prosecuted through the courts even when these complaints have been made to the Garda Siochana. The prosecution of such cases is not without its difficulties. For instance, where the child is very young (under 7 years) the allegation may be unclear and not repeated. Thus while the allegation is made to an adult or professional and subsequently validated by experienced personnel dealing with victims of sexual abuse, the child may be reluctant to repeat the allegations outside of a given situation and therefore may be unable to make a statement to the Gardai as required. Clearly in this instance a child is unlikely to be able to give evidence in a court of law and thus the decision is taken not to prosecute.

Further, an older child may not wish to repeat an allegation in a situation such as court where that child is likely to be questioned about the allegation and the decision is taken not to prosecute in light of the reluctance of the main witness.

However, the Working Party is aware of the increased use of the video link provisions under the Criminal Evidence Act, 1992 and welcomes this step. The Working Party is also aware of the lack of facilities both in Dublin and throughout the country for such video links and urges greater provision of such technology across the country. This would reduce the number of cases from the country being transferred to Dublin which results in a delay in the hearing of the trial and a resulting lengthening of the anxiety for all involved.

Evidence of Children

Evidence in any crimunal trial is received by way of sworn testimony. Thus in cases involving children, a consideration for a judge is whether a child understands what an oath to tell the truth is and the consequences of not telling the truth. At one time, only sworn evidence could be accepted in criminal trials and if a child did not understand the meaning of the oath, s/he could not give evidence.

This situation was changed by Section 30 of the Children Act, 1908 (as later amended) to allow for the reception of unsworn evidence from children of "tender years" who did not understand the nature of an oath but who, in the opinion of the court, understood the importance of telling the truth and were sufficiently intelligent to justify the reception of the evidence. However, such evidence had to be corroborated and if no such corroboration was forthcoming that could mean the case would not proceed.

This position continued until the Criminal Evidence Act, 1992 abolished the requirement to corroborate the unsworn evidence of a child (Section 28). Further, the Act expressedly permitted the reception of unsworn evidence from a person under 14 years of age as long as the court "is satisfied that he is capable of giving an intelligible account of events which are relevant to those (criminal) proceedings." (Section 27).

The importance of these provisions is that often the evidence of a child was unsupported by other evidence. Child abuse by its very nature has been found to be secretive and often does not leave physical marks or signs to confirm the complaint made by the child. Thus it should be possible for prosecutions to continue where the only evidence is the child's evidence with the jury determining the circumstances and deciding as to the guilt or innocence of the accused.

However, it is not clear whether the 1992 Act has had a significant effect on prosecutions. There is a need for information as to how many complaints involving children are made to the Director of Public Prosecutions each year and how many lead to prosecutions. Further, while the DPP may be prohibited from giving reasons in particular cases as to why prosecutions were not brought, there is no reason why, on a yearly basis, the DPP could not issue figures for complaints/prosecutions and general categories as to why prosecutions did not proceed. This has already been done in the Law Reform Commission Consultation Paper on Child Sexual Abuse (August, 1989) and the Working Party sees no reason why this cannot be repeated on a regular basis.

The Working Party has also noted that while there have been difficulties in mounting criminal prosecutions involving child victims, the civil courts do not seem to have the same difficulties where allegations of child sexual abuse is concerned. Thus children are taken into the care of Health Boards or given to the sole custody of one parent where there are allegations of sexual abuse of a child. While these courts do not operate on the same legal basis in that they must prove such allegations on the balance of probabilities as opposed to proving beyond a reasonable doubt, there is evidence to suggest that allegations of sexual assault/rape of children by family members, mostly fathers, are being dealt with in a civil court but are not being referred to criminal courts. This use of the civil courts for a legal relief to child sexual abuse is worrying in that it highlights defects in the criminal law which are going unchallenged and further reflects a lack of confidence in the criminal process.

Of particular concern to the Working Party would be the fact that a man may have the custody of a child taken from him and either vested in the mother of the child or a Health Board on the basis that he has abused that child, or often, other children within the family. The man, though having lost the custody of his child/children, is free to set up in another relationship and perhaps go on to abuse other children.

RECOMMENDATION

67. The Working Party endorses and recommends the full implementation of the recommendations contained in the **Report of the Kilkenny Investigation** (McGuinness,1993).

5.5 Conclusions

> Rape is a gross attack upon the human dignity and the bodily integrity of a woman and a violation of her human and constitutional rights. As such it must attract very severe legal sanctions.

The above quotation comes, not from feminist writings on crimes of violence against women, but from the decision of the then Chief Justice, The Honourable Mr. Justice Finlay, in the case of *The People (DPP) -v- Tiernan* in 1988. These two sentences neatly sum up the nature of rape and the need to treat such offences seriously in the Courts.

The Working Party considers that all assaults of a sexual nature on women and children represent gross attacks on the bodily integrity of the victims of such crimes. The Irish Constitution guarantees in Article 40.3 that, in its laws, the State will 'defend and vindicate the personal rights of the citizen.' One of the unenumerated rights under this Article is the right to bodily integrity. Thus, the State, not just individuals, is obliged to take steps to ensure the safety and well-being of all its citizens.

And it is not only as a result of its domestic obligations that the State is required to protect women and children from sexual crimes. It has international obligations that arise under such Treaties as the UN Convention on the Rights of the Child. Under Article 34 of this Convention, Ireland is obliged to 'undertake to protect the child from all forms of sexual exploitation and sexual abuse.' The increase in sexual abuse towards children, the growth of child pornography and other forms of sexual exploitation may mean that Ireland is failing child victims both under the Constitution and under the UN Convention.

The Working Party reminds the Government that the failure of the State to protect women and children from sexual assaults and rape is a most serious breach of basic human rights. Protection not only takes the form of laws and procedures which ensure that perpetrators are brought to justice through the criminal justice system, but also must include taking steps to deal with the use of violence in homes and communities. The criminal justice system alone cannot defend and vindicate the rights of Irish women and children.

Notes

1. See Women's Aid (1995) *Violence Against Women by Known Men*, Dublin, Women's Aid.
2. The main difference nowadays between a misdemeanour and a felony is that a felony carries wider powers of arrest. See O'Malley, forthcoming.
3. See, for example, Chambers and Millar, 1983; Hall, 1985; Shapland *et al.*, 1985.
4. First Report of the Working Group on a Courts Commission, Dublin, Stationery Office, 1996.
5. Connolly (1993) cautions against the 'dangers of simply transporting institutions from country to country regardless of differences in culture, population and legal systems'. He adds, however, that 'the operation of the Scandinavian system should not be dismissed simply because it takes place in a different setting. Although there are differences, it is suggested that these differences are outweighed by the similarities which exist'. Shapland *et al.* (1985), Temkin (1985), Kelly (1988) and others have found remarkable consistency and notable similarities in the (mal)treatment of victims of rape, sexual assault and other sexual offences by the Criminal Justice system in a wide range of jurisdictions.
6. Adler, 1987, cit. in Connolly, 1993.
7. But see Fennell (1993) for a review of case law in this regard.

CHAPTER 6 SEXUAL AND OTHER CRIMES OF VIOLENCE AGAINST WOMEN AND CHILDREN WITH DISABILITIES

> Women who have a disability or women who have learning disabilities can be taken advantage of because of who they are and what they do not know (Lawlor, 1992).

6.1 The Issues

There is no published research in Ireland on the experiences of women and children with disabilities in relation to the criminal justice system. However, recent studies in the USA and UK have shown that, just as the sexual abuse of children is occurring at ever earlier ages, so abusers are turning their attention to people with disabilities, who are less likely than non-disabled people either to report abuse or to be regarded as reliable witnesses (NRB, 1995). In a context in which sexual abuse is still too often thought to be an expression of attraction rather than a perversion of power, many people choose to believe that "nobody would do that to a disabled person". "I don't think it occurred to people that it would happen to a disabled child", reported a blind woman in the UK in 1993. "I think that was very marked in the fact that my sister's abuse was investigated but it just didn't occur to anybody to ask me (even though) I was in the room sometimes when they'd be talking" (Westcott, 1993). By lowering even further the poor self-esteem of many women and children with disabilities, such attitudes add to their vulnerability and place them at ever greater risk.

Philippa Russell (1992) suggests that some children (and adults) with disabilities are more vulnerable than others due to their "high dependency needs" (e.g. those people with disabilities who require assistance in intimate personal tasks such as eating, bathing and going to the toilet) and limited communication skills (e.g. those people with disabilities who do not use speech, using instead sign language, communication boards, computers etc). Many have to accept intimate care from virtual strangers and / or many different people and have no say over who assists them in such tasks.

Disabled children and adults often lack the assertiveness, vocabulary and / or skills to complain appropriately. They often live in families or residential care services, or attend day services, which experience high levels of stress, may be poorly resourced and lack the time, energy and / or confidence to voice concerns. This may in itself lead to sexual or other crimes of violence *within* the family or service. Lack of support for family members and other carers can lead to frustrations which are taken out on the person with a disability her/himself.

The victim status conferred by social convention on children and adults with disabilities can of itself increase their vulnerability. "Quite a comfortable victim . . . a very weak victim", was how one woman with a disability described herself in a recent study, while another disabled person commented, "I was there, I was available . . . I was already vulnerable, I already had problems and it's easiest to take the weakest on in the litter because they need more care and attention anyway . . . There's more opportunity . . . for the abuse and . . . to cover it up" (Westcott, 1993).

Lack of information contributes to the vulnerability of women and children with disabilities to sexual and other crimes of violence. Until recently very few schools for children with disabilities included relationships and sex education in their curricula. Very little information (for example, about support services) is available in formats other than print (e.g. on tape, in Braille) or in language easily understood by people with learning disabilities or those for whom sign is their first language. Naivety is a breeding ground for violence and abuse.

At the same time, the myths and fears which lie at the heart of contemporary belief systems about sexuality have a profound influence on the lives of people with disabilities, the kinds of sexual relations people with disabilities may have and whether, in fact, they may express sexuality at all. The sexual expression and the development of a sexual identity of people with disabilities is frequently subject to the control of others, either directly or indirectly, through society's delineations of acceptable sexual expression or what is attractive. These constraints make children and adults with disabilities sexually (and personally) vulnerable and all too easily at risk from abuse and exploitation (NRB, 1995). For some women (and men) with disabilities, violent, abusive or non-consensual sex may be their only experience of inter-personal sexuality.[1] Women with disabilities are frequently the targets (within apparently consensual relationships) of bullying, insecure men, with violent results.

It is worth noting that the literature has tended to assume a heterosexist bias, except in the sexual abuse of men or boys with disabilities. Sexual and other crimes of violence may well exist within the homosexual community, and are even less likely to be reported.

It has been argued in recent years that there are some forms of abuse which are specific to the situation of children and adults with disabilities, for example, lack of stimulation (particularly affecting people with severe or profound learning disabilities or autism), confinement and restraint, lack of supervision, drugs given incorrectly and insufficient treatment (Newport, 1991). When disabled adults or children are assumed to be "less human" because of their disability, abuse can be construed as "not so inhumane" or even "for their own good". In settings, situations and systems which institutionalise, which limit choice and deny personal control, in which obedience and compliance are instilled as good behaviour and in which isolation and rejection by others make attention and affection rare treats to be prized and coveted, opportunities for exploitation and abuse can thrive (Westcott, 1993).

In this sense, the totality of the way in which disabled children and adults are perceived and treated in contemporary society can be read as to some degree abusive. At the same time, it should be recognised that the relationship between abuse and disability is complex. While disability increases vulnerability to exploitation and abuse, the experience of abuse or exploitation can itself cause or contribute to disability: mental health difficulties, addiction, physical and/or mental disability.

In summary, children and adults with disabilities are at a higher than average risk of becoming victims of sexual and other crimes of violence due to:

- societal myths and values, devaluation and stigmatisation

- experiences of segregation, rejection, physical dependency, lack of choice or control
- multiple caretakers
- communication difficulties
- lack of access (for example, deaf people cannot use telephone helplines)
- negative self-image, low self-esteem ("I knew I shouldn't be alive anyway so I thought no-one would care")
- denial of caregivers and society in general.

For these reasons, it is important also to consider the vulnerability to exploitation and sexual and other crimes of violence of disabled men, many of whom are exposed to the same conditions and dangers as women and children with disabilities.

6.2 The Legal and Judicial Process

The under-reporting of sexual and other crimes of violence against women and children with disabilities is a major concern. People with disabilities experience considerable marginalisation generally in Irish society, and are thus both potentially more vulnerable to sexual and other crimes of violence and less likely to report such crimes. They may find it more difficult to report a crime partly because they are made to believe it is their fault, or because frequently they are not listened to or believed if they do. Furthermore, people dependent on others for their daily needs, those who do not use speech to communicate, those who live in institutions and those whose social contacts are closely circumscribed have particular difficulties in disclosing what may have happened to them.

At the same time, disabled people may not be believed and some of the reasons for this have already been discussed. Allegations from people with mental health difficulties are sometimes assumed to be evidence of delusions or attention-seeking (NRB, 1992). Inhibitors such as self-blame apply equally to disabled as to non-disabled people.

Of the 61 disability agencies dealing with disabled adults which responded to NRB's 1991 survey concerning sexual abuse, only 19 (31%) reported that they operated to a agreed procedure or guidelines for dealing with suspected or alleged cases of abuse. Of these, only four had written procedures (NRB, 1992). While this situation has undoubtedly improved since then, guidelines on procedures for the investigation and management of sexual abuse of people with disabilities, drawn up by a working group convened by NRB in 1991-92 and submitted to the Department of Health, are still apparently under consideration by the Department. In its 1994 submission to the Commission on the Status of People with Disabilities NRB again called for the Department of Health to introduce guidelines, and asked for these to apply to the

investigation of allegations brought by all disabled people, and not just people with learning disabilities as recommended in the report of the Kilkenny incest case.

NRB's 1992 proposals are limited, in that they concern sexual violence only, but they provide a basic framework for the construction of a set of guidelines in a broader context. They provide a useful definition of the sexual abuse of an adult with a disability:

"Sexual abuse of a person with a disability occurs when the person is engaged in sexual activities:

- which he or she does not truly comprehend
- or to which he or she is unable to give informed consent
- or which he or she has impaired ability to prevent
- or which he or she has impaired ability to communicate to others" (NRB, 1992).

This definition begins to open up the question of whether the exploitation or abuse of people with disabilities, including sexual and other crimes of violence, is of a different order than that of non-disabled people. It is important to note the negative effects of an easy identification of people with disabilities as "natural victims" and to be wary of identifying additional sources of negatively-defined "difference" from non-disabled populations. Nonetheless, the subject is worthy of consideration from the point of view of particular vulnerability (as discussed earlier). Rather than constructing a separate crime, it might be more useful to consider criteria for existing offences which take into account the particular vulnerability of people with disabilities.

Very few respondents to NRB's 1991 survey reported cases of sexual abuse to the gardaí. One agency working with people with learning disabilities suggested there was no point in prosecuting offenders since victims' evidence would be "unlikely to stick" (NRB, 1992). A television programme broadcast on BBC2 in March 1996 supported this view, reporting that only 0.3% of incidences of sexual abuse involving people with learning disabilities in the UK come to trial.[2] This was alleged to be because people with learning disabilities are said to make unreliable witnesses with poor memory, and only cases with a reasonable prospect of conviction go to court. Lawyers were said to be confused by notions of "mental age".

In the UK memoranda concerning the use of video recorded interviews with child witnesses are said to pay scant attention to the real needs of disabled children and are not used for evidence by disabled adults (Westcott, 1993). Interpretation is circumscribed in a way that makes it difficult for evidence from people with significant disabilities to be acceptable to the existing judicial system, thus preventing their access to criminal justice. "The poor credibility that children (and adults) with disabilities are deemed to have relates directly to prevailing attitudes and stereotypes in society, and specifically to existing value judgements about what manner of communication is both 'normal' and 'acceptable'.

In Ireland disability issues as they relate to justice and the legal system are invisible, unresearched and unrecorded. NRB's submission to the Commission on the Status of People with Disabilities called on the Department of Justice to research the interface between people with disabilities and the judicial system, including consideration of the vulnerability of people with disabilities as victims of crime and how this can be addressed; issues relating to people with disabilities as witnesses; and the need for pre-trial court familiarisation and in-trial personal advocacy so that people with disabilities can understand and follow court proceedings (NRB, 1994). In addition research should be undertaken to establish statistics and parameters (CSW, 1994). It is likely that the forthcoming report of the Commission on the Status of People with Disabilities will make similar recommendations.

While consideration of people with disabilities as perpetrators of sexual and other crimes of violence lies outside the scope of the Working Party, it is worth noting that the legal and judicial system appears to be inconsistent and unclear in its approach to such people. (For example, Kelly Fitzgerald's father received a lighter than expected sentence because the judge felt that his physical disability constituted a mitigating circumstance and would lead to ridicule within the prison walls, whereas a young man with a learning disability convicted of sexual abuse, himself a victim of sexual abuse, the previous year received a five-year custodial sentence).

6.3 Conclusions

In this chapter we have briefly reviewed some of the main areas of concern regarding the legal and judicial process as it affects women and children with disabilities who are victims of sexual and other crimes of violence.

It is essential that equality and inclusion in existing structures be achieved, rather than developing parallel systems and new categories which could have the unwanted effect of reinforcing marginalisation. Women and children with disabilities require the same things as non-disabled women and children, including a safe, happy environment free from attack or abuse, in which they are listened to and respected as people entitled to the full range of human and civil rights.

RECOMMENDATIONS

68. Recognising that legal and judicial reforms alone are clearly insufficient to address many of the problems outlined in this section, the Working Party recommends that the following measures and action be implemented or undertaken as minimum requirements in ensuring the just and **equitable treatment of women and children with disabilities** who have been subjected to crimes of sexual and other forms of violence: The Department of Justice should commission **research** on the interface between people with disabilities and the judicial system; such research should draw substantially on the accounts of people with disabilities.

69. The Department of Health should draw up and issue **guidelines** for the reporting of sexual and other abuse perpetrated against adults with disabilities.

70. The Department of Health should clarify whether children with disabilities and residential centres providing services to them are covered by the provisions of the **Child Care Act, 1991**.

71. In-service training in disability equality issues and the particular issues surrounding women and children with disabilities as victims of sexual and other crimes of violence should be given to all appropriate personnel working in the legal and judicial system (the judiciary; lawyers; social workers; counsellors; gardaí).

72. Appropriate and accessible **counselling** and support should be offered to women and children with disabilities who are the victims of sexual and other crimes of violence. Peer counselling services should be developed.

73. Information concerning women's and children's rights, how to detect and report abuse, how to protect oneself, should become widely available in formats other than print.

All agencies used by women and children in reporting crimes and in availing of support services, such as women's refuges, rape crisis centres, well woman clinics, legal aid centres and garda stations should be made **accessible** to people with disabilities, including access for people with physical, sensory, psychiatric and learning disabilities; telephone devices for the deaf (TDDs) should be installed, and staff trained in sign language interpretation should be available.

74. All buildings used in the course of the legal and judicial process as it applies to victims of sexual and other crimes of violence should be made **accessible** to people with disabilities.

75. Where those within the legal and judicial systems have no relevant training as to the needs of disabled people, **advocacy and other supports** should be availed of from a relevant agency, such as the National Council of Disabled People.

76. The Department of Justice should consider the particular vulnerability of women and children with disabilities when drawing up sentencing criteria; **sentencing patterns** should be monitored, and particular attention should be paid to the support systems provided at reporting, interviewing and trial of crimes against women and children with disabilities.

77. Government and voluntary agencies should undertake to ensure that parents and the **public become more aware** of the damaging and debilitating effects of sexual and other crimes of violence against people with disabilities, including the way in which social prejudice compounds the problem and constitutes a form of abuse in itself.

Notes

1. Degener, Theresia, interview on *Not So Different*, RTE Radio One, 1990, quoted in NRB, *Righting the History of Wrongs*, Submission to the Second Commission on the Status of Women, 1991, Dublin.
2. *From the Edge*, BBC 2, broadcast 19 March, 1996.

CHAPTER 7 THE JUSTICE SYSTEM

As the information presented in this Chapter confirms, justice is dispensed and administered overwhelmingly by men. Women comprise just 6.4% of the Garda Siochana, 9.5% of the Prison Service[1] and 12.5% of the Judiciary.

7.1 Women in the Garda Siochana

Surprisingly, the Garda Siochana *Annual Report* for 1995 provides no information about women in the force. The information below therefore refers to 1994.

While the numbers of women entering the Garda Siochana have risen sharply over the past two decades, women still constitute only a tiny proportion of the total force, i.e. 6.4% (702) in 1994.[2] Women are entirely absent from or very poorly represented in all of the decision-making and senior echelons of the Garda Siochana.

TABLE 1
An Garda Siochana 1994
Representation of Women

Rank	Total	Men	Women	(%)
Chief Commissioner	1	1	0	(0)
Deputy Commissioner	2	2	0	(0)
Assistant Commissioner	6	6	0	(0)
Surgeon	0	0	0	
Chief Superintendent	41	41	0	(0)
Superintendent	157	156	1	(0.6)
Inspector	248	243	5	(2)
Sergeant	1,829	1,787	42	(2.3)
Garda	8,550	7,908	642	(7.5)
Total	10,834	10,144	690	(6.3)

Source: Garda Siochana Annual Report 1994

7.2 Women in the Legal Profession

The numbers of women entering both branches of the legal profession have been steadily increasing since the 1980s. Approximately half of all those now entering the solicitors' branch are women, while approximately 25% of members of the Law Library (barristers) are women.

In their study of women in the legal profession, Connelly and Hilliard (1992) noted that although the legal world is no longer a totally male stronghold, 'it is still male-dominated'. Many of those surveyed considered that the ethos of the Bar, in particular, reflected certain values perceived to be more typically male than female. They found that sexist attitudes and behaviour had been encountered 'from all sources - colleagues, client and judges'. There was a strong sense among the women surveyed

that a woman had to be twice as good as a man in order to succeed in either branch of the profession.

7.3 Women in the Judiciary

> If judges come from the middle class, are middle-aged to elderly men, mostly catholic educated in single-sex schools with all the attitudes that implies, we need to ask how that group of people is equipped to judge the innermost feelings of a woman who has been raped (Gemma Hussey).[3]

Judicial appointments do not reflect the greatly increased numbers of women entering the legal profession since the 1980s. Although more women have been appointed to the Judiciary over recent years, they continue to be extremely poorly represented.

No information is available relating to the class composition or age profile of Judiciary.

TABLE 2
Women in the Judiciary, July 1996

	Total	Men	Women	(%)
Supreme Court	8	7	1	(12.5)
High Court	20	17	3	(15)
Circuit Court	25	23	2	(8)
District Court*	51	39	7	(13.7)
Total	104	86	13	(12.5)

* There are still five vacancies to be filled in the District Court.

7.4 Conclusions

Numerically, and in terms of its ethos and value system, the Justice system continues to be massively male dominated and defined. While the historical reasons for this are evident, history can neither explain nor justify continuing male dominance to such an overwhelming extent at the end of the 20th century.

The serious under-reporting of sexual and other crimes of violence in itself demonstrates an absence of faith and confidence in the deployment of justice on the part of very large numbers of women who are the victims of sexual and other violent crimes. The small numbers of women who do report such crimes, despite their personal pain, receive minimal encouragement and assistance in doing so from our official institutions of justice, and many refer to their intense feelings of disempowerment and disillusionment at every stage of the criminal justice process.

If our system is to achieve its objective of obtaining justice for the community as a whole and for individuals within it, it must fully assume its obligation not only to protect the right of the defendant to a fair trial, but also to ensure that the complainant receives fair, just and respectful treatment.

At present, and as we have seen throughout this Report, this is not the case. Given the still widespread prevalence within the system of gender-biased attitudes and narrow cultural stereotypes of women's 'natural' role, superficial changes to the operation of the system are inadequate. While there have been real improvements in garda practice and, although to a much lesser extent, in court procedures in recent years, the long overdue root-and-branch overhaul of the system as an integrated whole has not taken place. Such fundamental change would require, as a minimum, an acknowledgement that our criminal justice system does not always embody or achieve fairness for women or for children, accompanied by the development of awareness and training programmes for those involved - police, lawyers, judiciary - on the effects and consequences of sexual and other violent crimes for the complainants as well as for the defendants.

RECOMMENDATIONS

78. The Working Party recommends that **information and awareness programmes**, provided by experts in the field, on all aspects of the effects and consequences of sexual and other violent crimes should become a routine element within both initial and in-service **garda training**.

79. The Working Party recommends that **law schools** (including the Incorporated Law Society and the King's Inns) should incorporate teaching on all aspects of sexuality, violence and the law into their core curricula.

80. Recognising the independence of the judiciary, the Working Party recommends that the **judiciary should develop information and awareness programmes**, provided by experts including service providers in the field, on all aspects of the effects and consequences of sexual and other violent crimes.

81. The **attitude of the judiciary** is vital in all areas of law, but is particularly pertinent in Family Law. Reform of the system will be ineffectual if some of the judiciary do not have an awareness and understanding of the complex issues involved and women will not obtain justice in the courts.

Judges and all court personnel must appreciate the complexities of the areas of domestic violence and sexual abuse. Those working directly with abused women on the ground are continually retraining. It is impossible without specific **training on domestic violence for the judiciary** to be properly informed of this complex area. The **criteria for judicial appointment to the Family Courts should include experience and interest.**

82. Given the severe under-representation of women on the bench, the Working Party recommends that there be a committed and concerted effort by the Government towards achieving a **gender balance amongst the judiciary**.

Notes

1. See *National Report of Ireland to the United Nations Fourth World Conference on Women*, Dublin, Stationery Office, 1994.
2. These figures include Ban Gardai on career breaks.
3. cit in Shanahan, 1992.

CHAPTER 8 THE MEDIA AND CRIMES OF SEXUAL VIOLENCE

The print and broadcast media occupy a central place in western industrialised societies, with multiple roles and effects. Although the precise extent of media influence is a matter of often heated debate, the media's importance in our culture as a whole, and of course in our everyday lives, is undeniable. The press, radio and television are at once a primary source of entertainment, but also of information and education. They contribute powerfully to the reproduction and reinforcement of our value systems, but can also provide us with the means to challenge traditional values and ways of seeing the world.

The *National Report of Ireland to the United Nations Fourth World Conference on Women* (1994) noted that:

> The media can have either a positive or a negative influence with respect to violence against women [...] They can have a positive impact depending not only on how they choose to report incidents of violence, but also in the general image they portray of women and their status, even as regards matters which are apparently unrelated to violence as such.

While a comprehensive evaluation of the representation of women, both positive and negative, in Irish media, or an in-depth discussion of the ways in which they portray the issue of violence against women and children is beyond the scope of this report, we wish to draw attention to trends in press reporting in particular.

8.1 Rise in Coverage of Incidents

There has been a striking increase in Irish newspapers in the reporting of murder, rape, domestic violence and child sexual abuse cases over the past several years. On a visit to Dublin in July 1996, Linda Fairstein, head of the Sex Crimes Unit in the District Attorney's office in New York City, commented on the large number of cases covered. National newspapers carry reports of violent crimes against women and children on what is now virtually a 'routine' basis, with an entire page, on some days, devoted to reports of court hearings and judgements. In a very few cases,[1] coverage has been high-profile, extensive and socially deeply divisive. However, the vast majority of cases merit a fairly short inside-page report on one or at most two days.

An analysis of press coverage of rape cases in the 42-day period of 22 June to 8 August, 1992[2] found that *The Irish Times* reported on 14 cases, eleven of which appeared on one day only. *The Irish Independent* covered 19 cases in the same period, with 16 cases being covered on only one day. Given that the courts would not have been in session for the latter part of the study period, and that the analysis refers only to rape cases (i.e. excludes reports of sexual assaults, murders and domestic violence), coverage of rape cases would seem to be very high.

8.2 Types of Coverage and Reporting Styles

The increase in the number of cases covered is clearly a consequence of the greater visibility and politicisation of sexual violence in our society, with higher public awareness of the prevalence of such crimes being both reflected in and developed by press coverage. While such visibility is far preferable to the almost total silence surrounding sexual violence previously, quantity of coverage is not the only issue. How cases of sexual violence are reported is at least, if not more, important in shaping our perceptions of such crimes.[3]

While Irish newspapers generally appear to avoid the worst extremes of the UK press, the reporting of crimes of sexual violence is by no means as 'factual' or 'gender-neutral' as some newspaper editors and journalists claim. Although tabloid papers tend to sensationalise such crimes most frequently, quality newspapers may also do so from time to time, and both kinds of paper regularly stereotype women sexually and in terms of their social roles.

'Factual' Reporting

Coverage of crimes of sexual violence in the quality papers, particularly the daily papers, is heavily concentrated on court reports. Such reports convey the sense of being factual and therefore objective, in that they record the court process. However, this is in itself a choice - just one moment in a complex process becomes the primary focus of attention. Information about what went before, or the consequences and effects for the victim or the perpetrator feature only very rarely. Experiences, feelings and perceptions are either written out entirely, or mediated through the typically alienating language of the courtroom. Most tellingly and ironically, because victims have such a reduced role in court proceedings, women's voices are remarkable for their absence in these reports. The main protagonists are invariably male - perpetrators, lawyers, judges - and it is their perspectives which prevail.

Sensationalism and Gender Bias

Headlines are important in shaping the way in which we read and interpret news stories. Even more than the actual reports or articles, they can sensationalise incidents, and convey images and bias in very significant ways. For example, a rape case was reported in *The Irish Times* (16/05/95) under the following headline:

MAN GIVEN 3 YEARS FOR SEX ATTACK AFTER DRINKING 14 PINTS

While the consumption of 14 pints was hardly the primary focus of the judge's remarks, the headline in effect serves to sensationalise the case - to make it into a 'good story' - and in so doing reinforces the myth that men are not really responsible for their actions, and rape women (or children) for reasons 'beyond their control', i.e., when they are drunk.

Following the murder of Joyce Quinn in January 1996, the *Sunday Tribune* (28/1/96) ran an article on the widespread prevalence of violence in our society, under the banner headline:

This feeds the widespread myth that men who kill women (or rape them, or commit crimes of domestic violence) are 'monsters', 'fiends' or 'beasts'. Yet the prevalence of crimes of sexual and other kinds of violence (including murder) perpetrated by men against women utterly belies this myth. However much our culture may wish to deny it, violence against women is not extraordinary but everyday, and those who perpetrate violence are 'ordinary' men.

Headlines often focus on the 'normality' or 'abnormality' of the defendant, whatever the outcome of the defence at trial. In reality however, 'insanity' is accepted as a defence in only a small percentage of cases. A headline in The Irish Times (18/07/96), referring to the High Court hearing in the case of John Gallagher, read as follows:

> 'GALLAGHER NOT MENTALLY ILL WHEN HE KILLED TWO WOMEN IN 1988' - DOCTOR

Immediately above this appeared the heading:

> 'His personality disorder included immaturity and egocentricity'

This double heading borders on the contradictory: although John Gallagher was not insane, his brutal murder of two women may be explained in terms of a 'personality disorder'.

Members of the judiciary appear to be concerned about the trends and emphases in current press reporting. For example, in the case of Michael Bambrick, who raped and then killed two women, Mr. Justice Carney ordered that an inquiry be held into how details of Bambrick's account of killing Patricia McGauley and Mary Cummins was disclosed to tabloid newspapers two months before it was proven in court.

However, apart from these legal matters, there is very grave cause for concern about the gender-biased and sensationalised reporting of the case. The *Sunday World* (5/05/96) referred to one of the victims as 'pretty Patricia McGauley', and to the other as 'Sex Monster's Lesbian Lover'. The appearance and/or sexuality of the victims was completely irrelevant to the case, and ought therefore to have been irrelevant to the news story, and the salacious detail in which the deaths were described was absolutely unnecessary. When the case was heard in the Central Criminal Court, newspapers again chose to focus on those parts of the hearing where detailed evidence of the manner of the crimes was presented (see for example, *The Irish Times*, 18/07/96). In a letter to *The Irish Times* (6/08/96), sociologist Dr. Harry Ferguson commented that 'the reporting of the [Bambrick] case underlines just how biased attitudes remain against abused women and the cultural context in which such crimes of violence are downgraded from murder to mere manslaughter'.

8.3 Conclusion

Why didn't her mother do more? (*The Irish Times*, 22/05/93)

Tot killer mum now living with her new baby (*Evening Herald*, 17/01/95)

Chef gets 8 years for 'vicious' rape of widow (*Irish Independent*, 30/06/92)

Mother of six brutally raped in a car park (*Irish Independent*, 2/08/92)

Woman in marital rape trial admits she had affairs with several men (*The Irish Times*, 8/12/93)

These headlines are but a small selection of the endless examples of blatantly sexist stereotyping in press reporting of crimes of sexual violence, with women being routinely described in terms of their appearance, age and/or social roles. Women are invariably cast in the role of 'helpless', passive and silent victims - or are held responsible in some sense for crimes committed against them. Men who commit such crimes are regularly represented as 'not-men' (i.e., fiends, monsters, beasts), as insane or suffering from personality disorders, and thus not responsible for their violent actions. The most serious crimes of violence are described as 'domestic disputes' and/or attributed to the effects of men's alcohol consumption.

The Working Party is most concerned about the unthinking use of language in many press reports, the narrow and generally sexualised stereotyping of women, the almost exclusive focus on 'factual' court reporting, and a tendency to dwell on explicit and often salacious detail. We are concerned because of the pervasive effects of such reporting on our society's perceptions and understanding of men's violence against women. More specifically, we are of the view that current gender-biased reporting styles are a serious deterrent to women in reporting crimes of violence. The press - and other media - have a social responsibility to ensure that news reporting encourages women to report such crimes, by presenting women as people in their own right, and not as stereotypes, passive and silent victims, or as 'material' for titillating and sensationalising 'stories'.

RECOMMENDATION

83. The Working Party recommends that a **Code of Practice for the Reporting of Sexual and Other Crimes of Violence Against Women and Children** be drawn up, applied and monitored by the National Union of Journalists. The Code of Practice should be drawn up following consultation with agencies and services in the field. While we acknowledge the difficulties of implementing a voluntary Code of Practice, we consider that the introduction and application of such a Code would contribute significantly to raising social awareness about the seriousness and prevalence of sexual and other crimes of violence against women.

Notes

1. For example, the Lavinia Kerwick case; the so called 'marital rape' case in 1992; the Brendan Smyth child sexual abuse case; the Kilkenny incest case, and of course the 'X case.
2. Ciara Walsh, 1992, *Media Coverage of Rape*, MA Dissertation, WERRC, University College Dublin.
3. See for example, K. Davies; J. Dickey; T. Stratford (eds) (1987) *Out of Focus: Writings on Women and the Media* London: The Women's Press; K. Soothill and S. Walby (1991) *Sex Crime in the News* London: Routledge; J. Hanmer and S. Saunders (1993) *Women, Violence and Crime Prevention* Aldershot: Avebury Press.

Chapter 9 CONCLUSION

The perception that judgements and sentences handed down by the judiciary are at times seriously out of step with public thinking and uninformed by accessible knowledge and information about crimes of sexual and other forms of violence against women and children has led this Working Party to carry out a wide-ranging and fruitful consultation with many of the actors involved in the legal and judicial process.

Central to the report and the consultation process informing this report, are the voices of the women and children who have passed through the legal and judicial process and have found it at best, lacking in an understanding of the essential nature of the crimes of which they are victims and at worst, an experience which is a further violation of their integrity as human beings.

Professionals who play a part in the judicial process also gave of their time. Many shared their experiences and frustrations with the system which can be a blunt instrument for dispensing justice. Many professionals from within the legal and judicial system believe it must be overhauled and seriously question the adequacy of existing statute law.

It is the opinion of the Working Party that those charged with greatest responsibility in the legal and judicial system are also under the greatest onus to ensure that the system and all its processes deliver fair and humane treatment to all who pass through the systems.

The Working Party has now concluded its consultation and reflection and in presenting this report publicises its deliberations in the hope that the report will be acted upon immediately. Essentially, the non-implementation of each and any one of the recommendations contained in this report will represent a continuation of the failure of the judicial process to provide justice for women and children.

Nothing less than a comprehensive review of the current legal framework relating to sexual and other crimes of violence against women and children must be carried out by a specially established National Commission. The composition of such a body must comprise at least a 50% membership by women's organisations working on these issues if the legal and judicial process is to be changed in such a way that confidence in the system - especially that of women and children - can be restored. Delays in the implementation of these recommendations will represent further victimisation and pain for those women and children who have already suffered.

Any proposed changes to the legal and judicial process must encompass the objective of reducing the suffering of women and children who have experienced sexual and other violence. Central to this is the recommendation that separate legal representation must be provided for complainants in rape and sexual assault cases. The implications of the implementation of this recommendation are enormous in terms of reducing the suffering of victims. It would in short make the trial process considerably less traumatic for complainants. The Working Party reiterates its belief

that such a measure would contribute significantly to bringing about an increase in the reporting of rape.

The setting up by Government of an Inter-Departmental Committee amongst those Departments which deal with victims of domestic violence would allow the development of a long-term strategy to combat such violence and to develop much needed policies and procedures. Such a Committee, which would also include a voice for women's organisations, would allow for the development of co-ordinated, well-informed practices - including the development and publication of a code of practice for the reporting of sexual and other crimes of violence against women and children, along with the dissemination of good practice guidelines to ensure that women and children caught in the web of male violence will find a legal and judicial system that understands and meets their needs immediately, without causing further violation and hurt.

The Working Party is concerned that the legal and judicial process would also take into account the particular needs of certain groups in society who must be afforded specific protective measures to ensure that their social marginalisation does not lead to further discrimination by the legal and judicial systems. Traveller women and children, and women and children with disabilities are two such groups.

The establishment of a working group to examine the needs of Traveller women is strongly recommended. Research, guidelines for reporting and in-service training in disability and anti-discrimination education and awareness programmes should be introduced as part of the training of personnel in the legal and judicial systems if members of the Travelling community or those with a disability are to receive equality before the law.

Finally, the Working Party is aware that many of the issues raised here are not new, but rather have been the subject of submissions and research by women's groups and women's organisations, amongst others, for decades. What is new perhaps in 1996 is the increased and improved organisation of women, reflected in the determination of the members of this Working Party to continue to press the case for and insist upon the implementation of the recommendations in this report. This report is not so much the end of a review of the legal and judicial process, as the start of the campaign for and monitoring of their implementation. Members of the Working Party will continue to insist that women and children victims of sexual and other crimes of violence receive justice from the legal and judicial system set up to provide justice for all Irish citizens.

RECOMMENDATION

84. The Working Party recommends that a comprehensive **review of the current legal framework** relating to sexual and other crimes of violence against women and children be undertaken. The review should be carried out by a specially established **National Commission** at least half of the members of which should be drawn from individuals and women's organisations working on these issues.

Three key questions should guide the work of the National Commission:

(i) Whether existing statute law is adequate and appropriate.

(ii) Why the attrition rates are so high in cases concerning violence against women and children.

(iii) How to counteract the inappropriate and unjust treatment and questioning of women, and the low credibility accorded to children as witnesses throughout the justice system.

The National Commission's review should draw on international examples of innovative and effective reform in the letter and implementation of the law.

APPENDICES

APPENDIX A

List of Individuals, Agencies and Organisations who made Oral Submissions to the Working Party

Aoibhneas Women's Refuge: Phil Power.
Barnardos: Catherine McGlone, Training Officer.
Child and Woman Abuse Unit, University of North London: Liz Kelly.
Dublin Travellers Education and Development Group, Pavee Point: Ronnie Fay, Stasia Crickley.
Eastern Health Board: Valerie O'Brien (Senior Social Worker).
Caroline Fennell, BL, Faculty of Law, UCC.
Elaine Fitzgerald, St Clare's Unit, Temple St.
Forum of People with Disabilities: Donal Toolan.
Garda Siochana representatives: Chief Superintendent Tony Hickey, Bernard Owens and Mary Delmar.
Vivian Geiran: Social Worker, ex-probation Officer / Tallaght Welfare Society.
The Kavanagh Sisters.
Kelleher and Associates: Carmel and Patricia Kelleher.
Dr Imelda McCarthy, Dept of Social Policy and Social Work, UCD.
Tom O'Malley, Faculty of Law, UCG.
Probation Service: Anna Rynne David O'Donovan, Suzanne Vance, Sean Lowry.
Judge Peter Smithwick, President of the District Court.
Women's Aid: Jill Kennedy, Coordinator of the Women's Aid Helpline.

APPENDIX B

List of Individuals, Agencies and Organisations who made Written Submissions to the Working Party

Aoibhneas Women's Refuge
ASTI (Association of Secondary Teachers, Ireland).
Bar Council, Criminal Committee.
Barnardos.
Children's Rights Alliance, Republic of Ireland.
Coolock Community Law Centre.
Cork Domestic Violence Project.
Dublin Rape Crisis Centre.
Dublin Women's Aid.
Dundalk Women's Aid.
FLAC (Free Legal Advice Centres).
Forum of People with Disabilities / European Disability Forum - Report on Violence and Discrimination.
Galway Rape Crisis Centre.
Grand Parents Obliterated.
Mary Horkan, President of the Irish Federation of University Women, Department of Social Policy and Social Work, University College Dublin.
Irish Countrywomen's Association.
ICA, Castlebar.
ICA, Galway.
ICA, Rathpeacon.
INTO (Irish National Teacher's Organisation).
Irish Council for Civil Liberties.
Kelly, Liz, Child and Woman Abuse Studies Unit, University of North London.

Kerry Rape Crisis Centre.
Imelda McCarthy, Department of Social Policy and Social Work, University College, Dublin / Vico Consultation Centre, Co. Dublin.
Kieran McGrath, Northside Inter-Agency Project.
Kathy Moore, EHB Women's Refuge, Rathmines.
NAPSAC (National Association of Parents of Sexually Abused Children).
NRB (National Rehabilitation Board)
Dorothy Staunton, Temple St Children's Hospital.
Waterford Rape Crisis Centre.
Waterside House Refuge, Galway.
Western Health Board, Galway.

APPENDIX C
Index of Recommendations
(with page numbers)

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