

# JUSTICE AND ACCOUNTABILITY

# STOP VIOLENCE AGAINST WOMEN

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## Preface

Throughout the world, in times of war, in homes, and in the community, women are beaten, raped, mutilated and killed on an astonishing scale, and often with complete impunity. Violence against women is a human rights abuse happening on such a massive scale that Amnesty International has launched a global campaign, Stop Violence Against Women, calling for all governments to prioritise its eradication. Many people are startled, dismayed or incredulous when we say that one in three women will experience some form of gender-based violence – e.g. sexual violence, or systematic domestic violence – in her lifetime. And this is as real in Ireland as in any other country. In the context of violence in the home, Garda statistics for Ireland confirm that over 90 per cent of call-outs are for female victims, and that the perpetrator in over 90 per cent of cases is male – generally an intimate partner. And a 2002 WHO report states that only 20 per cent of physically abused women in Ireland even contacted the police. Similarly, there were 45,000 help-line calls last year to Rape Crisis Centres, 89 per cent of which were from females, and 97 per cent of perpetrators were male. UN statistics on Ireland indicate that only one in ten women or girls even report sexual violence.

From any perspective, these statistics are deeply disturbing. Violence against women and girls is a serious human rights problem nationally and internationally. In spite of the greater empowerment of women over the past 30 years, and recognition of the rights of women, reports of serious violence in Ireland, including rape, have not been decreasing, but increasing. Importantly, it is not just governments, but ordinary people, just like you and me, who can stop violence against women. Violence against women is a hidden scandal that has been silently accepted and facilitated by cultural and societal norms. We can and must make it stop by speaking out.

Many myths and misconceptions still shroud violence against women – for example, that domestic violence only happens to lower income

women, or that women somehow provoke sexual assaults on them. Another myth is that the low prosecution rates and the high withdrawal of charges in Ireland for domestic violence, rape and sexual assault indicate that these charges are often fallacious. Reporting violence is an enormous step. It involves often intimidating, complicated, invasive, and sometimes unsympathetic processes. Women who report violence to friends or family are sometimes treated with suspicion and disbelief. Taking these and the many, many other factors into consideration, the question might well be asked, how do so many women find the strength to report violence and stick with the process?

The impact of these myths however, is that victims fear being disbelieved by family, friends and their communities, particularly if the abuser is known to them, and may not report or proceed with prosecutions. The vicious circle thus created is that sceptics around her are reinforced in the belief that she lied in the first place. Women must be encouraged to come forward and seek protection and redress, and we must facilitate this by refusing to fall prey to falsehoods and conjecture.

Amnesty acknowledges that much has been achieved by Irish governments in addressing violence against women, beginning with the 1997 Report of the Task Force on Violence Against Women. But



Amnesty International prepares for the launch of its worldwide campaign to Stop Violence Against Women by raising the issue at its biennial International Council Meeting in Mexico in August 2003. A giant banner with delegates' handprints is displayed, together with a poster demanding justice for the hundreds of women murdered in the Mexican cities of Ciudad Juárez and Chihuahua.

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we clearly outline here that government has not done enough to satisfy the state's human rights obligations. We hope that, by shining the human rights spotlight on this abuse, that government and society will be prompted into action. Each and every woman and child who experienced the forms of violence described in this report have experienced serious violations of their human rights. When the state all too often fails to provide justice and redress for these violations, the state itself is guilty of abusing human rights. Furthermore, it colludes with the abusers and perpetuates a climate of silence and impunity. Many of these women and children are also being denied their basic human rights to shelter, adequate income, healthcare, and education. These are damning findings, and should shame us all into action.

Primary responsibility for protecting the human rights of everyone lies with the Government. This does not mean that the state authorities must simply refrain from violating women's human rights. They must ensure preventive and protective measures are put in place, that perpetrators are brought to justice with effective sanctions imposed, and that institutional and political inequalities that serve to undermine women's right to be free from violence and discrimination are addressed.

Progressing the conversion of commitments made in the Task Force Report into meaningful outcomes is government responsibility. Yet, consistently, when challenged, what government does is blind us with 'expert groups', 'additional measures', 'laws the envy of Europe', and 'significant budget allocations', all of which can create the sense that everything is in hand. And yet when asked fundamental questions - Are measures working? How do you know? - there is obfuscation or bewildering silence. Many people, quite justifiably, feel a resigned sense of inevitability, or that the issues are too complicated and frustrating to deal with, so they tolerate this status quo.

However, while holding them to account, we want to emphasise that it is not our intention to be antagonistic to the Irish Government in this report. Rather, we are proceeding in the confident assumption that the Irish Government is committed to the same ultimate objectives as we are, and hope to continue to work constructively with them to that end.

But society and individuals are crucial to the eradication of this human rights violation. We too must fundamentally and radically transform our way of thinking. Any act of violence against women does not occur in a vacuum. It is a consequence of both the historic and persistent subjugation and inequality of women in our society. We all have a duty to challenge gender stereotypes, inequality, and the under-representation of women in all spheres of influence. Violence against women is the most extreme manifestation of men's sense of control over women's lives and bodies. Men's violence is legitimised by what they see around them in society.

It is important also to address some of the misinformation in public and political discourse on this issue. In the context of violence in the home, Amnesty agrees that some victims are men, and also, that some perpetrators of violence against intimate partners are female. However, there are claims that violence, and domestic violence in particular, is not a gender issue, with suggestions of parity of violence perpetrated by men and women, or that the root causes and consequences of all violence are the same for women and men. Such assertions are wrong. They are belied by sound national and international research, and by the very experiences of statutory and voluntary services in Ireland that deal with victims of such violence very day. These misrepresentations are gravely misleading and do a great injustice to both male and female victims of violence.

Equally, and more disturbingly, serious human rights issues such as suicide and its connection with young male alienation, or the rights of caring fathers to access to their children, are misrepresented as reasons to deny redress for violence against women. And the argument is further corrupted by suggestions that to campaign against gender-based violence is somehow "anti-men". Serious issues



During a football match between Istanbulspor and Besiktas in Turkey in 2004, players wore Stop Violence T-shirts and carried a banner onto the pitch to promote the campaign. The banner said "Stop Violence Against Women - Amnesty International" and the T-shirt said "Red Card for Violence Against Women".

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such as those mentioned above are of concern to everyone working for human rights. Rights and justice for all should be the common aim of all advocacy groups.

So let me be clear. This campaign has one aim, the elimination of violence against women, which overwhelmingly takes place at the hands of men. Does Amnesty ignore human rights violations against men? Clearly not, and a quick glance at our range of campaigns on human rights would illustrate this. Does Amnesty think all men are human rights abusers? No.

But what we are saying is that gender-based violence is a huge problem, very seriously impacting at some point on the lives of one in three women and girls – and clearly a very significant proportion of men are the perpetrators. The only sensible or justifiable reaction to this is, when are we going to stop it? And, the solidarity and support of men and boys is essential to our campaign if we are to effect meaningful change.

As public awareness is raised by the publication of reports such as this, and as the silence is broken, more women experiencing violence will come forward seeking services and support. We are conscious that government funding of voluntary frontline services is inadequate and existing services are over-subscribed. When we speak in the media about this issue, frontline services report a sharp increase in calls. I would like to take this opportunity to pay tribute to the work they do and their unflagging determination to see justice done for women experiencing violence. I am also very aware that, when Amnesty highlights concerns at deficiencies in state responses, women may be listening who may then think that there is no point in trying to get help. I encourage any woman reading this who is experiencing violence to seek help – even if frontline services are overstretched, they are there for you, and help is available. If a helpline is busy, keep trying.

We know that women want to fight for justice and equality within their communities too, while ensuring that their community is respected by others. In the context of violence against women, it is essential, not alone that we urge government and other influential agencies to include women from marginalised and disadvantaged groups in their policy and decision-making processes, but that we advocates too, strive to include their direct participation in informing and driving our campaigning agenda. We also encourage these activists to access our materials, visit our website, and engage in lobbying or awareness raising efforts around VAW.

All over the world, women have led brave and inspiring campaigns against this violence, achieving dramatic changes in laws, policies and practices. With sufficient political will, violence against women can be challenged and addressed in Ireland. Amnesty demands that the Irish Government give this issue the priority it deserves. And we, Irish society, must do our bit. Violence against women is not a private matter – it is everyone's business.

*Seán Love*  
Executive Director  
Amnesty International (Irish Section)

## Introduction

In March 2004, Amnesty International launched its international campaign to Stop Violence Against Women, with the publication of a report entitled *It's In Our Hands*, which gives an account of the forms of gender-based violence experienced by women throughout the world, and what can be done to combat this human rights abuse. It illustrates that the experience or threat of violence affects the lives of women everywhere in the world today, cutting across boundaries of wealth, 'race' and culture, although how it manifests itself varies according to cultural norms and tradition, legal frameworks and public policy. It exposes the universality of this serious human rights violation, and the reality that no country or culture has adequately put the safety of, and respect for, women and girls at its heart, nor satisfactorily addressed discrimination and violence against women.

This report gives an account of violence against women in Ireland, and how the state is combating this abuse, from a human rights perspective. The intention in publishing this report is both to raise public awareness of the extent of men's violence against women in Ireland - that it is not something that only occurs elsewhere, far away in other countries, or within certain minority groups - and to clearly illustrate that it is a serious human rights abuse; and, while perpetrated by private individuals, one for which the state is ultimately responsible, with a duty to effectively prevent, investigate and punish such violence, and to provide protection, support and redress for abused women. The picture it presents shows that Ireland certainly is no exception when it comes to concerns about the prevalence of violence against women. As this report will also show, successive Irish governments have failed to fully respect their human rights obligations in dealing with violence against women.

### Violence Against Women: a gender perspective

Men and boys are targets of violence, including sexual violence, but this report and campaign deals with gender-based violence against women because this is a grave and systematic human rights abuse that has remained significantly unaddressed by governments across the world. Violence against women is defined in the UN Declaration on the Elimination of Violence against Women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life". *Gender-based violence* is defined as that "directed against a woman because she is a woman or that affects women disproportionately", in the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Therefore, not all acts of violence which harm women are gender-based. In some instances, women may be the primary perpetrators of gender-based violence against women or girl children, such as in the practice of female genital mutilation, or violence in lesbian relationships, but in the overwhelming majority of cases, men are the perpetrators. Our primary focus in this report, therefore, is on male-perpetrated violence. Throughout this report then, violence against women should be taken to mean gender-based violence against women, overwhelmingly committed by men. Thus the term 'woman' is interchanged in many places in this report with 'victim' or 'survivor', and 'man' used instead of 'abuser'.

Men's violence against women is different from other violent crime in several ways. The perpetrator is usually a person close to the woman, often someone with whom she has or has had an emotional and/or sexual relationship, and often too, with whom she lives or has lived, and with whom she may have children. National and international literature also points to the sexualised nature of much of men's violence against women. A detailed analysis of the gendered nature of violence against women is contained in a 2001 report published by a range of Irish nongovernmental groups, 'Violence Against Women: An Issue of Gender'.<sup>2</sup>



Bianca Jagger and Colm O'Cuanacháin at the Irish Launch of the Stop Violence Against Women Campaign, March 2004.

© Hugh McElveen Photography.



Memorial place for the eight women whose bodies were found in November 2001, Ciudad Juárez.

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*"The women's movement created the political, cultural and social climate in which women could speak out about men's use of violence, both in the public and private world. The systematic, endemic and sexualised nature of men's violence against women became evident as more and more women disclosed their experiences. ... Feminists recognised that whilst most organised and endemic forms of violence were a means by which one group controlled another, they also understood that violence against women had two additional elements. One was that the perpetrator of violence against women was most likely to be a male intimate or other male family member. Secondly, that men's violence always objectified, commodified and sexualised women. As Lori Heise has said, 'this is not random violence, the risk factor is being female'."*

Women's Aid  
*Vision, Action, Change*

A feminist analysis of violence against women has been adopted by the UN General Assembly in its 1993 Declaration on the Elimination of Violence Against Women, recognising that: "violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of their full advancement, and that violence against women is one of the crucial mechanisms by which women are forced into a subordinate position compared with men". Clearly then, any attempt to analyse or address violence against women outside a gender framework, i.e. to endeavour to address all forms of violence experienced by men and women through identical, one-size-fits-all, gender-neutral measures, would be senseless and futile.

### **Aim of this report**

This report will assess whether the Irish Government is taking effective measures to combat violence against women, and to address the needs of women who are at risk of, or have experienced, gender-based violence, with particular emphasis on the concepts of Justice and Accountability. The aim of this report is to evaluate the Irish Government's compliance with its duty to exercise due diligence in the prevention, investigation and punishment of violence against women, as enshrined in the UN Declaration on the Elimination of Violence against Women. A significant body of literature has been published on violence against women in Ireland, both nationally and internationally, and this report aims to complement existing research by pinning concerns and recommendations firmly to international human rights law. It makes clear, achievable recommendations for action by government.

The main purpose of the report is to provide the context and platform for Amnesty's campaigning and awareness-raising on this human rights violation, but we hope it will serve too as a lobbying and awareness-raising tool for individuals and organisations similarly interested in progressing women's rights. To this end, it describes the relevant international legal framework, which can be helpful when addressing governments and public servants who are failing to implement women's rights.

### **Report methodology and outline**

This report is based on a review of relevant literature on violence against women in Ireland, and also draws on personal communications with individuals and non-governmental organisations working in the area. The framework for analysis utilised is the state's duty to exercise due diligence in the prevention, investigation and punishment of acts of violence by private individuals – i.e. whether the Irish Government responds diligently on these three levels. It also assesses the state's compliance with its duty to provide protection, support and redress for abused women, and assesses the extent to which legislation, policies and measures comply with general comments and recommendations from UN expert bodies.

The first Chapter of this report looks at relevant international human rights standards. Chapter 2 provides an overview of government measures to address violence against women. Chapter 3 looks at violence in the family ('domestic violence'), and is the chapter to which most attention has been given due to the particular complexity of this issue. Chapter 4 looks at rape and sexual assault, a form of violence that occurs both in the family and in the community. Chapter 5 looks at the particular vulnerability of women in marginalised groups, and difficulties they experience in accessing protection. Chapter 6 assesses how the state is preventing gender-based violence by addressing its root causes.

It is important to note that, where statistics are presented in this report, they more than likely under-represent the true picture, due to significant underreporting of violence against women. For example, almost half (47 per cent) of those who disclosed experiences of sexual violence in the Sexual Abuse and Violence in Ireland (SAVI) Report, 2002 reported that they had never previously disclosed that abuse to others.

# Chapter 1

## International Human Rights Obligations

The Universal Declaration of Human Rights, upon which all international human rights treaties are founded, proclaims that all human beings, without distinction of any kind, such as sex, 'race', religion, social status or sexual orientation, are entitled to fundamental rights and freedoms, such as the right to life, liberty and security of person, the right to equality within the family, the right to the highest attainable standard of physical and mental health, and the right not to be subjected to torture, or to cruel, inhuman or degrading treatment or punishment.

While the rights enshrined in international human rights treaties cannot be vindicated in Ireland's national courts, unless they have been expressly incorporated into Irish law, international treaties ratified by Ireland<sup>4</sup> are legally binding, and at the international level, supersede Ireland's laws and Constitution. The Vienna Convention on the Law of Treaties governs states' general responsibility to implement treaties. The key responsibility is "good faith" (described in Latin as *pacta sunt servanda* – agreements must be fulfilled). States undertake their treaty obligations freely, and give their consent to be legally bound to fulfil their obligations. Where there is a contradiction between domestic law and treaty law, states are obliged to change their laws so that the treaty can be honoured and fulfilled in practice.<sup>5</sup>

### CEDAW Convention

The UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), ratified by Ireland in 1985, does not explicitly prohibit violence against women. However, the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee) (i.e. the body of experts that monitors States Parties' compliance with its provisions, and to whom governments must report every five years on their progress towards full compliance), in its General Recommendation No. 19, instructs that states must take all necessary and effective measures to combat all forms of gender-based violence, which "is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men". It further provides that states must ensure that the laws penalising violence in the family, rape, sexual assault and other forms of gender-based violence provide sufficient protection for all women and that women's integrity and dignity be respected. The state is also instructed to establish or support other agencies that provide protection, support and assistance to victims of gender-based violence. Statistics should be collected and research carried out on the prevalence, causes and effects of gender-based violence, and measures taken to prevent and counteract violence should be introduced and evaluated. General Recommendation No. 19 also calls for special measures to combat female genital mutilation, honour-related violence, trafficking and sexual exploitation.

One of the Government's responsibilities in ratifying CEDAW is to widely disseminate amongst the Irish public, information about the rights contained in this convention. Upon reviewing Ireland's last report to it, in its 1999 concluding observations on Ireland's compliance with CEDAW, the CEDAW Committee requested the wide dissemination in Ireland of those concluding comments, "in order to make the people of Ireland, and in particular government administrators and politicians, aware of the steps that have been taken to ensure *de jure* and *de facto* equality for women and the further steps that are required in that regard". It also requested the Government to "continue to disseminate widely, and in particular to women's and human rights organisations, the Convention, the Committee's general recommendations and the Beijing Declaration and Platform for Action". In



'Show of Hands' for the Stop Violence Against Women Campaign at the Irish Section Annual Conference, 2004.

*"Translating CEDAW principles into practice is a tall order, and... efforts to do so very often run into resistance from governments and the broader community. Nevertheless, the underlying argument [is] that non-governmental organization advocacy and monitoring of national governments can stimulate a relationship with government officials and help them to recognize that integrating government objectives with CEDAW principles produces beneficial socio-economic principles."*

Centre for Feminist Research, York University and the International Women's Rights Project, 2000



Stop Violence Against Women logo projected on Government Buildings during the recent International Women's Day Festival 'Demo to the Dáil'.

consulting with over 150 women, many of whom work with women's NGOs, in preparing its 'Shadow Report' to accompany Ireland's 2003 report to that Committee, the Women's Human Rights Alliance found that not one of those participants had been issued with information about these documents, and many were not aware of the existence of the CEDAW convention.<sup>6</sup> Ireland submitted its joint fourth and fifth reports to the CEDAW Committee in 2003, and later this year, the Committee will review, and issue its concluding observations on, Ireland's compliance with that Convention. Amnesty International will be bringing this report to the Committee's attention.

### The UN Declaration on the Elimination of Violence against Women

In 1993, the UN General Assembly adopted the Declaration on the Elimination of Violence against Women. The Declaration condemns physical, sexual and psychological violence against women, whether occurring within the family or in public, and regardless of whether it is perpetrated or condoned by the state. Article 4 of the Declaration provides: "States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women." The Declaration instructs states to:

- Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; states should also inform women of their rights in seeking redress through such mechanisms;
- Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organisations, particularly those concerned with the issue of violence against women;
- Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;
- Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and



maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

- Include in government budgets adequate resources for their activities related to the elimination of violence against women;
- Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitise them to the needs of women;
- Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;
- Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;
- Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;
- Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;
- Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;
- Recognise the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;
- Facilitate and enhance the work of the women's movement and non-governmental organisations and cooperate with them at local, national and regional levels.

### The Beijing Platform for Action

In 1995, the UN World Conference on Women in Beijing adopted a Platform for Action aimed at combating discrimination against women, which included the following recommendations to governments:

- Work actively to ratify and implement all international agreements on violence against women;
- Refrain from exposing women to violence and take all necessary measures to prevent,

*“The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”*

UN Human Rights Committee  
General Comment No. 31 on  
Article 2 of the International  
Covenant on Civil and  
Political Rights

investigate and punish, in accordance with national legislation, violence against women, irrespective of whether the violent act has been committed by a state party or by a private individual;

- Apply and/or strengthen criminal, civil, labour and administrative sanctions in order to punish and deal with all forms of violence against women and girls;
- Adopt and/or implement legislation, and evaluate and analyse legislation on a regular basis, to guarantee its efficiency in relation to the elimination of violence against women, with particular focus on preventive measures and the punishment of perpetrators;
- Improve and strengthen police protection of women, set up women's shelters and provide legal aid and support to women and girls in danger, as well as provide rehabilitation to men who commit violence against women.

## Equal protection of the law

International law, as contained in, *inter alia*, Articles 2 (1), 3 and 26 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Ireland in 1989, imposes a duty on states not to discriminate on a number of specified grounds, including gender, in the protection of human rights. Failure to fulfil this duty constitutes a violation of human rights. Women who have experienced violence, therefore, have an equal right to the enforcement and protection of the law as any other victim of violence, so that a pattern of non-enforcement amounts to unequal and discriminatory treatment on the basis of gender.

## Due diligence

This general principle of state responsibility requires that when states know or ought to know about violations of human rights, and fail to take appropriate steps to prevent the violations, then they bear responsibility for the violation. This does not detract from the individual civil or criminal liability of the person who commits the violation. The man who rapes or murders his partner is the person liable under criminal law for this act and should still be brought to justice. However, the state also bears a responsibility if it fails to prevent or investigate and address the act appropriately, and should make reparation to the victim or her family.

In its General Recommendation No. 19, the CEDAW Committee affirmed that violence against women constitutes a violation of human rights and that "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation." The UN Special Rapporteur on violence against women instructs that: "by definition, a State can be held complicit where it fails systematically to provide protection from private actors who deprive any person of his/her human rights. However, unlike for direct State action, the standard for establishing State complicity in violations committed by private actors is more relative. Complicity must be demonstrated by establishing that the State condones a pattern of abuse through pervasive non-action... To avoid such complicity, States must demonstrate due diligence by taking active measures to protect, prosecute and punish private actors who commit abuses.". It clarifies that: "a single violation of human rights or just one investigation with an ineffective result does not establish a lack of due diligence by a State. Rather, the test is whether the State undertakes its duties seriously.... For example, actions by State employees, the police, justice, health and welfare departments, or the existence of government programmes to prevent and protect women victims of violence are all concrete indications for measuring due diligence. Individual cases of policy failure or sporadic incidents of non-punishment would not meet the standard to warrant international action." The test therefore, for establishing that the state has been complicit in violations committed by private actors, i.e. where the state itself is guilty of

violating those same rights, is by establishing that the state condones a *pattern of abuse* through *pervasive non-action*.

The UN Special Rapporteur on violence against women states that "the due diligence standard is not limited to legislation or criminalization ... if education, dismantling of institutional violence, demystifying domestic violence, training of State personnel, the funding of shelters and other direct services for victim-survivors ... are found to be effective tools in preventing domestic violence and protecting women's human rights, all become obligations in which the State must exercise due diligence in carrying out".<sup>7</sup>

### European Convention on Human Rights

The European Convention on Human Rights and Fundamental Freedoms (ECHR) has been incorporated into Irish law through the European Convention on Human Rights Act, 2003 so its provisions must guide the operation of Irish law and policy. The European Court of Human Rights has consistently ruled that states have a positive obligation to ensure that people are protected from human rights abuses perpetrated by private individuals. Where the state, through its agents such as the police, social services or the courts, do not intervene in situations of known risk, and a woman is subjected to violence, the state is guilty of the same human rights violation as the perpetrator. The European Court of Human Rights has ruled that if state authorities did not do all that could have been reasonably expected of them to avoid a real and immediate risk to life of which they had or ought to have had knowledge, this is an infringement of the right to life. A failure to take reasonably available measures (i.e. not disproportionate burden on state) which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the state. This principle can also, by extension, apply to torture, and inhuman and degrading treatment.

Recent case law in the European Court of Human Rights has set out some guidelines on the level of effort states must make in protecting the rights of individuals, when intervening in situations where private citizens abuse the rights of others. In the case of *Osman v United Kingdom*<sup>8</sup> the Court considered a case in which threats against an individual were brought to the attention of the police, but they failed to intervene. The court made the following observations about the efforts that states must take to protect rights where non-state actors are threatening to cause harm:

*"The court notes that the first sentence of Article 2(1) [of the European Convention for the Protection of Human Rights and Fundamental Freedoms] enjoins the state not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction... Where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk... It is sufficient for an applicant to show that the authorities did not do all that could have*



Members of Amnesty International, Banúlacht, and the National Women's Council of Ireland launch the Beijing 'Promises Made, Promises Broken' poster.

**reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge.** " (Emphasis added.)

However, the Court also said that the measures to intervene must not constitute a "disproportionate burden" on the state. Another issue to consider is that in its efforts to reduce and address crimes against women, rights to privacy of individuals should not be unduly infringed. That is certainly not to say that what takes place in the home should be beyond scrutiny, rather that it is not reasonable practically to expect police officers or other personnel to be on hand to rescue anyone at any risk.

The case of *E and Others v the United Kingdom*<sup>9</sup> brings more detail to the level of effort the state must take in order to discharge its duties under international law to protect its citizens from abuses of their rights by non-state actors: "The test **does not require it to be shown that 'but for'** the failing or omission of the public authority ill-treatment would not have happened. A failure to take reasonably available measures which could have had **a real prospect of altering the outcome or mitigating the harm** is sufficient to engage the responsibility of the state." (Emphasis added.) The European Court of Human Rights also stated in the case of *Akkoç v Turkey*<sup>10</sup>, a case relating to the right to life, that the state must:

*"take appropriate steps to safeguard the lives of those within its jurisdiction. This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by a law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions."*

## Right to a remedy

The right to a remedy under international human rights law includes the right to services to assist victims in their recovery from violations of their human rights, including survivors of gender-based violence. The Declaration on the Elimination of Violence against Women calls on states to work to ensure, to the maximum extent feasible in the light of their available resources, that women subjected to violence and, where appropriate, their children, have specialised assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation. According to General Recommendation No. 19, the state has a clear duty to provide and adequately resource "[p]rotective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence".

## Conclusion

There is a high duty on the Irish Government to ensure an effective justice system, although the standard required is reasonable behaviour, not absolute protection. However, rights must be practical and effective, not theoretical and illusory<sup>11</sup>. Government is also obliged by its general duty under human rights law to fulfil rights – to adopt appropriate positive measures to improve respect for and enjoyment of rights – not just to respond to abuses. Amnesty International therefore believes that in order to exercise its duty of due diligence, the Irish Government should establish all the above activities and programmes, and for the equal benefit of all women and girls in its jurisdiction.

# Chapter 2

## Overview of Current and Future Policy in Ireland

### Duty to provide effective measures

The 1993 Declaration on the Elimination of Violence Against Women calls on states to "pursue by all appropriate means and without delay a policy of eliminating violence against women". The UN Special Rapporteur advises: "Because of the nature of violence against women, its prevalence, persistence and high incidence throughout the world, States must develop expansive strategies in order to fulfil their international obligations effectively." In order for such measures to be effective, they must be capable of measuring and demonstrating positive outcomes in terms of reducing violence against women and increasing women's protection and safety in real terms, and monitoring and evaluating progress. Necessarily, statistical information on the prevalence of violence against women and the responsiveness of measures is a prerequisite to gauging their effectiveness. Furthermore, these measures, even if effective, cannot be allowed to stagnate, but must be continually reviewed and strengthened.



Willie O'Dea Minister of State, Department of Justice Equality and Law Reform and Chairperson of the National Steering Committee on Violence Against Women at the launch of a poster campaign aimed at raising awareness of the issue of violence against women.

© Bryan O'Brien, *Irish Times*.

### National measures

In the 1990s, Ireland's policy and law underwent substantial development. Funding of voluntary agencies responding to violence against women also began to increase significantly, and they were afforded a greater role in influencing the national agenda. In 1996, a Task Force on Violence Against Women was established, and, in 1997, it published the *Report of the Task Force on Violence Against Women*,<sup>12</sup> which contained comprehensive proposals for a coordinated, coherent and integrated response to violence against women, through the development of services and preventative strategies, and the improvement of legislation and law enforcement.

Published in 1997, the Task Force Report does not reflect Ireland's increasing diversity, the growth of trafficking in women and girl children, or the state's duties towards women seeking asylum from gender-based persecution in their countries of origin. It focuses on 'domestic violence', rape and sexual assault, without addressing other forms newly presenting as concerns, such as trafficking or female genital mutilation; nor does it elaborate specific measures for marginalised groups of women, while it does point to the need for such.

A key recommendation in the 1997 Task Force Report was the establishment of a National Strategy on violence against women for the implementation of the Task Force's recommendations, and to ensure "a coordinated and coherent strategy both to address the needs of victims and to seriously tackle its root causes". This National Strategy was to be based on two fundamental principles:

- A total acceptance that violence against women is wrong, it is a criminal offence and there is neither an acceptable nor tolerable level of violence.

- Neither society nor the judicial system could ever regard violence inflicted on a woman by a man she knows as less serious than violence inflicted by a stranger

According to the Task Force Report, the National Strategy should focus on the following seven key areas:

- The development of a comprehensive range of services for women and children which offer a safe and friendly environment in which abuse can be disclosed and tackled;
- Ensuring the ready availability of accurate advice and information so that women who have experienced, or who have been threatened with violence, know the options open to them and are empowered to make informed choices;
- The adoption by service providers in the community, voluntary and statutory sectors of agreed policies, principles of good practice, written procedures, and training programmes;
- Taking the needs of marginalised women always into account in the implementation of policy and practice;
- The establishment of mechanisms to enable service providers to work together to provide a gateway to specialist advice, information and practical help;
- The provision of consistent and effective responses by the judicial system that recognise the seriousness of attacks against women, promote women's confidence in the system, and make perpetrators accountable for their violent behaviour;
- Putting preventative strategies in place, including the development of intervention programmes for offenders and public education programmes, which challenge both the root causes of violence against women and the climate in which it can be tolerated, trivialised or even encouraged.

However, the adoption of this National Strategy, as with many other of the Task Force Report's recommendations, has not been implemented to date. In the absence of a National Strategy, the Task Force Report, while comprehensive in its recommendations within its limited remit, remains inadequate, since it lacks the benchmarks, time-bound targets, and specified budget allocations that a strategy would entail. Therefore the capacity to monitor and hold government to account for performance on the Task Force Report recommendations remains seriously deficient, and progress towards implementation has not been systematically tracked.

In 1997, a Minister of State was appointed at the Department of Justice, Equality and Law Reform (DJE LR), and given special responsibility for equality issues, including violence against women measures. That year, the Minister of State established a National Steering Committee on Violence Against Women (NSC), comprised of government officials from the six government departments with responsibility for violence against women measures, and statutory and nonstatutory services, to implement the Task Force Report. The National Steering Committee's remit is to:

- Coordinate and advise on the distribution of resources among the eight Health Board regions
- Coordinate and advise on the ongoing development of policies, including those concerning perpetrators, criminal justice interventions, services and supports
- Oversee and monitor individual agencies' written policies and guidelines
- Ensure that regional and local structures are established
- Undertake research and needs assessments nationally
- Promote interagency training
- Ensure maximum value for money from available resources
- Develop codes of practice for collecting statistics and monitoring responses
- Publish periodic reports<sup>13</sup>

One mechanism for tracking progress on the Task Force Report recommendations was to be through

periodic reports published by the Committee. In March 1999, the *First Report of the National Steering Committee on Violence Against Women* was published, in which a commitment was again given by the Minister of State to the development of a National Strategy. While a source of information on projects underway, that brief report does not effectively or comprehensively measure progress on the Task Force recommendations. No further periodic reports have been published by the NSC. Neither does it operate a website, or occupy a dedicated section of the DJELR's website, so it is difficult to find information on its programme of activity or effectiveness. The Government's 2003 Report to the CEDAW Committee describes the NSC's objectives as including "ensuring that regional and local structures are established, developing public awareness campaigns, coordinating and advising on the distribution of funding, coordinating and advising on ongoing development of policies including those concerning perpetrators, criminal justice intervention, services and supports".<sup>14</sup> This description substantially differs from the remit outlined above, implying a downsizing in its prescribed role.

According to the Government's 2003 CEDAW Report, the NSC has commissioned research into service needs, entitled *Analysis of Current and Future Needs and Responses to Women Who Have Experienced Violence or the Threat of Violence Arising from Domestic Violence, Rape or Sexual Assault*, due to have been completed early in 2003. The National Observatory on Violence Against Women points to the "invaluable data on the effectiveness of the structures and the resource needs of the sector" expected in this research, of which, it says, there are three main dimensions:

- A national audit of service provision, with particular attention to identifying unmet need together with a costing of services to respond to unmet need
- The presentation of good practice models of service provision, including models from two similar jurisdictions to the twenty-six counties.
- An assessment of the effectiveness of mechanisms established to implement the recommendations of the Task Force on Violence Against Women, including the National Steering Committee and Regional Planning Committees.<sup>15</sup>

Amnesty International urges the DJELR to progress and publish this research as a matter of urgency, and ensure that the gaps thereby identified be filled and its recommendations implemented.

Non-governmental organisations providing services to women experiencing violence are included in the NSC, but while an NGO Coalition on Violence Against Women has been separately composed to monitor the NSC's progress, they can be in a difficult position when publicly critical of its functioning, as they are dependent on it for their funding allocations. Amnesty International urges the Government to consider the establishment of an independent statutory body to monitor, evaluate and progress violence against women policy and law, with express provision for its composition to reflect all stakeholder organisations, including organisations representing the experiences of marginalised women. The National Steering Committee is in the process of devising its Strategic Plan which should provide much needed direction and focus to the further development of services and policy.

### Regional measures

Under the NSC, eight Regional Planning Committees (RPCs) were given responsibility for regional measures. Responsibility for establishing and supporting the RPCs rests with the individual (then) health boards. The Task Force Report recommended that the RPCs have a strategic focus and should identify and assess the regional need for services, using appropriate evaluation and monitoring



Women dressed in black during a minute's silence outside the Dáil in memory of women murdered in Ireland as part of International Day Against Violence Against Women.

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systems, and implement a regional plan to meet these needs. While the RPCs have created an opportunity for dialogue and the promotion of good practice between the voluntary sector and state agencies, none have adopted plans to date. In 2002, the North Eastern Health Board commissioned the Women's Education and Resource Centre, University College Dublin, to undertake an evaluation of its services and an analysis of the gaps in existing service provision. Its report, *Changing Direction*, was published in 2003, in which the NEHB provides a comprehensive and frank account of the services, statutory and nonstatutory, that it delivers under its RPC<sup>16</sup>. The Women's Human Rights Alliance observes:

*"The establishment of the NSC and the eight RPCs are welcome developments in the state's response to VAW. However, there are concerns that, without clear budget allocations, the committees will not be able to fulfil their function. In the absence of a strategic plan, work is being duplicated and there is a lack of consistency between the operations of committees."*<sup>17</sup>

Concerns have been raised by the National Observatory on Violence Against Women that involvement in RPCs potentially incurs negative outcomes for voluntary agencies including:

- An increasing drain on their time and expertise with negative consequences for their capacity to deliver services.
- Difficulty of maintaining a critical stance of statutory agency practice whilst negotiating their funding at the same time.
- Statutory agency participation in interagency dialogue becoming in some cases a substitute for individual agency change at a senior policy and practice level.
- While the task of supporting the Committee is part of the job description of a senior official within the health Board, the absence in practice of senior statutory personnel at the table who have the power and resources to make decisions in relation to agency practice.
- Lack of transparency and consistency in relation to funding.<sup>18</sup>

## Community level

The Community Development Support Programme (CDSP), currently under the remit of the Department of Community, Rural and Gaeltacht Affairs, supports and funds community development projects (CDPs) in tackling poverty and social exclusion. CDPs have recognised violence against women as a key concern for their work, and women experiencing violence have found them safe places to disclose experiences of violence and to seek support. The North West Inner City Women's Network (NWICWN) is one such community forum for locally based women's groups funded by the CDSP, and this year published a review of its services and role, *Secrecy, Silence and Shame*.<sup>19</sup> The 2005 study, while small in scale, provides an account of the important role of community responses to violence against women. It also explores the experience of abused women living in the community who are suffering additional discriminations such as poverty, homelessness and drug addiction.

An interesting finding in this study, is that few local women were involved in the management, staffing, or activities in the project, due in part to the filling of paid positions by professionally qualified community workers from outside the area.<sup>20</sup> It concluded too that women in disadvantaged areas were mostly working in low-paid, part-time work while struggling to afford childcare, which left little time for active involvement in the community. The informal networks previously created by the women's groups were no longer working effectively as ways to provide support and referral to women, particularly those at risk of violence. Clearly, this sort of community initiative is a critical component of the layered, multi-agency response required to identify and respond to women experiencing violence. In this study, the authors also identified best practice



guidelines for such community development responses for women experiencing violence, and its findings and recommendations should inform national policy on CDPs.

### Community and voluntary sector

An indication of some success in the state's measures to address violence against women is the steadily increasing reporting of violence to voluntary frontline services, and the fact, therefore, that more women are accessing help. While some services have compiled and published statistics for many years, others are only now in the process of developing data collection and information systems, which is adding to their workload. Furthermore, services are at varying stages of reviewing and adapting their services to the diverse needs of women, a further demand on their resources.

The allocation of resources is an important indication of how seriously the state is addressing violence against women, hence one measurement of the due diligence with which the state is responding to violence against women. Funding for once-off projects has been provided to voluntary groups by state agencies like the Combat Poverty Agency or under the National Development Plan's Equality for Women Measure. Core operational funding for violence against women services, provided almost exclusively by voluntary organisations, is provided by the Department of Health and Children, the 2005 budget for which remains fixed at the 2003 allocation of €12 million, representing a drop in real terms. While this funding has significantly increased since the 1990s, states cannot reduce the level of protection they afford save on exceptional grounds. Voluntary services' demands that funding be increased with a once-off increase of €7 million from €12 million to €19 million by the end of 2005 to meet running costs of rapidly expanded services, were not met. In their *Briefing Note on Funding to Voluntary (Dedicated) Frontline Service Responses to Violence Against Women (VAW)* sent to government in early 2005, the NGO services on the NSC described the level of funding they currently receive as "severely inadequate to meet the current needs of women (and their children)", pointing to a "funding crisis within the sector, which must be addressed in 2005". Their demand for an immediate increase of €7 million in funding was not met. They also proposed the development of a national funding framework on violence against women by 2006 to overcome the following difficulties with current arrangements for funding of frontline responses: "there is no standardised approach, criteria or guidelines underpinning the allocation of this funding. This results in a lack of accountability and tracking in relation to the spend on service provision nationally. While frontline services are delivering accountable, planned, professional services, funding arrangements continue to undermine effective responses." None of their recommendations have been adopted to date. Amnesty International is gravely concerned that these services are so severely constrained by resource problems, and strongly urges the Irish Government to comply with the proposals in this Briefing Paper for "alleviating the worst effects of the funding crisis currently facing frontline service responses".

While it is essential that the voluntary sector is engaged in national planning and decision-making through the NSC and RPCs, this places yet another strain on their resources. In this context, the UN Special Rapporteur on violence against women instructs:

*"It is the State's duty to foster cooperative relationships between State organs and non-governmental organizations. The State must institute initiatives that encourage individuals and organizations working on issues of domestic violence to contribute to the official initiatives of the State. The State must also seek to identify ways in which it can assist non-governmental organizations working on issues of domestic violence"*

The UN Declaration on Violence Against Women instructs states to "[i]nclude in government budgets

adequate resources for their activities related to the elimination of violence against women." Of grave concern to Amnesty International, is that frontline services consistently report that the end result of underfunding is that victims are not able to access the support and protection they need. This represents a systematic and avoidable failure to meet the reasonably foreseeable need of victims of violence that, in itself, demonstrates a failure on the part of the state to prioritise victim's safety, and to exercise due diligence in the protection of women from serious violations of their human rights. Amnesty International would like to remind the Irish Government that these services are fulfilling the core responsibilities of the state in complying with its human rights obligations to victims of violence.

### Department of Justice, Equality and Law Reform

The DJELR has overall responsibility for monitoring and progressing government equality for women measures, including violence against women measures. It also directly funds some initiatives – the budget allocated to it for violence against women measures has increased from €101,000 in 1998 to €1,124,000 in 2005, which mainly funds programmes to increase public awareness, perpetrator programmes, and the National Domestic Violence Intervention Agency. The establishment of a new Commission for the Support of Victims of Crime has recently been announced by the DJELR, to devise an appropriate support framework for victims of crime into the future and disburse funding for victim support measures. The Commission's remit will include the examination of all aspects of the provision of services for victims of crime, as currently set out in the 1999 Victims' Charter. The DJELR has also committed to a review of the Charter at an early date, and Amnesty International urges it to look to international human rights standards contained *inter alia* in the Rules of Evidence and Procedure in the Rome Statute of the International Criminal Court in this review. Amnesty International urges the Commission to fully and comprehensively attend to the needs of women who have experienced violence, both in devising new procedures for women who have experienced violence, as victims and witnesses, and through providing adequate and stable funding to violence against women services in their support, advocacy and court accompaniment roles.

### National Plan for Women

The Irish Government undertook to develop and implement a National Plan for Women when it signed up to the UN Beijing Platform for Action. In October 2001, it published a draft National Plan for Women following which it engaged in a wide ranging consultation process, and published a report of these consultations, 'Towards a National Women's Strategy: Aspirations of Women collected in the course of the Consultation Process on the National Plan for Women 2002'. In 2002, it submitted to the UN 'Ireland's Report to the United Nations on the National Plan for Women 2002'. That is to say, a National Action Plan was not nationally adopted. Instead, government departments were to take account of the report to the United Nations when formulating and reviewing policy and legislation and when implementing programmes and measures. The Steering Committee overseeing the consultation process recommended the development of a National Women's Strategy 2003 – 2010, and such a strategy is currently under preparation by the DJELR. Amnesty International urges the DJELR to ensure that measures to combat and redress violence against women are fully included in the National Women's Strategy.

# Chapter 3

## Physical, Sexual and Psychological Violence in the Family

**F**or simplicity, since Irish law and policy use the term 'domestic violence', it is frequently used in this chapter, although it is not one universally endorsed, since it presents a normalising image of men's violence against women, implicitly denoting it as private or less harmful than other forms of violence, and failing to reflect the reality that, in the vast majority of cases where this form of violence occurs, men are the perpetrators and women the victims. The 1997 Task Force Report defines 'domestic violence' as "the use of physical or emotional force or threat of physical force, including sexual violence, in close adult relationships", which includes violence perpetrated by siblings and offspring<sup>21</sup>, consistent with international human rights law definitions.

Government statistics – Garda call-outs, applications for civil protection orders, or criminal trials – while sex-disaggregated, do not provide a breakdown of the relationships in which domestic violence takes place, so it is impossible to accurately know the relative prevalence of intimate partner violence. But violence committed by intimate partners is known to be the most common form of adult-perpetrated violence in the family. According to the UN Special Rapporteur: "Woman-battering ... is the most common form of domestic violence, characterized by the use of physical or psychological force, or the threat of such force, by the dominant domestic partner, whilst recognising the overwhelming probability that this partner is male, for the purpose of intimidating, manipulating or coercing the subordinate partner."<sup>22</sup> This chapter, therefore, concentrates on violence by intimate male partners, which includes marital rape, while recognising that violence is perpetrated by other family members, and recommendations made here refer equally to all forms of family violence.



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*"Study after study reveals that the core aspect of men's domestic violence is a pattern of coercive control over key aspects of the woman's life. It can involve the destruction of property, isolation from friends, family and other potential sources of support, threats to "significant others" including children, stalking, control over access to money, personal items, food, transportation and telephone. It can also involve sexual coercion, sexual assault and rape. Violence of this nature is not a once-off occurrence, but is persistent, frequent and aimed at instilling fear into the victim. There is also evidence that violent men carry their violence from one relationship to another."*

As explained in the Introduction, gender-based forms of violence against women affect women only or to a disproportionate degree, thus must be analysed and understood in terms of gender if they are to be addressed effectively.

Irish research, and the experiences of statutory and nonstatutory agencies, bears this out. In the seminal Women's Aid study, *Safety and Sanctions*, in an analysis of 379 domestic violence criminal convictions cases retrieved from the Garda Criminal Records Office files, over 99 per cent of offenders were male.<sup>23</sup>

### Nature and prevalence

It is important that the distinction between 'stranger violence' and 'intimate partner violence' be appreciated and understood. Domestic violence is not a once-off incident, but an ongoing pattern of violence and abuse, deliberately inflicted within a pattern of coercive control, where a man exercises power and control over a woman through actual or threatened physical violence, sexual violence and/or emotional abuse.

### Safety and Sanctions Women's Aid

Intimate partner violence is a form of violence that does not only affect women – men too experience intimate partner violence from female and male partners, but, in the vast majority of cases, the perpetrators of intimate partner violence are male – so is deemed to be form of violence that *disproportionately* rather than *solely* affects women.



Women's Aid members protesting outside the Dáil to mark International Women's Day, and highlight the need for legal reform.

© Brenda Fitzsimons, Irish Times

A World Health Organisation review of 48 population-based surveys of the prevalence of domestic violence demonstrates that, throughout the world, between 10 per cent and 69 per cent of women who have been in an intimate relationship with a man have been physically assaulted by an intimate male partner at some point in their lives.<sup>24</sup> International literature suggests that women experience an average of 35 incidents of violence before they report it.<sup>25</sup> The Government's National Crime Council will publish research on domestic violence early in 2005,<sup>26</sup> which is expected to shed new and important light on this area. National crime surveys are developed to measure crime that is not reported to police, since "generic crime surveys report significantly lower domestic violence prevalence than national surveys dedicated to the issue of domestic violence or violence against women, which often use broader definitions of violence, use specially trained same-sex interviewers and take more trouble to ensure respondents are alone when interviewed".<sup>27</sup> According to a recent report from the UK: "both the 1996 and 2001 British Crime Surveys (BCS) included a special set of supplementary questions on domestic violence and used a computer-based methodology to provide greater privacy. This led to a more than doubling of reported victimisation rates by women in 1996 from the previous BCS estimate in 1992."<sup>28</sup>

A 1995 report of a survey by Women's Aid, *Making the Links*, revealed that almost one in five (18 per cent) of women in Ireland who have been involved in intimate relationships with men have been abused by a current or former partner.<sup>29</sup> The majority of women surveyed said they knew a woman who had experienced violence by a male partner. When interviewed in General Practitioners' surgeries, two out of five women (39 per cent) who had been involved in a sexual relationship with a man said they had experienced violence (Bradley et al, 2002).<sup>30</sup> Of those, 46 per cent reported being physically assaulted, with 10 per cent reporting they had been punched in the face, 10 per cent punched or kicked elsewhere on the body, and 9 per cent choked. An anonymous questionnaire survey conducted by the Rotunda Maternity Hospital in 2000 found that in a sample of 400 pregnant women, 12.5 per cent had experienced partner abuse while they were pregnant.

*Making the Links* confirmed the international experience that women from all social backgrounds experience domestic violence. Yet, it is likely that women in higher socioeconomic groups and women in rural area areas are less likely to report it to the Gardaí. *Safety and Sanctions* found that women in the Dublin area are four times more likely to call the Gardaí than those outside the Dublin area. Callers outside the Dublin area however were twice as likely to have an injury than callers in the Dublin area, and arrests, charges and conviction rates were twice as high outside the Dublin area, the two probably being linked.

33 per cent of the 12,908 calls taken by the Women's Aid Helpline in 2003 related to physical violence, 44 per cent to emotional abuse, and 13 per cent to sexual abuse.<sup>32</sup> International literature demonstrates that there is grave risk of serious injury or homicide in the context of domestic violence, which escalates when a woman endeavours to leave or seek help. Women's Aid tracks female homicides and reveals that, since the beginning of 1996, 109 women have been murdered in Ireland, of whom 72 were killed in their own homes.<sup>33</sup> In cases which have been resolved, all have been perpetrated by a man and in just under 50 per cent of those cases, by the women's partner or ex-partner. In all cases awaiting trial, it is a man who has been charged. While the individual contexts of these murders are not known, international literature suggests that in a high proportion of partner murders where a woman is killed there is a history of violence against the woman in the relationship. A number of US states conduct fatality reviews of deaths resulting from domestic violence, including suicides, where the events leading up to the death and the effectiveness of any interventions are reviewed, service-delivery gaps are identified, and preventative interventions

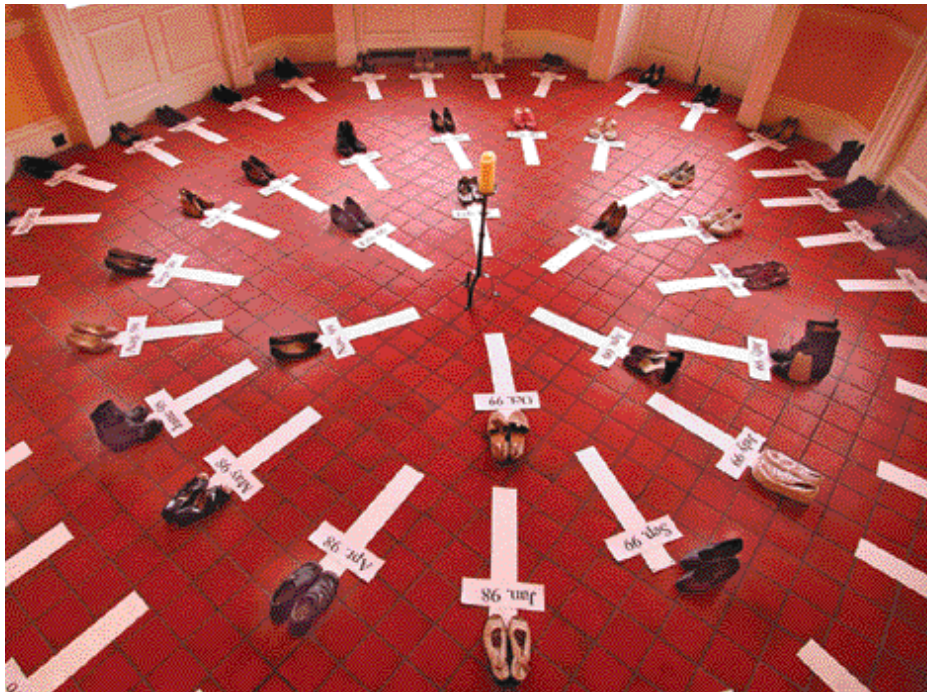
improved. The UK Government is proposing to establish a statutory basis for its homicide reviews. Amnesty International urges that, with due regard to the right to privacy of family members of the deceased, such fatality reviews also be undertaken in Ireland, since they "can increase individual agency accountability, enhance coordinated interagency efforts, identify trends and uncover special needs, leading to system changes and tailored services"<sup>34</sup> The risk to life also raises the standards expected of states in their exercising due diligence in preventing violence against women in intimate relationships.

While conscious that there is a somewhat artificial distinction between violence in the family, and rape and sexual violence, we consider the latter separately in Chapter 4 too. Rape and sexual violence are the most underreported forms of violence perpetrated by men against women in intimate relationships, including marriage, yet literature suggests that intimate partner violence often involves these forms. In the Bradley et al study, 9 per cent of women reported being forced to have sex by a male partner.<sup>35</sup> Women's Aid helpline statistics for 2003 showed an increase in reporting of rapes (511) and sexual abuse within relationships, which, it says, is traditionally not disclosed by women experiencing domestic violence. Furthermore, the overwhelming majority of victims of rape and sexual violence know their attacker and in many cases the attacker is an intimate partner or other family member. The 2002 SAVI Report found that almost one quarter of perpetrators of sexual violence against women were intimate partners or ex-partners<sup>36</sup> which was also reflected in Rape Crisis Centres helpline calls last year. Yet, in its review of applications for civil domestic violence orders, *Safety and Sanctions* found that sexual violence was seldom cited as a ground, indicating victims' unwillingness to disclose this form of violence.

Finally, domestic violence is a manifestation not alone of a profound power imbalance in the individual relationship, but also of systemic discrimination against and oppression of women that is manifested in unequal access to economic resources and political power. Domestic violence is firmly rooted in women's subordination, not just within families but also in society:

*"At its most complex, domestic violence exists as a powerful tool of oppression. Violence against women in general, and domestic violence in particular, serve as essential components in societies which oppress women, since violence against women not only derives from but also sustains the dominant gender stereotypes and is used to control women in the one space traditionally dominated by women, the home."*

According to the UN Special Rapporteur on violence against women: "women are less likely to receive adequate protection or outside help from societies in which economic and gender inequality ... are prevalent. This underscores the importance of developing strategies that go beyond providing protection and that attempts to deal with the socio-cultural causes of domestic violence must also be made." In Chapter 6, the persistence of gender inequality is explored.



Fifty-five pairs of shoes laid out in Dublin Castle represent women murdered in Ireland by men known to them. This exhibit marked the 25th anniversary of Women's Aid in Ireland.

*"I am very frightened for two of my clients at present that they will be killed. Their partners constantly describe what they will do to them and how their bodies will be found in some place, especially if they try to leave."*

Key Worker  
Secrecy, Silence and Shame

## A serious human rights violation

Torture, as defined in international human rights law, generally involves four critical elements: (a) it causes severe physical and/or mental pain, it is (b) intentionally inflicted, (c) for specified purposes and (d) with some form of official involvement, whether active or passive. Hence, it has been argued by jurists that, depending on its severity and the circumstances giving rise to state responsibility, domestic violence can constitute torture or cruel, inhuman and degrading treatment under the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The UN Special Rapporteur tacitly supports this conclusion:

*"In this context, it is argued that, like torture, domestic violence commonly involves some form of physical and/or psychological suffering, including death in some cases. Secondly, domestic violence, like torture, is purposeful behaviour which is perpetrated intentionally. Men who beat women partners commonly exercise control over their impulses in other settings and their targets are often limited to their partners or children. Thirdly, domestic violence is generally committed for specific purposes including punishment, intimidation and the diminution of the woman's personality. Lastly, like torture, domestic violence occurs with at least the tacit involvement of the State if the State does not exercise due diligence and equal protection in preventing domestic abuse. This argument contends that, as such, domestic violence may be understood to constitute a form of torture."*

UN Special Rapporteur on violence against women

*"The argument that domestic violence should be understood and treated as a form of torture and, when less severe, ill-treatment, is one that deserves consideration by the rapporteur and treaty bodies that investigate these violations together perhaps with appropriate NGO experts and jurists."<sup>39</sup>*

The UN Special Rapporteur has cautioned states about their high obligation here:

*"where the State does not exercise due diligence and equal protection to prevent and punish domestic abuse, it, like official torture or independent paramilitary violence, occurs with at least the tacit involvement of the State. Where the State permits this violence or is passive or half-hearted, it abandons the battered woman to the dominion of the batterer and tacitly supports that dominion. On these bases, it is contended that severe domestic violence can be understood as a form of torture while less severe forms may be sanctioned as ill-treatment under the ICCPR."<sup>40</sup>*

### Model of interagency cooperation – Duluth Domestic Abuse Intervention Project

The Duluth model is a domestic violence intervention project introduced in Duluth, Minnesota in 1981, and replicated throughout the US and elsewhere. Ireland's National Domestic Violence Intervention Agency is founded on its principles.

It institutionalises practices and policies which make perpetrators of violence against women accountable for their actions and ensures the safety of the women involved in the processing of criminal and civil cases. The model is founded on the principle of cooperation between the main statutory and nonstatutory interests and is proven to have significantly reduced the number of women killed in intimate relationships in the Duluth region.

It emphasises the primary role of the criminal justice system, based on the principle that an effective response to violence against women requires that the issue be high up on the agenda of all the various organisations, from police, prosecution services, and that an integrated response is needed. The DAIP project in Duluth has developed a method for regularly auditing the intervention system which involved examining each step in case processing to investigate how procedures and daily routines affected goals of victim safety, offender accountability and reduced tolerance of domestic violence.

An interagency team including staff from police, probation, prosecution, court administration, and victim advocacy, observes each processing point and interviews the practitioners involved. This method has been used to discover practices contributing to inadequate case outcomes, and to inform a change agenda.

Hence, where the Irish state cannot demonstrate its exercising due diligence in the prevention, investigation and punishment of domestic violence, it itself may be guilty of torture or cruel, inhuman and degrading treatment.

## CRIMINAL AND CIVIL JUSTICE SYSTEM

### Prevention and protection

In addition to official measures to address violence against women in Ireland outlined in Chapter 2, the 1990s saw many domestic violence-specific reforms, in response to rising national and international concerns that domestic violence was not being dealt with as a serious crime. These reforms included the Domestic Violence Act, 1996 (amended in 2002), the establishment of the Garda Domestic Violence Sexual Assault Investigation Unit in 1993,<sup>41</sup> and the 1994 Garda Síochána Policy on Domestic Violence Intervention, amended in 1997.

The UN CEDAW Committee, in General Recommendation No. 19, made recommendations on measures states should take to provide effective protection of women against gender-based violence, including:

- (i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including ... violence and abuse in the family
- (ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
- (iii) Protective measures, including refuges, counselling, rehabilitation action and support services for women who are the victims of violence or who are at risk of violence.

According to the UN Special Rapporteur: "Research clearly shows that the level and immediacy of the intervention are directly linked to both the frequency and the severity of woman-battering."

### Domestic violence legislation

Whether the very existence of legislation provides a deterrent is the subject of much debate, since literature shows that the most serious offenders are not always deterred by the criminal law. Nevertheless, it is clear that it is its rigorous and comprehensive implementation, sending out the message to perpetrators that they will be identified, prosecuted and punished, that is the best way of ensuring its deterrent effect. In other words, the mere existence of legislation cannot suffice to prevent violence.

The Domestic Violence Act, 1996 added two new court orders, the safety order and interim barring order, to the existing barring order. It also re-enacted section 7 of the Family Law (Protection of Spouses and Children) Act, 1981, which made breach of a domestic violence order an arrestable offence. The Act, therefore, deals with both the civil and criminal law aspects of domestic violence. It also expanded beyond married spouses the categories of individuals who can apply for domestic violence orders, to include parents and, with certain residency and property conditions, cohabitants.

Despite the 1997 Task Force Report priority recommendation that "appropriate mechanisms should be put in place to enable the operation of the Domestic Violence Act, 1996 to be monitored and kept

*"The judges, probation and welfare officers, the police and the social services have varying priorities to the law, to the offender, to their own agencies or to the children. These priorities are placed before the safety of the victim and inevitably fail to increase her safety. Unfortunately this tendency to undervalue victim safety has often resulted in the victim becoming more at risk by the very act of approaching the system. This consequence of heightened risk is well known by many in the voluntary sector who are also reluctant to encourage victims to approach the system."*

Don Hennessy  
Director, National Domestic  
Violence Intervention  
Agency.<sup>38</sup>

*"One of the most common forms of violence against women is that performed by a husband or an intimate male partner. This is in stark contrast to the situation for men, who in general are much more likely to be attacked by a stranger or acquaintance than by someone within their close circle of relationships... The fact that women are often emotionally involved with and economically dependent on those who victimize them has major implications for both the dynamics of abuse and the approaches to dealing with it."*

World Report on Violence and Health World Health Organisation, 2002



The Amnesty International Irish Section poster which marked the beginning of the Stop Violence Against Women Campaign.

under review in order to gauge its effectiveness in dealing with the victims of domestic violence", there has been no official review of the effectiveness, or consistency of implementation, of this Act. Irish research, particularly the seminal 1999 study by Women's Aid, *Safety and Sanctions*, challenges the effectiveness of the application and enforcement of Irish domestic violence legislation.

Amnesty International is also concerned that legislative protection for victims of domestic violence should not be confined to the criminal and civil justice system, however, but should encompass other legal entitlements, as will be expanded upon below. Whether these additional protections are introduced as amendments via the 1996 Act, or as amendments directly to relevant primary legislation is at the discretion of government. According to the UN Special Rapporteur:

*"Laws that attempt to provide protection for victims without providing necessary support services or the funds for such services are incomplete. Such resources for domestic violence legislation should, however, not only be set aside for the implementation and enforcement of the law itself but also for services that support victim-survivors and those that work towards the eradication of domestic violence through strategies such as education, training and documentation."*<sup>42</sup>

### Gaps in provision

Model legislation on domestic violence for any society was prepared for the Special Rapporteur who instructed that states should "adopt the broadest possible definitions of acts of domestic violence and relationships within which domestic violence occurs".<sup>43</sup> The following are some of the gaps in the 1996 Act's provisions when compared with this model legislation, and its review, as urged above, may well reveal others.

#### Offence of domestic violence

Civil orders, if comprehensively applied and rigorously enforced, can serve to modify future conduct, rather than merely address past incidents of violence. With their lower standard of proof, they will in many circumstances be more appropriate than the criminal law as preventative measures. Therefore, if Ireland were to secure an effectively functioning, transparent and accountable civil justice system – one that could guarantee the safety of women and children through *inter alia* risk assessment procedures, and with the ultimate penalty of criminal sanction where its orders are breached, and operating in tandem with a comprehensive range of parallel services and supports for women and children, and programmes that fundamentally realise wider attitudinal and behavioural transformation – this might prove to be the primary judicial prevention and protection mechanism. But, where violence does occur, it is essential that the perpetrator be dealt with to the fullest extent of the criminal law consistent with the wishes and safety of the woman. Clearly, it was intended that the 1996 Act should operate in parallel

with the criminal law, and that criminal charges should be pursued where applicable.

Therefore, the criminal justice system at all stages – police, prosecutors, courts, and probation/prison services – must be capable of demonstrating and regularly reporting on the extent to which it prefers the appropriate charge, gathers the necessary evidence to support the charge, prosecutes diligently, sentences to the degree commensurate with the gravity of the crime (i.e. ensuring that commission against a family member is treated as an aggravating factor), and ensures that sentences are justly served. Systematic training on gender-based violence against women should be mandatory for all actors in the justice system. Clear guidelines should exist and be monitored at all stages – for instance, the criminal code in Canada obliges the courts to take into account the abuse of a spouse or child as an aggravating factor in sentencing.



But, while it is important, both symbolically and practically, that violence against family members is treated in the same way as other 'public' forms of violence, Amnesty International is concerned that existing criminal offences may not suffice in every circumstance. Many forms of family violence are already criminal offences and should be treated as such. However, existing criminal offences, other than breach of an order under the 1996 Act, respond to offences on a single incident basis. Some forms of domestic violence - by definition repeated and persistent - may, in any one instance, not constitute a criminal offence under current legislation, or may constitute an offence that does not bear relation to the gravity of the systematic nature of the abuse. Some jurisdictions have taken additional steps, therefore, to expand or strengthen their criminal justice responses by creating new domestic violence offences. The constitution of specific offences, with express provision that other relevant charges should also be pursued, may also assist in evidence-gathering by the Gardai, since the components of the crime will inform the response by the Gardai, and may further serve as indicators for case management and review.

Therefore Amnesty International urges the Irish Government, in the first instance to implement the recommendations made in *Safety and Sanctions*; secondly, to further comprehensively review the functioning of the criminal justice system as it pertains to domestic violence; and thirdly, begin a consultation process on the legitimacy of introducing additional categories of domestic violence offences into Irish law. Clearly, such offences could risk down-criming more serious abuses if introduced to an ineffective justice system. As described below, due to the absence of reported statistics, it is impossible to tell whether and to what extent perpetrators of domestic violence are charged and prosecuted under appropriate offences. An evaluation of these and other international models should inform Ireland's adopting a specific domestic violence offence. Amnesty International will later this year publish a report on violence in the family, which will shed further light on the relevant international human rights standards in this regard.

### Categories of relationships

The UN Special Rapporteur urges: "The relationships which come within the purview of legislation on domestic violence must include: wives, live-in partners, former wives or partners, girl-friends (including girl-friends not living in the same house), female relatives (including but not restricted to sisters, daughters, mothers) and female household workers."

The 1997 Task Force report recommended that "the provisions of the Domestic Violence Act, 1996 should be extended to cover situations where couples have a child in common but do not live together; and the provision in the Act that a person must have lived with the respondent for at least six months before qualifying for a barring order should be reviewed". Neither recommendation has been acted upon, leaving many women without the protections afforded in this Act. For instance, the six-month cohabitation requirement for non-marital partners fails to appreciate the ongoing nature of domestic violence, and that victimisation does not always cease where the couple no longer lives together. Hence, in its terms, the 1996 Act does not comply with human rights standards.

### Statutory guidelines for interpretation

The Law Reform Committee of the Law Society has found "a total absence of guidance as to the standard of proof necessary to establish abuse and, therefore, practice varies as between District Court areas", in that it merely requires that the court be "of the opinion that there are reasonable grounds for believing that the safety or welfare of the applicant or any dependent person" requires a protective order to be made.<sup>44</sup> In its survey of solicitors, it found "a marked lack of uniformity in court practice which inevitably renders the application of the law uncertain and creates obvious difficulty for lawyers in advising clients". It recommends "that further statutory guidance be provided regarding the standard of proof necessary to establish abuse".

Recognising the systematic nature of domestic violence, a 1999 amendment to Spain's penal code provides that "any person who customarily wields physical or mental violence" against a family member is guilty of the offence of "domestic abuse". This charge can be made in conjunction with other criminal charges.

In Sweden, offences of "gross violation of integrity" and "gross violation of a woman's integrity" have been introduced, so that a man who repeatedly abuses and violates the rights of a woman with whom he is in an intimate relationship can be sentenced for gross violation of a woman's integrity. The provision is primarily intended to cover crimes that cannot be classified, for example, as assault in terms of single incident based severity.

## Implementation of 1996 Act

The UN Special Rapporteur advises: "States should be held accountable for consistent patterns of non-enforcement of criminal law. Thus, what would otherwise be wholly private conduct is transformed into a constructive act of State".<sup>45</sup> She continues: "the existence of a legal system criminalizing and providing sanctions for domestic assault would not in itself be sufficient; the Government would have to perform its functions to 'effectively ensure' that incidents of family violence are actually investigated and punished."

### Low reporting and high withdrawal rates

Compared with prevalence rates, there is a low level of reporting of domestic violence incidents to the police. Since 1994 statistical information on the annual incidents of domestic violence are published in the annual report of the Garda Síochána, and document an initial sharp increase in the reporting to the Gardai. In 1994 there were 3951 domestic violence incidents reported to the Gardai. By 2002 this had risen to 10,248 incidents with 92 per cent of victims being female.<sup>46</sup> In 2003 however, this had dropped significantly to 8,452.<sup>47</sup> Records of crimes of violence against the person (52 crimes of violence against the person have been consolidated in the Non-Fatal Offences Against the Person Act, 1997) do not record the relationship between the offender and the victim. Therefore more serious crimes of violence against women that do not occur in the home cannot be identified as domestic violence offences. There is also a high rate of withdrawal of applications for orders or complaints of breaches of orders.

The UN Special Rapporteur observes: "Unlike violent crimes, ... intimacy remains a bond between victim and perpetrator and often there continues to be contact between the victim and perpetrator. Such contact, generally unwelcome by the victim, leaves women vulnerable to threats or pressure to withdraw their complaints". She points to this perception on the part of law enforcement of the likelihood of withdrawal as an "excuse ... still commonly used to justify non-prosecution". While Amnesty International is aware of the frustration experienced by members of the Gardai when complaints are withdrawn, a review of the implementation of the Garda policy would yield invaluable information on how this may demoralise members and may lead some to opt for mediation roles. The intervention of specially trained, designated domestic violence police officers has been shown in other jurisdictions to be more successful in facilitating women to leave violent relationships and/or to proceed with prosecution of their abusers, where they empower the women to make her own decisions, assure her safety, and unequivocally condemn the abuse, and should be considered in Ireland.

### Perpetrators not arrested

According to the Special Rapporteur, "if a crime is alleged to have been committed against her, the officer must either arrest the suspect immediately, persuade him to leave the household or remove him from the household", even if the report was made by a third party. Thereby, no room for error is left open. Section 18 of the 1996 Act introduced a "probable cause" arrest, i.e. where an arrest can be made without the Gardai witnessing the violence, if it is suspected that Actual Bodily Harm or Grievous Bodily Harm is being or has been committed. The Act however falls short of legislative reforms introduced in a large number of states in the United States where the police can issue a warrant for unseen simple or common assaults.<sup>48</sup>

According to the Special Rapporteur: "Studies have shown that, when called in domestic violence cases, police often try to mediate or counsel the couple rather than to treat the incident like a criminal matter", due to "inadequate training, inadequate laws, stereotyping and ambiguity regarding its role in dealing with domestic violence". Amnesty International has been informed by women's organisations that, while in many cases, the Gardai adhere with the Garda policy, responses are inconsistent. In the absence of any review of its implementation in practice, Amnesty

Helen's ex- partner is very violent and abusive. The violence began with put downs and criticism, he then became physically violent and he raped her. The violence is just as bad when she leaves him. He stalks her and is more violent; he bombards her and threatens to kill her. He bought her a mobile phone so he can track her. She is afraid to turn it off. She cannot get a barring order because she has not lived with him for over a year.

### *Secrecy, Silence and Shame*

International remains deeply concerned that inconsistent application could seriously undermine the safety of victims.

The Garda Domestic Violence Intervention policy, in operation since 1997, prescribes a pro-arrest policy for perpetrators of domestic violence i.e. where a power of arrest exists, the Gardaí will use that power of arrest and charge the offender. The policy recognises the importance of an interagency approach to domestic violence and as a result Gardaí investigating complaints are directed to make women aware of the relevant services, both statutory and nonstatutory, which are available to them to offer support. Yet, *Safety and Sanctions* found that only 27 per cent of domestic violence reported cases led to an arrest, and in a significant number of cases where an arrest was not made, it was impossible to discern the reasons for this from the call-out form. Amnesty International does not recommend a mandatory arrest policy as exists in many states in the US - the UN Special Rapporteur cautions:

*"Although many advocates support such measures, contending that they appropriately shift responsibility for the violence from the victim to the State, some advocates warn that mandatory arrest and pro-charging policies are contrary to the victim's best interests and threaten to further weakening of her position by taking away control over the proceedings. Additionally, despite an increase in the number of arrests of batterers, mandatory arrest policies have also had the unintended consequence of leading to the arrests of victim-survivors."*<sup>49</sup>

A recent UK report too, found: "The introduction of mandatory or pro-arrest policies in North America has led to a considerable increase in dual arrests, and in women-only arrests in situations where women have fought back to try and curtail or escape domestic violence."<sup>50</sup> Nevertheless, in all cases, there should be a presumption in favour of arrest in every circumstance, or for a warrant to be issued for the man's arrest where he has fled the scene. Only where there are convincing reasons, should a decision not to arrest be made. Furthermore, these reasons should be clearly noted in the DVSA (1) form. Regardless as to whether or not an arrest is made, the accused should be removed from the home.

While some women reportedly do not wish to have their violent partner arrested and charged, Amnesty International is concerned that free and informed choice cannot be said to operate in many cases, particularly where the decision is rooted in fear – fear of the abuser, fear of the legal system, fear of children being taken into care are factors clearly outlined in literature in women's not pursuing legal avenues for protection, and must be addressed if the criminal justice system is to be effective in protecting women.

Irish literature indicates that the response by Gardaí to survivors of sexual assault has greatly improved over the past twenty years,<sup>51</sup> attributed to their increased level of training in sexual violence leading to greater awareness of women's needs.<sup>52</sup> Recent studies show that while a majority of women who approach Gardaí about domestic violence are satisfied there remains room for improvement.<sup>53</sup> One of the main community concerns documented in the 2005 Ionann Report, an audit of compliance of An Garda Síochána's policies and strategies with international human rights standards, is that: "Although there was a clear [Garda] policy on domestic violence, its implementation and impact was not routinely monitored. There was a high level of domestic violence but still a tendency for Gardaí to speak to the man rather than the women (sic) when they attended incidents. In some rural areas ... the perpetrator was known to the police, who would not be willing to act."<sup>54</sup> Amnesty International urges that an independent review of implementation of the Garda domestic violence policy be periodically conducted.

*"Qualitative studies have confirmed that most abused women are not passive victims but rather adopt active strategies to maximize their safety and that of their children. Some women resist, others flee, while still others attempt to keep the peace by giving in to their husbands' demands .... What may seem to an outside observer to be a lack of positive response by the woman may in fact be a calculated assessment of what is needed to survive in the marriage and to protect herself and her children."*

World Health Organisation  
*World Report on Violence and Health.*

### **Perpetrators charged with breach of order rather than serious criminal offence**

Amnesty International is concerned at the uncertain extent to which perpetrators are charged with criminal assault rather than a simple breach of an order secured under the 1996 Act. In the absence of evidence to the contrary, Amnesty International is concerned at reports it has received that 'down-criming' is widely practised, whereby an offender is charged with breaching an order, rather than the appropriate criminal offence, e.g. threat to kill, possession of an offensive weapon, rape, sexual assault, etc. Again, this points to the urgent need for review of Garda practice in this area. There is also concern that many women apply for an order where they might have been directed to pursue a criminal assault charge. This might be at least partially addressed by introducing a separate offence of "domestic violence". In the interim, information on the extent to which perpetrators are being charged with 3 or 4 of the Non Fatal Offences Against the Person Act, 1997 where appropriate to the act should be made available, and the necessary measures taken to ensure that this is a consistent response. Where an offence more serious than sections 3 or 4 of the 1997 Act has been committed, the Gardai should use the appropriate power of arrest, for example under section 5 which covers a threat to kill or cause serious harm.

In 1990, the Criminal Law (Rape) Amendment Act clarified that marital rape was a crime, but despite the known prevalence of rape within marriage, the only successful prosecution of marital rape was overturned in 2004. This void in its application should be the subject of analysis too in a review of the justice system.

### **Imbalance in legal representation**

In criminal trials for offences under the 1996 Act, it is standard practice for junior members of the Gardai to prosecute these charges, and their success can often be dependent on the calibre of the defence counsel, so that defendants with significant resources can have a significant advantage. In Tallaght, Co. Dublin, a pilot scheme is in operation whereby a Garda of senior rank prosecutes these cases, and Amnesty International urges that this practice be considered nationally. In Chapter 4, Amnesty International recommends entirely separate legal representation for victims and witnesses in criminal cases involving domestic violence against women.

### **Review of operation of justice system**

In order to put in place an effective system which protects the woman and holds the man accountable for his actions, interagency coordination is essential between the Gardai, the Probation and Welfare Service, the Judiciary, the court service, medical and health personnel and the support services provided to women. *Safety and Sanctions* demonstrates that the capacity of the civil and criminal justice systems to deliver safety for victims of domestic violence and hold violent men accountable is uncertain. Resources must be made available to the new National Domestic Violence Intervention Agency (NDVIA), which is working to ensure that those systems adequately respond to domestic violence, and to devise procedures and guidelines that prioritise and guarantee women's safety and ensure that perpetrators are controlled and prevented from re-victimizing. The UN Special Rapporteur instructs: "In order to evaluate the efficacy of new laws and policies, up-to-date statistical data should be collected and recorded in a public forum. Additionally, policies regarding the classification by the police of crimes of domestic violence which document the relationship between the perpetrator and victim should be instituted."<sup>55</sup> An annual review of the operation of the criminal and civil justice system and domestic violence cases should be compiled and published, giving a comprehensive account of how abusers and victims are dealt with at all stages.

### **Courts**

The court system can be intimidating, and a support service should be established in line with the International Criminal Court model outlined in Chapter 4, to assist women in making applications, and providing a support worker to accompany women to court when applications are being heard or when women are testifying in criminal cases. *Safety and Sanctions* points out that international

### **A model of integrated action in ensuring victim safety and punishing perpetrators of violence**

A major success was achieved with the establishment of the National Domestic Violence Intervention Agency (NDVIA) as a pilot project in 2003. Women's Aid's study, *Safety and Sanctions*, which was supported by the Department of Justice, Equality and Law Reform recommended that an integrated domestic violence intervention project be piloted. In 2002, the UN Committee on Economic, Social and Cultural Rights also took up this recommendation, and stated: "Noting that a review of the Domestic Violence Act (1996) was undertaken in 1999 (i.e. *Safety and Sanctions*), the Committee requests the State party, in its next periodic report, to explain what measures it has introduced in response to the review's recommendations including, but not confined to, the recommendation to develop a "Domestic Violence Pilot Intervention Project".

The NDVIA was set up with the support of the Department of Justice, Equality and Law Reform, to oversee the implementation of the pilot National Domestic and Violence Intervention Programme. This is an integrated programme coordinating the work of the civil and criminal judicial systems, risk assessment, monitoring and tracking programmes, women's support programmes and other key agencies (i.e. Probation & Welfare, Gardai, and locally based groups and agencies).

This programme proposes to implement an effective response to both perpetrators and victims of Domestic Violence, within the context of the criminal and civil justice system. The central aim of this intervention programme is to increase the safety of victims of domestic violence and reduce the recidivism rate of domestic violence.

The programme is based on:

- The findings of *Safety and Sanctions*, which explored the enforcement of domestic violence law in Ireland.
- National and international studies on the need for and effectiveness of such projects.
- The recommendations of the 1997 Report of the Taskforce on Violence against Women on intervention programmes.

The programme which the NDVIA is piloting in two areas is based extensively on the Duluth Model, representing international best practice, is uniquely modelled to fit accurately into the Irish civil and criminal justice systems. While agency cooperation and enthusiasm will be the cornerstones of the project, the intervention in the lives of abuse victims will demand that all involved be held accountable to the victims. Because domestic violence is a pattern of behaviour that re-occurs even when it is witnessed by the community, it is required that the agencies, statutory and voluntary, develop effective ways of stopping this violence. The cornerstone of this intervention model is an integrated community approach dedicated to developing an effective response to the issue of domestic violence. This approach will encourage all agencies to develop systems that can work in a spirit of cooperation.

The Department has undertaken to independently evaluate the pilot phase and aims to establish and develop criteria and principles for effective intervention for domestic violence crime that holds offenders accountable to the safety of victims and to the judicial system. The model will be developed to fit accurately within the current civil and criminal response to domestic violence. The project will work within the existing legislation and criminal justice system and make recommendations for effective models of practice that ensure victim safety and accountability of the perpetrator.

research shows that that such support services for women in the legal process, significantly reduces the number of women who withdraw applications.

*Safety and Sanctions* found inadequate case recording systems in both civil and criminal cases to be a major weakness of the justice system. It highlighted the fact that the type of information collected on the violence experienced by women is variable, as applications made in the civil system do not consistently document the nature or circumstances of the abuse. It also found that, at national level, statistics compiled on civil cases are incomplete, hence the sex of the applicant and respondent, relationship between the applicant and respondent, numbers of applications refused or withdrawn, or numbers of orders breached are unknown.

Under the 1996 Act, an interim barring order may be granted where the court is of the opinion that there are reasonable grounds for believing that the applicant or a dependant person is in immediate risk of significant harm and a protection order would not be sufficient for their protection. Therefore, the ability to quickly access such orders is essential to the protection of victims of domestic violence. However, in some District Court areas respondents experience unacceptably long delays, in some cases up to three months. In Dublin's Dolphin House family law court, delays of 12 to 14 weeks are reportedly not uncommon.

*Safety and Sanctions* suggested that only about one fifth of interim barring orders translate into barring orders. One of the main reasons for this is that many women withdraw their applications prior to or during the court hearing. In 2003, 3,586 barring orders under the 1996 Act were applied for.<sup>56</sup> 51.5 per cent of the applications were withdrawn or struck out, 44 per cent were granted, and only 4.5 per cent refused, indicating a high rate of attrition. This drop in applications is not viewed by voluntary services as evidence of a reduction in incidents of domestic violence, and it is belied by the 26 per cent increase in calls to the national Women's Aid helpline in the same period. It is more likely that the reasons for this drop lie in the women's fear of the abuser and the system. A significant proportion of women appearing as witnesses in criminal prosecutions against intimate partners also withdraw their complaints or refuse to testify.

The potential cost of making an application for a court order can also be dissuasive, and legal aid is granted by the state only to those with limited means. The UN Special Rapporteur, noting that "[p]erhaps the most widely utilized civil remedy for domestic violence is the protection or restraining order", these orders "are often rendered ineffective if practical policy considerations are lacking... (which) may include the ... costs or legal expertise involved in acquiring a protection order which may serve to undermine the practicality of protection or restraining orders."<sup>57</sup> There are also unacceptable delays in the application process to avail of legal aid.

### **Criminal law**

As mentioned above, breach of a court order secured under the 1996 Act is a criminal offence. Cases where a court order already exists under the 1996 Act make up a significant proportion of Garda call-outs, and also of those where an arrest is made. *Safety and Sanctions* revealed that is difficult to know the outcome of Garda follow-up when the culprit fled the scene, as this is not consistently documented.

It is difficult for the Courts Service to compile information on breaches of orders as applications for orders and prosecutions for their breach are processed through separate court systems i.e. the civil and criminal courts. Statistics on breaches of orders are returned as part of general criminal court sentencing statistics. In its analysis of cases files, *Safety and Sanctions* found that between 8 and 16 per cent of orders were breached. The difficulty of tracking cases through the criminal justice system was highlighted throughout that study, which it said is unsatisfactory from the point of view of the long-term monitoring of policy and legislation. It pointed to the need to put in place a

*"The reasons why applicants withdraw applications are complex. Some women use the application as a threat in an attempt to change the violent behaviour of partners and in some circumstances may negotiate a period of safety. Interviews with service providers and women using support services indicate that many women are aware of the physical risk that they may incur as a result of taking legal action and fear the escalation of violence. They are also aware of other negative consequences that can follow such as losing custody of children and the exposure in court of details concerning a woman's personal history, for example, prior history of being sexually abused as a child or adult sexual history. The reality of the fear which women experience is borne out by international research which demonstrates that serious assault, injury, rape and homicide can occur immediately following the victim attempting to access the legal system..."*

### **Safety and Sanctions**

mechanism for tracking these cases through the civil justice system, and to track breaches of civil orders in the criminal justice system.

The Working Group on a Courts Commission recognised that the operation of the courts dealing with family law presents particular and special problems. One of the problem areas concerns the operation of the *in camera* rule and the desire to ensure a balance between the right of privacy of litigants and children on the one hand and the right to a fair, transparent and accountable system of justice on the other. The Working Group concluded that reform in this area could not take place without accurate statistics from the courts on a regular basis on the operation of the courts dealing with family law matters. A welcome development has been the introduction of Section 40 of the Civil Liability and Courts Act, 2004, which commenced in effect as of the 31st March 2005, allowing for the preparation and publication by a barrister or a solicitor or a person falling within any other class of persons specified in regulations made by the Minister of a report of court proceedings to date covered by the *in camera* rule, and "the publication of the decision of the court in such proceedings". It further allows a party to be "accompanied, in such proceedings, in court by another person subject to the approval of the court and any directions it may give in that behalf".<sup>58</sup> This offers an important opportunity for reviewing the application of the 1996 Act in practice.

### Family Courts

A recommendation made in the 1997 Task Force Report was the establishment of regional family courts to which lawyers with considerable experience of family law should be appointed as judges. This call has also been made by the Law Reform Commission,<sup>59</sup> the Working Group on a Courts Commission<sup>60</sup> and the Law Society.<sup>61</sup> *Safety and Sanctions* further recommends that family law judges be trained in gender issues and violence against women principles, and that regional family courts should provide a structure for recording and compiling cases and judgments involving domestic violence which would contribute to the development of consistent practice and jurisprudence in this area. Until the establishment in full of regional family courts, the need for judicial training and guidelines in family law and related matter matters remains pressing, as is the need for the appointment of additional judges to the family law courts to alleviate delays.

### Investigation

#### Evidence and documentation

The UN Special Rapporteur points to the peculiar difficulties in evidence-gathering in the context of domestic violence: "in many countries, both real and evidentiary obstacles exist in cases of domestic violence. As in many violent crimes, there are often no witnesses of domestic violence, except for the victim."<sup>62</sup> The recommendations made in *Safety and Sanctions* conform with those of the Special Rapporteur's model legislation on domestic violence, which is instructive as to what should be recorded on police forms, and how they should be compiled and annually reported, and should be implemented immediately.

Since 1994, statistics on domestic violence incidents are compiled by the Garda Crime Division and published in the Annual Report of An Garda Síochána. *Safety and Sanctions* advises that information presented in the Garda Report should be expanded to include gender, relationship of accused to victim and the number of call-outs where a court order under the 1996 Act is in existence. In relation to indictable assault and sexual assault cases, the annual Garda Report should also provide data on the relationship of the offender to the victim. Statistics on assault, indictable assaults and murders should be published by both sex of the offender and victim, and the relationship between the victim and offender.

*"Garda call-out forms (DVSA (1) do not consistently document the abuse. In some cases due to the lack of documentation it was difficult to know the nature of the abuse which was inflicted on the woman. In order to facilitate effective prosecution and to enhance understanding of the risk to women and children, more specific information is required. In relation to Garda call-outs there is a need to know whether or not an arrestable offence has been committed. There is a need to know whether the Gardai have called back to the house, and the outcome and the follow-up where for instance the culprit has "fled the scene". The Domestic Violence Sexual Assault Investigation Unit (DVSAIU) should collate statistics annually from the DVSA (1) Forms and make them available to interested parties. The Unit should be expanded and resourced to do this."*

### Safety and Sanctions

### Probation and Welfare Service

UN General Assembly Resolution 52/86 urges states to ensure that "[s]afety risks are taken into account in decisions concerning non-custodial or quasi-custodial sentences, the granting of bail, conditional release, parole or probation."<sup>63</sup> Courts hearing application for orders under the 1996 Act, bail applications or child custody cases need full information on the risk to women and children, including the history of violence of the respondent, past orders applied against the respondent, breaches of such orders and the extent to which the safety of the woman is at risk.<sup>64</sup>

The Probation and Welfare Service (PWS) should provide this information to the court, in full consultation with the applicant, as advised in *Safety and Sanctions*. In criminal cases, that study points out, sentencing would appear to be based on whether or not the accused has previous convictions, which is not always appropriate for domestic violence cases and may not take into consideration the full history of violence of the accused or the risk the accused poses to his partner or ex-partner. Reports of the PWS should also inform sentencing policy, as the legal sanction imposed on the abuses must be sufficient to deter him from committing further acts of violence.

In addition to its nonstatutory functions in the criminal justice system, the PWS also has a statutory role in providing reports to judges in civil family law cases. However, the provision by the PWS of reports in family law cases was suspended in 1995 because of a lack of staff resources, and resumed on a limited pilot basis in 2002 in child custody cases. The 1997 Task Force Report recommended that the District Court should have access to Probation and Welfare Reports in coming to its decisions in family law cases, and that the question of staffing resources within the PWS should be addressed by the Department as a matter of priority. Following the increase in staff levels in recent years, the PWS has agreed to provide some support on a one-year pilot basis, in an agreed small number of reports to circuit courts in cases where the custody of children is in dispute. The PWS does not have a full statutory basis for its work in domestic violence proceedings. Recommendations made in *Safety and Sanctions* as to its functions in this area, and the preparation of pre-sanction reports, mandated order reports and victim reports have not been acted upon.

An Expert Group was appointed in 1998 to review the PWS, and in its two reports (1998 and 1999), it recommended that the number of officers employed by the PWS should be increased significantly, and that it should resume its role in providing Probation and Welfare Reports to judges in family law cases. It recommended that within the PWS structure, two distinct service sections should be developed: one section dealing with the area of criminal law, the other with family law, and that, when working in the area of family law, its officers should be designated as Court Welfare Officers. It also recommended the establishment of an Advisory Forum, to include organisations concerned with the justice and family law systems, both statutory and voluntary clients of the PWS. The role of the Forum should be to advise the PWS Agency on the formulation of policy and facilitate dialogue between the Agency and relevant bodies. No action has been taken on any of these recommendations.

The 1999 Expert Group report also recommended the establishment of an independent Inspector of Probation Services. The proposed objectives of the Inspector were to provide assurance to the Minister for Justice, Equality and Law Reform that the Service is providing high quality advice to criminal and family law courts and is contributing to public protection by the effective supervision of offenders; to assist in promoting and developing effective management and practice; and to conduct periodic thematic reports into dimensions of the work of the Service in order to develop models of best practice. No decision has been taken by the DJELR on the creation of this inspectorate. The Expert group also advised that the PWS should be adequately resourced to enable it to discharge its functions in the Family Law Courts. In respect of this recommendation, a 2004 government-commissioned report found "[n]o developments relating to family law (no official sanction of posts)".<sup>65</sup>



## Punishment

Despite the introduction of the 1996 Act, and the increased reporting of domestic violence to the Gardai, the conviction rate has dropped from 16 per cent in 1997 to 6.5 per cent in 2002.<sup>66</sup> Safety and Sanctions found that, whereas 40 per cent of persons convicted of a criminal offence under the 1996 Act received a prison sentence, only a small proportion of Garda reports of domestic violence resulted in a prison sentence (between 1 and 6 per cent in different regions), due to the high rate of withdrawal. Furthermore, despite the known fact that domestic violence occurs in all socioeconomic groups, those convicted and imprisoned were already highly criminalised, indicating a concern that domestic violence, in itself, is not taken sufficiently seriously within the criminal justice system. *Safety and Sanctions* concluded: "The prosecution of working class males is likely to result from a combination of factors, which includes the fact that working class women are more likely than middle class women to call the Gardai. When cases reach a court hearing, men from the lowest income groups are more likely to receive a prison sentence as one of the main factors taken into consideration in sentencing is prior convictions." It also pointed to the impossibility of ascertaining whether or not convicted abusers served their sentence. Therefore, this information from prison records should also be included in the annual reports recommended above.

*Safety and Sanctions* points too, to the lack of alternative sentencing options before the courts other than imprisonment. The 1997 Task Force Report recommended that "there should be consistency in sentencing policies". It urged that "judges should have options to recommend that offenders be assessed for suitability to participate in intervention programmes, as part of a sanction, but not as an alternative to the imprisonment options currently available". To ensure consistency and appropriateness of sentencing, it is essential that all members of the judiciary be fully trained in the nature of domestic violence and the risk to women who experience domestic violence.

## NONJUDICIAL PREVENTION AND PROTECTION STRATEGIES

While the Government has cited in its 2003 CEDAW Report the existence of the 1996 Act and other criminal laws as evidence of its determination to protect women, law is not in itself sufficient:

*"Domestic violence and its effects extend beyond a mere criminal justice problem, so that the legal system is generally utilized as a last resort, only after other mechanisms have been exhausted or proved ineffective. Domestic violence is a health, legal, economic, educational, developmental and human rights problem. This is reflected in ways in which women attempt to deal with domestic violence. Women often seek assistance first from family, friends, religious confidants, nurses, doctors, social workers, counsellors, or women's organizations"*

However, it is difficult to assess the effectiveness of the state's protective measures, in the absence of data on the experience of domestic violence and on the degree to which legal protections, services and other supports are being utilised by women.

## Society's role and responsibilities

According to the Special Rapporteur, government should; "Develop a greater understanding within the community of the incidence and causes of domestic violence and encourage community participation in eradicating domestic violence."<sup>68</sup> Despite increased awareness of violence against women, there persists a lack of understanding by society, including among women's families and communities. "Why doesn't she just leave?", is a question often posed, for instance, betraying a



Making their voice heard – Amnesty International members at a student rally.

fundamental failure to appreciate the many barriers in a woman's path, not least of which is the escalated violence she faces if she attempts to leave and even after she has left. While it is primarily the responsibility of the state under international law to address public ignorance and misconceptions about domestic violence through education strategies, there is a duty on individuals and society too, to identify and challenge this in ourselves and others.

## Education

In the Bradley *et al* study, 69 per cent of the women interviewed reported controlling behaviour by their partners. Such behaviour can be a predictor of potential violence, and this statistic illustrates the central importance of equipping women, particularly at an early age, to identify such behaviour. Awareness-raising, and the role of the education system, are discussed elsewhere. Literature suggests that on average women experience violence at the hands of their partners 35 times before reporting it to the police.<sup>69</sup> Yet, women who disclose violence are more likely to report it to a friend or relative (*Making the Links*), therefore it is essential that these persons can readily access information on what to do and the services are available locally. The stigma still surrounding domestic violence is a substantial barrier to women's seeking help, whether from professionals or friends.

## Identification and appropriate referral by other agencies

As mentioned earlier, no statutory service other than An Garda Síochána has formal protocols, guidelines or policies in relation to identifying, addressing and referring to other relevant agencies, cases of domestic violence. Many local services have, on their own initiative, sought the expertise of the NGO sector working on the issue of violence against women, resulting in the development of policies, good practice guidelines and intersectoral working arrangements at these local levels. But this ad hoc approach should be replaced with centrally devised policies and service agreements that operate at the national level to ensure consistent, coordinated and integrated responses.

Studies have shown that responses which focus solely on a woman's emotional and psychological state, drug or alcohol issues as the problem and not the violence she is experiencing, not only fail to address the underlying problem but can exacerbate the effect of the violence.<sup>70</sup> Therefore, it is essential that all agencies, including schools, medical services, mental health services, drug and alcohol services, services for people with disabilities, etc. are trained and equipped to identify violence and refer to violence against women services. Formal policies should be devised, and liaison protocols with violence against women services be put in place, not just at a local level, but at central, national level.

## Perpetrator programmes

Recommended as a preventative measure in the Task Force Report, there has been a growth in the number of intervention programmes for violent men funded by the DJELR to prevent further incidents of domestic violence, and they are currently the subject of a review for their effectiveness by that Department. Firstly, the 1997 Task Force Report clearly describes these as programmes for offenders, i.e. men who have committed violence already and who have been found guilty of an offence. The Task Force's intention, it must be assumed therefore, was to prevent these men from committing further violations, not to extrajudicially sanction them for their past violations, and where they present before the justice system, they would be dealt with within judicial sentencing powers, rather than extrajudicial interventions. It further expressed "caution about the outcomes of

programmes in relation to their rehabilitative effects and the risks of giving a false sense of security which could put women's safety in jeopardy" and therefore advised that such programmes "be linked to judicial sanctions and other support services for women". Currently, however, men are accepted by these programmes without their having been judicially sanctioned, which is a matter of some contention. The Task Force explicitly stated that "protection, safety and security of women and children should be the paramount consideration in developing (intervention) programmes". Critically, such intervention programmes should be accountable to the victim in ensuring her safety, and also to the justice system through formal mechanisms for reporting back so that noncompliance or evidence of further abusive behaviour are brought to the attention of the courts. Amnesty International urges the Department to ensure that all programmes under review are evaluated against this standard, i.e. that the partners and children of men dealt with within these programmes were safe, protected and secure as a result of these interventions, using clear, reliable criteria and indicators.

Furthermore, it should not be the practice of the Gardai to refer men to these programmes as an alternative to their arrest where a crime has been committed, or for the courts to refer abusive men to these programmes unless this is attached to an order made under the 1996 Act or to their sentence upon conviction. Referral to such a programme in lieu of an order or conviction would gravely endanger women's safety and confer effective impunity on abusers. The Task Force Report too is clear that "the judiciary should have the option of referring perpetrators for assessment as regards suitability for intervention programmes in both criminal and civil cases but such programmes should never be used as an alternative to criminal or civil sanctions". Ultimately, is the responsibility of the state to ensure that this does not happen in practice, and that perpetrators are dealt with by the full weight of the law.

Amnesty International is further concerned that any decision to expand such programmes must be viewed against the grave risk to women's safety and protection in not adequately funding frontline services for victims of violence, which should be the priority government funding area. This is notwithstanding the fact that the funding for these services is the immediate responsibility of the Department of Health and Children especially in view of the express caveat in the Task Force Report that these programmes should only be made available "in areas where support services for women and children are already in place".

## Other Legislative protection

In 1995, the UN Special Rapporteur on violence against women issued *A framework for model legislation on domestic violence*. It advises that one of the purposes of such legislation should be to: "Establish departments, programmes, services, protocols and duties, including but not limited to shelters, counselling programmes and job-training programmes to aid victims of domestic violence" All social, health, employment and housing legislation should be reviewed for its equitable and adequate application to the needs of women experiencing or fleeing violence.

## Interagency protection

It is also critical to identify the first points of contact women make with services in order to ensure that the response at these points is sufficient to meet women's needs for protection and to prevent the occurrence of further violence. The analysis is broken down here into two sections, the first on NGO/frontline services for women who experience violence and the second on services beyond this sector.

*"Both policy-makers and activists in this field must give greater priority to the admittedly immense task of creating a social environment that allows and promotes equitable and non-violent personal relationships. The foundation for such an environment must be the new generation of children, who should come of age with better skills than their parents generally had for managing their relationships and resolving the conflicts within them, with greater opportunities for their future, and with more appropriate notions on how men and women can relate to each other and share power."*

World Health Organisation  
*World Report on Violence and Health.*

### **Frontline services**

There are 38 community and voluntary organisations providing frontline services to women experiencing domestic violence: 18 refuges and 20 support services. Women's Aid is a voluntary organisation providing direct support to women through a national helpline, outreach and advocacy services. Many refuges also provide a range of ancillary services including childcare, information and support, counselling, advocacy, court accompaniment, support groups and outreach services. The National Network of Women's Refuges and Support Services (NNWRSS) is the national representative body for women's domestic violence and support services in Ireland, but it too, is significantly underfunded. Recognising that the development of refuges and support services in Ireland to date has been "incoherent and, at times, inconsistent", with "no nationally agreed models of service provision", the NNWRSS reviewed its services and published the account of issues and challenges in a 2003 report, *Social Service or Social Change?*<sup>71</sup> However, the NNWRSS – and the frontline services and refuges – will need considerable additional resources from government if this report's findings are to be implemented, and women and children are to be afforded a model service.

Amnesty is deeply concerned at the shortage of emergency refuge accommodation for women and children who make the decision to leave situations of violence – in 2003, at least 593 women were refused refuge accommodation due to lack of space.<sup>72</sup> While this is primarily an issue in Dublin, and substantially exacerbated by the insufficiency of more permanent accommodation, the UN Special Rapporteur is explicit on this point: "domestic violence raises serious safety issues for its victims. In order to adequately meet the needs of victim-survivors, funding must be allocated for the support or establishment of shelters for victims of violence."<sup>73</sup> Refuges are also severely hampered by inadequate funding in their efforts to identify and make the necessary upgrades to their facilities and services.

All community and voluntary organisations providing crisis and support services to women experiencing violence in the family identify underfunding as the main barrier to carrying out their work. In October 2004, Women's Aid published details of the 12,908 calls to its Domestic Violence Helpline in 2003. It is notable that 15 per cent of calls were from other bodies, including statutory agencies and public service providers, seeking information and support. Women's Aid pointed out that the Helpline also recorded 5,994 missed calls (calls that could not be answered as all support workers were engaged on other lines) due to insufficiency of funding and personnel, a 52 per cent increase on the number of calls missed in 2002. That potentially life-saving frontline services for affected women are hampered so significantly by resource problems is an indictment of Government funding arrangements.

### **Other statutory agencies**

Irish literature clearly demonstrates the importance women place, not alone on the Gardaí, but also GPs, hospital Accident and Emergency Departments, and social workers as essential points of contact and sources of information on the legal protections and services for women who experience violence. In a 1992 study of women in Limerick refuges, the sources of help identified included social workers, Gardaí, doctors, solicitors, court clerks and housing authorities. In *Making the Links* doctors, Gardaí, and solicitors were the primary sources of help identified by participants.

### **Health Services**

International studies have shown that the most severe incidents of violence result in calls for emergency medical services rather than the police. According to the UN Special Rapporteur: "Without clear policy and reporting guidelines, doctors and hospital staff merely accept these unconvincing stories, treat the wounds and allow the victim-survivor to return to her violent home, without any questions asked, any attempt to offer help or any referrals to appropriate organizations."<sup>75</sup> It is essential that all health service providers are trained to record injuries as a result of assault, and refer women to support service and the Gardaí. While services' effective liaison

with GPs was raised as a concern in *Changing Direction*,<sup>76</sup> hospitals have devised training and referral policies, in conjunction with voluntary agencies. However, national standardised training and referral policies are required.

### Housing services

While many women in possession of orders under the 1996 Act will not have to leave the family home, those who are not covered by its provisions or those who are unwilling to pursue that option may have no alternative. It was mentioned above that refugees often have to turn women away due to the lack of move-on accommodation for existing clients. Yet, in 2003, approximately €20m was spent on private B&B accommodation for homeless families by the Government, the experience of which for women fleeing a violent partner has been documented by Sonas Housing, a transitional housing provider, in a 2004 report as frightening, abusive, inappropriate and stressful.<sup>77</sup> These B&B placements are intended as short-term emergency placements, but in reality women and families can spend between 14 and 18 months there. The UN Special Rapporteur advises: "Recognizing the nexus between domestic violence and homelessness, priority should be given to victim-survivors of domestic violence in State-sponsored housing". Many women who have to leave their homes do not wish to enter emergency accommodation, whether refuge or B&B, and others cannot because of restrictions imposed, such as the prohibition on older male children. Those in emergency accommodation eventually must move on to more permanent settings, and again, transitional housing for women experiencing violence is underprovided.

Where women wish to rent accommodation in the private sector, applicants for social welfare 'rent allowance' must currently be renting accommodation, they must have been able to afford the rent from their own resources when they started to rent and should have had a reasonable expectation that they would continue to be able to afford the rent into the future. When women flee violent homes, they have often been financially dependent and may not have the resources to meet these requirements. Furthermore, to be entitled to apply, an applicant must have been assessed by a Housing Authority as having a housing need or registered as being homeless. Applicants do not qualify for rent supplement if they are in fulltime employment, regardless of their earnings. Again, this can act as a barrier, or can force women on lower incomes to abandon their employment. Furthermore, even where women are granted this allowance, the rent ceiling is so low as to force women into unsuitable dwellings or to worse, return to their violent homes. The habitual residence condition for rent allowance also serves to impact negatively on many women seeking accommodation in Ireland including returned Irish emigrants and non-nationals, and should be waived where the woman is fleeing domestic violence. The NEHB review also identified: "women without dependent children who have been forced to leave their homes as a result of violence against them are unlikely to be re-housed through a housing allocation from a local authority as they give priority to families. The transitional housing within the region is not available to women without dependent children."<sup>78</sup>

The Swedish Social Services Act (1980:620), for instance, was amended by a supplementary provision (Social Services Act, Section 8a) stipulating that local social welfare boards should provide women who are or who have been victims of domestic violence with help and support: "The local social welfare board should act to provide support and assistance to persons who have been victims of a crime and to their families. The local social welfare board should pay special attention to the fact that women who are being or who have been subjected to violence or other abuse in the home may need support in order to change their situation."

Inconsistencies have also been reported in how Community Welfare Officers respond to applications for supplementary welfare allowance from women who have fled, or are planning to leave violent homes. The difficulties associated with obtaining this financial assistance in times of crisis may have serious implications for a woman's safety: "This could result in a woman deciding to stay in an

*"None of the six [surveyed] local authorities had a policy on domestic violence. In their approved scheme of lettings, they all allocate priority to those who are assessed as homeless, however, the extent to which women out of home because of domestic violence are assessed as homeless varied greatly from council to council."*

*Safe Home: Sonas Housing Association Model of Supported Transitional Housing (2004).*



Women's Aid T-shirt

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*"Links have also been documented between both witnessing and directly experiencing domestic violence as a child and violent behaviour both within and outside the home as an adult."*

UN Special Rapporteur on violence against women

abusive relationship and remain dependent on her partner rather than go through the gruelling given by the local community welfare officer."<sup>79</sup>

### Protection of children

Evidence shows that a significant minority of men who abuse their adult partners also physically and sexually abuse their children.<sup>80</sup> Aside from such direct violence, domestic violence can have devastating effects on children, including depression, anxiety, behavioural problems, and isolation. 64 per cent of women surveyed in the *Making the Links* who said they had experienced violence by a partner, said their children had witnessed the violence. Poor school performance is also associated with violence in the home, and the education system should be equipped to identify and deal with this. UNICEF advises: "Children need to be identified as victims of domestic violence, and their safety has to be ensured. This requires ensuring the safety of their mothers and making childcare facilities available to women in shelters."<sup>81</sup> The link between domestic violence and child abuse must be identified and responded to by professionals who work with families who experience domestic violence and those in the area of child protection. Yet, while children comprise the majority of clients of domestic violence refuges, few refuges have funding for child protection workers.<sup>82</sup> (The widespread inadequacy of children's mental health services has been the subject of a 2003 report by Amnesty International.)<sup>83</sup>

While witnessing domestic violence is categorised as emotional abuse in Irish child protection policy guidelines, *Children First*, Barnardos has raised concern "that the failure to recognise and address the effects of family violence on children is a significant gap in our child protection services".<sup>84</sup> It observes that, while domestic violence is generally defined as violence between adults, children are frequently impacted on by domestic violence, and there is a close relationship between the abuse of mothers and the abuse of children. It points to the concern that, "while in recent years there has been greater attention to the effects of

physical and sexual abuse of children, there has been less recognition of the impact on them of witnessing domestic violence". It identified "a clear need to vindicate the rights of children by protecting them from all forms of abuse and their effects", and to this end, greater information is needed on the experiences of and risks to children through a "comprehensive study of family violence". The Children's Rights Alliance has recommended a comprehensive strategy to protect children from domestic violence.<sup>85</sup>

In a 2002 review of child protection cases in the Western Health Board, it was found that in 80 per cent of cases where women contacted social workers in relation to child protection issues, domestic violence was an issue.<sup>86</sup> Clearly then, women are accessing help for their children, and the sensitivity of child protection services to the women's experiences is also essential, as women's fear that disclosure of violence within the home could result in them losing their children has frequently been cited as a reason for not reporting violence.

The Law Society study found that, in the experience of lawyers surveyed, 35 per cent of District

Court judges would interview children in proceedings under the 1996 Act where they believe this to be appropriate.<sup>87</sup> While supporting this practice in principle - it is also in line with children's rights under the UN Convention on the Rights of the Child to have a voice in matters that concern them - it recommended "that judges are provided with guidelines and training on dealing with children and with the evidence of children".

Amnesty International is concerned at the reported granting to men who have committed violence against their female partners of unsupervised access to children, due to the lack of information available to the family courts in child custody proceedings on levels of risk and criminal prosecutions, documented in a recent report by Women's Aid.<sup>88</sup> It made several recommendations, including the establishment of a legal working group to examine responses to this issue in other jurisdictions. For many clients of the lawyers surveyed in the Law Society study, access to children resulted in further problems after the grant of a barring order on grounds of domestic violence. A still outstanding recommendation from the 1997 Task Force report is that, "in relation to the Probation and Welfare Service, the question of staffing resources should be addressed by the Department of Justice as a matter of priority; the District Court should have access to Probation and Welfare reports in coming to its decisions in family law cases". Also, guidelines for the judiciary in ensuring and prioritising the safety of women and children in family law cases should be introduced, as exist in the UK.

As noted above, there is currently limited provision for information to be recorded on the Garda DVSA (1) Form or on applications for orders under the 1996 Act. As advised by *Safety and Sanctions*, data recorded in these documents should be expanded to include whether or not the defendant has abused the children, and whether the children are afraid of the defendant. Again, guidelines need to be developed on the recording of domestic violence call-outs and training needs to be provided for all members of the Gardai.

Where courts do make orders for supervised access arrangements, the 1997 Task Force Report recommended that supervision should be conducted by a trained professional who is aware of the potential dangers in such situations, and recommended that this service should be provided by the Probation and Welfare Service. *Safety and Sanctions* also observed:

*"Where there has been a history of violence against the woman, access to the father needs careful consideration and the safety of the woman and child must not be compromised. With regard to supervised access, the reality for most people is that access takes place at weekends when neither the Probation and Welfare Service nor the Health Boards operate. In England, this issue is resolved by the provision of 'Access Centres' staffed by trained social workers or childcare workers."*

It also suggested that in some cases there will need to be supervised appropriate access in designated centres, which, it recommended, should be managed by the Probation and Welfare Service.

In respect of men who have committed domestic violence, the advice of the UN Special Rapporteur on custody and access is unambiguous:

*"In cases of domestic violence, women should be granted full custody of the children. In cases of woman-battering, the batterer should not be granted visitation rights so that they may be protected from abuse and from being used as leverage. In cases in which visitation rights are granted, visitation should be supervised and arranged in a way so as not to cause the woman any contact with the batterer. Details such as transportation, the site of the visitations, financial support for the visits and the persons authorized to supervise the visits should all*

*"In a case reported to Amnesty International by Women's Aid, a survivor of repeated attacks by her husband had received a three-year barring order to keep her husband away from her. Despite this, he continued to harass her, coming to her house and threatening to kill her and her friends, smashing her car and phoning her house all night long. Following one of these incidents he was arrested and sentenced to one year's probation. After another incident, he was again arrested and given a custodial sentence, which he appealed. He was released on bail, and allowed to see his children. At a judicial separation hearing several months later, the court refused to hear evidence about his abuse, saying that it had no bearing on the case. As a result, he was awarded joint custody of the children."*

It's in our hands  
Amnesty International

*be included in the court decree. In cases where domestic violence against a pregnant woman or her unborn foetus has occurred, there should be legal mechanisms to grant custody to the mother prior to the birth of the baby.*<sup>69</sup>

While the relaxation of the *in camera* rule offers a long-awaited opportunity to look behind the veil at what is happening in the family law courts, Amnesty International urges the Government and the Courts Service to allow the fullest possible reporting of hearings and decisions consistent with the rights of the parties involved. A formal system of family law reporting, similar to that established by the Courts Service in ... (which had to be ceased due to the rigidity of the *in camera* rule), would be helpful, but should not justify refusal or restriction of access to credible researchers and human rights monitors. The Act also allows for parties to be accompanied by person of their nomination, and Amnesty International urges the Government to ensure that voluntary support services and human rights monitors are facilitated in such court accompaniment at the request of the victim and are resourced to do so.

Under section 7 of the *Domestic Violence Act, 1996* the court has the power in domestic violence cases to consider the grant of an order under the *Child Care Act, 1991* and to adjourn the proceedings and order an investigation by the Health Board into the circumstances of any dependent person. The Law Society survey found that "this provision has been used in some District Court areas as a means of obtaining a welfare report at the expense of the Health Board where the parties are impecunious and there are serious concerns for the welfare of children or other dependant persons". However, according to this survey, the courts experience considerable difficulty and delay in obtaining such reports.

*"Children who witness marital violence are at a higher risk for a whole range of emotional and behavioural problems, including anxiety, depression, poor school performance, low self-esteem, disobedience, nightmares and physical health complaints".*

World Health Organisation  
*World Report on Violence and Health.*

## Recommendations

- Protective measures, including refuges, counselling and support services should be readily available to all women who have experienced or are at risk of domestic violence, and adequate funding should be made available to frontline services for providing existing levels of services, and to improve and expand their services.
- Appropriate mechanisms should be established for the monitoring and periodic review of the effectiveness and enforcement of the Domestic Violence Act, 1996, as recommended by the Task Force on Violence Against Women; and recommendations made in Safety and Sanctions should be immediately implemented.
- The 1996 Act should be amended to allow access to safety orders by all cohabittees regardless of proprietary interest in the joint residence, and access to safety and barring orders where couples have a child in common but do not live together; and the provision in the Act that a person must have cohabited with the respondent for at least six of the preceding nine months should be removed.
- A consultation process should be initiated on the potential utility of introducing additional categories of domestic violence offences into Irish law, with express provision that other relevant criminal charges should also be pursued.
- The criminal justice system should be comprehensively reviewed and reformed to ensure that it provides an effective response to domestic violence; annual reports should be compiled by the DJELR on the enforcement of criminal law detailing the degree to which reports of family violence are investigated, prosecuted and punished, including time served in prison.



- Focused research should be undertaken on the criminal justice response to sexual assault and rape in the context of domestic violence, and, in particular, the lack of enforcement of the offence of marital rape in the Criminal Law (Rape) Amendment Act, 1990.
- Fatality reviews should be considered where women are killed by current or former intimate male partners, to identify and address gaps in interagency responses for women experiencing domestic violence.
- Systematic training on gender-based violence against women should be mandatory for all agents in the justice system dealing with domestic violence, including experts providing reports to the courts.
- A court-based support and advocacy service should be provided for women making applications for civil orders or criminal complaints, in liaison with violence against women support services.
- Senior Gardai should be appointed to the prosecution of criminal cases where domestic violence is involved, and separate legal representation for victims as witnesses should be available in these cases.
- Implementation of the Garda Domestic Violence Intervention Policy should be regularly reviewed; Garda domestic violence call-out forms should be revised to record comprehensive information in compliance with recommendations made in Safety and Sanctions, which should be compiled and annually reported; all members of An Garda Síochána should be trained on gender-based violence as part of the core curriculum for pre- and in-service training; and the intervention of specially trained, designated domestic violence officers should be piloted and evaluated.
- The National Domestic Violence Intervention Agency should receive continued and adequate support, and upon evaluation, proceed expeditiously to its national mainstreaming.
- The promised regional system of family law courts should be expedited; in the interim, existing family law courts should be adequately resourced, with physical conditions and facilities appropriate to the needs of women and children, and sufficient additional judges with expertise in family law appointed to alleviate delays.
- Data and information collection systems in the civil justice system should be reviewed and reformed in order to ensure adequate reporting on the circumstances in which applications are made for orders under the 1996 Act.
- Clear judicial guidelines should be introduced for civil cases involving domestic violence, including in respect of standard of proof, requesting reports, and dealing with children as witnesses, and should be published.
- Judicial guidelines should also be introduced for criminal cases involving domestic violence, providing, inter alia, for mandatory sentencing as offences committed in aggravating circumstances.
- Delays in accessing legal aid should be addressed, through the appointment of additional staff to the Legal Aid Board, or reinstating the Private Practitioners Scheme for family law cases.
- Recommendations made by Women's Aid in Child Custody and Access in the Context of

Domestic Violence: Women's Experiences and the Response of the Legal System should be implemented, including the establishment of a working group to examine recent developments in family law and international models of good practice.

- The relaxation of the in camera rule in family law proceedings should be expeditiously availed of to review and reform current practice in domestic violence, child custody and other related proceedings, in order to ensure that the legal system deals effectively with these issues while prioritising the safety of women and children.
- A national strategy to identify and protect children in domestic violence situations should be developed and implemented, encompassing the roles and responsibilities of all relevant services, including social services, the education system, health services and frontline services.
- The Probation and Welfare Service should be comprehensively engaged in providing reports to the courts in family law proceedings, including the preparation of pre-sanction reports, mandated order reports and victim reports in domestic violence proceedings, and risk assessment reports in child custody hearings, and a clear statutory basis should be established for its role. Recommendations made by the Expert Group in its 1998 and 1999 reports should be implemented.
- Supervised access should be the presumed option in child custody applications where the court has reason to believe that domestic violence is an issue in the case; the Probation and Welfare Service should have a central role in supervised access arrangements, and safe, supervised 'access centres' staffed by trained personnel should be provided for such arrangements.
- Women experiencing violence in the family should be assured safe and appropriate accommodation: refuges should be sufficiently available to provide crisis accommodation and should be resourced to upgrade their facilities and services to meet the needs of women and children in line with the 1997 Task Force Report recommendations; sufficient numbers of transitional housing units should similarly be available; women out of home due to domestic violence should be assessed as homeless and prioritised for accommodation; B&B emergency accommodation should be discontinued as a matter of urgency; and other recommendations for integrated innovative solutions in *Safe Home: Sonas Housing Association Model of Supported Transitional Housing* should be adopted.
- All relevant entitlements and restrictions in legislation in respect of social welfare, education, employment, etc should be reviewed for their disadvantaging or impeding the safety of women experiencing or escaping domestic violence, and where necessary or appropriate, should include special measures for women experiencing or escaping domestic violence; and the habitual residence condition should be waived where migrant women are escaping violence in their homes.
- National policies and referral procedures should be centrally devised, monitored and evaluated, in respect of all relevant statutory services for identifying and responding appropriately and effectively to domestic violence.

# Chapter 4

## Rape and Sexual Abuse

As outlined in Chapter 3, the majority of rapes and sexual assaults experienced by women are committed by someone known to them, and very often by intimate male partners.<sup>90</sup> Therefore, while the legal protections and supports outlined here are sometimes thought to apply just to 'stranger' rape, they are also necessary for many women who experience violence in the family.<sup>91</sup> Where rape or sexual abuse occurs within the family, it should be dealt with accordingly within the criminal justice system. In Chapter 3, the consideration of specific criminal offences of 'domestic violence' is recommended, but rape and sexual abuse in the family should be dealt with under existing criminal law. Much of the analysis and recommendations in respect of preventing violence in the family in Chapter 3 pertain equally to rape and sexual abuse within the family, and an overarching discussion of the state's duty in respect of prevention is provided in Chapter 9.

### The nature of the violation

Acts of rape and serious sexual assault have been considered by international criminal tribunals as torture, genocide, and crimes against humanity. However, the same act of rape committed by a private citizen has only recently been seen in a comparable light. States are held responsible by human rights bodies for bringing perpetrators of gender-based abuses to justice, no matter what the context. Although rape by non-state actors has not yet been defined as the crime of torture, the European Court of Human Rights has identified abuses by state actors such as rape and corporal punishment of children as a breach of international standards on torture and ill-treatment which incurs the state's responsibility where the state has not legislated to prevent or criminalise it.<sup>92</sup> There is therefore a close nexus between certain types of violence against women and torture, freedom from which is a non-derogable right. This shows the priority that states should attach to preventing this form of violence against women and addressing it appropriately and effectively when it occurs.

### Prevalence

In Ireland, there is limited research on the prevalence of this form of violence, which, according to a study by Rape Crisis Network Europe, *Rape: Still a Forgotten Issue* is echoed across Europe: "There has been far less research on rape and sexual assault in Europe than on domestic violence ..., meaning we have a weak knowledge base on the issue."<sup>93</sup> The RCNE study suggests that, while "it is widely accepted that all forms of violence against women are underreported in official crime statistics, a more accurate picture is only possible through carefully crafted prevalence research", and points to the low levels of prevalence studies within all states surveyed, with "limited methodological innovation". It recommended that this poverty of information should be addressed both through specific studies and through integration of sexual assault into prevalence studies on other forms of violence against women; and that increasing awareness that rapes are committed by known men, and may involve repeat victimisation, should be further explored.



Rosemary Daly, CEO of the Rape Crisis Centre outside their HQ on Leeson St., Dublin at the launch of their *Statistics and Financial Summary* report.

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A nationally representative study, funded in part by the Department of Health and Children and the Department of Justice, Equality and Law Reform, the Sexual Abuse Et Violence in Ireland (SAVI) report,<sup>94</sup> was published in 2002, and outlines attitudes to sexual violence, experiences of sexual violence and barriers to, or facilitators of, seeking health services or legal redress. It found that more than one in four female respondents had experienced some form of sexual abuse in their lifetime. One in five women (20.4 per cent) reported experiencing sexual assault that involved physical contact as adults. A further 10 per cent of women had experienced non-contact abuse. Penetrative sex was a feature of abuse experienced by 6.1 per cent. . It observed no social 'class' distinction between adult women who have been subjected to rape and sexual assault. It found that intimate partners or former partners perpetrated the abuse in almost a quarter of cases. It found a strong association between penetrative abuse in childhood and later life, indicating a strong risk of revictimisation.

In provisional figures recently issued by an Garda Síochána, 447 rapes were reported in 2004, compared with 370 in 2003.<sup>95</sup> The number of sexual assaults reported to the Gardai increased over the past 10 years peaking in the reporting of 1650 cases in 2002, but a 12 per cent reduction has been seen since with 1060 reports in 2004. Dublin Rape Crisis Centre publishes annual statistical bulletins on the use of its counselling service, and it received 11,863 calls to its telephone counselling helpline in 2003, and 85 per cent of callers were female, and 50 per cent of calls were in relation to adult rape. Rape Crisis Network Ireland (RCNI) published its first national statistics in May 2005 (*National Rape Crisis Statistics, 2004*), which revealed that 45,000 help-line calls were dealt with by the 15 Rape Crisis Centres in 2004, 89 per cent made by women. They provided face-to-face support for 2,289 survivors of sexual violence that year. In 79.6 per cent of cases it deal with, the sexual violence was not reported to the Gardai. The RCNI report also found that 3.5 per cent of cases of sexual violence against females of childbearing age it dealt with, had resulted in pregnancy.



Justice Statue at Dublin Castle.

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## Investigation and Punishment

### Legislation and legal process

Ireland's current body of law on rape and sexual offences, particularly in light of recent reforms broadly complies with international human rights standards. An overview of relevant laws is provided in a 1998 study, *The Legal Process and Victims of Rape*.<sup>96</sup> While the mandatory nature of the judicial warning to juries about the dangers of relying upon uncorroborated evidence was removed, under section 7 of the Criminal Law (Rape) (Amendment) Act, 1990, this warning may still be given at the discretion of the trial judge, and in practice, judges reportedly continue to give the warning no less frequently. It should be expressly provided in legislation or court rules that corroboration of the victim's testimony is not required for any crime, particularly crimes of sexual violence, and this should be explained to the jury.

Under section 3 of the Criminal Law (Rape) Act, 1981 (as amended), on application in the absence of the jury, the trial judge may give leave for the defence to introduce questions on, or evidence of, the prior sexual conduct of the victim if to refuse would be unfair to the accused person, in that the jury might return a guilty verdict, where they might not if the evidence or question were allowed.

Although a narrowly drawn provision, in practice, such evidence and questions are reportedly frequently allowed. Rule 70(d) of the Rules of Procedure and Evidence in the Rome Statute of the International Criminal Court provides that the credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness. Rule 71 provides that the court shall not admit evidence of the prior or subsequent sexual conduct of a victim or witness, subject to Article 69(4): "The Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence." Rules 70 and 71 in combination provide important safeguards, therefore, since conduct may only be raised if relevant to an issue other than the matters excluded by Rule 70 (d), and should be reflected in Irish law.

Common Law rape is defined in the 1981 Act (as amended) as sexual intercourse with a woman who does not consent, and at the time the accused either knows that she does not consent or is reckless as to whether or not she consents. 'Consent' is not defined in the Act, however, and concerns have been raised about the entirely subjective test in common law, and reported inconsistencies in judge's directions to juries in explaining the concept. The Government's Law Reform Commission recommended that the subjective test be retained, but that a statutory definition of consent be provided to clarify its meaning for juries. This has not been implemented to date.

There has been major progress too, in the response of the Gardai to acts of violence against women, on foot of initiatives including: the establishment of the Domestic Violence and Sexual Assault Investigative Unit in 1993; the development of procedures and guidelines for the Gardai in handling all sexual offences; and the publication of gender disaggregated statistics on sexual offences in the Annual Report of an Garda Síochána since 1994.

### Underreporting and attrition

The state's duty to exercise due diligence in the investigation and punishment of violence requires the state to take all reasonable measures to ensure that victims are encouraged and supported in making complaints. Yet, underreporting of rape and sexual assault is a significant concern. The SAVI report estimated that only 7.8 per cent of women report their experiences of sexual violence to the Gardai, and for those who do not, it is often because they think it too trivial (almost 20 per cent), due to shame or embarrassment (over 15 per cent), blaming self or thinking others would blame them (approximately 6 per cent and 7 per cent respectively) or other reasons, including not wanting others to know and not wanting to cause pain to one's family. *Rape: Still a Forgotten Issue* found that the main reasons cited by women interviewed for this European-wide survey for deciding not to report rape were:

- Not naming the event as rape (and/or 'a crime') oneself;
- Not thinking the police/others will define the event as rape;
- Fear of disbelief;
- Fear of blame/judgement;
- Distrust of the police/courts/legal process;
- Fear of family and friends knowing/public disclosure/stigma;
- Fear of further attack/intimidation;
- Divided loyalty in cases involving current/ex intimates;
- Language/communication issues for women with disabilities and/or whose first language is not that of the country where they were assaulted.

In relation to rape and sexual assault, the RCNE study found that Ireland has one of the highest attrition rates in Europe, i.e. the proportion of cases that are not prosecuted. Concern has been

*"Of crimes committed, a smaller proportion are reported; of those reported, a smaller proportion are prosecuted; of those prosecuted a smaller proportion end in conviction. This progressive reduction between crimes committed and those, which end in conviction, is known as the process of attrition. .... We know from our direct experience with clients in Rape Crisis Centres over the past 25 years that our legal process is long and slow, fraught with difficulties and often viewed as incomprehensible by the uninitiated. .... Currently fewer than 1 in 10 complainants in cases concerning sexual violence engage with the criminal justice process at all ."*

Rape Crisis Network Ireland website

raised at the number of cases where decisions have been taken not to prosecute. Currently six out of every ten reports will not proceed at this stage.<sup>97</sup> In 2001, proceedings were taken in 37 per cent of cases recorded that year, but 71 per cent were considered "detected", i.e. the Gardaí are satisfied that it has identified the culprit because of the weight of evidence against the accused, even if no further action is taken.<sup>98</sup> The Director of Public Prosecutions traditionally does not disclose reasons for his office's deciding not to prosecute, but he has recently indicated a willingness to review this practice.

In the 1980s, approximately 21 per cent of all proceedings commenced resulted in a conviction, but between 1998 and 2001 the RCNE study found a 1 per cent conviction rate in Ireland despite an increase in both reporting and prosecution rates, the lowest rate of convictions for this crime in a survey of 21 European Union countries. Rape Crisis Network Ireland (RCNI) suggests that the current conviction rate in Ireland is 5 per cent. The RCNE study therefore concluded that "legal reform and changes in the investigation and prosecution of rape have had little, if any, impact on convictions, and more than this in many countries these processes have occurred during a period when the proportion of prosecutions and convictions has fallen, sometimes dramatically".

With specific reference to Ireland, the RCNE study cited the long delays in court proceedings, delays in reporting to the Gardaí, and loss of evidence as the main barriers to the successful prosecution of rape. Recent figures from the Court Service revealed that the number of rape and aggravated sexual assault cases brought to trial at the Central Criminal Court has fallen by 70 per cent over the last six years with just 37 cases heard in 2004, compared to 130 in 1999.

The RCNE study recommends that "research exploring the points at which cases are lost and dropped, and why, should be undertaken, and within this attention devoted to those countries where conviction rates have increased". Ireland's high attrition rate has subsequently become the subject of a three-year study underway at NUI Galway's law faculty commissioned by RCNI and part-funded by the Department of Justice. Pending the outcome of that attrition study, the following recommendations contained in the 2003 RCNE study should be implemented immediately:

- Justice departments should collect, collate and publish data on reported rapes, prosecutions and convictions on an annual basis. This information should be analysed nationally and regionally.
- Commitment should be given by governments to evaluate recent and new legal and procedural reforms, including the perspective of victims/survivors.
- Any new prevalence studies on violence against women (and domestic violence) should include questions about sexual assault.

Ultimately, the low reporting and high attrition rate mean that perpetrators of rape and sexual abuse are routinely benefiting from effective impunity for serious violations of women's human rights. The level and consistency of the pattern is clearly sufficient to conclude that the state is not exercising due diligence in the investigation and punishment of violence against women. Furthermore, given that a substantial number of offenders are likely to repeat this violation against the same or another woman, the state is also failing in its obligation to exercise due diligence in the prevention of rape and sexual violence.

*Rape: Still a Forgotten Issue* highlights that this experience is common right across Europe, in its concluding that "at the most fundamental of levels – protection and redress from sexual violation – most states in Europe are currently failing their female citizens". It concluded that "attrition and responses to reported rape in European countries confirms that rape and sexual assault continue to be neglected areas in government and institutional responses to violence against women", and

suggests that "this limited attention is one of the factors underpinning the widespread increase in attrition across Europe".

### Protection of victims as witnesses

In Ireland, victims of crime are witnesses for the prosecution, and confusion can arise in the public mind where women refuse to "press charges". Human rights are inalienable, i.e. they cannot be waived, and the state still has a duty to protect women and to treat what has happened to them as a crime. Moreover, a woman cannot be said to be exercising free will and informed choice where her decision not to support a criminal prosecution is grounded in fear of the abuser or of the legal system itself. Therefore, an essential component of a justice system is a court-based support service.

The RCNE study concluded: "There is no common 'good practice' across Europe with respect to measures that support and enable complainants to give their best evidence in court, which protects their dignity and integrity, nor limits the extent to which they can be humiliated and exposed to further harm."

RCNI observe: "Of the small proportion women who do report sexual violence to the Gardai, many recount experiencing profound dissatisfaction with the climate of scepticism which all too frequently greets their report, the lack of information regarding the case, (and) their lack of preparedness for the trial process."<sup>99</sup> A 2001 report highlighted the need for much more coherent and consistent support for victims reporting sexual violence and throughout the investigation and court case.<sup>100</sup> Rape Crisis Centres provide support and accompaniment services for victims throughout the criminal justice process, but while until this year, they received no funding from the Department of Justice for this, they have been issued with funding by the Government Commission for the Support of Victims of Crime on a pilot basis.

Article 6 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides that the responsiveness of judicial processes to the needs of victims should be facilitated by *inter alia* "[a]voiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims". Victims who report crimes of sexual violence face intolerably long delays in cases getting to court, due to the Government's failure to appoint sufficient judges and court facilities. Currently a two year wait is not unusual.

The Rome Statute of the International Criminal Court addresses some of the most common procedural and evidentiary rules that have traditionally undermined women's claims of abuse and made trials traumatic experiences for the victims involved. Therefore, the ICC Rules of Evidence and Procedure, such as the requirement to appoint experts in addressing crimes of sexual violence, and to establish a victims and witnesses unit, should be used as models to ensure that the rights and needs of victims and witnesses are respected in the national criminal justice system, and represent international best practice that all states should follow when prosecuting crimes of sexual violence.

### Right to separate legal representation

In civil cases, Section 26(3) of the Civil Legal Aid Act, 1995 provides that complainants in a case of rape, aggravated sexual assault, unlawful carnal knowledge and incest qualify for free legal advice. The legal aid solicitor may also accompany the victim into the criminal court, but may not participate in the proceedings in any way. In practice this provision has not been used, and victims are generally unaware of its existence. In any event, it is regarded by RCNI as inadequate. *The Legal Process and Victims of Rape* observed: "whether the victim is kept informed of the progress of the case pre-trial will depend on the individual police officer in charge of the investigation. No one has responsibility officially to inform the victim, but the investigating officer will do so in practice ... the victim has no formal opportunity to meet the prosecutor before the case, and whether a meeting is arranged will depend on the attitude of the individual prosecution counsel. Even where the victim



Barrister outside the Four Courts, Dublin.

Civil Legal Aid Act, 1995 provides that complainants in sexual abuse cases qualify for free legal advice. The legal aid solicitor may also accompany the victim into the criminal court, but may not participate in the proceedings in any way. In practice this provision has not been used, and victims are generally unaware of its existence.

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does meet with prosecution counsel, given the strict rules of evidence pertaining in the common law system, they may not discuss the evidence at this meeting."

The Rules of Procedure and Evidence of the ICC provide that victims can have a legal representative, i.e. separate from the prosecution team, who can participate in the trial if permitted by the judge. Separate legal representation for the victim can be important in ensuring implementation of the procedures and evidentiary rules that protect the rights of victims. These interests may be distinct from the prosecution and therefore separate representation for the victim helps to ensure adherence to the rules. The Rules state that when deciding whether a victim's legal representative can question a witness, the Chamber must consider 'the rights of the accused, the interests of witnesses, the need for a fair, impartial and expeditious trial'. Therefore, the Rome Statute and the ICC Rules are designed to ensure that the right of victims to have their representative participate in the trial is consistent with the right of the accused to a fair trial.

*"An important element in preventing sexual and physical violence against women is a collective initiative by men. Men's groups against domestic violence and rape can be found in Australia, Africa, Latin America and the Caribbean and Asia, and in many parts of North America and Europe. ... The "Men Can Stop Rape" group in Washington, DC, for instance, seeks to promote alternative forms of masculinity that foster non-violence and gender equality."*

*World Health Organisation  
World Report on Violence  
and Health*

In criminal trials, there is often a lack of parity in the calibre of the prosecution and the legal representation afforded to the defendant. In many cases, the prosecuting counsel may be a member of the Gardaí, or, in more serious cases, a state appointed counsel, who may have had only a cursory acquaintance with the case. Particularly in cases where the defendant has considerable resources and can afford the services of an experienced legal team, there can be an imbalance that militates against the service of justice. Victims of crime do not have a right to legal representation in Irish criminal proceedings. The issue of legal representation for victims of rape has been the subject of much debate. The Law Reform Commission in its Report on Rape (1988), opposed this idea on the ground that it would jeopardize the right of the accused to a fair trial because he would be faced by two opposing parties rather than one, and that it would complicate the criminal trial and alienate the jury to such a degree that it could lead to unjustified acquittals, that it involves the risk of coaching the victim/witness and that it would lead to an increase in the number of appeals challenging the fairness of the trial. Those in favour of such a scheme argue that legal representation for victims of rape would make the trial much less traumatic for them and would lead to an increase in the reporting of such crimes. The Department of Justice addressed the issue in its 1998 discussion paper, *The Law on Sexual Offences*, where it expressed doubt about the constitutionality of legal representation of victims of sexual offences, although it does suggest that representation might be allowed where an application is made to the court to present evidence on, or cross-examine, the complainant's past sexual history, since the application is heard by the judge only, so there is no question of the victim's representative influencing the jury. Amnesty International urges the Government to again consider the issue of separate legal representation, with due regard to its international human rights obligations

### **Punishment**

There is a perception of leniency in the sentencing of convicted offenders in cases of rape or sexual assault at Circuit and District Court level. In the main, rape cases are assigned to the Central Criminal Court, but charges of sexual assault outside Dublin, on occasion, are dealt with at District Court level. The Criminal Justice Act, 1993 gives the Director of Public Prosecutions power to seek a review of a sentence imposed on conviction by the Circuit and Central Criminal Courts on the grounds that it is unduly lenient, RCNI while broadly satisfied with the consistency of sentences handed down by the Central Criminal Court, is concerned that this lenient sentence review is too rarely used in Circuit Court cases. The question of extending this power of review to cases dealt with at District Court level has arisen. However, such a proposal has been deemed to raise many issues, which in the main arise from the summary nature of proceedings in the District Court, so the matter has been referred by the Attorney General to the Law Reform Commission as a matter of urgent public interest, and Amnesty International urges it to give due consideration to the need for such an appeal mechanism given the widespread perception of leniency in sentencing of rape and sexual assault cases at District Court instance.



## Support services

There are 17 RCCs in Ireland, which provide a range of services including advocacy, information, court accompaniment, counselling, therapy and education, but report being severely hampered by resource constraints, so that victims of rape can have to wait months for counselling. However, Amnesty International welcomes the fact that RCCs have recently received funding from the Department of Justice, Equality and Law Reform for supporting the RNCI, and from the Commission for the Support of Victims of Crime for court accompaniment services. A subgroup of the National Steering Committee has been established to look at the ready availability of forensic medical examinations in rape cases. This report is due later this year. The National Steering Committee has also agreed to a request from the Minister for Justice to pursue the recommendations in the SAVI report, and this work is set to begin very shortly.



"The government is not giving adequate financial support towards rape crisis and domestic violence services".

Frank Fahey, T.D. Minister of State at the Department of Justice Equality and Law Reform, March 2005.



The Rape Crisis Network of Ireland met with Finance Minister Brian Cowen in February 2005. RCNI Executive Director, Fiona Neary said the Minister was receptive to their cause. No additional funding has subsequently been provided by the Department of Finance. © Graham Hughes/Photocall.



"(Rape Crisis Centre needed) now more than ever".  
an Taoiseach, Bertie Ahern, May 2005.

© Graham Hughes/Photocall.



"There is no funding crisis being experienced (by frontline service providers).  
Minister of Health, Mary Harney T.D., Feb 2005.

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## Recommendations

- Rape Crisis Centres and Rape Crisis Network Ireland should be adequately funded to provide existing levels of services, and should be provided with additional funding to identify and respond to unmet needs.
- The Department of Justice, Equality and Law Reform should collect, collate and regularly publish data on reported rapes, prosecutions, convictions and sentences, including on time served in prison on an annual basis. This information should be analysed nationally and regionally, and adequately disaggregated.
- All recommendations made in the SAVI Report, and relevant recommendations in the 2003 RCNE report should be implemented.
- A court support service for victims of rape and sexual violence should be established on a statutory basis, in close liaison with the RCNI. In the interim, the Department of Justice, Equality and Law Reform should provide adequate and stable funding to Rape Crisis Centres to support victims of rape and sexual assault throughout the court process.
- Pending results of the RCNI research into attrition rates, the courts service should be resourced to ensure that all cases of rape and sexual assault are dealt with expeditiously and sensitively, and the Director of Public Prosecutions should give reasons for decisions not to prosecute.
- The Director of Public Prosecutions should rigorously exercise his power of review of lenient sentencing in rape and sexual assault cases, and give due consideration to the need for such an appeal mechanism at District Court instance, in full consideration of Ireland's human rights obligations.
- Further consideration should be given to the provision of separate legal representation for victims as witnesses, with due regard to Ireland's international human rights obligations.
- Provisions in criminal justice legislation incompatible with the rights of victims as witnesses should be reviewed and reformed, particularly in relation to uncorroborated evidence, evidence of prior sexual conduct and consent, with particular reference to the Rules of Procedure and Evidence of the International Criminal Court.
- Court procedures and facilities should comply with international best practice for respecting the rights and needs of victims as witnesses, a model for which is represented by the Rules of Procedure and Evidence of the International Criminal Court, for instance in their requirement to appoint experts in addressing crimes of sexual violence and to establish a victims and witnesses unit.

# Chapter 5

## Violence Against Vulnerable Women

**M**any women in marginalised or vulnerable groups are at increased risk of violence, or at a disadvantage in terms of availability or accessibility of support and protection. The UN Declaration on the Elimination of Violence Against Women instructs state to adopt "measures directed towards the elimination of violence against women who are especially vulnerable to violence". In its General Recommendation No. 19, the CEDAW Committee instructs that States Parties to that Convention should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women. States Parties to CEDAW are required to compile statistics and research on the extent, causes and effects of violence against women, and to ensure that services for victims of violence are accessible to all women.

The UN Special Rapporteur on violence against women advises that human rights standards require that: "Various State organs, including the police, prosecutors and social workers, should conduct coordinated outreach efforts in various marginalised communities where there are problems of domestic violence."<sup>101</sup> In terms of legal protections, the question is often not whether laws and complaints machineries exist, but whether these are in fact effective remedies for vulnerable women, i.e. whether these women are made aware of their existence, and to what extent they are accessible to and made culturally appropriate for migrant women. While Garda and courts statistics are insufficiently disaggregated, it is believed that many are not approaching the state legal machinery that is ostensibly there to protect them. In many respects, the criminal and civil justice systems are ill-equipped to address violence against women, and marginalised women can be even more indirectly discriminated against within these mechanisms. Special preventative and protective measures for women in vulnerable groups should be formally incorporated into the operation and review all violence against women measures.

The 1997 Task Force Report advised: "Violence and abuse of women occurs in every group in society, among the young and the elderly, among Traveller and settled women, among women with disabilities, among migrant women and women from ethnic minorities, among lesbian women, prostitutes, and women suffering from AIDS/HIV. Discrimination can create further barriers in giving women options and support to leaving violent partners". One of seven key elements in developing a comprehensive national strategy identified in the 1997 Task Force Report was "taking the needs of marginalised women always into account in the implementation of policy and practice", but this National Strategy was never prepared or adopted. The National Steering Committee was mandated to undertake research and needs assessment nationally, and to examine policy and practice from the perspective of all women, including marginalised women, but has not done so to date. In its Strategic Plan and its commissioned research, the protection of women in marginalised groups should be comprehensively explored and addressed by the NSC. The 1997 Task Force Report recommended that core training and good practice guidelines should address issues around nondiscriminatory practices, and that women from marginalised groups should be trained to deliver culturally appropriate services within their own communities - these come with the remit of the NSC, but again, it has not fulfilled this function. Other than Pavee Point Travellers Centre and Ruhama, a specialist NGO working with women in prostitution and victims of trafficking, the composition of the NSC is not representative of marginalised groups. The Government CEDAW Report points to the existence of equal status legislation and the national plan



Amnesty officer Lina Nykanen launching the 'text message' donation campaign.

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on women's health, but does not provide an account of current policy or practice from the perspective of marginalised women.

Other women not specifically named in the 1997 Task Force Report may also experience particular barriers to seeking help. For instance, there is some evidence to suggest that women from higher socioeconomic groups, and in rural communities, are slower to report violence they experience in the family. For female children and young women, while pointing to a lack of information on young people's experiences of violence, an issue identified by Women's Aid is that many have difficulty in identifying experiences as violence, and that, even when they do, they feel that supports are for adults (see education of young people in Chapter 6).

Generally, while there is a dearth of information generally in Ireland about the needs of women experiencing violence and the adequacy of responses, information on marginalised groups is further lacking. The state cannot simply ignore the existence of these groups. In order to demonstrate that it is protecting, respecting, promoting and fulfilling the rights of marginalised women, it must enter into an investigation of the responses needed for these women – but what limited research exists puts the state on notice to the fact that its *due diligence* obligation is not being complied with. The 2003 NEHB review, *Changing Direction*, for instance, found that, whereas referral networks were generally well established across a wide variety of agencies: "No effective links were reported with organisations of women from minority groups or agencies working with or on their behalf such as NEHB Disability Services, groups representing women from ethnic minority groups, disabled women, older women or lesbian and bisexual women."

The following is a brief exploration of the diverse needs of a number of groups, but it is important to note that this is not an exhaustive 'list', and also that many women are in situations of multiple jeopardy i.e. women have multiple identities within these and other groups, hence experience crosscutting discriminations putting them at further risk of their rights being violated.

### **Older women**

While little data exists on the degree to which older women experience gender-based violence, this would appear to be the same worldwide, as "acts of violence and abuse against older women ... usually remain taboo and are therefore underreported out of shame and denial, for fear of reprisals or out of the victim's ignorance of her human rights and of existing mechanisms for assistance and protection".<sup>102</sup> The Irish Human Rights Commission, in its submission to the CEDAW Committee, outlines the particular difficulties experienced by older women in long stay care and in their own homes through their financial disempowerment by historic circumstances such as the marriage bar in certain employment sectors, or by tradition or family circumstances. The dependence of many on the non-contributory old age pension, with a high risk of living in relative income poverty (50.2 per cent) and consistent poverty (4.4 per cent), makes this group very vulnerable to abuse. Older women who experience family violence also face considerable barriers to accessing services. The NEHB review, *Changing Direction*, observed that little is known about the experiences of older women in Ireland, but points to international research that identifies the numerous barriers that older women face in accessing services. It also identified difficulties older women may associate with staying in crisis accommodation such as refuges. The issue of long stay care is one of particular concern to older women and the lack of regulation of, and safeguards for women residing in, long stay care settings, has been documented by the Irish Human Rights Commission, the Equality Authority and the National Council on Ageing and Older People, pointing to the need for statutory regulation of long stay care for older people, and an independent inspection and complaints mechanism in respect of such facilities.

### **Women with Disabilities**

While international research shows that women with physical and mental disabilities are

particularly vulnerable to violence and abuse, both in the family and the community, little such research has been undertaken in Ireland. A preliminary scoping study carried out by Women's Aid found that the forms of violence experienced by women with disabilities range over a wide spectrum, often depending on the context in which the violence occurs, but that it is largely a hidden problem.<sup>103</sup> It found that women with disabilities are vulnerable to physical, sexual and psychological violence within the family, and that this violence shares features with violence against other women in the sexualised nature of much of the violence, the multiple forms of violence used and the intentional use of violence as a means to gain power and control by the perpetrator. It concluded that the possibilities for women with disabilities to leave their violent situation are often extremely limited due to a number of factors including difficulties in naming and identifying abuse both by women and service providers; women's isolation and low self esteem; poor attitudes among public service providers who may not believe women's accounts of the violence against them; practices in NGO organisations that do not have the skills to work with women with disabilities; and issues of physical access to premises where services are delivered.

Also identified were the institutionalised settings in which many women with disabilities live, the lack of advocacy services for people living in institutions, lack of access to information in appropriate formats, and the fear of negative consequences of disclosure. Within the health service, the Irish Human Rights Commission concluded, in its CEDAW submission, that women with disabilities are particularly vulnerable to mistreatment in closed environments, such as residential institutions and rehabilitation centres.

#### **Women with alcohol or drug abuse problems**

Many women with drug or alcohol addiction problems are at greater risk of violence by men. Many of these women are also homeless and therefore at increased risk. Health and social services often focus on the substance abuse and attach only secondary importance to the violence experienced by these women. Women who abuse alcohol or drugs are particularly vulnerable in situations where they need emergency protection, as refuges are unable to accommodate them, and homeless services will generally not accept them either due to their substance misuse, so these women are often referred to substance abuse services. Similarly, mental health services will generally refuse to deal with this group, and dual-diagnosis services are underdeveloped, and may again refer back to substance abuse services. However, substance abuse services often lack the necessary knowledge of the specific problems of abused women.<sup>105</sup>

#### **Homeless women**

*Secrecy, Silence and Shame* observes: "Studies on the population of women and children in Bed and Breakfast accommodation in the Dublin area consistently reveal a hidden and isolated group who have left home because of violence yet are forced to live in the most deprived circumstances. For many women and children the living situations compound a history of violence and make them vulnerable to further incidents of abuse." In a survey of homeless women's health in 2001, over half of the women reported physical violence in adulthood, and 80 per cent of these experiences occurred in the context of an intimate relationship with a husband or partner.<sup>106</sup> The study found that the levels of violence that these women experienced were three times the national prevalence rate, and concluded that for some women the only way they felt safe was to become homeless.

*"She moved out of the hostel at one stage and got a place in a Bed and Breakfast. The children preferred it there but she was frightened of other residents. Then her ex-partner found her and there was no protection from him so she went back to the hostel. She was very distressed. Recently, after all this time of her struggling in an impossible situation a care order has been taken on the children. The social worker tried her very best to keep them with their mother but it became too risky for the children ... it is a no-win situation for everyone."*

**Key Worker  
Secrecy, Silence and Shame**

**A homeless woman with a child begging on Nassau Street, Dublin.**

© Gareth Chaney/Photocall Ireland.



## Women in prostitution

Women in prostitution are a particularly underexplored group, but are known to experience violence on a regular basis. No national research has been conducted on the numbers of women in Ireland working in prostitution, their circumstances or their experiences of violence. It is known however, that they experience violence to an alarming degree. According to *Secrecy, Silence and Shame*:

*"Research indicates that women experience multiple forms of violence and abuse in addition to the violating nature of prostitution in itself. Data provided by the British Medical Journal (2003) indicates that 93% of women had experienced violence by clients. Although there is no comprehensive study of prostitution in Ireland, a number of small-scale studies and the experience of NGO's working with women shows a very high incidence of violence. In a 1999 survey of 77 women by the Women's Health Project almost half (48%-37) of the women interviewed stated that they had been physically assaulted by customers and 24% (19 women) reported having been forced to have sex with customers against their will. The research also documents the consequences for women's mental, physical, sexual and reproductive health and the decreasing age of entry into prostitution among drug-addicted women on the streets."*

*"The woman has worked in prostitution since she was a teenager. The key worker feels she is forced to minimise the level of harm and damage she is experiencing. She has been raped a number of times but says "it is part of the job". The key worker feels she is deeply traumatised."*

*Secrecy, Silence and Shame*

Irish and international research consistently demonstrates that poverty, abusive backgrounds, drug abuse and homelessness continue to be the primary reasons that women enter into prostitution.<sup>107</sup> Any strategy designed to prevent women in prostitution from experiencing violence must address each of these factors. To date, the primary emphasis in dealing with prostitution has been on criminal prosecution, with very little on their protection when victims of violence. In interviews for the *Secrecy, Silence and Shame* study, community workers and women working in prostitution pointed to both good and bad experiences with members of An Garda Síochána. Concern was also expressed by participants at the perception by some women that there was no point in reporting abuse or rape: "Women often believed there was an acceptance that because women are on the street it is their own fault and responsibility if they are violated. Some women felt that the violence was not taken as seriously nor were they seen as credible witnesses." Bindel and Kelly state that: "In Ireland, prostitutes are sometimes charged with soliciting when reporting attacks to the police."<sup>108</sup> In a 1996 EUROPAP survey of 84 women in prostitution in Ireland, almost half felt that violence towards women in prostitution had increased, yet over two thirds (69%) of women surveyed said they would not report an attack due to negative experiences with Gardaí coupled with their fear of prosecution.<sup>109</sup> *Secrecy, Silence and Shame* suggests very few women working in prostitution access specialist support services such as refuges and rape crisis centres, and that the violence they experience mostly occurs late at night when few services open.

## Migrant, Asylum-Seeking and Refugee Women

The UN Special Rapporteur on human rights of migrants has observed that, right throughout the world, very few cases of such discrimination and violence against women migrants are reported, and even fewer are the subject of a formal complaint. Given the known vulnerability of migrant women to violence, the Special Rapporteur has concluded that this low reporting points to a *de facto* denial of remedies to non-nationals, and that it also obstructs any possibility of dialogue about the forms of violence experienced by migrant women or policies that could counter such practices. It points therefore, to a vicious circle, where the lack or inaccessibility of appropriate procedures for migrant women making complaints of violence and seeking redress means that there is little reporting of cases, and that the absence of reporting, in turn, makes it difficult to put in place the necessary measures to ensure that cases are reported. This appears to describe precisely what we are facing in Ireland today.

We expect migrant, asylum seeking and refugee women, to experience gender-based violence, such as domestic violence, rape or sexual assault, to somewhat the same degree as Irish women. All respondent organisations in a 2005 roundtable mentioned below, felt that migrant, refugee and asylum seeking women are made even more vulnerable to violence in the Irish State by their legal status, socioeconomic conditions or cultural barriers. While some migrant women are beginning to access legal protections and voluntary support services, this is not to the extent that we would expect or hope. Statutory protections and service providers are inadequately trained and equipped to identify and respond to the needs of this new group of women.

### **Abuse of domestic workers**

Reports from NGOs such as the Immigrant Council of Ireland, the Migrant Rights Centre Ireland and the NCCRI have documented such abuse, and the inadequacy of the state's legal machinery to address this. The MCRI 2004 report, *Private Homes: A Public Concern* details the experience of migrant women employed in the private home, highlights the vulnerability of these women to exploitation, and recommends that the state supports these women in accessing their rights and strengthens protections for employees in the private home. Despite its stated commitment to addressing such exploitation and abuse, the Government has so far refused to ratify the 1990 International Convention on the Rights of Migrant Workers and their Families. If ratified and implemented in Irish law, this Convention offers important protections to all migrant workers (defined in the Convention as a person who is, was or to be engaged in a remunerated activity in a state of which he/she is not a national) including undocumented workers, the situation of whom is even more invisible, precarious and open to abuse and exploitation.

In amending Ireland's equality legislation and transposing three EU antidiscrimination Directives via the Equality Act 2004, the Government did not implement the Directives' recommendation that representative bodies, such as Trade Unions, be given standing to take cases on behalf of individuals, so that equality machinery still must rely on migrant women coming forward to make individual complaints, which places too much responsibility on those individuals in identifying and challenging such practices.

### **Asylum Seekers and Refugees**

The Irish state has a responsibility to provide asylum and rehabilitation to women who have fled gender-based violence in countries of origin, e.g. rape in conflict situations. The Refugee Act, 1996 specifically provides that the definition of "membership of a social group" includes gender, therefore claims of gender-based persecution may be assessed on this specific ground. The Office of the Refugee Applications Commissioner (ORAC) states that decision-makers receive specific training in relation to gender-based asylum and that guidelines have been introduced that draw on the UNHCR *Guidelines for the Protection of Women*. However, these guidelines have not been made publicly available, and there is no independent monitoring or evaluation of the effectiveness of this training. There has been no official evaluation of the extent to which the asylum determination process takes into consideration the specific needs of female asylum seekers who have suffered gender-based persecution. Rape Crisis Centres have built up a wealth of experience and knowledge in dealing with women who have been raped, but are concerned that appropriate weight is not always given to their representations on behalf of asylum seekers who claim they have been raped in their countries of origin. The lack of transparency and accountability in Ireland's asylum decision-making processes underpins Amnesty International's concerns about just how widely women may be denied refugee protection on the basis of gender-related persecution. The Irish Council for Civil Liberties Women's Committee has issued a Statement of Best Practice concerning refugee women and has pointed to the particular problems faced by many refugee women in establishing credibility. These guidelines are currently being updated, and Amnesty International urges the Irish Government to implement their provisions when published.

*"Asylum seekers and refugees placed under the government policy of direct provision are a particularly vulnerable group. Women in these situations who have experienced violence in hostels find that if they go to a refuge, the Health Board will not provide supplementary welfare. Although the government report claims ... that asylum seekers who have been sexually assaulted are referred to a RCC, the reality is that these centres are oversubscribed and struggling to cope with demands."*

Women's Human Rights Alliance Shadow CEDAW Report.

Sensitivity should also be demonstrated in Dublin Regulation procedures, whereby asylum seekers are transferred to another EU member state for an assessment of their refugee status. In 2004, the Irish Refugee Council and Rape Crisis Network Ireland voiced their concern that a multiple rape victim, who had also suffered other serious trauma, was removed from the state despite representations made directly by the Rape Crisis Centre of which she was a client, stating that the woman was "unable to travel even to England due to health and psychological problems" as a consequence of this rape. As a response to this case and others, Amnesty International together with Akidwa (Akina DADA wa Africa), the Irish Refugee Council and Rape Crisis Network Ireland convened a roundtable of nongovernmental organisations seeking to enhance the appropriate relationships between the sectors to ensure effective service delivery. Gaps identified during the meeting and in responses to questionnaires circulated in advance, included: insufficient weight given to women's testimony, and credibility too readily disputed; medical evidence/counsellor's reports not given due evidentiary weight; interviewers/translators occasionally are male; insufficient appreciation needed that women do not immediately disclose traumatic experiences such as rape.

*"A man tried to rape me... I fought back and got away and I did report it to the guards. This guy had five other convictions for rape, two of which happened when he was out on bail. One time he tied a girl to a tree raped her and left her there... she could have died. The guards didn't give a s\*\*t about me they said "you are a prostitute... what do you expect" When I reported the first bad beating it was the same. They asked if I had stolen something from the man, like his wallet."*

Denise  
*Secrecy, Silence and Shame*

### **Barriers to accessing services**

Many migrant women, particularly those dependent on spouses for residency entitlements, or who fear leaving abusive domestic situations due to concerns, founded or unfounded, about the implications for their residency or asylum status, or other benefits, are left without recourse to what domestic violence protections are available. Special statutory arrangements and guidelines for asylum-seeking, refugee and migrant women must be provided where domestic violence occurs to ensure that fear of deportation if separated from the abuser does not put women at risk, especially where residence entitlement flows from partner's status. Where women are shown to be experiencing violence in the family, their economic vulnerability where they dependent on the abusive partner for financial support must be addressed through removing the habitual residence requirement in social welfare provisions, and any restrictions on their right to work. The lack of awareness of legal protections, and other barriers such as interpretation or cultural needs and the lack of specialised provision within statutory and frontline services must be addressed.

Training of the Gardaí and the judiciary is also essential, not alone in gender and violence against women, but also in antiracism and diversity. The Garda-commissioned Lonann Report raised concern that An Garda Síochána's immigration role "tended to damage relationships with minority communities, refugees and asylum seekers."<sup>10</sup> It pointed to the absence of "ethnic monitoring of the use of police powers in relation to difference groups, whether as suspects or victims of crime" as an impediment to evaluating the effectiveness of Garda antiracism policies. It found that "there is institutional racism within An Garda Síochána in its dealings with certain groups in the community and in the absence of organisational structures which would identify and deal with what is a very fundamental abuse of human rights".

### **Racism**

The UN Special Rapporteur on the human rights of migrants has observed that the phenomenon of large-scale migration has often been accompanied by increased instances of racism and xenophobia. Lack of government leadership against public racism may expose migrant (and indeed Irish) women to racist abuse in Ireland – seen, for instance, directed against women wearing the hijab or pregnant African women – which is sometimes of an overtly sexualised nature. State institutional racism may be an issue too, where the purpose or effect of a violence against women measure or law, or the activities and responsiveness of agents of the state or public services, negatively impact on minority ethnic women disproportionately. Ireland is a State Party to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, which prohibits the treatment of someone because of their 'race', colour, descent, or national or ethnic origin that limits, intentionally or unintentionally, the person's human rights. The UK Lawrence Inquiry Committee defined institutional racism as "the collective failure of an organisation to provide an



appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage ethnic minority people". It is important that government identifies and challenges institutional racism in the state's planning and delivery of services for migrant women with minority ethnic status experiencing or at risk of violence.

### **Traveller Women and other minority ethnic groups**

The largest minority ethnic group in Ireland is the Traveller community,<sup>111</sup> and Traveller women face many additional barriers in escaping from or overcoming violence that can also be seen to apply to other minority ethnic groups, in that all face the additional discrimination of racism in trying to access protection. Furthermore, as their abuser is generally a member of their own community, they risk ostracisation within their community if they seek to get away from or take legal action against their abuser. *Making the Links* suggests that extended family networks and the link between family and income may result in pressure on Traveller women to maintain marriages despite violence. Whilst this can be a risk for all women, it can be a greater deterrent if a woman's community and family network is the main source of support in a society in which she may experience forms of discrimination such as racism.<sup>112</sup>

Pavee Point, in its Shadow Report to the CEDAW Committee, points out: "Traveller women experiencing violence can therefore experience high levels of racism and discrimination throughout the help seeking process. This has led to many difficulties for Traveller women who experience violence in approaching service providers, both non-governmental and statutory for support."<sup>113</sup>

In many respects, the activism of Traveller women and their representative organisations has highlighted issues of direct relevance to other minority ethnic groups in Ireland, i.e. crosscutting forms of discrimination and racism at the hands of the state, communities or within services. But it is important to note too, the multiple levels of disadvantage and vulnerability experienced by Traveller women, who, according to Pavee Point, are "burdened by human rights violations in relation to accommodation, i.e. with no water, no electricity, inadequate service provision and the constant threat of eviction". These circumstances can also directly hinder the ability of women to seek help. For instance, Pavee Point points to the lack of public telephones in Traveller halting sites and group housing schemes as a difficulty for women in calling helplines, social workers or the Gardaí.<sup>114</sup> Literacy problems can mean that information may be inaccessible. The exclusion of teenage boys from refuges is a difficulty for Traveller women who are not prepared to leave their sons behind in a violent situation while they stay in a refuge.<sup>115</sup> The best way of identifying and addressing practical barriers that exist at all stages in the process of seeking help, is to ensure that Traveller women, and all women in vulnerable groups, are formally involved in reviewing and revising all measures.<sup>116</sup>

One of the main concerns raised by community members in the Garda-commissioned 2005 Ionann report was again of a poor service for Traveller women: "For instance, a member [of the Gardaí] might be called to a domestic violence incident but then start checking people's car insurance. 'The woman then gets the wrath of the community as well.' Women Travellers were marginalised and it was assumed [by the Gardaí] that domestic violence was part of their culture."<sup>117</sup> In relation to the legal protections available, Pavee Point observes:

*"There is a dearth of data research on the experiences of travellers, or other minority ethnic groups, within the broad Criminal Justice System in Ireland. This is a result of existing data collection methods by the Garda Síochána and other organisations with criminal prosecution functions not generating, collating and presenting data with an ethnic dimension to it. None the less, anecdotal, individual experience and limited research, as well*



as our experience of working on issues of exclusion for travellers highlights a high level of mistrust of both the legal system and the Gardaí, inconsistent responses and racism. Gardaí work in relation to VAW, especially in relation to ethnic groups needs to be monitored to ensure equality of outcomes and for the continued improvement of services. Traveller women's experiences of the legal system remain largely unknown. To date much of the focus has been in relation to traveller women's experiences of An Garda Síochána's responses."<sup>118</sup>

In relation to violence against women services the 2003 NEHB review found: "Services for women who experience violence are not designed to take into account the needs of Traveller women."<sup>119</sup> Pavee Point observes that statutory and voluntary services that include equality as a key working principle are ensuring a fairer and more equitable distribution of resources and provision of services, as well as the participation and representation of diverse and excluded voices in areas of decision making and employment. It states:

*"Within the Violence Against Women (VAW) sector, integration of equality as a key working principle and thus the mainstreaming of equality is limited. There is also no equality framework in place specific to the needs of the sector to provide direction on the issue. In the absence of any sort of framework supporting the mainstreaming of equality Traveller women, intentionally or unintentionally, continue to experience racism and discrimination when seeking support. Principles of equality must underpin the work of the sector and be reflected in any actions undertaken to eradicate VAW. The NSC on VAW needs to take a lead role in the mainstreaming of equality within the VAW sector. A commitment at this level will ensure a cohesive and consistent approach to addressing inequalities at the levels of service provision and policy development."<sup>120</sup>*

*"[I]n the area of violence against women ... issues of race and gender intersect. For most women, their sense of dignity comes from not only being a woman but from also being members of a larger community whether it be racial, indigenous, ethnic, religious or by descent. Therefore women are often in an ambivalent position. They want to fight for justice and equality within their community, while ensuring that their community as a whole is respected among the peoples of the world. Their struggle is often made worse by the arrogant gaze, where outsiders, especially from the west, fight their cause with what is seen as contempt for their culture and their community."*

Radhika Coomaraswamy,  
UN Special Rapporteur on  
violence against women<sup>121</sup>

#### Respecting cultural diversity

In every part of the world, including Ireland (and we need simply to look at Ireland's 1937 Constitution to see how prevailing social values can lead to entrenched gender inequality), women's roles and positions are prescribed by society. Almost without exception women are assigned to roles which are subservient to those of men. In challenging violence against women, the state needs to balance respecting diversity and difference, and affirming the universality and indivisibility of rights, but with the understanding that certain principles are absolute, and violence against women is never acceptable.

Female genital mutilation for instance, is never acceptable. While there is no evidence that FGM is practised in Ireland, Amnesty International is concerned that the Government must do more to ensure it does not get a foothold here, primarily through enacting legislation expressly criminalising this practice. The UN Special Rapporteur on violence against women (1996) advises states to "adopt legislation which makes female genital mutilation a crime and implement education programmes to prevent the practice, which is one of the most pernicious forms of violence committed against women". Furthermore, many women risk being subjected to this harmful practice in their countries of origin, so the sensitivity of the asylum and 'permission to remain' processes to this risk is essential. An NGO coalition, of which Amnesty is a member, has been established under the direction of the Irish Family Planning Association to campaign for government action on both these fronts. Similarly, honour-related violence against girls and women – where the male concept of honour is used to legitimize violence against or the killing of women, and is based on the assumption that a man's honour is dependent on how the members of his family behave – occurs in many parts of the world, and in recent years, in neighbouring European countries.

But the recent banning of headscarves in French schools was a step too far, and cannot be justified as a necessary or proportionate restriction of the right to freedom of conscience and religion. There

is clearly a right to respect for one's culture and traditions, but where cultural or traditional norms reinforce gender inequality and violence against women, they too must be challenged. From the individual point of view, in tandem with the right to respect for one's culture, there is the reciprocal responsibility to ensure that cultural norms do not directly or indirectly place women at risk of violence. Where confronted with these competing rights, state and voluntary agencies must be resolute in ensuring that the safety of women is of paramount importance.

But within communities already exposed to racist attitudes of the wider public, it can be seen as undermining respect for community or culture if women expose violence they are experiencing, an issue of which service providers, activists and organisations representing minority ethnic women should be aware. Respect for cultural diversity can best be ensured while violence exposed, condemned and addressed, if government and other influential nonstate agencies include minority ethnic women in their formulation and evaluation of policy and decision-making. This necessarily involves mainstreaming their participation in all such processes, and resourcing and building the capacity of their representative organisations. Yet, for instance, Akidwa, one of very few NGOs representing migrant women, in this case African women, in official and nongovernmental fora, receives no core funding from government to do this. Special efforts should also be made to employ minority ethnic women within services. Community leaders too, should expose and publicly condemn violence against women that happens within their communities.

## Victims of Trafficking

Article 6 of the CEDAW Convention requires Ireland to "take all appropriate measures, including legislation, to suppress all forms of trafficking in women and the exploitation of women as prostitutes". According to Article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, (the Palermo Protocol) which supplements the UN Convention against Transnational Organized Crime:

*"Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."*

During its examination of Ireland's 2nd and 3rd periodic reports the CEDAW Committee requested the Irish Government to provide further information on trafficking in women. The Government reply stated that trafficking in women was not a major problem in Ireland. However, in its 4th and 5th periodic reports the Government states that it opposes and seeks to eliminate the practice of trafficking in women and that this is now a priority. Amnesty International welcomes the commitment given by the Irish Government in its CEDAW report, that national legislation will be prepared to give effect to the Palermo Protocol, which requires it to put in place measures to suppress trafficking, and also measures to protect victims of trafficking. It is important to distinguish that this Convention and Protocol are not human rights treaties.

The Council of Europe adopted a Convention on Action against Trafficking in Human Beings on 3 May 2005 requiring States Parties to take measures, individually and collectively, to prevent trafficking, to prosecute those responsible for trafficking and to take specific measures to protect and respect the rights of trafficked persons. The Convention establishes an independent body of

*"Each year, hundreds of thousands of individuals – the vast majority women and children from developing and transitional countries – are tricked, sold, coerced or otherwise procured into situations of exploitation from which they cannot escape. These individuals are the commodities of a transnational industry which, legally and illegally, generates billions of dollars each year and, almost without exception, is conducted with a frightening level of impunity. .... Any instrument dealing with the issue of illegal migration – whatever its perspective – should explicitly commit itself to preserving and protecting the fundamental rights to which all persons, including illegal migrants, are entitled. We can attack and dismantle the organized criminal networks that are engaged in the illicit movement of persons for profit. We can also work to ensure that the victims of this sad trade are not subject to further ill-treatment and abuse. These two goals are not irreconcilable."*

Mary Robinson  
UN High Commissioner for  
Human Rights



Amnesty members demonstrating at a student and youth rally in Dublin this year (2004).

experts to monitor the implementation of the Convention by States Parties. Amnesty International considers that the Convention provides a solid basis for Ireland's efforts to combat trafficking and respect and protect the rights of trafficked people, and therefore urges the Irish Government to ratify the Convention at the earliest opportunity.

### Prevalence

According to the International Organisation of Migration (IOM), at least 500,000 women are trafficked annually to Europe for sexual exploitation. A 2003 study carried out for the IOM on the trafficking of unaccompanied minors into Ireland suggested that Ireland is both a destination and a transit country for trafficking of women and children, often for the purpose of sexual exploitation.<sup>122</sup> It is important to distinguish between people-smuggling, which is also a human rights violation, and trafficking, as the latter entails exploitation that continues after the victim arrives at her final destination. International literature shows that women and children are most at risk of falling prey to trafficking, as they are more likely to experience the poverty and oppression that forces people into these situations. Due to its covert nature and the risks involved, including the involvement of criminal gangs, women who are trafficked are extremely vulnerable to violence. The Ruhama Women's Project, a voluntary organisation that provides support for women involved in prostitution, has highlighted the rise in the trafficking of women into Ireland for a number of years, concluding that "more and more women are being trafficked into the country, mostly from Eastern Europe, where many have their passports taken by brothel owners and find themselves being subjected to ruthless exploitation".<sup>123</sup>

Little else is known about the numbers and circumstances of victims of trafficking in Ireland. This is due primarily to the fact that trafficking is, by its very nature, a hidden crime and one highly organised and operated by criminal gangs expert in avoiding the detection of immigration officials and the Gardaí. Also, its victims are rarely in a position to bring themselves to the attention of the authorities – it is only through extraordinary efforts by the Garda Síochána and organisations like Ruhama that their circumstances can become known. The Government has not yet invested significantly in scoping or, beyond the appointment of additional Gardaí to the Garda National Immigration Bureau, addressing the problem. In effect, the failure of the state to put in place any protective measures for victims has also served to hamper research that would inform the sort of preventative strategy that the state has committed itself to adopting. Any attempt to engage in research in the absence of protection measures, places women in grave danger.

### Protection

The Child Trafficking and Pornography Act 1998 makes it a serious offence to traffick children for purposes of sexual exploitation. But otherwise, trafficking has been addressed as an immigration and organized crime problem. The Illegal Immigrants (Trafficking) Act, 2000 criminalised the act of trafficking, but provides no legal protections or procedures for identifying, protecting and providing redress to victims of trafficking. There are no specific legislative measures to address trafficking in women for the purposes of sexual exploitation. While Ireland's temporary residency provision of 'permission to remain on humanitarian grounds', in theory, offers some recourse for victims of trafficking, in practice, it is a flawed system, lacking transparency and a formal appeal system. Furthermore, it only operates where a person has been informed of the state's intention to deport her, i.e. after they have been identified as an irregular migrant.

Clearly, criminal sanctions should be imposed on traffickers, but victims of trafficking should be treated as victims of gender-based violence. Given their perilous circumstances, including the risk of retribution to family members from the traffickers, special measures are required if they are to seek or accept help, or even be made aware that help is available. Many trafficked women are already suspicious of law enforcement and immigration officials, based on their experiences in their countries of origin or transit, so sensitive policing is crucial.

Amnesty International urges that Irish legislation be adopted to comply with the Council of Europe Convention that includes:

- Activities aimed at preventing trafficking and prosecuting those responsible for trafficking;
- Adoption of procedures to identify trafficked persons, and ensuring that this key task is undertaken by trained and qualified people;
- Ensuring that people who are reasonably believed to have been trafficked are not involuntarily removed until the identification process has been completed and they are offered assistance and protection;
- Provision of assistance and protection to all people reasonably believed to be trafficked, including at a minimum: safe and secure housing; psychological and emergency medical assistance, interpretation and translation services, information about their rights – including to compensation; such assistance may not be conditioned on their willingness to act as a witness in any proceedings against those responsible for their trafficking;
- Authorisation of the presence of trafficked people in the state in which they are found for a period (of not less than 30 days), which is sufficient for them to begin to recover, escape the influence of their trafficker(s) and to make informed decisions about their future, and in certain situations (when their stay is necessary for their personal situation and/or for their cooperation in investigations or criminal proceedings) to grant them renewable residence permits;
- Ensuring that any repatriation of a trafficked person is carried out with due regard to his or

Amnesty International reminds the Irish Government that, where it delegates its human rights responsibilities to voluntary agencies, it must ensure that they are adequately resourced to perform this function.

her rights, safety and dignity; and

- Ensuring that the trafficked persons have access to redress and receive compensation for the abuses of their human rights to which they have been subjected.

### Impact on frontline services

A limited number of voluntary support services have the necessary training or expertise to respond to the needs of marginalised women experiencing violence, but many are in the process of identifying training needs and evaluating the accessibility and suitability of their services. All voluntary services with whom Amnesty International has spoken are aware that women from minority ethnic groups can be dissuaded from seeking help due to the lack of appropriate provision for their languages and cultures, or racist behaviour from staff or other service users. While alert to the need for their services and training to be evaluated and adapted to meet these needs, all point to the obstacle of underfunding with they are confronted in endeavouring to address these gaps.

A number of important projects are underway. The Immigrant Council of Ireland, Women's Aid and Akidwa are submitting a project proposal to the National Steering Committee on Violence Against Women to develop guidelines and procedures for service providers in dealing with violence against minority ethnic women. Women's Aid recommendations for its own services arising from the study it undertook include promoting the inclusion and participation of women with disabilities as employees and volunteers, and undertaking further research that explores women's help-seeking strategies and looks at the current responses from relevant services with a view to recommending models of good practice. At the 2005 roundtable a number of initiatives to address the needs of migrant women were discussed, but organisations reported that their capacity and resources are limited due to persistent underfunding from government. They urgently need resources for expanding and adapting their services to meet these needs, for interpretation facilities and training staff in cultural awareness and sensitivity, interpretation facilities, including for materials and helplines, and designated support workers. Amnesty International urges the Government to ensure that these, and other such initiatives, are granted adequate funding and support.

According to General Recommendation No. 19 of the UN Committee on the Elimination of All Forms of Discrimination against Women, the state has a duty to provide and adequately resource "[p]rotective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence". For the state to fail to provide these services equitably to all groups is discrimination, in itself a human rights violation.

### Recommendations

- Immediate steps should be taken to systematically gather and compile comprehensive data from all relevant sources, including marginalised communities themselves, about the prevalence, forms, risk factors and root causes of violence against women within marginalised groups in Ireland.
- The National Steering Committee on Violence Against Women should endeavour to include representatives from all marginalised groups, and they should be resourced to participate in this forum. Equality should be a key principle of the National Steering Committee's strategic plan under preparation. Development of an equality proofing framework to support the mainstreaming of equality within the VAW sector should be given priority within the workplan of the National Steering Committee's over the coming years.

- All statutory services should be facilitated in reviewing their provision for vulnerable groups of women, and auditing their policies and practices to ensure that vulnerable groups are attended to equitably and adequately, and should be funded to address gaps identified.
- Gardaí reporting systems, and civil and criminal case recording systems should be developed to include measures to track responses to marginalised women; and special measures to combat and redress violence against marginalised women should be identified and adopted.
- Laws, policies and practices should be equality proofed, and where they directly or indirectly discriminate against marginalised women, this discrimination should be addressed, and obstacles to accessing help be overcome.
- Traveller and other minority ethnic women should be named as target groups for recruitment within an Garda Síochána, and other state agencies.
- Specific funding should be allocated to statutory and voluntary services working with women experiencing violence to enable them to make their services accessible to women in marginalised or vulnerable groups.
- The Department of Justice, Equality and Law Reform should develop, publish and implement gender-guidelines that refer to every aspect of the asylum application process, as well as to the reception and integration of asylum seekers in Ireland, and the full implementation of these guidelines should be ensured through independent monitoring and evaluation.
- Recognising the trauma experienced by refugees and asylum-seekers fleeing situations of armed conflict and oppression, the Government should provide free, culturally appropriate and gender-sensitive counselling and other services to women asylum seekers, especially for women who have been subjected to gender-based torture.
- The availability, accessibility and appropriateness of legal and social preventative and protective measures afforded to victims of violence against women in marginalised groups should be reviewed, and the necessary reform of those laws, policies and structures introduced.
- A gender and violence against women perspective should be adopted when formulating or reviewing immigration and asylum laws and policies, also reflecting the multiple forms of discrimination experienced by many migrant women.
- The Strategic Plan of the National Steering Committee on Violence Against Women and the government-commissioned review of violence against women services should cover address the state's duties towards women seeking asylum from gender-based persecution in their countries of origin.
- Anti-racism and diversity training should be a core component of the training of Gardaí, immigration officials, refugee status determination officials, members of the judiciary, and all relevant statutory and voluntary services.
- Government should resource and build the capacity of marginalised women and their representative organisations to be invoked in all decision-making, law and policy formation processes, and awareness raising initiatives – not just those expressly related to immigration, asylum, antiracism, disability, etc. but all mainstream violence against women and related processes.

- Service providers, both statutory and NGO, should be provided with adequate resources and support to ensure responses to violence against minority ethnic women are culturally appropriate, and so that anti-racist codes of practice and training are integrated into the training of all staff and management.
- Immigration and asylum laws and systems should be reviewed and reformed so that they do not leave women vulnerable to violence occurring while in the state, particularly where they depend on their partner's legal status or economic resources; and special residency and welfare protections should be provided for migrant women experiencing violence in the family.
- The Government should ratify the 2005 Council of Europe Convention on Action against Trafficking in Human Beings at the earliest opportunity, and introduce special protections for victims of trafficking that accord with its provisions.
- The Government should ratify the 1990 UN Convention on the Rights of Migrant Workers and Their Families, and comply with its standards in the new Immigration and Residency Bill.



# Chapter 6

## Addressing the Roots of Violence

**A**s explained in Chapter 1, under the international human rights requirement of *due diligence*, the Irish state is obliged to take all reasonable measures to prevent violence against women. The UN Special Rapporteur on violence against women requires the state, for instance, to "intensify efforts to develop and/or utilise legislative, educational, social and other measures aimed at the prevention of violence, including the dissemination of information, legal literacy campaigns and the training of legal, judicial and health personnel".<sup>124</sup> The Irish Government, therefore, has a duty to explore and implement all preventative measures appropriate to its national situation. In addition to laws proscribing acts of violence and legal protections for women, wide-ranging and innovative measures are required to identify and address the fundamental causes and roots of violence, which lie primarily within societal attitudes, cultural norms and persistent systemic gender inequality.

But in order to prevent violence, the Irish Government must equip itself with knowledge and information about how and why women are experiencing violence, i.e. meaningfully investigate what precisely it is endeavouring to prevent, and how that can best be achieved. When it introduces preventative measures based on its findings, it must continually evaluate whether or not they are working, and how they might be improved. Gender inequality is both a root cause and consequence of violence against women, and must be addressed as part of a prevention strategy. Women and their representative organisations must be centrally involved in devising and reviewing the state's prevention measures.

### Knowledge and information

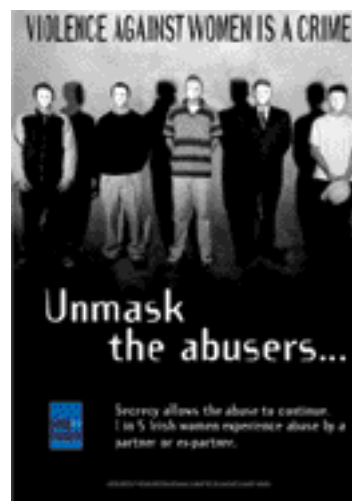
The UN Declaration on the Elimination of Violence Against Women also instructs states to: "Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public". Clearly then, according to international human rights standards, information is key to prevention, and, as will be outlined below, is widely lacking in Ireland and urgently required on at least six levels, which are interrelated and interdependent.

#### 1. Recording violence against women

Recording the prevalence, circumstances, causes and diverse experiences of violence against women is of critical importance in developing preventative measures. The CEDAW Committee states that, "statistical information is absolutely necessary in order to understand the real situation of women in each of the States parties to the Convention".<sup>125</sup> In its Concluding Observations on Ireland's 2nd and 3rd periodic reports, the CEDAW Committee requested Ireland to include in its next periodic report "comprehensive statistical information on the types and frequency of violence against women, including domestic violence, the number of complaints brought by women and the results of investigations". While the Government has

*"If statistics illustrate that existing laws are ineffective in protecting women from violence, States must find other complementary mechanisms to prevent domestic violence. Thus, if education, dismantling of institutional violence, demystifying domestic violence, training of State personnel, the funding of shelters and other direct services for victim-survivors and the systematic documentation of all incidents of domestic violence are found to be effective tools in preventing domestic violence and protecting women's human rights, all become obligations in which the State must exercise due diligence in carrying out. The due diligence standard is not limited to legislation or criminalization."*

UN Special Rapporteur on violence against women



Department of Justice information poster.

*“Social attitudes largely determine the wider cultural environment within which equality legislation and equality policy function. In this context, it is crucial to develop data systems aimed at establishing a sense of the nature of social attitudes and their evolution over time. Attitudinal data is highly sensitive to the use of language, the definitions and concepts applied and to the context in which surveys are conducted. Availability of attitudinal data in Ireland is very limited and uneven, and there is no regular series of attitudinal data that can monitor issues such as prejudice, discrimination and intolerance.”*

*Building the Picture  
Equality Authority*

provided information on domestic violence reported to the Gardai in its 2003 CEDAW report, it does not provide any information on the type and frequency of other forms of violence against women, or a breakdown of the number of complaints brought by women in marginalised or vulnerable groups. The known underreporting of all forms of violence against women means that the Gardai and courts are unreliable sources upon which to base prevalence estimates.

Otherwise, beyond data and research supplied by nongovernmental agencies, such as *Making the Links* or the SAVI Report cited throughout this report, no comprehensive data collection and research mechanisms exist that document and analyse the degree to which women experience violence. Data on violence against women is not centrally and routinely collected from a range of potential statutory sources – accident and emergency departments, maternity hospitals, GPs, social workers or mental health services, for instance – the compilation of which could provide a more accurate national picture of the prevalence and nature of the violence women are experiencing in Ireland. Such wide-ranging, integrated data collection efforts are essential, but can only be achieved by government.

A study commissioned by the Department of Justice, Equality and Law Reform recommended that specific gender sensitive data should be compiled to enable a more accurate portrayal of the situation of women and men in Irish society, including accurate and comprehensive data on all forms of violence against women. A report commissioned by the Equality Authority also recommended as a priority, that core sources of national, regional and local data be reviewed and modified in order to ensure that a profile of relevant populations be fully developed, including that: “Experience of violence and/or abuse within intimate relationships and originating within the wider society should be profiled, covering racist, physical and sexual violence and abuse and this data should be linked to other socioeconomic categories. Targeted surveys, together with qualitative data, will be required to get at some of the sensitive aspects of such data.”<sup>127</sup> That report found that one of the key problems with the current systems of data collection on violence against women in Ireland is that it is recorded by a variety of agencies and organisations, and is highly dispersed and fragmented; and that those affected by such fragmented, dispersed and incomplete systems of data collection are often those vulnerable to inequality and discrimination. It found that “it is frequently the commitment of the voluntary and community sector and of individual researchers, rather than the State, which has ensured that there is a certain amount of relevant data available”.

## **2. Monitoring and evaluating the effectiveness of state measures to prevent violence and protect women**

To prevent violence against women the state should effectively and periodically monitor and evaluate the extent to which measures are working in practice, through the elaboration of appropriate mechanisms through which it may compile comprehensive, up-to-date data, and by elaborating and utilising indicators that can track progress. As described in Chapter 2, the Department of Justice, Equality and Law Reform has commissioned national research on violence against women services and measures, which is expected to provide valuable information on the effectiveness of the existing structures and the resource needs of the sector, and this should be made available at the earliest opportunity.<sup>128</sup>

The National Strategy for Women currently under preparation must contain targets and indicators for monitoring violence against women and the effectiveness of responses. The Beijing Platform for Action instructs: “Non-governmental organizations should be encouraged to contribute to the design and implementation of ... strategies or national plans of action”. Yet, other than the inclusion of the National Women’s Council of Ireland on the Advisory Committee established to input into its preparation, there has been no consultation with women’s organisations to date in the elaboration of this strategy.

### 3. Recording attitudes to women and to violence against women

Information on societal attitudes is essential. Myths and misconceptions are widely held that underpin and reinforce stigma and impunity, and attitudes on the part of men and women can militate against their identification of abuse, as perpetrator or victim, as wrong. These views can also permeate policy-making.

Publicly held myths and misconceptions, which can also be held by those in positions of influence - law enforcement officials, government representatives, employers, etc. - can serve to relieve the perpetrator of his responsibility for the act of violence, and fail to be sensitive and supportive to women who have experienced violence. Often, the woman is singled out for blame, in having somehow done something to provoke the man into committing the violence. Violent men, especially those who inflict violence on their intimate partners, are often described as not being sufficiently in control of their impulses and anger, and in need of treatment or therapy, rather than having their behaviour dealt with as a crime. Other than the SAVI Report, there has been no in-depth national survey of Irish society's attitudes and beliefs about violence against women, but we know that many people hold inaccurate or hostile attitudes. These myths and assumptions create a climate where men's violence against women is trivialised, normalised, excused, and when they lead to underreporting, made invisible.

Before its 2005 three-week public awareness campaign on domestic violence, the NSC commissioned a survey of public awareness of and attitudes to the issue of domestic violence, which found that the majority of people feel that it is not a private matter, that it is a crime, and that it affects children. While a welcome addition to the otherwise limited information on public attitudes, the survey does not fully explore society's understanding and perceptions of this form of violence. In its General Recommendation No. 19, the CEDAW Committee instructs states to identify in their periodic reports to it, national attitudes on violence against women, yet the Government 2003 CEDAW Report contains so such information.

### 4. Monitoring and evaluating the effectiveness of measures to address negative attitudes

The 1997 Task Force Report made a series of detailed recommendations regarding the need for successive public awareness campaigns. The *First Report of the National Steering Committee on Violence Against Women* in 1999 also included, amongst its key priorities for action, a public awareness campaign.<sup>129</sup> Much has been achieved by the voluntary sector in this regard. However, while there has been some awareness-raising about domestic violence, including a three-week run

*"Societal attitudes resulting in stigma, a backlash against women who defend themselves from violence and a general tolerance and acceptance of violence against women were identified as key social barriers to women seeking assistance in relation to their experiences of violence. This can act to inhibit women's capacity to identify and name the violence against them as abusive and wrong with the result that they are not in a position to seek help from appropriate services."*

*Changing Direction  
Review of Services in North  
Eastern Health Board*

#### **Addressing Stigma and Shame through Public Education**

"Women experiencing violence often suffer the oppressive accusation that they are 'the problem'. One action which seems to break through this pathologising of women is the analysis of structured gender inequality; women develop a view of the 'bigger picture' of structured violence, and this often enables them to shift the burden of blame from their own shoulders to its rightful location: the perpetrator. This can create space for women to develop more positive self-images and begin to see themselves as, not the problem at all, but an important part of the solution.

Accessing the power to do this means first breaking the silence surrounding experiences of violence and this renders women particularly vulnerable. A wide range of supports and sanctions are necessary to safeguard women who take the power and courage to engage in such analysis."

*The Heart that Bites*  
National Women's Council of Ireland

of television advertisements in 2005, to date, there has been no large-scale government-run public awareness campaign conducted via the major media. The impact of these measures on public attitudes has not been evaluated.

#### **5. Recording awareness of VAW as a crime and how to seek help**

The recent survey conducted by the NSC found high levels of public awareness of domestic violence as a crime. However, the Women's Aid Teenage Tolerance project found that young people are not reporting their experiences to parents, teachers or other adults, but instead are telling their friends and peers. It found confusion amongst young people about what is and what is not violence and consent, and high tolerance levels of young people towards violence and abuse. It found that 19 per cent of young women and 34 per cent of young men did not think being forced to have sex is rape. It also found that young people perceive that existing services and helplines are either targeted at adults or children and are not appropriate to them. Amnesty International supports its recommendations that meaningful sex, relationship and lifeskills education must be provided by the Department of Education and Science for young people, both through providing funding for existing support services to target young people, and a mainstreamed education programme. Research into the levels of public awareness of violence against women as a serious crime, and how to access help, particularly among marginalised groups, is an essential component of prevention.

#### **6. Monitoring and evaluating the effectiveness of awareness-raising measures on VAW as a crime and how to seek help**

The UN Special Rapporteur advises: "Recognizing that women and girl children often do not report the violence that is perpetrated against them because they do not understand that they are victims of, rather than participants in, the violence, States should undertake legal literacy campaigns to inform women of their legal rights and educate them specifically about domestic violence" One of seven key elements for the strategy recommended by the 1997 Task Force Report was "ensuring the ready availability of accurate advice and information so that women who have experienced, or who have been threatened with, violence know the options open to them and are empowered to make informed choices".

Education programmes specifically addressed to young people to prevent violence and abuse in a new generation, was a recommendation in the 1997 Task Force Report. Education and awareness raising is essential to challenge sexist attitudes, identify and address young people's experience of abuse, and provide information about available support services. A Department of Health and Children programme designed specifically for boys in the Transition Year of the Senior-Cycle, 'Exploring Masculinities', deals with a range of issues of violence, including violence against women, but has largely been abandoned within schools. Amnesty International endorses the recommendation in *Changing Direction* that opportunities be explored to include the issue of violence against women in schools programmes, such as the Social, Personal and Health Education (SPHE) programme. Such a module should be regularly monitored and evaluated and teachers given the necessary support, training and resources for its implementation, and policies for schools should be centrally developed and implemented by the department on disclosure and appropriate referral, in liaison with the voluntary support services, statutory services and the Gardaí. As recommended in *Changing Direction*, voluntary services have developed expertise in designing and delivering education initiatives and should act as partners in the design, delivery and regular review of such programmes.

The Government, through the National Steering Committee has published leaflets on rape and sexual abuse, undertaken an awareness campaign on Drug Assisted Rape, a poster and newspaper advertising campaign on domestic violence entitled "Unmask the Abuser" in 2004, and a three-week TV advertising campaign in February 2005 aimed at raising public awareness of the effect of domestic violence on children. What measures have been introduced have not been evaluated for their effectiveness. Otherwise, raising awareness of how to seek help is mainly undertaken by

*"I tried to leave him a number of times in the six years. I would go to my parents who I was close to. They were kind and supportive, but because they were devout Catholics, they felt it would be wrong to allow me and the children to stay with them and that I should go back to my husband. Although they did not approve of his behaviour they could not see an alternative for me and always told me to go back which I did. Then the violence got worse because he knew I had no where to go."*

Brid  
*Secrecy, Silence and Shame*

*"Violence is a learned behaviour: part of the duty of the state to apply due diligence to prevent such crimes is to work with civil society in changing this behaviour and eradicating such violence."*

Inter-American Commission  
on Human Rights

voluntary services, which are not adequately funded to do so as comprehensively and thoroughly as they might. For instance, while it continues to provide education and training, Women's Aid's Education and Awareness Programme was discontinued in 2001 due to lack of funding.

### **Addressing gender inequality**

The underlying cause of violence against women lies in discrimination that denies women equality with men in all areas of life. Violence is both rooted in discrimination and serves to reinforce discrimination. The UN Declaration on the Elimination of Violence against Women states that violence against women is a "manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men" and that "violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men". Therefore, if the Irish Government is to meaningfully challenge violence against women, it must address gender inequality in all its forms. The UN Commission on the Status of Women urges: "Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective into all policies and programmes, addressing, inter alia, unequal access to educational opportunities and inadequate educational opportunities, and taking into account girls and women in especially difficult circumstances."<sup>132</sup>

Despite the fact that many of the formal legal barriers to women's equality, have been removed through Ireland's equality legislation, women remain disadvantaged and unequal on the basis of their gender. Ultimately, the persistence of gender inequality in Ireland is illustrated in the still high levels of violence against women. This persistent inequality is clearly demonstrated in women's pronounced under-representation in political and public life, in the high prevalence of poverty amongst women, and in the fact that women continue to earn far less than men. The Irish Human Rights Commission in its submission to the CEDAW Committee on Ireland's compliance, concludes that little or no action has been taken to address many of the concerns highlighted by the CEDAW Committee when it last examined Ireland's compliance with CEDAW five years ago.<sup>133</sup> For example, despite the recommendations of the Committee, Article 41.2 of the Constitution has not been amended and continues to be repugnant to Articles 2 and 5 of CEDAW.

Ireland's combined 4th and 5th periodic reports submitted by the Government to the CEDAW Committee in 2003 detail the laws, policies and programmes that are in place to prevent discrimination and promote equality for women, but yield little in the way of data, information or analysis in respect of the impact of these measures. As outlined in Chapter 2, no National Plan for Women was adopted in Ireland, as committed to by government under the 1995 Beijing Platform for Action, but a National Women's Strategy is currently in preparation.

### **Under-representation of women in state institutions**

In its 1999 concluding observations, the CEDAW Committee noted "with concern that women continue to be under-represented in public and political life, and that structural and attitudinal reasons, including limiting cultural and social values, difficulties in reconciling family life, paid employment and political tasks, have been identified among the reasons for this low representation". The Committee urged the Government to make full use of temporary special measures in accordance with article 4.1 of the Convention to increase women's participation in politics and decision-making. It further recommended awareness-raising and educational measures to redress cultural stereotypes, increase men's sharing of domestic work and encourage mentoring, networking and support systems to facilitate women's entry into public life. Women are still widely underrepresented in the political and economic institutions of state – only 15 per cent of members of the Dáil are female for instance – and temporary special measures to correct the imbalance, as recommended by the CEDAW Committee in its last report on Ireland's compliance with that Convention, have not been adopted.

*"Everyone has the right to take part in the government of [their] country, directly or through freely chosen representatives."*

Universal Declaration of Human Rights

In respect of other organs of state, such as the Gardai, while increases have been achieved in the numbers of women recruited, there still remains a significant gender imbalance, particularly within senior ranks. Concern is not confined to the overall proportion of women in positions of power and influence, but also whether the diversity of women's experiences – minority ethnic status, disability, etc – is reflected in these structures.

### **Resourcing of and consulting with women's groups**

Increased awareness among men and women of women's rights as human rights is critical to the advancement and protection of women. Advocates for women's human rights are essential in making rights a reality. The UN Declaration on the Elimination of Violence Against Women instructs states, in combating violence against women, to "[r]ecognise the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women", and to "[f]acilitate and enhance the work of the women's movement and non-governmental organisations and cooperate with them at local, national and regional levels". While the Government's Equality for Women Measure has funded certain initiatives, these have largely been ad hoc and often one-off projects. Meanwhile many women's representative organisations, such as the Women's Human Rights Alliance, do not receive any core funding from government. As pointed out in Chapter 2, voluntary violence against women services have been engaged in informing and progressing the national agenda on violence against women, but without adequate funding. Women's rights organisations, including organisations of women in marginalised groups, should be actively involved in the formulation and review all relevant policy and law, particularly in respect of measures to combat violence against women, and should be resourced to do so.

*"Full equality [for women] means more than the accomplishment of statistical objectives: the culture has to change."*

UN Secretary General  
Address to the Group on  
Equal Rights for Women in  
the United Nations, 7th  
March, 1997.

### **Recommendations**

- A comprehensive National Women's Strategy should be produced as a matter of priority in accordance with commitments under the Beijing Platform for Action, and provide for the production and dissemination of comprehensive gender equality data on an annual basis. It should provide a comprehensive set of time-bound gender equality targets and specific gender equality indicators to measure progress towards the gender equality targets set in the strategy. Indicators and targets in respect of violence against women should be comprehensive and reliable. All targets should be monitored on an annual basis.
- Targeted awareness-raising and education initiatives on issues of gender and violence against women should be developed and comprehensively introduced, involving the participation of women who have experienced violence and their representative organisations, with specific initiatives regarding marginalised groups, including antiracism education, and with information disseminated in a variety of formats and fora, especially for children and hard-to-reach groups.
- Women's rights organisations should be resourced and facilitated to engage in consultation with government, advocacy for women experiencing violence, and monitoring government compliance with CEDAW and related instruments.
- Recommendations made by the Irish Human Rights Commission for progressing women's equality in its 2005 submission to the CEDAW Committee should be implemented as a matter of priority.

# Conclusion

## Ignorance, Injustice and Impunity

**P**rimarily responsibility for protecting the human rights of everyone in Ireland, including women, lies with the Irish Government. This does not mean that the state or its authorities must simply refrain from violating women's human rights, but government must ensure preventive and protective measures are put in place, and that perpetrators are brought to justice with effective sanctions imposed. It also has the legal duty to support women who have experienced violence, redress the wrong done to them, and provide them with adequate reparation. It must further ensure that institutional and political inequalities that serve to undermine women's right to be free from violence and discrimination are identified and addressed.

Amnesty International has demonstrated throughout this report that violence against women in Ireland is not being combated to the degree that it should. Hence Amnesty International urges the Irish Government to recognise that it is in breach of international human rights law if does not take immediate and effective action to address the concerns raised in this report. The following is a summary of the concerns that have led Amnesty International to conclude that the Irish Government is not exercising due diligence in preventing, investigating and punishing violence.

### Prevention hampered by limited information

Data collection on the prevalence and nature of violence against women is inadequate and fragmented. It is mainly collected and disseminated through the Gardaí and courts, in a limited and insufficiently disaggregated form. The known underreporting of violence by women means that Gardaí and courts are unreliable sources upon which to base prevalence estimates. Frontline services are in the process of establishing comprehensive data collection and reporting mechanisms, but are inadequately funded by government to do so. Data on violence against women is not centrally and routinely collected from a range of potential statutory sources – accident and emergency departments, maternity hospitals, GPs, social workers or mental health services, for instance – the compilation of which could provide a more accurate national picture of the prevalence and nature of the violence women are experiencing in Ireland.

Data is not routinely analysed by government as to why and how women are experiencing violence, i.e. there is no meaningful investigation into what precisely the state is endeavouring to prevent, and how that can best be achieved. Prevention strategies are therefore operating in an information vacuum. Official evaluation of the effectiveness of state measures to combat and provide redress for violence against women is almost entirely absent. The use of accurate and systematic gender disaggregated data collection and analysis to measure progress in combating violence against women across the range of responsible government departments and policy areas is not in evidence. This includes data collection on ethnicity, disability, etc. to facilitate identification of the specific needs of women, and to assist in the development of strategies to address these needs.

### Inadequate legal protection

For women experiencing domestic violence, the Domestic Violence Act 1996 is incomplete in terms of the categories of victims covered, and in not providing a specific offence of domestic violence. The implementation of the Garda Síochána Domestic Violence Intervention policy has not been



Minister of State, Frank Fahey receives "Hands Petition."

reviewed, and women experiencing domestic violence, rape and sexual assault report inconsistent responses from Gardai. There is no definition of sexual assault in the relevant legislation. Victims of trafficking are almost entirely without protection.

The UN Declaration instructs, "women who are subject to violence should be provided with access to the mechanisms of justice". So, the question to be answered is not alone whether laws that exist are adequate, but whether the machineries for their implementation are in fact what human rights standards deem "effective remedies", i.e. whether all women experiencing, or at risk of violence are made aware of their existence, and to what extent they are accessible to women and appropriate for the diverse needs and situations of women. Improved implementation of the law in a manner that is sensitive to victims will mean that more women who have been subjected to violence will report violations and pursue legal proceedings against perpetrators. Yet the effectiveness or sensitivity of the justice system for women experiencing violence has not been the subject of an official review to date. Amnesty International believes that comprehensive evaluation and reform of the civil and criminal justice system is essential, to ensure that it is effectively and rigorously preventing, investigating and punishing violence against women.

We do know however, that, in the context of violence in the family, family law courts are overstretched, and victims of domestic violence are experiencing long delays in accessing the courts for protective orders. They often find that civil protection orders are not vigorously enforced. The extent to which men are charged with appropriate offences for acts of violence in the family is unknown, but it is likely that they are often charged with the least serious offences such as breaching a barring order. This uncertainty is compounded by the lack of statistics and analysis of the effectiveness of the civil and criminal justice systems. In many respects, the justice system is a hostile experience for women who have experienced violence, which leads many to withdraw applications for protection orders or criminal charges. Frontline services that support women through the judicial process are not funded to do so. There are gaps in the necessary intersection with other agencies such as the Probation and Welfare Service and An Garda Síochána. The legal system does not sufficiently protect women and children, and marginalised women can be even more indirectly discriminated against within these mechanisms.

International criminal law has become particularly pertinent to violence against women over the last ten years, through the establishment and work of the *ad hoc* international criminal tribunals for Rwanda and former Yugoslavia, and the adoption of the Rome Statute for the International Criminal Court. The development of definitions of crimes, the jurisprudence of the two *ad hoc* international criminal tribunals for Rwanda and former Yugoslavia, and the drafting and adoption of the Rome Statute of the International Criminal Court have defined violence against women more thoroughly than ever before, and in a manner which is more gender-sensitive and reflects to a greater extent the victim's experience of violence. The methods of investigation and court procedures of these international tribunals are increasingly sensitive to the needs and safety of witnesses and victims, particularly of survivors of sexual violence. They provide an important model of good practice for domestic criminal law systems. Amnesty International believes that the definitions of crimes and rules of procedure of the International Criminal Court are models for the reform of Ireland's criminal law relating to violence against women and for measures to protect and support victims as witnesses.

### Fragmented statutory protections

The Gardai are the only statutory service with a formal policy on domestic violence. Otherwise local ad hoc polices and referral protocols exist in some statutory services for identifying and addressing violence against women. Social welfare entitlements, and other services are not formally reviewed

*"Our agency has begun to develop an integrated response by engaging in conversations with both the statutory and voluntary agencies who encounter domestic violence as part of their work. What we have discovered is that at every level of engagement the offender pressures the system into minimising its response. Because each element of the system operates independently this pressure will expose some weakness in the chain of response and the offender will "escape" through this weak point. The result of such an "escape" is to confirm in the offender's mind the belief that [a] I am entitled to do what I do, and [b] that I will suffer no great consequence even when some of my behaviour is exposed. This "escape" will confirm in the mind of the victim that the system is unable to prioritise her safety. It will also confirm in the minds of other victims the futility of approaching the system in the first place."*

Don Hennessy,  
NDVIA



for their appropriateness in protecting women fleeing violence in the family. Fatality or suicide reviews are not systematically conducted to investigate how the system has failed to identify and respond to victims and how gaps can be addressed. There are substantial groups of vulnerable women, such as minority ethnic women and women with disabilities, for whom statutory services too, are not adapted or trained to attend. Immigration and asylum laws and policies do not properly guard against or address violence in the family occurring while in the Irish state, and many migrant women who are experiencing violence in intimate relationships are unable or unwilling to seek help because of their vulnerable legal status, language difficulties and cultural barriers.

## Children

Education of children and young people does not equip them to identify and challenge violence against women, and they lack appropriate supports for disclosing the violence they experience. Witnessing domestic violence is itself a form of child abuse, named as such in the state's child protection guidelines, yet there is no national strategy to identify and protect these children. Children comprise the majority of clients of refuges, yet few refuges are resourced to appoint child protection workers. Furthermore, the fact that most of these children have never previously presented to social workers reveals the gaps in interagency statutory protection mechanisms. The risk of the granting to men who have abused their partners of unsupervised access to children has been exacerbated by the lack of information available to the family courts on levels of risk, and investigation into these concerns been impeded by the in camera rule on family law proceedings.

## Impunity

Few women report the violence they have experienced to anyone, in part due to stigma and shame created by hostile public attitudes or a failure to recognise what has happened to them as criminal. Even fewer make a formal complaint to the Gardaí. This low reporting in and of itself points to a de facto denial of a remedy to the majority of victims. Furthermore, there is a low conviction rate for domestic violence, rape and sexual assault, and only a small proportion of those accused receive a prison sentence. Despite the known fact that domestic violence occurs in all socioeconomic groups, those convicted and imprisoned are those already highly criminalised, indicating that this crime is not taken sufficiently seriously within the criminal justice system. Many women withdraw complaints of domestic violence, rape and sexual assault, due to the hostile experience often met by women in the justice system resulting from its adversarial nature, long delays in cases being heard, the lack of a formal court support service for women, and the perception of lenient sentences. Amnesty International also believes that, due to the adversarial nature of the justice system, and the frequent disparity between the prosecuting and the defence counsel, separate legal representation should be afforded to victims as witnesses. Gaps exist in the necessary intersection with other agencies such as the Probation and Welfare Service and An Garda Síochána, so family law courts hearing applications for protection orders are not always sufficiently aware of the risk posed by men. Formally organised and periodically updated training is also needed for Gardaí, the judiciary, court staff and members of the legal profession.

The low rate of conviction and imprisonment can dissuade women from making complaints, so the picture again revealed is one of a vicious circle. But it also obstructs any possibility of analysis of the forms of violence experienced by women, especially women in marginalised groups for whom the experience of violence is known to be greater but who make even fewer complaints, or the elaboration of policies that could prevent such violence. Thus a loop is maintained whereby the lack, unsuitability or inaccessibility of appropriate procedures for women making complaints of violence and seeking redress means that there is little reporting of cases, and that the absence of reporting,

*"Considering that one in every three women around the world experiences violence during her life, violence against women is a major public health emergency. Most women visit health workers for routine medical care or check-ups during pregnancy. This puts health workers in a unique position to detect violence, provide referrals and support survivors of abuse. ... Health workers lack guidelines and protocol, gender-sensitivity, awareness, and training to provide the support women need."*

World Health Organisation  
*Violence Against Women: A  
Global Health Emergency*

in turn, makes it difficult to divine and address the causes and consequences, and to put in place the necessary measures to ensure that cases are reported. As a consequence, the majority of perpetrators go free of penalty and public condemnation.

### No National Strategy

Perhaps the most striking aspect of the state's response to violence against women has been the extensive failure to implement the comprehensive and far-reaching recommendations in the 1997 Task Force Report eight years later – a report that involved invaluable expertise, extensive consultation, and the time and effort of so many organisations and experts. That inter-agency cooperation and inter-departmental communication are central to effective implementation of policy, was a key recommendation from the Task Force Report. The 1999 Concluding Observations of the CEDAW Committee on Ireland's combined second and third periodic reports to it stated its concern "that no comprehensive and multidimensional strategy has yet been adopted to prevent and eliminate violence against women". This continues to be the case. That a strategy was not immediately adopted to implement this report can only be taken as an indication of the state's not prioritising the safety of women and the punishing of abusers. The same can be said of the state's ignoring the report's strong instruction to establish "monitoring and evaluation systems" for the planning and delivery of the measures it proposed. Ultimately, the failure to adopt a National Strategy, incorporating monitoring and evaluation mechanisms, to implement the Task Force Report is perhaps the most notable indication that the state has failed to exercise due diligence in the prevention, investigation and punishment of violence against women.

### Ineffective National Steering Committee

While the National Steering Committee on Violence Against Women has provided a useful forum for networking between government, statutory and community and voluntary agencies, and has contributed significantly to increased public awareness of violence against women and the expansion of services, Amnesty International concludes that it lacks transparency and accountability, and has not been enabled by government to adequately fulfill any of its original nine functions described in Chapter 2. While no criticism is intended of the NSC's membership, its functions and powers should be clearly underpinned by legislation – to give it teeth, in effect. Amnesty International urges the Irish Government to establish the NSC as a statutory, independent body, with responsibilities as described in its original remit in monitoring, progressing, evaluating and reporting on national and regional measures to address violence against women, in full consultation with women's rights organizations. This independent monitoring body should periodically conduct research on women's experiences of violence, public attitudes and awareness, and monitor and evaluate the effectiveness of preventative and protective measures. It should issue annual progress reports on implementation, including inter alia statistical information on violence reported, and reviews of recent national and international research. Of paramount importance is that it should be adequately resourced to meet its statutory brief. Until full consideration is given to the establishment of this statutory agency, the National Steering Committee's strategic plan under preparation should include the compilation of such annual reports.

### Underfunded frontline services

While substantial, the funding provided for the 38 community and voluntary organisations in Ireland providing frontline services for women who experience rape, sexual assault, domestic violence and trafficking is inadequate. The uncertain availability of refuges and transitional or social

housing for women experiencing violence in the family is a significant barrier to escaping abuse and accessing justice. Community and voluntary organisations providing crisis and support services for victims of violence in the family, and rape and sexual assault, identify underfunding as the major barrier to carrying out their work. They cannot meet existing demand - victims of rape have to wait months for counselling from Rape Crisis Centres, for example. These services are endeavoring to evaluate the appropriateness of their own services, and implement the necessary changes, but without funding. They are also improving their data collection systems, but again, without sufficient funding. Furthermore, these services are currently in the process of developing targeted initiatives to address inequalities experienced by vulnerable groups within their services by marginalised groups of women, but have not been resourced to meet these additional needs. According to the UN CEDAW Committee, the state has a clear duty to provide and adequately resource "[p]rotective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence."<sup>134</sup> Where government delegates these human rights responsibilities to voluntary agencies, it must ensure that they are adequately resourced to perform this function. Amnesty International believes that the state's failure to adequately fund frontline services to meet existing need and improve and expand their services is putting women's physical and mental integrity at serious risk. That potentially life-saving frontline services for women experiencing violence are hampered so significantly by resource problems is an indictment of government policy, and in itself, is evidence of its failure to exercise due diligence in the prevention of violence against women, and to protect women from this abuse.

### Limited Awareness and Education

Few public education initiatives have been undertaken by government to identify and address inaccurate or negative societal attitudes to violence against women, views that underpin and reinforce stigma and impunity, and militate against the identification of violence against women, including by perpetrators and victims, as a serious human rights abuse. These attitudes can also permeate policy-making if unchallenged. The 1997 Task Force Report made a series of detailed recommendations regarding the need for successive public awareness campaigns. While many initiatives have been undertaken by the National Steering Committee, there have been no large-scale public awareness campaigns to date, and the impact of these measures on public attitudes has not been evaluated.

### Failure to respect women's rights

The underlying cause of violence against women lies in discrimination that denies women equality with men in all areas of life. Violence is both rooted in discrimination and serves to reinforce discrimination. The Irish Government has failed to meaningfully act on any of the recommendations made by the UN CEDAW Committee in 1999 for progressing equality for women. In 2003, it submitted its 4th and 5th periodic reports to the Committee, which will be reviewed by the Committee in a meeting in Geneva with government representatives later this year, whereafter it will issue its conclusions on how Ireland has progressed its realisation of women's human rights.

### Redress and Reparation for the effects of violence

The Beijing Platform for Action adopted in 1995 states that governments should "take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims". Therefore, within the state's duty to provide redress and reparation for survivors of violence against women are a host of

*"Cabinet responsibility for gender equality rests with the Minister for Justice, Equality and Law Reform .... The Gender Equality Section of the Department of Justice, Equality and Law Reform, under the direction of the Minister, is responsible for implementing a number of Government commitments on gender equality, supporting policy development on gender issues, and monitoring national and international commitments on gender equality, including reporting on gender equality issues for which other Government Departments and State agencies are responsible."*

Government response to 'UN Questionnaire to Governments on Implementation of the Beijing Platform for Action (1995), and the Outcome of the Twenty-Third Special Session of the General Assembly (2000)'



Members of AI Ireland and the Rwandan and Burundian community carry a wreath to commemorate the tenth Anniversary of the genocide in Rwanda. © AI

*"Violence against women ... and girls is a human rights and public health emergency worldwide. It causes mental and physical injury, exposes women and girls to diseases and forced pregnancy, increases women's vulnerability in all spheres of their lives and, in the worst cases, ends in women's deaths. As a result of decades of efforts by women's groups to fight violence against women, there is a growing recognition that violence against women has a devastating impact not only on the lives of women, but also on their families, communities and societies at large."*

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World Health Organisation

critical, so that education, training and work opportunities for women are essential components of the state's duty.

Failing to address violence against women impoverishes society economically, politically and culturally, by limiting the active role that women can make in the development of their community. While it is impossible to determine the full cost to society of not addressing violence against women, a growing number of studies point to its serious economic consequences, including loss of productive time, loss of earnings and medical costs. Beyond the scope of this report, but worth others considering, is how efficiently the state might be seen to be expending its resources in failing to invest in preventive and support services, and instead dealing with the aftermath. It is important to note that, under the International Covenant on Civil and Political Rights, the state cannot excuse its failure to exercise due diligence in preventing, investigating and punishing violence against women on the grounds of lack of resources. Under Article 2(1) the International Covenant on Economic, Social and Cultural Rights, the state is under a positive obligation to achieve progressively the full realisation of the rights recognised in that Convention "to the maximum of its available resources".<sup>136</sup>

### No government accountability

Ultimately, it is the Irish Government that is accountable for respecting, promoting and fulfilling women's rights. That government endorsed the Task Force Report and committed itself to its implementation, yet failed to adopt a National Strategy or otherwise meaningfully ensure its progress, demonstrates the need for clear and effective lines of accountability within government. Six government departments have separate, but poorly defined roles in addressing violence against women.<sup>137</sup> It is not clear that arrangements exist within those departments to monitor the extent to which their practices are compliant with their obligations under the Task Force Report. Clearly then, the importance of a strong monitoring mechanism to track the conversion of policy statements of intent into meaningful and effective measures on the ground, and tangible outcomes in terms of the reduction of violence, and the protection and support of women, cannot be overstated. Amnesty International suggests that the Department of Justice, Equality and Law Reform should assume this overall monitoring role.

Amnesty International demands that all relevant department's individual roles, responsibilities and budgets for addressing violence against women be centrally monitored and coordinated by the Department of Justice, Equality and Law Reform (DJELR), which is one of its stated functions. The

pivotal position occupied by the DJELR in ensuring an integrated and adequate response to victims of violence has not been reflected in its annual reports, where it gives the barest account of measures to address violence. Monitoring and progressing the conversion of commitments made by government in the Task Force Report into meaningful outcomes is the overall responsibility of the DJELR. This should include monitoring and reporting on progress within other government departments and agencies. The DJELR therefore, should be responsible for compiling and disseminating comprehensive annual progress reports on the effectiveness of violence against women measures across all government departments.

## Conclusion

Throughout this report, Amnesty International has concluded that a pattern of violence in the family, rape and sexual assault, and trafficking clearly exists in Ireland. In Chapter 1, Amnesty International explained that the human rights abuses that are at issue here are torture, and inhuman and degrading treatment or punishment. The right to life itself is imperiled when the state fails to exercise due diligence. The test, as elaborated in Chapter 1, for establishing the state's culpability in not exercising due diligence in the prevention, investigation and punishment of violence against women, whereby it would be deemed complicit in violations committed by private actors, and where the state itself would thus be guilty of violating those same rights, is by establishing that the state condones a *pattern of abuse* through *pervasive non-action*.

In terms of human rights law, the burden of proof is on the state to demonstrate that it is taking effective measures to combat and reduce violence against women, and that it is realising women's equality, by clearly identifying measurable outcomes.

The inevitable conclusion in this report, must be that the state has not exercised due diligence in preventing violence against women. The recommendations made in the 1997 Task Force Report remain underimplemented, and those contained in many important reports commissioned by voluntary organisations not acted upon. The failure to meet the basic operational costs for voluntary services is a clear failure to comply with human rights standards. While many reviews and evaluations have been recommended by Amnesty International throughout this report, the Government has been on notice for some time as to what is immediately and urgently required, but has singularly failed to act.

Amnesty International concludes that clear channels of accountability, both for the perpetrator and for the state, have not been established or demonstrated, leading to a continued sense on the part of victims and the women's rights movement of effective impunity for perpetrators, and ineffective state mechanisms to identify, combat and redress violence against women. There is little monitoring of the effectiveness of legal and other measures to prevent, investigate and punish violence against women in real terms, i.e. how many women have experienced violence and how many men have been punished. The state has also been far from diligent in its duty to prevent violence, in failing to adopt measures contained in international human rights instruments, or that have been shown in other jurisdictions to have been successful in reducing violence and punishing perpetrators. A vicious cycle has been allowed to continue, whereby without adequate reporting, and data collection and evaluation systems, the efficacy of any measure is impossible to assess.

Hence, a case for pervasive nonaction can be made. Justice, is not being served, either in terms of the effective punishing of perpetrators, or the rights of women to be free from violence, and to protection, redress and reparation. There is little sense of the state's resolved determination to fulfil its obligation to exercise due diligence in the prevention, investigation and punishment of violence against women.



Amnesty members launch Body Shop texting campaign.

© Hugh McElveen Photography.

*"Including all costs, the total cost of domestic violence for the state, employers and victims is estimated at around £23 billion. .... The demonstration of the scale of the impact of domestic violence on society by estimating its cost may enable a wider range of both policy-makers and the general public to understand the extent of the problem and the potential gains to all that could result from the reduction and elimination of domestic violence. .... It shows the cost of inaction."*

### *The Cost of Domestic Violence*

UK Department of Trade and Industry Women and Equality Unit

international standards set out in this report, and to implement its recommendations.

Where the Irish Government, through its agents and statutory services, or in delegating its human rights responsibilities to nongovernmental organisations, is failing to exercise due diligence in the prevention, investigation and punishment of acts of violence against women, it is guilty of serious violations of women's rights. International human rights caselaw is evolving, and it is leading towards the conclusion that violence against women, including violence in the family and rape and serious sexual abuse, can, in certain circumstances, amount to torture, or inhuman and degrading treatment, contrary to Article 7 of the International Covenant on Civil and Political Rights, and Article 3 of the European Convention on Human Rights. Where women are killed, the right to life itself is violated. The state is guilty of these abuses if it fails to take reasonable measures to prevent or investigate and address the act. In this light, there is a high standard demanded of the state in preventing violence and protecting women. Amnesty International therefore urges the Irish Government to comply with

## Recommendations: Awareness, Action and Accountability

### General recommendations to government

Amnesty International urges the Irish Government publicly and at every opportunity to denounce violence against women as a serious human rights abuse, and acknowledge its responsibility to combat it. Amnesty International demands that the Government demonstrate its commitment to eradicating violence against women in Ireland, and exercise due diligence in preventing, investigating and punishing acts of all forms of violence against women.<sup>138</sup> In particular, Amnesty International urges the Government to:

- Develop and adopt a National Strategy on Violence Against Women, in full consultation with women's rights organisations.
- Until a National Strategy on Violence Against Women is adopted, ensure that the National Women's Strategy provides a framework for monitoring and measuring the progress of violence against women measures, and includes a comprehensive set of time-bound targets and reliable indicators to monitor violence against women.
- Establish the National Steering Committee on Violence Against Women as a statutory independent monitoring body, with responsibility for monitoring and progressing the implementation of the 1997 Task Force Report on Violence Against Women, and the National Strategy on Violence Against Women when adopted, including responsibility for developing and monitoring national research and data collection, guidelines, policies, training and awareness-raising.
- Adequately support and resource the National Steering Committee on Violence Against Women to implement its Strategic Plan, and to monitor and progress implementation of the 1997 Task Force Report on Violence Against Women.

- Establish effective, demonstrable cross-departmental responsibility for addressing violence against women, with a lead role of the Department of Justice, Equality and Law Reform in recording, monitoring and driving progress.
- Expedite the publication of national research on violence against women commissioned by the Department of Justice, Equality and Law Reform, on the effectiveness of the existing structures and the resource needs of the sector, and develop initiatives in areas where service gaps are so identified.
- Systematically gather, analyse and regularly disseminate comprehensive data on the prevalence and nature of all forms of violence against women, with particular focus on marginalised and vulnerable women; and on the causes, consequences, and costs of violence against women.
- Periodically review the effectiveness of measures designed to prevent violence against women, and to protect women experiencing violence, including best practice examples for combating and eliminating violence against women.
- Provide adequate funding, and establish funding criteria and more transparent funding mechanisms, for frontline services, to whom government is delegating its core human rights responsibilities, with sufficient additional funding that enables them to gather and analyse data on their service users, review and expand their services so they are provided equitably and appropriate to the needs of all women, and to provide a sufficient number of additional non-crisis responses for women survivors of violence.
- Review and, where necessary amend, all relevant laws on violence against women that provide for the prevention, investigation and punishment of violence against women, to ensure they meet international human rights standards.
- Review and reform the civil and criminal justice system to ensure that it adequately prevents, investigates and punishes violence against women, in a manner that is sensitive and responsive to the needs of women and children as victims and witnesses, and that all perpetrators of violence against women are charged with offences and given sentences commensurate with the gravity of their crimes; with due regard to the definitions of crimes and rules of procedure of the International Criminal Court as models for the reform of national criminal law relating to violence against women.
- Ensure that training in gender-based violence against women is integral to the training of all members of the Gardaí, judiciary, health professionals, lawyers and all other statutory agencies dealing with women and children who have experienced violence.
- Develop and introduce targeted awareness-raising and education initiatives on issues of gender and violence against women, which should involve the participation of women who have experienced violence and their representative organisations and should include specific initiatives regarding marginalised groups, with information disseminated in a variety of formats and fora, especially for children and hard-to-reach groups.
- Adopt special measures for the protection of migrant, asylum seeking and refugee women who experience violence in the family while in Ireland; and review and reform Ireland's immigration and asylum laws and related policies so that they do not leave women vulnerable to violence occurring in the state.

- Ratify the 1990 UN Convention on the Rights of Migrant Workers and Their families, and comply with its standards in the new Immigration and Residency Bill.
- Publish and implement gender-sensitive guidelines on the asylum application process, and on the reception and integration of asylum seekers in Ireland, and ensure the full implementation of these guidelines through independent monitoring and evaluation.
- Ratify the 2005 Council of Europe Convention on Action against Trafficking in Human Beings at the earliest opportunity, and introduce special protections for victims of trafficking that accord with its provisions.
- Ensure that all women who have been subjected to violence are provided with access to redress and reparation, including safe and appropriate accommodation, and targeted measures to enable them recover from violence and establish independence, such as programmes of education, training and employment.
- Ensure that an effective interagency response to violence against women is provided by all statutory services linking with frontline services, welfare services and the judicial system, through centrally devised, monitored and regularly evaluated national policies, referral procedures, and training regimes.
- Review and revise all statutory entitlements and restrictions to ensure that they meet the needs of, and do not prejudice the safety of women endeavouring to escape violence in the family.
- Take effective measures to promote the equality of women and counter women's impoverishment by ensuring equal access to economic and social rights, including education, employment and political participation.
- Acknowledge and support the work of nongovernmental groups of women's rights activists working to prevent violence against women, and ensure they are adequately funded.
- Implement all recommendations that emerge from the UN CEDAW Committee, in its 2005 concluding observations on Ireland's 4th and 5th reports.
- Expedite the incorporation of the Rome Statute of the International Criminal Court into national legislation to end impunity for violence against women in all circumstances.

#### **At the community level**

Amnesty International call on communities, religious bodies, employers, trade unions, corporations and all other nonstate bodies, and authorities, including the mass media, to:

- Work to create an environment which supports women and addresses violence, by building structures and processes to protect women, providing assistance to survivors of violence, and raising awareness about violence against women.
- Treat women as equal members of the community, including having equal participation in decision-making in processed and structures.
- Ensure gender equality in their leadership, membership and all other levels within their structure, reflecting the diversity of women in Ireland.



- Denounce and desist from any action that encourages or tolerates violence against women or women's inequality, and to respect, promote and fulfil women's human rights.
- Use their influence to challenge state failures to respect the rights of women, and to call for the state's compliance with international human rights standards.

**At the individual level**

Amnesty International urges every individual to:

- Challenge negative images of women and resist mass media, advertisements and other information channels that reinforce discriminatory attitudes and perpetuate violence against women and girls.
- Equip themselves with the knowledge and information to respond to women and children who disclose violence.
- Support Amnesty International's campaign to stop violence against women.

## Footnotes

### Introduction

1. *It's In Our Hands: Stop Violence Against Women* AI Index: ACT 77/020/2004 (2004).
2. Cork Domestic Violence Project, Dublin Rape Crisis Centre, National Network of Women's Refuges and Support Services, National Women's Council of Ireland, Network of Rape Crisis Centres Ireland, Women's Aid and Women's Education, Research & Resource Centre, UCD (2001).
3. Mc Gee, Garavan, de Barra, Byrne & Conroy, *The SAVI Report: Sexual Abuse and Violence in Ireland; A National Study of Irish Experiences, Beliefs and Attitudes Concerning Sexual Violence* Dublin Rape Crisis Centre and the Liffey Press (2002).

### Chapter 1

4. For treaties ratified by Ireland, see the Irish Human Rights Commission website at [http://www.ihr.ie/treaties/treaties\\_4.asp](http://www.ihr.ie/treaties/treaties_4.asp)
5. Article 27 Vienna Convention on the Law of Treaties.
6. Gaynor, *CEDAW Convention on the Elimination of All Forms of Discrimination Against Women Ireland 2004 Shadow Report* Women's Human Rights Alliance (2004).
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8. Application number 0023452/94, 28 October 1998.
9. Application number 33218/96, 26 November 2002.
10. Application number 22947/93 and 22948/93, judgment 10 October 2000.
11. *Airey v. Ireland*, Application number 00006289/73, 09/10/1979, para. 24: "The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective."

### Chapter 2

12. Office of the Tánaiste, April 1997.
13. *First Report of the National Steering Committee on Violence Against Women*, Stationery Office (1999)
14. Ireland's combined Fourth and Fifth periodic reports under the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, submitted to the UN on 10 June 2003.
15. *First Country Report from the Republic of Ireland* National Observatory on Violence Against Women (2004).
16. Timoney, Conlon & Smyth, *Changing Direction Evaluation of Services for Women Experiencing Violence in the North Eastern Region*, North Eastern Health Board (2003).
17. Note 6 above.
18. Note 15 above.
19. O'Connor Wilson Associates, *Secrecy, Silence and Shame: An analysis of Violence Against Women in the North West Inner City* North West Inner City Women's Network (2005).
20. Ibid.

### Chapter 3

21. For instance, *Safety and Sanctions*, note 23 below, found that

parents calling Gardai for "out of control" young people was particularly notable in its Dublin City research site, and many of these cases were drugs related.

22. Note 7 above.
23. Kelleher Associates & O'Connor, *Safety and Sanctions: Domestic Violence and the Enforcement of the Law in Ireland* Women's Aid (1999).
24. *World report on violence and health* World Health Organisation (2002).
25. See *Violence Against Women: An Issue of Gender* note 2 above.
26. <http://www.gov.ie/crimecouncil/research1.html>, consulted on 5th May 2005.
27. Barnish M, *Domestic Violence: A Literature Review*, HM Inspectorate of Probation, UK Home Office (2004)
28. Ibid.
29. Kelleher Associates & O'Connor, *Making the Links*, Women's Aid (1995).
30. Bradley et al, *Reported frequency of domestic violence: cross sectional survey of women attending general practice* British Medical Journal, Vol 324, 2002. This points to the degree of comfort with which women report to GPs, when asked the right questions. This study highlights training and awareness raising as a key need for GPs.
31. *Making the Links*, note 29 above, found that there was only a 1 per cent difference in the numbers of rural and urban women experiencing domestic violence.
32. Women's Aid National Freephone Helpline Statistics, 2003 (2004). 18,902 calls were made to the service, an increase of 26 per cent on calls made in 2002. It responded to 12,908 calls in 2003, a 17 per cent increase in calls responded to in 2002. 5,994 calls were missed due to insufficient staff.
33. [www.womensaid.ie](http://www.womensaid.ie), consulted on 13 May 2005.
34. Note 27 above.
35. Note 30 above.
36. Note 3 above.
37. UN Special Rapporteur on violence against women, note 7 above.
38. In *Amnesty Ireland* magazine, January 2005.
39. Note 7 above.
40. Ibid.
41. Originally covering just the Dublin Metropolitan Area, in 1997 it was placed under the National Bureau of Criminal Investigation and given a countrywide brief.
42. Note 7 above.
43. Special Rapporteur on violence against women, its causes and consequences, *A Framework for Model Legislation on Domestic Violence*, (Fifty-second session), E/CN.4/1996/53/Add.22, February 1996.
44. *Domestic Violence: The Case for Reform* A Report by the Law Society's Law Reform Committee, The Law Society of Ireland, (1999).
45. Note 7 above.
46. An Garda Síochána Annual Report, 2002.
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48. See *Safety and Sanctions*, note 23 above.
49. Note 7 above.
50. Note 27 above.
51. This has also been communicated to Amnesty International by

community and voluntary services.

52. SAVI report, note 3 above.
53. E.g. *Changing Direction*, note 16 above.
54. *An Garda Síochána Human Rights Audit: A report from Ionann Management Consultants*, An Garda Síochána (2004).
55. Note 7 above.
56. *The Courts Services Annual Report 2003* (2004) and *The Courts Services Annual Report, 2002* (2003).
57. Note 7 above.
58. Pending the coming into operation of rules of court in this regard, practice directions have been issued to the District and High Courts.
59. *Consultation Paper on Family Courts* The Law Reform Commission (1994).
60. *Working Group on a Courts Commission Sixth Report Conclusion* November, 1998, Government Publications (1998): "Suitable centrally situated court venues in both District Court and Circuit Court areas should be selected for family law hearings. All courts should be provided with consultation rooms and information facilities. ... In the longer term there should be a planned progress towards the system of Regional Family Courts recommended by the Law Reform Commission in its Report of Family Law Courts."
61. Note 44 above.
62. Note 7 above.
63. *Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice* (1997)
64. *Safety and Sanctions*, note 23 above.
65. *Value for Money Examination 46: The Probation and Welfare Service*, Comptroller and Auditor General (2004).
66. Note 15 above.
67. Note 14 above.
68. Note 7 above.
69. See generally, *Violence Against Women: An Issue of Gender* note 2 above.
70. See *Secrecy, Silence and Shame* note 19 above.
71. *Social Service or Social Change? Issues and Challenges for Women's Domestic Violence Services in Ireland* (2003).
72. O'Connor & Wilson, *Sonass Housing Association Model of Supported Transitional Housing*, Sonass Housing Association (2004). The National Crime Council (see note 26 above) is likely to report that 267 refusals of refuge accommodation can definitively be linked to lack of space, as, for so, when its report is published, and if this indeed is its finding, it may be more accurate to state that, at least 267 women were refused refuge accommodation due to lack of space.
73. Note 7 above.
74. Ruddle & O'Connor, *Breaking the silence: Violence in the home* Mid Western Health Board (1992).
75. Note 7 above.
76. Note 16 above.
77. Note 72 above.
78. Note 16 above.
79. *The Heart that Bites: Violence Against Women*, National Women's Council of Ireland (2001).
80. (Casey, 1989; Humphreys and Mullender, 2000). Statutory or voluntary services providers can also be at risk of violence from the abuser, and the UN Special Rapporteur advises: "Protection

orders may operate to protect the victim, a relative, a welfare worker or person assisting the victim of domestic violence from further violence or threats of violence." This should be considered in the review of the effectiveness of the 1996 Act.

81. UNICEF, *Domestic Violence Against Women and Girls* Innocenti Digest No. 6 - June 2000.
82. See note 71 above.
83. *Mental Illness: The Neglected Quarter - Children*.
84. *Information Pack: Domestic Violence* (2003).
85. *Implementation of the International Covenant on Economic, Social and Cultural Rights in Ireland: Submission to the UN Committee on Economic, Social and Cultural Rights* (2001).
86. O'Connor & Wilson, forthcoming. Cited in *Secrecy, Silence and Shame*, note 19 above.
87. Note 44 above.
88. *Child Custody and Access in the Context of Domestic Violence* Women's Aid (2004).
89. Note 7 above.

#### Chapter 4

90. One in 10 adult men experience contact sexual violence (SAVI Report, note 3 above.). In 2003, 15 per cent of callers to the Dublin Rape Crisis Centre counselling helpline were male.
91. Amnesty International is conscious of the risk that, in separating violence in the family from sexual violence, this can serve to reinforce the artificial public/private distinctions.
92. *Case of X and Y v. The Netherlands* Application number 8978/80, 26 March 1985; *Case of A. v. The United Kingdom*, Application number 25599/94, 23 September 1998.
93. Regan & Kelly, *Rape: Still a Forgotten Issue* Rape Crisis Network Europe (2003).
94. Note 3 above. It is likely that a follow-up study will be commissioned in the near future.
95. Including rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990.
96. For a comparative analysis of the laws and legal procedures relating to rape, and their impact upon victims of rape, in the then fifteen member states of the European Union, see *The Legal Process and Victims of Rape* Dublin Rape Crisis Centre (1998).
97. Rape Crisis Network Ireland, at: [www.rcni.ie/attritionpaper\\_000.htm](http://www.rcni.ie/attritionpaper_000.htm), consulted 13 May 2005.
98. *Ibid.*
99. *Ibid.*
100. Leane, Ryan, Fennell, Egan, *Attrition in Sexual Assault Offence Cases in Ireland: A Qualitative Analysis* University College Cork (2001).

#### Chapter 5

101. Note 7 above.
102. World Health Organisation.
103. Wilson, *Violence against Disabled Women*, Women's Aid (2001).
104. *Secrecy, Silence and Shame* note 19 above.
105. *Ibid.*
106. Smith, Mc Gee, Shannon & Holohan, *One Hundred Homeless Women: Health status and health service use of homeless women and their children in Dublin* The Royal College of Surgeons, Ireland (2001).
107. See *Secrecy, Silence and Shame* note 19 above.
108. Bindel & Kelly, *A Critical Examination of Responses to Prostitution*

- in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden* Child and Woman Abuse Studies Unit, London Metropolitan University, for the Routes Out Partnership Board (2003).
- 109.Ibid.
- 110.Note 54 above.
111. According to the 2002 Census, there are approximately 12,000 Traveller women living in Ireland, and the total Traveller population constitutes 0.6 per cent of Ireland's population. It is important to note the Government's formal non-recognition of the Traveller community as a minority ethnic group, which has been criticised by the UN CERD Committee in its recent concluding comments.
112. Fay, *Pavee Beirs: Breaking the Silence: racism and violence against women*, in Women's Subgroup Community Workers' Co-Op, eds. 'Violence Against Women – An Issue for Community Work', Galway: Community Workers' Co-operative (1999).
113. Pavee Point CEDAW Shadow Report (2005).
- 114.Note 112 above.
- 115.Ibid.
- 116.Ibid.
- 117.Note 54 above.
- 118.Note 113 above.
- 119.Note 16 above.
- 120.Note 113 above.
- 121.UN Special Rapporteur on violence against women World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa 31 August – 7 September 2001.
- 122.Conroy, *Trafficking in Unaccompanied Minors in the European Union Member States – Ireland* Report prepared for the International Organization of Migration (2003). Such data is gathered under the Child Trafficking and Pornography Act, 1998.
- 123.In Wylie, *Secreted Lives: Eastern European Women and Trafficking for Sexual Exploitation in Ireland* (2003).

## Chapter 6

- 124.Note 7 above.
- 125.General Recommendation No. 9.
- 126.Galligan, *The Development of Mechanisms to Monitor Progress in Achieving Gender Equality in Ireland* Department of Justice, Equality and Law Reform (2000).
- 127.Barry, *Building the Picture – Equality Data Issues* Equality Authority (2000).
- 128.National Observatory report, note 15 above.
- 129.Note 13 above.

- 130.Child and Women Abuse Studies Unit, University of North London for Women's Aid, *Teenage Tolerance: The Hidden Lives of Irish Young People*, Women's Aid (2001).
- 131.Note 16 above.
- 132.[www.un.org/womenwatch/daw/beijing/platform/institu.htm](http://www.un.org/womenwatch/daw/beijing/platform/institu.htm).
- 133.*Submission of the Irish Human Rights Commission to the UN Committee on the Elimination of Discrimination Against Women – Ireland's Combined 4th and 5th Periodic Reports under the Convention on the Elimination of All Forms of Discrimination Against Women* (2005).

## Conclusion

- 134.General Recommendation No. 19.
- 135.Parliamentary Assembly of the Council of Europe, *Domestic Violence against Women*, Recommendation 1582. Adopted 27 September 2002.
- 136.CESCR General Comment 9, 'The domestic application of the Covenant', E/C.12/1998/24, 3 December 1998.
- 137.The Government 2003 CEDAW Report lists just five, indicating that the Department of Employment is no longer seen as responsible for measures to assist women experiencing violence.
- 138.Also, beyond the scope of this report, is Ireland's responsibility under Articles 1 and 17 of the Rome Statute of the International Criminal Court to investigate and prosecute in its national courts perpetrators of violence against women for acts that amount to genocide, crimes against humanity and war crimes, by exercising its domestic jurisdiction regardless of where the crime was committed. In this regard, Ireland should expedite the incorporation of the Rome Statute through the International Criminal Court Bill, 2003. Ireland also has duties on the international stage in combating violence against women. For instance, Amnesty International in other reports has urged the Irish Government to promote adoption of an international Arms Trade Treaty (also known as the Framework Convention on International Arms Transfers) to stop the proliferation of weapons used to commit violence against women in other jurisdictions. In providing development assistance to other countries, it must ensure that support and assistance is not granted for governments which could reasonably be assumed to result in sustaining or exacerbating violence against women, and must benefit women equally. Ireland must also use its influence within the EU to ensure that all immigration and asylum measures respect and protect women fleeing violence or at risk of violence in their countries of origin or in destination countries, and that the EU does not obstruct progress on new human rights standards to protect women.