

**Dublin Rape Crisis Centre submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women**

20 May 2020

**About Dublin Rape Crisis Centre**

Dublin Rape Crisis Centre (DRCC) is a non-governmental organisation which for over 40 years has been dedicated to preventing the harm and trauma of rape and sexual abuse and promoting victims’ healing. DRCC is the largest of the 16 Rape Crisis Centres in Ireland and serves the population of Dublin and surrounding counties for counselling and nationwide through its helpline, education and policy work. DRCC also serves as a gateway to a range of additional supports including medical, legal, and social services.

**Questionnaire on criminalization and prosecution of rape**

This submission presented by the Dublin Rape Crisis Centre provides responses to the questionnaire on criminalisation and prosecution of rape.

**Definition and scope of criminal law provisions**

1. **Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.**

The Criminal Law (Rape) Act, 1981 states that a man commits rape if he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it and at that time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it.[[1]](#footnote-1)

The Criminal Law (Rape) (Amendment) Act, 1990 extended the definition of rape to mean a sexual assault (indecent assault upon any male or female person) that includes penetration (however slight) of the anus or mouth by the penis, or penetration (however slight) of the vagina by any object held or manipulated by another person (regardless of gender).[[2]](#footnote-2)

1. **Based on the wording of those provisions, is the provided definition of rape:**
2. **Gender specific, covering women only**

NO

1. **Gender neutral, covering all persons**

YES, the more recent definition contained within the 1990 Act is gender neutral but the 1981 Act applies to men only.

1. **Based on the lack of consent of victim**

YES

1. **Based on the use of force or threat**

NO

1. **Some combination of the above.**

NO**–** no use of force or threat is necessary

1. **Does it cover only vaginal rape?**

NO

1. **Does it cover all forms of penetration? If yes, please specify.**

YES, it covers penetration (however slight) of the vagina, anus or mouth by the penis or by any object held or manipulated by another person.

1. **Is marital rape in this provision explicitly included?**

YES[[3]](#footnote-3)

1. **Is the law silent on marital rape?**

NO

1. **Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?**

YES

1. **Is marital rape excluded in the provisions, or is marital rape not considered as a crime?**

NO, marital rape is considered a crime

1. **Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.**

NO

1. **What is the legal age for sexual consent?**

17 years of age

1. **Are there provisions that differentiate for sexual activity between peers? If so, please provide them.**

Criminal Law (Sexual Offences) Act 2017, Section 17.3.8: Where, in proceedings for an offence under this section against a child who at the time of the alleged commission of the offence had attained the age of 15 years but was under the age of 17 years, it shall be a defence that the child consented to the sexual act of which the offence consisted where the defendant—

(a) is younger or less than 2 years older than the child;

(b) was not, at the time of the alleged commission of the offence, a person in authority in respect of the child; and

(c) was not, at the time of the alleged commission of the offence, in a relationship with the child that was intimidatory or exploitative of the child.’[[4]](#footnote-4)

1. **Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.**
* A person guilty of sexual assault shall be liable on conviction on indictment to imprisonment for a term not exceeding 5 years.
* A person guilty of aggravated sexual assault shall be liable on conviction on indictment to imprisonment for life.
* A person guilty of rape shall be liable on conviction on indictment to imprisonment for life.
1. **What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?**

Under sections 6 to 9 of the Criminal Justice Act 1993[[5]](#footnote-5), the trial court is entitled to award compensation to victims of rape and other offences, to be paid by the defendant as part of the penalty (the ‘compensation order’). However, in practice this is rarely used. A state-funded scheme exists for victims of violent crime; the Criminal Injuries Compensation Tribunal[[6]](#footnote-6). The Tribunal cannot award compensation where the victim and the assailant were living together as part of the same household at the time of the assault. This rules out compensation in many instances, for example in cases of marital rape.

**Aggravating and mitigating circumstances**

1. **Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**

These can include premeditation, use of a weapon, the exploitation of a weak or defenceless victim, the use of excessive cruelty and the breach of trust. A recent decision of the Supreme Court has set guidelines for the severity of sentence that should be imposed in relation to rape[[7]](#footnote-7).

1. **Is rape by more than one perpetrator an aggravating circumstance?**

Not explicitly defined

1. **Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference)**

YES

1. **Is rape by spouse or intimate partner an aggravating circumstance?**

YES

1. **Does the law foresee mitigating circumstances for the purposes of punishment?** **If yes, please specify.**

YES: early admission of guilt, age of perpetrator, circumstances relating to family and life opportunities, the lack of a previous criminal record, whether the perpetrator shows genuine remorse, and the consequences of the offences on the offender.

1. **Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?**

NO

**Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?**

NO

1. **Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? If yes, please specify.**

NO

1. **if the perpetrator marries the victim of rape?**

NO

1. **if the perpetrator loses his “socially dangerous” character or reconciles with the victim?**

NO

**Prosecution**

1. **Is rape reported to the police prosecuted ex officio (public prosecution)?**

YES

1. **Is rape reported to the police prosecuted ex parte (private prosecution)?**

While possible in theory, it rarely happens. Any prosecution of a minor (under 18) must have the consent of the public prosecutor.

1. **Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?**

NO

1. **Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?**

NO

1. **Please provide information on the statute of limitations for prosecuting rape.**

There is no limitation period for prosecuting rape.

1. **Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?**

YES

1. **Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?  If yes, please specify.**

Not explicit in legislation, but a lack of any evidence may mean that a case might not be prosecuted.

1. **Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial?**

Yes. The judge must approve an application to bring up sexual history during trial and will do so if the judge believes that it would be unfair to the accused to refuse to allow the evidence[[8]](#footnote-8). In practice, if such application is made, it is normally granted.

1. **Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings?**

YES - ‘“protection measure” means a measure which is intended to safeguard the safety and welfare of a victim by limiting or preventing contact with, or repeat victimisation, retaliation or intimidation of, the victim by an alleged offender or any other person on his or her behalf and includes:

(a) advice regarding the personal safety of the victim;

(b) advice regarding the protection of the property of the victim;

(c) advice regarding safety orders, barring orders, interim barring orders and protection orders within the meaning of the Domestic Violence Act 2018[[9]](#footnote-9);

(d) an application to remand the alleged offender in custody;

(e) an application that any admission of an alleged offender to bail be subject to conditions; and

(f) the right to have protection needs assessed and have measures put in place to stop further victimisation and intimidation;[[10]](#footnote-10)

**War and/or conflict**

1. **Is rape criminalized as a war crime or crime against humanity?**

YES[[11]](#footnote-11)

1. **Is there a statute of limitations for prosecuting rape in war or in conflict contexts?**

NO

1. **Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?**

NO

1. **Has the Rome Statute of the International Criminal Court (ICC) been ratified?**

YES

**Data**

1. **Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.**

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| --- | --- | --- |
|  | **Rape crimes recorded**[[12]](#footnote-12) | **Rape convictions (incl. on a lesser charge)[[13]](#footnote-13)** |
| **2015** | 516 | 69 |
| **2016** | 516 | 54 |
| **2017** | 652 | 31 |
| **2018** | 784 | not yet available |
| **2019** | 807 | not yet available |

**Other**

1. **Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.**
* Continuing societal pressures on people not to report/ follow through with investigations in context where approximately 75% of victims know/ may be related or connected to the perpetrator;[[14]](#footnote-14)
* Inadequate training for police & other justice staff in effective investigation and prosecution of crime;
* Lack of legal aid or assistance for victims leading to risk of abuse/ re-traumatisation in the court system;
* Lack of training for juries and court personnel in rape myths;
* Lack of sentencing guidelines so that those disclosing can understand how the perpetrator may be sanctioned if convicted;
* Delay in the justice system;
* Insufficient supports for victims so that they self-blame/ self-shame.

***For further information, please contact:***

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1. Criminal Law (Rape) Act, 1981, Section 2: <http://www.irishstatutebook.ie/eli/1981/act/10/enacted/e> [↑](#footnote-ref-1)
2. Criminal Law (Rape) (Amendment) Act, 1990, Section 4: <http://www.irishstatutebook.ie/eli/1990/act/32/enacted/en/html> [↑](#footnote-ref-2)
3. Criminal Law (Rape) Act, 1981, Section 5 [↑](#footnote-ref-3)
4. Criminal Law (Sexual Offences) Act 2017, Section 17.3.8: <http://www.irishstatutebook.ie/eli/2017/act/2/section/17/enacted/en/html> [↑](#footnote-ref-4)
5. Criminal Justice Act 1993, Section 6 –8: <http://www.irishstatutebook.ie/eli/1993/act/6/enacted/en/html> [↑](#footnote-ref-5)
6. Criminal Injuries Compensation Scheme: <http://www.justice.ie/en/JELR/Pages/WP15000110> [↑](#footnote-ref-6)
7. DPP v F.E.: <https://beta.courts.ie/view/judgments/6550262e-55f5-47a4-a9c3-495fdb16b9db/f9475b2c-5bcd-4a86-b24f-5164edc4f9b8/2020_IESC_5_1.pdf/pdf> [↑](#footnote-ref-7)
8. Criminal Law (Rape) Act, 1981 Section 3: <http://www.irishstatutebook.ie/el> [↑](#footnote-ref-8)
9. Domestic Violence Act 2018: <http://www.irishstatutebook.ie/eli/2018/act/6/enacted/en/html> [↑](#footnote-ref-9)
10. Criminal Justice (Victims of Crime) Act 2017: <http://www.irishstatutebook.ie/eli/2017/act/28/enacted/en/print#sec19> [↑](#footnote-ref-10)
11. International Criminal Court Act 2006 Section 7: <http://www.irishstatutebook.ie/eli/2006/act/30/enacted/en/print#sec1> [↑](#footnote-ref-11)
12. Central Statistics Office, Recorded Crimes <<https://statbank.cso.ie/px/pxeirestat/Statire/SelectVarVal/Define.asp?maintable=CJA01&PLanguage=0>> accessed 12 May 2020. [↑](#footnote-ref-12)
13. Director of Public Prosecutions, Annual Report 2018 <<https://www.dppireland.ie/app/uploads/2019/11/AR2018-eng.pdf>> accessed 12 May 2020 [↑](#footnote-ref-13)
14. Ireland in the grip of sexual violence crisis <https://www.irishexaminer.com/breakingnews/ireland/ireland-in-grip-of-sexual-violence-crisis-rape-crisis-centre-sees-demand-for-services-soar-937176.html> [↑](#footnote-ref-14)