

## Tithe an Oireachtais

An Comhchoiste um Dhlí agus Ceart, Cosaint agus Comhionannas

# Tuarascáil maidir le héisteachtaí i ndáil le Foréigean

# Baile agus Foréigean Gnéasach

Deireadh Fomhair 2014

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**Houses of the Oireachtas**

Joint Committee on Justice, Defence and Equality

# Report on hearings in relation to Domestic and

# Sexual Violence

# October 2014

**31/JDAE/018**

**Preface**

In 2013, the Committee decided to initiate a public process to examine Domestic and Sexual Violence in Ireland, and based on submissions received and evidence heard, make a number of recommendations to the Minister to consider in confronting this issue. The Committee agreed that Deputy Anne Ferris [Vice-Chair] and Deputy Marcella Corcoran Kennedy should act as Rapporteurs on the separate subjects of Domestic and Sexual Violence and to prepare a report for the Committee’s consideration.

In November 2013, over 40 submissions were published from various groups/individuals on the issue of Domestic and Sexual Violence towards men, women and children. It was agreed to invite a number of those who made submissions to a public hearing to further elaborate on some of the main points raised by them. These hearings took place over two days – 19th February and 26th February 2014 and the transcripts are included in Appendix B.

In consideration of the many views expressed, it was agreed that the best way to add value to the consultation process was to publish the submissions received. Unfortunately, it was not possible to publish some submissions as they contained private personal information. However, the Rapporteurs did take the contents of all submissions into account.

These submissions can be viewed on the Oireachtas website at [www.oireachtas.ie](http://www.oireachtas.ie).

At the time, it was agreed to hold public hearings to further explore these matters early in 2014.

On behalf of the Committee, I wish to thank both Deputy Ferris and Deputy Corcoran Kennedy for bringing this matter before the Committee and undertaking this study with such commitment.





David Stanton, T.D.

Chairman

October 2014

**Introduction**

Domestic violence is an issue that has become a frightening reality for many Irish people. This is further underpinned by the increasing prevalence of sexual violence in Ireland.

The Rapporteurs wish to acknowledge the quality and detail of the submissions and recognise that in some cases the making of submissions may have been a painful experience. During the course of these emotive hearings a number of key points were raised. These points have been of great assistance to the Committee in considering the very serious and difficult issues this process has raised.

This report is an attempt to highlight some of the points raised and to expose the terrible and truly shocking situations some people endure on a daily basis. We believe that the evidence speaks for itself but we do make a number of recommendations which we will bring to the attention of the Minister for Justice and Equality. We hope that this process, in some way, brings a little comfort to the victims of domestic and sexual violence. The intention of this report is to present recommendations that are robust and victim-focused. This report groups the recommendations into four categories:

* The Law and Criminal Sanctions;
* Protection and Support of Victims;
* Education and the Prevention of Domestic Violence;
* Sexual Violence

The Rapporteurs would like to thank all those who courageously engaged in this process and assisted in the consideration of the evidence and the development of this report.

 

Anne Ferris TD Marcella Corcoran Kennedy TD

Vice-Chair / Rapporteur Rapporteur

**Criminal Law on Violence**

The offence of assault is defined under section 2 of the Non-Fatal Offences Against the Person Act 1997. The common law offences of assault and battery were abolished under section 28 and replaced with a new offence of assault under section 2. Under the Act, an assault occurs when a person, without lawful excuse, intentionally or recklessly:

1. directly or indirectly applies force to or causes an impact on the body of another, or;
2. causes another to believe on reasonable grounds that he or she is likely immediately to be subjected to any such force or impact.

For an assault to occur, these actions must be committed without the other person’s consent. The Act further details what constitutes force and the types of penalties that are available to the courts to impose. The Act provides for other serious offences including rape and sexual assault.

A further legal consideration is that the home is inviolable under the Constitution, save in accordance with law. This is affirmed in Article 40.5 of the Constitution. However, under the Criminal Law Act 1997, a member of An Garda Síochána may enter a home to apprehend an individual suspected of an arrestable offence, with the occupier’s knowledge. Furthermore, a state agent may enter a dwelling to defend an occupier’s constitutional rights.

The Committee, through its own preliminary research for this report, makes these points as a statement of fact on the law as it currently stands, rather than a finding from the evidence that it heard. However, this should not be an issue of making findings, as it is extremely clear to most of society that Domestic and Sexual Violence is totally unacceptable and should not be tolerated. In light of the evidence presented here, the Committee recommends that the law be amended, and that national policy be further adapted to robustly combat this issue. The Committee specifically recommends the creation of specific offences, in consideration of the domestic context of these issues.

The Committee also details a number of possible initiatives, including the focus on education and the application of specialised programmes to raise awareness of this subject. The Committee believes that a strong message must be conveyed through public policy and legislation that this type of behaviour is completely unacceptable. Furthermore, the protection of victims is of paramount importance. Both law and policy need to recognise the signs of domestic violence, and need to be well equipped to act when needed.

In addition to national policy, the Committee recommends clear adherence to international standards and norms, and the signalling of solid commitments to address Domestic and Sexual Violence in all of its forms. The Committee calls upon the Minister to sign the Istanbul Convention, and ensure its immediate ratification and implementation once this decision is made.

**Recommendations**

The following are some of the main points raised during the hearings, but the Rapporteurs emphasise that in order to get an idea of the true scale of these problems in our society, the full submissions and the transcripts should be read. Over the course of this exercise the Committee heard some shocking and disturbing accounts, many extremely distressing, of the abuse suffered by victims of domestic and sexual violence in modern Ireland. The Committee praises the courage of contributors in telling their story, and the evidence heard presents the most compelling justification for the recommendations set out in this report. The Committee urges the implementation of these recommendations as far as practicable, taking into account all relevant legal and constitutional issues.

It is clear from the evidence presented to the Committee that domestic and sexual violence is a damaging scourge on Irish society. Not only does this issue concern physical violence, but also psychological violence and emotional violence. It plunges families into turmoil, destroys homes and most significantly, destroys lives. In addressing this, the State needs to ensure it is addressed as far as the law will allow, with the best supports made available to victims and the toughest possible sentences served on the perpetrators.

Careful consideration was given to all submissions, with the objective of presenting recommendations that are not only robust, but also just, right and proportionate to the damage this issue may cause. Above all else, the Committee recommends that consideration is given to an approach that is one of zero-tolerance, making the necessary legal and if required, constitutional changes to combat this most distressing issue.

**Part I: The Law and Criminal Sanctions**

1. **That the Government legislates for the necessary legal and constitutional changes to make domestic violence, in itself, a crime. Furthermore, the Committee also recommends a wider definition of “domestic violence” and “domestic abuse”.**

As detailed above, assault is a crime under Irish law, whether this is committed inside or outside the home. The Committee heard that violence in a domestic context is often treated differently to public assault, where public assault is treated more seriously. The Committee submits that in the context of the psychological and emotional effects it has, this crime should be treated as being as serious if not more serious than many other forms of criminal and common law assault.

The Committee heard a number of accounts via submissions and hearings of the approach taken by services to domestic violence. Based on what was presented to the Committee, the Committee believes that this form of violence is most harmful and recommends that consideration is given to punishing such offences as severely as possible, with more robust and effective remedies, including barring orders and imprisonment. The reporting procedures for domestic abuse need to be more empathetic to the victim, with the appropriate services put in place to assess and act on any case of domestic abuse.

Furthermore, consideration must be given to creating a range of specific offences within this context: For example, reform legislation could create a new offence of ‘domestic / martial assault’, which as well as applying to physical harm, could also be applied to the humiliating impact domestic abuse has on the receiving party. Similarly, an offence of ‘psychological abuse associated with an act of violence’ could be considered, which would apply to emotional abuse of victims. This could be best achieved through legislation aimed at specifically addressing domestic violence. In addition to assault, the Committee further suggests that the requirement of the DPP to consent to prosecutions for rape within marriage under section 5(2) of the Criminal Justice Act 1990 be removed.

Finally, domestic offences, given their seriousness, must be clearly defined. The Committee heard how in most cases the abuses are premeditated and repeated, and not once off arguments or incidents. The Committee heard how many abuses are carried out with the intention of degrading and humiliating the victim in the one place he or she should feel secure, the home. Furthermore, in most cases the abuse is sustained and continuous, forming an identifiable pattern evidenced by the physical and/or emotional state of the victim.

1. **That the Minister gives consideration to empowering and requiring the Garda Síochána to take statements regarding a complaint of domestic violence, including the compiling of a report of what the Force itself has witnessed at the time the complaint is made. This could include, if the victim permits, the taking of photographs and the immediate arrangement of a medical assessment of the victim.**

This recommendation would allow the Gardaí to immediately step in to help the victim. From an evidentiary perspective, the taking of statements and the compiling of a Garda report would allow the commencement of the process towards securing a successful prosecution, which in turn would enhance the victim’s safety. The inclusion of an early medical assessment would further aid the process by determining the need for additional services as required.

The Committee submits that it should be the case that once a victim presents to a Garda station or support centre, an appropriate process should commence with the objective of protecting the victim. The Committee further recommends below for the introduction of an emergency barring order system to provide for the immediate protection of the family from the perpetrator if necessary. While protection is of paramount importance, the Committee states that the taking of photographs and other evidence would aid the process of bringing the perpetrator to trial.

1. **That the Minister gives consideration to creating two additional and more serious offences of marital / habitual assault and domestic assault, to be treated and punished more severely than the existing offence of assault under the Non-Fatal Offences Against the Person Act 1997.**

The Committee considers that the family home should always serve as a place of safety and not a refuge for crime. Violence in all its forms should attract appropriate legal sanction. The Committee submits a new offence of marital / habitual assault should exist in the case of a spouse / partner assaulting another spouse / partner. This should be complimented by a further offence of domestic assault, to be applied in cases of abuse of children within the home to act as a deterrent against the psychological trauma that can be inflicted upon family members within a domestic violence situation.

The gravity of these offences should not be diminished as a result of the offence occurring within the Constitutional protection of the institution of marriage, or the home. Furthermore, it is the view of the Committee that the naming the new offences in this manner would emphasise the seriousness of the crimes. The names of convicted offenders should be permanently added to the domestic violence register and/or sexual offenders register as appropriate.

These offences would be designed to cater for not just the harm caused to the victim, but also the harm done to the stability of the family home, the trauma inflicted upon witnesses to such violence, particularly to children, and the special psychological and emotional harm caused to the victim in situations where the perpetrator is a spouse or cohabitee. The law should provide for a range of penalties for such cases, including permanent barring orders, fines and where appropriate the mandatory application of a custodial sentence.

1. **The Committee recommends that consideration be given to legislating for the enhanced criminalisation of psychological abuses such as stalking and harassment within a marital or domestic context.**

The Committee considers that within the domestic context of this offence, the consequences may be extremely serious, up to and including the prospect of serious bodily harm for the victim. This is an offence that can take many forms, such as repeated attempts to contact, following the victim, turning up at the victim’s place of work, cyber-stalking etc. The Committee submits that it should be a sufficient standard of proof to show on the balance of probabilities that the behaviour of the accused has caused the victim to feel intimidated and / or to anticipate physical harm.

The Committee suggests a criminal offence of stalking, to apply where it can be proven that a perpetrator had been expressly told to leave the victim alone, but failed to do so. The Committee further suggests an additional aggravating factor to this offence where a prior intimate or domestic relationship is demonstrated and that there is a menacing nature to the perpetrator’s conduct. Therefore, the Committee recommends both a summary offence, to be punished by fine or caution and an offence on indictment, to be punished by a larger fine and / or imprisonment.

1. **The Committee recommends that consideration be given to the criminalisation of certain acts which may not necessarily involve physical harm, but focus more on psychological and emotional harm to the victim.**

The Committee, in a number of personal accounts of domestic abuse, heard that the emotional effects were far reaching and extremely damaging to the victims. The Committee was told about a number of examples of psychological abuse, and in light of this suggests that some consideration be given to criminalising some elements of this behaviour within a marital / habitual context. For example, there already exists an offence of harassment in Irish law, which only requires that the action is persistent.

In line with the above recommendations on an offence of martial / habitual assault and an offence of stalking, the Committee recommends an offence of marital / habitual harassment to cover abnormal behaviour in the category of persistent and damaging put-downs, coercion and threats. It should be noted that listing these forms of abuse may be non-exhaustive, so some discretion may be required from the court. Equally, the Committee acknowledges that these forms of abuse may not be limited to marital / civil partner/ cohabitee relationships, the breach of the trust and dependence that may exist within such a relationship is an additional consideration.

1. **It is recommended that consideration is given to reviewing the requirement that details of family law cases are held *in camera*, with a view to forming an appropriate reporting system for family law cases. Further to this, it is recommended that consideration for a review of how allegations of abuse in such cases are addressed, with perhaps the introduction of a requirement to refer such allegations to the Garda Síochána and DPP if they are made in the course of proceedings.**

The Committee was particularly concerned by some of the stories victims had to tell in relation to the investigation and prosecution of domestic and sexual violence. The issue of *in camera* proceedings and anonymity featured throughout submissions. The main purpose of this practice is to protect the identities of those involved. This is out of consideration of the serious nature of violent and sexual offences and the potential effects it can have on the professional and personal lives of those who may be found innocent of such crimes. This also corresponds to the principle of accused persons being presumed innocent until proven guilty. The privacy of victims and innocent family members is also a consideration.

The rights of the victim must be treated with the highest importance. Publishing more detail of the rationale used by Family Law Courts in reaching decisions would allow for consistent standards to be formed and maintained, while also ensuring that constitutional rights and common law legal principles such as *stare decisis* are properly maintained.

1. **The Committee recommends that provision is made for a Domestic Violence Unit within the courts, tasked with dispensing justice for domestic violence.**

This proposal envisages the use of specially trained and experienced judges in a “one family, one judge” model, which would be complemented by the provision of specially trained support services aimed at assisting the victim.

1. **That consideration is given to establishing a domestic violence register to catalogue details of convicted abusers.**

As well as acting as a deterrent against crime, such a system could aid Gardaí in assessing the severity of a complaint made when a party alleging a domestic crime presents at a Garda station and assist in in the process of ensuring the protection and well-being of those at risk. It could also be used with a view to ensuring that repeat offenders face justice for their crimes. Such a register could allow the Gardaí and law enforcement services to obtain greater powers to act and intervene in situations of risk, such as powers of arrestor acquiring greater powers to detain the accused until a barring order process has been successfully concluded. In the United Kingdom, the Domestic Violence Disclosure Scheme, known as Clare’s Law, was put in place across England and Wales in March 2014 after a successful pilot.

1. **That consideration be given to the introduction of emergency barring orders, in order to provide immediate protection to parties at risk of violence until representation can be made before the courts.**

The Committee submits that this issue is integral to reform. The Committee heard that many victims have nowhere else to go, and it is the accused and not the injured party who should be required to leave the family home. The introduction of an emergency barring order would allow for the prohibition of the accused from entering the family home until there has been an opportunity for a court to hear the full case. Such a measure should only be operated as an interim measure until the case is fully heard by a court and following case law in this area, emergency barring orders should not be granted for an indefinite duration.

1. **That the Government promotes the establishment of international standards in addressing and punishing domestic and sexual violence, including the transposition of Directive 2012/29/EU on victims’ rights and the ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention)**

Domestic and sexual violence is not just a national problem, but an international problem. Combatting this issue cannot be effective without the establishment of an international norm. Furthermore, the standardisation of rights and offences throughout the European Union would allow for the pursuit of those suspected of committing such offences to be more widespread and effective. To help ensure this, consideration could also be given by the Government to urging the European Commission to initiate legislation on combatting gender based violence as part of its promised initiative to address this issue.

**Part II: Protection and Support of Victims**

1. **The number of places of safety needs to be increased to ensure that no victim has to return to an abusive environment. There also needs to be sufficient refuge space to accommodate victims with children in order to prevent a situation where a victim has no option but return to an abusive environment.**

Very often, victims of domestic and sexual violence remain in a dangerous situation for a variety of reasons. These include fear, financial dependence on the perpetrator, no alternative accommodation and shame. It is essential that when a victim of domestic and/or sexual violence builds up the courage to seek assistance, a rapid and coordinated service must be available. This service must take account of the individual situation of the victim and put in place the appropriate steps to ensure the removal of risk. The service must also ensure that it can provide assistance to a victim who presents with their children allowing them to stay together as a family unit.

The Committee heard some extremely disturbing and distressing accounts of the circumstances faced by victims of domestic and sexual violence. What was clear from submissions was the inappropriate level of resources to provide refuge and eventually housing to those who are forced out of their homes by their abusers. This could be avoided if Recommendation 9 is implemented. As reiterated below, the Committee submits that consideration is given to the establishment of a ‘legal duty to act’ on all concerned, most importantly the Gardaí, courts and support services, many of whom presented evidence to the Committee.

1. **An emergency social welfare fund needs to be established to ensure that victims are not forced to remain in an abusive or unsafe environment simply because their financial need is assessed jointly with their partner. The Committee submits that consideration be given to a means of financial support, including emergency financial assistance.**

The Committee was told that some victims who are in receipt of financial aid from the State are sometimes jointly assessed with their partner. This situation means that in many situations victims cannot afford leave an abusive environment as to do so would render them destitute. This further empowers the abuser and also places any children at increased risk of physical, sexual and psychological injury.

1. **The Committee recommends that appropriate supports are put in place to support migrants who are victims of domestic violence, particularly in situations where the victim is dependent on the perpetrator for residency.**

The Committee was disturbed to hear that many victims are dependent on the perpetrators for residency and this may pose a barrier to victims seeking help and assistance. In addition, the Committee was also disturbed to hear that language barriers posed a difficulty for some victims, as addressed in the below recommendation. The Committee believes that victims should be granted access to Garda reports, safety / barring orders or proof that the Gardaí have been notified of an incident of domestic violence, where this information may be of assistance in securing residency or an independent means of living.

The Committee further submits that where there is clear evidence of domestic violence, such as what members of An Garda Síochána may observe at a crime scene, then immediate supports to the victim should be put in place without the types of delays that can occur owing to a need to locate an interpreter. The Committee believes that this role could fall to An Garda Síochána if necessary, not in the form of an arrest, but in the form of sourcing emergency overnight refuge to a victim until alternative accommodation can be found. The Committee would like to see the establishment of a duty on all concerned to ensure the safety of the victim.

1. **In addition to the previous recommendation, the Committee recommends a formal exemption to the habitual residence condition to account for domestic violence.**

The Committee heard that this may prevent many victims of domestic abuse from coming forward and seeking help. In order to overcome this difficulty, the Committee submits that an exemption should exist to the habitual residence condition, to allow for an emergency provision for those who are dependents to a perpetrator who is habitually resident, and those whose habitual residence depends on cohabitation with a spouse.

1. **The Committee recommends the establishment of a national pool of speakers / translators, at all stages of the process, to assist immigrants who are the victims of crime to access the services they need and defend their rights as protected by the State. The Committee further submits that such a pool be made a direct resource of the Garda Síochána and the courts.**

As mentioned above, the Committee heard how there can be significant language barriers for victims of domestic violence in seeking help. It noted the particular difference in the provision of translation services for criminal cases in the courts, but not for the protection of victims of domestic and sexual abuse. The Committee suggests that the provision of a language resource is considered. This could take the form of drawing a pool from among existing interpretation services, or outsourcing language services on an *ad hoc* basis as these services are needed.

**Part III: Education and the Prevention of Domestic Violence**

1. **It is recommended that the curricula for relationships and sex education programmes in schools are reformed to include a basic course in conflict resolution and mediation which may benefit young persons. In addition, children need to be educated to know that domestic abuse is not normal.**

In the course of the hearings, it was suggested that very often the perpetrators of Domestic and Sexual Violence have witnessed such behaviour in their own homes and do not view this behaviour as abnormal or unacceptable. This creates a cycle of abuse within each generation and this cycle needs to be broken. It is important that young men and women learn to show mutual respect for each other and see each other as equals. It is also important that anyone who becomes aware of a child living in an abusive environment to make this fact known to the appropriate authorities.

Ideally this would contribute to the nurturing of a generation which does not view physical or sexual violence as the norm in later life and places a focus on developing a mutual respect for members of the opposite sex. As pointed out earlier, these are just some of the main points which particularly struck us in the course of our examination of this matter and we reiterate that everyone should read the submissions and full transcripts for a more complete picture of the nature and extent of this blight on our society.

1. **Consideration to be given to putting processes in place to listen to children who have witnessed and are affected by domestic violence, both in the context of evidentiary requirements and family law disputes.**

The trauma on a child of experiencing domestic abuse between parents was one of the gravest aspects of the evidence presented to the Committee. The Committee submits that the psychological, emotional and physical wellbeing of the child should be one of the primary considerations in addressing instances of domestic violence. Quite simply, children should not be exposed to an environment that is harmful or destructive to them.

1. **The Committee recommends that consideration be given to the merger of Tusla and Cosc, resulting in a single body which provides for the strategic and operational action against the issue of domestic violence**

This is of fundamental importance to developing an efficient system for both the planning and action in providing and executing support services for those affected by domestic violence and abuse. Tusla’s remit is focused on the protection of children, while Cosc’s remit is focused on the prevention of domestic, sexual and gender based violence. The Committee heard that the similarities in the nature of the work carried out by both organisations could justify their merger, with Tusla providing the research and strategy aspect and Cosc becoming responsible for the implementation of these strategies and representations to the Department of Justice and Equality. The overall remit could be changed to allow the merged entity to focus on all forms of abuse and violence within the family dwelling.

1. **The Committee submits that additional emphasis be placed on rehabilitation of perpetrators of domestic abuse who are the subject of their first complaint or do not have a history of domestic violence.**

It is important that perpetrators are punished for committing any crime, but securing convictions can also be an important aspect when helping families at risk of domestic violence. The Committee heard about some rehabilitation and assistance programmes that are available, involving victims, perpetrators and children. The Committee submits that such programmes could help ensure that where possible domestic violence is “nipped in the bud”, and address cases where there is only a recent history of domestic violence or no history at all. This could serve to allow perpetrators to take responsibility for their actions and abstain from future violence.

**Part IV: Sexual Violence**

1. **The Committee reiterates its previous recommendation that the Minister gives consideration to the adoption of the Swedish Approach in combatting prostitution, that is, to criminalise the purchase of sexual services, while decriminalising and providing support services to those who sell sexual services through prostitution.**

The European Parliament recently passed a resolution describing prostitution as a form of violence against women. The Committee also heard that some make the argument that it is a human right for a person to do with his or her body as he or she pleases. The Committee is most concerned to learn that many vulnerable people have become involved in the sex industry not as a matter of free choice. The Committee submits that the law should penalise the demand for prostitution, through a number of robust measures. This approach should aim to ensure that the purchaser of sexual services is punished rather than the person in prostitution themselves.

Recently, the Committee recommended the criminalisation of the purchase of sexual services. The rationale for this is that those who create the demand in the illegal market are targeted with criminal sanctions, allowing more scope for the protection of people in prostitution. This is commonly known as the Swedish approach.

However, the Committee reiterates that as the purpose of this present examination is to highlight domestic and sexual violence, the issue is raised here again in the context of prostitution as a form of violence against the person. The Committee heard that there are cases where the buyers of sexual services may perpetrate additional physical violence and heard of one database of offenders which is used as a warning system within the sex industry. The Committee would like to add that in the context of people in prostitution, the economic and social factors that lead them to adopt such work should be examined in greater detail, but in a manner that doesn’t criminalise or stigmatise.

1. **The Committee recommends that consideration is given to new reform legislation aimed at codifying and clarifying the law in this area.**

The process of introducing reform legislation should also include a full review of the preparedness of the current law to address such crimes is necessary in order to assess any changes that could be made. This should include an examination of the substantive and procedural provisions in the law, as well as sentencing and post-release supervision of individuals convicted of sexual offences. In addition to this, the Committee makes the following specific recommendations:

1. **The Committee recommends that the law governing sexual offences be codified into a single Act.**

The Committee heard how the present law concerning the investigation and punishment of sexual offences can be incoherent. It is submitted that as well as criminal sanctions, the law concerning support services, registers and welfare of victims is codified in a single Act. It is submitted that as well as punishing the perpetrators, the law should equally be concerned with protecting the welfare of victims through specialised services, as recommended below. Similar legislation was introduced in the United Kingdom in 2003, which if replicated in Ireland would present an opportunity to optimise the law in relation to these issues.

1. **The Committee recommends that consent is fully defined under Irish law, including a defined list of circumstances where consent is not presumed.**

Specifically, the Committee heard that the definition of consent may be ambiguous, and recommends that a positive definition of consent be enshrined in Irish law. The Committee also submits that a list of circumstances which do not constitute consent is included, as the Committee heard was the case in New Zealand. This would provide a “second tier” in the definition which would list specific circumstances where consent is deemed to be absent. Enshrining this in statute would give a wider guidance to judges when applying the law in specific cases.

Capacity is another matter which was addressed in evidence presented to the Committee, and the Committee submits that consideration is given to the establishment of clear guidelines on what is and is not consent. The Committee also suggests that special attention is given to the protection of individuals with mental incapacity from sexual exploitation.

1. **The Committee recommends that the age of consent remains at 17 years but that consideration is given to some reform in circumstances where there is no exploitation involved.**

The Committee suggests that age differences between two people who engage in sexual activity be taken into account when considering a prosecution, particularly in cases on non-exploitative sexual expression. The Committee suggests that such expression be subject to penalties such as fines, community service and other probationary remedies, rather than a prison term. In addition, consideration could be given to the objectification of the definition of honest belief, as well as the introduction of a proximity clause would ensure that under-age consensual non-exploitative sexual activity is outside the remit of the criminal law where the age difference is no more than two years.

1. **The Committee recommends that consideration is given to the establishment of specialised units within An Garda Síochána, medical personnel, prosecution lawyers and support services, which are dedicated to the investigation and prosecution of domestic and sexual crime.**

The Committee acknowledges that in many cases the trauma caused to the victim can be very severe and as such, protection of the victim and the investigation / prosecution of the offence may be enhanced through the equipping of public services with well-trained and experienced personnel. For example, experienced personnel from Rape Crisis Centres and support organisations could be integrated into a reformed process for investigating and prosecuting sexual crime. The Committee believes there is a vital need for specialisation and training for criminal justice stakeholders who deal with sexual violence regularly and as such, recommends a focus for resources on this particular area.

The Committee heard how appearing before a jury of one’s peers may be upsetting for victims. It submits that the provision of specialised judges or a specialised court within the Criminal Courts of Justice may help alleviate this fear for victims, allowing the judge to direct the jury to be mindful of considerations which are specific to a particular case, based on his/her training and experience. In terms of the evidentiary requirements, the Committee submits that the right of the accused to represent himself or herself be qualified to prohibit a situation where the alleged perpetrator cross examines the alleged victim. Further to this, the Committee also submits that judicial discretion be structured to ensure that evidence of sexual experience is not admitted unless absolutely necessary.

1. **The Committee recommends that consideration is given to strengthening the regulation of pornography, including the development of programmes that educate young people on its potential dangers and the banning of any pornographic material that features violence and abuse.**

The Committee heard that this issue is very much an underlying factor to a large proportion of sexual violence. While the Committee acknowledges that an outright ban on pornographic material is unlikely, it certainly believes that its availability and use can be regulated. The Committee suggests that educating our young people that abuse and violence in the context of relationships is wrong will help alleviate the false sense of entitlement that appears to underpin the issue of domestic and sexual violence.

The Committee was very disturbed to be told that many people have reported the use of pornography during their abuse. It is clear that this is a factor and therefore it is submitted that consideration could be given to banning the sale and distribution of pornographic material that features abuse and violence, particularly against women. The Committee notes that child pornography is already criminalised and enforced, so the expansion of the criminal law to also outlaw abuse and violence in adult pornography is also enforceable. The Committee believes that the protection of women in particular should be the underlying rationale of such a measure.

**Conclusions**

As mentioned already, the Committee was disturbed to hear evidence of the extent of domestic violence in Ireland and the individual accounts of abuse detailed in submissions. Once again, the Committee wishes to thank all those who made submissions and would like to reiterate its praise for the courage and bravery of the many people who shared their stories.

The recommendations in this report reflect the conclusion of a long and detailed study of the submissions, and emphasise the need to bring in robust and effective measures to deal with the perpetrators of abuse and violence within the home. Domestic violence is a crime, and should be treated as such. Furthermore, those affected do not always just include the victim. All too often children are exposed to most despicable acts of violence within the home. The measures this Committee proposes not only aim to criminalise this conduct, but treat it with the gravity and seriousness it deserves.

As well as the introduction of further criminal and legal sanctions, the Committee addressed this issue under an additional two headings, protection of victims and prevention of domestic violence. The Committee believes that no victim should have to leave the family home because of domestic violence, and favours the approach of introducing emergency barring orders to target the perpetrator, with additional barring and safety orders put in place after a court hearing.

The Committee further believes that support should be given to resources and services where victims present at a Garda Station or refuge. Among the recommended reforms is the amendment to the Habitual Residence Condition to allow for situations where domestic violence is involved. Education is also a key component of addressing this issue, and the Committee submits that programmes are introduced which underline the fact that this behaviour is wrong.

The final heading the Committee considered is sexual violence. This is an underlying feature of domestic violence, but outside of the home is becoming an increasing affront to society generally. The Committee recommends an encompassing consolidation of legislation along the lines of the Sexual Offences Act 2003 in the UK. Furthermore, the Committee has made recommendations on a number of issues, such as the age and definition of consent, the treatment of statutory rape and the regulation of pornographic material. The Committee believes that a prevalence of violent and abusive material can convey a sense of entitlement amongst some men, which in turn can create threatening situations for others in Irish society. Guidelines and legislation in this area is urgently needed.