



RAPE CRISIS
NETWORK
IRELAND

RAPE & JUSTICE IN IRELAND

HANDBOOK

November 2010



About the RAJI Research

Rape & Justice in Ireland (RAJI)* is a report on 4 years of independent academic research undertaken in the Faculty of Law, NUIG, by a team led by Conor Hanly. The academic expertise within the team included qualifications in criminology, the law, psychology, statistics, sociology, political science and equality. The research was commissioned by Rape Crisis Network Ireland (RCNI).

The research looked at three populations/sets of materials.

- Strand 1** > Survivors of adult rape committed since 2002 who were over 18 at the time – **100 survivors** participated.
- Strand 2** > Prosecution stage – **596 DPP files**, received between 2000 and 2004 inclusive, were examined.
- Strand 3** > Rape trials which went before the Central Criminal Court between 2000 and 2005 - **173 cases** were examined.

While the populations being examined in each of the three strands sometimes overlap, they also differ; therefore the evidence in each strand is not comparable across the strands. For example only 66 out of the 100 survivors in strand 1 contacted the Gardaí and not all of those cases would have had a file sent to the DPP. *Where statistics appear in this book we have indicated which strand they come from with S 1 , S 2 & S 3.*

*Full reference: **Conor Hanly, Deirdre Healy, Stacey Scriver**, Rape & Justice in Ireland: as national Study of survivor, prosecutor and court responses to Rape (RAJI), RCNI, Liffey Press, Dec. 2009

About RAJI II

RAJI II is the RCNI strategy to raise awareness of the findings of RAJI and to promote and achieve implementation of the recommendations. This handbook was produced by the RCNI as a quick reference guide to accompany RAJI II. The contents of this handbook are distilled from the RAJI report. The RCNI take full responsibility for any misrepresentations that may have emerged from this summary. *It is recommended you use this handbook only as a guide and refer to the original report for further detail.*

Foreword

For a society intent on addressing rape and other forms of sexual violence both in terms of appropriate response and prevention, the objectives encompass a reduction in offending behaviour, a pursuit of justice where crimes are committed and an appropriate response to victims of crime.

Rape Crisis feminism has for over 30 years focused on campaigning for reform of statutory responses and developing specialist responses to meet survivor needs. What we can see throughout RAJI is that the system at various stages does work for survivors, **with a high proportion of satisfaction with initial contact with the Gardaí for example.**

However, the research found a divergence of response, practice, gaps in the law, and omissions in policy. The authors have made a number of recommendations which address these shortcomings. In addition the **Garda Policy on Sexual Crimes published early in 2010 and recent training review addresses a number of these concerns.**

The authors conclude that none of these reforms to the laws, practice and policy of statutory agencies by themselves offer a full solution. They also documented cultural obstacles in terms of fixed ideas about rape, responsibility and blame. It is these obstacles that are perhaps our shared next challenge in terms of creating a society free from abuse.

The law, the realities & justice

A key State duty is the pursuit of justice through the criminal justice system, for the crime of rape. RAJI reminds us with its stark findings how difficult and daunting that pursuit is, particularly for the complainant. Yet the RAJI findings also show us where there are failings and gaps in our laws, our practice and our response which if changed can improve the prospect of justice for rape and lessen the secondary trauma to survivors of participation in the criminal justice system.

'[the Gardaí] didn't judge me, concerned about my welfare, made it easy to go to college. Gave support on constant basis, explained system very well. They talked to offender and his friends about harassment and it stopped'

(RAJI survivor).

Facts & Stats

- 8% of survivors who **reported to the Gardaí did not go on to make a statement** (S 1 p 140)
- 9 out of 58 survivors who gave a statement later **withdrew that statement (S 1 p 240)**
- 27% of rape complainants between 2000 and 2004 inclusive, withdrew their complaint from the DPP (S 2 p 243)
 - > Over 40% of withdrawals were made by complainants who had **a current or past sexual relationship** with the accused (p 244)
 - > 10 complainants are considered to have withdrawn primarily due to **delay (p 248)**
- The DPP suspected 6% of cases to be **false** (S 2 p 223)
- **the DPP decided not to prosecute** 70% of rape files (S 2 p 232)

- 77% of defendants were granted **bail** at some point during the criminal justice process, almost all by the District Court (S 3 p 281)
- The average length of a trial was 33 months from date of incident to final disposition.
- Cases that were contested and went to trial took on average 9 months longer than those where a guilty plea was entered. (RAJ Executive Summary)
- The average **length of a sentence** for rape was 9 years and 3 months (S 3 p 303)
- Out of 181 cases that went to court (S 3)
 - > 70 were **convicted of rape**, and
 - > in total 108 were **convicted of some offence (p 329)**.

'Have heard nothing about the case for a year. Was asked to sign a release form to send clothes to Dublin. This is the last I heard. Any info I've got is from phoning them myself. I feel my case isn't important to them'

(RAJ survivor).

RAJI recommends the following to be written into Irish law

- The **Victim's Charter** (RAJI recommendation 10)
- **Bail** in rape cases should always be subject to strict conditions (RAJI rec. 13)
- **Bail** should not be granted to a defendant who has been convicted of rape (RAJI rec. 13)
- Forbidding a defendant in a rape case to conduct a personal **cross-examination** of the complainant (RAJI rec. 20)
- The restrictions on the introduction of **sexual history evidence** should be extended to the prosecution (RAJI rec. 21)
- Judges to be obliged to instruct **juries** that a conclusion that the complainant acted foolishly does not of itself make her wholly or partially responsible for the rape (RAJI rec. 16)
- Section 6 of the Criminal Justice Act 1993 be amended to clarify and strengthen the **victim compensation** procedures (RAJI rec. 23)
- DPP to be obliged to seek **compensation** on behalf of the complainant after conviction (RAJI rec. 23).

'Somebody [the DPP] makes a decision about the rest of your life and you're not entitled to an explanation?'

(RAJI survivor quote)

RAJI recommendation 22. Delay at all stages of the criminal justice system should be examined and reduced. The National Crime Council report recommendations on delay should be implemented.

RAJI recommendation 18. The interaction between suspended sentences and **post-release supervision** orders should be examined.

Attitudes, beliefs, culture & justice

Most people were raped by someone they knew and many of the assaults occurred in the victim's or the perpetrator's home. Alcohol was consumed in the majority of cases (see page 5 for more). Yet we can see in RAJI that a rape that fit this scenario was less likely to be prosecuted while the less common rape which is perpetrated by a stranger for example, is the most likely to be prosecuted. Reading RAJI one can only conclude that culture, beliefs and attitudes have a significant and negative impact on the pursuit of justice. RAJI demonstrates how these attitudes and beliefs were perpetuated and reinforced at every point in the criminal justice system.

'[It] happened in local area. I didn't want anyone to know what happened. I did not report the rape because I was too ashamed at what happened to me at my age. I didn't think anyone would believe me and I did not want my children to find out what had happened to me'

(RAJI survivor).

Facts & stats

- Over two thirds of rape cases sent to the DPP occurred in a private setting (S 2)
- Nearly 62% of complainants whose cases were sent to the DPP knew the man accused of raping them (S 2)
- 18% of rapes that were prosecuted by the DPP were stranger rapes (S 3 exec summary)
- 42% of those who had made a report seriously considered withdrawing their complaint and the primary reason for this was poor treatment by the Gardaí (S 1 p 159)

- one third of those who made a report) were encouraged to withdraw, almost half of those after dissuasion by Gardaí (S 1 p 161)

'We had continued a sexual relationship for a couple of years after the relationship. I felt that because people would view our relationship as being on a strictly sexual basis then the Gardaí wouldn't believe that I hadn't consented or that it wasn't me leading him on'

(RAJI survivor).

RAJI recommendation 1 & 2 Gardaí to develop a protocol to initiate and maintain ongoing contact with rape complainants and keep victims informed of the key developments of the case as required by the Victims Charter.

RAJI recommendation 3. Garda training should place greater emphasis on sensitivity and compassion for rape victim.

RAJI recommendation 5. Attempts to dissuade complainants from maintaining their complaints must end. This has been addressed in the Garda Policy on Sexual Crime.

RAJI recommendation 14. Research should be commissioned into the jury deliberative process

RAJI recommendation 24. Expert group convened to consider the acceptable limits of cross-examination and defence strategies and to consider if specialist training for lawyers involved in rape cases is required.

Alcohol, rape & justice

The clear message of RAJI is that ours is a binge drinking culture and this drinking culture provides the context for the majority of sexual violence crime. Alcohol's presence presents challenges in responding appropriately to sexual violence. Rape survivors, where alcohol was present, were not only more vulnerable to targeting for sexual assault in the first place, but once they report such an attack to the Gardaí, they were less likely to obtain redress through the legal system.

'I felt she [i.e., the interviewing Garda] thought I was wasting her time and that she didn't believe it was actually a rape because of the fact I was so out of it, I don't remember much. I only reported it in case there were similar cases that it might help'

(RAJI survivor).

Any relationship between alcohol and sexual violence is complex. Alcohol is not, and cannot be, an excuse for rape or an excuse for recklessness as to consent. How we choose to consume alcohol is a choice. How we chose to behave having consumed alcohol is not solely determined by alcohol; there are wider cultural influences at play. **A critical finding in RAJI is that to address alcohol consumption and behaviour while drinking is to address sexual violence.**

Facts & Stats

- 76.6 % of **suspects had consumed alcohol** on the date of the offence (S 2 p 227)
- Over 80% of **complainants** had consumed alcohol around the time of the offence (S 2 – p 225)
- For about two third of complainants and 90% of defendants whose

alcohol consumption was capable of being measured, the drinking was at **“binge” level** (7 standard drinks) (S 3 p 319).

- Nearly 40.8% of defendants were described as **‘severely intoxicated’** (S 2 – p 227)
- 45.4% of complainants were described as ‘severely intoxicated’ at that time (S 2 p 225)
- 4 out of 15 women who **did not report** took this decision largely because of the alcohol/drugs they had consumed (S 1 p 141)
- 29.9% of complainants with a history of alcohol abuse **withdrew their case** themselves (p241) (as compared to a general withdrawal rate of 27% (S 2 p 243)
- A complainant’s history of alcohol abuse was found to **negatively affect** the likelihood to prosecute (S 2 p 239).

‘I was made to feel it wasn’t a serious sexual assault. I was phoned a few days later. Garda stated ‘you were seen on CCTV footage kissing this man’ I was devastated. A kiss did not encourage a sexual assault’

(RAJI survivor).

RAJI recommendation 25. Dealing with **Ireland’s binge drinking**, particularly as it effects the behaviour of potential perpetrators, should be seen both as part of any anti-rape campaign and a prerequisite for the success of any such campaign.

RAJI recommendation 26. A **media campaign aimed at men**, particularly young men, to make them aware that rape is a possible consequence of binge-drinking.

Mental health, rape & justice

Where a complainant suffered from psychiatric illness few prosecutions were attempted by the DPP and there were no convictions (S 2).

For prosecution, reliable witnesses are a necessity. However, it is also essential that every individual in the state have equal access to the protection of the law. Where some groups, in particular those with psychiatric illnesses are seen to be excluded from the justice system due to personal attributes or disabilities a violation of human rights may have occurred (see, for instance, X & Y v. The Netherlands).

The authors were so concerned at this finding they said that it would be prudent (and ethical) for the DPP to examine internal decision making and consider pursuing more cases involving individuals with psychiatric illness issues to test juries and expose possible prejudices and assumptions regarding same (S 2 p 251).

Facts & stats

- RAJI found that after gender, disability is the **second most common risk factor** for rape (p 231)
- 13.1 % of whom were recorded as having past or ongoing **psychiatric illness** (S 2 p 231)
- Where the complainant had a psychiatric illness the **DPP only prosecuted 2 out of 78** cases (S 2 p 240)
- There was **no apparent distinction made for different degrees of psychiatric illness** for example low levels of psychiatric illness (S 2 p 252).
- 38% of complainants with a psychiatric illness withdrew their statements. This represents a disproportionate 16% of all complainant withdrawal.

RAJI recommendation 4. Specialist training for Gardaí who take statements from those with psychiatric illness

RAJI recommendation 6. Where possible victims should be allowed time to **recuperate** before their full statements is taken by the Gardaí

RAJI recommendation 12. The **DPP should develop a protocol** for dealing with complainants with a history of psychiatric illness to ensure that complaints by such people are not being dropped simply because they have a psychiatric illness.

Specialist support services & justice

The findings and recommendations in this study tell us that expert and specialist support services to victims are essential. It finds that victims are more likely to engage with and remain with the legal process if they have access to such services.

1. Engaging with the criminal justice system

Only a minority of survivors report to the police. In 2002, the SAVI report found that only 10% of all survivors reported, RCNI National Rape Crisis Statistics have found that an increasing number of service users are reporting, with 18% in 2007 and 27% reporting in 2009.

Expert victim support during the entire legal process is essential (RAJI p 258).

RAJI demonstrates the importance of forensic evidence to the prosecution of rape cases. **Sexual Assault Treatment Units (SATUs)** are expertly staffed, specially designed and properly equipped units that provide forensic clinical examinations for victims who have been raped or sexually assaulted. As well as medical examinations SATUs facilitate medical care, crisis intervention and links to longer term support, advocacy and

counselling through Rape Crisis Centres and other agencies. Access to SATUs may increase the incentive for – and therefore the rate of – rape reporting (p 253, 257). RAJI considers that it is quite possible that the very low rate of rape reports in the far west of Ireland may be due, in part, to a complete lack of SATU services in this area at the time of the study (p 254).

'I didn't feel that I was hugging my child. I had no feelings... feelings of...that nurturing loving mothering feeling that you have for your child... I felt like a stranger, I felt strange because I felt numb...I mean I looked ok but I just felt nothing, absolutely nothing...I went through the whole process [of daughter's confirmation] and I laughed and I sat and I talked but I felt absolutely nothing. It was like I was dead inside'
(RAJI survivor).

Facts & Stats

- Survivors in the study indicated that their **recovery** began when they were able to start talking about what happened to them and list the Rape Crisis Centres and particularly Rape Crisis Counsellors as the primary or secondary source of support (RAJI p. 218).
- **Friends and family** were the people survivors first told in 70% of cases. The most common sources of support were friends, who were the first ones told in half of all cases (n = 50), followed by family members, who were the first ones told in 20 per cent of cases (S 1, p 163).
- The most common reason given by participants in the study who reported to the Gardaí but did not make a formal statement was the perception that they could not deal with the difficult **demands of pursuing a case** (RAJI p 82).
- Survivors gave **specialist support services**, the highest satisfaction rating of 4.7 out of 5 (S 1 RAJI p 162).

- Victims who **withdrew their statement** were found to feel that they had less control over that decision (S1 p 188 - 190).
- Victims who felt they were influenced by powerful others in their decision making were **more likely to have more and stronger Post traumatic Stress Disorder (PTSD) symptoms** than those who felt they had control over decisions (S. 1 p 191).
- The **impact of the rape** on the mental and physical health, social activities, employment and personal relationships of the women interviewed was largely similar regardless of whether or not they had made a report (S 1 p 209).
- The **unemployment rate** for women who were raped was twice that of the national average for women (19% and 7.8% respectively) (S 1 p 129).

'I did leave college because... I couldn't go in because I was worried in case people started asking me questions... I didn't want tutors asking me where I was and then start me bursting into tears and having to run away...and it has affected me because anytime I go looking for a job – "how come you were only in college for two years, blah, blah, blah". And you can't say that to them'

(RAJI survivor).

RAJI recommends that continuing to provide funding for and development of **specialist support services** is indispensable in helping victims and is likely to minimise the rate of attrition (p 257).

RAJI recommendation 7. That SATUs be established at locations throughout the State, ideally within 80 kilometres of any given location, and that there be a media campaign to educate the public about such supports.

2. Staying engaged with the criminal justice system

'I was looking for a code book, a guide book for a long, long time of what to expect next so I could be prepared. And no such things exist of course, but I asked advice from the Rape Crisis Centre and I used the hotline continually which was great because you really do need people to talk to... and as you grow, you do get stronger, you do... you recover... you do... become stronger in yourself... you become far more appreciative of where you've been, what you've been through and who you're becoming now'

(RAJI survivor).

RAJI recommendation 7. that improvements should continue to be made in the provision of **support services** to complainants from the very beginning of their involvement with the judicial system.

RAJI recommendation 8. that there be a **nationally coordinated approach** to the planning, delivery and ongoing evaluation of support services for victims of sexual violence.

Data Collection

RAJI recommends that all NGOs operating in the criminal justice area produce and publish high quality statistics relating to their operations. It is also part of this recommendation that NGOs should be required, at a minimum, to co-operate with all legitimate research projects to the maximum extent consistent with their resources and requirements.

Victim Impact Statements/Reports & Justice

Victim impact statements and reports (VIR) are presented to the court after conviction and before sentencing. Complainants have a statutory right to address the court as to the impact of the rape and the court is under a statutory obligation to take that impact into account (Section 5 of the Criminal Justice Act 1993). The extent to which such statements are or should be taken into account is discussed within RAJI.

Rape and Justice in Ireland, Strand III examined 107 victim impact statements and reports (VIR) made with respect to 92 complainants. These VIRs were prepared most often by psychologists (44%) or Guards (18%). The victim herself was the author of just over 14%, and Rape Crisis Centres accounted for just over 11%. Some 13% were by other, unspecified authors.

The impact on victims of the rape as outlined in the VIRs was analysed and catalogued by the researchers. The Reports tended to focus naturally much more on psychological and other non-physical effects of the rape on the victim rather than on the physical effects, which were generally covered by medical reports. Only two Reports out of the 107, did not mention psychological effects.

Facts & Stats

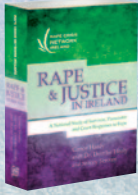
Issues cited in a Victim Impact Statement (S 3):

- Just under 16% of VIRs **cited the defendant**
- Just under 18% **cited sentencing** issues
- **Psychological concerns - 98%** of cases
- **Trust Issues - 55%** of cases
- **Physical injuries - 32%**, or one-third of cases. Only 6 of the 15 reports prepared by the victim themselves mentioned physical injuries

- **Work Problems: 31%** of victims' reports mentioned them generally
- **Time Off Work** - just over **25%** of cases
- **Moved Away** - just over **21%** of victims' reports
- **Economic Loss** - almost **17%** cases
- **Relationship Issues** - almost **16%** of cases
- **Changed Job** - **9%** of cases
- **Lost Job** - **9%** of cases
- **Family Issues** - **8%** of cases

RAJI recommendations 19: the production and distribution a **booklet** 'giving directions on what is inappropriate to mention' should be included in a victim impact statement, primarily for use by victims.





The Book is available to order at
www.theliffeypress.com
or call 353-1-851 1458

Rape Crisis Network Ireland (RCNI) is an information and resource centre on all aspects of sexual violence, with a proven capacity in strategic leadership including contributing and advising on the necessary infrastructure for the national response to all aspects of sexual violence. RCNI is the representative body for Rape Crisis Centres in Ireland. RCNI's role includes the development and coordination of national projects, supporting Rape Crisis Centres to reach quality assurance standards, and using our expertise to influence national policy and social change.



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