

The lawlessness of the home



Women's experiences of seeking
legal remedies to domestic violence
and abuse in the Irish legal system

A Summary

The voice of women

This research is a step towards assessing the efficacy of the Irish legal system's response to women seeking legal remedies to the violence and abuse they experienced by an intimate partner.

This report documents the lived consequences of the failures of the Irish legal system – the impact of inconsistencies and fragmentation, the lack of clarity, cohesion and transparency, and the impact of stereotyping on the lives of women and children relying on a system to work for them.

Critique of the Irish legal system and how it deals with domestic violence has been ongoing for over 20 years. Much of this work still holds today. This research report brings the findings and recommendations of all of this work together. It also looks at international law, experiences and best practices in a variety of other jurisdictions.

Most significantly, 'the lawlessness of the home' adds another essential dimension to our knowledge of how the Irish legal system responds to domestic violence. It centre-stages the lived experiences of women as they have looked for legal remedies to abuse and violence. The 'lawlessness of the home' gives voice to some of the women who have been silenced by the short-comings of our legal system.

At the heart of this research are the anonymous narratives of 13 women, who have bravely talked in one-to-one interviews about their engagement with the legal system. They range in age from 32 to 72. They live in urban and rural areas. Some of the women were born here. Some were not. Some of the women have children. Others do not. Some are married and some are not. Their stories are often shocking. They are often remarkable. And yet they are not unusual and they are not a surprise.

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Summary of research findings

This research shows that those women who did engage with the Irish legal system did so with very mixed results. Recent national data tells us that relatively few women report domestic violence to the Gardaí in Ireland. Most domestic violence perpetrators are not convicted and when they are convicted, jail time is rare.

Domestic violence is a violation of women's human rights, both as a result of the violence they experience and the failings of the system to protect them and to hold perpetrators to account.

Experiences in the women's narratives and feedback from service providers were consistent. Women generally were silenced in court, their allegations of domestic violence were not fully investigated or requests to make statements were not facilitated readily and breaches of orders went by unpunished. Access and custody issues were generally adjudicated without reference to the domestic violence or consultation with children. The different layers of the justice system from the Gardaí to the judges failed to give each woman the time and attention necessary to properly analyse her specific case.

6 key things the research tells us

1. Women are not being heard

The right to be heard is one of natural justice and is enshrined in Irish constitutional law. However, many of the women and the SAFE Ireland advocates involved in this research do not perceive the legal system as offering a fair hearing to women and children. Women are often not taken seriously when they make a complaint to the Gardaí about an incident, or when barring or safety orders are breached. Legal representatives advise them not to speak in court, even if they feel they are being unfairly represented. They often stay quiet for fear of annoying a judge, for fear of reprisal or to protect their children. They are accused of making false allegations. In separation or divorce cases, domestic violence within a relationship is often not taken into consideration.

2. High risk predictive behaviours like cruelty to animals are being missed

The most serious of all the outcomes of the Gardaí and/or the court not hearing the evidence is the missed opportunity for spotting high-risk behaviour and doing something about it before it is too late. Many of the women interviewed recounted a number of high-risk behaviours – threats to kill or coerced sex, for example – which were not always heard or included in evidence. However, cruelty to animals was the risk-factor most commonly ignored. It is associated with a spectrum of violent and anti-social behaviours and is recognised in international best practice as a high-risk behaviour to note. The women in this study relayed how their partners had killed pets in front of children, had killed farm animals or had kicked pets. It was an issue, which for different reasons in each case, was not compiled in evidence and was not heard in court. If assessing

for risk had taken place in many of the presented cases, this could have clarified the specifics of the violence and highlighted a requirement to provide protection for those families, in particular to attend to and monitor the welfare of the children. The narratives demonstrate the serious deficiency, especially among the Gardaí in risk assessment, and we heard accounts from women and children being left in situations of increased danger even after reaching out for help.

3. There is no consistency and continuity in the application of the law

Throughout the women's narratives, we heard how inconsistencies and the lack of continuity in applying the law have led to unjust treatment of women and a failure to adequately protect them and their children by holding perpetrators accountable. This suggests that part of the problem, for those affected by domestic violence, in being heard is the implementation of current legislation and policies.

The evidence from women illustrates that systems of investigation and justice are inconsistent and discontinuous, and are often reluctant to engage with domestic violence complaints. Many of the women and the support workers spoke about the difficulties of one judge hearing the domestic violence application, making the order and then not also hearing the access and maintenance applications, or making the orders for separation and divorce. Custody and access issues were often dealt with independent of domestic violence so that the violence was not seen as significant and relevant. The divide between family and criminal courts was often used by those who use violence to delay cases or evade consequences. In some cases, judges treated criminal behaviour that occurs in the public domain – like traffic fines or possession of cannabis – as more serious than violence in the home, thus undermining complainants' faith in the system and their attempts to protect their children.

4. There is no legal definition of domestic violence

There is no provision for the crime of domestic violence in Irish criminal law (although this is a recommendation in the recent report of the Oireachtas Committee on Justice and Equality on hearings on domestic and sexual violence). Instead, there is a range of offences under Irish law, which may be used to prosecute offences of domestic violence. While different legislation provides for the criminalisation of forms of domestic violence such as assault and sexual violence, the systematic pattern of abuse and coercive control is not clearly defined in our statutes and law. When women speak about the abuse they have experienced in this research they firstly talked about the coercion and the control as the most debilitating form of abuse and the most common. Domestic violence is often minimised as "just a domestic". This is a phrase that all the women said they had heard. This makes society and those in our institutions blind to behaviour that would be punished if it happened in public, or between two people not in an intimate relationship. Defining domestic violence crimes separately can allow legislatures to attach harsher penalties for domestic violence crimes and to address high rates of recidivism by requiring more severe punishments for multiple domestic convictions than for multiple general convictions.

5. Victim and perpetrator stereotypes influence legal outcomes

This report shows that stereotypes in domestic violence can influence remedies. Stereotypes can be based on gender, ethnicity, perceived class or level of education, whether someone is a criminal, on the type of abuse and violence and whether it is defended. The domestic violence victim and perpetrator stereotypes affect whether a woman who lives with violence gets a barring order and whether a man who is violent is punished for its breach. This stereotyping in turn influences people's demeanor and approaches to the legal system. Women may become what they are expected to be and men do too. A domestic violence support worker providing court accompaniment said that in her experience, a woman who has lived with violence has to be: ***“White, compliant, not too angry. You know somebody who seems kind of beaten down and passive. You go in there advocating for yourself as a strong woman ... that’s one thing you don’t do.”***

6. The system of response is fragmented – either the constituent parts do not link up or they do not work at all

Women pointed to ***“weak links in the safety chain.”*** There is meant to be a system in place to respond to women and children. It is referred to all the time. But the reality for women involved in this research is that the system exists on paper – it is an illusion. Existing law is often applied badly or not at all.

The system – as a safety chain for women and children – causes more difficulty and more trauma for women because it is not linked together or because its links are either missing or broken. The importance of multi-agency cooperation and good advocacy was a significant feature for women in order to reduce stress and to contribute to positive outcomes.

Our 5 Priority Recommendations

Our full research document makes 34 recommendations under eight themes. These have been approved by the National Steering Committee on Violence Against Women and have also been submitted to the Joint Oireachtas Committee on Justice and Equality. To really transform our legal and statutory response to women and children, law-makers, policy makers and legal professionals have to take on these recommendations in their totality. However, in the immediate term, here are our five priority recommendations.

1. Expand the Legal Definition of Domestic Abuse and Violence

Explore the benefits and unintended consequences of developing a comprehensive legislative definition for domestic violence which encompasses coercive control and explicitly recognises these violations of human rights within Irish law.

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2. Put in place a system that will ensure that the application of law is consistent and has cohesion

Decide to either establish a specialist domestic violence integrated court model that ensures victim autonomy which is operated by professionals trained with understanding of the dynamics of domestic violence, OR, training of all justice professionals including the judiciary who are hearing or representing domestic violence cases in both civil and criminal courts, or BOTH.

There is need for investment to establish strong infrastructure to ensure consistent implementation and monitoring of law and policy across the legal system.

Establish and resource locally coordinated multi-agency response teams which prioritise the safety and autonomy and right to privacy of victims while working to hold perpetrators accountable for their violent behaviour.

3. Introduce a risk assessment toolkit and homicide review structures

Introduce and implement standard risk assessment tools for all front-line statutory and non-statutory professionals responding to women and children experiencing domestic violence.

Establish homicide review legislation and implementation structures which means that a multi-agency review is conducted, following a domestic homicide, to assist all those involved in the review process, in identifying the lessons that can be learned with a view to preventing future homicides and violence.

4. Enact the Children and Family Bill 2015

Enact the Children and Family Bill 2015 but ensure that there are appropriate exemptions in place for victims of domestic violence. For example, victims of domestic violence should not be directed to enter into mediation or post parenting support programs with the perpetrator, these should be a matter of choice for the victims. In addition, there needs to be investment in courts services in order to ensure that they have the human resource capacity and training to implement the new legislation.

5. Ensure that there are special measures in place for victims of domestic violence so that barriers to accessing the justice system are removed

Ensure that special measures are put in place for victims of domestic violence in both civil and criminal proceedings in order to protect their anonymity and risk of intimidation by the perpetrator.

Ensure that legal aid costs are exempted for victims of domestic violence. Ensure that psychological assessments can be ordered by judges at district court level as well as circuit court. Ensure access to protection orders for all women including 24 hour emergency barring orders.

What this Research Will Spearhead in 2015

This research work is not an end point. It is a vital starting point. The recent publication of the Garda Inspectorate report strongly compliments the findings of our research report.

Both reports are comprehensive, but still, they only break the surface of the issue of domestic violence in Ireland and the legal system that tries to remedy it. The material and recommendations contained in both reports can be a catalyst for vital reform of how our legal system deals with domestic violence as we go forward.

There are champions for reform in every Irish institution that meets women and children: in An Garda Síochána, in the legal professions, social work, the health service and the courts. We have stated very clearly in this report that there are “pockets of good practice” around Ireland.

We want this good practice to be the norm, to be what women can expect when they seek legal support and remedy. To ensure this, SAFE Ireland will:

1. Initiate a series of thematic round table seminars

We will bring together Irish and International experts and practitioners across the current legal systems to a series of innovative, themed roundtables to put the focus squarely on the solutions to the complexity of the issues raised in this document.

2. Work with Government and relevant agencies to ensure that Ireland meets the requirements of the new EU Victims Rights’ Directive, which comes into effect in November 2015

SAFE Ireland can provide specialist advice on the specific needs of victims of domestic violence – both women and children - to Ireland’s preparation for this imminent new Directive. With the new EU Victims Rights Directive, the European Commission is taking action to make sure that victims of crime, including victims of domestic violence, can rely on their rights under EU law. EU Member States, including Ireland, have until 16 November 2015 to implement the directive’s provisions in their national laws. The law guarantees minimum rights for all victims, including proper support, information and protection.

3. Ensure the development of a Needs and Risk Assessment Toolkit for Justice Professionals

SAFE Ireland is currently working with specialist organisations from four other European countries to develop a Needs and Risk Assessment Toolkit that can support the work of justice professionals and organisations. Risk assessment has become a vital step in the protection of individuals from continued and repetitive abuse. It is already widely acknowledged that serious or fatal assaults may be predicted if the established risk factors are identified in a domestic abuse situation. Despite this, in Ireland there is no prescribed risk assessment toolkit or homicide review structures which can be used in the case of domestic violence. This situation is putting lives at risk every day.

SAFE Ireland is the national organisation of 40 domestic violence services, located throughout the country. Our members provide specialist, professional and proven support to women and children.

The legal research *The Lawlessness of the Home* was carried out for SAFE Ireland by Simone George, Solicitor and SAFE Ireland researcher.

SAFE IRELAND

Unit 5, Centre Court
Blyry Industrial Estate
Blyry, Athlone
Co Westmeath

Tel: +353 (0)906 479078

Email: info@safeireland.ie

Website: www.safeireland.ie

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Comhshaoil, Pobal agus Rialtas Áitiúil
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ISBN No: 978-0-9932127-0-3