

Hungary

Cries unheard

The failure to protect women from rape and sexual violence in the home

Summary

Girls and women seeking justice for rape in Hungary confront an almost insurmountable barrier. Crimes of sexual violence wreck the lives of women in every country in the world, and the effective prosecution of those responsible poses challenges to all governments and societies. Yet in Hungary, the government and the criminal justice system have yet to tackle the widespread prejudices that prevent women who have been raped or subjected to other forms of sexual violence from obtaining justice or redress.

Most rapes and other crimes of sexual violence are committed in the home and by people known to the victim, most frequently husbands and other intimate partners and former partners. The number of studies in Hungary has been shockingly small, although it has been estimated that nearly one in three women has been subjected to physical violence by their partner. In the only recent survey of over 1,000 women on physical and sexual violence in the home in Hungary, 28 per cent reported being beaten and over 7 per cent said they had been forced to have sex by their partners.

Rape and other forms of sexual violence are violations of women's human rights. The government's responsibility for criminal acts by private individuals lies in ensuring that laws and procedures provide a framework of protection, that such provisions are vigorously implemented to protect women from violence, and that women who have been subjected to violence are actively supported in obtaining justice and redress. These obligations on the state are set out in international human rights laws that Hungary has made commitments to uphold.

The government has made some moves in the right direction. In 1997 rape within marriage was recognized as a crime within the Penal Code. In 2003 the National Assembly resolved to establish a national strategy for the prevention and successful handling of domestic violence. Also in 2003 the police issued guidelines on the responsibilities of the police force in responding to domestic violence.

Yet the discrimination and denial that women continue to face in their struggle for justice against rapists and domestic abuse reveal the state's lack of political will to confront the pervasive prejudices that riddle the criminal justice system and broader society. The government is still failing to tackle the legal requirement that physical resistance by the victim must be proved, the dilatory police responses, and the lack of specialist services in the justice and health systems, which all provide positive disincentives to reporting the crime. Girls and women who have been raped can expect to be disbelieved and stigmatized.

Amnesty International is calling on the government of Hungary to respect, protect and fulfil women's rights through changes in the law, by ensuring access to justice, and by providing standards and training for professionals working with victims of sexual crimes. The government is urged to set up support services for victims of sexual violence, to carry out research and compile data that will inform policy making, and to actively combat social prejudices through public education. It must tackle crimes of sexual violence as seriously as other acts of violence against the person. Until effective action is taken, girls and women in Hungary will continue to be denied their right to justice and redress without discrimination.

The impact of rape

Rape and other forms of sexual violence have a devastating impact on women's lives. Women subjected to domestic violence, which often involves rape, suffer the same pain, humiliation and threat as victims of other forms of violence. They may have physical injuries, be subjected to psychological abuse, and experience the same feelings of powerlessness and depression. In addition, they are often without emotional support, facing alone widely-held myths and prejudices in the community about women's responsibilities for abuse by an intimate partner.

Many rape victims feel ashamed of what has happened to them and fewer of them ask for help than the victims of other forms of physical violence. They are only too aware that in rape cases the victim is treated as guilty until she can prove her innocence, while the accused is deemed innocent until proved guilty. A woman judge told Amnesty International:

"I have worked as a judge for 20 years, but to tell you the truth, I myself would not report rape. It is very difficult because of the procedures, the attitudes, and social conventions. It is the victim who has to defend and prove everything."

There are still strong prejudices against women who face violence in the family or are raped in Hungary. In a public opinion poll of nearly 1,200 people in 2006, over 32 per cent of those polled believed that women were responsible for being raped: nearly 40 per cent of the men and over 25 per cent of the women. A total of 62 per cent did not know that marital rape was a crime in Hungary. Over 15 per cent of the men thought that a husband forcing his wife to have sex was not rape, compared to over 8 per cent of women.

Rózsa received no support from friends or relatives although her husband beat and raped her routinely – indeed, they tried to explain and legitimize the violence – as she told Amnesty International.

"When he started to beat me regularly, his father said that he was right... When I told the police, they said that he had been quite alright the previous evening in the pub... I was ashamed to talk about this to my acquaintances. Everyone thought that women should just bear these things."

All rape has a devastating impact on the victim, but rape by an intimate partner leaves the victim under continuous threat of a repeat attack, powerless, disbelieved by many around her and frequently held responsible for the attacks she has endured.

A key barrier to women in trying to obtain justice for rape and other crimes of sexual violence is the high rate of attrition in such cases – the large number and proportion of cases that drop out of the legal process, failing even to reach court or not resulting in criminal convictions. The police may not identify the attacker. The victim or other witnesses may decide to withdraw their statements or not to press charges. The case may be labelled a “false report”. The police, prosecutors or judges may decide there is not enough evidence.

Despite high levels of attrition, Hungary’s conviction rate for rape and other sexual crimes is one of the highest in Europe, averaging convictions in over half of all cases. However, remarkably few cases are reported to the police, largely because of the social prejudices encountered within the criminal justice system by women who report such crimes. Other factors include the flawed laws on rape, poor investigative skills and training within the police, and the lack of official support and services offered to victims.

Flawed rape laws

Hungary’s laws on rape are in need of urgent reform. The Penal Code defines rape and other crimes of sexual violence as “crimes against marriage, the family, youth and sexual morality”. This removes the focus from the harm done to the victim, and encourages silence for fear of the damage even a complaint will do to a woman’s standing in her community. The Council of Europe has recommended member states define acts of physical or sexual violence as violations of “physical, psychological and/or sexual freedom and integrity”.

Most worryingly, in the Penal Code’s definition, rape must involve force by means of violence or threat of physical harm. This effectively denies women’s rights to sexual autonomy and physical integrity, and fails to provide proper protection from violence. In practice, the courts have assumed that, however severe the risk to the woman’s safety, she is deemed to have consented to sex unless she can prove she resisted.

János and Szilvia, a middle-aged couple, were attacked by four young men on their way home one night. János was beaten up and injured in the street. Szilvia was raped. All four men received suspended prison sentences, but on appeal three were acquitted and the fourth given a suspended term. The court ruled that “the victim is required to resist or at least express her resistance, if she is able to resist. This resistance must be serious, and the victim must say that she does not give her consent: she must also do something physically to try and avert the crime.”

One appeal court suspended a prison sentence for rape on the grounds that a child had not been able to prove that she did not physically resist for fear of her attacker.

Barbara was 15, had epilepsy and a learning disability, when she was raped by a 40-year-old man. He was sentenced to three-and-a-half years in prison, but on appeal his sentence was suspended and reduced. The appeal court ruled that physical violence “could not be established without doubt from her testimony, but only from that of the psychiatric specialist, who gave the opinion that the determined manner of the perpetrator, and his superior strength, restrained her from defending herself effectively.”

To introduce women's rights to sexual autonomy and equality in Hungarian law, the definition of rape and other crimes of sexual violence must include the possibility that they may be committed with intent or recklessly: with intent when the perpetrator knows that no consent has been given; recklessly when the perpetrator is reckless of whether consent has been given. Such a definition does not affect the burden of proof or the presumption of innocence for the defendant: The prosecution still has to prove that there was no consent or free agreement.

Failures to deliver justice and redress

The implementation of criminal procedures and regulations frequently fails to protect victims and proves a greater hurdle than the failings of the law itself. Widespread prejudices about rape and about women who make accusations of rape within the police and the criminal justice system result in serious under-reporting of sexual crimes.

The reasons for under-reporting are complex and diverse. Women fear retribution from the abuser and his associates, and stigma and ridicule within their community, but also have little confidence in the criminal justice system and health services. Even if they own the property they live in, their partner may refuse to leave the home, and the police may be reluctant to assist unless there is evidence of serious injury. Silence on the part of abused women may also result from economic dependency. Unemployment rates are especially high in rural areas and among mothers with very young children.

Too often the police fail to carry out professional investigations into reports of sexual crimes. Police investigation files submitted in court are formalistic and unusable. Vital material evidence such as stained clothing is not seized for forensic examination. Witnesses are not sought out or interviewed.

After Sztella reported to the police that her former husband had raped her, two police officers who arrived at her apartment listened to her former husband's version of events outside the building but failed to enter to examine the scene or attempt to interview Sztella, who was soon taken away by ambulance. Months later the police decided that no crime could be ascertained or result expected. Sztella had to initiate a private prosecution. The court decided there was insufficient evidence to convict.

Interviews by Amnesty International with a number of police officers revealed common prejudices about rape and about women who make accusations of rape:

"What is rape? It is different from a man's and from a woman's point of view... [Accusing someone of rape] can come in very handy for women when they want to get a divorce and parental rights... Anyone can hit her own head on a table... Why would police officers, prosecutors or judges be different from society?... Women often change their mind, and do not want to press charges."

One Hungarian study on official responses to domestic violence found many cases in which the police refused to pursue investigations, sometimes simply because they did not believe her or because, in the presence of the abusive partner, the woman told them she was to blame.

The police often discourage women from reporting sexual crimes that will be difficult to prove, or fail to record reports of crimes that they do not investigate.

There appears to be a serious failure at the heart of the police service to appreciate the negative attitudes women face when reporting sexual crimes or in their dealings with police officers. Senior officers have revealed blatant prejudice in attempts to shift not only the responsibility for under-reporting but also for the crimes themselves to the victims. A police expert on rape issues greeted Amnesty International's representative in 2006 with the words:

“Are you the one who has come to talk about the birds brought in here who say they have been raped?... At least 85 per cent of them are whores. They want to have sex, but then do not manage to come to an agreement. They are prostitutes, overtly or secretly. An expert can see this.”

Such bigotry is also found in the courts and other parts of the criminal justice system.

Court hearings in the case of Dora, a woman with a mental illness who was gang raped and tortured, stretched out for years. Although two men were initially sentenced to prison terms for acts of indecency, following a retrial and a reduction of the charge to slander, one man was acquitted and the other fined. The court ruled as relevant that Dora had allegedly admitted to working as a prostitute in the past.

Witnesses and victims are not adequately protected from harassment by defendants and others. The accused is allowed to directly question the victim both before the police and the court, and in practice such confrontation sessions take place on more than one occasion. “I found this quite useless and traumatizing when I worked as an investigator,” one police officer told Amnesty International.

The trauma continues in court.

Although teenager Eva consistently told the court that she had been raped, at one hearing she said that sex with the accused had been consensual. The court record showed that she was reluctant to answer questions, barely spoke and was incoherent, in contrast to her previous testimony. Relatives and supporters of the accused were present in court that day. At the next hearing, she said that she had been threatened by the relatives at the entrance to the court, an allegation confirmed by a teacher who escorted her. The accused was acquitted.

Missing data and lack of support services

The government fails to ensure there is statistical information and up-to-date research to form the basis of policy making and legislative reform in the area of sexual crimes. There is also a lack of training to address common misconceptions about the role of women which block access to professional support and treatment.

Police and prosecution service statistics about rape and other crimes of sexual or domestic violence show only the number of cases that the police started to investigate. The number of complaints is not recorded – including those dismissed without investigation. It is therefore

unclear how many cases were not investigated because a victim decided not to press charges or because the police decided there was insufficient evidence to prosecute.

Nor does the police and prosecution service conduct or commission research into the reasons for low levels of reporting to the police and prosecutions, into the experiences of girls and women who press charges against rapists, or into the state's responsibilities under international human rights law.

Although the police have made some positive changes, the rest of the criminal justice system lags behind. There is an urgent need for specialist training for law enforcement personnel, prosecutors, forensic experts, medical professionals and judges. Such training should ensure that the criminal justice system effectively responds to and investigates reports of sexual and intimate partner violence, vigorously prosecutes cases, and appropriately sentences convicted perpetrators. Although 240 police officers throughout Hungary received professional training in 2004, and a further 80 in 2005, there is a serious lack of funding for such training.

The survivors of sexual crimes should have access to support from social workers, access to psychological or legal services, and other professional advice and treatment. Doctors and psychologists in Hungary do not usually ask relevant questions when women seek medical care for injuries that could have resulted from domestic violence, even if the signs are clear. Their medical statements reflect only what the woman has told them. If she talks only about physical injuries, they will not ask whether she has been sexually assaulted as well.

After Zsuzsa was gang raped, her sister-in-law took her to a gynaecologist and informed an assistant what had happened. However the doctor removed a tampon that had been forced up into Zsuzsa's cervix by the rapes without asking any questions. The police later took Zsuzsa to be examined by another gynaecologist, who reported in detail on her internal injuries. Subsequently in court, the differences between the reports of the two medical examinations were highlighted during questioning.

In Hungary, forensic examinations of women who have been raped or sexually assaulted are performed by gynaecologists in hospitals, not by a specially trained medico-legal examiner or health care provider. Hungary lacks specialist centres that can provide both treatment for the survivors of sexual assaults and meet criminal justice requirements with respect to the collection of forensic evidence.

Recommendations

Amnesty International calls on the Hungarian government to:

Reform the law

- Amend the Penal Code (Articles 197, 198) to define rape and other crimes of sexual violence as crimes against a person's physical, psychological or sexual freedom and integrity, and not as crimes against sexual morality.

- Amend the Penal Code (Articles 197, 198) to reflect rights to sexual autonomy and physical integrity by requiring proof of consent or “free agreement”, not proof of physical resistance, as the basis for establishing rape and other crimes of sexual violence. The Code should set out a non-exhaustive list of examples illustrating situations in which consent or free agreement is not present, such as when a person submits to rape for fear of serious harm or because they are too affected by alcohol.

Deliver justice and effective redress

- Review, evaluate and implement the law, procedures and guidelines for police investigations of crimes – in particular with regard to the initial response, the recording and follow-up of complaints (including those that are withdrawn), evidence gathering, forensic examination, the taking of statements, and the interview or arrest of suspects – to ensure that they are applied as rigorously in cases of rape, other crimes of sexual violence and domestic violence as in those of other serious crimes against the person.
- Set up special centres, for example rape crisis centres or sexual assault referral centres, to deliver quality forensic practice for the purposes of effective investigation as well as support and services for the complainant (see below). Such centres could be based in hospitals.
- Establish effective mechanisms that allow the police to take prompt action against the perpetrators of crimes of sexual and domestic violence, for example in issuing and implementing court control orders and in setting up witness protection programmes aimed at safeguarding survivors and witnesses of rape, other crimes of sexual violence and domestic violence from threats or reprisals before, during and after criminal proceedings.
- Allocate cases of rape, other crimes of sexual violence and domestic violence to specially trained prosecutors.
- Ensure effective control of the court building and court room during a trial to protect witnesses, including the victim, from threats and intimidation. Measures such as the presence of a support person, or the introduction of screens to enable witnesses, including the victim, from seeing the accused or the public while giving evidence, should be considered.
- Ensure prompt, thorough, independent and impartial investigations are carried out into all allegations of police failures to investigate properly rape and other crimes of sexual violence. Police and government officials who fail to carry out their legal duty to protect women and prevent violence when clearly required to do so should be brought to justice.
- Establish specialist treatment programmes for the perpetrators of rape, other crimes of sexual violence and domestic violence, involving professionals and civil society organizations with expertise on violence against women and domestic violence, with the aim of preventing recurrence.

Strengthen professional standards and training

- Collect data and publish statistical information about rape, other crimes of sexual violence and domestic violence, in particular on:
 - the prevalence of these crimes
 - the number of complaints lodged with the police – including those dismissed without investigation – and the number of complaints withdrawn by complainants and investigations dropped by the police or prosecution before they come to court
 - the number of complaints that result in prosecutions
- Conduct or commission research into:
 - the reasons for low levels of reporting to the police, prosecutions or convictions
 - the experiences of girls and women who press charges against rapists
 - examples of best practice so that the state can fulfil its obligations to prevent crimes of rape, other crimes of sexual violence and domestic violence, prosecute perpetrators and provide protection for victims in line with international standards
- Such research should form the basis for relevant policy, legislative and training initiatives.
- Translate, disseminate and include in the training of health care professionals the 2003 *Guidelines for medico-legal care for victims of sexual violence* produced by the World Health Organization.
- Provide and fund specialized training and guidelines for police, judges, prosecutors, defence lawyers, and others involved in dealing with women survivors of rape, other sexual crimes and domestic violence. Such training and guidelines should involve professionals and civil society organizations with expertise on violence against women and domestic violence, and should cover:
 - the nature of violence against women, particularly in relation to these crimes, in order to eliminate prejudices and stereotyping about both victims and perpetrators
 - effective investigations and prosecutions, and sentencing guidelines to ensure that perpetrators are given sentences commensurate with the crime
- Raise the standard of forensic examinations and medical treatment of survivors of rape, other crimes of sexual violence and domestic violence by introducing standards and protocols based on best practice for the gathering of evidence by health care professionals, including the use of evidence kits.
- Provide support for victims that includes the collection of evidence without pressure to proceed with or drop the complaint, and avoid procedures and practices during investigation and trial which re-traumatize victims and lead to a reluctance to proceed with the case.

- Promote the access of victims to examination by female forensic practitioners.
- Ensure witness protection programmes provide witness protection before, during and after criminal proceedings, and include the issuing and implementation of court orders to protect complainants and witnesses.
- Integrate a gender perspective throughout the criminal justice system.

Provide support and services for survivors

- Ensure that police investigating cases of rape, other sexual crimes and domestic violence, when they arrive at the scene, inform the victim about support services available, including shelters and crisis centres. Such information should be given in private and not in the presence of the abuser, and regardless of whether the victim has asked for information.
- Set up special centres, for example rape crisis centres or sexual assault referral centres, to deliver support and services for the complainant – such as appropriate medical treatment including psychological care, crisis intervention, advocacy and legal counselling – as well as quality forensic practice for the purposes of effective investigation (see above). Such centres could be based in hospitals.
- Provide and fund specialized training and guidelines for health care, social workers and others involved in providing services to women survivors of rape, other sexual crimes and domestic violence. Such training and guidelines should involve professionals and civil society organizations with expertise on violence against women and domestic violence, and should cover:
 - the nature of violence against women, particularly in relation to these crimes
 - social prejudices about violence against women
 - advice on available services including shelters, medical and other support services, and legal services
- Ensure professional support, including psychological support, to the survivors of rape, other crimes of sexual violence and domestic violence, who are providing evidence to the police or in criminal proceedings.
- Provide and fund shelters for women escaping rape and sexual violence in the home, and ensure that women at risk of these crimes have security of tenure for themselves and their children in the homes they have shared with abusive partners.

Public information and education

- Organize and fund public education campaigns on the right of women to live free from violence, showing that rape and other forms of violence are a manifestation of unequal power relations between men and women that have led to domination over and discrimination against women by men.

10 *Hungary: Cries unheard - The failure to protect women from rape and sexual violence in the home. Summary.*

- In cooperation with health workers and civil society organizations, prepare and distribute education materials and information about available services for survivors of rape, other crimes of sexual violence and domestic violence.
- Include education about equality and mutual respect between the sexes, and the prevention of violence against women, in primary and secondary school curricula.

This report is a summary of a 12,300-word report, *Hungary: Cries unheard – The failure to protect women from rape and sexual violence in the home* (AI Index: EUR 27/002/2007), May 2007, available at www.amnesty.org.