



TPN 023/2016

The Permanent Mission of Ireland to the United Nations Office at Geneva presents its compliments to the Office of the High Commissioner for Human Rights (Secretariat of the Human Rights Committee) and has the honour to refer to the follow-up of the examination of the fourth periodic report of Ireland (reference KF/fup-116 dated 15 April 2016).

The Permanent Mission of Ireland has the honour to submit herewith its reply to the Human Rights Committee.

The Permanent Mission of Ireland to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights (Secretariat of the Human Rights Committee) the assurances of its highest consideration.



Geneva, 10 June 2015

Office of the High Commissioner for Human Rights  
(Secretariat to the Human Rights Committee)

**OHCHR REGISTRY**

**13 JUN 2016**

Recipients: HR COMMITTEE  
R. FOX  
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**Submission by Ireland of further information to the UN Human Rights  
Committee following Ireland's Fourth Periodic Review under the  
International Covenant on Civil and Political Rights**

Paragraph 25 of the Concluding Observations issued by the UN Human Rights Committee following the Fourth Periodic Review of Ireland under the International Covenant on Civil and Political Rights (ICCPR) recommended that:

*“25. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 10, 11 and 15 above”.*

Ireland provided a response to the Committee on 17 July 2015 which was considered by the Committee during its 116<sup>th</sup> session in March 2016.

The Government's response to the decisions of the Committee and request for further information in relation to the implementation of the recommendations in paragraphs 10, 11 and 15 of the Concluding Observations, as set out in the Committee's letter of 15 April 2016, is provided in this document.

## **I – Paragraph 10: Institutional abuse of women and children**

*“10. The Committee expresses concern at the lack of prompt, independent, thorough and effective investigations into all allegations of abuse, mistreatment or neglect of women and children in the Magdalene laundries, children’s institutions, and mother and baby homes. It regrets the failure to identify all perpetrators of the violations that occurred, the low number of prosecutions, and the failure to provide full and effective remedies to victims (arts. 2, 6 and 7).*

*The State party should conduct prompt, independent and thorough investigations into all allegations of abuse in Magdalene laundries, children’s institutions and mother and baby homes, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offence, and ensure that all victims obtain an effective remedy, including appropriate compensation, restitution, rehabilitation and measures of satisfaction.”*

### **Investigation into Mother and Baby Homes and certain related matters**

The Commission of Investigation into Mother and Baby Homes and certain related matters was established by Government Order in February 2015 (see S.I. 57 of 2015) to provide a full account of what happened to vulnerable women and children in these Homes during the period 1922 to 1998. A three-person Commission, comprising Judge Yvonne Murphy (Chair), Dr William Duncan and Professor Mary E Daly, has been appointed as an effective and transparent way of examining these complex and sensitive matters.

The scope of the Commission’s investigation is broad, and includes seven specific questions on practices and procedures regarding the care, welfare, entry arrangements and exit pathways for the women and children who were residents of these institutions. The primary function of the Commission is to establish the factual position in respect of the detailed matters set out in its Terms of Reference (see Schedule to S.I. 57 of 2015). The Committee is also asked to examine both the wider social and historical context in which these Homes existed and to investigate the relationships these Homes had with other institutions and organisations in relation to several specified matters.

In accordance with Section 9 of the Commissions of Investigation Act 2004, a Commission of Investigation is fully independent in the conduct of its investigations. The precise timing and approach to its investigations are matters for the Commission to decide and progress. Accordingly, it would not be appropriate for the Government to comment on this ongoing investigation. It is important that the Commission is given the necessary time and space to progress its work, so that we can gain the necessary understanding of the experiences of women and children in these homes.

With regard to the issue of redress, it is considered that the Commission of Investigation must first be allowed the opportunity to establish the facts of what happened in these homes. In the absence of relevant information it would be difficult to make determinations on issues as potentially complex as the question of redress.

It is also notable that mechanisms within the terms of reference were specifically included to take maximum advantage of the investigative powers, resources and expertise of the Commission to ensure that any additional matter which the Commission may deem to warrant investigation can be brought to the attention of the relevant authorities. This is not limited to matters within the direct scope of its investigations, but may also include issues which it considers to warrant further investigation in the public interest.

## **Investigation of allegations of abuse in the Magdalen Laundries**

While isolated incidents of criminal behaviour cannot be ruled out, in light of facts uncovered by the McAleese Committee and in the absence of any credible evidence of systematic torture or criminal abuse being committed in the Magdalen laundries, the Irish Government does not propose to set up a specific Magdalen inquiry or investigation. It is satisfied that the existing mechanisms for the investigation and, where appropriate, prosecution of criminal offences can address individual complaints of criminal behaviour if any such complaints are made.

The Government has made it clear on a number of occasions that if any woman considers she has been a victim of criminal behaviour, she should report it and it will be investigated. If the alleged abuse constitutes criminal behaviour, the police have full powers to investigate and the Director of Public Prosecutions then decides whether or not there should be a criminal prosecution.

There is no statute of limitations for indictable criminal offences in Ireland. The police have full powers to investigate and the Director of Public Prosecutions then decides whether or not there should be a criminal prosecution. The Department does not have comprehensive information on reported offences associated with Magdalen institutions but is only aware of a small number of allegations of specific criminal behaviour associated with the ten Magdalen institutions.

Two allegations of a serious offence against persons who were in Magdalen institutions have come to the attention of the Department in the last five years and both related to acts by people from outside the Institutions concerned. In both cases the victims declined to make a criminal complaint despite being invited to do so and therefore have not been the subject of a criminal investigation.

## **Compensation Schemes for victims of Magdalen Laundries**

### **(a) Access to the compensation schemes for victims living abroad**

To date, 807 applications have been received. 626 applicants have received their lump sum payments at a cost of over €23m (including 126 from UK, 2 Australia, 1 Cyprus, 1 Switzerland and 8 from the USA).

In addition to the lump sum, each woman, regardless of her country of residence, is entitled to a top up payment to bring her weekly income from the Irish State up to the equivalent of the Irish Contributory Pension, €233.30 if 66 years or over and €100 if under that age.

Legislation was also introduced to ensure that the women are also being provided with access to a range of primary and community health services free of charge. The women who currently reside outside of Ireland are entitled to access the specified primary and community health services if they visit or return to Ireland.

The Department of Health and the Health Service Executive (HSE) are currently exploring the practical arrangements to be put in place in respect of the specified primary and community health services for participants of the Magdalen laundries Restorative Justice Scheme who are living outside of Ireland. It is recognised that all health systems around the world vary in organisation and procedures and each system is unique.

Taking this wide variation into account, it will be necessary for these arrangements to be dealt with on an administrative basis by the HSE. Options on arrangements are currently being examined and the HSE are in contact with the women in this regard.

**(b) Waiver of any right of action against the State**

Following publication of the McAleese report the Government asked Mr. Justice Quirke to make recommendations on an appropriate scheme. He recommended that, as a pre-condition of receiving benefits under the Scheme, the woman concerned should sign a waiver not to take proceedings against the State. Before signing the waiver, the woman is strongly advised to take independent legal advice. Applicants are facilitated to engage their own choice of solicitor and are provided with a maximum amount of €500 + VAT from the State as a contribution to the cost of obtaining legal advice on the signing of the waiver.

The signing of such a waiver does not preclude the woman from making a complaint if she believes that she was the victim of a criminal offence, nor does it preclude the woman from pursuing a civil action against the institutions concerned or any individuals. As previously stated, the Government has made it clear on a number of occasions that if any woman has been a victim of criminal behaviour, she should report it and it will be investigated. If the alleged abuse constitutes criminal behaviour, the police have full powers to investigate and the Director of Public Prosecutions then decides whether or not there should be a criminal prosecution.

**(c) The situation of victims who were not formally admitted to the Magdalen Laundries but were nonetheless forced to work there, including with regard to access to the redress scheme**

The condition that the woman must have been admitted to and worked in a relevant institution was included as part of the ex gratia scheme in order to exclude persons who were paid employees working or managing laundries in the institutions concerned. The scheme is primarily aimed at Magdalen institutions where women admitted were expected to work. The main, but not exclusive, type of work was in the laundry associated with the institution.

The purpose of the ex gratia scheme is to contribute to a healing and reconciliation process for the women concerned. One of the grievances of the women who were active in campaigning was that they had not been compensated for working without pay. In order to address that grievance, the terms of reference for Mr. Justice Quirke refer to "*taking into account criteria determined to be relevant, including work undertaken and other matters as considered appropriate to contribute to a healing and reconciliation process*". Mr. Justice Quirke does provide for the payment of amounts of money to reflect the work undertaken by the women. However, these amounts are purely notional and are not intended to be an accurate reflection of the value of the work done either measured by the wages paid at the time (adjusted for inflation) or the value to the institutions.

The scheme is not intended to cover laundries generally. There are instances where some juveniles committed to other institutions on the same campus did work in the laundries of the Magdalen institution. In general those institutions have been covered under a different scheme, the Residential Institutions Redress Scheme.

**(d) Women still living in the care of the religious orders responsible for the Laundries and their rights to advocacy services under legislation or as part of the redress scheme**

With regard to advocacy, it is important to point out that Mr. Justice Quirke makes a very clear distinction between what is required for most women and what is required for those lacking full mental capacity including those women that are in an institutional setting.

Women who were in the Magdalen laundries are already covered under Section 21 of the Nursing Home Support Scheme Act 2009 which makes provision for persons to act as care representatives in respect of any person applying for support under that Act.

It is important to note that a personal advocate has very limited powers with regard to a person who lacks capacity. A personal advocate does not have power of attorney, to make decision or otherwise to manage the affairs of the person. That is why the provisions of Assisted Decision Making (Capacity) Act 2015 will be so important as it will provide for a range of options including decision-making assistants, co-decision makers, decision-making representatives, which are well suited to look after the best interests of the women who were in Magdalen laundries and have capacity issues.

The Assisted Decision-Making (Capacity) Act 2015 was signed into law by the President on 30 December 2015 but has not yet been commenced. New administrative processes and support measures, including the setting up of the Decision Support Service within the Mental Health Commission, must be put in place before the legislation comes into force. The Mental Health Commission is an agency under the Department of Health, and the Department of Justice & Equality will be liaising with the Department of Health in bringing the service into operation. Commencement of this Act is planned for the latter half of 2016.

Officials in the Department of Justice and Equality are careful to ensure that applicants do have the necessary capacity to understand the scheme and sign the relevant legal documentation and they cross check with other Departments to establish if there are any issues. A medical assessment is sought if there is any indication that an applicant under our scheme has capacity issues.

With regard to women who do not lack capacity, nominated contact people have been identified in the relevant Government Departments (Justice and Equality; Social Protection; and, Health) to assist the women in accessing their entitlements and advise the women in a professional, confidential and sensitive manner. The Government has provided grants to the Irish Women Survivors Support Network to provide advice and support to the women who are residing in the UK.

## **II-Paragraph 11: Symphysiotomy**

*"11. The Committee expresses concern that symphysiotomy, a childbirth operation which severs one of the main pelvic joints and unhinges the pelvis, was introduced into clinical practice and performed on approximately 1,500 girls and women in public and private hospitals between 1944 and 1987 without their free and informed consent. While noting the publication of a report by Oonagh Walsh in 2012, the review of the findings of the report by Judge Yvonne Murphy and the planned establishment of an ex gratia scheme for the survivors of symphysiotomy, the Committee expresses concern at the State party's failure to: (a) initiate a prompt, comprehensive and independent investigation into the practice of symphysiotomy; (b) identify, prosecute and punish, where still possible, the perpetrators for performing symphysiotomy without patient consent; and (c) provide effective remedies to survivors of symphysiotomy for the damage sustained as a result of these operations (arts. 2 and 7).*

*The State party should initiate a prompt, independent and thorough investigation into cases of symphysiotomy, prosecute and punish the perpetrators, including medical personnel, and provide the survivors of symphysiotomy with an effective remedy for the damage sustained, including fair and adequate compensation and rehabilitation, on an individualized basis. It should facilitate access to judicial remedies by victims opting for the ex gratia scheme, including allowing them to challenge the sums offered to them under the scheme."*

### **Investigations and reports on symphysiotomy**

At August 2014 two independent investigations had already been undertaken into the practice of symphysiotomy. Details of the findings of those reports and copies of the reports have been provided to the Committee. The Department of Health commissioned an independent research report into the practice of symphysiotomy. This report by Professor Oonagh Walsh stated that post-natal check-ups indicated no disabilities for some women, but that others reported disability including incontinence, chronic pain, difficulty in walking and sexual dysfunction.<sup>1</sup>

It provided a broad historical background to the issue. In 2013 retired Circuit Court judge Yvonne Murphy was commissioned by Government to undertake a further independent review on the legal aspects of symphysiotomy in Ireland. Judge Murphy advised Government on the merits and costs of proceeding with an ex gratia scheme relative to taking no action and allowing the court process to proceed.<sup>2</sup>

In November 2014, as a result of analysis of the reports, the Symphysiotomy Payment Scheme was established, with retired High Court judge Maureen Harding Clark as independent Assessor for the Scheme. Ms. Justice Clark has examined the applications of the 578 women who applied for awards under the Scheme. She has also met a number of the women and their support groups. To understand the background to the issue she has consulted with a wide range of experts. Ms. Justice Clark commissioned independent medical experts in the areas of obstetrics and gynaecology, radiology and orthopaedic surgery to assist her in her assessment of applications, where she considered evidence was needed either that the procedure was undertaken, or of its consequences on the health of the women. The consultants concerned were eminently qualified in their fields to undertake this work. Some women who applied to the Scheme had no medical records, but, following assessment by the medical experts, awards were made. The Scheme allowed for a much lower threshold of evidence than would have been required in a court of law.

<sup>1</sup> <http://health.gov.ie/blog/publications/report-on-symphysiotomy-in-ireland-1944-1984-professor-oonagh-walsh>

<sup>2</sup> <http://health.gov.ie/blog/publications/independent-review-of-issues-relating-to-symphysiotomy-by-judge-yvonne-murphy/>

Ms. Justice Clark has now made an offer of an award to every woman who met the criteria under the Scheme and has set about compiling her independent report which will form the basis of a third independent report on the pertinent issues relating to symphysiotomy and the women who underwent the procedure and are still alive in Ireland. When her report is published this will be provided to the Committee.

Professor Oonagh Walsh's report noted that symphysiotomy was proposed for a specific cohort and was never proposed as an alternative to caesarean section. There were no guidelines or protocols for symphysiotomy in mid-twentieth century Ireland. This was not unusual, as they did not exist for many other aspects of medical care. There was a general acceptance of the indications for symphysiotomy, which were "mild to moderate disproportion", while a greater degree of disproportion indicated caesarean section.

From her research Professor Walsh deduced that one of the principal reasons for symphysiotomy was the dangers associated with caesarean section, which were very real in the 1950s and 1960s. Although the operation had a high rate of success, it also had a far greater maternal mortality rate than symphysiotomy, as was shown by Bjorklund in his 2002 study.<sup>3</sup> In this study of around 1200 caesarean sections and 800 symphysiotomies in the period between 1908 and 1995 Bjorklund showed that maternal mortality was four times higher with caesarean section than with symphysiotomy in the first half of the century and 6 times higher in the second half. This is similar to data from Irish hospitals, which show the rates of maternal and infant mortality were higher for caesarean section than for symphysiotomy. Professor Walsh states that this was a constant source of discussion among Irish obstetricians.

Symphysiotomy is not currently a banned or illegal procedure. On the contrary, the WHO<sup>4</sup> states that symphysiotomy is controversial, but it could be a life-saving intervention in under-resourced settings where caesarean section is not available. In some cases, during birth, a woman may have a spontaneous symphysiotomy.

### **The Symphysiotomy Payment Scheme**

- (a) Assessment criteria were published as part of the Terms of Reference for the Scheme, which was approved by Government and was set up to be simple and non-adversarial. A woman had to provide evidence of symphysiotomy to receive the minimum award of €50,000. Depending on the evidence and pain or disability related to symphysiotomy or pubiotomy a sum of up to €150,000 was available. If no medical records were available medical experts examined the woman to obtain this evidence.

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<sup>3</sup> Bjorklund K. Minimally invasive surgery for obstructed labour: a review of symphysiotomy during the twentieth century (including 5000 cases). BJOG. 2002 Mar; 109(3):236-48. Review.

<sup>4</sup> Tukur J. Symphysiotomy for fetopelvic disproportion (last revised: 1 October 2011). The WHO Reproductive Health Library; Geneva: World Health Organization.



(b) Requirement that participants waive all rights and entitlements to seek compensation outside the Surgical Symphysiotomy Scheme and no right to appeal under the Scheme:

Women who applied to the Scheme did not waive their rights to take their cases to court as a precondition to participating in the Scheme. They could opt out of the Scheme at any stage in the process, up to the time of accepting their award. It is only on accepting the offer of an award that a woman had to agree to discontinue her legal proceedings against any party arising out of a symphysiotomy or pubiotomy. In the small number of cases taken through the courts the actions were settled without an admission of liability.

An application to the Scheme could be made notwithstanding legal proceedings in being. Applicants retained the right to challenge any alleged inappropriate surgical procedures through the courts. However, if an application was assessed and an award offered, a condition to accepting any such award made under the Scheme required any legal proceedings to be discontinued. This remained each woman's free choice – at that time she could still decide to refuse the award under the Scheme and proceed with legal proceedings or accept the award and discontinue any legal proceedings.

Under the Terms of the ex gratia Scheme there were three levels of award and there was no further appeal following the decision of the Assessor. However, it was open to any woman to initiate a judicial review if she believed she had the grounds to challenge any aspect of the Scheme.

- (c) Time limit imposed on applicants: When the Scheme commenced on 20 November 2014 a time limit of 20 working days was set for receipt of applications. This time limit was extended for a further 20 working days in exceptional circumstances. An application was valid even if all relevant supporting documentation was not provided at that time. The Scheme was very well publicised, by the support groups for the women and in national media. Following the registering of the initial application women were given a substantial number of months in some cases to seek advice and submit all relevant evidence. The Scheme's administrators assisted some women in locating records. The Department of Health has not received any reports of women who were unable to make the deadline. It is aware, however, of a small number who opted not to apply to the Scheme.

Women had waited many years for closure – many were in their 70s and 80s. Therefore, while the Scheme only commenced in November, some payments were made in December to women who were considered to be in very poor health. One of the Support Groups that met the Minister in September 2014 noted that three women who would have qualified for awards under the Scheme had died since July that year.

(d) Standards of proof required to seek awards under the Symphysiotomy Payment Scheme:

Making an application to the Scheme was simple, straightforward and confidential. Prior to the establishment of the Scheme women had to hire a solicitor and obtain medical assessments in order to pursue a course of action through the courts. The Government's Scheme is person-centred and gives a prospect for closure for women who would have an uphill battle in the courts. At the same time it did not prevent women who wished to pursue their case through the courts from doing so.

The burden of proof required was much lower than in a court of law. The few cases that came through the courts took years to reach a court hearing. In a case in the Irish courts in 2015, a woman who had a symphysiotomy in 1963 a few weeks before the birth of her baby, lost her case for compensation. In that case the High Court judge ruled that even though the woman has suffered since the operation, the practice of prophylactic symphysiotomy (that is before the birth of the baby) “*was not a practice without justification*” in 1963. The case is due for hearing shortly in the Court of Appeal. This case shows that in the courts each case is judged upon its own merits and the evidence provided. Under the ex-gratia payment Scheme, once evidence of a surgical symphysiotomy was provided, a minimum award of €50,000 was made by the Assessor.

Information on further disability (even where medical records were not available) allowed for the final award to be up to €150,000. Women who wished to be supported by their legal advisers could have this support and the Terms of the Scheme specified the funding that would be paid to legal advisers for this purpose. This process also spared women, many of whom were elderly, the need to provide oral evidence, as would be necessary in court. In some cases, where a woman had little or no evidence to support her case, she met the Judge who travelled around the country to meet these women. In a small number of cases a medical assessment was required to confirm that symphysiotomy had occurred and the level of subsequent disability. In a number of cases evidence from the woman’s GP provided adequate support for her application. In other cases the Judge had a case conference with her medical expert team and the clinical expert retained by the women in order to reach a fair consensus on the nature of disabilities involved.

### **Access to judicial remedies including challenges to the sums offered under the Scheme**

It was reported to the Minister by two of the three NGOs who provide supports to the women that the majority of women who had been seeking to take their cases to the courts for years welcomed the establishment of the Scheme which brought closure for them. Because of the age of many of the women it is unlikely that many of them would have succeeded in bringing their cases successfully through the courts and would have expended high costs on legal and other experts in their cases.

The ex gratia Scheme gave an option to women who, because of their age and the length of time that their cases had been with their legal teams, held out little hope of being successful in their cases or receiving an award.

Ms. Justice Clark and her professional medical assessors treated the women who applied to the Scheme with dignity and respect. Any woman who opted into the Scheme was clear about the terms of the Scheme. Each woman had the option to reject her award and pursue her case through the courts. From the updates posted on the Scheme’s website the Department notes that just one woman rejected the offer of an award.

### **Summary points:**

- The Government considers that the response to the issue of symphysiotomy has been fair and balanced. It did not interfere with a woman’s constitutional right to pursue her case through the courts. It did, however, offer women the option to find closure. Under an ex gratia scheme the giver does not recognise any liability or legal obligation.

The main advantage of this is that it offers a more flexible solution in terms of the mix of pecuniary and non-pecuniary elements of any award to applicants.

- The actual liability in law of the State in respect of each symphysiotomy case is extremely difficult to determine.
- Women are receiving and will continue to receive a range of health and social care supports from the State. These services include the provision of full General Medical Services eligibility on medical grounds, independent clinical assessments/advice (including, where requested a home assessment by an occupational therapist or physiotherapist), the arrangement of appropriate fast-tracked follow-up care where possible, the provision of counselling, physiotherapy and home help services and the arrangement of home modifications where necessary.
- A support group which is facilitated by a counsellor was established in 2004 and is still ongoing.
- Services are available on request by the women from the Health Service Executive nominated Symphysiotomy Liaison Officers.

### III - Paragraph 15: Conditions of detention

*“15. While welcoming the measures taken by the State party to improve conditions of detention and to increase the use of community sanctions as an alternative to imprisonment, as well as the progress achieved, the Committee is concerned at the lack of progress in eliminating adverse conditions in a number of prisons in the State party, such as: (a) overcrowding; (b) lack of in-cell sanitation facilities; (c) lack of segregation of remand and convicted prisoners, and between detained immigrants and sentenced prisoners; and (d) the high level of inter-prisoner violence. While noting the introduction of a new complaints model in the Irish Prison Service, the Committee is concerned that it does not provide for a fully independent system for dealing with every serious prisoner complaint (arts. 9–10).*

*The State party should step up its efforts to improve the living conditions and treatment of detainees and address overcrowding and the practice of “stopping out” as a matter of urgency in line with the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. It should establish a concrete timeline for the achievement of complete separation of remand and sentenced prisoners, juvenile and adult prisoners and detained immigrants and sentenced prisoners. It should also implement the new complaints model for all categories of complaints without further delay and ensure its independent functioning.”*

#### Overcrowding in prisons

Significant progress has been made in addressing overcrowding in our prisons. It is intended that the capacity of our prisons be aligned with the bed capacity recommended by the Inspector of Prisons, who, under the Prisons Act 2007 is independent of Government, insofar as this is compatible with public safety and the integrity of the criminal justice system. On 18 May 2016 the prison population was 3,766; this figure is 5% below the capacity recommended by the Inspector of Prisons. The detailed breakdown of the prisoner population and capacity at each facility as of 18 May 2016 is as follows:

INSTITUTION	Number in Custody	Bed Capacity per Inspector of Prisons	% of Inspector of Prisons Bed Capacity
<b>MOUNTJOY CAMPUS</b>			
Mountjoy (m)	508	554	92%
Mountjoy (f)	110	105	105%
Training Unit	96	96	100%
St Patrick's	1	34	3%
<b>WEST DUBLIN CAMPUS</b>			
Cloverhill	373	414	90%
Wheatfield	458	550	83%
<b>PORTLAOISE CAMPUS</b>			
Midlands	808	870	93%
Portlaoise	205	291	70%
Cork	274	168	163%
Limerick (m)	226	185	122%
Limerick (f)	37	24	154%
Castlerea	307	300	102%
Arbour Hill	133	131	102%
Loughan House	124	140	89%
Shelton Abbey	106	115	92%
<b>Total</b>	<b>3,766</b>	<b>3,977</b>	<b>95%</b>

Overcrowding has been eliminated in Mountjoy Prison, which once held up to 800 prisoners at its peak. Following the complete redevelopment of the prison, all cells have been returned to single cell occupancy and the bed capacity of the prison has been set at 554 which is the level recommended by the Inspector of Prisons.

In relation to Cork and Limerick significant action has been taken to lower the numbers accommodated in those prisons. Such reductions have been possible due to reducing committals and the introduction of structured release programmes for prisoners such as Community Return and Community Support.

The new prison in Cork became operational on 12th February 2016 and has a capacity of 296, an increase of 41% over the old prison. This project marks the largest single investment ever in the prison estate and in these times of continuing financial difficulty it represents a very important commitment on the part of Government to the modernisation of the prison estate and in particular to the elimination of slopping out. Plans are also being advanced for the redevelopment of the A and B wings of Limerick Prison which will address the physical conditions and capacity issues. The Irish Prison Service anticipates completion of this build in 2018.

#### **In-cell sanitation**

The elimination of the practice of slopping out in the prison estate is a priority. Considerable resources have been committed to this objective and significant progress has been achieved.

Following the complete refurbishment of Mountjoy Prison the practice of slopping out there has been eliminated. All cells in the new prison in Cork have in-cell sanitation. Planning is underway for a development at Portlaoise Prison that will bring the practice of slopping out (currently in one block of the prison) to an end.

A public consultation process on planning proposals for a major development at Limerick Prison has commenced. The proposed development will end the practice of slopping out in the remaining wing of Limerick Prison and will include a new accommodation block for female prisoners.

#### **Segregation of remand and sentenced prisoners, and between detained immigrants and sentenced prisoners**

All committals to the prison service are dealt with in a manner which seeks to ensure the safety of the prisoner themselves, the staff and the entire prisoner population.

Every effort is made to separate remand prisoners from convicted prisoners. The Irish prison system has a dedicated remand prison, Cloverhill Prison, with a capacity of 431, and every effort is made to utilise this facility to its maximum in order to meet the conditions of Rule 71 of Statutory Instrument 252 of 2007.

In line with the recommendations of the Inspector of Prisons and in order to effect the changes necessary in regime and culture and to ensure safe and secure custody, the Government decided in July 2013 to close St Patrick's Institution completely.

As an interim step, arrangements were made for sentenced 17 year old males to be transferred shortly after committal to St Patrick's Institution to a dedicated unit in Wheatfield Place of Detention. This is an interim measure until they can be accommodated in the new children detention facilities at Oberstown. Males aged 18 to 20 sentenced to detention are detained in a separate unit in Wheatfield.

The Irish Prison Service has a Protocol with An Garda Síochána, Ireland's National Police Service, which aims to ensure that all prison committals due for deportation/removal are dealt with in an effective and timely manner, which will minimise the time spent in the custody of the Irish Prison Service.

### **Prison Complaints Mechanisms**

Following a report by the Inspector of Prisons to the Minister for Justice and Equality in March 2012, regarding the introduction of a new complaints model in the Irish Prison Service, a new complaints model which meets best practice and our international obligations has been introduced in the Irish Prison Service.

The model contains four separate categories of complaints:

#### Category A

Complaints are the most serious level of complaints (assault, serious intimidation of prisoners by staff, etc.). Investigation of Category A complaints are by external investigator/s on behalf of the Irish Prison Service. A publicly advertised recruitment campaign was carried out by the Irish Prison Service in September 2012 which sought applications from suitably qualified persons with a legal or investigative background. A panel of 22 Independent investigators was established in October 2012.

#### Category B

Complaints are mid-range in terms of seriousness (discrimination, verbal abuse of prisoners by staff, inappropriate searches etc.) and are investigated by a Chief Officer with recourse to appeal to the prison Governor and a subsequent recourse of appeal to the Director General if a prisoner is unhappy with the outcome of his/her original appeal.

#### Category C

Complaints are essentially service complaints where a prisoner is unhappy with the level of service in a particular prison (visits, phone calls, etc.) and are investigated by a Prison Officer with the possibility of appeal to a Chief Officer if the prisoner is unhappy with the outcome or resolution of his/her complaint.

#### Category D

Complaints relate to complaints against professionals such as dentists, doctors etc. Such complaints will be referred in the first instance to the prisons' medical officer for possible resolution and, if this is not possible, to the relevant professional body responsible for regulating the professional involved.

The Inspector of Prisons has oversight of all categories of complaints. The Inspector of Prisons has recently submitted his Report on the Operation of the present Irish Prison Service Prisoner Complaints Policy to the Minister for Justice and Equality. The Inspector has made a number of recommendations which are currently being examined.



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15 April 2016

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the examination of the fourth periodic report of Ireland.

At the end of its 111<sup>th</sup> session, the Committee transmitted its concluding observations to your Permanent Mission. You may recall that, in paragraph 25 of the concluding observations, the Committee requested the State party to provide within one year further information on the specific areas of concern identified in paragraphs 10, 11 and 15 of the concluding observations.

On 20 July 2015, the Committee received the reply of the State party. At its 116<sup>th</sup> session, held in March 2016, the Committee analysed this information and adopted the following decisions:

- **Paragraph 10: [B2]:** With respect to investigations into all allegations of human rights violations, the Committee welcomes the establishment of the Commission of Investigation (Mother and Baby Homes and certain related matters) and requests that the State party provide information on the progress of the investigation to the Committee. However, the Committee regrets that such a statutory inquiry has not been established to investigate all allegations of abuse in Magdalene Laundries and children's institutions and reiterates its recommendation that the State party conduct an independent and thorough investigation.

**[C2]:** The SP has not provided new information regarding prosecutions and punishment of perpetrators. The Committee reiterates its recommendation that the State party prosecute and punish the perpetrators with penalties commensurate with the gravity of the offence.

**[B2]:** The Committee welcomes the compensation schemes in place for victims of Magdalene Laundries and children's institutions. However, additional information is required on:

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- (a) Access to the compensation schemes for victims living abroad;
- (b) The requirement that qualifying Magdalene survivors must waive any right of action against the State;
- (c) The situation of victims who were not formally admitted to the Magdalene Laundries but were nonetheless forced to work there, including with regard to access to the redress scheme;
- (d) Women still living in the care of the religious orders responsible for the Laundries and their rights to advocacy services under legislation or as part of the redress scheme.

The Committee recommends that the State party ensure that victims receive the full range of restitution, rehabilitation and measures of satisfaction to which they are entitled, in accordance with the Committee's recommendation. The Committee requests an update regarding redress for the victims of Mother and Baby Homes.

- **Paragraph 11: [C1]:** The Committee notes the commissioning of the Walsh and Murphy reports, but requests information on measures taken after the adoption of the Committee's concluding observations (14 August 2014) on investigations carried out into cases of symphysiotomy as well as information on prosecutions and punishment of perpetrators. The Committee reiterates its recommendation.

[C1]: The Committee welcomes the establishment of the Surgical Symphysiotomy Payment Scheme, but requires additional information on the scope and requirements, including:

- (a) the assessment criteria for providing compensation to victims;
- (b) the requirement that participants waive all rights and entitlements to seek compensation outside of the Surgical Symphysiotomy Payment Scheme and the lack of a right to appeal under the Scheme.
- (c) the time limit imposed on applicants (20 days) which may have hindered applicants from seeking independent advice in making their decision and may affect women residing outside Ireland; and
- (d) the standards of proof required to seek damages under the Surgical Symphysiotomy Payment Scheme.

[C2]: The Committee reiterates its recommendation that the State party should facilitate access to judicial remedies for victims opting for the ex gratia scheme, including allowing them to challenge the sums offered to them under the scheme.

- **Paragraph 15: [B1]:(a)** The Committee notes the efforts of the State party to address overcrowding and prison living conditions and requires information on the progress of these initiatives. The Committee also requires information on:

- (a) the number of inmates in each detention facility and its capacity; and
- (b) measures taken to address overcrowding in Mountjoy, Cork and Limerick detention facilities.





[B1]:(b) Committee notes the efforts of the State party to address the practice of “slopping out” and requires information on the progress of these initiatives, particularly in the Cork, Limerick and Portlaoise detention facilities.

[C1]:(c) The Committee reiterates its recommendation that the State party establish a concrete timeline for the achievement of complete separation of remand and sentenced prisoners, juvenile and adult prisoners and detained immigrants and sentenced prisoners.

[B2]:(d) The Committee notes the State party’s intention to fully implement the complaints mechanism in 2015 and requests the State party to provide further information on its implementation, including the measures in place to ensure its independent functioning and the progress of any new legislative reforms.

The Committee would appreciate it if the information referred be forwarded to the Secretariat **by 10 June 2016**. The reply should be sent in Word electronic version to the Secretariat of the Human Rights Committee (Kate Fox: [kfox@ohchr.org](mailto:kfox@ohchr.org) and Fernanda Santana: [fsantana@ohchr.org](mailto:fsantana@ohchr.org)). The information will then be scheduled for consideration at a future session.

The Committee looks forward to pursuing its constructive dialogue with the Irish authorities on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Sarah Cleveland

Special Rapporteur for Follow-up to Concluding Observations  
Human Rights Committee