

**IHRC Follow-Up Report
on State Involvement with
Magdalen Laundries**

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By

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The Irish Human Rights Commission (IHRC) was established under the Human Rights Commission Acts 2000 and 2001 to promote and protect human rights in Ireland. The human rights that the IHRC is mandated to promote and protect are the rights, liberties and freedoms guaranteed under the Irish Constitution and under international agreements, treaties and conventions to which Ireland is a party.

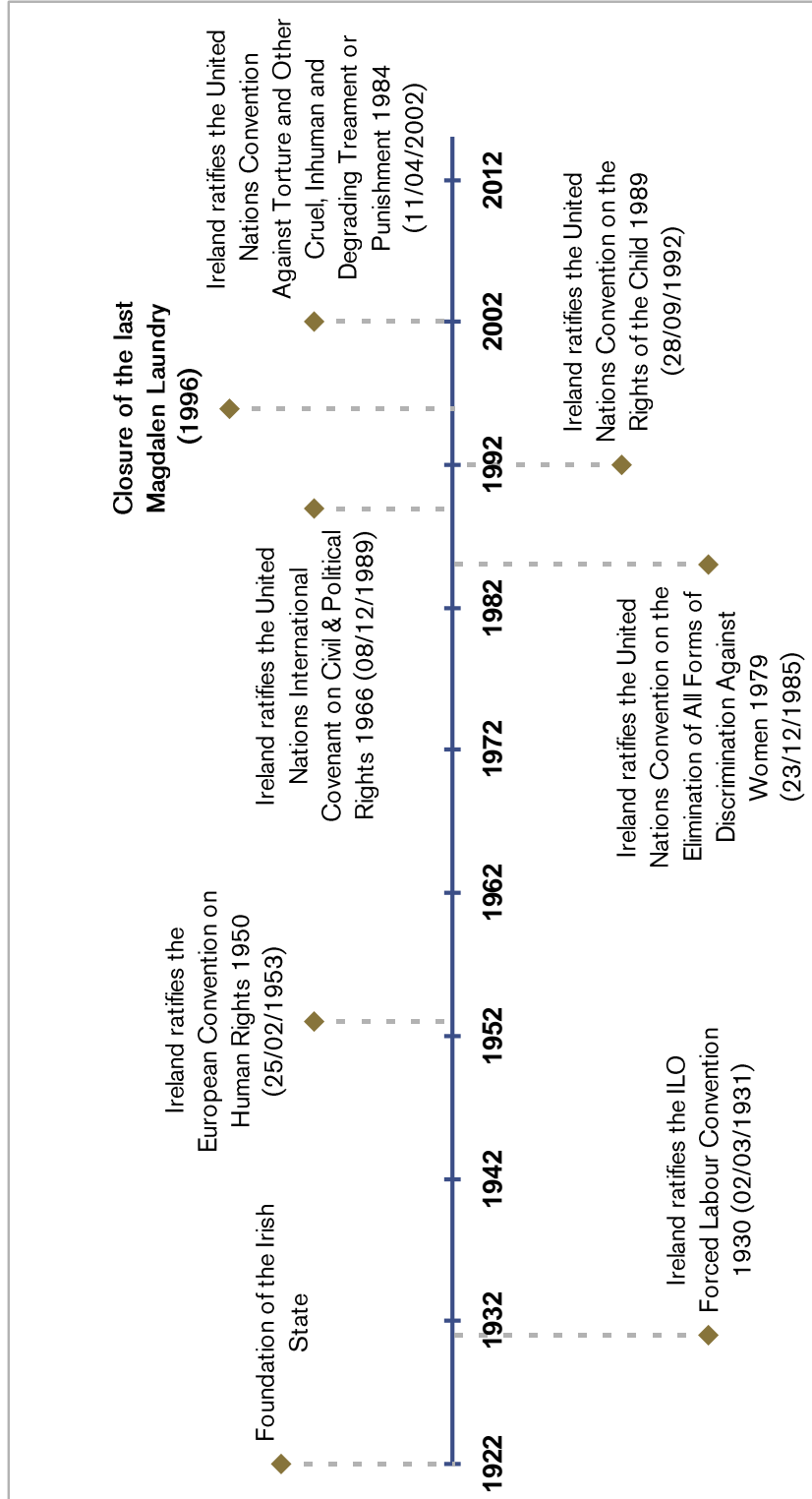
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Acronyms

CRC	(United Nations) Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	(United Nations) International Covenant on Civil and Political Rights
IDC	Inter-Departmental Committee
IHRC	Irish Human Rights Commission
ILO	International Labour Organisation
UNCAT	United Nations Committee against Torture

Guide:

Timeline of Ireland's ratification of International Human Rights Treaties referred to in this Report.



Executive Summary

The Irish Human Rights Commission (“IHRC”) is Ireland’s National Human Rights Institution with “A” status, established pursuant to the UN Paris Principles,¹ the Belfast Agreement, 1998,² and specifically by virtue of the Human Rights Commission Act, 2000.³ The IHRC has a statutory remit to promote and protect the human rights of all persons in the State. The statutory functions of the IHRC include keeping under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and to make recommendations to Government on measures to be taken to strengthen, protect and uphold human rights in the State.⁴

The IHRC is publishing this Report as a follow up to its *Assessment of the Human Rights Issues Arising in Relation to the Magdalen Laundries* which was submitted to Government in November 2010, and which called on the State to establish a statutory mechanism to inquire into the State’s involvement in the Magdalen Laundries.

While a statutory mechanism to look into the human rights implications of what occurred in the Laundries has not been established, since that time three significant and interconnected events have occurred. In May 2011, the United Nations Committee Against Torture recommended that the State “*institute prompt, independent, and thorough investigations into all allegations of torture, and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries*”. Shortly after this recommendation was made, the Minister for Justice, Equality and Law Reform appointed an Inter-Departmental Committee, in July 2011, under the chairmanship of Senator Martin McAleese, to establish the facts of State involvement with the Magdalen Laundries and to write a narrative thereon. In February 2013, the Inter-Departmental Committee submitted its report (the IDC Report) to Government. The IDC Report runs to some 1,015 pages and exhaustively documents the interactions between the State and its various agencies and the Magdalen Laundries. As a result of the IDC Report, a far clearer picture emerges regarding the relationship between the State and the Laundries.

The mandate of the IDC was a fact-finding one only and the Report, although extensive, does not contain any evaluation of those interactions. Nor does it assess the human rights implications for the State of what occurred in the Magdalen Laundries. The third significant event was the apology offered on behalf of the State

¹ *National Institutions for the Promotion and Protection of Human Rights*, UN General Assembly Resolution 48/134, 1993.

² The Good Friday Agreement was reached at the conclusion of the Multi-Party negotiations in Belfast on 10 April 1998: see <http://foreignaffairs.gov.ie/home/index.aspx?id=335>

³ As amended by the Human Rights Commission (Amendment) Act, 2001.

⁴ Section 8(a) and 8(d) respectively of the Human Rights Commission Act 2000.

by An Taoiseach in the Dáil to the women who had resided in the Magdalen Laundries. On foot of that apology, a judge of the High Court has been appointed to report to Government on an *ex gratia* scheme to be put in place for the benefit of the women concerned.

The IHRC considers that, despite the three positive events referred to above, there is still a gap in our understanding regarding the Magdalen Laundries that needs to be addressed. In the absence of a more thorough investigation, as recommended by the IHRC and the United Nations Committee Against Torture, this Follow-Up Report, and the conclusions it reaches in relation to the treatment of girls and women in the Laundries, is an important aspect of the process required to vindicate the rights of the women who resided in the Laundries. It is the IHRC's view that no system of redress can properly be put in place without first having an insight into the wrongs that it is intended to remedy. The IDC Report, although comprehensive in fulfilling the fact finding mission it was tasked with, is limited by its nature and is only a first step in establishing the obligation of the State to provide redress. The IHRC is therefore submitting this Report to Government to bridge this gap in understanding regarding the interactions of the State with the Magdalen Laundries. This Report thus places the relationship between the State and the Laundries in the context of the duty of the State to vindicate the rights of its citizens under the Constitution, and to respect, protect and fulfil its human rights obligations under international human rights law.

Chapter 1 of this Report reviews, based on the findings of the IDC Report, the extent of State involvement in Magdalen Laundries, in order to delimit the acts or omissions which can legitimately be considered to fall within the realm of State responsibility. The Chapter begins with a discussion of the definition of “*State*” actors, and then proceeds to consider the range of routes identified in the IDC Report by which women and girls came to be referred to Magdalen Laundries by emanations of the State. The financial and other assistance provided by the State to the Laundries is also considered, as well as the commercial dealings between the State and the Laundries.

Chapter 2 considers the treatment of the girls and women who entered the Laundries from the perspective of gender equality and questions whether there was a failure by the State to protect such girls and women from discrimination, in the context of the State's long standing obligations under Article 14 of the European Convention on Human Rights (“ECHR”), and Article 40.1 of the Constitution.

Chapter 3 examines the facts established in the IDC Report regarding the placement by the State, in its various capacities, of girls and women in Magdalen Laundries and the character of their residence in the Laundries, in the context of whether they may have been an unlawful interference with their right to liberty, as protected under Article 40.4 of the Constitution and Article 5 of the European Convention on Human Rights (“ECHR”). Conclusion 7 of the 2010 IHRC Assessment Report questioned whether the State's obligation to guard against

arbitrary detention in Magdalen Laundries was met but, in the absence of relevant public information, the IHRC could not reach a firm view on the matter.

Chapter 4 of this Report re-examines Conclusion 5 of the 2010 IHRC Assessment Report, which refers to young girls being denied educational opportunities during the time they spent in Magdalen Laundries. On the basis of the information now available through the IDC Report, the IHRC considers whether any possible breach of the right to education occurred, either pursuant to Article 42.4 of the Constitution and/or Article 2 of Protocol 1 of the ECHR.

Chapter 5 recalls Conclusions 8 and 9 of the IHRC Assessment Report regarding the obligations on the State under the Forced Labour Convention 1930 and the ECHR in respect of forced or compulsory labour. While the IDC Report does not directly refer to the character of the work carried out by girls and women in Magdalen Laundries, which were run as commercial enterprises, there is evidence in the IDC Report regarding State Inspections and payment of wages which are relevant to the IHRC's previous conclusions in this regard.

Chapter 6 considers whether the girls and women in the Laundries may have been exposed to instances of ill-treatment on foot of the testimony contained in the IDC Report. The relevant human rights standard applied is that under Article 3 of the ECHR which prohibits torture, inhuman or degrading treatment or punishment. The obligation of the State to not only prevent ill-treatment occurring, but also to investigate allegations of ill-treatment is examined, also taking into account the recommendation of the UN Committee Against Torture.

Chapter 7 similarly revisits Conclusion 11 of the IHRC Assessment Report, in light of the IDC Report, regarding the controversy surrounding the exhumation, in 1993, of the remains of 155 women buried in a communal plot at the High Park Magdalen Laundry in Dublin, and the subsequent cremation and re-interment of those remains. Chapter 5 considers whether the absence of official death certificates for persons buried at the High Park Magdalen Laundry has now been accounted for, and whether there are implications for any of the other burial grounds attached to Magdalen Laundries.

Chapter 8 reviews how human rights law approaches the issue of remedies for breaches of human rights standards, particularly the requirement for restitution. By drawing on the guidance provided by our domestic courts, international human rights expert bodies and the European Court of Human Rights, this Chapter will outline recognised factors relevant to providing remedies for human rights violations.

Chapter 9 summarises the conclusions reached in the report regarding various human rights standards and then addresses whether there are lessons to be learned by the State arising from its relationship with the Magdalen Laundries to prevent future human rights violations. Arising from these conclusions the IHRC makes a

number of recommendations, including in relation to remedies that should be put in place for the women who resided in the Laundries, and then goes on to consider other recommendations on the basis of the lessons that may be learned from the experience of the women.

Acknowledgements

Before setting out its recommendations, the IHRC would like to acknowledge the work of the Inter-Departmental Committee in unearthing and expertly documenting the factual information necessary to allow the IHRC develop its human rights analysis of what occurred in Magdalen Laundries. The IHRC would also like to acknowledge the long campaign pursued by the women who resided in the Laundries, and their supporters, to get justice for their cause. This campaign must at times have seemed futile. It is the hope of the IHRC that this Follow-Up Report, in naming the breaches of human rights for which the State was responsible, contributes to some extent to the process of rehabilitation that has now begun for these women.

Recommendations of the IHRC

The recommendations of this IHRC Follow-Up Report are as follows:

1. *That the State now put in place a system of redress for those women who resided in Magdalen Laundries. The scheme introduced should provide for individual financial compensation for the impact of the human rights violations concerned. In addition, measures should be put in place to ensure to the greatest extent possible the restitution and rehabilitation of the women. By way of restitution, lost wages and any pension or social protection benefits arising from engaging in compulsory work on an unpaid and unacknowledged basis should be identified and provided to the women concerned. Rehabilitation may take different forms and be delivered through a variety of interventions, such as in relation to: housing; pensions; health and welfare; education and; assistance to deal with the psychological effects of time spent in the Laundries.*

In order to deal with the legacy of the Magdalen Laundries, the State is recommended to adopt a number of systemic and specific measures as follows:

2. *The State and its agencies should review its interactions with non-State actors, where such private entities exercise any State function or provide any service on behalf of the State, to ensure that the State is fully complying with its obligation to “respect, protect and fulfil” the human rights of all those within its jurisdiction, by exercising appropriate legislative, contractual or other oversight and accountability measures.*

3. *The State should ensure, in accordance with its international human rights obligations that all credible allegations of abuse, which would, if proved, entail a breach of the State's human rights obligations, are promptly, thoroughly and independently investigated. In line with the requirements under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, those investigations should be carried out by a body that is independent, with defined terms of reference and statutory powers to compel evidence and retain evidence obtained.*
4. *Given the significance of gender related discrimination to the human rights violations that occurred in the Magdalene Laundries, consideration should be given to addressing the gender specific language of Article 41.2 of the Constitution, to address the persistence of stereotypical attitudes towards women and girls, in line with the recommendations of the UN Committee on the Elimination of all Forms of Discrimination Against Women and the recent conclusions of the Convention on the Constitution, 2013.*
5. *Amend domestic equality legislation, so that it more closely reflects the State's international human rights obligations in respect of protection from discrimination, and the right to equality.*
6. *Introduce stand-alone legislation that defines forced or compulsory labour and servitude as a criminal offence in its own right, and in addition confer a specific mandate on the National Employment Rights Agency to include the detection and prosecution of such offences within their inspection and regulatory powers. In addition, victims of forced or compulsory labour and servitude should have the opportunity to seek redress through civil law, whatever their legal status in the State, and be provided with appropriate protection by the State.*
7. *The Government should as a matter of urgency introduce comprehensive capacity legislation in full compliance with the UN Convention on the Rights of Persons with Disability.*
8. *The Mental Health Act 2001, section 4 refers to 'best interests'. The Act should be amended to reflect the human rights based approach of UNCRC as follows: (1) to provide a legal definition for the term best interests in section 4 of the Act and when it applies; (2) remove the reference to 'significant intellectual disability' as a criteria for 'mental disorder' within the meaning of the Act and (3) provide legal clarity for safeguarding the human rights of 'incapacitated compliant patients' through legislation providing for oversight of their circumstances.*

9. *The inappropriate placement of persons with intellectual disability in any setting and in particular in a psychiatric hospital/setting, must end, by facilitating such people to freely choose their place of residence and providing the supports they need to facilitate their living and inclusion in the community*
10. *The IHRC calls for the Government to re-affirm its commitment to A Vision for Change (2006) to ensure the goal of community based delivery of mental health services becomes a reality within its specified timeframe 2016 by re appointing the independent monitoring group to oversee the implementation of the policy.*
11. *Introduce a system for the provision of information and tracing services to adopted persons (including those who were informally adopted in the past), which fully respects each individual's right to know of their origins in accordance with the Convention on the Rights of the Child.*
12. *Amend the Local Authority (Sanitary Services) Act 1948, to ensure a rigorous system of accountability and oversight in relation to the granting of licenses for exhumations and cremations.*

Introduction

1. In November 2010, the IHRC published its report entitled *Assessment of the Human Rights Issues Arising in relation to the “Magdalen Laundries”* (the “IHRC Assessment Report”). The report followed on from an enquiry request made to the IHRC, the background to which is set out below. The IHRC Assessment Report set out twelve Conclusions in relation to Magdalen Laundries and associated issues. Those Conclusions are set out in full in Appendix 1 to this report.
2. The IHRC also made a formal Recommendation to the Government in its Assessment Report, as follows:

That in light of its foregoing assessment of the human rights arising in this Enquiry request and in the absence of the Residential Institutions Redress Scheme including within its terms of reference the treatment of persons in laundries including Magdalen Laundries, other than those children transferred there from other institutions; that a statutory mechanism be established to investigate the matters advanced by Justice For Magdalenes and in appropriate cases to grant redress where warranted.

Such a mechanism should first examine the extent of the State’s involvement in and responsibility for:

- *The girls and women entering the laundries*
- *The conditions in the laundries*
- *The manner in which girls and women left the laundries and*
- *End-of life issues for those who remained.*

In the event of State involvement/ responsibility being established, that the statutory mechanism then advance to conducting a larger-scale review of what occurred, the reasons for the occurrence, the human rights implications and the redress which should be considered, in full consultation with ex-residents and supporters’ groups.

3. As can be seen, this Recommendation sought a **two-stage response** from the Irish Government regarding Magdalen Laundries. First, the IHRC called for a statutory mechanism to be established to investigate whether the State had involvement in the Laundries, particularly in terms of how girls and women

came to enter the Laundries; their experience of life in the Laundries and how they ultimately left the Laundries, if at all. Second, the IHRC called for a wider review of what actually happened in Magdalen Laundries, if such State involvement was indeed established, before moving on to consider the question of redress.

4. A central finding of the IHRC Assessment Report was that the available public records regarding Magdalen Laundries are poor and incomplete (Conclusion 2). This information deficit posed a significant impediment to the IHRC reaching any definitive view as to the precise human rights implications for the State in relation to the operation of Magdalen Laundries. By necessity the IHRC's Conclusions were tentative regarding the human rights standards that might be engaged. This current IHRC report follows on from the 2010 IHRC Assessment Report on the basis that the information deficit identified above has now been partially rectified by the *Report of the Inter-Departmental Committee to Establish the Facts of State involvement with the Magdalen Laundries* (the "IDC Report"), published in February 2013. In this report, the IHRC seeks to assess, on the basis of the information contained in the IDC Report, the human rights implications for the State arising from its involvement with Magdalen Laundries.
5. The aim of this IHRC Follow-Up Report is ultimately to inform the Government on its obligations under human rights law in respect of Magdalen Laundries, including in relation to the issue of redress for the women concerned. This report also reflects on whether there are aspects of the operation of Magdalen Laundries, as documented in the IDC Report, which may still have relevance for the protection of human rights in the State today and in particular, whether there are certain lessons that need to be learnt and gaps in human rights protection which still require to be addressed by the State.
6. As stated this IHRC Follow-Up Report focuses on the State's involvement with Magdalen Laundries. This is of course not to ignore the broader societal context in which Magdalen Laundries operated. The role of families, the clergy and societal attitudes and mores are all important factors in understanding how the Laundries operated. However, commentary on such issues goes beyond the statutory remit of the IHRC.

Background

7. The uncovering of systematic abuse in State institutions lead to the establishment of the Residential Institutions Redress Board under the Residential Institutions Redress Act, 2002. The Board was established for the purpose of making fair and reasonable financial awards to persons who as children were resident in certain institutions in the State and suffered abuse

while so resident.⁵ Magdalen Laundries were not listed in the Schedule to the Act of 2002, and were thus excluded from that redress scheme. The State's position, at that time, was that it was not responsible for the operation of Magdalen Laundries.⁶

8. The decision not to include Magdalen Laundries in the redress scheme, together with media interest in 2003, arising out of the establishment of a memorial for 133 women buried in graves at the High Park Magdalen Laundry, Dublin, led to increased focus on Magdalen Laundries, and marked the beginning of a concerted campaign to seek redress on behalf of the women who had resided in the Laundries.⁷
9. In June 2010, Justice for Magdalenes (JFM), a non-governmental organisation approached the IHRC and requested that it conduct an enquiry pursuant to section 9(1)(b) of the Human Rights Commission Act 2000, into the treatment of girls and women who resided in Magdalen Laundries. Due to the serious nature of the matters raised and the advanced age of some of the survivors of these Laundries, the IHRC prioritised assessing this enquiry request and prepared a detailed internal assessment.

IHRC Assessment Report

10. In September 2010, the enquiry request was formally considered by the IHRC. Taking into account its statutory remit, powers and resources available to it, the IHRC decided not to conduct an enquiry itself but instead called on the State to take action to address the serious human rights issues that were raised. In November 2010, the IHRC Assessment Report was published, including the Recommendation for a statutory investigation into the State's involvement in and responsibility for Magdalen Laundries (as set out above).
11. Based on the information available at that time, the IHRC Assessment Report reviewed the possible extent of State involvement in Magdalen Laundries,

⁵ Long title to the Residential Institutions Redress Act, 2002.

⁶ In a letter from the Minister for Education and Science, dated 4 September 2009, to another public representative, the Minister advanced the following reasons why Magdalen Laundries had not been listed in the Schedule to the RIRA: 1. They were not subject to State regulation or supervision; 2. The State is only liable for children transferred to the laundries from residential institutions as covered under s.1(3) RIRA; 3. There is a difference between children taken into the laundries privately or who entered as adults and persons who were resident in State run institutions; 4. The laundries were privately owned and operated and did not come within the responsibility of the State; 5. The State did not refer individuals, nor was it complicit in referring individuals, to the Laundries.

⁷ *Inter alia*, Rafferty, M; "Restoring Dignity to Magdalenes", Irish Times, 21 August 2003. The Justice for Magdalenes organisation was established in 2003. Other organisations formed who engaged with the IDC were Irish Women's Support Network UK and Magdalen Survivors Together.

insofar as it may have triggered the State's human rights obligations. The IHRC concluded that girls and women entered the Laundries via a number of routes where there was apparent State involvement (Conclusions 3 and 4). The harshness of the conditions in the Laundries was noted, as well as concern being expressed regarding exhumations of a private graveyard at High Park Laundry and the subsequent cremation of the remains.

12. The key human rights standards addressed in the November 2010 IHRC Assessment Report included (i) freedom from arbitrary detention, (ii) freedom from ill-treatment and (iii) freedom from forced or compulsory labour and servitude. In the view of the IHRC, the extent and nature of the State's involvement in relation to Magdalen Laundries, including what it knew or ought to have known, possibly triggered the State's human rights obligations under both the Irish Constitution and the international human rights conventions it has ratified.

United Nations Committee Against Torture

13. In May 2011, the United Nations Committee Against Torture (UNCAT), in considering Ireland's First Periodic Report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, made findings and recommendations about the failure of the State to protect girls and women who were involuntarily confined between 1922 and 1996 in Magdalen Laundries.⁸ Significantly, in its Concluding Observations, UNCAT stated that Ireland had failed to regulate and inspect Magdalen Laundries, in circumstances where allegations of physical, emotional abuse and other ill-treatment were committed in breach of the Convention.⁹ The Concluding Observations of UNCAT relating to Magdalen Laundries are set out in Appendix 2 to this report.
14. UNCAT recommended that Ireland should "*institute prompt, independent and thorough investigations into all allegations of ill-treatment in Magdalene Laundries.*"¹⁰ UNCAT also recommended that all "*victims*" obtain redress and have an enforceable right to compensation including the means for as full rehabilitation as possible. These findings and recommendations of UNCAT broadly echoed those of the IHRC.

⁸ United Nations Committee Against Torture; Concluding Observations of the Committee against Torture, Ireland, at paras. 21 and 22. 17 June 2011 (CAT/C/IRL/CO/1) - <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.IRL.CO.1.pdf>. The Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment came into effect in respect of Ireland on 11 May 2002.

⁹ *Ibid.*, at para. 21.

¹⁰ *Ibid.*

15. The recommendations of UNCAT, however, went further than those of the IHRC in one distinct respect. UNCAT called on Ireland to “*prosecute and punish the perpetrators with penalties commensurate with the gravity of the offences committed.*”¹¹ The IHRC had not considered ill-treatment under the United Nations Convention Against Torture, but rather under the similar standard in the European Convention on Human Rights. The UNCAT recommendations on investigations and prosecutions are thus additional to those of the IHRC.

Inter-Departmental Committee

16. In July 2011, the Minister for Justice, Equality and Defence appointed an Inter-Departmental Committee (the “IDC” or the “Committee”) to be chaired by Senator Martin McAleese and charged with the task:

*“to establish the facts of State involvement with the Magdalen Laundries [...], which were identified by Government as 10 named institutions, and to write a Narrative Report thereon.”*¹²

17. The IDC was given the power to define its precise Terms of Reference and the appropriate time period to be considered by its investigations. The IDC comprised six Government Departments:
 - i) Department of Justice, Equality and Defence;
 - ii) Department of Health;
 - iii) Department of Environment, Community and Local Government;
 - iv) Department of Education and Skills;
 - v) Department of Enterprise, Jobs and Innovation and the;
 - vi) Department of Children and Youth Affairs.
18. The IDC report was presented to Government in February 2013. The period range reviewed by the Committee was from 1922 (the foundation of the Irish State) to 1996 (the closure of the last Magdalen Laundry).¹³ Residual issues occurring after 1996, in particular the question of the State’s role in relation to exhumations at High Park in Dublin, were also examined.
19. It is noted that the establishment of the IDC fell short of the IHRC’s call for a statutory mechanism to investigate the State’s role in Magdalen Laundries. The IHRC considers that the main advantage of a statutory investigation mechanism lies in the fact that it can guarantee independence and public accountability and may be vested with powers of compellability, in terms of accessing relevant

¹¹ Ibid., at para. 22.

¹² IDC Report, Ch. 2, Summary, at p. 4.

¹³ Ibid., Ch. 2, at paras. 13 and 15.

records or testimony. The IHRC appreciates, however, that statutory inquiries may not be as flexible as, for example, an ad-hoc inter-departmental Committee, and may become delayed in procedural disputes and that the publication of inquiry reports may as a result be delayed.¹⁴ Nonetheless, the remit of the IDC was also limited in relation to its subject matter. While the IDC Report establishes the facts of State involvement with the Magdalen Laundries in a narrow sense, this was only the first part of the IHRC's recommendation; the second part of the recommendation sought a more comprehensive statutory mechanism to look at, *inter alia*, the human rights implications of that involvement. It is further noted that the mandate of the IDC, does not address the more far-reaching recommendation made by the UNCAT in relation to investigations, prosecutions and the imposition of penalties, and at a minimum the recommendation for such an investigation remains unfulfilled.¹⁵ In her most recent review of the implementation of UNCAT's 2011 Concluding Observations on Ireland, the Committee's Rapporteur for Follow-Up states that the IDC "lacked many elements of a prompt, independent and thorough investigation as recommended by the Committee in its Concluding Observations".¹⁶

¹⁴ An example of this was the Commission to Inquire into Child Abuse (CICA). By virtue of the *Commission To Inquire Into Child Abuse Act, 2000 (Additional Functions) Order, 2001* (SI 280/2001), CICA was conferred with additional functions to enquire into the conduct of three vaccine trials on children. The CICA was also to consider "any systematic trials of a vaccine or the mode of delivery thereof" in the period 1940 to 1987. A Vaccine Trials Inquiry was thus initiated by the CICA and substantial work conducted by it up until June 2004. Advertisements were placed in the print media in the State and in the United Kingdom inviting affected persons to contact the CICA. Reportedly some 877 persons submitted completed questionnaires to the CICA which commenced preliminary investigations, contacted and provided legal representation to a wide number of 'respondents' and which interviewed a number of persons affected. However, SI 280/2001 was declared *ultra vires* in the High Court judicial review proceedings *Irene Hillary v The Minister for Education, Science and others* (11/06/ 2004). This Judgment/ Order followed a previous Supreme Court decision in the proceedings entitled *Meenan v Commission to Inquire into Child Abuse* (31/7/2003) in which the Court severely criticised the vaccine trials inquiry and quashed a direction to attend before the CICA. Having become mired in legal controversy, the CICA as a result decided to discontinue the Vaccine Trials Inquiry.

¹⁵ It is also noted in this regard that the Human Rights Committee, which is responsible for monitoring compliance with the International Covenant on Civil and Political Rights (ICCPR), which protects many of the human rights examined in this Report has commented; "Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. National human rights institutions, endowed with appropriate powers, can contribute to this end. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy." General Comment No. 31 [80], *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 29 March 2004. CCPR/C/21/Rev.1/Add. 13, at para 15.

¹⁶ Letter dated 22 May 2013 from Felice D. Gaer, Rapporteur for Follow-Up on Concluding Observations of UNCAT to H.E. Gerard Corr, Permanent Representative of Ireland to the United Nations Office at Geneva, page 3.

20. It is notable that the IDC adopted an inclusive strategy based on confidence-building measures, which involved a number of meetings with survivors and Religious Congregations. Such an approach was arguably necessitated by the fact that the Committee had no statutory powers to compel the production of relevant records and documentation. The Religious Congregations engaged with the Committee on a voluntary basis. Undoubtedly this collaborative approach allowed the IDC complete its report within 18 months.
21. The IHRC made a presentation to the IDC in October 2011 and provided the Committee with the background research underpinning its 2010 Assessment Report. The information gleaned by the Committee is extensive; it reviewed substantial State archive records and also the relevant records of the Religious Congregations. It requested and obtained reports and assistance from An Garda Síochána, the Coroners Service, the Health Service Executive, the Central Statistics Office and other agencies. It interviewed survivors of Magdalen Laundries, former state officials and members of Religious Congregations.
22. As stated, the Religious Congregations that operated Magdalen Laundries assisted the IDC on a voluntary basis. These Congregations informed the IDC that their purpose in admitting girls and women into Magdalen Laundries was to assist them in the absence of family and societal supports.¹⁷ They also stated that there was no sexual abuse in the Laundries, which has now been revealed as prevalent in residential institutions for children.¹⁸ The primary first hand evidence of the conditions in the Laundries received by the IDC appears to have been that of the women who resided there.
23. The IHRC wishes to acknowledge the substantial work undertaken by the Inter-Departmental Committee under the stewardship of Senator McAleese. As a result of the Report, a much fuller picture now emerges of Magdalen Laundries and the complex nature of State, Church and societal acts and omissions, which allowed girls and women be placed in these institutions during the Twentieth Century.
24. It is important to recall again that the remit of the IDC Report was limited to establishing the facts relating to State involvement with Magdalen Laundries. The IDC Report does not evaluate the implications of such involvement in terms of the State's responsibilities, including its human rights obligations. Such an analysis falls directly within the remit of the IHRC. As indicated above, the IHRC was previously unable to fully assess the extent of State involvement in the Laundries due to the scarcity of relevant public information. The contents of the IDC Report, although not exhaustive in terms of the operation of

¹⁷ IDC Report, Introduction, at para. 12.

¹⁸ *Ibid.*, Ch. 19, at paras. 72-75.

Magdalen Laundries and day to day conditions in them, significantly rectifies this information gap regarding the involvement of the State, thus allowing the IHRC to add significantly to its original assessment. The IDC Report, in setting out the facts as pertained to the Laundries, refers to domestic legal provisions where they existed but not to international human rights standards and seldom to constitutional standards. Under those standards, domestic legal provisions may themselves violate human rights law in certain circumstances.¹⁹ This Follow-Up Report considers those standards against the facts as established in the IDC report.

25. The IHRC, in producing this further report, is also mindful that the Government has appointed Mr Justice John Quirke to advise on the establishment of an *ex gratia* scheme for the benefit of women who were admitted to and worked in Magdalen Laundries.²⁰ Mr Justice Quirke was requested to examine how this scheme can best operate a fund for the women, including the procedures for determining the nature and amount of payments. In addition, he was asked to examine how the Government might best support the health and welfare needs of women and how to ensure that *ex gratia* payments under the scheme do not disadvantage recipients in terms of entitlement to social welfare and income taxation liability.²¹ It is understood that Mr Justice Quirke has now delivered his advices to Government. It should be noted, however, that on 22 May 2013 the United Nations Committee Against Torture Rapporteur for Follow-Up on Concluding Observations expressed concern that Judge Quirke's current work is "*premised in the incomplete investigations carried out by the McAleese [IDC] Committee*".²²

Archiving the records

26. One particular recommendation of the IDC Report worth noting at this juncture, is that copies of all State records identified by the IDC should be preserved as a distinct archive in the Department of An Taoiseach.²³ While the IHRC is of the view that such records might better be placed in the care of the National

¹⁹ See for instance *Norris v Ireland* (Applic. No 10581/83) Judgment 26 October 1988 and *Keegan v Ireland* (Applic. No 16969/90) Judgment, 26 May 1994.

²⁰ Terms of Reference for Mr Justice Quirke, published on Tuesday 19 February 2013 - <http://www.merrionstreet.ie/index.php/2013/02/terms-of-reference-for-mr-justice-quirke/>. See also Closing Statement by the Minister for Justice, Equality and Defence, Alan Shatter TD, on the Report of the Inter Departmental Committee to establish the facts of State involvement with the Magdalen Laundries - Dáil Éireann - Wednesday, 27th February 2013 (<http://www.justice.ie/en/JELR/Pages/SP13000071>).

²¹ Mr Justice Quirke was asked to report back to Government within three months with his recommendations, i.e. by 18 May 2013.

²² Letter dated 22 May 2013 from Felice D. Gaer, Rapporteur for Follow-Up on Concluding Observations of UNCAT to H.E. Gerard Corr, Permanent Representative of Ireland to the United Nations Office at Geneva, page 3.

²³ IDC Report, Introduction, at para. 19.

Archive, for reasons of accessibility into the future when relevant statutory time limits have expired, it agrees in principle that the relevant records should be preserved as a public record in its own right. The IHRC notes, in this regard, that the records provided to the IDC by the Religious Congregations remain with the Congregations and have not been copied or preserved separately. It may be appropriate to consider how these records may also be preserved and made available as public records in the future when the data protection concerns that now exist will no longer apply.

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27. In considering the facts presented in the IDC Report, the IHRC will focus on the key human rights standards addressed in its 2010 Assessment Report: namely (i) the right to equality, (ii) freedom from arbitrary detention, (iii) freedom from torture, inhuman or degrading-treatment or punishment, (iv) freedom from forced or compulsory labour and servitude and (v) the right to education. Finally this Report will reflect on some of the lessons learned from the experience of State interaction with Magdalen Laundries.

Chapter 1: State Involvement in Magdalen Laundries

28. As indicated in the Introduction to this Follow-up Report, the focus of the IHRC, in compiling this report, is to examine whether the IDC Report casts new light on the human rights obligations of the State arising from the relationship between the State and Magdalen Laundries. It should be noted that Conclusions 3 and 4 of the 2010 IHRC Assessment Report specifically recognise the involvement of the State in referring girls and women to the Laundries, while Conclusions 7, 8 and 9 identify the key human rights standards that might be engaged (see Appendix 1). These standards relate to protections against arbitrary detention, against forced or compulsory labour and against servitude and also concern end-of-life issues.
29. In this regard, Chapters 1 and 2 of this Report will focus on the routes of entry attributable, either directly or indirectly, to the State which are identified in the IDC Report. By so doing, this Follow-up Report applies relevant human rights standards to the facts established in the IDC Report, in order to come to certain conclusions regarding the human rights obligations of the State. This Chapter will, therefore, deal with two distinct issues. First, it will discuss the definition of the “State” adopted in the IDC Report and whether it is sufficiently broad for the purpose of assessing the human rights issues at stake. Second, it will provide an overview of the involvement of the State in Magdalen Laundries as identified in the IDC Report. This overview in turn informs the further analysis in this report regarding specific human rights standards.

Part 1: The definition of “State”

30. At the outset, it is important to consider how the IDC defined State actors as this informs what acts or omissions it considered to fall within State responsibility. Here, according to its report, the Committee adopted:

“the full meaning of “the State”, to refer to a body, whatever its legal form, which is or was responsible for provision of a public service under the control of the State and with special powers for that purpose. This encompassed not only Government Departments but a whole range of bodies, agencies and organisations, detailed throughout the Report.”²⁴

31. Using this definition, the IDC focused its investigations:

“on the activities of a whole range of bodies, agencies and organisations ranging from Government Departments, to local authorities, health authorities, social services, An Garda Síochána, the Probation Service,

²⁴ IDC Report, Ch. 2, at Summary, at p.4.

the Prison Service, the Courts Service, the General Register's Office, Industrial and Reformatory Schools, the institutions known as County and City Homes and so on."²⁵

32. This is as it should be. The definition employed by the IDC for emanations of the State is the definition employed by the European Court of Justice in a 1990 decision entitled *Foster v British Gas*,²⁶ namely:

*"a body, whatever its legal form, which has been made responsible, pursuant to a measure adopted by the state, for providing a public service under the control of the state and has for that purpose special powers beyond that which result from the normal rules applicable in relations between individuals".*²⁷

33. While this definition is broad, it nonetheless requires a "*measure adopted by the State*" to trigger the State's responsibility. Under international human rights law, the range of bodies that may comprise the State is wider. They include private organisations which operate outsourced Government functions, for example where policing or prison functions are outsourced to private security firms. Further, the State also retains obligations to "control" the behaviour of private actors where they perform quasi-Governmental functions. This obligation continues even if there is no specific legislative measure adopted by the State to regulate an activity (such as the level of care to be provided in residential services for persons with disabilities), but where the relationship between the State and the organisation is governed under a contractual arrangement.²⁸

34. The IDC "*also had regard to*" the Foster test in:

*"considering the status of a number of organisations which historically held a role in the performance of official functions or public services. These include the performance by officers of the Legion of Mary, the Salvation Army and the Society of the Vincent de Paul of the role of Voluntary Probation Officers to the Courts; as well as the historic role of the "cruelty man", that is, the Inspectors of the National Society for Prevention of Cruelty to Children."*²⁹

²⁵ Ibid., Ch. 2, at para. 20.

²⁶ *Foster, A and Others v British Gas*, Case C-188/89 (1990).

²⁷ IDC Report, Ch. 2, at para. 19.

²⁸ See for instance, "*Enquiry Report on The Human Rights Issues Arising from the Operation of a Residential Day Care Centre for Persons with a Severe to Profound Intellectual Disability.*" IHRC, March 2010.

²⁹ IDC Report, Ch. 2, at para. 21.

35. Clearly these persons performed the role of public officials engaged in probation and inspection following court processes and were correctly identified as such by the IDC. A further aspect of State responsibility arising from international human rights law is where private bodies undertake acts which impact on, and on occasions violate, human rights and where the State has not acted to end the violation by controlling the behaviour of the non-State actor. This obligation is often an implicit obligation under international conventions, referring as it does to the State's "*positive obligations*" to secure convention rights so that neither State nor non-State actors violate those rights.³⁰
36. The obligation may also be an explicit one, for example, the obligation under the 1930 Forced Labour Convention to suppress and outlaw forced or compulsory labour (discussed below). Under other international conventions, this obligation extended to the State, by whatever means appropriate, guarding against arbitrary detention, ill-treatment or servitude.
37. An ancillary question arises as to whether Magdalen Laundries were, in certain circumstances, part of the State apparatus, to the extent that they were performing State functions, such as acting as places of detention or of referral from a court or other public services. However, the IDC's interpretation did not extend to cover the Laundries themselves, *qua* providers of public services on behalf of the State. In practical terms this approach does not in fact lead to any omission in the factual accounts in the IDC Report, as there was extensive interaction with the Religious Congregations, who in any event provided all the relevant records they hold on a voluntary basis. Nonetheless, it is important to make the point in the present context, as ideally the records available from both State agencies and the Religious Congregations would be co-terminous, with a shared sense of responsibility evident, particularly insofar as the records uncovered by the IDC demonstrate that both the State authorities and the Religious Congregations viewed the operation of the Laundries in similar terms – as a place in which certain girls and women could be placed in lieu of imprisonment, psychiatric detention, abandonment or vagrancy. Thus an overly narrow definition of the State will not be adequate in the context of human rights law to address the full extent of the State's obligations *vis a vis* both the regulation and accountability of private actors providing services of a public nature.³¹ A human rights based understanding of the State must be sufficiently

³⁰ See *Van Kück v Germany*, Judgment of 12 June 2003, (2003) 37 EHRR 51 where the European Court of Human Rights found a violation of Article 8 of the ECHR. While there was no right under Article 8 to reimbursement for transgender surgery from an insurance company, where domestic law provided for such an entitlement, the State's positive obligations were triggered including the regulatory obligation to monitor the manner in which decisions were taken.

³¹ Thus the 2011 UN Committee Against Torture Concluding Observations on Ireland expressed grave concern at the failure by the State to protect girls and women involuntarily

broad to encompass its human rights obligations where it either “contracts out” certain State functions or services, or permits such functions or services to be discharged by private actors. This point has resonance at the present time where more and more services, utilities and functions that were previously considered the preserve of the State are being privatised.

38. It is also noted that in relation to those State actors or private actors acting for the State, the IDC did not “*make assessments of liability or potential liability*” but pointed out that its fact-finding mandate meant it was not a mechanism for determination of individual complaints.³² Further to the Report’s central conclusion that there was significant State involvement with Magdalen Laundries, the Taoiseach, in his speech to the Dáil on 19 February 2013 following the publication of the IDC report, was unambiguous in apologising on behalf of the State for the treatment of the girls and women who entered the Laundries.³³

Part 2: Direct State involvement in Magdalen Laundries

39. The scale of State involvement with the Laundries as revealed in the IDC Report, extends considerably beyond what had originally been considered in the IHRC Assessment Report. The IDC Report states that evidence of “*direct State involvement*” was found across the range of areas examined by the Committee.³⁴ The IDC Report records that some 11,198 women and girls entered 8 out of the 10 Magdalen Laundries it examined between 1922 and 1996.³⁵ Unfortunately, the two Sisters of Mercy Magdalen Laundries are not included in this figure as the relevant Register of Entries either did not survive (Dun Laoghaire Magdalen Laundry) or only survived in part (Galway Magdalen Laundry).³⁶ The IHRC notes that in respect of the majority (54%) of entries of

confined in Magdalen Laundries “by failing to regulate their operations and inspect them” and by failing “to institute prompt, independent and thorough investigation into the allegations of ill-treatment perpetrated on girls and women” in the laundries: see below and Appendix 3.

³² IDC Report, Ch. 2 at Summary, p.5.

³³ In his speech on 19 February 2013, the Taoiseach stated: “*Therefore, I, as Taoiseach, on behalf of the State, the government and our citizens deeply regret and apologise unreservedly to all those women for the hurt that was done to them, and for any stigma they suffered, as a result of the time they spent in a Magdalen Laundry.*” See www.taoiseach.gov.ie/eng/News/Taoiseach's_Speeches_2013/_TAOISEACH'S_STATEMENT_ON.html.

³⁴ IDC Report, Introduction, at para. 15.

³⁵ *Ibid.*, Executive Summary, Table in para. 4. The overall number of cases identified by the IDC, was 14,607, but this figure includes legacy cases, some Sisters of Mercy information and repeat admissions, which adjusted resulted in a figure of 11,198 cases, including all available information in the following fields: institution, name, date of entry, age on entry, county of origin, route of entry, date of exit, duration of stay, route of exit, and family profile (parents living or dead).

³⁶ *Ibid.*, Ch. 4, at para. 16.

girls and women to Magdalen Laundries between 1921 and 1996, the individual route by which they came to the Laundries remains unknown.

40. The IDC Report provides information on the routes of entry to Magdalen Laundries in respect of 46% of the girls and women who came to reside in the Laundries.³⁷ Of these *known* routes of entry to Magdalen Laundries, the IDC Report records that 26.5% (2,124) were referrals made or facilitated by the State.
41. Prior to the IDC Report, there was no official estimate of how many girls and women entered Magdalen Laundries, other than the 1901 and 1911 census records³⁸ and the 1970 Kennedy Report.³⁹ Now the number of girls and women who, after 1922, entered 8 out of the 10 Magdalen Laundries is much clearer, although it is likely that an exact figure may never be established.

A. State involvement – routes of entry

42. The IDC Report identifies the routes (or “*pathways*”) through which girls and women entered the laundries and the average duration of their stay. Notwithstanding lost or destroyed records, it may be tentatively assumed that the routes of entry that are now known give at least a *pro rata* indication of how girls and women came to enter the Laundries. The IDC Report records that of the *known* routes of entry;⁴⁰
 - 26.5% (2,124) were referrals made or facilitated by the State (8.1% from criminal justice system; 7.8% from industrial and reformatory schools; 6.8% from health and social services sector; and 3.9% from Mother and Baby Homes);⁴¹
 - 14.8% were transfers from other laundries;⁴²
 - 8.8% were referrals by priests;⁴³
 - 10.5% were referrals by family members;⁴⁴

³⁷ Ibid., Ch. 8, at para. 20.

³⁸ IHRC Assessment Report which recorded JFM contention that the 1911 census records some 1,094 women and girls residing in Magdalen Laundries.

³⁹ Reformatory and Industrial Schools Systems Report, 1970 (“the Kennedy Report”), referred to in IHRC Assessment Report.

⁴⁰ The IDC Report provides statistics based on the known routes of entry to the Laundries, and also provides a statistical breakdown when the total number of entries to the Laundries is taken into account, including 3,173 women who entered, but the reason is unknown (see Ch. 8, at para. 20).

⁴¹ IDC Report, Executive Summary, at para. 5 and Ch. 8, at para. 19.

⁴² Ibid., Executive Summary, at para. 6 and Ch. 8, at para. 17.

⁴³ Ibid.

- 16.4% were self-referrals.⁴⁵

Although no records now appear to exist in respect of the majority (54%) of entries to the Laundries, it may be presumed that they would fall across the routes of entry referred to above.

B. Types of referrals by the State to Magdalen Laundries

43. The IDC Report identifies State referrals of girls and women to Magdalen Laundries through (i) the criminal justice system, (ii) industrial and reformatory schools, (iii) health and social services (including from Mother and Baby Homes).⁴⁶ These referrals are briefly outlined below.

i) Criminal justice system referrals

44. The IDC Report provides considerable detail in relation to placements of girls and women in Magdalen Laundries that may be regarded as coming within the scope of the “*criminal justice system*”.⁴⁷ The IDC Report records that 8.1% of known routes of entry were through the criminal justice system and that of “*the large majority of cases involving women referred to the Magdalen Laundries from the criminal justice system were for minor or petty crime*”.⁴⁸
45. The criminal justice system is given a wide meaning in the IDC Report and includes:
- Government Departments;
 - An Garda Síochána;
 - The Probation Service;
 - The Prison Service; and
 - The Courts.⁴⁹
46. The IDC Report considers these routes of entry by reference to the legal arrangement concerned as follows:

- 1) Remand;

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid., Executive Summary, at para. 5 and Ch. 8, at para. 19.

⁴⁷ Ibid., Ch. 9.

⁴⁸ Ibid., Executive Summary, at para. 9 and Ch. 9, Summary; which indicates that the majority of placements of women in Magdalen Laundries by the criminal justice system followed convictions of more minor or petty crimes, particularly those dealt with in the District Court. These more common crimes on foot of which women entered Magdalen Laundries included everything from failure to purchase a train ticket to larceny, vagrancy and assault.

⁴⁹ Ibid., Ch. 9, Summary.

- 2) Probation;
- 3) Temporary Release from Prison;
- 4) Early Release from Prison;
- 5) Suspended sentences.

47. The IDC Report also identifies informal practices where Magdalen Laundries provided other services to the State, such as in connection with:

- 5) Adjourned sentencing;
- 6) Providing a step down facility from prison;
- 7) Placements by members of An Garda Síochána.

However, the IDC report also states that the “large majority” of cases involving women referred to Magdalen Laundries from the criminal justice system were for minor or petty crime only.⁵⁰

48. It is also significant, in the complex nature of referrals to Magdalen Laundries, that voluntary organisations and their officers “*had an important role in certain aspects of the administration of the criminal justice system*”.⁵¹ Those named by the Committee were the Legion of Mary “*whose members served as voluntary Probation Officers until the expansion of the professional Probation Service in the late 1960s and early 1970s*” and the National Society for the Prevention of Cruelty to Children “*in the years prior to the development of State social services*”.⁵²

ii) Referrals from industrial and reformatory schools

49. The IDC Report separately examines the placement of girls and young women in Magdalen Laundries directly from Industrial and Reformatory Schools. This represents another distinct entry path into Magdalen Laundries, accounting for 7.8% of all known referrals. The Report identifies five main patterns of referral in this context:

- (1) *girls were placed temporarily in a Magdalen Laundry prior to committal to an Industrial or Reformatory School;*
- (2) *girls were released on licence from Industrial or Reformatory Schools to the Magdalen Laundries before the age of 16;*

⁵⁰ Ibid., Executive Summary, at para. 9.

⁵¹ Ibid., Executive Summary, at para. 13.

⁵² Ibid.

- (3) *girls were committed by the Courts to Industrial or Reformatory Schools but refused entry by that school and admitted instead to a Magdalen Laundry;*
- (4) *girls were referred onwards from Industrial or Reformatory Schools to a Magdalen Laundry directly upon discharge at the age of 16;*
- (5) *former industrial or reformatory school children were referred to a Magdalen Laundry during the period of their post-discharge supervision.*⁵³

50. This is further evidence that on occasion the Laundries were acting as a surrogate for State services.⁵⁴

iii) Referrals from health and social services

51. In relation to the 6.8% of referrals from the health and social services sector (the responsibility of local authorities until 1970), the IDC Report records that “5 and possibly 6 Magdalen Laundries were approved as “extern institutions” for provision of public assistance” which meant that women “from all categories eligible for public assistance - including the poor and the disabled - could be and were placed there rather than receive “home assistance” (state payments)”.⁵⁵ Other referrals were as a “step down” from psychiatric institutions or for those with an intellectual disability. A retired Inspector of Mental Hospitals informed the IDC that psychiatric hospitals served as both a route of entry to and exit from Magdalen Laundries. In relation to the latter, the former inspector is quoted as citing the example of girls or women “... disposed of by the relevant institution because they were perceived as misbehaving themselves by the rules of conduct as set out by the institution and were identified as trouble makers, perhaps with personality characteristics or disorders which would not qualify for committal by the standards and legislation of today.”⁵⁶ In relation to entry to Magdalen Laundries, the IDC Report also records how a “cost-benefit analysis” was applied by the health authorities in at least some cases, where the decision to approve the transfer of:

“an indigent, homeless, disabled or psychiatrically ill girl or woman to a Magdalen Laundry hinged on the fact that such a transfer was more cost-

⁵³ Ibid., Ch. 10, Summary of Findings, at pp. 325-326.

⁵⁴ Thus Chapter 13 of the IDC Report records the approach as “State subvention would be provided in respect of persons maintained in outside institutions, where public authorities would otherwise have had to make alternative arrangements for the maintenance of those persons”; at para 50.

⁵⁵ Ibid., Executive Summary, at paras. 20-21.

⁵⁶ Ibid., Ch. 11, at para. 192. See also Chapter 13.

*effective than making direct provision for her in a facility operated by the health authorities” and that in other cases, “general grants to Magdalen Laundries were approved on the same basis.”*⁵⁷

This is further evidence that on occasion the Laundries were acting as a surrogate for State services.⁵⁸

52. Referrals from Mother and Baby Homes to Magdalen Laundries constituted 3.9% for whom the route of entry is known. The IHRC, in its previous Assessment Report, considered that Mother and Baby Homes were possibly the prevalent route of entry to Magdalen Laundries (Conclusion 3), but the IDC Report clearly documents that this was just one of a multiplicity of routes of entry. Although the Committee found there was no statutory basis for referrals of women to Magdalen Laundries on the basis of having a second child outside marriage, it concludes that *“akin to the cost-benefit analysis”* operating in the health sector, *“a desire to protect rate-payers from the costs of repeated pregnancies outside marriage may have played a part in some referrals of women to the Magdalen Laundries.”*⁵⁹

C. State funding and financial assistance

53. Chapter 13 of the IDC Report addressed the issue of direct funding and financial assistance by the State to Magdalen Laundries. The different funding streams provided by the State to the Laundries, also assists in understanding the situation of the girls and women who entered the Laundries. Such funding included:

- *Capitation under the Public Assistance Acts for certain individual women referred to Magdalen Laundries by public authorities;*
- *General funding under the Health Acts to certain Magdalen Laundries in consideration of performance of a function or provision of a service which the State would otherwise be required to perform or provide;*
- *Capitation payments in relation to certain women in Magdalen Laundries on remand or on probation and;*

⁵⁷ Ibid., at para. 22.

⁵⁸ Thus Chapter 13 of the IDC Report records the approach as “State subvention would be provided in respect of persons maintained in outside institutions, where public authorities would otherwise have had to make alternative arrangements for the maintenance of those persons”; at para 50.

⁵⁹ Ibid., at para. 24.

- *Other miscellaneous grants, including grants awarded to some Magdalen Laundries in the transitional phase around the times of their closure and subsequent provision of sheltered accommodation or nursing homes.*⁶⁰

54. The IDC Report confirms that such funding was authorised by the Department of Health and paid to Magdalen Laundries by local authorities and health boards. Chapter 13 usefully identifies the procedure for approving Magdalen Laundries as institutions for the provision of “*public assistance funding*”.⁶¹ The IDC Report clearly indicates that the provision of such funding was subject to the consent of the Minister for Health.⁶² Similarly, the IDC Report sets out the process for health authorities making payments to Magdalen Laundries for a “*service similar or ancillary to a service which the health authority may provide*” (under section 65 of the Health Act 1953). Again, the approval of the Minister for Health was required before such payments could be made.⁶³
55. Chapter 13 also identifies the quantum of State funds paid to Magdalen Laundries during certain periods by way of assistance.⁶⁴ For example, in 1969, the Minister for Health approved a grant of £2,500 IR “... *in respect of the maintenance of 38 permanently disabled or sub-normal unemployable females in the Convent of St Mary Magdalen, Donnybrook.*”⁶⁵ In this regard, the IDC Report reproduces a Department of Health internal memorandum, indicating that:

⁶⁰ Ibid., Ch. 13, at p. 594.

⁶¹ Ibid., at para. 11.

⁶² An instance of the Minister approving the provision of public assistance funding to a Laundry (Good Shephard Convent, Limerick) is recorded in the Report. See IDC Report, Ch 13 at paras 9 and 13. The IDC Report records that in expectation of a visit by the Minister to Health to Hyde Park in 1970, “officials of the Department [of Health] *discussed the Convent’s activities with the Health Authority. They say that this is one of the most progressive ‘Houses’ in the social field*”. In his speech to Hyde Park, the Minister is recorded as expressing his view that he was: “*most impressed by the range of welfare services provided there... The complex of welfare facilities included residential accommodation for some 150 girls and women ranging from teenagers to old age pensioners. Many of these women cannot find outside employment because of mental subnormality... It was a major responsibility to provide residential facilities for 150 people and when taken in conjunction with the modern commercial laundry at the Monastery, testified to the initiative, industry and ingenuity of the Sisters*”. He is also recorded as referring to the “*happy relationship between the health authority and the Sisters*”, including reference to the annual grant from the Department which although it “*would not compensate for the personal dedication of the Sisters but it was a practical recognition by the State of the welfare services provided by them*”; IDC Report, Ch. 13, at paras. 105-107.

⁶³ Ibid., at paras. 49 and 50.

⁶⁴ Both State papers and the records provided to the Committee by the religious congregations are referred to in the IDC Report.

⁶⁵ IDC Report, Ch. 13, at para. 62.

The Health Authority would have a liability to provide shelter and any necessary medical treatment these persons might require if they were not maintained in the Convent.

The Convent derives its main income from the operation of a laundry. The grant sought is equivalent to about 25/- a week per person, which is only a fraction of their maintenance cost in one of the Health Authority's institutions.⁶⁶

56. The final sentence of this quote contains an unambiguous acknowledgment that Magdalen Laundries were fulfilling a function that was otherwise the obligation of the State, the cost analysis indicating that the Laundries were intentionally publicly funded as a significantly cheaper alternative to State care.⁶⁷ It is also notable that, in considering the financial viability of the Laundries, the IDC Report states:

In summary, the analysis of the available financial records suggested that, in general, the Magdalen Laundries operated on a subsistence or close to break-even basis, rather than on a commercial or highly profitable basis and would have found it difficult to survive financially without other sources of income – donations, bequests and financial support from the State.⁶⁸

57. Therefore the provision of State funding in its various forms to the Laundries throughout the years was one of the crucial factors that allowed the Laundries to continue operating throughout the Twentieth Century.

Capitation payments made for remand detention

58. Another form of State income referred to capitation grants for taking in girls or women remanded to Magdalen Laundries (see below). The IDC Report sets out how capitation payments were made by the State in respect of places of detention for girls under the age of 17 for the purpose of Part V of the Children

⁶⁶ Ibid., at para. 64. Applications were also made for taking into care “special cases of girls under 16 years of age”; Chapter 13 at para 119.

⁶⁷ See also reference in a 1968 Departmental Memorandum to the fact that the cost of “each disabled inmate” in one Laundry would be much less taking into account the fact that they could not access “the maximum Disabled Person’s Maintenance Allowance (47/6 a week)” in addition to being otherwise only a “fraction of the cost” in another institution; Chapter 13 at paras 71-72. See also the 1969 application for a grant for “72 girls certified by two Doctors as unemployable, disabled and subnormal” on the grounds of cost; Ch. 13 at para 102. These grant applications were invariably approved by the Department of Health.

⁶⁸ Ibid., Ch.20, at para. 5.

Act 1908 with capitation grants signed by the Minister for Finance in relevant cases.⁶⁹

State contracts for laundry services

59. In addition to providing funding to Magdalen Laundries, Chapter 14 of the IDC Report details the use by the State of the laundry services provided by the Religious Congregations. On the basis of the figures set out in Chapter 14 (which are stated to have been compiled by the accountants for a congregation), it appears that between the years 1960 to 1966 (inclusive), the State paid one Magdalen Laundry (Sean McDermott Street, Dublin) a total of £46,449 IR for laundry services to the “*defence forces*”, “*public hospitals*” and “*other State bodies*”.⁷⁰ According to the figures produced in the IDC Report, this amount, restated in current-day (2011) values, equates to €1,072,629.⁷¹ Total laundry sales for Sean McDermott Street Magdalen Laundry from 1960 to 1966 are stated to have amounted to £259,384 IR. This means that State contracts with that particular Magdalen Laundry accounted for approximately 18% of its total business during that period.

Conclusion

60. While the above is just a brief overview of the nature of the relationship between the State and Magdalen Laundries from 1922-1996, as documented in the IDC Report, it is sufficient to give a sense of the nature of the inter-dependence between the two. The State clearly relied on the Laundries to provide certain services, at low cost, on behalf of the State, and with minimal oversight or intervention, while the Laundries equally relied on the State both in terms of the commercial aspect of the Laundries, but also in terms of relying on direct State funding to continue in operation.
61. How this inter-relationship impacted on the girls and women who entered the Laundries is the focus of the present follow-up report and will be considered in the context of the State’s human rights obligations from 1922 to the present day.

⁶⁹ Ibid., Ch. 9, at paras. 37 and 47. Full records of payments made by the Department of Justice for girls and women placed on remand or probation were not found by the IDC due to the Department destroying such files after 7 years; Ch. 13 at para 126 and Ch. 14 at para 4.

⁷⁰ Ibid., Ch. 14, at para. 15.

⁷¹ The IHRC notes that the IDC Report appears to have erred in providing the current-day value of the State’s contacts with Sean McDermott Street Magdalen Laundry for the period as being €153,232. This, in fact, appears to be the *average* yearly costs of the State contract with that Laundry expressed in current-day values.

Chapter 2: The Right to Equality

62. Gender is a defining feature in the history of Magdalen Laundries. Broadly speaking, it is the vindication of the rights of the women concerned that must inform the response to the revelations in the IDC Report regarding the State and Magdalen Laundries. In relation to any substantive breaches of human rights that may have occurred in the Laundries, as examined further in this Report, the consistent thread running through them is that they were perpetrated against girls and women. Men were never subjected to the regime that existed within the Laundries. In this regard, to the extent that the women in the Laundries did not have their human rights fully respected, human rights standards would regard their treatment as discriminatory, when compared to boys and men in similar situations (for the reasons set out below). For this reason the IHRC is placing gender discrimination in the foreground of its analysis of the human rights issues arising in relation to the operation of the Laundries. Thus, the right to equality cross cuts the other human rights standards considered in the following Chapters of this Report.

63. When the IHRC published its Assessment Report in 2010, it was stated that:

“... the State ratified the Convention on the Elimination of Discrimination against Women in 1985. This requires the State to take positive steps - on an ongoing basis - to eradicate any discrimination that impacts on women.

The ongoing refusal of the State to explore its own involvement in the “Magdalen Laundries” raises, I think, questions as to whether it is a form of ongoing discrimination. And this discrimination will not be eliminated until our collective responsibility for the treatment of these women is acknowledged.”⁷²

64. In relation to this collective responsibility for the operation of the Laundries this may be explained at a societal level by the fact that men were ascribed different social roles and their behaviour was seldom viewed in the same light as that of women. That this was so is very clear in the IDC Report, from the testimonies of survivors to the recollections of members of the Religious Congregations concerned who very clearly felt that society and the State asked them to take care of these girls and women who no one else wanted.⁷³

⁷² Olive Braiden, Member of the Commission, on the occasion of the publication of the IHRC Assessment Report, 9 November 2010. See <http://www.ihrc.ie/publications/list/opening-remarks-by-ihrc-commissioner-olive-braiden/>

⁷³ See IDC Report, Introduction, at paras 1-12.

65. While historical discrimination against women informs and underpins what happened to the girls and women who entered the Laundries, it did not form an express part of the IHRC's 2010 Assessment Report, principally because the State did not ratify the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) until 1985.⁷⁴ However, the prohibition on gender based discrimination has much earlier antecedents, in the form of the Constitution, from 1937, and the ECHR from 1953, both of which contain guarantees of equality and protection from discrimination, and their relevance to Magdalen Laundries is considered below.⁷⁵

Article 14 of the ECHR

66. Article 14 of the ECHR imposes a duty on State Parties not to discriminate on a number of explicit, but non-exhaustive grounds, including gender, when acting within the scope of other Convention rights:

"The enjoyment of the rights and freedoms as set forth in this convention shall be secured without discrimination on any ground, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

67. The reach of Article 14 is restricted to 'the enjoyment of the rights and freedoms as set forth' in the Convention. Thus, Article 14 has no independent existence and a complaint in relation to discrimination must first come within the ambit of one of the substantive provisions of the Convention. However, so long as an alleged breach of human rights falls within the scope of one of the other substantive rights under the Convention, a further claim may arise under Article 14 when taken in combination with that other right. This is so even if that

⁷⁴ IHRC Assessment Report at para 39. *Article 2 of the Convention on the Elimination of all forms of Discrimination Against Women affirms that; "State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women..."*

⁷⁵ Article 40.1 of the Constitution provides: "All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function." Article 14 of the ECHR states: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." The right to equality under both the Constitution and the ECHR is therefore not unlimited. The Constitution only goes so far as guaranteeing equality "before the law", and not in every aspects of the person's interactions with the State or indeed private parties. Under the ECHR, the right to equality is only guaranteed in relation to the enjoyment of other substantive rights under the Convention, and thus Article 14 may only be invoked in conjunction with another Article of the ECHR. In addition the ICCPR, which was ratified by Ireland in 1989, contains a general guarantee of equality in relation to the right protected by the Covenant (Article 2), a specific guarantee of equality between men and women (Article 3), and Article 26 of the ICCPR contains a stand-alone guarantee of equality "before the law".

other Convention right has not been breached when considered on its own. Thus, on occasion the European Court of Human Rights (the ECtHR) may find a breach under Article 14, even where it finds no breach of the substantive right engaged.⁷⁶

68. Not all differences in treatment are prohibited under Article 14 of the ECHR and the ECtHR has stated that:

[T]he principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 ... is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized.⁷⁷

In order to determine if there is a potential breach of Article 14, the ECtHR asks the following questions in deciding whether there has been a breach of Article 14:

- i Whether the matter falls within the ambit of a substantive ECHR right;
- ii Whether a difference of treatment on the basis of status can be demonstrated;
- iii Whether any difference of treatment pursues a legitimate aim and,
- iv Whether the measure in question is proportionate to the aim. This test includes an examination of whether the difference of treatment extends beyond the State's "margin of appreciation".⁷⁸

Each of these questions will be considered in turn below.

⁷⁶ See, *Kafkaris v Cyprus*, (App. 21906/04), Judgment 12 February, 2008, at para 159.

⁷⁷ "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" *v Belgium (Merits)*, Judgment of 23 July 1968, (1968) 1 EHRR 252 ("Belgian Linguistics case"), at para.10.

⁷⁸ Under the case-law of the European Court of Human Rights a certain "margin of appreciation" is allowed to national authorities in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law. The scope of the "margin of appreciation" will vary according to the circumstances, the subject-matter and its background.

Whether the matter falls within the ambit of a substantive ECHR right:

69. The following Chapters will consider whether, arising from the operation of the Laundries, there may have been breaches of, *inter alia*, the rights to liberty (Article 5); education (Article 1, Protocol 1); freedom from forced or compulsory labour or servitude (Article 4) and freedom from torture, inhuman or degrading treatment (Article 3). For the purpose of Article 14, it is sufficient to note at this point that all these rights are *prima facie* engaged on the basis of the evidence in the IDC Report, and accordingly if follows Article 14 is also engaged.⁷⁹

Whether a difference in treatment on the basis of status can be demonstrated

70. As noted Article 14 prohibits discrimination on certain non-exhaustive grounds such as sex, race, language or religion. As the regime in the Magdalen Laundries exclusively impacted on girls and women, it must then be considered whether there were any boys or men in a comparable situation to the women in the Laundries.⁸⁰ When one considers the routes by which girls and women entered the Laundries, and which are set out in detail in the IDC Report, it is clear that boys and men in similar situations were not dealt with in the same way.⁸¹ Thus, men in the criminal justice system; boys and men who were homeless or in dire poverty, boys and men with a physical, mental or intellectual disability, or boys in the juvenile justice system, were never exposed to the harsh regime in a similar fashion to the girls and women who entered the Magdalen Laundries. This is not to imply that boys or men in such situations never experienced breaches of their human rights, and undoubtedly some did, but never in the systematised, and gender exclusive way that the Magdalen

⁷⁹ See for instance *Abdulaziz and Others v. The United Kingdom*, at para. 71. It is noted in relation to the case law of the ECtHR, that if that Court finds that another substantive right under the Convention has been breached it will often decide not to go on and consider Article 14, on the basis that it would serve “no useful legal purpose” to do so. For example see *Dudgeon v The United Kingdom*, Judgment of 22 October 1981, (1982) 4 EHRR 149, at para. 69. See also *Saadi v. The United Kingdom*, 2006, at para. 57.

⁸⁰ The ECtHR has found that discrimination potentially contrary to the Convention may result from a *de facto* situation which predominantly affects one gender more than another. Thus prohibited gender discrimination may be evidenced by statistics which demonstrate that a practice affected one gender but not another. In the *Hoogendijk v The Netherlands* admissibility decision, the ECtHR stated: “[W]here an applicant is able to show, on the basis of undisputed official statistics, the existence of a *prima facie* indication that a specific rule – although formulated in a neutral manner – in fact affects a clearly higher percentage of women than men, it is for the respondent Government to show that this is the result of objective factors unrelated to any discrimination on grounds of sex.

⁸¹ See IDC Report, Chs, 9, 10 and 11.

Laundries dealt with women. Thus it is clear that women in a comparable situation to men were dealt with less favourably for the purpose of Article 14.⁸²

Whether the difference in treatment pursues a legitimate aim and is proportionate to that aim

71. Article 14 does not require that every situation be treated the same, and allows for a difference in treatment where this has the objective of actually eliminating an inequality.⁸³ Thus, once it has been shown that there has been a difference in treatment on a prohibited ground, it is for the respondent state to show that there is a reasonable and objective justification for this treatment. The ECtHR will therefore consider whether the treatment pursues a legitimate aim. If the difference in treatment has an objective and reasonable justification, namely, it pursues a legitimate aim and is proportionate to that aim; it will not result in a violation of Article 14. It is worthy of note in this context, however, that the ECtHR views discrimination on certain grounds as being more serious than others, so that more “weighty reasons” would be needed to justify such difference in treatment.⁸⁴ These grounds include gender.⁸⁵
72. The State has never put forward a single justification for the treatment of the girls and women in the Laundries.⁸⁶ As noted previously, the State’s first response was to deny knowledge in relation to what went on in the Laundries, a position that has now swung in the opposite direction to an at least implied acknowledgment of State responsibility for the wrongs that occurred. In this regard the State has not officially put forward an objective justification for the placement of girls and women in Magdalen Laundries. Therefore, it falls to

⁸² Naturally the situation of women giving birth outside marriage is a situation which relates exclusively to women, and thus does not invite the need to establish a comparator.

⁸³ In *Stec & Ors v The United Kingdom*, (Application 65731/01 & 65900/01), Grand Chamber, 12 April 2006, it was accepted by the Court that there was a legitimate aim pursued by conferring on women a lower pension age than men. This was justified by the fact that women in general spent longer out of the work force, looking after children and other family members, and thus it took them longer to build up sufficient social security payments to benefit from a full pension, than it took for men. The Court indicated that this arrangement would be justified so long as the factual inequality between men and women persisted.

⁸⁴ For example, the European Court has stated that because the advancement of the equality of the sexes is a major goal in the Member States of the Council of Europe, “very weighty reasons would have to be advanced before a difference of treatment on the grounds of sex could be regarded as compatible with the Convention”; see *Abdulaziz and Others v. The United Kingdom*, at para. 78.

⁸⁵ In relation to sex discrimination see *Stec & Ors v The United Kingdom*, (Application 65731/01 & 65900/01), Grand Chamber, 12 April 2006. The other grounds are race, religion, sexual orientation, nationality and legitimacy. In fact it has been stated that States enjoy no margin of appreciation in the context of discrimination on the gender ground: see Jacobs, White, Ovey, *The European Convention on Human Rights*, 5th Ed., at p. 562.

⁸⁶ For instance, the State never made a statement to the UN Committee Against Torture in relation to the allegations of abuse that occurred in the Magdalen Laundries.

consider whether the records of various contemporaneous State documents in relation to both formal and informal interactions with the Magdalen Laundries, contained in the IDC Report provide a coherent narrative of an overall State policy in relation to the Laundries. While the documentation recorded in the IDC Report is helpful, its segmented nature across Government Departments and time, and the diversity of contexts to which the State records relate, make it difficult to identify whether the State ever considered there was a legitimate objective in allowing the Magdalen Laundries operate as they did, and in turn whether there was any relationship of proportionality between the legitimate aim pursued and the measures adopted.

73. With the caveat stated above, if we take as an example the circumstance of the girls and women placed in the Laundries pursuant to the criminal justice system, and those girls who were “recalled” after their discharge from the Industrial and Reformatory schools, and placed in the Laundries (See Chapter 3 for more detail in relation to detention), then the question arises if there was any possible justification for placing the girls and women in the Laundries in these circumstances. What emerges from the IDC Report is that far from having a thought out policy in relation to the use of the Laundries as places of detention, the State largely relied on the Laundries in an *ad-hoc* and unregulated manner.⁸⁷ The only consistent aspect of the engagement between the States and the Laundries was gender, in that it all related to arrangements for the “containment” of girls and women. In addition it appears the Laundries were often used as a place of detention even where this was not legally authorised, undermining any claim that any legitimate aim was being pursued. Furthermore in relation to the question of proportionality, even if the State on occasion considered it justified to divert women from the prison system to the Laundries, this could never have been appropriate when the conditions of that detention in the Laundries were unsupervised by the State, and where the girls and women were at risk of being subjected to forced or compulsory labour or servitude, and to other possible breaches of their human rights, such as an absence of educational opportunities for girls.⁸⁸

The Constitution

74. The Constitution also contains a guarantee of equality which the State is obliged to uphold.⁸⁹ Article 40.1 states:

All citizens shall, as human persons, be held equal before the law.

⁸⁷ See IDC Report, Chapters 9 and 10, and Chapter 3 of this Report.

⁸⁸ See further Chapters 4 and 5.

⁸⁹ Article 40.1 of the Constitution provides: “All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.” The right to equality under the Constitution is therefore not unlimited.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

While the case law under Article 40.1 is limited, it is clear that insofar as the Article protects individuals “as human persons”, this would clearly encompass such a defining human trait as gender, and indeed this was accepted by the Supreme Court in *MD v Ireland*.⁹⁰ In addition Article 40.1 is confined to questions of equality “before the law”, and thus would appear to be limited to matters that engage the application of the law in some context. When we consider the Laundries, and in light of the contents of the IDC Report, this does not exclude the application of the constitutional equality guarantee to the situation of girls and women in the Laundries insofar as many of those placed in the Laundries were there on foot of some legislative provision or legal process. In addition it may be submitted that it was also the failure to apply the benefit of the law to the girls and women in the Laundries that resulted in discrimination against them, and this could also trigger the constitutional guarantee.⁹¹

75. When considering the guarantee of equality under the Constitution, while the case law is not wholly even, and variations in approach may be evident, the analysis engaged in by the High Court and Supreme Court largely reflects that of the ECtHR, insofar as they will look for a difference of treatment, and then go on to consider whether the difference is justified. So for instance in *SM v. Ireland* it was stated:⁹²

“the differentiation is legitimated by reason of being founded on difference of capacity, whether physical or moral, or difference of social function of men and women in a manner which is not invidious, arbitrary and capricious.”

In other words, the Courts ask if there a legitimate legislative purpose which justifies the interference and if that interference is proportionate and rationally connected with the identified purpose. In this regard the stages of the analysis above under Article 14, would also broadly apply in relation to an analysis of Article 40.1 of the Constitution.

Conclusion

76. Magdalen Laundries clearly operated as a discriminatory regime in respect of girls and women in the State. The State itself had knowledge of the regime and

⁹⁰ *M.D. (A Minor) v. Ireland & Ors* [2012] IESC 10.

⁹¹ See further Chapters 3 and 4 below.

⁹² *SM v Ireland*, [2007] 4 I.R. 369.

actively engaged with it, indeed financially benefitting from it in some cases. Society at large accepted the regime, and also supported it by placing sisters, daughters and mothers behind the walls of the Laundries.⁹³ However, the culpability of the State arises not only at a moral level, but also at a legal level. The ECHR and the Constitution both prohibited gender discrimination, but as we will see in the following Chapters, the State appears to have taken no cognisance of women's' right to equality when it engaged with, and permitted the Laundries to operate until their natural demise in the latter part of the Twentieth century. The following Chapters of this Report will amplify the discrimination that characterised the relationship between the State and the Laundries.

⁹³ See IDC Report, at Ch. 18.

Chapter 3: The Right to Liberty

77. On the basis of the IDC Report, we know that 2,124 girls and women (26.5% of all known referrals) were referred to Magdalen Laundries by an emanation of the Irish State.⁹⁴ Referrals by the State to Magdalen Laundries were in fact far more extensive than originally appreciated. Turning to those matters that specifically fall within the mandate of the IHRC; one of the key concerns identified in the IHRC Assessment Report was the manner in which girls and women came to enter and leave Magdalen Laundries. Analysis of this issue by the IHRC, including examination of public records in the National Archives, demonstrated that the Irish State, in the form of the Courts, commonly placed girls and women in Magdalen Laundries.
78. Recalling that the State was directly involved in 26% of the *known* entries to Magdalen Laundries by girls and women between 1922 and 1996, from the perspective of human rights compliance, such placements gave rise to a clear obligation on the State to ensure that the human rights of those persons were not breached. Such a breach might arise in the first instance by the placement itself, and thereafter by the treatment of girls and women while resident in the Laundries. Where there was a breach of such a duty by the State, an appropriate remedy is required.
79. As already stated, from the perspective of human rights compliance, placements in any institution, such as Magdalen Laundries directly engages the human rights obligations of the State. Before considering the treatment of girls and women in the Laundries, the first matter that arises for consideration is whether the initial placement of girls and women in Magdalen Laundries by the State, amounted to arbitrary detention, such detention possibly continuing for the duration that the girls and women remained in the Laundries. For present purposes, arbitrary detention arises where the entry and residence of the girls and women was an unlawful interference with the right to liberty, as protected under Article 40.4.1 of the Constitution and Article 5 of the ECHR.⁹⁵
80. While the direct involvement of the State in the placement of girls and women in Magdalen Laundries is relevant to determining whether unlawful detention

⁹⁴ See IDC Report, Ch. 8, at paras. 16-27.

⁹⁵ The ECHR was ratified by the State in 1953. The right to liberty is also protected under other human rights conventions, principally Article 9 of the International Covenant on Civil and Political Rights, (ICCPR). Article 9 also contains a right to compensation to those unlawfully deprived of their liberty. In addition the ICCPR contains a general guarantee of equality in relation to the right protected by the Covenant (Article 2), a specific guarantee of equality between men and women (Article 3), and Article 26 of the ICCPR contains a stand-alone guarantee of equality "before the law".

occurred, that is not the end of the matter. This is because under the ECHR, States owe a positive obligation:

*“to take measures providing effective protection of vulnerable persons, including reasonable steps to prevent a deprivation of liberty of which the authorities have or ought to have knowledge”.*⁹⁶

81. An additional obligation arises under Article 5(4) ECHR to regularly review the lawfulness of detention (discussed below). In the context of deprivation of liberty in private (non-State) institutions, such as Magdalen Laundries, the actions required of the State go beyond ensuring that an appropriate legal and administrative framework is in place, but extend to ensuring regular supervision and control of such private institutions to ensure that any confinement there is lawful and in the case of continuing detention not initially ordered by a court (such as remand or psychiatric detention), to review the ongoing lawfulness of that detention by a judicial authority.⁹⁷ States are subject to a clear positive obligation to protect the personal liberty of all persons from interference by private actors.
82. On this basis, even where the State was not directly involved in the placement of girls and women in Magdalen Laundries, the knowledge of the State in relation to their presence in the Laundries, absent consent or any lawful authority for keeping them there, would also give rise to State responsibility in terms of preventing arbitrary detention. As will be seen from the analysis below, the criminal justice functions of the State, as they related to girls and women, were firmly interwoven with the operation of the Laundries and it is difficult to understand how the State could not have known whether or not arbitrary detention was occurring in Magdalen Laundries.⁹⁸
83. While the IDC adopted the foundation of the State in 1922 as its starting point, the IHRC Assessment Report regarded the adoption of the Irish Constitution, in 1937, and the ratification of the ECHR, in 1953, as key dates for assessing the State’s responsibility in relation to arbitrary detention. The remit of the IHRC extends to human rights standards under both the Constitution and

⁹⁶ *Storck v Germany* (2005) 43 EHRR 96 at para. 102. This decision of the ECtHR builds on its previous jurisprudence in relation to the obligation of the State to take positive measures to prevent breaches of Articles 2, 3 and 8 of the Convention, such as *Z and Ors v The United Kingdom*, (2002) 34 EHRR 97 and *A. v. the United Kingdom*, Judgment of 23 September 1998, Reports of Judgments and Decisions 1998-VI, p. 2699, § 22.

⁹⁷ *Storck v Germany* (2005) 43 EHRR 96 at paras. 103 and 108.

⁹⁸ The IDC Report documents the extensive interaction between the State and Magdalen Laundries beyond the criminal justice system. The level of this interaction was sufficiently extensive to allow the State have knowledge of the manner in which women were placed in the Laundries, and some knowledge of the conditions in which they resided there. In this regard see IDC Report, Chapters 10, 11, 12, 13 and 14.

international law.⁹⁹ It is worth noting, in connection with the pre-1937 period, that detention and/or false imprisonment may have been unlawful under other domestic law provisions of that time, as is evident from the approach of the IDC Report in identifying whether a lawful basis existed for placing the women and girls in the Laundries.¹⁰⁰

Part 1: Legal Principles on Detention

A. Article 40 of the Constitution

84. Article 40.4.1 of the Constitution provides that:

“No citizen shall be deprived of his personal liberty save in accordance with law.”

85. As to the meaning of the provision *“in accordance with law”*, Henchy J in *King v Attorney General*¹⁰¹ stated that it means *“without stooping to methods which ignore the fundamental norms of the legal order postulated by the Constitution.”*¹⁰² Article 40.4.2 provides the mechanism whereby the legality of a detention is most frequently challenged. In broad terms, if there is a flaw or irregularity in a detention, this will result in the person having their liberty restored to them, in a procedure akin to the common law *habeas corpus* rule.¹⁰³
86. The *“circumstances of the particular case”* will usually determine whether or not a detention is in accordance with the law for the purpose of *habeas corpus* relief under Article 40.4.2.¹⁰⁴ Not every departure from legal correctness will

⁹⁹ Section 2 of the Human Rights Commission Act, 2000, states: *“In this Act (other than section 11) “human rights” means - (a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution, and (b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party.”*

¹⁰⁰ False imprisonment has traditionally been an offence at common law, and was first established in statute as an offence in this jurisdiction by section 15 of the Non-Fatal Offences Against the Person Act 1997. See, Charleton, McDermott, Bolger; *Criminal law* (Dublin: Butterworths, 1999), at pp. 722-729.

¹⁰¹ *King v Attorney General* [1981] IR 233.

¹⁰² *Ibid.*, at p. 257.

¹⁰³ Article 40.4.2^o provides that *“Upon complaint being made by or on behalf of any person to the High Court or any judge thereof alleging that such person is being unlawfully detained, the High Court and any and every judge thereof to whom such complaint is made shall forthwith enquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention, and the High Court shall, upon the body of such person being produced before that Court and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law”*.

¹⁰⁴ *State (Royle) v Kelly* [1974] IR 259 per Henchy J at para. 269.

render a detention unlawful so as to attract an order of *habeas corpus*. The test as to whether a detention is "in accordance with the law" for the purpose of *habeas corpus* relief was explained in the following passage from the judgment of Henchy J. in *State (Royle) v. Kelly*:¹⁰⁵

"The purpose of the test is to ensure that the detainee must be released if, but only if, the detention is wanting in the fundamental legal attributes which under the Constitution should attach to the detention.

*The expression is a compendious one and is designed to cover these basic legal principles and procedures which are so essential for the preservation of personal liberty under our Constitution that departure from them renders a detention unjustifiable in the eyes of the law. To enumerate them in advance would not be feasible and, in any case, an attempt to do so would tend to diminish the constitutional guarantee."*¹⁰⁶

87. In this regard, the Constitutional protection against deprivation of liberty is less clearly articulated, but possibly more flexible than the protection derived under Article 5 of the ECHR.
88. The *State (McDonagh) v Frawley*¹⁰⁷ is authority for the proposition that a mere technical flaw in relation to a person's detention will not result in their release, but in the words of O'Higgins CJ, "... there must be such a default of fundamental requirements that the detention may be said to be wanting in due process of law."¹⁰⁸
89. *Habeas corpus* relief may also be granted in circumstances where the detention of a person, though in itself or initially lawful, may become unlawful because of the way the prisoner has been treated. There does, however, not appear to be any instance of a prisoner securing release because of the conditions under which s/he was being detained.
90. In *Kinsella v. Governor of Mountjoy Prison*,¹⁰⁹ a prisoner in Mountjoy Prison sought a declaration that his constitutional rights had been infringed by the conditions of his detention so as to render his detention unlawful and necessitate his immediate release under Article 40.4.2 (the applicant, who was convicted for theft and sentenced to five months imprisonment, was also on remand for murder). Due to overcrowding and the lack of single cell accommodation, he was accommodated in a padded "safety observation cell", designed for at-risk prisoners with mental health problems (of which he had

¹⁰⁵ *State (Royle) v. Kelly* [1974] IR 259.

¹⁰⁶ *Ibid.*, at p. 269.

¹⁰⁷ *State (McDonagh) v Frawley* [1978] IR 131.

¹⁰⁸ *Ibid.*, at p. 136.

¹⁰⁹ *Kinsella v. Governor of Mountjoy Prison* [2011] IEHC 235.

none), where he was only released for six minutes a day to make a telephone call.

91. The High Court had no difficulty finding that a prisoner has a right to bodily integrity, which encompasses a person's psychological well being, and that this right had been breached. Hogan J. left open the possibility that his conditions of detention could render his continuing detention unlawful and granted the prison authorities an opportunity to remedy the situation.¹¹⁰

B. Article 5 of the ECHR

92. Article 5 ECHR protects the right to "*liberty and security of person*". Article 5(1) sets out six exhaustive conditions under which a State may legitimately curtail a person's liberty. Article 5(1) states that:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

¹¹⁰ The High Court dismissed the *habeas corpus* claim in this case, but the decision does indicate that if the conditions in which a person is detained are sufficiently poor, then this may render the detention unlawful, Hogan J making it clear that if the conditions of detention continued, the case "would inch its way to the point where the court could stay its hand no longer". See also *State (Richardson) v Governor of Mountjoy Prison* [1980] ILRM 82.

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

93. In addition, there is an overall requirement that such a deprivation of liberty be “*in accordance with a procedure prescribed by law*” which brings with it three additional requirements. First, this “*lawfulness*” requirement means that any detention must be in accordance with national law. This necessitates a determination as to whether an essential legal procedure has been followed and whether there is a precise legal basis for the deprivation of liberty. The requirement of a clear legal basis for any deprivation of liberty extends to the entire period of the deprivation. There have been a number of instances where violations of Article 5 ECHR have been found because the legal basis for the deprivation of liberty, despite being originally lawful, had at some point ceased to exist.¹¹¹
94. Second, this “*lawfulness*” requirement also refers to whether the national law meets the general principle of legal certainty. This principle requires that the conditions for the deprivation of liberty under national law must be clearly defined, and the law itself must be foreseeable in its application. Foreseeability allows a person, if necessary with legal advice, to foresee to a reasonable degree the consequences which a particular action may entail, such as their detention.¹¹²
95. Third, domestic law must also comply with the purpose of Article 5, namely to protect against “*arbitrariness*”. Therefore, even if a deprivation of liberty is lawful, it cannot be used in circumstances where it is not necessary or is designed to achieve an impermissible objective.¹¹³ Accordingly, as indicated in the IHRC’s Assessment Report (at para. 51), arrest for the purposes of

¹¹¹ *Quinn v France* (Application No. 18580/91) Judgment of 22 March 1995. In this case, the domestic courts ordered the release of a person who had previously been remanded in custody entirely in accordance with French law, but, for eleven hours after the court’s order, the applicant had remained in custody without being notified of the order or there being any move made to commence execution, which apparently was a result of the prosecutor’s office trying to set in motion extradition proceedings against him which would have then avoided having to comply with the order for release. The ECtHR acknowledged that there could be some delay in complying with such an order, but held that the respective interval was clearly too long to satisfy the Article 5 requirement). See also *Labita v. Italy* (Application No. 26772/95) Judgment of 6 April 2000; *K.F. v Germany*, (144/1996/765/962) Judgment of 27 November 1997.

¹¹² *Creanga v. Romania* (Application No. 29226/03) Judgment of 23 February 2012; *Medvedyev & Ors v. France* (Application No. 3394/03) Judgment of 29 March 2010.

¹¹³ *Witold Litwa v Poland* (Application No. 26629/95) Judgment of 4 April 2000. In this case, the ECtHR found the detention of a man, blind in one eye, in a “sobering-up centre” was clearly unnecessary given the absence of any threat to the public or himself, his blindness, the rather trivial circumstances of the case and the existence of other, far less draconian measure (to deal with an intoxicated person).

indefinite detention, including preventative detention is generally not permitted by Article 5(1) and is thus a violation of the right to liberty.¹¹⁴

96. Aside from the three overarching requirements outlined above, there are a number of other explicit safeguards contained in Article 5 ECHR. Under Article 5(2), persons deprived of their liberty must be informed promptly as to the reasons for the action taken and in respect of any charge(s) against them.¹¹⁵ The reasons provided must clarify for the person concerned the essential legal and factual grounds for the deprivation of liberty. This then allows the person to apply to a court challenging the lawfulness of the arrest or detention.¹¹⁶
97. Article 5(4) guarantees the right of all persons deprived of their liberty, whether by arrest or detention, to institute court proceedings challenging the lawfulness of their detention. Such challenges must be decided “*speedily by a court*” and release must be ordered if the detention is unlawful. To protect vulnerable persons who may not have the ability of bringing a challenge, Article 5(4) also requires that where the detention is potentially indefinite, periodic reviews must take place automatically by a court or tribunal which has the power to discharge.¹¹⁷
98. Article 5(5) provides an enforceable right to compensation in the event of arrest or detention in contravention of Articles 5(1) to 5(4). Failure by the State to provide redress, such as compensation, for unlawful detention is itself a breach of Article 5(5).¹¹⁸

¹¹⁴ *Lawless v Ireland* (Application No. 332/57) Judgment of 14 November 1980.

¹¹⁵ It is now well-established that the wording of this provision should not lead to the conclusion that the need to give reasons only arises in the context of criminal proceedings—it applies in all cases where there is a deprivation of liberty. As to the timing for the reasons, the acceptability of the timing will depend on the circumstances of a case. The ECtHR has not objected to intervals lasting less than a day in cases concerning the arrest and subsequent questioning of a suspect (*Dikme v Turkey* (Application No. 20869/92) Judgment of 11 July 2000), but found a ten-day delay in informing someone of the reasons why she was being confined in a mental hospital as unacceptable (*Van der Leer v The Netherlands* (Application No. 11509/85) Judgment of 21 February 1990).

¹¹⁶ *Fox, Campbell and Hartley v United Kingdom* (Application Nos. 12244/86; 12245/86; 12383/86) Judgment of 30 August 1990.

¹¹⁷ See for example the periodic reviews undertaken by the Mental Health Tribunals pursuant to sections 48 and 49 of the Mental Health Act 2001.

¹¹⁸ See *Brogan v United Kingdom* (Application Nos. 11209/84; 11234/84; 11266/84; 11386/85) Judgment of 29 November 1988; *Hood v United Kingdom* (Application No 27267/95) Judgment of 18 February 1999. There has never been a specific statutory right to compensation for unlawful deprivation of liberty by the State pursuant to Article 5(5) to the present date.

Were girls and women deprived of their liberty in Magdalen Laundries?

99. It is essential before invoking Article 5, to establish that there has in fact been a deprivation of liberty. In light of the contents of the IDC Report, and in particular the reported evidence of the women who resided in Magdalen Laundries, it is useful to highlight the factors that the ECtHR considers when determining whether a deprivation of liberty has occurred. In this regard, when examining the nature of the confinement, the ECtHR will take into account factors such as the type, duration, effects and manner of implementation of the detention measure.¹¹⁹
100. Confinement to a locked prison cell, for example, constitutes a deprivation of liberty. Less absolute forms of restriction, however, can be more problematic. In this regard, the ECtHR has drawn a distinction between a deprivation of liberty under Article 5 and a restriction on freedom of movement.¹²⁰ This distinction is more a matter of degree and intensity than one of nature or substance.¹²¹ The fact that a person has a degree of liberty within a particular place will not necessarily mean that Article 5 has no application.¹²² In the present context, the relevant test would appear to be whether the girls and women were under constant supervision and control within the Laundries, as this will normally be sufficient to constitute a deprivation of liberty.¹²³
101. In relation to the IDC Report, there are conflicting accounts of the extent to which the girls and women were free to leave the Laundries. There appears to be evidence from some sources that the women did leave the Laundries on occasion, and were not incarcerated in the same sense as might apply in a

¹¹⁹*Engel and Others v Netherlands* (Application Nos. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72) Judgment of 8 June 1976, at para. 58. See also Jacobs, Ovey and White, *The ECHR*, 4th Ed (Oxford: Oxford University Press, 2006), p. 124.

¹²⁰ Article 2 of Protocol 4 provides: “1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence...3 No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

¹²¹ Detention of a person in his or her home (i.e. house arrest) can fall short of engaging Article 5 but breach Protocol 4, Article 2. However, restrictions on movement coupled with other factors limiting liberty, such as supervision and reduced access to social contacts, can cumulatively engage Article 5. See for instance, *Guzzardi v Italy* (Application No. 7367/76) Judgment of 6 November 1980 and *H.L. v United Kingdom* (Application No. 45508/99) Judgment of 5 October 2004.

¹²² See *Ashingdane v the United Kingdom* (Application No. 8225/78) Judgment of 28 May 1985 (where the Court found Article 5 applied to a person who, although kept compulsorily in a mental hospital, was placed in a ward which was not locked and was allowed to leave the hospital grounds during the day and over the weekend without being accompanied).

¹²³ *Ibid.*

prison. For instance, the Report refers to testimony provided by a priest who was the chaplain in the Sean McDermott Street Laundry, and who stated that the women there took part in outings and were able to take up part time employment outside the laundry.¹²⁴

102. In this regard, the IDC Report refers to a photograph in which women from a Magdalen Laundry took part in a religious parade and appear to have been accompanied by the Gardai:

“303. The above statements by a priest and an outside lay-person suggest that Garda supervision of women outside the Magdalen Laundries did not occur, despite the fact that Gardaí might participate in some religious occasions, including some occasions involving women from those institutions as well as others.

304. However, as set out more fully above, in some cases Gardaí would be notified and expected to arrest a woman leaving a Magdalen Laundry, if her presence there was a requirement of probation; or in the context of recall during her period of post-discharge supervision from an Industrial or Reformatory School.”¹²⁵

103. While there were accounts of the women working outside one particular Laundry, and going on outings, such accounts would not necessarily refute the possibility that the girls and women were nonetheless under constant supervision and control while residing in the Laundries.¹²⁶ Otherwise put, such outings could be regarded as a form of temporary release if the girls and women concerned were subject to recall to the Laundries.
104. As we will see below, there were certainly instances where Magdalen Laundries were providing an alternative to the prison system, and in this regard it was clearly understood that the girls or women were to be maintained in conditions of detention. In other instances the situation is less clear cut, and would very much depend on the individual experience of the women concerned. One significant category of girls and women in the Laundries were those who sought to enter the Laundries voluntarily. Such instances are referred to as “self referrals” in the IDC Report, and examples of such cases are extensively set out in the report.¹²⁷ It is notable, in this regard, that those girls and women who entered of their own volition, appear on the face of the records that are available to have been equally free to leave of their own free will. The overlap between self-referrals, and the accounts of women being in a

¹²⁴ IDC Report, Ch. 9, at paras. 298-304.

¹²⁵ Ibid., Ch. 9, at paras. 303-304.

¹²⁶ Ibid., Ch. 9, at paras. 298- 303.

¹²⁷ Ibid., Ch. 18, at paras. 48-61.

position to take up part-time employment outside the Laundries or go on outings is unclear.

105. However, the direct testimony of the women who spoke to the IDC suggests a very restrictive regime, more in line with incarceration. In Chapter 19 of the IDC Report there are a number of quotes from women regarding their perception and experience of being effectively incarcerated within one or other of the Laundries, and these statements would at a minimum suggest that the women concerned understood they were not free to leave the Laundry at will.
106. In addition, with respect to the placements of girls and women in Magdalen Laundries by State agencies, the IDC Report notes a significant number of instances where girls and women had little, if any, knowledge about the reasons for which they were in Magdalen Laundries, and whether they were required to remain there. As documented in the IDC Report:

“51. Another very common grievance of the women who shared their stories with the Committee – particularly those who had previously been in Industrial or Reformatory Schools - was that there was a complete lack of information about why they were there and when they would get out. None of these women were aware of the period of supervision which followed discharge from industrial or reformatory school.

52. Due to this lack of information and the fact that they had been placed in an institution among many older women, a large number of the women spoke of a very real fear that they would remain in the Magdalen Laundry for the rest of their lives. Even if they left the Laundries after a very short time, some women told the Committee that they were never able to fully free themselves of this fear and uncertainty.”¹²⁸

107. The IDC Report sets out specific testimony in this regard:

“A woman who was in a Magdalen Laundry in the 1950s (and who had previously been in an Industrial School) said that there was “never any communication to tell me the reason for anything. ... No one ever spoke why I was there. In our heads all we could think of is we are going to die here. That was an awful thing to carry”.

A woman in a different Magdalen Laundry in the 1960s (who had also previously been in an industrial school) said “there was never a reason given for anything, we never thought we’d see the outside of the world

¹²⁸ Ibid., Ch. 19, at para. 51.

again. ... While you were in Ireland they knew exactly what you were doing. You had to leave Ireland to escape them”.

A woman who was in a Magdalen Laundry in the 1950s (placed there by a named person from her former Industrial School shortly after she had stayed out late one night while in employment) said “I don’t know why that happened. I learned later only women with illegitimate babies went there. I was a young virgin, I don’t know why I was put there”.

*Another woman was released from an Industrial School to her family home. She said on leaving the Industrial School she had “no paperwork, no explanations, I had nothing”. After reporting to the Industrial School that she was suffering physical and other abuse in the home, she was placed in a Magdalen Laundry. She said “the thing that gutted me mostly in the Laundry was knowing I probably would never get out of there. I went into myself a lot”.*¹²⁹

108. While these are all clearly subjective accounts of the experience of girls and women in the Laundries, when combined with the objective evidence in the IDC Report regarding the use of the Laundries for the purpose of detaining women and girls on behalf of the State, it is hard not to come to the conclusion that many, although certainly not all, of the women who entered the Laundries were deprived of their liberty. The question then becomes one of whether that deprivation of liberty was lawful.

Part 2: The right to liberty and referrals to Magdalen Laundries under the criminal justice system

A. Remand

109. As noted, Article 5(1)(c) ECHR allows for the arrest and detention of a person suspected of having committed a criminal offence. The arrest must be lawful, it must be affected for the purpose of bringing the person before a “*competent legal authority*” such as a court, and the detainee must reasonably be suspected of having committed an offence.¹³⁰ It is immaterial to compliance with Article 5(1)(c) whether the person is ultimately charged or prosecuted. For instance, the person may be released.¹³¹
110. There are two important observations that may be made in relation to placing girls and women on remand in Magdalen Laundries. First, remand to a

¹²⁹ Ibid., Ch. 19, at para. 52.

¹³⁰ The term “*offence*” in Article 5(1)(c) ECHR carries an autonomous meaning identical to that of criminal offence in Article 6(3).

¹³¹ *Labita v Italy* (Application. No. 26772/ 95), 6 April 2000 [GC], (2008) 46 EHRR 1228 at para. 155.

particular place incorporates a detention element. Thus, girls and women placed on remand in Magdalen Laundries were clearly being detained in anticipation of being brought before a Court. Second, excessive periods of preliminary detention, without judicial control, may give rise to a breach of Articles 5(1)(c) and 5(3) ECHR or indeed Article 40.4 of the Constitution.

111. Detention on remand is considered in the IHRC's Assessment Report (at paras. 51 and 52). The main focus in the Assessment Report was on the promptness with which girls or women placed on remand in Magdalen Laundries were subsequently brought before the Courts. The IDC Report also considers this matter and addressed the precise legal basis for placing girls and women on remand in Magdalen Laundries.¹³² A key legal principle here is that detention must be in accordance with law. This implies that girls and women remanded to institutions without a clear legal basis may have been detained unlawfully.
112. It appears from the IDC Report that, in the period up to 1960, there were two separate statutory provisions upon which a person could be remanded to a Magdalen Laundry. Section 4 of the Youthful Offenders Act 1901 is cited as the basis upon which a "*child*" under 14 years and a "*young person*" under 16 years could be placed on remand in a Magdalen Laundry or other institution.¹³³ The Children Act 1908 broadened the scope of places of detention which could be used for the remand/ committal of girls under the age of 17 years.¹³⁴ It also permitted the use of an institution for that purpose, whether or not it was publicly funded.¹³⁵ The IDC Report does not, however, appear to identify the legal basis on which girls aged 17 years and over could be remanded to a Magdalen Laundry.¹³⁶ There were no designated institutions under statute for the remand of such girls and women until 1960.
113. Subsequent to this, the Criminal Justice Act 1960 established a regime for classifying certain places as "*remand institutions*" for girls and women aged 17 to 21 years.¹³⁷ The IDC Report confirms that, under the Act of 1960, only one Magdalen Laundry and one other institution were designated as remand institutions; namely the Sean McDermott Street Magdalen Laundry and Our

¹³² The IDC Report found that women placed in Magdalen Laundries on remand "*remained there for the very short period typical of remand*" (Ch. 9, at para. 64).

¹³³ IDC Report, Ch. 5, at para. 10 and Ch. 9, at paras. 26-27.

¹³⁴ Such girls were deemed to be in lawful custody: see IDC Report, Ch. 9 at para. 27.

¹³⁵ Ibid. Various institutions were approved as places of detention for girls.

¹³⁶ This refers to girls aged 17 to 20 years (inclusive), until the Age of Majority Act 1985 which reduced the age of majority to 18 years.

¹³⁷ Persons so detained were deemed to be in the lawful custody of the person in charge of the institution for the period of remand or committal: see IDC Report, Ch. 5, at paras. 12-13. It is also recalled that, until the 1980s, for most purposes a person had not reached the age of majority until the age of 21 years and thus any person placed in a Magdalen Laundry until this time, under 21 years, would have effectively been a "minor". See Age of Majority Act 1985.

Ladies Home, Henrietta Street.¹³⁸ Notably, the IDC Report does not identify whether there was a legal basis for Magdalen Laundries being used as remand facilities for all the relevant entries identified in the Report.¹³⁹ The IDC Report indicates that five Magdalen Laundries were used as remand facilities.¹⁴⁰

114. However, in the absence of information about the age of the girls or women concerned, or the statutory provision that was relied on to place them on remand in the relevant Magdalen Laundry, it is impossible to determine whether their detention on remand was “*in accordance with the law*”. Here, the State’s obligation to “*control*” non State actors where their actions may violate human rights would require it to ensure that such informal detentions could not occur, while its direct involvement in women and girls being so remanded would heighten the responsibility of the State.¹⁴¹
115. It is also notable that the IDC Report identifies eleven “*sample cases*”, from between 1930 and 1980, of girls and women placed on remand in Magdalen Laundries.¹⁴² This includes girls as young as 13, 14, and 15 years old. Also among these sample cases are specific records of women aged 18, 19 and 22 years being brought to a Magdalen Laundry between 1930 and 1960.¹⁴³ It does not appear there was a clear legal authority for the remand of these women (who fell outside the provisions of the legislation cited) in a Magdalen Laundry during that period.
116. Finally, from the statistical analysis carried out by the IDC in relation to the route of exit for girls and women who entered the Laundries on remand, for a small number the period of remand did not end as might have been expected; i.e. either the woman was released or brought promptly before a competent Court. Thus the records show that for some women the route of exit is recorded as “*unknown or stayed in the Laundry*” and a number were recorded as being moved to another Magdalen Laundry or Congregation.

¹³⁸ IDC Report, Ch. 8, at para. 33. An institution operating at Henrietta Street in Dublin was also so designated. See also IDC Report, Ch. 9, at paras. 52 and 89.

¹³⁹ IDC Report, Appendix 4.

¹⁴⁰ *Ibid.*, Ch. 9, at para. 63.

¹⁴¹ Under human rights law, States have an obligation to “respect”, “protect” and “fulfil” relevant rights in human rights conventions. While the obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the relevant right, the obligation to “protect” requires States to take measures (such as passing laws or creating mechanisms) which prevent the violation of rights, whether by State or non-State actors. The obligation to “fulfill” requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of the right in question. See also *European Convention on Human Rights Guide for the Civil and Public Service*, IHRC, December 2012.

¹⁴² *Ibid.*, at para. 65.

¹⁴³ *Ibid.*

117. In summary, the IDC Report identifies the possible legal basis for some children and women being remanded to a number of Magdalen Laundries. *The IDC Report also states:*

“The typical pattern for such placements is as would be expected for detention on remand – short durations of stay, with exit routes suggesting that the girls and young women in question were leaving in order to appear before the Courts.”¹⁴⁴

118. However, in relation to arbitrary detention, it must be questioned whether there was a lawful basis for the use of Magdalen Laundries as a remand facility, in all the instances of remand identified in the Report. It is to be recalled that where a Magdalen Laundry was operating as an informal remand facility, not being designated by legislation or regulation, this put the custody of the girls and women outside the effective regulation of the State.¹⁴⁵

119. It is also clear that questions arise as to whether Magdalen Laundry residents were promptly released once the lawful basis for their detention ended or whether they over-stayed in conditions of *de-facto* detention. Therefore, it appears likely that in relation to a number of women who were placed on remand in unapproved Magdalen Laundries, their rights pursuant to Article 40.4.1 of the Constitution and Article 5 ECHR were breached.¹⁴⁶

B. Probation

120. A probation order is usually made by a court following conviction and thus comes within Article 5(1)(c) of the ECHR. The IHRC expressed concern in its Assessment Report about the fate of girls and women placed in the Laundries (and other institutions) on probation.¹⁴⁷ While probation orders made by a court fulfil the requirement of “lawfulness”, as prescribed by Article 40.4.1 of the Constitution and Article 5 ECHR, questions nonetheless arise in the present context in relation to (i) the exact nature of the conditions attached to each probation order and whether “residence” on foot of a probation order in a Laundry actually authorised detention, (ii) whether the women concerned were

¹⁴⁴ IDC Report, Ch.9, at para. 64. However, what is considered a short duration of stay is not defined in the Report.

¹⁴⁵ The IDC Report states that the Minister for Justice wrote to the Sean McDermott Street Laundry in 1960 indicating that the women and girls remanded there should be “*afforded... the same rights and privileges as prisoners on remand or awaiting trial.*” The Minister forwarded the relevant Prison Rules to be observed by the Laundry. Arrangements were also made for Probation officers to visit the girls and women remanded there. See IDC Report at Ch. 9, paras. 48-55.

¹⁴⁶ Subject to the relevant dates of 1937 and 1953.

¹⁴⁷ IHRC Assessment Report, at paras. 53-54.

monitored during their time in the Laundries and (iii) whether they were permitted to leave once their period of probation expired.

121. The IDC Report contains extensive evidence regarding the use of the Probation of Offenders Act 1907 (as amended) and the placement of girls and women in Magdalen Laundries.¹⁴⁸ It notes that girls and women were sent to Magdalen Laundries because there was no alternative secure accommodation for female juvenile offenders. This was because prison space for females was limited in the State until the modern era and there was a policy of preferring alternatives to imprisonment for female offenders, which has persisted into modern times.¹⁴⁹

Monitoring of probation placements

122. On the basis of the IDC Report, it appears that the State did, to some extent, monitor the probation of women in Magdalen Laundries. However, the probation service as we now know it did not come into existence until the 1970s. Prior to that time, the probation service was dependent on the assistance of voluntary probation officers, most often recruited from religious organisations, such as the Legion of Mary.¹⁵⁰ While there was a legal basis under the Criminal Justice Act 1914 for the Minister for Justice granting recognition and funding to such voluntary probation officers, it appears from the IDC Report that this only happened on a haphazard basis.¹⁵¹
123. It appears that many of the voluntary probation officers who supervised girls and women in Magdalen Laundries under a probation order had no legal standing to do so.¹⁵² This has implications for the State in terms of whether it properly maintained control over the conditions in which women were required to reside pursuant to a probation order from a Court.
124. Separately, the IDC Report identifies the legal basis on which women could be required to reside in Magdalen Laundries on foot of a probation order. The Criminal Justice Act 1914 amended the Probation of Offenders Act 1907, allowing for a probation order to include a condition as to “*residence*”. A probation order could not extend beyond three years, and therefore a condition as to residence could not require a girl or woman to reside in a Laundry for more than three years. The term “*residence*” is not defined in the relevant legislation. However, the meaning of the term may be understood in the context of the legislation itself, which provides an alternative to the imposition of a

¹⁴⁸ IDC Report, Ch. 9, at paras. 66-193.

¹⁴⁹ IDC Report, Executive Summary, at i. para. 12.

¹⁵⁰ *Ibid.*, Ch. 9, at paras. 77-115.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*, at para. 114.

custodial sentence or imposition of other greater punishment by a court.¹⁵³ In this regard, “*residing*” at a certain address must be distinguished from being incarcerated at that address.

125. The Probation of Offenders Act 1907, which is the primary legislation underpinning such orders, refers to the overall purpose of the Act as the “*release on probation of offenders in certain cases*” (emphasis added). This suggests that the intention of the 1907 Act did not encompass custodial orders, and rather was to avoid them. Therefore, it is unlikely that the probation orders imposed on women in Magdalen Laundries could sanction a deprivation of their liberty.¹⁵⁴ However, in reality, deprivation of liberty will occur having regard to the objective circumstances of the person concerned regardless of a statute’s intention. It is noted, in this regard, that there is evidence in the IDC Report of Gardaí arresting women if they left the Laundries in circumstances where it was a condition of their probation that they reside there.¹⁵⁵
126. It is also relevant to note, in this regard, that while a Probation Order may follow the conviction of an offender, such an order may also be imposed by a District Court before proceeding to conviction, in circumstances where the judge is satisfied on the evidence that the offence was committed.¹⁵⁶ As noted above, pursuant to Article 5(1)(a) the detention of a person may be justified if it *follows* conviction by a competent court. However, where a Court does not proceed to conviction, it would certainly not be in compliance with Article 5 to then impose a custodial order.
127. Also notable in relation to Probation Orders is the fact that it does not appear from the IDC Report that the Courts applied any conditions in the relevant probation orders requiring labour to be provided by the girls and women concerned within Magdalen Laundries. While the issue of forced or compulsory labour and servitude are dealt with below, it is useful to recall here that whenever girls and women were placed in Magdalen Laundries under the criminal justice system, such as on probation, remand or a suspended sentence, this did not sanction the Laundries to extract forced labour or compulsory from them, or to impose conditions of servitude.

¹⁵³ O’Malley, T; *Sentencing Law and Practice*, 2nd Ed (Dublin: Thomson RoundHall, 2006), p.470.

¹⁵⁴ An offender could, however, be brought back before a Court during the duration of the probation order if it was alleged they were not complying with the terms of the order and the court could then proceed to conviction and sentence.

¹⁵⁵ IDC Report, Ch. 9, at para. 304. The IDC Report also contains a quote from a report of the Chief Probation Officer in 1947 to the Minister for Justice, referring to a particular girl required to reside in a Laundry as a condition of a probation order, and which refers to “ the period of her detention”. IDC Report, Ch. 9, at para. 189.

¹⁵⁶ Section 1(1) Probation of Offenders Act 1907.

C. Other placements

128. In relation to routes of entry under the broad umbrella of the criminal justice system, in addition to remand and probation the IDC Report also found evidence of women being placed in the Laundries under the following five headings:

- suspended sentences;
- adjourned sentencing;
- temporary release/ early release from prison;
- “*step down*” from prison;
- referrals by An Garda Síochána.

129. These various routes will be examined briefly below, but it would appear for the most part that the lawfulness of the arrangements referred to above, not having a statutory basis, would have depended on the informed and unambiguous consent or agreement of the women concerned.

i) Suspended and adjourned sentencing

130. The IDC Report states that suspended sentences have no clear statutory basis, but finds that the practice has a basis in common law and has been accepted as a valid exercise of judicial discretion by the Supreme Court.¹⁵⁷ The Report offers a number of examples of sentences being imposed on girls and women and then suspended on condition that they enter a named Laundry for a specified period of time.¹⁵⁸ It is noted in this regard that once the sentence is imposed by a Court, time begins to run, and the sentence will expire after the length of time specified by the Court. So long as the person concerned fulfils the conditions attached to the suspension of the sentence, then they will not be brought back before the Court.¹⁵⁹

131. A variation of this is the adjournment of sentencing. In such cases, the Court postpones the imposition of a sentence after conviction for a stated period of time, during which time the behaviour of the person is considered, and which may mitigate against a custodial sentence being imposed in due course. Again, it is noted from the IDC Report that a number of women entered the Laundries on foot of an adjourned sentence, where the Court specified a period of time to be spent in a Magdalen Laundry or other institution, after which the woman would be brought back before the Court.

¹⁵⁷ IDC Report, Ch. 9, at para. 195.

¹⁵⁸ *Ibid.*, at para. 196.

¹⁵⁹ For further detail in relation to suspended sentences see Walsh, D and MacEntee, P; *Criminal Procedure* (Dublin: Thomson Round Hall, 2002), pp. 1032-1035.

132. In relation to adjourned sentences and suspended sentences, as noted above such an arrangement would have depended on the informed consent of the girl or woman concerned, insofar as entering a Magdalen Laundry was an alternative to serving a custodial sentence in prison, and the girls and women concerned could if they so chose have accepted a prison sentence.¹⁶⁰ So long as there was clarity regarding the terms of any order to place such women in Magdalen laundries, and there was informed consent to accept such an arrangement, then such arrangements may be regarded as “*voluntary*”, and thus may not raise particular concerns pursuant to Article 40.4.1 of the Constitution or Article 5 of the ECHR.
133. It is unclear whether such Orders from the Court, in relation to “*entering*” a Laundry, were intended to be custodial in nature and much would hinge on what the women, the Court and the institution concerned, understood the Order of the Court to entail. It may be observed, however, that being detained in a Laundry would appear to some extent to have defeated the logic of entering the Laundry as a means of avoiding a custodial sentence. For example, it would most likely have been unlawful if a woman had her sentence adjourned on condition that she enter a Laundry, and subsequently when brought back before the Court had a custodial sentence imposed without taking account of the length of time the woman already spent in the Laundry pursuant to a Court Order. It is unclear whether this ever happened, but it would certainly raise a constitutional issue if it had.
134. It is noted from the sample cases taken from the IDC Report that there is evidence of some irregularities in the way suspended sentences were imposed. In at least two of the instances outlined, the period for which the woman was required to reside in the Laundry was in excess of the sentence that had been imposed and suspended by the Court.¹⁶¹
135. Whether granting a suspended sentence or adjourning a sentence on foot of a Court Order was designed as an alternative form of detention remains an open question. However, one might well question whether the women in fact received any benefit from the suspended or adjourned sentence, when they were effectively required to give up their liberty by entering a Laundry in any event. Moreover, it is again important to note that whether or not these women were in fact detained in the Laundries, the Court Orders underpinning the

¹⁶⁰ If the women did not accept the condition to enter a Laundry, then presumably a custodial prison sentence would have been imposed.

¹⁶¹ IDC Report, Ch. 9, at para. 196. In one of those cases outlined a woman spent five years in a Laundry for stealing a watch, which would appear to have been far in excess of the custodial prison sentence that would have been imposed for the Offence. Section 77, The Courts of Justice Act 1924, specified a maximum sentence of 6 months imprisonment, with or without hard labour, for larceny where tried summarily in the District Court.

requirement to enter a Laundry did not authorise the extraction of forced or compulsory labour from the women while residing there.

ii) Referrals from prisons

136. There is an account in the IDC Report of women being granted temporary release from prison under the Criminal Justice Act 1960, and required as a condition of that temporary release to enter a Magdalen Laundry.¹⁶² There is also evidence of women being transferred to a Laundry on foot of an arrangement for early release. However, on the basis of various governmental memoranda reviewed in the IDC Report, it would appear that the Laundries and other institutions were regarded as an alternative detention facility from which the women would be released in due course, rather than constituting a form of early release.¹⁶³ The arrangements regarding these women seem to be quite distinct from those envisaged by the Criminal Justice Act 1960.¹⁶⁴ In this regard, it is noted that there are various references in the IDC Report to “*detention*” in the relevant institutions. In one instance it is noted that a woman who was transferred to a Laundry on this basis, spent the rest of her life there and was never released.¹⁶⁵
137. The IDC Report also gives a brief account of a number of women who, on release from prison, and possibly having nowhere to go, went to a Laundry for a period of time, in what is referred to as a “*step down*” type arrangement. While the accounts in the Report do not wholly exclude the possibility of some form of coercion being involved, it would appear that these may all have been self-referrals to enter the Laundries concerned, although again whether the women were free to leave at will would be a significant factor in relation to whether such referrals in fact amounted to detention. Unfortunately, there is insufficient evidence available to reach a firm conclusion on the matter.¹⁶⁶
138. In relation to referrals by An Garda Síochána, not otherwise considered in the IDC Report, most of the accounts in Chapter 9 come from retired Gardaí and are largely anecdotal. They concern instances where the Gardaí brought girls or women, who were effectively homeless or destitute, to a Magdalen Laundry.¹⁶⁷ Information as to what ultimately may have occurred in relation to

¹⁶² Ibid., Ch. 9, at paras. 206-215.

¹⁶³ Ibid., at para. 293.

¹⁶⁴ Ibid., at para. 214.

¹⁶⁵ Ibid., at para. 252.

¹⁶⁶ Ibid., at para. 271. There is reference to a woman being brought “by the Matron of Limerick Prison” to a Magdalene Laundry, or another woman was brought to a Magdalene Laundry by Sisters visiting the Prison.

¹⁶⁷ It is clear that the records available to the ID Committee did not have sufficient detail to understand exactly the capacity in which a Garda made a referral to the Laundries. For instance it is stated that there is considerable overlap between referrals by An Garda Síochána, and those cases where Garda were providing a prison escort to placing a girl on remand and so on.

the girls and women so referred is unavailable. However, so long as these girls and women were not detained in the Laundries or were not required to work in the Laundries, then there may not be any human rights implications in relation to their referral to the Laundries (as opposed to the conditions in which they resided).

139. Other instances where Gardaí may have brought girls or women to Magdalen Laundries, although no specific instances are cited, relate either to vagrancy or poor law type provisions or possibly “*larceny*” of an “*institutional uniform*”.¹⁶⁸ As there are no specific instances of entry to a Laundry by such means it is not possible to comment on the human rights implications that might arise in such cases.

Part 3: The right to liberty and referrals to Magdalen Laundries from industrial and reformatory schools and by health authorities and social services

140. In addition to referrals from the criminal justice system, the IDC Report identifies a number of other means by which the State was directly involved in placing girls and women in Magdalen Laundries. This includes through referrals from industrial and reformatory schools (7.8% of all known routes of entry),¹⁶⁹ and through referrals from health authorities and social services (13.1% of all known routes of entry).¹⁷⁰

A. Referrals by industrial and reformatory schools

141. The IDC Report identifies a legislative basis for the placement of girls and young women (below the age of 21 years) in Magdalen Laundries who had previously resided in Industrial or Reformatory Schools.¹⁷¹ In relation to temporary placements in the Laundries, section 63 of the Children Act 1908 permitted the Courts to commit a child up to the age of sixteen years, to any place of detention or “*to the custody of a relative or other fit person*” pending transfer to an Industrial or Reformatory School, if the detention order was not to take effect immediately or if the School had not yet been identified.
142. Where a Reformatory School was unwilling to accept a young offender aged 15 years or over, section 57(2) of the 1908 Act, permitted the Minister for Justice to order that the person be brought before a Court, which could make an alternative order in relation to the child.¹⁷² Pursuant to section 107 of the Children Act 1908, such an order could also include committing the offender

¹⁶⁸ IDC Report, Ch. 9, paras. 279-283.

¹⁶⁹ *Ibid.*, Executive Summary, at para. 5.

¹⁷⁰ *Ibid.*, Ch. 11, at para. 6. See also, Ch. 8, at para. 17.

¹⁷¹ *Ibid.*, Ch. 10, at paras. 37-45.

¹⁷² *Ibid.*, at para. 40.

to the care of a relative or “fit person”. These provisions did not apply in relation to an Industrial School.¹⁷³

143. The Act of 1908 also permitted a child to be released on licence by a School Manager to “*live with any trustworthy and respectable person*” who was “*willing to receive and take charge of him*” prior to their discharge.¹⁷⁴ The time of discharge was usually on reaching 16 years of age .¹⁷⁵ However, the child remained subject to the possibility of having the license revoked and being returned to the Industrial or Reformatory School at any time during the period of the license. In addition a child could be fully discharged from an Industrial or Reformatory School, or discharged on a conditional basis.¹⁷⁶
144. Most significantly, it is noted in the IDC Report that all children discharged from Industrial or Reformatory Schools, remained subject to supervision by the Manager of the school, after the period of detention as ordered by a Court had ended. This period of supervision was originally up to 18 years in the case of an industrial school, and 19 years in relation to a reformatory school. This period was extended to a uniform 21 years of age, under the Children Act 1941, subject to the direction of the Minister for Education. The implications of being under such supervision was that the minor concerned could be “recalled” to the school concerned for a maximum period of three months, where the Manager was of the opinion “that the recall is necessary for his [sic] protection”.¹⁷⁷
145. On the basis of the above legislative provisions, the IDC Report finds that the Children Act 1908 was the basis for both direct referrals of girls to Magdalen Laundries and recall to the Laundries during the period of post-discharge supervision from an Industrial or Reformatory School. A record of 622 such referrals was identified in the IDC Report and a number of sample cases are set out in the Report.¹⁷⁸
146. It is noted above that the IDC Report indicated that, pursuant to the Children Act 1908, it was permissible for girls to be temporarily placed in a Magdalen Laundry pending placement in an Industrial or Reformatory school. It was also noted that if such a school refused to take a girl, she could be placed in the care of the Superior of a Magdalen Laundry as a “*fit person*” under the Act. However, in both those instances, a referral under the Act could only be made

¹⁷³ Ibid., at para. 40.

¹⁷⁴ Section 67 of the Children Act 1908.

¹⁷⁵ This period could be extended to 17 years to allow a child complete a course of education usually in the context of a Reformatory School. See IDC Report, Ch. 10, at para. 42.

¹⁷⁶ Section 69 of the Children Act 1908.

¹⁷⁷ Section 68 of the Children Act 1908, as amended by the Children Act 1941. See IDC Report, Ch. 10, at para. 43.

¹⁷⁸ IDC Report, Ch. 10, at para. 46.

pursuant to a Court order, whereas in the cases cited in the IDC Report there is no reference to Court Orders, and as such it is unclear whether such placements, in the absence of evidence of a relevant Court order, were in fact in compliance with the Children Act 1908.¹⁷⁹ In fact, the IDC Report documents a report by a Probation Officer from 1941, which indicates that certain girls who were not accepted by Industrial and Reformatory Schools were placed in Magdalen Laundries without “*official sanction*”.¹⁸⁰ It further appears that in order to deal with such difficult cases, the approach adopted on some occasions was for the relevant reformatory school to accept the girls concerned, and then immediately release them on license to a Magdalen Laundry.¹⁸¹ In addition, the IDC Report documents a number of girls who were referred to Magdalen Laundries by priests on a non-statutory basis during the period of post discharge supervision.¹⁸² This would immediately suggest that such placements were not “*in accordance with law*”, and thus not in compliance with Article 5 ECHR.

147. The principle of detention of children as a last resort as set out in the Convention on the Rights of the Child was not considered in the IHRC Assessment Report.¹⁸³ While Article 5 of the ECHR, allows for minors to be detained in a number of circumstances, such as post conviction, Article 5(1)(d) specifically permits “*the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority*”. A minor under the ECHR is a person under eighteen years.¹⁸⁴ Thus, detention is permitted on two grounds under this aspect of Article 5. The first limb of Article 5(1)(d) permits the detention of a minor “*for the purpose of educational supervision*”. This entails participation in education as part of the detention regime.¹⁸⁵
148. The second limb of Article 5(1)(d) allows for the detention of a minor pending their appearance before a judicial or administrative authority on non-criminal charges.¹⁸⁶ In *DG v Ireland*, the ECtHR considered the situation of a boy in

¹⁷⁹ Ibid., at para. 50.

¹⁸⁰ Ibid., at para. 58.

¹⁸¹ Ibid., Ch. 10, paras. 59-103.

¹⁸² Ibid., Ch. 18, at para. 44.

¹⁸³ See Article 37 of the Convention. The Convention was not considered insofar as it was not ratified by the State until 1992.

¹⁸⁴ *Koniarska v U.K.* (App no. 33670/96), Judgment, 12 October 2000. This is the same age set out in the Convention on the Rights of the Child.

¹⁸⁵ However, educational supervision is not as narrow a concept as to be equated rigidly with notions of classroom teaching. In the case of *Koniarska v UK*, the ECtHR held that this concept could be seen as embracing other aspects of local authority care, particularly where, as was the case with the applicant in that case, an extensive range of classes was made available.

¹⁸⁶ For example, the detention of a minor accused of a crime during the preparation of a psychiatric report necessary to the taking of a decision on whether or not to order their continued detention is permitted.

State care under eighteen years of age, who was placed in St Patrick's Institution by the High Court.¹⁸⁷ The ECtHR accepted that the boy was a threat to his own safety and that of others. There was no alternative secure facility available in which to place him. The ECtHR found a violation of Article 5(1)(d), as St Patrick's Institution was not a facility for "educational supervision" nor was it an interim custody measure for the purpose of an educational supervisory regime. The Court stated that:

*"... if the Irish State chose a constitutional system of educational supervision implemented through court orders to deal with juvenile delinquency, it was obliged to put in place appropriate institutional facilities which met the security and educational demands of that system in order to satisfy the requirements of Article 5(1)(d)."*¹⁸⁸

149. There is no evidence in the IDC Report that the placement of minors in Magdalen Laundries that came through the route of industrial schools or health and social services was for the purpose of educational supervision or that they in fact received any form of education.¹⁸⁹ Similarly, there is no evidence in the IDC Report that minors (other than those placed in Magdalen Laundries on remand) were detained for the purposes of being brought before a judicial or administrative authority which was to decide whether or not to order their detention. Therefore, it appears the detention of these minors in Magdalen Laundries after 1953 may not have been in accordance with Article 5(1)(d).

150. In relation to those girls and women who were placed in a Magdalen Laundry during their period of post discharge supervision, a period which related to discharge from both Industrial or Reformatory schools, it is clear that the basis for such recall and detention did not require a Court Order, and the grounds for such recall was vague; relating as it did to the apprehension regarding the welfare of the girl or woman concerned. For instance in the IDC Report it is recorded that:

*"A member of one of the Religious Congregations which operated both Magdalen Laundries and Industrial Schools indicated to the Committee that, on the basis of folk memory, cases of this kind would most likely have occurred where the School Manager considered that the girl would benefit from more training, or where it might be considered, for example, that she was young in herself or "not ready for the world."*¹⁹⁰

¹⁸⁷ *D.G. v Ireland*, Judgment of 16 May 2002.

¹⁸⁸ *Ibid.*, at para. 79.

¹⁸⁹ See further below at Chapter 3 on the Right to Education.

¹⁹⁰ IDC Report, Ch. 10, at para. 168.

151. In this regard, the provision allowing for post discharge recall would be unlikely to meet the requirements of either the Constitution or Article 5 ECHR. The exercise of the power to recall by a School Manager, after the period of Court ordered detention had finished, is essentially a form of administrative detention, and is impermissible under human rights standards. In addition, the vagueness of the basis for such recall would also fail to meet the requirement and foreseeability under the ECHR and the Constitution.¹⁹¹ Finally, it is also noted that many of the girls and women subjected to this form of recall were neither aware that they could be recalled in this manner, nor were they informed as to the reason for being recalled, or how long they would be required to remain in a Laundry. Thus their discharge was a conditional one and they were liable to recall and re-detention. Again, this falls short of the essential safeguards that would be a prerequisite to ensuring the detention was in compliance with the relevant constitutional and ECHR standards. Where children (i.e. those aged under 18 years) were placed in either industrial schools or Magdalen Laundries without parental consent and without the purpose of educational supervision, a violation of Article 5(1)(d) ECHR would have occurred. This would have been compounded if there was no automatic judicial review of the detention under Article 5(4).

152. The IDC Report documents the testimony of a number of women who expressed “a very real fear that they would remain in the Magdalen Laundry for the rest of their lives”.¹⁹² These include the following:

“Another woman who had formerly attended an Industrial School said that what made her feel worst while in a Magdalen Laundry was “not knowing if you were ever going to get out of there ... I thought I was there forever”.

Another woman who was placed in a Magdalen Laundry as a young girl, after time in an Industrial School, said “I thought I’d be there for life and die in there. I was frightened”.

A different woman, who was placed in a Magdalen Laundry as a young girl shortly following her discharge from industrial school, said “It was

¹⁹¹ For instance in *King v The Attorney General*, [1981] IR 233, which concerned a challenge to an offence of vagrancy, the legislation was found to be unconstitutional for reasons that: “...the ingredients of the offence and the mode by which its commission may be proved are so arbitrary, so vague, so difficult to rebut, so related to rumour and ill-repute or past conduct, so ambiguous in failing to distinguish between apparent and real behaviour of a criminal nature, so prone to make a man’s lawful occasions, become unlawful and criminal by the breadth and arbitrariness of the discretion that is vested in both the prosecutor and the judge, so indiscriminately contrived to mark as criminal conduct committed by one person in certain circumstances when the same conduct, when engaged in by another person in similar circumstances, would be free of the taint of criminality...” (at p. 257).

¹⁹² IDC Report, Ch. 19, at para. 52.

devastating to hear that door locked and I was never ever to walk out. There was a big wall. I knew I was there for life. When that door was locked my life ended. I never moved on from there."¹⁹³

B. Referrals by health authorities and social services

153. The IDC Report also identifies a legislative basis for referrals to Magdalen Laundries by statutory health authorities and social services. Placements by these services appear to have been made on a less formal basis than those made pursuant to the criminal justice system, and generally did not follow a Court Order or process. The services making such placements were:

- 1) From 1922 to 1970 - public assistances authorities and institutions (e.g. local authorities, County and City Homes);
- 2) From 1970 onwards - health authorities (comprised of the former Department of Local Government and Public Health and the successor Department of Health); Health Boards (predecessors to the HSE);
- 3) Also from 1970 onwards - social services (including delivery of child services through the NSPCC for a short period);
- 4) Hospitals;
- 5) Mother and Baby Homes;
- 6) Psychiatric hospitals and services;
- 7) Institutions for those with intellectual disabilities.¹⁹⁴

154. As noted in the IDC Report, these referrals "*occurred in a variety of circumstances and for a variety of reasons*".¹⁹⁵ The IDC Report found that referrals to Magdalen Laundries by health authorities and social services were made to "*extern institutions*" which were approved and funded by the State.¹⁹⁶ The IDC Report found that in the decades following the establishment of the State (up until 1970), five and possibly six Magdalen Laundries were approved as extern institutions for provision of public assistance.¹⁹⁷ This appears to have

¹⁹³ Ibid.

¹⁹⁴ IDC Report, Ch. 11, Summary of Findings, at p. 434.

¹⁹⁵ Ibid., Executive Summary, at para. 20.

¹⁹⁶ Ibid., Ch. 11, at paras. 36-56.

¹⁹⁷ Ibid., at paras. 42-49.

occurred pursuant to successive pieces of legislation in the areas of public assistance and health, approval of which was made at Departmental level.¹⁹⁸

155. Approval as an extern institution meant that although operated by non-State actors, certain Magdalen Laundries were provided with maintenance grants in connection with persons who qualified for public assistance, such as those suffering from poverty and persons with intellectual and physical disabilities. This means that where girls or women were so referred to these particular Laundries, legislation permitted the payment of maintenance grants by the State to the Religious Congregations concerned. The main statutory provision cited by the IDC Report as the basis for funding to be provided to “*extern institutions*” is section 35 of the Public Assistance Act 1939, which provided as follows:

*“Subject to the consent of the Minister, a public assistance authority may, if they so think proper, make provision for the assistance in a home, hospital, or other institution not provided or maintained by such authority of persons, or particular classes of persons, eligible for public assistance, and where a public assistance authority makes such provision, such authority may defray the expenses of the conveyance of the persons for whose assistance such provision is made to and from such institution and the expenses of their maintenance, treatment, instruction, or training therein”.*¹⁹⁹

156. This definition provides for the maintenance in institutions of a wide variety of persons, namely those who lacked the resources to provide for life’s necessities.²⁰⁰ The definition also gives an indication of the purposes for which the maintenance payment was intended to be applied, i.e. for “*maintenance, treatment, instruction, or training.*” Therefore, this provision could never authorise the detention of a girl or woman in a Magdalen Laundry. However, it was provided under the 1939 Act that:

“A public assistance authority may, as a condition of the granting of general assistance to a person, require such person, either before or after or during receipt of such general assistance, to perform such work as

¹⁹⁸ IDC Report, Ch. 13 at paras 9-13.

¹⁹⁹ Section 10 of the Health Act 1953 and section 65 of the Health Act 1953 are also identified in the IDC Report as the subsequent basis on which Magdalen Laundries and other institutions were provided with funding to provide “institutional services”. IDC Report, Ch. 11, at paras. 55- 56, and Ch. 13, at paras 44 - 49.

²⁰⁰ In the IDC Report an extract from the *Annual Report of the Department of Local Government and Public Health for 1938-1939* refers to the category of persons maintained in extern institutions, which included “afflicted persons (deaf and dumb, blind, mentally defective, etc.) unmarried mothers and persons requiring special treatment in outside hospitals.” See IDC Report, Ch. 11, at para. 45.

*such authority shall consider suitable to the sex, age, strength, and capacity of such person and shall direct such person so to perform.*²⁰¹

However this section, as it relates to the performance of work in exchange for assistance, appears to apply to public assistance authorities only and not private institutions authorised under section 35 of the Act. The IDC Report identifies a number of examples of referrals under these provisions, including:

- (i) the placements of girls and young women in Magdalen Laundries by local health authorities following their rejection by foster families around the age when maintenance payments for them stopped at 16 years;
- (ii) the removal of unmarried mothers from county and city homes to other institutions, including Magdalen Laundries;
- (iii) the transfers of girls and women from psychiatric hospitals, either as a voluntary choice (using Magdalen Laundries as a type of half-way house on leaving the hospital) or, as with girls and women suffering from intellectual disabilities, an alternative to long-term psychiatric or other care; and
- (iv) the referral of girls and women (including some with developmental conditions) by social services where alternative accommodation was not available.²⁰²

157. Regarding an assessment of whether these placements amounted to a deprivation of liberty under Article 5 ECHR, the IDC Report correctly notes that *“there was no obligation on a girl or woman referred in this way to enter the institution—and no penalty arose if she refused to do so”*.²⁰³ However, the fact that the IDC Report indicates, in the subsequent sentence, that it *“is not in a position to determine whether or not this was made clear to the girls or women in question”* underlines the concern that these girls and women may have either been subject to some form of coercion to enter the Laundries or may have lacked the necessary mental capacity to consent to their stay in a Laundry.²⁰⁴ In both situations, the protections of Article 40.4 of the Constitution and Article 5 ECHR would apply.

²⁰¹ Section 25(1) of the Public Assistance Act 1939. The 1939 Act was repealed (other than section 3 and 86) by the Social Welfare (Supplementary Welfare Allowances) Act 1975.

²⁰² IDC Report, Executive Summary, at para. 20 and Ch. 11, at para. 109.

²⁰³ Ibid., Ch. 11, at p. 435 and at paras. 155-156.

²⁰⁴ Ibid. It is also noted in the IDC report in relation to the records that were identified, that it is likely that there were other instances of referrals of both women and children to Magdalen Laundries, but difficulties in searching the historical records mean that other possible instances were not found. See IDC Report, Ch. 11, at paras. 103-105.

158. In respect of women who had children outside marriage, the IDC Report identified records of Galway County Council which referred to such women as “*offenders*” and records the attempts of the Council to have those women admitted to Magdalen Laundries without payment. In addition, the same Council sought to introduce a scheme whereby women with a second child outside marriage would be refused public assistance if they refused to enter a Magdalen Laundry, but this proposal was never enacted.²⁰⁵
159. As regards Mother and Baby Homes, while they were generally funded by the State and operated by Religious Congregations, at least one institution was established by a Congregation at the request of the State, and at least two of these Homes were described in official records as being “*maintained by*” or “*under the control of*” Boards of Health.²⁰⁶ The IDC Report identifies seven such Homes distributed around the country.²⁰⁷ Unfortunately, while the HSE was able to identify records of 100 instances in which women were referred by Mother and Baby Homes to a Magdalen Laundry, the HSE could not provide the relevant identifying details to the IDC Report and so the corresponding records of the Religious Congregations could not be consulted.²⁰⁸ Other records in relation to referrals from Mother and Baby Homes identified by the IDC Report provide only rudimentary details of such referrals. The records provided by the Religious Congregations indicate that there was no set pattern for such referrals, although such referrals were certainly not exceptional. A striking feature of the sample records provided is that some of the women referred from Mother and Baby Homes remained in Magdalen Laundries for a long time; one woman remained for nine years, another for twelve and the longest period cited was thirty years.²⁰⁹ Whether any of these referrals to the Laundries might amount to arbitrary detention is impossible to say on the basis of the details available, and as noted previously, would wholly depend on the informed consent, free from coercion, of the woman involved.
160. The IDC Report identifies detailed accounts of three women who were referred by a local authority to a Magdalen Laundry after giving birth in a Mother and Baby Home. A woman of 22 years old was recorded as being admitted to the Laundry for “*protection and instruction*”.²¹⁰ Another woman who was admitted from the same Mother and Baby Home, was recorded as having “*escaped*” after three months.²¹¹ In relation to the records of Waterford County Council, again there are references to unmarried mothers as “*offenders*”. There is a

²⁰⁵ Ibid., at paras. 79-81.

²⁰⁶ Ibid., at para. 165.

²⁰⁷ Ibid., at para. 167.

²⁰⁸ Ibid., at paras. 170-174.

²⁰⁹ Ibid., at para. 187.

²¹⁰ Ibid., at para. 86.

²¹¹ Ibid., at para. 88.

record of a request from a matron of an unnamed hospital to have two women, who had a second child outside marriage, admitted to a Magdalen Laundry outside the County and “*placed under restraint*”. The records indicate that in fact this request was only granted on the consent of the women concerned.²¹²

161. As noted in the IDC Report, there was no legal basis for coercing a woman to enter a Magdalen Laundry under threat of withholding public assistance to her. However, the records show that in reality this may not have been the practice. Therefore, if a woman was under the apprehension that she did not have a choice as regards entering and remaining in a Laundry, then there may be instances where there was a breach of the constitutional right to liberty and its counterpart right under the ECHR.

C. Placements of minor girls in Magdalen Laundries

162. In the context of arbitrary detention, a distinction may be drawn between the various categories of person concerned. In the case of minor girls (i.e. girls under 18 years), it is unclear how any placement in a Magdalen Laundry could properly be regarded as voluntary and the IDC Report expresses some doubt in this regard.²¹³ However, if the placement was purely to ensure the welfare of the child concerned, and did not involve a deprivation of liberty, then neither Article 40.4 of the Constitution or Article 5 ECHR would be engaged. It is noted in the IDC Report that children were generally referred to a Magdalen Laundry after a foster placement came to an end, where their parents were not alive, or for reasons of poverty. In addition, social workers employed by local authorities for the purpose of discharging their health authority functions, together with the NSPCC, made referrals of girls and women to the Laundries. It is evident from the relevant records identified in the IDC Report that the Laundries were regarded as providing social care services for such girls and women, presumably in the absence of appropriate State facilities.²¹⁴
163. According to the IDC Report, this pattern of referrals by social workers and the NSPCC continued for some time after the establishment of Health Boards in 1970.²¹⁵ What is striking in this regard is the age of some of the children referred, in what might be regarded as relatively recent times. There is a record of a child as young as 11 years old being referred in this manner and also a significant number of teenagers.²¹⁶ While the legal basis for such placements is less than clear, insofar as such referrals did not follow from any Court process, such referrals should only have been for the purpose of educational supervision, in the absence of which, the placements would be a breach of

²¹² Ibid., at paras. 91-93.

²¹³ Ibid., at para. 107.

²¹⁴ Ibid., at paras. 115-139.

²¹⁵ Ibid., at para. 120.

²¹⁶ Ibid., at para. 155.

Article 5 (1)(d) ECHR.²¹⁷ Even if the placements were for educational supervision, after 1953 Article 5(4) ECHR would have required periodic judicial supervision of children placed in Laundries. A number of points relating to the right to education are set in the next Chapter of this Report.

D. Transfers from psychiatric services

164. Similar to the experience of minor girls, in relation to girls and women regarded as having a significant intellectual disability or psychiatric condition, consent may not have always been a prerequisite to their placement in a Magdalen Laundry.²¹⁸ The IDC Report provides a brief account of referrals from general hospitals, when Magdalen Laundries were essentially engaged to provide assistance to girls and women where no alternative accommodation was available.²¹⁹ Separately, the IDC Report records transfers from psychiatric hospitals to Magdalen Laundries, which amounted to 1.3% of all known entries to the Laundries.²²⁰ If such a placement was purely for the purpose of ensuring the welfare of the women concerned, was consented to and thus did not amount to a deprivation of liberty, then no issue pursuant to Article 5 ECHR or the right to liberty under the Constitution would arise in relation to such girls and women being in the Laundries, but only insofar as they were free to leave of their own volition. However, as the consent of these girls and women may have been absent (particularly for those with a mental illness or significant intellectual disability to such a degree that they lacked the mental capacity to so consent), then, at a minimum from 1953 onwards (ratification of the ECHR), any involuntary placement of such persons based on being assessed as being of “*unsound mind*”, should have complied with the minimum requirements of Article 5(1)(e) of the ECHR.
165. The *Winterwerp*²²¹ case is the classic exposition of the law in this regard. It is useful to recall here the five essential criteria for compliance under Article 5(1)(e) laid down by the ECtHR:
- 1) the mental disorder must be established by objective medical expertise (although this does not apply in emergencies);

²¹⁷ It is noted from the IDC Report that a number of such placements were at the request or with the consent of the child’s parents. See IDC Report, Ch. 11, at paras. 145 and 149.

²¹⁸ It is noted from the IDC Report that some of the women and girls placed in Magdalen Laundries, by virtue of being a person with an intellectual disability or psychiatric condition, were also minors.

²¹⁹ IDC Report, Ch. 11, at paras. 159-163.

²²⁰ The IDC Report states that these transfers occurred from the 1920s until the 1980s and found that “*the circumstances surrounding transfers varied over time and were influenced by a range of factors, including the absence of effective medication for psychiatric illnesses for much of the relevant period*”. See IDC Report at Ch. 11, at para. 191.

²²¹ *Winterwerp v The Netherlands*, 24 October 1979, Series A, No.33.

- 2) the nature or degree of the disorder must be sufficiently extreme to justify the detention;
- 3) detention should only last as long as the medical disorder and its required severity persist;
- 4) in cases where the detention is potentially indefinite, periodic reviews must take place by a court or tribunal which has the power to discharge; and
- 5) detention must take place in a hospital, clinic or other appropriate institution authorised to detain such persons.²²²

166. Subsequently the ECtHR confirmed that detention should cease where it no longer provided a therapeutic need.²²³

167. It is noted in the IDC Report that many of the records do not make a distinction between women with an intellectual disability, and those with a mental or psychiatric condition, and it is clear that Magdalen Laundries received both categories of girls and women.²²⁴ The detention of persons with intellectual disabilities in psychiatric institutions continues today and has long been criticised by international bodies.²²⁵ In addition it may be noted that in relation to all the referrals of such girls and women to a Magdalen Laundry, there does not appear to have been any formal process followed, and arrangements appear to have been made on an ad hoc basis.²²⁶ It is also noted in the IDC report that poverty may have been combined with mental illness as a reason why girls and women were admitted to the Laundries.²²⁷

²²² Ibid. See also *X v the United Kingdom* 5 November 1981, Series A, No. 46.

²²³ *Aerts v Belgium*, (Application No.61/1997/845/1051), Judgment, 30 July 1998. See also Article 14 Convention on the Rights of Persons with Disabilities (CRPD).

²²⁴ IDC Report, Ch. 11, at paras. 225-226.

²²⁵ See CPT Report on Ireland.

²²⁶ IDC Report, Ch. 11, at paras. 191-192. The IDC Report contains testimony from a retired inspector of mental hospitals as follows: “*Regarding the reverse circumstance, that is, women entered a Magdalen laundry from a psychiatric hospital, Dr Walsh made the following observation, “Until comparatively recent times,—say to the 1970s—homeless females admitted to psychiatric inpatient facilities, deemed ready for discharge but homeless, were often placed in residential premises run by Religious Congregations for accommodation, with what degree of consent is difficult to imagine.”* See IDC Report, Ch. 11, at para. 193.

²²⁷ Ibid., at para. 227. As to the detention of “vagrants”, pursuant to Article 5(1)(e) of the ECHR, the ECtHR in *DeWilde, Ooms and Versyp v Belgium* 18 November 1970, Series A, No. 12, held that the right to liberty may not be abrogated and a judicial decision is necessary even where the detainee consents to deprivation of liberty.

168. Strikingly, the period for which such girls and women remained in the Laundries appears to have been indefinite with a small number remaining for life. The reasons why others left were disparate; some returned to hospital or were referred to another institution, some went home to their families, and in other cases their behaviour appears to have been the reason they were required to leave the Laundry.²²⁸
169. It is also noted that the Mental Treatment Act 1945, was the statutory basis, up until 2006, for a person to be detained for psychiatric reasons, however, there is no evidence that any of Magdalen Laundries operated under the auspices of this Act.²²⁹ It also appears from the IDC Report that there would have been other women with intellectual disabilities placed in the Laundries and other institutions but not necessarily on foot of a transfer from a psychiatric hospital or other institution, but rather as a consequence of being eligible for public assistance.²³⁰ In cases where grants were paid to Magdalen Laundries for the maintenance of person with an intellectual disability, the IDC Report states that it is unclear whether such women were placed in the Laundries by the State or through private actors, such as families, however, it is noted that:

“At a minimum, these grant applications and payments confirm that the State was aware of the placement of these women in the Magdalen Laundries, even if it was not in itself responsible for the referrals.”²³¹

170. In fact, Chapter 13 of the IDC Report provides extensive information concerning the funding provided by the State under various mechanisms for the maintenance in the Laundries of girls and women with various forms of disability. Finally, it is worth recalling, as with all other categories of girls and women considered in the context of arbitrary detention, that nothing authorised the Laundries to extract forced or compulsory labour from girls and women placed in the Laundries with an intellectual disability or psychiatric condition.²³²

Conclusion

171. Under the criminal justice system, Magdalen Laundries clearly had a formal role in relation to incarceration, such as in relation to girls and women on remand and those transferred from prison but still detained. In addition, it appears that

²²⁸ IDC Report, Ch. 11, at para. 192.

²²⁹ Mental Treatment Act, Part XI., which deals with private charitable institutions. The Mental Health Act 2001, was not commenced until 2006.

²³⁰ IDC Report, Ch. 11, at paras. 45 and 211.

²³¹ *Ibid.*, at para. 212.

²³² The IDC Report records as an ancillary matter in the context of the funding provided to the State for the maintenance of women and girls with disabilities in the Laundries that at least some of them were engaged in the work of the Laundry. IDC Report, Ch. 13, at paras. 53 and 81.

the application of a probation order required that women would reside in the Laundries for a specified period of time, under pain of being brought back before a court if they did not. Children were also placed in the Laundries under the Children's Act 1908, in a number of circumstances and were clearly detained. In addition we now have extremely useful oral testimony provided by the women themselves in the context of the work of the IDC. There are ample accounts of the subjective experience of the women and their sense of incarceration in the Laundries. Thus, women were deprived of their liberty while in the Laundries. The lawfulness of such detention is questionable in a number of respects; such as whether the use of the Laundries as a detention facility was "in accordance with the law", and also the question of State oversight in relation to the conditions of detention, particularly in circumstances where such girls and women may have been exposed to forced or compulsory labour or other ill-treatment (as discussed in Chapter 5). It must also be acknowledged however that there are also other instances where women may have been detained in a Magdalen Laundry, but such detention was in accordance with the law, and does not appear to breach any of the fundamental requirements of the Constitution or the ECHR, such as in the case of certain remand arrangements. However, the lawfulness of such detention is brought into question where treatment of the girls and women in the Laundries breached the State's human rights obligations.

172. Under the health and social services system, girls and women with intellectual disabilities, mental illness or who were indigent, were informally transferred between Laundries and psychiatric institutions in contexts which likely constituted detention. Girls and women were also transferred from Mother and Baby Homes although to a limited degree. Under the education system, girls were sent to Magdalen Laundries from Industrial or Reformatory Schools. There were certainly instances of arbitrary detention that occurred in the Laundries in relation to some of these transfers. Such arbitrary detention arose when there was a failure to comply with the requirements of the law, or because the law itself fell below the requirements of the Constitution and the ECHR, a clear example of such being the case of girls that were "*recalled*" after being discharged from an Industrial or Reformatory School or women with a significant intellectual disability who lacked the capacity to consent to their placement. In relation to instances of arbitrary detention there is a legal requirement on the State to provide compensation to the person concerned.
173. Ultimately the circumstance by which each individual woman came to enter and reside in a Magdalen Laundry would have to be assessed to decide whether they were subjected to an unlawful deprivation of their liberty, and what compensation might be merited for same. Some of the same legal informalities evident in the IDC Report continue today in respect of vulnerable persons such as the placement of those with intellectual disabilities in psychiatric hospitals,

or who are placed in residential care. This experience is reflected on in Chapter 7 of this Report.

Chapter 4: The Right to Education

174. Magdalen Laundries were not educational establishments and insofar as children were placed in the Laundries, such placements were not for the purpose of their educational supervision.²³³ The evidence in the IDC Report regarding the ages of girls and women who entered the Laundries requires an examination of whether a possible breach of the right to education occurred, either pursuant to Article 42.4 of the Constitution and/ or Article 1 of Protocol 1 of the ECHR. Equally, as previously noted, if no education was available in Magdalen Laundries, this will undermine the lawfulness of any detention of children under Article 5(1)(d) ECHR (see previous Chapter). In this regard, it is noted that the IDC Report recorded the youngest known entrant to Magdalen Laundries as being nine years of age.²³⁴ Significantly, the IDC Report could only establish the age of 21% of all the known entrants to the Laundries. Of this number, the IDC Report indicates that 365 girls (or 4.1% of known entrants) were aged 14 years or under.²³⁵ It follows that if the ages of all entrants were known then this figure would likely be higher.
175. The State may therefore be responsible for breaching the constitutional right to education of girls placed in Magdalen Laundries. Under Article 42.4 of the Constitution, the State is obliged to provide for free primary education, insofar as the State authorised placement of young girls in the Laundries, and would also have been aware of the presence of such girls in the Laundries.²³⁶ Even before the Constitution was adopted, primary education was mandatory for children between the ages of 6 and 14 pursuant to the School Attendance Act 1926.²³⁷ The School Attendance (Amendment) Act 1967 raised the upper age

²³³ An official report published in 1970 was highly critical of the placement of girls in Magdalen Laundries, and commented on the lack of educational facilities as follows: “*There are generally no proper facilities for the education of these girls many of whom are thought to be retarded: there is a lack of qualified and specialist teachers and the training provided is not geared to getting the girls back into society as quickly as possible as useful citizens. It was noted that as no State grants are made for these purposes there is, consequently, no state control or right of inspection of these institutions.*” The Reformatory and Industrial Schools Systems Report (“The Kennedy Report”), 1970, at para 6.18.

²³⁴ IDC Report, Ch. 8, at paras. 65-69.

²³⁵ *Ibid.*, Executive Summary, at para. 4 and Ch. 8, at paras. 41 and 44. Numerous instances of young girls being placed in Magdalen Laundries, outside the criminal justice system, are contained in Chapters 10, 11, 12 and 13 of the IDC Report.

²³⁶ See previous Chapter. Chapter 18 of the IDC Report records non-state routes of entry to the Laundries and notes that the youngest girl referred by her family was 12 years old; IDC Report, Ch. 18, at para. 13.

²³⁷ The School Attendance Act placed an obligation on: “the parent of every child between the ages of six and fourteen years, and of every other child to whom the Act is applied, is required, unless there is a reasonable excuse for not so doing, to cause the child to attend a national or other suitable school on every day on which such school is open for secular instruction...”. In

limit to 15 years, where it remained for the rest of the relevant time period that the ID Report considers.²³⁸ Although there were exceptions to the Act, it is unlikely that any of those exceptions would have applied to placements in a Laundry.²³⁹

176. Turning first to the Constitution, Article 42.4 provides that:

The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

177. In addition, Article 42.3 provides:

1° The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.

2° The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.

178. In the seminal case of *Sinnott v The Minister for Education*, Keane CJ stated that:

“It is clear, accordingly, that while the principal beneficiaries of the right to free primary education recognised and protected in Article 42.4 are

this context, ‘parent’ was defined broadly as any person having “legal custody of the child and includes the person with whom the child is living or in whose custody the child is”. The Act sets out a finite list of excuses for non-attendance of a child at school, namely due to: illness; inaccessibility of a suitable school; a child of 12 years or over who is engaged in light agricultural work on [her] parent’s land for a specified (time-limited) period; that the child is receiving suitable elementary education in some manner other than by attending a national or other suitable school”; or that “the child has been prevented from attending school by some other sufficient cause”. A three day period was provided within which the Act required the parent (defined as above) to “communicate in writing or in person to the principal teacher of the school the cause of the child’s absence”. Failure to ensure the attendance of the child at school without reasonable excuse could lead to enforcement action. The Act also empowered the Minister to raise the school leaving age to 16 at a later point; and to make Regulations prohibiting or restricting the employment of children and establishing offences for persons employing a child in contravention of those Regulations.

²³⁸ The School Attendance Act 1926 was repealed by the Education (Welfare) Act 2000, which raised the upper age limit to sixteen years.

²³⁹ Including: (i) inaccessibility of a suitable school, (2) that the child is receiving suitable education in some manner other than by attending a national or other suitable school, and (3) that the child has been prevented from attending school by some other sufficient cause.

children in family units, they were not intended to be the only beneficiaries. Children without parents, natural or adoptive, whether they grow up in the care of institutions, foster parents or older relatives, are equally entitled to the right protected in Article 42.4.”²⁴⁰

179. Thus, it is clear that irrespective of how a child came to be in a Magdalen Laundry, or indeed under any other form of care outside the family, they had a right to primary education to be provided for by the State. The Sinnott case went on to define “primary education” stating:

“In this connection, I do not think that any useful guidance can be derived from dictionary definitions as to what is meant by the expression “primary education”. Its meaning, in the vast majority of cases, is clear. It denotes the stage of a child's education lasting from ages six to twelve and does not extend to the kind of training and human development that takes place from birth to age four. The latter normally takes place in the home and not in a school setting. The primary school curriculum in this country has since 1831 had as its central component education in literacy and numeracy, and now includes as already noted, in addition, mathematics, social and environmental studies, music and physical education. In addition, Irish is a compulsory subject in the primary school curriculum. It should be noted, however, as pointed out in Director of Public Prosecutions v. Best [2000] 2 I.R. 17 that the curriculum, as it now exists, represents more than the “minimum education, moral, intellectual and social” which it is the State's duty to ensure that children receive pursuant to Article 42.3.2.”²⁴¹

180. At a minimum, therefore, any child in a Magdalen Laundry, who had not completed their primary education at that point, should have been educated in basic literacy and numeracy, and during the 60s, 70s and 80s received a broader curricular education in line with the norm in primary schools at the time. There is no evidence in the IDC Report that this occurred, although there is one anecdotal account from a woman which indicates that there was an attempt to provide some form of education to her.²⁴²

²⁴⁰ *Sinnott v The Minister for Education*, [2001] 2 I.R. p. 545, at p. 630.

²⁴¹ *Ibid.*, at p. 637. Indeed, a matter often overlooked is the fact that the Supreme Court in *Sinnott* held that the right to primary education under Article 42.4 of the Constitution should be construed to extend to the time one reaches 18 years of age; an interpretation not immediately self-evident from the text of that provision.

²⁴² The IDC Report notes that one woman recollected that she “*tried to write a letter saying [she] wasn't getting school and the nun said ‘it can't go’*”; IDC Report Ch. 19, at para. 44. Another woman said that “*you'd have to handle all that dirty laundry and you could've picked up anything. They started to pay us a pound a month. And they did try to educate a few of us, a teacher came in, she was a lovely woman*”. IDC Report, Ch. 19, at para. 39.

181. In one memorandum a Probation Officer discusses the suitability of Magdalen Laundries as probation centres, commenting that there was an absence of broad education in them. The memo states that “*educational opportunities are absent and the only training is the ordinary work of the institution which always includes a public laundry, sewing, mending and cleaning.*”²⁴³

The Right to Education under the ECHR

182. Article 2 of Protocol 1 ECHR provides that “*no person shall be denied the right to education*”.²⁴⁴ This negative formulation means that there is no obligation upon State Parties to have a state system of education or to subsidise private schools or universities. These matters are left to the discretion of State Parties. However, where a State chooses to provide or allow the establishment of certain educational institutions, it is prohibited from denying a right of access to such an institution. The ECtHR, in the *Belgian Linguistics* case, noted that the Protocol only guarantees “*a right of access to educational institutions existing at a given time*”.²⁴⁵ This means that the Article guarantees a right of access to existing educational provision, but States have a wide “margin of appreciation” as to the resources they devote to the system and as to its organisation.²⁴⁶

183. The concept of education is sufficiently broad to encompass primary, secondary and university education provided for or permitted by a State. Thus, a State has an obligation to regulate public and private schools to ensure the Convention is complied with. The right to education is clearly not an absolute right and can be restricted. In determining whether a restriction is permissible, the Court will consider whether it is ‘foreseeable for those concerned’, whether it pursues ‘a legitimate aim’ and whether the means employed to realise the intended aim are proportional to its attainment.²⁴⁷

184. In the present context, the relevance of Article 2, Protocol 1, is that it differs from the constitutional right to primary education, insofar as it applies to education generally, including second and third level. The historical context is therefore relevant, and the opportunity for Irish children to attend secondary school would have expanded considerably during the 1950s, with free secondary education being comprehensively made available by the State from

²⁴³ *Ibid.*, Ch. 9, at para. 129.

²⁴⁴ Ireland signed the Protocol on 20 March 1952, ratified it on the 25 February 1953 and it entered into force on the 18 May 1954.

²⁴⁵ *Belgian Linguistics (No.2)*, Series A No 6, (1979-80) 1 EHRR 252 at para. 3.

²⁴⁶ Jacobs, White & Ovey; *European Convention on Human Rights*, 5th Ed. (Oxford University Press, 2010), 508.

²⁴⁷ Harris, O’Boyle and Warbrick; *Law of the European Convention on Human Rights*, 2nd Ed. (Oxford University Press, 2009), 700.

1967.²⁴⁸ Therefore children who would otherwise have had access to both primary education and secondary education, if not for their placement in a Magdalen Laundry, may also have had their right of access to State funded education breached by the fact they were obliged to enter a Magdalen Laundry.

Conclusion

185. It is evident from the IDC Report that children were placed in Magdalen Laundries, both directly by the State, and also by others. Any such children would have had a right to primary education up to a certain level, and a right of equal access to secondary education when State funding for such education became common place. Accordingly the placement of children in Magdalen Laundries, either by the State or others, may have given rise to a breach of the right to education under the Constitution and the right of access to education under the ECHR.

²⁴⁸ See for instance, Glendenning D; *Education and the Law*, 1999, Butterworths, at Ch 2. The upper age requirement for school attendance was raised to 15 years in 1967: The School Attendance (Amendment) Act 1967.

Chapter 5: Freedom from Forced or Compulsory Labour and Servitude

186. One conclusion of the IHRC's 2010 Assessment Report was that the State may have breached its obligations in relation to forced or compulsory labour under both the Forced Labour Convention 1930²⁴⁹ and the ECHR (Conclusion 8). This issue is indirectly addressed in the IDC Report, the facts of which support the IHRC's initial conclusion.

International law and forced or compulsory labour

187. From March 1931, Ireland assumed legal obligations under the 1930 Forced Labour Convention to prohibit or suppress forced or compulsory labour. The 1930 Convention was one of a number of anti-slavery and enforced labour conventions promulgated by the international community and ratified by the State.²⁵⁰ While the prohibition of forced or compulsory labour can also be found in Article 4 of the ECHR and in Article 8(3) of the International Covenant on Civil and Political Rights, insofar as the 1930 Convention's provisions cover the widest period from 1931 to date, that convention was necessarily most relevant to the IHRC's analysis. The obligation on the State to vindicate personal rights under Article 40 of the Constitution is also relevant.
188. Before considering the State's obligations under the 1930 Forced Labour Convention to suppress and outlaw the use of forced or compulsory labour in all its forms, the relevant facts identified in the IDC Report should be considered.

The definition of forced or compulsory labour

189. A question arises as to the meaning of "*forced or compulsory labour*". This is defined under the Forced Labour Convention as:

"all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" - Article 2(1).

190. Under this definition, work or service which is voluntary is excluded from the definition, but work or service which occurs under fear of a penalty is covered. In covering work or service which is exacted "*under the menace of any*

²⁴⁹ The *Forced Labour Convention 1930* is an International Labour Organization (ILO) convention. It is one of eight ILO fundamental conventions.

²⁵⁰ See also the Minimum Age (Industry) Convention, 1919 (No. 5) on child labour which Ireland ratified on 4 September 1925, the Minimum Age (Industry) Convention (Revised), 1937 (No. 59) (not ratified by Ireland) and the Minimum Age Convention, 1973 (No. 138), ratified by the State on 22 June 1978.

penalty”, it was made clear during the consideration of the draft 1930 Convention that the penalty in question need not be in the form of penal sanctions, but might take the form also of a loss of rights or privileges.²⁵¹

Obligation to suppress and outlaw forced or compulsory labour

191. Those States Parties which ratified the 1930 Forced Labour Convention undertook under Article 1(1) of that Convention to:

*“suppress the use of forced or compulsory labour in all its forms within the shortest possible period”.*²⁵²

192. This obligation on States Parties to suppress the use of forced or compulsory labour includes both an obligation to refrain and an obligation to act. In relation to the obligation to refrain, the primary obligation on the State is to refrain from using forced or compulsory labour as defined by the Convention. In relation to the obligation to act, there are two components. First:

“[t]he competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations” - Article 4(1).

193. In addition:

“[n]o concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilise or in which they trade” - Article 5(1).

194. Under Article 5(2) of the Convention, any such concessions containing provisions involving such forced or compulsory labour:

“shall be rescinded as soon as possible, in order to comply with article 1 of this Convention” - Article 5(2).

195. Second, Article 25 of the Convention introduced a requirement of criminalisation:

²⁵¹ General Conference of the International Labour Organisation. See

www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029.

²⁵² Whereas Article 1(2) provided that there may be a “*transitional period*” in which “*recourse to forced or compulsory labour may be had ... for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided for public purposes*”, this did not apply to forced or compulsory labour of women which was specifically prohibited under Article 11, or for any forced or compulsory labour supplied to private individuals, companies or associations, see below.

“[t]he illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.”

196. Thus on ratifying the 1930 Convention, in addition to its obligation to refrain from using forced or compulsory labour, Ireland also assumed three obligations to act:

1. It was obliged to suppress the use of forced or compulsory labour in all its forms through its laws and regulations and to end all concessions with the trade;
2. It was obliged to stop forced or compulsory labour “*for the benefit of private individuals, companies or associations*”;
3. It was obliged to introduce criminal penalties and to ensure that those penalties were adequate and strictly enforced.

As will be observed below, it appears that Ireland did not refrain from using such labour. It also failed to suppress, outlaw or enforce the law on all three of these grounds.

197. As the international prohibition on slavery refers to legal ownership,²⁵³ the IHRC, in its 2010 Assessment Report, did not consider the State to have violated this prohibition, although it raised concerns concerning the prohibition on servitude (see below).

Who may perform forced or compulsory labour?

198. Article 11 of the 1930 Forced Labour Convention provides that while able-bodied men could be called on to undertake forced or compulsory labour under certain conditions (see below), girls and women could not:

“only adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years may be called upon for forced or compulsory labour”

²⁵³ Article 1(1) of the Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention 1926 equates slavery with ownership as per the following definition: “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” The prohibition on slavery or servitude is found in the 1948 Universal Declaration on Human Rights and a number of international conventions including Article 7 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956) and Article 4 of the ECHR.

199. The following three circumstances are not included in the definition of forced or compulsory labour for the purpose of the Convention, and are therefore permissible:

- 1) *“Any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country”* - Article 2(2)(b), which referred to work or service normally carried out by citizens as part of their civic duty;
- 2) It had to be a public authority supervised or controlled work or service *“as a consequence of a conviction in a court of law”* but only where *“the said person [being] not hired to or placed at the disposal of private individuals, companies or associations”* - Article 2(2)(c);
- 3) It could be *“[m]inor communal services”* performed by members of the community, considered as normal civic obligations, provided that *“the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.”* - Article 2(2)(d).

200. However, as noted at the outset, the above exceptions apply to men aged between 18 and 45 years. Under Article 11, girls and women could never be subjected to forced or compulsory labour. Therefore, if subjected to such labour, girls and women would have their human rights violated. This situation is compounded if the State not only failed to suppress, outlaw or enforce the prohibition, but actually availed and benefited from forced or compulsory labour as set out in Chapter 14 of the IDC Report, where tenders for such work or services was the least expensive price received by the State.²⁵⁴ Thus even if there was no deliberate policy or preference by the State to accept tenders from Magdalen Laundries, this does not relieve the State of culpability given that it financially benefited from cheaper tenders (in part based on the absence of wages paid to the girls and women). At the same time the State provided different forms of financial grants to the Laundries pursuant to the Public Assistance and Health legislation for the upkeep of the girls and women, including the cheaper upkeep of girls and women with intellectual disabilities who were not entitled to the State’s disability allowance if they were so accommodated.²⁵⁵

²⁵⁴ IDC Report, Ch. 14, at para. 7.

²⁵⁵ See for example IDC Report, Chapter 13, where financial assistance by the Dublin Health Authority to the Magdalen Laundry at Sean McDermott Street, Dublin, is recorded as being provided under section 65 of the Health Act, 1953. As part of the rationale for the payment, the Authority contended that 35 *“totally disabled persons”* in the institution would be precluded from receiving a Disabled Persons (Maintenance) Allowance if they were accommodated in the institution. The Department of Health approved the grant on the basis that it was *“only a*

Forced or compulsory labour in Magdalen Laundries

201. The IHRC's Assessment Report noted that the key definition in the Forced Labour Convention is where work or service was given "*under the menace of a penalty*" (see paras 62-68). Thus, there could be no "*voluntary offer*" under threat of any penalty. The Assessment Report noted that the term "*penalty*" extends beyond a criminal penalty and could be loss of a privilege, denial of food or transfer to another institution. It stated that the question whether women and girls working in Magdalen Laundries gave their labour freely or under menace of a penalty is a finding of fact, but that it would appear likely, at a minimum, that all girls or women who entered the Laundries on remand or probation were by definition in a situation of detention and, thus, in fear of a penalty unless they complied with the instructions of the detaining authorities (here the relevant religious congregation). Such women could at any time be brought back before court to be committed to prison or be transferred to another institution if the head of the institution complained that the terms of their detention had been breached or that they were disruptive of the institution.
202. On the basis of the IDC Report, and the conclusions reached in the previous Chapter regarding detention in the Laundries, this conclusion appears confirmed and indeed the categories of girls and women in the Laundries on a non-voluntary basis is far wider than was appreciated before the publication of the IDC Report. Such girls and women who were in *de-facto* detention in the Laundries included girls and women who feared a penalty (whether loss of food or of a privilege) if they refused to work in the Laundry would by definition have been subjected to unlawful forced or compulsory labour as defined under international law. From the testimonies of the women recorded in the IDC Report, it appears many believed they could not leave the Laundry and many believed they were compelled to work, even children.²⁵⁶

Suppressing and outlawing forced or compulsory labour

203. The implications for the responsibility of the State to suppress and outlaw forced or compulsory labour is also clear from the Conditions of Employment Act 1936, which provided certain protections and entitlements for employees engaged in industrial work. Such work was defined as including the cleaning of any article, and so would have applied to Magdalen Laundries.²⁵⁷ Besides

fraction of the maintenance cost of an inmate in any one of the Dublin Health Authority's institutions"; see Ch13 at paras 70-72.

²⁵⁶ See IDC Report, Ch. 19.

²⁵⁷ Section 3(1) Conditions of Employment Act, 1936. In addition section 62 of the Act refers to industrial work carried out in institutions. See fn. 230 below.

providing for the observance of international conventions under section 12,²⁵⁸ the relevant Minister could prohibit or regulate employment of women in industrial institutions under section 16.²⁵⁹ Section 13 of the Act prohibited the employment of young persons less than fourteen years old to do industrial work. Under section 19, employers who paid workers calculated by reference to the amount of work done were required to provide them with written information “*in sufficient detail to enable such worker or outworker to compute the piece work wages payable to him, on this work*”. Non-compliance was an offence.²⁶⁰ Under section 24 workers had a right to annual leave entitlements and there were also provisions relation to annual leave, public holidays and working hours. The 1936 Act does contemplate non-payment of wages in industrial undertakings under sections 61 and 62 which state quite unequivocally that the protections of the Act do not apply in relation to pay.²⁶¹

²⁵⁸ Section 12 provided: “*The Minister shall, in the exercise of every or any power of making regulations conferred on him under this Act, have due regard to the provisions of the several international conventions for the time being ratified by and binding on the Government of Saorstát Eireann.*”

²⁵⁹ Section 16 provides: “(1) *The Minister may in respect of any form of industrial work, after consultation with representatives of employers interested in such form of industrial work and with representatives of workers so interested, by order make regulations either (a) prohibiting the employment of female workers to do such form of industrial work, or (b) fixing a proportion which the number of female workers employed by any employer to do such form of industrial work may bear to the number of other workers so employed. (2) When any regulations made under this section are for the time being in force in respect of any form of industrial work it shall not be lawful for any employer to employ to do such form of industrial work either (as the case may be) any female worker or so many female workers that the number of female workers so employed by such employer bears to the number of other workers so employed a proportion greater than that fixed by such regulations. (3) If, when any regulations made under this section are for the time being in force, any employer employs a female worker or a number of female workers in contravention of such regulations such employer shall be guilty of an offence under this section.*”

²⁶⁰ Article 19(6) provides: “*If any employer fails to comply with the requirements of this section he shall be guilty of an offence under this section.*”

²⁶¹ Section 62 provides as follows: “(1) *The provisions of this Act, except in so far as they relate to the payment of workers, shall apply in relation to industrial work done in any institution as if the persons doing such industrial work were workers employed to do such industrial work by the persons having control of such institution unless such industrial work is done for the purpose only of supplying the needs and requirements of such institution. (2) For the purposes of this section the word ‘institution’ means an institution carried on for charitable or reformatory purposes, other than a borstal institution, a mental home, or a county home.*” The 1944 Conditions of Employment Act amending the 1936 Act did not repeal or amend section 62 of the 1936 Act. ‘Industrial Work’ is defined in the 1936 Act at section 3(1): “*In this Act the expression ‘industrial work’ does not include agriculture, commercial nor domestic work nor mining nor the transport of persons or goods, but subject to that limitation the said expression includes all forms of industrial work and in particular industrial work done for or in connection with any of the following activities, that is to say; -(a) manufacturing, altering, cleaning, repairing, ornamenting, finishing, adapting for sale, testing, trading, packing, breaking up, demolishing or transforming any article...*”. Notwithstanding this, the worker concerned was deemed to be the employee of the undertaking, and so the other protections under the Act would have applied.

204. Insofar as Ireland had ratified the Forced Labour Convention in 1931, those provisions of the 1936 Act which contemplate non-pay for workers in industrial undertakings, including institutions for “charitable or reform” purposes (such as Magdalen Laundries) not only did not prohibit or criminalise forced or compulsory labour, but rather appear to have endorsed such practices. These sections would thus appear to be in contravention of the 1930 Convention and the obligations on the State having ratified that Convention. As a result it could be said that in 1936, the Government not only legislated for the non-payment of certain workers carrying out industrial work, but in not clearly suppressing and outlawing forced or compulsory labour of girls and women, as required under the 1930 Convention, it acted in direct contravention of its obligations under the Convention.
205. In fact, girls aged 14-17 years working in the Laundries, and other industrial undertakings, were required under section 80 of the Factories Act 1955 to have a certificate from a doctor that they were fit for employment as a young person before they could work.²⁶² Subsequent examination and certification was required on a 12-monthly basis under that section. Detailed instructions on these examinations were issued in 1959 by the Minister for Industry and Commerce.²⁶³ Here the State legislated and set instructions for initial and annual medical checks and certification of girls and women working in Magdalen Laundries, thereby ensuring the State had a clear knowledge of the working conditions in the Laundries and the apparent contraventions of the 1930 Convention.²⁶⁴
206. This response by the State was compounded by the fact that it entered into commercial relations with the Laundries for work and services which may have been the result of forced or compulsory labour and agreed tenders based on the cheapest rates quoted. Those tenders were priced on the basis of unpaid work which the State itself had permitted under sections 61 and 62 of the 1936 Act and medically certified (in relation to girls) under the 1955 Factories Act.²⁶⁵ Thus, the State would have violated its primary obligation to refrain from

²⁶² IDC Report, Ch. 5, at para 157.

²⁶³ *Ibid.*, Ch. 12, at para 58.

²⁶⁴ These medical examinations appear to have ended in the 1980s through the non-appointment of new certifying doctors. There do not appear to have been records of these medical examinations located by the IDC. One former inspector is reported as recalling recommending “*that the statutory medical examination*” of persons in Sundays’ Well Magdalen Laundry, Cork, should take place: IDC Report, Ch. 12, at para 102.

²⁶⁵ The IDC Report stressed that “in general, no evidence was identified by the Committee which would have suggested a deliberate policy or preference by State agencies for use of Magdalen or other institutional laundries over non-religious-operated laundries” but that what emerged was that, *inter alia*, tenders were granted or refused on the basis of price quoted”; IDC Report, Ch. 13, at para 7. While this finding may have exonerated aspects of the allegation that the State encouraged non-wage labour through agreements with the Laundries, it does not address the concerns regarding forced or compulsory labour in relation to certain of the girls

using forced or compulsory labour as defined by the Convention by engaging in commercial activities with the Laundries where at least some of the girls and women involved in the work undertook that worked under fear of a penalty.²⁶⁶

207. This violation was further compounded by the limited monitoring of Magdalen Laundries by the Factories Inspectorate, both in relation to the frequency and scope of those inspections (see below). This is particularly so given the fact that the Factories Inspectorate were not specifically authorised and did not in fact examine whether the labour was lawful, whether wages were paid or whether the girls and women were present on a voluntary basis, being primarily concerned with occupational health and safety issues.
208. Hence the IDC Report found that while section 62 of the 1936 Act appeared straightforward, no record was found of inspectors involving themselves in the question of employment or labour standards in Magdalen Laundries. The IDC Report concluded that “No instructions, guidelines or other written records have been identified by the Committee in relation to the approach of the Factories Inspectorate on [pay and conditions of employment]”.²⁶⁷

Regulation of employment conditions

209. The IDC Report does not directly name forced or compulsory labour, but rather sets out the facts of how the domestic legal provisions were implemented in the prevailing social conditions which allowed such labour take place unchecked. As noted above, part of this was caused by the limited role inspections played in identifying and halting forced or compulsory labour. Chapter 12 of the IDC Report examines the role of the Factories Inspectorate in relation to pay under the Truck Acts 1831-1896 and occupational health and safety conditions in the Laundries under the Factory and Workshop Acts 1901-1920; the Factories Act 1955; the Safety in Industry Act 1980 and the Safety, Health and Welfare at Work Act 1989.²⁶⁸

and women, where that labour was also unpaid and may have also constituted servitude: see below.

²⁶⁶ Chapter 14 sets out the main clients for the Magdalen Laundry at Sean McDermott Street, Dublin, over a six year period in the 1960s. State bodies contributed 18% to the Laundry's business and were “repeat customers”. The rest of its “customers” were “made up by hotels, schools, private companies and organisations as well as individuals. Hotels formed a sizable part of this total business and could be regarded as the mainstay of the business over the 6 year period in question.”; Ch.14, at paras 11-21.

²⁶⁷ IDC Report, Ch. 12, at para 185. See also IDC Report, Ch. 12 at paras. 80, 92, 147 and 184-188. Thus one retired inspector stated: “I did not address contracts of employment or wages issues and would have concentrated on issues relating to steam pressure vessels reports on boilers, guarding of calenders, guarding of hydro extractors and any other issue which might contravene the provisions of the Factories Act 1955 or Safety in Industry Act 1980”; IDC Report, Ch. 12, at para 147.

²⁶⁸ See generally IDC Report, Ch. 5, at paras. 143 to 145 and 165.

210. The IDC Report discusses whether the Laundries were compliant with this domestic legislation which, as noted, focuses primarily on occupational health and safety, as opposed to considering the State's compliance with its international obligations such as forced or compulsory labour.
211. The Factories Act, 1955 introduced occupational health and safety requirements relating to cleanliness, overcrowding, temperature, ventilation, lighting, floor drainage, safety including in relation to steam boilers and steam receivers and containers and fire safety, and welfare including water, washing facilities etc and was applicable to Magdalen Laundries.²⁶⁹ The IDC found that at least eight if not all ten Magdalen Laundries considered in its report were inspected.²⁷⁰ Those inspections were primarily concerned with issues such as fire safety.²⁷¹
212. The records of inspections available to the Committee were limited due to the destruction of records by the then-Department of Labour (now Department of Jobs, Enterprise and Innovation) in the 1980s and the Health and Safety Authority.²⁷² The Committee thus relied on records from one geographic area (Munster) in relation to the "green books" in which inspectors recorded inspections and recollections of former inspectors.²⁷³ The IDC Report also records the low number of inspections, with no inspections occurring between 1939-1957.²⁷⁴
213. Guidance for inspectors derived from the British Home Office with insurance documentation for equipment etc. an important source of guidance for inspectors.²⁷⁵ Inspections carried out indicate that on many occasions, no contraventions of the standards then in force were identified at Magdalen Laundries, these being the assessed standards relating to the cleanliness of the Laundries, the temperature, ventilation, air space etc. but not conditions of work or whether it was forced or compulsory labour.²⁷⁶

²⁶⁹ IDC Report, Ch. 5, paras. 153 to 156 and Ch. 12, paras 91 and 142.

²⁷⁰ IDC Report, Ch. 12, at paras. 153-157.

²⁷¹ IDC Report, Ch. 12 where the IDC recorded how "Green Books (Registers of the Factories Inspectorate) noted above contain a number of relevant references to action taken by Factories Inspectors in relation to fire safety certification for certain Magdalen Laundries"; at Ch 12. Para 165.

²⁷² IDC Report, Ch.12, at paras. 8 to 13. Thus, "*policy files, Registers of factories and workshops, prosecution records, inspection and investigation records and so on*" were destroyed by the Authority.

²⁷³ IDC Report, Ch. 12 at paras 45-48 and 93.

²⁷⁴ *Ibid.*, at para 87.

²⁷⁵ *Ibid.*, at paras 41 and 50.

²⁷⁶ *Ibid.*, at para 91.

Non-payment of wages

214. "Forced or compulsory" labour does not presuppose non-payment of wages. In fact, Article 14 of the 1930 Convention requires payment of wages for those undertaking forced or compulsory labour. The fact that girls and women were prohibited from being subjected to this labour does not mean they were not entitled to receive wages for the labour.²⁷⁷
215. As recorded in the IDC Report, the Truck Acts 1831-1896 prohibited employees being paid in anything other than "*the coin of the realm*".²⁷⁸ The Department of Jobs, Enterprise and Innovation reported to the Committee that no records were identified to establish whether the Factories Inspectorate ever considered the position of the women working in the Laundries in relation to these Acts.²⁷⁹
216. Although not expressly addressed in the IDC Report, it appears that the girls and women in Magdalen Laundries did not in fact receive pay for their work, although pocket money may have been paid to the girls and women on occasion.²⁸⁰ The IDC Report does consider whether girls and women were in "*insurable employment*" as, if they were, "*there would have been a requirement for the Congregations to make insurance contributions on their behalf*".²⁸¹ This is a most important question as normally an employer is required to make PRSI returns on behalf of employees as part of the social insurance fund. Failure to make proper returns is a criminal offence.²⁸² Also, employees who meet the

²⁷⁷ Article 14 provides: "1) *With the exception of the forced or compulsory labour provided for in Article 10 of this Convention [progressive abolition of such labour as a tax or for certain public works], forced or compulsory labour of all kinds shall be remunerated in cash at rates not less than those prevailing for similar kinds of work either in the district in which the labour is employed or in the district from which the labour is recruited, whichever may be the higher.* 2) *In the case of labour to which recourse is had by chiefs in the exercise of their administrative functions, payment of wages in accordance with the provisions of the preceding paragraph shall be introduced as soon as possible.* 3) *The wages shall be paid to each worker individually and not to his tribal chief or to any other authority.* 4) *For the purpose of payment of wages the days spent in travelling to and from the place of work shall be counted as working days. Nothing in this Article shall prevent ordinary rations being given as a part of wages, such rations to be at least equivalent in value to the money payment they are taken to represent, but deductions from wages shall not be made either for the payment of taxes or for special food, clothing or accommodation supplied to a worker for the purpose of maintaining him in a fit condition to carry on his work under the special conditions of any employment, or for the supply of tools.*" See also Article 5(2) under which "*compulsory or forced labour*" should only be exacted for public purposes and "*shall always receive adequate remuneration and [] not involve the removal of the labourers from their usual place of residence.*"

²⁷⁸ IDC Report, Ch. 5, paras.140 to 142 and Ch.12, para. 184.

²⁷⁹ IDC Report, Ch. 12, para. 84.

²⁸⁰ *Ibid.*, paras.106 to 107.

²⁸¹ *Ibid.*, para. 67.

²⁸² For example see section 52(3) of the Social Welfare Act, 1952.

relevant criteria are entitled to full or partial contributory old age pension on retirement and to other social welfare benefits.²⁸³

217. The IDC Report also considered the National Insurance Act 1911 and the Social Welfare Act 1952 (as amended),²⁸⁴ the purposes of which were to bring employees into the social security net. The 1952 Act and the regulations made thereunder do not exclude girls aged 16 years or over or women in Magdalen Laundries from being in insurable employment. The IDC Report records how the Department of Social Protection only keeps records searchable by reference to an individual employees' names not employers, despite the fact that employers are required by law to contribute per employee. Thus the IDC's ability to track whether the Religious Congregations *qua employers* properly made returns for insurable employees was limited. From one case study of a 17 year old girl who worked in a Laundry in 1968, and who was informed she was not in insurable employment by Departmental letter at the time, and in relation to which no other Departmental records could be found, the IDC Report records the Department of Social Protection's explanation that "*the woman [sic girl] was not considered by the Department to be employed "under any contract of service... written or oral, whether expressed or implied"*" and that on this basis she was not insurable.²⁸⁵ No explanation why this was so is recorded.

218. However, if the Department had considered the matter from the perspective of the 1930 Forced Labour Convention ratified by the State, it would be clear that "*work*" or "*service*" are covered under the definition of forced or compulsory labour and that those subjected to such labour (which should never be women or children: see above) should be paid a wage. The 1952 Act does not envisage wage earners from being exempt from social insurance unless they fall into a particular category in Part 11 of Schedule 1 of the Act. Persons working under an oral or implied contract of service, even where unpaid, are covered under Part 1 of Schedule 1 and as will be observed, persons must work less than 18 hours per week to be excluded under Part 11. This remained the situation until 1979.²⁸⁶

219. Section 2 of the 1952 Act defined insurable employment as:

²⁸³ See Chapter 4 of the 2007 IHRC enquiry report, "*The Self-Employed and the Old Age Contributory Pension*", www.ihrc.ie/download/pdf/pensionenquiry.pdf

²⁸⁴ See Social Welfare (Employment of Inconsiderable Extent) Regulations 1979, which established a minimum income threshold for insurable employment; as recorded in IDC Report at Ch. 15 para 105.

²⁸⁵ "The Department of Social Protection has indicated to the Committee that the assessments set out in the preceding paragraphs are correct, and considered that the first of these two options, namely that it was not considered that the woman was employed under a contract of service, is the most likely basis for the decision"; IDC Report, Ch.15, para.105.

²⁸⁶ Social Welfare (Employment of Inconsiderable Extent) Regulations 1979, which established a minimum income threshold for insurable employment (namely £6 per week).

“employment such that a person, over the age of sixteen years and under pensionable age, employed therein would be an employed contributor”.

220. Section 4 provided that everyone over 16 years was to be deemed an employed contributor.²⁸⁷ Part 1 of the First Schedule provided:

“Employment in the State under any contract of service or apprenticeship, written or oral, whether expressed or implied, and whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece or partly by time and partly by the piece, or otherwise, or without any money payment.”

221. Excluded or “excepted employment” under Part 2 of the First Schedule included the provision cited in the IDC Report namely “[e]mployment specified in regulations as being of inconsiderable extent”.²⁸⁸ Under 1953 Regulations, work less than eighteen hours per week where the employed person was “not mainly dependent for his livelihood on the remuneration received for such employment or employments” was deemed “inconsiderable” and this remained the situation until 1979 at which time a minimum income threshold was introduced which would have excluded the girls and women if not paid.²⁸⁹

222. Nonetheless, the IDC Report states that the work carried out by the women did not qualify as “insurable employment”, i.e. that there was no legal obligation to

²⁸⁷ Section 4 provided: “(a) every person who on or after the appointed day, being over the age of sixteen years and under pensionable age, is employed in any of the employments specified in Part I of the First Schedule to this Act, not being an employment specified in Part II of that Schedule, shall be an employed contributor for the purposes of this Act, and (b) every person becoming for the first time an employed contributor shall thereby become insured under this Act and shall thereafter continue throughout his life to be so insured.”

²⁸⁸ Part 2 of Schedule 1 at para. 6. The full provision of Part 2 provides: “1. Employment at a rate of remuneration exceeding in value six hundred pounds a year, or in cases where such employment involves part-time service only, at a rate of remuneration which is equivalent to a rate of remuneration exceeding six hundred pounds a year for whole-time service. 2. Employment in the service of the husband or wife of the employed person. 3. Employment of a casual nature otherwise than for the purposes of the employer's trade or business, and otherwise than for the purposes of any game or recreation where the persons employed are engaged or paid through a club. 4. Employment by a prescribed relative of the employed person, being either employment in the common home of the employer and the employed person or employment specified by regulations as corresponding to employment in the common home of the employer and the employed person. 5. Employment specified in regulations as being of such a nature that it is ordinarily adopted as subsidiary employment only and not as the principal means of livelihood. 6. Employment specified in regulations as being of inconsiderable extent.”

²⁸⁹ See *Social Welfare (Employment of Inconsiderable Extent)(No.2)(Regulations) 1953* and *Social Welfare (Employment of Inconsiderable Extent) Regulations 1979*; see IDC Report Chapter 15 at paras. 66 to 123. It is evident from the IDC Report that the work in the Laundries was far in excess of 18 hours in any one week; IDC Report, Ch. 15 at para 103.

pay these women (no legal contract of service existed) and that the women did not receive much, if any, pay.²⁹⁰ It similarly concluded that redundancy payments or rebate claims, which had been given by the Department to certain women who had worked in Laundries that were initially under religious management and subsequently transferred to commercial management, had involved the Department not being aware of the woman's working situation and discounted this as evidence that the women were in insurable employment while the Religious Congregations ran the Laundries. However, it is remarkable that such women were automatically included within the social security net, once the Religious Congregations handed over ownership of the Laundries to commercial entities.²⁹¹

Servitude

223. The IHRC Assessment Report set out the State's obligations to ensure that no one is held in servitude. These obligations arise from the Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention 1926, Article 6 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956, and Article 4 of the ECHR.
224. Under Article 4 of the ECHR, the ECtHR's jurisprudence makes clear that "*servitude*" means an obligation to provide one's services that is imposed by the use of coercion. In *C.N. V The United Kingdom*, the ECtHR considered that servitude involves "a specific offence, distinct from trafficking and exploitation, which involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance."²⁹² The key question here is whether girls or women in Magdalen Laundries were obliged to work by the use of such coercion. The IDC Report, while not directly addressing this point, establishes that girls and women worked in the Laundries for long hours, in harsh conditions, and were unpaid. It establishes how girls and women came to enter the Laundries and work there and, aside from those girls and women who voluntarily entered, voluntarily stayed and voluntarily left the Laundries, how many of the girls and women felt they had no choice but to remain and to work. If, as noted, those girls and women worked under threat of a penalty (which implies coercion), they would have been subjected to both forced and compulsory labour and to servitude.
225. There are different levels to the obligations on the State to prohibit servitude. The failure of a State to introduce and enforce criminal law penalties and thus "*take all practicable and necessary legislative and other measures to bring*

²⁹⁰ IDC Report, Ch. 15, paras. 105 to 107.

²⁹¹ *Ibid.*, paras. 108 to 123.

²⁹² *C.N v The United Kingdom*, Judgment 13 November 2012 at para. 80.

about the complete abolition or abandonment” of an individual’s labour through the use of coercion would constitute a violation of Article 4, even where the perpetrators were private individuals rather than State actors. This obligation “to protect” is a similar obligation to the obligation to suppress and outlaw forced or compulsory labour (discussed above).

226. In addition, the more recent case law of the ECtHR under Article 4 has also identified a procedural obligation on the State to investigate an alleged breach of Article 4 if the complaint to the domestic authorities gives rise to a “credible suspicion” of servitude.²⁹³ In this regard the lack of a specific legislative prohibition on servitude in the United Kingdom and the failure to give weight to the applicant’s allegations gave rise to a breach of Article 4 in *CN*. As will be considered later in this Report, to the present day there is no stand alone offence of forced or compulsory labour or servitude in Irish law, thus raising similar issues as arose in the *CN* case.²⁹⁴
227. In its 2010 Assessment Report, the IHRC noted that insofar as the women and girls in the Laundries were in a vulnerable and isolated situation, being dependent on the religious authorities in the Laundries for their welfare, subsistence and liberty, and given that at least some of those women were under threat of a penalty from the State if they left the Laundries, while others may have faced a loss of privilege or been subject to penalties if they refused to work, there may have been a violation of Article 4 of the ECHR (Conclusion 9).
228. The IDC Report does not provide any evidence to refute this contention, and in many respects reinforces this conclusion (see above and Chapter 3). Indeed, the key reference to coercion means that in all likelihood the State failed to prohibit and outlaw the practice of servitude in Magdalen Laundries.

Conclusion

229. The State’s culpability in regard to forced or compulsory labour and/or servitude in the Laundries appears to be threefold. Firstly; at the administrative level, it failed to outlaw and police against such practices, including through criminal sanction. Secondly; the State or its agents placed girls and women in the Laundries knowing that such girls and women would be obliged to provide their labour in those institutions, and then thirdly, the State further supported these practices by benefiting from commercial contracts with the Laundries. In relation to those commercial contracts, the IDC Report documents that the

²⁹³ *Ibid.* at para 71

²⁹⁴ See below Chapter 9. In the case of *O.O.O. & Ors v Metropolitan Police* [2011]EWHC 1246,, it was found that there was a duty to investigate credible complaints of a breach of Articles 3 and 4 of the ECHR, even if the alleged victims were reluctant to make a formal statement to the police.

State agreed tenders with the Laundries on the basis of being the cheapest rates available, but the crucial factor here is that the workers were unpaid, and may have been subject to forced or compulsory labour or servitude in order to achieve these economies on behalf of the State.

Chapter 6: Freedom from Ill-treatment

230. The IHRC Assessment Report concluded that the treatment of women and girls by the Religious Orders in Magdalen Laundries appears to have been harsh, that they were forced to work long hours, were isolated from society and were denied education (Conclusion 8). The IDC Report makes no findings of fact in relation to individual cases on the basis that its remit was a fact-finding mandate only.²⁹⁵ As to the general conditions in the Laundries, the IDC Report draws on the testimony of 128 women who resided in Magdalen Laundries and a number of other persons: including, former inspectors; the Religious Congregations themselves; doctors who served as GPs to the Laundries; a priest who served as chaplain in one Laundry; two retired Probation Officers; and a former manager of a Laundry.
231. Of the women who engaged with the Committee, the majority came from the 7.8% cohort of girls and women who entered the Laundries from Industrial or Reformatory schools. Girls and women otherwise referred directly by the State (for example by the courts, county and city homes, on foot of probation orders or psychiatric institutions) did not come forward so their accounts were not available to the Committee.²⁹⁶
232. While the IDC Report does not make specific findings in relation to the living and working conditions in the Laundries, in view of what it stated was the small and possibly unrepresentative sample of women and others available with direct experience of the Laundries, it nonetheless identified common patterns in the stories of certain women who lived and worked in the Laundries at particular times. Thus in Chapter 19, it records how the “*confusion and hurt*” experienced by the women interviewed was undoubtedly “*exacerbated by the fact that they had absolutely no idea why they were there*”.²⁹⁷
233. Noting that conditions in the Laundries was a matter of public concern for some time and a “*particularly sensitive issue*”, the IDC Report made a number of observations regarding conditions in the Laundries. First, it noted how public information was extremely limited and to address the public interest concerns (see above), it recorded extracts from interviews in Chapter 19. Second, the IDC Report recorded how many women found the Laundries to be “*lonely and frightening places*” and that they have been unable to share their stories up until now, adding to “*the confusion and pain they feel about that period in their lives*”.²⁹⁸ Third, it recorded the “*profound hurt*” of the Religious Congregations

²⁹⁵ Ibid., at para. 21.

²⁹⁶ Ibid., at para. 25.

²⁹⁷ Ibid., Ch. 19 at para. 28.

²⁹⁸ IDC Report, Introduction at para. 3. The “*majority of women described the atmosphere in the Laundries as cold, with a rigid and uncompromising regime of physically demanding work*”

that they provided an unrecognised social safety net to the girls and women, namely “*providing them with shelter, board and work*” and that they acted in the best interests of those who entered the Laundries.²⁹⁹ Fourth, it recorded that, in contrast to the Industrial and Reformatory schools, there was only one incident of sexual abuse complained of to the Committee.³⁰⁰ Similarly, although it recorded extremely demanding working conditions in the Laundries, the Committee did not find evidence of physical abuse, while the “*harsh and physically demanding work environment*” which resulted in trauma and lasting psychological impacts were said to refer to standards today and not necessarily those at the time.³⁰¹

234. Areas covered by the IDC Report include: sexual abuse; physical abuse; psychological and verbal abuse and non-physical punishment; work environment, reports of hair cutting; communication with the outside world - letters and visitors; lack of information and a real fear of remaining there until death; recreation; and manner of leaving.
235. The IDC Report recounts psychological and verbal abuse which resulted in trauma and lasting psychological impacts. It records what appears to have been routine belittling of girls and women (e.g. parading in front of others, kneeling for long periods, kissing the floor etc),³⁰² with punishment referring mainly to deprivation of food. Although confinement in a padded cell is recorded, this was not described as physical punishment, which the IDC Report termed as beatings. Otherwise, harsh and physically demanding work was described.
236. Similarly in the IDC Report, there was no specific focus on issues around the right to respect for private life which would have among other things addressed the question of keeping one’s identity after being placed in a Magdalen Laundry. Here the IDC Report noted the argument advanced by the Religious

and prayer, with many instances of verbal censure, scoldings or even humiliating put-downs”; Introduction at para. 18. The Committee acknowledged that to add to the confusion of new entrants to the laundries, “*most found themselves quite alone in what was, by today’s standards, a harsh and physically demanding work environment*”, that had a “*traumatic and lasting*” psychological impact”, Introduction, at para. 10.

²⁹⁹ Ibid., at para. 12 noting that the religious congregations did not recruit women for the Laundries.

³⁰⁰ IDC Report, Ch. 19 at paras. 31 to 32. Not addressed by the Committee was whether any such complaints had every been made to An Garda Síochána although given the detention or near-detention situation of many of the girls or women, it is difficult to see how such complaints would be made.

³⁰¹ IDC Report, Introduction at para. 3 and Ch. 19 at paras. 33 to 36. The Committee acknowledged that to add to the confusion of new entrants, “*most found themselves quite alone in what was, by today’s standards, a harsh and physically demanding work environment*”, that had a “*traumatic and lasting*” psychological impact” Intro, para. 10.

³⁰² IDC Report, Ch. 19 at paras. 38 to 39.

Congregations that the names of girls and women were changed out of a desire to preserve the anonymity of the women involved.³⁰³ Similarly, in relation to a commonly referred to photograph of women from the Sean McDermott Street Laundry marching in a religious procession with a priest and member of An Garda Síochána pictured in attendance, the IDC Report states that the police officer pictured was in the parade “*in veneration of Our Lady and for no other reason*”.³⁰⁴ As noted above, the IDC Report did not address the issue of whether girls in the Laundries were denied a similar education to other girls at the time but it appears that education facilities were minimal, if they existed.³⁰⁵ Insofar as the Green Books identify both boys and men also working in some of the Laundries, similar education concerns arise in relation to the boys working in those Laundries.³⁰⁶

237. Ill-treatment of a particular intensity may violate the constitutional right to bodily and mental integrity, and ECHR standards, specifically under Article 3, which contains an absolute prohibition on torture or inhuman or degrading treatment or punishment.³⁰⁷ While a finding of a breach of Article 3 will always require a certain minimum threshold of severity to be reached, the nature of what actions will constitute a breach of Article 3 are relative and will depend on all the factors in the case. In *Ireland v The United Kingdom*,³⁰⁸ the ECtHR set out the following factors as relevant in determining the existence of inhuman treatment (which it has frequently cited since): “*the duration of the treatment, its physical or mental effects, and the sex, age and state of health of the victim*”.³⁰⁹ The relative youth and vulnerability of girls and women in the Magdalen Laundries is of relevance to any consideration of Article 3 of the ECHR. It has been stated by the ECtHR in relation to degrading treatment under Article 3 that it would reach the level of severity required under Article 3 “*when it was such as to*

³⁰³ IDC Report, Introduction, at para. 14. Human rights law is clear that one cannot invoke one human right to justify the violation of another and that where a balancing of human rights is to occur, this should be before a judicial authority. Furthermore the prohibition on torture or inhuman or degrading treatment or other punishment is a fundamental norm and cannot be derogated from.

³⁰⁴ This assertion is made without reference to any counterview advanced by the women in pictured. Further, if a human rights framework was employed, the question whether the women were under detention before, during and following the procession would be articulated including the grounds (if any) for any detention, noting that at the relevant period, the State had committed to prohibit arbitrary detention under the Constitution and ECHR..

³⁰⁵ IHRC Assessment Report at para. 36.

³⁰⁶ In *Sinnott v Minister for Education*, the Supreme Court recognised that the constitutional right to free primary education extended to those aged up to 18 years (then the age of majority).

³⁰⁷ A similar prohibition on ill-treatment, is contained in Article 7 of the ICCPR which provides “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*”

³⁰⁸ *Ireland v The United Kingdom*, Judgment of 19 January 1978.

³⁰⁹ *Ibid.*, at para 162.

arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them".³¹⁰ In addition a breach of Article 3 will more readily be established where treatment is systemic in a closed institution with little opportunity to seek redress or to make a complaint to an official. While the limited information on ill-treatment in the IDC report renders it difficult to state definitively whether ill-treatment was routinely condoned or tolerated, from the testimonies of survivors it appears that a certain level of ill-treatment occurred.

238. Insofar as the evidence in the IDC Report is insufficient to come to any conclusion regarding a substantive breach of Article 3 ECHR or other protection from ill-treatment, it is important to recall in this context the recommendation of UNCAT which is contained in Appendix 2 to this Report. Under the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, torture is defined separately from other forms of ill-treatment, but requires a similar State response.³¹¹ In this regard, UNCAT has called on the State to "*institute prompt, independent and thorough investigations into all allegations of ill-treatment in Magdalene Laundries*" and to "*ensure that all victims obtain redress and have an enforceable right to compensation including the means for as full rehabilitation as possible.*"
239. There is a follow up procedure developed by UNCAT to monitor compliance with the Committee's recommendations and, in a recent letter (May 2013) to the Irish authorities, the UNCAT Rapporteur for the Follow-Up on Concluding Observations states that "*the Committee has received information from several sources highlighting that the McAleese [IDC] report, despite its length and detail did not conduct a fully independent investigation into allegations of*

³¹⁰. *Wiktoro v Poland*, (Applic. 14612/02) Judgment, 31 March 2009, at paras 44 & 54.

³¹¹ Article 1(1) of the UNCAT defines torture as ;"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. In relation to other forms of ill-treatment Article 16 provides; "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment."

arbitrary detention, forced labour or ill-treatment".³¹² The Rapporteur has requested further information "as to the measures that the State party is planning to take to ensure that there is a full inquiry into all complaints of abuse, in accordance with the Committee's original recommendation".³¹³

240. This recommendation reflects a similar approach by the ECtHR in dealing with allegations of breaches of Article 3 ECHR, insofar as that Court makes a distinction between substantive breaches of the Article and procedural breaches. Mental anguish clearly comes within the ambit of Article 3, and a breach of that Article may also be constituted by a failure by the State to carry out a proper investigation of an alleged breach of the Convention and to provide a remedy.³¹⁴ In this regard, the comments at paragraph 19 of this Report are recalled in relation to the limitations of the IDC Report.

Conclusion

241. There is no doubt that the girls and women who entered the Magdalen Laundries were exposed to a punitive regime, which was not only harsh by current standards, but would have been considered harsh by the standards of the time. Whether the treatment concerned reached the threshold of severity required to establish a substantive breach of Article 3 ECHR, is not definitively answered by the IDC Report, and it is recalled in this regard that the State has not, in the first place, put in place an investigative mechanism capable of establishing whether girls or women in the Laundries were exposed to treatment in breach of Article 3.
242. Nonetheless, based on the information that is available, it is clear that certain factors, such as the age, vulnerability and isolation of girls and women in the Laundries would be relevant to determining whether a substantive breach of Article 3 occurred. In addition the cumulative impact of the conditions in the Laundries would also be indicative such as; the gender aspect of the Magdalen Laundries; being subjected to arbitrary detention; exposure to forced or compulsory labour and/ or servitude and the psychological impact of isolation from the outside world which, adopting the formulation of the European Court of Human Rights, are all likely to "*arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them*".

³¹² Letter dated 22 May 2013 from Felice D. Gaer, Rapporteur for Follow-Up on Concluding Observations of UNCAT to H.E. Gerard Corr, Permanent Representative of Ireland to the United Nations Office at Geneva, page 3.

³¹³ *Ibid.*, page 3.

³¹⁴ See *Kurt v Turkey* (App no.24276/94) Judgment, 25 May 1998. The Applicant in that case was the mother of a man whom she alleged had been taken into State custody and then disappeared. The Court found that the failure of the State to investigate her complaints constituted a breach of Article 3, as "she was the victim of the authorities' complacency in the face of her anguish and distress". The Court also found a breach of Article 13, as she had no available remedy at a domestic level in respect of her complaint.

Chapter 7: Deaths and End of Life Issues

243. *The IHRC Assessment Report* examined the controversy regarding the exhumation, in 1993, of the remains of 155 women buried in a communal plot at the High Park Magdalen Laundry in Dublin. It concluded that the original burials and the subsequent exhumations and cremations in 1993 of known and unknown women raised serious questions for the State, in the absence of legislation requiring that all bodies be identified and accounted for in such private plots (Conclusion 11). The IHRC also questioned whether there were death certificates for all those persons buried at the High Park Magdalen Laundry, and whether their remains were properly preserved and reinterred.
244. The IDC Report addresses the reasons for the exhumation and the legal procedure involved. The Report establishes (i) the number of women exhumed, (ii) the law governing the exhumations, (iii) the efforts to identify the remains and (iv) the arrangements made for re-interment of the women concerned.

Burials at High Park

245. Regarding the burials at High Park, the IDC Report states that “*burial grounds*” attached to a “*church, chapel or place of worship*” did not come within the ambit of the Public Health (Ireland) Act 1878.³¹⁵ This Act established a system of sanitary districts with responsibility for burials and the maintenance of burial grounds. Importantly, the Report states that there was:

*“no general requirement on the Congregations which operated the Magdalen Laundries, or for the undertakers hired by them for funeral and burial arrangements, to notify the Local Authorities or any other agent of the State of individual burials intended to be made in their private (non-Local Authority operated) graveyards.”*³¹⁶

246. The precise legal application of the 1878 Act to Magdalen Laundries is not identified in the IDC Report.

Exhumations at High Park

247. In relation to the exhumation of the remains of women at High Park, the IDC Report confirms that an exhumation licence was granted by the Department of the Environment, Community and Local Government in May 1993 for the disinterment of 133 women.³¹⁷ This licence was granted pursuant to section 46

³¹⁵ IDC Report, Ch. 16, at para. 64.

³¹⁶ *Ibid.*, at para. 69.

³¹⁷ *Ibid.*, at para. 78.

of the Local Government (Sanitary Services) Act 1948.³¹⁸ The Report records that, of the remains exhumed, death certificates were provided by the Congregation for 75 women.³¹⁹ Of the remaining 58 women, no death certificate was available at the time.³²⁰

248. The IDC Report records that the remains of a further 22 women were located during the exhumation process.³²¹ These were not covered by the exhumation licence and so the Congregation applied to the Minister for the Environment for a second exhumation licence. In August 1993, the Minister granted a General Exhumation License for "*the exhumation of all human remains in the graveyard*".³²² The Report also records that in all but one case, the disinterred remains were removed to Glasnevin Cemetery, cremated and re-interred in a plot maintained by the Congregation.³²³ In total, the remains of 155 women were exhumed; 75 were identified by a death certificate, while 80 were not. This means that when the Exhumation Licences were granted, over half of the deaths were unaccounted for in terms of death registration and the remains of these women were unidentified. In addition the Exhumation Licenses permitted cremation, even of unknown remains, as an alternative to preservation and burial.³²⁴

249. The IDC Report records that, under the Local Government (Sanitary Services) Act 1948, death certificates are not required to be provided in respect of all exhumation applications.³²⁵ The IDC Report notes, however, that the Department of the Environment informed all Local Authorities through a "*Circular*" in 1989 that exhumation applications should be accompanied by the relevant death certificates, unless the certificate would be "*inordinately difficult*" to obtain.³²⁶ Reference is also made in the IDC Report to a "*rule of thumb*" operated by the Department of the Environment that a death certificate would be required for any death within the previous 40 years, which would appear to be contradicted by what occurred in relation to the exhumation at High Park.³²⁷

³¹⁸ Ibid., at para. 84.

³¹⁹ Ibid., at para. 85.

³²⁰ Ibid.

³²¹ Ibid., at para. 92.

³²² Ibid., at para. 91.

³²³ Ibid., at para. 93. Regarding the one exception, the Report records that the family of a deceased woman arranged for her remains to be re-interred in a family plot.

³²⁴ Ibid., at para 84.

³²⁵ Ibid., at para. 99.

³²⁶ Ibid., at para. 100.

³²⁷ Ibid., at para. 101.

Post re-interment events

250. The IDC Report records that following enquiries by An Garda Síochána in 2003 regarding the burials and exhumations, the relevant Congregation commissioned archiving and cataloguing work to establish the identity of the women whose remains were exhumed but remained unidentified. According to the Report, this work was ongoing between 2003 and 2005 and the final outcome was that all 155 women whose remains were exhumed from the graveyard at High Park and cremated and re-interred were identified. The Report accepts that inadequate record keeping by the Congregation was the “*most likely reason why fuller information was not forthcoming at the time of the exhumation*”.³²⁸
251. Following this, in 2010, discrepancies in the information recorded on the exhumation licences and on the headstone at Glasnevin Cemetery were brought to the attention of the Department of the Environment.³²⁹ The Department in turn raised these matters with the Congregation concerned in August 2010. As a result, the Department of the Environment was informed shortly thereafter that the Congregation had commissioned a memorial for those women now buried in Glasnevin Cemetery. The memorial will record the birth names and dates of death of the women and will, when erected, correct the discrepancies.

State oversight of exhumations

252. Arising from the IDC Report, questions still remain regarding the level of oversight by the State in the issuing of the relevant exhumation licences. It is striking that when the licences were issued, the remains of 80 women were unidentified. The granting of the licences (including that for the exhumation of all human remains and their cremation) in such circumstances, subject only to conditions regarding the expiry of the licence and the timeframe for re-interment or cremation, indicates an absence of safeguards in the underlying legislation and a *carte blanche* approach being taken to exhumations. As subsequent developments have shown, the identification of the remains buried at High Park was not an insoluble problem, and it must therefore be questioned, why a more rigorous approach was not taken to ensuring, as far as possible, that all the remains be identified by reference to relevant death certificates at the time.
253. In summing up the main concern regarding the exhumation at High Park, the IDC Report states:

³²⁸ Ibid., at para. 110.

³²⁹ IDC Report, Ch 16, at para 96.

“The availability at the time of the exhumation of the full particulars on each of the women concerned would have prevented concern and distress among women who had in their earlier lives been admitted to the Magdalen Laundries, their families, as well as the general public.”³³⁰

Article 8 of the ECHR

254. Applying relevant human rights standards to the exhumations, it is the rights of the surviving family members of the deceased that may have been at stake in relation to the exhumation at High Park.³³¹ As recalled in the IHRC Assessment Report, Article 8 of the ECHR encompasses the right of a child to establish maternity or paternity even after the death of a natural parent.³³² Establishing one’s origins is intimately tied up with a person’s understanding of their own identity which is protected by Article 8.³³³ As the disinterred remains were cremated before being re-interred in Glasnevin Cemetery, this could potentially have impacted on the Article 8 rights of living relatives of the deceased women to information about their origins.³³⁴ This is of particular concern in circumstances where a number of the women who entered Magdalen Laundries and remained there until their death, may have done so after having a child adopted.
255. While the impact of the exhumation of unidentified remains has now been somewhat ameliorated by the fact that the congregation was ultimately able to identify all the deceased women, nonetheless where identifying one’s mother or family member depended on DNA testing the subsequent cremation of all but one of the remains would have eliminated this possibility. It does not appear that the IDC spoke to surviving family members of those women exhumed from High Park Laundry, and so it is not possible to establish the impact of the exhumations on them personally. Nonetheless, at a minimum, the approach of the Department of the Environment risked giving rise to a breach of Article 8 of the ECHR, and suggests that the underlying legislation needs to be reviewed.

³³⁰ Ibid.

³³¹ The other significant respect in which human rights in relation to a deceased person may be invoked, is in the context of unnatural or suspicious deaths, where the right to life under Article 2 ECHR, requires that the States not only protect life, but also that there is an effective investigation of such deaths. In the present case, both the Dublin City Coroner and An Garda Síochána reviewed the exhumations at High Park, with a view to ensuring there was no evidence of such an unnatural or suspicious death, both finding that there was not.

³³² See *Mikulic v Croatia*, Judgment 7 February 2002, and *Jaggi v Switzerland*, Judgment 13 July 2006.

³³³ See for instance *Gaskin v UK*, Judgment 7 July 1989.

³³⁴ See further IHRC Assessment Report, at para. 102.

Death certificates and Magdalen Laundries

256. The IDC Report records 879 known deaths in Magdalen Laundries between 1922 and the closure of the last Magdalen Laundry in 1996.³³⁵ Some of these women were buried in private plots adjacent to a Magdalen Laundries, while others were buried in plots in public graveyards maintained by the congregation concerned. The IDC Report indicates that this is not a full account of the deaths that occurred as records for certain Laundries were not available. The Report sets out the legislative requirements regarding the registration of deaths during this period.³³⁶ Essentially, in the absence of a close family member being present at the time of death, the occupier of the institution, or Magdalen Laundry, would have been responsible for registering the death.³³⁷
257. Of the 879 deaths, the IDC Report states that death certifications were identified for 752 women (86%).³³⁸ This means that in 127 instances (14%), the IDC was unable to identify with certainty that registration of the death of the women in question had occurred. The Report suggests, however, that registration of some of the deaths may have occurred under a variation of the woman's name or at her former home-place rather than the district in which the Laundry was located.³³⁹ Nonetheless, this number of cases in which registration cannot be established (127) is significant. The IDC Report does not eliminate the possibility that the deaths of at least some of these women were in fact not registered. Furthermore it may be observed that, as with the private plot attached to High Park Laundry, the possibility that additional remains lie within the private plots of other Magdalen Laundries cannot be discounted.
258. In addition, in relation to the two Laundries to which only partial records exist, the IDC Report estimated that 78 women died in those Laundries, and of those a death certificate could not be located for 28% (22 women).³⁴⁰ Therefore, of the 957 known deaths in Laundries, there is no ascertainable record of 145 of the women who died (15% overall). It is also notable that some of those deaths occurred as late as the 1990s.

³³⁵ IDC Report, Ch. 16, at para. 38.

³³⁶ *Ibid.*, at paras. 16-26.

³³⁷ *Ibid.*, at para. 41.

³³⁸ The IDC Report records that these 879 known deaths were compared against the public death registers maintained by the Office of the Register General (GRO). Arising from this analysis, which appears to have been made significantly more difficult by poor record keeping in relation to the proper names of the woman in Laundries, it appears that 86% of deaths were confirmed to have been registered, while in the case of 14% (or 127 women) it could not be confirmed if their deaths were registered either by the Laundry or some other party. IDC Report, Ch 16, at paras 42-47.

³³⁹ *Ibid.*, at para. 50.

³⁴⁰ *Ibid.*, at paras. 55-59.

Conclusion

259. In relation to the 145 women who are known to have died in a Magdalen Laundry but for whom no death certificate may be located, it may be appropriate for Government to consider how best to create an official record or memorialise the deaths of these women. It may be that additional research could be carried out, addressing the difficulties identified by the IDC, in the hope that it might be possible to yet locate a death certificate at least for some of these women. If this is not possible, then it might be considered whether, based on the information made available to the Committee by the Religious Congregations in relation to these women, the deaths should be registered on the basis of the best information now available. This would at least allow any surviving family members a better chance to ascertain whether their family member died in a Magdalen Laundry, and in addition acknowledges the existence of women that were otherwise made invisible to society. However, this suggestion is made somewhat tentatively as there are very detailed legal requirements in relation to the information that must be provided to register a death pursuant to the Civil Registration Act 2004, and it would seem inevitable that a one-off legislative exception to these requirements would be necessary to allow for those requirements to be departed from in the case of these women for whom a death certificate cannot be located.³⁴¹
260. It is poignant that only seventeen years after the burial plot at High Park ceased to be used as a burial plot some of the women who had been buried there were exhumed and cremated without being identified. It is recalled in this regard that High Park was not the only private plot attached to a Magdalen Laundry, and such plots exist to the present day. It is clear in relation to exhumations (which are now administered by local authorities rather than the Department of the Environment), that the underlying legislation is out of date and lacks sufficient precision to avoid an arbitrary approach to exhumations. In particular there needs to be a clear legislative code underpinning the circumstances in relation to which it may be appropriate to dispense with the identification of remains where an exhumation is to take place, and those circumstances where it is not. In addition cremations should equally only be permitted where family consent is available and there is no possibility that subsequent identification of the remains may be required.

³⁴¹ Schedule 1 of the Civil Registration Act 2004, sets out the particulars to be entered on the Register of Deaths.

Chapter 8: Remedies

261. This Assessment identifies six distinct human rights where the State, both by omission and commission, breached the rights of women and girls who entered Magdalen Laundries. These are the right to equality, right to liberty, the prohibition on forced or compulsory labour, freedom from servitude, freedom from torture, inhuman or degrading treatment or punishment and the right to education, respectively. While the IHRC has focused on these human rights standards specifically because the evidence in relation to the breaches largely falls directly out of the IDC Report, there are other human rights standards that may have been breached, but which will depend on the individual experience in a Magdalen Laundry of the women concerned.
262. The concluding observation of the UN Committee against Torture is relevant in this regard, and is considered below. In addition it has been noted throughout this Report that the human rights standards that have been analysed against constitutional and ECHR standards, also have their counterparts in a number of UN treaties including the ICCPR, CEDAW and the Convention on the Rights of the Child (CRC),³⁴² While these have not been considered in detail in this Report, this does not exclude the possibility that there may also be breaches of those Conventions arising out of the operation of the Laundries. However, in light of the fact that Ireland only became bound by these Conventions relatively recently, and in the absence of any specific finding of the expert bodies charged with monitoring compliance with these Conventions, it would not be appropriate to analyse them further, and they are simply mentioned here for the purpose of indicating the IHRC's consideration of these standards.

Constitutional remedies

263. Before turning to the right to a remedy under international human rights standards as engaged by the operation of Magdalen Laundries, we will first briefly examine the approach to remedying breaches of constitutional rights. In this regard, the courts have asserted that they have the power to vindicate constitutional rights through enforceable remedies. In *Byrne v Ireland*³⁴³ Walsh J expressed the view that:

*"Where the People by the Constitution create rights against the State or impose duties on the State, a remedy to enforce those must be deemed to be also available."*³⁴⁴

³⁴² Ireland ratified the ICCPR on 8 December 1989; CEDAW on 23 December 1985, and the CRC on 28 September 1992.

³⁴³ *Byrne v Ireland*, [1972] I.R. 241.

³⁴⁴ *Ibid.*, at p.281.

264. While the above statement clearly applies to a constitutional wrong committed by the State, the question arises whether it also applies in relation to the acts of private actors. In *Meskeil v CIE*³⁴⁵ the Court found that a “horizontal” remedy could be granted against a private individual for breach of constitutional rights:

“...if a person has suffered damage by virtue of a breach of a constitutional right or the infringement of a constitutional right that person is entitled to seek redress against the person or persons who have infringed that right.”³⁴⁶

265. This is further evidence that on occasion the Laundries were acting as a surrogate for State services.³⁴⁷ This case is illustrative of the Irish courts “fashioning” a remedy to vindicate the individual’s fundamental rights. As such, *Meskeil* provides strong protection to an individual whose fundamental rights are infringed in circumstances where the State has failed to protect “protectable” rights. The *Meskeil* principle guarantees an individual a right of action against the individual who caused the harm even if where that individual a private actor. Constitutional rights must thus be respected by both State and non-State actors.

266. However, it must be acknowledged that there are a number of limitations to the *Meskeil* principle as it has been applied by the Courts. It does not provide a right of action to sue the State for failing to “control” or “regulate” the actions of the private actor. One may only sue the State for such harm where relevant principles of tort law, such as that of vicarious liability (duty of master for actions of his or her servant), can be identified and proved.³⁴⁸

267. In the context of Magdalen Laundries, statutory time limits for bringing proceedings in relation to an alleged breach of constitutional rights by either a private actor or the State would probably be a significant hurdle in the way of the women bringing legal proceedings now for the wrong they suffered in the past.³⁴⁹ Nonetheless it is useful to consider how the Courts would approach the question of remedies, in the context of the ex-gratia scheme to be established by the State. In light of the fact that there is no specific ongoing breach of the women’s constitutional rights, remedies in the nature of injunctive relief are probably not relevant. It is likely that a Court would simply confine

³⁴⁵ *Meskeil v CIE* [1973] I.R. 121.

³⁴⁶ [1973] IR 121 at 132-133.

³⁴⁷ Thus Chapter 13 of the IDC Report records the approach as “State subvention would be provided in respect of persons maintained in outside institutions, where public authorities would otherwise have had to make alternative arrangements for the maintenance of those persons”; at para 50.

³⁴⁸ See *O’Keeffe v Hickey* [2008] IESC 72 per Hardiman and Fennelly JJ.

³⁴⁹ In *McDonnell v Ireland*, [1998] 1 IR 134, Keane J indicated that an action for breach of constitutional rights is itself a tort and thus the same limitation periods apply.

itself to some form of declaratory relief, that is naming the breach of the constitutional right concerned, and would then turn to consider what damages would follow.

268. It has been noted that in practice a claim for damages of constitutional rights would be dealt with in accordance with common law principles, and as such there is no separate award of damages for the breach of constitutional rights.³⁵⁰ Therefore, financial compensation would be the most obvious remedy in the case of the women who resided in and experienced a breach of their constitutional rights in the Laundries. Such compensation would have to take into account the actual injury suffered by the women (e.g. mental injury, distress, loss of educational opportunity, loss of wages, loss of liberty and so on). In addition, it has also been found by the Courts that “*where a person’s constitutional rights have been infringed deliberately, consciously and without justification by the state, exemplary damages are appropriate.*”³⁵¹ Whether such aggravating circumstances exist in relation to the women in the Laundries would very much depend on the individual circumstances of the individual concerned.

Remedies in international law

269. Here we consider the right to a remedy under those international human rights instruments by the State under which individuals have the right to an effective domestic remedy where their human rights are engaged. In this section we will consider the position as developed by; (a) the European Court of Human Rights; (b) the UN Committee against Torture and other UN treaty bodies and, (c) the International Labour Organisation. As will be seen, the right to a remedy normally refers to an amalgam of compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and/ or a public apology.

A. European Court of Human Rights

270. Article 13 of the ECHR provides that:

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

271. Article 13 may be engaged where there is an arguable claim that there has been a breach of an ECHR right. It requires a domestic remedy to deal with the

³⁵⁰ See, Hogan and Whyte J.M Kelly: *The Irish Constitution*, 4th Ed, Butterworth’s, at p.1304-1313.

³⁵¹ *Ibid.*, at p. 1306.

substance of an “*arguable complaint*” and to grant appropriate relief. Remedies must be “*effective*” in practice as well as in law and, as noted, following the *McFarlane v Ireland*³⁵² Judgment, the adequacy of the remedy (whether constitutional, legislative or other) will be undermined where those remedies are theoretical and not capable of being demonstrated.

272. The remedy does not need to be judicial but must exist where an arguable Convention claim is made, which has clearly been the case in relation to the girls and women placed in Magdalen Laundries since 1953. The ECtHR regularly finds a violation of Article 13 where there is little or no possibility of a remedy under domestic law.³⁵³ Where the ECtHR finds a violation of a convention provision (including Article 13), the State must afford “*just satisfaction*” to the Applicant under Article 41 of the ECHR which provides that:

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

273. Under Article 41, the ECtHR in its Judgments may simply record the violation or violations it has found and set out the pecuniary and non-pecuniary measures that should be taken by the State.³⁵⁴ However, where the ECtHR identifies a lacuna in domestic law or practice, there is an obligation on the State Party to address the Judgment under general measures.
274. Under Article 46 of the ECHR, States are also required to “execute” the terms of a Judgment.³⁵⁵ States have a legal obligation to remedy the violations found but enjoy a “margin of appreciation” as regards to the means to be used. The

³⁵² *McFarlane v Ireland* (Applic. No 31333/06) Judgment of 10 September 2010.

³⁵³ See *Anguelova v. Bulgaria* (Application no. 38361/97) 13 June 2002 (HUDOC 2012) and *El-Masri v the former Yugoslav Republic of Macedonia* (Application No. 39630/09) 13 December 2012 (HUDOC 2012).

³⁵⁴ See for example *Anguelova v. Bulgaria* (Application no. 38361/97) 13 June 2002 (HUDOC 2012) at para 177.

³⁵⁵ Article 46 of the Convention provides that judgments of the ECtHR have binding force and the execution of such judgments is supervised by the Council of Ministers: 1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.” Execution (or implementation) of Judgments is the responsibility of the Committee of Ministers of the Council of Europe under Article 46. The Council of Europe’s Department of Execution of Judgments has responsibility for supervising the execution of all Judgments of the ECtHR on behalf of the Committee of Ministers which reviews progress as its periodic meetings.

measures to be taken are, in principle, identified by the State concerned, under supervision of the Committee of Ministers.³⁵⁶

275. As stated, the ECtHR may direct individual and/ or general measures in its Judgments. In relation to individual measures, these are formulated by reference to the impact of the violation on the Applicant. Awards of just satisfaction by the ECtHR do not always follow a finding of a violation: the ECtHR may decide that the finding of a violation is, in itself, sufficient vindication of the Applicant's rights and may limit an award to costs and expenses.³⁵⁷ In relation to (individual) compensation measures, awards may be made under three heads: (i) pecuniary loss, (ii) non-pecuniary loss and (iii) costs and expenses. Examples of non-pecuniary individual measures include restoration of contacts (subject to the best interest of the child) between children and parents unduly separated from them, reopening of unfair criminal proceedings or revocation of expulsion orders.³⁵⁸
276. Examples of general measures include introduction of effective remedies against excessive length of court proceedings, removal of discrimination against children born out of wedlock (e.g. in inheritance matters), adoption of legislation to prevent arbitrary recourse to telephone-tapping and lifting of undue restrictions on journalists' freedom of expression.³⁵⁹ Where a judgment has apparently not been complied with, the ECtHR may be called upon to examine the issue again if a similar fact application is submitted to it.³⁶⁰

B. United Nations Committee Against Torture

277. UN human rights conventions provide for a right to a remedy. Thus Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) provides that "*any person whose rights or freedoms as herein recognized are violated shall have an effective remedy*". In its General Comment No. 31, the Human Rights Committee³⁶¹ noted that Article 2(3) requires that States Parties make

³⁵⁶ See http://www.coe.int/t/dghl/monitoring/execution/Presentation/Pres_Exec_en.asp.

³⁵⁷ Harris, O'Boyle & Warbrick; *The Law of the European Convention on Human Rights* (2nd Ed, Oxford University Press, Oxford 2009) at p. 857.

³⁵⁸ See http://www.coe.int/t/dghl/monitoring/execution/Presentation/Pres_Exec_en.asp.

³⁵⁹ See http://www.coe.int/t/dghl/monitoring/execution/Presentation/Pres_Exec_en.asp.

³⁶⁰ In 2011, the Committee of Ministers adopted a twin track approach to execution of Court Judgments. Once judgments and decisions become final, States indicate to the Committee of Ministers as soon as possible the measures planned and/ or taken in an "action plan". Once all the measures have been taken, an "action report" is submitted. The Committee of Ministers then considers whether the Judgment has been properly executed. Whereas most cases before the Committee of Ministers follow the "standard" procedure, an "enhanced" procedure is used for cases requiring urgent individual measures or revealing important structural problems such as the need to amend a national constitution, introduce specific legislation or reform the way in which courts hear cases to reduce judicial delay.

³⁶¹ The Human Rights Committee supervises the implementation of the ICCPR.

reparation to individuals whose ICCPR rights have been violated and that, where appropriate, reparation involve *inter alia*, “*restitution, rehabilitation and measures of satisfaction*”.³⁶²

278. Similarly, Article 14 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Convention Against Torture) guarantees a right to redress for a victim of torture. It also guarantees an enforceable right to fair and adequate compensation, including the means for full rehabilitation. Redress also involves official recognition that harm has been done to the person in question and compensation must be fair and adequate and not symbolic.³⁶³
279. In 2012, the Committee Against Torture, which supervises the Convention Against Torture (Article 17), issued a General Comment related to the implementation of Article 14 by States.³⁶⁴ The Committee considers that the term “*redress*” in Article 14 encompasses the concepts of “*effective remedy*” and “*reparation*”.³⁶⁵ The comprehensive reparative concept entails “*restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention*.”³⁶⁶ The Committee expresses some broad principles, emphasising the importance of victim participation in the redress process and “*that the restoration of the dignity of the victim is the ultimate objective in the provision of redress*.”³⁶⁷
280. The Committee Against Torture also reminds States that in order to ensure that reparation is “*adequate, effective and comprehensive*”, the redress and reparative measures should take into account the “*specificities and circumstances of each case*”, thereby emphasising a more individualised remedy for victims.³⁶⁸ The Committee further states that redress should “*be*

³⁶² The Human Rights Committee has held that the right to a remedy under Article 2(3) requires States to ensure that similar violations do not occur in the future. The Committee thus emphasises the need for measures beyond a victim-specific remedy in preventing recurrence of violations. See also General Comment 20 of the Committee on Economic, Social and Cultural Rights (which addresses non-discrimination) and which requires States to ensure effective remedies which will include compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and public apologies.

³⁶³ Ingelse, C; *The UN Committee against Torture: An Assessment* (Kluwer Law International, The Hague 2001) 362.

³⁶⁴ UNCAT, ‘*General Comment No. 3 (2012)*’ on the ‘*Implementation of Article 14 by State Parties*’ (13 December 2012) UN Doc. CAT/C/GC/3.

³⁶⁵ *Ibid.*, at para. 2.

³⁶⁶ *Ibid.*

³⁶⁷ *Ibid.*, at para.4.

³⁶⁸ *Ibid.*, at para.6.

*tailored to the particular needs of the victim and be proportionate to the gravity of the violations committed against them”.*³⁶⁹

281. The Committee Against Torture also acknowledges that in assessing “*prompt, fair and adequate compensation for torture or ill-treatment*”, a number of factors may be taken into consideration, including:

*“reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; pecuniary and non-pecuniary damage resulting from the physical and mental harm caused; loss of earnings and potential earning due to disabilities caused by torture or ill-treatment; and lost opportunities such as employment and education.”*³⁷⁰

282. Another element of the General Comment, of particular significance in the present context, is that the Committee stresses that the crucial component of the right to redress is the clear acknowledgement by the State party concerned that the reparative measures provided or awarded to a victim are for violations of the Convention. Moreover, the Committee Against Torture has indicated that a State party may not implement development measures or provide humanitarian assistance as a substitute for redress for victims of torture or ill-treatment.³⁷¹

283. The Committee Against Torture’s Concluding Observations on Ireland, insofar as it addresses tMagdalen Laundries, are set out in Appendix 2 of this Report.

C. International Labour Organisation

284. The International Labour Organisation does not provide express guidance regarding remedies for victims of forced or compulsory labour. The 1930 Forced Labour Convention does not mention remedies *per se*, although Article 25 of the Convention provides that forced or compulsory labour shall be punishable as a penal offence and that it is an obligation on parties to the Convention to ensure that the penalties imposed by law are adequate and strictly enforced.

285. However, the *Report for the Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation*,³⁷² compiled in February 2013, states that the ILO Convention demands an appropriate mechanism for the identification, release, protection and rehabilitation of victims of forced labour. It

³⁶⁹ *Ibid.*

³⁷⁰ *Ibid.*, at para.10.

³⁷¹ *Ibid.*, at para.37.

³⁷² http://www.ilo.org/global/standards/WCMS_203982/lang--en/index.htm.

continues that, following their release, victims need to receive adequate protection to ensure the enjoyment of all their rights, including labour rights and compensation for material and moral damages. The report also states that the effective protection of victims of forced labour involves them being able to complain to the competent authorities, have access to justice and obtain compensation for the harm suffered. In the context of the women who were subjected to forced labour in Magdalen Laundries, this would require some quantification of their financial loss on a present day basis, including not only ancillary consequences, such as loss of pension rights, but also looking at their broader needs in terms of rehabilitation, which may of course differ from person to person.

Conclusion

286. In the context of women and girls who resided in Magdalen Laundries, there is now an opportunity for the State to provide appropriate remedies as required under the State's domestic and international human rights obligations. Such remedies would refer to an amalgam of compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and/ or a public apology.
287. Arising from instances of forced and compulsory labour or of servitude, a first step towards this could be through the recovery of lost wages and pension benefits, appropriately indexed. However, this may not be sufficient in most cases and the State must also consider the situation of those women that experienced multiple breaches of their human rights, such as arbitrary detention, coupled with forced or compulsory labour, servitude and exclusion from primary and/or secondary education. All of these violations may need to be addressed under separate pecuniary and non-pecuniary remedies.
288. In relation to non-compensatory reparation, satisfaction can also be provided by a State in the form of an acknowledgement of wrong-doing, an expression of regret or an assurance of non-repetition. The State apology to those who resided in Magdalen Laundries, made by An Taoiseach, Mr Enda Kenny TD on 19 February 2013 in Dáil Éireann, may thus be regarded as a remedy in the form of satisfaction and apology.
289. Finally, there remains the question of general measures. Following the approach of the ECtHR, this would refer to legislative or other measures to ensure non-repetition and to ensure structural issues evident in the history of Magdalen Laundries treatment of girls and women do not recur. In the following chapter we consider these "*lessons to be learnt*" and make recommendations to Government on the measures it should take to address the systemic issues which arose.

Chapter 9: Conclusions and Recommendations

290. This Follow-Up Report considers the facts established in the IDC Report and revisits the findings of the previous IHRC Assessment Report, in light of the information now available. As stated earlier, the IDC Report establishes direct State involvement in Magdalen Laundries, but stops short of drawing any conclusions regarding the consequent human rights obligations of the State. The IHRC notes that the Rapporteur for Follow-Up on the Concluding Observations of UNCAT has observed that the IDC Report “*lacked many elements of a prompt, independent and thorough investigation*”.³⁷³
291. The IHRC, in publishing this Follow-Up Report, is now identifying a number of human rights standards that were not fully respected by the State in relation to the girls and women who resided in the Laundries since the foundation of the State. How those rights failed to be upheld in relation to each individual that entered the Laundries will differ but, that consideration aside, the State can be in no doubt that it acted wrongfully.
292. The IHRC considers it an essential aspect of the history of Magdalen Laundries to understand what human rights standards were ignored by the State when it actively engaged with the Laundries and also permitted them to operate with minimal control and oversight. The significance of this analysis is two-fold. First, as an affirmation and vindication of the rights of the women who resided in the Laundries and who are still alive today. Second, as an insight into whether the failings in relation to the human rights standards identified can be regarded as only of historic significance. On this latter point, the conclusion reached by the IHRC is that some of the failures of the State, in terms of protecting the human rights of girls and women in the Laundries, are still evident today. In this regard, there are clear lessons to be learned from the operation of Magdalen Laundries that the State needs to understand and absorb into its approach to the provision of State services and its regulatory functions where such services are delivered either by a State agency or by private organisations on behalf of the State. To this end, the IHRC has included a short section on lessons learned at the end of this report, which is intended to amplify rather than diminishes the experience of the women who resided in the Laundries.

Part 1: Breaches of human rights

293. Chapters 2 to 7 of this Report set out a full analysis of the human rights standards that we now know were not respected by the State in relation to the

³⁷³ Letter dated 22 May 2013 from Felice D. Gaer, Rapporteur for Follow-Up on Concluding Observations of UNCAT to H.E. Gerard Corr, Permanent Representative of Ireland to the United Nations Office at Geneva, page 3.

operation of Magdalen Laundries. This section will briefly review those human rights standards and the context in which they may have been breached.

The right to equality

294. In Chapter 2 the discriminatory nature of the regime in Magdalen Laundries is identified and analysed against the guarantee of equality and non-discrimination under the Constitution and Article 14 of the ECHR. It is noted that gender was a defining feature of the history of the Laundries. It is also noted in that Chapter that the guarantee of non-discrimination cross cuts all the other human rights standards considered in the Report. Therefore, insofar as the girls and women in the Laundries may have had their right to liberty, right to education, right to be free of forced or compulsory labour or servitude and the right to protection from torture or inhuman or degrading treatment or punishment, breached, their right to equal treatment as women was also breached

The right to liberty

295. Chapter 3 of this Report analysed whether the routes by which girls and women entered Magdalen Laundries gave rise to instances of arbitrary detention. In this regard, it was concluded that there may have been instances of arbitrary detention in relation to those girls and women placed in the Laundries through the criminal justice system and the Industrial and Reformatory schools regime. This arose in the following ways:

- a) Probation orders, which did not authorise detention but were enforced to impose a detention regime in the Laundries;
- b) Girls and women placed on remand in a Laundry which was not authorised as a remand facility, or where the remand did not come to an end in the normal way;
- c) In the context of adjourned or suspended sentences, where a Court Order did not authorise detention in a Laundry, but this was the *de facto* result;
- d) Placement of girls in Magdalen Laundries under the Children Act 1908, in the absence of a Court Order;
- e) Girls placed in Magdalen Laundries in the absence of educational supervision;
- f) Girls and women placed in Magdalen Laundries during the period of post discharge supervision from an Industrial or Reformatory school;

- g) Any instance in which a woman was coerced into entering a Laundry, for example if a woman who had one or more child outside marriage was under the apprehension that public assistance would be withdrawn if she did not enter a Laundry;
- h) The placement of girls and women in the Laundries without proper consent, such as the involuntary placement of women with significant intellectual disabilities or serious mental illness, or the placement of children without a relevant Court Order.

296. As noted in Chapter 3, this account is not exhaustive of all the instances in which girls and women may have had their right to liberty unlawfully interfered with by virtue of being placed in a Magdalen Laundry. Indeed, other instances of arbitrary detention in the Laundries may yet come to light. However, these are the instances which are documented in the IDC Report and sufficient evidence appears now to be available to the IHRC for it to come to a conclusion on this matter.

The right to education

297. In Chapter 4 of this Report, the IHRC reviewed the instances in which children were placed in Magdalen Laundries. Such placements appear to give rise to a breach of their educational rights, both under the Constitution and the ECHR. Under the Constitution, irrespective of whether a child is in some form of institutional care, she/ he has a right to free primary education to whatever age this is appropriate. In relation to the ECHR, the right is expressed as one of access to education. Therefore, such educational rights would extend to secondary education, where this was commonly funded by the State. Although some form of education may have been provided in the Laundries in later years on an *ad hoc* basis, Magdalen Laundries did not have educational facilities suitable for children and comparable to that which was available outside the Laundries. Thus, it is an inevitable conclusion that the children who were placed in the Laundries did not have their educational rights fully respected.

The right to be free from forced or compulsory labour and servitude

298. This Report evaluates whether the conditions under which women worked in Magdalen Laundries merits the conclusion that their right to be free from forced or compulsory labour and servitude may not have been respected by the State. Aside from those women who entered the Laundries voluntarily and freely offered themselves for such labour, it is clear that those other girls and women who were not in the Laundries of their own free will, and who were under fear of a penalty if they left the Laundries or refused to work there were subjected to a form of forced or compulsory labour. This was in clear contravention of the

State's obligations under the Forced Labour Convention 1930, which it had ratified in 1931. This conclusion is only compounded by the fact that not only did the State not outlaw and suppress such practices, as it was required to do, but the State itself availed and benefited from such forced or compulsory labour when it entered into commercial contracts with the Laundries. In addition, the obligation to provide one's labour as a result of coercion also constitutes servitude under Article 4 of the ECHR, and again the State appears to have failed to suppress such practices when it knowingly allowed girls and women to work on an unpaid basis and under coercive conditions in the Laundries.

Freedom from ill-treatment

299. While even the limited testimony in the IDC Report points to treatment of girls and women in the Magdalen Laundries that was punishing and humiliating, the current Report also sets out the deficits that still exist in relation to determining whether girls and women in the Magdalen Laundries were exposed to ill treatment within the meaning of Article 3 ECHR or the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is clear that the State has an ongoing obligation to investigate allegations of such treatment as they arise under either Convention, and this is a matter that has been raised in the follow up process to the UNCAT recommendations by the Committee.
300. In any event, however the State responds to the UNCAT, or indeed the view which the survivors of the Magdalen Laundries may take of the need for a further investigative mechanism being established, some women will have experienced psychological trauma as a result of their experience in the Laundries, and those women as yet have no facility for that experience to be formally acknowledged and responded to.

The right to respect for private life

301. In light of the foregoing, undoubtedly concerns must be raised regarding the conditions in the Laundries and whether they fully respected the right of the girls and women to respect for their private life. In addition, the IHRC more specifically expressed concern in its 2010 Assessment Report that the exhumation (and later cremation) of unknown remains at the burial plot attached to High Park Magdalen Laundry, had possible implications for any surviving children of those women, insofar as their ability to gain information regarding their origins might be damaged or altogether extinguished. It is unclear if this did happen. However, the approach of the Department of the Environment, in issuing exhumation licenses and permitting the cremation of unknown remains of women who were relatively recently deceased, did not take sufficient account of the interests of surviving family members. There was

a clear risk that the right to respect for private life, under Article 8 of the ECHR of any children of the women buried in High Park could have been breached.

Part 2: Lessons to be learned

302. In the preface to the *Report of the Commission to Inquire into Child Abuse* (“The Ryan Report”), the Chairperson of the Commission, Mr Justice Sean Ryan, states:

“The system of industrial and reformatory schools belongs to a different era. However, many of the lessons to be learned from what happened have contemporary application for the protection of children and vulnerable people in our society. The Commission hopes that this Report will give rise to debate, reflection and action regarding the needs and rights of all children and persons in need of care.”

303. Regrettably, this observation is also apposite when one considers what occurred in Magdalen Laundries. While the Laundries have all closed, and many of the buildings sold or fallen into disrepair, the lessons to be learned from the history of Magdalen Laundries has many contemporary human rights repercussions that are worthy of note.

Equality

304. The right to equality is a fundamental norm of human rights law. As the history of the Magdalen Laundries shows, the State must never be complacent in relation to the manner in which it treats women, and other groups vulnerable to discrimination or who are under-represented in society. The protection from discrimination in domestic law is primarily enshrined in the Equal Status Acts 2000-2012, and the Employment Equality Acts 1998-2011.³⁷⁴ While this legislative code has, to a point, proved an effective tool in combating discrimination in relation to the provision of goods and services, and in respect of employment (particularly insofar as there is a specialised quasi-judicial body established under the Acts for the purpose of investigating and adjudicating on allegations of discrimination), protection under both Acts is restricted, insofar as it relates to nine identified grounds only.
305. The grounds covered by the Equal Status Acts and Employment Equality Acts do not reflect the more comprehensive protection for equality contained in either Article 14 of the ECHR (which refers to “*any other status*”), or Article 26

³⁷⁴ It is also noted that there is a guarantee of equality under the Constitution and indirectly by virtue of the European Convention on Human Rights Act, 2003, however the right to equality is rarely litigated before the Superior Courts, and does not deal with discrimination perpetrated by private actors or in the field of employment.

of the ICCPR (which relates to discrimination “*on any ground*”). In addition, the Equal Status Acts do not override any other conflicting legislative provision, and as such, a measure mandated by another statutory provision may not be challenged under the Equal Status Acts.³⁷⁵ This restriction on the legislative protection from discrimination may possibly conflict with the more comprehensive protection from discrimination that is required in the international human rights treaties referred to in this Report. In addition, this also includes the UN International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)³⁷⁶ and UN Convention on the Elimination of Discrimination against Women (CEDAW). This is notwithstanding the constitutional guarantee of equality and Article 14 of the ECHR.

State and private actors

306. The early response of the State in relation to calls for Magdalen Laundries to be included in the Residential Institutions Redress Scheme was that there was no State responsibility for these institutions as they were private entities. The State also contended that it was not responsible for placing women in the Laundries.³⁷⁷ While this was clearly a premature response and not based on sound research (a matter considered further below), what is also of concern from the present perspective is that it was considered necessary to establish direct State involvement before State responsibility is engaged. As discussed earlier in this Report, this approach, that requires a direct action by the State does not sit well with the State’s human rights obligations both under the Constitution to “*vindicate the personal rights of the citizen*” and under international human rights law which imposes a threefold obligation on the State to “*respect, protect and fulfil*” the human rights of each person within its jurisdiction. Human rights principles are not just formulated negatively to limit State interference, but also positively to oblige States to take active steps to fulfil its human rights obligations. The Human Rights Committee has commented on this positive obligation as follows:

“...the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to

³⁷⁵ See in this regard, The Equality Authority, Annual Report, 2004, at p. 14.

³⁷⁶ Article 6 of ICERD provides: “States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

³⁷⁷ *Supra* at paras. 8-9.

application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities".³⁷⁸

307. In other words, the State is not only enjoined from breaching the rights of those persons within its jurisdiction, there are additional obligations in relation to protecting human rights which require the State to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulation and adjudication. A clear example is in relation to child abuse or neglect. Given the vulnerability of children, it is no longer acceptable for States to argue that they have no obligation to intervene to protect children, particularly where a state knows or should know through appropriate mechanisms that abuse is taking place. While an obvious example of a state discharging this function is through the criminal law, and by having systems in place to protect individuals from violence and attack, there are other more subtle areas of human interaction, where it is necessary for the State to put in place preventive measures. Specifically, the obligation to “*protect*” requires states to take concrete measures such as passing laws or creating mechanisms which prevent the violation of rights, whether by state or non-state actors. In the context of Magdalen Laundries, this obligation (stated explicitly in the 1930 Forced Labour Convention) required the State to take specific measures to prevent the occurrence of forced or compulsory labour.
308. In light of what happened in Magdalen Laundries, and the contents of the IDC Report, the State should scrutinise its interactions with non-State actors to ensure that in any circumstance where the rights of the individual may be engaged, its regulatory and oversight functions are sufficiently robust to prevent human rights breaches arising. Also if any such allegations are made of abuse, the State must to be able to investigate them thoroughly and effectively and provide redress where merited.

Forced or compulsory labour and servitude

309. One of the consistent features of Magdalen Laundries was the exposure of the girls and women, who were not there by choice, to forced or compulsory labour and/ or servitude. From March 1931, Ireland assumed legal obligations under the 1930 Forced Labour Convention to prohibit or suppress forced or compulsory labour, and from 1953 it assumed similar obligations under Article

³⁷⁸ Human Rights Committee, General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 29 March 2004, CCPR/C/21/ Rev.1/ Add.13

4 of the ECHR on servitude. As noted in Chapter 5, there was a three-fold obligation on the State in relation to forced or compulsory labour:

- a) *It was obliged to suppress the use of forced or compulsory labour in all its forms through its laws and regulations and to end all concessions with the trade;*
- b) *It was obliged to stop forced or compulsory labour “for the benefit of private individuals, companies or associations”;*
- c) *It was obliged to introduce criminal penalties and to ensure that those penalties were adequate and strictly enforced.*

310. In addition, there was a specific prohibition on girls and women being subjected to forced or compulsory labour.

311. While the forced or compulsory labour and/or servitude experienced by some of the women in Magdalen Laundries has ended, although not yet redressed, the existence of forced or compulsory labour in the State has not. The State response to forced or compulsory labour and servitude has not been vigorous, and the question arises whether our present regulatory regime is sufficiently robust to suppress and penalise forced or compulsory labour or servitude in all its forms. The IHRC has concerns that this is not the case for a number of reasons.

312. First, there is as yet no stand-alone offence of forced or compulsory labour. Rather, forced labour has been prohibited where it occurs in conjunction with human trafficking.³⁷⁹ Thus, the legislation concerning human trafficking deals with forced or compulsory labour as a constituent element of the broader offence of human trafficking.³⁸⁰ This approach risks clouding the issue of forced or compulsory labour or servitude, thereby raising the threshold for a successful prosecution for instances of forced labour, where the trafficking element may be unclear or absent.³⁸¹ While there are currently legislative proposals to define and criminalise forced labour (based on the definition of forced labour contained in the 1930 Convention), this has not yet become law, and still maintains the link with human trafficking.³⁸² Thus, the State remains at

³⁷⁹ Sections 1 and 4 of the Criminal Law (Human Trafficking) Act 2008. In this regard the finding of the ECtHR in *C.N. v The United Kingdom* are recalled. See supra at Ch. 5.

³⁸⁰ Section 4 of the Criminal Law (Human Trafficking) Act 2008.

³⁸¹ In April 2013, The Migrant Rights Centre of Ireland reported that it has dealt with over 180 cases of forced labour over a period of six years, and in 22 of those cases, formal complaints had been made to An Garda Síochána. However, no prosecution for forced labour had been initiated. See, Irish Examiner, Article entitled “*Migrant Rights Centre deals with 180 forced labour cases in six years*”, 12 April 2013.

³⁸² Criminal Law (Human Trafficking) Bill 2013.

risk of being in breach of the Forced Labour Convention, and indeed Article 4 of the ECHR.

313. The detection of instances of forced or compulsory labour remains problematic in this State. It appears that the National Employment Rights Authority (NERA) is not specifically tasked to identify or bring prosecutions in instances of forced labour.³⁸³ NERA derives its powers of inspection from a broad range of employment protection legislation, and a breach of such legislation may well accompany instances of forced labour and no doubt inspectors operating under the auspices of NERA are concerned to ensure forced or compulsory labour is detected and dealt with.³⁸⁴ However, addressing issues such as underpayment of wages, or breaches of working time legislation, will not necessarily fully address instances of forced or compulsory labour or servitude, and thus not address the underlying causal factors (such as coercive practices by an employer) or the poor working conditions in place in some instances.
314. The requirement to suppress and criminalise instances of forced or compulsory labour is further complicated in the circumstances of those who require a work permit to work in the State, and who, by definition, are probably most open to exploitation insofar as they have a relationship of dependency on their employer. A person who works without a work permit may be guilty of a criminal offence,³⁸⁵ and in addition, may have no right of redress for breaches of employment legislation against their employer.³⁸⁶ The proposed legislation to deal with forced labour does not at present appear to tackle these issues and notably excludes reference to compulsory labour.

Psychiatric detention and institutionalisation

315. It is apparent from the IDC Report that there were a significant number of girls and women who resided in the Laundries as a consequence of having a

³⁸³ It is noted that under current proposed by the Minister for jobs, Enterprise and innovation, NERA, will in due course become part of the Workplace Relations Commission (WRC) – which will also incorporate the functions of the Labour Relations Commission (including the Rights Commissioner Service), the Equality Tribunal, and the Employment Appeals Tribunal.

³⁸⁴ The Protection of Young Persons (Employment) Act, 1996; The Organisation of Working Time Act; 1997; Parental Leave Act, 1998; National Minimum Wage Act, 2000; Carers Leave Act 2001; Redundancy Payments Acts, 1967 to 2003; Employment Agency Act, 1971; Protection of Employment Act, 1977; Protection of Employees (Employers' Insolvency) Act, 1984; Payment of Wages Act, 1991; and Employees (Provision of Information and Consultation) Act, 2006.

³⁸⁵ Section 2(3) Employments Permit Act, 2003, as amended by section 3 of the Employment Permits Act, 2006. There is a statutory defence under the Act if the employee took all the steps reasonably open to them to ensure they had a work permit.

³⁸⁶ In the case of *Hussein v The Labour Court & Anor*, [2012] IEHC 364, the High Court found that a migrant worker, who successfully claimed in the Labour Court, *inter alia*, for unpaid wages and holidays, could not in fact enforce that decision as he had worked illegally without a work permit, and so his contract of employment was not valid.

physical, intellectual or mental disability.³⁸⁷ Ireland has had a long history of institutionalising people with disabilities, and Magdalen Laundries were but one example of the institutions involved.³⁸⁸ However, while the legislative regime governing psychiatric detention now more closely reflects the requirements of Article 5 of the ECHR, there are still a number of residual concerns from the institutional care model that have still not been addressed.³⁸⁹ In this regard the IHRC has in the past expressed considerable concern in relation to the ambit of the safeguards against arbitrary detention under the Mental Health Act, 2001. These concern include the fact that there is still a cohort of persons with intellectual disabilities that are residing in psychiatric institutions,³⁹⁰ the lack of services in the community for persons with mental health problems resulting in an over reliance on in-patient treatment (often on a crisis basis) and also the ongoing delay in introducing any form of independent inspection regime into residential services for persons with disabilities.³⁹¹

316. In relation to psychiatric detention, the IHRC published a policy paper in relation to reform of the Mental Health Act, 2001 to ensure that so called “*incapacitated compliant*” patients are not subjected to arbitrary detention.³⁹² In this regard, the IHRC recommended, *inter alia*, that:

That the Government take steps to remedy the current lack of protection from deprivation of liberty afforded to incapacitated compliant patients and wards of court in the context of an admission to an approved centre within the terms of the Mental Health Act 2001. Specifically, the definition of a voluntary patient in the Mental Health Act 2001 should be amended to include only those persons who have the capacity to make such a decision and who have genuinely consented to their admission to a

³⁸⁷ See above Chapters 1 and 3. For more detail see also IDC Report, at Chapters 9 and 13.

³⁸⁸ HSE; *Time to Move on from Congregated Settings: A Strategy for Community Inclusion*, Report of the Working Group on Congregated Settings, HSE, June 2011, at pp. 45-47.

³⁸⁹ *Ibid.*, A recent report published by the Mental Health Commission stated that “*St Joseph’s Intellectual Disability Services in St. Ita’s Hospital recorded the highest number of physical restraint episodes of all approved centres in 2011. St Josephs is one of the few large institutional care services for persons with intellectual disabilities left in the State, and the fact that it uses physical restraint on an almost daily basis indicates is a considerable cause for concern*”; see *The Use of Seclusion, Mechanical Means of Bodily Restraint and Physical Restraint in Approved Centres: Activities Report 2011*, Mental Health Commission, March 2013.

³⁹⁰ The Health Research Board Annual Report 2005 states that the number of people with intellectual disability accommodated in psychiatric hospitals decreased by 78 since 2004, to 396 in 2005. The 2011 Report, which was published in October 2012, states that the current figure of people with intellectual disabilities accommodated in psychiatric hospitals is 214.

³⁹¹ While HIQA has introduced guidelines, these have not been put on a statutory footing to date, with an accompanying licensing and inspection regime: *National Quality Standards: Residential Services for people with Disabilities*, HIQA, May 2009.

³⁹² IHRC, *Policy Paper Concerning the Definition of a “voluntary patient” under S. 2 of the Mental Health Act, 2001*, February 2010.

*psychiatric institution and continue to consent to same. Ideally, such amendment should occur at the same time as the enactment of a comprehensive Mental Capacity Bill.*³⁹³

317. It was further recommended that this amendment to the Mental Health Act, 2001, would take place in tandem with the introduction of appropriate capacity legislation. While the Mental Health Act, 2001, is presently being reviewed by the Department of Health, section 2 of the Act has not been amended, and appropriate capacity legislation is still awaited. The IHREC considers this is necessary to ensure personal autonomy and respect for human rights and dignity is the standard applicable where 'best interests' considerations are invoked in decision making in relation to persons who are vulnerable by reason of either having a mental illness or an intellectual disability. The introduction of capacity legislation that reflects the principles of the UN Convention on the Rights of Persons with Disabilities would also allow the State to ratify the Convention.³⁹⁴
318. As was noted in the IDC Report, there was little distinction made historically between persons with an intellectual disability and those with a psychiatric illness. Indeed both categories of person were described in quite pejorative language that would not be used in contemporary discourse regarding disabilities.³⁹⁵ However, despite a heightened awareness of the inappropriateness of placing persons with an intellectual disability in a psychiatric facility, there are still a number of persons with an intellectual disability residing on a long term basis in psychiatric care in the State at the time of writing this Report.³⁹⁶ It would also appear that the conditions in which such persons are cared for fall well below acceptable standards.³⁹⁷ In addition, the grounds justifying psychiatric detention under section 3 of the Mental Health Act, 2001, include having an intellectual disability. The residual failure to properly distinguish between the needs of persons with an intellectual disability and those with a psychiatric illness, which might be more understandable in the

³⁹³ Ibid., at p. 29.

³⁹⁴ Ireland signed the UNCRPD in 2007, but has yet to ratify it.

³⁹⁵ For example, IDC Report, Ch. 13 at para 17.

³⁹⁶ Supra fn. 352.

³⁹⁷ For instance, see Report of the Committee of Inquiry to Review Care and Treatment Practices in St. Michael's Unit, South Tipperary General Hospital, Clonmel and St. Luke's Hospital, Clonmel, including the Quality and Planning of Care and the Use of Restraint and Seclusion and to Report to the Mental Health Commission', Mental Health Commission (2009). This Report found that intellectually disabled patients were being inappropriately prescribed long-term drugs such as benzodiazepines, which was as a result of a lack of alternative treatment options and a lack of activities. Patients with intellectual disabilities also shared a ward with patients with mental illness. Some residents felt unsafe because of this. Some residents also complained about the noises in the ward (St. Bridget's Ward) because of other patients shouting.

historical context of the Magdalen Laundries, is still reflected in Irish law and practice and requires to be addressed.

319. Sadly, we know from the IDC Report that persons suffering from mental illness lived in Magdalen Laundries. There is now a recognised need to move away from the use of institutionalised settings for the treatment of such persons. In 2006, the State published its policy document entitled *A Vision for Change*. This document was intended to map the transformation of mental health services in the State and was stated to “*detail a series of actions for developing a comprehensive person-centred model of person centred mental health service provision*”. However, the Mental Health Commission recently stated that some seven years after its publication “*the Government’s implementation of its own policy on mental health, A Vision for Change, has been slow and inconsistent.*”³⁹⁸ Thus, the required move away from the use of institutionalised settings for the treatment of person suffering from mental illness has still not been achieved in Ireland. This is of great concern to the IHRC.
320. Finally, recalling what was stated above regarding the relationship between the State and non-State actors, in 2010 the IHRC recommended to Government that the Health Information and Quality Authority’s (HIQA) inspection and monitoring role in relation to residential centres for persons with an intellectual disability should be introduced without delay and with adequate resources. However, this role of HIQA has not been put in place to date. As a consequence, these residential services have no common standard for the delivery of their services and are subject to no independent oversight regime to protect against poor standards, or possible instances of abuse.³⁹⁹ Again, this is of great concern to the IHRC.

Information and tracing for adopted persons

321. As was noted in the 2010 IHRC Assessment Report, there is no right in Irish law for an adopted person to access information regarding their origins. As noted in Chapter 7, which deals with deaths in Magdalen Laundries, this impacts on the children of women who entered the Laundries after having a child, and who gave up their child for adoption. Section 22 of the Adoption Act, 1952 provided for An tArd-Chláraitheoir to maintain an adopted children register. The register records the date and country of birth of the child, their first name and gender, the name and address of the adopters and the date of

³⁹⁸ The Mental Health Commission went on to document that, as of January 2013, there are still 394 people living in old style institutions. See, http://www.mhcirl.ie/File/Press_Release_7th_Anniversary_AVFC.pdf

³⁹⁹ See announcement by the Minister for State, Kathleen Lynch TD, reported in the Irish Times, 22 April 2013, that the statutory standards against which residential disability services will be monitored are currently being finalised.

the adoption order.⁴⁰⁰ The register does not contain details of the natural parents of the child (alive or deceased) nor is the child's original surname recorded. This register is available for inspection by the public. Separately, An tArd-Chláraitheoir is required to keep an index to cross reference each entry on the adopted children register and the corresponding entry in the register of births. This index is confidential and unlike the register of births, is not open to public inspection. Information can only be given to a person from the index on foot of a Court Order or order of the Adoption Authority (previously An Board Uchtála).⁴⁰¹ The Adoption Act 2010, which replaced the Adoption Act 1952, re-enacted these legislative provisions.⁴⁰² Therefore, to the present day there is a legislative presumption against an adopted person gaining access to their most basic identity document, their birth certificate.

322. The issue of gaining access to official information regarding one's origins, most often in the context of adoption, has been considered by both the Irish Court and the European Court of Human Rights. In Ireland, a child has the right to know the identity of their natural mother, but this right is not absolute and can be limited by reference to the right to confidentiality of the natural parent.⁴⁰³ Under the ECHR, every person has a right to information regarding their origins, including a person who has been adopted. Again, this right is not absolute and must be weighed against the right of a natural parent to confidentiality, with the key difference being the need for the State to have a system in place that respects the rights of the person seeking the information, and is capable of balancing the competing interests concerned.⁴⁰⁴

⁴⁰⁰ Section 22 (2) Adoption Act, 1952.

⁴⁰¹ Section 8 of the Adoption Act 1976 amended this provision to provide that no such Order for disclosure could be made unless it was first determined that it was in the best interests of the child concerned to do so.

⁴⁰² These provisions were re-enacted in sections 83 to 89 of the Adoption Act 2010. In commenting on the Adoption Bill 2009 (now the Adoption Act 2010) the Ombudsman for Children recommended a form of open adoption to vindicate the rights of the child: "The Adoption Bill should contain a general presumption in favour of disclosing information regarding their birth and adoption to adopted people. While the access to such information by adopted children under the age of 18 would need to be considered very carefully in light of the child's best interests and developing sense of identity, the rights of adopted people beyond that age should be clearly and unambiguously set out in the Bill. In particular, they should have a right to access their original birth certificate and to the information contained in any relevant adoption records or files. The rights of other parties in relation to the disclosure of identifying information should also be clarified in the Bill so that the Adoption Authority and the courts will have clear statutory guidance when called upon to balance these competing rights. *Advice of the Ombudsman for Children on the Adoption Bill 2009*, November 2009, at p.33.

⁴⁰³ See *IOT v B and MH v Father Doyle and the Rotunda Girls Aid Society* [1998] 2 IR 321 where the Supreme Court acknowledged that such a right was effectively extinguished where a child was formally adopted. This approach may be criticised as it appears to focus on the legal effect of the adoption process and allows the legislative provisions of the Adoption Acts to wholly extinguish the acknowledged constitutional right of the child.

⁴⁰⁴ *Mikulic v Croatia*, Judgment 7 February 2002, *Jaggi v Switzerland*, Judgment 13 July 2006.

323. Under the Convention on the Rights of the Child, an adopted child has the right to know his or her original identity. This also requires that the State put in place appropriate legal procedures for that purpose including recommended age and professional support measures.⁴⁰⁵
324. It is unlikely that the present system, whereby an adopted person is presumed to have no right of access to their birth certificate or other information about their origins is in compliance with either Article 8 of the ECHR or the Convention on the Rights of the Child. While it is accepted that legislation is required to deal with the issue of information and tracing services for adopted persons, no draft legislation has been published to date.⁴⁰⁶

Exhumations

325. As was outlined in Chapter 7 of this Report, the law regarding exhumations is contained in the Local Government (Sanitary Services) Act 1948. The relevant provisions regarding exhumations have not changed since enactment, and remain primarily the responsibility of the Minister for the Environment, Community and Local Government. What occurred in relation to the exhumations at the location of the High Park Magdalen Laundry in Dublin, clearly demonstrates the frailty of this legislation, insofar as there are insufficient safeguards to ensure exhumations are carried out with due respect for the interests of the family members of the deceased.

Record-keeping

326. One of the factors which most aggrieved survivors of Magdalen Laundries was the State's repeatedly denial of its involvement in the Laundries. This denial was repeated by the State before the UN Committee Against Torture in 2011. Certainly, some records of relevant State agencies appear to have been destroyed, including records of financial interactions, which would not have

⁴⁰⁵ See Article 8 of the Convention on the Rights of the Child which requires the State to "respect the right of the child to preserve his or her identity, (including nationality, name and family relations as recognised by law) without unlawful interference". Article 7 further provides that a child has the right in so far as possible to know and be cared for by its parents. These two Articles taken together have been interpreted by the Committee on the Rights of the Child to encompass a right to know one's original identity: see Committee on the Rights of the Child CRC/C/RUS/CO/3 at paras. 40 and 41. (Concluding Observations - Report of Russian Federation, 23 November 2005).

⁴⁰⁶ The Adoption (Tracing and Information) Bill is stated to "...provide for the Adoption Authority to have responsibility for safeguarding and maintenance of all adoption records in the State and for ensuring that access to those records is provided to an adopted person or birth parent in accordance with the Bill. The Bill will provide for an Information and Tracing Service to applicants seeking information about adoptions. See <http://www.dcy.gov.ie/viewdoc.asp?fn=%2Fdocuments%2Flegislation%2Flegislation.htm> (accessed 25 April 2013).

been readily available to Government Departments. However, the material compiled in the IDC Report is of such significant weight that it is nonetheless difficult to discern why this denial occurred repeatedly. The IDC Report, quoting a number of answers to Parliamentary Questions pertaining to Magdalen Laundries suggests in part that “*a fuller body of material than previously found was identified and is reported on here.*”⁴⁰⁷

327. In tandem with introducing increased controls for delegated authority to non-State actors, so that key records and information is kept, Government Departments and State agencies should take responsibility for their own good record-keeping and be in a position to properly record State interventions in matters of public and private life, where those interventions and interactions engage the human rights of its citizens. It is not acceptable for a State to claim that it cannot identify a violation of human rights on its territory or provide a remedy to victims on the basis that it has destroyed records, kept insufficient records or failed to adequately exercise “*due diligence*” in monitoring non-State actors.

Recommendations

328. As noted previously, the primary focus of this Follow-Up Report is to address those instances where the girls and women who entered Magdalen Laundries, may not have had their human rights fully respected. From this analysis flows a requirement for the State to provide an immediate remedy for the wrongs experienced by the women concerned. Furthermore, in line with its statutory mandate to protect and promote the human rights of all person in the State, the IHRC also makes a number of recommendations to address what might be regarded as the systemic human rights failings which are illustrated by the history of the Laundries, and which it considers provides a number of lessons for human rights protection in the State today. This is to prevent the wrongs experienced by the women who entered the Laundries from being repeated again in the future.

The recommendations of this IHRC Follow-Up Report are as follows:

1. *That the State now put in place a system of redress for those women who resided in Magdalen Laundries. The scheme introduced should provide for individual financial compensation for the impact of the human rights violations concerned. In addition, measures should be put in place to ensure to the greatest extent possible the restitution and rehabilitation of the women. By way of restitution, lost wages and any pension or social protection benefits arising from engaging in compulsory work on an unpaid and unacknowledged basis should be identified and provided to the women*

⁴⁰⁷ Ch. 14 at para 105.

concerned. Rehabilitation may take different forms and be delivered through a variety of interventions, such as in relation to: housing; pensions; health and welfare; education and; assistance to deal with the psychological effects of time spent in the Laundries.

In order to deal with the legacy of the Magdalen Laundries, the State is recommended to adopt a number of systemic and specific measures as follows:

2. *The State and its agencies should review its interactions with non-State actors, where such private entities exercise any State function or provide any service on behalf of the State, to ensure that the State is fully complying with its obligation to “respect, protect and fulfil” the human rights of all those within its jurisdiction, by exercising appropriate legislative, contractual or other oversight and accountability measures.*
3. *The State should ensure, in accordance with its international human rights obligations that all credible allegations of abuse, which would, if proved, entail a breach of the State’s human rights obligations, are promptly, thoroughly and independently investigated. In line with the requirements under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, those investigations should be carried out by a body that is independent, with defined terms of reference and statutory powers to compel evidence and retain evidence obtained.*
4. *Given the significance of gender related discrimination to the human rights violations that occurred in the Magdalene Laundries, consideration should be given to addressing the gender specific language of Article 41.2 of the Constitution, to address the persistence of stereotypical attitudes towards women and girls, in line with the recommendations of the UN Committee on the Elimination of all Forms of Discrimination Against Women and the recent conclusions of the Commission on the Constitution, 2013.*
5. *Amend domestic equality legislation, so that it more closely reflects the State’s international human rights obligations in respect of protection from discrimination, and the right to equality.*
6. *Introduce stand-alone legislation that defines forced or compulsory labour and servitude as a criminal offence in its own right, and in addition confer a specific mandate on the National Employment Rights Agency to include the detection and prosecution of such offences within their inspection and regulatory powers. In addition, victims of forced or compulsory labour and servitude should have the opportunity to seek redress through civil law, whatever their legal status in the State, and be provided with appropriate protection by the State.*

7. *The Government should as a matter of urgency introduce comprehensive capacity legislation in full compliance with the UN Convention on the Rights of Persons with Disability.*
8. *The Mental Health Act 2001, section 4 refers to 'best interests'. The Act should be amended to reflect the human rights based approach of UNCRPD as follows: (1) to provide a legal definition for the term best interests in section 4 of the Act and when it applies; (2) remove the reference to 'significant intellectual disability' as a criteria for 'mental disorder' within the meaning of the Act and (3) provide legal clarity for safeguarding the human rights of 'incapacitated compliant patients' through legislation providing for oversight of their circumstances.*
9. *The inappropriate placement of persons with intellectual disability in any setting and in particular in a psychiatric hospital/setting, must end, by facilitating such people to freely choose their place of residence and providing the supports they need to facilitate their living and inclusion in the community*
10. *The IHRC calls for the government to re-affirm its commitment to A Vision for Change (2006) to ensure the goal of community based delivery of mental health services becomes a reality within its specified timeframe 2016 by re appointing the independent monitoring group to oversee the implementation of the policy.*
11. *Introduce a system for the provision of information and tracing services to adopted persons (including those who were informally adopted in the past), which fully respects each individual's right to know of their origins in accordance with the Convention on the Rights of the Child.*
12. *Amend the Local Authority (Sanitary Services) Act 1948, to ensure a rigorous system of accountability and oversight in relation to the granting of licenses for exhumations and cremations.*

Appendix 1: IHRC Assessment Report - Conclusions

Conclusion 1

A large number of women and girls entered laundries, including Magdalen Laundries in the Twentieth Century, continuing a pre-existing practice. These laundries were run by Religious Orders, mostly Roman Catholic.

Conclusion 2

The available public records are poor and incomplete.

Conclusion 3

Women and girls entered the Laundries via different routes: through the Courts system having a suspended sentence, being on remand or probation, or 'informally' through referrals by families, voluntary or religious bodies, other State and non-state actors or through self-referral. Those entering were often unmarried mothers whose babies were put up for adoption but also women and girls who had committed serious crimes such as infanticide.

Conclusion 4

For those women and girls who entered following a Court process (in particular those on probation or remand) there was clear State involvement in their entry to the Laundries.

Conclusion 5

The treatment of these women and girls by the Religious Orders appears to have been harsh. They were reputedly forced to work long hours. Their names were often changed to a religious name, they were isolated from society and the girls were allegedly denied educational opportunities. The then Minister for Education and Science told the Oireachtas in 2001 that this treatment was abuse, that it involved an appalling breach of trust and that the victims suffered and continued to suffer.

Conclusion 6

There is no clear information on whether or how girls or women left the Laundries or if they had a choice in doing so.

Conclusion 7

Questions arise whether the State's obligations to guard against arbitrary detention were met in the absence of information on whether and how women and girls under Court-processes left the laundries.

Conclusion 8

The State may have breached its obligations on forced or compulsory labour under the 1930 Forced Labour Convention from March 1931 and under the ECHR from 1953 in a) not suppressing/outlawing the practice in laundries particularly regarding women and girls in fear of penalty if they refused to work and b) in engaging in commercial trade with the convents for goods produced as a result of such forced labour.

Conclusion 9

The State may have breached its obligations to ensure that no one is held in servitude insofar as some women or girls in the laundries may have been held in conditions of servitude after the State assumed obligations under Article 4 of the ECHR in 1953.

Conclusion 10

The adult biological children of women and girls who subsequently entered the laundries had and still have limited facilities to trace their biological parents and establish their identity, including through the Adoption Act 2010. This situation contrasts with that in Northern Ireland.

Conclusion 11

That the burial, exhumation and cremation of known and unknown women and girls who resided in Magdalen Laundries in 1993 at High Park, Drumcondra, raises serious questions for the State in the absence of detailed legislation governing the area and any requirement that all bodies be identified and accounted for in such communal plots. Questions arise as to whether there are death certificates for all those buried in those locations, and whether their remains were properly preserved and reinterred. Similar questions may arise in relation to other communal plots.

Conclusion 12

That vaccine trials of children in Mother and Babies homes did occur (at least 58 cases as found by the Commission to Inquire into Child Abuse), but that

inquiry was injuncted following judicial review proceedings in 2004 and not recommenced on a proper footing.

Appendix 2: IHRC Assessment Report - Recommendation


That in light of its foregoing assessment of the human rights arising in this Enquiry request and in the absence of the Residential Institutions Redress Scheme including within its terms of reference the treatment of persons in laundries including Magdalen Laundries, other than those children transferred there from other institutions; that a statutory mechanism be established to investigate the matters advanced by JFM and in appropriate cases to grant redress where warranted.

Such a mechanism should first examine the extent of the State's involvement in and responsibility for:

- The girls and women entering the laundries
- The conditions in the laundries
- The manner in which girls and women left the laundries and
- End-of life issues for those who remained.

In the event of State involvement/responsibility being established, that the statutory mechanism then advance to conducting a larger-scale review of what occurred, the reasons for the occurrence, the human rights implications and the redress which should be considered, in full consultation with ex-residents and supporters' groups.

Appendix 3: Extract from UNCAT Concluding Observations on Ireland

United Nations	CAT/C/IRL/CO/1
	Distr.: General
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	17 June 2011
	Original: English

Committee against Torture
Forty-sixth session
9 May-3 June 2011

Consideration of reports submitted by States parties under article 19 of
the Convention

Concluding Observations of the Committee against Torture

Ireland

1. The Committee against Torture considered the initial report of Ireland (CAT/C/IRL/1), at its 1002nd and 1005th meetings (CAT/C/SR.1002 and 1005), held on 23 and 24 May 2011. At its 1016th meeting (CAT/C/SR.1016), held on 1 June 2011, it adopted the following concluding observations.

...

Magdalene Laundries

21. The Committee is gravely concerned at the failure by the State party to protect girls and women who were involuntarily confined between 1922 and 1996 in the Magdalene Laundries, by failing to regulate their operations and inspect them, where it is alleged that physical, emotional abuses and other ill-treatment were committed amounting to breaches of the Convention. The Committee is also expresses grave concern at the failure by the State party to institute prompt, independent and thorough investigation into the allegations of ill-treatment perpetrated on girls and women in the Magdalene Laundries. (articles 2, 12, 13, 14 and 16)

The Committee recommends that the State party should institute prompt, independent, and thorough investigations into all allegations of torture, and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries, and, in appropriate cases, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offences committed, and ensure that all victims obtain redress and have an enforceable right to compensation including the means for as full rehabilitation as possible.