

JUSTICE FOR MAGDALENES RESEARCH

**FOLLOW-UP REPORT to the
UN COMMITTEE AGAINST TORTURE**

Follow-up to 61st Session (24 July 2017 – 11 August 2017)

August 2018

in respect of

IRELAND

Authors: Ciara Landy, BCL (NUI) & Anna O'Duffy, BCL (NUI) on behalf of JFMR

Justice for Magdalenes Research (JFMR) was formed by co-ordinating and advisory committee members of the Justice for Magdalenes survivor advocacy group following Ireland's State apology to women who were incarcerated and forced into unpaid labour in Magdalene Laundries. We engage in archival and educational work, with the aim of recording and raising public awareness of the experiences of women held in Magdalene Laundries. The members of JFM Research also continue to assist survivors of Magdalene Laundries in our personal capacities.

1. Executive Summary

1.1. In July 2017, the UN Committee Against Torture (CAT) made the following recommendations to Ireland regarding the abuse of thousands of girls and women in the Magdalene Laundries between 1922 and 1996:

- a) Undertake a **thorough and impartial investigation** into allegations of ill-treatment of women at the Magdalen laundries that has the **power to compel** the production of all relevant facts and evidence and, if appropriate, ensure the **prosecution and punishment** of perpetrators;
- b) Strengthen the State party's efforts to ensure that **all victims** of ill-treatment who worked in the Magdalen laundries **obtain redress**, and to this end ensure that all victims have the **right to bring civil actions**, even if they participated in the redress scheme, and ensure that such claims concerning historical abuses can continue to be brought 'in the interests of justice'; **take further efforts to publicize the existence of the ex gratia scheme to survivors of the Magdalen laundries living outside Ireland**; fully implement the **outstanding recommendations on redress** made by Mr. Justice Quirke; promote **greater access** of victims and their representatives to relevant information concerning the Magdalene Laundries held in private and public **archives**; and provide information on these additional measures in the State party's next report to the Committee.

1.2 Ireland continues in its failure to fully comply with these recommendations. While certain positive developments have occurred since the CAT investigated Ireland in July 2017, crucially, the State remains steadfast in its refusal to accept liability for the treatment of the women and girls in the Magdalene Laundries. Despite certain steps taken by the State towards achieving redress for the survivors of the Magdalene Laundries, substantial oversights remain.

1.3 The State's behaviour towards and in respect of former Magdalene women and their relatives amounts to continuing dignity violations, compounding the torture or ill-treatment which the women suffered while incarcerated in Magdalene Laundries and afterwards through the absence of accountability for their treatment.

1.4 The State has failed to implement several promised aspects of the Magdalene 'Restorative Justice' Scheme (hereinafter 'Magdalene Scheme'), including the comprehensive healthcare suite,¹ aspects of the Dedicated Unit, and access to the Scheme for women deemed to lack sufficient capacity to apply.

¹ There have been no developments regarding the healthcare available to women in Ireland since the situation described in Justice for Magdalenes Research, NGO Submission to the UN Committee Against Torture in respect of Ireland (July 2017), pp17, 18,

https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_CSS_IRL_27974_E.pdf

1.5 Since the CAT first examined Ireland's record in 2011, there has been an increasing awareness of the interconnectedness of the various institutions operated by religious orders in Ireland which were supported by the state such as industrial schools, Mother and Baby Homes, Magdalene Laundries and psychiatric institutions/asylums. Despite this, the State continues to investigate each individually and ignoring the existence and operation of these institutions as a network.

2. The Ombudsman's report regarding the *ex gratia* 'restorative justice' scheme

2.1. In November 2017, the Ombudsman of Ireland published a report entitled 'Opportunity Lost', finding that the Department of Justice maladministered the Magdalene Scheme. The Ombudsman highlighted the following items to be of particular concern, requiring urgent remedial action:

- a) The State's refusal to admit to the Magdalene Scheme many women whom the Department accepted were forced to work as school-aged children in Magdalene Laundries.
- b) The exclusion from the Magdalene Scheme of many women whom the Department deemed to lack sufficient capacity to manage their financial affairs.
- c) The Department of Justice assessed the duration of many women's time spent in Magdalene Laundries for the purpose of calculating the payment due under the Scheme, by reference only or primarily to the evidence proffered by religious orders (often not even requiring such orders to produce records) while failing to give the testimony of the women and their family members sufficient weight in the overall assessment of evidence.²

2.2. In relation to (a), The Minister for Justice and Equality, Charles Flanagan TD, announced on June 2nd 2018, that the Government had approved his proposals for extending the Magdalene Scheme to include those in adjoining institutions who had worked in the Magdalene Laundries, in line with the recommendation of the Ombudsman. The Government agreed that the Scheme will apply to women who worked in the laundries and who were resident in one of 14 adjoining institutions, including all of those recommended by the Ombudsman. He stated that a 'general' payment will be made for the entire period of residency and a 'work' payment for the period of work in a laundry.

2.3 In November 2018, a full year after the Ombudsman made his recommendations, the Department of Justice published an Addendum to the Terms of the Magdalen Restorative Justice Ex Gratia Scheme.³ While JFMR is relieved to see the Department finally taking action to include in the Scheme women who were forced to work as girls while they

² See Ombudsman, 'Opportunity Lost': *An Investigation by the Ombudsman into the administration of the Magdalen Restorative Justice Scheme*, November 2017, p 207. Available at <https://www.ombudsman.ie/publications/reports/opportunity-lost/>.

³ See <http://justice.ie/en/JELR/Addendum%20FINAL.pdf/Files/Addendum%20FINAL.pdf>

should have been receiving an education, the contents of the Addendum are cause for some concern.

- 2.4 The Addendum states that women must provide ‘evidence’ that they worked in a Magdalene Laundry even though the nuns didn't register them as residing in the Laundry. Common sense dictates that women's testimony should be sufficient to prove their case, not least because the nuns appear not to have kept records of the hours that children worked in Magdalene Laundries as legally required under Factories legislation.⁴ However, the Department of Justice has in the past refused to accept Magdalene survivors' testimony as having evidentiary value. This was one of the key reasons for the Ombudsman's finding of 'maladministration' by the Department in 2017. The new Addendum does not explain what the Department means when it says that women must produce ‘evidence’ that they worked in a Magdalene Laundry. Nor does the Addendum describe how the women's ‘evidence’ will be tested. The Department has not disclosed what the religious orders have told it regarding girls' working patterns. Nor has the Department provided funding or other assistance to the women in order for them to provide sworn testimony.
- 2.5 There is another extremely worrying aspect of the Addendum: a sentence stating ‘The calculation will be made on the basis that no child under 12 years of age worked in a Magdalen laundry, unless an applicant provides evidence of such work before she reached the age of 12 years.’ Again, it is not clear what the Department understands to constitute ‘evidence’ nor what the nuns have told the Department about the age at which children began to work in Magdalene Laundries. The McAleese Report acknowledges that the nuns recorded children as young as 9 living and working in Magdalene Laundries. Therefore, the presumption that no child younger than 12 was exploited in a Magdalene Laundry is unacceptable.
- 2.6 In relation to (b), the Government has yet to commence the entire *Assisted Decision-Making (Capacity) Act 2015*. The legislation provides a modern statutory framework to support decision-making by adults with capacity difficulties and was signed into law on 30th December 2015. The Minister for Justice and Equality, Charles Flanagan, responsible for this legislation, responded to a parliamentary question regarding the date of commencement of the full Act (8th March 2018): ‘It is not possible at the moment to provide an exact time line for the full implementation of the 2015 Act, as there are many

⁴ The religious congregations were required to keep records of girls’ working hours under the Conditions of Employment (Records) Regulations 1947 <http://www.irishstatutebook.ie/eli/1947/sro/200/made/en/print>; Factories Act 1955, sections 122 and 124 <http://www.irishstatutebook.ie/eli/1955/act/10/enacted/en/print>; and Factories (General Register) Regulations 1956 <http://www.irishstatutebook.ie/eli/1956/si/177/made/en/print> .

complex strands to this work, including involvement of multiple organisations, and the prevailing view is that the Decision Support Service will not be ready to become operational until 2019.⁵ JFMR argues that this legislation must be commenced as a matter of urgency, due to the age and in some cases, ill-health, of the survivors of the Magdalene Laundries who are unable to receive their owed redress, without this legislation, due to a deemed lack of capacity. JFMR is still concerned that all women still institutionalised should be referred to the National Advocacy Service so that they can access independent advocacy services; this repeated request to the Department of Justice has never been granted.

- 2.7 Regarding (c), it is welcome that the Government has appointed a Senior Counsel to review cases where there is a dispute in respect of length of stay. JFMR remains concerned, however, that women have not been given assistance to provide sworn testimony nor have they been provided with free access to independent advocacy or legal representation in order to present their case.

3. Dublin Honours Magdalenes

- 3.1 Following consultations between members of JFMR and members of Dublin City Council (DCC), on 5th March 2018, the Lord Mayor of Dublin, Mícheál MacDonncha, announced at a meeting of DCC that he would host survivors of the Magdalene Laundries at the Mansion House and that the Council's Central Area Committee would contribute towards the cost of the two-day event to honour the survivors of the Magdalene Laundries. On 8th March 2018, Minister Charles Flanagan announced that the Department of Justice,⁶ would invite Magdalene survivors in contact with the department to the event. The Department of Justice thereafter funded the majority of the event.
- 3.2 Dublin Honours Magdalenes (DHM) was organised voluntarily by businesswoman Norah Casey and members of JFMR. The two-day gathering took place on June 5th and 6th, at which 230 survivors of the Magdalene Laundries were honoured and celebrated by the City of Dublin, thus fulfilling two of the key recommendations of Mr Justice Quirke's Magdalene Redress Scheme – that the women be supported to meet and get to know each other, and that they discuss how they would like their experiences to be officially remembered.
- 3.3 On June 6th, as part of the DHM event, 146 survivors participated in a Listening Exercise, which was facilitated by UCD's Magdalene Oral History project. The audio recordings have now been transcribed and are currently being finalised in order to ensure a high level of accuracy. Once this work is complete, a report will be submitted to the Minister for Justice, and JFMR will provide a copy to the Committee.

⁵ Parliamentary question asked by Ruth Coppinger T.D. on 8th March 2018. Number 183. Available at: <http://www.justice.ie/en/JELR/Pages/PQ-08-03-2018-183>

⁶ The only organisation with the details of those who spent time in the laundries.

4. Investigating allegations of ill-treatment of women in the Magdalene Laundries

- 4.1. The investigation of allegations of ill-treatment and/or torture of girls and women in the Magdalene Laundries has repeatedly been highlighted by this Committee as a subject of concern. Thus far, the Irish government has failed to institute prompt, independent and thorough investigations into allegations of ill-treatment of women in the Magdalene Laundries. JFMR maintains that the *Inter-Departmental Committee to establish the facts of State involvement in the Magdalen Laundries* (hereinafter ‘IDC’) was not an independent, thorough and effective investigation.
- 4.2. JFMR has acknowledged that the IDC conducted important investigatory work. However, such work cannot be equated with a prompt, independent investigation, in light of the IDC’s numerous limitations which included:⁷
- a) its narrow remit, which was confined to establishing the facts of State involvement with the Magdalene Laundries and did not extend to investigating allegations of abuse or to establishing the whereabouts and identities of girls and women who died in the Magdalene Laundries;
 - b) its lack of powers to make findings and recommendations in relation to human rights violations;
 - c) its lack of public hearings or public access to the evidence it considered;
 - d) its lack of a public call for evidence;
 - e) its membership, which was drawn from the government departments involved in the Magdalene Laundries’ operation;
 - f) its decision to destroy all copies of evidence it received from the religious congregations responsible for running the Magdalene Laundries; and
 - g) the ongoing lack of public access to the archive of State papers which informed the Committee’s report or the archives of the relevant religious congregations⁸.

Additionally, by its own admission, the State concedes that the IDC ‘had no remit to investigate or make determinations of torture or any other criminal offence’.⁹

- 4.3. Given the investigative flaws of the IDC, JFMR rejects the Government’s suggestion that a ‘new enquiry is not warranted’.¹⁰
- 4.4 JFMR draws the Committee’s attention to its previous NGO report in 2017, which summarises clearly the evidence that *is* contained in the IDC report and provides ample

⁷ See July 2017 JFMR report (where this has been extracted from): Justice for Magdalenes Research, NGO Submission to the UN Committee Against Torture in respect of Ireland (July 2017), https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_CSS_IRL_27974_E.pdf

⁸ See Dail Debates, Written Answer of Charlie Flanagan TD, Minister for Justice, to Catherine Connolly TD, 22 November 2018, <https://www.kildarestreet.com/wrans/?id=2018-11-22a.249&s=magdalene+laundries> stating: ‘There are no plans at this stage to provide access to the McAleese archive at this time.’

⁹ See para 14 of State’s follow-up report.

¹⁰ See para 13 State’s follow-up report.

grounds to believe that systematic ill-treatment, and in some circumstances torture, occurred in Magdalene Laundries.¹¹ JFMR's 2017 report to the Committee also highlighted that the Irish Human Rights and Equality Commission has concluded that the IDC report does disclose evidence of apparent ill-treatment, arbitrary detention, forced labour and servitude, and a range of other human rights violations. In addition, JFMR's 2017 report summarises the conclusions of Mr Justice Quirke regarding the systematic and grave human rights violations that 173 survivors collectively disclosed to him.

Commission of Investigation into Mother and Baby Homes

- 4.5 The Terms of Reference (hereinafter 'ToR') of the ongoing *Commission of Investigation into Mother and Baby Homes and Certain Related Matters* require the compilation of a social history report regarding the institutions which served as entry/exit pathways for the mother and children of the named institutions,¹² including certain Magdalene Laundries. However, despite the fact that it is clear they were intrinsically connected to the overall operation of the Mother and Baby Homes and analogous institutions, the role of the Magdalene Laundries is excluded from the Commission's investigation proper.¹³
- 4.6 The social history report is not tantamount to an investigation of the role of the Magdalene Laundries in the operation of Mother and Baby Homes. Without such an investigation, the State cannot be said to be conducting a 'thorough and impartial investigation into allegations of ill-treatment of women at the Magdalene Laundries',¹⁴ as per the recommendations of this Committee in 2017. By treating each type of institution and often, each individual institution, as separate and unconnected entities, the State is ignoring an important aspect of the women's experiences in the Magdalene Laundries, specifically how some women were transferred between institutions in the network.

5. Future investigative framework

- 5.1. This Committee has recognised the need for a 'thorough' and 'impartial' investigation into allegations of ill-treatment of women at the Magdalen Laundries. Such investigation must have the power to compel the production of all relevant facts and evidence and, where appropriate, ensure the prosecution and punishment of perpetrators.

¹¹ Justice for Magdalenes Research, NGO Submission to the UN Committee Against Torture in respect of Ireland (July 2017), pp8, 9,

https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_CSS_IRL_27974_E.pdf

¹² Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Order 2015 s 11 (i).

¹³ Department of Justice and Equality, *Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries*, (2013) Executive Summary [5].

¹⁴ UN Committee Against Torture, 'Concluding Observations on the second periodic report of Ireland (31 August 2017) UN Doc CAT/C/IRL/CO/2 [26(a)].

- 5.2. JFMR requests that the Committee recommend that such investigation not take place under the Commission of Investigation Act 2004 (hereinafter ‘2004 Act’). This framework has been previously used for the investigation of ‘historical’ abuse in Ireland: the *Commission of Investigation into Mother and Baby Homes and Certain Related Matters* was established upon this legislative basis.
- 5.3. The 2004 Act contains a number of deficiencies that makes it incompatible with establishing a thorough and impartial investigation that assists in the prosecution of perpetrators:
- Under the existing legislation, it is a *criminal offence* for a witness, who has given evidence to the Commission in private, to ever discuss their evidence in public.¹⁵
 - There is a statutory preference for Commission of Inquiry hearings to be held in private.¹⁶
 - A witness may make an application for their evidence to be held in public¹⁷ but such requests are routinely refused.¹⁸
 - Evidence provided before the Commission is not admissible in criminal or civil proceedings¹⁹ against any person. This inadmissibility cannot be reconciled with the Committee’s recommendation that perpetrators of violations be prosecuted and punished.²⁰
 - Section 40 disapples the entirety of the Freedom of Information Acts 1997-2003.
 - In May 2018, [Section 198 of the Data Protection Act 2018](#) amended Section 39 of the Commissions of Investigation Act 2004 (which previously made the Commission immune from requests for personal data) to provide that: ‘Article 15 (Right of Access) of the Data Protection Regulation is restricted, to the extent necessary and proportionate to safeguard the effective operation of Commissions and the future cooperation of witnesses in so far as it relates to personal data (within the meaning of that Regulation) provided to a Commission.’ The Commission of Investigation has recently refused any access to personal data that the Commission currently holds on a woman whose child was taken from her, stating that ‘it is necessary and proportionate to refuse access to the personal data [the Commission] holds relating to your client in order to safeguard the effective operation of the Commission and the future cooperation of witnesses.’²¹

¹⁵ The Commissions of Investigation Act 2004, s 11.

¹⁶ The Commissions of Investigation Act 2004, s 11(1).

¹⁷ The Commissions of Investigation Act 2004, s 11(1)(a).

¹⁸ Conall Ó Fátharta ‘Baby home survivors denied public hearings’ (*The Irish Examiner*, 7 April 2018) <<https://www.irishexaminer.com/ireland/baby-home-survivors-denied-public-hearings-469201.html>> accessed 5 May 2018. Original documentation available at http://clannproject.org/wp-content/uploads/Letter-from-MBHCOI_01-06-16.pdf accessed 10 April 2018.

¹⁹ *ibid*, s 19.

²⁰ UN Committee Against Torture, ‘General Comment No 2’, ‘Implementation of article 2 by States parties’ (24 January 2008) UN Doc CAT/C/GC/2 [18].

²¹ A redacted version of this letter is available at the following link: <http://clannproject.org/wp-content/uploads/Letter-from-COI-re-Subject-Access-Request.pdf>

- As such, the Commission and the 2004 Act, in their current form, are not compatible with the right of victims to information concerning violations and investigative mechanisms²² or the State's duty to inform the public on such human rights abuses.²³

5.4 It is abundantly evident from survivor testimony that the Magdalene Laundries formed part of a broader framework of incarceration and exploitation of women and children that included both religious and secular institutions, such as Mother and Baby Homes, County Homes, adoption agencies, industrial and reformatory schools and psychiatric institutions. In light of this, any investigation of the laundries must adopt a transitional justice approach, whose remit includes aforementioned institutions, in order for such investigation to comply with this Committee's recommendations.

5.5 The investigation of the different institutions separately is contrary to the recommendations of the Committee, which seeks to ensure that the restorative justice scheme achieves 'satisfaction' for the survivors.²⁴ By viewing the women's experience in a restrictive and compartmentalised way, the State fails to acknowledge the entire experience of the women, some of whom spent time in a number of different institutions.

6. Failure to prosecute and punish perpetrators

6.1 The State contends that no individuals claiming to be victims of criminal abuse in Magdalene Laundries have made any complaints or requests to the Department of Justice and Equality seeking further inquiries or criminal investigations.²⁵ However, JFMR knows of several Magdalene survivors who have made complaints to An Garda Síochána (the Irish police force) regarding their treatment in Magdalene Laundries. Despite these complaints, and the available evidence of torture and ill-treatment in the Magdalene Laundries,²⁶ no action has been taken to hold individual or institutional perpetrators of abuse accountable. Indeed, as the State's report to the Committee in August 2018 makes clear, the State's official position is that the systematic treatment of girls and women in Magdalene Laundries *was not criminal*; therefore it is not reasonable of the State to suggest that the criminal justice system is an adequate avenue for complaints. Until the State recognises the gravity and reality of the women's experiences, and the application of Irish criminal and constitutional law, and European and international human rights law to those experiences, it is unfair to suggest that the women will receive the assistance they deserve.

²² UNGA 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' Res 60/147 (16 December 2005) UN Doc A/RES/60/147 [11].

²³ *ibid* [24].

²⁴ UNCAT Gen Comment No/3.

²⁵ See para 17 of State's follow-up report.

²⁶ See Justice for Magdalenes Research, NGO Submission to the UN Committee Against Torture in respect of Ireland (July 2017), pp7-14, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_CSS_IRL_27974_E.pdf

6.2 The State's failure to investigate, criminally prosecute and facilitate civil proceedings related to allegations of torture in a prompt manner amount to a de facto denial of redress and a violation of the State's obligations under article 14.²⁷

7. Access to the civil courts

Ex-gratia Scheme waiver

7.1 The State report to the Committee acknowledges that women who have received payments under the terms of the ex-gratia scheme signed an undertaking that they would not take action against the State and/or its agencies²⁸. Those who have participated in the scheme have no right to take action against public authorities, despite the State's failure to fully deliver the package offered to the women in return for immunity from legal action. This is unacceptable conduct in regard to a particularly vulnerable group. In light of the non-performance by the State of various important aspects of the ex-gratia scheme, JFMR asserts that the original waiver preventing women from taking action against the State should no longer be operational.

Statute of Limitations 1957

7.2 This Committee has suggested a requirement for domestic statutes of limitations not to be 'unduly restrictive'²⁹ and not to apply to gross violations of international human rights law.³⁰ In this regard, recent domestic caselaw in Ireland would suggest that an amendment to the Statute of Limitations is required³¹ in order for perpetrators (both State and non-State) of such abuses to be prosecuted.

7.3 The case taken by Elizabeth Anne O'Dwyer between 2015 and 2016³², which relates to a claim regarding a Mother and Baby Home, highlights the restrictiveness and unsuitability of the Statute of Limitations 1957 for the incidents of abuse suffered by the women in the Magdalene Laundries. O'Dwyer's claim in the High Court was dismissed for a number of reasons:

- Her claim was commenced out of time and was therefore prima facie statute barred. The delay in bringing the case was considered to be 'inordinate and inexcusable in all the circumstances', despite the court acknowledging her institutionalisation and the medical report which found it was a very difficult decision for her to make to

²⁷ Para 16 Implementation of article 14

²⁸ See para 21 of State's follow-up report.

²⁹ UNGA 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' Res 60/147 (16 December 2005) UN Doc A/RES/60/147 [7].

³⁰ *ibid* [6].

³¹ *E.A.O. v. The Daughters of Charity of St. Vincent De Paul* [2015] IEHC 68; *O'Dwyer v The Daughters of Charity of St Vincent de Paul & Ors* [2015] IECA 226; *Elizabeth Anne O'Dwyer v The Daughters of Charity of St Vincent de Paul, the Sisters of Our Lady of Charity of Refuge, and the Health Service Executive* [2016] IESCDET 12 (unreported), 22 January 2016.

³² *ibid*

initiate proceedings. The Court found she had knowledge of the matters complained of from the outset and therefore, the 44-year time lapse could not be ignored.

- The Court believed that due to the amount of time that had passed, individuals with important evidence may be deceased or have limited recollection of the relevant events.
- Her substantive claim, that her infant son was taken from her without consent, was not examined due to the failure to establish that, because of her specific circumstances, the case should be exempt from the Statute of Limitations,.
- O'Dwyer argued that the delay was excusable on the basis that she was diagnosed with Recurrent Depressive Disorder - an emotional disorder resulting in recurrent nightmares and flashbacks and feeling of shame and guilt.
- It was submitted on her behalf that even where a delay is held to be inordinate and inexcusable, the Court retains jurisdiction to allow a claim to proceed by applying a balance of justice test.

7.4 The Statute of Limitations 1957 includes an exception to the running of time against a plaintiff 'where the right of action is concealed by fraud of the defendant' (Section 71(1)(b)). The section provides that the time does not begin to run until the plaintiff has discovered the fraud or could, with reasonable diligence, have discovered the fraud. However, this exception did not apply here as the presiding judge found that the defendant had not perpetrated a fraud against her.

7.5 This Committee has accepted that due to the continuous nature of the effects of torture, statutes of limitation should not be applicable as they deprive victims of redress, compensation and rehabilitation due to them.³³ Therefore, JFMR calls upon the Committee to recommend that the State amend the 1957 Statute of Limitations or enact alternative legislation so as to provide victims with an effective remedy and facilitate them bringing civil action so that they may obtain and appropriate redress.³⁴

7.6 The domestic legal costs regime may also be responsible to some extent for the failure to prosecute and punish perpetrators through the civil courts. The potentially significant financial burden of taking an action to court is often a preventative barrier to an individual seeking a court remedy as a method of vindicating their rights and/or achieving a prosecution. Considering the lack of financial stability of many of the survivors of the Magdalene Laundries due to their unpaid and unpensionable labour, the costs regime presents for many an insurmountable obstacle regarding their access to redress in the civil courts.

7.7 An issue which further compounds the action of accessing justice in the courts is the lack of class action legislation available in Ireland. Multi-party actions can be a form of redress for a group of individuals. There are a number of advantages associated with

³³ Para 40 implementation of article 14.

³⁴ Para 20 Implementation of article 14.

multi-party actions, namely: overcoming the challenges of legal costs by collating mass harms endured into a single action, combining resources to allow litigants create strength in numbers, improving procedural efficiency by dealing with similar issues together to save time and potentially, providing a more effective remedy for individuals. In 2005, the Law Reform Commission in Ireland recommended that ‘a formal procedural structure, set out in the Rules of Court, to be introduced to deal with instances of multi-party litigation’ and that this should not replace, but instead provide an alternative to existing procedures, where it is more appropriate³⁵. This recommendation, if implemented, could be of significant assistance to the survivors of the Magdalene Laundries in seeking redress, due to its collective nature.

8. Access to information

- 8.1 Records relating to the Magdalene Laundries’ operations remain unavailable to the public or to Magdalene survivors, further impeding accountability. The IDC destroyed its copies of records received from the religious congregations and returned the originals at the end of its work. The State records, which the IDC gathered, have been deposited with the Department of An Taoiseach. However, on 26th March 2016 the Department of An Taoiseach rejected an Freedom of Information (‘FOI’) Act request by JFMR for the release of material in the IDC’s archive, stating that ‘these records are not held nor within the control of the Department for the purposes of the FOI Act. They cannot therefore be released by this Department’. This decision was upheld on appeal.³⁶
- 8.2 This position was confirmed by the Minister for Justice on 23rd February 2017³⁷ and most recently on 22 November 2018.³⁸ JFMR asserts that such records must be made available to both the public and to Magdalene survivors themselves.
- 8.3 The State has submitted that ‘The records relating to the institutions subject of the Magdalen ex-gratia scheme are in the ownership of the religious congregations and held in their private archives. The congregations are bound by data protection regulations. In addition, the State does not have the authority to instruct them on their operation. Any records held in a public archive are publicly available.’³⁹ For an investigation of the Magdalene Laundries to be considered thorough and effective, it must have the capacity to compel the production of all evidence, which should be made publically available. Without the publication (with redactions where necessary) of the evidence gathered by an investigation, any such investigation will lack necessary oversight and accountability.

³⁵ (p 69, LRC Report on MPA 2005: <http://www.lawreform.ie/fileupload/Reports/Report%20Multi-party%20litigation.pdf>)

³⁶ Letters on file with Maeve O’ Rourke.

³⁷ Written reply by Frances Fitzgerald, TD, Minister for Justice and Equality, to Maureen O’Sullivan, TD, 23 February 2017 (link at ref 122 of original report).

³⁸ See Dail Debates, Written Answer of Charlie Flanagan TD, Minister for Justice, to Catherine Connolly TD, 22 November 2018, <https://www.kildarestreet.com/wrans/?id=2018-11-22a.249&s=magdalene+laundries> stating: ‘There are no plans at this stage to provide access to the McAleese archive at this time.’

³⁹ See para 28 of State’s follow-up report.

It also results in a lack of autonomy of the survivors regarding the information that pertains to them, their families and their experiences.

9. Dedicated Unit

9.1 The following aspects of the ‘Dedicated Unit’ recommended by Mr Justice Quirke have yet to be implemented:

- (a) Practical, and if necessary professional, assistance to enable those women who wish to do so to meet with those members of the Religious Orders who have similar wishes to meet and interact;
- (b) similar practical assistance to meet and interact with other Magdalene women; and
- (c) the acquisition, maintenance and administration of any garden, museum or other form of memorial which the Scheme’s administrator, after consultation with an advisory body or committee, has decided to construct or establish.⁴⁰

9.2 The State has a duty to provide medical and psychological care for the full rehabilitation of survivors.⁴¹ The lack of psychological support for victims of violations and their families was highlighted by survivors at the Dublin Honours Magdalenes event. The event highlighted the need for ongoing peer support and support for families of the survivors. As the Committee has stated previously, access to such programmes should not depend on the victim pursuing judicial remedies⁴² and confidential and accessible services should be provided as required.⁴³

Memorialisation and Magdalene Sites

9.3 The acceptance of responsibility, commemoration and tributes to victims are, as accepted by this Committee, inherent in satisfaction and the right to truth for victims of Convention violations.⁴⁴

9.4 There are currently three Magdalene Laundries that are at risk of demolition and/or redevelopment;

- i. Sean McDermott Street Laundry in Dublin city centre,
- ii. Good Shepherd Laundry, Sundays Well, Cork, and
- iii. Donnybrook Magdalene Laundry, Dublin.

9.5 The Sean McDermott Street site is the only publicly owned Magdalene laundry site and is of significant public, cultural and historical importance. Sean McDermott Street was the last Magdalene laundry to close on 25th October 1996. Dublin City Council holds possession of the site, and following a successful motion to prevent the sale of the site on 13 September 2018, the DCC is considering the future of the site. On June 28th 2018,

⁴⁰ Magdalen Commission Report, pp 11-12.

⁴¹ Para 11, implementation of Article 14.

⁴² Para 15, Implementation of Article 14.

⁴³ Para 12, Implementation of Article 14.

⁴⁴ Para 16, Implementation of Article 14.

JFMR participated in a public consultation to discuss the future of the Seán McDermott Street site. JFMR contends that the site should act in large part as a memorial and educational centre, not only for survivors of the Magdalene Laundries, but as an inclusive remembrance space that would commemorate varying experiences of institutional abuse. As recommended by Judge Quirke, any such memorial or archive centre should be overseen by an advisory board or committee that *'should include at least 6 Magdalene women...[including] at least 2 representatives of eligible women currently living within the U.K or elsewhere'*.⁴⁵

10. Deaths in Magdalene Laundries and burial sites

10.1 As outlined to the Committee previously⁴⁶ JFM has repeatedly raised the issue of deaths and burial practices at the Magdalene Laundries with the State. Despite this, the State has yet to instigate a thorough and independent investigation into these matters. Our work is ongoing on this matter and the issue is set out in greater detail in JFMR's Critique of Chapter 16 of the IDC Report.⁴⁷

⁴⁵ See <http://jfmresearch.com/home/restorative-justice/dublin-honours-magdalenes/>

⁴⁶ See paras 2.10-2.12

⁴⁷ Claire McGettrick and Justice for Magdalenes Research, 'Death, Institutionalisation & Duration of Stay: A critique of Chapter 16 of the Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries and related issues' (19th February 2015), http://jfmresearch.com/wp-content/uploads/2017/03/JFMR_Critique_190215.pdf