

Irish Human Rights and Equality Commission

Submission to UN Human Rights Committee in relation to information received from Ireland on follow-up to the concluding observations

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**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**

Irish Human Rights and Equality Commission

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Introduction

The Irish Human Rights and Equality Commission ('the Commission'), established by the Irish Human Rights and Equality Commission Act 2014, exercises a dual function as the 'A-Status' National Human Rights Institution (NHRI) and the National Equality Body for Ireland. It is the successor body to the Irish Human Rights Commission (IHRC) which contributed to Human Rights Committee's (the Committee) examination of Ireland at the Committee's 111th session in July 2014.

In September 2015, the Commission provided its views on the follow-up material provided by Ireland to the Committee further to its request for follow-up information in relation to paragraphs 10, 11 and 15 of the Concluding Observations.¹

Many of the views set out in the Commission's 2015 submission remain relevant to the Committee's consideration of the information received from Ireland on follow-up to the concluding observations. In addition, the Commission has carried out further work in 2017 on the institutional abuse of women and children, symphysiotomy and conditions of detention in the context of the examination of Ireland by the Committee on the Elimination of Discrimination (CEDAW)² and the Committee against Torture (CAT)³ and the relevant issues are set out in summary form below.

¹ IHREC (2015) *Submission to UN Human Rights Committee on Ireland's One-Year Follow-up Report to its Fourth Periodic Review under ICCPR*, (hereafter 'IHREC ICCPR Submission 2015'), available: www.ihrec.ie/app/uploads/download/pdf/ihrec_submission_on_irelands_oneyear_followup_fourth_periodic_review_und er_iccpr.pdf

² IHREC (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women*, (hereafter 'IHREC CEDAW Report 2017'), available: <https://www.ihrec.ie/app/uploads/2017/02/Ireland-and-the-Convention-on-the-Elimination-of-All-Forms-of-Discrimination-Against-Women.pdf>

³ IHREC (2017) *Ireland and the Convention Against Torture*, (hereafter 'IHREC CAT Report 2017'), available: www.ihrec.ie/app/uploads/2017/07/Ireland-and-the-Convention-against-Torture.pdf

Institutional abuse of women and children

Following the State's examination by CAT in 2017, the Commission welcomed the State's commitment to invite the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence to finally secure accountability and redress for past wrongs.⁴

Mother and Baby Homes

The Commission has previously expressed concerns about the narrow scope of the investigation.⁵ The Commission has recently welcomed a civil society project – the Clann project – which offers legal assistance to anyone with experience of Ireland's treatment of unmarried mothers and their children, even if they do not fall under the list of 18 institutions initially being investigated by the Commission of Investigation.⁶

The Commission reiterates its recommendation that the scope of the Commission of Investigation into Mother and Baby Homes be widened to include the operation of similar institutions that do not currently fall within the Commission of Investigation's terms of reference.⁷

The State does respond to the Committee's request for information in relation to proposed forms of redress to victims.⁸ The Second Interim Report of the Mother and Baby Homes Commission of Investigation identifies inconsistencies in the exclusion of unaccompanied children in mother and baby homes from the remit of the Residential Institutions Redress Scheme: 'Children who were resident in these institutions without their mothers would seem to have been in the same position as children resident in the industrial schools and orphanages which were covered by the redress scheme'.⁹ Re-opening applications for the Redress Scheme appears unlikely.¹⁰ The Commission has expressed concern that the exclusion of certain un-accompanied children from the Residential Institutions Redress Scheme represents an arbitrary barrier to accessing redress.¹¹

Magdalene Laundries

According to the State 'in the absence of any credible evidence of systematic torture or criminal abuse, the Government does not propose to set up a further Magdalen inquiry or investigation'.¹² In 2013 the Irish Human Rights Commission published its *Follow-up Report on State Involvement with Magdalen Laundries*, which identified 'six distinct human rights, where the State, both by omission

⁴ IHREC (2017) 'Statement following the publication of the 'concluding observations' of the UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on Ireland's State Examination' Press release 15/08/2017, available: www.ihrec.ie/statement-following-publication-concluding-observations-un-committee-torture-cruel-inhuman-degrading-treatment-punishment-ireland/

⁵ These concerns were expressed most recently in IHREC's CEDAW Report 2017, p 45, and IHREC's CAT Report 2017, p 54.

⁶ IHREC CEDAW Report 2017, p 45. For more information see: <http://clannproject.org/2016/06/14/launch-of-major-project-to-assist-with-mother-and-baby-homes-commission-of-investigation/>

⁷ IHREC CEDAW Report 2017, p 45.

⁸ UN Human Rights Committee (2017) *Concluding observations on the fourth periodic report of Ireland, Addendum, Information received from Ireland on follow-up to the concluding observations*, CCPR/C/IRL/CO/4/Add.1, 15 August 2017, paras 1-3, (hereafter 'Ireland's ICCPR Follow-up 2017').

⁹ Mother and Baby Homes Commission of Investigation (2016) *Second Interim Report*, para 4.4.

¹⁰ Fiach Kelly (2017) 'Mother-and-baby home redress scheme "is not possible"', *Irish Times*, 11 April 2017, available: www.irishtimes.com/news/ireland/irish-news/mother-and-baby-home-redress-scheme-is-not-possible-1.3045238

¹¹ IHREC CAT Report 2017, p 56.

¹² Ireland's ICCPR Follow-up 2017, para 5.

and commission, breached the rights of women and girls who entered Magdalen laundries'.¹³ These rights are the right to equality, right to liberty, prohibition on forced or compulsory labour, freedom from servitude, freedom from torture, inhuman or degrading treatment or punishment and the right to education.¹⁴ In its submission to the Committee in 2015, the Commission also pointed out that the initiation of a criminal investigation does not require that a victim make a complaint.¹⁵

The Commission reiterates its recommendation that the State investigate fully the situation of women who were institutionalised in the Magdalene laundries, seeking to ensure that the perpetrators of crimes be punished and prosecuted.¹⁶

In its submission to the Committee in 2014, the Commission expressed the view that the ex-gratia payment under the Magdalene Restorative Justice Scheme does not meet human rights standards, since it does not provide for an individualised approach to compensation¹⁷ and it does not allow for the back-payment of arrears.¹⁸

In its report to CAT, the Commission cited the case of *M.K.L. v Minister for Justice and Equality and D.C. v. Minister for Justice and Equality*, referred to in the information provided by the to the Committee pm 15 August 2017, as an example of the barriers faced by victims of historical abuse when seeking redress.¹⁹ Although the applicants, women who had worked in the Magdalene laundries, were refused redress by the High Court, it was stated that 'the administration of the ex gratia scheme was flawed in the disputed cases as both applicants had no opportunity to make submissions on the evidence considered by the Restorative Justice Unit'.²⁰

The Commission has also expressed concerns that 40 women were deemed to lack capacity and therefore unable to access the Magdalene's Scheme, due to the fact that the Assisted Decision-Making (Capacity) Act 2015 has not yet been fully commenced.²¹ The Commission also informed CEDAW of reports that Magdalene survivors are not being provided with the same standard of healthcare under the Redress for Women Resident in Certain Institutions Act 2015 that they would receive under the standard medical card procedure.²²

¹³ Irish Human Rights Commission (2013) *IHRC Follow-up Report on State Involvement with Magdalen Laundries*, available: www.ihrec.ie/app/uploads/download/pdf/20130618164449.pdf, para 261. See also: Irish Human Rights Commission (2010) *Assessment of the Human Rights Issues Arising in relation to the "Magdalen Laundries"*, available: www.ihrec.ie/download/pdf/ihrc_assessment_of_the_human_rights_issues_arising_in_relation_to_the_magdalen_laundries_nov_2010.pdf

¹⁴ Irish Human Rights Commission (2013) *IHRC Follow-up Report on State Involvement with Magdalen Laundries*, available: www.ihrec.ie/app/uploads/download/pdf/20130618164449.pdf, para 261. See also: Irish Human Rights Commission (2010) *Assessment of the Human Rights Issues Arising in relation to the "Magdalen Laundries"*, available: www.ihrec.ie/download/pdf/ihrc_assessment_of_the_human_rights_issues_arising_in_relation_to_the_magdalen_laundries_nov_2010.pdf

¹⁵ IHREC ICCPR Submission 2015, para 9.

¹⁶ IHREC CEDAW Report 2017, p 43.

¹⁷ IHREC (2014) *Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights*, para 68; see also IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights*, (hereafter IHREC ICESCR Report 2015), section 5.5.1.

¹⁸ IHREC ICESCR Report 2015, section 5.5.1.

¹⁹ IHREC CAT Report 2017, p 54.

²⁰ *M.K.L. v Minister for Justice and Equality and D.C. v. Minister for Justice and Equality* [2017] IEHC 389, para 48.

²¹ IHREC CEDAW Report 2017, p 42-43.

²² IHREC CEDAW Report 2017, p 42-43.

The Commission reiterates its recommendation that the State commence the relevant provisions of the *Assisted Decision-Making (Capacity) Act 2015* without delay and implement the relevant provisions of the *Redress for Women Resident in Certain Institutions Act 2015*.²³

²³ IHREC CEDAW Report 2017, p 43.

Symphysiotomy

The State provides detailed information on three reports commissioned, two of which relate to the Symphysiotomy Payment Scheme.²⁴ The Commission restates its view that the State's actions to date with regard to symphysiotomy have not met the standard for 'effective remedy' as per its obligations under Article 2.3 of the International Covenant on Civil and Political Rights.²⁵ The Commission does not support the State's assertion that the establishment of the payment scheme and access to medical services amounts to 'a comprehensive response to this issue'.²⁶ Following a visit to Ireland in 2016, the Council of Europe Commissioner for Human Rights noted that 'the scheme admits no wrongdoing or liability on the part of the state and public authorities, any private hospitals or nursing homes, or any medical staff'.²⁷

In its report to CEDAW, the Commission observed that litigation has demonstrated that survivors of symphysiotomy have faced evidential barriers in obtaining an effective remedy through the courts system. The risk of incurring costs also represented a significant barrier to those seeking to obtain an effective remedy through the courts.²⁸

The Commission reiterates its recommendation that the State establish a statutory, independent and thorough investigation into cases of symphysiotomy, which can guarantee access to an effective remedy and adequate compensation.²⁹

In its reports to CEDAW and CAT³⁰, the Commission also noted that the report on the operation of the Symphysiotomy Payment Scheme has been subject to criticism for the tone of comments made with regard to certain applicants under the scheme, and to the actions of human rights defenders campaigning on the issue of symphysiotomy.³¹

²⁴ Ireland's ICCPR Follow-up 2017, para 13-23.

²⁵ Human Rights Committee, *General Comment No. 31*, CCPR/C/21/Rev.1/Add.13, para. 8.

²⁶ IHREC CEDAW Report, p 44.

²⁷ Nils Muižnieks (2017) *Report by Commissioner for Human Rights of the Council of Europe following his visit to Ireland from 22 to 25 November 2016*.

²⁸ *Farrell v Ryan* [2016] IECA 281. This case concerned the performance of a 'prophylactic' antenatal symphysiotomy in 1963, which the plaintiff claimed 'was in the circumstances negligent and that as a result thereof, she has sustained significant personal injuries' (para 1.2). In rejecting the plaintiff's claim in the High Court, Cross J stated: 'I find that the practice of prophylactic symphysiotomy in 1963 was not a practice without justification. It was, indeed, a controversial practice but it was also strongly defended. I find the strength of this defence is such that it is impossible to conclude that the plaintiff has proved her case' (para 11.7). On 6 December 2016 it was reported that following a failed appeal to the Court of Appeal, the plaintiff in this case was ordered to pay the legal costs of the appeal to the defendant, a Dublin maternity hospital. See Mary Carolan, 'Pensioner must pay costs of failed symphysiotomy appeal', *Irish Times*, 6 December 2016, available: www.irishtimes.com/news/crime-and-law/courts/high-court/pensioner-must-pay-costs-of-failed-symphysiotomy-appeal-1.2894965

²⁹ IHREC CEDAW Report 2017, p 44.

³⁰ IHREC CEDAW Report 2017, p 43; IHREC CAT Report 2017, p 55.

³¹ See, for example, Máiréad Enright, 'Notes on Judge Harding-Clark's Report on the Symphysiotomy Payment Scheme' [web page], Human Rights in Ireland, 24 November 2016 (Available at: <http://humanrights.ie/law-culture-and-religion/notes-on-judge-harding-clarks-report-on-the-symphysiotomy-payment-scheme/>).' Enright comments that 'The judge gives an impression of suspicion of campaigning organisations and their lawyers... [undermining] human rights campaigners, group organising, and social justice lawyering in one fell swoop, perhaps forgetting that without the work of these organisations the redress scheme – however flawed – would not have been set up at all, and many women would not have been able to access it'. A similar tone is evident in the media coverage surrounding the report's publication. See for example Paul Cullen, 'Symphysiotomy: the whitewash that never was', *Irish Times*, 23 November 2016, available: www.irishtimes.com/opinion/symphysiotomy-the-whitewash-that-never-was-1.2878271

Conditions of Detention

Overcrowding and prison infrastructure

The Commission welcomes progress achieved with respect to prison overcrowding and the prison infrastructure since the Human Rights Committee's fourth periodic report of Ireland.

The State has furnished the Committee with statistics on prisoners in custody as of 13 July 2017 and also provides comparative analysis with peak prisoner custody figures recorded in 2011.

The Commission welcomes the overall prison occupancy rate of 87% recorded for that date. However, it is concerned that disaggregated data published by the Irish Prison Service show that five prisons were recorded as being occupied over-capacity on that day, when measured against the Inspector of Prisons bed capacity standards.³²

Limerick prison, in particular, was recorded with 114% capacity in respect of male prisoners and 117% in respect of the female prison. Both facilities for female prisoners in Ireland were overcrowded on 13 July 2017, with 108% capacity recorded in the Dóchas Centre. Overcrowding was identified by the Inspector of Prisons in 2013 as the greatest obstacle to this facility operating as it should.³³ Despite notable advancements, prison overcrowding continues to be of concern.

The Commission welcomes the State's commitment to putting in place a step down facility for female offenders and female ex-offenders who are considered to be at a low risk of re-offending and urges the State to fulfil its stated commitment to opening the facility by early 2018. On the other hand, the Commission regrets the closure of the Training Unit, which will be re-purposed as a facility for older prisoners.³⁴ While the Commission welcomes the dedication of a unit for older prisoners who will have improved access to medical care, this should not come at the expense of the State's only semi-open, low-security prison for male prisoners. This development is not in keeping with the policy that rehabilitation should be an overarching aim of imprisonment.³⁵ The Acting Inspector of Prisons recently stated that she:

could only support the closure of the Training Unit if assured that prisoners would benefit from the same regime in a similar facility. Regrettably, that assurance has not been forthcoming and I am of the view that the imminent move to Mountjoy West cannot support the semi-open prison ethos.³⁶

The Commission reiterates its recommendation that resource allocation should reflect the importance of access to structured activities to counteract the harmful impacts of incarceration.³⁷

³² Irish Prison Service, *Prisoner Population on Thursday 13th July 2017*, available: www.irishprisons.ie/wp-content/uploads/documents_pdf/13-July-2017.pdf

³³ Inspector of Prisons (2013) *Interim Report on the Dóchas Centre*, para 2.27, available: www.inspectorofprisons.gov.ie/en/iop/pages/inspection_of_prisons_reports

³⁴ Tánaiste and Minister for Justice and Equality (2017) 'Written Answers: Prison Facilities' (Question no. 140) *Parliamentary Debates; Dáil Éireann*, 9 May 2017, available: www.justice.ie/en/JELR/Pages/PQ-09-05-2017-140

³⁵ Irish Prison Service (2016) *Strategic Plan 2016-2018*, para 1.4, available at <http://www.justice.ie/en/JELR/Irish-Prison-Service-Strategic-Plan-2016-2018.pdf/Files/Irish-Prison-Service-Strategic-Plan-2016-2018.pdf>.

³⁶ Inspector of Prisons (2017) *Report on an Inspection of the Training Unit, Mountjoy Campus carried out in accordance with Section 31(1) of the Prisons Act 2007*, para 8.3, available:

www.inspectorofprisons.gov.ie/en/iop/pages/inspection_of_prisons_reports

³⁷ IHREC CAT Report, p 33.

In-cell sanitation and cell occupancy

The Commission welcomes the improvements made in seeking to eliminate ‘slopping out’ in the Irish prison estate. Nevertheless, the most recent information available on in-cell sanitation shows that on 11 April 2017, 1,539 prisoners (41% of those in custody) used the toilet in the presence of another, in cells where prisoners also have to take their meals. On that day, while 54% of those in custody were accommodated in single cells, 1,396 prisoners (37%) shared with one other, 240 prisoners (6%) shared with two or more and 74 prisoners (2%) shared with three or more prisoners.³⁸

While the pending elimination of ‘slopping out’ across the prison estate will represent a significant achievement, restricted access to private sanitation continues to undermine the dignity of prisoners.

The Commission reiterates its recommendation that the State align prison standards with the United Nations Standard Minimum Rules for the Protection of Prisoners.³⁹

Segregation of prisoners

Separating remand and sentenced prisoners

The Commission notes that the State has not committed to achieving the full separation of remand from convicted prisoners.⁴⁰ In July 2017, the UN Committee against Torture expressed concern that this practice continues and also noted the lack of transparency with regard to the length of time that prisoners spend on remand, urging the State to:

Ensure the separation of remand prisoners from those who have been sentenced and provide [...] information on the number of remand prisoners and on how long they stay on remand.⁴¹

The Commission has expressed the view that it is inappropriate for women on remand to be accommodated alongside women who have been sentenced to imprisonment following conviction of a criminal offence.⁴²

Recalling its concern that the separation of remand and convicted prisoners is not subject to a concrete timeline, the Commission reiterates its recommendation that the Irish Prison Service improve the transparency of statistics with regard to the length of time that prisoners spend on remand.⁴³

Separating juvenile detainees

The Commission welcomes that the State no longer sends children to adult prisons, but notes the continued detention of 17 year-olds (sentenced prior to the change in law) at Wheatfield Place of

³⁸ Irish Prison Service, *Census Prison Population April 2017 – Cell occupancy – In-Cell Sanitation*, available:

www.irishprisons.ie/wp-content/uploads/documents_pdf/April-2017-In-Cell.pdf

³⁹ IHREC CAT Report, p 27.

⁴⁰ IHREC CAT Report, p 27.

⁴¹ UN Committee against Torture (2017) *Concluding observations on the second periodic report of Ireland*, para 16(d), available:

tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIrl%2fCO%2f2&Lang=en (hereafter ‘UNCAT 2017 Concluding Observations’).

⁴² IHREC CEDAW Report, p 123.

⁴³ IHREC CAT Report, p 27-28.

Detention. The number of 17 year-olds at that facility continues to decrease⁴⁴ and the Commission has expressed concern this is likely to have a very isolating impact on the remaining minor detainee at Wheatfield.⁴⁵

The Commission recommends that the State fulfil its stated commitment to end the practice of detaining 17 year-olds at Wheatfield Place of Detention by the end of August 2017.⁴⁶

Immigration-related detention

A prison, by definition, is not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence.⁴⁷ The Commission reiterates its view that immigration detention should be exceptional, proportionate and necessary in order to prevent unlawful immigration.⁴⁸

The Commission reiterates its recommendation that the *International Protection Act 2015* provide for a specified maximum period of detention in respect of applicants for asylum and subsidiary protection, whose detention should be a measure of last resort, and imposed under limited circumstances.⁴⁹

The State will open a dedicated immigration detention facility at Dublin airport to replace the Garda station at the airport.⁵⁰ In August 2017, the UN Committee against Torture highlighted its continuing concern that:

immigration detainees, including persons in need of international protection, continue to be detained in a number of prisons and police stations with remand and convicted prisoners; and that the State party has not followed through on its plans to open a dedicated immigration detention centre at Dublin Airport.⁵¹

The Committee against Torture recommended that Ireland:

Ensure that persons detained for immigration purposes are not held together with remand and convicted prisoners, are informed about their situation in a language they can understand and have effective access to legal advice and to the process of application for international protection.⁵²

The Commission reiterates its recommendation that the State ensure that any places in which persons may be deprived of their liberty for immigration-related reasons comply with the detailed guidance and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.⁵³

⁴⁴ In May 2017, there were five 17-year olds at Wheatfield. This was reduced to three 17 year-olds in July and one 17 year-old in August. Irish Prison Service, *2017 Prison Populations*, available: www.irishprisons.ie/index.php/information-centre/statistics-information/2015-daily-prisoner-population/2017-prison-populations/

⁴⁵ IHREC CAT Report, p 28.

⁴⁶ Ireland's Third ICCPR Follow-up Report, para 43.

⁴⁷ IHREC CAT Report, p 15.

⁴⁸ The Commission takes guidance from: Council of Europe Committee for the Prevention of Torture (2017) *Factsheet on Immigration Detention*, available: www.coe.int/en/web/cpt/-/cpt-factsheet-on-immigration-detention

⁴⁹ IHREC CAT Report, p 16.

⁵⁰ Tánaiste and Minister for Justice and Equality (2016) 'Written Answers: Immigration Policy' (Question no. 69) *Parliamentary Debates; Dáil Éireann*, 7 July 2016, available: www.justice.ie/en/JELR/Pages/PQ-07-07-2016-69

⁵¹ UNCAT 2017 Concluding Observations, para 11.

⁵² UNCAT 2017 Concluding Observations, para 12(d).

⁵³ IHREC CAT Report, p 16.

Prisoner complaints mechanisms

The Commission welcomes the State's commitment to improve independent oversight of the prisoner complaints mechanism through the proposed involvement of the Ombudsman. The Commission recalls the report of the late Inspector of Prisons on this matter and his finding that, aside from the external oversight element, there was evidence of a 'litany of failures' and the 'absence of a functioning line management structure' in respect of the complaints mechanism.⁵⁴ The Commission would welcome information on when the Ombudsman's role will become operational and assurances that the other recommendations of late Inspector of Prisons will be implemented in full, including the incorporation of fair procedures in the investigative mechanisms and ongoing training for relevant staff at all levels. Having examined Ireland in 2017, the Committee against Torture called upon the State to address the following concerns:

the lack of or incomplete documentation of complaints, delays in investigations by external investigators, gaps in referrals to police in appropriate cases, confusion about the complaints categorization as well as delays in their resolution; and that there is reportedly no confidence in the complaints system, that prisoners fear that they would not be protected if they were to make a complaint and were therefore discouraged from making complaints.⁵⁵

The Commission reiterates its recommendation that an independent body investigate complaints by prisoners.⁵⁶

⁵⁴ Inspector of Prisons (2016) *Review, Evaluation and Analysis of the Operation of the IPS Prisoner Complaints Procedure*, para 7.5, available: www.inspectorofprisons.gov.ie/en/iop/pages/other_reports

⁵⁵ UNCAT 2017 Concluding Observations, para 21.

⁵⁶ IHREC CAT Report, p 30.