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Follow-up Report to the United Nations Committee against Torture

Follow-up to 46th Session (9 May 2011 – 3 June 2011)

July 2012

Introduction

The Women's Human Rights Alliance (WHRA) was established in 2001 as a coalition of human rights and women's organisations promoting a human rights approach to the advancement of women's equality in Ireland and internationally. The purpose of the Alliance is to promote women's human rights, monitor the implementation of international commitments as they relate to women, raise awareness of economic, social and cultural rights and to develop the capacity of women's organisations to engage in women's human rights advocacy.

The WHRA welcomes the opportunity to comment on the follow-up to the 46th Session of the United Nations (UN) Committee against Torture regarding Ireland's progress one year on and would like to highlight persisting and pressing issues, especially with regards to women's full enjoyment of their rights. It therefore will take this opportunity to comment on some of the principle subjects of concern and recommendations as outlines in the *Concluding observations of the Committee against Torture (CAT/C/IRL/CO/1)* including the reduction of financial resources for human rights institutions (paragraph 8.), Magdalene Laundries (paragraph 21.), prohibition of female genital mutilation (paragraph 25.), abortion (paragraph 26.), and violence against women, including domestic violence (paragraph 27.).

On three of these areas of concern, namely the reduction of financial resources for human rights institutions, Magdalene Laundries and prohibition of female genital mutilation, UNCAT requested further information from the Irish government. In paragraph 33 of the Concluding Observations, UNCAT requested, pursuant to its rules of procedure, that the Irish government provides, by June 2012, further information regarding these areas of particular concern (as identified in paragraph 8, 20, 21 and 25 of the *Concluding observations of the Committee against Torture (CAT/C/IRL/CO/1)*). The WHRA welcomes this opportunity to contribute to the follow-up procedure and supports the UNCAT Committee's request for clarification on the part of the Irish government to when it intends to submit its already overdue follow-up information (cc/jmnf/jli/follow-up/CAT).

1.) Reduction of financial resources for human rights institutions

The WHRA shares UNCAT's concern regarding the disproportionate budget cuts to various human rights institutions mandated to promote and monitor human rights, such as the Equality Authority and the Irish Rights Commission (IHRC), in comparison to other public institutions. Both institutions have now merged into one body the Human Rights and Equality Commission and it is critical that this body is given adequate funding to continue the important work of the Equality Authority and the IHRC.

In particular, the case work currently being undertaken by the Equality Authority is crucial in terms of supporting women to take cases of discrimination to the Equality Tribunal and should continue to be a core part of the new Human Rights and Equality Commission's work. Providing an analysis of the outcomes of the case work which would be publicly available would enhance this aspect of the work and act to build awareness on the potential of our equality legislation. The good practice work undertaken by the Equality Authority to date provides concrete and user friendly support in developing initiatives for the promotion of equality. It is important that sufficient funding is allocated to ensure this work continues.

In addition the research published by the Equality Authority and the Human Rights Commission to date have played a critically important role in highlighting the experience of different groups of women experiencing inequality and human rights violations. In the current economic times this role is even more important as it essential to provide an analysis of the changing situation with regard to inequality in Irish society. Adequate funding must be provided to ensure that this research function can continue.

The WHRA is particularly concerned at the lack of understanding regarding the issue of women's inequality within a wider equality and human rights agenda. We believe current analyses of inequality and human rights issues do not give due weight to the depth of discrimination against and oppression of women in Irish society or to the multiple forms of discrimination and human rights violations against particular groups of women. The Human Rights and Equality Commission should be allocated sufficient funding to undertake substantive research to develop an understanding and awareness of the structural inequality women experience in Ireland, the human rights issues that they face and how to address these within a wider equality and human rights agenda.

<p>WHRA Recommendation: The Government ensure that the new Human Rights and Equality Commission is given adequate funding to continue the important work of the Equality Authority and the Irish Human Rights Commission</p>

2.) Magdalene Laundries

The WHRA agrees with UNCAT regarding the failure of the Government to protect girls and women who were involuntarily confined between 1922 and 1996 in the Magdalene Laundries. In particular, Ireland has violated the Convention by failing to regulate and inspect their operations, where allegations of physical and emotional abuse and other ill-

treatment were made. Furthermore the Government's failure to date to institute prompt, independent and thorough investigations into the allegations of ill-treatment perpetrated on girls and women in the Magdalene Laundries constitutes an ongoing violation of the most basic human rights (UNCAT arts. 2, 12, 13, 14 and 16).

The WHRA welcomes and supports the survivor advocacy group Justice for Magdalene's (JFM), which addresses the issue of redress for those incarcerated in Magdalene Laundries. The WHRA notes that JFM has produced evidence that the Irish State was complicit in referring women to the Laundries, including the practice that women were routinely referred to various Magdalene Asylums via the Irish court system and that there was no legal basis supporting the courts' use of these institutions to confine women or for members of the Garda Síochána returning women who escaped from the laundry institutions.

In its Concluding Observations on Ireland in June 2011, UNCAT expressed concern at Ireland's continuing violation of articles 2, 12, 13, 14 and 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), by its failure to institute prompt, independent and thorough investigations into Ireland's Magdalene Laundries abuse and to ensure that all survivors obtain redress. One year after the UNCAT session, the government has so far failed to announce when it plans to offer an apology and thereby enabling restorative justice for survivors of the Magdalene institutions.

The WHRA raised these concerns at Ireland's UPR hearing in Geneva in March 2012, urging the Irish government to comply with the recommendations of the UN Committee against Torture and the Irish Human Rights Commission to institute a statutory inquiry into Magdalene Laundries abuse and compensation scheme for survivors. The WHRA also included this issue in its submission to Ireland's draft report to International Covenant on Civil and Political Rights (ICCPR) in May 2012. The WHRA observes particularly strong and wide support from grass root organisations all over the country for the Magdalene Laundries issue.

Bearing in mind the recommendation by the UNCAT in 2011 to "ensure that all victims [of Magdalene Laundries abuse] obtain redress", and considering the exceptional urgency of the situation created by survivors' elderly age, WHRA requests that the government provide detailed information to UNCAT on the reparations measures it intends to provide to Magdalene Laundry survivors, the timeframe in which it will provide such reparations, and the intended beneficiaries of such reparations.

WHRA welcomes the establishment of the McAleese committee as a first step to establishing the full extent of state involvement, however requests the full and impartial inquiry work, as demanded by UNCAT and JFM. UNCAT recommended that the government institute prompt, independent and thorough investigations into all complaints of torture and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries, as well as prosecuting and punishing the perpetrators where appropriate. Moreover, the government should ensure that all

victims obtain redress and have an enforceable right to compensation, including the means for as full rehabilitation as possible.

WHRA Recommendation: The Government comply with the recommendations of the UN Committee against Torture and the Irish Human Rights Commission to institute a statutory inquiry and compensation scheme for the Magdalene Laundries abuse.

3.) Prohibition of Female Genital Mutilation

Female genital mutilation (FGM) is a harmful practice that violates the human rights of women and girls, in particular the right to the highest attainable standard of health, the right to be free from all forms of gender discrimination, the right to life, the right to bodily integrity and children's rights to special protections. The practice perpetuates negative gender based stereotypes and has serious social, health and psychological consequences. FGM continues to affect the lives of many women in Ireland. Research undertaken by AKIDWA in September 2010 found that the number of women that had been subjected to FGM had increased from 2,585 to 3,170 within four years.

The WHRA acknowledges and welcomes the recent passing of the Criminal Justice (Female Genital Mutilation) Act 2012 in Ireland that explicitly prohibits the practice of FGM in Ireland and looks forward to the Act's commencement. However the WHRA remain concerned that the legislation has retained the dual criminality requirement which may impede the successful prosecution of offenders from certain countries. However WHRA note that the Minister of Health has recently stated that the removal of dual criminality from the Criminal Justice (Female Genital Mutilation) Act 2012 could be revisited if and when Ireland ratifies the Council of Europe Convention on Preventing and Combating Violence Against Women (2011) which condemns the practice of FGM and provides that there should not be a dual criminality requirement.

The WHRA is aware that the Health Service Executive (HSE) is awaiting the enactment of the legislation which is due to happen before the summer recess in July to progress with the printing of information leaflets on FGM, an initiative that we welcome as an important first step in raising awareness of the legislation. The WHRA further welcome plans that the prevention of FGM and the care of women who have already undergone the procedure will be included in the HSE Service Plan for 2013 as a Key Result Area to allow for the development of a key performance indicators in subsequent years.

The WHRA however consider that legislation by itself is not sufficient to prevent FGM. Immediate inter agency action is required in implementing this legislation, to take place as a matter of priority. The WHRA would recommend that the government draw up a government National Action Plan to Prevent and Combat FGM similar to the National Action Plan to Prevent and Combat Trafficking which was drawn up to complement the anti-trafficking legislation. A National Action Plan would ensure that this legislation has meaningful application on the ground and would provide for inter agency co-ordination in the prevention of FGM and in ensuring that there are high quality and appropriate

professional supports available for women and girls who have undergone FGM in particular health care supports.

A National Action Plan would also provide a framework for the design and implementation of awareness raising programmes with a view to sensitizing all segments of the population about the extremely harmful effects of FGM and improve data collection of women presenting with FGM to maternity hospitals. The government could take guidance from a National Action Plan to Address FGM that was drawn up by a coalition of civil society organisations in 2008, an initiative funded by the European Commission.¹

WHRA Recommendation: (1) The Government draw up a government National Action Plan to Prevent and Combat FGM to complement and make effective the recently passed Criminal Justice (Female Genital Mutilation) Act 2012 (2) The Government ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011) and look to remove the dual criminality requirement from the Criminal Justice (Female Genital Mutilation) Act 2012.

4.) Abortion

The UNCAT Committee noted the concern expressed by the European Court of Human Rights (ECHR) in the *A, B and C v Ireland* about the absence of an effective and accessible domestic procedure in Ireland for establishing whether some pregnancies pose a real and substantial medical risk to the life of the mother, which leads to uncertainty for women and their medical doctors, who are also at risk of criminal investigation or punishment if their advice or treatment is deemed illegal. The Committee expressed concern at the lack of clarity cited by the ECHR and the absence of a legal framework through which differences of opinion could be resolved. Noting the risk of criminal prosecution and imprisonment facing both the women concerned and their physicians, the Committee expressed concern that this may raise issues that constitute a breach of the Convention.

The Committee appreciated the intention of the Irish government, as expressed during the dialogue with the Committee, to establish an expert group to address the Court's ruling. The Committee was nonetheless concerned further that, despite the already existing case law allowing for abortion, no legislation is in place and that this leads to serious consequences in individual cases, especially affecting minors, migrant women, and women living in poverty (arts. 2 and 16). The Committee urged Ireland to clarify the scope of legal abortion through statutory law and provide for adequate procedures to challenge differing medical opinions as well as adequate services for carrying out abortions in Ireland.

The WHRA welcomes the observations and recommendations of the UNCAT Committee and would like to take this opportunity to highlight Ireland's current and ongoing inadequate recognition of women's sexual and reproductive rights. 150,000 women have

¹ See National Action Plan to Address FGM (2008) available at www.akidwa.ie

travelled to the UK since 1980 to seek abortion services, over 4,000 in 2011. Criminalisation of abortion under the Offences Against the Persons Act 1861 (which provides for criminal sanctions for those who have abortions and those who assist them) and lack of clarity in Irish law mean that safe and legal terminations are not available in Ireland in any situation. By restricting and criminalizing abortion the Irish state disproportionately interferes with women's right to health, privacy, life, freedom from inhuman or degrading treatment and the right not to be discriminated against on the ground of gender.

Ireland's prohibitive regulation of abortion and the discriminatory nature of its application have been consistently subject to criticism by UN treaty bodies. Since 2005 the UN Human Rights Committee, the UN Committee on the Elimination of Discrimination Against Women, the UN Committee Against Torture, the Council of Europe Commissioner for Human Rights and the European Court of Human Rights have all criticised Ireland's regulation of abortion as being inadequate to fulfil Ireland's internationally agreed human rights obligations and made specific and reasonable recommendations as to how this situation could be remedied. None of the recommendations of these committees nor of the three national bodies, the All-Party Oireachtas Committee on the Constitution, 2000, the Cabinet Committee 1999 or the Constitution Review Group 1996, in relation to reform of Ireland's punitive and discriminatory regulation of abortion, has been addressed in any substantive way.

At last year's Universal Periodic Review nine countries asked questions or made recommendations to Ireland in relation to abortion, all critical of existing law. The WHRA is greatly concerned by the rejection of six recommendations of the UPR process on Ireland's restrictive regulation of abortion. These recommendations echo the criticisms made by three UN treaty bodies and the recent call by the UN Special Rapporteur on the Right to Health to decriminalize abortion. Ireland's rejection of these recommendations casts serious doubt on Ireland's commitment to women's reproductive health rights.

The WHRA call on the Irish government to implement the judgement in the A, B and C case as a matter of urgency. This requires legislation to clarify the circumstances in which a woman, according to the Supreme Court's interpretation of the Constitution in the X Case, may lawfully terminate a pregnancy within the state. The government must implement, as called for by the Committee of Ministers of the Council of Europe in March 2012, "substantive measures" to implement the judgment in A, B and C v Ireland as soon as possible; set a time-frame for the speedy enactment of legislation to give effect to the existing constitutional right to avail of abortion lawfully within the state in the circumstances outlined in the X Case; repeal the criminal provisions of the 1861 Offences Against the Person Act in relation to women who have abortions and those who assist them contained in order to address the chilling effect highlighted by the European Court of Human Rights and address the lack of interim measures and the serious consequences of this lack in individual cases, especially affecting minors, migrant women, and women living in poverty (arts. 2 and 16).

Article 40.3.3 of the Irish Constitution as interpreted by the Supreme Court does not permit therapeutic abortion in cases where a woman is pregnant as a result of rape, or

where the fact of carrying the pregnancy to term puts the physical or mental health or wellbeing of the woman in danger, where the foetus has a severe abnormality incompatible with life outside of the womb, or where a woman has particular difficulties in travelling outside the State (e.g. the case of asylum seekers). Review of Article 40.3.3 must be included as a priority issue for the proposed constitutional convention.

WHRA Recommendation: (1) Immediately repeal the Offences Against the Persons Act 1861; (2) immediately enact legislation to give effect to the Supreme Court ruling in the X case and clarify the circumstances under which an abortion may be lawful; (3) enact substantive measures to bring Ireland's laws and policies on abortion into line with the Convention, to address the violation of the rights of Applicant C and the interference with the rights of Applicants A and B identified by the European Court of Human Rights in the case of A, B and C v Ireland. (4) Review of Article 40.3.3 must be included as a priority issue for the proposed Constitutional Convention.

5.) Violence against women, including domestic violence

The WHRA acknowledges and welcomes that there a National Office for the Prevention of Domestic, Sexual and Gender Based Violence in place since 2007 and a National Strategy on Domestic, Sexual and Gender Based Violence 2010-2014. However progress is very slow. In the four years since the establishment of COSC, the effect on the ground for victims has been limited and the lack of a co-ordinated agency response to the issue of domestic violence is having a negative impact on women's and child's safety. In addition there has been a stark increase in the amount of women seeking refuge over the last two years.

NGOs providing services to women experiencing domestic and sexual violence are witnessing an unprecedented growth in demand for their services. The organisation Safe Ireland reports that 38,629 helpline calls were answered by domestic violence services across Ireland in 2010. In 2010 more than 7,235 individual women and 2,850 individual children received support from domestic violence support services and despite this alarming figure, services for violence against women have been chronically underfunded for years. This situation has reached crisis point as there have been additional cuts to funding in the last three years so more and more women are not being accommodated in refuges or are on waiting lists for support services. Services have been forced to cut positions, programmes or hours of operation. While some services have tried to mainstream women's needs into their services, domestic violence frontline services have not been able to develop adequate initiatives to better respond to the needs of marginalized women such as migrant, refugee, asylum seeking, Traveller women and women with a disability.

It is essential that services that assist women in this situation are adequately funded to be able to respond appropriately. Refuge provision remains inadequate and many women and children are denied access to refuges each year. Safe Ireland report that on over 3,236

occasions in 2010 services were unable to accommodate women and their children because the refuge was full or there was no refuge in their area. The Council of Europe recommends that there should be a target by member states of at least 1 refuge place per 10,000 of population and Ireland seriously lags behind this modest target.

WHRA welcome the recent public awareness campaigns on the issue of sexual and domestic violence. However it is notable that the National Strategy does not make a commitment to the publication of SAVI II. The SAVI Report on Sexual Abuse and Violence in Ireland was published in 2002 and has since acted as a key informant of Irish policy in relation to sexual violence. In order to develop clear comparative analysis a further study, SAVI II will be required. The WHRA calls for the publication of this report and the inclusion of migrant women in the report, including women seeking asylum and without protection living in direct provision.

It is clear that the requirement to satisfy the habitual residence condition (HRC) can have particular gender implications. AkiDwA, Pavee Point and other organisations have come across this issue particularly in relation to women experiencing violence. Migrant women of varying immigration status and women who have moved from a different jurisdiction are just some of the women who discover that they do not satisfy the HRC leaving them in a very vulnerable situation. If deemed not be habitually resident this will also impact on a women's ability to access a refuge. Women from migrant communities experiencing domestic violence should have access to an independent legal status from their abusive partner as that tends to be a reason why many women cannot exit violent situations². If a woman is deemed non-compliant with the HRC, she may have little or no access to financial assistance, including emergency assistance through the Supplementary Welfare Allowance scheme, subject to Community Welfare Officer Discretion. If she is still deemed non-compliant, she will not qualify for a long-term payment for privately rented accommodation and may be forced to return to her violent partner or risk poverty and homelessness. Women's refuges may have difficulty providing more than temporary emergency shelter and support to women in violent relationships if they are not entitled to social welfare payments. In the past, many refuges have tried to help migrant women without access to emergency social welfare payments but severe funding cuts to already underfunded refuges might make this impossible in the future³.

The WHRA agrees with UNCAT that some positive change has come about through the measures taken by the State party to prevent and alleviate gender-based violence, including the adoption of the National Strategy on Domestic, Sexual and Gender-based Violence, 2010-2014. However, the WHRA is deeply concerned by the continued high rates of domestic violence against women and the severe cuts in funding to combat

² As stated in AkiDwA's position paper 'Domestic Violence and Immigration': The Habitual Residence Condition² must be met by migrants, Irish emigrants and EU citizens to qualify for certain social welfare assistance payments and Child Benefit.

³ AkiDwA's 2008 Department of Justice project on domestic violence found migrant women in Ireland have been subjected by their violent partner to various forms of abuse connected with their immigration status, including the destruction of legal papers, withholding of immigration documents and/or status renewal deadlines and abuser threats to report spouses to immigration authorities to have them, or their children, deported.

violence against women at a time when such funds are badly needed. The WHRA urges the government to strengthen its efforts to prevent violence against women through the effective implementation of the National Strategy on Domestic, Sexual and Gender-based Violence, including the collection of relevant data and enhance its support and funding of refuge and support services provided for victims of domestic violence, as recommended by UNCAT.

Furthermore, WHRA calls on the government to implement the UNCAT recommendation to institute prompt, impartial and thorough investigations into allegations of domestic violence, and where appropriate, prosecutions and convictions. Moreover, the government is obliged to ensure that migrant women with dependent immigration status who are experiencing domestic violence be afforded independent status under legislation. The WHRA furthermore would urge the Irish government to sign and ratify the 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence which provides a comprehensive legal framework to prevent violence, to protect victims and to end the impunity of perpetrators.

WHRA Recommendations:

- (1) Funding for existing specialist services working on violence against women must at a minimum be protected from further cuts and should as a matter of urgency be increased as soon as possible.**
- (2) To ensure access to safe, emergency accommodation for women experiencing male violence, a target of at least 1 refuge place per 10,000 of population should be agreed and a timeframe for achievement set;**
- (3) the Irish government must sign and ratify the 2011 Convention on Preventing and Combating Violence Against Women and Domestic Violence which provides a comprehensive legal framework to prevent violence, to protect victims and to end the impunity of perpetrators;**
- (4) Urge the publication of SAVI II Report on Sexual Abuse and Violence in Ireland and the inclusion of migrant women in the next survey.**
- (5) that the Habitual Residence Condition be amended to make an exception in cases of domestic violence against women so that women can have ease of access to refuge support**
- (6) The Department of Justice through the Reception and Integration Agency establishes a separate women's only accommodation centre for women who have experienced gender based violence within their reception system.**

Conclusion

The WHRA welcomes this opportunity to contribute to the follow-up procedure and voiced its support to the UNCAT Committee's request for clarification on the part of the Irish government to when it intends to submit its already overdue follow-up information (cc/jmnf/jli/follow-up/CAT). The WHRA has highlighted the failure of the Irish government to implement UNCAT recommendations in a meaningful way, in particular in relation to the reduction of financial resources for human rights institutions, Magdalene Laundries, prohibition of female genital mutilation, abortion and violence against women, including domestic violence. The WHRA looks forward to continuing to contribute to the UNCAT process.

Members of the Women's Human Rights Alliance include:

National Women's Council of Ireland
AkiDwA
Cairde
National Travellers Women's Forum
One Parent Equality Network(OPEN)
Immigration Council of Ireland
Irish Family Planning Association
Irish Women's Lawyers Association
Migrant Rights Centre Ireland
National Collective of Community Women's Networks
Women's Aid
Dublin Rape Crisis Network
Pavee Point Travellers Centre
Justice for Magdalene's
UN Women

This submission / policy statement is endorsed by a broad range of non-governmental organisations and civil society groups. All the views expressed in the report do not necessarily reflect the policies and positions of each endorsing organisation.