



**Convention on the Elimination
of All Forms of Discrimination
against Women**

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**Committee on the Elimination of Discrimination
against Women**

**Information received from Ireland on follow-up to the
concluding observations on its combined sixth and seventh
periodic reports***

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* The present document is being issued without formal editing.



Introductory remarks

1. On 15 February 2017, Ireland appeared before the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW) for the review of its Sixth and Seventh Reports on the Convention on the Elimination of All Forms of Discrimination against Women.
2. In its Concluding Observations of 9 March 2017, the Committee asked Ireland to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 15(a), 17, 21 and 43(a).
3. Ireland continues to take significant steps to advance equality for women and girls. The Constitution of Ireland, which may only be amended by referendum, was amended to introduce marriage equality in 2015, and revise provisions for access to abortion in 2018 and for divorce in 2019. The State's official recognition in 2017 of Travellers as an ethnic group has been of both symbolic and social importance in the State's work to overcome the economic marginalisation and discrimination of members of the Traveller community, including Traveller women. Ireland is implementing the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), which it ratified on 8 March 2019. Measures to advance women's representation in leadership have led to women holding 34% of the most senior grades in the Civil Service and 41.5% of the membership of state boards. Targets are set for the membership of the boards of large companies listed on the stock exchange, and gender balance quotas in operation for candidates for elections to Parliament. Draft legislation to enhance wage transparency has also been developed for consideration by Parliament, with a view to reducing the gender pay gap.

Response to recommendations contained in paragraph 15(a) of the concluding observations (CEDAW/C/CO/6-7)

Magdalen Laundries

Apology

4. Ireland has issued two formal apologies to women who were resident in Magdalen Laundries. In February 2013 the then Taoiseach (Prime Minister), issued an apology on behalf of the Government in Dáil Éireann (Lower House of the Irish Parliament).¹ In June 2018 the President of Ireland issued an apology to the women.²

Investigations

5. As previously stated, the Irish Government is satisfied that the findings of the report of the Inter-Departmental Committee to establish the facts of State involvement with Magdalen Laundries – the McAleese Report (2013)³ – brought into the public arena a considerable amount of information not previously known about Magdalen laundries and showed that many of the preconceptions about these institutions were not supported by the facts. The content of the report has been fully accepted by the Irish Government.
6. The McAleese Committee had no remit to investigate or make determinations about allegations of torture or any other criminal offence. However, it took the

¹ <https://www.oireachtas.ie/en/debates/debate/dail/2013-02-19/29/>.

² <https://president.ie/en/media-library/speeches/speech-to-women-who-worked-at-the-magdalen-laundries>.

³ <http://www.justice.ie/en/JELR/Pages/MagdalenRpt2013>.

opportunity to record evidence and testimony that might throw light on allegations of systematic abuse. No factual evidence to support allegations of systematic torture or ill treatment of a criminal nature was found. The majority of women did report verbal abuse but not of a nature that would constitute a criminal offence. Working conditions were harsh and the work was physically demanding. A small number of women described instances of physical punishment. However, the majority said they had neither experienced nor seen other women suffer physical abuse.

7. The Irish Government remains satisfied that a specific Magdalen inquiry or investigation is not required.

Prosecutions

8. One applicant to the Magdalen Scheme made a complaint to An Garda Síochána in 1997 about her treatment in a Magdalen Institution. A criminal investigation was initiated and an investigation file sent to the Director of Public Prosecution who directed no prosecution in relation to the allegations. No other instances are known of other individuals making allegations of criminal abuse to An Garda Síochána. It is open to anyone who believes they have been the victim of a criminal offence to make a complaint to the relevant authorities – all such complaints will be fully investigated.

Effective remedies for victims, including appropriate compensation, restitution and satisfaction

9. The Ombudsman's Report, 'Opportunity Lost' included 4 recommendations as follows:

- The expansion of the scheme to 14 adjoining institutions;
- Independent review of all cases where there was a dispute over length of stay;
- Explore options to provide assistance to applicants who lack the capacity to accept an award;
- Develop central government guidance for future redress schemes.

10. Arising from those recommendations the Government decided in May 2018 to apply the scheme to women who worked in the laundries of the 12 'Magdalen' Institutions and who were resident in one of 14 adjoining institutions. The scheme established in 2013 and the expanded scheme remains open. To date just over €31.79 million has been paid in lump sum payments to 801 successful applicants who also receive pension and health benefits. The Scheme has been advertised extensively in many countries, as well as in Ireland.

11. In line with recommendation (ii) and (iii) a Senior Counsel was appointed to review all cases where there was a dispute over length of stay in a Magdalen Institution. It is expected that her review, which is well advanced, will be completed in the coming weeks. All cases where capacity to accept an award was an issue have been resolved. In relation to the final recommendation, central guidance for future redress schemes, this review is being co-ordinated by the Department of Public Expenditure and Reform and work is at an advanced stage.

12. The Department has worked closely with the Ombudsman to fully implement his recommendations.

Support and rehabilitation services for victims

13. A 'Dublin Honours Magdalenes' (DHM) event was held in June 2018⁴ attended by over 200 former residents and companions. The event, organised by a voluntary

⁴ <http://www.justice.ie/en/JELR/Pages/PR18000178>.

organisation and funded by the Irish Government, was a listening exercise for the women to meet and to express their views on a suitable memorial. The organisers' report was received very recently and is being considered.

14. Services to the women such as pension and health benefits are provided on a cross-departmental basis and officials in the Department of Justice and Equality engage with and advise the women on all matters.

Commission of Investigation into Mother and Baby Homes⁵

15. The statutory Commission of Investigation (Mother and Baby Homes and certain related Matters) was established in 2015 (S.I. No 57 of 2015). The mandate of the Commission and the scope of the investigation remains as last reported. The Irish Government is satisfied that this independent Commission has sufficient powers and scope to examine a broad range of issues, and to make a determination on their relevance to the central issues of public concern.

16. The Commission has prepared six Interim Reports to date: July 2016, September 2016, September 2017, December 2018, March 2019 and January 2020. All five reports were published. These Interim Reports focused on the investigative process, the collation and analysis of documentation and specific concerns around the scale of the task and the engagement with witnesses. In February 2020 the Government granted a request from the Commission for an extension of the timeline for the delivery of its final report to June 2020.

17. Separately, in March 2017, the Commission issued a statement confirming the presence of human remains in underground chambers on the site of the former Mother and Baby Home in Tuam Co. Galway. The Government sought technical, human rights and legal advices on how best to appropriately respond to this discovery. In October 2018 the Government decided to conduct a phased forensic excavation, exhumation and identification programme at Tuam. New legislation is currently being developed to facilitate this action.

18. This investigation is critically important for Ireland in coming to terms with its own history and will establish how Irish society responded to single women and their children at a time when they most needed support and assistance.

Symphisiotomy

19. The State is very cognisant of the Committee's concluding observations and recommendations regarding symphisiotomy, which research shows is still used in obstetric practice in certain limited circumstances. Ireland has undertaken 3 independent investigations and has provided awards to women who underwent symphisiotomy.

20. The first independent investigation and report by Professor Oonagh Walsh,⁶ a medico-social historian, recommended that a scheme be established to compensate the women. In 2013 Judge Yvonne Murphy was commissioned by Government to undertake a further independent review on the legal aspects of symphisiotomy in Ireland. Judge Murphy advised the Government on the merits and costs of proceeding with an ex-gratia scheme relative to taking no action and allowing the court process to proceed.

⁵ <http://www.mbhcoi.ie>.

⁶ <https://www.gov.ie/en/publication/8535fb-report-on-symphisiotomy-in-ireland-1944-1984-professor-oonagh-walsh/>.

21. The third report was produced by Judge Maureen Harding Clark,⁷ independent assessor to the Symphysiotomy Payment Scheme. Judge Clark provided her report as Assessor to the Payment Scheme, and this report also includes her independent report on the issue of symphysiotomy. It contains appendices with historical information from hospital reports at the time symphysiotomies were undertaken on the very limited medical conditions for which the procedures were performed and also an appendix with details on diagnostic imaging and clinical evidence supporting the conclusions arrived at by the Assessor and her clinical team.

22. The State urges Committee members to consider Judge Clarke's report and the evidence provided by the Judge and her clinical experts on the experience of women who underwent symphysiotomy.

Punishment of perpetrators

23. Judge Clark analysed all of the evidence available on the issue both in Ireland and internationally. Please see section 18 of the report where the Judge addresses the specific question "Was symphysiotomy a deliberate act of torture".

24. The Judge found that neither the records of the applicants to the Scheme nor narratives contained in the Clinical Reports from the major maternity hospitals at the time symphysiotomies were undertaken support the view that symphysiotomy was anything other than an attempt to improve maternal and fetal outcomes. She stated that "Its primary purpose was to avoid caesarean section by permanently enlarging a marginally small pelvis. Married women were expected to have several children as families at that time were large by the today's norms. Having 5 or more children was normal and the Dublin School was famous for the frequent delivery of women considered to be grand multips. There was no evidence of any kind to suggest intention to inflict pain. The prevailing philosophy in the Dublin maternity hospitals was plainly conservative in relation to caesarean section and was repugnant to sterilisation". Most applicants to the Scheme had at least 4 normal deliveries after the symphysiotomy.

25. Judge Clark examined current international practice in medical education and training. Irish and international studies indicate that symphysiotomy is not a banned procedure but has a place in obstetrics in certain limited circumstances. Based on the research and evidence now collated, including academic texts and the 2015 High Court case referred to below, it cannot be accepted that obstetricians at the time were perpetrators who should now be punished.

State provided an Effective Remedy

26. The State established the Symphysiotomy Payment Scheme, with an eminent retired High Court Judge as its independent Assessor. Judge Harding Clark previously served as a Judge with the International Criminal Court and as a Judge Ad Litem with the International Criminal Tribunal for the former Yugoslavia.

27. In establishing the ex-gratia scheme a key objective for the State was to ensure that the State's engagement with the women was undertaken in a sympathetic, compassionate and equitable fashion and, in particular given their ages that further stress was minimised. Many women took legal advice and the State facilitated this by payment of their legal costs. These total legal costs were circa €2.1 million.

⁷ <https://www.gov.ie/en/publication/544fc6-the-surgical-symphysiotomy-ex-gratia-payment-scheme-report/>.

28. Judge Clark worked with each woman or her legal representative to locate medical records and met some of the women in different parts of the country, where she considered this was necessary.

29. Many hundreds of hours were spent by Judge Clark and her team of clinical experts examining the applicants' medical records. Each application received an individual, careful assessment. Medical evidence was sought to explain delivery records and when claims could not be reconciled with established facts, the applicant was examined by relevant clinical experts. Some applicants were examined by several experts. When all efforts failed to obtain records, the Scheme moved to seeking secondary proof of symphysiotomy, by evidence of a scar and radiology evidence.

30. In twelve especially difficult applications Judge Clark held a discussion conference between her medical team and the woman's medical expert and a consensus was reached based on the medical facts in each case.

Access to the Courts

31. The establishment of the ex-gratia scheme did not require or compel any woman to forgo her right to initiate a case in Court. In 2015, the High Court heard the case of woman who had a symphysiotomy 12 days before her baby was born in 1963. Having reviewed all of the evidence, the Judge found that the procedure at that time "was not without justification". The High Court decision was upheld in the Court of Appeal and in 2017 three Supreme Court judges declined to hear a further appeal. While awards had been made to 3 other women whose cases were heard in the courts before the commencement of the Scheme, the most recent case shows that every case through the courts is judged on its own merits.

Judicial Review and women choosing to opt-out of the Scheme

32. Judge Clark set out the statistics regarding all of the applicants to the Scheme. Since this was an ex-gratia scheme and not a court process there was no ground for appeal. However, the ex-gratia scheme provided applicants with the option of judicial review against the Scheme, but this was not taken up. One woman opted out of the Scheme following her offer of an award to pursue her claim through the Courts. At the conclusion of the Scheme it was estimated that around 33 individuals had lodged cases with the courts.

Summary

33. A key objective in reviewing the available evidence and establishing the Symphysiotomy Payment Scheme was to ensure that the women who had undergone symphysiotomy were treated in a sympathetic, compassionate and equitable manner and further stress minimised.

34. In summary, the response of the Irish Government has three main pillars. Firstly, all available facts have been provided in three independent reports and the evidence for the procedure has been established including the most up to date international research on the topic. Secondly, a voluntary, person centred, Scheme was established which made awards to 399 women who underwent the procedure. In deciding on an ex-gratia scheme the process and procedures of the Irish legal system were considered as were the women's ages. Through the Scheme it aimed to help find closure for the majority of women and their families, without the need to face an uncertain outcome through the courts. Thirdly, the Irish health services provide on-going medical services to the women, including medical cards. It is important to note that there have been no further claims or further representations made to the Minister since the conclusion of the Scheme.

Means disregards and ex-gratia payments

35. The Department of Employment Affairs and Social Protection operates a range of means-tested social assistance payments, such as Jobseeker's Allowance, One-Parent Family Payment, Disability Allowance and the State Pension Non-Contributory. Means tests also apply to social insurance schemes in determining eligibility for an increase in the weekly rate of payment where a person has an adult dependent or child dependents. A person's income is also assessable for the in-work benefit for low-income working families, the Working Family Payment. In this regard, a number of compensation and other payments are currently disregarded for means-testing purposes. This includes payments made in accordance with the Magdalen Commission Report to women who were admitted to and worked in the Magdalen Laundries (provided in S.I. 155 of 2014). It also includes payments made by the Lourdes Hospital Redress Board, and under the terms of the Lourdes Hospital Payment Scheme and the Surgical Symphysiotomy ex-gratia Scheme (provided in S.I. 595 of 2014). These payments are disregarded as income for social assistance payments, for social insurance payments and for the Working Family Payment.

Response to recommendations contained in paragraph 17 of the concluding observations

Funding allocations to IHREC for 2015–2020

36. Since 2015, IHREC has been directly funded through a Vote of the Oireachtas. Section 26 of the Irish Human Rights and Equality Commission Act 2014⁸ provides a guide to the level of funding. In the 5 year period from 2015 to 2019 funding of €32.725m in total was made available under IHREC's Vote (please see Annex). Provisional expenditure by IHREC came to €26.228m, with an underspend each year and surplus monies surrendered to the Exchequer.⁹ The allocation for IHREC was further increased in 2020 to €6.751m.

37. It is acknowledged that it had taken longer than anticipate to increase staff levels, primarily because recruitment can take time when an organisation is in its start-up phase. In 2017 IHREC did not reach its full employment control framework of 56. At start of that year IHREC had 41 staff members (FTE). As of 31 December 2017 the IHREC had 45 staff members (FTE) and a programme of recruitment took place throughout 2018. During 2018, a number of staff were lost to promotions while some additional staff were recruited. By the start of Q1 2019, there were 50 staff in IHREC with further recruitment taking place throughout 2019.

Response to recommendations contained in paragraph 21 of the concluding observations

Funding for non-governmental organizations working in the field of women's rights

38. The National Strategy for Women and Girls 2017–2020 includes a commitment to enable civil society to advocate on behalf of women and ensure that women's interests are mainstreamed in the work of Government. Core funding for the National

⁸ "In each financial year, the Minister may, after consultation with the Commission, advance to the Commission out of moneys provided by the Oireachtas such sums as appear to the Minister, with the consent of the Minister for Public Expenditure and Reform, to be reasonably sufficient for the purposes of expenditure by the Commission in the performance of its functions.", <http://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/html>.

⁹ IHREC annual reports, <https://www.ihrec.ie/publications/>.

Women's Council of Ireland (NWCi) has increased by 75% since 2015. Funding support to the National Collective of Community-based Women's Networks (NCWN) to engage with women who experience disadvantage has also increased. (Please see Annex). NGOs also receive significant funding from State bodies for initiatives in areas such as women's health, domestic and sexual violence, and women's political engagement.

Response to recommendations contained in paragraph 43 of the concluding observations

Referendum

39. The Thirty-sixth Amendment of the Constitution Bill 2018 sought to delete Article 40.3.3 of the Constitution and substitute it with wording confirming that the Oireachtas may make laws for the regulation of the termination of pregnancy. The Bill passed all stages in the Houses of the Oireachtas (Parliament) on 28 March 2018. A Polling Day Order was subsequently made, and a referendum on the Thirty-sixth Amendment of the Constitution was held on 25 May 2018. The referendum was passed, with a vote of 66.4% Yes to 33.6% No. The Thirty-sixth Amendment of the Constitution Act was signed into law by the President on 18 September 2018.¹⁰

Legislation

40. A draft General Scheme of a Bill to Regulate Termination of Pregnancy was published on the Department of Health website in advance of the referendum, so that voters would be aware of the Government's policy/legislative intentions should the referendum pass.

41. The Health (Regulation of Termination of Pregnancy) Act¹¹ was passed by the Houses of the Oireachtas on 13 December 2018 and signed into law by the President on 20 December 2018. Key elements of the legislation, in particular the grounds on which termination of pregnancy may be carried out, remain the same as those set out in the draft General Scheme.

42. The Act permits termination of pregnancy to be carried out where there is a risk to the life, or of serious harm to the health, of the pregnant woman; where there is a risk to the life, or of serious harm to the health, of the pregnant woman in an emergency; where there is a condition present which is likely to lead to the death of the foetus either before or within 28 days of birth; and without restriction up to 12 weeks of pregnancy. The Act provides universal access to termination of pregnancy services for people who are ordinarily resident in the State (i.e. services are provided free of charge). Women – from both within and outside the State – may also access the service on a private basis, should they so choose. However, they will have to pay a fee to do so. While it is an offence for a person to intentionally end the life of a foetus otherwise than in accordance with the provisions of the Act, these provisions do not apply to a pregnant woman who has ended or attempted to end her own pregnancy. The Act repeals the Protection of Life During Pregnancy Act 2013 and the Regulation of Information (Services Outside the State For Termination of Pregnancies) Act 1995.

43. Services for termination of pregnancy commenced on 1 January 2019.

¹⁰ <http://www.irishstatutebook.ie/eli/2018/ca/36/enacted/en/html>.

¹¹ <http://www.irishstatutebook.ie/eli/2018/act/31/enacted/en/html>.

Annex 1

Annex to paragraph 33

Table: Funding allocations to IHREC for 2015–2020

Year	Allocation (€'000)			(€'000)	(€'000)
	Pay	Non-Pay	Total	Provisional Outturn*	Surplus
2015	3.240	3.090	6.330	3.880	2.450
2016	3.210	3.100	6.310	6.170	0.140
2017	3.538	3.093	6.631	5.340	1.291
2018	3.610	3.093	6.703	4.687	2.016
2019	3.658	3.093	6.751	6.151	0.600
Total 2015–2019			32.725	26.228	
2020	3.721	3.093	6.814		

Annex 2

Annex to paragraph 35

Table: Examples of NGO funding, 2015–2020

<i>Examples of NGO funding</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
NWCI						
Core funding	€0.300m	€0.400m	€0.480m	€0.500m	€0.525m	€0.525m
NCCWN						
Women's Equality and Development Programme (WEDP)	€1.385m	€1.385m	€1.385m	€1.405m	€1.439m	€1.490m