



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

**Concluding observations on the fourth periodic report of
Ireland**

Addendum

**Information received from Ireland on follow-up to the
concluding observations***

[Date received: 25 July 2017]

* The present document is being issued without formal editing.



Paragraph 10 — Institutional abuse of women and children

I. Mother and Baby Homes

1. The Commission of Investigation is due to complete its investigation in February 2018. The Commission has prepared two Interim Reports to date, in July 2016¹ and September 2016.² Both were published by the Government.

2. In addition to these interim reports, the Commission has confirmed the discovery of human remains at the site of the former Mother and Baby Home in Tuam Co. Galway. In response to this announcement, an expert group³ was appointed by the Minister for Children and Youth Affairs to provide technical advices on the steps needed at the site.

3. Ireland reiterates that the independent Commission must be allowed the opportunity to establish the facts and submit its final report before an appropriate response can be considered by the State.

II. Magdalen Laundries

[B] The Committee regrets no specific Magdalen inquiry is envisaged and reiterates that the State party conduct an independent and thorough investigation

[C] The State party has not provided information regarding prosecutions and punishment of perpetrators

4. The report of the Inter-Departmental Committee to establish the facts of State Involvement with Magdalen Laundries (The McAleese Report), which runs to 1,000 pages, is fully accepted by the Irish Government as a comprehensive and objective report of the factual position regarding the operation of the Magdalen laundries. The Report brought into the public arena a considerable amount of information not previously known and showed that many of the preconceptions about those institutions were not supported by the facts.

5. The McAleese Committee found no factual evidence to support allegations of systematic torture or ill-treatment of a criminal nature in these institutions. While isolated incidents of criminal behaviour cannot be ruled out, in light of facts uncovered by the McAleese Committee and 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. It is satisfied that the existing mechanisms for the investigation and, where appropriate, prosecution of criminal offences can address individual complaints of criminal behaviour. Within the State, An Garda Síochána (the Irish Police) is the only Body that has full powers to investigate criminal matters and the Director of Public Prosecutions then decides whether there should be a criminal prosecution.

6. The Government has made it clear on a number of occasions that if any woman has been the victim of criminal behaviour, she should report it and it will be investigated. Notwithstanding this, no information has been provided that would form a basis for criminal investigations. In two cases, women made reference to potential criminal offences against them by individuals from outside the Magdalen institutions. Despite encouragement in both cases, the women indicated that they did not wish to see a criminal investigation

¹ First Interim Report available at https://www.dcy.gov.ie/viewdoc.asp?fn=/documents/mother_and_baby_homes/20160727MotherandBabyHomesExtendTimeFrame.htm.

² Second Interim Report available at https://www.dcy.gov.ie/docs/Commission_on_Mother_and_Baby_Homes_Second_Interim_Report_published/4179.htm.

³ Details of appointment of Expert Group available at <https://www.dcy.gov.ie/viewdoc.asp?DocID=4229>.

take place. In the absence of any evidence that criminal offences have been committed, there have been no criminal prosecutions linked to the Magdalen institutions.

[B] Access to the ex-gratia scheme for those residing outside the State

7. Ireland does not accept that practical arrangements for participants in the Magdalen Restorative Justice Ex-Gratia scheme are not in place. The Scheme is available to all eligible applicants irrespective of their country of residence. Of the 672 applicants who have received payments so far under the scheme, 196 (29%) reside abroad. A breakdown of that figure is below.

<i>Country of residence</i>	<i>Number of applicants</i>
Australia	4
Cyprus	2
England	167
Northern Ireland	6
Scotland	2
Switzerland	1
USA	11
Wales	3
Total	196

8. In relation to women living abroad, the Government has also provided grants (€250,000 in 2013 and £150,000 in 2015) to the Irish Women Survivors Support Network in the UK to enable them to provide support and advice to women residing in the UK. Up to 20% of applicants reside in the UK.

[B] Requirement to sign a waiver

9. All eligible applicants who accept the ex-gratia payment and other benefits provided under the redress scheme are required to sign a legal document waiving any right of action against the Irish State. However, this waiver does not preclude someone who avails of the scheme from taking an action against a non-State body such as a religious congregation or individual(s) if they feel that a civil or criminal wrong has been done to them.

[B] Persons who were not admitted to a relevant institution

10. The Committee specifically asks if those who received compensation under the 2002 Residential Institutions Redress Scheme may also seek redress under the Magdalen Restorative Justice scheme for any work done, during the same period, in those laundries covered by the Magdalen scheme. It is clear that the terms of the Magdalen scheme apply to women who were “admitted to and worked in” the institutions specified in the ex-gratia scheme. Both criteria must be satisfied and persons who may have worked in the relevant institutions but resided elsewhere do not qualify under the scheme.

11. The question whether persons qualifying for redress under the 2002 Residential Institutions Redress Scheme are able to also seek redress under the Magdalen scheme for any work done in the specified laundries during the same period arose in a recent High Court case “*MKL and DC –v–Minister for Justice*”. A judgement issued on 1 June 2017 which will be finalised on 28 July 2017. Although the judgement should be read in its totality, one of its findings is that:

“... It is not appropriate that any applicant under the ex gratia scheme (i.e. Magdalen) should receive compensation, however described from the (Residential) Redress Board Scheme and the ex gratia scheme covering the same wrong.”

12. The report by Judge Quirke, upon which the Magdalen Scheme was established, specifically addresses one circumstance where a double payment can be made, namely where females are initially admitted to Industrial schools and subsequently transferred to a

Magdalen institution. They are entitled to payments under the Residential Institutions Redress Scheme for the period up to their 18th birthday and no account is taken of that payment when granting redress under the Magdalen scheme, for example if a girl went to an Industrial school at age 12 and was transferred to a Magdalen institution at age 14 where she stays until she is 21, she would be paid under the Residential Institutions Redress Scheme for the period when she was aged 12-18; and would also be entitled to redress under the Magdalen scheme for the period when she was 14-21. Therefore, in this case there is a double payment for the age period 14-18.

Paragraph 11 — Symphysiotomy

[C] Investigations into cases of Symphysiotomy, and prosecutions and punishment of perpetrators

13. Ireland is very cognisant of the Committee's concluding observations and recommendations. 3 independent investigations have been conducted and the Government has provided awards to women who underwent symphysiotomy. We note that Irish and international research shows that the procedure is still used in obstetric practice in certain limited circumstances.

14. Regarding the three independent investigations: The first report by Professor Oonagh Walsh, a medico-social historian, stated that post-natal check-ups indicated no disabilities for some women, but that others reported disability including incontinence, chronic pain, difficulty in walking and sexual dysfunction. Professor Walsh recommended that a compensation scheme be established.

15. In 2013, Judge Yvonne Murphy was commissioned by Government to undertake a further independent review on the legal aspects of symphysiotomy in Ireland. She advised 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.

16. The third report was produced by Judge Maureen Harding Clark, independent assessor to the Symphysiotomy Payment Scheme. Judge Clark previously served as a Judge at the International Criminal Court and as a Judge Ad Litem at the ICTY. Her report as Assessor to the Payment Scheme 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.

17. Ireland urges the Committee to consider Judge Clarke's report and the evidence she and her clinical experts provided on the experience of women who underwent symphysiotomy.

18. Judge Clark analysed all the evidence available on the issue both in Ireland and internationally. At section 18 of the report she addresses the specific question "Was symphysiotomy a deliberate act of torture". She 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:

19. "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".

20. Most applicants to the Scheme had at least 4 normal deliveries after the symphysiotomy.

21. Judge Clark examined current international practice in medical education and training. Her report states that the current academic text for Managing Obstetric Emergencies and Trauma published by the Royal College of Obstetricians and Gynaecologists (UK) contains a chapter on symphysiotomy and outlines the technique. A similar chapter is contained in The Johns Hopkins (USA) and International Federation of Red Cross and Red Crescent Societies Public Health Guide for Emergencies, a textbook that has been widely used in the classroom and the field.

22. The authoritative Cochrane Reviews, considered the gold standard of best practice in medicine, states that:

“Symphysiotomy is an operation to enlarge the capacity of the mother’s pelvis by partially cutting the fibres joining the pubic bones at the front of the pelvis. Usually, when the baby is too big to pass through the pelvis, a caesarean section is performed. If caesarean section is not available, or the mother is too ill for, or refuses a caesarean section or if there is insufficient time to perform caesarean section (for example when the baby’s body has been born feet first, and the head is stuck), symphysiotomy may be performed”.

23. Therefore, based on the research and evidence 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. Further and as detailed above, Irish and international studies indicate that symphysiotomy is not a banned procedure but continues to have a place in obstetrics in certain limited circumstances.

[B (b)] Provision of an effective remedy, access to the courts and women choosing to opt-out of the Scheme

[C] Appeal or Judicial Review

24. In establishing the Symphysiotomy Payment Scheme, with an eminent retired High Court Judge as its independent Assessor, 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, particularly given their ages, that further stress was minimised. Many women took legal advice and the State facilitated this by payment of their legal costs, which totalled circa €2.1 million.

25. 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 necessary.

26. Hundreds of hours were spent by Judge Clark and her team of clinical experts examining 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.

27. 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.

28. The Judge referred to “acquired group memory” to describe the statements from some women in instances where applicants clearly believed or had been led to believe that they had been “mutilated and that their pelvis had been sawn in half and broken in two or fractured”. In a number of cases women thought they had undergone a symphysiotomy, but there was no medical evidence or clinical records to support this.

29. 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 a

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 earlier this year (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 Scheme’s commencement, the most recent case shows that every case through the courts is judged on its own merits.

30. Judge Clark included statistics regarding all applicants to the Scheme. As an ex-gratia scheme and not a court process, there was no ground for appeal. 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 conclusion of the Scheme, it was estimated that around 33 individuals had lodged cases with the courts.

31. In summary, a key objective was to ensure that the women who had undergone symphysiotomy were treated in a sympathetic, compassionate and equitable manner and further stress minimised. The response of the Government has three main pillars:

- all available facts were provided in three independent reports and the evidence for the procedure has been established, including the most up-to-date international research- 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 was the women’s ages. The Scheme aimed to help find closure for the majority of women and their families, without the need to face an uncertain outcome through the courts. Third, the Irish health services provide on-going medical services to the women, including medical cards.

Paragraph 15 — Conditions of Detention

(a)[B] Overcrowding in Prisons

32. Ireland is committed to progressing its plans to reduce any remaining prison overcrowding and to align the capacity of prisons in line with the guidelines laid down by the Inspector of Prisons, insofar as this is compatible with public safety and the integrity of the criminal justice system.

33. As of 13/07/2017, there were 3,712 prisoners in custody with a bed capacity of 4,273 representing an occupancy rate of 87%. This allows for safe and secure custody for all categories of prisoner. On that date, there were 909 fewer prisoners, a reduction of 20%, in custody than in February 2011 when occupancy reached a peak of 4,621.

34. In excess of 900 new prison spaces have been constructed and brought into use since 2007. The new Cork prison currently has a capacity of 296 and on 13 July 2017, there were 279 prisoners in custody, representing an occupancy rate of 94%. The capacity of the old Cork Prison was 200. Overcrowding has now been eliminated in most prisons with only Limerick prison (male and female) and Mountjoy Female Prison (Dochas Centre) having overcrowding issues. Concrete plans are in place to reduce overcrowding in both of these prisons.

35. As part of the Joint Strategy, the Irish Prison Service made a commitment to explore the development of an open centre/open conditions for women assessed as low risk of re-offending. A joint Irish Prison Service/Probation Service working group considered the matter and decided to recommend that a more practical and cost effective way to address the deficit is to pursue step down facilities for women in the Dublin region. Expressions of Interest were sought in respect and this will go to tender shortly with the aim that a step down facility for female offenders and female ex-offenders will be in place in early 2018. This will help to reduce overcrowding in the Dochas centre.

36. Further, planning is well under way for modernisation and expansion of facilities in Limerick Prison. This includes the provision of high quality prison accommodation for

female prisoners with a capacity of approximately 50 individual cells and 8 transition units, which will more than double its current female capacity. As well as providing improved accommodation, it will also provide improved education, work training and visiting facilities. There are also plans for development of a new 103-cell male accommodation block which are at a very advanced stage and expected to go to tender shortly. Work is expected to commence in early 2018 and to be completed in late 2020. This development should eliminate overcrowding in Limerick prison and will also expand nationally the overall female accommodation capacity.

(b)[B] In Cell Sanitation

37. With the construction of a new prison in Cork (which opened on 12 February 2016) and refurbishment of Mountjoy prison, 99% of prisoners now have access to in-cell sanitation. The latest published report on this issue April 2017 shows that of the 3,750 persons in custody at that time, only 56 (19 males in Limerick & 37 males in Portlaoise), were subject to ‘slopping out’. All these prisoners — approximately 1% of the overall prison population — were in single occupancy cells.

38. The Irish Prison Service’s Capital Strategy 2016-2021 outlines plans for the complete replacement of the outdated accommodation in Limerick and Portlaoise prisons as well as improvements across a number of other prisons. Plans for redevelopment of the remaining part of Limerick prison subject to ‘slopping out’ are at a very advanced stage. Building work, which will end slopping out in the prison, will commence in early 2018 and be completed in late 2020. On completion of the Limerick and Portlaoise projects, “slopping out” will be eliminated across the prisons estate.

(c)[C] Segregation of Prisoners

39. Every effort is made to separate remand prisoners from convicted prisoners in line with Prison Rules. Currently one prison in the Estate is a dedicated remand prison, namely Cloverhill Prison in Dublin.

40. Individual local prison management seek to minimise the accommodation of remand and sentenced prisoners together but it is not always possible to guarantee this. In a prison system comprising a number of small regional based prisons, the aim of separating remand and sentenced prisoners has to be balanced with prisoners’ needs to be close to their families for visits and have access to their local legal representatives during ongoing trials.

41. As and from 31 March 2017, no children are being sent into the adult prison system. Instead, the Courts commit all 17 year olds to the Children’s Detention Centre at Oberstown, rather than to St. Patrick’s Institution. This has enabled St. Patrick’s Institution to be closed with effect from 7 April, 2017 and removed from the statute books.

42. To achieve this, the Minister for Justice and Equality and the Minister for Children and Youth Affairs made coordinated regulations under, respectively, the Prisons Act, 2015 and the Children Act, 2015.

43. Three 17 year olds, sentenced before these Regulations came into force, are currently in Wheatfield Place of Detention having been transferred there from St. Patrick’s. These children are never in contact with adult inmates and have their own separate modern accommodation and a specifically adapted regime. They will remain in the adult prison system until they complete their sentence, are considered for a structured & supported release plan or ‘age out’ into the adult system. This process will be complete by the end of August 2017 at which point no children will be accommodated in the adult prison system.

44. There are no specific immigrant detention centres in Ireland. Where detention of a person for immigration related reasons is necessary, the person is detained in a remand facility in Cloverhill Prison. With respect to non-sentenced immigrant prisoners, every effort is made to detain as many of these prisoners as possible in Cloverhill Prison.

(d)[B] Prisoner Complaints Mechanisms

45. The report of the then Inspector of Prisons, the late Judge Michael Reilly, on the prisoner complaints system entitled “Review, Evaluation and Analysis of the Operation of

the present Irish Prison Service Complaints Procedure” was published in June 2016.⁴ One of its key recommendations is that prisoners’ complaints should be subject to review by the Ombudsman who is independent in his functions.

46. The Minister for Justice and Equality accepted this recommendation and his Department and the Irish Prison Service are in advanced discussions with the Ombudsman’s office with the aim of establishing an effective complaints system for prisoners. To effect these changes, some amendment to secondary legislation may be required as well as development of IT infrastructure. It is expected that a new complaints procedure in line with the report’s recommendations will be in place by end 2017.

⁴ <http://justice.ie/en/JELR/Pages/Review-Evaluation-and-Analysis-of-the-Operation-of-the-present-Irish-Prison-Service-Prisoner-Complaints-Procedure-April-2016>.