



ICCPR Follow-Up Submission on Ireland
(further to Rule 71, paragraph 5
of the UN Human Rights Committee's Rules of Procedure)

September 2015

About the Irish Council for Civil Liberties

Founded in 1976, the Irish Council for Civil Liberties (ICCL) is Ireland's leading independent human rights organisation.

In June 2014, the ICCL submitted the Joint Civil Society Report to the Fourth Periodic Examination of Ireland under the International Covenant on Civil and Political Rights (ICCPR) in collaboration with 12 civil society organisations and stakeholders which formed the Joint Civil Society Steering Group on ICCPR. The ICCPR Steering Group also engaged with the Committee with respect to the List of Issues and provided briefings to the Committee on matters arising in the Report.

Members of the ICCPR Steering Group:

- Age Action Ireland
- Educate Together
- Free Legal Advice Centres
- Gay and Lesbian Equality Network
- Immigrant Council of Ireland
- Inclusion Ireland
- Irish Centre for Human Rights
- Irish Council for Civil Liberties
- Irish Family Planning Association
- Irish Penal Reform Trust
- Irish Traveller Movement
- Survivors of Symphysiotomy
- Transgender Equality Network Ireland

1. UN Human Rights Committee Recommendations 10 and 11

Institutional Abuse of Women and Children *Symphysiotomy*

Under Recommendations 10 and 11, the Committee requested that Ireland initiate “prompt, independent and thorough investigations” into:

- all allegations of abuse in Magdalene Laundries;
- children’s institutions;
- Mother and Baby homes;
- practice of symphysiotomy.

The Committee further recommended that Ireland “prosecute and punish the perpetrators” (including, in relation to symphysiotomy, “medical personnel”) and “ensure that all victims obtain an effective remedy” with respect to all the issues listed above.

In relation to the Magdalene Laundries, Mother and Baby homes and children’s institutions, the Committee indicated that those found to be perpetrators should receive “penalties which are commensurate with the gravity of the offence” and that measures to provide effective remedies should include “appropriate compensation, restitution, rehabilitation and measures of satisfaction”.

Regarding cases of symphysiotomy, the Committee went further, calling on Ireland to provide survivors of symphysiotomy with an “effective remedy for the damage sustained, including fair and adequate compensation and rehabilitation, *on an individualised basis* [emphasis added]”.

In its Follow-Up Replies to the Committee (transmitted by letter dated 17 July 2015 from the Permanent Mission of Ireland to the United Nations at Geneva), Ireland provided details on the *Commission to Inquire into Child Abuse* and the *Commission of Investigation on Mother and Baby Homes and certain related matters*.¹ According to the Government’s Follow-Up Replies:

“[...] the Irish Government has established a statutory inquiry to provide a full account, in a timely manner, of what happened to vulnerable women and children in Mother and Baby Homes during the period 1922 – 1998”.

This inquiry is established under the Commissions of Investigations Act 2004 which, the Government states:

¹ The Commission is required to address seven specific questions on the practices and procedures regarding the care, welfare, entry arrangements and exit pathways for the women and children who were residents of these institutions between 1922-1998. The primary function of the Commission is to establish the factual position in respect of the detailed matters set out in its Terms of Reference.

“Provides for an effective, prompt and transparent mechanism to investigate complex and sensitive matters of significant public concern while also respecting fair procedures and natural justice”.²

The Follow-Up Replies outline the significant inquiry powers under the 2004 Act, which is why the ICCL has been calling for independent statutory inquiries under that Act also to be established in relation to the treatment of survivors of the Magdalene Laundries and the practice of symphysiotomy.

However, at the time of writing, the Irish Government has still not established an independent inquiry on the Magdalene Laundries or regarding the practice of symphysiotomy, and it is abundantly clear from its Follow-Up Replies that it does not intend to do so. As outlined therein, the Government set up an Inter-Departmental Committee to establish facts (“McAleese Report”) on the State interaction with the Magdalene Laundries and an *ex gratia* scheme to administer compensation (“Magdalene Restorative Justice Scheme”). In this respect, the Committee will be aware that Ireland’s national human rights institution has stated that the McAleese Report is insufficient to meet the State’s human rights obligations and has recommended that an alternative statutory mechanism be established.³ In relation to the practice of symphysiotomy, the Department of Health commissioned a review which was published in July 2014 (“Walsh Report”) accompanied by *ex gratia* scheme (“Surgical Symphysiotomy Payment Scheme”).

The Government’s Follow-Up Replies describes a “comprehensive consultation process”, including the publication of a “scoping document” in relation to the Mother and Baby Homes. It continues that, “the views expressed and the information received informed Government’s approach to the establishment of the statutory investigation”. However, in relation to the review of symphysiotomy, (Walsh Review 2014), survivor testimony was

² The Government’s document also states that the Commission has robust powers to conduct investigations within its terms of reference in a manner it considers appropriate while adhering to the rules and procedures contained within the Act; that the Committee can be “assured that all government Departments and Agencies will fully cooperate with the investigation”; and, that the Commission has a “wide range of coercive powers”, for example, “directions to attend, to answer questions, to disclose and produce documents, entry and inspection to seize documents and equipment, powers to make determinations and give directions where privilege is claimed over documents”. The document continues: “mechanisms within the terms of reference are designed to take maximum advantage of the investigative powers, resources and expertise of the Commission” and that it is “not limited to matters within the direct scope of its investigations, but may also include issues which it considers to warrant further investigation in the public interest”.

³ Irish Human Rights Commission (November 2010), IHRC Assessment of the Human Rights Issues Arising in relation to the “Magdalen Laundries”. Available at: <http://www.ihrec.ie/download/pdf/ihrc_assessment_of_the_human_rights_issues_arising_in_relation_to_the_magdalen_laundries_nov_2010.pdf> [Accessed 21/09/2015]. See also, Irish Human Rights Commission (2013), IHRC Follow-Up Report on State Involvement with Magdalene Laundries <<http://www.ihrec.ie/publications/list/ihrc-followup-report-on-state-involvement-with-mag>> [Accessed 21/09/2015].

excluded from its terms of reference.⁴ The official report on the Magdalene Laundries has been criticised for its narrow remit and ignoring survivors' testimonies.⁵

A key issue for the survivors of the Magdalene Laundries and women who were subjected to symphysiotomy is the *ex gratia* Redress Schemes proffered by the Government. Neither Scheme provides an individualised approach compensation. As the Committee will be aware, the Surgical Symphysiotomy Payment Scheme provides for limited compensation⁶ and requires that extensive evidence is provided to support claims of ill health⁷ and complications which arose as a direct consequence of the procedure.

Furthermore, both Schemes require the women to waive their rights to seek further compensation. Under the terms of the Magdalene Restorative Justice Scheme, qualifying survivors must waive any right of action against the State or any other body or agency arising out of her admission to or work in, a laundry contrary to her constitutional rights.⁸ The Surgical Symphysiotomy Payment Scheme also requires women to waive all rights and entitlements and indemnify scheduled parties potentially liable before compensation will be awarded.⁹ For example, this precludes them from progressing a medical negligence case against any medical personnel in the future.¹⁰ This is in flagrant contravention of Ireland's obligations under international human rights law, which requires that proactive steps be taken combat impunity, including by identifying and, when necessary, punishing perpetrators of ill-treatment.

The women who survived the Magdalene Laundries and the women who suffered symphysiotomy procedures have been offered *ad hoc* remedies by the Government which

⁴ Oonagh Walsh *Report on Symphysiotomy in Ireland 1944-1984* Dublin: Department of Health 2013. Available at: <<http://health.gov.ie/wp-content/uploads/2014/07/Final-Final-walsh-Report-on-Symphysiotomy1.pdf>> [Accessed 21/09/2015].

⁵ See Justice for Magdalenes Research (JFMR), (September 2015), Follow-Up Report to the UN Human Rights Committee in respect of Ireland (111th Session, July 2014). At page 10, paragraph 5.4 (k), JFMR provide information on the 793 pages of survivor testimony which was provided to the Inter-Departmental Committee, none of which appears in the final Report. See also, page 8, paragraph 5.4 (c).

⁶ See Survivors of Symphysiotomy (SOS), (September 2015), Submission to the UN Human Rights Council, Universal Periodic Review of Ireland 2016. At page 4, paragraph 12 (c), SOS state that the Surgical Symphysiotomy Payment Scheme, "pays compensation (on average €65,000) that is 20% of the awards made by the courts for commensurate injuries".

⁷ The Scheme requires contemporaneous medical records, dating in many cases from the 1950s and 60s, to support claims of side effects that must be directly attributable to the procedure.

⁸ See Dáil Debates, (5 November 2013), Topical Issue Debate: Magdalene Laundries Issues, statement by Alan Shatter TD (then, Minister for Justice, Equality and Defence), available at: <<https://www.kildarestreet.com/debates/?id=2013-11-05a.544&s=shatter+AND+magdalene+AND+waiver#g546>> [Accessed 21/09/2015].

⁹ The waiver covers "all doctors, consultants, obstetricians, surgeons, medical staff, midwives, nursing staff, administrative staff, boards of management, associated with all hospitals or nursing homes, former hospitals or former nursing homes in the State whether public, private or otherwise and/or their insurers" and the medical Missionaries of Mary and/or any Religious Order involved in the running of any hospital and/or their insurers". Deed of Waiver available at: <<http://www.payment-scheme.gov.ie/Symphysiotomy/Symphysiotomy.nsf/O/OAFC8447AC15B2D580257D89003FA7AE/Sfile%20SCHEDULE1-Deedof%20WaiverandIndemnity.doc>> [Accessed 21/09/2015].

¹⁰ Or religious congregations.

lack full independence and fail to provide access to adequate individualised compensation and rehabilitation.

The ICCL welcomes the Committee’s examination of the accountability and restitution measures established by the Government in relation to historical institutional abuse against women and children.

The Committee may wish to enquire of the Irish Government why what “was once hidden and covered up” in one institutional setting – Mother and Baby Homes – is the subject of a comprehensive and independent investigation under the Commissions of Investigation Act 2004; while it persistently refuses to investigate in a manner consistent with international human rights standards, other institutional abuses that took place in Magdalene Laundries and hospitals performing symphysiotomies.

2. UN Human Rights Committee Recommendation 15

Conditions of Detention

Regarding conditions of detention in prisons identified by the Committee in 2014, the ICCL is aware of, and does not wish to duplicate, the submission of ICCPR Steering Group member, Irish Penal Reform Trust (IPRT) on this matter in response to the Follow-Up Replies. Instead, the ICCL wishes to call the attention of the Committee to alleged abuse¹¹ that has since come to light in other institutional settings in which deprivation of liberty and/or *de facto* detention takes place.

Rights of Persons with Disabilities

Since November 2013, when inspections and regulations were first introduced,¹² numerous cases have come to light regarding people with intellectual disabilities living in institutions, the circumstances of which may amount to inhuman or degrading treatment or punishment, contrary to Article 7 of the Covenant.

In December 2014, an undercover investigation by the State broadcaster (RTÉ) disclosed incidents of violence (verbal and physical) against people with severe intellectual disabilities housed in residential care.¹³ It is clear from troubling video imagery that the persons concerned were subject to such a degree of restriction of their liberty as to amount to *de facto* detention. In this connection, the Committee may wish to note the recent independent monitoring reports of the Health Information and Quality Authority (HIQA), which is the statutory body responsible for inspection of residential centres for people with disabilities. These reports paint a disturbing picture of the treatment of persons with intellectual disabilities in designated centres.¹⁴ For example, a 2014 report on the monitoring inspection of one designated centre which is home to 39 persons with complex and high support needs, revealed a disproportionately high level of restraint and

¹¹ Including crimes against the person in institutions.

¹² Under the Health Act 2007, the Health and Information Quality Authority was established.

¹³ <<http://www.rte.ie/news/pimetime/2014/1210/665909-prime-time-09-12-2014/>> [Accessed 21/09/2015].

¹⁴ <<http://www.hiqa.ie/social-care/find-a-centre/disability-services.>> [Accessed 21/09/2015].

seclusion on residents.¹⁵ The Committee may be interested to note the comments of the Ombudsman, Peter Tyndall when these incidents (undercover investigation) emerged:

“I was shocked at the deeply disturbing scenes shown on RTÉ’s documentary on Áras Attracta. Anyone who has a complaint about a HSE-run centre, such as Áras Attracta, or a HSE nursing home, can contact my office for an independent examination of their complaint”.¹⁶

While the Ombudsman is publicly declaring that his office is available to handle complaints, *after the fact*, given the extreme vulnerabilities of people who are housed (or for some *de facto* detained under the Mental Health Act 2001), in these institutions, it is imperative that the State has procedures in place to combat prevention of any such treatment.

The gravity and extent of the abuses uncovered demonstrate that people with intellectual disabilities in residential care are not afforded the necessary safeguards to ensure protection of their human rights, including the right to be free from inhuman or degrading treatment or punishment. In future engagements, the Committee may wish to enquire of the Government what steps it is taking to ensure that punishment of the alleged perpetrators is progressed and effective measures are in place to prevent any reoccurrences.

Rights of the Child

The ICCL would like to draw the attention of Committee members to recently published reports regarding children in special care units who were kept isolated for long periods of time in facilities so inadequate that they had no option but to urinate on the floor. In a report issued in 2015, the Health Information and Quality Authority (HIQA) was highly critical of the use of ‘single separation’ in a special care centre in Dublin. It found that there were 149 episodes of single separation involving nine children in the six months prior to the report.¹⁷ In one incident, a young person was held in continued isolation for five days.¹⁸

¹⁵ Health Information and Quality Authority, Monitoring Inspection Report No. 2433-27, December 11, 2014, p. 5. Available at <<http://hiqa.ie/2433-inspection-report-11-and-27-september-2014>> [Accessed 21/09/2015]. In September 2015, it was reported in the media that a Health Service Executive internal audit of a residential centre for persons with intellectual disabilities identified two alleged incidents on CCTV, which included pushing and forcible detention of persons. A Garda investigation is underway. See Cullen, P. (9 September 2015), “Gardai investigate disability worker over CCTV footage”, Irish times. Available at: <<http://www.irishtimes.com/news/health/garda-investigates-disability-worker-over-cctv-footage-1.2344858>> [Accessed 21/09/2015].

¹⁶ Ombudsman Peter Tyndall, (10 December 2014), “Complaints against HSE can be made to the Ombudsman”. Available at: <<http://m.ombudsman.gov.ie/en/News/Media-Releases/2014-Media-Releases/Complaints-against-HSE-centres.html>> [Accessed 21/09/2015]. The Irish Human Rights and Equality Commission also released a public statement on 10 December 2014 calling for a meeting with Minister of State, Kathleen Lynch. Available at: <<http://www.ihrec.ie/news/2014/12/10/ihrec-requests-meeting-with-minister-lynch-to-disc/>> [Accessed 21/09/2015].

¹⁷ Health Information and Quality Authority, Focused Inspection Report No. 731, 10 and 15 July 2015, p. 15. Available at: <<http://www.hiqa.ie/social-care/find-a-centre/childrens-special-care>> [Accessed 21/09/2015].

¹⁸ *Ibid*, at p. 9.

The report outlines inadequate facilities available to these children and young people, including lack of access to a toilet or shower, which resulted in at least two children urinating on the floor. In responding to the findings, the Child and Family Agency (Tusla), which is the statutory agency responsible for the centres, stated that the organisation, “is currently taking steps to strengthen its decision making procedures and facilities”.¹⁹

In further dialogue with the State, the Committee may wish to examine what action the Government and its agencies is taking to ensure that children and young people who are detained in State institutions are protected from inhuman and degrading treatment, and enjoy full respect for their human rights in line with international standards.

¹⁹ O’Brien, C. (31 August 2015), “Children in special care unit forced to urinate on floor”, Irish Times. Available at: <<http://www.irishtimes.com/news/social-affairs/children-in-special-care-unit-forced-to-urinate-on-floor-1.2334987>> [Accessed 21/09/2015].