



REFERENCE:KF/fup-119

18 April 2017

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 10, 11, and 15 of the concluding observations on the report submitted by Ireland ([CCPR/C/IRL/CO/4](#)), adopted at the 111th session in July 2014.

At its 116th session, held in March 2016, the Committee evaluated the information provided by the State party and requested additional information on the implementation of the recommendations selected for the follow-up procedure.

On 13 June 2016, the Committee received the reply of the State party. At its 119th session held in March 2017, the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Report on follow-up to concluding observations (see [CCPR/C/119/2](#)). I hereby attach a copy of the advanced unedited version of the relevant section of the report.

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. The Committee would appreciate receiving the requested information by **18 July 2017**. The State party is kindly requested, when submitting its reply to the Committee, not to reiterate information that has already been provided to the Committee.

The reply should be sent in Microsoft Word electronic version to the Secretariat of the Human Rights Committee (Kate Fox: [kfox@ohchr.org](mailto:kfox@ohchr.org) and [ccpr@ohchr.org](mailto:ccpr@ohchr.org)). In accordance with the Note by the Human Rights Committee on the procedure for follow-up to concluding observations (see [CCPR/C/108/2](#)), the follow-up report should not exceed a maximum of 3,500 words.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

H.E. Ms. Patricia O'Brien  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative  
Email: [genevapun@dfa.ie](mailto:genevapun@dfa.ie)



Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Mauro Politi'.

Mauro Politi  
Special Rapporteur for Follow-up to Concluding Observations  
Human Rights Committee

**Report on follow-up to concluding observations of the Human Rights Committee,  
[CCPR/C/119/2](#):**

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**New assessment of replies<sup>1</sup>**

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- A Reply/action largely satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.
  - B Reply/action partially satisfactory:** The State party took steps towards the implementation of the recommendation but additional information or action remains necessary.
  - C Reply/action not satisfactory:** Response received but actions or information not relevant or do not implement the recommendation. The action taken or information provided by the State party does not address the situation under consideration.
  - D No cooperation with the Committee:** No follow-up report received after reminder(s).
  - E Information or measures taken are contrary to or reflect rejection of the recommendation**
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Concluding observations:	<a href="#">CCPR/C/IRL/CO/4</a> , 23 July 2014
Follow-up paragraphs:	10, 11 and 15
First reply:	<a href="#">20 July 2015</a>
Committee's evaluation (see <a href="#">CCPR/C/116/2</a> ):	Additional information required on paragraphs 10[B2][C2][B2], 11[C1][C1][C2] and 15[B1][B1][C1][B2].
Second reply:	<a href="#">13 June 2016</a>
Committee's evaluation:	Additional information required on paragraphs 10[B][C][B], 11[C][A][B][C] and 15[B][B][C][B]

**Paragraph 10: Institutional abuse of women and children**

**The State party should conduct prompt, independent and thorough investigations into all allegations of abuse in Magdalene laundries, children's institutions and mother and baby homes, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offence, and ensure that all victims obtain an effective remedy, including appropriate compensation, restitution, rehabilitation and measures of satisfaction**

**Follow-up question** (see [CCPR/C/116/2](#))

**[B2]:** With respect to investigations into all allegations of human rights violations, the Committee welcomes the establishment of the commission of investigation into mother and baby homes and certain related matters and requests that the State party provide information on the progress of the investigation to the Committee. However, the Committee regrets that such a statutory inquiry has not been established to investigate all allegations of abuse in Magdalene laundries and children's institutions and reiterates its

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<sup>1</sup> Adopted by the Committee at its 118th session (17 October – 4 November 2016). The full assessment is contained in [CCPR/C/119/3](#).

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recommendation that the State party conduct an independent and thorough investigation.

[C2]: The State party has not provided new information regarding prosecutions and punishment of perpetrators. The Committee reiterates its recommendation that the State party prosecute and punish perpetrators with penalties commensurate with the gravity of the offence.

[B2]: The Committee welcomes the compensation schemes in place for victims who suffered in Magdalene laundries and children's institutions. However, additional information is required on:

- (a) Access to the compensation schemes for victims living abroad;
- (b) The requirement that qualifying Magdalene survivors must waive any right of action against the State;
- (c) The situation of victims who were not formally admitted to the Magdalene laundries but were nonetheless forced to work there, including with regard to access to the redress scheme;
- (d) Women still living in the care of the religious orders responsible for the laundries and their rights to advocacy services under legislation or as part of the redress scheme.

The Committee recommends that the State party ensure that victims receive the full range of restitution, rehabilitation and measures of satisfaction to which they are entitled, in accordance with the Committee's recommendation. The Committee requests an update regarding redress for the victims of mother and baby homes.

**Summary of State party's reply**

*Investigation into Mother and Baby Homes*

The State party repeats information on the commission of investigation into mother and baby homes provided in its [first follow-up reply](#) (pp.5-6). It notes that matters such as the precise timing and approach to investigations rest with the commission and it would not be appropriate for the government to comment on this ongoing investigation. The State party also repeats information provided in its [first follow-up reply](#) that the Commission must first be allowed the opportunity to establish the facts before considering the issue of redress (p. 6).

*Investigation of allegations of abuse in the Magdalen Laundries*

The State party reiterates (see [first follow-up reply](#), p.3) that it does not propose to set up a specific Magdalen inquiry or investigation. It further clarifies that if a woman considers she has been a victim of criminal behaviour she should report it and it will be investigated. There is no statute of limitations for indictable criminal offences.

In the last five years, two allegations of a serious offence in Magdalen institutions have been reported and both related to acts by people from outside the Institutions concerned, and in both cases the victims declined to make a criminal complaint despite being invited to do so.

*Compensation Schemes for victims of Magdalen Laundries*

(a) 807 applications have been received and 626 applicants (including 126 from the UK, 2 from Australia, 1 from Cyprus, 1 from Switzerland and 8 from the USA) have received their lump sum payments at a cost of over €23m. The State party repeats information from its [first follow-up reply](#) on the entitlement of each woman and on legislation introduced to ensure access to a range of primary and community health services free of charge (p.3), adding that this extends to women who are currently outside of Ireland if they visit or return to the country. It also repeats information regarding the examination of practical arrangements to be put in place for participants of the Magdalen laundries Restorative Justice Scheme living abroad (Ibid., pp. 3-4).

(b) Mr. Justice Quirke recommended that, as a pre-condition of receiving benefits under the

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Scheme, the woman concerned should sign a waiver not to take proceedings against the State and that, before signing, the woman is strongly advised to take independent legal advice, facilitated by a €500 + VAT as State contribution to legal advice costs. However, the signing of such a waiver does not preclude the woman from making a complaint if she believes that she was the victim of a criminal offence, nor does it preclude the woman from pursuing a civil action against the institutions concerned or any individuals.

(c) The condition that the woman must have been admitted to and worked in a relevant institution was included as part of the ex gratia scheme in order to exclude persons who were paid employees. The scheme is primarily aimed at Magdalen institutions where women admitted were expected to work and the main type of work was in the laundry. The terms of reference for Mr. Justice Quirke address the issue of compensation of women for working without pay, and he does provide for the payment of amounts of money to reflect the work undertaken by the women; however these amounts are purely notional and are not intended to be an accurate reflection of the value of the work done. The scheme is not intended to cover laundries generally. There are also instances where other institutions on the same campus did work in the laundries of the Magdalen institution and have been covered under a different scheme, the Residential Institutions Redress Scheme.

(d) Mr. Justice Quirke makes a very clear distinction between what is required for most women and what is required for those lacking full mental capacity including those women that are in an institutional setting. Women who were in the Magdalen laundries are already covered under the Nursing Home Support Scheme Act 2009, which makes provision for persons to act as care representatives in respect of any person applying for support under that Act. A personal advocate has very limited powers with regard to a person who lacks capacity. The Assisted Decision-Making (Capacity) Act 2015 will provide for a range of options for representatives for women who were in Magdalen laundries and have capacity issues, its entering into force was planned for the latter half of 2016. Officials in the Department of Justice and Equality ensure that applicants do have the necessary capacity to understand the scheme and sign the relevant legal documentation and a medical assessment is sought if there is indication of capacity issues. With regard to women who do not lack capacity, nominated contact people in the relevant government departments assist and advise the women, and grants have been provided to the Irish Women Survivors Support Network to provide advice and support to the women who are residing in the UK.

**Committee's evaluation**

**[B]:** The Committee notes that no additional information was provided on the progress of the investigation by the commission of investigation into mother and baby homes or on redress for victims, therefore reiterates its request and requires information on the progress of the investigation, on a possible timeline for its completion and on any proposed forms of redress to victims. The Committee once again regrets that no specific Magdalen inquiry or investigation is envisaged and reiterates its recommendation that the State party conduct an independent and thorough investigation.

**[C]:** The State party has not provided information regarding prosecutions and punishment of perpetrators, and the Committee reiterates once again its recommendation.

**(a), (b), (c), (d)[B]:** The Committee welcomes the lump sum payments made to applicants under the redress scheme for victims of Magdalen laundries. It notes however that the practical arrangements for participants of the Magdalen laundries Restorative Justice Scheme living abroad appear not to have been put in place. The Committee therefore requires information on the progress made in this respect.

The Committee notes that qualifying women should sign a waiver not to take proceedings against the State as a pre-condition for receiving benefits under the redress scheme, and requires clarification as to whether women filing a complaint the pursuing a civil action against the institutions concerned or any individuals would not qualify for redress under the scheme.

The Committee takes note of the information that the redress scheme covers primarily

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women admitted at, and expected to work in Magdalen institutions, but regrets the lack of specific information on the situation of victims who were not formally admitted to the Magdalene laundries but were nonetheless forced to work there, including with regard to access to the redress scheme. The Committee therefore reiterates its request in that regard and also requires clarification as to whether this category of victims is covered under the Residential Institutions Redress Scheme.

The Committee welcomes the measures in place to assist, advise and support applicants to the redress scheme, including women with impaired mental capacity.

The Committee reiterates its recommendation that the State party ensure that victims, including victims of mother and baby homes, receive the full range of restitution, rehabilitation and measures of satisfaction to which they are entitled, in accordance with the Committee's recommendation.

**Paragraph 11: Symphysiotomy**

**The State party should initiate a prompt, independent and thorough investigation into cases of symphysiotomy, prosecute and punish the perpetrators, including medical personnel, and provide the survivors of symphysiotomy with an effective remedy for the damage sustained, including fair and adequate compensation and rehabilitation, on an individualized basis. It should facilitate access to judicial remedies by victims opting for the ex gratia scheme, including allowing them to challenge the sums offered to them under the scheme.**

**Follow-up question** (see [CCPR/C/116/2](#))

[C1]: The Committee notes the commissioning of the Walsh and Murphy reports, but requests information on measures taken after the adoption of the Committee's concluding observations regarding investigations into cases of symphysiotomy as well as information on prosecutions and punishment of perpetrators. The Committee reiterates its recommendation.

[C1]: The Committee welcomes the establishment of the Surgical Symphysiotomy Payment Scheme, but requires additional information on the scope and requirements of the Scheme, including:

- (a) The assessment criteria for providing compensation to victims;
- (b) The requirement that participants waive all rights and entitlements to seek compensation outside of the Scheme and the lack of a right to appeal under the Scheme;
- (c) The time limit imposed on applicants (20 days), which may have hindered applicants with respect to seeking independent advice in making their decision and may affect women residing outside Ireland;
- (d) The standards of proof required to seek damages under the Scheme.

[C2]: The Committee reiterates its recommendation that the State party should facilitate access to judicial remedies for victims opting for the ex gratia scheme, including by allowing them to challenge the sums offered to them under the scheme.

**Summary of State party's reply**

*Investigations and reports on symphysiotomy*

The State party repeats information from its [first follow-up reply](#) on the two independent investigations undertaken into the practice of symphysiotomy, on the Walsh and Murphy reports and on the establishment of the Symphysiotomy Payment Scheme and the assessment of applications by Ms. Justice Clark (p.7). It notes that 578 applications were examined, and Ms. Justice Clark commissioned independent medical experts to assist her in her assessment of applications where deemed necessary. The Scheme allowed for a much lower threshold of evidence than would have been required in a court of law. An offer of an award was made to every woman who met the criteria under the Scheme and the

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independent report under preparation by Justice Clark will form the basis of a third independent report on the pertinent issues relating to symphysiotomy.

*The Symphysiotomy Payment Scheme*

(a) Assessment criteria require evidence of symphysiotomy in order for a woman to receive the minimum award of €50,000 and the maximum of €150,000. In the absence of medical records, medical experts examined the women to produce such evidence.

(b) The State party repeats information from its [first follow-up reply](#) that applicants did not waive their rights to take their cases to court as a precondition to participating in the Scheme and could opt out at any stage in the process, that discontinuation of any legal proceedings is required only if the award made under the Scheme is accepted (p. 8), and that there are three levels of award under the ex gratia Scheme and no further appeal following the decision of the Assessor (p. 9); however, it was open to any woman to initiate a judicial review if she believed she had the grounds to challenge any aspect of the Scheme.

(c) The time limit of 20 days could be extended for a further 20 days in exceptional circumstances, and an application was valid even if all relevant supporting documentation was not provided at that time. Following the registration of the initial application women were given a substantial number of months in some cases to seek advice and submit all relevant evidence. No reports of women who were unable to make the deadline were received; however, a small number of women opted not to apply to the Scheme.

(d) The burden of proof required was also lower than in a court of law and the process faster. At the same time the Scheme did not prevent women who wished to pursue their case through the courts from doing so. Information on further disability allowed for the final award to be up to €150,000. Women who wished to be supported by their legal advisers could have this support and the Terms of the Scheme specified the funding that would be paid to legal advisers for this purpose. When a woman had little or no evidence to support her case, she met the Judge, who was travelling around the country. In a small number of cases a medical assessment was required to confirm that symphysiotomy had occurred and the level of subsequent disability. In some cases evidence from the woman's GP provided adequate support for her application, and in other cases the Judge had a case conference with her medical expert team and the clinical expert in order to reach a fair consensus on the nature of disabilities involved.

*Access to judicial remedies*

Two of the three NGOs providing support to women reported that the majority of women who had been seeking to take their cases to the courts for years welcomed the establishment of the Scheme. Each woman who opted into the Scheme was clear about the terms and had the option to reject her award and pursue her case through the courts. Only one woman rejected the award.

**Committee's evaluation**

[C]: The State party provided no information on measures taken after the adoption of the Committee's concluding observations regarding investigations into cases of symphysiotomy and prosecutions and punishment of perpetrators. The Committee reiterates its recommendation. It also requires updated information on the status of the independent report under preparation by Justice Clark and on the third independent report on pertinent issues relating to symphysiotomy.

(a),(c),(d)[A]: The Committee considers the State party's response largely satisfactory.

(b)[B]: The Committee notes that discontinuation of any legal proceedings is only required if the award made under the Symphysiotomy Payment Scheme is accepted by the woman, and requires information on the number of women that opted out from the Scheme and decided to pursue legal proceedings.

[C]: The Committee notes the information provided on the satisfaction of the majority of women with the establishment of the Scheme, but once again regrets that there is no

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possibility for women to challenge the payment offered under the Scheme either by appeal or judicial review. It therefore reiterates its recommendation in that regard.

**Paragraph 15: Conditions of detention**

**The State party should step up its efforts to improve the living conditions and treatment of detainees and address overcrowding and the practice of "slopping out" as a matter of urgency in line with the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and approved by the Economic and Social Council by its resolutions 663 C (XXIJ'9 of 31 July 1957 and 2076 (LXII) of 13 May 1977. It should establish a concrete timeline for the achievement of complete separation of remand and sentenced prisoners, juvenile and adult prisoners and detained immigrants and sentenced prisoners. It should also implement the new complaints model for all categories of complaints without further delay and ensure its independent functioning.**

**Follow-up question** (see [CCPR/C/116/2](#))

**[B1]:** (a) The Committee notes the efforts of the State party to address overcrowding and prison living conditions, and requires information on the progress of those initiatives. The Committee also requires information on:

(a) The number of inmates in each detention facility and the capacity of the facility;

(b) Measures taken to address overcrowding in the Mountjoy, Cork and Limerick detention facilities.

**[B1]:** (b) The Committee notes the efforts of the State party to address the practice of slopping out and requires information on the progress of those initiatives, particularly in the Cork, Limerick and Portlaoise detention facilities.

**[C1]:** (c) The Committee reiterates its recommendation that the State party establish a concrete timeline for the achievement of complete separation of remand and sentenced prisoners, juvenile and adult prisoners and detained immigrants and sentenced prisoners.

**[B2]:** (d) The Committee notes the State party's intention to fully implement the complaints mechanism in 2015 and requests the State party to provide further information on the implementation, including on the measures in place to ensure the independent functioning of the mechanism and the progress on any new legislative reforms.

**Summary of State party's reply**

*Overcrowding in prisons*

The State party notes that on 18 May 2016 the prison population was 3,766 (5 percent below the capacity recommended by the Inspector of Prisons), and provides a detailed breakdown of the prisoner population and capacity at each facility as of 18 May 2016 (see [second follow-up reply](#), p.11). It repeats information provided in its [first follow-up reply](#) on the elimination of overcrowding in Mountjoy Prison, the reduction of the number of prisoners accommodated in Cork and Limerick prisons (p.11), and on the plans for redevelopment at Limerick Prison (p.12). It adds that the new prison in Cork became operational on 12 February 2016 and has a capacity of 296 - an increase of 41 percent over the old prison.

*In-cell sanitation*

Significant progress has been achieved in the elimination of the practice of slopping out in prisons. It has been eliminated at Mountjoy Prison, and all cells in the new prison in Cork have in-cell sanitation. Planning proposals for major developments to end the practice of slopping out at Portlaoise and Limerick Prisons are underway.

*Segregation of prisoners*

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Every effort is made to separate remand prisoners from convicted prisoners, including by utilising to the maximum the dedicated remand prison, Cloverhill Prison, with a capacity of 431. The State party reiterates information provided in its replies to the list of issues (CCPR/C/IRL/Q/4/Add.1, para.79) on the transfer of sentenced 17 year old males to a dedicated unit in Wheatfield Place of Detention until they can be accommodated in the new children detention facilities at Oberstown. Males aged 18 to 20 sentenced to detention are detained in a separate unit in Wheatfield. The State party also repeats information provided in its [first follow-up reply](#) on the Protocol between the Irish Prison Service and Ireland's National Police Service to ensure effective and timely processing of all prison committals due for deportation/removal (p.13).

*Prison Complaints Mechanisms*

The State party repeats information provided in its replies to the list of issues (CCPR/C/IRL/Q/4/Add.1, paras.81-85) on the new complaints mechanism and adds that the Inspector of Prisons has recently submitted his Report on the Operation of the present Irish Prison Service Prisoner Complaints Policy to the Minister for Justice and Equality and has made a number of recommendations which are currently being examined.

**Committee's evaluation**

**(a)[B]:** The Committee welcomes the progress made in reducing overcrowding and the inauguration of the new prison in Cork. However, it notes from the provided data that prisoner population in Cork and Limerick prisons still exceeded prison capacity in May 2016. The Committee therefore requires information on further measures taken to address overcrowding and on their impact. It also requires clarification of the current number of persons in custody and bed capacity of the old and new Cork facilities. The Committee reiterates its recommendation.

**(b)[B]:** The Committee welcomes that all cells in the new prison in Cork have in-cell sanitation, but requires specific information on the progress of proposed development projects aimed at eliminating sloping out at Portlaoise and Limerick Prisons.

**(c)[C]:** The Committee notes that no information was provided on the establishment of a concrete timeline for the achievement of complete separation of remand and sentenced prisoners, juvenile and adult prisoners and detained immigrants and sentenced prisoners, and requires information in that regard, including on the transfer of sentenced 17 year old males to the new children detention facilities at Oberstown.

**(d)[B]:** The Committee reiterates its request for information on measures in place to ensure the independent functioning of the complaints mechanisms and also requires information on the recommendations made in the Inspector of Prisons' report on the complaints policy to the Minister for Justice and Equality and on the follow-up thereto.

**Recommended action:** A letter should be sent reflecting the evaluation of the Committee.

**Next periodic report:** 31 July 2019

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