



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 879/2018\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Elizabeth Coppin (represented by counsel, Wendy Lyon and Yasmin Waljee)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Ireland
<i>Date of complaint:</i>	25 July 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 26 February 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	12 May 2022
<i>Subject matter:</i>	Lack of investigation into complaint of ill- treatment; right to remedy
<i>Procedural issue:</i>	Admissibility – <i>ratione temporis</i>
<i>Substantive issues:</i>	Lack of investigation; lack of redress and adequate compensation; torture, cruel, inhuman or degrading treatment or punishment
<i>Articles of the Convention:</i>	12–14 and 16

1.1 The complainant is Elizabeth Coppin, a national of Ireland born on 21 May 1949. She claims that the State party has violated her rights under articles 12 to 14 of the Convention, read alone and in conjunction with article 16, and article 16 read alone. The complainant is represented by counsel.

1.2 On 26 February 2019, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to examine the admissibility of the communication separate from its merits. On 4 December 2019, the Committee adopted a decision on admissibility.

\* Adopted by the Committee at its seventy-third session (19 April–13 May 2022).

\*\* The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

\*\*\* Individual opinions by Committee members Todd Buchwald, Erdogan Iscan and Ana Racu (dissenting) are annexed to the present decision.



**Facts as submitted by the complainant**

2.1 The complainant contends that between March 1964 and April 1968, when she was between 14 and 18 years of age, she was subjected to torture and cruel, inhuman and degrading treatment and punishment in the State party in three separate institutions, known as Magdalen laundries.

2.2 In 1951, the complainant was committed by order of the Listowel District Court to an industrial school for girls operated by a congregation of Catholic nuns, providing that she was to be detained until her sixteenth birthday in 1965. She was committed under the Children Act (1908), not on the ground that she was an orphan, but rather that she was destitute and illegitimate, with her mother being unable to support her. At the age of 14, in March 1964, she was sent by the industrial school to the Saint Vincent's Magdalen laundry in Cork, operated by another Catholic congregation of nuns, the Religious Sisters of Charity. After escaping from Saint Vincent's in August 1966, the complainant was apprehended in November 1966 at her new place of work by officers of the Irish Society for the Prevention of Cruelty to Children and placed in another laundry, in the convent of the Sisters of Our Lady of Charity of the Good Shepherd in Cork. In March 1967, the complainant was transferred to another laundry, operated by the Sisters of Our Lady of Charity of the Good Shepherd: St. Mary's in Waterford. She was discharged in April 1968, just before her nineteenth birthday.

2.3 The complainant was subjected to arbitrary detention, servitude and forced labour without pay for six days a week in all three Magdalen laundries and the State party was complicit in her arbitrary detention and mistreatment. She claims to have been subjected at numerous times to deliberate and ritual humiliation; denial of identity, educational opportunity and privacy; neglect; and other forms of grave physical and psychological abuse. During her time at Saint Vincent's, her living conditions reflected a prison-like environment: a cell of approximately 6 square metres, with a small bed, one blanket, a shelf and a jug and a basin for sanitation. The door to her cell was bolted, there were bars on the window and her lights were switched off every night at 9 p.m. In one of the laundries, her hair was shorn, she was dressed in sackcloth and called by a humiliating new male name, which she particularly disliked because it was the name of her tormentor at the industrial school.

2.4 At Saint Vincent's, the complainant was forbidden from speaking and generally deprived of human warmth and kindness. She lived in conditions of deliberate deprivation, with inadequate food and heating. She had limited contact with her family and was denied an education and any other opportunity to enjoy her childhood. She was also denigrated on religious grounds and was not informed as to whether she would ever be allowed to leave the laundries. She was convinced that she would die there and be buried in a mass grave. She claims to have been particularly vulnerable and experienced aggravated suffering because she was a child and had been removed from her family for being destitute and illegitimate, and because she had been physically and emotionally abused at the industrial school.

2.5 The complainant argues that the treatment she suffered constitutes at the very least, degrading treatment within the meaning of article 16 of the Convention, also amounting to torture under article 1. The abuse experienced in the industrial school and the Magdalen laundries has had serious and detrimental effects on her physical and psychological health.

2.6 The complainant has exhausted all available domestic remedies. In 1997 and 1998, she filed complaints with the Garda Síochána (the national police of Ireland) about the abuse suffered in the Magdalen laundries between 1964 and 1968. However, the police failed to investigate her claims. She did not have any avenue to contest the decision not to investigate her complaints, because in Ireland the police owe no duty of care to victims of crime. The complainant cannot submit a complaint to the Garda Síochána Ombudsman Commission, owing to the requirement to submit a complaint within 12 months of an incident.

2.7 In 1999, the complainant commenced a civil proceeding in the High Court of Ireland against the religious congregations that managed the industrial school and the Magdalen laundries. In November 2000, she applied to the High Court to join Ireland, the Minister of Education and the Attorney General as co-defendants in her civil action. Before her application for joinder was heard, however, on 23 November 2001, the High Court struck out her proceedings against the religious congregation and nuns responsible for her treatment in

the industrial school on the ground of “inordinate and inexcusable” delay. The High Court held that there was a real and serious risk of an unfair trial because a number of individuals involved were deceased and the archive of the religious congregations contained only sparse personal records. Following her counsel’s advice, the complainant did not appeal this decision, and the proceedings were discontinued in 2002.

2.8 In 2000, the State party established the Commission to Inquire into Child Abuse with a mandate to investigate abuse in Industrial and Reformatory Schools and other similar institutions. The complainant provided testimony to the Commission in 2002. In the same year, the State party established the Residential Institutions Redress Board to make financial payments to the victims of child abuse. In 2005, the complainant applied to the Board for an award and was offered an ex gratia payment for the abuse she had suffered in the industrial school and the Magdalen laundries. The award entailed no admission of liability by the State party or any religious congregation and was made on condition that the complainant agree in writing to waive any right of action against a public body or a person who had contributed to the scheme. The complainant accepted the award but attests that she felt she had no choice but to do so.

2.9 In its concluding observations on the State party’s initial report in 2011, the Committee expressed grave concern at the failure of Ireland to protect women and girls involuntarily confined in the Magdalen laundries and to institute prompt, independent and thorough investigations into alleged ill-treatment. The Committee recommended that Ireland investigate all complaints of torture and other ill-treatment in connection with the laundries and prosecute and punish the perpetrators as appropriate.<sup>1</sup>

2.10 Subsequently, in 2011, the State party established the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen laundries. That Committee had no remit to investigate or make determinations of torture or any other criminal offence. In 2012, the complainant provided a written statement recounting the violations she suffered in the Magdalen laundries, including an assessment of the State’s involvement in her arbitrary detention and abuse, to the Chair of the Inter-Departmental Committee. That Committee’s report was published in 2013 and stated that evidence of direct State involvement in the committal of women to the Magdalen laundries had been found in 26 per cent of the cases examined. State responsibility for funding and regulating the laundries was also established, as was the role of the police in returning escaped women to the laundries. After the publication of the report, the Government appointed Justice John Quirke to devise an ex gratia scheme to provide payments and other support to women confined in the Magdalen laundries. In March 2013, the complainant shared her experiences with Justice Quirke.

2.11 The Government subsequently established the Magdalen Laundries Restorative Justice Scheme, to which the complainant applied for an ex gratia award in July 2013 and was offered a payment. The award was made on the condition that the complainant agree in writing to waive any right of action against the State arising out of her admission to and work in the Magdalen laundries.

2.12 The complainant wrote on two occasions in December 2013 to the Minister for Justice and Equality, asking what measures the Government was taking to address the violations committed against women in the Magdalen laundries and seeking more time to reflect on participating in the Scheme. On 3 March 2014, following an offer from the Scheme, the complainant sent a letter of appeal to the Restorative Justice Implementation Unit of the Department of Justice and Equality expressing concern about its terms, stating that the scheme did not reflect the serious violation of her rights by the State and its agents. The complainant also noted that she had not committed a crime and that her treatment had been unlawful and needed to be addressed by the State. The complainant requested that an investigation into her rights violations be conducted, in order to produce findings as to her allegations of unlawful behaviour of agents of the State. The State party insisted that she either accept or reject the ex gratia payment. On 21 March 2014, she accepted the payment and signed the waiver.

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<sup>1</sup> CAT/C/IRL/CO/1, para. 21.

2.13 In 2015, the State party created the Commission of Investigation into Mother and Baby Homes, a form of church-run institution similar to those in which the complainant and her mother had resided. The complainant repeatedly appealed to relevant authorities to expand the Commission's mandate to cover these related institutions. In March 2017, the complainant wrote to the Minister for Children and Youth Affairs to request an investigation into violations perpetrated against women in the Magdalen laundries. Her letter stated that the abuse there had not been properly investigated and that no one had been held accountable for the arbitrary detention, forced labour, neglect, and psychological and physical abuse that women and girls had suffered. The complainant stated that there was a continuing violation of her rights and the rights of all women who had gone through the Magdalen laundries. The complainant received no reply from the Minister.

2.14 In 2017, the Committee against Torture expressed its deep regret that the State party had not undertaken an independent, thorough and effective investigation into the allegations of ill-treatment of women and children in the Magdalen laundries or prosecuted and punished the perpetrators, as recommended previously.<sup>2</sup> It recommended that the State party undertake a thorough and impartial investigation into allegations of ill-treatment of women in the laundries to compel the production of all relevant facts and evidence and, if appropriate, ensure the prosecution and punishment of perpetrators. It also recommended that the State party ensure that all victims of ill-treatment who had worked in the laundries obtain redress, and to that end ensure that all victims had the right to bring civil actions, even if they had participated in the redress scheme, and that such claims concerning historical abuses could continue to be brought "in the interests of justice". Since 2010, the Irish Human Rights and Equality Commission has been calling on the State party to undertake a statutory investigation into systematic abuse in the Magdalen laundries but the State party has declined to do so.

### **Complaint**

3.1 The complainant claims that the State party has violated article 12 of the Convention, alone and in conjunction with article 16, by failing to proceed to a prompt and impartial investigation of her allegations that she was subjected to torture and cruel, inhuman and degrading treatment and punishment in the Magdalen laundries, despite having reasonable grounds to believe that an act of torture had been committed in its territory. The complainant recalls that:

- (a) The police declined to act on the complaints she filed with them;
- (b) The State party's authorities did not open a criminal investigation into allegations of torture and ill-treatment at the Magdalen laundries after the complainant filed a civil claim in the courts;
- (c) The authorities did not initiate an investigation into the allegations she provided in testimony to the Commission to Inquire into Child Abuse in 2002, in her application to the Residential Institutions Redress Board in 2005 or in her testimony to the Inter-Departmental Committee in 2012;
- (d) She received no response to her letter to the Department of Equality and Justice in March 2014 or her letter to the Minister for Children and Youth Affairs in March 2017.

3.2 The State party has also violated article 13 of the Convention, alone and in conjunction with article 16, by failing to ensure that the complainant and other survivors of the Magdalen laundries had the right to complain and have their cases examined. The police were unresponsive to her complaints, and her civil proceedings against the religious orders in 1999 were dismissed by the High Court on grounds that too much time had elapsed since the incident. The other officials and bodies she petitioned were either not capable of opening criminal investigations into her complaints of torture and ill-treatment or failed to exercise their discretion to do so. She attests that no other effective domestic complaints mechanism was available to her and that even if one were, she would not be able to access it as a result

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<sup>2</sup> CAT/C/IRL/CO/2, para. 25.

of the waivers that she was obligated to sign as a condition of accepting the ex gratia awards offered to her by the State party in 2005 and 2014.

3.3 The complainant further claims a violation of article 14, alone and in conjunction with article 16, arguing that the State party has failed to ensure that she obtain full redress for the violations suffered in the Magdalen laundries, including the means for as full a rehabilitation as possible. Referring to paragraph 16 of the Committee's general comment No. 3 (2012), she submits that satisfaction is not only a discrete aspect of redress, but is required for rehabilitation and in order to guarantee non-repetition. The State party has not carried out key aspects of the right to receive satisfaction as part of redress. No investigation has been conducted and no individual or institution has been held accountable. With respect to the right to as full a rehabilitation as possible, the State party has not actually provided several of the benefits promised under the ex gratia scheme, including comprehensive and easily accessible health and social care.

3.4 Finally, the complainant claims a continuing violation of article 16 on the basis that the State party's refusal to investigate her allegations of torture and ill-treatment and the resulting impunity for the perpetrators constitute an affirmation by Ireland of her treatment in the Magdalen laundries. Such affirmation debases and humiliates her in a manner so severe as to amount to at least degrading treatment. She is experiencing a continuing violation of her dignity amounting to a breach of article 16, commencing with her treatment in the laundries and continuing on account of her treatment by the State party.<sup>3</sup>

3.5 The complainant has requested that the remedies for the violations suffered include investigation, health care, compensation, access to archives, repeal of "gagging orders", memorialization, establishment of specialized police units and access to the courts. She has also sought an acknowledgment that her treatment amounted to torture and other ill-treatment.

#### **State party's observations on admissibility**

4.1 On 29 November 2018, the State party requested separate consideration of the admissibility of the complaint from the merits as, since the complaint raises issues that relate to a period prior to the entry into force of the Convention for the State party, it should be considered inadmissible *ratione temporis*.<sup>4</sup>

4.2 The Magdalen laundries were established and operated as refuges for women primarily by religious orders. The laundries were not operated or owned by or on behalf of the State, and there was no statutory basis for admitting or confining a person there.

4.3 In June 2011, the Government established the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen laundries. Upon publication of the report by the Committee in February 2013, the Government stated its commitment to play its part in a healing and reconciliation process for women who were former residents of the laundries. The Government established an ex gratia redress scheme, enabling the former residents to receive compensation as a lump sum and weekly payments, and to be eligible for benefits such as primary medical services, prescribed medications, aids and appliances, dental services, home support, home nursing, counselling services and other health services.

4.4 In 1951, the complainant was committed to the Pembroke Alms Industrial School for Girls by a court order, authorizing her detention until 20 May 1965. The complaint only relates to the complainant's stay in three different laundries from 19 March 1964 to 30 April 1968.

4.5 In 2005, the complainant was awarded €140,800 for the abuse she suffered in the industrial school and the Magdalen laundries, under the Residential Institutions Redress Act of 2002. On 15 July 2013, she applied for redress under the Magdalen Laundries Restorative Justice Scheme in relation to her stay in three laundries. She was awarded a lump sum of €55,500 and a full State pension amounting to €973.20 every four weeks – which she still receives – and she is eligible for medical services. When she accepted the payment, she

<sup>3</sup> CAT/C/IRL/CO/1, para. 21; and CAT/C/IRL/CO/2, para. 25.

<sup>4</sup> The State party ratified the Convention and made a declaration under its article 22, effective 11 May 2002.

signed a Statutory Declaration under which she agreed to waive any right of action against the State or any public body arising from her admission to the laundries. All persons who applied for redress were provided an opportunity and allowance to obtain independent legal advice on the application and the waiver but the complainant did not choose this allowance.

4.6 In February 2013 and June 2018, respectively, the Prime Minister and the President of Ireland issued apologies to the former residents of the Magdalen laundries for the abuse and stigmatization suffered.

4.7 Although the complainant claims an ongoing violation of articles 12–14, read alone and in conjunction with article 16, her complaint places a significant emphasis on what occurred during her residency in the laundries. She filed complaints with the police and brought civil proceedings against representatives of the religious institutions and the State prior to the Convention’s entry into force in May 2002. The complainant’s claims concerning the alleged breach of articles 12 and 13 of the Convention are inadmissible *ratione temporis*.

4.8 The State party refers to the European Court of Human Rights finding that the question of *ratione temporis* is one that goes to jurisdiction and the Court has no jurisdiction over matters prior to ratification.<sup>5</sup> A failure to redress alleged violations that occurred prior to ratification falls outside the temporal jurisdiction and otherwise it would be contrary to non-retroactivity of treaties.<sup>6</sup>

4.9 The Committee may consider alleged violations of the Convention which occurred prior to recognition of its competence under article 22 if the effects of those violations continue after the declaration under article 22 and if the effects constitute in themselves a violation of the Convention.<sup>7</sup> A continuing violation must be interpreted as an affirmation, after the declaration, by act or by clear implication, of the previous violations of the State party.<sup>8</sup> The complainant has not established that the State party has affirmed any alleged previous violations of the Convention. The State party claims to have taken positive steps, including the establishment of redress schemes and the provision of formal apologies to former residents of the laundries.

4.10 The complainant has not exhausted domestic remedies because she has never brought a complaint or proceeding against the State party in relation to its alleged failure to investigate or provide redress. The proceedings presented as evidence of domestic remedies, namely the complaints made to the police in 1997 and 1998 and the civil proceeding in 1999, did not raise the present matters before the Committee. The complainant is claiming that the facts of her complaint occurred after 11 May 2002, yet she deems her domestic proceedings, which only relate to matters preceding the Convention’s entry into force, to be sufficient in meeting the requirement to exhaust domestic remedies.

4.11 With regard to the waiver that the complainant signed when accepting the redress payment, the State party submits that the redress schemes operated on an entirely voluntary basis and the complainant had the option to refuse the awards and bring proceedings before domestic courts.

4.12 The complainant submitted her communication not only on behalf of herself, but also on behalf of other survivors of the Magdalen laundries, which makes it inadmissible under rule 113 (a) of the rules of procedure.<sup>9</sup>

#### **Complainant’s comments on the State party’s observations on admissibility**

5.1 On 31 January 2019, the complainant reiterated that her complaint was admissible.

5.2 The complainant notes the continuing failure by the State party to investigate and provide redress for the treatment she was subjected to in the laundries. The State party is

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<sup>5</sup> European Court of Human Rights, *Blečić v. Croatia*, Application No. 59532/00, Judgment, 8 March 2006, para. 67.

<sup>6</sup> European Court of Human Rights (Third Section), *Milojević and others v. Serbia* (application Nos. 43519/07, 43524/07 and 45247/07), Judgment, 12 April 2016, paras. 50 and 51.

<sup>7</sup> *E.Z. v. Kazakhstan* (CAT/C/53/D/495/2012), para. 12.3.

<sup>8</sup> *Ibid.*

<sup>9</sup> See *A.A. v. Azerbaijan* (CAT/C/35/D/247/2004).

ignoring decisions in which the European Court of Human Rights asserted jurisdiction, even where the factual background of the complaint preceded ratification, such as in case of disappearance.<sup>10</sup> The State party's denial of the reality of the laundries has a similar character to such failure and the complainant's arguments are also in line with the decisions of other treaty bodies.<sup>11</sup>

5.3 The complainant is not asking the Committee to consider what happened to her in the laundries but to examine the effects of the abuse that she underwent in the light of the State party's current obligations under the Convention (arts. 12–14 and 16).<sup>12</sup>

5.4 The Committee has confirmed that a failure to investigate and provide redress for historic ill-treatment may be considered even when the allegations of ill-treatment would be inadmissible *ratione temporis*.<sup>13</sup>

5.5 The complainant has exhausted domestic remedies, claiming to have no further legal remedies with a reasonable chance of success<sup>14</sup> or likely to bring effective relief. Even if domestic proceedings were available to her, she would be precluded from using them, having waived any right of private action as a condition for receiving the ex gratia awards offered to her by the State. The decision to require women resident in the laundries to waive their rights to bring further proceedings against the State as a condition of participation in ex gratia redress schemes constitutes an illegitimate attempt by the State party to devise domestic legal means to “contract out” of its obligations.

5.6 The complainant's reference to other survivors is not to submit the complaint on their behalf, but to acknowledge that there is an undeniable collective dimension of the right to truth in the present case.

#### **Decision on admissibility**

6. On 4 December 2019, the Committee concluded that the State party had not produced evidence to indicate that an effective remedy was available or that any further remedies could bring effective relief. The Committee decided that the communication was admissible *ratione temporis* owing to possibly continuing violations, insofar as it raised issues with respect to articles 12 to 14 of the Convention, read alone and in conjunction with article 16, and article 16 read alone.

#### **State party's observations on the merits**

7.1 In observations on the merits, submitted on 31 July 2020, the State party argues that there has been no violation of the Convention because the Magdalen laundries as institutions were not in the ownership or control of the State party.

7.2 The complainant has been granted redress, including significant monetary compensation, for her treatment in an industrial school and three Magdalen laundries. Her allegations were investigated by the Garda Síochána, which determined that no prosecution could be brought against any individuals.

7.3 Since 1999, the State party has undertaken various investigations into allegations of abuse in institutional settings, including the Commission to Inquire into Child Abuse and the ongoing Commission of Investigation into Mother and Baby Homes.

7.4 In June 2011, an Inter-Departmental Committee (IDC) was set up to establish the facts of State involvement in the Magdalen laundries. It conducted interviews with 118 women who had been resident in laundries, including the complainant. In February 2013 it published its report regarding State involvement with Magdalen laundries.

<sup>10</sup> See European Court of Human Rights, *Zorica Jovanović v. Serbia*, Application No. 21794/08, Judgment, 9 September 2013.

<sup>11</sup> See *Sankara et al. v. Burkina Faso* (CCPR/C/86/D/1159/2003) and *Durmic v. Serbia and Montenegro* (CERD/C/68/D/29/2003).

<sup>12</sup> *E.Z. v. Kazakhstan*, para. 12.3.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Guridi v. Spain* (CAT/C/34/D/212/2002), para. 6.3.

7.5 The police have investigated allegations of abuse by individuals who have been resident in laundries, as the national law does not apply a statute of limitations with regard to criminal investigations.

7.6 On 28 October 1997, the complainant submitted to the police that she was the victim of physical and emotional abuse while resident in the laundries. In January 1999, the Director of Public Prosecutions determined, however, that there was insufficient evidence to warrant a prosecution against any individual.

7.7 The police also investigated the allegation of false imprisonment, which identified that all parties who were in authority during the relevant period (1964–1968) were now deceased and such allegation could not be attributed to any individual. On 16 June 2000, the Director of Public Prosecutions issued final instructions that no prosecutions were to be brought.

7.8 Separately, the police met with four women, including the complainant on 18 July 2012, regarding the time they spent in the laundries.

7.9 In 1999, the complainant launched civil proceedings against the congregations of the Sisters of Mercy, the Religious Sisters of Charity and the Sisters of Our Lady of Charity of the Good Shepherd, and Sister Enda O’Sullivan. Those proceedings were struck out by the High Court in November 2001 on the basis of the complainant’s inordinate and inexcusable delay, which would have given rise to a serious risk of unfair trial. The High Court concluded that the claim would be impossible to defend at such a remove of time.

7.10 The State party has established different mechanisms of redress to former residents of institutions such as the Magdalen laundries. The Residential Institutions Redress Act (2002) provides for financial awards to persons who suffered abuse while in those institutions, with the Residential Institutions Statutory Fund Board under the Act providing funding to former residents to obtain services, and the Magdalen Laundries Restorative Justice Scheme enabling applicants to seek the payment of a lump sum and medical benefits.

7.11 The acts complained of do not meet the threshold to be considered as either torture or cruel or inhuman or degrading treatment or punishment and so, as they have been fully investigated, the obligations under articles 12 and 13 have been met.

7.12 The obligations under article 14 only apply to a victim of an act of torture. The complainant has been granted significant redress by the State party. On 24 February 2005, she was awarded the sum of €140,800 from the Residential Institutions Redress Board for the abuse suffered in the institutions, including Magdalen laundries. In January 2014, the complainant was awarded the sum of €55,500 pursuant to the Magdalen Laundries Restorative Justice Scheme, with an ongoing entitlement to a monthly pension payment and benefits regarding her medical needs.

7.13 The State party has issued two formal apologies to women residents of the laundries for injuries and stigmatization suffered. In February 2013, the Taoiseach (the Prime Minister) issued an apology on behalf of the Government. In June 2018, the President apologized to women who had been resident in Magdalen laundries. Previously, on 10 May 1999, the Taoiseach issued an apology to the victims of childhood abuse.

7.14 There is no risk that the complainant will be subject to similar acts in the future, following the closure of the final laundry in 1996. The State party has put in place a comprehensive legislative framework including in regard to the prevention of torture and other ill-treatment. It has not been established that there has been any continuing violation of article 16.

7.15 The allegations by the complainant do not disclose any violation by the State party of articles 12 to 14 or 16.

#### **Complainant’s comments on the State party’s observations on the merits**

8.1 On 4 February 2021, the complainant submitted that, between the ages of 14 and 19, she was subject to forced incarceration, torture and grave ill-treatment in three Magdalen laundries. The Committee has previously condemned the State party’s failure to properly investigate and provide redress to victims of those institutions.



8.2 The State party fails to engage with the substance of the allegations and claim that there was no torture or ill-treatment whatsoever in the forced incarceration and deliberate mistreatment and denigration of young girls.

8.3 The complainant explains that the report of the Inter-Departmental Committee discloses highly significant evidence of treatment reaching the threshold of torture or cruel treatment, as well as significant involvement by the State party in the laundries.

8.4 The complainant submitted significant evidence of her exposure to torture, which the State party has not disputed. She also addresses the allegation that, even if the standard for ill-treatment has been met, the standard for torture has not been met. She explains that she indeed suffered severely, in an institution to which she was sent for punishment and that was set up solely to confine women, therefore clearly making it discriminatory.

8.5 The State party's suggestion that the police investigation into her treatment alone meets its obligations is insufficient to satisfy the requirements of articles 12 and 13. The State party's submission is contrary to the comprehensive reparative concept under the Convention. States cannot "buy off" victims and thus avoid their responsibilities, as articulated in general comment No. 3 (2012), without the guarantees of just satisfaction and non-recurrence; in particular when records were kept in secret, and where recommendations for redress have not been fully implemented. Significant investigative deficiencies have been disclosed in the material finally provided to the complainant. The State party has not acknowledged the impact of its failure to take proactive investigative steps or of the continuing inaccessibility of administrative archives concerning the laundries on the ability of the complainant to seek justice. The State party has hampered the complainant's search for admission of accountability by attaching conditions to her receipt of an ex gratia payment, meaning that she has been forced to waive her right of access to the civil courts. Concerning the submission that the complainant has had sufficient access to the courts to satisfy the State party's obligations, this was not the case, as the State party has at every turn hampered the complainant's legitimate attempts to seek justice through the courts. The investigation by the State party that has already been undertaken into the laundries is, as made clear by the Committee on previous occasions, insufficient. The State party continues to refuse to investigate the treatment in fact suffered in such institutions, despite significant evidence indicating maltreatment. While withholding access to the archive of the Inter-Departmental Committee, the State party persisted in claiming that the Committee had established the objective truth. The State party concedes that the Committee had no remit to investigate or make determinations about allegations of torture and therefore, it cannot be said that the investigation has been sufficient.

8.6 The complainant also refutes the State party's argument that there has been no violation of article 14, as it mistakenly suggests that the obligations contained in article 14 only apply to a victim of torture, misinterpreting the jurisprudence of the Committee against Torture.

8.7 Furthermore, the complainant disagrees with the argument that an apology and an ex gratia payment would suffice in meeting the State party's obligations under article 14 in circumstances where the State party refuses to investigate, or indeed accept any responsibility for, the matter, despite the findings of its own limited investigations.

8.8 The complainant addresses the argument by the State party regarding the absence of violation of article 16, by arguing that the continuing violations by Ireland of her dignity amount to ill-treatment to date.

#### **State party's additional observations on the merits**

9.1 On 8 June 2021, the State party submitted additional observations.

9.2 The scope of the complaint has been addressed in the Committee's decision on admissibility of 4 December 2019.

9.3 There has been no violation of any obligation arising from the Convention based on the allegations by the complainant, which have been fully investigated, and the complainant has already been granted significant redress, in accordance with article 14 of the Convention.

9.4 The acts complained of all occurred prior to the adoption or entry into force of the Convention, and to the coming into force of the Convention for the State party.

9.5 The acts complained of do not meet the minimum level of severity to fall within the definition of torture or cruel, inhuman or degrading treatment or punishment and are out of scope of general comment No. 2 (2007). In addition, the complaint is not supported by contemporary medical evidence.

9.6 The State party has accepted that the working regime within Magdalen laundries was harsh and physically demanding and has issued apologies for the harm experienced by the women residents.

9.7 The State party acknowledges the difficult circumstances of the complainant's early life and notes that the complainant was originally placed in a Nazareth House because of abuse by her stepfather. Her placement in that institution was agreed to by her mother, who also gave the religious order permission to place her in employment.

9.8 The complainant has incorrectly interpreted the relevant provisions of the Children Act (1908). The Commission to Inquire into Child Abuse noted that the Children Act gave the judicial system the jurisdiction to intervene in the affairs of a family in the interest of the child to protect their physical or moral wellbeing.

9.9 The complainant accepts that the complaint made by her to the police was investigated. She had further engagement with the police in 2012 and she did not inform the Committee of the various interactions she had with the police since her original complaint.

9.10 The obligations under articles 12 and 13 have been met, as there has been a prompt, impartial and effective investigation of the complaint. Those obligations are of means and not result. Following the investigations, a decision was taken not to pursue criminal prosecutions since all the alleged perpetrators were deceased.

9.11 Similarly, the criticisms by the complainant regarding how the civil proceedings were handled by the High Court are misplaced. Those proceedings were dismissed on the basis of an inordinate and inexcusable delay. The complainant cannot seek to use the present complaint to impugn the decision of the High Court.

9.12 The complainant has been provided with adequate, effective and comprehensive redress and has had access to appropriate complaint mechanisms, investigation bodies and institutions in a manner consistent with general comment No. 3 (2012). The State party refers to the recent decision of the European Court of Human Rights in the case of *L.F. v. Ireland*<sup>15</sup> in respect of redress.

9.13 The above-mentioned investigations were supplemented by the investigations by bodies such as the Inter-Departmental Committee. The complainant has also been provided with significant financial redress (including payments of €195,800 and a weekly payment equivalent to the State Contributory Pension, currently €12,912 per annum) and other support, including health-care services. In addition, the State has issued apologies to women who were resident in Magdalen laundries and has made a commitment to memorialization.

9.14 There has been no violation of article 16, as there is no continuing violation of any of the State party's obligations under the Convention.

9.15 The State party reiterates that certain remedies have already been provided to the complainant, while the remainder of the remedies identified by her are not appropriate, as they do not relate to matters which are within the scope of the complaint.

#### **Complainant's comments on the State party's additional observations**

10.1 In comments submitted on 8 October 2021, the complainant responds that the State party's submissions are either repetitious, tendentious or related to matters on which the Committee cannot be expected to adjudicate.

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<sup>15</sup> Application No. 62007/17, 10 December 2020.

10.2 The complainant, aged 72, is in failing health and respectfully requests the Committee to bring as swift an end as possible to the proceedings.

10.3 The State party contend that the complainant has failed to demonstrate that the abuse she was subjected to amounted to mistreatment prohibited by the Convention. The State party contends that there is insufficient medical evidence to uphold her complaint, although it notes that there is no such requirement under the Convention. The State party has not disputed that the complainant was interned, nor disputed the medical evidence, which demonstrates that she has suffered severe consequences.

10.4 The State party reiterates that, while the living conditions in the laundries were harsh and physically demanding, they were insufficiently poor to fall under the Convention, and refers to the circumstances in the case of *V.K. v. Russia*.<sup>16</sup>

10.5 The State party sets out in great detail its own interpretation of the Children Act (1908), including that it reportedly permits the detention of children. The complainant argues that no authority supports such arguments. The complainant has suffered at least ill-treatment under the Convention, as the State did not have the power to imprison her as it did.

10.6 None of the objections raised alter the position that the complainant was subjected to torture, or at least cruel, inhuman or degrading treatment or punishment. Such arguments do not and cannot absolve the State party of its obligations under articles 12 and 13.

10.7 The State party impugns the complainant's honesty by suggesting that she withheld from the Committee her knowledge of the steps taken by the police. The complainant reiterates that she was never informed of any specific investigative steps. The State party does not dispute that the police in 2012 made no attempt to retrieve or consider the complainant's previous file or to investigate her case. The State party's position is that if the relevant individuals were deceased, no further investigation could take place. The limited efforts of the State party cannot be said to be an effective or adequate investigation for the purposes of article 12 of the Convention.

10.8 With regard to article 14, the State party maintained that it had established sufficient mechanisms for investigation and redress. In particular, it relied on *L.F. v. Ireland* in defence of its ex gratia schemes. However, in that case there had been two independent investigations and the domestic courts had held that the symphysiotomy procedure of which L.F. had complained had been justified by relevant medical practice standards at the time. While the State party seeks to recall that the Magdalen laundries were not institutions in its ownership or under its control, the only investigation conducted into the laundries had considered that there had been significant State involvement.

10.9 The complainant refers to the Committee's findings in the context of follow-up to the concluding observations by the Committee, namely that while taking note of the arguments once more put forward by the State party, the Committee regretted the decision not to set up a thorough, independent and impartial investigation regarding the Magdalen laundries in spite of the alleged incidents of physical punishment and ill-treatment both in the light of facts covered by the report of the Inter-Departmental Committee and the non-judicial nature of that Committee. In that regard, the Committee against Torture reiterated the importance of investigating in a thorough and impartial manner all allegations of ill-treatment in these institutions and conducting criminal proceedings when necessary. The Committee against Torture also regretted that even the right of the victims to bring civil actions appeared to be limited by the requirement to sign an undertaking not to take an action against the State and its agencies.<sup>17</sup>

10.10 A cursory police investigation, cut short as certain individuals were deceased, places the complainant in no better place than the other victims of the laundries.

<sup>16</sup> European Court of Human Rights, Application No. 68059/13, Judgment, 7 June 2017.

<sup>17</sup> See

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FFUL%2FIRL%2F34997&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FFUL%2FIRL%2F34997&Lang=en).

## Issues and proceedings before the Committee

### *Consideration of the merits*

11.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all information made available to it by the parties.

11.2 As regards the claims under article 12, the Committee notes the complainant's argument that the State party has failed to institute a prompt, impartial and thorough investigation into her allegations. Article 12 obliges a State party to ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, and that such investigations must be effective.<sup>18</sup> The obligations in articles 12–14 apply equally to allegations of cruel, inhuman or degrading treatment or punishment.

11.3 In the present case, the complainant alleges that the State party is engaging in a continuing violation of its obligations under the Convention to investigate her allegations of torture and ill-treatment, to prosecute and punish those who have committed such acts, and to ensure that her complaints are effectively examined. She claims that the proof of the State party's failure in that regard is that the State party does not know, because it has never investigated, the exact treatment to which she was subjected, and that she has never received official acknowledgment that that treatment amounted to torture or to cruel, inhuman or degrading treatment or punishment. The complainant has claimed that the Inter-Departmental Committee was expressly prohibited from examining the issue, as the State party has admitted. The Committee against Torture observes that a prosecutorial decision was made not to pursue criminal investigation further because potential suspects were deceased, and the High Court decided to strike out the complainant's case in 2001, as there was a real risk of an unfair trial owing to the number of individuals involved who were deceased and the fact that the archives of the religious congregations contained only sparse personal records. Upon her counsel's advice, the complainant did not appeal this decision and the matter was discontinued in 2002. The Committee notes the State party's argument that it took all available measures to effectively investigate the complainant's alleged ill-treatment subsequent to entry into force of the Convention for the State party and the State party's declaration under article 22 in May 2002; the State party held that the acts in question became time-barred and, as the perpetrators were deceased, any criminal investigation would remain inconclusive regarding the responsibility of the individuals concerned. In the light of the above, the Committee considers that the State party has taken the necessary measures to conduct an effective, objective and timely investigation into the complainant's allegations of torture and ill-treatment. Given the circumstances of this case, the Committee cannot conclude that the measures taken have been incompatible with the State party's obligations under article 12 to ensure that the competent authorities proceed to a prompt, independent and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.

11.4 As regards claims relating to article 13, the complainant alleges that the State party has affirmed in a general manner the violations alleged on many occasions since the entry into force of the Convention for the State party and its declaration under article 22. The Committee notes the complainant's contention that none of the investigations undertaken by the State party have been effective. Having been repeatedly informed of the complainant's allegations and those of other women with similar experiences, and having taken actions to respond to them, including through the establishment of the Inter-Departmental Committee and the two *ex gratia* payment schemes, from which the complainant obtained awards in 2005 and 2014, the State party has opened both civil and criminal investigations into the substance of the complainant's allegations. The Committee notes the State party's argument that the complainant initiated the civil proceedings before the High Court but failed to submit an appeal against the decision to strike out her case; that the State party initiated criminal investigations which could not establish accountability as the alleged perpetrators were deceased; and that the complainant received two awards of compensation and signed two waivers that she would not make further claims. In the circumstances, the Committee

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<sup>18</sup> *E.Z. v. Kazakhstan*, para. 13.2.

considers that the State party undertook the necessary examination of the complainant's claims by competent authorities, even if the examination was not fully conclusive. Furthermore, the two awards made to the complainant following the establishment of facts constituted a partial admission of responsibility on the part of the State party. Accordingly, the Committee cannot conclude that the facts of the case would demonstrate a violation of the State party's obligations under article 13.

11.5 As regards claims regarding article 14, the Committee recalls paragraph 17 of general comment No. 3 (2012), under which a State's failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture may constitute a violation of the State's obligations under article 14. It also recalls that redress must cover all the harm suffered and encompass restitution, compensation and guarantees of non-repetition, taking into account the circumstances of each individual case.<sup>19</sup> The Committee notes the State party's argument that the complainant has never complained to the national authorities about its failure to investigate her allegations and provide redress to her. It also recalls the complainant's argument that there is no domestic remedy available to her to challenge the refusal of the police to investigate her complaint because there exists no cause of action, for example in tort, which could effectively and reasonably have been pursued, as the police owe no duty of care to the victims of crime under national law, and she is time-barred from complaining to the Garda Síochána Ombudsman Commission. The Committee further notes the complainant's argument that the State party has not identified any further domestic remedy likely to provide an effective remedy.<sup>20</sup> Although the complainant has appealed to many other authorities of the State party requesting them to exercise discretionary authority to investigate her allegations, including in 1997–1999, 2002, 2005, 2012–2014 and 2017, none of these attempts have been successful.

11.6 Furthermore, the Committee observes the State party's contention that it took all measures available to investigate the complainant's ill-treatment in the civil and criminal proceedings, including through the Inter-Departmental Committee, and that the complainant is precluded from bringing the present communication because on two occasions she waived any right of action arising from her time spent in the laundries as a condition of receipt of ex gratia awards. The Committee has previously determined that collective reparation and administrative reparation programmes may not render ineffective the individual right to a remedy and to obtain redress,<sup>21</sup> including an enforceable right to fair and adequate compensation, and that judicial remedies must always be available to victims, irrespective of what other remedies may be available.<sup>22</sup> Moreover, in its concluding observations on the second periodic report of Ireland, the Committee recommended that the State party should ensure that all victims of violations of the Convention committed at the Magdalen laundries had the right to bring civil actions, even if they had participated in the redress scheme, and ensure that such claims concerning historical abuses could continue to be brought "in the interests of justice".<sup>23</sup> In that context, the Committee notes the State party's argument that the authorities have repeatedly expressed apologies to the complainant, who has received a fair compensation through two ex gratia awards, has repeatedly been granted access to judicial remedies and has been enrolled in the scheme of social and health insurance, with rehabilitative effects.

11.7 In addition, the Committee observes the State party's contention that it is necessary to consider the totality of the forms of the redress awarded. The complainant has at all times accepted that there has been some redress in respect of her complaints, including ex gratia payments and the provision of apologies, which are welcome. The complainant is of the view, however, that the State party has continued, in public forums and before the Committee, (a) to deny that any forms of torture or ill-treatment took place; (b) to deny that it is obliged to investigate whether such forms of torture or ill-treatment took place; (c) to deny individuals the right to bring civil claims to investigate whether such forms of torture or ill-treatment took place (either through the ex gratia scheme or through the operation of limitation and

<sup>19</sup> *Bendib v. Algeria* (CAT/C/51/D/376/2009), para. 6.7.

<sup>20</sup> *Evloev v. Kazakhstan* (CAT/C/51/D/441/2010), para. 8.5.

<sup>21</sup> General comment No. 3 (2012), para. 20.

<sup>22</sup> *Ibid.*, para. 30.

<sup>23</sup> CAT/C/IRL/CO/2, para. 26.

delay rules); and (d) to deny that, insofar as there was any such torture or ill-treatment, it was the responsibility of the State. The Committee considers that the waivers signed by the complainant as a condition of participation in two domestic ex gratia schemes cannot alleviate the State party of its obligation to investigate allegations of continuing violations of the Convention, including the procedural aspects of the right to justice and to the truth,<sup>24</sup> and they do not affect the complainant's right to bring a communication to the attention of this Committee. The Committee notes, however, that civil and criminal proceedings, as well as administrative investigations, were exercised by the State party on the basis of allegations by the complainant. The Committee observes that the payments, without responsibility and admission of liability by the State party, without truth and without justice, are insufficient to meet the comprehensive reparative concept set out in general comment No. 3 (2012). The Committee also observes that the State party repeatedly expressed apologies to the complainant and involved her in compensation and rehabilitative schemes, even though domestic criminal proceedings did not establish the accountability of any individual perpetrators. The Committee therefore finds that the right to truth has generally been guaranteed through the operation of the investigation commissions, such as the Inter-Departmental Committee, and the restorative schemes established. Accordingly, the complainant's access to justice, albeit limited, has not amounted to a violation of article 14, read in conjunction with article 16, of the Convention.

11.8 With regard to the complaint under article 16, the Committee has noted the complainant's claim that the various forms of abuse to which she was subjected in the course of her detention in the Magdalen laundries, including ill-treatment and deplorable working and sanitary conditions, were compounded by the State party's refusal to investigate her allegations of torture and ill-treatment. The Committee observes that the alleged impunity for the perpetrators has, however, been largely attributable to a passage of time and applicability of domestic statutes of limitations. In the light of the above, the Committee concludes that the protracted suffering of the complainant, between March 1964 and April 1968, although compounded in part by the lack of conclusive investigation and of recognition that she faced at least ill-treatment when in the Magdalen laundries, has not amounted to a violation by the State party of its obligations, effective from May 2002, under article 16 of the Convention alone, or in conjunction with articles 12 to 14 of the Convention.<sup>25</sup> Moreover, the complainant's claims do not establish that the evaluation of her allegations by the authorities would have been arbitrary or amounted to a denial of justice or manifest procedural errors.<sup>26</sup>

12. The Committee, acting under article 22 (7) of the Convention, concludes that the facts before it do not reveal a violation by the State party of articles 12, 13, 14 and article 16 alone, or in conjunction with articles 12–14 of the Convention.

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<sup>24</sup> General comment No. 3 (2012), paras. 16–17.

<sup>25</sup> *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.8.

<sup>26</sup> *S. v. Sweden* (CAT/C/65/D/691/2015), para. 10.

## Annex I

### Joint opinion of Committee members Ana Racu and Erdogan Iscan (dissenting)

1. We disagree with the conclusions of the decision adopted by the Committee on 12 May 2022.<sup>1</sup> They present inconsistencies with the Committee's jurisprudence and its findings with regard to the State party's obligations, as contained in the concluding observations adopted by the Committee in 2011<sup>2</sup> and 2017.<sup>3</sup> Thus, they undermine the protective value of the Convention, a purpose of which is to provide full and effective protection and rehabilitation to victims and survivors of torture and ill-treatment.

2. In the concluding observations adopted in 2011 the Committee recommends that the State party institute prompt, independent and thorough investigations into all complaints that were allegedly committed in the Magdalen laundries and ensure that all victims obtain redress and have an enforceable right to compensation, including the means for as full rehabilitation as possible.

3. In the concluding observations adopted in 2017 the Committee recommends that the State party undertake a thorough and impartial investigation into allegations of ill-treatment of women in the Magdalen laundries that has the power to compel the production of all relevant facts and evidence, and strengthen its efforts to ensure that all victims who worked in the Magdalen laundries obtain redress, and to this end ensure that all victims have the right to bring civil actions, even if they have participated in the redress scheme, and ensure that such claims concerning historical abuses can continue to be brought "in the interest of justice".

4. Those recommendations have not been fully acceded to by the State party. Thorough and impartial investigation into allegations of ill-treatment of women at the Magdalen laundries has not been undertaken to compel the production of all relevant facts and evidence. The complainant has not been given the possibility of bringing a civil action with a view to seeking the truth.

5. The Committee's conclusions in its decision of 12 May 2022 also diverge from those of the concluding observations on Ireland of the Human Rights Committee, adopted in 2022,<sup>4</sup> whereby the State party was invited to ensure the full recognition of the violation of human rights of all victims in the Magdalen laundries, and establish a transitional justice mechanism to fight impunity and guarantee the right to truth for all victims; to guarantee full and effective remedy to all victims, removing all barriers to access, including short time frames to apply to the redress schemes, the ex gratia nature of the scheme and the requirement, in order to receive compensation, to sign a waiver against further legal recourse against State and non-State actors through judicial process.

6. The decision of the Committee against Torture of 12 May 2022 does not take into account international jurisprudence, such as the judgment of the Inter-American Court of Human Rights in 2013 in the case of *García Lucero and others v. Chile* (paras. 185–192), which makes reference to article 14 of the Convention and the Committee's general comment No. 3 (2012).

7. We recognize that the State party provided ex gratia payments, in general and in return for waivers. It also offered general, not individual, apology at the political level, while denying the victims access to truth. These mechanisms have not been sufficient to conclude that the State party fulfilled its obligations.

8. We disagree with the Committee's conclusion under article 12 that the State party took the necessary measures to conduct an objective and timely investigation into the complainant's claims. The record demonstrates that the State party has failed to conduct a

<sup>1</sup> CAT/C/73/D/879/2018.

<sup>2</sup> CAT/C/IRL/CO/1, para. 21.

<sup>3</sup> CAT/C/IRL/CO/2, paras. 25 and 26

<sup>4</sup> CCPR/C/IRL/CO/5, paras. 11 and 12.

prompt, independent and thorough investigation into allegations of arbitrary detention, forced labour and ill-treatment to which the complainant has been subjected. The Committee's decision sets a discouraging precedent, undermining the obligations under article 12.

9. As regards article 13, the Committee erroneously concludes that the ex gratia payment scheme offered by the State party reflects a partial admission of responsibility on part of the State party. Such a conclusion reflects a fundamental misunderstanding of the term "ex gratia" ("as a favour rather than an obligation") and the particularities of this scheme, through which the State party sought to address the calls for justice outside the criminal procedure.

10. We cannot conclude that the steps taken by the State party may be understood as fulfilling its obligations under article 14, as presumed in the Committee's decision, and recall that the Committee states in its general comment No. 3 (2012) that while collective reparation and administrative reparation programmes may be acceptable as a form of redress, such programmes may not render ineffective the individual right to a remedy and to obtain redress.

11. Similarly, even if the social and health insurance, with rehabilitative effects that the complainant has received as part of the ex gratia scheme, were provided as an admission of responsibility by the State party for having violated its obligations under the Convention, that provision would not satisfy the obligation of the State party under article 14 to ensure victims have access to an individualized determination of redress, including the means for as full rehabilitation as possible.

12. Full rehabilitation is a complex and long-term process that requires a holistic approach. If the survivor is denied truth and access to seek truth through official means, and if there is no acknowledgement of the violation and harm caused, survivors feel locked into their suffering and pain for life. In such circumstances, there can never be any meaningful or full rehabilitation as required under article 14. The Committee notes in its general comment No. 3 (2012) that rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.

13. Compensation is an important form of reparation but it can never be enough and never replaces a full rehabilitation. It is not a formal acknowledgement of truth and of harms suffered. Without truth and acknowledgement of what happened, no amount of money can be rehabilitative, or fix the pain and suffering inflicted.

14. Ex gratia payments and waivers prevent the survivors from ever seeking truth in the courts. This may amount to impunity. Denying access to justice and accountability leads to denial of the right to seek full rehabilitation.

15. Apology without acknowledgement of the harms inflicted cannot be considered to constitute full rehabilitation. Truth and acknowledgement by the State of what happened is essential to an apology and fundamental to redress.

16. We also diverge from the Committee's assertion, citing *S. v. Sweden*,<sup>5</sup> that the complainant has not satisfied the burden of proof to present an arguable case relating to her claim under article 16. As the Committee had determined this complaint to be admissible, it is unclear what the Committee considers to be the new evidence that led to this conclusion. It cites the State party's failure to act appropriately in response to the complainant's repeated requests for an investigation into her treatment at the Magdalen laundries as if it were beyond the State party's control. The State party's position leading to forgiveness for violations of the Convention owing to the passage of time is incompatible with article 2 of the Convention. The Committee's general comment No. 2 (2007) clarifies the absolute and non-derogable character of the prohibition against torture, without statute of limitations.

17. We therefore cannot agree with paragraph 12 of the Committee's decision, concluding "that the facts before it do not reveal a violation by the State party of articles 12, 13, 14 and article 16 alone, or in conjunction with articles 12–14 of the Convention."

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<sup>5</sup> CAT/C/65/D/691/2015, para. 10.



18. We would have concluded for violation of the Convention and requested the State party:

(a) To initiate a thorough and impartial investigation into the Magdalen laundries and, where appropriate, prosecute and punish the perpetrators;

(b) To ensure that the complainant and other victims are able to access information – which was denied in the past – in order to seek truth in courts;

(c) To provide the complainant with access to appropriate redress, including fair compensation and access to the truth, based on the outcome of the investigation;

(d) To ensure that the complainant and other victims have the right to bring civil actions, even if they have participated in the redress scheme;

(e) To prevent similar violations in the future and ensure that all victims have access to justice without obstacles.

## Annex II

### Individual opinion of Committee member Todd Buchwald (dissenting)

1. The crux of the matter is that the State party failed to conduct a prompt and impartial investigation into allegations of torture and ill-treatment that it had reasonable ground to believe had been committed, consequently failing to ensure redress. These failures continued after May 2002 when the State party's declaration under Article 22 became effective.

2. The Committee accepts that there were reasonable grounds to believe that torture or ill-treatment had been perpetrated, but the State party argues that it could not pursue a criminal investigation in response to complaints filed by the author in 1997 either because its authorities found insufficient evidence to warrant a prosecution of any individual or because all parties who were in authority during the relevant period were now deceased (see paras. 7.6 and 7.7).

3. Even assuming that it was appropriate to forego criminal investigations, the State party's obligation to investigate, and to provide redress, would not disappear. Investigations are required not only to establish the basis for criminal prosecutions, but also in order to implement procedures designed to obtain redress,<sup>1</sup> and the Committee has been clear that redress is required regardless as to whether any particular individuals can be held criminally responsible.<sup>2</sup> Thus, the contention, even if true, that it was not appropriate to pursue criminal investigations does not lead to the conclusion that an investigation was not required or that the obligation to provide redress was inapplicable.<sup>3</sup>

4. The State party also contends that, separate from any criminal investigations, it ensured an investigation by establishing the Inter-Departmental Committee in 2011 and commissioning a report from Justice John Quirke, which was published in May 2013, and that it has provided compensation through ex gratia schemes.

5. Although the aforementioned steps were unquestionably important, the Inter-Departmental Committee investigated only the issue of State involvement and had no mandate to conduct an assessment of responsibility or culpability.<sup>4</sup> The State party itself concedes that the Committee had no remit to investigate or make determinations about allegations of torture or any other criminal offence.<sup>5</sup> The ex gratia scheme established following the recommendations of Justice Quirke was specifically designed to be ex gratia and thus to avoid implications of legal responsibility or liability. In the end, neither the work of the Inter-Departmental Committee or of Justice Quirke entailed an investigation as to whether torture or ill-treatment had been perpetrated.

6. The decision of the Committee against Torture concedes that all payments were made without responsibility and admission of liability by the State party, without truth and without justice, and were insufficient to meet the comprehensive reparative concept (see para. 11.7) provided in general comment No. 3 (2012). The holistic concept of redress that the Committee has embraced includes verification of the facts and full and public disclosure of the truth, as well as acceptance of responsibility. The European Court of Human Rights, in its judgment of *El-Masri v. Former Yugoslav Republic of Macedonia* has stated that establishing the true facts and securing an acknowledgment of serious breaches constitute

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<sup>1</sup> Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), as revised, para. 190.

<sup>2</sup> General comment No. 3 (2012), para. 26.

<sup>3</sup> The same applies to civil cases that the State party's courts ruled could not proceed because it would be impossible to defend at this remove of time (see para. 7.9).

<sup>4</sup> Ireland, Department of Justice, *Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries* (2013), chap. 2, para. 26.

<sup>5</sup> CAT/C/IRL/CO2/Add.1, para. 14.

forms of redress that are just as important as compensation, and sometimes even more so.<sup>6</sup> This has not been done in this case.<sup>7</sup>

7. Most significantly, this case does not come to the Committee on a blank slate. In 2017, the Committee concluded that the State party had not undertaken an independent, thorough and effective investigation,<sup>8</sup> and explicitly reiterated these conclusions in a letter from its Rapporteur for follow-up to concluding observations.<sup>9</sup> The Committee itself is formally on record stating that the State party's investigations were insufficient to pass muster.

8. One may ask what the Committee thinks has changed between then and now. To be clear, there are unquestionably situations in which it is appropriate for the Committee to modify or reverse previous conclusions. However, it is incumbent upon the Committee in those cases to provide a clear explanation of its actions, as failure to do so risks undermining the respect for the Committee's work that is essential for it to be effective, in particular in the present case, where the alleged conduct was pervasive and occurred over a protracted period of time.

9. In the absence of such an explanation, I find myself unable to join in the Committee's decision.

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<sup>6</sup> Application No. 39630/09, Judgment, 13 December 2021, para. 6. The Committee against Torture itself has previously affirmed that the obligation to acknowledge applies even if the underlying violation occurred before the effective date of a State party's declaration under article 22.

<sup>7</sup> Although the State party has maintained that the acts complained of do not meet the threshold to be considered as either torture or other ill-treatment (see para. 7.11), the report of Justice Quirke noted that process suggested that a large number of young girls and women were degraded, humiliated, stigmatized and exploited (sometimes in a calculated manner) and that the women he interviewed were entirely credible (*The Magdalen Commission Report*, May 2013, paras. 3.03 and 4.09), thus supporting the conclusion that a full investigation was needed.

<sup>8</sup> CAT/IRL/CO/2, para. 25.

<sup>9</sup> See [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FFUL%2FIRL%2F34997&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FFUL%2FIRL%2F34997&Lang=en).