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Concluding Observations of the UN Committee against Torture, Recommendation to Ireland Regarding the Magdalene Laundries (2011)

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In June 2011, the United Nations Committee against Torture (CAT) examined Ireland's human rights record for the first time. The CAT's Concluding Observations addressed an issue which had long been ignored by the Irish government and had not yet been considered by any international human rights treaty body or national or international court: the (so-called 'historic') abuse of girls and women in Ireland's Catholic Church-run Magdalene Laundries.

The CAT noted that it was 'gravely concerned' by both 'the failure by the State party to protect girls and women who were involuntarily confined between 1922 and 1996 in the Magdalene Laundries' and the state's failure to investigate allegations of ill-treatment in the institutions. The CAT therefore recommended that the Irish government (a) 'institute prompt, independent and thorough investigations into all complaints of torture and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries'; (b) 'in appropriate cases, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offences committed'; and (c) 'ensure that all victims obtain redress and have an enforceable right to compensation, including the means for as full rehabilitation as possible'.¹ These recommendations were included in the CAT's urgent follow-up mechanism, requiring the government to respond within one year.

I. Context

While not uniquely Irish or Catholic in origin, 10 Catholic Church-run Magdalene Laundries remained in operation in Ireland from independence, in 1922, until the last institution closed in Dublin in 1996. The institutions were convents with commercial laundries attached, where thousands of women and girls as young as nine were detained and forced into unpaid labour for indeterminate periods of time. The girls and women confined in Magdalene Laundries included those taken into state care as children, those who had given birth outside of marriage (and had been forced to relinquish their infants on that basis) and those who had been sexually abused. Magdalene Laundries also confined girls and women in the criminal justice system, girls and women with disabilities, girls and women whose families or communities

¹ United Nations Committee against Torture, *Concluding Observations on the initial report of Ireland*, UN Doc CAT/C/IRL/CO/1 (17 June 2011), [21].

considered them to be a burden or ‘promiscuous’, and girls and women who were in need of shelter. Records indicate that state officials directly placed at least 26 per cent of girls and women in Magdalene Laundries, frequently in contravention of or in the absence of authorising legislation. Nuns, priests, doctors and family members were also among those who referred girls and women to the institutions.

Ireland’s Magdalene Laundries were understood by both the general public and the girls and women confined in them to be places of punishment and shame. A contribution by the Minister for Industry and Commerce in the Seanad in 1955 illustrates the official attitude towards Magdalene girls and women at that time: ‘the persons concerned here are not ordinary factory workers. They are miscreants of one kind or another. They are people who are in there, in these institutions, for the public good’.² In 1960, Senator Nora Connolly O’Brien criticised the Criminal Justice Bill, 1960, which provided for girls to be detained in a Magdalene Laundry on remand, on the basis that:

I do not think there is any member of this House who is ignorant of what the stigma would mean to a girl if she had mended her ways, if she had been corrected and was leading a normal and upright life, and had to spend the rest of her life in the fear and terror of being charged with having in her youth been an inmate of St. Mary Magdalen’s Asylum ... If I were asked to advise girl delinquents ... whether to go to prison on remand, or to go to St Mary Magdalen’s Asylum on remand, I would advise them wholeheartedly to choose prison, because I think having a record of having been in prison as a juvenile delinquent would not be so detrimental to the afterlife of the girl as to have it legally recorded that she was an inmate of St. Mary Magdalen’s Asylum.³

Survivor testimony reveals that, once inside the institutions, girls and women were frequently denied information about the reason for their detention or when they would be released (if at all). The girls and women were routinely stripped of their identities through the imposition of numbers, ‘house’ names, uniforms and/or haircuts and through constant surveillance, prohibitions on speaking, and denial of contact with the outside world. They were forced to work for no pay, six days per week from morning until evening, at heavy commercial laundry work, other manual labour and sometimes needlework and other crafts. Many survivors have recounted being subjected to repeated verbal denigration and to punishments for failure to work or for otherwise stepping out of line, including humiliation rituals and physical abuse. *An Garda Síochána* (the Irish police force) is known to have returned escapees to the Magdalene Laundries, and women have spoken of being punished for their escape attempts, including by transfer to a different Magdalene institution and solitary confinement.⁴

² Seanad Éireann Debate, Vol 44 No 15, 11 May 1955 (Factories Bill – Committee).

³ Seanad Éireann Debate, Vol 52 No 19, 13 July 1960 (Criminal Justice Bill, 1960 – Second Stage).

⁴ See Justice for Magdalenes Research, NGO Submission to the UN Committee Against Torture in respect of Ireland (for the session), July 2017, citing numerous sources of evidence, including the *Report of the Inter-departmental Committee to establish the facts of State involvement with the Magdalen laundries* (February 2013).

James Smith contends that the Magdalene Laundries formed part of Ireland's 'architecture of containment' – an architecture of physical, legal and other more abstract structures which the Irish Free State (1922–37) erected in cooperation with the powerful Catholic Church hierarchy in order to discipline and mould the image of the citizens of the newly independent nation.⁵ The new state's identity was bound up with the proclaimed moral virtue of its society and women in particular.⁶ The nation's 'architecture of containment', according to Smith, encompassed not only a network of institutions (including industrial and reformatory schools, Magdalene Laundries, mother and baby homes, County Homes and prisons), but also 'official and public discourses that concealed the existence and function of these facilities' and 'legislation that proscribed contraception, cultivated ignorance regarding human sexuality, and fostered intolerance for illegitimacy'.⁷ As Smith notes, 'the availability of this containment infrastructure empowered the decolonising nation-state to confine aberrant citizens, rendering invisible women and children who fell foul of society's moral prescriptions.'⁸

II. The Landmark

In 2003, three adoption rights activists (Mari Steed, Claire McGettrick and Angela Murphy), two of whom are the daughters of women detained in Magdalene Laundries for a combined total of approximately 60 years, established the *Justice for Magdalenes* (JFM) advocacy group. JFM's predecessor organisation, the *Magdalen Memorial Committee*, had successfully lobbied the Irish government for a memorial to the women whose bodies were exhumed in 1993 from a grave at the site of the High Park Magdalene Laundry in Dublin and cremated by the Sisters of Our Lady of Charity of the Refuge so that the nuns could sell their land.⁹ The driving force behind JFM's establishment was the revelation in 2003 by the late journalist, Mary Raftery, that the Sisters of Our Lady of Charity of Refuge had received exhumation licences from the Department of the Environment in 1993 for 155 women's bodies, without producing death certificates for 80 women or the full names of 46 women.¹⁰

JFM's aims were to

promote and represent the interests of the Magdalene women, to respectfully promote equality and seek justice for the women formerly incarcerated in Magdalene

⁵ James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment*, (University of Notre Dame Press, 2007) Introduction and Chapter 2.

⁶ See, for example, Lindsey Earner-Byrne, 'Illegitimate motherhood, 1922–60' in Earner-Byrne, *Mother and Child: Maternity and child welfare in Dublin, 1922-60* (Manchester University Press, 2007); Una Crowley and Rob Kitchin, 'Producing "decent girls": governmentality and the moral geographies of sexual conduct in Ireland (1922–1937)' (2008) 15(4) *Gender, Place and Culture* 355.

⁷ Smith, above n 5, 46.

⁸ *ibid.*

⁹ 'Magdalene women plaque unveiled', *The Irish Times*, 22 April 1996; Mary Raftery, 'Restoring dignity to Magdalenes', *The Irish Times*, 21 August 2003.

¹⁰ Raftery, *ibid.*

Laundries, and to seek the establishment and improvements of support as well as advisory and re-integration services for survivors.¹¹

Specifically, JFM sought an apology from the state to former Magdalene women and their family members and a comprehensive redress scheme.

In July 2009, upon the publication of the Ryan Report – the product of a nine-year investigation into the abuse of children in state-funded, Church-run residential schools, which was accompanied by a state apology to survivors of the schools and a redress scheme – JFM renewed its campaign for an apology and redress for former Magdalene women. The government’s response was to deny state liability for the institutions. The Minister for Education insisted that the Magdalene Laundries ‘were privately owned and operated institutions which did not come within the responsibility of the State.’¹² He stated that the institutions ‘were not subject to State regulation or supervision’ and that ‘[t]he State did not refer individuals to Magdalen Laundries nor was it complicit in referring individuals to them’.¹³

By this point, JFM had gathered archival evidence of significant state involvement with the Magdalene Laundries. Between 2009 and 2010, JFM continued its campaign for an apology and redress by meeting officials from numerous government departments, obtaining formal support from Labour Women and the National Women’s Council of Ireland for a redress scheme, and achieving the formation of a cross-party, ad hoc parliamentary committee dedicated to addressing the issue of redress for Magdalene survivors. Government TDs submitted an online petition to the Taoiseach and TDs from all parties submitted approximately 30 parliamentary questions to government Ministers. JFM also wrote to each of the relevant religious congregations several times to request a meeting, to no avail. The group did, however, meet with the Primate of All Ireland, Cardinal Sean Brady, and Archbishop of Dublin, Diarmuid Martin.

In 2010, JFM decided to take a human rights approach to its campaign for reparation. The group’s first step was to request that the Irish Human Rights Commission (IHRC) conduct an inquiry into ‘the State’s failure to protect the constitutional and human rights of women and young girls in the nation’s Magdalene Laundries’ and the state’s obligation to provide redress to survivors.¹⁴ The IHRC’s response was swift: in November 2010 it published a 27-page ‘Assessment of the Human Rights Issues Arising in relation to the “Magdalen Laundries”’ which concluded with a formal recommendation to government ‘that a statutory mechanism be established to investigate the matters advanced by JFM and in appropriate cases to grant redress where warranted.’¹⁵

¹¹ Justice for Magdalenes, ‘About Justice for Magdalenes’: www.magdalenelaundries.com/what.htm.

¹² Letter from Batt O’Keeffe, Minister for Education and Science to Tom Kitt, TD (4 September 2009), reproduced in JFM, *Information Booklet*: http://www.magdalenelaundries.com/jfm_booklet.pdf 6.

¹³ *ibid.*

¹⁴ See Justice for Magdalenes, Submission to the Irish Human Rights Commission (10 June 2010).

¹⁵ Irish Human Rights Commission, *Assessment of the Human Rights Issues Arising in relation to the ‘Magdalen Laundries’*, November 2010, 28–29.

In the absence of a response to the IHRC's Assessment, in April 2011 this author submitted an NGO report on behalf of JFM to the UN Committee against Torture (CAT) for its first periodic review of Ireland.¹⁶ Appended to this shadow report were the detailed, anonymised testimonies of four women incarcerated in different Magdalene Laundries between the late 1950s and late 1960s, and further shorter testimonies transcribed from radio and television programmes in which Magdalene survivors had recounted their experiences.

The governmental delegation which attended the CAT's examination of Ireland in Geneva in May 2011 held fast to the line that the state held no responsibility for abuse in Magdalene Laundries. The Secretary General of the Department of Justice argued that 'these alleged events happened in most cases a considerable time ago, in privately run institutions' and that 'the vast majority of women who went to these institutions went there voluntarily or, if they were children, with the consent of their parents or guardians'.¹⁷ In response, the acting Chairperson of the CAT, Felice Gaer, noted that Magdalene survivors 'are alive' and questioned the assertions that the Magdalene Laundries were 'private' and 'voluntary':

Do you have anything to suggest that the vast majority of women who went there were aware of the conditions ... if they made a choice, if they were given information?

We had testimony about locked doors and people being captured by police and returned ...

An act of torture may also arise from an act of omission and not just a positive act. So this appears to include failure to inspect or regulate the place where acts of torture occurred ... wouldn't this apply to the Magdalene Laundries?¹⁸

Following the session in Geneva, the CAT issued its formal Concluding Observations in which it recommended the immediate investigation of allegations of abuse in Magdalene Laundries, the prosecution and punishment of perpetrators, and the provision of full redress.

III. What Happened Next

The CAT's recommendations to Ireland regarding the Magdalene Laundries gained national and international press attention (including in the *New York Times*, *Time Magazine*, *The Guardian* and the BBC), and over the following days JFM organised

¹⁶ Justice for Magdalenes, Submission to the United Nations Committee against Torture (May 2011).

¹⁷ 'Sean Aylward from the Dept of Justice at UNCAT 1', 24 May 2011, <<https://www.youtube.com/watch?v=tSrDbeO5wYs>>; See also UN Committee against Torture, Summary record of the 1005th meeting held at the Palais Wilson, Geneva, on Tuesday, 24 May 2011, 3pm, UN Doc CAT/C/SR 1005, http://www.bayefsky.com/summary/ireland_cat_c_sr1005_2011.pdf.

¹⁸ Felice Gaer, 24 May 2011, <https://www.youtube.com/watch?v=YsUMPIFjUuk>; See also UN Committee against Torture, Summary record of the 1005th meeting, n 17 above .

an email campaign directed at Cabinet members, and numerous Senators and TDs called for parliamentary debates on the IHRC and CAT recommendations.¹⁹

Then, just over a week after the CAT issued its recommendations, on 14 June 2011, the Irish Minister for Justice announced that the government had ‘considered the circumstances of the women and girls who resided in the Magdalene Laundries’ and would establish an ‘Inter-departmental Committee [IDC] to clarify any State interaction with the Magdalene Laundries and to produce a narrative detailing such interaction’.²⁰

The IDC published its findings 18 months later, on 5 February 2013.²¹ The report demonstrated numerous forms of state involvement with the Magdalene Laundries, including placements of girls and women, the provision of financial support, and widespread commercial dealings with the institutions through contracts for laundry services. The report further revealed the state’s concomitant failure to regulate or monitor the institutions beyond treating them as factory premises (and even at that, its failure to properly supervise the institutions as factories) and its passing of legislation in 1936 to permit the non-payment of wages to the girls and women.

The Government had not given the IDC the mandate to make any legal findings or findings of wrongdoing in its report, nor had it given the IDC the mandate to investigate allegations of abuse. However, even without such findings the report’s release only added to the momentum of the public pressure campaign for reparation. While the IDC had been conducting its research, JFM had gathered almost 5,000 pages of archival and testamentary evidence concerning human rights abuses in Magdalene Laundries, which the group summarised in a public report.²² JFM and other NGOs had publicised the CAT’s one-year deadline for Ireland to respond to its recommendations, and Ireland had come before the UN Human Rights Council’s Universal Periodic Review process, where the Magdalene Laundries were again highlighted. In July 2012, Ireland’s Special Rapporteur on Child Protection called for ‘concrete provision’ for Magdalene survivors and investigations capable of leading to criminal prosecutions where appropriate, on the basis that ‘slavery’ and ‘forced labour’ appeared to have occurred in the institutions.²³ In addition, the state

¹⁹ Justice for Magdalenes, ‘Letter to Cabinet Ministers’, 13 June 2011: http://www.magdalenelaundries.com/dear_minister.htm.

²⁰ Department of Justice and Equality, Statement on the Magdalene Laundries, 14 June 2011.

²¹ Ireland, *Report of the Inter-departmental Committee to establish the facts of State involvement with the Magdalene Laundries* (February 2013).

²² Justice for Magdalenes, *State involvement in the Magdalene Laundries: Principal Submissions to the Inter-departmental Committee to establish the facts of State involvement with the Magdalene Laundries* (18 September 2012).

²³ Geoffrey Shannon, Fifth Report of the Special Rapporteur on Child Protection (2012), 81: <https://www.dcy.gov.ie/documents/publications/5RapporteurRepChildProtection.pdf>.

broadcaster, RTE, for the first time aired a television investigative news feature on the Magdalene Laundries (which featured Felice Gaer, Acting Chairperson of the CAT).²⁴

Finally, on 19 February 2013, the Taoiseach issued a state apology to all survivors of the Magdalene Laundries.²⁵ During his speech, the Taoiseach also promised the establishment of a fund to provide for ‘payments and other supports, including medical cards, psychological and counselling services and other welfare needs’.

IV. Significance

In the space available, it is possible only to highlight – rather than fully discuss – the significance of the CAT’s intervention in 2011. Four aspects, in particular, deserve brief mention.

First, the CAT’s engagement with the Magdalene Laundries issue gave the women’s complaints legal weight. Throughout the JFM campaign Magdalene survivors had alleged what, in principle, amounted to grave breaches of constitutional and human rights obligations (and, indeed, crimes and tortious causes of action). However, the passage of time and the civil Statute of Limitations in Ireland barred the women from pursuing these claims in court. The government used the absence of court judgments to support its claim that the state was not liable for any unlawful conduct – notwithstanding that Magdalene survivors were rendered unable to complain or seek justice, in large part, due to the state’s involvement in the women’s exploitation, its prolonged failure to investigate and its failure to afford any redress or rehabilitation. The CAT’s intervention shifted the balance of power, restoring importance to the women’s claims of rights violations and forcing the state to engage with questions of legality.

Second, the CAT’s involvement kept the issue of redress for Magdalene survivors high up on the domestic political agenda. In its debate with government officials and its extraction of policy responses from those officials, the CAT process provided material which elected representatives in Ireland, and JFM, could harness in continuing to demand reparation. The CAT process also garnered the attention of the national and international press, and consequently the attention of the general public.

Third, the CAT’s periodic review process and the periodic review processes of other UN human rights treaty bodies have provided mechanisms by which the state’s response to the Magdalene Laundries abuse can be kept under continual review. Although JFM retired its political campaign following the establishment of an ‘ex gratia’ scheme for Magdalene survivors in 2013, the subsequently formed *Justice for Magdalenes Research* organisation continues to make submissions to the CAT and

²⁴ *RTE Prime Time*, ‘The experiences of some of the Magdalene Laundry women’ (25 September 2012).

²⁵ Dáil Éireann, *Magdalen Laundries Report: Statements* (19 February 2013). See also <https://www.youtube.com/watch?v=hOQy17ZpoH8>.

other human rights treaty bodies regarding the ongoing need for a thorough, independent investigation into human rights violations in Magdalene Laundries and numerous other forms of redress, including access to records, access to court, and legal reforms to guarantee non-repetition.

Fourth, the CAT's recommendations regarding the Magdalene Laundries are significant on an international jurisprudential level. They contribute to the body of jurisprudence which recognises violence against women and the so-called 'private' realm in which it commonly occurs as engaging the rule against torture and ill-treatment and states' positive obligations under the norm. In addition, they are a significant addition to the CAT's fledgling jurisprudence recognising the rights to an investigation, access to justice and comprehensive redress regarding torture or ill-treatment which occurred prior to the state's ratification of the Convention Against Torture and which has produced 'continuing violations'.

Further reading

- Justice for Magdalenes Research: www.jfmresearch.com.
- Maeve O'Rourke and James M Smith (2016), 'Ireland's Magdalene Laundries: confronting a history not yet in the past' in Alan Hayes and Maire Meagher (eds), *A Century of Progress? Irish Women Reflect* (Arlen House, 2016).
- James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (University of Notre Dame Press, 2007).