

# **JUSTICE FOR MAGDALENES (JFM)**

## **IRELAND**

**Submission to the United Nations Universal Periodic Review**

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Justice for Magdalenes (JFM) is a non-profit, all-volunteer organisation which seeks to respectfully promote equality and advocate for justice and support for the women formerly incarcerated in Ireland's Magdalene Laundries. Many of JFM's members are women who were in Magdalene Laundries, and its core coordinating committee, which has been working on this issue in an advocacy capacity for over twelve years, includes several daughters of women who were in Magdalene Laundries, some of whom are also adoption rights activists. JFM also has a very active advisory committee, comprised of academics, legal scholars, politicians, and survivors of child abuse.

## 1 Executive Summary

- 1.1 Ireland's Magdalene Laundries were residential, commercial and for-profit laundries operated in Catholic convents by four orders of nuns: The Sisters of Mercy<sup>i</sup>, The Sisters of Our Lady of Charity,<sup>ii</sup> the Sisters of Charity,<sup>iii</sup> and the Good Shepherd Sisters.<sup>iv</sup> Between the foundation of the Irish Free State in 1922<sup>v</sup> and 1996, when the last institution closed, an as yet unknown number of Irish girls and women, estimated to be in the tens of thousands, were incarcerated in Magdalene Laundries and forced to carry out unpaid labour because they were perceived to be "promiscuous", were unmarried mothers, were the daughters of unmarried mothers, had grown up in the care of the Church and State, or were otherwise in vulnerable situations.
- 1.2 The effects of the Magdalene Laundries abuse on the women who are still alive today include severe psychological trauma, ill health, poverty, isolation and a deep sense of stigmatisation. The Magdalene Laundries were not included in the recent state inquiry into childhood institutional abuse in Ireland,<sup>vi</sup> and survivors have so far been denied all forms of restorative justice. Not only has the State failed to apologise or initiate any inquiry or compensation scheme, but the religious orders involved have also refused to apologise to or compensate the women, or to allow any access to their records. This has created identification difficulties for the women and their families, in particular the families of women who died behind convent walls. The children of former Magdalene women, especially adult adopted persons searching to reunite with their natural family and/or discover family medical histories, are especially impacted by the inaccessibility of records.
- 1.3 The Magdalene Laundries were and still are officially regarded by the State as "privately owned and operated establishments" which "did not come within the responsibility of the State."<sup>vii</sup> However, state archival records show that the courts referred a number of girls and women to these institutions on probation and as an alternative to a prison sentence, absent any statutory basis upon which to do so.<sup>viii</sup> The government also specified one Magdalene Laundry as a remand institution under the 1960 Criminal Justice Act, without any accompanying system of regulation or inspection.<sup>ix</sup> As detailed in Section 3 below, the State appears to have been further involved in the Magdalene Laundries' system of incarceration and forced unpaid labour through the involvement of the Irish police force in the placement of girls and women in the laundries and in the return of those who managed to escape, the tendering of state laundry contracts to these institutions, and the referral of women from state-funded mother and baby homes to Magdalene Laundries. In addition, several contemporaneous government departmental reports indicate a clear awareness of the confinement of children and unmarried mothers in the laundries.<sup>x</sup>
- 1.4 JFM asserts that the Irish State is responsible for grave and systematic human rights violations regarding Ireland's Magdalene Laundries. As we outline in Section 3, the State's judicial and commercial dealings with the laundries and its knowledge of the incarceration of children in these institutions, along with its total failure to regulate or inspect the laundries, violated the State's obligations under domestic and international law to respect the women's and girls' human rights and to prevent and suppress their abuse by non-state actors.
- 1.5 In November 2010, as a result of an inquiry application submitted by JFM,<sup>xi</sup> the Irish Human Rights Commission (IHRC) assessed the human rights issues arising in relation to the treatment of girls and women in Ireland's Magdalene Laundries. **The IHRC Assessment concluded with an official Recommendation to the Irish government to**

**immediately establish a statutory inquiry into human rights abuses in the Magdalene Laundries and ensure redress for survivors as appropriate.<sup>xii</sup>**

1.6 On 11<sup>th</sup> November 2010, the Irish government referred the IHRC Assessment and Recommendation to the Attorney General for “review and evaluation”. No further action has been taken to date.

**RECOMMENDATION:** JFM recommends that the Irish government (i) apologises on behalf of the Irish State for the abuse perpetrated towards girls and women in Ireland’s Magdalene Laundries, (ii) establishes a distinct redress scheme for Magdalene survivors and (iii) immediately adopts the IHRC recommendation to institute a statutory inquiry and compensation scheme.

## **2 Ireland’s relevant human rights obligations**

2.1 Of most relevance to this submission given the timeframe of the Magdalene Laundries abuse (1922 – 1996) are Ireland’s obligations under its own Constitution, the Universal Declaration of Human Rights (UDHR) and the European Convention on Human Rights (ECHR). As the last Magdalene Laundry only closed its doors in 1996, we also refer to Ireland’s obligations under the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

2.2 The Irish Constitution came into force on 29<sup>th</sup> December 1937. Ireland became a member of the United Nations on 14<sup>th</sup> December 1955. Ireland ratified the ECHR on 25<sup>th</sup> February 1953. Ireland ratified CEDAW on 23<sup>rd</sup> December 1985, ICCPR on 8<sup>th</sup> December 1989, and ICESCR on 8<sup>th</sup> December 1989.

## **3 Ireland’s human rights violations regarding the Magdalene Laundries, 1922 – 1996**

3.1 The survivor testimony available to JFM (see Appendix II) along with evidence contained in Report of the Commission to Inquire Into Child Abuse,<sup>xiii</sup> survivor accounts in the media, and state archival material (presented by JFM to the Irish Human Rights Commission and referenced in the IHRC assessment) points to a system of widespread, state-sanctioned unlawful imprisonment and forced labour of girls and women in the Magdalene Laundries on the basis of their sex and perceptions about their private lives, which resulted in the denial of a host of additional basic human rights.

3.2 The following paragraphs elaborate JFM’s claims that through (a) the State’s direct placement of girls and women in the Magdalene Laundries and (b) its failure to protect the girls and women from conditions and treatment of which it was aware or ought to have been aware because of its judicial and commercial dealings with the Magdalene Laundries, the Irish State violated numerous human rights of the girls and women in the laundries:

### **3.2.1 The right to liberty and freedom from arbitrary arrest or detention (Art. 40.4 Irish Constitution; Art. 3, 9 UDHR; Art. 9 ICCPR; Art. 5 ECHR)**

Magdalene survivors make very clear that they never felt free to leave the Magdalene Laundries, and there is evidence that the Irish police force was involved in returning girls and women who did manage to escape.<sup>xiv</sup> The women describe an overwhelming sense of despair that “once you were in the Magdalene, you knew you were never

getting out.” Many survivors recall how the doors out of the laundry were always locked and how the girls and women were under the nuns’ constant surveillance day and night. This testimony is echoed in the Report of the Commission to Inquire Into Child Abuse at Volume III, Chapter 18, Para 57. It would seem that the only way of leaving a Magdalene Laundry was to be signed out by a relative deemed by the nuns to be an appropriate guardian, or for the nuns to arrange for a girl or woman to take up a position of employment, often for little or no wages, at another church-run institution such as a nursing home or hospital.

In its official assessment, the Irish Human Rights Commission (IHRC) concludes that “There is no clear information on whether or how girls or women left the Laundries or if they had a choice in doing so.”

While priests, nuns and family members (often under duress from official authorities or the clergy) were involved in the placement of many girls and women in the Magdalene Laundries, the IHRC Assessment notes that there are also records of laundry referrals by state officials, including members of the police, welfare officers and social workers. In addition, the IHRC notes that probation officers accompanied women to the laundries. The IHRC further notes that at least up until the 1950s, women were referred from state-regulated, church-run Mother and Baby Homes to the Magdalene Laundries after being separated from their children.

There was never any statutory basis for the incarceration of girls and women in the Magdalene Laundries, save for one provision under the Criminal Justice Act 1960 for the use of a particular Magdalene Laundry in Dublin as a remand institution. As mentioned above, in November 2009, the Irish Minister for Education and Science stated that the Magdalene Laundries were never subject to state regulation or supervision and that the laundries were privately owned and operated and did not come within the responsibility of the State.

The IHRC Assessment notes that between 1922 and 1964, the Central Criminal Court gave at least 54 women a suspended sentence on condition that they reside in a Magdalene Laundry. Court records indicate that the woman’s release date was sometimes left to the discretion of the Superioress of the laundry. Women and girls were also referred to Magdalene Laundries as a condition of a probation order imposed by the Courts. According to the IHRC Assessment, “records of how the probation of these women and girls was monitored, if at all, do not appear to be publicly available.”

The IHRC Assessment states: “Little appears to be known about the fate of probationers. For women and girls who were accompanied to Magdalen Laundries by Probation Officers on foot of a Probation Order, their entry into the laundries was clearly instigated by the State and should have been monitored by the State. If those women were obliged to remain in the said laundries beyond the period specified by the original Court Order, then the lawfulness of this form of detention is highly questionable under Art. 5(1) ECHR as it does not appear to readily conform to any of the six conditions under which a State may legitimately curtail a person’s liberty. Again, persons unlawfully detained in breach of Art. 5 are entitled to compensation.”

JFM also draws attention to Art. 9(5) ICCPR which provides that “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

The State's involvement in the incarceration of Magdalene women and its abdication of its monitoring obligations stands in flagrant contravention of the UN General Assembly's *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988)<sup>xv</sup>, which includes that any form of detention must be carried out in strict accordance with the law, that a challenge to the lawfulness of the detention must always be available, that accurate records must be kept, that there must be independent oversight of all places of detention, and that all persons under any form of detention must be treated in a humane manner and with respect for the inherent dignity of the human person.

### **3.2.2 The right to be free from slavery, servitude and forced or compulsory labour (Art. 4 UDHR, Art. 8 ICCPR, Art. 4 ECHR)**

Magdalene survivors unanimously state that they were forced to work in the laundry or in the work room sewing or embroidering from morning until night, six days a week, and that they were never paid for their work. This precluded any opportunity to contribute to a state pension – something that is felt acutely by the women today. According to survivors, refusal to work was not an option: “you didn't dare”. A rule of silence was imposed in the laundries and some survivors recall harsh physical punishment for infractions of this rule or any other.

According to the IHRC Assessment: “Taking into account the fact that the women and girls in the laundries were in a vulnerable and isolated situation, being dependent on the religious authorities in the laundries for their welfare, subsistence and liberty, and given that it appears that the women and girls in the Magdalen Laundries were obliged to work for long hours in the laundries through the use of coercion (through fear of a penalty if they refused), it is likely that there may have been a violation of Art. 4 of the ECHR.”

The IHRC Assessment notes that state prison laundry may have been washed in a Magdalene Laundry and that Army laundry was certainly washed in “institutional laundries”, according to parliamentary records. The IHRC concludes that “The State may have breached its obligations on forced or compulsory labour under the 1930 Forced Labour Convention from March 1931 and under the ECHR from 1953 in a) not suppressing/outlawing the practice in laundries particularly regarding women and girls in fear of penalty if they refused to work and b) in engaging in commercial trade with the convents for goods produced as a result of such forced labour.”

### **3.2.3 The right to be free from torture and cruel, inhuman or degrading treatment or punishment (Art. 5 UDHR, Art. 7 ICCPR, Art. 3 ECHR)**

The IHRC Assessment concludes that on the basis of the information provided to it, the treatment of the girls and women “would if proven undoubtedly come within the prohibition of inhuman and degrading treatment and punishment under Art. 3 of the European Convention on Human Rights (ECHR)”.

In addition to the cruel, inhuman and degrading nature of unlawful incarceration and forced labour, further physical and emotional maltreatment recounted by survivors includes deprivation of identity as the women and girls were given “house” names, forced to work and eat in silence and barred from keeping close friendships; beatings, verbal abuse and cutting of hair for infractions of rules; lack of adequate nourishment, warmth or hygiene; medical neglect and conditions of work which resulted in later disability, premature death and lifelong gynecological problems; denial of family

visitations and interference with private correspondence; denial of educational opportunity; and denial of rest or leisure opportunity.

The IHRC notes that Art. 3 ECHR not alone prohibits serious ill-treatment by agents of the State, but also requires the State to put in place mechanisms to protect against abuse. It states that “Regardless of whether the State was aware of the conditions in Magdalen Laundries... it ought to have known of the conditions in those laundries. Had the State put in place an oversight or monitoring mechanism in respect of residential institutions such as Magdalen Laundries, as it was arguably obliged to do, this could have fostered a better appreciation of the conditions and possibly have acted as a means of protecting the human rights of persons in Magdalen Laundries.”

#### 3.2.4 Other rights

The unlawful incarceration and forced labour and/or servitude of girls and women in Ireland’s Magdalene Laundries, in which the State directly participated and failed to prevent, further violated the **right to education** (Art. 42 Irish Constitution, Art. 26 UDHR, Art. 13 ICESCR) of the girls who were incarcerated there (the available evidence suggests the incarceration of girls as young as 11). The abuse also violated the **right to respect for one’s private life** (Art. 12 UDHR, Art. 17 ICCPR, Art. 8 ECHR), given that incarceration was based on the nuns’, the State’s and society’s perceptions and misconceptions about the private actions of the girls and women. In addition, once inside the Magdalene Laundry, the girls and women were denied any privacy, including in their correspondence.

The Rule of Silence and the constant prayer which was imposed upon the girls and women violated their **right to freedom of opinion and expression** (Art. 19 UDHR, Art. 19 ICCPR, Art. 10 ECHR) and their **right to freedom of thought, conscience and religion** (Art. 18 UDHR, Art. 18 ICCPR, Art. 9 ECHR). Further rights which were violated include the **rights to just, favourable and safe conditions of work, equal pay for equal work and rest, leisure and reasonable limitation of working hours** (Art. 23, 24 UDHR; Art. 6, 7 ICESCR; Art. 11 CEDAW), the **right to a standard of living adequate for one’s health and well-being** (Art. 25 UDHR; Art. 11, 12 ICESCR), and the **right to take part in the government of one’s country or in the conduct of public affairs** (Art. 21 UDHR, Art. 25 ICCPR, Art. 7, 8 CEDAW).

Overall, the abuse suffered by the Magdalene women amounted to a grave and systematic violation of their **right to equality, non-discrimination and equality before the law** (Art. 40 Irish Constitution; Art. 2, 7 UDHR; Art. 2, 3, 26 ICCPR; Art. 2, 3 ICESCR; Art. 2, 3, 15 CEDAW; Art. 14 ECHR) because but for the fact that they were women and girls, they would not have been imprisoned.

#### 3.2.5 Continuing violations: **Right to an effective remedy (Art. 8 UDHR, Art. 9(5) ICCPR, Art. 13 ECHR); Right to equality and non-discrimination (as above)**

The women who were in Magdalene Laundries have the right to an effective remedy for the abuse they suffered as a result of the Irish State’s gross violations of its human rights obligations towards them. The exclusion of the Magdalene Laundries from the recent state apology and redress scheme for institutional abuse in Ireland discriminates against this class of survivors of institutional abuse, who suffered on the basis of their sex. That the Magdalene Laundries were not state-funded (unlike the institutions covered by the recent redress scheme) does not absolve the State of its responsibility to remedy its past human rights violations with respect to the laundries, as it did not preclude state responsibility to prevent the abuse in the first place.

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## Appendix I: Endnotes

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<sup>i</sup> The Sisters of Mercy operated Magdalene Laundries in Galway and Dun Laoghaire.

<sup>ii</sup> The Sisters of Our Lady of Charity operated Magdalene Laundries in Drumcondra and Sean MacDermott Street, Dublin.

<sup>iii</sup> The Sisters of Charity operated Magdalene Laundries in Donnybrook and Cork.

<sup>iv</sup> The Good Shepherd Sisters operated Magdalene Laundries in Limerick, Cork, Waterford and New Ross.

<sup>v</sup> Magdalene Laundries existed in 19<sup>th</sup> century Ireland and originate from 1768.

<sup>vi</sup> See Residential Institutions Redress Act, 2002, *available at* <http://www.irishstatutebook.ie/2002/en/act/pub/0013/print.html>.

<sup>vii</sup> Letter from Batt O'Keeffe, TD, Minister for Education & Science to Tom Kitt, TD, (Sept. 4, 2009) (available upon request).

<sup>viii</sup> The Central Criminal Court Trial Record Books of 1926 to 1964 document fifty-four cases where women found guilty of infanticide, manslaughter (of an infant) or concealment of a birth agreed to enter a Magdalene laundry for periods between six months and five years, in return for a suspended prison sentence. See JAMES M. SMITH, IRELAND'S MAGDALEN LAUNDRIES AND THE NATION'S ARCHITECTURE OF CONTAINMENT (2007). According to James Smith, a 1926 committal order shows that the state's probation officer discharged the woman at the relevant institution and that the court stipulated that the state meet the expense incurred in travel to and from the institution. Smith further states that, "[t]he case files reveal that the religious congregations actively sought these committals: the mother superior wrote directly to the court or to the relevant county registrar communicating the institution's willingness to accept the woman in question."

<sup>ix</sup> DAIL EIREANN PARLIAMENTARY DEBATES, Written Answer from Dermot Ahern, TD, Minister for Justice, Equality & Law Reform to Ruairi Quinn, TD (Jan. 19, 2010): "Following the enactment of the Criminal Justice Act, 1960, the then Minister for Justice approved both St. Mary's Magdalen Asylum, Sean McDermott Street, Dublin 1 and Our Lady's Home, Henrietta Street, Dublin 1 (not a Magdalen Asylum) for use as a remand institution for female persons aged from 16 to 21 years. Prior to 1960 the only option to the courts was to remand such persons to Mountjoy female prison. Payments were made by the Department of Justice for those remanded by the Courts to the two institutions in question." "It appears that these orders/arrangements were made by the courts without reference to any Department of State. The requirements of a probation order, including its duration, would be made known by the court to the offender. The records of such orders are court records. The Minister for Justice, Equality and Law Reform does not have any legal authority to instruct a religious organisation to provide full access to their records," *available at* <http://www.kildarestreet.com/wrans/?id=2010-01-19.2114.0>.

<sup>x</sup> The 1970 Reformatory and Industrial Schools Systems Report acknowledges that in some cases where reformatory schools refused to take girls "known to be practicing prostitution or who, on conviction for an offence [were] found to be pregnant," the girls were "placed on probation with a requirement that they reside for a time in one of several convents which accept them; in other cases they [were] placed on remand from the courts." The Report continues: "A number of others considered by parents, relatives, social workers, Welfare Officers, Clergy or Gardai to be in moral danger or uncontrollable are also accepted in these convents for a period on a voluntary basis. From enquiries made, the Committee is satisfied that there are at least 70 girls

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between the ages of 13 and 19 years confined in this way who should properly be dealt with under the Reformatory Schools' system.”

Also evident from official documents is the State's awareness of the placement of unmarried mothers of more than one child in the laundries. The Report of the Commission on the Relief of the Sick and Destitute Poor, Including the Insane Poor, published in 1928, recommended the establishment of state-funded residential institutions dedicated exclusively to first-time unmarried mothers, or “first-offenders”. “Mother and baby homes” were duly founded, and regulated and funded by the state. In 1933, the Department of Local Government and Public Health Annual Report stated that, “[w]ith regard to the more intractable problem presented by unmarried mothers of more than one child, the Sisters-in-Charge of the Magdalene Asylums in Dublin and elsewhere throughout the country are willing to co-operate with the local authorities by admitting them into their institutions. Many of these women appear to be feeble-minded and need supervision and guardianship. The Magdalene Asylum offers the only special provision at present for this class.”

<sup>xi</sup> Available from JFM upon request.

<sup>xii</sup> IRISH HUMAN RIGHTS COMMISSION, Assessment of the Human Rights Issues Arising in relation to the treatment of women and girls in Magdalen Laundries, November 2010, *available at* [http://www.ihrc.ie/download/pdf/ihrc\\_assessment\\_of\\_the\\_human\\_rights\\_issues\\_arising\\_in\\_relation\\_to\\_the\\_magdalen\\_laundries\\_nov\\_2010.pdf](http://www.ihrc.ie/download/pdf/ihrc_assessment_of_the_human_rights_issues_arising_in_relation_to_the_magdalen_laundries_nov_2010.pdf).

The IHRC Recommendation reads as follows:

That in light of its foregoing assessment of the human rights arising in this Enquiry request and in the absence of the Residential Institutions Redress Scheme including within its terms of reference the treatment of persons in laundries including Magdalen Laundries, other than those children transferred there from other institutions; that a statutory mechanism be established to investigate the matters advanced by JFM and in appropriate cases to grant redress where warranted.

Such a mechanism should first examine the extent of the State's involvement in and responsibility for:

- The girls and women entering the laundries
- The conditions in the laundries
- The manner in which girls and women left the laundries and
- End-of life issues for those who remained.

In the event of State involvement/responsibility being established, that the statutory mechanism then advance to conducting a larger-scale review of what occurred, the reasons for the occurrence, the human rights implications and the redress which should be considered, in full consultation with ex-residents and supporters' groups.

<sup>xiii</sup> See Volume III, Chapter 18 of the Report of the Commission to Inquire into Child Abuse (2009) *available at* <http://www.childabusecommission.ie/rpt/03-18.php>

<sup>xiv</sup> See statements in Appendix II; *see also* the Reformatory and Industrial Schools Systems Report, 1970: “A number of [girls] considered by parents, relatives, social workers, Welfare Officers, Clergy or Gardai to be in moral danger or uncontrollable are . . . accepted in these convents for a period on a voluntary basis.”<sup>xiv</sup>

<sup>xv</sup> U.N. General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* [Principles for the Protection of Persons under Detention], adopted by General Assembly resolution 43/173, 9 December 1988.

## **Appendix II: Selected witness statements**