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Rapporteur  
Office of the United Nations High Commissioner for Human Rights  
Committee Against Torture (CAT) Secretariat

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Dear Ms. Gaer,

I refer to your correspondence of 22nd May, 2013 in which you sought clarification and further information in relation to Ireland's response of 31<sup>st</sup> July, 2012 to the recommendations of the Committee against Torture contained in its concluding observations (paragraphs 8, 20, 21 and 25).

Please find below Ireland's comprehensive response to the issues raised.

**National Human Rights Institutions (paragraph 8)**

With regard to the resources of the new Irish Human Rights and Equality Commission (IHREC), the Minister for Justice and Equality is on record as referring to what happened in the past as involving 'disproportionate cuts'. The Commission will be invited to undertake a review of its staffing needs and the Minister has said that he recognises that this will have financial implications. Ireland is undergoing, a severe financial crisis, but he has said that he will take this very seriously and do everything he can to deal with these legacy problems. The Minister is conscious of what happened in the past. In the current financial crisis he has very limited room for remedial action, but he has publicly committed himself to allowing any administrative savings achieved as a result of the merger (rough estimate of some €500,000) to be retained by the Commission for its core work and not surrendered to the Exchequer.

It should be noted that all budget allocations are subject to the approval of the Oireachtas.

Ireland is committed to doing all that is appropriate to retain the 'A' status held by the current Human Rights Commission. The proposed functions for IHREC and the process of selection of members set out in the General Scheme of the Bill are much stronger and more independent of Government than in the current Act and in anything we have been able to find in other founding Acts that relate to National Human Rights Institutions (NHRI's). If the Committee has any information about other NHRIs to the contrary, we would be glad to receive and consider it.

There is no departmental or ministerial involvement whatsoever in the making of day-to-day spending decisions or policy by either of the existing bodies and there will be none in the making of policy or expenditure decisions by the new IHREC. It will continue to have complete financial autonomy. However, as a public body it is subject to the normal rules that apply across the public sector generally in relation to control of staff numbers and in relation to estimates and audit processes. The Department is looking at ways in which the autonomy of the body can be made

more explicit – we have provided for a direct reporting relationship to the Oireachtas for example.

Appointing members designate of IHREC as members of the Human Rights Commission and of the board of the Equality Authority on an interim basis pending enactment of the necessary legislation to effect the merger allows them to commence the process of the merger by managing the two existing bodies in an integrated way and by undertaking the necessary administrative steps – including the staffing review – even in advance of IHREC's formal establishment. During the period of these interim arrangements the members have the same degree of independence as will be the case when they formally become members of IHREC.

#### **Follow up to the Ryan Report (paragraph 20)**

As indicated in the 2012 update on this recommendation, the Government accepted all the recommendations of the Ryan Report and published its Implementation Plan in July 2009. This Plan set out 99 actions to address each of the 20 recommendations in the Ryan Report, and includes proposals considered essential to further improve services to children in care, in detention and at risk.

Implementation of the Plan is being overseen by a high level group comprising relevant stakeholders and chaired by the Minister for Children and Youth Affairs. In May 2011, the Minister for Children and Youth Affairs, Frances Fitzgerald T.D., invited the Children's Rights Alliance to join the Group to include the voices of children and civic society. The process of implementation is being supported by the provision of additional funding of €24m from the Exchequer.

The Third Progress Report on the Commission to Inquire into Child Abuse (CICA) Implementation Plan, which details progress and timeframes, was laid before the Houses of the Oireachtas by the Minister for Children and Youth Affairs in November 2012. This Third Progress Report, which comprehensively details the progress on all 99 actions and the associated timelines for implementation, can be accessed at the following web address: <http://www.dcyu.gov.ie/documents/publications/RyanThirdProgressReport.pdf>

Preparation work is underway in respect of the Fourth and Final Progress Report on the Ryan Implementation Plan which is due to be submitted during 2013. This Report will seek to provide final positions in relation to each of the actions contained in the plan.

In addition, the Government is taking a number of other measures to strengthen the existing governance arrangements through:

- The establishment in early 2011 of a dedicated Department and Minister for Children and Youth Affairs;
- The transfer of responsibility for the delivery of child and family support services from the Health Service Executive (HSE) to a new dedicated statutory agency, the Child and Family Agency, the legislation for which is currently being prepared;
- The publication in July 2011 of *Children First: National Guidance for the Protection and Welfare of Children*;
- The commitment to, and on-going progress towards, putting elements of Children First on a statutory footing;
- The enactment of the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act, which came into force in August, 2012; and
- The enactment, in December, 2012 of the National Vetting Bureau (Children and Vulnerable Persons) Act, 2012.

A range of actions are being progressed in the current year across the various agencies charged with delivery of the Implementation Plan. The current phase of implementation includes a particular focus on the fundamental reorganisation of the HSE child and family services into the new Child and Family Agency. In addition, the Minister for Children and Youth Affairs will be giving particular priority to progressing a series of actions relating to the Children First National Guidance, including the preparation of legislation to underpin the operation of the Guidance, and progressing the National Implementation Framework for Children First across all Departments, Agencies and sectors that have contact with children and young people.

The following set of key actions will be progressed in 2013:

- Preparation of supporting legislation following 2011 publication of Children First Guidance;
- Roll out of Children First implementation framework through Government Departments;
- Commencement of legislation placing on a statutory footing the requirement for persons working with children to be vetted;
- Continuing improvement and rationalisation of child welfare and protection services in the context of the new Child and Family Agency;
- Strengthening of family support services within the new Child and Family Support Agency;
- Building of necessary cross sectoral and cross agency links between Child and Family Support Agency and other relevant stakeholders;
- The establishment of a new service delivery model in the CFA to ensure that each concern raised with the service gets a response which is efficient, effective and proportionate;
- Establishment by the HSE of a multidisciplinary team for children in special care and detention, in conjunction with the Irish Youth Justice Service;
- Enhanced services for young people leaving care in line with statutory requirements;
- Inspections by the Health Information and Quality Authority (HIQA) against National Standards for the Protection and Welfare of Children for HSE Child and Family Services.

➤ *Independent Investigations*

As the Committee has noted, the provisions governing the Ryan Commission's work precluded the disclosure of the names of persons identified as perpetrators, hence this information was not available to An Garda Síochána for the purposes of initiating criminal investigations. It is also important to note, in comparing the number of prosecutions with the number of awards made under the Redress Scheme, that the standard of proof to sustain a criminal prosecution or conviction is higher than would have applied for the purposes of granting redress.

A dedicated helpline was established by An Garda Síochána for persons who wished to provide information relating to criminal behaviour connected with what the Ryan Report revealed. As of 31 May, 2013, 181 calls have been received. All of these calls have been assessed and fully investigated by the Garda authorities.

An Garda Síochána carried out investigations and submitted fifteen investigation files to the Director of Public Prosecutions (DPP). Directions have been received in respect of these fifteen files.

The DPP directed no prosecution in the case of fourteen of these cases. The DPP directed a prosecution in one case with the individual concerned sentenced to two years imprisonment,

with the last 18 months suspended on fourteen counts of indecent assault. One additional investigation is nearing completion and will be the subject of submissions to the DPP.

It is also of relevance to note that An Garda Síochána has, over many years, carried out a sizeable number of investigations into allegations of abuse associated with institutions dealt with in the Ryan Report, which have resulted in prosecutions and convictions over and above those noted in this response, but which for the reasons set out above cannot be correlated to the cases identified in the Ryan Report itself.

➤ *Residential Institutions Redress Board*

As set out in the 2012 update on this recommendation, the independent Residential Institutions Redress Board was established in December 2002 pursuant to the Residential Institutions Redress Act, 2002 to provide fair and reasonable financial awards to victims of institutional childhood abuse.

To qualify for an award, an applicant must prove his/her identity and establish to the Board's satisfaction that he/she was resident in a specified institution while under 18 and that he/she was injured while so resident and the injury is consistent with any abuse that is alleged to have occurred while so resident.

By the end of April 2013, the Redress Board had received a total of 16,362 applications and had finalised 15,606 cases. Of these, 14,579 have resulted in awards, with the remaining 1027 cases either being refused, withdrawn or resulting in no award. Applicants to the Redress Board are entitled to independent legal advice and the overwhelming majority of applicants availed of such advice.

Awards are made in accordance with the framework proposed by the independent Compensation Advisory Committee which advised on the appropriate levels of compensation for injuries related to childhood abuse and was published in January 2002. The average value of awards made to end April 2013 is €62,822. The overall expenditure on the scheme is expected to be some €1.2bn.

The original closing date for receipt of applications was 15<sup>th</sup> December, 2005, i.e. 3 years following the establishment of the Board. However, section 8 of the Act allows the Redress Board to extend the period for receipt of an application in exceptional circumstances and requires it to extend the period when it is satisfied that an applicant was under a legal disability. The Residential Institutions (Amendment) Act, 2011 removed the Board's power to consider applications made on or after 17th September, 2011. A total of 2,766 late submissions were received by this time. Of these 1,922 have been allowed, 290 have been disallowed, 192 have been withdrawn, files closed or deemed invalid and the Board has a further 362 to adjudicate on.

➤ *Support and rehabilitation for former residents*

A range of other measures have been put in place to support victims of institutional abuse, including:

- The provision of counselling services through the National Counselling Service. Established in 2000, this is a professional, confidential counselling and psychotherapy service available free of charge in all HSE areas. The service is available to all adults who have experienced trauma and abuse in childhood, with priority given to adult survivors of past institutional abuse in Ireland;
- The establishment of the *Origins* family tracing service, which is a dedicated and customised service for former residents wishing to trace family members with whom they have lost contact. This service is operated by Barnardos and by end April 2013 a total of 1,263 tracing cases had been completed; and
- The establishment of the Education Finance Board with a Fund of €12.7m to provide grants to former residents and their families to avail of educational services (this body

has expended almost all of the funds allocated to it and has now been dissolved – see below).

➤ *Residential Institutions Statutory Fund*

In 2012 the Government enacted the Residential Institutions Statutory Fund Act 2012. The bulk of the Act has been commenced and the Board of the Fund was established in March 2013. The purpose of the Fund is to support the needs of survivors of residential institutional abuse. The Fund will be financed from the €110m contributions offered by the congregations that ran many of the institutions. It will fund the provision of counselling, health, education, housing and other services for victims of abuse in residential institutions. On the establishment of the Statutory Fund the Education Finance Board was dissolved – the new Fund will provide support for education.

Eligibility to benefit from the Statutory Fund will be open to those former residents who received awards from the Residential Institutions Redress Board or equivalent court awards. The Board of the Statutory Fund has commenced work on the arrangements to be put in place for the operation of the Fund. Further publicity will be undertaken as the work progresses and a website with detailed information on the Fund's services will be developed. This information will advise potential applicants on how to apply for assistance from the Fund.

**Magdalen Laundries (paragraph 21)**

The major development since the recommendation of the UN Committee on Torture in June 2011 has been the completion and publication of the Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries - the McAleese Report. It was published on 5<sup>th</sup> February, 2013 and is available on [www.justice.ie](http://www.justice.ie).

The contents of that report have been fully accepted by the Irish Government as a comprehensive and objective report of the factual position prepared under the supervision of an independent chair person. On 19<sup>th</sup> February, 2013 the Taoiseach (Prime Minister) made an apology in the Irish Parliament (Dáil). The relevant extract from his address is attached at Appendix A.

The McAleese Committee was tasked with establishing the facts concerning the Magdalen laundries. This preliminary task was considered necessary because at the time the issue arose very little was known about their operations. The institutions in question were closed institutions with little contact with the outside world. It had been part of the ethos of these institutions to maintain strict privacy about the lives of those who entered these institutions. Their foundation predated the foundation of the State in 1922 and they ceased operations between 48 to 15 years prior to the matter coming before the Government.

The McAleese Report brought into the public arena a considerable amount of information not previously known. It also showed that many of preconceptions about these institutions were not supported by the facts. Some of the previous assumptions disproved by factual investigation and analysis were, for example:

- that there was no legal basis for referrals of girls and women to the Magdalen Laundries;
- that the Magdalen Laundries were not inspected by the State;
- that girls and women entering the Laundries commonly remained there for lengthy periods and often for life; or
- that the Magdalen Laundries were highly profitable.

In fact and directly contrary to these perceptions:

- the historical legal bases for State referrals were identified - The McAleese Report, (Chapters 9, 10 and 11);
- it was established that the Laundries were inspected in the same way and to the same extent as commercially-operated Laundries - The McAleese Report (Chapter 12);



- although duration of stay varied from one day to many decades in individual cases, the median duration of stay was 27.6 weeks. 61% of known entrants spent less than 1 year in the Laundries - The McAleese Report (Chapter 8);
- the Laundries operated on a subsistence or close to break-even basis, rather than on a commercial or highly profitable basis - The McAleese Report (Chapter 20).

In addition to thorough searches and investigations of all surviving records and interviews of relevant surviving officials, the Committee facilitated input to the process by all persons and organisations wishing to do so, including the Irish Human Rights Commission, the Irish Society for Prevention of Cruelty to Children, academics, historians, private individuals (including medical professionals) with experience of the Laundries, and so on.

The Committee had no remit to investigate or make determinations about allegations of torture or any other criminal offence. However, it did take the opportunity to record evidence and testimony that might throw light on allegations of systematic abuse. In this context 118 women who had been in these institutions agreed to complete a questionnaire on conditions (food, punishment etc.) in these institutions and/or to meet with and discuss these issues with the independent Chair.

No factual evidence to support allegations of systematic torture or ill treatment of a criminal nature in these institutions was found. There was one allegation of sexual abuse committed by one of the women resident there against another. A small number of women did describe instances of physical punishment during their time in the institutions. However, the large majority of women said they had neither experienced nor seen other girls or women suffer physical abuse in the Magdalen Laundries. The majority of women who engaged with the Committee had been at Reformatory or Industrial Schools prior to their admission to a Magdalen Laundry. They stated clearly that the widespread brutality which they had witnessed and been subjected to in Industrial and Reformatory Schools was not a feature of the Magdalen Laundries.

The majority of the women did report verbal abuse but not of a nature that would constitute a criminal offence. There is no doubt that the working conditions were harsh and the work physically demanding. The laundries were subject to State inspection, in the same way and in the same extent as commercial, non religious operated laundries. The religious congregations who ran these institutions were enclosed orders and the women in these institutions were subject to the same restrictions on contact with the outside world as applied to members of the religious community.

The Committee interviewed a number of medical doctors who had attended the women in Magdalen laundries and who had in some cases reviewed earlier records. They did not recall any indication of evidence of physical maltreatment.

The facts uncovered by the Committee did not support the allegations that women were systematically detained unlawfully in these institutions or kept for long periods against their will. Chapter 8 of the report contains statistics on the duration of stay. They indicated that the duration of stays varied considerably from a matter of weeks to more than a decade with the median stay being 27.6 weeks. There were a number of multiple entries with people leaving and returning and the age of the oldest entrant was 89 years of age.

There was a particular cohort of women who alleged they were detained against their will. These women had been in Industrial schools. As set out in Chapter 10 of the Report, the Children Act 1908 provided for a period of post release supervision and during that period (up to the age of 21) a person could be recalled. It was established that a number girls or young women who had been committed to Industrial schools were recalled during their period of supervision in accordance with the provisions of the Act (para.233) and placed in a Magdalen institution although the children concerned may not have been aware of the legal basis for their recall and detention. The Report states (para. 229) that

*"Despite the long-standing nature of this provision and the clear and consistent implementation instructions from the Department of Education, it appears to the Committee that as far as the public of today is concerned the supervision of children for a number of years after their discharge from Industrial or Reformatory Schools is long forgotten practice."*

It is true to state that the Justice For Magdalenes (JFM) did present a great volume of material purporting to point to the existence of possible criminal wrongdoings, including systematic physical and psychological abuse. However, many of the general allegations relied on reports unsupported by any direct knowledge and were not supported by the facts uncovered by the McAleese Committee. As regards "survivor testimony", we understand that JFM had to rely on a relatively small number of accounts. The testimony of 10 women was provided to the McAleese Committee. Seven of these were identified - three were anonymous. This contrasts with the much larger sample of the testimony of 118 women available for the McAleese Report. Of these 10 accounts provided by JFM, none described systematic physical abuse or torture, although four referred to isolated incidents of physical punishments. The remainder made no reference to physical abuse.

None of the testimony has been "tested" in civil, criminal or other proceedings. In the JFM submission to UNCAT dated May, 2011 there is reference in Appendix II to "Selected witness testimony" included in the 2009 Report of the Commission to Inquire into Child Abuse. These testimonies are from women who had transferred to residential laundries from industrial or reformatory schools. The reference by JFM to testimonies given to the Commission by these women could be interpreted as meaning that there is evidence regarding the Magdalen laundries that has been subject to cross examination and whose credibility has been tested and given appropriate weight by a tribunal. That is not the case.

While it is not impossible that some of the residential laundries referred to were Magdalen laundries, there were many residential laundries that were not Magdalen laundries and it could not be assumed that the witness testimony does refer in fact to Magdalen laundries.

No individuals claiming to be victims of criminal abuse in Magdalen laundries have made any complaints or requests to the Department of Justice and Equality seeking further inquiries or criminal investigations. The group (Irish Women Survivors Support Network) representing the largest number of women who were in Magdalen laundries have stated that

*"We hope that time is not wasted calling for more statutory enquiries or demanding yet more investigations and more bureaucratic statutory processes. In their advanced years, the women have repeatedly told us they have no wish for conflict or confrontation."*

While isolated incidents of criminal behaviour cannot be ruled out, in the light of facts uncovered by the McAleese Committee and in absence of any credible evidence of systematic torture or criminal abuse being committed in the Magdalen laundries, the Irish Government does not propose to set up a specific Magdalen inquiry body. It is satisfied that the existing mechanisms for the investigation and, where appropriate, prosecution of criminal offences can address individual complaints of criminal behaviour if any such complaints are made. If the Committee or any party has knowledge of a person with direct knowledge of an alleged criminal offence and forwards it to us, we shall request the appropriate authorities to carry out a criminal investigation into such allegations.

The report of Mr Justice Quirke addresses the provision of payments and benefits to the women who were in the Magdalen Laundries. The Government has decided to implement his recommendations in full. Details of implementing measures are available on [www.justice.ie](http://www.justice.ie).

➤ *The Role of Mr. Justice Quirke*

There appears to be a slight misunderstanding of the role of Mr. Justice Quirke. He was not asked to carry out an investigation into the Magdalen laundries so the question of independent statutory

powers does not arise. He was asked to make recommendations on a suitable scheme for the benefit of the women who worked in the Magdalen laundries. His full terms of reference are set out on page 1 of his report. A copy of his report is attached at Appendix B together with the statement issued by Ministers Shatter and Lynch when the Government accepted the recommendations contained in the report.

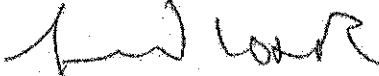
**Prohibition of female genital mutilation (FGM) (paragraph 25)**

The HSE has included FGM in its *National Operational Plan 2013; Implementing the National Service Plan 2013*. Under the terms set out in the National Operational Plan, the HSE has committed to develop an Action Plan in respect of progressing health related elements of FGM. The Plan will have specific reference to awareness-raising among communities, staff information and support, together with data collection.

In addition, the HSE is planning to reprint and circulate an updated FGM resource pack for health professionals to relevant staff in maternity and associated settings. The HSE has also introduced a National Maternity Healthcare Record. This new form will be used for all women booking for maternity care, and includes FGM as a risk factor for obstetric care for the first time at a national level. Its introduction will enable the development of relevant Key Performance Indicators over the next few years.

I trust this clarifies the situation. However, if you should require any further information we will be pleased to provide additional material and/or clarification as you deem necessary.

Yours sincerely,



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