

Justice for Magdalenes

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JUSTICE FOR MAGDALENES (JFM)

**Submission to the Department of Foreign Affairs and Trade
on Ireland's Fourth Periodic Report under the
International Covenant on Civil and Political Rights (ICCPR)**

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Overview

Justice for Magdalenes (JFM) is gravely concerned at the State's ongoing failure to provide reparation to survivors of the Magdalene Laundries and to establish an independent and thorough investigation into this abuse. These failures amount to continuing violations of the ICCPR in respect of all women who were incarcerated and forced into unpaid labour in Magdalene Laundries, including those who were subjected to such abuse before Ireland's ratification of the Covenant in 1989.

JFM notes with concern that Ireland's draft Fourth Periodic Report makes no reference to the State's commitments to make reparation for and ensure an independent and thorough investigation into the Magdalene Laundries abuse. JFM recommends that the final Fourth Periodic Report include the information requested below.

Recommendations

1. Bearing in mind the previous recommendation by the Committee against Torture in 2011 to "ensure that all victims [of Magdalene Laundries abuse] obtain redress",ⁱ and considering the exceptional urgency created by survivors' elderly age, JFM requests that the government provide detailed information to the Human Rights Committee on the reparations measures it intends to provide to Magdalene Laundry survivors, the timeframe in which it will provide such reparations, and the intended beneficiaries of such reparations.
2. Considering the recommendations of the Committee against Torture in 2011 and Irish Human Rights Commission in 2010ⁱⁱ to establish an independent and thorough investigation into the Magdalene Laundries abuse, JFM requests that the government inform the Human Rights Committee of when precisely the aforementioned independent investigation will commence its work.
3. JFM requests that the government provide full information to the Human Rights Committee on when it plans to offer an apology and thereby enable restorative justice for survivors of the Magdalene institutions.

Continuing violations

Human Rights Committee jurisprudence makes clear that a "continuing violation" of the Covenant occurs where there are continuing effects of a pre-ratification violation which themselves constitute violations of the Covenant.ⁱⁱⁱ At present, the State is violating Magdalene survivors' article 2 right to an effective remedy for, and prompt and impartial investigations into, their maltreatment,^{iv} as well as their right under article 9(5) to compensation for their unlawful detention.

The Human Rights Committee's General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant^v states that "[a] failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy."^{vi}

General Comment No. 31 continues:

Article 2, paragraph 3, requires that States Parties make reparation to individuals

whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.^{vii}

Furthermore, General Comment No. 31 states that “the right to an effective remedy may in certain circumstances require States Parties to provide for and implement provisional or interim measures to avoid continuing violations and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations.”^{viii}

Further on the subject of continuing violations of the Covenant, the Human Rights Committee has stated that “a continuing violation is to be interpreted as an affirmation ... by act or by clear implication, of the previous violations of the State party.”^{ix} The government’s ongoing failure to provide pensions which take account of a woman’s labour in the Magdalene Laundries, along with the overall lack of reparation and independent and thorough investigation, is a serious example of the State’s affirmation of its previous violations of the Covenant.

The abuse of girls and women in Magdalene Laundries violated ICCPR **article 2** (effective measures to guarantee Covenant rights, non-discrimination, and the right to an effective remedy), **article 3** (women’s equality in the enjoyment of Covenant rights), **article 7** (freedom from torture or cruel, inhuman or degrading treatment or punishment), **article 8** (freedom from slavery, servitude and forced or compulsory labour), **article 9** (right to liberty and freedom from arbitrary detention), **article 10** (right to be treated with humanity and respect for inherent dignity while deprived of liberty), **article 17** (freedom from interference with privacy, family, home and correspondence), **article 18** (freedom of thought, conscience and religion), **article 24** (children’s right to protection), **article 25** (right to take part in conduct of public affairs), and **article 26** (equality before the law and equal protection of the law).

State involvement and acquiescence in the Magdalene Laundries abuse

Magdalene survivors have provided the government with evidence of their maltreatment, as outlined above, through testimony to the UN Committee against Torture,^x UN Working Group on the Universal Periodic Review,^{xi} and Irish Commission to Inquire into Child Abuse,^{xii} and on film, television and radio.^{xiii}

The government already has knowledge of widespread state involvement in the laundries’ regime of involuntary confinement and forced unpaid labour,^{xiv} notwithstanding its creation of an Inter-Departmental Committee to establish the facts of state involvement with Magdalene Laundries.

On 17 December 2009, while in opposition, the Minister for Justice stated:

Does the Taoiseach intend to introduce legislation in the new year to amend the redress board legislation to extend it to those who suffered barbaric cruelty in the

Magdalen laundries? The Department of Justice, Equality and Law Reform now has irrefutable evidence that this State and the courts colluded in sending young women to what were then known as the Magdalen asylums. They ended up in the Magdalen laundries and were treated appallingly. Some of them have never recovered from the manner in which they were treated and their lives have been permanently blighted. Initially in this House the Minister for Education and Science denied that the State had any involvement in this. There is now absolutely irrefutable evidence as a consequence of court records and files that have been examined in the Department of Justice, Equality and Law Reform that the State was directly complicit in many women being placed in these totally inappropriate circumstances.^{xv}

JFM has provided the government, the Inter-Departmental Committee and the Committee against Torture with over 500 pages of evidence of state referrals to the laundries, Garda returns, state support of the laundries' commercial operations, and knowing and discriminatory failures by the State to oversee the treatment of girls and women in the laundries or to implement protective domestic legislation, such as the Factories Act and associated regulations. On 24 May 2012, JFM will supplement this evidence with approximately 700 pages of material which demonstrates further the State's responsibility for the abuse of girls and women in Magdalene Laundries, resulting in grave violation and continuing violation of the State's Covenant obligations.

ⁱ <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.IRL.CO.1.pdf>

ⁱⁱ Irish Human Rights Commission, "Assessment of the human rights issues arising in relation to the treatment of women and girls in Magdalen laundries", *available at* <http://www.ihrc.ie/publications/list/ihrc-assessment-of-magdalen-laundries-nov-2010/>

ⁱⁱⁱ *Mónaco de Gallicchio, on her behalf and on behalf of her granddaughter Ximena Vicario v. Argentina*, Communication No. 400/1990, U.N. Doc. CCPR/C/53/D/400/1990 (1995). Para 10.4, *available at* <http://www1.umn.edu/humanrts/undocs/html/vws400.htm>

"The Committee could, however, make a finding of a violation of the Covenant if the continuing effects of those violations were found themselves to constitute violations of the Covenant."

^{iv} See Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), para 14:

"Article 7 should be read in conjunction with article 2, paragraph 3, of the Covenant. In their reports, States parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by article 7 as well as appropriate redress. The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective. The reports of States parties should provide specific information on the remedies available to victims of maltreatment and the procedure that complainants must follow, and statistics on the number of complaints and how they have been dealt with."

See further Human Rights Committee, General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Adopted on 29 March 2004 (2187th meeting) [http://www.ccprcentre.org/doc/ICCPR/General%20Comments/CCPR.C.21.Rev1.Add13_\(GC31\)_En.pdf](http://www.ccprcentre.org/doc/ICCPR/General%20Comments/CCPR.C.21.Rev1.Add13_(GC31)_En.pdf)

^v Human Rights Committee, General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Adopted on 29 March 2004 (2187th meeting) [http://www.ccprcentre.org/doc/ICCPR/General%20Comments/CCPR.C.21.Rev1.Add13_\(GC31\)_En.pdf](http://www.ccprcentre.org/doc/ICCPR/General%20Comments/CCPR.C.21.Rev1.Add13_(GC31)_En.pdf)

^{vi} General Comment No. 31, *ibid*, at para. 15

^{vii} General Comment No. 31, *ibid*, at para. 16

^{viii} General Comment No. 31, *ibid*, at para. 19

^{ix} *Simunek, Hastings, Tuzilova and Prochazka v. the Czech Republic*, Communication no. 516/1992, para. 4.5, available at <http://www1.umn.edu/humanrts/undocs/html/dec516.htm>

“A continuing violation is to be interpreted as an affirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of the previous violations of the State party.”

^x Justice for Magdalenes, Submission to the United Nations Committee against Torture, 46th Session, May 2011, available at http://www2.ohchr.org/english/bodies/cat/docs/ngos/JusticeMagdalenes_Ireland46.pdf

^{xi} Justice for Magdalenes, Submission to the United Nations Working Group on the Universal Periodic Review, 6 October 2011, available at <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/IE/JFM-JusticeforMagdalenes-eng.pdf>

^{xii} Report of Commission to Inquire into Child Abuse, Vol III, Ch 18, available at <http://www.childabusecommission.com/rpt/03-18.php>

^{xiii} RTE, Liveline, 28 and 29 September 2009

^{xiv} Justice for Magdalenes presented a Narrative of State Interaction to the Minister for Justice and publicly in July 2011. Available from JFM on request.

^{xv} Mr. Alan Shatter, T.D., Order of Business, 17 December 2009, available at <http://www.kildarestreet.com/debate/?id=2009-12-17.230.0> and <http://www.youtube.com/watch?v=Avj4cJpDY08>