THE UNITED NATIONS COMMITTEE AGAINST TORTURE
IN THE MATTER OF A COMPLAINT PURSUANT TO ARTICLE 22 OF THE UNITED NATIONS CONVENTION AGAINST TORTURE

Communication No. 879/2018

Between:

ELIZABETH COPPIN

COMPLAINANT

-and-

IRELAND

STATE PARTY

OBSERVATIONS ON BEHALF OF IRELAND IN RESPONSE TO THE SUBMISSION MADE BY ELIZABETH COPPIN ON 4 FEBRUARY 2021

EXECUTIVE SUMMARY OF THE OBSERVATIONS ON BEHALF OF IRELAND IN RESPONSE TO THE SUBMISSION OF ELIZABETH COPPIN ON 4 FEBRUARY 2021

1. The State Party encloses this Executive Summary of its Observations on the Submission of Elizabeth Coppin ('*the Complainant*') of 4 February 2021 in respect of the Complaint made by her pursuant to Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('*the Convention*'). These observations are made supplemental to the submission made by the State Party on 31 July 2020.

2. The State Party recalls that the scope of the Complaint has been addressed in the Committee's decision on admissibility of 4 December 2019 and notes, in particular, the description of the Complaint at §6.4 and §6.5 of that decision. The State Party notes the jurisdiction vested in the Committee by §117(5) of the Rules of Procedure and suggests it is open to the Committee to revoke its decision on admissibility having regard to the totality of information before it.

3. The State Party repeats that there has been no violation of any obligation arising from the Convention arising from the Complaint made by the Complainant. The complaints made by the Complainant have been fully investigated by appropriate agencies. Further, without prejudice to the argument that there has been no violation of the Convention, the Complainant has already been granted significant redress in respect of the treatment to which she was subject while resident in different institutions, in a manner which meets any obligations which arise from Article 14 of the Convention. The State Party repeats that there is no continuing violation of the State Party's obligations under the Convention.

4. The State Party repeats that the acts complained of all occurred prior to the adoption or entry into force of the Convention generally and the coming into force of it for the State Party. While the State Party accepts that the Committee has determined the Complaint to be admissible, it remains a relevant factor that the acts complained of occurred prior to the adoption or entry into force of the Convention generally and the coming into force of it for the State Party. Furthermore, the State Party repeats that those acts do not meet the threshold to be considered to fall within the definition of torture, cruel, inhuman or

degrading treatment or punishment and are not the type envisaged by General Comment No. 2.

5. The State Party submits that the acts complained of by the Complainant, either individually or collectively, do not meet the threshold to be defined as torture or cruel or inhuman or degrading treatment or punishment. In that context, the State Party notes that the complaint is not one which is supported by contemporaneous medical evidence. The Complainant has not provided any explanation for the absence of such evidence or her medical records from the relevant period.

6. The State Party has accepted that the working regime within Magdalen Laundries was harsh and physically demanding and has issued apologies for the hurt experienced by the women who were resident in Magdalen Laundries, and for any stigma they suffered, as a result of the time they spent in a Magdalen Laundry. It remains the State Party's position that the minimum level of severity has not been met and the acts complained of are not the type envisaged in General Comment No. 2. The State Party submits that the argument made by the Complainant is not supported by the authorities cited by her.

7. In respect of the placement of the Complainant in Pembroke Alms (Nazareth House) Industrial School for Girls in Tralee, County Kerry and her subsequent transfer to a Magdalen Laundry, the State Party recalls that the role of the State with regard to Magdalen Laundries is explained in the report of the inter-departmental committee. The State Party acknowledges the difficult circumstances of Mrs. Coppin's early life and notes that it can also be recalled that the Complainant was originally placed in Nazareth House because of abuse at the hands of her step-father. Her placement in this institution was with the express consent of her mother, who also gave the Religious Order permission to place her in employment.

8. The State Party submits that the Complainant has incorrectly interpreted the relevant provisions of the Children Act, 1908, the purpose and history of which are addressed in Chapter 2 of the Final Report of the Commission to Inquire into Child Abuse and Chapter 5 of the report of the inter-departmental committee. The Commission to Inquire into Child Abuse noted that the Children Act 1908 gave the judicial system the jurisdiction to intervene in the affairs of a family *'in the interest of the child, usually of the poorer*

class, to protect their physical or moral wellbeing'. The State Party has explained the operation of section 67 and section 68 of the Children Act, 1908, which permitted managers of Industrial Schools to allow, by licence, the child to *'live with any trustworthy and respectable person named in the licence willing to receive and take charge of him'*. Managers of Industrial Schools were also entitled to revoke a licence and require a child to return to the Industrial School, with a child being liable to be subject to punishment if they ran away from the person with whom s/he was placed on licence. Section 68 of the Children Act, 1908 provided that a child remained under the supervision of the Manager of an Industrial School until he or she reached at least 18 years of age after their departure from an Industrial School, subject to one exception which does not arise in this instance. Having regard to the contents of the Children Act, 1908 the State Party submits that there was no failure by the State to act in accordance with the relevant statutory regime.

9. The State Party notes that the Complainant now accepts that the complaint made by her to An Garda Síochána was investigated and that she was notified of the outcome of that investigation. The Complainant also does not deny that she had further engagement with An Garda Síochána in 2012. The Complainant has provided no explanation as to why the Complaint made to this Committee was presented on the basis that there had been *'no investigation'* of the complaint. The Complainant has, further, provided no explanation as to why she did not inform the Committee of the different interactions she has had with An Garda Síochána since her original complaint was made.

10. The State Party repeats that any obligations arising from Article 12 and Article 13 have been met and there has been a prompt, impartial and effective investigation of the complaint made by the Complainant. The State Party recalls that the obligation arising from Article 12 and Article 13 is one of means and not result. In this instance the complaint made by the Complainant was investigated and there was a subsequent decision not to pursue criminal prosecutions, both of which were undertaken by bodies with appropriate impartiality and independence, acting in accordance with the powers granted to them by domestic law. The investigation of the complaint and the decision in respect of whether to pursue prosecutions were completed in accordance with the requirements of national and international law with regards to the guarantee of the right of a fair trial. In this context, it was a highly relevant factor that all the alleged perpetrators were no longer alive at the time of the investigation.

11. Similarly, the criticisms made by the Complainant of how the civil proceedings brought by her against the Sisters of Mercy, the Sisters of Charity, the Sisters of the Good Shepherd and Sr. Enda O'Sullivan were dealt with by the Irish High Court are misplaced. Those proceedings were dismissed on the basis of an inordinate and inexcusable delay. It is not permissible for the Complainant to seek to use this complaint to impugn the decision of the High Court. The State Party notes that the Committee has previously stated that it is not an appellate, quasi-judicial or administrative body.

12. The State Party repeats that without prejudice to the position that there has been no violation of the Convention, the Complainant has been provided with redress (in so far as it can be said that any obligation to provide redress arises). The State Party notes that the Complainant has had access to appropriate complaint mechanisms, investigation bodies and institutions in a manner consistent with General Comment No. 3. In addition, the Complainant has been provided with redress which is adequate, effective and comprehensive. The State Party draws attention to the recent decision of the European Court of Human Rights *L.F v. Ireland* (Application no. 62007/17) in respect of the obligation to provide redress under the European Convention on Human Rights.

13. In this context, it is noted that the complaint made by the Complainant was fully investigated and that investigation was supplemented by the investigations completed by bodies such as the inter-departmental committee. The Complainant has also been provided with significant financial redress (which included payments of €195,800 and a payment equivalent to the State Contributory Pension, which is in the amount of €12,912 per annum, as a weekly income) and other supports, including the provision of healthcare services. In addition the State has issued apologies to women who were resident in Magdalen Laundries for hurt done to them and any stigma suffered by reason of their residence in those institutions and has made a commitment to memorialisation. The redress provided is adequate, effective and comprehensive.

14. The State Party repeats that there has been no violation of Article 16 of the Convention and it is the position of the State Party that there is no continuing violation of any of the State Party's obligations under the Convention. It has been demonstrated that there has

been a full investigation of the complaint made by the Complainant and, in so far as it may be required, redress has been provided to her.

15. The State Party submits that in circumstances where there has been no violation of the Convention, the question of the provision of a remedy does not arise. Without prejudice to the foregoing, the State Party submits 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.

16. The complaint made does not disclose any violation of the obligations placed on the State Party by Articles 12, 13, 14 or 16 of the Convention. Having regard to all the information which is before it, the Committee should determine that there has been no violation of the Convention for any of the reasons identified in the Complaint.

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OBSERVATIONS ON BEHALF OF IRELAND IN RESPONSE TO THE SUBMISSION MADE BY ELIZABETH COPPIN ON 4 FEBRUARY 2021

I. Introduction

1. Ireland (*'the State Party'*) makes this submission to the United Nations Committee Against Torture (*'the Committee*) in reply to the submission made by Mrs. Elizabeth Coppin (*'the Complainant'*) dated 4 February 2021 in respect of the Complaint made by her pursuant to Article 22 of the United Nations Convention Against Torture (*'the Convention'*). This submission is made supplemental to the submission made by the State Party on 31 July 2020, which fully addresses the Complaint lodged by the Complainant. The submissions should be read in conjunction with each other.

2. The State Party recalls that the scope of the Complaint has been addressed in the Committee's decision on admissibility of 4 December 2019. In particular, the State Party notes that at §6.5 of that decision it is recorded that the Complaint relates to an allegation 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 ensure that her complaints are examined by the competent authorities; and to provide redress'*. It is also noted that the Committee recalled the Complainant's allegation that the alleged continuing violation has been affirmed by the State Party as it has *'repeatedly declined to open an investigation into these complainants allegations'*.

3. In its original submission, the State Party outlined the basis upon which it argues that there has been no violation of the Convention by reason of the matters contained in the Complaint. The State Party repeats the position outlined in its original submission, as reflected in the Executive Summary and throughout the submission, that the complaints made by the Complainant have been fully investigated by appropriate agencies. Further, without prejudice to the argument that there has been no violation of the Convention, the Complainant has already been granted significant redress in respect of the treatment to which she was subject while resident in different institutions, in a manner which meets any obligations which arise from Article 14 of the Convention. The State Party repeats

that there is no continuing violation of the State Party's obligations under the Convention.

4. The State Party notes that §117(5) of the Rules of Procedure permit the Committee to revoke a decision on admissibility in light of the statements and explanations provided by the State Party. The State Party submits that it is open to the Committee to revoke its decision on admissibility having regard to the totality of the information and responses provided by the State Party.

5. The State Party has already addressed all of the substantive complaints made by the Complainant in its original submission. It does not propose to repeat all the arguments which are already contained in the original submission. Instead, the State Party will seek to focus on the core issues raised in the Complainant's Reply. In that regard, the State Party notes that the Reply substantially repeats the substance of the Complaint which has already been made. The exception to this is the manner in which the investigation by An Garda Síochána[1] has been addressed. This will be considered further below.

6. The State Party draws to the Committee's attention that the Reply places much emphasis on issues which go beyond the Complainant's personal experience (which are the basis of the Complaint). This concern relates, in particular, to some of the proposed remedies suggested by the Complainant which, as will be demonstrated below, relate to issues not directly relevant to the Complainant's situation. In that context, the State Party directs the Committee to Section II of its original submission, which addresses Article 22 of the Convention.

7. For these reasons, the State Party respectfully submits that the Committee should determine that there has been no violation of the Convention for any of the reasons identified in the Complaint. Where there has been no violation of the Convention, the Committee does not need to consider the appropriateness of any of the remedies sought by the Complainant. In ease of the Committee, and for completeness, the State Party has addressed the appropriateness of the remedies proposed by the Complainant. As will be demonstrated below, certain of the proposed remedies have already been provided by

[1] The police service of the State Party

the State Party while the remainder relate to matters which do not arise from the Complaint and which are not relevant to the personal experience of the Complainant.

II. Torture, Cruel, Inhuman or Degrading Treatment or Punishment

8. The question of whether the allegations made by the Complainant meet the threshold of Torture, Cruel, Inhuman or Degrading Treatment of Punishment is addressed at Section IX of the State Party's Submission. The State Party does not intend to repeat that submission and refers the Committee to the totality of that section.

9. The State Party repeats that the acts complained of all occurred prior to the adoption or entry into force of the Convention generally and the coming into force of it for the State Party. While the State Party accepts that the Committee has determined the Complaint to be admissible, it remains a relevant factor that the acts complained of occurred prior to the adoption or entry into force of the Convention generally and the coming into force of it for the State Party[2]. Furthermore, the State Party repeats that those acts do not meet the threshold to be considered to fall within the definition of torture, cruel, inhuman or degrading treatment or punishment and are not the type envisaged by General Comment No. 2.

10. The principles by which this issue are to be addressed are well established and the State Party refers the Committee to Section IX of its original submission, in which relevant case law and prior decisions of the Committee are discussed. In this instance, the dispute between the parties relates to whether that threshold is met. As noted in the State Party's original submission, the report of the inter-departmental committee acknowledged that the regimes operated in Magdalen Laundries were harsh and caused significant hurt to the women resident in those institutions. Regret has been expressed by the State Party for the hurt experienced by the women who were resident in Magdalen Laundries. However, the State Party maintains that the Complainant has not shown that the required minimum level of severity has been met in her case.

[2] By analogy, see *O.R, M.M and M.S v Argentina* CAT/C/WG/3/DR1, 2 and 3/1988, Tab 51

11. The acts in respect of which complaint is made are outlined in the Complaint, with emphasis being placed on particular acts at §2.10 of the Reply. The State Party submits that either individually or collectively, these do not meet the threshold to be defined as torture or cruel or inhuman or degrading treatment or punishment, for the reasons which have already been explained. The State Party draws attention to the evidence given by the Complainant to the Residential Institutions Redress Board[3] and the inter-departmental committee. As noted at §101 of the State Party's original submission, the Complainant has previously drawn a distinction between the treatment suffered by her in the Pembroke Alms (Nazareth House) Industrial School and that which occurred in the Magdalen Laundries. The Complainant made it clear before the Residential Institutions Redress Board that she did not suffer the abuse in Magdalen Laundries that she was subjected to while in Nazareth House. Similarly, the Complainant's evidence to the inter-departmental committee was that she did not see any abuse while resident in Magdalen Laundries. The State Party again recalls that the living and working conditions in Magdalen Laundries are addressed in Chapter 19 of the report of the inter-departmental committee and notes that the evidence contained in that Chapter does not support the Complaint made.

12. In that regard, the State Party again notes that the Complaint is one which is not supported by contemporaneous medical evidence, something which is addressed further below. There is no contemporaneous evidence before the Committee which demonstrates that the Complainant was subjected to the acts complained of. Nor is there any medical evidence to suggest that she suffered injuries while resident in a Magdalen Laundry.

13. The State Party has accepted that the working regime within Magdalen Laundries was harsh and physically demanding and has issued apologies for the hurt experienced by the women who were resident in Magdalen Laundries, and for any stigma they suffered, as a result of the time they spent in a Magdalen Laundry. It remains the State Party's position that the minimum level of severity has not been met and the acts complained of are not the type envisaged in General Comment No. 2. Nor can an appropriate comparison be

[3] Transcript of proceedings before the Residential Institutions Redress Board, 24 February 2005, Tab 36 Complainant's submissions

drawn with acts which have previously been considered to meet the relevant threshold[4]. Contrary to what is suggested by the Complainant at §2.12 of her Reply, the State Party's original submission fully explained the basis upon which it is argued that the type of treatment complained of in this instance does not fall within the definition of torture or cruel or inhuman or degrading treatment or punishment. The State Party directs the Committee to Section IX of its original submissions, where General Comment No. 2, previous decisions of the Committee and other relevant decisions of Courts/monitoring mechanisms are addressed.

14. The Complainant now makes a general assertion that *'detention in conditions which deprive a person of the ability to meet their basic needs or which otherwise interfere with human dignity is a paradigmatic 'type' of treatment capable of violating the anti-torture norm'*. However, the cases cited by the Complainant in support of that proposition do not support the contention that the acts complained of by the Complainant meet the threshold to be defined as torture or cruel or inhuman or degrading treatment or punishment. Each of the cases relied on by the Complainant are addressed briefly below.

15. In *Price v. United Kingdom*[5], the severity of the circumstances in that case - the detention of a four limb deficient thalidomide victim in prison conditions which were dangerously cold, where she had difficulty accessing a bed and was at risk of developing sores because it was too hard and in which she had difficulty accessing toilet and washing facilities – led the European Court of Human Rights ('*ECtHR*') to find a breach of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('*ECHR*') ECHR. In *Fedotov v. Russia* the ECtHR found a violation of Article 3 in circumstances where the applicant was held in detention for a period of 22 hours without food or drink or access to toilet facilities and during which the applicant was physically and verbally assaulted. It can be noted that the Court also held that there was no violation of Article 3 in respect of a period of detention during which no allegation of a violation of his *'physical or mental integrity'* was made, notwithstanding the fact that it was accepted that the detention would have caused him considerable stress and strain. In *Slyusarev v. Russia*[6], the detention of the applicant for a period of four months without

[4] See, for example, *Sergei Kirsanov v. Russian Federation*, No. 478/2011, CAT/C/52/D/478/2001, 14 May 2014, paragraph 11.2, Tab 41 of the State Party's original submission
[5] *Price v. United Kingdom* (Application Number: 33394/96), Tab 170 Complainant's Submission
[6] *Slyusarev v. Russia* (Application No. 60333/00), Tab 172 Complainant's Submission

glasses which resulted in him being unable to read or write and caused him distress was held to violate Article 3. The decision in *Zephiniah Hamilton*[7] related to the conditions of detention in which a person suffering from significant disabilities was kept. The applicant, who was paralysed from the waist down, was kept in a cell from which he could not move without assistance from other inmates and from which he was unable to remove his own slop bucket resulting in him having to pay other inmates to remove it. Finally, in *Peers v. Greece*[8], the ECtHR found a violation of Article 3 in respect of prison conditions in which the applicant was kept, for a two month period, confined to a bed for each 24 hour period in a cell with limited ventilation and no window where he had no private access to toilet facilities.

16. It is the State Party's position that these cases are not comparable with the Complaint now being considered by the Committee. There are significant differences between the severe acts which gave rise to findings of torture, or cruel or inhuman or degrading treatment or punishment in these cases as compared to the acts complained of by the Complainant.

17. The State Party notes that, at §2.15 of the Complainant's reply, it is now alleged that the "*the forced labour to which she was subjected constitutes physical violence*", with reference being made to the definition of violence in the Istanbul Convention. The State Party recalls that it was acknowledged in the report of the inter-departmental committee that those who were living in Magdalen Laundries lived in a harsh and difficult regime, in which they were required to engage in physically demanding work. The State Party repeats, however, that the acts complained of do not meet the threshold to be considered to fall within the definition of torture, cruel, inhuman or degrading treatment or punishment. The State Party submits that the Complainant's references to the Istanbul Convention do not alter that position. Furthermore, it would appear that such references are an attempt to extend the definition of torture or cruel or inhuman or degrading treatment or punishment and such a proposition is not supported by any authority of this Committee.

18. In the cases cited by the Complainant, emphasis has been placed on the availability of supporting medical evidence. As previously noted by the State Party, the Complainant

[7] *Zephiniah Hamilton* (CCPR/C/66/D/616/1995), Tab 173 Complainant's Submission
[8] *Peers v.* Greece (Application No. 28524/95), Tab 170 of Complainant's Submission

does not provide contemporaneous medical evidence to support her Complaint. No explanation has been given by the Complainant for the absence of such evidence. Instead, the Complainant suggests, at §2.13(b), that her attempts to obtain her records from the Religious Orders have been *'frustrated'*. This conflates the question of any records held by Religious Orders with medical records which relate to any medical attention which the Complainant may have received either during her time in a Magdalen Laundry or subsequently. The Complainant does not provide an explanation as to why she has been unable to obtain records from any medical professionals or institutions (e.g. hospitals) from which she received treatment or care. The Complainant does not explain whether she has sought those records.

19. There is nothing to support a suggestion that the State Party has frustrated any attempt to obtain records by the Complainant. The Complainant does not identify any request for records made by her, or on her behalf, which has been refused. The report of Professor Patel does not contain any contemporaneous evidence and it does not appear that she had access to the Complainant's medical records when preparing the report. The State Party submits that this is a relevant factor which should be considered by the Committee in assessing the weight which should be given to this evidence.

20. At §2.13(d), the Complainant distorts the argument made by the State Party with regards to the relevance of findings made by domestic authorities in relation to the existence of acts which meet the threshold of torture or cruel, inhuman or degrading treatment or punishment. As pointed out at §98 and §99 of the State Party's original submission, in its decision in *VK v. Russia* (on which the Complainant placed reliance in the Complaint), one of the factors considered by the ECtHR in its assessment of whether the standard of proof had been met was findings made by domestic authorities in relation to the treatment to which the applicant had been subject. The decision of the ECtHR must be understood in the context of the facts which arose in that case, including the relevance of the findings made by domestic authorities. The Complainant originally relied upon the decision in *VK v. Russia* and argued that the treatment to which she is alleged to have been subject was comparable to that which was considered in that case. It is surprising therefore, that she now seeks to distinguish the approach of the ECtHR and suggest that the fact that reliance was placed on the fact that domestic authorities had made certain findings was inappropriate.

21. With regards to the involvement of the State with Magdalen Laundries generally and the committal of the Complainant to the Pembroke Alms (Nazareth House) Industrial School for Girls in Tralee, County Kerry, this has been comprehensively addressed by the State Party in its original submission. As explained in the State Party's original submission, Magdalen Laundries were not institutions in the ownership or under the control of the State Party. The role of the State Party with regard to Magdalen Laundries is explained in the report of the inter-departmental committee. It may also be recalled that the Complainant was originally placed in Nazareth House because of abuse at the hands of her step-father. Her placement in this institution was with the express consent of her mother, who also gave the Religious Order permission to place her in employment. In that regard, the circumstances which resulted in the Complainant being placed in Nazareth House, and subsequently in Magdalen Laundries are not of the type addressed at §19 of General Comment No. 2. In so far as it is alleged that the Complainant was unlawfully detained in a Magdalen Laundry, this allegation was the subject of investigation by An Garda Síochána as outlined in the State Party's first submission and which is discussed further below.

22. At §2.23 of her Reply, the Complainant asserts that the authorisation for the transfer of the Complainant to a Magdalen Laundry was not in accordance with the Children Act 1908. That assertion is incorrect. The State Party does not agree with the interpretation of the Children Act 1908 contended by the Complainant or that there was any breach of that legislation in the case of the Complainant.

23. The purpose of the Children Act, 1908, and its history, are explained in Chapter 2 of the Final Report of the Commission to Inquire into Child Abuse[9] and Chapter 5 of the report of the inter-departmental committee[10]. The Children Act, 1908 was introduced to apply a unified system of law to industrial and reformatory schools in both Britain and Ireland. It addressed a number of areas of law, including the prevention of cruelty to children, protection of infant life and the provision for juvenile offence. Part IV of the 1908 Act established the legal basis for reformatories and industrial schools. It operated

[9] Final Report of the Commission to Inquire in to Child Abuse, Volume 1, Chapter 2 – available at http://www.childabusecommission.ie/rpt/01-02.php

[10] Chapter 5, Report of the Inter-departmental Committee – see, in particular, Section B of Chapter 5, Tab 1

as the primary legislation relating to vulnerable children in Ireland until the repeal of relevant provisions of the Act by the Child Care Act, 1991. The Child Care Act, 1991 is now the primary piece of legislation regulating child care and child protection policy in Ireland. The remaining provisions of the Children Act, 1908 were replaced by the Children Act, 2001, which is now the main legislation governing the interaction of children with the criminal justice system. The Commission to Inquire into Child Abuse noted that the Children Act, 1908 gave the judicial system the jurisdiction to intervene in the affairs of a family *'in the interest of the child, usually of the poorer class, to protect their physical or moral wellbeing'*[11]. The circumstances in which a child could be admitted to an Industrial School are explained at §59 of Chapter 5 of the report of the inter-departmental committee. This reflects that the purpose of admission to an Industrial School did not necessarily have a punitive purpose, but rather was linked to the protection of the interests of the child, where family was unable to provide for their physical or moral wellbeing. As noted above, the placement of the Complainant in Nazareth House was made with the consent of her mother and the Order of the District Court records that it was made because her family was unable to support her.

24. The argument made by the Complainant at §2.23 of her reply relates to the circumstances in which a child, who was admitted to an Industrial School, may be transferred to a Magdalen Laundry. Section 67 of the Children Act, 1908 as amended permitted the managers of an Industrial School to allow, by licence, the child to *'live with any trustworthy and respectable person named in the licence willing to receive and take charge of him'*. That licence only remained in force until either revoked or forfeited by the breach of any of the conditions on which it was granted. Managers of Industrial Schools were also entitled to revoke a licence and require a child to return to the Industrial School. Further, a child who ran away from the person whom s/he was placed on licence with was *'liable to the same penalty as if he has escaped from the school itself'*.

25. Therefore, it is the case that the child was required to comply with the terms and conditions of that placement while on licence. Where the conditions of the placement were not met, the licence could be revoked and the child would be returned to the industrial school. The placement of a child on licence was not considered to be a 'final

[11] Chapter 2.14, Final Report of the Commission to Inquire into Child Abuse

disposal' of the child's admission to an Industrial School[12]. Instead, placements on licence were subject to regular review and where it was considered that supervision was no longer essential, the revocation of the original order could be sought.

26. Further, section 68 of the Children Act, 1908 provided that a child remained under the supervision of the Manager of an Industrial School until he or she reached at least 18 years of age after their departure from an Industrial School. The only exception contained in section 68 of the Children Act, 1908 related to the situation where a child was sent to an Industrial School for the purpose of enforcing a school attendance order, which did not apply in the case of the Complainant. Further, section 68(3) of the Children Act, 1908 provided for the grant of a licence to persons under the supervision of the Manager of an Industrial School. Section 68(3) of the Children Act, 1908 also provided for the revocation of that licence in certain circumstances. Any licence granted to a child before the expiration of their period in an Industrial School remained in force until after the expiration of their period of supervision in accordance with section 68 (see, Section 68(4) of the Children Act, 1908). Section 68(7) of the Children Act, 1908 also provided that where a licence granted to a person under the supervision of the manager of a certified school was revoked, such a person could be apprehended without warrant and brought back to the school.

27. The Order of Listowel District Court of 4 August 1951 provided that the Complainant's detention in the Pembroke Alms Industrial School Tralee was to last *'until but not including the 21st May 1965'*. The transfer of the Complainant to the care of a Religious Order was in accordance with the requirements of section 67 of the Children Act, 1908. In the context of the time, it is undoubted that a member of a Religious Order would have met the requirement of being a *'trustworthy and respectable person'*. Further, suggestion by the Complainant that section 67 does not make any reference to a child being detained while on licence, ignores the legal context in which section 67 operated and, in particular, ignores the specific requirements of section 67(2) that there be compliance with the terms of the licence for the duration of its existence. Further, section 67(4) of the Children Act, 1908 provided for the imposition of a penalty where a child escaped from the person with whom s/he was placed. The clear implication of this language was that it

[12] Circular 1 of 1924 issued from the Reformatory and Industrial Schools Department, Dublin Castle, April 1924, (Tab 52)

was considered that the placement on licence was conditional and there was a requirement to remain with the person with whom the child was placed. In that context, the fact that the notice of release made no reference to further detention is irrelevant. That notice must be seen in the context of the legislative framework in which it was issued, which clearly required that the child remain with the person to whom they were released.

28. With regard to the fact that the Complainant remained in a Magdalen Laundry beyond the date identified in the Order of the Listowel District Court, as explained above section 68(2) of the Children Act, 1908 provided that following the expiration of the period of their detention, a child remained under the supervision of the managers of an Industrial School up to the age of eighteen. Therefore irrespective of the date identified in the Court Order, the legislative framework provided that, as a matter of law, a child remained under the supervision of the managers of the Industrial School. Remaining under the supervision of the managers of the Industrial School would have included the Complainant remaining resident with the persons to whose custody she would have been released while on licence.

29. For these reasons, it is submitted that the argument made by the Complainant relating to the interpretation of the Children Act, 1908 is not sustainable and does not support the contention that there was a failure by the State to act in accordance with the relevant statutory regime.

30. The State Party repeats that there is nothing to suggest that the transfer of the Complainant from Nazareth House to a Magdalen Laundry was a punishment, as suggested at §2.27 of the Reply. The recording of a statement of opinion as to the general behaviour of the Complainant does not imply that such a transfer was imposed as a punishment. Instead, as explained above managers of Industrial Schools were permitted to grant a licence for a child to live with a third party in accordance with the Children Act, 1908.

31. In light of the foregoing, the State Party repeats that the Complaint does not meet the different elements of the definition of torture, inhuman or degrading treatment or punishment and can be dismissed on that basis.

III. Investigation of the complaint made by the Complainant

32. At section 3 of her Reply, the Complainant addresses the investigation of her Complaint by the State Party. The argument now being made by the Complainant is substantially different to that which was originally contained in her Complaint.

33. It may be recalled that the Complainant initially alleged that she made a complaint to An Garda Síochána and that there was *no investigation* of that complaint. It was demonstrated in the State Party's Response that this was manifestly incorrect and that there had been a full investigation of the complaint made by her, that she was kept informed of the nature and outcome of that investigation and that there was further engagement between the Complainant and An Garda Síochána in 2012 when a meeting was arranged between An Garda Síochána and the Complainant at the request of the inter-departmental committee.

34. The Complainant now accepts that there was an investigation of her complaint and that she was notified of the outcome of that investigation. She does not deny that there was further engagement between her and An Garda Síochána in 2012. However, the State Party notes that the Complainant provides no explanation as to why the Complaint made to this Committee was presented on the basis that there had been *'no investigation'* of the complaint. The Complainant has, further, provided no explanation as to why she did not inform the Committee of the different interactions she has had with An Garda Síochána since her original complaint was made. This includes the fact that she met, and was interviewed by, members of An Garda Síochána in 2012 following a request by the inter-departmental committee, during which she confirmed that she had been informed of the decision to take no prosecution on foot of her earlier complaint. The State Party considers that the Committee ought to have particular regard to these omissions by the Complainant.

35. Notwithstanding the fact that the Complaint was originally premised on the contention that the State Party was obliged to ensure that the complaint made by her to An Garda Síochána was investigated, the Complainant now argues, at §3.5, that an investigation by An Garda Síochána of her complaint would not meet the requirements of Articles 12 and 13 of the Convention. There is no authority to support that proposition. The obligation

arising from Article 12 and Article 13 is for there to have been a prompt, impartial and effective investigation[13].

36. As it has been established that there is no basis for the Complaint originally made by the Complainant (i.e. that there was 'no investigation' of her complaint to An Garda Síochána), the Complainant now seeks to impugn the *adequacy* of that investigation. However, there is no substance to that argument having regard to the steps taken in the investigation and the context in which it occurred. The State Party reiterates that the obligation arising from Articles 12 and 13 of the Convention is for there to be a prompt and impartial investigation of allegations of torture or ill-treatment. The Committee has previously confirmed that the obligation is one of means, not result, and that the investigation must be one which is *'capable not only of establishing the facts, but also of identifying and punishing those responsible[14]'*.

37. It may be recalled that there was a full criminal investigation into the Complainant's allegations by the appropriate body (i.e. the police service of the State Party). That investigation included the taking of appropriate steps, including taking statements from relevant witnesses and obtaining records from different parties and institutions with a view to establishing whether criminal acts had occurred and, if so, the identity of the perpetrators. Upon the conclusion of the investigation, the matter was referred to the relevant national officer who is vested with responsibility for the prosecution of crimes and whose independence is guaranteed by law, the Director of Public Prosecutions. That officer determined that there was to be no prosecution, primarily because the persons against whom most allegations were made were deceased. It must be emphasised that the records of the investigation undertaken by An Garda Síochána disclose that '*all parties in authority'* for the relevant period were deceased[15]. This demonstrates that the recent suggestion by the Complainant, at §3.23 – 3.25 of the Reply, that there were other persons who could have been investigated is misconceived.

38. The State Party submits that the investigation, and the decision not to pursue criminal prosecutions, were undertaken by bodies with appropriate impartiality and independence,

[13] *N.Z v. Kazakhstan*, No. 495/2012, CAT/C/53/D/495/2012, Tab 46 of the State Party's original submission
[14] *Zentveld v. New Zealand*, paragraph 9.2, Tab 45 of the State Party's original submission
[15] See Report of Garda N[redacted] B[redacted], 15 December 1999. Tab 9(f) of the State Party's original submission

acting in accordance with the powers granted to them by domestic law. The investigation occurred with due expedition and meets the standards which have previously been approved by the Committee (see, for example, *Mariano Eduardo Haro v. Argentina* (No. 366/20080) and *N.Z v. Kazakhstan* (No. 495/2012)). In that regard, the investigation sought to establish the facts and to identify those who were responsible. It was an investigation that could have led to the imposition of criminal liability but it was determined by the appropriate, independent national officer that a prosecution could not be brought as the relevant individuals, against whom charges might have been brought, had passed away.

39. The suggestion that the Complainant was not sufficiently involved in the investigation is also without merit. The Complainant was interviewed in the original investigation and was kept informed of the outcome of both the investigation and the decision of the Director of Public Prosecutions. The Complainant was entitled to provide any evidence to An Garda Síochána which she considered relevant, both in the course of the original investigation and in 2012. The Complainant was not limited or precluded in the manner in which she could engage with An Garda Síochána.

40. In so far as the Complainant now asserts that she ought to have been given copies of the records of the investigations, the case law cited by the Complainant does not support a contention that those records were required to have been disclosed to her. The decisions of *Gulec v. Turkey* (Application Number: (54/1997/838/1044) and *Edwards v. the United Kingdom* (Application Number: 46477/99) primarily relate to participation in inquiries held in the context of Article 2 ECHR, which does not arise in this instance. The decision of *El Masri v. Macedonia* (Application No: 39630/09, at paragraphs 182 - 185) confirms that an investigation of an allegation of a breach of Article 3 ECHR should be effective, in that it is capable of *"leading to the identification and punishment of those responsible"*, prompt, thorough and should include the authorities taking *"reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony and forensic evidence"*. The investigation should also be undertaken independently of the executive and a victim should be able to participate. Each of these requirements were met in the context of the investigation of the complaint made by the Complainant.

41. It may also be noted that the Complainant did not seek access to the investigation file held by An Garda Síochána. An Garda Síochána has reviewed the file maintained by them and there is no record of the Complainant seeking access to that file. It was open to the Complainant to seek access to that file and any such request would have been considered by An Garda Síochána in accordance with relevant national law.

42. With regard to the records of the decision of the Director of Public Prosecutions, it should be noted that the Director is independent in the exercise of her functions and not subject to the direction of the State Party. The Office of the Director of Public Prosecutions operates a facility whereby individuals can apply for a summary of the reasons which underpin any decision taken by that Office not to pursue a prosecution of a criminal offence.

43. It is also the case that any investigation of an allegation of criminality, and a decision as to whether to pursue a criminal prosecution, must be taken in accordance with the requirements of national and international law with regards to the guarantee of the right of a fair trial (found in Article 38.1 of the Constitution, Article 6 ECHR and Article 14 of the International Covenant on Civil and Political Rights (*'ICCPR'*), a fact which is entirely ignored by the Complainant in her Reply. As explained in the State Party's original submission, the decision not to pursue a criminal prosecution was heavily influenced by the fact that the alleged perpetrators were no longer alive and it was not possible to bring charges of false imprisonment against any individual. This situation obviously still existed in 2012 and serves as an express limitation on the ability of the State Party to carry out any further investigation.

44. The Complainant also suggests that the passage of time ought not to have prevented any investigation of the complaint made by the Complainant. This argument misunderstands both the investigation of the complaint made by the Complainant and the broader investigations undertaken by the State Party. The passage of time, *per se*, did not preclude any criminal, or other investigation. This is demonstrated by the investigation undertaken by An Garda Síochána of the complaint made by the Complainant.

45. However, it is also the case that because of the passage of time, individuals with knowledge of the allegations made by the Complainant or those who may be held

responsible are deceased. In those circumstances, the further investigation of the complaint made by the Complainant, in a manner compatible with the rights of *all* of the persons who may be impacted by such an investigation is not possible.

46. In this context, the attempt by the Complainant to draw a distinction between individual and institutional defendants is misplaced. Institutional defendants (i.e. the Religious Orders rather than the individuals who are members of those Orders) do not have a separate legal status in national law, and cannot be divorced from the individuals. Further, those institutional defendants would be severely limited in their ability to participate by reason of the fact that the individuals with relevant knowledge of the events in respect of which complaint is made are no longer alive. Further, it would not be possible to prosecute individuals who are now in leadership positions within Religious Orders for the alleged crimes committed by persons who are now deceased. These are highly practical limitations which are not addressed by the Complainant.

47. It is against this background that the criticisms of the investigations completed by the inter-departmental committee at §3.46 -3.51 must be considered. Again, it must be emphasised that the complaint made by the Complainant in respect of allegations relating to what occurred while she was resident in Magdalen Laundries was fully investigated by the appropriate domestic authorities. The investigation of individual allegations of criminal offences is the responsibility of An Garda Síochána, while it falls to the Director of Public Prosecutions to determine whether it is appropriate or possible to bring prosecutions on foot of those allegations. The State Party repeats that the determination of criminal liability following allegations of torture or ill-treatment can only be undertaken in the context of an investigation or prosecution carried out in accordance with the guarantees of fair procedures and a trial in due course of law found in Article 38.1 of the Irish Constitution, Article 6 ECHR and Article 14 ICCPR.

48. The State Party does not accept that there are any inaccuracies in the manner in which either the work of the inter-departmental committee or the earlier investigations carried out by the Commission to Inquire into Child Abuse or the Residential Institutions Redress Board was described. While it is correct that the inter-departmental committee, in accordance with its terms of reference, did not make findings in relation to individual complaints made by women who gave evidence before it, it still provided a comprehensive account of state involvement with Magdalen Laundries. The inter-

departmental committee was not a Court and, therefore, could not properly have been tasked with making findings in relation to individual complaints, having regard to domestic and international obligations relating to fair procedures and a right to a trial in due course of law which are noted above. In any event, the State Party submits that the criticisms made by the Complainant do not arise in her case as her complaint was investigated by the appropriate authorities. The work done by the inter-departmental committee served to supplement the investigation of the complaint made by the Complainant by An Garda Síochána.

49. For these reasons, the arguments made by the Complainant regarding the investigation of the complaint made by her should be rejected. The investigation carried out by An Garda Síochána met the requirements of being prompt, impartial and effective. That investigation was supplemented by the investigations completed by the inter-departmental committee, whose report provides a comprehensive account of the history of Magdalen Laundries. In the circumstances, there has been no failure by the State Party to comply with any obligations arising from the Convention.

IV. Civil Proceedings before the High Court

50. In her Reply, the Complainant again takes issue with the manner in which the civil proceedings brought by her against the Sisters of Mercy, the Sisters of Charity, the Sisters of the Good Shepherd and Sr. Enda O'Sullivan were dealt with by the Irish High Court. It is alleged that the manner in which these proceedings were addressed demonstrates that the State Party *'actively impeded'* the Complainant's access to the courts. Having regard to the rights guaranteed by the Convention, this is an issue which arises in the context of the allegation that there has been a breach of the Complainant's rights under Article 13 of the Convention.

51. It may be recalled that the proceedings sought damages from the religious congregations for negligence, breach of duty, assault and/or battery and/or false imprisonment and/or trespass to the person and/or breach of her constitutional rights in respect of the treatment alleged to have been suffered by her while resident in institutions owned and managed by those congregations. Those proceedings were struck out by the High Court

(Kelly J) in November 2001 on the basis of the Complainant's inordinate and inexcusable delay which, in the Court's view, would have given rise to a serious risk of unfair trial. The proceedings were not struck out because of the operation of the Statute of Limitations.

52. The Complainant now, in effect, seeks to use this Complaint to impugn the decision of the High Court by arguing that the proceedings could have been determined by reference to available documentary evidence. The attempt to impugn the decision of the High Court in this manner is impermissible. In its judgment, the High Court held that the case was one which would be determined by oral evidence, not documents. That decision was not one taken by the State Party but rather by a Judge appointed to the High Court in accordance with the Irish Constitution, which guarantees the independence and impartiality of judges appointed under it. The Complainant was legally represented before the High Court and elected not to appeal the decision to the Supreme Court. Having decided, with the benefit of legal advice, not to challenge the findings of the High Court, it is not open to the Complainant to attempt to use the process before this Committee to undermine those findings. As noted by the State Party at §98 of its original submission, the Committee has previously found that it is not its *'place to question the evaluation of evidence by domestic courts unless it amounts to a denial of justice*'[16]. The Committee has also noted that it is not *'an appellate, quasi-judicial or administrative body"*[17].

53. For this reason, it is questionable whether authorities from the United Kingdom cited by the Complainant[18] are relevant to the issues to be determined by the Committee. Those authorities go to the *merits* of the decision of the High Court rather than the question of whether the Complainant had access to an independent judicial body. The State Party notes that the Complainant does not suggest that the Courts established under the Irish Constitution lack independence or impartiality. Instead, her complaint focuses on the *outcome* of her proceedings. However, the State Party submits that where a civil complaint is considered by an independent judicial body and determined in accordance with law,

[16] *Falcon Rio v. Canada,* No 133/199, CAT/C/33/D/133/1999, Paragraph 8.5, Tab 43 of the State Party's original submission
[17] *NSZ v. Sweden*, No 277/2005, CAT/C/37/D/277/2005, Paragraph 8.6, Tab 44 of the State Party's original submission
[18] *Mutua and ors v. The Foreign and Commonwealth Office* [2012] EWHC 2678 (QB) and section 33 of the limitation Act, 1980

with an appeal against that decision available to a higher court, it cannot be said that there has been a breach of any obligation arising from the Convention.

54. Further, the approach of the High Court is consistent with the obligations arising under International Law and reflects the manner in which the question of delay leading to prejudice to one party has been addressed, for example, by the European Court of Human Rights (see, for example, *Stubbings v. United Kingdom* (Application no. 22083/93; 22095/93)[19] and *L.F v. Ireland* (Application no. 62007/17)[20].

55. For these reasons, the matters complained of with regards to the civil proceedings brought by the Complainant do not disclose any breach of Article 12 or 13 of the Convention.

V. Redress already granted to the Complainant

56. As outlined in the State Party's original submission, and repeated in these observations, it is the position of the State Party that there has been no violation of the Convention with the consequence that the requirement for redress does not arise. In the alternative, should the Committee consider it necessary to address whether redress was required or the adequacy of that redress, the State Party submits that there has been compliance with any obligations arising from the Convention.

57. As a preliminary comment, it may be recalled that at §6.4 of the decision on admissibility the Committee noted that Article 14 of the Convention can be violated where there is a failure to *'investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts or torture'*. The comments by the Committee reflect the contents of General Comment No. 3. It has been outlined in the State Party's original submission and repeated in these observations, that the complaint made by the Complainant has been subject to investigation by the appropriate domestic agencies, including An Garda Síochána with that specific investigation being supplemented by separate, broader investigations. It is

[19] *Stubbings v. United Kingdom* (Application no. 22083/93; 22095/93), Tab 53
[20] *L.F v. Ireland* (Application no. 62007/17), Tab 54. The decision should be read in conjunction with the related decisions of *W.M v. Ireland* (Application Number: 61872/17) (Tab 55) and *K.O'S v. Ireland* (Application Number: 61836/17) (Tab 56)

also the case that the Complainant was entitled to bring civil proceedings in relation to the allegations made by her. Those proceedings were determined by the High Court and the Complainant, with the benefit of legal advice, elected not to appeal to the Supreme Court.

58. In General Comment No. 3, the Committee identified that *'State Parties shall enact legislation and establish complaint mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill treatment and ensure that such mechanisms and bodies are effective and accessible to all victims*'. Such mechanisms and investigating bodies have been established by the State Party and, in this case, the Complainant in fact had access to them. This demonstrates that there has been compliance with the requirements arising from Article 14. In this instance there has been no failure to investigate or failure to allow civil proceedings in the manner envisaged at §17 of General Comment No. 3, again illustrating compliance with Article 14.

59. However, in so far as there may be an obligation to provide any redress, that which has been provided to the Complainant meets the requirements of Article 14 specifically and the Convention more generally. The redress which has been provided to the Complainant, has been explained in the State Party's original submission. This redress is adequate, effective and comprehensive. In this context, it is also relevant that the acts complained of occurred prior to the adoption or entry into force of the Convention generally and the coming into force of it for the State Party[21].

60. It may be recalled that the Magdalen Laundries were not institutions in the ownership or under the control of the State Party. As explained in the State Party's original submission, the report of the interdepartmental committee, published in 2013, addressed the extent of State involvement in Magdalen Laundries. Notwithstanding the fact that Magdalen Laundries were not institutions in the ownership or direct control of the State, the State Party has issued two state apologies to women who were resident in Magdalen Laundries for hurt done to them and any stigma suffered by reason of their residence in those institutions.

[21] By analogy, see *O.R, M.M and M.S v Argentina* CAT/C/WG/3/DR1, 2 and 3/1988, Tab 51

61. In this context, the State Party draws attention to the conclusions of the ECtHR in *L.F v. Ireland* (Application no. 62007/17) on the question of whether there was compliance with the obligation to provide redress under the ECHR in the context of women who underwent a symphysiotomy procedure in hospitals which were not owned by Ireland. Addressing arguments which were similar to those which arise before the Committee, the Court found that the State Party had complied with its obligations:

> 130. Nevertheless, in the present case, it would now be next to impossible for the domestic courts to conduct any meaningful – and, from the point of view of the defendant hospital, fair – inquiry into whether in her case the symphysiotomy had been performed with her full and informed consent. In these circumstances, where the actions complained of were not directly attributable to the State or to any of its agents, and were demonstrated not to have been carried out in bad faith or to have been unjustified by the relevant practice standards, the Court considers that in the particular circumstances of this case the civil proceedings, supplemented by the independent Walsh report, the ex gratia payment scheme, which enabled all the women who had undergone a symphysiotomy to obtain a not inconsequential award of compensation, and the provision of access, free of charge, to healthcare and individual pathways of care, sufficed to meet any obligation the State may have been under to provide redress.

62. There are features similar to the case made in *LF* to that which arises in this instance. In assessing whether the obligation to provide redress was met the ECtHR considered it appropriate to have regard to the fact that while the complaint was made against Ireland, the underlying actions which gave rise to the complaint were not directly attributable to the State. That is similar to the position being considered by the Committee, which is requested to assess a factual matrix relating to events which occurred in institutions which were not directly owned or operated by the State Party but in respect of which there was some involvement. The ECtHR also had regard to the fact that the complainant had been able to bring domestic civil proceedings (which were rejected by the domestic courts), in a manner similar to what has occurred in this instance. It was also relevant that the State Party had commissioned an independent, investigative report into the practice of symphysiotomy and had established an *ex gratia* redress scheme for

the benefit of the women involved. All of these factors combined to lead the ECtHR to conclude that any obligation to provide redress had been met.

63. . The State Party submits that it would be appropriate for the Committee to adopt a similar approach to that which was taken by the ECtHR. In particular, this decision demonstrates that it can be appropriate to consider the combination of different actions and the context in which those actions were taken in the assessment of whether an obligation to provide redress has been met. An analysis of the different elements which make up the redress which has been provided to the Complainant demonstrates that there has been compliance with any obligation arising under Article 14 to provide redress, in a manner consistent with General Comment No. 3. The forms of redress provided by the State Party combine to provide redress which is adequate, effective and comprehensive. It has also been tailored to the needs of women who were resident in Magdalen Laundries, with the Magdalen Laundries Restorative Justice Ex-Gratia Redress Scheme (*'the Magdalen Laundries Restorative Justice Scheme'*) having been designed to address the needs of the women which were identified by the Commission chaired by Mr. Justice John Quirke (*'the Quirke Commission'*).

64. As explained in the State Party's original submission and repeated in these observations, the Complaint made by the Complainant has been fully investigated. It is, therefore, inaccurate to claim that there have been *'no investigations'* into the *'truth or otherwise of Mrs. Coppin's allegations of ill treatment and torture'*. To the contrary, there have been different investigations into those allegations, include a full criminal investigation, the details of which have already been addressed.

65. The State Party has also provided significant financial redress to women who were resident in Magdalen Laundries, including the Complainant. The totality of the financial redress provided to the Complainant meets any obligations which may be placed on the State Party pursuant to Article 14, as identified in General Comment No. 3. The manner in which the financial payments to be made under the Magdalen Laundries Restorative Justice Scheme were designed is explained in the report of the Quirke Commission[22]. It

[22] Report of Mr. Justice John Quirke on the establishment of an ex gratia scheme and related matters for the benefit of those women who were admitted to and worked in the Magdalen Laundries, May 2013 Tab 17 of the State Party's original submission

was recommended that payments be calculated by reference to the length of time spent by a woman resident in a Magdalen Laundry with an additional payment made to reflect work done by the women during that time. It was also recommended that upon reaching the state retirement age (currently 65), women would be eligible for a payment equivalent to the State Contributory Pension as a weekly income. Consistent with these recommendations, the Complainant was awarded a sum of €55,000 in accordance with the terms of the Magdalen Laundries Restorative Justice Scheme. The Complainant is also in receipt of a payment equivalent to a full contributory State pension, which is paid on a monthly basis.

66. The Complainant was also separately awarded the sum of €140,800 by the Residential Institutions Redress Board in respect of the abuse suffered by her in all institutions (including the Magdalen Laundries) in which she was resident up to her 18th birthday. The assessment of that award included an assessment of the abuse suffered by the Complainant, whether she suffered from a medically verified illness, the psycho-social impact on her and any loss of opportunity or loss of education by reason of being in institutions. The meaning of the terms 'abuse' and 'injury' for the purposes of the Residential Institutions Redress Scheme are explained in A Guide to the Redress Scheme Under the Residential Institutions Redress Act, 2002 (Third Edition, December 2005)[23], published by the Residential Institutions Redress Board. That Guide also explained the operation of the Residential Institutions Redress Scheme. The meaning of terms such as 'abuse' and 'injury' are explained at §12 – 14, while the operation of the scheme is explained at §19 – 29.

67. The Complainant maintains her complaint in relation to the terms of the waiver signed by her at the time that she accepted the award of redress made under the Magdalen Laundries Restorative Justice Scheme. The State Party repeats that the complaint made by the Complainant with regards to the existence of the waiver simply does not arise in her case. The Complainant has already had civil proceedings relating to her time in Magdalen Laundries dismissed by the High Court and elected not to appeal to the Supreme Court. In these circumstances, the waiver does not operate to impede her access to a right to a remedy. She had already exercised that right. In her Reply, the

[23] A Guide to the Redress Scheme Under the Residential Institutions Redress Act, 2002 (Third Edition, December 2005) (Tab 57)

Complainant appears to suggest that there are other proceedings which may be brought by her. That is an entirely theoretical suggestion: there is nothing to suggest that there are other proceedings which are impeded by the waiver.

68. In her Reply, the Complainant makes certain criticisms of the Magdalen Laundries Restorative Justice Scheme, and in particular the *ex gratia* nature of the payments made to her. These criticisms are similar to those which were rejected by the ECtHR in *L.F v. Ireland* (Application no. 62007/17), in respect of an *ex gratia* redress scheme established by the State Party for those women who had undergone a symphysiotomy procedure. In particular, the EctHR rejected a contention that there was a failure by the State Party to comply with its obligations under the ECHR where the operation of the *ex gratia* scheme did not involve the admission of liability:

> 125. The applicant has also criticised the ex gratia payment scheme on the basis that it was a device to pressure women to discontinue legal proceedings; it entailed no admission of liability on the part of the hospital, or failure on the part of the State; there was no provision for an individualised assessment of non-pecuniary damage; and the level of damages was not commensurate with the injuries she suffered. However, the applicant herself has alleged no substantive failure on the part of the State – it being remembered that her domestic claim was directed against the maternity hospital –, and an ex gratia payment scheme set up by the State could not be expected to entail an admission of liability for the actions of hospitals, not all of which were under its control. In any case, any such admission would clearly be inappropriate where, due to the passage of time, it was impossible to say whether many of the symphysiotomies that took place were medically justified and/or carried out with the patients' full and informed consent.

69. The State Party suggests that it would be appropriate for the Committee to take a similar approach and this approach would be consistent with the terms of Article 14 and General Comment No. 3. The fact that the payment of financial redress is made without any admission of liability does not lead to a conclusion that this redress does not meet any obligations arising from Article 14. It is open to the Committee to have regard to the factual matrix in which the Magdalen Laundries Restorative Justice Scheme was

established, including the fact that the State Party provided financial redress and the fact that there has been a significant passage of time since the events which give rise to this Complaint.

70. The Complainant also takes issue with access to records held by both the Religious Congregations and the State. A number of points must be made in response. First, any records held by the Religious Congregations are held by those institutions. The State does not have any ownership or control of those records. Nor does it have any generalised entitlement to obtain them. In so far as the Complainant wishes to access her personal information from any Congregation, she is entitled to make a request for her personal data pursuant to the Data Protection Act, 2018. Second, records held by the State are subject to release pursuant to the Freedom of Information Act, 2014 as amended. This includes records which form part of the archive of the inter-departmental report which was previously held by the Department of An Taoiseach and is now held by the Department of Children, Equality, Disability, Integration and Youth, some of which have been released on foot of requests made pursuant the Freedom of Information Act, 2014 as amended. Third, to the knowledge of the State Party the Complainant has never made any request for the release of records held by the State pursuant to the Freedom of Information Act, 2014 as amended or otherwise.

71. Finally, on 28 October 2020[24] the State Party published a commitment to establishing an archive of records related to institutional trauma during the 20th Century. It is envisaged that this will involve the archiving and presenting of relevant records and witness testimony by victims and survivors as well as the historical and social context. It will be developed at a suitable site and operated in accordance with the highest international standards. That commitment was re-iterated on 12 January 2021[25] in response to the publication of the Final Report of the Commission of Investigation (Mother and Baby Homes and certain related matters). In addition, the State Party has committed to establishing a single repository for the records relating to Mother and Baby Homes, County Homes and Adoption Societies from which individuals will be able to apply for their personal information. The State Party has also committed to considering the

[24] Statement by the Government on Mother and Baby Homes, 28 October 2020 (Tab 58)
[25] Statement by the Government in response to the publication of the Final Report of the Commission of Investigation (Mother and Baby Homes and certain related matters), 12 January 2021 (Tab 59)

expansion of this repository over time to include other relevant institutional records. The State Party has also indicated that it will require Government Departments and State Bodies to prioritise ensuring that relevant original files are made publicly available in the National Archives of Ireland (NAI) in accordance with the terms of the National Archives Act 1986.

72. The health services to which the Complainant has access as part of the Magdalen Laundries Restorative Justice Scheme have already been comprehensively addressed by the State Party. Persons granted redress under the Magdalen Laundries Restorative Justice Scheme are granted a 2015A Card, which entitles the women to access medical services specified in the Redress for Women in Certain Institutions Act, 2015. It can be noted that as of 1 February 2021, 461 women hold eligibility for a 2015A Card.

73. The recommendation made by Mr. Justice Quirke in his report has been implemented. The report of the Quirke Commission did not include a specific recommendation that women granted redress under the Magdalen Laundries Restorative Justice Scheme should be granted access to complementary therapies, which are therapies that do not ordinarily form part of the public health system. It can be noted that as part of its report, the Quirke Commission provided draft legislation in respect of the health services which were to be provided to eligible women. It made no reference to complementary therapies.

74. As a resident of the United Kingdom, the Complainant is entitled to obtain reimbursement of medical expenses, subject to certain conditions, for accessing the equivalent services to those specified in the Redress for Women Resident in Certain Institutions Act, 2015. The provision of a reimbursement scheme is a reasonable and prudent approach to the management of the expenditure of public funds in other jurisdictions. It enables the State Party to ensure that there is appropriate transparency and accountability with regards to those funds. The reimbursement scheme is operated in a similar manner to equivalent schemes, including that which operates in respect of women who are entitled to the Health (Amendment) Act, 1996 Card. The State Party has established a dedicated office which provides information on, and assistance with, the processing of reimbursement applications for women who are resident outside of the State.

75. It is not correct that the State Party has failed to reply to correspondence on behalf of the Complainant in relation to access to health services. The correspondence between the State Party and representatives of the Complainant on this issue is outlined in the State Party's original response.

76. It is not correct that the State Party never established a Dedicated Unit as recommended by the Quirke Commission. It may be recalled that the purpose of the recommendation of the Quirke Commission regarding a 'Dedicated Unit' was the provision of information to women who had been resident in Magdalen Laundries in relation to their monetary, health, housing and other needs.

77. A Dedicated Unit, the Restorative Justice Implementation Unit, was established in the Department of Justice and Equality in June 2013. Officials assigned to that unit operated and managed the Magdalen Laundries Restorative Justice Scheme, while also providing advice and information to women in relation to the scheme and their other entitlements. Those services are now provided on a cross-Departmental basis, with nominated officials in relevant Departments and State agencies providing information and assistance to women who were previously resident in Magdalen Laundries. By way of example, the Health Service Executive has dedicated Liaison Officers to assist persons who qualify under the Magdalen Laundries Restorative Justice Scheme with issues relating to the package of healthcare supports provided under that Scheme. Further, the State Party provided monetary grants (in excess of €400,000) to the Irish Women Survivors Support Network (IWSSN), a group based in the United Kingdom, which enabled them to provide support and advice to women who were previously resident in Magdalen Laundries, who are resident in the United Kingdom, to access the Magdalen Laundries Restorative Justice Scheme and to promote awareness of the scheme.

78. The State Party wishes to emphasise again that there is no risk that the Complainant will be subject to acts of repetition. Magdalen Laundries, which were not owned or operated by the State Party, no longer exist following the closure of the final Laundry in 1996 and there is no suggestion that similar institutions would be opened again. In general, there now exists in the State a comprehensive legislative framework which governs the taking of children into care, employment rights and the promotion and protection of human

rights including the prevention of torture, cruel, inhuman or degrading treatment or punishment.

79. The ratification of the Optional Protocol to the Convention strictly falls outside of the scope of the Complaint. However, the Committee should note that the ratification of the Optional Protocol is identified as an objective of the State Party in the Programme for Government, published in July 2020. This commitment is reflected in the Strategy Statement 2021 - 2023 of the Department of Justice and the detailed action plan for delivery of that Strategy Statement published in 2021. It is intended that the legislation necessary to ratify the Optional Protocol will be published and progressed with a view to it being enacted by the end of 2021. There are certain other legislative amendments which must be implemented before ratification of the Optional Protocol can occur. This includes the establishment of National Preventive Mechanisms in respect of particular sectors. Work to progress this is ongoing and will be completed before ratification of the Optional Protocol.

VI. Article 16

80. The State Party submits that the alleged violation of Article 16 of the Convention has been fully addressed in its original submission. Each of the points raised in the Complainant's Reply have been addressed in these observations. The State Party repeats that there has been no violation of Article 16 of the Convention and it is the position of the State Party that there is no continuing violation of any of the State Party's obligations under the Convention.

81. The complaint made by the Complainant has been investigated by An Garda Síochána with a decision as to whether it was possible to bring a criminal prosecution taken by the Director of Public Prosecutions, a body whose independence is guaranteed by law. This investigation has been supplemented by the work of the inter-departmental committee.

82. The State Party has issued apologies to women who were resident in Magdalen Laundries for hurt done to them and any stigma suffered by reason of their residence in those institutions.

83. The redress granted to the Complainant has already been explained, including the healthcare services to which she is entitled. The Complainant has the benefit of the Redress Reimbursement Scheme and can seek reimbursement, subject to complying with relevant conditions, from the State for medical expenses, including physiotherapy and psychology services.

84. As noted above, the Statute of Limitations did not operate to preclude the Complainant from bringing proceedings before the High Court. It is also inaccurate to suggest that no investigation of the specific circumstances of the Complainant's case has been undertaken. It has been demonstrated that a complete investigation was undertaken of the complaint made by the Complainant.

85. For these reasons, it has not been demonstrated that there has been any violation of Article 16 of the Convention.

VII. Remedies

86. At Section 6 of her Reply, the Complainant identifies the remedies which she now requests from the Committee. As outlined in the State Party's original submission and repeated in these observations, the State Party submits that there has been no violation of the Convention. In those circumstances, the question of the provision of a remedy does not arise. Without prejudice to the position that there has been no violation of the Convention, the State Party will set out its position on the remedies sought by the Complainant.

87. By way of general comment, the State Party notes that a number of the potential remedies identified by the Complainant do not arise from the Complaint made by her. Instead, they are directed at broader issues in respect of which the Complainant does not have any entitlement to raise as they do not relate to matters which are within the scope of the Complaint.

88. At §6.1, the Complainant seeks an investigation of her complaint. The question of an investigation in to the complaint made by the Complainant has been fully addressed in

the original submission and this reply. The complaint made by the Complainant has been fully investigated by the appropriate domestic agencies, including a criminal investigation completed by An Garda Síochána, in a manner consistent with the obligations arising from the Convention. That investigation was supplemented by the work carried out by bodies such as the inter-departmental committee.

89. At §6.2, the Complainant seeks the '*provision of a full equivalent of the HAA card*'. The Complainant is entitled, subject to certain conditions, to avail of the Redress Reimbursement Scheme in order to access medical services which are equivalent to those which are available under the Redress for Women Resident in Certain Institutions Act, 2015. The services, in respect of which reimbursement is available, are in line with the recommendation made by the Quirke Commission regarding the type of health services which should be available under the Magdalen Laundries Restorative Justice Scheme. This includes reimbursement for any physiotherapy or psychology support services which are used by her.

90. At §6.3 the Complainant seeks compensation. The Complainant has been awarded significant compensation by the State Party. On 24 February 2005, she was awarded the sum of €140,800 in respect of the institutions, including Magdalen Laundries, in which she was resident up to her 18th birthday. In January 2014 the Complainant was awarded the sum of €55,500 pursuant to the Magdalen Laundries Restorative Justice Scheme along with an ongoing entitlement to a pension payment (paid on a monthly basis) and the benefit of the Redress Reimbursement Scheme with regards to her medical needs. As noted above, this includes reimbursement for any psychology support services which are used by her.

91. The Complainant was also eligible to apply for funding supports from the Residential Institutions Statutory Fund Board, also known as Caranua. Caranua provided funding supports to over 6,000 survivors of institutional abuse, and each applicant received an average of over €15,000. The Complainant will be in a position to inform the Committee whether she applied for or received supports from Caranua.

92. At §6.4, the Complainant seeks certain actions regarding records relating to Magdalen Laundries. The State Party does not consider that it would be appropriate or necessary, or even lawful, for all the records of Religious Congregations to be requisitioned by it. As

noted above, individuals are entitled to access to their records and those records which are held by the State Party are subject to release on foot of a request to a body to which the Freedom of Information Act, 2014 applies. The State Party is not aware whether the Complainant has sought to use the Freedom of Information Act, 2014 to access records held by public bodies. In that context, the criticisms made by the Complainant at §4.3(e) are entirely theoretical as it does not appear that the Complainant has actually sought to obtain any records which she wishes to access. In so far as it is suggested at §4.3(e)(i) that the Freedom of Information Act, 2014 as amended contains a blanket preclusion on its use to access records held by the State Party which were created prior to 1998, that is incorrect.

93. The State Party repeats the commitments made on 28 October 2020 and 12 January 2021 to establish a national memorial and records centre related to institutional trauma during the 20th century. The State Party has also committed to establishing a single repository for the records relating to Mother and Baby Homes, County Homes and Adoption Societies from which individuals will be able to apply for their personal information. The State Party has also committed to considering the expansion of this repository over time to include other relevant institutional records. The State Party has also indicated that it will require Government Departments and State Bodies to prioritise ensuring that relevant original files are made publicly available in the National Archives of Ireland (NAI) in accordance with the terms of the National Archives Act 1986.

94. At §6.5, the Complainant seeks the repeal of Section 28(6) of the Residential Institutions Redress Act, 2002. Section 28(6) of the Residential Institutions Redress Act, 2002 does not contain a 'gagging order' as alleged by the Complainant. There is nothing in national law which precludes the Complainant from speaking about what occurred in any institution in which she was resident. Section 28(6) of the Residential Institutions Redress Act, 2002 states:

> (6) A person shall not publish any information concerning an application or an award made under this Act that refers to any other person (including an applicant), relevant person or institution by name or which could reasonably lead to the identification of any other person (including an applicant), a relevant person or an institution referred to in an application made under this Act.

95. The only limitation contained in section 28(6) relates to the identification of another person or an institution and does not preclude the Complainant from speaking about what occurred in institutions in which she was resident.

96. For completeness, it may be useful for the Committee to understand the reason why Section 28(6) was enacted. There were two reasons which underpinned the enactment of this section. First, it was intended to facilitate survivors who did not wish to either speak publicly about their experiences or have those experiences spoken about in public by other parties. In this context, it should be noted that many of the survivors who engaged with the Redress Board had never previously disclosed the abuse suffered by them. In the absence of a provision of this nature, there was a concern that people would not come forward to obtain redress for fear that their experiences would be made public. Second, the section allowed the Residential Institutions Redress Scheme to operate on a non-adversarial basis, where an applicant was only required to demonstrate, by way of medical or psychological evidence, that they had suffered injuries which were consistent with the abuse they alleged to have been perpetrated against them. This allowed the scheme to operate on a confidential and non- adversarial basis.

97. At §6.6, the Complainant addresses the State Party's commitment to memorialisation. The question of an appropriate memorial has been addressed in the State Party's original submission. The State Party is committed to progressing the memorials which have been proposed and work is ongoing in respect of them. The State Party has made a financial commitment of €500,000 to the development of memorials. As noted in the original submission, the proposed housing development at the site of the former Magdalen Laundry at High Park, Dublin includes a proposal for a linear park, which will include a memorial space. A steering committee of relevant stakeholders has been proposed in order to progress this proposal. Similarly, the site of the former Magdalen Laundry at Sean McDermott Street has been identified as the site of a proposed memorial. This site is in the ownership of Dublin City Council, who are committed to providing a suitable area within any development of this site to host a memorial.

98. In addition, as explained in the State Party's original submission, the State Party supported the 'Dublin Honours Magdalen's event in June 2018, which was held in honour of women who had been resident in Magdalen Laundries. Over 200 former

residents of Magdalen Laundries attended the event, which was held in the Mansion House (the official residence of the Lord Mayor of Dublin). A separate event was also hosted by the President of Ireland in Áras an Uachtaráin, his official residence. While the event was organised by a voluntary group, the State Party provided funding of €300,000 and logistical support. This event provided an opportunity for women to meet, engage with each other and to express their views on a suitable memorial. As previously noted, no clear consensus emerged from this event in relation to the type of memorial to be provided.

99. At §6.7, the Complainant seeks the establishment of a unit within An Garda Síochána to be tasked with investigations of allegations made in respect of Magdalen Laundries. It is open to any person who was resident in a Magdalen Laundry to make a complaint to An Garda Síochána. That is something which has always been available. Complaints in relation to allegations of criminal activity related to Magdalen Laundries are fully investigated by An Garda Síochána in accordance with national law. Every Division of An Garda Síochána has an established and dedicated Divisional Protective Services Unit (DPSU), which are specialist units. Personnel attached to the DPSUs have been provided with a bespoke training course consisting of modules addressing issues such as the investigation of sexual crime, child protection, investigation of domestic abuse, online child exploitation and sex offender management. Any complaints relating to matters which occurred in a Magdalen Laundry are referred to the relevant DPSU for investigation.

100. At §6.8, the Complainant seeks certain commitments in relation to the operation of the Statute of Limitations. The State Party does not consider that it is appropriate or necessary for there to be any amendment of the Statute of Limitations, 1957. For the avoidance of doubt, nor is it considered appropriate or necessary for a direction to issue to either the Chief State Solicitor or the State Claims Agency to the effect that the defence of claims in cases of 'institutional abuse' should not include reliance on any limitation periods. The Chief State Solicitor and the State Claims Agency act for State bodies in litigation, who are bound by limitation periods in the same manner as any party to litigation. As pointed out below, limitation issues involve finely balanced judgements between various rights and interests.

101. A number of points may be made in respect of this claim. First, the Statute of Limitations did not operate to prevent the Complainant from maintaining the civil proceedings brought by her against the Sisters of Mercy, the Sisters of Charity, the Sisters of the Good Shepherd and Sr. Enda O'Sullivan. Therefore, the operation of the Statute of Limitations is not relevant to the complaint made by the Complainant and does not fall within the purview of the Committee. The State Party repeats that §40 of General Comment No. 3 does not apply in this instance.

102. Second, the operation of the Statute of Limitations binds the State Party in a manner similar to all parties to litigation within the State. The State Party does not have any special status and the limitation periods must be applied in the ordinary way.

103. Third, the operation of limitation periods has been found to be compatible with international human rights instruments by international Courts and United Nations Treaty Monitoring Bodies, including this Committee. As noted at §64 of the State Party's original submission, in this regard, a comparison can be drawn with Rule 113(f) of the Rules of Procedure of this Committee. In *Stubbings v. United Kingdom* (Application no. 22083/93; 22095/93), the ECtHR held that the operation of a limitation period in the context of proceedings relating to an allegation of sexual abuse of a minor did not violate Article 6 ECHR. This principle was recently reemphasised by the ECtHR in *L.F v. Ireland* (Application no. 62007/17), where it was stated:

> 108. Moreover, the Court has held that the right to institute proceedings before a court in civil matters is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. More particularly, it has observed that limitation periods in personal injury cases are a common feature of the domestic legal systems of the Contracting States. They serve several important purposes, namely to ensure legal certainty and finality, protect potential defendants from stale claims which might be difficult to counter and prevent the injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time (see, for example, *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 51, Reports of Judgments and Decisions 1996 IV

104. The State Party submits that the Committee should have regard to these conclusions and that they are not inconsistent with §40 of General Comment No. 3. The State Party repeats that this is not a case where the Complainant has been denied redress or a right to access a remedy by the operation of the Statute of Limitations.

105. The relevance of multi-party litigation to the Complaint is not clear, nor is it explained. The Complainant is not a person who has sought to engage in multi-party litigation and therefore cannot seek the reform of the law relating to such litigation in the context of this Complaint.

106. For the foregoing reasons, the State Party submits that the remedies of an investigation, the provision of health care services and compensation sought by the Complainant have already been provided to her. Proposals for a memorial are being progressed by the State Party. The establishment of a dedicated unit within An Garda Síochána for the investigation of complaints is not necessary where such complaints are already investigated by specially trained officers. The remainder of the remedies sought by the Complainant do not arise from the matters in respect of which complaint is made by the Complainant.

VIII. Conclusion

107. The State Party repeats that there has been no violation of Articles 12, 13, 14 or 16 of the Convention in respect of the issues raised in the Complaint. The scope of the Complaint which is before the Committee has been addressed at §6.4 and §6.5 of the decision on admissibility, with the focus being on whether the complaint made by the Complainant have been investigated and whether redress, if necessary, was provided.

108. The State Party submits that it is appropriate for the Committee to take account of the fact that the acts complained of all occurred prior to the adoption or entry into force of the Convention generally and the coming into force of it for the State Party. The State Party also recalls the jurisdiction of the Committee under Rule 117(5) of the Rules of Procedure.

109. The complaint of ill-treatment has been the subject of an independent and impartial investigation, which was carried out promptly in compliance with the obligations arising from Articles 12 and 13. The investigations which have been undertaken into the individual complaint made by the Complainant combined with the broader inquiries into institutional abuse which have been established by the State Party meet the requirements of both Articles 12 and 13.

110. Where there has been no violation of the Convention, the requirement for redress does not arise. However, in so far as it may have been necessary to provide redress to the Complainant, the State Party has complied with any obligations arising under Article 14. This redress provided, in the form of an appropriate investigation of the complaint made by the Complainant, financial redress, provision of healthcare services, apologies on behalf of the State and the commitment to memorialisation, are adequate, effective and comprehensive.

111. For similar reasons, the State Party submits that there has been no violation of Article 16 of the Convention as it has been demonstrated that there has been a full investigation of the complaint made by the Complainant and, in so far as is it may be required, redress has been provided to her.

112. In the circumstances, the Committee should determine that the State Party has not violated the Convention.

Aoife Carroll BL
Eoin McCullough SC
Law Library,
Four Courts,
Dublin

8th June 2021