

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

BETWEEN

ELIZABETH COPPIN

COMPLAINANT

AND

IRELAND

STATE PARTY

RESPONSE OF IRELAND ON THE QUESTION OF ADMISSIBILITY

1. Elizabeth Coppin (*"the Complainant"*) lodged a complaint against the State Party with the Committee Against Torture (*"the Committee"*), dated 25 July 2018 and sent to the State Party by the Office of the High Commissioner for Human Rights on 29 August 2018, in which it is alleged that the State Party is in breach of its obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*"the Convention"*) in respect of the treatment alleged to have been suffered by the Complainant while resident in certain institutions known as Magdalen Laundries.
2. As can be seen from the complaint, the Complainant makes four different allegations of breaches by the State Party of the Convention relating to her residence in institutions known as Magdalen Laundries. The Complainant identifies the following complaints, in summary form:
 - A violation of Article 12 of the Convention, alone and in conjunction with Article 16 on the basis that the State Party has never held *"a prompt and impartial investigation"*

into the complaints of torture and cruel, inhuman and degrading treatment and punishment in the Magdalen Laundries made by her and by other survivors of the Magdalen Laundries.

- A violation of Article 13 of the Convention, alone and in conjunction with Article 16, on the basis that the State Party has failed to ensure that she and other survivors of the Magdalen Laundries have the right to complain to and have their cases examined by the competent authorities.

 - A violation of Article 14 of the Convention, alone and in conjunction with Article 16, on the basis that the State Party has failed to ensure that she and other survivors of the Magdalen Laundries can obtain full redress for the violations suffered, including the means for as full rehabilitation as possible.

 - A violation of Article 16 on the basis that the State Party's failures and the resulting impunity of the State and relevant religious congregations constitute an affirmation by the State Party, by act and by clear implication, of Mrs Coppin's treatment in the Magdalen Laundries. It is alleged that the Complainant is experiencing "*a continuing situation*" of dignity violation sufficient to violate Article 16 commencing with her treatment in the Magdalen Laundries and continuing on account of the State's treatment of her since that time.
3. The State Party makes these submissions on the question of admissibility only and does not propose to address the substantive complaints made by the Complainant at this time. It is the position of the State Party that the complaints are not admissible having regard to Article 22 of the Convention and Rule 113 of the Rules of Procedure.
4. Given the nature of the Complaint, the State Party requests that the Committee issue a decision on admissibility prior to the State Party having to consider the merits of the complaint. The complaint made is wide ranging and purports to raise a significant number of issues that relate to a period prior to the date upon which the Convention applies to the State Party. In the circumstances, it would be unfair to require the State Party to answer claims that are inadmissible.

Background to the Complaint

5. It is necessary to briefly consider the background to the Complaint, along with the nature of the institutions in which the Complainant was resident and the redress schemes that have been established by the State Party under which the Complainant has been provided with redress.
6. Magdalen Laundries operated in Ireland from the eighteenth century to the twentieth century. They were established and operated primarily by religious orders as refuges for women. Women admitted to the refuges were mainly engaged in work in the laundry, which may have included sewing, and lived in accommodation on the same premises, and these properties were known as "Magdalen Laundries". The institutions known as Magdalen Laundries were not operated or owned by or on behalf of the State. In contrast to industrial schools or other similar institutions, Magdalen Laundries were operated on a private basis by religious congregations with no statutory basis for either admitting a person to or confining a person to a Magdalen Laundry. Magdalen Laundries no longer operate in the State and the last Laundry in Sean McDermott Street, Dublin closed in 1996.
7. In June 2011 the Government established an inter-departmental committee chaired by Senator Martin McAleese, a member of Seanad Éireann (the Upper House of the Irish Parliament), to establish the facts of State involvement with the Magdalen Laundries. The report of the inter-departmental committee was published in February 2013.
8. Upon publication of the report the Government of the State Party stated its commitment to playing its part in a healing and reconciliation process with a view to bringing closure to the women who had been resident in Magdalen Laundries. Mr Justice John Quirke, former Judge of the High Court of Ireland, was appointed by the Government to advise on an *ex-gratia* scheme to be established for the benefit of women who had been admitted to and worked in a Magdalen Laundry. The report of Mr Justice Quirke ("*the Quirke Report*") was submitted to Government in May 2013 and all the recommendations he made were accepted and implemented. On foot of the Quirke Report, an *ex-gratia* redress scheme was

¹ Tab 1 – Report of Mr. Justice John Quirke.

established for the benefit of women who were admitted to and worked in the institutions known as Magdalen Laundries under which women were paid a lump sum amount of redress, a weekly payment and were deemed to be eligible to certain benefits.

9. All women eligible for redress under the Magdalen Laundries Restorative Justice Ex-Gratia Redress Scheme² (*"the Magdalen Laundries Restorative Justice Scheme"*) are eligible for the payment of a lump sum calculated by reference to their length of stay in a laundry. In addition to that lump sum payment, women are entitled to a weekly payment designed to be similar to the payment of a State pension. This is paid at the rate of €100 per week if the woman is under the State pension age (currently 66) and increasing to €243.30 per week. Women are also provided with an enhanced medical card (*'2015.A Card'*) which is held for life. This was introduced by way of the Redress for Women Resident in Certain Institutions Act 2015³, and entitles the holder to:

- General Practitioner Services (Primary Medical services)
- Prescribed medications, aids and appliances
- Dental Services
- Ophthalmic services
- Home Support
- Home nursing
- Counselling Services
- Other health services including chiropodist/podiatry and physiotherapy.

10. Women eligible for the Magdalen Laundries Restorative Justice Scheme are also exempt from the payment of certain statutory payments for use of out-patient and in-patient medical services in the hospital system. Where a woman is resident outside of the State Party, she is entitled to primary and community medical services if she visits or returns to the State Party. The Health Service Executive, has also established the Redress Reimbursement Scheme 2015 to enable those women resident outside of the State to be reimbursed for medical services obtained in their country of residence. This ensures that women resident outside of the State Party can avail of access to medical benefits equivalent to those which are available under the Redress for Women Resident in Certain Institutions

² Tab 2 – Terms of the Magdalen Laundries Restorative Justice Scheme.

³ Tab 3 – Redress for Women Resident in Certain Institutions Act 2015.

Act 2015 in their country of residence. If a cardholder is charged for one of these services in her country of residence, the Redress Reimbursement Scheme will arrange for her to be reimbursed.

11. Since the establishment of the Magdalen Laundries Restorative Justice Scheme, 711 applicants have been paid a total of almost €27million in lump sum payments. This figure does not include the amount already paid and that will be paid in the future in respect of the weekly payment and it does not include the cost of the provision of medical benefits to eligible women.
12. Separately, on 10 April 2002 the Oireachtas (Irish Parliament) enacted the Residential Institutions Redress Act 2002⁴ to provide for the making of financial awards to persons who were resident as children in certain institutions and who suffered abuse while resident in those institutions. The institutions governed by the Residential Institutions Redress Act were generally industrial schools and reformatories that were operated by religious congregations, but which were subject to State regulation and inspection. Awards under the Residential Institutions Redress Act 2002 were assessed and made by the Residential Institutions Redress Board. Since its establishment, the cost of the Residential Institutions Redress Scheme has been €1.5billion⁵
13. According to her Complaint, the Complainant was committed by order of the Listowel District Court to the Pembroke Alms (Nazareth House) Industrial School for Girls in 1951 with the court order providing that she was to be detained until the eve of her 16th Birthday, [REDACTED] 1965. It is also set out in her Complaint that:-
 - a. on the 19 March 1964 the Complainant was admitted to St. Vincent's Magdalen Laundry, Peacock Lane, Cork and was resident there until 13 August 1966;
 - b. the Complainant was admitted to St. Mary's Sunday Well, another Magdalen Laundry in Cork, between 4 November 1966 and 8 March 1967; and
 - c. the Complainant was admitted to St. Mary's Magdalen Laundry, Cork Road, Waterford between 8 March 1967 to 30 April 1968.

⁴ Tab 4 – Residential Institutions Redress Act 2002.

⁵ This cost includes payment to eligible persons and the payment of legal costs associated with the making of applications for redress.

14. The Complaint made before the Committee only relates to the Complainant's residence in these three Magdalen Laundries.
15. The Complainant was resident in those Magdalen Laundries for a total period of 3 years and 11 months. On 15 July 2013 the Complainant made an application for redress under the Magdalen Laundries Restorative Justice Scheme relating to the period of time in which she was resident in the three identified Magdalen Laundries. Arising from this period of time in the Laundries, she was awarded a sum of €55,500 in accordance with the terms of the Magdalen Laundries Restorative Justice Scheme. The Complainant, who resides in the UK, is also eligible for a "2015A Card" in respect of medical services. As the complainant is now over 66 years of age, she receives the maximum amount of the pension type payment which can be awarded under the Magdalen Laundries Restorative Justice Scheme. That is to say, in addition to the lump sum payment of €55,500, she receives the full contributory State pension amounting to a weekly payment of €243.30. This involves a payment to the Complainant by the State Party of €973.20 every four weeks.
16. At the time of accepting the offer made to her under the terms of the Magdalen Laundries Restorative Justice Scheme, the Applicant signed a Statutory Declaration under which she agreed to waive any right of action against the State or any public or statutory body or agency arising from her admission to the Magdalen Laundries identified in her application for redress. All applicants for redress were given the opportunity to obtain independent legal advice on the application and the waiver. As part of the *ex gratia* Scheme, an allowance of €615 (€500 plus VAT) was available to every woman for the purposes of obtaining that legal advice from a solicitor of their choice. The Complainant did not elect to use this allowance although she was made aware of it by the administrators of the Scheme. Nonetheless, the Complainant's signature on the acceptance form and statutory declaration were both witnessed and signed by a solicitor acting on her behalf.
17. The State Party has issued two formal apologies to women who were resident in Magdalen Laundries for the abuse suffered by them and any stigma suffered by reason of their residence in those institutions. In February 2013, the then Taoiseach (Prime Minister), Enda Kenny, issued an apology on behalf of the Government in Dáil Éireann (the Lower House of the Irish Parliament). In June 2018, the President of Ireland, Michael D. Higgins, apologised to women who had been resident in Magdalen Laundries.

18. Previously, on 15 February 2004, the Complainant also made an application for redress pursuant to the scheme established under the Residential Institutions Redress Act 2002. The assessment of that application involved the Complainant giving evidence before the Residential Institutions Redress Board, which enabled it to make an assessment of the amount of redress which should be awarded to her. The award made by the Residential Institutions Redress Board related to abuse suffered by the Complainant in all institutions (including the Magdalen Laundries) in which she was resident up to her 18th birthday⁶. Having assessed all the evidence in relation to the abuse alleged by the Complainant, she was awarded the sum of €140,800 by the Residential Institutions Redress Board, comprised of €140,000 in redress and €800 in travelling expenses.

Admissibility ratione temporis

19. The State Party ratified the Convention on 11 April 2002. On the same date a Declaration was made pursuant to Article 22 of the Convention recognising the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction. The Convention entered into force with respect to the State Party on 11 May 2002.

20. The complaints made by the Complainant relate to matters that occurred prior to the ratification of the Convention and therefore do not fall to be considered by the Committee. The obligations placed on the State party by the Convention apply from the date of its entry into force for that State party. The matters complained of by the Applicant are alleged to have commenced in March 1964, upon her admission to Saint Vincent's Magdalen Laundry, Peacock Lane, Cork, and concluded in April 1968, upon her discharge from a Magdalen Laundry. *Prima facie* the complaint relates to matters that occurred prior to 11 May 2002 and are inadmissible *ratione temporis*.

21. The Complaint is framed in a manner that suggests an ongoing violation of the Complainant's rights. An examination of the contents of the complaints made by the

⁶ See Transcript of proceedings before Residential Institutions Redress Board, 24 February 2005, Document 36 to the Complaint, Page 891.

Complainant show that the substance of her complaints relates to matters that occurred while the Complainant was resident in institutions up to April 1968 when she was discharged from a Magdalen Laundry. This is evident from the explanation of the basis of her complaints contained at section 7 of the Complaint in which significant emphasis is placed on what occurred during the time the Complainant was resident in institutions.

22. The first complaint made relates to an allegation of a breach of Articles 12 and 13 in respect of an alleged failure to undertake a "*prompt and impartial*" investigation of the complaints made by the Complainant relating to what occurred while she was resident in Magdalen Laundries. In so far as complaints were made to the Irish authorities (either as a complaint to An Garda Síochána – Ireland's National Police Service - or by way of civil proceedings brought against the religious congregations who operated the Magdalen Laundries), these were made prior to May 2002. Therefore, the current complaints to the Committee relating to the manner in which any such pre-May 2002 complaints to national authorities were considered are inadmissible.
23. It is evident that the core of the Complaint relates to the abuse and treatment of the Complainant in the Magdalen Laundries, all of which occurred prior to May 2002 and is *prima facie* inadmissible.
24. It is a core principle of international law that the provisions of an international agreement will not bind a contracting State in relation to any fact or act that occurred or any situation that ceased to exist before the date of the entry into force of that treaty in respect of the individual State (the principle of non-retroactivity). This is reflected in Article 28 of the Vienna Convention on the Law of Treaties of 23 May 1969, which provides:

"Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

25. The application of the principle of non-retroactivity has been considered by the European Court of Human Rights ("*the ECtHR*") in the context of complaints brought before it relating to alleged violations of the European Convention of Human Rights and Fundamental Freedoms ("*the ECHR*"). In particular, the ECtHR has identified that the question of *ratione temporis* is one that goes to jurisdiction and is not simply a question of

admissibility. Where a complaint relates to matters that occurred prior to ratification, such complaint is not only inadmissible but the Court has no jurisdiction to consider it. This principle can be seen in the decision of the Court in *Blečić v. Croatia*:

"67. First, incompatibility ratione temporis is a matter which goes to the Court's jurisdiction rather than a question of admissibility in the narrow sense of that term. Since the scope of the Court's jurisdiction is determined by the Convention itself, in particular by Article 32, and not by the parties' submission in a particular case, the mere absence of a plea of incompatibility cannot extend that jurisdiction. To hold the contrary would mean that where a respondent State waived its right to plead or omitted to plead incompatibility, the Court would have to rule on the merits of a complaint against that State concerning a right not guaranteed by the Convention or on a Convention right not yet binding on it, for example by virtue of a valid reservation clause (incompatibility ratione materiae) or because it has not yet ratified an additional Protocol (incompatibility ratione personae).

The same has to be true for the Court's temporal jurisdiction, since the non-retroactivity principle operates to limit ratione temporis the application of the jurisdictional, and not only substantive, provisions of the Convention. Accordingly, the Court, in line with the position taken by the Commission on this point [footnote omitted], has to satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its jurisdiction at every stage of the proceedings."

26. In the State Party's view, there is a similar limitation on the jurisdiction of the Committee to consider complaints relating to events prior to ratification. In accordance with the general principle of non-retroactivity, which is also reflected in both the Convention and decisions of the Committee, the Committee cannot consider complaints that relate to acts or facts that occurred prior to ratification. Here, the Complaint relates to acts and facts that occurred quite a considerable period of time prior to ratification of the Convention by the State Party. Furthermore, the Complaint relates to a situation that ceased to exist before the date of entry into force of the Convention in respect of the State Party. At the time of the entry into force of the Convention in respect of the State Party, on 11 May 2002, the Complainant was no longer resident in a Magdalen Laundry, and had not been resident in any Magdalen Laundry for approximately 34 years. Further, Magdalen

⁷ Tab 5 - *Blečić v. Croatia*, Application no. 59532/00, paragraph 67, ECHR 2006 III 51.

Laundries no longer operate in the State with the last Laundry in Sean McDermott Street, Dublin having closed in 1996. Similarly, the Magdalen Institutes in which the Complainant resided closed prior to the relevant ratification dates of 11 May 2002. St. Vincent's Magdalen Laundry, Peacock Lane, Cork closed in 1991, St. Mary's, Sundays Well, Cork closed in 1977 and St. Mary's, Cork Road, Waterford closed in 1982.

27. This situation is not altered because the State Party may have been a party to other international agreements or domestically recognised the entitlement of individual to be protected against breaches of rights which are protected under the Convention. The jurisdiction of the Committee arises only from the Convention. In the absence of the Complainant taking issue with any acts or facts that arose subsequent to the date upon which it came into force in relation to the State Party, the Committee does not have jurisdiction to consider the complaint.
28. In so far as the Complainant seeks to rely on any alleged failure to provide a remedy for a breach of rights that is said to have occurred prior to ratification of the Convention, the State Party is also of the view that the consideration given to this issue by the ECtHR is persuasive in interpreting its obligations under the Convention. The ECtHR has held that a subsequent failure to remedy or address an alleged breach of rights protected by the ECHR that occurred prior to ratification could not bring a complaint within the jurisdiction of the Court. In *Blečić* it held:

"77. It follows from the above case law that the Court's temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference. The subsequent failure of remedies aimed at redressing that interference cannot bring it within the Court's temporal jurisdiction.

78. An applicant who considers that a State has violated his rights guaranteed under the Convention is usually expected to have resort first to the means of redress available to him under domestic law. If domestic remedies prove unsuccessful and the applicant subsequently applies to the Court, a possible violation of his rights under the Convention will not be caused by the refusal to remedy the interference, but by the interference itself, it being understood that this may be in the form a court judgment.

79. Therefore, in cases where the interference pre-dates ratification while the refusal to remedy it post dates ratification, to retain the date of the latter act in determining the Court's temporal

jurisdiction would result in the Convention being binding for that State in relation to a fact that had taken place before the Convention came into force in respect of that State. However, this would be contrary to the general rule of non-retroactivity of treaties”.

29. That approach was recently confirmed in *Milojević and Others v. Serbia*⁸, where the ECtHR held:

*“50. The Court reiterates that, in accordance with the general rules of international law, the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Convention with respect to that Party (see, for example, *Kadiķis v. Latvia* (dec), no. 47634/99, 29 June 2000). In order to establish the Court’s temporal jurisdiction it is therefore essential to identify, in each specific case, the exact time of the alleged interference. In doing so the Court must take into account both the facts of which the Applicant complains and the scope of the Convention right alleged to have been violated.*

51. The Court further notes that in cases where the interference pre-dates ratification while the refusal to remedy it post-dates ratification, to retain the date of the latter act in determining the Court’s temporal jurisdiction would result in the Convention being binding for that State in relation a fact that had taken place before the Convention came into force in respect of that State. This would be contrary to the general rule of non-retroactivity of treaties”.

30. The complaint made in relation to an alleged failure to provide a remedy and/or redress to the Complainant is entirely interlinked with a complaint of a substantive breach of the Complainant’s rights, all of which occurred prior to 11 May 2002. Any consideration of a complaint in respect of an alleged failure to provide a remedy and/or redress would result in the Committee examining and inquiring into events that arose prior to the date upon which the Convention came into force in respect of the State Party.

31. It is noted that the Committee has accepted that it may consider alleged violations of the Convention which occurred prior to recognition of its competence under Article 22 if the

⁸ Tab 6 - *Milojević and Others v. Serbia*, Application nos. 43519/07, 43524/07 and 45247/07, paragraphs 50-51, 12 January 2016.

effects of those violations continued after the declaration and if the effects themselves constitute a violation of the Convention. The Committee has held that in order for it to have jurisdiction to examine an alleged continuing violation, that continuing violation “*must be interpreted as an affirmation, after the formulation of the declaration [accepting the Committee’s jurisdiction], by act or by clear implication, of the previous violations of the State party*” (see Communication No. 495/2012, *N.Z. v. Kazakhstan*, decision on admissibility adopted on 28 November 2014, para 12.3).⁹ However, here, the Complainant has not established any evidence that would support a contention that the actions of the State Party have affirmed any alleged previous violations of the Convention. In fact, the State Party submits that the positive steps taken by the State Party to provide redress to those women who were resident in Magdalen Laundries is evidence of an absence of any affirmation of previous violations. These steps include the establishment of the Residential Institutions Redress Scheme in 2002, the more recent establishment of the Magdalen Laundries Restorative Justice Scheme and the apologies to the women made by President Michael D. Higgins and the then Taoiseach, Enda Kenny.

32. For these reasons, the State Party respectfully submits that the Committee does not have jurisdiction to consider this Complaint and it is therefore inadmissible.

Failure to Exhaust Domestic Remedies

33. The Complainant has failed to exhaust all available domestic remedies as required by Article 22(4)(b) of the Convention and Rule 113(e) of the Rules of Procedure. The Complainant has not established that the remedies available to her would be unreasonably prolonged or are unlikely to bring effective relief to her. The Complainant has never previously brought any proceedings and/or complaint against the State Party (or any State body) in which she complains of the matters which form the basis of the complaint made to this Committee. The Complainant does not provide any explanation for not bringing such proceedings.

34. At paragraph 5.1 of the Complaint, the Complainant outlines the steps taken by her to exhaust domestic remedies available to her. However, an examination of the steps taken

⁹ Tab 7 - Communication No. 495/2012, *N.Z. v. Kazakhstan*, Decision adopted on 28 November 2014, paragraph 12.3.

by the Complainant show that the only remedies sought by her relate to the treatment which she is alleged to have suffered while resident in different institutions, all of which occurred prior to May 2002.

35. The Complainant alleges that a complaint was made by her to An Garda Síochána in 1997 and 1998 in relation to the treatment alleged to have been suffered by her. However, the complaint to An Garda Síochána related to that treatment. It did not relate to the alleged failure of the State Party to hold an investigation, the alleged failure by the State Party to ensure complaints are examined by appropriate authorities, the alleged failure to provide adequate redress or the alleged affirmation by the State Party of the treatment in respect of which complaint is made.

36. Similarly, the Complainant (through a firm of solicitors acting on her behalf) commenced a civil claim against religious congregations in 1999. An examination of the Plenary Summons and Statement of Claim¹⁰ shows that, in these proceedings, the Complainant 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.

37. As appears from Paragraph 5.1.2 of the Complaint, those proceedings were struck out by the High Court in November 2001 on the basis of what the Court found to be 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 Complainant did not seek to appeal that decision to the Supreme Court. It is stated that that this was on foot of legal advice.

38. However, this civil claim:

- (a) did not seek relief against the State Party in relation to the treatment alleged to have been suffered by her while resident in institutions managed by religious congregations, and

¹⁰ Tab 32, Index of Documents to the Complaint.

(b) only related to the treatment alleged to have been suffered by her and did not make complaint in relation to the alleged failure of the State Party to hold an investigation, the alleged failure by the State Party to ensure complaints are examined by appropriate authorities, the alleged failure to provide adequate redress or the alleged affirmation by the State Party of the treatment in respect of which complaint is made.

39. At paragraph 5.1.2 of the Complaint, it is explained that the Complainant brought an application to join the State Party and the Minister for Education to her civil action but that such application was not pursued as the substantive proceedings were struck out by the High Court. The affidavit sworn by the Complainant in support of that application¹¹ establishes that the claim sought to be maintained against the State Party and the Minister for Education related to obligations said to be placed on those parties with regard to the "supervision, inspection and control" of the institutions in which she was resident. It was not proposed, on foot of that application, to make any argument that the State Party and/or the Minister for Education were required to undertake any investigation or to ensure complaints were investigated or to establish a redress mechanism. It is clear, therefore, that the Complainant has never sought to maintain domestic proceedings in relation to the matters that are said to be the focus of this Complaint.

40. In that regard, the position argued by the Complainant is inconsistent. On the one hand, she argues that the facts that give rise to the complaint occurred after 11 May 2002 such that there is a continuing violation of the Convention that would justify the Committee deeming the complaint to be admissible. On the other hand, she argues that making complaints to An Garda Síochána and bringing a civil claim in 1999 before the High Court against the religious congregations who owned and operated the institutions is sufficient to meet the requirement that she exhaust all domestic remedies. However, those complaints and the civil action could only ever relate to events that occurred prior to 1999. By extension, if there is overlap between the matters dealt with in those complaints and by the civil action and the matters that are sought to be complained of before the Committee, those matters must be inadmissible *ratione temporis*.

41. If there is no overlap between the matters underpinning the complaints to An Garda Síochána and the civil action and the matters that form the basis of this Complaint, then

¹¹ Tab 33, Index of Documents in the Complaint.

they are not relevant to the issue of admissibility that is to be considered by this Committee. Further, if there is no overlap, then the inference that must be drawn is that the Complainant has not maintained any domestic proceedings in respect of the matters that form the basis of this complaint with the consequence that the Complainant has not exhausted her domestic remedies and the complaint must be deemed inadmissible in accordance with Article 22(4)(b) of the Convention and Rule 113(c) of the Rules of Procedure.

42. At paragraphs 5.1.3 – 5.1.5 the Complainant seeks to argue that she has been prevented from bringing domestic proceedings against the State by reason of waivers signed by her upon receipt of redress payments in accordance with the Residential Institutions Redress Act, 2002 and the terms of the Magdalen Laundries Restorative Justice Scheme. An argument of that nature is disingenuous and fails to take account of decisions made by the Complainant herself to apply to and then accept awards under both Schemes.

43. The Complainant has been awarded monetary compensation on two separate occasions under the Residential Institutions Redress Act 2002 and the Magdalen Laundries Restorative Justice Scheme, both of which are operated by and funded by the State. The redress schemes operated on an entirely voluntary basis whereby qualifying persons were invited to make an application for redress and the redress to which they were entitled were assessed.

44. The Residential Institutions Redress Act 2002 entitled any person to an award of redress where they could establish the matters set out in Section 7 of that Act, namely:

- (i) Proof of his or her identity
- (ii) That he or she was resident in an institution during their childhood
- (iii) That he or she was injured while so resident and that injury is consistent with any abuse that is alleged to have occurred while so resident.

45. Persons who had already been made an award from a court or a settlement in respect of an action arising out of any circumstances which could give rise to an application before the Residential Institutions Redress Board were precluded from making an application to

the Board and from receiving an award under the Act in respect of those circumstances¹². Section 7(4) of the Residential Institutions Redress Act 2002 provides that the making of an application before the Board does not involve the waiver of any other right of action by the Applicant. However, where an applicant accepted an award made by the Residential Institutions Redress Board, he or she was required to *“agree in writing to waive any right of action which he or she may otherwise have had against a public body or a person who has made a contribution under section 23 (5) and to discontinue any other proceedings instituted by the applicant, against such public body or such person, that arise out of the circumstances of the application before the Board”*¹³.

46. As outlined above, upon accepting an offer of redress under the Magdalen Laundries Restorative Justice Scheme, the Complainant signed a Statutory Declaration in which she agreed to *“waive any right of action against the State or any public or statutory body or agency arising out of my admission to and work in St Mary’s, Sunday’s Well, Cork, St. Mary’s, Cork Road, Waterford and St. Vincent’s, St Mary’s Road, Peacock Lane, Cork”*.
47. Both redress schemes were established on a voluntary basis, with applicants being entitled to apply for redress awards should they wish to do so. However, applicants to those schemes were under no compulsion to accept the awards made. The question of a waiver of the right to bring or continue legal proceedings only arose where an award was accepted by an applicant.
48. In this instance, the Complainant made applications to both the Residential Institutions Redress Board and the Magdalen Laundries Restorative Justice Scheme and was offered awards under the terms of both schemes. The Complainant elected to accept the awards made to her and to sign the waivers accompanying the awards, in both cases with the benefit of legal advice. While the Complainant is now precluded from bringing proceedings before the domestic courts, that preclusion arises from the Complainant’s own decisions. It was open to the Complainant to refuse the awards and to bring proceedings against the State Party before the domestic courts. The Complainant elected not to take that course

¹² Section 7(2) and section 7(3) of the Residential Institutions Redress Act 2002.

¹³ Section 13(6) of the Residential Institutions Redress Act 2002.

of action and, therefore, is estopped from seeking to bring this complaint before the Committee.

Breach of Rule 113 of the Rules of Procedure – Acting on behalf of other persons

49. In accordance with Rule 113 of the Rules of Procedure, the Committee may only consider complaints from an individual who claims to be the victim of a violation by a State Party of the provisions of the Convention. Rule 113(a) of the Rules of Procedure requires that the complaint “*should be submitted by the individual himself/ herself or by his/ her relatives or designated representatives or by others on behalf of an alleged victim where it appears that the victim is unable to personally submit the complaint, and, when appropriate authorisation is submitted to the Committee*”.
50. The Complaint submitted by the Applicant purports to be on behalf of herself and “*other survivors of the Magdalen Laundries*”. The summary of the specific complaints made by the Complainant can be found at paragraphs 4.6, 4.8, 4.9 and 4.11 wherein the Complainant identifies the Articles of the Convention alleged to have been breached by the State Party and provides a short summary of the basis of that allegation. In each instance, the complaint is framed as being on behalf of the Complainant “*and other survivors of the Magdalen Laundries*”. It is further clear from the remainder of the Complaint that the basis of the complaint is not simply the allegations made personally by the Complainant but rather it is aimed towards the State response to all women who were resident in Magdalen Laundries.
51. The Complainant is not entitled to act, and has not presented any authorisation to act, on behalf of “*other survivors*.” Therefore, in so far as she seeks to rely on any alleged violation suffered by “*other survivors*”, such complaint is inadmissible in accordance with the Rules of Procedure. In this regard, the State Party relies on the decision of the Committee in *A.A. v. Azerbaijan* (Communication No. 247/2004, decision on admissibility adopted on 25 November 2005).¹⁴
52. The State Party submits that the entire complaint is inadmissible in accordance with Article 22 of the Convention and Rule 113 of the Rules of Procedure. However, strictly without

¹⁴ Tab 8 - Communication No. 247/2004, *A.A. v. Azerbaijan*, Decision on admissibility adopted on 25 November 2005.

prejudice to that submission, if the Committee is minded to deem the Complaint admissible, the decision on admissibility should be confined to matters that relate specifically to the individual circumstances of the Complainant and ought not be permitted to make any broad, or expansive complaint relating to "survivors" generally.

Conclusion on Admissibility

53. The Complainant seeks to make a broad and wide-ranging complaint relating to matters that occurred while she was resident in Magdalen Laundries in the period between 1964 and 1968. While an attempt is made to frame the Complaint in a manner that suggests that it is only alleged ongoing matters or matters that arose after ratification that are impugned, an examination of the detail of the Complaint clearly establishes that its core relates to the substance of what occurred while the Complainant was resident in different Magdalen Laundries in the period 1964 - 1968. Having occurred prior to May 2002, it is *prima facie* inadmissible *ratione temporis*. Consideration of this Complaint would be outside of the jurisdiction vested in the Committee by the Convention and would amount to a consideration of acts and facts that arose prior to the date upon which the Convention came into force in respect of the State Party.
54. Further, the Complainant has not exhausted domestic remedies available to her and has never sought to either make complaint or bring proceedings against the State relating to the alleged failure by the State Party to investigate abuses in the Magdalen Laundries or in relation to the redress obtained by her in relation to her time resident in those Laundries. The domestic proceedings relied upon by her as evidence of her compliance with an obligation to exhaust domestic remedies did not raise the matters in respect of which she now seeks to make a complaint.
55. Finally, in so far as the Complainant purports to make her complaint on behalf of herself and "other survivors", she is not entitled to do so and has no authorisation that grants her permission to act on behalf of "other survivors" and therefore has not complied with Article 22 of the Convention and Rule 113 of the Rules of Procedure.
56. Having regard to the foregoing and in light of the fact that the substance of the complaints relates to matters that occurred prior to the date upon which the Convention became

applicable to the State Party, it is respectfully submitted that the complaint is inadmissible and ought to be dismissed. The State Party requests that the question of admissibility be considered and determined prior to the merits of the complaint being assessed by the Committee.

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

BETWEEN

ELIZABETH COPPIN

COMPLAINANT

AND

IRELAND

STATE PARTY

LIST OF APPENDICES

1. Report of Mr Justice John Quirke dated May 2013
2. Terms of the Magdalen Laundries Restorative Justice Ex-Gratia Redress Scheme (November 2018)
3. Redress for Women Resident in Certain Institutions Act 2015
4. Residential Institutions Redress Act 2002
5. Blečić v. Croatia (Application no. 59532/00)
6. Milojević and Others v. Serbia, Application Nos. 43519/07, 43524/07 and 45247/07), 12 January 2016
7. Communication No. 495/2012, N.Z. v. Kazakhstan, Decision adopted on 28 November 2014
8. Communication No. 247/2004, A.A. v. Azerbaijan, Decision on admissibility adopted on 25 November 2005

