

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

SUBMISSION OF THE GOVERNMENT OF IRELAND ON THE MERITS OF
THE COMMUNICATION TO THE COMMITTEE AGAINST TORTURE MADE
BY ELIZABETH COPPIN

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EXECUTIVE SUMMARY

1. The State Party encloses this Executive Summary of its response to the complaint lodged by Elizabeth Coppin (*the Complainant*) in which it is alleged that Ireland is in breach of its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*the Convention*).
2. The State Party does not accept that there has been any violation of the Convention by reason of the matters contained in the Complaint. It is the position of the State Party that the allegations made in relation to the treatment of the Complainant while she was resident in Magdalen Laundries, institutions which were not in the ownership or control of the State Party, which underpin the Complaint have been fully investigated by appropriate agencies. Further, without prejudice to the position of the State Party that there has been no violation of the Convention, the Complainant has been granted redress, including significant monetary compensation, in respect of the manner in which she was treated in the institutions in which she was resident, which include an Industrial School and three Magdalen Laundries.
3. The allegations made by the Complainant in relation to her treatment in an Industrial School and the Magdalen Laundries were investigated by An Garda Síochána (the police force in Ireland) and it was determined that no prosecution could be brought against any individuals.
4. Since 1999, the State Party has undertaken different investigations into allegations of abuse in institutional settings. The totality of those investigations has allowed the facts relating to the operation of different institutions and the manner in which those who were resident in the institutions were treated to be established. These investigations have addressed the collective position regarding certain institutions, while also giving individuals an opportunity to give testimony with regards to their individual experiences. Those investigations could only be carried out in accordance with the obligation associated with the right to a fair trial, as reflected in Article 38.1 of the Irish Constitution, Article 6 of the European Convention on Human Rights and Fundamental Freedoms and Article 14 of

the International Covenant on Civil and Political Rights. Those investigations include the Commission to Inquire into Child Abuse ('CICA') and the on-going Commission of Investigation into Mother and Baby Homes and certain related matters.

5. 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 mandate given to the inter-departmental committee was *'to establish the facts of State involvement with the Magdalen Laundries...and to write a Narrative Report thereon'*. As part of its investigations, the inter-departmental committee met with and undertook interviews with 118 women who had been resident in Magdalen Laundries, including the Complainant.
6. The report of the inter-departmental committee was published in February 2013. It provides a comprehensive account of state involvement with Magdalen Laundries and put into the public domain a significant volume of information regarding the manner in which women entered the Laundries, their exit paths, the involvement of the State both with the manner in which women entered Laundries and how those Laundries were inspected. The report of the inter-departmental committee also addresses the living and working conditions of the women resident in the Laundries.
7. An Garda Síochána has investigated allegations of abuse made to it by individuals who have been resident in Magdalen Laundries and other institutional settings. The national law of the State Party does not have a statute of limitations with regards to criminal investigations and it remains open to any individual to make a complaint to An Garda Síochána where they believe that the treatment to which they were subject in a Magdalen Laundry was a criminal offence
8. On 28 October 1997, the Complainant made a complaint to An Garda Síochána of having been the victim of physical and emotional abuse while she was resident in Magdalen Laundries. On foot of that complaint, An Garda Síochána undertook an investigation of the allegations made by the Complainant, which included taking statements from her and from relevant witnesses and seeking to obtain relevant documentation. On foot of the investigation, reports were submitted to the Director of Public Prosecutions, the independent agency responsible for the prosecution of offences in Ireland, for directions as to whether criminal charges should be brought against any individual. The file was

reviewed by a senior officer in the Office of the Director of Public Prosecutions. In January 1999, the Director of Public Prosecutions determined, in accordance with the Guidelines for Prosecutors, that there was insufficient evidence to warrant a prosecution. At that time the Director of Public Prosecutions was of the view that there was insufficient evidence to determine whether charges could be brought in respect of the allegation of false imprisonment and informed An Garda Síochána that, if further evidence was obtained in relation to this allegation, the matter could be reconsidered. The Complainant was informed of the directions made by the Director of Public Prosecutions.

9. An Garda Síochána undertook further investigations in relation to the allegation of false imprisonment. The investigation identified that all parties who were in authority for the relevant period (i.e. 1964 – 1968) were now deceased. It was therefore concluded that it would not be possible to attribute an allegation of false imprisonment to any individual person. On 16 June 2000, the Director of Public Prosecutions issued final directions that no prosecutions were to be brought in relation to the allegations made by the Complainant.
10. Separately, following engagements with the inter-departmental committee, An Garda Síochána met with four women, including the Complainant, about the time they spent in Magdalen Laundries and any interaction between them and members of An Garda Síochána. The meeting with the Complainant occurred in London, United Kingdom on 18 July 2012 and further enquiries were undertaken by An Garda Síochána following that meeting.
11. In 1999, the Complainant (through a firm of solicitors acting on her behalf) issued civil proceedings against the Sisters of Mercy, the Sisters of Charity, the Sisters of the Good Shepherd and Sr. Enda O’Sullivan. Those proceedings were struck out by the High Court 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 High Court concluded that the claim would be *‘impossible to defend at this remove of time’*.
12. The State Party has established different mechanisms whereby redress is provided to persons who were resident in institutions, including Magdalen Laundries. The Residential Institutions Redress Act 2002 provides 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 State Party also established the Residential Institutions Statutory Fund Board (“Caranua”) under the Residential Institutions Statutory Fund Board Act, 2012, which was funded by the Religious Congregations and provided funding to former residents to enable them to obtain services. The State Party has also established the Magdalen Restorative Justice Ex-Gratia Scheme (*“the Magdalen Laundries Restorative Justice Scheme”*). Applicants are eligible for the payment of a lump sum calculated by reference to their length of stay in a laundry and medical benefits.

13. It is the position of the State Party that the acts complained of do not meet the required threshold to be defined as either torture or cruel or inhuman or degrading treatment or punishment. The State Party submits that the acts in respect of which complaint is made does not meet the required threshold, in the manner envisaged by General Comment No. 2. (i.e. the required special gravity is not present) nor can they be compared to the type of treatment that has been found to fall within the definitions of either torture or cruel or inhuman or degrading treatment or punishment by the Committee or other similar mechanisms and/or Courts.
14. It is the position of the State Party that the complaint of ill-treatment made by the Complainant has been fully investigated by relevant authorities and that the obligations contained in Article 12 and 13 of the Convention have been met. 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 Article 12 and 13.
15. In particular, the complaint made to An Garda Síochána was fully investigated and it was determined by the independent Director of Public Prosecutions that there should be no criminal prosecution. The ultimate conclusion of the investigation by An Garda Síochána was that it was not possible to bring criminal charges against any individuals as the persons against whom allegations were made by the Complainant were dead.
16. The investigations of the specific complaints made by the Complainant have been supplemented by the investigations completed by the inter-departmental committee. The report of the interdepartmental committee is a comprehensive, factual account of the history of the Magdalen Laundries, the manner in which they were operated and the living

and working conditions which existed in them. It placed a significant amount of information in the public domain that was not previously available.

17. The State Party submits that the obligations contained in Article 14 only apply to a 'victim of an act of torture'. Without prejudice to the foregoing, if it is necessary to consider the question of redress the State Party submits that the Complainant has been granted significant redress by the State Party. On 24 February 2005, following a hearing during which the Complainant gave evidence, she was awarded the sum of €140,800 from the RIRB 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.
18. The State Party has issued two formal 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. In February 2013, the Taoiseach, Enda Kenny TD, issued an apology on behalf of the Irish Government in Dáil Éireann. In June 2018, the President of Ireland, Michael D. Higgins apologised to women who had been resident in Magdalen Laundries. Previously, on 10 May 1999, the Taoiseach, Bertie Ahern TD, issued an apology on behalf of the State and its citizens to the victims of childhood abuse.
19. There is no risk that the Complainant will be subject to acts of repetition. Magdalen Laundries no longer exist in the State following the closure of the final Laundry in 1996. More generally, the State Party has in place a comprehensive legislative framework that governs the taking of children in to care, employment rights and the promotion and protection of human rights including the prevention of torture and other cruel, inhuman or degrading treatment or punishment. Similarly, it has not been established that there has been any continuing violation of Article 16.
20. 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.

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I. Introduction

1. On 25 July 2018 Elizabeth Coppin (*the Complainant*) lodged a complaint against Ireland (*the State Party*) with the United Nations Committee Against Torture (*the Committee*) in which it is alleged that Ireland is in breach of its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*the Convention*). The complaint was communicated to the State Party by the Office of the High Commissioner for Human Rights on 29 August 2018 and relates to treatment alleged to have been suffered by the Complainant while resident in Magdalen Laundries in the State.
2. By a response filed with the Committee on 29 November 2018, the State Party objected to the admissibility of the Complaint. By decision of 4 December 2019, which was communicated to the parties in January 2020, the Committee determined that the complaint was admissible.
3. The Complainant contends that between the ages of 14 and 18 she was subjected to torture and cruel, inhuman and degrading treatment and punishment in three Magdalen Laundries in which she was resident. The Complainant was born in the Saint Columbanus County Home, Killarney, County Kerry on [REDACTED] 1949. In 1951, by Order of the Listowel District Court, the Complainant was committed to the Pembroke Alms (Nazareth House) Industrial School for Girls in Tralee, County Kerry with that Order providing that she be detained until [REDACTED] 1965. The Complainant was discharged from the Industrial School in March 1964 and was admitted to St Vincent's Magdalene Laundry, Peacock Lane, Cork where she was resident until 13 August 1966. The Complainant was later admitted to Saint Mary's Sunday's Well, Cork where she resided between 4 November 1966 and 8 March 1967. Finally, the Complainant was admitted to Saint Mary's Magdalene Laundry, Cork Road, Waterford between 8 March 1967 to 30 April 1968.
4. The Complainant alleges that she was subjected to *'arbitrary detention, servitude, forced labour, deliberate and ritual humiliation, denial of identity, denial of educational opportunity, denial of privacy, physical neglect and other forms of grave physical and psychological abuse'*. On foot of those allegations, the Complainant complains of a violation of Articles 12, 13, 14 and 16 of the Convention.

¹ Paragraph 4.3, Complaint.

5. In particular, the complaint made can be summarised as follows:

- (i) A violation of Article 12, alone and in conjunction with Article 16, on the basis that Ireland has *'never held a prompt and impartial investigation into the complaints of torture and cruel, inhuman and degrading treatment and punishment in the Magdalene Laundries made by her and by other survivors of the Magdalene Laundries'*. It is alleged that the complaints made by the Complainant to An Garda Síochána² have not been investigated and Ireland has not established a statutory investigation into allegations of abuse in Magdalen Laundries.
- (ii) A violation of Article 13, alone and in conjunction with Article 16, on the basis that Ireland has *'failed to ensure that she and other survivors of the Magdalene Laundries have the right to complain to and have their cases examined by the competent authorities'*. It is alleged that complaints to An Garda Síochána have not been investigated and that proceedings brought by her against the Religious Institutions who operated the Laundries in which she was resident were dismissed by the Irish High Court.
- (iii) A violation of Article 14, alone and in conjunction with Article 16, on the basis that Ireland *'has failed to ensure that she and other survivors of the Magdalene Laundries can obtain full redress for the violations suffered, including the means for as full rehabilitation as possible'*.
- (iv) A continuing violation of Article 16 on the basis that *'Ireland's failures and the resulting impunity of the State and relevant religious congregations constitute an affirmation by Ireland, by act and by clear implication, of Mrs Coppin's treatment in the Magdalene Laundries'*.

6. The State does not accept that there has been any violation of the Convention by reason of the matters contained in the Complaint. It is the position of the State Party that the allegations made in relation to the treatment of the Complainant while she was resident in Magdalen Laundries which underpin the Complaint have been fully investigated by

² The police force of the State Party.

appropriate agencies. Further, without prejudice to the position of the State Party that there has been no violation of the Convention, the Complainant has been granted redress, including significant monetary compensation, in respect of the manner in which she was treated in the institutions in which she was resident, which include an Industrial School and three Magdalen Laundries. Furthermore, the allegations made by the Complainant in relation to her treatment in an Industrial School and the Magdalen Laundries were investigated by An Garda Síochána (the police force in Ireland) and it was determined that no prosecution could be brought against any individuals. More generally, Magdalen Laundries were the subject of an investigation by an inter-departmental committee appointed by the State Party and chaired by Senator Martin McAleese (*the inter-departmental committee*). The report of the inter-departmental committee published in February 2013 provides a comprehensive analysis of Magdalen Laundries, State involvement in those institutions and the living and working conditions to which women were subject in them. Redress for women who were resident in Magdalen Laundries has been provided through the Magdalen Laundry Restorative Justice Scheme. Separately, the State Party has undertaken investigations of child abuse in institutional settings through the Commission to Inquire into Child Abuse and has provided redress for that abuse through the Residential Institutions Redress Scheme.

II. Scope of the Jurisdiction of the Committee to consider the Complaint

7. Article 22 of the Convention limits the jurisdiction of the Committee to complaints submitted by individuals. There is no provision in the Convention for the consideration of an allegation of a violation of collective rights. This is reflected in Rule 113 of the Rules of Procedure. 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*”³.
8. The Complaint submitted in this case purports to be made on behalf of the Complainant and “*other survivors of the Magdalen Laundries*”. There is frequent reference throughout the Complaint to ‘*other survivors of the Magdalen Laundries*’, including at paragraphs 4.6, 4.8, 4.9 and 4.11 in which a summary of the complaint made in respect of each Article of the Convention is provided. Many of the matters complained of go far beyond the personal

³ Committee against Torture, *Rules of Procedure*, CAT/C/3/Rev.6 (1 September 2014).

circumstances of the Complainant and relate to general complaints about the manner in which the State Party has addressed issues related to Magdalen Laundries and women who were resident in them.

9. It was argued in the Submissions on Admissibility made on behalf of Ireland that the Complainant was not entitled to act on behalf of *'other survivors'*. In her response on admissibility, the Complainant indicated that she did not purport to submit complaints on behalf of other survivors *'but rather to acknowledge that there is an undeniable collective dimension to the right to truth in the present case and her situation is shared by many other victims'*.
10. The scope of the Complaint and whether it was made only on behalf of the Complainant or whether it extends to other persons is not addressed in the Decision on Admissibility.
11. The State Party repeats that it is its position that the jurisdiction of the Committee is confined to the consideration of the personal circumstances of the Complainant and the Complainant has no entitlement to seek to extend the scope of the Committee's jurisdiction. The assertion by the Complainant that the complaint is only framed in this manner so as to *'acknowledge that there is an undeniable collective dimension'* to some of the allegations does not reflect the actual contents of the Complaint. Instead, it represents an *ex post facto* attempt to justify the drafting of the complaint in a way so that it is made on behalf of the Complainant and *'other survivors'*.
12. The limits to the jurisdiction of the Committee are clearly established by Article 22 and the Rules of Procedure. The Committee does not have jurisdiction to generally consider the manner in which the State Party has addressed issues relating to Magdalen Laundries or the women who were resident in those institutions. Further, the Committee does not have jurisdiction to consider general societal issues that may exist within the State Party which have no bearing on either the Complaint or the personal circumstances of the Complainant. The Committee may only consider whether the facts as pleaded by the Complainant as they relate to her individual situation give rise to a violation of the Convention.

III. Institutions and Institutional Settings in which individuals were resident in Ireland

13. The Complaint made by the Complainant relates to the period of time spent by her resident in three different Magdalen Laundries and alleged violations of certain articles of the

Convention that flow from that period of time. The scope of the Complaint is limited to specific Magdalen Laundries and cannot extend beyond those institutions. However, as the Complaint includes references to time spent by her in different institutional settings, it is necessary to provide a brief explanation of the different types of institutions that existed in Ireland and the overall role played by the State Party in the operation of those institutions.

14. Magdalen Laundries operated in Ireland since the eighteenth century. They were established and operated primarily by religious orders as refuges for women. Women admitted to the Laundries or adjoining institutions usually engaged in work including laundry, sewing, lace-making and habit making. Women admitted to the refuges lived in accommodation on the same premises. These institutions were not operated or owned by or on behalf of the State. Instead, the Laundries were operated on a private basis usually by religious congregations. The history of these institutions is recorded in Chapter 3 of the report of the inter-departmental committee⁴, which notes that originally their establishment was linked to providing shelter for women who were in prostitution or in danger of becoming involved in prostitution. Throughout the 19th century, their continued existence was associated with widespread poverty throughout the State and the absence of state support. It is noted in the report of the inter-departmental committee that the availability of Magdalen Laundries, and other institutional settings, was seen as a solution to certain social problems and poverty. It was also acknowledged that the Magdalen Laundries were lonely and frightening places for those who lived there and that the women were often required to engage in harsh and physically demanding work. Allied to this was the fact that their placement in a Magdalen Laundry was a cause of confusion and hurt to some women as they did not know why they had been placed in those institutions.

15. The Complainant was resident in three Magdalen Laundries, each of which are described in Chapter 3 of the inter-departmental report. The history of St. Mary Magdalen's Peacock Lane, Cork is at paragraphs 47 – 49 of Chapter 3 of the report of the inter-departmental committee. The history of St. Mary's, Good Shepherd Laundry, Convent Avenue, Sunday's Well, Cork is at paragraphs 63 – 65 of Chapter 3 of the report of the inter-departmental committee. The history of St. Mary's Good Shepherd Laundry, Cork Road, Waterford is at paragraphs 56 – 59 of Chapter 3 of the report of the inter-departmental committee.

⁴ Chapter 3, Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries, February 2013, Tab 1.

16. Magdalen Laundries were not owned or operated on behalf of the State Party. There was no specific statutory framework under which individuals could be committed to a Magdalen Laundry. The report of the inter-departmental committee establishes that there were different routes by which women entered Magdalen Laundries⁵, including

- Voluntary or self-referrals (16.4% of known entries)
- Transfer from another Magdalen Laundry (14.8% of known entries)
- Referrals by family (10.5% of known entries)
- Referrals from priests (8.8% of known entries)
- Referrals from the criminal justice system (8.1% of known entries)
- Referrals from Industrial and Reformatory Schools (7.8% of known entries)
- Referrals from the health and social services sector (6.8% of known entries)
- Referrals from Mother and Baby Homes (3.9% of known entries)

17. Magdalen Laundries were not subject to inspection by the State in a manner similar to residential institutions operated for and on behalf of the State Party. Instead, they were regulated under the Factories Act, 1955 in a manner similar to commercially operated workplaces and laundries.

18. Magdalen Laundries no longer operate in Ireland. The last operational Laundry, located at Sean McDermott Street, Dublin, closed in 1996.

19. Magdalen Laundries are to be contrasted with other institutional settings which operated in Ireland during the relevant time period. The Reformatory Schools (Ireland) Act, 1858 established a system of Reformatory Schools for children who had been found guilty of criminal offences. The Industrial Schools (Ireland) Act, 1868 established a system of Industrial Schools for children who had been neglected, orphaned or abandoned. This legislative framework was replaced by the Children Act, 1908, which established a system for the committal of children to both Industrial Schools and Reformatory Schools. The Children Act, 1908 was substantially amended by the Child Care Act, 1991 (with those

⁵ Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries, February 2013, Tab 1.

amendments becoming operational by 1996). The 1908 Act was fully replaced by the Children Act, 2001.

20. Industrial and Reformatory Schools were independently managed, often by Religious Congregations. However, they were subject to a specific inspection regime operated by the State. Further, State funding was provided for recurring expenditure. A full history of the legislative history of Industrial and Reformatory Schools can be found in the Final Report of the Commission to Inquire into Child Abuse⁶. The Pembroke Alms (Nazareth House) Industrial School for Girls, Tralee, Co. Kerry, to which the Complainant was committed by the Order of Listowel District Court was an Industrial School within the meaning of the Children Act, 1908.

21. Mother and Baby Homes existed to provide accommodation and support for unmarried women and their babies. There was no common governance, policy or legislative basis to their operation. However, in general, they were operated and managed by Religious Congregations while being funded by the State.

22. County Homes evolved through the Local Government (Temporary Provisions) Act, 1923 which brought the administration of the public assistance services formally into the Irish Free State and provided that in each county one workhouse building should be retained as a 'county home' in which all the non-medical inmates in the county were lodged. These facilities provided a diverse range of health and social care services including, services to older persons, the chronically sick, those with mental health and intellectual disabilities and children with disabilities. As of 1949/1950, 29 County Homes operated in the State. In some instances, County Homes also provided services similar to those which were provided in Mother and Baby Homes. These institutions continued to operate until the 1960s when they were converted into homes for the aged.

IV. Investigations of alleged abuse that occurred within institutional settings by the State Party

23. Since 1999, the State Party has undertaken different investigations into allegations of abuse in institutional settings. The totality of those investigations has allowed the facts relating to

⁶ Chapter 2, Final Report of the Commission to Inquire into Child Abuse, 20 May 2009, Available at: <http://www.childabusecommission.ie/rpt/>

the operation of different institutions and the manner in which those who were resident in the institutions were treated to be established. These investigations have addressed the collective position regarding certain institutions, while also giving individuals an opportunity to give testimony in regard to their individual experiences.

24. A distinction must be drawn between investigations established by the State Party for the purposes of establishing the facts relating to abuse that occurred in institutional settings and the investigation of allegations of abuse in those settings made by individuals.

25. The investigation and prosecution of criminal offences in the State is the responsibility of An Garda Síochána, who are currently vested with those functions by the Garda Síochána Act, 2005⁷. Further the responsibility for determining whether criminal charges are to be brought against any individual following the conclusion of an investigation by An Garda Síochána is vested in the Director of Public Prosecutions. The Director of Public Prosecutions was established by the Prosecution of Offences Act, 1974 and has responsibility for the direction and supervision of criminal prosecutions. By virtue of section 2(5) of the Prosecution of Offences Act, 1974 the Director of Public Prosecutions is independent in the performance of his or her functions. In particular, the Director of Public Prosecutions operates independently of An Garda Síochána and of the Government (including any individual Government Department).

26. Holding an individual criminally liable for an allegation of torture or ill-treatment, or the prosecution of an individual in that regard, is something that may only be undertaken in the context of the investigation and/or prosecution of a criminal offence carried out in accordance with the requirements of Article 38.1 of the Constitution. National Law does not permit individuals to be held responsible for criminal acts otherwise than following a trial in due course of law. The requirements of national law are, in this regard, also reflected in the guarantees relating to the right to a fair trial found in international Human Rights Treaties. That right is guaranteed in Article 6 of the European Convention on Human Rights and Fundamental Freedoms and Article 14 of the International Covenant on Civil and Political Rights. In particular, Article 14 of the ICCPR provides that *'in the determination*

⁷ See, in particular, Section 7 of the Garda Síochána Act, 2005, Tab 2.

*of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law*⁸.

27. An Garda Síochána has investigated allegations of abuse made to it by individuals who have been resident in Magdalen Laundries and other institutional settings. The national law of the State Party does not have a statute of limitations with regards to criminal investigations and it remains open to any individual to make a complaint to An Garda Síochána where they believe that the treatment to which they were subject in a Magdalen Laundry was a criminal offence. The manner in which the specific complaints made by the Complainant have been investigated by An Garda Síochána and by which they have been considered in the context of the investigations undertaken by the State Party, is considered in more detail below.

28. In 1999, the State Party established the Commission to Inquire into Child Abuse ('CICA'). CICA was initially established on an administrative basis and was subsequently placed on a statutory footing in accordance with the Commission to Inquire into Child Abuse Act, 2000. It was mandated⁹:

- (i) To inquire into the abuse of children in institutions during the relevant period,
- (ii) Where it is satisfied that such abuse has occurred, to determine the causes, nature, circumstances and extent of such abuse, and
- (iii) Without prejudice to the generality of any of the foregoing, to determine the extent to which -
 - (I) The institutions themselves in which such abuse occurred,
 - (II) The systems of management, administration, operation, supervision, inspection and regulation of such institutions, and
 - (III) The manner in which those functions were performed by the persons or bodies in whom they were vested, contributed to the occurrence or incidence of such abuse.

⁸ See, in general, UN Human Rights Committee, *General Comment No. 32, Right to equality before courts and tribunals and for fair trial*, 23 August 2007, CCPR/C/GC/32, Tab 37.

⁹ Section 4(1)(b) of the Commission to Inquire into Child Abuse Act, 2000, Tab 3.

29. The remit of CICA included institutions which were defined as a school, an industrial school, a reformatory school, an orphanage, a hospital, a children's home and any other place where children are cared for other than as members of their families¹⁰. The purpose of CICA was to inquire into the abuse of children in different institutional settings. Magdalen Laundries did not fall within the definition of institutions contained in the Commission to Inquire into Child Abuse Act, 2000. However, as discussed below, time spent in a Magdalen Laundry up to the age of 18 was included within the redress scheme established by the Residential Institutions Redress Act, 2002 by which redress was provided to persons who had suffered abuse in institutions as children¹¹.
30. CICA was comprised of a Confidential Committee, which provided a forum for persons who suffered abuse to recount their experience on a confidential basis, and an Investigation Committee, which was mandated to investigate allegations of abuse made by individuals. The work of the Confidential Committee covered a period of time between 1914 and 2000. The work of the Investigation Committee covered a period of time between 1936 to 26 November 2002.
31. CICA published three interim reports (on 22 May 2001¹², 30 November 2001¹³ and 30 January 2004¹⁴) and published its final report on 20 May 2009¹⁵. A full history of the workings of CICA is contained at Chapter 1 of the Final Report. The Complainant invokes the statement made by Ms. Justice Laffoy upon her resignation as Chairperson of CICA on 2 September 2003, presumably with the intention of questioning the effectiveness or validity of the work of CICA. This does not accurately reflect either the manner in which CICA operated or the breath and scope of its final report. While CICA faced certain challenges during its existence, which are explained in its Final Report, those issues were addressed through consultation with relevant stakeholders and the making of amendments to the Commission to Inquire into Child Abuse Act, 2000 by the Commission to Inquire

¹⁰ Section 1 of the Commission to Inquire into Child Abuse Act, 2000, Tab 3.

¹¹ See, in particular, section 1(3) of the Residential Institutions Redress Act, 2002, Tab 4.

¹² First Interim Report of the Commission to Inquire into Child Abuse, 22 May 2001, Available at: http://www.childabusecommission.ie/publications/documents/Interim_Report.pdf

¹³ Second Interim Report of the Commission to Inquire into Child Abuse, 30 November 2001, Available at: <http://www.childabusecommission.ie/publications/documents/InterimReport2.pdf>

¹⁴ Third Interim Report of the Commission to Inquire into Child Abuse, 30 January 2004, Available at: <http://www.childabusecommission.ie/publications/documents/abuse.pdf>

¹⁵ Final Report of the Commission to Inquire into Child Abuse, 20 May 2009, Available at: <http://www.childabusecommission.ie/rpt/>

into Child Abuse (Amendment) Act, 2005. Following the making of these amendments, it was possible for the Commission to conclude its work in an effective manner and fulfil the mandate given to it by the Commission to Inquire into Child Abuse Act, 2000. The procedures adopted by CICA were designed to ensure that it would be in a position to complete its work within a reasonable timeframe, while also having regard to the rights of natural and constitutional justice and fair procedures.

32. The Confidential Committee heard evidence from 1090 individuals who reported abuse as having occurred in 216 institutions. The Investigation Committee considered allegations of abuse in twenty different institutions¹⁶. The work of that Committee is described in Chapter V, of Volume I of the Final Report of CICA. This Chapter also explains the difficulties encountered by the Investigation Committee and the decisions taken by it in order to properly progress its investigative work.
33. The Final Report of CICA is a comprehensive description and analysis of the abuse suffered by children while resident in institutions in the State. Chapter VII of Volume IV of the Final Report contains the recommendations of CICA to alleviate or otherwise address the effects of the abuse on victims and to reduce the incidence of abuse of children. The implementation of those recommendations has had a profound effect on the manner in which child abuse is addressed and child protection is given effect to in the State.
34. In parallel with the work of CICA, the State Party established the Residential Institutions Redress Board (*the RIRB*) which was mandated to make awards of redress to persons who had been abused in certain institutions. The operation of the RIRB is addressed further below.
35. 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 mandate given to the inter-departmental committee was *'to establish the facts of State involvement*

¹⁶ It can be noted that following the publication of the CICA Report, 15 files were sent to the Director of Public Prosecutions for directions as to whether criminal prosecutions should be brought. In the case of 14 of those files, the Director of Public Prosecutions directed that no prosecution be brought. In respect of the remaining file, the perpetrator was convicted of indecent assault and sentenced two years imprisonment with eighteen months of that sentence suspended.

with the Magdalen Laundries...and to write a Narrative Report thereon'. That mandate was interpreted as encompassing a time period between 1922 (the foundation of the State) to 1996 (i.e. the closure of the last Magdalen Laundry in the State). The definition of the 'State' adopted by the committee included any body, whatever its legal form, which is or was responsible for provision of a public service under the control of the State and with special powers for that purpose.

36. In appointing the inter-departmental committee, the Government confirmed that, as it was an independent committee, it was for the committee to determine its own working methods, including the manner in which investigations would be undertaken. It was also for the committee to determine the scope of its terms of reference. For that reason, the committee determined that the report should not be confined to the specific issue of State involvement with Magdalen Laundries but should also include a report on:

- non-State referrals of girls and women to the Magdalen Laundries;
- statistical information on the background and profile of all women;
- living and working conditions; and
- the financial viability of the Magdalen Laundries.

37. As part of its investigations, the inter-departmental committee met with and undertook interviews with 118 women who had been resident in Magdalen Laundries. These women included:

- 31 women represented by the Irish Women's Survivor's Network (UK);
- 15 women represented by Magdalene Survivors Together;
- 7 women introduced to the Committee by the Advocacy Group Justice for Magdalens;
- 7 women who made contact directly, on their own behalf, with the Committee; and
- 58 women currently living in nursing homes or sheltered accommodation under the care of the Religious Orders.

38. The committee also met with 10 women who had been resident in other institutions, including St. Mary's Laundry, Stanhope Street, Dublin which did not fall within the remit of the committee.
39. The Complainant was one of the 118 women who met with the inter-departmental committee. The Complainant accepts that she replied in the negative when asked by Senator McAleese whether she saw any abuse while resident in a Magdalen Laundry.
40. The report of the inter-departmental committee was published in February 2013. It provides a comprehensive account of state involvement with Magdalen Laundries and put into the public domain a significant volume of information regarding the manner in which women entered the Laundries, their exit paths, the involvement of the State both with the manner in which women entered Laundries and how those Laundries were inspected. The report of the inter-departmental committee also addresses the living and working conditions of the women resident in the Laundries. While the inter-departmental committee did not have a remit to assess individual complaints made by women, it did meet with women and give them an opportunity to give testimony on their individual experiences while living and working in the Laundries. The evidence given to the inter-departmental committee, which is considered in more detail below, does not support the allegations made in the Complaint.
41. On 17 February 2015, acting pursuant to section 3(1) of the Commission of Investigation Act, 2004, the State Party established a Commission of Investigation into Mother and Baby Homes and certain related matters (*the Mother and Baby Homes Commission*)¹⁷. The Mother and Baby Homes Commission was established to investigate the matters listed in the Schedule to Statutory Instrument 57 of 2015 which include the entry and exit pathways of women and children to and from specified institutions, the living conditions in those institutions, the mortality of mothers and children in those institutions, the post mortem procedures in respect of persons who died in those institutions and compliance with the relevant regulatory and ethical standards of the time with regards to vaccine trials conducted on children resident in those institutions. The Mother and Baby Homes Commission includes a Confidential Committee forum which allows former residents to provide

¹⁷ The Mother and Baby Homes Commission was established by the Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Order 2015 (S.I 57 of 2015), Tab 5.

accounts of their experiences in private. The focus of the terms of reference of the Mother and Baby Homes Commission is the experiences of single women and children who had been resident in Mother and Baby Homes and/or County Homes. The scope of the investigation that will be undertaken by the Mother and Baby Homes Commission is broad and comprehensive. It will permit an appropriate investigation of the systemic experience of women and children who were resident in these institutions. This includes the experience of the Complainant as a person who was born to an unmarried mother in a County Home.

42. The remit of the Mother and Baby Homes Commission extends to 14 named Mother and Baby Homes and a representative sample of 4 County Homes as selected by the Commission in the course of its investigations. The sample of 4 County Homes that are included in the investigation were identified by the Mother and Baby Homes Commission in light of the direction given by the State Party in the Order establishing the Commission that the chosen County Homes should be a representative sample selected as *“both fulfilling a function with regard to single women and their children similar to the institutions at (1) above and where the extent of the operation of this function is considered to merit their inclusion for the purposes of the investigations set out at Article 1(I) to (VIII) above having regard to factors such as the number of relevant births, the duration of such operations and the typical length of accommodation period of these mothers and children”*¹⁸.

43. In framing the Terms of Reference of the Mother and Baby Homes Commission of Investigation the approach of the State Party was to place an emphasis on the experiences of women and children who spent time in Mother and Baby Homes. Therefore, the focus in its terms of reference is on institutions which have been identified as having:

- The primary function of providing sheltered and supervised ante and post-natal facilities to mothers and their children, which included both board and lodgings, and
- An ethos which those running the institutions considered to promote a regime of work, training or education as part of an overall approach to either rehabilitating mothers before they left the institutions or to give them training for living independently.

¹⁸ Appendix 1, The Mother and Baby Homes Commission was established by the Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Order 2015 (S.I 57 of 2015), Tab 5.

44. Having regard to the criteria by which institutions were identified, it was considered that Magdalen Laundries did not meet the criteria for inclusion as a specified institution in Appendix 1 of the Schedule to the Commission of Investigation (Mother and Baby Homes and certain related matters) Order 2015. However, it is not accurate to suggest that Magdalen Laundries fall entirely outside the remit of the Mother and Baby Home Commission. The Terms of Reference require the Commission to investigate the extent to which other institutions were part of the entry or exit pathways for single mothers or children into Mother and Baby Homes, and upon their leaving these institutions. The Terms of Reference of the Mother and Baby Homes Commission require it to carry out its investigation having regard to the need for it to be prompt and thorough in accordance with the State's obligations under international human rights law¹⁹. To-date the Mother and Baby Homes Commission has submitted seven interim reports to the State Party. Of these seven reports, six have been published by the State Party. The State Party has committed to publishing the Sixth Interim Report of the Mother and Baby Home Commission subject to resolving a number of legal issues which have arisen from it. On 12 June 2020, the State Party granted an extension to the Mother and Baby Homes Commission to 30 October 2020 for the submission of their final report.

45. The Mother and Baby Homes Commission has been tasked with investigating the extent of compliance with relevant regulatory and ethical standards of the time of systemic vaccine trials found by the Commission to have been conducted on children resident in one or more of the institutions within its remit during the relevant period (including, inter alia, vaccine trials conducted using vaccines manufactured by Burroughs Wellcome in 1960/61, 1970 or 1973)²⁰. It is for the Mother and Baby Homes Commission to determine the vaccine trials which are appropriate to investigate. The State Party has requested the Mother and Baby Homes Commission to take account of relevant information from investigations previously undertaken on this issue. This includes a report of the Chief Medical Officer of the State Party on three clinical trials involving children and babies in institutional settings 1960/61, 1970 and 1973, which was published in 2000²¹ (and which is relied upon by the

¹⁹ Article 13, Terms of Reference of the Commission of Investigation into Mother and Baby Homes and Certain Related Matters, Tab 5.

²⁰ Article 1(V) of the Terms of Reference of the Mother and Baby Homes Commission, Tab 5.

²¹ Report of the Chief Medical Officer on three clinical trials involving children and babies in institutional settings 1960/1961, 1970, 1973 (compiled in 1997 and published in 2000), Tab 60, Complainant's submissions to UNCAT.

Complainant). It may be noted that the County Home in which the Complainant was resident (and in which she alleges she may have been a victim of a vaccine trial) is not one which was identified by the Chief Medical Officer as an institution in which trials of this nature occurred. To date the State Party has not identified any documentation that would support the contention that vaccine trials were undertaken in the particular County Home in which the Complainant was resident. It is also noted that the Complainant has not supported this allegation with any documentation which shows either that vaccine trials were undertaken at this County Home or that the Complainant was subject to a vaccine trial. It is open to the Complainant to present any relevant evidence held by her to the Mother and Baby Homes Commission for its consideration. The Mother and Baby Homes Commission is independent in the discharge of its functions and it is a matter for that Commission to determine the appropriate action to take if evidence is presented by the Complainant.

46. By letter of 10 March 2017, the Complainant wrote to the Minister for Children and Youth Affairs in relation to her experiences in different institutions. That correspondence was acknowledged but a substantive response did not issue to the Complainant. That omission is regretted. The Complainant has been in further correspondence with the Department of Children and Youth Affairs since 2014. Responses issued to the Complainant on 28 July 2014²², 8 August 2016²³ and 22 February 2019.²⁴ The Complainant has also spoken on the telephone with officials in the Department of Children and Youth Affairs and is on the mailing list for updates relating to the Mother and Baby Homes Commission.

V. Investigation of the complaint made by the Complainant

47. A central issue in the Complaint is the alleged failure by the State Party to investigate complaints made with regard to the treatment alleged to have been suffered by the Complainant while she was resident in Magdalen Laundries. The Complaint is premised on an allegation that the Complainant made a complaint to An Garda Síochána which was not investigated and in respect of which no action was taken by An Garda Síochána. That is manifestly not the case and the information put before the Committee does not support that contention.

²² Email from Department of Children and Youth Affairs to Elizabeth Coppin, 28 July 2014, Tab 6.

²³ Email from Department of Children and Youth Affairs to Elizabeth Coppin, 8 August 2016, Tab 7.

²⁴ Letter from the Department of Children and Youth Affairs to Elizabeth Coppin, 22 February 2019, Tab 8.

48. On 28 October 1997, the Complainant made a complaint to An Garda Síochána of having been the victim of physical and emotional abuse while she was resident in Magdalen Laundries. By letter of 28 October 1997 the Complainant wrote to Chief Superintendent Fred Garvey at Tralee Garda Station, Tralee, Co. Kerry in which she set out a complaint of abuse against the Sisters of Mercy and Sr. Enda O’Sullivan while resident in Pembroke Alms (Nazareth House) Industrial School for Girls in Tralee, County Kerry²⁵. On 14 December 1997 the Complainant wrote to Garda Noel F. Burke in relation to her complaint²⁶. On 16 April 1998 Garda Noel F. Burke took a statement from the Complainant in relation to her allegations²⁷.

49. On foot of that complaint, An Garda Síochána undertook an investigation of the allegations made by the Complainant. A statement was obtained from Sr. Enda O’Sullivan through her legal representatives²⁸. Inquiries were made with Listowel District Court, who confirmed that the Complainant was committed to the Pembroke Alms Industrial School by Order of the Listowel District Court on 4 August 1951 until [REDACTED] 1965 and that the consent of the Complainant’s Mother was obtained to this order²⁹. As part of the investigation, An Garda Síochána also obtained correspondence³⁰ from the Sisters of Mercy, Cork, St. Finbarr’s Hospital, Cork, the Good Shepherd Sisters, Cork, Tralee General Hospitals and the Social Work Department of the Southern Health Board³¹. In January 1998 An Garda Síochána made a request of Tralee General Hospital for any records relating to the allegation made by the Complainant that she was admitted to St. Catherine’s Hospital, Tralee between 16 February 1953 and 21 February 1953. By letter of 14 January 1998, Tralee Hospital confirmed that they could find no records relating to the Complainant at the hospital³².

²⁵ Investigation File of An Garda Síochána, Tab 9(j)

²⁶ Investigation File of An Garda Síochána, Tab 9(j)

²⁷ Investigation File of An Garda Síochána Tab 9(l)

²⁸ Investigation File of An Garda Síochána, Tab 9(o)

²⁹ Investigation File of An Garda Síochána, Tab 9(q)

³⁰ Investigation File of An Garda Síochána, Tab 9(s)

³¹ The Health Act 1970 established a system of Health Boards in Ireland with eight Health Boards being vested with responsibility for a particular functional area. The Southern Health Board was responsible for the management of the public health care system in Cork City, County Cork and County Kerry.

³² Investigation File of An Garda Síochána, Tab 9(x)

50. On 24 September 1998, Garda Noel F. Burke submitted a report on the investigation undertaken into the complaint made by the Complainant³³. On 1 December 1998, Detective Sergeant John Brennan submitted a report to the Superintendent of Tralee Garda Station on the investigation undertaken into the complaint made by the Complainant³⁴.
51. Those reports were submitted to the Director of Public Prosecutions for directions as to whether criminal charges should be brought against any individual. The file was reviewed by a senior officer in the Office of the Director of Public Prosecutions. In January 1999, the Director of Public Prosecutions determined, in accordance with the Guidelines for Prosecutors, that there was insufficient evidence to warrant a prosecution. The Director of Public Prosecutions also considered whether criminal charges could be brought in relation to the allegations of intellectual deprivation, social deprivation and verbal abuse and determined that the complaint did not disclose any criminal offence under these headings. The Director of Public Prosecutions was of the view that there was insufficient evidence to determine whether charges could be brought in respect of the allegation of false imprisonment and informed An Garda Síochána that, if further evidence was obtained in relation to this allegation, the matter could be reconsidered.
52. Upon receipt of the directions from the Director of Public Prosecution, Garda Noel F. Burke informed the Complainant that an investigation file had been furnished to the Director and that he had directed that no prosecution be taken in relation to the abuse alleged by her. The Complainant was also informed that further investigations were to be undertaken in relation to her transfer from the Pembroke Alms Industrial School. Garda Burke's conversation with the Complainant was recorded in a report to the Detective Sergeant of Tralee Garda Station of 7 October 1999³⁵.
53. By letter of 12 November 1999, An Garda Síochána confirmed to the Director of Public Prosecutions that the Complainant had been informed of the directions given by that office in relation to criminal prosecutions³⁶. It was also confirmed that further investigations were being undertaken in relation to the allegation of false imprisonment and the transfer of the

³³ Investigation File of An Garda Síochána, Tab 9(u)

³⁴ Investigation File of An Garda Síochána Tab 9(h)

³⁵ Investigation File of An Garda Síochána, Tab 9(a)

³⁶ Investigation File of An Garda Síochána, Tab 9(z)

Complainant to the Sisters of Charity, Cork and her subsequent alleged incarceration at the Good Shepherd's Sister, Cork and Waterford.

54. An Garda Síochána undertook further investigations in relation to the allegation of false imprisonment. In particular, An Garda Síochána sought to obtain relevant records relating to the Complainant's time in Magdalen Laundries. Limited records were available. The investigation also identified that all parties who were in authority for the relevant period (i.e. 1964 – 1968) were now deceased. It was therefore concluded that it would not be possible to attribute an allegation of false imprisonment to any individual person. The investigation from An Garda Síochána also confirmed that Sr. Enda O'Sullivan, who had been identified as a perpetrator of abuse by the Complainant, had died in November 1999. The results of the investigation are recorded in a report of Garda Noel F. Burke of 15 December 1999³⁷.
55. By letter of 6 June 2000, Inspector M McCarthy informed the Director of Public Prosecutions that all parties who were in positions of authority in the period 1964 to 1968 were deceased and that it would not be possible to bring any charges of false imprisonment against any named living person³⁸. On 16 June 2000, the Director of Public Prosecutions issued final directions that no prosecutions were to be brought in relation to the allegations made by the Complainant. The State Party understands that during the course of these investigations the Complainant was informed of the decisions of the Director of Public Prosecution by An Garda Síochána. In a meeting with An Garda Síochána in July 2012, the Complainant confirmed that she was informed that there would be no prosecution on foot of the complaint made by her.
56. Separately, following the establishment of the inter-departmental committee, the Department of Justice and Equality corresponded with An Garda Síochána on foot of a request made by the Chairperson of the inter-departmental committee, Senator Martin McAleese, that certain information be made available to him. On foot of that request, An Garda Síochána put in place a team from the National Bureau of Criminal Investigation to carry out a review of all records held by An Garda Síochána in relation to dealings or

³⁷ Investigation File of An Garda Síochána, Tab 9(f)

³⁸ Investigation File of An Garda Síochána, Tab 9(y)

involvement had by the organisation with the Magdalen Laundries and to conduct enquires into all requests received from the inter-departmental committee.

57. As part of those enquiries, An Garda Síochána met with four women, including the Complainant, about the time they spent in Magdalen Laundries and any interaction between them and members of An Garda Síochána. The meeting with the Complainant occurred in London, United Kingdom on 18 July 2012 and the details of that meeting are contained in a report of An Garda Síochána dated 15 August 2012³⁹. In that meeting the Complainant gave details of her experiences in Nazareth House and the different Magdalen Laundries in which she was resident. During that meeting, the Complainant confirmed that she had been informed by An Garda Síochána that there would be no prosecution on foot of the complaint made by her in 1997.
58. This report also outlines the details of the complaints made by the Complainant to An Garda Síochána, the nature of which are explained above.
59. The outcome of the review completed by An Garda Síochána, and the additional enquiries undertaken by them, is contained in a report of 11 September 2012⁴⁰. That report outlines the details of the meetings between An Garda Síochána and the four named women, including the Complainant. It also contains details of the additional enquires made by An Garda Síochána on foot of information given to them by the Complainant. The report notes that the Complainant informed the inter-departmental committee that she had been taken to the Magdalen Laundry at Sunday's Well, Cork by an Inspector O'Callaghan in 1966. Inquiries were undertaken by An Garda Síochána but they were unable to identify the person referenced by the Complainant. An Garda Síochána undertook an interview with retired Chief Superintendent O'Callaghan, who was stationed at Shandon Street, Co. Cork between 1965 to 1977. His evidence was that he was not involved with bringing girls to Magdalen Laundries. An Garda Síochána undertook an interview with the Complainant in the United Kingdom but she was unable to provide any further information that would assist in identifying the Inspector O'Callaghan referenced by her.
60. The State Party believes that the Inspector O'Callaghan, to whom reference is made by the Complainant, was not a member of An Garda Síochána but was an inspector employed by

³⁹ Report of An Garda Síochána relating to conversation with Elizabeth Coppin, 15 August 2012, Tab 10.

⁴⁰ Report of An Garda Síochána re: McAleese Investigations, 11 September 2012, Tab 11.

the Irish Society for the Prevention of Cruelty to Children. This individual is referenced in the report of Garda Burke of 15 December 1999.

61. The Complainant asserts that she was *'never contacted by the police about the complaint, and she was not provided with any information about any investigation that may have been carried out'*. That is not an accurate description of either the investigation or her engagement with An Garda Síochána. The evidence establishes that an investigation was completed by An Garda Síochána and submitted to the independent Director of Public Prosecutions to determine whether criminal charges should be brought. The Director of Public Prosecutions determined that bringing criminal charges for assault were not warranted. Ultimately, it was not possible to bring charges of false imprisonment as the individuals who could have been held responsible had passed away. The Complainant was informed of the outcome of the investigation and the directions given by the Director of Public Prosecutions, and she confirmed this to An Garda Síochána in July 2012. Following a request by the inter-departmental committee, An Garda Síochána met with the Complainant in 2012 and took a report of her experiences in both Nazareth House and the Magdalen Laundries. Following that meeting, An Garda Síochána undertook additional enquiries in an attempt to identify the individual whom the Complainant believes brought her from St. Finbar's Hospital to the Magdalen Laundry at Sunday's Well, Cork. The August 2012 Report of An Garda Síochána notes the outcome of earlier investigations by An Garda Síochána. It is the position of the State Party that An Garda Síochána engaged with the Complainant on foot of a request by the inter-departmental committee and carried out further enquiries based on the information provided by the Complainant. However, the State Party believes that no criminal prosecution on foot of the complaint made by the Complainant would have been possible for the same reasons as existed in 2000 (i.e. that all the persons in position of responsibility were dead).
62. In 1999, the Complainant (through a firm of solicitors acting on her behalf) issued civil proceedings against the Sisters of Mercy, the Sisters of Charity, the Sisters of the Good Shepherd and Sr. Enda O'Sullivan⁴¹. 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

⁴¹ *Elizabeth Coppin v. Cora McCarthy, Alice Doherty, Claire O'Sullivan and Enda O'Sullivan* (High Court Record Number: 1999/381P), Tab 12.

constitutional rights in respect of the treatment alleged to have been suffered by her while resident in institutions owned and managed by those congregations. Many of these allegations related to the actions of Sr. Enda O’Sullivan, who had been in charge of Nazareth House, the Industrial School in which the Complainant was resident. Those proceedings were struck out by the High Court 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 trial⁴². In particular, the High Court took account of the fact that Sr. O’Sullivan, against whom the majority of allegations were made, had died in 1999. It was also noted that other relevant persons, including lay persons, a general practitioner (Doctor), representative of the Department of Education and the Irish Society for the Prevention of Cruelty to Children (*ISPCC*) Inspector were also dead. The High Court (Kelly J) analysed the issue as follows:

...the question is whether the delay here prejudices the possibility of a fair trial to the extent that it is unfair to let the proceedings continue. The bulk of the allegations are against the Fourth Named Defendant, who died in 1999, and so is unable to be heard to defend her position or that of the Congregation. A substantial number of people – not just members of the Congregation – have died. They are lay persons, the general practitioners, the representative of the Department of Education and the *ISPCC* inspector who would have attended at Nazareth House on a regular basis

A number of persons identified by the Plaintiff are dead, another is senile, and others are unable to give evidence as to the matters alleged. This matter has to be decided by oral testimony. It is not a documents case. It will be based on the word of the Plaintiff which has to be countered by the Defendant. A fair trial requires something more than assertion and bland denial. It seems to me that this case cannot give rise to the type of forensic inquiry under which our constitutional system of justice is regarded as constituting a fair trial.

⁴² *Elizabeth Coppin v. Cora McCarthy, Alice Doherty, Claire O’Sullivan and Enda O’Sullivan*, (High Court, Kelly J, 23 November 2001) Tab 12.

63. The High Court concluded that the claim would be *'impossible to defend at this remove of time'*. The Complainant, with the benefit of legal advice, did not seek to appeal that decision to the Supreme Court.
64. It can be seen from the judgment of the High Court that it was concerned with the rights of all parties to a fair trial in relation to the issues. The High Court was concerned that, having regard to the fact that most of the relevant witnesses (including Sr. Enda O'Sullivan against whom many allegations were made) were dead, it would not be possible for the Defendants to have a fair hearing of the issues in dispute in a manner that would be consistent with the rights of all parties. In that regard, the High Court was acting in a manner similar to that which is permitted under Rule 113(f) of the Rules of Procedure of the Committee, whereby the Committee can determine that a complaint is not admissible where the time elapsed since the exhaustion of domestic remedies is such that would render consideration of the claims unduly difficult by either the Committee or the State Party. The State Party believes that, in line with usual criminal practice and procedure, these concerns were a driving factor in the decision by the Director of Public Prosecutions not to take any criminal prosecution on foot of the complaint made to An Garda Síochána. The State Party is also very conscious that these concerns would create a significant barrier to any further investigation of these complaints in a manner that would comply with its domestic constitutional obligations and its international human rights obligations under both the International Covenant on Civil and Political Rights and the European Convention on Human Rights.
65. The Complainant has also had the opportunity to give evidence before CICA, the RIRB and to meet with the inter-departmental committee. On each of these occasions, the Complainant was entitled to give evidence in relation to her experiences in institutions in which she was resident.
66. In particular, on 24 February 2005 the Complainant gave sworn evidence before the RIRB in relation to her experiences of abuses in institutions in which she was resident up to her 18th birthday, in the context of her application for redress under the Residential Institutions Redress Act 2002. That included giving evidence in relation to her experiences in Magdalen Laundries. Having heard her evidence, the RIRB made certain findings in relation to the allegations made by the Complainant and her entitlement to redress on foot of those

findings. First, the RIRB found that the Complainant had left a Magdalen Laundry *'illegally'* and that the authorities *'felt they had an opportunity or they had the right to put you back in'*⁴³. As a consequence of that the RIRB concluded that they were able to take account of all the time spent in the Laundries up to the Complainant's 18th birthday. The RIRB described the abuse suffered by the Complainant in the following terms⁴⁴:

So, if you like, we have a complex situation where you were physically and emotionally abused in Tralee. You were detained in completely inappropriate circumstances in Cork. You were re-admitted to Cork in absolutely, totally inappropriate circumstances and you were transferred to Waterford and kept there inappropriately, though not as abusive.

67. The RIRB determined that this abuse could be classified at a level of 25 (on a scale of 1 – 25).

68. Second, the RIRB was required to determine whether the Complainant suffered from a medically verified illness. The RIRB determined that the Complainant's admission to the Pembroke Alms (Nazareth House) Industrial School for Girls was as a consequence of her being a victim of assault by her step-father⁴⁵ and that her subsequent medical issues were partially caused by her family circumstances. The RIRB also noted that the Complainant had never required hospital admission. The RIRB assessed the medical illness attributable to her time in institutions as being a level of 8 (on a scale of 1 – 30).

69. Third, the RIRB was required to consider the psycho-social impact on the Complainant and was of the view that the absence of support from family and her mother made a *'substantial contribution'* to the Complainant's feelings of anger⁴⁶. The RIRB assessed the

⁴³ Transcript of proceedings before the Residential Institutions Redress Board, 24 February 2005, page 891, line 12 – 15, Tab 36, Complainant's submissions. It may be noted that this was a finding made in the context of the determination of the amount of redress to which the Complainant was entitled and the issue before the RIRB was the manner in which she was treated while resident in the institutions.

⁴⁴ Transcript of proceedings before the Residential Institutions Redress Board, 24 February 2005, page 891, line 22 - 28, Tab 36, Complainant's submissions to UNCAT.

⁴⁵ Transcript of proceedings before the Residential Institutions Redress Board, 24 February 2005, page 892, Tab 36, Complainant's submissions to UNCAT.

⁴⁶ Transcript of proceedings before the Residential Institutions Redress Board, 24 February 2005, page 894, Tab 36, Complainant's submissions to UNCAT.

psycho-social difficulties suffered by the Complainant which was attributable to her time in institutions as being a level of 12 (on a scale of 1 – 30).

70. Finally, the RIRB considered whether the Complainant had suffered a loss of opportunity or loss of education by reason of being in institutions, including the Magdalen Laundries. The RIRB found that the Complainant had distinguished herself and had *'reached a level of education which is distinguished for a person from your background'*⁴⁷ but that there had been a delay in reaching this level of education by reason of her time in institutions. The RIRB assessed the loss of opportunity and loss of education as being a level of 7 (on a scale of 1 – 15). As set out below, the Complainant received substantial compensation in this regard.

VI. State Apologies to those who were resident in Magdalen Laundries

71. The State Party has issued two formal 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. In February 2013, the Taoiseach, Enda Kenny TD, issued an apology on behalf of the Irish Government in Dáil Éireann⁴⁸. In June 2018, the President of Ireland, Michael D. Higgins apologised to women who had been resident in Magdalen Laundries⁴⁹.
72. Previously, on 10 May 1999, the Taoiseach, Bertie Ahern TD, issued an apology on behalf of the State and its citizens to the victims of childhood abuse⁵⁰.

VII. Redress established for those persons who were resident in Institutions

73. Separate to the investigations undertaken into institutional abuse and the specific investigations of the allegations made by the Complainant, the State Party has established different mechanisms whereby redress is provided to persons who were resident in institutions, including Magdalen Laundries.
74. On 10 April 2002 the Oireachtas enacted the Residential Institutions Redress Act 2002⁵¹ to provide for the making of financial awards to persons who were resident as children in

⁴⁷ Transcript of proceedings before the Residential Institutions Redress Board, 24 February 2005, page 895, Tab 36, Complainant's submissions to UNCAT.

⁴⁸ Apology of An Taoiseach, Enda Kenny TD, Tab 13.

⁴⁹ Apology of President Michael D. Higgins, Tab 14.

⁵⁰ Text of Apology of An Taoiseach, Bertie Ahern TD as drafted, 10 May 1999, Tab 15.

⁵¹ Residential Institutions Redress Act 2002, Tab 4.

certain institutions and who suffered abuse while resident in those institutions. The relevant institutions are listed in the Schedule to the Residential Institutions Redress Act, 2002 and include the Pembroke Alms (Nazareth House) Industrial School for Girls, in which the Complainant was resident. Those institutions were Industrial and Reformatory Schools which had been operated by religious congregations but also subject to State regulation and inspection. The Residential Institutions Redress Act, 2002 provided for applications for redress to be made to the Residential Institutions Redress Board. Those applications were either finalised by way of settlement or heard by way of an oral hearing, in private, in which an applicant could present evidence in relation to the abuse alleged to have been suffered by them. The redress granted to applicants under the 2002 Act included redress for abuse suffered by them in all institutions in which they were resident up to their 18th birthday, and extended to any abuse suffered by a person who was transferred from an institution to a Magdalen Laundry⁵². Therefore, any abuse suffered by an applicant in any period prior to her 18th birthday while resident in the Laundry was included in the assessment of the redress award made to her by the Residential Institutions Redress Board.

75. Since its establishment, the cost of the Residential Institutions Redress Scheme has been €1.244 billion⁵³.

76. In 2013 the Residential Institutions Statutory Fund Board (“Caranua”) was established by the Residential Institutions Statutory Fund Board Act, 2012⁵⁴. Caranua was funded by monetary contributions in the amount of €110 million pledged and ultimately provided by the Religious Congregations. That funding was provided by the Religious Congregations on foot of a request made by the State Party following the publication of the Final Report of CICA that they should make further contributions to the cost of supporting the needs of former residents who, as children, suffered abuse in those institutions. Former residents who received awards from the Residential Institutions Redress Board, or similar awards or settlements in court proceedings, were eligible to apply for assistance. The services which can be supported by Caranua include health and personal social services, educational services and housing services, and are intended to be complementary to survivors’ statutory entitlements. As the Statutory Fund is finite, and having regard to the number of

⁵² Section 1(3) of the Residential Institutions Redress Act, 2002, Tab 4.

⁵³ This cost includes payment to eligible persons and the payment of legal costs associated with the making of applications for redress.

⁵⁴ Residential Institutions Statutory Fund Board Act, 2012, Tab 50.

applications which had been received, Caranua ceased to accept new applications from 1 August 2018. Approximately 6,500 applications were made to Caranua. The Complainant was eligible to apply for support from Caranua.

77. Following the publication of the report of the inter-departmental committee, 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, was appointed by the Government to chair a Commission (*the Quirke Commission*) which was tasked with advising on the establishment of an *ex gratia* scheme for the benefit of women who had been admitted to and worked in a Magdalen Laundry.

78. As part of its work, the Quirke Commission engaged in a consultation process with women who had been resident in Magdalen Laundries. The Commission determined that it would be more appropriate to engage in conversations with these women rather than to require them to provide sworn evidence. That approach was taken in order to provide *'an opportunity for the Magdalen women to convey directly to the Commission and to me, who they were, where they were, what their circumstances were and what could be done to assist them and make their lives more comfortable'*. Between 26 March 2013 – 9 May 2013, the Commission spoke with 337 women who had expressed an interest in the proposed *ex gratia* scheme. The Commission also engaged with senior members of the Religious Orders who now care for a further 117 women. The Commission received oral and written submissions from certain groups and individuals who represented and advocated on behalf of women who had been resident in Magdalen Laundries.

79. The report of the Quirke Commission⁵⁵ (*the Quirke Report*) was published in May 2013. It contained 12 recommendations in relation to the establishment and operation of an *ex gratia* redress scheme for the benefit of women who were admitted to and worked in specific Magdalen Laundries.

⁵⁵ 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.

80. All women eligible for redress under the Magdalen Laundries Restorative Justice Ex-Gratia Redress Scheme⁵⁶ (*“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 (*‘2015A Card’*) which is held for life. This was introduced by way of the Redress for Women Resident in Certain Institutions Act 2015⁵⁷, 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

81. 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 Ireland, she is eligible to access primary and community medical services if she visits or returns to Ireland. 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 Ireland can avail of access to medical benefits equivalent to those which are available under the Redress for Women Resident in Certain Institutions 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.

⁵⁶ Terms of the Magdalen Restorative Justice Ex Gratia Scheme, Tab 18.

⁵⁷ Redress for Women Resident in Certain Institutions Act, 2015, Tab 16.

82. Since the establishment of the Magdalen Laundries Restorative Justice Ex-Gratia Redress Scheme, 799 applicants have been paid a total of €31.72 million in lump sum payments. This figure does not include the amount already paid and that which 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.

VIII. Redress awarded to the Complainant

83. By application dated 15 July 2013, the Complainant made an application for redress⁵⁸ under the Magdalen Laundries Restorative Justice Ex-Gratia Redress Scheme. In the course of the assessment of that application, it was confirmed that the Complainant was resident in Magdalen Laundries for the following periods of time:

- (i) 19 March 1964 – 13 August 1966 in St. Vincent's, St. Mary's Road (Sisters of Charity)
- (ii) 4 November 1966 to 8 March 1967 in St. Mary's, Sunday's Well (Good Shepherd Sisters)
- (iii) 8 March 1967 to 30 April 1968 in St. Mary's Cork Road (Good Shepherd Sisters)

84. This amounted to a total period of 3 years and 11 months in which the Complainant was resident in a Magdalen Laundry. The Complainant does not dispute that this is an accurate account of the time she spent in Magdalen Laundries.

85. By letter of 8 January 2014⁵⁹, the Complainant was made an offer of redress in accordance with the terms of the Magdalen Laundries Restorative Justice Ex-Gratia Redress Scheme by which she was awarded a sum of €55,500. By letter of 3 March 2014⁶⁰, the Complainant raised certain queries in relation to her award. A response issued to her on 14 March 2014⁶¹ in which it was confirmed that lump sum payments would be made without delay and that legislation was being enacted to provide for the medical services recommended by the Quirke Report. In a telephone call of 19 March 2014, the Complainant confirmed that she would be accepting the offer made to her. The State Party does not accept that it refused

⁵⁸ Application Form submitted by the Complainant to the Magdalen Laundries Restorative Justice Ex Gratia Scheme, 15 July 2013, Tab 19.

⁵⁹ Letter of Formal Offer of 8 January 2014 from the State Party to the Complainant, Tab 20.

⁶⁰ Letter of 3 March 2014 from the Complainant to the State Party, Tab 21.

⁶¹ Letter of 14 March 2014 from the State Party to the Complainant, Tab 22.

to engage with the Complainant and, at all times, has sought to address queries raised by her with different Departments.

86. The Complainant was paid a lump sum of €50,000, with the balance of the award being made in weekly payments between 1 August 2013 – 21 May 2015 (the date of the Complainant's 66th birthday). In addition, 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 Restorative Justice Scheme. That is to say, in addition to the lump sum payment of €55,500, she receives the full contributory State pension to the value of €243.30 per week. This involves a payment to the Complainant by the State Party of €973.20 every four weeks.
87. The Complainant is currently resident in the United Kingdom. Therefore, she is entitled to avail of the Redress Reimbursement Scheme in order to access medical benefits which are equivalent to those which are available under the Redress for Women Resident in Certain Institutions Act, 2015. By letter of 9 May 2018 from the Department of Health, the Complainant was informed of her entitlements under the Redress for Women Resident in Certain Institutions Act, 2015⁶². Similar information was provided to the Complainant's solicitors by letter of June 2019⁶³. The Complainant has not, to date, submitted any claim for reimbursement to the Redress Reimbursement Scheme.
88. At the time of accepting the offer made to her under the terms of the Magdalen Laundry Restorative Justice Scheme, the Complainant 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.

⁶² Letter of 9 May 2018 from Department of Health to Mrs. Elizabeth Coppin, Tab 23.

⁶³ Letter of June 2019 from Department of Health to KOD Lyons Solicitors, Tab 24.

89. Separately, on 15 February 2004, the Complainant made an application for redress in accordance with the Residential Institutions Redress Board Act 2002. As outlined above, the Complainant gave evidence before the RIRB and it reached certain findings in relation to the abuse suffered by her and the impact on her life. 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. 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 birthday⁶⁴. As set out above, the Complainant spent almost four years in Magdalen Laundries, all but the last 11 months of which was prior to her 18th birthday. The Complainant was represented by a solicitor and barrister before the RIRB and had legal advice in relation to the award made to her and the terms of that scheme.

IX. Allegations of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Magdalen Laundries

90. The Complainant alleges that she was subjected to torture and cruel or inhuman or degrading treatment while resident in three different Magdalen Laundries. The detail of the torture, cruel, inhuman or degrading treatment or punishment which is alleged is set out at paragraphs 7.3.1 and 7.3.2 of her complaint. It is of note that the Complaint is framed by reference to both torture and ill-treatment. The Complaint is not consistent on the question of whether it is alleged that the Complainant was subjected to torture and other acts of cruel or inhuman or degrading treatment or whether the allegation made is confined to acts of cruel or inhuman or degrading treatment or punishment. The Complaint contains various references to torture but it does not contain any assessment of how the acts alleged meet the threshold to be defined as torture as opposed to falling within the scope of cruel and inhuman or degrading treatment or punishment. It is noted that the minimum level of severity that must be met for the treatment to come within the scope of the Convention is only addressed by reference to *'ill-treatment'*⁶⁵, without any further specificity.

⁶⁴ See Transcript of proceedings before Residential Institutions Redress Board, 24 February 2005, Page 891, Tab 36, Complainant's submissions to UNCAT.

⁶⁵ See paragraph 7.3.3 of the Complaint.

91. In light of the failure to precisely define the nature of the allegation being made, and the inclusion of repeated references to torture, it is necessary to address the definitions of both torture and cruel or inhuman or degrading treatment or punishment and the minimum level of severity that must be reached in both instances to come within those definitions. It is the position of the State Party that the acts complained of do not meet the required threshold to be defined as either torture or cruel or inhuman or degrading treatment or punishment.
92. In *Ireland v. United Kingdom* (18 January 1978, Series A, No. 25, 2 E.H.R.R. 25) the European Court of Human Rights (*the ECtHR*) established that acts of ill-treatment must meet a minimum level of severity before they can fall within the scope of Article 3 of the European Convention on Human Rights (*the ECHR*). The ECtHR also drew a distinction between acts of violence which can be condemned on moral grounds or by the domestic laws of Contracting States and those cases which would fall within the scope of Article 3 of the ECHR. In holding that the five techniques in issue in those proceedings fell into the category of inhuman treatment and not torture, it was noted that they caused *'if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation'* and for that reason fell into the category of inhuman treatment. The techniques were described as degrading as they aroused in the victims *"feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance"*. The ECtHR identified the distinction between acts of torture and those which may be inhuman or degrading treatment⁶⁶:

...it appears on the other hand that it was the intention that the Convention, with its distinction between "torture" and "inhuman or degrading treatment", should by the first of these terms attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.

Moreover, this seems to be the thinking lying behind Article 1 in fine of Resolution 3452 (XXX) adopted by the General Assembly of the United Nations on 9 December 1975, which declares: "Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment".

⁶⁶ See *Ireland v. United Kingdom* (18 January 1978, Series A, No. 25, 2 E.H.R.R. 25) at paragraph 167, Tab 38.

Although the five techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood.

168. The Court concludes that recourse to the five techniques amounted to a practice of inhuman and degrading treatment, which practice was in breach of Article 3 (art. 3).

93. In order for acts to fall within the definition of torture they must have a level of intensity and cruelty which attaches to that word. That approach is consistent with the precise definition found in Article 1 of the Convention, which links the concept to the infliction of severe pain and suffering for a specific purpose and with the manner in which the concept has been considered by the Committee. In its General Comment No. 2, the Committee noted that there was a distinction between torture and common assault or other crimes and further noted that *'ill treatment may differ in the severity of pain and suffering'* and further there was no requirement to prove an impermissible purpose in order meet the threshold of ill treatment⁶⁷. Torture was described as a crime of *'special gravity'*. Similarly, in *Sergei Kirsanov v. Russian Federation*⁶⁸ the Committee held that acts including the prolonged detention of the complainant in a temporary confinement ward, during a pre-trial investigation period where he was not provided with bedding or toiletry items and where he did not have a table, toilet or sink or the entitlement to shower other than occasionally and with cold water was not torture. In reaching that finding the Committee noted that the acts did not appear to have caused *'severe pain and suffering within the meaning of Article 1, paragraph 1 of the Convention'*⁶⁹.

94. The Complainant alleges that she was subject to torture, cruel, inhuman or degrading treatment and punishment while resident in Magdalen Laundries. It is necessary to make a number of comments in relation to the evidence presented by the Complainant in support

⁶⁷ See Committee Against Torture, General Comment No. 2 CAT/C/GC/2 at paragraph 10 and 11, Tab 39.

⁶⁸ *Sergei Kirsanov v. Russian Federation*, No. 478/2011, CAT/C/52/D/478/2001, 14 May 2014, Tab 41.

⁶⁹ *Sergei Kirsanov v. Russian Federation*, No. 478/2011, CAT/C/52/D/478/2001, 14 May 2014, paragraph 11.2, Tab 41,

of the allegation that she was a victim of either torture, cruel, inhuman or degrading treatment or punishment.

95. First, the allegations of ill-treatment in Magdalen Laundries, in respect of which complaint is made, all occurred between 1964 – 1968, prior to either the adoption (1984) or the entry into force (1987) of the Convention. While the State Party accepts that the Committee has determined that the Complaint is admissible *ratione temporis*, it remains relevant to the assessment of the merits of the Complaint that the acts which occurred in the Magdalen Laundries which are said to be torture or cruel or inhuman or degrading treatment or punishment occurred prior to the adoption or entry into force of the Convention generally and the coming into force of it for the State Party.
96. Second, it is the position of the State Party that, the acts complained of have neither the required level of intensity or cruelty nor the impermissible purpose to permit them to be defined as torture. Further, the acts complained of do not meet the standard so as to fall within the definition of cruel or inhuman or degrading treatment or punishment. It was acknowledged in the report of the inter-departmental committee that the regimes operated in Magdalen Laundries were harsh and caused significant hurt to the women resident in those institutions. The State Party has expressed its regret for the hurt experienced by the women who were resident in Magdalen Laundries. However, it is the position of the State Party that the minimum level of severity has not been met in this instance. The State Party submits that the acts complained of are not of the type envisaged in General Comment No. 2 (i.e. the required special gravity is not present) nor can they be compared to the type of treatment that has been found to fall within the definitions of either torture or cruel or inhuman or degrading treatment or punishment by the Committee or other similar mechanisms and/or Courts.
97. The Complainant relies on the decision of the ECtHR in *VK v. Russia*⁷⁰ and argues that the treatment to which she was subject is comparable to that which was considered in *VK*. However, an examination of *VK* shows that a comparison cannot be properly drawn between the two sets of facts. In *VK*, the ECtHR held that treatment suffered by the Applicant, which included being locked in the dark in the toilets, being told he would be eaten by rats, being forced to stand in the lobby in his underwear and with his arms up for

⁷⁰ *VK v. Russia* (European Court of Human Rights, Application No. 68059/13, 7 March 2017), Tab 40.

periods of time and having his mouth and hands taped with sellotape met the minimum level of severity in light of his extremely young age and the medical impacts on him. It must be noted that the Applicant was four years old at the relevant time and, further, his complaint was supported by significant contemporaneous medical evidence along with medical evidence which post dated the incidents but which detailed the injuries suffered by him (including those of a neurological nature). The allegations made by the Complainant in *VK* were supported by statements made by teachers and parents of other pupils. Further, in 2011 a panel of experts found that the Applicant had been subjected to a prolonged, psychologically traumatic experience at the nursery school. The domestic authorities had also found that the applicant had been subject to battery and cruel treatment of minors but determined, for other reasons, that no criminal prosecution could occur. It was in these circumstances that the ECtHR held that the standard of proof had been met by the Applicant.

98. A distinction can be drawn with this case for a number of reasons. First, the Complainant was not a similar age to the applicant in *VK*. Second, the Complainant's account cannot be described as consistent in a manner similar to how the Applicant's account was described in *VK*. The allegations made by the Complainant are not consistent with the evidence that was before the interdepartmental committee, including the evidence given by the Complainant herself. Third, the Complainant has not provided any contemporaneous evidence, whether medical or otherwise, to support the specific allegations made by her. Finally, there are no equivalent findings by domestic authorities that the Complainant had been subject to the treatment complained of. As outlined above, the complaints made by the Complainant were investigated by An Garda Síochána and it was determined by the Director of Public Prosecutions that no criminal prosecutions should be brought. In that regard, it is noted that 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'*⁷¹. The Committee has also noted that it is not *'an appellate, quasi-judicial or administrative body'*⁷².

99. Third, the State Party submits that the evidence presented by the Complainant does not meet the required standard to show that the acts in respect of which complaint is made come within the definition of torture, inhuman, cruel or degrading treatment or

⁷¹ *Falcon Rios v. Canada*, No 133/199, CAT/C/33/D/133/1999, Paragraph 8.5, Tab 43.

⁷² *NZS v. Sweden*, No 277/2005, CAT/C/37/D/277/2005, Paragraph 8.6, Tab 44.

punishment. The State Party notes the standard applied in the context of an assessment of whether a violation of Article 3 has occurred, whereby a Complainant is required to submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real⁷³. While no complaint is made under Article 3 in this instance, the State Party submits that it is necessary for the Complainant to meet an equivalent standard when arguing that she was, in fact, subject to torture or cruel or inhuman or degrading treatment or punishment. In that context, the State Party notes that the evidential standard applied by the ECtHR in the assessment of whether an individual was a victim of torture or cruel or inhuman or degrading treatment or punishment is *'beyond reasonable doubt'*⁷⁴.

100. A number of matters may be noted in relation to the accounts given by the Complainant with regards to the time spent by her in Magdalen Laundries. The Complainant has previously drawn a distinction between the treatment suffered by her in Nazareth House and that which occurred in the Laundries. The Complainant gave evidence to the RIRB that while in the Laundries she was not subjected to the abuse she had received while committed to Nazareth House⁷⁵. Similarly, the Complainant states in the Complaint that she informed the inter-departmental committee that she did not see any abuse while resident in Magdalen Laundries. The investigations undertaken by the State, and the reports produced on foot of those investigations, are reflective of the evidence given by those who participated in them.

101. Further, the only medical evidence included with the Complaint is that which has been obtained for the purpose of legal proceedings. The Complainant relies primarily on the Medico-Legal Report of Professor Nimisha Patel of 16 August 2017 and has also included in her supporting documentation medical evidence obtained for the purpose of the legal proceedings brought against the Religious Congregations. The Complainant has not submitted any contemporaneous or historical medical evidence to support the contention either that she was subjected to torture or inhuman and degrading treatment or that she suffered any injuries (whether physical or psychological) during the time she was resident

⁷³ See Committee Against Torture, General Comment No. 2 CAT/C/GC/4 at paragraph 38, Tab 39.

⁷⁴ See *Ireland v. United Kingdom* (18 January 1978, Series A, No. 25, 2 E.H.R.R. 25) at paragraph 161, Tab 38.

⁷⁵ Transcript of proceedings before the Residential Institutions Redress Board, 24 February 2005, page 869, Tab 36, Complainant's submissions to UNCAT.

in Magdalen Laundries. Instead, the Committee is requested to make findings upon the Complainant's own evidence and the Medico Legal Report of Professor Patel.

102. The Medico-Legal Report was prepared for the purposes of this Complaint. Professor Patel records that *'medical records were not available to examine'*⁷⁶. Therefore, the conclusions reached by Professor Patel are based solely on the narrative provided by the Complainant. The Complainant has provided no explanation for the failure to provide either the Committee or Professor Patel with any of her medical records or any contemporaneous medical evidence which might support her complaint.

103. It is further noted that there is no evidence before the Committee as to whether the Complainant has ever received any medical treatment for any injury (whether physical or psychological) alleged to have been caused during the time spent in a Magdalen Laundry. It is recorded in the Medico Legal Report that the Complainant *'has never before received any psychological therapy, counselling or psychiatric care'*⁷⁷ and that she was once referred for counselling⁷⁸ but declined to return to see that Counsellor when it was disclosed that the Sisters of Mercy were paying for the service. It is also noted that Professor Patel recommended that the Complainant obtain professional psychological therapy. However, there is no evidence before the Committee as to whether the Complainant has obtained such therapy, or indeed, any medical support for the injuries alleged to arise from the matters that give rise to this complaint. In this context, it must be emphasised that the 2015A Card provides that holders can qualify for a counselling service, following a referral made in that regard by a registered medical practitioner, relative to and a relevant participant's admission to and work in any of the specified institutions⁷⁹. Women who are resident outside of the State can obtain reimbursement for services equivalent to those provided by the 2015A Card under the Redress Reimbursement Scheme. Since 2017, the Complainant has had the benefit of the Redress Reimbursement Scheme and can seek reimbursement, subject to complying with relevant conditions, from the State for expenses incurred in obtaining counselling services equivalent to those specified in the Redress for Women Resident in Certain Institutions Act, 2015.

⁷⁶ Paragraph 5, Medico-Legal Report of Professor Patel, Tab 3, Complainant's submissions to UNCAT.

⁷⁷ Paragraph 106, Medico-Legal Report of Professor Patel, Tab 3, Complainant's submissions to UNCAT.

⁷⁸ Paragraph 107, Medico-Legal Report of Professor Patel, Tab 3, Complainant's submissions to UNCAT.

⁷⁹ Section 2(1)(f) of the Redress for Women Resident in Certain Institutions Act, 2015, Tab 16.

104. The allegations made by the Complainant are not supported by available objective evidence, and in particular the evidence given by women to the inter-departmental committee in relation to living and working conditions in Laundries. As noted above, the living and working conditions in Magdalen Laundries are addressed at Chapter 19 of the inter-departmental committee's report. In that report, it is noted that only one woman reported an instance of sexual abuse while in a Magdalen Laundry. Further, the majority of women informed the committee that they had neither experienced nor seen others experience physical abuse while in the Laundries. This is also consistent with the statement given by the Complainant to An Garda Síochána in 1997, in which the complaint of physical abuse made by her was made against Sr. Enda O'Sullivan while she was resident in Nazareth House, an Industrial School. In her statement to An Garda Síochána and before the RIRB, the primary complaint made in relation to her time in Magdalen Laundries related to the fact of being required to live and work there and the harsh regime to which she was subject. The evidence of the women to the inter-departmental committee was to draw a distinction between what occurred in Magdalen Laundries and that which occurred in other institutions, such as Industrial Schools. The inter-departmental report records that women said that they were subjected to verbal abuse while resident in Laundries. However, the State Party submits that the infliction of verbal abuse could not be said to meet the required threshold to be described as torture or cruel or inhuman or degrading treatment or punishment.

105. The Complainant alleges that she was denied educational opportunity by reason of being in Magdalen Laundries. It may be noted that the educational attainment of the Complainant was not unusual for the relevant period of time. Data from the 1966 Census shows that of the females aged 16 in 1966 (the Complainant's age in 1966), 54% were no longer in education. 29% of girls were aged 14 or younger when their education ceased. It may also be noted that the RIRB found that the Complainant had distinguished herself and had *'reached a level of education which is distinguished for a person from your background'*.

106. The Complainant alleges that upon admission to Sunday's Well Magdalen Laundry her hair was forcibly sheared. The inter-departmental committee report states that while women reported having their hair cut, none of the women gave evidence that their head had been shaved with the exception of one woman who reported having her head shaved because of

lice. The Complainant's evidence before the RIRB was that her hair was cut and no allegation was made that it was forcibly sheared.

107. The Complainant alleges that she was deprived of access to family support and that her family had no *'legal right'* to see her. It is not clear why it is asserted that it was necessary for there to be a legal right to permit such visits. The evidence before the inter-departmental committee established that visits to women were permitted (and did occur), even if they were supervised. It may also be noted that, in the specific situation of the Complainant, the RIRB found that absence of family support from her life arose because of her stepfather's actions and was not the fault of any institution or the State⁸⁰. Further, the Complainant gave evidence before the RIRB that her mother visited her while in Nazareth House but was restricted in being able to visit because of the Complainant's stepfather⁸¹.

108. For these reasons, the State Party submits that the Complainant has not substantiated the allegation that she was subject to torture, cruel, inhuman or degrading treatment or punishment.

109. The State Party does not accept that any of the treatment to which the Complainant was subject was carried out either by or on behalf of the State. Magdalen Laundries were not State institutions. Nor were they managed or operated for or on behalf of the State. Magdalen Laundries were operated by religious orders and managed by nuns attached to the relevant religious orders. These nuns could not be properly described as being *'public officials'* within the meaning of Article 1.

110. Further, it could not be said that the nuns were acting with either the consent or acquiescence of public officials. The statement contained in the inter-departmental report that there was *'significant'* State involvement in the Magdalen Laundries must be seen in the context of the totality of the report. The report shows that the State had involvement with certain of the pathways by which women entered Magdalen Laundries. It also found that there was evidence of some financial involvement through the making of payments under various public assistance schemes and through the use of laundry facilities by some State

⁸⁰ Transcript of proceedings before the Residential Institutions Redress Board, 24 February 2005, page 893, Tab 36, Complainant's submissions to UNCAT.

⁸¹ Transcript of proceedings before the Residential Institutions Redress Board, 24 February 2005, page 864, Tab 36, Complainant's submissions to UNCAT.

entities. It has been acknowledged by the State Party that the working regime in place in Laundries was harsh and physically demanding. The report also notes that the State *'did not direct or inspect the overall management of the Magdalen Laundries apart from workplace inspections...'*. Laundries were subject to inspection as workplaces, in common with other commercial laundries. Between 1933 and 1956 this inspection occurred under the Factory and Workshop Acts 1901 – 1920. Following the coming into force of the Factories Act, 1955 in 1956 Laundries were subject to the same occupational health and safety legislation standards as commercial laundries. The evidence establishes that from 1957, Magdalen Laundries were subject to unannounced inspections by the Factories Inspectorate. On the outcome of those inspections the report states:

These inspections did not generally find contraventions of the standards then applicable to laundries as workplaces (although the standards of the time were not equivalent to current health and safety standards). On occasions when contraventions were identified during inspections, these contraventions were notified in writing to those operating the laundry (in this case, the Religious Congregations), just as occurred in commercial laundries. Records suggest that any such contraventions were remedied

111. 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 has apologised 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.

112. It is not the case that the State was involved in the management of Magdalen Laundries. Nor did it fail to enforce the regulatory regime that was in place at the time. The State Party does not accept that it failed to exercise *'due diligence'* as alleged by the Complainant. In fact, the relevant regulatory regime, as contained in the Factories Act 1955, was applied to Magdalen Laundries, including those in which the Complainant was resident.

113. In order to be defined as torture, the acts complained of must have been undertaken for a specific purpose. Article 1 provides examples of impermissible purpose as obtaining a confession or information, punishment, intimidation, coercion or for any reason based

upon discrimination. The Complainant asserts that the purpose for which she was sent to the Magdalen Laundries was punishment and, further that it was linked to a discriminatory reason based upon the Complainant's gender. This is not supported by the evidence.

114. It was established before the RIRB that the reason that the Complainant was originally committed to Nazareth House was because of her step-father's assault on her. In the *'Registration of expression of interest in the receipt of benefits from the Magdalen Laundry Fund'* completed by the Complainant on 22 February 2013, the Complainant stated that she was placed in Nazareth House by reason of her step-father's abuse⁸². It may also be noted that the evidence before An Garda Síochána established that the Complainant's mother consented to the order for her committal. There is no evidence to suggest that the Complainant was being punished. Indeed, Nazareth House was an Industrial School, in respect of which committal occurred where children had been neglected, orphaned or abandoned. If the Complainant had been originally committed as part of a punishment, she would have been sent to a Reformatory School. There is also no evidence to suggest that her transfer to a Magdalen Laundry was as part of a punishment to which she was subject.

115. On the question of discrimination, the Complainant does not present any evidence which would show that she was subject to the acts complained of by reason of her gender, which is the threshold that must be established in the context of an individual complaint. Instead of presenting any evidence relating to her individual position, she relies upon a modern day analysis of societal structures in place at the time Magdalen Laundries were in existence to make a general contention that they operated a discriminatory regime. An analysis of this nature does not support the allegation that the Complainant was subject to the acts complained of by reason of her gender.

116. For these reasons, the State Party argues that the Complainant has not established that she has been subject to either torture or cruel, inhuman or degrading treatment or punishment within the meaning of the Convention.

⁸² Registration of Expression of Interest in Receipt of Benefits from the Magdalen Laundry Fund, 22 February 2013, Tab 25.

X. Alleged Violation of Articles 12 and 13: No investigation or examination of complaints

117. The first complaint made by the Complainant is that there was a failure to hold an independent and impartial investigation into the complaints made by her of ill-treatment while she was resident in Magdalen Laundries and that this amounts to a violation of both Article 12 and Article 13 of the Convention.

118. By way of preliminary comment, it is worth reiterating, that the Committee only has jurisdiction to consider whether the complaint of ill treatment made individually by the Complainant has been considered by the State Party. While, at paragraph 8.1.3 of the Complaint, the Complainant alleges there has been a failure to investigate *'the complaints of other women who spent time in Magdalene Laundries'*, she has no entitlement to include such a claim and the Committee has no jurisdiction to consider it. The Committee's jurisdiction is strictly limited to the question of whether the complaint made by the Complainant with regards to her specific circumstances has been the subject of an investigation.

119. It is the position of the State Party that the complaint of ill-treatment made by the Complainant has been fully investigated by relevant authorities and that the obligations contained in Article 12 and 13 of the Convention have been met. 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 Article 12 and 13.

120. The nature of those investigations has been fully explained above. It can be seen from the evidence before the Committee that the characterisation of those investigations by the Complainant is not accurate.

121. First, the appropriate authority to investigate a complaint of torture or ill treatment is An Garda Síochána. The complaint made to An Garda Síochána was fully investigated. That investigation included having statements taken from the Complainant and Sr. Enda O'Sullivan and obtaining relevant records from different institutions. A file was sent to the Director of Public Prosecutions, who determined initially that prosecution for assault was not warranted. Following further investigations and confirmation that all persons who would have been in positions of authority, including Sr. Enda O'Sullivan, had died, the

Director of Public Prosecutions issued final directions that no prosecution for false imprisonment should be brought. The Complainant was informed of the investigation, the outcome of that investigation and the directions issued by the Director of Public Prosecutions. The statement made in the Complaint that there has been *'no progress in the examination or investigation of these complaints'* is manifestly incorrect.

122. The Complainant also brought civil proceedings against the Religious Orders who ran the institutions in which she was resident. As outlined above, those proceedings were dismissed by order of the High Court with the principal basis for the dismissal being that Sr. Enda O'Sullivan, against whom most of the allegations were made, was dead. The proceedings were not dismissed simply on the grounds of delay. Instead, the High Court determined that because a significant number of relevant witnesses (including one of the Defendants), were dead it would not be possible for the Defendants to defend the claim. In these circumstances, it would have been a breach of fair procedures and natural and constitutional justice to permit the claim to proceed.

123. The complaint made to An Garda Síochaná was investigated by the appropriate authorities, who concluded that criminal charges could not be brought. The primary reason for this was that the persons against whom the allegations were made were dead. This is also the reason why the Complainant was unable to maintain civil proceedings before the High Court. Having regard to the passage of time, and the death of the alleged perpetrators, the State Party believes further investigation of the allegations of criminality or the bringing of a prosecution would seem to be an impossibility.

124. The Complainant also gave evidence before CICA and the RIRB. Contrary to the assertion of the Complainant, these bodies were not precluded from considering the Complainant's time in Magdalen Laundries. Indeed, the ruling of the RIRB⁸³ specifically included the time spent by the Complainant in Magdalen Laundries up to her 18th birthday in its assessment of her application for redress. On foot of the application for redress made by the Complainant and following an oral hearing in which the Complainant gave sworn testimony, the RIRB made certain findings in relation to the abuse suffered by the Complainant and the impact on her life.

⁸³ Transcript of proceedings before the Residential Institutions Redress Board, 24 February 2005, page 888, Tab 36, Complainant's submissions to UNCAT.

125. The investigations of the specific complaints made by the Complainant have been supplemented by the investigations completed by the inter-departmental committee. The inter-departmental committee was established with a mandate to establish the facts relating to State involvement in the Magdalen Laundries. The interdepartmental committee was chaired by Senator Martin McAleese, an independent member of Seanad Éireann. Senator McAleese was nominated as a Member of Seanad Éireann by An Taoiseach Enda Kenny pursuant to Article 18 of the Constitution, which grants to the Taoiseach the power to nominate 11 members of Seanad Éireann. Senator McAleese sat as an independent member of Seanad Éireann and was not a member of either political party which formed the Government of the State Party between 2011-2016. The fact that he was nominated to Seanad Éireann pursuant to Article 18 of the Constitution does not mean that he sat with the Government in Seanad Éireann nor does it impact his independence.

126. The report of the interdepartmental committee is a comprehensive, factual account of the history of the Magdalen Laundries, the manner in which they were operated and the living and working conditions which existed in them. It placed a significant amount of information in the public domain that was not previously available.

127. Articles 12 and 13 of the Convention give rise to an obligation to undertake a prompt and impartial investigation of allegations of torture or ill-treatment. The Committee has determined that a *'criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who may have been involved therein'*⁸⁴. This is an obligation of means and not of result⁸⁵.

128. The State Party notes the approach of the Committee to the application of Article 12 and 13 in *N.Z v. Kazakhstan* (No. 495/2012)⁸⁶, where the complaint related to an allegation of police brutality in a police station after the Complainant attended there voluntarily for the purposes of informing the police of an earlier incident involving the discharge of a shotgun at a police officer. It was alleged that there was a failure to properly investigate the allegation

⁸⁴ See *Sergei Kirsanov v. Russian Federation*, No. 478/2011, CAT/C/52/D/478/2001, 14 May 2014, paragraph 11.3, Tab 41.

⁸⁵ See *CAS and CS v. Romania* (European Court of Human Rights, Application No. 26692/05, 20 March 2012, paragraph 20), Tab 42, and *Zentveld v. New Zealand*, No 852/2017, CAT/C/68/D/852/2017, paragraph 9.2, Tab 45.

⁸⁶ *N.Z v. Kazakhstan*, No. 495/2012, CAT/C/53/D/495/2012, Tab 46.

of torture and a failure to prosecute those responsible. The general obligation arising under Article 12 was described in the following terms:

The Committee recalls that Article 12 requires that the investigation should be prompt, impartial and effective, promptness being essential both to ensure that the victim cannot continue to be subjected to such acts and because, in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear

129. The Committee noted that the existence of an investigation will not be sufficient to show compliance with Article 12 *“if it can be shown not to have been conducted impartially”*. Kazakhstan established that an investigation had been undertaken and had resulted in charges being filed against one individual, who subsequently passed away. The investigation was ultimately closed with no criminal responsibility being attributed to anyone because of a lack of evidence. The Committee concluded that there was no violation of Articles 12 or 13 and stated:

13.5 While it remains concerned that preliminary examinations of complaints of torture and ill-treatment by police officers are undertaken by the Department of Internal Security, which is under the same chain of command as the regular police force, the Committee observes that the investigation was followed by prosecutor’s offices, which on several occasions revoked the decisions of the investigators to close the investigation and returned the case for additional investigation. In the particular circumstances of this case, the Committee finds that the complainant has failed to substantiate that the investigation conducted into the torture allegations of her son was not efficient and impartial. Accordingly, based on the materials before it, the Committee cannot conclude that the State party has failed to comply with its obligation to carry out a prompt, impartial and effective investigation into the allegations of torture of the complainant’s son

130. In order to comply with Articles 12 and 13, an investigation is required to be robust and must, at a minimum, comprise some investigatory steps and should include questioning of

the alleged victim as well as the alleged perpetrators. In *Mariano Eduardo Haro v. Argentina* (No. 366/20080), no violation of Article 12 was found to have occurred where a decision to not proceed to a prosecution was based on medical reports of the complainant as well as “*evidence, reports and statements obtained from various sources, including persons, such as the firefighter who came to the author’s assistance and other detainees who were in the same unit, who had no apparent conflict of interest, which concurred*”.

131. In this instance, the Complainant’s complaint was investigated by An Garda Síochána. The criminal investigation undertaken by An Garda Síochána sought to determine the nature and circumstances of the acts complained of and to establish the identity of those who may have perpetrated the acts. This was done by taking statements from relevant witnesses, including the person against whom the significant allegations of abuse were made, and obtaining records from different institutions. The final decision with regards to whether criminal charges should be brought was made by the Director of Public Prosecutions, an officer who has a guarantee of independence confirmed by law. The final decision not to bring any criminal prosecution was primarily determined by the fact that the relevant individuals, including the person against whom most of the allegations were made, had passed away. The State Party reiterates the position with regards to the availability of contemporaneous medical evidence which is explained above. In that regard, the position is similar to that which was considered by the Committee in *N.Z*, where no violation of Article 12 or 13 was found.

132. It is also relevant that the State Party has sought to establish the facts relating to institutional abuse by means other than criminal prosecutions. It is the entitlement of any individual to make a complaint in relation to acts of torture or ill-treatment to which they have been subject and for that complaint to be investigated by An Garda Síochána. However, the existence of that individual entitlement does not preclude the State Party from establishing investigative mechanisms which permit the facts relating to institutions and the abuse which may have occurred in those institutions to be established. Investigative mechanisms of this nature operate in parallel, and do not replace, the criminal justice system. It is also appropriate for these fact finding processes to be used in situations where, because of the passage of time and the fact that a significant number of alleged perpetrators may be dead, there may be real, practical problems with successfully achieving criminal prosecutions.

133. The argument made by the Complainant is premised on two propositions. First, it is argued that there has been no investigation of the complaint made by the Complainant to An Garda Síochána. That is manifestly incorrect, having regard to the information that is contained in this submission. Second, it is contended that there is an entitlement to a particular type of inquiry (i.e. a statutory inquiry). There is no authority for the proposition that Article 12 or 13 of the Convention mandates a particular *type* of inquiry to be undertaken. The obligation placed on Contracting Parties is to investigate allegations of torture or ill-treatment. That is the obligation that has been identified by the Committee in its Concluding Observations in respect of Ireland published on 17 June 2011⁸⁷.

134. In this instance, a full criminal investigation by the relevant authorities was undertaken at the time the complaint was originally made to An Garda Síochána. The prosecution and/or punishment of individuals alleged to be responsible for the acts of alleged ill-treatment was not possible as they had passed away by the time the investigation concluded. This meets the obligation contained in Articles 12 and 13 of the Convention.

135. That criminal investigation has subsequently been supplemented by CICA, the RIRB and the inter-departmental committee. Each of those bodies had different roles and primarily sought to establish the facts relating to institutional abuse in the State. In establishing these bodies, the State Party had to be mindful of the need to act as expeditiously as possible and to protect the rights of all parties involved, in line with both national and international law requirements. Further, the State Party was conscious of the significant passage of time since the period in which the institutions were mainly operational. In the context of the investigation of the Magdalen Laundries, the State Party was of the view that a statutory inquiry would be expensive, adversarial and would take a significant period of time to produce a report. The State Party was conscious that many of the women impacted were elderly and wished to identify a mechanism for investigation that would report without undue delay⁸⁸. Having balanced those various factors, the State Party established the inter-departmental committee and granted it a fact finding mandate. The publication of the inter-departmental report contained a comprehensive description of the operation of the

⁸⁷ Concluding Observations of the Committee Against Torture, 17 June 2011, paragraph 21, Tab 47.

⁸⁸ Address by Alan Shatter TD, Minister for Justice, Equality and Defence on the publication of the Report of Mr. Justice Quirke, 26 March 2013, Tab 26.

Magdalen Laundries and the manner in which women were treated while resident in those institutions. That report placed a significant amount of information in the public domain which had not previously been known about the institutions.

136. In the case of the RIRB, the assessment of the redress to which the Complainant was entitled involved the making of certain findings in relation to the abuse suffered by her in different institutions, including Magdalen Laundries. While this could not involve the assignment of criminal liability to any individual, it did include the investigation of her complaints and the making of an award of redress for the acts in respect of which complaint was made.

137. The Complaint contains significant criticism of the manner in which different inquiries have been undertaken by the State Party and of the legislative regime under which certain inquiries are undertaken (i.e. the Commission of Investigation Act, 2004). Those criticisms are misconceived and are not matters which properly fall within the jurisdiction of the Committee, in considering the Complaint lodged by the Complainant. First, the criticisms of the inter-departmental report are directed at the outcome of the investigation, with which the Complainant appears to take issue. The *outcome* of the investigation is not something that falls within the jurisdiction of the Committee in the context of an individual complaint lodged under Article 22. In particular, the manner in which submissions by specific representative organisations were considered by the inter-departmental committee does not come within the jurisdiction of the Committee.

138. Without prejudice to this argument, the Committee may note that arising from the information provided to the inter-departmental committee An Garda Síochána took steps to investigate certain allegations disclosed to the inter-departmental committee. As explained above, in July 2012 An Garda Síochána met with four named women, including the Complainant, about the time they spent in Magdalen Laundries and any interaction between them and members of An Garda Síochána. Further, in two instances serious allegations made by women who were resident in Magdalen Laundries were referred to An Garda Síochána⁸⁹. In the first case, on foot of information provided to the inter-departmental committee by a woman, An Garda Síochána met with her to discuss the matter but she did not want to make a formal complaint or have the incident in question

⁸⁹ Parliamentary Question, No. 368, 30 June 2015, Tab 27.

subject to a criminal investigation. In the second case, following the conclusion of the work of the inter-departmental committee, in the course of correspondence with the Department of Justice and Equality a solicitor made reference to an incident in a Magdalen Laundry which, if proven, would constitute a serious criminal offence. The State Party notified An Garda Síochána of this alleged incident and advised the solicitor that the matter should be reported to An Garda Síochána for criminal investigation. The State Party is not aware whether the woman in question elected to make a complaint to An Garda Síochána.

139. Second, the complaints in relation to the Commission of Investigation Act 2004 are made generally and are simply a recitation of the requirements of different sections of that legislation accompanied by a general allegation that there has been a failure to take an (undefined) *'human rights based approach'* to investigations. The Commission of Investigation Act, 2004 was enacted to facilitate fact finding investigations into matters of significant public concern and to report in a timely and cost efficient manner. It is not designed to determine individual criminal liability, which remains within the remit of An Garda Síochána, the Director of Public Prosecutions and the Courts. The operation of specific Commissions of Investigation is a matter for that individual Commission. The legislative framework requires that evidence is generally given in private to facilitate fact finding while also protecting the rights of all individuals and/or entities to fair procedures. A Commission of Investigation has a discretion to hear all or part of the evidence in public if it is satisfied that it is in the interests of both the investigation and fair procedures or where the Commission agrees to the request of a witness to provide all or part of his/her evidence in public⁹⁰.

140. Arising from the foregoing, it can be concluded that the complaints of torture or ill treatment made by the Complainant were investigated by an impartial and independent body, which determined that the prosecution of any individual would not be possible as the persons against whom complaints were made were dead. It can also be concluded that the State Party has undertaken appropriate fact finding investigations into the broader issues relating to Magdalen Laundries which have permitted a significant volume of information to be placed in the public domain. For these reasons, it cannot be said that there has been any violation of Articles 12 or 13 of the Convention.

⁹⁰ Section 11 of the Commissions of Investigation Act, 2004, Tab 28.

XI. Alleged Violation of Article 14 – Alleged Failure to provide redress

141. The second complaint made by the Complainant is an alleged failure to provide *‘full’* redress to the Complainant in accordance with Article 14 of the Convention.

142. By way of preliminary comment, the State Party submits that the obligations contained in Article 14 only apply to a ‘victim of an act of torture’. The State Party repeats its observations above that the acts complained of do not meet the threshold to fall within the definition of torture or cruel or inhuman or degrading treatment or punishment. Further, the State Party relies on the decisions of the Committee in *Džemajl et al v. Yugoslavia*⁹¹ and *Sergei Kirsanov v. Russia*⁹², in which it was stated that the scope of Article 14 only “*refers to torture in the sense of article 1 of the Convention and does not cover other forms of ill-treatment*”. In those circumstances, the obligations contained in Article 14 do not arise.

143. Without prejudice to the foregoing, should the Committee determine that it is appropriate to consider whether a violation of Article 14 has occurred or if it is considered necessary to consider whether redress has been provided under Article 16, the State Party submits that the obligations contained in Article 14 (and any that may arise under Article 16) have been met and that appropriate redress has been provided to the Complainant. The obligation to provide redress under Article 14 is said to comprise 5 elements, *inter alia*, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition⁹³. In the case of the Complainant, each of these requirements have been met.

144. First, it may be recalled that the Complainant has been granted significant redress by the State Party. On 24 February 2005, the Complainant was awarded the sum of €140,800 from the RIRB 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.

⁹¹ *Džemajl et al v. Yugoslavia*, No. 161/2000, CAT/C/29/D/161/2000, 21 November 2002, paragraph 9.6, Tab 49.

⁹² *Sergei Kirsanov v. Russian Federation*, No. 478/2011, CAT/C/52/D/478/2001, 14 May 2014, paragraph 11.4, Tab 41.

⁹³ General Comment No. 3 (2012), Tab 48.

145. The Magdalen Laundries Restorative Justice Scheme was established on foot of recommendations made by the Quirke Commission. Those recommendations were made following consultation with relevant parties, including 337 women who had been resident in Magdalen Laundries. It was designed, in accordance with those recommendations, to balance the different needs of women who had been resident in the Laundries. Included in the factors that were relevant to his assessment were the vulnerability and capacity of the women, their education deficit, the living conditions in the Laundries and the nature of the work which was undertaken. The Quirke Commission also considered the *'traumatic, ongoing effects which their incarceration and misery within the laundries has had upon their security, confidence and self-esteem'*.

146. The primary complaint made by the Complainant in relation to the terms of the Magdalen Laundries Restorative Justice Scheme relates to the waiver signed by her upon acceptance of an award of redress. As noted above, upon accepting the offer of redress made under the *ex gratia* scheme, the Complainant 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. The Complainant had the opportunity to avail of an allowance for the purpose of obtaining legal advice on the application and the waiver but elected not to obtain that allowance. The inclusion of a waiver of this nature was recommended by the Quirke Commission. The objection taken by the Complainant is that the implementation of a waiver impedes access to a right to a remedy or to obtain redress. However, such complaint cannot arise in the case of the Complainant. The Complainant already issued civil proceedings against the Religious Congregations who were responsible for running the Laundries in which she was resident. Those proceedings were dismissed by the High Court. With the benefit of legal advice, the Complainant did not seek to appeal that decision to the Supreme Court. The Complainant intended to join the State to those proceedings but they were dismissed before that application could be made. Having already had civil proceedings dismissed, the Complainant would have no entitlement to bring any action arising from her time in a Magdalen Laundry. Further, in the context of arguments made in relation to the admissibility of this Complaint, it was argued that the Complainant was not in a position to access alternative domestic remedies. It is inconsistent to argue that there are no domestic remedies available to her while also claiming that the waiver signed by her

acts as a bar to those remedies. In the circumstances, the complaint made is of a theoretical nature and does not actually impede access to a right to a remedy.

147. Similarly, the report published by the Ombudsman of Ireland entitled '*Opportunity Lost*' is not relevant to the Complaint. That report related to the eligibility criteria for the Magdalen Laundries Restorative Justice Scheme and, in particular, the institutions which came within the scope of the *ex gratia* scheme. Each of the Magdalen Laundries in which the Complainant was resident at all times came within the scope of the *ex gratia* scheme from its commencement. She was not impacted by the issues raised by the Ombudsman. For completeness, it may be noted that following publication of that report the terms of the *ex gratia* scheme were extended to cover the institutions identified by the Ombudsman.

148. Second, in so far as the Complainant has any medical needs arising from her time in a Magdalen Laundry they are met under the Redress Reimbursement scheme. It is noted that the complaint does not indicate that the Complainant has any individual needs which are not catered for by either the financial compensation or the provision of medical services. By letter of 3 March 2014, the Complainant raised certain queries in relation to the healthcare services which would be available under the *ex gratia* scheme, including whether they would be available to women resident outside the jurisdiction. A reply issued to the Complainant on 14 March 2014⁹⁴ in which she was informed that the implementation of the recommendations in the Quirke Report was being progressed by the Department of Health and that legislation would be enacted to make provision for those recommendations. This legislation was subsequently enacted as the Redress for Women Resident in Certain Institutions Act 2015 with provision for those resident outside of the State being made through the Redress Reimbursement Scheme.

149. The State Party does not accept that there has been a failure to implement the recommendations made by the Quirke Commission with regards to the healthcare benefits to be granted under the Magdalen Laundries Restorative Justice Scheme. As explained above, in accordance with the *ex gratia* scheme, women are granted a 2015A Card, which is valid for life and the card identifies the holder as qualifying for the health services specified in the Redress for Women in Certain Institutions Act, 2015 which is wider than access to those services provided to those persons who hold a medical card under the Health Act,

⁹⁴ Letter Department of Justice and Equality to Mrs. Coppin, 14 March 2014, Tab 29.

1970⁹⁵ as it also includes physiotherapy, chiropody, counselling and home help. Holders do not have to pay a prescription fee, can obtain access to enhanced dental services and can attend a General Practitioner (Doctor) of choice. Women who are resident outside of the State can obtain reimbursement, subject to conditions, for accessing the equivalent services to those specified in the Redress for Women Resident in Certain Institutions Act, 2015. As noted above, the Complainant has not, to date, submitted any claim for reimbursement under the Redress Reimbursement Scheme.

150. The Quirke Commission noted that the health needs and requirements of the women surveyed were diverse in nature and recommended⁹⁶ that they should have access to the full range of services enjoyed by holders of the Health (Amendment) Act, 1996 Card. The Health (Amendment) Act, 1996 Card is granted to women who were infected with Hepatitis C through blood or blood products provided by the State. For that reason, certain of the services provided by that card are linked to the holder having been infected with Hepatitis C. The Quirke Commission recognised this difference and noted that the comparison drawn with the Health (Amendment) Act, 1996 Card was for illustrative purposes and that not all the services available under that card would be directly relevant to women who had been resident in Magdalen Laundries⁹⁷.

151. The State Party also does not accept that there has been a failure to accept the recommendation of the Quirke Report relating to the establishment of an appropriate memorial. Since the publication of the Quirke Report the Department has engaged with the Justice for Magdalen Research Group with a view to identifying and developing that memorial, including attending, and providing funding to the facilitators of, two separate listening exercises with women in 2018. The Committee will understand that there are different views among the women as to the type of memorial that ought to be constructed. At this time two possible locations for a memorial have been identified at the sites of former Magdalen Laundries in Sean McDermott Street, Dublin and High Park, Dublin. Dublin City Council propose to make an application for development consent for the redevelopment of the site at Sean McDermott Street, Dublin which will include a memorial space. Separately, the Respond Housing Agency have been granted development consent

⁹⁵ A medical card is the mechanism whereby eligible persons are granted certain free public health services provided for under the Health Act, 1970 (as amended)

⁹⁶ 1st Recommendation, Report of the Quirke Commission, Page 7, Tab 17.

⁹⁷ Appendix G, Quirke Commission Report, Tab 17.

for a housing development at the site of the former Magdalen Laundry in High Park, Dublin. The Respond Housing Agency have committed to making a garden space available as a memorial. The State Party has committed to providing certain funding for each of these memorials. The State Party will continue to work with other relevant agencies to progress the memorials.

152. Third, the State Party has made two official apologies to women who were resident in Magdalen Laundries for the hurt which they experienced and for any stigma they suffered, as a result of the time they spent in a Magdalen Laundry along with an earlier apology to all victims of childhood abuse while resident in institutions. Those apologies have been offered by the President and the Taoiseach. The State Party has also established redress schemes from which the Complainant has benefited. Notwithstanding the fact that Magdalen Laundries were not institutions either in the ownership or control of the State Party, the State Party has taken the financial responsibility for the provision of redress and other supports to women who were resident in those institutions.

153. Fourth, the State Party has investigated the complaint made by the Complainant, in a process in which she participated. The ultimate conclusion of the investigation by An Garda Síochána was that it was not possible to bring criminal charges against any individuals as the persons against whom allegations were made by the Complainant were dead. Therefore, the question of assigning culpability to individuals for the acts in respect of which complaint is made cannot be finally determined as those against whom complaint has been made to the relevant authorities are dead. In the context of the individual complaint made by the Complainant, the relevant *'truth telling'* process by which individuals could be identified would be a criminal trial which is, clearly, impossible. At a broader level, the State Party established CICA, the RIRB and the inter-departmental committee. The Complainant gave evidence before each of these bodies. In the case of the RIRB, she gave evidence of her individual experience of abuse which resulted in certain findings being made, on foot of which she was awarded redress. Any further investigation of the Complainant's complaint would seem to be impossible as the relevant individuals against whom complaint is made are dead.

154. In so far as the Complainant seeks to complain that there has been a failure to provide a generalised public forum which would enable *'truth-telling'* by women who were resident in

Magdalen Laundries, that complaint is misconceived. The only complaint which may be made by the Complainant under Article 22 relates to her individual position. She has no entitlement to make a broader complaint in relation to the alleged absence of a forum for other women to raise complaints. Further, there is no authority for the proposition that Article 14 of the Convention mandates the establishment of a particular type of public inquiry or *'truth telling'* process.

155. The complaint made in relation to the absence of access to records is also misconceived. There is no suggestion that the Complainant has been denied access to any of her records by the State Party. Any broader complaint relating to access to records generally falls outside the scope of this individual complaint pursuant to Article 22.

156. The Complaint makes reference to a decision of the Department of An Taoiseach under the Freedom of Information Act, 2014 to refuse access to the archive of records relating to Magdalen Laundries gathered by the inter-departmental committee. The request for information was not made by the Complainant, nor does it relate to the Complainant's personal information. In relation to what is described as the archive of the inter-departmental committee, it may be noted that it contains copies of departmental, state agency and state body records. The originals of that documentation remain in their original locations and are subject to disclosure under the Freedom of Information Act, 2014⁹⁸ in the ordinary way. The Complainant is entitled to make a request under that Act to the Departments, agencies and other bodies holding the original documentation, for any documentation she wishes to access and it will be processed in the ordinary way. The records of the religious congregations which were provided to the inter-departmental committee were returned to those organisations. It was necessary to return those records to the religious congregations as they contained sensitive personal data.

157. A complaint in relation to women who died while in Magdalen Laundries being buried in unmarked graves cannot be maintained by the Complainant.

158. Fifth, it is not accurate to suggest that the State Party has offered no guarantees of non-repetition. There is no risk that the Complainant will be subject to acts of repetition. The Complainant was discharged from St. Mary's Cork Road on 30 April 1968. Magdalen

⁹⁸ The domestic legislation under which documentation held by state bodies may be disclosed.

Laundries no longer exist in the State following the closure of the final Laundry in 1996. There is nothing to suggest that institutions of this nature would be re-opened in the State. It is no longer considered appropriate to place women or children in institutional settings similar to Industrial Schools or Magdalen Laundries. Where it is necessary for the State to intervene to take children into care, that process is subject to strict regulation by the Child Care Act, 1991⁹⁹ as amended and the Children First Act, 2015¹⁰⁰. The Child and Family Agency has been given the function of promoting the welfare of children who are not receiving adequate care and protection¹⁰¹. The statutory obligations are supplemented by Children First: National Guidance for the Protection and Welfare of Children¹⁰², published under section 6 of the Children First Act, 2015. The societal attitudes that now exist and the legislative framework that has been established by the State Party are evidence of the absence of the risk of acts of repetition.

159. Further, in order to vindicate the rights of children and to support high quality services the State Party has established an Ombudsman for Children¹⁰³, who has a statutory obligation to advocate for children's rights. In 2012, the State Party amended its Constitution to insert Article 42A, which states that *'the State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as is practicable, by its laws protect and vindicate those rights'*, to ensure that children's rights are upheld. The State Party has established the Health Information and Quality Authority which has responsibility through its monitoring programmes for inspecting social care services and engaging with service users to measure compliance and provide assurances to the public.

160. Further, all places of employment that operate within the State are governed by a robust legislative framework which protects the rights of individual employees and which are compliant with International Law obligations¹⁰⁴. Employees have the benefit of an extensive employment rights framework and access to independent dispute resolution mechanisms to resolve disputes with their employers¹⁰⁵. Further, the State Party has also established the

⁹⁹ Child Care Act, 1991 as amended, Tab 31.

¹⁰⁰ Children First Act, 2015, Tab 32.

¹⁰¹ Section 3, Child Care Act, 1991, as amended, Tab 31.

¹⁰² Children First: National Guidance for the Protection and Welfare of Children, 2017, Tab 33.

¹⁰³ Ombudsman for Children Act, 2002, Tab 34.

¹⁰⁴ Appendix - Statutory Framework of Workers' Rights in Ireland, Tab 35.

¹⁰⁵ The Workplace Relations Commission and the Labour Court as established by the Workplace Relations Act, 2015 as amended (Tab 36) and the Industrial Relations Act, 1946 as amended respectively.

Workplace Relations Commission (*the WRC*), which is responsible for monitoring and enforcing the full suite of employment and equality rights for all employees in Ireland. The WRC carries out inspections throughout the State to ensure compliance with employment law and is empowered to seek redress from an employer for an employee or, in appropriate circumstances, commence criminal prosecutions against employers. An employee can make a complaint to the WRC if they believe that any of their employment or equality rights have been breached. Appeals against those decisions can be taken to the Labour Court.

161. The State Party submits that the complaint made in relation to the failure to guarantee non-repetition is premised entirely on generalised assertions relating to the societal position of groups of people, in which the Complainant does not fall. The Complainant cannot rely on generalised assertions relating to other groups of people (the substance of which is not accepted by the State Party) to ground an allegation that the State Party has offered no guarantees of non-repetition.

162. Furthermore, the State Party has in place a comprehensive framework for the promotion and protection of human rights, including the prevention of torture and other cruel, inhuman or degrading treatment or punishment, as outlined in the State Party's Common Core Document, the latest version of which was submitted on 23 September 2019, as part of the State's reporting under the ICCPR.

163. For these reasons, in so far as the Complainant alleges that acts in respect of which complaint is made come within the definition of torture or cruel or inhuman or degrading treatment or punishment (which is not accepted by the State Party), she has been provided with redress covering each of the 5 elements set out at paragraph 143 above, and no violation of Article 14 of the Convention arises.

XII. Alleged Violation of Article 16

164. The complaint made under Article 16 is grounded upon the same facts as those which are said to ground the allegation that there has been a violation of Articles 12, 13 and 14. The State Party submits that it has not been established that there has been any continuing violation of Article 16 and, for reasons similar to those set out above, there is no basis upon which there could be a finding of a violation of Article 16 distinct to any findings that are made in relation to the alleged violations of Articles 12, 13 and 14.

165. The State Party relies on the submissions made above which establish that the allegation that State institutions or officials and Religious Congregations have enjoyed *'impunity'* is not sustainable. The complaint made by the Complainant to An Garda Síochána was investigated but no prosecution could proceed as the individuals against whom complaint was made were dead. Further inquiries were undertaken by An Garda Síochána in 2012, following the engagement between the Complainant and the inter-departmental committee. However, it was not possible to identify the individual described by the Complainant.
166. The State Party has also established different investigative mechanisms which have permitted the facts relating to the treatment of those who were resident in institutional settings to be established. This has included CICA, the RIRB and the inter-departmental committee. This has permitted significant information to be placed in the public domain in relation to Industrial Schools, Reformatory Schools and Magdalen Laundries and the experience of those who were resident in those institutions.
167. The State Party has issued two 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.
168. The argument made by the Complainant that there is an ongoing violation of Article 16 by reason of the alleged affirmation by the State Party of her suffering is heavily reliant on the Medico-Legal Report of Professor Nimisha Patel. The conclusions of the Medico Legal Report are premised on the suggestion that there was no investigation of the complaint made by the Complainant to An Garda Síochána. As shown above, that is not the case. Further, the State Party repeats its comments on the Medico-Legal Report contained at paragraphs 101–103 above. In so far as it is alleged that the Complainant has not had access to appropriate health or social care for many years, the State Party repeats that since 2017, the Complainant has had the benefit of the Redress Reimbursement Scheme and can seek reimbursement, subject to complying with relevant conditions, from the State for expenses incurred in obtaining counselling services equivalent to those specified in the Redress for Women Resident in Certain Institutions Act, 2015. The Complainant has not, to date, submitted any claim for reimbursement under the Redress Reimbursement Scheme.

169. For the above reasons, the State Party submits that paragraph 40 of General Comment No. 3 is not applicable to the Complaint. The Complainant was not prevented from seeking redress by reason of the application of any Statute of Limitations. The Complainant had access to mechanisms to investigate the allegation of criminal acts made by her (i.e. An Garda Síochána) and judicial mechanisms to seek redress (i.e. the proceedings brought by her before the High Court). Both of these mechanisms could not be progressed because the persons against whom complaint was made were dead.

170. For the reasons outlined above, the State Party argues that there has been no violation of Articles 12, 13 and 14 of the Convention and, by extension, there has been no violation of Article 16 of the Convention.

XIII. Conclusion

171. The complaint made by the Complainant does not disclose any violation of the obligations placed on the State Party by Articles 12, 13, 14 or 16 of the Convention.

172. In light of the foregoing, the Committee should find that there has been no violation of the Convention by the State Party.

Aoife Carroll BL

Eoin McCullough SC

Law Library,

Four Courts,

Dublin

31 July 2020