Annex I

Joint Individual Opinion of Committee members Ana Racu and Erdogan Iscan (Dissenting)

1. We disagree with the conclusions of the decision, adopted by the Committee on 12 May 2022.[1] They present inconsistencies with the Committee's jurisprudence and its findings with regard to the State party's obligations as contained in the Concluding Observations (COB) adopted by the Committee in 2011[2] and 2017[3]. Thus, they undermine the protective value of the Convention, a purpose of which is to provide full and effective protection and rehabilitation to victims and survivors of torture and ill-treatment.

2. The COB adopted on 1 June 2011 "recommends that the State party institute prompt, independent and thorough investigations into all complaints … that were allegedly committed in the Magdalene laundries…and ensure that all victims obtain redress and have an enforceable right to compensation, including the means for as full rehabilitation as possible."

3. The COB by the Committee of 31 August 2017 stressed that "the State party should undertake a thorough and impartial investigation into allegations of ill-treatment of women at the Magdalene laundries that has the power to compel the production of all relevant facts and evidence… Strengthen the State party's efforts to ensure that all victims who worked in the Magdalene laundries obtain redress, and to this end ensure that all victims have the right to bring civil actions, even if they have participated in the redress scheme, and ensure that such claims concerning historical abuses can continue to be brought "in the interest of justice".

4. Those recommendations of 2011 and 2017 have not been fully acceded to by the State party. Thorough and impartial investigation into allegations of ill-treatment of women at the Magdalene laundries has not been undertaken to compel the production of all relevant facts and evidence. The complainant has not been given the possibility to bring civil actions with a view to seeking the truth.

5. The Committee's conclusions in its decision of 12 May 2022 also diverge from those of the UN Human Rights Committee's recent COB on Ireland, adopted on 22 July 2022,[4] whereby the State party is invited to "ensure the full recognition of the violation of human rights of all victims in these institutions, and establish a transitional justice mechanism to fight impunity and guarantee the right to truth for all victims;…to guarantee full and effective remedy to all victims, removing all barriers to access including short timeframes to apply to the redress schemes, the *ex gratia* nature of the scheme and the requirement, in order to receive compensation, to sign a waiver against further legal recourse against state and non-state actors through judicial process."

6. The Committee's decision of 12 May 2022 does not take into account international jurisprudence either, including the judgment of the Inter-American Court of Human Rights of 28 August 2013, in the case of *Garcia Lucero et al v Chile*[5], which makes reference to article 14 of the Convention and the Committee's General Comment No. 3.[6]

7. We recognize that the State party provided *ex gratia* payments, in general and in return for waivers. It also offered general, not individual, apology at political level, whilst it denied

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[1] CAT/C/73/D/879/2018
[2] CAT/C/IRL/CO/1 - para. 21
[3] CAT/C/IRL/CO/2 - paras. 25 & 26
[4] CCPR/C/IRL/CO/5 - paras. 11 & 12
[5] http://www.corteidh.or.cr/docs/casos/articulos/seriec_267_ing.pdf - paras. 185-192.
[6] CAT/C/GC/3

the victims to have access to truth. These mechanisms have not been sufficient to conclude that the State party fulfilled its obligations.

8. We disagree with the Committee's conclusion under article 12, that the State party took the "necessary measures" to conduct an objective and timely investigation into the complainant's claims. The record demonstrates that the State party, other than gathering information, has failed to conduct a prompt, independent and thorough investigation into allegations of arbitrary detention, forced labour and ill-treatment to which the complainant has been subjected. The Committee's decision sets a discouraging precedent undermining the obligations under article 12.

9. As regards article 13, the Committee erroneously concludes that the *ex gratia* payment scheme offered by the State party reflects a "partial admission of responsibility on part of the State party." Such a conclusion reflects a fundamental misunderstanding of the term "*ex gratia*" ("as a favour rather than an obligation") and the particularities of this scheme. By instituting the *ex gratia* scheme, the State party sought to address the calls for justice outside the criminal procedure.

10. We cannot conclude that the steps taken by the State party may be understood as fulfilling its obligations under article 14, as presumed in the Committee's decision. The General Comment No. 3 recalls that "while collective reparation and administrative reparation programmes may be acceptable as a form of redress, such programmes may not render ineffective the individual right to a remedy and to obtain redress."[7]

11. Similarly, even if the "social and health insurance, with rehabilitative effects" that the complainant has received as part of the *ex gratia* scheme, were provided as an admission of responsibility by the State party for having violated its obligations under the Convention, this would not satisfy its obligations under article 14 to ensure victims to have access to an individualized determination of redress, including the means for as full rehabilitation as possible.

12. "Full rehabilitation" is a complex and generally long-term concept that requires a holistic approach. If the survivor is denied truth and access to seek truth through official means, if there is no acknowledgement of the violations and harms, survivors feel locked into their suffering and pain for life. In such circumstances, there can never be any meaningful or full rehabilitation as required by article 14. The General Comment No. 3 underlines that: "Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society."[8]

13. Compensation is an important form of reparation. But it can never be enough and never replaces a full rehabilitation. It is not a formal acknowledgement of truth and harms suffered. Without truth and acknowledgement of what happened, no amount of money can be rehabilitative, or fix the pain and suffering inflicted.

14. *Ex gratia* payments and waivers prevent the survivors from ever seeking truth in the courts. This may amount to impunity. Denying access to justice and accountability leads to denial of the right to seek full rehabilitation.

15. Apology without acknowledgement of the harms inflicted cannot be considered to constitute full rehabilitation. Truth and acknowledgement by the State of what happened is essential to an apology and fundamental to redress.

16. We also diverge from the Committee's assertion that the complainant has not satisfied the burden of proof to present an arguable case as to her claim under article 16 (para. 11.8), citing *S. v. Sweden*[9]. As the Committee had determined this complaint to be admissible, it is unclear what the Committee considers to be the new evidence that led to this conclusion. It cites the State's failure to act appropriately in response to her repeated requests for an investigation into her treatment at the Magdalene laundries as if it were beyond its control.

[7] Ibid., para. 20
[8] Ibid., paras. 11-15.
[9] CAT/C/65/D/691/2015, para. 10.

The State party's position leading to forgiveness for violations of the Convention due to the passage of time is incompatible with article 2 of the Convention. The Committee's General Comment No. 2[10] clarifies the absolute and non-derogable character of the prohibition against torture, without statute of limitations.

19. Therefore, we cannot agree with para. 12 of the Committee's decision, concluding "that the facts before it do not reveal a violation by the State party of articles 12, 13, 14 and article 16 alone, or in conjunction with articles 12-14 of the Convention."

20. We would have concluded for violation of the Convention and requested the State party:

- to initiate a thorough and impartial investigation in the Magdalene laundries, and where appropriate, prosecute and punish the perpetrators;

- to ensure that the complainant and other victims are able to access information in order to seek truth in courts, which was denied in the past;

- to provide the complainant with access to appropriate redress, including fair compensation and access to the truth, based on the outcome of the investigation;

- to ensure that the complainant and other victims have the right to bring civil actions, even if they had participated in the redress scheme;

- to prevent similar violations in the future and ensure that all victims have access to justice without obstacles.

[10] CAT/C/GC/2.

Annex II

Individual opinion of Committee member Todd Buchwald (dissenting)

1. The crux of the matter is: the State party failed to conduct a "prompt and impartial investigation" of allegations of torture and ill-treatment that it had "reasonable ground to believe" had been committed, it consequently failed to ensure redress, and these failures continued after May 2002 when its declaration under Article 22 became effective.

2. The Committee accepts that there was "reasonable ground to believe" that torture or ill-treatment had been perpetrated, but the State party argues that it could not pursue a criminal investigation in response to complaints filed by the author in 1997 either because its authorities found "insufficient evidence to warrant a prosecution of any individual" or because "all parties who were in authority during the relevant period . . . were now deceased."[1]

3. Even assuming that it was appropriate to forego criminal investigations, however, the State party's obligation to investigate - and its obligation to provide redress - would not disappear. Investigations are required not only to establish the basis for criminal prosecutions, but also in order to implement "procedures designed to obtain redress"[2] and the Committee has been clear that redress is required regardless of whether any particular individuals can be held criminally responsible.[3] Thus, the contention – even if true – that it was not appropriate to pursue criminal investigations does not lead to a conclusion that an investigation was not required or that the obligation to provide redress was inapplicable.[4]

4. The State party also contends that, separate from any criminal investigations, it ensured an investigation by establishing the Inter-Departmental Committee ("IDC") in 2011 and the Quirke Report of May 2013, and that it has provided compensation through *ex gratia* regimes.

5. These were unquestionably important steps. As the IDC itself said, however, it investigated only the issue of state involvement and had no mandate to conduct "an assessment of responsibility or culpability."[5] The State party itself concedes that the IDC "had no remit to investigate or make determinations about allegations of torture or any other criminal offense."[6] Meanwhile, the *ex gratia* regime established under the Quirke Report was specifically designed to be *ex gratia* and thus to avoid implications of legal responsibility or liability. In the end, neither the IDC or the Quirke report entailed an investigation of whether torture or ill-treatment had been perpetrated.

6. The Committee's decision itself concedes that all payments were made "without responsibility and admission of liability by the State party, without truth, and without justice" and were "insufficient to meet the holistic 'comprehensive reparative concept' in General Comment No. 3."[7] The holistic concept of redress that the Committee has embraced includes "verification of the facts and full and public disclosure of the truth" (as well as "acceptance of responsibility").[8] In words that bear repeating, "establishing the true facts and securing an

[1] Committee Decision, paragraphs 7.7 and 7.8.
[2] Istanbul Protocol as revised, paragraph 190.
[3] General Comment No. 3, CAT/C/GC/3, paragraph 26 (a victim's reparation claim "should not be dependent on the conclusion of a criminal proceeding"; redress "should be available independently of criminal proceedings and the necessary legislation and institutions for such purpose should be in place").
[4] The same applies to civil cases that the State party's courts ruled could not proceed because it "would be impossible to defend at this remove of time." Decision, paragraph 7.10.
[5] IDC report, Chapter 2, paragraph 26.
[6] Information by Ireland, CAT/C/IRL/CO2/Add.1 (28 August 2018), paragraph 14.
[7] Decision, paragraph 11.7.
[8] CAT/C/GC/3, paragraph 16.

acknowledgment of serious breaches . . . constitute forms of redress that are just as important as compensation, and sometimes even more so."[9] This has not been done in this case.[10]

7. Most significantly, this case does not come to the Committee on a blank slate. The Committee in 2017 concluded "that the State party has not undertaken an independent, thorough and effective investigation,"[11] and explicitly reiterated these conclusions in the May 2019 letter of its Rapporteur for Follow-Up.[12] The Committee itself is formally on record that the State party's investigations were insufficient to pass muster.

8. One may ask what the Committee thinks has changed between then and now. To be clear, there are unquestionably situations in which it is appropriate for the Committee to modify or reverse previous conclusions. However, it is incumbent upon the Committee to offer some kind of genuine explanation of why it is reversing itself, and failure to do so risks undermining the respect for the Committee's work that is essential for it to be effective. That seems particularly so in the present case, where the alleged conduct was pervasive and occurred over a protracted period of time.

9. In the absence of such an explanation, I find myself unable to join in the Committee's decision.

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[9] El-Masri v. FYROM, Joint Concurring Opinion, paragraph 6. The Committee has previously affirmed that the obligation to acknowledge applies even if the underlying violation occurred before the effective date of a State party's Article 22 declaration. *See, e.g.*, Concluding Observations on Japan, paragraph 20.

[10] Indeed, in this proceeding, the State party has maintained that the acts complained of "do not meet the threshold" to be considered as either torture or other ill-treatment. Decision, paragraph 7.12. It is also worth recalling that Justice Quirke said the process in fact suggested "that a large number of young girls and women . . . were degraded, humiliated, stigmatized and exploited (sometimes in a calculated manner)" and that the women he interviewed were "entirely credible," Quirke Report, paragraphs 3.03, 4.09, thus supporting the conclusion that a true investigation was needed.

[11] Concluding Observations, CAT/IRL/CO/2 (31 August 2017), paragraph 25.

[12] Rapporteur's letter of 21 May 2019.