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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 879/2018*, **,***

Communication submitted by:	Elizabeth Coppin (represented by counsel, Wendy Lyon and Yasmin Waljee)
Alleged victim:	The complainant
State party:	Ireland
Date of communication:	25 July 2018 (initial submission)
Document references:	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 26 February 2019 (not issued in document form)
Date of adoption of decision:	12 May 2022
Subject matter:	Lack of investigation into complaint of ill-treatment; right to remedy
Procedural issue:	Admissibility – *ratione temporis*
Substantive issues:	Lack of investigation; lack of redress and adequate compensation; torture, cruel, inhuman or degrading treatment or punishment
Articles of the Convention:	12–14 and 16

1.1 The complainant is Elizabeth Coppin, a national of Ireland born on 21 May 1949. She claims that the State party has violated her rights under articles 12 to 14 of the Convention, read alone and in conjunction with article 16; and article 16. The complainant is represented by counsel.

1.2 On 26 February 2019, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to examine the admissibility of the communication separate from its merits.

The facts as submitted by the complainant

2.1 The complainant contends that between March 1964 and April 1968, when between 14 and 18 years of age, she was subjected to torture and cruel, inhuman and degrading

* Adopted by the Committee at its seventy-third session (19 April – 13 May 2022).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

*** Individual opinions by Committee members Todd Buchwald, Erdogan Iscan and Ana Racu (dissenting) are annexed to the present decision.

treatment and punishment in the State party in three separate institutions, known as Magdalene laundries.

2.2 In 1951, the complainant was committed by order of the Listowel District Court to an industrial school for girls operated by a congregation of nuns, providing that she was to be detained until her sixteenth birthday in 1965. She was committed under the Children Act (1908), not on the ground that she was an orphan, but rather that she was destitute and illegitimate, with her mother being unable to support her. The complainant contends that at the age of 14, in March 1964, she was sent by the industrial school to the Saint Vincent's Magdalene laundry in Peacock Lane in Cork, operated by another Catholic congregation of nuns, the Religious Sisters of Charity. After escaping from Saint Vincent's in August 1966, the complainant was apprehended in November of that year from her new place of work by officers of the Irish Society for the Prevention of Cruelty to Children and placed in another laundry in the convent of the Sisters of the Good Shepherd in Sunday's Well, Cork. In March 1967, the complainant was transferred to another laundry operated by the Sisters of the Good Shepherd: St. Mary's in Waterford. She was discharged in April 1968, just before her nineteenth birthday.

2.3 The complainant was subjected to arbitrary detention, servitude and forced labour without pay for six days a week in all three of the Magdalene laundries; the State party was complicit in her arbitrary detention and mistreatment. She claims to have been subjected at numerous times to deliberate and ritual humiliation; denial of identity, educational opportunity and privacy; neglect; and other forms of grave physical and psychological abuse. During her time at Saint Vincent's, her living conditions reflected a prison-like environment. She was placed in a cell of approximately 6 square metres, which contained a small bed with one blanket, and a shelf with a jug and a basin for sanitation. The door to her cell was bolted, there were bars on the window and her lights were switched off every night at 9 p.m. In one of the laundries, her hair was shorn, she was dressed in sackcloth and she was provided with a humiliating new male name, which she particularly disliked because it was the name of her tormentor at the Industrial School.

2.4 At Saint Vincent's, she was forbidden to speak and was generally deprived of human warmth and kindness. She lived in conditions of deliberate deprivation, with inadequate food and heating. She had limited contact with her family and was denied an education and any other opportunity to enjoy her childhood. She was also denigrated on religious grounds and was not informed as to whether she would ever be allowed to leave the laundries. She was convinced that she would die there and be buried in a mass grave. She claims to have been particularly vulnerable and experienced aggravated suffering because she was a child and had been removed from her family for being destitute and illegitimate, and because she had been physically and emotionally abused at the Industrial School.

2.5 The complainant argues that the treatment suffered constitutes at least degrading treatment within the meaning of article 16 of the Convention, also amounting to torture under article 1. The abuse sustained in the Industrial School and the Magdalene laundries have had serious and detrimental effects on her physical and psychological health.

2.6 The complainant has exhausted all available domestic remedies. In 1997 and 1998, she filed complaints with the Garda Síochána (the national police of Ireland) about the abuse suffered in the Magdalene laundries between 1964 and 1968. However, the Police failed to investigate her claims. She did not have any avenue to contest the decision not to investigate her complaints, becausethe Police owe no duty of care to victims of crime. The complainant cannot submit a complaint to the Garda Síochána Ombudsman Commission, to investigate police failure, owing to the requirement to submit a complaint within 12 months of an incident.

2.7 In 1999, the complainant commenced a civil proceeding in the High Court of Ireland against the religious congregations that managed the Industrial School and the Magdalene laundries. In November 2000, she applied to the High Court to join Ireland, the Minister of Education and the Attorney General as co-defendants in her civil action. However, before her application for joinder was heard, on 23 November 2001, the High Court struck out her proceedings against the congregation and nuns responsible for her treatment in the Industrial School on the ground of "inordinate and inexcusable" delay. The High Court held that there

was a real and serious risk of an unfair trial, because a number of individuals involved had died and the archive of the religious congregations contained only sparse personal records. Following her counsel's advice, the complainant did not appeal this decision, and the proceedings were discontinued in 2002.

2.8 In 2000, the State party established the Commission to Inquire into Child Abuse with a mandate to investigate into abuse in Industrial and Reformatory Schools and other similar institutions. The complainant provided testimony to the Commission in 2002. The same year, the State party established the Residential Institutions Redress Board to make financial payments to the victims of child abuse. In 2005, the complainant applied to the Redress Board for an award and was offered an ex-gratia payment for the abuse she suffered in the Industrial School and the Magdalene laundries. The award entailed no admission of liability by the State party or any religious congregation and was made on condition that the complainant agree in writing to waive any right of action against a public body or a person who had contributed to the scheme. The complainant accepted the award but she felt she had no other choice.

2.9 In its concluding observations on the State party's initial report in 2011, the Committee expressed grave concern at the failure of Ireland to protect women and girls involuntarily confined in the Magdalene laundries and to institute prompt, independent and thorough investigations into alleged ill-treatment. The Committee recommended that Ireland investigate all complaints of torture and other ill-treatment in connection with the Magdalene laundries and to prosecute and punish the perpetrators as appropriate (CAT/C/IRL/CO/1, para 21).

2.10 Subsequently, in 2011, the State party established the Inter-Departmental Committee (IDC) to establish the facts of State involvement in the Magdalene laundries. The IDC had no remit to investigate or make determinations of torture or any other criminal offence. In 2012, the complainant provided a written statement recounting the violations she suffered in the Magdalene laundries, including an assessment of the State's involvement in her arbitrary detention and abuse, to the Chair of the IDC, Senator Martin McAleese. The IDC's report was published in 2013. According to the report, evidence of direct State involvement in the committal of women to the Magdalene laundries was found in 26 per cent of the cases examined. State responsibility for funding and regulating the laundries was also established, as was the role of the police in returning escaped women to the laundries. After the publication of the report, the Government appointed Justice John Quirke to devise an ex-gratia scheme to provide payments and other support to women confined in the laundries. In March 2013, the complainant shared her experiences with Justice Quirke.

2.11 The Government subsequently established the Magdalene Laundries Restorative Justice Scheme. The complainant applied to the Scheme for an ex-gratia award in July 2013, and was offered a payment. The award was made on the condition that the complainant agree in writing to waive any right of action against the State arising out of her admission and work in the laundries.

2.12 The complainant wrote on two occasions in December 2013 to the Minister for Justice and Equality, asking what measures the Government was taking to address the violations committed against women in the Magdalene laundries and seeking more time to reflect on participating in the Scheme. On 3 March 2014, following an offer from the Scheme, the complainant sent a letter of appeal to the Restorative Justice Implementation Unit of the Department of Justice and Equality expressing concern about its terms, stating that the Scheme did not reflect the serious violation of her rights by the State and its agents. The complainant also noted that she had not committed a crime, and that her treatment had been unlawful and needed to be addressed by the State. The complainant requested that an investigation into her rights violations be conducted, in order to produce findings of unlawful behaviour of agents of the State. The State party insisted that she either accept or reject the ex-gratia payment. On 21 March 2014, she accepted the payment and signed the waiver.

2.13 In 2015, the State party created the Commission of Investigation into Mother and Baby Homes and Related Matters, another form of church-run institution similar to those in which the complainant and her mother had resided. The complainant repeatedly appealed to relevant authorities, to expand the Commission's mandate to cover these related institutions.

In March 2017, the complainant wrote to the Minister for Children and Youth Affairs, to request an investigation into violations perpetrated against women in the Magdalene laundries. Her letter stated that the Magdalene laundries abuse had not been properly investigated, and that no one had been held accountable for the arbitrary detention, forced labour, neglect, and psychological and physical abuse that women and girls had suffered there. The complainant stated that there was a continuing violation of her rights and the rights of all women who had gone through the Magdalene laundries.The complainant has received no reply from the Minister.

2.14 In 2017, the Committee expressed its deep regret that the State party had not undertaken an independent, thorough and effective investigation into the allegations of ill-treatment of women and children in the Magdalene laundries or prosecuted and punished the perpetrators, as recommended previously (CAT/C/IRL/CO/2, para. 25). It recommended, inter alia, that the State party should undertake a thorough and impartial investigation into allegations of ill-treatment of women at the Magdalene laundries to compel the production of all relevant facts and evidence and, if appropriate, ensure the prosecution and punishment of perpetrators. It also recommended that the State party ensure that all victims of ill-treatment who worked in the Magdalene laundries obtain redress; that all victims had the right to bring civil actions, even if they had participated in the redress scheme; and that such claims concerning historical abuses could continue to be brought “in the interests of justice”. Since 2010, the Irish Human Rights and Equality Commission has been calling on the authorities to undertake a statutory investigation into systematic abuse in the Magdalene laundries. The State party has declined to do so.

The complaint

3.1 The complainant claims that the State party has violated article 12 of the Convention, alone and in conjunction with article 16, by failing to proceed to a prompt and impartial investigation of her allegations that she was subjected to torture and cruel, inhuman and degrading treatment and punishment in the Magdalene laundries, despite having reasonable grounds to believe that an act of torture had been committed in its territory. The complainant recalls that:

(a) The national police declined to act on the complaints she filed with them;

(b) The State party’s authorities did not open a criminal investigation into allegations of torture and ill-treatment at the Magdalene laundries after the complainant filed a civil claim in the courts;

(c) The authorities did not initiate an investigation into the allegations she provided in testimony to the Commission to Inquire into Child Abuse in 2002, in her application to the Residential Institutions Redress Board in 2005 or in her testimony to the Inter-Departmental Committee in 2012;

(d) She received no response to her letter to the Department of Equality and Justice in March 2014 or her letter to the Minister for Children and Youth Affairs in March 2017.

3.2 The State party has also violated article 13, alone and in conjunction with article 16, by failing to ensure that she and other survivors of the Magdalene laundries had the right to complain to and have their cases examined. The Police were unresponsive to her complaints and her civil proceedings against the religious orders in 1999 were dismissed by the High Court on grounds that too much time had elapsed since the incident. The other officials and bodies she has petitioned were either not capable of opening criminal investigations into her complaints of torture and ill-treatment or failed to exercise their discretion to do so. She attests that no other effective domestic complaints mechanism is available to her, and that even if one were, she would not be able to access it as a result of the waivers she was obligated to sign as a condition of accepting the ex-gratia awards offered to her by the State party in 2005 and 2014.

3.3 The complainant also claims a violation of article 14, alone and in conjunction with article 16, arguing that the State party has failed to ensure that she obtained full redress for the violations suffered in the Magdalene laundries, including the means for as full rehabilitation as possible. Referring to paragraph 16 of the Committee’s general comment No. 3 (2012), she submits that satisfaction is not only a discrete aspect of redress, but is

required for rehabilitation and in order to guarantee non-repetition. The State party has not carried out key aspects of the right to receive satisfaction as part of redress. No investigation has been conducted and no individual or institution has been held accountable. With respect to the right to as full rehabilitation as possible, the State party has not actually provided several of the benefits promised under the ex-gratia scheme, including comprehensive and easily accessible health and social care.

3.4 The complainant claims a continuing violation of article 16 on the basis that the State party's refusal to investigate her allegations of torture and ill-treatment and the resulting impunity for the perpetrators constitute an affirmation by Ireland of her treatment in the Magdalene laundries. Such affirmation debases and humiliates her in a manner so severe as to amount to at least degrading treatment. She is experiencing a continuing violation of her dignity amounting to a breach of article 16, commencing with her treatment in the Magdalene laundries and continuing on account of her treatment by the State party.[1]

3.5 The complainant requested that the remedies for the violations suffered include: Investigation, healthcare, compensation, access to archives, repeal of 'gagging orders', memorialisation, establishment of units of the police, and access to the courts. She sought an acknowledgment that her treatment amounted to torture and other ill-treatment.

State party's observations on admissibility

4.1 On 29 November 2018, the State party requested separate consideration of admissibility from the merits. Since the complaint raises issues that relate to a period prior to the entry into force of the Convention for the State party, it should be considered inadmissible *ratione temporis*.[2]

4.2 The Magdalene laundries were established and operated as refuges for women primarily by religious orders. The laundries were not operated or owned by or on behalf of the State, and there was no statutory basis for admitting or confining a person there.

4.3 In June 2011, the Government established the Inter-Departmental Committee to establish the facts of State involvement with the Magdalene laundries. Upon publication of the report by the Committee in February 2013, the Government stated its commitment to play its part in a healing and reconciliation process for women who were former residents of the Magdalene laundries. The Government established an ex-gratia redress scheme, enabling the former residents to receive compensation as a lump sum and weekly payments, and would be eligible for benefits such as primary medical services, prescribed medications, aids and appliances, dental services, home support, home nursing, counselling services and other health services.

4.4 In 1951, the complainant was committed to the Pembroke Alms Industrial School for Girls by a court order, authorizing her detention until 20 May 1965. The complaint only relates to the complainant's stay in three different Magdalene laundries from 19 March 1964 to 30 April 1968.

4.5 In 2005, the complainant was awarded €140,800 for the abuse she suffered in the Industrial School and the Magdalene laundries, under the Residential Institutions Redress Act of 2002. On 15 July 2013, she applied for redress under the Magdalene Laundries Restorative Justice Scheme in relation to her stay in three Magdalene laundries. She was awarded a lump sum of €55,500 and a full State pension amounting to €973.20 every four weeks – which she still receives – and she is eligible for medical services. When she accepted the payment, she signed a Statutory Declaration under which she agreed to waive any right of action against the State or any public body arising from her admission to the Magdalene laundries. All persons who applied for redress were provided an opportunity and allowance to obtain independent legal advice on the application and the waiver. The complainant did not choose this allowance.

[1] CAT/C/IRL/CO/1, para. 21; CAT/C/IRL/CO/2, para. 25.

[2] The State party ratified the Convention and made a declaration under its article 22, effective of 11 May 2002.

4.6 In February 2013 and June 2018, respectively, the then-Prime Minister and the President of Ireland issued apologies to the former residents of the Magdalene laundries for the abuse and stigma suffered.

4.7 Although the complainant claims an ongoing violation of articles 12 to 14, read alone and in conjunction with article 16, her complaint places an emphasis on what occurred during her residency in the Magdalene laundries. She filed complaints with the police and brought civil proceedings against representatives of the religious institutions and the State prior to the Convention's entry into force in May 2002. The complainant's claims concerning the alleged breach of articles 12 and 13 of the Convention are inadmissible *ratione temporis*.

4.8 The State party refers to the European Court of Human Rights finding that the question of *ratione temporis* is one that goes to jurisdiction and the Court has no jurisdiction over matters prior to ratification.[3] A failure to redress alleged violations that occurred prior to ratification falls outside the temporal jurisdiction and otherwise it would be contrary to non-retroactivity of treaties.[4]

4.9 The Committee may consider alleged violations of the Convention, which occurred prior to recognition of its competence under article 22 if the effects of those violations continue after the declaration under article 22 and if the effects constitute in themselves a violation of the Convention.[5] A continuing violation must be interpreted as an affirmation, after the declaration, by act or by clear implication, of the previous violations of the State party.[6] The complainant has not established that the State party has affirmed any alleged previous violations of the Convention. It claims to have taken positive steps, including the establishment of redress schemes and the provision of formal apologies to former residents of the laundries.

4.10 The complainant has not exhausted domestic remedies as she has never brought a complaint or proceeding against the State party in relation to its alleged failure to investigate or provide redress. The proceedings presented as evidence of domestic remedies – the complaints made to the police in 1997 and 1998 and the civil proceeding in 1999 – did not raise the present matters before the Committee. The complainant is claiming that the facts of her complaint occurred after 11 May 2002. She deems her domestic proceedings, which only relate to matters preceding the Convention's entry into force, to be sufficient in meeting the requirement to exhaust domestic remedies.

4.11 As to the waiver that the complainant signed when accepting the redress payment, the State party submits that the redress schemes operated on an entirely voluntary basis and she had an option to refuse the awards and bring proceedings before domestic courts.

4.12 The complainant submitted her communication not only on behalf of herself, but also on behalf of other survivors of the Magdalene laundries, which makes it inadmissible under rule 113 (a) of the rules of procedure.[7]

Complainant's comments on the State party's observations

5.1 On 31 January 2019, the complainant reiterated that her complaint is admissible.

5.2 She complains of the continuing failure by the State party to investigate and provide redress for the treatment she was subjected to in the Magdalene laundries. The State party ignores decisions in which the European Court of Human Rights asserted jurisdiction, even where the factual background of the complaint preceded ratification, such as in case of disappearance.[8] The State party's denial of the reality of the Magdalene laundries has a

[3] The European Court of Human Rights, *Blečić v. Croatia* (application No. 59532/00), Judgment of 8 March 2006, para. 67.

[4] European Court of Human Rights (Third Section), *Milojević and others v. Serbia* (application Nos. 43519/07, 43524/07 and 45247/07), Judgment of 12 April 2016, paras. 50–51.

[5] *N.Z. v. Kazakhstan* (CAT/C/53/D/495/2012), para. 12.3.

[6] Ibid.

[7] *A.A. v. Azerbaijan* (CAT/C/35/D/247/2004).

[8] European Court of Human Rights, *Zorica Jovanović v. Serbia* (application No. 21794/08), Judgment of 9 September 2013.

similar character to such failure. Her arguments are also in line with the decisions of other treaty bodies.[9]

5.3 The complainant is not asking the Committee to consider what happened to her in the Magdalene laundries, but to examine the effects of the abuse that she underwent in the light of the State party's current obligations under the Convention (arts. 12–14 and 16 of the Convention).[10]

5.4 The Committee has confirmed that a failure to investigate and provide redress for historic ill-treatment may be considered even when the allegations of ill-treatment would be inadmissible *ratione temporis*.[11]

5.5 She has exhausted domestic remedies, claiming to have no further legal remedies with a reasonable chance of success[12] or likely to bring effective relief. Even if domestic proceedings were available to her, she would be precluded from using them as having waived any right of private action as a condition for receiving the ex-gratia awards. The decision to require women resident in the Magdalene laundries to waive their rights to bring further proceedings against the State as a condition of participation in ex gratia redress schemes constitutes an illegitimate attempt by the State party to devise domestic legal means to "contract out" of its obligations.

5.6 The complainant's reference to other survivors is not to submit the complaint on their behalf, but to acknowledge that there is an undeniable collective dimension of the right to truth.

Admissibility decision

6. On 4 December 2019, the Committee concluded that the State party had not produced evidence to indicate that an effective remedy was available, or that any further remedies could bring effective relief. It decided that the communication was admissible *ratione temporis* due to possibly continuing violations, insofar as it raised issues with respect to articles 12, 13 and 14 of the Convention, read alone and in conjunction with article 16, and article 16.

State party's observations on the merits

7.1 On 31 July 2020, the State party submitted that there has been no violation of the Convention. The Magdalene laundries were not in the ownership or control of the State party.

7.2 The complainant has been granted redress, including significant monetary compensation, for her treatment in an Industrial School and three Magdalene laundries. The complainant's allegations were investigated by the Garda Síochána (the Police) which determined that no prosecution could be brought against any individuals.

7.3 Since 1999, the State party has undertaken various investigations into allegations of abuse in institutional settings, including the Commission to Inquire into Child Abuse ('CICA') and the on-going Commission of Investigation into Mother and Baby Homes.

7.4 In June 2011, an Inter-Departmental Committee (IDC) was established, to determine the State involvement in the Magdalene laundries. It undertook interviews with 118 women resident in Magdalene laundries, including the complainant.

7.5 The report of the IDC was published in February 2013, providing an account of state involvement with Magdalene laundries.

7.6 The Police has investigated allegations of abuse by individuals who have been resident in Magdalene laundries. The national law does not apply a statute of limitations with regard to criminal investigations.

7.7 On 28 October 1997, the complainant submitted a complaint to the Police of having been the victim of physical and emotional abuse while she resided in the Magdalene laundries.

[9] See *Sankara et al. v. Burkina Faso* (CCPR/C/86/D/1159/2003) and *Durmic v. Serbia and Montenegro* (CERD/C/68/D/29/2003).

[10] Fn. 8.

[11] Ibid.

[12] *Guridi v. Spain* (CAT/C/34/D/212/2002), para. 6.3.

In January 1999, the Director of Public Prosecutions determined that there was insufficient evidence to warrant a prosecution against any individual.

7.8 The Police also investigated the allegation of false imprisonment, which identified that all parties who were in authority during the period (1964 – 1968) were now deceased, and such allegation could not be attributed to any individual. On 16 June 2000, the Director of Public Prosecutions issued final instructions that no prosecutions were to be brought.

7.9 Separately, the Police met with four women, including the complainant on 18 July 2012, about the time they spent in the Magdalene laundries.

7.10 In 1999, the complainant launched 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 due to the complainant's inordinate and inexcusable delay which 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'.

7.11 The State party has established different mechanisms of redress. The Residential Institutions Redress Act 2002 provides for financial awards to persons who suffered abuse while in those institutions. The Residential Institutions Statutory Fund Board ("Caranua") under the Residential Institutions Statutory Fund Board Act (2012) provided funding to former residents to obtain services. The Magdalene Restorative Justice Ex-Gratia Scheme ("the Magdalene Laundries Restorative Justice Scheme") enabled applicants to seek the payment of a lump sum and medical benefits.

7.12 The acts complained of do not meet the threshold to be considered as either torture or cruel or inhuman or degrading treatment or punishment. Since fully investigated, the obligations under articles 12 and 13 of the Convention have been met.

7.13 The obligations under article 14 only apply to a 'victim of an act of torture'. The complainant has been granted significant redress by the State party. On 24 February 2005, she was awarded the sum of €140,800 from the RIRB for the abuse she suffered in the institutions, including Magdalene laundries. In January 2014, the complainant was awarded the sum of €55,500 pursuant to the Magdalene Laundries Restorative Justice Scheme, with an ongoing entitlement to a monthly pension payment, and the benefit regarding her medical needs.

7.14 The State party has issued two formal apologies to women residents of the Magdalene laundries for injuries and stigma suffered. In February 2013, the Taoiseach, Enda Kenny TD, issued an apology on behalf of the Irish Government. In June 2018, the President of Ireland, Michael D. Higgins apologised to women who had been resident in Magdalene laundries. Previously, on 10 May 1999, the Taoiseach, Bertie Ahern TD, issued an apology to the victims of childhood abuse.

7.15 There is no risk that the complainant will be subject to similar acts in the future, following the closure of the final Laundry in 1996. The State party has put in place a comprehensive legislative framework including in regard to the prevention of torture and other ill-treatment. It has not been established that there has been any continuing violation of article 16 of the Convention.

7.16 The allegations by the complainant do not disclose any violation by the State party of articles 12 - 14 or 16 of the Convention.

Complainant's comments on the merits

8.1 On 4 February 2021, the complainant submitted that between the ages of 14 and 19, she was subject to forced incarceration, torture and grave ill-treatment, in three of Ireland's "Magdalene laundries". The Committee has previously condemned the State party's failure to properly investigate and provide redress to victims of those institutions.

8.2 The State party fails to engage with the substance of the allegations , and it claims that there was no torture or ill-treatment whatsoever in the forced incarceration and deliberate mistreatment and denigration of young girls.

8.3 The complainant explains that the report of the Inter-Departmental Committee (IDC) discloses very significant evidence of treatment reaching the threshold of torture or cruel treatment, as well as significant involvement by the State party in the Magdalene laundries.

8.4 The complainant submitted significant evidence of her exposure to torture, which the State party has not disputed. She also addresses the allegation that, even if she has met the standard for ill-treatment, she has not met the standard for torture. She explains that she indeed suffered severely, in an institution she was sent to for punishment, which was set up solely to confine women and women alone, and was clearly discriminatory.

8.5 The State party's suggestion that the police investigation into her treatment alone meets its obligations is evidently insufficient to satisfy the requirements of articles 12 and 13. The State party's submission is contrary to the comprehensive reparative concept under the Convention. States cannot 'buy off' victims and thus avoid their responsibilities as articulated in the Committee's General Comment No. 3, without the guarantees of just satisfaction and non-recurrence; in particular when records are kept in secret, and where recommendations for redress have not been fully implemented. As a matter of fact, there have been very significant investigative deficiencies disclosed in the material finally provided to her. The State party has not acknowledged the impact of its failure to take proactive investigative steps, or the continuing inaccessibility of administrative archives concerning the Magdalene laundries, on her ability to seek justice from the time of her abuse to the present days. The State party has attempted to thwart the complainant's quest for accountability by attaching conditions to her receipt of an ex gratia payment; she has been forced to waive her right of access to the civil courts. Concerning the submission that she has had sufficient access to court to satisfy the State party's obligations, it was in reality the opposite: the State party has at every turn hampered her legitimate attempts to seek justice through the courts. The investigation by the State party that has already been undertaken into the Magdalene laundries is, as made clear by the Committee on previous occasions, clearly insufficient. The State party continues to refuse to investigate the treatment in fact suffered in those institutions, despite significant evidence indicating maltreatment. While withholding access to the archive of the IDC, Ireland persists in claiming that the IDC inquiry between 2011 and 2013 into State involvement with the Magdalene laundries established the 'objective' truth. The State party relies that its investigative committee had no remit to investigate or make determinations about allegations of torture. It cannot be accepted that there has been a sufficient investigation.

8.6 She also refutes the State party's argument that there has been no violation of article 14 as mistakenly suggesting that the obligations contained in article 14 only apply to a victim of torture, misinterpreting the Committee's jurisprudence.

8.7 She also opposes the argument that an apology, and an ex-gratia payment, could somehow suffice to meet the State party's obligations under article 14 in circumstances where the State party refutes to investigate the matter or indeed accept any responsibility for it, despite the findings of its own limited investigations.

8.8 The complainant addresses a succinct argument by the State party about the absence of violation of article 16, arguing that Ireland's continuing violations of the complainant's dignity amount to ill-treatment to date.

State party's further observations

9.1 On 8 June 2021, the State party submitted additional observations.

9.2 The scope of the complaint has been addressed in the Committee's decision on admissibility of 4 December 2019 (§6.4 - §6.5).

9.3 There has been no violation of any obligation arising from the Convention based on the allegations by the complainant, which have been fully investigated. The complainant has already been granted significant redress, in accordance with article 14 of the Convention.

9.4 The acts complained of all occurred prior to the adoption or entry into force of the Convention, and the coming into force for the State party.

9.5 The acts complained of do not meet the minimum level of severity to fall within the definition of torture or cruel treatment and are out of scope of General Comment No. 2. The complaint is not supported by contemporary medical evidence.

9.6 The State party has accepted that the working regime within Magdalene laundries was harsh and physically demanding and has issued apologies for the harm experienced by the women residents.

9.7 The State party acknowledges the difficult circumstances of Ms Coppin's early life and notes that it can also be recalled that the complainant was originally placed in Nazareth House because of abuse by her step-father. Her placement in this institution was agreed by her mother, who gave the Religious Order permission to place her in employment.

9.8 The complainant has incorrectly interpreted the relevant provisions of the Children Act (1908). The Commission to Inquire into Child Abuse noted that the Children Act gave the judicial system the jurisdiction to intervene in the affairs of a family 'in the interest of the child, usually of the poorer class, to protect their physical or moral wellbeing'.

9.9 The complainant accepts that the complaint made by her to the Police was investigated. She had further engagement with the Police in 2012, and she did not inform the Committee of the different interactions with the Police since her original complaint.

9.10 The obligations under articles 12 and 13 have been met as there has been a prompt, impartial and effective investigation of the complaint. Those obligations are of means and not result. Following the investigations, there was a decision not to pursue criminal prosecutions since all the alleged perpetrators were no longer alive.

9.11 Similarly, the criticisms by the complainant of how the civil proceedings were dealt with by the Irish High Court are misplaced. Those proceedings were dismissed on the basis of an inordinate and inexcusable delay. The complainant cannot seek to use the present complaint to impugn the decision of the High Court.

9.12 The complainant has been provided with adequate, effective and comprehensive redress. The complainant has had access to appropriate complaint mechanisms, investigation bodies and institutions in a manner consistent with the General Comment No. 3. The State party referred to the recent decision of the European Court of Human Rights in *L.F v. Ireland*[13] in respect of redress under the European Convention on Human Rights.

9.13 The above investigations were supplemented by the investigations by bodies such as the Inter-Departmental Committee. The complainant has also been provided with significant financial redress (which included payments of €195,800 and a payment equivalent to the State Contributory Pension, which is in the amount of €12,912 per annum, as a weekly income) and other supports, including the healthcare services. In addition, the State has issued apologies to women who were resident in Magdalene laundries and has made a commitment to memorialisation.

9.14 There has been no violation of article 16 either, maintaining that there is no continuing violation of any of the State party's obligations under the Convention.

9.15 The State party reiterates that certain remedies have already been provided to the complainant, while the remainder of the remedies identified are not appropriate as they do not relate to matters which are within the scope of the complaint.

Complainant's further comments

10.1 On 8 October 2021, the complainant responded that the State party's submissions are either repetitious, tendentious, or relate to matters on which the Committee cannot adjudicate.

10.2 The complainant, aged 72, is in failing health and respectfully requests the Committee to bring as swift end as possible to these proceedings.

10.3 The State party contends that the complainant has failed to demonstrate that the abuse she was subjected to amounted to mistreatment prohibited by the Convention. The State party contends that there is insufficient medical evidence to uphold her complaint. However, there

[13] Application no. 62007/17.

is no such requirement in the Convention. The State party has not disputed that the complainant was interned, and has not disputed the medical evidence which demonstrates that she has suffered severe consequences.

10.4 The State party reiterates that while the living conditions in the Magdalene laundries were "harsh and physically demanding", they were insufficiently poor to fall under the Convention,It refering to the circumstances in *V.K. v Russia*.

10.5 The State party sets out in great detail its own interpretation of the Children Act (1908),reportedly permitting to detain children. The complainant argues that no authority supports such arguments. The complainant has suffered at least ill-treatment under the Convention: the State did not have the power to imprison her as it did.

10.6 None of the objections raised alter the position that the complainant was subjected to torture, or at least cruel treatment. Such arguments do not and cannot absolve the State party of its obligations under articles 12 and 13.

10.7 The State party impugns the complainant's honesty by suggesting that she withheld from the Committee knowledge of what steps were taken by the Police. The complainant reiterates that she was never informed of any specific investigative steps. Ireland does not dispute that the Police in 2012 made no attempt to retrieve or consider the complainant's previous file or to progress an investigation of her case. Under the State party's position, if the relevant individuals were deceased, no further investigation could take place. Ireland's desultory efforts cannot be said to be an effective or adequate investigation for the purposes of article 12 of the Convention.

10.8 As to article 14, Ireland maintains that it has established sufficient mechanisms for investigation and redress. In particular, it relies on *L.F. v. Ireland* in defence of its ex-gratia schemes. However, in that case, there had been two independent investigations and the domestic courts had held that the symphysiotomy procedure of which LF complained was justified by relevant medical practice standards at the time. While Ireland seeks to "recall" that the Magdalene laundries were not institutions in the ownership or under the control of the State party, the only investigation conducted into the laundries considered that there was "significant State involvement".

10.9 The complainant refers to the Committee's findings in the context of follow-up to the concluding observations by the Committee: "While taking note of the repeated arguments put forward by the State party, the Committee regrets the decision not to set up a thorough, independent and impartial investigation regarding the Magdalene Laundries in spite of the alleged incidents of physical punishment and ill-treatment both in light of facts covered by the McAleese Report, and particularly in view of the non-judicial nature of the Inter-Departmental Committee. In this regard, the Committee reiterates the importance of investigating in a thorough and impartial manner all allegations of ill-treatment in these institutions and conducting criminal proceedings when necessary. The Committee also regrets that even the right of the victims to bring civil actions appears to be limited by the requirement to sign an undertaking not to take an action against the State and its agencies…".[14]

10.10 A cursory police investigation, cut short as certain individuals were deceased, places the complainant in no better place than the other victims of the Magdalene laundries.

Issues and proceedings before the Committee

Consideration of the merits

11.1 In accordance with article 22 (4) of the Convention, the Committee has considered the present complaint in the light of all information made available to it by the parties concerned.

11.2 As regards the claims under article 12, the Committee notes the complainant's argument that the State party has failed to institute a prompt, impartial and thorough investigation into her allegations. Article 12 of the Convention obliges States parties to ensure

[14] Rapporteur for Follow-up to Concluding Observations, 21 May 2019.

that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, and that such investigations must be effective.[15] The obligations in articles 12 to 14 apply equally to allegations of other ill-treatment.

11.3 In the present case, the complainant alleges that the State party is engaging in a continuing violation of its obligations under the Convention to investigate her allegations of torture and ill-treatment and to prosecute and punish those who have committed such acts; and to ensure that her complaints are effectively examined. She claims that the proof of the State party's failure in that regard rests in the fact that the State party does not know, because it never investigated, the exact treatment to which she was subjected, and that she has never received an official acknowledgment that that treatment amounted to torture or cruel, inumhman or degrading treatment. The complainant has claimed that the IDC was expressly prohibited from looking at this issue, as the State party has admitted. The Committee observes a prosecutorial decision not to pursue criminal investigation further because potential suspects had passed, and the High Court decision to struck out the complainant's case in 2001 as there was a real risk of an unfair trial, as number of individuals involved had died and the archive of the religious congregations contained only sparse personal records. Upon her counsel's advice, the complainant did not appeal this decision and the matter was discontinued in 2002. The Committee notes the State party's argument that it took all measures to effectively investigate the complainant's alleged ill-treatment subsequent to the acceptance of the Convention and its declaration under article 22 in May 2002; the State party held that the acts in question became time-barred and their perpetrators had passed, and therefore the criminal investigation remained inconclusive as to the responsibility of individuals concerned. In light of the above, the Committee considers that the State party took the necessary measures to conduct an effective, objective and timely investigation into the complainant's allegations of torture and ill-treatment. In the circumstances of this case, the Committee cannot conclude that the measures taken have been incompatible with the State party's obligations under article 12 of the Convention to ensure that the competent authorities proceed to a prompt, independent and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed.

11.4 As regards article 13 claims, the complainant alleges that the State party has generally affirmed the violations alleged on many occasions since the entry into force of the Convention for the State party and its declaration under article 22. The Committee notes the complainant's contention that none of the investigations undertaken by the State party have been effective. Having been repeatedly informed of the complainant's allegations and those of other women with similar experiences, and having taken actions to respond to them, including through the establishment of the IDC and the two ex-gratia payment schemes, from which the complainant obtained awards in 2005 and 2014, the State party has opened both civilian and criminal investigations into the substance of the complainant's allegations. The Committee notes the State party's argument that the complainant initiated the civil proceedings before the High Court but failed to submit an appeal against the decision to struck-out her case; that the State party initiated criminal investigations which could not establish accountability as the alleged perpetrators passed; and that the complainant received two awards of compensation and signed two waivers from further claims. In the circumstances, the Committee considers that the State party undertook necessary examinations of the complainant's claims by competent authorities, even if not fully conclusive, and that the acceptance of the two awards against the signature of waivers, preceded by establishment of facts, led to a partial admission of responsibility on part of the State party. Accordingly, the Committee cannot conclude that the facts of the case would demonstrate a violation of the State party's obligations under article 13 of the Convention.

11.5 As regards article 14 claims, the Committee recalls its General Comment No. 3 (para. 17), under which a State's failure to investigate, criminally prosecute, or allow civil proceedings related to allegations of torture may consitute a violation of the State's obligations under article 14. It also recalls that redress must cover all the harm suffered and encompass restitution, compensation and guarantees of non-repetition, taking into account

[15] *N.Z. v. Kazakhstan* (CAT/C/53/D/495/2012), para. 13.2.

the circumstances of each individual case.[16] The Committee notes the State party's argument that the complainant has never complained to the national authorities about its failure to investigate her allegations and provide redress to her. The Committee recalls the complainant's argument that there is no domestic remedy available to her to challenge the refusal of the police to investigate into her complaint because there exists no cause of action, for example in tort, which could effectively and reasonably have been pursued, as the police owe no duty of care to the victims of crime under the Irish law; and she is time-barred from complaining to the Police Ombudsman Commission. The Committee further notes the complainant's argument that the State party has not identified any further domestic remedy likely to provide an effective remedy to the complainant.[17] Although the complainant has appealed to many other authorities of the State party requesting them to exercise discretionary authority to investigate her allegations, including in 1997 to 1999, 2002, 2005, 2012 to 2014 and 2017, none of these attempts have been successful.

11.6 Furthermore, the Committee observes the State party's contention that it took all measures available to investigate the complainant's ill-treatment in the civilian and criminal proceedings, and through the establishment of IDC, and that the complainant is precluded from bringing the present communication because on two occasions she waived any right of action arising from her time spent in the Magdalene laundries as a condition of receipt of ex gratia awards. The Committee has previously determined that collective reparation and administrative reparation programmes may not render ineffective the individual right to a remedy and to obtain redress (General Comment No. 3, para. 20), including an enforceable right to fair and adequate compensation, and that judicial remedies must always be available to victims, irrespective of what other remedies may be available (General Comment No. 3, para. 30). Moreover, in its concluding observations on the second periodic report of Ireland, the Committee recommended that the State party should ensure that all victims of violations of the Convention committed at the Magdalene laundries had the right to bring civil actions, even if they had participated in the redress scheme, and ensure that such claims concerning historical abuses could continue to be brought in the interests of justice (CAT/C/IRL/CO/2, para. 26). In that context, the Committee notes the State party's argument that the authorities have repeatedly expressed apologies to the complainant, who has received a fair compensation through two ex-gratia awards, has repeatedly been granted access to judicial remedies and has been enrolled in the scheme of social and health insurance, with rehabilitative effects.

11.7 In addition, the Committee observes the State party's contention that it is necessary to consider the totality of the forms of the redress awarded. The complainant has at all times accepted that there has been some redress in respect of her complaints, including ex gratia payments and the provision of apologies, which are welcome. However, she is of the view that the State party has continued, in public forums and before the Committee: (i) to deny that any forms of torture or ill-treatment took place: (ii) to deny that it is obliged to investigate whether such forms of torture or ill-treatment took place; (iii) to deny individuals the right to bring civil claims to investigate whether such forms of torture or ill-treatment took place (either through the ex gratia scheme or through the operation of limitation and delay rules); (iv) to deny that insofar as there was any such torture or ill-treatment, it was the responsibility of the State. The Committee considers that the waivers signed by the complainant as a condition of participation in two domestic ex gratia schemes cannot alleviate the State party of its obligation to investigate allegations of continuing violations of the Convention, including the procedural aspects of the right to justice and to the truth (General Comment No. 3, paras. 16–17), and they do not impair the complainant's right to bring a communication to the attention of this Committee. However, the Committee notes that civil and criminal proceedings as well as administrative investigations were exercised by the State party on the basis of allegations by the complainant. The Committee observes that the payments, without responsibility and admission of liability by the State party, without truth, and without justice, are insufficient to meet the holistic "comprehensive reparative concept" in General Comment No. 3. The Committee also observes that the State party repeatedly expressed apology to the

[16] *Bendib v. Algeria*, para. 6.7. See also the General comment No. 3 (2012): Implementation of article 14 by States parties (CAT/C/GC/3).

[17] *Evloev v. Kazakhstan* (CAT/C/51/D/441/2010), para. 8.5.

complainant and involved her in compensation and rehabilitative schemes, even though domestic criminal proceedings did not establish accountability of individual perpetrators. The Committee therefore finds that the right to truth has generally been guaranteed through the operation of the investigation commissions, such as IDC, and the restorative schemes established. Accordingly, the complainant's access to justice, albeit limited, has not amounted to a violation of article 14, read in conjunction with article 16, of the Convention.

11.8 With regard to the complaint under article 16, the Committee has noted the complainant's claim that the various forms of abuse to which she was subjected in the course of her detention in the Magdalene laundries, including ill-treatment and deplorable working and sanitary conditions, were compounded by the State party's refusal to investigate her allegations of torture and ill-treatment. The Committee observes that the alleged impunity for the perpetrators has, however, been largely attributable to a passage of time and applicability of domestic statutes of limitations. In light of the above, the Committee concludes that the protracted suffering of the complainant, between March 1964 and April 1968, although compounded in part by the lack of conclusive investigation and of recognition that she faced at least ill-treatment when in the Magdalene laundries, has not amounted to a violation by the State party of its obligations, effective from May 2002, under article 16 of the Convention alone, and in conjunction with articles 12 – 14 of the Convention.[18] Moreover, the complainant's claims do not establish that the evaluation of her allegations by the authorities would have been arbitrary or amounted to a denial of justice or manifest procedural errors.[19]

12. The Committee, acting under article 22 (7) of the Convention, concludes 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.

[18] *Niyonzima v. Burundi*, para. 8.8.

[19] *S. v. Sweden* (CAT/C/65/D/691/2015), par. 10.

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.