

Oifig an Aire Dlí agus Cirt agus Athchóirithe Dlí
Memorandum for the Government
Magdalen Laundries

1. Decision Sought

The Minister for Justice and Law Reform requests the approval of Government to:-

- (i) issue a letter on the lines attached at Appendix 1 to the religious orders who ran the Magdalen Laundries, providing them with a copy of the Irish Human Rights Commission (IHRC) assessment of human rights issues arising in relation to Magdalen Laundries published in November, 2010, inviting them to comment and to make their records public; and
- (ii) establish an inter-Departmental committee, chaired by the Department of Justice and Law Reform, to carry out a full review of the IHRC assessment and to make recommendations as appropriate.

2. Background

There is a campaign by groups acting on behalf of some women who were in Magdalen Laundries that the State should accept responsibility for any abuses that took place in these institutions. As well as seeking a formal apology from the State, the groups are campaigning for redress to be provided, and an inquiry into the exhumation of remains from former Magdalen Laundries in Drumcondra, Dublin, and Foster Street, Galway. Access to records is also being sought and demands for redress include a trust fund, a pension for all survivors over 65, housing assistance for survivors in need, and medical assistance including counselling.

The Department of Justice and Law Reform has met with two of the groups: Justice for the Magdalenes (JFM) and a smaller group led by a Mr Steven O'Riordan. The Magdalen groups want their own redress scheme and are targeting the State rather than the religious congregations who ran the Magdalen laundries. Magdalen Asylums were not included within the scope of the Residential Institution Redress Act 2002 (there was no statutory provision for such institutions, they were not specifically State funded* and they did not involve the State committing young, vulnerable children to these institutions with a responsibility for the State to safeguard their interests). Costs to date associated with the Residential Institution Redress scheme include €1.1b paid in compensation; €126m for the Ryan Commission and €22.7m for Counselling and the Education Finance Board. *(N.B. The Magdalen Asylum in Sean McDermott was used as a remand centre for a period (1960 to 1980) for 16-21 year old women charged with criminal offences and payments was made by the

Department for these remands. Some of the institutions may also have received funding via Health Boards etc. at some stages.)

There were 10 Magdalen asylums in this jurisdiction operated by four different religious orders:

Sisters of our Lady of Charity – High Park,/Drumcondra and Sean McDermott Street/Gloucester Street in Dublin;
Sisters of Mercy – Galway and Dun Laoghaire
Sisters of Charity – Donnybrook in Dublin and Cork;
Good Shepherd Sisters – Waterford, New Ross, Limerick and Cork

These institutions pre date the foundation of the state. They were founded as charitable institutions to provide a place of refuge or asylum for women. The vast majority of women seem to have gone there or been placed there by family due to poverty, having given birth outside marriage, having a mental disability, marital problems or were homeless and affected by prostitution or alcohol addiction. In a small percentage of cases there was some State involvement. However there is little information available on the majority of women who went there, the numbers involved, the conditions they encountered or what the alternatives were outside for such women. Unlike industrial schools, there was no statutory basis for their operation, young children were not involved and there have been no reports of widespread sexual or physical abuse* (we have received one account alleging corporal punishment in Cork). A number of women have given accounts of a strict and harsh regime with emotional abuse and we have no reason to doubt the substance of their accounts. However one former resident has written in to say that she was very well treated while in one of these institutions.

Officials from the Department have met with a Senior Lecturer from Maynooth (who is also a religious) and an archivist who are doing a history of the Sisters of Our Lady of Charity in Ireland. The records show a total of 6,000 women resided in High Park between 1839 to 1989 and just less than 3,000 in Sean McDermott Street between 1887 and 1966. The philosophy of the Order was to provide a place of asylum for women. Women who sought refuge were provided with food and clothing and provided with a "religious" name to protect their anonymity and past. They were expected to follow the same regime as the sisters which included working in the laundry (the source of finance for the institution) and to show obedience and piety. The records indicate that the majority of women stayed for relatively short periods with a significant returning on multiple occasions. A number of women apparently went there when ill where they received care and a Christian burial.

Notwithstanding various "documentaries" and the report of the Irish Human Rights Commission, the Department is not aware of any finding by a court or other similar body that any offences or torts have been committed by those operating Magdalen laundries. The Garda Siochana carried out a

detailed investigation of the exhumation in High Park and found no wrongdoing. The Department is not aware of any facts that would give rise to State liability or responsibility for abuses in Magdalen Laundries. To the best of our knowledge none of the complaints made alleging abuse in Magdalen Laundries have been made by an individual who was placed there with any State involvement

If there were any abuses in Magdalen laundries, the individual abusers concerned and the religious orders who ran them were responsible.

The Department circulated a draft Memorandum on 2 September, 2010 seeking the approval of Government to engage with the relevant religious orders regarding Magdalen Laundries. However the general view of observations from Departments was concern that engaging with the religious orders might give the impression that the State was accepting responsibility in this area. This combined with the more recent publication in November, 2010 of the IHRC assessment of human rights issues arising in relation to the Magdalen Laundries has led the Minister to propose a different approach which is set out in this Memorandum. A more expansive background note is attached for information at Appendix 2.

3. IHRC Assessment of the human rights issues arising in relation to the Magdalen Laundries.

In June 2010, Justice for the Magdalens (JFM) contacted and formally requested the IHRC to conduct an enquiry pursuant to section 9(1) (b) of the Human Rights Commission Act 2000 in to the treatment of women and girls who resided in Magdalen Laundries. The IHRC published their assessment of that request on 9 November, 2010, see Appendix 3. The assessment was noted by Government on the same day (S180/20/10/1370), and the Attorney General was asked in consultation with relevant Departments to consider the assessment. The Attorney General's role in this context is to provide legal advice to the relevant Departments.

The IHRC report describes itself as "*Assessment of the Human Rights Issues Arising in relation to 'Magdalen Laundries'*" and includes "conclusions". However in fact the IHRC did not engage in an exercise in identifying and weighing evidence and did not make formal findings in these terms. In essence, the IHRC were of the view that there was insufficient information or evidence to make any determination on (a) allegations that there were breaches of human rights in Magdalen Laundries and (b) the responsibility/liability of the State if there were breaches. They recommended that a statutory mechanism be established to investigate the matter but decided against using their own statutory power as requested by JFM. The IHRC stated that such a mechanism should first examine the State's involvement in and responsibility for those entering laundries, their conditions, their departure and "end of life" issues. In the event of State involvement/responsibility being established, a larger review should be conducted and redress considered.

4. Preliminary Analysis of the IHRC Report

The Department of Justice and Law Reform has carried out a preliminary examination of the report and in the light of this examination, the Minister has serious reservations about the methodology, accuracy and conclusions of the IHRC Report.

Of most concern is the lack of balance and any evidence to support the conclusions. The IHRC report is effectively based on allegations put forward by JFM and no effort was made to obtain clarification, information or observations from the State or (apparently) the relevant religious orders on any of the issues raised. The "conclusions" give the impression that the IHRC endorse the allegations made although phrased in such a way as not to be definitive e.g. *"Conclusion 5 - The treatment of these women and girls by the Religious Orders appears to have been harsh. They were reputedly forced to work long hours..."*. Furthermore the allegations against the State are not specific, making it impossible to respond.

The IHRC Assessment covers matters that fall within the responsibilities of the Departments of Environment, Heritage and Local Government; Enterprise, Trade and Innovation; Education and Skills; Foreign Affairs, Community, Equality and Gaeltacht Affairs and Health and Children as well as Justice and Law Reform. In the Justice area (and possible other areas as well) the report contains some inaccuracies and misleading statements. For example in the context of State involvement it states that women and girls were remanded in Magdalen Laundries such as the Laundry at Sean McDermott Street (para.52) giving the impression that the use of such institutions for remand purposes was widespread. In fact only one institution was ever approved for remand purposes. The periods of remand were only a matter of days and the institution in question was open to inspection in this context.

The IHRC concluded that it should not carry out an enquiry itself under the Human Rights Commission Act, 2000 because

- one of the main purposes of an enquiry (adequacy and effectiveness of law and practice) had already, at least partially, been satisfied;
- even if the IHRC did conduct an enquiry it would fall short of the relief sought by JFM;
- even if the IHRC did conduct an enquiry, it would still be a matter for the Government to decide on redress.

Instead the IHRC recommend that *"a statutory mechanism be established to investigate the matters advanced by JFM and in appropriate cases to grant redress where warranted."*

The IHRC conclusions ignore that the State already provides the mechanism of the courts where allegations of civil and criminal wrongs can be addressed. While there are statutory time limitations that would affect civil actions, these do not apply to criminal allegations. Unlike the case with abuse in the industrial schools, the groups/individuals concerned have apparently chosen not to make any complaints to the Garda or to pursue a

civil action. The IHRC conclusions also seem to be based on the premise that there should be an inquiry outside the courts system and that redress or other relief should be linked to that inquiry. There is an underlying presumption that any inquiry will confirm that there were serious abuses and that the State rather than the religious orders should provide redress. Arrangements that prejudge the question of the determination of the gravity and extent of abuses, the question of State responsibility and the question of redress would not be acceptable. The only existing statutory mechanisms (other than that provided for by the Human Rights Commission Act) for an inquiry are a Tribunal of Inquiry or a Commission of Investigation. As with an IHRC enquiry, a Tribunal of Inquiry or Commission of Investigation would not be in a position to order redress or other relief.

5. Next Steps

The IHRC is a statutory body empowered by law (section 8(d) of the 2000 Act) to make such recommendations to the Government as it deems appropriate. While the Minister, for the reasons outlined above, has reservations about the IHRC recommendations he does believe that they requires serious consideration. This requires giving the relevant Government Departments and religious orders an opportunity to provide their observations on the IHRC report. The Minister is seeking Government approval for the establishment of an inter-Departmental committee to carry out a full review of the IHRC assessment and to make recommendations as appropriate. Rather than await the establishment of the inter-Departmental committee, the Minister proposes to write to the religious orders immediately on the lines attached.

The Minister proposes that this Committee will be chaired by the Department of Justice and Law Reform and membership will be drawn from the Departments of Environment, Heritage and Local Government; Enterprise, Trade and Innovation; Education and Skills; Community, Equality and Gaeltacht Affairs and Health and Children, Foreign Affairs and the Office of the Attorney General.

The Minister proposes that this Committee will have the following defined terms of reference:

- (i) to review the Irish Human Rights Commission Assessment of the Human Rights Issues Arising in relation to the Magdalen Laundries published in November, 2010 taking into account the observations of Government Departments, the religious orders and any other interested parties; and
- (ii) to make recommendations as appropriate to the Government.

6. Bethany Home and other laundries

Bethany Home has been raised previously and receives a brief mention in the IHRC report (page 16, para. 53). The Minister does not propose to

include Bethany within the scope or terms of reference of this Committee. To the best of our knowledge, Bethany was a non Catholic Mother and Baby home— it was not a Magdalen laundry – and the focus of the IHRC report is on Magdalen laundries only. Similarly many other institutions run by nuns had laundries (e.g. convent schools) and the Minister does not intend to include these non-Magdalen laundries within the scope or terms of reference of this Committee.

7. Cost to the Exchequer

The Minister is conscious of the Minister for Finance's view that the proposals contained in the Memorandum previously circulated would very likely generate pressure for opening up redress. The Minister is conscious of the danger but considers that the IHRC Assessment has to be addressed and that the work of the Interdepartmental Committee will strengthen the position of the Government in dealing with the ongoing campaign

8. Impacts

As regards gender balance, only females entered Magdalen laundries and there were no equivalent male institutions. The majority of those who entered the Magdalen laundries would have suffered from poverty. There are no impacts for Employment, North South, East-West relations, industry costs or quality regulation.

9. Ministerial Observations

Copies of this Memorandum have been circulated to the Departments of Taoiseach, Finance, Education and Skills, Enterprise, Trade and Innovation, Environment Heritage and Local Government, Health and Children, Social Protection, Community, Equality and Gaeltacht Affairs, Foreign Affairs and the Office of the Attorney General.