

Assessment of the Human  
Rights Issues Arising in  
relation to the “Magdalen  
Laundries”

November 2010

## Introduction

1. In June 2010, Justice For Magdalenes (JFM) contacted the Irish Human Rights Commission (IHRC) and requested that the IHRC conduct an enquiry pursuant to section 9(1)(b) of the Human Rights Commission Act 2000, into the treatment of women and girls who resided in the so-called "Magdalen Laundries". JFM is an organisation campaigning for State recognition of, and redress for, human rights violations it alleges were experienced by women and girls who entered the Magdalen Laundries since the foundation of the Irish State in 1922. Due to the serious nature of the allegations raised and the advanced age of some of the survivors of these laundries, the IHRC prioritised assessing this enquiry request.
2. The IHRC reviewed the documentation provided by JFM and prepared a detailed internal assessment. In September, the internal assessment was considered by the IHRC. On the basis of the assessment and taking into account the IHRC's statutory remit, powers and resources available to it, the IHRC decided not to conduct an enquiry, but that it would call on the State to take action to address the serious human rights issues that were raised. The IHRC decided to publish this summary of its assessment of the human rights concerns which it considered were raised by the enquiry request. It also decided to call on the State to immediately institute a statutory mechanism to address these concerns.
3. In the assessment the IHRC reached 12 conclusions. These conclusions together with relevant extracts from the assessment are contained in this summary together with the IHRC's recommendations to Government. A bibliography also accompanies this summary with a list of the materials reviewed by the IHRC.

## Key Human Rights Instruments considered

State obligation	Date
Constitution of Ireland 1937	Adopted - 1937
Forced Labour Convention 1930	Ratification - 1931
European Convention on Human Rights 1950	Ratification - 1953

## Main issues

4. The most significant conclusions of the assessment concern the involvement of the State in the circumstances by which women and girls came to reside in Magdalen Laundries, an involvement that appears to be denied by the State. The assessment also came to certain conclusions in relation to the obligations of the State in relation to conditions in the laundries, particularly the work carried out by those women and girls and

whether this involved forced or compulsory labour or servitude. Also considered are end of life issues for the women and girls who died while residing in the laundries. Other conclusions relate to some of the ancillary issues raised by the enquiry request such as tracing and information services for adopted persons, and the conduct of vaccine trials in Mother and Baby Homes. All the conclusions and issues of concern to the IHRC are highlighted in this summary.

5. In relation to terminology, the phrase 'women and girls' is used throughout this document (girls referring to children under eighteen years of age), as evidence presented to the IHRC indicates that not only women, but girls as young as 13 years old, resided in these institutions.

### **What are the Magdalen Laundries?**

6. At the outset, it should be noted that there is a severe lack of publicly available material to indicate how many women and girls resided in Magdalen Laundries in the twentieth century or the duration of their residence. Many of the relevant records would appear to be held by the religious orders that operated the laundries, rather than State authorities.
7. There is no established definition of what constitutes a Magdalen Laundry. The information available to the IHRC indicates that the origins of Ireland's Magdalen Laundries stretches back to 1767 when the first refuge for "fallen women" was opened in Dublin. The first Magdalen Laundries in Ireland were founded and run by members of Church of Ireland denominations before being taken over by Roman Catholic orders in the nineteenth century. The name adopted by the institutions was influenced by the biblical figure of the prostitute, Mary Magdalene, as a role model for repentance and spiritual regeneration. As the name denotes, during the twentieth century Magdalen Laundries operated as private-for-profit laundry enterprises in which the women and girls living in the institutions were expected to work in order to "earn their keep". Magdalen Laundries are not to be confused with State run, and religious order managed, institutions which also operated laundries in Ireland for much of the twentieth century and in which mainly children worked. Similarly, Magdalen Laundries should not be confused with the small numbers of Church of Ireland and Roman Catholic managed laundries which also operated in the State during this period but which do not appear to have been referred to as "Magdalen laundries".
8. Magdalen Laundries were, and indeed still are, officially regarded by the State as purely private enterprises for which the State has no responsibility. An appreciation of this official stance is key to understanding the debate around the call for redress for the women and girls who resided in the laundries. Other than the commercial work of laundering, it is clear from the limited records available that the Magdalen Laundries were regarded by the State as having a reformatory purpose in relation to the women and girls

who came to reside there. The last Magdalen Laundry in Ireland closed in 1996.

9. Women and girls were institutionalised in Magdalen Laundries for a variety of reasons. Some of the women and girls in these institutions remained there for life in circumstances where their ability to leave is unclear. Those who had been single mothers were separated from their children prior to entering the laundries. Conditions in the institutions were harsh and women were required to work, apparently without pay while there. There was no specific statutory basis for women to be confined in these particular institutions but nonetheless there is evidence of State involvement in their placement there. It is important to note that in referring to women and girls residing in the laundries, this encompasses unmarried mothers, girls who were referred by their families, clergy or a variety of State actors, women and girls who may have had an intellectual disability, as suggested by some State reports, women and girls who came to reside in the laundries under various court processes, and possibly a combination of one or more of the aforementioned circumstances.

#### The request from JFM

10. JFM's submission to the Commission is detailed and multifaceted and includes issues relating to, *inter alia*, abuse, servitude and compulsory or forced labour, the authority for courts referring girls and women to Magdalen Laundries, employment rights, education rights, children's rights and access to information (including records relating to adoption and tracing). Ancillary to these issues is the question of the propriety of the State's involvement in exhumations conducted in 1993 at a Dublin Magdalen Laundry and also the question of whether the infant children of women who came to be in Magdalen Laundries were used in vaccine trials.
11. JFM states that the vast majority of persons who resided in Magdalen Laundries since 1922 fall outside the terms of the Residential Institutions Redress Act, 2002, scheme, which was set up to provide financial redress for children who suffered abuse in certain State institutions, managed by religious orders. According to JFM, these women are entitled to a State apology for the suffering they experienced while in Magdalen Laundries and for redress in the form of compensation.
12. JFM specifically requested that the IHRC conduct an enquiry under section 9(1)(b) of the Human Rights Commission Act, 2000, into:
  - 1) "*the State's failure to protect the constitutional and human rights of women and young girls in the nation's Magdalen Laundries*";
  - 2) "*the State's obligation to provide redress to Magdalen Laundry survivors*".

## Note on Justice For Magdalenes

13. JFM was founded in 2004 and developed from an earlier organisation, Magdalen Memorial Committee (MMC), formed in 1993 that ran a successful campaign for the establishment of a memorial for 133 women buried in graves at a Dublin Magdalen Laundry (High Park Convent) whose remains were exhumed, cremated and reinterred in Glasnevin Cemetery, Dublin. Following newspaper reporting in 2003 concerning possible irregularities surrounding the High Park exhumations and cremations in 1993, several women, some of whom were the adopted children of women in the laundries, continued the work done by MMC and resurrected the organisation which would eventually become JFM. In addition to the adopted children of women in the laundries, JFM indicates that survivors of Magdalen Laundries are also involved in its campaign.

14. JFM describes itself as a:

*“not-for-profit, totally volunteer-run organisation, with members in Ireland, the UK, the US, the EU and Australia”.*

15. JFM operates as a “survivor advocacy group” and states that it:

*“advocates on behalf of women – living and dead, some still living in religious institutions, others living in anonymity, and many now speaking about their past – who are not recognised or acknowledged as survivors of institutional abuse by the state, by the Church, or by Irish society”.*

16. Further information about JFM's campaign is available at [www.magdalenelaundries.com](http://www.magdalenelaundries.com).

## Exclusion from the Residential Institutions Redress Act 2002

17. The position of the State in relation to the Magdalen Laundries and the issue of redress appears to be summarised in a letter from the then Minister for Education and Science of 4 September 2009 to a T.D. In that letter the Minister explains why women and girls in Magdalen Laundries were (with a limited exception for girls transferred from the institutions covered by the Act to a laundry) excluded from the scope of the Residential Institutions Redress Act 2002. The Minister indicated that:

- Magdalen Laundries are not listed in the Schedule to the Residential Institutions Redress Act 2002 as they were not subject to State regulation or supervision.

- There is a difference between children taken into the laundries privately or who entered as adults and persons who were resident in State run institutions. The State is only liable for children transferred to the laundries from residential institutions - see Section 1(3) of the Residential Institutions Redress Act 2002.
- The laundries were privately owned and operated and did not come within the responsibility of the State.
- The State did not refer individuals, nor was it complicit in referring individuals, to the laundries.
- The Minister in a further letter to a T.D. dated 23 September 2009 later withdrew his characterisation in the letter of the women and girls at the laundries as "employees" in preference for the terms "workers".

#### Operation of and entry into Magdalen Laundries

18. The IHRC was advised by JFM that during the twentieth century Magdalen Laundries were operated by four Roman Catholic religious orders at ten separate locations in the State:
  - The Sisters of Mercy - (Galway and Dun Laoghaire).
  - The Sisters of Our Lady of Charity (or Refuge) – (Drumcondra/ High Park and Sean McDermott Street, Dublin).
  - The Sisters of Charity – (Donnybrook and Cork).
  - The Good Shepherd Sisters – (Waterford, New Ross, Limerick and Cork).
19. JFM contends that the 1911 census records some 1,094 women and girls residing in Magdalen Laundries. The IHRC reviewed the census records and this number, together with the name of the religious orders concerned, appeared to be accurate. The census returns are also telling in how the women and girls were described, with labels such as "inmate" and "penitent" being ascribed to the women and girls concerned. Aside from the Magdalen Laundries there were also a number of other laundries operating at the time, mostly under the auspices of the Church of Ireland, which fall outside the ambit of the enquiry request to the IHRC.
20. While it appears that the numbers of women and girls entering the laundries reduced significantly from the 1950s onwards, the Reformatory and Industrial Schools Systems Report, 1970 ("the Kennedy Report") concluded that "70 girls between the ages of 13 and 19 years" were still confined in

laundries in 1970. The last Magdalen Laundry, located at Sean McDermott Street in Dublin, ceased operating in 1996.

### Conclusion 1

A large number of women and girls entered laundries, including Magdalen Laundries in the Twentieth Century, continuing a pre-existing practice. These laundries were run by Religious Orders, mostly Roman Catholic.

### Records

21. Aside from the official State census, records detailing the precise number of women and girls who resided in Magdalen Laundries, and the circumstances in which they entered are not publicly available. It is presumed that they are held by the religious orders that operated the laundries. This lack of information has caused difficulty for the IHRC in fully appreciating the extent and influence of the Magdalen Laundries during the twentieth century. In addition the high degree of stigma attaching to women and girls who resided in these laundries means that information the IHRC could otherwise have garnered from direct interviews with former residents of Magdalen Laundries or a review of primary documents was low. Official State records appear to be incomplete or unavailable. For example, various Parliamentary Questions in relation to the Magdalen Laundries have been responded to with reference to only partial records available to the Government Ministers concerned, and there are no complete records in relation to women who were placed in laundries by the Courts on remand, or as a condition of their probation or of girls transferred from Industrial and Reformatory Schools to Magdalen or other laundries.
22. A statutory inquiry mechanism, if established, could address the deficit in the publicly available records as a first step.

### Conclusion 2

The available public records are poor and incomplete.

### State involvement in entry into laundries

23. An important aspect of JFM's submission to the Commission, for which it has provided evidentiary materials in support of its contention, is that the State was involved through the Courts, in sending some women and girls to Magdalen Laundries.
24. In examining the request by JFM for an enquiry, the IHRC noted that there were in fact a number of pathways by which women and girls came to reside in the Magdalen Laundries. In some cases, although certainly not all, there was a clear element of State involvement.

25. There are some contemporaneous records that suggest that women, at least up until the 1950s, were referred from religious run Mother and Baby Homes to the Magdalen Laundries. There is evidence that some Mother and Baby Homes were established under the auspices of the State, while others received capitation grants from the State towards their running costs. There was also an inspection role for the State in respect of certain Mother and Baby Homes, all of which appear to have been registered adoption agencies. The 2009 Report of the Commission to Report into Child Abuse (The "Ryan Report" - see further below) records that historically the usual practice in State run County Homes and Religious run Mother and Baby Homes was for the mother and child to reside there for up to two years while the mother engaged in domestic labour. After this period the child was either boarded out, adopted (legally or informally) or sent to a Junior Industrial School. In this regard it is clear that most single mothers going through Mother and Baby Homes were eventually separated from their children, and a mother did not bring her child if transferred to a Magdalen Laundry.
26. In relation to the Courts, there appears to have been three categories of women and girls who were sent to the laundries: (i) those who had been convicted of an offence; (ii) those on probation and (iii) those on remand.
27. The attention of the IHRC was drawn to the records of the Central Criminal Court retained in the National Archives, which documents criminal convictions following the foundation of the State in 1922 to 1964. These records indicate that subsequent to conviction for offences including infanticide, manslaughter and murder, at least 54 women were given a suspended sentence by the Court on condition that they resided in a Magdalen Laundry. Similarly, 27 more women went to other Roman Catholic laundries and 4 to Church of Ireland laundries subsequent to conviction in the same period. For the most part, the period they were required to reside in the laundries as a condition of their suspended sentence, was determined by the Court. However, records indicate that on a number of occasions the decision as to the release date of the women so convicted, was left to the discretion of the Superioress of the laundry concerned. The practice of women having their sentences on conviction suspended on condition they resided in a Laundry was documented in a State report from 1936, known as the "Cussen Report". This Report recommended that this system should be formalised in law and also that the laundries should be paid for the upkeep of the women concerned (taking into account the commercial value of their labour - examined further below).
28. A response to a Parliamentary Question by the Minister for Justice and Law Reform in 2010, confirms that women and girls were also referred to Magdalen Laundries and other laundries operating in the State as a condition of a probation order imposed by the Courts. From the 1940s onwards, State funding was provided to a laundry in Henrietta Street in Dublin in respect of the women and girls on probation there. The practice is

confirmed in a letter from 1957 between the Minister for Justice and the Office of the Taoiseach. Records of how the probation of these women and girls was monitored, if at all, do not appear to be publicly available.

29. The Criminal Justice Act, 1960 allowed for the approval of a religious institution as a place of remand for girls between the age of 16 years and 21 years old (the age of majority at the time). The Minister for Justice and Law Reform in a Parliamentary Question in 2010 confirmed that St Mary's Asylum on Sean McDermott Street was one such institution that was approved for use as a remand facility. It further appears that the State paid capitation grants for the maintenance of girls on remand. However, the Minister for Justice and Law Reform has also indicated that further research is required to ascertain if there are more extensive records available in relation to the use of laundries as remand centres.

30. The Kennedy Report from 1970 stated that:

*"A Number of [girls] considered by parents, relatives, social workers, Welfare Officers, Clergy or Gardaí to be in moral danger or uncontrollable are also accepted in these convents for a period on a voluntary basis. From enquiries made, the Committee is satisfied that there are at least 70 girls between the ages of 13 and 19 years confined in this way who should properly be dealt with under the Reformatory Schools' system."*

31. This extract illustrates that although there were non-State actors involved in referring girls to Magdalen Laundries, such as parents, relatives and clergy, the State was also involved, in so far as the Gardaí, welfare officers and social workers are recorded as referring girls to the laundries. In addition, Probation officers are also recorded as having accompanied women to the laundries after conviction. The word "referral" in this connection is used in a non-technical sense, as it is unclear how formal or informal the process was for having women and girls taken into the laundries due to the non-availability of public records in this regard.

### Conclusion 3

Women and girls entered the Laundries via different routes: through the Courts system having a suspended sentence, being on remand or probation, or 'informally' through referrals by families, voluntary or religious bodies, other State and non-state actors or through self-referral. Those entering were often unmarried mothers whose babies were put up for adoption but also women and girls who had committed serious crimes such as infanticide.

### Conclusion 4

For those women and girls who entered following a Court process (in particular those on probation or remand) there was clear State involvement in their entry to the Laundries.

#### Treatment in the laundries

32. One of the contentions by JFM is that women and girls who came to be in Magdalen Laundries suffered abuse.
33. In this regard, the group referred the IHRC to testimony provided to the Confidential Committee of the Commission to Inquire into Child Abuse by persons who worked in residential laundries. The Commission to Inquire into Child Abuse Acts 2000 and 2005 established a Commission to investigate child abuse State institutions and to allow persons to give evidence to the Commission either in public or private (the Confidential Committee). Under the Act, the Commission was obliged to publish a report and make recommendations to prevent child abuse, protect children from such abuse and actions to address the continuing effects of such abuse on those who have suffered it. The report of that Commission was published in 2009, and is known as the Ryan Report. Separately, the Residential Institutions Redress Act, 2002 provided for financial awards to be made to persons who suffered abuse while resident in the same institutions. Thus while being separate legal mechanisms, both dealt with the same instances of abuse.
34. The testimonies in the Ryan Report contained in Volume 3, Chapter 18, which deals with "Residential Laundries" for boys and girls, including in particular excerpts at paragraphs at 18.25, 18.45 and 18.47 were reviewed by the IHRC. The testimonies recount instances of physical and emotional abuse and harsh working conditions at industrial laundries. However, it is not clear whether they refer to Magdalen or other laundries which were operated by the State. The testimonies do refer to religious involvement in the running of the laundries in question.
35. It is significant to note that the reason why these survivors were included within the remit of the Residential Injuries Redress Board under the 2002 Act was by virtue of section 1(3) of the Act which covered the small group of persons transferred from State institutions to religious run laundries. Those who came to reside in the laundries by the other pathways examined in this assessment were excluded from the remit of the Act, albeit that they would equally have been exposed to abuse in the laundries concerned.
36. It is noted that the excerpts from the Ryan Report do not constitute a finding of fact, but rather allegations made by survivors. However, the testimonies are supported by other sources including the 1998 BBC Scotland Documentary *Sex in a Cold Climate* which considered the conditions in Magdalen Laundries and depicted accounts of serious abuse. On the basis of this evidence the treatment of these women and girls by the Religious

Orders appears to have been harsh. Women and girls in Magdalen Laundries were reportedly forced to work long hours. Their names were often changed to a religious name, they were isolated from society. The girls were allegedly denied access to education. This absence of educational facilities was specifically referred to in the Kennedy Report in 1970. The then Minister for Education and Science told the Oireachtas in 2001 that the treatment of adults in the laundries was abuse, that it involved an appalling breach of trust and that the victims suffered and continued to suffer.

### *Inhuman and Degrading Treatment*

37. On the basis of the information provided to it, the Commission considers that the treatment recounted in various sources such as the documentary *Sex in a Cold Climate* would if proven undoubtedly come within the prohibition of inhuman and degrading treatment and punishment under Article 3 of the European Convention on Human Rights (ECHR). Article 3 not alone prohibits serious ill-treatment by agents of the State, but also requires the State to put in place mechanisms to protect against abuse.
38. Regardless of whether the State was aware of the conditions in Magdalen Laundries, as JFM contend, by virtue of its operational obligations under Article 3 it ought to have known of the conditions in those laundries. Had the State put in place an oversight or monitoring mechanism in respect of residential institutions such as Magdalen Laundries, as it was arguably obliged to do, this could have fostered a better appreciation of the conditions and possibly have acted as a means of protecting the human rights of persons in Magdalen Laundries. The obligation to put in place an oversight mechanism to monitor conditions in the laundries would have been an immediate obligation where the State itself was using laundries as detention facilities for female offenders, such as in the case of the Sean McDermott Street laundry from 1960 onwards. In addition, given that it appears that some residents in Magdalen Laundries were minors and others were persons in a vulnerable position, with some arguably having an intellectual disability (as accepted in the 1970 Kennedy Report), the obligation of the State to take positive action to prevent abuse would appear to have been all the more acute.

### *Convention on the Elimination of Discrimination Against Women*

39. Taking into account the gender specific nature of the allegations of abuse in Magdalen Laundries the IHRC considered the relevance of UN Convention on the Elimination of Discrimination Against Women (CEDAW), and noted that incidents of violence (both psychological and physical) perpetrated against women by non-state actors could also be classified as gender-based abuse under that Convention. However the IHRC noted that the State only ratified CEDAW in 1985, while the numbers of persons residing in Magdalen Laundries was much reduced by that time. It would require

further enquiry to establish the conditions that prevailed in the laundries that were still operating after 1985, and whether same constituted a breach of women's rights under CEDAW after the state ratified same.

### 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. Their names were often changed to a religious name, they were isolated from society and the girls were allegedly denied educational opportunities. The then Minister for Education and Science told the Oireachtas in 2001 that this treatment was abuse, that it involved an appalling breach of trust and that the victims suffered and continued to suffer.

### Leaving the laundries

40. The Kennedy Report published in 1970 highlighted the apparently unsatisfactory system surrounding women and girls entering the laundries and also the uncertainty pertaining to their departure from the laundries:

*"6.18 ... It is a haphazard system, its legal validity is doubtful and the girls admitted in this irregular way and not being aware of their rights, may remain for long periods and become, in the process, unfit for re-emergence into society. In the past, many girls have been taken into the convents and remained there all their lives. A girl going into one of these institutions may find herself in the company of older, more experienced and more depraved women who are likely to have a corrupting influence on her. In most cases the nuns running these institutions have neither the training nor the resources to enable them to rehabilitate these girls and to deal with the problem."*

41. As noted earlier the Kennedy Report recorded a number of children were residing in the laundries in 1970, and also suggested that some of the women and girls in the laundries may have had intellectual disabilities. These two groups of individuals would have been particularly vulnerable to having their liberty curtailed. JFM also drew the attention of the IHRC to a contemporaneous account from the 1950s that suggested the religious order involved in managing one of the Magdalen Laundries exerted a level of control over women and girls seeking to leave the laundry. The absence of official records in relation to women residing in the laundries under Court processes also raises questions whether they were released in accordance with the relevant Court Order or otherwise.
42. It is noted that many women lived out their lives in the laundries and in fact never left. End of life issues for those women are considered further below.

### Conclusion 6

There is no clear information on whether or how girls or women left the Laundries or if they had a choice in doing so.

#### Question of arbitrary detention

43. The JFM group contends that Magdalen Laundries were used by the State as an alternative to prison with women and girls routinely sent to the laundries on foot of Court processes.
44. As set out above, women and girls entered the Magdalen Laundries by various pathways. If there were any women and girls who entered the laundries on a truly voluntary basis and who remained voluntarily in the laundries, no question of detention or a breach of international standards prohibiting arbitrary detention in their individual cases would arise.
45. Women and girls who entered the laundries under duress or compulsion would not have entered freely and could have been subjected to detention, albeit by a private non-State body. The residence of such individuals in the laundries, including whether it would have constituted detention, and if so, whether that detention may have been unlawful under human rights standards, is considered below. The dates from which relevant human rights standards applied are 1937 (when Ireland adopted its Constitution) and 1953 (when Ireland ratified the ECHR).
46. Article 5(1) of the ECHR protects the right to liberty and security of the person and sets out six exhaustive conditions under which a State may legitimately curtail a person's liberty, the most relevant of which, in the current context, are detention following conviction and detention following criminal charge.
47. Article 5(1)(a) permits the 'lawful detention of a person after conviction by a competent court'. 'Conviction' carries an autonomous meaning under the Convention and relates to a finding of guilt in respect of an offence. The 'offence' in question must be specific and concrete: preventative detention is not permitted under Article 5 of the Convention unless it relates to one of the exhaustive grounds enumerated under Article 5(1). The sentencing body must be a 'competent court'. 'Competent' means that it must have the power under domestic law to order the detention in question. 'Court' refers to a body possessing a judicial character which follows fair procedures. In addition, it has long been held that preventative justice has no place in the Irish legal system. Under Article 5(4) a person is entitled to have the lawfulness of their detention periodically reviewed by a Court.
48. Article 40.4 of the Constitution also protects the right to liberty, and a person's detention will be considered unconstitutional by the Courts unless it has a proper legal basis.

### *Suspended sentences*

49. As already stated, JFM submitted extracts from the Central Criminal Court Trial Record Books for the years 1926 to 1964 retained in the National Archive and it appears from these records that the “committals” of women and girls to Magdalen institutions, followed a finding of guilt by a Court. It appears that the Court gave the women and girls concerned an option between serving a prison sentence or agreeing to reside in a laundry for a specified period of time. Using this approach of providing an ‘option’, was most likely employed by the Courts to avoid any legal infirmity that might arise from detaining such women in laundries without legal authority. This problem was identified by the Cussen Report in 1936 and although alluded to in the Heads of Bill of a Criminal Justice (Females Offenders) Bill 1942 (which was not enacted) and in a 1958 Department of Justice memorandum, was not addressed.
50. If the women who undertook to reside in Magdalen Laundries as an alternative to a custodial sentence were detained in the laundries beyond the period specified by the Court order, there may well have been a deprivation of liberty within the meaning of Article 5 of the ECHR. On the basis of the evidence reviewed by the IHRC to date it appears that only three out of eighty-five identified “committals” were post-1953 (at which time the State had ratified the ECHR). Again, a statutory mechanism could examine whether further cases occurred post-1953, when the provisions of the ECHR applied in Ireland. In any event the Constitutional protection of liberty applied from 1937.

### *Remand*

51. Article 5(1)(c) permits the arrest and detention of a person suspected of having committed a criminal offence. Under this provision, the arrest must be lawful, it must be affected for the purpose of bringing the person before a ‘competent legal authority’, such as a court, and the detainee must reasonably be suspected of having committed an offence. Arrest for the purposes of indefinite detention, including preventative detention, such as internment, is not permitted by Article 5(1) and is thus a violation of the right to liberty. It is immaterial whether or not the person is in fact brought to court or charged. But importantly, too long a period of preliminary detention without judicial control may give rise to a breach of Articles 5(1)(c) and 5(3) ECHR or indeed Article 40.4 of the Constitution. Persons on remand are entitled under Article 5(3) of the ECHR to be brought promptly before a judge following their arrest and are entitled to trial within a reasonable time or to release pending trial. The pre-trial detention of an accused person must not exceed a reasonable time. The European Court of Human Rights will assess whether the grounds relied upon by the national authorities were adequate to justify the remand and its duration.

52. It is clear that women and girls were remanded in Magdalen Laundries such as the laundry at Sean McDermott Street, under the Criminal Justice Act, 1960 and further that capitation grants for maintaining the women concerned were paid by the State. If women and girls on remand were not brought before a court within a reasonable period of being sent to a laundry, then a violation of Article 5(3) of the ECHR or indeed the Constitution may have occurred. It is for the State to justify extending any detention period on public interest grounds. Further information would be required to determine whether the detention of persons remanded to the Magdalen Laundry at Sean McDermott Street was unjustifiably extended beyond that ordered by a Court. If so, persons unlawfully detained are entitled to compensation under Article 5(5).

### *Probation*

53. In relation to women and girls on probation, JFM again submitted records from the National Archive of Ireland detailing 29 persons being received by institutions, including six Magdalen Laundries and one Presbyterian Mother and Baby Homes (Bethany Home) as "probationers" in a one month period in 1944. The relevant probation periods ranged between 3 months and 3 years. The view of the State appears to be that women agreed to reside in Magdalen Laundries as an alternative to a prison sentence, and that this was mandated by the Probation of Offenders Act 1907.
54. Little appears to be known about the fate of probationers. For women and girls who were accompanied to Magdalen Laundries by Probation Officers on foot of a Probation Order, their entry into the laundries was clearly instigated by the State and should have been monitored by the State. If those women were obliged to remain in the said laundries beyond the period specified by the original Court Order, then the lawfulness of this form of detention is highly questionable under Article 5(1) ECHR as it does not appear to readily conform to any of the six conditions under which a State may legitimately curtail a person's liberty. Again, persons unlawfully detained in breach of Article 5 are entitled to compensation.

### *Other forms of duress*

55. It is arguable that some girls or women who entered the laundries purportedly on a voluntary basis may have subsequently been subjected to arbitrary detention. This may have occurred if the individual did not truly consent to entering in the first place – for example, children or persons with an intellectual disability (which deprived them of the ability to properly consent). It may have also occurred if over time a woman attempted to leave the institution but was not permitted to do so. Again, the assessment of whether this occurred would have to examine all the facts of the case, including the nature, duration and intensity of the conditions surrounding the person's residence in the laundries.

56. As the IHRC has insufficient information to hand to assess this question, it suggests that the statutory mechanism recommended so review it.

### Conclusion 7

Questions arise whether the State's obligations to guard against arbitrary detention were met in the absence of information on whether and how women and girls under Court-processes left the laundries.

### The question of whether forced or compulsory labour occurred in the Magdalen Laundries

57. The Religious Orders operating Magdalen Laundries were regarded by the State as essentially private and ran the laundries as commercial businesses. The 1936 Cussen Report stated:

*"...these institutions should be remunerated for their work of reformation by the payment of an appropriate grant in respect of girls committed under the arrangements we have recommended, but as the labour of these inmates is of some value, in many cases of commercial value, to the Institutions (e.g. where laundries are conducted) it should be provided that a specified portion of the cash value of the work of the girls in respect of whom grants have been paid should be placed to their credit... and made available for them on leaving."*

58. It appears clear that the residents of Magdalen Laundries worked for long hours in difficult conditions in the laundries during their residence and that the convents which ran the laundries benefitted financially from this arrangement.

### Forced Labour Convention

59. From March 1931, Ireland assumed legal obligations under the 1930 Forced Labour Convention to prohibit or suppress forced or compulsory labour. The 1930 Convention was one of a number of anti-slavery and enforced labour conventions ratified by the State. The Convention allowed a "transitional period" for States to rectify their practices but this did not include where forced or compulsory labour was "for the benefit of private individuals or associations". Further, Article 11(1) of the Convention provided that "only adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years may be called upon for forced or compulsory labour". Women and girls were excluded.
60. The prohibition on forced or compulsory labour can also be found under Article 4 of the ECHR and under Article 8(3) of the International Covenant on Civil and Political Rights. However, the 1930 Convention's provisions will

be considered here given that its provisions cover the widest period from 1931 to date.

61. The obligation on States to suppress the use of forced or compulsory labour includes both an obligation to abstain and an obligation to act. States must neither use forced or compulsory labour nor tolerate its use. States must repeal any laws or regulations which provide for or allow the exaction of forced or compulsory labour, so that any such use, be it by public bodies or private persons, is rendered illegal under national law. In addition, the use of forced or compulsory labour must be punishable by a criminal offence.

62. Not all labour is necessarily forced or compulsory labour and not all forced or compulsory labour is prohibited under the 1930 Convention. The term "*forced or compulsory labour*" is defined as:

*"all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily"* (Article 2(1)).

63. There are exceptions in the Convention, most notably Article 2(2)(c) which permits:

*"work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations"*.

64. However, this exception refers to public authority supervised or controlled work or service only after a criminal conviction before the courts. It would therefore not apply to persons on remand or probation, as many of the women and girls in the laundries were. Further, even where a person is convicted by a court of law, any forced or compulsory work must be carried out under the supervision and control of a public authority, under the terms of the 1930 Convention, while this work or service is only permissible if the person "*is not hired to or placed at the disposal of private individuals, companies or associations*". The authorities clearly did not observe the requirement of supervision and control by a public authority in the running and monitoring of the laundries. In addition, under the 1930 Convention, it was clearly impermissible to place individuals at the disposal of private bodies following court proceedings as was done in the case of the laundries.

65. It is accepted that labour will not be forced or compulsory if it is given voluntarily and thus the prohibition would not apply to those women and girls who entered the laundries "voluntarily" provided their labour was voluntarily given. This question is a matter which would need to be considered on a case by case basis.

66. The key definition in the Convention is where consent to work or service was given "under the menace of a penalty". Thus there could be no "voluntary offer" under threat of any penalty. The term "penalty" extends beyond a criminal penalty – it could be loss of a privilege, denial of food or transfer to another institution. Whether the women and girls working in the Magdalen Laundries gave their labour freely or under menace of a penalty is a finding of fact. However, it would appear likely that all girls or women who entered the laundries on probation or remand were in fear of penalty unless they complied with instructions, insofar as they could at any time be brought back before the Court to be committed to prison or be transferred to another institution.
67. An inquiry into the treatment and conditions of "voluntary" entrants would be required to ascertain whether a fear of any penalty may have arisen had they refused to undertake labour.
68. In summary the primary obligation of the State was to refrain from using forced or compulsory labour as defined by the 1930 Convention. Secondly, under Article 4, it was required not to allow any form of forced labour to be imposed by third parties and also to impose criminal penalties under Article 25.

#### *State contracts with the laundries*

69. In contrast with its legal obligations to outlaw the practice of forced labour, the situation would be compounded where any contracts or financial arrangements existed between State bodies and private individuals, companies or associations. The Magdalen Laundries would fit this definition. Such contracts or arrangements would amount to "concessions" and should have been rescinded "as soon as possible" after 1931 in order to comply with Article 1 of the Convention.
70. During its assessment, the IHRC noted that prison laundry may have been washed for Mountjoy Prison by a Magdalen Laundry, while a Parliamentary Question confirmed that laundry contracts for "Dublin district barracks and posts, including MacDonnell Aerodrome, and for Collins Barracks, Cork, which were previously held by commercial firms, have been placed with institutional laundries" in the 1940s. Further examination of this practice is required.
71. It is also important to note that the State appears to have been in breach of the Conditions of Employment Act, 1936. That Act provided protections and entitlements for employees in their conditions of employment. It further required observance of international conventions and at section 62 provided that workers carrying out industrial work in institutions (not for the purpose only of supplying the needs of such institution), and where such an institution is one carried on for charitable or reformatory purposes, that the

provisions of the Act applied to them except in relation to the payment of wages. It is noted that the definition of "industrial work" in section 3 of the 1936 Act would appear to cover a commercial laundry.

72. Apart from further State recognition of the practice of employment in these institutions, this provision is in breach of the 1930 Convention for, ironically, forced labour under the 1930 Convention does not presuppose non payment of wages, but in fact envisages payment of wages. However, it is unclear whether the women and girls in the laundries were ever paid and this would go to the question of both payment of back-wages and separately the question of pension entitlements today.

### Conclusion 8

The State may have breached its obligations on forced or compulsory labour under the 1930 Forced Labour Convention from March 1931 and under the ECHR from 1953 in a) not suppressing/outlawing the practice in laundries particularly regarding women and girls in fear of penalty if they refused to work and b) in engaging in commercial trade with the convents for goods produced as a result of such forced labour.

### Question of whether the conditions in the laundries broke the State's obligations with regard to servitude

73. The prohibition on slavery or servitude is found in the 1948 Universal Declaration on Human Rights and a number of international conventions including Article 4 of the ECHR, under which the State assumed legal obligations in 1953.
74. The European Court of Human Rights jurisprudence makes clear that "servitude" means an obligation to provide one's services that is imposed by the use of coercion. Further, the failure of a State to introduce and enforce criminal law penalties and thus "*take all practicable and necessary legislative and other measures to bring about the complete abolition or abandonment*" of an individual's labour through the use of coercion would constitute a violation of Article 4, even where the perpetrators were private individuals rather than State actors.
75. Taking into account the fact that the women and girls in the laundries were in a vulnerable and isolated situation, being dependent on the religious authorities in the laundries for their welfare, subsistence and liberty, and given that it appears that the women and girls in the Magdalen Laundries were obliged to work for long hours in the laundries through the use of coercion (through fear of a penalty if they refused), it is likely that there may have been a violation of Article 4 of the ECHR.

### Conclusion 9

The State may have breached its obligations to ensure that no one is held in servitude insofar as some women or girls in the laundries may have been held in conditions of servitude after the State assumed obligations under Article 4 of the ECHR in 1953.

Adoption and tracing of biological parents

### *Adoption in Ireland*

76. The first legislation providing for legal adoption in Ireland was introduced in 1952. It has been noted by the Adoption Authority and the Commission to Inquire into Child Abuse that even before this, children born to unmarried mothers were often fostered out, boarded out, "informally" adopted or sent to Junior Industrial Schools. Even after legal adoption was introduced there were occasions where a child was registered at birth in the name of adoptive parents, extinguishing all records of the natural parents.
77. Notably the first social welfare support for single mothers was only introduced in 1973, making it a practical impossibility up until then, in the absence of family support, for many women to keep their children. In contrast, it is noted that the State directed funding towards Mother and Baby Homes, and also paid for the boarding out of such children or their placement in Junior Industrial Schools.
78. Under the 1952 Act the two categories of child that could be adopted were orphans and so called "illegitimate" children born to unmarried parents. The 1952 Act always required the written consent of the mother to the adoption of her child unless prevented by mental infirmity from providing same. However, it is not clear that a mother would have been legally required to formally consent to her child being fostered or boarded out or indeed sent to a Junior Industrial School. (It should be noted that the concept of "legitimate" or "illegitimate" children has since been removed from Irish law).
79. From a list of adoption agencies that have been registered in the State pursuant to the Adoption Acts, and maintained by the Adoption Authority on its website, it is apparent that all the Mother and Baby Homes that were established after 1922 also operated as adoption agencies (although many of these agencies have since ceased operating). Therefore, it is clear that the State permitted Mother and Baby Homes to operate as adoption agencies, and babies were legally permitted to be adopted from these Homes. It must be questioned, when consenting to have their child adopted, how free the choice of the mother was, considering the stigma attached to illegitimate children at the time, the practical difficulty of keeping a child for a woman who was not married and the coercion they may have been subject to by society and possibly by those operating the home, particularly where these were religious orders.
80. In 1996, it was officially acknowledged by the State that there had been traffic in illegitimate children born in Ireland being sent to the United States

and other countries for adoption. The practice seems to have started in or around 1948 and continued up until the early 1970s. Aside from records kept by the Department of Foreign Affairs in relation to applications for passports for these children, there are no State records of these adoptions, with the only other records possibly being maintained by relevant adoption agencies who assisted to organise the transport of the children involved.

### *Information and Tracing*

81. JFM expressed concern to the IHRC about the difficulty many children of women who resided in Magdalen Laundries experience in seeking to trace or get information in relation to their biological mother or family. In particular they questioned the helpfulness of the adoption agencies and the Religious Orders who ran the Magdalen Laundries in providing information to allow adoptees trace their mothers.
82. In relation to the issue of securing information about a person's origins, the IHRC notes that since the Adoption Act 1952, there has been a legislative requirement to keep the link between a child's birth certificate and the record of their adoption confidential. This confidentiality can only be overridden by an Order of the Adoption Authority or Order of the Court. The legislative criteria stating when such an Order should or should not be made is limited to a situation where a child is involved (rather than an adult adoptee), although there is some case law in the area. The opportunity to amend the legislation in this regard was not availed of in the Adoption Act 2010. It is noted that securing relevant information is usually the first step for an adopted persons to begin tracing their natural family.
83. The IHRC notes that the previous Adoption Board (now Adoption Authority) put in place a voluntary code of practice in 2007 governing the provision of information to adopted persons. Under the code the primary providers of information and tracing services are the registered adoption agencies and the HSE. The Adoption Authority retains a residual role in this regard, such as in relation to informal, foreign or private adoption or in relation to persons who were boarded out or fostered. The code of practice suggests that non-identifying information should generally be released on request, however, identifying information can only be released on consent. In relation to applications to the Adoption Authority for access to birth certificates under the code of practice these are initially referred to the relevant adoption agency concerned, which compiles a report for the Adoption Authority to guide it in deciding whether to release the birth certificate or not. This code of practice is not generally available.
84. Separately from dealing with requests for information the Adoption Authority maintains the National Adoption Contact Preference Register (NACPR). This register is essentially a data base that allows adopted persons and their natural families to register their agreement to exchange information with one another or make direct contact on a voluntary basis. The NACPR is an

initiative of the Adoption Authority, but has not been placed on a statutory footing to date.

85. In considering the issue of information and tracing services for the children of former residents of Magdalen Laundries the IHRC took cognisance of the fact that while the adoption agencies would certainly hold records that would assist a person in identifying and possibly tracing their birth mother, the laundries would be unlikely to hold records in relation to an adoption. Rather, the records of the laundries would relate to the post adoption life of the mother. Nonetheless, at a minimum such records would show when and if women and girls left the laundry or hold a record of her death if she died while residing in the laundry, information that is of fundamental importance to an adopted person.
86. Having reviewed the law and practice in the area, the IHRC considered that children of women confined to Magdalen Laundries may encounter significant difficulty in accessing any identifying information about their natural parents unless, in the case of an application for a birth certificate, this is provided on foot of an order of the Adoption Authority or more unusually a Court Order. While there appears to be a defined practice in relation to information and tracing services, this is largely left in the hands of non-statutory actors (the adoption agencies) with no legal requirement to ensure that they provide such services in accordance with appropriate levels of transparency, accountability and coherence. It was also noted that the Freedom of Information Acts 1997 to 2003 and the Data Protection Acts 2003 to 2008 are of limited assistance in this regard. It is also worthy of note that the situation in the Republic of Ireland contrasts with that which operates in Northern Ireland where there is a statutory presumption in favour of releasing an adopted person's birth certificate once they reach 18 years of age. Issues thus arise under the equivalence provision of the 1998 Belfast (Good Friday) Agreement.

### *Human Rights and Adoption*

87. In relation to the relevant human rights standards, the Irish Courts have recognised the right to be informed of the identity of one's natural mother as an unremunerated right under the Constitution. However, this right is not absolute and must be balanced against the mother's right to privacy, which might in exceptional circumstances extend to any subsequent family she may have. It has been decided that where a mother can be presumed dead then that right to privacy no longer applies. This is significant in so far as the IHRC is aware that a considerable number of women died while residing in Magdalen Laundries, and as such the fact of their death appears to confer on their natural children a relatively unrestricted constitutional right of access to information about their origins.
88. The ECHR is also relevant to the right of adoptees to information about their origins. The European Court of Human Rights has indicated that pursuant to

Article 8 of the Convention (the right to respect for private and family life), an adopted person has the right, albeit balanced against the rights of the biological parents concerned, to know about their origins. Most importantly the State is obliged to establish a system that is effective in respecting this right. This right to know of one's origins subsists even where it appears that the person's natural parent(s) may be dead, and the right does not diminish over time.

89. The UN Convention on the Rights of the Child – under which the State has assumed obligations since 1992 - has also been interpreted by the Committee on the Rights of the Child to encompass the right of an adopted child to know his or her original identity, and requires that the State put in place appropriate legal procedures for that purpose including recommended age and professional support measures.
90. The IHRC notes that the Revised European Convention on the Adoption of Children, which opened for signature in 2008, provides for the right of an adopted child to have access to information held by competent authorities concerning his or her origins, although this right must be balanced against the right of natural parents to choose not to disclose their identity, neither right being absolute. Again the State is required to put in place an authority competent to determine these issues. While Ireland has not ratified this Convention it is an indication of an emerging consensus amongst Council of Europe States as to the rights of adopted persons.
91. The IHRC is also mindful of the recommendation made by the Ombudsman for Children, in considering the Adoption Bill 2009, that the Bill should contain a presumption in favour of disclosing information regarding their birth to adopted people. This would have brought the Republic of Ireland in line with the legal situation in Northern Ireland. However, as noted ultimately the Adoption Act, passed in 2010 retains a presumption against disclosure.
92. The IHRC is of the view that the current regime applying to the provision of information to adopted persons, including the children of women who resided in the Magdalen Laundries may not fully vindicate their rights under the Constitution, the ECHR, and in the case of children, their rights under the Convention on the Rights of the Child.
93. In relation to gaining access to the records held by the religious orders regarding Magdalen Laundries, this may be significant in light of the rights of adopted persons to have access to information about their origins. Although a case on point has not come before the European Court of Human Rights, its case law to date suggests that it would accept that knowledge as to the death of a parent is so closely linked to a person's sense of identity and development of their personality as to be protected by Article 8 of the ECHR. While in the normal course this could be confirmed by consulting the register of births, deaths and marriages, as has been seen additional complexities arise where women died in Magdalen Laundries and it has not

been possible to establish that records of the death and burial of each woman was properly recorded, as will be seen below.

94. The IHRC also considered that children who were informally or indeed illegally adopted, those boarded out, or adopted abroad may be faced with particular difficulties in securing information about their origins and specific measures may be required to assist them in this regard.

#### Conclusion 10

The adult biological children of women and girls who subsequently entered the laundries had and still have limited facilities to trace their biological parents and establish their identity, including through the Adoption Act 2010. This situation contrasts with that in Northern Ireland.

#### Burial, exhumation and cremations in High Park, Drumcondra

95. The IHRC has reviewed the material submitted to it concerning burials, exhumations and cremations at High Park Magdalen Laundry, Drumcondra in 1993. Two exhumations of bodies found in a communal plot in a private graveyard adjacent to that Magdalen Laundry occurred that year. JFM raises concerns about the licenses that were issued to allow for those exhumations. The first exhumation was of 133 bodies of persons believed to be women and girls who resided in the laundry. The second exhumation later that year was of 22 bodies, again of women and girls who resided in the laundry.
96. A letter issued by the Department of Justice and Law Reform to JFM in 2009 records that a first application for an exhumation licence to the Department of the Environment was granted on the basis of a schedule of 133 names of the deceased submitted based upon the numbers of crosses counted at the site. During the exhumation, a further 22 bodies were discovered and a second licence for exhumation was granted. It is contended by JFM that there was no notice of the exhumation application to any next of kin nor were there attempts to trace living relatives of the deceased.
97. It was stated by the Department of Justice and Law Reform in its letter that Death Certificates (which should accompany a licence application) could be located for only 75 of the 133 persons buried and that some certificates referred to deceased persons known only by a religious name. It was further indicated that during the exhumations, additional bodies were discovered and the letter continues "it appears that a General Exhumation Licence for the exhumation of all human remains within the private graveyard was granted." It was stated that a further 22 additional remains were located but not identified and that "All the remains were removed by Funeral Undertakers and subsequently cremated".

98. The Local Government (Sanitary Services) Act, 1948, governs the burial and exhumation of remains. Burials in contravention of the Act constitute a criminal offence under section 44(5) of the Act.

*Use of a Private Graveyard*

99. The first question examined by the IHRC was whether the private graveyard was lawfully used, however, there was insufficient information available to establish whether this was so. According to the Department of Justice and Law Reform letter, An Garda Síochána (and separately the Coroner) are stated to have “re-examine[d] the exhumation of the bodies” in 2003, but it is unknown the extent of the inquiries made or the specific matters inquired into. It is suggested that a statutory mechanism as recommended could inquire more fully into this matter.

*Grant of exhumation licences*

100. The second question is whether the exhumation licences were properly granted. The Local Government Act 1994, transferred the functions of the Minister for the Environment in relation to granting exhumation licences to relevant Local Authorities, who are now responsible for the maintenance and regulation of burial grounds. The granting of exhumation licences appear to be now governed by strict local authority guidelines which specify that the application must include, *inter alia*, the permission of the family of the deceased. In contrast the legal situation in 1993 appears to have been that it was a matter for the Minister to attach conditions to each separate exhumation licence. It appeared to the IHRC that in relation to the communal plot at High Park a licence would likely not be issued today according to current guidelines, namely that the consent of next of kin be given and the remains not lie unidentified in a common plot. However, the IHRC concluded it would be necessary to see a copy of the licences granted by the Minister in 1993 to determine whether the relevant conditions were complied with and again a statutory mechanism could inquire into this matter.

*Human Rights and the exhumations*

101. The third question is whether the cremations properly occurred and whether in permitting the burial, exhumation and cremations, the State discharged its human rights obligations including its procedural obligations under Article 2 of the ECHR in permitting the mass exhumation and cremation of persons unknown. Further human rights issues arise from the fact that the exhumations and cremations had occurred of persons unknown, some of whom had been given so-called ‘religious names’ while residing in the Laundry and were not referred to by their given legal names, while others had no recorded names.
102. Having regard to the absence of any detailed law in 1993 requiring the deceased persons to be identified and/ or next of kin traced or consulted

(such as through public advertisement) when located in a communal grave and prior to exhumation and cremation, it is recalled that respect for private and family life under Article 8 of the ECHR includes and encompasses the concept of personal integrity and that nothing can be more private, personal and integral to a human being than a person's identity including their name. In addition the rights under Article 8 (as set out above) encompasses the right of a child to establish maternity or paternity even after the death of a parent, possibly by DNA testing, with similar rights accruing under the Convention on the Rights of the Child. Such a right would be frustrated where the State allowed human remains to be cremated before conclusive identification.

103. Finally, the IHRC notes that JFM contends that Magdalen women are buried in communal graves in Galway, Cork and Limerick. The ongoing absence of primary legislation specifying strict controls in relation to exhumations, particularly from communal plots and private graveyards is a matter of concern.
104. A statutory mechanism could establish whether all bodies are identified and accounted for in these plots and whether the relevant death certificates exist for all those buried in those locations. It could also make recommendations for measures as to how the rights of the families of the deceased should be respected.

#### Conclusion 11

That the burial, exhumation and cremation of known and unknown women and girls who resided in Magdalen Laundries in 1993 at High Park, Drumcondra, raises serious questions for the State in the absence of detailed legislation governing the area and any requirement that all bodies be identified and accounted for in such communal plots. Questions arise as to whether there are death certificates for all those buried in those locations, and whether their remains were properly preserved and reinterred. Similar questions may arise in relation to other communal plots.

#### Vaccine trials in Mother and Baby Homes

105. In 2002 the Commission to Inquire into Child Abuse (CICA) commenced an inquiry into the vaccine trials, before it was halted in 2004 on foot of Judicial Review proceedings. That inquiry was never recommenced however a certain amount of information in relation to the vaccine trials was compiled, which clearly showed that some 58 babies in Mother and Baby Homes were used in the trials. It was noted by CICA that the Chief Medical Officer had found that there was no information available to clarify the arrangements (including the question of consent) with the parents of such children in Mother and Baby Homes.

106. At this point all that can be said in relation to the trials is that the question of whether they were properly and ethically carried out has not yet been resolved, but at the same time, this issue is not relevant to the form of inquiry and redress scheme that JFM is seeking, although there is undoubted overlap between the persons concerned. However the IHRC notes that separate human rights issues may arise in relation to this matter.

### Conclusion 12

That vaccine trials of children in Mother and Babies homes did occur (at least 58 cases as found by the Commission to Inquire into Child Abuse), but that inquiry was injuncted following judicial review proceedings in 2004 and not recommenced on a proper footing.

### The Decision not to conduct an enquiry

107. After careful consideration, the IHRC has decided not to conduct an enquiry in relation to the matters raised by JFM, on the basis of a number of factors. These are first that the IHRC in its assessment of the issues raised by JFM has already reviewed "*the adequacy and effectiveness of law and practice in the State relating to the protection of human rights*" (section 8(a) of the Human Rights Commission Act 2000) in light of the information available. Therefore one of the main purposes of an enquiry has already, at least partially, been satisfied. Second, even if the IHRC were to conduct an enquiry, this would fall considerably short of the relief sought by JFM, that is, a State apology or the setting up of a redress scheme. Finally, were the IHRC to conduct an enquiry, it would still remain a matter for the State whether to grant the relief sought by JFM.
108. However the IHRC decided in tandem with exercising its power under Section 9(1)(b) of the Human Rights Commission Act 2000 to refuse the enquiry request, that it would simultaneously exercise its functions under Sections 8(a) and 8(d) of the Human Rights Commission Act 2000 to review the law and practice in the area and to make the following recommendation to Government, in view of the serious human rights issues highlighted in its assessment.

### Recommendation:

That in light of its foregoing assessment of the human rights arising in this Enquiry request and in the absence of the Residential Institutions Redress Scheme including within its terms of reference the treatment of persons in laundries including Magdalen Laundries, other than those children transferred there from other institutions; that a statutory mechanism be established to investigate the matters advanced by JFM and in appropriate cases to grant redress where warranted.

Such a mechanism should first examine the extent of the State's involvement in and responsibility for:

- The girls and women entering the laundries
- The conditions in the laundries
- The manner in which girls and women left the laundries and
- End-of life issues for those who remained.

In the event of State involvement/responsibility being established, that the statutory mechanism then advance to conducting a larger-scale review of what occurred, the reasons for the occurrence, the human rights implications and the redress which should be considered, in full consultation with ex-residents and supporters' groups.

## TABLE OF RESOURCES

### *BOOKS*

Sutherland, H 'Irish Journey', 1958, Devin-Adare Company, New York;  
Smith, J; 'Ireland's Magdalen Laundries and the Nations Architecture of Containment', 2007 University of Notre Dame Press;  
Murdoch's Dictionary of Irish Law, 3<sup>rd</sup> Ed., 2000;  
McDermott; 'Prison Law', 2000, Roundhall Press;  
Ovey & White; 'The European Convention on Human Rights', 2006, 4<sup>th</sup> Ed., Oxford University Press;  
Shatter, A; 'Shatter's Family Law', 1997, 4<sup>th</sup> Edition, Butterworths;

### *STATE CORRESPONDENCE*

Letter from the Department of Justice and Law Reform to James Smith of 25 June 2010;  
Letter from the Minister for Education and Science to Justice for Magdalenes of 27 April 2010;  
Letter from the Department of Justice and Law Reform to James Smith in 2010;  
Letter from the Minister for Education and Science of 2 September 2009 to another public representative detailing the State's attitude to Magdalen laundries;  
Letter from the Minister for Education and Science of 4 September 2009;  
Letter from the Minister for Education and Science to Tom Kitt TD of 23 September 2009;  
Letter from the Office of the Minister for Justice to the Taoiseach's Office of 6 May 1957.

### *INTERNATIONAL TREATY REPORTS*

International Labour Conference, 96th Session, 2007;  
Committee on the Elimination of Discrimination Against Women General Recommendation No. 16;  
Committee on the Rights of the Child CRC/C/RUS/CO/3 (Concluding Observations – Report of Russian Federation, 23 November 2005).

### *INTERNATIONAL CONVENTIONS*

Abolition of Forced Labour Convention, 1957 (No. 105);  
American Convention on Human Rights;  
Convention on the Elimination of All Forms of Discrimination Against Women 1979;  
Council of Europe Convention on Action against Trafficking in Human Beings 2005;  
Convention on the Rights of the Child;  
European Convention of Human Rights (1950);  
European Social Charter (1961) and Revised European Social Charter (1996);  
Forced Labour Convention, 1930;

ILO Abolition of Forced Labour Convention 1957;  
ILO Forced Labour Convention 1930;  
ILO Protection of Wages Convention 1949;  
ILO Worst Forms of Child Labour Convention 1999;  
International Covenant on Civil and Political Rights 1966;  
The Hague Convention;  
UN Convention Against Torture;  
UN Convention on the Rights of the Child 1989;  
Universal Declaration of Human Rights 1948;  
UN Slavery, Servitude, Forced Labour & Similar Institutions & Practices Convention 1926;  
Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956);  
UN Convention on the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others 1949;  
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children – Protocol to the Convention against Transitional Organised Crime 2000.

### *JOURNALS*

The Labour Principles of the United Nations Global Compact A Guide for Business, ILO 2008.

### *LEGISLATION*

Adoption Act, 1952;  
Adoption (Northern Ireland) Order 1987;  
Births and Deaths Registration Acts, 1863 to 1972;  
Child Abuse Act 2000;  
Children (Amendment) Act 1957;  
Civil Registration Act 2004;  
Commission to Inquire into Child Abuse (Amendment) Act 2000 and 2005;  
Conditions of Employment Act, 1936;  
Conditions of Employment Act, 1944;  
Criminal Justice Administration Act 1914;  
Criminal Justice Act 1951;  
Criminal Justice Act 1960;  
Criminal Procedure Act 1967;  
Criminal Justice (Female Offenders) Bill 1942;  
Coroners (Amendment) Act, 1927;  
Data Protection Acts 1998 to 2003;  
Dublin Cemeteries Committee Act 1970;  
Human Rights Commission Act, 2000;  
Local Government Act 1994;  
Local Government (Sanitary Services) Act, 1948;  
Prison Acts 1865-1902;  
Prisons (Visiting Committees) Act 1925;

Probation of Offenders Act 1907;  
Registration of Births and Deaths (Ireland) Act, 1863;  
Registration of Maternity Homes Act 1934;  
Residential Institutions Redress Act 2002;  
Rules for the Government of Prisons 1947 [SI 320/47];

### **MISCELLANEOUS**

Justice for Magdalenes Newsletter Vol. 1, Issue 4, 4 March 2010;  
Guidelines for Dealing with Requests under Section 9(1)(b) and Applications under Section 10 of the Human Rights Commission Act, 2000;  
For a summary of JFM's objectives see *Justice for Magdalenes News*, Vol 1, Issue 2, December 2009;  
Magdalene Laundries, Mother-and-Baby Homes, and the Adoption/Fostering Connection, JFM, Compiled July 2010.

### **NATIONAL ARCHIVES**

Central Criminal Court Trial Record Books;  
1911 Census;

### **PARLIAMENTARY QUESTIONS**

PQ No. [29887/10], 6th July 2010;  
Written Answer [18796/10], Minister for Justice, Equality and Law Reform, 13 May 2010;  
Written Answer [5868/10], Minister for Social and Family Affairs, 4 February 2010;  
PQ [48572/09] the Minister for Justice Equality and Law Reform Dáil Debates, 18 January 2010;  
Written Answer [48572/09];  
Dáil Eireann Debates, Volume 544, 15 November 2002;  
Dáil Eireann Debates, Volume 549, 20 February 2002;  
462 Dáil Debates, 14 March 1996;  
463 Dáil Debates, 14 March 1996;  
Dáil Debates, Volume 52, 13 July 1960 per the Minister for Justice (Mr. Traynor);  
Oral response to PQ (Dáil Éireann – Volume 83, 7 May 1941);

### **PRESS ARTICLES**

The Guardian; 24 February 2010;  
Irish Times; Mary Rafferty, 21 August 2003;  
Irish Times; "Last Days of Laundry", 25 September, 1996;

### **STATE MATERIALS**

Advice of the Ombudsman for Children on the Adoption Bill 2009, November 2009;

Annual Report of the Department of Local Government and Public Health 1932-1933, p.129;  
Department of Justice Memorandum for the Government on a proposed Criminal Justice Bill, 1958;  
Framework for the Provision of National Information and Tracing Service, Adoption Board, November 2007;  
Guidelines on Adoption Information and Tracing, January 2009, Adoption Board, 2009;  
3<sup>rd</sup> Interim Report, Commission to Report into Child Abuse;  
Reformatory and Industrial Schools System Report, 1970 (Kennedy Report);  
Report of the Commission of Inquiry into the Reformatory and Industrial School System, 1934 – 1936 (Cussen Report 1936);  
Report of the Commission to Report into Child Abuse, 2009 (Ryan Report).

#### *OTHER*

Sex in a Cold Climate (1998); Dir: Steve Humphries, BBC Scotland.

#### *WEBSITES*

[www.citizensinformationboard.ie](http://www.citizensinformationboard.ie);  
[www.educationfinanceboard.com](http://www.educationfinanceboard.com);  
[www.magdalenelaundries.com](http://www.magdalenelaundries.com);  
[www.rirb.ie/resact.asp](http://www.rirb.ie/resact.asp).

## TABLE OF JUDGMENTS

### *ENGLAND AND WALES*

R (On the Application of Middleton) v. HM Coroner for Western Somerset [2004] UKHL 10.

### *EUROPEAN COURT OF HUMAN RIGHTS*

A. v. the United Kingdom (App. 25599/94), Judgment of 23 September 1998; (1999) 27 EHRR 611;  
Aksoy v. Turkey (1997) 23 EHRR 553;  
Brogan v. United Kingdom (1989) 11 EHRR 117;  
Burghartz v. Switzerland, 22 Feb 1994, Series A, No 280-B (1994) 18 EHRR 101;  
Campbell and Cosans v. United Kingdom (1982) 4 EHRR 293;  
Campbell and Hurley v. United Kingdom (1991) 13 EHRR 157;  
Clift v. United Kingdom (Applic. no. 7205/07), Judgment 13 July 2010;  
Conka v. Belgium (2001) 33 EHRR 1298;  
D.G. v. Ireland, Judgment, 16 May 2002;  
D.K. v. Crowley (2002) 2 IR 744;  
De Wilde, Ooms and Versyp v. Belgium (1970) Series A, No 12, para. 78;  
Elli Poluhas Dodsbo v. Sweden Ap No 61564/00 2006;  
Engel and Others v. Netherlands (1980) 1 EHRR 647;  
Estate of Kresten Filtenborg Mortensen v. Denmark ((Dec.), no. 1338/03, ECHR 2006-V);  
Finucane v. United Kingdom, Judgment of 4 July 2003, Application No. 29178/95;  
Gaskin v. UK, Judgment 7 July 1989;  
Guillot v. France 1996 V 1593;  
Gulec v. Turkey App. 21593/93, Judgment of 27 July 1998;  
Guzzardi v. Italy (1981) 3 EHRR 333 at para 95;  
Hood v. United Kingdom (2000) 29 EHRR 365;  
Il v Bulgaria ( App. 44082/98) Judgment of 9 June 2005;  
Ireland v. United Kingdom (1979-80) 2 EHRR 25;  
Jaggi v. Switzerland, Judgment 13 July 2006;  
Jordan v. United Kingdom, Judgment of 4 May 2001, Application No. 24746/94;  
Kaya v. Turkey (1998) 28 EHRR 1;  
Kelly & Ors. v. United Kingdom, Judgment of 4 May 2001, Application No. 30054/96;  
Labita v Italy (2000), Application no. 26772/95 Judgment of 6 April 2000, paras. 152 & 153;  
Lawless v. Ireland (1980) 1 EHRR 15;  
McCann v. United Kingdom, Judgment of 27 September 1995, 21 EHRR 97;  
McF v. G&G, The Sacred Hearth Adoption Society & Anor. [1983] 3 ILRM 228;  
McKerr v. United Kingdom, Judgment of 4 May 2001, Application No. 28883/95;  
Mikulic v. Croatia, Judgment 7 February 2002;

Moldovan and Others v. Romania (Apps 41138/98 and 64320/01), Judgment of 12 July 2005;  
Odievre v. France, Judgment 13 February 2003;  
Raimondo v. Italy (1994) 18 EHRR 237;  
Seguin v. France (Dec.), no. 42400/98, 7 March 2000;  
Selmouni v. France (2000) 29 EHRR 403;  
Shanaghan v. United Kingdom, Judgment of 4 May 2001, Application No. 377715/97;  
Siliadin v. France, Judgment 26 July 2005;  
Stubbings and Others (App22083/93 and 22095/93), Judgment of 24 September 1996; (1997) 23 EHRR 213;  
The Greek Case (1969) 12 Yearbook 186-510;  
Van der Musselle v. Belgium, judgment of 23 November 1983, Series A no. 70, p. 16, s34;  
W. v. Switzerland, Judgment of 26 January 1993, Series A no. 254-A, p. 15, &30  
X v. the Netherlands, no. 9327/81, Commission decision of 3 May 1983, Decisions and Reports (DR) 32, p. 180);  
X and Y v. the Netherlands, Judgment of 26 March 1985, Series A, No. 91;(1986) 8 EHRR 235;  
Z and Others v. United Kingdom (2002) 34 EHRR 97;

#### *IRISH COURTS*

AD v. Ireland (1994) 1 IR 369;  
G v. An Bord Uchtála, (1980) IR 32;  
IOT v. B and MH v Father Doyle and the Rotunda Girls Aid Society (1998) 2 IR 321;  
JD v. The Residential Institutions Redress Committee & Ors, Unreported, 27 July 2009;  
People (DPP) v. Tiernan (1988) IR 250;  
Rotunda Hospital v. The Information Commissioner, High Court, Unreported, 2 July 2009;  
Ryan v. Attorney General (1965) IR 294;  
State (O'Connell) v. Fawsitt [1986] ILRM 639;  
State (Walsh and McGowan) v. Governor of Mountjoy, unreported, High Court, Dec. 12, 1975;  
The People v. McGrory, Central Criminal Court, 6 November 1947, per Haugh J.  
The South Western Health Board v. The Information Commissioner, High Court, 31 May 2005.