

**Submission to the UN Committee
against Torture on Ireland's one
year follow-up to its second
periodic report under CAT**

November 2018



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**
Irish Human Rights and Equality Commission

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Contents

Introduction	1
1. Ratification of the Optional Protocol	2
2. Strengthening the independence and effectiveness of GSOC.....	3
Commission on the Future of Policing.....	3
3. Magdalen Laundries.....	5
Investigation by the Office of the Ombudsman.....	5
Independent investigation into the Magdalen Laundries.....	7
Access to information concerning held in private and public archives	8

Introduction

The Irish Human Rights and Equality Commission (the ‘Commission’) is Ireland’s ‘A-Status’ National Human Rights Institution.

The Commission previously made a submission to the UN Committee Against Torture (the ‘Committee’) in July 2017 in respect of Ireland’s Second Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (‘the Convention’).¹ The Committee, at para. 37 of its 2017 Concluding Observations, requested that the Government of Ireland provide responses in respect of three Recommendations (paras. 8, 20, and 26). The Commission has reviewed the State’s report of 11 August 2018.² The purpose of this submission is to update the Committee on developments regarding these three matters.

¹ IHREC (2017); [Ireland and the Convention Against Torture: Submission to the United Nations Committee Against Torture on Ireland’s Second Periodic Report](#), July 2017.

² UNCAT, [Concluding observations on the second periodic report of Ireland: Information received from Ireland on follow-up to the concluding observations](#), 11 August 2018. UN Document No: CAT/C/IRL/CO/2/Add.1

1. Ratification of the Optional Protocol

As indicated in its Submission to the Committee of July 2017,³ the Commission is of the view that there is no impediment to Ireland immediately ratifying OPCAT. OPCAT includes provisions in Articles 11(1)(b)(i), 17, and 24 to assist states to ratify the convention before having everything in place to comply with the Protocol. The Commission has called on the Irish Government to ratify OPCAT, including our recommendations of July 2017 that:

... the State ratify OPCAT without further delay, including, if absolutely necessary, a declaration under Article 24 postponing the implementation of obligations under part IV (National Preventive Mechanisms) of the Protocol.

... the State set out a detailed, time-bound 'Roadmap to Implementation of OPCAT' outlining the legislative, policy and other reforms required to establish a National Preventive Mechanism.⁴

The Commission welcomes the Government's intention to ratify OPCAT during the current parliamentary year and notes, in this connection, that the heads of an *Inspection of Places of Detention Bill*, providing for the inspection of all places of detention in the justice area, including prisons, police stations, and court buildings, are currently being prepared.⁵

The Commission has welcomed acknowledgement by the Department of Justice and Equality that the 'ambit of OPCAT extends beyond the Justice sector', and that coordination across a range of departments and agencies will be required to fully meet the State's obligations under OPCAT.⁶

The State's one year follow up report refers to research published by the Commission in 2017.⁷ The Commission drew on this research to prepare its February 2017 position paper,⁸ in which it recommended that the State create an NPM Co-ordinating Framework, which includes all designated NPM bodies and the Commission⁹, to act as a point of shared learning and oversight of all OPCAT-relevant activities within the State.

³ IHREC (2017); [Ireland and the Convention Against Torture: Submission to the United Nations Committee Against Torture on Ireland's Second Periodic Report](#), July 2017, at p.4.

⁴ IHREC (2017); [Ireland and the Convention Against Torture: Submission to the United Nations Committee Against Torture on Ireland's Second Periodic Report](#), July 2017, at p.4.

⁵ Irish Government (2018); [Spring/Summer Legislative Programme 2018](#).

⁶ Criminal Law Reform Division, Department of Justice and Equality (October 2016) 'Follow-up from the Department of Justice and Equality Open Policy Debate held on 23 November 2015 - Options for the ratification of OPCAT', p 1. Concerns had been raised during consultations with the Department that the State's approach to OPCAT risked neglecting those areas relevant to OPCAT which fall outside the criminal justice sphere.

⁷ IHREC (2017) [OPCAT: Ireland and the Optional Protocol to the UN Convention against Torture](#), February 2017

⁸ IHREC (2017); [Ireland and the Optional Protocol to the UN Convention Against Torture and All Forms of Cruel, Inhuman or Degrading Treatment or Punishment \(OPCAT\): A Submission by IHREC to the Criminal Law Reform Division of the Department of Justice and Equality](#), February 2017.

⁹ The Commission is expressing interest in a role within the NPM Co-ordinating Body with functions which reflect international good practice. For clarity, the Commission is not seeking to have its mandate extended to have an inspection role under OPCAT.

Such a coordinating framework could ensure that the network of agencies and mechanisms operating in this sphere are assisted in fulfilling their role in the collective National Preventative Mechanism. This would approximate the approach taken by New Zealand, where, a multiple body NPM, with the Human Rights Commission of New Zealand assigned a coordinating role has been established. This approach was taken so as to ‘take advantage of the expertise, experience and relationships that already existed’.¹⁰ As an A Status National Human Rights Institution, the Commission recommends that it should lead as the co-ordinating body within the NPM framework in line with Article 18(4) OPCAT.¹¹

The Commission recommends that the State accompany the collective designation of relevant bodies and agencies as the National Preventative Mechanism with the creation of an NPM coordinating framework, which includes all designated NPM bodies, to act as a point of shared learning and oversight of all OPCAT-relevant activities within the State both within and beyond the criminal justice sphere.

The Commission recommends that it should lead as the co-ordinating body within the NPM framework, in line with Article 18 OPCAT.¹²

2. Strengthening the independence and effectiveness of GSOC

Commission on the Future of Policing

As indicated in the State’s follow-up report,¹³ the Government established the Commission on the Future of Policing in Ireland to review the role, structures, leadership, management, ethos and culture of policing in Ireland, as well as the existing oversight mechanisms, including the role of the GSOC.¹⁴

¹⁰ In 2007, New Zealand established a multiple body NPM, with the Human Rights Commission of New Zealand assigned a coordinating role. The approach was taken so as to ‘take advantage of the expertise, experience and relationships that already existed’. The collective designation applied to four bodies: The Ombudsman, the Independent Police Conduct Authority, the Children’s Commissioner and the Inspector of Service Penal Establishments. See Human Rights Commission of New Zealand/ Te Kāhui Tika Tangata, *OPCAT in New Zealand 2007-2013: A review of OPCAT implementation by New Zealand’s National Preventative Mechanisms*, Auckland, July 2013, pp 8-13. Available at https://www.hrc.co.nz/files/2214/2398/7100/Opcat-2013_web.pdf.

¹¹ ‘When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights’

¹² Article 18(4) OPCAT: ‘When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.’

¹³ State follow-up report, UN Document No: CAT/C/IRL/CO/2/Add.1, at para. 10.

¹⁴ In carrying out its work, that Commission has focused on: existing and emerging challenges for Ireland’s model of policing; international benchmarks for effective policing; best practice policing models in other countries; previous reports about policing in Ireland; challenges to delivering structural and cultural reform in policing. [Terms of Reference of the Commission on the Future of Policing in Ireland](#).

In February 2018, the Irish Human Rights and Equality Commission made a Submission to the Commission on the Future of Policing,¹⁵ outlining priority human rights and equality issues regarding the delivery of policing services, the performance of police operations, and policing oversight and accountability. The Commission also endorsed¹⁶ GSOC's own recommendations to the Commission on the Future of Policing for strengthening the existing police complaints mechanisms.¹⁷ These included:

- Designation of GSOC as a fully independent body under a new statute, with its own voted financial resources and autonomous Accounting Officer.¹⁸
- Provision in law for independent GSOC investigation of all complaints against An Garda Síochána, and discontinuation of the practice of An Garda Síochána investigating complaints against its members.¹⁹

The report of the Commission on the Future of Policing in Ireland²⁰ was published in September 2018. The Irish Human Rights and Equality Commission has welcomed the setting out as a first principle in the report that 'human rights are the foundation and purpose of policing'.²¹ It has also welcomed the comprehensive approach to human rights set out in the report, which recommends the creation within An Garda Síochána of a dedicated high-level human rights unit as well as the appointment of an independent human rights adviser to a proposed new Policing and Community Safety Oversight Commission.²²

On the role of GSOC, the Commission on the Future of Policing in Ireland has recommended that GSOC be 'superseded' by a new independent complaints body with a title that makes 'clear that it is not part of An Garda Síochána'. The report recommends that this new body be titled 'the Independent Office of the Police Ombudsman (IOPO)', and that the head of the body should be its Accounting Officer.²³

¹⁵ IHREC (2018); [Submission to the Commission on the Future of Policing](#), February 2018.

¹⁶ IHREC (2018); [Submission to the Commission on the Future of Policing In Ireland](#), January 2018, p.27.

¹⁷ GSOC (2018); [Submission to the Commission on the Future of Policing In Ireland](#), January 2018, which revisited GSOC (2017); [Proposal for Legislative Change Submission to the Department of Justice and Equality](#), December 2017.

¹⁸ GSOC (2018); [Submission to the Commission on the Future of Policing In Ireland](#), January 2018, p.12. See also GSOC (2017); [Proposal for Legislative Change Submission to the Department of Justice and Equality](#), December 2017, p.4. Currently, GSOC falls under the functional remit of the Department of Justice. While GSOC is accountable to a parliamentary committee (the Oireachtas Committee for Justice and Equality), and its Chairperson is accountable to the Public Accounts Committee, GSOC draws its funding through the Department of Justice and the Accounting Officer for these funds is the Secretary General of the Department. GSOC refers to this arrangement as 'accountability without control' (GSOC, 2018, 12) and posits that its independence would be enhanced by full independence from the Department.

¹⁹ Currently, GSOC's governing legislation provides for three types of investigation of public complaints; under Section 94 of the Garda Síochána Act, 2005 (by the Garda Síochána, supervised and unsupervised investigations); under Section 95 (by GSOC, disciplinary), and under Section 98 (by GSOC, criminal). Under this arrangement, 43 per cent of investigations opened by GSOC were conducted by Gardaí (police officers) unsupervised by GSOC, and a further 14 per cent were conducted by a garda officer supervised by GSOC. See GSOC (2018); [Submission to the Commission on the Future of Policing In Ireland](#), January 2018, at p.12.

²⁰ Commission on the Future of Policing in Ireland (September 2018), *The Future of Policing in Ireland*. Available at: <http://policereform.ie/en/POLREF/Pages/PB18000006>

²¹ Commission on the Future of Policing in Ireland (September 2018), *The Future of Policing in Ireland*, pIX.

²² Commission on the Future of Policing in Ireland (September 2018), *The Future of Policing in Ireland*, p11.

²³ Commission on the Future of Policing in Ireland (September 2018), *The Future of Policing in Ireland*, p49.

The report further recommends that all complaints about the police be routed through this new independent body for assessment. The report recommends that those complaints determined to be performance management related are then to be passed on to the police organisation, while other complaints, which raise issues about police standards and integrity, corruption, breaches of law or human rights violations, are investigated solely by IOPO, ‘without recourse to Garda investigators, and [...] with appropriately experienced investigators’.²⁴

The Minister for Justice and Equality has welcomed the publication of the report, and has indicated that a consultation process will commence, with the presentation of an implementation plan for the recommendations due for submission to Government by the end of 2018.²⁵

The Commission is of the view that the proposals of the Commission on the Future of Policing have the potential to provide the framework within which human rights and equality can be firmly embedded in the ethos and operations of An Garda Síochána at all levels.

3. Magdalen Laundries

In its 2017 Concluding Observations, the Committee observed (at para. 6) that its previous recommendations that Ireland investigate allegations of ill-treatment of women at the Magdalen Laundries, prosecute perpetrators and ensure that victims obtain redress ‘have not been implemented’. The following section seeks to provide the Committee with a number of relevant updates in this regard.

Investigation by the Office of the Ombudsman

The Commission notes reference made in the State’s follow-up report to the publication by the Office of the Ombudsman in November 2017 of a report²⁶ on the administration of the Magdalen Restorative Justice Scheme.²⁷ The report centred on two main issues: (i) eligibility

²⁴ Commission on the Future of Policing in Ireland (September 2018), *The Future of Policing in Ireland*, p49.

²⁵ Department of Justice Press Release, 18 September 2018, ‘Minister for Justice and Equality, Charlie Flanagan, welcomes publication of the Report of the Commission on the Future of Policing in Ireland’, <http://www.justice.ie/en/JELR/Pages/PR18000289>

²⁶ Office of the Ombudsman (2017); [Opportunity Lost: An Investigation by the Ombudsman into the Administration of the Magdalen Restorative Justice Scheme](#), November 2017.

²⁷ The Magdalen Restorative Justice Scheme is an *ex gratia* scheme. There was no statutory basis for the Scheme and the Irish Government approved it on the understanding that the State has no obligation in law to provide compensation to the women concerned, see letter from the Secretary General, Department of Justice and Equality, Mr Noel Waters, to the Ombudsman of 13 October 2017, as published in Office of the Ombudsman (2017); [Opportunity Lost: An Investigation by the Ombudsman into the Administration of the Magdalen Restorative Justice Scheme](#), November 2017, at p.53. Since 2013, 692 applicants received just over €26m in lump sum payments through the Scheme. In addition, qualifying applicants received additional benefits including an enhanced state medical card and ‘top up’ pension payments. Payments under the Scheme are calculated based on the overall length of stay of an applicant, with awards being made up of 2 elements: a ‘general payment’ element and a ‘work’ element payment, see Department of Justice and Equality (2018); [Minister Flanagan announces Decision to Apply Magdalen Restorative Justice Scheme to Adjoining Institutions](#), 2 June 2018.

for admission to the Scheme and (ii) disputes over the alleged length of stay in a relevant institutions.²⁸ A third issue, that a number of women deemed to lack capacity to accept an award under the Scheme had ‘effectively been forgotten’, arose as an additional administrative concern in the course of the Ombudsman’s investigation.²⁹

The Ombudsman found maladministration of the Scheme by the Department of Justice and Equality (the Department),³⁰ with the opportunity for redress consequently being lost in a number of instances.³¹ In addition to calling on the State to administer the Scheme to reflect the generosity of spirit of the official apology to the Magdalen women,³² the Ombudsman made a number of recommendations³³, including that:

- the Department should reconsider applications where there is evidence that a woman worked in a Magdalen Laundry but was recorded as having been ‘admitted to’ an adjoining institution;
- the Department should review all applications where there is a dispute over ‘length of stay’ in a relevant institution;
- the women deemed to lack capacity should be made Wards of Court in order to receive an award under the Scheme;
- Guidance should be produced for any future restorative justice or redress schemes.

Implementation of the Ombudsman’s Recommendations

On 2 June 2018, the Irish Government announced that it would move to implement the recommendations of the Ombudsman.³⁴ As indicated in the State’s follow-up report, the Scheme will be extended to include adjoining institutions and guidelines are to be

²⁸ Office of the Ombudsman (2017); [Opportunity Lost: An Investigation by the Ombudsman into the Administration of the Magdalen Restorative Justice Scheme](#), November 2017, p.7.

²⁹ Office of the Ombudsman (2017); [Opportunity Lost: An Investigation by the Ombudsman into the Administration of the Magdalen Restorative Justice Scheme](#), November 2017, p.9.

³⁰ Within the meaning of [Section 4 of the Ombudsman Act, 1980](#), as amended.

³¹ Office of the Ombudsman (2017); [Opportunity Lost: An Investigation by the Ombudsman into the Administration of the Magdalen Restorative Justice Scheme](#), November 2017, p.5.

³² Office of the Ombudsman (2017); [Opportunity Lost: An Investigation by the Ombudsman into the Administration of the Magdalen Restorative Justice Scheme](#), November 2017, p.5.

³³ Office of the Ombudsman (2017); [Opportunity Lost: An Investigation by the Ombudsman into the Administration of the Magdalen Restorative Justice Scheme](#), November 2017, p.10.

³⁴ Department of Justice and Equality (2018); [Minister Flanagan announces Decision to Apply Magdalen Restorative Justice Scheme to Adjoining Institutions](#), 2 June 2018.

developed for future redress schemes.³⁵ As also indicated in the State's report, efforts are also being made to settle 'length of stay' disputes and issues around legal capacity.³⁶

The Commission notes and welcomes the signalled adjustments to the Magdalen Restorative Justice Scheme.

Independent investigation into the Magdalen Laundries

The Commission notes with regret the reiteration by the State in its follow-up report of its position that it 'does not believe that a new enquiry is warranted' into the Magdalen Laundries.³⁷

The State's follow-up report states that 'no factual evidence to support allegations of systematic torture or ill treatment of a criminal nature was found'³⁸ by the Inter-Departmental Committee to establish the facts of State involvement with Magdalen Laundries (the McAleese Report). However, the McAleese Committee had no remit to seek, investigate or make determinations on such evidence.³⁹

As the Commission has previously stated,⁴⁰ the McAleese Report is insufficient to discharge the State's human rights obligations to investigate the relevant allegations.

Recalling the recommendations of the Committee, and other UN treaty monitoring bodies⁴¹, the Commission urges the State to investigate fully, in line with international human rights standards, the situation of women who were institutionalised in the Magdalen Laundries.

³⁵ The Government decision to apply the scheme to adjoining institutions provides for the payment of the 'general payment' of the award for the length of stay in the institution and a 'work' element of the award in respect of the period of work in a laundry. The other benefits of the Scheme - pension-type payments and enhanced medical card - will also apply, see Department of Justice and Equality (2018); [Minister Flanagan announces Decision to Apply Magdalen Restorative Justice Scheme to Adjoining Institutions](#), 2 June 2018. The Government has indicated that an additional €60 million allocation to the Justice sector in Budget 2019 will be used, *inter alia*, to 'widen the Magdalen scheme'. See Statement of the Minister for Finance and Public Expenditure and Reform Mr. Paschal Donohoe T.D, 9 October 2018, at <https://www.gov.ie/en/campaigns/0941370210-budget-2019/>.

³⁶ On 17 April 2018, the Minister for Justice and Equality, Mr Charlie Flanagan TD, appointed a senior lawyer to review 'length of stay' disputes in Magdalen institutions and to provide advice on assisting the women deemed to lack capacity, see RTE News (2017); [Ombudsman Welcomes Govt Proposals on Magdalen Recommendations](#), Wednesday, 18 April 2018.

³⁷ State follow-up report, UN Document No: CAT/C/IRL/CO/2/Add.1, at para. 13.

³⁸ State follow-up report, UN Document No: CAT/C/IRL/CO/2/Add.1, at para. 15.

³⁹ State follow-up report, UN Document No: CAT/C/IRL/CO/2/Add.1, at para. 14.

⁴⁰ IHREC (2015); [Submission to the Committee on Economic, Social and Cultural Rights on the Examination of Ireland's Third Periodic Report under the International Covenant on Economic, Social and Cultural Rights](#), at section 5.5.1.

⁴¹ The UN Human Rights Committee has expressed 'regret' that an independent statutory inquiry into alleged abuse in Magdalen Laundries has not been established. See correspondence from Sarah Cleveland, Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee to Her Excellency Ambassador Ms Patricia O'Brien, Permanent Representative in Geneva, 15 April 2016. Available at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT_CCPR_FUL_IRL_23626_E.pdf

Access to information concerning relevant information held in private and public archives

The Commission notes the Committee's recommendation that the State:

promote greater access of victims and their representatives to relevant information concerning the Magdalene Laundries held in private and public archives; and provide information on these additional measures in the State party's next report to the Committee⁴².

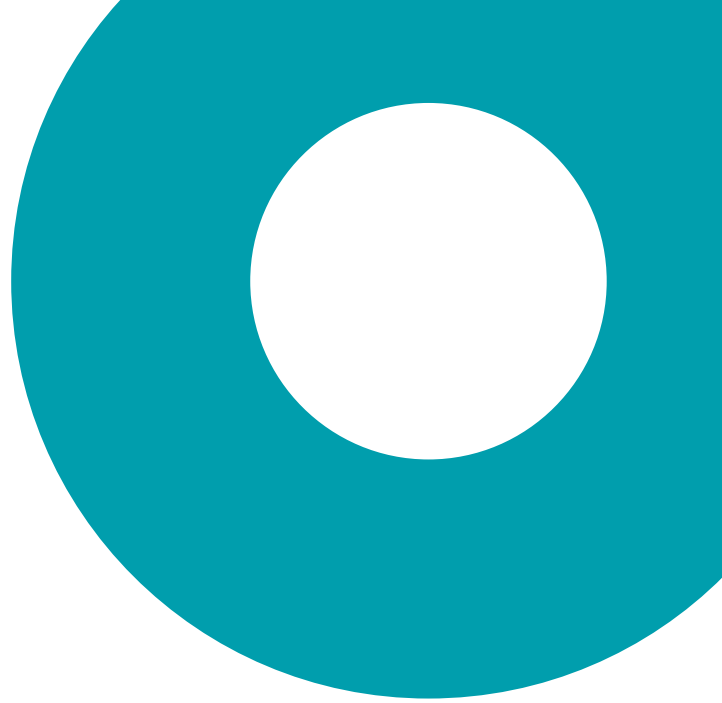
In addition to the information referred to by the State in its follow-up report at paragraphs 27 and 28, there have also been calls for the archive of the McAleese Committee to be made public. The Commission notes recent reports that the Department of the Taoiseach has indicated that there are 'no plans' to open this archive to the public.⁴³

The Commission recommends that the archive of the McAleese Committee be made public.

The Commission recommends that the State takes action to address barriers to victims and their representatives having access to relevant information held in archives.

⁴² [UNCAT, Concluding observations on the second periodic report of Ireland: Information received from Ireland on follow-up to the concluding observations, 11 August 2018. UN Document No: CAT/C/IRL/CO/2/Add.1](#) paragraph 26

⁴³ Conall Ó Fátharta, *Irish Examiner*, "No plans' to open committee archive on Magdalen laundries', 8 September 2018.



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