

***Irish Human Rights and Equality Commission***

**Submission to UN Human Rights Committee  
on Ireland's One-Year Follow-up Report to its  
Fourth Periodic Review under ICCPR**

**September 2015**



**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**

**Irish Human Rights and Equality Commission**

## **Introduction**

1 The Irish Human Rights and Equality Commission was established by the *Irish Human Rights and Equality Commission Act 2014*.<sup>1</sup> It is the successor body to the Irish Human Rights Commission (IHRC) which contributed to Human Rights Committee's examination of Ireland at the Committee's 111th session in July 2014. As the successor to the IHRC, the Commission is the national human rights institution for Ireland.<sup>2</sup>

2 The Commission notes the decision of the Committee to request from the Government of Ireland a one-year follow-up report on three recommendations contained in the Concluding Observations.<sup>3</sup> The Commission has examined the State's one-year follow-up report<sup>4</sup> and has prepared the observations below for consideration by Human Rights Committee.

## **Institutional abuse of women and children**

3 In its Concluding Observations, the Human Rights Committee expressed concern at the lack of prompt, thorough and effective investigations into all allegations of abuse, mistreatment or neglect in Magdalene laundries, children's institutions, and mother and baby homes.<sup>5</sup> The Committee regretted the failure of the State to identify all perpetrators of the violations that occurred, the low number of prosecutions, and the failure to provide full and effective remedies.

4 The Committee recommended that the State conduct prompt, independent and thorough investigations into all allegations of abuse in Magdalene laundries, children's institutions and mother and baby homes, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offence, and ensure that all victims obtain an effective remedy, including appropriate compensation, restitution, rehabilitation and measures of satisfaction.<sup>6</sup>

## **Magdalene Laundries**

5 In respect of conducting an independent investigation into all allegations of abuse, the Government restates that the report of the Inter-Departmental Committee chaired by Senator Martin McAleese has been fully accepted by the Government as a comprehensive and objective report and that no factual evidence to support allegations of systematic torture or ill-treatment of a criminal nature was found.<sup>7</sup> The Government repeats its position, originally made in its response to the Committee's list of issues, that 'the Irish Government does not propose to set up a specific

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<sup>1</sup> <http://www.oireachtas.ie/viewdoc.asp?DocID=26894>

<sup>2</sup> This is provided for in section 44 of the *Irish Human Rights and Equality Commission Act 2014*.

<sup>3</sup> Human Rights Committee (2014) *Concluding Observations on the Fourth Periodic Report of Ireland* (CCPR/C/108/2), at paragraph 25

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f4&Lang=en)

<sup>4</sup> *Follow-up material to the Concluding Observations of the UN Human Rights Committee on the Fourth Periodic Review of Ireland under the International Covenant on Civil and Political Rights, Geneva, 14–15 July 2014*

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fAFR%2fIRL%2f21460&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fAFR%2fIRL%2f21460&Lang=en)

<sup>5</sup> At paragraph 10.

<sup>6</sup> At paragraph 10.

<sup>7</sup> At page 2.

Magdalen inquiry or investigation’.<sup>8</sup> Furthermore, the Minister for Justice and Equality in a response to a parliamentary question on 30 June 2015 said that neither she nor her officials are considering setting up any further inquiry into these institutions.<sup>9</sup>

6 The Irish Human Rights and Equality Commission is concerned that the report of the McAleese Inter-Departmental Committee is insufficient to meet the state’s human rights obligations. The Commission notes that in 2010, it had advised that a statutory mechanism be established to examine, among other matters, the extent of the State’s involvement in and responsibility for the girls and women entering the laundries.<sup>10</sup> In 2013, following the publication of the report of the McAleese Inter-Departmental Committee, the Commission undertook a follow-up assessment, and formed the view that the information published by the McAleese Inter-Departmental Committee established breaches of human rights.<sup>11</sup> The Commission recommended that all credible allegations of abuse be promptly, thoroughly and independently investigated.

7 In relation to the prosecution of perpetrators, the Irish Government states in its follow-up report that no individual victims of criminal abuse in Magdalen laundries have made any complaints or requests to the Department of Justice and Equality seeking criminal investigations.<sup>12</sup>

8 The Irish Human Rights and Equality Commission notes that the initiation of a criminal investigation does not require that a victim make a complaint. The Commission also notes that in relation to another investigation concerning the treatment of individuals in institutions, An Garda Síochána (the Irish police service) established a dedicated phone line for persons who wished to report information.<sup>13</sup>

9 In respect of ensuring that all victims obtain an effective remedy, including appropriate compensation, restitution, rehabilitation and measures of satisfaction, the Government’s one-year follow-up report provides information on the introduction of the *ex gratia* scheme for payments to women.<sup>14</sup> The follow-up report also refers to the provision of an enhanced medical card, which was provided for in the *Redress for Women Resident in Certain Institutions Act 2015*.<sup>15</sup>

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<sup>8</sup> *List of issues in relation to the fourth periodic report of Ireland – Addendum: Replies of Ireland to the list of issues* (CCPR/C/IRL/Q/4/Add.1), at paragraph 57  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fQ%2f4%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fQ%2f4%2fAdd.1&Lang=en)

<sup>9</sup> Dáil Éireann Debate, ‘Written Answers: Magdalen Laundries’ (question no. 367), 30 June 2015  
<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2015063000078?opendocument#WRN01850>

<sup>10</sup> Irish Human Rights Commission (2010) *IHRC Assessment of the Human Rights Issues Arising in relation to the “Magdalen Laundries”*, paragraph 108. <http://www.ihrec.ie/publications/list/ihrc-assessment-of-the-human-rights-issues-arising/>

<sup>11</sup> Irish Human Rights Commission (2013) *IHRC Follow-up Report on State Involvement with Magdalen Laundries*, paragraphs 261 and 292 and sections of the report referred to in those paragraphs:  
<http://www.ihrec.ie/publications/list/ihrc-followup-report-on-state-involvement-with-mag/>

<sup>12</sup> At page 3.

<sup>13</sup> *List of issues in relation to the fourth periodic report of Ireland – Addendum: Replies of Ireland to the list of issues* (CCPR/C/IRL/Q/4/Add.1), at paragraph 59.

<sup>14</sup> Information was published on the website of the Department of Justice and Equality at the following web pages: <http://www.justice.ie/en/JELR/Pages/PR13000256> and <http://www.justice.ie/en/JELR/Pages/PB13000255>

<sup>15</sup> <http://www.oireachtas.ie/viewdoc.asp?DocID=28597>

10 The Irish Human Rights and Equality Commission in its submission to the Human Rights Committee in 2014<sup>16</sup> and in its submission to the Committee on Economic, Social and Cultural Rights on Ireland's third periodic report under the ICESCR in 2015<sup>17</sup> expressed concern that the scheme does not meet human rights standards. The Commission noted that the scheme does not provide an individualised approach to compensation<sup>18</sup> and that the redress scheme does not provide the full range of measures necessary to ensure to the greatest extent possible the restitution and rehabilitation of the women – as the Commission had recommended in its assessment of the McAleese Inter-Departmental Committee's report<sup>19</sup> – and does not allow for the back-payment of arrears.<sup>20</sup> The Commission has welcomed the *Redress for Women Resident in Certain Institutions Act 2015* which provides an enhanced medical card for former inmates in Magdalen laundries.<sup>21</sup>

### *Children's institutions*

11 The Government's one-year follow-up report notes that the report of the Commission to Inquire into Child Abuse<sup>22</sup> (the Ryan Commission) was published in 2009, and that the government published an action plan on foot of the recommendations in the report of the Ryan Commission.<sup>23</sup> The Commission notes that the fourth and final report of the Ryan Report Monitoring Group was published in March 2015.<sup>24</sup> That report states that five of the 99 actions have not been implemented.<sup>25</sup>

<sup>16</sup> Irish Human Rights Commission (2014) *Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights*, at paragraph 67  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fSS%2fIRL%2f17447&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fSS%2fIRL%2f17447&Lang=en)

<sup>17</sup> Irish Human Rights and Equality Commission (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:  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNHS%2fIRL%2f20495&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNHS%2fIRL%2f20495&Lang=en)

<sup>18</sup> *Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights*, at paragraph 68; *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.

<sup>19</sup> Irish Human Rights Commission (2013) *IHRC Follow-up Report on State Involvement with Magdalen Laundries*, recommendation 1 on page 125. <http://www.ihrec.ie/publications/list/ihrc-followup-report-on-state-involvement-with-mag/>

<sup>20</sup> *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.

<sup>21</sup> *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.

<sup>22</sup> <http://www.childabusecommission.ie/about/index.html>

<sup>23</sup> Office of the Minister for Children and Youth Affairs (2009) *Report of the Commission to Inquire into Child Abuse, 2009: Implementation Plan*  
<http://www.dcy.gov.ie/viewdoc.asp?Docid=1173&CatID=13&mn=&StartDate=01+January+2009>

<sup>24</sup> Ryan Report Monitoring Group (2014) *Ryan Report Implementation Plan: Fourth Progress Report*  
[http://www.dcy.gov.ie/viewdoc.asp?fn=/documents/Child\\_Welfare\\_Protection/RyanImplementation.htm](http://www.dcy.gov.ie/viewdoc.asp?fn=/documents/Child_Welfare_Protection/RyanImplementation.htm)

<sup>25</sup> At pages 6 and 7 of the *Ryan Report Implementation Plan: Fourth Progress Report*.

12 The Commission notes that four of the unimplemented actions have human rights implications for those who have previously been in institutions or for those who in the future enter the care system or come into contact with the courts. Those actions are:

- the undertaking of a longitudinal study of young people leaving care over ten years;
- the establishment of a professionally managed national archive as a central repository for the records of all children in care;
- that the archive should secure records created by non-statutory agencies; and
- that the Courts Service should conduct research on best practice on the management of children and family services in the courts.

The Commission welcomes the statement in the State's follow-up report that the Government is committed to the full implementation of all of the actions in the Implementation Plan.<sup>26</sup>

13 In relation to the prosecution of perpetrators, the Government's follow-up report provides no further information. The Commission notes that the UN Committee against Torture in its List of issues in 2013 stated 'the Committee's recommendations, including that all cases of abuse be investigated and perpetrators be prosecuted and punished, are unrealized'.<sup>27</sup>

14 The IHREC notes that in June 2001, the Government attempted to extend the terms of reference of the Ryan Commission to investigate three clinical trials of vaccines involving babies and children in institutional settings,<sup>28</sup> but that the order was overturned by the courts. The IHREC notes that the Commission of Investigation (Mother and Baby Homes and certain related Matters) – see below – is to investigate the vaccine trials.<sup>29</sup> However, the IHREC is concerned that a number of institutions that the Ryan Commission was to investigate in relation to vaccine trials are not named in the order establishing the current Commission of Investigation into the mother and baby homes.

### *Mother and baby homes*

15 The Government's one-year follow-up report summarises a significant development in respect of mother and baby homes since the Committee's 111th session, namely the establishment of the Commission of Investigation in February 2015,<sup>30</sup> and that the work of the Commission of Investigation is ongoing.

16 The Irish Human Rights and Equality Commission (IHREC) welcomed the establishment of the Commission of Investigation and considers that the individuals chosen to be the chair and ordinary members of it as significant in respect of its independence, impartiality, transparency and expertise.<sup>31</sup> The IHREC believes that the powers of the Commission of Investigation will enable it to

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<sup>26</sup> At page 5.

<sup>27</sup> Committee against Torture (2013) *List of issues prior to submission of the second periodic report of Ireland*, CAT/C/IRL/QPR/2, at paragraph 20  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2fQPR%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2fQPR%2f2&Lang=en)

<sup>28</sup> *Commission To Inquire Into Child Abuse Act, 2000 (Additional Functions) Order, 2001* (S.I. No. 280/2001)  
<http://www.irishstatutebook.ie/eli/2001/si/280/made/en/print>

<sup>29</sup> Paragraph (1)V of the terms of reference, as set out in the Schedule to the *Commission of Investigation (Mother and Baby Homes and certain related Matters) Order 2015*  
<http://www.irishstatutebook.ie/2015/en/si/0057.html>

<sup>30</sup> *The Commission of Investigation (Mother and Baby Homes and certain related Matters) Order 2015*.

<sup>31</sup> Irish Human Rights and Equality Commission (2015) 'IHREC response to publication of the Terms of Reference of the Commission of Investigation into Mother and Baby Homes and Certain Related Matters'

source all information and documentation to establish and properly test allegations of human rights abuses. The IHREC welcomes the broad scope of the institutions that are within the remit of the Commission of Investigation. The IHREC welcomes that the terms of reference include a provision to examine systematic discrimination on any grounds, including religion, race, Traveller identity or disability.

17 Before the establishment of the Commission of Investigation, the IHREC had made a number of recommendations to the Government concerning the Commission of Investigation.<sup>32</sup> The IHREC had recommended that the terms of reference should meet Ireland's human rights obligations and ensure effective remedies, including redress for victims. In this regard, the IHREC notes that a Commission of Investigation does not have the power to provide complete redress for victims. It notes that in the Dáil debate on the establishment of the Commission of Investigation, the Minister for Children and Youth Affairs said that it would be premature to consider redress and that the Commission of Investigation has the authority to make recommendations on this matter.<sup>33</sup>

18 The IHREC notes the concerns of the Committee against Torture in respect of the prosecution of crimes in the context of the Ryan Commission (referred to above) and considers that the State will need to take further steps to ensure full compliance with the State's obligations to prosecute perpetrators of criminal offences.<sup>34</sup>

19 The IHREC welcomes that the Commission of Investigation has as part of its remit the investigation of vaccine trials conducted on children resident in the institutions that come within its scope. It welcomes that the vaccine trials that are to be considered are not confined to the three that had been the intended scope of the Ryan Commission. However, it is concerned that the task in this regard is to establish compliance with relevant regulatory and ethical standards at the time of the systemic vaccine trials, and not with human rights or equality standards.<sup>35</sup>

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(Press release) 9 January 2015 <http://www.ihrec.ie/news/2015/01/09/ihrec-response-to-publication-of-the-terms-of-refe/>

<sup>32</sup> Irish Human Rights and Equality Commission (Designate) (2014) *Proposed Commission of Investigation to Inquire into Mother and Baby Homes: Submission on behalf of the Irish Human Rights and Equality Commission* <http://www.ihrec.ie/publications/list/ihrec-designate-submission-on-mother-baby-home-com/>

<sup>33</sup> Deputy James Reilly (Minister for Children and Youth Affairs), Dáil Éireann Debate, 'Mother and Baby Homes Commission of Investigation: Motion (Resumed)', Wednesday, 28 January 2015 (at page 519) <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2015012800057>

The IHREC had also recommended that consideration be given to amending the primary legislation under which commissions of investigation are established to fully allow for redress where allegations of human rights abuses are upheld, including through prosecutions of perpetrators, guarantees of individual remedies to victims, and non-repetition. The IHREC notes that this has not occurred.

<sup>34</sup> The IHREC notes that the Commissions of Investigation Act 2004 (in section 19) provides that statements made to or documents provided to a Commission of Investigation are not admissible as evidence against a person in any criminal proceedings. The Act is available at <http://www.irishstatutebook.ie/2004/en/act/pub/0023/print.html>

<sup>35</sup> The IHREC notes that in the Dáil debate on the on the establishment of the Commission of Investigation the question was asked 'why it was always the case that the children in the institutions received the experimental vaccine while the children in the community received the control vaccine?' Deputy Denis Naughten, Dáil Éireann Debate, 'Mother and Baby Homes Commission of Investigation: Motion (Resumed)', Wednesday, 28 January 2015 (at page 499) <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2015012800047>

## ***Symphysiotomy***

20 In its Concluding Observations, the Committee expressed concern that symphysiotomy was ‘performed on approximately 1,500 girls and women [...] between 1944 and 1987’ without consent.<sup>36</sup> The Committee expressed concern at the State’s failure to initiate a prompt, comprehensive and independent investigation into the practice of symphysiotomy; identify, prosecute and punish, where still possible, the perpetrators for performing symphysiotomy without patient consent; and provide effective remedies to survivors of symphysiotomy for the damage sustained as a result of these operations.

21 The Committee recommended that the State party initiate a prompt, independent and thorough investigation into cases of symphysiotomy; prosecute and punish the perpetrators, including medical personnel; and provide the survivors of symphysiotomy with an effective remedy for the damage sustained, including fair and adequate compensation and rehabilitation, on an individualised basis. The Committee recommended that the State facilitate access to judicial remedies by victims opting for the *ex gratia* scheme, including allowing them to challenge the sums offered to them under the scheme.

22 The Government’s one-year follow-up report refers briefly to the research report by Professor Walsh<sup>37</sup> and the legal review by Judge Murphy,<sup>38</sup> but provides no further information about the recommendation in the Concluding Observations in respect of establishing an independent and thorough investigation or on the criminal prosecution of perpetrators. The Government’s one-year follow-up report provides details on the establishment of the *ex gratia* payment scheme.

23 The Irish Human Rights and Equality Commission wrote to the Government on 1 October 2014 recommending that the Government take steps to address the human rights of the survivors of symphysiotomy procedures. Those steps were directed at meeting the State’s international human rights obligations under the International Covenant on Civil and Political Rights. In announcing a limited *ex gratia* payment scheme, the Government is limiting survivors’ access to an effective remedy for the damage sustained which would be otherwise available under a scheme established on a statutory footing. The time limit imposed where applications must be made before 5 December 2014 (or 14 January 2015 in exceptional circumstances) made it extremely difficult for the women involved to seek independent advice in making their decision. In addition, the waiver of legal rights under the scheme was also of concern.<sup>39</sup>

24 The Commission notes that women who underwent a symphysiotomy have had difficulties in securing hospital records to support their claims to the *ex gratia* scheme. The Commission notes that concerns have been expressed at the standards of proof that the scheme in practice requires in order to show that a woman has undergone a symphysiotomy, and that these appear to be higher

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<sup>36</sup> At paragraph 11.

<sup>37</sup> Oonagh Walsh (2013) *Report on Symphysiotomy in Ireland 1944–1984* <http://health.gov.ie/blog/publications/report-on-symphysiotomy-in-ireland-1944-1984-professor-oonagh-walsh/>

<sup>38</sup> Yvonne Murphy (2014) *Independent Review of Issues relating to Symphysiotomy* <http://health.gov.ie/blog/publications/independent-review-of-issues-relating-to-symphysiotomy-by-judge-yvonne-murphy/>

<sup>39</sup> Irish Human Rights and Equality Commission (2015) ‘IHREC response to publication of the Terms of Reference of the Commission of Investigation into Mother and Baby Homes and Certain Related Matters’ [Press release] 9 January 2015 <http://www.ihrec.ie/news/2015/01/09/ihrec-response-to-publication-of-the-terms-of-refe/>



than were applied in the High Court when it accepted the contested evidence of a litigant who sought damages for a symphysiotomy conducted in 1963.<sup>40</sup>

25 The Commission is of the view that the response of the State to the previous practice of symphysiotomy is not in full compliance with the State's human rights obligations. The Commission is of the view that the imposition of the *ex gratia* scheme is not compliant with human rights law.

### ***Conditions of detention***

26 In its Concluding Observations, the Committee identified four matters of concern in respect of the conditions of detention.<sup>41</sup>

### ***Overcrowding***

27 The Government's one-year follow-up report provides information on numbers of prisoners and actions to reduce overcrowding, and notes the role of the Community Return and Community Support programmes in reducing the numbers.

28 The Irish Human Rights and Equality Commission notes that the Irish Prison Service operates a high level of transparency on prison occupancy, and publishes data each weekday on the population of each prison.<sup>42</sup> The Commission notes that most of the data in the Government's follow-up report compares the prison population in 2015 against the prison population at its peak in 2011 rather than against the capacity of the prisons. The Commission notes that on the date the Government uses in its follow-up report (12 June 2015), a number of prisons were overcrowded. The details are given in Table 1. The Inspector of Prisons, in his annual report for 2013–2014, notes that 'overcrowding is a continuing, if a diminishing issue' and states that overcrowding in the Dóchas Centre (that is, Mountjoy female prison) is a serious concern.<sup>43</sup>

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<sup>40</sup> See Paul Cullen (2015) 'Symphysiotomy compensation refused to 53 women', *Irish Times*, 14 April 2015 on concerns regarding the standard of proof required by the payment scheme <http://www.irishtimes.com/news/health/symphysiotomy-compensation-refused-to-53-women-1.2174497>; see judgment of Cross J in *Farrell v Ryan* [2015] IHEC 275, at paragraphs 3.3 and 3.4, on the Court's acceptance of the plaintiff's evidence (the plaintiff was unsuccessful for other reasons) <http://courts.ie/Judgments.nsf/0/B6A16E2404E604EE80257E4300504DBD>

<sup>41</sup> At paragraph 15.

<sup>42</sup> At <http://www.irishprisons.ie/index.php/information-centre/statistics/daily-custody-figures>

<sup>43</sup> Office of the Inspector of Prisons (2014) *Annual Report 2013/2014*, at paragraph 6.10 [http://www.inspectorofprisons.gov.ie/en/IOP/Pages/Annual\\_Reports](http://www.inspectorofprisons.gov.ie/en/IOP/Pages/Annual_Reports)



**Table 1: Prison occupancy in five institutions on 12 June 2015**

<i>Institution</i>	<i>No. prisoners (12 June 2015)</i>	<i>No. beds (as per Inspector<sup>a</sup>)</i>	<i>Percent of occupancy (as per Inspector<sup>a</sup>)</i>	<i>No. beds (as per IPS<sup>b</sup>)</i>	<i>Percent of occupancy (as per IPS<sup>b</sup>)</i>
Mountjoy (female)	107	105	102 %	105	102 %
Cork	228	173	132 %	210	109 %
Limerick (male)	224	185	121 %	220	102 %
Castlereagh	326	300	109 %	340	96 %
Arbour Hill	135	131	103 %	142	95 %

**Notes:**<sup>a</sup> 'Inspector' = Inspector of Prisons<sup>b</sup> 'IPS' = Irish Prison Service

(1) The total number of institutions in the Irish prison system is fifteen. The five institutions listed in this table are those for which it would appear that a concern of overcrowding could be justified on the relevant date.

(2) The Irish Prison Service and the Inspector of Prisons have identified different capacities for a number of prisons. Columns 3 and 4 give, respectively, the capacity (number of beds) identified by the Inspector of Prisons and the occupancy as a percentage of that capacity. Columns 5 and 6 give the corresponding information using the capacity identified by the Irish Prison Service.

29 The Commission notes the progress reported by the Government on the construction and refurbishment of prison facilities, and in particular the construction of a new replacement prison in Cork which will have a larger capacity than the existing prison. It also notes that the Inspector of Prisons said that the refurbishment of Mountjoy Prison has been 'carried out to an extremely high standard'.<sup>44</sup> However, the Commission also notes that there are delays in delivering in full the 40-month capital plan that was to have been completed by the end of 2016.<sup>45</sup>

30 The Commission notes the publication in September 2014 of the *Strategic Review of Penal Policy*, which had been presented to the Minister for Justice in July 2014.<sup>46</sup> The *Review* contains 43 recommendations, a number of which if implemented would contribute to reducing overcrowding. The Commission notes that in July 2015 the Minister for Justice and Equality, in response to a parliamentary question, said that Government has agreed, in principle, to proceed immediately with the implementation of a number of the recommendations. They include reform of sentencing policy and preparing proposals on the potential for increased use of earned remission.<sup>47</sup>

<sup>44</sup> Office of the Inspector of Prisons (2014) *An overview of the Mountjoy Prison Campus with particular emphasis on the Separation Unit*, at paragraph 2.5  
[http://www.inspectorofprisons.gov.ie/en/IOP/Pages/An\\_overview\\_of\\_Mountjoy\\_Prison\\_Campus\\_with\\_particular\\_emphasis\\_on\\_the\\_Separation\\_Unit](http://www.inspectorofprisons.gov.ie/en/IOP/Pages/An_overview_of_Mountjoy_Prison_Campus_with_particular_emphasis_on_the_Separation_Unit)

<sup>45</sup> Irish Prison Service (2012) *Three Year Strategic Plan 2012–2015*, at page 52  
<http://www.irishprisons.ie/index.php/3-year-plan>

<sup>46</sup> Review Group on Penal Policy (2014) *Strategic Review of Penal Policy: Final Report*  
<http://www.justice.ie/en/JELR/Pages/PB14000244>

<sup>47</sup> Dáil Éireann Debate, 'Written Answers: Penal Policy Review Group Report' (question no. 369), 16 July 2015  
<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2015071600073?opendocument#WRV01550>

### *Slopping out*

31 The Government's one-year follow-up report provides information on the significant reduction in the number of prisoners who are 'slopping out'.

32 The Commission notes that slopping out remains part of prison life in three institutions – Cork Prison, Limerick Prison, and Portlaoise Prison.<sup>48</sup> The construction of a new prison in Cork is nearing completion. The Commission notes that the Irish Prison Service's Capital Expenditure Plan 2012–2016 contains plans to replace wings A and B of Limerick Prison in 2015.<sup>49</sup> The Minister for Justice and Equality, in reply to a parliamentary question, said that and that completion is now expected for late 2018.<sup>50</sup> The refurbishment of Portlaoise prison, including in-cell sanitation, was identified in the Capital Expenditure Plan to commence in 2015.<sup>51</sup> In March 2015, the Minister of State at the Department of Justice and Equality said that 'options regarding improved accommodation [in Portlaoise prison] continue to be explored'.<sup>52</sup>

### *Segregation of prisoners*

33 The Government's one-year follow-up report does not contain any deadline for the separation of remanded from sentenced prisoners, of juvenile from adult prisoners, or of detained immigrants from sentenced prisoners. It provides no information on the mixing of juvenile and adult prisoners.

34 The Commission drew the attention of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in August 2014<sup>53</sup> to the absence from the Irish Prison Service's strategic plan of any provision for the development of a strategy in respect of remand prisoners.<sup>54</sup>

35 The Commission notes that the Minister for Justice and Equality in reply to a parliamentary question said that as of 30 April 2015 there were a total of 10 prisoners aged 17 in adult prisons.<sup>55</sup>

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<sup>48</sup> The Irish Prison Service publishes a quarterly 'census' which provides data, by institution, on cell occupancy and in-cell sanitation. It is available at <http://www.irishprisons.ie/index.php/information-centre/statistics/census-reports>

<sup>49</sup> Irish Prison Service (2012) *Three Year Strategic Plan 2012–2015*, at page 52

<http://www.irishprisons.ie/index.php/information-centre/publications/strategy-statement>

<sup>50</sup> Dáil Éireann Debate, 'Written Answers: Prison Building Programme' (question no. 246), 6 May 2015

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2015050600059?opendocument#WRK05700>

<sup>51</sup> Irish Prison Service (2012) *Three Year Strategic Plan 2012–2015*, at page 52.

<sup>52</sup> Dáil Éireann Debate, 'Report on Penal Reform: Motion', 6 March 2015 – text in square brackets added to the original

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2015030600017?opendocument>

<sup>53</sup> Irish Human Rights and Equality Commission (Designate) (2014) *Submission on behalf of the Irish Human Rights and Equality Commission (Designate) to Representatives of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, at paragraph 10

<http://www.ihrec.ie/publications/list/ihrec-designate-report-to-cpt-7-august-2014/>

<sup>54</sup> Irish Prison Service (2012) *Three Year Strategic Plan 2012–2015*

<http://www.irishprisons.ie/index.php/information-centre/publications/strategy-statement>

<sup>55</sup> Dáil Éireann Debate, 'Written Answers: Prisoner Data' (question no. 524), 26 May 2015

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2015052600077?opendocument#WRZ00700>

The Inspector of Prisons in his annual report for 2013/2014 described as ‘a matter of grave concern’ that 17-year-old male children are remanded to St Patrick’s Institution.<sup>56</sup> Furthermore, the Inspector noted that because the numbers of juvenile prisoners is very low, their detention ‘is, at times, tantamount to holding them in isolation and it is certainly inhumane’.<sup>57</sup> He reports that the practice was due to cease on 15 October 2014<sup>58</sup> but the Government’s follow-up report provides no information on this matter, and the Irish Prison Service’s statistics show two 17-year-olds were detained on remand in the former youth institution at Mountjoy Prison on 21 August 2015.

### *Prison Complaints*

36 The Government’s one-year follow-up report summarises the four categories of complaints and reports on the main developments since the Inspector of Prisons published *Suggested Prisoner Complaints Model for Irish Prisons* in March 2012.<sup>59</sup> The key legal development was the making, on 9 January 2013, of an order amending the prison rules to include two new rules on complaints of a criminal offence (new rule 57A) and on preparation of internal reports on complaints (new rule 57B).<sup>60</sup>

37 The Irish Human Rights and Equality Commission notes that although the Inspector of Prisons does have ‘oversight’ of all categories of complaints,<sup>61</sup> as reported in the Government’s one-year follow-up report,<sup>62</sup> this does not take the form that had been recommended in the Inspector’s suggested model. In particular the Inspector has not been given the power to

- direct further enquiries,
- initiate a new investigation,
- take further evidence, or
- reverse the finding of the Governor without further inquiry.<sup>63</sup>

The Inspector of Prisons noted in his annual report for 2013–2014 that there is no appeals mechanism for the most serious level of complaints. He also reported that he has had discussions with the State authorities and that secondary legislation to address the problem is to be brought forward.<sup>64</sup> The Commission believes that, until an independent appeals mechanism is put in place, the State has not complied with the Committee’s recommendation on this matter.

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<sup>56</sup> Office of the Inspector of Prisons (2014) *Annual Report 2013/2014*, at paragraph 6.15.

<sup>57</sup> Office of the Inspector of Prisons (2014) *An overview of the Mountjoy Prison Campus with particular emphasis on the Separation Unit*, at paragraph 2.11.

<sup>58</sup> At paragraph 2.12.

<sup>59</sup> Inspector of Prisons (2012) *Suggested Prisoner Complaints Model for Irish Prisons* <http://www.inspectorofprisons.gov.ie/en/IOP/Pages/PB12000009>.

<sup>60</sup> S.I. No. 11/2013 - Prison Rules (Amendment) 2013 <http://www.irishstatutebook.ie/2013/en/si/0011.html>

These have been translated into language that is accessible for non-lawyers, which was published in June 2014: Irish Prison Service (2014) *Policy Document: Prisoner complaints* (PIN011) <http://www.irishprisons.ie/index.php/makingacomplaint>

<sup>61</sup> Paragraph 12 of Rule 57B provides:

*The Inspector of Prisons shall have oversight of all investigations carried out under this Rule, shall have access to any material relevant to any such investigation and may investigate any aspect that he or she considers relevant.*

<sup>62</sup> At page 13.

<sup>63</sup> Inspector of Prisons (2012) *Suggested Prisoner Complaints Model for Irish Prisons*, at paragraph 8.17.

<sup>64</sup> Office of the Inspector of Prisons (2014) *Annual Report 2013/2014*, at paragraph 4.12.