

## **IHRC Senior Enquiry & Legal Officer Sinéad Lucey**

### **Presentation of Assessment's Conclusions**

Good morning.

The Irish Human Rights Commission's (IHRC) assessment of Justice for Magdalenes' (JFM) enquiry request contains a number of significant conclusions. And this has led the Commission to make a number of recommendations to Government.

I would like to spend a few minutes setting out the Commission's assessment and its conclusions.

At the outset, I would like to state for the record that there is a severe lack of publicly available records in relation to the operation of the Magdalen Laundries. We presume that the Religious Orders who ran the laundries have those records.

In carrying out its assessment, the Commission took into account law and practice in relation to a diverse range of issues. These come under the headings of 'employment law', 'exhumations', 'adoptions' and 'criminal law and procedure', and of course, the human rights standards that apply and the attendant obligations on the State.

Timelines are crucially important here as human rights standards cannot be applied retrospectively to the actions of the State. Relevant dates are therefore noted throughout the assessment, the most important being 1931 – when the State ratified the Forced Labour Convention, 1937– when the State adopted its own Constitution - and 1953 – when it ratified the European Convention on Human Rights.

- In the opinion of the State there is thus a difference between persons taken into the laundries privately and persons who were resident in State run institutions.

However, it is most important to note that the State does not deny that women and girls in Magdalen Laundries were exposed to “abuse”. In fact, the Government has acknowledged in the Dáil that abuse did occur in Magdalen Laundries. But the State's position is that the Laundries were private in nature and that it ‘was not’ and ‘is not’ responsible for what happened there.

But does this view hold water?

The Commission has tested the State's reasoning in its assessment and has serious misgivings about its sustainability. The Commission considers that the State should, at the very least, inquire into its involvement in women and girls being placed in the laundries. Hopefully, the work we have already carried out will be of assistance to the State in this regard. The State also needs to inquire into its legal obligation to have regulated the conditions there. Again, we hope our work will be of assistance. Turning a blind eye to these issues cannot exclude the State from its responsibilities.

How did women and girls come to reside in the Laundries?

There were a number of ‘pathways’ with both State and non-State actors being involved in placing women in convent laundries. State actors responsible for placing women in the convent included Gardaí, welfare officers and social workers. But what is not clear is the nature and extent of the involvement of these State actors in this practice. This needs to be established.

Women and girls also came to Magdalen Laundries through the Courts. In one month alone in 1944, 29 so-called “probationers” were received by institutions from the Courts, including six Magdalen Laundries and one Presbyterian Mother and Baby Home. Referral by the courts happened in three ways: following conviction for a serious offence, being placed on remand, and on foot of a probation order. Again, the full extent of this practice needs to be established. As Commissioner Braiden pointed out, families, relatives and members of the clergy also placed women and girls in the laundries.

The Commission reviewed the Ryan Report and other witness testimony concerning the Laundries. The treatment of women and girls in the Laundries could conservatively be described as 'harsh'. It involved long hours of hard physical work - deprivation of identity, with women and girls having their given name taken away from them and being replaced with a religious names, or simply "Mary" - isolation from the community - and denial of educational opportunities. There were instances of physical and psychological violence.

Such treatment would almost undoubtedly reach the threshold of what constitutes inhuman or degrading treatment contrary to Article 3 of the ECHR, which not only prohibits serious ill-treatment by agents of the State, but also requires the State to put in place mechanisms to protect against such abuse by private actors. There may also have been a breach of the right to dignity and bodily integrity under the Constitution. Again, a statutory inquiry could take direct witness testimony to document what did happen in the Laundries.

### *Forced and Compulsory Labour*

Women and girls worked hard in the Magdalen Laundries. Of that, there can be no doubt. And one of our most striking conclusions is that the State may have breached its obligations under the 1930 Forced Labour Convention. Under the 1930 Convention, States must neither use forced or compulsory labour nor tolerate its use. In fact, special protections are made in the Convention for women and children. Article 4 of the ECHR reinforces this prohibition on forced or compulsory labour which effectively prohibits labour given under threat of any penalty, thus encompassing for example fear of the loss of a privilege, denial of food or transfer to another institution if one refused to undertake labour.

### *Adoption/ Tracing*

There is also a serious question as to what became of the infant children of Magdalen women and girls? Many of these children were born in Mother and Baby Homes. The Ryan Report states that there was a practice of separating such children from their mothers when they were between one or two years old. Children were then "boarded out", or informally or legally adopted. Children were also sent to Junior Industrial Schools when they reached six or seven years old – the age at which they were deemed unlikely to be adopted.

- And did the State, in permitting the burial, exhumation and cremations of both identified and unidentified remains, honour its obligations under Article 2 of the ECHR (the right to life).

None of these questions can be properly answered in the absence of a fuller investigation.

However, the Commission did find at the very least that the absence of proper identification of the women - and the cremation of their remains - raises questions under Article 8 of the ECHR, which requires respect for the person's private and family life. The removal of a person's identity during their life and perpetuated in their death, and the destruction of their remains by cremation may not be in accordance with the requirements of Article 8. And it certainly does not aid adopted children seeking to find out about their origins.

In conclusion, the IHRC cannot adjudicate on a breach of human rights. We cannot definitively say that the human rights of these women and girls who resided in the laundries were breached as this is beyond our powers. The Commission has, however, come to the overall conclusion that there are very clear questions of human rights compliance arising from its assessment. We consider that these substantiate the need to establish a statutory enquiry mechanism to fully and thoroughly investigate the matters raised by Justice for Magdalenes.

Thank you.