



## **Launch**

**IHRC Follow-up Report  
on State Involvement with Magdalen Laundries  
Tuesday, 18 June 2013**

## **Address**

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Irish Human Rights Commission**

Good morning!

As you will note, the Commission's Follow-Up Report is a detailed document. This morning I would like to give you an overview of its main points and its conclusions.

As you have heard this Report follows up on our 2010 Assessment Report. It significantly develops the analysis in the Assessment Report. The first thing to say about this Follow-Up Report is that this is not an investigative report. It is a human rights analysis drawing all of the information at our disposal, including the additional information which has come to light through the McAleese Report.

In compiling this Report, the Commission has not assessed whether any particular woman had her human rights breached by reason of her placement or treatment in a Magdalen Laundry. This is not the focus of the Commission's Report.

Rather, our report analyses in detail the information available to us, including the contents of the McAleese Report. It takes into account our previous work and research in this area, reviewing again our 12 conclusions to the State in 2010, and methodically examines the human rights standards that are engaged. This allowed the Commission to conclude, in principle, whether there was an overall failure by the State to respect the human rights of the women in the Laundries.

An example is the routes of entry to the Laundries as set out in the McAleese Report. The Commission's Follow-Up Report assesses those various routes of entry by reference to the right to liberty. It assesses whether any evident breach of that right emerges. In a sense this Report is a framework document, providing an overview of the human rights standards engaged by the operation of the Laundries. It can hopefully be used as a reference by which each individual woman can identify whether her human rights were breached.

Throughout the Report the IHRC has highlighted the various stages at which relevant human rights standards became binding on the State. These time lines are adhered to in the Report in determining State responsibility in respect of various human rights standards. The earliest is the Forced Labour Convention, ratified by the State in 1931, while the latest Convention to be ratified by the State and referred to in this Report is the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified in 2002.

Turning to the contents of the Report -

Our first point of departure is to examine the extent of State involvement in Magdalen Laundries. This will help us delimit the acts or omissions which can legitimately be considered to fall within the realm of State responsibility. This underlines the crucial

difference in our approach from that of the McAleese Report. The McAleese Report considers only the actual acts of State engagement with the Laundries. The Commission goes much further than this. We consider the wider issue of State responsibility. This is done from three perspectives:

First is the question of the actual engagement of the State with the Laundries, such as for instance entering into commercial contracts for laundry services with the Religious Orders.

Second, we consider whether the Laundries could in fact be considered an emanation of the State itself. This is because the Religious Orders effectively took on State functions, such as being used as remand facilities, or providing a form of social care service.

Finally, we ask whether the State did enough to “respect, protect and fulfil” the rights of the women in the Laundries and to meet the other positive obligations on the State that arise from specific duties under international human rights law. Did it exercise “due diligence” over the Laundries. Did it inspect, regulate or otherwise “control” what was happening inside these institutions. For example, the obligation to suppress and outlaw forced or compulsory labour under the ILO Forced Labour Convention, 1930, is a case in point in terms of what the State was obliged to do and what it omitted to do.

In human rights terms, the interactions between private actors and the State entail a number of layers of responsibility that cannot simply be quantified by considering the factual relationship between the State and Magdalen Laundries in isolation.

This approach informs our analysis throughout the Report.

The Report considers six human rights standards that are brought into play by the experience of the girls and women in the Magdalen Laundries. These are:

- the right to equality;

- the right to liberty,
- the right to education;
- the right to freedom from forced or compulsory labour or servitude;
- freedom from ill-treatment and
- the right to respect for private life.

### **First of all, the right to equality**

Under this heading we consider the discriminatory nature of the regime in Magdalen Laundries. It need hardly be said that gender was a defining feature of the history of the Laundries. This being so, we analyse the treatment of the girls and women in the Laundries against the guarantee of equality and non-discrimination under both the Constitution and Article 14 of the European Convention on Human Rights. The guarantee of non-discrimination runs in parallel with the other human rights standards considered in the Report.

Insofar as the girls and women in the Laundries may have had their rights breached, their right to equal treatment as women was also in jeopardy.

### **This brings me on to the right to liberty**

As I have already mentioned, the routes by which girls and women entered Magdalen Laundries, and which are so usefully de-segregated in the McAleese Report, are analysed in our Report. The Commission asks whether the means by which girls and women came to enter the Laundries gave rise to instances of arbitrary detention.

The Report concludes that there may have been instances of arbitrary detention of girls and women placed in the Laundries through the criminal justice system. Similarly, there may have been instances of arbitrary detention through placements from Industrial and Reformatory schools, as well as by other routes. The Commission considers that arbitrary detention may have arisen through:

- Probation orders - which did not authorise detention as such but were enforced to impose a detention regime in the Laundries;
- Girls and women being placed on remand in a Laundry which was not an authorised remand facility, or where the remand did not come to an end in the normal way;
- In the context of adjourned or suspended sentences, where a Court Order did not authorise detention in a Laundry, but this was the *de facto* result;
- Placement of girls in Magdalen Laundries under the Children Act 1908, in the absence of a Court Order;
- Girls placed in Magdalen Laundries in the absence of educational supervision;
- Girls and women placed in Magdalen Laundries during the period of post discharge supervision from an Industrial or Reformatory school;

There are other possible instances of arbitrary detention, for example;

- if a woman was coerced into entering a Laundry; such as a woman who had one or more child outside marriage and was thus under the apprehension or threat that public assistance would be withdrawn if she did not enter a Laundry;

Or

- The placement of girls and women in the Laundries without proper consent. This includes the involuntary placement of women with significant intellectual disabilities or serious mental illness. It also includes the placement of children without a relevant Court Order.

**Let me now turn to the right to education**

The Commission reviewed the instances in which children were placed in Magdalen Laundries. The McAleese Report states that one entrant to a Magdalen Laundry was just nine years old. The mandatory school attendance age at the relevant time (from 1926 onwards) was 15 years. This later rose to 16 years of age. Placements of children could give rise to a breach of their educational rights, both under the Constitution and the European Convention on Human Rights. Under the Constitution, since 1937, every child has a right to free primary education. Under the Convention, since 1953 the right to education is expressed as one of access to education. Therefore, such educational rights would extend to secondary education, where this was commonly funded by the State, which was the case from about 1967 onwards.

Magdalen Laundries did not have educational facilities suitable for children. In fact, Magdalen Laundries do not appear to have had any real educational facilities. This means that the act of placing children in the Laundries was a denial of educational opportunity. An inevitable conclusion of our Follow-Up Report is that children who were placed in the Laundries did not have their right to education fully respected.

**This brings me on to the right to be free from forced or compulsory labour and servitude**

One of the clearest conclusions of the IHRC's 2010 Assessment Report was that the State may have breached its obligations under the 1930 Forced Labour Convention - and also under Article 4 of the European Convention on Human Rights. Today's Report confirms that girls and women, who were not in the Laundries of their own free will, and who were under fear of a penalty if they left the Laundries or refused to work, were subjected to a form of forced or compulsory labour. This of course does not apply to girls and women who may have entered the Laundries voluntarily and freely offered themselves for unpaid labour.

This forced labour was in clear contravention of the State's obligations under the Forced Labour Convention 1930, which it had ratified in 1931. In addition, not only did the State not outlaw and suppress such practices, as it was required to do, but it availed and benefited from this forced or compulsory labour. We know from the McAleese Report that State contracts with one particular Magdalen Laundry (Sean McDermott Street) accounted for approximately 18% of its total business during the 1960s. Whereas the report states that there was no preference in tenders, the fact remains that the lowest tenders in some cases corresponded to situations where the women or girls concerned may have been in a situation of forced labour. Ironically, the Forced Labour Convention still contemplated workers being paid, but this does not seem to have occurred in the Laundries, something which later impacted on those women's social benefit and indeed pension entitlements.

#### **Let me now turn to Freedom from ill-treatment**

The limited testimony in the McAleese Report points to treatment of girls and women in the Magdalen Laundries that was punishing and humiliating. The Commission's Report sets out the deficits that still exist in relation to determining whether girls and women in the Magdalen Laundries were exposed to ill treatment, within the meaning of Article 3 of the European Convention on Human Rights or the UN Convention Against Torture. The Rapporteur to the Committee Against Torture, Ms Felice Gaer, has recently written to the Government clearly stating that the State has, at the very least, an obligation to independently investigate allegations of ill treatment.

In any event, however the State responds to the UN Committee, or indeed the view the survivors of the Magdalen Laundries take of the need for a further investigative mechanism being established, some women will have experienced psychological trauma as a result of their experience in the Laundries, and those women as yet have no facility for that experience to be formally acknowledged and addressed.

## **Finally, we consider the right to respect for private life**

Our report raised serious concerns that the conditions in the Laundries did not fully respect the right of the girls and women to respect for their private life.

The Commission previously expressed concern, in its 2010 Assessment Report, about the exhumation (and later cremation) of unknown remains of women at the burial plot attached to High Park Magdalen Laundry, Dublin in 1993. These events had implications for any possible surviving children of those women, insofar as their ability to gain information regarding their origins might be damaged or altogether extinguished. It is unclear if any children were in fact affected in this way.

The Commission's Follow-Up Report concludes that the approach of the Department of the Environment under the relevant legislative framework, in issuing exhumation licenses and permitting the cremation of unknown remains of women who were relatively recently deceased, did not take sufficient account of the interests of surviving family members. This created a clear risk that the right to respect for private life, under Article 8 of the European Convention on Human Rights, of any children of the women buried in High Park could have been breached.

These are the conclusions of the Commission's Follow-Up Report. I now have pleasure in handing you over to Professor Siobhán Mullally, who will discuss with you the Recommendations in the Report.