

IRELAND

**NEED TO STRENGTHEN THE
NATIONAL HUMAN RIGHTS
FRAMEWORK, TO LIFT
RESTRICTIONS ON ABORTION,
AND TO SECURE
ACCOUNTABILITY FOR PAST
ABUSES**

*Amnesty International
Submission to the UN Universal
Periodic Review, May 2016*

**AMNESTY
INTERNATIONAL**



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EXECUTIVE SUMMARY

In this submission, prepared for the Universal Periodic Review of Ireland taking place in May 2016, Amnesty International assesses the implementation of a number of recommendations that Ireland accepted during its previous UPR.

Amnesty International sets out its human rights concerns in the country, including the absence of a national preventive mechanisms as required under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the limited mandate of the new national human rights institution, and the restrictive abortion laws which put women and girls' lives at risk and violate their human rights.

Amnesty International also raises concerns about the lengthy refugee and asylum-seeker process and the inadequate investigation into the abuses committed in the "Magdalene Laundries".

Amnesty International makes a number of recommendations to the government to address these human rights concerns.

FOLLOW UP TO THE PREVIOUS REVIEW

Ireland accepted the large majority of recommendations made to it during its first UPR in November 2011, several of which have been implemented.¹ Amnesty International welcomes the constitutional referendum in May 2015 and the subsequent adoption of legislation in October 2015 providing for marriage equality for same sex couples.² Amnesty International further welcomes the government's National Interim Report submitted to the UN Human Rights Council at its 25th session.³

However, Amnesty International is disappointed at the lack of progress in implementing several of the recommendations. For instance, Ireland committed to ensuring that its mental health law complies with the UN Convention on the Rights of Persons with Disabilities.⁴ Unfortunately, despite recommendations for reform by a government-appointed expert group charged with reviewing the Mental Health Act 2001⁵ no legislative amendments have been tabled or enacted.⁶

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Ireland*, A/HRC/19/9 and *Addendum to Report of the Working Group on the Universal Periodic Review – Ireland*, A/HRC/19/9/Add.1. Of 127 recommendations received, Ireland accepted or partially accepted 108.

² A/HRC/19/9, recommendation 107.44 (Spain) and A/HRC/19/9/Add.1, paragraph 107.44.

³ National Interim Report at its 25th session. *Universal Periodic Review – National Interim Report – Ireland*, March 2014, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>

⁴ A/HRC/19/9, recommendation 107.16 (Spain) and A/HRC/19/9/Add.1, paragraph 107.16.

⁵ The Act primarily governs the circumstances in which a person may be involuntarily admitted to, detained and treated in an inpatient mental health facility.

⁶ Report of the expert group on the review of the Mental Health Act 2001 and government press release available at <http://health.gov.ie/blog/publications/report-of-the-expert-group->

THE NATIONAL HUMAN RIGHTS FRAMEWORK

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Since its first review, Ireland has ratified the Third Optional Protocol to the Convention on the Rights of the Child.⁷ It has also signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,⁸ however, it has yet to ratify it.

It is regrettable that Ireland has not enacted legislation necessary to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, despite having signed the Convention in 2007.⁹ It has also not yet ratified the UN Convention on the Rights of Persons with Disabilities. Ratification of both Conventions was among Ireland's pledges when seeking election to the UN Human Rights Council in 2012.¹⁰

Given the prevalence of violence against women and girls in Ireland,¹¹ it is welcome that Ireland has implemented its 2011 commitment to sign the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.¹² However, Amnesty International understands that the government considers additional legislation necessary to ratify this Convention, and is concerned

review-of-the-mental-health-act-2001.

⁷ During its first review, Ireland accepted a recommendation to ratify the Optional Protocol to the Convention on the Rights of Child on the sale of children, child prostitution and child pornography. See A/HRC/19/9, recommendation 106.6 (Chile, Ecuador, Portugal, Slovenia, Turkey, France). Ireland has yet to ratify this Optional Protocol. However, in the meantime Ireland has ratified the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, allowing for individual complaints, in September 2014.

⁸ A/HRC/19/9, recommendation 107.4 (Ecuador). A/HRC/19/9/Add.1, paragraph 107.4

⁹ A/HRC/19/9, recommendations 106.4 (Iraq, Indonesia, Argentina, Ecuador, Spain, France) and 106.5 (Costa Rica).

¹⁰ Annex to letter dated 13 April 2012 from the Permanent Representative of Ireland to the United Nations addressed to the President of the General Assembly, A/67/80.

¹¹ In 2014, a Europe-wide survey on violence against women found that that 26% of women in Ireland have experienced physical and/or sexual violence by a partner or non-partner since the age of 15; 31% have experienced some form of psychological violence by a partner, and 15% have experienced physical or sexual violence by a partner; 5% had experienced sexual violence by a non-partner since the age of 15, and 6% had experienced sexual violence by an intimate partner since the age of 15. (European Union Agency for Fundamental Rights, Survey data explorer: Violence against women survey, Ireland, available at <http://fra.europa.eu/DVS/DVT/vaw.php>; Violence against women: an EU-wide survey, Main results report, March 2014, available at <http://fra.europa.eu/en/publication/2014/vawsurvey-main-results>.) These statistics are considered underestimates, as only a minority of those who experience gender-based violence will report this fact to any authority. For instance, Rape Crisis Network Ireland's 2013 statistics reveal that 64% of those who experienced sexual violence did not report the incident(s) to a formal authority or the police. (RCNI *National Rape Crisis Statistics 2013*, (November 2014) p. 21, available at www.rcni.ie/wp-content/uploads/RCNI-National-Statistics-2013.pdf.) See also <http://www.safeireland.ie/2014/violence-against-women-every-day-every-where/>.

¹² A/HRC/19/9/Add.1 paragraph 48, referring to recommendation 107.37 (Austria).

at the length of time this is taking.

NATIONAL HUMAN RIGHTS FRAMEWORK

In July 2014, legislation was enacted to create the Irish Human Rights and Equality Commission - the new national human rights institution - through the merger of the Irish Human Rights Commission and Ireland's then equality body. The legislation contains two definitions of human rights, limiting the new Commission's "enforcement functions and powers" to the narrower definition which encompasses only such rights as have force of law in the State.¹³ This means, for instance, that the majority of economic, social and cultural rights are excluded.¹⁴ Amnesty International is concerned that the Commission's mandate has been limited in this way.

Ireland has not established a national preventive mechanism as required under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in line with accepted recommendations.¹⁵ Given the ongoing concerns about the conditions in Irish prisons, including that immigration-related detainees continue to be accommodated alongside prisoners remanded on or convicted of criminal charges, it is vital that such a mechanism be put in place.¹⁶ This would also assist in safeguarding the human rights of persons with intellectual disabilities in residential centres, many of whom are *de facto* detained and at substantial risk of neglect and abuse despite the commencement in 2014 of independent registration and inspections of such centres.¹⁷

¹³ Section 29 of the Irish Human Rights and Equality Commission Act 2014.

¹⁴ This has been raised as a concern by both the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights in their respective 2014 and 2015 reviews of Ireland. UN Human Rights Committee, *Concluding Observations on the fourth periodic report of Ireland*, CCPR/C/IRL/CO/4, 19 August 2014; UN Committee on Economic, Social and Cultural Rights, *Concluding Observations on the fourth periodic report of Ireland*, E/C.12/IRL/CO/3, 8 July 2015.

¹⁵ A/HRC/19/9, recommendations 106.2. (Estonia, Brazil, Chile, France, Greece, Slovenia, United Kingdom, Switzerland) and 106.3. (Peru).

¹⁶ UN Human Rights Committee, *Concluding Observations on the fourth periodic report of Ireland*, UN Doc CCPR/C/IRL/CO/4, 19 August 2014, pp. 5-6.

¹⁷ The Health Information and Quality Authority (HIQA) has a statutory remit to establish standards for these centres and to inspect centres against those standards. Its inspection reports are available at <http://www.hiqa.ie/social-care/find-a-centre/disability-services>. In a confidential HIQA report to the government accessed by the *Irish Times* newspaper under freedom of information legislation, HIQA is reported to have stated its concern at a "strong culture of neglectful care" and "negative, institutionalized culture" within some centres, and that some behaviour witnessed by its inspectors could be deemed "inhumane or degrading treatment". ("HSE accused of ignoring failings in disability homes: State watchdog Hiqa inspectors witness 'inhumane or degrading treatment'", 18 September 2015 available at <http://www.irishtimes.com/news/social-affairs/hse-accused-of-ignoring-failings-in-disability-homes-1.2355952>.) See also *Irish Times* newspaper, "Inspectors find failings in every HSE disability care home: One-third of Hiqa visits to HSE centres record failure to meet any of its standards", 14 August 2015 at <http://www.irishtimes.com/news/social-affairs/inspectors-find-failings-in-every-hse-disability-care-home-1.2315327>. See also Amnesty International Ireland press release, *Amnesty International calls for decisive and meaningful action on foot of Áras Attracta revelations*, 17 December 2014, at <https://www.amnesty.ie/news/amnesty-international-calls-decisive-and-meaningful-action-foot-%C3%A1ras-attracta-revelations>

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

In 2011, Ireland accepted a recommendation to protect economic, social and cultural rights, but did not fully accept the recommendation to incorporate into law the rights to health and housing.¹⁸ The 1937 Constitution of Ireland, *Bunreacht na hÉireann*, contains very limited provision for economic, social and cultural rights.¹⁹ Amnesty International welcomes the recommendation by the Constitutional Convention in February 2014 that the constitutional protection of economic, social and cultural rights be strengthened and that these rights be made enforceable before the courts.²⁰ In its March 2014 report to the government, it recommended that a provision be inserted into the Constitution that the state “shall progressively realize economic, social and cultural rights, subject to maximum available resources and that this duty is cognisable by the Courts”.²¹ Disappointingly, the government has not yet responded to this recommendation, despite undertaking to do so within a four month period.²²

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

ABORTION

Ireland has one of the world’s most restrictive abortion laws. Women and girls cannot legally have an abortion in Ireland unless there is a “real and substantial” risk to their life.²³

¹⁸ A/HRC/19/9, recommendation 107.4 (Ecuador) and A/HRC/19/9/Add.1 paragraphs 6 and 8.

¹⁹ For information on the constitutional provision for economic, social and cultural rights, see Amnesty International Ireland 2014 publication, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*, at https://www.amnesty.ie/sites/default/files/news/2012/04/AI_ESC_Rights_Report.pdf.

²⁰ <https://www.constitution.ie/AttachmentDownload.ashx?mid=adc4c56a-a09c-e311-a7ce-005056a32ee4>. The Constitutional Convention is a panel consisting of 33 members of parliament, 66 citizens and an independent Chair established by the Government in 2012 to independently review certain aspects of the Constitution. Having considered the items set by the Government for it to review, the Convention had one final agenda item it itself could choose to consider at its final session in February 2014; it chose to consider constitutional economic, social and cultural rights.

²¹ *Eighth Report of the Convention on the Constitution: Economic, Social and Cultural (ESC) Rights*, <https://www.constitution.ie/AttachmentDownload.ashx?mid=5333bbe7-a9b8-e311-a7ce-005056a32ee4>

²² In the terms of reference it set for the Constitutional Convention and as adopted by the Oireachtas (parliament), the government said it would “provide in the Oireachtas a response to each recommendation of the Convention within four months and, if accepting the recommendation, will indicate the timeframe it envisages for the holding of any related referendum”. https://www.constitution.ie/Documents/Terms_of_Reference.pdf

²³ In June 2015, Amnesty International published research for which it conducted many interviews with women, health professionals and other stakeholders. It shows the severe human rights impact of Ireland’s restrictive laws on access to, and information about, abortion services on women and girls in Ireland, and its effect on healthcare providers. Amnesty International, *She is not a criminal: The impact of Ireland’s abortion law* (Index: EUR 29/1597/2015).

Having rejected the recommendation made to it during its 2011 review that it enact legislation to respond to the 2010 European Court of Human Rights decision in *A, B and C v. Ireland*,²⁴ Ireland passed the Protection of Life during Pregnancy Act in 2013. The stated aim was to ensure access by pregnant women and girls to abortion as is their constitutional right when there is a “real and substantial risk” to their life, including the risk of suicide.²⁵ However, both the Act and its accompanying guidelines, published in September 2014, retain the same narrow wording of the life exception – “real and substantial risk” - and therefore do little to address the problems faced by medical professionals to adequately protect the rights of pregnant women and girls.²⁶ Permitting abortion only in life-threatening situations, and criminalizing abortion in health-threatening contexts, is dangerous in that it puts women and girls’ lives and health at risk, and is inconsistent with human rights obligations. In the context of abortion, international human rights standards are clear that abortion should be available when the pregnancy poses a risk to the physical or mental health of the pregnant woman or girl.²⁷

Furthermore, in direct contravention of human rights standards and jurisprudence, the Protection of Life during Pregnancy Act does not extend the grounds for access to abortion beyond where a woman or girl’s life is at risk. UN treaty bodies have consistently condemned countries that have a total ban on abortion or very restrictive laws, finding that countries that criminalize abortion and do not allow abortion in law and practice on grounds where the pregnant woman or girl’s health is at risk, where pregnancy is a result of rape, sexual assault or incest, or in cases of severe and fatal foetal impairment, violate numerous human rights, including the rights to life, health, privacy, freedom from discrimination and freedom from torture and other ill-treatment.²⁸ Recommendations to extend access to abortion along

²⁴ A/HRC/19/9, recommendation 108.5 (United Kingdom). Ireland stated that it rejected this recommendation on the basis that it had not yet been determined that the *A, B and C* judgement required legislation.

²⁵ Abortion where there is a “real and substantial risk to the life as opposed to the health” of a pregnant woman or girl, including through risk of suicide, was found to be a constitutional right in the 1992 Supreme Court decision *Attorney General v X and Others* [1992] 1 I.R. 1 (S.C.) (Ir.) [1992 No. 8469].

²⁶ Amnesty International, *Ireland: Submission to the UN Committee on Economic, Social and Cultural Rights: Pre-sessional Working Group, 1-5 December 2014* (Index: EUR 29/003/2014).

²⁷The Human Rights Committee consistently references health protection in consideration of women’s right to life as applied to safe abortion. See e.g. Human Rights Committee, *Concluding Observations: El Salvador*, CCPR/CO/78/SLV (2003), para. 14 and Human Rights Committee, *Concluding Observations: Mali*, CCPR/CO/77/MLI (2003), para. 14. In its Concluding Observations on Poland (CCPR/CO/82/POL (2004) para. 8), the Human Rights Committee reiterated concern about restrictive abortion laws, “which may incite women to seek unsafe, illegal abortions, with attendant risks to their life and health” under Article 6 of the ICCPR (the right to life). In its Concluding Observations on Mauritius (CCPR/CO/83/MUS (2005) para. 9), the Human Rights Committee noted that the penal code in Mauritius “penalizes abortion even when the mother’s life is in danger, and thus may encourage women to resort to unreliable and illegal abortion, with inherent risks for their life and health (Covenant, art. 6).”

²⁸ See for example, Committee on the Rights of the Child, *Concluding Observations: Argentina*, CRC/C/ARG/CO/3-4 (2010), para. 59; Committee on Economic, Social and Cultural Rights, *Concluding Observations: Peru*, E/C.12/PER/CO/2-4 (2012), para. 21; Committee on Economic, Social and Cultural Rights, *Concluding Observations: Kenya*, E/C.12/KEN/CO/1 (2008), para. 33; Human Rights Committee, *Concluding Observations: Guatemala*, R/C/GTM/CO/3 (2012), para. 20; Committee on Elimination of Discrimination

these lines were rejected by Ireland in its 2011 review.²⁹

The Act also recriminalizes abortion in all circumstances beyond a “real and substantial risk” to the life of the pregnant woman or girl, with a potential penalty of 14 years’ imprisonment for women and health professionals. Criminalizing a procedure that is only required by women and girls is discriminatory and violates women and girls’ human rights.³⁰

In addition, information about abortion services is extremely restricted under the 1995 Regulation of Information Act. This criminalizes the provision of information by health care providers and pregnancy counsellors that “advocates or promotes” the option of abortion, meaning, for instance, that health professionals are prohibited from making referrals for abortions services in other countries. The withholding and denial of abortion-related information to women violates their fundamental human rights, including the rights to information and freedom of expression.

The government has cited Article 40.3.3 of the Constitution (the Eighth Amendment, inserted in 1983 by popular referendum), which enshrines the “right to life of the unborn” as a primary reason for its restrictive legislation.³¹ However, the protection that Ireland affords the foetus under its Constitution cannot justify its non-compliance with the right to the enjoyment of the highest attainable standard of physical and mental health and the equal right of women and men to the enjoyment of all human rights set forth in UN treaties. Moreover, even though Ireland’s legal framework on abortion has been repeatedly criticized by human rights treaty bodies, the government has refused to schedule a referendum to propose a repeal of Article 40.3.3, despite the majority of people in Ireland being in favour of access to abortion in at least the minimum circumstances required by international human rights law, and for abortion to be decriminalized.³²

Despite the informational barriers, and other considerable financial and logistical

against Women, *LC v. Peru* (2005), para. 9(b)(iii); Human Rights Committee, *Concluding Observations: Guatemala*, CCPR/C/GTM/CO/3 (2012), para. 20; Human Rights Committee, *K.L. v Peru: final decision*, CCPR/C/85/D/1153/2003, 22 November 2005.

²⁹ A/HRC/19/9, recommendations 108.4 (Norway), 108.6 (Denmark), 108.7 (Slovenia), 108.8 (Spain) and 108.9 (Netherlands).

³⁰ See Amnesty International, *Ireland: Submission to the UN Committee on Economic, Social and Cultural Rights: Pre-sessional Working Group, 1-5 December* (Index; EUR 29/003/2014).

³¹ For instance in its response to questions from members of the UN Committee on Economic, Social and Cultural Rights during its periodic review in June 2015, the Irish delegation acknowledged that the law on legal abortion in Ireland was “very limited” and stated: “With respect to abortion in other circumstances [aside from where the life of the pregnant woman or girl is at real and substantial risk], for example to protect the woman’s right to health or in cases of rape and incest or fatal foetal abnormality, a further constitutional referendum would be needed in order to broaden the scope of the law.” Committee on Economic, Social and Cultural Rights, Fifty-fifth session, *Summary record of the 32nd meeting held at the Palais Wilson, Geneva*, 8 June 2015, E/C.12/2015/SR.32, para 51.

³² See Amnesty International press release “Two-thirds majority in Ireland want abortion decriminalized”, 8 July 2015, and polling data at <https://www.amnesty.org/en/latest/news/2015/07/two-thirds-majority-in-ireland-want-abortion-decriminalized>.

challenges to travelling abroad for abortion, every year approximately 4,000 women and girls from Ireland travel to the UK for this health care service. Countless others travel to other countries. This can be an extremely traumatic experience and violates their rights to health, equality, non-discrimination, privacy and, in some contexts, their right to be free from torture and other ill-treatment. Many women and girls, especially those without the financial means to travel or those prohibited from travelling due to their immigration or dependent status, or simply too ill to travel, may be forced to carry their pregnancies to term, or to resort to clandestine measures to terminate their pregnancies without the necessary medical supervision.

REFUGEES AND ASYLUM-SEEKERS

There are continuing delays in the determination of individuals' asylum or other protection needs, with many people remaining for years in "direct provision" accommodation which is unsuitable for long-stay residence, especially for families, children and victims of torture.³³ Under the current asylum determination system, decision-makers at first exclusively assess whether a claimant is a refugee at risk of individual persecution, while the wider risk of *refoulement* was only considered through a separate procedure of subsidiary protection. The government is in the process of enacting legislation to provide for a single procedure to deal with both types of claims concurrently.³⁴ A working group, established by the government to review what improvement could be made, issued a report in June 2015 containing a large number of recommendations for reform.³⁵ However, rather than proceed to implement the recommendations directly, the government established a task force in July 2015 to give further consideration to whether and how to implement them, leading to concerns about delay.³⁶

ACCOUNTABILITY FOR PAST INSTITUTIONAL ABUSES

Amnesty International considers that many women and girls who were detained or resided in religious-run "Magdalene Laundries", which operated with state funding and oversight between the 1930s and 1996, were subjected to a range of human rights abuses, including inhuman and degrading treatment, arbitrary deprivation of liberty and forced labour.³⁷

As noted in Ireland's National Interim Report, the government-established "Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries" issued its final report in February 2013.³⁸ It revealed important information about, for instance, referrals of women and girls from the criminal justice system and health and social services sector into the institutions,

³³ See Amnesty International, *Ireland: Submission to the CESCR* (Index: EUR 29/1629/2015), pp.10-11; Amnesty International, *Ireland: Briefing to the UN Committee against Torture* (Index: EUR 29/001/2011), pp. 7, 8.

³⁴ In March 2015, the General Scheme of the International Protection Bill was published with the objective of introducing a single protection procedure but a formal Bill has not yet emerged.

³⁵ The government press release and report are available at <http://www.justice.ie/en/JELR/Pages/PR15000389>

³⁶ See <http://www.justice.ie/en/JELR/Pages/PR15000418>

³⁷ Amnesty International, *Ireland: Submission to the United Nations Human Rights Committee: 111th Session of the Human Rights Committee (7-25th July 2015)*, (Index: EUR 29/001/2014), pp 21-26.

³⁸ Universal Periodic Review – National Interim Report – Ireland, March 2014, p. 3, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>.

and about financial interactions between state bodies and the Laundries. It was accompanied by a welcome official apology by the *Taoiseach* (prime minister) to the former residents of these institutions.

However, the government views this report as the final and full discharge of its obligations to uncover the truth about the abuses these women and girls experienced.³⁹ The Inter-Departmental Committee was not mandated to conduct a comprehensive review of the abuses inflicted within these institutions, nor was it given a mandate to review any facts it did uncover within the framework of a human rights analysis with a view to ensuring truth, redress and reparation for the victims. Rather, the focus of its inquiries was simply to establish the facts of state involvement in the Laundries. The government has asserted that “[t]he facts uncovered by the Committee did not support the allegations that women were systematically detained unlawfully in these institutions or kept for long periods against their will”.⁴⁰ Amnesty International believes these assertions speak not to the absence of such evidence, but to the fact that the Committee’s report is not – and was not intended to be – a comprehensive investigation.

The Committee was chaired by a member of the upper house of the Irish legislature, who as such was independent of the executive arms of government, but its members were senior representatives from six government departments. Such an investigation does not meet the criteria for an independent inquiry. Therefore, Amnesty International considers the report and the *ex-gratia* compensation scheme announced afterwards as falling below adequate standards of truth, justice and reparations.

In June 2014, following international media coverage of longstanding allegations of past abuses against women and children in so-called “mother and baby homes”, the government committed to establishing an independent Commission of Investigation.⁴¹ “Mother and baby homes” were operated by religious orders with

³⁹ For instance, in its reply to the Human Rights Committee’s List of Issues in 2014, the Government referred to the Inter-Departmental Committee report as “a comprehensive and objective report of the factual position” regarding these institutions, and said: “While isolated incidents of criminal behaviour cannot be ruled out, in light of facts uncovered by the McAleese Committee and in the absence of any credible evidence of systematic torture or criminal abuse being committed in the Magdalen laundries, the Irish Government does not propose to set up a specific Magdalen inquiry or investigation.” Human Rights Committee, *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, 27 February 2014.

⁴⁰ *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, 27 February 2014.

⁴¹ See Amnesty International, *Ireland: ‘Tuam babies’ mass grave allegations must spark urgent investigation* (Press Release), www.amnesty.org/en/latest/news/2014/06/ireland-tuam-babies-mass-grave-allegations-must-spark-urgent-investigation/. In June 2014, there was extensive domestic and international media coverage of revelations about an unmarked grave of up to 800 babies and children found in Tuam, a town in the west of Ireland on the grounds of a former ‘mother and baby home’. This was operated by a religious order between the 1920s and 1960s for ‘unmarried mothers’. It has been reported that as many as 35,000 unmarried mothers spent time in these ‘homes’ - see The Irish Times newspaper, *Inquiry faces daunting task unravelling the truth behind mother and baby homes*, 11 June 2014, at <https://www.irishtimes.com/news/social-affairs/religion-and-beliefs/inquiry-faces-daunting-task-unravelling-the-truth-behind-mother-and-baby-homes-1.1827598>.

state funding for “unmarried mothers” to give birth, from the 1920s to the 1990s, at a time when bearing a child outside marriage carried significant social stigma. There were longstanding concerns about how children and women were reportedly treated in these institutions, including apparently high child mortality rates, alleged illegal adoption practices, vaccine trials conducted on children without consent, and denial of medical care to some women. The Commission of Investigation’s terms of reference were published in January 2015, and were broadly welcomed by Amnesty International.⁴² However, Amnesty International was and remains concerned that the government decided not to take this opportunity to ensure a fresh and full examination of the “Magdalene Laundries” by adding this to the Commission’s mandate.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Ireland to:

International human rights framework

- Promptly ratify the International Convention for the Protection of All Persons from Enforced Disappearance, signed on 29 March 2007, making the declarations set out in Articles 31 and 32, and to ensure that its provisions are reflected in national legislation;
- Promptly ratify the UN Convention on the Rights of Persons with Disabilities, signed on 29 March 2007;
- Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

National human rights framework

- Expand the definition of “human rights” in the legislation establishing the Irish Human Rights and Equality Commission so that the Commission can exercise its functions by reference to all of Ireland’s international and domestic human rights obligations;
- Promptly ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish a national preventive mechanism as required under the Optional Protocol;
- Ensure the full and effective implementation of the International Covenant on Economic, Social and Cultural Rights by accepting the recommendation by the government-established Constitutional Convention to strengthen the protection of economic, social and cultural rights in the Irish Constitution, *Bunreacht na hÉireann*, and make these rights enforceable before the courts;
- Also, should it be decided that the recommendation of the Constitutional Convention on the constitutional protection of economic, social and cultural

⁴² For Amnesty International’s comment on the terms of reference see Amnesty International, *Proposed ‘Mother and Baby Homes’ investigation welcome, but a missed opportunity to address Magdalenes*, 9 January 2015, <https://www.amnesty.ie/news/proposed-%E2%80%98mother-and-baby-homes%E2%80%99-investigation-welcome-missed-opportunity-address-magdalenes--0>

rights requires further examination, ensure that such a process is robust, transparent and subject to clear timelines;

- Ensure that victims of all human rights violations are provided with access to effective remedies by ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, opting in to its inquiry and inter-state procedures.

Abortion

- Repeal Article 40.3.3 (the Eighth Amendment) of *Bunreacht na hÉireann*, the Irish Constitution, to enable the provision of a human rights-compliant framework for abortion and information, in law and in practice;
- Decriminalize abortion in all circumstances;
- Repeal the Protection of Life During Pregnancy Act 2013 and replace it with a legislative framework that ensures access to abortion both in law and in practice - at a minimum in cases where the pregnancy poses a risk to the life or to the physical or mental health of the woman or girl, in cases of severe and fatal foetal impairment, and in cases where the pregnancy is the result of rape or incest;
- Repeal the 1995 Regulation of Information Act to permit women and girls to access information about abortion services.

Rights of refugees and asylum-seekers:

- Ensure that the implementation of the 2015 legislation providing for a single protection procedure results in the prompt, fair and effective determination of claims for international protection and prevents undue delays in the granting of refugee status and subsidiary protection;
- Ensure respect for the rights of residents in the “direct provision” system to adequate housing and an adequate standard of living.

Accountability for past institutional abuses

- Establish an independent and thorough investigation into the broad range of human rights abuses suffered by large numbers of women and girls in the “Magdalene Laundries”;
- Ensure that the Commission of Investigation into the treatment of women and children in “mother and baby homes” has proper regard to the human rights framework in its methodology, findings and recommendations.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE⁴³

Ireland: Submission to the United Nations Human Rights Committee: 111th Session of the Human Rights Committee, 7-25th July 2015, (Index: EUR 29/001/2014).

She is not a criminal: The impact of Ireland's abortion law (Index: EUR 29/1597/2015).

Ireland: Submission to the UN Committee on Economic, Social and Cultural Rights: Pre-sessional Working Group, 1-5 December 2014 (Index: EUR 29/003/2014).

Amnesty International Ireland 2014 publication, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*, at https://www.amnesty.ie/sites/default/files/news/2012/04/AI_ESC_Rights_Report.pdf.

⁴³ All of these documents are available on Amnesty International's website: <https://www.amnesty.org/en/countries/europe-and-central-asia/ireland/>