



IRELAND: FOLLOW-UP PROCEDURE TO THE FORTY-SIXTH SESSION OF THE UN COMMITTEE AGAINST TORTURE

Amnesty International welcomed the Concluding Observations made by the Committee against Torture (the Committee) to Ireland in June 2011 (Undoc. CAT/C/IRL/CO/1) and submits this follow-up report for the Committee's consideration to illustrate ongoing areas of concern related to the priorities for follow-up. This follow-up focuses on Paragraph 8, 21 and 25 of the Concluding Observations.

REDUCTION OF FINANCIAL RESOURCES FOR HUMAN RIGHTS INSTITUTIONS (PARAGRAPH 8)

In the period since the Committee made its observation that Ireland's National Human Rights Institution, the Irish Human Rights Commission (IHRC), does not have direct accountability to parliament and lacks financial autonomy, the situation has not materially changed.

As stated in the government's follow-up report to the Committee, a draft General Scheme of a Bill was published in June 2012 setting out proposals for effecting a merge of the IHRC and the Equality Authority to form a combined Human Rights and Equality Commission (HREC), based on recommendations made by a government-appointed Working Group. The government has stated that the Bill enabling this merge is to be published by end 2012.¹ While it is welcome that the Working Group consulted widely with civil society in developing its proposals, that there is express reference to the Paris Principles² in Head 8 of the Scheme of the Bill, and that the Minister for Justice and Equality has stated that the government's ambition is to ensure that the new HREC fully complies with the Paris Principles³, Amnesty International would like to take this opportunity to draw to the Committee's attention that the IHRC in its observations on the Scheme of the Bill has stated its concern at some of the proposals.⁴ In particular, the IHRC has concluded "that a number of elements

¹ *47 Measures to be implemented by end 2012: Bodies to be Rationalised, Amalgamated or Abolished in 2012*, <http://per.gov.ie/wp-content/uploads/Rationalisation-Details.pdf>

² United Nations Principles relating to the Status of National Institution, adopted by General Assembly resolution 48/134 of 20 December 1993.

³ For example, the report of the UN Human Rights Council Working Group on Ireland's 2011 Universal Periodic Review adopted at the 19th Session of the Council (UN Doc. A/HRC/19/9) summarised Ireland's presentation to the Working Group in this regard as follows:

"34. The Irish Human Rights Commission and the Equality Authority will be merged to form a new strengthened and enhanced Human Rights and Equality Commission.

35. The new body will fully comply with the Paris Principles and the State party is confident that the International Coordinating Committee will be able to grant "A" status to this new body."

⁴ *IHRC Observations on the Heads of Irish Human Rights and Equality Bill 2012*, June 2012, <http://www.ihrc.ie/download/pdf/20120613105813.pdf>

of the Bill, individually and cumulatively, may seriously impact on the independence of the new institution". It observed that while the new body will report on some matters to the Oireachtas (parliament), it would remain too closely linked administratively to the Department of Justice and Equality, including for its budget. It also stated that the "appointment process for members of the board of the new body as suggested in Head 13, is not sufficiently independent, transparent and consultative and that there is an undue level of government control in the process as set out in the legislation". It also pointed out the need for clear provision in the Bill that the HREC shall recruit and select its own staff in order to ensure independence.

The IHRC has also stated that "it is deeply concerned that in reality the ability to address breaches of human rights, and equality duties may be undermined by the restricted definition of human rights in Heads 30 to 36". Head 30, which sets out the proposed legal enforcement and compliance functions of the HREC, contains a much narrower definition of "human rights" than that applying to the rest of its functions in Head 3. Head 30 limits the definition of "human rights" to norms that have "force of law in the State", i.e. it limits that concept of human rights to those enshrined in Ireland's domestic law and Constitution. The IHRC stated that while "it is accepted that in providing legal assistance or taking proceedings ... only those rights that are properly justiciable may form the basis of an application to Court ..., it is unclear why it is only such justiciable rights that may be engaged in the context of giving guidance on best practice; conducting inquiries, and providing information on human rights and equality to members of the public". Amnesty International believes that this dispute must be settled and that the upcoming Bill's definition of human rights and equality must not unduly restrict the HREC's legal powers.

The IHRC has 'A' status (full compliance with the Paris Principles) accreditation since 2003, and was reaccredited with 'A' status in 2008. It is due for re-accreditation by the Sub-Committee on Accreditation in 2013. It is important that the upcoming Bill ensures that the new HREC will achieve full Paris Principles compliance.

MAGDALENE LAUNDRIES (PARAGRAPH 21)

Amnesty International shares the Committee's concern that Ireland should "institute prompt, independent, and thorough investigations into all allegations of torture, and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries".

In response to the Committee's recommendation, the government announced in June 2011 that an interdepartmental committee would be established to "clarify any State interaction with the Magdalene Laundries and to produce a narrative detailing such interaction".⁵ An important component of the Committee's recommendation is the independence of any state-appointed investigation. This is particularly so where an inquiry is established into allegations of serious human rights violations, and into the nature and extent of the state's responsibility for such violations. Amnesty International was and remains concerned that, notwithstanding that the interdepartmental committee is chaired by an independent person, such an internal, interdepartmental process by definition lacks independence. We are also concerned that no assurances were given by the government at the time of establishing this process that an independent investigation or investigations would follow. Therefore we do not consider this interdepartmental committee process to meet the state's obligations in this regard.

We are further concerned at the time the interdepartmental committee process has taken, especially in view of the reported age and circumstances of the alleged victims of the Magdalene Laundries. The government's response to the Committee said the final report of the interdepartmental committee would be published in mid-2012. The government has more recently said that the report will now be available by end-2012.⁶ The women who say they were ill-treated in these laundries have already waited a very long time for this issue to be given government attention, and any further delay in reaching a successful conclusion of this interdepartmental inquiry process will further jeopardise their right to justice and reparation.

⁵ Minister for Justice and Equality, "Statement on the Magdalene Laundries", 14 June 2011.

⁶ Minister for Justice and Equality, "Shatter Statement on Magdalene Laundries", 11 September 2012.

In addition, the government's response to the interdepartmental committee's findings must operate on the clear basis that the state is responsible for violations committed by non-state actors not only where the state has been directly complicit in any arbitrary detention and mistreatment of women and children in the Magdalene Laundries, but also where the non-state actor in question was exercising a public function, and/or where the state had failed to exercise due diligence in the prevention or investigation of likely or actual human rights violations of which the state had knowledge or ought to have had knowledge, and/or in any other circumstances as prescribed by domestic law or international human rights treaties to which Ireland is a party. It is vital that this next step towards finally achieving justice for these women, and securing their right to full reparation, not be flawed from the outset by a minimalist view of the state's role in this regard.

We also note that Ireland in its follow-up response to the Committee states:

“Individuals and groups alleging criminal wrongdoing in Magdalene laundries have been consistently advised that if they have any evidence of criminal offences having been committed, they should report the matter to the police for criminal investigation and where appropriate prosecution. In addition any person may initiate a civil action before the courts seeking recompense for any wrongdoing they have suffered.”

Amnesty International does not consider the general availability to any individual of the criminal and civil law to be an effective substitute for the state's obligations in this regard, and assumes it not the intention of the government to suggest such.

Amnesty International notes that the report of the Special Rapporteur on violence against women, its causes and consequences, on the right to reparation (UN Doc A/HRC/14/22, 23 April 2010) identifies situations where systemic violations of women's rights have taken place, through crimes of violence and discriminatory practice (paragraphs 67-71), which should be subject to reparation. Examples given by the Special Rapporteur include forced sterilization programmes, sexual slavery and assimilation of Indigenous and Aboriginal children. Amnesty International considers that the Magdalene Laundries should be considered in this light given the strong evidence of arbitrary detention, torture and other ill-treatment and forced labour. In her report, the Special Rapporteur drew attention to the rights of survivors of such systemic violations to reparation – including restitution (including of confiscated wages, lost social benefits and other property) rehabilitation, compensation, satisfaction (including apology and dignified memorials) and guarantees of non-repetition. Amnesty International considers that the right of survivors of the Magdalene Laundries to reparation should be judged against these standards.

PROHIBITION OF FEMALE GENITAL MUTILATION (FGM) (RECOMMENDATION 25)

Since the Committee made its recommendation that Ireland expedite the enactment of the Criminal Justice (Female Genital Mutilation) Bill, and explicitly define under the law that FGM amounts to torture, Ireland has enacted the Criminal Justice (Female Genital Mutilation) Act. Its provisions are explained in the Irish government's follow-up response to the Committee. Amnesty International commends Ireland on its enactment of this Act. In particular Amnesty International welcomes the expansive definition of the acts that will amount to the criminal offence of FGM, the creation of the additional offence of removing a girl from the State for the purposes of undergoing FGM, precluding the defence of consent or culture, explicitly reference to FGM as a human rights violation and a form of gender-based violence, and provision for protection for victims during legal proceedings.

While Amnesty International welcomes the Act's allowing for the prosecution of anyone who performs FGM in another jurisdiction on a woman/girl usually resident in Ireland, it is of concern that the act must also be illegal in that jurisdiction.

Amnesty International is also concerned at the wording of section 2(2)(d) of the Act's exemption of any act performed on a woman of 18 years or more, where it does not cause "permanent bodily harm".⁷ While conscious that the Minister for Health has explained that the purpose of this exemption is to protect adults' "freedom of choice over cosmetic and other procedures that do not violate their human rights"⁸, it is important that this not be exploited as a loophole by perpetrators of FGM, and that the state's pursuit of prosecutions and convictions more generally under the Act is not dependent on the likelihood of proving beyond a reasonable doubt that "permanent bodily harm" will result from any of the acts the Act considers to be FGM.

Amnesty International encourages Ireland to pursue the Committee's recommendation that it implement targeted programmes with a view to sensitising all segments of the population about the extremely harmful effects of FGM. The organization considers that the best way of achieving this is for Ireland to adopt a domestic FGM action plan to be implemented in tandem with the new Criminal Justice (Female Genital Mutilation) Act. Legislation is important in setting standards to protect women and girls from this harmful practice, but it will not, by itself, end the practice of FGM. The development of such an action plan should involve all relevant governmental and non-governmental actors in the field of health care, education, social services, asylum, police and the judiciary. The action plan should refer to FGM in the context of asylum/international protection, in line with the UN High Commissioner for Refugees guidance note on refugee claims related to female genital mutilation. It should also refer to the obligation of states to exercise due diligence in:

- Implementing adequate prevention measures (including human rights education and awareness raising campaigns involving practising communities),
- implementing protection mechanisms (referral protocol, telephone helplines), including data collection on the practice in order to be able to adapt policies,
- ensuring access to medical and psychological support services for women and girls who have undergone FGM.

⁷ Section 2(2) of the Act states that a person is not guilty of an offence if:

4(a) the act concerned is a surgical operation performed by a registered medical practitioner on the girl or woman concerned, which is necessary for the protection of her physical or mental health,

(b) the act concerned is a surgical operation performed by a registered medical practitioner or a midwife, or a person undergoing training to be a midwife, on the girl or woman concerned when she is in any stage of labour, or has just given birth, for purposes connected with the labour or birth,

(c) the person is the girl or woman on whom the act of female genital mutilation is done, or

(d) the act concerned is done to a woman who is not less than 18 years of age and there is no resultant permanent bodily harm."

⁸ Oireachtas debate, Criminal Justice (Female Genital Mutilation) Bill 2011: Report and Final Stages, 14 March 2012, <http://debates.oireachtas.ie/dail/2012/03/14/00032.asp>