



IRELAND: SERIOUS GAPS IN HUMAN RIGHTS PROTECTION

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC
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CONTENTS

INTRODUCTION	4
FOLLOW UP TO THE PREVIOUS REVIEW	4
SEXUAL AND REPRODUCTIVE RIGHTS	5
REFUGEES AND ASYLUM SEEKERS	6
THE NATIONAL HUMAN RIGHTS FRAMEWORK	6
PROTECTION AND PROMOTION OF CIVIL SOCIETY	7
HUMAN RIGHTS SITUATION ON THE GROUND	7
SEXUAL AND REPRODUCTIVE RIGHTS	7
REFUGEES AND ASYLUM SEEKERS	9
RIGHT TO ADEQUATE HOUSING	9
PROTECTION AND PROMOTION OF CIVIL SOCIETY	10
ACCOUNTABILITY FOR PAST ABUSES	10
RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW	13
ANNEX	15

INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Ireland in November 2021. In it, Amnesty International evaluates the implementation of recommendations made to Ireland in its previous UPR, including in relation to its ratification of human rights treaties and removing the near total prohibition and criminalisation of abortion.

It also assesses the national human rights framework with regard to legislative protection of the rights of persons with disabilities, and lack of follow-up on recommended constitutional protection of all economic, social and cultural rights.

With regard to the human rights situation on the ground, Amnesty International raises concern about gaps in law impacting access to abortion services, growing numbers of people in homelessness or inadequate housing, living conditions for asylum seekers, and the state's failure to secure full truth, justice and reparation for survivors of human rights abuses and violations in 'mother and baby homes'. This submission also highlights concerns concerning limits on civil society groups' ability to accept funding for domestic advocacy work.

FOLLOW UP TO THE PREVIOUS REVIEW

Ireland supported in full or in part 176 and partially accepted 45 recommendations out of 262 made during its second Universal Periodic Review in May 2016, several of which have been implemented.¹

Amnesty International particularly welcomes Ireland's passing a referendum and enacting legislation to remove the prohibition and criminalization of blasphemy from its Constitution and statutory law.²

¹ UN Human Rights Council, Report of the Human Rights Council on its thirty- third session, UN Doc, A/HRC/33/2, 22 April 2020.

² UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, Addendum, UN Doc. A/HRC/33/17/Add.1, 20 September 2016, Recommendations 136.53 (France) and 136.54 (Sweden) were noted by Ireland on the basis that the Constitution can only be amended by popular vote. In October 2018, the referendum on the Thirty-seventh Amendment of the Constitution was held and passed, removing the prohibition and required criminalization of 'blasphemous' expression from Article 40.6.1 of the Constitution. Amnesty International Ireland, *Amnesty Welcomes Yes Vote in Blasphemy Referendum*, 27 October 2018, <https://www.amnesty.ie/amnesty-welcomes-yes-vote-in-blasphemy-referendum/>. In December 2019, the Blasphemy (Abolition of Offences and Related Matters) Act 2019 was enacted, repealing the criminal offence of "blasphemy" (available at <http://www.irishstatutebook.ie/eli/2019/act/43/enacted/en/html>).

Also welcome is Ireland's ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.³

It is regrettable that Ireland has still not commenced the enactment of legislation enabling it to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, despite having signed the Convention in 2007 and supporting recommendations made in its 2011⁴ and 2016 UPR reviews.⁵ This was also among Ireland's pledges when seeking election to the UN Human Rights Council in 2012.

Ireland has also not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which it signed in 2012, despite supporting recommendations to this effect in its second review.⁶

Ireland has not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in line with supported recommendations.¹⁵ In October 2020, the newly elected government committed to ratifying OPCAT within 18 months⁷ but by March 2021 had not established a national preventive mechanism as required under the OPCAT.

SEXUAL AND REPRODUCTIVE RIGHTS

Despite at that time having one of the world's most restrictive abortion laws, in its second review Ireland noted 16 recommendations calling on it to expand access to abortion, decriminalize abortion, provide women and girls with full information on abortion services, and amend its Constitution to allow for such reforms.⁸ The reason given by Ireland for not supporting these recommendations was that its Constitution may only be amended by popular referendum.⁹ It did support a recommendation that it engage in consultations with stakeholders on possible constitutional and legal reform on abortion.¹⁰

Since then, a Citizens' Assembly was established by the government, and in its June 2017 report recommended that the constitutional prohibition of abortion be removed, and lawful access to abortion services be expanded.¹¹ In 2018, a constitutional referendum was held and passed, and new abortion legislation enacted. However, significant gaps remain in this

³ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland UN Doc. A/HRC/33/17, Recommendations 135.71 (Portugal); 135.72 (Andorra); 135.73 (Italy); 135.74 (Turkey); 135.75 (Bosnia and Herzegovina).

⁴ Report of the Working Group on the Universal Periodic Review: Ireland, UN Doc. A/HRC/19/9, Recommendations 106.4 (Iraq, Indonesia, Argentina, Ecuador, Spain, France) and 106.5 (Costa Rica),.

⁵ A/HRC/33/17, Recommendations 135.1 (Romania) "Ensure the ratification of the recently signed human rights conventions"; 135.2 (Sierra Leone); 135.35 (Morocco); 135.36 (Slovakia); 135.37 (France); 135.38 (Ghana); 135.39 (Togo).

⁶ A/HRC/33/17, Recommendations 135.7 (Portugal), 135.6 (Spain), 136.7 (Finland).

⁷ *Programme for Government: Our Shared Future*, 29 October 2020, p86, <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>

⁸ A/HRC/33/17, Recommendations 136.11 (Slovenia), 136.15 (Germany), 136.16 (Netherlands), 136.17 (Norway), 136.18 (Iceland), 136.19 (Denmark), 136.64 (Iceland), 136.65 (India), 136.66 (Lithuania), 136.67 (Republic of Korea), 136.68 (Czech Republic), 136.69 (The former Yugoslav Republic of Macedonia), 136.70 (Slovakia), 136.71 (Sweden), 136.72 (Slovenia), 136.73 (Uruguay).

⁹ A/HRC/33/17, Recommendation 136.11 (Slovenia), and A/HRC/33/17/Add.1

¹⁰ A/HRC/33/17, Recommendation 135.136 (Switzerland).

¹¹ *First Report and Recommendations of the Citizens' Assembly: The Eighth Amendment of the Constitution*, 29 June 2017, <https://2016-2018.citizensassembly.ie/en/The-Eighth-Amendment-of-the-Constitution/Final-Report-on-the-Eighth-Amendment-of-the-Constitution/Final-Report-incl-Appendix-A-D.pdf>

legislation impacting women and girl's access to abortion services, as outlined below.

REFUGEES AND ASYLUM SEEKERS

In its second review, Ireland gave full or partial support to recommendations to speed up the processing of refugee status applications, and to provide adequate conditions and services for people seeking asylum.¹² Despite welcome efforts to reduce the length of time spent in the legal protection determination process, sufficient resources are still not in place to make that process prompt and efficient. Despite a programme of improvements, the “direct provision” system of accommodating asylum/protection seekers which came into effect in 2000 remains unsuitable for long-stay residence, especially for families, children and victims of torture.¹³ The government has recently made some important and welcome commitments in this regard however, outlined below.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Ireland has ratified the UN Convention on the Rights of Persons with Disabilities.¹⁴ However, legislation enacted in December 2015 before Ireland's second review, in order to comply with the Convention's requirement that it enable persons with disabilities to exercise their legal capacity and autonomous decision-making, has still not come into full force.¹⁵ In addition, legislation proposed to provide safeguards against deprivation of liberty in institutional care has still not been advanced beyond a 2019 report of a public consultation.¹⁶

In 2014, the government-established Constitutional Convention recommended constitutional protection of all economic, social and cultural rights.¹⁷ Disappointingly, successive

¹² A/HRC/33/17, Recommendations 135.148 (Qatar), 135.149 (Plurinational State of Bolivia), 136.88 (Mexico).

¹³ Amnesty International, *Ireland: Submission to The United Nations Committee on the Elimination of All Forms of Racial Discrimination*, 6 November 2019, Index: EUR 29/1344/2019, <https://www.amnesty.org/en/documents/eur29/1344/2019/en/>

¹⁴ A/HRC/33/17, Recommendations 135.1 (Romania), 135.2 (Sierra Leone), 135.4 (Islamic Republic of Iran), 135.6 (Spain), 135.5 (Georgia), 135.40 (Pakistan), 135.41 (Israel), 135.42 (Montenegro), 135.43 (New Zealand), 135.44 (Ghana), 135.45 (Poland), 135.46 (Sudan), 135.47 (Ukraine), 135.48 (Uruguay), 135.49 (Bulgaria), 135.50 (France), 135.51 (Guatemala), 135.52 (Italy), 135.53 (Brazil), 135.54 (Slovakia), 135.55 (Republic of Korea), 135.56 (Australia), 135.57 (China), 135.58 (Germany), 135.59 (Hungary), 135.60 (Philippines), 135.61 (Canada), 135.62 (Iraq), 135.63 (Malaysia), 135.64 (Bolivarian Republic of Venezuela), 135.65 (Indonesia), 135.66 (Qatar), 135.67 (State of Palestine), 135.68 (Thailand), 135.69 (Togo), 135.70 (Croatia).

¹⁵ Assisted Decision-Making (Capacity) Act 2015,

[http://www.justice.ie/en/JELR/Pages/Assisted_Decision-Making_\(Capacity\)_Act_2015](http://www.justice.ie/en/JELR/Pages/Assisted_Decision-Making_(Capacity)_Act_2015)

¹⁶ Department of Health, *The Deprivation of Liberty Safeguard Proposals: Report on the Public Consultation*, 12 December 2019, <https://www.gov.ie/en/publication/3f88c4-the-deprivation-of-liberty-safeguard-proposals-report-on-the-public-/>

¹⁷ *Eighth Report of the Convention on the Constitution: Economic, Social and Cultural (ESC) Rights*, March 2014, <http://www.constitutionalconvention.ie/AttachmentDownload.ashx?mid=5333bbe7-a9b8-e311-a7ce-005056a32ee4>. The Constitutional Convention consisted 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

governments have not formally responded to this recommendation.¹⁸

PROTECTION AND PROMOTION OF CIVIL SOCIETY

Ireland accepted a recommendation in its second review relating to the protection and promotion of civil society.¹⁹ The Electoral Act 1997 as amended in 2001 imposes a blanket ban on overseas donations to any civil society group deemed a ‘third party’ if their work is for “political purposes”, and places severe limits on domestic donations.²⁰ There are also burdensome reporting obligations for groups who register as a ‘third party’. Failure to comply is a criminal offence, and groups have been threatened with prosecution.²¹

One of the main issues with the amendment is that “political purposes” is so broadly defined that it can include the general advocacy work of a wide range of civil society organizations, including those dedicated to the defence and promotion of human rights, contravening Ireland’s obligations under international human rights law, including the rights to freedom of association and expression.

HUMAN RIGHTS SITUATION ON THE GROUND

SEXUAL AND REPRODUCTIVE RIGHTS

The Health (Regulation of Termination of Pregnancy) Act 2018 came into effect in 2019, providing for significantly expanded access to abortion services for pregnant people.²² However, gaps and barriers remain in this law. These include the potentially high and ambiguous threshold created by the language on risk of ‘serious harm’ to women’s health,²³

February 2014; it chose to consider constitutional economic, social and cultural rights. Its report of its deliberations and recommendations was published in March 2014.

¹⁸ In the terms of reference it set for the Constitutional Convention and as adopted by the Oireachtas (parliament) in 2012, the government was required to “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”, Resolution of Houses of the Oireachtas, http://www.constitutionalconvention.ie/Documents/Terms_of_Reference.pdf

¹⁹ A/HRC/33/17, Recommendation 135.126 (Armenia).

²⁰ Amnesty International, *Laws Designed to Silence: The Global Crackdown on Civil Society Organizations*, 21 February 2019, Index number: ACT 30/9647/2019, p23, <https://www.amnesty.org/en/documents/act30/9647/2019/en/>

²¹ Coalition for Civil Society Freedom, *Keeping the People’s Voice in Power: Coalition Statement on the Electoral Act, 2018*, pp6-7, <https://www.iccl.ie/wp-content/uploads/2018/12/Coalition-Statement-Electoral-Act.Pdf>

²² <http://www.irishstatutebook.ie/eli/2018/act/31/enacted/en/html>

²³ The risk to health ground to access abortion services provided for in the 2018 law includes a qualifier that the risk must be of “serious harm to the health” of the pregnant woman before a termination of pregnancy can be provided. This is a worryingly high threshold of harm required and should be removed.

lack of provision for access in cases of pregnancies with severe rather than fatal foetal impairments,²⁴ and a mandatory three-day waiting period for access on request.²⁵

As part of the public health emergency measures put in place to respond to the COVID-19 pandemic, the model of care for abortion before 12 weeks of pregnancy was amended to allow these two medical appointments three days apart to be provided remotely rather than in person.²⁶ Anyone who needs to access early abortion care is required to attend a healthcare facility only where medically necessary. This revised model is to remain only for the duration of the pandemic, and there are concerns about access.

Also of concern is the continued criminalization of health professionals.²⁷ Any lack of clarity in the law around whether an abortion may be provided, including in the above-named lawful circumstances, will inevitably result in a chilling effect, particularly given that the 2018 law continues to make it a specific criminal offence for medical professionals to perform abortion procedures outside legal grounds.

UK Department of Health and Social Care statistics published in June 2020 showed 375 women travelled from Ireland in 2019 to access abortion services in England and Wales.²⁸ However, travel is not possible for many due to its high cost, and legal or social limits on

²⁴ The 2018 law permits access to abortion without gestational limits where the pregnancy involves “a condition affecting the foetus that is likely to lead to the death of the foetus either before or within 28 days after birth”. Firstly, including this level of specificity in legislation is inappropriate, and can lead to delays in accessing vital services. Secondly, UN human rights treaty bodies have not limited their calls for access to abortion to cases in which foetal impairments are such that stillbirth or death immediately after birth is a virtual certainty. For instance, the UN Committee on the Elimination of Discrimination against Women (CEDAW) has called on the Irish government to legalize access to abortion in cases of “severe impairment of the foetus”, CEDAW: Concluding observations on the combined sixth and seventh periodic reports of Ireland, 2017, UN Doc. CEDAW/C/IRL/CO/6-7, paragraph 43.

²⁵ The 2018 law permits access to abortion on request up to 12 weeks of pregnancy. While the model of care has been temporarily amended for the duration of the COVID-19 pandemic (see next paragraph), the mandated practice is that this is provided in primary care up to nine weeks of pregnancy, and in hospitals between 10 and 12 weeks. However, the new law requires a waiting period of “not less than 3 days” between when a medical practitioner certifies the date of a woman or girl’s pregnancy and when the pregnancy can be terminated. Mandatory waiting periods cause delays in access to services, which may result in denial of services due to gestational limits on legal grounds. This is especially problematic for people seeking access near the 12-week limit, as they must attend a hospital rather than their local General Practice. This can pose particular challenges for some, as just ten of the 19 hospitals with maternity units around the country are currently providing full abortion services. Therefore, geographical distance from services, or difficulties in travelling, can have a significant impact on certain groups.

²⁶ Irish Family Planning Association, *IFPA Announces Additional Supports for Women During Covid19*, 25 May 2020, <https://www.ifpa.ie/two-years-after-repeal-ifpa-reflects-on-new-model-of-ema-care/>

²⁷ International human rights standards require abortion to be fully decriminalized, in order to eliminate the chilling factor that hinders health providers from providing abortion services. It is vital that no health provider should be dissuaded from acting in the best interests of their patient because of the fear of prosecution. However, the new law makes it a criminal offence for anyone other than the pregnant person to “intentionally end the life of a foetus otherwise than in accordance with the provisions of this Act”, carrying a possible prison sentence of 14 years. Unlike in the previous law, the Protection of Life During Pregnancy Act 2013, there is no constitutional requirement for such a provision. Regard therefore should be had to international public health evidence that criminalizing medical professionals creates a chilling effect that can lead to delay or even denial in providing lawful abortion services to pregnant people.

²⁸ The first annual report on the operation of the operation of the 2018 legislation which came into force in January 2019, showed 6,666 women or girls accessed abortion care in Ireland in 2019. (*Health (Regulation of Termination of Pregnancy) Act 2018 - Annual Report on Notifications 2019*, 30 June 2020, <https://www.gov.ie/en/publication/b410b-health-regulation-of-termination-of-pregnancy-act-2018-annual-report-on-notifications-2019/>) This was an increase from 32 in 2018 under the previous law which permitted abortion care only where there was a “real and substantial” risk to the pregnant person’s life. See also *The Journal*, ‘Two-tier system’ means couples still forced to travel for termination after severe foetal diagnoses, 21 March 2021, <https://www.thejournal.ie/fetal-diagnosis-5386250-Mar2021/>

travelling. This is particularly true for girls and women from socio-economically marginalized groups such as the Traveller community, people with disabilities or those without legal permission to travel such as undocumented migrants and asylum seekers. Those unable to travel may have to resort to clandestine abortions without medical support or continue an unwanted and sometimes physically and psychologically dangerous pregnancy, and therefore experience additional human rights violations related to their lack of access to safe and legal abortion services.

The 2018 Act provides for a review of its operation after three years of it being in force. It will be important that the review is comprehensive and directed at providing a fully human rights-compliant framework for abortion care.

REFUGEES AND ASYLUM SEEKERS

Despite some improvements in recent years, Amnesty International remains concerned about the living conditions and restricted, institutionalized regimes - especially for families, children, victims of torture and other vulnerable groups – in “direct provision” centres, including continuing reports of overcrowding, mental health impacts, isolation, and lack of dignity and privacy.²⁹ The congregated living in many centres does not allow for effective physical distancing and other public health measures to prevent COVID-19 transmission, and residents have been disproportionately impacted by infection outbreaks.³⁰

The government in 2020 committed to ending this system,³¹ and in February 2021 published a White Paper setting out its proposed approach to gradually replacing it with a more human rights compliant housing model by 2024.³² A detailed implementation plan is required. Also, measures are needed to ensure the rights, health and lives of those still living in “direct provision” centres are safeguarded during this transition period.

RIGHT TO ADEQUATE HOUSING

In its second review, Ireland supported recommendations that it improve the availability of social and emergency housing, and address homelessness.³³ Since then, the numbers of people experiencing homelessness or inadequate housing have grown. Recently, adequacy of housing has become of critical concern in the COVID-19 pandemic context. A parliamentary committee charged with reviewing the government’s response of the pandemic found a disproportionate impact on people living in inadequate housing including the Traveller and

²⁹ Foreword from Minister for Children, Equality, Disability, Integration and Youth Roderic O’Gorman, T.D.: “Direct Provision was established in 1999 as a temporary response to accommodating people seeking International Protection. In the decades since, it has proven expensive, inefficient, and ill-equipped to respond to shifting trends in international migration. More worryingly, it failed to respect the dignity and human rights of individuals, something which has rightly been subject to criticism from human rights organisations, activists, and those who are in it and have passed through it.” *A White Paper to End Direct Provision and to Establish a New International Protection Support Service*, 26 February 2021, p11, <https://www.gov.ie/en/publication/7aad0-minister-ogorman-publishes-the-white-paper-on-ending-direct-provision/>

³⁰ *Final report of the Oireachtas Special Committee on Covid-19 Response*, 8 October 2020, pp 35-37, https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/special_committee_on_covid_19_response/reports/2020/2020-10-09_final-report-of-the-special-committee-on-covid-19-response-sccr004_en.pdf

³¹ *Programme for Government: Our Shared Future*, 29 October 2020, p76, <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>

³² Amnesty International Ireland, *White Paper a real chance at ending direct provision after 21 years*, 26 February 2021, <https://www.amnesty.ie/white-paper-ending-direct-provision/>

³³ A/HRC/33/17, Recommendations 135.130 (Turkey); 135.131 (Portugal); 135.132 (Singapore); 135.133 (Holy See); 135.134 (Montenegro); 135.135 (Russian Federation)

Roma communities, migrants, and older people in congregated ‘nursing homes’ due to lack of support to enable them to live at home in their communities.³⁴

It is increasingly urgent that legislative, policy, financial and other housing measures be directed at ensuring affordability of housing, including adequate levels of state-provided housing, and regulations on rent levels and other housing-related costs in the private sector. Robust standards are also needed to ensure housing is adequate including in a pandemic situation, meeting the requirements of habitability, location and availability of services, facilities and infrastructure in line with international human rights standards.

There are increasing calls by housing groups for a constitutional right to housing, especially to balance the existing constitutional right to property.³⁵ The government committed in 2020 to scheduling a constitutional “referendum on housing”.³⁶ However, it remains unclear if this referendum will propose enshrining a right to housing in line with international human rights standards, as had been recommended in 2014 by the government-established Constitutional Convention.

PROTECTION AND PROMOTION OF CIVIL SOCIETY

The EU Fundamental Rights Agency warned in 2018 that the blanket ban on overseas funding in the Electoral Act (mentioned above) could have a particularly serious impact on civil society organizations in Ireland, where most independent funding comes from trusts and foundations based outside the country.³⁷ This law has been applied to civil society organizations,³⁸ including Amnesty International Ireland³⁹ and others campaigning on abortion rights, outside official election or referendum campaign periods.

Despite this warning, these provisions have not been reformed and pose a continuing threat to civil society groups.

ACCOUNTABILITY FOR PAST ABUSES

In June 2014, following national campaigning by survivors and their allies as well as international media coverage of longstanding allegations of past abuses against women and children in so-called “mother and baby homes”, the government established an independent

³⁴ *Final report of the Oireachtas Special Committee on Covid-19 Response*, 8 October 2020, [https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/special committee on covid 19 response/reports/2020/2020-10-09_final-report-of-the-special-committee-on-covid-19-response-sccr004_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/special%20committee%20on%20covid%2019%20response/reports/2020/2020-10-09_final-report-of-the-special-committee-on-covid-19-response-sccr004_en.pdf)

³⁵ Home For Good coalition, <https://www.homeforgood.ie/referendum/>

³⁶ *Programme for Government: Our Shared Future*, 29 October 2020, p86, <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>

³⁷ European Agency for Fundamental Human Rights, *Challenges facing civil society organizations working on human rights in the EU*, January 2018, <http://fra.europa.eu/en/publication/2018/challenges-facing-civil-society-orgs-human-rights-eu>. Amnesty International Ireland, *EU report expresses concerns regarding overly broad application of Ireland’s Electoral Act*, 18 January 2018, <https://www.amnesty.ie/eu-report-expresses-concerns-regarding-overly-broad-application-irelands-electoral-ac>

³⁸ Civicus Monitor, *Foreign funding restrictions a “threat” to civil society in Ireland*, 21 December 2017, <https://monitor.civicus.org/newsfeed/2017/12/21/foreign-funding-rules-threat-civil-society-ireland/>

³⁹ The state regulatory body ordered Amnesty International Ireland to pay back a grant of €137,000 made in 2016 to support a campaign to ensure abortion laws in Ireland comply with human rights. Amnesty International, *Ireland: Human rights organizations under threat from draconian law as Amnesty could face criminal charges*, 8 December 2017, <https://www.amnesty.org/en/latest/news/2017/12/ireland-human-rights-organizations-under-threat-from-draconian-law-as-amnesty-could-face-criminal-charges/> Two years later, the Irish High Court quashed the decision, with the regulatory body recognizing that it was procedurally flawed. Amnesty International Ireland, *Amnesty welcomes quashing of SIPO’s decision on OSF grant*, 31 July 2018, <https://www.amnesty.ie/amnesty-welcomes-quashing-of-sipos-decision-on-osf-grant/>

Commission of Investigation.⁴⁰ “Mother and baby homes” were operated by religious orders with state funding for “unmarried mothers” to give birth, from the 1920s to the 1990s. These institutions, and the practice of women being compelled into giving birth in these places and institutionalized violence against women, were the outcome of a history of harmful and negative gender stereotyping of women and so-called ‘illegitimate’ children, and the influence of the Roman Catholic Church.⁴¹

In its second review, Ireland noted a recommendation relating to these institutions on the basis that it would await the outcome of the Commission’s investigation.⁴²

In January 2021, the final report of the Commission was published.⁴³ It confirmed longstanding reports about the treatment of women and children in these institutions, including significantly disproportionate child mortality rates, poor conditions, physical and emotional abuse, adoptions without women’s full informed consent, and vaccine trials on children without adhering to regulatory or ethical requirements. However, there are many serious gaps regarding the information uncovered, findings made and their analysis. For example, there is no finding of forced or illegal adoptions, arbitrary detention or forced labour despite evidence from survivor testimonies.

The separation of children from their parents can, in certain circumstances, constitute torture or other ill-treatment. Similarly, the conditions within the ‘homes’, and the inadequate medical treatment received by mothers and children and high mortality rates, could constitute ill-treatment and violations of the right to life respectively. It is irrefutable that the experimental use of vaccinations on children without free consent is contrary to Article 7 of the International Covenant on Civil and Political Rights.

The Commission concluded that there is some evidence of racial discrimination in how children were put forward for adoption, but not in how children were treated in the ‘homes’. This directly contradicts survivors’ testimony.⁴⁴ There is also very limited information on and analysis of the treatment of women and children with disabilities.

⁴⁰ 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’. Irish Times, *Inquiry faces daunting task unravelling the truth behind mother and baby homes*, 11 June 2014, <https://www.irishtimes.com/news/social-affairs/religion-and-beliefs/inquiry-faces-daunting-task-unravelling-the-truth-behind-mother-and-baby-homes-1.1827598>).

⁴¹ Amnesty International, *Ireland: Proposed ‘mother and baby homes’ investigation welcome, but a missed opportunity to address Magdalenes*, 9 January 2015, <https://www.amnesty.org/en/latest/news/2015/01/ireland-proposed-mother-and-baby-homes-investigation-welcome-missed-opportunity-address-magdale/>

⁴² A/HRC/33/17/Add.1. Recommendation 136.51 (Russian Federation)

⁴³ *Final Report of the Commission of Investigation into Mother and Baby Homes*, 12 January 2021, <https://www.gov.ie/en/publication/d4b3d-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes/>

⁴⁴ E.g. summary of the testimony of a “witness of mixed race” who arrived at a ‘home’ with her son having been pregnant as a result of rape: “[T]hey simply took her son from her and put him,’ she said, ‘in an annexe of the home’ away from her. This was an area specifically set aside for children who were unlikely to be adopted because of abnormalities or deformities. In her son’s case, she believed that he was placed there because he was of mixed race. She recalled that a nun would call him ‘filthy’ and ‘Little Black Man’. While giving her evidence, she said the nuns suggested to her that she had prostituted herself, and went on to advise her: ‘to refrain from exchanging sexual favours for money.’” (*Report of the Confidential Committee: October 2020*, 12 January 2021, p64, <https://www.gov.ie/en/publication/d693a-report-of-the-confidential-committee-to-the-commission-of-investigation-into-mother-and-baby-homes-october-2020/>)

In some areas, the Commission report minimises the harm done or potentially done or outright denies any harm having been done at all to survivors, including in relation to children. For instance, it concludes, without presenting evidence, that children were “not harmed” as a result of the vaccine trials to which they were subjected.

For these reasons, the report is not comprehensive. Moreover, it is an impediment to truth and justice, and itself at some points harms victims. It is now the government’s responsibility to fulfil its legal obligation to ensure full truth, justice and reparation for all survivors of human rights abuses in these ‘homes’. It must acknowledge and take prompt and effective measures to address the harm done by these gaps and weaknesses to survivors and victims. A follow-up state investigation is clearly needed on the child mortality rates, through all appropriate means including exhumation of burial sites and human-rights-compliant inquests.

The government must pay very careful attention to its formulation of recommendations for providing reparation. The Commission report’s recommendations on reparation are extremely limited (counselling and medical assistance are the examples given). Survivors must be able to participate effectively in this process and be consulted. They must be treated with respect for their dignity and with humanity.

The recommendations the Commission made on assessing financial redress are very concerning. It draws crude and unjustifiable lines of demarcation around survivors that it recommends be provided with redress.⁴⁵

Another immediate government responsibility is to ensure that where evidence is gathered and suspected perpetrators are identified, they are referred to the criminal justice system and prosecuted.

International human rights law requires that all aspects of such an investigation be transparent and made public. Confidentiality should only be to the degree lawful, necessary and proportionate to protect the rights of individual victims, witnesses and others. Yet all the Commission’s hearings, including survivors’ and other interviews, were conducted in private, without clear justification. Also, survivors have still not been granted access to their personal records and data relating to their experiences in these institutions, including their birth certificates, despite a government commitment in October 2020 to correct the law in this area.⁴⁶

⁴⁵ For instance, it recommends that children whose mothers remained with them in these institutions be excluded, presumably on some unfounded basis that these children could not have experienced abuses. It recommends benchmarking financial redress for children who were harmed in these ‘homes’ against what survivors received from the Residential Institutions Redress Scheme (<https://www.rirb.ie/>) which applied to persons who, as children, were abused while resident in industrial schools, reformatories and other institutions subject to state regulation or inspection - and for women against the Magdalene Laundries redress scheme. The nature, severity and impacts of these children’s and women’s experiences are not directly analogous. Moreover, both redress schemes have been criticised. UN human rights treaty bodies have expressly deemed the Magdalene redress scheme inadequate (Committee Against Torture, CAT/C/IRL/CO/2, 31 August 2017, paras 25, 26. Committee on the Elimination of Discrimination against Women, CEDAW/C/IRL/CO/6-7, 9 March 2017, paras 14, 15).

⁴⁶ Audio recordings of survivor interviews by the Commission’s Confidential Committee were destroyed by the Commission without transcripts being made; some interviewees say they were not told this would happen. The government has since said it has succeeded in retrieving these recordings. RTÉ news, *Mother and Baby Homes Commission retrieves backup recordings*, 23 Feb 2021, <https://www.rte.ie/news/mother-and-baby-homes/2021/0223/1198776-mother-and-baby-homes/>

RECOMMENDATION 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, making the declarations set out in Articles 31 and 32, and ensure that its provisions are reflected in national legislation.
- Promptly complete the legislative and other requirements so it can ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 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.

SEXUAL AND REPRODUCTIVE RIGHTS

- Ensure the three-year review of the Health (Regulation of Termination of Pregnancy) Act 2018 is comprehensive and directed at providing a human rights-compliant framework for abortion, in law and in practice, including by identifying and eliminating barriers impacting marginalized groups, and young people and adolescents.

REFUGEES AND ASYLUM SEEKERS

- Produce and publish a detailed implementation plan and timeline to ensure that the commitment to ending “direct provision” by 2024 and creating a human rights-compliant alternative is realized.
- Ensure the rights, dignity, health and lives of people who remain in “direct provision” during the transition period are respected and protected until that accommodation system is ended, including through effective measures to prevent transmission of COVID-19.
- Reduce the processing times, and address the backlog of cases, in the international protection determination system, while ensuring decisions are fair and thorough.

RIGHT TO ADEQUATE HOUSING

- Schedule a referendum on a constitutional right to housing in line with international human rights standards.

PROTECTION AND PROMOTION OF CIVIL SOCIETY

- Amend the Electoral Act to ensure funding for civil society groups is regulated or limited only to the degree necessary and proportionate to a legitimate aim, and in line with the right to freedom of association and expression.

ACCOUNTABILITY FOR PAST ABUSES

- Fulfil its obligation to ensure full truth, justice and reparation for all survivors of human rights abuses and violations in ‘mother and baby homes’.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE

Ireland: Submission to The United Nations Committee on the Elimination of All Forms of Racial Discrimination, 6 November 2019, Index: EUR 29/1344/2019, <https://www.amnesty.org/en/documents/eur29/1344/2019/en/>

Europe: Human rights in Europe - review of 2019, 16 April 2020, Index: EUR 01/2098/2020, <https://www.amnesty.org/en/documents/eur01/2098/2020/en/>

Amnesty International Report 2017/18: The state of the world's human rights, 22 February 2018, Index: POL10/6700/2018, <https://www.amnesty.org/en/documents/POL10/6700/2018/En/>

Ireland: Submission to the United Nations Committee Against Torture, 61st Session, 24 July to 11 August 2017, 27 June 2017, Index: EUR 29/6564/2017, <https://www.amnesty.org/en/documents/eur29/6564/2017/en/>

Amnesty International Report 2016/17: The state of the world's human rights. 22 February 2017, Index: POL10/4800/2017, <https://www.amnesty.org/en/documents/pol10/4800/2017/en/>

Ireland: Amnesty International's Submission to the Committee on the Elimination of Discrimination against Women, 23 January 2017, Index: EUR 29/5543/2017, <https://www.amnesty.org/en/documents/eur29/5543/2017/en/>

Ireland: 'Tuam babies' mass grave allegations must spark urgent investigation, 5 June 2014, www.amnesty.org/en/latest/news/2014/06/ireland-tuam-babies-mass-grave-allegations-must-spark-urgent-investigation/.

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