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DR/ML/ak 879/2018

20 January 2020

Dear Ms. Lyons & Ms. Mitrow,

I have the honour to transmit to you herewith, the (advance unedited) text of the Admissibility decision adopted on 4 December 2019 by the Committee against Torture concerning complaint No. 879/2020, which was submitted to the Committee under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on behalf of Ms. Elizabeth Coppin.

Any explanations or statements received from the State party on the merits of the complaint will be communicated to you in due course for comments.

Yours sincerely,

Ibrahim Salama

Chief

Human Rights Treaties Branch

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Advance unedited version

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 879/2018*, **

<i>Communication submitted by:</i>	Elizabeth Coppin (represented by counsel, Wendy Lyon and Yasmin Waljee)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Ireland
<i>Date of communication:</i>	25 July 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 26 February 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	4 December 2019
<i>Subject matter:</i>	Lack of investigation into complaint of ill- treatment
<i>Procedural issue:</i>	Admissibility – <i>ratione temporis</i>
<i>Substantive issues:</i>	Lack of investigation into complaint of ill- treatment; lack of redress and adequate compensation; cruel, inhuman or degrading treatment or punishment
<i>Articles of the Convention:</i>	12–14 and 16

1.1 The complainant is Elizabeth Coppin, a national of Ireland born on 21 May 1949. She claims that the State party has violated her rights under articles 12 to 14 of the Convention, read alone and in conjunction with article 16, and article 16 read alone. The complainant is represented by counsel.

1.2 On 26 February 2019, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to examine the admissibility of the communication separate from its merits.

The facts as submitted by the complainant

2.1 The complainant contends that between March 1964 and April 1968, when she was between 14 and 18 years of age, she was subjected to torture and cruel, inhuman and

* Adopted by the Committee at its sixty-eighth session (11 November–6 December 2019).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

degrading treatment and punishment in the State party in three separate institutions, known as Magdalen laundries.

2.2 The complainant contends that in 1951 she was committed by order of the Listowel District Court to an industrial school for girls operated by a congregation of nuns with the court order providing that she was to be detained until her sixteenth birthday in 1965. She was committed under the Children Act 1908, the ground for her committal not being that she was an orphan, but rather that she was destitute and illegitimate, with her mother being unable to support her. The complainant contends that at the age of 14, in March 1964, she was sent by the industrial school to the Saint Vincent's Magdalen laundry in Peacock Lane in Cork, operated by another Catholic congregation of nuns, the Religious Sisters of Charity. After escaping from Saint Vincent's in August 1966, the complainant was apprehended in November of that year from her new place of work by officers of the Irish Society for the Prevention of Cruelty to Children and placed in another laundry in the convent of the Sisters of the Good Shepherd in Sunday's Well, Cork. In March 1967, the complainant was transferred to another laundry operated by the Sisters of the Good Shepherd: St. Mary's in Waterford. She was discharged in April 1968, just before her nineteenth birthday; she emigrated to the United Kingdom of Great Britain and Northern Ireland soon afterwards.

2.3 The complainant alleges that she was subjected to arbitrary detention, servitude and forced labour without pay for six days a week in all three of the Magdalen laundries and that the State party was complicit in her arbitrary detention and mistreatment. The complainant further claims to have been subjected at numerous times to deliberate and ritual humiliation; denial of identity, educational opportunity and privacy; neglect; and other forms of grave physical and psychological abuse. During her time at Saint Vincent's, her living conditions reflected a prison-like environment. She was placed in a cell of approximately 6 square metres, which contained a small bed with one blanket, and a shelf with a jug and a basin for sanitation. The door to her cell was bolted, there were bars on the window and her lights were switched off every night at 9 p.m. On one occasion she was accused of stealing sweets from another resident and was held for three days and nights in solitary confinement with no bed, no toilet, one tin cup of water and only one slice of dry bread for every meal. In one of the laundries, her hair was shorn, she was dressed in sackcloth and she was provided with a humiliating new male name, which she particularly disliked because it was the name of her tormentor at the Industrial School.

2.4 At Saint Vincent's, she was forbidden to speak and was generally deprived of human warmth and kindness. She lived in conditions of deliberate deprivation, with inadequate food and heating. She had limited contact with her family and society and was denied an education and any other opportunity to enjoy her childhood. She was also denigrated on religious grounds and was not informed as to whether she would ever be allowed to leave the laundries. She was convinced that she would die there and be buried in a mass grave, as had occurred to other women. She claims to have been particularly vulnerable and experienced aggravated suffering because she was a child and had been removed from her family for being destitute and illegitimate, and because she had been physically and emotionally abused at the Industrial School before her arrival at the laundries.

2.5 The complainant argues that the treatment she was subjected to constitutes at the very least degrading treatment within the meaning of article 16 of the Convention, also amounting to torture under article 1. She submits that the mistreatment and abuse she suffered in the Industrial School and the Magdalen laundries have had serious and detrimental effects on her physical and psychological health.

2.6 The complainant contends that she has exhausted all available and effective domestic remedies. In 1997 and 1998, she filed complaints with the Garda Síochána (the national police service of Ireland) about the abuse she had suffered in the Magdalen laundries between 1964 and 1968. However, she claims that the police failed to investigate her complaints. The complainant claims that she did not have any remedy against the police in that regard, because, as a matter of law in the State party, the police owe no duty of care to victims of crime. The complainant further submits that she cannot submit a complaint to the Garda Síochána Ombudsman Commission, an independent body charged with investigating police failure and malpractice, owing to the requirement to submit a complaint within 12 months of an incident.

2.7 In 1999, the complainant commenced a civil proceeding in the High Court of Ireland against representatives of the religious congregations that managed the Industrial School and the Magdalen laundries. In November 2000, she applied to the High Court to join Ireland, the Minister of Education and the Attorney General as co-defendants in her civil action. However, before her application to join the State defendants was heard, on 23 November 2001, the High Court struck out her proceedings against the religious congregation and nuns responsible for her treatment in the Industrial School on the ground of “inordinate and inexcusable” delay. The High Court held that there was a real and serious risk of an unfair trial, because a number of individuals involved had died and the archive of the religious congregations contained only sparse personal records. Following her counsel’s advice, the complainant did not appeal this decision, and the proceedings were discontinued in 2002.

2.8 In 2000, the State party established the Commission to Inquire into Child Abuse with a mandate to investigate into child abuse in Industrial and Reformatory Schools and other similar institutions. The complainant provided testimony to the Commission in 2002. In the same year, the State party established the Residential Institutions Redress Board to make financial payments to the victims of such child abuse. In 2005, the complainant applied to the Redress Board for an award and was offered an *ex gratia* payment for the abuse she suffered in the Industrial School and the Magdalen laundries. The award entailed no admission of liability on the part of the State party or any religious congregation and was made on condition that the complainant agree in writing to waive any right of action that she might otherwise have had against a public body or a person who had made a contribution to the Scheme. The complainant accepted the award but attests that she felt she had no choice but to do so.

2.9 The complainant recalls that in its concluding observations on the State party’s initial report in 2011, the Committee against Torture expressed grave concern at the failure of Ireland to protect women and girls involuntarily confined in the Magdalen laundries and to institute prompt, independent and thorough investigations into allegations that women and girls were subjected to ill-treatment at these institutions. The Committee recommended that Ireland investigate all complaints of torture and other cruel, inhuman or degrading treatment or punishment made in connection with the Magdalen laundries and to prosecute and punish the perpetrators in appropriate cases.

2.10 In 2011, following the publication of the Committee’s concluding observations, the State party established the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen laundries. The Inter-Departmental Committee had no remit to investigate or make determinations of torture or any other criminal offence. In 2012, the complainant provided a written statement recounting her allegations of having suffered human rights violations in the Magdalen laundries, coupled with her assessment of the State’s involvement in her arbitrary detention and abuse, to the Chair of the Committee, Senator Martin McAleese. The Committee’s report was published in 2013. According to the report, evidence of direct State involvement in the committal of women to the Magdalen laundries was found of 26 per cent of the cases it examined. State responsibility for funding and regulating the laundries was also established, as was the role of the police in returning escaped women to the laundries. After the publication of the report, the Government appointed Justice John Quirke to devise an *ex gratia* scheme to provide payments and other support to women who had spent time in the Magdalen laundries. In March 2013, the complainant sent a written statement detailing her experiences in the laundries to Justice Quirke.

2.11 The Government subsequently established the Magdalen Laundries Restorative Justice Scheme. The complainant applied to the Scheme for an *ex gratia* award in July 2013. A determination was made on the length of time that the complainant had been a resident in the Magdalen laundries. On the basis of that determination, the Scheme offered the complainant a payment. As already noted, the award entailed no admission of liability on the part of the State party or any religious congregation, and it was made on the condition that the complainant agree in writing to waive any right of action against the State arising out of her admission to and work in the laundries.

2.12 The complainant wrote on two occasions in December 2013 to the State party’s Minister for Justice and Equality, asking what measures the Government was taking to

address the human rights violations committed against women in the Magdalen laundries and seeking more time to reflect on the legal implications of participating in the Scheme.¹ On 3 March 2014, after the complainant had received a formal offer from the Scheme, the complainant sent a letter of appeal to an official of the Restorative Justice Implementation Unit of the Department of Justice and Equality expressing concern about its terms, stating that the Scheme as a whole did not reflect the serious violation of her human rights by the State and its agents. The complainant also noted that she had not committed a crime, and that her treatment had been unlawful, unjust and needed to be addressed by the State. The complainant requested that an investigation into the violation of her human rights be conducted, in order to produce findings as to her allegations of unlawful behaviour of agents of the State towards her.² The State party's officials insisted that she either accept or reject the ex gratia payment. On 21 March 2014, she accepted the payment and signed the waiver.

2.13 In 2015, the State party created the Commission of Investigation into Mother and Baby Homes and Certain Related Matters, another form of church-run institution similar to those in which the complainant and her mother had been resident. The complainant sent numerous communications to relevant authorities, appealing to them to expand the Commission's jurisdiction to cover these related institutions. In March 2017, the complainant wrote to the Minister for Children and Youth Affairs, to whom the Commission of Investigation was mandated to report, appealing to her to request an investigation into human rights violations perpetrated against women in the Magdalen laundries. Her letter stated that she was deeply upset that the Magdalen laundries abuse had not been properly investigated, and that no one had been held accountable for the arbitrary detention, forced labour, neglect, and psychological and physical abuse that women and girls had suffered there. The complainant further stated that she believed that that was a further violation of her human rights and the human rights of all women who had gone through the Magdalen laundries.³ The complainant attests that she has received no reply from the Minister with regard to this communication.

2.14 In 2017, following its consideration of the second periodic report of Ireland, the Committee against Torture expressed its deep regret that the State party had not undertaken an independent, thorough and effective investigation into the allegations of ill-treatment of women and children in the Magdalen laundries or prosecuted and punished the perpetrators, as recommended in its previous concluding observations. The Committee was also concerned at reports that the State party had not undertaken sufficient efforts to uncover all available evidence of abuses held by private institutions, nor taken adequate steps to ensure that victims were able to access information that could support their claims (CAT/C/IRL/CO/2, para. 25). The Committee recommended, *inter alia*, that the State party should undertake a thorough and impartial investigation into allegations of ill-treatment of women at the Magdalen laundries that has the power to compel the production of all relevant facts and evidence and, if appropriate, ensure the prosecution and punishment of perpetrators. The Committee also recommended that the State party should strengthen its efforts to ensure that all victims of ill-treatment who worked in the Magdalen laundries obtain redress, and to that end ensure that all victims had the right to bring civil actions, even if they had participated in the redress scheme, and ensure that such claims concerning historical abuses could continue to be brought "in the interests of justice". The complainant notes that since 2010 the Irish Human Rights and Equality Commission has been calling on the State party to undertake a statutory

¹ In separate communications on 3 and 12 December 2013, the complainant asked Minister Alan Shatter what mechanisms were put in place for any Magdalen women, such as herself, who felt that the question of her human rights had not been addressed. She also asked what the Government and the Minister's department were doing about redressing the violation of her human rights when she was in the Magdalen laundries, and she requested more time to reflect on the legal implications of accepting the award she had been offered under the ex gratia scheme for persons who worked in the Magdalen laundries.

² Elizabeth Coppin, discussion of terms and request for investigation into her human rights violations, email to Joni Murphy, Restorative Justice Implementation Team, Department of Justice and Equality, 3 March 2014.

³ Elizabeth Coppin, investigation into the Magdalen laundries, Katherine Zappone, Minister for Children and Youth Affairs, 10 March 2017.

investigation into systematic abuse in the Magdalen laundries, and the State party has declined to do so.

The complaint

3.1 The complainant claims that the State party has violated article 12 of the Convention, alone and in conjunction with article 16, by failing to proceed to a prompt and impartial investigation of her allegations that she was subjected to torture and cruel, inhuman and degrading treatment and punishment in the Magdalen laundries, despite having reasonable grounds to believe that an act of torture had been committed in its territory as a result of its actions or omissions. The complainant recalls that:

- (a) The national police service declined to act on the complaints she filed with them;
- (b) The State party's authorities did not open a criminal investigation into allegations of torture and ill-treatment at the Magdalen laundries after the complainant filed a civil claim in the courts;
- (c) The authorities did not initiate an investigation into the allegations she provided in testimony to the Commission to Inquire into Child Abuse in 2002, in her application to the Residential Institutions Redress Board in 2005 or in her testimony to the Inter-Departmental Committee in 2012;
- (d) She received no response to her letter to the Department of Equality and Justice seeking to appeal the terms of the Magdalen Restorative Justice Scheme in March 2014 or her letter to the Minister for Children and Youth Affairs in March 2017.

3.2 The complainant also claims that the State party has violated article 13 of the Convention, alone and in conjunction with article 16, by failing to ensure that she and other survivors of the Magdalen laundries had the right to complain to and have their cases examined by the competent authorities. She notes that the police were unresponsive to her complaints and that her civil proceedings against the religious orders in 1999 were dismissed by the High Court on grounds that too much time had elapsed since the incident. In addition, she notes that the other officials and bodies she has petitioned were either not capable of opening criminal investigations into her complaints of having experienced conduct amounting to torture and ill-treatment or failed to exercise their discretionary authority to do so. She attests that no other effective domestic complaints mechanism is available to her, and that even if one were, she would not be able to access it as a result of the waivers that she was obligated to sign as a condition of accepting the ex gratia awards offered to her by the State party in 2005 and 2014.

3.3 The complainant further claims a violation of article 14 of the Convention, alone and in conjunction with article 16, on the basis that the State party has failed to ensure that she obtained full redress for the violations suffered in the Magdalen laundries, including the means for as full rehabilitation as possible. Referring to paragraph 16 of the Committee's general comment No. 3 (2012) on the implementation of article 14, the complainant submits that satisfaction is not only a discrete aspect of the right to redress, but is also required for rehabilitation and in order to guarantee non-repetition. The complainant notes that the State party has not carried out key aspects of the right to receive satisfaction as a component of the right to redress. In particular, no investigation has been conducted into her allegations and no individual or institution has been held accountable. She also notes that with respect to the right to as full rehabilitation as possible, the State party has not actually provided several of the benefits promised under the ex gratia scheme, such as comprehensive and easily accessible health and social care.

3.4 Finally, the complainant claims a continuing violation of article 16 on the basis that the State party's refusal to investigate her allegations of torture and ill-treatment and the resulting impunity for the perpetrators constitute an affirmation by Ireland of her treatment in the Magdalen laundries. She claims that this deliberate affirmation debases and humiliates her in a manner so severe as to amount to at least degrading treatment. She claims that she is experiencing a continuing violation of her dignity amounting to a breach of article 16, commencing with her treatment in the Magdalen laundries and continuing on account of her

treatment by the State party since that time. In this respect, the complainant refers to the Committee's concluding observations on the second periodic report of the State party.⁴

State party's observations on admissibility

4.1 On 29 November 2018, the State party submitted its observations on the admissibility of the complaint. It requests that the Committee examine the admissibility of the complaint prior to the assessment of its merits. It contends that the complaint raises issues that relate to a period prior to the entry into force of the Convention for the State party. It asserts that it is therefore inadmissible *ratione temporis*.

4.2 The State party states that the Magdalen laundries were established and operated as refuges for women primarily by religious orders from the eighteenth to the twentieth centuries. The laundries were not operated or owned by or on behalf of the State, and there was no statutory basis for either admitting or confining a person to a Magdalen laundry.

4.3 In June 2011, the Government established the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen laundries. Upon publication of the report by the Committee in February 2013, the Government stated its commitment to play its part in a healing and reconciliation process for women who were former residents of the Magdalen laundries. With the advice of a former judge, the Government established an *ex gratia* redress scheme, under which the former residents were to receive compensation in the form of a lump sum and weekly payments. In addition, they would be eligible for benefits such as primary medical services, prescribed medications, aids and appliances, dental services, home support, home nursing, counselling services and other health services. Those women who resided outside Ireland would be entitled to such services if they returned to or visited Ireland. A scheme was also established to reimburse medical costs incurred in their country of residence.

4.4 The State party notes that in 1951, the complainant was committed to the Pembroke Alms Industrial School for Girls by a court order, which provided for her detention until 20 May 1965. It submits that the complaint only relates to the complainant's stay in three different Magdalen laundries from 19 March 1964 to 30 April 1968.

4.5 The State party notes that in 2004, the complainant was awarded €140,800 for the abuse she suffered in the Industrial School and the Magdalen laundries, under the redress scheme pursuant to the Residential Institutions Redress Act of 2002. It also notes that, on 15 July 2013, the complainant applied for redress under the Magdalen Laundries Restorative Justice Scheme in relation to her stay in three Magdalen laundries. She was awarded a lump sum of €55,500 and a full contributory State pension amounting to €973.20 every four weeks – which she still receives – and she is eligible for medical services. When she accepted the payment, she signed a Statutory Declaration under which she agreed to waive any right of action against the State or any public or statutory body or agency arising from her admission to the Magdalen laundries. The State party submits that all persons who applied for redress were provided an opportunity and allowance to obtain independent legal advice on the application and the waiver, but the complainant did not choose to use this allowance despite knowing about it.

4.6 The State party further submits that, in February 2013 and June 2018, respectively, the then-Prime Minister and the President of Ireland issued apologies to the former residents of the Magdalen laundries for the abuse and stigma suffered by them.

4.7 The State party ratified the Convention and made a declaration under its article 22 on 11 April 2002. The Convention entered into force for the State party on 11 May 2002. The State party contends that the claims made by the complainant relate to matters that occurred prior to the ratification of the Convention. These matters commenced in March 1964, upon the complainant's admission to Saint Vincent's Magdalen laundry, and concluded in April 1968 upon her discharge from another Magdalen laundry. The State party submits that the claims are therefore inadmissible *ratione temporis*.

⁴ CAT/C/IRL/CO/1, para. 21; CAT/C/IRL/CO/2, para. 25.

4.8 The State party contends that although the complainant claims an ongoing violation of articles 12 to 14, read alone and in conjunction with article 16, her complaint places a significant emphasis on what occurred during her residency in the Magdalen laundries. It also submits that the complainant filed complaints with the police and brought civil proceedings against representatives of the religious institutions and the State prior to the Convention's entry into force in May 2002. Thus, it contends that her claims concerning the State party's alleged breach of articles 12 and 13 of the Convention are inadmissible *ratione temporis*.

4.9 The State party refers to the European Court of Human Rights finding that the question of *ratione temporis* is one that goes to jurisdiction and the Court has no jurisdiction over matters prior to ratification.⁵ The State party asserts that there is a similar limitation to the Committee's jurisdiction. It maintains that a failure to redress alleged violations that occurred prior to ratification falls outside the temporal jurisdiction and to hold otherwise would be contrary to the general rule of non-retroactivity of treaties.⁶

4.10 The State party notes that the Committee has held that it may consider alleged violations of the Convention, which occurred prior to recognition of its competence under article 22 if the effects of those violations continue after the declaration under article 22 and if the effects constitute in themselves a violation of the Convention.⁷ It also notes that the Committee has found that a continuing violation must be interpreted as an affirmation, after the formulation of the declaration, by act or by clear implication, of the previous violations of the State party.⁸ The State party contends that, in this case, the complainant has not established that the State party has affirmed any alleged previous violations of the Convention. It claims to have taken positive steps, including the establishment of redress schemes and the provision of formal apologies to former residents of the laundries.

4.11 The State party submits that the complainant has not exhausted domestic remedies because she has never brought a complaint or proceeding against the State party in relation to its alleged failure to investigate or provide redress. The proceedings presented as evidence of domestic remedies – that is, the complaints made to the police in 1997 and 1998 and the civil proceeding in 1999 – did not raise the present matters before the Committee. In this regard, the State party finds the complainant's argument to be inconsistent. On the one hand, she is claiming that the facts giving rise to her present complaint occurred after 11 May 2002 such that there is a continuing violation of the Convention. On the other hand, she deems her domestic proceedings, which only relate to matters preceding the Convention's entry into force, to be sufficient in meeting the requirement to exhaust domestic remedies.

4.12 With respect to the waiver that the complainant signed when accepting the redress payment, the State party submits that the redress schemes operated on an entirely voluntary basis and she had an option to refuse the awards and bring proceedings before domestic courts.

4.13 The State party further argues that, to its understanding, the complainant submitted her communication not only on behalf of herself, but also on behalf of other survivors of the Magdalen laundries. It contends that insofar as the complainant seeks to rely on any alleged violation suffered by other survivors, such complaint is inadmissible under rule 113 (a) of the rules of procedure and the Committee's jurisprudence.⁹

Complainant's comments on the State party's observations on admissibility

5.1 On 31 January 2019, the complainant submitted her comments on the State party's observations on admissibility. She maintains that her complaint is admissible.

5.2 The complainant argues that her complaint does not relate to events that occurred prior to the ratification of the Convention. She complains of present and ongoing violations,

⁵ The State party invokes the decision by the European Court of Human Rights (Grand Chamber), *Blečić v. Croatia* (application No. 59532/00), Judgment, 8 March 2006, para. 67.

⁶ *Ibid.*, paras. 77–79; see also the European Court of Human Rights (Third Section), *Milojević and others v. Serbia* (application Nos. 43519/07, 43524/07 and 45247/07), Judgment, 12 April 2016, paras. 50–51.

⁷ *N.Z. v. Kazakhstan* (CAT/C/53/D/495/2012), para. 12.3.

⁸ *Ibid.*

⁹ The State party invokes the decision in *A.A. v. Azerbaijan* (CAT/C/35/D/247/2004).

namely the continuing failure by the State party to investigate and provide redress for the treatment she was subjected to in the Magdalen laundries. She argues that the State party ignores decisions in which the European Court of Human Rights asserted jurisdiction, even where the factual background of the complaint preceded ratification, including in a case¹⁰ where the Court found a continued failure by the State to investigate a disappearance that occurred before the State's accession to the Convention. The complainant argues that the State party's behaviour in denying the reality of the Magdalen laundries has a similar character to such failure. She further submits that her arguments on admissibility are also in line with the decisions of other treaty bodies.¹¹

5.3 The complainant notes that she is not asking the Committee to consider what happened to her in the Magdalen laundries, but to examine the present effects of the abuse that she underwent in the light of the State party's current obligations under the Convention. She asserts that the decision of the Committee in *N.Z. v Kazakhstan*¹² is a clear authority for the proposition that it may consider current effects of violations over which it would, for temporal reasons, not have jurisdiction.

5.4 The complainant notes that the Committee has expressly confirmed that a failure to investigate and provide redress for historic ill-treatment may be considered even when the allegations of ill-treatment would be inadmissible *ratione temporis*.¹³ She claims that the effects of violations of her rights under articles 12–14 and 16 of the Convention continue to date and thus her complaint is admissible.

5.5 The complainant maintains that she has exhausted domestic remedies. She claims to have no further legal remedies with a reasonable chance of success¹⁴ or which are likely to bring effective relief. She submits that in Irish law, there exists no cause of action, for example in tort, which could effectively and reasonably have been pursued. Although, in theory, she could have brought an action against the State for violation of her constitutional rights, there are few examples of its successful employment in practice and the European Court of Human Rights has previously found this remedy to be ineffective with regard to human rights violations. She notes, as does the State party, that even if domestic proceedings were available to her, she would be precluded from making use of them as a consequence of having waived any right of private action as a condition for receiving the ex gratia awards offered to her by the State. The complainant further asserts that the State party's decision to require women who were subject to violations of the Convention in the Magdalen laundries to waive their rights to bring further proceedings against the State as a condition of participation in its ex gratia redress schemes constitutes an illegitimate attempt by the State party to devise domestic legal means to "contract out" of its obligations under the Convention.

5.6 The complainant asserts that the State party's claims on inadmissibility under rule 113 (a) of the rules of procedure are baseless. Her reference to other survivors is not to submit the complaint on their behalf, but rather to acknowledge that there is an undeniable collective dimension to the right to truth in the present case and her situation is shared by many other victims.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same

¹⁰ See European Court of Human Rights, *Zorica Jovanović v. Serbia* (application No. 21794/08), Judgment, 9 September 2013.

¹¹ The complainant invokes the decisions by the Human Rights Committee and the Committee on the Elimination of Racial Discrimination. See *Sankara et al. v. Burkina Faso* (CCPR/C/86/D/1159/2003) and *Durmic v. Serbia and Montenegro* (CERD/C/68/D/29/2003).

¹² *N.Z. v. Kazakhstan* (CAT/C/53/D/495/2012), para. 12.3.

¹³ *Ibid.*

¹⁴ *Guridi v. Spain* (CAT/C/34/D/212/2002), para. 6.3.

matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The State party contests the Committee's competence *ratione temporis* on the grounds that the alleged abuse in the Magdalen laundries commenced and concluded before 11 May 2002, when the Convention entered into force for the State party, and that the complainant's complaints to the national authorities – that is, the national police service and the national courts in the form of civil proceedings against the religious congregations that operated the Magdalen laundries – were made and considered prior to this date.

6.3 A State party's obligations under the Convention apply from the date of its entry into force for that State party, and the Committee's competence to examine alleged violations of the Convention applies once the State party has made a declaration under article 22 and it has become effective. However, the Committee can examine alleged violations of procedural obligations under the Convention that occurred before a State party's ratification or accession to the Convention or recognition of the Committee's competence through its declaration under article 22, and of other obligations that have similar legal effect under the Convention.¹⁵

6.4 Article 12 of the Convention obliges States parties to ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, and that such investigations also must be effective.¹⁶ Article 13 of the Convention – which obligates States parties to ensure that any individual who alleges he or she has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his or her case promptly and impartially examined by, its competent authorities – does not require complainants to formally lodge a complaint with the authorities. Rather, it is enough for a victim to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated.¹⁷ Further, as the Committee affirmed in paragraph 17 of its general comment No. 3, a State party can violate article 14 of the Convention, which requires States parties to ensure that victims of torture obtain redress, through a failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture. The obligations in article 12 to 14 apply equally to allegations of cruel, inhuman or degrading treatment or punishment.

6.5 In the present case, the complainant alleges that the State party is engaging in a continuing violation of its obligations under the Convention to investigate her allegations of torture and ill-treatment; to ensure that her complaints are examined by the competent authorities; and to provide redress. The complainant also alleges that the State party has affirmed this violation on many occasions since the entry into force of the Convention for the State party and its declaration under article 22. Despite having repeatedly been made aware of the complainant's allegations and those of other women with similar experiences, and despite having taken certain actions to respond to them, including through the establishment of the two ex gratia payment schemes from which the complainant obtained awards in 2005 and 2014, the State party has repeatedly declined to open an investigation into these complainant's allegations.¹⁸ In the light of the foregoing, the Committee considers that the complainant has adequately alleged, for purposes of admissibility, that the State party is

¹⁵ Inter-American Court of Human Rights, *García Lucero et al. v. Chile*, Judgment, 28 August 2013, para. 38. See also *Ticona Estrada et al. v. Bolivia*, Judgment, 27 November 2008, paras. 93–97; *A.A. v. Azerbaijan* (CAT/C/35/D/247/2004), para. 6.4; *Gerasimov v. Kazakhstan* (CAT/C/48/D/433/2010), para. 11.2; *N.Z. v. Kazakhstan*, para. 12.3; and European Court of Human Rights, *Šilih v. Slovenia*, Application No. 71463/01, paras. 159–160.

¹⁶ *N.Z. v. Kazakhstan* (CAT/C/53/D/495/2012), para. 13.2.

¹⁷ *Abad v. Spain* (CAT/C/20/D/59/1996), para. 8.6.

¹⁸ Moreover, the Irish Human Rights and Equality Commission has since 2010 called on the State party to establish a statutory investigation into the abuses committed in the Magdalen laundries, and the Committee has called on the State party to initiate investigations that could lead to criminal prosecutions of perpetrators of torture or ill-treatment committed in the Magdalen laundries as recommended by the Committee in 2011 and 2017. See CAT/C/IRL/CO/1, para. 21, and CAT/C/IRL/CO/2, para. 26 (a).

engaged in the continuing violation of its obligations under the Convention. It therefore considers that it is not precluded *ratione temporis* from examining the communication.

6.6 Regarding the State party's contention that the complainant has not exhausted all available domestic remedies because she has never complained to the national authorities about its failure to investigate her allegations and provide redress to her, the Committee recalls the complainant's argument that there is no domestic remedy available to her to challenge the refusal of the police to investigate into her complaint because in Irish law, there exists no cause of action, for example in tort, which could effectively and reasonably have been pursued, as the police owe no duty of care to the victims of crime under the Irish law; and she is time-barred from complaining to the Garda Síochána Ombudsman Commission. The State party has not identified any further domestic remedy that the complainant has failed to exhaust and that would likely provide an effective remedy.¹⁹ Moreover, although the complainant has appealed to many other authorities of the State party requesting them to exercise discretionary authority to investigate her allegations, including in 1997 to 1999, 2002, 2005, 2012 to 2014 and 2017 (see paras. 2.6–2.14), none of these attempts have been successful. Thus, the Committee considers that there are no domestic remedies presently available to the complainant that could bring her effective relief.

6.7 The Committee also takes note of the State party's contention that the complainant is precluded from bringing the present communication because on two occasions she waived any right of action arising from her time spent in the Magdalen laundries as a condition of receipt of *ex gratia* awards. The Committee has previously determined that collective reparation and administrative reparation programmes may not render ineffective the individual right to a remedy and to obtain redress (general comment No. 3, para. 20), including an enforceable right to fair and adequate compensation, and that judicial remedies must always be available to victims, irrespective of what other remedies may be available (general comment No. 3, para. 30). Moreover, in its concluding observations on the second periodic report of the State party, the Committee recommended that the State party should ensure that all victims of violations of the Convention committed at the Magdalen laundries had the right to bring civil actions, even if they had participated in the redress scheme, and ensure that such claims concerning historical abuses could continue to be brought in the interests of justice (CAT/C/IRL/CO/2, para. 26). The Committee therefore concludes that the waivers signed by the complainant as a condition of participation in two domestic *ex gratia* schemes cannot alleviate the State party of its obligation to investigate allegations of continuing violations of the Convention brought to its attention, including the procedural aspects of the right to justice and to the truth (general comment No. 3, paras. 16–17), and they do not impair the complainant's right to bring an otherwise admissible communication to the attention of this Committee. Therefore, the Committee is not precluded from examining the communication.

6.8 The Committee therefore decides:

- (a) That the communication is admissible insofar as it raises issues with respect to articles 12, 13 and 14 of the Convention, read alone and in conjunction with article 16, and article 16 read alone;
- (b) That the State party is requested to provide supplementary observations on the merits of the communication within four months of the date of the present decision;
- (c) That the State party's observations will be transmitted to the complainant for comments;
- (d) That the present decision shall be communicated to the complainant and to the State party.

¹⁹ *Evloev v. Kazakhstan* (CAT/C/51/D/441/2010), para. 8.5.