Clann Project Submission to the Committee on Children, Disability, Equality and Integration on the General Scheme of a Mother and Baby Institutions Payment Scheme Bill

5th May 2022

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About the Clann Project

The Clann Project is a multi-award-winning collaboration between Adoption Rights Alliance (ARA), Justice for Magdalenes Research (JFMR) and Hogan Lovells International LLP). Since 2015 the project has been gathering witness statements of those affected by unlawful and forced family separation in Ireland. The Clann Project spoke to 164 people and assisted 82 witnesses to provide statements to the Mother and Baby Homes Commission of Investigation and published a public group report and recommendations in October 2018.

About Adoption Rights Alliance

Adoption Rights Alliance (ARA) was established in 2009. The organisation advocates for equal human and civil rights for those affected by the Irish adoption system. ARA provides information, advocacy and practical advice to adopted people and natural parents, including a very active online peer support group which currently has 2,678 members.

About Justice for Magdalenes Research

Justice for Magdalenes (now JFMR) was established in 2003. The organisation provides information and support to the women who spent time in the Magdalene Laundries and their families. JFMR educates the general public by researching the Magdalene Laundries and related institutions.

ABOUT THIS SUBMISSION

This submission is comprised of two existing Clann publications:

1. The Clann Project submission to Oak Consulting consultation on the development of an *ex-gratia* 'Restorative Recognition Scheme' of 31st March 2021. The recommendations contained in this submission still stand. The appendices to that submission are available at the following links:

   Appendix 1: JFM Submission to Judge Quirke 13-03-2013
   Appendix 2: JFM Reparations Scheme October 2011
   Appendix 3: Dr Maeve O'Rourke Recommendations to Scottish Parliament
   Appendix 4: Recommendations of the Collaborative Forum
   Appendix 5: Submission to Oireachtas Justice Committee Re GDPR 26.3.21
   Appendix 6: Institutional Burials Bill_Joint Submission 26.2.21

2. The Clann Project's press release of 17th December 2021, when the High Court declared that eight survivors were denied fair procedures by the Mother and Baby Homes Commission of Investigation. The impugned parts of the Commission's Final Report include findings and recommendations upon which the Government is relying to limit its proposed redress scheme.

In summary, and as outlined in greater detail in our December 2021 press release, the government's redress scheme must be amended as follows:

- The redress scheme must recognise all rights violations perpetrated in the institutional and family separation system.

- The scheme must respond to what participants said in the OAK Consulting independent consultation process on the development of its 'Restorative Recognition Scheme'.

- The Birth (Information and Tracing) Bill must be drastically amended to guarantee without exception the rights to know one's identity, to access one's personal data, to access administrative records, to access truth regarding

serious human rights violations, and to know the truth of the fate and whereabouts of disappeared relatives.

- Participants in the scheme must not be forced to legally waive their rights to go to court in return for payments as small as €5,000.

- The Government must by order of the Attorney General initiate inquests to establish the identities and circumstances of death of the children and women who remain in unmarked, unrecorded graves following their disappearance in mother and baby and related institutions. The existing Coroners Act provides for such action.

- The Government's planned payment scheme must recognise the harms of sale of children and illegal adoption, forced labour and servitude, torture and inhuman and degrading treatment and gender-based violence against women and girls, arbitrary detention, and enforced disappearances—all of which occurred in the institutional and family separation system.

- The Government's payment scheme plans do not recognise forced family separation or the erasure of identity as abusive; nor do they recognise the grave abuse of many boarded out and adopted people, among other harms. The Government must rectify, among other flaws in its plans:

    - Its exclusion of those who were boarded out as children;

    - Its exclusion of those who were adopted or otherwise separated from their mother in an institution before the age of six months;

    - Its exclusion of those who were in institutions not investigated by the Commission of Investigation;

    - Its exclusion of mothers and their now-adult children who were separated in non- institutionalised settings including through adoption agencies and private facilitators, and through illegal adoption, including via illegal birth registration;

- Its refusal to recognise forced labour or servitude other than of a type that the Government deems to have been ‘commercial’;

- Its exclusion of those who received payment previously from the Residential Institutions Redress Board (RIRB). The abuse recognised by the RIRB was of a different nature to forced family separation;

- Its restriction of the ‘enhanced medical card’ to those institutionalised for more than six months and its restriction of healthcare for those now living abroad to a once-off €3,000 payment; and

- Its gross undervaluing of the abuses perpetrated through the proposed payment amounts.

Clann Project Submission to Oak Consulting

Re: Consultation Process on the Development of an *Ex-Gratia* 'Restorative Recognition Scheme'

31st March 2021

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INTRODUCTION

Since 2015, the Clann Project (which is a collaboration between Adoption Rights Alliance (ARA), Justice for Magdalenes Research (JFMR) and Hogan Lovells International LLP) has been gathering witness statements of those affected by unlawful and forced family separation in Ireland. The Clann Project spoke to 164 people and assisted 82 witnesses to provide statements to the Mother and Baby Homes Commission of Investigation (MBHCOI) and published a public group report and recommendations in October 2018.

Our recommendations on a 'Restorative Recognition Scheme', which we set out in this document, are informed by the witness statements and other evidence gathered and are supported the Clann Project's Constitutional and human rights analysis of the State's legal obligations. They are also guided by our experience over the past two decades in assisting adopted people, survivors, natural parents and family members. Our recommendations are further guided by our experience in making recommendations on and engaging with the Government's '*Ex Gratia*' Restorative Justice Scheme for Magdalene survivors.[1] These recommendations are also consistent with and should be read alongside the Recommendations of the Collaborative Forum of Former Residents of Mother and Baby Homes.

We are disappointed that the Government has allowed less than a month for people to contribute to this consultation process. Moreover, we are extremely concerned that the Government has not engaged in sufficient outreach efforts to ensure as many people as possible are empowered and enabled to participate in the consultation. **Simply advertising the consultation is not enough.** The people affected by this issue are, to a large extent, marginalised and disenfranchised; most still feel unable to speak out about their experiences. This is further compounded by the fact that 90% of the institutions, agencies and individuals involved in forced family separation in Ireland were excluded from the remit of the MBHCOI and, more recently, by the irrationally limited and factually

[1] See JFM's 2011 Restorative Justice and Reparations Proposals **(Appendix 1)** and JFM's 2013 submission to Mr Justice John Quirke **(Appendix 2)**.

inaccurate findings of that Commission. Many people who were not covered by the Commission's Terms of Reference feel they are not entitled to participate in this consultation. Many people feel the abuses perpetrated against them have been minimised and denied. **It is difficult for people in this position to feel they have a right to be heard and unfortunately, the Government has failed to ensure that everyone affected feels welcome to contribute.** The Government's Submission Guidelines do not explain who can take part in the consultation. The Government could have easily written to all of the people who gave evidence to the MBHCOI to invite them to participate. Given the extent to which this population feels disenfranchised, a video broadcast on television and social media platforms would have gone a long way towards ensuring maximum participation in the consultation.

The Clann Project has created a guide to help people make submissions and provide more information about their views on how the 'Restorative Recognition Scheme', including a non-adversarial compensation process, could work.

Due to the State's direct involvement in, oversight of and knowing failure to prevent gross and systematic human rights violations in the adoption and informal child care systems, and in Mother and Baby Homes, County Homes and related institutions, the Irish Government is obliged by Irish Constitutional law and European and international human rights law (including international customary law) to provide **effective** remedies and reparation.

The elements of reparation which the Government must provide, according to international human rights law, include:

- Compensation, proportional to the gravity of the violations and the harm suffered;
- Rehabilitation, including medical and psychological care as well as legal and social services;
- Unfettered access to information and archives in order to establish the facts of one's own identity and experiences and the fate of the disappeared;

- An official apology (see section 11 below);
- Judicial and administrative sanctions against individuals responsible for abuse;
- Commemorations and tributes to those who suffered; and
- Inclusion of an accurate account of the human rights violations that occurred in educational material at all levels and in the training of state agents.

The Government must restore the citizenship rights of **all** those subjected to unlawful deprivation of liberty, unlawful family separation, loss of identity, disappearance and unmarked burial, medical experimentation, violence, neglect and exploitation. **This includes adopted people and people placed in informal care arrangements, as well as mothers and all family members affected by Ireland's 20th century coercive, secret adoption and family separation system that extended far beyond Mother and Baby Homes, and also includes those who were removed unlawfully as children to other jurisdictions**. Because the Irish State supported and failed to prevent these grossly discriminatory and systematic abuses, the State has clear and numerous legal obligations under Irish, European and international law to cease all ongoing abuse and to provide effective remedies.

As an absolute first step, in order for any other redress measure to have integrity, the Government must engage in truth-telling. **Access-to-records legislation must be introduced immediately. All people in Ireland must be guaranteed access to their birth certificate.** Mothers, adopted people and people placed in 'informal' care arrangements, and other relatives, must have **access to their personal data**. Those affected must also have access to the **administrative records** of the State and private institutions, agencies and individuals involved.

We look forward to the Government fulfilling its promise of 28 October last to implement our recommendations for (1) the creation of a **National Archive of Institutional, Adoption and Other 'Care'-Related Records**, which affords survivors and family

members full access to all personal information held by the State in accordance with best international practice, and (2) **proper implementation of EU GDPR rights** by all controllers of institutional, adoption and other 'care'-related records.

The Government must also change litigation procedures so that it is **easier for people to access court**. A dedicated **criminal investigations unit and human rights-compliant coroner's inquests** must also be established. Crucially, survivors of abuse must have **statutory rights to compensation and to all rehabilitative supports** that they require. National education and other memorialisation measures led by those affected must also be undertaken as part of a Transitional Justice process.

Our recommendations, explained further below, concern:

1. Access to records legislation
2. HAA Medical Card
3. Recommendations regarding the compensation process in a 'Restorative Recognition Scheme'
4. Implementation of the Mother and Baby Homes Collaborative Forum Recommendations
5. Explicit rights for people adopted overseas
6. Proper implementation of EU GDPR rights
7. Access to court
8. Dedicated Criminal Justice Unit & Human Rights-Compliant Coroner's Inquests
9. Repeal of 'gagging' orders
10. Amendment of the *Status of Children Act 1987*
11. Official acknowledgement of human rights violations

1. ACCESS TO RECORDS LEGISLATION

We urge the Government to consider the alternative Adoption (Information and Tracing) Bill which ARA published and submitted to the then-Minister for Children in November 2019. Drafted by Claire McGettrick, Dr Maeve O'Rourke, Reader Máiréad Enright and Dr James Gallen, the proposed Bill draws on the EU General Data Protection Regulation (GDPR) provisions and amends the Government's stalled 2016 Bill to provide for:

a) Unconditional access to birth certificates for adopted people and people placed in informal care arrangements;

b) A clear statutory right of access to one's own 'care' or adoption file and to records concerning a family member who died in 'care' or adoption;

c) A statutory right of access to administrative records for natural mothers, survivors and adopted people;

d) The safeguarding and centralisation of all relevant records in an independent repository where access is provided by professional archivists;

e) An enhanced tracing service;

f) Placement of the National Adoption Contact Preference Register (NACPR) on a statutory footing; and

g) The right to know you are adopted.

a) Unconditional access to birth certificates for adopted people and people placed in informal care arrangements

Since 1864 all Irish birth certificates have been publicly available in the General Register Office. Adopted people are the only people in Ireland who are denied the ability to retrieve their own birth certificate, because institutions and individuals in control of adopted people's files (including TUSLA and the Adoption Authority of Ireland) refuse to inform

adopted people of their name at birth or to provide adopted people with their unredacted adoption / early life file.

The continuing refusal to tell adopted people their name at birth, or to provide them with their publicly registered birth certificate, is in our view **unconstitutional and contrary to the GDPR**.

In February 2020 the Court of Appeal decided in *Habte v Minister for Justice and Equality* [2020] IECA 22 that there is an unenumerated Constitutional right 'to have [one's] identity correctly recognised by the State'. Mr Justice Murray explained (at para 31):

> *The trial Judge rooted this conclusion, in part, in the widespread recognition of the right in international instruments (Article 24(2) of the International Covenant on Civil and Political Rights, and Article 7 of the Convention on the Rights of the Child) and the view that this right both necessarily inhered in Article 8 of the European Convention on Human Rights and was a corollary to the right to protection of data provided for in Article 8 of the Charter on Fundamental Rights of the European Union (in which connection the Judge further referred to section 74(3) of the Data Protection Act 2018 and section 9 of the Freedom of Information Act 2014). He said (at para. 44):*
>
> > *'…there is an implied constitutional onus on the State arising from the inherent dignity of the individual referred to in the Preamble and the personal rights of the citizen in Article 40.3 of the Constitution to accurately record and represent central aspects of personal identity.'*

As explained in this Legal Opinion by Professor Conor O'Mahony, Dr Fred Logue, Dr Maeve O'Rourke, Dr James Gallen, Dr Eoin Daly, Reader Máiréad Enright, Dr Sinéad Ring, Rossa McMahon (solicitor) and Dr Laura Cahillane, the outdated decision in *IO'T v B* [1998] 2 IR 321 creates no barrier to the Oireachtas legislating to provide automatic access to birth certificates. *IO'T v B* was decided in a legislative vacuum, did not address

the issue of access to publicly available birth certificates, and does not affect the position expressed by the Supreme Court in *Fleming v Ireland* [2013] 2 IR 417 that legislation 'concerned with the implementation of public policy in respect of sensitive matters of social or moral policy' will attract a particularly strong presumption of constitutionality.

Under EU law (which is supreme over any conflicting Irish law), a person's name is their personal data to which they have a right under Article 15 GDPR. According to Article 23 GDPR and the European Data Protection Board's related guidance, the fundamental right of access to one's personal data can lawfully be restricted **only if** there is clear legislation that allows for such restriction and the restriction is a necessary and proportionate measure in a democratic society and respects the essence of the fundamental rights and freedoms at issue. The withholding from adopted people of their name at birth does not meet any of these requirements. It is arbitrary, discriminatory, unnecessary and disproportionate.

The Legal Opinion mentioned above concludes that a proportionate way of balancing the rights of adopted people and their parents would be to properly resource the voluntary National Adoption Contact Preference Register (NACPR) while providing personal data access so that all relatives are enabled to manage their own family relationships without unnecessary and arbitrary State coercion. This is what ARA's draft Bill proposes.

Adopted people have been categorised as a 'threat'; the Irish State has consistently taken a punitive and restrictive approach to providing them with their personal data. Rather than advocating reparation for a closed and secret adoption system, Government proposals have framed adopted people as untrustworthy individuals from whom their mothers need to be protected. No other cohort of Irish citizens is discriminated against in this manner and it is time to resolve this issue once and for all. Since 2001, the Government has made a number of unsuccessful attempts to legislate for access to records for adopted people. Each of these Government schemes has prescribed (unwarranted) measures designed to ensure that adopted people do not infringe on their

natural mothers' privacy. These proposals have been rejected by adopted people as gross infringements of their rights.

The evidence simply does not support the 'adoption myths' upon which previous Government proposals have been based. This briefing note by Claire McGettrick demonstrates how this is the case. The briefing note also outlines (i) how adopted people can already obtain their birth certificates, (ii) how they are marginalised by the current system, (iii) what legislative proposals would be acceptable to them, and (iv) a simple short-term solution which would allow adopted people to access their birth certificates.

It should not be forgotten that adoption (and 'informal' adoption) during the 20th century in Ireland was generally forced and frequently illegal. This closed, secret system obliterated the identities of thousands of adopted people. The Irish State is obliged to remedy these abuses, rather than continuing to unjustifiably and unlawfully deny adopted people their identity.

b) A clear statutory right of access to one's own 'care' or adoption file and to records concerning a family member who died in 'care' or adoption

The Government must ensure a clear pathway for mothers, adopted people and all those placed in care arrangements to access their own care and adoption files.

In addition, relatives must be provided with a clear right of access to information about the fate and whereabouts of their family member(s) who died while in an institutional or other 'care' setting. Worryingly, such a right is not included in the Government's current General Scheme of Bill on exhumations.

We recommend, at d) below, that the Government create a central independent repository of all adoption and related 'care' records, into which records (or copies of records) are statutorily requisitioned from all relevant state and non-state data controllers to be administered by professional archivists. However, in the meantime and in any event, a

statutory right of access to one's own file and to records of a relative who died in 'care' must operate in respect of **all** the many diverse data controllers currently in possession of records so that no person's access is delayed in the time that it takes to create the independent repository. Time is not on the side of those affected, whose rights to their own information and to knowledge of their loved ones' fate have been denied for far too long already.

c) A statutory right of access to administrative records for natural mothers, survivors and adopted people

The Government must establish a statutory right of access to all administrative records concerning the historical institutional, adoption and 'care'-related system (which would of course be subject to the usual provisions to protect the rights of individuals in their private capacity).

Administrative records include, for example, financial records, inspection files, contracts, governance records and correspondences. Many of these records lie in the archives of previous inquiries into institutional abuse, where they remain effectively 'sealed' (e.g. the archives of the Commission to Inquire into Child Abuse, the Inter-departmental Committee to inquire into State involvement with the Magdalen Laundries and the Mother and Baby Homes Commission of Investigation). Many additional administrative records remain in the custody of a wide array of State and non-State bodies.

It is a violation of the right to an effective investigation under European and international human rights law that so many of the State's previous inquiries into so-called 'historical' abuse have happened in secret, refusing survivors and adopted people access to the administrative records gathered and refusing them the opportunity to comment on these records. The Government must (1) create an immediate right of access to these administrative files for those affected by the historical institutional, adoption and 'care'-related system, wherever they may currently be; and (2) ensure that administrative records are gathered into and made available in the central independent repository that

will also provide individuals with access to their personal data and to information about the fate of their loved ones who died in 'care' settings.

d) The safeguarding and centralisation of all relevant records in an independent repository where access is provided by professional archivists

In October 2020, we warmly welcomed the Government's promise to establish a national archive of records related to institutional trauma during the 20th century. This is a hugely important opportunity for Ireland to establish a human rights-based, world-leading inclusive approach to acknowledging and documenting our history of institutional and gender-related abuse. However, the State must depart from previous habits of excluding and compartmentalising people. **Nobody can be left behind.**

In preparation for this national archive, which will take years to build, there is an **immediate need to create dedicated repository** of adoption and other 'care'-related records with professional archivists providing the various forms of information that we describe above.

e) An enhanced tracing service

The Government should immediately put in place an enhanced tracing service for those who wish to avail of it. However, we have grave concerns about TUSLA's current involvement in the existing service. TUSLA operates legally troubling and discriminatory practices, including defining adopted people's birth name as third party data and undertaking 'risk assessments' of all adopted people who request their records. Indeed, the Collaborative Forum of Former Residents of Mother and Baby Homes, which was established to advise the Government, has repeatedly stated that TUSLA should have no further role in adoption information and tracing. Therefore, it is absolutely imperative that:

- The tracing service is operated according to **international best-practice models, including a robust complaints mechanism;**
- The tracing service is adequately resourced;

- All research relating to adoption traces is carried out by **trained genealogists** and not social workers;

- If two or more service users state that they wish to be put in direct contact with each other with no further intervention or assistance from TUSLA or any other State agency, they are not obstructed from availing of this option;

- The tracing service is regularly advertised internationally and on social media in order to facilitate people who were exported from Ireland for adoption as children;

- The Government resources an independent assessment of how TUSLA is interpreting the GDPR rights of adopted people, their natural relatives and others affected by so-called historical abuses.

We are extremely concerned that TUSLA is not currently considered to be an 'accredited body' as prescribed under the *Adoption Act 2010*, and it is therefore unregulated in its role as an adoption service provider. Section 126 of the *Adoption Act 2010* must be amended by inserting the following:

> *(5) Tusla: The Child and Family Agency shall be registered as an accredited body and thus regulated by the Adoption Authority.*

f) Placement of the National Adoption Contact Preference Register (NACPR) on a statutory footing

Since the launch of the NACPR in 2005, ARA and its predecessors have called for the Register to be put on a statutory footing. Unfortunately, despite ministerial promises of regular advertising both in Ireland and abroad, the NACPR has not been advertised since it was first launched, nor has it ever been placed on a statutory basis. A contact register is only ever as good as its advertising, and thus the NACPR has never reached its full potential. If prospective registrants do not know of the existence of the NACPR, they will not know to register, and this can lead to registrants believing that the other party is not interested in meeting them. Legislative measures should also adhere to the following:

- The AAI has operated the NACPR since 2005 and it is imperative that the institutional memory and expertise developed since then is maintained. For this reason, and for the reasons set out above, **under no circumstances should the NACPR be handed over to TUSLA.**

- If two or more registrants have been matched with each other on the NACPR and they wish to be put in direct contact with each other with no further intervention or assistance from the AAI, Tusla or any other State agency, they should not be obstructed from availing of this option.

- If two or more registrants have been matched on the register and they do not wish to be reunited through TUSLA, another service must be offered to them.

- The NACPR must be adequately resourced.

- The NACPR must be advertised both nationally and internationally at least every two years.

- The NACPR must be advertised regularly on social media platforms.

g) The right to know you are adopted

The State should ensure that it is every adopted person's right to know they are adopted, by amending existing legislation to remove any provisions that hide an adopted person's status. As evidenced in the witness testimony set out in the Clann Report, many adopted people grew up not knowing they are adopted, only to discover this fact later in life when, for example, trying to obtain a passport. We recommend that a statutory provision be introduced immediately to provide the right for adopted people to know they are adopted.

Relatedly, as outlined in the ARA draft bill, the Government must delete Section 89 (2) of the *Adoption Act 2010* which states that:

> *(2) A[n abridged] certificate referred to in subsection (1) may not disclose that the person to whom the certificate relates is an adopted person.*

2. HAA MEDICAL CARD

In its final report the MBHCOI recommended an 'enhanced medical card' for some survivors. In fact, the **full HAA card** is required for **all survivors of adoption-related, state care-related and institutional abuse**.

In 2013, the very first recommendation that Mr Justice Quirke made as part of his recommended Magdalene Laundries restorative justice scheme was that: 'Magdalen women should have access to the full range of services currently enjoyed by holders of the Health (Amendment) Act 1996 Card ("the HAA card")'.[2] This recommendation responded to what the Magdalen Commission Report described as the 'principal' concerns voiced by survivors during the Commission's consultations.[3]

This HAA card (or its equivalent) has never been provided to the Magdalene survivors, in breach of the promises made to them (in return for which they signed legal waivers of their rights against the State when accepting the 'restorative justice' scheme). We explain this in detail below.

It is clear from internal governmental records from 2013 that one of the reasons why the Magdalene survivors were not given the HAA card was because the Department of Health feared it would be requested by other survivors of abuse.

It is absolutely critical that all survivors of adoption-related abuse, foster care / boarding out-related abuse, Magdalene Laundries, industrial and reformatory schools and other forms of institutional abuse are provided with the full HAA card. In addition to being recommended by Judge Quirke for Magdalene survivors (and never provided to them), Industrial school survivors also need this because of the closing down of Caranua, and the Collaborative Forum of Mother and Baby Homes Survivors

[2] Magdalen Commission Report, p36.
[3] Magdalen Commission Report, p33.

specifically recommended the HAA card in its report for those who suffered forced family separation.

The **HAA card is far more than an ordinary medical card**. Judge Quirke's Report (*The Magdalen Commission Report*) noted that, even though 91% of 231 women who spoke to Judge Quirke explained that they already had a free medical card or GP visit card, they still had substantial 'complaints and worries' regarding their ability to access health and social care services.[4] For example, the Report explained: 'Many women indicated that they wished to be provided with access to counselling. Some wished to have access to a medical card and to be given an opportunity to see their GP on a more regular basis. Others described how they were currently on waiting lists awaiting surgery and how their scheduled surgery has been delayed or cancelled. Some women described how they struggled with mobility issues and a number of women stated that they believed that their lives would be greatly improved were they to be provided with walking frames or stair-lifts. Some described how they required improvements and alterations to be made to their homes to accommodate their health conditions.'[5]

The contents of the HAA card were explained in the Magdalen Commission Report. Judge Quirke clarified that '[d]etails of the range, extent and diversity of the community services to be provided to the women are described within Appendix G.'[6] Appendix G of Judge Quirke's report is 10 pages long and explains that it is largely a reproduction of the information guide provided to current holders of the HAA card—who are those infected by the State with Hepatitis C in the 1990s. The services set out in Appendix G are:

- access to a Liaison Officer who arranges and pays for all services, either in advance or upon the production of receipts;

- chiropody and podiatry services, provided by any qualified professional as frequently as needed without any requirement to obtain prior approval or a doctor's referral;

4 Magdalen Commission Report, p33.
5 Magdalen Commission Report, p34.
6 Ibid.

- complementary therapies such as massage, reflexology, acupuncture, aromatherapy, hydrotherapy, chiropractic services and osteopathy, provided by a registered medical practitioner such as a GP, registered nurse or physiotherapist, following an initial doctor's referral;

- counselling, including psychological and psychotherapy services, for cardholders and their immediate relatives (including adult children), provided by an accredited professional, without any requirement to obtain prior approval or a doctor's referral;

- all necessary dental services, provided by dentists participating in the State's Dental Treatment Services Scheme;

- hearing tests and aids, without limitation;

- ophthalmic services, without any requirement to obtain prior approval or a doctor's referral;

- a specialist home nursing service, involving a clinical nurse-led home care plan that is 'individualised, client focused, flexible and easily accessible…which meets the assessed needs at any given time of each client and which is reviewed on a regular basis to reflect changing needs', the aim being 'to provide and support client focused care in the community to enable the individual to be cared for at home and to reduce unnecessary admissions to hospital';

- a home support service to assist with household chores, either provided by the State or through direct employment by the cardholder which is reimbursed;

- all necessary aids and appliances as prescribed by a GP, Consultant, Occupational Therapist or Public Health Nurse;

- physiotherapy services, provided by any chartered professional, following a doctor's referral;

- GP services from any licenced professional without limitation;

- no charge for any prescription by a GP; and

- referrals to a consultant doctor by a GP to be facilitated within two weeks.

In response to our advocacy seeking the full HAA card for Magdalene survivors, the Government has claimed that not everything in the HAA card is relevant to institutional abuse survivors because it covers some Hepatitis C specific matters. However, this argument does not make sense because if a survivor does not require something specific to Hepatitis C they will not use that service.

The following is an explanation of how the Magdalene survivors have been denied the promised HAA card. **We urge the Government to remedy this situation immediately and to include all survivors of Magdalene Laundries and residential schools, and all survivors of foster care/boarding out-related abuse, adoption-related abuse, Mother and Baby Homes and County Homes in the proper HAA card scheme.**

a) Comparison between HAA and RWRCI Guides

Compare the **five-page** *HSE Guide to Health Services under the Redress for Women Resident in Certain Institutions Act 2015* with the **forty-eight-page** *HSE Guide to Services Provided with the HAA Card*.

b) Complaints by the dental profession

In 2015 three dentists published a letter to the editor of the *Journal of the Irish Dental Association* noting that the RWRCI card entitles Magdalene survivors 'to the limited and incomplete treatment that the DTSS [Dental Treatment Services Scheme] provides for most medical card holders'. The dentists 'urge[d] the Council of the Irish Dental Association to publicly disassociate itself from this act by the Government and to speak out publicly on behalf of its members who do not accept the injustice we are expected to support.'

c) Complementary therapies

During debates in 2014 on the Redress for Women Resident in Certain Institutions Bill, when several parliamentarians argued that complementary therapies assist in relieving

stress, then-Minister for Justice, Frances Fitzgerald, agreed to '*come up with proposals for a separate, carefully laid out scheme – an administrative rather than a statutory scheme*' to provide complementary therapies. This never happened.

In a letter to a survivor known to us, in May 2018, the Department of Health stated:

> *The RWRI Act 2015 does not include complementary therapies, such as reflexology, aromatherapy, massage, hydrotherapy and acupuncture, or other alternative therapies such as health services meeting the medical needs of the Magdalen Women. It should be noted that Judge Quirke's Report did not identify these services for Magdalen Women. Should you wish to raise the issue of complementary therapies you should contact the Department of Justice & Equality, who have responsibility for the RWRCI Act 2015, in the first instance.*

d) Kathleen R.

In August 2015, Kathleen R. told Claire McGettrick she felt 'hoodwinked' by the State. Kathleen's HSE 'home help' hours had been reduced and she was completely distraught. Having been confined in institutions for most of her first twenty-three years, Kathleen had fought hard for her independence and she could not face the thought of re-institutionalization in adulthood. Kathleen phoned the HSE Contact Person in her area, and that person told her bluntly that she was not entitled to extra hours and that the RWRCI card was merely there to provide free medicine.

e) Beth

Claire McGettrick's experience of attempting to obtain mobility aids and counselling for a survivor of both a Magdalene Laundry and a Mother and Baby Home, 'Beth', who is also now deceased, further illustrates the problems that arose immediately for Magdalene survivors. In August 2015 Claire emailed the HSE regional Contact Person for the RWRCI scheme to say that Beth *'has difficulty getting up and down the stairs at her home due to ongoing medical issues which severely affect her mobility'* and that she

'would like to apply for a stair lift under the RWRCI Card.' The reply stated: *'Unfortunately the Health Service Executive do not provide stair lifts.'* Claire asked if the RWRCI card might help Beth to obtain specially designed walking sticks, as she had arthritis in both hands. The reply stated: *'Unfortunately, there is no priority given to holders of the RWRCI Cards'.*

In late September 2015, Claire again emailed the RWRCI Contact Person to ask if it was possible for Beth to be prioritised for counselling. Beth had been experiencing suicidal thoughts and self-harm, and she had been placed on a waiting list by the HSE National Counselling Service in early August following a GP's referral several months previously. A response from the RWRCI Contact Person in mid-October conveyed a message from the National Counselling Service that: *'they do not prioritise their waiting list at all. They adhere strictly to this policy. Seemingly they receive numerous requests from G.P.'s.'* It was only following letters from *pro bono* lawyers, with the support of a *pro bono* expert psychological report, that Beth began to receive counselling in late February 2016. Responding to Beth's solicitor's letter, and while agreeing that the National Counselling Service would clinically review Beth's GP's referral, the HSE National Director of Primary Care clarified that RWRCI cardholders were not entitled to HAA-standard psychological care. The letter said: *'The terms of the Redress for Women Resident in Certain Institutions Act 2015 (Section 2(1)(f)) states that the 'HSE shall make available without charge to relevant participants a counselling service, following a referral made in that regard by a registered medical practitioner.'* Please note that the act does not make specific mention of payment for private counselling services.' Beth died just over a year later.

f) Internal government records from 2013

Internal notes released to Conall Ó Fátharta under Freedom of Information show that before Judge Quirke's report and recommendations had reached the Department of Justice (DoJ) at the end of May 2013, Mr Jimmy Martin had discussed with the Department of Health (DoH) the cost of providing only the ordinary public medical card to

survivors who did not already have one. Other documentation demonstrates that, upon receiving *The Magdalen Commission Report*, the DoH resisted the idea of providing HAA-standard care.

An email from Jimmy Martin to a colleague on 4 July 2013 relayed that the 'observations of the Department of Health' on Judge Quirke's report were as follows: '*The notion of an 'enhanced' medical card is unclear. However, health legislation could be prepared to deem a person that has received a cash payment relating to her stay in a Magdalen laundry from the Minister of Justice and Equality to have full eligibility regardless of her means/income. Full eligibility entitles a person resident in Ireland to a range of public health and the public acute hospital services. The cost of this would be in the region of €3m per year. If the legislation was changed for the Magdalen women there will be an expectation by other groups (e.g. symphysiotomy, thalidomide, narcolepsy etc.) who are receiving medical card type services through the HSE that a similar legislative provision would apply to them. This precedent would require further detailed analysis*.' The DoJ did not force the issue, informing health officials that the extent of the services provided was their prerogative. A note of a meeting on 8 July 2013 between Mr Martin and DoH officials records: '*[DoH] has concerns re giving medical cards over and above the norm or providing them to people living outside the State. [Mr] Martin indicated that the Government had already agreed to provide the Magdalen women with medical cards. What these would cover was a matter for the Department of Health. Counselling had been mentioned repeatedly*.'

g) Most recent survivor correspondence

Dr Maeve O'Rourke received the following messages in recent months from a Magdalene survivor:

> '*Hi Dr Maeve O Rourke as s Magdalene Survivors who has beein emailing and writing to Taoiseachs and Health ministers since 2014 but refused the HAA Card every time . As i suffer bad Health Fibromyalagia cervical Rib Syndrome both 24/7*

pain .And AFIB Of the Heart and i am a Diabetic type 2. I Would like to ask you is there any other steps i could take to the Goverment to fight for my HAA CARD ...

Hi Maeve i certainly would be very happy if you foward my email to the lady you mentioned i have been writing myself for my friend and myself to A few Taoiseachs and Many TD.s to no avail i feel my health is not been cared for Enough . But i know if i had tha HAA Card would be given more Priority by my Health Officials . My eyes are in a bad state ive had many bad falls over a few years . And this enhanced card do not cover me'

h) Dublin Honours Magdalenes Listening Exercise

On 6th June 2018, a formal 'Listening Exercise' took place in the Round Room of the Mansion House as part of Dublin Honours Magdalenes (DHM), an historic two-day event in Dublin from June 5th-6th.

As many of the transcripts make clear, the women insisted (repeatedly) that the Health Card, as recommended in Justice Quirke's Magdalen Commission Report (and explained in detail in Appendix G to that report) and agreed to 'in full' by the government, was not what was delivered to them by Government under the Magdalen Restorative Justice Ex Gratia scheme.

The benefits offered to them are essentially nothing more than the routine healthcare service offered to state medical cardholders, which most of them already have due to their low income or advanced age. A number of survivors living outside Ireland also expressed frustration at the state's failure to deliver healthcare benefits to women in the Diaspora - indeed, some women did not know they were entitled to such a benefit in the first place. The following excerpts from the women's testimonies speak for themselves:

- *We're not able to use ours in England. I spoke to Judge Quirke*

- *Did you get the medical card in England?*
  –No, no...

- *'…there's also a point I want to bring up, and it's one of the reasons I'm here today…is what we were promised in the Quirke Report. The stuff that we're entitled to, as…being survivors.*

- *Now, this is a letter I got at the time… 'This, the bill, provides for a broad range of health services, which we will receive free of charge. These services will include general practitioner, medical and surgical. Drugs, medicine and surgical. Nursing services, home help services. Dental, ophthalmic and aural services. Counselling services, chiropody services and physio services'. Now out of that, at the moment…the only thing I have…is... my medicine free. And… I have got free counselling.*

- *You're asking what we'd like the government to do. I would actually like them to fully implement Judge John Quirke's recommendations. He recommended a medical card of a HAA. You know, that would give us a lot of benefits that we could access things that's wrong with us in life because this medical card he gave us, enhanced medical card, it's not much more than the ordinary medical card. …We get our medications. We don't have to pay for our medication, but other things they said we're entitled to, it's not happening.*

- *[Judge Quirke] recommended a medical card…that would give us a lot of benefits that we could access things that's wrong with us in life because this medical card he gave us, enhanced medical card, it's not much more than the ordinary medical card.*

- *You know, we're pensioners. We got this booklet telling us that we could get our eyes tested twice a year. But you get that anyway as a pensioner! But they thought they were giving us something extra… But still…still if I want to go and get my eyes tested, I still have to get permission from the HSE, but this card was telling us, and the booklet was telling us… as far as we were concerned we didn't have to fill in no forms. We get the same benefits as a pensioner and that needs to be rectified.*

- *[Judge Quirke] recommended a medical card…that would give us a lot of benefits that we could access things that's wrong with us in life because this medical card they gave us...it's not much more than the ordinary medical card.*

- *And even with this magic medical card…you have to pay for your blood. So, I have no sense on the principle of the thing…The physiotherapist is actually the same as when you have an ordinary medical card.*

- *But you know with it all we were supposed to get …counselling… and the dentist. We were supposed to get all those. But you get them automatically as a pensioner…When I accepted my money that time, I had to sign a form that said I would never take another penny off them…you have to pay €600 then to the solicitor and he signed off that you accepted your money.*

- *Don't make promises they're not going to keep to people. Because I really thought like, this is the opportunity for us all to get counselling, to talk to someone. This [the Listening Exercise] is counselling to me. Everybody sharing, you know.*

- *It is really embarrassing when you see the card.*

- *We were promised the medical card that would give us a climb up on the ladder for our teeth, for our eyes… everything. Haven't got it… We got the card, but we never got anything to go with it. And I got a private number to ring and they never answer it.*

3. THE COMPENSATION PROCESS IN A 'RESTORATIVE RECOGNITION SCHEME'

This section draws from and should be read alongside the recent recommendations of Dr Maeve O'Rourke to the Scottish parliament **(Appendix 3)**. As noted above, the right to an effective remedy for grave Constitutional and human rights violations requires the provision of compensation proportional to the gravity of the violations and the harm suffered.

a) Waiver of rights is unacceptable

The 'Restorative Recognition Scheme' should not under any circumstances have a waiver of legal rights as a condition of receiving a payment from the scheme. In order to support those who may wish to seek a judicial remedy in addition to a payment from the scheme, the scheme's establishing legislation could direct the courts to reduce

any future damages award by the amount already paid by the relevant Defendant under the scheme. This approach would recognise the absolute and inalienable human right of survivors of torture and other cruel, inhuman or degrading treatment to accountability for such abuse, and to compensation commensurate with the gravity of the harm suffered. Such recognition and any ensuing litigation would strengthen current and future protections against torture and ill-treatment.

In January 2020, the United Nations Committee Against Torture found the waivers imposed upon a participant in Ireland's Residential Institutions Redress Board (RIRB) and Magdalene '*ex gratia* restorative justice' scheme to be unenforceable. The Committee's admissibility judgment in the ongoing individual case under article 22 of the Convention Against Torture of *Elizabeth Coppin v Ireland* is available here. As noted at para 4.5 of the judgment, the Irish Government argued that Mrs Coppin's prior waivers under the Residential Institutions Redress Act 2002 and the non-statutory Magdalene '*ex gratia* restorative justice' scheme should preclude her from bringing subsequent legal action against the State arising from the abuse concerned. At para 6.4, the Committee affirmed that articles 12, 13 and 14 of the Convention Against Torture require the state to investigate every individual case where there is reasonable ground to believe that torture or ill-treatment occurred and that article 14 requires the state to allow civil proceedings related to allegations of acts of torture or ill-treatment. At para 6.7, the Committee dismissed the legal waivers as having no effect on Mrs Coppin's absolute rights under the Convention; the Committee stated 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)'.

Many survivors will not pursue litigation following an application to the scheme. There are many obstacles to litigating 'historical' abuse and survivors' personal preferences will vary. However, the presence of a waiver disproportionately harms every applicant to a

scheme, and the general public, in addition to harming most obviously those who may have wished to litigate but felt obliged to take the scheme payment.

To illustrate:

i. In forcing survivors to choose between a guaranteed financial payment and accountability, a waiver arguably emits a message to survivors themselves and to the general public about survivors that they are interested in money above all else. This is simply untrue and degrading to survivors.

ii. If barriers to litigation are removed, individual cases may establish precedents that are of benefit to many, in terms of truth-telling and legal interpretations and standard-setting regarding the nature of and responsibility to protect from human rights abuse. There is every reason to believe that a waiver will prevent cases that could have enhanced legal protections from human rights abuse from being taken.

iii. The absence of cases due to a waiver may also lead to revisionism by some institutions or individuals who contributed to the scheme and benefitted from a waiver's protection against suit. In this regard, it is worth noting the response by the Rosminians (Institute of Charity), to the Department of Education's proposal to retain, but 'seal' for at least 75 years, all records gathered by the RIRB. The Rosminians opposed any retention of the records, rejecting the veracity of survivors' accounts of abuse generally and ignoring the fact that the RIRB made awards following an adversarial process:

> *Those who were involved in the Redress Scheme know well that it was purposely designed with a very low burden of proof to facilitate the State. The motivation was as much to do with politics as with justice. … Future generations will naively take as truth the submissions to the Redress Board*

and lead to the eternal besmirching of the names of good people. Injustice heaped upon injustice.[7]

iv. It is also worth noting that the legal waiver under the Magdalene '*ex gratia* restorative justice' scheme has led to a situation where Irish Government officials have made repeated statements to United Nations human rights treaty bodies to the effect that the State knows of 'no factual evidence to support allegations of systematic torture or ill treatment of a criminal nature'[8] and that:

'No Government Department was involved in the running of a Magdalen Laundry. These were private institutions under the sole ownership and control of the religious congregations concerned and had no special statutory recognition or status.'[9] *These contentions have been disproved*

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7 See enclosure in Dr Maeve O'Rourke submission to the Scottish parliament: https://aran.library.nuigalway.ie/bitstream/handle/10379/16315/20201001Dr_ORourke_ltr_to_convener-additional_evidence_with_appendix.pdf?sequence=1&isAllowed=y

8 Ireland, Second Periodic Report to the Committee Against Torture, UN Doc CAT/C/IRL/2, 20 January 2016, para 241, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2f2&Lang=en Ireland, Information on follow-up to the concluding observations of the Committee against Torture on the second periodic report of Ireland, UN Doc CAT/C/IRL/CO/2/Add.1 (28 August 2018), para 15. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2fC O%2f2%2fAdd.1&Lang=en Human Rights Committee, Replies of Ireland to the list of issues, UN Doc CCPR/C/IRL/Q/4/Add.1 (received 27 February 2014, published 5 May 2014) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2f Q%2f4%2fAdd.1&Lang=en
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9 Ireland, Second periodic report to the Committee against Torture, UN Doc CAT/C/IRL/2 (20 January 2016) para 237.

not only by extensive survivor testimony but also by the contents of the Government's Inter- departmental Committee to establish the facts of State involvement with the Magdalene Laundries, a substantial report of the Irish Human Rights Commission and the report of Mr Justice John Quirke on his proposals for the Magdalene 'ex gratia restorative justice' scheme.[10] *The absence of litigation on the matter, however, continues to influence the State's official position—and, as a result, the national historical record and other structures.*

Magdalene Laundries survivors have not, in fact, received all aspects of the promised scheme—and the waiver is key to this situation. Financial payments were administered by the Department of Justice first, before other elements of the scheme were provided, and the women had to sign a waiver to receive their payment. This meant that they were left with little recourse when the other elements failed to appear (particularly because the scheme is a non-statutory administrative scheme, making judicial review more difficult—aside from the ordinary barriers to taking legal action). And, as discussed above, numerous survivors have spoken about the joint failure of the Department of Justice and Department of Health to provide the promised healthcare.

b) Procedural fairness

In establishing the Magdalene scheme in 2013, the Irish Government expressed a desire to avoid the re-traumatising adversarial procedures of the previous RIRB. Therefore, it was decided that a woman need only demonstrate her duration of detention in an institution in order to qualify for a payment. Payments were based on a scale of up to 10 years+ which correlated with lump sum payments of up to €50,000 and further weekly payments up to €50,000 in total, paid in actuarially calculated instalments with any remainder reverting to the State if a woman dies earlier than predicted. (The scheme

[10] See Maeve O'Rourke, 'Justice for Magdalenes Research, 'NGO Submission to the UN Committee Against Torture in respect of Ireland' (JFMR, July 2017) pp 7-13, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_CSS_IRL_27974_E.pdf

includes other material elements, automatically provided or promised upon a woman's qualification for a specific payment amount.)

An investigation by the Ombudsman and judicial review proceedings established, respectively, that the Magdalene scheme lacked fairness because: (1) the Department of Justice, which administered the Scheme, required the production of documentary evidence, i.e. records, and had no mechanism for receiving the women's own testimony or that of their family or friends in the event that records were not available or were disputed; and (2) the Department did not provide the women with a copy of all evidence which it had received (e.g. from the nuns), in order to allow comment. Legal fees were not provided to help women through the application process—rather, €500 + VAT was available only for a solicitor to advise each woman on the legal waiver once she had received an offer. Neither did the Government provide any independent advocacy services under the Scheme such that, by November 2017, the Ombudsman reported that women 'deemed' by the Department to lack sufficient decision-making capacity to apply to the scheme had been abandoned.

Therefore, in light of the experience of Magdalene survivors, in order to be admitted to the scheme **there should be no absolute requirement for documentary evidence** and **testimony must be permitted to ground an application in the absence of records.** In addition, applicants to the scheme must be provided with independent advocacy assistance and legal assistance to safeguard their rights and to enable them to provide their best evidence.

c) Time limit

The 'Restorative Recognition Scheme' should have no time limit. Many survivors of Irish residential schools did not have the opportunity to apply to the RIRB because they were unaware of its existence, or unaware of its relevance to their experiences, before the deadline for applications had passed. Their exclusion from the RIRB had a compounding effect because eligibility for the later material supports provided by

'Caranua' was premised on a prior award from the RIRB. In 2013, Mr Justice John Quirke recommended that the Magdalene scheme have no time limitation and the Government has applied no time limit to the Magdalene scheme, which remains open.

4. IMPLEMENTATION OF THE COLLABORATIVE FORUM RECOMMENDATIONS

The Government must implement the Recommendations of the Collaborative Forum of Former Residents of Mother and Baby Homes **(Appendix 4)**, which relate to:

i. Identity and information;
ii. Health and well-being supports; and
iii. Memorialisation and personal narratives.

5. EXPLICIT RIGHTS FOR PEOPLE ADOPTED OVERSEAS

People who were adopted from Ireland to America and other overseas locations should be included in any information and tracing services provided by the State. A **guarantee of Irish citizenship, and assistance to claim such citizenship**, should be provided.

For people who are interested, **repatriation options** should be made available. We also recommend that the State, in conjunction with the equivalent authorities in the US and elsewhere, provide subsidised 'homeland tours' for people who were sent abroad for adoption. Doing so would be consistent with the recently published Department of Foreign Affairs' Ireland's Diaspora Strategy 2020.

6. PROPER IMPLEMENTATION OF EU GDPR RIGHTS

This recommendation should be read alongside our Joint Submission to the Oireachtas Joint Committee on Justice Regarding the General Data Protection Regulation of 26th March 2021 **(Appendix 5)**.

In October 2020, following the reversal of its policy to 'seal' for 30 years all records received from the MBHCOI, the Government promised additional resources to the Department of Children, Equality, Disability, Integration and Youth and TUSLA to ensure the immediate implementation of GDPR rights in respect of the MBHCOI archive. In January the Clann Project called for the swift recruitment of data protection law expert committees, who are independent of government Departments and TUSLA, to administer the data protection obligations of the Department and TUSLA. In addition, independent expertise should also be provided to the Adoption Authority of Ireland and to the **myriad other controllers of adoption and institutional records.**

We strongly believe that it is necessary to immediately create and resource a **dedicated unit of the Data Protection Commission, with a dedicated Advisory Committee** including those with direct experience of adoption, institutionalisation and State care, and human rights expertise, to ensure in relation to all institutional, adoption and 'care'-related records:

i. Cataloguing / identification of the location of all archives of historical institutional, adoption and care-related records;

ii. Major improvements in data controllers' practice, including through published guidance and proactive monitoring and investigating of such practice;

iii. The provision of accessible information and assistance to data subjects (bearing in mind the varied and particular needs of those affected);

iv. Efficient and transparent appeals from contested decisions of data controllers; and

v. Detailed recommendations, following consultation with those affected, on future elements of the legislation to underpin the promised National Archive of Historical Care-Related Records.

Section 12 of the Data Protection Act 2018 provides that 'the functions assigned to the [DPC] by virtue of its being the supervisory authority for the purposes of the Data Protection Regulation and the Directive, the general functions of the Commission shall

include…such other functions as may be assigned to it from time to time by or under any other enactment'.

7. ACCESS TO COURT

International human rights law confirms that 'statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.'

The State must amend the Statute of Limitations 1957 to explicitly grant discretion to judges to disapply the normal limitation period where it is in the interests of justice. A precedent for such an approach is to be found in England. There, section 33 of the *Limitation Act 1980* permits a court to disapply the statutory time period where *'it would be equitable to allow an action to proceed.'* In coming to a decision whether to disapply the limitation period, a court is required to consider a number of factors, including the level of prejudice that would be caused to a plaintiff were the statutory limitation period to apply and the level of prejudice that would be caused to the defendant were the court to lift the limitation period.

In the meantime, the State must direct the Chief State Solicitor and State Claims Agency not to plead the Statute of Limitations in so-called 'historical' institutional abuse cases. The Courts will retain their residual discretion to refuse to allow cases to proceed where it would not be in the interests of justice.

The State should also reform the civil legal aid scheme and rules of court procedure to enable multi-party litigation in line with the 2005 Law Reform Commission Report.

The availability of evidence and the opening of archives is vital to individuals' ability to take claims to court if they wish to do so.

8. DEDICATED CRIMINAL JUSTICE UNIT AND HUMAN RIGHTS-COMPLIANT INQUESTS AND EXHUMATIONS

a) Criminal justice and Garda accountability

A standalone unit within An Garda Síochána, made up of specially trained officers and supported by the Garda Síochána Ombudsman Commission (GSOC) where there is any suggestion of Garda involvement in criminal behaviour, should be established and tasked with investigating all suspected and alleged criminal offences concerning institutional and family separation abuses during the 20th century. In addition, a special unit of GSOC should respond to complaints regarding Garda misconduct short of criminal allegations.

The State should ensure that all individuals affected by institutional and family separation abuses are provided with their full entitlements to information and support under the EU Victims Directive and associated *Criminal Justice (Victims of Crime) Act 2017*. Crucially, the State should provide legal aid to victims and survivors so that they can be advised of their legal entitlements; as noted by McDonald, Article 47 of the EU Charter states that 'legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice'.

In addition, Section 42 of the *Garda Síochána Act 2005* should be amended to provide for special inquiries established under this provision to draw conclusions in respect of criminal conduct allegedly perpetrated by members of An Garda Síochána, **including** former members of An Garda Síochána, in the course of their duties and/or in respect of institutional and family separation abuses. In particular, individuals tasked with chairing such inquiries should be provided with the power to furnish investigative files to the Director of Public Prosecutions and/or to make recommendations regarding prosecutions of members for alleged criminal behaviour.

b) Human rights-compliant inquests and exhumations

This recommendation should be read alongside our Joint Submission to the Oireachtas Committee on Children, Equality, Disability and Integration on the General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill of 26th February 2021 **(Appendix 6)**.

The jurisdiction of the Coroner is and should remain the primary basis for addressing human remains related to institutional burials. Under existing legislation inquests are clearly required, as per section 17 of the Coroners Act 1962. Death by neglect or maltreatment falls under 'unnatural manner'; 'unknown causes' may apply in many cases, but more broadly, the obligation to hold an inquest generally applies to instances where an individual is in the care of the State.

The government's proposal for a statutory Agency for burials can be designed in a way that is compatible with and subject to the Coroner's jurisdiction. It is completely unacceptable that the Government's General Scheme of Bill regarding institutional burials, published in December 2019, proposes to disapply the powers of the Coroner in relation to Tuam and other exhumation sites.

The Coroner system must be reformed in order to comply with the European Convention on Human Rights. The system at present, even as amended, lacks independence (due to its heavy reliance on An Garda Síochána outside of Dublin to conduct its work); it also lacks transparency, promptness, accessibility and consistency. Variation in procedures is apparent between each district. There is no training for coroners, and indeed the majority of coroners in Ireland are in acting positions. Families experience vast difficulties in being permitted to present their own experts, and the ability of inquests to present narrative verdicts has not developed apace with neighbouring jurisdictions. In addition to human rights and procedural reforms of the coroners system, a special coroners unit needs to be established, with a team of coroners, a full team of staff, investigators, lawyers, and a team of pathologists in order to conduct such inquiries, and any required inquests, in a timely fashion which respects Article 2 ECHR requirements.

It is important to note that in addition to the coronial system, the government has also established the Independent Child Death Review Group, which examines and makes recommendations relating to the deaths of children in or following State care. Its most recent report provides an overarching review of deaths from 2000-2020. This approach already indicates an ability to institute special mechanisms and groups to review such deaths.

The 2017 Expert Technical Group report suggested that a multi-disciplinary body of experts would be an appropriate mechanism to address the complex tasks involved in exhumation, examination and identification of infant human remains. Such an approach can be consistent with the exercise of the coroner's jurisdiction. Section 33 of the *Coroners Act 1962* provides that a coroner may request the Minister for Justice to arrange post-mortem examination of the body by any person appointed by the Minister; special examination by way of analysis, test or otherwise. These broad powers could cover the use of appropriate national and international expertise and best practices and processes related to exhumation and DNA analysis, while retaining coronial jurisdiction.

See here for a record of the Clann Project's efforts in 2018 to assist those affected to respond to the Government's consultation on the Tuam burial ground.

9. REPEAL OF 'GAGGING' ORDERS

a) Section 28(6) *Residential Institutions Redress Act 2002* must be amended

The colloquially named 'gagging order' in section 28(6) of the *Residential Institutions Redress Act 2002* has caused untold harm to survivors of industrial schools through its 'chilling effect', despite the provision never actually being used to prosecute a survivor for speaking in public of the matters which they revealed to the Redress Board. For more on the impact of the gagging order, please see the 2017 report of the voluntary organisation

Reclaiming Self to the UN Committee Against Torture (in particular p17, 23-24), and Mick Peelo's two-part documentary for RTE in March 2020, *Redress*.

Section 28(6) states as follows:

> *A person shall not publish any information concerning an application or an award made under this Act that refers to any other person (including an applicant), relevant person or institution by name or which could reasonably lead to the identification of any other person (including an applicant), a relevant person or an institution referred to in an application made under this Act.*

Under section 28(9), contravention of section 28(6) is a criminal offence with a maximum penalty under section 34 of a €25,000 fine and/or 2 years' imprisonment. In our view and the view of many lawyers whom we have consulted, this section on its face contravenes the guarantee of freedom of expression in Article 40.6.1 of the Constitution and Article 10 ECHR. It is unnecessary and disproportionate given the other legal protections available to alleged wrongdoers (e.g. defamation law and the protection from civil suit that the RIRA 2002 provides once a survivor has accepted a settlement).

Section 28(6) of the RIRA 2002 must be amended to clarify that 'a person' refers to those working for the RIRB and Review Committee and not survivors.

b) Section 11(3) Commissions of Investigation Act 2004 must be amended

The current section 11(3) of the 2004 Act criminalises the disclosure by **any person** of evidence or documents given to the Commission in private, on pain of a maximum penalty of a €300,000 fine and/or 5 years' imprisonment.

We believe that this provision, on its face, is in clear violation of the right to freedom of expression of those who experienced abuse, who should be enabled if they wish to contribute testimony or documents to the national historical record or otherwise to publish

their accounts. Furthermore, as recommended above, this provision should be amended so that all personal data given to the Commission in private is readily available to the individuals who own it as required by the GDPR, and so that State and other administrative records are publicly available (anonymised as necessary).

10. AMENDMENT OF THE *STATUS OF CHILDREN ACT 1987*

Section 35 (1) of the *Status of Children Act 1987* states that:

> *(1) (a) A person (other than an adopted person) born in the State, or*
>
> *(b) any other person (other than an adopted person),*
>
> *may apply to the Court in such manner as may be prescribed for a declaration under this section that a person named in the application is his father or mother, as the case may be, or that both the persons so named are his parents.*

This is blatant discrimination against adopted people, enshrined in an act designed to abolish the shame associated with illegitimacy. As part of the redress measures, the State should amend Section 35 (1) of the *Status of Children Act 1987* so that adopted people (whether legally or illegally adopted) are included in the statutory right to a declaration of parentage.

11. OFFICIAL RECOGNITION OF HUMAN RIGHTS VIOLATIONS

On Wednesday 13 January 2021, An Taoiseach Micheál Martin issued an official State apology to the survivors of Mother and Baby Homes. While the State apology was most welcome, it did not acknowledge the full extent of the human rights violations experienced by people affected by this issue. The Clann Project Report, which was submitted to the MBHCOI and to the Government in October 2018, recommended that the State apology must include:

- An apology for the shame and stigma imposed on unmarried mothers and their children through the State's policies and practices;

- An apology to adopted people who had to grow up with no knowledge of their origins;

- An apology to adopted people for the loss of their identity;

- An apology for the incarceration of women and children in Mother and Baby Homes and similar institutions;

- An apology to mothers and relatives whose children died in institutions due to abuse and neglect;

- An apology to adopted people who had to grow up in abusive families due to the lack of proper assessments and follow ups;

- An apology for the state policies and practices, and the fostering of a culture, that caused mothers and children to be separated from each other by forcing and coercing women into relinquishing their babies;

- An apology to natural fathers who wished to raise and/or have contact with their children but were denied the opportunity to do so;

- An acknowledgement of the effects on past and future generations of families affected by the system;

- An apology to mothers who were denied knowledge of their rights, which prevented them from giving informed consent;

- An apology for the continued stigma and discrimination imposed on adopted people and natural parents through the lack of statutory rights and services.

The Clann Project Report further recommended that the State should also do all within its power to encourage the religious orders and church hierarchies to acknowledge responsibility and participate in the process of making reparations for the damage caused by the churches' treatment of unmarried families.

Finally, we register our grave concern that the MBHCOI Final Report has caused further abuse by its findings that:

- There is ‘no evidence’ that girls or women were forced to enter mother and baby homes by the Church or State authorities;
- Girls and women were ‘always free to leave’ and were not incarcerated;
- The forced unpaid labour of girls and women in the Mother and Baby Homes ‘was generally work which they would have had to do if they were living at home’;
- There is ‘very little evidence that children were forcibly taken from their mothers’, even though ‘mothers did not have much choice’;
- Some women ‘are of the opinion that their consent was not full, free and informed’ but ‘there is no evidence that this was their view at the time of the adoption’;
- There is ‘no evidence’ that girls or women were denied pain relief;
- There is ‘no evidence of discrimination’ in relation to decisions made about fostering or adoption of mixed race children or children with disabilities;
- There is ‘no evidence of injury to the children involved as a result of vaccine trials’;
- Criticisms of Tusla regarding information and tracing are ‘unfair and misplaced’;
- Diocesan records and the records of the religious orders ‘are the property of the holders and they have the right to determine who gets access’; and
- Where babies died while their mother was in the institution ‘it is possible that [she] knew the burial arrangements or would have been told if [she] asked. It is arguable that no other family member is entitled to that information’.

These findings do not cohere with the evidence provided to the MBHCOI (as demonstrated within the Final Report’s own pages) nor do they cohere with evidence provided to the MBHCOI through the Clann Project, or to the information that countless survivors and adopted people have shared with the general public over years. As mentioned above, it is a gross violation of the right to an effective investigation that the

MBHCOI proceeded effectively in secret, denying all those personally affected by abuse any opportunity to access or comment on any of the evidence being gathered by the Commission.

There is an ongoing judicial review action by at least one survivor, claiming that the MBHCOI breached its statutory duty under section 34 of the Commissions of Investigation Act 2004 by failing to provide to her (or any survivor or adopted person) a draft of the Report for comment. Section 34 of the 2004 Act obliges every Commission of Investigation, before submitting an interim or final report to the relevant Minister, to send a draft of the report or its relevant part 'to any person who is identified in or identifiable from the draft report'. The legislation specifies that a person is 'identifiable from a draft report if the report contains information that could reasonably be expected to lead to the person's identification'. While the MBHCOI did not name survivors or adopted people in its Report, it provided many details of their lives. It also decided to make a blanket statement at the beginning of the Confidential Committee Chapter (p.12), without providing any detail regarding who or what it was referring to, and without providing any of those it was referring to with the opportunity to comment:

> *'The Commission has no doubt that the witnesses recounted their experiences as honestly as possible. However, the Commission does have concerns about the contamination of some evidence. A number of witnesses gave evidence that was clearly incorrect. This contamination probably occurred because of meetings with other residents and inaccurate media coverage.'*

The Government should not rely on the MBHCOI Report to devise the contents of its 'Restorative Recognition Scheme' and should consider repudiating the Report outright. An inaccurate official historical record is not only insulting to those who have suffered grave abuse; it denies the most basic element of a remedy, which is acknowledgement of the truth. It further impedes memorialisation, education, and efforts to ensure institutional reform and non-repetition of similar abuse in future.

FOR IMMEDIATE RELEASE | FRIDAY 17 DECEMBER 2021 | DUBLIN

IRISH HIGH COURT DECLARES THAT MOTHER AND BABY HOMES COMMISSION OF INVESTIGATION TREATED SURVIVORS UNLAWFULLY

SURVIVORS AND CLANN PROJECT CALL ON GOVERNMENT TO AMEND REDRESS SCHEME TO RECOGNISE ALL HUMAN RIGHTS VIOLATIONS

Government agrees to High Court declaration that Commission of Investigation wrongly denied survivors the right to comment on many draft findings

Commission's redress recommendations are among findings which do not accurately reflect the survivors' evidence, as claimed by the Court cases

Government will permanently deposit today's High Court declarations in Oireachtas Library alongside the final Commission Report and will list impugned paragraphs alongside Commission Report online

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- 'Fatally flawed' Commission Report no longer stands as credible record, say survivors and the Clann Project
- Government must now drastically amend the redress scheme and extend redress to formerly 'boarded out' children
- Redress must also be extended to all affected by forced family separation, illegal vaccine trials, forced labour, abuse as an adopted child, institutional abuse of any duration, and death
- Inquests must be held into the deaths and disappearances of children and mothers and Government must give full access to the Commission's archive

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The Irish High Court has today declared that eight survivors including Philomena Lee, Mary Harney, Mari Steed, Mary Isobelle Mullaney and others not identified publicly were denied fair procedures by the State's Mother and Baby Homes Commission of Investigation which operated between 2015 and 2021.

The Government has agreed to, and will not be appealing, the High Court's declaration that the survivors were wrongly refused their statutory right under section 34 of the Commissions of Investigation Act 2004 to reply to a draft of the Commission's findings. This right was afforded to the religious orders and other alleged wrongdoers.

In its Final Report the Commission of Investigation reached conclusions diametrically opposed to the litigants' testimony without any explanation as to why, and without offering them any opportunity to comment on a draft of these conclusions as was their statutory right.

Today's High Court declaration will appear alongside the Commission's Final Report on the Government website and it will be deposited for permanent preservation in the Oireachtas Library alongside the Commission's Report. The Government will also list online and in the Oireachtas Library all paragraphs in the Commission's Report which the survivors' High Court actions claimed did not accurately reflect their testimony.

The impugned parts of the Commission's Final Report include findings and recommendations upon which the Government is relying to limit its proposed redress scheme. For example, the Commission concluded that redress should not be granted for forced or illegal adoption, forced labour in Mother and Baby Homes generally, vaccine trials in Mother and Baby Homes, or the abuse of 'boarded out' or adopted people as children.

The Commission's findings were heavily contested by those personally affected when published in January 2021. Today's High Court declaration confirms that these findings were reached following an unlawful process that denied survivors' fair procedures rights.

The Clann Project will lodge the High Court's declaration with the eight United Nations human rights bodies that **wrote** to the Government earlier this month. The eight human rights bodies criticised the State's ongoing failure to remedy abuses that occurred in the institutional and forced family separation system such as the sale of children, enforced disappearance, torture and ill-treatment, arbitrary detention, servitude and forced labour, and gender-based violence. The human rights bodies emphasised the need for comprehensive redress, unfettered access to records, and immediate inquests into deaths and disappearances at sites including Tuam and Bessborough.

CASE SUMMARIES AND QUOTES SHARED ON BEHALF OF SEVERAL OF THE LITIGANTS

Mary Harney's Claim: Mary Harney was born in Bessborough in 1949 and illegally 'boarded out' (fostered) to an abusive family aged 2 ½. The Commission's Report ignores her sworn evidence that she was not properly fed by her foster parents and that she was routinely subjected to physical abuse leading to her placement aged 5 in an Industrial School. It also ignores the evidence of 30 formerly boarded out children in the Confidential Committee Report. Given today's High Court declaration, the Government cannot continue to exclude boarded out children from the redress scheme, says Mary Harney.

The Commission concluded that the nature of the violence suffered by boarded out children 'cannot be established'. The Commission further concluded that 'the evidence relating to boarded out children and children at nurse is scant' notwithstanding Mary Harney's sworn testimony and 19 pages of testimony in the Commission's Confidential Committee report amounting to what the Confidential Committee itself called a 'stream of similar accounts of beatings and abuse of all kinds'. The 19 pages include tens of graphic descriptions of extreme violence including serial rape and routine whipping, servitude, abject neglect and denial of education. Reflecting the Commission's conclusions, the Government's proposed payment scheme does not provide any payment for abuse suffered while a boarded out child. This cannot stand, say Mary Harney and the Clann Project.

Mary Harney said: *'We have been vindicated. Today's declaration by the High Court and the Department of Children, Equality, Disability, Integration and Youth, is a step towards justice for all of the women and children incarcerated in the Mother and Baby Institutions and separated from each other, and for those of us who were boarded out to abusive guardians. The declaration given today demonstrates that the Commission of Investigation failed in its statutory duty to witnesses and that the government is not willing to stand over its work.*

The administrative files and documents of the Commission must now be made available for scrutiny, and the proposed redress scheme must take into account the breaches of our constitutional and human rights. Almost 25 years has passed since the last Mother and Baby Home closed its doors in Ireland—it is time for the Government to grant those still alive their chance to find healing and peace in the information that has always been rightfully theirs; if not, the epitaph 'Deny Till They Die' will be written on the tombstone of Irish justice.'

Philomena Lee's Claim: Directly contrary to the sworn testimony of Philomena Lee, the Commission's Report claims that women 'were not incarcerated' in mother and baby institutions; that there is 'no evidence' of women being denied full, free and informed consent to their child's separation from them; that there is 'no evidence that women in mother and baby homes were denied pain relief or other medical interventions' that were available to public hospital patients; that the forced labour which women were subjected to in mother and baby homes 'was generally work which they would have had to do if they were living at home' and not of the type that should have been remunerated; and that the religious orders' records are 'the property of the holders and they have the right to determine who gets access'.

Lee, like Harney, is calling for the government to change its 'restorative recognition' plans, to open the administrative records gathered by the Commission of Investigation, and to meaningfully recognise the human rights abuses perpetrated.

Philomena Lee, now 88, said: *'The Commission of Investigation failed in its duty to impartially and fairly investigate and establish the truth. This has been confirmed by the High Court's declaration today. In my sworn evidence in 2017, I explained to the Commission how I was confined in Sean Ross Abbey and kept away from my son Anthony for all but one hour each day. When Anthony was 3 ½ I was forced to sign a consent form for his adoption. The nuns refused to tell me what it said. We had no privacy in Sean Ross Abbey and no way to provide for our child—I worked for no pay six days a week at heavy laundry work, and I had no way out of the institution. When Anthony and I sought to find each other the nuns lied to us, and they prevented us meeting before Anthony died.*

The Commission's findings are deeply hurtful and troubling to me. Those findings deny what we lived – they deny the truth. I call on the Government to denounce this Report now, and to open up the Commission's archive of documents to survivors and adopted people so that they can access information still withheld to this day. The secrecy and obstruction by state and church must end. It has gone on for far too long.'

Bridget, one of the litigants, who has not been named publicly: Bridget gave birth to her baby boy William at Bessborough Mother and Baby Home in October 1960. Bridget gave evidence to the Commission of Investigation that Baby William died in December 1960 alone in St Finbarr's Hospital, following serious medical neglect of both mother and child by the nuns in Bessborough. When they finally transferred William to hospital the nuns refused to allow Bridget to accompany him and Bridget was denied knowledge of the cause of William's death, the location of William's grave or even whether he was buried in a coffin.

The Commission of Investigation refused to give Bridget records it held demonstrating William's burial location. It summarised her evidence inaccurately in its Report. It further ignored her evidence when it concluded that women 'were not "incarcerated"' in Mother and Baby Homes and were 'always free to leave'; that 'there is very little evidence of physical abuse'; that women in Mother and Baby Homes were not subjected to unlawful forced labour; and that women in Mother and Baby Homes received 'superior' maternity care.

The Commission further ignored Bridget's evidence by concluding that 'In cases where the mothers were in the homes when the child died, it is possible that they knew the burial arrangements or would have been told if they asked'. The Commission gave no reasoning for its finding that efforts to locate disappeared children would be 'prohibitively' expensive.

Bridget said: *'I welcome the Government's acknowledgement that there was a breach of Statutory Duty. I was denied my right to read a copy of the Commission of Investigation's draft Report and to correct the inaccuracies it contained in relation to the circumstances that I and my baby faced when incarcerated in Bessboro, Cork. I was blatantly lied to by those in charge at Bessboro about the burial place of my beautiful baby William. Nothing can bring my son back but at the very least the Government must ensure that the truth is told and that all records are released to those concerned.*

There are several areas of the Executive Summary of the Commission of Investigation's Report which do not reflect the truth and my lived experience.

The facts are that I was incarcerated in Bessboro and denied access to my baby who became seriously ill and despite me begging for a doctor to see my child, he was denied medical intervention for 16 days, after which he was finally sent to hospital. I was not allowed to be with my baby at the hospital and he died there without his mother by his side.

I am pleased that I have survived to tell William's story and to speak the truth of what happened to him and me. An inquest into the death of my baby should be carried out, just as it most certainly would if my child had not been born in Bessboro to an unmarried mother.'

Another of the litigants, who has not been named publicly, gave sworn evidence to the Commission of Investigation that two months after her birth at St Patrick's Mother and Baby Home she was placed for adoption, following which she was subjected to extreme physical, mental and sexual abuse at the hands of her adoptive parents throughout her childhood.

Her abuse included being starved, being force-fed and forced to eat her vomit, severe beatings, being washed with bleach, and being scalded with boiling water from a kettle. She was sexually abused by a number of members of her adoptive family, and verbally abused constantly.

Her adoptive parents also adopted a boy, who she witnessed being severely beaten. She eventually ran away from her adopters at the age of 15 or 16 to escape the abuse.

The Commission of Investigation Report contains an incomplete summary of her evidence, omitting important parts of her testimony. The Commission's findings do not address the inadequacy of the State's oversight of adoptive placements and prospective adopters' suitability, ignoring the witness testimony received. The Commission made no finding about abuse suffered by adopted people as children.

Without explanation the Commission's Report concludes that 'The Commission has no doubt that, whatever the shortcomings of the legal adoption system, it was preferable to placing children in industrial schools or to boarding out or placing at nurse.' The Commission did not recommend any redress for people abused as adopted children, and the Government's redress scheme copies this approach. Following today's High Court declaration, this exclusion must be reversed.

This litigant said: '*My birth mother came from an industrial school and at 8 weeks pregnant was placed in St Patrick's Mother and Baby home. I have no idea if my adoption was consented to by her as I was placed at two months old in my adopted family.*

The State failed me and mother by not ensuring that I had a safe, secure upbringing and that I did not suffer abuse and torture at the hands of my adopted family. The commission did not take my testimony into consideration when making its finding and recommendations. I want all my information that the Government and Church have in relation to my early life. I also want redress for all I have endured in my early life and the impact it still continues to have today.'

Another of the litigants who has not been identified publicly, S Kil, said: '*This is a victory for survivors and our cases. We were readily identifable in the Commission's report and were denied a draft of the report and as a result our testimonies were mis-represented.*

One of the key elements in my case is that the Commission denied me my religious identity and changed my religion in my testimony. My religion is central to my Mother and Baby Home experience as the women in Denny House told me – "a handful of Protestant babies come up each year for adoption and yours is one of them".

From the moment I was locked up in Denny House my unborn baby was seen as an adoptee. I was put under constant excessive coercion to put my baby up for adoption by the women in Denny House. In order to have my baby adopted these women in Denny House broke me down, destroying my self-confidence and self-worth and told me I would never be a good mother and my baby would be better off without me. This is not reflected in the summary of my testimony in the report or in the chapter on Denny House. In addition, to change my religion was unconstitutional and disrespectful to my identity and my particular experience and to any other survivor who is from a minority group and was in a Mother and Baby Home.

From the outset, the Commission's Confidential Committee stage-managed my testimony giving, only focusing on a particular narrative and points they wanted to include in the report. I instantly recognised myself, twice, in the Confidential Committee part of the report. It greatly upset me that the Confidential Committee completely twisted my words, misrepresented what I said and did not present a factual account of what happened to my son and I.

The report never acknowledged this or the fact that Denny House was another Mother and Baby Home hell-hole were babies were left to scream for hours and hours on end while their mothers were made to work in the house. The house was a terrifying place to be regardless of what the report says. My experience in this institution has had a profoundly negative affect on my life.

I believe this report should be consigned to the dustbins of history. I call on the government to repudiate this report and for the Commissioners and Commission employees who falsely misrepresented my testimony and paperwork, and whose findings are abhorrent, to apologise for the incredible pain their report has caused survivors.'

Dr Mary Isobelle Mullaney said: '*I, Dr Mary Isobelle Mullaney, gave testimony before the Commission in good faith in the hope of highlighting the plight of my birth mother who died five days after my six week premature birth in Sean Ross Abbey, she was aged 21 years. I was adopted by wonderful parents both of whom I loved deeply. The report of the commission got several details of my testimony wrong, a trail of chinese whispers evident from the recording, to the summarised 'transcription' , to what appeared in the final report.*

The implication that I had anything less than the best of love and care from my adoptive mother and father was hurtful and retraumatising and a lie and to have it corrected was the reason I took this high court action- I could not have had better parents and I wanted the report corrected to reflect my experience and what I had actually told the Commission.

I welcome the acknowledgement by the Minister that I should have gotten the opportunity to correct this record and only wish it could actually be corrected.

Even though my birth mother died with what should be obvious questions about her care and though I was institutionalised and unloved for four months and my adoptive mother was not made aware that my birth mother was dead, and even though the Minister has acknowledged that proper procedures were not followed by the Commission and despite the money spent by the government on the Commission, the flawed report, the money spent on Oak Consultants (whose recommendations were largely ignored) and the money spent by the state on the High Court action; we still do not qualify for any redress under the terms of the proposed redress scheme for any of the trauma and subsequent re traumatisation that we have been subjected to.

The trauma of the 'primal wound' of severing the relationship between the baby and the birth mother has not been acknowledged in the report, my birth mothers sacrifice has in no way been acknowledged and what more could a person do than give her life?

However the nuns in Sean Ross did keep me alive and facilitate my adoption into a wonderful family and I wanted to acknowledge that and did so in my testimony to the Commission and welcome the opportunity to restate that publicly.'

THE CLANN PROJECT

Philomena Lee, Mary Harney, Mari Steed and other litigants who have not been named publicly gave sworn written evidence to the Commission of Investigation with the assistance of the **Clann Project**: a voluntary evidence-gathering and advocacy collaboration between global law firm Hogan Lovells International LLP and the groups **Justice for Magdalenes Research** and **Adoption Rights Alliance**.

Claire McGettrick of the Clann Project said: *'The Commission's conclusions currently stand as the State's official historical record and are informing the Government's highly restrictive and problematic 'restorative recognition' plans. This is a further abuse of affected people's dignity and rights, which the Government must put right. The Commission of Investigation examined 18 institutions, which represents a tenth of the institutions, agencies and individuals that were involved in the forcible separation of children from their mothers. The Mother and Baby Homes were just one element of the forced family separation system in Ireland. These abuses occurred both inside and outside institutional settings; social class and/or financial stability were no refuge. The Government is ignoring the thousands of women who gave birth outside Mother and Baby Homes who were also forced to suffer in silence after the devastating loss of their children to adoption. The Government is also refusing to acknowledge the myriad abuses suffered by adopted and boarded out people, regardless of where they were born, including abuses in adoptive families and the injustice of closed, secret adoption. This is exemplified in the Government's current adoption legislation proposals which have been described as grossly offensive by adopted people but have nonetheless been characterised by Minister O'Gorman as a form of redress. The Government's acceptance of the High Court declaration must now represent a turning point and an end to the management and compartmentalisation of affected people.'*

Dr Maeve O'Rourke of the Clann Project said: *'The Clann Project, with the help of global law firm Hogan Lovells International LLP, repeatedly and publicly drew attention to the unfairness of the Commission of Investigation's procedures from 2016 until the Commission's dissolution in 2021. The government knew that the Commission was refusing to provide survivors or adopted people with any personal data, or even a transcript of their own evidence. Those personally affected had no way of accessing or commenting on any of the evidence being gathered by the Commission, and the Commission refused to allow any survivor a public hearing despite their express requests. In fact the Commission refused to advertise or allow all survivors to meet its Investigation Committee; it directed survivors generally to its Confidential Committee and then declined to treat the testimony given to the Confidential Committee as having evidentiary value for the purpose of the report's conclusions. We hope that today's judgment will change how Commissions of Investigation and all state inquiries treat people who have suffered abuse: they deserve to be treated as rights holders and enabled to fully participate in investigations. The Clann Project is extremely grateful to the many survivors, adopted people, lawyers and others who have contributed voluntarily since 2015 to the effort to hold the Mother and Baby Homes Commission of Investigation accountable to those whose lives it was affecting.*

The Clann Project also wishes to thank the lawyers representing the litigants in the judicial review actions settled today: Wendy Lyon and all at Abbey Law Solicitors; Stephen Kirwan, Maryse Jennings and all at KOD Lyons Solicitors; Gary Moloney BL, Cillian Bracken BL, Nóra Ní Loinsigh BL, Ceile Varley BL, April Duff BL, Alan DP Brady BL, Colin Smith BL, Siobhan Phelan SC and Michael Lynn SC.

GOVERNMENT REDRESS SCHEME MUST BE AMENDED

Philomena Lee, Mary Harney, Mari Steed and several more of the litigants together with the Clann Project now call on the Government:

- To amend its 'restorative recognition' plans to recognise all rights violations perpetrated in the institutional and family separation system, and

- To respond to what participants said in the **OAK Consulting independent consultation process** on the development of its 'Restorative Recognition Scheme'**.**

- **The Government's Birth (Information and Tracing) Bill must be drastically amended to guarantee without exception the rights to know one's identity, to access one's personal data, to access administrative records, to access truth regarding serious human rights violations, and to know the truth of the fate and whereabouts of disappeared relatives**—as emphasised by eight UN human rights Special Rapporteurs in a **letter** to Government last month and by the Oireachtas Children's Committee in its recent **pre-legislative scrutiny report**. The Birth (Information and Tracing) Bill in its current form does not grant information access to mothers or to relatives of the deceased, and the Bill would deny adopted people and those subjected to illegal adoption and illegal birth registration access to any identifying information about their siblings or information about a parent's or guardian's care of them. The Bill requires a person's medical information to be given to a health professional rather than directly to them. The Bill does not mandate information disclosure by any data controllers other than TUSLA (the Child and Family Agency) and the Adoption Authority of Ireland. Furthermore, the Bill proposes to restrict the right to birth identity by requiring people whose parent has expressed a 'no contact' preference to attend a discriminatory and unnecessary Information Session at which they will be informed not of their own entitlements but of their parent's 'privacy rights, and…the importance of respecting their contact preferences.'

- **Participants in the scheme must not be forced to legally waive their rights to go to court in return for payments as small as €5,000.** The proposed waiver can only be understood as an attempt by the State to buy survivors' silence, and it follows an unlawful Commission of Investigation process that portrayed those affected as untruthful. Those affected must retain their right to seek justice; if necessary a future court award can be reduced by the amount already paid. The UN Committee Against Torture already ruled in the case of **Elizabeth Coppin v Ireland** that it is contrary to Ireland's international law obligations to force survivors of inhuman or degrading treatment to give up their right to the truth and accountability in exchange for a so-called 'ex gratia' payment. In November 2021, eight UN Special Rapporteurs **wrote** to the Government to emphasise that its payment scheme must be 'without prejudice to the right to seek further remedies for human rights violations experienced'.

- **The Government must by order of the Attorney General initiate inquests to establish the identities and circumstances of death of the children and women who remain in unmarked, unrecorded graves following their disappearance in mother and baby and related institutions.** The existing Coroners Act provides for such action. Instead, however, the Government is proposing through its Institutional Burials (Authorised Interventions) Bill to establish a specialised agency to exhume remains for identification purposes only—and not to investigate. A key criterion for such an agency's establishment under the Government's Bill is that there is no evidence of violent or unnatural death, and once the agency takes control of the site the Coroner's jurisdiction and obligation to hold an inquest will be disapplied. It is unacceptable that the Government refuses to recognise any evidence of violent or unnatural death at mother and baby institutions, given the incarceration and neglect, inordinately high death rates, and ongoing denial of information about the whereabouts of the deceased that is clearly evident from the testimony and other data provided to the Commission of Investigation.

- **The Government's planned payment scheme, as stressed by the eight UN Special Procedures last month, must recognise the harms of sale of children and illegal adoption, forced labour and servitude, torture and inhuman and degrading treatment and gender-based violence against women and girls, arbitrary detention, and enforced disappearances**—all of which occurred in the institutional and family separation system. The Government's payment scheme plans do not recognise forced family separation or the erasure of identity as abusive; nor do they recognise the grave abuse of many boarded out and adopted people, among other harms. The Government must rectify, among other flaws in its plans:

    - Its exclusion of those who were boarded out as children;
    - Its exclusion of those who were adopted or otherwise separated from their mother in an institution before the age of six months;
    - Its exclusion of those who were in institutions not investigated by the Commission of Investigation;
    - Its exclusion of mothers and their now-adult children who were separated in non-institutionalised settings including through adoption agencies and private facilitators, and through illegal adoption, including via illegal birth registration;
    - Its refusal to recognise forced labour or servitude other than of a type that the Government deems to have been 'commercial';
    - Its exclusion of those who received payment previously from the Residential Institutions Redress Board (RIRB). The abuse recognised by the RIRB was of a different nature to forced family separation;
    - Its restriction of the 'enhanced medical card' to those institutionalised for more than six months and its restriction of healthcare for those now living abroad to a once-off €3,000 payment; and
    - Its gross undervaluing of the abuses perpetrated through the proposed payment amounts.

CLANN CONTACTS
Maeve O'Rourke: [redacted]
Claire McGettrick: [redacted]

WITNESS CONTACTS
S Kil ('Margaret'): [redacted]
Mary Isobelle Mullaney: [redacted]

NOTES TO EDITORS

- The sworn evidence given to the Commission of Investigation by Philomena Lee, Mary Harney and Bridget is available to view on the Clann Project website here and further statements will be added in the coming days**:** **http://clannproject.org/clannarchive/statements/**

- Among the Commission of Investigation's conclusions, which contradicted survivors' clear testimony and were reached without offering survivors a right of reply while this right was afforded to alleged wrongdoers, were that:

  - Responsibility for the harsh treatment of women who gave birth outside marriage during the 20th century 'rests mainly with the fathers of their children and their own immediate families' and 'it must be acknowledged that the institutions under investigation provided a refuge' (Executive Summary prologue)

  - Although some mothers 'are of the opinion that their consent was not full, free and informed', there is 'no evidence that this was their view at the time of the adoption' (Executive Summary para 254)

  - 'The Commission found very little evidence that children were forcibly taken from their mothers; it accepts that the mothers did not have much choice but that is not the same as 'forced' adoption.' (Recommendations para 34)

  - There is 'no evidence that women in mother and baby homes were denied pain relief or other medical interventions that were available to a public patient who gave birth in a Dublin or Cork maternity unit' (Executive Summary para 245)

  - Women in mother and baby homes 'were not "incarcerated" in the strict meaning of the word…They were always free to leave if they took their child' (Recommendations para 27)

  - The forced labour which women were subjected to in mother and baby homes 'was generally work which they would have had to do if they were living at home' (Recommendations para 30) and not of the type that should have been remunerated (Recommendations para 31)

  - The 'Diocesan records and the records of the religious orders involved in the institutions are the property of the holders and they have the right to determine who gets access' (Recommendations para 52)

  - The criticism by many survivors and adopted people of the information and tracing arrangements in place is 'quite vitriolic' and 'unfair and misplaced' (Recommendations para 3)

  - Accounts of mothers being required to cut the grass at Bessborough mother and baby home with scissors were invented or contaminated by a work of creative writing (Chapter 18 footnote 78)

  - While 'it must be assumed that many foster children, perhaps the majority, were beaten – how violently cannot be established' (Chapter 11 para 90) and 'the evidence relating to boarded out children and children at nurse is scant' (Chapter 11 para 142)

  - The abuse of boarded out children was not relevant to the Commission's recommendations on redress (Recommendations paras 19, 22, 23, 39)

- Procedural flaws in the Commission of Investigation's methods, additional to the statutory breach recognised in today's High Court declaration, are summarised in a letter of 30 July 2021 from Hogan Lovells International LLP to the Oireachtas Committee on Children, Disability, Equality and Integration, available here: **http://clannproject.org/wp-content/uploads/Hogan-Lovells-Letter-to-Childrens-Committee_30-07-21-1.pdf**

- Clann Project recommendations on the Restorative Recognition Scheme: **http://clannproject.org/restorative-recognition-scheme/clann-project-recommendations-on-restorative-recognition-scheme/**

- Clann Project joint submissions on GDPR to the Oireachtas Justice Committee: **http://clannproject.org/wp-content/uploads/Submission-to-Oireachtas-Justice-Committee-Re-GDPR-MOR-CMG-LON-26.3.21.pdf**

- Clann Project submissions on the Birth (Information and Tracing) Bill: **http://clannproject.org/wp-content/uploads/Clann-Project-Submission-to-Oireachtas-Childrens-Committee.pdf**

- Clann Project joint submissions on the Institutional Burials Bill: **http://clannproject.org/wp-content/uploads/Institutional-Burials-Bill_Joint-Submission-26.2.21.pdf**

- The **letter** from eight United Nations human rights expert bodies, delivered to government on 5 November concerning ongoing violations of the rights of Mother and Baby Homes and County Homes survivors, adopted people and relatives was signed by:

    - Luciano Hazan, Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances
    - Mama Fatima Singhateh, Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material
    - Tomoya Obokata, Special Rapporteur on contemporary forms of slavery, including its causes and consequences
    - Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
    - Siobhán Mullally, Special Rapporteur on trafficking in persons, especially women and children
    - Fabian Salvioli, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence
    - Reem Alsalem, Special Rapporteur on violence against women, its causes and consequences
    - Melissa Upreti, Chair-Rapporteur of the Working Group on discrimination against women and girls