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Title	Briefing note for the United Nations Committee on the Rights of the Child: `Historical' forced separation of unmarried mothers and children through adoption, `boarding out' Mother and Baby Homes, County Homes, Magdalene Laundries and related practices and institutions
Author(s)	O'Rourke, Maeve
Publication Date	2023
Publication Information	O'Rourke, Maeve. (2023). Briefing note for the United Nations Committee on the Rights of the Child: `Historical' forced separation of unmarried mothers and children through adoption, `boarding out' Mother and Baby Homes, County Homes, Magdalene Laundries and related practices and institutions. Galway: Irish Centre for Human Rights, University of Galway.
Publisher	Irish Centre for Human Rights, University of Galway
Link to publisher's version	https://www.universityofgalway.ie/irish-centre-human-rights/
Item record	http://hdl.handle.net/10379/18006

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**Briefing Note for the United Nations Committee on the Rights of the Child:
'Historical' forced separation of unmarried mothers and children through adoption,
'boarding out', Mother and Baby Homes, County Homes, Magdalene Laundries and
related practices and institutions**

Attached to my correspondence to the Committee in September 2022 were copies of several High Court Declarations in recent judicial review cases taken by eight survivors of Ireland's forced family separation system who interacted with the **Mother and Baby Homes Commission of Investigation** (MBHCOI) between 2015 and 2020. These High Court Declarations establish that the MBHCOI reached its conclusions pursuant to an **unlawful investigative procedure** whereby the MBHCOI denied abuse survivors their explicit statutory entitlement to review and comment on draft findings concerning them. The MBHCOI offered alleged wrongdoers access to evidence, draft findings and the opportunity to comment; it treated survivors in a wholly inferior manner.

The MBHCOI's official findings are clearly and overwhelmingly contradicted by survivor testimony on the face of the MBHCOI's Report itself and the MBHCOI's Confidential Committee Report. The **MBHCOI's unjustified findings** include that: there is no evidence that mothers did not consent to the adoption of their child; there is very little evidence that children were forcibly taken from their mothers; girls and women in Mother and Baby Homes were not incarcerated; unlawful forced labour generally did not occur; unlicensed, non-consensual vaccine trials were not injurious; and there is scant evidence of abuse of children who were boarded out or adopted.

Having promised in June 2021 to commission an international human rights expert to re-examine the witness testimony provided to the MBHCOI's Confidential Committee, the Irish Government stated in August 2022 that it will not carry out such a review. Despite consenting to the above-mentioned High Court orders, the Government seems intent on standing over the **MBHCOI's findings which in turn are grounding the State's position on redress and reparation.**

The Committee is urged to address the following major failures of accountability, access to justice and reparation in its dialogue with the Irish Government:

- The absence in the Birth Information and Tracing Act 2022 of a right for mothers to gain access to their personal data, and the continuing restrictions on the rights of adopted people, siblings and other relatives to gain access to their personal data.
- The under-resourcing of the Child and Family Agency (Tusla) and the Adoption Authority of Ireland such that Tusla and the Authority have informed numerous people seeking their personal files under the Birth Information and Tracing Act 2022 that they may not receive this information until July 2023 or August 2023, respectively: despite a one month time limit under the Act, which may only be extended to three months maximum.
- The unavailability to those affected, law enforcement authorities, or the general public of the MBHCOI archive as a whole, notably including State and non-State institutions' administrative records; and the continuing unavailability to the public of the 'McAleese Committee' archive of State records concerning the Magdalene Laundries, currently held in the Department of the Taoiseach.

- The current ‘Mother and Baby Institutions Payment Scheme Bill’ which will (among other flaws):
 - force survivors to waive their legal rights in exchange for minimal payment;
 - exclude all those who were adopted/separated from their mother before the age of six months;
 - exclude those who suffered abuse as fostered/‘boarded out’ children;
 - exclude those who were abused by institutions/family separation practices not investigated by the MBHCOI;
 - refuse to recognise forced labour or servitude other than of a type deemed by Government to have been ‘commercial’ (the Bill offers minimal payment only to women who worked for more than 3 months in a subset of the listed institutions);
 - exclude those who received payment previously from the Residential Institutions Redress Board (RIRB) notwithstanding that the RIRB did not recognise the abuse of family separation; and
 - restrict the ‘enhanced medical card’ to those institutionalised for more than six months (again, failing to recognise the harm of unlawful family separation).
- The establishment of a dedicated process via the Institutional Burials Act 2022 to exhume, attempt to identify, and re-inter the remains of infants buried at the Tuam Home site with no plan for inquests despite repeated familial requests, and no plan for exhumations or inquests at any other institutional site despite thousands of infants’ burial locations remaining unknown, several hundred deceased infants’ identities remaining unrecorded, and countless infants’ and mothers’ causes of death being suspicious (due to the extraordinarily high death rates in Mother and Baby institutions, among other evidence) and/or unexplained.

I am available at maeve.orourke@universityofgalway.ie to answer any queries you may have.

Sincerely,

Dr Maeve O’Rourke

Assistant Professor of Human Rights

Irish Centre for Human Rights, School of Law, University of Galway

Co-Director, CLANN: Ireland’s Unmarried Mothers: Gathering the Data

(www.clannproject.org)

Member, Justice for Magdalenes Research (www.jfmresearch.com)

Barrister, 33 Bedford Row, London

Attorney at Law (New York) (non-practising)

24 January 2023

Dr Maeve O'Rourke
Irish Centre for Human Rights
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University of Galway
Ireland
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United Nations Committee on the Rights of the Child
OHCHR, CH-1201 Geneva
Switzerland

22 September 2022

RE: Pre-session concerning Ireland

Dear Committee members,

In 2020 a team of postgraduate students of the Irish Centre for Human Rights submitted a detailed report to the Committee focusing on human rights violations suffered by children in the **Direct Provision** system. This report has not been updated since 2020. Nonetheless, I hope that its contents provide a useful addition to the more recent submissions to the Committee by other organisations concerned with Direct Provision and the treatment of children seeking international protection in Ireland.

I am also writing to convey to the Committee, with the litigants' consent, several of the High Court Declarations in the recent judicial review cases taken by eight survivors of Ireland's historical forced family separation system who interacted with the **Mother and Baby Homes Commission of Investigation** (MBHCOI). As the attached press release published by the Clann Project (of which I am a voluntary director) explains, these High Court Declarations establish that the MBHCOI reached its conclusions pursuant to an unlawful investigative procedure whereby the MBHCOI denied abuse survivors their explicit statutory entitlement to review and comment on draft findings concerning them. The MBHCOI offered alleged wrongdoers access to evidence, draft findings and the opportunity to comment; it treated survivors in a wholly inferior manner.

The attached letter from Hogan Lovells International LLP explains further that the MBHCOI denied all requests by those affected for a public hearing; refused to allow many survivors who wished to attend the Investigative Committee to do so, instead funnelling the majority of survivors into the Confidential Committee arm of the investigation; and refused to consider the testimony given by 550 people to the Confidential Committee as having sufficient evidentiary value to influence the MBHCOI's final findings and recommendations to Government. Having promised, in June 2021, to commission an international human rights expert to re-examine the witness testimony provided to the MBHCOI's Confidential Committee, the Government stated

in August 2022 that it will not carry out such a review (see attached *Irish Examiner* article dated 29 August 2022). Despite consenting to the above-mentioned High Court orders, the Government seems intent on standing over the MBHCOI's findings which in turn—by objective analysis—are grounding the State's position on redress and reparation. The MBHCOI's findings, which are clearly and overwhelmingly contradicted by survivor testimony both in the MBHCOI's Report and Confidential Committee Report, and elsewhere, include that: there is no evidence that mothers did not consent to the adoption of their child; there is very little evidence that children were forcibly taken from their mothers; girls and women in Mother and Baby Homes were not incarcerated; unlawful forced labour generally did not occur; unlicensed, non-consensual vaccine trials were not injurious; and there is scant evidence of abuse of children who were boarded out or adopted.

I will be unable to attend the pre-session on 27 September, however I am available to provide further information via email (maeve.orourke@universityofgalway.ie) to Committee members interested in pursuing with the Irish Government the persistent failings in the State's response to the forced family separation system which involved adoption, Mother and Baby Homes, County Homes, Magdalene Laundries, 'boarding out'/fostering, and residential schools among other institutions. While some positive steps and commitments have been made, the failings which must urgently be remedied include:

- The absence in the Birth Information and Tracing Act 2022 of a right for mothers to gain access to their personal data, and restrictions on the rights of adopted people, siblings and other relatives to gain access to their personal data.
- The unavailability to the public or law enforcement authorities of the MBHCOI archive as a whole, notably State and non-State institutions' historical administrative records;
- Plans for a Mother and Baby Homes 'redress' scheme that would (among other flaws):
 - force survivors to waive their legal rights in exchange for minimal payment;
 - exclude those who suffered abuse as fostered/'boarded out' children;
 - exclude those who were adopted/separated from their mother before the age of six months;
 - exclude those who were abused by institutions/family separation practices not investigated by the MBHCOI;
 - refuse to recognise forced labour or servitude other than of a type deemed by Government to have been 'commercial';
 - exclude those who received payment previously from the Residential Institutions Redress Board (RIRB) notwithstanding that the RIRB did not recognise the abuse of family separation; and
 - restrict the 'enhanced medical card' to those institutionalised for more than six months (again, failing to recognise the harm of unlawful family separation).
- The establishment of a dedicated process to exhume, attempt to identify and re-inter the remains of infants buried at the Tuam Home site with no plan for inquests despite repeated familial requests, and no plan for exhumations or inquests at any other institutional site despite thousands of infants' burial locations remaining unknown, several hundred deceased infants' identities remaining unrecorded, and countless infants' and mothers' causes of death being suspicious (due to the extraordinarily high death rates in Mother and Baby institutions, among other evidence) and/or unexplained.

Kind regards,

Maeve O'Rourke

Dr Maeve O'Rourke
Assistant Professor of Human Rights
Irish Centre for Human Rights
School of Law
University of Galway
Ireland

Attachments:

- 1. High Court Declarations perfected 18 May 2022**
- 2. Clann Project Press Release dated 17 December 2021**
- 3. Letter from Hogan Lovells International LLP to Oireachtas Committee on Children, Disability, Equality and Integration dated 30 July 2021**
- 4. Conall Ó Fátharta and Elaine Loughlin, 'Abuse survivors' tales abandoned' *Irish Examiner* (29 August 2022)**

ATTACHMENT 1:
High Court Declarations perfected 18 May 2022

THE HIGH COURT

JUDICIAL REVIEW

2021 No. 180 JR

Friday the 17th day of December 2021

BEFORE MR JUSTICE SIMONS

**IN THE MATTER OF THE CONSTITUTION OF IRELAND,
THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003,
THE COMMISSIONS OF INVESTIGATION ACT 2004,
THE COMMISSIONS OF INVESTIGATION (MOTHER AND BABY
HOMES AND CERTAIN RELATED MATTERS) ORDER 2015, AND
THE COMMISSION OF INVESTIGATION (MOTHER AND BABY
HOMES AND CERTAIN RELATED MATTERS) RECORDS AND
ANOTHER MATTER ACT 2020**

BETWEEN

MARY HARNEY

APPLICANT

AND

**THE MINISTER FOR CHILDREN, EQUALITY, DISABILITY,
INTEGRATION AND YOUTH, THE GOVERNMENT OF IRELAND,
IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

AND

IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

AMICUS CURIAE

The Motion of Counsel for the Applicant pursuant to Notice of Motion filed herein on the 11th day of March 2021 having come before the court for hearing on the 17th day of November 2021 and the 18th day of November 2021 in

THE HIGH COURT

the presence of said Counsel and in the presence of Counsel for the Respondents and Counsel for the Amicus Curiae

Whereupon and on reading the said Notice of Motion the Order herein dated the 8th day of March 2021 giving leave to the Applicant to apply for an Order of Certiorari by way of application for judicial review the Statement dated the 4th day of March 2021 signed by the Solicitor for the Applicant the Affidavit of Mary Harney filed on the 4th day of March 2021 the Statement of Opposition filed on the 21st day of June 2021 the Affidavit of Dara Breathnach filed on the 21st day of June 2021 the Affidavit of Mary Harney filed on the 22nd day of July 2021 and the Affidavit of Mari Steed filed on the 24th day of November 2021 and the documents and exhibits in said Affidavits referred to and the written legal submissions filed on the 4th the 10th and the 15th days respectively of November 2021

And on hearing what was offered by said respective Counsel

THE COURT WAS PLEASED to reserve its judgment herein

And this matter being mentioned to the Court on this day by Counsel for the Applicant in the presence of Counsel for the Respondents and Counsel for the Amicus Curiae

And **IT APPEARING** that a settlement has now been reached herein

By Consent **THE COURT DOTH DECLARE** that the Commission of Investigation (Mother and Baby Homes and Related Matters), by failing to provide the Applicant, who is identifiable in the final report, with a draft of the Report, or the relevant part of the draft of the Report, as required by section 34(1) of the Commission of Investigation Act 2004 prior to submitting the final report to the Minister, acted in breach of statutory duty

THE HIGH COURT

And By Consent **IT IS ORDERED** that the Applicant do recover as against the Respondents her costs of the proceedings herein including all reserved costs – said costs to be adjudicated in default of agreement

**JOHN MEEHAN
REGISTRAR**

Perfected this 18th day of May 2022

Abbey Law
Solicitors for the Applicant

Chief State Solicitor
Solicitors for the Respondent

Solicitors for the Amicus Curiae

THE HIGH COURT

JUDICIAL REVIEW

2021 No. 292 JR

[INCAM]

Friday the 17th day of December 2021

BEFORE MR JUSTICE SIMONS

**IN THE MATTER OF THE CONSTITUTION OF IRELAND,
THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003,
THE COMMISSIONS OF INVESTIGATION ACT 2004,
THE COMMISSIONS OF INVESTIGATION (MOTHER AND BABY
HOMES AND CERTAIN RELATED MATTERS) ORDER 2015, AND
THE COMMISSION OF INVESTIGATION (MOTHER AND BABY
HOMES AND CERTAIN RELATED MATTERS) RECORDS AND
ANOTHER MATTER ACT 2020**

BETWEEN



APPLICANT

AND

**THE MINISTER FOR CHILDREN, EQUALITY, DISABILITY,
INTEGRATION AND YOUTH, THE GOVERNMENT OF IRELAND,
IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

AND

IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

AMICUS CURIAE

The Motion of Counsel for the Applicant pursuant to Notice of Motion filed herein on the 14th day of April 2021 being mentioned to the Court on

THE HIGH COURT

this day in the presence of Counsel for the Respondents and Counsel for the Amicus Curiae

Whereupon and on reading the said Notice of Motion and the Order herein dated the 12th day of April 2021 giving leave to the Applicant to apply for an Order of Certiorari by way of application for judicial review

And on hearing what was offered by said respective Counsel

And **IT APPEARING** that a settlement has now been reached herein

By Consent **THE COURT DOTH DECLARE** that the Commission of Investigation (Mother and Baby Homes and Related Matters), by failing to provide the Applicant, who is identifiable in the final report, with a draft of the Report, or the relevant part of the draft of the Report, as required by section 34(1) of the Commission of Investigation Act 2004 prior to submitting the final report to the Minister, acted in breach of statutory duty

And By Consent **IT IS ORDERED** that the Applicant do recover as against the Respondents her costs of the proceedings herein including all reserved costs – said costs to be adjudicated in default of agreement

And By Consent **IT IS ORDERED** that the following part of the said Order dated the 12th day of April 2021 “*That pursuant to Section 27 of the Civil Law (Miscellaneous Provisions) Act 2008 or otherwise that the publication of or broadcast of any matter relating to the proceedings which would or could identify the applicant as a person suffering from a medical condition be prohibited*” be and the same is hereby continued indefinitely

JOHN MEEHAN
REGISTRAR
Perfected this 18th day of May 2022

Abbey Law
Solicitors for the Applicant

Chief State Solicitor
Solicitors for the Respondent

Solicitors for the Amicus Curiae

THE HIGH COURT

JUDICIAL REVIEW

2021 No. 303 JR

Friday the 17th day of December 2021

BEFORE MR JUSTICE SIMONS

**IN THE MATTER OF THE CONSTITUTION OF IRELAND,
THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003,
THE COMMISSIONS OF INVESTIGATION ACT 2004,
THE COMMISSIONS OF INVESTIGATION (MOTHER AND BABY
HOMES AND CERTAIN RELATED MATTERS) ORDER 2015, AND
THE COMMISSION OF INVESTIGATION (MOTHER AND BABY
HOMES AND CERTAIN RELATED MATTERS) RECORDS AND
ANOTHER MATTER ACT 2020**

BETWEEN

PHILOMENA LEE

APPLICANT

AND

**THE MINISTER FOR CHILDREN, EQUALITY, DISABILITY,
INTEGRATION AND YOUTH, THE GOVERNMENT OF IRELAND,
IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

AND

IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

AMICUS CURIAE

The Motion of Counsel for the Applicant pursuant to Notice of Motion filed herein on the 14th day of April 2021 having come before the Court for hearing on the 17th day of November 2021 and the 18th day of November 2021 in

THE HIGH COURT

the presence of said Counsel and in the presence of Counsel for the Respondents and Counsel for the Amicus Curiae

Whereupon and on reading the said Notice of Motion the Order herein dated the 12th day of April 2021 giving leave to the Applicant to apply for an Order of Certiorari by way of application for judicial review the Statement dated the 12th day of April 2021 signed by the Solicitor for the Applicant the Affidavit of Wendy Lyon filed on the 12th day of April 2021 the Statement of Opposition filed on the 21st day of June 2021 the Affidavit of Dara Breathnach filed on the 21st day of June 2021 the Affidavit of Philomena Lee filed on the 7th day of July 2021 and the Affidavit of Wendy Lyon filed on the 1st day of November 2021 and the documents and exhibits in said Affidavits referred to and the written legal submissions filed on the 4th the 10th and the 15th days respectively of November 2021

And on hearing what was offered by said respective Counsel

THE COURT WAS PLEASED to reserve its judgment herein

And this matter being mentioned to the Court on this day by Counsel for the Applicant in the presence of Counsel for the Respondents and Counsel for the Amicus Curiae

And **IT APPEARING** that a settlement has now been reached herein

By Consent **THE COURT DOTH DECLARE** that the Commission of Investigation (Mother and Baby Homes and Related Matters), by failing to provide the Applicant, who is identifiable in the final report, with a draft of the Report, or the relevant part of the draft of the Report, as required by section 34(1) of the Commission of Investigation Act 2004 prior to submitting the final report to the Minister, acted in breach of statutory duty

THE HIGH COURT

And By Consent **IT IS ORDERED** that the Applicant do recover as against the Respondents her costs of the proceedings herein including all reserved costs – said costs to be adjudicated in default of agreement

**JOHN MEEHAN
REGISTRAR**

Perfected this 18th day of May 2022

Abbey Law
Solicitors for the Applicant

Chief State Solicitor
Solicitors for the Respondent

Solicitors for the Amicus Curiae

THE HIGH COURT

JUDICIAL REVIEW

2021 No. 291 JR

Tuesday the 21st day of December 2021

BEFORE MR JUSTICE SIMONS

**IN THE MATTER OF THE CONSTITUTION OF IRELAND,
THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003,
THE COMMISSIONS OF INVESTIGATION ACT 2004,
THE COMMISSIONS OF INVESTIGATION (MOTHER AND BABY
HOMES AND CERTAIN RELATED MATTERS) ORDER 2015, AND
THE COMMISSION OF INVESTIGATION (MOTHER AND BABY
HOMES AND CERTAIN RELATED MATTERS) RECORDS AND
ANOTHER MATTER ACT 2020**

BETWEEN

MADELEINE BRIDGET MARVIER

APPLICANT

AND

**THE MINISTER FOR CHILDREN, EQUALITY, DISABILITY,
INTEGRATION AND YOUTH, THE GOVERNMENT OF IRELAND,
IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

AND

IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

AMICUS CURIAE

The Motion of Counsel for the Applicant pursuant to Notice of Motion filed herein on the 14th day of April 2021 having been mentioned to the Court on the 17th day of December 2021 in the presence of Counsel for the Respondents and Counsel for the Amicus Curiae

THE HIGH COURT

Whereupon and on reading the said Notice of Motion and the Order herein dated the 12th day of April 2021 giving leave to the Applicant to apply for an Order of Certiorari by way of application for judicial review

And on hearing what was offered by said respective Counsel

And **IT APPEARING** that a settlement has now been reached herein

By Consent **THE COURT DID DECLARE** that the Commission of Investigation (Mother and Baby Homes and Related Matters), by failing to provide the Applicant, who is identifiable in the final report, with a draft of the Report, or the relevant part of the draft of the Report, as required by section 34(1) of the Commission of Investigation Act 2004 prior to submitting the final report to the Minister, acted in breach of statutory duty

And By Consent **IT WAS ORDERED** that the Applicant do recover as against the Respondents her costs of the proceedings herein including all reserved costs – said costs to be adjudicated in default of agreement

And same being mentioned to the Court again on this day by Counsel for the Applicant in the presence of Counsel for the Respondents

By Consent **IT IS ORDERED** that the following part of the said Order dated the 12th day of April 2021 “*That pursuant to Section 27 of the Civil Law (Miscellaneous Provisions) Act 2008 or otherwise that the publication of or broadcast of any matter relating to the proceedings which would or could identify the applicant as a person suffering from a medical condition be prohibited*” be and the same is hereby discharged

**JOHN MEEHAN
REGISTRAR**

Perfected this 18th day of May 2022

Abbey Law
Solicitors for the Applicant

Chief State Solicitor
Solicitors for the Respondent

Solicitors for the Amicus Curiae

THE HIGH COURT

JUDICIAL REVIEW

2021 No. 486 JR

[INCAM]

Friday the 17th day of December 2021

BEFORE MR JUSTICE SIMONS

**IN THE MATTER OF THE CONSTITUTION OF IRELAND,
THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003,
THE COMMISSIONS OF INVESTIGATION ACT 2004,
THE COMMISSIONS OF INVESTIGATION (MOTHER AND BABY
HOMES AND CERTAIN RELATED MATTERS) ORDER 2015, AND
THE COMMISSION OF INVESTIGATION (MOTHER AND BABY
HOMES AND CERTAIN RELATED MATTERS) RECORDS AND
ANOTHER MATTER ACT 2020**

BETWEEN

[REDACTED]

APPLICANT

AND

**THE MINISTER FOR CHILDREN, EQUALITY, DISABILITY,
INTEGRATION AND YOUTH, THE GOVERNMENT OF IRELAND,
IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

AND

IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

AMICUS CURIAE

The Motion of Counsel for the Applicant pursuant to Notice of Motion filed herein on the 27th day of May 2021 being mentioned to the Court on

THE HIGH COURT

this day in the presence of Counsel for the Respondents and Counsel for the Amicus Curiae

Whereupon and on reading the said Notice of Motion and the Order herein dated the 21st day of May 2021 giving leave to the Applicant to apply for an Order of Certiorari by way of application for judicial review

And on hearing what was offered by said respective Counsel

And **IT APPEARING** that a settlement has now been reached herein

By Consent **THE COURT DOTH DECLARE** that the Commission of Investigation (Mother and Baby Homes and Related Matters), by failing to provide the Applicant, who is identifiable in the final report, with a draft of the Report, or the relevant part of the draft of the Report, as required by section 34(1) of the Commission of Investigation Act 2004 prior to submitting the final report to the Minister, acted in breach of statutory duty

And By Consent **IT IS ORDERED** that the Applicant do recover as against the Respondents her costs of the proceedings herein including all reserved costs – said costs to be adjudicated in default of agreement

And By Consent **IT IS ORDERED** that the following part of the said Order dated the 21st day of April 2021 *“That pursuant to Section 27 of the Civil Law (Miscellaneous Provisions) Act 2008 and the inherent jurisdiction of the Court that the publication of the name or anything that might identify the applicant herein or her son be prohibited”* be and the same is hereby continued indefinitely

**JOHN MEEHAN
REGISTRAR**

Perfected this 18th day of May 2022

Abbey Law
Solicitors for the Applicant

Chief State Solicitor
Solicitors for the Respondent

Solicitors for the Amicus Curiae

ATTACHMENT 2:
Clann Project Press Release dated 17 December 2021



CLANN

[HTTP://CLANNPROJECT.ORG](http://clannproject.org)

[INFO@CLANNPROJECT.ORG](mailto:info@clannproject.org)

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

-
- '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

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 identifiable 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 where 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.

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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

ATTACHMENT 3:

**Letter from Hogan Lovells International LLP to Oireachtas Committee on Children,
Disability, Equality and Integration dated 30 July 2021**

30 July 2021

By email

Deputy Funchion
Chair
Committee on Children, Disability, Equality and Integration
Leinster House
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Our ref 10162979

Dear Deputy Funchion

MOTHER & BABY HOMES COMMISSION REPORT

As we believe you will be aware, this firm is acting on behalf of Adoption Rights Alliance (“ARA”) and JFM Research (“JFMR”) in connection with The Clann Project which was set up to assist anyone who wished to submit their evidence, in the form of witness statements, to the Mother & Baby Homes Commission of Investigation (“the Commission”).

In doing so, the Clann Project spoke to 164 witnesses and submitted 82 statements to the Commission of which 34 were supported by the sworn affidavit confirming their truth required by the Commission if they were to be taken into account as evidence. Based on these statements and the work of a large number of academics and lawyers, including more than 20 members of the Bar of Ireland, the Clann Project made a substantial submission to the Commission setting out its own findings as regards the treatment of mothers, children and adopted people in the institutions under investigation and the adoption system as a whole and also made a number of recommendations that it believed the Commission should make to the Irish Government in its report.

We understand that your Committee is interested in meeting with various groups to discuss the suggestion that the Commission’s Report be repudiated based on its content and findings together with concerns expressed about the Commission’s methodology as described in the Report but also in subsequent comments by one of the Commissioners at an online seminar hosted by Oxford University.

The Clann Project co-directors Claire McGettrick and Dr Maeve O’Rourke attended before you on 29 June 2021 in relation to the Birth Information and Tracing General Scheme of Bill and are also available to appear in relation to the Commission Report. We will leave them to make their detailed position clear if invited to appear. In the meantime, however, they have asked us to provide you with any comments that we have about the Commission’s approach and methodology arising out of our own interaction with the Commission over the course of its investigation.

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THE ESTABLISHMENT OF THE COMMISSION OF INVESTIGATION

ARA and JFMR were pleased when in 2014 the Government stated its intention to establish an investigation into Ireland's Mother & Baby Homes and related issues. Both organisations had long felt that there needed to be a comprehensive investigation into adoption, forced family separation and connected institutional abuses.

The Clann Project was established to help anyone who wanted to give evidence to the Commission by providing such assistance as they required. This started by providing practical information about how those who wanted to interact with the Commission could do so and moved on to the preparation of witness statements. As well as assisting those individuals who approached us, we also believed that the Clann Project would assist the Commission as it would receive professionally drafted statements that cross referred to relevant documentation. Indeed, at one point [Ref: MBHCOI letter to HL dated 21 July 2016](#) the Commission said that it was pleased we were providing this Pro Bono service to affected individuals.

Against this backdrop, it is fair to say that we were disappointed by the reaction we got from the Commission in response to our correspondence with them (which was principally directed to obtaining a greater understanding of the Commission's procedures and the extent to which Clann Project witnesses could give evidence and make submissions to the Commission in public hearings) which, at times, seemed to be unnecessarily defensive and unduly focussed on maintaining the secrecy of the investigation.

CORRESPONDENCE WITH, AND SUBMISSIONS MADE TO, THE COMMISSION

Procedure for giving evidence and responding to the evidence of others

At the very outset, we wrote to the Commission with a number of questions relating to the procedures by which individuals could give evidence to the Commission and how they could be involved in the cross examination of witnesses whose evidence affected them ([Ref: HL letter to MBHCOI dated 12 November 2015](#)).

The Commission's response ([Ref MBHCOI letter to HL dated 14 December 2015](#)) contained the following statements:

- *The Commission will disclose the evidence of a witness and ask that witness to attend in person... for the purposes of cross examination by the representative of an affected party in circumstances where the Commission considers that fair procedures require such an attendance. The decision will obviously be to a significant extent based on the nature of the evidence given but will also depend on the other evidence available to the Commission and the degree to which a person is considered to be affected by that evidence.*
- *Unless the Commission directs that evidence will be heard in public...[it] is not anticipated at this stage that other interested parties or their legal representatives will be invited to attend the private hearings of the Commission.*
- *The conduct of the investigation is a matter for the Commission and should it at any stage require commentary on relevant evidence from survivors, arrangements will be made in this regard.*

Making procedural submissions in public

On 11 February 2016, a request was made to the Commission that when the Clann Project made its procedural submissions to the Commission on 9 May 2016, that hearing be heard in public [[Ref: letter from CM to MBHCOI dated 11 February 2016](#)]. On 19 February 2016, the Commission asked why a public hearing would be appropriate. Reasons were subsequently provided [[Ref: letter from ARA/JFMR to MBHCOI dated 3 May 2016](#)] and again and in further detail at the hearing on 9 May

2016. Those reasons included the fact that the submissions were on the scope of the investigation, no personal evidence was being given, that the Clann Project was acting in a quasi-representative capacity and it was in the interest of fairness and transparency that the hearing be in public. The request was declined so we asked for the reasons why [[Ref: letter from HL to MBHCOI dated 27 May 2016](#)]. The Commission responded by referring us to S11(1) of the Commission of Investigations Act 2004 and by saying that it “*was not satisfied that it was desirable in the interests of both the investigation and fair procedures to hear all or part of your clients’ evidence in public*” [[Ref: letter from MBHCOI to HL dated 1 June 2016](#)]. We responded [[Ref: letter from HL to MBHCOI dated 1 July 2016](#)] pointing out that S11(1)(a) allows the Commission to hold a hearing in public if it is requested by a witness and, in these circumstances, it was incumbent on the Commission to give reasons for its decision to refuse such a request.

Giving evidence to the Investigation Committee

On 9 August 2016, we wrote to the Commission [[Ref: letter from HL to MBHCOI dated 9 August 2016](#)] noting that the Commission website gave the impression that the only way individuals could give evidence was via the Confidential Committee and that there was no indication of how witnesses could give evidence to the Commission itself. The Commission responded [[Ref: letter from MBHCOI to HL dated 23 August 2016](#)] stating that the Investigation Committee will invite witnesses to give evidence which “*will add to its body of knowledge of the issues under investigation. Not everyone who expresses an interest in giving evidence to the Investigation Committee will be invited for hearing*”.

On 23 February 2017, we wrote to the Commission [[Ref: letter from HL to MBHCOI dated 23 February 2017](#)] passing on a request from Philomena Lee that she be able to give her evidence to the Investigation Committee and that her hearing be held in public. The Commission said that it would consider the request [[Ref: letter from MBHCOI to HL dated 21 March 2017](#)]. We repeated the request on 1 March 2017 [[Ref: letter from HL to MBHCOI dated 1 March 2017](#)].

REACTION OF SURVIVORS, ADOPTED PEOPLE AND MOTHERS TO THE COMMISSION OF INVESTIGATION’S FINAL REPORT

As your Committee will be well aware, the Commission’s Final Report has been criticised by survivors, adopted people, mothers and other relatives.

The criticisms range from inaccuracies in the reporting of individual cases including in the main report of the Commission, to the making of various findings—for example that there is very little evidence that children were forcibly taken from their mothers, that there is no evidence that women were forced to enter mother and baby homes by the Church or State authorities, that women were not incarcerated in the institutions, that the women’s unpaid labour was generally work which they would have had to do if they were living at home, and that non-consensual vaccine trials disclosed no evidence of injury—and the extent to which the evidence of witnesses given to the Confidential Committee was considered by the Commission and included in its Report.

STATEMENTS BY THE COMMISSIONERS

The criticism as to the extent to which the evidence of survivors, adopted people and mothers was considered by the Commission was fuelled recently by the statements made by Professor Daly at an Oxford University seminar on 2 June 2021 in relation to the testimony reflected in the Confidential Committee Report [[Ref: http://clannproject.org/commission-report/oxfordtranscript](http://clannproject.org/commission-report/oxfordtranscript)]. During that seminar, Professor Daly said:

“Anything in the main report had to meet robust legal standards of evidence”.

“If we wrote something that was adverse, critical about an individual or an entity, an institution, we had to write a draft report where we made these critical observations and

supply them with the accompanying documentation.... And they had a chance to read that and they had a chance to come back.... They came back with a vengeance.”

“I have spoken to my colleagues about how we could have integrated the Confidential inquiry into the Report? Well, first of all, it would have taken us... it would have taken a lot of time, additional time...”

“I think basically we’ve done a job and I think let it stand and nobody ever suggested this was going to be the last word on it. We never knew it could be or should be the last word and my view is, by all means, let others go and work with this topic and with taking statements from people, particularly people who spoke to the Confidential inquiry, from anyone who has got evidence. So my view is we’ve done a job and basically, you know, let others go and take it further.”

Following a request that the Commissioners appear before your Committee to answer questions about their Report and its methodology, Judge Murphy wrote a letter dated 11 June 2021 [Ref: [Letter from Judge Murphy to Joint Committee on Children, Disability, Equality, Integration and Youth dated 11 June 2021](#)] In that letter, Judge Murphy said:

“The Commission... was required to work within the 2004 Act and its Terms of Reference.”

“During the Investigation, the Commission investigated critical witnesses on oath, testing the evidence where appropriate and always on the express understanding that those affected by it would be given the opportunity to cross examine.”

“It must be noted that the number of mothers who spoke to the Confidential Committee is a tiny proportion of the total number of mothers in the institutions under investigation. 304 mothers gave testimony to the Confidential Committee... in the period 1960-1998 inclusive, there were 24,207 mothers in the institutions investigated – the experiences of 1 per cent of those are reflected in the Confidential Committee Report.”

“In the absence of evidence that would withstand scrutiny and cross examination, the Commission was unable to reach factual conclusions that many people wished that it had reached”.

REFLECTIONS ON THE COMMISSION’S METHODOLOGY AND APPROACH

We can readily understand that the Irish government wished to avoid the time and expense of undertaking a public inquiry with all the expense of large legal teams and hence set up the Commission in the way that it did. That said, the approach taken by the Commission, which was to hold every hearing in private and apparently feel unable to make even general factual findings based on the testimony given to the Confidential Committee has left many of those most acutely affected lacking confidence in the Report.

This lack of confidence is, at least in part, based on the following elements of the Commission’s approach to its investigation:

- Article 6 of the Commission’s Terms of Reference contained the express option for the Commission to revert to the relevant Minister to request a variation. Indeed, in July 2016 Minister Zappone expressly confirmed that she was willing to entertain any such request [referred to in the Commission’s second interim report at <https://assets.gov.ie/26424/d934467e5b0e46a5b4217e4a997afd48.pdf>]. Thus, had the Commission felt as constrained by its Terms of reference as is now suggested it had the option to seek a variation.
- The Commission of Investigation Act 2004 does not require that every hearing be held in private. S11(3) of the Act expressly allows evidence to be heard in public at the request of

a witness. The Commission's refusal to hold any hearings in public, or give any reasons for its position, gives an unnecessary impression of secrecy.

- Neither the Terms of Reference nor the Commission of Investigation Act 2004 require that anything in the main report has to meet robust legal standards of evidence. There was nothing to stop the Commission drawing conclusions from a preponderance of evidence available to it, including evidence given to the Confidential Committee (see Article 4 of its Terms of Reference), while stating any caveats as to the nature of that evidence.
- Judge Murphy has stated that the testimony of the 550 witnesses who gave evidence to the Confidential Committee is only a tiny fraction of those who passed through the Homes. This, of course, is true but, in that case, why were witnesses encouraged to attend the Confidential Committee by virtue of the Commission not including on its website details of the other route to give formal evidence? Why did the Investigation Committee only call 64 of those witnesses to give evidence? Why did the Commission not call any of the Clann Project witnesses (even those who had submitted sworn affidavits) to give evidence? Why did the Commission not even reply to the request of Philomena Lee that she be able to give her evidence to the Commission?
- Notwithstanding the various statements made about, and statutory provisions (not least Section 12 of the Commissions of Investigations Act 2004 and Articles 2 and 3 of the European Convention of Human Rights), relating to individuals being affected by other persons' evidence, the Clann Project is unaware of any affected person being shown any evidence from any of the relevant institutions or being called for cross examination or being invited to cross examine another witness.
- It is clear from the comments of Professor Daly that various institutions have been given the opportunity to comment on draft findings and to make submissions on them. The Commission Report (Chapter 18) also indicates that individual nuns have had the opportunity to comment on draft findings. The Clann Project is unaware of any affected person being offered the same opportunity.

All of the above have contributed to the feeling amongst many adopted people, survivors and mothers that the Commission's Report has been prepared about them but with insufficient involvement of them.

HOW SHOULD THE REPORT BE TREATED?

We do not for one second criticise the integrity or hard work of the Commissioners. Indeed, much excellent work has been done to accumulate and pull together all the various sources of oral and written evidence.

Unfortunately, the manner in which the Commission has operated has resulted in conclusions being drawn that simply do not reflect the actual experiences of the very people most affected by the Commission's report. As a result, it would be disappointing if this report were accepted by the Irish Government as the definitive word on the operation of the Mother & Baby Homes. We would refer to the statement of Professor Daly that the Report should not be regarded as the last word on this subject and nor was it intended to be.

We note the suggestion by ARA and JFMR that the Government should affix to the Report's cover a notice to the effect that the Government has concerns about the Commission's methodology and as a result has not accepted the Commission's findings in full. Given our own misgivings about the Commission's procedures, as discussed in this letter, we see this proposal as a sensible one. In these circumstances, your Committee might therefore consider recommending to the Government the attachment of such a note to the Report.

Yours sincerely

A handwritten signature in black ink that reads "Yasmin Waljee". The signature is written in a cursive style with a large initial 'Y'.

Pp Yasmin Waljee OBE

Faye Jarvis
Partner

CC All members of the Committee on Children, Disability, Equality, Integration and Youth

ATTACHMENT 4:

Conall Ó Fátharta and Elaine Loughlin, 'Abuse survivors' tales abandoned' *Irish Examiner* (29 August 2022)

Abuse survivors' tales abandoned

[Abuse survivors' tales abandoned](#)

Irish Examiner

August 29, 2022 Monday

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**Section:** Pg. 1**Length:** 649 words**Byline:** Conall Ó Fátharta and Elaine Loughlin

Body

A promised independent review of testimony given by mother and baby home survivors has now been abandoned by the Government.

In June of last year, Children's Minister Roderic O'Gorman announced plans to bring proposals to Cabinet to appoint an international human rights expert to re-examine the written testimony given to the Mother and Baby Homes Commission of Investigation, and report back this year.

The commitment came after survivors and academics raised concerns over the way testimony provided to the commission's confidential committee was handled.

Campaigners had called for an independent examination of the testimony given by hundreds of survivors after a member of the commission of investigation admitted that these personal stories had been discounted because they were provided in private and not under oath.

While a draft memo to appoint an international expert was drawn up by Mr O'Gorman, it did not progress any further.

A spokesperson for the minister has now confirmed to the *Irish Examiner* that he no longer plans to carry out this independent review.

A Freedom of Information (FoI) request to the Department of Children, Equality, Disability, Integration, and Youth reveals that the review never progressed beyond a "draft outline" of a proposed memorandum for Government on June 14 last year.

The schedule for the refused FoI, which requested all records relating to the establishment of the independent review between June and December 2021, shows just eight records for this period.

On June 14, an email thread was started between "Advisor, Sec Gen and PO re draft outline of proposed Memo for Government".

Abuse survivors' tales abandoned

This thread is described as "an early draft of a document created for the purpose of enabling the Minister to bring proposals to Government for consideration".

It is not mentioned again for the remainder of 2021.

The remaining documents concern a speaking note prepared for the Taoiseach on June 14, some email threads on "policy approaches to ongoing deliberations by the Minister on potential policy approaches on which a final decision has not been made" on December 7, and a response to a media query made by the *Irish Examiner* on December 8.

Some 500 survivors gave evidence to the confidential committee.

However, commission member Mary Daly later admitted that the testimony of mothers and those born in institutions was not given the same weight as other information, as anything contained in the main report of the commission had to "meet robust legal standards of evidence".

The commission heard separately from a smaller number of people under oath.

A spokesperson for the Department of Children said Mr O'Gorman had listened to the "concerns and disappointment" of some survivors when the report of the confidential committee did not live up to their expectation and has acknowledged the "deep hurt" which this has caused.

"Although care was taken in the design of the confidential committee component to try and allow the truth as survivors wanted it told to emerge, the minister recognises that this has not happened for very many of them," the spokesperson stated.

"The minister has been keen to address these concerns and had previously indicated the possibility of a review of the testimony offered to the confidential committee.

"Having considered the matter, the minister believes that a new initiative to support survivors to tell their personal story, so that it can be formally recorded and accepted as part of the official record, provides the best opportunity for responding to the concerns of survivors in a meaningful way."

The spokesperson added that survivors will be able to come forward to tell their personal story or have the testimony of the confidential committee used in the planned national centre for research and remembrance.

This centre is due to be located on the site of the former Magdalene laundry on Seán McDermott St in Dublin.

News: 4

Classification

Language: ENGLISH

Publication-Type: Newspaper

Subject: APPOINTMENTS (90%); INVESTIGATIONS (90%); NEGATIVE NEWS (90%); NEGATIVE PERSONAL NEWS (90%); INFANTS & TODDLERS (89%); WITNESSES (89%); CABINET OFFICES (78%); HUMAN RIGHTS (73%); ONLINE MARKETING & ADVERTISING (64%)

Industry: ONLINE MARKETING & ADVERTISING (64%)