

JUSTICE FOR MAGDALENES RESEARCH

A RESOURCE FOR PEOPLE AFFECTED BY AND INTERESTED IN IRELAND'S MAGDALENE INSTITUTIONS



Kelly Ledoux

Solicitor | Attorney | LLM International Human Rights on behalf of

[Justice for Magdalenes Research](#)

[The Clann Project](#)

Email for correspondence: ledouxk@outlook.com

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VIA EMAIL to ohchr-ccpr@un.org and gabriella.habtom@un.org

Ms. Gabriella Habtom
Secretary of the Committee
Human Rights Committee (CCPR)
135th Session
Palais Wilson
Geneva, Switzerland

Re: Submission to the United Nations Human Rights Committee on Ireland's Fifth Periodic Report Under the ICCPR

Dear Ms. Habtom,

Please accept this correspondence as a written contribution by Justice for Magdalenes Research ('JFMR') and The Clann Project ('Clann') for the examination and review of Ireland during the 135th session of the Human Rights Committee ('Committee'). We are pleased to have the opportunity to provide this short submission in advance of the discussion of Ireland's Fifth Periodic Report under the International Covenant on Civil and Political Rights ('ICCPR').

JFMR is a non-profit organization which aims to provide for the advancement of education of the general public by researching the Magdalene Laundries and similar institutions and by providing information and support to the women who spent time in the Magdalene Laundries and their families. The Clann Project is a collaboration between JFMR, the Adoption Rights Alliance (ARA), and Hogan Lovells International LLP, which was established to discover the truth of what happened to unmarried mothers and their children in 20th century Ireland. JFMR and Clann were heavily involved in assisting those who wished to give evidence to the Commission of Investigation into Mother and Baby Homes ('Commission') from 2015 through 2021.

The purpose of our submission is to highlight key issues relevant to Ireland’s continuing obligation to account for and remedy human rights violations committed by the State against women, children, and families through family separation and institutional abuses in Magdalene Laundries, Mother and Baby Homes, County Homes, the adoption and foster care/boarding out system, and all related institutions and practices. This submission focuses specifically on **Issue 4 – Accountability for past human rights violations (arts. 2, 6-7 and 14)** – raised in the Committee’s List of Issues¹ and includes suggested questions which the Committee may wish to ask of Ireland during the examination. The submission begins with an acknowledgment of a recent positive step by Ireland in guaranteeing memorialisation for past institutional abuses, but it next addresses critical issues and flaws with the investigation by the Commission and related redress measures proposed by the Irish Government.

National Centre for Research and Remembrance

With regard to the Committee’s request in Issue 4 for information on what steps Ireland has taken to foster a process of truth telling, reconciliation and learning², at the outset we recognize and welcome the Irish Government’s commitment to providing accountability and memorialisation through its recent announcement of a National Centre for Research and Remembrance (‘Centre’).³ The Centre will be located on the site of the last former Magdalene Laundry to close in Ireland, in 1996, on Sean McDermott Street in Dublin city.⁴

This Centre will act as a national site of conscience and include the following: a) museum and exhibition space; b) research centre and archive of records related to institutional abuses; c) place for reflection and remembrance; d) social housing and local community facilities; and e) an educational and early learning facility. The Government has committed that the Centre will include a central repository including digital access to records and exhibits as well as personal testimonies. The Government has promised that next steps for this active memorialisation project will involve formal consultation with survivor representatives, local community representatives, and legal support to ensure protection of data privacy rights.

¹ HRC, ‘List of Issues to be taken up in connection with the consideration of the Fifth Periodic Report of Ireland’ (14 January 2021) UN Doc. CCPR/C/IRL/Q/5.

² *Ibid.*

³ Department of Children, Equality, Disability, Integration and Youth (DCEDIY) Press Release, ‘Government approves proposals for a National Centre for Research and Remembrance’ (29 March 2022), <https://www.gov.ie/en/press-release/bab42-government-approves-proposals-for-a-national-centre-for-research-and-remembrance/>.

⁴ Dublin City Councillors voted to save the Sean McDermott Street site in 2018. Aine McMahon, ‘Dublin councillors vote to block sale of Magdalene laundry’ (*The Irish Times*, 13 September 2018) <https://www.irishtimes.com/news/social-affairs/dublin-councillors-vote-to-block-sale-of-magdalene-laundry-1.3628671>; see also ‘About the Sean McDermott Street Site’ (*Open Heart City: Sean McDermott Street* 2020), <http://openheartcitydublin.ie/seanmcdermottstreet/>.

Suggested Questions

1. How will the Government ensure that survivors, community members, stakeholders, lawyers, and experts are properly consulted on the Centre so as to respect and protect human rights and data privacy?
2. What is the timescale of finalizing the Centre?
3. How will the Irish Government ensure the Centre follows best international human rights practices, policies, and standards?
4. Will the Irish Government guarantee that the Centre is inclusive, reflecting all aspects of Ireland's institutional and forced family separation system?

Mother and Baby Homes Commission of Investigation and Related 'Redress' Measures

The proposed Centre discussed above is part of the Government's Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions ('Action Plan').⁵ However, the Action Plan is based upon the recommendations contained in the Final Report of the Commission of Investigation into Mother and Baby Homes ('Commission Report')⁶ which was **fundamentally flawed**.⁷ In December 2021, the High Court in Ireland declared that the Commission treated survivors including Philomena Lee, Mary Harney, Mari Steed, Mary Isobelle Mullaney, Madeleine Bridget Marvier and others not publicly identified **unlawfully**.⁸ The survivors were denied fair procedures, specifically their statutory right under section 34 of the Commissions of Investigation Act 2004, to reply to a draft of the Commission's findings (even though this opportunity was afforded to the religious, state, and other alleged wrongdoers).

The Irish Government agreed with the High Court's declaration and will not be appealing. Notably, the Government fails to mention these eight High Court judicial review actions in its response to Issue 4(b) which specially asks about reports that investigations into institutional abuses have been insufficient in scope.⁹

⁵ Government of Ireland, 'An Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions' (2021), <https://www.gov.ie/pdf/?file=https://assets.gov.ie/204579/0b00bbf2-4319-4298-827e-6b0b01bf09ae.pdf#page=null>.

⁶ DCEDIY, 'Final Report of the Commission of Investigation into Mother and Baby Homes' (22 November 2021), <https://www.gov.ie/en/publication/d4b3d-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes/> ('Commission Report').

⁷ See Clann Press Release, 'Irish High Court Declares That Mother and Baby Homes Commission of Investigation Treated Survivors Unlawfully' (17 December 2021), http://clannproject.org/wp-content/uploads/Clann-Press-Release_17-12-21.pdf, attached as Appendix A.

⁸ *Ibid.*

⁹ HRC, 'Replies of Ireland to the list of issue in relation to its fifth period report' (13 April 2022) UN Doc. CCPR/C/IRL/RQ/5.

The Commission Report was inadequate as it included recommendations and conclusions completely contrary to survivors' testimony and without any explanation or reasoning. One survivor and litigant, Mary Harney, gave sworn evidence that she was not properly fed by her foster parents and was routinely subjected to physical abuse before her placement in an Industrial School.¹⁰ Another litigant (who has not been named publicly) gave evidence that after being born at the St. Patrick's Mother and Baby Home, she was adopted to a family which severely abused her physically, mentally, and sexually throughout her entire childhood.¹¹ But this evidence given by the litigants along with 30 formerly 'boarded out' children were ignored by the Commission as 'scant' or 'cannot be established'. As a result, the Commission refused to recommend redress for formerly 'boarded out' children.¹² Remarkably, the Commission concluded in stark contradiction to these testimonies of abuse: 'There is no doubt that the option of legal adoption was a vastly better outcome for the children involved than the previous informal adoption or nursed out arrangements.'¹³

Another survivor, Philomena Lee, swore that she was confined to Sean Ross Abbey and kept away from her son for all but one hour each day.¹⁴ Ms. Lee was forced to work six days a week at heavy laundry work for no pay and without any option to leave the institution. Against Ms. Lee's testimony, the Commission Report claimed women 'were not incarcerated' in mother and baby institutions and the forced labor they were subjected to 'was generally work which they would have had to do if they were living at home'.¹⁵ Ms. Lee asserts she was forced to sign a consent form for her son's adoption, yet the Commission Report claims there is no evidence of women being denied full, free and informed consent to their child's separation.¹⁶ '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'.¹⁷

The Commission Report made numerous other blatantly incorrect conclusions: 1) 'Children who spent very short periods in the institutions would find it difficult to establish that they had been abused'¹⁸; 2) '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.'¹⁹; 3) While 'It is clear that there was not compliance with the relevant regulatory and ethical standards of the time as consent was not obtained from either the mothers of the children or their guardians and the necessary licenses were not in place', there is 'no evidence of injury to the children involved as a result of vaccines';²⁰ and 4) 'The Commission has not seen

¹⁰ See Mary Harney Witness Statement (redacted), attached as Appendix B.

¹¹ Appendix A, p. 5.

¹² Commission Report, Recommendations paras 19, 22, 23, and 29.

¹³ Commission Report, Recommendations para 35.

¹⁴ See Philomena Lee Witness Statement (redacted), attached as Appendix C.

¹⁵ Commission Report, Recommendations para 30; see also Appendix A, p. 3.

¹⁶ Commission Report, Executive Summary para 254; see also Appendix A, p. 3.

¹⁷ Commission Report, Recommendations para 34.

¹⁸ Commission Report, Recommendations para 23.

¹⁹ Commission Report, Chapter 36 para 80.

²⁰ Commission Report, Executive Summary para 248.

evidence of illegal registrations of birth which occurred in the mother and baby homes and county homes under investigation'.²¹

The Commission's Investigation was unfair from the very beginning as the Commission refused to provide witnesses with any personal data or a transcript of their own evidence.²² The Commission refused to allow all survivors who wished to meet with its Investigation Committee (which was the only part of the Commission empowered to make adverse findings against identified parties) the opportunity. Instead, survivors were in general directed to a 'Confidential' Committee whereby their testimony given confidentially was determined not to have evidentiary value for the purpose of the Commission Report's conclusions. Furthermore, without written notice or informed consent, the Commission deleted audio recordings of 550 interviews with its Confidential Committee.²³

Although acceptance and agreement of the High Court declarations has been published alongside the Commission Report on the Government website (along with paragraphs which the survivors claimed did not accurately reflect their testimony)²⁴, there is no agreement on how the Commission Report should ultimately be treated.²⁵ The Government has refused to repudiate the Commission Report.²⁶ The Commission's faulty conclusions currently stand as

²¹ The Minister for Children recently made a public apology to people affected by the practice of illegal birth registrations (which had previously been deemed as 'incorrect' birth registrations) – and it is estimated that up to 20,000 adoption records could be illegally registered. This apology came approximately a year after an Annual Report of the Special Rapporteur on Child Protection in June 2021, which concluded that evidence in the Commission Report suggests multiple human rights violations by the State. Commission Report, Chapter 32 para 398; see Paul Cunningham, 'Minister "truly sorry" over illegal birth registrations' (*RTE*, 10 May 2022), <https://www.rte.ie/news/ireland/2022/0510/1297099-illegal-birth-apology/>; M. Reynolds, *A Shadow Cast Long: Independent Review Into Incorrect Birth Registrations* (May 2019) (para 4.24), available at <https://www.gov.ie/pdf/?file=https://assets.gov.ie/126409/d06b2647-6f8e-44bf-846a-a2954de815a6.pdf>. C. O'Mahony, *Annual Report by the Special Rapporteur on Child Protection 2021: A Report Submitted to the Oireachtas* (June 2021), <https://www.gov.ie/en/publication/2d30f-annual-report-of-the-special-rapporteur-on-child-protection-2021/>.

²² M. O'Rourke, C. McGettrick, R. Baker, R. Hill et al, *Clann: Ireland's Unmarried Mothers and their Children: Gathering the Data: Principal Submission to the Commission of Investigation into Mother and Baby Homes* (JFMR, ARA, Hogan Lovells, October 2018), http://clannproject.org/wp-content/uploads/Clann-Submissions_Redacted-Public-Version-October-2018.pdf.

²³ C. McQuinn, 'Deleted testimony from mother and baby home survivors can be recovered' (*The Irish Times*, 23 February 2021) <https://www.irishtimes.com/news/politics/deleted-testimony-from-mother-and-baby-home-survivors-can-be-recovered-1.4493326>.

²⁴ DCEDIY, 'Commission of Investigation into Mother and Baby Homes and Certain Related Matters' (12 April 2022) <https://www.gov.ie/en/publication/316d8-commission-of-investigation/#outcome-of-judicial-review-applications>.

²⁵ Hogan Lovells, 'Letter to Deputy Funchion, Chair of the Committee on Children, Disability, Equality, and Integration' (30 July 2021) http://clannproject.org/wp-content/uploads/Hogan-Lovells-Letter-to-Childrens-Committee_30-07-21-1.pdf.

²⁶ In a written Parliamentary Question Response, Minister Roderic O'Gorman insisted that the Government still wishes to stand behind the Commission Report: 'While I acknowledge that specific paragraphs are not accepted by a number of survivors, I am also aware that some of those paragraphs may reflect the experiences and evidence of other survivors.' Dáil Éireann, DCEDIY: Mother and Baby Homes Inquiries (19 January 2022), <https://www.kildarestreet.com/wrans/?id=2022-01-19a.2892&s=inquest+mother+and+baby#g2899.q>.

the state official record which the Government relies upon to limit its approach to redress in the following proposed legislation: 1) Birth Information and Tracing Bill ('Information Bill'), the 2) Institutional Burials Bill ('Burials Bill'), and 3) Mother and Baby Institutions Payment Scheme ('Payment Scheme').

The Information Bill is discriminatory legislation which is riddled with shortcomings²⁷: it does not provide a right for mothers to receive their full records, especially information about the forced or illegal separation from their child; it does not provide an automatic access to birth certificates and records for adopted people; adopted people whose parents have registered a preference for no contact will have to attend a mandatory and offensive Information Session about privacy – this is in breach of EU law because it places a restriction on adopted people's fundamental right to their personal data; there is no provision allowing for relatives of the deceased to obtain records of those who died in institutional custody; it requires a person's family medical history to be given to a health professional rather than directly to them; and it does not mandate information disclosure by any data controllers other than TUSLA (the Child and Family Agency) and the Adoption Authority of Ireland.²⁸

The Joint Oireachtas Children's Committee recommended 83 changes to the Information Bill, but the Government has rejected or ignored many important recommendations.²⁹ As argued by the Children's Committee and eight UN Special Rapporteurs³⁰, the Irish Government must amend the Information Bill to absolutely guarantee without exception the right to know one's identity, to obtain one's personal data which includes medical and early care records and administrative records, to access truth about serious human rights violations, and to know what happened to disappeared relatives.

Next, the Burials Bill aims to establish an agency to excavate and exhume remains of the children and women in unmarked, unrecorded graves following their disappearance in Mother and Baby Homes and related institutions. The main purpose of the Burials Bill is for exhumation and identification purposes only³¹ rather than to investigate circumstances surrounding death.³² In response to pre-legislative scrutiny recommendations, some

²⁷ See C. McGettrick, M. O'Rourke, and L. O'Nolan, et al., *Birth Information and Tracing Bill 2022: Briefing Note and Amendments* (28 February 2022), available at http://clannproject.org/wp-content/uploads/Clann_A8A-Briefing-Note_Information-Tracing-Bill_28-02-22.pdf.

²⁸ See M. O'Rourke, 'Birth Information and Tracing Bill 2022: An Analysis', (21 January 2022), available at <https://maeveorourke.medium.com/birth-information-and-tracing-bill-2022-an-analysis-e7705eb5ef7>.

²⁹ Joint Committee on Children, Equality, Disability, Integration and Youth Report on Pre-Legislative Scrutiny of the Birth Information and Tracing Bill (December 2021), https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_children_equality_disability_integration_and_youth/reports/2021/2021-12-14_report-on-pre-legislative-scrutiny-of-the-birth-information-and-tracing-bill_en.pdf.

³⁰ *Ibid*; Mandates of the Working Group on Enforced or Involuntary Disappearances (5 November 2021) Ref OL IRL 2/2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26772>.

³¹ Institutional Burials Bill 2022 (Bill 23 of 2022), <https://www.oireachtas.ie/en/bills/bill/2022/23/>.

³² S. Buckley et al., *Joint Submission to Oireachtas Committee on Children, Equality, Disability and Integration re: General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill* (26

amendments were recently made to the Burials Bill to allow a Director to make a contract or arrangement with an ‘appropriately qualified person’ (not a coroner) for forensic analysis in establishing if possible, the circumstances and cause of death.³³ Only if evidence emerges that death occurred in violent or unnatural circumstances will the An Garda Síochána and a coroner be called and the land where the human remains are found designated as a crime scene. However, given the high rates of death and serious abuses of incarceration and neglect in Ireland’s institutions, the Government must inspect these unexplained, potentially violent or unnatural deaths in state custody – which has been customary under a coroner’s powers in Ireland since before independence. No investigation has taken place into the cause of these deaths to date because the Government does not want to disclose any potentially criminal behavior.³⁴ This Burials Bill must address this and ensure investigations are conducted at all sites in Ireland beyond Tuam.³⁵

Third, the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) is currently establishing a Payment Scheme to provide for financial payments (compensation or redress) and an enhanced medical card to victims and survivors of Mother and Baby homes.³⁶ Yet in order to join this scheme, participants will be forced to sign a legal waiver of their right to pursue action against the State through the courts in return for payments as little as €5,000. The UN Committee Against Torture (CAT) has noted in a preliminary admissibility decision in *Elizabeth Coppin v Ireland* that ‘ex gratia’ payments cannot be exchanged for the right to truth and accountability – a State party has a continued ‘obligation to investigate allegations of continuing violations of the Convention brought to its attention, including the procedural aspects of the right to justice and to the truth.’³⁷ Therefore, any payment scheme must be ‘without prejudice to the right to seek further remedies for human rights violations experienced.’³⁸

The DCEDIY contracted with the consulting firm OAK in March and April 2021 to provide an independent report on the redress and compensatory needs of survivors.³⁹ 444

February 2021) http://clannproject.org/wp-content/uploads/Appendix-6_Institutional-Burials-Bill_Joint-Submission-26.2.21.pdf.

³³ Amended Institutional Burials Bill (No. 23a of 2022),

https://data.oireachtas.ie/ie/oireachtas/bill/2022/23/eng/ver_a/b23a22d.pdf.

³⁴ Parliamentary Question Response, Minister Roderic O’Gorman (n 26).

³⁵ See Select Committee on Children, Equality, Disability, Integration and Youth debate (Tuesday, 3 May 2022),

https://www.oireachtas.ie/en/debates/debate/select_committee_on_children_equality_disability_integration_and_youth/2022-05-03/2/.

³⁶ DCEDIY, ‘Payment Scheme’ (9 May 2022), <https://www.gov.ie/en/publication/0c637-mother-and-baby-institutions-payment-scheme/>.

³⁷ Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 879/2018, CAT/C/68/D/879/2018 (14 January 2020), https://www.hoganlovells.com/-/media/hogan-lovells/pdf/2020-pdfs/2020_02_17_un_torture_committe_delivers_preliminary_judgment_against_ireland.pdf

³⁸ Mandates of the Working Group (n 30).

³⁹ M. L. O’Kennedy, *Report of the findings of the Consultation with Survivors of Mother and Baby Homes and County Homes* (17 May 2021), <https://www.gov.ie/pdf/?file=https://assets.gov.ie/204592/4414655a-2caa-4d63-bb62-b8d1fb929485.pdf#page=null>.

written submissions were made and 186 people participated in the OAK independent survivor consultant report ('OAK Report') whereby they ultimately recommended a 'universal, inclusive scheme.' However, the current proposals for the Payment Scheme reflect the Government's blind loyalty to the erroneous Commission Report and willful ignorance towards the OAK Report. The Government's proposals:

- Exclude those who were adopted or otherwise separated from their mother in an institution before the age of six months (because family separation is not considered a harm requiring redress);
- Exclude those who were fostered or boarded out as children before adoption legislation was enacted in 1953;
- Exclude those who were in institutions not investigated by the Commission of Investigation;
- Exclude those who were forcibly separated in non-institutionalized settings including through adoption agencies and private facilitators, and through illegal adoption including via illegal birth registration;
- Refuse to recognize forced labor or servitude in institutions, other than of a type that the Government deems to have been 'commercial';
- Restrict the 'enhanced medical card' to those institutionalized for more than six months (because family separation is not considered a harm requiring redress); and
- Grossly undervalue the abuses perpetrated, requiring waiver of all legal rights against the State in exchange for as little as €5,000 payment.⁴⁰

The Payment Scheme currently does not recognize the harms of sale of children and illegal adoption, forced labor and servitude, torture and inhuman and degrading treatment, gender-based violence against women and girls, arbitrary detention, forced family separation or the erasure of identity as abusive, or the abuse of many adopted or 'boarded out' people in these institutions.⁴¹ The Government must amend its 'restorative recognition' plans to recognize all rights violations perpetrated in the institutional and family separation system.⁴²

⁴⁰ See M. O'Rourke, 'The silencing of those subjected to forced family separation' (26 January 2022) <https://maeveourke.medium.com/deny-til-they-die-the-systematic-silencing-of-those-subjected-to-forced-family-separation-f129062f6b3>.

⁴¹ Mandates of the Working Group (n 30).

⁴² C. McGettrick and M. O'Rourke, *Clann Project Submission to Oak Consulting re: Consultation Process on the Development of an Ex-Gratia 'Restorative Recognition Scheme'* (31 March 2021) http://clannproject.org/wp-content/uploads/Clann-Project-Submission-to-Oak-Consulting_31.3.21.pdf.

Further Issues

With regard to the Magdalene Laundries abuse, we highlight the detailed submissions from JFMR⁴³ and the Irish Council for Civil Liberties⁴⁴ for the purpose of informing the CAT's Follow-Up process in 2018. Since then, with the exception of progress on the Site of Conscience at Sean McDermott Street (National Centre for Research and Remembrance, discussed above), the issues unfortunately remain the same and are addressed by the suggested questions below.

With respect to the treatment of records and archives gathered by the three key inquiries into systematic so-called 'historical' institutional abuse in Ireland to-date, we reiterate the information presented by the Irish Centre for Human Rights for the purpose of informing this Committee's LOIPR. The suggested questions below address the continuing secrecy of these records and archives.

Suggested Questions

1. What steps will the Irish Government take to recognize the definitive and substantial flaws in both procedure and substance in the Commission Report? Bearing in mind in particular the High Court declarations, how can the Irish Government accept the Commission's findings in full and treat the Commission Report as the definitive word on the operation of the Mother and Baby Homes?
2. Will the Government implement all of the Oireachtas Children Committee's recommendations for amendments to the Information Bill? If not, why not?
3. Will the Government, by order of the Attorney General, initiate inquests to establish the identities and circumstances of death of the remains of children, women, and babies found in unmarked graves following their disappearance in Mother and Baby Homes and related institutions?
4. Will the Payment Scheme continue to operate as an 'ex gratia' payment in exchange for legal waiver of rights, in contravention of the UNCAT?
5. Will Ireland amend its 'restorative recognition' plans to recognize all rights violations perpetrated in the institutional and family separation system?

⁴³ C. Landy and A. O'Duffy, *Justice for Magdalenes Research Follow-Up Report to the UN Committee Against Torture* (August 2018),

https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_NGS_IRL_33112_E.pdf.

⁴⁴ Irish Council for Civil Liberties, *NGO Submission to the United Nations Committee Against Torture: Follow-up to the 2017 Concluding Observations of the Committee against Torture* (23 November 2018), <https://www.iccl.ie/wp-content/uploads/2018/11/ICCL-Follow-up-report-to-UNCAT-final-23.11.18.pdf>.

6. How does Ireland respond to what participants said in the OAK Report on the development of its 'Restorative Recognition Scheme'?
7. When and how will the Government ensure that the full 'HAA card' suite of services (including all HAA private services, and all HAA complementary therapies) is provided to all survivors, including survivors of residential schools and Magdalene Laundries, and all those affected by forced family separation, whether residing in Ireland or abroad?
8. How will the Government ensure that the fate and burial place of all women who died in the Magdalene Laundries are identified?
9. When will the Government back-date the pension payments received under the Magdalene Laundries 'ex gratia' scheme to the date that an applicant reached retirement age, rather than simply to the scheme's start date, in order to fulfil Judge Quirke's recommendation that the women should be put in the position they would have occupied had they paid sufficient stamps?
10. When will the Government ensure access to justice and accountability for the Magdalene Laundries through the establishment of an independent, thorough investigation and truth telling process; the amendment of the Statute of Limitations to enable civil claims to be brought 'in the interests of justice'; and the education of State officials, including An Garda Síochána, regarding the treatment of girls and women in Magdalene Laundries?
11. When will the Government release to the public (using technology to anonymise records where appropriate) the archive of State records gathered by the Inter-Departmental Committee to establish the facts of State involvement with the Magdalene Laundries, the Commission to Inquire into Child Abuse, and the Mother and Baby Homes Commission of Investigation?
12. How will the Government ensure that the fate and burial place of all women who died in the Magdalene Laundries are identified?
13. How and when will the Irish State ensure that the personal data access rights of all people who affected by the adoption system and who were confined in institutions are respected?
14. When will the State repeal the 'gagging' clause in the Residential Institutions Redress Act 2002 and ensure that survivors' freedom of expression is respected and protected?
15. How and when will the Irish State invite survivors who wish to deposit their testimony for the national historical record and the education of younger generations to do so?

Final Note: Recently, on May, 18 2022, the High Court of Ireland perfected its order and declaration in the case of Mary Harney v. Minister for Children, Equality, Disability, Integration and Youth as discussed above.⁴⁵ However, the High Court has not yet released its perfected declarations in the remaining seven cases. JFMR and Clann respectfully seeks leave to amend this submission after the due date of May 30, 2022 in order to attach these important declarations for your consideration. We would request the Committee allow submission of these declarations up to and including the date of the formal private sessions and informal briefings for Ireland in July.

We look forward to speaking with the Committee on these issues further during a formal session or informal briefing soon. If you have any questions or would like additional information in the meantime, please do not hesitate to contact us.

Sincerely yours,

Kelly Ledoux

On behalf of JFMR and the Clann Project

⁴⁵ See *Mary Harney v. Minister for Children, Equality, Disability, Integration and Youth, the Government of Ireland, Ireland and the Attorney General* [2021] IEHC 180R, attached as Appendix D.



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.

CLANN CONTACTS

Maeve O’Rourke: +353-83-8453070, maeveorourke@gmail.com

Claire McGettrick: +353-86-3659516, clairemcgettrick@gmail.com

WITNESS CONTACTS

S Kil ('Margaret'): +353-87-9947541

Mary Isobelle Mullaney: +353-86-8180412, isobelle.mullaney@gmail.com

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

Appendix B

WITNESS STATEMENT OF MARY HARNEY

I, Mary Harney, of [REDACTED] USA, WILL SAY:

1. I make this statement for the purpose of providing evidence to the Mother and Baby Homes Commission of Investigation established by the Irish Government pursuant to Section 3 of the of the Commissions of Investigations Act 2004.
2. Attached to this statement is an exhibit marked MH1 which contains various copy documents. References to page numbers in this statement are to pages in MH1.
3. I make this statement as someone who was born in the Bessboro Mother and Baby Home in Cork.

Circumstances of my Birth and Early Life

4. I was born on [REDACTED] 1949 and am now 68 years old.
5. I do not know much about my mother's early life other than that her mother died when she was 12 at which point she was sent to St Dominic's Industrial School where she stayed until she was 16. She was then taken in by relations and went out to work. I don't know the circumstances in which my mother became pregnant and I do not know the identity of my father. My mother said that she would take this information to her grave and would only say that he was "a local man from Waterford".
6. My mother was taken to Bessboro Mother and Baby Home on [REDACTED] 1949, the day before she gave birth. She went in a van that must have been arranged by somebody and that somebody is likely to have been a person of influence because how other was she able to work until the day before she gave birth? My mother must have been showing her pregnancy at that stage and it would have been very unusual for an unmarried mother only to go to the Mother and Baby Home at such a late stage.
7. My mother told me that there weren't any windows in the van and it banged along over the roads of Waterford and Cork until she arrived in the late afternoon/evening. By that time she was feeling fairly sick so she was put straight into a ward because they thought she was going to give birth that night.
8. My mother told me that she gave birth sometime in the early hours of the next morning and that she had great difficulty delivering me. She was told to sit on some kind of commode and strain and then, later, she was put back into her bed and I was delivered by a nun. According to my mother, after the umbilical cord was cut, the nuns took me away and put me into a side ward telling her that I probably wouldn't live through the night. They gave her no explanation for this statement and she lay there in bloody sheets, sobbing and without any medical care. At about 7am the next morning, a nun brought me to her wrapped in a towel and said that I had been bawling all night and that's probably what had

kept me alive. The nun then gave me to my mother and that was when she first saw me and got to hold me.

9. After my mother had recovered from the birth, she was only allowed to have contact with me when she breastfed me. My mother said that once the babies had been breastfed they were put into cots where the sheets were tied tightly around them so they couldn't move around. I guess you could say it was like a swaddling because the babies were not free to shake their legs around. The babies were all kept in little metal cots lined up in a dormitory and she said they were generally left to cry without being given any attention.
10. My mother told me that in order to see me more often she begged to be put on to laundry work sluicing the nappies. The nappies were very rough and were washed by hand. The nappies made all of the babies red raw and most suffered from a rash with no cream or Vaseline type product to ease the discomfort.
11. My mother said that conditions in Bessboro were hard and everybody had to obey the rules. At times the punishments for stepping out of line included, in my mother's case, one instance of being told to cut the lawn with a pair of scissors but a more regular, and to my mind, cruel punishment was to deprive mothers of access to their children.
12. My mother and I stayed at Bessboro until I was about 2½. Not all of the children stayed that long because it was understood by all of the mothers that the nuns would be trying to arrange families to which the babies could be sent. There was definitely a pecking order with better looking babies and those of mothers with more respectable backgrounds being the ones that were offered to the "better" families.
13. A lot of the children were sent to American families and the mothers always knew when there was an American family at the Home to inspect the children. At the end of each such day everyone was upset either because their child hadn't been chosen and thereby missed out on a good opportunity in life or because their child had been chosen and had been taken away from them.
14. I understand that I was never one of those displayed for American families because I had had two illnesses, measles and whooping cough, and that meant that at best I would only ever go to an Irish family.

Circumstances of my Departure from Bessboro

15. My mother told me that one day in November 1951, when I was about 2½, the nuns came to her and gave her half an hour to get me ready because "I was going". My mother had knitted me little jumpers and skirts and she dressed me up in the best clothes that she had. There was a long corridor in Bessboro up which the nuns took the children to hand them

over in the parlour and there was a nun there who took me from my mother and walked me up to the end of the corridor and through a door. That was the last she saw of me. By all accounts, after I had gone, the nuns took all the clothes that my mother had made for me and took them back to her saying that I won't be needing these because my "new mother" had bought me new clothes. My mother told me that this broke her heart.

Leaving Bessboro

16. In those days adoption was illegal in Ireland or at least there was no formal provision for it in Irish law so, when the nuns found homes to send the children, I guess in effect they were being fostered out. In my case there doesn't appear to have been any formal paperwork surrounding this process and the records that I have seen all refer simply to me being "taken" (page 5, 7 and 16).
17. I was fostered to what seemed to me to be a very elderly couple, probably in their 50s or 60s and I was simply handed over to them. Their names were Mr and Mrs [REDACTED] and they both lived in Cork. Mr [REDACTED] was [REDACTED] and had an accent. Mrs [REDACTED] was well educated and was a senior figure in her local church. They were fairly well off and lived in the biggest house on the street and owned a greengrocers shop. I have no idea why the [REDACTED] took me in.
18. The [REDACTED] were very strict and the house was very dark. I was 2½ and I was put in a small bedroom on my own. At the side of the bed on the wall was a picture of Michael the Archangel with a trident in his hand shoving snakes into the pit of hell. There was a little lamp in front of the picture that glowed and flickered and the combination of the light and the picture traumatised me so much that I cannot even hear the word "snake" today without being terrified. I begged and begged to be taken out of that room but, instead of helping me with my fears, Mrs [REDACTED] simply locked me in. I do not know why it was believed that the [REDACTED] were suitable "foster parents" or whether any checks on them were undertaken but they certainly had no idea how to bring up children.
19. Notwithstanding that the [REDACTED] were relatively wealthy, I was poorly fed and was always hungry. The [REDACTED] were strict and I was regularly smacked and hit on the backs of my legs. I would often sneak out of the house and go and visit the [REDACTED] family up the road where Mrs [REDACTED] always had a big fire going and she would give me sandwiches. Mrs [REDACTED] would also give me a hug and this was the only real affection I received.
20. I am told that I was quite a bright child and could read by the time I was 4. At that point I was taken up to a school run by nuns and this was where my lifelong love of learning began.

21. Fairly soon afterwards, Mrs [REDACTED] apparently reported to the ISPCC that I wasn't being fed properly and that my legs were often red at the back where I had been smacked. Mrs [REDACTED], who knew I was fostered, told me later that she had asked if she could have me instead of the [REDACTED] because she believed I was being neglected.
22. The response to this was that the "Cruelty Man" (an officer of the Irish Society) came to the house and the next thing I knew I was in the back of a big black car with Mrs [REDACTED] and the Cruelty Man who was dressed like a police officer. They took me to the Cork courthouse and there was some kind of hearing before the judge. The upshot of the hearing was that I was committed to the Good Shepherd's Industrial School at Sunday's Well until I was 16.
23. I now have a number of documents referring to the court hearing (pages 7, 9, 13 and 16) and in those documents it states quite clearly that the whereabouts of my mother was unknown. This was patently untrue because the nuns at Bessboro knew exactly where my mother was because they had sent her to St Winifred's Hospital in Cardiff which was run by their own order.
24. I was therefore taken away to the Good Shepherd's Industrial School, apparently with Mrs [REDACTED]'s approval, though, bizarrely, she continued to visit me periodically while I was at the Industrial School. I have not gone into any great detail about my time in the Good Shepherd's because that is not the subject of this statement. Suffice it to say that life was extremely hard and I only ended up there as a result of having been placed with a wholly inappropriate family by the people at Bessboro.
25. When I was about 11, I was told by the nuns in the school that my mother was dead. This came as a great upset to me and I included a prayer to my mother's soul in my daily prayers from that time until I found out that this was not true.

Information given to my Mother

26. My mother had no idea that after she left Bessboro she was free to go wherever she wanted. In fact what happened was that she was simply sent by ferry to Wales to work in a sister institution of the Bessboro nuns. Money was deducted from her weekly wages to pay back the cost of her transport to Wales. She also had no idea when she was there that she was free to leave whenever she wanted.
27. At some point, in or around 1952/53 my mother met a local man and got married. Apparently at that point she and her husband tried to get me back but the nuns in Wales told her that they had contacted Bessboro and the head nun there said no. They painted her a big picture that I was getting everything she couldn't give me and that I couldn't be

removed from the family to which I had gone because I had been adopted. This of course was not true.

Finding my Mother

28. I left the Good Shepherds when I was 16 and was discharged back into the care of Mrs [REDACTED], even though an inspector from the Dept. of Education stated that Mrs [REDACTED] had no claim on me by law (page 13) I found a job skivvying in a local hotel where I was a chambermaid. I had to give all my wages to Mrs [REDACTED]. We were only given scraps of food left over from people in the hotel and the occasional cup of tea and I felt as if I was being incarcerated just as much as I had been at the Industrial School, just in a different way, so I rebelled.
29. I wanted to find out more information about my family and wanted to find out more about my mother who (at that time) I still thought was dead.
30. I therefore went to a priest who had been kind to me when I was at the Good Shepherd's and asked him to help me. Mrs [REDACTED] had recently referred to me as illegitimate and so the first thing I did was to ask him what that meant. The priest explained that it meant that my mother had not been married when she had me and that being illegitimate was seen as a bad thing. The priest then undertook some investigation about my mother and informed me that he could find no record of my mother having died. He went on to say that this must mean she was still alive. He added that the nuns at Bessboro had told him that they believed she was living in England.
31. I then visited Bessboro myself and spoke to a little old nun who opened the door. That nun said "My, Peggie Harney". I said "no, I'm Mary Harney" and the nun said "I must be thinking of your mother because you are a spitting image of her". At that point another nun came up and told the original nun to leave this matter to her and asked me what I wanted. I said that I wanted to find out about my mother. The new nun said "we can't give you any information". I explained that my mother had been in Bessboro and that, regardless of what I'd been told, I knew she was not dead. The nun then told me that my mother "went to England and that's all I'm giving you". She then sent me away.
32. I therefore left Bessboro at least knowing my mother's name, that I looked like her and thinking that my mother was in England (as opposed to Wales where the nuns actually knew she was).
33. Following that, I went back to the Good Shepherd's and asked to see Mother Philomena who was the head nun at the time. She invited me into the parlour to talk. I confronted her telling her that she had lied to me and had told me that my mother was dead. I said that I

had prayed for her soul every night but she wasn't dead and asked why she had lied. Mother Philomena simply said "it was better for you". I then told Mother Philomena that I was going to find my mother "even if it took me 10, 20 or 40 years" to which she told me "you can't do that and don't forget Mrs ██████ can still have you put in the Magdalenes".

34. After that I was determined to travel to England to try to find my mother even though I had no real idea of how to do this. By this time, I had a little money saved up and, together with another girl, I packed up my few meagre belongings and we caught the ferry to England. We landed in Fishguard in Wales and then got the train to London.
35. After a period during which I was effectively living on the streets, I was taken to an Irish Catholic organisation which gave me a bath and some food and helped me to get a job.
36. I then began writing letters to try to find out where my mother was. I wrote to parishes in different cities asking if they had any records. After a while, I also wrote to Bessboro and, to my surprise, a few weeks later I got a letter (pages 17 and 18) back from the nuns at Bessboro telling me my mother's name, address and the fact that she was married and had 2 children. The letter also stated they didn't know whether she had told her husband about me.
37. I was so excited that I had found my mother that all I wanted to do was to go to Cardiff and knock on her door. I called the priest who had helped me start the process of finding my mother (at that point he was in the English Midlands) and he gently explained to me that it might be that my mother didn't want me back and that just turning up might cause more problems than it would solve. He offered to help me get in touch with her and said that he would get back to me when he had done so.
38. About 2 weeks later, he called me on the phone and told me that he had spoken to the Bishop in Cardiff and had asked him to send a priest around to the address they had for my mother. He said that the priest had gotten back to the bishop and had confirmed that my mother wanted to get in touch with me. He said that my stepfather knew all about me and "they want to see you". He suggested I leave it to them to arrange this on their own terms and advised me not to go up there and simply knock on the door. He told me that until very recently my mother didn't know I was even alive and that basically she knew nothing about me.
39. A couple of days later I received a phone call from a man who said that his name was Tommy and that he was married to my mother. He told me that my mother wanted to talk to me but she was crying and so she had asked him to talk to me first and to tell me about them. So he told me about himself and my mother as well as the ages and names of my sisters and all that and he then said that my mother was ready to talk to me. I then heard a

female voice with a strong Welsh accent saying "hello love this is your mammy" and we both burst into tears. No one could have told me how just hearing my mother's voice would have such an effect on me. All of a sudden, I looked out of the phone box and everybody at the home was by the side of the phone box and they were crying too. We didn't speak for long but my mother said she and her husband would love to see me and they wanted to come to London to meet me.

40. Shortly after that, the big day arrived and my mother came to see me. All the people where I worked made sure I had new clothes because they didn't want me to show myself up in front of my mother. We met in the parlour of the institution where I was working and living and I went in and met my mother - she was short and stocky with an Irish/Welsh accent. My brain was saying this is not my mother but then I suddenly realised that I finally found my mother and had 2 sisters. We sat down at the table and her husband did all the talking. My mother didn't say much and she also never hugged me but I knew that I had a mother and that was the most important thing in my life.
41. They invited me to come back to Cardiff with them to live and I agreed. I was warned by one of the nuns at the institution that when a family has been separated and have been apart for a long time it is not easy to make it work. Children in my situation often have an image of what their mother will be like but that is often very different to the reality. Even so I was sent a ticket to travel to Wales and I went down to Cardiff to live with them.
42. I moved into their 2 bedroom house with them and the rest of the family but unfortunately I found the house extremely claustrophobic. Having lived in institutions all my life, I was used to living with other people but all of those buildings were large and with plenty of space and I found the small house suffocating. I found it difficult to get on with my sisters and my stepfather had told my mother that it was important that she didn't do anything that might appear to favour me over her younger daughters and this made me feel like an outsider.
43. In the end, I simply had to leave. I then started drinking and over a period of 15 years I became an alcoholic.
44. After a number of years I managed to sort myself out and worked for both the London and Cardiff fire brigades for over 20 years. I left the fire brigade when I got arthritis in my hands and so they made me redundant having given me a lump sum of money which I used to go the College of the Atlantic in Maine, USA, and I graduated in 1996 with a BA in Human Ecology. I achieved my MA in Irish Studies in NUI Galway in 2013. I was further honoured by College of the Atlantic with an Honorary Master's Degree in Philosophy in 2014.

45. Once I was sober, my relationship with my mother was one of friendship rather than mother/daughter. My mother lacked empathy and found it difficult to praise or be close to anyone but nonetheless she was still my hero for what she had gone through as a young woman, the fact that she had taught herself to read and write, had married and had kept it together to bring up a family.
46. My mother died in 2013 when she was 84.

The Commission of Investigation

47. When, in 1999, Bertie Aherne apologised on behalf of the State to those who suffered abuse in residential institutions in Ireland, I felt that this was a breakthrough in terms of understanding how badly women and children were treated in those institutions in the 20th century.
48. I feel that it would be appropriate for a further apology to be given to those women and children who passed through the Mother and Baby Homes and who were separated, often against the mother's will, by it being determined by the nuns who run those homes that it was better for illegitimate children to be adopted or fostered to new families. The Mother and Baby Homes were part of the Irish system even if the individual acts of cruelty and misinformation were committed by individual members of the religious orders actually running the homes.
49. I believe that it is important that there be some form of restorative justice and possibly compensation for those that need it but it is important that any compensation scheme doesn't operate to re-victimise those who find it difficult to substantiate claims simply because inadequate records were kept about them.
50. As well as the better known issues about children being adopted or fostered with their mother's uninformed consent, I think that the treatment of women when they left the Mother and Baby Homes also needs to be investigated. I do not believe that my mother was the only person who was transported from a Mother and Baby Home to another institution run by the same religious orders without any understanding or explanation that they did not have to go if they did not want to go.

Finally, I believe that the State should accumulate all records in relation to the Mother and Baby Homes and that they should be organised in such a way that they can be searchable by individuals so they can find out their personal history. There has been far too much deliberate misinformation given to mothers and children over the years and this should not be perpetuated by records being kept all over the place and with the continued involvement

of the religious orders who remain unwilling to acknowledge their role in what is a matter of national shame.

I believe that the contents of this statement are true.

Signed

Mary Harney

Date

Appendix C

WITNESS STATEMENT OF PHILOMENA LEE

I, Philomena Lee, of [REDACTED] WILL SAY:

1. I make this statement for the purpose of providing evidence to the Mother & Baby Homes Commission of Investigation established by the Irish Government pursuant to Section 3 of the Commissions of Investigations Act 2004.
2. Attached to this statement is an exhibit marked "PL1" which contains various copy documents. Reference is to page numbers in this statement are to pages in PL1.
3. I make this statement as someone who spent time, and had a child, in the Sean Ross Abbey Mother and Baby Home in Roscrea, Tipperary.

Circumstances of my Birth and Early Life

4. I was born on [REDACTED] 1933 in Newcastle West, Limerick. I am now 83 years old.
5. I was the fourth of six children and as a family we were not very well off. My mother died of tuberculosis aged 36 when I was 6 years old. My father decided that he could not manage with six children and so he put myself and my two sisters into the Mount St Vincent Convent School in Limerick. This was an orphanage/boarding school where we lived all year round save for two weeks per year when we could go home. I entered the convent, which was run by the Sisters of Mercy, in 1939 and left in 1951 when I was 18.
6. When I was 18, I went to live with my aunt in Limerick City. She got me a job working as a cleaner in St Mary's Convent in Limerick. I stayed there for approximately 9 months.
7. In or around October or November 1951, I fell pregnant. While I had received a good education at the convent, I didn't know anything about the ways of the world and had received no sex education whatsoever. On one Friday, night my aunt took me to a carnival and at the fair I met a man who chatted me up and one thing led to another.
8. I carried on working until May 1952 when one day my aunt asked me out of the blue if I was pregnant. I said that I didn't know what pregnant meant and she asked me if I had ever "been with a boy". I said that I had, once at the carnival, and my aunt got very angry and slapped me around the face.
9. My aunt then took me to a doctor and he confirmed that I was pregnant. The doctor recommended to my aunt that she "take me to Roscrea" but I didn't really understand what he meant by that. I don't know how or what arrangements were made for me to go to Roscrea but one day shortly after the doctor's appointment my brother and aunt drove me there. I went with only what I was wearing and knew nothing more than that I was going there to have my baby.

Sean Ross Abbey

10. I only have a vague recollection of my arrival at Sean Ross Abbey which I believe was on 6 May 1952. I was met by a nun and after a short handover I was taken away and my aunt and brother left. I was 7 months pregnant.
11. I slept in a large dormitory with other women and girls some of whom were pregnant and others who had already had their babies. Most of my memories have been blocked out over the years but I recall being cold at night and that the clothes they gave us to wear were heavy and scratchy. No one had any privacy at all. I cannot remember what the food was like, however, I have an abiding memory of always being hungry.
12. The day after I arrived at Sean Ross Abbey I was put to work in the laundry. The working day was approximately 8.30am until 4pm and it was heavy work scrubbing clothes and bedding on boards, washing and ironing all with our bare hands. As far as I could see, we were only washing the Abbey's own laundry and that this was not a commercial operation. We worked a 6 day week. On Sundays we would attend a number of masses but we would not work in the laundry. To the extent that the women and girls had any spare time, I recall that we spent a lot of this time knitting clothes for our children.
13. The regime at the Abbey was pretty severe but, as I tended to do what I was told, I didn't receive many punishments. The key thing that I remember is that the nuns kept on reminding us that we had committed a mortal sin and that our shame should be eternal. We had to attend confession every week and every time we had to confess to what we had done. In effect. Therefore, we never received absolution. All of the women and girls at the Abbey were given a new name, mine was Marcella, and there was little or no discussion of who we really were and what our families might do or from where they came. This was all a part of the shame we were made to feel every day of our time at Roscrea.
14. I do recall that a couple of the girls ran away but on each occasion they were brought back by the Garda. As for myself, I only stepped out of line once so far as I can recall. We had a rare day off on 22 July which was the feast day of Mary Magdalene. We had to go to and from church all day putting our uniform on and off. By the third change I simply refused to change again and the nun who insisted that I did so became really angry and then didn't speak to me for the next 6 weeks. The story clearly got around the other nuns and I was pretty much ostracised until I apologised. To make my apology, I was forced to go down on my knees and apologise to the nun in front of everybody in the refectory. This was just another part of the humiliation and shame that we were subjected to every day.

Giving Birth

15. When I started going in to labour, I was taken to the onsite maternity unit which was known as St Josephs. There was no doctor present, just nuns, and there was no formal medical care or any kind of pain relief. I found the labour agonising but, in accordance with the principle that we had to suffer for our sins, one of the nuns in response to my screams simply said "let her get on with it".
16. It was a breech birth and the nun who was looking after me said she had never done one of those before. At one point during the labour that nun left the room and told the mothers in the adjoining maternity ward that they had to get down on their knees and pray because "Marcella is going to die". Nonetheless, at 7pm on Sunday 5 July 1952, I gave birth to a healthy baby boy (7lbs 12oz) who I named Anthony.
17. I stayed in St Josephs for 8 weeks. I don't remember much about that time other than that I spent it all looking after and breastfeeding Anthony who I loved with all my heart from the first minute I saw him.

The Period until Anthony's Adoption

18. After 8 weeks in St Josephs, I went back to the main building and back to work in the laundry. The work regime was as before but each day between 4 and 5pm we were allowed to spend time with our children under the supervision of the nuns. I lived for that hour every day and Anthony was always really happy to see me when I came into the nursery. I didn't continue breastfeeding Anthony after the original 8 weeks and he was fed by the nuns along with the other post 8 week old children.
19. Some of the others had a little money to buy gifts for their children. I had nothing but there was one very kind nun, Sister Annunciata, who would occasionally give me a bar of chocolate to give him. That same nun also took a few photographs of Anthony and gave them to me (pages 2 to 6).
20. It never occurred to me to ask whether I could go home now I had given birth. This was partly because I had nowhere to go (my aunt had effectively disowned me) but also because I had to stay until Anthony was adopted. It was taken for granted that Anthony would be adopted and it never even crossed my mind that there might be any other option.
21. One Sunday a nun called me upstairs to see Sister Hildegard in the office. Sister Hildegard was the nun who ran the adoption business of the Abbey. Sister Hildegard was in the room together with a tall man who I now assume was a solicitor. Sister Hildegard produced a single page document which she put in front of me pointing at the bottom and

saying "sign there. Your boy is going to be adopted." I wasn't given time to read the document and simply did what I was told.

22. The document that I signed, a copy of which I have now obtained and is at page 1, appears to have been dated the following day and confirms my agreement to Anthony's adoption and relinquishes all rights to him. It also confirms that I will never try to contact him. The contents of this document were never read to me or explained to me. The document purports to have been sworn on oath. However, at no point was I ever asked formally to swear to the document.
23. As it turned out, Anthony was not adopted until about 6 months later but every day after the meeting with Sister Hildegard I was terrified that would be the day he was going to go. No one told me anything about when he might go or to whom he might go.
24. Then, finally, on 18 December 1955 when Anthony was 3½, he was taken away for adoption. I didn't get a chance to say goodbye but the same kind nun (Sister Annunciata) informed me that he was leaving and I ran upstairs and looked out of the window and saw him getting into a car. There was no discussion about it in advance and I was given no information afterwards other than that he had gone. Being parted from him broke my heart.
25. I cried and cried over the Christmas period because I wanted him back. I think it was because I was inconsolable that the nuns decided to get rid of me and got me a job in a school in Ormskirk in Lancashire that was run by the Sisters of the Sacred Hearts of Jesus and Mary which was the same religious order as Sean Ross Abbey.
26. I travelled to England in early 1956 and worked in Liverpool for 2 years and then applied for a nursing job in [REDACTED] I moved to [REDACTED] in 1958 and got married in 1959. I have 2 children, Kevin and Jane, and also have 4 lovely grandchildren. I stayed in nursing all my working life focussing in the main on psychiatric nursing.

Finding Anthony

27. During the almost 50 years since Anthony was taken away, I only told one person about him. I told my husband before we got married because I didn't want there to be any secrets between us.
28. For several years after they took Anthony away I was terribly angry. However, once I started work at the psychiatric hospital I got over my anger as I came to understand what a destructive force anger could be. Even so, I have never been to confession since. I thought about Anthony every day and prayed that somehow we would be reunited. I didn't do anything to find him because I had been told I shouldn't but I always told the

nuns at Sean Ross Abbey what my address was in case Anthony ever came looking for me.

29. The only contact I ever had from Sean Ross Abbey after I left was that I was sent a photograph of Anthony with his adoptive mother. This arrived when I was in Ormskirk. I assume that it was sent by Sister Hildegard.
30. When I turned 70, I just decided one day that I had to try and find Anthony. I spoke to my brother and he said that I should tell my family and so, in August 2003, I told my daughter Jane the whole story. Jane asked me whether I wanted her to find Anthony and I told her that I did.
31. It was Jane who found out what had happened to Anthony and under what name he had been raised. She did this by contacting an adoption group in Ireland, one of whose members was Mari Steed. That group had produced a tracing guide and using the information in the guide, and benefitting from the fact that I had all the relevant details about Anthony's birth, we obtained his birth certificate. Having got that, Jane and I wrote to all conceivable government agencies asking for information about what had happened to Anthony. I was astonished however at how reluctant anyone seemed to be to assist in tracing Anthony and they all referred me back to other agencies like in an elaborate game of pass the parcel (pages 7 to 15).
32. Finally, in late 2003-early 2004, we wrote to a Sister Sarto at the Sacred Heart Adoption Society (page 14) and received a reply from her asking us to telephone her which we did in January 2004. When we spoke, Sister Sarto informed me that Anthony had been adopted to America, that his name had been Michael Hess and that he had died. Her words were "I'm sorry to tell you he's dead". This was obviously absolutely terrible news and I was extremely upset.

Adoption Process

33. Having learned of Anthony's name in the US and with the help of Martin Sixsmith, the former BBC journalist who agreed to assist in finding information out about Anthony and who subsequently wrote a book about our story, we found details of Anthony's adoption both on the Irish end (pages 16 to 66) and in America (pages 67 to 77).
34. It appears that Anthony was not formally adopted until he got to America. Apparently his adoptive parents had been doing a European tour and had been advised by a relative, who was a Catholic bishop, to go to Roscrea and consider the adoption of a child. It seems that Mr and Mrs Hess had resolved to adopt a little girl but when they saw how close that little girl (Kate) was to Anthony they decided to take both of them.

35. I understand from Kate and Anthony's partner that Mr and Mrs Hess paid a significant sum of money to Sean Ross Abbey in connection with the adoption and that they paid annual sums thereafter but I do not know the detail of the sums involved.
36. It appears that there was some limited vetting in America to confirm that Mr and Mrs Hess were suitable adoptive parents. I understand that Mr and Mrs Hess' existing sons were a little resentful of their new adopted brother and sister and that Mr Hess was fairly strict but at the same time I have always understood that Anthony had a very good relationship with his adopted mother.
37. Anthony turned out to have a very good brain and he qualified as a lawyer and rose to being counsel for both the Reagan and Bush administrations. Apparently he never forgot his roots (he always knew that he had been adopted and that his original name was Anthony Lee) and he made strenuous efforts to find his family.
38. These efforts included two trips to Sean Ross Abbey, the first of which was in August 1993 (page 79). When he was at the Abbey, Anthony expressly asked the nuns for details of his mother. By all accounts, and in particular from his partner who was with him, he spoke on both occasions to Sister Hildegard but she told him that they were not able to help. In fact, Sister Hildegard told Anthony that I had abandoned him at 2 weeks old and the nuns didn't know where I was. This of course was a patent lie as I had looked after Anthony for 3½ years at the Abbey prior to his adoption and the nuns at the Abbey always knew where I was in case Anthony came looking.
39. On his second visit, Anthony knew that was dying and I am informed by Anthony's partner that Anthony paid a significant sum of money to the nuns at the Abbey so that his ashes could be buried there in case I ever came looking for him. Even though the nuns knew he was dying and Anthony had directly asked for information about me, they still chose not to put him in touch with me.
40. Anthony died on 15 August 1995 (pages 79 to 87) and I understand that Sister Hildegard died a few months after. It seems I will, therefore, never know why the nuns did not put Anthony in touch with me even when they were taking his money to allow him to be buried at the Abbey. This unspeakable cruelty can never be justified.
41. Finally, in 2014 TUSLA sent me further information showing the entries relating to Anthony and myself from Sean Ross Abbey (pages 88 to 106). These records include a letter from a Sister Gabriel to Sister Sarto dated 15 May 1996 (page 101) which suggests that the nuns were well aware of Anthony's circumstances and chose not to inform me even that he had died.

What should the Commission do?

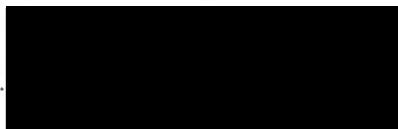
- 42. I believe that the Commission should provide a report that acknowledges the extent of the cruel and, in many cases, inhuman treatment of the vulnerable women who passed through the Mother and Baby Homes. The homes were embedded in the state system and I believe were partly funded by the state. The state did not look after the women that were sent to the homes and the removal of their children for adoption, often without the mother's consent or with uninformed or coerced consent, has caused unspeakable suffering. It is simply not good enough to explain this away as a consequence of the moral and beliefs of Society at the time. In my view the Commission should recommend to the Irish state that it apologises to every woman passing through the Mother and Baby Homes and to the children that never knew their families because of their adoption.

- 43. I believe that the Commission should also take steps to improve people's ability to contact their relatives. At the moment the respect for an individual's privacy is given too much weight when considering another individual's right to know from where they come. I believe that the Commission should recommend a change in the law to allow individuals to find out information about themselves much more readily than they can at present and without the stigma that still seems to be attached to being born out of wedlock.

- 44. As a former member of the medical and nursing profession I am also well aware of the importance of family history when it comes to making medical decisions, especially in the context of hereditary conditions. It is absolutely vital that all individuals have as full an access as possible to their identity and their records and those of their family members so as to improve treatment decisions for themselves and their family.

- 45. Finally, I believe that the Commission should recommend the provision of help and counselling for women and children who passed through the Mother and Baby Homes. Many of the mothers who gave birth in the Mother and Baby Homes were thoroughly indoctrinated with a sense of shame at their situation and the fact that they had committed a mortal sin. The Commission should state very clearly that the mothers in the Mother and Baby Homes had done nothing wrong and that they did not deserve the treatment that they received.

Signed ..



Philomena Lee

Philomena Lee

Dated ..

24.2.2017

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