

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

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

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

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

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

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

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

I am available at [maeve.orourke@universityofgalway.ie](mailto:maeve.orourke@universityofgalway.ie) to answer any queries you may have.

Sincerely,

***Dr Maeve O’Rourke***

*Assistant Professor of Human Rights*

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

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

*([www.clannproject.org](http://www.clannproject.org))*

*Member, Justice for Magdalenes Research ([www.jfmresearch.com](http://www.jfmresearch.com))*

*Barrister, 33 Bedford Row, London*

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

24 January 2023