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Irish Centre for Human Rights



CLANN PROJECT

SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

IN RESPECT OF

IRELAND
(for the 91st Session)

19th May 2025

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1. INTRODUCTION

The Clann Project is joint initiative by Adoption Rights Alliance¹ and JFM Research,² which was initially established provide free legal assistance to people who wished to give evidence to the Mother and Baby Homes Commission of Investigation (MBHCOI).³ This group submission provides the United Nations Committee on the Elimination of Discrimination Against Women (the Committee) with up-to-date information regarding access to justice and reparation for family separation abuses perpetrated during the twentieth century with ongoing aspects and impacts to this day.

We acknowledge that the Government has made some progress in recent years: in January of 2021, the Taoiseach delivered an official State apology; many adopted and boarded out people have obtained certain identifying information under the *Birth Information and Tracing Act 2022*; a limited cohort of people have received small payments (in exchange for a legal waiver of their rights against the State) under the *Mother and Baby Institutions Payment Scheme Act 2023*; steps are being taken to set up a process of exhuming remains at the former Tuam Mother and Baby institutional site; legislation has been passed to required private holders of institutional and family separation records to preserve and not to destroy or alter them or remove them from the jurisdiction; and plans are underway for a National Centre for Research and Remembrance.

However, the purpose of this submission is to highlight the ways in which many affected people⁴ have been excluded from the progress made since the State apology, and how the Government's claimed justice and redress measures are in numerous respects discriminatory and inadequate. The State continues its practice, identified by the Committee in its 2017 Concluding Observations, of failing to the whole spectrum of abuses perpetrated against women and girls and their children through the forced family separation system.⁵ **To contextualise the Government's policies in relation to forced family separation abuses, we encourage the Committee to read Clann's**

¹ www.adoption.ie

² www.jfmresearch.com

³ See: <https://clannproject.org/about/>

⁴ We use the term 'affected people' to mean all those who are impacted by Ireland's system of institutionalisation and forced family separation.

⁵ Committee on the Elimination of Discrimination Against Women, *Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Ireland*, UN Doc CEDAW/C/IRL/CO/6-7, 9th March 2017, para 14(c). (Hereafter **CEDAW 2017 Concluding Observations**.)

Briefing Note Providing Context to the Irish State's Response to Forced Family Separation Abuses.⁶

RECOMMENDED QUESTIONS FOR THE IRISH GOVERNMENT

Based on the below analysis we suggest the following questions that you may wish to ask of the Government, to encourage fulfilment of its obligations to cease—and to ensure truth, justice, reparation, memorialisation and guarantees of non-recurrence in respect of—the gross and systematic human rights abuses arising from Ireland's twentieth century family separation system.

Scope and Basis of State Response

1. Will the Government list the impugned sections of the MBHCOI *Final Report* alongside the dedicated webpage for the *Report* on the Government's website, and not merely on the MBHCOI webpage?
2. Will the Government acknowledge and apologise for all forced family separation and institutional human rights violations perpetrated against unmarried mothers and their children?
3. Will the Government revise its 'Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions' to ensure that all affected individuals are included in its language and scope?
4. Will the Government immediately appoint affected people to all Steering and Sub-Groups of the National Centre for Research and Remembrance, and ensure that forced family separation and other non-institutional abuses are included in the Centre's design?

Information Access and Preservation

5. Will the Government remove the requirement for certain applicants to attend an Information Session as stipulated under Section 17 of the *Birth (Information and Tracing) Act 2022 (BITA)*?
6. Will the Government ensure that all records relating to Ireland's system of forced family separation and institutionalisation (regardless of their location) are safeguarded, centralised in the NCRR and made available to those affected?

⁶ Available at: https://clannproject.org/wp-content/uploads/Clann-Project_Briefing-Note-Providing-Context-to-the-Irish-States-Response-to-Forced-Family-Separation-Abuses.pdf.

7. Will the Government amend the *BITA* to ensure that: (i) all applicants are provided with a schedule of their records; and (ii) no records are withheld or redacted?

Deaths and Burials

8. Will the Government amend the *Institutional Burials Act 2022 (IBA)*: (i) to provide a mechanism for human rights compliant investigations to establish the identities of and the causes and circumstances of the deaths and burials of women and children; (ii) to include human rights compliant tests and procedures in the event that evidence emerges that the deaths of mothers and infants were 'violent or unnatural'; (iii) to ensure that all relatives are proactively located, provided with information and records, and enabled to engage with the processes established by the legislation; and (iv) to widen the criteria according to which an 'Authorised Intervention' would be permitted under the legislation?
9. Will the Government activate the Coroner jurisdiction to investigate the deaths of children and women in Mother and Baby Homes and related institutions?

Mother and Baby Institutions Payment Scheme

10. Will the Government amend the *Mother and Baby Institutions Payment Scheme Act 2023 (MBIPSA)*: (i) to include all affected people; (ii) to ensure that the payments are reflective of the gross and systematic human rights violations involved; (iii) to remove the requirement to waive a right of action against the State in exchange for a minimal payment; (iv) to allow all applicants to apply for a review and appeal; (v) to remove the requirement to accept or reject a payment offer within six months; (vi) to allow applicants to apply more than once; and (vii) to remove the closing date of the scheme?
11. Will the Government amend the *MBIPSA* and the *Redress for Women Resident in Certain Institutions Act 2015* to ensure that the healthcare provided is as recommended in Appendix G of the *Magdalen Commission Report*?
12. Will the Government instruct the Office of the Chief Deciding Officer to amend the MBIPS application portal to allow any person to make an application to the Mother and Baby Institutions Payment Scheme?
13. Will the Government ensure that the Mother and Baby Institutions Payment Scheme is advertised widely both nationally and internationally, via a range of means?

2. THE BIRTH (INFORMATION AND TRACING) ACT 2022

The *Birth (Information and Tracing) Act 2022 (BITA)* was adopted and commenced in 2022. While a significant milestone, the *BITA* does not represent a human rights-compliant response to the information access problems faced to this day by mothers whose children were unlawfully taken from them through Ireland's twentieth century forced family separation system, and by adopted people and others separated from their mothers and family as children, and by relatives of the deceased.

2.1 Information Session

The *BITA* makes provision for adopted people and others separated from family as children to access their birth certificates and (some) records. **Crucially, this access is not unconditional.** Although birth certificates are public records, and despite strong objections from affected people and their allies,⁷ and under the *BITA*, certain applicants **must engage in a cumbersome, discriminatory and intrusive process to access their own birth certificate and (some) records.**⁸ If one or both of an adopted or boarded out person's parents registers a preference for no contact, the person must attend a mandatory Information Session about their parents' privacy rights with a 'designated person' in the Adoption Authority of Ireland (AAI) before the State will release their birth certificate and records.⁹ The Information Session is contrary to the recommendations of eight United Nations Special Procedures, who wrote to the Irish Government in November 2021.¹⁰ The eight Special Procedures called for a '**clear and transparent procedure for unconditional access** to information and archives, which can enable victims and relatives to establish their identity, as well as the fate of disappeared relatives'.¹¹

⁷ See e.g., the Clann Project and Article Eight Advocacy *Briefing Note* on the *BITA*. (Hereafter the **Clann/Article Eight Advocacy Briefing Note**.) Available at: https://clannproject.org/wp-content/uploads/Clann_A8A-Briefing-Note_Information-Tracing-Bill_28-02-22.pdf.

⁸ See Section 2 of the *Clann/Article Eight Advocacy Briefing Note*.

⁹ *BITA*, s17.

¹⁰ Eight Special Procedures' Joint Letter to Ireland concerning the General Scheme of the Birth Information and Tracing Bill, the General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill, and the proposed Restorative Recognition Scheme, UN Doc OL IRL 2/2021 (5th November 2021): <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26772>. (Hereafter **Eight Special Procedures Joint Letter to Ireland**.)

¹¹ *Ibid.*, p. 4, emphasis added. For further analysis see the *Clann/Article Eight Advocacy Briefing Note*.

2.2 Affected People Excluded from Accessing Records

A significant number of affected people are excluded from accessing records under the *BITA*, for example: most mothers,¹² most relatives,¹³ many people who were adopted outside the State,¹⁴ certain people who were otherwise illegally adopted,¹⁵ people who were in non-adoptive ‘care’ settings,¹⁶ and people who were not in institutions listed in the *Schedule* attached to the Bill.¹⁷ Save for a small number of exceptions, the legislation only provides records to a cohort of individuals termed ‘relevant persons’—that is, an adopted person, an illegally adopted person, a boarded or ‘nursed out’ out person, or a person who was confined in an institution named in the *Schedule* attached to the legislation.¹⁸ However, the *Schedule* of institutions covered under the *BITA* is limited to the 14 Mother and Baby Homes investigated by the MBHCOI and 30 County Home institutions, whereas, Clann is aware of over 180 entities that were involved in forcibly separating unmarried mothers and their children during the twentieth century.¹⁹

2.3 Records Not Covered By BITA

Access to records represents one of the most significant issues for affected people, both in their efforts to understand and document their abusive experiences and for obtaining reparation.²⁰ The 500 individuals who participated in the Government-sponsored OAK consultation insisted that the issue of access to records ‘overshadowed all others in relation to ensuring access to the [Payment Scheme]’.²¹ Yet, the *BITA* excludes access to many important types of record, and its definition of ‘relevant records’ is overwhelmingly restrictive.²² Additionally, the *BITA* provides no mechanism for affected people to access the administrative records of institutions, agencies and individuals involved in forced family separation. Many of these administrative records lie in the archives of previous inquiries into institutional abuse, where they are inaccessible to

¹² *BITA*, s26-30.

¹³ *Ibid.*, s26-30, s20-24.

¹⁴ *Ibid.*, s2.

¹⁵ *Ibid.*, s57.

¹⁶ *Ibid.*, s2.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ See **Clann’s List of 180+ Institutions, Agencies and Individuals**: https://clannproject.org/wp-content/uploads/Institutions-agencies-personnel_Redacted_27-01-2022.pdf.

²⁰ See the *Clann Report*, Section 3. See also: <https://clannproject.org/2018/10/15/clann-publishes-findings-of-three-year-project-on-adoption-and-mother-and-baby-homes/>.

²¹ O’Kennedy, M.L. (2021) *Report of the Findings of the Consultation with Survivors of Mother and Baby Homes and County Homes*. (Hereafter the **OAK Report**.) Available at:

<https://assets.gov.ie/285098/65cf6ce2-a60b-432b-abc5-cbbc9b7a6162.pdf>, p. 12.

²² *BITA*, s2. For further discussion, see *Clann/Article Eight Advocacy Briefing Note*.

affected people or the general public and effectively ‘sealed’.²³ Many additional administrative records remain in the custody of a wide array of State and non-State bodies. It is a violation of the right to an effective investigation under European and international human rights law that so many of the State’s previous inquiries into so-called ‘historical’ abuse have happened in secret, refusing affected people access to the administrative records gathered and refusing them the opportunity to comment on these records.

2.4 Affected People’s Experiences Accessing Records

Despite repeated Ministerial assurances that records would be neither redacted nor held back under the *BITA*,²⁴ affected people have found that in practice, State agencies are redacting some records. Furthermore, affected people who have obtained a schedule of their records under the General Data Protection Regulation (GDPR) have discovered that many records are being withheld from them under the *BITA* system.²⁵ Importantly, the *BITA* does not entitle the requester to a schedule of records held on their adoption file or of records relating to them which are held elsewhere. Thus, to obtain a schedule of records held by State agencies, affected people must also submit a GDPR subject access request (SAR). Not all affected people are aware of this strategy, and thus, in the absence of automatic access to a schedule, many have no way of knowing if records have been withheld from them.

Currently, there is no centralised mechanism whereby affected people can make one application to a single entity and receive all records relating to their situation. Instead, to get the bare minimum of what they are entitled to under Irish law, affected people have no other option but to submit several GDPR SARs to a range of data controllers²⁶ alongside their application under the *BITA*. This is because some records are only accessible via a GDPR SAR but not the *BITA*, and other records are only accessible via the *BITA* but not a GDPR SAR. While some records will be released under both the GDPR and the new system, **crucially, there are other records which will not be**

²³ See O’Rourke, M. (2022) ‘Ireland’s “Historical” Abuse Inquiries and the Secrecy of Records and Archives’ in Black, B., Brangan, L. and Healy, D. (eds), *Histories of Punishment and Social Control in Ireland: Perspectives from a Periphery*. Leeds: Emerald Publishing, pp. 107-138. Available at: <https://www.emerald.com/insight/publication/doi/10.1108/9781800436060>.

²⁴ E.g.: <https://www.oireachtas.ie/en/debates/debate/seanad/2022-05-10/speech/86/> and <https://www.oireachtas.ie/en/debates/debate/dail/2022-01-20/speech/274/>.

²⁵ See e.g.: <https://www.thejournal.ie/readme/adoption-records-issues-5909825-Nov2022/>.

²⁶ Including State agencies providing *BITA* services.

released at all under either system. Moreover, as discussed in the next section, there are other records still which remain in private hands and have not been transferred to State authorities.

2.5 Safeguarding of Records

2.5.1 *Records Not Transferred to State Agencies*

Affected people who have received records under the *BITA* have reported to the Clann Project that certain categories of records have not been released to them, including the minutes of adoption agency case committees that made decisions on the placement of children, other administrative records from former adoption agencies, and records relating to the medical care of children in a range of institutions. Clann is also aware of other categories of records that are covered under the *BITA* but which have not been transferred to the State, including admissions registers from nursing homes that organised (often illegal) adoptions and records from private hospitals that were involved in adoption placements. The AAI has a statutory remit under the *BITA* to safeguard ‘relevant records’. Specifically, the Authority can issue a direction to record holders to transfer ‘relevant records’ to it.²⁷ The *BITA* guidelines state that ‘every effort should be made’ not only to provide access to information requested, but also to ‘other information’ which may assist an affected person ‘in understanding their birth origin story’.²⁸ **There is both a significant public interest and a positive obligation on the AAI to safeguard and make available all records which are not currently in the custody of State authorities.**

2.5.2 *Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024*

In October 2024, the Government passed legislation which places certain statutory obligations on the private holders of records concerning Ireland’s twentieth-century institutional and family separation system.²⁹ The legislation makes it an offence for any person or private organisation (other than affected people) to destroy or alter relevant records, or to remove them from the jurisdiction of Ireland. If requested by the National

²⁷ *BITA*, s48.

²⁸ *Ibid.*

²⁹ *Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024.*

Archives of Ireland, any person or organisation must produce an inventory of the records they hold. While we welcome this legislation, it does little proactively to ensure that affected people have access to these records (particularly where the records are not deemed susceptible to personal data access requests under data protection law).

3. THE INSTITUTIONAL BURIALS ACT 2022

The *Institutional Burials Act 2022 (IBA)* was commenced in July 2022 and, to date, the Government has established one Office of the Director of Authorised Intervention—for the Tuam Mother and Baby Institution site (ODAIT)—pursuant to the legislation.³⁰ The ODAIT has not yet begun exhumations; it is currently setting up the necessary processes and procedures, and it is inviting DNA samples from ‘vulnerable and elderly’ eligible individuals prior to opening its ‘full identification programme’.³¹ According to recent Government correspondence, exhumations are due to commence ‘in the second half of June this year’.³²

3.1 Issues Raised in Correspondence from United Nations Special Procedures

In their November 2021 letter to the Government, the eight UN Special Procedures identified as potential ‘obstacles to undertaking effective investigations into the deaths that occurred in the Mother and Baby homes and analogous institutions’: (i) the criteria according to which an ‘Authorised Intervention’ would be permitted under the legislation, (ii) the discretionary nature of the legislative power to establish an ‘Authorised Intervention’, and (iii) the wholesale absence of inquests into the deaths of children and women in Mother and Baby and related institutions.³³ The *IBA* does not address these concerns in that:

- (i) The *IBA* provides for exhumation, identification and re-burial of remains; it does not provide for any investigation(s) into the cause or circumstances of death.³⁴
- (ii) Under the *IBA*, an ‘Office of Director of Authorised Intervention’ (ODAI) may be established only in relation to institutional burials that are considered ‘manifestly inappropriate’,³⁵ which means uncoffined, buried contrary to the Burial Grounds Regulations, buried in a way considered to be undignified, or buried in a manner

³⁰ See: <https://odait.ie/>.

³¹ See: <https://odait.ie/news/updates-from-the-team/>.

³² See: https://clannproject.org/wp-content/uploads/DCEDIY_Email-Re-Tuam_29-04-25.pdf.

³³ Eight Special Procedures Joint Letter to Ireland, pp. 12-13.

³⁴ *IBA*, s10.

³⁵ *IBA*, s7.

or location considered ‘repugnant to common decency’.³⁶ Therefore, the test for an ‘Authorised Intervention’ is not whether remains are unknown, or burial locations are unknown, or the suspected or apparent cause or circumstances of death raise a *prima facie* issue under the right to life, liberty, freedom from servitude, freedom from torture or other ill-treatment, and/or respect for private and family life.

- (iii) The *IBA* requires the Director of the ‘Authorised Intervention’ to notify An Garda Síochána (the police) and the Coroner ‘where evidence emerges that human remains were buried following death in violent or unnatural circumstances’.³⁷ The *Act* does not state what tests or procedures are to be applied in identifying or adjudicating such a possibility, and the legislation as a whole clearly implies that what is currently known about the Mother and Baby institutions and the deaths of mothers and infants there, generally speaking, is not to be considered ‘violent or unnatural’.
- (iv) Although the *IBA* gives the ODAI unparalleled powers to obtain records from any source ‘for the purposes of assisting him or her in performing his or her functions’,³⁸ the *Act* does not make specific provision for either (i) public disclosure or disclosure to affected relatives of information relevant to the operation of an institution and the circumstances of deaths and burials there, or (ii) proactive tracing of relatives who may not already know that they are entitled to provide a DNA sample or otherwise to engage with the process established by the legislation.

3.2 The Role of the Coroner

As emphasised by a coalition of lawyers, affected people and researchers in pre-legislative submissions on the legislation, the Irish Government should be activating the Coroner jurisdiction to investigate the deaths of children and women in Mother and Baby Homes and related institutions—including where exhumations are not possible because bodies are irrecoverable.³⁹ The *Coroners Act 1962* (as amended) permits the Attorney General to direct the holding of inquests, and numerous families have stated their wish for inquests to take place.⁴⁰ Families of children who died in the Bessborough Mother and Baby Home in Cork have also repeatedly requested the State to purchase the

³⁶ Ibid., s8.

³⁷ Ibid., s36.

³⁸ Ibid., s27-29.

³⁹ See: *Joint Submission to Oireachtas Committee on Children, Equality, Disability and Integration RE: General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill*: http://ifmresearch.com/wp-content/uploads/2021/03/Institutional-Burials-Bill_Joint-Submission-26.2.21.pdf. (Hereafter **Joint Submission on the Institutional Burials Bill**.)

⁴⁰ E.g.: <https://extra.ie/2023/04/11/news/irish-news/mother-and-baby-home-plea>; and <https://www.irishexaminer.com/news/arid-30918731.html>.

institutional grounds which are in the hands of private property developers—bearing in mind that the MBHCOI found 923 children to have died in Bessborough between 1922 and 1998⁴¹ and the religious congregation has never produced a burial register or any other evidence of burial locations for the vast majority of those children who therefore remain missing.⁴² Furthermore, of 31 mothers who died in Bessborough in the same timeframe, burial records have been produced for only 12.⁴³

3.3 Mortality Rates

According to the MBHCOI *Final Report*, in 18 Mother and Baby institutions (which is only a fraction of the institutions and entities involved in separating unmarried families) approximately 9,000 children died from the foundation of the State in 1922 onwards: amounting to 15% of the children who were in those institutions.⁴⁴ A further 200 mothers died while confined in an institution investigated by the MBHCOI.⁴⁵ The MBHCOI *Final Report* observes that '[m]ortality rates in each of the institutions were very high in the period compared to the overall national rate of infant mortality'.⁴⁶ This higher-than-average rate of mortality continued into the 1980s.⁴⁷ The MBHCOI *Report* further acknowledges that 'Maternal mortality in the homes was higher than the national rate until the 1970s'.⁴⁸ The *Report* notes in relation to child/infant deaths that 'A relatively high percentage of deaths (18%) [in the largest institutions] were classified as "non-specific" as they did not have adequately specific information to ascertain a primary cause'.⁴⁹

Nonetheless, incredibly, the MBHCOI's findings include that 'the institutions provided a refuge';⁵⁰ that '[u]ntil the 1960s or the 1970s, the quality of maternity care in mother and baby homes was probably superior to that available to the majority of Irish women at the time',⁵¹ and 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

⁴¹ MBHCOI *Final Report*, Executive Summary, para 95.

⁴² *Ibid.*, Executive Summary, para 97; also Chapter 18.

⁴³ *Ibid.*, Chapter 18A, 11.

⁴⁴ *Ibid.*, Executive Summary, para 229.

⁴⁵ *Ibid.*, Executive Summary, para 243.

⁴⁶ *Ibid.*, Chapter 33A, 6.

⁴⁷ As demonstrated in relation to Pelletstown, for example: MBHCOI *Final Report*, Chapter 33A, 11.

⁴⁸ MBHCOI *Final Report*, Chapter 33, para 33.25.

⁴⁹ *Ibid.*, Chapter 33, 5 and Chapter 18A, 11.

⁵⁰ *Ibid.*, Executive Summary, Prologue.

⁵¹ *Ibid.*, Executive Summary, para 244.

asked. It is arguable that no other family member is entitled to that information'.⁵² The MBHCOI did not apply a right to life framework of analysis—whether using the Irish Constitution, European human rights law or international human rights law. Furthermore, the MBHCOI *Report's* findings also deny the overwhelming evidence (including on the face of the *Report* itself) that mothers and children were routinely arbitrarily deprived of their liberty, forcibly separated, and subjected to exploitation and neglect in the institutions.

3.4 Records Relating to the Deaths of Infants and Mothers

The identities of hundreds of children who died in the institutions from 1922 onwards remain undisclosed. The MBHCOI *Report* states that its information on child deaths comes from the State's General Register Office (GRO)⁵³ and the privately created institutional records—although it is not entirely clear what type of records the Commission is referring to in this regard and these privately created records are held confidentially within the MBHCOI archive. The *Report* provides no information about the children who died in St Gerard's,⁵⁴ the MBHCOI found no GRO records for the Regina Coeli Hostel (although it states that 107 deaths occurred at that institution, of 734 deaths 'associated with' the institution),⁵⁵ and other institutions have GRO records but not for deaths recorded privately by the institutions: this is the case for Dublin Union (104 deaths), Tuam (6 deaths), Bessborough (11 deaths), Sean Ross (2 deaths), Castlepollard (17 deaths), Dunboyne (5 deaths), Bethany (6 deaths), Denny (8 deaths), Cork County Hospital (33), Stranorlar (4 deaths), and Thomastown (8 deaths).⁵⁶

The burial places of thousands of individuals who died in the institutions (both children and mothers) remain undisclosed.⁵⁷

Furthermore, the identities and whereabouts of children and women who died in numerous other institutions and entities involved in separating unmarried mothers and

⁵² Ibid., Chapter 36, para 80.

⁵³ Ibid., Chapter 33, para 33.1.

⁵⁴ Ibid., Executive Summary, para 148; Chapter 27, para 27.2 – 27.3. 'It has not been possible to extract St. Gerard's files from St. Patrick's Guild files, of which they are a part. These were provided to the Child and Family Agency (TUSLA) in 2017 but have not yet been fully processed.'

⁵⁵ MBHCOI *Final Report*, Chapter 21A, 8.

⁵⁶ See *Joint Submission on the Institutional Burials Bill*, Appendix 1.

⁵⁷ Ibid., pp. 23-27 and Appendix 1.

their children beyond the 18 institutions subject to the MBHCOI's remit remain uninvestigated.⁵⁸

Even considering the 18 institutions that fell within the MBHCOI's remit, the Commission cannot be considered to have investigated these deaths effectively for reasons including that the MBHCOI's Terms of Reference precluded it from assisting any family or individual to trace their relative,⁵⁹ and the Commission declined throughout its work to provide any person affected by the matters under investigation with access to any of the personal or familial records that it held in relation to them, or to any of the broader administrative records of the system under investigation.⁶⁰ Moreover, the additional investigative shortcomings of the MBHCOI led to eight High Court declarations (agreed to by Government in 2021), which established that affected people were denied their fair procedures rights to be heard by the MBHCOI (contrary to how alleged wrongdoers were treated).⁶¹

4. MOTHER AND BABY INSTITUTIONS PAYMENT SCHEME

This section sets out several human rights-related problems relating to the exclusionary Mother and Baby Institutions Payment Scheme (MBIPS), which the Government began to administer in March 2024, pursuant to the *Mother and Baby Institutions Payment Scheme Act 2023 (MBIPSA)*. The terms of the scheme are based on the Terms of Reference and the findings of the MBHCOI. However, the MBHCOI's scope was extremely limited, its findings are deeply flawed and widely contested by affected people, and, as noted above, the Irish High Court declared in 2021 that the Commission unlawfully denied survivors and affected people an opportunity to comment on the Commission's draft findings.⁶² Additionally, the MBIPS fails to adhere to Ireland's human rights obligations, which were emphasised in relation to forced family separation by the eight United Nations Special Procedures in their November 2021 letter to Ireland,⁶³ and highlighted by this Committee in its 2017 Concluding Observations,⁶⁴ and

⁵⁸ Ibid., pp. 28-29.

⁵⁹ Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Order 2015, SI No 57 of 2015.

⁶⁰ See: <http://clannproject.org/2018/10/15/clann-publishes-findings-of-three-year-project-on-adoption-and-mother-and-baby-homes/>.

⁶¹ See: http://clannproject.org/wp-content/uploads/Clann-Press-Release_17-12-21.pdf.

⁶² Ibid. See also: <http://clannproject.org/wp-content/uploads/M-ORourke-ICHR-Letter-to-CRC-for-Pre-Session-1.pdf>.

⁶³ See Eight Special Procedures Joint Letter to Ireland.

⁶⁴ CEDAW 2017 Concluding Observations, para 15(a).

further raised in a 2023 recommendation of the Committee on the Rights of the Child.⁶⁵ Moreover, as of 23rd March 2025, the Government has spent only 7.75% of the allotted budget for the MBIPS.⁶⁶ This demonstrates that the MBIPS is not fit for purpose and reinforces the fact that the current design of the Scheme, which stems from a flawed report, is entirely inadequate.

4.1 Failure to Acknowledge Forced Family Separation and Related Issues

Regardless of their circumstances, affected people have consistently identified forced family separation as a primary harm for which reparation should be provided.⁶⁷ Despite this, the MBIPS fails to recognise forced family separation and other abuses associated with it. For example, eligibility for the MBIPS omits everyone who spent less than six months as a baby in an institution before being separated from their mother,⁶⁸ **thus excluding 24,000 people who were confined in the Mother and Baby Institutions otherwise covered by the scheme.**⁶⁹ However, the number of people excluded from the MBIPS **far exceeds 24,000**. The MBIPS's narrow remit fails to cover the majority of institutions, organisations, agencies and individuals involved in separating unmarried mothers and their children in twentieth-century Ireland, **thereby excluding many thousands⁷⁰ of other affected people.**⁷¹

4.2 Healthcare

Mothers and adopted or boarded out people who were institutionalised for less than six months are denied the so-called 'enhanced' medical card, as otherwise provided under the *MBIPSA*.⁷² Affected people living outside of the State are denied access to the card and are instead given a one off payment valued at €3,000.⁷³ The so-called 'enhanced' medical card mirrors the healthcare services provided to Magdalene survivors under the

⁶⁵ UN Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Ireland' (28th February 2023) UN Doc CRC/C/IRL/CO/5-6, sec D 24 (I).

⁶⁶ See: https://clannproject.org/wp-content/uploads/MBIPS-Weekly-Report_17-23rd-March-2025.pdf.

⁶⁷ E.g., *OAK Report*, p. 29.

⁶⁸ *MBIPSA*, s18.

⁶⁹ See: <https://www.independent.ie/irish-news/politics/minister-reveals-24000-mother-and-baby-homes-survivors-excluded-from-redress-scheme/41066964.html>. See also: <https://www.ihrec.ie/ihrec-calls-for-changes-to-mother-and-baby-institutions-payment-scheme/>.

⁷⁰ Adoption Rights Alliance estimates that there are at least 100,000 people who were adopted or boarded out in or from Ireland. See: <https://adoption.ie/how-many-adopted-people-are-there/>.

⁷¹ See Clann List of 180+ Institutions, Agencies and Individuals. See also Special Advocate Press Release, 26 September 2024: <https://criticaladoptiontheory.com/wp-content/uploads/2025/02/Press-Release-from-the-Special-Advocate-for-Survivors-of-Institutional-Abuse-Patricia-Carey-26.9.2024.pdf>.

⁷² *MBIPSA*, s18(4), s34(3).

⁷³ *Ibid.*, s18(5).

Magdalen Restorative Justice Ex-Gratia Scheme.⁷⁴ The basic healthcare provided under these cards cannot be characterised as ‘enhanced’.⁷⁵ Rather, save for the requirement to pay a small fee for prescriptions, the services largely mirror that of the regular public medical card.

4.3 Failure to Acknowledge Other Abuses

The MBIPS fails to acknowledge those who suffered abuse in adoption/fostering/boarding out placements, as well as the abuses of illegal vaccine trials, racial or disability-based discrimination, or the trafficking of children outside the State for adoption.⁷⁶ The MBIPS further excludes those who received payment previously from the Residential Institutions Redress Board, which did not recognise the abuse of family separation.⁷⁷ Furthermore, although many of these kinds of human rights violations took place both inside and outside of institutional settings, the State only recognises (some) abuses that took place in (certain) institutions.

4.4 Exclusions from Work-Related Payments

The MBIPS also prohibits mothers institutionalised in 12 Mother and Baby Homes from claiming a ‘work-related payment’: the payment is available only to mothers detained in the Tuam Home, Sean Ross Abbey or a County Home. This exclusion appears to be based on the MBHCOI’s finding that the forced unpaid labour of girls and women in Mother and Baby Homes ‘was generally work which they would have had to do if they were living at home’.⁷⁸ Eligibility for the Work-Related Payment under the scheme refuses to recognise forced labour or servitude other than of a type deemed by the Government to have been ‘commercial’.⁷⁹

⁷⁴ *Redress for Women Resident in Certain Institutions Act 2015*. See also: <https://www.gov.ie/en/publication/bed53-mother-and-baby-institutions-payment-scheme-your-questions-answered/#what-the-enhanced-medical-card-entitles-the-holder-to>.

⁷⁵ See: <https://jfmresearch.com/wp-content/uploads/2017/03/JFMR-PR-140715.pdf>.

⁷⁶ See letter from Dr Maeve O’Rourke to the UN Committee on the Rights of the Child, Pre-session concerning Ireland (22nd September 2022). Available at: <http://clannproject.org/wp-content/uploads/M-ORourke-ICHR-Letter-to-CRC-for-Pre-Session-1.pdf>.

⁷⁷ O’Rourke, M. (2023) *Briefing Note for the United Nations Committee on the Rights of the Child: ‘Historical’ forced separation of unmarried mothers and children through adoption, ‘boarding out’, Mother and Baby Homes, County Homes, Magdalene Laundries and related practices and institutions*. Available at: <http://clannproject.org/wp-content/uploads/O-Rourke-Note-for-CRC-24.1.23.pdf>.

⁷⁸ MBHCOI *Final Report*, Recommendations, para 30.

⁷⁹ *Report of the Interdepartmental Group on the development of the Mother and Baby Institutions Payment Scheme*: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/285097/91053894-8e93-490c-b05c-56cf12d387dd.pdf#page=null>.

4.5 Exclusion from Applying to the MBIPS

Although Section 19(1) of the *MBIPSA* states that: ‘a person who considers that he or she is a relevant person may make an application ... to the Chief Deciding Officer’, the design of the MBIPS online portal prevents people not covered by the scheme from even applying. For online applicants who were not in a listed institution, there is no option for them to proceed, unless they select an incorrect institution. Yet, the *MBIPSA* does not require potential applicants to have been in listed institutions; rather, according to that Section, a person **‘who considers that he or she is a relevant person’ may make an application**. In this respect, the design of the MBIPS online portal is not only exclusionary, it also obscures the true number of people who are excluded from the Payment Scheme.

When asked if she would instruct the Office of the Chief Deciding Officer to amend the MBIPS application portal to allow any person who considers that they are a relevant person to make an application to the scheme, the current Minister for Children, Equality, Disability, Integration and Youth Norma Foley merely reiterated the *MBIPSA*’s definition of a ‘relevant person’.⁸⁰

4.6 Minimal Payments and Waiver

Payments under the scheme are minimal; for example, a mother detained in an institution for up to 3 months will receive €5,000 in exchange for waiving her rights to sue the State. Moreover, those eligible for the Payment Scheme are forced to waive ‘any right of action which the applicant may otherwise have had against a public body and to discontinue any other proceedings instituted by the applicant against such public body’.⁸¹

4.7 Denial of Right to Review and Appeal

The right to request a review of a Notice of Determination under the Payment Scheme and the right to appeal that review are restricted to certain applicants. Only those applicants who have received certain Notices of Determination may apply for review and appeal. All other applicants are prevented from requesting a review (and thus from

⁸⁰ See: <https://www.oireachtas.ie/en/debates/question/2025-03-19/1360/>.

⁸¹ *MBIPSA*, 31(3)(b).

making appeals, since the appeals process relates to a review of a Notice of Determination).

4.8 Deadline to Accept Payment Offers

The MBIPSA stipulates that applicants who receive payment offers under the Scheme must accept or reject the offer within six months. This imposes an unnecessary burden on affected people, many of whom may need a longer period to allow them to seek advice (legal and otherwise) in advance of making a decision. This is especially true for affected people living outside of Ireland. For example, in Britain, Liam Conlon MP has called for the six-month period to be extended or waived. According to Conlon, this narrow timeframe 'is putting undue pressure on survivors who are in receipt of means tested benefits or financial support for social care'.⁸² Because of this, Conlon reports that some affected people who have accepted offers are concerned that they may lose their benefits, others have delayed acceptance of an offer for fear of this happening, while others still have decided not to make an application 'until the picture becomes clearer'.⁸³

4.9 Limit on Number of Applications

In addition to the barriers outlined in **Section 4.5**, the MBIPS online portal also prevents affected people from making multiple applications. Once a person has applied once, if they attempt to make another application, the system blocks them from doing so. This barrier is unreasonable, and fails to consider the wide range of experiences and needs of those affected. For example, in some cases, an affected person may have been confined in several institutions (under multifarious circumstances), and, for their own reasons, they might not feel able to apply to the MBIPS for all institutions at once. Or an applicant who has already applied to the MBIPS might subsequently obtain new records which show they were confined in another institution as an infant (or for a longer period in the same institution as their original application). Affected people in these circumstances are prevented from making more than one online application. Furthermore, affected people who have either rejected a payment offer or those who

⁸² See: <https://drive.google.com/file/d/1V7YIPl05vOcJHGWCCSDMRhAWMw3qNs6P/view?usp=sharing>. Link provided by the office of Liam Conlon MP.

⁸³ For further information, see: <https://drive.google.com/file/d/1uuHt-LiJQC-4QUKqloG8Q4ry4InxzoX5/view?usp=sharing>. Link provided by the office of Liam Conlon MP.

decided not to respond before the 6-month deadline for various reasons, should not be prohibited from applying again in the future.⁸⁴

4.10 Duration of the MBIPS

According to Section 6 of the *MBIPSA*, the Payment Scheme will close five years after its establishment (March 2029). This is unacceptable for several reasons. First, while some advertising has taken place in Ireland and the United Kingdom, the Payment Scheme has not been advertised adequately in other countries where affected people may be living, in particular, the United States. There is a real risk that affected people may miss out on an opportunity to apply; for example, after the Residential Institutions Redress Board closed, many survivors and affected people complained that they had been unaware of the existence of the scheme.⁸⁵ Second, a closure date does not take into account the fact that it can take time for affected people to come to a decision about seeking reparation for the abuses perpetrated against them, and a five-year limit serves to automatically exclude anyone who does not feel ready to apply within that period.

5. MEMORIALISATION

On 29th March 2022, the Government approved proposals for a National Centre for Research and Remembrance (NCRR) at the site of the former Magdalene Laundry in Sean McDermott Street in Dublin.⁸⁶ According to the Government, the NCRR ‘will stand as a National Memorial to honour all those who were resident in Mother and Baby Homes, Industrial Schools, Reformatories, Magdalen Laundries and related institutions’. While we welcome the Government’s proposals, we are concerned about (i) the lack of direct involvement of affected people in the design and planning of the NCRR, and (ii) the apparent focus on institutional abuses, rather than a focus on the entire system of forced family separation, institutionalisation and related abuses against women and children.

Between October 2024 and February 2025, the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) held a series of ‘Engagement Sessions’. The

⁸⁴ See: <https://drive.google.com/file/d/1V7YIPl05vOcJHGWCcSDMRhAWMw3gNs6P/view?usp=sharing>. Link provided by the office of Liam Conlon MP.

⁸⁵ E.g., *G (M) v Residential Institutions Redress Board* [No. 1529 JR/2010] and *O’B (J) v Residential Institutions Redress Board* [2009] IEHC 284.

⁸⁶ See: <https://www.gov.ie/en/press-release/bab42-government-approves-proposals-for-a-national-centre-for-research-and-remembrance/>

DCEDIY explains that these sessions are designed to ensure ‘that survivors and affected persons, and their family members and advocates, [can] hear about and feedback on the [NCR]’.⁸⁷ According to the Government’s NCR website, attendees at the Engagement Sessions:

... heard about plans for the buildings on the National Centre site, work to date on the development of the archival repository, and examples of other survivor-led exhibition and memorialisation spaces. ... Attendees also had an opportunity to participate in discussions about what they would like to see contained in the National Centre.⁸⁸

However—and although the DCEDIY acknowledges that the ‘strongest message’ from affected people ‘was on involvement in decision-making’—the presentations delivered during the Engagement Sessions betrayed the fact that **a significant amount of work has already taken place without any input from affected people**.⁸⁹ Moreover, the presentations made clear that, save for the Special Advocate for Survivors,⁹⁰ **no affected people are represented on the main NCR Steering Group or any of its Sub-Groups**.

According to the DCEDIY website, the feedback offered during the Engagement Sessions ‘is now being compiled and will [sic] published on [the NCR web] page once complete. This feedback will help to inform the ongoing work on the National Centre, and future engagement’.⁹¹ **However, ‘informing’ ongoing work is not equal to meaningful ‘involvement in decision-making’.** **The Government must immediately appoint affected people to the NCR Steering Group and each of its Sub-Groups.**

Finally, as discussed in our *Briefing Note* contextualising the State’s response to forced family separation abuses, the Government wrongly characterises such injustices as exclusively institutional.⁹² This position is demonstrated in the Government’s plans

⁸⁷ See: <https://www.gov.ie/ga/foilsuichan/hec90-national-centre-current-status-plans-and-consultation/>.

⁸⁸ Ibid.

⁸⁹ See: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/320172/89a27f06-2923-48f5-9c93-a41786770668.pdf>.

⁹⁰ Patricia Carey, the Special Advocate is an adopted person and is a member of the main Steering Group, but not any of the Sub-Groups. See: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/320172/89a27f06-2923-48f5-9c93-a41786770668.pdf>.

⁹¹ See: <https://www.gov.ie/ga/foilsuichan/hec90-national-centre-current-status-plans-and-consultation/>.

⁹² See: https://clannproject.org/wp-content/uploads/Clann-Project_Briefing-Note-Providing-Context-to-the-Irish-States-Response-to-Forced-Family-Separation-Abuses.pdf.

which envision the NCRR 'as a National Memorial to honour all those who were resident in Mother and Baby Homes, Industrial Schools, Reformatories, Magdalen Laundries and related institutions'.⁹³ **Forced family separation and other non-institutional abuses appear to be excluded from the Government's plans for the Centre, and it is critical to ensure that these are seen as integral to the NCRR's design.**

⁹³ See: <https://www.gov.ie/en/press-release/bab42-government-approves-proposals-for-a-national-centre-for-research-and-remembrance/>.