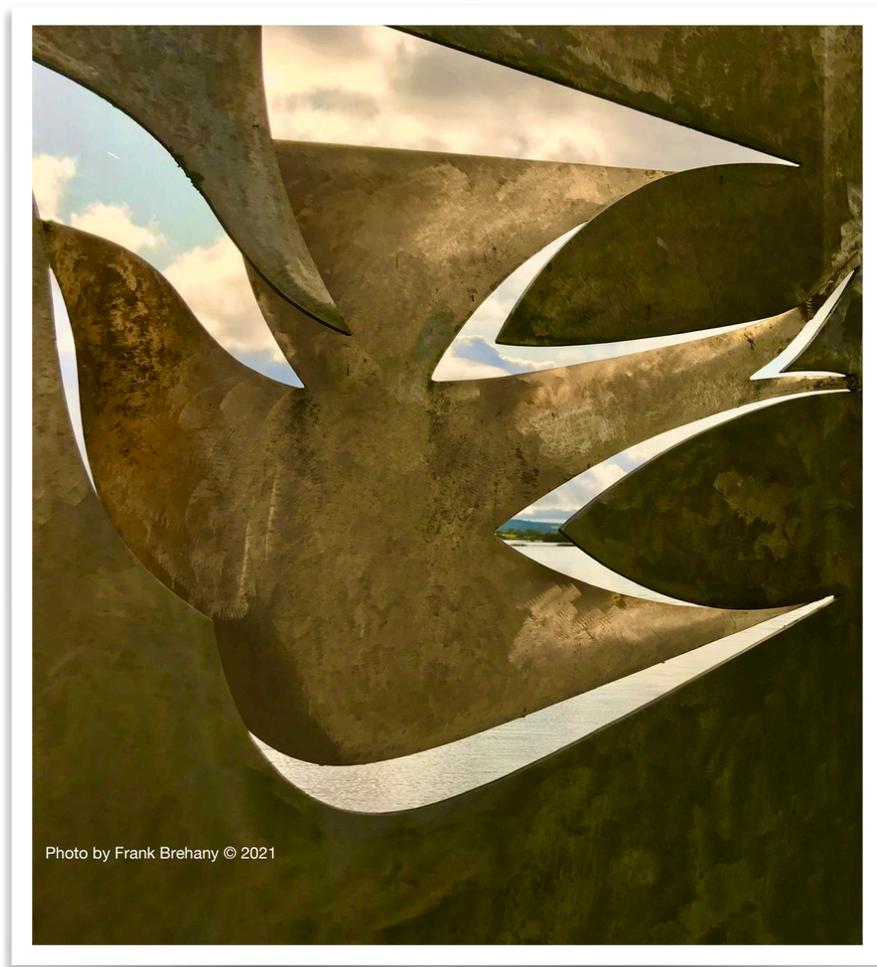


The Separation, Appropriation & Loss Initiative: An Scaradh, Toiliú agus Cailleadh Tionscnamh Injustice | Recognition | Restoration

The themes of Injustice, Recognition & Restoration for Victims, Survivors and Families of the Mother and Baby Home Institutions, and associated issues and settings



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“Immediately after giving birth in 1980 in a hospital, the infant daughter of an 18-year old woman was taken straight from this hospital to adoption while the witness went back to the home. The witness told the Committee that in her view there was no acknowledgment of the bond between a mother and her child that ‘begins even before birth’. ‘I grew up on a farm’, she explained, ‘I watched cows having calves and I know the bond that exists even in the animal world”

**Witness, Mother & Baby Homes Commission of Investigation,
Final Report 2021 – Confidential Committee p.104**

1. Introduction & Summary

What do you say to someone that has lived for eighty years, with no identity, or to one that has been provided with three birth certificates, all with differing information, where at least two are false?

What do you say to a Mother who waits still for her sixty year-old child to find her? How do you explain a system that coerced her into giving up that child for adoption? What explanation do you give to a child in their twilight years, with fond memories of a Mother they were abruptly separated from for reasons they do not understand?

What do you say to a family, now waiting for seven years since the horrors of Tuam was made public, about the return of their lost sibling or family member, so that they can lay them to rest, with dignity, within their family plot?

The Separation, Appropriation & Loss Initiative (SALI) has prepared this response to those types of questions, following a request from the Department of Children, which seeks to consult those connected to/interested in the Mother and Baby Homes Institutions. The initial consultation has been facilitated by the Irish government through the Oak Consulting Group. The authors provide consideration of human rights issues which appear to be largely absent from the recently presented final report from the Commission of Investigation into Mother and Baby Homes (and associated matters). The Commission's report was initiated in the first instance due to the discovery of a mass grave at the site of a former Mother and Baby Home in Tuam County Galway. Subsequently, juvenile human remains, located during test excavations in 2017, were confirmed within the grounds of the former home. In its Consultation, the Department presently focuses on the issues of redress currently under investigation and the provision of a health services card. However, we have expanded our submission to include human rights issues relating to the right of an individual to information related to his/her incarceration, to the families of the lost children to be consulted and involved; to the right to an appropriate and respectful retrieval for burial of human remains found on such sites and obligations where applicable under International Human Rights Law, including those under the European Convention on Human Rights, arising from the right to respect and dignity afforded to individuals during their incarceration and with respect for family life.

In the creation of this document, the authors are mindful of the following key factors raised by the Commission's Report (MBHCR) and of the response of the Irish government:

- In item one of its Executive Summary, the Report into the Commission of Investigation into Mother and Baby Homes (and certain related matters) reveals

“the proportion of Irish unmarried mothers who were admitted to mother and baby homes or county homes in the twentieth century was probably the highest in the world”. Fourteen mother and baby homes and four County Homes were investigated from 1922 to 1998, over a five year, eleven month time-frame. However, the Clann Project submitted a list of 182 Institutions, individuals and agencies involved in adoption, informal adoption and other forced family separation during the 20th Century. The Commission found 56,000 unmarried mothers and about 57,000 children passed through the 18 homes cited above investigated and approximately 9,000 children died in those institutions. Of the 56,000 mothers who gave birth; over 5,500 were under the age of 18 and some were as young as 12 years of age. This limited analysis leaves open an incomplete statistical analysis of the actual numbers involved in all 182 Institutions;

- The issues raised within the MBHCR failed to deal with or reconcile a number of factors, including:
 - Misrepresentation in the report of survivor testimonies when compared with the testimonies of other witnesses including members of clergy or religious orders and state officials;
 - Unsupported statements which are at odds with witness testimonies contained within the report;
 - Lack of referencing as to the author of certain statements;
 - Inability to challenge or raise questions given the authors chose not to meet with the Oireachtas Committee on request, or with others;
 - Unavailability of documentation available to the Commission to verify accuracy.
 - Lack of respect afforded to Victims, Survivors and the families of the lost children;
 - Refusal to employ or adhere to a Human Rights framework, that would place at its centre, Victims, Survivors and their Families within the narrative;
 - Loss of identity and documentation, to include birth certificate and details, medical information on birth parents, with-held by State;
 - Disparity in the treatment of Mothers and Children within the Institutions in life and in death;
 - Lack of dignity afforded to the human remains of children and mothers lost in the institutions;

- The Irish Government's response to the recent publication of the MBHCR is to request those affected, Victims, Survivors and their Families, together with families of the lost children, to submit their views by way of direct engagement with Oak Consulting (OC). OC were appointed to garner opinion, and to provide a written submission for perusal. In order to meet the narrow timeframe set to March 31st, the authors set out below the issues they see as relevant to the discussion:
 - In the creation of the Restorative scheme envisaged, there must also be a recognition and publication of all institutions, agencies and individuals (182 cited by Clann Project) as being open to eligibility to such a scheme;
 - This report reiterates the concerns of the Women and Children affected by their incarceration within the system of Mother & Baby Home Institutions (and associated institutions/boarding out)
 - However, the authors note that the latest Mother and Baby Home Commission of Investigation is yet another investigation, and is a report that compartmentalises and its conclusions produces an overall social failure. Whilst the focus is currently upon the Mother and Baby Home system, it should not be forgotten that many people in that story, also went onto suffer or experience the horrors found within the Industrial Schools, Magdalene Laundries, Vaccine Trials, Boarding out and/or illegal Adoptions & ongoing Identity issues. These factors do not take into account the belief that crimes have been committed against them, discrimination, prejudice and imposed shame that has spanned across generations. The Mother and Home issue separates the subsequent common experiences and presents the potential to create further harm or distress, because of the continued fractured approach to the overall issues affecting all of the victims, survivors and their families.

The SALI and its Authors therefore provides an additional voice to the concerns of the Women and Children affected by their incarceration within the system of Mother & Baby Homes, and in particular to those who had experience of the Tuam Mother & Baby Home, along with other Institutions.

Therefore the opinion expressed in this report represents the experience of the Authors and is a culmination of their views, and of the views and opinions of the women and children whom they have spoken to. The opinions expressed in this document stems from the the establishment's responses and failures to various Commissions of Investigation.

The basic hierarchy of needs contained in this report, are wide-ranging and relevant to the Irish government's call for opinion. Whilst some may consider the present call for opinion, as potentially delivering a rushed consultation, it is the view of the SALI, that

such a call for opinion should not ultimately deliver a scheme that presents detriment or discrimination to the victims, survivors and their families.

This report highlights General Principles of any Restorative Recognition Scheme along with the fundamental minimums of any Financial redress scheme. SALI notes the imperative and emphasis placed by government in securing a swift introduction to a Financial scheme. However, the SALI is of the opinion, that in creating any restorative justice scheme, there is a need to recognise key factors that are essential to support any Financial scheme. The relationship of Health, Criminal Enquiries, Identity, Data, Education and the Lost Generations are both complementary and symbiotic to the creation of any Financial redress scheme.

We recommend that through each and every step/process/mechanism or forum, that it should be victim/survivor/person-framed and led, where possible, with an emphasis, need and demand, for representation, consultation and participation. All processes should move forward on the basis of the principle of: **'Do no harm; do no further harm'**; this should be the principle foundation.

On one final point of importance, we call on the Irish Government to commit to ratify the International Convention for the Protection of All Persons from Enforced Disappearances 2006^{1 2}.

This holds important relevance to the unmarked graves of Tuam and of other locations, along with the enforced disappearances of many thousands of women from their families and communities, along with the many children who 'disappeared' or were airbrushed from society through legal/illegal adoption systems^{3 4}.

We note that the Republic of Ireland signed this Treaty on 29 March 2007 but has yet to confirm accession to the Treaty or that it has been ratified by the Irish State.

We also note the lack of retrospection within the Treaty but are comforted by the rulings of the European Court of Human Rights⁵ on breaches contained within the ECHR⁶ in relation to enforced disappearances.

¹ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4

² <https://www.irishexaminer.com/news/arid-30947153.html>

³ <https://www.ihrec.ie/commission-takes-on-new-role-as-irelands-national-rapporteur-on-the-trafficking-of-human-beings>

⁴ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>
(Protocol to Prevent, Suppress and Punish Trafficking)

⁵ <http://assembly.coe.int/CommitteeDocs/2011/ajdoc45.pdf>

⁶ https://www.echr.coe.int/documents/convention_eng.pdf

We further note the provisions of Article 7 of the Rome Statute which also includes matters relating to Enforced Disappearances⁷.

We are however concerned that any delay by the State could prejudice Victims, Survivors and their Families by any undue delay in creating the necessary legislative vehicles to deal with such disappearances.

We call on the Irish government to take all necessary steps to ratify the UN Convention, to import retrospectively the UN Convention's provisions and to offer clarity of intended actions that will remove any potential detriment to Victims, Survivors and the Families if they need to have recourse to the European Court of Human Rights.

The Irish government's reputation has been damaged by the fall-out following the publication of the Mother and Baby Home report, through actions and narrative; this submission presents an opportunity for the government to restore at least some of that reputation

The SALI strongly recommends that the Irish government import all of the aforementioned factors as the basis of any methodology when dealing with this subject matter and in particular, into the creation of any Restorative Recognition Scheme. It is vitally important therefore, when importing the principles of this section and of this report, that due regard is given to every Woman and Child, including mixed-race Irish⁸, and their Families, affected by this State and Religious failure. Only then can reparation, restoration and equality of arms begin.

⁷ <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>

⁸ <https://www.irishtimes.com/life-and-style/people/the-women-s-podcast/the-irish-times-women-s-podcast-ep-449-rosemary-adaser-growing-up-black-in-irish-institutions-1.4410484?mode=amp>

2. General Principles - Essential Supports for Victims, Survivors & Families

The broad nature of restoration & supports:

Victims & Survivors require a comprehensive package of restoration, services and supports.

We therefore recommend that these fundamentals need the moral and legal authority of the Irish government, guiding Local government on that authority, and leading to their implementation and rolled out by both National and Local government.

1922: A Centenary of Commemoration:

Despite the historical legacy issues of the Irish Free-State, the Republic not just adopted that legacy but went on to re-define that legacy.

That re-definition led to many generations of Irish Women and Children and their Families suffering through the actions of Church and State or their agents or servants (for example, Charitable Institutions, Private Agencies).

Through institutional failures, that suffering continues to the present day.

If Irish Society is truly shocked by the Industrial School, Mother and Baby Home Institutions, Magdalene Laundry and Illegal Adoption systems that affected many families in society, then the State and Society should take all steps to elevate the Women, Children and their Families in the approaching Centenary of Commemoration in 2022.

We therefore recommend that the Irish government and the Religious Institutions, institute a year-long, National & Local, inclusive and wide-ranging public commemoration, to recognise, educate and commemorate this unique category of Irish Citizens. The construction of such a commemoration should be victim/survivor led.

The Power of Words: Language & Terminology:

We must carefully consider the Power of Words^{9 10 11}. The use of language and terminology is important to all the Victims, Survivors and their Families.

The incorrect or improper usage of language or expression simply adds further to the distress of those affected. It does not aid in any objectives and perceptions of any restorative scheme, if consideration and corrections are not made to this narrative.

Therefore, there should be a promotion of the word **'Institution'** to replace and de-legitimise the **'Home'** reference (it is accepted that this was the original categorisation of such Institutions, but we now have it within our power to deliver a cultural and institutional change).

In addition, consideration must be given to other offensive misnomers and attempts to trivialise/euphemise narrative (as applied by government and institutions), which include terms such as "residents" for those predominantly affected, should be discouraged and any such references must be renamed with terms more appropriate and veracious, for example:

- **'forced removal';**
- **'inmates';**
- **'incarceree/incarcerees';**
- **'incarceration';**
- **'confinement';**
- **'detainees';**
- **'prisoners';**
- **'captives';**
- **'internees'.**

It should be noted that most of these examples or 'words' are taken directly from the Victims, Survivors and their Families and from within the various Commissions/ Investigations and their reports; the list is not intended to be exhaustive.

This commentary does not as yet, discuss the nature of the Institutions and their potential descriptives, as experienced by the Victims & Survivors.

It is important to note that there is ample history within Ireland of how the power of language and words, presented a sufficient threat to the powers that be.

⁹ <https://manzanarcommittee.org/2012/07/15/jacl-ratifies-power-of-words-handbook-what-are-the-next-steps/>

¹⁰ <https://manzanarcommittee.files.wordpress.com/2020/06/powerorwords-revised-jacl.pdf>

¹¹ https://www.nps.gov/tule/learn/education/upload/Power_of_Words.pdf

The formation of the Irish Free-State and the subsequent Republic, placed at its centre, the return of that power of language and words.

Such 'power' cuts to the heart of identity, ideals, beliefs, social norms and importantly, ethics.

Whilst there is an argument that can be made that the language created around these Institutions and Institutional abuse reflected the conditions of the period, in reality, they reflected a narrative created by that power, used in the promotion or normalisation of that system of abuse.

For example, there are many terms or expressions used by Religious Orders and the State and accepted by a wider society, that describes the nature of the locations where Women and Children were held.

It is important to acknowledge that there are many Women and Children who do not subscribe to the religious name given to a location or their other descriptives, such as 'home', 'school' or 'laundry'; some do not consider that this language accurately reflects the nature of their detention.

There are some, utilising the 'corrected' language above, who describe the locations of their detention as 'Concentration Camps'.

It is accepted that this is a controversial term or expression.

However, there is already an International precedent whereby socially isolated or detained groups have examined the nature of the expression, 'Concentration Camps'.

The most notable exploration of this expression came through the experiences of Japanese/Americans who were 'interned' during the Second World War in the United States.

It is clear that senior American politicians were uncomfortable with the words 'relocation centres' or 'internment camps' and openly expressed that Japanese/Americans were in fact incarcerated within 'Concentration Camps'¹².

The controversial nature of this expression is however tied within the International conscious to the events of the Second World War in Europe. However, following the War, the usage and debate on the expression, 'Concentration Camps', has continued unabated. The issue was given prominence following a discussion between Japanese/

¹² https://en.wikipedia.org/wiki/Internment_of_Japanese_Americans

American Survivors, The American Jewish Committee and the National Parks Service which agreed upon a definition of 'Concentration Camps' (1998)¹³ as follows:

"A concentration camp is a place where people are imprisoned not because of any crimes they have committed, but simply because of who they are. Although many groups have been singled out for such persecution throughout history, the term 'concentration camp' was first used at the turn of the century in the Spanish-American and Boer Wars.

During World War II, America's concentration camps were clearly distinguishable from Nazi Germany's. Nazi camps were places of torture, barbarous medical experiments, and summary executions; some were extermination centers with gas chambers. Six million Jews were slaughtered in the Holocaust. Many others, including Gypsies, Poles, homosexuals, and political dissidents were also victims of the Nazi concentration camps.

In recent years, concentration camps have existed in the former Soviet Union, Cambodia, and Bosnia.

Despite differences, all had one thing in common: the people in power removed a minority group from the general population and the rest of society let it happen".

Whilst we can subscribe to the narrative created, we cannot support the expression 'the rest of society let it happen', because to do so would support the findings of the MBH's recent report, which failed to recognise the general powerlessness of Irish Society. It is also important to understand that this descriptive also supports the narrative found within Article 7 of the Rome Statute¹⁴. The descriptive and definition of 'Concentration Camp', with its clarifications, would however strike a chord with many of the Women and Children held captive within the Industrial school, Mother and Baby Home and Magdalene Laundry Institutions. Reference to this terminology underpins the importance of the Power of Words and how the correct language must be used, no matter how challenging this may be for Civil Society.

It is our view that there is now a need to challenge the orthodoxy of language and the continued use of 'accepted' language and terminology. If we fail to do this through any Restorative scheme, it will simply continue to amplify the subsequent narrative of the 'powers that be' and any continuing vested interests.

We would also urge care in the provision of any tenders, contracts, grants or awards (collectively cited as 'awards'), made by government or any other body, to examine the nature of language or terminology. We take the view that to encourage a system of 'awards' to determine this important area, delivers the potential to offer a less cost-effective method of establishing key principles and acceptability of any output.

¹³ <https://www.janm.org/press/release/american-jewish-committee-japanese-american-national-museum-issue-joint-statement>

¹⁴ <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>

We have determined that there are two methodologies that could be deployed.

The first references the aforementioned 'awards' which should be preconditioned with the obligation to create a 'Board of Reference', to be populated with a Victim, Survivor or their Family Stakeholder cohort, thereby ensuring a solid consideration of the issues and a wider agreement on the definition and use of Language and Terminology. The second alternative is that where no 'awards' are made and that such an initiative is primarily facilitated by government, they too should construct any work or consideration in this area around a 'Board of Reference', thus guaranteeing the stability of its output. In any event, we would call on the government to create such a 'Board of Reference'

If the definition and use of language is actioned through these vehicles, we would strongly urge the government to ensure that newly defined expressions or terminology is placed within the remit of governmental operations and within the debate and law-making processes of the Oireachtas.

We therefore strongly recommend that urgent consideration be given to the creation of a 'Board of Reference' or Consultative Panel, with a strong representation from Victims, Survivors and their Families, to discuss, determine and change present Language and Terminology in relation to this wider subject matter. This 'panel' should be activated either through private or public initiatives. The full expenses of any Victims, Survivors and their Families should be met in full as defined within the Financial Redress comments below.

That Panel should have the power to scrutinise and challenge any failure to implement its recommendations and raise these failures toward action through the Oireachtas. To do so will change narrative and political and social thinking and, create the conditions that will form the bedrock of any Restorative scheme.

Access to Justice:

The Irish system of Law is based in Common Law, with obligations extended through the laws and obligations of the European Union and through International Treaties and Conventions. Victims, Survivors and their Families have an absolute right to be heard in Irish Judicial proceedings, whether proceedings are commenced by them or unrelated third parties. Where proceedings have been commenced by third parties, Victims,

Survivors and their Families will demonstrably have 'locus standi' (a standing or interest^{15 16 17 18 19 20}), or potential intervention rights^{21 22}.

Locus standi or intervention can arise where issues before the court are of direct interest to them or others, or where they can assist the court in their deliberations through Judicial Review, Human Rights actions or, through Coronial proceedings.

For the sake of clarity, Legal Aid provision must be unconditionally extended to Victims, Survivors and their Families pursuant to any civil litigation either concurrently or post any payment received from any Financial Redress. Any payment from any Financial Redress scheme should not be limited in any form and its receipt should not preclude any ability through Legal Aid to either jeopardise or preclude litigation for any civil or criminal justice.

In all cases they will require support for such action.

Support must be primarily delivered through a robust Legal Aid system.

Recognition must be given to the substantial structural wrongs committed against victims and survivors.

Any failure presented within a Legal Aid system only serves to extend the actual or perceived wrongs that have been committed.

The Irish Justice system is robust enough to deal with challenges raised by the past or the present, but the Victim, Survivor or Family member should not be disadvantaged, through lack of funding, to access their right to a Fair Hearing or Intervention, guaranteed under Article 6 of the European Convention of Human Rights²³.

¹⁵ <https://www.pila.ie/resources/listing/case-summary-cahill-v-sutton-1972-ir-269/>

¹⁶ <https://trinityflac.files.wordpress.com/2019/10/50th-anniversary-research-project-final-to-print.pdf>

¹⁷ <https://www.bailii.org/ie/cases/IESC/2019/S18.html>

¹⁸ [https://www.courts.ie/view/judgments/681b8633-3f57-41b5-9362-8cbc8e7d9215/981c098a-462b-4a9a-9941-5d601903c9af/2020 IESC 49.pdf/pdf](https://www.courts.ie/view/judgments/681b8633-3f57-41b5-9362-8cbc8e7d9215/981c098a-462b-4a9a-9941-5d601903c9af/2020%20IESC%2049.pdf/pdf)

¹⁹ [https://www.courts.ie/acc/alfresco/4c363613-d8d4-4813-91ff-ea95c099d390/2020 IEHC 461.pdf/pdf](https://www.courts.ie/acc/alfresco/4c363613-d8d4-4813-91ff-ea95c099d390/2020%20IEHC%20461.pdf/pdf)

²⁰ <https://www.bailii.org/ew/cases/EWHC/Admin/1994/1.html>

²¹ <https://justice.org.uk/wp-content/uploads/2016/06/To-Assist-the-Court-Web.pdf>

²² https://www.pilsni.org/sites/default/files/TonyMcGleenan_paper.pdf

²³ https://www.echr.coe.int/documents/handbook_access_justice_eng.pdf

The test for accessing Legal Aid can be found within the case of Airey v Ireland²⁴ which sets out the basic principles in being able to access Legal Aid, these being:

- The State may be compelled to provide legal assistance for securing an indispensable access to court;
- Examination of the facts of the case/application will be considered;
- The complexity and nature of the procedure;
- The complexity of the issues in law;
- The need to establish any facts through expert evidence;
- The examination of any witnesses.

By default, the victims and survivors are experts in their own right, both for their own potential cases but also in areas where their intervention would provide a value to the court.

We would also add that an important factor in any of these cases or scenarios, which should be considered within any Legal Aid application, will be found through Public Interest. There is no question that the combination of the factors affecting the Women and Children have piqued that 'interest', with many Irish Citizens now expressing their outrage at the system and events now revealed.

The risk arising from the administration of any scheme of Legal Aid and therefore access to Justice will present itself through any financial qualifying criteria, if victims and survivors receive payment from any proposed Financial redress scheme. The value to the court or any proceedings of the victims and survivors will be undermined through an administrative process. Any refusal of Legal Aid, because of a 'benefit' received will add further to the distress of victims and survivors.

Therefore we strongly recommend that any legislation providing for the system of Legal Aid must also be amended, to preclude any payment received from any Financial redress scheme by any victim or survivor, from any financial qualifying criteria.

This amendment to legislation would be in the interests of victims and survivors wishing to subsequently engage in litigation; it is in the interests of the Irish State and the concerns of structural wrongs; it is in the interests of the courts who could potentially benefit through a more informed delivery of judgements; it is in the interests of transparency and the stated desire to rectify the wrongs of the past.

²⁴ [https://hudoc.echr.coe.int/eng#{"itemid":\["001-57420"\]}](https://hudoc.echr.coe.int/eng#{)

Statute of Limitations:

In order to deliver upon the promise of Justice, we strongly recommend that both the Chief State Solicitor and State Claims Agency, should **not use** to their advantage, the Statute of Limitation in any Judicial Review, Compensation or Compensatory schemes actions, in any Adoption/Illegal Adoption matters and Institutional abuse cases ^{25 26 27 28 29 30}. We do not intend that such a list of potential actions that could be brought by Victims, Survivors or their Families is exhaustive.

By way of background, we note the following:

- The statute of Limitation periods in Irish law applicable here are the limitations applying to civil actions are set out in the Statute of Limitations, 1957, and the Statute of Limitations (Amendment) Act, 1991 and 2000. These statutes provide a time-limit on the ability to take an action, so that after a defined period, any action will be time brought by a potential Claimant or Applicant will be time-barred;
- The Statute of Limitations applicable in Irish law, depends on the type of legal case and also who is taking the case (the rules are different for children). The time period usually starts from the date of accrual of the cause of action or (if later) knowledge of the potential cause of action;
- In previous Redress measures, the then Taoiseach announced the Government would amend the 1957 legislation to enable victims to bring claims for sexual abuse. Subsequently, meetings with victims and survivors of industrial schools prompted the referral to the Law Reform Commission and the proposal that Statute of Limitations (Amendment) Act 2000 was confined to sexual abuse. The Residential Institutions Redress Act of 2002 extended to the full range of abuses under investigation.

It is important to note the importance of ‘Limitation’ when ranged against the issues we outline in Chapter 4, ‘Adoption Law and the Status of Children’.

²⁵ <https://industrialmemories.ucd.ie/ryan-report/report/1-5?page=3>

²⁶ <https://industrialmemories.ucd.ie/ryan-report/report/1-5?page=3>

²⁷ <https://industrialmemories.ucd.ie/ryan-report/report/1-5?page=3>

²⁸ <https://www.dutchnews.nl/news/2020/04/women-used-for-slave-labour-take-sisters-of-the-good-shepherd-to-court/>

²⁹ <https://www.irishtimes.com/opinion/germans-are-right-to-pursue-100-year-old-former-nazi-war-criminals-1.4487643?mode=amp&s=03>

³⁰ <https://www.irishtimes.com/news/woman-claims-no-consent-for-adoptions-1.1197426?mode=amp>

We repeat our strong recommendations contained within the opening paragraph to this section, in that the State must deliver mechanisms that prevents its ability to invoke Limitation periods in all of these most sensitive and difficult cases that could be brought by Victims, Survivors and their Families. If the State provided this concession, it would send a very powerful message that recognition and equality of arms is being delivered to a section of Irish Society long-since denied!

The North/South Divide:

Whilst in general there has been a practice or process to view this entire issue through the prism of the Irish Republic, we must not forget that many Victims, Survivors and their Families have been affected by ‘trafficking’ issues or practices, travelling in both directions within the island of Ireland.

The First Minister of Northern Ireland (Arlene Foster), has responded to the research into the operation of the Mother and Baby Homes and Magdalene Laundries in Northern Ireland. On 26 January 2021, she is recorded as having stated that³¹:

“The records relating to mother-and-baby homes are not complete for all the institutions. A high percentage of the women and girls — around 86% — were from Northern Ireland. The others were from outside the jurisdiction. Around 11.5% of the women and girls crossed the border, and a small number came from Great Britain and elsewhere...

What is indisputable is that there was a considerable movement of babies from Northern Ireland to the Republic of Ireland, in significant numbers: 202 babies from Marianvale from 1957 to 1982; 171 from Marianville from 1950 to 1990; 120 from Mater Dei from 1942 to 1970; and 58 from Thorndale from 1930 to 1970. How that came to be raises many more questions — questions that require answers...

The Health Minister, Judith Gillespie and the deputy First Minister and I have already raised the issue with the Minister of Children, Equality, Disability, Integration and Youth in the Republic of Ireland, Roderic O’Gorman. He has committed to considering the scope for cooperation in the area of adoption linked to mother-and-baby homes...

There was also the cross-border movement of women and children into and out of those institutions. In the same way that women from this jurisdiction were admitted to mother-and-baby homes across the border, as reflected already, women from across the border were also admitted to homes here...”

³¹ <https://www.theyworkforyou.com/ni/?id=2021-01-26.5.1>

From these comments it can be seen that the issue of trafficking between Institutions, Religious Orders or denominations was evident.

The issue for many Victims, Survivors and their Families is one of Tracing and Identity and understanding their personal history, in addition to identifying the wrongs or harm that has been committed against them.

As we can see from the statement of the NI First Minister, the solutions are NI centric in the same way that the Irish Republic has managed the same issue ³² ³³.

At the core of any Restorative Justice Scheme, there is an absolute and unconditional need to address this important cross-border issue. In our view, this can be principally achieved through the 'Good Friday Agreement' (GFA) (also known as the Belfast Agreement - BA)³⁴. The pathway to developing cross-border solutions can be demonstrated through the GFA (BA); we would summarise the following as providing the framework for the establishment of that cooperation:

- Strand 1 - point 18 - The First Minister (FM) and the Deputy First Minister (DFM) of NI, will deal with and coordinate the work of the Executive Committee and provide responses to external relationships;
- Strand 1 - point 30 - In accordance with point 18 the FM and DFM will represent the Assembly as a whole and they will ensure cross-community involvement;
- Strand 1 - point 34 - There will be established a Civic Forum, created as a consultative mechanism to provide opinion/guidance on social, economic and cultural issues;
- Strand 2 - point 1 - There will be established a North/South Ministerial Council (NSMC) to act in consultation, cooperation and action, within the island of Ireland on matters of mutual interest and within their competence;
- Strand 2 - point 5 (i) - The role of the NSMC will include the exchange of information, to discuss and consult, with a view to cooperate on matters of mutual interest within their competence;

³² <https://www.theguardian.com/uk-news/2015/jun/25/irish-cardinal-admits-inquiries-into-child-rapist-priest-were-only-to-protect-church>

³³ <https://www.dailymail.co.uk/news/article-2547145/Nuns-forced-children-eat-vomit-soiled-bedsheets-heads-punishment-care-homes-largest-inquiry-institutional-child-abuse-told.html>

³⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf

- Point 5 provides an Annex for North/South cooperation (a list is provided). The list provided suggests that it 'may' include what is set out but this suggests that such a list is not limited;
- Rights, Safeguards & Equality of Opportunity - Human Rights - point 1 - An affirmation is made that all parties are committed to mutual respect and the civil rights of everyone in the community. We note the provision that a right exists of equal opportunity in all social activity;
- New Institutions in NI - point 5 - This created the establishment of the NI Human Rights Commission, which we note should be empowered to bring court proceedings or to provide assistance to individuals doing so;
- We note that there are comparable steps required by the Irish Republic;
- A Joint Committee - point 10 - We have noted that a Joint Committee, involving representation from both North and South Human Rights Commission's should be created and act as a forum for consideration of Human Rights issues in the island of Ireland;
- Reconciliation & Victims of Violence - point 12 - Whilst this sections focus is centred upon the victims of violence in NI, it nonetheless has analogy and relevance to our own Victims, Survivors and their Families. We note that as part of the suggested reconciliation process offered by this section, that victims have a right to remember as well as contribute to a changed society. Our own Victims, Survivors and their Families, whichever side of the border they live or the circumstances that are relevant to them have under this point a right not to be forgotten and be recognised as society's witnesses through their living testimony;
- In general we note the NI opportunities that exist to initiate or create legislation (noting the similar opportunity that already exists for the Irish Republic), contained within the GFA (BA);
- We note that these provisions are supported by the Articles of the Inter-Governmental Agreement of 10 April 1998;
- We note also the provisions contained within the recent Protocol between Ireland and the United Kingdom³⁵. In particular we note the provisions contained within Articles: 1 (1), 2 (1) & (2) and 11 (1) & (2) which provide continued recognition and support for the GFA (BA) as set out above.

³⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf

We therefore strongly recommend, that in the creation of any Restorative Justice Scheme, that recognition is given to the mutually apparent issues that exist in the island of Ireland. It is imperative that this issue takes centre-stage in the construction of any scheme and that full consideration and application is given to the GFA (BA) and that the discussions already commenced with Minister O’Gorman continue and are formalised through the GFA (BA) to produce the necessary outcomes for the Victims, Survivors and their Families.

Accountability:

On Accountability, the victims and survivors have a moral and legal right to full disclosure of all information held, this includes but is not limited to:

- Access to birth information/certificate(s) confirming their identity and their created identity;
- Birth certification must include:
 - Disclosure of biological parentage including that of a putative father where noted/indicated/confirmed;
 - All robust attempts made to authenticate and verify birth/natural/biological maternal registration in an institution, e.g. address on admission to be cross-checked with contemporary census/electoral roll to endure validation;
- Any baptismal certificate(s) confirming their identity and their created identity;
- The inclusion of all records relating to:
 - Anatomical Research issues;
 - Reformatories;
 - Being Nursed-out;
 - Baby/Child-farms - ‘Farmed-out’ (as an example, we make reference to those children used as farm labourers/farm-hands, e.g. Westbank Protestant children’s institution in Greystones, Co.Wicklow, where there was significant trafficking to NI);
 - Mental/Psychiatric institutions to be considered for inclusion given their inextricable nexus with all institutions;

- All boarding out/adoption and all administrative files that hold information pertaining to victims and survivors;
- All records held by State and Religious Institutions related to their incarceration and experiences which includes (but not limited to):
 - Access to all governmental documents held under any seal (government will need to take requisite action);
 - Access to all government internal documentation used to determine actions or policy;
 - Access to all Gardai investigation documentation or internal documentation used to determine action or policies (there is an acknowledgement of data issues, but victims and survivors have a right to understand the detail of their criminal complaints, or where a complaint has not been raised by the victim or survivor, to understand the nature of that third party complaint and the issues raised and the action taken);
 - Access to all investigation documentation used by Public Prosecutors or internal documentation used to determine action or policies (there is an acknowledgement of data issues, but victims and survivors have a right to understand the detail of their criminal complaints, or where a complaint has not been raised by the victim or survivor, to understand the nature of that third party complaint and the issues raised and the action taken);
 - Access to all documentation held by the Adoption Agency or Tusla. As we have outlined in Chapter 2, due regard must be had to the cross-border, cross-jurisdictional issues, particularly within Northern Ireland and the Irish Republic (including relevant Health Authorities or Trusts. Cooperation must be secured through the mechanisms detailed in Chapter 2.

We therefore recommend that laws creating this general right of access are passed quickly and without opposition from the government.

We also recommend that supplementary laws to support the principal legislation are openly and publicly declared, in good time, offering an opportunity for victims and survivors to scrutinise, comment and create the opportunity to accept their amendments to such secondary legislation.

We acknowledge the issue of confidentiality, but note that discussion in this area has been muted against the majority who seek their right to identity. We recommend that in order to determine policy in this area, the Irish government creates a

stakeholder panel to devise rational approaches to the construction of any devices relating to privacy.

In any event, we call upon the Irish government to recognise and respect the wholesale rights of the victims and survivors under the General Data Protection Regulation³⁶ which the Irish government must implement in full.

The Conduct of future Inquiries or Commissions:

It is clear that past Inquiries & Commissions have substantially failed to address a wide variety of issues, if at all. The construction of such Inquiries or Commissions appear to be paternalistic and rely on a subsidiarity principle, that only Irish people or its government can assess, report and recommend³⁷. Examples of dissatisfaction with the recent MBHC report includes Victims and Survivors in not being provided with written contracts by the Commission which would have provided clarity of purpose and of intention. This led to a situation where testimonies are invalidated, unverifiable and open to the consequences, where Commission staff apparently cold-called witnesses, placing the personal and/ir families in jeopardy, through exposing lifelong secret's, potentially breaching privacy, or to confirm anonymity. Victims and Survivors have subsequently experienced and have been presented, with their inaccurate testimonies and non-verbatim transcripts; it is a recipe for disaster of purpose, truth and reconciliation. Given the extensive nature of the complaints raised by many Victims and Survivors, the approach deployed should be less subsidiariic and more International and certainly clear on rights and of intentions.

Victims & Survivors require that in any future Inquiries or Commissions, that they must be constructed and chaired by International experts, beyond the UK or the Republic of Ireland, who have a demonstrable record in determining Human Rights³⁸, International Law and International Social Policy expertise (possibly a panel of three such personnel). Victims & Survivors should be rightfully empowered, given all past exclusion and marginalisation, to have consultative and participatory recommendation and approval of any international candidates in leading any Inquiry/Commission. The International Experts should be transparently clear of any conflicting interests; they should be devoid and vetted against any religious/political/judicial/institutional affiliations. The outcomes

³⁶ https://ec.europa.eu/info/law/law-topic/data-protection_en

³⁷ <https://www.heraldscotland.com/news/18922615.scottish-child-abuse-inquiry-scottish-government-guided-regrettable-paternalism/?ref=twtrrec&s=03>

³⁸ <https://rm.coe.int/report-on-the-visit-to-ireland-from-22-to-25-november-2016-by-nils-mui/16807bcf0e>

of any Inquiry or Commission should be accepted by the Irish government without qualification with the acceptance of a recognisable and defined timescale for the implantation of any outcomes. Such outcomes should however only ever be considered by the Irish government as a minimum form of action required.

We consider that such a process should include a victim/survivor consultative/participatory panel (e.g. 5 representatives), to be fully engaged in any inquiry/commission process, with validation/verification powers, in amending any ongoing Terms of Reference, in conjunction with the Chair/Commissioner/Panel and, the power to observe all records either used or retained that have been accessed/analysed/reported or retained by the investigation, throughout and following the end of that process. Any records that are accessed and subsequently held and copied, should be where feasible stored and then archived in agreed location, by the Inquiry or Commission, for at least 6 months, before their return to those under scrutiny.

We consider that the Chair/Commissioner/Panel should be mandated to account for the Report in a forum of Victim/Survivor Representation (in tandem with an Oireachtas committee (that committee to have the necessary powers to call and compel), to critique and commend where applicable and necessary on the findings, their recommendations and shortcomings.

We recommend that the Irish government deploys this methodology in the construction of future Inquiries of Commissions.

3. Key elements/concerns expressed by victims & survivors on any Restorative Recognition Scheme

Financial Redress:

Survivors right to financial redress is key; it can provide a degree of comfort for survivors whose lives have been negatively impacted and who decades later, are living in poverty due to lack of life chances dictated by early life experience – incarceration and separation (these factors have lead to a reduction in life chances, including deficits of social skills and preparedness or denial of those factors, as well as non-existent or lack of education and other opportunities).

Any opportunity for financial redress should ensure that any application will be assessed and applicant supported, by a wholly independent decision-maker, free from any form of governmental connection or pressure, who is informed and fully knowledgeable on the issues.

The Definition or Limits of Financial Redress:

Further in this Chapter we provide our views against making ‘distinctions’ within the Victim, Survivor or their Family groupings. In previous State Investigations, a methodology of calculation has been made which is perhaps akin to current State scheme (such as Criminal Injury Compensation) or through the practices found within Personal Injury awards. In the creation of these ‘limited’ schemes, they have delivered a sense of dissatisfaction, particularly in the manner in which it has been divided and distributed, leaving many with a belief that they have been re-victimised and that recognition for their testimony, their suffering and therefore Justice, remains elusive.

We would strongly urge that such methodologies are not deployed against Victims, Survivors and their Families as those processes have failed to deliver appropriate levels of ‘compensation’ for their incarceration and the lost opportunities of life ³⁹ ⁴⁰ ⁴¹. A scheme so designed will only deliver a just level of ‘compensation’ when measured against the total failure of any Victim or Survivors loss of Human Rights. Any scheme design therefore needs to present a unique and dynamic assessment and solution that truly reflects the horrors of the experiences.

³⁹ <https://www.bbc.co.uk/news/uk-northern-ireland-47973826>

⁴⁰ <https://core.ac.uk/download/pdf/232772328.pdf>

⁴¹ <https://www.irishtimes.com/news/shortt-awarded-1-9m-for-wrongful-imprisonment-1.1183470>

The Modelling of any Financial Redress Scheme:

As previous models have demonstrated (for example, the Magdalene Laundries), the design and construction of a compensation scheme has gravitated toward a tariff-distinction-based scheme. This has its 'history' within the range of group-action compensation schemes found within civil law/personal injury disputes. The argument used to support this model is that it delivers a balanced response to the complaints made.

But the attraction to this model is flawed because where general legal issues are in dispute, they are usually centred upon one primary index point of harm. For example, a car produced by a manufacturer is found to have fundamental faults, which are hidden from view, altering how a Consumer makes an economic decision. A compensation scheme would be designed to correct that detriment. In a holiday illness claim, the index point will arise from poor hygiene conditions, resulting in a wide-spread illness and a loss of contractual 'enjoyment'. A scheme so designed to accommodate these failures will properly compensate for the issues arising out of that primary event.

Another equivalent tariff-distinction-based scheme is found through the Criminal Injuries Compensation Scheme⁴². This follows the same methodology as that found in the civil law practices described above. But again, it is dealing with one specific index event, with the majority of claims delivering short to intermediate resolution of conditions, the long-term major injuries account for a minority of claims

In the case of the Mother and Baby Home (MBH) crisis or 'event', we are dealing with something that has far more fundamental detriment and implications than those found within a contractual, illness or criminal injury claim.

The issues arising from the MBH's presents matters of important Public Interest.

The detriment presented by the MBH's are not just confined to a period of incarceration, but have extensions into the original and continuing Forced Removals, Industrial Schools, Magdalene Laundries, the controversial system of 'Adoptions', along with the many common personal issues of loss of or continual breaking of bonding, abuses, prejudice, discrimination, isolation, loss of identity; this list of detriment has no limitation on the common sufferings of Victims, Survivors and their Families.

On the issue of Forced and Illegal adoptions, we note that an illegal adoption can only be constituted where proven in contravention of law. Therefore, Restorative or

⁴² http://www.justice.ie/en/JELR/Pages/Criminal_Injuries_Compensation_Scheme

Reparative Recognition in Redress must be given to the falsification of certification of origin, i.e. documentation that was wilfully doctored and witnessed (in the presence of GPs, solicitors), presenting that the child would be registered as 'natural' to prospective parents, thereby feasibly circumventing any necessity for court order, visa/passport required at the time ^{43 44 45 46}.

Another important factor to consider is how these detriments have travelled through the generations, where the secret shame can be found not just within the Republic of Ireland but throughout the diaspora.

It is important in any modelling, not to view the Victims, Survivors or their Families as categories of Claimant.

As we have already outlined above, the Power of Words is vital. In considering how to model any compensation scheme it is important to recognise that the Women and Children were specifically identified, carrying with them a State and Religious 'mark of Cain'.

For many Women and Children, they have distinct and collective views on what happened to them. Their lives were similar to many of their fellow Citizens, forming part of that society and its norms; they participated in and contributed to society's well-being. However their range of experiences then demonstrates their separation from that society, that they were categorised, they were deprived of agency, they were marked as a distinct group, subject to a range of 'attacks' from being a member of that group, such an attack was industrial by scale. The attacks on them were/are demonstrably multiple and common in nature. Where they were once part of society, the ranges of conduct committed against them, furthered a State, Religious or organisational policy. It has delivered substantial and continuing Human Rights breaches. It presents a uniqueness of circumstance as opposed to the generality of life.

It is on this latter basis that the government should plan its modelling of any Financial Redress Scheme.

⁴³ <https://www.dailymail.co.uk/news/article-2257853/Irish-GP-scores-children-illegally-adopted-Lack-paper-trail-left-adoptees-unable-mothers.html>

⁴⁴ <https://www.irishtimes.com/news/social-affairs/up-to-4-000-irish-children-sent-abroad-for-adoption-over-30-years-1.4472519?mode=amp>

⁴⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118116/human-trafficking-report.pdf

⁴⁶ <http://bastards.org/bastard-nation-history-analysis-endorsement-of-adoptee-citizenship-act-2019-2020/> - (This is another important reference for issues of dual citizenship)

Therefore, the starting point must begin with a consideration of Interim Payments.

Interim Payments:

There should be an important requirement/consideration made to provide Interim payments; there are two options:

The first option is our preferred methodology.

Universal Payment:

- There should be no distinction (age/time spent etc), qualification or criteria used to determine qualification for such a payment;
- The only qualification criteria that should be used is whether an individual was admitted (no matter the length or period within a MBH(s)) and following removal from a MBH was subsequently readmitted to a MBH following the giving of birth, or associated Institution or Adoption Agency. This criteria should extend to include all those 'nursed-out', 'farmed-out' and Foundlings', within the scope and remit for eligibility and reparations;
- If the answer is 'yes', then the Victim or Survivor (of their families) qualify for payment of an Interim Payment;
- The payment should be immediate;
- The minimum payment should be €15,000 in lieu of a final award;
- All who were admitted or spent time from birth in a MBH should receive the payment;
- There may be political objections to such a Universal Payment but we consider that any political objections are misplaced for the following reasons:
 - The MBH issue presents a uniqueness of circumstance;
 - It is inappropriate to use previous compensatory 'Magdalene' schemes as the precedent simply because of the controversy that such schemes attracted and continue to attract. The same applies to any temptation to gravitate toward any civil law solutions as described above;
 - To consider the MBH issue in isolation delivers a continuing political fault in that the MBH issue is closely tied to issues and experiences, that lay beyond that primary entry point;

- There is a simplicity and attraction of application through this method, presenting an immediate, non-discriminatory, equality of arms;
- Some may argue that the capital outlay is excessive without qualification, but that argument presents a naivety in political thinking. It is obvious that the Irish government (and perhaps its predecessors) have suffered a continual loss of integrity and reputation. By creating a Universal Payment, it delivers a clear, strong political message that all have equality of arms, it would send a strong message to all Irish Citizens, that the government is listening. It would deliver a clear 'restorative' and constitutional message about Citizenship;;
- It also presents a strong social and financial benefit in that if the government chooses to adopt this methodology, Victims, Survivors and their Families will be spared in retelling and reliving their testimonies and experiences, it would remove the possibility that some would be dissuaded from applying to any scheme (government should encourage engagement through simplicity), monies will therefore be saved in assessments and administration, delivering an ultimate benefit to Irish taxpayers and reputation to the operation of government;
- All monies paid should be done so free of tax, charges or other financial encumbrances or conditions;
- In summary, the benefits delivered would witness:
 - Simplicity of application;
 - It would be cost-efficient in its administration;
 - It would deliver overall simplicity for the Irish State and Tax-payers;
 - It would deliver a very strong message of Restoration and a path toward ultimate Justice.

Alternative Model:

The alternative is of course found within the familiarity of a distinction/criteria led interim payment scheme. **It remains our view that all qualify and that no-one should suffer from any restriction, distinction or detriment suffered on any payment (noting that some will perhaps be unable to provide date-data confirming periods of incarceration).** If the government chooses to adopt the alternative model for payment, then any distinctions should be limited to:

- We repeat the qualifying criteria found in the preceding option, that being that the only qualification criteria that should be used is whether an individual was admitted (no matter the length or period within a MBH(s)) and following removal from a MBH was subsequently readmitted to a MBH following the giving of birth to also include all those 'nursed-out', 'farmed-out' and Foundlings', within the scope and remit for eligibility and reparations;
- This would include those Mothers and Children now aged 30 or more (this takes into account that the last MBH on the island of Ireland, closed its doors in 2006);
- For those suffering with any illness or any serious illness or a combination of illness types (physical, psychological, psychiatric);
- Any Interim Payment made can be deducted from final settlement;
- It is suggested that the minimum payment should be €15,000;
- All monies paid should be done so free of tax, charges or other financial encumbrances or conditions;

The full award from any Financial Redress Scheme:

This presents the greatest challenge for the Irish government and many of the arguments we have made on Interim Payments are replicated here.

Our preferred method is found within the scope of a Universal Payment.

Universal Payment:

- Whereas the alternative would deliver what it perceives as fairness through distinctions, we suggest that distinctions can be viewed in a different and dis-unifying way;
- Distinctions will be found through the category of the individual and their experiences, many of which are common and collective;
- If you recognise the commonality of those distinctions then you must also recognise the equality of experience suffered by the Women and Children;
- For the sake of clarity we would define qualifying Victims & Survivors to include the Mothers affected, Children, Siblings and their surviving Relatives, to include all those 'nursed-out', 'farmed-out' and Foundlings', within the scope and remit for eligibility and reparations. As we reject any attempt to provide any form of 'distinction' through the time spent within a MBH, we would go further and establish any such period to run from the point of conscious conception, the

period up to removal to a MBH, incarceration in a MBH and through any separation and subsequent exit or transfer from a MBH, recognising also the combined trauma that subsequently results from this defined experience. As we provide this definition, it must also be recognised that this is accompanied by the high potential for physical/emotional/psychological treatment or detriment, experienced in the period before incarceration, followed by the period of confinement in what amounted to penal conditions and lack of medical care;

- Presenting a recognised equality of arms, sends a powerful message not just to the Victims, Survivors and their Families, but also to wider Irish society;
- Recognising a collective experience presents the opportunity for simplicity in assessment;
- In following our preferred model for Interim Payments, it presents the the basics of qualification;
- The issues of distinction and collective experience again presents a uniqueness of circumstance and provides for a narrative that justifies payment;
- Every Victim & Survivor (and qualifying families) should receive a Universal Payment, without distinction or separation;
- The Capital Sum to be paid should be calculated, not just by Ministers, their Legal Teams and Actuaries, but also in partnership with a Victim, Survivor, Family-led panel, working in real-time, alongside government and not in any time-delayed Consultative process. This Victim/Survivor-led approach would deliver an important Stakeholder element at the heart of and into the moment that discussions take place, delivering a more solid assessment and agreement;
- Where any Victim, Survivor, Family-led Panel is created, they should be chosen from a wide pool of stakeholders and have their full expenses paid for their attendance at any meetings.
- We do not consider that any final Universal Payment should adopt the methodology of any tariff-distinction-based scheme and certainly not by any reference to any previous scheme (for example, the Magdalene Laundries), when determining the Capital sum. Determination of any Capital Sum present the opportunity to import blue-sky thinking into its construction;
- Once a Capital Sum is agreed, we would recommend that payment is then made to all Victims, Survivors and their Families at six-month intervals, in the sum of

€6,000, alternatively, every 3 Months in the sum of €3,000, until the final payment from the Capital Sum has been paid;

- All monies paid should be done so free of tax, charges or other financial encumbrances or conditions;
- With regards to any political objections, we simply repeat our observations found within our preferred methodology on Interim Payments.
- In summary, the benefits delivered would witness:
 - Simplicity of application;
 - It would be cost-efficient in its administration;
 - It would deliver overall simplicity for the Irish State and Tax-payers;
 - It would deliver a very strong message of Restoration and a path toward ultimate Justice.

Alternative Model:

Of course the government may decide to gravitate toward a more traditional tariff-distinction-based model.

It remains our view that all qualify and that no-one should suffer from any restriction, distinction or detriment suffered on any payment (noting that some will perhaps be unable to provide date-data confirming periods of incarceration).

For the sake of clarity we would once again define qualifying Victims & Survivors to include the Mothers affected, Children, Siblings and their surviving Relatives, including those 'nursed-out', 'farmed-out' and Foundlings', within the scope and remit for eligibility and reparations. As we reject any attempt to provide any form of 'distinction' through the time spent within a MBH, we would go further and establish any such period to run from the point of conscious conception, the period up to removal to a MBH, incarceration in a MBH and through any separation and subsequent exit or transfer from a MBH, recognising also the combined trauma that subsequently results from this defined experience. As we provide this definition, it must also be recognised that this is accompanied by the high potential for physical/emotional/psychological treatment or detriment, experienced in the period before incarceration, followed by the period of confinement in what amounted to penal conditions and lack of medical care.

We must also recognise a continued academic/governmental/institutional narrative, which confers an admission pathway under a girl's/woman's own 'volition'. However, this narrative must not be given credence and must be reframed against the Religious/

State and ultimate familial context of duress and indoctrination, which pervades and defeats any notion of free will or voluntary compulsion. It is a distinction that must not be accepted.

If the government chooses to adopt this alternative model for a Capital Sum, it presents a perceptual difficulty amongst Victims, Survivors and Families, that once again, 'the suits' are determining the issues and in any event, it will deliver an inequality of arms.

If the government chooses to adopt this route, we would observe and strongly recommend that:

- Interim Payments are paid as per our preferred methodology; it would present a strong message that the government is listening, and
- The Capital Sum to be paid should be calculated, not just by Ministers, their Legal Teams and Actuaries, but also in partnership with a Victim, Survivor, Family-led panel, working in real-time, alongside government and not in any time-delayed Consultative process. This Victim/Survivor-led approach would deliver an important Stakeholder element at the heart of and into the moment that discussions take place, delivering a more solid assessment and agreement;
- Where any Victim, Survivor, Family-led Panel is created, they should be chosen from a wide pool of stakeholders and have their full expenses paid for their attendance at any meetings. Such expenses must recognise the difficulties faced by this demographic and must account for overnight stays both pre and post such meetings of this Panel.

Minimum Requirements of a Tariff-Distinction-Based Ex-Gratia Compensation

Scheme:

Survivors are concerned about the consideration, limitation, management and scale of any ex-gratia payment scheme. They call for the following minimums to be imported into such a scheme, for example:

- Where a Financial Redress scheme is created, the Redress Board must be independent and appropriately resourced in expert and experienced specialists in trauma, psychotherapy etc. The Redress Board must be fully resourced with adequate staffing, to facilitate speedy adjudication. There must be no judicial/governmental role on the Board; it must be demonstrably independent. Appointments to the Board to be screened for potential conflicts of interest e.g. religious/governmental/judicial;

- Survivors do not accept that there should be any 'reinterpretation' on the nature of incarceration, or limits on what qualifies an individual to be considered to have been incarcerated. To do so not only causes discrimination to many victims and survivors but diminishes what many have experienced and would represent a failure by the State to accept the nature of those experiences;
- Based on their incarceration in Institutions, for mothers who gave birth either in the Institutions or at a local medical unit/hospital (and subsequently returned to the Institution), there should be no restriction, distinction or detriment suffered on any payment;
- For any child or children, their being accompanied and unaccompanied is irrelevant and therefore there should be no restriction, distinction or detriment suffered on any payment;
- Those who have been subjected to illegal birth registration, there should be no restriction, distinction or detriment suffered on any payment;
- For those who have suffered with physical/sexual or other abuse (there should be no limitation on the range of abuse that is claimed, for example, verbal, bullying or other degrading treatment). This category should include those who have suffered such injuries whilst in past or continuing care, there should be no restriction, distinction or detriment suffered on any payment;
- For any person (whatever their age) who has without informed consent, participated in any clinical vaccine trials, there should be no restriction, distinction or detriment suffered on any payment;
- There are two categories for onward care provided directly to any child/children from Institutions. For any child or children who were subjected to forced removal or separation, resulting in boarding out/fostering/or other adoption arrangements, which presented acknowledged vulnerability, with subsequent physical/sexual abuses or other abuses, arising from systemic failures and delivered through a process of non-vetting/regulation and reviews. Equally any child or children who were subjected to forced removal or separation, resulting in boarding out/fostering/or other adoption arrangements, which presented acknowledged vulnerability, suffering with abuses (for example, discrimination, prejudice, verbal, bullying or other degrading treatment), arising from systemic failures and delivered through a process of non-vetting/regulation and reviews. In all categories, there should be no restriction, distinction or detriment suffered on any payment;

- Equitable and equal acknowledgement must be considered for early-life separation, innate trauma suffered therein and ramifications for later life for the Mother and Child. Most of this complex trauma goes undetected, undiagnosed and unrealised by both Mother and Child. Research exists that directs to the physiological, emotional and psychological affects⁴⁷. Many birth/natural mothers downplay and/or fail to recognise child-relinquishment under any circumstance as an abuse and/ violation of human rights/trauma. We highly recommend trauma-informed education delivered by experts/agency to all affected by way of free access to night/day/further education online courses, literature (books hard/paper copy, electronic), pamphlets with access to specialist medical/therapeutic (holistic, hypnotherapeutic, mindfulness & wellbeing etc) measures and such measures should also includes greater GP training and awareness. This must be factored into any consideration of how a Redress scheme should be constructed.
- Where any State or Redress Board's recommendations are made to exclude time spent in an institution, before 6 months old and after 1973, these should be considered as exclusory are discriminatory, unjustified, unjustifiable and inappropriately remiss;
- Equally, anyone given medication (sedation etc), daily/regularly/occasionally, without fully informed consent, shall be awarded the same access to reparations;
- It is important to acknowledge the psychological/emotional abuse suffered, (this should include an acknowledgement of the seeping primal wounds, as these consequences have been dismissed in most, if not all output on the abuses, their ramifications, life and long-term impact, propensity to addiction etc. The category of 'nursed-out' to be included with boarding-out/fostering. Any mental institutional victims or survivors must be included in the scope of this Redress scheme;
- Any proposed scheme must cover loss of earnings for unpaid labour, loss of educational and social mobility/skills/opportunities. Submissions must be taken from the application and be separate and distinctive in merit and, must not be subject to any comparison to any previous statements/accounts given to a Commission/Inquiry when disparities/recollections etc will inevitably differ for a variety of reasons. Submissions to be considered with priority to age and health conditions, and, expedited within a maximum of 6 months from the application. The scheme must account for Legal Experts, who be available for applications/ applicants, paid at a set/standard fee by the State Redress Scheme, for each and every application regardless of complexity;

⁴⁷ <https://www.originscanada.org/adoption-trauma-2/trauma-to-surrendering-mothers/adoption-trauma-to-mothers-dr-geoff-rickarbys-testimony-to-the-new-south-wales-parliamentary-inquiry/>

- There should be explicit rules that Legal Services cannot charge an applicant monies for services provided in producing applications on behalf of Victims, Survivors and their Families. Remuneration for such Services should be paid by the proposed Redress Board;
- Any allocated payments must be paid directly to the Applicant and not via a third party i.e. Law Firms and, awards must be paid within two weeks of any adjudication with the recourse to paid-for independent financial advice by the Redress scheme;
- Any questionnaires that are compiled for each applicant, should be considered as not being designed for any interrogative scrutiny, but to aid recollection of events and circumstances potentially forgotten;
- There should be no imposition of a Non-Disclosure Agreement (NDA) upon any victim or survivor or their families who are potential recipients of any payment from any Financial Redress scheme. Recipients should be free to discuss (privately or publicly) any element of such a Financial redress scheme. If government is concerned about its 'assessment' process, then it should create an open and publicly accessible scheme or tariff that demonstrates how calculations will be made. The insistence of any NDA, stifles any public commentary of the scheme and the issues that gave rise to that scheme. NDAs are not in the broader interests of the Irish State nor of its Citizens;
- There should be no element of 'full and final settlement' of any of the issues claimed by victims and survivors or their families. There should be no claim from any Financial redress scheme that any payment made is in lieu of any wrongs committed by Church or State. Payment made should be free of all such encumbrances and further, there should be no condition attached that prevents any recipient of monies (victim, survivors or families) from taking any subsequent legal action in the future. Further, if any victim, survivor or family achieves further payment through any legal action, the rules of this proposed Financial redress scheme must preclude any clawback from any monies received and the rules of the scheme must prevent any court from taking into account any payment received from the Financial redress scheme.

Choices of Payment:

In the delivery of any ex-gratia compensation scheme, all victims and survivors should be given the following unrestricted choices:

- To receive the total amount awarded as one lump sum, free of any form of taxation, guaranteed by the Irish government, for receipt in any Jurisdiction the victim or survivor resides in;
- To receive no less than 60% of the lump sum awarded and the remainder 40% by way of an annual pension payment, properly and adequately invested (receiving annual reports as to the scale of the 'pension pot' and its performance, to deliver a high rate of return and offering a total financial protection. The option to defer 40% of the payment can be accepted by the victim or survivor either as an enhanced pension monthly payment or twice yearly payment:
 - A victim or survivor shall at any time during the operation of the deferred part of any compensation scheme, be free to withdraw and receive the deferred part as a lump sum, with interest, without any penalty or charges and free of any form of taxation, guaranteed by the Irish government for receipt in any Jurisdiction the victim or survivor resides in;
 - Where a victim or survivor opts to defer part of the payment, the recipient shall receive paid-for (by the Irish government), independent financial advices (at the request of the victim or survivor - one per annum as a minimum), as to any investment potential, so empowering them to maximise their investment and return;
 - In offering any such investment advices, the victim or survivor shall receive the services of an independent paid-for advocate (paid by the Irish government), to help them determine the best outcomes of any financial advices received;
 - At all times victim or survivor's capacity shall be considered and advocated for through the primary support of their family or other personal network. If such issues arise, then the victim or survivor or their representatives shall receive free (paid-for by the Irish government) independent legal advices to determine any issues, in whatever jurisdiction;
 - When a victim or survivor dies, whether they witnessed the State Apology (Apologies) or not, the remaining 'pension pot' shall be paid in its entirety, as a lump sum, without any taxation or other charges, guaranteed by the Irish government, for receipt in any Jurisdiction the victim or survivor resided within for the benefit of their estate.

Pre-deceased Payments:

Where a victim or survivor has witnessed a State Apology (Apologies) or not, and has died prior to the roll out of any ex-gratia compensation scheme, the said payment

shall be provided to the Estate of the deceased. Such payment shall be paid in its entirety, as a lump sum, without any taxation or other charges, guaranteed by the Irish government, for receipt in any Jurisdiction the victim or survivor resided within for the benefit of their estate. Special consideration to be given to relatives affected and eligible who may not have mental capacity to apply and who are at risk of exclusion for want of having no legal Power of Attorney in place.

4. Additional Supports & Areas of Concern

Healthcare supports

- HAA Medical Card as first announced for women of the Magdalene Homes and or similar for survivors in other jurisdictions including access to private healthcare facilities provides for a working precedent;
- However, it is our view that in consulting Victims and Survivors as to their needs, it is incorrect to establish the answers to that question in one moment of time;
- It is clear that the needs of Victims and Survivors are wide and varied which suggests a universality;
- But a Consultation on this point potentially risks or fails to look beyond the 'moment in time', and into the future;
- It must be accepted that the government is faced with an ageing demographic and therefore any such card should import a future stability;
- Key issues were clearly expressed in 2019 ⁴⁸ about repeat-trauma through hospital visits, end-of-life care, independent living, home care packages and funeral expenses - all important aspects of ongoing health and social care;
- It is our view that in the provision of any medical card, the government should:
 - Deliver equality of arms;
 - Recognise that a card should be delivered without any form of limitation on its criteria, application and use;
 - That unlimited benefit should cover all present and future physical, psychological, rehabilitative, care and transport and expense needs of any Victim or Survivor;
- There will of course be some in government or the Oireachtas who may object to this universality principle, however, we would argue that the delivery of such a principle presents:
 - Simplicity of application;
 - Simplicity of use (through a single point of delivery of GP Services and Onward referrals);
 - It would be cost-efficient in its administration;
 - It would deliver overall simplicity for the Irish State and Tax-payers;

⁴⁸ <https://www.education.ie/en/Publications/Education-Reports/consultations-with-survivors-of-institutional-abuse-on-themes-and-issues-to-be-addressed-by-a-survivor-led-consultation-group.pdf>

- Fears of Capital costs are allayed through a recognition of the age-demographic of Victims and Survivors, which presents a reality of overall costs.

Criminal Enquiries:

Correction of Reports and Investigation into Criminal activity

- Correction of any illegal birth markers/ registrations via legal compulsion to rectify within the sites from where children were routed for adoption both overseas and in Ireland (182 institutions in all)
- An active and immediate correction of the now infamous Commission's report which discounts to the point of ignoring survivor testimonies.
- Garda Investigation team fully resourced on foot of survivor testimonies and invitation for further survivor participation to enable same with access to DPP and advice centre for survivors with sensitive information.
- Criminal Assets Bureau and File Recovery team appointed to seize all records where Agencies/Institutions insist on with-holding; resources to conduct raids, etc.

Identity:

Diaspora

Basic requirements include:

- Sincere and resourced 'reaching out' Public Information Campaign to inform and aid victims and survivors or their families who live overseas
- An opportunity to regain Irish citizenship where lost, due to falsified records or abuse of power against a citizen of this state. **This is a fundamental right not just to the victim or survivor but also to those family members who so qualify under Article 9 and Amendment 27 of the Constitution of Ireland.**
- Repatriation when requested from those who were trafficked as children out of State along with recognition of their Irish Citizenship.
- Support services to include medical housing and social care supports; healthcare and community based supports where applicable, paid for by the Irish government in whatever Jurisdiction the Victim or Survivor resides in. Such benefits are to be guaranteed and paid for by the Irish government and free from taxation or other charges in that Victim or Survivors Jurisdiction.

Adoption Law and the Status of Children

It is important to acknowledge the European Convention on the Adoption of Children 1967 and now revised (27/11/2008) and its extensive provisions. In particular, we note the provisions contained therein that speak to an adopted persons right to access information, and the power of discretion given to Contracting States to override any limitations that access to information (Article 22) ⁴⁹. We note that the Irish Republic has yet to sign and ratify the revised version of the Convention ⁵⁰, but note that Ireland signed and ratified the original Convention ⁵¹.

There are several key questions that should be determined:

- Is it desirable that the State should amend Section 35 (1) of the Status of Children Act 1987, so that adopted people (whether legally or illegally adopted) are included in the statutory right to a declaration of parentage?
- Is it desirable that the State should establish a statutory right for all adopted persons to know they are adopted?
- Is it desirable that the State should direct the Chief State Solicitor and State Claims Agency not to plead the Statute of Limitations in adoption and institutional abuse cases (as we have detailed in Chapter 2)?

To each of these core questions, through our collective experiences and work, we believe that the answers to these questions is in the affirmative.

In considering the Law and the Status of adopted Children, we consider that it is necessary to reflect upon the 1952 Adoption Act, which passed into Irish Law on the 1st January 1953. Section 24 of the Act enforced the secrecy imposed, once the adoption order was made, thus:

‘the child shall be considered with regard to the rights and duties of parents and children in relation to each other as the child of the adopter or adopters born to him, her or them in lawful wedlock’.

This then placed an onus on the State - Section 22 (5) of the Act, which directed the General Registrar who:

‘shall keep an index to make traceable the connexion between each entry and the corresponding entry in the register of births. That index shall not be open to public inspection; and no information from it shall be given to any person except by order of a Court or of the Board’.

⁴⁹ <https://rm.coe.int/1680084823>

⁵⁰ https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/202/signatures?p_auth=6uYL92Ad

⁵¹ https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/IRE?p_auth=6uYL92Ad

We have therefore concluded and strongly recommend that the State should establish a statutory right for all adopted persons, to know they are adopted and to be able to access information related to their birth, without limitation. Therefore, it is relevant to cite Section 35 (1) of the Status of Children Act of 1987, which should be amended to reflect that persons who were adopted, legally or illegally, are included in the statutory right to a declaration of parentage.

Adoption Practices: Fully funded independent inquiry with external involvement

We begin with the principal position that:

“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents” - Article 7 (1) The Convention on the Rights of the Child⁵², and

“The child should at all times have a name, a nationality and a legal representative. The child should not, as a result of foster placement, adoption or any alternative regime, be deprived of his or her name, nationality or legal representative unless the child thereby acquires a new name, nationality or legal representative” - Article 8 of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally⁵³

There must be a full Public Inquiry into the adoption practices throughout the Institutions or through the State, or their servants or agents (including through private GP placements ⁵⁴) ⁵⁵, importing our observations in Chapter 2 about future construction, operation and management of such an Inquiry, including the agreement that all of its members agree to be accountable to State upon completion.

Any legislative measures must offer the option for adopted persons to revoke their adoptive name and revert to the original/birth name where requested.

In any legislative measure, it must import and expedite the use of dedicated (professional genealogists). Provisions should introduce the full requisite manpower/ staffing, funded by the State for tracing resources, that are extendable to international agencies where inter-country adoption is suspected or reasonably evidenced. Further explorational tracing must run concurrently with State-funded

⁵² <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁵³ https://childhub.org/sites/default/files/library/attachments/168_244_EN_original.pdf

⁵⁴ <https://www.dailymail.co.uk/news/article-2257853/Irish-GP-scores-children-illegally-adopted-Lack-paper-trail-left-adoptees-unable-mothers.html>

⁵⁵ <https://www.independent.co.uk/arts-entertainment/little-blessings-1307025.html>

DNA testing. State-funded DNA testing is particularly relevant and necessary, where personal evidence, produced through tracing information is missing/lacking and personal circumstances result in complex sourcing identity/ancestry/heritage/biological-medical history; this is important and indicative of the requirement for a speedy conclusion, particularly where genetic/hereditary illness is of contemporary and inter-generational importance.

Handwriting experts must be employed to challenge signatures on any relevant documentation and thereby assist truth recovery and corroboration against forgery. Where criminality is determined then this must attract an automatic referral to the Gardai.

An independent body must be established on a cross-jurisdictional basis. This should be in collaboration with, and in authority with international exit-pathways used by Victims and Survivors; such exit-pathways include but are not limited to:

- NI - Republic of Ireland;
- NI - Republic of Ireland to GB;
- NI - Republic of Ireland to-US;
- NI - Republic of Ireland to Canada;
- NI - Republic of Ireland to Australia;

Recognition and the work of this independent body and the exit-pathways will deliver value in being able to probe adoption practices and powers to compel, via law/police, relevant adoption agencies/institutions, in each jurisdiction, to disclose all relevant files (e.g. admin, accounts and personal), or seek legal powers to enter (with or without a power of entry/warrant) any relevant offices or stage facilities. Victim and Survivor representatives must be given sight of all records/files accessed by the body, in the interests of verification and transparency.

DNA Database and Genealogy support

- An opportunity for those who find via DNA their families to reconnect with financial assistance to undertake that journey;
- The provision of Genealogy experts, necessary for tracing. To provide an appropriate specialist intermediary party, to approach and contact any discovered and potential family trace(s);
- A State commemoration event of rediscovered Identity at Áras an Uachtaráin.

Data:

The General Data Protection Regulation is the Principal data-regulation in the Republic of Ireland and its automatic adoption satisfies the Republic's Treaty obligations to the European Union ⁵⁶. GDPR expertise must be utilised and taken into full account, to examine and implement the EU GDPR supremacy, over all national and domestic legislation. All existing and future legislative measures should import all the provisions of the GDPR and expedite actions and objectives to support this goal (utilising emergency legislation if necessary). Any failure to fully implement the GDPR only creates legal uncertainty for all Irish Citizens. Legislation must fully instruct all data-holders as to their obligations under the GDPR and to fully and quickly comply with data requests from stakeholders, regarding any outstanding, past refusal and future submissions, within an agreed and reasonable timeframe as specified by the GDPR, the Information Commissioner and through any agreed stakeholder consultation.

Education:

Memorialisation / National Archive

- A national memorial centre (often deemed 'site of conscience') ⁵⁷ with opportunity to develop regional memorial centres that are accessible to survivors and those affected and where survivors are invited to meet visitors, relate their experiences etc;
- To advance the discussion on regional memorials, they should be erected in each of the 32 Counties, to take account, commemorate and acknowledge and not place additional burdens on Victims, Survivors or their Families, through journeys to Dublin/Belfast, for annual commemoration.
- Any annual Commemoration should occur on an agreed and ordained statutory holiday for NI and RoI;
- Educational scholarships for Post Primary Schools / Universities to continue the learning experience and facilitated by survivors and families to deliver their testimonies directly;
- Institutional history must be integrated into secondary/comprehensive/high school curricula;

⁵⁶ https://www.irishexaminer.com/opinion/commentanalysis/arid-40208042.html?type=amp&_twitter_impression=true

⁵⁷ <https://nctr.ca>

- Each Applicant to the Redress scheme must be given access to educational/vocational training opportunities at the expense to the State, where the Applicant's training/education has been denied, as a result of institutional incarceration/detention and where social mobility has been limited.

The Lost Generations:

The Medico-Social Detriment

Recognition must be given to the affects of Institutionalisation on Women and Children. This recognition must exist, irrespective of their period of incarceration or detention, within any form of Institutionalised or 'care' process. Comparison must be made against those who have never been institutionalised and the differences determined between those who have been incarcerated and institutionalised and those who have not. Any attempt at creating a Restoration or any Restorative scheme, must recognise the very real potential amongst Women and Children for delays in cognitive function, problems with motor development, growth delays, reproductive system problems or the development of language. Socio-emotive behaviours and the potential for psychiatric difficulties must be acknowledged. There should be thorough physical medical examinations to assess and determine the overall affect of institutionalisation on all aspects of the body and in particular the brain, either resulting from the conditions produced through that institutionalisation or through any physical or other abuse suffered through that process. It is vital that these extensive assessments, by reference to a comparator group, ultimately delivers to all Victims and Survivors, paid-for, therapeutic, medicinal or psychiatric solutions. ^{58 59 60}
^{61 62 63 64 65 66 67 68} .

⁵⁸ <https://core.ac.uk/download/pdf/303931489.pdf>

⁵⁹ <https://www.apa.org/pi/ses/resources/indicator/2019/04/incarcerated-women>

⁶⁰ <https://core.ac.uk/download/pdf/147605016.pdf>

⁶¹ <https://www.apa.org/monitor/2014/06/neglect>

⁶² <https://www.pnas.org/content/pnas/early/2012/07/17/1200041109.full.pdf>

⁶³ <https://pubmed.ncbi.nlm.nih.gov/21756437/>

⁶⁴ [https://www.biologicalpsychiatryjournal.com/article/S0006-3223\(13\)00499-X/abstract](https://www.biologicalpsychiatryjournal.com/article/S0006-3223(13)00499-X/abstract)

⁶⁵ <https://pubmed.ncbi.nlm.nih.gov/17656028/>

⁶⁶ https://www.originscanada.org/adoption-trauma-2/trauma_to_surrendering_mothers/adoption-trauma-to-mothers-dr-geoff-rickarbys-testimony-to-the-new-south-wales-parliamentary-inquiry/

⁶⁷ <https://www.thetimes.co.uk/article/newborns-kept-in-dying-room-by-mother-and-baby-home-nuns-6dmsx5dn8>

⁶⁸ <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx>

Unmarked Graves / Recovery of Remains

- In establishing essential principles, to restore the lost generations, any work should install the Principles of the Vienna Convention⁶⁹ and its preamble, or other equivalent International Protocols, or a specifically designed Protocol, which imports the elements of the Vienna Convention;
- Immediate setting up with necessary resources of a State run database to enable survivors or those who feel they are related to a missing child, to give their DNA to be stored securely for the reason of matching only and destroyed upon completion of that work;
- The location of human remains is an integral part in the issues of enforced disappearances. Discovery can assist, through elimination, the arduous process of the long-term tracing of loved ones ^{70 71};
- There should be an expedited probing to locate human remains.
- There should be timely Exhumation, DNA testing, Discovery, Re-interment (where agreed), Inquests and Coroner involvement and appropriate memorial erected;
- Scientific technology should be urgently deployed within existing cemeteries, on burials/graves in situ, to examine for potential multiple burials in either in single coffins or multiple stacking within graves;
- Criminal charges/proceedings must be instigated against any/all institutions under scrutiny/charge, where any Criminal matter or breach of Order's are identified;
- Therefore, the recovery of the remains of the lost children of Tuam as already agreed by the previous administration should now be deployed without further delay, utilising the above conditions. It is a requirement that there should be an urgent appointment of a Coroner or team of Coroners, to note the causes of deaths and correct recording or amendment of any erroneous detail, to enable any legal case that may arise as a result.
- The Order of the Bon Secours should be primarily liable for 100% of the costs of these obligations ⁷². Any negotiations with the State or Local Authority for any cost-sharing scheme between them should not impede progress on the Order's

⁶⁹ https://www.bu.edu/jewishstudies/files/2018/08/HOW-TO-DEAL-WITH-HOLOCAUST-ERA-REMAINS.FINAL_.pdf

⁷⁰ <https://www.irishmirror.ie/news/irish-news/ex-employee-mother-baby-home-14211564>

⁷¹ <https://www.irishtimes.com/news/health/dead-babies-placed-in-coffins-of-unrelated-adults-until-80s-hse-says-1.2034819?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fnews%2Fhealth%2Fdead-babies-placed-in-coffins-of-unrelated-adults-until-80s-hse-says-1.2034819#.WotwXq0YSdM.mailto>

⁷² <https://www.independent.ie/irish-news/order-that-ran-tuam-home-refuse-to-say-if-exhumation-funds-offer-has-increased-39970915.html>

primary obligation and the State's actions to legislate for action and/or install a Coroner or a team of Coroners.

- Investigation of sites where remains of children are 'lost' or as yet unknown to include all technologies such as Ground Penetrating Radar (GPR) to sites such as Sean Ross Abbey (SRA) and Bessborough (and others as discovered). Both SRA and Bessborough sites were run by the same Order who appear to have held little if any regard for the respectful burial of children and recording in paperwork. The Sisters of the Sacred Heart of Jesus and Mary must be required to pay all funds applicable to locate those remains and State must support survivors in the provision of a detailed account of those who lost their lives in the Institution.
- The appointment of an expert such as Dame Professor Sue Black ⁷³ together with special rapporteur Professor Conor O'Mahony to advise the Dáil on such work either via Committee or in a special sitting;
- All currently planned or approved building or construction or road-scheme developments should be immediately suspended, whilst the grounds of every former/still owned and working institution is forensically examined;
- Irish & Northern Ireland government's need to be proactive and pre-emptive ^{74 75 76 77 78}, in delegating responsibility for each County Council to be on alert on planning proposals received relating to the sites of former/existing institutions and enterprises. Government's should monitor their directive and the application by local councils. Such awareness on planning proposals must ensure geophysical and/or manual survey/excavation be carried prior to commencement of any works on those sites. Victims/survivors cannot feasibly maintain a watchful eye on each site to ensure due diligence and that the duty of care is applied, to mitigate against non-disclosure of any findings pertaining to human remains in unmarked/unofficial burial conditions.

⁷³ <https://www.irishtimes.com/news/world/uk/mother-s-campaign-to-exhume-baby-s-body-produces-empty-coffin-1.3207682>

⁷⁴ <https://www.belfasttelegraph.co.uk/opinion/columnists/alf-mccreary/peter-quigley-my-birth-mother-placed-me-in-a-dublin-orphanage-the-bethany-home-in-rathgar-more-than-220-children-died-there-from-neglect-and-malnutrition-i-am-one-of-the-fortunate-ones-a-bethany-survivor-38717781.html>

⁷⁵ <https://news.sky.com/story/nuns-among-12-arrested-over-historical-abuse-at-orphanage-in-scotland-11480033>

⁷⁶ <https://www.ctvnews.ca/canada/unmarked-graves-of-children-from-residential-school-found-beneath-rv-park-1.4076698>

⁷⁷ <https://ulsterherald.com/2018/03/28/step-closer-to-locating-workhouse-graves-in-dungannon/>

⁷⁸ <https://connachtribune.ie/fears-former-orphanage-may-contain-babies-burial-site-044/>

Annex 1:

The Basic Requirements of the Restorative Recognition Scheme:

Purpose:

- To acknowledge the people central to this scheme are the experiential, those who survived such Institutions and families affected including those who lost family members in the Institution or in later times.
- To acknowledge the many mothers and children, along with their families and how they have been impacted negatively by their experiences in the care of Religious Orders where human rights violations occurred. It should also be acknowledged that the State was influenced by Church hierarchy or Church hierarchal processes and dogma and therefore failed to regulate services and hold itself and Religious Orders to account. Access and mechanism's for Restorative Justice must be made available to all those who wish to avail themselves of that Justice
- To help people who have experienced institutional abuse, to gain access to a range of supports to include counselling, health and housing supports, and a Redress payment
- To recognise the suffering and ongoing trauma endured because of abuses of power by State/Religious Institutions.
- To recognise the 'lost' children and mothers of such institutional care, to include all those 'nursed-out', 'farmed-out' and Foundlings', within the scope and remit for eligibility and reparations
- To hold institutions involved accountable for failure to protect
- To aid a truthful narrative and secure documentary evidence from State and Religious Orders and private individuals
- To learn from mistakes of the past by ensuring a continuous learning environment, memorialisation as appropriate and political responsibility.

Mimimums:

The Restorative Recognition Redress Scheme should involve:

- Those who have experienced institutional 'care' within Mother and Baby Home and in 'boarding out'; adopted whether legal or illegal; and families of the 'lost' children and adults.

- The formation of a Redress Support Service — free, confidential emotional support and legal and financial counselling for people thinking about or applying to the Scheme along with specialist trauma-informed counselling.
- The RR Scheme is devised with a strong focus on person-centred supports thus requiring survivor advocates to sit on the board to devise and implement the applications process.
- Inviting Independent Decision Makers who consider applications and make recommendations and conduct reviews.
- Including the availability of free legal advice afforded to those affected to advise them of their rights.
- Encouraging/Promoting or where applicable forcing participating Institutions to provide redress – in all its forms – access to records; documentary evidence; face to face meetings if required to people who were held in the institutions.

GLOSSARY	
Expression or Acronym:	Definition:
Abuse of Power	Is where persons in charge of the Institutions or in positions of Power, either in political, religious or social life, or combined, use their influence to subjugate, control and abuse those over whom they held control
Application	A method to apply for a benefit or a scheme. An application will be available online, in hard copy format and with assistance provided if required via a dedicated telephone helpline.
BA	Belfast Agreement, also known as the GFA
Child	A child is a person under the age of 18
Child Abuse	Either the physical or psychological abuse, or both types of abuse combined, committed against a child. Under a Scheme, child abuse is committed against a person under the age of 18
Counselling	A system whereby physical, psychological, social or pastoral support is given to a Victim or Survivor. Victims & Survivors can request or apply for such support. Counselling can include family counselling and supports for significant other/carer(s). Depending on where people live they should be able to access a lump sum to pay for services in their local area or a referral to dedicated bespoke services
DFM	Deputy First Minister
DNA	Deoxyribonucleic Acid (genetic code of organisms)
ECHR	European Court of Human Rights
GFA	Good Friday Agreement, also known as BA
GPR	Ground Penetrating Radar
FM	First Minister

Independent Decision-Maker	Independent Decision-Makers will or can consider applications for redress. They are highly experienced people from a range of backgrounds to include representatives of victim/survivors themselves
Institution	An institution means an organisation, such as a Mother and Baby Home, an Adoption Agency; a Religious Institutions; an Orphanage; a Children’s Home; Industrial School; Magdalen Laundry; a Church; a Diocesan network; a local or national Government Department, Private maternity ‘homes’/hospitals
Institutional Child Abuse	Where the abuse occurred, for example, on the premises of an institution, or where activities of an institution took place (such as a Convent, Orphanage, Church, Hospital), or by an official of an institution
Mother	As outlined in the Commission’s report (MBHCR), mothers are girls as young as 12 upwards who became pregnant outside of marriage and gave birth in the institutions of State (hospitals) or within dedicated facilities such as Mother and Baby Homes or private facilities and who were impacted negatively as a result of the experience which may include the falsification of records; the separation from her child; enforced disappearances etc/. so that there is no opportunity for recovery or reunion.
MBHC	Mother and Baby Homes Commission
MBHCR	Mother & Baby Homes Commissions Report
NDA	Non-Disclosure Agreement
NI	Northern Ireland
NSMC	North South Ministerial Council
OC	Oak Consulting
Redress	Redress means acknowledging harm done. It includes many forms (apology; tangible supports to include counselling; direct services such as enhanced medical card for a range of services (also in private health facilities); improvements to enhance health – lifelong living / housing / social supports/ political advocacy/ counselling / memorialisation and a direct person-centred ongoing review of services applicable

Review	A method of Independent Assessment. We recognise that decisions are often wrong due to an inability to understand. Therefore an independent advocate from a support network will review the application and support in its appeal
SALI	Separation, Appropriation & Loss Initiative

“And that is why I swore never to be silent whenever wherever human beings endure suffering and humiliation. We must take sides. Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented. Sometimes we must interfere. When human lives are endangered, when human dignity is in jeopardy, national borders and sensitivities become irrelevant. Wherever men and women are persecuted because of their race, religion, or political views, that place must – at that moment – become the center of the universe”

Elie Wiesel - Nobel Acceptance Speech - 10 December 1986 ⁷⁹

⁷⁹ <https://eliewieselfoundation.org/elie-wiesel/nobelprizespeech/>

The Authors:

Breeda Murphy

Breeda is committed to issues of social justice and in particular societal structure and how power is controlled to deny certain groups of people their rightful place in society.

Breeda began researching and working in the area of disability in the 1990's and returned to studies at NUIG to research the 'Forgotten Irish'; people who had left Ireland for the UK, during and following the war, to rebuild Britain and support families in Ireland by way of remittances.

Breeda argues that those men and women built the Irish system of health, education and social care by sending monies home regularly. It was while researching in London that Breeda first met women and men from Ireland's maze of institutions who left for Britain as teenagers.

The recent Commission's report looked at exit pathways; many stigmatised within their own country 'took the boat' to begin a new life without support structures. She cites that those men and women are her heroes, forgotten sadly by two communities – the one they left behind and the one they contributed to and yet, being Irish felt an outsider in.

Over six years ago Breeda began working with survivors of Tuam Mother and Baby Home and witnessed the weight of testimonial evidence, then largely ignored by the Government.

Breeda vowed to advocate alongside survivors and families of the lost children in an effort to garner support and convey the imbalance of power which remains evident today. Breeda when asked 'Why', replies that on witnessing injustice reined upon such vulnerable people, one cannot walk away.

Working at grassroots Breeda has enabled those affected to avail of tangible support, including grant aid, and new independent social housing, in collaboration with Galway County Council, medical support from HSE and the recording of testimonies in a dedicated archive held at NUIG. Today Breeda advocates alongside survivors and families seeking answers from Religious Orders and the Government. Survivors Breeda engage's with are located in the North and South of Ireland, the UK and the United States. Collectively, they are eager to ensure the survivor narrative, speaking

truth to power, rises above the din of conjecture contained in state commissioned publications.

Eunan Duffy

Eunan is an Adoptee, Activist and Advocate. He was adopted from the Marianvale, Mother & Baby/Magdalen Institution in Newry, Co.Down; this Institution was operated and owned by the Good Shepherds Sisters from 1946 until 1984.

Eunan only became aware of his adoption circumstances in 2016, when it became necessary for him to provide a full birth certificate, as part of satisfying marriage requirements in Poland.

This life-changing revelation had a profound impact on Eunan and his family.

Added to his personal and family concern, was made all the more worrying, through the subsequent discovery that the origins of his adoption involved one of many and now infamous carceral institutions, renowned for a catalogue of Human Rights abuses and crimes.

For Eunan, the immediate challenge became a race against the clock to try and trace his biological origins, identity and heritage, within a system still designed to obstruct and discourage the discovery of family roots and medical genesis.

That was one battle within the complex war that he has overcome and conquered.

Through his commitment and work, Eunan has helped reunite 7 separated families in the last 2 years, who were associated with the issues common to Eunan's experience.

Eunan considers that yet again, it is those affected who are doing the heavy-lifting, where the State has continued to abdicate its responsibilities in assisting with reunifications, via archaic and discriminatory legislation, and in some cases actually went further in abetting the obstruction of reunion.

Eunan acknowledges that many continue their quest for their origins; they have and will continue, now and in the future, to struggle in the same vein for the ultimate truth, disclosure and justice.

For Eunan, he believes that his work is not yet complete and is dedicated to ensure that the battle for his own truth and that of others goes on!

Frank Brehany



Frank is a dual-Citizen, one of which delivers long-standing European Citizenship. He is a medically retired Police-Officer and qualified in 1997 as a practising Solicitor, working initially in formal legal practice. This led to ownership and management of a National Consumers Organisation in the UK. Frank's interests in Law covers not just Consumer Law, but also the problems found within Consumer Contracts, European Law, Human Rights and National and cross-border solutions to Consumer problems. He has extensive media experience, and comments on Legal issues for Consumers, Travel Trends and the Travel related problems experienced by Consumers. Frank continues as a self-funded practising solicitor, not currently working in Legal Practice, but he maintains his competency as required by the Solicitors Regulatory Authority of England & Wales. Frank applies his legal training and experience, to develop solutions within the Standards-making and Political environments.

He has never been a member of any political party or grouping and he voluntarily subscribes to the Nolan Principles for Standards in Public Life.

Frank's interest in the 'Magdalene' story stems from the fact that his family held a 'secret', stretching across the decades. He discovered that his Father was a 'Magdalene Child' and was separated from his Mother and subsequently 'boarded out'. His GrandMother was incarcerated within the Mother & Baby Home and Magdalene Laundry Institutions for 42 years, until her death, never to be reunited with her child or family.