

ICCL Submission on a Restorative Recognition Scheme for the Former Residents of the Mother and Baby Homes and County Homes

31 March 2021

Overview

The Irish Council for Civil Liberties (ICCL) welcomes the opportunity to provide input into the 'Restorative Recognition' scheme. While it is positive that the Government is committed to implementing its Action Plan and providing support to former residents of Mother and Baby Homes, ICCL has some concerns about this proposed scheme and its process, particularly in relation to the fulfilment of the State's international human rights obligations.

This submission first highlights the need for the State to fulfil its human rights obligations and ensure that the rights of women and children affected by Mother and Baby Homes are respected, protected and fulfilled. Second, it highlights the need to provide reparation to survivors of Mother and Baby Homes, the importance of taking into account key learnings from previous institutional redress schemes, and some key human rights considerations in relation to the operation of the scheme. Third, it notes concerns around the terminology and handling of the consultation process of the 'Restorative Recognition' scheme. Finally, it provides a summary of recommendations.

Part 1: The State needs to fulfil its human rights obligations

A human rights-based approach to addressing historical abuse is of the utmost importance and a legal requirement.¹ Public bodies in Ireland have a statutory duty to promote equality, eliminate discrimination, and protect the human rights of members, staff, and the persons to whom they provide services.²

Despite containing evidence of a range of gross human rights abuses, the final report of the Mother and Baby Homes Commission lacks a comprehensive human rights framing or analysis of the abuses that occurred in and around Mother and Baby Homes. The Government did not mandate the Mother and Baby Homes Commission to undertake a human rights analysis of the abuses that occurred against the human rights standards and obligations on the State that were in place at the time.³ ICCL and others have previously critiqued this approach.⁴ The Irish Human Rights and Equality Commission, the national public body mandated to protect and promote human rights and equality in Ireland, advocated for such a framework but the Government chose to ignore its submission.⁵ This is a fundamental failure, one which the Government now has the opportunity to remedy in designing, developing, and delivering measures in this area.

It is welcome that the call for submissions on the public consultation process for the 'Restorative Recognition' scheme notes that the government's action plan seeks to be

survivor-centred and based on human rights principles, and that “*financial recognition is but one aspect of the government’s action plan*”.⁶

However, the Government must fulfil its human rights obligations in practice. It is of significant concern to ICCL that there is no mention of human rights in the Government’s statement on the final report of the Mother and Baby Homes Commission and 22 point action plan⁷. ICCL has previously highlighted the Government’s human rights obligations following the publication of the final report of the Commission of Investigation into Mother and Baby Homes.⁸ Other organisations including the Irish Human Rights and Equality Commission⁹, the Clann Project¹⁰ and UN Human Rights Treaty Bodies¹¹ have also emphasised Ireland’s human rights obligations in relation to proper and sufficient redress and reparation for survivors of Mother and Baby Homes. We would also highlight the recommendations by the Collaborative Forum of Former Residents of Mother and Baby Homes and call on the Government to publish their report.¹²

These human rights obligations include providing effective remedies to victims of human rights violations.¹³ The right to an effective remedy requires the State to:

- (a) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
- (b) Provide those who claim to be victims of a human rights law violation with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation; and
- (c) Provide effective remedies to victims, including reparation.¹⁴

The right to an effective remedy also includes the right to know the truth about the human rights violations a victim has suffered.¹⁵ As part of fulfilling this broader right, the State has an obligation to fulfil the right of all individuals to access documents that contain their personal data and provide information about their personal identity.¹⁶

While it is acknowledged that the Restorative Recognition scheme is one component of the Government’s broader Action Plan, there is a need to assess whether it will fulfil the Government’s human rights obligations. The Government’s current Action Plan outlines eight areas and 22 action points where it intends to take action to provide redress for survivors.¹⁷ These areas are: a survivor-centred approach, apology, access to personal information, archives and database, education and research, memorialisation, restorative recognition, and dignified burials. This Action Plan is an important but incomplete response to the human rights violations that took place in Mother and Baby Homes in Ireland. Proposed measures, such as an apology, memorialisation efforts, and access to personal information are important under human rights law and transitional justice principles.

It is currently unclear whether implementing the Action Plan would fulfil the State’s human rights obligations as there is not enough detailed information available about each of the action points and how they will be carried out. For example, while dignified burials and legislation on institutional burials is welcome, ICCL raised significant concerns about the proposed legislation in another submission to the Government.¹⁸

According to international law, effective reparation should include compensation, recognition/satisfaction, restitution, guarantees of non-recurrence, and rehabilitation.¹⁹ To date, there has been no reparation for those whose rights were violated by the Mother and Baby Homes system. This will be further examined in relation to the proposed 'Restorative Recognition' scheme in Part 2.

(i) Lack of effective investigations

Effective investigations into the Mother and Baby home system is lacking. The final report of the Mother and Baby Homes Commission has been criticised by survivor and human rights groups.²⁰ It was not an effective investigation into the abuses that occurred as it did not undertake a human rights analysis.

Recordings of testimony provided by survivors to the Commission have been destroyed. Some survivors have said they were not told that this would happen.²¹ This collection, processing and destruction of personal data without consent could also constitute a breach of the General Data Protection Regulation (GDPR). While the Government has stated the audio files have been recovered, these have yet to be provided to people who wish to have them.²² It is vital that where people request copies of their transcripts that they are provided to them.

The Commission did not carry out "a comprehensive review of adoptions".²³ Given the evidence that adoptions were done outside of a system of regulation or law, and, in some cases, without the informed consent of the mother, there is a need for effective investigations to shed much greater light on this system. Many survivors of illegal adoptions have been calling for a comprehensive investigation into the system for years and continue to do so.²⁴

(ii) Lack of access to documents relating to personal data

There is a need to ensure access to documents relating to personal data for those impacted by Mother and Baby Homes, in order for survivors to have their right to know the truth realised. This is also a key component of the right to an effective investigation. While the Government's Action Plan states that they wish to bring the legislation to pre-legislative stage by the end of 2021,²⁵ this is not in the priority list or in the pre-legislative programme for Spring of the government's current legislative programme.²⁶ Given the advanced age of many survivors of the system of forced adoption we urge the government to prioritise this legislation; to ensure the legislation is drafted in consultation with survivors; and to ensure the legislation complies with relevant human rights law and standards.

(iii) Lack of access to justice

There is a need to remove obstacles to litigation to enable access to justice for survivors of institutional abuse. The Clann Project highlights different steps to ensure access to court, including amending the Statute of Limitations Act 1975, directing the Chief State Solicitor

and States Claims Agency to not apply the statute of limitations in institutional abuse cases, and reform the civil legal aid scheme and allow for class actions.²⁷

(iv) *Lack of clarity around the development and implementation of the Strategic Action Plan, including with regard to a survivor-centred approach*

The Government's commitment to a survivor-centred approach, including in the development of a Strategic Action Plan, is welcome. A survivor-centred approach has been described as one "in which, the survivors' wishes, safety, and well-being remain a priority in all matters and procedures."²⁸ Similarly, UNFPA describe it as one which "creates a supportive environment in which the survivor's rights and wishes are respected, their safety is ensured, and they are treated with dignity and respect."²⁹ A human rights-based approach is central to a survivor-centred approach.

The process for implementing the proposed action points of the Government's current Action Plan is unclear. The first action point in the current Action Plan is the 'Development of a Strategic Action Plan and Engagement with Former Residents.' The current status of this is unknown. However, if the Government is taking a survivor-centred approach, as it claims, then this should be the first step in order to inform the design and development of the other proposed measures. It is also important that this Strategic Action Plan references the State's human rights obligations in this context and explains how it will fulfil them.

The Government allowed the Mother and Baby Homes Commission to dissolve without writing to survivors and participants in the investigation about this consultation on reparations. The Department should consider writing to everyone who participated in the Commission's work to engage them in the development of the Strategic Action Plan and design of the 'Restorative Recognition' scheme.

Recommendations

Conduct effective investigations:

- I. Initiate a wider independent investigation into all individuals, agencies and bodies that were involved in the abuse of mothers and children and, particularly, in the system of illegal and forced adoptions in Ireland in the 20th Century. This investigation should be survivor-centred, guided by human right law and standards, comprehensive in its scope and powers and transparent, including by ensuring proper and appropriate recording, analysis, archiving and access to the evidence it gathers.
- II. Initiate an investigation into why the records of testimony were destroyed and clarify how this can be rectified and avoided in future.

Provide access to documents, related to personal identity:

- III. Prioritise legislative reform that gives adopted people the right to access their birth certificates, as well as a right to access other relevant documents that can shed light on their personal identity and origins.

Increase access to justice for survivors of Mother and Baby Homes:

- IV. An Garda Síochána or another appropriate body should set up a special unit to support survivors of Mother and Baby Homes to make criminal complaints and to investigate such complaints, in line with their duty to investigate criminal activity.
- V. GSOC should set up a special unit to investigate the role of the Gardaí in facilitating abuses in Mother and Baby Homes and other places of state care.
- VI. Ensure access to justice including by removing obstacles to litigation by providing for class actions, protective mechanisms against prohibitive cost orders and clarity around obstacles that statutory limitation periods may pose.

Appropriately develop and publish the Strategic Action Plan:

- VII. Clarify the process for the development of the Strategic Action Plan.
- VIII. Publish the Strategic Action Plan and open it for comment by survivors, survivor groups, and wider civil society to ensure this is a transparent, human rights informed process.
- IX. Seek the advice of the Data Protection Commissioner to assess whether the Government can write to survivors who testified to the Mother and Baby Homes Commission to inform and engage them on the development of the Strategic Action Plan and design of the 'Restorative Recognition' scheme.
- X. Ensure the Strategic Action Plan has concrete action plans with clear targets, indicators, outcomes, timeframes, and associated budget lines.
- XI. Ensure the Strategic Action Plan sets out the State's human rights obligations in this context and how it will fulfil them.

Part 2: The State needs to provide reparation to survivors

The scheme providing reparation to survivors of Mother and Baby Homes must be underpinned by human rights law and standards and should take into account key learnings from previous institutional redress schemes.

(i) *Reparation*

The 'Restorative Recognition' scheme has been described as including financial recognition payments and access to an enhanced medical card.³⁰ As noted, this is one component of a broader Action Plan and despite its name could be understood as a form of reparation.

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law provide guidance on reparation. As noted in Part 1, effective reparation includes compensation, recognition/satisfaction, restitution, guarantees of non-recurrence, and rehabilitation.³¹

- *Compensation*: Compensation is a specific form of reparation which "should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case."³² It is a monetary award for loss resulting from the violation, as well as the costs for legal and other support services.³³
- *Recognition/Satisfaction*: Recognition or Satisfaction is a non-financial form of reparation that, as noted above, includes "full and public verification of the facts, and formal acceptance of any State responsibility."³⁴ It may include a public apology, judicial and administrative sanctions against persons liable for the violations, and commemorations and tributes to the victims.³⁵
- *Rehabilitation*: Rehabilitation includes medical, psychological, legal and social support services.³⁶
- *Guarantees of non-recurrence*: Guarantees of non-recurrence or non-repetition includes "the investigative obligation to take all reasonable steps to identify system failures and human errors."³⁷ It may also include providing human rights education to the public and state actors and the reform of relevant laws and administrative practices that may have contributed to the human rights violation.³⁸
- *Restitution*: Restitution constitutes measures to "restore the victim to the original situation" before the human rights violation occurred."³⁹ This may include the restoration of liberty and enjoyment of human rights. While this may not be fully

possible in this context as there are some irreversible consequences, some measures, such as access to personal information for children born in Mother and Baby Homes is possible as well as provision of information for families. Exhumations and reburial in a dignified manner could also be considered a form of restitution.

Financial payments and access to an enhanced medical card can be interpreted as providing for some compensation and rehabilitation. It is recommended that a Health Amendment Act (HAA) card or an equivalent to the standard of care provided to HAA cardholders be provided to survivors of Mother and Baby Homes. Mr Justice Quirke, who was asked to advise on the establishment of an ex gratia 'restorative justice' scheme for women who were admitted to and worked in a Magdalene laundry, recommended the Government provide a HAA card to these women.⁴⁰ The Government publicly accepted all of Mr. Justice Quirke's recommendations in 2013.⁴¹ However, this recommendation has not been complied with to date. The Government should provide the full HAA card to all survivors of institutional abuse, including industrial schools, Magdalene laundries, Mother and Baby Homes, and County Homes.

Other forms of reparation (recognition, restitution, and guarantees of non-recurrence) are currently not accounted for in this scheme or the broader Action Plan. These are key gaps, discussed further below.

(ii) *Need to provide reparation to all those who's rights were violated by the Mother and Baby Homes system*

The Government is obliged to provide reparation to all those whose rights were violated by the Mother and Baby Homes system. This includes all those who suffered abuse in the institutions, all those affected by forced and otherwise unlawful adoption, abuse in the boarding out and fostering system, as well as other forms of abuse such as unlawful denial of information and disappearance of relatives.

The Government's Action Plan and the name of the 'Restorative Recognition' scheme utilises the term 'former residents.' This term is not defined and could be interpreted in a limited way to only cover women who were in the institutions and exclude the children who were born there. The duration of the 'residency' is unclear. This submission uses the term survivors to refer to both women who were in Mother and Baby Homes and their children who were born there.

(iii) *Lessons learned from previous institutional redress schemes*

It is important to draw on lessons learned from previous institutional redress schemes. The Residential Institutional Redress Board Scheme began in 2003 to provide redress for survivors of industrial schools. One of the limitations of the scheme is that to participate in the settlement process, an applicant had to waive their right to litigate.⁴² The scheme was criticised as being "protracted, expensive, difficult, and legalistic."⁴³

The Magdalene Laundries restorative justice ex gratia scheme began in 2013 to provide redress to survivors of initially twelve Magdalene laundries. This scheme has also been criticised. For example, the Ombudsman conducted an investigation into how it was administered following 27 complaints to its office and highlighted different administrative failings of the scheme.⁴⁴ It made key recommendations, including to expand the scope of eligibility of admission to the scheme to adjoining institutions and to review the cases where there has been a dispute over the length of stay.⁴⁵ It also made a general recommendation in relation to developing future schemes that:

*"In order to ensure that any future restorative justice or redress schemes benefit from the learning from the operation of this and other schemes, guidance should be produced in respect of the development and operation of such schemes generally. Such guidance should be developed centrally but should be applicable across all government departments and public bodies."*⁴⁶

This recommendation should be implemented as a matter of urgency.

(iv) Human rights considerations in relation to the operation of the 'Restorative Recognition' Scheme

Eligibility for the Financial Restorative Recognition Scheme: First, redress schemes for survivors of institutional abuse have been criticised for being unjust, including on the basis of eligibility and assessment criteria. For example:

*"A redress scheme can be substantially unjust in two ways: it can be partial in scope and partial in relief. The partial scope of redress arises from ex ante limits on liability: eligibility and assessment criteria limit what is redressable."*⁴⁷

Thus, it is important to carefully consider eligibility and assessment criteria. It is welcome that the Government is conducting a public consultation process on this.

Second, a clarification that all survivors of Mother and Baby Homes, including county homes, will be covered in the scheme would be welcome. The Mother and Baby Homes Commission's final report is limited as it only examined 14 mother and baby homes and 4 county homes. Other stakeholders have identified up to 182 agencies, institutions and individuals that may have been complicit in the abusive system that mothers and their children were subjected to.⁴⁸ Further, the Mother and Baby Homes Commission highlighted "inconsistencies in the decisions to include/exclude some institutions" from the Residential Institutional Redress Scheme.⁴⁹ It is important that such inconsistencies be avoided in the setting up of this scheme in relation to Mother and Baby Homes. It is important that the scope of this scheme and the focus of the Government's Action Plan extends beyond the 18 homes that the Commission examined to other Mother and Baby home settings.

Third, the proposed eligible groups should be expanded, based on a human rights analysis. The Mother and Baby Homes Commission recommended that different groups have strong cases for redress:

- Women who carried out 'commercial work' in county homes, women in Tuam Mother and Baby home, and women who worked outside the institutions without pay;
- Women who spent lengthy periods (for example more than six months) in mother and baby homes before 1974;
- Unaccompanied children who did not qualify for reparation under the Residential Institutions Redress Board Scheme.⁵⁰

The basis for the selected groups recommended by the Mother and Baby Homes Commission for reparation appear to somewhat arbitrary; based on a broad social analysis rather than a human rights based analysis. We suggest that they are therefore limited in their usefulness. For example, there is a focus on compensation for the carrying out of 'commercial work' rather than a focus on remedying human rights violations which occurred. The human rights abuses that require remedying include deprivation of liberty and security of the person, violations of the right to life, torture and ill-treatment, modern slavery or servitude or forced labour, violation of private and family life, and discrimination. ICCL's briefing note on the Government's human rights obligations following the publication of the Mother and Baby Homes Commission's final report provides further analysis of these human rights violations.

The category of persons that should be considered eligible for redress should be all those who suffered human rights abuses while in Mother and Baby Homes and County Homes.

Administration of the scheme: The administration of the scheme should be conducted in line with human rights law and principles. For example, the UN Basic Principles highlight that "Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families."⁵¹ The Basic Principles also provide that "States should develop means of informing the public and victims of human rights violations of their rights, remedies, and "of all available legal, medical, psychological, social, administrative, and all other services to which victims may have a right of access."⁵² These principles must inform the design and development of a redress scheme.

The former UN Special Rapporteur on Truth, Justice, Reparation and Guarantees of Non-Recurrence highlighted the advantages of administrative reparation programmes over litigation as they offer "faster results, lower costs, relaxed standards of evidence, non-adversarial procedures, and a higher likelihood of receiving benefits."⁵³ This scheme must operate without prohibitive administrative hurdles or an adversarial scheme.

Given the controversy over the destruction of testimony by the Mother and Baby Homes Commission and concerns over lack of informed consent and data protection in collecting survivors' testimonies, it is important that the proposed scheme take appropriate safeguards to mitigate such concerns in relation to its operation. This should include explicit steps to ensure compliance with the GDPR, such as by providing all relevant information to

participants on how their data will be processed and of course obtaining informed consent from all those who participate in the scheme for the processing of their data.

(v) *Gaps in relation to rehabilitation, recognition, restitution and guarantees of non-recurrence*

The proposed 'Restorative Recognition' scheme may provide compensation and some form of rehabilitation to survivors of Mother and Baby Homes, depending on its scope. However, rehabilitation must encompass legal and other support services, in addition to medical services.

There is also a gap in relation to other key components of reparation: recognition, restitution, and guarantees of non-recurrence. This should be addressed, and survivors' views should be taken into account in developing such measures.

Recommendations

- XII. Provide the full HAA card to survivors of Mother and Baby Homes and survivors of other institutional abuse, including industrial schools and Magdalene laundries.
- XIII. Ensure key lessons learned from the operation of previous redress schemes are taken into account in the design and operation of this scheme.
- XIV. Develop guidance in relation to the development and operation of redress or restorative justice schemes generally, which should be developed centrally and applicable across all government departments and public bodies.
- XV. Clarify the scope of the scheme and ensure it has a broad scope with regard to eligibility criteria for participation in the scheme.
- XVI. Ensure survivors have access to legal services, including through the provision of civil legal aid.
- XVII. Ensure survivors' right to reparation is fulfilled, including through providing for compensation, rehabilitation, recognition, restitution, and guarantees of non-recurrence, and enable survivors to participate in the design and development of such measures.

Part 3: Concerns relating to the terminology and handling of the consultation process of the scheme

(i) Lack of clarity around the term 'Restorative Recognition'

The language the Government uses to refer to its work and support is important. ICCL would like to highlight the lack of clarity around the term 'Restorative Recognition.' This term is not rooted in human rights law.

However, it appears to merge two relevant terms: restorative justice and recognition. Restorative justice "brings victims, offenders and communities together to decide on a response to a particular crime."⁵⁴ The EU Victims Directive defines it as "any process whereby the victim and offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offenses through the help of an impartial third party."⁵⁵ Recognition or satisfaction is a form of reparation that includes "full and public verification of the facts, and formal acceptance of any State responsibility."⁵⁶ Unfortunately, what is proposed under this scheme does not amount to a restorative justice process or recognition/satisfaction.

It may be more appropriate to refer to this scheme as a 'Reparations' scheme. This recognises the former residents of Mother and Baby Homes as rights-holders and the financial payments and health supports as forms of reparation for the abuses they suffered. The current name suggests that this is a discretionary scheme, which it should not be. It is important that the Government acknowledges that providing reparations to survivors is a human rights obligation. In the context of advocating for a human-rights based approach to victims' rights, the European Union (EU) Fundamental Rights Agency highlighted:

"The move from a need-based rhetoric to human rights language changes profoundly the relationship between the victim and the state. The victim is no longer pleading for help on the basis of their vulnerability, pressing needs and deservingness but demanding that the state should take seriously what it owes to the individuals living on its territory and their human rights. The state is no longer in the comfortable and patronizing position of a more or less generous Good Samaritan, but a duty-bearer indebted to the individuals living under its jurisdiction as rights-holders."⁵⁷

This paradigm shift toward a human rights-based approach in discourse and in practice is much needed in the Government's action in relation to former residents of Mother and Baby Homes and their children.

(ii) Concerns around the process for the public consultation process

While it is welcome that the Government is conducting a consultation process, the way in which this has been carried out has raised some concerns. The ICCL is raising these

concerns in order to inform the Government in its future consultation processes in this area, such as in the proposed development of a strategic action plan and engagement with survivors.

First, it has been a rushed process. The call for submissions was published on 10 March with a deadline of 31 March.⁵⁸ Similarly, the call to participate in online consultation meetings was published on 10 March with a deadline of confirming attendance by 24 March.

Second, in addition to the tight timeframe, the online consultation meeting process had different administrative hurdles, such as filling out a form and emailing OAK to register with them for a meeting on a first come, first served basis.⁵⁹ Holding public online meetings, without limitations on who can attend, in addition to requesting participants to participate in 'camera-on' mode could pose a barrier for some who might wish to otherwise participate. It is also unclear how many consultation meetings were to take place. Given they were to take place between 18-31 March, each lasting 3 hours, with a maximum of 12 people in attendance, it is unclear how many people were consulted through this process. More transparency and safeguards for future consultation processes would be welcome. For example, rather than having limited online meetings open to the public, perhaps in future, there could be survivor-only online meetings with due respect for their right to privacy.

Third, the guidelines state that "submissions received will be subject to the provisions of the Freedom of Information Act 2014."⁶⁰ This raises some questions about how survivors' confidentiality in this process will be guaranteed, which is a key element of a survivor-centred approach. More clarity is needed on this issue.

Recommendations

Clarify terminology:

- XVIII. Clarify the terminology around this scheme and adopt human rights language to acknowledge the human rights violations that occurred and that measures to address these violations are legally required rather than being provided on a discretionary basis.
- XIX. Adopt clear terminology to refer to survivors, both women and children, of the Mother and Baby Homes system.

Improve future consultation processes:

- XX. Ensure that due notices of the consultation processes is given and the process is conducted with sufficient time so that survivors and other interested persons who may wish to participate have enough time to prepare and do so.
- XXI. Ensure that consultation processes are transparent and provide adequate safeguards to enable the full participation of survivors, including guarantees of confidentiality.

Summary of ICCL Recommendations

Conduct effective investigations:

- I. Initiate a wider independent investigation into all individuals, agencies and bodies that were involved in the abuse of mothers and children in and around Mother and Baby Homes and, particularly, in the system of illegal and forced adoptions in Ireland in the 20th Century. This investigation should be survivor-centred, guided by human right law and standards, comprehensive in its scope and powers and transparent, including by ensuring proper and appropriate recording, analysis, archiving and access to the evidence it gathers.
- II. Initiate an investigation into why the records of testimony given to the Mother and Baby Homes Commission were destroyed and clarify how this can be rectified and avoided in future.

Provide access to documents, related to personal identity:

- III. Prioritise legislative reform that gives adopted people the right to access their birth certificates, as well as a right to access other relevant documents that can shed light on their personal identity and origins.

Increase access to justice for survivors of Mother and Baby Homes:

- IV. An Garda Síochána or another appropriate body should set up a special unit to support survivors of Mother and Baby Homes to make criminal complaints and to investigate such complaints, in line with their duty to investigate criminal activity.
- V. GSOC should set up a special unit to investigate the role of the Gardaí in facilitating abuses in Mother and Baby Homes and other places of state care.
- VI. Ensure access to justice including by removing obstacles to litigation by providing for class actions, protective mechanisms against prohibitive cost orders and clarity around obstacles that statutory limitation periods may pose.

Appropriately develop and publish the Strategic Action Plan:

- VII. Clarify the process for the development of the Strategic Action Plan.
- VIII. Publish the Strategic Action Plan and open it for comment by survivors, survivor groups, and wider civil society to ensure this is a transparent, human rights informed process.
- IX. Seek the advice of the Data Protection Commissioner to assess whether the Government can write to survivors who testified to the Mother and Baby Homes Commission to inform and engage them on the development of the Strategic Action Plan and design of the 'Restorative Recognition' scheme.
- X. Ensure the Strategic Action Plan has concrete action plans with clear targets, indicators, outcomes, timeframes, and associated budget lines.
- XI. Ensure the Strategic Action Plan sets out the State's human rights obligations in this context and how it will fulfil them.

Ensure survivors' right to reparation is fulfilled:

- XII. Provide the full HAA card to survivors of Mother and Baby Homes and survivors of other institutional abuse, including industrial schools and Magdalene laundries.
- XIII. Ensure key lessons learned from the operation of previous redress schemes are taken into account in the design and operation of this scheme.
- XIV. Develop guidance in relation to the development and operation of redress or restorative justice schemes generally, which should be developed centrally and apply across all government departments and public bodies.
- XV. Clarify the scope of the scheme and ensure it has a broad scope with regard to eligibility criteria for participation in the scheme
- XVI. Ensure survivors have access to legal services, including through the provision of civil legal aid.
- XVII. Ensure survivors' right to reparation is fulfilled, including through providing for compensation, rehabilitation, recognition, restitution, and guarantees of non-recurrence, and enable survivors to participate in the design and development of such measures.

Clarify terminology:

- XVIII. Clarify the terminology around this scheme and adopt human rights language to acknowledge the human rights violations that occurred and that measures to address these violations are legally required rather than being provided on a discretionary basis.
- XIX. Adopt clear terminology to refer to survivors, both women and children, of the Mother and Baby Homes system.

Improve future consultation processes:

- XX. Ensure that consultation processes are conducted with enough time so that survivors and other interested persons who may wish to participate have enough time to prepare and do so.
- XXI. Ensure that consultation processes are transparent and provide adequate safeguards to enable the full participation of survivors, including guarantees of confidentiality.

References

¹ The right to a remedy is protected in various international human rights law treaties: Universal Declaration of Human Rights ("UDHR"), art. 8; International Covenant on Civil and Political Rights ("ICCPR"), art. 2; Convention on the Elimination of Racial Discrimination ("CERD"), art. 6; Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT"), art. 14; Convention on the Rights of the Child ("CRC"), art. 39. Other relevant international declarations include the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985; UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of IHL and Serious Violations of IHL (2005).

² Irish Human Rights and Equality Commission Act 2014, s 42.

³ ECHR (ratified in 1953); Irish Constitution.

⁴ ICCL, Briefing Note on the human rights obligations of Government following publication of Mother and Baby Homes Commission's Final Report, March 2021. Available at: <https://www.iccl.ie/wp-content/uploads/2021/03/ICCL-MBHC-Briefing-Note.pdf>.

⁵ IHREC (designate), 'Proposed Commission of Investigation to Inquire into Mother and Baby Homes: Submission on behalf of the Irish Human Rights and Equality Commission (Designate)' (July 2014). Available at: https://www.ihrec.ie/download/pdf/ihrec_designate_submission_on_mother_baby_commission_investigation_june_2014.pdf.

⁶ Department of Children, Equality, Disability, Integration and Youth, *Call for Submissions on a Restorative Recognition Scheme for the Former Residents of the Mother and Baby Homes and County Homes*, March 2021, p. 2. Available at: <https://www.gov.ie/en/consultation/cc828-call-for-submissions-on-a-restorative-recognition-scheme-for-former-residents-of-mother-and-baby-homes-and-county-homes/>.

⁷ Department of Children, Equality, Disability, Integration and Youth, *Government Statement on the Final Report of the Commission of Investigation (Mother and Baby Homes and certain related matters)*, 12 January 2021. Available at: <https://www.gov.ie/en/press-release/4f64f-government-statement-on-the-final-report-of-the-commission-of-investigation-mother-and-baby-homes-and-certain-related-matters/>.

⁸ ICCL, Briefing Note on the human rights obligations of Government following publication of Mother and Baby Homes Commission's Final Report, March 2021. Available at: <https://www.iccl.ie/wp-content/uploads/2021/03/ICCL-MBHC-Briefing-Note.pdf>.

⁹ IHREC (designate), 'Proposed Commission of Investigation to Inquire into Mother and Baby Homes: Submission on behalf of the Irish Human Rights and Equality Commission (Designate)' (July 2014). Available at: https://www.ihrec.ie/download/pdf/ihrec_designate_submission_on_mother_baby_commission_investigation_june_2014.pdf.

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About ICCL

The Irish Council for Civil Liberties (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped legalise homosexuality, divorce, and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality and reproductive rights. ICCL has worked on data protection for decades.