



9 November 2021

To the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on discrimination against women and girls,

Re: Joint Communication from Special Procedures in relation to Mother and Baby and County Home Institutions

I thank you for your joint communication of 5 November 2021 in which you seek observations on concerns raised in relation to specific aspects of the General Scheme of the Birth Information and Tracing Bill, the General Scheme of the Certain Institutional Burials (Authorised Interventions) Bill, and the proposed Restorative Recognition Scheme for former residents of Mother and Baby and County Home institutions. You also raise important considerations in relation to appropriate overall responses to human rights issues in the area of Mother and Baby and County Home Institutions.

Please accept this communication as an initial response to some of the important issues raised in your letter. I trust that these immediate observations and clarifications will prove helpful in the interim while we work to prepare a further and more detailed response.

Independent Investigation and State Apology

At the outset, it is important to stress that the Irish Government takes its responsibility to investigate and address historic wrongs very seriously. In February 2015, the Government established an independent inquiry- the statutory Commission of Investigation into Mother and Baby Homes and certain related matters to provide a full account of what happened to vulnerable women and children in these homes from 1922 to 1998. The Commission was fully independent of Government and had extensive powers to compel witness to produce documents and answer questions.

The Commission undertook its extensive work over an almost 6 year period, publishing seven Interim Reports and bringing a considerable amount of important and previously unknown information into the public domain. Its Final Report was published on 12 January 2021¹.

¹ The final report from the Commission was referred to the Attorney General's Office, the Director of Public Prosecutions and the Garda Commissioner. An Garda Síochána has the power to conduct criminal investigations in the State. An Garda Síochána carefully considered the Commission's Final Report and determined that there was insufficient information available in the report to commence criminal investigations. An Garda Síochána issued a statement on 29 April 2021 appealing for information from anyone who wishes to report a crime relating

The following day, on 13 January 2021, An Taoiseach offered a formal apology- on behalf of the Government, the State and its citizens- to those who spent time in the institutions. In this apology, An Taoiseach acknowledged that, over a period of decades, the State had failed to protect vulnerable citizens, and that the State's duty of care toward those citizens had not been upheld. The full text of this apology is attached at appendix A.

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This apology formed the basis for restorative action and was the starting point for a suite of important commitments as explained below.

Government of Ireland Action Plan

The publication of the Commission's Final Report was accompanied by a Government commitment to a Strategic Action Plan encompassing a suite of 22 specific measures across eight themes, namely:

- A survivor-centred approach
- Apology
- Access to Personal Information
- Archives and Databases
- Education and Research
- Memorialisation
- Restorative Recognition
- Dignified Burial

These themes take account of the Commission of Investigation's recommendations, as well as the priority needs and concerns of survivors and former residents and their families, as established through engagement with those most affected. The State's obligations under domestic and international human rights law underpin all eight themes and 22 commitments, which can be found at appendix B.

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The Irish Government is conscious of the need to move swiftly to implement the commitments made. As a result, while the Strategic Action Plan is expected to be published very shortly, significant progress has already been made in advancing the actions. There has been a particular priority focus on the following immediate steps:

- Ensuring that strengthened counselling support was in place for all survivors and former residents, free of charge, prior to publication of the Commission's report and remains in place.
- Engaging with survivor representatives on the development of proposals for an enhanced model of engagement involving a new Special Advocate for Survivors.
- Taking possession of the archive of the Commission of Investigation, ensuring access to personal information within this archive in accordance with the General Data Protection Regulation, and appointing a professional archivist to focus on the preservation of, and public access to, these records.
- Developing and publishing draft legislation to provide access to birth and early life information for adopted persons and others with questions in relation to their origins.
- Advancing draft legislation to allow for exhumation, identification and dignified reburial of the infants at the Tuam burial site, as well as at any other institutional sites where there have been manifestly inappropriate burials.
- Developing draft proposals for a significant Scheme to provide eligible survivors and former residents with a financial payment and a form of enhanced medical card³.
- Advancing a range of other actions, including in the areas of commemoration, memorialisation and research.

Restorative Recognition Scheme

The Irish Government will soon be publishing proposals for a major Scheme to provide eligible survivors and former residents with a financial payment and a form of enhanced medical card. These proposals have been informed by an extensive national and international public consultation process, as well as advice from the Irish Human Rights and Equality Commission. Full details of the Scheme will be announced following Government approval, and it is hoped that the Scheme will open to applications in 2022.

In your communication, a concern is expressed that the Scheme may be limited to financial compensation rather than considering the five forms of reparation in addition to measures to ensure truth, justice, memory and non-recurrence. In this regard, it is important to emphasise that the Scheme is the centrepiece of a much broader Government response which is committed to investigation; apology; access to information; rehabilitative and health supports; financial payments; education and research; memorialisation; and dignified burial, with all measures underpinned by human rights and a survivor-centred approach.

Birth Information and Tracing Legislation

In May 2021, the Irish Government published draft legislation to guarantee a clear right of access to birth and early life information for all persons who are adopted and others who have questions in relation to their origins. Currently, access to this information is significantly limited, and a number of legislative attempts to address this issue over the last twenty years have failed.

³ The enhanced medical card provides the holder with an entitlement to a full range of health and social care services free of charge.

In order to address this, the proposed Birth Information and Tracing legislation aims to enshrine in law the importance of a person knowing his or her origins. It provides for the full and un-redacted release of birth certificates, as well as the full release of birth, early life, care and medical information as defined in the legislation, to all relevant persons who have attained the age of 16 years. The proposed legislation also establishes a statutory tracing service and contact preference register to support people seeking to share information or make contact with family. Additionally, it contains important, bespoke measures to address the issues arising for people affected by illegal birth registration. Since publishing the General Scheme, Government has consulted widely and is deeply grateful for feedback, including that provided in the present Joint Communication.

It is important to recognise that the legislation will sit within the framework of the Irish Constitution and the European Union General Data Protection Regulation (GDPR). It stands alongside and strengthens existing rights to information. Specifically, it ensures that people retain their full rights to make a Subject Access Request in relation to their personal information under the GDPR, while also retaining a right to apply under this proposed legislation which will offer *guaranteed* access to a suite of shared personal information, i.e. information which is the personal information of both the child and the parent and, therefore, requires the application of a balancing mechanism by each data controller under the GDPR. This requirement for each data controller to balance the rights of the two parties has resulted in cases of persons receiving redacted birth certificates. The proposed legislation will bring clarity and certainty for adopted persons seeking access to identity information.

In your communication, you raise three concerns in relation to the legislation on which you would welcome observations. I have offered an initial response to each concern in the paragraphs below.

Definition of care information: With regard to the concerns expressed in relation to the precise parameters of the definition of care information, my colleague, the Minister for Children, Equality, Disability, Integration and Youth is giving careful consideration to all feedback received on the General Scheme as part of the process of drafting the Bill. He will ensure that the issues raised in the Joint Communication are considered in that context. More broadly, it is important to highlight that the proposed legislation is framed as enabling rather than restrictive in nature; it provides clarity about a particular defined suite of information which can *always* be released in all circumstances, while not limiting the release of any other information where a relevant body is not otherwise legally prohibited from sharing that other information. Policy guidelines made under the proposed legislation will ensure that this important enabling approach can be embedded in policy and practice under the new legislative framework.

Access to personal information for mothers: With regard to the concern that mothers cannot access their personal information under the General Scheme, I can confirm that this is because mothers can already access their personal information under the GDPR.

The clear objective of the Birth Information and Tracing legislation is to provide important origins information to adopted persons and others, to vindicate their identity rights. The legislation is essential for adopted persons to achieve full release of birth certificates and birth information in all cases. Mothers will already have access to the birth certificate and to their own identity information. It is different information they are seeking, namely records relating to themselves and, in some cases, current information on their adopted child.

In the case of their own records, the Minister for Children, Equality, Disability, Integration and Youth has written to representatives of mothers to advise that existing GDPR access rights are not impacted by this Bill and, therefore, mothers can continue to avail of their existing rights under the GDPR, data protection and freedom of information legislation to access information on records pertaining to themselves. They can also avail of the right to rectification which is enshrined in the GDPR and is a route for mothers to rectify personal data held about them in historical files which they consider to be inaccurate or incomplete. I know this is of significant importance to many of the mothers to whom the Minister spoke.

Access to information for relatives of deceased: Finally, with regard to the right of relatives to access the records of a family member who died in a Mother and Baby or County Home Institution, the Government is very committed to exploring positive action in this area. The Minister for Children, Equality, Disability, Integration and Youth has sought detailed legal advices on this matter, with a view to being able to address this issue in the legislation if possible, while recognising that the fundamental objective of the legislation is to support relevant persons to access origins information.

This is a complex and multi-layered issue as recognised by the representative from the Irish Data Protection Commission who appeared before the Parliamentary Committee tasked with scrutinising the legislation. Nonetheless, the Government is absolutely committed to exploring what can be achieved in this legislation in relation to supporting access to information for the child of a deceased relevant person and for the next of kin in specified circumstances.

Finally, on the broader issue of historical adoption and illegal birth registration, both the Final Report of the Mother and Baby Homes Commission of Investigation and the Independent Review of Incorrect Birth Registrations (which was also published by Government earlier this year) make clear that unmarried mothers and their children lived in a hostile and uncaring environment in the period the report examined. In the past, adoption was often a secretive practice, carried out without due regard to the rights of those involved. Such practice in adoption reflects wider societal prejudices of the time. It is accepted that such practice would fall short of the standards we would expect today.

Today, the safeguards in the Irish adoption acts ensure that the best interests of the child are the paramount consideration in all adoption cases, and in every step of the process. Modern day adoption legislation and practice also ensures that the rights of all involved are vindicated, including birth fathers, within the overarching framework of working for the best interests of the child involved.

In response to the secrecy associated with many historical adoptions, the Government is committed to delivering on comprehensive access to birth certs and early life information through the proposed Birth Information and Tracing legislation. The parliamentary Pre-Legislative Scrutiny Report in respect of this legislation is awaited, but we hope to receive this and be in a position to publish the final Bill by the end of this year. This legislation is an absolute priority for the Irish Government and we hope to enact it as quickly as possible in the interest of adopted persons, those who were the subject of an illegal birth registration and all those with enduring questions in relation to their origins.

Burials Legislation

The General Scheme draft Certain Institutional Burials (Authorised Interventions) Bill underwent Pre-Legislative Scrutiny in the first half of 2021 and the Joint Oireachtas Committee published its report on 15 July. This proposed legislation, when enacted, will provide a sound legal basis for exhumation, identification and dignified reburial of the infants at the Tuam site. It will also enable intervention at other sites should similar circumstances come to light.

The aim of the legislation is to offer a robust pathway which is grounded in humanitarian forensic action and which does not constrain at the outset the potential outcomes which may be achieved. The Irish Government is committed to a comprehensive and sincere response to the Tuam site which, in light of the unique and uncertain situation which exists, can only be progressed in a step-by-step, phased manner based on the real time technical and forensic information emerging from the intervention. This comprehensive response requires the proposed enabling legislation which guarantees intervention and dignified reburial.

The draft legislation has undergone extensive parliamentary Pre-Legislative Scrutiny. My colleague, the Minister for Children, Equality, Disability, Integration and Youth referred the legislation to the relevant Committee for scrutiny on 11 January 2021 and received the report and recommendations of that Committee on 15 July 2021. He is currently carefully considering the recommendations from that process in the context of drafting the Bill, and hopes to publish this Bill by the end of the current parliamentary session.

In your communication, you raise several concerns in relation to the General Scheme, including emphasising that the Bill must not impede the holding of inquests. The Irish Government welcomes and values your observations, all of which will also be carefully considered as part of finalising the Bill for Government approval and publication.

In particular, you raise a concern that, while the coroner has a statutory obligation to hold an inquest in the event of an unexplained or unnatural death, the General Scheme cites certain conditions and proportionality considerations which govern intervention. In this regard, it is important to clarify that the proposed legislation is intended to complement the Coroners Act 1962 by providing a mechanism for *guaranteed* intervention at the Tuam site. It does not remove the obligation on the coroner to hold an inquest as may be required under the 1962 Act and, where the remains show evidence of violent or unnatural death, the Director overseeing the intervention must immediately inform the coroner within whose district the remains were exhumed and An Garda Síochána. As such, the statutory obligations of the coroner would continue to apply in these circumstances.

A concern is also raised in respect of the proposed statutory time period of 70 years. In that regard, I can confirm that my colleague, the Minister for Children, Equality, Disability, Integration and Youth has indicated that he is carefully considering this time period, with a view to its adjustment. Consideration is also being given to the removal of the proposed restriction in relation to informed consent by the family.

Finally, a concern is raised in relation to the discretionary power afforded to officials under the proposed legislation. Again, in this regard, I can confirm that my colleague, the Minister for Children, Equality, Disability, Integration and Youth is carefully considering mechanisms to further enhance transparency and accountability of those tasked with an intervention under the legislation.

I hope that these initial clarifications are helpful and acknowledge again with gratitude with observations provided.

The Government remains committed to progressing this legislation as a priority in order to ensure that the children buried at Tuam can at last be afforded the dignity in repose so long denied to them.

Memorialisation

Finally, your communication references the profound importance of memorialisation, noting that, without memory, the rights to truth, justice and full reparation cannot be fully realised, and there can be no guarantees of non-recurrence. The Irish Government has made a number of important commitments to memorialisation at both a national and community level.

At national level, the Government will develop an all-Ireland memorial in consultation with former residents and other key stakeholders. It will work to establish, on a formal, national basis, a national memorial and records centre related to institutional trauma during the 20th century. This will build on a commitment to a central repository of institutional records and will include archiving relevant records and witness testimony by victims and survivors as well as presenting the historical and social context. It will be developed at a suitable site and operated in accordance with the highest international standards. It will be designed in cooperation with professional archivists and historians, as well as with victims, survivors and their advocates. There will be strong engagement with survivors so that there is clarity on how information will be presented and reassurance regarding the protection of survivors' private information.

This will be complemented by local memorialisation projects, funded by local authorities, in line with the wishes of former residents.

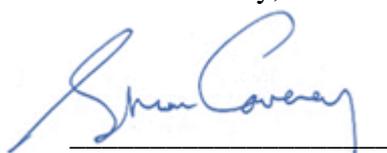
In addition, the Government will continue to provide funding to local survivor groups, in Ireland and abroad, who wish to organise commemorative events.

In progressing all of these memorialisation and commemoration commitments, Government is deeply conscious that memorialisation means different things to many different people, and so it is key that the design and establishment of memorials should be led by survivors and former residents. Ultimately it should be a matter for survivors and former residents to determine the form memorialisation may take.

In conclusion, the Government is deeply committed to responding to the needs and concerns of those who spent time in Mother and Baby and County Home Institutions. This is with a view to recognising the failings of the past, providing survivor-centred supports, offering opportunities for reconciliation and healing, rebuilding trust, and, at the broadest level, promoting the development of a progressive, respectful and equal society. We are aware of the urgency of this work which is an absolute priority for the Government.

In keeping with our standing invitation to the independent human rights experts who hold mandates from the Human Rights Council to report and advise on human rights from a thematic or country specific perspective, we welcome and deeply value the engagement from Special Procedures and trust this initial response is helpful. We will provide a further response and update to the issues raised in due course.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Simon Coveney', written over a horizontal line.

Simon Coveney, T.D.
Minister for Foreign Affairs and
Minister for Defence