

**Mandates of the Working Group on Enforced or Involuntary Disappearances; the 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**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 45/3, 43/22, 42/10, 43/20, 44/4, 45/10, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government concerns in relation to the possible impact of the **General Scheme of the Birth Information and Tracing Bill, the General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill and the proposed Restorative Recognition Scheme for former residents of Mother and Baby Homes and County Homes (Restorative Recognition Scheme), on the rights of victims and survivors. These legislative proposals raise serious concerns in relation to the State's compliance with its international legal obligations, and raise concerns in relation to appropriate responses to the human rights issues raised in relation to the terms of reference, and methodology of the Mother and Baby Homes Commission of Investigation (hereafter the Commission), and other related redress schemes and reports on institutional and historic abuses.**

***General Scheme of the Birth Information and Tracing Bill***

In follow up to the recommendations of the Commission regarding the access of victims to information on their birth, on 11 May 2021, the Government published the General Scheme of the Birth Information and Tracing Bill. This is an important step forward, noting that in her report, the Special Rapporteur on the sale and sexual exploitation of children recommended to your Excellency's Government, to enact legislation that would facilitate transparent adoption processes and guarantee adopted people's right to an identity, including access to their birth certificates and health records (A/HRC/40/51/Add.2 para 77.d).

We acknowledge the Bill's objective, namely to ensure compliance with the State's obligations under the UN Convention on the Rights of the Child (CRC) ratified by your Excellency's Government on 21 December 1992, in particular articles 7 and 8, on the name and nationality and preservation of identity, which includes, "the right to know and cared for by his or her parents". The right to know one's parents has been interpreted by the UN Committee on the Rights of the Child in conjunction with article 3 on the child's best interests as an obligation by each State party:

"to take all necessary measures to allow all children, irrespective of the circumstances of their birth, and adopted children to obtain information on the identity of their parents, to the extent possible" (CRC/C/15/Add 188 para 32).

However, we are concerned that the Bill in its current draft, fails to ensure and effectively vindicate rights of access to records and personal data.

Specifically, we are concerned that:

1. the definition of the 'care information' which an adopted person will be entitled to receive excludes information about 'care provided by (a) a birth parent or guardian of the child, or (b) a relative of the child who is providing care other than as part of a nursed out, boarded out or foster care arrangements, or (c) a person who is, or becomes, the adoptive parent of the child';
2. The draft legislation does not provide a right for mothers to receive their full records; and
3. There is no provision in the draft legislation to ensure the right of relatives of those who died in institutional custody to obtain full records about their disappeared relative.

### ***General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill***

We have been informed of the publication of the *General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill of 2021*. The aim of the Bill is:

"[...] to provide the statutory basis and framework under which the Government may decide to authorise interventions at certain sites where manifestly inappropriate burials have taken place".

However, we are concerned that this proposed new legislation would, if adopted, in practice, negatively impact upon the rights to truth and justice of affected individuals, whose relatives may be buried in these sites.

We are concerned that this Bill may create additional obstacles to undertaking effective investigations into the deaths that occurred in the Mother and Baby homes and analogous institutions. The Bill proposes the establishment of an Agency for each burial site, which, if created, will have the power to undertake excavations and exhumations. However, the ad hoc Agency will only be established by a Government

Minister if a list of specified conditions are met.<sup>1</sup>

We are concerned that these conditions may not effectively facilitate victims and relatives' access to information about the circumstances of their relatives' burials. The discretionary power eventually granted to Government officials in this matter is a source of concern and would fail to ensure an impartial, effective and transparent system and process of investigation.

Under the Coroners Act 1962, the Attorney General is authorised to direct any coroner to hold an inquest, where it is considered that the holding of an inquest is considered 'proper'. (s.18) The Coroner is under a statutory obligation to hold an inquest in the event of an unexplained or unnatural death (s.17). However, the new proportionality test proposed in this Bill would effectively prevent an investigation based on an economic impact, or the impact of such excavation on residents, "whose dwelling adjoins the site". (Head 3 of the Bill). The views of the relatives of the deceased are only one of the reasons to be considered in applying the proportionality test. These limitations raise concerns as to how the State will discharge its obligations under Article 2 of the European Convention on Human Rights (ECHR), ratified by your Excellency's Government in 1953. It also raises concerns regarding the compliance with articles 2 and 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Excellency's Government in 1989.

In addition, Head 6 of the Bill proposes to restrict the establishment of the Agency if there was informed consent by the family to the burial, or if the lapse of time since the last known burial exceeds 70 years. It is unclear from the current wording of the proposed legislation how informed family consent will be established or how such a limitation ensures compliance with the State's procedural obligations arising under Article 2 ECHR, on the right to life, and Articles 2, 3 and 6 ICCPR. Of concern also is the imposition of a statutory limitation of 70 years, potentially excluding burial sites established prior to 1950. This is inconsistent with the timeline given to the Commission to investigate cases from 1922 to 1998. We are concerned that the proposed legislation allows for the possibility that an investigation does not take place if Government has formed the view that a memorialisation of the site without further investigation is more appropriate (Head 6(10)). We are also concerned about the lack of clarity regarding rights of appeal for victims and relatives against decisions taken not to establish an Agency or to continue an investigation.

The concerns in relation to the proposed legislation do not preclude our opinion that a revision of and full implementation of the Coroners Acts 1962 could meet the State's international and regional human rights obligations, in particular articles 2.3 and 6 of ICCPR and Articles 2 and 13 ECHR, by for example, regulating access to information, establishing clear rules of procedure, an accessible appeals mechanism, and meeting the State's obligations to ensure effective investigations in relation to alleged human rights violations, and effective remedies. Given the

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<sup>1</sup> Where the current legislation clearly established the circumstances under which the Coroner must initiate the investigation, under the new Bill, the order to investigate, excavate and exhume, will only be made if:

- (1) a Minister is satisfied that manifestly inappropriate burials have taken place at a site associated with an institution;
- (2) if such excavation is necessary for safeguarding important objectives of general interest (according to the said Ministry's ponderation of the situation);
- (3) If the action is proportionated with its intended objective;
- (4) If it also passes the test of the criteria for interventions outlined in the Bill and;
- (5) if none of the restrictions set forth in the same legislation apply.

conclusions in the Commission's report concerning the higher mortality rates in the Mother and Baby Homes, it is critical to ensure that provisions are made for the holding of inquests to investigate the deaths that occurred and that the Bill does not impede the holding of such inquests.

***Restorative Recognition scheme: Right to Truth, Reparations and Guarantees of non-recurrence***

As a response to the recommendations of the Commission, the Government has stated that a Restorative Recognition scheme would be established. However, little information has been provided to date as to the nature of this Scheme, and its scope appears to be limited only to certain institutions. In view of the experiences of two previously established restorative mechanisms, namely the Residential Institutions Redress Scheme and the Magdalen Restorative Justice Ex-Gratia Scheme, we recommend to your Excellency's Government that any new restorative scheme encompasses measures to provide full reparation to victims that extend beyond financial compensation to include the five forms of reparation owed to victims (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition), and are undertaken jointly with measures to ensure truth, justice, memory and non-recurrence.<sup>2</sup> In this regard, we would recommend that redress schemes should ensure:

1. A clear and transparent procedure for unconditional access to information and archives, which can enable victims and relatives to establish their identity, as well as the fate of disappeared relatives;
2. A review of the methods of investigation of the Mother and Baby Homes Commission of Investigation, in procedures followed and in institutional sites reviewed, and in its analysis of human rights violations, in light of Ireland's obligations under international law to ensure the right to truth, justice and reparations;
3. Ensure accountability for violations of human rights, through investigation, and prosecution of perpetrators, and imposition of effective, proportionate and dissuasive sanctions;
4. Provide compensation commensurate with the gravity of the offences and other measures of rehabilitation if victims wish to avail of such measures (and without prejudice to the right to seek further remedies for human rights violations experienced);
5. A State apology that fully recognises the gravity and range of human rights violations that occurred in the Mother and Baby homes and analogous institutions;
6. Establish and support processes of memorialisation designed and led by victims and survivors.

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<sup>2</sup> On the analysis of memorialisation processes in the context of serious violations of human rights and international humanitarian law as the fifth pillar of transitional justice, please see report by the Special Rapporteur on the promotion of truth, justice reparations and guarantees of non-recurrence, to the Human Rights Council in 2020, A/HRC/45/45



As the proposed Scheme and the above mentioned draft legislative measures are responses, in part, to the Commission's report, we would like to recall the observations made by UN human rights mechanisms. For example, the Special Rapporteur on the sale and sexual exploitation of children following her visit to Ireland in 2018, specifically warned about the limited scope of the Commission's work, noting that its investigation was not broad enough, "to uncover the full scale of illegal adoption, which still affects Irish citizens today." (A/HRC/40/51/Add.2 para 14)<sup>3</sup>. The UN Committee against Torture in its Concluding Observations to Ireland in 2017 expressed its concerns about the Terms of Reference of the Commission (CAT/C/IRL/CO/2, para 27) and recommended an independent, thorough and effective investigation into any allegations of ill-treatment, including cases of forced adoption, amounting to violations of the Convention, at all of the Mother and Baby Homes and analogous institutions (CAT/C/IRL/CO/2, para 28). We urge that the proposed legislation and the proposed Restorative Recognition Scheme ensure compliance with your Government's international obligations to ensure effective remedies, and undertake effective investigations in relation to the full range of human rights violations raised to date in relation to the Mother and Baby homes and analogous institutions.

These obligations are recalled below:

Regarding standards related to **sale of children and illegal adoptions**, the report of the Special Rapporteur on the sale and sexual exploitation of children on her visit to Ireland in 2018, specifically warned that: "[...] the limited scope of the Commission's work – as with that of other commissions examining abuses in institutions before it – will mean that its investigation is not broad enough to uncover the full scale of illegal adoption, which still affects Irish citizens today." (A/HRC/40/51/Add.2 para 14). Illegal adoption may come within the international legal definition of trafficking; the purpose may be exploitative – of both the natural parent(s), and the adopted child, given the failure to ensure the best interests of the child and the rights of the child. We note that while the current international legal definition of trafficking stems from the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, and the Council of Europe Convention on Action against Trafficking in Human Beings (both ratified by Your Excellency's government in 2010), trafficking in persons comes within the scope of the international legal prohibition of slavery, servitude and forced labour – a peremptory norm of international law.<sup>4</sup> In respect of children, it is important to note that the act and purpose of exploitation are sufficient to bring the impugned conduct within the scope of the international law prohibition of trafficking in persons.<sup>5</sup> As such, it is critical to ensure that the proposed Restorative Recognition Scheme establishes a process for effective investigations and ensures access to effective remedies to all victims, without exception.

Concerning standards related to **forced labour and servitude**, it is important to ensure that the proposed Restorative Recognition scheme includes forced labour

<sup>3</sup> Similar concerns had already been raised, for example by the Human Rights Committee in their Concluding Observations to Ireland in 2014, see para. 10, CCPR/C/IRL/CO/4.

<sup>4</sup> *Rantsev v. Cyprus and Russia App no 25965/04 (Judgment of 7 January 2010)* para 281  
See Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery art. 1(d), Sept. 7, 1956, 18 U.S.T. 3201, 266 U.N.T.S. 3: [Child Trafficking is defined as] any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

and servitude within its scope. We note that gendered human rights abuses, are frequently neglected in restorative justice and reparations schemes, and particular attention is required to ensure a gender-lens is applied to the design and implementation of the Scheme, informed by survivors and victims. In her report on Ireland, the Special Rapporteur on sale and sexual exploitation of children found that: “[...] girls who were transferred to the Magdalene laundries were made to work against their will and with little to no compensation, in arrangements that could amount to the sale of children.” (A/HRC/40/51/Add.2, para 16) It has been reported that women and children in the Mother and Baby homes and when ‘hired out’, were forced to work without remuneration under threat of abuse and in abusive circumstances.<sup>6</sup> The Commission’s executive summary of the report states: “The women worked but they were generally doing the sort of work that they would have done at home; women in the county homes did arduous work for which they should have been paid and there are a few other examples where this is also the case.”<sup>7</sup> The Working Group on Discrimination against Women and girls in its report on the causes of deprivation of liberty of women stated that forced confinement of women should be understood as a form of gender-based violence as many lack resources, choice and opportunities. These conditions push women into the realm of human trafficking, contemporary forms of slavery (A/HRC/41/33). In addressing the scope and status of Article 4 ECHR, the European Court of Human Rights in *Siliadin v. France* emphasised at para.112: “*The Court reiterates that Article 4 enshrines one of the fundamental values of democratic societies.*”<sup>8</sup> We note that the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, (ratified by your Excellency’s Government on 18 Sep 1961) requires States Parties to take all practicable and necessary legislative and other measures to bring about the complete abolition or abandonment of the following institutions and practices:

“(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.” (cited in *Siliadin v France*, at para 125).

In the case of *Rantsev v. Cyprus and Russia*, the European Court of Human Rights, recalling the previous interpretation of *Siliadin v. France*, further stated, regarding the obligation to investigate and the positive obligations stemming from article 4 ECHR, that: “Like Articles 2 and 3, Article 4 also entails a procedural obligation to investigate situations of potential trafficking.”<sup>9</sup> In its General Recommendation no.38 on trafficking in women and girls in the context of global migration (2020),<sup>10</sup> the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) states at para 15:

“Obligations flowing to non-State actors to respect the prohibition of trafficking also arise from the peremptory norm (jus cogens) prohibiting slavery, the

<sup>6</sup> Report of the Confidential Committee to the Commission of Investigation into Mother and Baby Homes October 2020, see pp 115, 118

<sup>7</sup> Executive summary of the Final Report of the Commission of Investigation into Mother and Baby Homes, Department of Children, Equality, Disability, Integration and Youth, 2021, p 5

<sup>8</sup> *Siliadin v. France*, Application no 73316/01 (Judgment of 26 October 2005), para 112.

<sup>9</sup> *Rantsev v. Cyprus and Russia*, Application no. 25965/04 (Judgment of 7 January 2010), para. 288. See: *S.M. v. Croatia*, Application no. 60561/14 (Judgment of 25 June 2020) para 316

<sup>10</sup> Committee on the Elimination of Discrimination against Women, ‘General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration’ (20 November 2020) UN Doc CEDAW/C/GC/38.

slave trade and torture, noting that in certain cases trafficking in women and girls may amount to such rights violations.” (CEDAW/C/GC/38 para 15).

Further the CEDAW Committee states in General Recommendation no.38 (2020) that victims: “[...] must be ensured access to justice on the basis of equality and non-discrimination, including the prosecution of their perpetrators and the provision of remedies” (CEDAW/C/GC/38 para. 42). States parties to the Convention on the Elimination of All Forms of Discrimination against Women (ratified by your Excellency’s government on 23 December 1985) must: “provide appropriate and effective remedies, including restitution, recovery, compensation, satisfaction and guarantees of non-repetition, to women whose rights under the Convention have been violated.” (CEDAW/C/GC/38 para. 43). In this regard, the CEDAW Committee recommends that States: “Ensure facilitated access to inclusive, age-sensitive and gender-sensitive complaint mechanisms and justice mechanisms, including through the provision of procedural and age-appropriate accommodations, for all women and girls who are victims of trafficking, including non-citizens”. (CEDAW/C/GC/38 para 100-101). As such, we bring to your Excellency’s Government’s attention, the positive obligations on the State, of due diligence, of protection and of effective investigation and access to effective remedies, which should be fulfilled in the proposed Restorative Recognition Scheme and any related measures.

Concerning standards on **torture, inhuman and degrading treatment and gender-based violence against women and girls**, we note that the European Court of Human Rights has held that States are obliged under Article 3 ECHR to: “provide effective protection in particular of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.”<sup>11</sup> This obligation was restated in *O’Keeffe v Ireland*.<sup>12</sup> The UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment has noted: “[...] whenever States fail to exercise due diligence to protect trafficking victims from the actions of private actors, punish perpetrators or provide remedies, they are acquiescent or complicit in torture or ill- treatment”. (A/HRC/26/18, para 41). The Committee against Torture has also highlighted the positive obligations of States regarding access to remedy for victim of an act of torture. In General Comment n°3 regarding States’ obligations under article 14 of the Convention - the obligation to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible”- the Committee stressed that:

<sup>11</sup> For example, *Z and Others v United Kingdom*, Application no. 29392/95 (Judgment 10 May 2001) para 73; *O’Keeffe v Ireland*, Application no. 35810/09 (Judgment 28 January 2014), para 144; *X and Y v The Netherlands*, Application no. 8978/80, (Judgment 26 March 1985) paras 35–36.

<sup>12</sup> *O’Keeffe v Ireland*, Application no. 35810/09 (Judgment 28 January 2014), para 93

“The obligations of States parties to provide redress under article 14 are two-fold: procedural and substantive. To satisfy their procedural obligations, States parties shall enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims. At the substantive level, States parties shall ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible” (CAT/C/GC/3, para. 5)

The due diligence obligation of States to prevent gender-based violence against women is well established. (Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women) In addition, General Recommendation No. 35 (2017) of the Committee on the Elimination of Discrimination against Women, updating General Recommendation No. 19 (1992), clarifies that States parties are under an obligation to act with due diligence to investigate all crimes of violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. The Working Group on Discrimination against Women and girls stated that failure to protect women’s rights to health and safety may amount to cruel, inhuman or degrading treatment or punishment or torture, or even a violation of their right to life. (A/HRC/32/44). We note the importance of ensuring that the Restorative Recognition Scheme addresses the obligations of the State arising from reports of the conduct of vaccine and infant milk-trials in Mother and Baby homes, and the legal responsibility of the State, and third parties, in relation to the conduct of non-consensual experimental medical treatment.

Regarding standards on **arbitrary detention** (deprivation of liberty and security of the person), the proposed Restorative Recognition Scheme should also address concerns that have been raised in relation arbitrary detention in Mother and Baby Homes and analogous institutions, again ensuring that a gender equality lens is applied in the design and implementation of the Scheme and that the rights of women and girls are ensured.<sup>13</sup>

Concerning standards on **enforced disappearances**, in its General Comment on children and enforced disappearances, the Working Group on enforced disappearances states:

“States need to develop truth-seeking mechanisms that are child-sensitive and that assess how children were affected by enforced disappearances. The mandate of those mechanisms should make clear references to child victims of enforced disappearances. There should be proper allocation of resources to secure the proper expertise, methodology and structure.” (A/HRC/WGEID/98/1, para. 24).

We would like to recall the Working Group’s General Comment on women affected by enforced disappearances (A/HRC/WGEID/98/2), which stresses, *inter alia*, the differentiated effects of enforced disappearances in women and girls. In particular, States must acknowledge disappeared women and girls, and recognize the particular types of harm they suffer based on their gender, including instances of sexual violence and forced impregnation, and the resulting psychological damage and

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<sup>13</sup> Report of the Confidential Committee to the Commission of Investigation into Mother and Baby Homes October 2020.

social stigma as well as the disruption of family structures. Reference is also made to the Working Group's General Comment on the right to truth (A/HRC/16/48), which states that the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. No legitimate aim, or exceptional circumstances, may be invoked by the State to restrict this right. The right to know the truth about the fate and the whereabouts also applies to the cases of children who were born during their mothers' enforced disappearances, and who were thereafter illegally adopted. Article 20 of the Declaration provides that such acts of abduction, as well as the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such". The same provision also provides that States "shall devote their efforts to the search for and identification of such children and to the restitution of the children to their families of origin". That is to say that the falsity of the adoption should be uncovered. Both the families of the disappeared and the child have an absolute right to know the truth about the child's whereabouts. However, paragraph 2 of the same article tries to ensure a balance when it comes to the issue of whether the adoption should be revisited. This balance, taking into consideration the best interest of the child, does not prejudice the right to know the truth of the family of origin or the child's whereabouts.

The State's positive obligations in relation to enforced disappearances are stated in international human rights treaties, and customary international law, and raise questions also in relation to the State's responsibility under the ECHR, specifically Articles 2 (right to life), Article 3 (prohibition of torture), Article 5 (right to liberty and security), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy). Reference is also made to Articles 6, 7, 9, 10, 16 of the ICCPR, read alone and in conjunction with Article 2.3 and, where minors are involved, also Article 24.1. In addition, we would like to recall the obligation of the State under Article 20 of the Declaration on the Protection of All Persons from Enforced Disappearance, which requires that measures be taken to prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance. It also requires that the State devote their efforts to the search for and identification of such children and return them to their families of origin. Further, Articles 13 and 19 of the Declaration respectively require States to conduct prompt, thorough and impartial investigations into allegations of enforced disappearance and to provide victims and their family with adequate redress for the harm suffered. Article 17 of the Declaration clarifies that enforced disappearances shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

Regarding standards relating to **non-discrimination and equal protection of the law**, the proposed Restorative Recognition Scheme must ensure that the principle of non-discrimination is respected, and that equal protection of the law is ensured, including for victims from minority ethnic groups, including the Travelling Community, and for persons with disabilities. It is essential to ensure that multiple and intersecting forms of discrimination, affecting the equal enjoyment of human rights, are addressed in the design and implementation of the Scheme. Specifically, in relation to the Mother and baby homes, the UN Committee on the Elimination of Racial Discrimination, in its Concluding Observations on Ireland stated:

“The Committee is concerned about reports of abuses based on race in mother and baby homes, including racial discrimination in the adoption process and physical, emotional and sexual abuse experienced by those children who self-identify as mixed-race Irish in these institutions.” (CERD/C/IRL/CO/5-9, para 17).

Concerning standards on **the right to life**, the proposed Restorative Recognition Scheme must also address and ensure that within its scope, all measures necessary are taken to fulfil the State's procedural and substantive obligations concerning the right to life.

Finally, regarding **standards on the right to effective remedy**, access to records and information is a key component of an effective investigation and to access to effective remedies. The right to an effective remedy encompasses both a substantive right to reparations and procedural rights necessary to access reparations, including accessing information. The *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 that reparation may include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The *Updated set of principles for the protection and promotion of human rights through action to combat impunity* establishes the right to truth as:

“[...] the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations” (E/CN.4/2005/102/Add.1).

In her report on reparations to women who have been subjected to violence (A/HRC/14/22), the Special Rapporteur on violence against women noted that women have historically been neglected in discussions of reparations, despite the recognition of the right to a remedy in international human rights instruments. She stressed that reparations for women cannot be just about returning them to the situation in which they were found before the individual instance of violence, but instead should strive to have a transformative potential. This implies that reparations should aspire, to the extent possible, to subvert instead of reinforce pre-existing patterns of crosscutting structural subordination, gender hierarchies, systemic marginalization and structural inequalities that may be at the root cause of the violence that women experience before, during and after the conflict. Complex schemes of reparations, such as those that provide a variety of types of benefits, can better address the needs of female beneficiaries in terms of transformative potential, both on a practical material level and in terms of their self-confidence and esteem. Measures of symbolic recognition can also be crucial. They can simultaneously address both the recognition of victims and the dismantling of patriarchal understandings that give meaning to the violations. The Working Group on Discrimination against women and girls in its report on health and safety stated that redress and remedies are part of the States’ international human rights obligations, especially, when it comes to survivors/victims of gender-based violence and rectification of the past wrong doings (A/HRC/32/44). The Human Rights Committee, in its General Comment no.31 on *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (CCPR/C/21/Rev.1/Add. 13) specifically stated that:

“There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3. (para.8).”

“A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.” (para.15).



“Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged.” (para.16).

In relation to the relevant international law, we draw your Excellency’s attention to the international legal instruments, in force at the time of the events occurring, and relevant peremptory norms of international law (*jus cogens* norms), that also form part of customary international law and were binding upon the State. Specifically, these include, and are not limited to: Right to life, right to be free from torture, inhuman and degrading treatment, the prohibition of forced labour and servitude, the prohibition of racial discrimination, the prohibition of enforced disappearance, and the right to liberty and security of the person, including the right to be free from arbitrary detention. We also note that the procedural duty to carry out an effective investigation under Article 2 ECHR has evolved into a separate and autonomous duty and may bind the State even when the death took place before the critical date of ratification.<sup>14</sup>

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please advise what steps are being taken to ensure that the Birth Information and Tracing Bill will comply with the State’s obligations under international law, including its obligations to ensure effective remedies for human rights violations, and to effectively protect rights to information, and to truth, justice and reparation.
2. Regarding the General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill, please explain why the proposed legislation on institutional burials dis-apply the Coroner’s powers, once a specialised Agency is established to undertake exhumations, identification and re-interment of remains at institutional sites. Please explain what legal protections and judicial oversight will be in place to ensure transparency in the process, and what further steps will be taken to ensure that the legislation complies with the State’s obligations under international law.
3. Given that the Attorney General is currently empowered under the existing Coroners Acts, 1962, to direct the holding of inquests, and in light of the Commission Report’s findings, please provide information on whether the Government will order inquests into the deaths and burials identified in this report.

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<sup>14</sup> See also: *Silih v Slovenia*, Application No 71463/01, (Judgment of 9 April 2009). We note that in *Varnava and Others v Turkey*, the European Court of Human Rights observed that interpretation of the Convention obligations cannot be equated to a retroactive imposition of liability and concluded that its case-law is a means of clarifying pre-existing texts to which the principle of non-retroactivity does not apply in the same manner as to legislative enactments. *Varnava and Others v Turkey* Applications Nos 16,064/90 (Judgment of 18 September 2009), para. 140

4. Please provide further information on the proposed “Restorative Recognition Scheme.” Please clarify what steps are being taken to ensure that the scheme fulfils the State’s obligations under international human rights law, to ensure effective access to remedies, and to ensure compliance with the rights of victims to truth, justice, reparations, guarantees of non-recurrence and memory, without discrimination and without further delay.
5. Recognizing that, “without memory, the rights to truth, justice and full reparation cannot be fully realized, and there can be no guarantees of non-recurrence” (A/HRC/45/45, para. 100), please provide information on what memorialisation measures are planned in the proposed “Restorative Recognition Scheme”, and what role will be given to survivors in the design and implementation of such measures
6. Please provide information on what steps the Government will take to investigate and ensure accountability through the proposed Restorative Recognition Scheme, for the conduct of vaccine and infant milk-trials in Mother and Baby homes.
7. Please provide information on what steps the Government will take, through the proposed legislation and scheme, to ensure the rights to information and to effective remedies, including rights of access to personal data, the rights of natural mothers to access their full records and the rights of relatives of those who were in Mother and Baby Homes and analogous institutions, to obtain full records about relatives who died in Mother and Baby homes and analogous institutions.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government will be made public via the communications Reporting website after 48 hours. They will also subsequently be made available in the usual Report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Luciano Hazan

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Mama Fatima Singhateh

Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

Tomoya Obokata

Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Siobhán Mullally  
Special Rapporteur on trafficking in persons, especially women and children

Fabian Salvioli  
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Reem Alsalem  
Special Rapporteur on violence against women, its causes and consequences

Melissa Upreti  
Chair-Rapporteur of the Working Group on discrimination against women and girls