



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Submission to the Executive Office's  
Consultation on Truth Recovery – Mother and  
Baby Institutions, Magdalene Laundries and  
Workhouses, and their Pathways and Practices**

**September 2024**

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## Summary of Recommendations

- 2.9** The NIHRC recommends that the Executive Office ensures that a human rights-based approach is expressly stated as a foundation of the public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI. This is with a view to providing a baseline on which the inquiry can build (including beyond human rights law) to ensure it is effective, rather than limiting its scope and consequently deeming it ineffective. This can be achieved through using phrasing such as “abuses and human rights violations” in determining the public inquiry’s scope.
- 2.14** The NIHRC recommends that the Executive Office ensures that there is an effective mechanism, within the public inquiry, to consider individual experiences and to establish the types of abuse and human rights violations that occurred across the relevant period, together with effective redress for individuals and preventative measures to ensure they can never happen again. To enable that, there must be meaningful engagement with victims and survivors and their representative organisations from the planning stages of the public inquiry through to implementation and evaluation of the inquiry’s recommendations.
- 2.24** The NIHRC recommends that the Executive Office ensures that the temporal scope of the public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI is as expansive as possible. This is with a view to ensuring that there is no discrimination towards any victim and survivor and that there is a mechanism that effectively investigates the pathways and practices surrounding Mother and Baby Institutions, Magdalene Laundries and Workhouses, particularly in the context of family separation.
- 2.26** The NIHRC recommends that the Executive Office ensures that the inquiry considers the specific needs of different groups of women, and their families affected by the institution and the system that established and ran them.

- 2.36** The NIHRC recommends that the Executive Office ensures that a victim-centred approach is at the heart of every aspect of a public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI. This should be a clear obligation within the legislation and terms of reference associated with the public inquiry.
- 2.37** The NIHRC recommends that the Executive Office ensures that a mechanism is included within the public inquiry process for evidencing and considering the effects on intragenerational and intergenerational relatives of victims and survivors of Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI.
- 2.38** The NIHRC recommends that that the Executive Office ensures that that victims and survivors, and as appropriate their relatives, are meaningfully supported to be become core participants of a public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI, if they so wish.
- 3.12** The NIHRC recommends that the Executive Office ensures that the focus of a public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI is to establish what happened, why it happened, who was responsible and what can be done to prevent it from happening again. This must include a thorough, objective and impartial analysis pursuing all lines of inquiry.
- 3.13** The NIHRC recommends that the terms of reference are sufficiently flexible to enable the public inquiry to consider all evidence uncovered by or provided to it that is relevant. This must involve the meaningful involvement of victims and survivors within designing, participating in and engaging with the inquiry process, including in the drafting or altering of the terms of reference.
- 3.21** The NIHRC recommends that the Executive Office ensures that consideration is given to creating an expert advisory panel to the public inquiry that includes members with lived experience of Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI.

- 3.22 The NIHRC recommends that the Executive Office ensures that the panel of the public inquiry should have discretion to make decisions, guided by the findings of the Truth Recovery Independent Panel, research of the Expert Panel and through consultation with victims and survivors of these institutions and their relatives. Any additional suggestion that is made based on robust evidence should be meaningfully considered for inclusion within scope of the public inquiry.**
- 3.29 The NIHRC recommends that alleged human rights violations of the right to life, freedom from torture, and forced labour that the State knows about or ought to have known about within the institutions including those allegedly perpetrated by individuals, are also investigated, if not already.**
- 3.33 The NIHRC recommends that the Executive Office ensures that any clause preventing duplication between the proposed new inquiry and the Historical Institutional Abuse Inquiry does not prevent the new inquiry from following any obvious and reasonable line of investigation for the purposes of its consideration of Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI.**
- 3.38 The NIHRC recommends that the Executive Office ensures that a public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI adopts a victim-centred approach in the development, content and evolution of the inquiry's terms of reference.**
- 3.43 The NIHRC recommends that the Executive Office ensures that the public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI has effective powers of compellability that are clearly set out. Balanced with the requirement to conduct a thorough investigation, this includes that a victim-centred approach is adopted regarding who can be compelled to provide evidence and the type of information that can be compelled.**

- 3.46** The NIHRC recommends that the Executive Office ensures a public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI includes safeguarding mechanisms for the purposes of creating and maintaining a safe space for victims, survivors and their relatives to participate in and engage with the inquiry.
- 3.49** The NIHRC advises that the requirement to conduct reasonably prompt and expeditious investigations must not be used to rush its establishment without the support of victims and survivors.
- 3.57** The NIHRC recommends that the Executive Office ensures that there is a process for archiving the evidence and information sources recovered and collated by the Expert Panel, Truth Recovery Independent Panel and public inquiry. Access to and publication of information should only be limited where it is lawful, proportionate and necessary to do so.
- 4.11** The NIHRC advises that there is an obligation on the State to initiate effective investigations into disappearances and suspicious deaths and such investigations must be capable of ascertaining the presence or otherwise of unmarked graves. The NIHRC observes that one possibility might be for the public inquiry to have the power to order geophysical surveys and archaeological investigations as required.
- 5.3** The NIHRC recommends that the Executive Office ensures that the measures of financial redress and operational mechanisms connected to Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI are developed, implemented and monitored in close consultation with victims and survivors, their relatives and representative organisations. Moreover, any decision taken in relation to financial redress should be communicated to victims and survivors in an accessible way to meet their specific needs.
- 6.5** The NIHRC recommends that the Executive Office ensures that staff and professionals working in or associated with the proposed public inquiry are given suitable, gender-sensitive, victim-centred, trauma-informed training in relation to truth

**recovery processes, transitional justice and human rights standards. This should be monitored and refreshed when necessary.**

**7.3 The NIHRC recommends that the Executive Office ensures that the public inquiry is resourced to the extent necessary to carry out an effective, human rights compliant investigation and is able to produce a robust record of all abuses and human rights violations that occurred in Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI.**

**7.4 The NIHRC recommends that sufficient resources are set aside to implement the findings of the public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI.**

## 1.0 Introduction

1.8 The Northern Ireland Human Rights Commission (the NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). The NIHRC is also required, under section 78A(1) of the Northern Ireland Act 1998, to monitor the implementation of Article 2 of the Windsor Framework, to ensure there is no diminution of rights protected in the “Rights, Safeguards and Equality of Opportunity” chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK’s withdrawal from the EU.<sup>1</sup> In accordance with these functions, the following advice is submitted to the Executive Office in response to its consultation on Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and their Pathways and Practices.

1.9 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and treaty obligations of the Council of Europe (CoE) and United Nations (UN). The relevant regional and international treaties in this context include:

- International Labour Organisation (ILO) Forced Labour Convention 1930;<sup>2</sup>
- European Convention on Human Rights 1950 (ECHR);<sup>3</sup>
- UN International Covenant on Civil and Political Rights 1966 (UN ICCPR);<sup>4</sup>
- UN Convention on Economic, Social and Cultural Rights 1966 (UN ICESCR);<sup>5</sup>
- UN Convention on the Elimination of Racial Discrimination 1965 (UN CERD);<sup>6</sup>

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<sup>1</sup> The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement and all references to the Protocol in this document have been updated to reflect this change. (see Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework).

<sup>2</sup> Ratified by the UK in 1931.

<sup>3</sup> Ratified by the UK 1951. Further guidance is also taken from the body of case law from the European Court of Human Rights.

<sup>4</sup> Ratified by the UK in 1976.

<sup>5</sup> Ratified by the UK in 1976.

<sup>6</sup> Ratified by the UK in 1969.



- UN Vienna Convention on the Law on Treaties 1969;<sup>7</sup>
- UN Convention on Elimination of Discrimination against Women 1981 (UN CEDAW);<sup>8</sup>
- UN Convention against Torture 1984 (UN CAT);<sup>9</sup> and
- UN Convention on the Rights of the Child 1989 (UN CRC).<sup>10</sup>

1.10 In addition to these treaty standards, the following declarations and principles provide further guidance in respect of specific areas:

- UN Human Rights Committee General Comment No 16;<sup>11</sup>
- UN Human Rights Committee General Comment No 20;<sup>12</sup>
- Declaration on the Protection of All Persons from Enforced Disappearance;<sup>13</sup>
- Report of the UN Secretary-General on The Rule of Law and Transitional Justice in conflict and post-conflict settings;<sup>14</sup>
- UN CAT Committee General Comment No 2;<sup>15</sup>
- The UN Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo';<sup>16</sup>
- UN CEDAW Committee General Comment No 28;<sup>17</sup>
- UN CRC Committee General Comment No 13;<sup>18</sup>
- UN Human Rights Committee General Comment No 34;<sup>19</sup>
- UN CAT Committee General Comment No 3;<sup>20</sup>
- UN Human Rights Committee General Comment No 35;<sup>21</sup>

<sup>7</sup> Ratified by the UK in 1971.

<sup>8</sup> Ratified by the UK 1986.

<sup>9</sup> Ratified by the UK 1988.

<sup>10</sup> Ratified by the UK 1991.

<sup>11</sup> UN Human Rights Committee General Comment No 16: Article 17 on the Right to Privacy', 1988.

<sup>12</sup> 'UN Human Rights Committee General Comment No 20: Article 7 on the Prohibition of Torture or other Cruel, Inhuman or Degrading Treatment or Punishment', 1992.

<sup>13</sup> A/RES/47/133, 'Declaration on the Protection of All Persons from Enforced Disappearance', 18 December 1992.

<sup>14</sup> S/2004/616, 'Report of the Secretary-General: The Rule of Law and Transitional Justice in Conflict and Post-conflict Settings', 23 August 2004.

<sup>15</sup> CAT/C/GC/2, 'UN CAT Committee General Comment No 2: Implementation of Article 2', 24 January 2008.

<sup>16</sup> A/HRC/14-22, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Rashida Manjoo', 23 April 2010.

<sup>17</sup> CEDAW/C/GC/28, 'UN CEDAW Committee General Comment No 28: Core Obligations of States Parties Under Article 2 of UN CEDAW', 16 December 2010.

<sup>18</sup> CRC/C/GC/13, 'UN CRC Committee General Comment No 13: Right of the Child to Freedom from all Forms of Violence', 18 April 2011.

<sup>19</sup> CCPR/C/GC/34, 'UN Human Rights Committee General Comment No 34: Article 19 on Freedom of Opinion and Expression', 12 September 2011.

<sup>20</sup> CAT/C/GC/3, 'UN CAT Committee General Comment No 3: Implementation of Article 14', 13 December 2012.

<sup>21</sup> CCPR/C/GC/35, 'UN Human Rights Committee General Comment No 35: Article 9 on Liberty and Security of Person', 16 December 2014.

- UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff 2014;<sup>22</sup>
- The Minnesota Protocol;<sup>23</sup>
- UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff 2016;<sup>24</sup>
- UN CEDAW Committee General Comment No 35;<sup>25</sup>
- UN Human Rights Committee General Comment No 36;<sup>26</sup>
- UN CAT Committee Concluding Observations on the UK;<sup>27</sup>
- UN Human Rights Committee General Comment No 36;<sup>28</sup>
- UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli;<sup>29</sup>
- UN CEDAW Committee General Recommendation No 38;<sup>30</sup>
- The Istanbul Protocol;<sup>31</sup> and
- UN Human Rights Committee Concluding Observations on the UK.<sup>32</sup>

## 2.0 Human Rights-based Approach

2.1 The Truth Recovery Design Panel recommended that an inquiry should “investigate individual, institutional, organisational and State departmental/agent responsibility concerning human rights violations experience in Mother and Baby Institutions, Magdalene Laundries,

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<sup>22</sup> A/HRC/21/46, ‘Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff’, 9 August 2012.

<sup>23</sup> UN Office of the High Commissioner for Human Rights, ‘The Minnesota Protocol on the Investigation of Potentially Unlawful Death: The Revised UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions’ (OHCHR, 2016),

<sup>24</sup> A/HRC/34/62/Add.1, ‘Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff on his Mission to the UK of Great Britain and NI’, 17 November 2016.

<sup>25</sup> CEDAW/C/GC/35, ‘UN CEDAW Committee General Comment No 35: Gender-Based Violence Against Women, Updating General Recommendation No 19’, 26 July 2017.

<sup>26</sup> CCPR/C/GC/36, ‘UN Human Rights Committee General Comment No 36: Right to Life’, 30 October 2018.

<sup>27</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019.

<sup>28</sup> CCPR/C/GC/36, ‘UN Human Rights Committee General Comment No 36: Article 6 Right to Life’, 3 September 2019.

<sup>29</sup> A/75/174, ‘UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence Report on the Gender Perspective in Transitional Justice Processes’, 17 July 2020.

<sup>30</sup> CEDAW/C/GC/38, ‘UN CEDAW Committee General Recommendation No 38: Trafficking in Women and Girls in the Context of Global Migration’, 20 November 2020.

<sup>31</sup> UN Office of the High Commissioner for Human Rights, ‘Manual of the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (OHCHR, 2022).

<sup>32</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024.

Workhouses and their pathways and practices”.<sup>33</sup> This recommendation is acknowledged by the Executive Office, with a commitment that “human rights are central” to the “entire process”,<sup>34</sup> a recommendation with which the NIHRC agrees.

- 2.2 The NIHRC notes however, that the Executive Office suggests that legislation to establish a public inquiry “will make reference to a wider range of activities than ‘human rights violations’, when directing the inquiry to investigate the institutions and their functions”.<sup>35</sup> If that is intended as a justification for not framing the inquiry in and by human rights standards, the NIHRC suggests, respectfully, that is a mistake. Human rights do not preclude the consideration of other issues – they simply ground them – and in any event the NIHRC is unable to think of an issue that would be outside the scope of human rights, but would otherwise be covered by an inquiry.
- 2.3 For the avoidance of doubt, human rights standards provide a baseline for the consideration of responsibilities and failings. In other words, they set the minimum standards, which can be added to.

## **Purpose of human rights-based approach**

- 2.4 The Executive Office is concerned that “an investigation that is solely focused on individual human rights violations may not cover issues which ‘fall outside’ that threshold e.g. acts or omissions that were otherwise wrong, unlawful or illegal”.<sup>36</sup> Firstly, the NIHRC reminds the Executive Office that the relevance of human rights is not confined to individual cases. Quite the contrary; a human rights approach considers individuals’ cases and the context and environment within which they arose. Human rights standards require, for example, individual independent investigation into allegations of abuse, but also the systemic consideration of issues so that they might not arise again. Human rights are both reactive and preventative.

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<sup>33</sup> Truth Recovery Design Panel, ‘Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI: Truth, Acknowledgement and Accountability’ (TEO, 2021), at 9.

<sup>34</sup> The Executive Office, ‘Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices’ (TEO, 2024), at 16.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

- 2.5 A human rights-based approach is a conceptual framework informed by international human rights standards, which aims to put “human rights and corresponding State obligations at the heart of policy making”.<sup>37</sup> Thus, applying a human rights-based framework is important to safeguard rights for rights-holders, who can be individuals or social groups that have entitlements in relation to duty bearers. Duty bearers are State, or delegated non-State actors, that have an obligation to ensure that the human rights of rights-holders are respected, protected and fulfilled.<sup>38</sup>
- 2.6 Regarding the investigation of Mother and Baby Institutions, Magdalene Laundries and Workhouses, a human rights-based approach will empower victims and survivors and their relatives (rights-holders) to understand and exercise their rights and entitlements, while supporting the NI Executive (duty-bearers) in the organisation of this forthcoming inquiry and the effective implementation of its outcome. The PANEL principles offer guidance on how to achieve this. These are:
- **Participation** – everyone is entitled to active participation in decision-making processes which affect the enjoyment of their rights;
  - **Accountability** – duty-bearers are held accountable for failing to fulfil their obligations towards rights-holders. There should be effective remedies in place when human rights breaches occur;
  - **Non-discrimination and equality** – all individuals are entitled to their rights without discrimination of any kind. All types of discrimination should be prohibited, prevented and eliminated;
  - **Empowerment** – everyone is entitled to claim and exercise their rights. Individuals and communities need to understand their rights and participate in the development of policies which affect their lives; and
  - **Legality** – approaches should be in line with the legal rights set out in domestic and international laws.

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<sup>37</sup> European Network of National Human Rights Institutions, ‘Human Rights-Based Approach’. Available at: [Human Rights-Based Approach - ENNHRI](#)

<sup>38</sup> Ibid.

- 2.7 Thus, a human rights-based approach is not solely focused on establishing civil or criminal liability, though accountability is an important aspect. In essence, a human rights-based approach is about ensuring that a law, policy or investigation is as effective as possible *in practice*.
- 2.8 There is precedent for adopting a human rights-based approach in the present context. For example, human rights are a visible cornerstone in the work of the Truth Recovery Independent Panel, which has been tasked with making recommendations to the Public Inquiry.<sup>39</sup> Furthermore, specific to a public inquiry set up under the Inquiries Act 2005, the terms of reference of the Scottish COVID-19 Inquiry refer to a human rights-based approach.<sup>40</sup>
- 2.9 **The NIHRC recommends that the Executive Office ensures that a human rights-based approach is expressly stated as a foundation of the public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI. This is with a view to providing a baseline on which the inquiry can build (including beyond human rights law) to ensure it is effective, rather than limiting its scope and consequently deeming it ineffective. This can be achieved through using phrasing such as “abuses and human rights violations” in determining the public inquiry’s scope.**

## Individualistic approach

- 2.10 The consultation document observes that focusing solely on human rights may limit the scope of what may be considered within the inquiry. The NIHRC disagrees with that fundamental premise. This is explained further below.
- 2.11 The Executive Office appears to be concerned that “human rights violations are normally considered at an individual level and a public inquiry under the UK Inquiries Act 2005, cannot establish someone as liable under civil or criminal law (this would be the role of a court)”.<sup>41</sup> It is true that human

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<sup>39</sup> Truth Recovery Independent Panel, ‘Terms of Reference’ (TRIP, 2024).

<sup>40</sup> Scottish Government, ‘COVID-19 Inquiry: Terms of Reference’ (Scottish Gov, 2022).

<sup>41</sup> The Executive Office, ‘Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices’ (TEO, 2024), at 16.

rights law is constructed around the rights of the individual.<sup>42</sup> This is based on human rights being conferred on every individual, by virtue of them being a human being.<sup>43</sup> Nevertheless, the finding of a violation for one individual helps to confirm for duty bearers what does or does not constitute a violation within that context, which has far-ranging benefits beyond the individual whose case is being investigated. Additionally, the finding of a similar violation against several individuals can help to expose patterns, including systemic discrimination or disadvantage faced by marginalised groups. As the former UN Special Rapporteur on the promotion of truth, Pablo de Greiff, has recommended, “the structural and systemic dimension of violence and rights violations and abuses should be examined. A comprehensive understanding of the past requires instruments that do not treat it merely as a series of unconnected events”.<sup>44</sup> Moreover, when discussing a public inquiry on Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI, Professor Phil Scraton has stated that:

having interviewed so many of the families, so many of the survivors, the issue for me is undeniable. Whatever their memories about precise issues, their collective memory of what they have been through chimes. You hear the same evidence over-and-over-again.<sup>45</sup>

2.12 Additionally, the response to a human rights violation is not limited to compensation or damages. It can and often does include public declarations, disciplinary sanctions, prosecutions, effective training, better guidance or planning and also the amendment of legislation to protect potential victims.<sup>46</sup> There is precedent for that in the European Court of Human Rights (ECtHR).<sup>47</sup> There is also precedent in the ECtHR for individual cases to lead to consideration of the collective needs and rights of groups or communities. For example, the ECtHR identified the specific protection needs of Roma communities, noting that “special consideration

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<sup>42</sup> Groups of individuals can take collective cases, but each applicant must be directly affected, or in the case of a death indirectly affected, by the alleged violation. See for example, Article 34 of the ECHR.

<sup>43</sup> Preamble, UN International Covenant on Civil and Political Rights 1966; Preamble, UN International Covenant on Social, Economic and Cultural Rights 1966.

<sup>44</sup> A/HRC/34/62/Add.1, ‘Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff on his Mission to the UK of Great Britain and NI’, 17 November 2016, at para 125.

<sup>45</sup> Excerpt from Professor Phil Scraton’s interview in the documentary *Stolen* (2023).

<sup>46</sup> *Erdogan and Others v Turkey* (2006) ECHR 59; *Abdullah Yasa and Others v Turkey* (2013) ECHR 839; *McShane v UK* (2002) ECHR 469; *Khashiyev and Akayeva v Russia* (2005) ECHR 132.

<sup>47</sup> *Ananyev and Others v Russia* (2012) ECHR 21.

should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases”.<sup>48</sup> Further, in relation to discrimination on the grounds of sex, the ECtHR has noted that such discrimination contrary to Article 14 of the ECHR, can be perpetrated against a “person or a group”.<sup>49</sup>

2.13 While the NIHRC accepts that public inquiries under the Inquiries Act may be limited in their ability to order redress, that is not due to them being framed by human rights. The Inquiries Act itself must be read consistently with the ECHR, which means that an investigation into human rights violations must be effective. To be effective an investigation’s conclusions “must be based on thorough, objective and impartial analysis of all relevant elements” and follow “an obvious line of inquiry”.<sup>50</sup> Thus, there is a requirement on a public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI to consider individual experiences, where appropriate. It is welcomed that the consultation document indicates the intention to facilitate consideration of individual’s experiences.<sup>51</sup>

2.14 **The NIHRC recommends that the Executive Office ensures that there is an effective mechanism, within the public inquiry, to consider individual experiences and to establish the types of abuse and human rights violations that occurred across the relevant period, together with effective redress for individuals and preventative measures to ensure they can never happen again. To enable that, there must be meaningful engagement with victims and survivors and their representative organisations from the planning stages of the public inquiry through to implementation and evaluation of the inquiry’s recommendations.**

## Temporal scope

2.15 The Executive Office proposes to limit the scope of an inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI to between 1922 and 1995.<sup>52</sup> This is to mirror the provisions set out in the

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<sup>48</sup> *Chapman v UK* (2001) ECHR 43, at para 96.

<sup>49</sup> *Absulaziz, Cabales and Balkandali v UK* (1985) ECHR 7, at para 82.

<sup>50</sup> *Kolevi v Bulgaria* (2009), at para 201; *Armani da Silva v UK* (2016), at para 234.

<sup>51</sup> The Executive Office, ‘Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices’ (TEO, 2024), at 20.

<sup>52</sup> *Ibid*, at 15.

Preservation of Documents (Historical Institutions) Act (NI) 2022.<sup>53</sup> The Executive Office is concerned, mistakenly, that a human rights based approach would limit this approach because:

the UK ratified the ECHR in 1951, but it only became binding in domestic UK law with the introduction of the Human Rights Act 1998 (which came into force in October 2000). There may be potential issues applying human rights legislation retrospectively for the entire period from 1922-1995.<sup>54</sup>

- 2.16 The NIHRC welcomes the fact that the period should be wide and pre-date the ECHR. The NIHRC however disagrees that a human rights approach would somehow limit the temporal reach of the inquiry for the reasons explained further below, the fact that violations occurred before the entry into force of the ECHR does not mean that those violations will be excluded from its reach. The NIHRC is also concerned that it will not consider practices and pathways that continued beyond 1995.
- 2.17 In 2024, the UN Human Rights Committee raised concerns that no mechanism was in place to “address the systematic abuse of women and children in Northern Ireland between 1922 and 1995 in institutions such as the Magdalene laundries and mother and baby homes”.<sup>55</sup> Similarly, in 2019, the UN CAT Committee raised concerns with the lack of mechanism to address the abuse of children in institutions between 1922 and 1995.<sup>56</sup> However, neither UN Committee specifically recommended that an investigation into these institutions should be limited to 1922 to 1995.
- 2.18 Regarding the concern that adopting a human rights-based approach will provide its own limits on how far back the scope of a public inquiry can stretch, there are several assurances that this is not an issue.
- 2.19 The UK is bound by the ECHR (and other relevant human rights treaties) from the date of ratification or when the treaty came into force, whichever is later. The UK was one of the first States to ratify the ECHR on 4

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<sup>53</sup> Ibid.

<sup>54</sup> Ibid, at 16.

<sup>55</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 10.

<sup>56</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 2 June 2019, at para 44.



November 1950, but the ECHR did not come into force until 3 September 1953. The ECHR is the first human rights treaty that the UK ratified, though the UK had also ratified the International Labour Organisation Forced Labour Convention in 1931, which informed development of the right to freedom from slavery and forced labour (Article 4 of the ECHR).

- 2.20 In principle, 3 September 1953 is the date from when the UK's ECHR obligations are enforceable,<sup>57</sup> with additional human rights obligations from other treaties following as they were ratified. However, the UK did not recognise the competence of the European Commission on Human Rights to examine individual applications and the jurisdiction of the ECtHR until 1966. The ECtHR recognises this year as the 'critical date' for when ECHR obligations apply domestically.<sup>58</sup>
- 2.21 The UK adopts a dualist legal system, which means that any international obligations must be incorporated into domestic law to have direct effect – i.e. a court must take account of the ECHR, where relevant, in its rulings and public authorities are directly responsible for ensuring that they do not act in a way that is incompatible with the ECHR.<sup>59</sup> The Human Rights Act, which directly incorporates the ECHR into domestic law, came into force on 2 October 2000. The ECHR is the only human rights treaty to be directly incorporated into domestic law.
- 2.22 The UK Government initially rejected that the ECHR applied to cases dealing with pre-Human Rights Act 1998 acts or omissions.<sup>60</sup> The UK Supreme Court revised this approach in *Re McCaughey* [2011], accepting that procedural obligations apply to pre-Human Rights Act violations.<sup>61</sup> However, the UK Supreme Court changed its view in *McQuillan, McGuigan and McKenna* [2021] where it held that the domestic 'critical date' for ECHR obligations is 2 October 2000, when the Human Rights Act 1998 came into force.<sup>62</sup> Nevertheless, the ECtHR is of the view that the procedural obligation to investigate "has evolved into a separate and autonomous duty".<sup>63</sup> Considering Article 2 specifically, the ECtHR found that:

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<sup>57</sup> *Silih v Slovenia* (2009) ECHR 571, at para 164.

<sup>58</sup> *Chong and Others v UK* (2018) ECHR 802, at paras 84-90.

<sup>59</sup> Sections 2 and 6, Human Rights Act 1998.

<sup>60</sup> *Mc Kerr* [2004] UKHL 12.

<sup>61</sup> *Re McCaughey and Ancor* [2011] UKSC 20.

<sup>62</sup> *McQuillan, McGuigan and McKenna* [2021] UKSC 55.

<sup>63</sup> *Silih v Slovenia* (2009) ECHR 571, at para 159.

although it is triggered by acts concerning the substantive aspects of Article 2 [of the ECHR] it can give rise to a finding of a separate and independent 'interference'... In this sense it can be considered to be a detachable obligation arising out of Article 2 capable of binding the State even when the death took place before the critical date.<sup>64</sup>

2.23 Moreover, there is a broad margin of appreciation in this regard, and it is within the State's discretion to go beyond those dates.

2.24 **The NIHRC recommends that the Executive Office ensures that the temporal scope of the public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI is as expansive as possible. This is with a view to ensuring that there is no discrimination towards any victim and survivor and that there is a mechanism that effectively investigates the pathways and practices surrounding Mother and Baby Institutions, Magdalene Laundries and Workhouses, particularly in the context of family separation.**

## Specific needs and groups

2.25 Adopting a human rights-based approach provides a framework within which consideration of specific needs is considered. For example, human rights encourage consideration of the specific needs of racial and ethnic minorities,<sup>65</sup> persons with disabilities,<sup>66</sup> women and girls,<sup>67</sup> and children.<sup>68</sup> Similar to the approach adopted by the Joint Committee of Human Rights,<sup>69</sup> it also encourages consideration of abuses that were not openly

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<sup>64</sup> *Silih v Slovenia* (2009) ECHR 571, at para 159.

<sup>65</sup> Article 14, European Convention on Human Rights 1950; Article 2(1), UN International Covenant on Civil and Political Rights 1966; UN Convention on the Elimination of All Forms of Racial Discrimination 1965.

<sup>66</sup> Article 14, European Convention on Human Rights 1950; Article 2(1), UN International Covenant on Civil and Political Rights 1966; Article 23, UN Convention on the Rights of the Child 1989; UN Convention on the Rights of Persons with Disabilities 2006.

<sup>67</sup> Article 14, European Convention on Human Rights 1950; Article 2(1), UN International Covenant on Civil and Political Rights 1966; UN Convention on the Elimination of All Forms of Discrimination Against Women 1981; UN Convention on the Rights of the Child 1989; Articles 6 and 7, UN Convention on the Rights of Persons with Disabilities 2006.

<sup>68</sup> Article 14, European Convention on Human Rights 1950; Article 2(1), UN International Covenant on Civil and Political Rights 1966; UN Convention on the Rights of the Child 1989; Article 7, UN Convention on the Rights of Persons with Disabilities 2006.

<sup>69</sup> House of Commons and House of Lords Joint Committee on Human Rights, 'The Violation of Family Life: Adoption of Children of Unmarried Women 1949-1976' (JCHR, 2022), at paras 135-138.

recognised as such at the time, such as enforced disappearances, human trafficking and forced labour.<sup>70</sup> Thus, adopting a human rights-based approach would encourage the public inquiry to consider how experiences within Mother and Baby Institutions, Magdalene Laundries and Workhouses may have differed or caused different effects for particular groups of individuals. Consequently, the content of the forthcoming inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses can benefit from a full consideration of UN and Council of Europe treaties that the UK is bound by, as well as the ECHR.

- 2.26 **The NIHRC recommends that the Executive Office ensures that the inquiry considers the specific needs of different groups of women, and their families affected by the institution and the system that established and ran them.**

## Victim-centred approach

- 2.27 The consultation makes several references to victims and survivors. The Commission welcomes that support for victims and survivors is identified as a key component and that there is the intention to enable the proposed inquiry to consider evidence from affected individuals.<sup>71</sup> The acknowledgement of the intergenerational impact of abuse is further welcomed.<sup>72</sup> However, it is notable that a victim-centred approach is only expressly mentioned in the context of the financial redress process within the consultation document.<sup>73</sup> The consultation document also considers whether including a victim or survivor on the public inquiry panel would “conflict with the requirement of impartiality”.<sup>74</sup>
- 2.28 The inquiry process in Ireland has faced much criticism and been subject to successful legal challenge for its approach to victim and survivors’

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<sup>70</sup> Articles 2, 3 and 4, European Convention on Human Rights 1950; Articles 4, 7 and 8, UN International Covenant on Civil and Political Rights 1966; Articles 6 and 37, UN Convention on the Rights of the Child 1989; Articles 10, 15 and 27(2), UN Convention on the Rights of Persons with Disabilities 2006.

<sup>71</sup> The consultation document proposes that views will be sought by the proposed inquiry from women and girls admitted to a Mother and Baby Institution; children, now adults, born while their mothers were in the Mother and Baby Institution; women and girls admitted to Magdalene Laundries; pregnant women and pregnant girls admitted to the Workhouse; women and girls who gave birth while they were in the Workhouse; children, now adults, born while their mothers were in the Workhouse. See The Executive Office, ‘Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices’ (TEO, 2024), at 16 and 20.

<sup>72</sup> The Executive Office, ‘Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices’ (TEO, 2024), at 20.

<sup>73</sup> Ibid, at 24 and 29.

<sup>74</sup> Ibid, at 23.

treatment and involvement in the investigation process.<sup>75</sup> From the perspectives of legality, practicality and efficiency, it is crucial that the mistakes made during that process are learned from and avoided in NI. From the perspective of a human rights-based approach, as advocated by the NIHRC, a victim-centred approach is a requirement through the application of the PANEL Principles and considering best practice.

2.29 Speaking on the Commission of Investigations into Mother and Baby Homes, Catriona Crowe, has stated that:

a lot of survivors are now older. They will die, many of died. Far too many have died without getting the information or the solace they should have got. Others will too... People particularly survivors of Mother and Baby Homes waited a very long time – 2015 to 2021 for the results of the Commission of Inquiry in the Mother and Baby Homes and county homes in Ireland. It was hoped and expected by many people that this would finally lay this to rest, that it would treat survivors respectfully and with dignity, that their evidence would be taken seriously and that we would get for the first time a really interesting panoramic view of what had gone on in these places. On the contrary, there are some good chapters on social history, adoption institutionalisation, welfare, health, all of those things that is useful to historians. But what the survivors started to notice was that their testimony had effectively vanished.<sup>76</sup>

2.30 Professor Máiréad Enright explained that:

I was surprised how often the Commission [of Investigations into Mother and Baby Homes] says in its findings “we found no evidence of such and such an abuse” or “little evidence of such and such an abuse”. And when I was first reading the report, I remember vividly feeling very confused as to how they could have possibly come to those conclusions when, if you turn to the back of the report where all the excerpts from the confidential committee are, you seem to a wealth of testimony, which I would consider to

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<sup>75</sup> *Stolen* (2023); JP McDowell and Hannah Unger, ‘Press Release: Fair Procedures – High Court declares that rights of Mother and Baby Home survivors were breached’, *FieldFisher*, 22 December 2021.

<sup>76</sup> Excerpt from Professor Catriona Crowe’s interview in the documentary *Stolen* (2023).

be evidence of those abuses. If you decided that you want to give testimony to the Mother and Baby Homes Commission, you would be sent to one of two Committees – the Investigative Committee or the Confidential Committee.

We know now that the vast majority of people who wanted to give evidence were sent to the Confidential Committee, not the Investigative [Committee]. What wasn't made clear to people at the time, was that, if you went to the Confidential Committee you were promised a non-adversarial space in which you could tell your story and it wouldn't be contradicted. You could give your evidence. You would be treated well, you would be believed.<sup>77</sup> The other side of that coin, this wasn't explained to people, was that if you went to the Confidential Committee, because your evidence hadn't been tested as it might be in a court, your evidence would be kept at that level of 'just a story' and the Commission would not take it into account when they were coming to their findings. When you understand that basic point, then everything becomes much clearer, because the vast majority of oral evidence that was given to the Commission did not inform the findings.

I think people expected, certainly I expected, that oral testimony would be a significant influence on the findings of this Commission. It wasn't. So that's how you end up with a finding like, for example, there is little to no evidence of forced adoption.<sup>78</sup>

2.31 Professor Phil Scraton has stated that “what it is about is trying to empower those who have the stories to tell. They must have a confidence in the system and process that belongs to them and isn't in the ownership of State institutions or religious institutions”.<sup>79</sup> Dr Maeve O'Rourke has also emphasised that the involvement of victims and survivors within the public inquiry is crucial and that the public inquiry should enable consideration of victims and survivors experiences.<sup>80</sup> Furthermore, how victims and

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<sup>77</sup> The Truth Recovery Independent Panel could be equated to the approach of the Confidential Committee within the Commission for Investigations.

<sup>78</sup> Excerpt from Professor Máiréad Enright's interview in the documentary *Stolen* (2023).

<sup>79</sup> Meeting between Dr Maeve O'Rourke and NI Human Rights Commission, 13 August 2024.

<sup>80</sup> Excerpt from Professor Phil Scraton's interview in the documentary *Stolen* (2023).

survivors are treated by the process and ensuring access to information will be key to an effective public inquiry.<sup>81</sup>

2.32 The former UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff, noted that:

truth-seeking requires the active participation of individuals who wish to express their grievances and report on the facts and underlying causes of the violations and abuses which occurred. Truth-seeking will only be regarded a justice measure if civil society, in particular victims' organisations, is adequately represented in the composition of a truth commission.<sup>82</sup>

2.33 Drawing from the PANEL principles, participation is a fundamental element of a human rights-based approach. For participation to be effective, affected individuals and their representative organisations should be involved in every stage of the process – design, development, implementation, monitoring and evaluation.

2.34 Best practice is set by the UN Convention on the Rights of Persons with Disabilities that is grounded in the mantra – “nothing for us, without us” – and requires that:

in the development and implementation of legislation and policies to implement the... [UN CRPD], and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations.<sup>83</sup>

2.35 Critically, participation must be meaningful and not illusory. It is important that victims and survivors are supported in engaging with the public inquiry, recent examples of good practice should be considered. For example, victims and survivors in the context of the UK COVID-19 inquiry and the Post Office Inquiry have been enabled to group together and become a core participant of the respective inquiry, which enables

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<sup>81</sup> Meeting between Dr Maeve O'Rourke and NI Human Rights Commission, 13 August 2024.

<sup>82</sup> A/HRC/21/46, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff', 9 August 2012, at para 54.

<sup>83</sup> Article 4(4), UN Convention on the Rights of Persons with Disabilities 2006.

qualifying individuals to have rights to receive disclosure of documentation, be represented by lawyers and make legal submissions, suggest questions and receive advance notice of the inquiry's report. There is power for the Chair of an inquiry to make such a provision.<sup>84</sup>

- 2.36 **The NIHRC recommends that the Executive Office ensures that a victim-centred approach is at the heart of every aspect of a public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI. This should be a clear obligation within the legislation and terms of reference associated with the public inquiry.**
- 2.37 **The NIHRC recommends that the Executive Office ensures that a mechanism is included within the public inquiry process for evidencing and considering the effects on intragenerational and intergenerational relatives of victims and survivors of Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI.**
- 2.38 **The NIHRC recommends that that the Executive Office ensures that that victims and survivors, and as appropriate their relatives, are meaningfully supported to be become core participants of a public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI, if they so wish.**

### 3.0 Human Rights Compliant Investigations

- 3.1 Article 1 of the ECHR, which requires that the UK "secure to everyone within their jurisdiction the rights and freedoms defined in... [the ECHR]". Consequently, there must be an effective official investigation conducted whenever "there is reason to believe that an individual has died in suspicious circumstances" and/or it is "arguable" and "raises reasonable suspicion" that an unlawful breach of Articles 2 (right to life) and Article 3 (freedom from torture) of the ECHR has occurred.<sup>85</sup> Such investigations are not limited to State action or inaction, but extend to the resulting

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<sup>84</sup> Rule 5, Inquiry Rules 2006.

<sup>85</sup> *ROD v Croatia* (2008) ECHR 1048, at Section 1; *Assenov and Others v Bulgaria* (1998) ECHR 98, at para 102; *M and Others v Italy and Bulgaria* (2012) ECHR 1967, at para 100; *Assenov and Others v Bulgaria* (1998) ECHR 98, at para 102; *Mocanu and Others v Romania* (2014) ECHR 958, at paras 319-325; Articles 12 and 14, UN Convention against Torture 1984; CAT/C/GC/2, 'UN CAT Committee General Comment No 2', 24 January 2008, at paras 5, 17, 18 and 25; CAT/C/GC/3, 'UN Committee against Torture General Comment No 3', 13 December 2012, at para 5.



actions of non-State actors that the State knew or ought to have known about.<sup>86</sup> Similar obligations also arise under international human rights standards.<sup>87</sup>

- 3.2 The further strength in adopting a human rights-based approach is that it provides clear guiding principles on the minimum that is required for an investigation to be effective. These include that the investigation must satisfy the required purpose, be independent and impartial, be thorough, of the State's own motion, commence promptly, progress with reasonable expedition and be subject to public scrutiny.<sup>88</sup>
- 3.3 The NIHRC welcomes the commitment to undertake a public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI.<sup>89</sup> It is particularly welcomed, that there is a commitment to undertake an investigation on the State's own motion.<sup>90</sup> However, there are other elements of what constitutes an effective investigation that require consideration in the context of the proposals set out in the consultation document. The consultation document acknowledges these elements by referring to "procedural fairness, promptness, accountability, and openness to public scrutiny",<sup>91</sup> but it is worth considering each in detail.

## Purpose of an investigation

- 3.4 The consultation acknowledges that a public inquiry includes "the ability to examine the facts to determine a) what happened, b) why did it happen, c)

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<sup>86</sup> *Ergi v Turkey* (1998), ECHR 59, at para 82.

<sup>87</sup> Such as Articles 6 and 7, UN International Covenant on Civil and Political Rights 1966; Article 2(1), UN Convention against Torture 1984; Articles 6 and 37(a), UN Convention on the Rights of the Child 1989; Articles 10 and 15, UN Convention on the Rights of Persons with Disabilities 2006.

<sup>88</sup> *Hugh Jordan v UK* (2001) ECHR 327; *McKerr v UK* (2001) ECHR 329; *Assenov and Others v Bulgaria* (1998) ECHR 98, at para 102; *Mocanu and Others v Romania* (2014) ECHR 958, at paras 319-325; CCPR/C/GC/36, 'UN Human Rights Committee General Comment No 36: Right to Life', 30 October 2018, at paras 27 and 28; CAT/C/GC/3, 'UN Committee against Torture General Comment No 3', 13 December 2012, at para 5; UN General Assembly, 'Resolution 60/147: 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', 16 December 2005, at para 3(b).

<sup>89</sup> The Executive Office, 'Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices' (TEO, 2024), at 4.

<sup>90</sup> *McCann v UK* (1995) 21 EHRR 97, at para 173; *McKerr v UK* (2001) ECHR 329, at para 111; *Hugh Jordan v UK* (2001) ECHR 327, at para 105; CCPR/C/GC/36, 'UN Human Rights Committee General Comment No 36: Right to Life', 30 October 2018, at para 28; A/RES/47/133, 'Declaration on the Protection of All Persons from Enforced Disappearance', 18 December 1992.

<sup>91</sup> The Executive Office, 'Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices' (TEO, 2024), at 16.



who was accountable. Some inquiries also consider what can be done to prevent a particular issue from happening again”.<sup>92</sup>

3.5 The consultation document sets out proposals that the public inquiry will focus on whether there were systemic failings in:

- what led women and girls to be admitted to such institutions;
- their treatment while there;
- their departure from the institutions;
- the placement of children, now adults, (other than with a birth mother), born while their mothers were in an institution, for the purposes of adoption, fostering or other care arrangements; and
- the registration, regulation or inspection of the institutions.<sup>93</sup>

3.6 The report of the Truth Recovery Expert Panel outlines that the purpose of this public inquiry should be, to “investigate issues of individual, institutional, organisational and state departmental/agent responsibility concerning human rights violations experienced in Mother and Baby Institutions, Magdalene Laundries, Workhouses and their pathways and practices”.<sup>94</sup> The Executive Office’s concern with the Expert Panel’s focus on human rights violations only is discussed in Section 2 of this submission.

3.7 The Truth Recovery Design Expert Panel further recommends that an inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses, should also aim to gather, preserve and digitise relevant records, to commission geographical surveys in relation to burial sites, to investigate financial operations of the institutional, forced labour and family separate system, and to publish comprehensive reports.<sup>95</sup>

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<sup>92</sup> Ibid, at 14.

<sup>93</sup> Ibid, at 16.

<sup>94</sup> Deirdre Mahon et al, ‘Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI: Truth, Acknowledgment and Accountability’ (TEO, 2021), at 13.

<sup>95</sup> Ibid, at 13-14.

- 3.8 The Truth Recovery Design Expert Panel’s proposed approach reflects a human rights-based approach to an investigation. An investigation aims to establish and secure accountability and to determine whether particular actions were or were “not justified in a particular set of circumstances”.<sup>96</sup> This can be for the purpose of identifying and punishing the responsible individuals or bodies,<sup>97</sup> preventing impunity, avoiding denial of justice, “drawing necessary lessons on revising practices and policies with a view to avoiding repeated violations”, and/or preventing the “occurrence of similar violations in the future”.<sup>98</sup>
- 3.9 The right to life can only be interfered with when “absolutely necessary” in three very specific scenarios – in defence from unlawful violence, to effect a lawful arrest or prevent escape of a person lawfully detained, or to lawfully quell a riot or insurrection.<sup>99</sup> Freedom from torture or ill-treatment is an absolute right, which should not be interfered with under any circumstances.<sup>100</sup> On that basis it is imperative that the procedural obligation to investigate is taken seriously. This is not only essential from the perspective of dealing with past abuses, but to ensure that similar violations do not occur in the future.
- 3.10 The nature and degree of scrutiny required by an investigation is determined by the circumstances of each case, for example undisputed cases may require a simple investigation, but disputed or suspicious cases

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<sup>96</sup> *Kaya v Turkey* (1998) ECHR 10, at para 87.

<sup>97</sup> *Ibid*, at paras 106-107; *Assenov and Others v Bulgaria* (1998) ECHR 98, at para 102; *Mocanu and Others v Romania* (2014) ECHR 958, at paras 319-325; Articles 12 and 14, UN Convention against Torture 1984; CAT/C/GC/2, ‘UN CAT Committee General Comment No 2’, 24 January 2008, at paras 5, 17, 18 and 25; CAT/C/GC/3, ‘UN Committee against Torture General Comment No 3’, 13 December 2012, at para 5; CCPR/C/GC/36, ‘UN Human Rights Committee General Comment No 36: Right to Life’, 30 October 2018, at para 27.

<sup>98</sup> *Kaya v Turkey* (1998) ECHR 10, at paras 106-107; *Assenov and Others v Bulgaria* (1998) ECHR 98, at para 102; *Mocanu and Others v Romania* (2014) ECHR 958, at paras 319-325; Articles 12 and 14, UN Convention against Torture 1984; CAT/C/GC/2, ‘UN CAT Committee General Comment No 2’, 24 January 2008, at paras 5, 17, 18 and 25; CAT/C/GC/3, ‘UN Committee against Torture General Comment No 3’, 13 December 2012, at para 5; CCPR/C/GC/36, ‘UN Human Rights Committee General Comment No 36: Right to Life’, 30 October 2018, at paras 27 and 28; UN Office of the High Commissioner for Human Rights, ‘The Minnesota Protocol on the Investigation of Potentially Unlawful Death: The Revised UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions’ (OHCHR, 2016), at para 8(c).

<sup>99</sup> Articles 2 and 15(2), European Convention on Human Rights 1950; Article 6, UN International Covenant on Civil and Political Rights 1966; Article 6, UN Convention on the Rights of the Child 1989; Article 10, UN Convention on the Rights of Persons with Disabilities 2006.

<sup>100</sup> Articles 3 and 15(2), European Convention on Human Rights 1950; Article 7, UN International Covenant on Civil and Political Rights 1966; Article 2(1), UN Convention against Torture 1984; Article 37(a), UN Convention on the Rights of the Child 1989; Article 15, UN Convention on the Rights of Persons with Disabilities 2006.

will require additional scrutiny.<sup>101</sup> The focus on systemic violations is welcomed, however this should not be at the expense of considering individual experiences, which ultimately will be crucial in identifying where systemic issues occurred. This is set out in more detail at paragraphs 2.10 to 2.14 of this submission.

3.11 Considering that an effective investigation is required to be transparent,<sup>102</sup> there is also a link to the right to truth.<sup>103</sup> Thus, an investigation is also important in establishing the truth and gathering accessible information.

3.12 **The NIHRC recommends that the Executive Office ensures that the focus of a public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI is to establish what happened, why it happened, who was responsible and what can be done to prevent it from happening again. This must include a thorough, objective and impartial analysis pursuing all lines of inquiry.**

3.13 **The NIHRC recommends that the terms of reference are sufficiently flexible to enable the public inquiry to consider all evidence uncovered by or provided to it that is relevant. This must involve the meaningful involvement of victims and survivors within designing, participating in and engaging with the inquiry process, including in the drafting or altering of the terms of reference.**

## **Independent and impartial investigations**

3.14 Independence is a key component of an effective investigation.<sup>104</sup> Thus, the NIHRC welcomes the express commitment to ensuring that the public

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<sup>101</sup> *Velikova v Bulgaria* (2000) ECHR 198, at para 80.

<sup>102</sup> *Avsar v Turkey* (2001) ECHR 439.

<sup>103</sup> UN Secretary-General, 'UN Approach to Transitional Justice', March 2010, at 3; *El-Masri v The Former Yugoslav Republic of Macedonia* (2012), Application No 39630/09, Judgment of 13 December 2012, at para 191; *Janowiec and Others v Russia* (2013) ECHR 1003, at para 9 of the Joint Partly Dissenting Opinion of Judges Ziemele, De Gaetano, Laffranque and Keller; *Varnava and Others v Turkey* (2009) ECHR 1313, at paras 200-202; CAT/C/GC/3, 'UN CAT Committee General Comment No 3: Implementation of Article 14', 13 December 2012, at paras 6 and 16.

<sup>104</sup> *Hugh Jordan v UK* (2001) ECHR 327; *McKerr v UK* (2001) ECHR 329; *Assenov and Others v Bulgaria* (1998) ECHR 98, at para 102; *Mocanu and Others v Romania* (2014) ECHR 958, at paras 319-325; CCPR/C/GC/36, 'UN Human Rights Committee General Comment No 36: Right to Life', 30 October 2018, at paras 27 and 28; CAT/C/GC/3, 'UN Committee against Torture General Comment No 3', 13 December 2012, at para 5; UN General Assembly, 'Resolution 60/147: 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', 16 December 2005, at para 3(b).

inquiry is independent and impartial. However, the NIHRC notes that there are additional aspects that require further consideration beyond the simple requirement of impartiality and independence.

- 3.15 Regarding the question of panel membership and the inclusion of a person with lived experience, published guidance is limited. There is, for obvious reasons, clear guidance that perpetrators must be excluded from investigation. The ECtHR has stated that for an investigation to be independent it is “necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events”.<sup>105</sup> This requires a “lack of hierarchical or institutional connection, but also a practical independence”.<sup>106</sup> The guidance on the inclusion of victims or survivors in operating investigations that are directly or indirectly related to their own experiences is less clear. Yet, the UN Revised Minnesota Protocol does offer some direction.<sup>107</sup>
- 3.16 The UN Revised Minnesota Protocol states that “investigations must also be free from undue external influence, such as the interests of political parties or powerful social groups”.<sup>108</sup> The UN Revised Minnesota Protocol also states that “investigators must be impartial and must act at all times without bias. They must analyse all evidence objectively. They must consider and appropriately pursue exculpatory as well inculpatory evidence”.<sup>109</sup>
- 3.17 A reasonable option might be to add the Truth Recovery Independent Panel or a similar model, within the public inquiry structure as an expert advisory panel.
- 3.18 A further issue is the procedure for selecting which institutions to include in the inquiry.<sup>110</sup> It is proposed that “before the institutions of interest are prescribed the Executive Office must consult the Chairperson and seek the

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<sup>105</sup> *Ergi v Turkey* (1998), ECHR 59, at paras 83-84; *Hugh Jordan v UK* (2001) ECHR 327, at para 120; *McKerr v UK* (2001) ECHR 329, at para 128.

<sup>106</sup> *Ibid.*

<sup>107</sup> UN Office of the High Commissioner, ‘The Minnesota Protocol on the Investigation of Potentially Unlawful Death’ (OHCHR, 2016), at para 27.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*, at para 31.

<sup>110</sup> The Executive Office, ‘Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices’ (TEO, 2024), at 17.

approval of the [NI] Assembly".<sup>111</sup> The Executive Office has acknowledged that the "decision to prescribe an institution will need to be taken carefully".<sup>112</sup> The Executive Office has stated that it intends to inform its decisions on which institutions to prescribe by consulting evidence gathered by Expert Panel and the Truth Recovery Independent Panel.<sup>113</sup>

- 3.19 The NIHRC welcomes consideration of the expertise of the Expert Panel and the Truth Recovery Independent Panel. The NIHRC also welcomes the proposal to build flexibility into the prescription process by including "other institutions".<sup>114</sup> However, the NIHRC is concerned that the requirement to seek the approval of the NI Assembly before deciding that an institution can be included within the scope of the inquiry is not an independent or impartial approach. Independence from the government, Mother and Baby Institutions, Magdalene Laundries, Workhouses and other linked institutions will be key to ensuring that the public inquiry is independent in law and practice.<sup>115</sup>
- 3.20 Furthermore, to require 'sign off' from a political body has implications for the independence and effectiveness of the process.
- 3.21 **The NIHRC recommends that the Executive Office ensures that consideration is given to creating an expert advisory panel to the public inquiry that includes members with lived experience of Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI.**
- 3.22 **The NIHRC recommends that the Executive Office ensures that the panel of the public inquiry should have discretion to make decisions, guided by the findings of the Truth Recovery Independent Panel, research of the Expert Panel and through consultation with victims and survivors of these institutions and their relatives. Any additional suggestion that is made based on robust evidence should be meaningfully considered for inclusion within scope of the public inquiry.**

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<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> *Ergi v Turkey* (1998), ECHR 59, at paras 83-84; *Hugh Jordan v UK* (2001) ECHR 327, at para 120; *McKerr v UK* (2001) ECHR 329, at para 128.

## Thorough investigations

3.23 A human rights compliant investigation is not one that is “half-hearted and dilatory”.<sup>116</sup> To be human rights compliant, an “investigation’s conclusions must be based on thorough, objective and impartial analysis of *all* relevant elements... failing to follow an obvious line of inquiry undermines the investigations’ ability to establish the circumstances of the case and the person responsible”.<sup>117</sup>

### Inquiry’s scope

3.24 The consultation document includes an acknowledgement that “research has demonstrated that some Mother and Baby Institutions not only admitted pregnant women and girls during and after pregnancy but also on occasion, offered crisis/hostel accommodation to non-pregnant women”.<sup>118</sup> The NIHRC welcomes the intention to “examine the treatment of all women and girls in relation to Mother and Baby Institutions and Magdalene Laundries” and “the facts regarding children, now adults born while their mother was in a Mother and Baby Institution”.<sup>119</sup> The NIHRC also welcomes the intended flexibility to ensure that evidence emerged that children, now adults, had experience of Magdalene Laundries, however this would need to be expressly stated to ensure it occurs.<sup>120</sup>

3.25 Regarding Workhouses, the consultation document acknowledges that “previous research has also established that many children born there to mothers, who were not married, were frequently boarded out, fostered or adopted” and “to that extent, Workhouses can be said to have operated as a form of Mother and Baby Institution for some women and girls”.<sup>121</sup> It is proposed to limit the inquiry’s scope to these instances, with a focus only “on pregnant women and girls and children, now adults born to them while their mother was admitted to a Workhouse”.<sup>122</sup> The consultation clarifies that “it is not the policy intention to include all those pregnant women and

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<sup>116</sup> *Acar and Others v Turkey* (2005) ECHR 313, at para 91.

<sup>117</sup> *Kolevi v Bulgaria* (2009) ECHR 1838, at para 201; *Armani da Silva v UK* (2016), Application No 5878/08, Judgment of 30 March 2016, at para 234.

<sup>118</sup> The Executive Office, ‘Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices’ (TEO, 2024), at 19.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*, at 19 and 20.

<sup>122</sup> *Ibid.*

girls who effectively used Workhouse infirmaries as their local maternity unit and returned home with their children”.<sup>123</sup> Nor is it the intention to “bring within the remit of the inquiry those other women, men and children who may have experienced similar conditions in the Workhouse”.<sup>124</sup> The NIHRC welcomes the inclusion of Workhouses in the proposed inquiry. Yet, an effective investigation does require thorough consideration of evidence. Thus, limiting the scope of an investigation can be justified to enable the investigation resources to be effectively utilised. However, a decision to limit the scope of an investigation must not be arbitrary or for the purposes of creating the illusion that an effective investigation on the selected matters will be undertaken.<sup>125</sup> Where the State knows of or should have known about suspicious deaths or instances of torture, ill-treatment or degrading treatment, this must be thoroughly investigated.<sup>126</sup> While it appears that the reason for not including these broader Workhouse cases within the proposed inquiry seems justified, any suspected abuses or human rights violations that did occur must be effectively investigated, albeit through a different mechanism(s).

3.26 The NIHRC further welcomes the proposal in the consultation document to “focus not only on the institutions themselves but also on any organisations or individuals linked to their activities”.<sup>127</sup> Also, the intention that the inquiry considers relevant pathways and practices through stating that:

the remit of the inquiry may extend, therefore, beyond examining the role of the institutions themselves to include e.g. the involvement of social workers, General Practitioners, clergy, “baby homes”, private nursing homes, adoption agencies involved with women and girls in the institutions, and their children, now adults, born while their mothers were there.<sup>128</sup>

3.27 The consultation document clarifies that:

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<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> *Acar and Others v Turkey* (2005) ECHR 313, at para 91.

<sup>126</sup> *Ergi v Turkey* (1998), ECHR 59, at para 82.

<sup>127</sup> The Executive Office, ‘Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices’ (TEO, 2024), at 18.

<sup>128</sup> Ibid.

it is not, however, the policy intention to include every mother who gave birth to a child, now adult, who was adopted or fostered from 1922-1995 or all children, now adults, who were adopted or fostered in that period, as the inquiry would effectively become a review of the entire adoption or care system from 1922-1995.<sup>129</sup>

- 3.28 This is an important to enable individual cases and the actions of individuals linked to the activities of the institutions to either be brought to the attention of the inquiry and investigated if appropriate, or to be considered of the inquiry's own motion.
- 3.29 **The NIHRC recommends that alleged human rights violations of the right to life, freedom from torture, and forced labour that the State knows about or ought to have known about within the institutions including those allegedly perpetrated by individuals, are also investigated, if not already.**

### **Non-duplication**

- 3.30 The consultation document states that "it is important that the inquiry does not duplicate work of the Historical Institutional Abuse Inquiry, and it is the policy intention that the legislation contains a clause to that effect".<sup>130</sup> However, it is acknowledged within the consultation document that:

the inquiry may nevertheless inquire into facts relevant to its purposes if these facts were not established by the Historical Institutional Abuse Inquiry when looking into a given institution, for example, the Historical Institutional Abuse Inquiry only examined the experience of under-18s in the three Good Shepherd Sisters' Magdalene Laundries.<sup>131</sup>

- 3.31 To be effective, an investigation's conclusions "must be based on thorough, objective and impartial analysis of all relevant elements" and follow "an obvious line of inquiry".<sup>132</sup> The NIHRC welcomes that it is intended that any institutions not covered by the Historical Institutional Abuse Inquiry

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<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> *Kolevi v Bulgaria* (2009), at para 201; *Armani da Silva v UK* (2016), at para 234.



can be considered for inclusion by the proposed new inquiry, where relevant. Any concern of non-duplication should not prevent the ability for the public inquiry to follow an obvious line of inquiry.

- 3.32 For example, there may be evidence that was considered by the Historical Institutional Abuse Inquiry to which the new inquiry should have access. Another example might be the three Good Shepherd Sisters' Magdalene Laundries already investigated by the Historical Institutional Abuse Inquiry should be considered by the new inquiry, albeit through a different lens.
- 3.33 **The NIHRC recommends that the Executive Office ensures that any clause preventing duplication between the proposed new inquiry and the Historical Institutional Abuse Inquiry does not prevent the new inquiry from following any obvious and reasonable line of investigation for the purposes of its consideration of Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI.**

### Terms of reference

- 3.34 The consultation states that the Executive Office will "consult the Chairperson before preparing or amending the inquiry terms of reference. These cannot therefore be agreed until the Chairperson is appointed. The work of the Independent Panel will help to shape the terms of reference".<sup>133</sup>
- 3.35 To ensure that a public inquiry provides for a thorough investigation, it must have an effective terms of reference. The Istanbul Protocol gives guidance on what a terms of reference for an effective inquiry should include, noting that they should be "neutrally framed", they should "state precisely which events and issues are to be investigated and addressed in the commission's final report", and they should "provide flexibility in the scope of the inquiry to ensure that thorough investigation by the commission is not hampered by overly restrictive or overly broad terms of reference".<sup>134</sup> The Istanbul Protocol further notes that necessary flexibility can be ensured by permitting the commission to, for example, amend its terms of reference.<sup>135</sup>

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<sup>134</sup> UN Office of the High Commissioner for Human Rights, 'Manual of the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (OHCHR, 2022), at para 59.

<sup>135</sup> Ibid.

- 3.36 The Inquiries Act 2005 provides that, before the date of commencement of an inquiry, a Minister must set out the terms of reference of the inquiry.<sup>136</sup> The NIHRC understands that the Executive Office must provide for a Terms of Reference, but this should be done in close collaboration with the Chair of the Independent Panel, providing for suitable flexibility to allow for changes to the Terms of Reference should the investigation evidence the requirement. Effective participation of victims and survivors at all stages of the inquiry is integral to an effective outcome.
- 3.37 The NIHRC acknowledges and welcomes the fact that the Executive Office has engaged with victims and survivors in various ways, including through the work of the Expert Panel, the Truth Recovery Independent Panel and this public consultation. However, as set out in the PANEL principles, effective participation should continue to be facilitated throughout the course of the inquiry, including the implementation stages. For example, there is precedent with the UK COVID-19 Inquiry undertaking an engagement and consultation exercise on draft terms of reference.<sup>137</sup>
- 3.38 **The NIHRC recommends that the Executive Office ensures that a public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI adopts a victim-centred approach in the development, content and evolution of the inquiry’s terms of reference.**

## Compellability

- 3.39 The consultation states that a public inquiry will have “the legal powers to compel evidence available” and that there will be an “independent body to administer and compel evidence from institutions and other parties”.<sup>138</sup>
- 3.40 The Istanbul Protocol stipulates that the independent commission carrying out the inquiry must “have the authority to obtain all information necessary to the inquiry and should conduct the inquiry as provided for under these principles”.<sup>139</sup> The UN Revised Minnesota Protocol also states:

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<sup>136</sup> Section 5, The Inquiries Act 2005.

<sup>137</sup> UK COVID Inquiry, ‘Terms of Reference Consultation’ (UKCI, 2022).

<sup>138</sup> The Executive Office, ‘Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices’ (TEO, 2024), at 9.

<sup>139</sup> UN Office of the High Commissioner for Human Rights, ‘Manual of the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (OHCHR, 2022), at para 48.

an investigation must be carried out diligently and in accordance with good practice. The investigative mechanism charged with conducting the investigation must be adequately empowered to do so. The mechanism must, at a minimum, have the legal power to compel witnesses and require the production of evidence, and must have sufficient financial and human resources, including qualified investigators and relevant experts.<sup>140</sup>

- 3.41 This supports the view of Dr Maeve O'Rourke that any public inquiry should have comprehensive powers of compellability.<sup>141</sup> The NIHRC also agrees with Dr O'Rourke.
- 3.42 The NIHRC welcomes the Executive Office's proposals on compellability, but to be effective victims, survivors and their families should be involved when determining the "other parties" that can be subject to compellability.
- 3.43 **The NIHRC recommends that the Executive Office ensures that the public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI has effective powers of compellability that are clearly set out. Balanced with the requirement to conduct a thorough investigation, this includes that a victim-centred approach is adopted regarding who can be compelled to provide evidence and the type of information that can be compelled.**

### **Protection of victims, survivors and relatives**

- 3.44 The consultation proposes that a public inquiry should be "as inclusive and comprehensive" as possible.<sup>142</sup> This requires creating and ensuring a continuous safe space for victims, survivors and their relatives to engage with the inquiry free from "threats, attacks and any act of retaliation" and to ensure their "safety, physical and psychological well-being, and privacy".<sup>143</sup>

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<sup>140</sup> UN Office of the High Commissioner, 'The Minnesota Protocol on the Investigation of Potentially Unlawful Death' (OHCHR, 2016), at para 27.

<sup>141</sup> Meeting between Dr Maeve O'Rourke and NI Human Rights Commission, 13 August 2024.

<sup>142</sup> The Executive Office, 'Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices' (TEO, 2024), at 17.

<sup>143</sup> CCPR/C/GC/36, 'UN Human Rights Committee General Comment No 36: Right to Life', 30 October 2018, at para 28; Hugh Jordan v UK (2001) ECHR 327, at para 107; UN Office of the High Commissioner for Human Rights, 'The Minnesota

- 3.45 Many testimonies that are already publicly available have reported physical and psychological abuse, societal institutionalisation and fear that have had a lasting effect.<sup>144</sup> A safe space must be created, which avoids the risk of re-traumatisation as much as possible.
- 3.46 **The NIHRC recommends that the Executive Office ensures a public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI includes safeguarding mechanisms for the purposes of creating and maintaining a safe space for victims, survivors and their relatives to participate in and engage with the inquiry.**

## Prompt commencement and expedition

- 3.47 The Executive Office has indicated its commitment to the prompt establishment of the public inquiry. To date, the undue delay in commencing and progressing human rights compliant investigations regarding Mother and Baby Institutions, Magdalene Laundries and Workhouses is a violation and ongoing breach of Articles 2 and 3 of the ECHR.<sup>145</sup> It is not sufficient that an investigation is pending, an investigation must be progressed.<sup>146</sup>
- 3.48 Importantly, however, as confirmed by the UN Revised Minnesota Protocol “the duty of promptness does not justify a rushed or unduly hurried investigation”.<sup>147</sup> The CoE Venice Commission also requires that the process for making laws is “transparent, accountable, inclusive and

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Protocol on the Investigation of Potentially Unlawful Death: The Revised UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions’ (OHCHR, 2016), at paras 27 and 36; A/RES/47/133, ‘Declaration on the Protection of All Persons from Enforced Disappearance’, 18 December 1992.

<sup>144</sup> Deirdre Mahon et al, ‘Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI: Truth, Acknowledgment and Accountability’ (TEO, 2021), at 32.

<sup>145</sup> *Mentesse and Others v Turkey* (2005) ECHR 22, at para 54; *Aslakhanova and Others v Russia* (2012) ECHR 2075, at paras 11-12; *Hugh Jordan v UK* (2001) ECHR 327, at para 136; CCPR/C/GC/36, ‘UN Human Rights Committee General Comment No 36: Right to Life’, 30 October 2018, at para 28; UN Office of the High Commissioner for Human Rights, ‘The Minnesota Protocol on the Investigation of Potentially Unlawful Death: The Revised UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions’ (OHCHR, 2016), at para 23.

<sup>146</sup> *Yasa v Turkey* (1998) ECHR 83, at para 104.

<sup>147</sup> UN Office of the High Commissioner for Human Rights, ‘The Minnesota Protocol on the Investigation of Potentially Unlawful Death: The Revised UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions’ (OHCHR, 2016), at para 23.

democratic”.<sup>148</sup> Thus, the procedural obligations attached to Articles 2 and 3 of the ECHR are interlinked. Immediate commencement of an investigation will not be human rights compliant if the investigation being undertaken is not thorough or does not satisfy the intended purpose of a human rights compliant investigation for example. Consequently, being subject to a watched clock cannot be a reason or justification to rush legislation through without meaningful consultation or the backing of victims and survivors.

**3.49 The NIHRC advises that the requirement to conduct reasonably prompt and expeditious investigations must not be used to rush its establishment without the support of victims and survivors.**

## **Public scrutiny**

3.50 The consultation document notes that the Truth Recovery Expert Panel recommended that a key function of the Independent Panel will be to “gather, preserve, catalogue, and digitise relevant records and archives” relating to the activities of mother and baby homes, Magdalene Laundries and other institutions.<sup>149</sup> The consultation does not, but should, specify how the information will be accessed and preserved. The Executive Office views this as an issue outside of the remit of the public inquiry.<sup>150</sup> But the NIHRC disagrees, particularly in light of issues which have arisen with similar inquiries in Ireland.<sup>151</sup>

3.51 The ongoing denial of information to victims and survivors including as to familial links and treatment, is an ongoing violation of their human rights.<sup>152</sup> The Expert Panel believes, and the NIHRC agrees, that there should be a statutory order to preserve records and legislation to establish:

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<sup>148</sup> CDL-AD(2016)007rev, ‘CoE European Commission for Democracy Through Law: Rule of Law Checklist’, 18 March 2016, at 13.

<sup>149</sup> Deirdre Mahon et al, ‘Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI: Truth, Acknowledgment and Accountability’ (TEO, 2021), at 13.

<sup>150</sup> The Executive Office, ‘Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices’ (TEO, 2024), at 37.

<sup>151</sup> Jennifer O’Connell, ‘State accused of ‘stonewalling’ and ‘hiding evidence’ over Magdalene Laundries’, *Irish Times*, 4 March 2023; *Stolen* (2023); JP McDowell and Hannah Unger, ‘Press Release: Fair Procedures – High Court declares that rights of Mother and Baby Home survivors were breached’, *FieldFisher*, 22 December 2021.

<sup>152</sup> Deirdre Mahon et al, ‘Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI: Truth, Acknowledgment and Accountability’ (TEO, 2021), at 118.

a dedicated repository of all personal and administrative records relating to historical institutions, adoption, and related practices should be drafted in consultation with the Independent Panel, which through its work with victims-survivors will gain invaluable expertise.<sup>153</sup>

3.52 Public scrutiny is a key component of an effective investigation.<sup>154</sup> It is commonly accepted that a victim, next of kin or close family member has specific rights regarding the disclosure of information.<sup>155</sup> As an indication of what is meant by a close family member in the context of Article 2 of the ECHR, the ECtHR has accepted married partners,<sup>156</sup> unmarried partners,<sup>157</sup> parents,<sup>158</sup> siblings,<sup>159</sup> children,<sup>160</sup> and nephews.<sup>161</sup>

3.53 The Istanbul Protocol states that an inquiry report should be public, be issued within a reasonable period of time and should be “published widely and in a manner that is accessible to the broadest audience possible”.<sup>162</sup> The Istanbul Protocol further advises that States should “reply promptly and publicly to the commission’s report and, where appropriate, indicate which steps it intends to take in response to the report, particularly with a view to expeditiously and effectively implementing its recommendations”.<sup>163</sup>

3.54 Furthermore, there is a recognised right to truth in cases of gross human rights violations, which includes violations of the right to life and freedom

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<sup>153</sup> Ibid, at 120.

<sup>154</sup> *Al Nashiri v Romania* (2018) ECHR 447, at para 641.

<sup>155</sup> *Tanas v Moldova* (2010), Application No 7/08, Judgment of 27 April 2010, at para 104; *Burden v UK* (2008) ECHR 356, at para 33; *Lambert and Others v France* (2015) ECHR 545, at para 89; CCPR/C/GC/36, ‘UN Human Rights Committee General Comment No 36: Right to Life’, 30 October 2018, at para 28; UN Office of the High Commissioner for Human Rights, ‘The Minnesota Protocol on the Investigation of Potentially Unlawful Death: The Revised UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions’ (OHCHR, 2016), at para 11.

<sup>156</sup> *McCann v UK* (1995) 21 EHRR 97; *Salman v Turkey* (2000) ECHR 357.

<sup>157</sup> *Velikova v Bulgaria* (2000) ECHR 198.

<sup>158</sup> *Ramsahai and Others v Netherlands* (2007) ECHR 393; *Giuliani and Gaggio v Italy* (2011) ECHR 513.

<sup>159</sup> *Andronicou and Constantinou v Cyprus* (1997), Application No 86-1996-705-897, Judgment of 9 October 1997.

<sup>160</sup> *McKerr v UK* (2001) ECHR 329.

<sup>161</sup> *Yasa v Turkey* (1998) ECHR 83.

<sup>162</sup> UN Office of the High Commissioner, ‘Manual of the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (OHCHR, 2022), at para 61.

<sup>163</sup> Ibid.

from torture or ill-treatment.<sup>164</sup> The UN Office of the High Commissioner for Human Rights recognises that “access to information and, in particular, to official archives, is crucial to the exercise of the right to truth”.<sup>165</sup> It also identifies that “the right to the truth as a stand-alone right is a fundamental right of the individual”.<sup>166</sup> However, the right to truth is “not only for the applicant and his family, but also for other victims of similar crimes and the general public”.<sup>167</sup> This is supported by the UN Revised Minnesota Protocol, which states that:

the right to know the truth extends to society as a whole, given the public interest in the prevention of, and accountability for, international law violations. Family members and society as a whole both have a right to information held in a State’s records that pertains to serious violations, even if those records are held by security agencies or military or policy units.<sup>168</sup>

3.55 Also worth noting, albeit not directly enforceable as is the ECHR, there is for example, the right to culture, which recognises historical and memorialisation processes.<sup>169</sup> The right to culture may be exercised by a person individually, in association with others, or as a community or group.<sup>170</sup>

3.56 Furthermore, it is important to consider a gender-sensitive approach, as identified by the former UN Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo.<sup>171</sup> The former UN Special

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<sup>164</sup> *El-Masri v The Former Yugoslav Republic of Macedonia* (2012), Application No 39630/09, Judgment of 13 December 2012, at para 191; *Janowiec and Others v Russia* (2013) ECHR 1003, at para 9 of the Joint Partly Dissenting Opinion of Judges Ziemele, De Gaetano, Laffranque and Keller; *Varnava and Others v Turkey* (2009) ECHR 1313, at paras 200-202; CAT/C/GC/3, ‘UN CAT Committee General Comment No 3: Implementation of Article 14’, 13 December 2012, at paras 6 and 16.

<sup>165</sup> E/CN.4/2006/91, ‘Study on the Right to the Truth: Report of the Office of the United Nations High Commissioner for Human Rights’, 8 February 2006, para 52.

<sup>166</sup> *Ibid.*

<sup>167</sup> *El-Masri v The Former Yugoslav Republic of Macedonia* (2012), Application No 39630/09, Judgment of 13 December 2012, at para 191.

<sup>168</sup> UN Office of the High Commissioner for Human Rights, ‘The Minnesota Protocol on the Investigation of Potentially Unlawful Death: The Revised UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions’ (OHCHR, 2016), at para 13.

<sup>169</sup> A/HRC/25/49, ‘Report of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed, Memorialization Processes’, 3 January 2014; A/69/286, ‘Report of the Special Rapporteur in the Field of Cultural Rights’, 8 August 2014.

<sup>170</sup> E/C.12/GC/21, ‘General Comment No 21: Right of Everyone to Take Part in Cultural Life (Art. 15, para 1(a) of the International Covenant on Economic, Social and Cultural Rights)’, 21 December 2009, at para 9.

<sup>171</sup> A/HRC/14-22, ‘Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Rashida Manjoo’, 23 April 2010, at para 29.

Rapporteur stated that the participation of women and girls in redress processes is “important for women and society in general to draw the links between past and present forms of violence and seize the opportunity provided by reparations discussions to press for more structural reforms”.<sup>172</sup>

- 3.57 **The NIHRC recommends that the Executive Office ensures that there is a process for archiving the evidence and information sources recovered and collated by the Expert Panel, Truth Recovery Independent Panel and public inquiry. Access to and publication of information should only be limited where it is lawful, proportionate and necessary to do so.**

## 4.0 Evidence Relating to Deaths and Burial

- 4.1 The report of the Expert Panel on Mother and Baby Institutions suggests that the inquiry should have power to “commission geophysical surveys and archaeological investigations at former institutional sites with the aim of ascertaining the presence or otherwise of unmarked graves”.<sup>173</sup>
- 4.2 The consultation identifies that, in order to provide for the commissioning of geophysical surveys and archaeological investigations in legislation, “it would first have to be based on compelling evidence at specific sites”.<sup>174</sup> It is stated that:

at this point, there is no specific site in this jurisdiction where there is evidence of large-scale, apparently illegal burials... There is also an existing process whereby any allegations of illegality concerning the relevant institutions, including infant burials, can be brought to the police.<sup>175</sup>

- 4.3 The Executive Office has concluded that “new substantial powers of entry or exhumations are, therefore, not considered justified in the absence of

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<sup>172</sup> Ibid.

<sup>173</sup> Deirdre Mahon et al, ‘Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI: Truth, Acknowledgment and Accountability’ (TEO, 2021), at 13.

<sup>174</sup> The Executive Office, ‘Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices’ (TEO, 2024), at 22.

<sup>175</sup> Ibid.



compelling evidence at specific sites”.<sup>176</sup> Instead, it is proposed that:

the inquiry will have sufficient investigatory powers, equivalent to the Inquiries Act 2005, to require a person to give evidence or produce documents in relation to unmarked graves whether of relevant adults or infants, and to review e.g. admissions, departures, mortality and burial records to establish an appropriate evidence base.<sup>177</sup>

- 4.4 The Executive Office intends to “rely on investigatory powers equivalent to those in the Inquiries Act 2005 and await the findings of the Independent Panel/Inquiry before anticipating any additional requirements for legislation in this area”.<sup>178</sup>
- 4.5 ‘Disappearances’ in relation to Mother and Baby Institutions refer to those situations where women and girls were detained in institutions, and where their “fate or whereabouts is still being withheld from relatives by either state or non-state actors”.<sup>179</sup> This might also refer to cases where parent and child were separated forcibly and prevented from discovering information about each other.<sup>180</sup>
- 4.6 The ECHR covers a lot of this. Article 2 of the ECHR contains the positive obligation on the State to take all appropriate measures to safeguard the lives of individuals living in its jurisdiction.<sup>181</sup> These obligations apply “in the context of any activity, whether public or not, in which the right to life may be at stake”.<sup>182</sup> The State does not have to be involved in the disappearance to be obliged to put in place “effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions”.<sup>183</sup>
- 4.7 Article 3 of the ECHR, which prohibits torture or inhuman or degrading

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<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.

<sup>179</sup> Maeve O’Rourke, ‘A Human Rights Framework: Background Research for the Truth Recovery Design Process’, (TEO, 2021), at 6.

<sup>180</sup> Ibid.

<sup>181</sup> *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* (2014) ECHR 789.

<sup>182</sup> Ibid, at para 130.

<sup>183</sup> *Medova v Russia* (2009) ECHR 70, at para 95.

treatment or punishment, creates specific obligations which can be relied upon additionally by the family members of disappeared persons. The ECtHR has recognised that a violation of Article 3 of the ECHR occurs where:

the failure of the authorities to respond to the quest for information by the relatives or the obstacles placed in their way, leaving them to bear the brunt of the efforts to uncover any facts, may be regarded as disclosing a flagrant, continuous and callous disregard of an obligation to account for the whereabouts and fate of a missing person.<sup>184</sup>

4.8 The UN Human Rights Committee states that an enforced disappearance constitutes a “unique and integrated series of acts and omissions representing a grave threat to life”, and notes that States are obliged to take “adequate measures to prevent the enforced disappearance of individuals and conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance”.<sup>185</sup>

4.9 Article 9(4) of the UN CRC states that, where a child has been separated from its parents, the State:

shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child.

4.10 The NIHRC is concerned that the proposed approach limits the inquiry’s capacity and ability to conduct a sufficiently thorough investigation to comply with Articles 2 and 3.<sup>186</sup>

4.11 **The NIHRC advises that there is an obligation on the State to initiate effective investigations into disappearances and suspicious deaths and such investigations must be capable of ascertaining the presence or otherwise of unmarked graves. The NIHRC observes**

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<sup>184</sup> *Varnava and others v Turkey* (2009) ECHR 1313, at para 200.

<sup>185</sup> CCPR/C/GC/36, ‘UN Human Rights Committee General Comment No 36: Article 6 Right to Life’, 3 September 2019, at para 58.

<sup>186</sup> *Kolevi v Bulgaria* (2009), at para 201; *Armani da Silva v UK* (2016), at para 234.

**that one possibility might be for the public inquiry to have the power to order geophysical surveys and archaeological investigations as required.**

## **5.0 Financial Redress**

- 5.1 The consultation document sets out proposals for two financial redress schemes. These are: a standardised payment scheme; and an individually assessed payment scheme.<sup>187</sup> Under the standardised payment scheme, individuals will likely receive the same amount of financial redress for very different levels of harm.<sup>188</sup> There will also be implications for different treatment according to the date of death, the date of apology and the date of claims.
- 5.2 Human rights law is clear that there must be an effective remedy.<sup>189</sup> It is not prescriptive as to the amount of financial redress nor the availability of redress for posthumous claims but it is clear that close consultation with victims and survivors is required to determine the propriety and effectiveness of proposed schemes.<sup>190</sup> The work of the Expert Panel, Truth Recovery Independent Panel and public consultation significantly assist this, but in line with the PANEL principles, this requires specific, meaningful engagement that will require further dialogue based on the responses received to the Executive Office's proposals.
- 5.3 **The NIHRC recommends that the Executive Office ensures that the measures of financial redress and operational mechanisms connected to Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI are developed, implemented and monitored in close consultation with victims and survivors, their relatives and representative organisations. Moreover, any decision taken in**

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<sup>187</sup> The Executive Office, 'Truth Recovery - Mother and Baby Institutions, Magdalene Laundries and Workhouses, and Their Pathways and Practices' (TEO, 2024), at 25.

<sup>188</sup> Ibid.

<sup>189</sup> Article 13, European Convention on Human Rights 1950; Article 3(a), UN International Covenant on Civil and Political Rights 1966; CAT/C/GC/2, 'UN CAT Committee General Comment No 2 on the Implementation of Article 2', 24 January 2008, at paras 3 and 15; CRC/C/GC/13, 'UN CRC Committee General Comment No 13 on the Right of the Child to Freedom from all Forms of Violence', 18 April 2011, at para 17.

<sup>190</sup> Article 12(1), UN Convention on the Rights of the Child 1989; Article 4(3), UN Convention on the Rights of Persons with Disabilities 2006; A/Res/40/34, 'UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', 1985, at para 6(b); A/HRC/14-22, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Rashida Manjoo', 23 April 2010, at para 32.

**relation to financial redress should be communicated to victims and survivors in an accessible way to meet their specific needs.**

## 6.0 Training

- 6.1 Establishing an effective training programme is a critical step in ensuring a thorough and human rights compliant investigation is conducted by a public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses.
- 6.2 The Istanbul Protocol stipulates that the State must “provide training, and adequate guidance and instructions, on international standards concerning the investigation of torture or ill-treatment... and on good practice to any persons involved in relevant investigations and other legal proceedings”.<sup>191</sup>
- 6.3 The UN CAT Committee has noted that it is important that relevant actors in investigations receive specific training to ensure sensitivity during proceedings to avoid “re-victimisation and stigmatisation of victims of torture or ill-treatment”.<sup>192</sup>
- 6.4 The then UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli identified that, in relation to Truth Commissions, all commission staff should “have sufficient knowledge of gender issues and receive ongoing training to raise awareness about gender, sexual violence ... and overcoming biases”.<sup>193</sup> The former UN Special Rapporteur noted that training is particularly important for staff who collect statements, as this is often the first point of contact with victims”.<sup>194</sup>
- 6.5 **The NIHRC recommends that the Executive Office ensures that staff and professionals working in or associated with the proposed public inquiry are given suitable, gender-sensitive, victim-centred, trauma-informed training in relation to truth recovery processes,**

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<sup>191</sup> UN Office of the High Commissioner for Human Rights, ‘Manual of the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (OHCHR, 2022), at para 203.

<sup>192</sup> CAT/C/GC/3, ‘UN CAT Committee General Comment No 3: Implementation of Article 14’, 13 December 2012, at para 34.

<sup>193</sup> A/75/174, ‘Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence Report on the Gender Perspective in Transitional Justice Processes’, 17 July 2020, at para 14.

<sup>194</sup> Ibid, at para 15.

**transitional justice and human rights standards. This should be monitored and refreshed when necessary.**

## **7.0 Resourcing**

- 7.1 The Executive Office’s consultation document does not specify deal with the source of funding for the Truth Recovery Inquiry. Nor does it indicate the means of implementation of the report of the Independent Panel. The NIHRC suggests that these should be considered and provided for.
- 7.2 The Istanbul Protocol requires that bodies carrying out inquiries “must have at their disposal all the necessary budgetary and technical resources for effective investigation”.<sup>195</sup> The UN Revised Minnesota Protocol states that investigations into serious human rights violations must have sufficient financial and human resources”.<sup>196</sup>
- 7.3 **The NIHRC recommends that the Executive Office ensures that the public inquiry is resourced to the extent necessary to carry out an effective, human rights compliant investigation and is able to produce a robust record of all abuses and human rights violations that occurred in Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI.**
- 7.4 **The NIHRC recommends that sufficient resources are set aside to implement the findings of the public inquiry into Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI.**

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<sup>195</sup> UN Office of the High Commissioner for Human Rights, 'Manual of the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (OHCHR, 2022), at para 194.

<sup>196</sup> Ibid, at para 27.

## Contact Us

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