

LEARNING THE LESSONS SEMINAR SERIES

Co-designing the Inquiry / Investigation
into Mother and Baby and Magdalene
Laundry Institutions in Northern Ireland

June 2021



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Patrick Corrigan
AMNESTY INTERNATIONAL



Prof Patricia Lundy
ULSTER UNIVERSITY



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Introduction

There is growing recognition that historical inquiry processes in Northern Ireland (NI) have failed to deliver a victim-centred approach, neglecting to include survivor input as an integral part of development. In May 2013, as part of a sustained justice campaign, victims and survivors, alongside Amnesty International, made a submission to the NI Executive (*Magdalene Laundry-type institutions in Northern Ireland: The case for a human rights response by the Northern Ireland Executive – briefing, Amnesty International UK, May 2013*. https://www.amnesty.org.uk/files/doc_23218.pdf) calling for a public inquiry to investigate Mother and Baby and Magdalene Laundry institutions. Women in NI told Amnesty that they suffered arbitrary detention, forced labour, ill-treatment, and the removal and forced adoption of their babies, amounting to human rights violations. Three years later, in October 2016, the Executive agreed to establish an inter-departmental working group on Mother and Baby Homes, Magdalene Laundries and Historical Clerical Child Abuse. These institutions and groupings fell outside the remit of the Historical Institutional Abuse Inquiry (HIAI). In 2017, the working group commissioned research to investigate how these institutions operated in NI. The resulting report, *Mother and Baby Homes and Magdalene Laundries in Northern Ireland, 1922–1999* ('the research report'), written and researched by Dr Leanne McCormick (Ulster University) and Professor Sean O'Connell (Queen's University), was published in January 2021. [copy of report can be accessed here]. Check the link is live/active <https://www.health-ni.gov.uk/sites/default/files/publications/health/Introduction.pdf>

The Research Report *Mother and Baby Homes and Magdalene Laundries in Northern Ireland, 1922–1999*

The research report examined eight Mother and Baby institutions, four Magdalene Laundries, a number of former workhouses on a sampling basis, as well as three Health and Social Services/Charities. Three of the Mother and Baby institutions were operated by Roman Catholic bodies, four by Protestant denominational groups, and social services/charitable bodies also operated a similar provision during the relevant

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period. Additionally, a number of sample years for Belfast's Union Infirmary were examined; a peak year for 'illegitimate' births in this institution was in 1932 (202 births). As part of the research, 60 oral testimonies were taken including, but not limited to, mothers and their now adult children, priests, nuns, retired social workers, retired probation officers, GPs and midwives.

The research report estimates that between 1922 and the closure of the last Magdalene Laundry in 1984, approximately 3,000 women spent time within these institutions (McCormick and O'Connell, 2021: 33), and that 10,500 women may have entered Mother and Baby institutions between 1922 and 1990 (ibid.: 22). These estimates are based on available records and the report acknowledges that the records were not complete. Therefore, it is appropriate to assume that the actual number of women who entered these institutions is significantly higher than the estimate. While institutions were operated privately, they were largely funded through state welfare authorities, and many of the women and girls were referred to the institutions by state welfare authorities, families, GPs, clergy and even the courts.

Drawing on the *Mother and Baby Homes and Magdalene Laundries* (2021) report, a brief outline of some key findings is set out below.

- Mother and Baby institutions:
 - From the records available to the research team, and survivors' testimonies, it was established that the girls and women admitted to these institutions were subjected to many basic human rights violations, including arbitrary detention, and were forced to carry out strenuous physical labour in pregnancy with no concession for those women in their final trimester of pregnancy. In addition, these women and girls received little preparation for childbirth, often without any pain medication, and often were subsequently separated from their children without informed consent. Women provided vivid accounts of being made to feel ashamed about their pregnancy and that the atmosphere was authoritarian and judgemental. Many of the birth mothers also related negative experiences of giving birth in hospital and many described the sense that they were being judged morally by medical staff.

- The researchers document the movement of women, girls and babies across the Irish border in both directions. An estimated 551 babies born in homes in NI were moved to the Republic of Ireland (RoI), with some being adopted there or further afield in Britain and the United States. The researchers did not have access to individual adoption records held by adoption agencies, Health and Social Care Trusts and the courts, and were unable to establish the legality of these cross-border adoptions and related matters. Several of the oral testimonies raise concern over the issue of 'informed consent' for adoption. Most commonly, these testimonies featured discussion of the traumatic and highly pressurised circumstances in which very young women were asked to make decisions about adoption. In a smaller number of cases, testimony included allegations of irregularities around the signatures on consent forms.
- The report also provides disturbing accounts of girls sent to the institutions following pregnancy as a result of incest or rape. The researchers were unable to establish if the men and boys allegedly responsible for the sexual offences were reported to the police. The oral testimonies indicate that staff in the Mother and Baby institutions were not trained to attend to the psychological trauma arising from sexual abuse and incest.
- Finally, many of the babies and women who died in the institutions are buried in mass, often unmarked, graves in various cemeteries across NI.
- Two main issues warranting further investigation identified by the researchers include adoption and infant mortality rates.
- Magdalene Laundries:
 - The report estimates that 2,808 girls and women entered the three Good Shepherd St Mary's laundries. Girls and women entered the Good Shepherd laundries via a variety of routes including referrals by welfare authorities, probation/the courts, police, parents (or other family members), priests, Catholic organisations and Mother and Baby

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institutions. Significant numbers of girls and young women were sent from the Mother and Baby institutions. In several cases from the 1950s and 1960s, the Good Shepherd records indicate that girls and young women who were the victims of sexual assault and incest were placed in these institutions at the direction of the courts.

- In Good Shepherd laundries between the 1920s and 1970s, girls and women were required to carry out a full week's work at the laundry without payment. From the 1970s, modest amounts of 'pocket money' were paid to the women. The report notes that for those women who spent many years confined to the laundry before leaving, their status as unpaid workers has left them with concerns about related issues such as national insurance payments and their entitlement to a pension.
- Oral testimony collected by the researchers, as well as that for the HIAI, suggests that the Good Shepherd laundries were austere environments and discipline was instilled by a regimented system. Until the late 1960s, women were discouraged from leaving the institutions. The HIAI described this as 'a practice of containment'.

Full details of the research report can be accessed here [[report](#)].

The Truth Recovery Design Panel

After the publication of the research report, the NI Executive agreed to an independent inquiry or investigation into Mother and Baby and Magdalene Laundry institutions. Ministers announced that the investigation would be shaped by survivors of the institutions through a co-design process, facilitated by experts. The then First Minister Arlene Foster stated:

'Today we give a commitment to survivors, that you will be silenced no more.'¹

¹ The Executive Office (2021) Executive announces independent investigation into mother and baby homes. Available at: <https://www.executiveoffice-ni.gov.uk/news/executive-announces-independent-investigation-mother-and-baby-homes>

Deputy First Minister Michelle O'Neill promised that survivors would shape the progress of the investigation:

'They were failed on every level and we cannot allow them to be failed any longer ... we must move forward carefully and respectfully and ensure that at all times the voices of those survivors and their now adult children are at the centre of this process, they will shape how it progresses.'²

The NI Executive then established an independent three-person Truth Recovery Design Panel. The members appointed are:

- Professor Emeritus Phil Scraton, Queen's University Belfast School of Law;
- Dr Maeve O'Rourke, Irish Centre for Human Rights, National University of Ireland Galway; and
- Deirdre Mahon (Chair), Director of Women and Children's Services, Western Health and Social Care Trust.

Over a six-month period (March to September 2021), the Panel will work alongside survivors and their families to make recommendations for a full and thorough investigation into how the institutions operated and the impact that this has had on their lives. After a long campaign, survivors from Mother and Baby and Magdalene Laundry institutions can now co-design an effective investigation mechanism into the human rights abuses they suffered. The Panel's final recommendations will be submitted to the NI Executive and the findings will be made public.

The UN Committee Against Torture's observations on the sixth periodic report of the UK (CAT/C/GBR/CO/6) in 2019 includes a recommendation relating to historical Mother and Baby Homes and Magdalene Laundries. At Section 45 (b) it states that 'the State party should: expedite the process of carrying out an impartial and effective investigation into the practices of the Magdalene Laundries and Mother and Baby Homes in Northern Ireland that is capable of resulting in the prompt identification of

² Ibid.

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victims of ill-treatment inflicted at those institutions and the provision of redress to them³.

Against this backdrop, Amnesty International and Ulster University, in discussion with individual survivors, established a series of online seminars in early 2021 involving survivors, academics, journalists, human rights organisations and campaigners. Each seminar panel comprised individuals with direct knowledge and experience of historical investigations and human rights in a range of jurisdictions including NI, RoI, Canada, Australia and South Africa. The purpose of the seminar series is to learn lessons from national and international experience. This report summarises the panellists' contributions and explores the key lessons that they identified. We hope that this will help inform survivors and assist in the development of an investigative model to meet their justice needs.

Learning the Lessons Seminar Series Panels

The seminar series consisted of four pre-recorded panel sessions released between March and April 2021. The seminar series is available to watch on Amnesty International's website [[seminar series](#)]. Panellists were asked to reflect on lessons learned, 'what worked and didn't work' and 'what they would do differently'. Below are details of each speaker and panel session. See Appendix for details of each panel and contributors.

Panel 1

Chair: Patrick Corrigan – Amnesty International

Professor Patricia Lundy – Ulster University, founder of Panel of Experts on Redress (NI)

Breeda Murphy – activist on Mother and Baby Home issues and PRO of Tuam Mother and Baby Home Alliance

³ UN Committee Against Torture, Concluding Observations on the 6th Periodic Report of the United Kingdom of Great Britain and Northern Ireland: Geneva, 7 June 2019, CAT/C/GBR/CO/6. Available at: <https://digitallibrary.un.org/record/3859788?In=en#record-files-collapse-header>

Dr James Gallen – Dublin City University, expert advisor to the Irish Department of Children and Youth Affairs, with expertise in Mother and Baby institutions

Panel 2

Chair: Eunan Duffy – adoptee, activist, advocate

Professor Kathleen Mahoney – chief negotiator, Assembly of First Nations, Residential School Settlement, major architect of Truth and Reconciliation Commission of Canada

Gerry McCann – Rosetta Trust, survivor-campaigner for HIA Inquiry

Conall Ó Fátharta – journalist and lecturer, NUI Galway

Panel 3

Chair: Mark McCollum – adoptee, campaigner

Professor Anne-Marie McAlinden – Queen's University Belfast

Frank Golding – Care Leavers of Australia Network

Colm O'Gorman – Amnesty International Ireland

Panel 4

Chair: Sharon Burke – born in Newry and adopted in Dublin, whose mother spent time in Marianvale Mother and Baby Home, Newry

Jon McCourt – survivor-campaigner, Survivors North-West

Professor Brandon Hamber – Ulster University, expert on transitional justice

Gemma McKeown – solicitor, Committee on the Administration of Justice

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Learning the Lessons Principles

Panellists discussed several historical child abuse (HCA) inquiries in the RoI, NI and Australia. Canada's child abuse Truth and Reconciliation Commission and the South African Truth and Reconciliation Commission were also explored. The inquiries discussed in this report are statutory inquiries: the Historical Institutional Abuse Inquiry (HIAI), the Commission to Inquire into Child Abuse (Ryan Report)⁴ and the Mother and Baby Homes Commission of Investigation and certain related matters.⁵ These inquiries have similarities and differences in terms of scope, style, process, and procedure. A full discussion of the features of each inquiry is outside the scope and remit of this report.

Across the panels, several underpinning principles emerged. The following section sets out these principles:

- survivors' justice needs;
- the human rights approach; and
- survivor participation.

This is followed by an analysis of key lessons learned.

Principle 1: Survivors' Justice Needs

Panellists emphasised that the starting point of any design process, and inquiry/investigative mechanism, should be to identify survivors' justice needs. Survivors' justice needs are complex and wide-ranging and are the linchpin that should drive historical abuse investigative approaches. One panellist stated that 'survivors needs need to be the engine' that drives how we address past human rights violations. The inquiry/investigative mechanism should be a holistic approach, applying transitional justice principles and developing an understanding of the wider social context – such as how police, churches and communities operated – as well as the ongoing and longer-term impact on survivors and their families.

⁴ The Commission to Inquire into Child Abuse (CICA) was first established as a non-statutory inquiry in May 1999, under Judge Mary Laffoy, and became a statutory inquiry one year later, on 23 May 2000.

⁵ A statutory inquiry underpinned by the Commission of Investigation (Mother and Baby Homes and certain related matters) Order 2015.

Justice needs that were identified in panel sessions were varied but tend to coalesce around the following:

Acknowledgment	Validation	Vindication
Accountability	Acceptance of Responsibility	Accountability
Voice and Empowerment	Authoritative Record/Truth	Apology
Material Redress	Access to Records	Prosecutions
Symbolic Redress	Intergenerational Needs	Transformation
Reparations	Forgiveness and Reconciliation	Recognition

It was suggested that survivors' needs are best met through transparency and information sharing, with ongoing briefing and debriefing meetings throughout the inquiry process. Additionally, the international experiences stressed the need for adequate counselling, and un-rushed space to tell personal 'stories'. However, it was noted that it is not simply about giving voice, but that 'truth telling should have a tangible and immediate outcome'. Moreover, several panellists stressed that justice needs are connected not just to the *process* but also to the *outcomes*. To meet justice needs, the purpose of an inquiry/investigative process must be clear from the outset, to avoid raising expectations and leading to victim disappointment. As one panellist put it, 'any process needs to deliver for individuals ... promises made must be upheld. The [Republic of Ireland] Mother and Baby Home Commission report had promised fact finding in individual cases and this promise was not delivered on.' It was noted that this failure has had a negative impact on survivors and survivor empowerment.

Principle 2: Human Rights Approach

A further underpinning principle was that human rights must be legally embedded in any established inquiry/investigative process. This includes the right to life, right to

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freedom from inhumane and degrading treatment, freedom from slavery and forced labour, right to private and family life, right to liberty, remedy where there has been a violation, access to personal information, and freedom from discrimination on the grounds of sex and social origins. One panellist noted, ‘these rights, if legally embedded in the process, will serve to protect and provide survivors with ownership of the process’. If these rights are legally embedded in the process, it would require granting survivors core participant status. The importance of survivors having core status was raised by several panellists and is discussed later in this report.

It was stated that the Ryan Commission and the Mother and Baby Homes Commission of Investigation (RoI) lacked a human rights approach. One panellist said that ‘the lack of a human rights approach resulted in survivors not having a fair hearing or fair response’. Another suggested that the lack of a human rights focus is the reason why the causes and state responsibility were able to be ignored and excluded from the Mother and Baby Commission report. Furthermore, by largely ignoring the issues surrounding adoption and forced adoption, the RoI commissions failed to investigate the right to private and family life. To uphold a human rights framework investigation, it should be intergenerational, with the inclusion of both mothers and children. In setting up the co-designed process, the NI Executive alluded to this, stating that ‘the voices of those survivors *and their now adult children* are at the centre of this process’ (emphasis added).⁶

A question asked by one panellist was: ‘who does the inquiry serve? If it is to serve survivors it should be centred on human rights, survivor justice needs and survivor participation, ensuring truth, justice, and reparation, as well as appropriate and effective accountability. There must be state accountability for their failure to protect and fulfil the rights of survivors; as such, they have a responsibility to provide justice, and to identify systemic issues which allowed the abuses to occur.’

⁶ The Executive Office (2021) Executive announces independent investigation into mother and baby homes. Available at: <https://www.executiveoffice-ni.gov.uk/news/executive-announces-independent-investigation-mother-and-baby-homes>

Principle 3: Participation

Survivor participation was a recurring theme. Namely, survivor participation must be embedded in all stages: design, implementation, and monitoring. Their specific roles should be written into the terms of reference and/or legislation and not left to the discretion of others. Survivors should be appointed as commissioners and personnel with principal roles in the inquiry/investigative mechanism. Likewise, survivors should not be treated simply as consultees, but instead must occupy decision-making roles.

It was also noted that no survivor representatives were appointed to the Truth Recovery Design Panel. One panellist expressed this as follows:

‘Capturing those stories, allowing for equal participation in any forum is the only route to justice. Otherwise, it is a continuation of what went before, the silencing. Empowerment and enabling, supporting all communication from grass roots to policy makers; ensuring that a survivor representative sits on Boards [associated with designing a process], building trust and treating with respect all involved.’

Learning the Lessons: Structures, Process and Procedures

This section examines key issues and lessons of previous historical abuse inquiries highlighted by panellists.

Inquiries: Confidential and Statutory Elements

- The NI **HIAI** comprised two separate components: a confidential Acknowledgement Forum and a public Statutory Inquiry. Survivors were able to decide whether they wished to take part in the Acknowledgement Forum only *or in both* components.
- The **Ryan Commission** in the RoI comprised two separate and distinct committees: the Confidential Committee and the Investigation Committee. Like the HIAI, the Confidential Committee heard survivors’ accounts of child abuse in a confidential setting and in a sympathetic way. These accounts were not contested. However, unlike the HIAI, survivors had to choose whether to give evidence to *either* the Confidential *or* the Investigation Committee.

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- The **Mother and Baby Homes Commission** in the ROI had a similar framework. However, unlike the Ryan Commission, those who wished to participate were able to give evidence at the Confidential Committee, the Investigation Committee or both. Panellists said that many survivors were unaware that they could provide evidence to both committees in the Mother and Baby Homes Commission.

Regarding the HIAI, the Acknowledgment Forum was designed to provide an opportunity for survivors to recount their experiences on a confidential basis; it provided survivors with the space to tell ‘their story’. One panellist and survivor described the Acknowledgment process as rewarding; that ‘survivors were given control over it, without direction’, noting that it was ‘a space to articulate experience to someone who was going to listen, survivors were made comfortable and given the opportunity to ‘unload’’. This perspective is reiterated in Lundy’s 2020 research,⁷ in which 43 survivors took part, with over 50% describing the Acknowledgment Forum as a positive experience. Survivors also viewed the Acknowledgment Forum as a step towards breaking the silence and challenging denial on the issues involved.

However, there were emotional consequences, where individuals suffered from the emotions of reliving the past through giving testimony without an immediate outcome. One means of providing an immediate outcome and support to survivors is for a redress scheme to run parallel to the acknowledgement and inquiry process; this was recommended by several panellists.

A further concern raised about the Acknowledgement Forum was the summarising of survivor testimony. The HIAI summarised the testimony and this became the basis of the individual survivor’s personal statement to the Statutory Inquiry. These summaries were posted to survivors’ homes to be signed and returned. This caused significant distress to survivors as one panellist said: ‘this was a point of vulnerability’. Moreover, the issue with summaries being posted to survivors’ homes was the risk of loss of privacy, and subsequent distress, if other household members, who may not have known about their experiences, became aware of them.

⁷ Lundy, P. (2020) *Through the Lens of Survivors: Lessons from the Northern Ireland Historical Institutional Abuse Inquiry*. Ulster University.

The Mother and Baby Homes Commission refused to provide survivors with a copy of their testimony. One panellist noted that initially it was reported that survivor testimony had been destroyed. However, the files were subsequently ‘rediscovered’ after considerable outcry.

The Trauma of Testifying

While descriptions of the HIAI confidential Acknowledgement Forum were generally positive, the public Statutory Inquiry element was described by one survivor panellist as ‘frightening and intimidating’, a process ‘likely to cause re-traumatisation’. Another said that survivors were ‘directed and constrained’ and that survivors felt ‘they were the ones on trial’. They were vulnerable and felt exposed due to the public gallery and courtroom setting. This panellist stated that the Statutory Inquiry did provide a detailed analysis of the systemic abuse, but it was not centred on survivors; rather, it left survivors re-traumatised and victimised. ‘It was an impersonal environment, lacked empathy, and showed no understanding of the impact of what survivors had gone through.’ One panellist and survivor noted that because of taking part in the HIAI Statutory Inquiry, seven years later survivors are still struggling and reliving the abuses that they suffered. Testifying had a long-term impact – ‘prior to the inquiry these experiences had been suppressed’. It was not a victim-centred process and survivors were ‘collateral damage’. It was suggested that long-term counselling and community-based support should be put in place.

International ‘Good Practice’: Victim-Centred

Panellists agreed that a ‘tick box’ consultation exercise must be avoided. It was reiterated that survivors must have a meaningful decision-making role throughout all stages of the inquiry/investigative process. Participation is not simply giving testimony. International examples of ‘good practice’ were presented.

The Truth and Reconciliation Commission (TRC) of Canada, which was established to investigate Indian Residential Schools, was said to be victim-centred and victim-led. The goals of the TRC were decided by survivors through dialogue with indigenous

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leaders and communities; thus, trust was established from the outset. The first step to signifying respect for indigenous culture was that the TRC was established according to indigenous customary law. All of the Commission's activities and rituals were grounded in indigenous values and included principles summarised as 'transparency, forward looking, do no harm, and victim-centred'. It was officially acknowledged that the abuse had impacted widely on families and indigenous communities. The Commission held 73 local community and seven national events: this highlights the importance of decentralising and localising events. A simple technique used in Canada to show survivors that their participation was valued was to offer accommodation and meals to those participating in the Commission.

In Australia, the Chief Commissioner's 'willingness to involve survivors resulted in victim participation and empowerment throughout the duration of the process'. This was contrasted with NI's HIAI, which lacked even a formal complaint structure. 'There was no obvious, formal, or structured avenue for survivors to lodge a concern or complaint about the inquiry's procedures.'

Appointments: Commissioners and Personnel

Central to participation is the appointment of survivors to key roles in the inquiry/investigative mechanism. Panellists recommended that survivors should be appointed as commissioners or panel members and that this should be written into the terms of reference and 'not left to someone's discretion'. This should ensure that the process would be centred on survivors. In addition, survivors should have decision-making roles and be central to the implementation and monitoring (again, written into the terms of reference). It was underscored that by appointing survivors to key positions, a sense of ownership was created.

- In Australia, the Commission had a panel of six commissioners made up of a variety of professionals, including a former child migrant.⁸

⁸ Commissioner Andrew Murray was a child migrant. He went on to be an Australian senator.

- In Canada, a survivor and a respected member of the indigenous community were appointed as commissioners. Survivors were also appointed as commission staff and researchers.
- In South Africa, a public consultation was held to select and appoint the chief commissioner of the Truth and Reconciliation Commission.

Repositioning Civil Servants

There were several concerns raised about support staff connected to the HIAI and these were related to the repositioning of civil servants to the inquiry. One survivor described the civil servants involved in the HIAI as 'cooperative', but it was clear that they 'did not understand the sensitive issues involved'. Some said that repositioning civil servants was a conflict of interest and signified a lack of independence. Several panellists stated that repositioning civil servants was an inappropriate way to staff an inquiry.

Methodology and Transparency

The Mother and Baby Homes Commission in the RoI was criticised for its failure to make public its methodology and the lack of transparency on its processes of investigation. Several panellists criticised the secrecy involved, particularly on how and why judgements or conclusions were made. This is significant because the Commission on occasions stated that there was not enough evidence to support claims made by survivors and questioned the accuracy of their testimony. One panellist said, 'interaction with survivors occurred in private, and the evidence was gathered in private. There is limited understanding of the Commission's operating processes due to the lack of methodological transparency. This lack of transparency generated distrust in the commission and its agenda.'

Panellists advised that whatever mechanism is implemented in NI, its methodology must be written into the terms of reference and made public. Namely, 'how will it apply standards of proof and weigh evidence? Which will be given the greatest validity –

archives or testimony?’ Survivors must be made fully aware of the approach prior to participation.

Terms of Reference

The terms of reference were a core theme and focus of discussion throughout the panel sessions. It is widely recognised that the terms of reference are central to a successful investigation. ‘They are the foundations and if they are not sufficient the resulting investigation or inquiry will be deficient.’ The terms of reference should determine the scope, time frame, powers to compel witnesses and documents, structure, personnel and features of the inquiry/ investigation. As one panellist said, ‘the terms of reference have the potential to limit a fuller, forensic truth’. Terms of reference set out the scope of an inquiry and in one session it was emphasised that this must include ‘the investigation of harms and abuses, such as physical, emotional, psychological and sexual abuse, forced adoption, forced labour, denial of basic human rights and needs (such as education), separation from family, and loss of identity. And include issues of victimhood, intergenerational trauma and lifelong impacts on survivors, families and secondary victims.’ The terms of reference should cover ‘individual, organisational, state and societal involvement not being limited to a range of institutions but also including extension into the community’. Panellists agreed that the sampling of cases or institutions does not provide a true reflection of victim impact.

The focus on institutions is a format of investigation that was used by the HIAI, the Ryan Commission, Mother and Baby Homes Commission and internationally. This approach was widely criticised in panel sessions. The focus on institutions rather than the wider macro-level issues was described as a missed opportunity. The Mother and Baby Homes Commission excluded hundreds of institutions, agencies, private nursing homes and religious adoption agencies from its remit, and panellists criticised the Commission for failing to provide an explanation for institution selection and for the complete exclusion of adoption societies. Due to the exclusion of adoption agencies, the focus on adoption was limited and based on historical narrative rather than investigating the processes involved. The result was a report that compartmentalised the issues rather than showing that adoption was a systemic problem. The focus of

any inquiry should be 'the all-encompassing experiences of survivors, rather than on particular institutions'. It was noted that survivors were not consulted on the HIAI terms of reference, which were described as inadequate and overlooked issues such as loss of opportunity.

Panellists further noted the importance of the required legislation and the compellability of witnesses and documents. A 'loophole' in HIAI was highlighted: 'evidence was given to the inquiry by an institution spokesperson with little or no knowledge or experience of the conditions in the 'homes' at that time. This provided a generic account.' Panel experts discussed how institutions may potentially block or resist cooperating in the process, and argued that there should be accountability concerning engagement. One proposal was that engagement or lack thereof should be open to public scrutiny, and that the inquiry should report the level of engagement, including the non-public elements of investigation.

It was further advised that survivors should be directly involved in contributing to the breadth and depth of the terms of reference.

Core Participant Status and Legal Representation

Several panellists were strongly of the view that, in order for a commission/inquiry to meet human rights standards, survivors must be granted core participant status, or a similar protective mechanism should be written into the terms of reference. Core participants receive advanced disclosure, legal representation, can suggest questions to the chair/panel, have advance access to interim and final reports and have the right to make opening and closing submissions. Providing survivors with these benefits would ensure 'equality of arms and equal protection'. In the HIAI, institutions had core participant status, but survivors did not. As one panellist put it, 'without this protected status, survivors are reduced to the status of a bystander with no powers or protections'. Panellists noted that the government may put forward an argument that providing survivors with core participant status 'would be an overly expensive process due to lawyers' fees'. However, research on the HIAI has shown that survivors were left vulnerable due to their non-core status and lack of personal legal representation. One panellist noted that core participant status for survivors does not automatically

mean individual legal representation – ‘there are creative ways of addressing this, such as collective representation’.

Disclosure of Personal Information

Disclosure of information to survivors was discussed as a significant issue by several panellists, including survivors who participated in the HIAI. As noted previously, institutions had core participant status; this meant that institutions had access to statements and all other relevant information at least 20 days in advance of giving testimony. Survivor witnesses did not have the same access; they were not designated as core participants. In contrast, survivors were provided with briefing sessions immediately prior to testifying before the HIAI. During briefing sessions, survivors were informed of any queries or challenges to their personal evidence statement raised by the institutions and/or agencies. In the briefing sessions, survivors were also presented with disclosure of personal and often sensitive information about their life history, usually previously unknown.

One survivor recounted how, immediately prior to giving public evidence to the HIAI, one individual was informed that their mother had placed them in the institution; the survivor had previously presumed the church or social services had placed them in ‘care’. This type of disclosure was said to be shattering. Yet, individuals were expected to then give evidence and even undergo cross-examination. This panellist stated that disclosures should be carried out in a timely fashion, and must consider the vulnerability of survivors, who should be prepared and forewarned. If need be, testifying should be postponed to allow the individual time to process the information and come to terms with it prior to giving evidence in public. It was underscored that ideally such disclosures should take place well in advance of any inquiry, that individuals should be given access to any files held on them by the institutions, and that survivors should have access to any documentation relating to them prior to making the decision on whether to testify. These points were reiterated by other panellists regarding processes in the RoI.

Adversarial or Inquisitorial

The aims and functions of an investigative process were outlined as to investigate:

1. What happened?
2. Why did it happen?
3. Who is responsible?
4. What can we learn?

Many of the panellists highlighted that during the ‘what happened’ stage, victims and survivors are often subjected to adversarial cross-examination. As noted, the Mother and Baby Homes Commission in the RoI questioned the validity of survivor testimony, which panellists described as adversarial and traumatising. A similar response was given by survivors who had engaged directly in the HIAI, who noted that giving testimony was a traumatising experience.

There was strong agreement among panellists that an inquiry or commission should be fact finding regarding ‘why and how’ the abuse took place, not necessarily ‘what abuse took place’. One panellist advised that there should be limits on the involvement of lawyers and barristers, to avoid survivors being subjected to adversarial cross-examination. A significant point of discussion by international panellists was the need to use a non-adversarial approach and victim-sensitive questioning. The Australian commission had many lawyers, but as one panellist explained, ‘there was a general agreement not to go hard on survivors. This agreement assured that they would not be exposed to harsh or unnecessary adversarial questioning.’ Other panellists also supported the case for a less legal/adversarial approach. Canada operated a non-adversarial approach. ‘Sessions took place in a circle, symbolically and practically demonstrating that those involved were equal in voice and input.’ This removed the adversarial courtroom setting and hierarchical system and embedded the importance of survivor participation.

Concerns were expressed about the HIAI and the inappropriateness of its location and physical environment. The HIAI took place in a ‘decommissioned’ courthouse. Hearings took place in a courtroom setting with barristers, the panel top table, witness stand, large television screens relaying the proceedings live, and public gallery. This was described as ‘an intimidating setting where survivors felt they were ‘on trial’.

Moreover, there was the potential that ‘former abusers could be in the public gallery watching survivors give testimony’. This inappropriate setting ‘caused a great deal of anguish and harm to the mental wellbeing of survivors’.

Valuing Testimony

One panellist pointed out that the ‘legitimacy of the process of investigating the past depends upon the existence and cooperation of survivor testimony ... otherwise we are just writing a history book’. Regarding Mother and Baby institutions and Magdalene Laundries, due to the restrictive nature of archival records, oral history should be essential to the investigation. This did not happen in the Mother and Baby Homes Commission. Panellists discussed the lack of value placed on survivor testimony and input. This was a significant failing in the process. It was explained that 549 survivors appeared before the Confidential Committee to give testimony. They later became aware that they would not receive a transcript of their testimony and would not be able to amend or correct it. Their testimony was ‘property of the commission’. As a result of the lack of transparency and limited survivor involvement, it was said that ‘the outcome did not reflect the lived experience of survivors’. One panellist put it as follows:

‘We saw evidence of survivor testimonies being diluted – as no findings on abuse and neglect were made as late as 2019 in its interim report – when survivors had provided testimony... In relation to adoption, there is a suggestion that women may have been in denial about having consented to the adoption of their child. The coercion, the power dynamics at play, the lack of support and access to alternatives is not given its worth in the discussion and so once again, blame is misplaced.’

Indeed, owing to the secrecy surrounding the Mother and Baby Homes Commission and lack of clarity about how the Confidential Committee would operate, some survivors refused to provide testimony due to concern about how the evidence would be handled. It was said that ‘they feared that they would not have control over their own testimony’; as noted above, these fears were justified.

This view is supported by other panellists who suggested that as a direct consequence of how survivor testimony was treated, the Commission published narrow recommendations that were not based on survivor empowerment. Moreover, if survivor testimony is not valued as evidence and survivors are not given a legally protected role in the process, the outcomes will not be a true reflection of the practices that took place within the institutions under investigation. This is further amplified due to survivor testimony being relegated to just one chapter of the Commission's final report. Additionally, the Mother and Baby Homes Commission stated that it had concern over survivor testimony, describing it as 'evidence which is clearly incorrect'. However, it did not provide an evidential basis for this conclusion and due to the lack of transparency, testimony is not available to raise informed questions about the conclusions and findings of the Commission. Panellists recommended that there should be an explicit requirement that survivor testimony is paramount to conclusions and recommendations.

Access to Records: Cross Jurisdiction Investigations

Alongside valuing survivor testimony and issues of disclosure, access to records was raised as a matter of concern by several panellists. This was two-fold: first, cross-border record sharing; second, the right of survivors to have access to information and personal files.

McCormick and O'Connell's research report *Mother and Baby Homes and Magdalene Laundries in Northern Ireland (2021)* notes that institutions operated with no regard for the border between NI and the RoI / Irish Free State. Panellists stressed that cross-border cooperation regarding access to records and documentation is vital. This will probably require legislation and cross-border agreement on access to records. It was noted that in October 2020, the Irish government created a central database of records on historical abuse and that under current GDPR legislation in the RoI, an individual is entitled to information that concerns them, whether it is held by the state or a private institution. Legislation in the RoI, namely the Commissions Investigations Act, severely limited the use of documentation for any other purposes beyond the scope of the inquiry/investigation. For example, legislative restriction meant that documentation

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and evidence could not be used in any resulting criminal proceedings. Additionally, commissions were exempt from Freedom of Information (FoI) or data access requests, which was said to compound secrecy issues. In NI, the Inquiries Act 2005 ensures that any possible investigation or inquiry will not have exemption from FoI requests if established under this legislation.⁹

It was highlighted that there are issues regarding how and when survivors can access the information an institution or inquiry may hold on them. HIAI survivors could not access information easily as the right to access was not automatically guaranteed. Likewise, in the RoI, survivors did not automatically have the right to access files the Commission had relating to their case. According to panellists, on completion of the Australian and RoI Mother and Baby Homes inquiries, records were sealed. In the RoI, 'there was one report provided, one narrative which could not be questioned without access to records'. It was argued that survivors should have the right to their personal files and original birth certificates if adopted. A point of commonality among panellists was that survivors should be provided with all documentation no matter how extensive or limited it may be: they should not have to undertake a lengthy process to obtain it. Access should be granted prior to any investigative process and prior to survivors deciding on whether to take part in such an investigation.

Panellists also recommended that documentation should not be sealed, but instead be placed in an official archive and used to inform the public. It was noted that 'survivor testimony is essential to uncovering the "history and mystery" of this island and as such records and documentation should be used to inform public knowledge, to inform the teaching of Irish history within school settings. The past is the past, and to understand our society today we need to understand what has brought us to this place, what the history is.'

⁹ See note 36, <https://www.legislation.gov.uk/ukpga/2005/12/notes/division/6?view=plain>

Keeping Survivors Informed

The findings and recommendations of an inquiry/investigation are highly anticipated. It was suggested that a formal process to keep survivors informed should be structured into any mechanism established. Survivors who participated in the Mother and Baby Homes Commission learned of delays and interim reports through the media. Panellists underscored that using the media to inform survivors was unacceptable. The Mother and Baby Homes Commission's final report was leaked to the media two days prior to its official release. 'Almost all survivors had not received a copy of the report prior to the Minister speaking in Dáil Éireann and apology read into the record'. It was suggested that a principle should be established and written into the terms of reference and legislation that 'survivors must be the first to be informed of delays and/or outcomes'.

It was noted that implementation of inquiry/commission recommendations are not always enacted, adding further distrust and disempowerment of survivors. In Australia, the Commission included recommendations on how to monitor implementation of its 409 recommendations. These recommendations were published at stages throughout the process, which helped create transparency on how the Commission was progressing.

Redress

Panellists agreed that a redress scheme should run parallel with the investigative process. It was pointed out that research has established that there was abuse, mistreatment and human rights violations within the Mother and Baby institutions.

Survivors raised several concerns about the HIAI. At the end of giving evidence to the inquiry, survivors were asked what they wanted from redress (i.e. memorial, apology and/or redress). The wording of the question was 'restrictive, set the parameters and restricted [their] voice'. It did not offer survivors the space to speak about their unique justice needs. Most were too emotional, stressed and overwhelmed having just given evidence. Survivors had no input into the design of the HIAI redress recommendations – particularly the monetary cap and compensation bands. Likewise, they had no

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meaningful role in the redress (compensation) scheme, and the HIAI Chairperson had influenced redress by stating that he was 'mindful of the public purse'. The delay in setting up a redress scheme 'had a negative impact on satisfaction and healing', and 'created hurt and mistrust'. Support with welfare and advice on finance management was said to be fundamental. Local community organisations are well placed to assist if given the resources.

Similarly, the redress scheme implemented following the Ryan Commission report was based on a predetermined scale and there were issues relating to transparency. As one panellist said, 'the secrecy which surrounded the Ryan Inquiry carried over to the redress scheme'. Survivors were obliged to comply with a confidentiality clause imposed by the redress board. Survivors could not disclose the amount they were awarded and make public their views. The redress board was described as 'brutal' – 'the focus was on minimising cost'. It was emphasised that justice is not achieved 'if people are forced through a flawed [investigative] process, then forced into a minimising redress scheme'.

Regarding survivors of Mother and Baby institutions in NI (and elsewhere), it was suggested that redress should include 'support in helping adult children find their lost identities, to find a route back to their families, their history'. The use of DNA technologies should be used and paid for by government to repair the damage that was allowed to occur. A secure database should be established, containing this DNA information to facilitate the reunion of mothers with their adult children.

All three international panellists stressed the importance of creating a redress process that addressed wider problems – the intergenerational effects of abuse and support for families and communities.

One panellist highlighted the healing nature of redress, stating that due to the highly individualised nature of healing, there should be alternative options, such as restorative justice available to those who wish to avail of it.

Accountability

Panellists emphasised the need for accountability and acceptance of responsibility. This was linked to the need for answers. 'If you get a conclusion that society collectively is to blame, this essentially means that no one is to blame.' Panellists noted that anonymity given to those implicated undermines survivors' right to accountability.

Prosecutions

The matter of prosecutions was raised by several panellists. It was noted that the focus of a public inquiry is focused on fact finding, rather than prosecutions. It was agreed that information gathered by an inquiry should be referred to the Police Service of Northern Ireland (PSNI) and Public Prosecution Service (PPS) with a view to prosecutions. There should be transparency about the status of prosecutions and survivors should be kept informed of progress, delays, and decisions. The HIAI referred 190 cases to the PSNI, of which 77 were submitted to the PPS for a decision. Despite Fol requests submitted by Ulster University and Amnesty International, the status of these cases is unclear, though it seems likely that there have been zero prosecutions.

Doing Things Differently: Designing a Mechanism

In addition to the recommendations outlined above, two panellists put forward suggestions for designing an investigative mechanism.

The first panellist proposed a mechanism that would build on the statutory inquiry model but would include three additional elements. The starting point would be identifying survivors' justice needs, and those needs should drive the inquiry

1. A Thematic Research and Investigation Unit

This unit would provide a macro analysis, identifying patterns, and policies, as well as context, causes and consequences. It would be responsible for researching and investigating issues identified by survivors such as trafficking, illegal adoptions, infant mortality and impunity across jurisdictions. It would also investigate the

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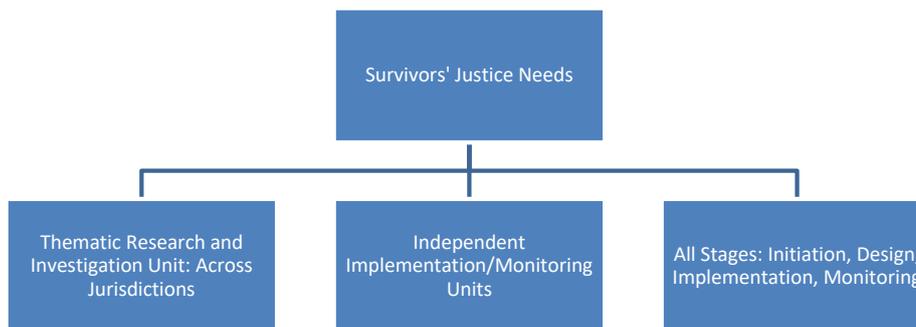
agencies and actors involved including but not limited to the state, religious orders and institutions, social services and the police.

2. Independent Implementation and Monitoring Units

Both units would be survivor-led and action driven. This would give survivors a clearly defined participatory role and should be written into the terms of reference.

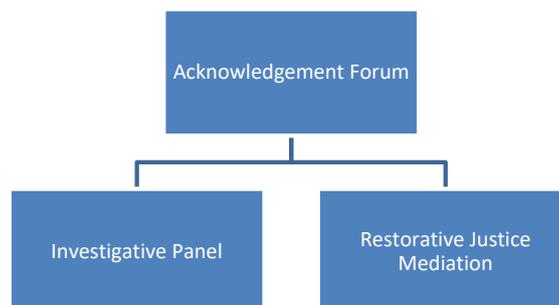
3. All Stages ¹⁰

That during all stages of the process survivors would be represented in a decision-making role and involvement in any negotiations.



Likewise, the second panellist suggested a hybrid model, owing to the failure of existing adversarial processes to address harms to individual victims. The potential of restorative justice processes was discussed as an avenue within the inquiry rubric. Mediated encounters would assist survivors to obtain acknowledgment of harms and offer reparation. This avenue would not be about fact finding but would provide greater voice for victims and potentially greater offender accountability and cooperation as there are no sanctions involved. This route would be based on the personal choice of survivors. It was noted that there is a wealth of experience in NI of restorative justice practice. There would be the necessary protections and safeguards, criteria for referral, balance of interests, consensual consent, and immunity. However, this model would emphasise 'procedural justice'. That is, the process would be procedurally fair and victim-centred.

¹⁰ An 'information retrieval unit' could at the end of the inquiry seek to answer individual survivor questions.



Summary

From research already conducted into Mother and Baby and Magdalene Laundry institutions in NI, we know that there were serious and widespread human rights violations that merit an effective and appropriately empowered investigation.

NI now has an exceptional opportunity to put in place such an investigation, which not only meets the range of needs and expectations of survivors but is co-designed by survivors themselves. By heeding the collective wisdom of those survivors and learning from victim-survivors and others who have gone through or studied previous inquiry processes, a bespoke investigation process can be put in place to deliver the truth, justice and redress to which all have a right.

This report summarises key lessons and recommendations of the ‘Learning the Lessons’ seminar series organised by Amnesty International and Ulster University. The report is not meant to be a word-for-word repeat of what each panellist said. Instead, it presents an analysis of the main lessons highlighted. We thank all our contributors for sharing their expertise and experience and recommend that you watch the [seminar series](#) for the full presentations and discussion.

June 2021

APPENDIX



LEARNING THE LESSONS

Co-designing the Inquiry into Mother and Baby
& Magdalene Laundry Institutions in Northern Ireland

A series of online panel events
drawing on survivor and expert
experience from around the world

First event available to view from 29 March 2021

amnesty.org.uk/motherandbabyinquiry



LEARNING THE LESSONS

PANEL
EVENT
1

Co-designing the Inquiry into Mother and Baby
& Magdalene Laundry Institutions in Northern Ireland



Prof Patricia Lundy, Ulster University, founder of Panel of Experts on Redress



Breeda Murphy, Tuam Mother and Baby Home Alliance



Dr James Gallen, Dublin City University, expert on Irish Commission on Mother & Baby Homes



Patrick Corrigan, Amnesty International (chair)

Available to view from 29 March 2021

amnesty.org.uk/motherandbabyinquiry



LEARNING THE LESSONS

PANEL
EVENT
2

Co-designing the Inquiry into Mother and Baby
& Magdalene Laundry Institutions in Northern Ireland



Gerry McCann, Rosetta Trust, survivor-campaigner for Historical Institutional Abuse Inquiry



Prof Kathleen Mahoney, Chief Negotiator for Assembly of First Nations for the Residential School Settlement Agreement; major architect of Canada's Truth and Reconciliation Commission



Conall Ó Fátharta, journalist and lecturer, NUI Galway



Eunan Duffy, adoptee, advocate, activist (chair)

Available to view from 6 April 2021

amnesty.org.uk/motherandbabyinquiry



LEARNING THE LESSONS

PANEL
EVENT
3

Co-designing the Inquiry into Mother and Baby
& Magdalene Laundry Institutions in Northern Ireland



Colm O'Gorman, Amnesty International Ireland, founder of One in Four, campaigner for Ferns Inquiry



Prof Anne-Marie McAlinden, Queen's University Belfast



Frank Golding, former care home child resident, Vice-President of Care Leavers of Australia Network



Mark McCollum, adoptee / campaigner (chair)

Available to view from 13 April 2021

amnesty.org.uk/motherandbabyinquiry



LEARNING THE LESSONS

PANEL
EVENT
4

Co-designing the Inquiry into Mother and Baby
& Magdalene Laundry Institutions in Northern Ireland



Jon McCourt, Survivors North West, survivor-campaigner for Historical Institutional Abuse Inquiry



Prof Brandon Hamber, Ulster University, expert on transitional justice



Gemma McKeown, solicitor, Committee on the Administration of Justice (CAJ)



Sharon Burke, born in Newry and adopted in Dublin, whose mother spent time in Marianvale, Newry (chair)

Available to view from 26 April 2021

[amnesty.org.uk/motherandbabyinquiry](https://www.amnesty.org.uk/motherandbabyinquiry)



