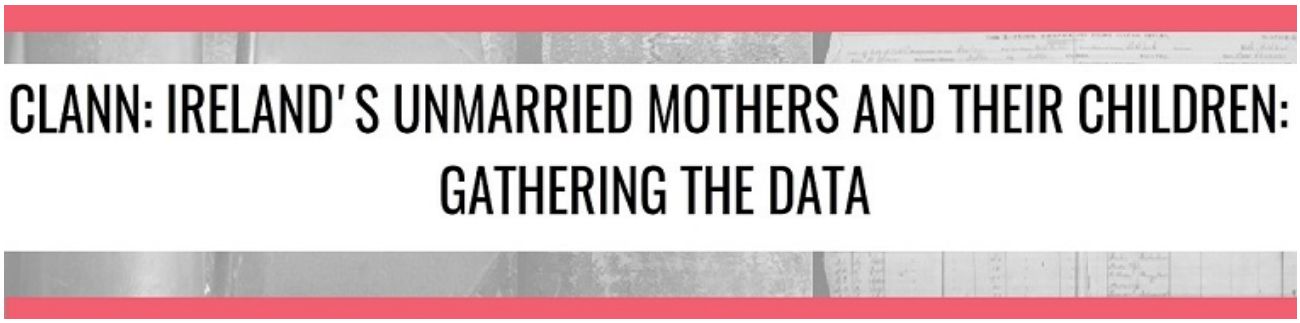

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26th February 2020

The Citizens' Assembly
16 Parnell Square
Dublin D01 E7C1

Via email to: info@citizensassembly.ie

Re: Call for submissions, Citizens' Assembly on Gender Equality

Dear Members of the Citizens' Assembly,

We enclose for your review a copy of the final report of 'Clann: Ireland's Unmarried Mothers and their Children: Gathering the Data' (Clann Report), along with our press release from the time of the Clann Report's publication in 2018. As co-directors of the 'Clann Project', we believe that the findings and recommendations of the Clann Report are of vital importance to your task given that they relate to Ireland's history of systematic discrimination against women and children and the ongoing human rights violations connected to that history.

We ask that you please cite the Clann Report as follows: Maeve O'Rourke, Claire McGettrick, Rod Baker, Raymond Hill *et al*., *CLANN: Ireland's Unmarried Mothers and their Children: Gathering the Data: Principal Submission to the Commission of Investigation into Mother and Baby Homes*. Dublin: Justice For Magdalenes Research, Adoption Rights Alliance, Hogan Lovells, 15 October 2018. The Clann Report is also available online at www.clannproject.org.

The Clann Project is a joint initiative by Adoption Rights Alliance (ARA),[1] Justice for Magdalenes Research (JFMR)[2] and global law firm, Hogan Lovells. The Clann Project is co-directed by Dr Maeve O'Rourke, a Lecturer at the Irish Centre for Human Rights and a member of the JFMR group, and Claire McGettrick, a Government of Ireland PhD scholar at the School of Sociology in University College Dublin and co-founder of both ARA and JFMR.

Between 2015 and 2018 the Clann Project provided assistance to those who wished to give evidence to Ireland's Commission of Investigation into Mother and Baby Homes and Certain Related Matters (Commission of Investigation) by arranging free legal help for individuals to make full written statements. In parallel with this process, Clann anonymised shared statements, gathered documentary and archival materials, and carried out legal research and analysis in cooperation with the Voluntary Assistance Scheme of the Bar of Ireland in order to make a public group report to the Commission of Investigation.

The 154-page Clann Report summarises the evidence gathered by over 80 witnesses and from other sources, regarding the treatment of unmarried mothers and their children in 20th-century Ireland, under the following three headings:

1. **Treatment of mothers and children in the past,** including the circumstances in which mothers and children were separated from each other and the impact of this separation.

   It is clear that for many decades from the foundation of the Irish State in 1922 onwards, the State's policy on 'illegitimacy' involved the incarceration of thousands of women and girls who became, and who were deemed 'at risk' of becoming, pregnant outside marriage and the separation of many thousands of children from their mothers including through a closed, secret, forced adoption system. Women and girls were not given the option of raising their children outside marriage due to the absence of sufficient rights and supports. Witnesses who gave evidence to the Clann Project offer compelling evidence of gender and socio-economic discrimination, stigma, racism, forced adoption, illegal adoptions, arbitrary detention, forced labour, physical and psychological abuse, punishments, neglect (including medical neglect), and the deaths of infants in Mother and Baby Homes and related institutions. Evidence gathered by the Clann Project also demonstrates failures to identify, and mark the graves of, women and children who died in various institutions, including Magdalene Laundries, Mother and Baby Homes and related institutions.

2. **Treatment of adopted people as children**, including the impact of Ireland's closed, secret adoption system on people who were separated from their mothers as children.

   The Irish State's policy on 'illegitimacy' involved the incarceration of thousands of infants and children in Mother and Baby Homes and other institutions. Thousands of children deemed to be 'illegitimate' were adopted or boarded out through a closed, secret system operated and overseen by agents of both the State and the Catholic Church (and in some instances agents of the Church of Ireland). Clann Project witnesses offer vivid accounts of the emotional and psychological

[1] ARA is a voluntary organisation whose main aim is to advocate for equal human and civil rights for those affected by the Irish adoption system by providing them with information, advice and access to peer support, and to research adoption in order to educate the general public and preserve the history of the Irish adoption system.
[2] JFMR is a voluntary organisation whose main aim is to provide for the advancement of the education of the general public, by researching Ireland's Magdalene Laundries and similar institutions, and by providing information and support to the women who spent time in the Magdalene Laundries and their families.

impact of growing up under such a closed system, and they describe conditions of institutional neglect, non-consensual medical experimentation, illegal adoptions (including the trafficking of children to America for adoption) and in some cases, abuse and neglect in adoptive families.

3. **Treatment of mothers, adopted people and family members in the present**, including the continuing lack of access to information concerning personal and family histories.

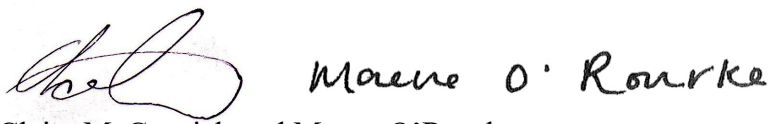
   The abuses committed in the past are perpetuated in the present due to the Irish State's denial of information rights to adopted people and natural parents. The impact of these ongoing violations of human rights is inter-generational and is not restricted to those directly involved. The witness statements and other evidence exhibited in these submissions demonstrate that from the perspective of adopted people and natural parents seeking information or contact, Ireland's adoption system is opaque, discriminatory, prejudicial, and often unprofessional and obstructive. Adopted people are denied the right to know their own names and to access records pertaining to their adoptions. In addition, due to a lack of effective investigation and the absence of rights to information, mothers and other family members remain unable to discover what became of their relatives who disappeared through institutionalisation and/or forced separation.

In the final Clann Report, following three years of evidence gathering from witnesses, the Clann Project made the following 8 recommendations to the Commission of Investigation:

1. A new process of investigation should be opened to all stakeholders and make access to information its primary goal;
2. A State apology should be issued to all those who have been affected;
3. Redress and reparations, primarily in the form of access to information, and also material benefits and symbolic reparations devised through a process led by people directly affected;
4. Introduction of statutory rights and services for adopted people, natural parents, relatives of the deceased and all individuals who experienced abuse, including centralised records and access to archives and tracing services;
5. Acknowledgement by religious orders and church hierarchies;
6. Establishment of a specific unit to investigate criminal allegations;
7. Amended Statute of Limitations and reformed legal aid to enable multi-party litigation;
8. Active and ongoing memorialisation and research.

We ask that Citizens' Assembly members read the Clann Report and the accompanying press release, and take our recommendations into account in your consideration of the issue of gender equality in Ireland.

Yours sincerely,



Claire McGettrick and Maeve O'Rourke
On behalf of Justice for Magdalenes Research and Adoption Rights Alliance

Press Release. EMBARGOED UNTIL 9.30am,15th October 2018

CLANN PUBLISHES FINDINGS OF THREE-YEAR PROJECT ON ADOPTION AND MOTHER AND BABY HOMES

Statutory Rights to Files and Independent Archive of Records amongst 8 key recommendations

Adoption Rights Alliance (ARA), Justice for Magdalenes Research (JFMR) and global law firm, Hogan Lovells, today published the final Report of their joint **'Clann Project'** which draws on 77 witness statements, extracted from conversations with 164 people separated from their family members through Ireland's forced, secret adoption system and related historical abuses.

The 154-page Report – *Ireland's Unmarried Mothers and their Children: Gathering the Data* – references an unprecedented number of witness statements and makes 8 recommendations to the Mother and Baby Homes Commission of Investigation.

The continued denial of access to personal files, and the lack of an independent repository where all privately and publicly held records are deposited and made available, is perpetuating the abuse of those impacted by forced, secret adoption and related historical abuses in Ireland, according to the Clann Project.

Adopted people in Ireland have no statutory right to their birth certificates or their adoption or early life files, and this is out of step with Northern Ireland and the rest of the UK, and with countries such as Germany and Spain.

There is no independent system in Ireland to ensure that survivors of related institutional and historical abuses are provided with their records. These records continue to be held by the religious and private bodies, State agencies and Government departments involved.

Women whose children were forcibly taken from them have to rely on the discretion of private bodies that managed the institutions or social workers operating *ad hoc* when looking for information about their past treatment. Equally, family members of children and adults who died in institutions and who may still lie in unmarked graves also do not have a statutory right to their relative's personal records.

Due to its underpinning legislation and the Commission of Investigation model - which in the view of the Clann Project is significantly hindering the process and must be reviewed - the Commission of Investigation into Mother and Baby Homes and Certain Related Matters is proceeding in private and is refusing personal or public access to the files it is considering:

- The Commission has declined all requests for public hearings and is conducting its inquiry entirely in private.[i]
- The Commission is declining to provide a transcript to any witness who has given oral evidence to it in private.[ii]
- It appears that the Commission's entire archive will be sealed once it finishes its inquiry, and never available to the Gardaí, the civil courts, affected individuals or the public.[iii]
- The Commission does not provide people with the personal records it has gathered on them.[iv]

In its final report, and following three years of evidence gathering from witnesses, the Clann Project is making the following 8 recommendations to the Commission of Investigation, as it prepares to make its recommendations to Government early next year.

1. A new process of investigation should be opened to all stakeholders and make access to information its primary goal;

2. A State apology should be issued to all those who have been affected;
3. Redress and reparations, primarily in the form of access to information, and also material benefits and symbolic reparations devised through a process led by people directly affected;
4. Introduction of statutory rights and services for adopted people, natural parents, relatives of the deceased and all individuals who experienced abuse, including centralised records and access to archives and tracing services;
5. Acknowledgement by religious orders and church hierarchies;
6. Establishment of a specific unit to investigate criminal allegations;
7. Amended Statute of Limitations and reformed legal aid to enable multi-party litigation;
8. Active and ongoing memorialisation and research.

The Clann project is also calling for the contents of the McAleese archive to be made public – the Archive contains all State records concerning the Magdalene Laundries, gathered by the *Inter-departmental Committee to establish the facts of State involvement with the Magdalen Laundries* from 2011 to 2013.

Claire McGettrick, Co-Director of the Clann Project, said: *'The Clann Project witnesses describe a situation of marginalisation, powerlessness and discrimination that persists in 21st Century Ireland, because private, religious and State bodies are withholding their personal and family records. In addition, the administrative records held by the State and private bodies are being kept entirely secret. This is compounding the abuse suffered in the past. No other form of redress will be meaningful without first abandoning this insistence on secrecy and treating people with dignity.'*

Rod Baker, of Hogan Lovells, said: '*There is a surprising reticence by authorities to allow individuals access to basic information about themselves, preferring to preserve the confidentiality of the institutions and their members whose actions caused those individuals great suffering. Even the Commission set up to investigate those institutions is operating in great secrecy and has refused, without giving any justification for the refusal, to allow public hearings when requested by witnesses in accordance with the Commissions of Investigation Act 2004. In this modern age, it is imperative that this pervasive insistence on secrecy is abandoned and those who have suffered most get the information they need*'.

Dr Maeve O'Rourke, Co-Director of the Clann Project, said: '*The insistence on secrecy is causing ongoing human rights violations. There is a "right to truth" under European and international law for victims and survivors, and for the general public, where gross human rights violations have occurred in a country. It is time for the State to do what is right and tell the truth. It is the first step in restoring dignity to people who have suffered, and in ensuring that these abuses never happen again.'*

Dr Maeve O'Rourke continued: '*Under international law, an "enforced disappearance" occurs where a person is detained or abducted with State involvement, following which the State refuses to provide information about the person's fate or whereabouts. We have many cases of "enforced disappearance" in Ireland," she concluded.*

ENDS //

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Notes to editors:

1. About the Clann Project

The full Report of the Clann Project '- *Ireland's Unmarried Mothers and their Children: Gathering the Data'* is now available at http://clannproject.org/clann-report/

The 'Clann Project' is a voluntary initiative set up three years ago to help people give testimony to the Mother and Baby Homes Commission of Investigation. ARA and JFMR were concerned from the outset of the Commission's work that its inquiry was happening entirely in private and that it would not be providing a transcript to any witness who gave oral evidence before it. To date, lawyers at Hogan Lovells have given *pro bono* assistance to 164 people, 77 of

whom gave detailed witness statements to the Commission. The Clann Project has also received help from over 20 barristers (including 7 Senior Counsel) through the Bar of Ireland's Voluntary Assistance Scheme, and from numerous legal academics, whose analysis of the law in the past and present informed the Clann Report.

The witnesses who participated in the Clann Project provided harrowing accounts of past abuse and forced separation from their family members. Overwhelmingly, the witnesses also drew attention to their ***continuing*** experiences of abuse by State, Church and private bodies because of the ongoing secrecy of information. They stated unequivocally that they need to be provided with access to information and records. **Please see below for excerpts of the testimony provided**.

2. Access to adoption files in other European jurisdictions

The following are examples of other European countries which provide adopted people with access to their birth certificates and adoption records (see also our Briefing note on Access to Information here):

- **Northern Ireland**
  Since 1987, adopted people over 18 in Northern Ireland have been able to access their birth certificates and adoption files.

- **England and Wales**
  In England and Wales, adopted people over 18 years old have had the right to access their birth records since 1975, when the Children Act 1975 was introduced. In the debates surrounding the legislation before its enactment, some sections of the media, politicians and other activists predicted disastrous outcomes to the opening of adoption records. Triseliotis notes that adopted people were viewed as 'potentially vindictive 'second-class' citizens.[v] Ultimately however, in his empirical analysis of the impact of the Children Act 1975, Triseliotis found that:

  - *'The calamities anticipated by sections of the media, politicians, and some organizations have not materialized. The various studies carried out so far suggest that the vast majority of adoptees act thoughtfully and with great consideration for the feelings of both their birth and adoptive parents'.*[vi]

- **Scotland**
  In Scotland, since 1930, adopted people over 16 years of age can access their birth certificates and adoption records.
- **Germany**
  In Germany, since 1957, any child (including adopted children) can access their birth certificates once they reach the age of 16. Since 2002, adult adopted people in Germany have had the right to access their adoption files once they are 16 years or older. Additionally, since 1989, it is the constitutional right of every person in Germany to have knowledge of their parentage. It is important to note that under German law, the interests of the adopted person outweigh the interests of natural parents to protect their identities.
- **Spain**
  In Spain, adopted people over the age of 18 can access their birth certificates and adoption files. Adopted people under the age of 18 can also access this information with their adoptive parents' consent.
- **Austria**
  In Austria, since 1983, adopted people have had a general legal entitlement to access their birth records, including the following information regarding their parents: name, date and place of birth and death, marital status and nationality (Sections 2 and 52/2 of the Austrian Personal Statute Law 2013). This also applies to *incognito* adoptions, although the access is limited to those who are 14 years or older. These regulations are considered as being consistent with Article 8 ECHR (the right to respect for private and family life).
- **The Netherlands**
  In The Netherlands, since 1994, since the '*Valkenhorst II*' case, adopted people have had the right to access their adoption records.

- **Belgium**
  In Belgium, since 1960, adopted people have automatic access to their birth certificates.

3. Philomena Lee and Dame Judi Dench
Among the participants in the Clann Project were Philomena Lee and her daughter, Jane Libberton, who made a short film to encourage others to come forward and make a witness statement.

Dame Judi Dench, who played the part of Philomena Lee in the 2014 Oscar-nominated movie, also endorsed the Clann Project, stating, *'There must be so many women who have had an experience like Philomena Lee. It is imperative that their voices should be heard.'*

4. Excerpts from Witness Testimony
The Clann Project Report contains evidence of human rights abuses throughout the network of County Homes, Mother and Baby Homes, adoption agencies, Magdalene Laundries and other entities involved in institutionalising and separating women and their children. The Report also provides compelling accounts of continuing abuse through the secrecy and manipulation of records and other information by the State and private entities involved in the abuses.

See for example the following excerpts from the Clann Project Report (for further quotations, navigate to the relevant paragraph in the Report):

Conditions in Mother and Baby Homes and Institutions

> *"[W]e were locked in and there was absolutely no way of getting out*". (Para 1.47)
>
> *"There was no doctor present, just nuns, and there was no formal medical care or any kind of pain relief*" (Para 1.204)
>
> *"[My mother] was tied to the bed and when she couldn't push, one of the nuns sat on her chest to make her*". (Para 1.206)
>
> *"I was in terrible pain and was afraid but when I screamed or called for help I was abused".* (Para 1.210)
>
> "*We were made to work even if we were very ill, as I was. No excuses were ever accepted*". (Para 1.225)
>
> "*I went into labour while polishing the corridor floors*". (Para 1.227)
>
> "*[W]hen my mother cried out in pain during labour she was told [she] was "paying for her sins".* (Para 1.262)

Coercion and Forced Adoption

> *"[My son] was wrenched from my breast by one of the nuns while I was feeding him and taken away for adoption... At no time did I give my consent to my son's adoption".* (Para 1.102)
>
> "*[F] ollowing some pressure, I ultimately signed the papers*". (Para 1.152)
>
> *"I was not given any other options"*. (Para 1.153)

Mortality and Infant Deaths

> *"[My son was kept] in a closed off area called the dying room. I begged the nuns to take my son to a hospital, but they only did so after two weeks had passed. My son died in hospital*". (Para 1.172)

> *"I do not even know whether he was buried in a coffin …There was never even a kind or sympathetic [word] spoken to me*". (Para 1.173)

Emotional and Psychological Impact of Forced Adoption on Mothers

> *"There was no discussion about it in advance and I was given no information afterwards other than that he had gone. Being parted from him broke my heart*". (Para 1.277)

> "*The nuns at Bessborough made my life hell and changed my life forever. ... I think I am still in shock, still traumatised. ... I think I will die with the pain and trauma that was caused during this time*". (Para 1.291)

> *"The level of insensitivity we experienced was shocking. No thought was given to how affected we would be by having bonded with our babies and having cared for them for five days".* (Para 1.293)

Lack of Proper Adoption Assessments

> *"My [adoptive] parents' drinking was not a secret and I do not believe that if a proper vtting process had been followed they would have been allowed to adopt me".* (Para 2.59)

> *"Throughout my childhood and adolescence, my adoptive mother subjected me to psychological cruelty, as well as physical abuse".* (Para 2.62)

> *"My childhood was not a happy one and I do not view adoption as a guarantee of a 'better life'. My upbringing was dysfunctional primarily involving my adoptive mother's alcoholism and sexual abuse by my brother".* (Para 2.69)

The Emotional and Psychological Impact of Closed, Secret Adoption on Adopted People

> *"One of the saddest things is the perception of adoption in the past as being the best solution for mother and child. It most certainly was not. I feel personally I have lost so much".* (Para 2.89)

> "*As I grew older I felt a sense of loss within me that I didn't know my true origins. I felt very lonely all my life. I was nothing like my adoptive family*". (Para 2.90)

> *"I had a relatively normal upbringing and my adoptive parents would say that I caused no trouble. In fact, I suffered from depression and an all-pervading sense of sadness throughout my childhood, teenage years and early adulthood".* (Para 2.94)

"The impact of my adoption has had a lasting impact on my life … It has also had a lasting impact on my children. They have not known any grandparents or relatives other than those of their father's family". (Para 2.95)

"My upbringing with my adoptive parents was full of love and affection; I had a very close bond with both of them and they were wonderful parents to me. Despite this, I felt the impact of being adopted…". (Para 2.96)

Lack of Statutory Rights to Information

"It is incredibly difficult for people who were adopted from the Mother and Baby Homes to get hold of accurate and detailed information. If I'd had to rely on the official channels to trace my birth mother I would be an old lady before they got around to me and my birth mother would likely be dead". (Para 3.49)

"I have found it incredibly difficult to access information about my childhood, my mother and my siblings. ... Whenever I attempted to obtain information I was made to feel that I was a nuisance". (Para 3.58)

"*I felt like I was treated as a threat to my mother, and that the social worker tried to keep us apart for as long as possible*". (Para 3.59)

"*I haven't been entitled to review anything on my file held by the Child and Family Agency. They have been obstructive from the start and I have been refused access to a large amount of information. Without a birth certificate I managed to find my mother myself…*". (Para 3.61)

"Throughout the time I spent researching my birth family I found the authorities from whom I sought assistance obstructive and unhelpful". (Para 3.66)

"It seems to me that some of the information I was given was deliberately inaccurate, or misleading. I felt that some of the details I was provided were given in order to lead me down a garden path. This experience has made me very angry and I feel like I have been lied to. I do not know what to believe" (Para 3.71)

"*… it makes me angry to think that I was pushed as far as becoming an emotional wreck in order to obtain such simple information about myself. Everyone has the right to know their name; the right to know their mother's name*". (Para 3.72)

"I first approached the nuns at St Patrick's Guild ... when I was 18. ...the nun had glee in her eyes and a horrible satisfaction about her when she told me … that I had no chance of finding [my mother]." (Para 3.78)

"*By the time St Patrick's Guild passed on the information they had about my mother … after numerous phone calls and letters, she had passed away four months earlier…*" (Para 3.89)

"*When the social workers finally took me to my birth mother's ward, I walked into the room and kissed her on the forehead. I told her who I was and she replied by saying "I*

knew you would find me someday". … My mother passed away less than a month later". (Para 3.91)

"By this stage, it was too late to seek [my natural mother's] consent or establish her wishes which no one had ever done before. She had already passed". (Para 3.109)

"*I have found the process of trying to trace information about my mother very hard. It has been the most daunting, depressing, miserable and lonely search. I have faced umpteen brick walls, and I don't know how to express it. All I know is that it has worn me out*". (Para 3.113)

References:

[i] See:

- Conall O'Fatharta, 'Baby home survivors denied public hearings' Irish Examiner (7 April 2018), https://www.irishexaminer.com/ireland/baby-home-survivors-denied-public-hearings-469201.html
- Letter dated 27 May 2016 from Rod Baker, Hogan Lovells, to Maeve Doherty, Solicitor to the Commission of Investigation, http://clannproject.org/wp-content/uploads/HL-Letter-to-MBHCOI_27-05-16.pdf
- Letter dated 1 June 2016 from Maeve Doherty, Solicitor to the Commission of Investigation, to Rod Baker, Hogan Lovells, http://clannproject.org/wp-content/uploads/Letter-from-MBHCOI_01-06-16.pdf
- Section 11(1) of the Commissions of Investigation Act 2004, which establishes a presumption of private rather than public hearings.

[ii] See letter dated 1 June 2016 from Maeve Doherty, Solicitor to the Commission of Investigation, to Rod Baker, Hogan Lovells, http://clannproject.org/wp-content/uploads/Letter-from-MBHCOI_01-06-16.pdf

[iii] See:

- Section 11(3) of the Commissions of Investigation Act 2004, which prohibits disclosure or publication of the evidence or contents of any documents produced by a witness while giving evidence in private. The High Court has held that this section of the Act creates statutory privilege over the archives of Commissions of Investigation (*O'Neill and Others v An Taoiseach and Others* [2009] IEHC 119, Murphy J, 18 March 2009; *Byrne and Others v An Taoiseach and Others* [2010] IEHC 353, Laffoy J, 9 September 2010).
- Section 19 of the Commissions of Investigation Act 2004, which states that statements or admissions made to the Commission, documents given or sent to the Commission, and documents specified in an affidavit and given to the Commission are not admissible as evidence against a person in any criminal or other proceedings.
- Section 43 and Section 45 of the Commissions of Investigation Act, which state that all evidence and all documents received or created by a Commission of Investigation will be deposited with the 'specified Minister' upon the conclusion of the investigation, only to be released to any subsequent Tribunal of Investigation that may be established to inquire into matters that fell within the Commission of Investigation's terms of reference.

[iv] Prior to May 2018, the original Section 39 of the Commissions of Investigation Act 2004 made the Commission immune from the application of the right to personal data under Section 4 of the Data Protection Act 1988.

In May 2018, Section 198 of the Data Protection Act 2018 amended Section 39 of the Commissions of Investigation Act 2004 to provide that: 'Article 15 (Right of Access) of the Data Protection Regulation is restricted, to the extent necessary and proportionate to safeguard the effective operation of Commissions and the future cooperation of witnesses in so far as it relates to personal data (within the meaning of that Regulation) provided to a Commission.'

The Commission of Investigation has recently refused any access to personal data that the Commission currently holds on a woman whose child was taken from her, stating that 'it is necessary and proportionate to refuse access to the personal data [the Commission] holds relating to your client in order to safeguard the effective operation of the Commission and the future cooperation of witnesses.' A redacted version of this letter is available at the following link: http://clannproject.org/wp-content/uploads/Letter-from-COI-re-Subject-Access-Request.pdf

[v] Triseliotis, J. (1984). Obtaining Birth Certificates. In P. Bean (Ed.), *Adoption: Essays in Social Policy, Law, and Sociology* (pp. 39–53). London and New York: Tavistock. (Page 46)

[vi] Triseliotis, J. (1984). Obtaining Birth Certificates. In P. Bean (Ed.), *Adoption: Essays in Social Policy, Law, and Sociology* (pp. 39–53). London and New York: Tavistock. (Page 51)

JFM RESEARCH
www.magdalenelaundries.com

Adoption Rights Alliance
www.adoptionrightsalliance.com

CLANN: IRELAND'S UNMARRIED MOTHERS AND THEIR CHILDREN: GATHERING THE DATA

Principal Submissions to the Commission of Investigation into Mother and Baby Homes

PRINCIPAL AUTHORS:

DR MAEVE O'ROURKE, CLAIRE MCGETTRICK, ROD BAKER AND RAYMOND HILL

WITH ADDITIONAL INPUT FROM:

PROF JAMES M SMITH, COLIN SMITH BL, SUSAN LOHAN, ASSOC PROF KATHERINE O'DONNELL AND TARA CASEY

SUBMITTED TO THE COMMISSION OF INVESTIGATION ON MOTHER AND BABY HOMES AND CERTAIN RELATED MATTERS ON 8 OCTOBER 2018

WWW.CLANNPROJECT.ORG

Cite as follows:
Maeve O'Rourke, Claire McGettrick, Rod Baker, Raymond Hill *et al*., *CLANN: Ireland's Unmarried Mothers and their Children: Gathering the Data: Principal Submission to the Commission of Investigation into Mother and Baby Homes*. Dublin: Justice For Magdalenes Research, Adoption Rights Alliance, Hogan Lovells, 15 October 2018.

Hogan Lovells

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A. FOREWORD

The Clann Project is a joint voluntary initiative by Adoption Rights Alliance ("ARA") and Justice for Magdalenes Research ("JFMR") in association with global law firm Hogan Lovells. The purpose of the Clann Project is to help establish the truth of what happened to unmarried mothers and their children during the 20th century, from the foundation of the Irish State in 1922 onwards. It is doing this by:

- Assisting individuals whose lives were affected by the systematic institutionalisation and separation of unmarried mothers and their children between 1922 and 1998 to give evidence, in the form of witness statements, to the Commission of Investigation into Mother and Baby Homes and Certain Related Matters so that they can inform that process and its findings;

- Creating an archive of statements and documentation and preserving that archive for future generations;

- Making a submission to the Commission of Investigation based on the statements and other evidence gathered, which identifies the factual findings and recommendations that we believe the Commission should make to the Irish Government; and

- Making submissions to the Irish Government and human rights bodies regarding the Irish State's obligations towards those whose lives were affected by the systematic institutionalisation and separation of unmarried mothers and their children between 1922 and 1998.

These submissions mark the first milestone in the Clann Project's overall aim to help establish the truth of Ireland's treatment of unmarried mothers and their children. The volume and range of statements made available to the Clann Project by witnesses is unprecedented, and the assistance provided by Hogan Lovells has enabled ARA and JFMR to work on a scale that has been hitherto impossible. Irish adopted people and natural mothers are at a disadvantage in the telling of their experiences because Ireland's closed, secret adoption system has denied them access to the language, individual records and administrative archives required to document and articulate their history. The witnesses who have shared their statements with the Clann Project have made an invaluable contribution to our collective understanding of adoption, "illegitimacy", institutionalisation and related issues in Ireland.

The Clann Project builds on a previous initiative by Justice for Magdalenes (predecessor of JFMR), which facilitated 22 survivors, family members and other witnesses in submitting testimony to the *Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries* ("the McAleese Committee"). In August 2012, Justice for Magdalenes made its principal submission,[1] *State Involvement with the Magdalene Laundries* to the *Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries*. The submission consisted of a 145-page document which was supported by 795 pages of survivor testimony and 3,707 pages of archival evidence and legislative documentation. It provided comprehensive evidence of State complicity in the abuses experienced by girls and women in Ireland's Magdalene Laundries. In Appendix 2, we include a copy of these Principal Submissions and an Index[2] to the archival evidence submitted to the IDC, a digitised and anonymised version of which is available here.

The work of Clann Project continues in gathering further statements and archival evidence, and in carrying out further analysis. In the coming months we will also turn towards the creation of the Clann Archive, by publishing these submissions (removing any details which may identify witnesses) along with further legal argument and a wide range of archival and other resources via the project's website, including data on infant mortality.

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1 JFM Principal Submission: State Involvement in the Magdalene Laundries. Appendix 2: Tab 33

2 Bundle Index to JFM Principal Submission. Appendix 2: Tab 25

Processes of the Clann Project

The Clann Project has operated under strict ethical protocols[3] and has provided full details of its operation to its participants via its website (www.clannproject.org) and its Information and Consent Forms (also available on the website). The Clann Project has also made its correspondence with the Commission of Investigation available on its website.

Individuals who have participated in the Clann Project by providing statements have all consented to the use and referencing of their statements in these submissions.

All statements have been prepared by lawyers at Hogan Lovells, the international law firm which has been assisting the Clann Project on a pro bono basis.

Copies of all completed statements are at Appendix 1 to this document. The majority of these statements have already been provided to the Commission and they are all produced in un-redacted format on the express understanding that the Commission will keep confidential the identity of their makers.

The statements compiled by the Clann Project are corroborated by documents and archival materials referred to in these submissions.

All references to the statements have been anonymised and all witness names have been replaced by witness numbers. The Commission will easily be able to cross refer those witness numbers to the statements, and identify named individuals who have been redacted in the report, but this will not be possible for anyone else because it is only the Commission that will receive the un-redacted statements. The Clann Project intends to publish its submissions to the public but any such publication will not include publication of the statements. In due course, witnesses will be given the opportunity to consent to the inclusion of their anonymised statements in a public archive on the Clann Project website. This initiative is part of Clann's ongoing commitment to making resources available to those affected by Ireland's treatment of unmarried mothers and their children, as well as our aim to cultivate a culture of transparency and access to information.

[3] Available at: http://clannproject.org/wp-content/uploads/Clann-Ethical-Protocols.pdf

B. ACKNOWLEDGEMENTS

In June 2015, ARA and JFMR first met with Yasmin Waljee and her colleagues at Hogan Lovells in London, when the firm generously agreed to work with us on a *pro bono* basis. Over the following year, ARA, JFMR and Rod Baker from Hogan Lovells worked together to develop the Clann Project's policies and procedures, and in June 2016, the project launched to the general public. Thus far, over 50 lawyers and staff at Hogan Lovells have given freely of their time to speak to 164 witnesses which in turn led to the completion of over 70 statements. As voluntary, unfunded groups, ARA and JFMR would never have been able to work on this scale and thus we are profoundly grateful to Hogan Lovells for the work they have done on the Clann Project. In late-2017, the US offices of Hogan Lovells also offered *pro bono* assistance to the Clann Project, as part of our outreach to Irish people sent to the US for adoption as infants.

The Clann Project witnesses who have spoken to ARA and JFMR members say that the compassion, patience and care shown by Hogan Lovells' lawyers have been second to none. In many cases, Clann Project witnesses were recounting extremely traumatic experiences, and we are very grateful to the team at Hogan Lovells for the empathy and sensitivity they have shown to interviewees. We are also grateful to the trainee solicitors at Hogan Lovells who were so diligent and kind in responding to emails from people interested in participating in the project.

It has been our great pleasure to work with Rod Baker, who, together with Faye Jarvis, led the Hogan Lovells team on the Clann Project. Rod (and indeed all of the lawyers at Hogan Lovells) came to this issue with little knowledge of what had happened to Ireland's unmarried mothers and their children, and we were in awe of his ability to get to grips with the subject so quickly and so compassionately. Time and again over the past three years, Rod went above and beyond the call of duty, and it has been an honour to work with him.

To Rod, Faye and Yasmin and all the team at Hogan Lovells, thank you sincerely from all of us in Adoption Rights Alliance and Justice for Magdalenes Research.

The Clann Project would also like to acknowledge and thank the following for their invaluable contribution to these submissions:

We are profoundly grateful to the witnesses who have shared their statements with the Clann Project. Irish adopted people, natural parents and relatives are only beginning to speak about their experiences; your courage will be an inspiration to others and most importantly, your experiences will let them know they are not alone.

We would like to acknowledge the 1,755 members of ARA's online peer support group, made up of adopted people, natural parents and relatives. A number of members of this group participated in the pilot phase of the Clann Project's statement gathering process, and we are extremely grateful to them for their assistance, which helped us to refine our processes and protocols in advance of the public launch of the project. We are also constantly guided by the members of the peer support group who share their experiences and support each other on a daily basis, as well as the hundreds of others who contact us every year on a once-off basis.

We wish to thank our JFMR and ARA colleagues Susan Lohan, Mari Steed, Angela Murphy, Assoc Prof Katherine O'Donnell and Prof James Smith for their support, encouragement and guidance on the Clann Project over the past three years. We also wish to thank A&L Goodbody, and particularly Ciaran Ahern, for their assistance with the governance of JFMR for the past three years.

The Clann Project is indebted to Raymond Hill, Barrister practising in England and Wales from Monckton Chambers, London, who provided pro bono assistance to JFMR in 2012 in compiling its principal submission to the McAleese Committee. Raymond's legal assistance to JFMR in 2012 was an invaluable model for the format of the Clann Project. Raymond generously offered of his time and expertise once again, on a pro bono basis, to assist the Clann Project in its work.

We are also extremely grateful to Gareth Noble and Wendy Lyon at KOD Lyons solicitors, and to Michael Lynn SC, Siobhan Phelan SC and Colin Smith BL, for their unhesitating encouragement of and assistance to the Clann Project.

The Voluntary Assistance Scheme of the Bar of Ireland ("VAS"), through the generous pro bono efforts of 22 barristers, superbly coordinated by Sonja O'Connor BL, has provided a series of analyses of relevant Irish law which have been invaluable to the Clann Project in preparing these submissions. Those barristers included:

Mary O'Toole SC

Eileen Barrington SC

Bernard Condon SC

Niamh Hyland SC

Teresa Blake SC

Siobhan Phelan SC

Michael Lynn SC

Catherine Forde BL

Sarah Fennell BL

Natalie McDonnell BL

Colin Smith BL

Deirdre O'Donohoe BL

Patrick Rooney BL

Niamh Barry BL

Anita Finucane BL

Deidre Flannery BL

Alison Fynes BL

Julie Maher BL

Colm Scott-Byrne BL

James Kane BL

Amy Deane BL

Grace Mulvey BL

In addition, for their extremely generous contribution of time and expertise we wish to thank:

Dr Conor O'Mahony, University College Cork School of Law

Dr James Gallen, Dublin City University School of Law and Government

Professor Louise Mallinder, Ulster University School of Law

Dr Suzanne Egan, University College Dublin School of Law

Stephen Kirwan, KOD Lyons solicitors

Susie Kiely

Catríona Crowe

Aisling Burns

Eileen Crowley

Tara Casey

Ashley Perry

University College Cork School of Law Child Law Clinic Master's students, 2017:

Julianne Dowling

Abigail Flynn

Aine Horgan

Lorcan Maule

John Murphy

Emily Rockett

University College Dublin School of Law Human Rights Clinic Master's students, 2017:

Julia Canney

Erin Dunleavy

Michelle Dunne

Rory Geoghegan

Mary Haasl

Oisin MacCanna

Roisin O'Sullivan

Neil Rafter

We wish to thank all of those who helped us to disseminate information about the Clann Project, including members of the academic community in Ireland and abroad, as well as Patricia Whyte in Barnardos and the Coalition of Irish Immigration Centres (Aileen Leonard Dibra and Paul Dowling) and the Irish Pastoral Centre in Boston (Veronica Keys). We wish to thank Philomena Lee and Jane Libberton, Kathy Finn and Mari Steed, who all participated in the Clann informational videos which were compiled by Caroline Murphy and Hugh Chaloner. We also wish to thank Fiona Ward, who donated photographs to the Clann Project and who gives so generously of her time to photograph ARA and JFMR events, as well as the sites of Magdalene Laundries, Mother and Baby Homes and other institutions.

We are eternally grateful to Judy Campbell, unsung hero of adopted people and natural mothers, whose tireless research on infant mortality and non-marital births we will publish in the coming months.

We wish to thank Conall Ó'Fátharta of the Irish Examiner, who has done a service to the Irish State through his work on this issue. We also wish to thank Mike Milotte, author of *Banished Babies*, who generously donated his archive to ARA.

Last but not least we acknowledge the tireless work of Catherine Corless, whose research played such a significant role in bringing this issue to the forefront.

Dr Maeve O'Rourke and Claire McGettrick
On Behalf of the Clann Project

Dr Maeve O'Rourke is a barrister at 33 Bedford Row, London and also Senior Research and Policy Officer at the Irish Council for Civil Liberties. She has provided *pro bono* assistance to Justice for Magdalenes (now JFMR) since 2010 and was recognised as the UK Family Law Pro Bono Lawyer of the Year in 2013 for her advocacy regarding Ireland's Magdalene Laundries abuse. She jointly coordinates the Clann Project with Claire McGettrick and taught a Human Rights Clinic at University College Dublin in 2017 which involved Master's students in research for the Clann Project. Maeve holds a PhD from Birmingham Law School, an LLM from Harvard Law School and a BCL (International) from University College Dublin School of Law. She has practised as a barrister in the areas of human rights, family law and international mass tort/environmental claims and she has worked for Equality Now and as a research assistant at Harvard Law School and the University of Minnesota Law School Human Rights Center. She is also a registered Attorney at Law in the State of New York.

Claire McGettrick is an Irish Research Council postgraduate scholar at the School of Sociology in University College Dublin. Her PhD research is reconstructing the progression of formal and informal adoption in Ireland, as well as examining how adopted adults and children have been classified and defined in the discourses of expert knowledge, and how they have been managed in adoption policy and practice. Claire is also an adopted person and survivors' rights advocate. She is co-founder of Justice for Magdalenes (now JFMR) and Adoption Rights Alliance. She coordinates the Magdalene Names Project, which has recorded the details of over 1,600 women who lived and died behind laundry walls. Claire also jointly coordinates the Clann Project with Dr Maeve O'Rourke.

C. EXECUTIVE SUMMARY AND SUMMARY OF RECOMMENDATIONS

As at the date of submission of this report, the Clann Project has:

- Spoken to 164 witnesses
- Completed 77 statements (73 statements were originally submitted to the Commission in April)

The difference between the number of witnesses and the number of completed statements is an indication of how challenging it is for people affected by closed, secret, forced adoption to speak of their experiences and to recount memories and emotions which were in many cases, buried and/or not spoken of for many years.

Of the 77 statements in Appendix 1, 25 of the statements currently fall outside of the Commission's Terms of Reference in that they do not specifically relate to one of the 14 Mother and Baby Homes or four County Homes within those Terms of Reference. These statements have been included to support the Clann Project's assertion that the Terms of Reference are too narrow and to illustrate the fact that individuals beyond those linked to the small sample of institutions listed in the Terms of Reference have, and want to give, valuable and relevant evidence to the Commission. We have repeatedly called on the Commission to make use of its ability to recommend the addition of further institutions to its Terms of Reference and we have furnished the Commission with a list of 182 Institutions, agencies and individuals who were involved in Ireland's closed and secret system of adoption from 1922 onwards.

STRUCTURE OF THESE SUBMISSIONS

Sections 1, 2 and 3 of these submissions contain a summary of the evidence gathered from the witnesses who created statements through the Clann Project and references to documentary evidence and other information supporting the witness evidence. These sections present evidence which falls into the following three factual areas:

(1) **Treatment of mothers and children in the past,** including the circumstances in which mothers and children were separated from each other and the impact of this separation.

It is clear that for many decades from the foundation of the Irish State in 1922 onwards, the State's policy on "illegitimacy" involved the incarceration of thousands of women and girls who became, and who were deemed "at risk" of becoming, pregnant outside marriage and the separation of many thousands of children from their mothers including through a closed, secret, forced adoption system. Women and girls were not given the option of raising their children outside marriage due to the absence of sufficient rights and supports. Witnesses who gave evidence to the Clann Project offer compelling evidence of gender and socio-economic discrimination, stigma, racism, forced adoption, illegal adoptions, arbitrary detention, forced labour, physical and psychological abuse, punishments, neglect (including medical neglect), and the deaths of infants in Mother and Baby Homes and related institutions. Evidence gathered by the Clann Project also demonstrates failures to identify, and mark the graves of, women and children who died in various institutions, including Magdalene Laundries, Mother and Baby Homes and related institutions.

(2) **Treatment of adopted people as children**, including the impact of Ireland's closed, secret adoption system on people who were separated from their mothers as children.

The Irish State's policy on "illegitimacy" involved the incarceration of thousands of infants and children in Mother and Baby Homes and other institutions. Thousands of children deemed to be "illegitimate" were adopted or boarded out through a closed, secret system operated and overseen by agents of both the State and the Catholic Church (and in some instances agents of the Church of

Ireland). Clann Project witnesses offer vivid accounts of the emotional and psychological impact of growing up under such a closed system, and they describe conditions of institutional neglect, non-consensual medical experimentation, illegal adoptions (including the trafficking of children to America for adoption) and in some cases, abuse and neglect in adoptive families.

(3) **Treatment of mothers, adopted people and family members in the present**, including the continuing lack of access to information concerning personal and family histories.

The abuses committed in the past are perpetuated in the present due to the Irish State's denial of information rights to adopted people and natural parents. The impact of these ongoing violations of human rights is inter-generational and is not restricted to those directly involved. The witness statements and other evidence exhibited in these submissions demonstrate that from the perspective of adopted people and natural parents seeking information or contact, Ireland's adoption system is opaque, discriminatory, prejudicial, and often unprofessional and obstructive. Adopted people are denied the right to know their own names and to access records pertaining to their adoptions. In addition, due to a lack of effective investigation and the absence of rights to information, mothers and other family members remain unable to discover what became of their relatives who disappeared through institutionalisation and/or forced separation.

Section 4 of the submissions contains a Constitutional and human rights law analysis of the evidence summarised in Sections 1 to 3. This section argues that Sections 1 to 3 disclose evidence of enforced disappearances and of violations of the rights to dignity; equality and non-discrimination; autonomy; freedom from torture and cruel, inhuman or degrading treatment or punishment; respect for private and family life; liberty; freedom from slavery, servitude and forced labour; life; and an effective remedy, including an effective investigation, access to justice, the right to the truth, and access to other forms of reparation and redress.

The Clann Project believes that it is vitally important to recognise the Constitutional and human rights of individuals whose lives have been affected by the systematic institutionalisation and separation of unmarried mothers and their children since the formation of the Irish State. To fail to consider the rights violations that occurred, and those that are still occurring with significant cross-generational reverberations, would be to ignore the essence of the matters under investigation by the Commission of Investigation. In the view of the Clann Project, for as long as the Irish State continues to ignore the Constitutional and human rights that have been violated, these rights continue to be denied.

In its report to Government on the Terms of Reference for the Commission of Investigation in 2014,[4] the Irish Human Rights and Equality Commission stressed the grave and systematic nature of the human rights violations that appear to have occurred in Mother and Baby Homes, County Homes and related institutions, and through the adoption and boarding-out system in Ireland since 1922. At least six international human rights bodies have also expressed their concern at the denial of the rights of non-marital families through institutionalisation and forced separation from 1922 onwards in Ireland and called on the State to recognise and comply with its legal duties to remedy these rights violations.[5] JFMR and ARA have made numerous submissions to these and other human rights bodies.[6]

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

5 Committee Against Torture, Concluding Observations on the initial report of Ireland (17 June 2011) UN Doc CAT/C/IRL/CO/1. Appendix 2: Tab 43; Committee Against Torture, Concluding Observations on the second periodic report of Ireland (31 August 2017) Appendix 2: Tab 44; UN Doc CAT/C/IRL/CO/2; Committee on Economic, Social and Cultural Rights, Concluding Observations on the Third Periodic

Section 5 of the submissions discusses the Commission of Investigation's processes to date. While the Clann Project does not doubt the commitment of the Commission's members and staff and welcomes and appreciates the painstaking work that they are undertaking, we believe that there are serious shortcomings in both the legislation underpinning the Commission and the Commission's methods of operation. This is particularly so given the grave human rights violations that have occurred.

Section 6 of the submissions contains the recommendations that the Clann Project believes should be made by the Commission of Investigation to the Irish Government. These recommendations take the form of proposals for a Transitional Justice Process. Transitional Justice comprises four distinct goals of truth-telling, accountability, reparation and guarantees of non-recurrence. The recommendations are informed by the witness statements and other evidence gathered and are supported by our Constitutional and human rights analysis of the State's legal obligations. They are also guided by the experience of ARA's founding members over the past two decades in assisting adopted people, natural parents and family members. The recommendations are also consistent with the feedback from participants at Minister Katherine Zappone's facilitated meetings with people affected by this issue.[7]

Finally, **Appendix 1** contains the witness statements and exhibits. **Appendix 2** contains the documents referred to in these submissions save those which we believe are already readily available to the Commission (and we invite the Commission to contact us in the event that it requires the submission of further documents). **Appendix 3** contains a number of press articles.

SUMMARY OF RECOMMENDATIONS

Update on Recommendations, October 2018:

The below recommendations were submitted to the Commission of Investigation in April 2018. Since that time the Clann Project has continued to research and consider what concrete

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Report of Ireland (8 July 2015) UN Doc E/C.12/IRL/CO/3 Appendix 2: Tab 54; Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Sixth and Seventh Periodic reports of Ireland (3 March 2017) UN Doc CEDAW/C/IRL/CO/6-7 Appendix 2: Tab 26; Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Ireland (19 August 2014) UN Doc CCPR/C/IRL/CO/4 Appendix 2: Tab 43; Council of Europe, Parliamentary Assembly, Periodic review: Ireland, Doc 14450 Part 5 (IE), 14 December 2017 Appendix 2: Tab 66; Council of Europe Commissioner for Human Rights, Nils Muzinieks, Report following visit to Ireland from 22 to 25 November 2016, CommDH(2017)8, 29 March 2017 Appendix 2: Tab 55.

See also: CEDAW List of Issues, March, 2016, Appendix 2: Tab 27; HRC Follow Up Letter 2016, Appendix 2: Tab 56; HRC Follow Up Letter 2017, Appendix 2: Tab 57; Ireland, Follow Up to HRC 2015, Appendix 2: Tab 59; Ireland, Follow up to HRC 2016, Appendix 2: Tab 59; CAT LOIPR 2013, Appendix 2: Tab 53; CAT Follow Up Letter 2013, Appendix 2: Tab 52, Ireland, Follow Up Letter to CAT 2013, Appendix 2: Tab 58; Ireland, Reply to CAT LOIPR 2016, Appendix 2: Tab 61; Ireland, Report to CEDAW 2016, Appendix 2: Tab 62; IHRC Assessment of the Human Rights Issues Arising in relation to the "Magdalen Laundries", Appendix 2: Tab 31.

6 JFMR Report to CEDAW for LOIPR_2015, Appendix 2: Tab 36; JFMR report to CEDAW for the 66th session (Ireland), Appendix 2: Tab 37; Adoption Rights Alliance CEDAW Submission_2015, Appendix 2: Tab 18; Adoption Rights Alliance CEDAW Submission Jan 2017, Appendix 2: Tab 19; Adoption Rights Alliance UN HRC Follow Up Report, Appendix 2: Tab 50; Adoption Rights Alliance ICCPR Submission May 2012, Appendix 2: Tab 20; Adoption Rights Alliance IHRC Submission Feb 2011, Appendix 2: Tab 21; Adoption Rights Alliance UPR Report October 2011, Appendix 2: Tab 22; Adoption Rights Alliance UPR Report September 2015, Appendix 2: Tab 23; JFM Application to IHRC June 2010, Appendix 2: Tab 32; JFM Submission to UNCAT May 2011, Appendix 2: Tab 34; JFM UNCAT Follow-Up May-June 2011, Appendix 2: Tab 35; JFMR Report to UNCAT for the Session 2017, Appendix 2: Tab 24; Appendix to JFMR Report to UNCAT for the Session 2017, Appendix 2: Tab 25; JFMR Submission to Government for UPR October 2015, Appendix 2: Tab 40**;** JFMR UPR Report_2015, Appendix 2: Tab 41; JFMR UPR Report_2011, Appendix 2: Tab 38; Justice for Magdalenes Research Follow-up report to UN HRC With-Appendices, Appendix 2: Tab 42; ARA Submission to UNCAT July 2017, Appendix 2: Tab 51; JFMR Report to CESCR 2015, Appendix 2: Tab 64.

7 Dublin Facilitated Meeting, Facilitator's Report. Appendix 2: Tab 46 Facilitator's Report, Cork Meeting. Appendix 2: Tab 67

mechanisms are necessary to implement its recommendations. On 15th October 2018 the Clann Project will issue a public statement calling on the Government to create: (1) statutory rights to personal files for adopted people, natural parents, all those who experienced institutional abuse, and relatives of those who died while institutionalised; and (2) an independent repository where all privately and publicly held records are deposited and made available. The Clann Project team is drafting a conceptual framework for legislation and will provide updates via www.clannproject.org.

The Clann Project's recommendations take the form of proposals for a Transitional Justice Process comprising a number of elements explained in detail in section 6 of the submissions. In summary, the Clann Project's recommendations are:

1. **A New Form of Investigation that Makes Access to Information its Primary Goal and is not Limited to Certain Institutions**

   In order to comply with Ireland's obligations under European and international human rights law, and to fulfil the rights guaranteed by the Irish Constitution, the Commission should recommend an investigative and truth-telling process to address institutional and structural human rights violations from the foundation of the Irish State. All individuals affected by the Mother and Baby Homes, County Homes, Magdalene Laundries, other related institutions and Ireland's closed, secret, forced adoption system should have the opportunity to participate. This process should include an evaluation of the existing investigations by the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; a large-scale "capstone" investigation which makes access to information its primary aim; and a thorough investigation of deaths and the identification of remains of women and children who died in Mother and Baby Homes, Magdalene Laundries and other institutions.

2. **State Apology**

   The Commission should recommend to the Irish Government that it should make an apology on behalf of the State to all those women and their now-adult children and family members who suffered as a result of Ireland's closed, secret, forced adoption system and the operation of the Mother and Baby Homes and related institutions. Any State apology should meet international standards on apologies and be made in accordance with the Irish Ombudsman's Guide to making a meaningful apology.[8]

3. **Redress and Reparations**

   The Commission should recommend the provision of statutory rights and services which would constitute forms of redress and reparations for individuals and families affected by the treatment of unmarried mothers and their children. Most important of these is unfettered access to information and archives. In addition, the Commission should recommend that the State amend existing laws and procedures to allow access to the courts for individuals who wish to claim compensation. Further forms of reparations should include "active" and ongoing memorialisation and educational initiatives.

4. **Statutory Rights and Services**

   The Clann Project recommends the introduction of statutory rights and services for adopted people and natural parents, to include access to information, centralisation of records, access to the Commission of Investigation's archives, tracing services, services and citizenship rights for people adopted to America and other overseas locations, the right to know you are adopted and the extension of the National Counselling Service to those who wish to avail of it.

5. **Acknowledgement of Responsibility by Religious Orders and Church Hierarchies**

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[8] Ombudsman Guide to Making a Meaningful Apology. Available at: https://www.ombudsman.ie/Website/en/publications/guidelines-for-public-bodies/guide-to-making-apology/

The State should do all within its power to encourage the religious orders and church hierarchies to acknowledge responsibility and participate in the process of making reparations for the damage caused by the churches' treatment of unmarried mothers and their children.

6. **Establishment of a Dedicated Unit to Investigate Specific Criminal Allegations**

The State should establish a dedicated unit to ensure that available evidence of crimes arising from, and all criminal allegations by individuals affected by, the matters discussed in these submissions are investigated with a view to prosecutions where appropriate. The State should ensure that all those who are affected are provided with their full entitlements to information and support under the EU Victims Directive and associated Criminal Justice (Victims of Crime) Act 2017.

7. **Access to the Courts**

The State should amend the Statute of Limitations 1957 to explicitly grant discretion to the courts to disapply the normal limitation period where it is in the interests of justice. This would allow interested individuals to seek redress through the courts against those parties responsible for the suffering caused to them arising out of and in connection with the operation of the Mother and Baby Homes, related institutions and the closed, secret, forced adoption system. The State should also reform the civil legal aid scheme and rules of court procedure to enable multi-party litigation in line with the 2005 Law Reform Commission Report, so as to allow for efficient and effective use of civil litigation against institutions and individuals for so-called "*historical*" abuse.

8. **Memorialisation**

The State should provide resources to facilitate "active" and ongoing memorialisation and research and educational initiatives in order to preserve the history of, and acknowledge the suffering caused by, Ireland's treatment of unmarried mothers and their children. A key aspect of the memorialisation and educational initiatives should be to explore how these experiences might inform us of ways to create a civil society where these harms are unlikely to be repeated.

D. GLOSSARY OF TERMS AND LANGUAGE

Homes	Collective reference to Mother and Baby Homes and County Homes
Institutions	Collective reference to other institutions which dealt with unmarried mothers and/or their children. For example, institutions where infants were held prior to adoption where mothers were not present; hostels; private nursing homes and other smaller locations where unmarried mothers gave birth to their children.
Agencies	Adoption agencies and societies which facilitated the placement of children for adoption
the Commission	The Commission of Investigation into Mother and Baby Homes and certain related matters
Terms of Reference	The Terms of Reference contained in the Department of Children and Youth Affairs SI No 57 of 2015 Commission of Investigation (Mother and Baby Homes and certain related matters) Order 2015.
the 1952 Act	The Adoption Act 1952
the 2004 Act	The Commissions of Investigations Act 2004
the NACPR	The National Adoption Contact Preference Register
Natural mother	Women who gave birth in Mother and Baby Homes, institutions, hospitals and other locations whose children were subsequently adopted. There are several reasons why the Clann Project uses the term "natural" as opposed to "birth", not least because many natural mothers are offended by the term and also because many natural mothers cared for their children for up to two or three years (or sometimes longer) before adoption.
Natural father	Men who are the fathers of children who were adopted. See above regarding our preferred use of the term, and also in the case of natural fathers, the term "birth father" is a biological impossibility.
Birth certificates	Every person who is born has his or her birth entered in the Register of Births, from which **birth certificates** are generated. Adopted people's births are registered in their original identity, however after adoption, they were entered into the Adopted Children's Register in their new adoptive identity. The document used by adopted people as a birth certificate in everyday life is in fact an ***"Extract from the Adopted Children's Register"***. The oft used term "*original birth certificate*" is inaccurate, because each person has only one birth certificate.
Illegitimacy	In the Irish context, "illegitimacy" means births which took place outside of marriage. The term is referenced throughout these submissions, not as the Clann Project's choice of word, but the pejorative term used by the State, churches and society during but not limited to the period covered by this report.
County Homes	County Homes were established and administered by public authorities. The Local Government (Temporary Provisions) Act 1923 provided for the establishment and administration by County Councils of "County Schemes" for the relief of the poor, including unmarried mothers. The absence of national regulation left vast discretion, it would appear, to individual County Homes and local Boards of Health as regards the rules governing admission, detention and discharge of

	mothers and children. Their operation was not consistent across the different counties. Further information is available in paragraphs 1.15-1.21 below.
Mother and Baby Homes	Mother and Baby Homes were institutions run by religious orders and sometimes by lay management, where women and girls who were pregnant outside of marriage were sent to be confined and give birth to their children.[9] Women and girls who could not pay to leave had to remain in the home for long periods: frequently two to three years or more.
Magdalene Laundries	Magdalene Laundries were originally philanthropic, but in the 20th century they were carceral institutions attached to Convents operated by female religious in which women, deemed "penitents", worked at laundry and other for-profit enterprises.[10]

Mother and Baby Homes and Magdalene Laundries: Similarities and Differences

- Both types of institution were punitive and involved
  - Incarceration
  - Punishments
  - Humiliation
  - Removal of identity
  - Isolation from family/friends/outside world
  - Unpaid work

- While laundry work was often carried out in Mother and Baby Homes, they were not necessarily commercial-run businesses
- A relatively small percentage of women and girls in Magdalene Laundries were unmarried mothers
- Women and girls did not give birth in Magdalene Laundries, however some did become pregnant there
- Women and girls could be either paid out of a Mother and Baby Home or they remained there for two or three years. However "second offenders" (women and girls who gave birth to more than one child outside of marriage) were sent to Magdalene Laundries.

9 With the exception of Árd Mhuire in Dunboyne, from where women and girls were sent to the National Maternity Hospital at Holles Street to give birth. In some cases, particularly where difficulties arose during labour, women and girls were sent from Mother and Baby Homes to hospitals to give birth.

10 See: Smith, J. M. (2007) *Ireland's Magdalen Laundries and the Nation's Architecture of Containment.* Notre Dame: University of Notre Dame Press and http://jfmresearch.com/home/preserving-magdalene-history/about-the-magdalene-laundries/

1. SECTION 1: TREATMENT OF MOTHERS AND CHILDREN IN THE PAST

The Prevailing Culture and State Policy

1.1 From the beginning of the Irish State, becoming pregnant outside of the institution of marriage caused girls and women to become socially ostracised and legally and financially powerless. For much of the 20th century, the State did not offer support to single mothers to raise their children. The Social Welfare Act 1973 was the first piece of legislation which entitled all unmarried mothers to maintenance allowances and children's allowance. The 1937 *Bunreacht na hÉireann* (*Constitution of Ireland*) was revealing in its definition of *"family"* as the family based on marriage.[11] Lindsey Earner-Byrne notes that *"In the turbulent early years of the Irish Free State, pregnancy outside wedlock became a symbol of the perceived moral degeneration of the nation".*[12] Earner Byrne maintains that:

> *"In Ireland, during the first half of the twentieth century, the prevailing view of unmarried motherhood was that it was illegitimate, unsustainable and morally wrong. This 'construction' helped to direct and limit the scope of government policy in relation to the unmarried mother and her child".*[13]

1.2 A pamphlet published by the Irish Women's Liberation Movement in 1971 highlights the lack of support for unmarried mothers to keep their families together even at that time:

> *…The unmarried mother who keeps her child does not officially exist as a class as far as this State is concerned. It is time that she was recognised. The unmarried mother does exist. We need a system for dealing with her problems which is less punishing and more aware of her and her child as a fatherless family. At present this system is a muddle.*
>
> *We need a central organisation which will help and rehabilitate the unmarried mother. Ideally this organisation should be able to advise her as to practical and monetary help available, encourage her to keep her child if she so wishes, help her find housing and employment and organise crèches and nurseries.*
>
> *Some legislation must be brought into being to ensure that the person named as the father will accept the responsibility involved. This would mean that the legal stigma of illegitimacy would be removed and the child would have a right to his father's name and inheritance.*
>
> *Such a central organisation should be responsible, at least in part, for a programme of public education which would improve the attitude towards the unmarried mother and her child, and accept them to their rightful place in Society.*[14]

1.3 The punishment for having conceived a child outside of marriage was predominantly directed at women and girls. While ARA is aware of one case where a boy was sent to an

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11 Article 41.3.1, Bunreacht na hÉireann (1937), Dublin: Oifig an tSoláthair, 1945.

12 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 173) Also, see Paul Michael Garrett, "'Unmarried Mothers in the Republic of Ireland", *Journal of Social Work* 16, 6 (2016): 708-25; Donnacha Sean Lucey, "Single Mothers and Institutionalisation", in *The End of the Irish Poor Law* (Manchester: Manchester UP, 2015): 82-118; James Smith, "The Politics of Sexual Knowledge: The Origins of Ireland's Containment Culture and 'The Carrigan Report' (1931)", *Journal of the History of Sexuality* 13, 2 (April 2004): 208-33; Maria Luddy, "Sex and the Single Girl in 1920s and 1930s Ireland", *Irish Review* 35 (Summer 2007): 75-91; and Sandra McEvoy, "The Regulation of Sexuality in the Irish Free-State, 1929-35", in *Medicine, Disease and the State in Ireland, 1650-1940*, eds. Elizabeth Malcolm and Greta Jones, Cork: Cork UP, 1999. 253-66.

13 Lindsey Earner-Byrne (2003) 'The Boat to England: An Analysis of the Official Reactions to the Emigration of Single Expectant Irishwomen to Britain, 1922–1972,' *Irish Economic and Social History* Vol 30, Issue 1, pp. 52 – 70. Appendix 2: Tab 1 page 69. Also, see Jennifer Redmond, "'Sinful Singleness': Exploring the Discourses on Irish Single Women's Emigration to England, 1922-1948", *Women's History Review* 17, 3 (July 2008): 455-76; and Maria Luddy, "'Moral Rescue and Unmarried Mothers in Ireland in the 1920s", *Women's Studies* 30, 6 (December 2001): 797-817.

14 Irish Women's Liberation Movement, *Chains or Change* (1971). Appendix 2: Tab 63

Industrial School because he and his girlfriend had conceived a child out of wedlock, generally there was no comparable institution to the Mother and Baby Home, County Home or Magdalene Laundry for the putative fathers of so-called "illegitimate" children. Until 1998, adoption law in Ireland did not address the question of an unmarried father's consent at all. From one perspective, unmarried fathers were absolved of parental responsibility while from another perspective, and in legal terms, they were not regarded as parents at all.[15]

1.4 Witnesses who gave evidence through the Clann Project attest to the fact that, for much of the 20th century from the foundation of the State, institutionalisation was the only State-funded option for unmarried mothers who did not have their own means of support.

1.5 For example, Witness 2, who was born in 1960, says that her mother was sent to Sean Ross Abbey by her family.[16] Witness 20, born in 1959, says the same.[17] Witness 12 was taken by her family to Bessborough in 1967.[18]

1.6 Witness 26 says that in 1968 she was forwarded on to Dunboyne by a monk

> "*who recommended the Convent to me. The Convent was also advertised in shops using religious pictures*".[19]

1.7 Witness 32 says that

> "*It was common in the 1980s for a family to take in a young woman in my position. That was what I hoped would happen to me; however, my request to be placed with a family was ignored, and Cunamh told me that the only place where I could go was Bessborough. I was only 17 at the time and without a family to take me in, I had no other choice but to go to Bessborough*".[20]

1.8 Witness 17 believes that her mother was sent to the County Home

> "*to give birth to me because I was an illegitimate child, which meant I was not allowed to be born in a regular hospital*".[21]

1.9 It did not matter that girls or women may have become pregnant as a result of rape; incarceration in an institution was the response to their situation too. Through Freedom of Information requests, *Irish Examiner* reporter Conall Ó'Fátharta has obtained maternity registers from Bessborough Mother and Baby Home dating from between 1954 and 1987 which show that children as young as 12 were placed in that particular institution. Records list, for example, a girl of 14, whose child was stillborn, in Bessborough in 1982; a girl of 13, whose child was stillborn in 1963; and a girl of 12, whose child was stillborn as a result of "ante-partum haemorrhage" in 1968.[22]

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15 Under section 14 of the 1952 Act, only the consent of the mother was needed for the adoption to proceed, as the Act only provided for the adoption of children born outside of marriage. The unmarried father was considered not to have any rights in respect of the child and thus his consent was not required. A constitutional challenge to this aspect of the law was rejected in *State (Nicolaou) v An Bord Uchtála* [1966] IR 567 (This was later found to be a violation of the ECHR in *Keegan v Ireland* (1994) 18 EHRR 342 and so the Adoption Act 1998 introduced a procedure whereby unmarried fathers would have to be consulted before an adoption could proceed. If they withhold their consent, the placement for adoption must be deferred for 21 days so as to allow the opportunity to apply for guardianship; if appointed as a guardian, the consent of the father to the adoption would then be required.)

16 Appendix 1: Tab 2 paragraph 5

17 Appendix 1: Tab 20 paragraph 22

18 Appendix 1: Tab 12 paragraph 6

19 Appendix 1: Tab 26 paragraph 2.4

20 Appendix 1: Tab 32 paragraph 7

21 Appendix 1: Tab 17 paragraph 7

22 Conall Ó'Fátharta, 'Child rape victims were in Bessborough maternity registers show' *Irish Examiner* (2 December 2015), Available at: https://www.irishexaminer.com/ireland/child-rape-victims-were-in-bessborough-maternity-registers-show-369151.html; Conall Ó'Fátharta, 'Girls pregnant due to rape put in Bessborough in 1980s' *Irish Examiner* (2 December 2015). Available at: https://www.irishexaminer.com/ireland/girls-pregnant-due-to-rape-put-in-bessborough-in-1980s-369168.html

1.10 In 1927 the Commission on the Relief of the Sick and Destitute Poor recommended the institutionalisation of unmarried mothers and their children, and their separation. The Commission concluded that there were two classes of unmarried mothers: *"those who may be considered amenable to reform"* and *"those who for one reason or another are regarded as less hopeful cases"*. [23] Regarding the first class, the Commission recommended that *"Boards of Health should be allowed an almost complete discretion in the matter of dealing with and paying for this class through the agency of Rescue Societies and other voluntary organisations"*.[24] Regarding the second class – referred to as *"women who had fallen more than once"* – the Commission recommended the establishment of institutions designed for the accommodation of mothers and children *"in order to keep the unmarried mothers in the pre-natal period out of contact with the County Homes".*[25]

1.11 The Commission on the Relief of the Sick and Destitute Poor recommended that the Boards of Health be given the legal power to detain unmarried mothers in institutions for periods of one to two years, and *"[o]n third or subsequent admissions…power to retain for such period as they think fit, having considered the recommendation of the Superior or Matron of the Home"*.[26] The object of such recommended detention was *"to regulate control according to individual requirements, or in the more degraded cases to segregate those who have become sources of evil, danger, and expense to the community".* [27] The recommended legal powers were never introduced into law.[28] However, neither were safeguards against detention.

1.12 The Commission recommended that unmarried mothers detained in institutions should not be allowed to leave with their children. The report stated that:

> "*no woman should be discharged until she has satisfied the Board of Health that she will be able to provide for her child or children, either by way of paying wholly or partially for maintenance in the Home or boarding it out with respectable people approved by the Board of Health. Discretion might, however, be left to the Board of Health to allow the woman to take her discharge without taking her child or children, if they consider this desirable from the circumstances of the particular case*".[29]

1.13 Regarding the fate of children past infancy, the Commission recommended that where it was not practical for them to be *"boarded out"*, they should be accommodated in the same institution as their mothers until they reached school age.[30]

1.14 Despite the calls by the Commission on the Relief of the Sick and Destitute Poor and others for unmarried mothers and their children to be accommodated elsewhere than in County Homes,[31] Earner-Byrne states that *"County homes continued to play the largest role in the institutionalisation of unmarried mothers throughout the 1930s, 1940s and 1950s".*[32]

1.15 County Homes were established and administered by public authorities pursuant to several pieces of legislation.

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23 Para 228, Also see Smith, *Ireland's Magdalen Laundries*, 51-4.

24 Para 230

25 Para 233

26 Para 234. Also, see Smith, *Ireland's Magdalen Laundries*, 53.

27 Para 236

28 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 187)

29 Para 237. On boarding out children, see Donnacha Sean Lucey, "Child Welfare and local authorities", in *The End of the Irish Poor Law* (Manchester: Manchester UP, 2015): 119-47.

30 Para 231

31 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 185) In 1943 the Joint Committee of Women's Societies and Social Workers (JCWSSW) lamented that many unmarried mothers still had no option but the county home (fn 64); also see Smith, *Ireland's Magdalen Laundries* page 53.

32 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 183)

1.16 The Local Government (Temporary Provisions) Act 1923 provided for the establishment and administration by County Councils of *"County Schemes"* for the relief of the poor, including unmarried mothers. It is worth noting that it was proposed in the Dáil that the following should be added at the end of s.2(3) of the 1923 Act: *"Provided same does not conflict with the lawful liberty of the individual or his or her statutory rights".*[33] The amendment was tabled but not adopted.

1.17 Each County Scheme was regulated separately according to the First Schedule of the 1923 Act. Regarding the Galway scheme, for example, the First Schedule to the 1923 Act mandated the establishment of a County Home for Children and for such unmarried mothers as were *"first offenders"* only. Unmarried mothers who *were "old offenders"* were to be *"offered an opportunity of relief and retrievement in the Magdalen Asylum, Galway, upon such terms and conditions as may be agreed on between the Executive Committee and the Sisters in Charge of the Magdalen Asylum"*.[34] The Donegal County Scheme included the establishment of a *"Central Home [where] a Maternity Ward for unmarried mothers shall be provided and isolated from other sections, and occupants not permitted to associate with other residents".*

1.18 The absence of national regulation left a powerful discretion, it would appear, to individual County Homes and local Boards of Health as regards the rules governing admission, detention and discharge of mothers and children. Their operation was not consistent across the different counties.

1.19 The Public Assistance Act 1937 was designed to *"enable bodies charged with the administration of the relief of the poor to give assistance to certain classes of societies engaged in relieving poor persons"*.[35] The Act allowed public assistance authorities (bodies charged by law with the administration of the relief of the poor) to contribute to the expenses of a *"society for relieving poor persons"*, defined as *"a body of persons, incorporated or unincorporated, which has as its object or one of its objects the giving of relief to poor persons"*. This effectively authorised the State to fund religious congregations and therefore abrogate responsibility for this population.

1.20 The Public Assistance Act 1939 was intended to *"make further and better provision in relation to the relief of the poor"* and set up public assistance districts and authorities to replace the County Scheme authorities. The Act required public assistance authorities to provide and maintain such homes, hospitals and other institutions for the relief of the poor as directed by the Minister and allowed public assistance authorities to make regulations regarding the conditions for entry into such institutions. The Act also allowed public assistance authorities to contribute to the expenses of *"societies for relieving poor persons"* which were located in the functional area of the public assistance authority and were rendering *"useful aid in the administration of public assistance in such functional area"*. By virtue of Section 7(1)(c) of the Health Authorities Act 1960, the Health authorities took over the administration of homes and institutions governed by the 1939 Act.[36]

1.21 Section 54 of the Health Act 1953 provided that *"[a] person who is unable to provide shelter and maintenance for himself or his dependents shall, for the purposes of this section, be eligible for institutional assistance".* According to Section 6 of the 1953 Act, the meaning of "institution" included County Homes as well as maternity homes and other forms of institution.

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33 Dáil Éireann debates, Vol. 2, No. 30, 21st February 1923. See Lucey, 119-47.

34 Smith *Ireland's Magdalen Laundries,* 53-4 & 218fn16.

35 See Public Assistance Act 1937, long title.

36 According to Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press, pp190-191: "In 1939 the Public Assistance Act allowed for the free medical care of all people unable to pay. Obviously this covered most unmarried mothers. However, the same legislation made the unmarried mother legally responsible for the financial upkeep of her illegitimate child, even while that child was maintained in an institution (Cherish pointed out that the 1939 Act only obliged fathers to maintain their legitimate children. See Cherish, *Proceedings of the Conference on the Unmarried Parent and Child in Irish Society* (Dublin 1974) p6)".

1.22 The Health Act 1970 gave powers to health boards to provide and maintain any home required for the provision of services under the Health Acts 1947 to 1970. Section 62 of the 1970 Act established a requirement on health boards to *"make available without charge medical, surgical and midwifery services for attendance to the health, in respect of motherhood, of women who are persons with full eligibility or persons with limited eligibility".*

1.23 Earner-Byrne notes that *"there were three mother and baby homes administered by the Poor Law authorities generally for working-class unmarried mothers: Pelletstown on the Navan Road in County Dublin under the control of the Dublin Board of Assistance, the Auxiliary Home, Kilrush, County Clare and a home at Tuam under the Galway Board of Health and Public Assistance".* [37] These three mother and baby homes were co-administered by the Sisters of Charity of St Vincent de Paul, the Sisters of Mercy and the Bon Secours Sisters, respectively.[38]

1.24 Other, "voluntary" Mother and Baby Homes were established by religious orders, including Bessborough Home in Cork, Sean Ross Abbey in Roscrea and the Manor House, Castlepollard in Co Westmeath (all administered by the Sisters of the Sacred Heart of Jesus and Mary).[39] The Clann Project is aware of at least 19 Protestant homes,[40] including the Bethany Home in Rathgar, which was a lay-run home, but affiliated to the Church of Ireland.[41] These appear to have been funded by capitation grants per mother and child,[42] as well as sweepstake funds[43] and income from other sources.

1.25 St Patrick's Infant Dietetic Hospital in Temple Hill (affiliated to St Patrick's Guild Adoption Society) and St Joseph's Baby Home in Stamullen (affiliated to St Clare's Adoption Society) were institutions where children were kept without their mothers, usually prior to adoption.[44]

1.26 Lay religious organisations also played a significant role in accommodating unmarried mothers and their children, and in organising their separation (e.g. through the adoption or *"boarding out"* of children) while facilitating some to stay together. Earner-Byrne notes that societies such as the Saint Patrick's Guild[45] and the Catholic Protection and Rescue Society (CPRSI) in Dublin *"frequently dealt with requests for assistance from all over the country"* as girls and women from towns and cities outside of Dublin fled to Dublin rather than entering their local County Home.[46] The CPRSI also arranged the adoption of

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37 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 185)

38 ibid

39 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 185)

40 Clann list of Institutions, Agencies and Individuals Appendix 2: Tab 2

41 See Niall Meehan, "Church and State Bear Responsibility for the Bethany Home", *History Ireland* 18, 5 (September 2010): 10-11.

42 See Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 185), noting that "the rate was three shillings a day for mother and child in 1928" (See *Annual Report of the Department of Local Government and Public Health, 1928-9*, p47).

43 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 185), citing Coleman, 'The origins of the Irish Hospital Sweepstake', pp 40-55; *First General Report of the Hospitals' Commission, 1933-34*, pp 54-4; *Third General Report of the Hospitals' Commission, 1937*, pp 7 and 145.

44 For example Witness 9; Witness 15; Witness 20; Witness 38; Witness 41; Witness 46; Witness 67; Witness 69.

45 The Castlepollard Birth Register notes the handing over of infants to St. Patrick's Guild on a regular basis. See Department of Health Archives, Hawkins House, Dublin, Files: NATARCH/ARC/0/527034; NATARCH/ARC/0/527039, NATARCH/ARC/0/527040 and NATARCH/ARC/0/527038. Likewise, see the Annual Returns for the various Mother and Baby Homes, especially for Sean Ross Abbey, which routinely note both St. Patrick's Guild and the CPRSI as facilitating adoptions for children born in these institutions. See Department of Health Archives, Hawkins House, Dublin, File A124_34_Annual_Returns_Special_Homes. (Research by Prof James Smith, Boston College)

46 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 186): Dublin was the destination for many unmarried mothers…Of the 551 illegitimate births registered in the city in 1931, only 335 were found to be 'chargeable to the city' (fn 85) Each local authority was responsible for the welfare of the illegitimate

children from the three Sacred Heart Mother and Baby Homes at Castlepollard, Bessborough and Sean Ross Abbey, as well as Árd Mhuire in Dunboyne and St Patrick's, Navan Road.[47] The Legion of Mary operated the Regina Coeli Hostel in Dublin, which accommodated unmarried mothers and their children.

1.27 The Clann Project is aware of at least 57 private nursing homes which were involved with unmarried mothers and their children.[48]

1.28 Following the introduction of the Adoption Act 1952, a range of adoption agencies came into existence. Prior to the introduction of legal adoption in Ireland in 1953 some children were informally adopted from Mother and Baby Homes, County Homes or other institutions; however there was no such entity as an *"Adoption Agency"*. Adoption Agencies as a legal entity did not exist in Ireland in any statutory form before the 1st January, 1953, which is the date of commencement of the Adoption Act 1952.[49] The Clann Project is aware of at least 23 adoption agencies and societies.[50]

1.29 The Clann Project is aware of a number of other organisations and individuals which had involvement with unmarried mothers and their children, particularly from the 1980s onwards, including Cura and Ally.[51]

1.30 Magdalene Laundries also detained girls and women who had given birth outside marriage (and whose children had been placed elsewhere): [52] a practice explicitly authorised by the First Schedule to the Local Government (Temporary Provisions) Act 1923 in respect of Galway in particular. As the 2013 Report of the *Inter-departmental Committee to establish the facts of the Magdalen Laundries* ("the McAleese Report") indicates, there is substantial archival evidence including Annual Statistical Returns for the various Mother and Baby Homes demonstrating ongoing significant transfer of women from Mother and Baby Homes to Magdalene Laundries during the 20th century from 1922 onwards.[53] Despite the fact that the former institutions were State-funded, licensed and inspected and that the McAleese Report established State involvement in funding Magdalene laundries, the traffic of women between these institutions has never been investigated, and neither has the fate of these women's children.[54]

1.31 The McAleese Committee never established the fate of the 26 women transferred from the Tuam Mother and Baby Home to the Sisters of Mercy Magdalen Laundry in Galway between 1948 and 1957 for which it was provided with documentation from the Department of Health Archives in Hawkins House, Dublin.[55] JFMR has since established

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children born of women from its area… The Catholic Protection Society, for example, dealt with 1,003 requests for assistance in 1927 (fn 87) .In the same year, the guild received 5,988 letter regarding the protection of Catholic children (fn 88).

47 For example: Witness 8; Witness 5; Witness 22; Witness 58; Witness 59; Witness 69.

48 Clann list of Institutions, Agencies and Individuals Appendix 2: Tab 2

49 Prior to the enactment of the 1952 Act, most Mother and Baby Homes acted as de facto adoption agencies, facilitating the removal of children to the US for adoption.

50 Clann list of Institutions, Agencies and Individuals Appendix 2: Tab 2

51 Clann list of Institutions, Agencies and Individuals Appendix 2: Tab 2; See Witness 6.

52 See for example *Annual Report of Department of Local Government and Public Health, 1928-9*, p47 cited by Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 185)

53 Available at: http://www.justice.ie/en/JELR/Pages/MagdalenRpt2013; See copies of these Annual Statistic Returns in the Department of Health Archives, File A124/34 "Annual Returns, Special Homes". This file contains most returns for Tuam, St. Patrick's Navan Road, Bessboro, Castlepollard, Sean Ross Abbey, and Árd Mhuire, Dunboyne for years of operation between 1950 and 1971. (Research by Prof James Smith)

54 James M. Smith, a member of Justice for Magdalenes Research, informed the McAleese Committee in February 2012 of exceedingly high infant mortality rates for children at the Tuam Baby Home, including the deaths of children of women transferred to the Sisters of Mercy Magdalen Laundry in Galway. See https://www.irishexaminer.com/ireland/mcaleese-inquiry-told-of-tuam-mother-and-baby-home-deaths-in-2012-450612.html

55 See Justice for Magdalenes' Principal Submission to the McAleese Committee, pg. 71, para. 128. Appendix 2: Tab 33**;** See Department of Health Archives, for example, Files L112/21 Mayo Returns Children Unmarried Institutions, A21_158b Mayo 1950-56 Returns, A 21_158 viib Mayo Returns, A11_345 Galway Children Unmarried Mothers Returns, Al 11_342 vol. II Galway Children Unmarried Mothers 1952-57, etc. The aforementioned files contain bi-annual returns, submitted at the end of March

that a number of these women are buried in Bohermore Cemetery in Galway, i.e., they remained for the rest of their lives working in the Laundry. JFMR is also aware that a number of the babies of these women transferred from Tuam to Galway are listed among the 798 children who died at the Tuam Baby Home. We have no knowledge however, of the fate of the surviving children. Neither did the McAleese Committee establish the fate of the 25 women transferred from the Sean Ross Abbey Mother and Baby Home to various "Good Shepherd Homes" as detailed on the annual statistical returns for that institution located in Department of Health Archives at Hawkins House, Dublin, copies of which were provided to the McAleese Committee.[56] The McAleese Committee did not establish the fate of these women's children either. The Annual Statistical Returns for Sean Ross Abbey signal that in the same years that women were transferred to "Good Shepherd Convents", children were sent for adoption to the USA, as well as given into the care of a number of agencies facilitating adoption (e.g., St. Patrick's Guild, CPRSI, etc.).[57] Similarly, the Annual Statistical Returns for St. Patrick's, Navan Road signal the discharge or transfer of unmarried mothers to Magdalene Laundries in Dublin, specifically High Park in Drumcondra (Sisters of Our Lady of Charity) and Donnybrook (Sisters of Charity).

1.32 JFMR is aware of a number of cases where women and girls became pregnant while they were confined in Magdalene Laundries. JFMR has evidence of two women who gave birth in St Patrick's Mother and Baby Home, Navan Road, both of whom were listed as resident in Magdalene Laundries.[58] JFMR brought testimony from a daughter of one such woman to the attention of the McAleese Committee, however this material was ignored. In the following extract from her testimony Teresa B [pseudonym] expresses her feelings about her mother and her conception:

> *"She was ashamed of her work, because, I think when she met us she saw us as better than her. We didn't feel better than her, we thought she was fabulous. And we were very proud of her – as women – we were very proud of her. And we were proud that she made us, even though we assume or know that we were conceived of abuse. That doesn't make us feel ashamed, nobody asked to be born. It makes me feel proud of the fact that I'm educated enough to speak like this now and I'm grateful to her and I'm grateful to my adoptive parents for making me who I am".*[59]

1.33 Teresa B's mother remained institutionalised in a Magdalene Laundry until her death at the age of 50. Teresa managed to meet her mother some years prior to her death:

> *"[W]e could not believe that she was only forty-two because she looked so old fashioned ... She was wearing one of those polyester dresses. That was her good clothes, …and she had a handbag, this is one of the poignant things, she*

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and September each year, to the Department of Local Government and Public Health detailing each child funded through the Public Assistance Authority. In addition to providing identifying information for each child (name, date of birth, date of entry and exit from the home, mother's name, etc., the forms also include rudimentary health information (including noting deaths), exit information for the child (e.g., released to family members, transferred to an industrial school or convent, given into the care of adoption and boarding out agencies, sent for adoption abroad), the form also listed the "whereabouts of the parents" (which invariably only noted information on the mother, including whether she was working locally, returned to her family, gone to "England" or the "USA", or sent to "The Magdalen"). These forms document a significant oversight on the part of the State for each child in PAA institutions as well an awareness on the State's part as to the fate of their mothers. (Research by Prof James M Smith, Boston College)

56 See Justice for Magdalenes' "Principal Submission to the Inter-Departmental Committee Investigating State Interaction with the Magdalene Laundries", pg. 71, para. 130. Appendix 2: Tab 33

57 See Department of Health Archives, Hawkins House, File A124/34 "Annual Returns-Special Homes". In particular, see the Annual Statistical Return for Sean Ross Abbey 1960 and 1961. The 1961 Return signals "1" woman sent to Good Shepherd Convent. It also signals a total of 78 children sent for adoption, with the following breakdown: "USA 33, Irish 23, St. Pat's Guild 9, C.P. & R. S. 11, Stamullen 2". The 1962 Return signals "2" women sent to the Good Shepherd Convent. It also signals the discharge of children, including adoptions, as follows: "Adoptions Irish 30, USA 21, Scotch 2, English 1, St. Patrick's Guild 17, C.P. & R. S. 32, Navan Road 1, Cappagh 1, Stamullen 3, Schools 5, Board Out 14, Relations 46". (Research by Prof James Smith, Boston College)

58 Judy Campbell Research on Magdalene Laundry Conceptions. Appendix 2: Tab 15

59 See: Death, Institutionalisation & Duration of Stay: JFMR Critique of Chapter 16 of McAleese Report (Page 60-61) Appendix 2: Tab 29

had a handbag and when she opened it, there was nothing inside. It was just a handbag that was empty, just for decoration because, when you're going to something fancy you should have a handbag. …She looked like a pensioner. I couldn't believe she was forty-two, I kept looking into her face to find a forty-two year old and I couldn't, because she had the face of hard work, that face that you see in so many women that have just had to work too hard and have never had a rest and have never had anyone to take care of them or tell them to put their feet up, and who have just worked too hard. [S]he was just lovely, and she was asking extremely innocent questions … it was the first time she ever had coffee and it was very exciting for her to have coffee and she hadn't seen brown sugar before either - obviously in the Gresham there was brown and white sugar cubes on the table and it was all very fancy to her. And she was just overjoyed to be there and absolutely wowed by everything".[60]

1.34 The case of *EAO v Daughters of Charity of St Vincent de Paul, Sisters of Charity of Refuge and the Health Service Executive,* which recently made its way through the High Court,[61] Court of Appeal[62] and Supreme Court[63] on the preliminary question of whether it was statute-barred due to the passage of time is another example of transfer between a Mother and Baby Home and Magdalene Laundry. The plaintiff in the case had been incarcerated in a Magdalene Laundry and, after being released or escaping from the Magdalene Laundry, was raped and became pregnant. She was sent to St Patrick's Mother and Baby Home on the Navan Road Dublin 7. The nuns in the Mother and Baby Home took her son away from her when he was only a few months old, at which point she was incarcerated in the Magdalene Laundry again.

1.35 The McAleese Report demonstrates that the State legislated for, and made, direct payments to Magdalene Laundries for the provision of social welfare assistance;[64] for the care and custody of women under the Health Acts, "*where public authorities would otherwise have had to make alternative arrangements for the maintenance of those persons*";[65] for certain remand and probation cases;[66] and for other, miscellaneous, purposes.[67] Chapter 11 of the McAleese Report notes that Health Authorities often made grants to Magdalene Laundries because it was a cheaper alternative to providing care in a Health Authority institution.[68] The State further financially supported the Magdalene Laundries through the conferring of charitable status and charitable tax exemptions on the Magdalene Laundries because they did not pay the women and girls who worked in the laundries and had as their aim "*the advancement of religion*";[69] the application of varying commercial rates;[70] and the failure to collect, or exemption from the requirement to pay, social insurance contributions on behalf of the girls and women living and working in the institutions (thus doubly depriving the girls and women of the proceeds of their labour).[71]

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60 JFM Follow-Up Submission to UNCAT, Section 4.1.20. Appendix 2: Tab 35

61 *EAO v Daughters of Charity of St Vincent de Paul, Sisters of Charity of Refuge and the Health Service Executive* [2015] IEHC 68

62 *EAO v the Daughters of Charity of St Vincent de Paul, the Sisters of Our Lady of Charity of Refuge and the Health Service Executive* [2015] IECA 226

63 *EAO v the Daughters of Charity of St Vincent de Paul, the Sisters of Our Lady of Charity of Refuge and the Health Service Executive* [2-16] IESCDET 12

64 McAleese Report, Chapters 5, 11, as designated "extern institutions" under the Public Assistance Acts and Health Act 1953.

65 McAleese Report Chapter 13, para 50: Section 65 Health Act 1953 "can effectively be understood as the mechanism by which the Health Authorities funded non-state organisations to provide services with the Health Authorities would otherwise be required to provide. In other words, State subvention would be provided in respect of persons maintained in outside institutions, where public authorities would otherwise have had to make alternative arrangements for the maintenance of those persons".

66 Youthful Offenders Act 1901, Criminal Justice Act 1960

67 McAleese Report, Chapter 13

68 McAleese Report, Chapter 11, para 211

69 McAleese Report, Chapter 15

70 McAleese Report, Chapter 15

71 McAleese Report, Chapter 15

1.36 The McAleese Report shows that the State regulated the Magdalene Laundries as factory premises,[72] although the Report notes that State records only show inspections of some Magdalene Laundries from 1957 onwards and only in respect of machinery and laundry premises rather than working and living conditions.[73] The State failed to regulate the institutions beyond treating them as ordinary factory premises, despite the State's use of the Magdalene Laundries as places of detention and care, including the care of children, and its knowledge of their functions.[74] The State awarded laundry contracts to Magdalene Laundries on the basis of the nuns' tenders being the most competitive,[75] in the knowledge that the women and girls were receiving no wages for their work.[76] In fact, the State legislated to allow the non-payment of wages to girls and women in Magdalene Laundries. The Conditions of Employment Act, 1936, allowed for the non-payment of individuals working in institutions for "*charitable or reform*" purposes.

1.37 The Clann Project has compiled a list of 182 institutions, agencies and individuals that it understands to have been involved in the separation of unmarried mothers and their children.[77]

Repatriation from England

1.38 Because there was little to no opportunity for unmarried mothers to keep their children in Ireland prior to the 1970s, and because a profound societal stigma remained even after that date, many pregnant women and girls fled to England and further afield. Some expectant mothers travelled to England, relinquished their children for adoption and then returned to Ireland. However, as Paul Michael Garrett demonstrates, many expectant mothers who fled to England were repatriated to Ireland before giving birth under an arrangement between the English *"Rescue Societies"* and the Catholic Protection and Rescue Society of Ireland (CPRSI, now known as Cúnamh).[78]

1.39 The State was fully involved in facilitating these arrangements. Department of Health Archives document how department officials acted as intermediaries to arrange payment for services between CPRSI and (i) local government agencies, e.g., Donegal, Monaghan, Galway, etc., and (ii) Mother and Baby Homes, e.g., Bessborough, Manor House, Castlepollard.[79]

1.40 Earner-Byrne notes that *"[i]n November 1931, the rudiments of the repatriation scheme were agreed upon in the offices of Mr John Dulanty, the Irish High Commissioner in*

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72 Including the yearly certification of children as fit to work (pursuant to the Factories Acts and associated regulations, the Conditions of Employment Act 1936, the Safety in Industry Act 1980, and the Safety, Health and Welfare at Work Act 1989).

73 McAleese Report, Chapter 12, and see specifically p522, 571, 573.

74 The State acknowledged this in its Replies to the United Nations Human Rights Committee's List of issues in May 2014, stating that "[t]he laundries were subject to State inspection, in the same way and to the same extent as commercial, non-religious operated laundries" (5 May 2014, CCPR/C/IRL/Q/4/Add.1, para 53). Available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsieXFSudRZs%2FX1ZaMgUUOS9yIgPEMRvxx26PpQFtwrk%2BhtvbJ1frkLE%2BCPVCm6lW%2BYjfrz7jxiC9GMVvGkvu2UIuUfSqikQb9KMVoAoKkgSG

75 McAleese Report, Chapter 14, para 7. The McAleese Report notes that "State authorities were not averse to putting pressure on Magdalen Laundries to reduce prices either in order to renew or retain contracts".

76 See McAleese Report, Chapter 14, paras 166-188.

77 Clann list of Institutions, Agencies and Individuals Appendix 2: Tab 2. This list has been compiled from information supplied to us over the past two decades by adopted people, natural parents and relatives, as well as information from the Adoption Authority and others including Professor James Smith and Dr Sean Lucey.

78 Paul Michael Garrett (2000) 'The Hidden History of the PFIs: The Repatriation of Unmarried Mothers and their Children from England to Ireland in the 1950s and 1960s,' *Immigrants & Minorities*, 19 (3), pp. 25-44. (Page 26) Appendix 2: Tab 3. Also see Jennifer Redmond, *Moving Histories: Irish Women's Emigration to Britain from Independence to Republic* (Liverpool: Liverpool University Press, 2018); Luddy, M. (2001) 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s', *Women's Studies: An Interdisciplinary Journal*, 30 (6), pp. 797-817.and Louise Ryan, "Sexualizing Emigration: Discourses of Irish Female Emigration in the 1930s", *Women's Studies International Forum* 25,1 (2002): 51-65.

79 See Department of Health Archives, Hawkins House, Dublin. Files MA 124/26 Repatriation-Unmarried Mothers and A124/23b Repatriation PFIs. (Research by Prof James Smith, Boston College)

London, by officials from the Irish Department of Local Government and Public Health and representatives of Catholic social welfare societies in Britain".[80] However, according to Earner-Byrne:

> "*The Irish committee for the supervision of the repatriation promised by the department during the 1931 meeting in the High Commissioner's office never materialised. As a result, the Irish Catholic Protection and Rescue society operated the repatriation scheme in lieu of any official action, a role they were officially designated by Archbishop McQuaid on his succession to the Catholic See of Dublin in 1941*".[81]

1.41 Garrett says that in England during the 1950s and 1960s

> *"the initials PFI or 'pregnant from Ireland' were part of the everyday vocabulary of the social workers who dealt with unmarried mothers arriving from Ireland".*[82]

1.42 For example, Witness 11 says that agents of the Catholic Church told her that she "*would have to return to Ireland to have the baby*" and arranged for her to return to Bessborough. She says that she

> "*had no idea where I was going and did not know that once I had gone there I would not be able to leave again*".[83]

Incarceration in Homes and Institutions

1.43 Unmarried mothers were routinely incarcerated, without a legal basis, in Homes and Institutions with the State's knowledge. Routinely, the girls' and women's release was dependent upon them relinquishing their child to adoption or to a "boarding out" arrangement, which was often several years after giving birth.[84]

1.44 Earner-Byrne summarises some of the evidence that exists in official documents showing that the State knew of the systematic detention of girls and women and their children in institutions, without statutory basis:

> *"In the Bessboro home in Cork, according to the Department of Local Government and Public Health, women were, as a matter of policy, 'detained for a period of one year, and [were] trained to useful occupations, housework, cooking, needlework, laundry work, dairy management, poultry rearing, gardening and farming'.*[85] *However, by 1930 the matron of the home explained that 'a number of the girls are weak willed and have to be maintained in the Home for a long period to safeguard them against a second lapse.*[86] *In 1932 the matron allegedly reported that some 'girls first received into the Home are still there and have no*

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80 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 192), citing *Annual Report of the Department of Local Government and Public Health, 1931-2,* p129-30; Litster, A, 'Report on the unmarried mother, in Great Britain and at home', 8 May 1948. NAI, Clandillon, Box (3)). Also see Earner-Byrne", The boat to England: An analysis of the official reactions to the emigration of single expectant Irishwomen to Britain, 1922-1972", *Irish Economic and Social History* 30 (2003): 54-71 Appendix 2: Tab 1 and "Moral Repatriation: The Response to Irish Unmarried Mothers to Britain, 1920s-1960s", in *To and From Ireland: Planned Migration Schemes, 1600-2000*, ed. P. Duffy (Dublin: Geography Publications, 2004). 155-73.

81 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. 193

82 Paul Michael Garrett (2000) 'The Hidden History of the PFIs: The Repatriation of Unmarried Mothers and their Children from England to Ireland in the 1950s and 1960s,' *Immigrants & Minorities*, 19 (3), pp. 25-44. (Page 26) Appendix 2: Tab 3

83 Appendix 1: Tab 11 paragraph 5

84 Appendix 1: Tab 11 paragraphs 7 and 8; Appendix 1: Tab 25 paragraph 20

85 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 187) citing *Annual Report of the Department of Local Government and Public Health, 1922-25,* p56.

86 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 189) citing *Annual Report of the Department of Local Government and Public Health, 1930-1*, p130.

desire to leave it. These girls have a great influence for good over the newcomers.'[87] *The questionable virtue of long periods of detention was repeatedly stressed from a moral perspective. In 1934 it was noted that few women released from the special religious homes relapsed, and those who did 'spent only a short period in the special homes either because of the death of the first child or through the interference of relatives'.*[88]

…Alice Litster, as an inspector for boarded-out children, argued for the early release of unmarried mothers from county homes on the grounds of child welfare.[89]*... The reason proffered by certain county homes for not following this policy was the character of the mothers: the authorities argued that they 'would inevitably return to the county home with a second illegitimate child'.*[90] *A policy of detaining women on the grounds that they may be 'prone to relapse' afforded an extraordinary degree of discretionary power at the hands of county home officials and the religious orders that ran the special homes.*

…Although, as noted, there was no legal basis for the policy, mothers were detained indefinitely in most of the institutional homes, with the average stay amounting to two years. In 1949 the Report of the Consultative Child Health Council noted that the tendency to detain unmarried mothers in institutions for between eighteen and twenty-four months for the purposes of house and laundry work continued.[91] *The policy of long-term detention remained the norm until the late 1950s, even though evidence suggested throughout the 1930s and 1940s that it was one of the reasons expectant Irish unmarried mothers fled to Britain".*[92]

1.45 Even as late as 1958, officials in the Department of Health were writing to the Managers of the different institutions querying durations of stay.[93]

1.46 According to June Goulding, women and girls had to stay in Bessborough until their children were three years old,[94] however, those who could pay £100 were allowed to leave ten days after the birth of their baby.[95]

1.47 Witness 5 says that at St Patrick's Mother and Baby Home in 1956: "*we were locked in and there was absolutely no way of getting out*".[96]

1.48 The only exceptions were where someone (such as a family member or the father of the child) paid for the mother to be released,[97] or the mother was herself able to pay the institution.[98]

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87 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 189) citing *Annual Report of the Department of Local Government and Public Health, 1932-3*, p55.

88 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 189) citing *Annual Report of the Department of Local Government and Public Health, 1933-4*, p179.

89 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 189) citing *Annual Report of the Department of Local Government and Public Health, 1928-9*, p217.

90 ibid

91 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 189) citing *Report of the Consultative Child Health Council, 1949* part 'F' *Infant (illegitimate) Death Rate in the city of Dublin*, p3, NAI, Dept of Health A116/167.

92 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 189) citing 'Memorandum for the Government: Report of the Commission on Emigration and Other Population Problems', p2, NAI, Dept. Taoiseach, S12424B.

93 Department of Health Archives, Hawkins House, Dublin. File A121/181 Special Homes, Sisters of the Sacred Heart, Letter from Dowling re: shortening the length of stay, 04/07/ 1958. Correspondence in the same file from a year earlier points to the involvement of the Bishop of Meath's involvement in advocating for shorter durations of confinement for women in the Homes. (Research by Prof James Smith, Boston College)

94 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 16)

95 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 36)

96 Appendix 1: Tab 5 paragraph 15

1.49 The State assisted religious orders in ensuring that mothers stayed incarcerated at the Mother and Baby Homes. Witness 26 says of her time at Dunboyne in late 1967/1968 that:

> "*Daily life was so bad that I attempted to run away twice with two other girls but they always found us and brought us back. On the second occasion we were caught by the police who returned us to the Convent*".[99]

1.50 This was not an isolated occurrence, as is confirmed by Witness 25. She says that, when she was at Sean Ross Abbey between 1952 and 1955: "*that a couple of girls ran away but on each occasion they were brought back by the Garda*".[100]

1.51 It is also confirmed by Witness 12 who says that she was told by the nuns at Bessborough in 1967-68 that "*if you left Bessborough without permission from the nuns you would be brought back by the Garda*".[101]

1.52 Witness 12 says

> "*While I was at Bessborough I can recall at least one woman who did try to leave without the nuns' permission and she was brought back by the Garda. Another woman tried to escape out of a very high window, but she fell and sadly died*".[102]

1.53 Women who tried to leave with their children were also returned. Witness 21, who was born in St Patrick's Mother and Baby Home, Navan Road says that her mother desperately wanted to keep her, but she "*had not been allowed to do so*". She tried to escape with Witness 21 and "*got as far as the port … but was caught and we were brought back to St Patrick's on the same day*".[103]

1.54 The mothers were discouraged from maintaining contact with their families and families were hindered in contacting their relatives held in the Mother and Baby homes.[104] Witness 26 says that she told the Mother Superior at Dunboyne that she wished her sister to look after her baby until she was old enough to do so, but

> "*I later learned from my sister that she had tried to call but was never allowed to speak to me*" and that the Mother Superior had lied to her sister "*that I had changed my mind and I wanted to give my baby up for adoption*".[105]

1.55 No one was ever allowed to visit Witness 26 or her baby at the Convent.[106] Witness 12 was told when she arrived at Bessborough in 1967 not to disclose her identity or where she came from and she was told not to have any contact with the outside world

> "*or you would be punished … we were not allowed any visitors, or to send or receive letters*".[107]

1.56 Incarceration was routine in Magdalene Laundries as well. As noted by the McAleese Committee, *"a large number of the women spoke of a very real fear that they would remain in the Magdalen Laundry for the rest of their lives"* and the McAleese report also quotes the evidence of women who believed that they would die in the Magdalene Laundries.[108] Chapter 19 of the McAleese Report contains evidence of women being

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97 Appendix 1: Tab 16 paragraph 15; Appendix 1: Tab 20 paragraph 32; Appendix 1: Tab 29 paragraph 10; Appendix 1: Tab 17 paragraph 10
98 Appendix 1: Tab 70 paragraph 37
99 Appendix 1: Tab 26 paragraph 3.9
100 Appendix 1: Tab 25 paragraph 14. Appendix 1: Tab 11 paragraph 15
101 Appendix 1: Tab 12 paragraphs 7 and 8
102 Appendix 1: Tab 12 paragraphs 7 and 8
103 Appendix 1: Tab 21 paragraph 9
104 Appendix 1: Tab 11 paragraphs 8 and 17
105 Appendix 1: Tab 26 paragraphs 3.1, 3.10 and 6.5
106 Appendix 1: Tab 26 paragraphs 3.1, 3.10 and 6.5
107 Appendix 1: Tab 12 paragraph 9
108 McAleese Report, Ch 19, paras 52, 130.

"*reclaimed by members of their families*"[109] and women making plans to try to escape the institutions.[110] Chapter 19 also summarises evidence from several of the religious congregations explaining why they locked doors and gates of the Magdalene Laundries[111] and cites the testimony of a former novice in a Magdalene Laundry that "*both the external and internal doors of the Laundry were locked*".[112] According to the Report of the Magdalene Commission headed by Mr Justice John Quirke,

> "*A very large number of the women described the traumatic, ongoing effects which incarceration within the laundries has had upon their security, their confidence and their self-esteem. Many described the lasting effects of traumatic incidents such as escape from the laundries and subsequent recapture and return*".[113]

Adoption or Boarding Out / Institutionalisation in Industrial Schools

1.57 For the vast majority of unmarried mothers until at least the 1970s, keeping their child was not an option due to explicit State policy and implicit State support for religious morality.

1.58 Following the introduction of the Adoption Act 1952, the rate of adoption of children born outside marriage rose steadily. In 1967, 97% of children born to unmarried mothers in Ireland were the subject of adoption orders.[114]

1.59 Witness 25 explains that at Sean Ross Abbey in 1952:

> *"it was taken for granted that [her son] would be adopted and it never even crossed her mind that there might be another option".*[115]

1.60 Even in later periods – and even where a woman came from a relatively affluent family – there was no practical alternative to adoption. Witness 22 says that, when she gave birth to her daughter, [redacted], at St Michael's, Crofton Road in 1973, her family had "*no problem taking care of the hospital fees*". Her daughter was taken away immediately after the birth and

> "*It was made very clear to me at the time that neither my mother, nor [redacted]'s natural father (whom I subsequently married, four years later), nor I would be allowed to visit [redacted] at any stage)*".[116]

1.61 Although Witness 22's mother "*wanted us to care for [redacted] ourselves*", [redacted] was eventually adopted.[117]

1.62 Witness 67's natural mother could afford to attend a private hospital but said that her mother

> *"believed that relinquishing [her] was the best thing she could do for [her] within the limited set of choices available to her [mother] at that time. My natural mother felt she had no other option but to have me adopted, predominantly because my natural father was physically and emotionally abusive to her. She did not want to raise me in this environment, and raising me alone was not a route that was open to*

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109 McAleese Report, Ch 19, para 57.
110 McAleese Report, Ch 19, paras 58, 59.
111 McAleese Report, Ch 19, paras 69-71.
112 McAleese Report, Ch 19, para 112.
113 Magdalen Commission Report, para 5.13. Available from: http://www.justice.ie/en/JELR/2.%20THE%20MAGDALEN%20COMMISSION%20REPORT.pdf/Files/2.%20THE%20MAGDALEN%20COMMISSION%20REPORT.pdf
114 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press. (Page 207)
115 Appendix 1: Tab 25 paragraph 20
116 Appendix 1: Tab 22 paragraphs 8, 15, 20, 22 and 28
117 Appendix 1: Tab 22 paragraphs 8, 15, 20, 22 and 28

her, because of the lack of support for unmarried mothers, and because of the stigma of giving birth outside of marriage".[118]

1.63 As well as wanting to avoid incarceration in Mother and Baby Homes, many pregnant unmarried women fled to England to avoid the stigma, and where there seemed to have been more options to parent their children if they wished. Moreover, the period of confinement in Mother and Baby Homes in the UK was of shorter duration, and there was a lengthy conversation in the context of establishing the repatriation scheme that fewer women might travel to England if the Homes in Ireland let women out sooner than the typical two to three years.[119]

1.64 Witness 11 says that, if she had stayed in England to give birth when she became pregnant in 1960:

"*I would have been able to keep my baby*".[120]

1.65 Witness 29 says that her sister gave birth to her first child at Castlepollard, who was taken away from her, but when she became pregnant a second time, she left Ireland for Liverpool:

"*where [her sister] was fortunate enough to be cared for by a lovely family and there reared her daughter*".[121]

Illegal Adoptions

1.66 Based on our experience with people who were subjected to illegal adoptions, ARA has compiled a list of scenarios in which illegal adoptions appear to have occurred:

a) where a non-marital child was registered as the natural child of the adoptive parents without the natural mother's knowledge or consent and no adoption order was made;

b) where a non-marital child was registered as the natural child of the adoptive parents and an adoption order was made;

c) where a marital child was registered as the natural child of the adoptive parents and no adoption order was made;

d) where a marital child was registered as the natural child of the adoptive parents and an adoption order was made;

e) where the adoptive parents were not resident in the State at the time of the adoption;

f) where a relinquished child over a year old was sent overseas for adoption without the consent and knowledge of the natural mother;

g) where informed consent was not given, as in the case of natural mothers who were minors who signed consents without a guardian or legal advisor present, without understanding the import of severing parental rights;

h) any adoption arranged by a private person or private body, not regarded as a registered adoption agency;

i) any adoption arranged by a registered adoption agency or other body for the purpose of financial gain.

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118 Appendix 1: Tab 67 paragraph 6

119 See Department of Health Archives, Hawkins House, File A124/23b "Repatriation of Pregnant Unmarried Irish Women". (Research by Prof James Smith)

120 Appendix 1: Tab 11 paragraph 5

121 Appendix 1: Tab 29 paragraph 8

1.67 The UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography includes Ireland as an example in her thematic report on illegal adoptions, and also states that

> *"Illegal adoptions, namely adoptions that are the result of crimes such as the abduction and sale of and the trafficking in children or that are processed through the commission of other illegal acts or illicit practices such as the lack of proper consent of biological parents, fraud and improper financial gain, violate multiple child rights norms and principles, including the best interests of the child".*[122]

Adoption Without Statutory Basis

1.68 Prior to the commencement of the Adoption Act 1952 in January 1953, no legislation existed to regulate the adoption of children in or from Ireland, meaning that there was no mechanism for the formal transfer of parental rights. However, it was well known that *de facto* adoptions took place prior to 1953 without statutory authority.

1.69 In a speech entitled *'The Need for a Law of Adoption'* in 1949, E W McCabe, the Vice-Chairman of the Adoption Society of Ireland noted that:

> "*It is surprising how many of our fellow-citizens are ignorant of the absence of this law and synonymously how loosely the term "adoption" is used here. The fact that at present agreements are drawn up by solicitors to cover the transfer of children must tend to delude one, but in fact these agreements are completely invalid in law and can have merely psychological value…There is a further disquieting feature in the present chaos in that children can be taken from this country for adoption in other countries which have suitable laws. I regret that it is impossible to obtain reliable figures for this traffic, but as a matter of interest I have with me a photograph taken from one of our newspapers of last December showing four Irish children with their American adoptors [sic] who had taken them from this country to America*".[123]

1.70 The 1946 High Court case of *In Re: M and infant*[124] is an example of an illegal adoption carried out by the false registration of the "adoptive" parents as the parents of the child on her birth certificate.

1.71 Irish caselaw from the first half of the 20th century demonstrates an understanding that the natural mother of a child had a *prima facie* legal right to the custody of her child.[125] In the High Court case of *In Re: M and infant*,[126] Gavan Duffy J stated that *"[t]he absence from our Statute Roll of an Adoption Act, on the lines of the English 'Adoption of Children Act', 1926, is regrettable and that is an urgent matter for reform".*[127]

1.72 From the 1940s until the 1970s, the State facilitated an international adoption scheme to America in conjunction with the Catholic hierarchy in Ireland, the United States Embassy in Dublin and US Catholic Charites. This was despite the fact that, prior to 1953 there was no legal basis in Ireland for these adoptions and from 1953 onwards section 10 of the Adoption Act 1952 required prospective adoptive parents to be Irish residents.[128]

1.73 Section 40 of the 1952 Act clearly states that "*[n]o person shall remove out of the State a child under seven years of age who is an Irish citizen or cause or permit such removal*".[129]

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122 Report of the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography (Page 21). Appendix 2: Tab 65

123 E W McCabe, Vice-Chairman, Adoption Society (Ireland) on *'The Need for a Law of Adoption'* 8 April 1949. A copy of a draft Heads of Bill for an Adoption Bill dated circa 1938-39 survives in the Department of Health Archives, Hawkins House, which proposed a *Guardian Ad Litem* for all children during the adoption process. The Heads of Bill never proceeded to official Draft stage.

124 *In Re: M. and infant* [1946] IR 334

125 *In Re: O'Hara* [1900] 2 IR 232; *In Re: M an Infant* [1946] IR 334

126 *In Re: M. and infant* [1946] IR 334

127 Ibid p345

128 See paragraphs 1.123 to 1.147: Adoptions to America

129 Section 40(1), Adoption Act 1952.

There are two exceptions to this general prohibition: the removal of an illegitimate child under one year of age by or with the approval of the mother or, if the mother is dead, of a relative for the purpose of residing with the mother or a relative outside the State;[130] or the removal of a child (not being an illegitimate child under one year of age) by or with the approval of a parent, guardian or relative of the child.[131] Under the 1952 Act, a person contravening this provision was guilty of an offence carrying a fine and/or to a sentence of imprisonment not exceeding twelve months. However, there were no convictions for adoptions to America during the time that they were happening.

Legalisation of Adoption

1.74 Adoption was legalised for the first time in Ireland through the Adoption Act 1952 ("the 1952 Act").

1.75 Under the 1952 Act, all adoptions had to be formalised by order of the Adoption Board. Section 10 of the 1952 Act provides that an Adoption Order shall not be made unless the child concerned lives in Ireland, is at the date of application not less than six months old and not more than seven years old and is illegitimate or an orphan.

1.76 Section 14 of the 1952 Act provides that an Adoption Order shall not be made without the consent of every person being the child's mother or guardian, unless the Adoption Board is satisfied that those persons are incapable by reason of mental infirmity of giving consent or cannot be found.

1.77 Section 15 of the 1952 Act provides that consent shall not be valid unless it is given after the child is 6 months old and the Adoption Board has satisfied itself that anyone giving consent understands the nature and effect of the consent and of the adoption order.

1.78 Section 39 of the 1952 Act imposes an obligation on Registered Adoption Societies to provide a mother who proposes to place a child for adoption with the following: (a) A statement in writing in a prescribed form explaining the effect of an adoption order upon the rights of a mother and the provisions of the Act of 1952 relating to consent and (b) ensure that the person understands the statement and signs the document to that effect. Failure to comply with this section is an offence.

1.79 The leading authority on the meaning of valid consent to adoption is the Supreme Court judgment in *G v An Bord Uchtála*,[132] in which Walsh J stated as follows:

> "*... the consent, if given, must be such as to amount to a fully-informed, free and willing surrender or an abandonment of these rights. However, I am also of opinion that such a surrender or abandonment may be established by her conduct when it is such as to warrant the clear and unambiguous inference that such was her fully informed, free and willing intention. In my view, a consent motivated by fear, stress or anxiety, or a consent or conduct which is dictated by poverty or other deprivations does not constitute a valid consent".*

1.80 In *DG v An Bord Uchtála*,[133] Laffoy J held that for a consent to placement to be fully informed, a mother must be aware of:

> *(i) The nature of her rights in relation to the child but without their categorisation as constitutional or legal rights;*
> *(ii) The two-stage nature of the adoption process;*
> *(iii) The effect of the making of an adoption order on her rights, and*
> *(iv) The effect of s.3 of the 1974 Act and, in particular, the possibility that, if she gives an initial consent to the placement, the court may override the requirement for a final consent.*

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130 Section 40(2), Adoption Act 1952.
131 Section 40(3), Adoption Act 1952.
132 *G v An Bord Uchtála* [1980] IR 32
133 *DG v An Bord Uchtála* [1996] ILFR 263. Subsequently affirmed in an *ex tempore* SC judgment delivered on 11th July 1996.

1.81 Laffoy J added later in that decision:

> "*...it is not sufficient merely to consider whether the relevant information was conveyed to the mother. It is necessary to consider also the ability of the mother to receive the information and to intellectually process it in such a way as to lead to an understanding of the effect of an adoption order and the consequences of each step in the process leading to an option order*".[134]

Denial of Informed Consent

1.82 Once the Adoption Act 1952 ("the 1952 Act") came into force, its formal requirements were regularly not followed.

1.83 In particular, it was the requirement that mothers give their informed consent that was regularly breached. Many of the mothers who have been in contact with the Clann Project say that they did not give informed consent to the adoption of their children in accordance with Section 15 of the 1952 Act.

1.84 Some children were adopted without any attempt at getting their mother's consent. Witness 12, whose son was adopted through the Sacred Heart Adoption Society says that:

> "*In early February 1968, when my baby boy was six-seven weeks old, he was wrenched from my breast by one of the nuns whilst I was breastfeeding him and taken away for adoption*".

She makes clear that

> "*[a]t no time did I give my consent to my son's adoption*".[135]

1.85 Witness 29 says that her sister's son was taken away for adoption in America from Castlepollard using deception:

> "*She was asked to dress him up for a photograph and leave him with staff for the photograph*".

1.86 Witness 29's nephew was then carried into a car and driven away and her sister never saw or heard of him again.[136]

1.87 Witness 5 was simply told that her daughter was "*leaving*" St Patrick's and was told to bring up some clothes – she was then told that her daughter was "*not here she's gone*". Witness 5 says:

> "*I know now that my daughter was adopted even though I never gave any consent to this*".[137]

1.88 Witness 16, whose adoption was arranged through St Nicholas's Adoption Society in Galway, was told by her natural mother that

> "*she did not sign the final consent form for my adoption, meaning that I was adopted without a birth certificate and without my mother's final consent*".

1.89 Witness 21's adoption was arranged through St Louise's Adoption Society in Dublin.[138] She says that it is clear from her mother's attempt to escape from St Patrick's, Navan Road, with her daughter that her adoption was:

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134 *DG v An Bord Uchtála* [1996] ILFR 263

135 Appendix 1: Tab 12 paragraphs 25 and 26

136 Appendix 1: Tab 29 paragraph 11

137 Appendix 1: Tab 5 paragraphs 18 and 19

138 St Louise's Adoption Society handled the bulk of adoptions from St Patrick's Mother and Baby Home on the Navan Road.

> "*without my birth mother's consent (and there is no signed consent form among the records that have now been provided to me)*".[139]

1.90 Other mothers were pressurised to sign consent forms. Witness 26 says that

> "*I grew very fond of my baby and didn't want to give her up*".

1.91 Witness 26 says she was instructed by a religious sister at Dunboyne to sign the adoption papers, she was terrified and was forced to sign the adoption paper by the same nun. She signed further papers at a solicitor's office:

> "*I told him I didn't want to sign but he just told me to shut up*".[140]

1.92 Witness 2 was adopted to America via the Sacred Heart Adoption Society. She says that she learned from her natural mother that

> "*she did sign the adoption papers …when she was presented with them but she was terribly aggrieved at having to do so … My mother was clearly traumatised by her treatment by the Sisters and would cower in their presence*".[141]

1.93 She was later told by the HSE that her adoption *"had been undertaken on the black market and had been illegal"*.[142]

1.94 Witness 30 says

> *"I don't believe I gave informed consent to the adoption of my child. I didn't know or believe I had any rights. I was adamant that I did not want my baby adopted, but nobody told me I had any other options but to give her up. My wishes did not seem to be relevant in any way".*[143]

1.95 Witness 26, who was in Árd Mhuire in Dunboyne says

> "*My baby was around 6 months old when she was adopted. I was having dinner and [the religious sister] called me out to speak to me. She told me that my baby was leaving that day. When I said she wasn't, [the religious sister] dragged me down the corridor by my clothes and instructed me to sign the adoption paper. I was left alone in the office and I didn't sign them. [The religious sister] returned, dragged me to another office and forced me to sign the paper. I was terrified.*[144]

1.96 Witness 26 discusses various documents that were apparently created to support her baby's adoption and refers to "*a typed*" letter from Father [redacted] dated 15 October 1968

> *"advising me of the permanent nature of adoption. I have never known a Father* [redacted] *and I certainly never received this letter".*[145]

1.97 Witness 26 goes on to refer to a

> *"purported "authority" from me dated 14 February 1969 (although the month appears to have been altered) to place my child for adoption. I did not give any such authority"*.[146]

1.98 Many mothers signed without having the consequences of the adoption forms explained to them. Witness 25's son was adopted to America via the Sacred Heart Adoption Society. She says that she was simply told to sign the adoption papers by a religious

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139 Appendix 1: Tab 21 paragraph 10
140 Appendix 1: Tab 26 paragraphs 5.5 and 6.2-6.3
141 Appendix 1: Tab 2 paragraph 17
142 Appendix 1: Tab 2 paragraph 23
143 Appendix 1: Tab 30 paragraph 54
144 Appendix 1: Tab 26 paragraph 6.2
145 Appendix 1: Tab 26 paragraph 7.6 (a)
146 Appendix 1: Tab 26 paragraph 7.6 (c)

sister in Sean Ross Abbey. She was not given time to read the document and simply did what she was told. The contents of the document were never read or explained to her – and although it purports to have been sworn, it was never formally sworn.[147]

1.99 In some cases, the layout of the form and inadequate procedures make it unclear whether the mother gave informed consent to the adoption. Witness 19, who was adopted through the Rotunda Girls Aid Society, has seen the adoption consent form under which he was adopted. His natural mother had not signed it – it was signed by someone else.

> "*She did sign a smaller form, indicating that she understood the nature of an adoption order … This was a detached sheet from a statement which purports to explain the effects of an adoption order, but it does not at any point indicate her consent to the adoption*".[148]

1.100 For Witness 29's adoption, the form itself was witnessed by a nun at St Patrick's Mother and Baby Home, Navan Road.[149]

1.101 In other cases, the restrictions contained in Sections 10 and 15 of the 1952 Act as regards the age of the child either at the date of Adoption or when consent might be given, were totally ignored.

1.102 Witness 12's son was adopted through the Sacred Heart Adoption Society. She says:

> "*In early February 1968, when my baby boy was 6 or 7 weeks old, he was wrenched from my breast by one of the nuns while I was feeding him and taken away for adoption... When my son was taken, I ran after the nun down the corridor but there were two big doors that the women weren't allowed to go through and so all I could do was bang on those doors. About an hour later, the nun came back and told me that my baby was gone and when I asked 'where'" she said 'just gone'. I later found out that my son had been adopted and had been taken away by his adoptive parents the same day. At no time did I give my consent to my son's adoption".*[150]

1.103 In the same year that Witness 12's son was born, a film made by the company Radharc entitled "Adoption Day" was broadcast on RTÉ on 26th November. The documentary features an interview with a religious sister from "the Adoption Society", who details her understanding of consent and procedures.[151] This suggests that there was contemporary knowledge amongst the religious orders of how the adoption process should work.

1.104 The recent case of *EAO v Daughters of Charity of St Vincent de Paul, Sisters of Charity of Refuge and the Health Service Executive,* in which the High Court,[152] Court of Appeal[153] and Supreme Court[154] all found a claim to be statute-barred due to the passage of time, illustrates another instance of denial of informed consent.

1.105 The plaintiff was incarcerated in a Magdalene Laundry following an upbringing in several institutions, including an Industrial School. Having been released or escaped from the Magdalene Laundry, she was raped and became pregnant. She was sent to St Patrick's Mother and Baby Home on the Navan Road Dublin 7 where, she told the Court that:

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147 Appendix 1: Tab 25 paragraphs 21-22
148 Appendix 1: Tab 19 paragraph 22
149 Appendix 1: Tab 19 paragraph 22
150 Appendix 1: Tab 12 paragraphs 25 to 26
151 Radharc "Adoption Day" Broadcast 26th November 1968. Available from http://www.radharc.ie/archives/adoption-day-obelisk-park/
152 *EAO v Daughters of Charity of St Vincent de Paul, Sisters of Charity of Refuge and the Health Service Executive* [2015] IEHC 68
153 *EAO v the Daughters of Charity of St Vincent de Paul, the Sisters of Our Lady of Charity of Refuge and the Health Service Executive* [2015] IECA 226
154 *EAO v the Daughters of Charity of St Vincent de Paul, the Sisters of Our Lady of Charity of Refuge and the Health Service Executive* [2-16] IESCDET 12

> "*she was separated from her son and was only allowed to see him for the purposes of feeding. She claims that she was precluded from bonding with her son or developing any natural relationship with him*".[155]

1.106 The plaintiff claimed that in May 1969, when her son was two months old:

> "*the servants or agents of the first named defendant informed her that her son was being put up for adoption. While the plaintiff maintains she strongly expressed her desire to keep her son, she states that he was taken away from her at the beginning of July 1969 and she was not afforded an opportunity to say goodbye*".[156]

1.107 Given that the plaintiff was incarcerated in a Magdalene Laundry and was thus enduring and attempting to survive arbitrary detention and forced and compulsory labour in a cruel and punishing environment, and given the fact that she was returned there upon escape, and the fact that she was raped with impunity, the Clann Project asserts that the possibility for free and informed consent for her son's adoption is highly unlikely.

1.108 A document obtained through under the Data Protection Acts indicated that, when her child was two months old, the plaintiff had signed a "Form 34.E", described as *"Mother's Consent to Adoption"*, witnessed by a religious sister, in breach of the six-month waiting period requirement under Section 15(1) of the Adoption Act 1952. Kearns P in the High Court described this *"interim consent"* as a *"highly questionable process"*. Hogan J in the Court of Appeal stated that the six-month rule

> *"was an important and vital legislative safeguard which was designed to ensure that the consent of the mother was freely given and that a decision of this kind – with life changing implications for both the mother and child – was not taken in the immediate aftermath of labour and delivery".*

1.109 Once her child was taken from her, the plaintiff was then transferred back to the Magdalene Laundry where several months later:

> "*the plaintiff submits that she was presented with adoption papers and was informed by a [religious sister] that should she fail to sign them she would be 'put out on the street'. She states that due to the undue influence and duress she was placed under, she felt compelled to sign the documents".*[157]

1.110 It appears from the Supreme Court decision in *M v An Bord Uchtala and the AG*[158] that the forms used by the Adoption Board and registered Adoption Societies prior to 1976 in fact failed to comply with the 1952 Act because they failed to inform the mother placing the child for adoption of her right to withdraw her consent prior to the making of an order. In *M v An Board Uchtala and the AG*, the Supreme Court held an adoption order to be null and void on the basis that

> "*The Board all the time had the statutory obligation under s. 15, sub-s. 3, of the Act of 1952 to satisfy itself that the mother not only had given a consent in the prescribed form (as she undoubtedly had done on the 9th July) but also that she understood the nature and effect of this consent. Not only is there no evidence that the Board took any steps so to satisfy itself, but all the evidence indicates that once the written consent in the prescribed form was obtained by the Board no further action (not even notification to her of the date of the hearing of the application for adoption) was taken to involve the mother in the adoption process. This meant that this mother not only did not understand the true nature of the*

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155 *EAO v Daughters of Charity of St Vincent de Paul, Sisters of Charity of Refuge and the Health Service Executive* [2015] IEHC 68

156 *EAO v Daughters of Charity of St Vincent de Paul, Sisters of Charity of Refuge and the Health Service Executive* [2015] IEHC 68

157 *EAO v Daughters of Charity of St Vincent de Paul, Sisters of Charity of Refuge and the Health Service Executive* [2015] IEHC 68

158 *M v An Bord Uchtala and the AG* [1977] IR 287

> *consent she had given but that the Board took no step whatsoever to inform her. It also means that the Board did not discharge the statutory obligation imposed upon it under the provisions of s. 15, sub-s. 3, of the Act to satisfy itself that she understood the nature and effect of the consent. This failure, in my view, deprived the Board of any power to make the order it purported to make on the 20th July, 1971, since one of the essential statutory prerequisites to the exercise of that power had not been observed".*

1.111 Following the case of *M*, the Oireachtas passed the Adoption Act 1976, which rendered valid in domestic law all consents that were given and adoption orders made prior to that point in time insofar as they might be invalid by reason of the defects existing in the *M* case. The 1976 Act expressly provided that the mother is to be informed of her right to withdraw her consent at any time prior to the making of the Order and of her right to be heard on the application for the order. Further, the Act required that on giving consent, the person must be asked to state in writing whether she wishes to be informed of the date on which the board will meet. In *M*, the Supreme Court said that to comply with Section 15(2) of the 1952 Act it was not sufficient for the Board to have before it a sworn affidavit of consent. The 1976 Act therefore provides that the Board may authorise a suitable person to make enquiries on its behalf to ensure that the person understands the nature and effect of the consent and the nature and effect of an adoption order.

1.112 The case of *M v An Bord Uchtala and the AG*[159] demonstrated clearly that the Adoption Board, as the body charged by the legislature with the task of ensuring that the statutory provisions in the Adoption Acts were given proper effect in order to vindicate the Constitutional rights of all concerned, had failed in its duty. However, the actions of the State following the case were to protect the Catholic Church, State and other entities involved in adoption in respect of their previous violations of the rights of unmarried families.

<u>Falsification of Documents</u>

1.113 The witness testimony provided to the Clann Project outlines many instances where documents were forged or contained knowingly false information to facilitate illegal adoptions, most commonly, where the adopted person is registered as the natural child of the adoptive parents. The effects of this on both the adopted person and the natural mother are profound. For natural mothers, their status as mothers has been obliterated and for those who wish to reunite, finding their sons and daughters is an even more impossible task. For adopted people who have been registered as the natural child of their adoptive parents, any feasible possibility of establishing their true identity has been obliterated. Moreover, the possibility of consanguinity – which is already a risk even in legal adoptions – is considerably higher in cases of illegal adoption.

1.114 The State and the Adoption Authority of Ireland ("AAI", which replaced the Adoption Board in 2010) refuse to acknowledge the phrase *"illegal adoptions"*, and the official position is that because no adoption order existed, no adoption took place, and therefore the person in question has been falsely registered and is not adopted. For example, the *Adoption (Information and Tracing) Bill, 2016* refers to illegal adoptions as *"incorrect registrations"*.[160] However, as the Joint Oireachtas Committee on Health and Children pointed out in its 2015 report on the Pre-Legislative Scrutiny of the *General Scheme and Heads of the Adoption (Information and Tracing) Bill*, terms such as

> "'*wrongful registrations' or 'incorrect registrations' suggest an administrative oversight, and do not adequately reflect the covert nature of many adoptions carried out in the past*".[161]

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159 *M v An Bord Uchtala and the AG* [1977] IR 287

160 Adoption (Information and Tracing) Bill 2016. Appendix 2: Tab 4 page 7

161 Report on the Pre-Legislative Scrutiny of the General Scheme and Heads of the Adoption (Information and Tracing) Bill. (Page 13) Available at: https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-

1.115 Because those who have been illegally adopted do not know that they are not the natural children of their adoptive parents, the true number of illegal adoptions may never be known. In 2010 the AAI conducted an audit of its files and said it had found 99 individuals who identified themselves as adopted but no adoption order existed for them. However, at a meeting of the Joint Oireachtas Committee on Health and Children in 2014, (then) acting CEO of the AAI, Kiernan Gildea, said:

> *"It is impossible to indicate the number of illegal registrations. There are 100 applications on the National Contact Preference Register for those people lucky enough to know they have a birth certificate but that they were not adopted [sic]. There must be many thousands out there in that position who may not even know they are not adopted and their registration is illegal or irregular".*[162]

1.116 An investigation in 2010 by *Irish Examiner* reporter Conall Ó'Fátharta revealed the illegal adoption of Tressa Reeves's son. Ms Reeves gave birth to her son in 1961, and nine days after he was born she was brought to St Patrick's Guild, where she was told to sign the adoption papers and never contact her son again. Ms Reeves assumed that her son's adoption was legal, but when she returned to St Patrick's Guild in 1977 she was told by a religious sister that she *"must have imagined"* that she had given birth to a baby. Ms Reeves made renewed attempts to contact St Patrick's Guild in 1995 and 1996, but received no response to her letters. She phoned the agency around the same time and was informed by a religious sister that her file might have been *"lost in a fire"*. In 1997, Tressa contacted St Patrick's Guild again and the new director of the Guild admitted to her over the phone that there was indeed a file on Tressa and her son. Tressa's son's birth was finally correctly registered on October 14th 2009, however at that point her son still did not know he was adopted.[163]

1.117 St. Rita's was a private nursing home at 68 Sandford Road in Ranelagh in Dublin, which was opened in 1947 by midwife Mary Keating.[164] In January 1965, Mary Keating was convicted in the Dublin District Court of forging the official birth register by registering adopted infants as the natural children of their adoptive parents.[165] ARA is aware of a number of other homes and individuals who were involved in illegal adoptions, but to our knowledge, this case was the only prosecution of its kind.[166] Although she had been convicted of falsely registering births, Mary Keating continued to operate her private nursing home specialising in maternity cases at St Rita's until her retirement over a decade later.[167]

1.118 Witness 45 was the subject of an illegal in-family adoption from St Rita's in 1964. She says:

> "*Dr [redacted] originally advised sending me for adoption to a family in the USA – he said that it would be easier for everyone. He asked [my mother] to go and talk to a nun (who had office on the Quays in Dublin) about this, which [she] then did. The nun insisted that she speak to [my mother] on her own, without [her sister], and encouraged [her] to have her baby adopted in the US. This she declined. However, when asked about keeping me in the family, the doctor went on to suggest an arrangement whereby [her sister] would pretend to give birth to me, and her name would be inserted on my birth certificate. He recommended this arrangement take place at St Rita's. He explained that the benefit of this*

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the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-(Information-and-Tracing)-Bill.pdf

162 Discussion: Adoption in Ireland, Joint Oireachtas Committee on Health and Children, 26th June 2014. Appendix 2: Tab 5

163 Irish Examiner, Tressa Reeves Case_19-20 April 2010. Appendix 3: Tab 1

164 Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business.* Dublin: New Island. (Page 72)

165 Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business.* Dublin: New Island. (Page 122)

166 Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business.* Dublin: New Island. (Page 126)

167 Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business.* Dublin: New Island. (Page 126)

arrangement would be that I would have a clear birth certificate, which he thought was very important. [My mother] and [her sister] agreed to go ahead with the second proposal. [Her sister] felt very strongly that it was important to keep the baby in the family. [My mother] did not believe she had any option to keep the baby herself".[168]

1.119 Witness 45 also says:

"An amnesty should be declared for families affected by the issuing of illegal birth certificates at St. Rita's. This law was broken and enabled by [a] member of the medical profession who was prepared to operate outside the law and unwilling to challenge it … [those involved] should be called upon to declare all that is known of these practices at St. Rita's".[169]

1.120 Witness 31 was born in St Rita's Nursing Home in 1962 and was registered as the natural child of her adoptive parents. She made several attempts to find out information about her natural family, but her endeavours were unsuccessful. She made an application to be included on the National Adoption Contact Preference Register (NACPR), but nobody ever contacted her. Without leads, she eventually gave up on her search and assumes that her natural mother is probably deceased.[170]

1.121 Witness 2 was adopted to America through the Sacred Heart Adoption Society. Most Sacred Heart files were transferred to the Health Service Executive after the agency closed. Witness 2 says:

"On a visit … in 2011 … I visited a social worker… he told me that my adoption had been undertaken on the black market and had been illegal".[171]

1.122 Witness 29 says:

"Our father was well known in the Dublin legal circles of that time and I can only speculate that he may have used his influence to have the baby sent illegally to America".[172]

Adoptions to America

1.123 From the 1940s until the 1970s, in excess of 2,000 children were sent from Ireland to the United States for adoption. The Ireland-US adoption scheme is discussed in detail in Mike Milotte's *Banished Babies*.[173] Fifteen witnesses who spoke to the Clann Project were either adopted to the US, or had a relative sent away for adoption. This section outlines documentary evidence and other information which corroborates and is relevant to the witness statements, but we do not propose to set out all of the circumstances surrounding the Ireland-US scheme.

1.124 We do want to draw attention to the fact, however, that despite the numbers of Irish babies sent to America for adoption, and despite the State always being aware that certain unmarried mothers left Mother and Baby Homes and related institutions in Ireland and emigrated to the USA, at no point to date has the Commission of Investigation advertised its work to or solicited participation from these two relevant constituencies.[174] JFMR has worked closely with the Coalition of Irish Immigration Centers in the US to draw

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168 Appendix 1: Tab 45, paragraph 12

169 Appendix 1: Tab 45, paragraph 27

170 Appendix 1: Tab 31, paragraphs 8 to 14

171 Appendix 1: Tab 2 paragraph 23

172 Appendix 1: Tab 29 paragraph 13

173 Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business*. Dublin: New Island.

174 See James Smith, "Will Mother and Baby Home Commission advertise to the hidden Irish diaspora?" *The Irish Times* 9th Nov. 2016, https://www.irishtimes.com/life-and-style/abroad/will-mother-and-baby-homes-commission-advertise-to-the-hidden-irish-diaspora-1.2859793. JFMR has made representations to Minister Katherine Zappone, Minister for State Ciaran Cannon, and Ambassador Dan Mulhall seeking a commitment that the Commission would advertise in the USA to no avail. Copies of correspondence available upon request.

attention to the ongoing work of the Commission, and a number of Irish Immigration Centers have, in the last two years, provided information via their websites, newsletters, and local Irish immigrant newspapers.[175]

1.125 The adoption of children from Ireland to the US was State-sanctioned, most notably through its facilitation of the production of passports which in turn enabled the US Embassy to provide visas for children to enter the US. The State facilitated these adoptions even prior to the introduction of legislation making adoption legal in Ireland. Indeed, the Irish-US adoptions were being facilitated by the Department of External Affairs (now Foreign Affairs) throughout the 1940s while at the same time the Department of Justice was actively discouraging the introduction of legislation to facilitate legal adoption domestically.[176] Thus, one arm of the State was turning a blind eye to what another arm of the State was doing, and the contemporary correspondence in the National Archives betrays an awareness of it in precisely those terms. The Department of External Affairs repeatedly told people inquiring about adoption that its only function was to process applications for passports.[177]

1.126 However, simultaneously these adoptions were also knowingly omitted from the Adopted Children's Register and even after adoption was legalised in 1952, the Adoption Board was exempted from overseeing the arrangements. This was confirmed in a Seanad debate around the 1963 Adoption Bill, when then Minister for Justice, Charles J Haughey said that *"the Adoption Board have no function in regard to a child taken out for adoption in America".*[178] In the same Seanad debate Professor Dooge said:

> *"There is a very widespread feeling that the adoption code is being broken in this manner. If the statistics were included in the annual report of the Adoption Board, those sufficiently interested to read the report would be able to see the correct position. There should be some annual published Statement".*[179]

1.127 In March 1950 Reverend Robert Brown, assistant secretary of the National Conference of Catholic Charities in America wrote to the St Vincent de Paul Society expressing concern that Catholic Irish children were being adopted by non-Catholic parents in the US. Archbishop of Dublin, John Charles McQuaid was one of those consulted on the matter, and upon reading the letter he ordered that no further children should be sent to the US for adoption until the matter was investigated.[180] Negotiations between Catholic Charities in the US and Father Cecil Barrett acting on behalf of Archbishop McQuaid began on the matter of how to ensure that the Catholic faith of children sent to America would be safeguarded.[181] Milotte points out that

> *"While Archbishop McQuaid and Cecil Barrett looked for the best arrangements to safeguard the faith, and Catholic Charities pondered the possibilities presented to them by an abundance of 'illegitimate' Irish children, the civil authorities back in Ireland were letting slip an opportunity to develop a professional, child-centred scheme for regulating and monitoring the American adoptions. This turned out to be a critical lapse since – with disastrous consequences for unknown numbers of*

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175 See for example, http://ciic-usa.org/clann-irelands-unmarried-mothers-and-their-children-gathering-the-data/; http://www.irishchicago.org/social-services-january-2016/; http://www.irishchicago.org/social-services-news-february-2017/; https://www.ipcboston.org/news; http://campaign.r20.constantcontact.com/render?m=1101864499548&ca=35f89c3a-7cfa-47bb-bfb1-f61a09410858

176 Department of Justice Files at the National Archives, File Nos 345/96/III and 345/96/IV "Enquiries re Irish Law Relating to the Adoption of Children". (Research by Prof James Smith, Boston College). See also paragraph 1.128 below.

177 Department of Foreign Affairs Files at the National Archives, File No 90/93/17 "Adoption of Children – Proposals for Legislation". (Research by Prof James Smith, Boston College)

178 Adoption Bill 1963 Seanad Debate, Appendix 2: Tab 6 page 26

179 Adoption Bill 1963 Seanad Debate, Appendix 2: Tab 6 page 26

180 Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business.* Dublin: New Island. (Pages 22-24)

181 Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business.* Dublin: New Island. (Page 29)

Irish infants – Catholic Charities could not in many cases … guarantee the children's welfare, whatever about their religion".[182]

Ultimately, the Archbishop would set out a list of criteria which he said must be met before Irish children could be sent to America for adoption:

1. *The prospective adopting parents must have a written recommendation from the director of Catholic Charities of the Diocese in which they live;*

2. *The prospective adopting parents must supply for inspection their Baptismal certificates and their Marriage certificates;*

3. *The prospective adopting parents must have a written recommendation from the Parish Priest of their Parish;*

4. *The prospective adopting parents must submit a statement of their material circumstances, with a guarantee as to their income, so as to ensure a good home and good prospects in life for the adopted child;*

5. *The prospective adopting parents must submit medical certificates stating their ages, that they are in good health, physical and mental, and that they are not deliberately shirking natural parenthood;*

6. *The prospective adopting parents must swear an affidavit to the effect that they are Catholics, that they guarantee to rear the adopted child as a Catholic, that they undertake to educate the adopted child, during the whole course of its schooling, in Catholic schools, that, if in the future the child is sent to a University, it will be sent to a Catholic university, that they undertake to keep the adopted child permanently and not to hand it over to any other party or parties.*[183]

Despite the fact that the criteria were more concerned about Catholicism than child welfare, McQuaid's scheme was described as *"very satisfactory"* by the Department of External Affairs.[184] Copies of the list were dispatched to Irish diplomats in the US, who were told that the Department of External Affairs had *"independently"* come to the same conclusions as McQuaid. According to Milotte, in practice, this meant that passports would only be issued to children whose prospective adoptive parents had sworn an affidavit on McQuaid's criteria.[185,186]

1.128 Mike Milotte's analysis is supported by primary material from the records of the Department of Foreign Affairs and Trade, which are published in the Royal Irish Academy's *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. These show that, before the legalisation of adoption in 1952, the Department of Foreign Affairs was prepared to grant passports in 1949 to children being sent abroad on what it described as "*a 4,000 mile voyage into the virtually unknown*".[187] There is a memo from Dublin to the consulate in San Francisco from December 1949 which states expressly that *"[t]his Department is prepared to issue passports to children who are to be adopted by people in*

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182 Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business.* Dublin: New Island. (Page 30)

183 Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business.* Dublin: New Island. (Page 34). Archbishop McQuaid's criteria were revised in 1955 and again in 1957, see correspondence on file at Dublin Diocesan Archives, McQuaid-American Adoptions.

184 Minutes from Annual Meetings of the Directors of Catholic Charities [held as part of the US Catholic Charities archive at Catholic University of America, Washington, DC] throughout the 1950s signal concern that the sisters operating maternity homes in Ireland (i) were "circumventing" the guidelines— laid down by Archbishop John Charles McQuaid and accepted by the Passport Office and US Embassy— by which an American family could adopt an Irish child, (ii) were providing children to American families in a "haphazard" fashion, and (iii) were working directly with "Travel agencies" and/or "travelogue companies". (Research by Prof James M Smith)

185 Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business.* Dublin: New Island. (Pages 37-38)

186 See also Section 2, paragraphs 2.49-2.76; 2.99-2.101

187 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 355)

the United States provided the parents or guardians consent is obtained and that satisfactory evidence of the foster-parents suitability is produced".[188]

1.129 However, the Department did not appear to want to be involved in anything other than the passport issuing. As one memo from July 1950 says:

> "*[t]his Department, strictly speaking, enters into the matter only in so far as it is necessary to give Irish passports to the children concerned … It is no part of our function to assist foreigners to remove Irish children from this country for the purpose of adopting them and indeed we would be open to criticism if we were to attempt to do so*". Therefore, US citizens wishing to adopt in Ireland should *"address their enquiries to the American Embassy in Dublin".*[189]

The memo then states *"there would be a considerable danger of public criticism if official backing seemed to be available for this traffic"*.[190] This line was repeated in November 1950 – the Minister did not want to give the impression that he was *"fostering emigration of children"* – and therefore the Minister vetoed using Irish diplomatic and consular offices to make enquiries with regard to the suitability of proposed adoptive parents.[191] There is a further memo from May 1951 in which the Department states that it is *"reluctant to go outside the procedure mentioned above".*[192] And in June 1951, the New York consulate stated that their usual procedure was to explain to prospective US adoptive parents that *"we have no function in the matter as it is essentially a private arrangement between the foster parents and the child's custodian; we then refer the inquirer to the American Embassy in Dublin".*[193]

1.130 As of May 1950, the line from the US Embassy in Washington was that *"there is at present no Irish legislation with which it is necessary to comply and … the permission of the United States Immigration authorities is all that is required".*[194] A message from the Assistant Secretary at the Department to London from March 1951 also states that potential adoptive parents could be told *"that there is no Irish law prohibiting the adoption abroad of Irish citizen children"*.[195]

1.131 The impression seems to have been that there was nothing that could be done to stop the overseas adoption of Irish children – *"[u]nder the existing law [in December 1949], the Minister has no power to intervene once the consent of the mother has been obtained".*[196]

1.132 However, there is an interesting memo from May 1951 which refers to the inalienable rights of the family in the Irish Constitution and that *"it was our opinion that the mother of a child could not alienate her natural right to bring up her own child; that her surrender of her child to a convent or other institution was all right as far as it went but that if she was to take it back the Court in this country would almost certainly uphold her. However, I also pointed out that [in] our opinion, the foreign decree of adoption, valid in the country where it was given, would be recognised as valid in our Courts in the same way as a valid Foreign Decree of Divorce".*[197]

1.133 The Irish Government was also aware that they were one of the chief sources of adopted children going to the US: *"Ireland and Italy are the two countries chiefly concerned … the French Government will not allow any children to be adopted abroad; … Belgium was very strict in the matter and … the Netherlands was somewhat less strict".*[198] A message from November 1950 refers to the US Consulate General in Dublin granting 150 visas to

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188 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 483)
189 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Pages 555 and 580)
190 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 581)
191 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 608)
192 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 660)
193 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 672)
194 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 542)
195 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 645)
196 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 482)
197 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 666)
198 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 541)

children between July 1949 and September 1950 *"i.e. an average of 10 per month".*[199] The message frankly goes on to say that *"I interviewed recently one adopting parent … and gathered from her that this country enjoys quite a reputation, among the personnel of these US air-bases in Britain, as a place where one can get children for adoption without much difficulty … She told me that she did not attempt to look for a child in G.B. since it was common gossip in her camp that so much red tape attended the getting of a child in G.B. to be taken to America for adoption that it was not worth the trouble to go looking for one … the idea seems to have got abroad that an orphan can be had here for the asking … This looks as if a veritable trade in orphans were beginning"*.[200]

1.134 The Government was well aware in December 1949 that there could be problems with cross-border adoption – *"The Minister [for Health] considers that there is some cause for uneasiness in this matter since it seems possible that applicants for children may be persons turned down as adopters in their own country and, further, there is no means of knowing or ensuring that children placed in the care of applicants will be adopted legally in their new country or even that they will remain in the care of the original applicants … some measures should be taken to safeguard children's interests and he [the Minister for Health] would be glad to have the views of your Minister as to whether it might be possible to arrange that aliens wishing to take children out of this country for adoption should be obliged to produce evidence of character, suitability and religion which should be supported by a recommendation from the Diplomatic Representative in this country".*[201]

1.135 One of the minutes from July 1950 then states that *"some of the cases where children had been taken to America for adoption have already attracted a good deal of attention, not only in America but also here"* and that *"the Archbishop of Dublin apparently has instructed all Catholic institutions in the archdiocese of Dublin to close down on any more applications pending a full investigation of the matter".* [202] Records in Archbishop McQuaid's papers demonstrate that his embargo was causing a backlog of infants that had been promised to US families. One religious sister from St Patrick's Guild wrote to Archbishop McQuaid's office:

> *"I beg His Grace to allow us to send these little children. It would be such a bitter blow to the adopters to be denied their little child just when their hopes were about to be realised. Also, I would be very grateful if you would advise me what to say to the many others whose applications I have already received. All are vouched for as excellent Catholics and they have beautiful homes. It is difficult to know what to say to them. … Lest there should be any confusion I would like His Grace to know that the six children whose picture was in the paper recently before they embarked for USA were not from St Patrick's Guild. We have always been most careful to avoid publicity".*[203]

1.136 As to the actual checks undertaken, despite the suggestion in the document[204] (see paragraph 1.128 above) that checks were carried out, there is also a memo from May 1950 in which enquiries had been carried out as to who in the US could carry out checks on parents – mentioning the Board of Public Welfare – *"From informal enquiries at the Board it was learned that they carry out investigations as to the character and general suitability of persons in this country adopting American children"* and although *"they had not been asked to perform such services in the case of adoptions from other countries … they indicated that they might be prepared to do so subject to approval from the Department of State"*.[205] There were then further enquiries in June 1950 with a consultant on Foster Care at the Federal Security Agency.[206] But, a memo from June 1951 says that

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199 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Pages 629-630)
200 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Pages 607 and 630)
201 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Pages 482-483)
202 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 580)
203 Letter from Sr Francis Elizabeth of St Patrick's Guild to Fr Mangan, Archbishop's House, 23rd March 1950. Archbishop McQuaid Papers, Mike Milotte Archive.
204 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 483)
205 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 541)
206 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 560)

"No public authority in New York … will make the inspection necessary for such a certificate [of suitability] when the adopted child comes from outside their area".[207]

1.137 The Catholic Church seems to have been entrusted with carrying out some checks. A memo from December 1950 states that *"From the Mother Superior of St Patrick's Home, I learned that His Grace the Archbishop of Dublin, though in principle opposed to the taking of children out of the country in this fashion, has given his agreement in individual cases on the understanding that the adopting parents are vetted by the Conference of Catholic Charities of which there is usually a branch in each parish in the United States. From our point of view here this is very satisfactory*[208] *… The Conference of Catholic Churches furnish, I understand, a comprehensive report on the adopting parents and also follow up the career of the child when it has arrived in the States and see that it is in fact adopted according to law. Even then they still continue to follow it up".* The memo (by the Acting Head of the Consular Section) states that *"in the cases of all institutions, both Catholic and non-Catholic, the Superiors do in fact follow up the child after it leaves them and that in fact they do receive regular reports on its welfare"* and that he did not authorise the issue of a passport unless (a) the person handing over the child is in fact the guardian of the child and was authorised by the mother to arrange for its adoption; (b) *"That satisfactory references, including references from clergy men have been produced In respect of the adopting parents"* and (c) *"In cases where a satisfactory report has been furnished on the adopting persons by the Conference of Catholic Charities, I take that as satisfactory evidence of the parents' character, etc".* (see pages 630-631). This is later repeated in a memo from June 1951 – *"satisfactory evidence from our point of view would be a vetting of the foster parents by the Catholic Charities or a kindred organisation"*.[209]

1.138 The problem for adoptive parents appears to have been that *"the New York Catholic Charities will only give their approval when the entire adoption is being arranged through their organization"* – so that adoptive parents dealing with institutions in Ireland directly were *"frequently"* caused *"great disappointment and grief"* when they had difficult in completing their adoptions.[210] It is important to note that the US Catholic Charities were insistent on ensuring that the proper procedures were followed, as evidenced in the minutes of their National Annual Meetings. The ongoing concerns for Irish children being adopted by US families, in particular the issue of appropriate back-ground checks, placement, and follow-up services, were discussed at both the Annual Meeting of Directors of US Catholic Charities and at the bi-annual meetings of the Standing Committee of Directors of US Catholic Charities through the 1950s, as reflected in the agendas, minutes, and dedicated memoranda discussed during these sessions.[211] The religious sisters in Ireland and some US adoptive families were inconvenienced and consequently as a result of various interventions on the part of US Catholic Charities, and there are indications in the archive that both some nuns and families sought to circumvent the processes put in place. Thus, while US Catholic Charities remained focused on the religious wellbeing of these children, they did at some level play a role in professionalising Irish adoption processes, at least indirectly.[212]

1.139 At least part of the concern of the Government and Archbishop McQuaid in conducting checks was in ensuring that the adoptive parents were Catholic – *"part of the difficulty from the religious point of view in making investigations through the qualified agencies is that while the Agencies usually have the power to enquire into the religious background, in practice they often tend to disregard this aspect"* [see page 542]. There is a memo from September 1950 suggesting using Irish consuls in the US to help investigate the suitability of adoptive parents – this suggestion seems to have been rejected for the reasons given in the documents referred to in paragraph 1.128 above. But the memo mentions later the situation in the UK and whether the Dublin Board of Assistance should assist Children's Officers in Great Britain make the enquiries necessitated by *"the British Adoption of*

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207 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 672)

208 See Milotte's analysis at paragraph 1.127

209 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 667)

210 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 673)

211 US Catholic Charities Archives, Catholic University of America, Washington, DC. Additional information available upon request from Professor James Smith, Boston College.

212 US Catholic Charities archives, available on request from Professor James Smith, Boston College.

Children Act 1926. The procedure under that Act does not, of course, afford the safe-guards for religion which Catholic opinion in this country would regard as necessary" [see page 594]. There is also a memo which records the conditions under which the Archbishop of Dublin would allow children to go to the US, which was *"confidential"* and *"should not be used officially in any circumstances"*. This required the adoptive parents to sign an affidavit undertaking that *"we are both Catholics"*, would rear the child *"as a Catholic, and to educate such child, during the whole course of its schooling, in Catholic Schools, and to send it to a Catholic University"*, if s/he went to university.[213] This again corroborates Milotte's analysis, which was that it was Archbishop McQuaid who drew up the list of criteria which had to be met before Irish children could be sent to America for adoption – and that those criteria were focused on the Catholic faith of the potential adoptive parents, as well as their standing in life, but completely omitted any express mention of whether the prospective adoptive parents would be able to provide good care for the child.

1.140 It is clear that a factor in the government allowing children to be sent for adoption abroad was that *"[t]he children so adopted are, in the main, illegitimate children with an uncertain future in this country and the Minister [for Health] would be diffident in suggesting that obstacles should be placed in the way of their acquiring a new permanent home".*[214] There is also a mention of the fact that illegitimate children were *"a charge on the rates"* whom local authorities were *"obliged to make provision for their maintenance".*[215]

1.141 There is also mention of maintaining the good will of the Irish-American community: *"The majority of people who wish to adopt Irish children seem to do so because of some link of blood or religion which makes the country seem sympathetic. In view of the possibility of canalizing such good will for anti-partition purposes, the importance of retaining their sympathy would be appreciated".*[216]

1.142 On Christmas Eve 1995, Catríona Crowe, archivist with the National Archives of Ireland discovered the archival records associated with the adoption of Irish children to America.[217] Although these adoptions had been facilitated by the combined powers of the Catholic Church and Irish State, when news broke of the discovery of the files in early 1996, it was the first time that there was widespread awareness of these practices.

1.143 In March 1996, then Tánaiste and Minister for Foreign Affairs, Dick Spring gave an undertaking that people adopted to the United States would be *"quickly"* helped in contacting their natural mothers. Within months however, the government hit *"legal snags",* as it was alleged that legal advice to the Department of Foreign Affairs suggested that natural mothers' names could not be given to the adopted people in question, because it may breach the National Archives Act and also because it may breach a constitutional right to privacy.[218] However, this view does not tally with the fact that most people 'officially' adopted to the US have always known the identity of their natural mothers, because their birth certificates and passports were sent over with them when they travelled. Witness 71 says:

> *"My adoptive parents had preserved all relevant documents for my adoptive brother and me, including our original Irish passports, Pennsylvania adoption decrees, naturalization certificates, etc. So I've known my own birth name since as early as I can remember. I was able to obtain a copy of my original Irish birth certificate through an FOIA request to (then) US Immigration and Naturalisation (now USCIS)".*[219]

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213 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 667)
214 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Pages 482, 561)
215 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 665)
216 *"Documents on Irish Foreign Policy"*, Volume IX, 1948-1951. (Page 673)
217 Irish Times, 9th March 1996, 'Routine Work Uncovers Vital Data on Adoptions', Appendix 3: Tab 2
218 Irish Times, 8th May 1996, 'Legal Snags Hit Plans to Link Adoptees with Birth Mothers', Appendix 3: Tab 3
219 Appendix 1: Tab 71 paragraph 23

1.144 Documentary evidence provided by other witnesses corroborates this. For example, in 1997, a religious sister at St Patrick's Guild Adoption Society wrote to Witness 9 and used Witness 9's natural mother's full name in the letter.[220] Yet, when Witness 68's wife contacted the Department of Foreign Affairs she was told that although they had his records, there were *"legal reasons"* why he could not have them.[221]

1.145 Not all US adoptions were carried out with "official" approval. When the US adoption files were discovered in 1996, it was estimated that approximately 1,500 adoptions took place.[222] Mike Milotte says that at least 2,070 children were sent to America for adoption, based on the number of visas which were issued. However, according to records held by the Department of Foreign Affairs, this total comes to 2,088. Moreover, Milotte points out that St Patrick's Guild's own records show that they sent 572 children to America, while the Department of Foreign Affairs cites a figure of 515.[223] Elsewhere, Milotte points out that:

> *"hundreds, if not thousands, more children were taken from the country without sanction or public record-keeping. Many were handed to foreigners. On October 8th, 1951, The Irish Times reported that in the previous year 'almost 500 babies were flown from Shannon for adoption', a number that the paper said 'is believed to have been exceeded' during the first nine months of 1951. In the first week of October alone, it reported, 18 'parties' of children departed from the airport".*[224]

1.146 Additionally, in the case of some adopted people who have approached ARA for assistance, no record exists for them in the Department of Foreign Affairs. Similarly, Witness 29 says in relation to her nephew,

> *"neither the Department of Foreign Affairs nor the Adoption Board could find a trace of him".*[225]

1.147 Despite the promises which were made in 1996, the needs of Irish adopted people who were sent to America as infants have been completely ignored by the Irish State. For example, the *"Year of the Gathering"* came and went in 2013 without a single invitation extended to Irish people who were sent to America for adoption as infants. This is in stark contrast to the Irish State's approach to other members of the diaspora who are afforded unfettered access to their history and heritage through free online access to the 1901 and 1911 Censuses and who are encouraged to avail of genealogical services in a dedicated space in the National Library of Ireland. It also contradicts the State's responsibility under Article 2 of the Constitution of Ireland, which states that:

> *"It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish Nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage".*

<u>Adoptions Without Birth Registrations</u>

1.148 In the case of some adoptions, an adoption order was facilitated by the Adoption Board, however no birth certificate exists for the adopted person. For example, Conall Ó'Fátharta reported that Carol O'Keeffe's adoption was allowed to go ahead even though the home in which she was born did not register her birth. Ms O'Keeffe says

> *"I suppose initially it wasn't so easy psychologically because you did have this feeling that everyone else in the country has a registered birth and what was so*

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220 Appendix 1: Tab 9 Documents, pages 4-5
221 Appendix 1: Tab 68 paragraph 15
222 Irish Times, 9th March 1996, 'Routine Work Uncovers Vital Data on Adoptions', Appendix 3: Tab 2
223 Mike Milotte (2012) *Banished Babies: The Secret History of Ireland's Baby Export Business.* Dublin: New Island. (Pages 235-236)
224 Irish Times, 28th June 2014, 'The Baby Black Market'. Appendix 3: Tab 4; See also *Banished Babies*, page 8-9.
225 Appendix 1: Tab 29 paragraph 19

different about me? It didn't make me feel part of things. I felt a little bit less worthy. I felt different. I also felt worried that this may not be my mother that I was matched with. However, I know that she is now so that was a relief. I also felt angry because it fed into other feelings that maybe if there was a census that I don't exist. I know that's not true because I function quite well with my documents and I have a passport so I know I am an Irish citizen. It didn't make me feel too proud of being Irish though".[226]

1.149 Witness 16 says

> *"I was adopted without a birth registration even though my mother turned up at Sean Ross Mother and Baby Home alone with a baby, with no legal proof that she was the baby's mother. I was adopted 2 months later on the basis of a letter of non-registration and my baptismal certificate. … It is impossible to imagine a child without a birth certificate being adopted today. It should have happened when I was adopted. As a child born to an unmarried mother, I obviously wasn't worth registering".*[227]

Other Forms of Coercion

1.150 Because of the absence of sufficient supports for unmarried mothers, Ireland's adoption system can be considered to have been generally forced in nature, such that the societal and financial pressure to sign the adoption papers was so great that many natural mothers felt they had absolutely no choice but to do so. Many natural mothers tried desperately to keep their children, but it was virtually impossible.

1.151 As one advertisement in the *Irish Independent* in 1975 reads:

> *"PLEASE HELP unmarried mother, baby 1½, must get flat or bedsitter or sign adoption papers".*[228]

1.152 Witness 22 says that the adoption of her daughter was organised by her father with the Catholic Protection and Rescue Society of Ireland (now Cúnamh). She says that she did not initially agree to the adoption of her daughter, but

> "*following some pressure, I ultimately signed the papers*".

1.153 Witness 22 says that neither the adoption forms, nor the process were ever adequately explained to her

> *"and I was not given any other options"*.[229]

1.154 No one accompanied Witness 22 when she went to sign the final adoption form before the solicitor.[230]

1.155 Earner-Byrne notes that:

> '*Those unmarried mothers who attempted to brave life outside the institution, if denied parental or familial protection, were fated to a precarious existence with no legal protection. The two Department of Local Government and Public Health Inspectors of boarded-out children, Anne Fitzgerald-Kenney and Alice Litster repeatedly stressed the harsh existence that these women and their children endured at the hands of society. The majority of these women were engaged in domestic service, their wages were small and "their history militates against them*

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226 Irish Examiner 14th August 2010 I had no birth cert so why was my adoption allowed? Appendix 3: Tab 5
227 Appendix 1: Tab 16 paragraph 18
228 Irish Independent, 28th November 1975 "Flats Wanted" Appendix 3 Tab 6
229 Appendix 1: Tab 22 paragraphs 30-33
230 Appendix 1: Tab 22 paragraphs 30-33

> *and they are obliged to accept what is offered".*[231] *It was hardly surprising that, in the majority of cases, contribution to the upkeep of their child was "found impracticable".*'[232]

1.156 From the 1970s, with the rise of the women's movement and after Ireland joined the European Economic Community in 1973, women's rights slowly began to improve, including the introduction of the Unmarried Mothers' Allowance in the same year. As a result, adoption rates began to steadily decline. This trend led one Adoption Board social worker to complain that *"fewer babies were coming on the 'adoption market'".*[233] The social worker claimed that there was a *"pressure"* on unmarried mothers to keep their babies, however the natural mothers in contact with ARA members over the past two decades and the witnesses who have given evidence to the Clann Project are unanimous in saying that they were in fact pressurised into relinquishing their babies, even during the 1980s.

1.157 The pressure on unmarried mothers to agree to adoption is illustrated by Witness 32's case. She explains that she was referred to Bessborough in 1982 by the Catholic Protection and Rescue Society of Ireland. Although she was allowed to leave Bessborough for Galway before giving birth, she believes that Bessborough contacted the social worker at Galway Regional Hospital on the same day that she left Bessborough. The social worker persisted in asking her about giving her daughter for adoption, even though she had said she was sure she wanted to keep her child. After the birth, her daughter was transferred to a nursery and the social worker then told her that her daughter had been taken for adoption. When Witness 32 asked for her daughter back, the social worker responded that:

> "*she could do nothing to help me*".[234]

1.158 It took Witness 32 three months for her to recover her daughter through court proceedings.[235]

1.159 Witness 6's daughter was adopted through St Catherine's Adoption Society (Clarecare) in Co Clare in 1983. She says:

> *"I was under continued pressure from the social worker to sign the adoption consent form but I was still keen to try to find any way in which I could keep her. I was in a traumatised state as I felt that I was being judged whatever I did, either for leaving her or for not putting her up for adoption".*[236]

1.160 Witness 41 managed to keep her son in 1978, but says that:

> *"[f]rom when I arrived at the home, [the social worker] and the nuns were persistently talking to me about adoption. The nuns would call me into the office at least once a week and present me with papers to sign for my child to be put up for adoption, but I refused. At no point did I even consider putting my child up for adoption. … During my time in the home, I was given tough jobs to do. The other girls who were compliant with the nuns and agreed to adoptions were not called upon to do these jobs. I was usually asked to do these tasks during recreational time, the period in which I should have been with the other girls".*[237]

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231 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press (Page 190) citing *Annual Report of the Department of Local Government and Public Health, 1927-8*, p93.

232 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press (Page 190)

233 Irish Independent, 29th March 1976 "Pressure on Unwed Mums to Keep Baby Gone Too Far" Appendix 3: Tab 7

234 Appendix 1: Tab 32 paragraphs 18-43

235 Appendix 1: Tab 32 paragraphs 18-43

236 Appendix 1: Tab 6 paragraph 15

237 Appendix 1: Tab 41 paragraphs 7-8

1.161 When Witness 41 visited St Joseph's Baby Home in Stamullen, where her son had been moved to, she says

> *"[t]he supervising nun told me that my son was in the best place because I could not give him any kind of quality of life. She asked me 'what can you offer this child?' and told me I could not give him anything because I had nothing. However, after much persuasion I was told that if I got the relevant paperwork together, I could bring him home with me".*[238]

1.162 It is worth noting that in *G v An Bord Uchtála*[239] the Supreme Court found that there was no informed consent where, as Walsh J explained:

> *"Less than eight weeks after the birth of her child, the plaintiff had already signed a form consenting to the placing of the child for adoption. Prior to that she had been subject to several representations urging her that it was in the best interests of the child and herself to have the child placed for adoption. When the representations were initially made to her, they were made to her within one week of the birth of her child and while she was still in hospital. It is not difficult to imagine the anxieties and troubled state of mind of this lonely young girl, who was but a short time past her twenty-first birthday and who, unknown to friend or family, had given birth to her child far from home".*

1.163 Walsh J. went on to say at p.80-81:

> *"…it is regrettable that such a degree of haste should have arisen in a case such as this, especially having regard to the isolated position of the plaintiff and to her extreme youth. In so far as the evidence goes, she was not made aware of the possibilities which exist for aiding persons in her position or of the several excellent societies which exist for the purpose of enabling a woman who finds herself in the plaintiff's circumstances to retain her child and, at the same time, to carry on her life as normally as is possible in the circumstances. By the time the plaintiff did sign the form it may be that she was no longer confused but that is very far from saying that she was a completely free agent or that she was aware of the result if she withdrew her consent. All the circumstances indicate that she was not a free agent. The evidence discloses a reluctance and an anxiety on her part throughout the transaction; the matter which appears to have been operating mostly on her mind was her desire to maintain secrecy over the whole affair".*

1.164 Witness 72, *who worked for a State-run service, was disciplined for giving*

> *"birth to a baby boy out of wedlock".*[240]

1.165 *She was also told that she had to give the baby up and that*

> *"I'd be sacked if I didn't do so".*[241]

Mortality

1.166 While there has (rightly) been much focus on deaths in the Mother and Baby Home at Tuam, the issue is not restricted to one institution, or indeed to institutions at all. Death rates at Bessborough were described by an internal HSE report in 2012 as *"wholly epidemic"*.[242] The *Irish Examiner* reported that children in Bessborough were buried in unmarked graves as recently as 1990.[243] It is important to note that one of the burial plots discovered as part of the *Irish Examiner* investigation was owned by the former St Anne's

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238 Appendix 1: Tab 41 paragraph 19
239 *G v An Bord Uchtála* [1980] IR 32
240 Appendix 1: Tab 72, paragraph 18
241 Appendix 1: Tab 72, paragraph 11
242 Irish Examiner, 2nd June 2015 SPECIAL INVESTIGATION: Appendix 3: Tab 15
243 Irish Examiner, 19th February 2018 Bessborough children were buried in unmarked graves as late as 1990. Appendix 3: Tab 15

Adoption Society, demonstrating that infants died not just in Mother and Baby Home and County Homes, but also in the care of adoption agencies and others.[244]

1.167 JFMR has been investigating deaths in Magdalene Laundries since 2003 through the Magdalene Names Project[245] and thus far, has recorded the details of 1663 women who died in the Magdalene institutions between 1835 and 2014. Many of these women are still unaccounted for and buried in unmarked graves. While the McAleese Committee examined the issue of exhumations at High Park, JFMR submits that this investigation was wholly inadequate.[246] The McAleese Committee did not publicly identify women who died in Magdalene Laundries or their burial places, and Chapter 16 of the McAleese Report notes that the Committee could not locate death certificates for 15% of women it understood to have died in all Magdalene Laundries, up to the 1990s.[247] In the coming months the Clann Project will publish further research by Judy Campbell on infant mortality in Mother and Baby Homes and similar institutions.

1.168 On 12th December, 2017, the Minister for Children and Youth Affairs, Dr Katherine Zappone published the Report of the Expert Technical Group, *Options and Appropriate Courses of Action available to Government at the site of the former Mother and Baby Home, Tuam, Co. Galway.*[248] The Report identified five possible options for managing the Tuam site and for appropriately responding to the discovery of infant remains interred at Tuam. These are:

- Memorialisation;
- Exhumation of known human remains;
- Forensic excavation and recovery of known human remains;
- Forensic excavation and recovery of known human remains with further evaluation/excavation of other areas of interest;
- Forensic excavation of the total available area.

1.169 Galway County Council facilitated a public consultation process on the five options outlined by the Expert Technical Group, so that the Inter-Departmental Group on the process can submit proposals to the government. JFMR and ARA compiled a template document to assist those who wish to send a submission to Galway County Council and Minister Zappone.[249] JFMR and ARA advocated for a forensic excavation of the total available area, followed by an exhumation, and dignified re-internment and appropriate memorialisation of all the infant remains located at the site. ARA and JFMR recommended that the forensic excavation should also be conducted in conjunction with a complete investigation into burial and adoption practices at Tuam, particularly if fewer than 796 human remains are located. However, we also stressed that a "one-size-fits-all" approach is not appropriate in investigating deaths at the various institutions and other locations around Ireland.

1.170 In April 2018, a University College Dublin (UCD) and Trinity College Dublin (TCD) team challenged the findings of the Expert Technical Group which suggested that it would be difficult to exhume and identify remains at Tuam because the remains are *"commingled"*.

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244 See also: https://www.irishexaminer.com/breakingnews/views/analysis/commission-of-inquiry-stymied-by-own-remit-837658.html

245 See: http://jfmresearch.com/home/magdalene-names-project/

246 Death, Institutionalisation & Duration of Stay: JFMR Critique of Chapter 16 of McAleese Report. Appendix 2: Tab 29

247 *IDC Report*, Ch 16, see also Irish Human Rights Commission, *Follow Up Report on State Involvement with Magdalen Laundries*, June 2013 (*IHRC Follow-up Report*), p101, https://www.ihrec.ie/documents/ihrc-follow-up-report-on-state-involvement-with-magdalen-laundries-june-2013/

248 Available at: https://www.dcya.gov.ie/documents/mother_and_baby_homes/20171212MBHExperttechGroupReport.pdf

249 Available at: http://clannproject.org/wp-content/uploads/JFMR_ARA_Template-Submission-Re-Tuam.docx

The UCD/TCD team maintain that new technologies would address the difficulties outlined in the Expert Technical Group report.[250]

1.171 The witness statements gathered by the Clann Project demonstrate that deaths were not confined to one institution. Witness 11's son died at Bessborough after she was given an injection by a nun: "*I do not know what this injection was but I believe that this is what caused [my] baby's death and almost caused my own*". Although she was told by the nuns that her son had a birth defect, she says that this is a "*total lie*" – he was perfect and "*I believe he died as a result of the neglect he suffered from those at Bessborough*". [251]

1.172 Witness 11 says her son was kept apart from her

> "*in a closed off area called the dying room. I begged the nuns to take my son to a hospital but they only did so after two weeks had passed. My son died in hospital*".[252]

1.173 Witness 11 says that the nuns refused to let her attend her son's burial:

> "*I do not even know whether he was buried in a coffin*". She says that "*There was never even a kind or sympathetic [word] spoken to me*".[253]

1.174 Witness 47 says that the day after her son's birth in Bessborough she went to the nursery to see her son and was told

> *"in a completely matter of fact way 'your baby died'. I was absolutely stunned".*[254]

1.175 Witness 47 says that there are significant discrepancies between her own recollections and the available records.[255] She also says that the records say that her son's cause of death

> *"is given as 'cerebral haemorrhage' and show that he had lived for two days. I have many unanswered questions about this. Why I was told on the day after his birth that my son had died? If he was 'poor at birth' why did they not call for a doctor or send him to hospital? …The timings of the registrations feel odd to me. [My son's] birth was not registered until nine days after the day on which they say he died with his death registered five days after that. It seems logical to me that they would have registered the birth and death at the same time yet this is not what happened. … Also why is there no record of a burial or grave? … Hearing about the experiences of other mothers and children in Bessboro and given the lack of a death certificate and the discrepancies in the Register I can't help but wonder if Joseph lived. If he did there is little chance of him being able to trace me or me him. This leads me to believe that there was a widespread trafficking of babies in Bessboro by these nuns and their associates".*[256]

1.176 Witness 2 says that she is curious about the circumstances of her brother's birth

> "*how it came to be that he suffered a stroke and whether my mother and my brother received proper medical attention during his birth and subsequently*".[257]

1.177 Witness 18 says that his second sister died of gastro-enteritis aged 3 months.[258]

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250 Irish Times, 13th April 2018, Tuam mother-and-baby home remains 'can be identified'. Appendix 3: Tab15
251 Appendix 1: Tab 11 paragraph 21
252 Appendix 1: Tab 11 paragraph 21
253 Appendix 1: Tab 11 paragraphs 21-23, 28 and 30
254 Appendix 1: Tab 47 paragraph 16
255 Appendix 1: Tab 47 paragraph 23
256 Appendix 1: Tab 47 paragraphs 26-29
257 Appendix 1: Tab 2 paragraph 28
258 Appendix 1: Tab 18 paragraph 26

Anatomical Experiments on Deceased Infants

1.178 Although this issue is not raised in witness statements, the issue of anatomical experiments on deceased infants in Mother and Baby Homes and other institutions should not be ignored. In October 2011, RTÉ's *Prime Time* revealed that between 1940 and 1965, the remains of 460 infants who died in Mother and Baby Homes had been given to anatomy laboratories[259] After the broadcast, ARA strongly condemned these anatomical experiments on vulnerable children who died in these institutions.[260] Section VII of the Anatomy Act 1832 makes provision for the donation of remains to anatomy departments, however it is unclear whether informed consent for such donations was obtained from the mothers of children who died in Mother and Baby Homes and similar institutions.

Possible Falsification of Deaths to Facilitate Illegal Adoptions

1.179 An investigation by Conall Ó'Fatharta of the *Irish Examiner* in 2015 revealed that the HSE examined the Mother and Baby Homes at Tuam and Bessborough in the course of its work for the *Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries*.[261]

1.180 One report which was written about Bessborough described

> *"'staggering' numbers of children listed as having died at the institution. The author of the report says infant mortality at Bessborough between 1934 and 1953 is 'a cause for serious consternation'. Curiously, no deaths were recorded after 1953 but 478 children died in this 19-year period — which works out as one child every fortnight for almost two decades. Perhaps most shocking of all is the view of the report that death certificates may have been falsified so children could be 'brokered into clandestine adoption arrangements, both foreign and domestic' — a possibility the HSE report said had 'dire implications for the [Catholic] Church and State'".*[262]

1.181 In this context it is also worth noting that the *Irish Examiner* also reported in 2015 that Bessborough was reporting more deaths to the State than it had recorded on its own registers.[263]

Statutory Obligations Regarding Deaths in Institutional Settings

1.182 There are several pieces of legislation which required the recording and reporting of deaths in institutions.

1.183 Major questions arise regarding the extent to which State, Catholic Church and other institutions and officials complied with their statutory obligations in respect of the deaths of children and sometimes their mothers, including in Magdalene Laundries.

1.184 Section 10 of the *Births and Deaths Registration (Ireland) Act 1880* required that the Registrar General be notified of deaths occurring in a *"house"*, defined under section 37 to include a *"public institution"* that was *"a prison, lock-up, workhouse, barracks, lunatic asylum, hospital, and any prescribed public, religious, or charitable institution"*. Where a death took place in a setting other than a house, section 11 of the 1880 Act imposed notification obligations on relatives having knowledge of the death, every person present at the death, any person taking charge of the body and the person causing the body to be buried. According to section 17 of the 1880 Act, there was an obligation on any person

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259 RTÉ Prime Time, Anatomy of a Scandal. Broadcast on Thursday 6th October, 2011. Available at https://www.youtube.com/watch?v=O7BxnC6EUuo. See also: https://www.rte.ie/news/primetime/2014/0609/622696-prime-time-anatomy-of-a-scandal/

260 Adoption Rights Alliance Press Release, 7th October 2011, Adoption Rights Alliance Strongly Condemns Use of Deceased Infants in Anatomical Experiments. Available at: http://www.adoptionrightsalliance.com/PR_07-10-11.htm

261 Irish Examiner, 3rd June 2015 Government already knew of baby deaths. Appendix 3: Tab 15

262 Irish Examiner, 3rd June 2015 Government already knew of baby deaths. Appendix 3: Tab 15

263 Irish Examiner 9th November 2015, Grave situation: Deaths at Bessborough don't add up. Appendix 3: Tab15

who buried or performed any funeral or religious service for the burial of a dead body to notify the Registrar if they had not received a certificate of death.

1.185 Section 18 of the 1880 Act concerned the burial of stillborn children. It required certification by a registered medical practitioner who was in attendance at the birth or had examined the body that the child was not born alive.

1.186 Section 19 of the 1880 Act required that notice be given to the Registrar where a coffin contained more than one body.

1.187 Regulation 108 of the Regulations for the Discharge of the Duties of Registrars of Births, Deaths and Marriages in Ireland pursuant to the Births and Deaths Registration Acts, Ireland, 1863–1880 provides:

> *"In any case in which it appears to the Registrar that a Death has been caused by Violence or has been attended by suspicious circumstances and no Inquest has been held, he must not immediately register the Death, but must take such means as may be necessary, either through the police or otherwise, to bring the case under the notice of the Coroner having jurisdiction in the place in which the Death occurred, and before registering such Death, must ascertain that an Inquest is considered by the Coroner to be unnecessary".*

1.188 Section 10 of the *Registration of Maternity Homes Act 1934* made it an offence to fail to keep proper records of every reception into and discharge from the home as well as every confinement, miscarriage, birth and death of every child therein and every removal of a child therefrom and the name of the person removing said child and the address to which the child has been removed.

1.189 Section 11 of the Act required that every death of a registered person at a maternity home be notified to the Local Authority. Section 11 made specific provision for the recording of the cause of death:

> *"11.—(1) Whenever on or after the appointed day a death occurs in a maternity home in respect of which a person is registered in the register kept by a local authority, such person shall give in writing to the chief executive officer of such local authority notice of such death and the cause thereof by delivering or by despatching by registered post, within twelve hours after such death, to such chief executive officer such notice.*
>
> *(2) If any person fails or neglects to comply with the provisions of this section, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding ten pounds".*

1.190 The *Factories Act 1955* required that the Minister for Industry and Commerce be notified of any death at a factory owing to accident. The 1955 Act applied to the Mother and Baby Homes, County Homes and Magdalene Laundries by virtue of section 84(1) which provided:

> *"84.—(1) Where, in any premises forming part of an institution carried on for charitable or reformatory purposes, any manual labour is exercised in or incidental to the making, altering, repairing, ornamenting, finishing, washing, cleaning, or adapting for sale, of articles not intended for the use of the institution, but the premises do not constitute a factory, then, nevertheless, the provisions of this Act shall, subject as hereinafter in this section provided, apply to those premises".*

1.191 Section 1 of the *Coroners (Amendment) Act 1927* imposed an obligation on a coroner to hold an inquest where there was a reasonable cause to suspect that person died either a violent or unnatural death or a sudden death of which the cause is unknown or that such person has died in prison or in such place or in such circumstances as to require an inquest under any other Act.

1.192 Section 2(1) of the 1927 Act gave the coroner the power to inquire into the circumstances of the death of a person who was not attended throughout his last illness by a duly qualified medical practitioner or in whose case a medical certificate of the cause of death was not procurable.

1.193 Section 2(2) of the 1927 Act required the local Superintendent or other officer of An Garda Síochána, if he became aware, to inform the coroner of any person who was not attended throughout his last illness by a duly qualified medical practitioner, or in whose case a medical certificate of the cause of death was not procurable.

1.194 Section 15 of the 1927 Act provided for exhumation in circumstances where a body had already been buried and the coroner was made aware that there was reason to believe that person died either a violent or unnatural death.

1.195 The 1927 Act was repealed and replaced by the *Coroners Act 1962*, which contained a number of similar provisions to those outlined above in respect of the investigation into the cause of death.[264]

1.196 Section 47 of the 1962 Act permits a coroner who is informed by a member of An Garda Síochána not below the rank of inspector, that it is his opinion that the death of any person whose body has been buried in the coroner's district may have occurred in a violent or unnatural manner, to request the Minister for Justice to order the exhumation of the body by An Garda Síochána.

1.197 Some legislation also created obligations in relation to burials.

1.198 The *Public Health (Ireland) Act 1878* divided Ireland into urban and rural sanitary districts. Each sanitary district was subject to the jurisdiction of a sanitary authority.[265] Section 175 of the 1878 Act permitted a sanitary authority to contract for and purchase or take lands and buildings for the purpose of forming a burial ground. The 1878 Act empowered the Minister to make Regulations for the control of burial grounds provided by Local Authorities.[266]

1.199 However, in *McCarthy v. Johnson* Walsh J noted:

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264 Section 17 of the Coroner's Act 1962 provides:*"17.—Subject to the provisions of this Act, where a coroner is informed that the body of a deceased person is lying within his district, it shall be the duty of the coroner to hold an inquest in relation to the death of that person if he is of opinion that the death may have occurred in a violent or unnatural manner, or suddenly and from unknown causes or in a place or in circumstances which, under provisions in that behalf contained in any other enactment, require that an inquest should be held".*

Section 18(1) of the Coroner's Act 1962 ("the 1962 Act") provides:*"18.—(1) Where a coroner is informed that the body of a deceased person is lying within his district and that a medical certificate of the cause of death is not procurable, he may inquire into the circumstances of the death of that person and, if he is unable to ascertain the cause of death, may, if he so thinks proper, hold an inquest in relation to the death.*

Section 18(3) of the 1962 Act imposes a similar obligation on a member of An Garda Síochána to that provided under section 15 of the 1927 Act to notify the coroner of a death where the cause of death is not procurable:*(3) It shall be the duty of an inspector or officer of the Garda Síochána, if he becomes aware of the death within the district of a coroner of any person in whose case a medical certificate of the cause of death is not procurable, to inform the coroner of such death.*

Section 18(4) imposes a notification obligation on certain named persons in respect of a death believed by that person to have been directly or indirectly, as a result of violence or misadventure or by unfair means, or as a result of negligence or misconduct or malpractice on the part of others, or from any cause other than natural illness or disease for which he had been seen and treated by a registered medical practitioner within one month before his death, or in such circumstances as may require investigation.

Failure to notify in accordance with section 18(4) is a summary offence punishable by a fine not exceeding twenty pounds.

265 Section 3 of the Public Health (Ireland) Act 1878

266 Section 181 of the Public Health (Ireland) Act 1878; Rules & Regulations for the Regulation of Burial Grounds 1888 as amended by 1919 and 1929 Regulations

> *"A study of the law in this matter reveals that until the passing of the Local Government (Sanitary Services) Act, 1948, there was no legal provision which could prevent the burial of a person in any ground which was not a recognised burial ground and which was not consecrated ground. There existed certain formalities and legal provisions dealing with the consecration of burial grounds but they have nothing to do with the present case. It appears to have been the situation up to the passing of the Act of 1948 that a person could be buried in any plot of ground and, subject only to the law concerning nuisance, there was no law to prevent it".*[267]

1.200 From the passing of the *Local Government (Sanitary Services) Act 1948* Act no new burial grounds could be opened without the consent of the Minister for the Environment. Section 44 of the 1948 Act prohibited the burial of a person otherwise than in a burial ground being a burial ground for the purposes of the Act. Section 44(2) of the 1948 provided:

> *"(2) The following (and no other) places shall be burial grounds for the purposes of this section—*
>
> *(a) a place which is in lawful use as a burial ground and which was, immediately before the commencement of this section, in lawful use as a burial ground,*
>
> *(b) a place as respects which the Minister has, after the commencement of this section, given his approval to its being used as a burial ground,*
>
> *(c) a burial ground provided by a burial board under the Acts".*

Conditions in the Homes and Institutions

Medical Care

1.201 Although the stated purpose of the Mother and Baby Homes was to offer pregnant unmarried women a place to give birth, it is noticeable that they offered either no or very limited medical care prior to, and even during and after birth.

1.202 June Goulding, (now deceased) who worked as a midwife for a year in the Sacred Heart Home in Bessborough from 1951 says that the rules in Bessborough made a *"mockery of [her] training"*.[268] She recalls that no pain relief was administered during labour[269] and that girls who screamed were *"admonished"*, because screaming "*was forbidden and a smart lecture ensued".*[270] On one occasion Goulding wanted to stitch a tear which had occurred as a girl gave birth to her almost nine-pound son, however she was refused access to the cabinet in which the medical supplies were held. She was told

> *"I'm afraid, Nurse, the key to that cabinet has never been handed over. Girls must suffer their pain and put up with the discomfort of being torn – [the Reverend Mother] says that they should atone for their sin".*[271]

1.203 On her first day in Bessborough, Goulding witnessed one mother in tears as she attempted to breastfeed her child while simultaneously attending to an abscess on her breast. She remembers a nun warning the mother not to *"let the pus into the baby's mouth".* Goulding says

> "*I was dumbfounded. It was quite obvious that each time the hungry baby gulped its mother's milk the pain in her infected breast became excruciating. I had previously nursed unfortunate women in the training hospital with blocked milk ducts whose temperatures shot up to 103 degrees. We tried to ease their*

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267 [1989] IR 691, 693

268 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 31)

269 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 59)

270 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 29)

271 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 31)

> *discomfort with hot face-cloths and four-hourly dosages of aspirin. When this did not arrest the problem they were put on penicillin. I had never before seen an abscess that had actually created such an enormous open wound. 'Sister,' I whispered in muted tones in an effort to avoid alarming the distressed patient. 'Is she on antibiotics?' The reply came as a withering look as the nun continued to glance at the other mothers and order them to give the babies ten minutes at each breast".*[272]

1.204 Witness 25 says of her son's birth at Sean Ross Abbey in 1952, "*[t]here was no doctor present, just nuns, and there was no formal medical care or any kind of pain relief*".[273]

1.205 Witness 25's son was in the breech position and the nun had "*never done one of those [births] before*" and thought that Witness 25 was going to die.[274]

1.206 Witness 20 relates her mother's account of giving birth at Sean Ross Abbey in 1959:

> "*She was tied to the bed and when she couldn't push, one of the nuns sat on her chest to make her*"[275].

1.207 Witness 5 says that at St Patrick's, Navan Road in 1956:

> "*[A religious sister] acted as the midwife but there was no specialist medical attention provided*"[276].

1.208 Witness 12 says that during her son's birth at Bessborough in 1967, not only was there no trained medical support: "*I was never once examined by a doctor*". Witness 12 was left in labour during the night with no help from the nuns at all. She says that during the evening

> "*as the pain progressed, I was locked in what I can only describe as a cell … I was left there all night with no attention*". [277]

1.209 In the morning, a nun came into the cell to check on Witness 12, but did not help her get on to the delivery table:

> "*so I lay across it and that's how I gave birth*".[278]

1.210 Witness 11 gives similar evidence about giving birth in Bessborough in 1960. She says that when she went into labour "*the nun in the corner room ignored my calls for help*". She says that she was locked in the labour room alone for 72 hours:

> "*I was in terrible pain and was afraid but when I screamed or called for help I was abused*". [279]

1.211 An injection on the second day of labour was administered by a nun and not a doctor. It is this which Witness 11 believes

> "*is what caused my baby's death and almost caused my own*". [280]

1.212 When Witness 11 did eventually see a doctor to remove abscesses on her back and breast,

> "*he did so without any antiseptic or anaesthetic. He handled me extremely roughly, I was in a lot of pain, but he just pushed me around while he operated*".[281]

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272 June Goulding (1998) *The Light in the Window*. Dublin: Poolbeg Press Limited. (Page 17)
273 Appendix 1: Tab 25 paragraphs 15 and 16
274 Appendix 1: Tab 25 paragraphs 15 and 16
275 Appendix 1: Tab 20 paragraph 29
276 Appendix 1: Tab 5 paragraph 17
277 Appendix 1: Tab 12 paragraph 18
278 Appendix 1: Tab 12 paragraph 18
279 Appendix 1: Tab 5 paragraphs 20, 21 and 24
280 Appendix 1: Tab 5 paragraphs 20, 21 and 24

1.213 Even by 1982, medical conditions at Bessborough were poor. Witness 32 says that

> "*the only antenatal care we received was from one sister who took our blood pressure and carried out urine tests … birthing conditions at Bessborough were primitive and the girls were in agony after the birth*".[282]

1.214 Medical conditions were also poor for unmarried mothers giving birth in the County Homes. Witness 17 says of her birth at the County Home, Killarney in 1949 that

> "*The medical care my mother received at the County Home was minimal at best. No medical doctor attended my birth, instead it was overseen by nuns*".[283]

1.215 Medical conditions were only marginally better at private nursing homes. Witness 22 gave birth at a private nursing home in 1973 and understands that a doctor was in attendance, although she did not see him and "*was not consulted about the administration of any anaesthetic, or about any decisions taken during delivery*". [284] She

> "*understood that [her daughter] suffered some damage to her head in the course of being delivered … I suspect that this may have been the result of the use of forceps but, to date, I have been unable to obtain any medical records relating to the birth*".[285]

1.216 It appears that the Registration of Maternity Homes Act 1934 was not properly enforced. The 1934 Act required every local authority to maintain a register of Maternity Homes, defined as *"any premises which are, wholly or partly, used or intended to be used for the reception of pregnant women or of women immediately after child-birth".*[286] Section 6 of the Act made it an offence to carry on an unregistered maternity home, unless an exemption had been provided by the Minister. Section 5 of the Act provided for refusal of registration where the applicant was not a fit and proper person to carry on a maternity home, where the premises were unsuitable for use for a maternity home, or where the superintendent nurse of the home was not a qualified nurse or certified midwife. Section 12 of the Act provided for inspection of Maternity Homes.

1.217 Earner-Byrne notes that the Legion of Mary's Regina Coeli hostel in Dublin was given an exemption from registration under the Maternity Homes Act in November 1934. According to Earner-Byrne:

> "*Under the 1934 Registration Act, the [Regina Coeli] hostel should have been obliged to keep records and undergo annual inspections. However, due to the Legion's resistance to outside interference and the department's dependence on voluntary initiatives with regard to the care of unmarried mothers, the hostel had been granted an exemption in November 1934".*[287]

1.218 This begs the question whether other "voluntary" institutions in which unmarried mothers gave birth received similar exemptions. Voluntary organisations are characterised by having an autonomy from the State, are self-governing through a board of unpaid trustees, are aided by philanthropy, offer a beneficial service to non-members, are largely open to a wide diversity of members and have a not-for-profit ethos. The religious orders' insistent claims that the Mother and Baby Homes that they ran were straightforward voluntary organisations are wilful denials of reality. On a number of grounds the Mother and Baby homes run by religious orders cannot be described as voluntary organisations, not the least being that these orders were funded by the State, and were, in fact, private operators who derived significant financial benefit from addressing the 'problem' of

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281 Appendix 1: Tab 5 paragraphs 20, 21 and 24
282 Appendix 1: Tab 32 paragraphs 13 and 23
283 Appendix 1: Tab 17 paragraph 8
284 Appendix 1: Tab 22 paragraphs 11-13
285 Appendix 1: Tab 22 paragraphs 11-13
286 Registration of Maternity Homes Act 1934, s1.
287 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press (Pages 200-201), citing Regina Coeli exemption under section 6 of Registration Act, 1934, NAI, Dept. Health, M134/58.

unmarried mothers – a 'problem' of stigma that was conceptualised largely through the doctrine of those religious orders.

1.219 In 1946, Chief Medical Officer of the Department of Local Government and Public Health, Dr James Deeny, ordered an examination of the Regina Coeli hostel in response to the high infant mortality rates at the institution (Earner-Byrne notes that in 1945, 48 of 156 babies at the institution died and in 1946, 33 babies of 88 died of gastro-enteritis).[288] According to Earner-Byrne, the inspection of the hostel in 1946 revealed that

> *"there were only seven permanent members of staff, no qualified nurse and doctor to provide care for the [220] babies and unmarried mothers resident in the hostel".*[289]

1.220 Deeny removed the hostel's exemption from the 1934 Registration of Maternity Homes Act in May 1948.[290]

1.221 Section 21 of the Health Act 1947 provided that:

> "*A health authority shall, in accordance with regulations made under section 28 of this Act make arrangements for safeguarding the health of women in respect of motherhood and for their education in that respect*".

1.222 Any such arrangements for safeguarding the health of unmarried mothers do not appear to have been made.

Forced Labour in the Homes and Institutions

1.223 Pregnant women in the Mother and Baby Homes were expected to carry out heavy physical work, even up to the day of their labour. June Goulding says that the girls in Bessborough were forced to *"pluck"* the *"manicured"* lawns by hand.[291] On one occasion she also witnessed the girls being forced to tar the driveway. She says there were:

> *"about eight to ten girls, all in varying degrees of pregnancy, with heaps of gravel, a fire burning to heat a black bucket of tar and a roller that took three pregnant girls to pull".*[292]

1.224 Witness 25 says that the day after she arrived at Sean Ross Abbey in May 1952, she was put to work in the laundry between approximately 8.30am and 4pm. It was:

> "*heavy work scrubbing clothes and bedding on boards, washing and ironing all with our bare hands during a 6 day week*".[293]

1.225 Witness 11 scrubbed the stone floors and passageways at Bessborough and says:

> "*We were made to work even if we were very ill, as I was. No excuses were ever accepted*".[294]

1.226 Witness 26 worked in the laundry attached to the Good Shepherd Mother and Baby Home at Dunboyne for 7 hours a day, 6 days a week.[295] And Witness 12 says that the pregnant

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288 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press (Page 200) citing NAI, Dept of Health, M134/60

289 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press (Page 200) citing Daly to Deeny, 6 September 1949, NAI, Dept. Health, M134/60.

290 Lindsey Earner-Byrne (2007) *Mother and Child: Maternity and Child Welfare in Dublin 1922-60.* Manchester: Manchester University Press (Page 200)

291 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 166-167)

292 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 193)

293 Appendix 1: Tab 25 paragraph 12

294 Appendix 1: Tab 11 paragraphs 11, 15 and 26. The only exception was that mothers whose families paid for their stay at the Mother and Baby Home were treated slightly better – Witness 16 says that her mother was given work in the nursery, "meaning that she had a lot of contact with me" and was only required to carry out farm work, picking potatoes, 1 or 2 days a week – see paragraph 15 of her witness statement

women were required to work at Bessborough. She says she was required to cut the lawn with scissors with a group of other women:

> "*we were not allowed to stop when we felt tired. In the winter months I had to polish and scrub the corridors. Other women were sent to work in the laundries. The work was especially difficult given that I and the other women were pregnant. I worked seven days a week every week until I went into labour*". [296]

1.227 Witness 12 says "*I went into labour while polishing the corridor floors*".[297]

1.228 Similarly, Witness 70 says that her mother, went into labour at St Patrick's, Navan Road in 1966

> "*when she was on top of a ladder fixing curtains and that she was forced to finish this chore before she would be transferred to St Kevin's (maternity hospital) regardless of the fact she had gone into labour*".[298]

1.229 Women and girls were then required to resume that work, shortly after giving birth. Witness 20, who was born in Sean Ross Abbey, says that

> "*my birth mother was sent back to work in the fields and the laundry just two days after my birth*".[299]

1.230 Witness 25 says that, 8 weeks after she gave birth to her son, she went back to work in the laundry attached to the Mother and Baby Home at Sean Ross Abbey. She was required to work in the laundry for a further three and a half years until her son was adopted.[300]

1.231 Witness 5 was sent back to work at St Patrick's 2-3 days after giving birth.[301]

1.232 None of the mothers say that they received any monetary payment or privileges for their work.[302]

1.233 Unmarried women who gave birth at the County Homes were treated in a similar way. Witness 17's mother gave birth at the County Home in Killarney, which was run by the Mercy Order of nuns. She washed linen and provided care to elderly and infirm patients

> "*right up until the day before she gave birth to me and did not receive any payment in return. After the birth, she received little time to recuperate before she was forced to return to work. My mother told me that, as a general rule in the County Home, all girls and women returned to work as soon as their babies were born. This meant that she had little spare time to care for me during the weeks and months after I was born*".[303]

1.234 Witness 18 says of his mother, who spent almost 5 years in the 1950s at the West Cork County Home:

> *"It was a hard life for my mother in the home. She was not paid for her work in the home".*[304]

1.235 Women who were incarcerated in Magdalene Laundries were forced to work constantly and unpaid, as evidenced in the McAleese Report.[305]

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295 Appendix 1: Tab 26 paragraphs 3.3 and 3.4
296 Appendix 1: Tab 12 paragraphs 16 and 18
297 Appendix 1: Tab 12 paragraphs 16 and 18
298 Appendix 1: Tab 70 paragraph 37
299 Appendix 1: Tab 20 paragraph 31
300 Appendix 1: Tab 25 paragraphs 18 and 20
301 Appendix 1: Tab 5 paragraph 17
302 Appendix 1: Tab 11 paragraph 11 ; Appendix 1: Tab 26 paragraph 3.4
303 Appendix 1: Tab 17 paragraphs 7 and 9
304 Appendix 1: Tab 18 paragraph 28

Rule of Silence

1.236 June Goulding says there was a rule of silence in Bessborough, where there was an *"almost penitential"*[306] atmosphere. She says:

> *"The girls were treated like criminals in this building and there was a general air of penitence. It permeated every corner – even the chapel. Those in charge who ran the godforsaken place like a prison did so as cruelly and as uncaringly as any medieval gaoler".*[307]

1.237 Goulding says she herself was:

> *"intimidated into a silence that [she] found crushing, as it was obvious that [the Reverend Mother] had ultimate control over each and every sphere of this hospital".*[308]

1.238 Goulding says that when she arrived she was brought on a tour of the institution, and when they reached the *"dayroom":*

> *"Forty or more blue-uniformed girls were sitting at a long table. There had been a babble of voices outside the door but, once the nun and I appeared, there was a total silence and all heads were turned towards their knitting. A few looked up furtively. 'Get on with your knitting and no talking,' the nun said in that tone that made me feel like a teenaged girl who had not learnt her algebra".*[309]

1.239 Witness 11 says that:

> *"[a] rule of silence was enforced at Bessborough. We could not talk and had to whisper to each other. We were not to be heard, and if we were, we were reprimanded".*[310]

1.240 Witness 12 says that in Bessborough *"you were never to speak of your identity or where you came from"*.[311]

1.241 Witness 47 was sent to Bessborough after she became pregnant at the age of thirteen following a rape in England. She says:

> *"I remember that it was very strange and lonely for me in Bessboro, I couldn't use my own name … or wear my own clothes. The other girls looked after me and helped me because I was so young and didn't know what was happening to me".*[312]

Other Aspects of the Living Conditions in the Homes and Institutions

1.242 All of the witnesses say that conditions in the Mother and Baby Homes and other institutions were hard.

1.243 They were cold.[313]

1.244 They were poorly fed and hungry (unlike the religious sisters).[314] June Goulding says that the food was "*frugal"* in Bessborough, and *"inmates"* were given margarine – *"the ultimate insult in 1951",* while the nuns were given butter.[315]

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305 McAleese Report, Chapter 19, paras 35, 39, 64-68, 131, 143; Chapter 20 para 33.
306 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 18)
307 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 42)
308 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 18)
309 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 7)
310 Appendix 1: Tab 11 paragraph 10
311 Appendix 1: Tab 12 paragraph 7
312 Appendix 1: Tab 47 paragraph 9
313 Appendix 1: Tab 11 paragraphs 12-13 ; Appendix 1: Tab 25 paragraph 11

1.245 And they were frightened.[316]

1.246 Witness testimony suggests that conditions were similar at the County Homes. Witness 18 says of West Cork County Home in the early 1950s:

> "*As I was very young I only have a vague recollection of my mother. I remember her crying and saying she wanted to get out of the home*".[317]

1.247 If mothers did anything the nuns disapproved of they would be punished. Punishments might include hair cutting, solitary confinement, beating, as well as deprivation of food and water.[318]

1.248 Conditions at Bessborough "*were worse than a prison – prisoners have rights but we had no rights at all*".[319]

1.249 The women at Bessborough were *"stripped of all … human rights and dignity*" and were never told of their rights or how long they would be there.[320]

1.250 Conditions at Dunboyne were similar: "*There were bars on the windows and it was like a prison*".[321]

1.251 At both homes there was no one to complain to and nothing that the mothers could do about their treatment.[322] Even in 1982, Bessborough is described as being a "*holding pen … you were only there because nobody wanted you*".[323]

1.252 Punishments included being "*routinely denied contact with their children*".[324]

1.253 Even where women were not being expressly punished, the nuns routinely limited unmarried mothers' contact with their own children after they had given birth. Witness 20 says that after her birth in Sean Ross Abbey in 1959

> "*My birth mother was allowed to see me just once a day for an hour each day after my birth when the babies were brought in to be fed. However, the babies were fed by whoever was available, not necessarily by their own mothers. The mothers were actively prevented from bonding with their babies".*[325]

1.254 After Witness 25 gave birth to her son at Sean Ross Abbey in 1952, she was allowed to see him for an hour a day under the supervision of the nuns.[326]

1.255 Similarly, Witness 5 says that at St Patrick's in 1956, the only contact she had with her daughter:

> "*was when I was taken to the nursery to feed her but, after feeding, I was taken back to work*".[327]

1.256 Witness 11 says that at Bessborough in 1960 the mothers fed the babies in the nursery:

> "*but never our own*".[328]

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314 Appendix 1: Tab 26 paragraphs 3.2, 3.3 and 6.4 **;** Appendix 1: Tab 11 paragraphs 13, 15 and 18 ; Appendix 1: Tab 12 paragraph 14 ; Appendix 1: Tab 70 paragraph 37 ; Appendix 1: Tab 25 paragraph 11

315 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 43)

316 Both of punishment by the nuns and of what would happen to their children. See Appendix 1: Tab 11 paragraphs 12, 15 and 19

317 Appendix 1: Tab 18 paragraph 5

318 Appendix 1: Tab 11 paragraphs 15 and 17

319 Appendix 1: Tab 11 paragraphs 8 and 32

320 Appendix 1: Tab 12 paragraph 9

321 Appendix 1: Tab 26 paragraph 3.6

322 Appendix 1: Tab 11 paragraphs 15 and 32; Appendix 1: Tab 26 paragraph 3.10

323 Appendix 1: Tab 32 paragraph 15

324 Appendix 1: Tab 11 paragraph 15

325 Appendix 1: Tab 20 paragraph 32

326 Appendix 1: Tab 25 paragraph 18

327 Appendix 1: Tab 5 paragraph 17

1.257 Witness 12 says that at Bessborough in 1967-68 her son was immediately taken away from her after his birth and locked in the nursery and she could only spend time with him when she fed him.[329]

1.258 Witness 26 says that at Dunboyne in 1968 mothers saw their babies:

> "*three times a day and only for a very short period of time; just long enough to feed them*".[330]

1.259 The mothers were stigmatised for giving birth outside of marriage. Witness 25 says of her time in Sean Ross Abbey:

> "*The key thing I remember is that the nuns kept on reminding us that we had committed a mortal sin and that our shame should be eternal*".[331]

1.260 Witness 20 says that when her mother gave birth to her at Sean Ross Abbey in 1959

> "*the nuns wouldn't call her by name, they called her a 'fallen woman*'".[332]

1.261 Witness 12 says that at Bessborough in 1967-68,

> "*The nuns constantly told me I was evil, that no one would ever want to marry me and that I would never make anything of my life. On a personal level this was very damaging …*".[333]

1.262 Witness 17 says that the nuns at the County Home in Killarney subjected her mother to verbal cruelty when giving birth –

> "*when my mother cried out in pain during labour she was told by one of these nuns that she should not be surprised as my mother was "paying for her sins".*[334]

1.263 The conditions in the Mother and Baby Homes appears to have contrasted with the situation at church-run private nursing homes of the period.[335]

1.264 Witness 22 says that when she gave birth to her daughter in a private nursing home in 1973,

> "*I was reasonably well-treated at St Michael's following the birth of my daughter and stayed there for only seven days until I was well enough to go home to my family. During that time, I was looked after by a young nurse … I was given sufficient to eat, wore my own clothes and was generally comfortable*".[336]

1.265 However, the regime at the private nursing home was similar to that at the Mother and Baby Homes in at least one respect. Witness 22 says that she did not see her daughter whilst at St Michael's.

> "*She was taken away immediately after she was born*" and "*I therefore never fed her*".[337]

1.266 It was made clear to Witness 22 that she would not be allowed to visit her at any stage. However, her brother and sister in law were able to take her to see her once, after her transfer to St Patrick's, shortly before she was adopted.[338]

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328 Appendix 1: Tab 11 paragraph 11
329 Appendix 1: Tab 12 paragraphs 19 and 20
330 Appendix 1: Tab 26 paragraph 3.2
331 Appendix 1: Tab 25 paragraphs 13-15
332 Appendix 1: Tab 20 paragraph 29
333 Appendix 1: Tab 12 paragraph 10
334 Appendix 1: Tab 17 paragraph 8
335 Except in regard to medical treatment and the availability of options for unmarried mothers other than the adoption of their children – see paragraphs 1.1-1.9; 1.38-1.42; 1.57-1.65; 1.201—1.222.
336 Appendix 1: Tab 22 paragraph 14
337 Appendix 1: Tab 22 paragraphs 15, 16, 20 and 23

1.267 JFMR's predecessor organisation, Justice for Magdalenes, made a Principal Submission to the McAleese Committee which summarised 3,707 pages of archival and legislative documentation, as well as 795 pages of witness testimony.[339] JFM's Principal Submission and testimony provided by Magdalene survivors to the United Nations,[340] in curated oral history projects[341] and in the media[342] provide evidence of:

(a) Girls and women living behind barred and/or unreachable windows, locks on all doors, and perimeter walls which were barbed on the top;[343]
(b) Escape attempts being thwarted by the *Gardaí*;[344]
(c) Girls and women witnessing the deaths of other women confined in Magdalene Laundries[345] and disrespectful funerals and burials;[346]
(d) Physical neglect, including inadequate food,[347] poor hygiene,[348] cold conditions[349] and lack of access to pain relieving medication;[350]
(e) Physical assault,[351] and other punishments including deprivation of meals[352] and denial of recreation;[353]
(f) Prohibitions on sending and receiving mail;[354]
(g) A lack of access to newspapers, save for occasions when clothes were wrapped up in old newspaper;[355]
(h) Denial of access to close relatives living in other parts of the convent complexes;[356]

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338 Appendix 1: Tab 22 paragraphs 15, 16, 20 and 23

339 JFM Principal Submission to the IDC: State Involvement in the Magdalene Laundries. Appendix 2: Tab 33

340 See Justice for Magdalenes, Submission to the United Nations Committee against Torture (May 2011). Appendix 2: Tab 34

341 See Glynn, Breaking the Rule of Silence, http://www.magdalenelaundrylimerick.com, O'Donnell, Magdalene Institutions: Recording an Archival and Oral History (University College Dublin) http://jfmresearch.com/home/oralhistoryproject/

342 Among others: Vignoles, 'Magdalene Laundry Institute for Outcast Women', RTÉ Radio 1, Ireland - Documentary on One (14 November 1992), http://www.rte.ie/radio1/doconone/2013/0207/647346-radio-documentary-magdalene-laundry-galway/; *Witness: Sex in a Cold Climate* (1998). Produced by Steve Humphries. Testimony Films for Channel 4, Great Britain, (16 March), https://www.youtube.com/watch?v=FtxOePGgXPs; *Les Blanchisseuses De Magdalen* 1998. Une Film du Nicolas Glimois et Christophe Weber. Produced by Arnaud Hanelin. France 3/Sunset Preste; *The Magdalen Laundries* 1999. Narr. Steve Croft, prod. L. Franklin Devine. 60 Minutes, CBS News, New York (3 January); Washing Away the Stain 1993. Directed by Sarah Barclay and Andrea Miller BBC 2 Scotland (16 August); Mary Norris in Angela Lambert, 'A very Irish sort of hell', (2003) Sunday Telegraph, 2 March; RTE Radio 1, Liveline (28, 29 September 2009); RTE Prime Time, 'The experiences of some of the Magdalene Laundry women' (25 September 2012), http://www.rte.ie/news/player/2013/0205/3401239-the-experiences-of-some-of-themagdalene-laundry-women/

343 JFM Principal Submission to the Inter-departmental Committee on the Magdalene Laundries, p13-16. Appendix 2: Tab 33

344 JFM 2011 submission to UNCAT, Appendix IV. Appendix 2: Tab 34

345 JFM Principal Submission to the Inter-departmental Committee on the Magdalene Laundries p22. Appendix 2: Tab 33; JFM 2011 submission to CAT, Appendix IV. Appendix 2: Tab 34

346 JFM Principal Submission to the Inter-departmental Committee on the Magdalene Laundries p22. Appendix 2: Tab 33; Death, Institutionalisation & Duration of Stay: JFMR Critique of Chapter 16 of McAleese Report. Appendix 2: Tab 29

347 JFM Principal Submission to the Inter-departmental Committee on the Magdalene Laundries, p31-32. Appendix 2: Tab 33; JFM 2011 submission to CAT, Appendix IV. Appendix 2: Tab 34

348 JFM Principal Submission to the Inter-departmental Committee on the Magdalene Laundries p32. Appendix 2: Tab 33; JFM 2011 submission to CAT, Appendix III, Appendix IV. Appendix 2: Tab 34

349 JFM Principal Submission to the Inter-departmental Committee on the Magdalene Laundries p32. Appendix 2: Tab 33

350 JFM 2011 submission to CAT, Appendix IV. Appendix 2: Tab 34

351 JFM Principal Submission to the Inter-departmental Committee on the Magdalene Laundries p 22 – 24, Appendix 2: Tab 33. JFM 2011 submission to CAT, Appendix III. Appendix 2: Tab 34

352 JFM Principal Submission to the Inter-departmental Committee on the Magdalene Laundries, p19, Appendix 2: Tab 33

353 JFM 2011 submission to CAT, Appendix IV. Appendix 2: Tab 34

354 JFM Principal Submission to the Inter-departmental Committee on the Magdalene Laundries p17-19. Appendix 2: Tab 33

355 JFM Principal Submission to the Inter-departmental Committee on the Magdalene Laundries p19-20. Appendix 2: Tab 33

(i) Girls and women being called by numbers and "house" names, instead of by their own names;[357]
(j) The imposition of a rule of silence;[358] and
(k) The lifelong psychological effects of the Magdalene Laundries abuse, including experiencing nightmares, depression and despair; feeling ashamed, stigmatised, worthless, nervous and frightened; and finding it difficult to integrate in society and to maintain relationships.[359]

Additional Discrimination Against Certain Unmarried Mothers

1.268 There is considerable evidence in witness statements given to the Clann Project that the religious sisters in Mother and Baby Homes treated mothers less favourably if the mothers themselves or their children came from minority or marginalised groups.

1.269 Witness 11 was herself born outside of marriage. She believes that she was treated worse by the religious sisters at Bessborough because of this.[360]

1.270 Witness 26 says that at Dunboyne

> "*I was treated differently because my baby was mixed race".*

She says that one of the religious sisters said that

> *"this is the first and last time a black child will ever be here"*[361].

1.271 Witness 28, who was adopted through St Louise's Adoption Society, says that adopted children were treated differently depending on the social background of the natural family. This determined the category into which the baby was placed. The *"higher"* categories of adoptees appear to have been placed with better families, such as the families of doctors and other professionals.

> "*Because my birth mother had come from an industrial school, I probably fell into one of the lowest categories and therefore was placed with a less well-off family*".[362]

1.272 This is confirmed by Witness 22, who came from a relatively affluent family. She was told by the Catholic Protection and Rescue Society of Ireland (CPRSI) during the adoption process that her daughter's adoptive parents "*would be from a family similar to mine*".[363]

1.273 Witness 32 says that there was a hierarchy of the girls at Bessborough when she was there in 1982:

> "*Some of the girls were treated quite well if they had worked previously and received state allowances – they generally got what they wanted. Because I was poor, and had refused to work in the nursery, I would have come quite low on the ladder*"[364].

1.274 Witness 5 explains that she became pregnant after she was raped by a priest when she sought help after running away from a Magdalene Laundry

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356 JFM Principal Submission to the Inter-departmental Committee on the Magdalene Laundries, p20. Appendix 2: Tab 33
357 JFM Principal Submission to the Inter-departmental Committee on the Magdalene Laundries, p24 – 25. Appendix 2: Tab 33; JFM 2011 submission to CAT, Appendix III, Appendix IV. Appendix 2: Tab 34
358 JFM Principal Submission to the Inter-departmental Committee on the Magdalene Laundries p31. Appendix 2: Tab 33; JFM 2011 submission to CAT, Appendix IV. Appendix 2: Tab 34
359 JFM 2011 submission to UNCAT, Appendix IV. Appendix 2: Tab 34
360 Appendix 1: Tab 11 paragraphs 4 and 25
361 Appendix 1: Tab 26 paragraph 3.8.
362 Appendix 1: Tab 28 paragraph 9
363 Appendix 1: Tab 22 paragraph 33
364 Appendix 1: Tab 32 paragraph 11

> "*Knowing that I had spent my entire life in institutions run by nuns, I was asked by [the religious sisters] how I had fallen pregnant. I explained what had happened and how I had been raped by a priest … They asked me if I was sure about this and I confirmed that this was the only time I had ever been anywhere near a man. The nuns appeared to believe me but they did absolutely nothing about it*".[365]

Emotional and Psychological Impact of Forced Adoption on Mothers

1.275 The mothers with whom ARA and JFMR have been in contact say that they were not told when their children would be taken away for adoption – and when it did happen, it would take place suddenly. This was often after several years of being in the Mother and Baby Home with their child. These features of the adoption process had a profound impact on the mothers.

1.276 Witness 25 says that for each day of the six months period after she signed the adoption papers for her son before he was taken away:

> "*I was terrified that would be the day he was going to go. No one told me anything about when he might go or to whom he might go*".[366]

1.277 When Witness 25's son was taken from her in December 1955 at the age of 3½, she did not get a chance to say goodbye but was only able to see him getting into a car.

> "*There was no discussion about it in advance and I was given no information afterwards other than that he had gone. Being parted from him broke my heart*".[367]

1.278 Witness 11 says that another woman at Bessborough

> "*had a little boy, two and a half years old, and every day she cried for fear that he would be taken away from her*".[368]

1.279 Witness 16 says that her natural mother was only told after she was taken for adoption by another mother at Sean Ross Abbey: "*she's gone. She didn't even get to say goodbye".*[369]

1.280 Witness 20 says that her natural mother gave a similar account of her adoption from Sean Ross Abbey – her natural mother was not told when they took her daughter away for adoption or allowed to say goodbye to her daughter.[370]

1.281 The effects of having their children taken away from them have had a profound and lifelong impact on mothers who gave birth in Mother and Baby Homes.

1.282 Witness 19, who was born at St Patrick's Mother and Baby Home, Navan Road says that he has learned that "*my adoption caused my birth mother to have an emotional mental breakdown. She was institutionalized and became schizophrenic*". She died in a community home, where she "*often referred to her child and her wish to make contact*".[371]

1.283 Similarly, Witness 16's mother had a nervous breakdown and was admitted as a psychiatric patient after she was taken for adoption from her mother from Sean Ross Abbey:

> "*My mother firmly believes that this breakdown was triggered by my adoption*".[372]

1.284 The consequences are not confined to mental illness. Witness 21 says that her natural mother:

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365 Appendix 1: Tab 5 paragraph 16
366 Appendix 1: Tab 25 paragraphs 23 and 24
367 Appendix 1: Tab 25 paragraphs 23 and 24
368 Appendix 1: Tab 11 paragraph 26
369 Appendix 1: Tab 16 paragraph 15
370 Appendix 1: Tab 20 paragraph 32
371 Appendix 1: Tab 19 paragraph 20
372 Appendix 1: Tab 16 paragraph 15

> "*was very bitter and sad about having to give me up for adoption*", she was "*hugely upset about the fact that she had not been allowed to keep me although she had clearly wanted to, even to the extent that she tried to escape from St Patrick's and take me to England*". [373]

1.285 Witness 21 says her mother's bad treatment at St Patrick's left her natural mother

> "*deeply upset and bitter about the way in which she was treated, and about the Catholic Church more generally*".[374]

1.286 Witness 12 says that the trauma has caused her to

> "*suffer panic attacks, for example if I go to the theatre I have to sit near the door so that I can get out. I have had treatment over the years for these attacks from a psychotherapist and have had to develop strategies to manage them*". [375]

1.287 Witness 12 also believes that her hearing loss is a result of her treatment at Bessborough.[376]

1.288 Witness 20 says that her natural mother told her that

> "*she has suffered badly at the hands of the nuns at [Sean Ross Abbey] and had lost her religion over it*".[377]

1.289 In other cases, the trauma has prevented mothers who have been in contact with their children from developing a relationship with them. Witness 28, who was born at St Patricks, Navan Road, describes her mother as being "*still visibly traumatised by her experiences*" and that they have been unable to maintain contact since meeting.[378]

1.290 For those mothers whose children died in the Mother and Baby Homes, the effects have been devastating. Witness 11 says that

> "*After being freed from Bessborough, my life was made up of continual suicide attempts ... I could not accept how my baby had been allowed to die without any medical care".* [379]

1.291 Witness 11 says

> "*The nuns at Bessborough made my life hell and changed my life forever. I could not get over what happened to me. I think I am still in shock, still traumatised. My time in Bessborough was a horrible, horrific experience … I think I will die with the pain and trauma that was caused during this time*".[380]

1.292 Witness 2 says of her natural mother at Sean Ross Abbey:

> "*My mother was clearly traumatised by her treatment by the Sisters and would cower in their presence*".[381]

1.293 Witness 30 was put into a regular maternity ward after she had her baby at Holles Street and says:

> *"The level of insensitivity we experienced was shocking. No thought was given to how affected we would be by having bonded with our babies and having cared for them for five days".*[382]

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373 Appendix 1: Tab 21 paragraphs 8, 24 and 35
374 Appendix 1: Tab 21 paragraphs 8, 24 and 35
375 Appendix 1: Tab 12 paragraph 10
376 Appendix 1: Tab 12 paragraph 10
377 Appendix 1: Tab 20 paragraph 29
378 Appendix 1: Tab 28 paragraphs 20 to 22
379 Appendix 1: Tab 11 paragraphs 30 and 34
380 Appendix 1: Tab 11 paragraphs 30 and 34
381 Appendix 1: Tab 2 paragraph 17

1.294 Witness 73 was born in the Vevay Nursing Home in Dublin in 1964. She was extremely ill after her birth and was thus transferred to Temple Street Children's Hospital. Witness 73 learned from her mother that a senior paediatrician was

> *"scathing about the situation, in particular the fact that I had been born out of wedlock, and my mother said that he showed no compassion nor gave her the same respect as he would have given to a marital mother"*.[383]

1.295 Witness 26 has now found her daughter:

> "*but it has never really worked. We have never been able to forge a lasting relationship*".

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382 Appendix 1: Tab 30 paragraphs 37-38

383 Appendix 1: Tab 73 paragraph 8

2. SECTION 2: TREATMENT OF ADOPTED PEOPLE AS CHILDREN

Conditions in the Homes and Institutions

2.1 Because adopted and fostered/boarded out people were so young when they stayed in the Homes and Institutions, few have recollections of their time there. Generally, adopted people are dependent on mothers or other adults who were present in the institutions at the time for information. As discussed at Section 3 below, adopted people are denied even the most basic details about their early years and therefore any information (whether positive or negative) about their own early experiences about general conditions in these institutions is extremely important to have.

2.2 June Goulding recalls that births in Bessborough were a *"non-event"* and other girls were not allowed into the labour ward to see the new arrival.[384]

2.3 Witness 73 says that when she was in Temple Street Children's Hospital after her birth she was

> *"put into an incubator with another baby that was known to have E Coli. The fact that this occurred showed that the hospital simply didn't care and I believe that I was discriminated against because my mother was unmarried".*[385]

2.4 Witness 36 says that while it appears from photographs that she was in good health when she arrived to America from St Patrick's Mother and Baby Home, Navan Road, her adoptive parents were concerned that she was not yet walking at 15 months. She says:

> *"This is not out of the realm of normality for a 15 month old but it did lead them to wonder how much outdoor access I had been allowed or whether I had been kept in confined spaces. The second is that, to start with, I used to lay awake but very still in my crib with my eyes wide open (rather than moving, crying or shouting as you would expect a 15 month old to do). My parents told me that I did this for a good week or so after I arrived, until I became more comfortable".*[386]

2.5 Witness 33 says of her time in Navan Road:

> *"I only have a few memories of St Patrick's: one is of a nun shouting at me and ordering me to go into the toilet; a second memory is of being in a hospital with many beds; and the third memory is of running around with another child when a nun told me to get back into bed".*[387]

2.6 Witness 33 was six years old when she left St Patrick's Mother and Baby Home. She says

> *"I recall that on the day I was collected from St Patrick's by [her adoptive parents], I was standing in the front room of the convent when a driver came up to me to say "you're coming with us". I don't remember being informed in advance that I would be leaving St Patrick's".*[388]

2.7 It is extremely difficult to obtain information about conditions in institutions such as St Patrick's Infant Dietetic Hospital in Temple Hill or St Joseph's Baby Home in Stamullen, because mothers did not stay in the institutions with their children. ARA has had contact with numerous adopted people who stayed in Temple Hill and most say that they arrived to their adoptive parents in poor condition, with nappy rash. In her memoir, Caitríona Palmer says:

> *"I had arrived at [her adoptive parents' house] on the night of 2 June 1972 with a nappy rash unlike anything my parents or neighbours had ever seen before, my tiny buttocks bleeding and raw. None of the solutions that [her adoptive mother]*

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384 June Goulding (1998) *The Light in the Window.* Dublin: Poolbeg Press Limited. (Page 30)
385 Appendix 1: Tab 73 paragraph 9
386 Appendix 1: Tab 36 paragraph 14
387 Appendix 1: Tab 33 paragraph 11
388 Appendix 1: Tab 33 paragraph 15

> *tried seemed to work. Finally, in desperation, Mam tracked down a paediatric specialist in a Dublin hospital. Over time, this doctor solved the rash. Even now, over forty years later while recounting the story, I can sense the terror my mother felt: she feared that if she couldn't sort out the rash, the nuns might take me away from her. But I had developed the rash at Temple Hill".*[389]

2.8 Temple Hill provided nursery training to girls who also staffed the institution. Two former trainees who spoke to Caitríona Palmer described a hectic schedule at Temple Hill, where there was little time to pay much attention to the babies. Palmer asked one former trainee whether the babies were well cared for. She said:

> *"Yes, I think the babies were well cared for … I can remember once a young nurse being a bit rough with a baby in frustration because the baby wouldn't stop crying, but that's the only incident I can remember of somebody being a bit nasty. But when you look back, we were just young girls who had come straight from school with very little education. We did the best we could. But whether that was good enough? There is a big question mark over that".*[390]

2.9 When Palmer told the former trainee about her nappy rash and what another former trainee told her about the routine at Temple Hill, she said that:

> *"We were on a set schedule and a routine … We had to make sure that everything was done according to the timescale. And so if you fed a baby, put it back down and it soiled its nappy then it was going to be in it for quite some time. … There was no spontaneity or acknowledging an individual baby's needs. They were on the conveyer belt, basically, and there was no stepping off it.*[391]

2.10 Witness 67 says:

> *"My adoptive parents often recalled the poor condition in which I arrived to them from Temple Hill. They said that I was clearly undernourished and that I had severe nappy rash".*

2.11 Witness 73 also managed to speak to former nurses from Temple Hill, who told her that:

> *"Babies who were present there were denied affection and no response was made when they were crying. My understanding is that this was aimed at reducing crying by babies and to make it easier for them to be adopted by new parents. My adoptive parents regularly commented upon my lack of crying as baby and child and that I would lie awake for hours without making a sound".*[392]

2.12 Witness 67 also spoke to two former trainees from Temple Hill, one of which had stood for her when she was baptised in the institution. She says her "godmother" told her that:

> *"Temple Hill was a very strict institution and that trainees stayed in the nurses' home all the time, with little opportunity for them to socialise. [Her godmother] also told me that they had to check the babies for rashes and to see if they were losing weight, but in general the trainees did not handle the babies. She said that trainees would get attached to the older infants who were harder to adopt, as prospective adopters wanted younger babies, and had their pick of what eye colour or hair colour they wanted. [She] also told me that when visitors would arrive there was lots of showing off and putting the best quilts and clothes on the babies. In more recent years my natural mother recalled that she bought clothes and blankets for me to have, but I do not know whether I was actually given these during my time at Temple Hill".*[393]

2.13 In relation to the other former trainee, Witness 67 says:

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389 Palmer, C. (2016) *An Affair with My Mother.* Dublin: Penguin Ireland. (Page 179)
390 Palmer, C. (2016) *An Affair with My Mother.* Dublin: Penguin Ireland. (Pages 184-185)
391 Palmer, C. (2016) *An Affair with My Mother.* Dublin: Penguin Ireland. (Pages 182-185)
392 Appendix 1: Tab 73 paragraph 15
393 Appendix 1: Tab 67 paragraph 12

> *"Some years ago, I spoke with another woman … who was former trainee nurse at Temple Hill during the mid-1970s. During her time at Temple Hill, [she] acted as godmother to 16 children who were baptised while they were in the institution. [She] kept each of their identity bracelets and had hoped to reunite the bracelets with their original owners, but sadly she passed away unexpectedly a number of years ago before she was able to fulfil this wish. I had lengthy conversations with [her] about Temple Hill, which she said was a neglectful and abusive institution during her time there. She alleged that at Temple Hill, babies were underfed and subjected to other abuses, particularly from one particular nurse who would pinch the infants. She said that in general, infants were given no attention whatsoever, apart from being weighed, fed and changed every day, and in fact, trainee nurses would be chastised for giving any attention to them".*[394]

2.14 Witness 73's mother paid £2.10s (two pounds ten shillings) for the time that Witness 73 spent in Temple Hill. These payments represented a third of her weekly salary, and they continued for three months after Witness 73 left Temple Hill.[395]

Vaccine Trials

2.15 This section outlines documentary evidence and other background information which corroborates and is relevant to witness statements on the vaccine trials. The subject of vaccine trials carried out on children in Mother and Baby Homes and similar institutions first emerged in 1991, when three trials which took place in 1961, 1971 and 1973 were brought to the attention of the Minister for Health. The vaccines had been produced by Wellcome Laboratories, and the trials were carried out by Wellcome Laboratories in the UK, the Department of Medical Microbiology at University College Dublin and (in one trial) the Eastern Health Board. The vaccines were given to 211 Irish children, 123 of whom were in children's institutions. In 1998, the Minister for Health asked Dr James Kiely (Chief Medical Officer at the Department of Health) to produce a report on the vaccine trials issue. This report (the **"Kiely Report"**)[396] was subsequently published in 2000.[397]

2.16 According to the Kiely Report, 58 infants in 5 Mother and Baby Homes took part in Trial 1, which took place in 1961. The names of the 5 homes are not provided, however the Sacred Heart Home in Bessborough, Cork seems to have been involved.[398] To the Clann Project's knowledge, Witness 71 (see below) is the only person to have ever received confirmation of their involvement in this trial as an infant. Professor Irene Hillary of University College Dublin alleged that *"the management, medical officers and mothers were aware of the nature of the trial and gave their consent on that basis"*.[399] However, the Kiely Report notes that

> *"In the home in Bessboro, Cork, the mothers of the infants would also have been resident there but there is no written evidence to indicate whether the mothers' consent was sought or obtained for their children's participation in this trial. Further, there is no documentation available in Bessboro which describes the arrangements made between management and the researchers for the conduct of this trial".*[400]

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394 Appendix 1: Tab 67 paragraph 15

395 Appendix 1: Tab 73 paragraph 13

396 Dr James Kiely, *"Report on three Clinical Trials involving Babies and Children in institutional settings 1960/1961, 1970 and 1973"* Appendix 2: Tab 7

397 Report of the Inter-Departmental Group on Mother and Baby Homes, July 2014. Available at: https://www.dcya.gov.ie/documents/publications/20140716InterdepartReportMothBabyHomes.pdf (Page 17)

398 Report of the Inter-Departmental Group on Mother and Baby Homes, July 2014. Available at: https://www.dcya.gov.ie/documents/publications/20140716InterdepartReportMothBabyHomes.pdf (Page 18)

399 Dr James Kiely, *"Report on three Clinical Trials involving Babies and Children in institutional settings 1960/1961, 1970 and 1973".* (Page 19) Appendix 2: Tab 7

400 Dr James Kiely, *"Report on three Clinical Trials involving Babies and Children in institutional settings 1960/1961, 1970 and 1973".* (Page 19) Appendix 2: Tab 7

2.17 In this context it is worth noting that records relating to the vaccine trials carried out at Bessborough were not transferred to the Health Service Executive after the Sacred Heart Adoption Agency closed.[401] Witness 71 says that her mother gave evidence to the Commission to Inquire into Child Abuse that she did not consent to the trial:

> *"In October 2002, my mother and I were invited to give preliminary testimony to the legal team working under the Laffoy Commission in Dublin. My mother gave clear testimony that she was unaware I was being used in any trials, and that her consent was never sought for my participation".*[402]

2.18 A 2016 investigation by Conall Ó'Fátharta in the *Irish Examiner* revealed that files relating to infants involved in the 1961 vaccine trial at Bessborough were altered in the weeks after the CICA sought discovery of the records.[403] According to the *Irish Examiner*, changes to the records include:

- *"The alteration of discharge dates of mothers (by a period of one year and two years);*
- *The changing of discharge dates of children;*
- *The changing of admission dates of mothers;*
- *The alteration of the age of a mother (by two years);*
- *The alteration of dates of adoption;*
- *The changing of baptism dates and location of baptism;*
- *The insertion of certain named locations and information into admission books".*

2.19 The information obtained by the Irish Examiner correlates with records which Witness 71 requested under a data access request. She says that in her case, the altered information made it appear as though her mother had been discharged much earlier.

> *"These alterations seem to be specifically aimed at obscuring the lack of mothers' consent. Mr O'Fatharta, knowing I had a rather detailed file as a result of my FOI/DPA request, asked me to check my records and this made it clear that changes were made and a notation made of it in August 2002. I have filed a formal criminal complaint with the Cork Gardaí and Data Protection Commissioner regarding the alteration to my data …As these alterations were made while records were being formally requested by an ongoing statutory investigation, it is my contention that these alterations are both a criminal violation and a data protection breach. The Cork Gardaí have decided not to pursue a criminal investigation and have referred the matter to the Data Protection Commissioner ("DPC") and the current Commission of Investigation into Mother and Baby Homes. I have had no response as of yet from the DPC".*[404]

2.20 Trial 2 took place in 1971, and 69 children who were in a children's home in Dublin were involved.[405] According to the Kiely Report,

> *"As regards Trial 2, there is no information available which can clarify one way or another, whether consent was obtained for the participation in this trial of those children who were resident in the children's' home mentioned because there are no records".*[406]

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401 Irish Examiner, 10th August 2011_Vaccine Trial Files Will not be Transferred to HSE. Appendix 3: Tab 8

402 Appendix 1: Tab 71 paragraphs 31 to 32

403 Irish Examiner, November 15th 2016: Bessborough Mother and Baby Vaccine Trial Files Altered. Available at: https://www.irishexaminer.com/ireland/bessborough-mother-and-baby-vaccine-trial-files-altered-430609.html. Appendix 3: Tab 9

404 Appendix 1: Tab 71 paragraph 33

405 Report of the Inter-Departmental Group on Mother and Baby Homes, July 2014. Available at: https://www.dcya.gov.ie/documents/publications/20140716InterdepartReportMothBabyHomes.pdf (Page 18)

406 Dr James Kiely, *"Report on three Clinical Trials involving Babies and Children in institutional settings 1960/1961, 1970 and 1973".* (Page 41) Appendix 2: Tab 7

2.21 Trial 3 took place in 1973, involving 53 children in Mother and Baby Homes and other institutions, including St Patrick's Home, Navan Road; Madonna House; Cottage Home; Bird's Nest Home and Bohernabreena. According to the Kiely Report:

> *"As regards Trial 3, the question of consent is unclear. Available correspondence seems to indicate that the Medical Officer of some of the homes may not have been aware that residents of these homes were being given the vaccines prepared for the trial in use at the time. Professor Hillary asserts that she sought and received permission to use these newer vaccines in the homes as part of a clinical trial".*[407]

2.22 In terms of follow ups on the children involved in these trials, the Kiely Report says that

> *"It was not the practice to follow-up vaccinated children for other than very short periods and the participants in these trials were not followed up in the longer term".*[408]

2.23 The Kiely Report states that

> *"The Therapeutic Substances Act, 1932 was the statute governing the importation and use of vaccines in these trials. It has not been possible to locate or identify documentation which would confirm whether or not the legal requirements of this Act were complied with in respect of these three trials".*[409]

2.24 Whatever the implications of the Therapeutic Substances Act for the lawfulness of the use of therapeutic substances in the State during the conduct of clinical trials, there was no legislation prescribing the procedure for conducting the trials nor was there any legislation dealing with the issue of consent to participate in a clinical trial before the enactment of the Control of Clinical Trials Act, 1987.

2.25 In November 2000, the Minister for Health referred the Kiely Report to the CICA because *"the most rigorous interrogation of the system failed to produce documentary records of the trials".*[410] The CICA set up a Vaccine Trials Division, which investigated the matter for two years.[411] In June 2004 however, as a result of legal action taken by Professor Irene Hillary, the State's order to the CICA was held to be invalid by the High Court, and the CICA's work on the vaccine trials was halted.[412]

2.26 The judgment in *Hillary v. Minister for Education* [2005] 4 IR 333 suggests that the researchers involved in the trials in question confirmed, in a public statement on the 9th of July, 1997 that the researchers had received the consent of some of the parents of the infants involved in the trial. It was recorded in the judgment that in subsequent communications, Professor Hillary asserted that she requested and received the permission of both the management and medical officer of the home in Bessborough to carry out a trial and she understood that all the parents whose infants were participants were informed either by her or the manager of the nature of the vacation being undertaken and they gave their consent on that basis. There is a statement in the published article in relation to the findings of the trial in question that the medical officers in the homes gave permission to carry out the trial on infants under their care. The judgment further records the statement to the effect that this is the only reference to consent in the published article and the question of consent is not addressed in the trial

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407 Dr James Kiely, *"Report on three Clinical Trials involving Babies and Children in institutional settings 1960/1961, 1970 and 1973".* (Page 41) Appendix 2: Tab 7

408 Dr James Kiely, *"Report on three Clinical Trials involving Babies and Children in institutional settings 1960/1961, 1970 and 1973".* (Page 41) Appendix 2: Tab 7

409 Dr James Kiely, *"Report on three Clinical Trials involving Babies and Children in institutional settings 1960/1961, 1970 and 1973".* (Page 40) Appendix 2: Tab 7

410 Report of the Inter-Departmental Group on Mother and Baby Homes, July 2014. Available at: https://www.dcya.gov.ie/documents/publications/20140716InterdepartReportMothBabyHomes.pdf (Page 19)

411 Commission to Inquire into Child Abuse, Third Interim Report, December 2003 (Page 209) Appendix 2: Tab 8

412 Irish Times, June 12th 2004, State Order for Inquiry Into Vaccine Trials Invalid. Appendix 3: Tab 10

protocol. Addressing the question of consent, the Chief Medical Officer is quoted in the judgment of the Court as having recorded:

> "*In principle, it appears to be the case that the authorities in whose care children were placed and who, in the absence of parents or guardians, were in loco parentis, were entitled to give consent for medical treatment (including vaccination) on behalf of the children in circumstances where, in their judgment, that treatment was in the child's interest. It is not clear however, that such authority would extend to giving consent to an intervention which, while it would confer certain benefits on the child by way of protection against a number of infectious diseases, was clearly a clinical trial, the outcome of which or the level of benefit accruing to the child could not be predicted. It is also unclear what standing, if any, medical officers attached to the children's homes had to give consent*".

2.27 In 2011, RTÉ's *Prime Time "Anatomy of a Scandal"* programme revealed that a fourth trial had been carried out by Wellcome in 1964 on children resident in Sean Ross Abbey.[413]

2.28 In December 2014, a fifth vaccine trial, carried out by GlaxoSmithKline in 1965, was uncovered by Michael Dwyer at University College Cork. While GlaxoSmithKline denied that the trial was carried out on children in institutions, the *Irish Examiner* notes that

> *"Although the report does not specify where the trial took place, the reference to the reaction to the vaccines being monitored by 'the adults looking after the children' and the fact that follow-ups were done on all the children from day 6 to day 14 at 6pm seem to indicate that the children were in a group setting".*[414]

2.29 In June 2017 Conall Ó'Fátharta reported in the *Irish Examiner* that Glaxo Laboratories were also testing lactose and baby formula on infants at Bessborough in 1974. The report says that

> *"The trial sheets recorded a range of reactions to the products. These included vomiting (slight, moderate, severe, or none), excessive regurgitation, wind (slight, moderate, severe, or none), stools (locae, normal, or constipated) and stool colour (yellow, grass green, olive green, yellow green, no stools, meconium, changing). Other "abnormal conditions" were also noted. These included excessive crying, irritability, napkin rash, thrush, and others".*[415]

2.30 The vaccine trials in the 1960s and 1970s sometimes involved children living at home, and thus were not exclusively conducted on children in Mother and Baby Homes and similar institutions.[416] However, it is worth noting that informed consent is more feasible to obtain in the case of the parents of children living at home, as opposed to vulnerable women and girls living in institutions under the control of religious orders and other individuals. Moreover, because these institutions were part of the infrastructure of Ireland's closed, secret adoption system, it has proven impossible for the vast majority of those who suspect they were involved in the trials to obtain information.

2.31 There is a lot of uncertainty amongst witnesses who spoke to the Clann Project as to whether they were the subject of vaccine trials, and there is great suspicion amongst those born in these institutions at the relevant times about the truth or accuracy of any records. The Clann Project is not aware of any instance where a mother resident in a Mother and Baby Home gave consent for her child to be included in a vaccine trial.

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413 RTÉ Prime Time, Anatomy of a Scandal. Broadcast on Thursday 6th October, 2011. Available at https://www.youtube.com/watch?v=O7BxnC6EUuo

414 Irish Examiner, 1st December 2014, Fifth Vaccine Trial on Children Exposed. Available at: https://www.irishexaminer.com/ireland/fifth-vaccine-trial-on-children-exposed-300302.html

415 Irish Examiner, 26th June 2017, New Bessborough revelations show wider range of products tested on children. Available at: https://www.irishexaminer.com/viewpoints/analysis/new-bessborough-revelations-show-wider-range-of-products-tested-on-children-453349.html

416 Report of the Inter-Departmental Group on Mother and Baby Homes, July 2014. Available at: https://www.dcya.gov.ie/documents/publications/20140716InterdepartReportMothBabyHomes.pdf (Page 18)

2.32 Witness 71 says that she

> "*received confirmation from GSK that I was indeed part of the active trial group of a 4-in-1 combination vaccine given between 1960/61 at Bessborough".*
>
> *The Department of Health claim[ed] they held no files relative to me, but it is my understanding that they were at that time in possession of records and files pertinent to the Laffoy Commission, a subset of the Commission to Investigate Child Abuse ("CICA") begun in 1991. In 2001, I submitted an online questionnaire published by CICA relative to those who believe they may have been part of vaccine trials in relevant mother-baby homes or residential institutions. In October 2002, my mother and I were invited to give preliminary testimony to the legal team working under the Laffoy Commission in Dublin. My mother gave clear testimony that she was unaware I was being used in any trials and that her consent was never sought for my participation".*[417]

2.33 Witness 70 says

> "*When I was a teenager I was very conscious of the vaccine marks/scars on both my shoulders and left ankle. I had asked my adoptive mother about these as I was self-conscious of these and didn't like to wear vests, etc so these marks could be seen. My mother told me that when I was placed with her and my father on 27 May 1961 both my arms were bandaged and all the vaccine marks were inflamed and infected. It took months for these to heal she told me and I had to go to the doctor to get my arms dressed and ointment, etc. She told me they were in a bad way. I always wondered where they came from.*
>
> *I [have] now gotten my birth weight and the chart documenting my weight over time and, most importantly, my vaccine dates, both BCG and smallpox. I was given both my smallpox and BCG vaccines in Bessborough before I was sent to my adopted parents in Mayfield, but what accounted for all the marks I had? I had two huge BCG scars on my right shoulder, four smallpox on my left shoulder and two small marks on my left ankle. I went to my GP and got him to examine my marks/scars very carefully and he said that these many marks were not at all in keeping with marks of vaccines from that time. There were way too many of these.*
>
> *I wrote to GSK [Glaxo Smith Kline] pharmaceutical company and gave my date of birth and my birth name to see was I one of the babies who got vaccinated in the 1960/61 trial while I was there. I got a letter back stating "no they didn't have my birth name or mother's name on that trial which had taken place while I was there". I received a letter stating that I wasn't part of that 1960/61 trial.*
>
> *I just hope I can get some answers for all the vaccine marks that I have on my body as whether I was in a vaccine trial or not. I am very badly scarred from these marks and no need for so many of them. Most people have 2/3 at the most, I have 8 in total. I just want to know and find out what was done to me".*[418]

2.34 Witness 68 says:

> *"I have five or six inoculation marks on my left shoulder and I had become concerned over the years that I may have been involved in drug trials whilst I was at St Joseph's. I submitted a Freedom of Information request to Glaxo SmithKline who confirmed that I was not part of a trial".*[419]

2.35 Witness 17 says:

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417 Appendix 1: Tab 71 paragraphs 31 to 32
418 Appendix 1: Tab 70 paragraphs 37, 41, 42, 58
419 Appendix 1: Tab 68 paragraph 24

> "*I am also concerned that I may have been used in medical research without my consent when I was living at the County Home in Killarney and potentially the Industrial School. In particular, my medical records show that I was hospitalised for 5 days between 19 and 21 February 1953. However, no reason for this medical treatment is given. This is very unusual because, in my experience, the nuns who ran the County Home and other institutions like it were meticulous record keepers. It simply does not make sense to me that no reason was given in my medical records for my hospitalisation.*
>
> *I have tried to investigate whether such medical trials were conducted in the County Home in Killarney or the Industrial School during my time in both institutions but, when I contacted someone in Dublin who held themselves out as having information about these trials, they told me that no such trials had been carried out in County Kerry.*
>
> *Given that there is evidence relating to the medical trials which the courts and the Irish Government have prevented from being subject to public scrutiny and that I have previous personal experience of people attempting to suppress my records, I would not be surprised to find that people are lying to me and there is evidence that I was subjected to medical trials as a child".*[420]

2.36 Witness 28 says:

> "*I think it is possible that I was subjected to vaccine trials at St Patrick's, although I have no way of knowing this for certain. I think that this is possible for three reasons. First, the date of my birth in December 1966 coincides with the period when vaccine trials were being undertaken. Second, I used to be a blood donor, but around the time of the hepatitis C scandal in Ireland in the mid-1990s I received a letter from the Blood Transfusion Service informing me that my blood could no longer be accepted because it contained an anti-virus. I have no idea how an anti-virus could have become present in my blood unless it was as the result of a vaccine trial. Thirdly, I remember that when I was at primary school, another girl and I were taken to be examined by a doctor. I have never understood what that examination was about but I have often wondered whether it may have been a follow-up examination for children who had been subjected to vaccine trials".*[421]

The Adoption Board and Lack of Regulation of Adoption Societies

2.37 The 1952 Adoption Act established the Adoption Board as the regulatory body for adoptions. All adoptions were required to be approved by the Adoption Board (Section 9 (1) of the 1952 Act), meaning that the Adoption Board had responsibility for ensuring that the requirements of the Act were being fulfilled by those involved in arranging adoptions.

2.38 Section 36 of the Act also provided for the registration of adoption societies, and Section 34 of the 1952 Act stipulated that:

> *"(1) It shall not be lawful for any body of persons to make or attempt to make any arrangements for the adoption of a child under seven years of age unless that body is a registered adoption society or a public assistance authority or for that purpose to retain a child in their custody or arrange to have him retained by any other person or body.*
>
> *(2) If any person takes any part in the management or control of a body of persons which exists wholly or in part for the purpose of making arrangements for adoption, and which is not a registered adoption society or a public assistance authority, he shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding one hundred pounds or to both".*

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420 Appendix 1: Tab 17 paragraphs 47, 48, 51

421 Appendix 1: Tab 28 paragraph 28

2.39 Under Section 37 of the 1952 Act, the Board was authorised to cancel the registration of adoption societies, while under Section 38, the Board had the power to *"inspect and make copies of all books and documents relating to adoption in the possession or control"* of adoption societies.

2.40 Section 42 of the Adoption Act 1952 made it an offence for any person, adopter, parent, or person who makes arrangements for the adoption to receive any payment or reward in consideration of the adoption (although the Act did not stop adopters, parents or guardians of a child from making or receiving payments for the maintenance of a child being adopted).[422]

2.41 Despite these statutory provisions, however, as former Adoption Board Chairperson, Vivienne Darling puts it:

> *"[t]he Adoption Board has never really functioned fully as a governing body. Over the years it has confined its activities to legalising placements arranged by the adoption societies".*[423]

2.42 In a 1974 report, Darling said there were:

> *"enough indications to suggest that the standard of adoption practice in some agencies leaves much to be desired in certain respects".*[424]

2.43 However, Darling said that the Adoption Board:

> *"seems to adopt [a] negative attitude to any suggestions for improvement in the standard of practice. The Board contents itself with the actual making of adoption orders. It has been suggested by the Minister for Justice that the Irish adoption system is superior to that of other countries in that all adoptions are processed uniformly by [the Adoption Board]. This cannot be true, however, if there is poor practice at adoption society level. Whilst the Board may make recommendations to the adoption societies and has in fact done so, but only as recently as 1970, it has no power under the Act to enforce these recommendations…The Board also seems unwilling to examine the possibility of any deficiency within the system".*[425]

2.44 Darling also recalled an incident where a child died from ill-treatment at the hands of her adoptive parents in Waterford, and the Adoption Board refused a call for a public enquiry from the Joint Committee of Women's Societies and Social Workers.[426] Darling called for a:

> *"full scale government enquiry into the adoption of children such as those carried out by the Hurst and Houghton Committees in Britain in 1954 and 1972 respectively, should be undertaken in this country before we congratulate ourselves any further on our supposedly satisfactory adoption system".*[427]

2.45 It is now 44 years since Vivienne Darling's call for a full-scale investigation into adoption practices, and no such inquiry has ever taken place. The grave implications of this are evident in the anecdotal evidence supplied to ARA and in the witness statements given to the Clann Project.

2.46 ARA co-founder Susan Lohan (in her then capacity as UK Coordinator of AdoptionIreland) wrote to the Adoption Board in July 2003 requesting information on the Board's policies regarding registration and deregistration of adoption agencies.[428] When asked to confirm the criteria for registering and deregistering an adoption agency, the then CEO wrote that

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422 Section 42(3)(b), Adoption Act 1952.

423 Vivienne Darling (2005) 'Social Work in Adoption: Vignette'. In: Kearney, N. and Skehill, C. (Eds.) *Social Work in Ireland: Historical Perspectives.* Dublin: Institute of Public Administration. (Page 193)

424 Vivienne Darling (1977) *Adoption in Ireland.* Dublin: CARE. (Reprint of 1974 report, page 47)

425 Vivienne Darling (1977) *Adoption in Ireland.* Dublin: CARE. (Reprint of 1974 report, page 48)

426 Vivienne Darling (1977) *Adoption in Ireland.* Dublin: CARE. (Reprint of 1974 report, page 48)

427 Vivienne Darling (1977) *Adoption in Ireland.* Dublin: CARE. (Reprint of 1974 report, page 49)

428 Letter from Susan Lohan to Johan Collins 7th July 2003. Appendix 2: Tab 17

"…following an extensive search of the archive files written criteria have not been found" and that *"[t]he Board has no records of the registration of a Society having been declined or withdrawn".*[429]

2.47 Witness 73 says that her experience with the Adoption Board itself regarding her search for her natural father and her complaint against St Patrick's Guild left her *"traumatised"*.[430] Witness 73 was invited by the then chairperson to come and meet the Board on a certain date, however:

> *"As I hadn't had any written confirmation of the agreed appointment nor any details of how it might play out, I phoned his secretary on the day before but my name wasn't in the schedule and she advised me not to turn up. …I explained that he had phoned me to ask me to attend and that I had already travelled from London to Dublin and asked her to remind him of his invitation and that I planned to attend. The next day, I turned up on the original appointment and the chairperson expressed incredulity that I was there and admonished me for just turning up as if I had not been invited. He asked me to wait, while he advised the Board of my presence, which I did for one and a half hours. I was then asked to go to his office where he had my Adoption Board file in front of him.*
>
> *He told me that the 'good news' was that my adoption had been "totally legal" and he appeared to consider the matter closed at that point as well as completely failing to understand the basis for my request for a hearing. For the second time that day, I explained why I wished to meet the Board and that under no circumstances would I engage with St Patrick's Guild, given their attitude towards me. Three hours after my arrival, I was finally ushered in to meet the Board just before their lunch. The 8 or so Board members were not introduced to me and without any preamble [name/role redacted] presented a bible and asked me to repeat to swear an oath. I was taken aback and asked him to explain what was going on. He then shouted at me, whilst turning purple in the face, that I was in attendance at a court hearing and that I must swear an oath on the bible to tell the truth. His attitude completely unnerved me and none of the other Board members came to my aid. … I explained to the Board that I had had a bad experience with St Patrick's Guild on the question of establishing who my natural father was and I that I wished to lodge a formal complaint about the Guild as well as seeking clarification on my father's name and identity. Without any preamble, one particular Board member began asking me questions about my relationship with my mother, my adoptive parents and other questions, which I regarded as invasive and irrelevant to the matter in hand. … The meeting ended after about 20 minutes, when the deputy chair announced that they had a lunch to attend. I left the meeting with no idea and no indication as to whether I was going to receive any assistance from the Board and was very traumatised".*[431]

Payments for Adoptions

2.48 Anecdotal evidence provided by adopted people in contact with ARA suggests that adoption agencies frequently sought donations from adoptive parents, and others suspect that money changed hands when they were being adopted. An internal HSE report which was referenced in an investigation by Conall Ó'Fátharta of the *Irish Examiner* in 2015 said that:

> *"in the period from 1929 to 1940, 'adoptive parents were charged a sum ranging between £50-60, payable on a monthly payment scheme in exchange for their adopted child'. The report said 'further investigation into these practices is warranted'".*[432]

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429 Letter from John Collins to Susan Lohan, 14th August 2003. Appendix 2: Tab 16

430 Appendix 1: Tab 73 paragraph 34

431 Appendix 1: Tab 73 paragraphs 32-34

432 Irish Examiner, 2nd June 2015, Concern over possible falsification of Bessborough death records raised in 2012. Appendix 3: Tab 15

No Proper Assessment of Suitability of Adoptive Parents and Lack of Follow-Up

2.49 While there appears to have been some vetting of potential adoptive parents, social workers were not given specialised training in adoption, and most of the church-run adoption agencies were staffed by religious sisters and members of the clergy and did not employ trained social workers.[433] Former Adoption Board Chairperson, Vivienne Darling says that there was no *"specialised training in social work practice in the adoption field"* until 1999 when the Standardised Framework for Intercountry Adoption Assessments was developed.[434] The standardised framework for domestic adoption assessments was not developed until 2004, when domestic adoption levels were virtually non-existent.[435] In 1974, Vivienne Darling said the assessment procedures were *"little more than superficial"*.[436] Elsewhere, she says that:

> *"In the early days the number of couples seeking to adopt did not match the number of babies available for placement and as a result selection criteria were sometimes less than stringent. There were hearsay tales of a children's officer driving around her district with babies in the back of her car seeking out homes, and also of adoptions being arranged by post. These may have been apocryphal stories, but there is no doubt that assessment criteria were vague and concentrated more on the socio-economic status of prospective adopters rather than on their capacity to understand the needs of a child and their ability to offer a stable and healthy emotional environment in which the child would be reared".*[437]

2.50 Witnesses who spoke to the Clann Project corroborate Vivienne Darling's concerns. While many witnesses report that they had happy upbringings with their adoptive parents and foster carers, others question the vetting process because some children were adopted into wholly unsuitable and often abusive families.

<u>Fostered/Boarded Out People (Pre-1952)</u>

2.51 Witness 39 says of her foster parents:

> *"Sometimes they treated me well, but not all the time. My foster father was okay but my foster mother made me do all the house work … I was treated completely differently from their two natural daughters".*[438]

2.52 She says her foster mother had two brothers (who are now deceased) and:

> *"I used to be sent down to them for dinner. The two of them used to interfere with me. At the time I didn't understand what was happening because I was too young. … Then when I would go back home, my foster mother would give me a slap in the face and ask me what had kept me down there for so long. But I was afraid to tell her because she wouldn't have believed me anyway".*[439]

2.53 Witness 33 says that her foster parents:

> *"constantly informed me that I was a tainted child as my parents had not been married. They called me 'bastard' constantly and told me that they had been very kind to take me in. … They would say that my mother was a whore and that she would "easily open her legs", a phrase I did not understand at the time. [They] used to beat me. They had a leather strap to which they had attached a wooden*

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433 Vivienne Darling (2005) 'Social Work in Adoption: Vignette'. In: Kearney, N. and Skehill, C. (Eds.) *Social Work in Ireland: Historical Perspectives.* Dublin: Institute of Public Administration. (Pages 185-186)

434 Vivienne Darling (2005) 'Social Work in Adoption: Vignette'. In: Kearney, N. and Skehill, C. (Eds.) *Social Work in Ireland: Historical Perspectives.* Dublin: Institute of Public Administration. (Page 191)

435 O'Brien, V. and Conway, E. (2004) *Guide for Practitioners - A Standardised Framework for Domestic Adoption Preparation, Assessment and Decision-making Procedures.* Dublin: Irish Adoption Board. Available at: http://hdl.handle.net/10197/3055.

436 Vivienne Darling (1977) *Adoption in Ireland.* Dublin: CARE. (Reprint of 1974 report, page 47)

437 Vivienne Darling (2005) 'Social Work in Adoption: Vignette'. In: Kearney, N. and Skehill, C. (Eds.) *Social Work in Ireland: Historical Perspectives.* Dublin: Institute of Public Administration. (Page 187)

438 Appendix 1: Tab 39 paragraph 12

439 Appendix 1: Tab 39 paragraph 13

handle to improve the grip. They also had a stick which they would use on me. The beating was constant. [They] beat me if I did not answer them in the right way, if I looked at them in the wrong way, or if I did not eat everything on my plate. They constantly found fault".[440]

2.54 Witness 33 says that her foster parents were paid just over £2 per month by the Dublin Health Authority, as well as a clothing allowance twice a year. She recalls that her foster mother was *"constantly writing"* to the Dublin Health Authority asking for more money, alleging that her foster daughter was growing, however Witness 33 does not recall receiving any new clothes.[441]

2.55 Witness 18 says:

"I do not believe the authorities performed any kind of checks on the homes in which I was boarded out. I was provided for only in the most basic sense, and received little attention from those who 'looked after' me. I was never housed in a loving or caring environment and the authorities appeared not to know or care that this was the case".[442]

2.56 Witness 1 says:

"*I was fostered to what seemed to me to be a very elderly couple, probably in their fifties or sixties and I was simply handed over to them... I was poorly fed and was always hungry. The [foster parents] were strict and I was regularly smacked and hit on the backs of my legs. [They] were very strict and the house was very dark. I was two and a half and I was put in a small bedroom on my own. At the side of the bed on the wall was a picture of Michael the Archangel with a trident in his hands shoving snakes into the pit of hell. There was a little lamp in front of the picture that glowed and flickered and the combination of the light and the picture traumatised me so much that I cannot even hear the word "snake" today without being terrified. I begged and begged to be taken out of that room but instead of helping me with my fears, I was simply locked in. I do not know why it was believed that [they] were suitable "foster parents" or whether any checks on them were undertaken but they certainly had no idea how to bring up children".*[443]

2.57 After her foster parents were reported to the Irish Society for the Protection of Cruelty to Children (ISPCC), Witness 1 was sent to the Good Shepherd Industrial School at Sundays Well in Cork, where *"life was extremely hard"*. She says she *"only ended up there as a result of having been placed with a wholly inappropriate family by the people at Bessboro".*[444]

<u>Adopted People (Post-1952)</u>

2.58 Witness 28 says that she:

"*was placed for adoption through the St Theresa's Adoption Agency with a family called the [redacted]. I understand that when the adoption was arranged someone vouched for my adoptive parents and that this was accepted as proof of their suitability to adopt children. In my view this was a wholly inadequate vetting procedure for safeguarding the children who were placed for adoption. … Throughout my entire childhood I was subjected to repeated physical, mental and sexual abuse by my adoptive family. My abusers were not only my adoptive parents but a number of different people including my grandfather. …. There was no follow-up monitoring or assessment following the adoption. In my view this*

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440 Appendix 1: Tab 33 paragraphs 17-18
441 Appendix 1: Tab 33 paragraph 22
442 Appendix 1: Tab 18 paragraph 11
443 Appendix 1: Tab 1 paragraphs 17 to 19.
444 Appendix 1: Tab 1 paragraphs 22 and 24.

was a significant failing of the system because it allowed two vulnerable children to be subjected to repeated abuse from a very early age".[445]

2.59 Witness 55, who believes she was born in St Patrick's Mother and Baby Home, Navan Road says:

"*My parents' drinking was not a secret and I do not believe that if a proper vetting process had been followed they would have been allowed to adopt me. If they had asked anybody at the church, I think they would have been told that my parents were not suitable or stable enough to adopt".*[446]

2.60 Witness 5's daughter was adopted through the Catholic Protection and Rescue Society of Ireland and says that her daughter did not have a happy childhood and told her that *"no one ever came to check up on her or to make sure that the family into which she was adopted was appropriate".*[447]

2.61 Witness 9 was adopted to the US through St Patrick's Guild Adoption Society and says he was abused by his adoptive uncle. Witness 9's uncle, who was a senior member of the clergy in his Archdiocese in the US, had collected him from St Patrick's Infant Dietetic Hospital in Temple Hill, to bring him to the US for adoption.[448]

2.62 Witness 67 has evidence that St Patrick's Guild and the Adoption Board were aware that she was not settling in well with her adoptive parents and says the Irish adoption system *"completely failed"* to protect her:

"Throughout my childhood and adolescence, my adoptive mother subjected me to psychological cruelty, as well as physical abuse, by giving me a cocktail of anti-psychotic and other psychiatric medications until I was eight years old, and also by insisting that I should have numerous unnecessary medical procedures".[449]

2.63 Witness 67 says that her adoptive mother claimed that she was a difficult child and she was thus brought to a child psychiatrist when she was three. Witness 67 disputes the notion that she was a problem child, and this is corroborated by the psychiatrist who said that:

'"there was a very hostile mother/child relationship, with much reactive anxiety on the part of the little girl, manifested in many symptoms, some of them quite aggressive'. Crucially, [the psychiatrist] described me as 'a normal and an intelligent youngster', 'in all areas except that of mother' (emphasis added). He observed that:

> *'[a]nother aspect of the difficulty is mother's own personality, rather rigid, inflexible, and compulsive, with inappropriate expectations of children's behaviour. Her own background and early development was a very constricted one, and resulted in an extremely inhibited and controlled personality'".* [450]

2.64 Witness 67 adds:

"Given that [the psychiatrist] managed to identify that my adoptive mother had psychological issues after just two sessions, I cannot understand why [St Patrick's Guild] and the Adoption Board allowed her to adopt a child. I do not know whether psychiatric evaluations formed part of the assessment processes, (if so, they were clearly not robust enough), but either way, the Irish adoption system completely failed to protect me from this woman. Moreover, as I have outlined … it appears that warning signs were there early on in the process and these were obviously

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445 Appendix 1: Tab 27 paragraphs 10 to 14
446 Appendix 1: Tab 55 paragraph 34
447 Appendix 1: Tab 5 paragraph 26
448 Appendix 1: Tab 9 paragraph 11
449 Appendix 1: Tab 67 paragraphs 21 to 61
450 Appendix 1: Tab 67 paragraph 49

ignored by both [St Patrick's Guild] and the Adoption Board, otherwise I would surely have been removed from my adoptive mother's custody".[451]

2.65 Witness 67 says she has a letter from when she:

"…was five months old. This letter offers a somewhat disturbing insight into my mental and emotional wellbeing at that time. The letter was written by…a local GP … to [a consultant at a children's hospital]. [The GP] told [the consultant] that I had been 'restful for one day after adoption' but since that time there had been 'continuous trouble' with me. [The GP] went on to say that, '[s]ometimes there [were] four to five days of having been restful and happy but then her crying continuously, not sleeping and extreme restlessness starts again. The mother is very nervous with her and I feel communicates this to the child.' [The GP] said that physically, she could not find anything of significance, but that I was 'a very little thing' who did not 'smile readily.' She went on to say, '[h]onestly, I can't convince myself that there is really anything seriously the matter with this child'. [The GP] stated that she had prescribed Phenabarbitone (a barbiturate) in the mornings 'to calm her a little,' which she said appeared to have worked".[452]

2.66 Witness 67's consultant wrote back to the GP and said that he had:

"'found nothing of any consequence' and that 'in all respects' I was a 'normal' child. This was not the first time that a doctor a concluded that there was nothing wrong with me. [The consultant] closed his letter by saying, 'I tried to reassure this anxious woman and I think that she will feel better when the final adoption papers come through very soon'".[453]

2.67 Witness 67 says there is a copy of the consultant's letter on both her Adoption Authority/Board file and in her St Patrick's Guild file, now held by Tusla. In the case of St Patrick's Guild file, Tusla redacted the final line: *"I tried to reassure this anxious woman and I think that she will feel better when the final adoption papers come through very soon*", while the Adoption Authority refused to release the record at all.[454]

2.68 Witness 59 says:

"I didn't have a very good relationship with my adoptive parents (which got worse as I got older). I had a difficult relationship with my adoptive mother and my adoptive father drank quite a bit (though he was never violent or aggressive). … My adoptive mother didn't like people to know we were adopted and also had a great fear of who was going to take care of her when she got older. She mentioned it to me many times as a child that I would look after her. So I don't believe she wanted children for the right reasons. To me it wasn't the ideal place to grow up with my personality and the environment was not nurturing for me. I also felt that I should have been checked upon by the adoption agency to see how I was doing as a child. … I don't believe Cúnamh placed me with an appropriate family. I strongly believe the adoption agency should have looked into the suitability of my adoptive parents more than they did and made further visits after the first year to check how I was doing".[455]

2.69 Witness 2, who was adopted to the US through the Sacred Heart Adoption Society, says:

"My childhood was not a happy one and I do not view adoption as a guarantee of a 'better life'. My upbringing was dysfunctional primarily involving my adoptive mother's alcoholism and sexual abuse by my brother".[456]

2.70 Witness 3, also adopted to the US through the Sacred Heart Adoption Society, says:

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451 Appendix 1: Tab 67 paragraph 50
452 Appendix 1: Tab 67 paragraph 36
453 Appendix 1: Tab 67 paragraph 38
454 Appendix 1: Tab 67 paragraphs 39 to 40
455 Appendix 1: Tab 59 paragraphs 31 and 34
456 Appendix 1: Tab 2 paragraph 10

> *"As regards my childhood and upbringing, I didn't suffer any physical abuse but I do recall no real bonding experience between me and my adoptive parents and always feeling like a lodger in my adoptive home. My adoptive family employed corporal punishment and I often had to experience having a leather belt used on my bare back side. I was told this was because they loved me. I cannot say that my life would have been better had I stayed in Ireland but sending me away for adoption at the age of 3½ was certainly not a good thing".*[457]

2.71 Witness 73 says that:

> *"[i]n my adoptive parents' application to adopt, one reference included is from their local parish priest, who stated that they were 'good Mass-going Catholics' and apart from that there is no other evidence that my adoptive parents were assessed in any way for their suitability as parents. … Years later, my adoptive father explained to me that the rationale behind them wanting to adopt was that he travelled a lot and they couldn't have children so they thought it was a good idea for my adoptive mother to have a 'companion'".*[458]

2.72 Witness 70 says:

> *"I was an only child in my adoptive family and had a very good relationship with my adoptive parents. However, I was never accepted by their extended family, with family members actively avoiding me solely because I was adopted".*[459]

2.73 Some witnesses report that they were subjected to psychological cruelty by their adoptive parents.

2.74 Witness 9, who was adopted through St Patrick's Guild, says that for him and his sister:

> *"It was difficult to hear from our adoptive parents that we were not wanted and that they had made a mistake in adopting us. They had two natural children that were six years older than us. There was a massive difference between how they treated my sister and I, and their natural children. My sister and I were often told that [we] had come from a very bad situation and that we were lucky and should be happy that we had been adopted. We were not made to feel like a part of the family at all. We were more or less told that we were second class citizens".*[460]

2.75 Witness 73 was adopted through St Patrick's Guild in 1964. She says:

> *"I stayed at Temple Hill for 1.5 months before I went to stay with my adoptive parents. My adoptive parents subsequently told me that they were simply brought into a room containing a lot of babies and were asked which one they wanted".*[461]

2.76 Witness 67, also adopted through St Patrick's Guild, says:

> *"Despite her own fervent belief that she was a model parent, my adoptive mother was relentless in reinforcing the fact that I did not belong and that I was different. If I misbehaved or did something that displeased her, her constant refrain was, 'well you didn't get that from us'. I cannot remember a time when I did not know I was adopted, and I was frequently reminded of it by my adoptive mother both in private and in front of others. … My adoptive mother would often claim that I was not treated any differently to my brothers, but she said this so often that it had the effect of making me feel extremely different anyway. In reality, she never treated me as one of her own and has never accepted me for who I am".*[462]

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457 Appendix 1: Tab 3 paragraph 11
458 Appendix 1: Tab 73 paragraph 19
459 Appendix 1: Tab 70 paragraph 16
460 Appendix 1: Tab 9 paragraph 9
461 Appendix 1: Tab 73 paragraph 16
462 Appendix 1: Tab 67 paragraph 25

Silence and Secrecy in the Adoptive Family

2.77 Under Ireland's closed, secret adoption system, once an adoption order was made, all parties to the adoption were expected to move on with their lives as if the child had been born to the adoptive parents. [463] Thus, the silence and secrecy that pervaded the adoption system was also infused within the adoptive family itself. Although some adoptive families were open about adoption, in other cases, adoptive parents had great difficulty in discussing or hearing any mention of the subject. In other cases still, the adoptive parents completely hid the fact that their daughter or son was adopted. In many such instances, for fear of appearing disloyal, adopted people will often wait until their adoptive parents have passed away before seeking out information or tracing.

2.78 Witness 40 says:

> *"My adoptive father still gets upset when I mention the adoption or my birth mother. He considers me to be his blood and flesh and would prefer to ignore the fact that I was adopted. He is a very catholic man and I think he is in denial. He does not understand why I care so much about this. He would sometimes ask me why I was asking those questions, if I thought he and my adoptive mother didn't do well enough, if they didn't treat me well enough. It was really hard at first. It created some tensions between me and him, but we are better now".* [464]

2.79 Witness 24 says:

> *"As the years went on I tended not to ask my adoptive parents much about the circumstances of my adoption as I felt that they had told me all they knew, and also as if I would somehow have been disloyal to them by doing so".* [465]

2.80 Witness 70 says:

> *"I was thirty-two years old when my mother died and I had often thought about finding my birth mother but couldn't do it as while my mother … was alive it felt disloyal and I didn't want to hurt her. Dad had passed five years earlier when I was twenty-seven".* [466]

2.81 Witness 19 says:

> *"I remember first hearing the word 'adopted' when I was around 12 or 13. I was misbehaving and arguing with my adoptive mother, as parents and children do, and I threw my house keys into the river. In a fit of anger she said she never should have adopted me. As soon as she said it, she dismissed it and it was never discussed again. I never discussed adoption with my adoptive parents; if I ever raised the subject my adopted mother would just become emotional. It was easier not to talk about it".* [467]

2.82 Witness 19 also says that:

> *"After my Adoptive Mother passed away in 2009 I felt more able to pursue my adoption files in earnest".* [468]

<u>Discrimination of Adopted People within the Adoptive Family</u>

2.83 ARA has encountered three separate situations in the past year alone where the adopted person was disinherited by their adoptive parents. In all three cases, the adopted people

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463 See Vivienne Darling (2005) 'Social Work in Adoption: Vignette'. In: Kearney, N. and Skehill, C. (Eds.) *Social Work in Ireland: Historical Perspectives.* Dublin: Institute of Public Administration. (Pages 186-187)

464 Appendix 1: Tab 40 paragraph 6

465 Appendix 1: Tab 24 paragraph 5

466 Appendix 1: Tab 70 paragraph 20

467 Appendix 1: Tab 19 paragraph 5

468 Appendix 1: Tab 19 paragraph 9

thought they enjoyed close relationships with their adoptive parents and were devastated to discover that their now-deceased parent did not regard them in the same light as a natural child. In two of the cases, the adoptive families also had natural children, who received their full inheritance.

"Late Discovery" Adopted People

2.84 In ARA's experience many adopted people were not told of their adoption by their adoptive parents (sometimes referred to as "late discovery" adopted people), and often they do not discover this until they attempt to obtain their passport or when they try to avail of some government services. For this reason, for many years ARA has called for adopted people to have the right to know they are adopted. In 2009 and 2010 ARA argued strongly against the inclusion of Section 89 of the Adoption Act 2010, which introduced new adoption certificates which hide the fact that the person is adopted, as set out in Section 89 (2):

> *"A certificate referred to in subsection (1) may not disclose that the person to whom the certificate relates is an adopted person".*

2.85 Witness 19 says:

> *"I discovered I was adopted in 1988, when I was around 18 years old. I was attempting to claim benefits at the Department of Social Welfare but was told I couldn't claim without a 'long version' of my birth certificate. I'd never seen this before but I asked my adoptive father for it. He gave me what I now know to be the Adopted Children's Registered Certificate[469] (page 1) in an envelope and when I presented the certificate at the Department of Social Welfare I discovered that I was adopted".*[470]

2.86 Witness 70 says he found out he was adopted when he was ten or eleven. He says:

> *"A boy that lived in my housing estate called me an orphan and that my mother and father weren't my mother and father. I was upset and I went to my mother and father and asked them. They had to come clean and tell me the truth. They were genuinely upset for me, I do know that, and only wanted to protect me. I always remember asking them, 'does that mean I have another mother so?' It all made sense to me now! I always knew deep down that something was wrong, that I didn't fit in and felt always so alone".*[471]

2.87 Similarly, Witness 16 says that she found out she was adopted at nine years old because she was teased at school. She says:

> *"[m]y adoptive mother initially denied it, but finally admitted it later. The topic of adoption was never really discussed at home, particularly due to the fact that my adoptive parents were very old when they adopted me … They had an older parent's attitude to the matter and I felt like being adopted was something to be ashamed of so I felt that the issue was shameful and not to be raised".*[472]

The Emotional and Psychological Impact of Closed, Secret Adoption on Adopted People

2.88 The stigma of illegitimacy was so great that it was taken for granted by agents of the system that adoption was better for illegitimate children than remaining with their mother and family. No regard was given to the emotional and psychological impact on adopted children of being separated from their mother and family.

2.89 Witness 51 says:

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469 Extract from the Adopted Children's Register. See Section C about terminology.
470 Appendix 1: Tab 19 paragraph 5
471 Appendix 1: Tab 70 paragraph 11
472 Appendix 1: Tab 16 paragraph 6

"*One of the saddest things is the perception of adoption in the past as being the best solution for mother and child. It most certainly was not. I feel personally I have lost so much. The sense of growing up with that innate inner issue of 'this is who I look like', 'this is where I am from', and 'this where I am connected to on the deepest levels'. This is who I am. I have information, I have photographs, but there is a disconnect, a distance that will forever be there. I missed out on meeting close and extended family members because of the so-called shame of illegitimacy".*[473]

2.90 Witness 16 says:

"*As I grew older I felt a sense of loss within me that I didn't know my true origins. I felt very lonely all my life. I was nothing like my adoptive family*".[474]

2.91 Witness 34 says:

"*I suspect that I must have had some contact with my natural mother during the first 7 months of my life as the sudden breaking of that attachment has caused me great trauma and it has affected my life in various ways like the ripple caused by a stone dropped into a still pond… I feel that my separation from my birth mother caused me emotional trauma as an infant as it interrupted the natural bonding and attachment process. This emotional trauma was apparent in my childhood when I suffered from separation anxiety and anxiety attacks. I grew to be afraid of powerful women and that had an influence on the partners that I chose and my ability to deal with rejection".* [475]

2.92 Witness 27 says:

"*My adoptive parents have been loving and supportive of me all my life. However, even in circumstances where I have had a strong and loving family life, for most of my life I have felt terrified that I would be "given back" and have always felt the need to seek approval and be liked. I was made to feel embarrassed at junior school because I was adopted and I have been very affected as an adult … I have suffered from anxiety for much of my life and I still have dreams about my birth mother where I wake up feeling that I am unable to breathe. I feel very emotional if I see something in a TV drama or in the news which mirrors my own situation and some days I feel as if I just can't move on. The years of searching for the truth and the meetings with my birth mother were so traumatic that it still rips me apart".*[476]

2.93 Witness 4 says:

"*Even at 40 years of age I was still terrified that my kids could be taken off me if they missed school or exhibited any other problems. My son has autism and this just adds to my stress. I have also always had a fear that if my kids have a mishap at school they could be taken away from me.*

I have always suffered from migraines and headaches and have often wondered whether I was the subject of any of the experiments carried out on babies in the Mother and Baby Homes. My health has been terrible for most of my life".[477]

2.94 Witness 73 says:

"*I had a relatively normal upbringing and my adoptive parents would say that I caused no trouble. In fact, I suffered from depression and an all-pervading sense*

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473 Appendix 1: Tab 51 paragraph 34
474 Appendix 1: Tab 16 paragraph 7
475 Appendix 1: Tab 34 paragraphs 17, 25 to 26
476 Appendix 1: Tab 27 paragraph 45 to 46
477 Appendix 1: Tab 4 paragraphs 45 to 46

of sadness throughout my childhood, teenage years and early adulthood, until I sought professional help in dealing with these issues".[478]

2.95 Witness 55 says that:

"*The impact of my adoption has had a lasting impact on my life and I had a serious breakdown in my mid to late 30s. I was a very vulnerable child who sadly attracted the attentions of people who took advantage of my situation. It has also had a lasting impact on my children. They have not known any grandparents or relatives other than those of their father's family. They have also had to tolerate my rather over-zealous parenting style as I have tried to make up for what I lost".*[479]

2.96 Witness 58 says:

"My upbringing with my adoptive parents was full of love and affection; I had a very close bond with both of them and they were wonderful parents to me. Despite this, I felt the impact of being adopted, in particular by older parents".[480]

2.97 Adoption is a life-changing event with generation wide consequences. Many of the people in contact with ARA and JFMR are the adult children and grandchildren or other relatives of adopted people who seek to connect with their natural families. Witness 73 says:

"I hope that academics, policy makers and even politicians reading this statement in future will realise the immense damage the Irish state's and the catholic church's crass social engineering of non-marital families has caused to myself, my mother, my father, my siblings and to my own child".[481]

2.98 Witness 51 also points to the inter-generational impact of adoption and says that:

"Whilst my mother and I were close to my Adoptive Grandmother and her family there was no biological connection and it always felt like "there was a piece missing". This affects the various generations in a family".[482]

<u>Loss of Culture and Difficulties with Assimilation for People Adopted to America</u>

2.99 Witnesses who spoke to the Clann Project spoke of the loss of their Irish culture. Witness 63 says that:

"*changing an adoptee's original name without consent is a slap in the face to their complete ancestry and progeny! My adopted father was of Czechoslovakian heritage and his giving me his name deprived me of my heritage: I lived a dual internal life: resenting the name I was given and unable to identify with my born nationality. I did not wear green on St Patrick's Day or celebrate because I was green inside and felt that I should have nothing to prove. How do you explain to someone that you are Irish with a name like [redacted]?*".[483]

2.100 Witness 3 says:

"My broad Irish brogue was noticed by everyone, and people made me uncomfortable with their comments and demands that I "sing a song" for them. I had a good voice and my adoptive father would put me front and centre to sing at any gatherings. Eventually, this attention led to suppressing the Irish brogue and also developing a stuttering habit that affected my social interactions and school work performance in grade school. I was given speech therapy classes for several

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478 Appendix 1: Tab 73 paragraph 20
479 Appendix 1: Tab 55 witness statement, paragraph 42
480 Appendix 1: Tab 58 paragraph 11
481 Appendix 1: Tab 73 paragraph 20
482 Appendix 1: Tab 51 paragraph 32
483 Appendix 1: Tab 63 paragraph 5.4

years, and eventually learned to correct my speech patterns and minimize the stresses I was feeling. … This strong sense of an Irish identity has always been at the core of my experience in the world. While I don't have any first hand memories of my birth mother, it is clear that I did not bond with the adoptive family. I easily walked away from them on many occasions later as an adult, without any sense of attachment or emotional connection".[484]

2.101 Witness 3 recalls that he had difficulty settling in when he arrived to America:

"By all accounts, I didn't assimilate well when I arrived at my new home. I recall refusing to go into the house when we arrived from the airport. Family members walked me up and down the street and finally coaxed me to come into the home after giving me some ice cream. I was wearing diapers, which caused a lot of excitement and embarrassment for me. I had to assure them I was indeed toilet trained! I refused to sleep in a bed, instead crying myself to sleep under the bed. I continued to sleep like this for over a year. I cried a lot and consistently told people I was only visiting and would be going back to Ireland soon. My adoptive parents confronted me often about stopping such talk and also about my rejection of their other adoptive child who was younger than me".[485]

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484 Appendix 1: Tab 3 paragraphs 10-11

485 Appendix 1: Tab 3 paragraph 10

3. SECTION 3: TREATMENT OF MOTHERS, ADOPTED PEOPLE AND FAMILY MEMBERS IN THE PRESENT: DENIAL OF ACCESS TO INFORMATION

Ireland's Closed, Secret Adoption System

3.1 Legal adoption was first introduced in Ireland on 1st January 1953, when the 1952 Adoption Act was brought into force. The system introduced by the 1952 Act was closed and secret. Section 24 says that once an adoption order is made,

> *"the child shall be considered with regard to the rights and duties of parents and children in relation to each other as the child of the adopter or adopters born to him, her or them in lawful wedlock"*

3.2 Section 22 (5) says that the General Registrar

> *"shall keep an index to make traceable the connexion between each entry and the corresponding entry in the register of births. That index shall not be open to public inspection; and no information from it shall be given to any person except by order of a Court or of the Board".*

3.3 Vivienne Darling describes the closed, secret system as follows:

> *"When it was introduced adoption was regarded as a neat way of solving with one stroke the twin problems of non-marital births and infertility. … Adoption workers saw themselves as facilitating an event rather than participating in a life-span process. The adoption order was seen as the finality. Thereafter the newly formed families and birth parents were expected to get on with their lives at different sides of high walls of separation. The expectation was that adoptive parents would raise the children in the same way as if born to themselves. Adoptees were kept in the dark as to their origins, and birth parents were expected to make a fresh start. The need for post-adoption services was slow to be recognised, but eventually the emergence of self-help groups … was evidence that the effects of adoption did not end with the making of the order".*[486]

Lack of Statutory Rights to Information

3.4 Irish adopted people are uniquely discriminated against in comparison to other citizens, because they are have no statutory right to their birth certificates and adoption files. Apart from vital family information, these files contain details such as early care records, illnesses, vaccines, details of placement with foster families, correspondence from natural mothers or family members and consent forms. Since 1952, the legislation has been amended eight times, however none of the adoption acts to date have legislated for information rights for adopted people.

3.5 The Irish government first attempted to legislate for information rights in 2001, when a draft scheme on adoption information and post adoption contact was approved by cabinet. The proposed legislation included a provision where adopted people who were in breach of a contact veto would be fined or imprisoned.[487] The discrimination and prejudice regularly experienced by adopted people is exemplified in the then Minister for Children's press release announcing the proposed legislation, where she hoped that a proposed contact veto would provide reassurance that the legislation would "*not constitute a threat*".[488] The threat of criminalisation was removed by former Minister Brian Lenihan at

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486 Vivienne Darling (2005) 'Social Work in Adoption: Vignette'. In: Kearney, N. and Skehill, C. (Eds.) *Social Work in Ireland: Historical Perspectives.* Dublin: Institute of Public Administration. (Page 186-187)

487 Department of Health and Children Press Release, 24th May 2001, Hanafin Announces New Draft Legislation on Adoption Information. Available at: http://health.gov.ie/blog/press-release/hanafin-announces-new-draft-legislation-on-adoption-information/. The same heads of bill were published in 2003 as proposals for discussion at the Adoption Legislation Consultation: http://health.gov.ie/wp-content/uploads/2014/03/Adoption-Legislation-Consultation-Discussion-Paper.pdf

488 Department of Health and Children Press Release, 24th May 2001, Hanafin Announces New Draft Legislation on Adoption Information. Available at: http://health.gov.ie/blog/press-release/hanafin-announces-new-draft-legislation-on-adoption-information/

the 2003 Adoption Legislation Consultation, after a successful campaign by ARA's predecessor organisation, AdoptionIreland.

3.6 The only outcome of the 2003 Adoption Legislation Consultation was the National Adoption Contact Preference Register (the "NACPR"), which was set up in 2005 for natural families and adopted people to apply to register their details and make their wishes known about having contact with their natural family members. Contact registers are designed as complementary mechanisms to assist those who wish to have contact (or contact made on their behalf), and not those who seek information only, or information for the time being. They should never be viewed as a replacement for statutory rights to information. Unfortunately, despite ministerial promises of regular advertising both in Ireland and abroad, the NACPR has not been advertised since it was first launched in 2005, nor has it ever been placed on a statutory basis, despite repeated calls from ARA and its predecessors. A contact register is only ever as good as its advertising, and thus the NACPR has never reached its full potential. If prospective registrants do not know of the existence of the NACPR, they will not know to register, and this can lead to registrants believing that the other party is not interested in meeting them.

3.7 In July 2015 former Minister James Reilly published the General Scheme and Heads of an Adoption (Information and Tracing) Bill.[489] The proposals were immediately criticised because of a requirement for adopted people to sign a Statutory Declaration that they would not attempt to contact their natural parent(s) directly if their birth certificate was released to them.[490] Minister Reilly referred the proposals to the Joint Oireachtas Committee on Health and Children for pre-legislative scrutiny. In its report, the Committee said that:

> "*based on the weight of evidence and the legal submissions received from witnesses, the Committee can find no convincing reason for the inclusion of a Statutory Declaration in the Bill".*[491]

3.8 The Heads of Bill also included a provision whereby there may be *"a compelling reason, such as may endanger the life of a person, for not disclosing … adoption information"*[492] to an adopted person. It is hugely stigmatising (and wholly inaccurate) to suggest that the provision of information to an adopted person would endanger life.

3.9 The present Minister for Children, Katherine Zappone, TD published the current Adoption (Information and Tracing) Bill on 25th November 2016.[493] The Statutory Declaration has been removed from the Bill, however the requirement of an undertaking appears to be little more than a rebranding of the declaration and would still have the effect of introducing statute-based discrimination against adopted people. Moreover, the "compelling reasons" ground was also retained. We do not propose to provide a detailed analysis of the bill here as ARA published an critique at the time which is exhibited herein.[494]

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489 Adoption (Information and Tracing) Bill, General Scheme and Heads of Bill. Available at: https://www.dcya.gov.ie/documents/legislation/20150727AdoptionInfoandTracingHeadsofBill1.pdf

490 Adoption Rights Alliance Press Release, 27th July 2015, Adoption Rights Alliance says Legislative Proposals Impose Statutory Discrimination. Available at http://adoptionrightsalliance.com/ARA%20PR_27-07-15.htm

491 Report on the Pre-Legislative Scrutiny of the General Scheme and Heads of the Adoption (Information and Tracing) Bill. (Page 12) Available at: https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-(Information-and-Tracing)-Bill.pdf

492 Adoption (Information and Tracing) Bill, General Scheme and Heads of Bill. Available at: https://www.dcya.gov.ie/documents/legislation/20150727AdoptionInfoandTracingHeadsofBill1.pdf (Head 7, Page 72).

493 Adoption (Information and Tracing) Bill 2016. Available at: http://www.oireachtas.ie/viewdoc.asp?DocID=33905&&CatID=59

494 ARA's Briefing Note and Amendments to the *Adoption (Information and Tracing) Bill 2016.* Appendix 2: Tab 14

Discrimination and Prejudice

3.10 The absence of statutory rights for adopted people has led to policies and practices that are *ad hoc*, unprofessional and discriminatory. The absence of statutory rights has not only manifested itself in an unfair bias at policy level, it has also led to discrimination and prejudice against adopted people elsewhere. A number of examples of discrimination and prejudice encountered by ARA and our predecessor organisation through our work with adopted people, natural parents and natural relatives are set out below. Many of these are corroborated by the experiences set out in extracts from witness statements below.

3.11 When the government announced the modernisation of the Civil Registration system in 2001, many adopted people believed this would help them to gain access to their birth certificates. ARA's predecessor organisation, AdoptionIreland, submitted a Freedom of Information Request to the then Department of Health and Children. Records released revealed that a query had been raised by consultants working on the project, because the new system would make it simpler for adopted people to find their birth certificates, or even perform a "wildcard" search for their date of birth as they currently can only through an exhaustive manual search of the Civil Registration records. The records also showed that a decision had been taken at a meeting of the Adoption Board to ensure that adopted people would not be able to obtain their birth certificates through the new system. The FOI request also revealed records which indicated that officials at the Department of Health and Children and the General Registrar's Office were working to produce adoption certificates which would hide an adopted person's status.[495] Because no clear statutory rights exist for adopted people, all of these decisions – which have profound implications for adopted people's rights – were made by unelected public servants in the legislative vacuum.

3.12 In 2005, a religious sister from the Sacred Heart Adoption Society infiltrated the private online peer support group of ARA's predecessor organisation, AdoptionIreland. She then obtained copies of posts in the group from adopted people who complained about her and summoned those people to her office, where she challenged them on their views. Both Adoption Ireland and ARA made repeated complaints to the Adoption Board and subsequently the Adoption Authority about the religious sister in question, however no action was ever taken.

3.13 In September 2003, ARA's predecessor organisation was notified by adopted people that the then Adoption Board had begun the practice of requiring affidavits from adopted people who sought their birth certificates. In the affidavits, adopted people would have to swear that they would respect their natural mother's right to privacy and that they would not initiate contact at any time. Throughout this *ad hoc* policy making, the Adoption Board (now the Authority) does not appear to have ever considered the privacy rights of adopted people to know and own their own personal information.

3.14 In a draft publication sent to our predecessor organisation, the then Adoption Board referred to adopted people's searches as an opportunity to *"take or regain control over their lives"*.[496] This is problematic because, if there is a need for adopted people to *"take or regain control over their lives"*, the implication is that adopted people have no control over their lives.

3.15 ARA has encountered numerous other examples of discriminatory and unprofessional behaviour from adoption professionals including the following:

- Withholding non-identifying information such as first names or place of birth;
- Social workers and religious sisters discouraging adopted people from tracing;
- Social workers contacting adoptive parents as opposed to the adult adopted person when a query arrives from a natural mother;
- A refusal to provide medical information, even in life-threatening situations;

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495 Civil Registration Modernisation FOI. Appendix 2: Tab 9

496 Draft version of *Protocols and Guidance for The Provision of Information and Tracing Services By HSE Adoption Services / Registered Adoption Agencies*, Adoption Board, 2005. (Page 35) Appendix 2: Tab 10

- Agencies insisting on face to face meetings with social workers prior to the release of any information, regardless of whether the person lives in Ireland or not;
- Breaches of confidentiality;
- Adoption agencies providing false or inaccurate information;
- Mandatory counselling being insisted upon or strongly encouraged, leaving the adopted person feeling they have no choice in the matter;
- Agencies telling adopted people and natural parents that it is illegal to trace;
- Agencies using adopted people to vent their anger at the Adoption Authority's attempts to regulate the system.

3.16 In the wake of a 2014 Dáil discussion on information rights for adopted people, one *Irish Independent* journalist wrote:

> *"Imagine the distress that possibility must be causing to women treated shabbily by the State already. Consider their dread, now, at the prospect of their anonymity being rescinded. Some may be elderly, and in poor health. The threat that an adult child could turn up, unannounced, on their doorstep is likely to be an added burden".*[497]

3.17 In 2010, one former Minister for Children asserted that:

> "*[n]o matter how great the desire to meet a birth parent, unregulated contact can give rise to real disappointment and in some cases distress*".[498]

3.18 When Caitríona Palmer first met with St Patrick's Guild, she was questioned at length about why she wanted to trace. She says in her memoir:

> *"I hadn't expected to have to work so hard to prove my worthiness for this search. Naively, I had thought it my right".*[499]

Palmer was told by a religious sister at the agency that:

> *"'Of course, you are aware that there is a very extensive waiting list to join before we can activate your search request,' the nun was saying as she shifted through some paper on her desk. 'I can't say when your name is likely to come to the top of that list and of course, when it does, I must warn you that the search may not end the way you envision it. Your natural mother may no longer be alive or may not have any wish to pursue contact with you."*[500]

3.19 Witness 67 says of her experience with St Patrick's Guild:

> *"the (lay) social worker at SPG was pleasant, however she seemed more interested in finding out about my state of mind than in giving me information about my identity".*[501]

Witness 67 also says:

> *"When I received my (redacted) SPG records from Tusla, I discovered that in the file, my social worker had made notes regarding her meetings and other communications with my mother and me. These included two separate file notes which stated that she had explained 'the risks' of reunion with both of us. I have not had an opportunity to ask my natural mother if she can recall what risks were discussed. For my own part, I recall that I was warned that it could go wrong and that my mother might not want contact. Above all else however, the language in*

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497 Irish Independent, 12th June 2014, Mothers of Adopted Babies Face a New Trauma if the Cloak of Invisibility is Suddenly Torn Away. Appendix 3: Tab 11

498 Barry Andrews (2010) 'Balancing Act', *Irish Examiner*, 23rd April, p.15. Appendix 3: Tab 14

499 Palmer, C. (2016) *An Affair with My Mother.* Dublin: Penguin Ireland. (Page 38)

500 Palmer, C. (2016) *An Affair with My Mother.* Dublin: Penguin Ireland. (Page 38)

501 Appendix 1: Tab 67 paragraph 63

> *these file notes betray a certain attitude about reunion amongst social workers. Adoption reunions are certainly challenging, but these challenges do not, by any stretch of the imagination, amount to anything that could be described as a 'risk'".*[502]

3.20 Witness 73 says that when she spoke to her adoptive father at nineteen about the possibility of obtaining information about herself:

> *"My adoptive father warned me in stern terms about maybe not wanting to know what I might find out. Descriptions such as alcoholic, drug addict, prostitute and criminal were used in that warning".*[503]

Witness 73 says that when she went to St Patrick's Guild a lay social worker:

> *"told me my mother's surname but not her first name because as that was a rare name … it might have…identified her straight away. I look back with incredulity at the degree to which I accepted this unwelcome control over my identity and origins I didn't do anything with this information but it ate away at me until I was 22 and then I renewed my quest for information in the hope that now I was older, people would take me seriously".*[504]

3.21 Witness 73 eventually reunited with her natural mother, an extremely private woman who told few people about her daughter. When her natural mother died Witness 73 says:

> *"To avoid any distress to my mother's family, I attended the funeral incognito. It was exceptionally difficult to see the rest of her family giving each other support and sympathy while I, as my mother's daughter, had to remain anonymous. In an astonishing act of insensitivity, the catholic priest, who presided at her funeral (who barely knew my mother as she was not a practising catholic) described my mother to the congregation as a 'single woman, without a husband or children' and that 'we should feel a particular sadness for her as a result'. Even in death, our family unit (that my mother and I were) was denied recognition".*[505]

3.22 When Witness 73 approached St Patrick's Guild about meeting her natural father a religious sister told her she was a *"destroyer of lives*" and *"admonished [her] very sternly for seeking my father's details from her 'when [she] had failed to do so during [her] 13 year relationship with [her] mother".*[506]

3.23 Witness 73 said of the religious sister at St Patrick's Guild:

> *"I can honestly say that she made me feel like a criminal, someone unworthy of her time and attention and that feeling has continued with me to this day".*[507]

3.24 In March 2016 the Committee on the Elimination of Discrimination Against Women (CEDAW) asked the Irish State to:

> *"explain the mischief that the proposed bill on information and tracing seeks to prevent in requiring surviving adoptees to sign a statutory declaration undertaking not to contact their biological mothers as a condition for gaining access to their birth certificates. Please also state whether adoptees have access to files, medical and other records and documents regarding their adoptions".* [508]

In its response to CEDAW the Irish State contends that the declaration (now rebranded as an undertaking) provides for the balancing of rights of adopted people with the rights of

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502 Appendix 1: Tab 67 paragraph 65
503 Appendix 1: Tab 73 paragraph 21
504 Appendix 1: Tab 73 paragraph 22
505 Appendix 1: Tab 73 paragraph 28
506 Appendix 1: Tab 73 paragraph 30
507 Appendix 1: Tab 73 paragraph 31
508 Available at: https://www.ihrec.ie/app/uploads/2016/09/CEDAW_List-of-Issues_Mar16.pdf

natural parents to privacy.[509] ARA contends that the government's position fails to differentiate between privacy and secrecy and fails to recognise the adopted person's right to privacy, that is, the right to know their identity and all of their personal information.

3.25 Since 1864, birth registrations have been a matter of public record, and adopted people in Ireland have been using resources provided by ARA and its predecessor organisation to obtain their birth certificates since at least the 1990s. The Clann Project has no evidence of any catastrophes occurring as a result of an adopted person obtaining information about themselves and/or their natural families.

3.26 In England and Wales, adopted people have had the right to access their birth records since 1975, when the Children Act 1975 was introduced. In the debates surrounding the legislation before its enactment, some sections of the media, politicians and other activists predicted disastrous outcomes to the opening of adoption records. Triseliotis notes that adopted people were viewed as "potentially vindictive 'second-class' citizens.[510] Ultimately however, in his empirical analysis of the impact of the UK Adoption Act 1975, Triseliotis found that:

> *"The calamities anticipated by sections of the media, politicians, and some organizations have not materialized. The various studies carried out so far suggest that the vast majority of adoptees act thoughtfully and with great consideration for the feelings of both their birth and adoptive parents".*[511]

3.27 In his empirical assessment of the international history of the adoption reform movement in the United States, Great Britain, and Australia from 1953 to 2007, Prof Wayne Carp maintains that:

> "*a vast gap exists between the fear by birth parents and adopted adults that their privacy will be invaded and their family disrupted and the reality that few or no offences are committed*.[512] (Emphasis in original)

Secrecy versus Privacy and Alleged Assurances of Confidentiality

3.28 It has been repeatedly alleged by adoption agencies and others that an assurance of confidentiality was given to natural mothers whose children were going to be adopted. This supposed guarantee is often used as a means of denying adopted people a statutory right to information. However, the notion of there being an assurance of confidentiality presumes that such an assurance was sought by natural mothers in the first place. The fact that more women and girls chose to raise their children after supports were put in place for unmarried mothers from the 1970s onwards also strongly suggests that natural mothers would not have sought protection from their own children. Natural mothers would certainly have sought confidentiality and privacy from Irish society, which judged unmarried mothers so harshly. In this regard, the need for privacy has been wrongly confused with a supposed need for secrecy.

3.29 In 1997, St Patrick's Guild Adoption Society admitted to the *Irish Times* that it had given false information to adopted people about their natural mothers. The Guild alleged that this was done to *"safeguard the mothers' identities"*. One adopted woman who spoke to the Irish Times said that she had been given misleading information by St Patrick's Guild which:

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509 Available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsgA84bcFRy75ulvS2cmS%2F%2BgXu7jKK136tSfAb4OE0W6l4Hr91sspJviT2dp8%2BG1F8flUbDSjbhrklr1TujWeynYH%2BwcGAXNQaZUZp4%2B2qYAJ

510 Triseliotis, J. (1984). Obtaining Birth Certificates. In P. Bean (Ed.), *Adoption: Essays in Social Policy, Law, and Sociology* (pp. 39–53). London and New York: Tavistock. (Page 46)

511 Triseliotis, J. (1984). Obtaining Birth Certificates. In P. Bean (Ed.), *Adoption: Essays in Social Policy, Law, and Sociology* (pp. 39–53). London and New York: Tavistock. (Page 51)

512 E Wayne Carp, "Does Opening Adoption Records Have an Adverse Social Impact?: Some Lessons from the U.S., Great Britain, and Australia, 1953-2007", Adoption Quarterly 10(3-4), 2007.

> *"led to decades of fruitless searching. 'I have no problem with confidentiality, but I do have a problem with lies', she says".*[513]

3.30 Despite the fact that St Patrick's Guild has admitted to giving adopted people false information and also to conducting illegal adoptions,[514] to the Clann Project's knowledge, the Guild has never been sanctioned by either the Adoption Board or the Adoption Authority. In fact, the Guild was the first agency to be reaccredited by the Adoption Authority under the new regulatory regime introduced through the *Adoption Act 2010*.[515]

3.31 Although we have made repeated requests for proof, neither ARA nor its predecessor organisation has ever seen any evidence whatsoever that assurances of confidentiality (either written or otherwise) were either given or sought by natural mothers in respect of their children. In our experience, the only mention of *"confidentiality"* was when natural mothers were forced to give an undertaking never to contact their children ever again. For example, Witness 46 says:

> *"I have a copy of the 'Certificate of Surrender' signed by my birth mother, dated 6 November 1959, according to which she agreed to give St Patrick's "complete custody and control of [her] infant child, with authority to place her in a family home for legal adoption, whether out of EIRE or otherwise" … Part of the undertaking given in this certificate is to* ***'agree and promise not to attempt to retake my said infant child from, or induce her to leave any place where she may be found'"*** *(emphasis added).*[516]

3.32 It is also worth noting that birth registrations have been a matter of public record in Ireland since 1864. Since that time, it has always been possible for any member of the public to view the Register of Births and obtain copies of birth certificates from the information contained therein, which would, in an instant, reveal the identity of any woman who has given birth, including those women whose children were adopted. Therefore, regardless of any alleged (or implied) guarantees of confidentiality, it would have been impossible in practical terms, to give any such guarantee.

IO'T v B [1998] 2 IR 321

3.33 In 1998, the Supreme Court issued a judgment in the case of *IO'T v B* (involving two women, born outside of marriage and adopted informally prior to the 1952 Adoption Act) stating that both the right to know the identity of one's mother and the right to privacy are protected by the Constitution, and that neither right is absolute and either right may be restricted by the constitutional rights of others and the requirements of the common good. The Attorney General and the Rotunda Girls Aid Society argued strongly in that case in favour of natural mothers' right to privacy and confidentiality,[517] and since *IO'T v B*, social workers and the Attorney General (it appears) have implemented a policy whereby, unless a natural mother has indicated her preference for contact, the natural mother's presumed wish for secrecy overrides the adopted adult's right to know their identity.

3.34 In fact, the *IO'T v B* judgment did not suggest or recommend such a restrictive blanket approach to the adult adopted person's right to know their identity, or to the weighing of the natural family's rights and interests. The Supreme Court's judgment (which was directed to the Circuit Court in this case) stated that:

> *"In the absence of evidence with regard to all the circumstances of the natural mother and her considered attitude with regard to the disclosure of her identity, it is neither possible nor desirable to lay down all the criteria to be applied in the*

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513 Irish Times, 7th April 1997, Adoption Society Admits Supplying False Information to Shield Mothers' Identities. Appendix 3: Tab 12

514 See paragraph 1.116 above on the Tressa Reeves case

515 See https://conallofatharta.wordpress.com/2016/05/08/st-patricks-guild-accredited-under-2010-adoption-act/

516 Appendix 1: Tab 46 paragraph 8

517 IO'T at 353

> *balancing of the constitutional right of the child to know the identity of its natural mother and the constitutional right to privacy of the natural mother".*[518]
>
> *"While there is a conflict of constitutional rights, the obligation on the courts is to attempt to harmonise such rights having regard to the provisions of the Constitution and in the event of failure to so harmonise, to determine which right is the superior* ***having regard to all the circumstances of the case".***[519] (emphasis added)
>
> *"The natural mothers…do not have an absolute constitutional or legal right to have the anonymity guaranteed them at the time they placed the applicant and the plaintiff respectively for adoption, preserved".*[520]

3.35 While in practice, the *IO'T v B* judgment is routinely used as an excuse to deny adopted people their information, the judgment applies only tangentially to the question of legislating with regard to adult adopted persons' access to information, because the case concerned (a) individuals who had not been formally adopted and (b) their individual applications to court for declarations of parentage under section 35 of the Status of Children Act, 1987. It is worth noting that the very starting point in *IO'T v B* – the question of whether the Constitution protects the right to know one's identity – was considered only in respect of children who had not been adopted and only as *"the right to know the identity of one's natural mother"*.[521]

Information and Contact

3.36 It is often wrongly assumed that for adopted people, information about one's origins and contact with one's natural family go hand in hand. Information relating to an adopted person's identity is in fact a completely separate issue to a desire to meet natural family members. In ARA's experience, some adopted people do not want contact with their natural mothers at all, while others will wait for a period of time after obtaining their birth certificates[522] before attempting to contact their natural mothers and/or family members. This is because adopted people often choose to absorb the information before progressing any further. In 2017, ARA learned that over ten times the number of adopted people than natural mothers have registered a 'No Contact' preference on the National Adoption Contact Preference Register (NACPR) to date.[523] Thus, even those adopted people who put themselves forward on the NACPR so that their natural parents might be made aware of the current identities of their now-adult children, are ten times more likely than natural parents to wish that they not be contacted.

3.37 In its Pre-Legislative Scrutiny report, the Joint Oireachtas Committee on Health and Children highlighted concerns which were raised both by adopted people and by former Senator Jillian van Turnhout, who said:

> *"We very much have to separate the information and contact. One has a right to information and nobody wants to put anyone into distress, but that cannot be a compelling reason in terms of one's right to identity".*[524]

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518 at 355

519 349

520 354

521 at 348

522 Adoption Rights Alliance provides information to adopted people on how to legally obtain their birth certificates by researching civil registration records.

523 Information provided at a meeting with the Adoption Authority in January 2017. 'No contact' entries on the NACPR include individuals who have opted for 'no contact currently' or 'no contact but will share medical information'.

524 Report on the Pre-Legislative Scrutiny of the General Scheme and Heads of the Adoption (Information and Tracing) Bill. (Page 18) Available at: https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-(Information-and-Tracing)-Bill.pdf

Witness Testimony on Information and Tracing

3.38 The difficulties that mothers and adopted people invariably faced, and continue to face, in trying to access information pervade the testimonies that witnesses have shared with the Clann Project.

3.39 Their search for information has in many instances been two-fold: first, a search for information about their family members, as mothers have wanted to find their now-adult children, and adopted people have wanted to find their natural mothers and other natural family members and relatives; and second, a search for personal information, including key identity documents such as birth certificates, adoption files and medical records.

3.40 The witness statements speak of the multifaceted impact of the denial to access of information on their lives, including emotional and psychological distress, unanswered questions about identity and personal health, and lost time and, for those who wish to do so, opportunity to reunite with their family.

Insufficient Resources

3.41 Because of the lack of statutory rights, any information provided to individuals who have been affected by adoption is on a discretionary basis, which leaves adopted people and their family members powerless in the process.

3.42 One significant obstacle in access to information has been the insufficient resources of authorities to provide information in a timely manner. This has manifested itself in particular through the long waiting lists on which mothers and children were placed when trying to access information by, primarily in the case of Clann Project witnesses: Tusla (sometimes referred to by witnesses as the Health Service Executive ("HSE")), the Adoption Authority of Ireland ("AAI", which replaced the Adoption Board in 2010) and other adoption agencies, including St Patrick's Guild Adoption Society, St Louise's Adoption Society, The Rotunda Girls Aid Society, and Cúnamh (formerly the Catholic Protection and Rescue Society of Ireland). In most instances, these bodies were first ports of call for Clann Project witnesses seeking information.

3.43 Most adoption agencies have now shut down, and their records have been transferred to Tusla. In 2016 it emerged that St Patrick's Guild requested payment of *"at least €50,000"* from Tusla before it would transfer its records. Tusla eventually agreed to a one-off payment of €30,000 to facilitate storage of the files while the transfer negotiations were ongoing and to assist with the agency's closure.[525]

3.44 In practical terms the absence of statutory rights for adopted people and natural parents means that in busy social work departments their needs are competing against prospective (intercountry) adoptive parents who do have a statutory right to an adoption assessment. Invariably, resources are diverted towards those with statutory rights, and adopted people and natural mothers remain on lengthy waiting lists. The AAI has called for the removal of the statutory right to an adoption assessment, calling it *"a waste of HSE/CFA [Tusla] and AAI resources"*.[526]

3.45 Many of those trying to trace their families were told that it could be years before they could hope to be assigned a social worker or receive records. Witness 22, who gave birth to a daughter in 1973 who was homed in St Patrick's Mother and Baby Home, was informed by Cúnamh that it could take up to two years to be assigned a social worker.[527] For many, these delays meant resorting to conducting private investigations. Witness 12, who gave birth to a son in Bessborough Mother and Baby Home in 1967, was told by the HSE that it could take up to eight years to receive information due to the large number of requests they were receiving.[528] She ultimately resorted to personal connections to

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525 Irish Examiner, 18th October 2016, St Patrick's Guild sought €50k from Tusla for adoption records. Appendix 3: Tab 15

526 Adoption Authority Annual Report 2013. Appendix 2: Tab 11

527 Appendix 1: Tab 22 paragraph 36

528 Appendix 1: Tab 12 paragraph 28

facilitate the request for information. Witness 58, who was born in 1964 in Castlepollard, said about her searches for information through these authorities:

> "*It has been difficult to get information from the Health Services Executive, the Adoption Authority of Ireland and Cúnamh mainly due to, from my perspective at least, an overburdened work-load, lack of resources, inadequate social workers and the previous legislation in Ireland. Legislation has been a huge obstacle in obtaining information as the authorities were constrained in what information they could provide by the law. I only managed to obtain the information surrounding my adoption and my birth parents as a result of my persistent enquiries with the authorities and my own searches. I faced a brick wall in finding out about my identity and had to use my own time and resources to discover much of the information I know today*". [529]

3.46 Witness 58, who was adopted through Cúnamh, later learned that her natural mother had put two further children up for adoption in England. Upon speaking with her siblings, she was *"astounded"* by their different experiences in accessing information about their birth parents. Her siblings in the UK had had full access to their files from the age of 18, whereas she:

> "*had to struggle for years to get even the smallest amount of information*".[530]

3.47 Witness 20, who was born in Sean Ross Abbey in 1959, initially looked for information about her birth parents through St Patrick's Guild Adoption Society, where a nun leafed through a file on her desk "*but wouldn't let [her] see anything*".[531]

3.48 Witness 20 also wrote to the AAI requesting a copy of her adoption file, following which she was placed on a waiting list. She finally received a letter from a social worker, which stated that "*there is very little information on file pertaining to either of my birth parents*".[532]

3.49 Witness 20 ultimately resorted to searching privately to find her natural mother. Her testimony is that:

> "*It is incredibly difficult for people who were adopted from the Mother and Baby Homes to get hold of accurate and detailed information. If I'd had to rely on the official channels to trace my birth mother I would be an old lady before they got around to me and my birth mother would likely be dead*".[533]

3.50 When Witness 73 approached St Patrick's Guild about searching for her natural father, a religious sister at the Guild told her that if she was

> *"determined to continue to seek out my father, that it would take her at least 1 year even to open my file and 'who knew how long thereafter to determine if who they thought was the father in fact was'. I knew that my father would be in his 70s and that time might be of the essence so I offered to pay for a family researcher for a few months to look for him and any other priority cases on the St Patrick's Guild extensive waiting lists but this was rudely dismissed, as [the religious sister] claimed that 'no one else could understand St Patrick's Guild special methods of operating' and that 'suitably qualified staff were simply not available in the Irish Labour Market'".*[534]

3.51 Witness 14, whose girlfriend was taken to Árd Mhuire Mother and Baby Home to give birth to their son in 1978, said of the process of seeking access to information:

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529 Appendix 1: Tab 58 paragraphs 33 to 34
530 Appendix 1: Tab 58 paragraphs 30
531 Appendix 1: Tab 20 paragraph 35
532 Appendix 1: Tab 20 paragraph 35
533 Appendix 1: Tab 20 paragraph 35
534 Appendix 1: Tab 73 paragraph 30

> "*invariably one would face very substantial delays, usually between two to three years and sometimes even longer, before they would allocate a social worker to meet with you for the first time to discuss the matter. Such a meeting with a social worker was only the first step in an even longer process, involving a number of meetings and significant time before any information was provided, or contact made*".[535]

3.52 Witness 14 identified the problem as a lack of resources and manpower. [536]

Lack of Centralised Record-Keeping

3.53 Another factor that has obstructed access to information for witnesses is a lack of centralised record-keeping. This often meant seeking information from several different sources which could not be easily searchable. For example, Witness 19, who was adopted from St Patrick's Mother and Baby Home in 1970, initially asked the Rotunda Girls' Aid Society for information about his natural family, but was informed that their files were in paper format and that it was impossible to search through them for an individual case.[537]

3.54 Witness 19 signed up for the NACPR and when he didn't hear anything for a year after signing up, he said that "*I was disheartened and thought that my birth family didn't want to be contacted".* [538]

3.55 However, Witness 19's testimony is that it later emerged that this system was wholly inadequate as it wasn't well publicised or freely available to everyone; for example, it didn't take account for people who had left Ireland. He says that "*After this disappointment I waited a number of years before deciding to follow up on my adoption myself*".[539]

3.56 Witness 24, who was adopted through St Mary's Adoption Society, says that he registered with the NACPR, but a match between him and his brother was only noticed because he had informed the AAI that of a change of address. He says that:

> *"The social worker explained that, when my file was updated to reflect my new contact details, someone had spotted there was another entry on the register for a child whose mother had the same date of birth. From that they made the connection between me and my brother. The social worker apologised that the register was not set up to connect siblings, but only to match parents and children".*[540]

Obfuscation and Misrepresentation

3.57 Several witnesses have spoken of encountering deliberate misrepresentation by members of the clergy and representatives of the Irish State when trying to access information about themselves or their family members.

Adopted/Boarded-Out People

3.58 Witness 18 was born in the West Cork County Home in 1952. His sister was placed in St Aloysius, an institution only 100 yards from his own, that was run by the same congregation of nuns who, he said, would have known at the time that they were brother and sister. Even so, he didn't find out that he had a sister until he was 12 years old. He said as follows about his experience:

> "*I have found it incredibly difficult to access information about my childhood, my mother and my siblings. Even when I submitted my Freedom of Information Request to the HSE, there was much delay in obtaining the information and I*

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535 Appendix 1: Tab 14 paragraph 36
536 Appendix 1: Tab 14 paragraph 36
537 Appendix 1: Tab 19 paragraph 6
538 Appendix 1: Tab 19 paragraph 8
539 Appendix 1: Tab 19 paragraph 8
540 Appendix 1: Tab 24 paragraphs 20-22

> *suspect that not all of it was disclosed (though of course I am unable to prove this). Whenever I attempted to obtain information I was made to feel that I was a nuisance. I got the impression that the authorities close ranks on you when you try to obtain information. I have been told countless times by various institutions that my records have been lost in a fire, a flood, or that the nuns are very old now and wouldn't remember. I find it difficult to imagine that there are no records contained in these institutions. If it was more straightforward to obtain basic information, it would be easier to piece together my background and my childhood. It is important for everyone to know who they are and I believe this right should not be denied to me or others in similar circumstances to my own".*[541]

3.59 Others have also spoken about negative treatment by authorities in trying to access information. Witness 16, who was adopted through St Nicholas's Adoption Society, said that the process of getting in contact with her natural mother was "*a much more difficult process for both of us than it should have been*".[542] She said:

> "*When the Child and Family Agency [which now holds the files for St Nicholas's started to trace my birth mother I felt like I was treated as a threat to my mother, and that the social worker tried to keep us apart for as long as possible*". [543]

3.60 However Witness 16's natural mother had phoned back immediately and said she was happy to meet her when contacted by the Child and Family Agency:

> "*The social worker however did not contact me to tell me she had phoned or that she had met her which made for a few very difficult weeks for me that were unnecessarily cruel*". [544]

3.61 Witness 16 concluded that:

> "*I haven't been entitled to review anything on my file held by the Child and Family Agency. They have been obstructive from the start and I have been refused access to a large amount of information. Without a birth certificate I managed to find my mother myself and this could have been achieved much quicker with more efficient assistance*".[545]

3.62 Witness 40, who was born in Bessborough in 1971, contacted the nuns at Bessborough to get in touch with her natural mother. The religious sister in charge wrote her a letter:

> "*essentially telling* [her] *to get on with* [her] *life*" and "*used a very condescending tone*".[546]

3.63 The religious sister also asked Witness 40 to undertake counselling lessons with her, which she strongly opposed as she had:

> "*no desire to sit in a room and open up to the very person who had put [her] in that situation by refusing to provide [her] with [her] mother's details*".[547]

3.64 Witness 40 added:

> "*[The religious sister]'s suggestion that I get counselling sessions with her felt like she was rubbing salt over a wound. I believe she was enjoying the hold, the power she had over me. She definitely had power issues. Whether in writing or on the phone, she was always very belittling. She played on how vulnerable I was. I could hear it in her voice. I found [the religious sister] very manipulative and I believe that she has repeatedly lied to me and other people who were asking*

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541 Appendix 1: Tab 18 paragraph 29
542 Appendix 1: Tab 16 paragraph 17
543 Appendix 1: Tab 16 paragraph 17
544 Appendix 1: Tab 16 paragraph 17
545 Appendix 1: Tab 16 paragraph 17
546 Appendix 1: Tab 40 paragraphs 22 and 24
547 Appendix 1: Tab 40 paragraphs 22 and 24

questions about Bessborough. I believe she had a habit of fabricating truths, of mistreating facts and information".[548]

3.65 Witness 10, who was born in Bessborough, has also spoken about feeling deliberately discouraged from continuing her searches for information. Like Witness 40, she was told that she needed to undergo counselling before she was ready to get more information about her natural mother, which she did not want to do. She was told by the nuns at Bessborough that her natural mother couldn't read or write, which she later found out was false. She thinks that this was:

> "*another tactical attempt at discouraging [her] from searching for information*".[549]

3.66 Witness 8 was adopted through the Catholic Protection and Rescue Society of Ireland (now known as Cúnamh) and spent several years trying to find out information about her natural mother through Cúnamh. She said of her experience:

> "*Throughout the time I spent researching my birth family I found the authorities from whom I sought assistance obstructive and unhelpful*".[550]

3.67 Witness 8 became aware, through information received pursuant to a Freedom of Information request, that a religious sister at Bessborough provided information about her natural mother to her social worker at Cúnamh, yet this was explicitly on a "*non-disclosure basis*" (page 18 of exhibit). She felt that her:

> "*attempts to research the identity of [her] birth mother, and other birth relatives, were repeatedly and deliberately frustrated by those authorities [she] contacted*" and that "*Cúnamh were not honest with [her]*".[551]

3.68 In particular, Witness 8 was informed by Cúnamh that her natural mother had died by being pushed under a train. She found out later that her mother had in fact died by suicide. Cúnamh also did not tell her that she had cousins, even though it held their details.[552]

3.69 Witness 57 was born in St Patrick's Mother and Baby Home and adopted through St Louise's Adoption Society in Dublin. Her testimony is that she found it:

> "*extremely difficult to obtain information about the circumstances of [her] birth or [her] birth parents from authorities*".[553]

3.70 Most of the information Witness 57 does have, she has obtained by herself. When she went to the authorities for assistance, she "*was given conflicting information and felt pressurised to stop [her] search*".[554]

3.71 Witness 57 was not told about the existence of her natural brother until several years after she had started her search, although she believes that the HSE (which now holds St Louise's files) must have known about him from the beginning. She has also said that she is very disappointed that the HSE had mentioned that it had two letters from her natural mother addressed to her, but that she had been refused access to them. She concluded as follows:

> "*It seems to me that some of the information I was given was deliberately inaccurate, or misleading. I felt that some of the details I was provided were given*

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548 Appendix 1: Tab 40 paragraphs 22 and 24
549 Appendix 1: Tab 10 paragraph 26
550 Appendix 1: Tab 8 paragraphs 28 and 29
551 Appendix 1: Tab 8 paragraphs 28 and 29
552 Appendix 1: Tab 8 paragraphs 28 and 29
553 Appendix 1: Tab 57 paragraphs 15 and 30
554 Appendix 1: Tab 57 paragraphs 15 and 30

in order to lead me down a garden path. This experience has made me very angry and I feel like I have been lied to. I do not know what to believe".[555]

3.72 After years of searching, Witness 19, who was adopted via the Rotunda Girls Aid Society, eventually managed to discover his natural mother's first name, and his own first name at birth, by making numerous calls to social workers. He attests that:

"*I received this information over the phone and it was a very distressing time; I ended up crying down the phone to the social workers. I was extremely grateful to receive this information but with the benefit of hindsight it makes me angry to think that I was pushed as far as becoming an emotional wreck in order to obtain such simple information about myself. Everyone has the right to know their name; the right to know their mother's name*".[556]

3.73 Witness 67, who was adopted through St Patrick's Guild Adoption Society says:

"At [my] first meeting [with the social worker], I plucked up the courage to ask the social worker if she could confirm that my name had been changed. She went to another room to look at the file and when she came back she told me I had had a different original name… As grateful as I was to receive this vital yet basic piece of information about myself, at the time I couldn't help but feel frustrated that SPG had not told me my own name at the very first meeting [with a religious sister], and without me having to ask for it. It also dawned on me that an entire file of information about me was being held somewhere in that building and I wasn't even allowed to be in the same room as it, never mind read it for myself. At the end of the meeting [the social worker] gave me [a] piece of paper with more information about my natural mother and father. Again, I was being given mere morsels of information, but yet they were still precious to me. The information is so innocuous, I simply cannot understand why it was not possible to let me have it while I was growing up".[557]

3.74 Witness 2, who was adopted to the US through the Sacred Heart Adoption Society, says:

"[The religious sister] introduced me to my birth mother … I found that meeting incredible and overwhelming. [Her natural mother] took her leave after the meeting but we arranged to meet again the next day. The following morning, [the religious sister] told me that my mother was not coming because she had decided she had 'better things to do'. [The religious sister] then took me out sightseeing. I subsequently found from my mother that she did come to meet me but [the religious sister] had left the message that I was not available because I 'had better things to do'. I cannot understand this behaviour which seems to me to have been manipulative and petty".[558]

3.75 Witness 43 had a similar experience with the same religious sister. She unfortunately became ill before she was due to meet her natural mother for the first time and could not make it. She says:

"I thought that this would be a simple task of rescheduling but the response I received from the nun I spoke to was very upsetting. I was shocked at the insensitivity and she was very intimidating. The clear implication was that it was my fault. I was told that they could not guarantee my Birth Mother was going to want to meet me anymore. The tone of the nun was inappropriate; that I had cancelled and that if she did not want to meet anymore it was all my fault. I felt that I had been told off like I was at school and I remember hanging up the telephone and crying. She was unnecessarily harsh and insensitive and I still

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555 Appendix 1: Tab 57 paragraphs 15 and 30
556 Appendix 1: Tab 19 paragraph 9
557 Appendix 1: Tab 67 paragraph 63
558 Appendix 1: Tab 2 paragraph 14

cannot believe someone in that position would treat people like that knowing the circumstances".[559]

3.76 When Witness 43 made the four-hour bus journey to Cork for the rescheduled reunion, she was brought into a room and could hear the religious sister talking to her natural mother in the next room. The religious sister then returned and asked had Witness 43 received any counselling:

> *"I said I had not and I was told that I could not meet my Birth Mother unless I had received counselling. This was the first I had heard of this requirement. It probably would have been useful to have counselling but at that point we were there, I could hear her in the next room and I could not believe I was being told we could not meet. … They agreed we could meet that day eventually but this issue on counselling was an unnecessary complication and very upsetting. I assume they forgot to tell me I should have counselling".*[560]

3.77 On reflection Witness 43 felt she would have benefitted from counselling prior to the meeting.[561] It is important to note however that ARA has consistently argued against a) compulsory counselling, and b) counselling provided by adoption agencies who have been involved in the adoptions in question.

3.78 Witness 15 says:

> *"I first approached the nuns at St Patrick's Guild … when I was 18. … My memory of that meeting was that the nun had glee in her eyes and a horrible satisfaction about her when she told me [common name removed] was my birth mother's name and that I had no chance of finding her. … My file was on the table in front of the nun and she took great satisfaction in me not being able to see what was in it while sitting at the other side of the table. She was laughing inwardly at me – that is how I remember that meeting".*[562]

3.79 Witness 15's experience demonstrates how it is problematic to have religious sisters who have been previously involved in adoptions running information and tracing services. This case also demonstrates how, even in cases where reunion is not possible, direct contact is often far more humane than mediated contact through an adoption agency. Witness 15 says that St Patrick's Guild told her that her natural mother was not willing to meet, however because she *"did not have any trust in the nuns and needed to be sure that they had told [her] the truth"*, Witness 15 wrote to her natural mother herself and received a reply within a fortnight. While Witness 15's mother did not want to meet, she nonetheless wrote *"a very nice letter"* to her daughter.[563]

Natural Mothers and Relatives

3.80 Natural mothers in contact with ARA often speak of the difficulties they experience in obtaining information about their daughters and sons. In all cases ARA is aware of, when a natural mother (or father) makes an enquiry, social workers have contacted the adoptive parents rather than the adult adopted person themselves. An example of one such instance is exhibited in Legislative Proposals submitted by ARA to the Minister for Children in 2011. In this particular instance, a natural mother had contacted the adoption agency to enquire about her now-adult daughter. The adoption agency subsequently wrote to the adopted person's adoptive parents:

> *"I have had a letter from [the adopted person's] birth mother. She is married and living in England. She would love to hear how [the adopted person] is, what she is doing, her hobbies etc. Most of our work in the Agency now is in post-adoption. In all of this work our concern is the preservation of confidentiality. I would*

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559 Appendix 1: Tab 43 paragraph 18
560 Appendix 1: Tab 43 paragraphs 21-22
561 Appendix 1: Tab 43 paragraph 28
562 Appendix 1: Tab 15 paragraph 7
563 Appendix 1: Tab 15 paragraphs 14-16

appreciate if you would contact me to discuss the enquiry and how you would like to respond to it".[564]

3.81 However, both adoptive parents were by that point deceased and the letter was therefore in this instance received by the adoptive person herself. In ARA's experience, when adoption agencies communicate directly with adoptive parents more often than not, the social worker will subsequently inform the natural mother that the adoptive parents have said it is not a good time as their daughter or son is *"doing exams"* or *"getting married"*.

3.82 Witness 40 says:

> *"My adoptive father told me that, when the nuns enquired about me, he replied "I don't know what she's doing, I don't know she ever will". It was very dismissive. I believe he was angry with my leaving the family home at age 18, and that is why his answer might have sounded rude. I believe [the religious sister] made no effort to put it poetically when she reported back to my mother. [The religious sister] probably repeated it word for word to her, implying that I was lost and had no stable life".*[565]

3.83 Witness 40's natural mother took her own life the following year. [566]

3.84 Witness 25 said that she always told the nuns at Sean Ross Abbey what her address was in case her son ever came looking for her. However, she eventually found out that he made strenuous efforts to find his family, including when he was terminally ill, but the nuns had lied to him and told him that he had been abandoned by his natural mother and that "*the nuns didn't know where [she] was*". [567]

3.85 Even when he was dying and had directly asked for information about his natural mother, "*they still chose not to put him in touch with [her]*".[568]

3.86 Witness 26, who gave birth to a daughter at the Good Shepherd Convent in Dunboyne in 1968, is convinced that the Convent has falsified letters purportedly sent to her and written by her from her time at the Convent. She received these documents from the HSE when she was looking for information about her adopted daughter through an agency, and says:

> "*the first time that I have ever seen those documents was when the agency sent them to me. I had no education. I cannot write. It is therefore impossible for me to have written the letters included in those documents".*[569]

Lost Time and Opportunity for Reunion

3.87 Regardless of whether the significant delays in accessing information stemmed from insufficient resources or misrepresentation, or both, the consequence of these delays for many witnesses was a loss of opportunity to reunite with the natural parent or adopted child, and loss of time to be able to spend with them.

3.88 Witness 9 was adopted from St Patrick's Guild. His testimony is that he has been trying to get information about his natural family since 1995. In his dealings with St Patrick's Guild as part of this process, he felt that they:

> "*tried to dissuade [him] from [his] search for [his] family*" and emphasised "*the length of the waiting list in an effort to put [him] off*".[570]

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564 Letter from adoption agency, 8th February 2001, page 70 of Adoption Rights Alliance Legislative Proposals, available at: http://www.adoptionrightsalliance.com/Legislative%20Proposals_PUBLIC.pdf. Single page exhibited at Appendix 2: Tab 12

565 Appendix 1: Tab 40 paragraphs 16-20

566 Appendix 1: Tab 40 paragraphs 16-20

567 Appendix 1: Tab 25 paragraph 38

568 Appendix 1: Tab 25 paragraph 39

569 Appendix 1: Tab 26 paragraph 7.6

570 Appendix 1: Tab 9 paragraphs 20, 21 and 28

3.89 Witness 9 goes on to say as follows:

> "*By the time St Patrick's Guild passed on the information they had about my mother in 1998, after numerous phone calls and letters, she had passed away four months earlier […]. I was consistently told by St Patrick's Guild that they did not have any information to hand but they had been in possession of her contact details all along. She lived in the same house for much of her life and they also had her phone number. By withholding the information they had, St Patrick's Guild denied me the opportunity to meet my birth mother*". [571]

3.90 In Witness 9's view:

> "*The church institutions committed serious wrongs, selling babies, trafficking babies. They sent vulnerable children into homes with no vetting. They should not now be involved in any way, shape or form. It appears to me that these institutions are blocking people from finding their roots to cover up their deviant acts in the past".* [572]

3.91 Witness 50 was born in Castlepollard Mother and Baby Home in 1968. His mother was married to his father, a fact of which the authorities were aware at the time. He was nevertheless put up for adoption at the age of four months. He first met with a nun of the Sacred Heart Sisters Adoption Society to request for a trace for his natural mother to be initiated in 2003. He was told at the time that it was "*probably a worthless exercise*". He visited the same nun in 2006, and found out that no steps had been taken to progress his request since 2003. He started to make his own investigations at that time and also initiated a search with the HSE in Waterford/Kilkenny. He eventually managed to trace his natural mother's identity and location himself, and informed the HSE of this in 2007, noting that he was very concerned about their lack of progress and that he was conscious that his natural mother was growing old. He received a phone call from the HSE just a week later to inform him that his natural mother had been taken ill in hospital. He said as follows about this experience:

> "*I told them that I was coming to visit her but they said that I was not allowed to until the social workers had arrived at the hospital. I drove to the hospital in any event and waited there until the social workers arrived. When they arrived they offered to take me to see my birth mother. Four times the social workers took me to the doors of the wrong hospital wards. They would stop, look at me and wait for my reaction. I do not know why they did this but it felt as though it was a form of mental abuse, as though they were trying to break me down until I said I did not want to see her. When the social workers finally took me to my birth mother's ward, I walked into the room and kissed her on the forehead. I told her who I was and she replied by saying "I knew you would find me someday". The social workers left the room and I spent some time speaking with my mother. My mother passed away less than a month later*". [573]

3.92 Witness 50 concluded:

> "*I will always be grateful that I got to meet her and to know that she was happy to meet me but it will always weigh heavy on my mind and in my heart that we were denied more time together through what I believe to be a deliberate delay by the Sacred Heart Sisters Adoption Society and the HSE Social Work Department in facilitating our contact. I have been denied the opportunity to get to know my mother and my children have been denied the opportunity to have had their grandmother in their lives*".[574]

3.93 Witness 69 was admitted to Castlepollard Mother and Baby Home with her natural mother when she was seven weeks old, and was subsequently adopted through St Patrick's

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571 Appendix 1: Tab 9 paragraphs 20, 21 and 28
572 Appendix 1: Tab 9 paragraphs 20, 21 and 28
573 Appendix 1: Tab 50 paragraphs 17 and 20
574 Appendix 1: Tab 50 paragraphs 17 and 20

Guild. Witness 69 began searching for her natural mother when she was 21 years old. She was told by the Adoption Board in 1985 that they couldn't give her details of her natural mother's identity for reasons of confidentiality, and was referred to St Patrick's Guild. She made several requests and efforts to contact St Patrick's Guild, but received no responses, which she found "bitterly disappointing". She said that:

> "*[she] cannot fathom how little action they took when [she] was clearly upset and concerned about not being able to make contact with [her] birth mother*".[575]

3.94 Witness 69'snatural mother passed away in 1988. She did not learn of this until 1996, eleven years after she first began searching for her natural mother. According to her half-sister, her mother had been asking for her on her death bed and when she would be arriving. She said:

> "*To hear of this at a time when I was desperately seeking to reunite with my birth mother was truly heart-breaking*".[576]

3.95 After Witness 19 had spent years trying to find out the name of his natural mother and his own first name at birth, it took a number more years to find out further information about his natural mother. He was finally able to make contact with his natural family in 2014, after having spent 17 years searching for them, only to discover that his natural mother died one month before he was able to make contact with his family. He says that:

> "*The inadequacies of the system delayed my search for years, causing me anguish and distress as well as removing any opportunity I may have had to meet my mother before she passed away*".[577]

Medical Records

3.96 Many of the witnesses, both mothers and adopted people, who have spoken to the Clann Project have not been able to access their medical records. On an emotional level, this has caused significant distress and worry. On a practical level, this has led to an inability for the parents and children accurately to understand their medical history, such as the existence of any hereditary diseases in their family. Further, the lack of access to medical records and their medical history make it impossible to rule out that adopted people could have been involved in medical research trials as infants.

3.97 As far as Witness 7 knows, she was born in St Joseph's Nursing Home in August 1950. She is not certain that this if the correct date because she has never been able to obtain her birth certificate, which had meant that it took her nine years and considerable difficulty to get a passport. She is particularly concerned that when her children or she seek medical care, they are "*unable to describe fully the family medical history*".[578]

3.98 Witness 7's testimony is as follows:

> "*I am very frustrated that after so many years I still do not know my real identity. In a sense, I feel that I still do not exist. The establishment should do all that it can to help people like me and tell us the truth about who we are".*[579]

3.99 Witness 31 was illegally adopted through St Rita's Nursing Home. She also does not know her family medical history and said as follows:

> "*My doctor recently asked me for my family medical history, which I obviously don't know. I was struck by the fact that I have no idea what could be lurking*

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575 Appendix 1: Tab 68 paragraphs 24 and 25
576 Appendix 1: Tab 68 paragraphs 24 and 25
577 Appendix 1: Tab 19 paragraph 26
578 Appendix 1: Tab 7 paragraphs 29 and 30
579 Appendix 1: Tab 7 paragraphs 29 and 30

around the corner for me from the medical point of view and this is causing me anxiety, not only for me but for my own daughter".[580]

3.100 Witness 8 had initiated her searches with Cúnamh in 1995. She was told by Cúnamh in 2007 that her natural mother's two sisters had been diagnosed with breast cancer and that one of them had died as a result in 2005. She said as follows in this regard:

> "*The way I look at it, I am ■■ years of age, I have raised three children. I pay my bills, I pay my taxes, I am a normal citizen of this country but at the end of the day I was treated like a five year old child. I am angry that it was so difficult to track down my birth certificate and that nobody was able to assist me. I should have been given my medical records – to hear about my family's increased risk of breast cancer so late on in my life is shocking, especially since I have three daughters myself".*[581]

3.101 Witness 40 speaks about perceiving a need to make clear her intense emotional distress to social workers in order to access information, as a "*'lever' or 'fork' to try to get more information out of the AAI*". She had applied to put her name on the NACPR and finally received some documents from the AAI in 2013. However, most of the information had been redacted with a thick black marker. She thereafter made repeated requests to the AAI to find out the redacted information. She explained that four of her friends had recently died in the last year around the age of 45-46 years old from hereditary conditions. She was worried about passing on hereditary diseases to future children and considered that not knowing about her family history and family conditions could be fatal. After speaking to the AAI advisor, who was "*really upset*" and "*disgusted by the way women were treated in Ireland*", for more than an hour, she finally received the unredacted information and could identify who her mother was. Sadly, her mother had taken her own life before she could trace her.[582]

3.102 Witness 58 says:

> *"My son was very ill in 2005/2006 and I was unable to answer the doctors' questions regarding my medical history. In 2011, I requested health records from my birth mother's time at the Manor House Castlepollard from the Health Service Executive but was simply told to join the waiting list. Not knowing my medical history during the time of my son's illness made me anxious and worried".*[583]

Right to Privacy and Redaction of Personal Records

3.103 Several adopted people talk in their testimonies of the Irish authorities' balancing of privacy rights weighing too strongly in favour of natural parents in a way that has meant that adopted people have been denied access to important information about themselves, often through redactions of key identity documents such as birth certificates.

3.104 Witness 21 was born in St Patrick's Mother and Baby Home in 1966 and was adopted through St Louise's Adoption Society. She was able to make contact with her natural mother and corresponded with her by letter before she died. In 2014, she wrote to Tusla requesting a full copy of any information that they held on her, her natural mother and other natural family members. She expressly sought adoption information, medical records, maternal care records, feeding records, vaccination records, records of participation in any medical or vaccine trials, among others. Her testimony in this regard is as follows:

> "*Although I was provided with a number of records from the files of St Patrick's and St Louise Adoption Society, a large amount of the information to which Tusla had access was redacted and/or withheld from me entirely, which I find remarkable. The letter that I received explaining this […] cites the strong*

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580 Appendix 1: Tab 31 paragraph 16
581 Appendix 1: Tab 8 paragraph 32
582 Appendix 1: Tab 40 paragraph 27
583 Appendix 1: Tab 58 paragraph 20

protection of personal information created by s.28 of the Freedom of Information Act where this personal information is sought by someone other than the individual to whom it relates".

3.105 In Witness 21's view, the effect of this was "*very odd*" as her deceased mother is not in a position to consent, but whilst she was still alive, she was willing to provide her with information about herself. She concludes as follows:

"*Whilst I recognise that these issues involve a balancing of rights, it seems wrong that the right to privacy of a deceased individual is given greater weight than a living person's right of information about their family background. In my view, the Commission should recommend to the Government that it change the law to allow greater access to information to people wanting to find out about their family".*

3.106 Witness 21 added that it seemed to her:

"*inappropriately restrictive that adopted children can only be given information about themselves and their background if their natural family, particularly the birth mother, consents".*[584]

3.107 Witness 27 was born in Marian Vale Mother and Baby Home in Newry and was transferred to the South for adoption through St Clare's Adoption Society in Stamullen. It took her six years to obtain access to her records, after being repeatedly told by the Adoption Board that she wasn't entitled to see them. Her testimony is that it was "*wholly inappropriate*" that she was only given scant information from the Adoption Board when she now knows that they had the full information all the time. She concludes:

"*I would also like to comment on the difficulty that adopted children have in obtaining a copy of their own birth certificate. I appreciate that there is a balance to be struck between the right to privacy of birth mothers and fathers and the interests of the adopted child but in my view that is not a justification for preventing a person from seeing their <u>own</u> birth certificate".*[585]

3.108 Witness 67 says she provided the Adoption Authority (then the Adoption Board) and St Patrick's Guild with written consent from both her natural mother and her adoptive parents, however both the Board and the Guild nonetheless refused to release her files to her.[586] Later, Witness 67 applied for her records under the Data Protection Act, and she has had three different experiences in obtaining the same record, which is a letter from another doctor to her GP. When Witness 67 applied for her medical records from her GP, the letter in question was given to her in unredacted format.[587] When she applied to Tusla for her St Patrick's Guild records, the letter was released, however the final line in the letter (referring to her adoptive mother) was redacted.[588] When she applied to the Adoption Authority, it refused to release the record on the grounds that they contain *"third party information"*.[589] Witness 67 says:

"I completely disagree with this rationale, because I have successfully applied for other records about me, for example, my medical records, and nothing has ever been redacted or withheld from these files on the grounds that they contain 'third party information', despite the fact that my adoptive parents, doctors and other medical personnel are named throughout. If I am capable of receiving unredacted records in other contexts without any danger of me harassing third parties named therein, there is no conceivable reason why I should not be permitted to receive my adoption files in an unredacted format".[590]

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584 Appendix 1: Tab 21 paragraphs 29 and 34
585 Appendix 1: Tab 27 paragraph 36
586 Appendix 1: Tab 67 paragraph 74
587 Appendix 1: Tab 67 paragraph 38
588 Appendix 1: Tab 67 paragraph 39
589 Appendix 1: Tab 67 paragraph 40
590 Appendix 1: Tab 67 paragraph 42

3.109 It took Witness 68 several years to obtain her birth certificate. She first requested this from several authorities in 1993 but did not receive any information. In 1994, the Adoption Board responded to a letter from her stating that without her natural mother's consent, they could not help her or release any information that would identify her natural mother. She said that:

> "*By this stage, it was too late to seek her consent or establish her wishes which no one had ever done before. She had already passed*". [591]

3.110 Witness 68 wrote to the Adoption Board again in 1996 and was told that she would be placed on a waiting list due to the large volume of requests they were receiving. She ultimately was able to obtain her birth certificate at a meeting with a nun from St Patrick's Guild, during which she also learned of her mother's passing in 1988. She recalls:

> "*falling to the floor in shock, as it had been such a long and desperate search for [her] birth mother and the news was incredibly distressing*".

3.111 Witness 68 also said that she was "*incredibly happy at obtaining a copy of my birth certificate, but it did not appease the loss of finding out my birth mother had passed*".[592]

3.112 When Witness 68 complained to the Adoption Board later that year at the lack of contact and progress, she was astounded that the response at that stage referred her to contacting her mother, who they knew had passed from the correspondence. She said that :

> "*It was nothing short of insulting and showed the clear lack of integrity from them in helping [her] with [her] search*".[593]

3.113 Witness 68 concludes as follows:

> "*I have found the process of trying to trace information about my mother very hard. It has been the most daunting, depressing, miserable and lonely search. I have faced umpteen brick walls, and I don't know how to express it. All I know is that it has worn me out*".[594]

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591 Appendix 1: Tab 68 paragraphs 29, 30 and 40
592 Appendix 1: Tab 68 paragraphs 29, 30 and 40
593 Appendix 1: Tab 68 paragraphs 29, 30 and 40
594 Appendix 1: Tab 68 paragraphs 29, 30 and 40

4. SECTION 4: CONSTITUTIONAL AND HUMAN RIGHTS

Applicable Human Rights Obligations

4.1 The evidence summarised above demonstrates the existence of a system in which large numbers of girls and women who became pregnant outside of marriage from the foundation of the Irish State onwards were incarcerated without legal authority, forcibly returned from abroad without legal authority, institutionalised in settings which were not properly equipped or regulated to ensure adequate medical care during pregnancy and birth, prevented from caring for their infants after birth, and subjected to forced labour and other severe forms of physical and psychological denigration and humiliation. The forced institutionalisation and separation of unmarried mothers and their children was State policy, including for girls and women who had become pregnant as a result of rape. The evidence shows that institutional conditions led to the deaths of many children, who were frequently buried unidentified. It has also been established that pharmaceutical companies were permitted to perform vaccine trials on the children of unmarried mothers, and statements gathered by the Clann Project indicate that mothers' consent was not sought or obtained for these trials. Numerous women were transferred between Magdalene Laundries and institutions for unmarried mothers, and many women who died in Magdalene Laundries having been subjected to arbitrary detention, forced labour and other forms of abuse have not been identified nor their graves marked.

4.2 The evidence gathered by the Clann Project (as well as statistics available via the Adoption Authority annual reports) makes clear that there was a system of widespread forced, illegal separation of unmarried mothers and their children (if they survived) from the foundation of the Irish State onwards through informal adoptions, adoptions carried out while mothers were incarcerated, and adoptions which otherwise did not satisfy the legislative requirements post-1952. Children were also forcibly separated from their mothers by *"boarding out"* or fostering, and by their placement in industrial schools or other settings which denied them familial contact. In addition, even where adoptions took place in accordance with the legal formalities of the post-1952 adoption legislation and outside of an imprisonment context, unmarried girls and women frequently felt coerced by the societal stigma and ostracisation that they faced coupled with the State's refusal to support them to raise their children. As a result of the separation of children from their mothers, wider family connections were also broken as children were denied the opportunity to know their other natural relatives. Although many adoptive families were loving and caring environments, the State's failure to monitor the homes and institutional settings into which children were sent led to numerous children suffering further abuse for the duration of their childhood.

4.3 To this day, information remains unavailable to many individuals whose lives were affected by the institutionalisation and separation of unmarried mothers and their children during the 20th century. Women whose children were taken from them have no statutory right to know what happened to their children, and adult adopted people have no statutory entitlement to their birth certificate, family medical history information or information from their adoption or early history that would tend to identify any of the parties involved. The mothers and other family members of children who died in institutions have no statutory entitlement to know where they are buried and the circumstances of their death.

4.4 The institutions and agencies involved in the separation of mothers from their children and state social workers have provided some information on a discretionary basis. The provision of information is extremely limited, *ad hoc* and dependent on the goodwill of the institutions involved in the abusive system. Individuals seeking to uncover their own identity and personal history, and those attempting to discover the fate of their children or other relatives, are powerless in the system. This powerlessness has added to the pain and suffering which the system of abuse caused to many.

4.5 The State's efforts to investigate the abuse of unmarried mothers and their children, and to provide information to mothers, their adult children and other relatives, and the general public, have been piecemeal. The Commission of Investigation is only investigating the treatment of mothers and children in 18 of the 182 institutions, agencies and individuals

involved in the system. This means that the treatment of people who dealt with 164 of the institutions, agencies and individuals is not subject to any investigation. Section 19 of the Commissions of Investigation Act 2004 prevents the Commission from transferring the evidence which it obtains to An Garda Síochána, and moreover, An Garda Síochána has not instituted any systematic investigations into the abuse of unmarried mothers and their children in the ways summarised above.

4.6 The Commission of Investigation is not mandated to provide personal information to individuals or their family members. In fact, the Commission of Investigation is immune from the ordinary right of access to one's personal data under the Data Protection Act.[595] There is still no mechanism in existence for individuals to learn the truth about their own identity and history, or that of their relative(s). There has been no identification of the remains of the children buried unmarked, whether at Tuam, Castlepollard, Bessborough, Sean Ross Abbey or elsewhere. Nor have the identities or gravesites of all the women who died in Magdalene Laundries been ascertained and made known to their families or the public.

4.7 The treatment of unmarried mothers and their children outlined in these submissions constitutes grave human rights abuse. The abuse is not "historic". Human rights violations are continuing due to the State's failure to ensure (among other things) effective investigations, accountability measures, access to the truth, access to personal information and information about the fate of family members, access to the courts, access to rehabilitation and other redress measures, and mechanisms for ensuring that the systematic abuse is not repeated.

4.8 At least six international human rights bodies have expressed their concern at the denial of the basic rights of non-marital families for many decades from the foundation of the State in 1922 onwards and called on the State to recognise its duty to remedy these rights violations.[596]

4.9 The Irish Human Rights and Equality Commission recognised the gravity of the abuse when it informed the Government in its 2014 submissions regarding the proposed Commission of Investigation that:

> "*The operation and oversight of institutions such as the Mother and Baby Homes and Magdalen Laundries raise very serious questions about the extent to which the State has complied with its human rights obligations*".[597]

4.10 The IHREC stressed the need to consider the State's obligations under the:

- 1937 Constitution of Ireland
- European Convention on Human Rights (ratified on 3 September 1953)
- United Nations Convention on the Elimination of All Forms of Discrimination Against Women (ratified on 23 December 1985)

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595 See Commissions of Investigation Act 2004, section 39.

596 Committee Against Torture, Concluding Observations on the initial report of Ireland (17 June 2011) UN Doc CAT/C/IRL/CO/1. Appendix 2: Tab 45; Committee Against Torture, Concluding Observations on the second periodic report of Ireland (31 August 2017) UN Doc CAT/C/IRL/CO/2 Appendix 2: Tab 44; Committee on Economic, Social and Cultural Rights, Concluding Observations on the Third Periodic Report of Ireland (19 June 2015) UN Doc E/C.12/IRL/CO/3 Appendix 2: Tab 28; Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Sixth and Seventh Periodic reports of Ireland (3 March 2017) UN Doc CEDAW/C/IRL/CO/6-7 Appendix 2: Tab 26; Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Ireland (19 August 2014) UN Doc CCPR/C/IRL/CO/4 Appendix 2: Tab 43; Council of Europe, Parliamentary Assembly, Periodic review: Ireland, Doc 14450 Part 5 (IE), 14 December 2017 Appendix 2: Tab 66; Council of Europe Commissioner for Human Rights, Nils Muzinieks, Report following visit to Ireland from 22 to 25 November 2016, CommDH(2017)8, 29 March 2017 Appendix 2: Tab 55.

597 IHREC (designate), 'Proposed Commission of Investigation to Inquire into Mother and Baby Homes: Submission on behalf of the Irish Human Rights and Equality Commission (Designate)' (July 2014) p5. Available at: https://www.ihrec.ie/download/pdf/ihrec_designate_submission_on_mother_baby_commission_investigation_june_2014.pdf

- International Covenant on Civil and Political Rights (ratified on 8 December 1989)
- International Covenant on Economic, Social and Cultural Rights (ratified on 8 December 1989)
- United Nations Convention on the Rights of the Child (ratified on 28 September 1992)
- United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ratified on 11 April 2002)

4.11 The Clann Project believes that the following international treaties are also relevant to the abuse of unmarried mothers and their children from 1922 onwards:

- Charter of Fundamental Rights of the European Union (in force since 2009)
- League of Nations Slavery Convention, 1926 (ratified on 18 June 1930)
- International Labour Organization (ILO) Forced Labour Convention, 1930 (ratified on 2 March 1931)
- United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1957 (ratified on 18 September 1961)
- ILO Abolition of Forced Labour Convention, 1957 (ratified on 11 June 1958)
- United Nations Convention on the Elimination of Racial Discrimination (ratified in December 2000)

4.12 It is important to note that, under the Irish Constitution and European and international human rights law, the State may be deemed responsible for human rights violations not only when State officials or institutions directly perpetrate abuse but also when the State fails to act in order to safeguard individuals' rights when it knows or ought to know that abuse of fundamental human rights is occurring.[598]

4.13 There is a great deal of direct State responsibility for the treatment of unmarried mothers and their children. The State directly managed many of the institutions which incarcerated women and girls and their children, and it funded a large number of organisations and institutions who claimed they were "voluntary" organisations which were involved in the institutionalisation and separation of unmarried mothers and their children. Numerous State bodies were responsible for the regulation and supervision of institutions and organisations that institutionalised and separated unmarried mothers and their children. State bodies were also responsible for monitoring and responding to deaths in care settings. In addition, numerous *"voluntary"* entities had powers under law to provide adoption and other public services that affected unmarried mothers and their children, such as would today bring them within the definition of a public body in European law.[599]

4.14 In addition, the State holds considerable "indirect" responsibility for the treatment of unmarried mothers and their children, in the sense that it should have properly monitored the system and intervened to prevent rights violations because it was aware and ought to have been aware that women and children were suffering gross and systematic abuse. The vulnerability of unmarried mothers and their children – in the sense of being imprisoned, being subjected to pervasive societal discrimination and stigmatisation, and being dependent on the State for support – made the State's obligations to protect their rights even more pressing. It is clear from the evidence gathered by the Clann Project and other publicly available evidence that the State knowingly supported and facilitated, and failed to prevent (including by way of breach of statutory duty by oversight bodies such as

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598 See for example *Belgian Linguistics* case *Belgian Linguistic (No 2)* (1968) 1 EHRR 252 para 7; *Marckx v Belgium* (1979) 2 EHRR 330 para 31; *X and Y v Netherlands* (1985) 8 EHRR 235; *O'Keefe v Ireland* App no. 35810/09 (2014) 59 EHRR 15; HRC General Comment No 31, 'The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (29 March 2004) UN Doc CCPR/C/21/Rev.1/Add.13 para 8; *Storck v Germany* (2006) 43 EHRR 6, para 102.

599 See *Foster v British Gas,* Case C-188/89 (1990)

the Adoption Board), the abuse of unmarried mothers and their children in many ways during the 20th century.

4.15 It is also crucial to recognise that, under the Irish Constitution, non-State entities and individuals are obliged to respect the Constitutional rights of others.[600] These submissions focus in particular on the obligations of the State because the State is – and always has been – in the position to put an end to the systematic abuse, and to investigate, bring about accountability and ensure access to information and other forms of reparation. However, it is extremely important to also highlight the legal and moral responsibility of the Catholic Church and its representatives, and the responsibility of other organisations and individuals, for the grave abuse of unmarried mothers' and their children's Constitutional and human rights. There is a major role for these entities and individuals to play in ensuring that the systematic abuse comes to an end and that information, accountability and access to justice and reparation are provided to individuals whose lives have been affected.

Non-Exhaustive List of Human Rights Violations

Enforced Disappearance

4.16 The Clann Project is of the opinion that the illegal separation of children from their mothers and mothers' subsequent inability to discover the fate or whereabouts of their children amounts to **enforced disappearance**,[601] which is one of the gravest violations of rights and constitutes a crime against humanity under international criminal law when widespread or systematic. In addition, where mothers were incarcerated following their separation from their children and the State refused thereafter to inform the children (even when they became adults) of their mothers' fate or whereabouts, this also seems to constitute enforced disappearance.

4.17 Enforced disappearance is a combined violation of several of the rights guaranteed by the Irish Constitution, the European Convention on Human Rights (ECHR), the EU Charter and many other international treaties. It is recognised internationally that:

> *Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field… Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life*.[602]

4.18 An enforced disappearance is by its nature a continuing situation, meaning that the violations of the rights involved (e.g. the rights to liberty and security of the person and to freedom from torture and ill-treatment) continue to exist until the time that the State provides information to family members about the fate and whereabouts of their

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600 See for example *Educational Co of Ireland v Fitzpatrick (No 1)* [1961] IR 323; *Re Ward of Court (withholding medical treatment) (No 2)* [1996] 2 IR 79.

601 The United Nations Declaration on the Protection of All Persons from Enforced Disappearances, UNGA Res 47/133 (1 December 1992) UN Doc A/RES/47/133 explains that 'enforced disappearances' occur when *'persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law'*. Available at: http://www.un.org/documents/ga/res/47/a47r133.htm

602 Ibid.

relative.[603] This means that mothers and their adult children who are still unable to find out what became of each other are continuing to experience human rights violations. The violations are not *"historic"*.

Violations of Dignity

4.19 The treatment described in these submissions was, and is, deeply discriminatory. Unmarried girls and women and their children have been treated as if they have less worth than others, and as if they did not, and do not, deserve the same rights as others. In this way, the institutionalisation and forcible separation of unmarried mothers and their children and its aftermath has clearly **interfered with their right to respect for their human dignity**. The right to dignity in death[604] also appears to have been routinely violated by the manner in which many children and women who died in institutions were buried.

4.20 The equal dignity of all human beings is the founding principle upon which the current international human rights regime is based. Human dignity is also of particular importance in the Irish Constitution. The Irish Constitution is the oldest existing domestic Constitution in the world which recognises human dignity as one of its founding concepts.[605] The Irish Courts have recognised the constitutional right to dignity.[606] In *Quinn's Supermarket v. Attorney General*, the majority of the Supreme Court stated:

> "*The provisions of Article 40, s. 1, of the Constitution … is not a guarantee of absolute equality for all citizens in all circumstances but it is a guarantee of equality as human persons and (as the Irish text of the Constitution makes quite clear) is a guarantee related to their dignity as human beings and a guarantee against any inequalities grounded upon an assumption, or indeed a belief, that some individual or individuals or classes of individuals, by reason of their human attributes or their ethnic or racial, social or religious background, are to be treated as the inferior or superior of other individuals in the community. This list does not pretend to be complete; but it is merely intended to illustrate the view that this guarantee refers to human persons for what they are in themselves rather than to any lawful activities, trades or pursuits which they may engage in or follow*". [607]

Discrimination

4.21 The treatment of unmarried mothers and their children outlined in these submissions has **violated the explicit equality and non-discrimination guarantees** in the Irish Constitution and European and international human rights law. The discrimination that women and children experienced was not confined to the ground of marital status. It was sex and gender-based in its punishment and stigmatisation of women and girls, and it appears to have been significantly socio-economically based. Racial discrimination is also evident in the discriminatory treatment of mixed-race children.

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603 See for example UN Declaration on the Protection of All Persons from Enforced Disappearances, UNGA Res 47/133 (1 December 1992) UN Doc A/RES/47/133. Available at: http://www.un.org/documents/ga/res/47/a47r133.htm; Working Group on Enforced or Involuntary Disappearances, 'General Comment on Enforced Disappearance as a Continuous Crime' in UN Human Rights Council. Available at: http://www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf; 'Report of the Working Group on Enforced or Involuntary Disappearances' (26 January 2011) UN Doc A/HRC/16/48. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.48_en.pdf; *Varnava and others v Turkey*, App nos 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90 (ECtHR, 18 September 2009) para 148; HRC, *S Jegatheeswara Sarma v Sri Lanka*, Communication No. 950/2000 (16 July 2003) UN Doc CCPR/C/78/D/950/2000 para 6.2; also para 9.1 onwards.

604 See *PP v HSE* [2014] IEHC 622

605 The Preamble to the Constitution states that the purpose of the Constitution is to promote "*the common good, with due observance of Prudence, Justice and Charity so that the dignity and freedom of the individual may be assured, true social order attained, the unity of country restored, and concord established with other nations*". See Bunreacht na hÉireann (1937), Dublin: Oifig an tSoláthair, 1945.

606 See, for example, *In re Ward of Court (No 2)* [1996] 2 IR 79; *Redmond v Minister for the Environment* [2001] 4 IR 64.

607 *Quinn's Supermarket v. Attorney General* [1972] IR 1 p13.

4.22 The ECtHR has held on several occasions that discrimination on grounds of *"illegitimacy"* and discrimination against unmarried mothers and their children violates the ECHR.[608] In *Johnston v Ireland*,[609] Ireland's discriminatory succession law was found to be in breach of the Convention.

4.23 Since December 1985, Ireland has been obliged under Article 5 of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women to:

> *take all appropriate measures:*
>
> *(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;*
>
> *(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.*[610]

Violations of the Right to Autonomy

4.24 The denial of mothers' opportunity to withhold consent to the taking of their children, including through their systematic incarceration and through the absence of proper informed consent procedures in the adoption context, arguably **violated the women's right to autonomy**. The right to autonomy is closely connected with the concept of human dignity and appears to be an implied right under Article 40.3.1 of the Constitution,[611] recognised in *Re a Ward of Court (withholding medical treatment) (No2).*[612] The rights to dignity and autonomy are also part of the rights under Constitutional, European and international law to respect for privacy, freedom from torture and ill-treatment, and liberty.

Torture or Cruel, Inhuman or Degrading Treatment or Punishment

4.25 Intense suffering and humiliation was, and continues to be, caused by numerous aspects of the abuse described in these submissions. The abuse summarised above profoundly interfered with the human dignity of women, girls and their children. The forced separation of women and girls from their children; the incarceration, exploitation and neglect of women and children in the institutions; the conditions in which many infants died and were buried; the infliction of non-consensual medical experimentation on children; and the ongoing refusal of State and non-State institutions to reveal information to individuals who are attempting to discover the truth about their identity or their relative's fate are all capable of being viewed as **cruel, inhuman or degrading treatment, or even torture where the pain or suffering was severe and deliberately inflicted**.

4.26 The right to freedom from torture and ill-treatment has been recognised by the Irish Courts as an unenumerated right (and part of the right to bodily integrity) under Article 40.3 of the Constitution.[613] The right to freedom from torture and ill-treatment is expressly guaranteed by a wide range of European and international treaties to which Ireland is a party. This right is absolute,[614] meaning that the State cannot invoke any justification for

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608 *Mazurek v France* (2006) 42 E.H.R.R. 9; *Marckx v Belgium,* Series A, No. 31 (1979) 2 E.H.R.R. 330;

609 (1986) 9 E.H.R.R. 203

610 CEDAW Art 5

611 Article 40.3.1:

> *3 1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen;*
>
> *2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.*

612 *Re a Ward of Court (withholding medical treatment) (No2)* [1996] 2 IR 79

613 See *Ryan v Attorney General* [1965] I.R. 345; *The State (C) v Frawley* [1976] IR 365; Hogan & White, *JM Kelly: The Irish Constitution* (4th ed., Tottel Publishing, 2003), para 7.3.76;

614 See *Al-Adsani v. United Kingdom* App no. 35763/97 [2001] ECHR 761 (21 November 2001)

committing torture or ill-treatment or failing to take reasonable measures to protect from torture or ill-treatment which it knows or ought to know is occurring.

4.27 The witness statements gathered by the Clann Project demonstrate that degrading treatment was systematically inflicted upon unmarried women and girls and their children. Degrading treatment includes that which *"was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance, or when it was such as to drive the victim to act against his will or conscience"*.[615]

4.28 In addition, the evidence gathered by the Clann Project demonstrates that women and children were frequently caused bodily injury and/or intense physical or mental suffering, indicating cruel or inhuman treatment.[616]

4.29 Torture has been defined by the European Court of Human Rights (ECtHR) as *"deliberate inhuman treatment causing very serious and cruel suffering"*.[617] The definition of torture under the United Nations Convention Against Torture (UNCAT) requires that severe pain or suffering has been intentionally inflicted for the purpose of punishing a person, intimidating or coercing her, or for any reason based on discrimination of any kind.[618] The Clann Project believes that these criteria were met in numerous cases of forced adoptions, in particular.

4.30 It is generally understood that individuals are more likely to experience torture or ill-treatment when they are deprived of their liberty, due to the power that others hold over them. In addition, the ECtHR and other international human rights treaty bodies have recognised that people are vulnerable to experiencing torture or ill-treatment when they are powerless in other ways: for example, if they are dependent on the State for the minimum resources necessary for daily living, or if they are dependent on health professionals for care. Given that unmarried mothers and their children were generally ostracised in society for much of the 20th century and many were incarcerated, they were in a situation of great dependence on the State and so-called *"voluntary"* service-providers. It is likely that many of the individuals affected by the institutionalisation and forced separation of mothers and children have experienced intense feelings of humiliation and distress due to their powerlessness to stop the abuse that happened to them.

4.31 Factors that are likely to have increased even further the suffering experienced by those who were forcibly institutionalised and separated include that many were children, and many were victims of rape – and they were punished, rather than cared for (and rather than the perpetrators of sexual violence being apprehended and punished). It is widely recognised by courts and human rights treaty bodies around the world that children are more vulnerable to torture or cruel, inhuman or degrading treatment due to their dependence on others for care, their powerlessness to remove themselves from abusive situations and the psychological impact of abuse suffered while at a formative stage of life.[619] The ECtHR has held on numerous occasions that States are obliged under Article 3 ECHR to "*provide effective protection in particular of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had*

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615 *Jalloh v. Germany* [GC] no 54810/00 para 68.

616 See *Jalloh v Germany* (2007) 44 EHRR 32 para 68; see also Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights* (2nd edn, Oxford University Press 2005) 214.

617 *Aksoy v Turkey*, App No 21987/93 (ECtHR, 18 December 1996) para 63.

618 UNCAT Article 1; see also UNCAT, General Comment No 2, Implementation of article 2 by State parties, 24 January 2008, UN Doc CAT/C/GC/2, § 10

619 See for example *O'Keeffe v Ireland* (2014) 59 EHRR 15*; Z and Others v United Kingdom* (2002) 34 EHRR 3; *Tarakhel v Switzerland* (2015) 60 EHRR 28 para 119; IACtHR, '*Juvenile Reeducation Institute*' *v Paraguay*, Judgment of 2 September 2004 (Preliminary Objections, Merits, Reparations and Costs) Series C No 112 paras 163, 212; *Aydin v Turkey* (1998) 25 EHRR 251 para 84; *Rahimi v Greece*, App no 8687/08 (ECtHR, 5 July 2011).

or ought to have had knowledge".[620] In addition, the ECtHR has recognised that "*rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence*"[621] and that States have heightened duties to protect the dignity of victims of rape and sexual violence and to deter such violence by holding perpetrators accountable.[622]

4.32 European and other international human rights treaty bodies have found on numerous occasions that relatives have suffered inhuman and/or degrading treatment where their family member has been forcibly disappeared and the State has refused to provide information about their family member's fate or whereabouts.[623] In these cases, the experience of inhuman or degrading treatment is recognised as an ongoing situation until or unless there is accountability. The violation is not *"historic"*.

4.33 Non-consensual medical treatment which is not necessary by reason of emergency and experimentation on a child without its parent's consent are generally understood to be violations of the right to freedom from torture and ill-treatment, and to bodily integrity.[624]

Violations of the Right to Respect for Private and Family Life

4.34 It is beyond question that the State's policy of supporting and enforcing the institutionalisation and separation of mothers and children on the basis that these families were not married **violated the right to respect for private and family life**. More specifically, the right to respect for private and family life was violated by aspects of the abuse including the denial of proper opportunity to care for and bond with one's child in institutional settings; the humiliating manner in which many women were forced to give birth; the forced and otherwise illegal separations of children from their mothers, including through informal, illegal and coerced adoptions; the non-consensual infliction of vaccine trials on children; and the failure to mark burial places. Violations of the right to respect for private and family life continue today in the form of lack of access to information about one's identity and family history, and lack of access to information about the fate and whereabouts of family members.

4.35 The right to privacy is an unenumerated right under the Irish Constitution.[625] A closely related right under the Irish Constitution is the unmarried mother's constitutional right to the custody of her child.[626] The right to respect for private and family life is protected by the ECHR, the EU Charter, the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention on the Rights of the Child (UNCRC). Article 8 of the EU Charter contains an explicit right to protection of personal data, which is an aspect of the right to privacy.

4.36 The right to respect for private and family life is not absolute. However, the State is only permitted to interfere with privacy or family life in a manner that is necessary in a democratic society and proportionate to achieving a legitimate aim.[627]

4.37 Article 8 ECHR includes the right to know and be cared for by one's parents.[628] The Irish Courts and the ECtHR have both held that the right to respect for private and family life will be violated where a forced (i.e. non-consensual) adoption occurs in anything other

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620 For example, *Z and Others v United Kingdom* (2002) 34 EHRR 3 para 73; *O'Keeffe v Ireland* (2014) 59 EHRR 15 para 144; *X and Y v The Netherlands* (1986) 8 EHRR 235 paras 21–27; *A v United Kingdom* (1999) 27 EHRR 611 para 22.

621 *Aydin v Turkey* (1998) 25 EHRR 251 para 83.

622 See for example *Opuz v Turkey* (2010) 50 EHRR 28 para 132; *Bevacqua and S v Bulgaria* App no 71127/01 (ECtHR, 12 June 2008) para 65; *Hajduová v Slovakia* (2011) 53 EHRR 8 para 46.

623 *Kurt v Turkey* (1999) 27 EHRR 373; *Bazorkina v Russia* (2008) 46 EHRR 15; *Quinteros v Uruguay*, Communication No 107/81; *Blake v Guatemala*, Judgment of 24 January 1998; *Goiburu and Others v Paraguay*, 22 September 2006.

624 See *In Re a Ward of Court (No. 2t)* [1996] 2 I.R. 79 at 156; *North Western Health Board v HW & Anor* [2001] 3 IR 622; Hogan & White, n. 24, para 7.3.77. See also *The People (DPP) v. Tiernan* [1988] IR 250 and *The People (DPP) v. JT* 91988) 3 Frewen 141

625 *McGee v Attorney General* [1974] IR 284; *Kennedy v Ireland* [1987] IR 587

626 *G v An Bord Uachtala* [1980] IR 32. See also *I.O'T v. B* [1998] 2 IR 321

627 Art 8 ECHR; *Kennedy v Ireland* [1987] IR 587.

628 *B v United Kingdom* (1987) 10 E.H.R.R. 87

than exceptional circumstances where objective evidence shows it to be necessary in order to protect the best interests of the child.[629] Article 8 ECHR requires that parents are sufficiently involved in the decision making process as to whether or not a child should be separated from them.[630] Article 9 UNCRC states that *"a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child".*

4.38 In *Kutzner v Germany*, the ECtHR held that in cases of children in care, *"where the existence of a family tie has been established, the State must in principle act in a manner calculated to enable that tie to be developed and take measures that will enable parent and child to be reunited"*.[631]

4.39 In the 1994 case of *Keegan v Ireland*,[632] the ECtHR held that Ireland was in violation of the right to respect for private and family life because Irish law allowed for the adoption of a child without the knowledge or consent of the natural father.

4.40 The right to know one's identity is a well-recognised aspect of the right to respect for private and family life under European human rights law.[633] In *SH v Austria*, the ECtHR held that:

> "*respect for private life requires that everyone should be able to establish details of their identity as individual human beings and that an individual's entitlement to such information is of importance because of its formative implications for his or her personality. This includes obtaining information necessary to discover the truth concerning important aspects of one's personal identity, such as the identity of one's parents*".[634]

4.41 Similarly, Article 7 UNCRC states that every child *"shall have the right from birth to a name [and] the right to know and be cared for by his or her parents".* Article 8 UNCRC requires States to *"respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference".* Article 8 continues: *"Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity".*

4.42 Blanket bars to accessing information about one's identity have been held by the ECtHR to violate the right to respect for private and family life.[635] The ECtHR has recognised that legitimate limits may be placed on the right when it is the mother's desire to remain confidential.[636] However, on the basis of ECtHR case law, it is highly questionable whether the denial of information would be considered by the ECtHR to be justified where an individual mother had not expressly stated at the time of the adoption that she wished to remain anonymous in the event that her adult child sought to ascertain her identity.[637]

4.43 In *Gaskin v United Kingdom*,[638] the ECtHR held that a person who has been in the care of a public authority has the right to obtain information about his or her treatment while in care. At the very least, adequate procedural protection must be in place to ensure that

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629 See *Gnahoré v France* (2002) 34 E.H.R.R. 38, at 59; Johansen v. Norway (1997) 23 E.H.R.R. 33

630 *W v United Kingdom* (1987) 10 E.H.R.R. 313

631 *Kutzner v. Germany*, App no. 46544/99, 26 February 2002 para 61

632 *Keegan v Ireland*, App No 16969/90 (ECtHR, 26 May 1994)

633 *Gasin v UK* (1989) 12 EHRR 36; *Odievre v. France (*App No 42326/98) ECHR 2003-III and *Godelli v. Italy* (App No 33783/09) 25 September 2012; Irish Human Rights Commission *Assessment of the Human Rights Issues Arising in relation to the "Magdalen Laundries"* Appendix 2: Tab 13 page 24; Law Must Enshrine Child's Right to Birth Information, Irish Times, 21st February 2013. Appendix 3: Tab 13

634 *SH v Austria* (2011) 52 EHRR 6, para 83

635 *Gasin v UK* (1989) 12 EHRR 36; *Mikulic v Croatia*, App No 53176/99; *AMM v Romania*, App No 2151/10 (ECtHR, 14 February 2012); *Phinikaridou v Cyprus*, App No 23890/02 (ECtHR, 20 December 2007); *Godelli v Italy*, App No 33783/09 (ECtHR, 25 September 2012); Jäggi v. Switzerland, App No 58758/00 (ECtHR, 13 October 2006).

636 *Odièvre v France* (2004) 38 E.H.R.R. 43

637 See also paragraphs 3.28-3.32, (Secrecy versus Privacy and Alleged Assurances of Confidentiality)

638 *Gaskin v United Kingdom* (1990) 12 E.H.R.R. 36

one is not arbitrarily denied the right to know about one's background. In the *Gaskin* case, the applicant, who had been taken into care at a very early age, wished to consult the confidential case records that had been compiled by the local authorities containing reports by everyone connected with the care proceedings. He was not able to gain access to all the information in his file as some of the contributors refused to provide him with information they had given in confidence. The Court in *Gaskin* held that a system that made access to case records conditional on obtaining the contributors' consent would only comply with the principle of proportionality if it made an independent body responsible for taking the final decision regarding access to the records in the event of the contributor failing to answer or withholding consent.

4.44 Denial of access to information regarding the fate and whereabouts of family members has also frequently been found to violate the right to respect for private and family life under the ECHR. In the 2015 case of *Jovanovic v Serbia*, the ECtHR found that the State had subjected a mother to a continuing violation of her right to respect for her private and family life on account of the fact that, since her newborn son had been removed from her in hospital in 1983, she had not been informed of how or when he had died or when and where he was buried.[639]

4.45 Failure to return the remains of deceased family members to their relatives has on many occasions been found to violate the right to respect for private and family life under the ECHR.[640]

4.46 With great relevance to the treatment of unmarried mothers and their children in Ireland, Article 9 UNCRC states that where separation of parent and child has occurred due to "*detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child*", 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*". Ireland ratified the UNCRC in 1992 and therefore the Convention applies to all situations that were continuing at that date, as well all that arose afterwards.

4.47 The ECtHR has in several cases found the performance of medical procedures on children without parental consent to violate the right to respect for private and family life.[641]

Arbitrary Detention (i.e. Violations of the Right to Liberty and Security of the Person)

4.48 **Arbitrary detention** was at the heart of the treatment of Irish unmarried mothers and their children for decades from the foundation of the State onwards. There is clear evidence that women, girls and their children were systematically detained in institutions including Mother and Baby Homes, County Homes and "voluntary" hostels and homes, including Magdalene Laundries (applicable to mothers only) without legal basis. The State was aware of, and participated in, this practice. No procedural safeguards existed to prevent arbitrary (including indefinite) detention. In addition, the State appears to have been aware of the forced return of pregnant girls and women from England by "voluntary" organisations and knowingly failed to prevent this practice.

4.49 The right to liberty is explicitly enshrined in Article 40.4.1 of the Irish Constitution, which provides that *"no citizen shall be deprived of his personal liberty save in accordance with law"*. Irish case law makes clear that the possibility of release upon the taking of a particular step (for example, the payment of a sum of money or in the present case the

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639 *Jovanovic v Serbia* (2015) 61 EHRR 3.

640 See for example *Hadri-Vionnet v Switzerland*, App No 55525/20 (ECtHR, 14 February 2008); *Girard v France*, App No 22590/04 (ECtHR, 20 June 2011); *Pannullo and Forte v France*, App No 37794/97 (ECtHR, 30 October 2001); *Sabanchiyeva and Others v. Russia* no 38450/05, 6 June 2013; *Maskhadova and Others v. Russia* no. 18071, 6 June 2013

641 See *M.A.K. and R.K. v. the United Kingdom* [2010] ECHR 363; *Glass v. the United Kingdom* no. 61827/00, 9 March 2004

relinquishment of a child for adoption) does not prevent a situation being classified as a deprivation of liberty.[642] The Constitution is clear that there must be a legal basis for detention in order for it to be lawful. As the Supreme Court held in *The State (McDonagh) v Frawley*, detention must be carried out in accordance with *"due process of law"* in order to be permitted.[643]

4.50 The right to liberty and freedom from arbitrary detention is also enshrined in European and international human rights law.[644] The prohibition of arbitrary detention is of such importance that it is a universally binding rule of customary international law (meaning that it binds states even when they have not ratified a particular Convention outlawing it).[645] According to numerous international treaties and customary international law, the prohibition of arbitrary detention does not allow for any exceptions. Thus, as the UN Working Group on Arbitrary Detention explains, *"a State can never claim that illegal, unjust, or unpredictable deprivation of liberty is necessary for the protection of a vital interest or proportionate to that end".*[646]

4.51 Similarly to Irish Constitutional law, under European and international human rights law a deprivation of liberty is only lawful if it happens in accordance with procedures established in domestic law which are fair and protect against arbitrariness.[647]

4.52 In *De Wilde, Ooms and Versyp ("vagrancy") v Belgium*, the ECtHR stated that detention cannot be considered voluntary merely because a person presents themselves to State authorities as destitute.[648]

Slavery, Servitude and Forced Labour

4.53 The evidence gathered by the Clann Project demonstrates that girls and women were routinely **forced to perform long days of unpaid labour, frequently for years**, while incarcerated in institutions including County Homes and Mother and Baby Homes, and Magdalene Laundries. The State appears to have been fully aware of this exploitation and failed to take any action to prevent it.

4.54 The Irish State has been obliged under international law since the early 1930s to take all necessary measures to prohibit and prevent slavery, servitude and forced labour. Such obligations arose under the 1926 Slavery Convention; 1930 ILO Forced Labour Convention; 1957 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; ILO Abolition of Forced Labour Convention; ICCPR; ECHR; and arguably the personal rights provisions in Article 40.3 of the Irish Constitution. In Ireland's 1984-85 Country Report to the ILO Committee of Experts overseeing implementation of the 1957 Forced Labour Convention, the Irish Government stated that *"[i]n view of the widespread recognition of the right not to be required to perform forced or compulsory labour as a fundamental human right, it may be regarded as virtually certain that the courts would regard it as a personal right guaranteed under the Constitution".*[649]

4.55 In *Van der Mussele v* Belgium, the ECtHR recognised that consent to labour which is essentially forced or constrained, and is not essentially voluntary, should not be a defence

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642 *In re Aiken* (1881) 8 LR Ir 50; *Re:Keller* (1888) 22 LR Ir 155

643 *The State (McDonagh) v Frawley* [1978] IR 131.

644 See art 5 ECHR; art 9 ICCPR

645 See United Nations General Assembly, Report of the Working Group on Arbitrary Detention, UN Doc A/HRC/22/44 (24 December 2012), paras 41 – 52. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/189/35/PDF/G1218935.pdf?OpenElement

646 Ibid, para 48.

647 See for example, *M v Ukraine* App no 2452/04 (ECtHR, 19 April 2012) para 58; *Kedzior v Poland* App no 45026/07 (ECtHR, 16 October 2012) para 63; Human Rights Committee, General Comment No 35, 'Article 9 (Liberty and security of person)' (16 December 2014) UN Doc CCPR/C/GC/35 . Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en

648 Series A no. 12 p 36 (18 June 1971)

649 International Labour Organisation, CEACR: Individual Observation concerning Convention No. 105, Abolition of Forced Labour, 1957 Ireland (ratification: 1958) (1990).

to charges of forced labour.[650] In *Siliadin v France* the ECtHR held that '"*servitude" means an obligation to provide one's services that is imposed by the use of coercion'.*[651] The treatment experienced by unmarried mothers could likely qualify as '*servitude*', in light of this definition.

Violations of the Right to Life

4.56 The State appears to have been aware of the high infant mortality rates in many institutions which detained unmarried mothers and their children. To the extent that the State failed to properly regulate those institutions and/or enforce the laws that applied to them so as to prevent foreseeable deaths, the State arguably **violated the right to life** of those who died. The right to life is enshrined in Article 40.3.2 of the Irish Constitution and Article 2 ECHR (among other legal instruments which place obligations upon Ireland). Both the Irish High Court and the ECtHR have recognised that the right to life places positive obligations on the State to protect life by its laws.[652] In *Makaratzis v Greece* the ECtHR held that Article 2 ECHR places a "*primary duty on the state to secure the right to life by putting in place an appropriate legal and administrative framework to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions*".[653]

4.57 In addition to the requirement of general regulation and inspection, where the State failed to take specific measures to protect children and women from what it knew or ought to know were immediate risks to their lives (for example, conditions in a given institution) the right to life may have been violated. The ECtHR has held that Article 2 ECHR requires the State to take practical steps to prevent loss of life in specific situations where it knows or ought to know that there is a real risk of death.[654] In *Nencheva and Others v Bulgaria*, for example, the ECtHR found that Bulgaria had violated the right to life of fifteen children and young adults who died at a home for young people with disabilities as a result of cold and shortages of food, medicines and basic necessities. The manager of the home had tried without success on several occasions to alert all the public institutions which had direct responsibility for funding the home and which could have been expected to act.

4.58 It is explained below that the State can also violate the right to life by failing to conduct an effective investigation into deaths that occur in institutional settings.

Continuing Violations of the Right to a Remedy

4.59 The Clann Project maintains that individuals and families whose lives were affected by the institutionalisation and separation of unmarried mothers and their children in 20th century Ireland are being denied their right to an effective remedy for the Constitutional and other human rights violations that are both past and continuing. Section 5 of these submissions explains in detail why the Commission of Investigation is not a sufficient remedy for the rights violations that have occurred and are continuing. Meanwhile, this section gives an overview of the applicable human rights law.

4.60 The Supreme Court has held that there is a right to a remedy under the Constitution for breaches of Constitutional rights.[655] As per Ó Dálaigh CJ in *The State (Quinn) v Ryan*:

> "*It was not the intention of the Constitution in guaranteeing the fundamental rights of the citizen that these rights should be set at nought or circumvented. The intention was that rights of substance were being assured to the individual and that the Courts were the custodians of these rights. As a necessary corollary it follows that no one can with impunity set these rights at nought or circumvent*

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650 *Van der Mussele v Belgium* (1983) 6 EHRR 163

651 (2006) 43 EHRR 16

652 *McGee v Attorney General* [1974] IR 284; *LCB v United Kingdom* 1998-III; 27 EHRR 212.

653 *Makaratzis v Freece* 2004-XI; 41 EHRR 1092 para 57 (GC).

654 See for example *Oneryildiz v Turkey* 2004-XII, 41 EHRR 325; *Osman v United Kingdom* 1998-VIII, 29 EHRR 245; *Opuz v Turkey* Hudoc (2009), 50 EHRR 695.

655 *Byrne v Ireland* [1972] 1 IR 241

them, and that the Courts' powers in this regard are as ample as the defence of the Constitution requires".[656]

4.61 Article 13 ECHR explicitly protects the right to an *"effective remedy"* for violations of the rights enshrined in the ECHR. Article 47 of the EU Charter guarantees the right to an *"effective remedy and to a fair trial"* for violations of its provisions. The vast majority of the other international human rights law treaties to which Ireland is a party also guarantee the right to a remedy for breaches of the State's obligations under those instruments.[657]

4.62 There are several aspects to the concept of an *"effective remedy"* for human rights violations. The United Nations *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* [658] and ECtHR and other international human rights treaty jurisprudence are all in general agreement that the right to an effective remedy requires the State to:

(a) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;

(b) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation; and

(c) Provide effective remedies to victims, including reparation.

Investigations

4.63 ECtHR jurisprudence makes clear that there is a positive obligation on the State to institute an effective investigation where there is evidence that Convention rights have been violated. In *Jovanovic v Serbia*, the ECtHR held that Article 8 ECHR contains a procedural obligation on states to investigate allegations of disappearances of children and of unlawful adoption.[659] ECtHR jurisprudence concerning the right to an effective investigation under Articles 2 (right to life) and 3 (prohibition of torture and inhuman or degrading treatment) is plentiful.

4.64 The obligation under Article 2 ECHR to protect the right to life imposes an obligation on the State to investigate deaths whether they occur at the hands of State agents,[660] private persons,[661] or persons unknown.[662] These may also include cases of disappeared persons whose fate is unknown.[663] Article 6 ICCPR, which protects the right to life, has also been interpreted so as to impose an obligation on the State to investigate and prosecute allegations of deprivation of life by State authorities or by private individuals

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656 *The State (Quinn) v Ryan* [1965] IR 70 at 122.

657 See for example article 2 of the International Covenant on Civil and Political Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child.

658 United Nations, *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*, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005. Available at: http://legal.un.org/avl/ha/ga_60-147/ga_60-147.html

659 Jovanovic v. Serbia (App No 21794/08) ECHR 2003-II 147.

660 *McCann v UK* A324 (1995); 21 EHRR 97 GC

661 *Menson v UK* App No 47916/99; (2003) 37 EHRR CD 220

662 *Togcu v Turkey* App No. 27601/95 (ECHR, 19 April 2002), *Kaya v Turkey* (1999) 28 EHRR 1; *Yasa v Turkey* 1998-VI; 28 EHRR 408.

663 *Cyrus v Turkey* 2011-IV; 35 EHRR 731, para 731 GC.

and entities.[664] The obligation is not dependent upon the lodging of a formal complaint by the next of kin or their suggesting a particular line of inquiry or investigative procedure.[665]

4.65 In *Salman v Turkey*, recognising that *"[p]ersons in custody are in a vulnerable position and the authorities are under a duty to protect them"*,[666] the ECtHR held that States are obliged to carry out an effective official investigation into deaths in custody or detention, even if no agent of the State was involved in the incident resulting in death. This was confirmed in *Musayeva v Russia*.[667] In *Fernandes v Portugal*, the ECtHR held that the investigative obligation arises where a death occurs *"in suspicious circumstances, even when the State has no direct responsibility for the death"*.[668] In *Oneryildiz v Turkey* (a case in which numerous deaths were caused by an environmental disaster), the ECtHR held that the investigative obligation arises *"when lives have been lost as a result of events occurring under the responsibility of the public authorities, which are often the only entities to have sufficient relevant knowledge to identify and establish the complex phenomena that might have caused such incidents"*.[669]

4.66 In *Premininy v Russia*, as in many other cases, the ECtHR held that Article 3 includes the requirement *"to carry out a thorough and effective investigation"*[670] of incidents of torture or ill-treatment, which investigation *"should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible".*[671]

4.67 The UNCAT contains an explicit obligation on the State under Article 12 to promptly, effectively and impartially investigate and examine the case of any individual who alleges that she or he has been subjected to torture or ill-treatment'.[672] Neither Article 12 nor Article 13 of the Convention requires the formal lodging of a complaint of torture or ill-treatment under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence. It is sufficient for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated.[673]

4.68 The ECtHR has held that an *"effective investigation"* is one which conforms to the following requirements:

- *Independence*: The investigation must be carried out by a body with both institutional and practical independence from those implicated in the events.[674]
- *Effectiveness*: The investigation should not be reliant solely on evidence or information from the source being investigated.[675] It should have full investigatory powers to compel witnesses and it should be capable of securing evidence.[676]
- *Promptness and reasonable expedition*: The investigation should be undertaken in a prompt and timely fashion in order to maintain public confidence.[677]

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664 Human Rights Committee, Draft General Comment on Article 6 of the International Covenant on Civil and Political Rights – Right to life, para 31

665 *Nachova v Bulgaria* 2005-VII; 42 EHRR 933 GC; see also *Finucane v United Kingdom* (2003) 37 EHRR 29.

666 *Salman v Turkey* (2002) 34 EHRR 425, para 99

667 (2008) 47 EHRR 25, para.77.

668 *Fernandes v Portugal* App No 43098/09 (ECHR, 15 December 2015) para 70. See also *Tunç v Turkey* App no 24014/05, (ECHR, 25 June 2013), para 171; *McCaughey v United Kingdom* App No 43098/09 (ECHR, 15 December 2015)

669 *Oneryildiz v Turkey* (2005) 41 EHRR 20 para 93

670 *Premininy v Russia,* paras 72, 74.

671 ibid para 74.

672 ibid para 25.

673 See *Abad v. Spain*, Communication No. 59/1996, UN Doc CAT/C/20/D/59/1996 (Available at: http://undocs.org/CAT/C/20/D/59/1996), 14 May 1998 § 8.6 and *Parot v. Spain*, Communication No. 6/1990, 2 May 1995, § 10.4.

674 See for example McKerr v United Kingdom (2002) 34 E.H.R.R. 20; Ergi v. Turkey(2001) 32 EHRR 388.

675 See for example Keenan v. United Kingdom (2001) 33 EHRR 913.

676 See for example Khan v. United Kingdom (2001) EHRR 1016.

- *Thoroughness*: the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions.[678] They must take all reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony and forensic evidence.[679] Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.[680]

- *Public Scrutiny*: There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory.[681]

- *Initiated by the State*: The authorities must act once the matter comes to their attention rather than leaving it to the next of kin to instigate.[682]

- *Involvement of victim*: The victim must be involved to the extent necessary to safeguard their legitimate interests.[683] In the case of *Edwards v United Kingdom*,[684] the ECtHR found that the parents of a man killed in prison were denied their right to an effective investigation notwithstanding that an inquiry, chaired by independent experts and assisted by lawyers, was commissioned by the Prison Service, Essex County Council and North Essex Health Authority and sat for 10 months and heard from about 150 witnesses. The ECtHR held that Mr and Mrs Edwards were not *"involved to the extent necessary to safeguard their interests"* on the grounds that the inquiry was held in private and:

> "*The applicants, parents of the deceased, were only able to attend three days of the inquiry when they themselves were giving evidence. They were not represented and were unable to put any questions to witnesses, whether through their own counsel or, for example, through the Inquiry Panel. They had to wait until the publication of the final version of the Inquiry Report to discover the substance of the evidence about what had occurred*".[685]

4.69 At the international level, the requirements of an effective investigation into alleged or suspected torture or ill-treatment have been interpreted in the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (GA Res 55/89 of 4 December 2000).[686] The UN Principles state the following requirements:

- The purposes of an investigation include (i) clarification of the facts and establishment and acknowledgement of individual and State responsibility for the victims and their families; (ii) identification of measures needed to prevent recurrence; and (iii) facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those

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677 See Gulec v. Turkey (1999) 28 EHRR 121; McKerr v United Kingdom (2002) 34 EHRR 20.

678 *El Masri v Macedonia* (2013) 57 EHRR 25, paras *183*-185; See also *Assenov (1999) 28 E.H.R.R. 652* at [103]; and *Batı v Turkey (2006) 42 E.H.R.R. 37* at [136] (extracts).

679 See *Tanrıkulu v Turkey (2000) 30 E.H.R.R. 950* at [104]; and *Gül v Turkey (2002) 34 E.H.R.R. 28* at [89].

680 See Boicenco v Moldova (41088/05) 11 July 2006 at [123].

681 Ibid.

682 *İlhan v. Turkey* [GC] App No 22277/93, ECHR 2000-VII, para 63

683 See for example Güleç v Turkey (1999) 28 EHRR 121; See also *El Masri v Macedonia* (2013) 57 EHRR 25 para 185

684 *Paul and Audrey Edwards v the United Kingdom* App No 46477/99 (ECtHR, 14 March 2002)

685 Ibid para 84.

686 Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Recommended by General Assembly resolution 55/89 of 4 December 2000, Office of the United Nations High Commissioner for Human Rights (hereinafter, "UN Principles"), Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/EffectiveInvestigationAndDocumentationOfTorture.aspx

indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State (Principle 1);

- The investigators are not just independent but also competent and impartial, and that they have access to impartial medical or other experts (Principle 2);

- The investigation has all necessary budgetary and technical resources for effective investigation and the authority to summons witnesses and demand the production of evidence (Principle 3(a));

- Alleged victims of torture or ill-treatment and their legal representatives are informed of and have access to any hearing, have access to all information relevant to the investigation, and be entitled to present other evidence (Principle 4);

- In cases of an 'apparent existence of a pattern of abuse', States shall 'ensure that investigations are undertaken through an independent commission of inquiry or similar procedure'. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve (Principle 5(a));

- The investigators' report is made public and that it includes conclusions and recommendations based on findings of fact and applicable law, including detailed descriptions of events that were found to have occurred and the evidence upon which such findings were based (Principle 5(b)); and

- Medical examinations conducted for investigative purposes conform to established standards of medical practice and result in an accurate written report, communicated confidentially to the person affected (Principle 6).

Access to Justice

4.70 Article 13 UNCAT contains an explicit obligation on States to ensure that individuals who allege that they have been subjected to torture or ill-treatment have the right to complain to, and have their case promptly and impartially examined by, the competent authorities. The UN Committee Against Torture's (CAT) General Comment No 3 states that *"Civil proceedings, or other proceedings, should not impose a financial burden upon victims that would prevent or discourage them from seeking redress"* (notably, the General Comment characterises the Article 13 UNCAT obligation as an aspect of comprehensive redress).[687] The CAT notes that *"Judicial remedies must always be available to victims, irrespective of what other remedies may be available, and should enable victim participation. States parties should provide adequate legal aid to those victims of torture or ill-treatment lacking the necessary resources to bring complaints and to make claims for redress".*[688]

4.71 In a similar vein, Article 47 of the EU Charter (Right to an effective remedy and to a fair trial) states that:

> Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
>
> Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
>
> Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

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687 CAT General Comment No 3, 'Implementation of article 14 by States parties' (13 December 2012) UN Doc CAT/C/GC/3 para 29. Available at: http://www.refworld.org/docid/5437cc274.html

688 CAT General Comment No 3, 'Implementation of article 14 by States parties' (13 December 2012) UN Doc CAT/C/GC/3 para 30. Available at: http://www.refworld.org/docid/5437cc274.html

Reparation and Redress

4.72 In *Ananyev v Russia*, the ECtHR held that the right to an effective remedy under Article 13 ECHR, when considered together with Article 3 ECHR, requires the State to ensure both preventive and compensatory remedies.[689] In other words, the State has to establish 'an effective mechanism in order to put an end to any such treatment rapidly'[690] and also ensure 'an enforceable right to compensation for the violation that has already occurred'.[691] Crucially, the ECtHR has also identified a right to know the truth protected by the Convention in *El Masri v Macedonia*.[692] The case concerned a German national subjected to extraordinary rendition and torture by the CIA in Afghanistan and Macedonia. In its judgment, the Court's Grand Chamber identified a violation of the procedural aspect of Article 3 ECHR in the inadequacy of the Macedonian investigation into his allegation that he had been tortured in a Skopje hotel. The Court observed:

> *191. Having regard to the parties' observations, and especially the submissions of the third-party interveners, the Court also wishes to address another aspect of the inadequate character of the investigation in the present case, namely its impact on the right to the truth regarding the relevant circumstances of the case. In this connection it underlines the great importance of the present case not only for the applicant and his family, but also for other victims of similar crimes and the general public, who had the right to know what had happened.*

4.73 In a Separate Concurring Opinion, the very eminent Judges Tulkens, Spielman, Sicilianos and Keller also discussed the right to the truth, but said that in legal terms it might better be situated in the right to an effective remedy in Article 13 ECHR:

> *4. We consider, however, that the right to the truth would be more appropriately situated in the context of Article 13 of the Convention, especially where, as in the present case, it is linked to the procedural obligations under Articles 3, 5 and 8. The scale and seriousness of the human rights violations in issue, committed in the context of the secret detentions and renditions system, together with the widespread impunity observed in multiple jurisdictions in respect of such practices, give real substance to the right to an effective remedy enshrined in Article 13, which includes a right of access to relevant information about alleged violations, both for the persons concerned and for the general public.*
>
> *5. The right to the truth is not a novel concept in our case-law, nor is it a new right. Indeed, it is broadly implicit in other provisions of the Convention, in particular the procedural aspect of Articles 2 and 3, which guarantee the right to an investigation involving the applicant and subject to public scrutiny.*
>
> *6. In practice, the search for the truth is the objective purpose of the obligation to carry out an investigation and the raison d'être of the related quality requirements (transparency, diligence, independence, access, disclosure of results and scrutiny). For society in general, the desire to ascertain the truth plays a part in strengthening confidence in public institutions and hence the rule of law. For those concerned – the victims' families and close friends – establishing the true facts and securing an acknowledgment of serious breaches of human rights and humanitarian law constitute forms of redress that are just as important as compensation, and sometimes even more so. Ultimately, the wall of silence and the cloak of secrecy prevent these people from making any sense of what they have experienced and are the greatest obstacles to their recovery.*

4.74 The CAT has clarified that, pursuant to Article 14 UNCAT, states must 'promptly initiate a process to ensure that victims obtain redress, even in the absence of a complaint, when

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689 *Ananyev v Russia* (2012) 55 EHRR 18 paras 96–98.
690 ibid para 98.
691 ibid para 97.
692 *El Masri v Macedonia* (App No 39630/09) ECHR 2012-VI 263

there are reasonable grounds to believe that torture or ill-treatment has taken place'.[693] The CAT's General Comment No 3 clarifies that 'redress' in Article 14 UNCAT means the 'comprehensive reparative concept' outlined in the UN Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.[694] In other words, redress under Article 14 UNCAT requires restitution, compensation, rehabilitation, satisfaction and the right to the truth, and guarantees of non-repetition.[695]

4.75 It is worth reproducing the CAT's explanation in its General Comment No 3 of "satisfaction and the right to the truth":

> *16. Satisfaction should include, by way of and in addition to the obligations of investigation and criminal prosecution under articles 12 and 13 of the Convention, any or all of the following remedies: effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification, and reburial of victims' bodies in accordance with the expressed or presumed wish of the victims or affected families; an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; judicial and administrative sanctions against persons liable for the violations; public apologies, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims.*
>
> *17. A State's failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a de facto denial of redress and thus constitute a violation of the State's obligations under article 14.*

4.76 In September 2015, the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, published a *Set of General Recommendations for Truth Commissions and Archives* as an appendix to his report elaborating on the main elements of a framework for designing State policies regarding "guarantees of non-recurrence" (UN Doc A/HRC/30/42). As the Special Rapporteur noted:

> *Archives containing records of mass violations can contribute to prevention. Access to well-preserved and protected archives is an educational tool against denial and revisionism, ensuring that future generations have access to primary sources, which is of direct relevance to history teaching. One notable example in this regard are the Stasi files opened up by Germany after 1989. Opening files contributes directly to the process of societal reform*. (UN Doc A/HRC/30/42 p22)
>
> *2…archives are relevant and can make significant contributions to each of the pillars of transitional justice, not merely truth and justice…Beyond the fact that transitional justice measures generate records themselves, truth commissions, trials, reparations programs and other transitional justice initiatives can contribute to improving archival practice both by the way they implement relevant standards with respect to their own documents, and because some of them, particularly truth*

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693 CAT General Comment No 3, 'Implementation of article 14 by States parties' (13 December 2012) UN Doc CAT/C/GC/3 para 27. Available at: http://www.refworld.org/docid/5437cc274.html

694 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res 60/147 (16 December 2005) UN Doc A/RES/60/147. Available at: http://legal.un.org/avl/ha/ga_60-147/ga_60-147.html

695 CAT General Comment No 3, 'Implementation of article 14 by States parties' (13 December 2012) UN Doc CAT/C/GC/3 para 2. Available at: http://www.refworld.org/docid/5437cc274.html

commissions, are in a good position to make comments and recommendations about archival reform in general. (UN Doc A/HRC/30/42, *Set of general recommendations for truth commissions and archives* para 2)

4.77 Among other things, the Special Rapporteur's *Set of General Recommendations for Truth Commissions and Archives* states that truth commissions should, through their operations:

(a) Build provision for the eventual disposition of their records, guaranteeing both their safety and accessibility;

(b) Plan to deposit their archives, preferably in existing national archives, duly taking into account considerations of the security, integrity and accessibility of the archives;

(c) Stipulate that the access policy of truth commission archives should maximise public accessibility, while respecting applicable privacy concerns, including in particular assurances of confidentiality provided to victims and other witnesses as a precondition of their testimony;

(d) Note that maximising future accessibility has an impact on many operations of a commission throughout its lifetime, including, for example, on the process of taking statements and other contact with victims and witnesses who should be advised that their contributions to the commissions may be accessible in the future under specified conditions; and

(e) Establish guidelines for access to truth commission records, which shall take into account (among other things) general access rules, such as:

(i) what was previously public should remain public;

(ii) victims, families, investigative and prosecutorial authorities, as well as legal defence teams, should have unhindered access to information on their specific case;

(iii) there should be a presumption of public access to all State information with only limited exceptions;

(iv) a procedure to make effective the right of access should be established; and

(v) whatever access rules are determined for various categories of potential users (for example, victims, legal representatives, journalists, academics, and members of the general public) should apply to all members of the given category without discrimination.

4.78 The Special Rapporteur's *Set of General Recommendations for Truth Commissions and Archives* also states that truth commissions "*are encouraged to*" make recommendations to the State "*on archives and the establishment of national archival policies that concern records containing information on gross human rights violations and serious violations of international humanitarian law*" including recommendations that:

(a) Encourage the establishment of modern, accessible, and reliable archives which are essential for the long-term preservation and use of records containing information on gross human rights violations and serious violations of international humanitarian law;

(b) Recommend the creation of archival laws, freedom of information legislation, data protection legislation and transparency requirements within other laws, which take into account the right to information, the right to know the truth, and the specificity of the records dealing with human rights violations and violations of international humanitarian law

(c) Promote the establishment of comprehensive National Archival systems, including non-governmental records, especially those that are relevant to gross human rights violations and serious violations of international humanitarian law (emphasis added).

The Continuing Nature of the State's Obligation to Ensure an "Effective Remedy"

4.79 It is frequently suggested that the abuse suffered in Mother and Baby Homes, County Homes, Magdalene Laundries and other institutions that operated in 20th century Ireland is *"historic"*. This is an inaccurate description of the situation in which many individuals and families find themselves today.

4.80 As explained above, numerous Constitutional and human rights violations are continuing. Huge numbers of people are continuing to experience an inability to access information that the State and other institutions, agencies and individuals possess about their identity, their childhood, their experience of incarceration, their separation from their mother, or child, or other family member(s) and/or their medical history. Family members who were forcibly or otherwise illegally separated remain unable to discover each other's fate. Relatives of children and women who died while institutionalised are denied the opportunity to know the fate and location of their family member. The ECtHR and other international human rights treaty bodies have recognised that situations of enforced disappearance, and interference with the right to respect for private and family life, for example, continue to exist while information is withheld.

4.81 There is a strong argument to be made that many individuals and families are continuing to experience degrading treatment at the hands of the State and indeed non-State individuals and institutions, due to their powerlessness to bring about an accounting from those who were involved in the abuse of unmarried mothers and their children during the 20th century and the suffering that is caused by that fact.[696]

4.82 Even where certain violations of Constitutional and human rights can be said to have ceased, there is case law from the ECtHR and other international human rights treaty bodies to show that individuals and families affected by these past violations still have the right to an effective remedy. The obligations to investigate, ensure access to justice and provide reparation still exist, particularly where the Commission of Investigation into Mother and Baby Homes and Certain Related Matters is the first step that the State has taken to comply with its human rights obligations, and records and other evidence have not been available to those who were affected by the abuse.

4.83 In the Inter-American Commission on Human Rights (IACmHR) case of *Garcia Lucero v Chile*,[697] notwithstanding that 29 years had elapsed since the torture complained of, the IACmHR held that the petition had been presented within a reasonable time. The Commission found that *"Mr Garcia was so severely tortured that he was physically and psychologically incapacitated for work, he was unable to learn English despite living in Great Britain for nearly 30 years, and his persistent efforts to secure compensation reveal his financial situation".*[698] The Commission concluded that *"it is not reasonable to require a person under such circumstances to travel from United Kingdom to Chile and initiate a legal action for reparations, when no person in the same situation as Mr Garcia has been compensated as the result of a judicial decision"*.[699]

4.84 In *Mocanu v Romania*,[700] the ECtHR cited *Garcia Lucero v Chile*,[701] *Rio Negro Massacres v Guatemala*[702] and the CAT's General Comment No 3 in support of its finding that a

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696 See IACtHR, *Rio Negro Massacres v Guatemala* paras 238–44; IACtHR, *Moiwana Community v Suriname* paras 87–103; HRC, *Sankara v Burkina Faso*, Communication No 1159/2003 (28 March 2006) UN Doc CCPR/C/86/D/1159/2003 para 12.2; *Cyprus v Turkey* (2002) 35 EHRR 30 para 156; *Varnava v Turkey* (2010) 50 EHRR 21 para 138; *Kurt v Turkey* (1999) 27 EHRR 373; *Bazorkina v Russia* (2008) 46 EHRR 15.

697 IACmHR, *Leopoldo Garcia Lucero v Chile*, Report No 58/05, Petition 350/02 (Admissibility) (12 October 2005).

698 ibid para 48.

699 ibid.

700 *Mocanu v Romania*.

complaint was admissible under Article 3 ECHR 18 years after the alleged ill-treatment, and despite the applicant waiting 11 years before lodging a criminal complaint. The ECtHR held that:

> "*delay in lodging a complaint is not decisive where the authorities ought to have been aware that an individual could have been subjected to ill-treatment—particularly in the case of assault which occurs in the presence of police officers—as the authorities' duty to investigate arises even in the absence of an express complaint*".[703]

4.85 In *Mocanu*, the ECtHR concluded that *"the applicant's vulnerability and his feeling of powerlessness, which he shared with numerous other victims who, like him, waited for many years before lodging a complaint, amount to a plausible and acceptable explanation for his inactivity from 1990 to 2001"*.[704] The Court accepted the applicant's explanation that his *"vulnerability"* arose from *"the deterioration in his health following the ill-treatment allegedly sustained"* and *"the feeling of powerlessness which he experienced on account of the large number of victims of the repression conducted by the security forces and the judicial authorities' failure to react in a prompt manner, capable of reassuring him and encouraging him to come forward"*.[705]

4.86 The ECtHR reached a similar conclusion in *Benzer v Turkey*,[706] where the applicants were inhabitants of villages that had been bombed by the Turkish military. The Court accepted that the applicants had been unable to complain about the events to the national authorities for a long period after the attack on their villages.[707] They had introduced official complaints with the national authorities as soon as they had had the possibility to do so, and had applied to the European Court shortly after they realised that the domestic remedies would not yield any result. In response to the Government's argument of delay, the ECtHR held that *"that justification cannot be interpreted in a way so as to prevent human rights violations from being punished each time national authorities remain inactive in an investigation".*[708] The ECtHR accepted the applicants' submissions that *"in an atmosphere of fear where serious human rights violations were not being investigated, it was not possible to make a complaint"*.[709]

4.87 The CAT's General Comment No 3 explains that 'States parties shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress'.[710] The reason for the CAT's position is that "[f]or many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those who have not received redress".[711]

4.88 Even if certain human rights violations occurred prior to entry into force of a given treaty, there is precedent from the CAT and the ECtHR which supports the notion that the State still has procedural obligations – i.e. to investigate and ensure accountability – and (under the UNCAT) the obligation to ensure redress.

4.89 Notwithstanding that Ireland ratified the UNCAT in 2002, in its 2017 Concluding Observations regarding Ireland's second periodic report under the Convention Against Torture, the CAT stated that:

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701 IACtHR, *García Lucero v Chile*.
702 IACtHR, *Rio Negro Massacres v Guatemala*.
703 ibid para 265.
704 ibid para 275.
705 ibid para 273.
706 *Benzer v Turkey* App no. 23502/06 (12 November 2013)
707 Ibid paras 110-135
708 Ibid para 128
709 Ibid para 131.
710 CAT General Comment No 3, 'Implementation of article 14 by States parties' (13 December 2012) UN Doc CAT/C/GC/3 para 40. Available at: http://www.refworld.org/docid/5437cc274.html
711 ibid

> "27. *While the Committee appreciates the State party's creation of a Commission of Investigation into Mother and Baby Homes in February 2015, it is concerned at reports that its terms of reference do not allow it to investigate all institutions in the country at which abuses, including forced and illegal adoptions, may have occurred and that following the expected conclusion of the Commission's work in February 2018, its archives will be closed and will not be made available to the public (arts. 2, 4, 12, 13, 14 and 16).*
>
> *28. The State party should ensure that it carries out an independent, thorough and effective investigation into any allegations of ill-treatment, including cases of forced adoption, amounting to violations of the Convention at all of the Mother and Baby Homes and analogous institutions, that perpetrators of any such acts are prosecuted and punished and that all victims of violations of the Convention obtain redress. The State party should ensure that information concerning abuses in these institutions are made accessible to the public to the greatest extent possible".*[712]

4.90 In the same Concluding Observations, the CAT also stated that survivors of Magdalene Laundries have continuing rights to an investigation, prosecution of perpetrators and redress, including as full rehabilitation as possible.[713]

4.91 The CAT's recommendations to Ireland chime with its judgment in *Gerasimov v Kazakhstan.*[714] In this case the CAT found violations of Article 1 in conjunction with Article 2 UNCAT, and Articles 12, 13 and 14 UNCAT, notwithstanding that the torture complained of occurred prior to Kazakhstan's declaration of the Committee's competence under Article 22 of the Convention. On the preliminary question of temporality, the CAT held that it *"can examine alleged violations of the Convention which occurred before a State party's recognition of the Committee's competence under article 22 if the effects of these violations continued after the declaration, and if the effects constitute in themselves a violation of the Convention"*.[715] The Committee found that, due to the State authorities' decision following the Article 22 declaration not to open a criminal investigation, *"the State party's failure to fulfil its obligations to investigate the complainant's allegations and to provide him with redress continued after the State party recognized the Committee's competence"*.[716] Therefore, it was held, the CAT had jurisdiction over the entire complaint.

4.92 In *Silih v Slovenia*, concerning a pre-ratification death, the ECtHR held that *"the procedural obligation to carry out an effective investigation under art.2 has evolved into a separate and autonomous duty' and 'it can be considered to be a detachable obligation arising out of art.2 capable of binding the State even when the death took place before the critical date"*.[717] The Court also held that the investigative obligation generally *"binds the State throughout the period in which the authorities can reasonably be expected to take measures with an aim to elucidate the circumstances of death and establish responsibility for it"*.[718] The existence of the procedural obligation is subject a 'genuine connection' test.[719] In *Silih*, the ECtHR held that it will have jurisdiction over procedural obligations concerning pre-ratification substantive violations to cases where (a) the alleged pre-ratification substantive violation occurred not more than 10 years prior to ratification,[720] and (b) *"much of the investigation… took place or ought to have taken place*

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712 CAT, Concluding Observations on the second periodic Report of Ireland (31 August 2017) UN Doc CAT/C/IRL/CO/2. Appendix 2: Tab 44

713 CAT, 'Concluding Observations on the initial report of Ireland' (17 June 2011) UN Doc CAT/C/IRL/CO/1 para 21. Appendix 2: Tab 45; CAT, Concluding Observations on the second periodic Report of Ireland (31 August 2017) UN Doc CAT/C/IRL/CO/2 paras 25–26. Appendix 2: Tab 44.

714 CAT, *Gerasimov v Kazakhstan*, Communication No 433/2010 (24 May 2012) UN Doc CAT/C/48/D/433/2010. Available at: http://www.worldcourts.com/cat/eng/decisions/2012.05.24_Gerasimov_v_Kazakhstan.pdf

715 ibid, para 11.2.

716 ibid.

717 *Silih v Slovenia* (2009) 49 EHRR 37 para 159.

718 ibid para 157, citing *Brecknell v United Kingdom* (2008) 46 EHRR 42 paras 66–72 and *Hackett v United Kingdom*, App no 34698/04 (ECtHR, 10 May 2005).

719 *Silih v Slovenia,*paras 161–63. See also *Mocanu v Romania,* paras 208–09.

720 *Janowiec v Russia*, para 146.

in the period following the entry into force of the Convention".[721] If these two criteria are not met, in exceptional circumstances the *"genuine connection"* test may be satisfied by the *"need to ensure the real and effective protection of the guarantees and the underlying values of the Convention"*.[722]

721 ibid para 147.
722 ibid para 149.

5. SECTION 5: THE COMMISSION OF INVESTIGATION, ITS PROCESSES AND OPERATION

5.1 The Clann Project welcomed the establishment of the Commission of Investigation. We recognise the commitment of Commission's members and staff to the painstaking work involved. We look forward to the Commission's report, which we hope will be considered and wide-ranging.

5.2 That said, the Clann Project has a number of concerns about the Commission's scope and processes and the extent to which they satisfy the rights of the many thousands of people affected by the issues addressed in these submissions. We believe that the Commission does not constitute an *"effective investigation"* into the grave and systematic violations of Constitutional and human rights experienced by unmarried mothers and their children, and their wider family members. We draw the Commission's attention in particular to the ECtHR's criteria for an *"effective investigation"*, outlined at paragraph 4.68 above and to the *Set of general recommendations for truth commissions and archives* published in 2015 by the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and discussed at paragraphs 4.76-4.78 above.

5.3 It is important to recall that, in its 2014 submission to Government regarding the proposed Commission of Investigation, the IHREC stated that *"it is critically important that any such investigation should take place within a human rights and equality framework and, in particular, that it fully conforms with the State's human rights obligations under the Constitution and under international human rights law".*[723] The IHREC notified the UN Committee Against Torture (CAT) in 2017 of its concern that it is not a requirement of the Commissions of Investigation Act 2004 that Commissions of Investigation take a human rights-based approach to their work.[724] In his Country Visit Report on Ireland in 2017, the Council of Europe's Commissioner for Human Rights, Nils Muiznieks, found that in respect of past institutional abuses affecting women and children, *"a common feature of these inquiries is that they have not taken a human rights based approach"*.[725]

5.4 The Clann Project is concerned that in some vital respects, the Commission is failing to comply with its obligation under the European Convention on Human Rights Act 2003 to *"perform its functions in a manner compatible with the State's obligations under the Convention provisions"*. We are concerned that the Constitutional rights, including to procedures which accord with the requirements of natural and constitutional justice,[726] of individuals and families affected by the matters under investigation are not being fully respected.

5.5 Our primary concerns are as follows:

Hearings in Private

5.6 Section 5 of the Commission's Rules and Procedures largely replicates Section 11 of the Act and gives the Commission significant discretion to hear evidence from witnesses in public.

> *11 (1) A commission shall conduct its investigation in private unless –*
>
> *(a) a witness requests that all or part of his or her evidence be heard in public and the commission grants the request, or*
>
> *(b) the commission is satisfied that it is desirable in the interests of both the investigation and fair procedures to hear all or part of the evidence of a witness in public.*

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723 Ibid p 2.

724 IHREC, Report to UNCAT 2017, p53. Available at: https://www.ihrec.ie/app/uploads/2017/07/Ireland-and-the-Convention-against-Torture.pdf

725 Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, Report following his visit to Ireland from 22 to 25 November 2016, CommDH(2017)8 (29 March 2017) pp 32 – 37). Appendix 2: Tab 55

726 See In Re Haughey 1971 IR 217; Shatter v Guerin [2016] IECA 318.

> *(2) Where the evidence of a witness is heard in private –*
>
> *(a) the commission may give directions as to the persons who may be present while the evidence is heard,*
>
> *(b) legal representatives of persons other than the witness may be present only if the commission –*
>
> *(i) is satisfied that their present would be in keeping with the purposes of the investigation and would be in the interests of fair procedures, and*
>
> *(ii) directs that they be allowed to be present,*
>
> *(c) the witness may be cross examined by or on behalf of any person only if the commission so directs, and*
>
> *(d) any member of the commission or a person who has been appointed under section 8 and is authorised by the commission to do so may, orally or by written interrogatories, examine the witness on his or her evidence.*

5.7 Notwithstanding the Commission's power to hear evidence in public, and notwithstanding that the Commission has stated that anyone *"affected"* by any evidence given those witnesses might be given the opportunity to cross examine the witness who gave that evidence,[727] the Clann Project is not aware of any hearing being conducted in public or any single witness being given the opportunity to cross examine other witnesses.

5.8 The Clann Project believes that it is not only important, but also a clear requirement under the ECHR (and therefore the European Convention on Human Rights Act 2003, which applies to the Commission), that individuals who spent time in the institutions under investigation should have the opportunity to give evidence in public if that is their wish, and to see the evidence of those involved in the running and monitoring of those institutions and/or comment on that evidence. Even though it has the power to allow this to happen, the Commission has chosen not to do so.

5.9 The Clann Project when making submissions to the Commission in May 2016 initially by letter dated 3 May 2016 and then in person about the procedures adopted by the Commission asked for its hearing to take place in public pursuant to s11(1)(a) of the Act.[728] No response was received before the hearing and the submission was rejected at the hearing without any reason being given. When reasons were later requested in correspondence,[729] again no substantive response other than a blanket statement that it was not considered in the public interest was received. In addition, a request for a public hearing for the evidence of Philomena Lee was made without any substantive response ever being received.[730]

5.10 Failing to give reasons for *"quasi-judicial"* decisions such as when to reject a request under Section 11(1)(a) of the 2004 Act that a hearing be held in public appears to be in breach of the Commission's duty. In *Mallak v Minister for Justice, Equality and Law Reform* [2012] *3I/TR297,* the Supreme Court held:

> *"In the present state of evolution of our law, it is not easy to conceive of a decision maker being dispensed from giving an explanation either of the decision or the decision making process at some stage".*

5.11 The Clann Project is aware that there might be good reasons for certain hearings to be held in private and for certain aspects of the evidence available to the Commission to be kept confidential. However, for the entirety of the Commission's evidence gathering to be held in private does not allow the Irish public (and, in particular, those directly affected by

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727 Letter from Commission of Investigation 14 December 2015. Appendix 2: Tab 47

728 Letter from the Clann Project to the Commission of Investigation, dated 3 May 2016. Appendix 2: Tab 48

729 Letters between the Clann Project and the Commission of Investigation dated 27 May, 1 June, 1 July, 9 August, 23 August 2016. Appendix 2: Tab 49

730 Letters between Hogan Lovells and the Commission of Investigation dated 23 February, 1 March and 21 March 2017. Appendix 2: Tab 68

this issue) to see and understand the processes of the Commission and/or to have any means or confidence in the approach taken or conclusions reached by the Commission.

5.12 The Commission's decision to gather and examine evidence in private has profound consequences for access to information about the matters under investigation, including access to the archive of documents and testamentary evidence being compiled by the Commission. Previous High Court judgments have clarified that where evidence has been given to a Commission of Investigation under the 2004 Act in private, the archive is sealed thereafter.[731] In addition, the Commission refuses to issue any person who has given evidence to the Commission with a transcript of their own evidence, presumably due to the provision in section 11(3) of the Commissions of Investigation Act 2004 making it a criminal offence (with extremely limited exceptions) for any person to disclose or publish evidence given to the Commission in private. These are grave restrictions on the right of victims of gross and systematic human rights violations to the truth, to an effective investigation, to freedom of expression, and to comprehensive reparation and redress.

Access to Documents

5.13 The Clann Project is concerned that the Commission appears to intend not to make available to those affected by the Homes any of the documentary evidence that it receives during the course of its investigation. This includes documents furnished to the Commission by State entities but also by private institutions, religious orders or individuals.

5.14 The Clann Project accepts that the Commission has a duty to ensure the confidentiality of sensitive data and material which is not relevant to the Commission's work. However, the Clann Project submits that the Commission should endeavour to make available the substance at least of the documentary evidence which is relevant to the Commission's work taking appropriate measures to maintain confidentiality of sensitive data as legally required. Indeed, the Clann Project notes the duty on the Commission pursuant to Section 12 of the 2004 Act to disclose to any person who gives evidence to the Commission the substance of the evidence in its possession that, in the Commission's opinion, the person should be aware of in order that the person may comment upon it. The Clann Project is not aware of the Commission ever acting upon this duty.

Use of Documents

5.15 Sections 19, 39 and 40 of the 2004 Act restrict information and documentation that has been provided to the Commission from being used or accessed for other purposes. These sections prohibit the use of such information in criminal proceedings and make the Commission immune from Freedom of Information Request and Personal Data Access requests.

5.16 It will come as no surprise to the Commission to learn that many of those individuals in contact with the Clann Project have experienced great difficulty in accessing even the most basic information (birth certificates, names of parents and medical information) about themselves, in particular from the various religious orders running many of the institutions.

5.17 As part of these submissions the Clann Project urges the Commission to make recommendations to the Irish Government that will facilitate the timely provision of documentation to affected individuals that relate to themselves and their personal histories without having to suffer the current restrictions in access. The statements attached to these submissions divulge many cases where people have been delayed and prevented from obtaining basic information about their identity and where those delays and obstructions have resulted in cases where the person sought has died prior to the completion of the search.

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731 See *O'Neill and Others v An Taoiesach and Others* [2009] IEHC 119; *Byrne and Others v An Taoiseach and Others* [2010] IEHC 353.

5.18 The Clann Project urges that no documentation is returned to those individuals or entities who provide it before a consideration is made as to whether it should be retained, or recommended to be retained, in a public archive.

Inadequate Information as to Commission's Procedures

5.19 The Commission has adopted Rules and Procedures but has done little or nothing to advertise what they are. The Rules and Procedures are not referred to on the Commission's website and, other than a two-page document containing information for witnesses attending the Commission's Investigation Committee, the Commission does not seem to have produced a guide to its processes and procedures. Potential witnesses have informed the Clann Project that they have been reluctant to give evidence due to lack of knowledge as to how the Commission operates. This led the Clann Project to produce a guide that explained to witnesses what to expect.[732]

Inadequate Advertising of, and Access to, the Commission Itself

5.20 Rule 7 of the Commission's Rules and Procedures makes specific reference to evidence being given by witnesses directly to the Commission itself. In a letter from the Commission dated 17 September 2015 it was stated *"It is open to anyone who was resident in or who worked in a Mother and Baby Home to meet within the Confidential Committee. If after meeting with the Confidential Committee they wish to present their evidence formally to the Commission it is open to them to do so. Alternatively, a witness may decide to give their evidence directly to the Commission in the first instance".*[733] This option has not been advertised to witnesses and, instead, witnesses wishing to give evidence to the Investigation have been directed to the Confidential Committee. The Clann Project acknowledges the need for a Confidential Committee to allow individuals to give evidence in a confidential and informal context and for that evidence to be included in the Confidential Committee's *"report of a general nature"* but the lack of access to the Commission itself has deprived witnesses of the opportunity to give, and the Commission to hear, specific evidence relevant to the Commission's investigation.

Scope of the Investigation

5.21 The Clann Project regards the list of institutions forming the subject of its investigation (limited as it is to just 14 Mother and Baby Homes and 4 County Homes) as being far too restrictive. This limitation will not allow the Commission to make findings that reflect the operation of at least 182 homes, institutions, agencies and individuals operating across the country.[734]

5.22 As the Commission will be aware, there were numerous formal and informal arrangements that implemented the Irish State's policy regarding the treatment of children born outside marriage, unmarried mothers and women and girls *"at risk"* of becoming unmarried mothers. These included, amongst others, State maternity hospitals, private hospitals, private nursing homes, homes where children were held but where natural mothers were not present, GP assisted home births, PFIs (pregnant from Ireland – women and girls who gave birth in the UK and were brought back to Ireland), County Homes, statutory and non-statutory adoption agencies, children's homes and Magdalene Laundries. To limit the scope of the investigation to just 14 Mother and Baby Homes and 4 County Homes will mean that the experiences of thousands of unmarried girls and women whose children were adopted (including illegal adoptions) and those adopted people born to such unmarried girls and women will be excluded from the scope of the Commission's investigation.

5.23 This will have numerous negative consequences, namely that the true number of forced adoptions will not be investigated, the true number of illegal adoptions will not be investigated, the role of the Adoption Board (now the Adoption Authority) will not be fully

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732 Available at: http://clannproject.org/wp-content/uploads/Guide-to-the-Commission-of-Investigation_V1_June-2016.pdf

733 Letter from the Commission dated 17 September 2015 Appendix 2: Tab 47

734 Clann list of Institutions, Agencies and Individuals Appendix 2: Tab 2

investigated and the role of the State will not be fully investigated, for example, by its operation of State-funded maternity hospitals (the Dublin hospitals including Holles Street, The Rotunda, The Coombe, St James' Hospital and Cork's Erinville Hospital) and its role in facilitating forced and illegal adoptions. The role of State appointed/regulated adoption agencies will not be fully investigated in that the role of all bar a handful of adoption agencies (the majority of which were run by the Catholic Church) which facilitated forced and illegal adoptions will not be investigated.

5.24 There is an obvious danger that any conclusions based on a sample of institutions can be dismissed as not being representative of the Homes as a whole.

5.25 The Commission has the discretion to seek an amendment to its terms of reference under Section 6 of the 2004 Act. Indeed, Minister Zappone in a statement by the Department of Children and Youth Affairs dated 1 June 2017 stated that:

> *"While the Commission has stated that it is not seeking an extension to its present remit I have indicated that I am open to considering some of the questions which have been raised again in public debate".*

5.26 It is the Clann Project's submission that the Commission should have sought an extension to the scope of its investigation to include a far wider selection of institutions and agencies so it could make effective recommendations in its final report while at the same time allowing a far greater number of affected individuals to provide their evidence to the Commission. At the very least, the Commission should have been willing to hear evidence from people who are affected by the wider list of those institutions and agencies so those individuals can be heard. This is one of the reasons why the statements attached to these submissions include a number of statements from individuals whose experiences are relevant to the Commission's investigation but do not relate to one of the listed institutions.

5.27 The Clann Project made a submission to the Commission on 9 May 2016 that the Terms of Reference should be extended but this was rejected as recorded in paragraphs 5.3 to 5.11 of the Commission's 2nd Interim Report. The Clann Project does not agree with the reasons given by the Commission for rejecting the submission. These appear to be that it would not be in the public interest to investigate institutions which have already been investigated (such as the Magdalene Laundries)[735] and that the named homes are *"unquestionably the main homes that existed during the 20th century".*[736] These reasons do not take account of the precise scope or ambit of the previous investigations, which did not necessarily involve investigation of the same issues with which the Commission is charged and it also excludes the ability of individuals to give relevant evidence to the Commission simply because the institution or agency they were affected by is not on the Commission's list.

Social History Module

5.28 The Clann Project understands the importance of context and that it is relevant to understand societal attitudes at the time the Homes, agencies and institutions were in operation so, to this extent, the Social History Module that the Commission is to produce is important.

5.29 However, it is not acceptable for the operation of the Mother and Baby Homes, other institutions and the adoption system to be excused as simply being reflective of attitudes at the time and any temptation to use the social history module for the purpose of obfuscating the continuing harms that people suffer and the obligations to address these harms should be firmly resisted.

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735 Commission of Investigation 2nd Interim Report. Available at: http://www.mbhcoi.ie/MBH.nsf/page/LPRN-ALCFND1238712-en/$File/MBHCOI%202nd%20Interim%20Report.pdf

736 Commission of Investigation 2nd Interim Report. Available at: http://www.mbhcoi.ie/MBH.nsf/page/LPRN-ALCFND1238712-en/$File/MBHCOI%202nd%20Interim%20Report.pdf

5.30 It is for this reason that the Clann Project has sought to set its factual submissions within the legal framework of the time to show that much of what occurred in and around the operation of the Homes and the adoption system was, and remains, in breach of statutory, constitutional and international obligations.

5.31 The Clann Project is concerned that the role played by Religious Orders, civil society, the State, families and partners/fathers in relation to single women and their children is only referred to as an issue to be covered under the social history module[737] and their specific role is not included within the specific questions that the Commission is tasked to investigate as set out in clause (1) of the Terms of Reference.

5.32 It is critical that the role of the Irish State and the Religious Orders is fully investigated and that any necessary conclusions are drawn if the Commission's report is to carry any importance or value.

Inadequate Advertising of the Commission's Existence

5.33 Other than publicity in the news media arising out of the original announcement of the establishment of the Commission and/or arising out of news stories such as the discovery of children's remains in Tuam, the Clann Project is only aware of limited advertisement or publicity about the Commission's operation or invitation to affected individuals to come forward to give evidence.

5.34 Many of the witnesses who have given evidence to the Clann Project were not aware, other than through the efforts of the Clann Project itself, of the Commission or the opportunity to give evidence to it.

5.35 There also does not appear to have been any significant (or indeed any) advertisement of the Commission's existence or objectives outside Ireland, in particular, in the UK or USA to which countries many potential witnesses either re-located or were sent for adoption.

5.36 In response to a question on 13 January 2016 Dr James Reilly, then Minister for Children, made a statement that €60,977.44 had been spent in relation to public radio and print media advertisements re the establishment of the Commission and the Clann Project regards this as clearly having been insufficient.[738]

5.37 The Clann Project believes that many more witnesses would have come forward had the Commission's existence been advertised more widely.

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737 Commission of Investigation Terms of Reference 11B.

738 Available at: http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016011300098

6. SECTION 6: RECOMMENDATIONS FOR A TRANSITIONAL JUSTICE PROCESS

Ireland should commit once and for all to addressing its legacy of so-called "historical" abuse in line with best international standards and practice.

The Clann Project's recommendations take the form of proposals for a comprehensive Transitional Justice Process. The Clann Project's work on transitional justice is ongoing, and the proposals set out herein will be refined in the coming months. As part of this work, JFMR will hold a conference at Boston College in November, which will consider Ireland's legacy of structural and institutional abuse and the potential of transitional justice.

The recommendations below are informed by the witness statements and the evidence gathered and are supported by our Constitutional and human rights analysis of the State's legal obligations. They are also guided by the experience of ARA founding members over the past two decades in assisting adopted people, natural parents and family members.[739] The recommendations are also consistent with the feedback from participants at Minister Katherine Zappone's facilitated meetings with people affected by this issue.[740]

A future Transitional Justice Process must be guided by the human rights standards outlined at paragraphs 4.59 – 4.78 above. These include ECtHR jurisprudence on the rights to an effective investigation and remedy, the *UN Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*,[741] the *Set of General Recommendations for Truth Commissions and Archives* published in 2015 by the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, and the UN Committee Against Torture's General Comment No 3.[742]

A Transitional Justice process is considered best practice for jurisdictions attempting to make reparation for, and ensure non-recurrence of, gross and systematic human rights violations against large sections of their populations. "Transitional justice" describes an approach to dealing with gross and systematic human rights violations that makes victims and survivors absolutely central to efforts to deal with the past, and that requires a comprehensive, holistic approach which does not trade off elements of redress and reparation against each other. For example: compensation is not sufficient to meet the State's obligations without also ensuring truth-telling and accountability. Education and institutional reforms designed to prevent recurrence are also required in order to vindicate the experiences and rights of those who were subjected to the systematic abuse and ensure that their participation in the reparations process is not in vain.

The Transitional Justice Process should begin without delay. The age range of those affected by this issue is wide, and many – particularly mothers – are ageing and elderly.

The Clann Project recommends that Ireland's Transitional Justice Process should comprise the following elements:

6.1 A New Form of Investigation that Makes Access to Information its Primary Goal and is not Limited to Certain Institutions

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739 ARA runs a confidential online peer support (through a closed Facebook group), which currently has over 1,750 members who share updated information on their experiences on a daily basis. See: https://www.facebook.com/groups/adoptionrightsalliance

740 Dublin Facilitated Meeting, Facilitator's Report. Appendix 2: Tab 46; Facilitator's Report, Cork Meeting. Appendix 2: Tab 67

741 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res 60/147 (16 December 2005) UN Doc A/RES/60/147. Available at: http://legal.un.org/avl/ha/ga_60-147/ga_60-147.html

742 CAT General Comment No 3, 'Implementation of article 14 by States parties' (13 December 2012) UN Doc CAT/C/GC/3 para 29. Available at: http://www.refworld.org/docid/5437cc274.html; United Nations Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, Annex: 'Set of general recommendations for truth commissions and archives', UN Doc A/HRC/30/42 (7 September 2015). Available at http://www.ohchr.org/Documents/Issues/Truth/A-HRC-30-42.pdf

The current Commission of Investigation by its own mandate is not representative of the full range of institutions related to mothers, babies and adoptions, covering only a sample of relevant County Homes and excluding a broad range of otherwise relevant and comparable institutions. Based on our experience to date (in particular submitting reports and information to the Interdepartmental Inquiry into State Involvement in the Magdalene Institutions), there is a foreseeable and significant danger that the Commission's report will be presented and understood as offering a comprehensive factual and official record of Ireland's treatment of unmarried mothers and their children and the closed, secret adoption system which persists even in the present day. The lack of a comprehensive investigation by the Commission means that its eventual Report can never be accepted as definitive.

In addition to limits in its mandate, the current Commission of Investigation into Mother and Baby Homes and Certain Related Matters is in many key respects a secret investigation. The fact that section 11 of the Commissions of Investigation Act 2004 criminalises the publication of all evidence given to the Commission in private and requires the Commission's archive to be sealed, and the refusal to hold public hearings especially after requests made to the Commission, are all contrary to international standards and best practice regarding investigations into human rights abuses, as discussed at paragraphs 4.68 – 4.78 above. The Commission therefore not merely does not satisfy the State's international human rights obligations, it is in fact contravening the State's obligations in this regard. Furthermore, a Commission of Investigation under the current legislation hampers access to justice because it is unable to coordinate with other legal processes, with statements and documentation not admissible as evidence in civil or criminal proceedings.[743]

We therefore recommend that the investigation process conducted as part of Ireland's Transitional Justice Process should include the following:

a) Evaluation of the Existing Investigations

Ireland's approach to date on Mother and Baby Homes must be evaluated against the highest relevant international standards. Minister for Children and Youth Affairs, Katherine Zappone and the government have already committed to a country visit of the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, to ensure the highest degree of compliance with international law and best practice on transitional justice. This visit must be facilitated without delay and any ensuing report or recommendations must be made publicly available.

b) Capstone to "Historical" Abuse Inquiries – Non-Restrictive, Open Access

The Transitional Justice Process should include an investigative and truth-telling mandate to address institutional and structural human rights violations in Ireland since the foundation of the State generally. Such a mandate can draw from and complement the work of existing inquiries in Ireland, including the Mother and Baby Homes Commission of Investigation, but should look to identify linkages and traffic between institutions, agencies and agents of the system, and the forms of abuse suffered by individuals which have been excluded from existing inquiries. This approach offers: the means for a process centred on and owned by the people affected; the means for maximum transparency and potential to build trust; and the potential for a capstone to prior efforts to address the past and to rectify past shortcomings.

Any new investigation should be centred on people directly affected, including through their appointment as investigators and through public hearings. Public hearings can empower the people affected, including direct victims and survivors and family members, and enable all stakeholders and society at large to understand the causes of and contributions to "historical" abuse. Any new investigation must ensure maximum access to information, in compliance with the human rights obligations discussed at paragraphs

743 Section 19 of the Commission of Investigation Act 2004

4.68 – 4.78 above. Those whose lives were affected by the abuse under investigation must also be enabled to give evidence in public if they wish. State and non-State archives must be opened to the extent possible, including the archives of previous investigations into "historical" abuse. Previously imposed legal restrictions on the right of individuals who experienced institutional abuse to speak and reproduce their evidence in public must be lifted.

It is worth highlighting some of the aspects of truth commission processes in two comparative jurisdictions – Canada and Australia – which demonstrate that it is not necessary to impose the procedures that have been adopted in Ireland to date:

Indian Residential Schools Truth and Reconciliation Commission of Canada

The Truth and Reconciliation Commission (TRC) of Canada, established in 2008, travelled around Canada and held multiple public events, where survivors (as they are termed by the TRC of Canada) came to share their testimonies. Members of the public could attend hundreds of sharing panels and sharing circles (special events which respected and embraced Indigenous customs and culture) which took place around the country. These events, which included survivor testimony, were live-streamed online at the time they were held. Anyone with an interest in the TRC's work was invited to attend, whether they were a survivor, a former employee of a residential school, or a member of the public who wanted to learn more about the history of indigenous people in Canada.

Much of the archival material of the TRC of Canada is accessible to the public online. Members of the public can view hundreds of videos of the sharing panels and sharing circles. The National Centre for Truth and Reconciliation (NCTR), the body responsible for continuing the truth-telling efforts that the TRC of Canada began, allows members of the public to search its website for access to particular documents used by the TRC of Canada, including textual records, audio-visual records, photographs and maps. The search function on the website allows a person to search by key word, by survivor name and by institution.

The TRC of Canada also allowed survivors to make private submissions, to which the public do not have access, but the survivor themselves can get a copy of it.

Even now that the work of the TRC of Canada is complete, the NCTR is still providing access to the archives of the TRC and assisting survivors and the general public in gaining access. The TRC of Canada has outlined the duties of the NCTR as ensuring the following:

- Survivors and their families have access to their own history;
- educators can share the residential school history with new generations of students;
- researchers can delve more deeply into the residential school experience and legacy;
- the public can access historical records and other materials to help foster reconciliation and healing; and
- the history and legacy of the residential school system are never forgotten.

Australian Royal Commission into Institutional Responses to Child Sexual Abuse

The Commission was established in 2012 and public hearings have been broadcast through the Royal Commission's website. Viewers could live-stream the hearings on line, making them more accessible to those unable to travel to Sydney. The Chair of the Commission could instruct that audio be cut at certain points in order to protect witnesses' identities.

The Royal Commission has made case studies available online, each of them relating to a public hearing which took place about a particular topic, whether a specific incident of sexual abuse or a more general question of practises and policies of an organisation. Each case study has its transcripts available online, along with witness lists and exhibits, which includes witness testimony, anonymised as appropriate to protect the children involved, and various other documents such as letters between members of the organisation and internal reports on child protection. Some of the earlier case studies also contain the submission of the general counsel to the Royal Commission, which summarises the key findings from the evidence discussed at the hearings and makes recommendations as to how to proceed. Parties involved in the proceedings are invited to respond to these findings, through their own written submissions, which are also published online.

c) Investigation of Deaths and Identification of Remains

Ireland should ensure the burial of human remains in a dignified manner, having ascertained the quantity of remains, performed up-to-date scientific techniques of analysis and identification, and held a coroner's inquest to verify the causes of death where possible. Ireland is under a clear international legal obligation to return remains to families where possible, to enable a dignified burial of remains by families and to investigate deaths that occurred in institutional care.

Thus, as part of Ireland's Transitional Justice Process, the State should enable the identification of the remains of children in Mother and Baby Homes and related sites in a manner determined appropriate after extensive consultation with people directly affected. This process should involve several sites containing remains, including but not limited to Tuam, Co. Galway, Sean Ross Abbey, Bessborough, Castlepollard, burial plots at St Finbarr's and St Joseph's Cemeteries in Cork and the Angel Plots at Glasnevin Cemetery. Universities and other educational institutions which used the remains of infants in anatomical experiments should be compelled to furnish all records relating to these practices, including arrangements for burial.

JFMR has raised serious concerns about the McAleese Committee's inadequate investigation of deaths of women and girls in Magdalene Laundries, including women transferred from Mother and Baby Homes and related institutions, as well as the exhumations at High Park laundry and the burial practices of the religious orders who ran the laundries. Deaths, burials and exhumations at Magdalene Laundries should therefore form a key element of any investigation into deaths and identification of remains.[744]

The most advanced international techniques available should be used to enable the maximum possibility of analysis, identification and (where appropriate) exhumation of remains. Recent scientific methodologies were used in identifying the remains of Easter Rising rebel Thomas Kent, as commissioned by the Office of An Taoiseach,[745] and their relevance to the task of identifying remains of children and adults interred anonymously in Mother and Baby Homes has been confirmed by a joint submission from UCD and TCD academics.[746]

The State should request assistance from international expert groups on exhumations of large sites of human remains, such as the International Commission on Missing Persons.

To enable maximum public awareness and transparency, Ireland should commit to a publicly available map of graves involving "historical" abuse and institutions, drawing from the example of Spain.[747]

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744 Death, Institutionalisation & Duration of Stay: JFMR Critique of Chapter 16 of McAleese Report. Appendix 2: Tab 29

745 http://www.ucd.ie/newsandopinion/news/dnaanalysisidentifieslong-lostremainsofexecuted1916rebel

746 https://www.irishtimes.com/news/social-affairs/how-dna-experts-can-identify-tuam-babies-the-full-story-1.3460133

747 http://mapadefosas.mjusticia.es/exovi_externo/CargarMapaFosas.htm; See also JFMR's map of Magdalene Laundries and burial locations known to us, available here:

6.2 State Apology

a) Why a State Apology is Necessary

The witness testimonies outlined herein describe a cruel system which forced women to relinquish their children to a closed, secret adoption system simply because they were born outside marriage. Compliance with this system has been ensured by the stigmatisation of "bastard" or "illegitimate" children and their unmarried mothers. Each party to the adoption was expected to walk away and continue their lives as if it never happened. The State is allowing this stigmatising and discriminatory system to continue even today, by denying adopted people, natural parents and natural family members the rights and services they need and deserve. An apology would go a long way towards combatting the stigma associated with illegitimacy and unmarried motherhood, and has the potential to empower adopted people, natural mothers, fathers and family members to speak about their experiences.

The Ombudsman's *Guide to Making a Meaningful Apology* states that in order for an apology to be meaningful, those making the apology should 1) accept that they have done something wrong; 2) accept responsibility; 3) explain clearly why the offence happened; 4) be sincere in the apology; 5) assure non-repetition of the offence and 5) make amends.[748]

An apology, absent any other measures of acknowledgment of wrongdoing and efforts to address the needs of people who have suffered, is never sufficient and risks being a hollow gesture. To be effective an apology must be combined with material forms of reparation including access to personal information, which is a stated priority for participants in the Clann Project and the many hundreds of people in contact with us every year. International best practice suggests parameters for a State apology:

> *"The most effective apologies are unequivocal; they are not diluted by qualifying language designed to limit their scope or redirect blame…Expressions of regret, for instance, are most frequently statements of sadness and disappointment that fall short of an apology, whereas unequivocal apologies contain a more explicit if not unconditional acknowledgment of responsibility. They acknowledge the specific injustices that occurred, recognise that victims suffered serious harm as a result, and take responsibility for what happened".*[749]

Comparative experience demonstrates that the most effective and well-received forms of apology reflect the process of consultation and collaboration with those being apologised to about the scope content and nature of the apology.[750] Comparative experience also demonstrates it matters who the apology comes from.[751] In the context of Ireland the combination of State and church institutions means that it is essential that both State and church authorities take responsibility for wrongdoing and offer unequivocal apologies. The International Centre for Transitional Justice (ICTJ) concludes:

> *"Our comparison of apologies for past human rights violations reveals some other important attributes that can help to promote some reparative effect:*

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http://jfmresearch.com/home/magdalene-names-project/map-of-magdalene-laundries-and-grave-locations-2/

748 Ombudsman Guide to Making a Meaningful Apology. Available at: https://www.ombudsman.ie/Website/en/publications/guidelines-for-public-bodies/guide-to-making-apology/

749 International Center for Transitional Justice, More than Words: Apologies as a Form of Reparation (2015), 2

750 Mihaela Mihai and Mathias Thaler (eds) *On the Use and Abuses of Political Apologies* (Palgrave Macmillan 2014)

751 International Center for Transitional Justice, More than Words: Apologies as a Form of Reparation (2015) 14-16

- *An unequivocal statement of apology acknowledges the specific injustices that occurred, recognises that victims have suffered serious harm, and takes responsibility for this.*

- *An apology must be sincere; perceptions of a lack of forthrightness can undermine an apology.*

- *Effective apologies take into account, as sensitively as possible, what victims are likely to feel and think about what is being said. The apology should honour victims and indicate the importance of restoring respect for them and recognising their dignity.*

- *They assure victims—and the rest of society—that the victims were not at fault for what happened.*

- *They emphasise common values shared by everyone in society.*

- *They tell victims what else will be done to redress the harm that was caused as well as what is being done to keep them safe from further harm. The best apologies address the future not just the past".*[752]

b) Scope of the Apology

The Irish State should include the following elements in its apology:

- An apology for the shame and stigma imposed on unmarried mothers and their children through the State's policies and practices;
- An apology to adopted people who had to grow up with no knowledge of their origins;
- An apology to adopted people for the loss of their identity;
- An apology for the incarceration of women and children in Mother and Baby Homes and similar institutions;
- An apology to mothers and relatives whose children died in institutions due to abuse and neglect;
- An apology to adopted people who had to grow up in abusive families due to the lack of proper assessments and follow ups;
- An apology for the policies and practices that caused mothers and children to be separated from each other by forcing and coercing women into relinquishing their babies;
- An apology to natural fathers who wished to raise and/or have contact with their children but were denied the opportunity to do so;
- An acknowledgement of the effects on past and future generations of families affected by the system;
- An apology to mothers who were denied knowledge of their rights, which prevented them from giving informed consent;
- An apology for the continued stigma and discrimination imposed on adopted people and natural parents through the lack of statutory rights and services.

6.3 Redress and Reparations

For a measure to count as reparation and to be understood as a justice measure, it has to be accompanied by an acknowledgment of responsibility and needs to be linked with other justice initiatives such as efforts aimed at achieving truth, criminal prosecutions and guarantees of non-recurrence. *Ex gratia* schemes of the kind used in prior Irish redress schemes cannot constitute reparations. The statutory rights and services set out at Section 6.4 represent an essential element of our proposed Transitional Justice Process for Ireland. In ARA's experience, for most adopted people, **"redress" predominantly means unfettered access to their records.**

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752 ibid, 18

Reparations in international practice involve both material and symbolic form of benefits, all framed under a process of acknowledgment of responsibility. Material benefits can include financial payments and privileged and distinctive access to relevant medical and counselling services. Symbolic reparations can include a national programme of memorialisation, including a museum, research and educational projects. These projects should be led by on-going consultation with people directly affected by the issue, which would contribute to a sense that such abuse cannot be forgotten and forms a key part of the national narrative. The definition of eligible stakeholders should be determined after national consultations and reflect the findings of any truth commission on Irish human rights abuses in this area.

The UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography asserts that

> *"In all cases of systemic illegal adoptions, States must ensure redress for victims through remedies that include reparation for victims and support to adoptees in their search for their origins. The experiences of adoptees trying to establish the truth behind their 'abandonment' and illegal adoption are telling, as are the obstacles they encounter and the good practices of competent authorities".*[753]

The Special Rapporteur also asserts that:

> *"Even though transitional justice measures in the context of searches for biological origins have been applied following regime change, the same principles can be used to respond to the quests for truth, justice, reparation and guarantees of non-recurrence carried out by victims of other large-scale illegal adoptions, when such violations have been tolerated or directly committed by the State. The few responses of States to such cases reflect a piecemeal approach and a chequered pattern of denial, resistance, acknowledgement and assistance. The exception to this is Australia, where in 2012 the Senate released the findings and recommendations arising from an enquiry into former forced adoption policies and practices. The decision to release the findings and recommendations constituted an exercise in truth-seeking, a recognition of past wrongdoing, reparation and guarantees of non-recurrence through legislative, institutional and policy reforms.*
>
> *Demands for truth, justice, reparation and guarantees of non-recurrence from victims of past large-scale or systematic cases of illegal adoptions continue to be ignored and inadequately addressed by States. Public instances of recognition of past wrongdoing are rare, depend on the willingness of those responsible and do not entail concrete action. In addition, public inquiries to establish the truth and recognize the experiences of victims have been incomplete and have failed to address the concerns of all victims. Consequently, in many cases, victims' demands for acknowledgement, apology and redress are yet to be met".*[754]

To finance any reparations, the Government should revisit the indemnity granted to Catholic Church bodies and congregations in 2002, in light of the fact that significant evidence of further abuse has emerged beyond what was disclosed at that period of time and that the indemnity applies in any event only to the *Residential Institutions Redress Act 2002*.

6.4 Statutory Rights and Services

The Clann Project strongly recommends, as part of the Transitional Justice Process, the introduction of statutory rights and services for adopted people and natural parents, all of whom have been deeply affected by Ireland's treatment of unmarried mothers and their children. These rights and services should comprise the following elements:

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753 Report of the Special Rapporteur on the sale of children, child prostitution and child pornography (Page 19). Appendix 2: Tab 65

754 Report of the Special Rapporteur on the sale of children, child prostitution and child pornography (Page 20). Appendix 2: Tab 65

a) Access to Information

The State should give adopted people the statutory right to access to their birth certificates and unredacted adoption records held by the State, religious orders, agencies, institutions and individuals.[755]

The statutory right to access information for adopted people should be a key element of the State's plans to address the harm caused by Ireland's closed, secret, forced adoption system.[756] To this day, adopted people are placed under immense societal pressure to express gratitude for being adopted, while simultaneously they are often perceived and portrayed as disruptive forces who are at risk of turning up uninvited and unwanted on their natural mother's or family's doorstep at any time.[757] This stigmatisation is perpetuated in current policy and practice,[758] and also in the State's most recent efforts to legislate for adoption rights.[759] In this regard, the rightful need of natural mothers for confidentiality and privacy has been wrongly confused with a supposed need for secrecy from their now-adult children.[760] Current policy and practice also conflates adoption information and contact with natural family, which brings with it a false assumption that the right to a relationship is sought in additional to information rights.[761] The witness testimony outlined by the Clann Project in these submissions demonstrates the enormous impact (both past and present) of closed, secret adoption in Ireland.[762]

Information should be provided by a unit run by professional archivists (see section b) and it should comprise an emergency helpline for those who require information urgently, for example, in medical emergencies.

b) Centralisation of Adoption Records

The State should make provision for all adoption records (personal and administrative) held by the State, religious orders, agencies, institutions and individuals to be placed in a central archive under the responsibility of a qualified, independent archivist.[763]

The Clann Project suggests a three-pronged approach, which should be rolled out immediately. Firstly, a publicity campaign should be launched informing all potential record holders[764] that they are required, within a specified time, to furnish all materials in their possession to the centralised archive. Secondly, a project similar to the *Access to Institutional and Related Records* (AIRR) project[765] should be established for State and non-State institutions, agencies and individuals involved with adoption. This service should digitise all records and identify those containing personal information so that a comprehensive archive of materials can be created, in order to facilitate access and retrieval of personal information. Thirdly, an anonymised version of the digitised archive should be created, with any personal information redacted, so that the administrative and

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755 The required legislation need not be complex, and ARA has already provided suggested wording to the Minister for Children. See ARA's Briefing Note and Amendments to the *Adoption (Information and Tracing) Bill 2016*. Amendment to Section 25 at page 41. Appendix 2: Tab14

756 See paragraphs 3.1-3.3

757 See paragraphs 3.10-3.27

758 See Section 3

759 See ARA's Briefing Note and Amendments to the *Adoption (Information and Tracing) Bill 2016*. Appendix 2: Tab 14

760 See paragraphs 3.28-3.32

761 See paragraphs 3.36-3.37

762 See paragraphs 3.38-3.113

763 See Section 3, and paragraphs 3.53-3.56

764 Including institutions, agencies and individuals involved in illegal adoptions. See ARA's Briefing Note and Amendments to the *Adoption (Information and Tracing) Bill 2016*. Appendix 2: Tab 14. We are concerned that plans to centralise records under the Bill will exclude illegal adoptions. The Bill defines illegal adoptions as 'incorrect registrations', and because an information source is defined as '*a person who the Minister reasonably believes has, at any time, made or attempted to make arrangements for the adoption of a child*' (emphasis added), we are extremely concerned that this will mean that individuals who were involved in making arrangements for illegal adoptions will not be legally required to furnish their records.

765 See http://www.eneclann.ie/archives-records-management/case-studies/dept-health-children/

other records pertaining to institutions, agencies and individuals can be made available to scholars and anyone wishing to learn more about this aspect of Ireland's past.[766]

c) Access to the Archive of the Commission of Investigation

As part of the centralised archive envisaged at b) above, the Commission of Investigation should make its archive available to adopted people, natural parents, natural family members and the general public.

Archives and records play a central role in the promotion and implementation of the right to truth. Individuals affected by the closed, secret adoption system in Ireland cannot develop trust or closure with the process if they do not know and obtain their own information. The Commission of Investigation 2004 Act provides for statutory privilege over archives of Commissions of Investigation. Again, this is contrary to international best practice and comparative experience which suggests that archives must be open to the maximum extent possible, especially for those who allege they were denied their Constitutional rights and suffered human rights abuse.

Access to individual information, both about adoption records and the presence of individuals resident within Mother and Baby Homes and County Homes remains an essential priority for adopted people, natural mothers and family members, as well as advocacy organisations operating in the area. The existing Commission has gathered and digitised significant data that can affect individuals. The archives of the Commission of Investigation should be furnished to the centralised archive referred to in subsection (b).

Access to archival information concerning human rights should reflect international standards and best practice.[767] Several principles should inform access to archives of the Commission of Investigation:

- *"The victim has the right to know what information is in the file on his or her case (habeas data).*
- *The victim has the right to determine whether the file on his or her case can be consulted by third parties.*[768]
- *The victim may have a copy of their information*
- *The victim and those named may submit further information. Both victims and those named in the files may want to make corrections or declarations about the information in the files. The original case files, as they existed at the close of the commission, should not be altered by additions or deletions.*[769]"

In the interest of demonstrating the essential fairness of the Commission of Investigation process, its record should also be made available for public research use. Research use can guarantee confidentiality of personal information through standard ethical best practices in academic research.

d) Tracing Services

The State should provide statutory-based tracing services for adopted people, natural parents and natural relatives who wish to make contact with each other.

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766 The Clann Project concurs with Catríona Crowe's recent call on the religious orders, the diocesan authorities and the Irish state to establish a repository of records.

767 International Council On Archives, Principles of Access to Archives (2012), available at https://www.ica.org/en/principles-access-archives; International Council on Archives, Principles of Access to Archives Technical Guidance on Managing Archives with Restrictions (2014), available at https://www.ica.org/sites/default/files/2014-02_standards_tech-guidelines-draft_EN.pdf

768 Trudy Huskamp Peterson, *Final Acts: A Guide to Preserving the Records of Truth Commissions* (Wilson Centre 2005) Page 93

769 ibid, 96

Witness testimony is clear that the absence of statutory rights to services has resulted in an ad hoc, discriminatory system, with devastating effects.[770] A training and education programme should be developed (in consultation with stakeholders) for those providing the service.[771] The National Adoption Contact Preference Register (NACPR) should be put on a statutory footing, and a new publicity campaign launched in Ireland and abroad, to be repeated on a yearly basis.

e) US and Other Overseas Adoptions

The State should introduce statutory rights for people adopted from Ireland to the US and other countries.[772]

People who were adopted from Ireland to America and other overseas locations should be included in any information and tracing services provided by the State. A guarantee of Irish citizenship, and assistance to claim such citizenship, should be provided. For people who are interested, repatriation options should be made available. We also recommend that the State, in conjunction with the equivalent authorities in the US and elsewhere, provide subsidised "homeland tours" for people who were sent to the US for adoption.

f) The Right to Know you are Adopted

The State should ensure that it is every adopted person's right to know they are adopted, by amending existing legislation to remove any provisions that hide an adopted person's status.[773]

As evidenced in the witness testimony set out herein, many adopted people grew up not knowing they are adopted, only to discover this fact later in life when, for example, trying to obtain a passport.[774] Adoption Rights Alliance recommends that a statutory provision be introduced immediately to provide the right for adopted people to know they are adopted.

g) Counselling

The State should extend the National Counselling Service to adopted people, natural parents and natural relatives.

Witnesses who spoke to the Clann Project outlined the emotional impact of incarceration and the closed, secret, forced adoption system.[775] Thus, for those who wish to avail of it, free counselling should be provided. In the context of continued discrimination and prejudice against adopted people in adoption policy and practice, it is crucial to point out that we strongly object to compulsory counselling of any kind.[776]

6.5 **Acknowledgement of Responsibility by Religious Orders and Church Hierarchies**

The State should do all within its power to encourage the religious orders and the church hierarchies[777] to acknowledge responsibility and participate in the process of making reparations for the damage caused by the churches' treatment of unmarried mothers and their children.

As outlined in paragraph 6.2 above, the Catholic and Protestant religious orders, clergy and diocesan authorities should be encouraged to issue a full apology to those who have suffered as a result of treatment by its representatives. The religious orders and the

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770 See paragraphs 3.87-3.95

771 See paragraphs 3.57-3.86 for instances of obfuscation and misrepresentation; see also paragraph 2.49 on the lack of specialised training for social workers in adoption.

772 See paragraphs 1.123-1.147 and 2.99-2.101

773 See ARA's Briefing Note and Amendments to the *Adoption (Information and Tracing) Bill 2016*. (Page 49, on amending Section 89 of the Adoption Act 2010). Appendix 2: Tab 14

774 See paragraphs 2.84-2.87

775 See paragraphs 1.275-1.295 (emotional impact on mothers) and 2.88-2.101 (emotional impact on adopted people)

776 See paragraph 3.77

777 Both Protestant and Catholic

church hierarchies should also be required to furnish all records in their possession to a centralised archive, to be made available to those affected by the issue, and (in appropriately anonymised form) to scholars and others who wish to learn about this aspect of our nation's history.

The religious orders and church hierarchies should also contribute towards any monetary compensation arising from its treatment of unmarried mothers and their now-adult children.

6.6 **Establishment of a Dedicated Unit to Investigate Specific Criminal Allegations**

The State should establish a dedicated unit to ensure that available evidence of crimes arising from, and all criminal allegations by individuals affected by, the matters discussed in these submissions are investigated with a view to prosecutions where appropriate – as required under European and international human rights law.

The State should ensure that all individuals affected by the institutionalisation and separation of unmarried mothers and their children, and by other so-called "*historic*" abuses in Ireland, are provided with their full entitlements to information and support under the EU Victims Directive and associated Criminal Justice (Victims of Crime) Act 2017.

6.7 **Access to the Courts**

The State should amend the Statute of Limitations 1957 to explicitly grant discretion to the courts to disapply the normal limitation period where it is in the interests of justice. A precedent for such an approach is to be found in England. There, section 33 of the Limitation Act 1980 permits a court to disapply the statutory time period where *"it would be equitable to allow an action to proceed."* In coming to a decision whether to disapply the limitation period, the court is required to consider a number of factors, including the level of prejudice that would be caused to the plaintiff were the statutory limitation period to apply and the level of prejudice that would be caused to the defendant were the court to lift the limitation period.

In the meantime, the State should direct the Chief State Solicitor and State Claims Agency not to plead the Statute of Limitations in so-called "historical" institutional abuse cases. The courts will retain their residual discretion to refuse to allow cases to proceed where it would not be in the interests of justice.

It is important to note that the availability of evidence and the opening of archives, relating to the abuse discussed in these submissions is vital to individuals' ability to take claims to court if they wish to do so.

The State should also reform the civil legal aid scheme and rules of court procedure to enable multi-party litigation in line with the 2005 Law Reform Commission Report, thereby allowing the efficient and effective use of civil litigation against institutions and individuals for "historical" abuse.

6.8 **Memorialisation**

The State should provide resources to facilitate memorialisation initiatives in order to preserve the history and acknowledge the suffering caused by Ireland's treatment of unmarried mothers and their children.

No memorial should ever act as a means to draw a line under an issue, particularly one which remains contested. Given the Constitutional and human rights abuses which were committed in the institutions and through the adoption system, in addition to any physical memorial(s), more "active" methods of memorialisation are required so that we can learn from what happened in these institutions.

In recent years, JFMR has been working to ensure that the history of the Magdalene institutions is properly recorded, in order to leave an *"active"* legacy with which survivors, family members, friends, researchers and the Irish public can engage. In doing so, our aim is to contribute towards a greater understanding of what happened in the laundries, and so that similar abuses which may be happening to vulnerable populations in the present day can be more easily recognised.

We have donated the archive of our political campaign that led to the State apology to Magdalene women, which is being made freely available on-line.[778] We have also been gathering material for a *"virtual digital museum"* where images, audio, transcripts and archival materials can be put online for people to learn from and donate to. Through the Magdalene Names Project,[779] JFMR has been working on collating a complete list of names of women who died within the Magdalene walls from a variety of archival sources (as we do not have access to the records that the religious orders hold) and we are working to commemorate the women with appropriate headstones. Since 2012, we have also co-organised the commemoration of the women buried at Magdalene grave sites around the country through the annual Flowers for Magdalenes events.[780] Through the Irish Research Council project *Magdalene Institutions: Recording an Oral and Archival History* we have assisted with the collection of oral histories with over 90 people (survivors, relatives and others associated with the laundries) and these are being processed and transcripts and audio files are being put online.[781] We have further worked to develop educational materials so that school children can be informed about some of the key aspects of those institutions and be facilitated to develop insight into the ideologies which enabled these institutions to become integral to Irish society and culture.[782]

The State should provide the necessary resources to ensure that what happened to those affected by the Magdalene Laundries, Mother and Baby Homes and similar institutions, and the closed, secret adoption system is memorialised appropriately and respectfully. The Clann Project submits that the most appropriate way to effectively memorialise the issue is to act on all of the recommendations set out above, by ensuring that the issue is thoroughly and independently investigated, through a State apology, and by ensuring reparation for the harm done. This can be achieved by amending the Limitation Act, by encouraging church authorities to take responsibility, by providing counselling for those who wish to avail of it, and most importantly, by providing statutory rights to information and tracing services and a centralised archive of records, as well as resources for educational initiatives (including research projects such as oral histories) and other means of active memorialisation.

CONCLUSION

On 3rd March 2017, Minister for Children and Youth Affairs Katherine Zappone, TD, called for a Transitional Justice approach to dealing with the legacy of Ireland's history of institutional abuse: an approach that would place victims and survivors at the centre of the healing process. Four months later, on 27th July 2017, the United Nations Committee Against Torture Deputy Chairperson, Ms Felice Gaer, urged the State to act on Minister Zappone's recommendation. Offering a more holistic method of coming to terms with past abuses, Transitional Justice comprises four central tenets: justice, reparation, truth-telling, and guarantees of non-recurrence. The Clann submissions reflect our commitment to all four. Truth-telling, in particular, lies at the foundation of the submission's recommendations. In this sense, the Clann Project contributes to the work of the Mother and Baby Homes Commission of Investigation. Through these submissions and our continuing work, the Clann Project seeks to understand what happened in the past. The project aims to empower women and their now-adult

778 Available at: http://repository.wit.ie/JFMA/

779 Available at: http://jfmresearch.com/home/magdalene-names-project/

780 See: http://jfmresearch.com/home/flowers-for-magdalenes/

781 Available at: http://jfmresearch.com/home/oralhistoryproject/

782 A pilot educational programme, developed with the British charity TrueTube has won a number of awards including first place in the British Universities Learning On Screen Awards 2014. See: https://www.truetube.co.uk/film/magdalenes

children who endured Ireland's Mother and Baby Homes, related institutions and the closed adoption system to come to terms with the impact of the past on their lives in the present. And, the Clann Project insists on the need to carry forward the lessons of the past and thereby influence the emergence in the future of a more just, human rights-based, civic society where women and children, and all who are experiencing conditions of vulnerability, will be protected under law and respected as equal members of society. The Clann Project contends, in conclusion, that there can be no guarantee of non-recurrence in the absence of the Truth.

The authors of this report wish to thank the Commission of Investigation into Mother and Baby Homes for the opportunity to make these submissions. We remain available for any queries or further discussion as we hope that our findings and recommendations might be taken into account by the work of the Commission.

7. SECTION 7: ADDENDUM – FURTHER WITNESS EVIDENCE IN SUPPORT OF THE SUBMISSIONS IN SECTIONS 1 - 3

Further witness evidence in support of our submissions in Section 1 on the Prevailing Culture and State Policy

After paragraph 1.36 insert the following paragraphs:

1.36(a) JFMR also has evidence of a woman (Witness 74's mother) who became pregnant while incarcerated in St Finan's Hospital in Killarney (a psychiatric hospital) and then was transferred to Sean Ross Abbey to have her baby:

i. Witness 74 was born in [redacted] in the St Columbanus County Home in Killarney, where she remained until 1953, when she was transferred to the Pembroke Alms Industrial School (Nazareth House) in Tralee, Co Kerry.[783]

ii. Witness 74's mother remained in the County Home until [redacted], when she was transferred to St Finan's Hospital, also in Killarney.[784]

iii. In a letter and accompanying application[785] requesting Witness 74's mother's transfer, the Medical Officer at the County Home told St Finan's that Witness 74's mother had been on chlorpromazine, which is an antipsychotic medication, on the recommendation of a named doctor in St Finan's Hospital. The Medical Officer said that Witness 74's mother was now refusing to take the medication and that she felt "*persecuted by the nurses*". The Medical Officer alleged that Witness 74's mother had threatened to "*do in*" one of the staff at the County Home. The Medical Officer said that Witness 74's mother was "*unmanageable*", that the County Home was "*unable to control her and [they] would be glad if she would be accepted [to the Mental Hospital] as a person of unsound mind*".[786]

iv. In [redacted], while she remained incarcerated in St Finan's Hospital, Witness 74's mother became pregnant with a daughter.[787] Witness 74 says:

> "*It is unknown whether my sister's birth father was another patient, member of staff or visitor at the Mental Hospital. I have spoken to my solicitor about this on a number of occasions but I have been unable to find out any further details about the conception. I consider it outrageous that a patient in a mental hospital could fall pregnant and yet there be no record or any investigation*".[788]

v. Witness 74 has managed to obtain some documentation regarding her mother's pregnancy. Although St Finan's Hospital seemed to be well aware of the financial implications, the records are of little assistance in ascertaining how Witness 74's mother became pregnant while under the care of St Finan's Hospital.[789]

vi. After it was discovered that Witness 74's mother was pregnant, a doctor from St Finan's Hospital[790] wrote to the Sacred Heart Mother and Baby Home at Sean Ross Abbey requesting that they take her in "*until she has had the baby*".[791] The doctor noted that the Kerry Health Authority would be responsible for all fees in relation to her stay at the Mother and Baby Home. The doctor said that Witness 74's mother had been "*kept fairly stable on medication and [had] on occasions been allowed home as well as out to work*".

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783 Appendix 1: Tab 74 paragraph 10
784 Appendix 1: Tab 74 paragraphs 5 and 7
785 Signed by the Sister-in-Charge at the County Home – see footnote 4.
786 Appendix 1: Tab 74 documents, pages 1-3
787 Appendix 1: Tab 74 paragraph 8
788 Appendix 1: Tab 74 paragraph 23
789 Appendix 1: Tab 74 documents, pages 10-11
790 The Doctor in question is the same doctor who had been advising the County Home regarding antipsychotic medication for Witness 74's mother. See paragraph 1.36(a)iii above
791 Appendix 1: Tab 74 documents, pages 10-11

He went on to say that Witness 74's mother "*was found to be pregnant but was very guarded on history concerning same*".[792]

Further witness evidence in support of our submissions in Section 1 on Adoption or Boarding Out / Institutionalisation in Industrial Schools – Denial of Informed Consent

After paragraph 1.103 insert the following paragraphs:

1.103(a) Witness 74's mother was asked to consent to the adoption of Witness 74's sister while she was in St Finan's Hospital (a psychiatric hospital):

i. In [redacted], after becoming pregnant while confined in St Finan's Hospital in Killarney, Witness 74's mother gave birth to her sister at the Sacred Heart Mother and Baby Home in Bessborough.[793] Witness 74's sister was sent to Nazareth House in Tralee at some point after her birth, however, Witness 74, who was also raised in the same institution, did not discover until later that she had a sister who was at that stage being raised in the same institution.[794] From the available documentation[795] it appears that Witness 74's mother was transferred back to St Finan's Hospital after her sister's birth, however it is unclear exactly when the transfer took place.

ii. In 1979 Witness 74 discovered that a family that was living near Nazareth House was attempting to adopt her sister, who was at that point [redacted] years old. Witness 74 says that she was [redacted] years old at that point, with young children of her own, however she was given no opportunity to take in her sister, nor was she involved in the decision-making process.[796] Witness 74 lost contact with her sister after she was adopted, when she moved overseas with her adoptive parents.[797]

iii. In 1974, in relation to the prospective adoption of Witness 74's sister, a doctor[798] from St Finan's Hospital wrote to a social worker in St Mary's Adoption Service at the Southern Health Board in Tralee. The doctor said he had examined Witness 74's mother and that he had discussed the adoption of her daughter. He said that he was "*satisfied that she is completely aware of what is involved, and that she is perfectly willing to sign the necessary papers, as she is satisfied that it is in the interests of the child*".[799]

iv. In 1975, a social worker in St Mary's Adoption Service at the Southern Health Board wrote to the same doctor at St Finan's Hospital. The letter refers to a request from the Adoption Board in relation to Witness 74's sister[800] and also refers to (and encloses) a certificate of mental fitness from the doctor in relation to Witness 74's mother.[801] It is reasonable to assume that the certificate of mental fitness relates to her mother's capacity to sign the papers. Simply put, a doctor from St Finan's Hospital, who had been medicating Witness 74's mother for over a decade, signed a certificate of mental fitness for Witness 74's mother, thus implying that she was capable of informed consent to relinquish her child for adoption. At the same time however, Witness 74's mother was not deemed fit to live outside St Finan's Hospital, as it appears she remained there until Witness 74 took her home to live with her some years later.

v. Witness 74 believes her mother was coerced into having her sister adopted. Her mother told her she received "*numerous letters from the adoption society*" asking her to consent to her sister's adoption.[802]

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792 Appendix 1: Tab 74 documents, page 11
793 Appendix 1: Tab 74 documents, page 9
794 Appendix 1: Tab 74 paragraph 25
795 Appendix 1: Tab 74 documents, page 12
796 Appendix 1: Tab 74 paragraph 27
797 Appendix 1: Tab 74 paragraph 28
798 The Doctor in question is the same doctor who had been advising the County Home regarding antipsychotic medication for Witness 74's mother. See paragraph 1.36(a)iii
799 Appendix 1: Tab 74 documents, page 12
800 See paragraph 1.103(a)viii
801 Appendix 1: Tab 74 documents, page 13
802 Appendix 1: Tab 74 paragraph 30

vi. Witness 74 adds:

> "*I believe that my Mother was coerced into signing the consent letter. I do not have a copy of the consent letter. I struggle to understand how my Mother could have been of sound mind to sign the 'necessary papers' when the authorities were also quite sure that at the same time she was not of sound mind hence the fact that she was admitted to and kept on medication in the Mental Hospital for most of her life*".[803]

vii. Documents obtained by Witness 74 suggest that while the Adoption Board appeared to accept the doctor's assessments of mental capacity for her mother, the Board was simultaneously concerned that Witness 74's natural mother's mental illness could have been passed to her daughter. Prior to Witness 74's sister's adoption, the Adoption Board wrote to St Mary's Adoption Service at the Southern Health Board in Tralee. The Board requested an assessment of her sister's mental capacity, as well as a report from the Hospital "*on the nature of natural mother's mental ailment and whether it is considered hereditary*".[804] Witness 74's sister told her that "*she was required to see three psychiatrists before she was adopted due to the fact that our Mother was living in the Mental Hospital*".[805]

viii. Given that Witness 74's mother was being confined and medicated in a psychiatric hospital, and the fact that she became pregnant while in the hospital's care, and given the fact that she was returned there after giving birth, the Clann Project asserts that the possibility for free and informed consent for her daughter's adoption is highly unlikely.

1.103(b) Witness 75 was placed with a family in Dublin while she was pregnant by Ally, a group based in Parnell Square, Dublin:

i. Five days after she had her baby, the lady, [redacted], with whom she had been staying while she was pregnant, came to Holles Street Hospital to collect her and take her back to her house for a further period of recovery. Instead of going to [redacted] house, Witness 75 was driven from the Hospital straight to the adoption agency, St Patrick's Guild, Haddington Road. Witness 75 says:

> *"….[redacted] was still carrying my baby, I couldn't understand why she wasn't giving him to me. I was numb and weak and my voice wasn't working. A nun dressed in black came into the room. [redacted] handed my baby to her and I can see her she scurried out of the room as fast as she could. I just stood there in shock, it all happened so quickly. I never saw my son again."*[806]

ii. Witness 75 was subsequently contacted by the adoption agency asking her to sign adoption papers. Witness 75 says:

> *"The nun from the adoption agency rang me several times to ask me to sign papers as she had a family ready to take my son. She told me off for holding up the procedure. As I had no one to talk to, no one to advise me, no support from anywhere and living in a flat with my sister, I went to the agency. A girl there walked me across the road to a solicitor's office where I signed my name on some papers. I did not read the papers before I signed. The solicitor read something out, but I did not take it in. I was not in a state in which I was capable of understanding what he was saying or what I was signing."*[807]

1.103(c) Witness 76 had been placed under an anaesthetic during the birth of her son. Three weeks later she was told to attend a solicitor's office to sign the adoption papers. She says *"I remember feeling that the adoption took place very quickly. I still had the side effects from the*

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803 Appendix 1: Tab 74 paragraph 32
804 Appendix 1: Tab 74 documents, page 14
805 Appendix 1: Tab 74 paragraph 29
806 Appendix 1: Tab 75 paragraph 33
807 Appendix 1: Tab 75 paragraph 38

stitches from labour and my mother was only just coming through from a coma when I signed the papers."[808]

Further witness evidence in support of our submissions in Section 1 on Conditions in the Homes and Institutions

After paragraph 1.203 insert the following paragraph:

1.203(a) Witness 76 gave birth to her son in St Patrick's Mother and Baby Home in Dublin. She says that:

i. "*I received very little ante-natal care*."[809]

ii. "*I was not given any education about giving birth*."[810]

iii. *"My experience of labour was horrendous. … When we got to the hospital [at St Patrick's] I was left alone in a room for the whole night and all of the next morning. I was not given any pain relief or medical treatment for the whole of this period and was only checked on twice the whole time I was there.*"[811]

iv. *Witness 74 remembers being given an anaesthetic after a doctor was brought in from another hospital. Whilst she was under the anaesthetic, a symphysiotomy was performed on her. She was not told at the time that she had undergone a symphysiotomy.*[812]

Further witness evidence in support of our submissions in Section 1 on Emotional and Psychological Impact of Forced Adoption on Mothers

After paragraph 1.283 insert the following paragraph:

1.283(a) Witness 75 felt helpless and worthless and down after her baby was taken away from her. Her *"life went on a very downward spiral after that and I drank a bit to cope".*[813] She also had two breakdowns in later life, which she attributes in part to the trauma of the loss of her son.[814]

Further witness evidence in support of our submissions in Section 1 on Adoption or Boarding Out / Institutionalisation in Industrial Schools

After paragraph 1.58 insert the following paragraph:

1.58(a) Witness 75 says that *"[t]he women who worked at Ally used to talk to us, but never gave us any option except for returning to our families. We all knew that this could not happen and this is why we were there. The only alternative, which Ally did not talk about, was having our babies adopted."*[815]

Further witness evidence in support of our submissions in Section 2 on Conditions in the Homes and Institutions

After paragraph 2.2 insert the following paragraph:

2.2(a) Witness 76 gave birth to her son in St Patrick's Mother and Baby Home in Dublin in [redacted]. She says that:

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808 Appendix 1: Tab 76 paragraph 31
809 Appendix 1: Tab 76 paragraph 17
810 Appendix 1: Tab 76 paragraph 18
811 Appendix 1: Tab 76 paragraphs 19-20
812 Appendix 1: Tab 76 paragraphs 20-21
813 Appendix 1: Tab 75 paragraph 40
814 Appendix 1: Tab 75 paragraphs 54 and 55
815 Appendix 1: Tab 75 paragraph 15

i. *"I was not permitted to spend any quality time with my baby or bond with him in any way. I was allowed to feed him once every four hours during the day, but was not granted any time to kiss or cuddle him."*[816]

ii. "*The only contact I was allowed to have with my baby was during the times that I fed him in the five days following the labour. … I do not know whether my baby was fed at night. I certainly was not allowed to go and see him at night and I was not told that anyone else would feed him. However it is possible that he was fed by other people.*"[817]

iii. *"When I went to sign the adoption papers, one of the nuns from St Patrick's was there. She told me that my baby had suffered from separation trauma and withdrawal symptoms after I left St Patrick's. … I do not know if anyone picked my baby up or cared for him when he was distressed at this time.*"[818]

Further witness evidence in support of our submissions in Section 2 on No Proper Assessment of Suitability of Adoptive Parents and Lack of Follow Up – Adopted People (Post-1952)

After paragraph 2.76 insert the following paragraph:

2.76(a) In relation to Witness 74's sister's adoption, the Adoption Board wrote to St Mary's Adoption Service at the Southern Health Board in Tralee and asked whether the prospective adopters were "*aware of natural mother's mental history*".[819] The available documentation indicates no such concern for the suitability of the prospective adoptive parents, who were ultimately successful in their application. However, Witness 74 says her sister "*was beaten by her adoptive parents*".[820]

Further witness evidence in support of our submissions in Section 2 on Silence and Secrecy in the Adoptive Family

After paragraph 2.77 insert the following paragraph:

2.77(a) Witness 75 says that when she sought out her son, her son's adoptive mother *"was not happy with my contact. She did send some information about my son. I also received a reply supposedly from him, but I can't be sure who wrote the letter. It stated at the time that he was not ready to make contact with me but would contact a social worker if he changed his mind in the future.*"[821]

Further witness evidence in support of our submissions in Section 3 on Obfuscation and Misrepresentation – Adopted/Boarded-Out People

After paragraph 3.79 insert the following paragraphs:

3.79(a) Witness 74 was born in the County Home in Killarney, and she says her requests for records have been "*repeatedly refused*".[822]

3.79(b) When Witness 75 set about trying to contact her son, she says she was interviewed *"several times"* before she was *"eventually allowed to write a letter to him, delivered through the Adoption Agency"*.[823]

3.79(c) Witness 76 says that she received *"no response"* from St Patrick's Mother and Baby Home when she enquired about her son.[824]

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816 Appendix 1: Tab 76 paragraphs 23
817 Appendix 1: Tab 76 paragraphs 25-26
818 Appendix 1: Tab 76 paragraph 32
819 Appendix 1: Tab 74 documents, page 14
820 Appendix 1: Tab 74 paragraph 33
821 Appendix 1: Tab 75 paragraph 50
822 Appendix 1: Tab 74 paragraph 41
823 Appendix 1: Tab 75 paragraphs 49-50
824 Appendix 1: Tab 76 paragraph 35