



Adoption Rights Alliance Ireland

Submission to the United Nations Universal Periodic Review

25th Session of the Working Group on the UPR

Human Rights Council

21st September 2015

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Summary

Adoption Rights Alliance (ARA) is an organisation which campaigns for the enshrinement of the rights of the adopted child and Ireland's 100,000+¹ adopted adults in legislation.²

ARA requests that the following questions are put to the Irish Government:

- 1) Will Ireland grant all adopted people the right to access their birth certificates and all records pertaining to their time in State, or State-funded, care?
- 2) Will Ireland broaden the Mother and Baby Homes Commission of Investigation?

More detailed recommendations are at pages 13 and 14.

¹ ARA's estimate of a total population of **85,000 – 90,000** unmarried women who had their children adopted from 1922 to 1998 is a revised version of previous figures cited by our organisation and is based on the following: i) **44,000** is the Adoption Authority of Ireland's (AAI) official figure of children adopted domestically from 1953 to 2013 (41,000 is the total number from 1953 to 1998); ii) **1,933** is the official number of children exported to the US for adoption, however we suspect that this is a conservative figure as many who have approached ARA were registered as the natural child of their adoptive parents and/or no Department of Foreign Affairs file exists for them; iii) **10,000** is the number of children ARA estimates were illegally adopted or illegally boarded out from 1922 to 1998. This number is based on the percentage of such enquiries ARA has received from 2009 to 2015 and which our predecessor organisation received from the early 1990s until 2007. In addition, in June 2014, the then acting CEO of the AAI, Kiernan Gildea, admitted to the joint Oireachtas Committee on Health and Children that there were 'at least several thousand illegally adopted people; we might never know the total number because of the lack of a paper trail'; iv) **30,000** is the number of children ARA estimates were informally boarded out (prior to the introduction of legal adoption) from 1922 to 1952 at a rate of 1,000 per annum. This number is based on the percentage of such enquiries we have received from 2009 to 2014 and which our predecessor organisation received from the early 1990s until 2007. It is also based on the numbers of files that appear to have been held by agencies such as the Sacred Heart Adoption Agency from this period. Source: HSE, who took ownership of these files in Dec 2011; See: <http://www.irishexaminer.com/ireland/health/hse-still-without-vaccine-trial-files-169263.html>

² In the absence of adoption information legislation, Adoption Rights Alliance provides practical advice and advocacy to those affected by Ireland's closed, secret, forced adoption system. See <http://www.adoptionrightsalliance.com>

1. Background and framework

- 1.1 Founding members of ARA and the hundreds of individuals in contact with our organisation have been affected by the closed, secret, forced adoption system which was administered by the State and which persists even today. In many cases these individuals are survivors of abuse in State institutions including, but not limited to, Mother and Baby Homes.
- 1.2 The Mother and Baby Homes were institutions which were operated in the State between the 1920s and 1990s, by various religious orders and housed children born outside marriage and their mothers (while pregnant and after giving birth). The Mother and Baby Homes were funded, regulated and inspected by the State, both at the local and State government levels.
- 1.3 The Mother and Baby Homes formed only a part of the State's policy regarding the treatment of children born outside marriage, unmarried mothers and women and girls 'at risk' of becoming unmarried mothers (the 'Policy'). There were numerous formal and informal arrangements that implemented the Policy, involving, inter alia, State Maternity Hospitals; Private Hospitals; Private Nursing Homes; homes where children were held but where natural mothers were not present, GP assisted homes 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.
- 1.4 In summary, the Policy involved the incarceration of thousands of women and girls who became pregnant outside marriage and their babies (and the incarceration of women and girls perceived to be 'at risk' of becoming pregnant outside marriage in Magdalene Laundries), and the subsequent adoption of the children or other means of removal from their mothers' care.
- 1.5 In many cases, witness testimonies suggest that under the Policy the treatment by the State of children born outside marriage, unmarried mothers and girls and women 'at risk' of becoming unmarried mothers, included involuntary detention; forced labour; involuntary medical experimentation;

physical and psychological abuse; some cases of sexual abuse; neglect, including medical neglect; and interference with privacy. Publicly available records indicate extremely high death rates of infants in some of the institutions during various time periods, and many of those who died in the institutions are as-yet unidentified and lie in unmarked graves.

- 1.6 Such treatment amounts to breaches of the Universal Declaration of Human Rights (UDHR), the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights ('ICESCR'), the UN Convention against Torture (UNCAT) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The treatment of women and girls in Mother and Baby Homes also violated the Irish Constitution and the European Convention on Human Rights (ECHR).
- 1.7 Specifically, and on the basis of the witness testimony that we have collected we identify breaches of CEDAW Articles 2, 3, 5, 7, 9, 11, 12, 13, 15, 16 and 25; ICCPR Articles 2, 3, 6, 7, 8, 9, 10, 11, 14, 17, 18, 23, 24, 25 and 26; ICESCR Articles 2, 3, 6, 7, 9, 10, 11, 12 and 15; and UNCAT Articles 2, 12, 13, 14 and 16. The failure to institute a comprehensive investigation and reparation measures (see further below) means that many of these violations are continuing.

2. Commission of Investigation

- 2.1 In February 2015 the Irish State established the Commission of Investigation into the Mother and Baby Homes and Certain Related Matters³ (the 'Commission'). The Commission was established pursuant to the Commission of Investigation (Mother and Baby Homes and Certain Related Matter) Order 2015 (State S.I. No. 57 of 2015), which sets out and is referred to by the Commission as its Terms of Reference⁴ (the 'ToR').

³ <http://www.mbhcoi.ie/MBH.nsf/page/index-en>

⁴

http://dcya.gov.ie/viewdoc.asp?fn=/documents/Mother_and_Baby_Homes/20150109DraftOrderCommofInvestigation.pdf

2.2 We welcome the establishment of Commission as a step taken towards justice, however, we have significant concerns about the limitations of the Commission as formed and they are set out below.

A. The Terms of Reference of the Commission are too narrow

2.3 **Grounds and scope of discrimination (Paragraph VIII of the ToR).** The Commission may investigate whether Mother and Baby Home 'Residents' were systematically treated differently (which we submit should read 'discriminated against') on the basis of a prescriptive list of 'religion, race, traveller identity or disability'. Gender, marital status and socio-economic status have been omitted, which is significant given the Policy and the Homes did discriminate on such grounds. No scope to investigate whether the Homes themselves, their existence and purpose, were, in and of themselves, breaches of the State's obligations, which we submit they were.

2.4 **Graves and identification of remains.** There is no directive within the ToR for the Commission to identify the remains of deceased infants at former Mother and Baby Home sites. Relatives of the deceased babies and children buried in mass graves across several Homes cannot currently discover the circumstances of their relative's death or their final resting place. The Commission provides an opportunity, and possibly the only opportunity, to correct this; we would welcome it doing so.

2.5 **The ToR are too limited, in that they only consider the Mother and Baby Homes.** The Mother and Baby Homes formed only a part of the Policy. There were other institutions and arrangements, as explained at paragraph 6 above, which are excluded from the inquiry. As a result the experiences of up to 70% of all unmarried girls and women whose children were adopted (including illegal adoptions) and those adopted persons are currently excluded from the ToR.

2.6 Specifically, the exclusion of the Magdalene Laundries, which formed part of the Policy, constitutes a failure to implement repeated recommendations of the UN Committee against Torture, Human Rights Committee and Committee on Economic, Social and Cultural Rights to establish a prompt and thorough

investigation into all allegations of abuse of girls and women in Ireland's Magdalene Laundries.⁵

2.7 The exclusion of the majority of all adoption cases from the Commission, will have, inter alia, the following negative consequences:

2.7.1 *The true number of forced adoptions will not be investigated.* A forced adoption is one where a natural mother is forced, bullied, threatened, or otherwise coerced into signing relinquishment papers for her child's adoption. The official figures for 1967 show that 97% of children recorded as born outside of marriage were taken for adoption, which tends to indicate that keeping a child as an unmarried mother was not a real option (due to the Policy).

2.7.2 *The true number of illegal adoptions will not be investigated.* An illegal adoption is not officially recognised by the Adoption Authority of Ireland (AAI) or the Department of Children and Youth Affairs (DCYA) who use the phrase 'illegal birth registration' or 'wrongful registration'.⁶

2.7.3 The role of the State-appointed Adoption Board will not be investigated. Where the majority of both forced and illegal adoptions are excluded from the scope of the Investigation the State's role through the Adoption Board (renamed the AAI in November 2010) in facilitating forced and illegal adoptions cannot be properly investigated. The Board appointed adoption agencies but failed to monitor or supervise them.⁷

⁵ The omission of the Magdalene Laundries from the ToR is discussed in greater detail in the UPR submission of Justice for Magdalenes Research (JFMR)

⁶ Illegal adoptions include, inter alia, adoptions where consent was not effectively given (e.g. by a minor (under 21 years of age until the 1970s); where consent was obtained directly after birth when a mother was medicated; where consent was obtained during the first 6 weeks after a baby was born; where consent was given by a woman's parents, partner, or was forged; where an Irish woman living in the UK was threatened with violence or enticed with the promise of a job and accommodation to return to the State and subsequently had her baby taken for adoption (this practice was used widely by the Catholic Protection and Rescue Society of Ireland (CPRSI) now known as Cunamh and also by the former adoption agency St Anne's in Cork.) It is our belief that most illegal adoptions were undocumented and were carried out by individuals and institutions (GPs, midwives, nurses, solicitors, priests) with no connection to Mother and Baby Homes[, but with the apparent tacit approval of the State].

⁷ Under the 1952 Adoption Act, the Adoption Board's role was to: a) permanently sever the parental rights of unmarried parents to make available their children for adoption and to simultaneously sever the adopted child's right to his/her original family/identity/heritage and to create a new set of relationships 'as if the child had been born to the adoptive parents'; and b) to appoint, regulate and monitor adoption agencies.

2.7.4 *The Role of the State will not be investigated.* The role of the State, through State-funded Maternity Hospitals⁸ in facilitating forced and illegal adoptions will not be investigated.

2.7.5 *The role of State appointed/regulated adoption agencies will not be investigated.* The role of all bar a handful of adoption agencies (the majority of which were church run) in facilitating forced and illegal adoptions will not be investigated either.⁹

2.7.6 *The role of professionals will not be investigated.* Professionals who facilitated illegal adoptions, see paragraph 2.7.2 above, (called ‘private adoptions’ by the Adoption Board and Adoption Authority) such as GPs; obstetricians, mid-wives; nurses; solicitors; priests; nuns are not within the scope of the ToR.

B. Within the limited scope, the sample of Homes is too small and cannot be representative

2.8 The ToR limits the Commission to only 14 Homes and provides no details as to how these have been selected. There is no justification (nor any statement) that those 14 Homes are representative of the Homes in the State. By our calculations there were over 150 operating in the State during the relevant period for the purposes of the Commission. Such a limited scope has two broad effects: (1) It seriously risks the validity of any findings, as the report cannot be comprehensive; and (2) It excludes the majority of persons affected from the Commission (and those within the Homes were a minority of the persons affected by the Policy).

C. Inappropriate limitations under the Commissions of Investigation Act 2004

⁸ (e.g. Dublin Hospitals including Holles St, Rotunda, Coombe, James, Cork’s Erinville Hospital)

⁹ In the 1960s Nurse Mary Keating, proprietor and operator of St Rita’s Nursing Home on Sandford Road was charged and found guilty of facilitating illegal birth registrations as opposed to illegal adoptions. Mary Keating never lost her licence and continued her business well into the 1970s. St Patrick’s Guild also admitted in the mid-1990s to routinely lying to mothers and children who came back looking for one another, which was roundly condemned in Leinster House by Alan Shatter and Frances Fitzgerald TDs.

2.9 We are concerned that certain provisions of the Commissions of Investigation Act 2004 are not appropriate for this inquiry:

- a) Section 19: Statements, admissions and documents given to the Commission in the course of its investigation are not admissible as evidence against a person in any criminal or other proceedings;
- b) Section 39: Blanket restriction on the application of section 4, Data Protection Act 1988, right of access to data, where that data has been provided to the Commission in the course of its investigation;
- c) Section 40: Blanket restriction on the application of the Freedom of Information Acts 1997 to 2003 regarding records of the Commission's investigation other than general administration records.

D. Concerns regarding the Confidential Committee (the 'Committee') established by the Commission

2.10 The Commission has established the Committee, pursuant to the ToR:

' ... to provide a forum for persons who were formerly resident in the homes listed in Schedule 1, or who worked in these institutions, during the relevant period to provide accounts of their experience in these institutions in writing or orally as informally as is possible in the circumstances.'

2.11 The Committee is directed by and accountable to the Commission and may put in place procedures to protect the confidentiality of those persons who testify to the Committee and so wish it.

2.12 We are concerned regarding the Committee's conduct will not reveal any details of its procedures (including refusing to provide such details to persons who wish to testify to the Committee). All enquires to the Committee are met with the response that the procedures of and all details of the Committee are confidential. This gives rise to legitimate concerns as to the conduct of the Commission and the Committee in regard to the administration of justice.

3. Adoption information rights

3.1 The closed, secret nature of the Irish State's adoption system has remained in place since legal adoption was first introduced in Ireland in 1952¹⁰. During the past 63 years, eight Adoption Acts¹¹ and an amendment to the Constitution¹² have been brought forward, and all have failed to provide legislation to grant information rights or statutory based information and tracing services to Irish adopted people.¹³

3.2 In July 2015 the Irish State published the Heads of Bill for an adoption information and tracing bill.¹⁴ The measures currently propose that adopted people should sign a statutory declaration promising not to contact their natural mothers in exchange for access to their birth certificates. This would force adopted people to sign away their rights in a way that further marginalises them on a statutory basis.

3.3 In November 2010 the then Irish Human Rights Commission (IHRC)¹⁵ published its assessment¹⁶ of the human rights issues arising in relation to the treatment of women and girls in Ireland's Magdalene Laundries. The assessment included conclusions and observations on Ireland's closed secret adoption system and also acknowledged the lack of parity between Irish adopted people and their Northern Irish counterparts. The assessment also raised issues under the ECHR.

¹⁰ <http://www.irishstatutebook.ie/1952/en/act/pub/0025/index.html> The 1952 Adoption Act introduced legal adoption into Ireland but its measures related only to non-marital children as the Catholic hierarchy were concerned to avoid the children of unmarried catholic, parents being adopted into Protestant families. Previously, children of married and unmarried parents whose parents could not care for them due to poverty, were 'boarded out' to families in an informal fostering system

¹¹ Previous Adoption Acts: <http://www.aai.gov.ie/index.php/legislation/adoption-legislation.html>

¹² <http://www.irishstatutebook.ie/1979/en/act/cam/0006/index.html>

¹³ The first Adoption Information and Tracing Bill introduced to Dáil Éireann by Mary Hanafin (then Minister with responsibility for adoption) in 2001 attempted to criminalise adopted people who were in breach of a contact veto, a crime which was punishable by a year's imprisonment and/or a IR£5000 fine. After a successful campaign by our previous organisation, AdoptionIreland, the Bill was later shelved by Mary Hanafin's successor, Brian Lenihan, at the Adoption Legislation Consultation in October 2003, which (in spite of continued promises) resulted in no information legislation. <http://www.dohc.ie/press/releases/2001/20010524.html>

¹⁴ http://www.dcy.gov.ie/docs/27.07.2015_Appendix_A_Heads_of_Bill_and_General_Scheme/3495.htm

¹⁵ Now the Irish Human Rights and Equality Commission (IHREC)

¹⁶ <http://www.ihrc.ie/publications/list/ihrc-assessment-of-magdalen-laundries-nov-2010/>

- 3.4 In stark contrast to Northern Ireland,¹⁷ adopted people in the Republic of Ireland have no statutory right to their birth certificates.¹⁸ The Irish Adoption Authority and accredited bodies (previously known as adoption agencies)¹⁷ insist upon seeking the permission of natural mothers before releasing birth certificates.¹⁹
- 3.5 The Irish Adoption Authority and adoption agencies/accredited bodies refuse to give adopted people access to their adoption files. In denying adopted people access to their family histories, the Irish State is in breach of Articles 7, 8 and 20 of the UN Convention on the Rights of the Child as well as Article 8 of the ECHR.
- 3.6 Because tracing and information services are not put on a statutory footing, the Adoption Authority and accredited bodies are not required to provide a minimum standard of service, which has been a major issue for adopted people and natural parents.²⁰ Any tracing mechanisms put in place must be given corresponding legislation.²¹
- 3.7 Despite repeated revelations²² about the activities of some church run adoption agencies, some of these agencies continue to enjoy the benefit of state funding and for many years they remained as the custodians of the vast

¹⁷ In Northern Ireland, once adopted people reach the age of 18 years they are entitled to access their birth certificates. http://www.adviceguide.org.uk/index/your_family/family/birth_certificates.htm

¹⁸ Every person who is born in Ireland 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 when they were adopted, 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 term '*original birth certificate*' is incorrect, because each person has only one birth certificate. In the case of illegal adoptions, the birth certificates were falsified and the adopted person was registered as the natural child of his/her adoptive parents.

¹⁹ <http://www.aai.gov.ie/index.php/tracing/release-of-original-birth-certificate.html>

²⁰ Examples of complaints and issues with adoption agencies and the Adoption Authority available at: <http://www.adoptionrightsalliance.com/complaints.htm>

²¹ For example, in 2005, the Irish government launched the National Adoption Contact Preference Register (NACPR), which was never given statutory footing and thus has never been operated to full capacity, with adopted people and natural parents who have been matched being sent back to the same adoption agencies they are desperate to avoid dealing with. National Adoption Contact Preference Register: <http://www.aai.gov.ie/index.php/tracing/contact-preference-register.html>

²² Irish Examiner newspaper exposé on an illegal adoption from St. Patrick's Guild Adoption Society: <http://www.irishexaminer.com/ireland/kfkfglqbcwql/rss2/>

majority of adoption files, giving them the unique ability to cover past activities and frustrate adopted people's trace in the process.

- 3.8 There are hundreds of thousands of files and documents, concerning adoptions that are dispersed across a myriad of unregulated organisations and private individuals,²³ church backed adoption agencies – some of which are no longer operational,²⁴ Catholic and Church of Ireland churches,²⁵ the Health Service Executive²⁶ and the Adoption Authority²⁷ itself. An unknown number of illegal adoptions took place, some of which would have been arranged by private individuals, sometimes doctors, nurses, solicitors, priests or nuns. For adopted people and natural parents involved in these adoptions, these individuals are the only source of information and no efforts have been made to safeguard these files.

²³ Due to the secrecy surrounding Ireland's closed adoption system, a great number of children born to unmarried parents were born in private nursing homes whose registers were not controlled by any central authority. Such homes also had a reputation for handling illegal adoptions, where children were not registered under their mother's names but were instead registered as the natural children of their adoptive parents so without the original registers, it is impossible to trace a child's origins.

²⁴ Until the 1980s, registered adoption agencies were exclusively church backed agencies for whom adoption was a lucrative business. In addition to the capitation grants they received for every child in their 'care' (see Chapter 'An Act of Charity' from 'Suffer the Little Children' by Mary Raftery and Eoin O'Sullivan – New island Books 1999), they also received thousands of donations from grateful adoptive parents. Where those parents hailed from the US, individual donations ran to the thousands and in the case of Irish adoptive parents, donations continued as regular annual payments.

²⁵ Large numbers of Catholic churches, particularly those close to Mother and Baby Homes, hold baptismal records for children taken for adoption. These records are held in paper format, in unprotected parish offices and for many adopted people, these may be the sole records noting their original names and mother's details. Access to the records is controlled by local parish priests and their administrators – adopted people may not view the records and they cannot obtain copies of their baptismal certificates in their original identities. This results in the bizarre situation where adopted people wishing to marry in a catholic church have their maternal lineage looked at by unqualified church staff who report back to the priest carrying out the marriage ceremony whether or not they think the adopted person and his/her fiancé could be related. The same situation pertains to certain Church of Ireland churches but the numbers are not significant.

²⁶ The Health Service Executive (successor to regional Health Boards) began to act as custodian of adoption files from circa the mid to late 80's as private adoption agencies ceased trading, due to a significant fall in mothers being forced to relinquish their children to adoption. The HSE is chronically understaffed and social workers spend most of their time on child protection and also ironically on assessing prospective adoptive parents for adoption of children from abroad. As they have no statutory obligation to handle adoption information and tracing cases, in some instances, a senior social worker may only spend a half day a fortnight on such cases. In one particular area there is no social worker with responsibility for adoption. Due to management inertia and lack of leadership on the part of the Adoption Authority, the same social workers also carry out the genealogical work for which they are completely unqualified. This not only results in waiting lists of up to 2.5 years duration <http://www.adoptionrightsalliance.com/waiting.htm> during which time the person being sought may die but also in the wrong person being identified or searchers being told that the trail ran cold.

²⁷ From the outset of legal adoption, the Adoption Authority (known as the Adoption Board) acted as an adoption agency and brokered adoptions. Because of the lack of appropriate research and transparency at the Adoption Authority, few details are known about the circumstances surrounding these adoptions.

3.9 In the Adoption Acts 1952-2010, there was no provision made for adopted people to know that they were adopted.²⁸

3.10 By maintaining the current closed, secret adoption system and failing to put adopted people's rights on a statutory footing, the Irish State is not upholding the human rights of Irish adopted people under the Irish Constitution, the ECHR, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. We also believe that adopted people are being discriminated against under the equivalence provision of the 1998 Belfast (Good Friday) Agreement.

4. Intercountry adoption

4.1 While intercountry adoption practices are more child-centred since Ireland's ratification of the Hague Convention for the Protection of Children in Intercountry Adoption, we remain concerned the Irish State is shoring up major breaches of human rights with regard to children being adopted from America.²⁹ As there is undoubtedly no shortage of prospective adopters in the US, we believe that this is not only morally wrong but also in breach of Article 21 on the UN Convention on the Rights of the Child.

5. Assisted Human Reproduction

5.1 This year, the Irish State introduced the Children and Family Relationships Act, which for the first time regulated assisted human reproductive practices. While there is much to welcome in the legislation, ARA has the following concerns regarding the legislation:

- a) the lack of retrospective rights for those born before the enactment of this legislation
- b) the lack of information provided while the child is growing up

²⁸ Public servants working at the General Registrar's Office regularly report on adopted people requesting a birth certificate without knowing they are adopted, resulting in staff then having to break the news and re-direct them to another department. Apart from the obvious violation to the basic human rights of an adopted person, denying them knowledge of their adopted status also has major implications in terms of the potential for adopted people to marry people they are related to.

²⁹ For example: http://www.aai.gov.ie/attachments/article/27/ICA%20stats%202014_1.1.pdf

- c) the information sought from the donor at the time of donation is wholly insufficient³⁰

6. Recommendations

6.1 ARA recommends the following:

- a) The broadening of the scope of the Commission of Investigation as set out above and in ARA and JFM Research's joint briefing note to the Minister for Children;³¹
- b) Legislation to grant adopted people automatic access to their birth certificates;
- c) Legislation to grant adopted people access to all files, records, documents, and papers on their origins, family histories and early care and medical records held within the Irish State, the UK and also in the US;
- d) Statutory based information and tracing services;
- e) Legislation to strictly regulate accredited bodies in all areas of their operations;
- f) The deregistration of all church based accredited bodies;
- g) All adoption files to be placed under the Data Protection Acts 1988, 2003 and that all adoption files are seized and placed in a central archive for safekeeping so they can be made available to those to which they refer;
- h) A statutory provision for adopted people to have the right to know they are adopted;
- i) The prohibition of all bilateral agreements in intercountry adoption and the cessation of adoptions from the US;
- j) The amendment of the Children and Family Relationships Bill as set out in Section 5 above.

³⁰ Please see also ARA's Briefing Note on the legislation:
http://www.adoptionrightsalliance.com/ARA%20Briefing%20Note_Children%20&%20Family%20Relationships%20Bill.pdf

³¹ http://www.adoptionrightsalliance.com/ARAJFMR_ToR_Briefing_300614.pdf