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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.\(^1\)
- The Commission is declining to provide a transcript to any witness who has given oral evidence to it in private.\(^2\)
- 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.\(^3\)
- The Commission does not provide people with the personal records it has gathered on them.\(^4\)

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.’ 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’.

- **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 vetting 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:

- Section 11(1) of the Commissions of Investigation Act 2004, which establishes a presumption of private rather than public hearings.


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
