Mother and Baby Homes Commission of Investigation Report

Draft Alternative Executive Summary

UNDER EMBARGO UNTIL JULY 14 2021, 09:00

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July 13 2021

FOREWORD

This document is written in solidarity with all those, in Ireland and overseas, who experienced human rights violations in the 'mother and baby homes' and associated institutions, or whose rights were violated by the wider system of family separation of which those institutions were a part. Affected people include women who were separated from their children, people adopted, fostered and 'boarded out' from the institutions, their parents, siblings and wider families. They also include women and children who died in the institutions, and those sent from one institution to another; perhaps a laundry, a psychiatric hospital or an industrial school. Many affected people have campaigned for decades so that their experiences could receive a full public hearing. This project is inspired by their refusal to let the State control their personal narratives, and public understanding of Ireland's national history.

We are academic specialists in human rights law, family law, criminal justice, equalities, social welfare law, legal history and histories of institutionalisation. This document is our 'rapid response' to the 2021 Final Report of the Mother and Baby Homes Commission of Investigation ('the Report'). We have rewritten the Report's Executive Summary. This document is intended to be read as an alternative Executive Summary to the Report. References in footnotes, unless otherwise stated are to that Report. Inline references in brackets –- e.g. **(1.1)** - are to numbered sections of this document.

Our 'rewrite' is not comprehensive. It concentrates on the aspects of the Executive Summary that are most relevant to a legal analysis. Unlike the original Executive Summary, it is organised by legal topic and by type of rights violation. This means that this document may address issues in a different order to the original Report. It also means that it connects issues drawn from across several different chapters of the Report. We have not taken account of any of the many developments since the Report was published in writing Sections 1-6, though we have reflected on some in Section 8. We have not, and cannot, gather new evidence or new personal testimony.

We have rewritten the Executive Summary because it is the section of the Report that most people have read, and it is the section that outlines the Commission's findings. We are concerned that the findings do not fully reflect the evidence presented in the main body of the Report and often minimise the State's current obligations to those affected by mass 'historical' abuses. Re-writing the Executive Summary also allowed us to respond relatively quickly alongside our ordinary academic workloads. Of course, as is evident from our footnotes, in re-writing the Executive Summary, we examined the Report thoroughly and as a whole.

For a more detailed explanation of how this document was written and why, please see the 'Notes on Methodology' (Section 8 of this document). Many questions about the limitations of this document, and about why we have adopted certain kinds of language or taken a particular approach to evidence are answered there. The Report itself does not include a substantive discussion of its methodology. Section 8 is part of the process of making our research accountable to our readers, and especially to those most affected by the issues we discuss.

In Sections 1-6, when we refer to 'The Commission' we are writing as if the Commissioners and their co-authors had analysed the main body of their own Report differently. Our

methodology draws on 'feminist judgments projects'.[1] In these projects, scholars rewrite important legal judgments as if they were judges, demonstrating that different outcomes or analyses – ones which are more attentive to women's rights and to gendered experiences - were possible, even using the laws in force and evidence available to the original court at that time. In this way, a feminist judgments project shows that interpretation of facts and legal principle is central to legal decision-making and draws attention to the power dynamics that make some interpretations seem more plausible than others. We do something similar here. The Report is not a court judgment. However, its findings have legal impact; for example, in influencing future redress processes.

Of course, this document does not replace the work done by the Commissioners or their research team. Instead, it is a creative academic exercise that shows that the Commission could have come to different conclusions using the same evidence, even remaining within the original Terms of Reference, and even without conducting substantial new primary research. In some places, we borrow from the Commission's own analysis. Although we cannot endorse the Commission's approach, we can make the best of the evidence it gathered.

Academic expertise is not more important than expertise by experience. There would not have been any Commission without the participation of those whose rights have been breached and they, in many ways, produced the evidence that we worked with via the Commission's Report. We recognise that the Mother and Baby Homes Commission process, in common with other state investigations, was not designed in direct collaboration with affected people. The Terms of Reference, the design of the Collaborative Forum, the Investigative and Confidential Committees and the Report's text excluded significant cohorts of affected people. Their unique knowledge of past abuse was not respected as it should have been. This document does not seek to be the 'final word' on past human rights abuses. Those most directly affected are entitled to contest state and academic narratives of past harm, including ours.

In keeping with feminist academic practice, we are sharing this draft while it is still a work in progress. We will share a draft with those attending an online public event hosted by TU Dublin Law Department on July 14th and we warmly invite comments and feedback. We will explain how to send us feedback, and what sorts of feedback we can use, at the event. We also welcome comments and endorsements from academic researchers of any relevant discipline.

Several people read and reviewed versions of this document in draft and are acknowledged below. We are very grateful for their time and efforts. We especially appreciate the contributions of three readers and reviewers who preferred not to be acknowledged by name.

This document relies extensively on the work of Claire McGettrick, Maeve O'Rourke and all participants in the Clann Project. We endorse their recommendations for State action. Their consistent, diligent work for affected people is a model of solidarity and scholar-activism.

Any errors and omissions are our own.

1 See further Northern/Irish Feminist Judgments: Judges' Troubles and the Gendered Politics of Identity. Oxford: Hart Publishing, 2017.

ACKNOWLEDGMENTS

Editors

Máiréad Enright, Reader in Law, University of Birmingham – m.enright@bham.ac.uk
Prof Aoife O'Donoghue, Law School, Durham University- aoife.o'donoghue@durham.ac.uk

Authors

Aoife Price, National University of Ireland, Galway
Clíona de Bhailís, National University of Ireland, Galway
Maria Ní Fhlatharta, National University of Ireland, Galway
Sahar Ahmed, Trinity College Dublin
Dr Aisling McMahon, Assistant Professor of Law, Maynooth University
Dr Aoife Daly, Lecturer in Law, University College Cork
Dr Ciara Fitzpatrick, Lecturer in Law, Ulster University
Dr Deirdre McGowan, Senior Lecturer, Technological University Dublin
Dr Fergus Ryan, Associate Professor in Law, Maynooth University
Dr Fiona Donson, Senior Lecturer in Law, University College Cork
Dr Helen Kehoe, Solicitor
Dr James Gallen, Associate Professor of Law, Dublin City University
Dr Kieran Walsh, Senior Lecturer in Law, Portsmouth University
Dr Louise Kennefick, Associate Professor, Maynooth University
Dr Lydia Bracken, Lecturer in Law, University of Limerick
Dr Lynsey Black, Assistant Professor of Law, Maynooth University
Dr Maebh Harding, Lecturer in Law, University College Dublin
Dr Michelle Farrell, Reader in Law, Liverpool University
Dr Phil Mullen, Assistant Professor in Sociology, Trinity College Dublin
Dr Samantha Morgan-Williams, Lecturer in Law, University College Cork
Dr Vicky Conway, Associate Professor of Law, Dublin City University
Prof Eilionóir Flynn, Centre for Disability Law and Policy, NUI Galway
Prof Shane Darcy, National University of Ireland, Galway

Expert Readers

Anna Corrigan
Anne Harris-Hennon
Caitriona Palmer
Carmel Cantwell
Clodagh Finn
Conall Ó Fátharta
Conrad Bryan
Fionna Fox, Solicitor
Maria Joyce, National Traveller Women's Forum
Mary Harney
Rosemary Adaser
Siobhan Kilroy
Teresa O'Sullivan

Academic Reviewers

Claire McGettrick, Irish Research Council Postgraduate Scholar, School of Sociology, University College Dublin
Dr Ciara Breathnach, Associate Professor in History, University of Limerick
Dr David Keane, Assistant Professor in Law, Dublin City University
Dr Deirdre Duffy, Reader in Critical Social Policy, Manchester Metropolitan University
Dr Deirdre Foley, Roy Foster Irish Government Research Fellow, Hereford College, Oxford
Dr Erika Hanna, Senior Lecturer in Modern History, University of Bristol
Dr Georgina Laragy, Glasnevin Trust Assistant Professor in Public History and Cultural Heritage, Trinity College Dublin
Dr Ida Milne, Lecturer in European History, Carlow College
Dr Jennifer Redmond, Assistant Professor in Irish History, NUI Maynooth
Dr Katherine O'Donnell, Associate Professor in History of Ideas, School of Philosophy, University College Dublin
Dr Laura Kelly, Senior Lecturer in the History of Health and Medicine, University of Strathclyde
Dr Laura McAtackney, Associate Professor, School of Culture and Society, Aarhus University
Dr Leanne McCormick, Senior Lecturer in Modern Irish Social History, University of Ulster
Dr Lorraine Grimes, Social Sciences Institution, National University of Ireland, Maynooth
Dr Maeve O'Rourke, Lecturer in Law, Irish Centre for Human Rights, NUI Galway
Dr Mark Coen, Lecturer in Law, University College Dublin
Dr Niall Meehan, Head of Journalism & Media Faculty, Griffith College Dublin
Dr Ruth Fletcher, Senior Lecturer in Law, Queen Mary, University of London
Dr Sarah-Anne Buckley, Lecturer, School of History and Philosophy, NUI Galway
Dr Sophie Cooper, Teaching Fellow in Irish History, University of Leicester
Prof Sean O'Connell, Professor of History, Queens University, Belfast
Prof Yvonne McDermott Rees, School of Law, Swansea University

1. INTRODUCTION

This Report addresses the institutionalisation of unmarried mothers and their children in Ireland from 1922-1998.[2] *It focuses on 18 institutions. These represent just a fraction of the 'homes' found in twentieth century Ireland. In turn, they were just one part of a wider system of family separation. As well as formal and informal adoption, transnational adoption, fostering and boarding out, this system included later institutionalisation in industrial schools, Magdalen laundries and other abusive residential institutions.*

Experiences varied from one institution to another. Throughout the period under examination, the institutions were consistently associated with serious human rights abuses. These abuses were known about and tolerated for decades. The institutions' activities were considered 'charitable' or part of the 'welfare state'. This may have protected them, and the State itself, from significant criticism. However, it does not extinguish the human rights abuses women and children suffered as a result of their activities.

From 1922 to 1998, women's and girls' reproductive choices and sexual autonomy were heavily constrained, including by Irish law. It is commonly observed that all Irish women were affected in some way by these restrictions but unmarried women, girls and their children suffered distinct injustice and indignity which cannot be ignored. Disabled, Traveller, mixed-race, and poor women and children experienced additional discrimination.

In many instances, single mothers' families inflicted and were complicit in abuse. The same can be said of some children's natural fathers. Some actively participated in a wider culture of secrecy and shame around unmarried parenthood. Others were simply unable to resist it, often, though not always, due to lack of means or knowledge. When natural fathers and mothers resisted unwanted adoption, they were often firmly rebuffed. Some families were repeatedly harmed by this system. Some who gave birth in the institutions had been children in institutions themselves, and some of their children grew up, in turn, to be institutionalised

However, this Commission is primarily concerned with State responsibility for past abuses. All institutions investigated by the Commission were regulated by the State and all received some State funding. The State did more than indirectly contribute to or condone these abuses. It actively and deliberately supported abusive institutions. When families and communities excluded women and girls, the State provided no meaningful refuge. While stigma and shame made it almost impossible for unmarried women and girls to raise their children in the community, money and legal status – issues within the control of the state - mattered too. Poorer women and girls were more likely to be institutionalised for longer periods under harsher conditions, because they could not afford an alternative.

Some aspects of institutional regimes improved with the passage of time. However, family separation through coerced, closed and secret adoption remained a feature of this institutional system late into the period under examination.

2 It is important to note that one institution discussed in the Report; The Castle, only closed in 2006.

From the 1970s onwards, Ireland saw significant changes to the status of women driven by the activism of unmarried mothers and their advocates. In particular, church and State authorities became aware that women and girls and their families were increasingly resistant to the idea of entering an institution to conceal an unplanned pregnancy. From 1967, more women travelled to England to access legal abortion there. Nevertheless, the State continued to deny adequate social and economic supports to single mothers. The impacts of that refusal are still felt in Irish society, and across the Irish diaspora. Many single parents and their children still live in poverty in Ireland today. The State continues to use institutions and private providers as sources of 'care' for vulnerable groups.

This Report identifies several mass abuses. These constituted breaches of human and constitutional rights at the time they occurred, and/or trigger human rights obligations today.

The precise grounds on which the State can be found liable for individual breaches of human and constitutional rights will vary by context. In general terms, the State can be considered responsible for a range of abuses for six distinct reasons, some or all of which apply in individual cases:

1) The State funded all institutions discussed in this Report in some way.
2) The State regulated - through local government, inspection, funding, criminal, human rights, constitutional and administrative law - all 18. Where religious authorities - Roman Catholic and Protestant - objected to more intensive regulation and reform, State agencies preferred to negotiate rather than enforce regulatory arrangements. In effect, the State delegated key social functions to private institutions.
3) The State was aware of abusive practices in many institutions but did not make full use of its statutory powers, including powers of prosecution, and did not sanction institutions by depriving them of funding,[3] It did not effectively investigate and punish key criminal offences and did not ensure effective investigations of deaths.
4) Irish law punished family foundation outside of marriage and showed no concern for reproductive justice.
   a) The law criminalised aspects of access to contraception (until 1993) and almost all abortion (until 2019), making it almost impossible to avoid unwanted pregnancy. For most of the period under examination it also tightly controlled access to information about contraception, fertility and abortion, and provided minimal sexual health education.
   b) The State disadvantaged people born to unmarried parents by preserving 'illegitimacy' as a legal status until 1987.
   c) Until 1953, the State largely left the regulation of adoption to Roman Catholic and Protestant institutions. After 1953, adoption law was heavily weighted against natural parents, and illegitimacy remained a key reason for adoptions.
   d) The State did not offer adequate financial support to unmarried single mothers to enable them to live independently.
5) State agents actively directed unmarried women and girls into the institutions, including by facilitating effective 'repatriation' from Britain.
6) Irish law still inhibits efforts to seek accountability for abuses in the institutions by restricting affected people's access to records of institutionalisation and family; their own records and those of close family members.

3 The point here is not those institutions always received adequate state funding, but that deprivation of funding was one means by which the state could exert control over institutions in cases where it knew of abuses.

1.1 HUMAN RIGHTS: SUMMARY OF FINDINGS

The Commission finds that the State bears substantial responsibility for breaches of constitutional and human rights including:

The right to personal liberty

The Commission accepts that during the whole period under examination, especially from 1930 to 1960, many women and girls were involuntarily detained in institutions **(3.4)**. 'Involuntary' here means more than that they had no practical alternative to entering an institution. It means that they were actively detained against their will. Witness testimony demonstrates that some women and girls were deceived or coerced into entering an institution. In some cases, they reported being told by a Garda, social worker, authorities in charge of an institution, or a judge that they must remain in an institution. They often understood that it was unlawful to disobey that instruction. Those 'repatriated' from Britain were also sent to institutions. The Commission is persuaded that, in practice, many women and girls, their families and friends, staff and State agents, understood that they were not free to leave the institution when they pleased. In key respects, detention in these institutions was indistinguishable from formal State incarceration. The Commission has seen records documenting petitions for release and discussing release dates. The law did not provide for formal review of this detention.

The rights to privacy, bodily integrity and freedom from inhuman and degrading treatment

The Commission heard and saw ample evidence of inhuman and degrading treatment in most institutions under examination **(3.6)**. Especially in the earlier period under examination, and especially for working class women and girls, living conditions in the institutions were very poor. The Report documents physical, psychological and emotional abuse, obstetric violence **(3.8)**, forced labour **(3.3)**, denial of essential medical treatment, imposition of unwanted medical interventions, denial of adequate nutrition and physical punishment. Some witnesses to the Commission reported systemic physical abuse; for others it was occasional. Some abuses were deliberately intended to punish and deter unmarried motherhood. The context of the abuse meant that some degrading effect was inescapable. Physical abuse took place within an inherently hierarchical and deeply exclusionary institutional regime. It was often accompanied by emotional and verbal abuse, which in turn was often sexualised or couched in the language of stigma and shame. Those on the receiving end were generally young women and girls, separated from their ordinary support structures, denied any real privacy, pregnant or recovering from birth. This combination of factors means that many mothers can be considered to have experienced inhuman and degrading treatment. Undoubtedly, in some cases, forcible removable of a child against their mother's will may well be considered degrading treatment, and that degradation will have been worsened by aspects of the institutional regime.

The Commission emphasises that many women and girls sent to the institutions were pregnant through sexual assault, **(3.5)** including child sexual abuse by family members, employers or foster families. The State was aware of widespread child sex abuse, at least since the Carrigan Report (1931). The Commission saw no evidence that women and girls pregnant through sexual violence received special care in the institutions, or that their cases were

properly investigated. On the contrary, detention in an institution is likely to have compounded the original abuse.

The Commission accepts that many women and girls were required to undertake exhausting domestic and caring labour in the institutions unpaid to contribute to the running costs of several institutions under examination **(3.3)**. This was often a point of distinction between poorer women and girls and those from wealthier backgrounds, whose families might pay for early release. In many cases, denial of a wage was also an obstacle to raising one's own child; without an income it was impossible to plan to provide for them.

The right to life.

Reported mortality rates in the institutions under investigation were well in excess of those across the general population until the 1970s and, in some cases, the 1980s **(3.7)**. The Commission has seen evidence that that national and local government[4] officials were aware of these death rates. Nevertheless, the State failed to adequately regulate the institutions and did not adequately investigate these deaths. Where required, legally mandated inquests often did not take place. It is highly probable that more lives were lost as a result. The Commission also has reasonable grounds to believe that some death records may have been falsified in the course of arranging illegal adoptions. Some burials clearly did not respect the deceased's dignity.

Vaccine and infant milk trials.

The Commission heard evidence that children in the institutions were subject to vaccine and infant milk-trials, without their mothers' or guardians' consent and sometimes without their knowledge. It is impossible to comprehensively assess the trials due to gaps in the available records **(3.9)**. The Commission finds that participating researchers did not comply with prevailing ethical standards. Participation in the trials was burdensome for children. The Commission cannot rule out that some children suffered adverse effects.

The right to private and family life.

The Commission has seen ample evidence of coerced and illegal adoption throughout the period under examination **(Section 4)**. The Commission is aware of evidence of falsification of birth, adoption and death records potentially affecting several thousand people. Coercion was a common feature of the Irish adoption system. The law, to a great extent, tolerated this coercion. Although, from 1953 onwards, it recognised that adoption should not take place without the natural mother's consent, in practice, mothers signed adoption papers while subject to a range of social, economic, religious and familial pressures incompatible with genuine choice. Several were below the age of majority when asked to sign, and the law offered no special protection for them. Institutionalisation, and harmful experiences in the institutions, often undermined mothers' capacity to resist that pressure. Several witnesses described how they had carefully planned to keep their children, but their decisions were deliberately overridden. The Commission also heard convincing evidence that many mothers formally consented to adoption without fully understanding their legal rights. Disturbingly, many witnesses to the Commission gave evidence that children were sometimes removed using physical force, and that some mothers acquiesced to adoptions under duress, including

4 In this document we use 'local government' as a generic umbrella term. The relevant authorities with responsibility for the institutions took different forms in different counties over the course of the period under examination **(1.3).** They included (in rough chronological order) boards of guardians, boards of health/public assistance, public assistance authorities, local authorities and health authorities.

under direct threat of violence. Although these adoptions were clearly illegal, most affected mothers had no practical access to a remedy.

The State was certainly aware that the law on adoption consent was deficient. Rather than act to support unmarried mothers, the Oireachtas twice legislated to make it easier to formalise an adoption. In 1974, it legislated to reduce the minimum age at which a child could be adopted from six months to six weeks, and to allow the High Court to dispense with the natural mother's consent. In 1976, the Supreme Court heard a case in which an adoption order was ruled invalid because the Adoption Board had not fulfilled its obligations to be satisfied that the mother understood the adoption order's effects, or her right to withdraw that consent. The Oireachtas swiftly legislated to make sure that adoption orders finalised in other similar cases could not be challenged.

The law was also inadequate to protect the rights of natural fathers. In cases where fathers were aware of their paternity and wished to be involved in raising their children, it was difficult for them to assert parental rights. Unmarried fathers did not have a constitutional right to custody or guardianship and did not obtain a statutory right to apply for these until 1964. Until 1998, unmarried fathers were not consulted in relation to proposed adoptions. Legal processes in force from 1930 to 1976 allowing mothers to obtain financial support from their children's fathers were cumbersome and ineffective.

The Commission found evidence of intercountry adoptions **(4.3)** connected to the institutions, including cross-border movement involving Northern Ireland. Where children were legally adopted under U.S. law, there was often no basis in Irish law for permanent surrender of parental rights, and no basis in U.S. law for proper regulation of intercountry adoption. Evidence from the 1940s to the 1950s shows that State agents understood that these adoptions were not properly regulated under Irish law. The Commission has also seen evidence of falsified birth records. The Irish State took no appropriate measures to ensure that American adoptive parents were properly vetted. In the case of Catholic adoptions, it effectively delegated this responsibility to U.S. Roman Catholic organisations. There is no evidence of anything other than ad hoc vetting practices in the case of Protestant adoptions. The Commission has not been able to access the full financial records of organisations involved in arranging these adoptions, including donations by adoptive parents. However, it emphasises that an adoption may be illegal, and breach the rights of children and natural parents involved, irrespective of whether that adoption is part of a commercial exchange

Although many adopted people grew up in secure and loving adoptive families, the Commission heard significant and convincing evidence from others who did not. Aspects of their suffering could have been avoided with adequate regulation and oversight of the adoption process. The Commission emphasises that even a happy adoption does not erase the consequences of forced family separation, or the State's responsibility to redress it.

Surviving relatives of those who died in the institutions, or following a period in an institution, experience continuing harm today because reliable records are not accessible, and many burials cannot be traced. The Commission heard from advocacy groups who framed this experience as akin to the aftermath of 'enforced disappearance'.

The right to identity

Breaches of the right to private and family life documented by the Commission have implications for the right to identity **(4.1)**. Throughout the period under examination,

adoptions were closed and secret. Ireland still restricts adopted people's access to their birth certificates and other records and restricts relatives' access to records which may disclose a deceased family members' fate. The Commission also heard evidence from adopted people and natural parents demonstrating wilful concealment, deception and obstruction of access to records by the State. The Commission urgently recommends law reform in this area.

The right to freedom from discrimination.

In examining the prevalence of discrimination in the institutions, the Report concentrates on just two; Pelletstown and Bessborough. The Commission found ample evidence of discrimination against both women and children on the basis of their membership of vulnerable groups.

- Mixed-race children experienced institutional racism **(5.1)**. They were subjected to a range of physical and verbal abuse because of their race. They were more vulnerable to long-term institutionalisation because they were less likely to be recommended for adoption, because of their race. Mixed-race children suffered distinctive violations of their right to identity, because they were denied information about their racial and national origins.
- Disabled children were less likely to be recommended for adoption because they were disabled. Disabled mothers were less likely to be permitted to keep their children because they were disabled. Both disabled women and children were vulnerable to long-term institutionalisation even where alternatives were available **(5.2)**.
- Traveller women **(5.3)** were often sent to institutions for pre-natal and post-natal care, and Traveller children were often sent to institutions on a seasonal basis.[5] This institutionalisation was consistent with State assimilation policies. Travellers experienced both racism and discrimination alongside distinctive violations of cultural rights including long-term confinement and lack of opportunities to appropriately mourn the dead.
- Poorer women and girls and their children were more likely to find themselves in county 'homes', which had the worst living conditions and imposed the most demanding forms of unpaid labour. Poorer women and girls were also likely to be institutionalised for longer periods or to be moved between institutions including to Magdalen Laundries or psychiatric institutions.
- Religion **(5.4)** was integral to the regime in the institutions examined, irrespective of Christian denomination. Women, girls and children were governed in accordance with religious principles, and punished for transgressions against religious teaching, irrespective of their own wishes and needs.

Discrimination on these grounds intersected with the gender discrimination that permeated the wider system. Discrimination within the institutions exacerbated discriminatory cultures elsewhere in society. Discrimination is both a violation of human rights and aggravates other human rights abuses.

5 The term 'Traveller' is used throughout this Report to refer to the Irish Traveller Community or Mincéiri.

2. UNMARRIED MOTHERHOOD IN CONTEXT
2.1 CONCEALMENT

Secrecy and censorship around sexuality in twentieth century Ireland ensured that many women and girls lived in total ignorance of the facts of reproduction and motherhood. The 'shame' of 'illegitimacy' was a pervasive society-wide taboo, operating with bottom-up and top-down force. Shame, related to notions of sexuality and the female body, wielded considerable power.[6] Families, religious agents, State officials and professionals compelled pregnant women and girls to conceal their pregnancies and, often, the sexual abuse which had led to conception. The very high rates of maternal institutionalisation in Ireland documented in the Report can only be understood within this context of secrecy. The shame of 'illegitimate motherhood'[7] could affect generations of one family.[8] This drove Ireland's exceptional rates of maternal confinement. As testimony to this Commission shows, individuals were in the institutions to hide or be hidden.[9]

Some families negotiated that culture of concealment by keeping children, so that, for example, sons were raised as nephews and granddaughters as daughters. The Commission heard from many others that their families refused to support them in raising a child outside marriage. Girls raised in religious institutions, similarly, were prevented from keeping their children.

In 1948, the Department of Health inspector Alice Litster described children born outside marriage as the 'infant martyrs of convenience, respectability and fear'. Today we recognise that women and children suffered for the State's convenience as much as for familial respectability and fear. The State actively supported a culture of concealment **(3.1 and 4.1)** and provided no meaningful alternative.

In the years after independence, authorities (both religious and lay) considered institutional containment to be the most appropriate way of dealing with what was perceived to be the serious social problem of illegitimacy. This institutional response was dominated by religious organisations, regarded by the State as experts in the 'reform' or 'rescue' of unmarried women and girls, sometimes referred to as 'offenders' or 'penitents'.[10] Post-1922 and into the 1930s, unmarried motherhood became a key preoccupation of both lay and secular leaders. There was frequent public discussion on this issue, especially in newspapers and Lenten pastorals. Discussion of unmarried motherhood was also a feature of commentary on infanticide trials.[11]

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6 Clara Fischer, 'Gender, nation, and the politics of shame: Magdalen Laundries and the institutionalisation of feminine transgression in modern Ireland', Signs, 41:4 (2016) 821-43.
7 Lindsey Earner-Byrne (2007) Mother and child: Maternity and child welfare in Dublin, 1922-60 (Manchester University Press).
8 See e.g. Confidential Committee, 999.
9 Confidential Committee,61.
10 4.54; 4.113; 9.33; 9.42.
11 For example: Karen M. Brennan, '"A Fine Mixture of Pity and Justice": The Criminal Justice Response to Infanticide in Ireland 1922-1949,' Law and History Review, 31 (2013) 793; Elaine Farrell, 'Infanticide of the Ordinary Character: An Overview of the Crime in Ireland, 1850-1900,' Irish Economic and Social History, 39 (2012) 56; Clíona Rattigan, 'What Else Could I Do?': Single Mothers and Infanticide, Ireland 1900-1950 (Irish Academic Press, 2012); Louise Ryan, 'The Press, The Police and Prosecution Perspectives on Infanticide in the 1920s,' in Diane Urquhart and Alan Hayes (eds), Irish Women's History (Irish Academic Press, 2004). Ciara Breathnach, Eunan O'Halpin, 'Scripting blame: Irish coroners' courts and unnamed infant dead, 1916–32', Social History, 39 (2014); Ciara Breathnach, Eunan O'Halpin, 'Registered "unknown" infant fatalities in Ireland, 1916-1932' Irish Historical Studies, 38 (2012): 70-88.

The issue was characterised by a dual perspective: considerable debate at the societal/policy level and very determined secrecy at the individual level. Breaks in this code of concealment occurred only rarely, and punitively, in the practice of denunciations from the pulpit which were an occasional feature of parish life.[12]

We cannot discuss the institutions' 'welfare' functions without acknowledging that they reinforced this wider culture of shame and secrecy around unmarried and pregnant women and girls. An institutional response of concealment perpetuated cultural attitudes. Church, State and local government supported the segregation of unmarried mothers from other 'respectable' categories of institutional 'inmate'.[13] For some, time in the institutions may have offered respite from other kinds of violence and harm, but they were not a 'refuge' from shame or concealment.

The emphasis on secrecy persisted across decades, even as significant legal and social changes made unmarried motherhood somewhat more feasible.[14] As late as 1967,[15] the number of children adopted was equivalent to 97% of births outside marriage. As new approaches to the management of unmarried mothers emerged in the 1970s, both church and State continued to emphasise secrecy.[16] Witnesses who gave birth in the 1980s/90s reported a continued familial, institutional and social emphasis on concealment. For example, the Commission heard one account, in this period, of being concealed under coats when driven by nuns to hospital ante-natal appointments.[17]

As the Confidential Committee heard, secrecy had many consequences beyond the fact of institutionalisation itself; for a few mothers it meant that their labour was induced early,[18] for many secrecy around adoption made it a much more difficult experience,[19] while, for more, secrecy hampered later attempts to trace natural mothers or adopted children.[20] It is also clear from the testimony that secrecy, underpinned by attitudes to sexuality steeped in shame, created power differentials within the institutions which made them particularly punitive and degrading environments, for women, girls and children with lasting impacts on self-esteem. Especially in the earlier decades under review, the desire to maintain secrecy motivated some women to leave their local areas to give birth.[21] Some left Ireland, going to Northern Ireland, Britain and elsewhere, temporarily or permanently, because a stay in an institution was difficult to conceal from friends, neighbours and family.[22] The primacy of secrecy also meant that simple breaches of privacy could have very serious consequences.[23]

2.2 Impacts of the Law on Illegitimacy

The law on illegitimacy compounded social stigmatisation of unmarried mothers and their children. Children born to unmarried mothers and not legitimated by their parents' marriage

12 9.63- 9.69.
13 4.60; 19.12; 18.40.
14 6.75-6.76.
15 6.3. That was the year in which births in mother and baby homes peaked.
16 12.49-12.51.
17 Confidential Committee 60.
18 Confidential Committee 74 - 75.
19 Confidential Committee 125; 32.235.
20 Confidential Committee 170.
21 8.7, 8.15, 8.30.
22 7.23.
23 6.76.

had no legal relationship to their fathers.[24] Sole responsibility for their welfare rested on their mother[25] and they could not succeed to their father's estate.[26] After 1964, men could apply for guardianship of non-marital children, but the child remained 'illegitimate'.[27]

The legal status of illegitimacy, indicating the lack of a male protector, facilitated many illegal practices considered in detail in this Report. The de facto, but extra-legal, detention of women and children in institutions **(3.4)** was justified by the need to conceal the shame of extra marital birth. Vaccine trials were conducted on their children without parental consent **(3.9)**. Children born in England to unmarried Irish mothers were 'repatriated'[28] with little regard for their views **(3.4)**. Adoption was facilitated outside a legal framework or with scant regard for the mother's consent **(4.2)** because it offered a supposed solution to the problems associated with the status of illegitimacy.[29] The Adoption Act 1952 further emphasised the distinction between non-marital and marital children by providing only for the adoption of non-marital children and orphans. Falsification of birth records for adopted children **(4.2)** was notionally justified by the perceived need to avoid the stigma of illegitimacy.[30] At times, high infant mortality was rationalised, spuriously, by reference to the child's legal status.[31]

The law reflected the stigma of unmarried motherhood. In Dáil debates on the Illegitimate Children (Affiliation Orders) Bill in 1929, unmarried mothers were referred to as 'poor girls', 'unfortunate girls', 'hardened sinners', and 'immoral'. The law's overriding concern was to protect men from unscrupulous women who could potentially blackmail them for monetary support.[32] Witnesses born to unmarried mothers testified to the impact of this status on their lives. They were labelled using such terms as 'bastard,'[33] 'spawn of the Devil,'[34] 'the nothing lad,'[35] and described as 'virtual lepers' in the Dáil.[36] Requirements to produce birth certificates made their status public and impacted on their ability to gain employment and participate in education.[37]

The government largely ignored the issue of illegitimacy, despite campaigns by organisations like Cherish[38] and a 1974 recommendation by the Roman Catholic Bishops conference that it be abolished.[39] The Law Reform Commission recommended abolition in 1982, but steps were not taken to equalise the treatment of children until the European Court of Human Rights

24 Guardianship of Infants Act 1884. The Legitimacy Act 1931 allowed for the legitimation of children through subsequent marriage of their parents.
25 Public Assistance Act 1939.
26 This distinction remained after the passage of the Succession Act 1965, OB v S [1984] IR 316.
27 Guardianship of Infants Act 1964.
28 These women and girls are associated with the term 'PFI' or 'Pregnant from Ireland'. The Commission recognises that this term is depersonalising and offensive.
29 6.1. For an example of pre-1952 arguments presenting legal adoption as a solution to the difficulties of illegitimacy see EW McCabe, 'The Need for a Law of Adoption' Dublin: Journal of the Statistical and Social Inquiry Society of Ireland, Vol. XXVIII, Part II, 1948/1949, pp178-191. McCabe was Vice President of the Adoption Society.
30 32.390.
31 See e.g. 5.43, 9.97.
32 Maria Luddy, 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s' (2011) 30 Women's Studies 797-817, 812.
33 See e.g. Confidential Committee, 52.
34 36.83.
35 36.82.
36 1.126.
37 1.125. Some Ministers at the time considered the short form certificate to be a 'liberal' measure.
38 36.86.
39 36.90.

ruled in 1986 that the Irish law on illegitimacy contravened the European Convention on Human Rights.[40] In 1979, that Court had already ruled that discrimination against unmarried mothers and their children was a violation of the Convention.[41] Oireachtas debates on the Status of Children Act 1987, which removed the legal status of illegitimacy, recognised the need for equality between children. However, the Act continues to deny adopted people a statutory right to a declaration of parentage.[42] No apology has been offered to the thousands of children and adults discriminated against by society and the State as a result of the legal status of legitimacy.[43]

2.3 NATURAL FATHERS

Without discounting issues of personal responsibility, it is important to set paternal agency in its social and legal context. Legislative policy strongly preferred maternal over paternal responsibility for non-marital children. Under the 1964 Guardianship of Infants Act, an unmarried mother was her children's sole guardian during her lifetime; it is only in more recent decades that non-marital fathers have been able to acquire joint guardianship.[44] Unless the non-marital father is the child's guardian or a person having charge of or control over the child at the relevant time, he has no right to veto an adoption and (prior to 1998) was not automatically consulted in relation to proposed adoptions.[45] From 1863 until 1930, financial support could be claimed under the Bastardy (Ireland) Act, 1863.[46] From 1930 to 1976, an unmarried father could be pursued for financial support by means of an affiliation order, but this was difficult and expensive to pursue **(3.2)**.[47] Prior to 1988, a non-marital child had no entitlement to inherit from their father's estate.[48]

Testimony given to the Confidential Committee highlights an alarming number of pregnancies resulting from rape,[49] incest,[50] and the sexual exploitation of minors.[51] This often occurred at the hands of family members, foster parents,[52] and in some cases priests.[53] There

40 Johnston & Others v Ireland (1986) EHRR 203.
41 Marckx v Belgium, Series A, No. 31 (1979) 2 E.H.R.R. 330.
42 S. 35(1).
43 36.98.
44 See the Guardianship of Infants Act 1964, as amended by the Status of Children Act 1987, the Children Act 1997 and the Children and Family Relationships Act 2015.
45 See, for instance, State (Nicolaou) v An Bord Uchtála [1966] IR 567 See also the circumstances of JK v VW [1990] 2 IR 427 and WO'R v EH [1996] 2 IR 248. But see the Adoption Act 1998 and s.16 of the Adoption Act 2010.
46 Poor Law Guardians could take civil cases to recover maintenance costs.
47 Illegitimate Children (Affiliation Orders) Act, 1930. For accounts of attempts to obtain orders see 4.86-4.87.
48 See O'B v S [1984] IR 316 but see also the Status of Children Act 1987.
49 Confidential Committe.13, 14 (twice), 15, 17, 19 (twice), 20, 22 (multiple), 23 (twice), 26 (several accounts), 28, 30, 32, 33, 34, 36, 43, 48, 51, 53, 59, 61, 64 (twice), 68, 70, 73, 76, 80, 82, 83, 91, 94, 97, 103, 108, 109, 110, 130, 150, 151, 155, 156, 158, 165, 166, and 173.
50 See the Punishment of Incest Act 1908. Incest involves sexual intercourse between a man and his mother, sister, daughter, or granddaughter. Sarah-Anne Buckley, 'Family and Power: Incest in Ireland, 1880-1950' in Anthony McElligott (et al) Power in History: from Medieval Ireland to the Post-Modern World, Historical Studies XXVII, Irish Academic Press, June 2011 shows that in practice prosecution required evidence other than the victim's e.g. the corroboration of a witness or evidence of pregnancy.
51 Confidential Committee, 14; see also 22, 83 and 103.
52 Confidential Committee, 155 and 173.
53 Confidential Committee, 15, 43, 91 and 130.

are several accounts of pregnancy following gang rape[54] and one account of a woman being sexually exploited by family members for payment.[55] The testimonies exhibit a widespread view among women that there was no point in reporting these incidents to the Gardaí, as they would not have been believed or no action would have been taken. These experiences seemed to have drawn little empathy from those who ran the institutions **(3.5)**.[56]

Paternal responsibility is a recurring theme in evidence given to the Confidential Committee. There are multiple references to natural fathers disappearing on discovering the pregnancy. In some cases, this reflected fear of negative social repercussions and family reaction[57] and the widespread stigma and shame associated with unmarried pregnancy. News of an unplanned pregnancy could conceivably ruin the standing and reputation of an entire family, and there is evidence of some fathers being disinherited and having no choice but to emigrate on fathering a non-marital child.[58] In some cases, fathers were unaware of their paternity.[59] Where fathers did seek to take paternal responsibility for their children they were often rebuffed.[60] The perception that a partner was 'beneath' the family, or of the wrong religious background, militated against some proposed marriages being approved (as parents were anxious to ensure matches suited to their families' social standing).[61] The Commission acknowledges that very few natural fathers affected by these issues have spoken publicly about their experiences, suggesting the ongoing effects of stigma.

Case law on nullity relating to marriages contracted between the 1960s and 1980s indicates a pattern of women and men propelled into marriage on discovery of a non-marital pregnancy,[62] often as a result of familial pressure amounting to duress or undue influence. For example, in *N (otherwise K) v. K*[63] a pregnant 19-year-old married her first sexual partner out of obedience to her parents. In *O'B v. R*[64] a pregnant 17-year-old married her first boyfriend in the face of parental pressure. These cases remind us that marriages begun and maintained out of a sense of duty were often unhappy and did not respect either spouse's autonomy.[65] Today, many would be recognised as forced marriage.[66]

2.4 Profit and Responsibility

Individuals, and religious orders, lay religious organisations, local government bodies, corporations and public bodies, including universities, benefitted financially from State-

54 Confidential Committee, 19 (raped by two local boys), 26, 34 and 36 (gang-rapes) and 32 (raped by a group of older men).
55 Confidential Committee,109.
56 Confidential Committee, 48.
57 Confidential Committee, 20.
58 Conrad M. Arensberg and Solon T. Kimball, Family and Community in Ireland (2nd ed., Harvard University Press 1968). See also the discussion in Chapter 9.
59 Confidential Committee,164.
60 Confidential Committee, 144-145. See also The State (K.M. & R.D. v. Minister for Foreign Affairs & Others [1979].
61 8.60-8.62.
62 8.58-8.59; 9.18.
63 [1985] IR 733.
64 [1999] 4 IR 168.
65 See also MK v FMcC [1982] ILRM 277, W (C) v (C) [1989] IR 696, AC v PJ [1995] 2 IR 253. See further Walsh J. in G v. An Board Uchtála [1980] 1 IR 32 noting that such a marriage would also be injurious to the child.
66 For a 1950s civil service reference to 'forced marriage', see 8.38.

sanctioned systems for the management of unmarried mothers and their children. **(3.1)** This is in line with the economic context of other institutions previously the subject of State investigations, including the Magdalen Laundries.[67] It has not been possible to examine the financial records of each institution, partly because some orders failed to provide relevant records to the Commission. However, there is little doubt that those running the institutions in question benefitted economically from them, notwithstanding the divergence in their financial performance or the inadequacies of state funding.

While certain religious orders shared detailed financial information, such as the Good Shepherd Sisters (Dunboyne), others did not, despite numerous requests. These include the Congregation of the Sacred Hearts of Jesus and Mary (Bessborough, Sean Ross and Castlepollard).

It is important when considering the financial aspects of the operation of the institutions to avoid a narrow focus on the profitability, given the false implication that its absence may in some way amount to an absolution of responsibility.[68] In a similar vein, it is immaterial that those managing the institutions were themselves poorly paid or unpaid; this does not undo any economic exploitation of women, girls and their children. Indeed, the underpayment of staff may have reinforced the expectation that unpaid labour **(3.3)** was generally acceptable.

Institutions often benefited from per capita state payments per 'resident'. In addition, as noted at **(2 and 3.3)** above, at various times some institutions relied on charges made on women's income and on their unpaid labour. In both instances, they were deriving financial benefit from the women's unlawful detention **(3.4)**. Roman Catholic religious orders and Protestant groups accrued further benefits in the form of donations and enhanced public reputation as providers of welfare and healthcare services. Several organisations which ran these institutions are active participants, directly or through successors, in these sectors in Ireland and elsewhere today. Some have also benefited from income related to property no longer used for the institutionalisation of women and children but originally acquired for that purpose. All economic exploitation, whether in the form of unremunerated labour, payments for adoptions or payments for forced participation in medical trials, **(3.9)** aggravated other harms documented in the Report, regardless of whether this exploitation was profitable.

The State's constitutional and human rights obligations are engaged in this context irrespective of whether relevant private institutions profited from abusive practices. In the context of redress and the potential contributions to be made by churches and associated religious orders and lay groups, the financial performance of individual institutions should not be a decisive consideration. Similarly, the responsibilities of other actors associated with the vaccine trials, including universities, colleges, and pharmaceutical companies are not circumscribed by any economic benefits that may have accrued.

In accordance with our Terms of Reference, the Commission recommends that consideration be given to further investigation, as a matter falling within the public interest, of all economic aspects of how these institutions operated, whether commercial or otherwise. This

67 Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries (2013), Chapters 13-15, 19, 20; Report of the Commission to Inquire into Child Abuse (2009), Executive Summary, 24.
68 See Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries (2013), Chapter 20, 993, stating that the Magdalen Laundries 'were operated on a subsistence or close to break-even basis rather than on a commercial or highly profitable basis'.

investigation should set the institutions in the social and historical context of the broader finances of the religious entities involved.[69] This context includes institutional connections to other beneficiaries including corporations, universities and the professions.

69 S.I. No. 57/2015 – Commission of Investigation (Mother and Baby Homes and certain related Matters) Order 2015, Section 6.

3. In the Institutions.

3.1. Governance and Responsibility

There is surprisingly little evidence that national politicians took a serious interest in the welfare of unmarried mothers for most of the twentieth century. When individual politicians raised critical questions, these were often brushed aside.[70] Local government, similarly, did not prioritise the welfare of mothers and children living in the institutions. However, all of the institutions investigated by the Commission were regulated by the State and all received some State funding. Oversight was conducted by both the relevant local government and the Department of Local Government and Public Health/Department of Health.[71] Two funding systems can be identified. The four county 'homes' within the scope of this investigation as well as the mother and baby 'homes' at Tuam, Kilrush and Pelletstown were owned and controlled by local government, as successors to the pre-independence workhouses and Poor Law Union system. Their daily operations were almost entirely funded by the local government (from local rates) and staff, including religious staff, were local government employees. The remaining institutions were owned by Roman Catholic and Protestant religious groups. These institutions received two kinds of significant State funding.[72] First, most received public capital financing from the Hospitals Commission to fund substantial building works[73] (e.g., building a maternity hospital or a smaller maternity unit). Second, all received capitation payments[74] - a type of maintenance payment - from the local government for each pregnant woman or girl, and each child, that the institution admitted.[75]

The Registration of Maternity Homes Act 1934 set out a statutory power of inspection for the Department of Local Government and Public Health ('DLGPH'), later the Department of Health, regarding all places where women and girls gave birth or received nursing care following a birth.[76] This Act allowed the DLGPH to visit the institutions and recommend improvements. In practice, inspectors inspected nurseries and living quarters as well as the maternity units, but this was conditional on management co-operation.[77] County 'homes' were more broadly regulated regarding all aspects of their operation, including diet and living conditions, for all residents before 1934.[78] All these institutions were (or ought to have been[79])

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70 4.118, For instance, in 1973 during debates on the Adoption Act 1974 Sen Timothy McAuliffe called for the institutions to be abolished, but then Minister of Justice, Charles Haughey said it was beyond his remit. Adoption Bill, 1963: Second Stage, https://www.oireachtas.ie/en/debates/debate/seanad/1963-12-18/speech/131/.

71 See discussion on a potential extension of the Tuam institution in 1960 by the Western Health Board Visiting Committee, discussions as to whether it was 'economical' and in 'better condition' than similar institutions elsewhere. 'Time for people of Tuam to break silence on 'home babies'' Irish Times April 23rd, 2019.

72 Several institutions also advertised to solicit private donations.

73 1.72-1.82; 4.66-4.79. The Hospitals Commission, though technically independent, worked closely with the DLGPH. The Hospitals Commission inspected institutions, commenting on facilities and matters that required improvement.

74 Bethany and Denny House did not seek these until the mid-1940s. Regina Coeli was not in receipt of regular State funding but it did receive funding from the Hospitals Trust Fund in 1950.

75 Bethany, Denny House and St. Gerard's also received grants under the Maternity and Child Welfare Scheme, to subsidise the costs of boarding out children.

76 1.109 – 1.121; 2.10 – 2.11; 4.89-4.96 referring to s. 12(1) 1934 Act

77 See e.g. 18.110 in relation to high mortality rates at Bessborough.

78 4.5.

79 Regina Coeli resisted registration under the 1934 Act, in part because women did not give birth there, but an exemption was never officially granted, and it was eventually inspected; 21.118- 21.134; 21.164. Dunboyne, founded in 1955, went unregistered until 1982.

subject to State regulation from 1934. It was after 1934 that the 'private' institutions began accommodating pregnant women and girls in significant numbers.[80]

The DLPGH had statutory power to prevent a local authority from maintaining women at a particular home, but this was rarely used[81] and there was no clear policy on when local government powers to withdraw a maternity home's licence[82] should be exercised. The defects in this division of powers are evident from events at Bessborough in the early 1940s. DLGPH inspectors raised serious concerns about high infant mortality rates, but the local authority, which was aware of the death rates, did not respond.[83] The DLPGH eventually temporarily prohibited local government from funding public patients admitted to Bessborough. However, 'private patients' continued to be admitted, and there is no evidence that local government officials considered preventing this. [84]

Considering that:

(1) the statutory powers of regulation conferred on a government department,
(2) the public funding of capital projects, and
(3) the system of financial support from local government for these institutions

it is clear that the State established a distinct system to cater for unmarried pregnant women and girls. This was not a haphazard system, but one established with care and deliberation by the State in partnership with the religious agents.[85]

In lie with population demographics, most institutions under investigation were run by orders of Roman Catholic women religious. Bethany Home, the Church of Ireland's Denny House, Miss Carr's (all Protestant institutions) and the Roman Catholic Legion of Mary's Regina Coeli, though relying more on lay and voluntary labour, were also missionary-minded in their approach. The Roman Catholic church was the dominant influence on the system, morally and politically, though its views did not depart radically from those of Protestant religious leaders. It is clear that the State-established system for the 'care' of unmarried, pregnant, women and girls was entirely dependent on the availability and willingness of religious agents to provide these services. Roman Catholic religious orders assumed control of most institutions, in part because they had played key roles in administering workhouses, industrial schools and reformatories since before independence.[86] Protestant institutions had an even longer gestation, though they entered a relative decline as Roman Catholic agencies emerged. However, the delegation of power to religious agents was also in line with Catholic[87] and Protestant visions of "subsidiarity", under which the State could fund but not control social services, and in which direct State intervention was considered a last resort.

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80 In this sense, State funding also actively contributed to the system's expansion. From 1936, the Vatican permitted nuns to engage in midwifery, which enhanced demand for on-site maternity units.
81 It was used in Castlepollard in 1941 in relation to severe overcrowding (18.111). It was eventually used temporarily at Bessborough in the 1940s after several years of known high mortality rates (18.116).
82 Section 9(1) 1934 Act
83 18.112
84 18.126
85 On the origins of the system see 4.7-4.10.
86 4.32
87 See also *Casti Connubii* (1931) in which Pope Pius IX warned against unduly generous state help to unmarried mothers.

The State effectively delegated key public functions to religious-run institutions. Even where religious institutional staff were paid public employees, they were generally selected and managed by their own religious superiors. At least until 1960, religious agents in charge of institutions enjoyed significant autonomy[88] in determining which institutions they would run,[89] which categories of women and girls they would accept or refuse to accommodate,[90] and how long women and children would stay.[91] The DLPGH in co-operation with British Catholic charities,[92] also established a scheme to 'repatriate' pregnant Catholic women, from Britain **(3.4)**. British voluntary and statutory welfare services co-operated with this practice.

Local government officials habitually deferred to Roman Catholic orders' preferences, or to those of the local bishops. Religious authorities or management often ignored or attempted to deflect the government's few and ambivalent attempts to enforce any consequences following inspections of substandard institutions. By the 1940s, government inspectors were taking a more critical attitude to the institutions,[93] but met with resistance in some cases.[94] Some institutions justified this refusal of co-operation in terms of their purported religious rights to self-government.[95] On one occasion, the local bishop and the Sisters of Mercy withdrew services when statutory oversight was exercised regarding appointment of personnel at Kilrush.[96] The local bishop directly contributed to delay in removal of the Mother Superior at Bessborough[97] despite the appalling rate of preventable infant deaths there. When the Department of Health sought to begin closing the institutions in the mid-1950s, some bishops resisted.[98] Reform proposals which would have dramatically improved the lives of women and children were deferred or not pursued, because of religious resistance.[99] It is clear that the State's regulatory powers did not remove the need for negotiation with religious authorities.

Religious influence on State policy did not abate with the closure of many institutions in the 1960s and 70s. Religious organisations including the CPRSI (later Cúnamh) Ally, CURA[100] and the Protestant Adoption Society (later PACT) remained active in the regulation of unmarried mothers and their children, even as the practice of containing pregnant women and girls and new mothers in specialist institutions fell out of use. Religious[101] and State[102] responses to unmarried mothers changed as awareness of reliance on abortion travel rose,[103] and much stigma previously associated with unmarried mothers and their families was transposed onto abortion-seekers.[104]

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88 Their policies eased, allowing shorter stays and accepting a wider range of women as numbers of women entering the institutions began to fall, from the late 1950s; 12.105-12.106.
89 20.67.
90 4.54; 4.107; 6.51;10.10; 15.52; 16.75-16.76; 16.80; 18.30; 19.22; 20.75. Admissions policies especially affected women on a second or subsequent unmarried pregnancy.
91 4.112; 15.105 (on retention of older children in Tuam); 18.177; 19.122.
92 On the role of Cardinal Hinsley here see 7.14.
93 5.1.
94 5.35; 5.71.
95 5.101; 18.67 – 18.69 (citing canon law).
96 16.37.
97 5.47 – 5.62; 5.75; 18.122. 19.52.
98 6.66-6.71; 15.116-15.124.
99 5.101-5.108; 6.64; 9.123.
100 12.124-12.142.
101 7.60; 7.67; 12.4; 12.122.
102 12.86.
103 12.86; 12.124 noting that the majority of English women having abortions in the 1970s under the 1967 Act were married while the majority of Irish women were single.
104 See e.g. 12.122.

The Commission acknowledges the Clann Project's argument, made in its very helpful submissions, that the State is obliged to regulate and intervene to protect vulnerable people from known harms.[105] Under Article 40.3 of the Constitution, the State's laws must respect and as far as practicable defend and vindicate the personal rights of the citizen. The State did not rid itself of that responsibility by delegating key functions to 'private' institutions,[106] especially where victims of abuse had no realistic alternative to using them **(3.3 and 3.4)**. The State was aware, at various times, of many risks of abuse posed by institutionalisation. Despite this awareness, it did not offer effective protection to unmarried mothers and their children.

3.2 Social Welfare

Previous Irish inquiries into institutional abuse have shown that poverty was a key predictor of institutionalisation in industrial schools and Magdalen laundries. Women of all backgrounds disclosed serious abuses to the Commission. However, unmarried mothers were often poor and unemployed, and many lived in poverty once discharged from the institutions. Middle class unmarried women lost jobs on pregnancy;[107] this risk applied to Gardaí[108], schoolteachers[109] and civil servants. The State effectively excluded unmarried women and girls from accessing contributory social assistance schemes until the 1970s.[110] As early as the 1920s, the State was aware of some arguments for making direct social welfare payments to unmarried mothers.[111] In the 1930s, when the State introduced pensions for widows, no consideration was given to extending equivalent benefits to unmarried mothers.[112] Unmarried mothers living in the community with their children could be paid 'home assistance'; a relic of the Poor Law. It was largely an emergency payment, made at the discretion of local government,[113] and practice varied from one locality to another.[114] The children's allowance introduced in 1944 did not apply to the first child.[115] From 1953, all women who made social insurance contributions were entitled to twelve weeks of maternity allowance under the Social

105 See e.g. 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.
106 In addition, at least since 1961, Irish constitutional law has recognised that constitutional rights have horizontal effect; that private bodies as well as state bodies must recognise individual constitutional rights: Educational Co of Ireland v Fitzpatrick (No 1) [1961] IR 323.
107 8.18.
108 12.146.
109 18.339; 12.146; Flynn v. Power [1985] IR 648.
110 From 1948, Britain made more generous means-tested benefits available to unmarried mothers on the same basis as married mothers, though statutory entitlements to housing came much later and mother and baby homes remained an important feature of the social landscape. Anthony McCashin, Continuity and Change in the Welfare State (Palgrave Macmillan, 2019) 62. It should be noted that the Beveridge report recommended 'further examination' of ways to provide state support to unmarried mothers, especially where the male cohabitee was already married or a divorced man had remarried, as they could not easily fit into the system of social insurance. Yet, like many of Beveridge's recommendations, this was not taken forward by the post-war Labour government. See, Social Insurance and Allied Services, Cmd 6404 (1942) (London: HMSO), paras 347–348 cited by Pat Thane, Unmarried Motherhood in Twentieth Century England, (2011) Women's History Review, 20:1, 11-29, 21.
111 35.11. See also 5.90-5.95.
112 4.115.
113 See ss. 9 and 35, Public Assistance Act, 1939. The ISPCC were also involved in this system: http://www.childabusecommission.ie/rpt/pdfs/CICA-VOL5-01.pdf
114 1.85- 1.87; 4.56; 12. 64 – 12.68, 35.9. Since local government funding came from the rates, more money was available in wealthier areas.
115 35.21.

Welfare Act 1952.[116] Single women could also, in theory, claim unemployment benefit under that Act[117] if they had worked in insured employment for the requisite period, but could not claim a dependant allowance for a child,[118] and women were routinely questioned about the care of children in making applications.[119] Until the 1970s, women and girls had no significant access to public social workers who might inform them of their options.[120] Even then, independent, woman-centred advice was not guaranteed **(4.2)**.

The Affiliation Orders (Ireland) Act 1930 was enacted to update the previous law on 'bastardy'.[121] It was often used to enable local government to recover the costs of maintaining unmarried mothers and their children in institutions. The Department of Justice also hoped that imposing liability on fathers would prevent infanticide and "prostitution", reflecting unsubstantiated societal assumptions about the morality of unmarried motherhood.[122] Affiliation applications were available in Irish law until 1976. Some local government officials pursued putative fathers[123] at great risk to mothers' privacy. The applications rarely succeeded.[124] Even when the application was successful, men were often too poor to pay or left the country to avoid payment.[125] The maximum maintenance sum awarded under an affiliation order was £1 per week and remained at that rate until 1972.[126]

Instead of direct financial support, therefore, the State offered institutionalisation. Lack of income, combined with the effects of overwhelming stigma, meant that many women and girls had little choice but to accept it. Most women living in institutions were maintained there by local government, at officials' discretion.[127] To gain admission, women and girls often needed the assistance of an intermediary such as a doctor, charity,[128] civil servant or clergyman.[129] From 1942, the decision to admit a woman or girl to an institution fell to the county manager. Local government also had discretion to charge women or their families for a contribution to maintenance,[130] often risking women's privacy.[131] Later, the Health Act 1953 provided for a statutory entitlement to institutional assistance in the form of admission to a mother and baby home or county home.[132] The Commission found evidence that local

116 1.84; 35.27. The first maternity benefit was paid under the 1911 National Insurance Act.
117 In theory, the same could be said of the Unemployment Assistance Act 1934.
118 The Social Welfare Act 1952, s 26(c), provided that men could claim an allowance for dependent children, but there was no similar provision for single women or widows.
119 Joint Committee on Women's Rights, Second Report: Interim Report, Social Welfare (Houses of the Oireachtas, 1985).
120 12.41.
121 Illegitimate Children (Affiliation Orders) Act 1930; 4.81-4.87.
122 4.83.
123 4.84-4.87; 18.63.
124 4.85.
125 4.82; 18.63.
126 12.67.
127 4.100; 10.11. The power originates after independence with the Local Government (Temporary Provisions) Act 1923, and is carried forward by the Public Assistance Act, 1939, the Health Act 1953 and the Health Act 1970.
128 From 1962, the CRPSI could make arrangements for women's admission to a home; 6.76.
129 8.5. In some cases, this was done on her behalf by the DLGPH; 8.31.
130 8.44; See similarly Denny House at 23.26.
131 See e.g., 8.35-8.36; 19.149.
132 19.144. s.54.

government officials resented these maintenance costs,[133] and found cases in which they refused to pay for a mothers' upkeep.[134]

As in the case of the industrial schools, capitation payments were more generous than payments available to families in the community,[135] including in the later period under review. The State distributed resources to institutions which could have been of substantial benefit to single mothers if paid directly to them instead. From the late 1950s onwards, as fewer women and girls used the institutions and operating costs rose, the State initially responded by initiating plans to close some institutions and consolidate the system. Only later did it begin to pay single mothers directly. The emphasis on adoption from the 1950s onwards can also be understood in this context, because it reduced the costs associated with fostering/boarding out or further institutionalisation.[136]

The Unmarried Mother's Allowance (UMA) was finally introduced in 1973, with the aim of supporting mothers to retain custody of their children. Its introduction reflected growing tolerance of unmarried mothers from the Catholic hierarchy, particularly as more Irish women travelled to England to access abortion services **(3.1)**. There was increasing pressure from the EEC (now the EU) to improve gender equality, and Irish feminist organisations including Cherish advocated publicly for unmarried mothers. The impact of UMA should not be exaggerated. It is unclear how many of those giving birth in institutions knew that it was available, especially when it was first introduced.[137] Continued social stigma prevented many women and girls who were traditionally dependent on their family, from accessing it,[138] and public information initiatives were very poor.[139] A significant network of support organisations for single mothers did not emerge until the later 1970s.[140]

There is no evidence of systematic policy consideration of the particular socio-economic challenges affecting unmarried mothers.[141] Unlike deserted wives' allowance, UMA was a means-tested benefit, paid in the expectation that women would be full-time mothers, rather than engaging in paid work. Social welfare officers also made 'humiliating' efforts to check if women were cohabiting with partners.[142] Little income was exempt for means-tested purposes (with other earnings withdrawn at a rate of 100%) and there was no statutory provision to subsidise childcare costs or offset them against earned income. The rate of UMA in 1974 was £8.15 per week, with modest annual increases in line with the Consumer Price Index, taking it to £13.95 by 1991.

133 4.84; 4.103; 9.104; 18.24; 18.209; 1917; 19.23 (a rare case of reluctance to defer to the clergy given the expense involved). A key dimension of stigmatisation of unmarried motherhood was connected to the idea that they and their children would be a drain on public resources. Fr. Richard Devane, for example, warned against unmarried women who became 'the prolific mother[s] of degenerates'; 9.89
134 7.38; 8.31; 8.38-8.39 on refusal even when requested to do so by the Department of Health; 12:40; 20.18.
135 35.11; 35.22-35.23.
136 11.138.
137 32.194; 18.356. In 1979, 4,574 women were in receipt of the allowance (12.71). In that year alone, there were 3,331 births outside of marriage.
138 12.72; also Confidential Committee, 93 (1990s).
139 12.79.
140 This included Cherish, 12.73-12.90.
141 Anthony McCashin, 'Lone Parents in the Republic of Ireland: Enumeration, Descriptions and Implications for Social Security' (1993) The Economic and Social Research Institute.
142 12.73.

Supplementary welfare allowance, including housing allowance, was paid from 1977.[143] Nevertheless, persistent discrimination made it difficult for single mothers to access rented accommodation into the 1990s.[144] In 1987, the disposable income of a lone parent family was £81 per week compared to £201 for all families. Life was extremely difficult for single mothers who lacked mutual support and assistance from the child's father or a wider family circle or who were unable to secure a well-paid job.[145] In short, social welfare payments were not adequate to enable a dignified life for single mothers and their children.[146]

3.3 UNPAID LABOUR

Many institutions examined by the Commission, including Tuam, Pelletstown and Kilrush, were former workhouses. Well into the twentieth century, these institutions enforced regimes indistinguishable from the Poor Law system,[147] emphasising 'reform' and unpaid labour.[148]

Some institutions required women and girls to use their welfare payments or other income to contribute to the institution's costs.[149] The law permitted this. Women and girls also worked unpaid for the institutions, much as others did in the Magdalen laundries. Unmarried mothers, particularly those in county 'homes,'[150] were subject to strict and punishing work regimes, without ordinary workers' rights such as holidays or sick leave.

Despite government funding, the institutions' solvency, the maintenance of buildings and grounds, and the care of elderly, young and disabled residents, depended on unmarried mothers' unpaid labour.[151] Depending on the institution, this could include cooking, heavy scrubbing and cleaning, needlework, institutional laundry, packing commercial goods and care work as well as work typically done by men such as heavy groundskeeping,[152] farming and cutting wood or turf. This kind of work was especially associated with poorer women's experiences, especially in county 'homes'. It is not comparable with ordinary domestic duties, as women who had managed demanding workloads on family farms, or as inmates in other institutions, could attest. The Public Assistance Act 1939 provided that 'inmates' in receipt of public assistance from local government should work without pay.[153] The Health Act 1953 eventually prohibited the continuation of unpaid labour.[154]

143 1.87; This replaced home assistance.
144 12.72; 12.95- 12.102.
145 12.72; MhicMhathúna and MacMathúna v. Ireland [1989] IR, 512.
146 12.94.
147 4.37.
148 The Public Assistance Act 1939, incorporated much of the earlier legislation e.g. The Poor Relief (Ireland) Act 1938 (Chapter 1, para 1.30) and the Pauper Children (Ireland) Act 1938 (Chapter 1, para 1.48), 1930 ILO Forced Labour Convention.
149 35.6-35.8. It is not clear whether this practice had ceased by the 1970s e.g. 35.8.
150 4.42; 10.48- 10.59. A minority of women were paid; 10.57.
151 See e.g. 30.9.
152 See e.g. a complaint about Castlepollard in 1945 at 20.41-20.45. DLGPH inspector Alice Litster investigated the complaint but took the view that heavy manual labour was appropriate for the robust 'country' girls involved. One such girl associated the work at Castlepollard with exhaustion, even though she was used to working hard on her family farm. See also 12.23.
153 10.47 Section 25.
154 Ch 10, para 10.58, see also International Labour Organisation requirements that women in later stages of pregnancy are given adequate time off contrary to C029 - Forced Labour Convention, 1930 (No. 29) to which Ireland as a member (from 1923) of the ILO was bound.

The Commission is satisfied that many unmarried mothers were expected to work unpaid into at least the 1960s.[155] However, the Confidential Committee heard evidence of exhausting unpaid work in some institutions later in the period under examination. This clear and sustained prevalence of unpaid labour was a breach of the State's obligations under international law to prohibit and prevent slavery, servitude and forced labour – a commitment in place since the 1930s.[156]

The Commission acknowledges, based on the experience of the Magdalen Restorative Justice Scheme,[157] that registers and other institutional admissions records may not accurately reflect the length of stay in an institution. On the evidence available, it is clear that a two-year stay was not uncommon, into the 1960s. This was partly because mothers were retained to provide care for their children until they were adopted or boarded out. **(3.4)**. However, there were also financial motivations at play. For instance, local government sought to reduce the cost to the ratepayers of funding the institutions,[158] and this meant that they were keen to retain unmarried mothers to do work other than care for their own children. In 1952, the Department of Health decided that county 'homes' should no longer admit unmarried mothers. However, some continued to admit them into the early 1960s; reflecting their economic value to these institutions.[159]

Poverty was a predictor of a longer term of unpaid labour.[160] Mothers who could pay for the baby's keep at a private nursing home[161] or arrange a private adoption,[162] or whose families could do so,[163] left the institution earlier. In some institutions 'private patients' were not required to work unpaid. Even after a child had left the institution to be 'boarded out', their mother could be expected to contribute to their maintenance including by any paid work she did inside[164] or outside the institution,[165] in theory until the child turned 16.[166]

The unpaid labour requirement had disciplinary as well as financial implications. During scrutiny of the Health Bill 1952, Tom Kyne TD (Labour) identified the gendered implications of disciplinary working practices in county 'homes' when he noted that 'casual men were no longer required to break stones before getting their breakfast…unmarried mothers were still

155 Unmarried mothers were still carrying out work without pay in the Limerick county home in Newcastle West in 1962 (Department of Health, INACT/INA/0/449398; INACT/INA/0/464099, cited at 10.60).
156 Applicable is 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; International Covenant on Civil and Political Rights; 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." See International Labour Organisation, CEACR: Individual Observation concerning Convention No. 105, Abolition of Forced Labour, 1957 Ireland (ratification: 1958) (1990).
157 https://www.ombudsman.ie/publications/reports/opportunity-lost/.
158 4.39 – 4.41.
159 10.24; 8.39.
160 4.114; 6.65.
161 21.93.
162 18.312 (for example via St. Patrick's Guild).
163 18.312; 20.132.
164 On paid former inmates see 28.50-28.51.
165 4.114; 10.80.
166 Public Assistance Act 1939 s. 27.

kept in…we put them to carry out some of the most menial tasks, made to do unnecessary work, just maybe as a lesson to them not to come in again.'[167]

Labour regimes were harmful in other ways. Depriving mothers of an income limited their opportunities for escape and ensured that they would struggle to support their children financially.[168] Unpaid work was not taken into consideration in assessing social insurance contributions. Mothers were also habitually forced to prioritise work over their own welfare and that of their children. One witness reported that in 1966, at St Patrick's Navan Road "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."[169] Witnesses described being forced to work to the point of labour, often carrying out punitive tasks; one witness described being required to cut the lawn at Bessborough with scissors.[170] Following the birth, mothers were forced to return to work almost immediately[171] and the limited time that they were permitted to spend with their baby was constrained by pressure to complete an arduous list of domestic tasks.[172] A government inspector to Athy noted a nine-week old infant with a half-finished bottle lying beside her. She suggested to the mother that it be lap fed and not put into the cradle until she had finished the feed, to which the mother replied that 'she would never get her work done if she had to spend so much time feeding the baby.'[173] The inspector noted that 'this is not an isolated case by any means,' and subsequently noted the relative importance of the domestic work of the institution compared to the infants' welfare.[174]

3.4 Admissions and Detention

Much evidence heard by the Confidential Committee raised concerns around the basis for admission to institutions. An immediate question is whether girls and women were voluntarily or involuntarily admitted. The question of admission links directly to the constitutional principle that no "citizen shall be deprived of his personal liberty save in accordance with law".[175] Some witnesses described the institutions as a 'refuge'[176] or a 'haven'.[177] However, many of these witnesses were contrasting the institutions with extensive physical, sexual and emotional abuse they experienced in their previous place of residence,

167 10.58.
168 Ch 15, McAleese Report http://www.justice.ie/en/jelr/pages/magdalenrpt2013; 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 Magdalens Research, Adoption Rights Alliance, Hogan Lovells, 15 October 2018. http://clannproject.org/wp-content/uploads/Clann-Submissions_Redacted-Public-Version-October-2018.pdf, (Hereinafter 'Clann Report') 1.35.
169 Witness 70, Clann Report, 1.228.
170 18.373, 18.395. See also Witness 12, Clann Report, 1.226. In the absence of rebutting evidence, we accept the witness's testimony.
171 Witness 20 (para 1.229) and Witness 5 (para 1.232) Clann Report stated they returned to work within days of giving birth.
172 10.52.
173 Department of Health, INACT/INA/0/448082 cited in chapter 10, 10.55.
174 Ibid.
175 Article 40.4.1 of Bunreacht na hÉireann, 1937.
176 Confidential Committee 23, 36, 58.
177 Confidential Committee 23, 65.

be that home[178] or foster care.[179] This is not the same as saying girls and women chose to be in the institutions or that they maintained their liberty.

The Commission first explored whether girls and women, were in fact, deprived of their liberty.[180] The Commission repeatedly heard that children and women were sent to 'homes' by others.[181] Some were already institutionalised, and entered from Magdalen laundries or industrial schools.[182] The decision to enter an institution was rarely the child's or the woman's own. Testimony shows that family members,[183] employers,[184] clergy,[185] Gardaí,[186] doctors,[187] social workers[188] and on one occasion a judge,[189] made the decision. One woman told the Confidential Committee that a judge told her that if she did not answer his question about the paternity of her child 'I'll put you away where nobody will see you again'.[190] The decision to enter an institution was often made for the woman, and government inspectors understood that women and girls were often unwilling to enter.[191] However, as one witness noted, '[i]n those days you did what you were told'.[192] It was not unheard of for a woman to be deceived about her eventual destination.[193]

Of particular concern are instances where State agents were involved in delivering children and women to an institution. Where this action was taken by, or on foot of action by, Gardaí, social workers[194] and judges, there would have been an understanding that the weight of the law was behind it. Disobeying was not a practical choice and would also have been understood as an unlawful act. Previous academic studies have referred to institutionalisation without the practical possibility of resistance as 'coercive confinement'; a phrase which captures the lack of choice or freedom.[195] The Commission has heard sufficient evidence to indicate that girls and women were deprived of their liberty in being placed in the institutions. For similar reasons, 'exit' to another institution, such as a Magdalen laundry,[196] can be considered a continuation of involuntary detention. Several women were forced to travel to work in hospitals and other institutions operated by the same religious orders in Britain. The

178 8.46-8.47.
179 Confidential Committee, 24.
180 Detention does not become voluntary merely because the detained person is destitute; De Wilde et. al. v. Belgium Series A no. 12 p 36 (18 June 1971) or because the person can be released if they pay a sum of money; In re Aiken (1881) 8 LR Ir 50; Re: Keller (1888) 22 LR Ir 155.
181 Alice Litster (8.7) described how in 1945, she directed rural women to an institution even if they had intended to enter a private nursing home, return to work and keep their baby.
182 Confidential Committee 18, 39.
183 Confidential Committee, 14,.23, 24, 28, p29, 30, 32, 35.
184 Confidential Committee, 14.
185 Confidential Committee, 16, 17, 19, 23, 30, 40.
186 Confidential Committee, 43, 28.
187 Confidential Committee, 20, 23.
188 Confidential Committee, 18, 25, 28, 33, 38.
189 Confidential Committee, 13.
190 Confidential Committee, 13.
191 6.54; 7.19; 8.24; 11.33; 21.33.
192 Confidential Committee, 31.
193 In an Oireachtas Debate in 1963, Sen Timothy McAuliffe described the women and girls 'as being held a prisoner' Adoption Bill, 1963: Second Stage, https://www.oireachtas.ie/en/debates/debate/seanad/1963-12-18/speech/131/.
194 Confidential Committee, 38
195 Eoin O'Sullivan and Ian O'Donnell. "Coercive confinement in the Republic of Ireland: The waning of a culture of control." Punishment & Society 9.1 (2007): 27-48.
196 See e.g. EAO v Daughters of Charity of St Vincent de Paul, Sisters of Charity of Refuge and the Health Service Executive [2016] IESC 12; Confidential Committee 18, 115; 15.75; 'second offenders' in Tuam required to enter a laundry. See Schedule 1 Local Government (Temporary Provisions) Act 1923; McAleese Report http://www.justice.ie/en/jelr/pages/magdalenrpt2013 105-106.

Commission is concerned that women who went on to work in other institutions after their release, continued to experience effective servitude.[197]

Second, the Commission sought to identify a legal basis for these involuntary admissions, as required under Article 40 of the Constitution. The evidence available suggests a pattern of breach of the constitutional right to liberty. A 1964 Department of Health memorandum shows that the State was aware that there was no legislative basis for holding a woman in any of these institutions, though women and girls were asked to give 'reasonable notice' before departing.[198] There are clear resonances here with admissions to Magdalen laundries, which frequently lacked any clear legislative basis.

Case law from the 1920s, concerning internment, makes clear that a legislative basis for detention is required.[199] Such legislation existed for those convicted of offences or those of 'unsound mind', and some preventative detention is permitted under the Offences Against the State Act 1939. Until the passing of the Criminal Justice Act 1984, police detention without charge was not lawful. Thus, for the entire period under consideration the right to liberty could only be breached in limited circumstances, grounded in underpinning legislation. Detention of women and girls in these institutions did not meet those constitutional requirements and thus the Commission concludes there were breaches of the right to liberty.[200]

The relationship between coercion and admission is especially clear in the cases of women and girls returned to Irish institutions from Britain.[201] Between 1931 and 1971, a State 'repatriation' policy ensured that many women and girls who had left Ireland for British cities to give birth and arrange their child's adoption[202] were returned to institutions in their counties of origin.[203] The underlying motivations were both economic and religious; to relieve British charities and local government of responsibility for these women and children, and to address a threat, perceived by Roman Catholic agencies that children would be raised in non-Catholic families. In several cases, women and girls were compelled to travel late in pregnancy, risking their health, and that of their babies. The Commission has seen some evidence that women who were living unmarried with a man, who were disabled or who had friendships with men who were not White were more likely to come to the attention of organisations involved in 'repatriation'. Babies and older children were also repatriated. It is not known whether the mothers consented to leave Britain. The Commission has seen evidence of cases in which significant pressure was applied in convincing women to return. There is evidence that the authorities were aware that by going to Britain, women were deliberately avoiding Ireland's punitive system for the control of unmarried mothers.[204] In returning them to an Irish institution, the Irish State was overriding their will.

197 19.170.
198 6.64. See also 16.49, 16.53, 16.82 for recognition of this principle in the 1920s and 30s.
199 R (O'Connell) v Military Governor of Hare Park Camp [1924] 2 IR 104.
200 See The State (McDonagh) v Frawley [1978] IR 131.
201 See generally Chapter 7.
202 A number of British cases are scattered across Chapter 8.
203 For attempts to return them to their parents (and deter travel in the long term) see 7.46-7.47 This practice continued unofficially afterwards through arrangements via clergy and religious orders.
204 5.109; 12.9 Unmarried Irish mothers who travelled to Britain in later pregnancy, and were unable to find work, could not access mainstream state health and welfare services. However, in the 1940s, 50s and 60s, a woman returned to Ireland could be detained in an Irish home and deprived of an income for a longer time than if she had remained in Britain.

Breaches of the right to personal liberty occurred both on admission and during ongoing detention. The ongoing holding of women and girls and their treatment after admission, indicates that they were involuntarily detained. They were not at liberty to leave when they chose. Their length of stay was arbitrarily determined by local government or religious agencies by reference to criteria with no basis in law.[205] Into the 1960s,[206] two-year terms of residence[207] (and sometimes longer terms)[208] were frequently imposed on women and girls who were maintained by public authorities. **(3.3)** With the knowledge of government,[209] institutions forbade mothers[210] to leave without also taking their children, requiring them to make arrangements for care or adoption or to wait until arrangements were made for adoption, committal or boarding out.[211] In practice, however, those who had no access to the social security system or familial support[212] remained in the institutions under duress. In the earlier decades, a longer stay was considered necessary to ensure the woman's 'reform', and some State officials and influential policy makers openly shared this view.[213] The requirement that the woman remain with the child was not universally relaxed until the 1970s.[214]

There is evidence that many people, including those in authority, understood that the institutions were places of detention.[215] In Kilrush, detainees were only permitted to leave if their families came for them and the board gave permission.[216] In 1924, the chair of the South Cork Board of Public Health and Home Assistance and Lord Mayor suggested that women should be prosecuted for escaping Bessborough.[217] The Commission found evidence of priests, TDs and councillors writing letters petitioning for the release of individuals.[218] Gardaí, on another occasion, were investigating a girl's complaint of forced adoption. They noted, on visiting, that she was due for 'release'. The word 'release' suggests that the Gardaí considered that the woman was incarcerated.[219] Frequent social and institutional references to those who

205 This idea of reform was endorsed by the 1927 Commission on the Relief of the Sick and Indigent Poor; 4.44-4.45. This Commission agreed that a second pregnancy should lead to 2 years' detention and that a woman should not be permitted to leave until the local government was satisfied that arrangements had been made for her child.
206 5.98; 6.60-6.66.
207 6% of women for whom the Commission has records stayed 700 days or longer in an institution; this rose to 20% for the three Sacred Heart homes. 17% of women in the 1940s and 20% of women in the 1950s stayed 700 days or longer. Some women in county homes remained for many years; 10.19.
208 Some women evidently stayed for decades e.g. 18.60.
209 See 19.57-1960 on DLGPH policy in 1944/45, encouraging boarding out by 2 years, and noting that some children were remaining longer. This was also motivated by the desire to avoid overcrowding, and long-term institutionalisation of children; 20.66. See also Department of Health awareness in 1963 at 19.145.
210 30.9.
211 10.57, 10.65, 10. 81, 18.62 and 28.38 (attempted prosecution of women who left Bessborough without their children); 18.159.
212 See recognition of this at Pelletstown in 1940; 13.178. See also DLGPH's rejection of the Clare Board's suggestion that women at Kilrush be allowed to leave Kilrush and take up employment while their children remained behind; 19.21; courts committing the children of mothers at Sean Ross to industrial school so that they could take up employment; 19.84.
21319.61; 6.64 for a later example. There is evidence that some influential figures saw detention as means of preventing further pregnancies. For example, Fr. Richard Devane SJ proposed 'deprivation of liberty' as an alternative to sterilisation; 9.52.
214 12.105.
215 Bethany Home was also used as a remand home.
216 16.56.
217 18.28. They left because their babies had died. See also 28.38; police notified of 'absconders'.
218 6.64 ; 19.112.
219 24.94. See also 9.102.

had children outside of marriage as 'second offenders' and 'persistent offenders',[220] and use of the term 'rehabilitation'[221] also suggest a social understanding that these institutions had a quasi-penal function.[222] This was no mere label. In the earlier decades under examination, the distinction between first and second offenders often determined the type of institution to which a woman was sent.[223] County managers and the Department of Health were involved in setting general policy around 'second offenders'. **(3.1)**

The involuntary nature of detention is further evidenced by 'escapes'[224] and responses to them. For instance, in 1924 when three women attempted to escape from Kilrush, they were arrested by Gardaí and returned.[225] Regularly, those who escaped were 'captured, brought back and punished.'[226] Another woman brought back by Gardaí was punished by the nuns for running away by having her hair cut off.[227] One witness testified that she saw a woman die while jumping out the window, trying to escape Bessborough.[228] The children born in the institutions also attempted to escape, sometimes directly citing abuse as the catalyst for their actions. Aspects of the institutional regime including locked doors and other physical infrastructure, denial of income **(3.3)**, and imposition of a uniform **(3.6)** also served to deter escape.

Where a person alleges unlawful detention, Art 40.3.2 of the Constitution provides for *habeas corpus*; a process whereby the High Court must examine the lawfulness of the detention. The Commission has seen no evidence that this process was ever used to release a woman detained in one of these institutions. The context in which these women and girls were detained made this, otherwise standard, legal challenge less likely.

3.5 Admissions and Sexual Abuse

Many women and girls placed in institutions were pregnant as a result of a sexual offence committed against them, including rape, statutory rape, incest or serial sexual abuse, while living at home or while fostered or 'boarded out'. There is evidence that staff at these institutions knew that some pregnancies were the result of sexual offences.

5,616 girls were under 18 when they came to a "home", representing 11.4% of the total admissions in the period under review. Some institutions had significantly higher rates of admission of under-18s: 23.4% of Dunboyne's[229] admissions were children. To the Commission's knowledge, the youngest child admitted pregnant to an institution was just 11

220 4.59; 4.107; 6.49; 8.11; 9.71; 9.76; 9.88; 9.94; 9.111; 10.27; 10.48; 13.105; 13.59; 13.105; 18.44; 19.15; 21.7; 21.37; 22.100; Confidential Committee 82, 161.
221 9.75.
222 In this respect it is irrelevant that some authorities may have understood that the institutions protected women; 4.47. The Commission on the Relief of the Sick and Destitute Poor 1927 originally recommended that this should be a legal category, with boards of health having the power to detain second offenders. This never became law. Clann Report, 116.
223 9.76; 10.12-10.14; 20.18. In the 1960s, Pelletstown prioritised the adoption of children of first-time mothers so that they could leave sooner; 6.65. Charitable agencies often referred poorer women to county homes; 10.14.
224 8.22; 16.56; 19.197.
225 See also threats to call the Gardaí, Confidential Committee, 56, 144.
226 18.297.
227 Confidential Committee, 43.
228 18.327.
229 Dunboyne operated from 1955-1991.

years old. When Ireland attained independence, the age of consent was 16.[230] Therefore, any girl under the age of 16 who was pregnant on admission to a home was the victim of a criminal offence. Any person working in or operating a home who was aware of the pregnancy of a girl was under an obligation to report the offence to the Gardaí. A reporting obligation existed under the common law offence of misprision of felony which criminalised any person who concealed knowledge that a felony had been committed. The Criminal Law Amendment Act 1935 raised the age of consent to 17, further increasing the reporting responsibilities of institutions and their staff. Cases were rarely reported[231] and, even where they were reported, Gardaí appeared reluctant to investigate. The consequence of failing to report such concerns was that child sex offenders were left free while their victims were detained.[232]

The idea that the authorities were entirely indifferent to sexual offences against girls in the earlier part of the century does not withstand scrutiny. The Criminal Law Amendment Bill 1929 sought to raise the age of consent to 18, but the Bill was withdrawn so as to allow further investigation into the question of sexual offences against children. This led to the establishment of the 1931 Carrigan Committee[233] which heard evidence of extensive and widespread sexual offending,[234] calls for increased punishment of offenders,[235] and an increased age of consent.[236]

The Commission did not encounter any evidence to suggest that women and girls pregnant through sexual violence received any special care in the institutions. On the contrary, in many cases, the violence experienced was exacerbated by the institutional regime.

The legal framework of child protection inherited by the newly independent State was based on a series of Victorian and Edwardian statutes, many of which were consolidated in the Children Act 1908, which dominated Irish child protection law until the passage of the Child Care Act 1991. At its beginnings, child protection law was at least partially based on the idea that, while children who suffered abuse were increasingly seen as victims, they were also threats to the existing social order. This is clearly evidenced by parliamentary debates around the Acts. From the late nineteenth century onwards, children were removed from parental care for a number of different reasons, ranging from the commission of criminal offences against children by parents to abandonment or desertion of parental rights. These new measures were justified in order to remove responsibility from 'drunken fathers and

230 Criminal Law Amendment Act 1885, s 5.
231 19.174; For examples of reporting see 18.64; 29.68; Confidential Committee p. 22, 27, 32. For examples of judicial action see 1.128 (failed action for seduction brought by father); 20.53, (successful prosecution for unlawful carnal knowledge).
232 In re DG [1991] 1 IR 491is a striking case heard in the High Court in 1989. A girl was 15 when she became pregnant by a 23-year-old man. She was sent to what the court calls a 'home and school for girls in rural parts'. Consideration was given to a rape prosecution, but this was not pursued.
233 The Committee's report was suppressed. See James M. 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, no. 2 (2004): 208-33.
234 Committee on the Criminal Law Amendment Acts, Report of the Committee on the Criminal Law Amendment Acts (1880–1885) and Juvenile Prostitution (1931), National Archives of Ireland (NAI), Department of Justice (D/Jus) file S5998 (Carrigan Report) and Committee on the Criminal Law Amendment Acts, Minute Book, (NAI, D/Jus S5998) (Minute Book), testimony of Eoin O'Duffy, 25.
235 Carrigan Report, 29–30; Minute Book, testimony of Rev PJ Roughneen, 65, testimony of District Judge Dermot Gleeson, 56, and testimony of Fr M Fitzpatrick, 33.
236 Carrigan Report 16–18, and Minute Book, testimony of Miss Ita Dodd representing the Irish Women Citizen's and Local Government Association, 13, testimony of Mrs Margaret Gavan Duffy and Mrs Ita Brady, 59.

profligate mothers over children who have been saved from misery, degradation, and ruin'.[237] The Children Act 1908, expanded the State's supervisory role in child protection but did so by placing significant reliance on criminal law mechanisms rather than any understanding of an overarching concept of welfare or best interests. This is made clear by the terms of section 58 of the 1908 Act, which was one of the most important mechanisms by which children were removed from their parents. A child could be removed from parental care for begging, homelessness, destitution, parental drunkenness, living with or associating with a known thief or prostitute, or being the daughter of a man convicted under the Criminal Law Amendment Act 1885. As the courts' powers expanded, the law focused more overtly on concepts of neglect, and school non-attendance became an important ground for child removal.[238] However, the law continued to be applied in ways that othered affected children with distinct impacts on poor and Traveller **(5.3)** children. Before a child could be 'protected' because they were found begging, for instance, a court had to first convict the child of the offence in question. This requirement for a criminal conviction was removed by the passage of the Children Act 1929, which permitted the admission of children to institutions such as certified schools with parental consent. This was further expanded by the Children Act 1941, which gave courts greater discretion to dispense with such consent.

All of this serves to highlight that criminal law and child protection were deeply entwined. It is perhaps unsurprising, in this context, that children requiring protection were not recognised, themselves, as victims of crime.

3.6 Inhuman and Degrading Treatment

The Commission has heard significant evidence of physical abuse and punishment and of systematic psychological or emotional abuse and punishment. Degrading conditions and ill-treatment can, each in isolation, give rise to violations of the rights to bodily integrity and to the right not to be ill-treated. In combination and considered in the light of the vulnerabilities of women and girls detained in these institutions, the Commission's findings suggest serious breaches of Ireland's international and national legal obligations.[239]

Ireland ratified the European Convention on Human Rights in 1953 and was, from then, bound by the Article 3 prohibition on torture, inhuman and degrading treatment or punishment. The Irish courts also recognised the unenumerated right to bodily integrity, (in 1965),[240] and the right not to be subjected to torture, or inhuman or degrading treatment, (in 1976)[241] under Article 40.3.1 of the Constitution. Thus, at least since the early 1950s, the State had concrete legal obligations to prohibit torture and other forms of ill-treatment. The Commission accepts that many people are living with the continuing effects of severe ill-treatment today.

It is also significant that, from the early 1970s, Ireland was an international advocate for the strengthening of the international ban on all forms of ill-treatment. Ireland co-sponsored numerous resolutions at the UN leading to the UN Declaration against Torture and other

237 HL Deb 06 February 1891, vol 350, cols 116–117, Lord Thring.
238 See further, Sarah-Anne Buckley, *The Cruelty Man* (Manchester University Press, 2015)
239 Ireland signed the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment in 1992. The European Convention in Human Rights applied from 1953.
240 Ryan v Attorney General [1965] I.R. 345.
241 The State (C) v Frawley [1976] I.R. 365.

Cruel, Inhuman or Degrading Treatment in 1975.[242] In 1971, Ireland took an inter-state petition against the United Kingdom to the European Commission on Human Rights alleging breaches of the European Convention, including of Article 3.[243]

Material living conditions in most institutions under review were generally poor, inadequate, or basic, until at least the late 1960s.[244] The county homes, Kilrush and Tuam, had appalling physical conditions.[245] Many institutions were overcrowded, until at least the early 1950s;[246] witnesses continued to confirm horrific conditions in the 50s and 60s.[247] Many institutions had inadequate heating and poor hygiene arrangements or inadequate sanitation.[248] The Commission has seen evidence of local government refusal to invest in essential repairs, or in provision of amenities such as hot water, in the earlier decades under study, even when requested to do so by their religious management.[249] Hygiene issues included insufficient nappy changes[250] and toileting for babies,[251] and inadequate sanitary provision for menstruating women and girls.[252] There was a general lack of personal privacy.[253] These living conditions had the capacity to diminish the dignity of the women and girls (and the babies, for whom the conditions were often wholly unsuitable).[254] The Commission accepts the Clann Project's submission that the impact of physical abuse,[255] under-nutrition and degrading treatment on vulnerable children who were at a formative stage of life cannot be underestimated, especially because they had no power to escape.[256]

The objective physical conditions provide an important contextual picture. More important is how those living conditions were experienced by the women, girls, and children, particularly in the light of the coercive circumstances of their detention. **(3.4)** The women and girls were vulnerable due to the circumstances of their institutionalisation, their separation from their community and family, their pregnancy, their fear of imminent childbirth and its consequences **(3.8)**, their enforced dependency on the institutions for basic living necessities and for healthcare and in many cases, their age. Some had been sexually abused **(3.5)**. Some had spent time in other institutions.[257] Their vulnerability must have been heightened by the atmosphere of the institutions, which, testimony shows, was characterised by shame and fear.

The Commission heard testimony, including from children born in the institutions,[258] of the presence of various forms of physical abuse and punishment. Witnesses also describe a

242 M Farrell, 'Ireland and the United Nations Declaration against Torture: Principles and Politics in Action' (2009-10) 4-5 Irish Yearbook of International Law 155-201.
243 Ireland v United Kingdom (App no 5310/71) 25 January 1976.
244 Dunboyne which opened in 1957 is an exception. The flatlets, which came in to use from the 70s on, also provided improved living conditions.
245 6.83. See particularly Julia Devaney's recorded testimony at 15.154.
246 Bessborough, up to late 40s then 'eased', para 96; Castlepollard, until early 50s para 108; Pelletstown – 13.212; late 1950s – para 24.85.
247 Confidential Committee, 41; 19.159.
248 19.53.
249 15.16; 15.36; 16.24-16.28; 19.75. The authorities were clearly empowered to make these contributions under s. 65 of the Health Act, 1953.
250 5.50; 29.110; Confidential Committee, 47.
251 18.118; 20.42
252 19.173; 20.141; 20.162; Confidential Committee, p. 52.
253 216; 10.38.
254 10.38.
255 22.100.
256 Clann Report, 112.
257 8.17; 8.20.
258 Confidential Committee, 46, 51 and 53.

threatening atmosphere – they feared punishment.[259] Women and girls were required to undertake demanding unpaid labour (both as work tasks and punishment)[260] **(3.3)**. This work was supervised at times through physical abuse (slaps or punches) and verbal abuse.[261] The work comprised scrubbing floors, for long periods, [262] and other cleaning, including while heavily pregnant or in the days after giving birth. [263] Witnesses also attest to inadequate medical attention,[264] **(see also 3.8)** which must have caused additional pain and suffering, especially for very young children**.**

Women and girls were routinely, and deliberately, subjected to emotional abuse. This abuse was underpinned by structural shaming, imposed through such practices as deprivation of identity, being forbidden to talk about their life outside the institution, being required to wear a uniform[265] and being assigned a new or 'house' name,[266] upon entering the institution.[267] On arrival at an institution, one then-fifteen-year-old said that 'her clothes were removed, her hair was cut, and she was told: 'You're here for your sins'.' [268]

As well as degrading living conditions and physical and emotional abuse, witnesses also recount the anguish of having to relinquish babies for adoption,[269] and testify to the long term psychological and physical consequences of institutionalisation.[270] In many cases, emotional and physical abuse broke resistance to the adoption of their children; today the effect of making a victim act against his or her will is considered a hallmark of degrading treatment.[271]

The Commission has heard evidence that living conditions in the institutions improved in the 1960s and especially from the 1970s onwards. In large part, however, this was in response to women's and families' increasing refusal to use the institutions, in favour of less punitive alternatives.[272] That mass refusal is, in itself, evidence that conditions in the institutions were widely known to be intolerable.

3.7 Deaths and Burials

The Confidential Committee heard evidence of deaths attributed to neglect or abuse, including inadequate medical care, in the institutions.[273] In relation to the 18 institutions within the Commission's mandate, for which records were available, approximately 9,000 children (amounting to 15% of the children who were in the institutions), and 200 women died. The very high mortality rates were known to local and national authorities at the time

259 18.385; Confidential Committee, 45, 48 and 147.
260 Confidential Committee, 41; 201.147.
261 Confidential Committee p. 41
262 18.924.
263 Confidential Committee, 41.
264 18.298-18.303.
26518.373; 19.33, 19.182; 20.160
266 This seems to have been a particular feature of life in Bessborough, Sean Ross and Castlepollard which were all run by the same order.
267 18.5; 19.197.
268 Confidential Committee, .16; See also 19.198.
269 32.164 on the experience of signing the adoption forms as traumatic.
270 Examples: Confidential Committee, 46 (fear of enclosed spaces) and 152 (eating disorder); 13.372 (panic attacks).
271 Jalloh v Germany (2007) 44 EHRR 32
272 9.125; 12.78.
273 Confidential Committee 48.

and were recorded in official publications.[274] Some of the highest mortality rates are recorded in the decade after 1934, when the Registration of Maternity Homes Act was introduced **(3.1)**. They were in excess of infant mortality in the general population and non-institutional contexts until the 1970s,[275] and in some instances until the 1980s.[276] The State failed to properly regulate those institutions or enforce existing laws, to prevent foreseeable deaths to the extent possible **(3.1)**. As such, in many cases, the State violated both the constitutional and international human right to life of those who died.

The Commission notes that the State's attitude to infant mortality in institutions contrasts sharply with its attitude to infanticide. Unmarried women and girls found guilty of concealment of birth or infanticide were often sent to religious institutions by the courts, including institutions run by congregations featured in this Report. When an infant was suspected to have been killed by its mother, the State often acted through the criminal justice system. If the same infant died in an institution, it generally did not.[277] Both responses, however, speak to a refusal to address the costs of ongoing stigmatisation of non-marital pregnancy, and to an overwhelmingly punitive attitude to unmarried mothers and their children.

Several witnesses at the Confidential Committee raised concerns about death records. Some believed that infant deaths were falsified so that children could be adopted illegally.[278] The Committee also encountered cases where individuals had contacted a natural mother who they had previously been informed was dead.[279] The issue of known discrepancies between recollections and records reflects some of the witness testimony gathered by the Clann Project.[280] The Commission is unable to satisfy itself that all death records for infants in these institutions can be verified. The Commission is precluded under its Terms of Reference from examining individual cases. Nevertheless, the Commission concludes that the concerns and allegations of survivors demonstrate the need for independent forensic examination of burial sites, immediate survivor access to all relevant records, and a highly publicised DNA matching service. These would enable many affected people to verify their identity and their connection to deceased and surviving family members, to determine what became of missing relatives and, where desired, to request return of remains.

Concerns about death records are compounded by a lack of comprehensive information regarding burial practices, procedures and locations. Some witnesses at the Confidential Committee expressed very limited knowledge regarding the burial of their loved ones.[281] Some women have not been able to access information about the burial of their child who died in an institution.[282] At least one was deliberately misled, which was unforgivable. This experience is reflected in the witness testimony gathered by the Clann Report.[283] The Commission has not been able to find burial records for the majority of the children who died

274 18.112.
275 33.25.
276 Chapter 33A, 11.
277 For examples of the small number of inquests that were held see 13.177; 16.71; 20.24; 21.148; 21.150; 21.153; 21.154; 28.43; 30.34. These are often examples of accidental death, or death where the child's mother was arguably suspected of involvement. For an example of a sworn inquiry into a woman' death see 19.29. For deaths investigated by Gardaí see 21.147; 22.90; 22.100.
278 Confidential Committee, 51; 77;91; 97; 172.
279 Confidential Committee, 182.
280 Clann Report, 1.175.
281 Confidential Committee, 72;153; 171.
282 Confidential Committee, 68; 72.
283 CLANN Report, 1.173.

in the institutions under investigation, whether from specific institutions or from the General Register Office. The failure to maintain effective death and burial records breaches the Burial (Ireland) Act, 1868, Public Health (Ireland) Act, 1878, Births and Deaths Registration (Ireland) Act 1880 and the Registration of Maternity Homes Act 1934. The Commission remains convinced that there are people who have further information, but they have not come forward.[284]

There is very little information for St Gerard's in Dublin,[285] there are no General Registration Office (GRO) records for the Regina Coeli Hostel,[286] and other institutions have GRO records but a number of deaths remain unaccounted for: Dublin Union (104 deaths),[287] Tuam (6 deaths),[288] Bessborough (11 deaths),[289] Sean Ross (2 deaths),[290] Castlepollard (17 deaths),[291] Dunboyne (5 deaths),[292] Bethany (6 deaths),[293] Denny (8 deaths),[294] Cork County Hospital (33),[295] Stranorlar (4 deaths),[296] and Thomastown (8 deaths).[297]

In the absence of clear information regarding appropriate burials, it appears likely that women's and children's dignity in death was violated by the manner of their burials. There is no information on burial whereabouts or records for Kilrush, Miss Carr's Flatlets, The Castle, St. Gerards, Cork County Home or Stranorlar. Burial records were destroyed regarding Thomastown. The Commission did not investigate the burial arrangements at Regina Coeli as the children died in many different locations. In the Dublin Union/St Patrick's/Pelletstown institution, 513 burial whereabouts remain unaccounted for.[298] The burial location of children formerly resident at Denny House is only partially known.[299] The Commission was advised by Good Shepherd Sisters that infants from Dunboyne home were buried in a local government graveyard,[300] but obtained no further information. Bethany Home burials identified by researchers have not been incorporated within official records.[301]

The Commission has not been able to establish where the majority of the Bessborough children are buried. No register of burials was kept at Tuam or Sean Ross Abbey. Both sites have been subjected to forensic examination on behalf of the Commission. The only way in which the nature and extent of burials can be established in each site is by excavation of the properties as the records seen by the Commission cannot fully establish the extent, nature or

284 38.1.
285 Very little is known about St. Gerard's because the MBHCOI was unable to access its institutional records; 27.2 – 27.3. It has not been possible to extract St. Gerard's files from St. Patrick's Guild files, of which they are a part. These were provided to the Child and Family Agency (TUSLA) in 2017 but have not yet been fully processed.
286 Chapter 21A, 8.
287 Chapter 13A, 35.
288 15.70.
289 18.26-27, 41.
290 Chapter 19A, 30.
291 Chapter 20A, 27.
292 Chapter 24A, 27.
293 Chapter 22A, 25.
294 Chapter 23A, 16.
295 28.13.
296 Chapter 29A.
297 Chapter 30A, 12.
298 Chapter 13A, 34.
299 Chapter 23A, 16; 23.94.
300 24.188.
301 The Commission were made aware of a set of records relating to the Nicholls Undertakers in Dublin City by Derek Leinster which catered for many Protestant burials.

location of all those who died in the institutions. Regarding Tuam, the Commission appreciates that the government is trying to establish an agency to deal with the matter. The Commission understands the rights of family members to know more. The Government may wish to take a view on those exhumations necessary in the interests of survivors and affected families.

The Commission recognises that the identification and memorialisation of children who died in the institutions has often depended on voluntary efforts. Examples include the work of Catherine Corless at Tuam and Bethany Home survivors at Mount Jerome Cemetery.

In recognising the distinct cultural importance of funerals and mourning for the Traveller Community, **(5.3)** the Commission highlights with disappointment the responses of relevant religious organisations regarding recognition of mass graves and the identification and location of final resting places of those who died within the institutions. We recognise the trauma which this has caused and understand that it deepens the pain of forced institutionalisation for many Traveller women and children. The Commission also notes that known mass graves and burial sites at former institutions remain unmarked, inappropriately recorded, and inaccessible. The Commission recommends that access be granted for those who wish to visit the graves as a matter of urgency.

The Commission further notes the common practice, evidenced in records seen by the Commission, of using infants' remains, including stillborn infants' remains, for teaching and research purposes,[302] at third level institutions. Violations of the rights to dignity in death and private and family life arise where these remains were removed to a university with allowing adequate time for a relative to claim the body, or they were retained them without parental consent. Even where remains were eventually buried,[303] their retention over decades raises serious concerns. The Commission notes that the Anatomy Act 1832 applied to the remains of the infants born alive and required 'decent' burial in a coffin or shell, in consecrated ground, within six weeks of the removal of the remains for anatomical examination. The state, through its inspectors of Anatomy and otherwise was responsible for ensuring compliance with the Act. Further violations may arise where the university did not record sufficient identifying details to enable relatives to know the infants' whereabouts and fate.[304]

3.8 OBSTETRIC VIOLENCE

Several witnesses who gave birth while resident in the institutions testified that they experienced neglect, physical abuse[305] or degrading treatment during childbirth. Women associated these experiences with all decades under examination, and with both religious and 'lay' personnel. Especially in earlier decades, some institutions had very poor facilities for birth, and several were located far from a major maternity hospital.[306] However, the wisdom of allowing births to take place in the institutions was being questioned even in the 1980s,

302 Fifth Interim Report para 7.13
303 38.29
304 See, for example retention of "wet remains" at Galway. Although available records strongly suggest that these are unlikely to be those of children taken from Tuam, the absence of appropriate records has understandably contributed to relatives' concerns; 38.27
305 19.207; Confidential Committee 68.
306 19.71-19.73.

when conditions in institutions had otherwise improved.[307] Serious abuses were reported even where medical facilities were of good quality and trained staff were available.[308]

Unmarried mothers experienced poor treatment in childbirth as a continuation and compounding of other oppressive experiences during pregnancy. The Confidential Committee heard from witnesses who understood that these abuses were punishments for their pregnancies, or for their sins.[309] Some witnesses associated abuses during childbirth with long-term physical and mental health problems.[310] Today, we would acknowledge that many of these women experienced obstetric violence.

Neglect included denial of, or delay in providing, appropriate medical care, including pain relief,[311] before, during and after labour.[312] It also included refusal to relieve women and girls of physical work in late pregnancy **(3.3)**.[313] These experiences are particularly troubling, given that unmarried mothers were known, at various times, to be at heightened risk of poor health outcomes.[314] Into the 1960s, poorer or disabled[315] women and girls and those pregnant for a second or subsequent time were more likely to give birth in the county homes,[316] where risks related to unsanitary conditions and inadequate staffing were more common.

Physical abuse included use of restraints during labour[317] and medical examination[318] or intervention without informed consent.[319] All of these can violate the constitutional right to bodily integrity.[320] Some witnesses report being subjected to treatment that they did not understand,[321] without any explanation. Women reported limited antenatal instruction,[322] and poor sex education,[323] even later in the period under investigation. Although the Rotunda and Holles Street began antenatal clinics in the 1930s, in 1970 the Master of Holles Street suggested that the stigma of unmarried motherhood was still a barrier to accessing healthcare.[324]

307 18.210 – 18.211.
308 6.25-6.26.
309 Confidential Committee 69, 82; 19.176; 19.198.
310 Confidential Committee 81.
311 19.197; 20.160; Confidential Committee, 57. Pethidine and 'gas and air' were available to mothers in Irish maternity hospitals for the management of difficult labours from the 1940s onwards; Harding Clark, Surgical Symphysiotomy Ex Gratia Payment Report https://www.gov.ie/en/publication/544fc6-the-surgical-symphysiotomy-ex-gratia-payment-scheme-report/ 168. Issues around pain relief may have been related to medical officers' willingness to facilitate the births.
312 13.458; 18.298 18.314; 19.198; Confidential Committee 67; 68; 71; 78; 81; 84.
313 20.42; 20.160; Confidential Committee 57; 71; 81.
314 5.18.
315 10.15.
316 10.10.
317 19.176, 19.207.
318 19.191; 20.160. Women were often examined for syphilis or other sexually transmissible diseases as standard. This was often experienced as highly stigmatising. See 19.29 in which an unmarried mother was refused admission to a maternity hospital because she was assumed to have venereal disease. She subsequently died of sepsis. She did not have venereal disease.
319 18.300. Patient consent was recognised as a legal requirement, at least in respect of 'dangerous' operations in Ireland from at least 1954; Daniels v. Heskin [1954] IR 73, 80 but *cf* judgment of Kingsmill Moore J.
320 Ryan v Attorney General [1965] I.R. 345.
321 Confidential Committee 71; 72; 74; 80-81; 18.299.
322 12.25; 18.176; 18.318; 18.345; 19.176; Confidential Committee 63.
323 9.37 -9.40; 13.290, referring to poor knowledge among Dublin women in 1984.
324 12.34-12.35.

Women described multiple omissions or harms in the course of one birth, including in institutions which had well trained medical staff. For example, the Commission heard from one witness who developed an abscess at Bessborough after injection with a dirty needle. The abscess was lanced without her consent. When she went into labour, she was left alone for 72 hours. She and her baby were denied antibiotics. The baby subsequently died of septicaemia.[325]

Many mothers were teenagers or children pregnant for the first time,[326] and it should have been obvious that extra care was needed. The impact of non-consensual medical intervention was especially severe because women and girls had very little reproductive autonomy to begin with. For most of the period under study, women could not effectively access contraception[327] or abortion[328] in Ireland **(2.1)**.[329] Some women and girls had been raped **(3.4)**. Others had attempted to manage their pregnancies without resort to a home but had been prevented from doing so **(3.4)**.

Degrading treatment included verbal abuse, sometimes in sexualised[330] terms. Verbal abuse by medical staff and others in authority was especially damaging, precisely because women and girls were very vulnerable, frightened, sometimes in poor mental health, often in severe pain,[331] and under the effective control of those who shouted at, shamed[332] or belittled them.[333] Some witnesses who gave birth in external maternity hospitals reported hostile treatment from staff as well as from other patients and visitors, into the 1980s.[334] The Commission saw some evidence of hospitals refusing to admit unmarried mothers, who were sent to institutions instead.[335]

3.9 Vaccine and Milk Trials

The Commission identified thirteen vaccine trials conducted on children, including seven taking place in institutions under investigation (1934-1973)[336] There was another suspected

325 18.300 – 18.304.
326 18.314; Confidential Committee 68; 78; 81.
327 The contraceptive pill was available in Ireland from 1962 but could not legally be prescribed as such until 1979. In practice, effective contraceptive access was dependent on marital status, religious denomination, age, wealth and mobility for all of the period under examination.
328 For discussion of women who attempted illegal abortion before admission to an institution see 18.185; 19.148; 21.23; 21.28.
329 9.31-9.35.
330 Confidential Committee 69-70; 71; 79; 80; 81; 18.299.
331 Confidential Committee 78; 80.
332 Confidential Committee 70; 74; 18.314.
333 Confidential Committee 72; 74.
334 12.33; 18.316; 18.329.
335 3.26; 6.22; 8.20; 8.5; 9.101. The three Dublin hospitals admitted single women. However, until 1954 the Rotunda Hospital requested marriage certificates for women when they enrolled for antenatal care; 6.20. In 1970 they reported to the Department of Health that unmarried women were encouraged to wear wedding rings and receive male visitors; 12.33.
336 34.17. These were as follows: 1935: Denis F Hanely, Wellcome's APT anti diphtheria vaccine Dublin (Trial A); 1960/61: Professor Patrick Meenan and Dr Irene Hillery, Wellcome's 'Quadrivax' vaccine (Trial B); 1964:Professor Meenan and Dr Hillery, Wellcome 'Wellcovax' Measles Vaccine Sean Ross, Roscrea (Trial C); 1964.1965 Professor Meenan and Dr Hillery, Glaxo Laboratories 'Mevillin-L' measles vaccine Dublin (Trial D); 1965: Professor Meenan and Dr Hillery, Glaxo Laboratories, 'Quintuple' 5 in 1 vaccine (Trial E); 1968: Dr Victoria Coffey, Glaxo Laboratories measles vaccine St Patrick's (Trial F); 1974: Professor Meenan, Dr Hillery and Dr Margaret Dunleavy, Wellcome Diptheria, Tetanus and Pertusis (DTP) Trial Dublin (Trial G).

but unconfirmed trial in 1965.[337] Trials of infant milk were also conducted on children in Bessborough and Pelletstown.[338] There are gaps in the records available. This hinders a comprehensive assessment of the extent of the trials that took place, the number of children involved, and the potential harms which may have been suffered.

Vaccine trials involved products of leading international pharmaceutical companies, including Wellcome and Glaxo laboratories which today are part of GlaxoSmithKline. As well as institutions' medical officers, they involved several leading Irish medical academics and senior public health officials, some of whom were working in Irish universities, including Trinity College Dublin and University College Dublin. In some cases, potential benefits were reported for lead investigators or their institutions as a result of their involvement in the trials, for example, laboratory equipment (or assistance towards purchasing this), or financial sums were provided to some researchers/institutions.[339]

The permissions and licences needed to conduct such trials were not always in place, with some trials conducted in breach of licences.[340] This may suggest a failure on the State's part to adequately monitor or enforce the applicable regulatory framework.[341]

Consent was often not obtained from parents/guardians of children for these trials.[342] It is also not clear if all parents/guardians were made aware that their children were part of trials. The importance of voluntary consent in medical treatment/research has been enshrined in medical ethics since the Nuremberg code in the 1940s.[343] Moreover, there is evidence that parental consent was emphasised for medical interventions in other Irish contexts as early as the 1930s. For example, under an anti-diphtheria immunisation programme for Dublin children operating in 1935, health authorities required consent of parents for children treated in municipal health clinics and city schools.[344] It was reported that no child was immunised without a written consent form.[345]

The extent of adverse reactions experienced by children from these trials, or other potential physical or psychological harms which may have resulted from their involvement in the trials is difficult to determine, due to several factors, including the lack of comprehensive records in many cases, and difficulties around the subsequent identification of people who were subjected to the trials. Nonetheless, evidence available shows some children suffered adverse reactions to products trialled, including infants recorded as having 'slight temperature and rash' 14 days after vaccination,[346] moderate reactions,[347] and some severe reactions with some children hospitalised in one case.[348] Several individuals' participation has been confirmed; however, there is no current process to inform them of their participation or to provide them

337 34.17 an unconfirmed trial for an oral polio vaccine in St Patrick's Navan Road (Pelletstown) in 1965. See 34.31.
338 34.164.
339 34.172, 34.120, 34.129.
340 34.153.
341 Therapeutic Substances Act, 1932.
342 34.16.
343 34.11.
344 34.38.
345 34.38.
346 34.96.
347 34.157 moderate reaction defined as 'baby so upset as to require extra attention or nursing'; 34.175 and 34.185, severe reactions to experimental milk feeds.
348 34.137 this referred to cases in 1973 in Dublin DTP trials.

with their records. The Government should take steps to provide these individuals with unredacted and unmediated access to their records.

Aside from potential risks such children were exposed to by their involvement in trials of unapproved products, being part of a trial often comes with other burdens, including the need to provide e.g., blood samples or rectal temperatures over the period of the trial.[349] These requirements placed additional burdens on children, and could also arguably be viewed as potential harms suffered. Very few people involved in these trials as children have had their participation confirmed by the State, and many records have now been returned to the relevant archives. The Commission urges the Oireachtas, and GlaxoSmithKline, to ensure affected people's unmediated access to these records.

4. Family Separation[350]

The Commission's Terms of Reference exclude a full consideration of the many individuals and institutions involved in arranging adoptions during the period under examination.[351] However, as with the governance of the institutions **(3.1)**, the State delegated much responsibility for administering legalised family separation – including the vetting of prospective adopters - to religious organisations including adoption societies.[352] Priests, nuns, solicitors[353] and doctors all facilitated private adoptions.[354] In principle, from 1952 onwards, adoptions were regulated by the State,[355] but oversight by the Adoption Board was limited until well into the 1970s.[356]

Until the 1970s, church organisations did not encourage single motherhood[357] and the State offered no real alternative to adoption or fostering following birth outside of marriage.[358] The marital family occupied a privileged position in constitutional law. Nonetheless, unmarried mothers and their children had clear rights to private and family life. As early as 1946, Gavan Duffy P. spoke of these family rights as 'authentic claims of nature', recognised at common law.[359] In 1966[360] and again in 1978[361] the Supreme Court recognised the unmarried mother's right to protect and care for, and have custody of her child under Article 40.3 of the Constitution. This right was unenforceable in practice. It was violated when women were permanently separated from their children without their consent and without any opportunity to restore their relationship. Extraordinarily high levels of family separation through formal and informal adoption and fostering were considered justified, not merely because unmarried mothers were often vulnerable or poor, but because they were considered

349 34.106; 34.111; 34.83; 34.104.
350 For more discussion of this phrase see **(8.3)**
351 32.7. However, we note that several institutions had strong connections to adoption agencies. For example, St. Patrick's Guild, run by the Sisters of Charity, ran St. Gerard's 'home'.
352 32.258. Most were Catholic. PACT was the main Protestant Adoption Society. Some received local government funding. Some ran or were affiliated with crisis pregnancy services.
353 13.196.
354 32.295.
355 32.257.
356 32.255.
357 12.61.
358 In 1963, the Department of Health argued that the best outcome of entry into a mother and baby home was that the woman should leave with her child; 19.145. See also 13.288. In 1970, the Kennedy Report recommended an emphasis on keeping mother and child together; 12.36.
359Re M [1946] I.R. 334. Pre-independence see e.g. In Re: O'Hara [1900] 2 IR 232.
360 Nicolaou v. An Bord Uchtála (1966) IR 567.
361 G v. An Bord Uchtála [1980] IR 32, 52 (decided 1978).

unfit parents by default.[362] This policy effectively assumed that the rights of unmarried mothers were generally in conflict with those of their children – so that the child's rights and best interests were better protected by being separated from its natural mother and, wherever possible, being placed with a married adoptive family. The policy of family separation also meant that siblings were frequently separated from one another.

For much of the period under study, political commentary, religious teaching and media coverage presented the institutionalisation of single mothers as a consequence of parental rejection. In this respect, unmarried mothers were sometimes said to be 'more sinned against than sinning'.[363] Religious orders, in particular, were praised for engaging with women and girls abandoned by their own families,[364] and many understood their work in those terms.[365] However, evidence seen by the Commission clearly demonstrates that the State and religious organisations engaged in harmful practices of forced family separation, with serious lifelong consequences for many women and their children. Even after the institutions had closed or moved to less overtly degrading regimes, forced separation remained a common feature of State responses to unmarried parents **(2.3)**.[366]

4.1 Harms of Family Separation

The Commission recognises that the culture of family separation that operated in the institutions had a lasting negative impact and controlled elements of many women's later lives. It interfered with many mothers' personal development and inhibited their right to develop relationships.[367] The Commission heard from witnesses who were deeply distressed by the fact that they had assented to their children's adoptions.[368] One witness spoke of a subsequent child's ill health as 'retribution' for her having given up her first baby.[369] Some witnesses told the Commission that they made a deliberate choice not to have more children because of their experiences.[370]

Family separation was not confined to formal legal separation; it was equally apparent in the institutions' day-to-day operations. For most of the period under examination,[371] Regina Coeli was the only institution examined to enable mothers to keep their babies with them, and then in very poor conditions and only if they could pay.[372] There is evidence that those in authority actively deterred bonding between mother and baby after birth.[373] Mothers were often prevented from breastfeeding or holding their new-born babies.[374] There was also limited scope for interaction as the children grew older: children stayed in the institutions for various time periods prior to adoption or boarding out, but mothers were not given free access to

362 3.35 (contrasting 'innocent' children with their mothers). See e.g. 5.116 on state rejection of unmarried motherhood as abnormal and further eg 5.89, 9.48, 9.58.
363 9.51; 9.96; 9.102; 17.4; 20.43. The phrase is from Shakespeare, King Lear.
364 12.23; 19.33.
365 9.110; 12.23; 18.221.
366 24.149.
367 X v Iceland, app no 6825/74 (Commission), 18 May 1976 (Article 8 ECHR); Marckx v Belgium, app no 6833/74, 13 June 1979 (Article 8 ECHR).
368 Confidential Committee, 90, 104.
369 Confidential Committee, 154.
370 Confidential Committee, 37; 155, 158.
371 12.106; by the 1980s, Bessborough allowed some women to keep their babies.
372 21.71; 21.99-100. The Legion of Mary would apply for committal of children to industrial school.
373 19.177, 19.207.
374 Confidential Committee, 67.

them, even though they lived in the same institution.[375] Several witnesses gave evidence of attempting see their child and of being punished when caught doing so.[376] Some mothers who were prevented from bonding with their babies gave evidence of the negative impact this had on their relationships with their subsequent children.[377] Many women's babies died in the institutions and these losses had life-long effects **(3.7)**.

The system of family separation also negatively affected children. Some of those who came to the Commission experienced trauma as a result of family separation, even where their adoptive parents provided secure, happy homes. Prior to 1953, the fate of a child born to an unmarried mother was at the mercy of her financial means[378] and the policy of the local authority taking responsibility for them.[379] **(3.2)** The Commission heard distressing and cogent evidence from adults boarded out, fostered[380] and adopted as children, who were neglected[381] or abused[382] in the households and families that received them [383] after they left their first institution.[384] Foster parents benefited from local authority maintenance,[385] and eventually from the child's labour power[386] and earning capacity.[387] These children were often deprived of an education, despite government policy.[388] Older 'boarded out' children were often 'hired' out by local authorities as farm labourers and servants, for very poor pay or payment in kind. The Commission has seen evidence that children boarded out from both Catholic and Protestant institutions experienced similarly damaging exploitation and abuse.

For many children, early life in a 'home' was the start of a longer experience of institutionalisation. Some local authorities preferred industrial school placements[389] to boarding out. Those who were not adopted or boarded out often spent their childhood in county 'homes', children's 'homes', and abusive industrial schools.[390] Some were then transferred to other institutions, including Magdalen laundries or psychiatric hospitals, as adults.

These issues were all known to state authorities. In particular, local government officials habitually evaded their statutory placement[391] and inspection duties[392] in respect of children boarded out[393] or placed at nurse.[394] Some actively refused to co-operate with national

375 10.74; 18.377; Confidential Committee, 47.
376 Confidential Committee, 47.
377 Confidential Committee, 67.
378 11.143.
379 11.43.
380 Archival evidence related to boarded out children is scant;11.141; 11.142.
381 11.64-11.97.
382 11.86-11.92, Confidential Committee 109.
383 11.45-11.46; Confidential Committee, 106,108, 111 125, 130, 133.
384 11.43.
385 11.80-81 – the money was often not spent on the child.
386 11.92-11.98.
387 11.25-11.40; 11.65-11.69.
388 11.110.
389 11.52.
390 12.276.
391 Children Acts 1908 and 1934 (at nurse).
392 Children Act, 1908; 11.49-11.58.
393 County Boards of Health (Assistance) Order 1924; s. 48 Public Assistance Act, 1939; 55(3) Health Act, 1953 (boarding out).
394 11.113-11.137. Unlike 'boarding out', being placed 'at nurse' was a private arrangement, though in theory subject to government inspection. A mother would choose the woman or private nursing home herself or approach, the NSPCC, or a charity such as the CRPSI (11.133-11.134) to do so. Bethany Home

inspectors.[395] Once adoption was legalised, unsuitable care arrangements persisted, though they were more often short-term, as a precursor to adoption. Even following reform of the adoption law in 1953, the processes for vetting or evaluating prospective adopters[396] were entirely inadequate, and children were placed at foreseeable risk of grave harm. Where abuses were perpetrated in private households, the State was responsible for failing to take the necessary steps to ensure that a child was not put in foreseeable danger.

Many witnesses gave evidence to the Committee of their efforts to trace their natural parents or children later in life and spoke of the obstacles encountered in doing so. The Commission is grateful for the submission of advocacy organisations, including the Adoption Rights Alliance, on this matter. The Commission heard evidence of instances where the names of children and natural mothers were changed on adoption papers and birth certificates.[397] Many witnesses who had been adopted from the institutions as children testified that they were falsely told that their natural mothers were deceased,[398] and there were several reports of mothers being led to believe that their children had died when this was not the case.[399] Several witnesses adopted from institutions testified that their families did not tell them they were adopted, with many finding out by chance later in life.[400]

Many witnesses regarded access to birth information and records as essential to upholding their sense of identity.[401] The Commission heard evidence of the harm caused to adopted people where they were unable to trace their natural parents, including psychological harm[402] and issues pertaining to medical history.[403] Some adopted witnesses spoke of a lost opportunity to meet family members who died while they were trying to access the necessary records. Adopted people who were successful in gaining access to their records often found they were incomplete,[404] inaccurate,[405] or had some information redacted or erased.[406] Witnesses also testified to difficulties in accessing records that would disclose the fate of deceased family members **(3.7)**. Denial of access to that information amounts to a continuing violation of the right to private and family life.[407] The Commission notes the valid argument made in submissions by the Clann Project that, in some circumstances, the removal of children from incarcerated **(3.4)** parents, and the subsequent denial of all information about that child's fate, may amount to enforced disappearance.[408] Witnesses associated this treatment with religious-run institutions and, more recently, with Tusla. The Commission is of the view that barriers experienced in accessing personal data raise serious questions of compliance with the EU General Data Protection Regulation (GDPR). In particular, blanket redaction of mixed personal data is incompatible with the Regulation. Details of an adopted person's name at

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also placed children at nurse. Charities often did not effectively vet carers (11.117) and some carers were not registered with the local authority. Nursed-out children were often sent to industrial schools after a few years;11.125.
395 11.52-11.53.
396 See 32.212-32.255 onwards for Darling's assessment of the system in the 1970s.
397 Confidential Committee, 96, 99, 176.
398 Confidential Committee, 89-90, 127, 128, 129, 171, 173, 198.
399 Confidential Committee, 91, 130.
400 Confidential Committee, 91, 92, 112, 132, 133.
401 Confidential Committee, 133, 179, 182.
402 Confidential Committee, 133.
403 Confidential Committee, 93, 171.
404 Confidential Committee, 171, 181.
405 Confidential Committee, 182.
406 Confidential Committee, 171, 173, 188.
407 Jovanovic v Serbia (2015) 61 EHRR 3.
408 Clann Report 110.

birth, or those of their natural parents, for example, should not withheld simply because this information may identify another person.[409] Ongoing unequal treatment of adopted people by comparison to other adults perpetuates the original harms of forced separation, and continues cultures of concealment **(2.1)** which are antithetical to the right to private life.

The right to identity is recognised in the Irish Constitution,[410] the ECHR[411] and the UN Convention of the Rights of the Child. Adopted people have a right to unmediated access to their birth certificates and other personal records. GDPR-compliant legislation facilitating access to publicly available birth certificates, birth information, and records for adopted people and people placed in informal care arrangements should be introduced immediately.

4.2 Domestic Adoption

Until 1953, Ireland had no adoption legislation. The word 'adoption' was used before 1952 to refer to 'boarding out' or fostering[412] but the practice was not legally regulated.[413] The Public Assistance authorities were allowed to board out children under the Public Assistance Act 1939 but not empowered to permanently place them with a private individual. [414] In the 1911 census, across Ireland, 438 children aged from one month were identified as 'adopted'. Despite the lack of legal regulation in this period, mothers still had to sign 'agreements'[415] with the authorities/charities overseeing the arrangement. Mothers had automatic rights of custody to their children including the right to recover a child, and so these agreements did not affect the legal relationships between them and their children.[416] Yet without an adequate social welfare framework, **(3.2)** recovering their child was not a realistic option for most unmarried mothers.[417]

The 1952 Act provided for permanent transfer of parental rights from natural parents to adoptive parents. A number of long-term fostering arrangements were regularised with the passage of this legislation.[418] Once an adoption order was made, a child was considered the child of the adopters, with natural parents losing all parental rights. A mother was required

409 Nowak v Data Protection Commissioner of Ireland (Case C-434/16, 20 December 2017). Deceased people have no rights under GDPR. In the limited cases where a living natural mother has privacy concerns around release of this information, her rights do not trump those of her adult child. IO'T v. B [1998] 2 IR 321 does not address the question of publicly available birth certificates.
410 Article 40.3.1. See I'OT v B [1998] 2 IR 321.
411 Article 8. See Odièvre v. France, app no 42326/98, 13 February 2003.
412 11.134.
413 4.96-4.97; 32.38.
414 Public law structures acknowledged a "right of return"; 4.100; 11.15; 11.35. While public assistance authorities ostensibly had 'all the rights and powers of the parents' over a child that they maintained, (Public Assistance Act 1939, s46) in reality, these were expressly limited by statute. The authority was not allowed to detain a child if a mother could maintain the child and claimed it back. (Public Assistance Act 1939 s44(4)) The Public Assistance authorities were allowed to board out a child under the Public Assistance Act 1939 but not empowered to place them permanently with a private individual.
415 32.12-32.53.
416 32.37; Under Irish law mothers could consent to their children being cared for by other private individuals as part of their right of custody. However, this consent was temporary because they retained the legal right to have their children returned to them, at any point, except in exceptional circumstances where a court could refuse to enforce their parental rights on a best interest of the child basis (Custody of Children Act 1891, s3; Guardianship of Infant Act 1964, s14; In Re M. (An Infant) [1946] I.R. 334 at 345 per Gavan Duffy P.).
417 32.25.
418 11.138.

to sign two consent forms: an initial agreement to place a child for adoption, and later a consent to the adoption order.

Adoption consent generated very few court cases, especially until the late 1970s, but this does not mean that most women whose children were adopted consented at the time.[419] In 2013, the Australian government apologised for past policies of forced adoption. Here, we follow the approach of the 2012 Australian Senate Inquiry into coerced and forced adoptions.[420] In determining that adoptions were forced, this inquiry examined, not only failure to adhere to the formal adoption law but the overwhelming effects of social and emotional pressure on women's ability to give real consent, even where legal requirements were met. [421]

The Irish law on consent focused on ensuring that mothers understood the legal consequences of adoption and signed the relevant papers. In many cases, consent to adoption fell short of the legal standards. The Commission heard from women who insist that they did not sign consent forms. [422] Several did not understand what they were signing, including because they were not given a real opportunity to read it,[423] or had literacy difficulties.[424] The Adoption Board had the responsibility to satisfy itself that the mother understood the nature and effect of the consent and of the adoption order but there was minimal - if any - real oversight, especially before the 1970s.[425] Only from 1976 onwards natural mothers did receive the necessary support from trained social workers and others to have a real chance to assert their agency during the consent process. Even then, the presence of a social worker did not guarantee that a mother's desire to raise her child would be respected. [426]

In theory, natural mothers had time after the initial adoption placement in which to change their minds. It is important to emphasise that mother and child were often separated by the point of placement, [427] including in the 1970s and 1980s.[428] Some mothers received no prior

419 32.154.
420https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2010-13/commcontribformerforcedadoption/report/index.
421 In Australia, adoptions could legally be concluded within days or weeks of birth during the period under examination, leading to 'rapid adoptions' which denied the mother the opportunity to make a meaningful decision. This was not the case in Ireland. 32.139. However, the Australian inquiry did not confine itself to the question of rapid adoptions.
422 19.178, Confidential Committee 99, 144.
423 19.200.
424 3.167; 19.187, 19.2, 20.151, 20.157, 32.193, 36.321, Confidential Committee 147, 98, 92, 91.
425 32.170; 32.182.
426 As an indication of relevant attitudes in the 1970s see 'Pressure on Unwed Mums to Keep Baby Gone Too Far', Irish Independent March 29, 1976, p. 3 in which an Adoption Board social worker suggests that the policy of encouraging single women to raise their children may have gone 'too far'. For a much later example see In re DG An Infant [1991] 1 IR 491 (heard in 1989). Lavan J in the High Court describes how three Barnardos social workers had, in his words, attempted to 'blacken the character' of 15-year-old schoolgirl in order to persuade the Court to dispense with the requirement that she consent to her child's adoption. The social workers had not treated her or her child's best interests as paramount. See also Confidential Committee, 165 in which the witness describes the pressure her social worker placed her under to have her child adopted.
427 The High Court effectively approved of this practice. See S v. Eastern Health Board (32.129) in which consent to placement was given after 10 days v Eastern Health Board, unreported judgment of Finlay P. of 28 February 1979: McC v. An Bord Uchtála [1982] ILRM 159 a case involving St. Louise's Adoption Society in which the mother had consented to placement 3 days after birth (32.116) treating a first coerced consent as cured by a second uncoerced consent and McF v. G 1983] ILRM 228 in which the child was place for adoption 8 days after birth at Bessborough (32.117), dispensing with the need for a second consent despite evidence that the first was coerced.
428 18.378, Confidential Committee 152, 32.197.

notice of when the adoption would happen.[429] Some were still recovering from labour when asked to consent to placement or gave consent shortly after they saw their child for what they believed to be the last time. Even if Irish mothers theoretically had a legal 'option' of objecting to adoption later on (between the two 'consents') the reality was often quite different. The Commission heard evidence from women who made concrete plans to keep their children, only to be overruled,[430] or who were prevented from exercising their statutory right to change their minds.[431]

Other women reported explicit and immediate coercion; for example, being subjected to verbal abuse or physical violence[432] during the signing of papers or being locked in a room[433] while the baby was taken.[434] Sometimes, these breaches were attributable to the actions of family members[435] and institutional staff, but often they were visible to, or abetted by social workers, adoption agency staff, Protestant and Roman Catholic clergy and solicitors.[436]

A range of broader pressures also undermined women's consent to adoption. The law did not recognise this as invalidating consent.[437]

Many mothers' impossible financial position affected their consent. They were without any effective right to public assistance until 1973 and received only meagre assistance after that **(3.2)**. There is also evidence that in the 1960s, women and girls who might have preferred to have their child boarded out temporarily, while they earned and saved some money, were not permitted to do so, because local government payments ceased in such circumstances.[438] Adoption had become the imposed default option for poor women and girls. In some cases, adoption may have seemed the only route out of institutionalisation **(3.4)** for both mother and child.[439] However, the Commission recognises that women of all social backgrounds experienced coerced adoption; the pressure to conceal unmarried pregnancy transcended class **(2.1)**.

Social workers who worked in institutions in the later decades under review gave evidence of a systemic culture of adoption[440] in which immense pressure was placed on mothers to assent.[441] Involuntary detention and associated abuse and degrading treatment **(3.6)** would have had a devastating influence on the mothers' agency **(4.1)** and on their ability to resist the pressure to sign. Mothers who expressed a desire to keep their child were typically met with efforts to undermine their confidence and to persuade them to engage in the adoption

429 Confidential Committee 98, 88, 20.133.
430 Confidential Committee 56,92, 94, 22.
431 Confidential Committee 88.
432 18.349, 18.364, 24.93, 32.193, Confidential Committee 103, 102, 98, 94-96 Confidential Committee
433 Some adoptions took place directly from homes
434 Confidential Committee, 94.
435 32.236.
436 18.318; 32.161; Confidential Committee 99.
437 32.118; G v. An Bord Uchtála [1980] IR 32 had indicated that consent motivated by 'fear, stress or anxiety, or consent or conduct dictated by poverty or other deprivations does not constitute a valid consent'. However, this test was not applied in subsequent High Court cases and does not seem to have been reasserted until the 1990s; 32.158.
438 6.77-6.78.
439 19.145 (Department of Health awareness of this fact, 1963).
440 Confidential Committee, 86.
441 Confidential Committee, 88.

process.[442] Mothers were routinely told that their baby would have a better life if they were adopted, and they were made to believe that they had nothing to offer their child.[443]

Some mothers had a longer history of institutionalisation, because they were disabled or had been raised in an industrial school. Some mothers were children themselves, but they were subject to the same consent provisions as adults. [444] One woman who was 15 years old when having her child, told the Commission that she had simply handed him over to be adopted without any real understanding of what she was doing.[445]

The Oireachtas was aware that the law on consent was inadequate. However, in the 1970s it legislated twice, not to strengthen mother's rights but to reduce their opportunities for resistance. The Adoption Act 1974 reduced the minimum age at which adoption could take place, from 6 months to just 6 weeks.[446] It also empowered the High Court to dispense with the requirement of a second consent where the mother refused to give it.[447] It was generally considered in the child's best interests to remain with the prospective adopters.[448] In 1976 the Supreme Court voided an adoption because the natural mother had not been made aware of her legal right to change her mind at the time she consented to the adoption.[449] The Oireachtas responded to this judgment by retrospectively validating any and all adoption orders which were defective because the mother was not fully aware of her rights at the time of giving consent.[450] Given the extraordinarily high adoption rates for children of unmarried mothers,[451] and the social knowledge of the difficulties mothers faced,[452] it was essential that the State enacted robust measures to prevent coerced adoption. It did not do so, and the Commission cannot be confident that the majority of mothers consented to adoption.

The Commission has seen evidence of illegal adoptions including falsifying birth certificates to give the impression that adopters were the baby's natural parents.[453] Sometimes records were falsified where the adoptive parents were otherwise ineligible to adopt. The Commission has had sight of the unpublished Independent Review Report into Incorrect Birth Registrations, which indicates substantial potential illegality in this area.[454] The

442 For example, 24.94; Confidential Committee, 90.
443 Confidential Committee, 55-56, 88; 20.122; 18.355.
444 32.126.
445 Confidential Committee, p. 106.
446 Section 8, Adoption Act 1974. During debates on the Act, Senator Timothy McAuliffe called for the institutions to be abolished and argued that children born in them should have the same rights as others. He also pointed out that boarding-out normally resulted in exploitation for profit of these children. Adoption Bill, 1963: Second Stage, https://www.oireachtas.ie/en/debates/debate/seanad/1963-12-18/speech/131/.
447 32.110-32.112.
448 32.125.
449 Discussed at 32.106.
450 Discussed at 32.107.
451 6.75; 32.27.
452 32.91.
453 For an example pre-1953 see In Re: M. and infant [1946] IR 334. See also discussion of St. Rita's at 32.394-32.419. This falsification can have serious effects for particular cohorts of adopted people. For instance, an adult born in Northern Ireland but adopted in the Republic of Ireland might lose their British citizenship if their place of birth was not recorded on their birth certificate.
454 32.41. The Commission had pre-publication access to "A Shadow Cast Long - Independent Review Report into Incorrect Birth Registrations" May 2019 Appendix 3. Available at: https://www.gov.ie/pdf/?file=https://assets.gov.ie/126039/ac34f6a0-5a59-4316-91bf-13aefdd1058b.pdf#page=null (last visited 16 March 2021); 32.402.

Commission regrets that the State has taken such a long time to inquire into this issue.[455] It has been a criminal offence to register a birth incorrectly since 1874.[456] The Department of Health knew of these practices from at least the 1950s.[457] Although the State tolerated them, it is likely that the threat of criminalisation encouraged strategic or minimalist record keeping. The impact on affected people's right to identity **(4.1)** has been immeasurable; tracing relatives has been rendered impossible in many cases.

4.3 Intercountry Adoption

Intercountry adoption occurs where a child is taken from their country of residence and placed with adoptive parents in another jurisdiction. The harms of illegal and coerced closed adoption are amplified when a child is taken to be raised abroad, because the child may be permanently separated from their natural parents and their national culture and identity. By the 1950s, there was significant demand from White U.S. adoptive parents for White children from Ireland, in part, because other European countries had either forbidden the practice or tightened their rules to prevent adoption abuses.[458] This demand may have suited State interests because, following intercountry adoption, there was no risk that a child would become a financial burden on the public purse.

Official institutional and external records examined by the Commission show that 1,638 children who were resident in institutions were placed for intercountry adoption between 1922-1980s.[459] However, evidence of the probable scale of illegal birth registrations in Ireland during that time suggests that the actual number of children taken out of Ireland for adoption may be higher.

In 2010, Ireland introduced legislation, the Adoption Act 2010, [460] to recognise and regulate inter-country adoption, following the ratification of the 1993 Hague Adoption Convention.[461] Within this strict international framework, intercountry adoption remains a controversial practice and is only considered if no domestic child-care solution can be found. [462] In Ireland it was used even when natural mothers were willing, but unsupported, to care for their children. There was no legal basis whatsoever for the permanent surrender of Irish-born children for subsequent adoption abroad during the period under review. Although institutions used 'certificates of surrender'[463] and the Department of External Affairs required formal parental consent to intercountry adoption before issuing a passport for a child, it was not legally possible for mothers to consent to permanent surrender of parental rights in this way. It was an offence under the Adoption Act, 1952 to remove the child of an unmarried

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455 The Adoption Authority of Ireland reported evidence of illegal registration to the Department of Children and Youth Affairs in 2011. No inquiry was launched. https://www.irishexaminer.com/opinion/commentanalysis/arid-30854861.html
456 32.292.
457 32.393. See also IO'T v. B [1998] 2IR 321.
458 32.303.
459 The total number of inter-country adoptions is at least 2,000. However, some of these took place through institutions not under the Commission's remit including St Patrick's Guild.
460 Adoption Act 2010.
461 The Adoption Act 1991 allowed recognition of adoptions by Irish residents who adopted abroad.
462 See Article 21 of the UN Convention of the Rights of the Child and the preamble to the Hague Convention 1993
463 32.99; 32.296

mother from Ireland unless that child was aged over one year, and a parent, guardian or relative had given their consent.[464]

The Commission has seen evidence of at least four different types of practices which could be classified as exploitative forms of intercountry adoption:

1. Transferral of extramarital children to Northern Ireland for adoption, which was not permitted by Irish law.[465]
2. Movement of pregnant women from the "homes" to give birth in the USA where the child would later be adopted under local state law. This practice was not illegal, but it was exploitative and calls women's consent to the adoption into question.[466]
3. Illegal birth registration cases where children were born to Irish mothers in Ireland, but their foreign adoptive parents were registered as the natural parents on the child's birth certificate. This form of 'child laundering' allowed the adopters to bypass legal child surrender and vetting processes in their home State, putting the children at risk. Illegal birth registration was also a specific criminal offence under Irish law. [467]
4. Developed processes of informal intercountry 'adoption' where children, born in the institutions were surrendered by their mothers to private individuals or adoption societies and then matched by Catholic charities to adoptive parents living abroad, usually in the USA. They were adopted under the domestic law of the foreign country.

These intercountry adoptions created a "limping" status. While recognised as transferring parental status under the law of the country where the child was placed, they were not legal under Irish law where the mother's rights of custody endured. However, once a child had left Ireland there was no practical means by which a mother could enforce her custody rights and seek the return of her child.

Irish state bodies were wary of direct involvement with intercountry adoption and there is evidence of contemporary concern about the practice. Public assistance authorities understood that they had no legal authority to facilitate intercountry adoption directly but allowed private intermediaries to facilitate the practice.

Religious influence on the practice of intercountry adoption was endemic. Passports were issued to children by the Department of External Affairs following a protocol written by Archbishop McQuaid and Fr Cecil Barrett, in which the interests of children were inadequately protected.[468] The protocol required that Catholic children's proposed adoptive parents would be vetted by Catholic organisations, but this system could not ensure that the child would remain in the care of those parents. While the Commission was impressed by the thoroughness of some US domestic adoption processes there was simply no guarantee that a child sent to the USA would enter these processes.[469] The Commission notes that it has not been shown evidence of any parental vetting for children released to U.S. adopters by the Braemar Rescue Home for Protestant girls or by the Bethany Home.

464 Section 40(3), Adoption Act 1952.
465 12.156.
466 32.381-32.389.
467 Births and Deaths Registration 1874. s40.
468 32.319.
469 32.379.

In the mid-1950s St. Anne's Adoption Society was established in Cork, specifically to arrange the adoption of 'repatriated' Roman Catholic babies born in Britain. This was also unregulated intercountry adoption. Had these children been adopted in Britain, they would have had better rights of access to their records than they currently enjoy as Irish-adopted people.

Children were placed for adoption illegally and by means of coercion. There is widespread evidence of abusive adoptive practices sharing characteristics, including inducement of consent, with what we now understand as child trafficking.[470] There were deep economic and demographic asymmetries between the adoptive parents[471] and natural mothers, and this will have impacted women's ability to resist the adoption of a child abroad. Government officials considered that the material gains of adoption to a family in the United States were obvious.[472] Adoptive parents could contribute financially to the institutions. The Commission heard evidence that payment was made in respect of some U.S. adoptions, whether in the form of personal gifts or donations to the institutions.[473] By contrast, the majority of natural mothers could not afford to keep their children. It is likely that this generated inappropriate economic incentives to arrange intercountry adoptions.

5. DISCRIMINATION

There are limits to the extent to which the Commission can fully engage with issues of discrimination in this process. They relate to framing and representation. By looking at issues of discrimination in isolation, rather than examining their intersections, it is impossible to fully examine the extent of discrimination within these systems.

The Commission recognises that discrimination on the basis of race, disability, religion and membership of the Traveller community were and remain widespread within Irish society throughout the twentieth and twenty-first century. The Commission recognises this discrimination is unacceptable and should have no place within either public or private discourse.

Whether this discrimination was actively intended or not is immaterial. The institutions did not merely reflect wider patterns in Irish society; they compounded those patterns. Discrimination experienced while under the control of an institution is particularly important because it contributes to individual vulnerability and exacerbates inhuman and degrading treatment and may have long-term impacts on mental health **(3.6)**.

5.1 RACE

470 Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Human Rights Council, 7 March 2017, A/HRC/34/55, para 23, 28.
471 3.343; 19.185; 32.299; American adoptive parents were respectable married Catholics, or for those children born in Protestant run institutions, respectable married Protestants. Even where American adoptive parents were not wealthy, they were more financially stable, and living in a more prosperous country than the natural mother.
472 19.107.
473 32.337; see discussion at 32.368 indicating these were received by the Daughters of Charity pre-1957 and 32.372 – 32.374 indicating fees were paid to interested parties in the United States. Language at 32.37 indicates that some parents understood that they were participating in commercial adoption. See also the prohibition on payments to those who arranged adoption in the Adoption Act, 1952, suggesting an awareness of this practice pre-1952; 32.97.

The Commission received witness statements and evidence strongly suggestive of discrimination in relation to the fostering or adoption of mixed-race children, and discriminatory attitudes related to their institutional racialisation. The Commission concludes that the race of the parents and/or the child affected the outcome for the child, especially in preventing adoption or fostering.[474]

Several mixed-race witnesses testified to experiences of institutional racism.[475] Recording of a child's race in institutional records was not innocuous. It is wrong to assume the neutrality of racial classifications without adequately interrogating their legacies and origins in specific geographical and political contexts.[476] The Report demonstrates that racialisation processes in the institutions involved the application of language reminiscent of U.S. slavery and Jim Crow America to Irish children in the latter half of the twentieth century.[477] This language of segregation was used to record the mixed-race child ranging from 'coloured,'[478] 'half caste,'[479] 'negro,'[480] 'half negro,'[481] 'dark skinned,' to 'African'.[482] Other children were labelled 'Indian,'[483] or 'half caste (Asian) infant.'[484]

The evidence suggests that these terms were used in a racist manner, and not for any purpose other than to draw attention to the phenotype of the child, resulting in their stigmatisation.[485] Department of Health inspectors' reports, though generally brief in reference to mixed-race children, reflect the attribution of racialised impediments, [486] with one inspector remarking that 'coloured babies' were 'difficult to rear.' [487] Adoption placement decisions for these children took account of their race. Of the 275 children who were in Pelletstown and Bessborough, where race is noted on their records over the period in question, only 56% were placed for adoption.[488] There is clear evidence that these children would have been placed for adoption if they had been White. The Report is peppered with such evidence. [489] For example,

> Coloured child. Healthy. Medically fit for adoption but owing to colour this would be difficult.' 'Healthy. Half caste child. On account of above will be unfit for adoption.

474 31.171, further noting that the same conclusion was reached in relation to the role of mental and/or physical conditions/disabilities of the mother and/or the child in affecting the outcome for the child, as being factors in the prevention of adoption or fostering.
475 31.172. See also 31.43. Professor Bryan Fanning, a professor of migration and social policy at University College Dublin, told the Commission that "in his experience, black children were problematic to the system and the stories he had heard from them suggest that they had experienced racism as children and that it had impacted on their lives."
476 Elaine Moriarty. Measuring Mixedness in Ireland: Constructing Sameness and Difference in, editor(s) Zarine L. Rocha and Peter J. Aspinall, The Palgrave International Handbook of Mixed Racial and Ethnic Classification, Cham, Palgrave Macmillan, 2020, 249–265, at p.249.
477 31.32.
478 Inter alia 7.47, 8.71, and 31.51.
479 At inter alia 13.425 and 19.107.
480 31.32.
481 21.64.
482 21.64 and 23.74.
483 31.18.
484 31.29.
485 See witness at 13.425 who testified to the Commission that the attitude to his ethnicity 'warranted noting as if it were an insurmountable problem.'
486 31.11.
487 31.33. The inspector further notes that such children are 'inclined to be bronchitic in the first year of life.'
488 31.172.
489 31.26.

Boarding out (this child was, however, adopted).' 'Healthy. Coloured child. Unfit for adoption on account of colour only.'

The presence of comparatively large numbers of mixed-race children in just two of the bigger institutions may reflect a policy to house these children together rather than disperse them to smaller institutions. This suggests a policy of de facto segregation[490] within these institutions that would echo similar results for mixed-race children in industrial schools. [491]

The Commission found evidence of perceived difficulty in placing mixed-race children.[492] Many adoption societies had long waiting lists of prospective parents but no children for adoption, while recognising that their major challenge was placing mixed-race children.[493] A 1968 *Sunday Independent* report stated that 'apart from coloured children', almost every eligible child found a new home in 1967. [494] Children who were not adopted were likely to remain in institutions. Testimony describes how mixed-race children were often moved between institutions 'in order to find a home'[495] since they were devalued in the commodified marketisation of babies from institutions that did not serve them.

Racist language is frequently referenced in attitudes of staff towards parents of mixed-race children. [496]

Mixed-race children were unwitting participants in both the vaccine trials recorded in Pelletstown (2 out of 14 children in the 1960/61 Quadrivax quadruple and 1 out of 20 in the Quintuple vaccine trial). A remarkable 23% (13 out of 56) children who received a course of oral polio vaccine in Pelletstown were described as 'half-caste' or 'coloured child.'[497] This strongly suggests a policy of selection. The commercial and scientific rationale for such a policy is not clear from the available records. The Commission notes that affected mix-race

490 See witness testimony at 18.381 describing segregation of mixed-race infants at Bessborough.
491 The Ryan Report http://www.childabusecommission.ie/rpt/ cites a 1970s report by the Child Care Advisor in the Department of Education, Mr Graham Granville. Granville stated in his annual report that: "It would appear upon examination of the files etc. that in the past many of the children admitted to Clifden were received into care to be removed 'out of sight out of mind. This policy in his opinion was applied especially to children of different racial backgrounds" (at 9.23-24). Dr. Phil Mullen discusses similar findings in her research of 15 mixed race women who grew up in industrial schools in the 1950s-1970s.
492 See also AMRI, Shadow Report to the UN Committee on the Elimination of Racial Discrimination https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_NGO_IRL_37383_E.pdf p. 5.
493 7.61, evidence of the Cork Diocesan Archives, St Anne's Adoption Society, Box 3. 'The fact that T is half coloured could affect her chances of adoption.' Cf. also note at 31.11, that a foster mother, was keen to adopt 'the little coloured boy', but the inspector asked, 'but will it work out?' The Commission highlights other evidence at 31.13 such as that of Fr James Good of St Anne's Adoption Society who observed that '…where there is any question of blood other than north European there would be very little likelihood of our placing such a child'. He thought that some mixed-race children were being adopted in Dublin, but he feared that they would struggle to be accepted in the south, 'there are still so very few coloured people here that they still excite admiration'.
494 The article further quoted Lady Valerie Goulding, who was involved in services for children with disabilities, as saying that 'you are looked at sideways if you have a coloured baby with you'. According to this article approximately six 'coloured' children were adopted every year but there was a backlog of 20 such children 'causing a big headache for various organisations dealing with child adoption,' [at 31.14].
495 31.33.
496 31.33.
497 34.162.

individuals may be legitimately concerned that they were selected with an eye towards international markets in the US and Africa and that further investigation is needed.

Finally, evidence that mixed-race children were placed for adoption or for fostering with unsuitable families on many occasions foregrounds the lack of racial literacy and care of the racial and cultural heritage of mixed-race children in this period, resulting in irreparable harm to their identity formation.

5.2 DISABILITY

There was a flow of disabled people between mother and baby 'homes', psychiatric hospitals, county 'homes',[498] Magdalen laundries, industrial schools and specialist disability services. Disabled children often stayed longer in mother and baby 'homes'.[499] When disabled people left one of the institutions considered in this Report, it was in many cases only to enter another kind of segregated setting, and there was little to no support for disabled people exiting the relevant setting and being supported to live in the community.[500] Institutionalisation was often life-long, and entailed life-long exposure to degrading conditions. [501] Alternatives to institutionalisation for disabled people existed throughout the time period under review, and national policy on disability and mental health from the 1960s onwards[502] favoured support in the community over institutionalisation. This approach was not reflected in the transfer of disabled women and children into and out of the institutions included in this Report. High infant mortality rates sometimes often attributed to disabilities, raising questions about the treatment of disabled children, especially in the earlier period under examination.

Evidence exists from those familiar with various institutions of discrimination regarding decisions as to whether to 'board out' disabled children or place them for adoption. While it would be important for prospective foster or adoptive parents to be equipped and supported to address any health issues a child might have, this should never have resulted in the use of disability as a criterion to deny opportunities to a child. [503] With respect to adoption, there was no legal basis for the use of disability of either the child, or the mother, as a criterion for this decision, and the staff in these institutions had no legal authority to make a decision on this basis. Furthermore, evidence exists of disabled mothers who wanted to keep their children, but whose disabilities were used by various institutions as a justification that they were unfit to parent them. [504]

In the context of disability discrimination, the report focuses on two institutions; Pelletstown and Bessborough, selected based on their size and longevity. [505] However, the Commission has gathered evidence of more widespread disability discrimination in decisions about the placement of disabled children for fostering ('boarding out') and adoption,[506] and in the

498 10.16.
499 13.251.
500 31.150.
501 Some settings e.g. the adult public psychiatric hospital at St Ita's Portrane were entirely unsuitable for very young children; 31.135; 31.175.
502 Department of Health, Report: The Problem of the Mentally Handicapped, in Commission of Inquiry on Mental Handicap (Stationery Office, 1960); Report of the Commission on Inquiry on Mental Handicap (Stationery Office, 1965).
503 6.79; 31.147; 31.151.
504 23.83; 31.91; 31.106.
505 31.2.
506 Confidential Committee, 136.

transfer of disabled mothers[507] and children between mother and baby 'homes' and other institutionalised settings.[508]

The evidence suggests that while the numbers of women entering the institutions decreased overall in later years, the proportion of disabled women and girls entering the institutions continued to increase.[509] Throughout the investigation, issues relating to consent were raised. Both disabled and non-disabled mothers were subjected to medical interventions without consent, to the adoption of their children without their consent, and were placed in the institutions without their consent. The belief that all unmarried mothers were vulnerable and unable to consent was widespread in the earlier part of this period.[510] However, disabled mothers' consent was ignored for reasons beyond marital status. Their capacity to consent – to sex,[511] to being in these institutions, to placing their children for adoption[512] - was ignored, unsupported and in some instances used as a tool to justify their children's continued institutionalisation.[513]

There is little to suggest that efforts were made to support disabled women and girls to give informed consent, either to their placement in these institutions or to their children's adoption. The 1952 Act gave the Adoption Board the discretion to "dispense with the consent of" a mother if the Board was satisfied that she was "incapable by reason of mental infirmity of giving consent." This approach has continued in the Adoption Act 2010 which continues to allow for dispensing with consent on the grounds of "mental infirmity" albeit now with the approval of the High Court, rather than the Adoption Board. There is no further clarification in these Acts as to how "mental infirmity" should be proved, but from the evidence provided to this Commission, it is clear that this language was often used to dispense with the consent of women and girls with intellectual and psychosocial disabilities in particular, to the placement of their children for adoption.[514]

The Commission acknowledges that it did not meet with any advocacy group representing disabled people. As such, one of the most affected groups did not have their voices heard in this process. These limitations of the Commission's research will need to be addressed more fully in any future work.

5.3 TRAVELLERS

The Commission recognises the considerable gaps in available data on Traveller women and girls sent to these institutions. Under 1963 public health guidance[515] Traveller women and girls were advised to present to maternity hospitals and other related institutions for both pre- and post-natal care. The *Report of the Commission on Itinerancy* (1963) stated that:[516]

507 Confidential Committee, 54.
508 31.62.
509 1.137.
510 9.44; 9.89; 10.14; 31.53.
511 20.53. 23.81; 31.70; 23.81.
512 31.70.
513 20.79.
514 31.71. 31.69; 20.79.
515 Report of the Commission on Itinerancy (1963), 51; https://www.lenus.ie/handle/10147/324231.
516 Report of the Commission on Itinerancy (1963), 51; https://www.lenus.ie/handle/10147/324231.

> Itinerant mothers should be encouraged to stay in hospital for longer periods than, they do after childbirth. The accepted period is normally ten days and medical practitioners in charge of maternity 'units should do everything possible to ensure that the itinerant mother is maintained for at least that period. [517]

Records from Pelletstown,[518] Tuam[519] and Stranorlar[520] show that Traveller children were admitted seasonally for health concerns related to their poor living conditions.[521]

Notwithstanding these health-related admissions, the available evidence indicates that a number of 'social cases,'[522] 'unwed' women, their children[523] and whole Traveller families were sent to institutions. Such practices are indicative of pervasive State policy post-independence, specifically post 1963 and the Commission of Itinerancy Report, which stated that the Traveller way of life was intrinsically harmful and that children should be removed from the Traveller culture.[524] This policy reflects the cycle of institutionalisation which many Travellers experience, as a direct result of the State's policies to assimilate Travellers to the settled way of life.

Undoubtedly, involuntary detention **(3.4)** was traumatic for all women. However, the Commission recognises the additional levels of harm and trauma which were experienced by Travellers detained within the four walls of an institution. The Commission saw evidence that Traveller women and girls may have left the institutions of their own accord on rare instances.[525] Nevertheless, most were not aware that they could leave and were forced to endure conditions of confinement directly conflicting with their culture. In 1974, the Manager of the Magdalen Home in Sean MacDermott St, recognised these divergences between institutional confinement and the Traveller culture, nothing that [Travellers] 'cannot be accommodated in the present institutions, because such units are entirely alien to their culture and upbringing.'[526] The Commission therefore recognises that admission of Travellers to the institutions was part of a framework which forced Traveller women and girls from their cultural and traditional nomadic way of life and required them to assimilate to settled living, further eroding their cultural identity.

The Commission acknowledges that discrimination was widespread throughout the institutions. However, we conclude that Traveller women, girls and children experienced additional discriminatory treatment on the basis of their ethnicity. The evidence presented both to the Commission and cross-referenced from other reports referenced reflects this normalised discriminatory context. The Ryan Report into industrial schools highlighted and

517 Report of the Commission on Itinerancy (1963), 50 & 51; https://www.lenus.ie/handle/10147/324231.
518 13.262, 13.340.
519 15.98.
520 29.7.
521 13.340.
522 13.282.
523 29.7, 29.107.
524 Report of the Commission on Itinerancy (1963), 69; https://www.lenus.ie/handle/10147/324231
525 'She remembered one mother who was a member of the Traveller community. She said that this young woman found it difficult to settle; she left because she could not cope.' Para 24.176.
526 Submission to the Task Force on Child Care Services from Sr Lucy Bruton, Convent of Our Lady of Mercy, Lower Sean MacDermott Street, Dublin 1, 10th December 1974. Department of Health C.4.01.03 Task Force Submissions Vol 1.

recorded several instances of discrimination faced by children.[527] While similar language was not found directly within the official inspection reports relied upon here, clear indications of prejudice and persistent othering arose in the manner in which Traveller mothers and children were discussed in staff testimony.[528]

5.4 RELIGION

Religion was an integral part of each of the institutions under review.[529] There was very little evident understanding of religion outside of Christianity. In one adoption case 'Hindu' and 'Muslim' were used interchangeably.[530] The main institutions were either religiously owned and run or owned by local government and staffed and run by religious figures **(3.1)**. Women and girls were often referred to institutions by a clergyman or by a member of a religious order. [531]

Women and girls were admitted to institutions on the basis of their perceived religious membership, or that of their children, often irrespective of their personal wishes or attitudes to the church in which they had been raised.[532] There is ample evidence of "denominational competition" indicating that the care given to mothers and children was secondary to the desire to avoid proselytization, especially of Catholics by Protestants.[533] There is some evidence that the Bethany Home and the Church of Ireland's Irish Church Missions engaged in practices of this sort.[534]

These concerns delayed the passage of the adoption law itself by years,[535] during which time Catholic organisations regulated Catholic adoptions in accordance with the principles of canon law.[536] Catholic groups opposed to adoption legislation objected that mothers might consent to have their child adopted by a couple of another religion or might be pressurised to do so. One Attorney General described the risk as that of endangering children's souls.[537] The Roman Catholic hierarchy only supported the introduction of adoption on the basis that the legislation would safeguard the child from this risk by ensuring that the child's adoptive parents and natural mother were of the same religion.[538] This requirement was not eased until 1974, following a constitutional challenge.[539]

The Commission saw evidence of Catholic women and girls who bargained with the authorities by strategically 'pretending' to be Protestants or threatening to give their child to

527 'Witnesses recalled being constantly told their parents were 'alcoholics', 'prostitutes', 'mad' and 'no good'…. witnesses reported being verbally abused and ridiculed about their Traveller and mixed-race backgrounds. 'Br ...X... called me a kn***** and said my parents didn't want me, I felt worthless and degraded.' Ryan Report, http://www.childabusecommission.ie/rpt/ Volume 3 Chapter 7: Record of abuse (male witnesses) Paragraph 236
528 As indicated within their grouping as ''itinerants, destitutes, evicted persons,' (13.340).
529, 4.26.
530 31.30.
531 8.11; 8.100.
532 22.67; 23.85; 23.100
533 3.35-3.37; 5.104; 7.53; 8.81; 21.55; 21.62.
534 22.61-22.65
535 32.30- 32.89 especially 32.78-32.79.
536 32.25; 32.54.
537 32.76.
538 32.89.
539 32.102.

a Protestant institution.[540] Sometimes they did this to avoid being sent to a Catholic institution or for reasons of anonymity. A Roman Catholic woman in a Protestant institution, or vice versa, was often understood to have transgressed the bounds of communal control and could be sought out and removed to an institution of her own denomination.[541]

State agents tolerated this sectarian policing of communal boundaries and may have enforced them. For example, in 1939 in response to CPRSI complaints about severe neglect of children living in Bethany Home and boarded out by Bethany, a DLGPH medical inspector placed pressure on Bethany Home to cease admitting Roman Catholics.[542] The Commission notes that this response prioritised defusing sectarian conflict over exercise of the Department's protective statutory powers, rather than investigating the possibility of temporary closure. **(3.1)**.

The State's 'repatriation' scheme **(3.4)** directly co-operated with Roman Catholic organisations in Britain, including the Crusade of Rescue, which were determined to ensure that children born to Catholic mothers were adopted into Catholic families. A woman repatriated to Ireland would often be reallocated to an institution on the basis of county of origin,[543] number of prior pregnancies and religion.

Religious influence was considered central to 'reform' of unmarried mothers[544] in both Protestant and Catholic institutions. Once in an institution, women were often required to participate in religious activities.[545] In State-funded institutions run by Catholic religious staff, the religious ethos affected living conditions. For example, at Bessborough, penitential dietary restrictions imposed on pregnant women and nursing mothers meant that they were severely deprived of protein.[546]

Women and girls experienced gender-based discrimination related to the religious ethos of the institutions they entered, even where they shared the religion of the staff and managers. Unmarried mothers were perceived to have violated religious norms around pregnancy and marriage. They were deprived of choice around pregnancy by restrictive laws on contraception,[547] censorship[548] and abortion that, for most of the period under study, mirrored contemporary Catholic social teaching and Protestant institutional practices. In the institutions, they were spoken to and about in terms of the 'sin' of their pregnancy and the need to redeem themselves.[549] Some witnesses to the Confidential Committee recall that the language of 'sin' was used when they were punished and verbally abused.[550] **(3.6)** Natural fathers often suffered stigma[551] **(2.3)** but were not institutionalised in the same way.

540 5.98; 8.17; 8.82; 8.89; 8.96; 11.118; 21.55; 21.59-21.63.
541 8.14; 8.81 – 8.83.
542 22.93-22.94
543 Some returning via Dublin initially stayed at Regina Coeli; 21.33.
544 6.52.
545 3.38.; 9.24.; 22.14.; 22.60.; 22.61.
546 5.24.
547 12.31.
548 The Censorship of Publications Act 1929 restricted access to information on contraception and was not repealed until early 1980. The Regulation of Information Act 1995 restricted access to information about abortion services abroad and was in force until early 2019.
549 18.303, 18.348, 19.197; 23.5.
550 Confidential Committee 62, 79, 110.
551 9.8-9.11.

6. CONCLUSION

The 'rewritten Executive Summary' ends here. Instead of a formal conclusion, we summarise here the differences between our main findings and those of the Commission.

Commission Finding	Where	Our Finding	Where
General Responsibility			
Responsibility for the harsh treatment of women and their children rests primarily with the fathers of the children and with the mothers' immediate family. Lack of family support was the primary reason for entering an institution.	Prologue	Responsibility in law for breaches of constitutional and human rights rests with the State, which funded and regulated the institutions, delegated key public functions to religious bodies, through its laws created the conditions by which the institutions became a default option for the containment of unmarried mothers. The State was generally aware of abusive conditions in the institutions.	3.1 and 4. On the role of natural fathers see 2.3.
Deprivation of Liberty			
There is no evidence that women were forced to enter mother and baby homes by the Church or State authorities	Executive Summary [8]	There is substantial evidence of unconstitutional involuntary detention, especially in the earlier period under study.	3.4
Women were always free to leave if they took their child Even if they were unable to leave without their children, they also owed legal duties to their children.	Recommendations [27]	Women and girls were generally free to leave in law, but not in practice. Evidence in the Report indicates there were barriers to leaving the institutions. Leaving was not actively facilitated. Women were not financially supported to perform their duties to their children outside of the institutions	3.3-3.4
They were not 'incarcerated' in the strict meaning of the word but in the earlier years, at least, with some justification, they thought they were.	Recommendations [27-28]	There is clear evidence of unconstitutional involuntary detention, especially in the earlier period under study.	3.4
Unpaid Labour			
In mother and baby homes girls and women were expected to work but this was generally work which they	Recommendations [30-32]	Labour undertaken in the institutions was unpaid, and this refusal to pay contributed	3.3 and 3.6

would have had to do if they were living at home…no different from work carried out by women on farms all over the country. Exceptions include (1) women in county homes, (2) women in Tuam (3) women working outside the homes without pay and (4) women who spent more than 6 months in the institution.		to women's effective incarceration. There is evidence that women and girls undertook physically demanding work, including while pregnant and irrespective of their age, ability, or health. There is no evidence that the impact of physically demanding work on maternal or Infant health outcomes was monitored by health authorities. Work was frequently used as punishment.	
Physical Abuse, Inhuman and Degrading Treatment			
Some evidence of minor physical abuse	Recommen dations [22]	There is significant evidence of abuse amounting to inhuman and degrading treatment, including of pregnant women, children and survivors of sexual abuse. The right to freedom from inhuman and degrading treatment is absolute and breaches cannot be justified.	3.6
Some evidence of poor treatment of children when boarded out	Recommen dations [39]	There is evidence of physical abuse and neglect of both boarded out/at nurse and adopted children, attributable to inadequate regulation of the family separation system.	4
No evidence that women were denied pain relief or other healthcare. Maternity services in the institutions were of better quality than those available to the majority of Irish women at the time.	Executive Summary [245]	There is significant evidence of obstetric violence, which was unacceptable whether perpetrated in the institutions or in maternity hospitals.	3.8
Women were dissuaded from sharing their story because of concern for their privacy	Executive Summary [16]	This is an institutional conception of 'privacy' as secrecy and is bound up in the ideology of concealment on which this system thrived.	2.1 and 3.6

		Women in the institutions were often deprived of meaningful personal privacy.	
Children who spent very short periods in the institutions would find it very difficult to establish that they had been abused	Recommendations [19-23]	This statement must be rejected for want of sufficient evidence. Given the extreme vulnerability of young children at a key stage in their development, the severity of the abuse is not inevitably determined by the length of stay. Children may have suffered long-term effects.	3.6
No evidence of injury as a result of non-consensual vaccine trials.	Executive Summary [248]	It is not possible to make this claim on the available evidence. Non-consensual experimental medical treatment is a breach of the right to bodily integrity.	3.9
Unlawful family separation			
Only children who were resident in an institution without their mothers have a case for redress.	Recommendations [19-23]	The State must take account of the harms of forced family separation, and associated breaches of constitutional and human rights Regimes of separation were often enforced within the institutions even when mother and child were housed in the same building or complex.	4.1
Women who entered mother and baby homes after 1973 do not have a case for redress.	Recommendations [23]	Changes related to the introduction of Unmarried Mothers' Allowance in 1973 do not justify this conclusion.	3.2
Women who entered an institution pre-1973 only have a case for redress if institutionalised for longer than 6 months.	Recommendations [33]	No minimum time limit applies the breaches we have identified from our analysis of the Report, especially those relating to family separation.	4.1-4.3
The option of legal adoption was a vastly better outcome for the children involved than the alternative.	Recommendations [35]	Children who were separated from their mothers in Ireland between 1922-1998, including adopted children, experienced a range of well-documented harms related to forced family separation.	4.1

		The appropriate comparison is not between adoption and other forms of institutional separation. We must take account of the fact that many children could have remained with their natural mothers instead of being institutionalised.	
The Commission finds very little evidence that children were forcibly taken from their mothers, even if it accepts that women had little choice.	Recommendations [34]; Executive Summary [34]	There is significant evidence of coerced adoption, amounting in many cases to forced adoption, throughout the period under examination. The evidence is comparable to that found in Australian inquiries into forced adoption.	4.2
Practice in Ireland can be distinguished from the Australian practice of forced adoption	Recommendations [34]; Executive Summary [34]		
With the exception of a small number of legal cases, there is no evidence that women did not consent to adoption.	Executive Summary [254]		
At least from the 1970s/80s the law was adequate to ensure that a mother's consent was full, free and informed.	Executive Summary [254]		
Any payments made by adoptive parents in respect of transnational adoptions were donations.	Executive Summary [255-258]	Donations may nevertheless have contributed to exploitation within the adoption process.	4.3
The Commission finds no evidence of illegal adoption registration in the homes under investigation.	32.398	There is significant evidence of a variety of illegal adoption practices.	4.2
Criticism of Tusla's handling of personal records is unfair because their practice is compliant with the law.	36.80	Tusla's practice has violated GDPR and the constitutional and human rights of affected people.	4.1
Deaths			
In cases where the mothers were in the homes when the child died, it is possible that they knew the burial arrangements or would have been told if they asked.	36.80	The Commission heard significant evidence from family members who have been unable to access information about the fate of relatives, in breach of their human rights.	4.4.

		The failure to conduct appropriate investigations into the fates of those who died in the homes compounds these breaches.	
Discrimination			
No findings of discrimination including in relation to fostering and adoption decisions.	Executive Summary [261]	There is significant evidence of discrimination on the basis of race, religion, disability and membership of the Traveller Community, and evidence of associated harms.	6.

7. CLANN RECOMMENDATIONS FOR ACTION

Our rewritten findings support the Clann Project's 2020,[552] and 2021 recommendations.[553] The recommendations draw on research by Claire McGettrick and Dr Maeve O'Rourke. They are informed by the testimony of survivors, adopted people and family members, as well as the Collaborative Forum on Mother and Baby Homes. Clann are human rights defenders, and it is regrettable that their interventions on behalf of affected people have been criticised by the Commission and by some journalists and politicians. [554]

We acknowledge that many advocacy groups for affected people do not agree with all of Clann's recommendations. Our position is that academics should seek to offer critical support, rather than override or replace work done by advocacy groups. That is the main reason why we have not written substantive new recommendations of our own. Clann's recommendations also fit well with our work because, like us, they have pursued an approach that centres human rights law in their advocacy. Their work also fits well with our methodology **(Section 8)** which requires us to engage with materials available to the Commission at the time of writing its own Report.[555] Clann's recommendations draw on their 2018 report[556] and their other published submissions to the Commission.

Clann's key recommendations include:

- Introduction of access-to-records legislation. This includes legislation ensuring adopted people's unconditional access to their birth certificates, but the issue is much broader. Mothers, adopted people, people placed in informal care arrangements and other relatives must have access to their personal data, including relevant administrative records of public and private institutions, and corporations, including Magdalen laundries and industrial schools. Relatives of those who died in institutions must have a right of access to relevant records. Access requires:
    - Proper implementation of GDPR rights by all controllers of institutional, adoption and other care-related records.
    - Placement of the National Contact Preference Register on a statutory footing.
    - Creation of a National Archive of Institutional, Adoption and other Care-Related records which catalogues available records appropriately and supports affected people in accessing all personal information held by the State.

552 Clann Report especially at 135-148. The Commission briefly acknowledges Clann's recommendations at 36.22-24 but appears to dismiss them on the basis that Clann did not cost their proposals.

553http://clannproject.org/restorative-recognition-scheme/clann-project-recommendations-on-restorative-recognition-scheme/.

554 See e.g.https://www.irishtimes.com/opinion/mother-and-baby-homes-inquiry-s-lack-of-transparency-was-damaging-1.4466658; http://clannproject.org/correspondence-defamatory-statements-in-the-seanad/ .

555 See Aitheantas' recommendations, published in January 2021. https://www.adopteerights.ie/2021/01/17/statement-ref-mother-and-baby-homes-report-and-future-legislation-regarding-adoptee-access-to-birth-information/

556 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 Magdalens Research, Adoption Rights Alliance, Hogan Lovells, 15 October 2018. http://clannproject.org/wp-content/uploads/Clann-Submissions_Redacted-Public-Version-October-2018.pdf.

- Improved rights of access to the courts.
- Establishment of a dedicated criminal investigations unit, and human rights compliant coroners' inquests.
- National education and memorialisation measures as part of a transitional justice process. This should include production of accurate education materials, including training materials for State employees who work with survivors and adopted people.
- Statutory rights to compensation, healthcare and all necessary rehabilitative supports for all affected people. In February, Clann made an additional submission to OAK consulting, who are responsible for the government's 'restorative recognition scheme'.[557] We endorse those recommendations. In particular:
    - Redress payments should not be made conditional on any waiver of rights.
    - No time limits should apply to the application process.
    - Testimony must be permitted to ground an application, where relevant institutional records are absent, inaccurate or incomplete.
- A comprehensive state apology to all those affected by the system of forced separation of unmarried mothers and their children, which fully recognises the human rights violations perpetrated both within and outside the institutions.
- State action to ensure that religious orders and church authorities participate in making reparations for the harm cause by churches' treatment of unmarried families.
- Repeal of the 'gagging orders' in section 28(6) Residential Institutions Redress Act 2002 and section 11(3) Commissions of Investigation Act 2004.

557 Available here https://aran.library.nuigalway.ie/bitstream/handle/10379/16680/Clann-Project-Submission-to-Oak-Consulting_31.3.21.pdf?sequence=1&isAllowed=y.

8.Notes on Methodology

8.1 Process and Motivation

We wrote this document collaboratively between March and July 2021. We received no external funding or payment for this work. Most of us are in salaried positions but others are precariously employed. Each of us took responsibility for a section of the document and produced at least two drafts of that section. Máiréad Enright and Aoife O'Donoghue acted as editors, co-ordinating the writing process. In the course of editing, the sections were rearranged for coherence and flow so that material originally written by one author is often combined with material originally written by another. We met online to discuss our arguments and approach and recorded our discussions to include all authors in the dialogue. Each of us read and commented on the whole document in draft. We circulated drafts to readers with expertise in law, history, research methods and public policy and to campaigners and legal professionals who have worked on relevant issues. Their names are listed in the Acknowledgments, except where they requested to remain anonymous. Our arguments incorporate their feedback to the extent possible

Many of us are trained lawyers or academics who teach future legal professionals. Solicitors, judges and courtrooms appear frequently in the pages of the Report, and lawyers have been central to the work of Commissions and redress schemes. It is important that the legal community reckons with its involvement in past abuse, including by working today for fair and generous responses to affected people's demands for justice. This document may be useful to legal educators who wish to include discussion of the institutions on their curriculum.

8.2 What are the Limitations of this Document?

The limitations of this new Executive Summary are related to those of the Report itself. The Report discusses just 18 institutions.[558] Its engagement with discrimination is even more limited, drawing on just two. It is regrettable that the Commission did not request[559] to modify its Terms of Reference to permit deep engagement with a wider range of organisations. The Report does not discuss the whole adoption system in Ireland from 1922-1998 and it does not address the experiences of people who gave birth in or were adopted from private nursing homes, maternity hospitals and agencies.[560] Like the Report, therefore, this new document can only speak to and generalise from the harms that occurred in a small number of institutions.

558 The Clann Project identified over 180 institutions, agencies and individuals involved in forced family separation; Clann Report 133**.** The Commission considered that the mother and baby homes investigated were the 'main' institutions of their kind. Commission of Investigation 2nd Interim Report. Available at: http://www.mbhcoi.ie/MBH.nsf/page/LPRNALCFND1238712-en/$File/MBHCOI%202nd%20Interim%20Report.pdf.

559 s.6 Commissions of Investigation Act, 2004.

560 See Aitheantas' statement here, noting that a more comprehensive investigation was required to meet international human rights standards; https://www.adopteerights.ie/2021/01/17/statement-ref-mother-and-baby-homes-report-and-future-legislation-regarding-adoptee-access-to-birth-information/.

Our findings can only be indicative and not conclusive. In addition, our legal arguments are not worked out in as much detail as if we had written a larger Report.

The Commission had access to a range of records which are not yet generally accessible to other researchers. Some are in private religious hands. We relied on accounts and interpretations of those records as presented in the Report. We do not know whether those accounts represent the full range of records in existence, and we do not have a detailed sense of whether essential records are missing. We note that the Commission relied on the co-operation and goodwill of private data controllers in many respects, despite its statutory powers of entry and inspection.[561] The methodologies used by the Commission to include or exclude interviewees for hearing by the Investigative Committee are unclear, as is their sampling approach. The Investigative Committee did not hear witnesses with experience of every institution under examination. For example, the main body of the Report does not include testimony from anyone who was at Denny House.

The Report was published after some individuals identifiable from its text had reviewed it and made submissions on it in draft under s. 34 of the Commissions of Investigation Act. We cannot know what changes were made to the draft as a result of that process, whether records were kept of that process or how resulting conflicts were resolved.

We are relying on a Report produced by a flawed Commission whose Commissioners have declined to answer questions about their working methods. While the Commission was sitting, the Clann Project[562] raised serious concerns about its collection and treatment of oral evidence. These were also raised by people who gave evidence to the Commission. These concerns included that witnesses:

- were not permitted to speak about issues arbitrarily deemed irrelevant to the Commission's inquiry.[563]
- were not permitted to give evidence in public,[564] even though the Commission had the statutory power to allow that.[565] The Commission did not permit any public hearings at all and did not give reasons for this decision.[566] As a result, affected people could not observe relevant hearings, or cross-examine people who gave evidence that directly undermined their own testimony.
- were not given access to any documentary or oral evidence in the Commission's possession that appeared to contradict their testimony.[567] This knowledge inequality placed witnesses at a clear disadvantage when speaking about traumatic events which took place some decades ago. At the time the Commission's hearings were held, Ireland had not reformed its laws to enable all people giving evidence to access their birth or other records,[568] or the records of deceased family members, and this

561 S. 28 Commissions of Investigation Act, 2004.
562 Clann Report, Section 5.
563 Testimony obtained at the Confidential Committee was summarised using standard forms which may have shaped interviewers' sense of relevance, and prematurely imposed undisclosed standards on the testimony.
564 Clann Report, 129-130.
565 S. 11, Commissions of Investigation Act, 2004.
566 Clann Report, 131.
567 Clann Report, 131.
568 The same obstacle applies when affected people attempt to access the courts.

inevitably affected the nature of the testimony they could give.[569] At the time of writing, many witnesses are receiving partial versions of their testimony for the first time and others have requested access to personal data currently in the Commission's archive. It is possible that, had witnesses been given full access to relevant records, the evidence of human rights abuse contained in the Report would be even stronger.

Many of these failings mean that the Commission's investigation fell short of Irish, European[570] and international human rights standards[571] that apply to investigations of unlawful adoption,[572] violations of the right to life[573] and violations of the right to freedom from torture, inhuman and degrading treatment.[574] In particular, the Commission's procedures clearly (i) inhibited public scrutiny of its processes and (ii) inappropriately restricted affected people's participation in its investigation.[575] At the time of writing, eight people who came before the Commission as witnesses have brought judicial review cases, challenging how their evidence was treated in the Report.[576] We cannot remedy the Commission's failings here, but they have affected how we treat the evidence contained in the original Report.

8.3 LANGUAGE

Language has always been central to the regulation of unmarried mothers and their children in Ireland. Although the older language of 'sin', 'first and second offenders' and 'moral degeneracy' has fallen out of use, many of those affected by the institutions are acutely conscious of the persistence of old ideas in more modern terminology.

We are careful not to repeat harmful terminology even where it was in common use decades ago. We are also attentive to more recent expressions which tend to conceal the nature of the harms. For example, where possible, we refer to 'mother and baby homes' and 'county homes' as 'institutions', as a reminder that denial of or exclusion from a family home was central to women's and children's experiences. We do not use the word 'residents' to describe women and children who were often involuntarily detained in institutions. Where it is clear that an affected mother was a minor at the time an abuse occurred, we call her a 'girl', 'teenager', 'adolescent' or 'child' and not a 'woman'.

We also use the language of 'natural mother' rather than 'birth mother'[577] to recognise the wider emotional and caring attachment that women have to their children, beyond the physical experience of birth, even where they were permanently separated from one another.

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569 For detailed discussion of this issue see Clann Report, 85-106. Some witnesses would have had access to relevant information, because social workers or religious authorities had disclosed it on a discretionary basis, or because relevant information was shared within families.
570 The Commission is a public body for the purposes of the ECHR Act 2003.
571 Clann Report 4.68 – 4.78.
572 Jovanovic v. Serbia (App No 21794/08) ECHR 2003-II 147.
573 Oneryildiz v Turkey (2005) 41 EHRR 20 para 93 (responsibility of public authorities); Salman v Turkey (2002) 34 EHRR 425, para 99 (deaths in custody) ;Fernandes v Portugal App No 43098/09 (ECHR, 15 December 2015) (obligation exists even where the State is not directly responsible for the death)
574 Premininy v Russia [2011] ECHR 252.
575 See Clann Report, 120.
576 See further https://www.thejournal.ie/mother-and-baby-homes-high-court-cases-5467030-Jun2021/
577 The Confidential Committee uses the compound words 'birthmother' and 'birthfather'.

This is also the term used in Irish constitutional law. At the same time, we recognise that many women whose children were adopted prefer the term 'mother' without any qualifying adjective, or 'first mother'. Others prefer the term 'birth mother/father/parent' because they feel that it better reflects their perception of the relationship between the social experience and legal construction of adoption.

We use 'forced family separation' as a general term to include the range of legal and illegal mechanisms by which unmarried mothers were separated from their children and children were separated from siblings and wider kinship networks, including by adoption, fostering and boarding out. There are some difficulties here. First, some affected people may prefer not to use an umbrella term to describe a range of distinct experiences. Second, others may take issue with the phrase 'family separation' since the word 'family', for them and for a range of reasons, does not accurately describe their relationships to those from whom they were separated. Third, our use of the word 'forced' does not imply that women and children did not experience any other abuses where this separation was consensual. This document describes a range of other abuses which were not conditional on coerced adoption or fostering. Finally, some people may find the word 'separation' is inadequate to describe the violent loss of a family member, child or parent and may prefer the terms 'child removal' or 'child abduction'.

As far as possible, we avoid the word 'illegitimate', using 'non-marital', or describing children as 'the children of unmarried mothers'.

When we use the term 'baby' or 'child' it is to refer to the treatment of babies and children in the past. Where those people are still alive today, they are adults and should be treated as such.

A new project at NUI Galway will examine the language, terminology and representation of those directly affected by the 'mother and baby homes'.[578] This project was recommended by the Mother and Baby Homes Collaborative Forum in 2018.

8.4 VOICE

The Commission was more than an exercise in legal fact-finding. Public inquiries often emphasise blame, or proving an offence, at the expense of making genuine space for affected people to speak to their experience, to be heard by the wider community and to contribute to public understanding of history. The Report includes evidence that institutionalised people complained of abuse at the time it happened but were not believed.[579] For reasons discussed later in this section, many witnesses now feel that the Commission has not heard or believed them. In making direct use of their testimony, we aim to show that they have been heard.

However, several witnesses have described the quotes and paraphrased fragments taken from their testimony as inaccurate, containing errors or omitting key facts. These problems are arguably attributable to the restricted format of the Commission hearings, which prevented affected people from testing evidence that appeared to contradict their claims. Witnesses who

578 https://www.nuigalway.ie/about-us/news-and-events/news-archive/2021/may/minister-announces-research-project-with-nui-galway-into-language-terminology--representations-in-mother--baby-homes.html.
579 18.186; 20.155.

were identifiable from the final Report[580] were not given the opportunity to view and make submissions on a draft version of the Report as provided for in s.34 of the Commissions of Investigation Act, 2004.[581] Had this entitlement been respected, they could have corrected errors in the final Report.

We are, therefore, concerned that many of the excerpts published in the Confidential Committee Report may be unreliable and may not reflect the oral testimony actually given to the Confidential Committee. Therefore, although we draw extensively on the Confidential Committee Report in coming to our conclusions, we do not directly quote from the paraphrased statements which the Report presents as quotations from Confidential Committee testimony. A feminist approach to human rights abuse aims to centre the voices of those affected. We have attempted to follow that approach. However, the limitations of the Report itself and elements of the Commission's methodological choices have badly affected our ability to do this.

Many witnesses were surprised and disappointed that the Report did not present their testimony as coherent individual narratives but as paraphrased fragments. By contrast, oral and written testimony provided by those who gave evidence to the Investigative Committee is presented in longer form, and 'largely set out in their own words', at the end of some of the chapters giving short histories of each of the 18 institutions considered by the Commission. The Northern Ireland Research Report on Mother and Baby Homes preferred longer narratives to quotations in its presentation of oral evidence. The authors of the Northern Ireland report note that fragmented quotations – of the type published by the Confidential Committee - may be difficult to process or contextualise, so that they appear less credible than other forms of evidence, including the accounts of authority figures.[582] It was not possible for us to do something similar because the Commission has not published full transcripts of witness evidence.[583]

In the weeks and months since the Report was published, affected people and advocacy groups have worked to recover and share full accounts of the experiences shared with the Commission. We encourage anyone reading this document to take time to engage with them.

- Clann Project – Selection of Witness Statements submitted to the Commission http://clannproject.org/statements/
    - For quotes from a wider range of witness submissions, and an accompanying detailed human rights analysis see the Clann Report (2018) http://clannproject.org/restorative-recognition-scheme/clann-project-recommendations-on-restorative-recognition-scheme/
- Caroline O'Connor's story is told in Catriona Crowe, 'The Commission and the Survivors' (2021) *Dublin Review of Books* https://thedublinreview.com/article/the-commission-and-the-survivors/

580 A witness may be identifiable from details of their life story even where they are not directly named.
581 In the UK this is called Maxwellisation.
582 Leanne McCormick and Sean O'Connell with Olivia Dee and John Privilege, *Research Report on Mother and Baby Homes in Northern Ireland* https://www.health-ni.gov.uk/publications/research-report-mother-and-baby-homes-and-magdalene-laundries-northern-ireland (Hereinafter 'Northern Ireland Report')17.
583 The Commission had planned to destroy all audio recordings of witness testimony, but backup copies were preserved, following application of campaigner and political pressure. https://www.irishexaminer.com/news/arid-40232390.html The Independent Inquiry into Child Sexual Abuse uses 'pen portraits', and publishes longer anonymous accounts from its Truth Project online with witnesses' consent. https://www.truthproject.org.uk/about-us/asking-for-your-consent.

- The Tuam Oral History Project http://www.nuigalway.ie/tuam-oral-history/
    - Nochtaithe – a response to the project by Drama and Theatre Students, NUI Galway http://www.nuigalway.ie/tuam-oral-history/nochtaithe/
- Abbey Theatre, *Home: Part One* https://www.abbeytheatre.ie/whats-on/home-part-one/
- National Concert Hall, Breaking the Silence - https://www.youtube.com/watch?v=-Vj7wmTvdls
- AMRI, Shadow Report to the UN Committee on the Elimination of Racial Discrimination (2019) https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_NGO_IRL_37383_E.pdf 8-11
- Noelle Brown's response to the Commission Report https://www.youtube.com/watch?v=j2mkZLZK8zU
- Siobhan Kilroy's story of appearing before the Confidential Committee https://tortoiseshack.ie/ep-469-extend-the-commission-siobhans-story/
- Irish Times Inside Politics Podcast, 'Mother and Baby Homes Report' (with Elizabeth Coppin and Caelainn Hogan), 16 January 2021, https://www.irishtimes.com/news/politics/inside-politics/inside-politics-mother-and-baby-homes-report-1.4459641?mode=amp
- Irish Times Women's Podcast, 'Ep 441: Sealing the Records: Maeve O'Rourke & Mary Harney', October 2020, https://podcasts.apple.com/ie/podcast/the-irish-times-womens-podcast/id1040117877?i=1000495309503
- Irish Times Women's Podcast, 'Ep 466: The Commission of Investigation into Mother and Baby Homes' (with Rosemary Adaser, Noelle Brown and Máiréad Enright), 15 January 2021, https://www.irishtimes.com/life-and-style/people/the-women-s-podcast/the-irish-times-women-s-podcast-ep-466-the-commission-of-investigation-into-mother-and-baby-homes-1.4458448?mode=amp
- RTE Radio 1, Morning Ireland, 13 January 2021, https://www.rte.ie/radio1/morning-ireland/programmes/2021/0113/1189425-morning-ireland-wednesday-13-january-2021/
- RTE Radio 1, Today with Claire Byrne, 'Mother and Baby Homes' (with Noelle Brown), 13 January 2021, https://www.rte.ie/radio/radioplayer/html5/#/radio1/21892875
- Second Captains, 'Episode 1943: A Momentous Week for Irish Society, Fionn's Story', 15 January 2021, https://www.secondcaptains.com/2021/01/15/episode-1943-a-momentous-week-for-irish-society-fionns-story/
- RTE Radio 1, Liveline, 'Mother & Baby Homes', 18 January 2021, https://www.rte.ie/radio/utils/share/radio1/21894752
- RTE Radio 1, Drivetime, 'Mother and Baby Homes Discrimination' (with Jude Hughes of the Association of Mixed Race Irish and Dr Philomena Mullen), 18 January 2021, https://www.rte.ie/radio/radioplayer/html5/#/radio1/21894770
- Irish Times Women's Podcast 'Mother and Baby Homes Commission Member Speaks Publicly' https://www.irishtimes.com/life-and-style/people/the-women-s-podcast/the-irish-times-women-s-podcast-ep-506-mother-and-baby-homes-commission-member-speaks-publicly-1.4583421

- Irish Times, Caelainn Hogan 'Mother and baby homes report contradicts survivors' lived experiences' https://www.irishtimes.com/opinion/mother-and-baby-homes-report-contradicts-survivors-lived-experiences-1.4457411?mode=amp

8.5 Testimony before the Confidential Committee: Law and Oral Testimony

The majority of witnesses (532 with direct or family experience of the institutions) who gave evidence to the Commission[584] were heard in private at the Confidential Committee. However, the Report's findings frequently contradict significant testimony heard by the Confidential Committee. For example, the Commission found "no evidence" that women were forced to enter "mother and baby homes" by church or State authorities; "no evidence" of gross abuse equivalent to that suffered in industrial schools; "no evidence" that women were denied pain relief in labour; "no evidence" that children were injured in vaccine trials; "no evidence" that women did not fully consent to their children's adoptions; "no evidence" of discrimination against disabled or mixed-race children in adoption decision-making and "very little evidence" of physical abuse.

Confidential Committees are useful provided that they inform an inquiry's eventual conclusions.[585] However, while we were drafting this document it became apparent through the intervention of Professor Mary Daly that the Commission gave little or no weight to Confidential Committee evidence in drawing its final conclusions.[586] Although the former chair of the Commission, Yvonne Murphy has subsequently written to the Oireachtas Children's Committee to say that this testimony was 'very much taken into account', she did not give any examples of how this was done. [587] Thus, it appears that the only personal

584 The main body of the Report does make some reference to 'witnesses', 'former residents' and their 'evidence'. However, these terms seem to refer to the proceedings of the Investigative Committee.

585 The Confidential Committee is comparable to the Truth Project of the Independent Inquiry into Child Sex Abuse (England and Wales), but that Inquiry uses research based on the Truth Project to inform its conclusions on designated general research questions. See further https://www.iicsa.org.uk/key-documents/11685/view/truth-project-research%3A-methods-full-.report.pdf. Australia's Royal Commission into Institutional Responses to Child Sexual Abuse heard from thousands of people at confidential private sessions. These people are not treated as 'witnesses' to the Commission. They were not cross-examined or required to give evidence on oath. De-identified narratives were published with the speaker's consent. The Royal Commission confirms that information gathered in private session informed all of its work, and private session evidence is extensively cited in its reports. See further https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_5_private_sessions.pdf especially (2.2).

586 Dr Deirdre Foley and Professor Ian McBride in conversation with Professor Mary Daly', Oxford University on 2nd June 2021 http://clannproject.org/commission-report/oxfordtranscript/ especially pp. 12-13, 21-22, 26-27.

587 https://www.irishtimes.com/news/social-affairs/full-letter-sent-to-oireachtas-by-former-members-of-mother-and-baby-homes-commission-1.4590705. There are three possibilities. 1) Most people who spoke to the Investigative Committee had already spoken to the Confidential Committee, so the Confidential Committee may have been used as a mechanism to sift evidence that would later be tested at the Investigative Committee. 2) As indicated in Prof. Daly's transcript at p. 26, researchers working on other chapters of the Report may have looked at the Confidential Committee's evidence in order to guide their research. 3) The Commission also references the views of 'former residents' in passing in its Recommendations chapter, but it is not clear that this is a reference to the Confidential Committee.

testimony directly relied on was that given to the Investigative Committee, orally or as a sworn affidavit.[588]

The Investigative Committee received 32 affidavits and held 194 hearings, at which 64 former 'residents' and 30 advocacy groups, gave evidence. Of the 64 residents, 45 had been invited on the basis of their testimony to the Confidential Committee, though the Report does not explain how they were selected. Just 19 witnesses were permitted to access the Investigative Committee directly.[589]

The Oireachtas did not intend that evidence given to the Confidential Committee would carry little or no weight when it came to producing the Commission's general findings. The Commission was instructed to produce a report of a 'general nature' based on testimony heard by the Confidential Committee. The reference to 'general nature' merely suggests that the Commission could not use evidence given in the Confidential Committee to make a finding that directly identified an individual wrongdoer, religious order or institution. The Terms of Reference then provided that the Commission 'may, to the extent it considers appropriate, rely upon [that report of a general nature drawn from Confidential Committee evidence] to inform' its investigations. The Commission was entitled to find that some elements of the evidence heard by the Confidential Committee were not persuasive, so that it was not 'appropriate' to draw on that evidence in its main Report.[590] However, its Report does not explain why certain testimony given to the Confidential Committee was not found to be useful in determining key issues of public interest, or why it seemed unsafe to take that evidence into account in any visible way. There are several possibilities, but all are open to critique.

First, some caution is required in investigating claims of past abuse under Irish law. The Commission was not empowered to make findings of guilt or innocence, or of civil liability that might directly affect non-State actors.[591] However, it is obvious that the interests of identifiable individuals are engaged by a Commission of Investigation. Alleged wrongdoers[592] and claimants have a constitutional right[593] to their good name under Irish law.[594] This entails rights to natural justice and fair procedures, and entitlements to be protected from the disadvantages caused by 'lapse of time'[595] including death of key witnesses, fading of memory or loss or destruction of records. The Commission was required to take these matters into

588 That testimony is often paraphrased, though the Report says that it is 'largely set out in [the witnesses'] own words'; 19.170. Some witnesses have said that these paraphrases misrepresent their original testimony.
589 Confidential Committee, 10. For further discussion of the Commission's procedures see Clann Project archive of correspondence with the Commission http://clannproject.org/visit-contribute-to-the-archive/correspondence-with-the-commission-of-investigation/ Confidential Committee, 10
590 Section 32 of the Commissions of Investigation Act 2004 provides that where a Commission considers that the facts relating to a particular issue have not been established, 'it may indicate its opinion as to the quality and weight of any evidence relating to the issue' http://www.irishstatutebook.ie/eli/2015/si/57/made/en/print.
591 Participation in a redress scheme is a matter of moral obligation rather than legal liability.
592 Survivors have the same rights in principle.
593 A person's own evidence to a Commission of Investigation is not admissible in civil or criminal proceedings against them; s. 19, Commissions of Investigation Act, 2004. However, the Commission could report a suspected serious crime to the authorities, based on evidence heard by the Confidential Committee.
594 Re Haughey [1971] IR 217.
595 On delay in international human rights law, see Clann Report 126.

account in designing its processes and procedures.[596] These issues did not arise in respect of the bulk of the Commission's work.[597] By and large, the Commission's Terms of Reference[598] encouraged it to make findings as to systemic issues - 'what happened and why' - rather than identifying named wrongdoers[599] or specific incidents.[600] The Commission provided an extra layer of protection for any accused parties by anonymising witnesses or institutions in publishing any evidence given to the Confidential Committee.[601] Regard for the rights of alleged wrongdoers did not require the Commission to disregard Confidential Committee evidence as such. Finally, under s. 34 of the Commissions of Investigation Act, identifiable individuals were entitled to review and make submissions on the Report.[602]

Second, the Confidential Committee was established to allow people to give testimony 'as informally as is possible in the circumstances'.[603] It is important to be sensitive to the needs of people who are affected by trauma, shame and stigma.[604] The obligation to treat witnesses sensitively does not imply the obligation to ignore their testimony. By declining to directly draw on their testimony, the witnesses were disadvantaged by a process which may have been intended to 'spare' them an adversarial hearing.[605] They were not in a position to make an informed choice about whether to speak to the Investigative Committee,[606] make a written submission to the Investigative Committee, or speak the Confidential Committee.[607] The opportunity to testify to the Commission was not widely advertised.[608] Witnesses were not informed that evidence given to the Confidential Committee would not influence the Commission's findings to any significant degree.[609] The Commission did not proactively assist

596 For a copy of the Commission's Rules and Procedures see http://clannproject.org/wp-content/uploads/MBHCOI_Rules-Procedures.pdf.
597 That is to say that most of the Commission's findings are not about the commission of serious abuses or criminal offences by named individuals/members of named religious orders in named institutions. Contrast Michael Murray and David Gibson v Commission to Inquire into Child Abuse, Minister for Education Minister for Education and Science, Ireland and the Attorney General [2004] IEHC 102.
598 The Commission also had the power to request an amendment of its Terms of Reference under s. 6 of the Commissions of Investigation Act 2004.
599 It was also empowered to omit identifying information from its Report where necessary in the interests of justice; section 32(3), Commissions of Investigation Act, 2004.
600 The exception is probably the vaccination trials. Contrast with, for example, the Commission to Inquire into Child Abuse, which had a clear statutory mandate to make findings of this kind under Section 13, Commission to Inquire into Child Abuse Act, 2000.
601 Confidential Committee Report 12. The Gárdaí have confirmed that alleged perpetrators are so effectively anonymised that it would not be possible to begin effective prosecutions on the basis of information contained in the Report without further information https://www.thejournal.ie/mother-and-baby-home-garda-appeal-5423400-Apr2021/ Confidential Committee Report 12.
602 See Prof Mary Daly's description of this process at http://clannproject.org/visit-contribute-to-the-archive/correspondence-with-the-commission-of-investigation/ p 3.
603 Article 3 http://www.irishstatutebook.ie/eli/2015/si/57/made/en/print.
604 See more detailed discussion by the Steering Committee of the Oral History Network of Ireland here https://oralhistorynetworkireland.ie/statement-re-mother-and-baby-homes-commission-june-2021.
605 We note that proceedings in the Investigative Committee need not have been adversarial. An inquisitorial model might have been more appropriate.
606 Clann Report, 132.
607 As discussed by Catriona Crowe at https://thedublinreview.com/article/the-commission-and-the-survivors/.
608 Clann Report 134.
609 See Clann Project letter to Commission on failure to advertise the Investigation Committee http://clannproject.org/wp-content/uploads/Letter-from-Hogan-Lovells-to-MBHCOI_09-08-2016.pdf

them to submit evidence to the Investigative Committee in the form of a sworn affidavit.[610] Their right to participate in the fact-finding process was not respected as it should have been. The Commission had significant discretion to formulate its own rules and procedures.[611] When the Commission realised that the vast bulk of testimony had been taken by the Confidential Committee, it should have acted to address any unfairness.

Third, the Commission may have had concerns about the validity of evidence given informally about events which happened decades ago. It may have decided that evidence given to the Investigative Committee was more reliable for certain purposes because it had been tested by questioning or given under oath, whereas evidence given to the Confidential Committee was not 'tested' in this way. However, cross-examination is not the only way to test credibility. The Commission could have given some weight to evidence heard by the Confidential Committee where that evidence was repeatedly corroborated by other testimony.[612] It could also have acted to invite more witnesses to make submissions to the Investigative Committee. The Terms of Reference also empowered the Commission to identify any issues 'warranting further investigation in the public interest'.[613] In instances where a key question could not be answered on the available evidence, it was free to suggest what sort of further investigation might produce the necessary information.[614]

8.6 Our Approach to Oral Evidence

An acknowledgment at the end of the Confidential Committee Report says:

> in all groups, the depth and honesty of what witnesses revealed to the Committee about what had happened to them having left the mother and baby homes, was startling.

We begin from the presumption that all witnesses gave honest and authentic testimony. We have seen no reason to do otherwise.

We have made extensive use of Confidential Committee evidence to inform our general findings. This document makes frequent reference to the Report and works in dialogue with it.[615] We also make use of the evidence that the Commission itself used, but our approach means that we draw different conclusions.

At the same time, we recognise that the defects in the Confidential Committee testimony discussed at **(8.5)** mean that in places, where we rely on that testimony, we may be

610 The Scottish Child Abuse Inquiry has adopted this process, as has the New Zealand Royal Commission of Inquiry into abuse in care https://www.abuseincare.org.nz/library/v/119/practice-note-3-witness-statements.
611 Section 15, Commissions of Investigation Act, 2004.
612 On questioning and corroboration as relevant factors see by analogy s. 5(4) Commission to Inquire into Child Abuse Act, 2000.
613 http://www.irishstatutebook.ie/eli/2015/si/57/made/en/print.
614 We also note that the Confidential Committee Report was originally to be delivered in 2016. This was done because the number of people who came to the Commission was larger than expected. See 2016 Interim Report https://assets.gov.ie/26423/a59153f1fdd44776a5a4c69a83b3354b.pdf.
615 Our references to paragraphs of the original Report are not comprehensive – failure to reference a particular page or paragraph does not indicate dismissal of the evidence recounted in that part of the Report.

reproducing errors and omissions taken from the Report itself. We recognise that several people who testified to the Confidential Committee found that elements of their testimony were downplayed or omitted or misrepresented. Not quoting the testimony **(8.6)** only goes so far. We hope that ongoing judicial review cases, challenging how witness evidence was treated in the Report will generate appropriate remedies.[616]

The original Executive Summary summarises findings which are specific to individual institutions. The limitations of the evidence presented in the Report are such that we have not been able to do the same, especially because the Investigative Committee did not hear witness testimony in respect of every one of the 18 institutions, and the Confidential Committee report does not identify relevant institutions. Local projects, such as the Tuam Oral History Project may be better placed to do this kind of work.

In many places, testimony given to the Confidential Committee mirrors and corroborates evidence accepted by the Investigative Committee. It is often appropriate, therefore, to come to stronger versions of the original Report's weaker findings.

Often, inquiries of this kind[617] adopt the civil standard of proof[618] making general findings of fact on the balance of probabilities, and we have done so where the evidence allows it.[619] We have been flexible in our approach to the standard of proof where necessary.[620] For instance, a lower standard[621] may be appropriate in investigating mass human rights violations because witnesses may be inhibited from testifying in large numbers by shame, fear or stigma or because the nature of the abuse is such that there are few surviving witnesses and no meaningful or trustworthy written record. United Nations commissions and missions have generally adopted "reasonable suspicion" or "reasonable grounds to believe" as the

616 See further https://www.thejournal.ie/mother-and-baby-homes-high-court-cases-5467030-Jun2021/.

617 It is important to note that findings of state liability here are in respect of indirect involvement, not direct killing/torture etc. Thus the standard is not 'overwhelming' or 'clear and convincing' evidence.

618 We have found it difficult to identify the general standard(s) of proof the Commission used in coming to its findings. A "standard of proof" is a legal way of explaining how certain we must be before we can conclude that an allegation is proven. We can imagine the standard as falling somewhere along a spectrum between absolute certainty and pure conjecture. The Commission makes various findings of fact – both specific and general - on the basis of possibility,(See e.g. in the Executive Summary 13, 48, 64, 67, 68 and 'impossible to prove or disprove' 73) probability (See e.g. in the Executive Summary 10, 12, 30, 31, 43, 44, 45, 46, 49, 50, 56, 59, 60, 63, 67, 68, 69, 74 and 76), reasonable assumption, (See e.g. Chapter 29 11 and 16; Chapter 30 5 (assert rather than assume), Chapter 32 129, Chapter 34 48 and 49) presumption,('Presumably' is used over 100 times in interpreting evidence across the Report) or simply, on the basis of what the evidence does or does not 'suggest', 'show' or 'indicate' (See e.g. in the Executive Summary p9, 22, 23, 29, 36, 45, 47, 49, 50, 51, 52, 56, 57, 58, 59, 60, 64, 65, 66, 68, 72, 73, 74, 75). This suggests that the Commission adopted a flexible standard of proof, even if it does not spend time in unpacking that standard.

619 Often colloquially understood as something between 51% and 60% likelihood. More evidence supports the conclusion than contradicts it. It is proven 'on the preponderance of the evidence'.

620 Lower standards of proof are often used in administering redress schemes. For example, an applicant may not be required to prove that they were personally subjected to a particular form of abuse, if they were present in an institution were abuses of that kind were endemic, provided that there is no strong contradictory evidence available to the decision-maker. However, here we are interested in the evidentiary standards for assessing whether or not particular abuses were common in a long-standing system at a given point in time.

621 Evidence may also be useful to a Commission even where it is not strong enough to meet the civil standard. For example, if there is a 'real possibility' that something occurred, the Commission may want to bear it in mind in making recommendations for the future See e.g.https://www.childabuseinquiry.scot/resource-centre/standard-of-proof-chairs-decision/.

applicable standard.[622] We are not adjudicating on the 'truth' of any individual narrative presented in testimony to the Commission.

In deciding how to engage with statements made to the Confidential Committee, we have been influenced by the Northern Ireland Research Report into mother and baby "homes" and Magdalen laundries, published in January 2021.[623] This report was not produced by a Commission. However, it provides a helpful defence of the credibility of oral history evidence.[624] It makes five observations, which have informed our practice here:

1. An automatic preference for archival and documentary evidence[625] may reinforce unequal power relations, by allowing the voices of those who had power in the past to drown out the voices of those who had none.[626] This is a significant problem with the Report precisely because it did not make full use of the bulk of oral evidence available to it.[627] This sort of preference is difficult to justify in circumstances where records are known to be missing or incomplete.[628]
2. Archival evidence is not necessarily more reliable than oral history evidence. For example, the Report makes extensive use of past officials' impressions[629] of unmarried mothers in Chapter 8, while discounting living women's account of equivalent experiences. Institutional records are socially constructed, produced for distinct purposes and reflect the authors' interpretation and memory of events. An ordinary person's memory of their own experience, in some circumstances, may be franker than a specially prepared institutional account.[630] This is true of people who spent time in institutions as younger women or as children, as well as of religious or state agents.
3. Accounts of personal experience may corroborate one another; as where similar themes recur across multiple testimonies.[631] Those interviewed may also differ in their evaluation of similar experiences; some people may have a positive recollection of a practice which many others characterise in negative terms. These differences may

622 OHCHR, Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice, 62–63. This is a less demanding standard than "balance of probabilities". Applying this standard means acknowledging that other conclusions are possible, but that there is a 40-50% likelihood that one particular conclusion is correct. Drawing a conclusion on the basis of "reasonable suspicion" still requires a holistic assessment of a substantial body of credible objective evidence, including repeated and consistent reports of harm. The government may always decide to pursue further action on the basis of the Commission's conclusions.

623 After its publication, the Northern Ireland Executive announced an inquiry 'co-designed with victims and survivors and will give them the opportunity to influence the outcome of the investigation, how it should be conducted and who should participate in it.' See further https://truthrecoverystrategy.com

624See also https://oralhistorynetworkireland.ie/statement-re-mother-and-baby-homes-commission-june-2021.

625 Surprisingly, the Commission Report engages in detail with evidence drawn from newspaper, magazine and radio interviews with and about people who were in the institutions e.g. 12.15-12.19; 18.178 ;22-12.30.

626 Northern Ireland Report 18.

627 The testimony of nuns who worked at four institutions is reproduced at some length in the main Report. This includes Sister Sarto's perspective on the adoption process, which is not directly put into conversation with women's accounts of that process. In places, women's claims are put to the nuns and sometimes they are directly rebutted 18.239; 20.175. The majority worked in those institutions from the late 1960s onwards 1980s. One nun interviewed worked at Bessborough in the 1940s. Only the names of the Good Shepherd sisters who worked at Dunboyne are anonymised.

628 See Professor Mary Daly describing gaps in the available records http://clannproject.org/commission-report/oxfordtranscript/ at 22 and 25

629 At 8.1 the Report discusses these in the context of the 'absence of mothers' voices' from the records. See a similar remark on boarded out children at 11.141.

630 Northern Ireland Report 17.

631 Northern Ireland Report 18.

simply reflect the complexity of people's memories; different perspectives do not diminish the validity of individual views.

4. Oral history evidence is not unreliable merely because aspects of an account are vague or inconsistent. Understandably, people's accounts of traumatic experiences often have these qualities.[632] Therefore we do not draw negative inferences from reported gaps in individual accounts,[633] and we do not seek to contradict any individual witness's evidence.[634]
5. Contrary to the Commission's assertion that witness evidence was 'contaminated' by 'meetings with other residents and inaccurate media coverage',[635] oral history evidence is not less credible merely because it draws on collective or public narratives, such as those developed in advocacy groups. An individual should be permitted to draw on wider cultural scripts in explaining their own direct experience, without this undermining the credibility of their testimony.[636] We have not disregarded testimony merely because it reflects the arguments of an advocacy group, or indeed the arguments of a religious order. We have also drawn extensively on the submissions of the Clann Project to the Commission, because their submission is grounded in the testimony of affected people.

8.7 A Feminist Rights-based Analysis

Why human rights?

It is often said that we must evaluate past injuries according to the laws of the time. However, domestic law is not the only relevant source of past standards. We recognise that it is often the case that the law of a society in which serious human rights abuses occur will tolerate those abuses, and sometimes directly facilitate them. That a particular action was designated legal or illegal by domestic law at a given point in time does not, by itself, tell us whether that action was harmful. A rights-based approach is appropriate as a supplement to analysis of past domestic law.[637] Emphasising rights violations also directs attention to people's experiences. Instead of a national, regional or institution-level analysis, it can encourage a 'listening' approach which emphasises the details of the harms done to living people

Human rights standards and a transitional justice approach.

In preparing this document, by contrast, we recognise that the Commission was not a court, and that any redress offered to affected people is *ex gratia*; not determined by formal legal obligation. The scope of any transitional justice response is determined by political decisions

632 Northern Ireland Report 30. It is important to note that even patchy or partial oral testimony can contribute to the historical record if it is skilfully brought into conversation with other sources.
633 Contrast the Report's approach at 32.164 on trauma and women's 'denial' around forced adoption.
634 Contrast e.g. 13.148 contradicting a witness's evidence that she had a symphysiotomy as 'highly unlikely', without explaining why.
635 Confidential Committee Report 12. The Ryan Report http://www.childabusecommission.ie/rpt/ [5.29-5.40] made similar observations but was more specific about the origins of its concerns, noting that 'contamination' was also a feature of evidence given by members of religious orders.
636 Northern Ireland Report 18.
637 See further, Irish Human Rights and Equality Commission, Submission (20149 https://www.ihrec.ie/download/pdf/ihrec_designate_submission_on_mother_baby_commission_investigation_june_2014.pdf.

taken in the present. The Commission could have moved beyond minimum established legal standards in attributing responsibility for wrongdoing. The point of transitional justice processes is precisely to recognise that harmful actions tolerated in the past are deserving of reparation today.

Why feminism?

The interpretation of the Report presented here is legally rigorous and plausible, and we have been transparent about our methodological commitments. A feminist legal approach is appropriate[638] because the institutional structures examined in the Report were established and maintained to regulate and contain the sexual and reproductive lives of 'troublesome' women and girl and their children. Many of the injuries experienced in the institutions are profoundly gendered. They include systemic denial of reproductive autonomy, shaming of perceived sexual transgression, forced separation from family, deliberate discrimination against non-marital families, and violent or degrading treatment in pregnancy and before and after birth.

We have also taken account of some distinctive feminist approaches to legal analysis. These include:

- An intersectional approach that it is attentive to the ways in which race, class, religion, ethnicity and physical and psychosocial disability intersected with gendered exclusions.
- Analysing reproductive harms in terms of reproductive justice, rather than only of reproductive rights. This means paying attention to the structures and resources needed to found and raise a family in dignity, as well as to those needed to avoid pregnancy.
- Attention to agency and autonomy. In particular, recognising that oppressed people can resist State power, and that social norms are reinforced and remade in interactions between people.
- A suspicion of simplistic public/private divides, recognising that human rights also extend into 'private' homes and institutions.
- Attention to the gendered politics of responsibility, especially in the regulation of the family and of sexuality.
- Recognising that women who have been leaders in government, in society and in their professions have also been complicit in and benefited from gendered human rights abuses. The Report documents women in medicine, academic research, social work, religious orders and the civil service who contributed to punitive institutionalisation and forced family separation.

8.7 Law in Context

In the Report, legal analysis is often highly formalistic, and detached from lived experience. For example, we did not identify any instances in which the Report offers a direct legal

638 See UNHCHR, Integrating a Gender Perspective into Human Rights Investigations, https://digitallibrary.un.org/record/3802044?ln=en 63 advising that a gender perspective should be integrated throughout the investigation.

analysis of recurring issues arising from witness's accounts of their experience of adoption law. [639] Non-enforcement of existing law is a repeated theme in the Report, particularly in relation to adoption consent, and inspection of places where children were living and dying. In this new Executive Summary, where possible, we set the law in the context of reported lived experience.

We also try, where possible, to emphasise connections between systems. The women and children who were in institutions and their families often also had experiences, including repeated experiences, of abuses in other State-run institutions, including the industrial schools and the 'mother and baby homes'.

8.8 Law and Time

This new Executive Summary is attentive to relationships between law and time. This means being attentive to the relationships between experiences of abuse and formal legal change. We do not assume that the presence of a new law on the books meant an immediate or sudden change in women's and children's circumstances – this is clear, for example, from our analysis of the impact of Unmarried Mothers Allowance. At the same time, it is clear that the State's enforcement or creation of new legal models made a concrete difference to women and children, and to the lives they had after they were separated.

We are also cautious of linear and progressive narratives of legal change. Law reform may be regressive, ineffective, inadequate or have unintended consequences.

Finally, although the Report is framed as dealing with 'historic' abuse, most of the harms it documents took place within living memory. One of the institutions discussed – the Castle – closed in 2006.[640]

Past human rights standards.

The Report does not pursue a rights-based analysis of the evidence before it.[641] By avoiding a human rights analysis, the Report minimises harms which (i) violated constitutional and/or human rights standards at the time they occurred and/or (ii) are recognised as rights violations today.

Human rights standards changed significantly over the course of the period 1922-1998. In this document, we identify abuses which were clear rights violations at the time they took place, and we particularly emphasise older case law to this effect.

The 1937 Constitution emphasises rights. In incorporating human rights provisions into the Constitution (a relatively unusual practice at the time) the State was consciously setting standards of protection for its citizens. Abuses taking place before the European Convention of Human Rights was adopted by the Council of Europe in 1953 cannot be considered breaches of that Convention. However, breaches taking place in from 1953 onwards cannot

639 Chapter 32 does report some witnesses' accounts of consent to adoption, in Section E, 'Adoptions in Practice', but in very broad terms.
640 See Chapter 26.
641 See generally Chapter 36.

be disregarded. A more serious difficulty emerges in respect of international human rights instruments because even where Ireland signed relevant conventions in the early 1970s, [642] it did not ratify them until the 1980s and 1990s, or even later. By this time most institutions were closing or closed, though the systems of which they were a part remained in place in altered form.[643] Nevertheless, Ireland was a member of the United Nations when earlier Declarations of human rights principles were made,[644] that were later embodied in more effective and enforceable instruments. It is not unreasonable to take account of emerging common international standards in evaluating past wrongdoing, while at the same time recognising that the State was often reluctant to incorporate these standards into its own laws.

It is important to remember the role of power relations in the institutional recognition of rights. Some rights; for example, the right to freedom from detention, were established earlier in the development human rights law or constitutional law. By contrast, injuries to women and children have often not been recognised as legal wrongs deserving of concrete protection, and marginalised people have often been deprived of the resources necessary to bring their claims before the courts. As such, serious harms can go unrecognised by law for a long time.[645] If we simply note that the State took a long time to incorporate human rights standards into its own laws, without saying more, then we are excusing the State's past refusal to challenge and reform harmful and abusive practices.

Present human rights standards and dealing with past harm.

Establishing the human rights of affected people in the present is not always contingent on proving that the State recognised the harm they suffered as human rights abuse at the time it occurred. For example, today adopted people have an established right to identity, **(4.1)** and therefore they have rights of access to personal data, even if the law in force during their childhood provided for closed adoption. The State is also responsible for the continuing effects of some past violations.[646] For instance, by limiting access to personal data, today's Irish law has exacerbated some of the effects of past coerced family separation. Finally, the State may be obliged to investigate injuries which were not formally recognised as torture or inhuman and degrading treatment at the time they occurred.[647] The Commission's processes,

642 For example (and this is not an exhaustive list), Ireland signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1966. They came into force in 1976. Ireland did not ratify them until 1989. Ireland signed the Convention on the Elimination of All forms of Discrimination Against Women in 1973. It came into force in 1976 and Ireland ratified it in 1985.
643 See the Report's 'Timelines', which seems to encourage readers to draw the conclusion that the institutions closed before major human rights provisions become relevant.
644 Including the Declaration of the Rights of the Child, 1924; the United Nations Charter in 1945; the Universal Declaration of Human Rights in 1948; the Declaration of the Rights of the Child in 1959.
645 The Commission itself is not always so strict about time periods. For example, it calls the State's failure to address the status of illegitimacy until 1987 'an egregious breach of human rights' (Chapter 36 29) even though it was 1987 before the European Court of Human Rights recognised it as such Chapter 36 15-16).
646 Clann Report 125-128.
647 Coppin v. Ireland (available at: https://www.hoganlovells.com/en/news/un-torture-committee-delivers-preliminary-judgment-against-ireland-deciding-to-hear-magdalene-laundries-case-in-full). See 6.2 -6.3 in which a complaint relating to treatment between 1964 and 1968 was upheld even though Ireland did not ratify the Convention until 2002. See also Clann Report 127-128 on pre-ratification violations in international human rights law. The Commission acknowledges this point at Chapter 36 9-10 but does not reflect on the potential application of those principles to its own work. Article 13 of the Commission's Terms of Reference refer to the need for 'prompt and thorough' investigation in accordance with the State's obligations under international human rights law. http://www.irishstatutebook.ie/eli/2015/si/57/made/en/print.

and its approach to evidence, should have reflected the State's obligations to affected people under today's law.