



**ADOPTION RIGHTS ALLIANCE  
JFM RESEARCH**

**Adoption Rights Alliance, JFM Research, Clann Project  
Briefing Notes  
re. the Final Report of the  
Mother and Baby Homes Commission of Investigation**

*Important: Resources for survivors, adopted people and natural mothers on how to access information and records are available at this link:*

<http://clannproject.org/resources/>

On Tuesday 12 January 2021, the Irish Government will publish the Report of the Mother and Baby Homes Commission of Investigation (MBHCOI). The Government has stated that the Report is 3,000-4,000 pages long. We will be responding comprehensively once we have read the Report in full. We emphasise the importance of listening to survivors, adopted people and other people directly affected. We reiterate our concern, stated since 2015, that the MBHCOI has refused to allow mothers, adopted people or any other person affected by abuse to have access to their personal records held by the MBHCOI or to be heard in public.

Since 2015, the Clann Project (which is a collaboration between [Adoption Rights Alliance](#) (ARA), [Justice for Magdalenes Research](#) (JFMR) and Hogan Lovells International LLP) has been gathering witness statements of those affected by unlawful and forced family separation in Ireland. We look forward to the Government fulfilling its [promise of 28 October](#) last to implement our recommendations for personal data access and the

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creation of a dedicated National Archive of institutional, adoption and other 'care'-related records. The Clann Project's updated **recommendations to Government are outlined below**. These recommendations are consistent with and should be read with the [Recommendations](#) of the Collaborative Forum of Former Residents of Mother and Baby Homes.

We ask that you read the [Clann Project Report](#) and the [Press Statement accompanying the Clann Project Report](#) alongside the MBHCOI Report because the Clann Project Report addresses a wider range of family separation abuses than the MBHCOI. The Clann Report also explains the Constitutional and European and international human rights law responsibilities of the Irish State.

We emphasise the **absolute necessity for the Government's actions now to go beyond the narrow remit that it gave the Commission of Investigation**. The Commission was confined to examining only 14 Mother and Baby Homes and 4 County Homes. However, the Clann Project submitted a list of **182 institutions, individuals and agencies involved in adoption, informal 'adoption' and other forced family separation during the 20th century**.

The Government must restore the citizenship rights of **all** those subjected to unlawful deprivation of liberty, family separation, loss of identity, disappearance and unmarked burial, medical experimentation, violence, neglect and exploitation. **This includes adopted people as well as mothers and all family members affected by the coercive, secret adoption and family separation system that extended far beyond Mother and Baby Homes, and also includes children removed illegally and in some cases adopted in other jurisdictions**. Because the Irish State supported and failed to prevent these grossly discriminatory and systematic abuses, the State has clear and numerous legal obligations under Irish, European and international law to cease all ongoing abuse and to provide effective remedies.

## Recommendations to Government

As an absolute first step, in order for any other redress measure to have integrity, the Government must engage in truth-telling. **Access-to-records legislation must be introduced immediately. All people in Ireland must be guaranteed access to their birth certificate.** Mothers, adopted people and people placed in ‘informal’ care arrangements, and other relatives, must have **access to their personal data**. Those affected must also have access to the **administrative records** of the State and private institutions involved.

We look forward to the Government’s implementation of our recommendations, [accepted by An Taoiseach](#) Micheál Martin on 28 October last, for (1) the creation of a **National Archive of Institutional, Adoption and Other 'Care'-Related Records**, which affords survivors and family members full access to all personal information held by the State in accordance with best international practice, and (2) proper implementation of EU GDPR rights by all controllers of institutional, adoption and other ‘care’-related records.

The Government must also change litigation procedures so that it is **easier for people to access court**. A dedicated **criminal investigations unit and human rights-compliant coroner’s inquests** must also be established. Crucially, survivors of abuse must have **statutory rights to compensation and to all rehabilitative supports** that they require. National education and other memorialisation measures led by those affected must also be undertaken as part of a Transitional Justice process.

**The Government has stated its intention to issue an apology on Wednesday 13 January.** This is a most welcome and long overdue development. However, the forthcoming State apology must be inclusive—the people affected by this issue have waited too long for this moment and nobody can be left behind. The Clann Project is aware of at least 182 agencies, individuals and institutions that were involved in the forced separation of unmarried mothers and their children. **Thus, the State apology must**

**include people affected by all institutions and the traffic between them and not just those covered by the MBHCOI's Terms of Reference.**

**Moreover, the State must be clear on what is the focus of the apology - i.e., that the Irish State has maintained a closed, secret, forced adoption system which underpinned Ireland's treatment of unmarried mothers and their children.**

**This apology must include:**

- An apology for the shame and stigma imposed on unmarried mothers and their children through the State's policies and practices;
- An apology to adopted people who had to grow up with no knowledge of their origins;
- An apology to adopted people for the loss of their identity;
- An apology for the incarceration of women and children in Mother and Baby Homes and similar institutions;
- An apology to mothers and relatives whose children died in institutions due to abuse and neglect;
- An apology to adopted people who had to grow up in abusive families due to the lack of proper assessments and follow ups;
- An apology for the state policies and practices, and the fostering of a culture, that caused mothers and children to be separated from each other by forcing and coercing women into relinquishing their babies;
- An apology to natural fathers who wished to raise and/or have contact with their children but were denied the opportunity to do so;
- An acknowledgement of the effects on past and future generations of families affected by the system;
- An apology to mothers who were denied knowledge of their rights, which prevented them from giving informed consent;
- An apology for the continued stigma and discrimination imposed on adopted people and natural parents through the lack of statutory rights and services.

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

**Our recommendations are summarised as follows:**

**1. ACCESS TO RECORDS LEGISLATION**

- a) Unconditional access to birth certificates for adopted people and people placed in informal care arrangements
- b) A clear statutory right of access to one's own 'care' or adoption file and to records concerning a family member who died in 'care' or adoption
- c) A statutory right of access to State records for survivors, adopted people and natural mothers.
- d) Measures to safeguard and centralise records
- e) An enhanced tracing service
- f) Placement of the National Adoption Contact Preference Register (NACPR) on a statutory footing
- g) The Right to Know you are Adopted

**2. EXPLICIT RIGHTS FOR PEOPLE ADOPTED OVERSEAS**

**3. PROPER IMPLEMENTATION OF EU GDPR RIGHTS**

**4. REDRESS AND REPARATIONS**

**5. ACCESS TO COURT**

**6. DEDICATED CRIMINAL JUSTICE UNIT & HUMAN RIGHTS-COMPLIANT CORONER'S INQUESTS**

**7. REPEAL OF 'GAGGING' ORDERS**

- a) Section 28(6) Residential Institutions Redress Act 2002 must be amended
- b) Section 11(3) Commissions of Investigation Act 2004 must be amended

## 1. ACCESS TO RECORDS LEGISLATION

In November 2019, ARA published and submitted to Government an [alternative Adoption \(Information and Tracing\) Bill](#) (drafted by Claire McGettrick, Dr Maeve O'Rourke, Reader Máiréad Enright and Dr James Gallen) which adapts the Government's 2016 Bill to provide for:

a) **Unconditional access to birth certificates for adopted people and people placed in informal care arrangements**

Since 1864 all Irish birth certificates have been publicly available in the General Register Office. Adopted people are the only people in Ireland who are denied the ability to retrieve their own birth certificate, because institutions and individuals in control of adopted people's files (including TUSLA and the Adoption Authority of Ireland) refuse to inform adopted people of their name at birth or to provide adopted people with their unredacted adoption / early life file.

The continuing refusal to tell adopted people their name at birth, or to provide them with their publicly registered birth certificate, is in our view **unconstitutional and contrary to the EU General Data Protection Regulation (GDPR)**.

In February 2020 the Court of Appeal [decided](#) in *Habte v Minister for Justice and Equality* [2020] IECA 22 that there is an unenumerated Constitutional right 'to have [one's] identity correctly recognised by the State'. Mr Justice Murray explained (at para 31):

*The trial Judge rooted this conclusion, in part, in the widespread recognition of the right in international instruments (Article 24(2) of the International Covenant on Civil and Political Rights, and Article 7 of the Convention on the Rights of the Child) and the view that this right both necessarily inhered in Article 8 of the European Convention on Human Rights and was a corollary to the right to protection of data provided for in Article 8 of the Charter on Fundamental Rights of the European*

*Union (in which connection the Judge further referred to section 74(3) of the Data Protection Act 2018 and [section 9 of the Freedom of Information Act 2014](#)). He said (at para. 44):*

*‘...there is an implied constitutional onus on the State arising from the inherent dignity of the individual referred to in the Preamble and the personal rights of the citizen in Article 40.3 of the Constitution to accurately record and represent central aspects of personal identity.’*

As explained in this [Legal Opinion](#), the outdated decision in *IO’T v B* [1998] 2 IR 321 creates no barrier to the Oireachtas legislating to provide automatic access to birth certificates. *IO’T v B* was decided in a legislative vacuum, did not address the issue of access to publicly available birth certificates, and does not affect the position expressed by the Supreme Court in *Fleming v Ireland* [2013] 2 IR 417 that legislation ‘concerned with the implementation of public policy in respect of sensitive matters of social or moral policy’ will attract a particularly strong presumption of constitutionality.

Under EU law (which is supreme over any conflicting Irish law), a person’s name is their personal data to which they have a right under Article 15 GDPR. According to Article 23 GDPR and the European Data Protection Board’s related [guidance](#), the fundamental right of access to one’s personal data can lawfully be restricted only if there is clear legislation that allows for such restriction and the restriction is a necessary and proportionate measure in a democratic society and respects the essence of the fundamental rights and freedoms at issue. The withholding from adopted people of their name at birth does not meet any of these requirements. It is arbitrary, discriminatory, unnecessary and disproportionate.

The [Legal Opinion](#) mentioned above concludes that a proportionate way of balancing the rights of adopted people and their parents would be to properly resource the voluntary National Adoption Contact Preference Register (NACPR) while providing personal data

access so that all relatives are enabled to manage their own family relationships without unnecessary and arbitrary State coercion. This is what ARA's draft Bill proposes.

Adopted people have been categorised as a 'threat'; the Irish State has consistently taken a punitive and restrictive approach to providing them with their personal data. Rather than advocating reparation for a closed and secret adoption system, Government proposals have framed adopted people as untrustworthy individuals from whom their mothers need to be protected. No other cohort of Irish citizens is discriminated against in this manner and it is time to resolve this issue once and for all. Since 2001, the Government has made [a number of unsuccessful attempts](#) to legislate for access to records for adopted people. Each of these Government schemes has prescribed (unwarranted) measures designed to ensure that adopted people do not infringe on their natural mothers' privacy. These proposals have been rejected by adopted people as gross infringements of their rights.

The evidence simply does not support the 'adoption myths' upon which previous Government proposals have been based. [Click here](#) for a briefing note from Claire McGettrick which demonstrates how this is the case. The briefing note also outlines (i) how adopted people can already obtain their birth certificates, (ii) how they are marginalised by the current system, (iii) what legislative proposals would be acceptable to them, and (iv) a simple short-term solution which would allow adopted people to access their birth certificates.

It should not be forgotten that adoption (and 'informal' adoption) during the 20th century in Ireland was generally forced and frequently illegal. This closed, secret system obliterated the identities of thousands of adopted people. The Irish State is obliged to remedy these abuses, rather than continuing to unjustifiably and unlawfully deny adopted people their identity.



**b) A clear statutory right of access to one's own 'care' or adoption file and to records concerning a family member who died in 'care' or adoption**

The Government must ensure a clear pathway for mothers, adopted people and all those placed in care arrangements to access their own care and adoption files and for all relatives to access information about the fate and whereabouts of their family member(s) who died while in an institutional or other 'care' setting. Notably, such a right is not included in the Government's current General Scheme of Bill on exhumations.

**c) A statutory right of access to State records for survivors, adopted people and natural mothers.**

Pending the creation of the National Archive of Institutional, Adoption and Other 'Care'-Related Records, we request that the Government establishes a statutory right of access to State records concerning the historical institutional, adoption and 'care'-related system (which would of course be subject to the usual provisions to protect the rights of individuals in their private capacity).

The *Freedom of Information Act 2014* establishes a general right of access only to information created after October 1998 (or 2008 for some public bodies). The exceptions to this temporal limitation are extremely narrow. The argument has been repeatedly made (e.g. by Minister Joe McHugh when introducing the Retention of Records Bill 2019 and by Minister O'Gorman in relation to the Commission of Investigation (Records) Act 2020) that historical abuse inquiry archives contain only copies of State files that remain in their original form in government departments and elsewhere. It is necessary to give this assurance real meaning, in the form of a statutory right of access.

**d) Measures to safeguard and centralise records**

In October, we warmly welcomed the Government's promise to establish a national archive of records related to institutional trauma during the 20th century. This is a hugely

important opportunity for Ireland to establish a human rights-based, world-leading inclusive approach to acknowledging and documenting our history of institutional and gender-related abuse. However, the State must depart from previous habits of excluding and compartmentalising people. **Nobody can be left behind.** The legislation underpinning the national archive should include in its remit the provision of information to survivors and adopted people.

#### e) **An enhanced tracing service**

The Government should immediately put in place an enhanced tracing service for those who wish to avail of it. However, we have grave concerns about TUSLA's current involvement in the existing service. TUSLA operates legally troubling and discriminatory practices, including defining adopted people's birth name as third party data and undertaking 'risk assessments' of all adopted people who request their records. Indeed, the Collaborative Forum of Former Residents of Mother and Baby Homes, which was established to advise the Government, has repeatedly stated that TUSLA should have no further role in adoption information and tracing. Therefore, it is absolutely imperative that:

- The tracing service is operated according to international best-practice models, including a robust complaints mechanism.
- The tracing service is adequately resourced.
- All research relating to adoption traces is carried out by trained genealogists and not social workers.
- If two or more service users state that they wish to be put in direct contact with each other with no further intervention or assistance from TUSLA or any other State agency, they are not obstructed from availing of this option.
- The tracing service is regularly advertised internationally and on social media in order to facilitate people who were exported from Ireland for adoption as children.

- The Government resources an independent assessment of how TUSLA is interpreting the GDPR rights of adopted people, their natural relatives and others affected by so-called historical abuses.

We are extremely concerned that TUSLA is not currently considered to be an ‘accredited body’ as prescribed under the *Adoption Act 2010*, and it is therefore unregulated in its role as an adoption service provider. Section 126 of the *Adoption Act 2010* must be amended by inserting the following:

*(5) Tusla: The Child and Family Agency shall be registered as an accredited body and thus regulated by the Adoption Authority.*

**f) Placement of the National Adoption Contact Preference Register (NACPR) on a statutory footing**

Since the launch of the NACPR in 2005, ARA and its predecessors have called for the Register to be put on a statutory footing. Unfortunately, despite ministerial promises of regular advertising both in Ireland and abroad, the NACPR has not been advertised since it was first launched, nor has it ever been placed on a statutory basis. A contact register is only ever as good as its advertising, and thus the NACPR has never reached its full potential. If prospective registrants do not know of the existence of the NACPR, they will not know to register, and this can lead to registrants believing that the other party is not interested in meeting them. Legislative measures should also adhere to the following:

- The AAI has operated the NACPR since 2005 and it is imperative that the institutional memory and expertise developed since then is maintained. For this reason, and for the reasons set out above, **under no circumstances should the NACPR be handed over to TUSLA.**
- If two or more registrants have been matched with each other on the NACPR and they wish to be put in direct contact with each other with no further intervention or

assistance from the AAI, Tusla or any other State agency, they should not be obstructed from availing of this option.

- If two or more registrants have been matched on the register and they do not wish to be reunited through TUSLA, another service must be offered to them.
- The NACPR must be adequately resourced.
- The NACPR must be advertised both nationally and internationally at least every two years.
- The NACPR must be advertised regularly on social media platforms.

#### **g) The Right to Know you are Adopted**

The State should ensure that it is every adopted person's right to know they are adopted, by amending existing legislation to remove any provisions that hide an adopted person's status. As evidenced in the witness testimony set out in the [Clann Report](#), many adopted people grew up not knowing they are adopted, only to discover this fact later in life when, for example, trying to obtain a passport. We recommend that a statutory provision be introduced immediately to provide the right for adopted people to know they are adopted.

## **2. EXPLICIT RIGHTS FOR PEOPLE ADOPTED OVERSEAS**

People who were adopted from Ireland to America and other overseas locations should be included in any information and tracing services provided by the State.

A **guarantee of Irish citizenship, and assistance to claim such citizenship**, should be provided.

For people who are interested, **repatriation options** should be made available. We also recommend that the State, in conjunction with the equivalent authorities in the US and elsewhere, provide subsidised 'homeland tours' for people who were sent to the US for

adoption. Doing so would be consistent with the recently published [Department of Foreign Affairs' Ireland's Diaspora Strategy 2020](#).

### **3. PROPER IMPLEMENTATION OF EU GDPR RIGHTS**

In October 2020, the Government [promised](#) additional resources to ensure the immediate implementation of GDPR rights. We call for the swift recruitment of data protection law expert committees, who are independent of government Departments and TUSLA, to administer the data protection obligations of the Department and TUSLA. In addition, independent expertise should also be provided to the Adoption Authority of Ireland and other controllers of adoption and institutional records.

Subject to the advice of independent experts, we believe that it is necessary to create and resource a dedicated unit of the Data Protection Commission, with a dedicated Advisory Committee including those with direct experience and human rights expertise, to ensure in relation to institutional, adoption and 'care'-related records:

- Cataloguing / identification of the location of all archives of historical institutional, adoption and care-related records
- Major improvements in data controllers' practice, including through published guidance and proactive monitoring and investigating of such practice
- The provision of accessible information and assistance to data subjects (bearing in mind the varied and particular needs of those affected)
- The provision of efficient and transparent appeals from contested decisions of data controllers
- Detailed recommendations, following consultation with those affected, on future elements of the legislation to underpin the promised National Archive of Historical Care-Related Records

#### 4. REDRESS AND REPARATIONS

Due to the State's direct involvement in, oversight of and knowing failure to prevent gross and systematic human rights violations in the adoption system, and in Mother and Baby Homes, County Homes and related institutions, the Irish Government is obliged by Irish Constitutional law and European and international human rights law (including international customary law) to provide effective remedies and reparation.

The elements of reparation which the Government must provide, according to international [human rights law](#), include:

- Compensation, proportional to the gravity of the violations and the harm suffered,
- Rehabilitation, including medical and psychological care as well as legal and social services,
- Unfettered access to information and archives in order to establish the facts and the fate of the disappeared,
- An official apology--as recommended above,
- Judicial and administrative sanctions against individuals responsible for abuse,
- Commemorations and tributes to those who suffered, and
- Inclusion of an accurate account of the human rights violations that occurred in educational material at all levels and in the training of state agents.

The Government must implement the [Recommendations](#) of the Collaborative Forum of Former Residents of Mother and Baby Homes, which relate to (1) identity and information, (2) health and well-being supports, and (3) memorialisation and personal narratives.

We reiterate the need for the statutory information rights explained above, as a necessary form of reparation. Furthermore, the Government must amend civil and criminal justice procedures as follows:

## 5. ACCESS TO COURT

International [human rights law](#) confirms that ‘statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.’

The State must amend the Statute of Limitations 1957 to explicitly grant discretion to the courts to disapply the normal limitation period where it is in the interests of justice. A precedent for such an approach is to be found in England. There, section 33 of the Limitation Act 1980 permits a court to disapply the statutory time period where *‘it would be equitable to allow an action to proceed.’* In coming to a decision whether to disapply the limitation period, a court is required to consider a number of factors, including the level of prejudice that would be caused to a plaintiff were the statutory limitation period to apply and the level of prejudice that would be caused to the defendant were the court to lift the limitation period.

In the meantime, the State must direct the Chief State Solicitor and State Claims Agency not to plead the Statute of Limitations in so-called ‘historical’ institutional abuse cases. The Courts will retain their residual discretion to refuse to allow cases to proceed where it would not be in the interests of justice.

The State should also reform the civil legal aid scheme and rules of court procedure to enable multi-party litigation in line with the 2005 [Law Reform Commission Report](#).

The availability of evidence and the opening of archives is vital to individuals’ ability to take claims to court if they wish to do so.

## 6. DEDICATED CRIMINAL JUSTICE UNIT AND HUMAN RIGHTS-COMPLIANT INQUESTS AND EXHUMATIONS

### a) Criminal justice and Garda accountability

A standalone unit within An Garda Síochána, made up of specially trained officers and supported by the Garda Síochána Ombudsman Commission (GSOC) where there is any suggestion of Garda involvement in criminal behaviour, should be established and tasked with investigating all suspected and alleged criminal offences concerning institutional and family separation abuses during the 20th century. In addition, a special unit of GSOC should respond to complaints regarding Garda misconduct short of criminal allegations.

The State should ensure that all individuals affected by institutional and family separation abuses are provided with their full entitlements to information and support under the EU Victims Directive and associated Criminal Justice (Victims of Crime) Act 2017. Crucially, the State should provide legal aid to victims and survivors so that they can be advised of their legal entitlements; as noted by [McDonald](#), Article 47 of the EU Charter states that 'legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice'.

In addition, Section 42 of the Garda Síochána Act 2005 should be amended to provide for special inquiries established under this provision to draw conclusions in respect of criminal conduct allegedly perpetrated by members of An Garda Síochána, **including** former members of An Garda Síochána, in the course of their duties and/or in respect of institutional and family separation abuses. In particular, individuals tasked with chairing such inquiries should be provided with the power to furnish investigative files to the Director of Public Prosecutions and/or to make recommendations regarding prosecutions of members for alleged criminal behaviour.

### b) Human rights-compliant inquests and exhumations

The jurisdiction of the Coroner is and should remain the primary basis for addressing human remains related to institutional burials. Under existing legislation inquests are clearly required, as per [section 17 of the Coroners Act 1962](#). Death by neglect or



maltreatment falls under ‘unnatural manner’; ‘unknown causes’ may apply in many cases, but more broadly, the obligation to hold an inquest generally applies to instances where an individual is in the care of the State.

The government’s proposal for a statutory Agency for burials can be designed in a way that is compatible with and subject to the Coroner’s jurisdiction. It is completely unacceptable that the Government’s General Scheme of Bill regarding institutional burials, published in December 2019, proposed to disapply the powers of the Coroner in relation to Tuam and other exhumation sites.

The Coroner system must be reformed in order to comply with the European Convention on Human Rights. The system at present, even as amended, lacks independence (due to its heavy reliance on An Garda Síochána outside of Dublin to conduct its work); it also lacks transparency, promptness, accessibility and consistency. Variation in procedures is apparent between each district. There is no training for coroners, and indeed the majority of coroners in Ireland are in acting positions. Families experience vast difficulties in being permitted to present their own experts, and the ability of inquests to present narrative verdicts has not developed apace with neighbouring jurisdictions. In addition to human rights and procedural reforms of the coroners system, a special coroners unit needs to be established, with a team of coroners, a full team of staff, investigators, lawyers, and a team of pathologists in order to conduct such inquiries, and any required inquests, in a timely fashion which respects Article 2 ECHR requirements.

It is important to note that in addition to the coronial system, the government has also established the Independent Child Death Review Group, which examines and makes recommendations relating to the deaths of children in or following State care. Its most recent report provides an overarching [review of deaths from 2000-2020](#). This approach already indicates an ability to institute special mechanisms and groups to review such deaths.

## **Regarding the Government's proposals for exhumations:**

The 2017 Expert Technical Group report suggested that a multi-disciplinary body of experts would be an appropriate mechanism to address the complex tasks involved in exhumation, examination and identification of infant human remains. Such an approach can be consistent with the exercise of the coroner's jurisdiction. Section 33 of the Coroners Act 1962 Act provides that a coroner may request the Minister for Justice to arrange post-mortem examination of the body by any person appointed by the Minister; special examination by way of analysis, test or otherwise. These broad powers could cover the use of appropriate national and international expertise and best practices and processes related to exhumation and DNA analysis, while retaining coronial jurisdiction.

Several other provisions of the Government's General Scheme of Bill could be achieved through small amendments via Miscellaneous Provision Acts. Part 6 of the Bill could be achieved by amendment to existing DNA legislation rather than this bespoke process. Some provisions, according to the General Scheme itself, could be provided for in existing legislation. Head 48(3) states: The DNA (Historic Remains) Database may be a standalone database or may use the DNA Database System established under the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014.

It would be possible to create a permanent and human rights compliant Agency by legislation that would address irregular burials in a victim-survivor centred way and one that would effectively cooperate and align with access to records and existing coronial and criminal investigative jurisdictions.

See [here](#) for a record of the Clann Project's efforts in 2018 to assist those affected to respond to the Government's consultation on the Tuam burial ground.

## 7. REPEAL OF 'GAGGING' ORDERS

### a) Section 28(6) Residential Institutions Redress Act 2002 must be amended

The colloquially named 'gagging order' in section 28(6) of the Residential Institutions Redress Act 2002 has caused untold harm to survivors of industrial schools, despite the provision never being used to prosecute a survivor for speaking in public of the matters which they revealed to the Redress Board. For more on the impact of the gagging order, please see the [2017 report](#) of the voluntary organisation *Reclaiming Self* to the UN Committee Against Torture (in particular p17, 23-24), and Mick Peelo's two-part documentary for RTE in March 2020, [Redress](#).

Section 28(6) states as follows:

*A person shall not publish any information concerning an application or an award made under this Act that refers to any other person (including an applicant), relevant person or institution by name or which could reasonably lead to the identification of any other person (including an applicant), a relevant person or an institution referred to in an application made under this Act.*

Under section 28(9), contravention of section 28(6) is a criminal offence with a maximum penalty under section 34 of a €25,000 fine and/or 2 years' imprisonment. In our view and the view of many lawyers whom we have consulted, this section on its face contravenes the guarantee of freedom of expression in Article 40.6.1 of the Constitution and Article 10 ECHR. It is unnecessary and disproportionate given the other legal protections available to alleged wrongdoers (e.g. defamation law and the protection from civil suit that the RIRA 2002 provides once a survivor has accepted a settlement).

Section 28(6) of the RIRA 2002 must be amended to clarify that 'a person' refers to those working for the RIRB and Review Committee and not survivors.

**b) Section 11(3) Commissions of Investigation Act 2004 must be amended**

The current section 11(3) of the 2004 Act criminalises the disclosure by any person of evidence or documents given to the Commission in private, on pain of a maximum penalty of a €300,000 fine and/or 5 years' imprisonment.

We believe that this provision, on its face, is in clear violation of the right to freedom of expression of those who experienced abuse, who should be enabled if they wish to contribute testimony or documents to the national historical record or otherwise to publish their accounts. Furthermore, as recommended above, this provision should be amended so that all personal data given to the Commission in private is readily available to the individuals who own it as required by the GDPR, and State and other *administrative* records are publicly available (anonymised as necessary).