



Adoption Rights Alliance Submission
to the
Committee on Children, Disability, Equality and Integration
on the General Scheme of the Birth Information and Tracing Bill 2021
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INTRODUCTION

Adoption Rights Alliance was founded in 2009 by Claire McGettrick and Susan Lohan, as a direct continuation of the advocacy and advice group “the Adopted People’s Association” (APA)¹, where they were members of the steering committee.

Both groups were established in response to the denial of information rights for adopted people and due to the complete absence of state services for any adopted person seeking information on their identities; families; early lives; circumstances behind their trafficking overseas; their involvement in illegal medical experiments; an explanation regarding their illegal adoption etc.

Mari Steed, born in the Bessborough Mother and Baby Institution in Cork and trafficked to the US aged two and a half, also previously a member of the APA’s steering committee, is the group’s US Co-ordinator.

With a combined experience on the flawed Irish Adoption model of many decades, all three have been members of or remain members of various advisory groups on Irish Adoption either at the Adoption Board; the Adoption Authority of Ireland (AAI); the Department of Children, Equality, Disability, Youth and Integration (DCEDIY)².

In 2014, ARA founded “the Philomena Project” with Philomena Lee and her daughter Jane Libberton following the international outcry at Ireland’s Forced Adoption regime depicted in the Oscar nominated film *Philomena* and have given talks on the subject nationally and internationally including at the Vatican.

In 2015, ARA and JFM Research (JFMR) jointly established the Clann Project³, where information on and by Ireland’s Unmarried Mothers and their Children, provided by the individuals themselves was gathered and collated for the production of a ground breaking report on the experiences of all those affected by institutional abuses and Ireland’s closed, secret, forced adoption system.

Repeatedly since 2001, ARA members have made formal submissions to various Cabinet Members, Ministers for Children, Joint Oireachtas Committees, Opposition Members, Special Rapporteurs, the UN etc.

We hope that our brief and at times personal contribution, to this 2021 pre-legislative scrutiny of the proposed “2021 Birth Information and Tracing Bill”, will be given careful consideration and we urge all members of the Committee to study in detail the very comprehensive submission by our Clann colleagues Claire McGettrick, Dr Maeve O’Rourke, Assoc Prof Katherine O’Donnell and Loughlin O’Nolan from Article Eight Advocacy⁴.

¹ The APA was also known as “AdoptionIreland”. Thanks to funding from Tesco Ireland, in 2000, the APA set up Ireland’s first Contact Preference Register, which was augmented by the non-statutory “National Adoption Contact Preference Register” (NACPR) based at the Adoption Board (later called the Adoption Authority of Ireland) 5 years later in 2005.

² Susan Lohan was a member of the Stakeholder Advisory Group to the Adoption Board from 2003-2009; has been a member of the Collaborative Forum at DCEDIY since 2018; Mari Steed served on the DCEDIY selection committee to establish the Collaborative Forum informing the Commission of Inquiry.

³ For a full breakdown of the Clann Project and Report, see clannproject.org

⁴

<http://clannproject.org/wp-content/uploads/Clann-Project-Submission-to-Oireachtas-Childrens-Committee.pdf>

IMPORTANT NOTE

While we refer throughout this submission to ‘adoption,’ this submission reflects the rights and issues which impact any individual fostered, boarded-out, raised in institutional care, illegally registered at birth, illegally or “informally” adopted, or pre-1952 Adoption Act.

THE IRISH ADOPTION SYSTEM - A TIMELINE OF DENIAL FOR SURVIVORS

Despite it being almost 70 years⁵ since the first legally⁶ adopted Irish person was denied their most basic human rights of knowing their identity, family and history, despite the introduction of several further Adoption Acts, including a consolidation of all existing acts and the creation of the Adoption Authority of Ireland (AAI) in 2010⁷, despite national and international calls for the identity rights of adopted people (and others born/detained in various institutions) to be vindicated, successive Irish governments have failed to do so.

It is a commonly held view amongst commentators and amongst those who have been formally or informally, legally or illegally adopted that those same governments woke up in the 1990's to realise that the Irish State, in concert with various churches, had overseen a decades long system of forced adoption, in contravention of both national and international statute, to which the Irish state was obligated to follow.

By denying the human rights of those directly affected by the adoption system, they sought to limit the numbers of people, who would uncover the dark underbelly of how Ireland had treated the most vulnerable mothers and children based on religious and moral prejudice.

The author of *Banished Babies*⁸, Mike Milotte, quotes the view of most adopted people, that we believe it is the unstated intention of Irish governments to “deny till they die”. Since 1997, that view has not changed but has hardened. Any doubts about governmental intentions have been blown up by the many discriminatory and simply vitriolic provisions of previous bills, commencing with the suggested provision of the “2001 Adoption Information and Tracing Bill⁹”, that adopted people would be criminally prosecuted for contacting their natural parents and upon conviction could face a year's imprisonment and/or a fine of IRE5000.

A 2015 bill¹⁰ referred to adopted people representing a “danger of death” and required that adopted people would be forced to sign a “Statutory Declaration”, promising not to contact their natural parents, in exchange for their own birth certs. The 2016 Bill also copied the suggestion that the natural parents of adopted people could exercise a veto¹¹, citing “compelling reasons” preventing the release of an adopted person's own birth certificate to them.

An overview of the attempts to “legislate” for rights that adopted people should freely enjoy may be found at <http://adoption.ie/background-to-adoption-information-access-in-ireland/>.

⁵ Many individuals who had been informally adopted prior to January 1st, 1953 were “grandfathered” under the 1952 legislation so many adults were legally adopted after the new Act became law.

⁶ Formal or legal adoption was introduced in Ireland by the passing of the 1952 Adoption Act – see <http://www.irishstatutebook.ie/eli/1952/act/25/enacted/en/print>

⁷ The 2010 Adoption Act was a consolidation of all existing acts and it also included the creation of the Adoption Authority of Ireland (AAI) in 2011. See <http://www.irishstatutebook.ie/eli/2010/act/21/enacted/en/html> for the 2010 Adoption Act.

⁸ In his 1997 book, *Banished Babies*, former RTE journalist, Mike Milotte, provides a detailed history of how an illegal trade in the trafficking of babies and children operated (primarily to the USA), using documents unearthed by the former head of the National Archives, Catriona Crowe.

⁹ The “2001 Adoption Information and Tracing Bill”, was introduced by Mary Hanafin as Minister for Children at the Department of Health, headed by Micheal Martin.

¹⁰ Dr James Reilly as Minister for Children launched the “2015 Adoption Information and Tracing Bill” in which adopted people we referred to as presenting “a danger of death”.

¹¹ The 2016 Bill introduced by Minister for Children Katherine Zappone even proposed that where a natural parent was deceased, that other (wholly unconnected) family members could exercise the power of veto.

THE COLLABORATIVE FORUM REPORT

In 2018, having promised the publication of the final report of the *Commission of Investigation into Mother and Baby Homes and Certain Related Matters in early 2019*¹², former Minister for Children, Katherine Zappone embarked on a substantive PR exercise ahead of the promised publication by seeking applications from various survivor groups, their families and advocates¹³ to work and report on some of the key issues identified during the “facilitated discussions” held in 2017. This new group was called the Collaborative Forum¹⁴ and was given cabinet approval in May 2018.

Nineteen individuals from across the various survivor communities, including a representative from Adoption Rights Alliance met in July 2018 to be briefed on 3 core areas, on which the Minister wished to have a report and crucially Recommendations.

In December 2018, the Collaborative Forum¹⁵ produced a detailed report, which called unequivocally for unfettered access for adopted people (and others) to the entire suite of their personal information, held in both state and private archives and for the provision of legislation and services to facilitate that access.

Key amongst the Recommendations¹⁶ was the creation of a “One-stop Shop”, for survivors of all forms of boarding out, temporary fostering, trafficking and or adoption to access all of their personal information but importantly also to the administrative files of the institutions – state or private – which concerned their period of detainment, as mothers, as children, particularly those who were unaccompanied in an institution as a result of being earmarked for adoption.

For reasons that remain unclear, the government of 2016 -2020 refused to publish the *Collaborative Forum Report*, choosing only to publish the Recommendations, which were also given in full to the Commission of Investigation, who included some in their own final report.

Unseal the Archive Campaign

Events which occurred in October 2020 also contributed to this latest attempt to legislate for information rights for adopted people and those born/detained in certain state and private institutions, based on their mothers’ marital status at the time of their births.

Firstly, the attempt by Minister for Children, Roderic O’Gorman, to legislate for *the Child and Family Agency TUSLA* to receive the digital archive of *the Commission of Investigation into Mother and Baby Homes & Certain Related Matters* at the winding up of the Commission, where it would be sealed for 30 years and secondly to suggest that the people whose most vital personal information, contained within the archive, would not be allowed to make Subject Access Requests to the Department of Children, Equality etc until 30 years had elapsed.

¹² The Commission should have reported in early 2017 but secured a last minute extension of 1 year from Minister Zappone.

¹³ <https://assets.gov.ie/26271/bcced757a1064b1db615fbd3e9b7ef30.pdf>

¹⁴ See <https://assets.gov.ie/26509/151c60db4c104709b10237016efdd77f.pdf>

¹⁵ Members of the Collaborative Forum received no payment for their work on the report

¹⁶ See

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/25774/085e9ecf9bb4495c94b8a21b4c143998.pdf#page=1>

Once the Data Protection Commissioner, Helen Dixon, rejected the advice of former AGs¹⁷ and confirmed the accuracy of independent legal opinions that adopted people had the same information access rights as all other citizens, legislation had to be produced.

FUNDAMENTALS FOR THE BIRTH INFORMATION AND TRACING LEGISLATION¹⁸

1. Unconditional access to birth certificates and 'birth information' for everyone, regardless of natural parents' contact preferences. Nobody can be left behind.
2. A clear statutory right of access to one's own 'care' or adoption file (including as a mother) and to records concerning a family member who died in 'care' or adoption.
3. The file, the whole file and nothing but the file: No discrimination when accessing personal data, and a strong presumption towards openness, in light of the fact that the personal data in question relates to injustices to which mothers, adopted people, others placed in 'care' and families were subjected.
4. A statutory right of access to the administrative records, wherever they are held, of all adoption agencies, institutions, State bodies and others involved with forced family separation for natural mothers, survivors, adopted people and others placed in 'care'.
5. A clear commitment in the legislation to the safeguarding and centralisation of all relevant records in the National Memorial and Records Centre.
6. An enhanced tracing service, run by independent genealogists, to include a robust complaints mechanism and training for social workers and others involved in the service.
7. The new statutory based Contact Preference Register should include all registrations from the National Adoption Contact Preference Register (NACPR), and the contact preference options from the NACPR should be reinstated.
8. The right to know you are adopted.
9. Repeal of 'gagging orders'.
10. Information rights for adopted children and their natural parents.

¹⁷ <https://www.irishexaminer.com/news/arid-40070054.html> "Government breaking the law by sealing mother and baby homes records, says DPC"; Irish Examiner 23rd October 2021

¹⁸ As compiled by our colleagues at the Clann Project:

<http://clannproject.org/wp-content/uploads/Clann-Project-Submission-to-Oireachtas-Childrens-Committee.pdf>

Unconditional access to birth certificates is NOT provided for

- Section 8 of Head 3 states that when the General Register Office or a relevant body receives an application for a birth certificate, the GRO or the relevant body will ask the Adoption Authority of Ireland (AAI) for information regarding any contact preference registered by a natural parent named on the birth certificate. Where a 'no contact' preference has been lodged, the applicant will have to attend an Information Session before their birth certificate will be released to them.

For many adopted people, the prospect of being lectured to by a TUSLA¹⁹ social worker on the privacy rights of their natural parent(s) is anathema to them, when the same agency has disregarded their privacy rights²⁰ for years and has referred to them as agents of harm.

That fact that there is no reciprocal provision for a natural parent to request their own information or information on their daughter or son is indicative that the prevailing attitudes towards adopted people are unchanged.

Solution

All applicants for a birth certificate should receive the same information, regardless of the Contact Preference of their parent(s). Information Booklets should be the same for all applicants and they should have a choice regarding the delivery of any information session i.e. the venue and the person who delivers it. Information should be non-stigmatising and impartial.

Access to Personal Information & Records is NOT for All

- The Bill has currently structured, does NOT allow for information requests from natural parents on themselves or on their daughters or sons. This is a huge misstep as in the majority of cases, unmarried parents had their children forcibly removed from them for the purposes of adoption (formal and informal; legal and illegal). Such parents need the same unfettered access to their own files and to the administrative files of the institution that detained them or transacted their child's adoption.
- All adopted/boarded out people born in or detained in a state or private institution due to their status at birth should be given access to the administrative files of the relevant institution to establish what care or lack of care they were likely to have received, whilst at that institution

¹⁹ The 2021 Birth Information & Tracing Bill, suggests that it will be social workers from TUSLA mainly, with whom adopted people, will be required to interact. AAI social workers will be involved to a lesser extent.

²⁰ Some social workers seem to be unaware of the multi-faceted meaning of privacy in domestic and international law. Privacy is interpreted and explained as "secrecy", when in law, all adopted people (or those boarded out) have the right to enjoy a private life, without interference from the state, its agents or other citizens.

Solution

The understanding of “Relevant Record” needs to be clearer on whether or not it includes administrative files.

Independent, qualified archivists should be tasked with cataloguing the types of records available for each institution.

Definitions of information are NOT rigorous

- The Bill contains many definitions of the types of information, which might be available to an adopted person applying for their personal information. It is not possible for a Bill to list all available types of information and as a result, critical data could be excluded.

Solution

“The file, the whole file and nothing but the file” should be made available to applicants. Simultaneously, independent qualified archivists should be tasked with cataloguing the types of data typically collected by each institution on mothers and their now adult children (taking into account how that data collection evolved over the decades) so applicants making Subject Access Requests can reasonably test the quality of data they receive.

Relatives of those who died in institutions may NOT apply for their relative’s information

- Given the appallingly high mortality rates of non-marital children detained in various institutions; the allegations of which provided the *raison d’etre* for the establishment of the *Commission of Investigation into Mother and Baby Homes and Certain Related Matters*, it is inexplicable that the bill does NOT allow for relatives (parents; children and siblings in particular) of those who died to apply for information regarding their deceased relative.

Solution

There should be no restriction on relatives applying for information on their deceased relative(s), this includes but is not limited to parents seeking information on their deceased daughter or son; to daughters and sons seeking information on a parent or siblings in the first instance.

Information on Siblings is NOT complete

- The Bill suggests that adopted people would only receive minimal information on whether or not they had siblings i.e. the gender of their sibling(s) and their approximate age(s). This is inherently discriminatory as the majority of applicants will have little or no means of ever establishing the identities of their paternal siblings themselves and in many cases, even maternal siblings can be untraceable if the information held on their mother was deliberately falsified or limited.

Solution

To demonstrate the state's intention to offer redress to adopted people for the enforced separation from their natural parents, the bill should be amended to include the provision of their sibling(s) full names and whether or not they too were taken for adoption.

The Language and Tone of the Bill is NOT representative of a Transitional Justice Approach

- Given the vast swath of human rights abuses, which the state meted out to non-marital mothers and their daughters and sons, both historically and continuously today through the denial of the scale of forced adoption and the denial of identity and information rights to adopted people, the tone of certain parts of the Bill is deeply unsettling.
- The purpose of the Bill as shown on page 2 is trivialising and fails to reference the role of the state and others in deliberately tearing families asunder based solely on the marital status of the parent(s) or on the status of the child(ren) at birth.

It reads

The purpose of this General Scheme is to recognise the importance of a person knowing his or her origins; to achieve this through the provision of access for the person to his or her birth certificate, birth information, early life information, care information and medical information; to provide this access for all persons who were adopted, nursed out, boarded out, the subject of an incorrect birth registration or who otherwise have questions in relation to their origins;

- People who were illegally adopted, need to be described as such, they are NOT the victims of clerical errors or of "incorrect birth registrations" as the bill euphemistically describes them.
- Section 4 of the Bill describes elements of the public information campaign prior to enactment of the Bill. However, the Department is equating the need to access to personal information with a need for contact. This assumption is unfounded and contributes to the notion of adopted people as individuals from whom natural parents need to be protected.

Solution

The tone of the Bill needs to reflect the enormity of the on-going human rights abuses endured by non-marital mothers and their now adult children.

CONCLUSION

We urge Minister O’Gorman and this Joint Oireachtas Committee to reflect on all that has gone before

- The discriminatory attitude of the State towards adopted people and all of those forcibly separated from their disgraceful and families due to attitudes, which today would be described as hate crimes.
- The lost opportunities by legislators to vindicate adopted people’s rights to know their identities, histories and families.
- The on-going stigmatisation of adopted people as agents of harm, as destroyers of lives, as psychologically unwell.
- The continued “othering” of adopted people in forcing us to engage with social workers and medical professionals when it comes to accessing our most basic personal information.
- The trivialising language, which suggests that the vindication of adopted people’s rights to their identities is not something the state is concerned with.
- The thousands of parents and increasingly their daughters and sons, who have died
 - o without knowing the fate of the other;
 - o without being able to explain the forces, which pulled them asunder;
 - o without being able to tell the other that they thought about them every day;
 - o without justice, accountability, apology, dignity or peace

It now rests with the individual members of this committee to reflect on the wishes of the survivors and of their compassionate fellow citizens. We urge you, do not allow the attitude of the “deny till we die” to prevail.