



**Adoption Rights Alliance Briefing Note on the Terms of Reference of the  
'Commission of Investigation into Mother and Baby Homes and Related Matters'  
27<sup>th</sup> January 2015**

**1. An estimated two-thirds of women and girls are potentially excluded from the investigation**

Adoption Rights Alliance (ARA) is concerned that the experiences of between **60% to 70%** of all unmarried girls and women (**50,000 to 62,000 of a total population of 85,000 – 90,000**) whose children were forcibly or illegally adopted will be excluded from the scope of the Investigation.

Appendix One of the Terms of Reference refers to a very limited prescribed list of fourteen Mother and Baby Homes. ARA is concerned that this leaves the conditions experienced by women and girls who went through State Maternity Hospitals; Private Hospitals; Private Nursing Homes; GP assisted homes births; PFIs (pregnant from Ireland) women and girls who gave birth in the UK and were brought back to Ireland excluded from the inquiry.

- a. RTE's figures (Joe Little on 6:01 News and 9:00pm news 09-01-2015) say that approx. **23,000 (28% of a total of 85,000)** women passed through these homes from 1922 to 1998; Carl O'Brien in his article of the Irish Times on 10-01-2015 quoted a figures of **35,000 (41% of a total of 85,000)**. Neither provided a source and the DCYA are unable to provide any estimate of the numbers involved.
- b. ARA's estimate of a total population of **85,000 – 90,000** unmarried women who had their children adopted from 1922 to 1998 is based on the following.
  - i. **44,000** is the Adoption Authority of Ireland's (AAI) official figure of children adopted domestically from 1953 to 2013<sup>1</sup>; 41,000 is the total number from 1953 to 1998.

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<sup>1</sup> See AAI Annual Report 2013

- ii. **1,933** is the official number of children trafficked to the US<sup>2</sup>, however we suspect that this is a conservative figure as many who have approached ARA were illegally adopted (i.e. they were registered as the natural child of their adoptive parents and/or no Department of Foreign Affairs file exists for them)
  
- iii. **10,000** is the number of children ARA estimates were illegally adopted or illegally boarded out from 1922 to 1998. This number is based on the percentage of such enquiries ARA has received from 2009 to 2014 and which our predecessor organisation received from the early 1990s until 2007. In addition, in June 2014, the then acting CEO of the AAI, Kiernan Gildea, admitted to the joint Oireachtas Committee on Health and Children that there were ‘at least several thousand illegally adopted people; we might never know the total number because of the lack of a paper trail’
  
- iv. **30,000** is the number of children ARA estimates were informally boarded out (prior to the introduction of legal adoption) from 1922 to 1952 at a rate of 1,000 per annum. This number is based on the percentage of such enquiries we have received from 2009 to 2014 and which our predecessor organisation received from the early 1990s until 2007. It is also based on the numbers of files that appear to have been held by agencies such as the Sacred Heart Adoption Agency from this period<sup>3</sup>.

## 2. Exclusion from Confidential Committee

Section 3 of the Terms of Reference states that:

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

It appears to us that those who are not listed in Schedule 1 (also referred to as Appendix 1) will be excluded from the Confidential Committee. ARA is gravely concerned about the implications of this in terms of the Commission’s ability to consider other institutions and settings. While ARA will

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<sup>2</sup> Source: Department of Foreign Affairs, reproduced in Mike Milotte’s ‘Banished Babies’(New Island Press, 1997)

<sup>3</sup> Source: HSE, who took ownership of these files in Dec 2011; See: <http://www.irishexaminer.com/ireland/health/hse-still-without-vaccine-trial-files-169263.html>

include all relevant institutions, agencies and individuals in its submission to the Commission, we fear that adopted people, natural mothers and others with important information about institutions, agencies and individuals not listed in Schedule 1 may be reticent about coming forward as they have no right to avail of the Confidential Committee and its safeguards.

### 3. **The true number of forced adoptions will be hidden**

ARA is concerned that if 60% -70% of all adoption cases are excluded from the Investigation that the true extent of forced adoptions will remain unknown. A forced adoption is one where a natural mother is forced/bullied/threatened/coerced into signing relinquishment papers for her child's adoption. This abuse of the adoption process is internationally recognised and has been identified in other countries such as Spain/Italy and Australia<sup>4</sup>. ARA estimates that over 85% of all domestic Irish adoptions were forced. The official figures for 1967 show that **97% of children born outside of marriage were taken for adoption**, which indicates that there was no choice for women having children outside of marriage until the late 1970s/early 1980s when single mother's allowance had been introduced and attitudes were beginning to change.

### 4. **The true number of illegal adoptions will be hidden**

ARA is concerned that if 60% - 70% of all adoption cases are excluded from the Investigation that the true extent of illegal adoptions will remain unknown. An illegal adoption, **which is not officially recognised by the AAI or the Department of Children and Youth Affairs (DCYA)** – both of whom use the phrase 'illegal birth registration', includes e.g. adoptions where consent was given by a minor (under 21 years of age until the 1970s); where consent was obtained directly after birth when a mother was on medication; where consent was obtained during the first 6 weeks after a baby was born; where consent was given by a woman's parents; where consent was given by a woman's partner; where a woman's consent was forged; where an Irish woman living in the UK was threatened with violence or enticed with the promise of a job and accommodation to return to the Irish State but subsequently had her baby taken for adoption (this practice was used widely by the Catholic Protection and Rescue Society of Ireland (CPRSI) now known as Cunamh and also by the former adoption agency St Anne's in Cork.) Most illegal adoptions were undocumented and were carried out by individuals and institutions (GPs, midwives, nurses, solicitors, priests) **with no connection to Mother and Baby Homes.**

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<sup>4</sup> See the apology on this systemic abuse of unmarried women given by Australian premier, Julia Gillard in April 2013 (<http://www.ag.gov.au/About/ForcedAdoptionsApology/Pages/default.aspx>)

## 5. **The role of the state appointed Adoption Board will be hidden**

ARA is concerned that where the majority of both forced and illegal adoptions are excluded from the scope of the Investigation that the state's role through the Adoption Board (renamed to the Adoption Authority of Ireland in November 2010) in facilitating forced and illegal adoptions will either not be uncovered or will be entirely underestimated.

- a. Under the 1952 Adoption Act, the Adoption Board's role was to permanently sever the parental rights of unmarried parents to make available their children for adoption and to simultaneously sever the adopted child's right to his/her original family/identity/heritage and to create a new set of relationships 'as if the child had been born to the adoptive parents'.
- b. Under the 1952 Adoption Act, the Adoption Board's role was **also** to appoint, regulate and monitor adoption agencies. The Board appointed adoption agencies, **but failed to monitor or supervise them**. In 2003, the then CEO of the Adoption Board, John Collins, in a written response to Susan Lohan, admitted that he could find no evidence of the criteria the Adoption Board used to appoint adoption agencies; that he could also find no evidence of the criteria the Adoption Board used to deregister an agency; that he could also find no evidence of the Adoption Board ever having deregistered a single agency.<sup>5</sup>

## 6. **The Role of the State will be hidden**

ARA is concerned that where the majority of both forced and illegal adoptions are excluded from the scope of the Investigation (because they were not associated with a Mother And Baby Home) that the role of the state, through State funded Maternity Hospitals (eg. Dublin Hospitals such as Holles St, Rotunda, Coombe, James; Cork's Erinville Hospital) in facilitating forced and illegal adoptions will either not be uncovered or will be entirely underestimated.

## 7. **The role of state appointed/state regulated adoption agencies will be hidden**

ARA is concerned that where the majority of both forced and illegal adoptions are excluded from the scope of the Investigation (because they were not associated with a Mother And Baby Home)

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<sup>5</sup> Copy of letter available at Pgs 73-74 of ARA Legislative Proposals:  
[http://www.adoptionrightsalliance.com/Legislative%20Proposals\\_PUBLIC.pdf](http://www.adoptionrightsalliance.com/Legislative%20Proposals_PUBLIC.pdf)

that the role of all bar a handful of adoption agencies (the majority of which were church run) in facilitating forced and illegal adoptions will either not be uncovered or will be entirely underestimated.

- a. In the 1960s Nurse Mary Keating, proprietor and operator of St Rita's Nursing Home on Sandford Road was charged and found guilty of facilitating **illegal birth registrations as opposed to illegal adoptions**. Mary Keating never lost her licence and continued her business well into the 1970s. According to Mike Millotte's 'Banished Babies', infants were secretly exported from St. Rita's to the US for adoption, however no exact figures are available as many of the adoptions were illegal and involved false birth registrations. The evidence from St Rita's registers linked St Patrick's Guild to these adoptions but the Adoption Board neither investigated nor sanctioned St Patrick's Guild<sup>6</sup>.
- b. St Patrick's Guild also admitted in the mid 1990s to routinely lying to mothers and children who came back looking for one another, which was roundly condemned in Leinster House by Alan Shatter and Frances Fitzgerald<sup>7</sup>.

#### 8. **The role of professional elites will be hidden**

ARA is concerned that because the Investigation starts and end with Mother and Baby Homes that those professionals who facilitated illegal adoptions (called 'private adoptions' by the Adoption Board and Adoption Authority) such as GPs; obstetricians, mid-wives; nurses; solicitors; priests; nuns will never be identified and will never be held accountable. ARA sees their exclusion as a **deliberate act** to safeguard the reputations of the 'great and good of Irish society' and to minimise the scale of such adoptions in the public eye.

#### 9. **Grounds of discrimination (Paragraph VIII)**

This paragraph suggests that the Commission would investigate whether Mother and Baby Home '*Residents*' were systematically treated differently (which should surely read 'discriminated against') on the basis of a prescriptive list of 'religion, race, traveller identity or disability' but yet **marital status and socio-economic status have been omitted**.

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<sup>6</sup> Mike Milotte, Banished Babies (New Island Press, 1997)

<sup>7</sup> See <http://debates.oireachtas.ie/dail/1997/04/09/00024.asp>

## 10. DCYA assertions regarding the scope of the investigation

When closely questioned by Susan Lohan at the official briefing Minister for Children and Youth Affairs, Dr James Reilly initially half suggested that all organisations, all agencies, all individuals involved in boarding out/adoptions **would be covered by the investigation**. When pressed to give an exact answer, the then acting Secretary General of the DCYA, Liz Canavan (a former CEO of the Adoption Authority of Ireland) shook her head and passed notes to Minister Reilly. When Ms Lohan pointed out her reaction to Minister Reilly he asserted that ‘no reasonable person could expect the Investigation to go beyond Mother and Baby Homes, given the scale of such an Inquiry’<sup>8</sup>

ARA **does not accept** former DCYA’s Acting Sec General Liz Canavan’s assertion that the Investigation can go further if the evidence is brought before the Commission. Ms Canavan claimed at the briefing on 09-01-2015 that if one of the many adoption agencies **not linked** to a Mother and Baby Home were to suddenly crop up with reference to one of the fourteen homes under investigation, that the Commission would then have a carte blanche to investigate said agency **in its entirety**. ARA believes that this is an unfounded assertion as Article 1 of the Terms of Reference for the Establishment of the Commission states:

‘The Commission is directed to investigate..... In relation to the Mother and Baby Homes listed in Appendix 1;’ (which lists only fourteen Mother and Baby Homes).

ARA believes that any attempt to demand evidence of all adoptions from an agency, apart from the one or two that might be linked to a Mother and Baby Home would be subject to rigorous legal challenge, similar to the ones which stopped the vaccine trial module of the Laffoy Commission or seriously delayed the Quarryvale module of the Mahon tribunal.

ARA also believes that the 2004 Commissions of Investigation Act would prevent this but an expert legal opinion should be sought on this.

## 11. Graves and identification of remains

ARA is concerned that there is no directive within the Terms of Reference for the Commission to identify the remains of deceased infants at former Mother and Baby Home sites. As well as an amendment to the Terms, ARA recommends that an archaeological expert in the recovery and

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<sup>8</sup> Minister James Reilly -09-01-2015 in briefing to representative groups at Leinster House.

identification of remains is engaged by the Commission. ARA is concerned that relatives of the deceased babies and children buried in mass graves across several Mother and Baby Homes will never know the exact cause of their relative's death nor their final resting place. We also query whether this prevents relatives from making their own inquiries to relevant state bodies – local coroners, local councils, Gardaí etc.

#### **12. No reference to international norms for investigations into human rights abuses**

ARA is concerned that there is zero mention of effective remedy; redress; independence; justice; accountability; public scrutiny; prosecutions etc within the Terms of Reference as would normally be expected by a signatory to the UN Convention of Human Rights (and particularly given Nigel Rodley's comments in public hearings to Frances Fitzgerald in summer 2014).

#### **13. Magdalene Laundries and other institutions**

ARA is deeply disappointed at the exclusion of the Magdalene Laundries and other categories of institutions from the Terms of Reference. ARA and JFM Research submitted a list of over 150 institutions to the Minister and thus both organisations advocated an **issues based approach**, rather than a prescribed list as proposed in the Terms of Reference.

ARA joins Victor Stevenson and the Bethany Survivors group in their call for the inclusion of the various Church of Ireland homes, particularly the Westbank Home in the Terms of Reference for the Commission.