



# JUSTICE FOR MAGDALENES RESEARCH

**Archives and Records Association, Ireland.**

**21<sup>st</sup> November 2019**

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## Archive as Advocacy



- Material for the evidence-based arguments in public arenas:
  1. moral,
  2. Legal;
  3. historical
  4. educational;
  5. political

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## Available archives: paper



- 145-page document collating evidence of State complicity, 796 pages of survivor testimony consistent with 3,707 pages of supporting evidence (hardcopy UCD archives0)
- [WIT digitised archive](#)

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## Available archives: oral histories



- [Magdalene Oral History Project](#)
- 86 interviews (from 99 interviewees);
- Dublin Honours Magdalenes Listening Project

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## **Access to ‘historical’ abuse archives in Ireland: Legal and Political Questions**

Maeve O'Rourke, '10 ways institutional abuse details are still being kept secret in Ireland' *RTE Brainstorm* (6 October 2019)

<https://twitter.com/RTEBrainstorm/status/1180800494832427009>

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## Commission of Investigation into Mother and Baby Homes and Certain Related Matters

- 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 Magdalenes Research, Adoption Rights Alliance, Hogan Lovells, 15 October 2018.
- 120-page Submission to the Commission of Investigation into Mother and Baby Homes and Certain Related Matters (2018) based on 79 witness statements, archival documentation and academic research, and legal analysis from 30+ lawyers

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## Inter-departmental Committee to establish the Facts of State Involvement with the Magdalen Laundries (McAleese Committee)

- Maeve O'Rourke, 'Justice for Magdalenes Research, NGO Submission to the UN Committee Against Torture in respect of Ireland' (Justice for Magdalenes Research, July 2017),  
[https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT\\_CAT\\_CSS\\_IRL\\_27974\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_CSS_IRL_27974_E.pdf)



Roinn an Taoisigh  
Department of the Taoiseach

Our Ref: FOI/2018/0351

maeveorourke@gmail.com

25 September 2018

Dear Ms. O'Rourke,

The records of the Archive of the Inter Departmental Committee to Establish the Facts of State Involvement in the Magdalen Laundries (McAleese Archive) are stored in this Department for the purposes of safe keeping in a central location and are not held or within the control of the Department for the purposes of the FOI Act. They cannot therefore be released by this Department.



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United Nations

CAT/C/IRL/CO/2



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

Distr.: General  
31 August 2017

Original: English

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**Committee against Torture**

**Concluding observations on the second periodic report of  
Ireland\***

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**26. The State party should:**

**(a) Undertake a thorough and impartial investigation into allegations of ill-treatment of women at the Magdalen laundries that has the power to compel the production of all relevant facts and evidence and, if appropriate, ensure the prosecution and punishment of perpetrators;**

**(b) Strengthen the State party's efforts to ensure that all victims of ill-treatment who worked in the Magdalen laundries obtain redress, and to this end ensure that all victims have the right to bring civil actions, even if they participated in the redress scheme, and ensure that such claims concerning historical abuses can continue to be brought "in the interests of justice"; take further efforts to publicize the existence of the ex gratia scheme to survivors of the Magdalen laundries living outside Ireland; fully implement the outstanding recommendations on redress made by Mr. Justice Quirke; promote greater access of victims and their representatives to relevant information concerning the Magdalene laundries held in private and public archives; and provide information on these additional measures in the State party's next report to the Committee.**

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## Retention of Records Bill 2019



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**An Bille um Thaifid a Choimeád, 2019**  
**Retention of Records Bill 2019**

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*Mar a tionscnaíodh*

*As initiated*

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## Section 1: Interpretation

“record” means a document in any form (including any electronic form) made or received, by a relevant body, in the performance of its functions, and includes copies of any such records; 20

“relevant body” means—

- (a) the Commission to Inquire into Child Abuse,
- (b) the Residential Institutions Redress Board, or
- (c) the Residential Institutions Redress Review Committee;

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“sealing period” has the meaning given to it by *section 3(2)*.

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## **Transfer of records on dissolution of relevant body**

3. (1) Subject to this section and *sections 2 and 5* and notwithstanding *section 27(5)* of the Act of 2000 and *section 28(3)* of the Act of 2002, all records shall, on the dissolution 25  
of the relevant body concerned—
- (a) be deemed to be records of the Department of Education and Skills, and
  - (b) be transferred to the National Archives.
- (2) A record transferred under *subsection (1)* shall be sealed and withheld from public 30  
inspection for a period (in this Act referred to as the “sealing period”) of no less than  
75 years commencing on the date of transfer of the record concerned and ending on  
the coming into operation of regulations made under *section 6* granting access to the  
record.

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## **El Masri v Macedonia (App No 39630/09) ECHR 2012-VI 263**

Separate Concurring Opinion of Judges Tulkens, Spielman, Sicilianos and Keller

5. The right to the truth is not a novel concept in our case-law, nor is it a new right. Indeed, it is broadly implicit in other provisions of the Convention, in particular the procedural aspect of Articles 2 and 3, which guarantee the right to an investigation involving the applicant and subject to public scrutiny.

6. In practice, the search for the truth is the objective purpose of the obligation to carry out an investigation and the *raison d'être* of the related quality requirements (transparency, diligence, independence, access, disclosure of results and scrutiny). For society in general, the desire to ascertain the truth plays a part in strengthening confidence in public institutions and hence the rule of law. For those concerned – the victims' families and close friends – establishing the true facts and securing an acknowledgment of serious breaches of human rights and humanitarian law constitute forms of redress that are just as important as compensation, and sometimes even more so. Ultimately, the wall of silence and the cloak of secrecy prevent these people from making any sense of what they have experienced and are the greatest obstacles to their recovery.

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**United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff**

***Set of General Recommendations for Truth Commissions and Archives (September 2015) UN Doc A/HRC/30/42***

Archives containing records of mass violations can contribute to prevention. Access to well-preserved and protected archives is an educational tool against denial and revisionism, ensuring that future generations have access to primary sources, which is of direct relevance to history teaching. One notable example in this regard are the Stasi files opened up by Germany after 1989. Opening files contributes directly to the process of societal reform.

2...archives are relevant and can make significant contributions to each of the pillars of transitional justice, not merely truth and justice...Beyond the fact that transitional justice measures generate records themselves, truth commissions, trials, reparations programs and other transitional justice initiatives can contribute to improving archival practice both by the way they implement relevant standards with respect to their own documents, and because some of them, particularly truth commissions, are in a good position to make comments and recommendations about archival reform in general.

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## Adoption (Information and Tracing) Bill 2016

- Dr Conor O'Mahony, Dr Fred Logue and Dr Maeve O'Rourke, ***Opinion on the application of the Irish Constitution and EU General Data Protection Regulation to the Adoption (Information and Tracing) Bill 2016 and the Government's 'Options for Consideration' dated 5th November 2019,*** <https://www.documentcloud.org/documents/6550426-Legal-Opinion-on-Adoption-Information-FINAL-15.html>



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1. This opinion discusses the application of both the Irish Constitution and the EU General Data Protection Regulation (GDPR) to the question of legislating to allow adopted people to know their identity at birth.
2. The opinion analyses the Government's Adoption (Information and Tracing) Bill 2016, including the Government's proposed amendments to that Bill. It takes into account the '4 Options for Consideration' provided by Minister Katherine Zappone to stakeholders on 5th November 2019. It further considers the alternative legislative proposals put forward by a number of Senators in summer 2019.
3. This document focuses on the parts of those varying legislative proposals that concern the release to an adopted person of sufficient information to enable them to access their publicly registered birth certificate in the General Register Office (GRO).
4. Although it is beyond the scope of this opinion, we note that the issue of access to files (beyond birth certificates) for parents and adopted people also raises significant questions of both constitutional and European data protection law and requires further considered analysis

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In summary, the opinion concludes that:

- The Irish Constitution and the EU GDPR do not require the Oireachtas to establish a system whereby parents may object to their adult child receiving information that enables them to retrieve their publicly available birth certificate from the GRO.
- The Irish Constitution and the EU GDPR allow the Oireachtas to legislate to establish a system similar to that in Northern Ireland, whereby every adopted adult is entitled to their birth certificate following an information session if they were adopted prior to the introduction of the legislation, and questions of contact are addressed through a voluntary adoption contact preference register and a well-resourced voluntary tracing service.

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- If the Oireachtas chooses not to legislate to ensure that every adopted person can access their birth certificate, any case-by-case decision-making procedure must be compatible with the EU GDPR because the GDPR is supreme over all Irish law including the Constitution.
- It is doubtful that the decision-making procedure proposed by the Government in the Adoption (Information and Tracing) Bill 2016, including ‘Option 2’ whereby a ‘presumption in favour of release’ would be stated in the Bill, is compatible with the provisions of the GDPR.
- ‘Option 3’ and ‘Option 4’ would, it seems, allow the GDPR to function freely in relation to the release of adopted people’s personal data.