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Special Rapporteur on the promotion of truth, justice,  
reparations and guarantees of non-recurrence  
Office of the United Nations High Commissioner for Human Rights  
By email to [srtruth@ohchr.org](mailto:srtruth@ohchr.org)

24<sup>th</sup> January 2020

**RE: IRELAND'S EXPERIENCE OF MEMORIALISATION IN THE CONTEXT OF SERIOUS VIOLATIONS OF HUMAN RIGHTS AND HUMANITARIAN LAW**

Dear Mr Salvioli,

I write with the aim of informing your upcoming thematic report on memorialisation processes following gross human rights violations and serious violations of international humanitarian law. I am grateful for the opportunity to submit the following information to you and hope that it will be of assistance.

I am a Lecturer in Human Rights Law at the Irish Centre for Human Rights, in the National University of Ireland, Galway.<sup>i</sup> I have researched and advocated for the past 10 years in the area of Ireland's systematic institutional, gender-based and adoption-related abuses throughout the 20<sup>th</sup> century, involving (and not limited to) mistreatment in residential schools, Magdalene Laundries, Mother and Baby Homes and County Homes, and through the coercive adoption of children born outside of marriage.<sup>ii</sup>

These abuses have gained widespread public attention (internationally as well as domestically) over the past two decades in particular, and the Irish State has taken some steps to investigate the abuses and to offer survivors 'redress', primarily in the form of financial payments. I have criticised the State's ongoing failure to meet its human rights obligations in full in relation to these systematic abuses,<sup>iii</sup> as have many international and domestic human rights bodies, civil society organisations, survivor advocacy groups and individual survivors, and academics and practitioners. At the same time, there have been many attempts by survivors, artists, journalists, activists, civil society groups, academics and others to ensure recognition, truth-telling and memorialisation to the extent that they can.

This letter is intended to guide you to further literature and other resources which (1) explain the Irish State's failures at a national level to ensure truth-telling, public education or other forms of memorialisation regarding the above-mentioned abuses; and (2) demonstrate some of the efforts that others have made to ensure memorialisation. First, some background information regarding the relevant serious human rights violations is provided.

Please do not hesitate to contact me should you require further information.

Yours sincerely,

**Dr Maeve O'Rourke**

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<sup>i</sup> I am also a Barrister at 33 Bedford Row, London, a member of the Justice for Magdalenes Research group ([www.jfmresearch.com](http://www.jfmresearch.com)), and a Co-director of the Clann Project ([www.clannproject.org](http://www.clannproject.org)).

<sup>ii</sup> Additional, so-called ‘historical’, systematic human rights violations in Ireland include clerical child sex abuse within the Catholic Church (see for discussion of the Ferns, Murphy and Cloyne Reports, Carole Holohan, *In Plain Sight: Responding to the Ferns, Ryan, Murphy and Cloyne Report* (Amnesty International Ireland 2011)), the practice of symphysiotomy (see the submission by Survivors of Symphysiotomy to the United Nations Committee Against Torture in 2017,

[https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT\\_CAT\\_CSS\\_IRL\\_27972\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_CSS_IRL_27972_E.pdf)) and abuses in psychiatric institutions. It is important to note that Ireland’s health and social care system continues to institutionalise children, adults and families who require assistance from the State in a manner that appears unnecessary and inappropriate to the needs of many, and which is not adequately regulated or inspected. Ireland has not yet ratified the Optional Protocol to the Convention Against Torture. See for discussion of the State’s ongoing failure to ensure adequate human rights protection in places of detention and custody and control, Maeve O’Rourke, ‘ICCL Follow-up report to the United Nations Committee Against Torture’ (Irish Council for Civil Liberties, 2018), including Appendices, <https://www.iccl.ie/wp-content/uploads/2019/03/ICCL-2018-follow-up-report-to-UN-Committee-Against-Torture.pdf>.

<sup>iii</sup> See for example, Maeve O’Rourke and Claire McGettrick, Press Release, ‘Clann Publishes Findings of Three-Year Project on Adoption and Mother and Baby Homes’, 15 October 2018, <http://clannproject.org/2018/10/>; Maeve O’Rourke, ‘Prolonged Impunity as a Continuing Situation of Torture or Ill-treatment? Applying a Dignity Lens to So-called “Historical” Cases’, 2019, Academia.edu, [https://www.academia.edu/38816533/Prolonged\\_Impunity\\_as\\_a\\_Continuing\\_Situation\\_of\\_Torture\\_or\\_Ill-Treatment\\_Applying\\_a\\_Dignity\\_Lens\\_to\\_So-called\\_Historical\\_Cases](https://www.academia.edu/38816533/Prolonged_Impunity_as_a_Continuing_Situation_of_Torture_or_Ill-Treatment_Applying_a_Dignity_Lens_to_So-called_Historical_Cases); Maeve O’Rourke & ICCL (2018) *ICCL Follow-Up Report to the United Nations Committee Against Torture*. Irish Council for Civil Liberties, Dublin, <https://aran.library.nuigalway.ie/handle/10379/15296>.

**IRELAND'S EXPERIENCE OF MEMORIALISATION IN THE CONTEXT OF SERIOUS  
VIOLATIONS OF HUMAN RIGHTS AND HUMANITARIAN LAW**

**A Submission to the United Nations Special Rapporteur on the promotion of truth, justice,  
reparations and guarantees of non-recurrence**

Dr Maeve O'Rourke, Lecturer, Irish Centre for Human Rights, NUI Galway<sup>1</sup>

January 2020

**Background**

The systematic sexual, physical and emotional abuses which children experienced in Ireland's **Industrial and Reformatory Schools** during the 20<sup>th</sup> century are discussed in the official report of the Commission to Inquire into Child Abuse<sup>2</sup> and the Amnesty International report, *In Plain Sight*,<sup>3</sup> among many other sources. In 2017, the UN Committee Against Torture (CAT) made several recommendations to Ireland regarding the need to ensure accountability and comprehensive redress for these abuses.<sup>4</sup> The CAT's concluding observations were prompted in particular by a report for the session by the voluntary group, Reclaiming Self.<sup>5</sup>

The system of arbitrary detention, forced labour and multiple forms of torture or ill-treatment of girls and women in Ireland's **Magdalene Laundries** during the 20<sup>th</sup> century is described in oral histories<sup>6</sup> and in written submissions to human rights bodies by the voluntary group Justice for Magdalenes / JFM Research,<sup>7</sup> among other sources. The CAT addressed the Magdalene Laundries abuse in its Concluding Observations in 2011 and 2017.<sup>8</sup> The CAT's recommendations to Ireland regarding the Magdalene Laundries (focusing on the obligations to investigate, prosecute perpetrators, facilitate access to information, and ensure comprehensive redress) have been echoed by the UN Human Rights

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<sup>1</sup> [Maeve.orourke@nuigalway.ie](mailto:Maeve.orourke@nuigalway.ie)

<sup>2</sup> Ireland, The Commission to Inquire into Child Abuse, <http://www.childabusecommission.ie>.

<sup>3</sup> Carole Holohan, *In Plain Sight: Responding to the Ferns, Ryan, Murphy and Cloyne Report* (Amnesty International Ireland 2011).

<sup>4</sup> Committee Against Torture, Concluding Observations on the Second Periodic Report of Ireland, CAT/C/IRL/CO/2, 31 August 2017, paras 23, 24.

<sup>5</sup> Reclaiming Self, Ryan Report Follow-up: Submission to the United Nations Committee Against Torture (June 2017),

[https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT\\_CAT\\_CSS\\_IRL\\_27959\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_CSS_IRL_27959_E.pdf)

<sup>6</sup> See for example, Katherine O'Donnell, Sinéad Pembroke and Claire McGettrick, 'Magdalene Institutions: Recording an Oral and Archival History', <http://jfmresearch.com/home/oralhistoryproject/>; Jennifer O'Mahoney, 'The Waterford Memories Project: Oral History', <https://www.waterfordmemories.com/our-projects>.

<sup>7</sup> See JFM Research, Accountability, <http://jfmresearch.com/home/restorative-justice/accountability/>

<sup>8</sup> Committee Against Torture, Concluding Observations on the First Periodic Report of Ireland, CAT/C/IRL/CO/1, 17 June 2011, para 20; Committee Against Torture, Concluding Observations on the Second Periodic Report of Ireland, CAT/C/IRL/CO/2, 31 August 2017, para 25.

Committee,<sup>9</sup> the UN Committee on the Elimination of All Forms of Discrimination Against Women<sup>10</sup> and the UN Committee on Economic, Social and Cultural Rights.<sup>11</sup> The Irish Human Rights and Equality Commission has also made criticisms and recommendations to the Irish Government similar to the UN bodies.<sup>12</sup>

The widespread incarceration of unmarried mothers in **Mother and Baby Homes** and **County Homes**, and the forced separation of children from their mothers in these institutions and through a broader network of **adoption agencies, hospitals and nursing homes**, is examined in the report of the voluntary evidence-gathering project, ‘Clann: Ireland’s Unmarried Mothers and their Children: Gathering the Data’,<sup>13</sup> among other sources. Numerous international human rights bodies have issued recommendations to Ireland in respect of these human rights violations in recent years.<sup>14</sup>

## **The Irish State’s failure to memorialise, or to ensure truth-telling and national education**

### **Overview**

In 1999 the Irish Government issued a State apology to survivors of Industrial and Reformatory Schools.<sup>15</sup> The Government apologised to Magdalene Laundry survivors in 2013,<sup>16</sup> and the President

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<sup>9</sup> Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Ireland, CCPR/C/IRL/CO/4, 19 August 2014, para 10; Letter from Sarah Cleveland, Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, to Ireland, 15 April 2016.

<sup>10</sup> Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Ireland, CEDAW/C/IRL/CO/6-7, 9 March 2017, paras 14-15.

<sup>11</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Ireland, E/C.12/IRL/CO/3, 8 July 2015, para 18.

<sup>12</sup> Irish Human Rights Commission, Submission to the United Nations Human Rights Committee on the Examination of Ireland’s Fourth Periodic Report, June 2014, paras 58-69; Irish Human Rights and Equality Commission, Submission to the Committee on Economic, Social and Cultural Rights on the Examination of Ireland’s Third Periodic Report under the International Covenant on Economic, Social and Cultural Rights, May 2015, para 5.5; Irish Human Rights and Equality Commission, Submission to the United Nations Committee on the Elimination of Discrimination Against Women: List of Issues Prior to Reporting on Ireland’s Combined 6th and 7th Reports under CEDAW, October 2015, paras 17-19; Irish Human Rights and Equality Commission, Submission to the United Nations Committee against Torture on Ireland’s Second Periodic Report, July 2017, pp 53-58.

<sup>13</sup> 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* (Justice for Magdalenes Research, Adoption Rights Alliance, Hogan Lovells, October 2018), <http://clannproject.org/clann-report/>

<sup>14</sup> Committee Against Torture, Concluding Observations on the second periodic report of Ireland (31 August 2017) UN Doc CAT/C/IRL/CO/2; Committee on Economic, Social and Cultural Rights, Concluding Observations on the Third Periodic Report of Ireland (19 June 2015) UN Doc E/C.12/IRL/CO/3; Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Sixth and Seventh Periodic reports of Ireland (3 March 2017) UN Doc CEDAW/C/IRL/CO/6-7; Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Ireland (19 August 2014) UN Doc CCPR/C/IRL/CO/4; Council of Europe, Parliamentary Assembly, Periodic review: Ireland, Doc 14450 Part 5 (IE), 14 December 2017; Council of Europe Commissioner for Human Rights, Nils Muzinieks, Report following visit to Ireland from 22 to 25 November 2016, CommDH(2017)8, 29 March 2017.

<sup>15</sup> RTE Archives, Apology for Institutional Child Abuse 1999, <https://www.rte.ie/archives/2019/0430/1046590-apology-to-victims-of-institutional-child-abuse/>

<sup>16</sup> Dáil Éireann, Magdalen Laundries Report: Statements (19 February 2013), <https://www.kildarestreet.com/debates/?id=2013-02-19a.387>

of Ireland added a second official apology to Magdalene Laundry survivors in 2018.<sup>17</sup> These apologies were significant moments in Irish political and cultural life, and they were followed by the establishment of explicitly ‘ex gratia’ financial payment schemes for survivors (groups defined by reference to an exhaustive list of institutions, meaning that not all of those who suffered similar abuse were eligible for admission).<sup>18</sup> At present, an independent Commission of Investigation is underway in relation to the treatment of women and their children in Mother and Baby Homes and a small selection of County Homes.<sup>19</sup> It is likely that upon publication of the Commission’s report, which is expected in 2020, the Government will face public pressure to similarly issue a State apology and institute a scheme of financial payments (both of which are needed).

Many people in Ireland, if asked, would likely state that so-called ‘historical’ abuse in residential schools and Magdalene Laundries has been dealt with and that survivors have received ‘redress’. However, a recent consultation with 100 residential school survivors, commissioned by the Department of Education, found that many survivors’ ongoing health, housing, social support, educational and financial needs are not being met and that ongoing, dedicated services that are not time-limited are required.<sup>20</sup>

A further issue that appears not to be understood generally by the public is that there has been **little to no accountability** for these abuses. By this I mean:

- prosecutions have been almost non-existent (an issue which the CAT has repeatedly raised);
- the State has denied survivors access to the civil courts (through the requirement that survivors waive their legal rights against the State and in relation to the residential schools the Church too, in order to receive limited payments from the explicitly ‘ex gratia’ schemes, along with a range of other procedural barriers to accessing justice);
- individual perpetrators generally have not been named by inquiry bodies;
- under legislation, survivors of residential schools are criminally prohibited from publishing information about any financial award received from the ‘ex gratia’ Residential Institutions Redress Board scheme in a way that could identify any individual or institution involved in their abuse;<sup>21</sup> and
- access to primary sources of information about the abuses is limited for survivors and extremely restricted for the general public.

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<sup>17</sup> “‘Ireland failed you’: President Higgins apologises to Magdalene Laundries survivors at Aras an Uachtaráin event’ *Irish Examiner* (5 June 2018), <https://www.irishexaminer.com/breakingnews/ireland/ireland-failed-you-president-higgins-apologises-to-magdalene-laundries-survivors-at-aras-an-uachtarain-event-846951.html>

<sup>18</sup> The Residential Institutions Redress Board was established under the Residential Institutions Redress Act 2002, to provide payments to those who had suffered abuse in Industrial or Reformatory Schools. The Magdalen Restorative Justice Scheme was established as an administrative measure, without statutory underpinning, and administered by the Department of Justice from 2013 onwards: see Ireland, Office of the Ombudsman, *Opportunity Lost: An investigation by the Ombudsman into the administration of the Magdalen Restorative Justice Scheme* (2017), <https://www.ombudsman.ie/publications/reports/opportunity-lost/index.xml>

<sup>19</sup> For more information about the Commission of Investigation into Mother and Baby Homes see the Commission’s official website at [www.mbhcoi.ie](http://www.mbhcoi.ie) or the non-governmental report of the CLANN Project at [www.clannproject.org](http://www.clannproject.org).

<sup>20</sup> Barbara Walshe and Catherine O’Connell, *Consultations with Survivors of Institutional Abuse on Themes and Issues to be addressed by a Survivor Led Consultation Group* (Department of Education, July 2019), <https://www.education.ie/en/Publications/Education-Reports/consultations-with-survivors-of-institutional-abuse-on-themes-and-issues-to-be-addressed-by-a-survivor-led-consultation-group.pdf>

<sup>21</sup> Section 28(6) Residential Institutions Redress Act 2002.

In 2014, Professor Sir Nigel Rodley concluded the UN Human Rights Committee’s examination of Ireland by stating in relation to the nation’s so-called ‘historical’ abuses:

The state’s response has been one of seeking to find material responses to the needs of the victims, and I don’t want to pour cold water on that. However, there remains the problem of accountability—the accountability for assault and worse. In all of these cases, the issue that remains for the state party is to consider what it is going to do about accountability. Accountability for its own responsibilities, accountability for its failures to monitor what others have been doing, and the accountability of others for committing abuses that the State might well be able to think of as crimes. The accountability that I mention is missing in everything that we’ve heard so far.<sup>22</sup>

Connected to this lack of accountability, in my opinion, is the lack of memorialisation or national education initiatives led at a governmental level.

### **Failure by Government to lead memorialisation, truth-telling or national education initiatives**

At the conclusion of the 2009 Report of the Commission to Inquire into Child Abuse, which found among other things that ‘[a] climate of fear, created by pervasive excessive and arbitrary punishment permeated most of the institutions and all those run for boys’ and that ‘[s]exual abuse was endemic in boys’ institutions’, the Commission made numerous recommendations designed (1) to alleviate or otherwise address the effects of the abuse on those who suffered, and (2) to prevent where possible and reduce the incidence of abuse of children in institutions and to protect children from such abuse. The Commission’s very first recommendation was that ‘A memorial should be erected.’ The Commission’s second recommendation was that ‘The lessons of the past should be learned.’<sup>23</sup>

To this day, no national memorial relating to the residential schools abuse has been established by the State. The report from the 2019 consultation with 100 survivors, commissioned by the Department of Education, states:

Survivors said that any memorial to survivors of institutional abuse should be in a public centrally-based space in Dublin, which could be seen and visited easily by the public. Many survivors indicated that it should be a place of learning and information and should contain the records, photographs, books, films and documentaries for the families of future generations of survivors and for society. It should be a place for the study of institutions for all students interested in this issue. It could also be a place where people could document their stories if they wished to do so.<sup>24</sup>

In 2013 following the State apology to Magdalene Laundry survivors, the President of the Law Reform Commission of Ireland, Mr Justice John Quirke, led a three-month Commission (‘the Magdalen

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<sup>22</sup> United Nations Human Rights Committee, Examination of the fourth periodic report of Ireland (14 and 15 July 2014), Statement by Sir Nigel Rodley, 0.00–1.08; 4.33–5.55 min, [www.youtube.com/watch?v=v0NCIB3uHns](http://www.youtube.com/watch?v=v0NCIB3uHns).

<sup>23</sup> Ireland, Commission to Inquire into Child Abuse, Final Report (20 May 2009), Executive Summary, <http://www.childabusecommission.ie/rpt/ExecSummary.php>

<sup>24</sup> Barbara Walshe and Catherine O’Connell, *Consultations with Survivors of Institutional Abuse on Themes and Issues to be addressed by a Survivor Led Consultation Group* (Department of Education, July 2019), p21, <https://www.education.ie/en/Publications/Education-Reports/consultations-with-survivors-of-institutional-abuse-on-themes-and-issues-to-be-addressed-by-a-survivor-led-consultation-group.pdf>

Commission’) which recommended a scheme of ‘restorative justice’ measures.<sup>25</sup> One of the Magdalen Commission’s recommendations was that the State should establish a ‘Dedicated Unit’ to provide services to survivors including ‘the acquisition, maintenance and administration of any garden, museum or other form of memorial which the Scheme’s administrator, after consultation with [an] advisory body or committee...which should include at least 6 Magdalen women [and] should additionally include at least 2 representatives of eligible women currently living within the UK or elsewhere.’<sup>26</sup>

The Irish Government publicly accepted the Magdalen Commission’s recommendations ‘in full’.<sup>27</sup> However, no memorial or museum has been established to date.

More recently, in December 2018, a Collaborative Forum of Former Residents of Mother and Baby Homes, established by the Department of Children and Youth Affairs while the Commission of Investigation into Mother and Baby Homes and Certain Related Matters is ongoing, has recommended (among other things) measures concerning ‘memorialisation and personal narratives’.<sup>28</sup> The Collaborative Forum recommends:

- The erection of national and local monuments to commemorate, respect and honour mothers and children held in institutions;
- A living memorial, which could be in digital, audio or visual presentation of information and individual narratives;
- An annual commemoration day with both a national and a local focus;
- Regulation of planning and development to protect institutional sites against interference pending surveys for burial places;
- Archaeological surveys to ascertain location and scale of burials at institutional sites;
- A research project to match records of deaths held by the General Register Office with contemporaneous records of those institutionalised; and
- Inclusion of a module on Mother and Child institutions in the National History curriculum for schools and such material to be included across appropriate programmes in universities and third level colleges.<sup>29</sup>

Civil society momentum is now growing in support of the idea of a national Site of Conscience, concerning all forms of so-called ‘historical’ institutional, gender-related and adoption-related abuses, being established at the site of the last Magdalene Laundry to close (in 1996), on Sean McDermott Street in Dublin City Centre. This derelict site is currently in the possession of Dublin City Council, following a land swap with the religious Sisters of Charity. In 2018, survivors, activists and local politicians successfully rallied to prevent the planned sale of the 2.4 acre site by Dublin City Council

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<sup>25</sup> Ireland, The Magdalen Commission Report (May 2013), <http://www.justice.ie/en/JELR/2.%20THE%20MAGDALEN%20COMMISSION%20REPORT.pdf/Files/2.%20THE%20MAGDALEN%20COMMISSION%20REPORT.pdf>

<sup>26</sup> Ibid.

<sup>27</sup> Ireland, Department of Justice and Equality, Press Release, ‘Restorative Justice Scheme for former Magdalen Residents announced – Government accepts all recommendations of Quirke report’ (26 June 2013), <http://www.justice.ie/en/JELR/Pages/PR13000256>

<sup>28</sup> Ireland, Department of Children and Youth Affairs, Recommendations from the First Report of the Collaborative Forum of Former Residents of Mother and Baby Homes (December 2018), <https://www.gov.ie/pdf/?file=https://assets.gov.ie/25774/085e9ecf9bb4495c94b8a21b4c143998.pdf#page=1>

<sup>29</sup> Ibid, p 10.

to a budget hotel chain for €14 million.<sup>30</sup> In recent weeks, Dublin City Councillors and officials have agreed to a new plan for the site that would include a third-level college, housing for older people, and a substantial memorial.<sup>31</sup> Such plans for a memorial will be subject to consultation with survivors and the broader community during 2020. In order for any significant memorialisation process or measure to be implemented at this site or anywhere else, financial support from central Government will be required (and has not yet been promised).

### **Access to information and freedom of expression**

Closely related to the question of memorialisation—and particularly forms of memorialisation that seek to educate the public in depth—are the issues of access to information and freedom of expression regarding ‘historical’ abuses in Ireland. In general, truth-telling regarding the above-mentioned abuses has been gravely hampered by a lack of access to both State-held and privately held archives, and the censoring of survivors’ testimonies.

As reported by the Clann Project in 2018,<sup>32</sup> the ongoing **Commission of Investigation into Mother and Baby Homes** is proceeding entirely in private despite numerous requests by survivors for a public hearing. The Commission is gathering all evidence in private and is not giving those affected the opportunity to comment on any of it. The Commission refuses to provide witnesses with a transcript of the evidence that they have provided to the Commission. It appears to be operating a blanket policy of refusing to disclose to victims or survivors of the institutions, or anyone affected by adoption, the personal data that it holds on them.<sup>33</sup> It is also refusing to provide personal information about the deceased to their next of kin.<sup>34</sup> Furthermore, the Commission’s grounding legislation states that all evidence that it gathers in private is inadmissible in civil or criminal proceedings.<sup>35</sup> The legislation also indicates that the Commission’s archives will be closed to the public following the conclusion of its work.<sup>36</sup>

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<sup>30</sup> See Christina McSorley, ‘Attempts to block sale of Magdalene Laundry building’ *BBC News NI* (3 September 2018), <https://www.bbc.com/news/world-europe-45388377>

<sup>31</sup> Laoise Neylon, ‘New Plan for Sean McDermott Street Laundry Site Includes a College Campus’ *Dublin Inquirer* (22 January 2020), <https://www.dublininquirer.com/2020/01/22/new-plan-for-sean-mcdermott-street-laundry-site-includes-a-college-campus>

<sup>32</sup> Clann: Ireland’s Unmarried Mothers and their Children: Gathering the Data, Press Release, ‘Clann Publishes Findings of Three-Year Project on Adoption and Mother and Baby Homes’, 15 October 2018, <http://clannproject.org/2018/10/>; see also Maeve O’Rourke, ‘10 ways institutional abuse details are still being kept secret’, *RTE Brainstorm* (5 September 2019), <https://www.rte.ie/brainstorm/2019/0503/1047282-10-ways-institutional-abuse-details-are-still-being-kept-secret/>.

<sup>33</sup> *Ibid.*

<sup>34</sup> Conall Ó Fátharta, ‘Commission says they are prohibited from telling surviving family members about burial locations’ *Irish Examiner* (19 April 2019), [https://www.irishexaminer.com/breakingnews/ireland/commission-says-they-are-prohibited-from-telling-surviving-family-members-about-burial-locations-918869.html#.XLSuOdZB\\_M.twitter](https://www.irishexaminer.com/breakingnews/ireland/commission-says-they-are-prohibited-from-telling-surviving-family-members-about-burial-locations-918869.html#.XLSuOdZB_M.twitter)

<sup>35</sup> Commissions of Investigation Act 2014, section 19.

<sup>36</sup> Section 11(3) of the Commissions of Investigation Act 2004 prohibits disclosure or publication of the evidence or contents of any documents produced by a witness while giving evidence in private. The High Court has held that this section of the Act creates statutory privilege over the archives of Commissions of Investigation (*O’Neill and Others v An Taoiseach and Others* [2009] IEHC 119, Murphy J, 18 March 2009; *Byrne and Others v An Taoiseach and Others* [2010] IEHC 353, Laffoy J, 9 September 2010).

Section 19 of the Commissions of Investigation Act 2004 states that statements or admissions made to the Commission, documents given or sent to the Commission, and documents specified in an affidavit and given to the Commission are not admissible as evidence against a person in any criminal or other proceedings.



As for the evidence gathered by the **Inter-departmental Committee to establish the facts of State involvement with the Magdalen Laundries**,<sup>37</sup> which proceeded between 2011 and 2013, the Department of the Taoiseach (Prime Minister) is currently holding the State's entire archive of records concerning the Magdalene Laundries secret, asserting in response to Freedom of Information requests: 'these records are stored in this Department for the purpose of safe keeping in a central location and are not held nor within the control of the Department for the purposes of the FOI Act. They cannot therefore be released by this Department'.<sup>38</sup> In 2018 the Government informed the CAT that records relating to Magdalene Laundries 'are in the ownership of the religious congregations and held in their private archives [and] the State does not have the authority to instruct them on their operation.'<sup>39</sup>

Regarding the records gathered by the **Commission to Inquire into Child Abuse** and the **Residential Institutions Redress Board**, both of which concerned abuse in residential schools, in 2019 the Department of Education published draft legislation proposing to prohibit all access to every document contained in the archives of these two bodies for at least the next 75 years. The written submissions of numerous survivors, practitioners and academics resisting this Retention of Records Bill 2019 are available online at <http://jfmresearch.com/retention-of-records-bill-2019/> and merit reading in full. As mentioned above, since the establishment of the Residential Institutions Redress Board in 2002, section 28 of its underpinning legislation has prohibited survivors (on pain of criminal prosecution) from publishing any information about their financial payment or application that could lead to the identification of any person or institution involved in their abuse.

In Ireland at present, there is no explicit statutory scheme of access for adopted people, or women whose children were taken, or family members of those who died while institutionalised, or survivors of institutional abuse more broadly, to their personal information.

The Government has argued for many years that the Irish Constitution prohibits the enactment of legislation entitling all adopted people to receive the information (their birth name) that would enable them to retrieve their publicly registered birth certificate from the General Register Office. This view has been contradicted by a significant number of Irish legal scholars and practitioners,<sup>40</sup> and the Adoption Rights Alliance group is actively campaigning for (and has published a draft Bill that would establish) a system of access to birth records that emulates Northern Ireland, England, Scotland and Wales where identifying information is provided to adopted people (in some cases following the provision of advice from a State agency) and they and their family members can then decide whether

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Section 43 and Section 45 of the Commissions of Investigation Act state that all evidence and all documents received or created by a Commission of Investigation will be deposited with the 'specified Minister' upon the conclusion of the investigation, only to be released to any subsequent Tribunal of Investigation that may be established to inquire into matters that fell within the Commission of Investigation's terms of reference.

<sup>37</sup> Ireland, *Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries* (Department of Justice, February 2013), <http://www.justice.ie/en/JELR/Pages/MagdalenRpt2013>

<sup>38</sup> Maeve O'Rourke, 'Justice for Magdalenes Research, NGO Submission, (n **Error! Bookmark not defined.**) pp 15-16.

<sup>39</sup> Ireland, Information on follow-up to the Concluding Observations of the Committee against Torture, UN Doc CAT/C/IRL/CO/2/Add.1 (28 August 2018) para 28.

<sup>40</sup> 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 5<sup>th</sup> November 2019, [http://adoption.ie/wp-content/uploads/2019/11/OMahoney\\_Logue\\_ORourke-Opinion.pdf](http://adoption.ie/wp-content/uploads/2019/11/OMahoney_Logue_ORourke-Opinion.pdf)

and how to pursue contact by withholding or providing their contact details through a voluntary tracing register.<sup>41</sup>

The recently enacted Data Protection Act 2018 and EU General Data Protection Regulation are being interpreted in an *ad hoc* fashion by the various data State, Church and private data controllers that hold files relating to ‘historical’ institutional and adoption-related abuses. It appears that some of these data controllers have interpreted new data protection laws to mean that they should release even less information to survivors or anyone affected by adoption than they might have previously. Routinely, in my experience, any information relating to a person other than the individual requesting data is redacted from the file, whether the other person is a state official, a member of religious or other personnel in a position of authority, or a parent or other family member of the person requesting their data, whether deceased or alive.

The Clann Project has reported numerous incidences of mothers, adopted people and others affected by family separations being discouraged, delayed, demeaned and even lied to in their search for personal information in recent decades.<sup>42</sup> In 1997 the St Patrick’s Guild adoption agency, which arranged more than 10,000 adoptions in Ireland during the 20<sup>th</sup> century, acknowledged that it routinely gave false information to adopted people about their parents.<sup>43</sup> In summer 2019, a Government-appointed Collaborative Forum of survivors of Mother and Baby Homes reported being informed by the State’s Child and Family Agency (Tusla) that when an adopted person requests their personal records, State social workers assess ‘the likelihood of harm being caused to wider birth families by the release of personal information to an applicant’.<sup>44</sup> The Collaborative Forum noted that ‘[n]either the statutory basis for such a criterion, nor the nature of how harm is determined, was clear to forum members.’<sup>45</sup>

Tusla has further stated as a blanket rule that when an adopted person seeks information it can only ‘lawfully release information relating to other persons (e.g. birth parents) with their expressed consent’,<sup>46</sup> demonstrating that Tusla does not consider an adopted person’s identity at birth or family circumstances to be their personal data.<sup>47</sup> The opaque and unpredictable manner in which the State manages the personal information of people unlawfully adopted was further demonstrated in 2018 when the Department of Children publicly acknowledged (having been aware of many of these cases for several years<sup>48</sup>) that it knew of 126 people registered at birth by an adoption agency as the natural child of people who were not their natural parents.<sup>49</sup> Records of internal Departmental discussions show the question being raised, ‘whether the information will do more harm than good to those who have no indication of the problem to date’, and Tusla querying ‘who to tell first – birth parents, adopted parents, subject of registration’; ‘how much information are they entitled to’; ‘if the subject matter is deceased, do we advise their children’; and ‘how does the state manage litigation?’.<sup>50</sup>

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<sup>41</sup> See Adoption Rights Alliance, General Election 2020, <http://adoption.ie/general-election-2020/>

<sup>42</sup> See for example Clann Report, (n **Error! Bookmark not defined.**) paras 3.45, 3.58.

<sup>43</sup> Pdraig O’Morain, ‘Adoption society admits supplying false information to shield mothers’ identities’ *The Irish Times* (7 April 1997).

<sup>44</sup> Conall Ó Fátharta, ‘Tusla considers damage release of personal information can cause’ *Irish Examiner* (16 July 2019).

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> Regarding mixed personal data, see *Dr B v The General Medical Council* [2016] EWHC 2331 (QB).

<sup>48</sup> Conall Ó Fátharta, ‘Adoption body reported illegal record in 2002’ *Irish Examiner* (18 June 2018).

<sup>49</sup> See Sean Murray, ‘Adoption scandal: Officials questioned whether telling those affected would “do more harm than good”’ *Journal.ie* (6 July 2018).

<sup>50</sup> *Ibid.*

In January 2020, a coalition of 72 abuse survivors and individuals affected by adoption, along with academic and practising archivists, historians, psychologists, sociologists and lawyers, issued a **public statement calling for the establishment of an Annex to the National Archives of Ireland** to hold and make available historical institutional and care-related records.<sup>51</sup> This coalition's statement calls for an independent archive that would provide at a minimum:

- Access to full personal files for institutional abuse survivors and those affected by adoption, including women whose children were unlawfully taken from them;
- Access for family members of those who died while in custody or care to information about their relative's fate and whereabouts;
- An opportunity for survivors and others to deposit testimony and other information for public access now or in the future;
- Public access to the administrative records of the systems of institutionalisation and adoption in 20<sup>th</sup> century Ireland, whether currently held by private or State bodies; and
- The extra staffing, training and records management infrastructure (physical and digital) required at the National Archives or appointed body in order to achieve the above.

Notably, one of the survivors quoted in the statement, Rosemary Adaser, Founder and CEO of The Association of Mixed Race Irish, says: *'The Mother and Baby Homes Commission is due to report soon, and the next Government will have to ask, 'How do we provide redress?' We say that no form of acknowledgement or redress will work if survivors do not also have the right to access their personal records and the administrative records of the systems that abused them.'*

It has been suggested by some that such an Annex to the National Archives could be located at the future Site of Conscience in Sean McDermott Street. In December 2019, an initial working group of survivors, academics and practitioners met in NUI Galway, with the Spokesperson for the Stasi Records Agency, Dagmar Hovestadt, to discuss and prepare an initial outline of legislation that could provide for such an independent national archive (following national consultation with survivors and others affected).<sup>52</sup>

### **Other efforts to memorialise and ensure truth-telling and national education**

As mentioned above, many individuals and organisations in Irish society have made efforts to gather, preserve, recount, teach and interpret the history of Ireland's mistreatment of women and children in residential schools, Magdalene Laundries, Mother and Baby Homes and County Homes, and through the system of coerced adoption. I cannot provide an exhaustive list in the time and space available. The below examples are excerpted from the Justice for Magdalenes Research Educational Resources<sup>53</sup> list

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<sup>51</sup> Justice for Magdalenes Research, 'Survivors, academics and practitioners call on every election candidate and political party to commit to a National Archive of Historical Institutional and Care-Related Records', 22 January, [http://jfmresearch.com/retention-of-records-bill-2019/archive\\_election2020/](http://jfmresearch.com/retention-of-records-bill-2019/archive_election2020/)

<sup>52</sup> RTE Radio, Today with Sean O'Rourke, 'Retention of Records' and 'Mr Justice Sean Ryan', 16 December 2019, <https://www.rte.ie/radio1/today-with-sean-o-rourke/programmes/2019/1216/1099429-today-with-sean-orourke-monday-16-december-2019/>

<sup>53</sup> James M Smith, Claire McGettrick, Katherine O'Donnell, Maeve O'Rourke & Mari Steed, Justice for Magdalenes Research Educational Resources List: <http://jfmresearch.com/educational-resources/>

which, it should be noted, relates primarily to the Magdalene Laundries and Mother and Baby Homes abuse and is not intended to be comprehensive:

### Identification of graves and commemoration of deaths

- McGettrick, Claire. [Magdalene Names Project](#) (Justice for Magdalenes Research)
- McGettrick, Claire. ‘[Death, Institutionalisation and Duration of Stay: Critique of Chapter 16 of McAleese Report](#)’ (Justice for Magdalenes Research, 2015)
- Map of Magdalene Laundry and Magdalene Burial Sites: <http://jfmresearch.com/home/map-of-magdalene-laundries-and-grave-locations>
- Flowers for Magdalenes: <http://jfmresearch.com/home/flowers-for-magdalenes/>

### Oral History

- O’Donnell, Katherine, Sinéad Pembroke and Claire McGettrick. [Magdalene Institutions: Recording an Oral and Archival History](#).
- O’Mahoney, Jennifer. [The Waterford Memories Project](#): Oral History
- O’Rourke, Maeve, McGettrick, Claire, and others. [Clann: Ireland’s Unmarried Mothers and their Children: Gathering the Data](#).
- Legg, Kathleen. [Whispering Hope: The True Story of the Magdalene Women](#), Orion Publishing, 2016.

### Preservation of archival evidence

- Justice for Magdalenes Research Archive: <http://repository.wit.ie/JFMA/>
- O’Rourke, Maeve, McGettrick, Claire, and others. [Clann: Ireland’s Unmarried Mothers and their Children: Gathering the Data](#).

### School lesson plan

- [The Magdalenes](#). Produced by Nick Carew, TrueTube (United Kingdom), 2013.

### Creative literature

- Bolger, Dermot. [A Second Life: A Renewed Novel](#). New Island Books, 2010.
- Brogan, Patricia Burke. [Eclipsed](#). Salmon Drama, 1994.
- Brogan, Patricia Burke. [Stained Glass at Samhain](#). Salmon Drama, 2003.
- Bruen, Ken. [The Magdalen Martyrs: A Jack Taylor Novel](#). Minotaur Books, 2006.
- Conlon-McKenna, Marita. [The Magdalen](#). Forge Books, 2002.
- Dilworth, Rachel. [The Wild Rose Asylum: Poems of the Magdalen Laundries of Ireland](#). Akron Series in Poetry, 2009.
- Lowe, Louise. [Laundry](#). Anu Productions, 2011.

### Life writing / memoir

- Goulding, June. [The Light in the Window](#). Poolbeg, 1998.
- Palmer, Caitríona. [An Affair with my Mother: A story of Adoption, Secrecy and Love](#). Penguin, 2015.
- Rodgers, J.P. [For the Love of My Mother](#). Headline Publishing, 2005.
- Sixsmith, Martin. [The Lost Child of Philomena Lee: A Mother, Her Son, and a Fifty-year Search](#). Macmillan, 2009.

### Art / visual culture

- Fenster, Diane. [Secrets of the Magdalene Laundries](#).
- Flynn, Mannix. “[State-Meant: Call me by my name](#).” Far Cry Productions.

- Glynn, Evelyn. [Breaking the Rule of Silence](#). Limerick College of Art, 2011. See also: <http://www.lit.ie/Isad/GallerySpace/Exhibitions/Breaking%20The%20Rule%20Of%20Silence:%20Bearing%20Witness%20to%20the%20Magdalene%20Laundry.aspx> and <https://www.irishtimes.com/culture/tv-radio-web/we-should-be-recovering-our-magdalen-history-not-burying-it-1.634425>
- Lowry, Alison. “[\(A\)Dressing Our Hidden Truths](#).” 2019.
- Mc Mahon. Maedhbh. “[Procession](#).”
- Parry, Cheryl. “[The Magdalene Laundries](#)“, 2007.
- Romero, Rachael. “[The Magdalene Laundries](#).”

#### Film

- [The Magdalene Sisters](#). Directed by Peter Mullan (Lionsgate, 2003).
- [Philomena](#). Directed by Stephen Frears (Weinstein, 2013).
- [Sinners](#). Directed by Aisling Walsh (BBC Northern Ireland, 2002).

#### Documentary film-feature

- [The Forgotten Maggies](#). Produced by Steven O’Riordan.
- Les Blanchisseuses de Magdalen. By Nicolas Glimois and Chrisophe Weber, produced by Arnaud Hanelin, France3/Sunset Preste, 1998. [Available as Convents of Shame from Marathon International Video]
- [The Magdalenes](#). Produced by Nick Carew, TrueTube, 2013.
- Washing Away the Stain, Directed by Sarah Barclay and Andrea Miller, BBC 2 Scotland, 1993.
- [Witness: Sex in a Cold Climate](#), Produced by Steve Humphries, Testimony Films for Channel 4, 1998.

#### Documentary film-news magazine segment

- “[Ireland’s Hidden Bodies, Hidden Secrets](#),” Produced by Sue Lloyd-Roberts (“Our World,” BBC News Channel, 5 October 2014).
- “[Magdalene Laundries](#).” 60 Minutes, narrated by Steve Croft, produced by L. Franklin Devine, CBS News, 1999.
- “[Magdalene Laundries](#).” Our World, produced by Sue Lloyd-Roberts, BBC News Channel, 27 September 2014.
- “[The Magdalene Laundries](#).” Primetime. Produced by Tanya Sillem, RTÉ, September 2012.
- “[Magdalene Laundry Apology](#),” Primetime, produced by Tanya Sillem, RTÉ, February 2013.
- “[Private members’ bill to provide for a State apology to Magdalene women](#).” Tonight with Vincent Browne, TV3, February 2013.
- “[Slave Labour: Magdalene Laundries disgraced Irish Catholic women](#).” By Sean Mallen, produced by Mia Sheldon. Global HD, Canada 2012.

#### Radio interviews / documentary

- [NPR Interview](#) with Mari Steed
- “[Magdalene Laundry Institute for Outcast Women](#)“, RTÉ Documentary on One, produced by Julian Vignoles, November 1992.
- “[Close The Door – Magdalen Laundries](#)“, RTÉ Documentary on One, produced and presented by Padraic Dolan, March 1990.

#### Academic books / cultural history

- Earner-Byrne, Lindsey, [Mother and Child: Maternity and child welfare in Dublin, 1922-60](#). Manchester University Press, 2007.
- Finnegan, Frances. [Do Penance or Perish](#). Oxford University Press, 2004.
- Luddy, Maria. [Prostitution and Irish Society, 1889-1940](#). Cambridge University Press, 2007.
- Luddy, Maria. [Women and Philanthropy in Nineteenth Century Ireland](#). Cambridge University Press, 1995.

- McCarthy, Rebecca Lea. [The Origins of the Magdalene Laundries: An Analytic History](#). McFarland, 2010.
- Milotte, Mike. [Banished Babies](#). New Island Books, 2012.
- Prunty, Jacinta. [The Monasteries, Magdalen Asylums and Reformatory Schools of Our Lady of Charity in Ireland, 1853-1973](#). Columba Press, 2017.
- Raftery, Mary and Eoin O’Sullivan. [Suffer the Little Children](#). New Island Books, 1999.
- Smith, James M. [Ireland’s Magdalen Laundries and the Nation’s Architecture of Containment](#), University of Notre Dame, 2007.

A sample list of peer reviewed journal articles and academic book chapters regarding Ireland’s legacy of institutional, gender-based, and adoption-related abuse is also available on the Justice for Magdalenes Research website (and more generally through library search engines).<sup>54</sup>

It is important to note that some small monuments have been constructed (e.g. a statue in Galway, in the West of Ireland, with a poem by Patricia Burke Brogan inscribed; and a bench in St Stephen’s Green, Dublin).<sup>55</sup> Researchers at University College Dublin have also been developing videos and lesson plans for secondary school students.<sup>56</sup>

Regarding Magdalene Laundry buildings (the fate of which I am more familiar with than other institutional settings): while several sites have been sold by the religious congregations to private property developers, two of the former Magdalene institutions have been taken over by third-level colleges: Limerick Institute of Technology and Waterford Institute of Technology. In Waterford, the college has kept intact many of the buildings. The students who study many different courses in Waterford are given the opportunity to explore and research the legacy of the Waterford campus.<sup>57</sup> In Galway, while the Magdalene Laundry buildings were knocked down to make way for a bank, the Sisters of Mercy donated the Convent building to the charity, COPE, which is currently renovating the site to create a domestic abuse service and refuge.<sup>58</sup> COPE Galway published a booklet in 2018 containing personal testimonies and information about a certain number of women who are known to have died in the Magdalene Laundry.<sup>59</sup> In Drumcondra, Dublin, the social housing charity, Respond!, is currently renovating the former Magdalene Laundry building in High Park and investigating ways to mark the history of the Magdalene Laundries on the grounds as well as commissioning art pieces.<sup>60</sup>

A final event that is crucial to highlight is the gathering of over 200 Magdalene Laundry survivors in summer 2018, voluntarily organised by a small group of activists and funded by the Irish Department of Justice. ‘Dublin Honours Magdalenes’ was a three-day event which enabled women who had been detained in Magdalene Laundries, together with a companion each, from all over Ireland and abroad to meet each other (something that had previously been impossible for many due to the fact that their names were changed in the institutions and if they escaped or were released, it was generally without notice). The women were honoured and commemorated by the President of Ireland, the Minister for

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<sup>54</sup> See James M Smith, Claire McGettrick, Katherine O’Donnell, Maeve O’Rourke & Mari Steed, Justice for Magdalenes Research Educational Resources List: <http://jfmresearch.com/educational-resources/>

<sup>55</sup> Watch: Katherine O’Donnell and Nuala Cunningham, Dublin Honours Magdalenes, Listening Exercise Video, <https://youtu.be/smAa5E1luA8>

<sup>56</sup> For more information, contact Dr Katherine O’Donnell at [Katherine.odonnell@ucd.ie](mailto:Katherine.odonnell@ucd.ie)

<sup>57</sup> For more information, contact Dr Jennifer O’Mahoney at [jomahoney@wit.ie](mailto:jomahoney@wit.ie)

<sup>58</sup> See COPE Galway, Modh Eile House, <https://www.copegalway.ie/domestic-abuse-services/modh-eile-house/>

<sup>59</sup> COPE Galway, Remember, Respect and Record: The Magdalen Women of Galway (2018), <https://www.copegalway.ie/publications/remember-respect-record-the-magdalen-women-of-galway/>

<sup>60</sup> Watch: Katherine O’Donnell and Nuala Cunningham, Dublin Honours Magdalenes, Listening Exercise Video, <https://youtu.be/smAa5E1luA8>. For more information, contact [info@respond.ie](mailto:info@respond.ie)

Justice, the Lord Mayor of Dublin and a host of artists and members of the public.<sup>61</sup> Included in the event was a Listening Exercise, in which the women were invited to speak in private (in groups of 10, without companions, facilitated by academics and others involved in researching or advocating in the area of ‘historical’ abuse) about what Irish society should know about the Magdalene Laundries abuse and how we should respond to its legacy.<sup>62</sup>

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<sup>61</sup> [‘Magdalene Survivors – An Emotional Week’](#) RTE multimedia feature (9 June 2018); Ed O’Loughlin, ‘These Women Survived Ireland’s Magdalene Laundries. They’re Ready to Talk’ *The New York Times* (7 June 2018); Ed O’Loughlin, ‘Survivors fill in the blanks; Dublin, Ireland’ *The Toronto Star* (17 June 2018); Patsy McGarry, ‘Magdalene women gather in Dublin; Hundreds to take part in two-day event to meet and talk about their experience’ *The Irish Times* (5 June 2018); Catherine Sanz, ‘Magdalenes given guard of honour at Dublin reception’ *The Times* (5 June 2018).

<sup>62</sup> For more information about this Listening Exercise, contact [Katherine.odonnell@ucd.ie](mailto:Katherine.odonnell@ucd.ie)