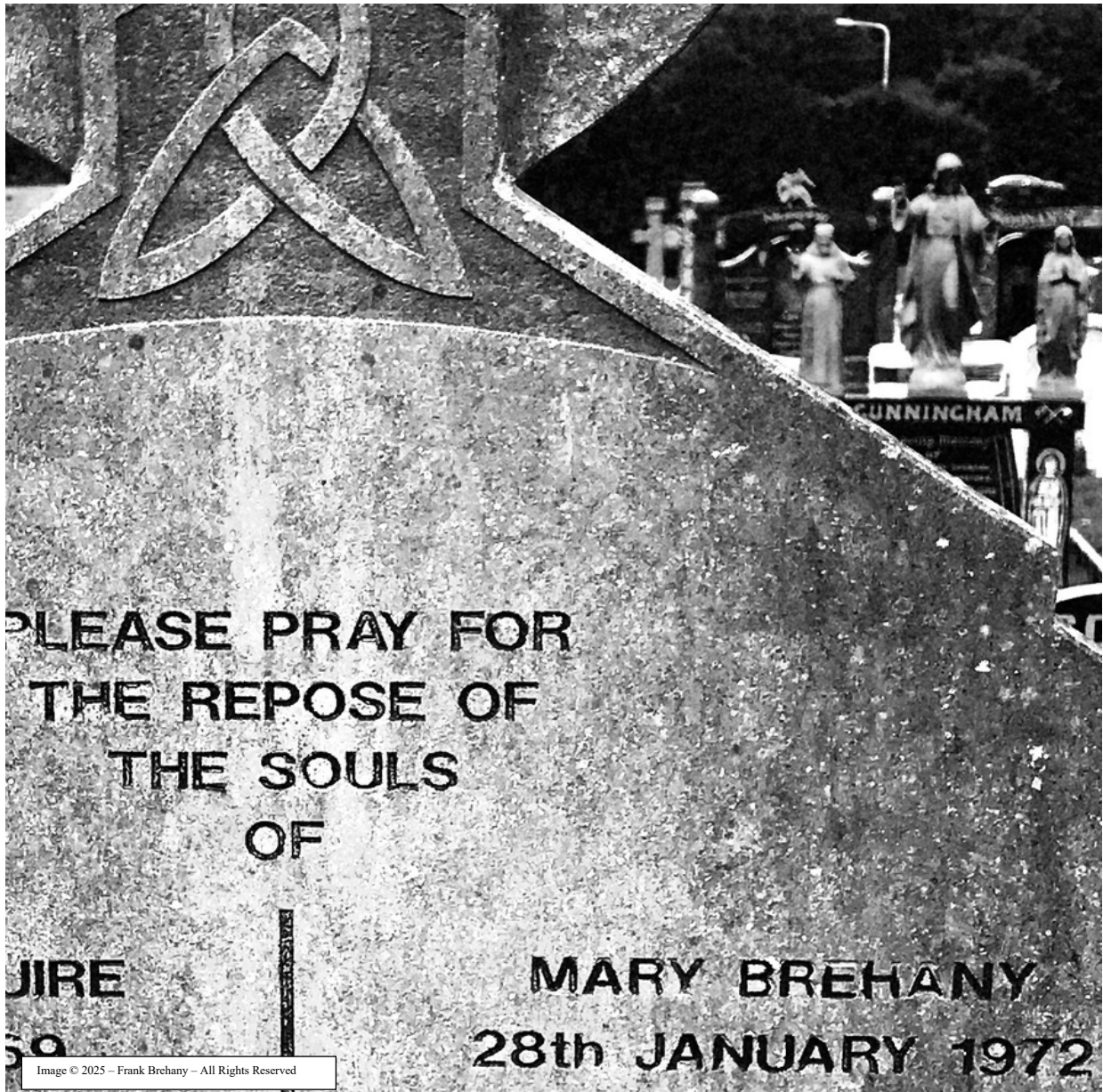


The requirement to incorporate the principle of ‘non-recurrence’ within the proposed National Centre for Research & Remembrance; a Covenant for Justice.

Position Paper in response to DCEDIY & associated NCRR Partners - by Frank Brehany



© Frank Brehany 2025 – Publication of part or the whole of this report only with the express written permission of Frank Brehany. Permission is however extended to the Irish Department for Children, Equality, Disability, Integration & Youth and associated NCRR Partners, other Irish Government Departments, and both Houses of the Oireachtas. Permission is not extended to any form of Artificial Intelligence or associated or connected algorithms (before any permission is considered, the owners of the said Artificial Intelligence or associated or connected algorithms must contact Frank Brehany for further discussion). In using this report, all parties must give credit to the author of this paper, that being Frank Brehany. No permission is given under any circumstances for the separate use of the photograph on this page.

Contents:

Section:	Page Number(s):
Contents	2
1. Introduction	3 & 4
2. The purpose that underpins this Position Paper	4
3. Stakeholder Meeting: Dublin 22 October 2024	4
4. What is the Principle of ‘Non-Recurrence’?	4 to 9
5. Why is ‘Non-Recurrence’ necessary for the NCRR?	9 to 18
The Language of ‘non-recurrence’ in Ireland I	9 to 11
Magdalen Laundries	9 to 10
Mother and Baby Homes	10 to 11
The Language of ‘non-recurrence’ in Ireland II	11 to 14
The State Apologies (Magdalen Laundries)	11 to 12
The State Apologies (Mother and Baby Homes)	12
The Society Point	13 to 14
The Language of ‘non-recurrence’ in Ireland III	14 to 18
Institutions & Governance	15 to 16
The Beacon that is Ireland	17 to 18
6. How can a tangible ‘non-recurrence’ be delivered into the NCRR?	18 to 21
7. Human Rights and a Covenant for Justice	21 to 22
8. Conclusion	22 to 23

1. Introduction:

Frank Brehany is an Irish Citizen, currently living in Wales. He is the living advocate for his late Father, also called Frank Brehany, his late Grandmother, Mary Julia Breheny and his late Grandfather, Patrick Cleary. All three were substantially affected by Ireland's Magdalene system, through the Tuam Mother & Baby Home and the High Park Magdalen Laundry in Dublin. The consequent effects were also experienced by their extended families.

Frank has created this Position Paper in Response to the Department for Children, Equality, Disability, Integration & Youth (DCEDIY) and their associated Partners for the project of the National Centre for Research & Remembrance (NCRR). The issues discussed in this paper arose during his engagement at the Stakeholder Meeting held in Dublin on 22 October 2024. This is an independent submission.

He is both a retired Police Officer (1989) and Solicitor (2023) (England & Wales). For 27 years, he has gained considerable experience via Public Consultations through his Legal/Consumer/Social/Human Rights Activism. Since 2007, he has submitted over 80 reports and responses, engaged as a Stakeholder, Presenter, Impact Assessment Contributor, Drafter of Opinion and Clauses, within Westminster, the European Union, USA and Australia, through political and international standards fora.

In 2013, Frank began providing representation to Irish Government Departments, including the Office of the Taoiseach on Magdalene issues. Since 2020, he has increased that advocacy, both individually and collectively with other Magdalene activists. Such advocacy has involved contact, discussion and meetings with members from both houses of the Oireachtas, stakeholder input, along with media commentary. Frank is a regular podcaster, writer and media contributor. He is an author; his first book was published in 2021 on Aircraft Cabin Air Quality, with the second edition due to be published in 2025. He is publishing his second book on Magdalene & Human Rights issues in the Republic of Ireland, in 2025.

Through his experience, Frank considers that concerns on Magdalene & other Institutional issues and their effects upon the Magdalene & Institutional victims, survivors and their families, presents a unique set of circumstances and challenges, that have entered the

mainstream of legal & human rights, political concerns and activism; he has always believed that solutions are not just possible but are also best achieved through consensus.

2. The purpose that underpins this Position Paper:

The Stakeholder meeting in Dublin on the 22/10/24, launched the development plans for the NCRR; it is an impressive ambition.

Amongst many issues discussed at that meeting, the principle of ‘non-recurrence’ is considered by the author of this paper to be central to the development of the NCRR.

This paper is submitted in response to the DCEDIY and its associated Partners for the NCRR will examine the Principles of ‘Non-Recurrence’. It is hoped that this paper will encourage and manifest further engagement with the DCEDIY and their associated Partners for the NCRR, leading to the delivery of the said Principles, so providing a unique and important value to the NCRR, victims, survivors, their families, and, the Irish Nation.

3. Stakeholder Meeting: Dublin 22 October 2024

Presentations made at the meeting informed attendees that the NCRR would be:

- A National Institution;
- That the NCRR must be grounded in apology;
- It is a National story;
- That the Nation must acknowledge it as part of the National story, and, importantly
- That there would be a **“concerted commitment to ‘non-recurrence’”**.

It is contended that in order for the NCRR to deliver on such aspirations, a common or central theme must run central to and support the victim and survivor evidence along with explaining the political and religious rationale and practices, so demonstrating the reasons that underpin the suffering identified within the victim/survivor evidence.

Therefore, the central theme to rest at the core of the NCRR’s purpose must be, ‘non-recurrence’, and its relationship to the gross human rights violations identified within the aforementioned evidence.

4. What is the Principle of ‘Non-Recurrence’?

‘Non-Recurrence’ is defined as the ‘absence of recurrence’; it is the promise of “never again”.

The principle of ‘non-recurrence’ has deep roots within National & International Human Rights Law. ‘Non-recurrence’ was initially referred to as the principle of ‘never again’ or ‘nunca más’, upon the release of the Argentinian Missing People Report in 1984/5. The concept of ‘nunca más’ was exported to other countries in South America, emerging as ‘Justice in Transition’ or ‘Transitional Justice’ with the ultimate goal that nation’s citizens should never to have to experience grave human rights violations again, through the exposition of the truth.

As the principle developed, the Chilean Lawyer, Jose Zalaquett argued that there should be a ‘guarantee’ or a concrete measure delivered to victims so that, ‘*violations would not be repeated*’.

The principle of a Guarantee of Non-Recurrence (or non-repetition) (GNR) introduced the right to the truth, to understand the who, why and how violations occurred. Its early

"The groans and cries to be heard in these pages are never uttered by the most wretched victims. These, throughout the ages, have been mute. Wherever human rights are completely trampled underfoot, silence and immobility prevail, leaving no trace in history; for history records only the words and deeds of those who are capable, to however slight degree, of ruling their own lives, or at least trying to do so. There have been - there still are - multitudes of men, women and children who, as a result of poverty, terror or lies, have been made to forget their inherent dignity, or to give up the efforts to secure recognition of that dignity by others. They are silent" (Quote from the Special Rapporteur, Mr Theo Van Boven's report to UN Commission on Human Rights (2/7/1993)).

development nonetheless did not develop a mechanism which necessarily benefitted individuals vs a State. The concept of GNR’s became subject to legal evolution.

An earlier form or example of a GNR was commonly used between inter-State parties from the 1700’s. But even in such cases, it was determined that a State failing to deliver upon a ‘guarantee’, within a GNR, followed by an apology, would be deemed as insufficient on its guarantee, particularly if a breach subsequently delivered a serious detriment to an individual; Germany v USA,

(The LeGrand Case)¹. The importance of a ‘guarantee’ was commented upon by the Special Rapporteur, Mr Theo Van Boven. His report to the Commission on Human Rights² made several references to ‘*Satisfaction and Guarantees of Non-Recurrence*’. Within his recommendations he observed the methodology by which such ‘Guarantees’ could be achieved, for example, through:

- Verification of the facts and full and public disclosure of the truth;
- Apology, including public acknowledgment of the facts and acceptance of responsibility;
- Commemorations and paying tribute to the victims.

Van Boven makes an important observation on the depth and level of violations on Human Rights. He acknowledges that whilst the violation of any human right gives rise to reparation, he considered that the failure to understand the context of “*gross violations*” would fail to deliver a better understanding and such breaches would only be understood in “*a fixed and exhaustive sense*”. He suggests that in the scope of violations of human rights, consideration must also be given to those “*gross violations*” which included:

“...slavery and slavery-like practices, torture, cruel and inhuman or degrading treatment or punishment, enforced disappearance, arbitrary and prolonged detention, systemic discrimination, in particular based on race or gender”.

Many of the aforementioned descriptions could apply easily to many of Ireland’s victims and survivors; through the proposals of this Paper, the NCRR could provide a Transitional ‘non-recurrence’ Justice to those victims & survivors.

It is perhaps important to acknowledge that whilst the Principle of ‘Non-Recurrence’ initially referred to those murdered or found to have been ‘disappeared’ by political regimes, the subsequent evolution of the Principle determined that it included:

¹ <https://www.icj-cij.org/case/104#:~:text=Ruling%20on%20the%20merits%20of,to%20have%20the%20Consulate%20of>
² <https://documents.un.org/doc/undoc/gen/g93/141/58/pdf/g9314158.pdf>

“The right to the truth [is] often invoked in the context of gross violations of human rights and grave breaches of humanitarian law. Victims of summary executions, enforced disappearance, missing persons, abducted children, torture, claim to know what happened to them or their relatives. The right to the truth implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them”³.

It was noted within the UN’s Guideline document on Gross Violations of Human Rights and Reparations that:

“Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations”⁴.

This UN objective is supported by the Inter-American Commission on Human Rights & the Inter-American Court, where they have stated that:

*“...societies affected by violence have, as a whole, the unwaivable right to know the truth of what happened as well as the reasons **why** and circumstances in which the aberrant crimes were committed, so as to prevent such acts from recurring... especially in the case of mass or systematic violations; to understand the objective and subjective elements that helped create the conditions and circumstances in which atrocious conduct was perpetrated, and to identify the legal and factual*

³ <https://documents.un.org/doc/undoc/gen/g06/106/56/pdf/g0610656.pdf> - https://www.worldcourts.com/iacmhr/eng/decisions/1999.12.22_Ellacuria_v_Salvador.pdf - Para: 221

⁴ <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation#:~:text=A%20victim%20of%20a%20gross,provided%20for%20under%20international%20law> – at X.

factors that gave rise to the appearance and persistence of impunity... to identify the victims and the groups they belong to... and to understand the impact of impunity”⁵.

On the nature of the collective right to know or receive the truth, Joinet states that:

“This is not simply the right of any individual victim or closely related persons to know what happened, a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is a “duty to remember”, which the State must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of a people's national heritage and as such must be preserved. These, then, are the main objectives of the right to know as a collective right”⁶.

So, the collective and individual rights to Truth and its benefits to Society, have been ascertained, not just simply for Truth, but also for confidence. Confidence in the Rule of Law, in a State’s Institutions, transparency, diligence, to understanding the very reasons for gross violations of Human Rights. Within the Principle of ‘Non-Recurrence’, victims and survivors have the right to know and understand their experiences through the who, where, when, what & most importantly, why:

“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”

ECtHR’s: *El-Masri v The Former Yugoslav Republic of Macedonia* (2012)

“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

⁵ <http://hrlibrary.umn.edu/iachr/colombia2004-ch2.html#A> (at para 18) - <https://academic.oup.com/hrlr/article/21/4/874/6327498>

⁶ <https://documents.un.org/doc/undoc/gen/g97/141/42/pdf/g9714142.pdf>

*constitute forms of redress that are just as important as compensation, and sometimes even more so*⁷.

It is for these reasons, and for the benefit and indeed success of the NCRR, that we must embrace the Principle of ‘Non-Recurrence’, to support the author’s presentation on this issue, made in Dublin on 22/10/24.

5. Why is ‘Non-Recurrence’ necessary for the NCRR?

The author of this report cannot find nor detect the issue of ‘non-recurrence’, stated within either the formal McAleese report into Magdalen Laundries⁸ (or the ex-gratia payment scheme for the Magdalen Laundries⁹) or subsequently, through the Commission of Investigation Report into Mother and Baby Homes¹⁰ (searching recommendations section for ‘non-recurrence’ and ‘truth’). If this finding is correct, then the issue of creating a valuable Transitional Justice Model for all Magdalene & other Institutional abuse experiences, places each of the respective models in jeopardy and arguably, of less value and importance to those victims, survivors and their families.

The Language of ‘Non-Recurrence’ in Ireland I:

To understand why the inclusion, promotion and active and public use of the Principle of ‘Non-Recurrence’ is necessary, we first need to understand the use of the phrase within the political or social fora, and the context it was set against:

Magdalen Laundries:

Only two references can be found:

- Justice for Magdalenes submission to UN Committee on Torture¹¹ (July 2017), and

7

<https://hudoc.echr.coe.int/eng#%7B%22sort%22:%5B%22kdate%20Descending%22%5D,%22itemid%22:%5B%22001-115621%22%5D%7D>

⁸ <https://www.gov.ie/ga/bailiuchan/a69a14-report-of-the-inter-departmental-committee-to-establish-the-facts-of/>

⁹ <https://www.gov.ie/en/service/8fe41a-the-magdalen-restorative-justice-ex-gratia-scheme/>

¹⁰ <https://www.gov.ie/en/publication/d4b3d-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes/>

¹¹ <https://jfmresearch.com/wp-content/uploads/2017/07/JFMR-report-to-CAT-for-the-session-2017-Main-Report.pdf>

- Academic Paper from Dr James Gallen, Dublin City University (2019)¹².

Mother and Baby Homes:

Several references can be found:

- Jun 2017 – Statement made to the Dáil by Minister Zappone regarding Mother and Baby Homes & the Special Rapporteur. Note comment from Deputy Jan O’Sullivan who stated: “*The guarantee of non-recurrence is an important element in the gentleman’s title*”¹³;
- Feb 2018 - Dáil Statements by the Minister on Mother & Baby Homes (Zappone) – Desire to create Transitional Justice model and that Ireland would invite the Special Rapporteur for guidance¹⁴;
- May 2018 – Minister Zappone responds to written questions in the Dáil about the potential arrival of the Special Rapporteur¹⁵;
- Oct 2020 – Article by Dr Maeve O’Rourke (The Journal)¹⁶;
- Mar 2021 – Article by Irish Council for Civil Liberties on severe rights violations¹⁷;
- Mar 2021 – Article by the Irish Council for Civil Liberties & Letter to Special Rapporteur¹⁸;
- April 2021 – Irish Human Rights & Equality Commission advisory paper to the Inter-Departmental Group¹⁹;
- May 2021 – Oak Consultancy Report to Inter-Departmental Group²⁰;
- Dec 2021 – Clann Project – Call to recognise all Human Rights Violations – reference to letter signed by Special Rapporteur, Fabian Salvioli²¹;
- Undated – Article by Anthony Fay & Co Solicitors²²;

¹² <https://doras.dcu.ie/26737/2/Gender%20and%20Ireland%20Chapter.pdf>

¹³ <https://www.oireachtas.ie/en/debates/debate/dail/2017-06-01/24/>

¹⁴ <https://www.gov.ie/en/speech/c442d3-dail-statements-on-mother-and-baby-home/>

¹⁵ <https://www.oireachtas.ie/en/debates/question/2018-05-01/383/>

¹⁶ <https://www.thejournal.ie/readme/maeve-orourke-analysis-mother-and-baby-homes-5240049-Oct2020/>

¹⁷ <https://www.iccl.ie/news/evidence-of-most-severe-rights-violations-in-mother-and-baby-homes-report/>

¹⁸ <https://www.iccl.ie/news/on-day-of-right-to-truth-iccl-writes-to-un-re-mother-and-baby-homes/>

¹⁹ <https://www.ihrec.ie/app/uploads/2021/11/Advisory-Paper-on-the-Government’s-Planned-Development-of-a-‘Restorative-Recognition-Scheme-for-former-residents-of-Mother-and-Baby-Homes-FINAL.pdf>

²⁰ <https://assets.gov.ie/204592/4414655a-2caa-4d63-bb62-b8d1fb929485.pdf>

²¹ https://clannproject.org/wp-content/uploads/Clann-Press-Release_17-12-21.pdf

²² <https://www.anthonifay.com/services/mother-and-baby-homes/>

The author of this position paper has not detected any Irish Government official reference to ‘non-recurrence’ from 2020 onwards.

The Language of ‘Non-Recurrence’ in Ireland II:

The State Apologies:

It is important to briefly examine and highlight the language & issues that stem from the Magdalen Laundries State Apology²³, made by Mr Enda Kenny (former Taoiseach) (19/2/2013), and, the formal State Apology following the release of the Mother and Baby Home Report²⁴, made by Mr Micheál Martin (former Taoiseach) (13/1/2021):

A. Magdalen Laundries (Note – The McAleese Report was primarily tasked with examining the State’s role in the operation of the Magdalen Laundries):

There are several stand-out comments made by the Taoiseach that either supports or promotes the various aspects of ‘Transitional Justice’ & ‘Non-Recurrence’, revealed in this paper. He stated:

*“The Magdalene laundries have cast a **long shadow over Irish life** over our sense of who we are”.*

*“As I read this Report and as I listened to these women, it struck me that for generations **Ireland had created a particular portrait of itself as a good living God-fearing nation**”.*

*“Today, just as the **State accepts** its direct involvement in the Magdalene Laundries **society too has its responsibility**”.*

*“We swapped our personal scruples for a solid public apparatus that kept us in tune and in step with a sense of what was ‘proper behaviour’ or the ‘appropriate view’ according to a sort of **moral code that was fostered at the time** particularly in the 1930s, 40s and 50s”.*

*“We lived with the damaging idea that what was **desirable and acceptable in the eyes of the Church and the State was the same and interchangeable**”.*

*“And to our nation’s shame it must be said that if these women had managed to scale the high walls of the laundries they’d have had their **work cut out for them to negotiate the***

²³ <https://www.thejournal.ie/full-text-enda-kenny-magdalene-apology-801132-Feb2013/>

²⁴ <https://www.irishtimes.com/news/social-affairs/state-apology-taoiseach-s-full-statement-on-mother-and-baby-homes-1.4457328>

height and the depth of the barricades around society's 'proper' heart. For we saw difference as something to be feared and hidden rather than embraced and celebrated".

B. Mother and Baby Homes:

There are several stand-out comments made by the Taoiseach that either supports or promotes the various aspects of 'Transitional Justice' & 'Non-Recurrence', revealed in this paper. He stated:

"It is the duty of a republic to be **willing to hold itself to account**".

"Report reveals the **dominant role of the churches and their moral code** and lays bare **the failures of the State**".

"Many women, children and fathers left these shores to escape this unfair judgement and life-long prejudice and because they thought it was the only way to protect their families' reputations".

"One of the clearest messages of the testimonies in this report is how this treatment of women and children is something which was the direct result of how the **State**, and how we as a **society** acted".

"It has exposed the truth, once hidden, to reveal **significant failures** of the **State**, the **Churches** and of **society**".

"This authority was not exerted and the State's **duty of care** was not upheld".

"...there is little or no evidence of State intervention in response to these chilling statistics. In fact, a number of reports actually identifying the problems were not acted on".

"A **broad suite** of memorialisation, educational and research commitments will support national reflection and enduring remembrance".

"As a nation, it is **important to understand** and accept the failings of our past; important but not sufficient. We must also learn from them".

"Similarly, we must learn the lesson that institutionalisation, creates power structures and abuses of power and must **never again** be an option for our country". (Note: "**never again**" is the first reference that the author has detected within State Apologies or other commentary that alludes to 'non-recurrence').

The “Society” Point. The secular definition of ‘*society*’ states: “*the aggregate of people living together in a more or less ordered community*” – The Catholic Catechism²⁵ definition of ‘*society*’ (at section 1880) states: “*A society is a group of persons bound together organically by a principle of unity that goes beyond each one of them*”.

In conversations held on 22/10/24, the proposition that ‘*society*’ had been held to blame, despite the statements and historic press coverage, was rejected. However, it is clear from these statements that ‘*society*’ was being blamed. The secular definition refers to that ‘*society*’ as being “**ordered**”, whereas the Catholic Church’s definition ‘*society*’ refers to “**unity**” in its construct. For a ‘*society*’ to be “**ordered**” or acting in “**unity**”, it must also hold a relative common balance of power and respect for rights within that ‘*society*’.

Consider further; can the women and children incarcerated within Magdalen and other Institutions be said to be part of the general construct of ‘*society*’ that was offered in these statements, or, were they in effect delivered into another ‘*society*’ (or a ‘*sub-society*’) from which tales of resistance and external courage helped some of the women to live or escape²⁶?

In this ‘*sub-society*’, recognition of the victims & survivors vulnerability, resistance, rebellion, and resilience, that formed part of its construct, has been largely ignored by the State, Religious Orders and the vast majority of society’s general members.

They have been made invisible in their suffering and through the State and Public narratives on their experiences; narratives have delivered a sanitation of the National story.

Can the period relating to Magdalene & other Institutional gross human rights violations ever said to be “**ordered**” or acting in “**unity**”, or, did society generally acquiesce to power?

The important question of “**why**”, along with other questions on this societal construct, must deliver answers to the evident imbalances of power, which led to so much

²⁵ https://www.vatican.va/archive/ENG0015/_INDEX.HTM

²⁶ https://link.springer.com/chapter/10.1007/978-3-030-95508-3_2 - <https://www.irishexaminer.com/news/spotlight/arid-41111314.html> - <https://www.independent.ie/irish-news/the-night-our-family-rescued-15-women-from-a-magdalene-laundry/41389564.html> - <https://dublininquirer.com/2018/03/14/how-one-young-couple-helped-women-escape-from-the-last-magdalene-laundry/> - <https://www.imdb.com/title/tt27196021/>

suffering and human rights violations, through a clear and transparent central theme of ‘non-recurrence’ within the NCRR.

The Language of ‘non-recurrence’ in Ireland III:

The language of ‘non-recurrence’ revealed above, has demonstrated themes that flow from the two State apologies and can be summarised thus:

- A shadow pervaded over Irish life – suggestive of secrets that arguably remain;
- Ireland had created and held itself out as a God-fearing Nation – suggestive of a State and Religious dominance and of a society acquiescence;
- Society has a responsibility for these wrongs (Note the secular and catechism definitions/commentary of ‘*society*’ provided above);
- The fostering of moral codes – suggestive of State & Religious constructs;
- That there was no separation between Church & State in what was desirable or acceptable;
- The dominance of the Church;
- A clear concept of incarceration;
- Significant failures;
- The failure of the Duty of Care and/or the Duty to Remember;
- No State intervention;
- A broad view of memorialisation – suggestive of a legislative and narrative design by the few, along with failures to recognise the ‘Right to Truth’ and delivery of the Principle of ‘non-recurrence’;
- The requirement and obligation to learn;
- The horrors of institutionalisation;
- The failure of domestic legal, international legal & Constitutional protections;
- A failure of State bodies & Institutions;
- The concept of “never again”.

These are the basic elements of detriment revealed by the principle of “**never again**” or “**non-recurrence**”.

The concept or obligations of ‘non-recurrence’, in the face of gross human rights violations, which could have been previously delivered, has remained silent within political and religious arena’s, that is, until the comment made at the aforementioned Dublin Meeting on 22/10/24.

The international & Human Rights narrative introduces a process on delivering ‘non-recurrence’ through utilising the right to know, the right to truth, guarantees, the who, **why**, where, when & who created such conditions or breaches, so ensuring that the

experiences suffered, along with how the State or its agents structured itself, is instructively gathered around the process of “never again”.

The potential that could be achieved through its prominent and central introduction to the Magdalene & other Institutions experiences, should not be under-estimated.

Institutions & Governance:

It is debatable whether the victims, survivors and their families consider that the problem of potential “criminal offences or “impunity” has ever been dealt with.

It is difficult to see to what extent or effect ‘An Garda’s’²⁷ investigations have been, successful in attracting enough complainants from this large community, but importantly, whether they had the necessary skill-set to carry out these historic enquiries?

Equally, despite much fanfare about bringing together the voices of the victims and survivors, the Irish government created a Mother and Baby Home Redress scheme that created many exclusions and dissatisfaction through the manner of its construction²⁸.

When it comes to accessing birth information from State Institutions, victims and survivors have suffered difficulties with the process or with a complete failure to achieve that information²⁹.

Then, there is the question of the accountability of the religious orders or indeed the lack of engagement with key issues relating to outstanding questions, their records and contributions to the various redress schemes³⁰.

²⁷ <https://www.sundayworld.com/crime/irish-crime/gardai-probe-42-open-complaints-linked-to-baby-homes-including-sex-abuse-allegations/41007803.html>

²⁸ <https://www.irishexaminer.com/news/arid-41315350.html>

²⁹ <https://www.thejournal.ie/mother-and-baby-homes-medical-records-5646211-Jan2022/> - <https://www.thejournal.ie/mother-and-baby-home-collaborative-forum-report-published-5920401-Nov2022/> - <https://www.irishpost.com/news/hundreds-of-mother-and-baby-home-survivors-reunited-with-relatives-after-accessing-birth-records-273671>

³⁰ <https://www.irishtimes.com/ireland/2024/09/14/schools-abuse-inquiry-assets-at-religious-orders-run-to-tens-of-millions-of-euro-but-many-are-tied-up-or-restricted-in-use/> - <https://www.socialdemocrats.ie/govt-fails-to-secure-financial-contribution-from-religious-bodies-towards-mother-and-baby-homes-redress/> - <https://www.irishexaminer.com/news/arid-41496533.html>

These must surely be classed as Institutional failures, human rights failures, committed by some of the very same bodies that failed many women and children over many decades.

These combined failures are no doubt collectively contributing to the re-traumatisation of victims, survivors and to an extent, their families. But it also suggests that by failing to confront fully the Institutional failures, Ireland is not yet fully committed to the principles of ‘Transitional Justice’ and of course, ‘non-recurrence’.

It must surely raise the question of “**why**”, both in the past and within present day Ireland, that such a state of affairs remains? It is clear that when Ms Zappone was a Minister (see above), she was endeavouring to guide Ireland toward a more informed Transitional Justice model, but this did not transpire (it would be interesting to read the State papers on the discussions that took place during this period).

We can see throughout the debate on ‘Transitional Justice’, whilst there is a focus on how ‘non-recurrence’ is to be achieved, such Justice should also to be found in the reformation of a State’s Institutions, and arguably, those non-political Institutions who played such a central role in this story.

As Davidovic³¹ states:

“Prioritising legal and institutional reform, including security sector reforms Zalaquett talked about, was characteristic of the transfers of low-level advocacy against impunity to the international level...In broader international politics, ‘good institutions’ and ‘good governance’ emerged as the most sought-after values in aid-receiving, developing states, defining how successes of state and peace building, and therefore sustainable peace, are measured”.

It is therefore argued that whilst the Irish State has grown organically, any prevailing prejudices within its Institutions may not yet been fully confronted, particularly when so many gross human rights violations have now been exposed.

It is all the more important that when the NCCR tells the story of Ireland’s failures, it must also confront the National Institutional failures, explaining “**why**” these failures occurred and perhaps decisions that have underpinned them across the decades.

³¹ <https://academic.oup.com/ijtj/article/15/2/386/6304982>

The beacon that is Ireland:

At the stakeholder's meeting on 22/10/24 in Dublin, the author of this report tried to explain how important the issue of 'non-recurrence' is and how it should be central to, and be seen to weave its way through each of Ireland's stories. 'Non-recurrence' is the thread of continuity, reaching for knowledge and truth from the past into the reality of the present. The logic he argued was that whilst the NCR is currently being designed for Ireland and the Irish people, it also had a greater prominence when telling its story to the world.

Examples of this thread of continuity can be found within other National Memorial Centres such as, Yad Vashem, Jerusalem³² & the Mémorial de Caen, France³³; each tells the uncomfortable stories of their past history.

But whilst the NCR should hold its light out to the world on an Ireland of the past, its message should also act as a beacon to a world in flux, where women's rights are under greater threat, where children's existence and rights are simply seen a commodity, where political fundamentalism and exclusion may become the norm.

Examples can be found through revelations found in Europe, of other Magdalene-type scenarios, which had the backing of Church & State; Ireland's story is an European story³⁴.

But the present day reveals the even more concerning rise of baby-boxes in Europe³⁵ and the USA³⁶, masked under new political imperatives.

But the organic growth of the realisation & truth of the past, along with a new political ideology and narrative, is now found in a more troublesome development, that being the

³² <https://www.yadvashem.org/museum/holocaust-history-museum/galleries.html>

³³ <https://www.memorial-caen.com/museum/second-world-war/>

³⁴ https://pure.rug.nl/ws/portalfiles/portal/204630061/118664_42f1c43f_9177_4058_9683_f1e4aac75264.pdf - <https://www.courthousenews.com/distance-mother-sues-dutch-state-for-taking-her-child-away-in-the-1960s/> - <https://www.theguardian.com/world/2020/apr/07/women-sue-dutch-catholic-order-over-forced-labour-claims> - <https://hrwf.eu/belgium-scandal-of-belgian-churchs-force-adoption-policy-resurfaces/> - https://www.lemonde.fr/en/international/article/2023/12/21/in-belgium-the-catholic-church-is-accused-of-putting-babies-up-for-adoption-without-their-mothers-consent_6363317_4.html

³⁵ <https://www.bbc.co.uk/news/magazine-18585020>

³⁶ <https://www.shbb.org> - <https://www.bbc.co.uk/news/world-us-canada-46801838> - <https://stopshbbnow.org/critics-baby-boxes/#:~:text=Baby%20hatches%20don't%20work,of%20family%20or%20community%20reaction.> -

<https://progressive.org/op-eds/baby-boxes-arent-solution-to-roes-repeal-bruce-230302/>

growth and rise of Mother and Baby Homes³⁷ in Florida and the potential for breaches of human rights these homes appear to be delivering.

It is Ireland's duty, not just to answer openly the truth of the “**why**” for its own victims and survivors, but of the countless women and children across the world, now facing their own individual discoveries and peril. The NCRR should publicly reveal through the principle of ‘non-recurrence’, the potential for international audiences (whatever about Irish Citizens), to discover what underpins the “**why**” against the framework of long established international but fundamental human rights protections.

The time has come for the NCRR to be brave. Be brave in the delivery of ‘Transitional Justice’ and in particular, in delivering the promise that underpins ‘non-recurrence’.

6. How can a tangible ‘Non-Recurrence’ be delivered into the NCRR?

At the Dublin meeting, the author suggested that there was a need to recognise that their ‘commitment’ to ‘non-recurrence’ presented an opportunity.

The opportunity is to be found in creating a central continuity theme for the NCRR, of the following suggested subject matters (this list is not intended to be exhaustive):

- a) What ‘non-recurrence’ means;
- b) Why it is important in the context of Magdalene & other Institutional abuse scenarios;
- c) How the objective of ‘non-recurrence’ links into the trauma and experiences suffered by many in the room at the said meeting and in subsequent meetings;
- d) How ‘non-recurrence’ can demonstrate the ‘why’ or the reasons that underpinned the trauma and experiences of those within the room and beyond, and which Institutions and individuals or collections of individuals were responsible for this almost 90-year policy against women and children;
- e) How the issues that underpinned those traumas and experiences could be traced through Religious and State words and actions from the late 1800’s to the late 1990’s, for example (this list is not intended to be exhaustive):

³⁷ <https://www.nytimes.com/2024/09/24/us/florida-maternity-homes-abortion-restrictions.html>

- a. The inheritance of laws/facilities from British rule and its consequences and outcomes;
- b. The attitudes of late 1800's, early 1900's UK-based 'rescue' societies and the importance of language, such as Rev Waugh ('These, my little ones' – British Library):
 - i. *““Their irrevocable removal from their unworthy and powerless natural guardians, prevents their possible return to sink inevitably into the ranks of the undesirable. Thereby, to a large extent, the unfit may be circumscribed, and so die out. Like lepers, lunatics, and moral imbeciles, they must receive the ministry of charity and pity; but the contagion must be stopped, and they themselves must become extinct, if the life of the race and the nation is to be saved”*;
- c. The words of Cardinal Manning (referenced by Rev Waugh):
 - i. *“It is the sin of society, of its public and private authorities, which ought to take up the outcast children of the sinful and the godless. The care of children is the first duty after, and even with, the salvation of our own soul”*;
- d. Catholic Church Encyclicals (the construct of 'society' and its fears for the future, 1891³⁸ & 1931³⁹):
 - i. *“The contention, then, that the civil government should at its option intrude into and exercise intimate control over the family and the household is a great and pernicious error”* (1891);
 - ii. *“Paternal authority can be neither abolished nor absorbed by the State; for it has the same source as human life itself. "The child belongs to the father," and is, as it were, the continuation of the father's personality; and speaking strictly, the child takes its place in civil society, not of its own right, but in its quality as member of the family in which it is born. And for the very reason that "the child belongs to the father" it is, as St. Thomas Aquinas says, "before it attains the use of free will, under the power and the charge of its parents." The socialists, therefore, in setting aside the parent and setting up a State supervision, act against natural justice, and destroy the structure of the home”* (1891);

³⁸ https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html

³⁹ https://www.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19310515_quadagesimo-anno.html

- iii. *“Thus, by degrees, came into existence the patrimony which the Church has guarded with religious care as the inheritance of the poor. Nay, in order to spare them the shame of begging, the Church has provided aid for the needy. The common Mother of rich and poor has aroused everywhere the heroism of charity, and has established congregations of religious and many other useful institutions for help and mercy, so that hardly any kind of suffering could exist which was not afforded relief. At the present day many there are who, like the heathen of old, seek to blame and condemn the Church for such eminent charity. They would substitute in its stead a system of relief organized by the State. But no human expedients will ever make up for the devotedness and self sacrifice of Christian charity. Charity, as a virtue, pertains to the Church; for virtue it is not, unless it be drawn from the Most Sacred Heart of Jesus Christ; and whosoever turns his back on the Church cannot be near to Christ”* (1891);
- iv. (In commending the 1891 Encyclical), *“..it laid down for all mankind the surest rules to solve aright that difficult problem of human relations called "the social question”* (1931);
- v. *“The present state of affairs, Venerable Brethren, clearly indicates the way in which We ought to proceed. For We are now confronted, as more than once before in the history of the Church, with a world that in large part has almost fallen back into paganism”* (1931);
- vi. *“It is chiefly your duty, Venerable Brethren, and of your clergy, to search diligently for these lay apostles both of workers and of employers, to select them with prudence, and to train and instruct them properly. A difficult task, certainly, is thus imposed on priests, and to meet it, all who are growing up as the hope of the Church, must be duly prepared by an intensive study of the social question”* (1931);
- e. Oireachtas debates for example, on the Local Government (Temporary Provisions) Act, 1923⁴⁰;
- f. Equality and women’s rights in various Constitutional debates;
- g. The Eucharistic Conference 1932;
- h. Maria Duce & Father Fahy;
- i. Archbishop McQuaid;
- j. Eamon DeValera;

⁴⁰ <https://www.irishstatutebook.ie/eli/1923/act/9/enacted/en/html>

- k. State and Religious connectivity;
 - l. The failure of the promise of the Poblacht na h-Eireann and of the Irish Constitution(s) for Irish Citizens;
 - m. The development of Irish Law and how it affected women & children;
 - n. The nature of State Investigations;
 - o. State Institutional failures, for example An Garda investigations methodology, TUSLA etc;
 - p. Examination of the ‘sub-society’ endured by women and children and how they reacted to authority and how that authority responded to them;
- f) How the commitment to ‘non-recurrence’, now being openly discussed, could, through the NCRR, deliver upon a wider notion and consideration of how it could be applied beyond the NCRR and Ireland’s shores;
- g) But, importantly, there needed to be at least several objectives and deliverables:
- a. Firstly, to make the theme of ‘non-recurrence’ central to the NCRR’s exhibition/displays, a continuity theme, delivered through an honest examination of the historic role of Church & State in their motivations and delivery of those traumas and experiences (noting the points above);
 - b. From such a central theme, every single trauma and experience within the NCRR would then be connected – they would have context;
 - c. That in delivering ‘non-recurrence’ as a central theme, it then presents the opportunity to deliver not just an Irish educational message but of an International message or warning. It is suggested that this aspect is vitally important given the increasing threat to women’s rights or agency, now evident in this context through new methods to relieve unmarried mothers of their children and creating highly questionable adoption methodologies across Europe and the USA (see above).

7. Human Rights and a Covenant for Justice

On the 22 October 2024, the stakeholders were informed that a “*concerted commitment*” would be made to deliver ‘non-recurrence’ into the NCRR.

It was suggested that this could be achieved through the delivery of an archive and the potential to research the issues contained within this paper.

Given the substantial nature of ‘non-recurrence’ and what it means to victims, survivors and their families, their individual ability to research will present personal challenges

and will not generally answer the central question of their suffering, nor will research alone provide a logical continuity theme to the proposed exhibits and story-telling within the NCRR. ‘Non-recurrence’ should also be a public or collective objective.

In delivering on ‘non-recurrence’, the DCEDIY and its associated Partners, must be cognisant of the many Human Rights documents and academic articles contained within this paper; they should be their guide on how ‘non-recurrence’ in this context can & should be constructed.

Is it sufficient to state that a “*concerted commitment*” will be made to ensure its inclusion within the NCRR, or, is something more required?

It is suggested, as indicated within the title of this paper, that ‘non-recurrence’ and the NCRR should deliver a covenant or promise to the victims, survivors and their families on this element of ‘Transitional Justice’.

Therefore, the language of “*concerted commitment*” should be abandoned in favour of a “Covenant for Justice”, promising that the elements of ‘non-recurrence’ will be delivered and be central to the exhibits and story-telling of the NCRR. Such a covenant would deliver context, and answer many of the unspoken questions as to “why” so many suffered and endured gross human rights violations.

8. Conclusion:

The late 1800’s and into the early 20th Century marks the period from which the debate by and between Ireland’s Church and State, sealed the fate of so many women and children in Ireland. From these early seeds, the process of condemnation, incarceration and abuse of human rights were visited upon the many thousands of Irish women and children.

It is a story that barely acknowledges the depth of the reasons of why this happened.

In the many encounters the author of this report has had with victims and survivors, and indeed their families, the one aspect that is continually raised is, “*why did this happen?*”

Many hold vague or instinctive opinions about why their suffering occurred, but for them, not understanding the “*why*” continues to traumatise many in private; they are sceptical of apologies.

Equally, whilst the author acknowledges many good intentions and actions, both Government and the Religious Orders have controlled the nation’s narrative, revealing a

set of horrors, but failing to explain what underpinned their failures. There was a clear bright moment, when ex-Minister Zappone sought to develop a true ‘Transitional Justice’ model, guided by international voices, but that brief moment of opportunity was lost. Through the NCRR, this opportunity is revived!

The suggestion that ‘non-recurrence’ should feature within the NCRR is welcome, but, it must reach beyond the worthy activities of archiving and researching. The NCRR must be courageous and present a public ‘non-recurrence’, as the central or continuity theme, when telling the story of so many victims and survivors.

This report highlights the theory, the international legal instruments, cases and arguments on how ‘Transitional Justice’ and the area of ‘non-recurrence’ is not only a growing international discipline, but a necessary and vital introspection of a country and how it has wronged its own citizens.

The author encourages the DCEDIY and its associated Partners for the NCRR, to be bold, be courageous, and to present this Irish story, without fear or favour, and to be not only a beacon for the right to truth for Ireland, but for the world beyond.

Frank Brehany

3 January 2025