The Pursuit of Justice in Ireland:

International Human Rights Law and Children of African and Irish Descent

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This paper was prepared by the author for a symposium held on 8 May 2023, at Ghent University in Belgium about Belgium's Métis (mixed race) community and how to seek reparations for past human rights violations. As a participant from Ireland, the team at the Human Rights and Migration Clinic in the university was interested in learning about the legal approaches and experiences of mixed race people in Ireland, which is the subject of this paper. The author conducted a critical race analysis of the findings and reports of two statutory investigations into Irish childcare institutions where children of African and Irish descent were placed.

Many Métis children were taken from their African mothers in Belgium's colonial territories in Africa, such as Ruanda-Urundi (now Rwanda and Burundi) and the Congo and transported to Belgium without the mother's consent or abducted. In Belgium, they were placed in church run childcare institutions or adopted/fostered to white families. In October 2021, the Tribunal of First Instance of Brussels dismissed a legal case taken against the State by five Métis victims, who alleged that the State committed crimes against humanity in their abduction and placement in religious run institutions in the Congo.[1] They are currently planning to make an appeal.

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[1] Liliane Umubyeyi, 'Reparations for Mixed-Race Children Abducted by Belgium in Its Former Colonies: Challenging an Unfair and Inaccurate Judgment' (*African Futures Lab*, 4 October 2022) <https://africanfutures.mit.edu/news/2022-10-04-reparations-for-mixed-race-children-abducted-by-belgium-in-its-former-colonies-challenging-an-unfair-and-inaccurate-judgment/> accessed 12 May 2023.

Introduction

This paper was prepared for a symposium held on 8 May 2023, at Ghent University in Belgium about Belgium's Métis (mixed race) community and reparations for past human rights violations. Many Métis children were taken from their African mothers in Belgium's colonial territories in Africa, such as Ruanda-Urundi (now Rwanda and Burundi) and the Congo and transported to Belgium without the mother's consent, or abducted by force.[2] In Belgium. They were placed in church run childcare institutions or adopted/fostered to white families.

The origins of mixed race children in Ireland, in childcare institutions, is different as Ireland had no direct colonies. However, this paper provides some insight into Ireland's own colonial encounters and the racial discrimination and systemic racism experienced by children of mixed African Irish descent in Irish childcare institutions between the 1940s and 1990s. It addresses the approach taken by the Irish State to reparations and transitional justice and challenges the findings of a statutory Commission of Investigation into mother and baby homes, which concluded that there was no evidence of racial discrimination in adoption decisions.[3] The paper also summaries how, as adults, the group is seeking to vindicate their human rights through the United Nations human rights mechanisms, which may provide the Métis community in Belgium with some insights into the approach we are taking to obtain justice.

The story of children of African descent in Ireland is just one of thousands who lived through these childcare institutions, such as single mothers, Traveller children, children with disabilities, children adopted or "boarded out", children living in poverty, or girls who became pregnant under the age of consent and were sent to these institutions. Their experiences of abuse in Irish institutions are in no way minimised by this narrative and analysis. This is simply part of a wider picture, and it is well established now that children and women from all backgrounds suffered terrible abuses while in the care of institutions run by religious congregations. However, here I focus on this small ethnic minority group of children of black African fathers and white Irish mothers. Entwined within this account is my own personal experience as a child growing up in these Irish institutions, and whose father went into exile from apartheid South Africa.

Colonial Context

Ireland is often viewed separately as a country colonised by the British Empire, rather than being part of an imperial and colonising empire. Rarely is the country seen as part of the worldwide colonial system, when in fact many of the colonial administrators and miliary personnel originated from Ireland. For example, Colonel Edward Marcus Despard from Co Laois in Ireland fought alongside Horatio Nelson as a young man, in the San Juan raid in 1780 against the Spanish in central America (currently Nicaragua).[4] Despard was later to become superintendent of the Bay of Honduras Settlement (later called Belize). Similarly, Charles McCarthy, a Cork man of Irish and French descent, was a British army officer who was

[2] François Milliex, 'Reconciling with Belgium's Métis Legacy in Africa and at Home' [2020] The Africa Report.
[3] 'Mother and Baby Homes Commission of Investigation Final Report' (('MBH Report'), 30 October 2020) para 261 Available at < https://www.gov.ie/en/publication/d4b3d-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes/ > accessed on 7 May 2023.
[4]Jay M, *The Unfortunate Colonel Despard,* 2019, Clays Ltd Elcograf S.p.A. Great Britain, page 56.

appointed in 1812 as a governor of British territories in West Africa. In addition, many Irish missionaries travelled to Africa as part of the colonial expansion in the 19th and 20th Centuries.

The mindset of Catholic missionaries in Ireland can be glimpsed in comments of the Bishop of Galway to the Africa Missions Society in 1956, when he said "…the intense hostility of the most evil and depraved form of paganism with its hideous cruelty and human sacrifices, its dark and evil fetish tyranny. In no other part of the world did a missionary meet such terrible savagery".[5] In order to fully understand the story of children of African descent in Ireland it is important to frame it in the context of colonialism from which many of the negative attitudes and stereotypes of African people originated.

During the de-colonisation process of African nations in the middle of the 20th Century, we saw many young African students arrive in Ireland. The newly independent African nations required educated and professional citizens to fill government administration roles and in the fields of law and medicine. It was through encounters in Ireland that several young white Irish girls met with African students and bore children outside wed-lock. Because of the stigma attached to having an "illegitimate" child with a black father some women went abroad to the UK to give birth and returned only to hand their children to the care of the State, in institutions run by religious orders. Others went straight into mother and baby homes and subsequently handed their children up for adoption or fostering. A few women refused to sign away their children for adoption and managed to bring up their child but with difficulties. The fathers faced the risk of being expelled from education institutions if discovered to have fathered an illegitimate child or they simply had affairs unknown to their wives. Some Irish girls simply returned from the UK pregnant or with mixed race children born there.[6]

The mixed race Irish people born before the 1970s, in particular those brought up in institutions, were a dispersed group, which up until recently have never had a single voice. Typically, they are people of African fathers and Irish mothers who were born after the 1940's following the arrival of students from several African states to study at Irish medical schools and universities. Ireland up to the 1960s was a strongly conservative catholic state. It was also a relatively poor country which saw many people flocking to Dublin and other cities in search of work. It was also a time when young people were exposed to new influences from overseas such as new music (arrival of the Beatles in 1963), television, new foreign students, swinging sixties and sexual liberation. Culturally, it was a tumultuous time in Ireland and in Dublin in particular.

In 1964 it was reported by the Minister for External Affairs in parliament that in "1962/3 there were 1,100 students from developing countries at the National University, Trinity College, Dublin, and the College of Surgeons out of a total student population of 11,000" (10% of the student population in Ireland).[7] Many of these African students would return home to their countries as doctors, lawyers and leaders in their communities, and some settled outside Africa. Many of their children born outside marriage were left behind in State owned religious run orphanages and institutions where they were subjected to several forms of human rights abuses and violations.

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[5] 'Africa Needs Teachers to Aid Missionaries, Centenary of African Missions Society', *Connacht Tribune* (23 April 1956).

[6] Conrad Bryan, 'MRI Research and Position Paper', 14 October 2014, submitted to the Joint Committee on Justice, Defence and Equality in the Irish Parliament.

[7] Minister for External Affairs, Mr Aiken, Parliamentary Debate on 27 February 1964, Vol. 207 No. 13, available at < https://www.oireachtas.ie/en/debates/debate/dail/1964-02-27/8/#spk_11 > accessed on 27 April 2023.

Child Abuse in Irish Childcare Institutions

The first televised story of the horrific abuses of children in Irish Industrial Schools to emerge was the TV drama-documentary called *Dear Daughter*,[8] produced by Louis Lentin in 1996. In this documentary, Christine Buckley recounted the abuses she was subjected to and the atrocities in St Vincent's Industrial School in Goldenbridge, Dublin, run by the Sisters of Mercy religious order. Her father was a Nigerian medical student and mother a white Irish woman. This documentary was followed by another documentary in 1999 by Mary Raftery, called *States of Fear*,[9] which looked at a wider number of institutions to identify the systemic nature and extent of the abuses. The exposure of widespread and systemic abuses and the subsequent national outrage led to the establishment of a Commission to Inquire into Child Abuse (CICA), a full State Apology from the Irish Prime Minister and the 2009 Final Report[10] by Justice Sean Ryan ("Ryan Report").

Industrial and Reformatory Schools

The Ryan Report revealed widespread and horrific cases of abuse. This included racial abuse and racial slurs experienced by mixed race children, for example in the section called 'Record of abuses (male witnesses)' a victim testified that "one nun locked me in a closet, beat the hell out of me with a leather strap. She didn't like blacks, she called me Baluba, every time the Irish soldiers were attacked in the Congo she attacked me".[11] The Luba were an African tribe in the Katanga region of the Congo, often termed "Balubas". The tribe ambushed and killed nine Irish UN peacekeepers on 8 November 1960,[12] which was widely reported in Ireland at the time. This is one example of how colonial encounters still cast its shadow within this story. In addition to this, the section on girls called 'Record of abuses (female witnesses)' states that "…witnesses of mixed race reported being referred to by derogatory names relating to their skin colour and, along with their mothers, being subjected to racial slurs".[13]

Systemic racism in the form of racial segregation was a significant finding of the Commission. Racial Segregation was reported, whereby mixed race children were placed in remote locations on the west coast of Ireland to be kept "out of sight out of mind".[14] An inspector from the Department of Education who visited an institution in county Galway on the west coast of Ireland in the 1970s stated that "[T]his policy in his opinion was applied especially to children of different racial backgrounds".[15]

Segregation of children in this manner restricted opportunities for family placements, such as fostering or adoption. Adoption societies in Ireland were not linked with Industrial schools, children were primarily placed from mother and baby institutions.

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[8] Available at: < https://ifiarchiveplayer.ie/dear-daughter/ >, accessed on 27 April 2023.
[9] See interview with Mary Raftery at: < https://www.rte.ie/archives/2019/0424/1045440-mary-raftery-states-of-fear/ > accessed on 27 April 2023.
[10] Justice Sean Ryan, 'Final Report of the Commission to Inquire in Child Abuse' (20 May 2009) Available at < http://childabusecommission.ie/?page_id=241 > accessed on 23 April 2023.
[11] ibid vol 3 chp 7 para 7.236.
[12] Ronan McGreevy, '60 Years on: Why Irish Soldiers Who Died in Niemba Did Not Get Medals', *Irish Times* (7 November 2020) <https://www.irishtimes.com/news/ireland/irish-news/60-years-on-why-irish-soldiers-who-died-in-niemba-did-not-get-medals-1.4402428> accessed 7 May 2023.
[13] Ryan (n 10) vol 3 chp 9 para 9.222.
[14] ibid chp 9 para 9.23-9.24 There was also a high concentration of mixed race children sent to industrial schools in Sligo and Ballaghaderreen.
[15] ibid para 9.24.

Babies of African descent were often referred to the courts by the Irish Society for the Prevention of Cruelty to Children (ISPCC) and then committed by a judge to Reformatory or Industrial Schools for a detention period of up to 16 years.

Despite its findings, the Commission missed an opportunity to further investigate widespread systemic racism and racial discrimination throughout this carceral system. The Statutory Instrument and Terms of References agreed by the Irish Parliament did not place an obligation on the Commission to inquire into systemic racism and its impact on children of different racial backgrounds. Many adults today who provided testimony and evidence of harms at the Redress Board[16] hearings (set up in 2002 to provide compensation to victims), say they were not asked or queried directly on racial discrimination. In fact, in some cases individuals were not able to raise the issue of racism when seeking compensation from the Redress Board. Victims normalised their experiences of racism as children and did not fully understand the language of human rights nor recognise that their rights were being violated. In one case I examined, the solicitor representing the victim hadn't even reflected and recognised racism and racial discrimination within the list of legal claims prepared for a High Court case.

As a consequence, I believe individuals entered this judicial process at the Redress Board without an equality of arms and as a consequence they were not offered remedies for being subjected to racial discrimination and systemic racism. While the racial abuse and racial slurs were classified in the report as 'denigration of family origin' under the heading Emotional Abuse,[17] this approach minimised the overall impact of systemic racism and racial discrimination across a range of human rights, such as the right to a private and family life and the right to development to a child's full potential. Nowhere in the conclusions and recommendations by the Commission was consideration given to the aggravated nature of racially motivated corporal punishment, systemic racism or racial discrimination.

Mother and Baby Institutions

In 2015 the Irish parliament established another Commission of Investigation following the discovery of a mass grave of the remains of about 800 children within a sewerage system at a Mother and Baby Institution in a town called Tuam in county Galway. This institution was owned by Galway County Council but run by the Bon Secours religious order of nuns. Mother and Baby Institutions were set up for unmarried mothers and their "illegitimate" children. These institutions were State owned, religious run institutions. There was significant stigma associated with having a baby as a single mother in a catholic society such as Ireland. Mothers had no option but to give up their children for adoption, and in many cases the children were forcibly taken and illegally adopted. For white Irish mothers whose children were fathered by black African men the stigma was doubly worse; not only was the child "illegitimate", as a legal status, but also racialised as "coloured". A significant number of these children spent their first 4 years in these homes and were not offered up for adoption but rather sent on to other institutions such as Reformatory and Industrial Schools referred to earlier.

[16] 'Residential Institutions Redress Board' (*Residential Institutions Act*, 10 April 2002) <https://www.rirb.ie/resact.asp> accessed 7 May 2023.

[17] Residential Institutions Redress Act, 2002 sec 1(1)(d), as amended by the section 3 of the 2005 Act (Ireland) Defined as "Defined as: 'Any other act or omission towards the child which results, or could reasonably be expected to result, in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare.'

Importantly, the new Statutory instrument governing this Commission of Investigation now included an equality clause which placed a duty on the Commission to "identify…the extent to which any group of residents may have systematically been treated differently on any grounds [religion, race, traveller identity or disability]."[18] This obligation was an historic watershed, as it was the first time in Ireland that a requirement was made in law to investigate systemic racism in an institution. The Minister for Children, Katherine Zappone, promised survivors at the time that the State would take a Transitional Justice approach[19] to addressing the concerns of survivors and so she set up a Collaborative Forum in 2018 to represent their interests under the theme of "nothing about us without us".[20]

Initially the investigation was expected to take three years, but it took almost 6 years to complete. The final report was finished in October 2020 and published by the government in January 2021. Many people were shocked to read in the final report that "the Commission concluded that there was no evidence of discrimination in relation to decisions made about fostering or adoption of mixed race children … However the decisions that were made with respect to placing these children took account of race".[21] Yet, the conclusion also stated that that only 56% of mixed race children were placed for adoption, but when one looks at the detailed findings it is revealed that during the 1960's "virtually all 'illegitimate' children born in Ireland were adopted".[22] If only 56% of this ethnic minority group are being adopted, when almost 100% of population are being placed, this is statistical evidence that systemic racism and racial discrimination is at play. Furthermore, in the chapter on discrimination it states that "the question whether race…of the mother and/or the child affected the outcome for the child, especially if it prevented adoption or fostering, can be answered in the affirmative",[23] but went on to say that there does not appear to be systemic discrimination. This is without providing any definition for systemic discrimination in its report.

The Commission's judgement on systemic racism was contradictory and inconclusive and needed to be challenged. Surprisingly, in its State Apology on 13 January 2021 the government went further than the Commission when it acknowledged:

"*…the additional impact which a lack of knowledge and understanding had on the treatment and outcomes of mothers and children with different racial and cultural heritage…discriminatory attitudes exacerbated the shame and stigma felt by some of our most vulnerable citizens, especially where opportunities for non-institutional placement of children were restricted by an unjust belief that they were unsuitable for placement with families*".[24]

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[18] 'Terms of Reference: S.I. No. 57/2015 - Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Order 2015' (Statutes, *Irish Statute Book*, 20 February 2015) s 1. VIII <https://www.irishstatutebook.ie/eli/2015/si/57/made/en/print> accessed 20 March 2022.

[19] Elaine Loughlin, 'Katherine Zappone: "We Will Find the Truth and Achieve Reconciliation"', *The Irish Examiner* (10 March 2017) <https://www.irishexaminer.com/news/arid-20444866.html> accessed 14 April 2022.

[20] Government of Ireland, 'Charter for a Collaborative Forum of Former Residents of Mother and Baby Homes and Related Institutions' (*Gov.ie*, 17 August 2019) <https://www.gov.ie/en/publication/02ad3b-charter-for-a-collaborative-forum-of-former-residents-of-mother-and-/> accessed 4 May 2023.

[21] 'MBH Report' (n 3) para 261 Available at < https://www.gov.ie/en/publication/d4b3d-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes/ > accessed on 7 May 2023.

[22] ibid para 32.27.

[23] ibid para 31.171.

[24] Micheál Martin, 'Report of the Commission of Investigation into Mother and Baby Homes: Statements' (Dáil Éireann, *Oireachtas*, 13 January 2021) <https://www.oireachtas.ie/en/debates/debate/dail/2021-01-13/10/> accessed 10 April 2022.

Unfortunately, the Commission's conclusion was to have serious implications for redress for victims of racial discrimination in Irish childcare institutions and many other survivors who suffered from other forms of grave violations which are not covered by the scheme. The Irish government decided to introduce the Mother and Baby Institutions Payment Scheme Bill in 2022 which offered a time based General Payment (redress payment) to any person who resided in a Mother and Baby Institutions as a child for 6 months or more up to a limit of 10 years. This has been designed to avoid individual assessment and compensation for specific human rights violations. It has been argued that this is to avoid re-traumatising victims by putting victims through an adversarial court process. This argument has been strongly rejected by many people.

United Nations Mechanisms – a means to vindicate human rights

The Irish government approved[25] an €800 million financial package in November 2021 to cover the costs of the redress scheme for some 34,000 people. However, as the bill progressed through the lower house of parliament (Dáil) it became apparent that the government was not going to budge on this financial package, despite over 24,000 people being excluded because they were in the Mother and Baby Institutions less than 6 months. For mixed race people who were in these institutions this scheme ignored reparations for the impact of systemic racism, even though the government had apologised for the treatment of children from different racial backgrounds. Clearly, the government and politicians did not fully understand the nature of these racial abuses and the international human rights law implications. The government rigidly stuck to the position of the Commission which failed to recommend any compensation for racial discrimination and systemic racism. The challenge now was that, as a small group, our voices would be drowned out, against the legitimate claims and calls of the 24,000 excluded survivors. We urgently needed to go outside the country to seek independent international support to challenge the false narrative expressed by the Commission and to put the record straight.

Special Procedures – Working Group of Experts on People of African Descent

Disturbingly, the false "official" narrative about children of African descent incarcerated in childcare institutions was now being set in stone. It seemed to me that the only way to contest this narrative was to seek external support from experts and a complaint to Special Procedures at the United Nations was the quickest way to do this, if only I could persuade them through the power of personal evidence and critical race analysis.

There was little time as the legislative clock was ticking fast and the Government was steaming ahead with their rigid redress Bill. Therefore, choosing the Working Group of Experts on People of African Descent ('WGEPAD') seemed to be the perfect avenue for our cause and it also had a complaints mechanism. There were five human rights experts in this working group. The Commission had by now been discredited when it lost a Judicial Review case in the Irish High Court for failing to allow survivors/defendants a right to read the draft report before it was published. The High Court declared in December 2021 that the Commission "acted unlawfully by denying fair procedure to the survivors".[26]

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[25] Lisa O'Carroll, 'Irish Government Agrees €800m Package for Mother and Baby Home Survivors' (16 November 2021).

[26] Dominic McGrath, 'Mother and Baby Homes Commission Treated Survivors Unlawfully, High Court Rules', *The Irish Independent* (17 December 2021) <https://www.independent.ie/breaking-news/irish-news/mother-

These unfair procedures prevented us from defending our case about systemic racism, while the State and the religious orders were allowed to see and correct what was being disclosed about them in the report. They had a right of reply but victims did not. The key substantive human rights issues I wanted to raise with the human rights experts were concerns about racial discrimination in adoption practices, religious discrimination and illegal non-consensual vaccine trials. My analysis of these are as follows:

1. **Racial discrimination in adoption practices:**

   The practice by doctors and paediatricians, at Pelletstown Mother and Baby Institution, who decided whether a child was fit for adoption based on the child's colour and race would have been a violation of article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination ('ICERD') which states that "*the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life*". In the first instance, the practice of certifying 'fitness for adoption' should not have been made by a medical doctor, there are wider issues. This ultimately determined a child's pathway to the Adoption Board. The Commission found medical records which included the following racial remarks:

   - Coloured child. Healthy. Medically fit for adoption but owing to colour this would be difficult (1959).[27]
   - Healthy. Half caste child. On account of above will be unfit for adoption (1959).[28]
   - Boarding out (this child was, however, adopted) (1959).[29]
   - Healthy. Coloured child. Unfit for adoption on account of colour only.[30]
   - In 1966: 'Normal healthy half-caste (Chinese) baby', certified fit for adoption, 'provided parents are aware of parentage'.[31]
   - The paediatrician wrote that it was a 'normally developed half caste baby. Physically healthy but in view of maternal psychiatric history child will be fit for boarding out only'. This child was discharged through St Louise's Adoption Society for boarding out and was subsequently adopted.[32]
   - "…in 1962, in response to a similar query from the Crusade of Rescue, Fr James Good of St Anne's Adoption Society replied, 'I am afraid the answer there is that where there is any question of blood other than north European there would be very little likelihood of our placing such a child'. He thought that some mixed race children were being adopted in Dublin, but he feared that they would struggle to be accepted in the south 'there are still so very few coloured people here that they still excite admiration'"[33]

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and-baby-homes-commission-treated-survivors-unlawfully-high-court-rules-41160751.html> accessed 11 April 2022.

[27] 'MBH Report' (n 3) para 31.26.

[28] ibid 31.26.

[29] ibid.

[30] ibid also a note in the author's institutional files revealed the reason for non-adoption was due to his colour.

[31] ibid 31.27.

[32] ibid 31.95.

[33] ibid para 31.13.

2. Religious discrimination in adoption practices:

Structural religious discrimination impacted children of African descent in ways that were not investigated effectively by the Commission. In an attempt to explain the poor adoption rates for mixed race children, the Commission Report makes reference to the Sunday Times article of 28 Sept 1968, quoting Lady Valerie Goulding as "saying that 'you are looked at sideways if you have a coloured baby with you'." According to this article approximately six 'coloured' children were adopted every year but there was a backlog of 20 such children 'causing a big headache for various organisations dealing with child adoption'. However, on further examination I found that that this quote by the Commission failed to mention that the Protestant Adoption Agencies referred to in the same article did not have the same problems, in fact the protestant agency had people seeking to adopt mixed race children.

Furthermore, in the article, Fr Colleran of the Catholic Protection and Rescue Society states that "Irish people have no prejudice against coloured children and they ought to get over their lack of confidence in them". These details were strangely omitted by the Commission in its report. The Irish Times journalist Eileen O'Brien noted that in 1967, the Protestant Adoption Society in Ireland reported that "there were many more would-be adopters than children offered for adoption and many people come to the society seeking to adopt children of mixed race or Vietnamese orphans".[34] Clearly, the assumption made by the Commission that there were few people who would take mixed race children was wrong, in fact the underlying issue was religious discrimination faced by mixed race children in difficult circumstances.

The structural aspect of this issue can be seen in legislation. The 1952 Adoptions Act (s. 12) prohibited adoptions of children to adoptive parents who were not the same religion as the natural parents, in the case of an illegitimate child, only the natural mother was recognised. The religion of the African father was not taken into account and many would not have been Catholic. As noted in a letter to the Irish independent "The other [issue] is the difficulty in finding eligible Christians to adopt coloured children …Thus the adoption of many coloured children is rendered difficult".[35] This predicament could have been over-ridden by the Adoption board in certain circumstances as the Adoption Board had the discretion under the Adoption Act 1952 Art 12(3): "*The Board may, having regard to the special circumstances of a particular case, make an adoption order although the persons referred to in subsection (2) are not all of the same religion, provided that each of them is a member of one of the following religious denominations, namely, the Church of Ireland, the Presbyterian Church in Ireland, the Methodist Church in Ireland, the Religious Society of Friends in Ireland, the Baptist Union of Ireland and the Brethren, commonly known as the Plymouth Brethren*." This of course did not allow other Christian denominations, such as Church of England. My own South African father was a Christian, but was not of any of these other Irish protestant denominations. I doubt if any of the African fathers were members of these alternative Irish protestant denominations.

[34] Eileen O'Brien, 'The Problems of Adoption', *Irish Times* (30 September 1968) <https://www.proquest.com/hnpirishtimes/docview/525037604/B43E90411D534882PQ/1?accountid=12899> accessed 30 March 2022.

[35] Michael J Nagle, 'Letter to the Editor - Coloured Children', *Irish Times* (2 May 1967).

Although this law gave some discretion to the Adoption Board it is clear from the commission that the Catholic church and adoption societies were ferociously against giving "catholic" children to protestant or non-Catholic families. According to the Irish Press report in December 1965, children were placed in families of the same religion as the mother. It stated that the "practice applied here is the matching of religions. A child is never given to adoptive parents who are of a different religion to that of its natural parents. In this, the Irish regulations are different to that of Britain and many other countries".[36] In 1970, Father James Dunne, the head of the Liverpool Catholic's Children Protection Society, said that his society "proposed to allow non-Catholics to adopt Catholic babies – because Catholics in the city, most of whom are Irish-descendent, were reluctant to do so…the position is so serious that we are prepared to let non-Catholics have these unwanted illegitimate coloured or mixed race babies born to catholic women".[37] The Commission noted that "The main motivation behind the British and Irish Catholic charities who were involved in repatriating Irish women from Britain, either pregnant or with their new-born infant, was to prevent these children being 'lost' to Catholicism through adoption into Protestant families. Concerns, however-far-fetched, that state-regulated adoption would result in Catholic children being adopted by parents of a different religion were a factor in delaying the introduction of legal adoption in Ireland until 1952".[38]

In the report's 'Timeline' section, the Commission itself noted that in 1975 "The High Court found that the requirement of uniformity of religion in the Adoption Act 1952 amounted to discrimination on grounds of religious belief or status in breach of Article 44, s.2(3) of the Constitution".[39] For example, in a case where the mother of the child was a member of the Church of England, not listed in the Adoption Act 1952, an adoption application had been rejected because of the different religion of the prospective adoptive parents.[40] This religious clause in the Adoption Act, which appeared to be a neutral rule, also indirectly discriminated against children in racial groups who were baptised as Catholics (mother's religion). It appears, the Catholic organisations would not have offered these mixed race children to non-Catholic prospective families but rather preferred to leave them in institutions. This is indirect discrimination, which particularly impacted this group of institutionalised children, by restricting other opportunities to realise the right to a family and private life.

Finally, the Commission's statement that "[i]t appears that race was a less important factor in decisions relating to adoption than religion or disability"[41] reveals a complete lack of understanding of the intersectionality between race and religion described above which impacted children of different racial backgrounds. The hierarchy of discrimination inferred by this statement also revealed an incompetence by the Commission in its inability to critically analyse systemic racism, which resulted in a distorted and misleading conclusion.

[36] Richard Grogan, 'Adopting Children', *The Irish Press* (29 December 1965).
[37] 'Reluctant to Adopt Babies', *Irish Independent* (28 September 1970).
[38] 'MBH Report' (n 3) para 49.
[39] ibid 96.
[40] ibid para 32.102.
[41] ibid Executive Summary, para 262.

3. Illegal vaccine trials and the targeting of vulnerable children

The Commission found that many children of all backgrounds, including mixed race children, were subjected to illegal vaccine trials across several institutions. It also found that "there was not compliance with the relevant regulatory and ethical standards of the time as consent was not obtained from either the mothers of the children or their guardians and the necessary licences were not in place."[42] Furthermore, the Commission referred to the Nuremburg Code (1947) as setting the standards for clinical trials at this time,[43] which were not kept.

The Commission reported that it identified seven vaccine trials which took place in the institutions under investigation in the period 1934-1973 and had identified a number of the children involved. One vaccine trial of particular concern for children of mixed race, who were targeted along with children with disabilities, was the oral polio vaccine trial in Pelletstown institution in Dublin, which the Commission identified but could not confirm it as part of the Glaxo trials, but concluded that "…considering the methodology employed and the selection criteria as it pertained to the children involved, the Commission takes the view that there is a high probability that it was"[44] a vaccine trial.

A Department of Health document dated 30 September 1963 dealing with this application noted that, in April 1962, Professor Meenan had asked to field-trial an Oral Polio Vaccine in Pelletstown. In that instance, the Department of Health raised concerns regarding the selection of Pelletstown: 'While the procedure proposed appeared to be a safe one, the selection of the group to participate was open to objection and approval was not given on that occasion.'[45] The selection methods used resulted in a high proportion of mixed race children along with children with disabilities. In 1965, 56 children selected to receive a course of oral polio vaccine were all children who were living in Pelletstown unaccompanied. At least 44 of these children had already received a full three-shot vaccination against polio. The institutional records show that 53 of the 56 children selected were 'illegitimate' children and that the three 'legitimate' children involved were either 'abandoned' or had a physical disability. Eight of these children were described as 'mentally retarded', 'backward' or 'of low intelligence'. Others had physical disabilities and associated notes which read 'child won't walk', 'not lifting head', 'underdeveloped child', 'enlarged heart and partially deaf' and 'no teeth, large head'. In 13 further instances, children were described as 'half-caste' or 'coloured child'.[46]

This number of 13 out of 56 children represents 23% in this trial who were mixed race. This is a large sample when you consider ethnic minority community in the general population were less than 0.5%. Clearly children of mixed race and with disability were targeted for this trial. This was clearly discrimination and targeting of mixed race children, but also children with disabilities in the same trial.

[42] ibid Executive Summary, para 248.
[43] ibid para 34.10.
[44] ibid para 34.163 Note this polio vaccine is in fact noted in the author's medical records from Pelletstown institutional records as a 'trial'.
[45] ibid 34.92.
[46] ibid para 34.162.

The Commission should have drawn attention to the racial dimension in this vaccine trial and included this analysis within the chapter on racial discrimination to show the multiple impacts of racism, not only its impact on adoption and fostering opportunities.

It should be noted that in Article 7 of the International Convention on Civil and Political Rights ('ICCPR'), non-consensual medical experiments sit alongside torture, cruel and degrading treatment and reads as follows:

> *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."*

However, the Commission's conclusion was that there was "no evidence of injury to children as a result of these vaccines",[47] but this statement was successfully challenged by a survivor in the Judicial Review in the High Court as mentioned earlier.[48] It is worth noting here the statement by V Leary in 1995 that "Although medical experimentation, for example, may result in good for the general populace, it must not violate the dignity of the individuals subjected to it–- particularly the dignity of society's most vulnerable groups: the poor, racial and ethnic minorities, disabled persons and the mentally and physically handicapped who have often been the subjects of medical experimentation".[49] The impact cannot be known unless there is follow up physical and mental health screening. Several people have spoken to me about the ongoing mental health impact of finding out that one has been subjected to vaccine experimentation.

It is important to note that Article 7 does not refer to injury caused by medical experimentations but rather the requirement to obtain a person's consent. The absence of consent is a violation under ICCPR, which requires an effective remedy under Article 2 of this Convention. Clearly, any damaged caused by medical experimentations would also require an effective remedy. The Irish government is refusing to provide remedies for non-consensual vaccine trials on the basis that the redress scheme is intended to be non-adversarial and therefore individual assessment is not being carried out. However, individual assessment is not necessary as the State knows exactly who was subjected to the trials as they hold the Commission's records. As stated in its final report, the Commission has identified children involved in the trials.[50] Therefore, there is no reason why the government cannot notify individuals and address this matter. The State is notifying individuals whose birth details were illegally/fraudulently registered on their birth certificates.[51]

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[47] ibid para 248.

[48] McGrath (n 26) As part of the settlement the Government agreed to make a declaration that the defendant disagreed with the statement on vaccine trials in paragraph 248 in the Commission's final report.

[49] Virgina A Leary, 'Justiciability and Beyond; Complaint Procedures and the Right to Health' [1995] The Review 55.

[50] 'MBH Report' (n 3) para 34.48: 'The trial of Wellcome's quadruple vaccine was undertaken between December 1960 and November 1961...The Commission has identified all 68 children involved in this trial.' The author has specifically requested personal vaccine records under GDPR and his vaccine records were held within a vaccine trial file compiled by the Commission, now held by the State.

[51] ibid para 32.399-32.400'...the registration of the births of a number of children was incorrect and illegal. The children involved had been born to unmarried mothers and their births were then registered to the "adoptive" parents...Tusla has since been in contact with the majority of the people involved.'

The basic premise the Commission appears to rely on in arriving at its conclusion is that society was to blame for the problem of mixed race children being left in institutions. It states that the "absence of people of non-European ethnicity in the Irish population meant that children or unmarried mothers from a different racial background were conspicuous and there was a lack of knowledge and understanding about their culture, religion and ethnicity".[52] This is an unacceptable justification for the State's failure to protect these children from institutionalisation. This line of argument deflects responsibility from those who owned and ran childcare institutions who held racist views and "negative bias".[53]

In addition, it deflects from the State's international legal obligation[54] to protect children from racial discrimination within the State (society) and by extension within its childcare institutions. ICERD article 2(d) states:

> "*Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization*."

There are some challenging implications behind this broad prohibition in the context of 'orphaned'/institutionalised children from ethnic minority communities. One may say you cannot force a white person to adopt or foster a black child. But this misses the point here, which is that in a society where there are clearly enough white families from different religious backgrounds, and with no religion, who were willing to take mixed race children into their families, the only conclusion one can come to for the lower number of family placements for mixed race children is systemic discrimination (racial and religious). The fact that some mixed race children were adopted proves that society was not to blame. That some were adopted cannot mitigate against a charge of systemic discrimination, for which the State is responsible and should be accountable.

On 23 September 2022, following the completion of its work on my complaint, the WGEPAD and four other Special Rapporteurs issued a joint Statement which concluded that the "proposed Bill Payment Scheme provides a unique opportunity to provide redress for the harms caused due to racial discrimination and systemic racism to which children of African and Irish descent were subjected".[55] This public statement by the independent human rights experts has been roundly ignored by the Irish government, despite the pressure from several cross party politicians calling for the state to address the issue raised by the experts.

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[52] ibid para 31.10.

[53] ibid 31.172.

[54] International Convention on the Elimination of All Forms of Racial Discrimination (adopted on of 21 December 1965, entered into force on 4 January 1969) 660 UNTS 195 (ICERD) art 2(1)(d) (United Nations) which states 'Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization'.

[55] UN Special Rapporteurs, 'Ireland: UN Experts Call for Adequate Redress for Systemic Racism and Racial Discrimination in Childcare Institutions 23 September 2022' (*Statements: Special Procedures*, 23 September 2022) <https://www.ohchr.org/en/statements/2022/09/ireland-un-experts-call-adequate-redress-systemic-racism-and-racial> accessed 4 May 2023.

The standard response to all politicians by the Minster for Children Roderic O'Gorman, has been to say, through parliamentary questions and answers, that "…there is no financial payment which could make up for the immense pain and suffering endured by so many of our citizens whose lives have been affected by these issues".[56] But there is a level of compensation so low it compounds the pain and suffering. When asked, by Catherine Connolly TD, "if he intends to attach the UN statement to the commission's report maintained online and in the Oireachtas library as the official and historical record"[57] he said "…that the UN statement and the State's response are in the public domain and, therefore, available and accessible to all". [58] Therefore, the conclusion expressed by UN experts remains unchallenged by the State. It is perhaps a tacit acceptance of reality.

UN Treaty body–- Committee on the Elimination of Racial Discrimination ('CERD')

Given the refusal of the Irish State to provide reparations, we now need to consider taking the complaint further to the CERD to adjudicate. This step will now mean entering the UN treaty body system to establish if a State is in breach of legally binding international law, ICERD in this case. The purpose of CERD is to monitor compliance with ICERD, make General Recommendations and receive complaints from individuals, groups of individuals or State parties (inter-State cases) for adjudication. After consideration of communications from all parties to a dispute CERD will issue suggestions or recommendations to resolve the dispute.

This complaints mechanism is provided for in ICERD article 14 and, upon ratification, Ireland declared that it "recognizes the competence of the Committee on the Elimination of Racial Discrimination…to receive and consider communications from individuals or groups of individuals within Ireland claiming to be victims of a violation by Ireland of any of the rights set forth in the Convention".[59] Therefore, this option is available to our group and would be the first time a case is taken against Ireland to CERD for a violation of the convention.

The key complaint in this case is very clear and simple, which is an alleged violation by Ireland of ICERD article 6 which reads:

> *"States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."*

[56] Éamon Ó Cuív, 'Dáil Éireann Debate' (*Oireachtas.ie*, 9 November 2022) <https://www.oireachtas.ie/en/debates/question/2022-11-09/98/#pq_98> accessed 4 May 2023.
[57] Catherine Connolly, 'Dáil Éireann Debate' (*Oireachtas.ie*, 15 November 2022) <https://www.oireachtas.ie/en/debates/question/2022-11-15/433/#pq_433> accessed 4 May 2023.
[58] ibid.
[59] 'Depositary - International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966' (Depositary, *United Nations Treaty Collection*, no date) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en> accessed 5 May 2023.

The key matters to take into account if a case is to be heard by CERD are as follows:

1. **Admissibility**
   The first stage of any CERD case is to decide if the complaint is admissible and whether the Committee should consider it. There are several points the State will probably argue to convince the Committee to 'thrown out' this case before it gets to consider the merits of the complaint.

   a) It is likely the State will argue the case is **inadmissible *ratione temporis*** *(*by reason of time*).* The claim that the abuses happened so long ago that it cannot be defended, as perpetrators may no longer be alive and therefore a charge of unfair procedures could be raised.
   b) Linked to *ratione temporis* will be the claim that the **ratification** of ICERD on 29 December 2000 was long after the alleged abuses of racial discrimination and systemic racism occurred.
   c) **Statute of limitations** in Ireland prevent cases of personal injury to be taken after a specified period of time as stipulated in domestic law.
   d) It may be argued that **domestic remedies** through the Irish courts have not been fully exhausted.

   e) The State may claim that 'effective protection' through **competent tribunals** were provided through the two statutory Commissions of Investigation. The Ryan Commission completed on 20 May 2009 and the Murphy Commission which competed on 30 October 2020 met the State's **procedural obligations** under ICERD article 6.
   f) Some victims were **compensated previously** for abuses in Reformatory and Industrial Schools and it could be claimed that article 6 right to remedies have already been met for these victims.
   g) In a case like this it is important to show the **continuing effects** of the violation, as this aspect could be challenged. The State have provided some remedies, such as counselling services and medical cards, to some survivors and may claim that this reduces the long term effects.
   h) They may claim that there is **no unreasonable delay** in obtaining damages through the courts. Reasonable delay in obtaining remedies is a key consideration for CERD.

   There are several hurdles to getting admitted, however the Committee could be persuaded by the fact that the statute of limitations law in Ireland is unduly restrictive and there are no class action procedures available to take a group action for systemic racism. The State was also in breach of its procedural obligations to provide fair procedures in its two Commissions of Investigation. In addition, the fact that the State is providing no recognition for racial discrimination at all in its redress scheme is a failure to protect this ethnic minority group. Further, I do not believe we would need to pass all tests to be admitted.

2. **Merits of the case**
   It is possible that the State does not contest admissibility, in which case the complaint goes straight to the merits stage. However, if the State contests but CERD decides to admit the Complaint having heard both sides, then it proceeds to the next stage for consideration. An allegation that the State is in breach of article 6, "just and adequate" reparations for children of African descent, would probably be the most substantive issue at this stage. The State has already acknowledged that racial discrimination resulted in institutionalisation of children with different racial backgrounds and the UN Special Procedures have also concluded that children were subjected to systemic racism.

   The issue then becomes whether the minimalist and generalised redress offered by the State, which fails to acknowledge or compensate systemic racism and racial discrimination, satisfies the requirements of Article 6. CERD is an independent body and, under ICERD article 14, can only rely on information received from the parties to the dispute. Therefore, based on information received, it would have to satisfy itself that children of African descent were subjected to racial discrimination, and then consider whether the proposed redress scheme meets the requirements of Article 6. It would be our view that the Commission mechanism and subsequent scheme falls far short of this standard, and erases the correct history of what occurred to children of African descent in mother and baby homes and other childcare institutions.

   CERD may then have to consider the ongoing impact and damage caused by racial discrimination to determine the proper right to a remedy. It is clear that many children spent prolonged periods in institutions as a result of their colour, and many spent up to 18 years in childcare institutions. Their lives were put at risk. Racially motivated institutionalisation resulted in a loss of dignity, the loss of the right to a family life, loss of the right to inheritance (culturally and tangibly), loss of the right to identity (African), freedom from cruel and degrading treatment, such as illegal non-consensual medical experimentations (vaccine trials and baby product trials), corporal punishment, sexual and emotional abuse, loss of the right to develop to the maximum potential (poor educational outcomes), right to health, amongst many others. No matter how well or poorly any of the victims fared in later life, each and everyone is poorer as a result of such a degrading childhood, including the next generation.

Concluding Remarks

It is always heart breaking to hear the tragic stories from adults of their lost childhoods and what life might have been like had they escaped institutional life. Recently, I learned of a mother having to choose between her white child and her "coloured" child, both of whom were sentenced by a judge to 16 years in an institution. The mother returned to take her white child out of the institution, leaving her mixed race child behind. Is this racial discrimination? Was she to blame? What was even more disturbing is that, having recently reviewed the institutional records of the children, I found that another woman had offered to take the mixed race child into her family as her own child, but the State failed to avail of this opportunity. The language and terminology in the files characterised this mixed race child as problematic and less than worthy.

Under international law it is the State's obligation to eliminate racial discrimination committed by any person or organisation and to provide remedies for both the act of racial discrimination and separately for any damage caused. This distinction between the act and the damage is important for this case. The specialist and independent nature of CERD offers some hope that cases like ours would get a fair hearing, given the lack of competent Commissions of Investigation, lead by judges in Ireland.

There are several good reasons to consider a complaint at CERD but there are hurdles to cross first. However, should the Métis in Belgium fail to get satisfaction in the domestic judicial or administrative system it may very well be worth thinking about taking the case to a regional or international forum like CERD.[60]

[60] Belgium ratified ICERD on 7 August 1975 and declared that it recognises the competence of CERD to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by Belgium of any of the rights in ICERD. However, on 10 October 2020, it has designated the Centre pour l'Egalité des Chances et la Lutte contre le Racisme (Centre for Equal Opportunity and the Struggle against Racism), established by the Act of 15 February 1993, as competent to receive and consider petitions from individuals and groups of individuals. See < https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en >