

**Opening Statement**

**To the Joint Oireachtas Committee on Children, Equality, Disability, Integration & Youth  
on the "General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill" (Burials Bill)**

**By Susan Lohan**

**On behalf of**

**Mary Harney**

**Mary Lawlor**

**Susan Lohan**

**April 14<sup>th</sup>, 2021**

## Introduction:

I am Susan Lohan, Co-founder of Adoption Rights Alliance<sup>1</sup> & I am joined by my fellow advocate & survivor, Mary Harney. We are very pleased to have been invited by the committee to present our views on the "General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill" (Burials Bill), being brought forward by Minister for Children, Equality, etc Roderic O'Gorman.

I am an adopted person, separated from my mother immediately after birth in 1964 & housed in a State Children's Hospital, Temple Street before being moved to another institution, Temple Hill, an "Infants' Hospital" (sic) run by the Sisters of Charity, the now disgraced adoption agency, St Patrick's Guild.

Mary Harney, was born in February 1949, at the Bessborough Mother & Baby Institution, in Co. Cork. She spent two and a half years in the institution and was illegally fostered from there. At age 5 years, due to neglect on the part of the foster people, she was taken to court by the ISPC and was subsequently incarcerated until age 16 and a half in the Good Shepherd's Industrial School, Sunday's Well Cork.

We are here today in a private capacity but we are also both members of the Collaborative Forum group of Mother and Baby/County & Bethany Institution survivors, having applied to be members in May 2018<sup>2</sup>. The Forum was established in July 2018, via a charter<sup>3</sup> approved by the FG & Independents Cabinet to advise the Dept of Children & Youth Affairs (as it was then called) & former Minister, Katherine Zappone on "issues of concern for survivors, their families & advocates".

As survivors, we endeavour to describe the treatment of all victims of Ireland's Forced Adoption<sup>4</sup> & Enforced Family Separation<sup>5</sup> systems in human rights terms, irrespective of when and where the abuse occurred. We have embraced the international human rights model of Transitional Justice<sup>6</sup> in describing the actual abuses & in recommending potential remedies around the 4 pillars of *truth, justice, reparations and guarantees of non-repetition*.<sup>7</sup>

We find that the proposed Burials Bill is not in keeping with these central tenets of Transitional Justice & we will address our concerns under these headings.

We are not legal experts, we are volunteer advocates for our fellow survivors & the voiceless 9000+ deceased children.

Whilst you will undoubtedly hear more professional & more detailed submissions over the course of your pre-legislative scrutiny, we make our recommendations from the heads & hearts of those so willfully discarded & othered by the state, its agents & various churches.

---

<sup>1</sup> See [www.adoption.ie](http://www.adoption.ie)

<sup>2</sup> <https://assets.gov.ie/26271/bcced757a1064b1db615fbd3e9b7ef30.pdf>

<sup>3</sup> <https://assets.gov.ie/26509/151c60db4c104709b10237016efdd77f.pdf>

<sup>4</sup> Forced Adoption – according to the UN Office of the High Commissioner falls under the umbrella term of Illegal Adoptions, "Adoptions resulting from crimes such as abduction and sale of and trafficking in children, fraud in the declaration of adoptability, falsification of official documents or coercion, and any illicit activity or practice such as lack of proper consent by biological parents, improper financial gain by intermediaries and related corruption, constitute illegal adoptions and must be prohibited, criminalized and sanctioned as such. See <https://www.ohchr.org/EN/Issues/Children/Pages/Illegaladoptions.aspx>

<sup>5</sup> See [https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3442&context=fss\\_papers&httpsredir=1&referer=](https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3442&context=fss_papers&httpsredir=1&referer=) for the human rights implications of Enforced Family Separation

<sup>6</sup> "Transitional justice refers to the ways countries emerging from periods of conflict and **repression** address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response". See <https://www.ictj.org/about/transitional-justice>

<sup>7</sup> Memorialisation is regarded as the 5<sup>th</sup> pillar of Transitional Justice but importantly ***it is placed last in order of importance*** & should only be considered AFTER the previous 4 have been addressed

## Concerns over provisions contained within the Burials Bill

Even from the description of the purpose of the Bill, several problems are instantly discernible.

The main question is why is this government & Minister O’Gorman solely focused on the state of the burials (referred to in a trivialising way as “inappropriate”), when the kernel of the issue is to discover the facts of how 9000+ children died at rates vastly in excess of local & national norms? Under the watch of successive Irish governments since the formation of the State?.

The purpose of the Bill is to provide ‘the statutory basis and framework under which Government may decide to authorise interventions at certain sites where manifestly inappropriate burials have taken place associated with institutions operated by or on behalf of the State or in respect of which the State had clear regulatory or supervisory responsibilities’, and for the establishment of an Agency to carry out such interventions.

to permit excavations at such a site and to amend the Planning and Development Acts to make those works exempted development for the purposes of the planning code; to authorise exhumations from the site; and to provide a basis for identification using DNA samples from unidentified bodies exhumed and from people who are or may be close relatives of those unidentified persons, so that surviving close relatives may be made aware of the circumstances of their relatives interment, assured that they have been exhumed from a manifestly inappropriate burial site, and where it is not possible to return remains or partial remains for reburial, assured that the remains will be re-interred in a respectful and befitting manner.

Issue no.	Issue	Recommendation
1.	That intervention will be determined by the existence of “inappropriate burials” rather than unlawful or suspicious deaths.	The imperative for the state to intervene should not be determined by the classification of “inappropriate burials” but by the determination that the deaths leading to the burials are suspicious or unlawful as is best international practice set out in various conventions & protocols dealing with mass graves
2.	The unilateral discretion that any government may exercise in deciding whether or not to “intervene” at sites.	The vindication of the human rights of the deceased children & their relatives should be a top level deciding factor in determining intervention to avoid the scenario of the state refusing to investigate a mass grave for the sake of avoiding “international embarrassment”.
3.	The provision for the state to unilaterally decide to memorialise a site rather than intervene or investigate is at direct odds with best international practice on the treatment of mass graves.	The Memorialisation route must not be used as an excuse not to investigate gross human rights abuses
4.	Little weight appears to have been given to the families of the deceased or survivors.	The wishes of family members & survivors for truth & justice should be central in the Burials Bill (or in any amended Coroners Acts) & should take precedence over the wishes of residents living near mass grave sites.
5.	That intervention would only be considered where there is a connection with an institution operated by or on behalf of the state, once again leaves those survivors of Enforced Family Separation not connected to a Mother & Baby/County or Bethany institution out in the cold.	All mass grave sites should be covered by this (or by extended Coroners’ legislation), not just those linked to the state or agents of the state (in this case the various Mother and Baby Institutions)

6.	The creation of an Agency, tasked with “intervening”, which automatically disapples the Coroners Acts 1962 -2019 in respect of bodies exhumed from a site during the period of existence of the Agency – is impossible to comprehend.	The jurisdiction of the Coroner MUST apply in the case of all mass graves & if needs be the Coroners Acts 1962-2019 should be extended to include the powers to investigate & determine the causes of death & to identify the victims.
7.	The lack of involvement of local Coroners is a wasted resource in the investigation & treatment of all mass graves.	The creation of an “Agency” to intervene in mass grave sites, should also include an obligation for the agency to report all findings to the local coroner or the Coroners Acts should be amended to include the powers suggested for the Agency within this bill.
8.	The proposal to exclude those mass graves untouched for 70 years time from investigation is at odds with best international practice & the terms of reference for the MBHCOI.	The proposed 70 year time lapse exception has no place in Transitional Justice; all mass graves associated with the women and children, who were victims of Enforced Family Separation from 1922 to 1998, must be investigated.
9.	The close relationship between the Agency & the sponsoring Minister in the form of monitoring reports, which are not described as being publicly available is disturbing.	All reports issuing from the Agency or Coroner with regard to a mass grave or a previously unknown individual grave, where the circumstances of death &/or burial are regarded as suspicious must be in the public domain & must be issued to family members without delay.
10.	The reliance on obtaining DNA samples from first degree or close relatives in order to identify deceased children is extremely limited.	A multi-disciplinary approach to identification must be taken rather than relying solely on DNA
11.	The proposals for the Agency records to be sealed for a period of 30-40 years is a slight against natural justice & with regard to the Commission’s own archive has been described as illegal by the DPC <sup>8</sup> .	All monitoring reports issuing from either an Agency or Coroner on their findings etc at a mass grave must be made publicly available immediately & must not be subject to any sealing orders.
12.	The timescales of 5 years being suggested for the return of a family members remains are wholly unreasonable.	The remains of the deceased must be returned to their families without delay once identification, DNA samples and other analysis (e.g. likely cause of death) has taken place. Many of the mothers are aging & are desperate to know the fate of their children.
13.	The Bill makes no provision for the treatment & protection of unclaimed or unidentified remains.	All unclaimed & unidentified remains must be preserved & protected. Under no circumstances should remains be allowed to be cremated as happened during the irregular exhumation of former detainees of the former Magdalene Laundry in High Park, Drumcondra <sup>9</sup>

<sup>8</sup> <https://www.irishexaminer.com/news/arid-40070054.html> &

<https://www.irishtimes.com/news/politics/blanket-ban-on-mother-and-baby-homes-data-access-contested-1.4389816>

<sup>9</sup> See <http://jfmresearch.com/home/preserving-magdalene-history/high-park/>

## Concerns over Omissions within the Burials Bill

### Truth

The Burials Bill, as currently structured fails utterly to deliver on truth for mothers, children, survivors & families. It operates on the basis that the deaths are a fait accompli, requiring neither investigation, explanation, accountability nor compensation. As the death rates at the various institutions have been shown to have exceeded national death rates of children in the general population by several factors<sup>10</sup>, legally & morally, they require the most thorough analysis, to deliver at the very least, basic truth for the 9000+ victims recognised so far. Without this basic step, Ireland should rightly be defined as a pariah state with regard to its non-compliance with human rights legislation.

In the normal course of events, a discovery of a previously unknown individual or mass grave, would involve the Coroners' Service, to establish the "who, when, where & how" of the deaths for each unidentified set of remains. However, as can be seen from sections of the Commission's Executive Summary, several of the institutions falling under the remit of the Commission's Terms of Reference, were not fully investigated for various reasons and the survivors & families previously detained within those institutions, have not had their questions answered.

### Justice & Reparations

Given the scant coverage of Deaths generally within the Commission's final report<sup>11</sup>, combined with the number of essential points<sup>12</sup> on which the Commission arrives at inconclusive and unsubstantiated opinions, there is little from the report that could be used in a legal context to either deliver justice or to provide compensation for family members of the deceased.

Taking Tuam alone, at this point, the state has failed to establish, whether or not the 802 infants & children, reported as having died at the former Bons Secours Mother and Baby Institution at Tuam, are all accounted for in the illegal mass grave found there & whether the observed condition of the bodies corresponds with the reported causes of death, when the opportunity to have done so has existed since 2013.

According to the *Fifth Interim Report*<sup>13</sup> of the MBHCOI, published in March 2019, the causes or registration of deaths were not investigated at that stage by the Commission as they would be dealt with by the final report<sup>14</sup>. Yet, Chapter 15 on Tuam in Vol 2 barely comments on the causes of deaths in the Tuam institution & covers the newly arrived figure of 802 deaths under the anodyne heading "Exit Pathways". The Section on mortality covers just 5 paragraphs & there is no statistical analysis of the deaths at Tuam versus local, national or institutional norms.

With regards to Bessborough, the Commission has failed to identify the location of the 929 deceased children & merely expresses its surprise<sup>15</sup> that no one at the religious order of the Sacred Hearts of Jesus & Mary was able to direct them to the burial places.

With regards to the Kilrush Home, no effort was made by the Commission to even establish how many children died there and they make zero reference to the likely burial places of the deceased children<sup>16</sup>.

---

<sup>10</sup> See Figure 3, page 2007, Vol 5 of the Final Report of the MBHCOI shows just 1 example of the degrees to which death rates in an institution i.e. Pelletstown far exceeded local & national infant mortality rates

<sup>11</sup> Chapter 33, Deaths in Vol. 5 covers only 32 pages, the vast majority of which are tables showing the death rates in individual institutions without local or national comparison & including only a sub-set of institutions (see pages 2019 & 2020 in particular.

<sup>12</sup> There is scant detail on the numbers of children's deaths that were certified by a Medical Practitioner as opposed to an Informant & there is no reference to whether or not, the Commission checked the individual institutional records of deceased records for evidence of medical certification. See page 1995 of Chapter 33

<sup>13</sup> See <https://www.gov.ie/en/press-release/169f8f-commission-of-investigation-into-mother-and-baby-homes-fifth-interim/>

<sup>14</sup> *This report is concerned with the burial arrangements in the main institutions under investigation and with the transfer of remains to educational institutions for the purpose of anatomical examination. It is limited to burials and **does not include any analysis of the causes of deaths or the registration of deaths. These issues will be dealt with in the final report.***

<sup>15</sup> See section 247 in <https://assets.gov.ie/118565/107bab7e-45aa-4124-95fd-1460893dbb43.pdf>

<sup>16</sup> See section 89 in the Executive Summary of the final Report, <https://assets.gov.ie/118565/107bab7e-45aa-4124-95fd-1460893dbb43.pdf>

