

## Authors of the Submission

This submission is made by individuals either boarded out or adopted from various institutions, where the mortality rate of non-marital children exceeded the natural average, despite the mothers of the children, being forced into these institutional settings for the welfare of their children.

We are also members of the Collaborative Forum<sup>1</sup> but we are making this submission independently of the forum in our own right.

As members of various survivors groups (& of the Collaborative Forum), we have studied & embraced the cornerstone concepts of Transitional Justice of accountability; truth telling (investigation) ; reparations (redress) & reform (preventing reoccurrence) and regard the treatment of Ireland's unmarried mothers and their children as gross human rights abuses.

In October 2018, former Minister for Children, Katherine Zappone publicly expressed the view that a Transitional Justice model<sup>2</sup> would be at the heart of all decisions effecting survivors at a Boston College Conference on Transitional Justice in Ireland<sup>3</sup>.

We see no reflection of a Transitional Justice model in either the General Scheme of the Institutional Burials Bills nor in the 80+ pages of detail, which is literally devoted to the reburial of the babies and children's bodies rather than to the exposure of their causes of death & how they came to be so discarded.

We will not go through each section or sub-section of the Institutional Burials Bill but will instead explore the vital areas we believe have been overlooked by this Bill.

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<sup>1</sup> The Collaborative Forum (CF), was appointed<sup>1</sup>, by former Minister for Children, Katherine Zappone at the Dept of Children and Youth Affairs (DCYA) in July 2018 to represent survivors (including natural mothers, their children and their advocates) of Ireland's Mother and Baby Institutions, a sample of County Institutions, Bethany Institutions & other places where natural mothers and their children were housed, worked, neglected and forcibly separated.

<sup>2</sup> <https://muse.jhu.edu/issue/42823>

<sup>3</sup> <https://www.bc.edu/bc-web/academics/sites/ila/events/towards-transitional-justice.html>

## Comments on the General Scheme

“The purpose of this General Scheme is to provide the statutory basis and framework under which Government may decide to authorise interventions at certain sites.”

*Even prior to the April 2019 confirmation of Catherine Corless’ assertion that an undocumented mass grave of infants & children was indeed located underneath the grounds of the former “Tuam Home” in underground chambers, the emphasis has been resolutely on the “Tuam Home” rather than across the myriad of settings where bodies are likely to be. The discovery of the bodies of all missing children reported as having died across all of the institutions, which housed unmarried mothers & their children, must be enshrined in any legislation or recommendations.*

“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;”

*This trivialising emphasis on the undefined inappropriate burials rather than on the causes or numbers of deaths is reflected in the January 2015 Terms of Reference<sup>4</sup> for the Commission of Investigation into Mother and Baby Homes (sic) and Certain Related Matters. It is continued throughout all of the Dept of Health & Youth Affairs (DCYA) press releases on the Commission’s various interim reports & is particularly noticeable in the Fifth Interim Report<sup>5</sup>, which states*

“The Commission has submitted this interim report to assist Government in implementing its agreed course of action to manage the juvenile remains interred at the site at Tuam, Co Galway.

*It is repugnant to us that the government would regard the bodies of the children as requiring “management”; all of these remains require forensic investigation, reporting to local coroners, adjudication on the causes of their deaths; identification & eventual reburial but only after the facts of their deaths have been confirmed.*

“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;”

*It is not clear at this stage whether or not private burial grounds are included in this definition, when it is essential that they are. The Mother and Baby Institutions at Bessborough, Sean Ross Abbey & Castlepollard (run by the religious order of the Sacred Hearts of Jesus & Mary) are private estates, which contain private burial grounds. They cannot be excepted from the scope of any Garda or Coroner’s investigation.*

“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.”

*Identification & exhumation alone are wholly insufficient responses to the discovery of a mass grave. As far as possible, the number of bodies should be collated to aid their classification or identification. These groupings should be compared to the death notifications made to the local authorities during the years that the various institutions operated and a coroner’s inquest needs to be opened for each set*

<sup>4</sup> <http://www.mbhcoi.ie/mbh.nsf/page/Terms%20of%20reference-en>

<sup>5</sup> <https://assets.gov.ie/25783/a141b69a4a3c46fd8daef2010bf51268.pdf>

*of remains to ensure as far as possible that the reported causes of death are consistent with the state of the remains.*

*From our experience of attending annual commemorations at Sean Ross Abbey, Bessborough etc, we find that mothers who fear that their child is buried within the grounds are more concerned about their child's cause of death, rather than how they are buried. In addition, it is a key concern to the survivors that the causes of death of the infants & children be thoroughly investigated as this is the only measure which will ensure accountability.*

### **International Protocols on Processing Mass Burial Sites**

*We also note the distinct absence of any reference to international protocols on the treatment of mass graves within the Institutional Burials' Bill, which concerns itself solely with the exhumation, identification & reinternment of remains, as if detailed analysis of the causes of death had already taken place, when they clearly have not.*

*We wish to draw the committee's attention to the following protocols, which should be the cornerstones of any investigation of any unidentified mass or individual graves discovered at the various institutional settings, where infant & children's bodies are buried or are suspected of being buried.*

1. *UN New Minnesota Protocol 2016*

In the foreword, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, states that

*"A suspicious death occurring anywhere in the world is potentially a violation of the right to life, often described as the supreme human right, and therefore a prompt, impartial and effective investigation is key to ensuring that a culture of accountability — rather than impunity — prevails. The same applies to enforced disappearances. The updated version of the Minnesota Protocol provides a comprehensive and shared platform for forensic investigators, pathologists, law enforcement officials, lawyers, prosecutors, presiding officers and NGOs to make accountability a worldwide reality".*

2. *EAAF Forensic Guide 2020*

*In the Introduction, their objective is stated as*

*"The objective of this forensic guide is to provide a practical and simple tool for cases that involve the investigation, recovery and analysis of human skeletal remains for purposes of identification and determination of cause of death in contexts of human rights violations and violations of international humanitarian law."*

3. *The Bournemouth Protocol on Mass Grave Protection*

*"The Bournemouth Protocol on Mass Grave Protection and Investigation is firmly based on the premise that standards of investigation and protection applied to mass graves must support efforts to establish the truth about what happened and facilitate the pursuit of justice. It is through investigations that the State gives meaning to human rights guarantees.*

## **National Guidance on the Handling of Mass Graves & Article 8 of the ECHR – The Right to Respect for Private & Family Life**

Dr Geoffrey Shannon, Ireland's former Special Rapporteur on Child Protection in April 2018 in his paper "*Human Rights Issues at the Former Site of the Mother and Baby Home, Tuam Co. Galway*", elucidated the importance of Article 8 of the ECHR in relation to the burials in Tuam<sup>6</sup>.

Shannon cites several legal cases that were brought before the ECtHR in relation to the right to know the circumstances of a family member's death, but he highlights two cases, *Hadri-Vionnet v Switzerland*<sup>7</sup> and *Zorica Jovanović v Serbia*<sup>8</sup>, as best representing the situation of the Tuam burials.

In *Hadri-Vonnet*, a local authority in the state of Switzerland buried the applicant's stillborn child without informing her of the time and location of the burial. The Court judged that the state infringed the applicant's rights under Article 8 of the ECHR<sup>9</sup>.

Shannon believes this decision of the Court demonstrates that the right of a family member to know where their dead relatives are buried is 'crucial'<sup>10</sup>. The failure of the Irish State to reveal burial information to family members amounts to a violation of Article 8 of ECHR. It can be inferred from the *Hadri-Vionnet* case that the Irish government continues to breach the rights of the mothers of the Tuam babies (& other sites) by delaying efforts to identify the bodies of the buried children, and to inform the parents of the circumstances of their children's deaths and burials.

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<sup>6</sup> Dr Geoffrey Shannon - <https://assets.gov.ie/25217/0abb576368b14e2081c447b417544fb2.pdf>

<sup>7</sup> <https://international.vlex.com/vid/case-of-hadri-vionnet-564858374>

<sup>8</sup> <https://hudoc.exec.coe.int/ENG#%7B%22EXECIdentifier%22:%5B%22004-7011%22%5D%7D>

<sup>9</sup> [https://www.echr.coe.int/documents/guide\\_art\\_8\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_8_eng.pdf)

<sup>10</sup> Dr Geoffrey Shannon- <https://assets.gov.ie/25217/0abb576368b14e2081c447b417544fb2.pdf> , pages 34/35

## **Summary of Recommendations**

1. The location of the bodies of all missing infants & children, reported as deceased at the various institutional sites to be determined – not just at Tuam.
2. The causes & numbers of deaths for each of the institutional sites to be verified & documented by a Coroner's Court.
3. Private burial grounds to be included in all investigations.
4. Robust measures to be taken to identify all of the remains.
5. Family members, parents in particular, to be informed about their relative's cause of death & place of burial.
6. Family Members to be consulted about the reinterment of their relative's remains
7. Religious congregations to pay a sizeable proportion of the exhumation, analysis, identification & reburial costs.
8. International protocols to be utilised throughout.
9. International expertise to be recruited & utilised throughout.