



Re: Pre-legislative scrutiny of the General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill by the Joint Oireachtas Committee on Children, Disability, Equality and Integration

ICCL Opening Statement¹

April 14, 2021

The Irish Council for Civil Liberties is an independent NGO that works to promote and protect human rights in Ireland. ICCL does not represent particular groups but rather works to ensure government fulfils its human rights obligations in all relevant law and policy. In our submission to the Committee, we analysed the General Scheme of a Certain Institutional Burials Bill in light of Ireland's human rights obligations.

As other speakers have done today, we would underline the vital importance of taking a survivor-centred approach to this legislative process, and at all stages of implementation. We all have to acknowledge that survivors and family members are a diverse group and have different needs and wishes. It's therefore vital that legislation on burials should not close any doors or pose undue obstacles to the fulfilment of the wishes of survivors and family members. This includes ensuring that inquests can be held where appropriate.

From a human rights perspective, institutional burials and mass grave sites imply violations of different human rights, including the right to life. Survivors and families have the right to an effective remedy, which includes the right to equal and effective access to justice, reparation for harm suffered, and access to relevant information concerning the violations and reparation mechanisms. The State has an obligation to effectively investigate unlawful or suspicious deaths. Taking reasonable steps to identify the deceased person and to determine the cause of death where appropriate are key components of this obligation.

¹ Delivered by Doireann Ansbro, Head of Legal and Policy, Irish Council for Civil Liberties



Irish Council for
Civil Liberties

The government has previously acknowledged the importance of taking a transitional justice approach in the context of Mother and Baby Homes. The key pillars of a transitional approach are the right to truth, justice, reparation, and guarantees of non-recurrence.

In its current form the General Scheme of this Bill has significant problems from both a human rights and transitional justice perspective. First, it impedes an effective investigation into the deaths of those buried at mass grave sites as it temporarily disappplies the jurisdiction of the Coroner; the legislation does not apply if “the human remains at the site were buried there following death in violent or unnatural circumstances” or if there is an ongoing criminal investigation. This limits the scope of the Bill and appears to indicate a presumption by Government that institutional burials were not preceded by violent or unnatural circumstances. This doesn’t stand up from an evidentiary perspective given that we know the cause of death for many babies in Mother and Baby Homes, especially in the earlier half of the century, was registered as malnourishment indicating severe neglect. Nor does it stand up from a human rights perspective given the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions has stated that, “Mass graves are crime scenes”.

Under the current draft Bill, complex and challenging requirements must be met to set up an Agency. It provides for overly broad discretion to Government, additional broad criteria, an unclear proportionality assessment, and overly restrictive obstacles. For example, a particularly problematic restriction is a time limitation of 70 years, limiting the scope of the Bill to 1951 onwards. The rationale for this is unclear.

The lack of transparency regarding the Agency’s documents and records is also of concern. The Bill effectively provides for the sealing of documents and records for a period of 30 years. This is problematic and is inconsistent with transitional justice principles, in particular the right to truth. Access to information is a key right that has taken on particular significance in the context of justice for Mother and Baby Homes survivors and their families.

Overall, we consider that the Bill lacks a rights-based approach, a survivor-centred approach, and is inconsistent with a transitional justice approach.

We recommend that the Government takes one of two possible approaches: either significantly reform this bill in line with international human rights law and transitional



justice principles, or amend existing legislation to provide for relevant powers for existing bodies such as the Coroner to address institutional burials.

We recommend that Ireland ratify the UN Convention against Enforced Disappearances, as this provides a clear roadmap for dealing with enforced disappearances and is relevant for addressing mass graves and institutional burials.

Finally, we note that this is one component of the overall Government's response to the severe and systematic human rights violations that occurred in Mother and Baby Homes. There is a broader need for Government to respect its human rights obligations and transitional justice principles throughout this response and we call on it to do so.