

20 March 2026

To whom it may concern:

RE: Large Scale Residential Development proposal, “The Farm” (Cork City Council Planning Ref. 25/44442), at Bessborough, Ballinure, Blackrock, Cork

We, the undersigned, write in support of the appeal by Bessboro Mother and Baby Home Support Group against the grant by Cork City Council to Estuary View Enterprises 2020 Limited on 24 February 2026 of Conditional Permission for a Large-Scale Residential Development at a site located at Bessborough, Ballinure, Blackrock, Cork (Planning Ref. 25/4442).

In summary, we submit:

1. The State is aware of a situation of mass disappearance and the probability that some of the disappeared are buried in the grounds of Bessborough Mother and Baby institution. An Bord Pleanála and An Coimisiún Pleanála have refused planning permission for this site numerous times since May 2021 due to the lack of clarity regarding the whereabouts of 878 children and mothers (in total) who were confined in Bessborough.
2. The State is obliged under the European Convention on Human Rights (ECHR) to investigate the deaths of children and mothers who were confined in Bessborough, and to ascertain the whereabouts of the disappeared and return their remains to relatives. The EU Charter of Fundamental Rights (CFR) protects—in several cases more explicitly than in the ECHR text—the equivalent rights which, according to the jurisprudence of the European Court of Human Rights (ECtHR), give rise to such obligations (CFR arts 1, 2, 4, 6, 7, 11, 20, 21, 24, 33, 42, 47). These legal obligations are reinforced by international human rights law sources and standards, including as interpreted by eight United Nations Human Rights Council-appointed Special Procedures directly in relation to the deaths and disappearances of individuals previously confined in Ireland’s Mother and Baby institutions. Irish Constitutional caselaw supports the existence of these obligations, also.
3. The State has not complied with its European human rights law obligations in respect of the deaths and disappearances of children and women who were confined in Bessborough

Mother and Baby institution. The Mother and Baby Homes Commission of Investigation (MBHCOI) proceeded in private and offered no opportunity to bereaved mothers or relatives to see or comment on, or suggest lines of inquiry further to, the evidence it received and considered. The MBHCOI did not publish its archaeological assessment of the grounds at Bessborough; it kept its entire archive relating to Bessborough confidential from bereaved mothers and relatives. The MBHCOI's archive remains inaccessible to affected people and the public, and neither An Coimisiún Pleanála nor the members of Cork City Council have access to the documents and other evidence underlying the MBHCOI's observations and conclusions. Furthermore, the MBHCOI did not use all reasonable means to search for the disappeared children and women of Bessborough: it did not undertake geophysical surveys using methods such as ground-penetrating radar / electrical resistivity / magnetometry, and there is no indication in its Reports that it undertook test excavations or soil chemistry or decomposition analysis. The State has not established any other investigation into the disappeared children and mothers of Bessborough.

4. An Coimisiún Pleanála is obliged to uphold the State's European human rights law obligations, which cannot be displaced or delegated by way of conditions on a grant of planning permission to a private property developer.
5. Cork City Councillors have acknowledged the State's responsibility for the Bessborough site, unanimously agreeing that a Compulsory Purchase Order is necessary in relation to the entire remaining site.

This letter reproduces some of the contents of the following publications, which ACP may wish to consult further:

- Sarah-Anne Buckley, Vicky Conway, Máiréad Enright, Fionna Fox, James Gallen, Erika Hayes, Mary Harney, Darragh Mackin, Claire McGettrick, Conall Ó Fátharta, Maeve O'Rourke and Phil Scraton, 'Joint Submission to Oireachtas Committee on Children, Equality, Disability and Integration' (Dublin: Justice for Magdalenes Research, 26 February 2021)¹
- Maeve O'Rourke, 'A human rights framework: Background Research for the Truth Recovery Design Process' (Belfast: Truth Recovery Design Panel, 27 September 2021)²
- Maeve O'Rourke, 'The Manipulation of "Vulnerability": State Responses to So-Called "Historical" Abuses in Ireland' (2021) 43(3) Human Rights Quarterly 435

¹ Available at https://jfmresearch.com/wp-content/uploads/2021/03/Institutional-Burials-Bill_Joint-Submission-26.2.21.pdf.

² Available at <https://researchrepository.universityofgalway.ie/server/api/core/bitstreams/1b76cc1f-3a72-40b8-855a-3ad67ab2b5c3/content>.

1. The State is on notice of mass disappearances and ‘highly likely’ burials at Bessborough

1.1 MBHCOI findings

The MBHCOI’s reports (the Fifth Interim Report published in March 2019,³ and the Final Report published in January 2021⁴) found the following in respect of mothers and children in Bessborough Mother and Baby institution:

Population

- Bessborough housed 9,768 girls/women and 8,938 children between 1922 and 1998.⁵ It opened in 1922.⁶ It ‘was a large Georgian house initially on over 200 acres of land.’⁷
- Within the network of Mother and Baby institutions under investigation by the MBHCOI, Bessborough admitted the second largest number of girls below the age of 18.⁸

State involvement

- Bessborough ‘was owned and run by the Congregation of the Sacred Hearts of Jesus and Mary. It was financed by capitation payments from the local health authorities and received capital funding from the Hospitals Trust Fund.’⁹
- The *Registration of Maternity Homes Act 1934* ‘gave the DLGPH/Department of Health the authority to inspect all places where women gave birth, or received nursing care following a birth. All maternity homes were required to register, and registration was the responsibility of the local authority.’¹⁰
- ‘The evidence suggests that the Cork local health authorities did not properly monitor Bessborough and did not take appropriate action when it became aware of the very high rate of infant mortality.’¹¹

³ Mother and Baby Homes Commission of Investigation (MBHCOI), Fifth Interim Report (March 2019), <https://www.gov.ie/en/department-of-children-disability-and-equality/publications/commission-of-investigation-into-mother-and-baby-homes-and-certain-related-matters-fifth-interim-report-march-2019/>.

⁴ MBHCOI, Final Report (January 2021), <https://www.gov.ie/en/department-of-children-disability-and-equality/publications/final-report-of-the-commission-of-investigation-into-mother-and-baby-homes/>.

⁵ MBHCOI, Final Report, Executive Summary para 90.

⁶ MBHCOI, Final Report, Chapter 18 para 18.1.

⁷ MBHCOI, Final Report, Executive Summary para 93.

⁸ MBHCOI, Final Report, Executive Summary para 3.

⁹ MBHCOI, Final Report, Executive Summary para 94.

¹⁰ MBHCOI, Final Report, Executive Summary para 27.

¹¹ MBHCOI, Final Report, Executive Summary para 94.

Deaths

- 923 children who were associated with Bessborough died.¹² This ‘includes children who died in the Bessborough home and Sacred heart hospital [in Bessborough]; children who were born in or admitted to Bessborough who subsequently died elsewhere and children who were never admitted to Bessborough but whose mothers had been resident in Bessborough prior to their birth’.¹³
- ‘Most (761) died in Bessborough, either in the Bessborough home or in the Sacred Heart Hospital.’¹⁴ A further 129 children died in Cork District Hospital/St Finbarr’s Hospital, 15 children died in other city hospitals, 12 children died in private addresses - mainly foster homes - following their discharge from Bessborough, and 4 children died in a ‘private mother and baby home’ following discharge from Bessborough.¹⁵
- ‘Through the institutional records, the Commission identified 31 deaths among women admitted to Bessborough’.¹⁶ ‘The Commission found GRO records for 29 of the 31 maternal deaths.’¹⁷

Mortality rates

- In the early 1940s successive inspections carried out by the Department of Local Government and Public Health (DLGPH) under the *Registration of Maternity Homes Act 1934* revealed major shortcomings in Bessborough¹⁸ 75% of the children born in Bessborough in 1943 died within the first year of life.¹⁹ This was the ‘highest rate of infant mortality in an Irish mother and baby home’.²⁰ ‘In the years 1940-44, 330 children died in Bessborough. Deaths recorded during these five years accounted for 36% of all child deaths associated with Bessborough in its 76-year operation.’²¹
- In late 1944 or early 1945, ‘Dr Ward, the Parliamentary Secretary at the DLGPH, considered that the medical supervision of children in Bessborough, as reported by Dr Condy, was “criminally casual”’.²²
- ‘In the years 1958-60 infant mortality increased to around 10%: representing nine deaths on average in these years.’²³

¹² MBHCOI, Final Report, Executive Summary para 95.

¹³ MBHCOI, Final Report, Chapter 18A p34.

¹⁴ MBHCOI, Final Report, Chapter 18A p38.

¹⁵ MBHCOI, Final Report, Chapter 18A p38.

¹⁶ MBHCOI, Final Report, Chapter 18A p10.

¹⁷ MBHCOI, Final Report, Chapter 18A p10.

¹⁸ MBHCOI, Final Report, Executive Summary para 28.

¹⁹ MBHCOI, Final Report, Executive Summary para 62.

²⁰ MBHCOI, Final Report, Executive Summary 234.

²¹ MBHCOI, Final Report, Chapter 18A pp34-35.

²² MBHCOI, Final Report, Chapter 18 para 18.118.

²³ MBHCOI, Final Report, Chapter 18A p36.

Burial records and burial places of mothers

- ‘The Commission found burial records for 12 women in St Joseph’s Cemetery, Cork.’²⁴
- ‘The Commission has established that, between November 1927 and January 1985, 12 adult women, all former residents of the Bessborough Home, were buried in a Congregation of the Sacred Hearts of Jesus and Mary owned burial plot at St Joseph’s Cemetery. This plot is marked by a headstone. However, the headstone lies in three broken pieces and the inscription is unreadable. It is unlikely that the headstone bears the names of women buried in this plot. The women buried here remained in Bessborough for extended periods working as domestic servants; their deaths were not childbirth related. One woman entered Bessborough in 1922, aged 20 years, and remained there until her death in 1984 - a period of 62 years. Another entered Bessborough in 1924, aged 21 years, and remained there until her death in 1985 - a period of 60 years.’²⁵

Burial records of children

- ‘Bessborough failed to keep a register of infant burials and the burial location of the majority of children who died there is still unknown.’²⁶

Burial places of children

- ‘It is not known where the vast majority of the children who died in Bessborough are buried...Despite very extensive inquiries and searches, the Commission has been able to establish the burial place of only 64 children.’²⁷
- ‘The Commission remains perplexed and concerned at the inability of any member of the Congregation of the Sacred Hearts of Jesus and Mary to identify the burial place of the children who died in Bessborough.’²⁸
- ‘The Commission...recognises that it is highly likely that burials did take place in the grounds of Bessborough.’²⁹

Rationale for conclusion that burials in Bessborough are ‘highly likely’: process of elimination

- ‘There is a small burial ground in the grounds of Bessborough. This was opened in 1956 for members of the congregation. It seems to have been assumed by former residents and advocacy groups that this is also where the children who died in Bessborough are buried as there are occasional meetings and commemoration ceremonies held there. The vast majority of children who died in Bessborough are not buried there; it seems that only one child is buried there.’³⁰

²⁴ MBHCOI, Final Report, Chapter 18A p10.

²⁵ MBHCOI, Fifth Interim Report, paras 4.49-4.50.

²⁶ MBHCOI, Final Report, Executive Summary para 97.

²⁷ MBHCOI, Fifth Interim Report p8 para 1.

²⁸ MBHCOI, Final Report, Chapter 38A para 38.12.

²⁹ MBHCOI, Final Report, Chapter 38A para 38.17.

³⁰ MBHCOI, Fifth Interim Report p8 para 1.

- ‘At an early stage, the Commission thought it unlikely that all the children who died in Bessborough were buried in this burial ground as it was not nearly large enough for the number of children involved and, in any event, it would be unlikely that children would be buried in the same burial ground as members of the congregation.’³¹
- The Commission examined:
 - Three collections of records from St Finbarr’s Hospital³²
 - The burial records for seven of the eight burial grounds that were in operation in Cork city and surrounding hinterland between 1922 and 1998:³³
 - St Joseph’s Cemetery, Tory Top Road, Cork..
 - St Finbarr’s Cemetery, Glasheen Road, Cork.
 - St Michael’s Cemetery, Mahon, Cork.
 - Douglas Municipal Cemetery, Douglas, Cork.
 - St Mary’s Cemetery, Curraghkippane, Cork.
 - St Catherine’s Cemetery, Kilcully, Cork
 - Rathcooney Cemetery, Glanmire, Cork.
 - The Commission was ‘unable to locate the burial records for Cork District Cemetery, Carr’s Hill’³⁴ despite extensive efforts.³⁵

Other rationale for conclusion that burials in Bessborough are ‘highly likely’

- ‘The Commission considers that it is likely that some of the children are buried in the grounds but has been unable to find any physical or documentary evidence of this. In particular, during the 1940s (when many of the deaths occurred) and when petrol was scarce, it would have been very expensive to arrange off-site burials. However, as no physical evidence of possible locations was found, the Commission did not consider it feasible to excavate 60 acres not to mention the rest of the former 200 acre estate.’³⁶

1.2 Previous planning decisions

The recent grant of planning permission by Cork City Council at Bessborough stands in stark contrast to three decisions taken previously by An Coimisiún Pleanála (ACP) and An Bord Pleanála (ABP) in respect of the site.

³¹ MBHCOI, Fifth Interim Report para 4.14.

³² MBHCOI, Final Report, Chapter 38A paras 38.18-38.25.

³³ MBHCOI, Fifth Interim Report para 4.30.

³⁴ MBHCOI, Fifth Interim Report para 4.31.

³⁵ MBHCOI, Fifth Interim Report paras 4.40-4.47.

³⁶ MBHCOI, Fifth Interim Report para 7.

In May 2021, in ABP-308790-20, ABP refused permission for the following reason:

Having regard to the Fifth Interim Report (2019) and the Final Report (2020) [sic] of the Commission of Investigation into Mother and Baby Homes, and on the basis of the information submitted in the course of the application and oral hearing, the Board is not satisfied that the site was not previously used as, and does not contain, a children's burial ground and considers that there are reasonable concerns in relation to the potential for a children's burial ground within the site, associated with the former use of the lands as a Mother and Baby Home over the period 1922 to 1998. In this context, the Board considers that it would be premature to grant permission for the proposed development prior to establishing whether there is a children's burial ground located within the site and the extent of any such burial ground.³⁷

Simply put, ABP refused permission precisely because so little was known about the location of children's burials at Bessborough. The situation remains unchanged since ABP's decision in ABP-308790-20 and since the publication of the MBHCOI Final Report. The burial place of 859 children and 19 mothers is still not known. It has still not been established 'whether there is a children's burial ground located within the site and the extent of any such burial ground'.

This was acknowledged in ABP's refusal of permission in ABP-315820-23, in September 2024, for two reasons—one of which was the following:

Having regard to the Board's decision to refuse permission for a previous application (ACP-308790-2-), the Board is satisfied that no new material information or evidence has been presented in this application to substantiate a different conclusion following that previous decision. The Board considers that the potential exists for the presence of human remains and/or burials at this proposed development site associated with the former use of the lands as a Mother and Baby Home over the period 1922 to 1998. The Board considers it would therefore be premature to grant permission for this proposed development prior to establishing the extent of human remains and/or burials, if any, and that such matter extends beyond the scope of normal planning conditions particularly having regard to the impacts this may have on the development as proposed. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.³⁸

³⁷ An Bord Pleanála, Board Order ABP-308790-20 (25 May 2021)
<https://www.pleanala.ie/anbordpleanala/media/abp/cases/orders/308/d308790.pdf?r=285984457966>

³⁸ An Bord Pleanála Board Order ABP-315820-23 (13 September 2024)
<https://www.pleanala.ie/anbordpleanala/media/abp/cases/orders/315/d315820.pdf?r=589201902105>

ACP again refused permission in ABP-313206-22, in July 2025. The Inspector's Report stated the following:

10.4.9. In conclusion, no new or significant evidence has been presented since the Board's decision on ref no. 308790 (decision in 2021), which had been based on a considerable body of evidence that was robustly tested at the oral hearing, which would be sufficient to overcome the Board's reason for refusal. Furthermore, nothing has changed on the ground in respect of addressing the considerable uncertainty regarding the potential for unrecorded burials within the lands, including the site of the current proposal, that had given rise to this decision, i.e. no excavations have been carried out. Notwithstanding the appellants' claims that the area of concern was largely confined to the area north and west of the folly and on lands not within the applicants' ownership, it has been widely accepted by the Board, the Commission of Investigation and by the applicants' own experts, that the extent of the area to which the uncertainty persists regarding the potential for unrecorded burials is significant.

10.4.10 In relation to dealing with the issue by way of condition requiring forensic research and monitoring, the Board had also considered the question of granting planning permission subject to a condition requiring forensic excavations to be carried out prior to commencement of construction, as is currently proposed as a solution to the uncertainty, but had rejected this proposal on the basis of the significant degree of uncertainty on this matter, the need for a rigorous standard of oversight which would be beyond the scope of the planning authority, and the potential consequences for the development should human remains be discovered *in situ*.

... 10.4.12 Conclusion on Legacy: It is acknowledged that the application site is removed from the lands that were subject to both ref no. 308790 and 318520. I would also acknowledge that a significant portion of the site, is dominated by existing structures of considerable age that may pre-date the use as a Mother and Baby Home and the majority of new structures fall within the footprint of such. Notwithstanding such and having regard to the fact that application site is part of the historic curtilage of Bessborough House and does include existing open areas, which has a history of use as a former Mother and Baby Home, it is considered that the issues raised by Board's reason for refusal for development subject to ref no. 308790 and 318520 on lands also within the historic curtilage of Bessborough House are relevant in this case. I do not consider that the proposal addressed this issue satisfactorily with no additional information of any material significance has been presented to the Board in the intervening period. In light of the significant uncertainty regarding the location and extent of unrecorded burials on the lands associated with Bessborough House site, as highlighted in the Fifth Interim Report (2019) and the Final Report (2020) of the Commission of Investigation into Mother and Baby Homes, and to

the reasonable concerns raised by the Board in relation to the potential for a children's burial ground on these lands, it would be premature to grant permission for the proposed development prior to establishing if there is a children's burial ground within the site, the extent of such a burial ground and the implications for the delivery of the development as proposed. For these reasons, the proposed development should, therefore, be refused.³⁹

2. The State's human rights obligations

2.1 Letter to the Government from eight United Nations Human Rights Council-appointed Special Procedures

In a letter to the Irish Government on 5 November 2021, no fewer than eight United Nations Human Rights Council-mandated Special Procedures criticised the State's response to the deaths and burials of individuals who were confined in Mother and Baby homes and analagous institutions.⁴⁰ Making reference not only to international treaties and customary international law but also the provisions of the European Convention on Human Rights, the Special Procedures emphasised the need to 'effectively facilitate victims and relatives' access to information about the circumstances of their relatives' burials' and stated: 'Given the conclusions in the Commission's report concerning the higher mortality rates in the Mother and Baby Homes, it is critical to ensure that provisions are made for the holding of inquests to investigate the deaths that occurred'.⁴¹

Highlighting the State's particular obligations in respect of disappearances, the Special Procedures' letter observed that 'the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation'⁴² and continued:

The State's positive obligations in relation to enforced disappearances are stated in international human rights treaties, and customary international law, and raise questions

³⁹ An Bord Pleanála, Inspector's Report ABP-313206-22 (23 May 2025)

<https://www.pleanala.ie/anbordpleanala/media/abp/cases/reports/313/r313206.pdf?r=489345265325>.

⁴⁰ Letter of 5 November 2021 from Luciano Hazan, Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Mama Fatima Singhateh, Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Tomoya Obokata, Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Siobhán Mullally, Special Rapporteur on trafficking in persons, especially women and children; Fabian Salvio, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Reem Alsalem, Special Rapporteur on violence against women, its causes and consequences; and Melissa Upreti, Chair-Rapporteur of the Working Group on discrimination against women and girls (Letter of 5 November 2021 from 8 UN Special Procedures), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26772>.

⁴¹ Letter of 5 November 2021 from 8 UN Special Procedures, 4.

⁴² Letter of 5 November 2021 from 8 UN Special Procedures, 9.

also in relation to the State's responsibility under the ECHR, specifically Articles 2 (right to life), Article 3 (prohibition of torture), Article 5 (right to liberty and security), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy). Reference is also made to Articles 6, 7, 9, 10, 16 of the ICCPR, read alone and in conjunction with Article 2.3 and, where minors are involved, also Article 24.1. In addition, we would like to recall the obligation of the State under Article 20 of the Declaration on the Protection of All Persons from Enforced Disappearance, which requires that measures be taken to prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance. It also requires that the State devote their efforts to the search for and identification of such children and return them to their families of origin. Further, Articles 13 and 19 of the Declaration respectively require States to conduct prompt, thorough and impartial investigations into allegations of enforced disappearance and to provide victims and their family with adequate redress for the harm suffered. Article 17 of the Declaration clarifies that enforced disappearances shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.⁴³

Regarding the timeframe in which deaths took place in Ireland's Mother and Baby institutions: in addition to their above-noted clarification that a disappearance constitutes a continuing situation, the Special Procedures observed:

In relation to the relevant international law, we draw your Excellency's attention to the international legal instruments, in force at the time of the events occurring, and relevant peremptory norms of international law (*jus cogens* norms), that also form part of customary international law and were binding upon the State. Specifically, these include, and are not limited to: Right to life, right to be free from torture, inhuman and degrading treatment, the prohibition of forced labour and servitude, the prohibition of racial discrimination, the prohibition of enforced disappearance, and the right to liberty and security of the person, including the right to be free from arbitrary detention. We also note that the procedural duty to carry out an effective investigation under Article 2 ECHR has evolved into a separate and autonomous duty and may bind the State even when the death took place before the critical date of ratification.⁴⁴

2.2 Report of the Special Rapporteur on Child Protection, Geoffrey Shannon, in 2018

In December 2017 then Minister for Children, Katherine Zappone TD, requested then independent Special Rapporteur on Child Protection, Geoffrey Shannon, to provide a report on *Human Rights*

⁴³ Letter of 5 November 2021 from 8 UN Special Procedures, 10.

⁴⁴ Letter of 5 November 2021 from 8 UN Special Procedures. 12 (citations omitted).

Issues at the Former Site of the Mother and Baby Home, Tuam, Co Galway. That report, published in April 2018,⁴⁵ contains extensive European, Irish Constitutional, and international human rights law analysis that relates also to the deaths and disappearances at Bessborough Mother and Baby institution. Shannon’s report discusses, *inter alia*:

- Public bodies’ obligation to perform their functions compatibly with the ECHR, pursuant to the European Convention on Human Rights Act 2003;
- The right under Article 8 ECHR to know the fate of family members, including information surrounding the death and/or burial of loved ones;
- The State’s obligation under Articles 2 and 3 ECHR to investigate effectively when a death occurs in suspicious circumstances or where an individual has gone missing in life-threatening circumstances;
- The meaning of an ‘effective investigation’ according to ECtHR jurisprudence, including that State authorities must take the initiative to investigate once the matter has come to their attention, that the approach must be comprehensive and steps must be taken to secure all relevant evidence in relation to the death, and that the investigation must be open to public scrutiny and must involve relatives of the deceased to a sufficient degree to safeguard their legitimate interests;
- The importance of dignity under the Irish Constitution, in particular in relation to circumstances of death; and
- The question of the inherent jurisdiction of the High Court to determine whether and how remains should be dealt with.

2.3 Irish Human Rights and Equality Commission

The Submission of the Irish Human Rights and Equality Commission (IHREC) on the *General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill* dated February 2021⁴⁶ is relevant to the instant appeal; it recognises that:

The discovery of the mass grave site at the former Mother and Baby Home at Tuam in 2017 and the findings of the *Mother and Baby Homes Commission of Investigation Final Report* (2020) that many of the Mother and Baby Homes did not properly record the burials of children who died in these institutions engage serious human rights and equality issues both for the deceased and their family members.⁴⁷

⁴⁵ Geoffrey Shannon, *Human Rights Issues at the Former Site of the Mother and Baby Home, Tuam, Co Galway*, 12 April 2018, <https://assets.gov.ie/25217/0abb576368b14e2081c447b417544fb2.pdf>.

⁴⁶ Irish Human Rights and Equality Commission, ‘Submission to the Joint Committee on Children, Disability, Equality and Integration on the General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill’ (February 2021), <https://www.ihrec.ie/downloads/Submission-to-the-Joint-Committee-on-Children-Disability-Equality-and-Integration-on-the-General-Scheme-of-a-Certain-Institutional-Burials-Bill.pdf>.

⁴⁷ *Ibid* 2.

The IHREC Submission notes that the situation in Bessborough (among other analogous institutions) raises wide-ranging human rights issues under the Irish Constitution, European human rights law and international human rights law. These include ‘the importance of dignity under the Constitution’, the recognition at common law ‘of the right to a decent burial, and of a range of rights and duties concerning dead bodies’, the ‘positive procedural obligation upon states to investigate’ under Articles 2 and 3 ECHR, the rights of family members of deceased persons under Article 8 ECHR ‘to have their loved one’s body returned to them and the right to know the fate of their family members, including information surrounding the death and/or burial of their loved ones’, the right ‘to know the truth’, and various international human rights standards and best practice guidance applicable to mass graves.⁴⁸ IHREC’s Submission recommends a ‘transitional justice response for the survivors of the Mother and Baby Homes and families of those who died within these institutions’.⁴⁹

2.4 Human rights guarantees

The following section gives further consideration to human rights guarantees under the Irish Constitution, the ECHR (which should be taken also to mean the CFR in the context of the application of EU law to planning decisions, bearing in mind Article 52(3) CFR⁵⁰), and international human rights law.

Right to an effective investigation

The deaths of children in Bessborough in the mid-1940s occurred in an institutional environment that a senior Government official called ‘criminally casual’.⁵¹ The disappearance of the vast majority of those who died while associated with Bessborough is a situation of extreme seriousness, demonstrating systemic neglect (if not worse), discrimination and denial of human dignity—not only on the part of the Sisters of the Sacred Hearts of Jesus and Mary but also by the State authorities that paid for and placed girls, women and their children in the custody of the religious congregation and that had legal responsibilities to inspect and regulate their treatment. In *Makaratzis v Greece* the ECtHR held that Article 2 ECHR places a ‘primary duty on the state to secure the right to life by putting in place an appropriate legal and administrative framework to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions’.⁵² In addition to the

⁴⁸ Ibid 3-6.

⁴⁹ Ibid 8.

⁵⁰ Charter of Fundamental Rights of the European Union [2012] OJ C326/391, Art 52(3): ‘In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.’

⁵¹ MBHCOI, Final Report, Chapter 18 para 18.118.

⁵² *Makaratzis v Greece* (2005) 41 EHRR 49 para 57.

requirement of general regulation and inspection, and criminal law enforcement, the ECtHR has held that Article 2 requires the State to take practical steps to prevent loss of life in specific situations where it knows or ought to know that there is a real risk of death.⁵³ In *Nencheva and Others v Bulgaria*, the ECtHR found that Bulgaria had violated the right to life of fifteen children and young adults who died at a home for young people with disabilities as a result of cold and shortages of food, medicines and basic necessities. The manager of the home had tried without success on several occasions to alert all the public institutions which had direct responsibility for funding the home and which could have been expected to act.⁵⁴

The right of relatives to an effective investigation is an established aspect of both the right to life and the right to freedom from torture and other inhuman or degrading treatment under Articles 2 and 3 ECHR, respectively. In *Salman v Turkey*, recognising that '[p]ersons in custody are in a vulnerable position and the authorities are under a duty to protect them',⁵⁵ the ECtHR held that states are obliged to carry out an effective official investigation into deaths in custody or detention even if no agent of the state was involved in the incident resulting in death. This was confirmed in *Musayeva v Russia*.⁵⁶ Furthermore, in *Oneryildiz v Turkey*, where numerous deaths were caused by an environmental disaster, the ECtHR held that the investigative obligation arises 'when lives have been lost as a result of events occurring under the responsibility of the public authorities, which are often the only entities to have sufficient relevant knowledge to identify and establish the complex phenomena that might have caused such incidents'.⁵⁷

It is a matter of settled ECHR law that the obligation to carry out an 'effective investigation' arises wherever there is an 'arguable claim' that an unlawful death has occurred whether at the hands of state agents or private individuals.⁵⁸ An 'arguable claim' exists where the 'allegations could not be discarded as being prima facie untenable'.⁵⁹ In *Fernandes v Portugal*, the ECtHR confirmed that the investigative obligation arises wherever a death occurs 'in suspicious circumstances, even when the State has no direct responsibility for the death'.⁶⁰ The obligation to establish an 'effective investigation' further arises wherever there is an 'arguable claim' that a violation of Article 3

⁵³ See for example *Oneryildiz v Turkey* (2005) 41 EHRR 20; *Osman v United Kingdom* (2000) 29 EHRR 245; *Opuz v Turkey* (2010) 50 EHRR 28.

⁵⁴ *Nencheva and Others v Bulgaria* App no 48609/06 (ECtHR, 18 June 2013).

⁵⁵ *Salman v Turkey* (2002) 34 EHRR 425 para 99.

⁵⁶ *Musayeva v Russia* (2008) 47 EHRR 25 para 77.

⁵⁷ *Oneryildiz v Turkey* (2005) 41 EHRR 20 para 93

⁵⁸ Council of Europe, *Guide to good practice in respect of domestic remedies (adopted by the Committee of Ministers on 18 September 2013)* (2013) 31.

⁵⁹ *Nuri Kurt v Turkey* (2007) 44 EHRR 36, para 117.

⁶⁰ *Fernandes v Portugal* App No 43098/09 (ECtHR, 15 December 2015) para 70. See also *Tunç v Turkey* App no 24014/05, (ECtHR, 25 June 2013) para 171; *McCaughey v United Kingdom* App No 43098/09 (ECtHR, 15 December 2015).

ECHR (right to freedom from torture or inhuman or degrading treatment or punishment) has occurred.⁶¹

In *Mocanu v Romania* the ECtHR held that the responsibility is on the state, not the victim of torture or ill-treatment, to initiate an investigation—and this is especially the case where the state has witnessed the abuse in question.⁶² The procedural obligation to investigate under both Articles 2 and 3 ECHR is non-derogable: in other words, it cannot be displaced for any reason. Guidance issued by the Registry of the ECtHR states:

Article 2 ranks as one of the most fundamental provisions in the Convention, one which in peace time, admits of no derogation under Article 15. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe (*Giuliani and Gaggio v. Italy [GC]*, 2011, § 174). As such, its provisions must be strictly construed (*McCann and Others v. the United State Kingdom*, 1995, § 147).⁶³

Regarding the temporality of the State’s obligations, the ECtHR has held that the state is under a continuing obligation to investigate apparent unlawful death which allegedly occurred prior to the Convention’s entry into force if the gap between the alleged abuse and the Convention’s entry into force is not more than ten years and much of the investigation took place or ought to have taken place in the period following the entry into force of the Convention.⁶⁴ The examination of deaths and burials by the MBHCOI creates a ‘critical date’ for activating Convention jurisdiction.⁶⁵

The UN Committee Against Torture (CAT) has clarified that states’ obligations under the Convention Against Torture to investigate, and to ensure access to justice and reparation in respect of, apparent torture or ill-treatment apply retrospectively. According to the CAT’s General Comment No 3, ‘States parties shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to a remedy and to obtain redress.’⁶⁶ The CAT’s reasoning is that: ‘For many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those whom have not received

⁶¹ *Aksoy v Turkey* (1997) 23 EHRR 553 para 98; *Assenov and Others v Bulgaria* (1999) 28 EHRR 652 para 98; *Kaya v Turkey* (1999) 28 EHRR 1 para 107.

⁶² *Mocanu v Romania* (2015) 60 EHRR 19 para 265.

⁶³ Council of Europe, European Court of Human Rights, ‘Guide on Article 2 of the European Convention on Human Rights: Right to life’ (31 August 2025) 6 https://ks.echr.coe.int/documents/d/echr-ks/guide_art_2_eng.

⁶⁴ *Jovanowicz and Others v Russia*, Apps nos 55508/07 and 29520/08 (ECtHR, 21 October 2013) paras 146-147; see also *Silih v Slovenia* App no 71463/01 (ECtHR, 9 April 2009) para 163.

⁶⁵ *Janowicz v Russia*, Application No 39630/09, Merits and Just Satisfaction (ECtHR, 13 December 2012).

⁶⁶ UN Committee Against Torture (CAT), General comment no. 3, 2012: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment : implementation of article 14 by States parties, 13 December 2012 para 40.

redress.’⁶⁷ The CAT has explained that ‘victims’ of torture and ill-treatment include ‘affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.’⁶⁸

State obligations in respect of disappearances

In our view, the circumstances in Bessborough can be characterised as ‘disappearances’ as that term is used in both ECtHR jurisprudence and international human rights law: due to the deprivation of liberty to which mothers and their children were subjected in Bessborough Mother and Baby institution.⁶⁹ The following paragraphs explain that for as long as information about a relative’s whereabouts is withheld from their family members, the disappearance continues. It is a continuing situation and frequently understood as a combined violation of rights: depending on the circumstances including the rights to life, freedom from torture and inhuman or degrading treatment, liberty, and respect for private and family life.

An ‘enforced disappearance’ is defined in international human rights law as occurring where:

persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.⁷⁰

⁶⁷ The CAT’s multiple Concluding Observations directed at the UK and Ireland in relation to the Magdalene and Mother and Baby institutions, and its admissibility decision in *Elizabeth Coppin v Ireland* (UN Doc CAT/C/68/D/879/2018, 14 January 2020), demonstrate that as of the date of the UNCAT’s coming into force, those who have suffered in the past are included in the obligations under articles 12, 13 and 14.

⁶⁸ CAT, General comment no. 3, 2012 : Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment : implementation of article 14 by States parties, 13 December 2012 para 3.

⁶⁹ Maeve O’Rourke, ‘A human rights framework: Background Research for the Truth Recovery Design Process’ (Belfast: Truth Recovery Design Panel, 27 September 2021) 26-29,

<https://researchrepository.universityofgalway.ie/server/api/core/bitstreams/1b76cc1f-3a72-40b8-855a-3ad67ab2b5c3/content>; Maeve O’Rourke, Claire McGettrick, Rod Baker, Raymond Hill et al, *CLANN: Ireland’s Unmarried Mothers and their Children: Gathering the Data: Principal Submission to the Commission of Investigation into Mother and Baby Homes* (Clann Report) (Dublin: Justice for Magdalenes Research, Adoption Rights Alliance, Hogan Lovells, 15 October 2018) paras 4.48-4.52, <https://clannproject.org/clann-report/>; Clann Project, Press Release, ‘Irish High Court declares that Mother and Baby Homes Commission of Investigation treated survivors unlawfully: Survivors and Clann Project call on Government to amend Redress Scheme to recognise all human rights violations’ (Clann Project, 17 December 2021) https://clannproject.org/wp-content/uploads/Clann-Press-Release_17-12-21.pdf; Máiréad Enright and Aoife O’Donoghue (eds), ‘Mother and Baby Homes Commission of Investigation Alternative Executive Summary (2025) 14(1) *Feminists@law* 37-41, <https://journals.kent.ac.uk/index.php/feministsatlaw/article/view/1396/2444>.

⁷⁰ United Nations Declaration on the Protection of All Persons from Enforced Disappearances, UNGA Res 47/133 (1 December 1992) UN Doc A/RES/47/133.

The ECtHR recognised a situation similar to an enforced disappearance—which it described as a ‘disappearance’⁷¹—in the 2015 case of *Jovanovic v Serbia* where a state-run hospital had taken a woman’s new-born son from her in 1983 and from then on:

the body of the applicant’s son was never released to the applicant or her family, and that the cause of death was never determined. Furthermore, the applicant was never provided with an autopsy report or informed of when and where her son had allegedly been buried, and his death was never officially recorded. The criminal complaint lodged by the applicant’s husband would also appear to have been rejected without adequate consideration and the applicant herself still has no credible information as to what happened to her son.⁷²

The 1992 UN Declaration on the Protection of All Persons from Enforced Disappearances explains that ‘[a]cts constituting enforced disappearance shall be considered a continuing offence as long as perpetrators continue to conceal the fate and whereabouts of persons who have disappeared’.⁷³ A similar definition is used by the ECtHR, which noted in *Varnava and Others v Turkey* that a ‘disappearance is a distinct phenomenon, characterised by an ongoing situation of uncertainty and unaccountability in which there is a lack of information or even a deliberate concealment and obfuscation of what has occurred’.⁷⁴ In *Jovanowicz v Russia*, the ECtHR emphasised that the ‘essence of the issue...lies...in the authorities’ dismissive reactions and attitudes in respect of that situation when it was brought to their attention’ or in ‘the failure of the authorities to respond to the quest for information by the relatives or from the obstacles placed in their way, leaving them to bear the brunt of the efforts to uncover any facts’.⁷⁵

Crucially, the ECtHR has held that the state is obliged to assist in the discovery of a missing relative not only where the state was involved in the disappearance but also in cases where non-state actors were involved. In *Varnava and Others v Turkey*, the ECtHR found that a state will violate the Convention where, regardless of who is responsible for the disappearance, the state’s response to relatives’ requests for assistance ‘may be regarded as disclosing a flagrant, continuous and callous disregard of an obligation to account for the whereabouts and fate of a missing

⁷¹ *Zorica Jovanovic v Serbia* App no 21794/08 (ECtHR, 26 March 2013) para 47.

⁷² *ibid* para 71 (references within the paragraph to earlier paragraphs in the judgment which establish these facts are omitted).

⁷³ United Nations Declaration on the Protection of All Persons from Enforced Disappearances, UNGA Res 47/133 (1 December 1992) UN Doc A/RES/47/133, Article 17(1).

⁷⁴ *Varnava and others v Turkey* App nos 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90 (ECtHR, 18 September 2009) [GC] para 148.

⁷⁵ *Janowicz v Russia* (2014) 58 EHRR 30 para 178.

person’.⁷⁶ In *Jovanovic*, the ECtHR acknowledged that ‘[t]he mutual enjoyment by parent and child of each other’s company constitutes a fundamental element of “family life” within the meaning of Article 8 of the Convention’ and that Article 8 not only prohibits ‘arbitrary interference’ with family life but also imposes positive obligations on the state to assist in the discovery of a missing relative.⁷⁷ It is worth noting that other ECtHR case law has recognised sibling relationships,⁷⁸ and the relationship of uncles and aunts with their nieces and nephews,⁷⁹ to comprise ‘family life’ within the meaning of Article 8.⁸⁰

Notably, Article 9(4) of the UN Convention on the Rights of the Child explicitly requires that where the separation of parent and child:

results from any action initiated by a State Party such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.⁸¹

The ECtHR has recognised that for as long as there is a ‘continuing situation’ of a Convention violation the right to a remedy remains.⁸² The UN Human Rights Committee, similarly, has found that the ICCPR applies to a situation of ‘enforced disappearance’ which may have begun prior to the Convention’s entry into force in respect of a particular country but continued or continues to exist afterwards.⁸³

⁷⁶ *Varnava and others v Turkey* App nos 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90 (ECtHR, 18 September 2009) para 200.

⁷⁷ *Zorica Jovanovic v Serbia* App no 21794/08 (ECtHR, 26 March 2013) para 70. Note that the unmarried mother’s constitutional right to the custody of her child has been recognised by the Irish courts as an unenumerated right: *G v An Bord Uachtala* [1980] IR 32. See also *I.O’T v. B* [1998] 2 IR 321. The ECtHR has also held that Article 8 protects the right to know and be cared for by one’s parents: *B v United Kingdom* (1987) 10 EHRR. 87.

⁷⁸ *Custafa and Armagan Akin v Turkey* App no 4694/03 (ECtHR, 6 July 2010), para 19; *Boughanemi v France* App no 22070/93 (ECtHR, 24 April 1996) para 35.

⁷⁹ *Butt v Norway* App no 47017/09 (ECtHR, 4 March 2013) paras 4, 76; *Jucius and Juciuviene v Lithuania* App no 14414/03 (ECtHR, 25 February 2009) para 27.

⁸⁰ However the ECtHR frequently notes that ‘the existence or non-existence of “family life” is essentially a question of fact depending upon the real existence in practice of close personal ties’: deriving from *K and T v Finland* App no 25702/94 (ECtHR, 12 July 2001) para 150.

⁸¹ Ireland ratified the UNCRC in 1992; the Convention applies to all situations that were continuing at that date as well as all that arose afterwards.

⁸² *Mocanu v Romania* (2015) 60 EHRR 19 para 261.

⁸³ UN Human Rights Committee (HRC), *Jegatheeswara Sarma v Sri Lanka*, Communication No. 950/2000 (16 July 2003), UN Doc. CCPR/C/78/D/950/2000 para 9.4.

In addition to violating numerous rights of the disappeared individuals themselves,⁸⁴ continuing situations of enforced disappearance have been found by the ECtHR and UN Human Rights Committee in several cases to give rise to a continuing situation of inhuman or degrading treatment of relatives on account of the suffering caused by their inability to discover their loved one's fate and whereabouts.⁸⁵

Right to respect for private and family life

The ECtHR has repeatedly found the Article 8 ECHR rights of a living relative to be violated where a state has failed to return, or delayed unjustifiably in returning, the body of a deceased person to their family.⁸⁶ The ECtHR has also found Article 8 to be violated where parents have been denied information about the final resting place of their stillborn child.⁸⁷ The right to respect for private and family life is acknowledged by the ECtHR to have a particular connection with the concept of human dignity.⁸⁸ In *Jovanovic v Serbia* the ECtHR held that 32 years after a woman's newborn son had been removed from her in hospital (and notwithstanding the fact that the child's removal occurred prior to the ECHR entering into force with respect to Serbia), the woman was still experiencing a continuing violation of her right to respect for her private and family life because the State had never informed her of whether, how, or when the child had died, or whether, when and where he was buried.⁸⁹

⁸⁴ Council of Europe: Commissioner for Human Rights, *Missing persons and victims of enforced disappearance in Europe*, March 2016, 17-18: 'Enforced disappearance is a crime under international law and a violation of multiple human rights, including the right to personal liberty and security, the right to recognition as a person before the law, the right not to be subjected to torture or other cruel, inhumane or degrading treatment or punishment, the right to a fair trial, and the right to life. Enforced disappearance also violates the economic, social and cultural rights of the disappeared person and his or her family.' See also Working Group on Enforced or Involuntary Disappearances (WGEID), 'Study on enforced or involuntary disappearances and economic, social and cultural rights', UN Doc A/HRC/30/38/Add.5 (9 July 2015).

⁸⁵ *Kurt v Turkey* (1999) 27 EHRR 373; *Bazorkina v Russia* (2008) 46 EHRR 15; HRC, *María del Carmen Almeida de Quinteros et al v Uruguay*, Communication No 107/1981 (21 July 1983) UN Doc CCPR/C/OP/2.

⁸⁶ *Pannullo and Forte v France* App no 37794/97 (ECtHR, 30 October 2001), *Girard v France* App no 22590/04 (ECtHR, 30 June 2011). See for discussion of these cases, Shannon, *Human Rights Issues at the Former Site of the Mother and Baby Home, Tuam, Co Galway* (n 45) 32-33. See also the discussion in O'Rourke, McGettrick, Baker et al, *Clann Report* (n 69) 114 of the following cases: *Hadri-Vionnet v Switzerland*, App No 55525/20 (ECtHR, 14 February 2008); *Sabanchiyeva and Others v. Russia* App no 38450/05 (ECtHR, 6 June 2013); *Maskhadova and Others v Russia* App no 18071 (ECtHR, 6 June 2013).

⁸⁷ *Hadri-Vionnet v Switzerland*, App No 55525/20 (ECtHR, 14 February 2008). See discussion of this case in O'Rourke, McGettrick, Baker et al, *Clann Report* (n 69) 114 and Shannon, *Human Rights Issues at the Former Site of the Mother and Baby Home, Tuam, Co Galway* (n 45) 35.

⁸⁸ See for example *Pretty v United Kingdom* App no 2346/02 (ECtHR, 29 April 2002) para 65; *McDonald v United Kingdom* App no 4241/12 (ECtHR, 20 May 2014) para 47.

⁸⁹ *Jovanovic v Serbia* (2015) 61 EHRR 3.

In its 2010 *Assessment of the Human Rights Issues Arising in relation to the 'Magdalen Laundries'*⁹⁰ the Irish Human Rights Commission (IHRC) concluded that Article 8 ECHR was engaged by the State's failure to ensure the identification of the bodies of women who were buried in a communal grave and thereafter exhumed and cremated.⁹¹ The IHRC noted that 'respect for private and family life under Article 8 of the ECHR includes and encompasses the concept of personal integrity and that nothing can be more private, personal and integral to a human being than a person's identity including their name.'⁹²

Right to respect for human dignity

Respect for human dignity (in other words, the inherent and equal worth of all persons) is not only the basis of international and European human rights law but also a fundamental underpinning principle of the Irish Constitution.⁹³ It is explicitly guaranteed by Article 1 CFR.

Shannon observes that Irish constitutional law jurisprudence makes 'clear that dignity is highly relevant to the experience of death and dying'.⁹⁴ In the Supreme Court case of *Re Ward of Court Denham J* identified the existence of a right to dignity in life and death,⁹⁵ and in *PP v HSE*⁹⁶ the High Court rejected the notion that dignity was irrelevant once a person had died, as follows:

This does not mean that the Court discounts or disregards the mother's right to retain in death her dignity with proper respect for her autonomy with due regard to the grief and sorrow of her loved ones and their wishes. Such an approach has been the hallmark of civilised societies from the dawn of time. It is a deeply ingrained part of our humanity and may be seen as necessary both for those who have died and also for the sake of those who remain living and who must go on. The Court therefore is unimpressed with any suggestion that considerations of the dignity of the mother are not engaged once she has passed away.⁹⁷

The MBHCOI Report's contents demonstrate a clear difference in how various institutions—not only the Sisters of the Sacred Hearts of Jesus and Mary, who ran Bessborough, but also hospitals and cemeteries—treated people in death, depending on whether or not they were born outside marriage or had given birth outside marriage. The discriminatory nature of these practices can

⁹⁰ Irish Human Rights Commission (IHRC), *Assessment of the Human Rights Issues Arising in relation to the "Magdalen Laundries"*, November 2010.

⁹¹ *ibid* paras 101-102.

⁹² *ibid* para 102.

⁹³ See O'Rourke, McGettrick, Baker et al, *Clann Report* (n 69), para 4.20; Shannon, *Human Rights Issues at the Former Site of the Mother and Baby Home, Tuam, Co Galway* (n 45) 88.

⁹⁴ Shannon, *Human Rights Issues at the Former Site of the Mother and Baby Home, Tuam, Co Galway* (n 45).

⁹⁵ *Re Ward of Court* [1996] 2 IR 79.

⁹⁶ *PP v HSE* [2014] IEHC 622.

⁹⁷ *PP v HSE* [2014] IEHC 622. See also Shannon, *Human Rights Issues at the Former Site of the Mother and Baby Home, Tuam, Co Galway* (n 45) 90.

easily be understood to have violated what a majority of the Supreme Court in *Quinn's Supermarket v Attorney General* found to be the constitutional 'guarantee of equality as human persons...related to their dignity as human beings and a guarantee against any inequalities grounded upon an assumption, or indeed a belief, that some individual or individuals or classes of individuals, by reason of their human attributes or their ethnic or racial, social or religious background, are to be treated as the inferior or superior of other individuals in the community.'⁹⁸ The ECtHR has on several occasions, including in the case of *Johnston v Ireland*,⁹⁹ held that discrimination on grounds of non-marital family status violates the ECHR.¹⁰⁰

Right to an effective remedy

The Irish Supreme Court has held that there exists a right to a remedy under the Constitution for breach of a constitutional right.¹⁰¹ Article 13 ECHR, meanwhile, explicitly protects the right to an 'effective remedy' for violations of the rights enshrined in the ECHR. Article 47 CFR provides the equivalent. The vast majority of the other international human rights law treaties to which Ireland is a party also guarantee the right to a remedy for breaches of the State's obligations under those instruments.¹⁰²

The ECtHR¹⁰³ and the United Nations General Assembly,¹⁰⁴ among many other human rights actors,¹⁰⁵ have identified the right to the truth as a core element of both the right to an effective remedy and the meaning of reparation in contexts of gross or systematic human rights violations. Truth-telling, as a form of accounting to the wronged person for wrongful actions, contributes to the restoration of respect for the human dignity of those who have suffered rights violations—as the United Nations Committee Against Torture (CAT) has highlighted.¹⁰⁶ The United Nations Special Rapporteur (UNSR) on the promotion of truth, justice, reparation and guarantees of non-recurrence has emphasised the necessity of truth-telling and education for the achievement of other

⁹⁸ *Quinn's Supermarket v Attorney General* [1972] IR 1, 13.

⁹⁹ *Johnston v Ireland* (1986) 9 EHRR 203.

¹⁰⁰ *Mazurek v France* (2006) 42 EHRR 9; *Marckx v Belgium*, Series A, No. 31 (1979) 2 EHRR 330.

¹⁰¹ *Byrne v Ireland* [1972] 1 IR 241. See also *The State (Quinn) v Ryan* [1965] IR 70 at 122.

¹⁰² See for example Article 2 of the International Covenant on Civil and Political Rights, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Article 39 of the Convention on the Rights of the Child.

¹⁰³ *El Masri v Macedonia* App No 39630/09 (ECtHR, 13 December 2012).

¹⁰⁴ *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UNGA Res 60/147 (16 December 2005) UN Doc A/RES/60/147. Available at: http://legal.un.org/avl/ha/ga_60-147/ga_60-147.html

¹⁰⁵ including the United Nations Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence, <https://www.ohchr.org/en/issues/truthjusticereparation/pages/index.aspx> and the Committee Against Torture (CAT): see CAT, General Comment No 3, 'Implementation of article 14 by States parties' (13 December 2012) UN Doc CAT/C/GC/3 para 2, <http://www.refworld.org/docid/5437cc274.html>

¹⁰⁶ CAT, General Comment No 3, *ibid*, para 16.

core aspects of reparation, notably guarantees of non-repetition and memorialisation.¹⁰⁷ Regarding methods of truth recovery and truth-telling: it is of paramount importance that those directly affected by human rights violations are centrally involved in the process given that, as the CAT notes, ‘the restoration of the dignity of the victim is the ultimate objective in the provision of redress.’¹⁰⁸ The UNSR on the promotion of truth, justice, reparation and guarantees of non-recurrence has repeatedly emphasised, meanwhile, the centrality of archival access to effective truth recovery and truth-telling.¹⁰⁹

In *El Masri v Macedonia*,¹¹⁰ which involved extraordinary rendition and inhuman and degrading treatment, three ECtHR judges in a concurring opinion contended that ‘the “right to the truth”, that is, the right to an accurate account of the suffering endured and the role of those responsible for that ordeal’¹¹¹ is both ‘broadly implicit’ in the investigative obligation and also, in itself, a requirement of the right to an ‘effective remedy’ where human rights violations are gross and systematic. The judges contended that the right to the truth includes ‘a right of access to the relevant information about alleged violations, both for the persons concerned and for the general public’.¹¹² In this case, the right to the truth with its requirement of public information disclosure arose because of ‘[t]he scale and seriousness of the human rights violations in issue, committed in the context of the secret detentions and renditions system, together with the widespread impunity observed in multiple jurisdictions in respect of such practices’.¹¹³

Right to freedom of expression

Related to the right to the truth is the right of victims and survivors to freedom of expression, which is engaged by the investigative practices of the State. The text of Article 10 ECHR and Article 11 CFR includes the freedom ‘to receive and impart information and ideas’ (emphasis added). The ECtHR has held that ‘it is an integral part of freedom of expression to seek historical truth’,¹¹⁴ and in *Kenedi v Hungary* the Court found a violation of Article 10 where the government (in defiance of court orders) refused to disclose certain documents which a historian needed to

¹⁰⁷ United Nations General Assembly (UNGA), *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, on memorialisation processes*, UN Doc A/HRC/45/45 (9 July 2020), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/175/70/PDF/G2017570.pdf?OpenElement>

¹⁰⁸ CAT, General Comment No 3 (n 105) para 4.

¹⁰⁹ UNGA, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, Annex: Set of General Recommendations for Truth Commissions and Archives*, UN Doc A/HRC/30/42, <https://digitallibrary.un.org/record/803412?ln=en#record-files-collapse-header>.

¹¹⁰ *El Masi v ‘The Former Yugoslav Republic of Macedonia’* app no 39630/09 ECtHR 13 December 2012

¹¹¹ *Ibid* para 1.

¹¹² *Ibid* para 4.

¹¹³ *Ibid*.

¹¹⁴ *Fatullayev v. Azerbaijan* App No 40984/07 (ECtHR, 22 April 2010) para 87; *Monnat v Switzerland* App No 73604/01 (ECtHR, 21 September 2006) para 57.

write a study on the functioning of the Hungarian State Security Service in the 1960s.¹¹⁵ The ECtHR held that ‘access to original documentary sources for legitimate historical research was an essential element of the applicant’s right to freedom of expression’.¹¹⁶ The ECtHR has also found that Article 10 ECHR imposes positive as well as negative obligations on states, and in *Dink v Turkey* the Court held that states must create a favourable environment for participation in public debate by all concerned, enabling them to express their opinions without fear.¹¹⁷ Arguably, the right to freedom of expression requires that those subjected to gross and systematic human rights violations must be facilitated to fully contribute to the national historical record, including by receiving and being in a position to comment on any records that concern them.

The United Nations Updated Set of principles for the protection and promotion of human rights through action to combat impunity (Orentlicher Principles) explain that the right to know can be facilitated by mechanisms that are additional to—and, importantly, that enhance the functioning of—the ordinary existing justice mechanisms of the state. Crucially, specialised truth-telling mechanisms are not a substitute for existing justice mechanisms, which must also operate in response to the state’s knowledge of gross human rights abuse. The Orentlicher Principles emphasise the importance of ‘a truth commission or other commission of inquiry’ providing access to archives, stating that:

Appropriate measures to ensure this right [to truth] may include non-judicial processes that complement the role of the judiciary. Societies that have experienced heinous crimes perpetrated on a massive or systematic basis may benefit in particular from the creation of a truth commission or other commission of inquiry to establish the facts surrounding those violations so that the truth may be ascertained and to prevent the disappearance of evidence. Regardless of whether a State establishes such a body, it must ensure the preservation of, and access to, archives concerning violations of human rights and humanitarian law.¹¹⁸

¹¹⁵ *Kenedi v Hungary* App no 31475/05 (ECtHR, 26 August 2009).

¹¹⁶ *Ibid* para 43.

¹¹⁷ *Dink v Turkey* Apps Nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09 (ECtHR, 14 September 2010) para 137, translated and summarised in Council of Europe/European Court of Human Rights, Research Report: Positive obligations on member States under Article 10 to protect journalists and prevent impunity, December 2011, 5.

¹¹⁸ UN Commission on Human Rights, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc [E/CN.4/2005/102/Add.1](#) (8 February 2005), Principle 5.

3. The State has not met its human rights law obligations

3.1 The MBHCOI's confidential process and sealed archive are not an 'effective investigation'

Requirements of an effective investigation

Here, we highlight particularly salient requirements of an 'effective investigation', according to ECtHR jurisprudence (which is supported by an array of international law standards). A more detailed account of the 'effective investigation' requirements espoused by the ECtHR can be found elsewhere.¹¹⁹

Promptness: The ECtHR has repeatedly held that where an investigation is required, it should be undertaken in a prompt and timely fashion in order to maintain public confidence.¹²⁰ According to the ECtHR, the obligation to investigate 'is not dependent upon the lodging of a formal complaint' by the victim or next-of-kin 'or their suggesting a particular line or inquiry or investigative procedure'.¹²¹ The UN Principles on the Effective Investigation of Torture state, similarly, that: 'States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred.'¹²² The Minnesota Protocol on the Investigation of Potentially Unlawful Death (Minnesota Protocol) notes, however, that 'The failure of the State promptly to investigate does not relieve it of its duty to investigate at a later time: the duty does not cease even with the passing of significant time.'¹²³

Thoroughness: The ECtHR commonly states that in order to be 'effective', an investigation 'must be capable of leading to the establishment of the facts'.¹²⁴ The ECtHR has held that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions.¹²⁵ They

¹¹⁹ Maeve O'Rourke, 'A human rights framework: Background Research for the Truth Recovery Design Process' (Belfast: Truth Recovery Design Panel, 27 September 2021) 26-38, <https://researchrepository.universityofgalway.ie/server/api/core/bitstreams/1b76cc1f-3a72-40b8-855a-3ad67ab2b5c3/content>; HM Courts and Tribunals Service, Chief Coroner's Guidance for Coroners on the Bench (Bench Guidance), Chapter 20: The Article 2 inquest (30 July 2025) <https://www.judiciary.uk/guidance-and-resources/chapter-20-the-article-2-inquest/>.

¹²⁰ See *Gulec v. Turkey* (1999) 28 EHRR 121; *McKerr v United Kingdom* (2002) 34 EHRR 20.

¹²¹ *Nachova v Bulgaria* 2005-VII; 42 EHRR 933 GC; see also *Finucane v United Kingdom* (2003) 37 EHRR 29. See also *Rantsev v Cyprus and Russia* (2010) 51 EHRR 1 para 288 and *Edwards v United Kingdom* (2002) 35 EHRR 19 para 69.

¹²² OHCHR, Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Recommended by UNGA Resolution 55/89 of 4 December 2000, Principle 2.

¹²³ The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017, 7.

¹²⁴ *Armani Da Silva v United Kingdom* App no 5878/08 (ECtHR, 30 March 2016) para 233.

¹²⁵ *El Masri v Macedonia* (2013) 57 EHRR 25, paras 183-185; See also *Assenov v Bulgaria* (1999) 28 EHRR 652 para 103 ; and *Batu v Turkey* (2006) 42 EHRR 37 para 136 (extracts).

must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence.¹²⁶ Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.¹²⁷

Powers to secure and compel the production of evidence: The ECtHR has held that the investigation should not be reliant solely on evidence or information from the source being investigated.¹²⁸ It should have full investigatory powers to compel witnesses and it should be capable of securing evidence.¹²⁹ In the Article 2 context, the ECtHR has held that ‘The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinic findings, including the cause of death.’¹³⁰ The UN Principles on the Effective Investigation of Torture state the requirement thus: ‘The investigation must have all necessary budgetary and technical resources for effective investigation and the authority to summons witnesses and demand the production of evidence’.¹³¹

Involvement of the victim and access to evidence: The ECtHR has held that ‘the victim must be involved to the extent necessary to safeguard their legitimate interests’.¹³² The UN Principles on the Effective Investigation of Torture specify that: ‘Alleged victims of torture or ill-treatment and their legal representatives must be informed of and have access to any hearing, have access to all information relevant to the investigation, and be entitled to present other evidence.’¹³³ The Istanbul Protocol states, similarly, that: ‘Those alleging that they have been tortured and their legal representatives should be informed of and have access to any hearing and all information relevant to the investigation and must be entitled to present evidence. This particular emphasis on the role of the survivor as a party to the proceedings reflects the especially important role his/her interests play in the conduct of the investigation... Parties to the inquiry should be allowed to submit written questions to the commission.’¹³⁴

¹²⁶ See *Tanrikulu v Turkey* (2000) 30 EHRR950 para 104; and *Gül v Turkey* (2002) 34 EHRR28 para 89.

¹²⁷ See *Boicenco v Moldova* App no 41088/05 (ECtHR, 11 July 2006) para 123.

¹²⁸ See for example *Keenan v. United Kingdom* (2001) 33 EHRR 913.

¹²⁹ See for example *Khan v. United Kingdom* (2001) EHRR 1016.

¹³⁰ *Armani Da Silva v United Kingdom* App no 5878/08 (ECtHR, 30 March 2016) para 233.

¹³¹ OHCHR, Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Recommended by UNGA Resolution 55/89 of 4 December 2000, Principle 3(a).

¹³² See for example *Güleç v Turkey* (1999) 28 EHRR 121; see also *El Masri v Macedonia* (2013) 57 EHRR 25 para 185.

¹³³ OHCHR, Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Recommended by UNGA Resolution 55/89 of 4 December 2000, Principle 4.

¹³⁴ OHCHR, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), 2004, HR/P/PT/8/Rev.1 para 116.

In the case of *Edwards v United Kingdom*,¹³⁵ the ECtHR found that the parents of a man killed in prison were denied their right to an effective investigation notwithstanding that an inquiry, chaired by independent experts and assisted by lawyers, was commissioned by the Prison Service, Essex County Council and North Essex Health Authority and sat for 10 months and heard from about 150 witnesses. The parents were not ‘involved to the extent necessary to safeguard their interests’ on the grounds that the inquiry was held in private and:

The applicants, parents of the deceased, were only able to attend three days of the inquiry when they themselves were giving evidence. They were not represented and were unable to put any questions to witnesses, whether through their own counsel or, for example, through the Inquiry Panel. They had to wait until the publication of the final version of the Inquiry Report to discover the substance of the evidence about what had occurred.¹³⁶

Access to information about a deceased or disappeared family member: The Minnesota Protocol, which concerns potentially unlawful death, states that: ‘Family members have the right to seek and obtain information on the causes of a killing and to learn the truth about the circumstances, events and causes that led to it. In cases of potentially unlawful death, families have the right, at a minimum, to information about the circumstances, location and condition of the remains and, insofar as it has been determined, the cause and manner of death.’¹³⁷

Transparency: According to the ECtHR, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory.¹³⁸ Transparency also assists victims’ involvement as well as holding the investigation to account more broadly. As the Minnesota Protocol states:

The right to know the truth extends to society as a whole, given the public interest in the prevention of, and accountability for, international law violations. Family members and society as a whole both have a right to information held in a state’s records that pertains to serious violations, even if those records are held by security agencies or military or police units.

Investigative processes and outcomes must be transparent, including through openness to the scrutiny of the general public and of victims’ families. Transparency promotes the rule of law and public accountability, and enables the efficacy of investigations to be monitored externally. It also enables the victims, defined broadly, to take part in the investigation ... Any limitations on transparency must be strictly necessary for a legitimate purpose, such

¹³⁵ *Paul and Audrey Edwards v the United Kingdom* App No 46477/99 (ECtHR, 14 March 2002).

¹³⁶ *Ibid* para 84.

¹³⁷ The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017, 4-5.

¹³⁸ *Jordan v United Kingdom* (2003) 37 EHRR 2 para 109.

as protecting the privacy and safety of affected individuals, ensuring the integrity of ongoing investigations, or securing sensitive information about intelligence sources or military or police operations. In no circumstances may a state restrict transparency in a way that would conceal the fate or whereabouts of any victim of an enforced disappearance or unlawful killing, or would result in impunity for those responsible.¹³⁹

The MBHCOI does not meet the ECtHR’s requirements for an ‘effective investigation’

During a February 2026 debate on the Institutional Burials (Amendment) Bill 2022, Minister for Children, Disability and Equality, Norma Foley TD characterised the MBHCOI’s efforts as ‘extensive’.¹⁴⁰ We respectfully highlight, however, that the MBHCOI proceeded entirely in private—it did not conduct any hearings in public, nor did it share any of the evidence it received with affected people so that they could comment on it or suggest further lines of inquiry—and its archive is now inaccessible in the Department of Children.¹⁴¹ These are fundamental breaches of the State’s obligations discussed above.

The MBHCOI’s findings are not supported by a published archive. The MBHCOI did not publish its archaeological assessment of the grounds. It has not been possible for relatives of the deceased and disappeared, or members of the public—nor indeed An Coimisiún Pleanála or members of Cork City Council—to see, pursue, test or query the documents or other evidence behind the following reporting, observations and findings of the MBHCOI in relation to Bessborough:

- ‘A number of people and organisations have made suggestions about possible locations for children’s graves both in the area which is currently part of the Bessborough estate (roughly 60 acres) and in areas which were sold in earlier years (the total area was once about 200 acres). During 2019, the Commission followed up on some of these suggestions.’¹⁴²
- ‘In April 2019, the Commission’s solicitor and archaeologist walked the grounds of Bessborough with a man who had lived nearby. He pointed out the area in the grounds where he believes he saw a graveyard marked with white crosses. He subsequently swore an affidavit setting out his recollections. A similar exercise was conducted in October 2019 with a man who had played in the grounds as a child. He pointed out an area where he said

¹³⁹ The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017, 4-5.

¹⁴⁰ Seanad Éireann debate, Institutional Burials (Amendment) Bill 2022: Second Stage (25 February 2026), <https://www.oireachtas.ie/en/debates/debate/seanad/2026-02-25/speech/179/>.

¹⁴¹ O’Rourke, McGettrick, Baker et al, *Clann Report* (n 69) 129-133; Letter from Yasmin Waljee and Faye Jarvis, Hogan Lovells International LLP, to Kathleen Funchion TD, Chair, Oireachtas Committee on Children, Disability, Equality and Integration dated 30 July 2021, https://clannproject.org/wp-content/uploads/Hogan-Lovells-Letter-to-Childrens-Committee_30-07-21-1.pdf.

¹⁴² MBHCOI, Final Report, Chapter 38A para 38.13.

he had seen open graves with the bodies of young children exposed. This was marked on a map and he subsequently swore an affidavit to this effect.’¹⁴³

- ‘Also in April 2019, a man who had done building work in Bessborough in 2008 told the Commission that there was a cavern/chamber underneath the church on the site. The work had been carried out on behalf of the HSE so the Commission issued a direction to the HSE seeking minutes of the meetings between the HSE and the builders involved in the site. These minutes were provided by the HSE in August 2019. The minutes note that the space was referred to as an underground tank and was found to contain water and petrol-contaminated silt. It appears there was no archaeological significance to the tank.’¹⁴⁴
- ‘As already stated, the Congregation of the Sacred Hearts of Jesus and Mary do not know where the children who died in Bessborough are buried. The Commission finds this very difficult to comprehend as Bessborough was a mother and baby home for the duration of the period covered by the Commission (1922 – 1998) and the congregation was involved with it for all of this time. The Commission finds it very difficult to understand that no member of the congregation was able to say where the children who died in Bessborough are buried.’¹⁴⁵
- ‘The congregation was unable to explain why there were designated child burial grounds in Castlepollard and Sean Ross but not in Bessborough. The congregation provided the Commission with an affidavit about burials generally and specifically about the Castlepollard and Sean Ross child burials but very little evidence was provided to support the statements in it. The affidavit was, in many respects, speculative, inaccurate and misleading.’¹⁴⁶
- ‘A number of members of the congregation provided affidavits and/or oral evidence to the Commission. They were able to provide remarkably little evidence about burial arrangements.’¹⁴⁷
- ‘A member of the congregation who was in Bessborough for most of the period 1948- 1998 told the Commission that she did not remember any child deaths during her time there but she implied that the children who did die there were buried in the congregation burial ground. In the years 1950-1960 (inclusive), 31 children died in Bessborough so it is rather surprising that she does not remember any deaths.’¹⁴⁸
- ‘Another congregation member who was in Bessborough from 1978-1985 told the Commission that one baby died during her time there. She said that the manager of the maternity hospital (who was also a member of the congregation) “took over the arrangements for the burial”. She “vaguely remembered” that the mother wanted the baby buried in St Michael’s Cemetery but she did not know where the baby was actually buried.

¹⁴³ MBHCOI, Final Report, Chapter 38A para 38.14.

¹⁴⁴ MBHCOI, Final Report, Chapter 38A para 38.15.

¹⁴⁵ MBHCOI, Fifth Interim Report para 5.

¹⁴⁶ MBHCOI, Fifth Interim Report para 3.4.

¹⁴⁷ MBHCOI, Fifth Interim Report, para 4.16.

¹⁴⁸ MBHCOI, Fifth Interim Report para 4.18.

The Commission has established that there is no record of this baby in St Michael's burial records. She did not remember if the mother's family was involved in the burial arrangements but she was clear that the congregation had bought the coffin for the baby.¹⁴⁹

- 'In evidence to the Commission, a member of the congregation who was there in the 1980s said that there were two children buried in the burial ground during her time there and a third was disinterred elsewhere and reinterred in this ground. Another member of the congregation who was in Bessborough for a period in 1971 and again between 1975 and 1981 swore an affidavit in which she said that she remembered one child who died and was buried in the congregation's plot in the grounds. The recollections of these two congregation members seem to be incorrect. In fact, it would appear that there is only one child buried in the congregation's burial ground and that burial took place in 1994. The burial ground has some individual memorials to other children who died in Bessborough but it is unlikely that they are buried in this plot.'¹⁵⁰
- 'Early in 2018, the Commission issued a national public appeal seeking information from individuals who may have personal knowledge, documentation, or any other information concerning the burial arrangements and/or burial places of children who died in Bessborough. Members of the public contacted the Commission, with mostly second-hand information, suggesting that children were buried in different parts of the estate. All of this information was followed up and the locations identified as possible burial sites by members of the public were assessed by forensic archaeologists. Some of these locations have been built on. To date, no physical or documentary evidence has been produced which suggests that any of the sites identified by members of the public contain human remains.'¹⁵¹

Continuing disempowerment of bereaved mothers and relatives

Through the secrecy it imposed over its investigation save for its interim and final conclusions, the MBHCOI's treatment of mothers and other relatives of the deceased and disappeared children and women of Bessborough continued a prolonged pattern of dismissal and denial of human dignity that characterised the women's confinement, the deaths of their children and their decades-long pursuit of truth and justice.

Illustrating this pattern, the MBHCOI Final Report records the testimony of *Resident K*, who gave birth at Bessborough in the early 1980s, as follows:

I never got a chance to see or hold the baby. They told me that the baby was a boy and that he was still-born. There was no more mention of the baby after I gave birth and I accepted

¹⁴⁹ MBHCOI, Fifth Interim Report, para 4.19.

¹⁵⁰ MBHCOI, Fifth Interim Report, para 4.20.

¹⁵¹ MBHCOI, Fifth Interim Report para 4.27.

that he was dead. I was not invited to the burial nor was I given any details of how the remains were being dealt with. I was not given a death certificate.¹⁵²

According to the MBHCOI's Final Report, *Resident K* 'visited Bessborough on three occasions in a bid to get information about her time there and records relating to her child's death and burial. On one occasion a nun told her that her child was buried in the congregational burial ground onsite. She "mistrusts the accuracy of the [Bessborough] records" provided to her'.¹⁵³

The Clann Project received testimony from a *Witness 47*, who gave birth to her son in Bessborough in 1963. She told the Clann Project that the day after her son's birth in Bessborough she went to the nursery to see him and was told 'in a completely matter of fact way "your baby died". I was absolutely stunned'.¹⁵⁴ *Witness 47* said that there are significant discrepancies between her own recollections and the available records. She said that on the records her son's cause of death 'is given as "cerebral haemorrhage" and show that he had lived for two days. I have many unanswered questions about this. Why was I told on the day after his birth that my son had died? If he was "poor at birth" why did they not call for a doctor or send him to hospital?'

Witness 47 explained that her son's birth 'was not registered until nine days after the day on which they say he died with his death registered five days after that. It seems logical to me that they would have registered the birth and death at the same time yet this is not what happened'. *Witness 47* asked 'why is there no record of a burial or grave?' The discrepancies, combined with the absence of a burial record and grave have contributed to a great deal of uncertainty for *Witness 47*, who has no final resting place to visit and who 'can't help but wonder' if her son lived.¹⁵⁵

In the documentary film published in 2025, *Testimony* (Dir: Aoife Kelleher), Madeleine Marvier recounted the death and disappearance of her son, William, in 1960. Madeleine said that, after William's birth:

I got very ill, very feverish. I did have an injection. I don't know what it was. ... William got ill about the second day. I don't know how he got the infection. It was either through me or through the needle. They took William away. I don't know where he was kept. I used to get up at night and go around searching the doors. The last week I didn't see him at all. ... I cried every day for my baby. They wouldn't let me have him. The nun came and she said, 'William died'. And I said, 'When did he die?' She told me he was buried. He was buried in Bessborough.

¹⁵² MBHCOI Final Report, Chapter 18: Bessborough, para 18.386

¹⁵³ MBHCOI Final Report, Chapter 18: Bessborough, para 18.388

¹⁵⁴ O'Rourke, McGettrick, Baker et al, *Clann Report* (n 69) para 1.174.

¹⁵⁵ O'Rourke, McGettrick, Baker et al, *Clann Report* (n 69) para 1.175.

Madeleine's daughter, Carmel Cantwell said that when her mother visited Bessborough:

The nun decided to take her down to the graveyard. She wouldn't allow my mum inside, my mum had to look over the wall. And the nun tapped her foot on a spot and said, 'Your baby's buried here'. We always questioned this small little graveyard—how could it hold so many children? Eventually we found out that he's not buried there at all. William was buried in All Saints Cemetery, Carr's Hill, a famine grave where 30,000 people are buried. We have no idea on this five acre site where he is. We just go and lay flowers at the gates. The first time I took my mother up there, oh it was pitiful because she just wandered through the whole site, trying to see any evidence of a grave anywhere. At 80 years old with brambles scratching her legs, searching a field.

Madeleine continued:

60 years we've missed not taking flowers or telling them why or explaining why. You want to know where your child is buried. I'd like to go and sit down, sit down where he's buried, sit down for two or three hours with him and talk to him. He needs us, he's been on his own all this time. Really they were monsters, absolute monsters.

The MBHCOI did not use all means at its disposal to investigate

It is clear from its Fifth Interim Report that the MBHCOI did not use all reasonable means to search for the disappeared children and women of Bessborough. The Commission used desk-based and visual landscape assessment techniques. However, it did not undertake geophysical surveys using methods such as ground-penetrating radar / electrical resistivity / magnetometry, and there is no indication in its Reports that it undertook test excavations or soil chemistry or decomposition analysis.

The MBHCOI reported the following:

- 'The Commission tried to establish where the Bessborough children were buried. Cartographic and landscape assessment was undertaken of possible unrecorded burial arrangements in the Bessborough grounds. A site survey was also conducted. It is clear that there are a number of locations within the grounds where burials could have taken place. However, there is no significant surface evidence of systematic burial anywhere except for the congregation burial ground.'¹⁵⁶

¹⁵⁶ MBHCOI, Fifth Interim Report, Summary of Findings, para 6.

We reproduce the relevant part of the Fifth Interim Report in full here:

4.22 The Commission engaged forensic archaeologists to carry out a cartographic and landscape assessment of possible unrecorded burial arrangements in the Bessborough grounds. As already stated, the grounds measure approximately 60 acres. It is also possible that burials took place in the grounds that no longer form part of the Bessborough estate, that is, a total area of 200 acres.

4.23 The forensic archaeologists and the Commission's researchers reviewed all available cartographic sources and aerial images in order to identify possible burials within the grounds of Bessborough. A site survey was also conducted. It is clear that there are a number of locations within the grounds where burials could have taken place. However, there is no significant surface evidence of systematic burial anywhere except for the congregation burial ground.

4.24 The third edition Ordnance Survey Map for the Bessborough area was produced in 1949/50. This identifies a southeast portion of the site as a "Children's Burial Ground". Such a label is not uncommon on this edition of maps and usually denotes a cillín (see Introduction). It is possible that, in this case, the label may refer to the area north-west of the Keep folly, a small rectangular enclosure to the north-east or the wider field in which the label is located.

4.25 In the intervening years, groundwork has left this area in a highly disturbed state and there is nothing physical to mark it as a former burial ground. The Commission interviewed a landscaper who undertook extensive groundwork on the Bessborough Estate over a period of almost thirty years. The witness stated that he had personally undertaken excavations in the area marked "Children's Burial Ground". He said that it was necessary for him to dig six to eight feet deep across this site and that he found no evidence of human remains or any evidence to suggest that the site was formerly used as a burial ground.

4.26 The Commission examined vertical aerial photography taken by the Irish Air Corps in 1951. This series includes high resolution aerial photography of the Bessborough Estate.³⁶ The majority of child deaths at Bessborough occurred before 1951 (over 700) and it would be reasonable to expect that, if there were burials there, an aerial photograph taken in February 1951 would show up some ground disturbance, or anomaly on the landscape. If over 700 children were buried on the Bessborough Estate before 1951 the aerial photograph would be expected to give some indication of where the remains are located. The aerial photographs of the Bessborough site were examined by forensic archaeologists who determined that no visible features on the Bessborough landscape were indicative of any obvious site hosting the remains of such a large number of children.

4.27 Early in 2018, the Commission issued a national public appeal seeking information from individuals who may have personal knowledge, documentation, or any other information concerning the burial arrangements and/or burial places of children who died in Bessborough. Members of the public contacted the Commission, with mostly second-

hand information, suggesting that children were buried in different parts of the estate. All of this information was followed up and the locations identified as possible burial sites by members of the public were assessed by forensic archaeologists. Some of these locations have been built on. To date, no physical or documentary evidence has been produced which suggests that any of the sites identified by members of the public contain human remains.

3.2 The State has not established any other investigation

As far as we are aware, there has been no Garda investigation into the continuing disappearance of 878 children and mothers (in total) who were associated with Bessborough. The Garda Commissioner announced in April 2021 that he did not plan to commence an investigation into the matters summarised in the 2,865-page MBHCOI Final Report because the MBHCOI's anonymisation of its findings meant that 'there is insufficient detail in the report to commence an investigation.'¹⁵⁷ The Garda Commissioner urged survivors of Mother and Baby institutions to come forward with their testimony while cautioning that 'there will be limitations as to the action we can take in some cases due to matters such as the loss of evidence over time or suspects and witnesses being deceased.'¹⁵⁸ An Garda Síochána is statutorily barred from accessing the entire archive of records gathered by the MBHCOI, pursuant to the inquiry's underpinning legislation.¹⁵⁹ In evidence to an Oireachtas committee in early 2021, Martin Parfrey, a survivor of Bessborough, stated: 'more than 850 burials in Bessborough [Mother and Baby Home] are unaccounted for and we regard those babies as illegally missing. Accordingly, a full Garda investigation should be initiated, and it should include Garda access to the archives of the religious order and investigate all living personnel, no matter what age.'¹⁶⁰

We are not aware of any Coroner's inquest having been initiated in relation to the deaths and disappearances of children and mothers of Bessborough, although in December 2025 the Cork South Coroner's Court agreed in response to a High Court judicial review application to reconsider a request by Madeleine Bridget Marvier to hold an inquest into the circumstances of her son

¹⁵⁷ RTE News, 'Appeal for Information About Crimes at Mother-and-Baby Homes' (29 April 2021), <https://www.rte.ie/news/mother-and-baby-homes/2021/0429/1212798-mother-baby-appeal/>.

¹⁵⁸ An Garda Síochána, Press Release, 'Garda Appeal re Mother and Baby Homes' (29 April 2021), <https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2021/april/garda-appeal-re-mother-and-baby-homes.html>.

¹⁵⁹ Commissions of Investigation Act 2004, section 19. This legislation underpinned the MBHCOI and specifies that no 'statement or admission' made to the MBHCOI, nor 'document given or sent to [the MBHCOI] pursuant to a direction or request,' nor 'document specified in an affidavit' is admissible as evidence against a person in any criminal or other proceedings.

¹⁶⁰ Oireachtas Joint Committee on Children, Disability, Equality and Integration: General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill: Discussion, Evidence of Martin Parfrey (14 April 2021) https://www.oireachtas.ie/en/debates/debate/joint_committee_on_children_disability_equality_and_integration/2021-04-14/3/.

William's death.¹⁶¹ Irish legislation throughout the twentieth century mandated an inquest where a death appeared unexplained or unnatural; current legislation additionally requires a coroner's inquest in every instance where a person has died while in state custody or detention¹⁶² and permits the Attorney General to direct the holding of an inquest wherever it is deemed 'advisable.'¹⁶³ The authors of this letter have advocated to Government previously for the holding of Coroners' inquests in relation to deaths and disappearances connected to Mother and Baby institutions (and other related institutions).¹⁶⁴

Finally, successive Ministers for Children have refused to exercise their statutory power pursuant to the *Institutional Burials Act 2022* to appoint a Director of Authorised Intervention in relation to Bessborough. On 25 February 2026 during a Seanad debate the current Minister for Children, Norma Foley TD, asserted that 'the evidential standard for full forensic excavation under the Act' is not met insofar as Bessborough is concerned.¹⁶⁵ We are aware that Carmel Cantwell made a formal, reasoned request of Minister Roderic O'Gorman TD on 2 October 2023. On 18 April 2024, the Minister responded, stating:

Section 7 of the Act requires that in order to establish an Office of Director of Authorised Intervention in respect of a particular area of land associated with an institution the Government must be satisfied that burials have taken place there and must have evidence that those burials are manifestly inappropriate.

The investigation of burial arrangements in Mother and Baby institutions, including the former institution in Bessborough, was part of the work of the Commission of Investigation into Mother and Baby Homes and certain related matters. Sadly, despite cartographic and landscape assessments and public appeals for information, the Commission was unable to find any physical or documentary evidence of burials at the Bessborough site...

¹⁶¹ 'Court to reconsider baby's death shortly after birth at Bessborough after conceding High Court action' *BreakingNews.ie* (16 December 2025), <https://www.breakingnews.ie/ireland/court-to-reconsider-babys-death-shortly-after-birth-at-bessborough-after-conceding-high-court-action-1842681.html>.

¹⁶² Coroners Act 1962 (as amended), section 17.

¹⁶³ *Ibid* section 24(1).

¹⁶⁴ Sarah-Anne Buckley, Vicky Conway, Máiréad Enright, Fionna Fox, James Gallen, Erika Hayes, Mary Harney, Darragh Mackin, Claire McGettrick, Conall Ó Fátharta, Maeve O'Rourke and Phil Scraton, 'Joint Submission to Oireachtas Committee on Children, Equality, Disability and Integration' (Dublin: Justice for Magdalenes Research, 26 February 2021), https://jfmresearch.com/wp-content/uploads/2021/03/Institutional-Burials-Bill_Joint-Submission-26.2.21.pdf; Oireachtas Joint Committee on Children, Disability, Equality and Integration, General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill: Discussion, Evidence of Maeve O'Rourke (14 April 2021) https://www.oireachtas.ie/en/debates/debate/joint_committee_on_children_disability_equality_and_integration/2021-04-14/3/.

¹⁶⁵ Seanad Éireann debate, Institutional Burials (Amendment) Bill 2022: Second Stage (25 February 2026), https://www.oireachtas.ie/en/debates/debate/seanad/2026-02-25/16/#spk_179.

In reply on 13 June 2024, Ms Cantwell reiterated her request and raised many of the arguments we also make in this letter.

4. An Coimisiún Pleanála is obliged to uphold the State’s European human rights and Constitutional law obligations, which cannot be delegated to a private developer

As an ‘organ of the state’ under the European Convention on Human Rights Act 2003, An Coimisiún Pleanála (ACP) is obliged to ‘perform its functions in a manner compatible with the State’s obligations under the Convention’s provisions’.¹⁶⁶ Similarly, in applying EU planning law in the course of its decision-making on this appeal, ACP must act in accordance with the CFP interpreted by reference to the ECHR. The Constitution also applies.

The State’s obligations as set out in this letter cannot be displaced or delegated by way of Conditions on a grant of planning permission to a private property developer.

Notably, in his response on 18 April 2024 to Ms Cantwell’s above-mentioned formal request for the appointment of a Director of Authorised Intervention in Bessborough under the Institutional Burials Act 2022, then Minister for Children, Roderic O’Gorman TD, stated:

It should be noted that the Minister has publicly emphasised that any proposed development at the Bessborough site should have due regard to the Commission’s reports and give adequate consideration to the views of all survivors and family members.

Furthermore, in November 2022 the Minister for Housing, Local Government and Heritage wrote to all local authorities requesting that Development Plan processes give adequate consideration to incorporating appropriate measures to ensure the protection of unrecorded burial sites associated with an institution.

5. Cork City Councillors have recognised the State’s responsibility for the Bessborough site

The State’s responsibility for the Bessborough site has been acknowledged unanimously by Cork City Councillors, who agree that a Compulsory Purchase Order is necessary to protect the entire remaining Bessborough lands. The submission of Cllr Peter Horgan dated 3 February 2026, on the instant planning permission application,¹⁶⁷ explains that Cork City Council has unanimously passed the following motion:

¹⁶⁶ European Convention on Human Rights Act 2003, section 3.

¹⁶⁷ Peter Horgan, ‘Objection to The Farm LRD – Bessborough, Blackrock, Cork – file 25/4442’ (3 February 2026) <https://planningapi.agileapplications.ie/api/application/document/CORKCITY/5JKYPFR846P7CQ6RQJ8VEZT8N233TE8W9DLU7YP5N2RZQEVGPNC6AAS4Y8L4BTECG7KW42Q4W4EZF>.

That this Council will seek to begin a process with the relevant Government Departments to CPO the entire land at Bessborough in order to make it a new public park and memorial to the history of the site.

We commend the position of the Councillors and wish to reiterate our support for the appeal by Bessboro Mother and Baby Home Support Group against the grant by Cork City Council on 24 February 2026 of Conditional Permission for a Large-Scale Residential Development at Bessborough. For the above reasons, we request that ACP allow the appeal.

By way of a final note: Our engagement with affected people and peer support networks indicates that the proposed development lacks the support of both the population connected to Bessborough and the wider community of people affected by forced family separation and institutionalisation in Ireland. There is a strong consensus that the developer's proposed memorial lacks legitimacy, not least because any development at Bessborough carries a significant risk of encountering undocumented burials.

Please do not hesitate to contact us with any queries, c/o maeve.orourke@universityofgalway.ie.

Yours faithfully,

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