

Appendix C

Human Rights issues at the former site of the Mother and Baby Home, Tuam, Co. Galway - a report by Dr Geoffrey Shannon

In his report Dr Shannon examines the application of domestic and international law in relation to the Tuam situation and considers case law in relation to relevant obligations.

Dr Shannon notes the absence of any unified mass-grave protection guidelines which could assist the State in its response to the discovery in Tuam.

In considering the European Convention on Human Rights (ECHR), the report asserts that family members of deceased persons may have a substantial number of rights which are capable of assertion. Notably, Dr Shannon suggests that in order to ensure the effective vindication of the Article 8 and Article 3 of ECHR rights, *“there appears to be an inferred duty on the Irish State to collect, as far as reasonably possible, the remains of those interred at Tuam.”* He cautions that while these rights are not absolute their existence is of considerable importance. He acknowledges that these rights should be considered having regard to the extreme delicacy of the any exhumation and further investigation Tuam site as determined by the ETG.

Dr Shannon offers the opinion that the State *“is unlikely to fall foul of its duty where it takes all reasonable steps to investigate the possibility of retrieval and, if proportionate and justified, undertakes reasonable measures to retrieve the bodies in question.”* He also notes that in terms of Convention rights the *“deceased no longer possess human rights and they are not capable of asserting same”*.

He references Article 2 and the duty to effectively investigate a killing or suspicious death and the impact which the emergence of new or credible information may have on this duty. In terms of International Human Rights Law, the report notes that *“if inhuman or degrading treatment and violations of privacy can be characterised as continuing, it may constitute a violation of the UNCAT, ICCPR or CEDAW.”*

The report also recognises that there may be a countervailing dignity interest in not disturbing the burial site which could be a factor a court would weigh in assessing the practical benefits of exhumation. Furthermore, the report suggests that *“the operators of the Mother and Baby Home at Tuam may have been under a common law duty to bury those who died under their roof. This duty to bury incorporates a duty to bury decently and with dignity, in a Christian burial.”*

The report does not examine or make any determinations on the deaths of the infants at the former home nor does it seek to make any determination on whether the burials were appropriate or inappropriate. These matters are within the Commission’s remit and upon which it is yet to make a determination.

The report points to the importance of the human rights dimension in any decision on the Tuam site and the remains interred therein. While noting that there may be a dignity interest

in not disturbing the burial site, the report deals extensively with the case that the State has a positive duty to make reasonable and proportionate efforts to recover and return the remains to families. Dr Shannon concludes that under the European Convention on Human Rights (ECHR) the State *“is unlikely to fall foul of its duty where it takes all reasonable steps to investigate the possibility of retrieval and, if proportionate and justified, undertakes reasonable measures to retrieve the bodies in question.”*

The full report is published on the website of the Department of Children and Youth Affairs.