

# **Survivors of Symphysiotomy**

The Convention Against Torture, Cruel, Inhuman or Degrading  
Treatment or Punishment

**Submission to the 61<sup>st</sup> Session of the United Nations  
Committee Against Torture**

On the Second Periodic Report of Ireland

---

Survivors of Symphysiotomy Email: [survivors0s@gmail.com](mailto:survivors0s@gmail.com); Tel 003531 83 88 168; 086 81 80 254 (cell)  
Website: <http://www.symphysiotomyireland.com> Twitter: @SoS\_Ireland  
Facebook: <https://www.facebook.com/SoS-Survivors-of-Symphysiotomy-173631906029192/>

## Contents

|  |    |
|--|----|
| <i>Introduction</i>  | 3  |
| Symphysiotomy policy and practice  | 3  |
| Past and continuing breaches of the Convention   | 4  |
| Discrimination   | 4  |
| Past and continuing acts of torture, cruel, inhuman or degrading treatment                                     | 5  |
| Past and continuing physical and mental suffering  | 6  |
| Deliberate infliction of acts of torture, cruel, inhuman or degrading treatment for a prohibited purpose       | 6  |
| Public official involvement in, and failure to prevent, acts of torture, cruel, inhuman or degrading treatment | 7  |
| Failure of the State to provide an effective remedy  | 7  |
| Failure of the State to carry out a full and independent inquiry   | 8  |
| Failure of the State to provide appropriate restitution  | 10 |
| Failure of the State to provide rehabilitative services  | 11 |
| National court proceedings   | 11 |
| Conclusions and recommendations of other treaty bodies   | 12 |
| <i>Suggested recommendations to the State party</i>  | 12 |
| <i>Suggested questions for the State party</i>   | 13 |
| Annex 1 Testimony from a survivor of symphysiotomy   | 14 |
| Annex 2 Further testimony from survivors of symphysiotomy  | 17 |
| Annex 3 <i>Bodily Harm: symphysiotomy and pubiotomy in Ireland 1944-92</i>                                     | 18 |

## **Introduction**

1. This submission outlines the torture, cruel, inhuman and degrading treatment, which was perpetrated on women in Ireland by the practice of symphysiotomy, a discarded and dangerous operation, performed in the absence of clinical need as a matter of policy from 1944-1987, and why the government's failure to protect women in maternity then, and to vindicate their rights now, constitutes past and continuing violations of the Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as 'the Convention'). Symphysiotomy is a childbirth operation that severs the pelvis by cutting the symphysis pubis, the joint at the junction of the two pubic bones which binds the two sides of the pelvis. The practice of symphysiotomy in preference to a far safer and normative procedure (Caesarean section) constituted gender-based torture, cruel, inhuman and degrading treatment, which was deliberately inflicted on women and girls in a manner that deprived them of all legal rights, including the right to refuse medical treatment and experimentation, and led to lifelong physical and mental suffering.

2. Survivors of Symphysiotomy made a complaint to the Committee Against Torture on 10 March 2014 (see Annex 2).<sup>1</sup> Very significant developments have taken place since, and this submission updates and summarises the earlier one. Given the advanced age of our members, their ongoing health difficulties and the findings and recommendations of several treaty bodies on this issue (see paras 24, 25 and 26), we respectfully request the Committee to exercise its discretion to include the practice of symphysiotomy in its review of Ireland in July 2017.

3. Survivors of Symphysiotomy (SoS) is the sole membership organisation for some 350 survivors of symphysiotomy. A campaigning, all-volunteer group, unfunded by the State and independent of government, SoS members range in age from 50 to 91 and are spread across Ireland, with a small number in Britain, Malta, the United States, Australia and New Zealand. From 1949 to 1987, these women had their pelvises sundered in childbirth in operations that breached their human rights, including the right to self-determination, bodily integrity and privacy, in invasive genital surgery that was non-consensual and illegal.

### **Symphysiotomy policy and practice**

4. The practice of forced symphysiotomy originated in 1944 at the National Maternity Hospital, a Catholic private hospital in Dublin. Senior Catholic doctors there embarked on a mass medical experiment designed in selected cases to replace Caesarean section, the normative treatment for difficult births, with symphysiotomy, a long defunct operation. Caesarean section was seen as a barrier to childbearing without limitation. The so-called rule of three limited the number of Caesarean sections that could safely be performed on the same woman, hence the operation was seen as leading to the use of contraception, sterilisation and abortion, all practices prohibited by Roman Catholic doctrine. Symphysiotomy, in contrast, was seen as the gateway to endless reproduction in cases where a woman's pelvis was suspected of being slightly too narrow to allow the passage of her baby. The severing of the symphysis was believed to permanently widen the pelvis, avoiding the need for Caesarean section not only in the index birth, but in the birth of babies as yet unconceived. Ireland was the only resource rich country in the world to practise symphysiotomy in preference to Caesarean section in the mid to late 20<sup>th</sup> century.

---

<sup>1</sup> Survivors of Symphysiotomy 2014 *Submission to the UN Human Rights Committee* 12 June 2014, Appendix *Submission to the United Nations Committee Against Torture* 10 March 2014.

5. An estimated 1,500 women and girls were subjected to symphysiotomy without their free and informed consent from 1944-1987,<sup>2</sup> generally in the absence of medical necessity. Almost every woman left hospital not knowing she had been subjected, covertly, to symphysiotomy. That knowledge came some 50 years later, through the media.

### **Past and continuing breaches of the Convention (Arts 2, 12, 13, 14 & 16)**

6. The practice of symphysiotomy in the absence of medical necessity constitutes torture, cruel, inhuman and degrading treatment. The UN Special Rapporteur on Torture has found that 'medical care that causes severe suffering for no justifiable reason can be considered cruel, inhuman or degrading treatment or punishment', and that healthcare practitioners may inflict physical and psychological suffering amounting to cruel, inhuman and degrading treatment on women before, during and after childbirth.<sup>3</sup> Ireland has violated, and continues to violate, Articles 2, 12, 13, 14 and 16 of the Convention - together with Articles 2, 7 and 17 of the International Covenant on Civil and Political Rights (hereinafter referred to as 'the Covenant') - for the following reasons:

(i) symphysiotomy, a harmful childbirth operation that inflicted severe and continuing physical and mental suffering, was introduced into clinical practice and performed in Ireland from 1944-1987 without informed consent, in the absence of medical necessity;

(ii) symphysiotomy was a scheduled procedure that was intentionally inflicted by doctors on women and girls in the absence of clinical need in preference to Caesarean section, an infinitely safer and normative operation, which was then readily available;

(iii) symphysiotomy was deliberately and intentionally inflicted on selected women and girls in childbirth for a prohibited purpose;

(iv) there was public official involvement in the performance of symphysiotomy, which was practiced in public institutions that were owned and managed by the State and in private hospitals and maternity homes that delivered maternity services on behalf of the State;

(v) Ireland failed to prevent the gratuitous performance of symphysiotomy on women and girls from 1944 onwards, despite the fact that these operations were performed in the absence of clinical necessity.

(vi) Ireland has failed, and continues to fail, to provide an effective remedy to survivors of symphysiotomy;

### **Discrimination**

7. The abuses in question here were perpetrated upon women and girls in maternity for reasons based on discrimination based on sex, in the terms of Article 1 of the Convention. The practice of symphysiotomy constituted a gross interference with bodily integrity that significantly

---

<sup>2</sup> UN Human Rights Committee 2014, Concluding observations on the Fourth Periodic Report of Ireland CCPR//C/IRL/CO/4, para 11 (19 Aug, 2014).

<sup>3</sup> Juan E Mendes UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. UN Doc. No. A/HRC/22/53 (2013), para 39, available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf)

impaired the exercise of women's human rights and fundamental freedoms. Performed without their informed consent, as it was, symphysiotomy constituted gender-based violence, which is discriminatory (see survivor testimonies, Annex 1 and 2).<sup>4</sup>

**Past and continuing acts of torture, cruel, inhuman or degrading treatment (Arts 1 & 16)**

**8.** The performance of symphysiotomy entailed torture, cruel, inhuman and degrading treatment, which was inflicted on women during a period of extreme vulnerability. Women scheduled for symphysiotomy were obliged to labour for as long as it took, up to 48 hours in some cases,<sup>5</sup> for labour to progress to the requisite degree. The surgery was carried out as a matter of policy under local anaesthetic,<sup>6</sup> which led to intense physical and mental suffering. One surgical technique widely used in Ireland entailed the partial cutting of the woman's symphysis, followed by the manual separation of her pubic bones 'by forceful abduction [splaying] of the thighs'.<sup>7</sup> Survivors recalled being physically restrained as they screamed and struggled against the surgery, fully conscious, in the height of labour.<sup>8</sup> Many women found the experience of coercive surgery traumatic, and feelings of intense fear and anguish were widely reported. Performed before large groups of generally male students, as it was, such genital surgery, carried out on a woman whose feet were restrained in stirrups in the lithotomy or 'stranded beetle' position, was experienced as grossly humiliating.

**9.** Women generally faced further hours of labour, and the sundering of the symphysis intensified the pain, with the baby's head acting as a 'battering ram'<sup>9</sup> further prising open the pelvis. Efforts to expel the baby unhinged the severed pelvis still further in these 'brutalising' vaginal deliveries.<sup>10</sup> Such births were particularly agonising in circumstances where doctors were apparently testing the limitations of the surgery (see para 14). Vaginal delivery often required further medical intervention. Forceps or vacuum extraction was routinely employed, and the use of such instruments and machines required further surgery (episiotomy) to enlarge the birth canal, all of which added another dimension of severe pain and suffering to these harrowing births.

**10.** The postnatal period was characterised by further physical and mental suffering. Notwithstanding their severe post-operative pain, women were very often forced to walk on their sundered pelvises within a day or two of surgery, and this enforced walking was experienced as excruciatingly painful.<sup>11</sup> Babies born by symphysiotomy were generally admitted to intensive care. Many women recalled the fear and anguish of not being able to see their new born babies, of not knowing, in some cases, whether they were alive, and this mental suffering was exacerbated by the refusal of staff to give them any information.

---

<sup>4</sup> Testimony from a survivor of symphysiotomy. Annex 1. See further testimony from survivors in *Survivors of Symphysiotomy* 2014 op cit, pp 35-48. Annex 2.

<sup>5</sup> Connolly G *International Missionary Training Hospital Clinical Report Maternity Department 1960-61*: 36.

<sup>6</sup> Morrissey J K 2004 *An examination of the relationship between the Catholic Church and the medical profession in Ireland in the period 1922-1992, with particular emphasis on the impact of this relationship in the field of reproductive medicine*. Unpublished PhD thesis University College Dublin: 171-2.

<sup>7</sup> Maharaj D and Moodley J 2002 'Symphysiotomy and fetal destructive operations.' *Best Practice and Research Clinical Obstetrics and Gynaecology* 16 (1): 117-131.

<sup>8</sup> *Survivors of Symphysiotomy* 2014 op cit, 9. Annex 2.

<sup>9</sup> Royal Academy of Medicine in Ireland 1951 'Transactions.' *Irish Journal of Medical Science* 1951: 1026.

<sup>10</sup> *Ibid*.

<sup>11</sup> O'Connor M 2011 *Bodily Harm: symphysiotomy and pubiotomy in Ireland 1944-92*. Evertype, Westport: 27. Annex 3.

## **Past and continuing physical and mental suffering (Arts 2, 12, 13, 14, and 16)**

**11.** These operations generally had devastating, and sometimes catastrophic effects on women and their families, and these effects, in very many cases were, and are, lifelong. Some babies died – practitioners acknowledged that symphysiotomy carried a 10 per cent fetal death rate<sup>12</sup> – while others sustained brain damage, a known risk of the process.<sup>13</sup>

**12.** Symphysiotomy inflicted serious bodily injury by depriving women of their ability to walk, a basic bodily function. Many survivors continue to walk with a limp, and, for the vast majority of women, the surgery led to lifelong locomotor difficulties, and, for some, continuing pelvic instability. Some suffered bladder and/or bowel injuries during the surgery and the vast majority suffer from continuing urinary incontinence, a known side effect. Organ prolapse, particularly of the uterus, was common. Survivors have also reported chronic urinary tract infections, and chronic wound or bone infections at the site of the operation. Almost all survivors continue to suffer from severe and chronic pain, post symphysiotomy, which is unresponsive to treatment.

**13.** The surgery has also had a lasting effect on the psychological integrity of those subjected to it. Admitted to hospital as young, healthy women, they were discharged traumatised, disabled, in pain and incontinent, effects that today, almost half a century later, continue in very many cases. Survivors had no understanding as to why they were disabled or why they were unable to care for their children, and this compounded their mental suffering, which, in some cases, led to a nervous breakdown. For many, the disruption inflicted by the surgery to their sexual lives was permanent and this led, in some cases, to marital break-up. Some women could not bring themselves to have another child post symphysiotomy, so fearful were they of childbirth. Many experienced bonding difficulties with the baby born following symphysiotomy: for some, the disruption of the unique early attachment period led to continuing emotional distancing or unresolved grief. Some women continue to suffer from claustrophobia, panic attacks, or post-traumatic stress disorder, re-living the experience of forced symphysiotomy in nightmares, flashbacks and intrusive thoughts. The belated discovery that they had been subjected to symphysiotomy gave rise to further distress and anguish, as they struggled to come to terms with the knowledge that they had been abused in childbirth.

## **Deliberate infliction of acts of torture, cruel, inhuman or degrading treatment for a prohibited purpose (Arts 2 & 16)**

**14.** These harmful and unjustified childbirth operations constitute acts of torture, cruel, inhuman and degrading treatment that were deliberately inflicted on women and girls for a prohibited purpose: non-consensual medical experimentation. Young, healthy women expecting their first child were the preferred subjects of the experiment,<sup>14</sup> and pregnant women were used as guinea pigs for 20 years at the National Maternity Hospital (and elsewhere) to test surgery for which there was no clinical need. Dr Arthur Barry, who intensified the experimentation at the National Maternity Hospital, repeatedly urged his colleagues to experiment with symphysiotomy: ‘I do not yet know what limits should be placed on the operation ... enlarge the pelvis and the baby’s head will fit through’.<sup>15</sup> Challenged over the non-consensual practice of the operation, Barry replied: ‘surely it will be a sad day for

---

<sup>12</sup> Feeney J K 1956 *Coombe Lying In Hospital Report 1956*. In Morrissey J K 2004 op cit, 175.

<sup>13</sup> Royal Academy of Medicine in Ireland 1950 ‘Transactions.’ *Irish Journal of Medical Science* 1950: 860.

<sup>14</sup> Morrissey J K 2004 op cit, 154.

<sup>15</sup> Royal Academy of Medicine ‘Transactions’ 1950 *Irish Journal of Medical Science* 1950: 866.

obstetrics when we allow the patient to direct us as to the line of treatment which is best for the case'.<sup>16</sup> Whether performed antenatally (pre-labour), during labour, or postnatally (following Caesarean section), the practice was deliberate and intentional. Women selected for symphysiotomy were routinely allowed to go past their estimated date of delivery, and this often led to the birth of larger babies,<sup>17</sup> who were more difficult to deliver, as were babies presenting in positions, such as breech, face and brow. Such 'indications' for symphysiotomy ensured that its potential to ensure vaginal birth was tested to the limit.

**15.** Medical ambition also appears to have been a factor in the practice. The National Maternity Hospital was establishing itself as an international training centre in the 1940s, and symphysiotomy was seen as 'enormously useful as a substitute for Caesarian section in conditions in Africa and India where major surgery was not possible'.<sup>18</sup>

**Public official involvement in, and failure to prevent, acts of torture, cruel, inhuman or degrading treatment (Art 2 )**

**16.** Ireland failed in its duty to protect and vindicate the rights of women and girls not to be subjected to a cruel, inhuman, degrading and unwarranted childbirth operation. Symphysiotomy was practised in public institutions that were owned and managed by the State, and in private hospitals and maternity homes that statutorily provided services on behalf of public health authorities in return for State funding. From 1934, these authorities had a non-delegable statutory duty ensure the safety and well-being of women in maternity. Clinical reports detailing the performance of these abusive operations side by side with Caesarean section, some perpetrated on girls as young as 15 or 17,<sup>19</sup> were sent to the Department of Health. Despite wide powers of investigation, the State failed to investigate the practice, and to prevent acts of torture, cruel inhuman or degrading treatment committed on territory in its jurisdiction.

**Failure of the State to provide an effective remedy (Arts 12, 13, 14 &16)**

**17.** Despite the fact that these women and their families continue to suffer from the effects of these violations and from the effects of the torture, cruel, inhuman and degrading treatment to which they were subjected, Ireland has failed, since it ratified the Convention on 11 April 2002, to discharge its obligations under Articles 12 and 13. Despite ample evidence presented to successive ministers for health, including the current Prime Minister, that acts of torture, cruel, inhuman and degrading treatment have been committed in the territory under its jurisdiction, the State has failed, and continues to fail, to provide an effective remedy to survivors of symphysiotomy, and, under Article 14, women's right to reparation, by:

(a) failing to carry out a full, independent and impartial inquiry;

(b) failing to provide fair and adequate restitution to survivors of symphysiotomy or other remedies for the damage sustained following these abusive operations.

Ireland's failure to deal appropriately with these abusive operations amounts to continuing degrading treatment in violation of Article 16. Consequently, the acts complained of constitute

---

<sup>16</sup> Royal Academy of Medicine 'Transactions' 1955 *Irish Journal of Medical Science* 1955: 530.

<sup>17</sup> Connolly G International Missionary Training Hospital *Clinical Report Maternity Department* 1960-61: 35-9

<sup>18</sup> Farmer T 1994 *Holles Street 1894-1994 The National Maternity Hospital A Centenary History*. Farmer, Dublin, 114.

<sup>19</sup> Stuart J J 1960 'Coombe Lying-In Hospital Report' 1960 In *Irish Journal of Medical Science* 1961: 56-7.

torture, cruel, inhuman, or degrading treatment and fall within the temporal scope of Ireland's obligations pursuant to the Convention (*A A v. Azerbaijan*).<sup>20</sup> The Committee may examine alleged violations of the Convention which occurred prior to the State party's ratification of the Convention if the effects of these violations continued after ratification, and if these effects themselves constitute a violation of the Convention. While the acts in question were performed before Ireland's ratification of the Convention, the severe physical and mental suffering of survivors is continuing. The State's failure to provide an effective remedy to survivors also gives rise to an ongoing violation of Article 16.

### **Failure of the State to carry out a full and independent inquiry (Arts 12 & 13)**

**18.** There has been no independent, impartial or comprehensive inquiry into the practice, as recommended by several treaty bodies (see paras **24**, **25** and **26**). None of the perpetrators of these non-consensual surgeries, a few of them still living, have been held to account. In its concluding observations on the practice earlier this year, the CEDAW Committee found that 'no effort has been made to establish an independent investigation'.<sup>21</sup> Referring to the three State-commissioned reports on symphysiotomy, the Human Rights Commissioner of the Council of Europe found that 'the first report could not be considered as independent, an important shortcoming given that the two ensuing reports relied heavily on its findings'.<sup>22</sup> The first report, the Walsh Report,<sup>23</sup> which purported to be a history of the practice, was a partial and inadequate review, in violation of Ireland's obligations pursuant to the Convention:

(a) the Walsh Report lacked independence, because the terms of reference and the choice of person commissioned to write the report were settled in close conjunction between the Department of Health and the Institute of Obstetricians and Gynaecologists, the body whose members were implicated in these abusive operations;<sup>24</sup>

(b) the report was not comprehensive, because the terms<sup>25</sup> (agreed with the author) excluded the taking of oral evidence, including from victims: the author explained that this was 'central to the production of an independent report, compiled without influence or input from vested interests';<sup>26</sup> the terms also excluded consideration of unpublished data, putting 99 per cent of hospital records outside the scope of the review, in addition to (written) victim testimonies;

---

<sup>20</sup> *A. A. v. Azerbaijan* Communication No 247/2004, UN Doc. CAT/C/35/D/247/2004 (2005).

<sup>21</sup> CEDAW Committee 2017 Concluding observations on the Combined Sixth and Seventh Periodic Reports of Ireland, UN Doc. CEDAW/ C/IRL/CO/6-7, p 4, para 14 (b) (3 March, 2017). Available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2fCO%2f6-7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2fCO%2f6-7&Lang=en)

<sup>22</sup> Muiznieks N 2017 *Report by Nils Muiznieks, Council of Europe Commissioner for Human Rights, following his visit to Ireland, from 22 to 25 November 2016* CommDH 2017 (8) 29 March 2017. Council of Europe, 32, para 172.

<sup>23</sup> Walsh O 2014 *Report on Symphysiotomy in Ireland 1944-1984* Department of Health, Dublin. Available at <http://health.gov.ie/wp-content/uploads/2014/07/Final-Final-walsh-Report-on-Symphysiotomy1.pdf>

<sup>24</sup> Jennifer Martin Deputy Chief Medical Officer 2011 Emails (three) to Michael O'Dowd Chairman of the Institute of Obstetricians and Gynaecologists 27 January. Michael O'Dowd 2011 email (one) to Jennifer Martin 27 January.

<sup>25</sup> Walsh O 2014 op cit, 9.

<sup>26</sup> Walsh O 2014 op cit, 3.

(c) the report justified the practice of forced symphysiotomy, and, ignoring Ireland's 1937 Constitution and the judgment of the Irish Supreme Court,<sup>27</sup> alleged, wrongly, that patient consent to medical intervention was, and 'is still not a legal requirement except in relation to mental health'.<sup>28</sup>

**19.** The second government-commissioned report – grounded in the first report – was tasked with weighing up the financial advantage to the State of introducing a redress scheme versus the cost of defending some 180 symphysiotomy legal actions then being taken, in which the State faced potential pay-outs of around €400,000 per plaintiff. The Murphy Report concluded that an ex gratia redress scheme would save the government around €60 million.<sup>29</sup>

**20.** The third report was expected to focus solely on the ex gratia symphysiotomy payment scheme, announced on 1 July 2014 in the run up to Ireland's examination by the UN Human Rights Committee. Instead, the Harding Clark Report,<sup>30</sup> exceeded the scheme's terms of reference:

(i) the Harding Clark report devoted some 600 pages, including three appendices, to justifying the practice of forced symphysiotomy, an operation the author presented as safe and appropriate, to which patient consent was supposedly not required;

(ii) the report failed to clarify the workings of the payment scheme, to which it devoted less than 100 pages of text, much of which was subjective and anecdotal, leaving the scheme's flawed assessment process unclear;

(iii) the report, which is replete with unproven claims and baseless allegations, focused on unsuccessful applicants to the scheme, wrongly portraying them as false claimants and revictimising all survivors of symphysiotomy.

Referring to the Harding Clark Report, the Council of Europe Human Rights Commissioner observed that 'the approach to the victims has even been rather patronizing if not dismissive, with the last report being criticised for questioning the credibility of the claims or suggesting that the victims have been manipulated into asking for compensation'.<sup>31</sup> Noting the 'wide criticism' of the Harding Clark Report from human rights stakeholders in Ireland, the Commissioner stated that he was 'particularly struck by the patronising tone and the kind of information provided in the report. The report does not give acknowledgement to women's suffering and seems to perpetuate some gender stereotypes against (elderly) women'.<sup>32</sup> Since the covert practice of symphysiotomy was exposed in 1999,<sup>33</sup> the State has sought to conceal the fact that the surgery left women with lifelong injuries, that it was performed in the absence of clinical necessity, and that it originated in a mass medical experiment driven by medical hostility to birth control. Harding Clark represents the most elaborate attempt to date to advance

---

<sup>27</sup> Daniels v. Heskin [1954] IR 73.

<sup>28</sup> Walsh O 2014 op cit, 70.

<sup>29</sup> Murphy Y 2014 *Independent Review of Issues relating to Symphysiotomy* Department of Health, Dublin, 50.

<sup>30</sup> Harding Clark M 2016 *The Surgical Symphysiotomy Ex Gratia Payment Scheme* Department of Health, Dublin. The main report is available at <http://health.gov.ie/wp-content/uploads/2016/11/The-Surgical-Symphysiotomy-Ex-Gratia-Payment-Scheme-Report.pdf>

<sup>31</sup> Muiznieks N 2017 op cit, 32, para 178.

<sup>32</sup> Muiznieks N 2017 op cit, 38, para 186.

<sup>33</sup> Morrissey J 1999 'Midwifery of darker times.' *Irish Times* 6 September.

these arguments. Its publication has intensified the need for a full and independent inquiry into the practice.

### **Failure of the State to provide appropriate restitution (Art 14)**

**21.** The government refused an offer to settle women's legal actions collectively in 2013. The sole remedy offered by the State was an ex gratia payment scheme, which failed to provide an effective remedy to survivors, because it was introduced without an admission of, or an apology for, wrongdoing (see *O'Keeffe v. Ireland*).<sup>34</sup> The scheme failed to provide fair and adequate restitution, not least because, as the Council of Europe Human Rights Commissioner observed: 'the voices of the surviving victims are not sufficiently heard or respected', and their testimonies 'were reportedly not given a similar weight to written or medical records':<sup>35</sup>

(a) the terms excluded the taking of oral evidence,<sup>36</sup> and this paper-based approach led to grave injustices in very many cases;

(b) 185 applicants, almost one third of the total number (590), were denied entry to the scheme:<sup>37</sup> (written) survivor testimonies were ignored, and medical records, which in many cases were unobtainable because they went back over half a century, preferred;

(c) a similar approach was taken to proof of disability. The scheme ignored (written) survivor testimonies, insisting on medical records, which, in the majority of cases, were unobtainable because they went back over half a century;

(d) the scheme breached applicants' human rights by using their health data without their knowledge or consent in a clandestine radiological study<sup>38</sup> that purported to show that the severing of the pelvis in symphysiotomy had no long term effects.

(e) the terms ruled out individualised assessment (pp 2-4), in contravention of the UNHRC's recommendation,<sup>39</sup> and provided no mechanism for accepting independent medical reports, which the scheme generally discounted;

(f) the payments offered were not commensurate with court awards for injuries inflicted by symphysiotomy: the majority of applicants did not receive the additional disability payment (€50,000), which left them with the minimum payment of €50,000;

(g) the terms gave no right of appeal, again in contravention of the UNHRC's recommendation, giving a sole assessor unbridled discretion, including the power to destroy records held by the scheme upon its conclusion (p 19, para 46); nor was the scheme subject to any independent monitoring or oversight;

---

<sup>34</sup> *O'Keeffe v. Ireland* [2014] 35810/09.

<sup>35</sup> *Muiznieks N* 2017 op cit, 32, para 178.

<sup>36</sup> *Harding Clark M* 2016 op cit, Appendix 4 *Terms of the Scheme* p 16, para 34. Available at <http://health.gov.ie/wp-content/uploads/2016/11/Appendix-IV-Terms-of-The-Surgical-Symphysiotomy-Ex-Gratia-Payment-Scheme.pdf>

<sup>37</sup> *Harding Clark M* 2016 op cit, 10, 35.

<sup>38</sup> *Harding Clark M* 2016 op cit, Appendix 1 *Symphysiotomy and Pubiotomy Review – an Imaging Perspective*. Available at <http://health.gov.ie/wp-content/uploads/2016/11/Appendix-I-Review-by-Prof-Leo-Lawler.pdf>

<sup>39</sup> UN Human Rights Committee 2014 op cit, para 11.

(h) applicants were forced to sign a waiver that abrogated their legal rights, ‘holding harmless’ those responsible for these abusive surgeries, and indemnifying private entities and actors as well as public bodies and officials as a condition of payment;<sup>40</sup>

(i) the terms gave applicants only 20 days in which to apply (p 10, para 19), making it difficult for claimants in Ireland and virtually impossible for those outside the jurisdiction to do so, particularly as the advertising of the scheme was apparently restricted to the national press.

### **Failure of the State to provide rehabilitative services (Art 16)**

**22.** Survivor testimony shows that, in recent years, in violation of Article 16, the State has failed to implement repeated undertakings to provide survivors of symphysiotomy with the health and social services they require, free of charge. These services are entirely discretionary and have largely atrophied, leaving women to pay privately or forego care.

### **National court proceedings**

**23.** Victims’ access to judicial remedies has been obstructed. In 2013, the Government reversed its previous non-opposition to a Private Members’ Bill for survivors of symphysiotomy setting aside for one year Ireland’s stringent law on limitations, which affords no judicial discretion. Plaintiffs face significant evidential barriers, acknowledged by the Council of Europe Human Rights Commissioner,<sup>41</sup> because, following a decision of the Irish Supreme Court,<sup>42</sup> they must show that the symphysiotomy performed on them could not have been justified in any circumstances. The State has used its vast resources to defend symphysiotomy cases to the end. Costs were awarded against the plaintiff, a septuagenarian pensioner, in a recent case involving a symphysiotomy performed 12 days prior to labour,<sup>43</sup> in a decision that is expected to have a chilling effect on some 24 other litigants, many of whom are in their 70s and 80s. In an apparent reference to that case, in which domestic remedies have been exhausted, the Council of Europe Human Rights Commissioner stated that it was difficult ‘to accept the idea put forward by some that antenatal symphysiotomy was an acceptable, or even justified procedure’.<sup>44</sup>

### **Conclusions and recommendations of other treaty bodies**

**24.** Several treaty bodies have affirmed that Ireland’s failure to provide an effective remedy to survivors of symphysiotomy is in violation of its human rights obligations. On 24 July 2014, citing Arts 2 and 7 of the Covenant, the UN Human Rights Committee expressed concern that symphysiotomy had been performed on some 1,500 women ‘without their free and informed consent’ between 1944 and 1987, and that the State had failed to undertake an effective investigation into the practice or provide effective remedies for the damage sustained. The Committee called upon Ireland to undertake an effective inquiry, ‘prosecute and punish the

---

<sup>40</sup> The waiver covers 'all doctors, consultants, obstetricians, surgeons, medical staff, midwives, nursing staff, administrative staff, boards of management, associated with all hospitals or nursing homes, former hospitals or former nursing homes in the State whether public, private or otherwise and/or their insurers' and the medical Missionaries of Mary and/or any Religious Order involved in the running of any hospital and/or their insurers'. Deed of Waiver available at <http://www.payment-scheme.gov.ie/Symphysiotomy/Symphysiotomy.nsf/O/OAFC8447AC15B2D580257D89003FA7AE/SfileSCHEDU LE1-Deedof WaiverandIndemnity.doc>

<sup>41</sup> Muiznieks N 2017 op cit, 34, para 187.

<sup>42</sup> Kearney v. McQuillan [2010] IESC 20.

<sup>43</sup> Farrell v. Ryan [2015] IEHC 275; Farrell v. Ryan [2016] IECA 281.

<sup>44</sup> Muiznieks N 2017 op cit, p 32, para 173.

perpetrators, including medical personnel’, and provide survivors with an effective remedy, ‘including fair and adequate compensation and rehabilitation, on an individualized basis’.<sup>45</sup>

**25.** Similar findings and recommendations were made by the CEDAW Committee on 3 March 2017. The Committee observed that the UNHRC recommendations had not been implemented, and regretted that ‘no effort has been made to establish an independent investigation to identify, prosecute and punish the perpetrators who performed the medical procedure of symphysiotomy without the consent of women’. The Committee concluded that the practice of symphysiotomy had given rise to ‘serious violations that have a continuing effect on the rights of victims’ and called for an effective inquiry, and provision of ‘an effective remedy, including appropriate compensation, official apologies, restitution, satisfaction, and rehabilitative services’.<sup>46</sup>

**26.** The Human Rights Commissioner of the Council of Europe reached similar conclusions in relation to the State’s failure to provide an effective remedy for these human rights abuses. In his report on Ireland, published on 29 March 2017, the Commissioner found that the Walsh Report, the cornerstone of the State’s investigation into the practice, lacked independence (see para. **18**) and that the Harding Clark Report, purportedly on the government payment scheme, was problematic both in tone in content, and in its attitude to survivors (see para. **20**). The Commissioner highlighted particular inadequacies of the government payment scheme, such as its ex gratia nature, which admitted ‘no wrongdoing or liability’, the legal waiver which was a condition of payment, the level of compensation, which was ‘considered to be very low compared to the level of abuse endured’, and the 20-day ‘window of opportunity’ given to apply for compensation.<sup>47</sup>

---

### **Suggested recommendations to the State party**

On behalf of survivors of symphysiotomy, we respectfully request this Committee to consider incorporating the following into its Concluding Observations to the State party:

recalling that the practice of forced symphysiotomy, which was performed in the absence of medical necessity, is a form of gender-based violence that constituted torture, cruel, inhuman and degrading treatment, which led, and continues to lead, to severe physical and mental suffering, and that the State party’s ongoing failure to protect survivors’ rights then and to vindicate them now, is in violation of the Convention, calls for:

(a) an independent and comprehensive inquiry, with international participation, into the practice of forced symphysiotomy in Ireland, leading to the prosecution and punishment of perpetrators, including medical personnel and public officials; the investigators and terms of reference to be agreed with human rights stakeholders in Ireland, including national membership-based survivor groups;

---

<sup>45</sup> UN Human Rights Committee 2014 op cit, para 11.

<sup>46</sup> CEDAW Committee 2017 op cit, p 4, paras 14, 14 (b), 15 and 15 (a).

<sup>47</sup> Muiznieks N 2017 op cit, 34, para 185.

(b) the payment of appropriate compensation, official acknowledgement of, and an apology for, these human rights abuses, and the provision of rehabilitative services, to include a statutory entitlement for survivors to full health and social services.

### **Suggested questions for the State party**

On the basis of the ongoing violations of Ireland's obligations pursuant to the Convention, we respectfully propose that the Committee ask the following questions of the State party:

- 1.** Does the Irish State accept that the medical practitioners who promoted and practiced symphysiotomy in Ireland from the 1944 onwards were primarily motivated, not by medical necessity, but by religious or quasi-religious motives?
- 2.** Does the Irish State accept that, given that symphysiotomy was performed allegedly on a small minority of women for a complication that, in other similar cases in Ireland at that time, was treated by Caesarean section, those women who were subjected to symphysiotomy were discriminated against?
- 3.** Does the Irish State accept that the operation of symphysiotomy generally led to severe and lifelong physical and mental suffering?
- 4.** Does the Irish State accept that symphysiotomy was practiced in the absence of informed consent, and that such coercive operations violated women's human rights?
- 5.** Does the Irish State accept that the performance of these operations at the National Maternity Hospital from 1944 constituted non-consensual experimentation?
- 6.** Does the Irish State accept that an ex gratia payment scheme without an accompanying admission of liability does not constitute an effective remedy?

Marie O'Connor Chairperson Survivors of Symphysiotomy  
and, on behalf of the National Executive:

Rita McCann

Shane McCann

Marion Moran

Jackie Moran

Margaret O'Dywer

Betty Walsh

26 July 2017

## **Annex 1**

### **Testimony from Rosemary, a survivor of symphysiotomy**

“My pelvis was broken in 1973 on my fifth child. My daughter was big and in a breech position — feet first. They brought me in to the Lourdes [Our Lady of Lourdes Hospital, Drogheda] at 40 weeks, they said the baby was in an “unstable lie”. There was no emergency.

I was left in the ward for 10 days, then they brought me down to theatre for a Caesarean section. But Dr O’Brien refused to do it, and said I could deliver normally, so he turned the baby, and I was wheeled back up to the ward. They put me on a drip, and gave me injections. This went on for 24 hours. Then they tried to get the baby out with a vacuum, a machine like a Hoover, but it didn’t work.

Then Dr O’Brien broke my pelvis in front of a crowd, medical students I took them to be. It was very embarrassing, to be lying there with your legs trussed up in front of so many young men.

The doctor said nothing to me about what he was going to do, just went ahead and did it, in the labour ward. No one spoke to me, no one asked me for my permission. They gave me chloroform, it didn’t work. Today, 41 years later, I still have nightmares about a red hot poker going through the bottom of my stomach.

And afterwards, the baby was still inside, I couldn’t believe it. You’ve had a small procedure, the nurse said, now you’ll have to do the hard work. The pushing was desperate, I’ll never forget it, it seemed to go on for hours. With every push, it felt like my pelvis was breaking in two.

The baby was very poorly when she was born, very limp. There was no heartbeat for four minutes. It was touch and go for 24 hours. They put her into an incubator and I didn’t see her for a week.

The only bit of me I could move after the operation were my toes.

I couldn’t go to the toilet, I was in bed with a catheter. They put a binder on my hips. Five days after the operation, the nurse and the physio forced me to walk. I fainted with the pain. But they kept going, getting me to walk with a chair, and I kept on fainting, but they took no notice.

I was nursed in the same ward as women who had had their babies naturally, women who could walk. I should have been put in traction, the way you would if you broke your pelvis in a car crash. But they didn’t want the pelvis to heal up, that’s why they made us walk on it, so the pelvis would stay open, for more babies. I should have been given a Caesarean section, but they wanted us to have nine or 10 children, and you couldn’t do that if you had a Caesarean — you could only have three sections, at most, in the Lourdes. But all talk of birth control was banned in that hospital. The Pill was in, in 1973, but they didn’t want to know.

They sent me home after 10 days, even wrote in my notes that I was in a 'satisfactory' condition, but I couldn't walk. I got no advice, no painkillers. There was no follow up, no one from the hospital ever came near me. The family doctor didn't want to know, either. I got no help from anyone medical, ever. I had four children at home under the age of 8 to look after, including 2-year-old twins. I found it very difficult to nurse the baby or change her for the first year. I could hardly move with the pain.

The operation ruined my life.

I couldn't do anything other mothers did, taking their children to matches, playing tennis, or kicking a ball. I felt I wasn't a good enough mother. I got depressed; that lasted for seven years. I got a total breakdown after the operation, physical and mental. They put me on anti-depressants, I still depend on them to this day. I couldn't sleep at night — I had restless legs — so they put me on sleeping tablets. That was 20 years ago, I'm addicted to them now. And I'm still on tablets for my nerves. My husband lost out, too. Our married life was never the same: Sex was too painful and I was terrified I might get pregnant again. I felt guilty.

I felt 70 when I was 30. Symphysiotomy left us old before our time.

My walking difficulties never improved. I walk very slowly today, with a stick, find the stairs almost impossible, and have to be very careful not to hurt myself getting into a car. Vacuuming is out of the question, I could never push anything heavy since the operation. I can still hear my pelvis bones rubbing together to this day. I know it's unstable, because I'm prone to falls. Last year, I had a bad fall and broke my shoulder. I have chronic pain since the operation, especially on the right side, in my leg. And my pubic bone is very painful to this day. If my grandchildren ran into me there, I'd be in agony.

I have arthritis in my lower lumbar region, my back feels as if it's breaking if I stand for an hour, or if I sit for too long, and the pain has travelled up into my neck and across my shoulders. This all started three years ago, so it's getting worse. I used to get injections into my back for the pain, but I had to stop them, they were too severe. The operation left me incontinent as well. I had a bladder repair in 2004, after getting rings put in, but it didn't work. I've had loads of urinary tract operations since that operation as well. They never went.

I left hospital not knowing my pelvis had been cut. I didn't find out for 30 years. They said nothing to me about the operation, only that they had to do it to save the baby's life. I still didn't know what it was. It shouldn't have been allowed to happen. I know now these operations were written up in the Lourdes reports and those reports were sent to the Department of Health, that's what the nuns said. They blamed the doctors, but they owned the hospital. They'd been at them for 30 years by the time I was operated on in 1973. No one ever shouted stop.

We heard it on the local radio, that's how it came out. I joined Survivors of Symphysiotomy back in 2002, when it started. Some are worse off than me. We have members who had it done as young as 15, 17, or 18 years of age. Some of those who were done wide awake, like me, remember seeing the doctor coming with a hacksaw, like a wood saw, a half circle with a handle and a straight blade. The ones who screamed were held down, their arms pinned by nurses, their legs in stirrups. There was no escape.

We looked for an independent inquiry back then, but we never got one. No one in the government ever wanted to know, they tried to fob us off. The Department of Health went to the doctors' union, asking them to investigate themselves. The union stood over these operations, said they were acceptable, and the department left it at that. No one ever said, "this has to be investigated".

Instead of an inquiry, we got a whitewash report, a draft report that said symphysiotomy was safer than Caesarean-section. But no one had walking difficulties after a Caesarean. After all this time, the authorities still refuse to admit the truth. It's very aggravating. Trying to pretend these operations were done in an emergency, when we all know they were planned. You can see it in the hospital notes. I know now they were experimenting on us, that we were guinea pigs for the nuns' clinics out in Africa. They were training staff as well, that's why there was such a big crowd at my operation.

Now the Government is planning to offer us some scheme or other, a handout for pain and suffering, not restitution for abuse. The scheme the minister has decided on is a no-fault scheme, not based on any wrongdoing. We might be in our 70s and 80s, but we want the truth. Someone has to say, these operations should never have been done. Symphysiotomy was banned in Paris in 1798, but they did it in the Lourdes until 1987. You wouldn't do it to a cow.

They left me go 12 days over my due date even though they knew I was carrying a big baby. Why didn't they induce me? She was 9lbs 14oz when she was born and I'm just 5'0". Why didn't they do a Caesarean?"

---

This interview first appeared in the Shadow Report submitted by the Irish Council for Civil Liberties, to the UN Human Rights Committee in June 2014, *Civil Society Report to the Fourth Periodic Examination of Ireland under the ICCPR (June 2014)*. The interview was republished by *The Irish Examiner* on 16 July 2014.

*Names and identifying details have been changed to preserve anonymity.*

## **Annex 2**

### **Further testimony from survivors of symphysiotomy**

See Survivors of Symphysiotomy *Submission to the UN Human Rights Committee* 12 June 2014 Appendix *Submission to the United Nations Committee Against Torture* 10 March 2014, 35-48.

Available at

[http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT\\_CCPR\\_CSS\\_IRL\\_17504\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT_CCPR_CSS_IRL_17504_E.pdf)

### **Annex 3**

O'Connor M 2011 *Bodily Harm: symphysiotomy and pubiotomy in Ireland 1944-92*. Evertime, Westport.

Available at <https://archive.org/details/745914-bodily-harm-report>