

Survivors of Symphysiotomy

Submission to UNHRC

Introduction

1 This submission outlines the torture, and cruel, inhuman or degrading treatment, which was perpetrated on a number of women in Ireland by non-consensual medical operations known as symphysiotomy and pubiotomy, and why the Irish Government's failure to protect these women then, and to vindicate their rights now, constitutes a past violation of Articles 2, 7 and 17 of the International Covenant on Civil and Political Rights and a continuing violation of Articles 2 and 7. This was a gender-specific form of torture, and cruel and inhuman treatment, confined, as it was and could only be, to women, and inflicted on them in a manner which deprived them of all legal rights, including the right to refuse medical treatment and experimentation.

2 Survivors of Symphysiotomy (SoS) is the national membership organisation for some 300 survivors of symphysiotomy and pubiotomy. A campaigning, all-volunteer group, unfunded by the State and independent of government, SoS members range in age from 47 to 91 and are spread across the 26 counties of Ireland, with a small number in Northern Ireland, England, Malta, the United States and Australia. From 1949 to 1987, these living survivors had their pelvises broken in childbirth in operations that were performed gratuitously and without consent, and breached their right to privacy. Ireland was the only resource rich country in the world to practise these discarded and dangerous operations in the mid-to-late 20th century.

Description of symphysiotomy

3 Symphysiotomy is a cruel and dangerous childbirth operation that sunders the pelvis, cutting the symphysis joint or, in the case of pubiotomy, severing the pubic bone. At least 1,500 of these 18th century operations were performed in Ireland from 1942 to 2005 without patient consent, mostly in private Catholic hospitals: in or around 300 women survive today. These women have been waiting for truth and justice from a recalcitrant State for over a decade.

Past and continuing breach of Covenant

4 Ireland has violated Articles 2, 7 and 17 and continues to violate Articles 2 and 7 of the International Covenant on Civil and Political Rights (hereinafter referred to as 'the Covenant') for, *inter alia*, the following reasons:

- i. directly employing agents of various authorities of the State and of publicly owned hospitals that performed the medically unjustified and destructive operations of symphysiotomy and pubiotomy;

- ii. allowing and overseeing the performance of the medically unjustified and destructive operations of symphysiotomy and pubiotomy in private hospitals that delivered maternity services on behalf of the State in Ireland;
- iii. allowing and overseeing the performance of these genital operations, which large numbers of generally male students were frequently invited to witness, in the absence of patient consent, thus constituting arbitrary interference with women's right to privacy.
- iv. failing in its obligation under the aforementioned articles of the Covenant and under Article 3 of the European Convention of Human Rights and Fundamental Freedoms to put in place mechanisms to protect against the abuse of human rights which these operations constituted—they were carried out without patient consent on an estimated 1,500 women in Irish hospitals and maternity homes between 1941 and 2005; and
- v. willfully failing to discharge its monitoring obligation under the UN General Assembly Body of Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law.

Recent and current testimonies and statements

5 Before providing further particulars of the past and ongoing violations of the Covenant, we refer to the following excerpts, which have been taken from statements by survivors* and by public representatives in Dáil Éireann, the Lower House of the Irish national Parliament, which bear witness to the horror of the violations which are the subject of this complaint:

I just remember being brought into a theatre and the place was packed with people. I wasn't told what was happening ... I was screaming and being restrained. I couldn't see much except for them sawing. It was excruciating pain ... I was just 27 and I was butchered.

Survivor of pubiotomy and member of SoS, Philomena, on the birth of her third child at the National Maternity Hospital Dublin in 1959.

I was screaming. It's not working, [the anaesthetic] I said, I can feel everything ... I seen him go and take out a proper hacksaw, like a wood saw ... a half-circle with a straight blade and a handle... The blood shot up to the ceiling, up onto his glasses, all over the nurses... Then he goes to the table, and gets something like a solder iron and puts it on me, and stopped the bleeding. ... They told me to push her out. She must have been out before they burnt me. He put the two bones together, there was a burning pain, I knew I was going to die.

Survivor of pubiotomy and member of SoS, Cora, on the birth of her first child at 17 at the International Missionary Training Hospital, Drogheda, in 1972.

What they went through was a crime against human decency ... Their civil liberties were defiled, most notably those of health and freedom of choice, and they suffered the most extreme excesses of degradation.

Government Deputy Ann Phelan, Member of Parliament
Statement to Parliament, 16 April 2013

The sister tutor had written 'query [Caesarean] section?' on my notes. Over my dead body, said [Dr] Sutton. ... They didn't tell me what they were doing. I thought I had paralysis. I couldn't move my legs up or down ... I asked what was wrong; nobody told me. It was a case of shut up. You felt you were up against a brick wall ... I can't make out why they didn't section me...He [Sutton] cracked it [the pubic bone].

Survivor of symphysiotomy and member of SoS, Kathleen, on the birth of her first child at St Finbarr's Hospital, Cork, in 1957

'The women were abused in every conceivable way. They were gratuitously maimed in the process of procedures conducted by pillars of Irish society on behalf of the State on extremely dubious grounds. The women involved suffered at the hands of those practitioners who rode rough-shod over their legal, moral and constitutional rights to bodily integrity and self-determination.'

Government Deputy Seán Conlan, Member of Parliament
Statement to Parliament, 16 April 2013

Medical experimentation

6 Long shunned by doctors in the Western world on account of its dangers, symphysiotomy was officially revived in 1944 at the National Maternity Hospital in Dublin as a replacement for Caesarean section in certain cases. The operation was carried out electively for teaching purposes as well as for religious reasons. The hospital was building itself up as an international training centre in the 1940s, and symphysiotomy, a low cost operation that needed neither hospital nor electricity, was seen as invaluable for students from Africa and India. Pregnant women were used there as guinea pigs in the 1940s and '50s and this experimentation continued through the 1960s and '70s at Our Lady of Lourdes Hospital in Drogheda, which was founded by the Medical Missionaries of Mary to train staff for their many hospitals and clinics overseas.

7 These were covert—as well as unlawful—operations: patient consent was never sought. Four or five decades elapsed before women understood that their pelves had been broken, gratuitously. Medical staff neglected to give women information about the procedure prior to surgery. Hospitals discharged women who did not know their pelves had been severed, and family doctors tended to say little. In depriving women of the knowledge of their surgery, doctors also denied them the opportunity to recover: the consequences for their physical and mental health were disastrous.

Failure to provide an effective remedy

8 Ireland continues to violate the Covenant because it has failed, and continues to fail, to provide an effective remedy to survivors of symphysiotomy by:

- i. Failing to initiate a prompt, independent or impartial inquiry;
- ii. Failing to provide fair and adequate restitution to survivors of symphysiotomy and pubiotomy for the damage sustained as a result of these wrongful operations.

9 In answer to these charges, we expect the Irish State to rely upon its recent 'review' of the practice of symphysiotomy by Professor Oonagh Walsh along with its plans to establish an *ex gratia* redress scheme. Ireland's 'Walsh report' fails to adequately or impartially investigate the practise of symphysiotomy, in violation of Ireland's obligations pursuant to the Covenant, for, inter alia, the following reasons:

(i) Walsh wrongly defends the practise of symphysiotomy on the basis that it was a safer operation than Caesarean section.

(ii) Walsh excluded survivors' testimony and wrongly claims that symphysiotomy was only carried out in emergency situations—survivor testimony consistently indicates that symphysiotomy was a planned operation.

(iii) Walsh wrongly misrepresents the doctrine of patient consent by stating that informed consent was not a legal requirement in Ireland until the 1990s: in accordance with statements of law by Ireland's Supreme Court (see *Daniels v Haskins* [1953] IR 73), informed patient consent was a legal requirement from the early 1950s.

Public commentary about Ireland's draft Walsh report:

10 The report has drawn criticism from a number of sources. Two examples follow.

It's clear from reading Dr Walsh's first report that all her conclusions are based on essentially desk-based research — databases searched, requests to libraries (libraries!), hospitals asked for their records, and so on. And at the bottom of the description of her research methods, Dr Walsh notes: "Maternity hospitals were not required to produce annual reports in the 1940s, 1950s or 1960s so no firm statistics are available". Perhaps not surprisingly — especially given the fact that she never met a single survivor as part of the original research, nor ever read an individual patient file, the overall effect of Dr Walsh's research is to minimise the incidence of and the reasons for the procedure.

Fergus Finlay, Chief Executive of Barnardos
The Irish Examiner, 16 April 2013

I am calling on the Government to do exactly what these women want. They have repudiated the Walsh report, so it should be binned, today. If they want to start the process again, that must start immediately, and it must be the process they want. They should also, immediately, receive a full apology from the Government for having treated them so poorly to date in this inquiry.

Deputy Stephen Donnelly, Member of Parliament
Press release 27 June 2012

11 The Government reportedly received the final version of the Walsh Report in November 2012. After initially promising to publish it in September 2013, the Minister for Health subsequently refused to release it, a position he has reiterated again and again. At the time of writing, the suppression of this report by the Government continues.

Request for inclusion in the upcoming review

13 We have made a separate complaint to the UN Committee Against Torture pursuant to its periodic review of Ireland in 2015 (see the Appendix, which sets out the matter in far greater detail). Nevertheless, given the advanced age of our members and their ongoing health difficulties, we are seeking the assistance of the Human Rights Committee in exercising its discretion to include the issue of symphysiotomy and pubiotomy in its review of Ireland in July 2014.

The Committee is urged to conclude that the very limited response by Ireland to women who have undergone symphysiotomy and pubiotomy means that the state party has failed to provide an effective remedy to survivors of symphysiotomy and pubiotomy by failing to initiate a prompt, independent and impartial inquiry and by failing to provide them with fair and adequate restitution for the damage they sustained as a result of these wrongful operations. The Committee is also urged to conclude that these women's right to privacy was violated.

The Committee is asked to call on the state party to rectify these failings by asking Ireland: to institute an independent statutory inquiry into the practice of symphysiotomy and pubiotomy in Ireland; to enact the Statute of Limitations (Amendment) Bill 2013, which was passed at Second Stage by Dáil Éireann (the Irish Parliament) on 17 April, 2013; and to enter into a fair and just settlement of the legal actions initiated by survivors.

The Committee is also urged to conclude that the introduction of any ex-gratia scheme to compensate them without an accompanying admission of liability would fail to meet the test for an effective remedy.

Questions for Ireland

14 On the basis of the ongoing violations of Ireland's obligations pursuant to Articles 2 and 7 of the Covenant, we respectfully propose that the Committee asks the following eight questions of the Irish State:

1 Does the Irish State accept that the performance of symphysiotomy and pubiotomy in Ireland from the 1940s through to the 1990s was not medically justified in the circumstances then prevailing, where Caesarean section was the norm for difficult births and was readily available?

2 Does the Irish State accept that, in all cases, the operations of symphysiotomy and pubiotomy were performed without patient consent, and that such operations therefore violated women's constitutional and human rights?

3 Does the Irish State accept that the performance of symphysiotomy and pubiotomy in the absence of clinical necessity was related to institutional needs, such as the need to train students?

4 Does the Irish State accept that were elements of experimentation in respect of symphysiotomy

and pubiotomy, and that the gratuitous performance of these operations was related to institutional needs, such as the need to perfect the surgery for export to missionary hospitals and clinics in African countries?

5 Does the Irish State accept that an ex gratia scheme, which is based on no admission of liability, fails to meet the test for an effective remedy?

6 Will the State ensure that restitution includes admission of liability and corresponds to the awards made by the Irish Supreme Court in *Kearney v McQuillan*, in *Nelson v the Health Service Executive* and in other symphysiotomy cases?

7 Will the State allow survivors the right of independent legal representation in assessing appropriate individual awards by way of restitution?

8 Will the State allow survivors the right of independent medical assessment in assessing appropriate individual awards by way of restitution?

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[
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