

# **Survivors of Symphysiotomy**

**The Convention on the Elimination of All Forms of  
Discrimination against Women**

**Submission to the UN Committee on the  
Elimination of Discrimination against Women**

**Re**

**Ireland's examination by the Treaty Body in February 2017**

January 2017

## Introduction

1. Survivors of Symphysiotomy is the national membership organisation for some 350 victims (and their families) of symphysiotomy, a destructive operation performed in Ireland during childbirth.<sup>1</sup> A campaigning, all-volunteer group, unfunded by and independent of the State, its members range in age from 50 to 90 and are spread across Ireland, with small numbers in Northern Ireland, Britain, Malta, the United States, Australia and New Zealand. From 1949 to 1987, these living survivors had their pelvises broken in childbirth in operations that were performed gratuitously, without their knowledge or consent. Ireland was the only resource rich country in the world to practise these dangerous and non-consensual operations in preference to Caesarean section in the mid-to late 20th century.

2. Symphysiotomy is a high risk childbirth operation that effectively unhinges the pelvis, cutting the symphysis joint (or severing the pubic bone). While it had been estimated that 1,500 of these obsolete operations had been performed in Ireland from 1944 onwards, mostly in Catholic private hospitals, the exact number is not known. An unknown number of women survive today. One baby in ten died post symphysiotomy;<sup>2</sup> others were left with suspected brain damage<sup>3</sup> or were otherwise injured. The long term consequences for women were left unexamined. Survivor testimony shows continuing locomotor difficulties, pelvic instability and chronic pain; bladder and bowel injuries, life long incontinence; organ prolapse; chronic wound infections; sexual, marital and family problems; and psychological distress and trauma. These now mainly elderly survivors have been waiting for truth and justice from a recalcitrant State for the past sixteen years.

3. Symphysiotomy was performed, before, during and after labour, generally in the absence of medical necessity and often under local anaesthetic. Patient consent was never sought. Women have related how, after many hours of labour, they were set upon by hospital staff, their legs splayed in stirrups, and operated upon, wide awake and often screaming. Those who resisted were physically restrained by midwives. Then, still in labour following the surgery, the baby's head acting as a battering ram, women were left for as long as it took, hours or days, before being obliged to push the baby out through the agony of an ever-unhinging pelvis.<sup>4</sup>

4. The practice of symphysiotomy in Ireland constituted a grave violation of human rights – encompassing gender-based and obstetric violence<sup>5</sup> – stemming from medical hostility to birth

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1 See <http://symphysiotomyireland.com/>  
<http://www.facebook.com/SoS-Survivors-of-Symphysiotomy-173631906029192/timeline/>  
 Twitter: @SoS\_Ireland.

2 Coombe Lying-In Hospital 1956 Report 'Coombe Lying-In Hospital Report 1956.' *Irish Journal of Medical Science* 1957: 452-4.

3 Royal Academy of Medicine in Ireland 1950 'Transactions.' *Irish Journal of Medical Science* 1950: 860.

4 Survivors of Symphysiotomy 2014 [Appendix to SoS Submission to UNHRC] Submission to the United Nations Committee Against Torture, 8-10. Available at [http://tbinternet.ohchr.org/Treaties/CCPR/Share%20Documents/IRL/INT\\_CCPR\\_CSS\\_IRL\\_17504\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Share%20Documents/IRL/INT_CCPR_CSS_IRL_17504_E.pdf)

5 Obstetric violence is an often overlooked and normalized manifestation of gender-based violence, lying at the intersection of institutional violence and violence against women. Obstetric violence—including invasive practices, forced or coerced medical interventions, and discrimination based on economic background—occurs during pregnancy and childbirth in public and private medical practice. Women's Global Network for Reproductive Rights, *Obstetric Violence*, <http://www.may28.org/obstetric-violence/>.

control, which was rooted in Roman Catholic teaching.<sup>6</sup> Medical ambition was also a factor: survivor testimony shows that doctors keen to build up their hospitals as international training centres<sup>7</sup> used young and vulnerable women as clinical material for training purposes<sup>8</sup> in a medical experiment that lasted for 20 years in Dublin.<sup>9</sup>

### Past and continuing breaches of the Convention

5. This submission outlines how Ireland's failure to protect these women then, and to vindicate their rights now, constitutes a past and continuing violation of the Convention on the Elimination of All Forms of Discrimination against Women. This was a gender-specific and discriminatory form of torture, cruel, inhuman or degrading treatment, which was inflicted on women in a manner that deprived them of all legal, constitutional and human rights. The practice of the surgery breached women's rights to:

- (a) freedom from gender-based violence and discrimination in healthcare settings;<sup>10</sup>
- (b) bodily integrity, autonomy and self determination;<sup>11</sup>
- (c) refuse medical treatment and experimentation;<sup>12</sup>
- (d) privacy and family life;<sup>13</sup>
- (e) work outside the home;<sup>14</sup>
- (f) participate in recreational activities, sports and cultural life.<sup>15</sup>

### Breaches of other human rights treaties

6. In July 2014, the United Nations Human Rights Committee (UNHRC) found that symphysiotomy had been carried out in Ireland from the 1940s to the 1980s on 1,500 women and girls without their consent. The UNHRC found in effect that, under Article 7 of the International Covenant on Civil and Political Rights, the practice of symphysiotomy constituted torture, cruel, inhuman or degrading treatment, and involuntary medical experimentation.

6 Arthur Barry 1954 'Conservatism in Obstetrics.' *Transactions of the 6th International Congress of Catholic Doctors*. John Fleetwood (ed) Guild of St Luke, SS Cosmas and Damian, Dublin, 122-6. In Jacqueline K Morrissey 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, 161. Symphysiotomy was performed in preference to Caesarean section, which was associated with birth control. Three Caesarean sections was seen as the upper safety limit, hence to perform a C-section on a woman expecting her first child was to limit her family to three.

7 Tony Farnar 1994 *Holles Street 1894-1994 The National Maternity Hospital: A Centenary History*. A&E Farnar, Dublin, 248.

8 Marie O'Connor 2011 *Bodily Harm*. Everttype, Dublin, 117-8.

9 Jacqueline K Morrissey 2004 op cit, 169-71.

10 Failing to protect women and girls from gender-based violence and discrimination in healthcare settings (Arts 1,2,3).

11 Failing to protect women and girls from being subjected to the mutilating and unnecessary operation of symphysiotomy, which was aimed at permanently enlarging a woman's pelvis to enable future childbearing without the limitation seen as being imposed by Caesarean section (Art 3).

12 Ibid.

13 Failing to ensure the right of women and girls to privacy in healthcare settings by allowing and overseeing these genital operations – which subsequently impacted on intimate and family life – to be performed in the presence of often large numbers of generally male medical students in the absence of patient consent (Art 3).

14 Due to the devastating consequences of the surgery, women who wished to work outside the home often found themselves unable to do so (Art 11).

15 Similarly, women who had previously engaged in sports, such as cycling, for example, or recreational activities, such as dancing (which was extremely popular), generally found themselves unable to continue these pastimes (Art 13).

7. The UNHRC recommended that Ireland should initiate a prompt, independent and thorough investigation into cases of symphysiotomy; prosecute and punish the perpetrators, including medical personnel; provide an effective remedy to survivors for the damage sustained, including fair and adequate compensation and rehabilitation on an individualised basis; and facilitate access to judicial remedies by victims opting for the *ex-gratia* scheme, including allowing a challenge to the sums offered under the scheme.<sup>16</sup> Ireland has refused to implement any of the UNHRC's recommendations, as will now be demonstrated.

### **Issues raised by the Treaty Body**

8. The Treaty Body in its List of Issues and Questions (para 7) has asked the State party for information on:

- (a) the specific measures taken to investigate the practice of symphysiotomy, with a view to identifying, prosecuting and punishing the perpetrators, with particular reference to the issue of patient consent, including in relation to children;
- (b) the provision of an *ex gratia* compensation scheme, and other remedies, for survivors of symphysiotomy.

9. No independent or thorough investigation has been carried out into the practice of symphysiotomy, nor has Ireland any plans to do so. None of the perpetrators of these non-consensual surgeries, some of them still living, have been held to account. An *ex gratia* scheme was introduced without any admission of wrongdoing. Ireland has never apologised for the wrongfulness of symphysiotomy. The view of the State is that the practice of symphysiotomy was non-injurious and appropriate, and that consent was either given or not required. The State has no intention of providing other remedies to survivors.

### **Failure to provide an effective remedy**

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

- i. Failing to carry out a full, independent and impartial inquiry;
- ii. Failing to provide fair and adequate restitution to survivors of symphysiotomy, or other remedies, for the damage sustained as a result of these wrongful operations.

### **Failure to carry out a proper inquiry**

11. There has been no independent, impartial or comprehensive inquiry, despite the fact that the State has commissioned three reports. The first, a "history" of symphysiotomy in Ireland, authored

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<sup>16</sup> UN Human Rights Committee 2014 Concluding observations on the fourth periodic report of Ireland, 4. Available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f4&Lang=en)

by Professor Oonagh Walsh<sup>17</sup> under contract to the Department of Health, was a partial and inadequate investigation of the practice, in violation of Ireland's obligations pursuant to the Convention:

(a) The Walsh Report lacked independence: its (restrictive) terms of reference were drawn up in consultation with the Institute of Obstetricians and Gynaecologists ("IOG"), as was the choice of researcher.<sup>18</sup> The IOG is the voice of the medical specialty responsible for these operations.

(b) The terms of reference (agreed with the author) excluded unpublished data – putting 99 per cent of hospital records outside the scope of the investigation – and oral evidence, excluding first hand accounts of survivors from becoming part of this history;<sup>19</sup>

(c) Evidence that symphysiotomy was a mass medical experiment designed to replace Caesarean section in selected cases,<sup>20</sup> and that symphysiotomy was a more dangerous procedure was ignored;

(d) The doctrine of patient consent was misrepresented: the Report claimed that informed consent was not a legal requirement in Ireland from 1944–1987, ignoring Ireland's 1937 Constitution and the judgment of the Irish Supreme Court.<sup>21</sup> No case of informed consent to symphysiotomy has ever come to light. The State party's recent claim to the Treaty Body<sup>22</sup> that some of these surgeries were carried out with patient consent on the basis that they were 'elective' is disingenuous. 'Elective' is a medical term, meaning 'planned' or 'non-emergency': it does not mean the operation was chosen by the patient. To also suggest, as the State party has done, wrongly, that symphysiotomy was often performed in an emergency is a claim not made in the final Walsh Report.<sup>23</sup>

**12.** The second government-commissioned report on symphysiotomy was the Murphy Report. This was a narrow report – grounded in the Walsh Report that weighed up the financial savings to the State of introducing a redress scheme rather than allowing the litigation initiated by many survivors to proceed. Murphy concluded that an ex gratia scheme would save Ireland around €60 million.<sup>24</sup>

**13.** The third report government-commissioned on symphysiotomy is the recently published Harding Clark Report on the Surgical Symphysiotomy Ex Gratia Payment Scheme.<sup>25</sup> This 800-page report

17 Oonagh Walsh 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>.

18 Jennifer Martin 2011 Deputy Chief Medical Officer Email to Tom Moran et al 12 May.

19 Oonagh Walsh 2014 op cit, 9.

20 Jacqueline Morrissey 2004 op cit, 169-71.

21 Daniels v Heskin [1954] IR 73.

22 Ireland 2016 CEDAW Response of Ireland to List of Questions and Issues prior to Reporting, 12. Available at [http://www.justice.ie/en/JELR/CEDAW\\_REPORT\\_September\\_2016.pdf/Files/CEDAW\\_REPORT\\_September\\_2016.pdf](http://www.justice.ie/en/JELR/CEDAW_REPORT_September_2016.pdf/Files/CEDAW_REPORT_September_2016.pdf)

23 Oonagh Walsh 2014 op cit, 72-3.

24 Yvonne Murphy 2014 *Independent Review of Issues relating to Symphysiotomy*. Department of Health, Dublin, 50.

25 Maureen Harding Clark 2016 *The Surgical Symphysiotomy Ex Gratia Payment Scheme* Department of Health, Dublin. Available at <http://health.gov.ie/wp-content/uploads/2016/11/The-Surgical-Symphysiotomy-Ex-Gratia-Payment-Scheme-Report.pdf>

– also grounded in the Walsh Report – was a partial and inadequate account, replete with unproven claims and baseless allegations, that revictimised survivors. The Report exceeded the Scheme's terms of reference by setting out to write a "history" of symphysiotomy in Ireland, minimising and mitigating its practice:

- (i) The Harding Clark Report failed to clarify the workings of the Scheme, devoting less than a hundred pages, much of which was subjective and anecdotal, to the Scheme's flawed assessment process<sup>26</sup>;
- (ii) Harding Clark undermined women's (written) testimony, falsely portraying hundreds of applicants to the Scheme as claimants who were fraudulently in pursuit of compensation;
- (iii) Over 600 pages were devoted to justifying the practice of symphysiotomy, an operation the Report portrayed as non-injurious and appropriate, to which patient consent was allegedly not required.

**14.** Since Dr Jacqueline Morrissey exposed the covert practice of symphysiotomy in 1999, the State has taken every opportunity to conceal the fact that the surgery left women with permanent injuries, and that it was performed in preference to Caesarean section in a mass medical experiment that was driven by Catholic doctors' hostility to contraception. Of the three official reports relating to symphysiotomy, Harding Clark represents the most elaborate attempt to date to advance these arguments. Its publication has intensified the need for a full and independent inquiry into the practice of symphysiotomy in Ireland.

#### **Failure to provide fair and adequate restitution**

**15.** The sole remedy offered by the State was this ex gratia Scheme, which was not accompanied by any admission of wrongdoing. The Scheme failed to provide fair and adequate restitution:

- (a) The terms of reference gave applicants only 20 days in which to apply, making it difficult for claimants in Ireland and impossible for those outside the jurisdiction to do so;
- (b) The Scheme adopted a policy of not taking oral evidence: it was paper-based;
- (c) The Scheme out ruled individualised assessment, in contravention of the UNHRC's recommendation;
- (d) The terms provided no mechanism for accepting independent medical reports and such reports were generally discounted;
- (e) The "compensation" awarded by the Scheme was not commensurate with court awards for injuries inflicted by symphysiotomy;<sup>27</sup>

<sup>26</sup> Maureen Harding Clark 2016 op cit, 5-103.

<sup>27</sup> See *Kearney v McQuillan and North Eastern Health Board* [2012] IESC 43. Available at <http://www.bailii.org/ie/cases/IESC/2012/S43.html>. The plaintiff was awarded €350,000.

(f) The terms gave no right of appeal, again in contravention of the UNHRC's recommendation, giving a sole assessor unbridled discretion;

(g) Applicants were forced to sign a waiver that abrogated their legal rights, "holding harmless" those responsible for these abusive surgeries, and indemnifying even private entities, such as religious congregations, as a condition of payment.<sup>28</sup>

15. The State party's claim to the Treaty Body that the Scheme was non-adversarial<sup>29</sup> is belied by the experience of numerous claimants. The further claim that the Scheme 'also gets around the problems of lack of access to clinical records and the situation where the doctors concerned have died' is false: the scheme required clinical records that in many cases went back over half a century as proof of disability. As such records were generally unobtainable, only a minority of claimants were awarded a disability payment.<sup>30</sup>

18. While the government has repeatedly stated that survivors are free to litigate, the State has used its vast resources to defend symphysiotomy cases to the end. Contrary to what Ireland has claimed to the Treaty Body, the health and social services allegedly provided to survivors of symphysiotomy by the State free of charge are largely illusory. Cutbacks in recent years have heavily impacted the health system, services are entirely discretionary and have largely atrophied. Survivor testimony shows that, in recent years, women have increasingly been obliged to pay privately for health and social services.

### **New breaches of survivors' human rights**

19. New breaches of survivors' human rights have occurred since January 2016 in relation to data protection. The inclusion in the Harding Clark Report of so much anecdotal material, including individual case histories, means that individual claimants to the scheme can be identified, breaching their right to privacy. In an earlier breach, the Scheme announced on its web site its intention to destroy all records submitted by applicants unless their return was sought by 29 January 2016. However, following public controversy and a complaint to Ireland's Data Protection Commissioner, the Scheme resiled from its proposal to shred unclaimed records. A further breach of survivors' fundamental rights has now emerged with the publication of the Harding Clark Report, which published the results of a large scale "study" conducted in secret in a Dublin hospital under the auspices of the Scheme. This radiological review used applicants' health data without their knowledge or consent for the purposes of research that purported to show that the severing of the pelvis in symphysiotomy had no long term effects.<sup>31</sup>

28 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/SfileSCHEДУ LE1-Deedof WaiverandIndemnity.doc>

29 Ireland 2016 op cit, 12.

30 Maureen Harding Clark 2016 op cit, 6-11.

31 Leo P Lawler 2016 Symphysiotomy and Pubiotomy Review - an Imaging Perspective. In Maureen Harding Clark

On behalf of survivors of symphysiotomy, **the Committee is urged to conclude** that the practice of this destructive and non-consensual operation violated their rights to freedom from gender-based violence and discrimination in healthcare settings; bodily integrity, autonomy and self determination; refusal of medical treatment and experimentation; privacy and family life; work outside the home; and participate in recreational activities, sports and cultural life.

**The Committee is also urged to conclude** the State party has failed to provide an effective remedy by (i) failing to initiate an independent and comprehensive inquiry into the practice of symphysiotomy and (ii) introducing an ex-gratia compensation scheme without an accompanying admission of wrongdoing.

**The Committee is further urged** to call for an international investigation into the practice of symphysiotomy in Ireland, independent of the State party, agreed with human rights organisations and national membership survivor groups.

Marie O'Connor, Chairperson, Survivors of Symphysiotomy

Rita McCann, member, Survivors of Symphysiotomy

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2016 op cit. Appendix 1. Available at <http://health.gov.ie/wp-content/uploads/2016/11/Appendix-I-Review-by-Prof-Leo-Lawler.pdf>The study was conducted over an 11 month period by 11 doctors at the Mater Hospital, Dublin under the supervision of Prof Lawler, who worked closely with the Scheme in assisting the Assessor in her determination of claims. A selection of X-rays submitted to or accessed by the Scheme as part of its assessment process formed the basis of the symphysiotomy review. Of the 590 women who applied to the Scheme, 126 were selected for inclusion, but the basis for their selection is unclear. Both the hospital and the Department of Health have refused to supply any information concerning this research.