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# **Survivors of Symphysiotomy**

**Submission to the United Nations Committee Against Torture  
under the List of issues Prior to Reporting**

27 January 2020

# Survivors of Symphysiotomy

1. Survivors of Symphysiotomy, a campaigning, all-volunteer group, unfunded by the State and independent of government, is the national membership organisation for some 350 survivors of symphysiotomy. They are among the (estimated) 1,500 women who had their pelvises severed in symphysiotomy in Ireland from 1944 to 1987, without their free and informed consent.<sup>1</sup>
2. We welcome this opportunity to contribute to the List of Issues Prior to Reporting of Ireland at the 69th Session of the Committee Against Torture.
3. Survivors of Symphysiotomy actively participated in Ireland's examination in July 2017, including by submitting a prior report to the Committee.<sup>2</sup> We disseminated the Committee's Concluding Observations, issued on 9 and 10 August 2017, to members, NGOs, lawyers, academics and media.
4. Since Ireland's appearance before the Committee, the practice of symphysiotomy has been brought to the attention of the United Nations General Assembly. In 2019, Survivors of Symphysiotomy participated in a global investigation into obstetric mistreatment and violence,<sup>3</sup> which was led by the UN Special Rapporteur on Violence Against Women. The report of Ms Dubravka Simonovic, which was presented to the General Assembly on 4 October 2019, highlighted the practice of forced symphysiotomy in Ireland.<sup>4</sup> The Special Rapporteur found that symphysiotomy had been performed in Ireland 'without the knowledge or the free and informed consent of the women concerned', and that the surgery had 'caused lifelong pain and disability to numerous women'.

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<sup>1</sup> UN Human Rights Committee 2014. *Concluding observations on the Fourth Periodic Report of* [http://ccprcentre.org/doc/2014/07/CCPRCIRLCO4\\_E.pdf](http://ccprcentre.org/doc/2014/07/CCPRCIRLCO4_E.pdf)

<sup>2</sup> Survivors of Symphysiotomy 2017. *The Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment: Submission to the 61st Session of the United Nations Committee Against Torture on the Second Periodic Report of Ireland*. On line. Available at: [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT\\_CAT\\_CSS\\_IRL\\_27972\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_CSS_IRL_27972_E.pdf)

<sup>3</sup> Survivors of Symphysiotomy 2019. *Submission to the United Nations Special Rapporteur on Violence Against Women: Mistreatment and Violence against Women in Reproductive Healthcare during Childbirth*. On line. Available at <https://www.ohchr.org/Documents/Issues/Women/SR/ReproductiveHealthCare/SurvivorsSymphysiotomy.pdf>

<sup>4</sup> Simonovic D, 2019. *Report of the Special Rapporteur on Violence Against Women, its causes and consequences on a human rights-based approach to mistreatment and violence in reproductive health services with a focus on childbirth and obstetric violence*, 8. On line. Available at: [https://eipmh.com/wp-content/uploads/2019/09/UN\\_Res.71170.pdf](https://eipmh.com/wp-content/uploads/2019/09/UN_Res.71170.pdf).

5. Survivors of Symphysiotomy welcomes the concern expressed by the Committee at the practice of symphysiotomy in Ireland; and at reports that it caused severe pain and suffering that continue to the present day, and that 'doctors declined to perform alternative procedures that would have caused substantially less pain and suffering for religious rather than medical reasons'.

6. Ireland has ignored the recommendations made by the Committee in its Concluding Observations on the practice of forced symphysiotomy. Since their publication, the State has not initiated any new actions of an investigative, compensatory or rehabilitative nature in respect of survivors.

7. This submission, in the main, highlights aspects of what the State has repeatedly presented as an 'investigation' into symphysiotomy, viz., the Walsh Report,<sup>5</sup> and what has often been described as 'compensation', viz., the government payment scheme, which, we submit, are not in compliance with the Committee's recommendations.

### **Symphysiotomy (Arts 2, 12, 13, 14 and 16)**

8. In its Concluding Observations in relation to symphysiotomy, citing Arts 2, 12, 13, 14 and 16, the Committee made the following recommendations:

30. 'The State party should initiate an impartial, thorough investigation into the cases of women who have been subjected to symphysiotomy, ensure that criminal proceedings are initiated with respect to any perpetrators of violations of the Convention, and ensure that survivors of symphysiotomy obtain redress, including compensation and rehabilitation, determined on an individual basis'.

Other United Nations committees, such as the UNHRC in 2014,<sup>6</sup> and CEDAW in 2017,<sup>7</sup> have made similar recommendations. All have been equally ignored by the State party.

### **The failure of the State party to investigate the practice of symphysiotomy**

9. The sole attempt made by the State party to investigate the practice of forced symphysiotomy in Ireland was the commissioning of the Walsh Report. This provided the foundation for two further State reports on symphysiotomy, one on financing redress, the other on the payment scheme. Summarising its findings, Walsh found that, in the majority of cases, symphysiotomy was 'a clinically appropriate decision' and that (only) those operations performed following Caesarean section were inappropriate.<sup>8</sup>

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<sup>5</sup> Walsh O 2014 *Report on Symphysiotomy in Ireland 1944-1984* Department of Health, Dublin. On line. Available at <http://health.gov.ie/wp-content/uploads/2014/07/Final-Final-walsh-Report-on-Symphysiotomy1.pdf>

<sup>6</sup> UN Human Rights Committee 2014 op cit.

<sup>7</sup> Committee on the Elimination of Discrimination Against Women 2017. *Concluding observations on the combined sixth and seventh periodic reports of Ireland*. CEDAW/C/IRL/6-7, paras 14-15. 15 February 2017. On line: 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>8</sup> Walsh 2014 op cit, 72-3.

**10.** The Walsh Report lacked independence, an important shortcoming given that the two ensuing reports relied heavily on its findings, as the Human Rights Commissioner of the Council of Europe has observed.<sup>9</sup> The Institute of Obstetricians and Gynaecologists (IOG) in Ireland was given a key role by the Department of Health in the commissioning process. As previously documented, the IOG was involved in drawing up the Walsh terms of reference and in advising on the choice of reviewer.<sup>10</sup> During the relevant period, the Institute accredited hospitals that were sites of symphysiotomy and its membership included doctors who were involved in these operations.

**11.** The Walsh review was not designed to be comprehensive. New information has come to light since our last submission to the Committee, which shows that the Walsh report was never intended to be more than a cursory exercise. Two months (later extended to three) was allocated for its completion, a time frame which a public health professor had earlier advised the Department of Health was inadequate.<sup>11</sup>

**12.** The limitations imposed by the Walsh terms of reference were significant. The review was restricted from taking oral or written evidence, nor did it have powers of compellability. In consequence, Walsh did not investigate allegations of injuries caused by symphysiotomy, nor was it empowered to examine allegations of its non-consensual performance (which the reviewer defended). Walsh was confined by its terms to examining published data, an important restriction in that it excluded 99 per cent of hospital data from consideration.

**13.** In consequence, the Walsh Report made no worthwhile attempt to establish how many of these operations had been performed in Ireland, nor under what circumstances they had been carried out. Hospitals were allowed to self report (on total numbers performed), and no attempt was made to investigate discrepancies with other (higher) figures previously supplied by those same institutions. Extensive (unpublished) hospital records of symphysiotomy were ignored, which left important sites of symphysiotomy in Ireland unexamined.

#### **The failure of the State to identify, prosecute or punish perpetrators**

**14.** Walsh's terms precluded the identification of perpetrators. The obstetricians, anaesthetists, nurses and midwives who took part in symphysiotomies were generally noted in unpublished hospital records. No steps were ever taken to identify any personnel, including those involved in post-Caesarean symphysiotomies, which the State has admitted were wrongful. The perpetrators of these and other abusive surgeries remain officially unidentified and have never been prosecuted or punished.

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<sup>9</sup> Nils Muiznieks 2017 *Report of the Human Rights Commissioner of the Council of Europe*, p 32, para 172. Available on line: <https://rm.coe.int/report-on-the-visit-to-ireland-from-22-to-25-november-2016-by-nils-mui/16807bcf0e>.

<sup>10</sup> Survivors of Symphysiotomy 2017 op cit, 8.

<sup>11</sup> Professor Cecily Kelleher 2010. Email 1 November (series released by the Department of Health), 2-3.

### **The failure of the State to provide proper redress**

**15.** The government introduced its ex gratia payment scheme<sup>12</sup> without any admission of wrongdoing. The scheme therefore failed to meet the criterion for an effective remedy.<sup>13</sup> Victims living outside the Irish jurisdiction were effectively denied access to payment: the scheme closed after 20 days, a time limit without precedent in Ireland for such arrangements.

**16.** The scheme's insistence on medical records, mostly unobtainable after half a century, led to further injustices, as previously detailed.<sup>14</sup> The scheme relied upon radiological proofs of surgery and disability that were known to be invalid. Some 200 women, almost one third of the total number of applicants, were judged not to have had a symphysiotomy. Just 399 women out of a total of 590 succeeded in their applications to the scheme, and most received only the minimum payment of €50,000, a small fraction of the court awards made in similar cases. Payment was conditional on a widely censured waiver abrogating victims' legal rights to take further action against both private and public actors.

### **The failure of the State to provide individualised assessment**

**17.** Contrary to the express recommendation made by the Committee (and other UN treaty bodies), the terms of the scheme outruled individualised assessment of the injuries. A single assessor was given sole discretion, unfettered by independent oversight or a right of appeal. The scheme's terms also excluded oral evidence. Written survivor testimony was generally ignored, and independent medical reports were similarly discounted.

### **The failure of the State to provide adequate rehabilitation**

**18.** While the State party undertook to provide victims with health and social care services free of charge, this undertaking has never been enshrined in statute and remains discretionary. The consequences of the State's failure to ensure proper rehabilitation has become increasingly evident with the passage of time, as access to public health and social services diminishes and administrative personnel change. Most survivors today are obliged to pay privately or forego care.

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<sup>12</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>13</sup> O'Keeffe -v- Ireland [2014] 35810/09 Available at <https://rm.coe.int/16805a32bb>

<sup>14</sup> Survivors of Symphysiotomy 2017 op cit, 10-11.

**Suggested questions for the State party**

**19.** Survivors of Symphysiotomy respectfully request that the following questions be put to the State party:

- (i) Why has Ireland not implemented the recommendations made by the Committee in its Concluding Observations in relation to:
  - (a) initiating an impartial and thorough investigation into the cases of women who were subjected to symphysiotomy;
  - (b) ensuring that criminal proceedings are initiated against any perpetrators of violations of the Convention;
  - (c) ensuring that survivors of symphysiotomy obtain redress, including compensation and rehabilitation, determined on an individual basis?
- (ii) When does the State party propose to implement the recommendations of the Committee?

Marie O'Connor

Chairperson

Survivors of Symphysiotomy, and, on behalf of the Executive Committee:

Rita McCann

Shane McCann

Marion Moran

Jackie Moran

Margaret O'Dwyer

Betty Walsh

27 January 2020