

**Submission to the UN Human Rights Committee on
Ireland's Fourth Periodic Report under the
International Covenant on Civil and Political Rights**

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1. The Centre for Criminal Justice and Human Rights was established within the Faculty of Law, University College Cork in 2006. Its aims are:
 - ✚ To pursue innovative and interdisciplinary research into crime, justice and human rights and to produce scholarship of excellence in these fields;
 - ✚ To engage with and contribute to debates on law reform and policy development at national and international levels;
 - ✚ To develop innovative legal education, capacity building, training and outreach programs;
 - ✚ To foster a community of researchers in the field of crime, justice and human rights and to provide opportunities for postgraduate students and new career entrants.

2. The Centre is comprised of 10 academic staff specialising in areas such as gender and law, mental health and medical law, migration law, criminal justice and children's rights. More than 20 PhD students are affiliated with the Centre, which hosts an ongoing series of workshops, seminars and conferences and a dynamic research programme. This submission focuses on three key issues of concern to the work of the Centre for Criminal Justice and Human Rights, and raising questions of Ireland's compliance with its treaty obligations under the ICCPR. These are:
 - ✚ Symphysiotomy and pubiotomy
 - ✚ Reception conditions for asylum seekers
 - ✚ Safe and Legal Abortion and reproductive health

Symphysiotomy and pubiotomy

3. The widely criticised medical practices of symphysiotomy and pubiotomy continued in Ireland until the 1980s. Elsewhere in Europe, such practices had been discontinued since the 1940s as cesarean section operations became commonplace for difficult delivery situations in maternity hospitals. Survivor testimony collected by the Survivors of Symphysiotomy reveals the physical and mental trauma endured by women who underwent these procedures, and the absence of informed consent to such medical interventions. The continuing use of such procedures was the subject of criticism as early as 1951, by Oxford University Professor Chassar Moir, who questioned its deployment in stark and direct terms. (See: Royal Academy of Medicine in Ireland *Transactions: Section of Obstetrics*. 1951 Irish Journal of Medical Science 1951: 1026)

4. In the case *Kearney v McQuilligan*, the Supreme Court noted that the medical procedure of symphysiotomy:
 - [...] was introduced in the late 18th century. The purpose of the operation, which is performed at the end of labour, is to increase the diameters of the mother's pelvis so as to release the baby. It was introduced in an age before caesarean section

became possible, and at a time when the only alternative course might involve a destructive operation to protect the life of the mother. Foreseeable risks in the procedure were urinary tract infection, incontinence, and loco-motor disability.

The Court goes on to note that:

✚ [...] the popularity of the operation waned in the early 19th century, but thereafter interest revived in certain quarters including in some Irish hospitals. The evidence was that the procedure ceased being used, even in Drogheda, by the year 1971 (two years after the procedure in question here). It appears to have fallen out of favour in the National Maternity Hospital rather earlier, in the mid 1960s.

5. In fact, the practice of symphysiotomy continued in Ireland until the 1980s. The former Minister for Health, Ms Mary Harney, in rejecting calls for an independent inquiry commented that the practice was superseded in Ireland by Cesarean sections, in the 1980s. A documentary investigation carried out by a leading current affairs programme on Ireland's national broadcaster, RTE, found that the practice continued until the 1980s, despite being discredited as an acceptable medical procedure in developed states.
6. The Statute of Limitations acts as a barrier to women seeking effective remedies for the harms endured. The failure of the State to publish the draft Walsh report on Symphysiotomy (which does not include any testimony from survivors) adds a further layer to the State's failure to properly investigate the use of such medical procedures in Ireland. The Irish Human Rights Commission (Ireland's NHRI) has previously called upon the State to carry out an independent investigation.
7. In November 2013, the Government appointed Judge Yvonne Murphy to provide an independent report and to consult with women who had undergone symphysiotomy procedures. The terms of reference for this report include:
 - ✚ To meet women who have undergone surgical symphysiotomy procedures to assess what, in their opinion, would bring closure for them.
 - ✚ To meet insurers, indemnifiers and/or other parties in relation to such liabilities and to explore and negotiate a quantum representing a fair contribution towards a fund which would form part of an ex-gratia scheme to which Government would also contribute in order to establish an ex-gratia scheme and put closure on the issue for the women involved.
 - ✚ To assess the merits and cost to the State of proceeding with an ex-gratia scheme relative to allowing the court process to proceed.
8. Providing 'closure' to survivors of these procedures, is not and should not be the core focus of a State's response to a continuing violation of the ICCPR and of its human rights obligations thereunder. Further, it is submitted that an *ex gratia* scheme, does not meet the State's obligations to provide an effective remedy for human rights violations, or to carry out a prompt, effective and impartial investigation into the harms endured and the State's

failure to exercise due diligence with regard to the use of such surgical procedures, without informed consent, and with regard to changed medical practice and opinion.

9. From the testimony provided by survivors, as well as documented medical commentary, it is clear that the continued use of symphysiotomy and pubiotomy procedures, without reasonable consideration of more humane medical procedures, was ideologically driven and reflected ideological, religious and cultural beliefs concerning women's reproductive roles and control over the timing, spacing and numbers of children.
10. The failure of the State to provide an effective remedy for women who underwent such procedures, or to undertake a prompt effective and impartial investigation into the use of such procedures without informed consent, is a continuing violation of the ICCPR, specifically Articles 2, 3, 7 and 26.

Reception conditions for asylum seekers

11. The system of direct provision for asylum seekers and their families was introduced by the State through administrative circular in 1999. The use of the system of direct provision, which relies heavily on accommodation and catering services provided by private contractors, has been the subject of criticism by several UN human rights treaty bodies. Specifically the delays in the asylum process, the length of time that asylum seekers have to remain in direct provision centres without the right to work and with a limited social security payment of €19.10 per week (€9.50 per child), has been criticised.
12. In response to a parliamentary question in February 2013, the former Minister for Justice and Equality, Deputy Alan Shatter, provided the following statistics:

As of 11 February 2013, there are 4,735 residents in 35 accommodation centres contracted to RIA throughout the State. The following profile shows the duration of stay of residents currently in direct provision accommodation centres.

Months Currently in Direct Provision	Number of residents*
0-3	223
3-6	210
6-9	213
9-12	235
12-18	304
18-24	221

24-36	496
36+	2,833
Total	4,735

(*This profile is based on residents' most recent entry to the direct provision system. It does not include past time spent by residents who left the system for a period and subsequently sought and were granted re-access to the system.)

13. A Report published by the Irish Refugee Council in 2012 highlights the numbers of children in direct provision, and the risks to child development, to abuse and to poverty and exclusion. It is estimated that almost one third of the residents currently in direct provision are children. The Government appointed Rapporteur on Child Protection has repeatedly raised concerns as to what he has described as the 'real risk' of abuse in the direct provisions centres, and the failure to provide for private or family life for families with children.
14. The accommodation of trafficked persons within direct provision centres, does not meet the State's positive obligations to assist victims of trafficking in appropriate accommodation and has been the subject of criticism by the Council of Europe monitoring body, the Group of Experts on Action against Trafficking in Human Beings in its First National Report on Ireland (2013).

Safe and Legal abortion and the right to reproductive health

15. The Protection of Life during Pregnancy Act 2013 and Irish constitutional law, provides for a lawful termination of pregnancy only in circumstances where there is a real and substantial risk to the life of the mother, including a risk arising from suicide. No provision is made for a lawful termination of pregnancy in cases of fatal foetal abnormality, rape or incest, or in situations where there is a risk to the health or well-being of the mother.
16. The review procedures established to assess whether or not there is a risk to life arising from a risk of suicide, are both cumbersome, intrusive and distressing for a vulnerable, suicidal woman or girl, and do not comply with requirements of humane medical procedures or of equal treatment and respect for women and girls (arts 3 and 26). Given the distinctions made in terms of the review procedure, between risks to life arising from physical conditions and mental health conditions, the tendency to further stigmatisation of suicidal persons, and the discriminatory treatment legislated for, is contrary to the norm of non-discrimination established in article 2 (ICCPR).