

Survivors of Symphysiotomy (SoS)

The International Covenant on Civil and Political Rights

Fourth Periodic Review of Ireland 2014

Recommendation 11 Symphysiotomy

Response to the follow-up material submitted by Ireland to the UNHRC

1 On 14 August, 2014, the UN Human Rights Committee found that symphysiotomy, a childbirth operation that severs one of the main pelvic joints and unhinges the pelvis, was performed without the consent of the 1,500 women and girls upon whom it was perpetrated, that they sustained damage as a result of these operations and that, under Article 7 of the Covenant, the practice constituted or may have constituted torture or cruel, inhuman or degrading treatment and involuntary medical experimentation. The Committee prescribed an independent inquiry, prosecution of the perpetrators and fair compensation and rehabilitation. Far from accepting its judgement or implementing its recommendation, Ireland continues to maintain that the practice of symphysiotomy was acceptable and has refused to implement any of the Committee's prescriptions. Moreover, in its statement dated 17 July 2015, Ireland has not only engaged in obfuscation but has misled the Committee as to why the operation was practiced; the state party has also airbrushed the issue of patient consent; has effectively refused to carry out a prompt and effective inquiry; and has acted in further flagrant disregard for its responsibilities and obligations by establishing a compensation scheme, which, at its heart, shields the actors and institutions centrally involved in this human rights abuse.

Continuing breach of international human rights law

2. While Ireland makes no reference to the Covenant in its follow-up material, nor to the Committee's judgement in that regard, the state party has violated Articles 2, 7 and 17, and continues to violate Articles 2 and 7, for, *inter alia*, the following reasons:

- (i) allowing and overseeing the performance of non-consensual and experimental operations in hospitals within its territory, which were under the supervision and control of the Irish State and contracted to provide maternity services on its behalf;
- (ii) failing to carry out a prompt, impartial and full investigation into these operations;
- (iii) Failing to *prosecute and punish the perpetrators, including medical personnel*;
- (iv) Failing to *provide fair and adequate compensation*;
- (v) Establishing an *ex gratia* redress scheme which abrogates women's legal rights by requiring them to sign a waiver holding "harmless" all actors involved in the performance of these non-consensual operations.

Involuntary medical experimentation

3 Ireland has failed to address a core issue: involuntary medical experimentation. Symphysiotomy (and pubiotomy) were introduced into clinical practice in 1944 at the Catholic National Maternity Hospital (NMH), Dublin, in a mass medical experiment designed to test the viability of these operations as a replacement for Caesarean section under certain circumstances. Contrary to what the state party has suggested, the performance of these operations was gratuitous: Caesarean section, not symphysiotomy, was the norm for difficult births in Ireland at the time (as hospital clinical reports attest). The writings and utterances of the doctors most associated with the experiment underline the experimental and religiously motivated nature of their project. Dr Alex Spain admitted that he would have done symphysiotomy more frequently, were it not for the fact that 'it was an entirely new procedure to me and one that has to be faced against the weight of opinion of the entire English-speaking obstetrical world' (NMH Report 1948: 456. In *Irish Journal of Medical Science* 1949). (See also Alex Spain 1949 'Symphysiotomy and pubiotomy. An apology based on the study of 41 cases.' *Journal of Obstetrics and Gynaecology of the British Empire* 56: 576-85). Addressing an international Catholic medical congress in Dublin, Dr Arthur Barry acknowledged the safety of Caesarean section, exhorting his colleagues to cut the symphysis for religious, not for medical, reasons: 'every Catholic obstetrician should realise that Caesarean section is probably the chief cause for the practice by the profession of the unethical procedure of sterilisation and furthermore it is very frequently responsible for encouraging the laity in the improper prevention of pregnancy or in seeking its termination' (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).

4 Far from being considered 'acceptable medical practice', as the state party has alleged, the practice of symphysiotomy was roundly attacked by visiting professors from Britain, who condemned the surgery on the grounds that it led to death and brain damage in babies and skeletal and other injuries in women, while the head of the Protestant Rotunda Hospital pleaded for Caesarean section to be used instead (RAMI Transactions Section of Obstetrics 1951. *IJMS* 1951: 1031. 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, 171-2). But Barry was undeterred. Pregnant women continued to be used as guinea pigs at his hospital in the 1950s and this experimentation continued through the 1960s and '70s.

5 Survivor testimony shows that these operations, which were planned, were done without patient consent: this is a crucial issue that the state party has failed signally to address. Forms consenting to 'any operation the Surgeon considers advisable' were still in use in Ireland as late as 1984 (O'Connor: 99-100), and many were signed by survivors in the height of labour. The nature of the operation was never disclosed prior to surgery, and women were often misled. They had no knowledge of any childbirth operation other than Caesarean section, and believed that that was they were consenting to. Done without patient consent, these operations were illegal and constituted battery in Irish law, breaching, as they did, women's legal and constitutional rights, under Ireland's 1937 Constitution and under Irish case law (Haskins).

Torture, or cruel, inhuman or degrading treatment

6 These operations constituted torture, or cruel, inhuman or degrading treatment within the meaning of Article 7 of the Covenant. This is another central issue that Ireland has failed to address. Medical opinion held that a cervical dilatation of five cms was required for the surgery (Crichton D and Seedat EK 1962. 'Symphysiotomy: technique, indications and limitations.' *The Lancet* (i): 554-59), and women were generally operated upon while awake in the labour ward, not under general anaesthetic in the operating theatre. Survivor testimony shows that women were usually left in labour for many hours before being set upon by hospital staff, their legs splayed in stirrups, and operated upon, wide awake and often screaming, while those who resisted were held down by staff. Then, still in labour post surgery, the baby's head acting as a battering ram, women were left for as long as it took, hours or days, before being forced to push the baby out through the agony of an ever-unhinging pelvis. Hospital records show that women unable to delivery vaginally post symphysiotomy were eventually delivered by Caesarean section (by doctors who had earlier withheld this operation from them).

Injuries sustained by survivors

7 The state party has misrepresented the Walsh Report on symphysiotomy (para 1). Far from stating that 'post-natal check-ups indicated no disabilities for some women', the report asserts: 'the six-week check up is rarely mentioned in the respondent's (sic) accounts so it is difficult to gauge whether symphysiotomy was discussed' (page 95). The state party refers to the Cochrane review of symphysiotomy but omits to mention the authors' key statement that 'the core issue regarding the use of symphysiotomy is the possibility of long-term morbidity' (<http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD005299.pub3/full>). The authors had previously identified pelvic instability as a key complication (Hofmeyr GJ, Shweni PM *Symphysiotomy for fetopelvic disproportion (Review)* *The Cochrane Library* 2010, Issue 10 <http://www.thecochranelibrary.com>). The WHO (2001) lists pain and long term walking difficulty, *inter alia*, as risks of the procedure (WHO, UNFPA, UNICEF, World Bank. *Managing complications in pregnancy and childbirth. A guide for midwives and doctors*. Geneva: WHO 2001). That symphysiotomy leads to long term morbidity is amply borne out by survivor testimony in Ireland: many women were left permanently disabled, incontinent and in pain, while their babies, in some cases, died or were left brain damaged or otherwise injured. Many have described how the effect of being taken over in this way and operated upon willy-nilly damaged them for life, psychologically. The consequences, often lifelong, of the surgery for women included pelvic instability, walking and other difficulties, bladder and bowel injuries, vesico-vaginal fistula, organ prolapse, wound infections, mental health issues, sterility, sexual problems, and relationship issues. The medical literature of earlier decades is replete with references to the risks of symphysiotomy. See, for example, Crichton and Clarke (1966), who find find sacro-iliac, symphyseal and groin pain associated with walking difficulties in 1,389 post symphysiotomy patients (Crichton D and Clarke G C M *Symphysiotomy - Indications and Contraindications S Afr J Obstetrics and Gynaecology* 3 December 1966:73-9. <http://archive.samj.org.za/1966%20VOL%20XL%20Jan-Dec/Articles/12%20December/1.2%20SYMPHYSIOTOMY%20-%20INDICATIONS%20AND%20CONTRAINDICATIONS.%20Derk%20Crichton.%20D.%20Phil%20and%20G.C.M.%20Clarke.pdf>

A recent study done in Ireland **shows the development of osteo-arthritis in the sacroiliac joints to be a common among post symphysiotomy patients, which they authors attribute to long term pelvic instability** (Available at: <http://www.ncbi.nlm.nih.gov/pubmed/24382731>)

Failure to mount an inquiry

8 Ireland's continuing refusal to mount an inquiry into symphysiotomy means that little is known about the practice. Apart from seeking rudimentary information from 1934 onwards, the State did not require maternity facilities to collect or publish clinical data on obstetric procedures. The evidential base for the state party's assertions in relation to symphysiotomy is therefore weak. Not was it a generally

approved practice in Ireland, as claimed by the state party. The bulk of these operations were done by a small number of powerful doctors in very senior positions: over 800 symphysiotomies were recorded in three private Catholic teaching hospitals. Only four hospitals in the State, which catered for around one quarter or less of the total number of childbearing women in that era, published data on obstetrical procedures in their annual clinical reports. The Walsh Report failed to analyse these reports comprehensively, and those data have never been subjected to comprehensive analysis by the State or by its agents. Access to other truth finding mechanisms is extremely limited. In April, 2015, the Irish Human Rights and Equality Commission declined to conduct an inquiry into these operations. Victims' access to the courts, is limited by the stringent law of limitations in Ireland, which affords no judicial discretion.

9 Ireland appears to have adopted a policy of 'delay until they die' in relation to symphysiotomy survivors. Instead of mounting an inquiry into the practice in 1999, Ireland waited until 2011 to commission a highly restrictive review, whose terms of reference (agreed with the author) excluded both unpublished data and survivor testimony. The state party received this report in November 2012, but failed to publish it until July 2014, when it issued immediately prior to SoS's participation in Ireland's examination by the Committee.

10 The Walsh Report found, in effect, that 97 per cent of these operations were medically appropriate. However, it failed to adequately or impartially investigate the practice of symphysiotomy, in violation of Ireland's obligations pursuant to the Covenant, for, *inter alia*, the following reasons:

- (i) the exclusion of unpublished data from the report's terms of reference meant, in effect, that clinical data was off limits: almost all hospital records, by definition, are unpublished. No adequate attempt was made to establish the circumstances under which these operations were carried out, so the report's claim that they were medically appropriate is without foundation;
- (ii) the exclusion of survivor testimony prevented the first hand accounts of survivors from becoming part of what is known about the practice of symphysiotomy;
- (iii) the report ignores contemporaneous (and later) evidence showing conclusively that the introduction of symphysiotomy into clinical practice in Dublin in 1944 was a mass medical experiment;
- (iv) the report wrongly defends the practice of symphysiotomy on the basis that it was a 'safer' operation than Caesarean section;
- (v) Wrongly, the report justifies doctors' failure to seek patient consent, by stating that informed consent was not a legal requirement in Ireland.

Failing to prosecute the perpetrators

11 Far from facilitating access to judicial remedies, Ireland has repeatedly sought to block any avenue that might offer survivors a determination of truth or a mechanism for justice, including accountability. Instead of prosecuting and punishing the perpetrators, including medical personnel, Ireland has done everything in its power to protect them. In 2013, the Government withdrew its support for a Private Members' Bill designed to facilitate survivors' access to judicial remedies, thereby protecting doctors, hospitals, and the State itself from civil suits for personal injuries. In July 2014, in the run up to the Committee hearing, Ireland established an *ex gratia* scheme, without any accompanying admission of liability. Earlier this year, the European Court of Human Rights (O'Keefe -v- Ireland) confirmed that *ex gratia* redress without an admission of State liability cannot be considered an effective remedy. The *ex gratia* scheme shields the perpetrators, by making payment conditional on applicants signing a waiver indemnifying all actors and agencies, both public and private, involved in these acts of surgery. This makes it the functional equivalent of an amnesty law, which may be in breach of the Covenant.

Failing to provide fair compensation

12 The scheme, which gives a sole assessor unfettered discretion, gave applicants a 20-day period in which to apply, making it almost impossible for women resident outside Ireland to do so. The scheme

- (a) fails to protect women's legal rights, vitiating them through the waiver, and excluding all right of appeal;
- (b) provides no mechanism for considering survivor testimony; or damage reports from independent doctors;
- (c) pays compensation (averaging €65,000) that is 20 per cent of the awards made by the courts for commensurate injuries;

Litigation

13 Ireland's strategy is to use its vast resources to make it almost impossible for survivors to mount challenges in the courts while coercing them into accepting minimalistic compensation through its no fault payment scheme. Three symphysiotomy cases have been ventilated in the Irish Courts to date: Kearney v McQuillan, where the Supreme Court stated that symphysiotomy was not justifiable, Anon v Ryan, which settled after three days at hearing, and Farrell v Ryan, where the High Court held against the plaintiff. The latter is currently on appeal to Ireland's Supreme Court. While publicly maintaining that survivors are free to pursue cases through the Irish legal system, the state party has placed numerous legal obstacles in the way of survivors who have initiated litigation. Ireland, via the State Claims Agency, which is responsible for defending legal claims, has defended all legal claims by symphysiotomy survivors with increasing aggression in recent years. The Agency has unflinchingly invoked the Statute of Limitations to try to defeat these actions and has used its multi-billion euro budget to deploy doctors to contest all elements of survivors' claims, including injury. Moreover, due to the limited time in which a survivor can pursue her claim and because the doctors involved are now largely deceased, survivors are prevented from making any pleadings in respect of patient consent. It has always been open to Ireland to instruct the State Claims Agency to settle these legal actions: the early settlement of legal actions has been recommended in other jurisdictions dealing with historical institutional abuse (see Consultation Paper on Civil Litigation and Redress, Royal Commission into Institutional Responses to Child Sexual Abuse, Australia, January 2015). Furthermore, it has been recommended that the statute of limitations should not be pleaded as a defence (*ibid*). Contrary to best practice, internationally, therefore, Ireland has deliberately chosen to pursue a highly aggressive litigation strategy against symphysiotomy survivors, while establishing a minimalistic compensation scheme which abrogates their legal rights.

Rehabilitation

14 The claims made by the state party in respect of medical service are somewhat illusory, in SoS's experience: these services, which are discretionary, have been heavily eroded in recent years. Survivors have had their medical eligibility suspended while under bureaucratic review at intervals; independent clinical assessment and advice are virtually unobtainable; instead of being fast tracked, survivors take their place in lengthy queues for publicly funded health services; physiotherapy and home help services are almost inaccessible; and home modifications have been unavailable for some years.

NOTE

Survivors of Symphysiotomy is today the national membership organisation for some 400 survivors of symphysiotomy. A campaigning, all-volunteer group, with an elected National Executive made up almost exclusively of survivors, the organisation is unfunded by the State and independent of government. The organisation's work can be divided into three:

(i) **Political and lobbying work:** Survivors of Symphysiotomy has campaigned tirelessly for a public inquiry into the practice of symphysiotomy; given numerous briefings to Dail deputies (members of Ireland's national Parliament); organised petitions and public demonstrations; campaigned for the lifting of the State of Limitations for survivors of symphysiotomy, and engaged with UN human rights processes.

(ii) **Research and media:** SoS Chairperson Marie O'Connor is the author of *Bodily Harm Symphysiotomy and Pubiotomy in Ireland 1944-92* (Everson, Westport, 2011), a fully referenced research report that examines the practice of these covert operations, reveals the circumstances under which they were carried out, considers the surgery from a legal perspective, documents survivors' lived experiences and presents their case for truth and justice.

Survivors of Symphysiotomy is very active in both the traditional and social media: the issue of symphysiotomy has been covered by CNN, Al Jazeera and the BBC, as well as by the British and Irish press. The organization's website is ranked in the top three by Google, and it also runs a very active Facebook campaign and a Twitter account. See:

<http://symphysiotomyireland.com/>

<https://www.facebook.com/SoS-Survivors-of-Symphysiotomy-173631906029192/timeline/>

Symphysiotomy (SoS) tweets at @SoS_Ireland

(iii) **One to one support:** Advice and support is provided to members on a one-to-one basis in relation to health, legal, political, and other matters. There is a strong culture of participation within SoS and this is reflected in the very large attendances at meetings, with 200 survivors and family members, or more, regularly attending EGMs.