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Survivors of Symphysiotomy

Submission to the Council of Europe

Istanbul Convention

on

Violence Against Women

August 2022

Violence against women in reproductive healthcare

Introduction

1. The prohibition of gender-based violence against women that has evolved into a principle of customary international law is one that Ireland has violated, and continues to violate, in reproductive healthcare. This submission outlines the past and continuing violence and mistreatment routinely perpetrated against women and girls in maternity care that is exemplified by Ireland's practice of forced symphysiotomy. This was a discarded and dangerous birth operation that was performed coercively for four decades in the absence of medical necessity as a matter of policy, for reasons of social control. The government's failure to protect women in maternity care then, and to vindicate their rights now, constitutes past and continuing violations of international law, the Constitution and the laws of Ireland. The State's failure to mount an effective inquiry into the practice of forced symphysiotomy has enabled a wider culture of violence and mistreatment in maternity care to continue unchecked, premised as it is on coercive healthcare policy and practice, and buttressed by inadequate accountability mechanisms and significant barriers to access to justice.

2. The UN Rapporteur on violence against women, Dubravka Šimonović, highlighted Ireland's practice of forced symphysiotomy, describing it as 'a human rights violation and a form of violence against women that could amount to torture'. [1] Forced symphysiotomy is analogous in many ways to forced sterilisation, which is expressly prohibited by the Istanbul Convention (article 39 (b). Although both lie at opposite ends of the reproductive spectrum, both involve the performance of reproductive surgery on powerless women in childbirth, in pursuit of prohibited ends devised by powerful doctors. Forced sterilisation aims, surgically, to permanently end a woman's reproductive capacity by ligating her Fallopian tubes, while forced symphysiotomy aims, operatively, to permanently maximise a woman's reproductive capacity by

[1] Dubravka Šimonović, Report of the UN Special Rapporteur on Violence Against Women to the UN General Assembly 2019 *A human rights based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence.* UN Doc A/74/137, paras 40, 49; 4, 12. 11 July 2019. She found obstetric violence to be 'widespread and systematic in nature'.

severing her symphysis. Both practices can be seen to constitute gender based violence, since both are medically unjustified and both are coercive. Both, additionally, led to severe and lifelong suffering, physical and/or mental. At the core of both lie the denial of women's human dignity and the invasion of their bodily integrity.

3. 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 1,500 women who had their pelvises severed in symphysiotomy in Ireland, without their free and informed consent, from 1944 to 1987.[2] Almost every survivor left hospital not knowing she had been subjected, covertly, to symphysiotomy. That knowledge came some fifty years later, sparked by media coverage.[3]

4. A former Special Rapporteur on Torture, Sir Nigel Rodley, then chair of the UN Human Rights Committee, now sadly deceased, told Ireland in 2014 that the practice of symphysiotomy constituted torture.[4] This was a gender-specific and discriminatory form of torture and ill treatment that was deliberately inflicted on women and girls in a manner that deprived them of all legal rights, including the right to refuse medical treatment, and led to severe and lifelong physical and mental suffering. Forced symphysiotomies violated such human rights as the right to be free from torture, cruel, inhuman or degrading treatment and gender-based violence and discrimination in hospitals and maternity homes; self determination, autonomy and human dignity; the right to refuse medical experimentation and treatment; and rights to health; privacy and family life.

5. The Committee on the Elimination of Discrimination Against Women (CEDAW) concluded in 2017 that 'the medical practice of symphysiotomy gives rise to serious violations that have a continuing effect on the rights of victims/survivors of those

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2 UN Human Rights Committee, Concluding observations on the Fourth Periodic Report of Ireland. Ireland CCPR//C/IRL/CO/4, para 11 (adopted 23 July 2014). On line. Available at: http://ccprcentre.org/doc/2014/07/CCPRCIRLCO4_E.pdf

3 Morrissey J 1999 'Midwifery of darker times.' *Irish Times* 6 Sept.

4 During Ireland's examination by the Treaty Body Cahill A 2014 *The Irish Examiner* 17 July 2014. Available on line: https://www.irishexaminer.com/analysis/a-misogynist-state-275685.html.

violations'.[5] Almost every women was left with lifelong disability. Survivors have testified to severe and continuing suffering, such as movement difficulties, urinary incontinence, chronic pain and mental anguish. The surgery disrupted mother-child bonding; adversely affected women's intimate lives; and stressed marital and family relationships. These effects, in the vast majority of cases, are continuing. The State has failed to provide victims with an effective remedy.[6] No effective inquiry has ever been carried out into the practice by the State, nor has it offered any restitution commensurate with the harm inflicted. There has been no official acknowledgement of, or apologies for, wrongdoing, nor any guarantees of non-repetition. As Sir Nigel Rodley observed in 2014, 'there remains the problem of accountability, of assault'.

Symphysiotomy policy and practice

6. Symphysiotomy is an 18th century childbirth operation that severs the pelvis by incising the symphysis pubis, the joint at the junction of the pubic bones that binds the two sides of the pelvis. The practice of forced symphysiotomy originated at the National Maternity Hospital, Dublin in 1944, in a mass medical experiment aimed ultimately at replacing Caesarean section, the normative treatment for difficult births, with symphysiotomy, a long discarded and dangerous operation. Senior Catholic doctors set out to pre-empt the practice of birth control by women and girls, severing the pelvis to enforce vaginal delivery in the index birth, and avoid the need for future Caesarean sections, which were seen as a barrier to childbearing without limitation. Ireland is the only country in the world to have practised symphysiotomy as a non-emergency procedure in the mid to late 20th century.

7. Some women had their pelvises divided under general anaesthetic during late pregnancy before the onset of labour or in the aftermath of Caesarean section. But most women were subjected to the surgery during labour, before being set upon by hospital

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5 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. Available on line: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2fCO%2f6-7&Lang=en

6 UNHRC 2014 op cit. CEDAW 2017 op cit. Referencing symphysiotomy in 2014, Sir Nigel Rodley told Ireland that 'it is time the Irish State stopped its automatic response to every scandal being to first deny, then delay, then lie, cover up and eventually, if forced, throw some money at it and hope it will go away'. Cahill A 2014 op cit.

staff, and operated upon, wide awake under often inadequate local anaesthetic, without their knowledge or consent. Women unable to delivery vaginally post-operatively were eventually delivered by Caesarean section by doctors who had earlier withheld this operation from them. An estimated 1,500 women and girls were subjected to symphysiotomy without their free and informed consent in public and private hospitals from 1944-1987,[7] generally in the absence of medical necessity. Many women were left permanently disabled, their lives irreparably damaged by the surgery, while in some cases their babies died. Other children were brain damaged, a known risk of the process,[8] or otherwise injured.

Violence against women

8. In 2014, the UN Human Rights Committee, citing, inter alia, article 7 of the International Covenant on Civil and Political Rights, that symphysiotomy had been performed on 1,500 women and girls without their informed consent.[9] UNCAT, in its concluding observations on the practice of forced symphysiotomy in Ireland in 2017, cited articles 2, 12, 13, 14 and 16 of the Convention Against Torture.[10]

9. Ireland's practice of forced symphysiotomy violated its obligations under the Convention (article 39 (b)) for the following reasons:

(i) forced symphysiotomy, a dangerous childbirth operation introduced into obstetric practice in Dublin, the practice of which was documented from 1944-1984, is analogous to forced sterilisation, which is prohibited by article 39 (b);

(ii) forced symphysiotomy, like forced sterilisation, was performed without patient consent and in the absence of clinical need, and inflicted severe and continuing physical as well as mental suffering;

(iii) symphysiotomy was deliberately inflicted on selected women and girls in a discriminate manner before, during and after childbirth;

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7 UNHRC 2014 op cit.

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

9 UNHRC 2014 op cit.

10 Committee against Torture 2017. Concluding observations on the second periodic report of Ireland. CAT/C/IRL/2, paras 29-30. 9 and 10 August 2017. On line. Available at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_COC_IRL_28491_E.pdf

(iv) symphysiotomy was generally a planned procedure that was intentionally inflicted for a prohibited purpose on women and girls in the absence of clinical need, to enforce vaginal delivery and pre-empt the use of birth control;

(v) symphysiotomy, which was practiced in public hospitals and in private hospitals and maternity homes that delivered maternity services on behalf of the State, entailed public official involvement;

(vi) the State took no measures to prevent the performance of symphysiotomy on women and girls from 1944, despite the fact that these operations were performed in the absence of clinical necessity;

(vii) Ireland has failed, and continues to fail, to provide an effective remedy to survivors of symphysiotomy;

(viii) Ireland has failed, and continues to fail, in its obligations under the aforementioned Conventions, including the Istanbul Convention, and under Article 3 of the European Convention of Human Rights and Fundamental Freedoms, to put in place mechanisms to protect against the abuses of human rights constituted by the operations in question;

(ix) Ireland has failed, and continues to fail, 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.

Past and continuing acts of torture or ill treatment

10. The vast majority of women were operated upon during labour, an extended period of extreme vulnerability. Women scheduled for symphysiotomy were obliged to labour for as long as it took, up to two days in some cases, for their cervixes to dilate to the requisite degree for surgery.[11] Even by the standards of the time, these labours were arduous. Babies occasionally died while staff waited for labour to 'progress'. Women in the height of labour were then set upon in the labour ward, and had their symphyses severed, generally without prior notice.

[11] Our Lady of Lourdes Hospital Drogheda International Missionary Training Centre Clinical Report Maternity Dept 1960-61: 36.

11. The surgery was initially carried out under general anaesthetic, but the policy changed in 1952: henceforth, in the fetal interest, the surgery was to be performed under local anaesthetic. [12] [13] This added to the burden of physical and mental suffering that these operations generally entailed. Anaesthetic failures were common. Some surgical techniques were more cruel than others: Zarate's method, which was widely used, was particularly inhuman. It entailed the partial cutting of the woman's symphysis, followed by the manual separation of her pubic bones 'by forceful abduction [splaying] of the thighs'. [14] Women recalled being physically restrained by hospital staff as they struggled and screamed against the surgery, fully conscious, in the height of labour.[15] The experience of non-consensual surgery was traumatising for many, and gave rise to feelings of intense fear, terror and anguish. Their feet manacled in obstetric stirrups or held apart in the 'stranded beetle' or lithotomy position, women experienced this invasive genital surgery as profoundly humiliating, carried out, as it was, before groups of mainly male medical students. Women were then forced to go on for as long as it took, post-operatively (fourteen hours in one case[16]) until the baby came, the pain of labour forcing its way through the agony of the surgery, while the fetal head acted as a 'battering ram' [17] further prising open the mother's pelvis. Women were then delivered, generally by forceps or vacuum extraction, in what Professor Chassar Moir of Oxford University condemned as 'brutalising vaginal deliveries'.[18] The use of such instruments and machines, which required further surgery to enlarge the birth canal, added another dimension of pain and suffering to these already harrowing births.

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[12] Morrissey J K 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.

[13] The use of local anaesthetic also meant the surgery could be performed in the absence of medical infrastructure. The National Maternity Hospital was then building itself up as an international teaching hospital, and the operation was seen as 'enormously useful as a substitute for Caesarian (sic) section in conditions in Africa and India'. Farmer T 1994 *Holles Street 1884-1994 The National Maternity Hospital A Centenary History* Farmar Dublin, 118.

[14] Maharaj D and Moodley J 2002 'Symphysiotomy and fetal destructive operations.' *Best Practice and Research Clinical Obstetrics and Gynaecology* 16 (1): 117-131.

[15] Survivors of Symphysiotomy 2014 Submission to the United Nations Committee Against Torture: 9.

[16] Our Lady of Lourdes Hospital Drogheda 1960-61, op cit, 35.

[17] Royal Academy of Medicine in Ireland 1951 'Transactions.' *Irish Journal of Medical Science* 1951: 1026.

[18] Morrissey J K 2004 op cit, 164.

12. Symphysiotomy was also carried out before and after labour. Women subjected to antenatal symphysiotomy were forced to endure the final weeks of their pregnancy in severe pain, unable to walk. Admitted to hospital at 40 weeks, their babies were extracted by forceps under general anaesthetic. In other recorded cases, doctors carried out symphysiotomy in the aftermath of Caesarean section on patients who were under general anaesthetic. They, too, endured severe post-operative pain following this second and wholly gratuituous operation, which brought its own life-altering consequences.

13. The postnatal period, a time of unique vulnerability, was characterised by further violence and mistreatment which gave rise to further severe physical and mental suffering. Women were forced to walk on their divided pelvises within a couple of days of giving birth, apparently as a matter of policy, and they found this enforced walking excruciatingly painful.[19] The post-symphysiotomy pain was so severe in many cases that women required daily painkilling injections in addition to strong oral medication. Mothers were separated from their newborn babies (who were routinely placed in intensive care) and this enforced separation generally continued during their hospital stay (which lasted for two weeks or so). The fear and anguish of not being able to see their children, of not knowing, in some cases, whether they were alive, was exacerbated by the refusal of healthcare practitioners to give them any information. This added significanty to the mental suffering experienced by so many mothers during those very first postnatal weeks.

Past and continuing severe physical and mental suffering

14. Symphysiotomy is a destructive operation that effectively unhinges the pelvis, a pivotal structure that supports the spinal column as well as key internal organs. The procedure carried a 10 per cent fetal death rate, a fact acknowledged by its proponents.[20] Other infants were seriously injured, with some sustaining brain damage, another known risk of the process.[21] As well as grossly disrupting the normal course of pregnancy, labour and the postnatal period, the surgery had life altering and life long

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19 O'Connor M 2011 *Bodily Harm: symphysiotomy and pubiotomy in Ireland 1944-92.* Evertype, Westport: 27.

20 Feeney J K 1956 *Coombe Lying-In Hospital Report* 1956. In Morrissey J K 2004 op cit, 175.

21 Royal Academy of Medicine in Ireland 1950 op cit, 860.

effects in the vast majority of cases, severely disrupting marital and family relationships, and, long term, leaving women unable to work inside or outside the home, or take part in recreational, sports or cultural activities.

15. The surgery had an enduring effect on the psychological integrity of those subjected to it. Admitted to hospital as young, healthy women, survivors were discharged traumatised, disabled, in pain and incontinent, effects that continue today almost half a century later. Unable to walk, these young women were reliant on others for assistance. They could not understand why they were disabled, why they were unable to care for their children, why they were mentally traumatised, why they were unable to resume sexual relations. Some suffered a nervous breakdown following the surgery. Some women could not bring themselves to have another child post symphysiotomy, so terrifying was the experience. Many mothers experienced bonding difficulties: the surgery disrupted the unique early attachment period, and this led in some cases to continuing emotional distancing. For many, the disruption to their sexual lives was permanent and this led, in some cases, to marriage break-up. Depression was, and remains, very common among survivors. Some continue to suffer from claustrophobia, panic attacks, or post-traumatic stress disorder, re-living the experience of forced symphysiotomy in nightmares, flashbacks and intrusive thoughts.

16. Women's bodily integrity was equally affected. The surgery deprived women of their ability to walk, a basic bodily function, and generally led to lifelong locomotor difficulties. Many women continue to walk with a limp today and most are effectively unable to ascend or decend a stairway. Some continue to suffer from pelvic instability, and sustain recurring falls. Almost every woman continues to suffer from severe pain in the lower back, sacroiliac joints and pelvic area that is unresponsive to treatment. Some suffered bladder and/or bowel injuries during the surgery and, for very many, urinary incontinence, and in some cases, bowel incontinence, have been a continuing and distressing side effect. In the worst cases, women were left with a fistula that never healed: this led to very severe incontinence, which led to lives lived in near total social isolation. Uterine prolapse was common: in younger women, this was treated with hysterectomy, and induced premature menopause. Some women suffered recurring and lifelong urinary tract infections, while others developed wound or bone infections at the site of the operation, which in some cases became chronic.

The absence of a therapeutic purpose

17. In 2013, the UN Special Rapporteur on Torture found that 'medical care that causes severe suffering for no justifiable reason can be considered cruel, inhuman or degrading treatment'.[22] The practice of forced symphysiotomy was unjustifiable, because it lacked a therapeutic purpose. No one could say whether or not a woman might not have delivered vaginally without it. Victims were denied an opportunity to labour and give birth without being assaulted in the labour ward. Symphysiotomy was also performed post Caesarean section: Ireland's Supreme Court found the operation without justification.[23]

The gratuitous practice of a harmful operation

18. Symphysiotomy was introduced into clinical practice and performed routinely in Ireland in the absence of medical necessity. Should operative intervention be required, Caesarean section, an infinitely safer and normative treatment, was at all material times readily available. The practice of forced symphysiotomy constituted a gross interference with bodily integrity that significantly impaired the exercise of women's human rights and fundamental freedoms. The operation was not a generally accepted practice in Western medicine in 1944, because it was seen as being unacceptably destructive and harmful. Doctors generally refused to perform it, even as a last resort. Until Caesarean section became safe enough to be acceptable, craniotomy, a destructive procedure that decapitated the fetus, was the normative procedure in Europe and the United States to save a woman's life.[24]

Discrimination

19. The abuses in question here were perpetrated upon women and girls for reasons of discrimination based on sex, in contravention of Art 1 of the Convention Against

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[22] Mendes J E (2013) UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/HRC/22/53 (2013), para 39. On line. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf

[23] Kearney v McQuillan and North Eastern Health Board [2012] IESC 43. On line. Available at: http://www.bailii.org/ie/cases/IESC/2012/S43.html.

[24] Shorter E 1983 *A History of Women's Bodies* Allen Lane London, 81-88.

Torture. Performed without informed consent, as it was, the sectioning of the pelvis in childbirth constituted gender-based violence. Moreover, these operations were discriminatory on other grounds: age, health, parity, anatomy and, apparently, socio-economic status all formed the basis of a deliberate and methodical selection process (see the following para).

Deliberate infliction of torture, cruel, inhuman or degrading treatment for a prohibited purpose

20. The practice of forced symphsyiotomy was carried out for a prohibited purpose: non-consensual medical experimentation. Half a century after Caesarean section had established itself in the Dublin maternity hospitals, Dr Alex Spain embarked on a mass medical experiment at the National Maternity Hospital aimed at replacing Caesarean section in selected cases with symphysiotomy.[25] Young, healthy women pregnant with their first child were the preferred subjects for this experiment:[26] some of these abusive surgeries were perpetrated on girls as young as 15 and 17.[27] Within the category of young, healthy, first time mothers, doctors made a further selection. Women whose pelvises were suspected of being slightly too narrow to permit vaginal delivery; or whose pelvic measurements led to a diagnosis of minor to medium disproportion,[28] were selected for surgery that was aimed at enforcing vaginal delivery. Spain's successor, Dr Arthur Barry, repeatedly urged his colleagues to experiment with symphysiotomy: 'I do not yet know what limits should be placed on the operation … enlarge the pelvis and the baby's head will fit through'.[29] Pregnant women, many of them less well off, were used as guinea pigs for twenty years to test a harmful operation for which there was no medical need. Patient consent to symphysiotomy was not seen as a requirement. Publicly challenged over the non-consensual practice of symphysiotomy, Barry replied: 'surely it will be a sad day for obstetrics when we allow the patient to direct us as to the line of treatment which is best for the case'.[30]

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25 Morrissey J K 2004 op cit, 154.

26 Ibid.

27 Stuart J J 1960 'Coombe Lying-In Hospital Report' 1960 In *Irish Journal of Medical Science* 1961: 56-7.

28 Barry A 1954 'Conservatism in Obstetrics.' *Transactions of the Sixth International Congress of Catholic Doctors* John Fleetwood Ed Guild of St Luke SS Cosmas and Damian Dublin, 122-166. In O'Connor M 2011 op cit, 76-77.

29 Royal Academy of Medicine 'Transactions'1950 *Irish Journal of Medical Science* 1950: 866.

30 Royal Academy of Medicine 'Transactions'1955 *Irish Journal of Medical Science* 1955: 530.

A surgical practice whose purpose was social control

21. Dublin's symphysiotomy experiment was impelled by religious, not medical, considerations, an aspect that concerned the UN Committee Against Torture. The performance of postnatal symphysiotomies, in particular, highlighted the fact that social control, not therapeutic treatment, was the specific purpose. Powerful Catholic doctors who subscribed to the natural law viewed women, stereotypically, as vessels for procreation: nine or ten children was seen by them as the ideal family size. However, the so-called rule of three capped the number of Caesareans that could safely be performed on the same woman. Caesarean section, in Barry's view, was a moral hazard that led to birth control, a practice which was prohibited by the Church. He wrote that Caesarean section encouraged 'the laity in the improper prevention of pregnancy or in seeking its termination' and was 'probably the chief cause … of the unethical procedure of sterilisation'.[31] Proponents of symphysiotomy, such as Barry, sectioned the pelvis of selected women to surgically ensure childbearing without limitation.

Public official involvement in and failure to prevent acts of torture, cruel, inhuman or degrading treatment

22. These operations were performed by doctors working in public institutions that were owned and managed by the State, and in private hospitals and maternity homes that were statutorily contracted by the State to provide maternity services. The healthcare professionals who took part in these operations in public hospitals were salaried State employees. They were aware or should have been aware that the use of local anaesthetic in preference to general anaesthetic (from 1952) added significantly to the quantum of severe physical and emotional pain and suffering inflicted by these coercive surgeries. These operations were generally conducted by consultant obstetricians or were carried out under their direct supervision. Midwives actively participated in these acts of torture, cruel, inhuman or degrading treatment by restraining women physically during the act of surgery, forcing them to walk on their sundered pelvises post operatively, and refusing to give them information about their

[31] Barry A 1954 op cit, 122-6.

surgery. Survivors, in consequence, left hospital unaware that they had been operated upon and were denied the opportunity to optimise their recovery.

23. Ireland's practice of forced symphysiotomy persisted for four decades. Hospitals that were sites of forced symphysiotomy were repeatedly accredited for training purposes in obstetrics and midwifery by State regulatory boards, such as the Medical Council and the Irish Nursing Board. Such regulators failed in their duty to halt the practice of these destructive, gratuitous and involuntary operations.

24. Ireland failed in its duty to protect and vindicate the rights of women and girls not to be subjected to the torture, cruel, inhuman, or degrading treatment entailed in these unwarranted, harmful and non-consensual childbirth operation. From 1934, public health authorities had a non-delegable statutory duty ensure the safety and well-being of women in childbirth. Clinical reports detailing the performance of these abusive operations were sent to the Department of Health. Despite wide powers of investigation, the State failed to investigate the practice, and to prevent acts of torture, cruel, inhuman or degrading treatment from being committed on territory under its jurisdiction.

The failure of the State to carry out an effective investigation

25. There has been no effective investigation into the practice of symphysiotomy. Notwithstanding three official reports, there has been no independent, impartial or comprehensive inquiry. None of the perpetrators of these non-consensual surgeries have been held to account. Twelve years after the practice had been publicly exposed, following repeated demands for an inquiry from Survivors of Symphysiotomy, the State commissioned a partial and narrow review that lacked independence.[32] Its terms and author were agreed between the Institute of Obstetricians and Gynaecologists– some of whose members had carried out these abusive operations–and the Department of Healthm which allowed and oversaw the practice.[33] These terms ruled out oral evidence and unpublished data, excluding written survivor testimony and 99 per cent of hospital records. The Walsh Report justified the general practice of forced symphysiotomy and, ignoring Ireland's 1937 Constitution and the judgment of the Irish

[32] 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

[33] Dr Jennifer Martin Deputy Chief Medical Officer 2011 Email to Tom Moran et al 12 May.

Supreme Court[34], found, wrongly, that patient consent to medical treatment was not then or now a general legal requirement.[35] Two further reports commissioned by the State relied on this review.

26. The second government-commissioned report was tasked solely with weighing up the financial advantage to the State of redress versus the defence of some 180 symphysiotomy actions then being taken. The Murphy Report concluded that an ex gratia redress scheme would save the government approximately €60 million.[36]

27. The third official report, the Clark Report, exceeding the terms of reference, devoted some 600 pages to justifying the practice of forced symphysiotomy, an operation it presented as safe and appropriate. Less than 100 pages of text were devoted to the scheme's assessment process, much of it subjective and anecdotal.[37] The report, which was dismissive about the issue of patient consent, and the findings of UN treaty bodies, made a number of derogatory comments about the applicants to the scheme. Its prejudicial portrayal of those who were unsuccessful as false claimants was widely criticised by human rights defenders, including the Human Rights Commissioner of the Council of Europe. The Harding Clark Report caused immense distress to survivors and, in particular, to elderly women who had applied to the scheme in good faith and who were unable to access the medical records, many of them going back half a century, that were required by the scheme as proof of surgery.

The failure of the State to provide adequate restitution

28. The government's ex gratia payment scheme was introduced without any admission of wrongdoing. The scheme therefore failed to meet the criterion for an effective remedy.[38] 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

34 Daniels v. Heskin [1954] IR 73.

35 Walsh O 2014 op cit, 70.

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

37 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

38 O'Keeffe –v- Ireland [2014] 35810/09 Available at https://rm.coe.int/16805a32bb

such administrative arrangements. Contrary to the recommendations made by UN treaty bodies, individualised assessment was out ruled. A single assessor was given sole discretion, unfettered by independent oversight or a right of appeal. Women were silenced: the scheme's terms excluded oral evidence and written survivor testimony was generally ignored. Independent medical reports were similarly discounted. The scheme's insistence on medical records, mostly unobtainable after half a century, led to further injustices. These grave injustices were compounded by the scheme's reliance on proofs of surgery and disability that were known to be invalid. Modern x-rays were used to out rule prior symphysiotomy, [39] although the scheme had previously established that such x-rays could not be relied upon as proof of surgery carried out some 50 years earlier. Many applicants, whose medical records showed symphysiotomy, were found, wrongly, to have 'no evidence of prior symphysiotomy', based on an initial 'blind' reading of their modern x-rays. These images were also used to assess significant disability.[40] Some 200 women, almost one third of the total number of applicants, were judged not to have had a symphysiotomy. Most of those who were permitted to enter the scheme received only the minimum payment of €50,000, a small fraction of the court awards made in symphysiotomy cases. Payment was conditional on a waiver abrogating victims' legal rights, 'holding harmless' those responsible for these abusive surgeries and indemnifying private actors and entities, such as religious congregations, and public bodies and officials as a condition of payment. The waiver was censured by human rights bodies in Ireland, such as the Irish Human Rights and Equality Commission, and internationally, by the Human Rights Commissioner of the Council of Europe.

The failure of the State to guarantee rehabilitation

29. While the State undertook to provide victims with health and social care free of charge, this undertaking has never been enshrined in statute and remains discretionary. The consequences of the State's failure to guarantee rehabilitation is becoming increasingly evident as access to public health and social services diminishes. Most survivors today are obliged to pay privately or forego care.

39 Harding Clark 2016 op cit, 46-48, paras 102-103.

40 Ibid, 48, para 106.

Conclusions and recommendations of international human rights bodies

30. Ireland's failure to provide an effective remedy to survivors of symphysiotomy has been censured by international human rights bodies. In 2014, the UN Human Rights Committee, citing Articles 2 and 7 of the International Covenant on Civil and Political Rights, expressed concern that symphysiotomy had been performed on some 1,500 women 'without their free and informed consent',[41] and that the State had failed to undertake an effective investigation, and to provide adequate restitution for the damage sustained. The Committee called upon Ireland to undertake an effective inquiry, 'prosecute and punish the perpetrators, including medical personnel', and provide survivors with an effective remedy, 'including fair and adequate compensation and rehabilitation, on an individualized basis'.[42] Similar findings and recommendations were made by the CEDAW Committee in February 2017. That Committee concluded that the State had failed to implement the UNHRC recommendations, and that 'no effort has been made to establish an independent investigation to identify, prosecute and punish the perpetrators who performed the medical procedure of symphysiotomy without the consent of women'.[43] Calls for an independent inquiry were reiterated in August 2017 by the UN Committee Against Torture. In its concluding observations, UNCAT called for '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'.[44]

31. The Human Rights Commissioner of the Council of Europe also reached similar conclusions in 2017. Referring to the three State-commissioned reports on symphysiotomy, Mr Nils Muiznieks found that 'the first report could not be considered as independent, an important shortcoming given that the two ensuing reports relied heavily on its findings' (p 32, para 172).[45] The Commissioner found the Harding Clark

41 UNHRC 2014 op cit.

42 Ibid.

43 Committee on the Elimination of Discrimination Against Women 2017 op cit, p 4, para 14 (b)

44 Committee against Torture 2017 op cit.

45 Nils Muiznieks 2017 Report 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.

Report to be problematic in tone and in content, and in its attitude to survivors (para. 20). Mr Muiznieks highlighted particular inadequacies of the government payment scheme, such as its ex gratia nature, which admitted 'no wrongdoing or liability', the 20-day time period laid down for applications, the level of compensation, which was 'considered to be very low compared to the level of abuse endured', and the legal waiver which was a condition of payment.

Access to justice

32. Many survivors commenced legal action in 2002, and these actions provided the impetus for the State payment scheme introduced in 2014. Ireland's stringent law on limitations was (and remains) a significant barrier to justice, however. The government stymied a Private Members' Bill in 2013 that proposed to set aside the law on limitations for survivors for one year, refused the offer of a collective settlement and subsequently introduced its own payment scheme.

33. In recent years, the State has used its vast resources to defend symphysiotomy actions in the courts to the hilt, pitting itself against elderly women of slender means. Free legal aid is not generally available in civil cases. Costs have also been awarded against unsuccessful plaintiffs. A case involving an antenatal symphysiotomy performed in 1963, twelve days before the onset of labour, was defeated in 2016: the fact that costs were awarded by the Court of Appeal against the septuagenarian pensioner attracted widespread concern within the human rights community.[46]

34. Concern has also been expressed about the onerous burden of proof in these cases. In *Kearney -v- McQuillan and North Eastern Health Board*, Ireland's Supreme Court ruled that the plaintiff was required to show that her symphysiotomy could not have been justified under any circumstances.[47] This set an inordinately high threshold not only for the case in question but for all subsequent symphysiotomy actions. The judges also ruled that the issue of consent could not be tried, because the doctors were deceased. So the issue at the heart of these human rights violations, consent to medical treatment, cannot be ventilated in the Irish courts. Finally, justice delayed is justice

46 Farrell -v- Ryan [2015] IEHC 275.

47 Kearney -v- McQuillan and North Eastern Health Board op cit.

denied. The Kearney case took eight years to conclude. For litigants in their 70s and 80s, such a time frame offers no realistic prospect of justice.

Continuing mistreatment and violence in reproductive healthcare

35. Involuntary sterilisations were carried out side by side with forced symphysiotomies for over a decade in one hospital in the north-east of Ireland. These abuses occurred in a private Catholic hospital owned and managed by the Medical Missionaries of Mary. As many as 188 women were effectively sterilised at the International Missionary Training Centre, Drogheda, from 1974 to 1998, without their knowledge or consent. Consultant obstetricians at the hospital's small maternity unit removed women's reproductive organs, generally following Caesarean section, for no medical reason.[48] These mutilating and unnecessary operations were allowed to continue unchecked for almost a quarter of a century. During this period, State regulatory boards repeatedly accredited the maternity unit for training in obstetrics and midwifery.

36. Gender-based violence and mistreatment in maternity care appears to be endemic in Ireland. Cases of mistreatment and violence against women in obstetric units and maternity hospitals have been widely reported. Consent issues have been highlighted in national surveys run by the Association for Improvements in the Maternity Services Ireland. Only 50 per cent of respondents (N=2,836) who gave birth in Ireland from 2010-2014 were given an opportunity to refuse tests, procedures or treatments during childbirth.[49] A recent programme aired on RTE, the national broadcaster, attracted over 1,000 complaints from women alleging abuse in Irish maternity hospitals and units.[50] The Health Service Executive later apologised to the women who complained.

Healthcare policy and practice

37. Ireland continues to substantively ignore such findings and such complaints. No known policies are in place to guide health care practitioners' responses to violence

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48 Harding Clark M 2006 The Lourdes Hospital Inquiry An Inquiry into peripartum hysterectomy at Our Lady of Lourdes Hospital, Drogheda. Available on line: https://health.gov.ie/wp-content/uploads/2014/05/lourdes.pdf

49 Association for Improvements in the Maternity Services Ireland 2014. Available on line. http://aimsireland.ie/what-matters-to-you-survey-2015/womens-experiences-of-consent-in-the-irish-maternity-services/.

50 Available on line: https://www.rte.ie/radio1/liveline/programmes/2019/0405/1040937-liveline-friday-5-april-2019/

against women, nor are there any practices laid down to protect women's human rights in reproductive healthcare. On the contrary, hospital policy and practice in maternity care continues to foster a culture of coercion. Rooted in patriarchy, misogyny and clericalism, this paternalistic culture stems from the role of the Catholic Church in Ireland, historically, in providing hospital-based care, and from a quasi-militaristic command and control nursing culture.

38. Ireland's system of maternity care is based on the 'active management' of women in labour, an obstetric blueprint for accelerating labour that assumes patient consent. Amniotomy, an invasive procedure that ruptures the waters surrounding the baby in the uterus, is performed on admission to the labour ward, while intravenous syntocinon [51] ensures that a woman's cervix will dilate at the required rate of one cm per hour. Under this coercive policy, efficiency, productivity and turnover take precedence over women's rights to self-determination, bodily integrity and human dignity. Ireland's policy of having three births per 24 hours for every bed in maternity wards has been condemned by UN treaty bodies. In its concluding observations in 2017, the CEDAW expressed concern about childbirth being reportedly 'highly medicalized and dependent on the use of artificial methods to accelerate the process such that women are made to deliver babies within 8 hours of hospitalization'. The Committee called on the State to introduce a programme that respects the natural birth process, to enable women to access maternity services without being subjected to artificial methods of accelerating births.[52]

Consent during pregnancy

39. The Irish Constitution gave the fetus equal rights with its mother from 1983 until 2018, when the Eighth Amendment was repealed by referendum. The former constitutional protection for the fetus contributed significantly to a culture of coercion. The Eighth Amendment was routinely invoked in applications made to the High Court by the authorities. Such applications, often led by consultant obstetricians, were aimed at compelling a women to submit to unwanted medical intervention, and these applications were generally successful.

[51] A synthetic form of the hormone oxytocin.

[52] CEDAW 2017 op cit, paras 44-45.

Accountability mechanisms

40. Regulatory mechanisms are weak and hospital governance inadequate in a system that is dominated by 'voluntary' hospitals: private, mainly Catholic, entities funded by the State to provide health care, including in reproductive health. There is no State inspectorate of maternity care in Ireland, and hospital licensing has yet to be introduced. Without access to information, there can be no accountability. The Dublin maternity hospitals–where half of Ireland's births take place–were exempt from the Freedom of Information Act until 2003, while the exemption for State boards, such as the Nurses and Midwives Board, continued until 2006.

41. Complaints may be directed to the Medical Council, a statutory body whose record of investigation is poor. Complaints involving non-consensual treatment or assault may be filed with the police, but such a recourse has never brought known results. A High Court personal injury case taken in 2014 over the performance of an amniotomy alleged to be unnecessary and non-consensual failed. The judge emphasised the routine nature of the intervention and stated that 'she [the midwife] was the person entitled, authorised and qualified to make the decision'.[53]

42. One independent accountability mechanism is in place to ensure redress for victims of mistreatment and violence in reproductive health care in Ireland. Apart from maladministration, the Ombudsman (as the office is termed) is empowered to address failures to seek informed consent to medical procedures and to respect a person's privacy and dignity, if these complaints relate to medical treatment that is publicly funded.[54]

Reparations

[53] Hamilton -v- Health Service Executive [2014] IEHC 393. Available on line: see http://www.courts.ie.

[54] The Ombudsman nd. Available on line: https://www.ombudsman.ie/publications/information-leaflets/public-hospitals/

43. Apart from the forced sterilisations at the International Missionary Training Centre, Drogheda, no known cases of mistreatment and violence in reproductive health care have led to financial compensation, acknowledgement of wrongdoing or guarantees of non-reoccurrence.

Conclusion

44. The practice of forced symphysiotomy is arguably one of the greatest crimes to have been perpetrated against women in the last century in reproductive healthcare. The State's failure to mount an effective inquiry into the practice has enabled Ireland's coercive culture of maternity care, which is underpinned by an industrial model of maternity care and a defective national consent policy, to grow unchecked. If women's human rights in reproductive health care to self determination, autonomy and human dignity are to be respected, new policies and practices that respect the right to refuse medical treatment are required.

Marie O'Connor
Chairperson Survivors of Symphysiotomy

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