

# Survivors of Symphysiotomy

Senator Denis O'Donovan  
Chairman  
Seanad Public Consultation Committee

21 March 2014

Dear Senator O'Donovan

In response to your Committee's call for submissions in relation to Ireland's upcoming ICCPR review, I attach the submission from Survivors of Symphysiotomy (SoS): the abusive childbirth surgery of which we complain constitutes *the* gravest outstanding violation by Ireland of its ICCPR obligations, and warrants, we believe, an oral hearing from your Committee.

Yours sincerely

Marie O'Connor  
Chairperson, Survivors of Symphysiotomy (SoS)

Also on behalf of:

Marie Crean  
Survivor and member of SoS Executive

Linda Farrell  
Survivor and member of SoS Executive

Vera McArdle  
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Ellen Moore  
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Colm MacGeehin  
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Member of the Irish Bar

Michael Lynn  
Member of the Irish Bar

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Member of the Irish Bar

# SoS Submission to the Seanad Public Consultation Committee

## Introduction

1 This submission derives from the submissions made on 10 March 2014 by Survivors of Symphysiotomy (SoS) to the United Nations Human Rights Committee (UNHRC) and the United Nations Committee Against Torture (UNCAT). These submissions charge that Ireland has violated, and continues to violate, respectively, Articles 2 and 7 of the International Covenant on Civil and Political Rights (ICCPR) and Articles 2, 12, 13, 14 and 16 of the United Nations Convention Against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment. Given the advanced age and poor health of many survivors, and the inordinate time that has elapsed since these abuses were first exposed, SoS has asked the UNHRC to include this issue in its July 2014 review. This submission to the Seanad Public Consultation Committee is made in that context.

## *Locus standi and expertise*

2 The authors of this submission comprise (i) the Chairperson and other members of the National Executive of SoS, which has amassed extensive knowledge of the human rights abuses involved in the performance in Ireland of symphysiotomy and pubiotomy and (ii) legal practitioners with expertise in relevant international and domestic law.

## Factual information

3 The following is an extract from SoS's submission of 10 March 2014 to the UNHRC:

*Survivors of Symphysiotomy (SoS) is the national membership organisation for some 300 survivors of symphysiotomy and pubiotomy. A campaigning, all-volunteer group, unfunded by the State and independent of government, SoS members range in age from 47 to 91 and are spread across the 26 counties of Ireland, with a small number in Northern Ireland, England, Malta, the United States and Australia. From 1949 to 1987, these living survivors had their pelves broken in childbirth in operations that were performed gratuitously and without consent in 24 hospitals and maternity homes in Ireland, the only industrialised country in the world to practise these discarded and dangerous operations in the mid-to-late 20th century.*

## *Description of symphysiotomy*

*Symphysiotomy is a cruel and dangerous childbirth operation that sunders the pelvis, cutting the symphysis joint or, in the case of pubiotomy, severing the pubic bone. At least 1,500 of these 18th century operations were performed in Ireland from 1942 to 2005, without patient consent, mostly in private Catholic hospitals: in or around 300 women survive today. These women have been waiting for truth and justice from a recalcitrant State for over a decade.*

### ***Continuing breaches of Covenant***

*Ireland has violated, and continues to violate, Articles 2 and 7 of the International Covenant on Civil and Political Rights (hereinafter referred to as 'the Covenant') for, inter alia, the following reasons:*

- i. directly employing agents of various authorities of the State and of publicly owned hospitals that performed the medically unjustified and destructive operations of symphysiotomy and pubiotomy;*
- ii. allowing and overseeing the performance of the medically unjustified and destructive operations of symphysiotomy and pubiotomy in private hospitals that delivered maternity services on behalf of the State in Ireland;*
- iii. failing in its obligation under the aforementioned articles of the Covenant and under Article 3 of the European Convention of Human Rights and Fundamental Freedoms to put in place mechanisms to protect against the abuse of human rights which these operations constituted - they were carried out without patient consent on an estimated 1,500 women in Irish hospitals and maternity homes between 1941 and 2005; and*
- iv. willfully failing 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.*

### ***Recent and current testimonies and statements***

*... I just remember being brought into a theatre and the place was packed with people. I wasn't told what was happening ... I was screaming and being restrained. I couldn't see much except for them sawing. It was excruciating pain ... I was just 27 and I was butchered.*

#### ***Survivor of pubiotomy and member of SoS, Philomena, on the birth of her third child at the National Maternity Hospital Dublin in 1959.***

*'I was screaming. It's not working, [the anaesthetic] I said, I can feel everything ... I seen him go and take out a proper hacksaw, like a wood saw ... a half-circle with a straight blade and a handle. ... The blood shot up to the ceiling, up onto his glasses, all over the nurses... Then he goes to the table, and gets something like a solder iron and puts it on me, and stopped the bleeding. ... They told me to push her out. She must have been out before they burnt me. He put the two bones together, there was a burning pain, I knew I was going to die.'*

#### ***Survivor of pubiotomy and member of SoS, Cora, on the birth of her first child at 17 at the International Missionary Training Hospital, Drogheda, in 1972.***

*'What they went through was a crime against human decency ... Their civil liberties were defiled, most notably those of health and freedom of choice, and they suffered the most extreme excesses of degradation.'*

***Government Deputy Ann Phelan, Member of Parliament  
Statement to Parliament, 16 April 2013***

*'The sister tutor had written 'query [Caesarean] section?' on my notes. Over my dead body, said [Dr \_\_\_\_\_]. ... They didn't tell me what they were doing. I thought I had paralysis. I couldn't move my legs up or down ... I asked what was wrong; nobody told me. It was a case of shut up. You felt you were up against a brick wall ... I can't make out why they didn't section me...He [\_\_\_\_\_] cracked it [the pubic bone].'*

***Survivor of symphysiotomy and member of SoS, Kathleen, on the birth of her first child at St Finbarr's Hospital Cork in 1957***

*'The women were abused in every conceivable way. They were gratuitously maimed in the process of procedures conducted by pillars of Irish society on behalf of the State on extremely dubious grounds. The women involved suffered at the hands of those practitioners who rode rough-shod over their legal, moral and constitutional rights to bodily integrity and self-determination.'*

**Government Deputy Seán Conlan, Member of Parliament**  
*Statement to Parliament, 16 April 2013*

***Medical experimentation***

*Long shunned by doctors in the Western world on account of its dangers, symphysiotomy was officially revived in 1944 at the National Maternity Hospital in Dublin as a replacement for Caesarean section in certain cases. The operation was carried out electively for teaching purposes as well as for religious reasons. The hospital was building itself up as an international training centre in the 1940s, and symphysiotomy, a low cost operation that needed neither hospital nor electricity was seen as invaluable for students from Africa and India. Pregnant women were used there as guinea pigs in the 1940s and '50s and this experimentation continued through the 1960s and '70s at Our Lady of Lourdes Hospital, in Drogheda, which was founded by the Medical Missionaries of Mary to train staff for their many hospitals and clinics overseas.*

*These were covert - as well as unlawful - operations: patient consent was never sought. Four or five decades elapsed before women understood that their pelvises had been broken, gratuitously. Medical staff neglected to give women information about the procedure prior to surgery. Hospitals discharged women who did not know their pelvis had been severed, and family doctors tended to say little. In depriving women of the knowledge of their surgery, doctors also denied them the opportunity to recover: the consequences for their physical and mental health were disastrous.*

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

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

- i. Failing to initiate a prompt, independent or impartial inquiry;*
- ii. Failing to provide fair and adequate restitution to survivors of symphysiotomy and pubiotomy for the damage sustained as a result of these wrongful operations.*

*In answer to these charges, we expect the Irish State to rely upon its recent "review" of the practice of symphysiotomy by Professor Oonagh Walsh along with its plans to establish an ex gratia redress scheme. Ireland's 'Walsh report' fails 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) Walsh wrongly defends the practise of symphysiotomy on the basis that it was a safer operation than Caesarean section.*

*(ii) Walsh excluded survivors' testimony and wrongly claims that symphysiotomy was only carried out in emergency situations – survivor testimony has consistently indicated that symphysiotomy was a planned operation.*

*(iii) Walsh misrepresents the doctrine of patient consent by stating that informed consent was not a*

*legal requirement in Ireland until the 1990s - in accordance with statements of law by Ireland's Supreme Court (see Daniels v Haskins [1953] IR 73), informed patient consent was a legal requirement from the early 1950s...*

*The Government reportedly received the final version of the Walsh Report in November 2012. After initially promising to publish it in September 2013, the Minister for Health subsequently refused to release it, a position he has reiterated again and again. At the time of writing, the suppression of this report by the Government continues.*

**4** The following is an extract from SoS's letter (amended) of 10 March 2014 to the secretariat of the UNHRC:

*We submit that the surgical acts in question constitute torture, and cruel, inhuman or degrading treatment within the meaning of Article 7 of the Covenant, and that they also constituted in many cases medical experimentation, without free consent within the meaning of that Article.*

*We submit that our enclosed submission constitutes reliable and verifiable information, supported by, inter alia, survivor testimony and historical and other research, showing that:*

*(i) acts of torture, cruel, inhuman or degrading treatment were systematically practised in the territory of Ireland over many decades, on three generations of women, and perpetrated on living survivors from 1949 to 1987 at least, both by direct agents of public authorities in State or public authority hospitals, and, with the acquiescence of the State, by medical personnel in private hospitals, who were providing services on behalf of the State;*

*(ii) the effects of these violations continued after Ireland's 1989 ratification of the Covenant and still continue to today, involving, in many cases, lifelong pain and suffering for those subjected to these operations;*

*(iii) those continuing effects constitute, in themselves, a continuing violation of the Covenant.*

*In bringing to the Committee's attention the abuses involved in the operations of symphysiotomy and pubiotomy, we, the complainants, rely on the decision of the Committee Against Torture in AA v Azerbaijan, to the effect that alleged violations of the Human Rights Conventions which occurred before ratifications by a State Party may be examined, if the effects of these violations continued after ratification and if these effects themselves constitute a violation of the Convention. Those conditions are fully met in the case of the said acts.*

*The formal revival in Ireland in 1944 of the defunct operations of symphysiotomy and pubiotomy constituted, and was explicitly so presented, by those who initiated the revival, as a mass medical experiment. Doctors failed to seek the consent of those who were subjected to these operations as part of this experiment - often young mothers having their first child. There was also a significant element of testing the limits of the surgery, in terms, for example, of the lower and upper end of the human gestational cycle, again without the subjects' consent. Not alone did doctors generally fail to give any meaningful information to the women concerned prior to the act of surgery, but in some cases, medical practitioners actively deceived women by minimising the gravity of the operation they were about to perform. This failure to inform subjects continued post-surgery and the vast majority of women left hospital not knowing their pelves had been incised.*

For further details, see the report in: <http://www.thejournal.ie/symphysiotomy-un-1355549-Mar2014/>

**5** In November 2013, the Minister announced the appointment of a former Circuit Court Judge, Ms Yvonne Murphy, to advise him on how to bring 'closure' to survivors of symphysiotomy and pubiotomy. In the same moment, the Government announced its opposition to SoS's Statute of Limitations (Amendment) Bill - which it did not initially oppose and which passed Second Stage in Parliament. So, it seems as though the

Government is hoping to block as many survivors as possible from access to justice, while at the same time moving to establish the parameters of so-called 'redress' in an attempt to lure 250 plus survivors from their legal actions with a paltry *ex gratia* scheme. No *ex gratia* scheme can provide an effective remedy, however. The performance of symphysiotomy and pubiotomy in Ireland from 1949-1987 amounted to torture, cruel, inhuman and degrading treatment. As in the case of the UN Human Rights Conventions, Article 3 of the European Convention on Human Rights, which says that no one can be subjected to torture, cruel, inhuman or degrading treatment, calls for an effective remedy for any violation. In a recent judgement (O'Keefe v Ireland), the European Court of Human Rights found that no *ex gratia* scheme, which by definition is based on no admission of liability, can meet the requirements of Article 3 for an effective remedy. The Murphy process, which contemplates an *ex gratia* scheme of 'redress', is therefore fundamentally misconceived. The judgement also underlined that a state could not absolve itself from ensuring compliance with international human rights obligations by delegating compliance to private bodies or individuals or ascribing all responsibility for non-compliance to such bodies or persons. These rulings clearly have a wider application in respect of violations of the United Nations Human Rights Conventions.

### **Key priorities and challenges for the State**

**6** We respectfully submit that the abuses complained of in the above extracts constitute *the most serious outstanding charges of violation of the State's obligations under international human rights law*. Regulatory capture of the Department of Health by a vested interest - the Institute of Obstetricians and Gynaecologists - has led to denial by the State that the acts complained of constitute medical negligence and breach human rights. The challenge for the State is to escape this capture, cease its policy of denial, acknowledge the human rights abuses, bring them to an end and put in place an effective remedy for the victims.

### **Policy changes required**

**7** SoS has consistently called for a settlement of members' legal actions based on:

- (i) a statement of truth that these operations were wrongful, unjustified and unjustifiable;
- (ii) levels of restitution that reflect the range of injuries sustained *and* represent a significant discount on the court awards in these cases, which range from €325,000-€600,000; and
- (iii) access to independent legal representation and independent medical assessment paid for by the State.

### **Request to Seanad Committee**

**8** SoS requests that the Seanad Public Consultation Committee:

- (i) grant an oral hearing to SoS as part of its ICCPR deliberations;
- (ii) write to the UNHRC to seek support for SoS's request to have this issue included in the July 2014 review of Ireland's compliance with the ICCPR;
- (ii1) write to the Irish Government to ask it not to oppose such an inclusion.

We are more than willing to supply Committee members with copies of our 50-page submission to UNCAT.

21 March 2014