

# Survivors of Symphysiotomy (SoS)

## Submission to the United Nations Human Rights Council

### Universal Periodic Review of Ireland 2016

Survivors of Symphysiotomy is 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. Founded in 2002, its members range in age from 48 to 92 and are dispersed across the Republic of Ireland, with a small number in Northern Ireland, England, Scotland, Malta, the United States, Australia and New Zealand. From 1950 to 1987, these living survivors had their pelvises sundered in childbirth operations that were performed gratuitously and without consent in hospitals and maternity homes in the Republic of Ireland. 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, including the drawing up of a Private Members' Bill that passed Second State in Dail Eireann (Ireland's national Parliament) in 2013; and appeared before the UN Human Rights Committee in 2014.

(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.<sup>1</sup> *Bodily Harm* 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 organisation has a strong presence on the Internet: its 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 very 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.

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1 Available at <http://goo.gl/2YUP3>

## **Introduction**

**1** This submission outlines the torture, and cruel, inhuman or degrading treatment, perpetrated on three generations of women in Ireland by doctors who carried out destructive and non-consensual childbirth operations ('symphysiotomy') in the absence of medical necessity; and shows why Ireland's failure to protect these women then, and to vindicate their rights now, constitutes a violation of the International Covenant on Civil and Political Rights, the UN Convention Against Torture, the European Convention of Human Rights, and the UN General Assembly Body of Basic Principles. In 2014, the UN Human Rights Committee ruled that these operations constituted torture and involuntary medical experimentation. This was a gendered form of torture inflicted on women in childbirth in a manner that deprived them of all legal rights.<sup>2</sup>

## **Description of symphysiotomy**

**2** Symphysiotomy is a cruel and dangerous childbirth operation dating from 1777 that sections the symphysis pubis or, in a later variant ('pubiotomy'), severs the pubic bone. These involuntary operations were tested as a replacement for Caesarean section in Ireland in a mass medical experiment begun in 1944 in publicly funded Catholic hospitals. Doctors continued to perform the surgery covertly until the 1980s. 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. An estimated 1,500 of these operations were done in Ireland: around 600 women survive today.

## **Continuing breach of international human rights law**

**3** Ireland has violated Articles 2, 7 and 17 of the International Covenant on Civil and Political Rights and continues to violate Articles 2 and 7; Ireland has also violated Articles 12, 13 and 14 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and continues to violate Articles 1 and 16, for, *inter alia*, the following reasons:

- (i) allowing and overseeing the performance of these operations of symphysiotomy and pubiotomy, the performance of which has been ruled by the UN Human Rights Committee to constitute involuntary medical experimentation and torture, cruel, inhuman or degrading treatment;
- (ii) allowing and overseeing a mass medical experiment in 1944 in private hospitals within its territory, which were under contract to the State to deliver maternity services on its behalf, aimed at replacing, where possible, Caesarean section with symphysiotomy or pubiotomy;
- (iii) allowing and overseeing the performance of these medically unjustified and destructive operations in public hospitals, where they were carried out by directly employed agents of various authorities of the State and of those public hospitals;
- (iv) allowing and overseeing the performance of these medically unjustified and destructive, operations in private hospitals within its territory, which were under contract to the State to deliver maternity services on its behalf;
- (v) allowing and overseeing the performance of these operations, which were genital in nature and which large numbers of generally male students were frequently invited to witness in the absence of patient consent, thus constituting arbitrary interference with women's right to privacy;
- (vi) failing to carry out a prompt, impartial and full investigation into these operations and to provide redress, including restitution and accountability;
- (vi) failing in its obligation under the 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 abuses of human rights constituted by these operations; and
- (vii) failing willfully to discharge its monitoring obligation under the UN General Assembly Body of Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law.

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<sup>2</sup> This torture, and cruel, inhuman or degrading treatment, was confined, as it was and could only be, to women, in the terms of Article 1 of the Convention Against Torture.

## **Recent testimonies and statements**

4 The following excerpts, which have been taken from statements by survivors and by public representatives in *Dáil Éireann*, the Lower House of the Irish national Parliament, bear witness to the horror of the violations which are the subject of this complaint:

*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 Survivors of Symphysiotomy, 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 Survivors of Symphysiotomy, Cora, on the birth of her first child at 17 in 1972 at the International Missionary Training Hospital, Drogheda.**

*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] Sutton. ... 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 [Dr Sutton] cracked it [the pubic bone].*

**Survivor of symphysiotomy and member of Survivors of Symphysiotomy, Kathleen (now sadly deceased), 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.**

### **Involuntary medical experimentation**

**5** Long shunned by doctors on account of its dangers (except as a last resort procedure), symphysiotomy and pubiotomy were introduced into clinical practice in 1944 at the National Maternity Hospital (NMH), Dublin, in a mass medical experiment designed to test the viability of these operations as a replacement for Caesarean section. The experiment, which spread to other publicly funded Catholic hospitals, was religiously motivated: Caesarean section was associated with birth control (one C-section often led to another and three was seen as the upper safety limit), and birth control was repugnant to some senior Catholic doctors.<sup>3</sup> Pregnant women were used at NMH as guinea pigs in the 1940s and '50s and this experimentation continued through the 1960s and '70s at the International Missionary Training Hospital, Drogheda. Done without patient consent, as they were, these operations were unlawful. Four or five decades generally elapsed before women learned - through the media - that their pelvises had been broken, gratuitously, in childbirth.

### **Torture**

**6** Most operations were performed during labour, as hospital records attest. Survivor testimony shows that women were left in labour for many hours before being set upon by hospital staff, their legs splayed in stirrups, and operated upon without their consent, wide awake and often screaming. Then, still in labour, 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 unhinging pelvis. Those unable to delivery vaginally were eventually delivered by Caesarean section by doctors who had earlier withheld this operation from them.

### **UN Human Rights Committee**

**7** In August, 2014, the UN Human Rights Committee ruled that these operations constituted torture and involuntary medical experimentation and prescribed an independent inquiry, prosecution of the perpetrators and fair compensation.<sup>4</sup> Far from implementing these recommendations, Ireland has vitiated them through its commissioning of a biased because restrictive review and its establishment of an unjust and defective ex gratia scheme.

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

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

- (a) Failing to *initiate a prompt, independent and thorough investigation*;
- (b) Failing to *prosecute and punish the perpetrators, including medical personnel*;
- (c) Failing to *provide fair and adequate compensation and rehabilitation on an individualised basis to survivors of symphysiotomy and pubiotomy for the damage sustained*;
- (d) Failing to *facilitate access to judicial remedies* under its ex gratia scheme.

**9** Instead of mounting a prompt and full inquiry into the surgical practice in 1999, Ireland took 12 years to commission a highly restrictive review, whose terms of reference (agreed with the author), excluded both unpublished data and survivor testimony. The Government reportedly received this report in November 2012, and withheld it until July 2014, when it was published prior to our appearance at the UN Human Rights Committee.<sup>5</sup>

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<sup>3</sup> <http://humanrights.ie/law-culture-and-religion/kearney-v-mcquillan-religion-harm-and-history/>

<sup>4</sup> UN ICCPR Human Rights Committee Concluding observations on the fourth periodic report of Ireland, 4. Available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f4&Lang=en)

<sup>5</sup> Oonagh Walsh *Report on Symphysiotomy in Ireland 1944-1984* Dublin: Department of Health 2013. Available at <http://health.gov.ie/wp-content/uploads/2014/07/Final-Final-walsh-Report-on-Symphysiotomy1.pdf>

**10** The 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) The exclusion of unpublished data from the report's terms of reference meant, in effect, that 99 per cent of clinical data was closed to external scrutiny: almost all hospital records, by definition, are unpublished. No adequate attempt was made to establish the clinical 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 from the report's terms of reference prevented the first hand accounts of survivors from becoming part of what is known about the practice of symphysiotomy and pubiotomy: this further calls into question the veracity of this so-called history of symphysiotomy in Ireland;
- (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 aimed at replacing Caesarean section in certain circumstances;
- (iv) Ignoring pubiotomy, the report wrongly defends the practice of symphysiotomy on the basis that it was a 'safer' operation than Caesarean section, again ignoring the evidence of the time that showed conclusively that C-section was the treatment of choice in Ireland for difficult births in 1944;
- (v) Wrongly, the report justifies doctors' failure to seek patient consent, stating that informed consent was not a legal requirement in Ireland. To suggest that informed patient consent was not a legal requirement in Ireland from the early 1950s is to ignore both Ireland's 1937 Constitution, and the decisions of Ireland's Supreme Court (see *Daniels v Haskins* [1953] IR 73).

### **Remedy, including restitution and accountability**

**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. Indeed, the official view is that these abusive surgeries were medically appropriate. In 2013, the Government withdrew its support for a Bill designed to facilitate survivors' access to judicial remedies, protecting doctors, hospitals, and the State itself from civil suits for personal injuries.<sup>6</sup> In July 2014, in the run up to the UN Human Rights Committee hearing, Ireland established an *ex gratia* scheme, without any accompanying admission of liability. The European Court of Human Rights (*O'Keefe -v- Ireland*) has confirmed that *ex gratia* redress without an admission of State liability cannot be considered an effective remedy.<sup>7</sup>

**12** The scheme, which gives a sole assessor unbridled discretion,

- (a) contains no right of appeal;
- (b) provides no mechanism for survivor testimony;
- (c) pays compensation (on average €65,000) that is 20 per cent of the awards made by the courts for commensurate injuries;
- (d) makes payment conditional on applicants signing a waiver indemnifying and holding 'harmless' all actors and entities, both public and private, involved in these acts of surgery<sup>8</sup>, making it the functional equivalent of an amnesty law, which may be in breach of the Covenant.<sup>9</sup>

<sup>6</sup> <http://humanrights.ie/law-culture-and-religion/the-trouble-with-redress-symphysiotomy-and-other-failures/>

<sup>7</sup> [http://hudoc.echr.coe.int/eng?i=001-140235#{%22itemid%22:\[%22001-140235%22\]}](http://hudoc.echr.coe.int/eng?i=001-140235#{%22itemid%22:[%22001-140235%22]})

<sup>8</sup> The waiver covers "all doctors, consultants, obstetricians, surgeons, medical staff, midwives, nursing staff, administrative staff, boards of management, associated with all hospitals or nursing homes, former hospitals or former nursing homes in the State whether public, private or otherwise and/or their insurers" and the medical Missionaries of Mary and/or any Religious Order involved in the running of any hospital and/or their insurers". Deed of Waiver available at <http://www.payment-scheme.gov.ie/Symphysiotomy/Symphysiotomy.nsf/O/OAFC8447AC15B2D580257D89003FA7AE/SfileSCHEDULE1-DeedofWaiverandIndemnity.doc>

<sup>9</sup> <http://humanrights.ie/law-culture-and-religion/whats-still-wrong-with-the-symphysiotomy-redress-scheme/>

**13** In April, 2015, the Irish Human Rights and Equality Commission declined to conduct an inquiry into these operations. Relevant hospital records, therefore, continue to remain immune to external scrutiny. Victims' access to the courts is limited by the stringent law of limitations in Ireland, which affords no judicial discretion, while a Supreme Court judgement prevents victims from travelling the issue of consent in personal injuries cases.<sup>10</sup>

**14** Ireland suggests that survivors are free to pursue cases through the Irish legal system, should they chose to do so, yet the state party fails to mention on the numerous legal obstacles placed in the path of individual survivors who have initiated litigation. Ireland, via the State Claims Agency, which is responsible for defending legal claims, has aggressively defended all legal claims by symphysiotomy survivors. In all cases the Agency has invoked the Statute of Limitations to defeat these actions and has used its multi-billion euro budget to deploy doctors to contest all elements of survivor 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 unable to make any pleadings in respect of patient consent. Two elective symphysiotomy cases have been ventilated in the Irish Courts to date. The Kearney case,<sup>11</sup> where the Supreme Court stated symphysiotomy was not justifiable, and Farrell v Ryan where the High Court recently held against the Plaintiff<sup>12</sup>. Farrell v Ryan is currently on appeal to the Supreme Court. The Irish State litigation strategy is to use its vast resources to make it impossible for women to mount challenges in the courts while coercing them into accepting minimalistic compensation through its ex gratia redress scheme.

#### **Request for inclusion in the Universal Periodic Review**

**15** We have made a separate complaint to the UN Committee Against Torture pursuant to its review of Ireland in 2017. Nevertheless, given the advanced age of our members and their ongoing health difficulties, we request the Human Rights Council to include the hitherto unexamined issue of symphysiotomy in its examination of Ireland under the UPR process in 2016.

#### **Recommendations**

##### **16 The Council is urged to conclude that:**

1. Within the meaning of Article 5 of the United Nations Declaration on Human Rights, Article 16 of the United Nations Convention Against Torture and Article 7 of the International Covenant on Civil and Political Rights, the practice of symphysiotomy and pubiotomy which was performed on living survivors in Irish hospitals and maternity homes between 1950 and 1987 constitutes torture, cruel, inhuman or degrading treatment;
2. Ireland has failed to provide an effective remedy to survivors of symphysiotomy and pubiotomy by failing to initiate a prompt, independent and full inquiry and by failing to provide victims with fair and adequate restitution for the damage they sustained as a result of these wrongful operations;
3. Ireland's ex-gratia payment scheme, which hold harmless the perpetrators of symphysiotomy and indemnifies all individuals and institutions responsible for the non-consensual performance of symphysiotomy and pubiotomy operations, contravenes Ireland's obligations pursuant to Article 5 of the United Nations Declaration on Human Rights and Article 7 of the International Covenant on Civil and Political Rights.

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<sup>10</sup> Ibid.

<sup>11</sup> Kearney -v- McQuillan [2010] IESC 20. Available at <http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/c97557e835029d87802576f2003b1cff?OpenDocument>

<sup>12</sup> Farrell -v- Ryan [2015] IEHC 275

**17 The Council is asked to call upon the state party:**

**A** to institute an independent statutory inquiry into the practice of symphysiotomy and pubiotomy in Ireland, as has been done in the case of the Mother and Baby Homes;

**B** to enact the Statute of Limitations (Amendment) Bill 2013, which was passed at Second Stage by Dáil Éireann (the Irish Parliament) on 17 April, 2013.

**Appendix**

Survivors of Symphysiotomy *Submission to the United Nations Committee Against Torture* 2014.<sup>13</sup>

Marie O'Connor

Chairperson, Survivors of Symphysiotomy

Ruadhán Mac Aodháin

Member of the Irish Bar

Michael Lynn

Member of the Irish Bar

21 September 2015

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<sup>13</sup> Survivors of Symphysiotomy [Appendix to SoS Submission to UNHRC] *Submission to the United Nations Committee Against Torture* 2014. Available at [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT\\_CCPR\\_CSS\\_IRL\\_17504\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT_CCPR_CSS_IRL_17504_E.pdf)

