

30 October 2018

Submission to UN Working Group on Business
UN Guiding Principles on Business and Human Rights

Email: londonirisharc@gmail.com

Twitter: @LdnIrishARC

Website: https://londonirisharc.com/

Facebook: https://www.facebook.com/londonirishARC/

INTRODUCTION

The London-Irish Abortion Rights Campaign is a grassroots organisation of over 1,000 members based in and around London, founded in November 2016. We campaign for free, safe, legal abortion in Ireland and Northern Ireland. We are actively involved in advocacy, media, legal, fund-raising, awareness-raising and direct action activities in London. We work closely with a number of key stakeholder groups in Great Britain, Ireland and Northern Ireland. We are not affiliated to any political party.

Abortion rights in Northern Ireland and Ireland have been and continue to be affected by a range of intersecting factors, many with a cross-jurisdictional flavour. These include legal, political, religious, social, economic, geographic, historical and cultural factors, the most important of which we set out in this submission. As a result of these factors, in relation to abortion, women in Ireland and Northern Ireland face on a daily basis discrimination, harm to their health, levels of hardship, discrimination and breaches of their human rights almost unique in the developed world.

We set out below our responses to questions 1, 4-7 and 9-13 provided by the Working Group on Business.

1. In what ways do women experience the impact of business-related human rights abuses differently and disproportionately? Please provide concrete examples in the context of both generic and sector- or region-specific experiences of women.

Like women in every country in the world, women in Ireland and Northern Ireland have abortions. Their reasons for doing so vary. For some it is a difficult and sometimes painful decision, while for others it is straightforward and a relief to end an unplanned pregnancy. The only difference is that the vast majority of Irish and Northern Irish abortions do not take place on the island of Ireland. Between 1970 and 2015, at least 61,311 women travelled from Northern Ireland and 180,797 from Ireland to England for abortion services¹.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, has expressed concern regarding the "severe physical and mental anguish and distress experienced by women and girls regarding termination of pregnancy due to the State policies".²

The report entitled Abortion as a Workplace Issue, prepared by trade unions across the island of Ireland³ demonstrates that the criminalisation of abortion and the corresponding difficulty in accessing abortion on the island of Ireland has a disproportionate effect on women in the workplace. Numerous respondents confirmed that they felt unable to tell an employer or supervisor about an abortion due to the perceived stigma and fear of being bullied in the workplace if it became known that they had had an abortion.⁴ Of those polled, 73% of respondents with direct experience of abortion did not tell anyone in their workplace about the procedure, let alone a supervisor or employer.⁵

This survey highlighted the concern of workers about taking time off for the procedure and for recovery afterwards. One respondent noted that a colleague had used holiday to have an abortion as "there's no way she would have told her supervisor why" she required time off; instead she made up a story about visiting relatives in England.⁶

An underlying factor throughout the report Abortion as a Workplace Issue was the cost for women to access abortion. As well as the direct costs of the procedure (the cost of flights, accomodation and the procedure itself) women also face additional costs and risks as highlighted by the survey. Difficulties securing paid sick leave to recover is underlined by the following statistics of respondents with direct experience:

- 23% wanted to take time off after the abortion but couldn't afford to lose wages;
- 20% wanted sick leave but could not take it;
- 11% needed time off but could not get sick pay;
- 10% took unpaid leave; and

⁵ *Ibid.* at 4.3 on p28

¹ The Guardian, "Irish women report relief and gratitude after using abortion pills" (17 October 2016) https://www.theguardian.com/world/2016/oct/17/home-abortion-kits-women-ireland-study [accessed on 1 October 2018]

² List of issues prior to the submission of the second periodic report of Ireland, December 2013

³ Bloomer, F., Devlin-Trew, J., Pierson, C., MacNamara, N., Mackle, D., (2017) Abortion as a Workplace Issue: Trade Union Survey - North And South Of Ireland. Dublin: UNITE the Union, Unison, Mandate Trade Union, the CWU Ireland, the GMB, Alliance for Choice, Trade Union Campaign to Repeal the 8th.

⁴ *Ibid.* p27 - p29.

⁶ *Ibid*. at 4.3.2 on p29.

• 28% used annual leave.7

Women are disproportionately affected by the current legal status and perceived stigma of abortion. They feel unable to take sick leave to recover from abortion, as would be the norm for other medical procedure.

4. Which State laws and policies or social, cultural and religious norms continue to impede women's integration into economic activities and public life generally?

As noted above in response to question 1 the continued criminalisation of abortion in Northern Ireland is a barrier to women's right to bodily autonomy, and impedes women's ability to access abortion, take time off to recover from the medical procedure and to discuss the issue within the workplace.

The catholic church still has a strong influence across the Republic of Ireland's state institutions, most notably running 90% of primary schools and many of the Irish state's hospitals being controlled by religious orders9. This impacts how sex education is delivered, what teachers can say regarding contraception and how to safely use it and on the availability of legal medical procedures and medication for women. Sex education is not consistently taught, with outside organisations including Catholic organisations that teach abstinence based contraception, often being brought in to deliver sex education.¹⁰ Teachers have reported that religiously controlled boards of management have prevented them from providing accurate information to their students. 11 It is noteworthy that the two largest hospitals in the Republic of Ireland do not provide sterilisation to women¹² and the Mater hospital does not stock the pill in its pharmacy, necessitating in-patients to procure them off-site themselves¹³. From a young age, children are instilled with the idea that women's bodies are for making babies and not provided with the tools to make informed choices about contraception and family planning. This is compounded by women's inability to access the full suite of contraception and sterilisation in state-funded hospitals which can impact on their ability to continue to work.

Northern Ireland faces similar problems in education, 93% of schools in Northern Ireland reflect largely one religious or cultural tradition¹⁴. This impacts sex education as 20% of respondents to a survey by the Family Planning Association said that "lessons about sex and

⁸ Irish Times, "Pupil numbers grew 10% at multi-denominational schools" (26 February 2018) https://www.irishtimes.com/news/education/pupil-numbers-grew-10-at-multi-denominational-schools-1.3406632 [accessed 1 October 2018]

¹² Ibid (fn 9)

⁷ Ibid. at 4.2.1 on p27.

⁹ Irish Times, "Catholic Church's influence over Irish hospital medicine persists" (28 April 2016) https://www.irishtimes.com/opinion/catholic-church-s-influence-over-irish-hospital-medicine-persists-1.2626856 [accessed 1 October 2018]

¹⁰ The Irish Times, "What are our children being taught about sex?" (24 April 2018), https://www.irishtimes.com/news/education/what-are-our-children-being-taught-about-sex-1.3467341 [accessed 30 October 2018]

¹¹ Ibid

Newstalk, "EXCLUSIVE: Mater Hospital patients refused contraceptive pill" (21 April 2017)
 https://www.newstalk.com/Mater-hospital-patients-refused-contraceptive-pill [accessed 1 October 2018]
 Integrated Education Foundation, "Integration Works for Everybody Strategic Vision 2018-2021"
 https://view.publitas.com/integrated-education-fund/ief-strategic-vision-2018-2021-integration-works-for-everybody/page/6-7 [accessed 30 October 2018]

relationships were based on the personal beliefs of the teacher or stance of the school"¹⁵. In a Family Planning Association survey a prominent criticism of sex education from students was that abortion could not be discussed with teachers in an open and unbiased way and that pupils in Catholic schools were least likely to be taught about contraception.¹⁶

Article 41.2 in the Republic of Ireland's constitution, states that "[the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved. The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home". This sets the tone that a woman's place is in the home and that they should bear the brunt of responsibility for family and house work. It should be noted that the Irish government have postponed a referendum to remove this article from the constitution and it is unclear whether it will be removed or amended.

5. Are there any good practices of integrating a gender perspective into the State's economic sphere (e.g. state-owned enterprises, public procurement agencies, trade missions export credit agencies, privatization of public services, and trade and investment partnerships)?

Northern Ireland

With regard to access to safe abortion, the UK Government recently enacted a major change to their healthcare/economic policy by allowing pregnant people from Northern Ireland to access NHS (National Health Service) funding for abortion services provided in England and Wales¹⁷. This change was not initiated by the Government with the sole purpose of ensuring better protection for Northern Irish citizens accessing abortion services however, so the extent to which the credit for this "good practice" can be attributed to the Government is limited. In fact, the policy change was motivated by the Government's anticipation of defeat on an amendment to the Queen's Speech in Parliament tabled by Labour MP Stella Creasy¹⁸, prompted by a UKSC case¹⁹ brought by a Northern Irish woman and her 15-year-old daughter, who, without NHS funding, had been forced to pay £900 to access abortion services in a private clinic in England. Political change was felt necessary because although the majority of Supreme Court justices held that the Secretary of State for Health was not obliged to exercise his discretion to provide such funding for Northern Irish residents in this case, the strong dissenting judgments of Baroness Hale and Lord Kerr²⁰, along with ensuing widespread commentary and press attention²¹, brought to light the lack of regard given to Northern Irish women by the State's healthcare/economic policy.

¹⁵ The Belfast Telegraph, "Plea for better sex education in Northern Ireland schools as STIs rise" (12 September 2016), https://www.belfasttelegraph.co.uk/news/education/plea-for-better-sex-education-in-northern-ireland-schools-as-stis-rise-35040047.html [accessed 30 October 2018]

¹⁶ Family Planning Association, RELATIONSHIPS AND SEXUALITY EDUCATION (updated August 2014) https://www.fpa.org.uk/sites/default/files/northern-ireland-relationships-and-sexuality-education-in-schools.pdf [accessed 30 October 2018] at p3

¹⁷ Jennings, "The Provision of Abortion Services to Northern Irish Women on the National Health Service in England", <u>E.H.R.L.R. 2017</u>, <u>4</u>, <u>394-399</u> [accessed via Westlaw 17 October 2018]

¹⁸ The Guardian, "Northern Irish women offered free abortion services in England", (October 2017) https://www.theguardian.com/world/2017/oct/23/northern-irish-women-offered-free-abortion-services-inengland, [accessed 17 October 2018]

¹⁹ R. (on the application of A and B) (Appellants) v Secretary of State for Health (Respondent) [2017] UKSC 41

²⁰ Ibid, UKSC

²¹ Ibid, Jennings

This policy change is welcome, but it remains the case that Northern Irish resident women travelling to GB to access abortion services face significant economic strain; this may include childcare costs, lost income from jobs, and travel and accommodation costs²². Integrating a gender perspective into Northern Ireland's economic sphere would necessarily involve legalising and funding local abortion services.

Republic of Ireland

The July 2018 Updated General Scheme for abortion legislation²³, to be enacted following the repeal of Article 40.3.3 of the Irish Constitution²⁴, does not propose a legislative scheme governing the costs involved in accessing abortion services in the Republic of Ireland. This matter was raised in the Lawyers For Choice Position Paper²⁵ that responded to the General Scheme, as was the issue of free access to contraception, and the issue of State support for women who will still need to travel to access abortion services where the legislative scheme in the Republic of Ireland will not permit. Much depends on how the Department of Health responds to these matters, but some indication of good practice in economic policy has come from the Health Minister's recent public pledge²⁶ that abortion services will be provided free of charge under the Republic of Ireland's healthcare system.

6. How could policy coherence be improved between different government ministries or departments dealing with women issues and business related matters?

Northern Ireland

There has been no government in Northern Ireland since January 2017²⁷. As such, it is difficult to envision how policy coherence can be improved between government ministries or departments. Moreover, following a recent application for judicial review²⁸ against a decision made by the Department of Infrastructure civil servants in the absence of ministerial guidance, it has been held that no further political decisions may be taken by Northern Irish civil servants. Following the outcome of this case, Secretary of State for Northern Ireland Karen Bradley has pledged to introduce legislation to Parliament "to give greater clarity and certainty to enable Northern Irish departments to continue to take decisions in Northern Ireland in the public

²² CEDAW, "Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women", page 6 "(III) Travelling out of Northern Ireland for an Abortion", (February 2018) https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_ITB_GBR_8637_E.pdf [accessed 17 October 2018]

²³ ROI Department of Health, "Updated General Scheme of a Bill Entitled Health (Regulation and Termination of Pregnancy) Bill 2018", (10 July 2018) https://health.gov.ie/wp-content/uploads/2018/07/Updated-General-Scheme-of-the-Health-Regulation-of-Termination-of-Pregnancy-Bill-2018.pdf [accessed 17 October 2018]

²⁴ RTE News, "Landslide victory for Yes side in referendum", (26 May 2018), https://www.rte.ie/news/eighth-amendment/2018/0526/966152-eighth-amendment-referendum/ [accessed 17 October 2018]

²⁵ Enright, Fletcher, de Londras, Conway, "Position Paper on The Updated General Scheme of Health (Regulation of Termination of Pregnancy) Bill 2018" (August 2018),

https://lawyers4choice.files.wordpress.com/2018/08/position-paper-1.pdf, [accessed 17 October 2018]

²⁶ Irish Examiner, "Abortion services will be free, Harris confirms" (September 2018) https://www.irishexaminer.com/breakingnews/ireland/abortion-services-will-be-free-harris-confirms-870089.html [accessed 17 October 2018]

²⁷ Belfast Telegraph, "Northern Ireland on verge of breaking Guinness World Record for having no government" (August 2017), https://www.belfasttelegraph.co.uk/news/northern-ireland/northern-ireland-on-verge-of-breaking-guinness-world-record-for-having-no-government-37192162.html, [accessed 17 October 2018]

²⁸ Ibid, Jennings

interest and to ensure the continued delivery of public services"²⁹. There is no indication that Bradley's proposed legislation will deal with the issue of abortion service provision in Northern Ireland, nor the interaction of this issue with business related matters. It has been suggested³⁰, however, that increased powers given to civil servants under this legislation may allow them to accommodate the repeal of ss. 58-59 of the Offences Against the Person Act 1867, a means of reform which is currently being campaigned for by a cross-party coalition for abortion reform³¹. We cannot speculate how Northern Irish civil servants would respond to this legal change even given the power to do so, nor whether any scheme implemented would ensure policy coherence between the Departments of Health, Justice and Economy on this issue.

Republic of Ireland

The authors can find no public statement from the Republic of Ireland's Department of Business, Enterprise and Innovation³² (DBEI) indicating their response to the changing legal framework governing abortion in the Republic of Ireland. Nor is any consideration given in the Department of Health's Updated General Scheme³³ to the impact women accessing abortion services in the Republic of Ireland will face in the workplace. It is suggested that the Department of Health consider this issue, and amend the General Scheme to ensure that women accessing abortion services in the Republic of Ireland receive adequate support from their places of work, including medical leave and prevention of workplace stigma. DBEI can then commit their policy to ensuring businesses adhere to these expectations, including accountability and review mechanisms if there is failure to do so.

7. What is the extent to which businesses currently apply a gender lens in conducting human rights due diligence, including social or environmental impact assessment?

Northern Ireland

The Northern Ireland Human Rights Commission has established the Northern Ireland Business and Human Rights Forum³⁴ "to share good practice, and as a means of engaging with the UK National Action Plan"³⁵. The National Action Plan³⁶, to implement the UN Guiding

²⁹ Ibid, Jennings

³⁰ Ibid, Jennings

³¹ Creasy, Wollaston, Swinson, Johnson, Roberts, Lucas, "Cross Party Coalition for Abortion Reform: Open Letter to All MPs", (June 2018)

http://www.workingforwalthamstow.org.uk/cross party coalition for abortion reform open letter to all mps [accessed 17 October 2018]

³² ROI Department of Business, Enterprise and Innovation, https://dbei.gov.ie/en/, [accessed 17 October 2018]

³³ Ibid

³⁴ NI Business and Human Rights Forum, http://www.nihrc.org/business-human-rights-forum [accessed 17 October 2018]

³⁵ UK Government response to Joint Committee on Human Rights Sixth Report of Session 2016–17, <u>Human Rights and Business 2017: Promoting responsibility and ensuring accountability</u>, (December 2017), https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/686/68602.htm, [accessed 17 October 2018)

³⁶ HM Government, "Good Business, Implementing the UN Guiding Principles on Business and Human Rights" May 2016,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment data/file/522868/ Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_print_version.P_DF, [accessed 17 October 2018]

Principles on Business and Human Rights (UNGPs)³⁷, includes guidance for businesses to ensure that they "respect human rights wherever they operate". Neither the National Action Plan generally, nor the guidance for businesses offered by it, encourages the application of a gender lens in conducting human rights due diligence, despite repeated emphasis in the UN Guiding Principles themselves encouraging businesses to "pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability"³⁸, mentioning women specifically. There is no consideration of the issue of abortion, nor the impact of restrictive abortion law upon women in the workplace, in any of these provisions.

Republic of Ireland

The Republic of Ireland's Department for Foreign Affairs and Trade has also published a National Plan on Business and Human Rights³⁹, as a framework for government and businesses to give effect to the UNGPs. This plan emphasises a link with the Republic of Ireland's National Action Plan on Women, Peace and Security⁴⁰, and cohesion between the two. However, again neither document identifies as an issue the human rights impact of restrictive abortion law upon women in the workplace.

9. What is the role of businesses in dealing with domestic laws, policies and societal practices which are discriminatory to women?

Businesses in Northern Ireland and the Republic of Ireland have had a role in shaping attitudes towards abortion in both countries. It is however through their potentially wilful ignorance of the issue that they have shaped the story. 41 Yet the stigma present across the island prevents women from reporting the stress and financial struggle they experience because of having to travel for the procedure is clearly a workplace issue. 42 Only 11% of women surveyed were able to get sick pay for the days they took to procure an abortion, while only 10% were supported by a manager. 43 The silence of many businesses, potentially through fear of protest or boycott by vocal anti-choice demonstrators 44 has resulted in a deepening of stigma, and a calcification of the law in Northern Ireland specifically.

10. How could media and advertising industries fight against gender stereotyping and disempowerment of women?

The rules around media and advertising on political issues in the Republic of Ireland are extremely tight. The Broadcasting Act 2009 (41)(3) states that,

³⁹ ROI Department for Foreign Affairs and Trade, "National Plan on Business and Human Rights 2017-2020", (November 2017), https://www.dfa.ie/media/dfa/alldfawebsitemedia/National-Plan-on-Business-and-Human-Rights-2017-2020.pdf [accessed 17 October 2018]

https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/ourwork/empoweringwomen-peaceandsecurity/Irelands-second-National-Action-Plan-on-Women-Peace-and-Security.pdf [accessed 17 Oct 2018]

³⁷ UN Human Rights, "Guiding Principles on Business and Human Rights", (2011), https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, [accessed 17 October 2018]

³⁸ Ibid, at page 20

⁴⁰ ROI Department for Foreign Affairs and Trade, "Ireland's second National Action Plan on Women, Peace and Security", (January 2015),

⁴¹ Ibid (n 3) at 4.2.1.

⁴² Ibid at Table 3, page 34

⁴³ Ibid

⁴⁴ Precious Life, Campaigns, accessed via http://www.preciouslife.com/campaigns on 02 October 2018

A broadcaster shall not broadcast an advertisement which is directed towards a political end or which has any relation to an industrial dispute.⁴⁵

In the Republic of Ireland abortion has been unequivocally seen as a political issue, not to mention that until 18 Sept 2018⁴⁶, to advertise abortion services would have been contrary to Article 40.3.3. of the Constitution of Ireland, and a criminal offence.⁴⁷ It is still a criminal offence under other existing legislation.⁴⁸ It is yet to be revealed how the media and advertising industry will deal with the issue.

Regarding Northern Ireland, the stigma surrounding abortion, and regular protests outside any business willing to advise on the issue, ⁴⁹ prevent media and advertising from speaking out on the issue of abortion.

11. What additional or specific barriers do women (women human rights defenders) face in accessing effective remedies for business-related human rights abuses?

The current lack of a trade union policy has hampered women across the island of Ireland from becoming aware of or accessing abortion services available to them overseas. ⁵⁰ Some experiences in the participants of Bloomer's study highlight the combination of workplace relationships and stigma in making it much harder for women who choose to have an abortion to be able to do so as openly as they wish, and without fear of reprisal. ⁵¹

12. How could all types of remedial mechanisms, processes and outcomes be made more gender-sensitive?

As above, the key to even developing remedial mechanisms, processes and outcomes surrounding abortion is initially a programme of legislative reform in Northern Ireland and the completion of such ongoing reform in Republic of Ireland. After such efforts are made, campaigns within and outside of the workplace to reduce the stigma attached to having an abortion across the island of Ireland is desperately necessary.⁵²

13. How to overcome power imbalances and discriminatory practices that might undermine the effectiveness of remedies obtained by women?

Along with a programme for destigmatisation and legal reform, business can lead with best practice on dealing with abortion in the workplace. To outline what this would look like in full

http://www.irishstatutebook.ie/eli/2009/act/18/section/41/enacted/en/html#sec41 on 02 October 2018

⁴⁵ Broadcasting Act 2009 (41)(3) accessed via

⁴⁶ Kelly, F., President signs Bill repealing Eighth Amendment into law, 18 September 2018 (The Irish Times, Dublin) accessed via https://www.irishtimes.com/news/politics/president-signs-bill-repealing-eighth-amendment-into-law-1.3633601 on 02 October 2018

⁴⁷ The Constitution of Ireland Art 40.3.3. (since repealed by the Thirty-Sixth Amendment to the Constitution Act 2018)

⁴⁸ Regulation of Information (Services outside the State for Termination of Pregnancies) Act, 1995

⁴⁹ Ferguson, A., Closure of Marie Stopes Belfast clinic ends five years of hostility, 8 December 2017, accessed via https://www.irishtimes.com/news/social-affairs/closure-of-marie-stopes-belfast-clinic-ends-five-years-of-hostility-1.3318970 on 02 October 2018

⁵⁰ Ibid (fn 3) at para 5.4.1. page 36

⁵¹ Ibid (fn 3) at para 4.3.2. page 29

 $^{^{52}}$ Amnesty International, She is not a criminal: The impact of Ireland's abortion law, (EUR 29/1597/2015) at (3.2) and (12)

would be beyond the competence of the authors and the word limit of this exercise. The authors would recommend Bloomer's study for detailed reading.