



**Gender Lens to United Nations Guiding Principles on Business and Human Rights:
Response to a Call for Input**

The Abortion Rights Campaign (ARC) is an all-island grassroots movement for choice and change. We organise the annual March for Choice to demand free, safe and legal abortion access for all who need or want it. ARC was a founding member of the “Together For Yes” campaign which secured a resounding Yes vote in the recent referendum to repeal Ireland’s constitutional prohibition on abortion. We aim to ensure that the health and dignity of all reproductive rights-holders in Ireland are protected in line with international best practice and human rights standards.

Introduction

We are now at a critical and pivotal point in the fight for free, safe, legal and accessible abortion services as the Irish government is currently legislating for their introduction. The Abortion Rights Campaign continues to advocate for the best possible abortion service provision. We also campaign for improved access and education relating to contraception and reproductive rights more generally, as well as supporting the fight for decriminalisation and meaningful abortion access in Northern Ireland.

The right to decide the number and spacing of their children is an essential element of women’s¹ reproductive rights². Access to comprehensive reproductive healthcare, including abortion, is an established human rights issue; yet it is also a business-related workplace issue. Without the right to make decisions about their body and have those decisions be respected, women are not truly equal, in the workplace or elsewhere in society.

While our response to this Call for Input focuses on the Republic of Ireland and Northern Ireland, we recognise the global nature of reproductive justice, and that many of the barriers outlined below carry over into other jurisdictions. The suggestions we outline for consideration by the Working Group extend to all locations where restrictive abortion regimes limit the capacity to participate fully in the workforce.

Abortion and Reproductive Health as a Workplace Issue

Access to abortion is a healthcare issue which necessarily impacts other aspects of an individual’s life. However, abortion as a workplace issue had been overlooked in research on

¹ Although we use the terms ‘women’ in this document, people who do not identify as women may need abortion services, and suffer gender-based discrimination in accessing reproductive healthcare.

² Article 16 *Convention on the Elimination of All forms of Discrimination against Women*, New York, 18 December 1979. Available from: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

the topic. A recent report commissioned by trade unions in the Republic of Ireland and Northern Ireland has provided much needed insight into the impacts of restricted abortion access from a business perspective.³ Over 3,000 trade union members completed a survey which sought to ascertain opinions on abortion as a workplace issue. Twenty percent of respondents stated that they had direct experience of abortion as a workplace issue.

Of those with direct experience, 42% said that they struggled to cover the costs of the abortion, and struggled with arranging time off work. Additionally, 23% said that they wanted to take time off after the abortion but were unable to afford losing wages; 20% said that they wanted to take sick leave after the procedure but were unable to. It is easy to see how State laws restricting access to abortion are implicated in these findings. As of October 2018, pregnant people in both the Republic⁴ and Northern Ireland are forced to travel to other jurisdictions in order to access abortion, meaning that their costs are often significant. Those who cannot afford to travel may import safe but illegal abortion pills, or attempt an unsafe clandestine abortion, both of which risk imprisonment. The secrecy associated with these practices means it is likely people do not feel able to request sick leave. Although the legislation currently being discussed in the Republic of Ireland will allow for abortion to be accessed within the State, the issue of stigma regarding abortion is likely to continue; individuals who need additional time off for health reasons may still be unable to access it.

The Committee on the Elimination of Discrimination Against Women (CEDAW) has stated that “laws that criminalize medical procedures only needed by women and that punish women who undergo these procedures”⁵ are a barrier to safe healthcare and has repeatedly recommended decriminalisation of abortion⁶. From a business perspective, the criminalisation of women’s healthcare can restrict their ability to work or access employment. In 2016, a Northern Irish woman was convicted of having an illegal abortion and given a suspended sentence⁷. This criminal record is likely to have a significant impact on her future employment prospects. A Northern Irish mother is currently bringing a legal challenge to her prosecution for buying abortion pills for her teenage daughter. She has described the disruption to her life caused by the prosecution as “five years of agony” and as a result she has struggled with anxiety and lost trust in doctors⁸.

³ Bloomer, F. et al (2017) ‘Abortion as a Workplace Issue: A Trade Union Survey North & South of Ireland’. Available at: https://issuu.com/cwuireland/docs/abortion_is_a_workplace_issue

⁴ Legislation for regulating the termination of pregnancy in the Republic of Ireland has not been finalised as of October 2018, meaning persons in need of an abortion still have to travel in most circumstances.

⁵ Committee of Elimination of Discrimination Against Women, General Recommendation 24 (1999) on women and health, para. 14. Available from: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/GEC/4738&Lang=en

⁶ For example; Concluding Observations on Peru, CEDAW/C/PER/CO/7-8 (2014), para. 36; Concluding Observations on Ireland, CEDAW/C/IRL/CO/6-7 (2017), para. 43.

⁷ McDonald, H. (2016) “Northern Irish woman given suspended sentence over self-induced abortion”, *The Guardian*. Available from: <https://www.theguardian.com/uk-news/2016/apr/04/northern-irish-woman-suspended-sentence-self-induced-abortion>

⁸ Oppenheim, M. (2018) “Mother ‘in fear and pain’ as she faces prosecution for buying daughter abortion pills in Northern Ireland” *The Independent*. Available from:

The negative consequences of the legally restrictive and culturally stigmatised status of abortion are heightened when individuals are engaged in the informal economy or precarious work. In the informal sector, taking time off work for an abortion, or for abortion-related illnesses, may negatively impact employment prospects. Similarly, individuals working zero hour contracts may compromise their health in order to continue working, for fear of being removed from future rosters. Women in Ireland are more likely to be engaged in low-paid and precarious work.⁹ These forms of employment can make it even more difficult for women to take the time off necessary to obtain and potentially recover from an abortion.

Until legislation providing abortion is introduced in Ireland, people continue to travel to obtain this vital healthcare. The employment impacts of having to travel to a different jurisdiction to obtain an abortion are manifest, as noted above. However, even when abortion is lawful in Ireland, questions of accessibility and affordability will impact women and their employment.

The current requirement in the draft legislation that pregnant people be subjected to a mandatory 3-day waiting period will undermine the women's employment security as it may force people to take extended periods off work. A study conducted in Utah found that the State's mandatory 72-hour waiting period translated to an 8-day wait in practice¹⁰. Similar problems are likely to occur in Ireland under current plans to allow healthcare providers to refuse care (or "conscientiously object"). The impact of this will be most harshly felt by those living in rural or remote areas who will have to travel long distances to access abortion care, as well as those in precarious work who could risk losing their jobs trying to access basic healthcare. Meanwhile, in Northern Ireland, despite moves in UK parliament to address the current criminal and legislative landscape, abortion remains illegal except in extremely limited circumstances and is punishable by life imprisonment. While certain Irish politicians have indicated that Northern Irish women would be eligible to receive abortions in the Republic once legislation has been finalised, there will most likely remain temporal and monetary constraints that impact their access to abortion services. The consequent negative impact on employment security for women in Northern Ireland will therefore also remain.

Stigma and Discrimination

The cultural and religious legacy in both the Republic of Ireland and Northern Ireland has a large role to play in maintaining the stigma and secrecy surrounding abortion. Seventy-three percent of those with direct experience of abortion as a workplace issue in Bloomer and colleagues' research said that the individual involved did not disclose the abortion to anyone in their workplace. A discussion forum was provided by the researchers to obtain more detailed perspectives on this. Statements and discussions on the forum made it clear that disclosure could be problematic in the workplace as a result of stigma or perceived stigma

<https://www.independent.co.uk/news/uk/home-news/northern-ireland-abortion-pill-mother-prosecuted-daughter-belfast-court-a8546936.html>

⁹ Irish Congress of Trade Unions (2015) 'Precarious Work on the Rise for Women in Ireland' available at: <https://www.ictu.ie/equality/2015/10/09/precariou-work-on-the-rise-for-women-in-ireland-c/>

¹⁰ Roberts, S.C.M et. al (2016) "Utah's 72-hour waiting period for abortion: experiences among a clinic-based sample of women", ANSIRH, 48(4), 179-187.

and that inability to disclose could lead to feelings of isolation. An individual's specific workplace environment can be an additional barrier to disclosure, for example, for those who worked in organisations with a strong religious ethos¹¹. It should be noted that a substantial proportion of Irish schools (95% of primary schools¹²) and hospitals operate with a religious ethos, despite receiving state funding. This means that the vast majority of education and healthcare workers have little choice but to work under a strong religious ethos.

Additionally, the impact of stigma and discrimination must be considered intersectionally. For example, transgender men, non-binary people, gender non-conforming individuals and people with intersex¹³ variations can become pregnant and require access to reproductive health care, including contraception and abortion. The specific vulnerability of transgender people has been further highlighted by the Office of the High Commissioner for Human Rights in the 2017 'Standards of Conduct for Business: Tackling Discrimination Against Lesbian, Gay, Bi, Trans and Intersex People'. Specifically, that companies should respect the human rights of transgender and intersex people, workers, and community members¹⁴. However, clear best-practice research, training and policy guidelines are scarce for this community¹⁵. Furthermore, transgender individuals routinely experience discrimination in accessing healthcare, which negatively impacts health outcomes; a US survey indicated that 30.8% of respondents delayed or did not seek healthcare due to discrimination¹⁶, and in Ireland 74% of transgender individuals have had negative experiences when accessing health services¹⁷. Transgender individuals also face high levels of stigma and discrimination in the workplace; in a survey by TENI, 43% of respondents indicated they had experienced problems in work due to being trans¹⁸. The stigma that transgender people face in healthcare and workplace contexts is compounded by abortion stigma, affecting their access to direct services such as abortion access but also support services within a business context such as paid sick leave. This intersectionality is not restricted to transgender, non-binary and intersex individuals; factors such as race, ethnicity, age and legal status can all affect how

¹¹ Bloomer, F. et al (2017) 'Abortion as a Workplace Issue: A Trade Union Survey North & South of Ireland'. Available at: https://issuu.com/cwuireland/docs/abortion_is_a_workplace_issue

¹² Department of Education and Skills (2017) 'Interesting Facts - First Look at Data from Primary Online Database, 2016/2017'. Available at: <https://www.education.ie/en/Publications/Statistics/Primary-Online-Database-POD-/POD-Interesting-Facts-First-Look-at-Data-from-POD-2016-2017.pdf>

¹³ "Intersex people are born with sex characteristics that don't fit typical definitions of male and female", UN Free and Equal 'Intersex Awareness'. <https://www.unfe.org/intersex-awareness/>

¹⁴ UNOHCHR (2017) *Standards of Conduct for Business: Tackling Discrimination against Lesbian, Gay, Bi, Trans & Intersex People*. Available at: <https://www.unfe.org/wp-content/uploads/2017/09/UN-Standards-of-Conduct.pdf>; Please see also the 2015, *UN Joint Statement on Ending Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People*. Available at: https://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF

¹⁵ Light, A. et al (2018) 'Family Planning and Contraceptive Use in Transgender Men' *Contraception* 98(4) 266-269 <https://doi.org/10.1016/j.contraception.2018.06.006>

¹⁶ Jaffee, K.D. et al (2016) 'Discrimination and Delayed Health Care Among Transgender Women and Men: Implications for Improving Medical Education and Health Care Delivery', *Medical Care* 54 (11) 1010-1016, doi: 10.1097/MLR.0000000000000583

¹⁷ McNeil, J et al (2013) Speaking from the Margins: Trans Mental Health and Wellbeing in Ireland. Available from: <http://www.teni.ie/attachments/5bdd0cd5-16b6-4ab6-9ee6-a693b37fdbcf.PDF>

¹⁸ Ibid.

an individual is perceived and treated when dealing with reproductive rights issues in a workplace context.

In light of the above factors, it is important to highlight that stigma - either direct or perceived - can prevent individuals from seeking guidance or support from colleagues or managers. This was borne out in Bloomer and colleagues' survey, in which only 15% of respondents stated that they had been supported by colleagues and only 7% by managers.

Abortion and healthcare businesses

When the new legislation is enacted in the Republic of Ireland, organisations who provide abortion (such as General Practitioner (GP) surgeries, clinics and hospitals) must act in a manner which does not infringe upon the rights and dignity of women and pregnant people. The refusal to provide care (or to "conscientiously object") based on the personal beliefs of a medical provider, is just one example of a practice which will harm women and pregnant people and make abortion more difficult to access. This in turn means that the working life of the pregnant person may be implicated, for example, having to make repeat visits to different GPs in order to find one who will not object. We believe that pregnant people should be able to avail of abortion care as soon as possible and should not be blocked from access by services providers who refuse to deliver care on grounds of conscience.

The restrictive laws enforced upon workers who provide abortion services should also be emphasised. Under Ireland's proposed abortion legislation¹⁹, medical professionals who assist a pregnant person outside the tight constraints of the law are liable to face criminal sanctions of up to 14 years imprisonment. This is harmful to both pregnant people and healthcare workers; the "chilling effect" of criminalisation on healthcare providers, noted in *Mellet vs Ireland*²⁰, will continue to impact medical decision making. Restricting the professional capacity of those working in medical professions and could endanger the health of the pregnant person and prevents medical professionals from delivering healthcare which is truly patient-centered. For female medical professionals with dependants or who are sole earners, the threat of criminal sanctions is particularly harmful.

A better model

In order to guard against the discrimination of women in the workplace, it is integral that reproductive healthcare in Ireland, including abortion services, are autonomy-focused, accessible, accountable and based on the best standards of medical evidence. In order to address the stigma and silence surrounding abortion, the State should ensure that training and education which intends to actively break down stigma be made available to employers and trade unions. This education should be delivered to healthcare professionals as a matter of priority. Comprehensive training which gives healthcare workers space to ask questions, voice their concerns and clarify their own perceptions and values can make a valuable

¹⁹ Health (Regulation of Termination of Pregnancy) Bill 2018.

²⁰ United Nations Human Rights Committee (17 November 2016). "Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2324/2013". Available from: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/116/D/2324/2013&Lang=en

contribution to removing some of the fear around delivering reproductive healthcare services, and likewise in supporting colleagues who may need to access abortion services.²¹

Conclusion

In order to ensure that the human rights of women in the workplace are met, it is crucial that employers are equipped to respond to healthcare issues, such as abortion, in a rights-based and non-stigmatising manner. The current inaccessibility of abortion in Ireland disadvantages women in the workplace in numerous ways. The stigma and secrecy surrounding abortion prevents women from being able to properly disclose their experiences and needs in the workplace. Clauses such as a mandatory 3-day waiting period and the criminalisation of medical professionals and others who assist a pregnant person outside the constraints of the law will prove additional barriers to women in the workplace - both those receiving and delivering services. Exceptions-based models of abortion care damage both abortion seekers and providers and limit the latter's capacity to deliver truly patient-centred care.

In order to ensure that women are not discriminated against in the workplace for accessing - or providing - abortion, we make the following suggestions to be considered by the Working Group:

- A patient-centred approach to abortion which integrates the procedure within the wider health system. This should be delivered in tandem with comprehensive sex education and wider public education about abortion and the supports which employers can provide.
- That States budget for the delivery of education and training which de-stigmatises abortion and equips medical professionals with the skills they need to deliver reproductive healthcare.
- The removal of barriers, such as mandatory waiting periods and refusal of care, which will negatively impact on women's ability to access abortion within the workforce.
- The removal of the threat of criminal sanctions for women (and others) who obtain or deliver abortion care.

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²¹ Freedman, L. et. al (2010) "Obstacles to the integration of abortion into obstetrics and gynecology practice". *Perspect Sex Reprod Health*, 42(3) 146.