

Atheist Ireland UPR



Submission to the United Nations Universal Periodic Review of Ireland in 2016

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1. About Atheist Ireland

What Atheist Ireland Promotes

1.1 Atheist Ireland is an Irish advocacy group. We promote atheism and reason over superstition and supernaturalism, and we promote an ethical, secular society where the State does not support or finance or give special treatment to any religion. ⁱ

1.2 Since being formed in late 2008, we have campaigned for a secular Irish Constitution, parliament, laws, government, education and healthcare systems. By secular we mean that the State should be neutral between religious and nonreligious philosophical beliefs. We would be as opposed to the State supporting atheism as we are to the State supporting religion.

How Atheist Ireland Works

1.3 We have made submissions to the Irish Government and political parties, the UN Human Rights Council under the periodic review, the UN Human Rights Committee under the ICCPR, the UN ESC Rights Committee under the ICESCR, the UN CERD Committee, the Council of Europe under the Framework Convention for the Protection of National Minorities, and the Council of Europe under the Implementation of the Louise O’Keeffe judgment at the European Court.

1.5 We have met with or addressed the Taoiseach and Minister for Education, Irish parliamentary health and education committees, senior civil servants in relevant departments, the Irish Constitutional Convention, the UN Human Rights and ESC Rights Committees, the OSCE Human Dimension Implementation Meetings, and the Presidents of the European Union, Parliament and Council.

1.4 We are members of Atheist Alliance International. We hosted the World Atheist Convention in Dublin in 2011. We hosted an International Conference on Empowering Women Through Secularism in Dublin in 2013.

Atheist Ireland and the UPR Process

1.5 We contributed to and we endorse the Irish civil society recommendations to this UPR process, as coordinated by the Irish Council for Civil Liberties under the campaign identity Your Rights Right Now. Our recommendations are reflected in the civil society response. We are also members of the Irish ESC Rights Initiative which has also made a submission to this process.

1.6 This document elaborates on the recommendations that are relevant to the areas where atheists and members of minority faiths are discriminated against, as the extra space here permits, and adds some extra nuance, in particular in the area of education, where this extra nuance is critical to understanding the nature of the problem.

2. Recommendations

Recommendations on Freedom of Religion and Belief

2.1 Amend Article 40.6.1 of the Constitution, and repeal sections 36 and 37 of the Defamation Act 2009, to remove the offence of blasphemy from Irish law.

2.2 Replace the obligatory religious oaths in Articles 12.8, 31.4 and 34.5 of the Constitution (for President, Judges and members of the Council of State including Prime Minister and Deputy Prime Minister), and the optional oaths and declarations in court, with single neutral declarations that reveal no information about the religious or nonreligious philosophical beliefs of the oath-taker.

2.3 Amend Article 40.1 of the Constitution to guarantee equality to all and to proscribe discrimination (direct or indirect) in any area of law on non-exhaustive grounds, as recommended by the Irish Human Rights Commission and the Constitutional Review Group.

Recommendations on The Right to Education

2.4 Amend or repeal Section 15 of the Education Act 1998, Section 7(3)(c) of the Equal Status Act 2000, and Section 37(1) of the Employment Equality Act 1998, to oblige publicly funded schools to deliver educational services, including employment, state curriculum and enrolment, in an objective, critical and pluralistic manner, and with no religious discrimination of any kind.

2.5 Replace the patronage system (in which most schools are publicly funded private schools, each with their own ethos) with an inclusive secular system, in which the foundation is State-run schools that are neutral between religions and atheism, and in which private ethos schools are an add-on alternative as opposed to being the basis of the school system.

2.6 As an interim measure for some families, and only as that, accelerate the divestment programme for schools and ensure the widest possible availability of multi and non-denominational schools. In areas where there is only one standalone school, enforce divestment or change of ethos in order that everybody in that area has access to a school with an ethos that is neutral between religions and atheism and does not discriminate on the ground of religion.

2.7 Ensure that there are workable policies in place to accommodate children who have opted out of formal religious education. Ensure that such children are not subject to religion being integrated throughout the remainder of the curriculum, even in denominational schools.

2.8 Ensure that there is an effective complaints mechanism and an effective remedy, in practice and in law, to vindicate breaches of human rights in schools.

2.9 If constitutional change is required to enact any of these recommendations, the Government should urgently hold a Religious Equality Referendum to bring about such constitutional change.

Recommendations on Reproductive Rights and Historic Abuse

2.10 Repeal Article 40.3.3 of the Irish Constitution, to enable the Oireachtas to legislate for the right to abortion. Decriminalise abortion by repealing sections 22 and 23 of the Protection of Life During Pregnancy Act 2013. Repeal the Abortion Information Act 1995. Provide a human rights compliant framework for abortion, in law and in practice.

2.10 Implement full and independent inquiries into symphysiotomy and Magdalen laundries, leading to prosecutions where wrongdoing is established. Adopt and implement a consistent approach, in line with international human rights law, to all inquiries into historical abuse.

3. Freedom of Religion and Belief Overview

3.1 The chairs of both major UN Human Rights Committees have strongly criticised Ireland's lack of separation of church and state.

3.2 In 2014, Nigel Rodley, chair of the Human Rights Committee, linked many of Ireland's social problems to the institutional belief system that has predominated in and sought to dominate Ireland. ⁱⁱ

3.3 In 2015, Waleed Sadi, chair of the ESC Rights Committee, compared Ireland to a developing country, saying that we are unique in Europe where separation of church and state is almost sacrosanct. ⁱⁱⁱ

3.4 In 2014, the Irish State accepted, under strong pressure from the UN Human Rights Committee, that majority votes cannot be used to derogate from Covenant obligations, yet Ireland continues to deny human rights to atheists and minority faiths based on majority votes. ^{iv}

3.5 The Irish State now claims that it is constitutionally obliged (not merely permitted, but obliged) to allow religious discrimination to continue in order to buttress religion.

3.6 The Department of Justice has told Atheist Ireland that the Government is constitutionally obliged to allow religious schools to give priority to their coreligionists, regardless of whether or not the State funds those schools, and that they cannot constitutionally go any further in removing the exemptions that State-funded schools with a religious ethos have from our equality laws. ^v

3.7 However, many relevant bodies and citations do not share the Government's certainty that removing these discriminations would be unconstitutional. These include:

- European Court of Human Rights in Louise O'Keefe Judgment
- Constitutional Review Group Report 1995 on Access to Schools
- Oireachtas Education Committee on Admission to Schools Bill
- Statutory bodies reporting to Oireachtas Education Committee
- Irish Human Rights Commission Report on Religion and Education
- Forum on Patronage and Pluralism on Duty of Education Department
- Forum on Patronage and Pluralism on Integrated Curriculum
- Professor Gerry Whyte on Court Reasoning open to Question
- Eoin Daly and Tom Hickey on the 'Right to Discriminate'
- Alison Mawhinney on failure to protect human rights

This linked document includes relevant extracts from all of these sources:
<http://atheist.ie/2015/09/schools-equality-pact-unconstitutional/>

3.8 The Supreme Court has said it is the duty of the Oireachtas to balance competing constitutional rights in legislation. The Oireachtas cannot fulfil this duty if the Government closes down the debate, without publishing the legal opinion it is relying on to close it down.

3.9 This is particularly important on this issue, because eight different United Nations and Council of Europe bodies have told Ireland that this religious discrimination is breaching the human rights of atheist and minority faith children, families and teachers.

3.10 If constitutional change is required to end religious discrimination, the Government should urgently hold a Religious Equality Referendum to bring about such constitutional change.

4. Blasphemy Law

4.1 Ireland introduced this law despite having informed the Venice Commission in 2007 that in general the legislation already in place provided adequately for these matters. Ireland introduced a Blasphemy law in a country where the non-religious do not enjoy the right to equality before the law without discrimination or the right to an effective remedy.

4.2 The ballot paper given to the Constitutional Convention did not include the option to replace the clause with a positive clause on freedom of expression based on Article 10 of the European Convention of Human Rights. This option was recommended by Atheist Ireland, and previously by the 1996 Irish Constitution Review Group chaired by TK Whitaker.

5. Religious Oaths

5.1 Under the Irish Constitution, not only judges and the President, but also members of the Council of State are required to swear a religious oath. The Taoiseach, the Tánaiste, the Chief Justice, the President of the High Court, the Chairman of Dáil Éireann, the Chairman of Seanad Éireann, and the Attorney General are all ex-officio members of the Council of State.

5.2 In courts, religious oaths are optional, but the law governing the administering of oaths and affirmations in Ireland breaches Article 17.1 of the ICCPR. Atheists are obliged to object publicly to taking a religious oath. In 1990 the Law Reform Commission recommended abolishing the oath in its present format, and replacing it with a single neutral declaration.^{vi}

6. The Right to Education

6.1 Ireland fails to protect the rights of children and teachers in publicly funded National schools. Parents are legally obliged to send their children to schools where there is no effective remedy to vindicate their Covenant rights.

6.2 The State claims that parents are exercising choice by sending their children to these schools, but the European Court in the Louise O'Keeffe case found that there was no choice in reality.^{vii}

6.3 To date nothing has changed on the ground for atheist and secular parents and our children in the education system.

6.4 The State has not put in place any effective remedy to vindicate the rights guaranteed under the Covenants and neither has it explained how it intends to give effect to the O'Keeffe case judgment at the European Court.

6.5 No complaints mechanism has been put in place. The European Court in the Louise O'Keeffe case has found Ireland in breach of Article 3 (protection from abuse) and 13 (the right to an effective remedy) of the European Convention.

6.6 No steps are being taken to ensure that the rights of children of minority religions or non-faith are recognised in the Education Act 1998.

6.7 No non-Denominational schools have opened. The small number of Educate Together schools are multi-denominational, not non-denominational as the UN Human Rights Committee has asked for. These schools now say that they no longer describe themselves as multi-denominational, but nothing has changed in how they operate on the ground.

6.8 The Irish State plans to continue to discriminate and provide exemptions to religious bodies to discriminate against minorities in the Irish Education system.

6.9 Despite the fact that the UN specifically referred to secular parents and the religious integrated curriculum in their Concluding Observations, the Irish state has not changed one single piece of legislation or produced any statutory guidelines to protect the rights of secular parents and their children. Religious exemptions are still in place which permits publicly funded private bodies to legally discriminate against minorities in the education system.

6.10 The divestment programme, the Report from the IHRC and the Forum on Patronage and Pluralism have not made a difference on the ground because the Constitution obliges the state to give priority to religion. Equality before the law and equal protection of the law without religious discrimination take second place to promoting religion. The religious discrimination suffered by minorities in the education system has undermined the rights guaranteed under Covenants.

The Education Act 1998

6.11 Section 15.1 of the Education Act 1998 obliges the Board of Management of all schools to manage the school on behalf of the patron of that school.

6.12 Section 15.2 (b) of the Education Act 1998 obliges Boards of Management of all schools to uphold and be accountable to the patron for so upholding, the characteristic spirit of the school.

Characteristic Spirit or Ethos

6.13 The characteristic spirit of the school is known as the ethos of the school. Despite being obliged to uphold this ethos, schools are not legally obliged to write it down. Parents are not aware from the Admissions Policy how exactly the ethos of the school will operate on the ground.

6.14 The characteristic spirit (ethos) of a school can include any of the following, participation in some of which can be declared obligatory:

- Religious integrated curriculum
- Religious instruction classes
- Religious prayers
- Religious ceremonies
- Religious symbols in classrooms
- Religious symbols on school uniforms
- Religious rites of passage such as Holy Communion

6.15 There is nothing in the Education Act 1998 that obliges any school to deliver the State curriculum in a neutral and objective manner.

The Integrated Religious Curriculum

6.16 Section 6 (a) of the Education Act 1998 obliges every person concerned in the implementation of the Act to give practical effect to the constitutional rights of children.

6.17 But Rule 68 of the Rules for National Schools obliges schools to integrate a religious ethos throughout the entire curriculum. The Report from the Forum on Patronage and Pluralism in 2012 recommended that, as a first step, Rule 68 should be deleted as soon as possible. ^{viii}

6.18 The State is well aware that there is no practical application given to the Constitutional right of parents to opt their children out of religious instruction classes, or religion that is integrated into the curriculum and the daily life of the school.

Proposed Government Bills Retain Religious Discrimination

6.19 The Government is proposing two Bills that it claims will address the problems of religious discrimination in schools. In reality neither Bill will do this. Indeed, both Bills retain the right of publicly funded schools to continue to discriminate on the ground of religion.

6.20 The Admissions to Schools Bill will not remove religious discrimination in access to schools. ^{ix} Indeed it will further institutionalise religious discrimination. ^x

6.21 The Section 37 Amendment Bill will not protect teachers who are atheists or members of minority faiths from religious discrimination. The Irish Human Rights and Equality Commission has said that the approach of this Bill is undesirable, and may continue to leave the State exposed to a breach of its obligations under the European Employment Equality Directive 2000/78. ^{xi}

Patronage System

6.22 Ultimately the only way to end religious discrimination in Irish schools is to replace the patronage system, in which most schools are publicly funded private schools, each with their own ethos, almost all religious. The Oireachtas Education Committee has concluded that multiple patronage and ethos as a basis for policy can lead to segregation and inequality, and that the objectives of admission policy should be equality and integration. ^{xii}

6.23 The divestment programme must only be seen as an interim measure for some families. Even at its maximum planned extent, this process would still leave most parents (i.e. families in areas where there is only one standalone school) without access to a school that does not discriminate on the ground of religion. Also, even as an interim measure for some families, divestment must include non-denominational schools as opposed to merely multi-denominational schools.

7. Health and Reproductive Rights

7.1 Atheist Ireland is a member of the Coalition to repeal the Eighth Amendment to the Irish Constitution. We endorse the recommendations on abortion rights made in the Your Rights Right Now civil society submission.

8. Historic Abuse of women and children

8.1 Atheist Ireland works with victim groups of historic abuse in Ireland. We endorse the recommendations on addressing historic abuse in the Your Rights Right Now civil society submission.

9. Annexes and Notes

Annexes

Atheist Ireland 2015 - Schools Equality PACT - Patronage, Access, Curriculum, Teaching

Atheist Ireland 2014 - Submission to UN Human Rights Committee under ICCPR

Notes

ⁱ <http://atheist.ie>

ⁱⁱ <http://www.atheist.ie/2014/08/01/the-catholic-belief-system-in-ireland-and-human-rights-abuses-from-child-abuse-to-symphysiotomy/>

ⁱⁱⁱ <http://www.irishtimes.com/news/social-affairs/un-says-ireland-must-have-vote-on-abortion-1.2243406>

^{iv} <http://atheist.ie/2014/08/irish-government-accepts-abortion-rights-cannot-be-denied-by-majority-votes-video-and-transcript/>

^v <http://atheist.ie/2015/08/education-justice-blame-each-other/>

^{vi} <http://www.lawreform.ie/fileupload/Reports/rOaths.htm>

^{vii} <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-140235>

^{viii} <http://www.education.ie/en/Press-Events/Conferences/Patronage-and-Pluralism-in-the-Primary-Sector/The-Forum-on-Patronage-and-Pluralism-in-the-Primary-Sector-Report-of-the-Forums-Advisory-Group.pdf> p 81

^{ix} <http://atheist.ie/2014/12/draft-general-scheme-education-admission-schools-bill-religious-discrimination/>

^x <http://atheist.ie/2015/04/school-admissions-bill-will-institutionalise-religious-discrimination/>

^{xi} <http://atheist.ie/2014/04/approach-of-religious-discrimination-bill-is-undesirable-says-irish-human-rights-and-equality-commission/>

^{xii} <http://www.oireachtas.ie/parliament/mediazone/pressreleases/name-20988-en.html>