

# Atheist Ireland



## Submission to the United Nations under the International Covenant on Civil and Political Rights

<http://atheist.ie>

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<http://atheist.ie>

## Overview, Contents, Format, Key Priorities and Recommendations



### 1.1 Atheist Ireland

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. Since being formed in late 2008, we have campaigned for a secular Irish Constitution, parliament, laws, government, education and healthcare systems.

We have made submissions to the Irish Government and political parties, the UN Human Rights Council under the periodic review, the UN CERD Committee and the Council of Europe under the Framework Convention for the Protection of National Minorities. We have addressed Irish parliamentary committees, the Irish Constitutional Convention, the OSCE and the Presidents of the European Union, Parliament and Council. We are members of Atheist Alliance International, and we hosted the World Atheist Convention in Dublin in 2011.

### 1.2 Overview

This Submission outlines the failure of the Irish State to protect the human rights of atheists and secularists in many areas of Irish life and will show how Ireland's human rights obligations are incompatible with the Irish Constitution.

Ireland has failed to take positive measures to secure the human rights of atheists and secularists under the ICCPR despite having ratified the treaty and agreeing to guarantee these rights to all within its territory.

The Irish State cannot fulfil its obligations under the Covenant because it gives preference to religious beliefs and permits discrimination against atheists/secularists. In Ireland there is no effective remedy to vindicate Covenant rights.

### 1.3 Contents

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### 1.4. Format

In each section, we start with the question that the UN Committee has asked Ireland in in the List of Issues on Ireland. We then outline and elaborate on the current situation.

An exception to this format is the section on the Civil Registration Amendment Act. This is the latest piece of direct religious discrimination against atheists and secularists in Ireland, and we ask the Committee to ask the State to amend this law to bring it into line with the ICCPR.

## 1.5 Key Priorities for Ireland

The key priorities and challenges facing Ireland in complying with the ICCPR are to comply with Articles 2 (nondiscrimination and right to an effective remedy) and 26 (equality before the law). Article 26 covers all laws in Ireland, and it guarantees to all persons equal and effective legal protection against any religious discrimination.

This raises fundamental issues about how the Irish State fails to protect atheists and secularists (as well as religious minorities) with regard to the various religious exemptions in Irish laws. Please also remember that it is persons, not groups, that are guaranteed these rights.

Specific relevant rights are guaranteed under Article 18 (freedom of thought, conscience and religion), 19 (freedom of expression) and 6, 7 and 17 (life, treatment and privacy). Protecting these rights requires changes to the Irish Constitution and laws, including equality laws, the education system, religious oaths, the blasphemy law, the Civil Registration Act, and abortion law.

## 1.6 Specific Recommendations

1. Give full effect to the human rights under the Covenant in domestic law.
2. Amend Article 44 of the Irish Constitution, on Religion, to explicitly give equal protection without discrimination to religious and non-religious philosophical believers.
3. Amend Article 40.1 of the Irish Constitution on equality before the law with the principle of non-discrimination.
4. Remove Section 7.3(c) of the Equal Status Act 2000 to ensure that children have a guaranteed access to schools without discrimination of any kind.
5. Remove Section 12.4 and 37.1 of the Equality Acts which permit schools and hospitals and training bodies to discriminate on the grounds of religion.
6. Ensure that all children have equal access to a basic moral, intellectual and social education in schools (Art 42.3.2 Irish Constitution) and not one just permeated by religious values.
7. Amend Section 15 of the Education Act 1998 to ensure that the curriculum in all schools is delivered in an objective, critical and pluralistic manner.
8. Amend Section 15 of the Education Act 1998 to ensure that all schools write down their Characteristic Spirit.
9. Enact legislation to ensure that a common ethics course is an integral part of all B.Ed and Graduate Diploma programmes in the colleges for student teachers based on human rights and equality and also in accordance with the Toledo Guiding Principles.
10. Reform the governance of State-funded teacher training colleges to remove the authority of religious bodies.
11. Replace the requirement that the President, judges and Council of State members (including Taoiseach and Tanaiste) must swear a religious oath in the presence of Almighty God (Arts 12, 31, 34), and that the President and judges ask God to direct and sustain them (12, 34), with a single neutral declaration that reveals no details about personal religious beliefs.
12. Implement the recommendations of the Law Reform Commission regarding secular affirmations in courts and polling stations and other oath-taking.
13. Remove the Constitutional references to all authority coming from the Holy Trinity and our obligations to our divine Lord Jesus Christ (preamble); powers of government deriving under God from the people (6); the homage of public worship being due to Almighty God and the State holding his name in reverence (44); and the glory of God (closing line).
14. Amend Article 40.6.1 of the Constitution to remove the offence of blasphemy.
15. Remove Section 36 and 37 of the Defamation Act 2009 (blasphemy offence).
16. Amend the Civil Registration Act to treat religious and nonreligious bodies equally.
17. Remove Article 40.3.3 of the Constitution to enable the Oireachtas to pass abortion laws consistent with our ICCPR obligations.

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## 2. Articles 2/26 Effective Remedy and Article 40.1 of the Irish Constitution



### 2.1 The Committee's Question

The Committee in the List of Issues on Ireland fourth periodic report asks:

*"1. Given that the Covenant is not directly applicable in the State party, please provide information on measures taken to ensure that all of the Covenant provisions are fully given effect in its domestic legal order."*

### 2.2 The Current Situation

There is still no effective remedy in practice or in law to vindicate the rights guaranteed under the ICCPR. The state are taking certain steps, but none of these can in practice secure Covenant rights on the ground. The Irish State will continue to fail in their positive obligation to protect the rights of atheists/secularists because the Irish Constitution requires them to buttress religion.

The Irish Constitution clearly does not protect atheists/secularists from religious discrimination. The Irish state provides exemptions in the Equal Status Act, the Education Act and the Employment Equality Act for religious bodies to discriminate on religious grounds. This discrimination has undermined the human rights of atheists/secularists.

### 2.3 Statement by Equality Authority

In a recent Submission to the Minister for Justice Equality and Defence, the Equality Authority stated that: (1)

*"In spite of recognising the need to protect religious interests, the Supreme Court elevated the constitutional free practice of religion guarantee over the non-discrimination guarantee. A similar analysis to that of Quinn's Supermarket was provided by the Supreme Court in McGrath v Trustees of Maynooth*

*College which concerned the argument of the plaintiffs who were dismissed on grounds relating to their religion that this action constituted "discrimination on grounds of religious status" within Article 44.2.3 of the Constitution. In following the reasoning of Quinn's Supermarket, the Supreme Court concluded that the purpose of the prohibition on religious discrimination was to protect the free practice of religion. This resulted in the prohibition on religious discrimination effectively being superseded or overcome by the protection of the right to free practice of religion." (2)*

### 2.4 Article 40.1 of the Constitution

This reads: *"All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function."*

### 2.5 Statement by IHRC

The Irish Human Rights Commission, in their Report to the UN under the Universal Periodic Review, recommended a Constitutional Referendum on Article 40.1 to proscribe discrimination. They also made the following comments in their Submission on the List of Issues under the ICCPR: (3)

*"The IHRC has also called on the State to expand the definition of equality in Irish law. In particular, the IHRC considers that Article 40.1 of the Constitution should be amended to guarantee equality to all and to proscribe discrimination (direct or indirect) in any area of law on non-exhaustive grounds. To the IHRC's knowledge there has been no discussion by State authorities of the need for the equality guarantee under Article 40.1 of the Constitution to provide (or be interpreted to provide)*

*equivalent protection to the right guaranteed under Article 26 of the Covenant. As noted, nor has the matter of the current interpretation of the equality guarantee under Article 40.1 of the Constitution been referred to in the Terms of Reference of the Constitutional Convention.”*

## **2.6 Statement by UN ESCR Committee**

The United Nations Committee on Economic, Social and Cultural Rights in their concluding observations in 2002 stated the following on Article 40.1:

*“16. The Committee regrets that the State party has not yet undertaken any measures with regard to the Committee’s 1999 recommendation concerning the inconsistency of article 40.1 of the Constitution on equality before the law with the principle of non-discrimination as set out in articles 2 and 3 of the Covenant.”*

## **2.7 Statement by Constitutional Review Group**

The Constitutional Review Group Report 1995 also recommended Constitutional change to Article 40.1 of the Constitution to bring Ireland in line with international human rights instruments. (4)

*“A majority of the Review Group recommends that there should be added to Article 40.1 a section in the following terms:*

*“No person shall be unfairly discriminated against, directly or indirectly, on any ground such as sex, race, age, disability, sexual orientation, colour, language, culture, religion, political or other opinion, national, social or ethnic origin, membership of the travelling community, property, birth or other status.”*

## **2.8 Summary**

Despite these observations and recommendations, there has been no change and no commitment to a Constitutional Referendum on Article 40.1 and consequently Ireland is in breach of its obligations under the ICCPR as it will continue to discriminate against atheists/secularists and fail to guarantee and protect their rights under the Covenant.

## **2.9 Notes for this Section**

(1) <http://www.equality.ie/Files/Letter-to-Minister-from-Acting-Chair.pdf>

(2) <http://www.equality.ie/Files/Recommendation-Paper-re-section-37-amendment.pdf>

(3) [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT\\_CCPR\\_IFN\\_IRL\\_14924\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT_CCPR_IFN_IRL_14924_E.pdf)  
para 17

(4) <http://archive.constitution.ie/reports/crg.pdf> p. 205

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## 3. Articles 2/18/24/26 NonDenominational Schools, Complaints Mechanism and Effective Remedy



### 3.1 The Committee's Question

The Committee in the List of Issues on Ireland fourth periodic report asks:

*"26. Please provide information on steps being taken to ensure that the right of children of minority religions or non-faith are also recognized in the Education Act 1998, and the number of nondenominational primary schools that have been established during the reporting period. Please also clarify whether there is an accessible and independent complaint handling mechanism to resolve disputes between parents and schools."*

### 3.2 The Current Situation

Since the comments of the UN in 2008, nothing has changed on the ground for atheist/secular parents and our children in the education system.

- **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.**
- **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.**
- **No non-Denominational schools have opened up. The small number of Educate Together schools are multi-denominational, not non-denominational as the UN Committee has asked for.**
- **The Irish State plans to continue to discriminate and provide exemptions to religious bodies to discriminate against minorities in the Irish Education system.**

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 guaranteed under the ICCPR. Religious exemptions are still in place which permits publicly funded private bodies to legally discriminate against minorities in the education system.

### 3.3 The steps taken cannot work

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 the Covenant.

### 3.4 The Education Act 1998 / The Equal Status Act 2000 / The Employment Equality Act

All the above Acts provide exemptions to religious bodies and fail to protect minorities from religious discrimination because the State gives priority to religious beliefs over philosophical convictions.

### 3.5 The State directly runs religious schools

The majority of schools in Ireland at both primary and second level are religious schools. But schools do not need to be under a religious patronage to operate as religious schools. In fact the Dept of Education is patron to nine schools. In 2008 they informed the Committee that five of these were Catholic and four Protestant. (1)

At second level Educational Training Board schools (ETB) come under the VEC Act which does not refer to religion. Despite this all these schools have religious instruction classes and many of these operate a religious ethos.

### 3.6 The Education Act 1998

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.

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.

### 3.7 Characteristic Spirit or Ethos

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 of any school how exactly the ethos of the school will operate on the ground.

The characteristic spirit (ethos) of a school can include any of the following:

- 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

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

### 3.8 The Opt- Out from Religion

Section 30.2 (e) of the Education Act 1998 does not oblige any student to attend instruction in any subject which is contrary to the conscience of the parent of the student or in the case of a student who has reached the age of 18 years, the student.

This section of the Education Act 1998 reflects Article 44.2.4 of the Constitution which states that:

*“Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at the school.”*

### 3.9 Religious Instruction

***One of the key things to note is that both the Constitution and the Education Act 1998 refer to religious instruction.***

The religion that is integrated into the curriculum and the daily life of the school is not regarded as religious instruction but religious education. The state does not recognise that there is any right to opt out of religion that is integrated into the curriculum.

### 3.10 Barrington Judgment

In the Supreme Court case Campaign to Separate Church and State, Barrington J stated:

*“The Constitution therefore distinguishes between religious ‘education’ and religious ‘instruction’ – the former being the much wider term. A child who attends a school run by a religious denomination different from his own may have a constitutional right not to attend religious instruction at that school but the Constitution cannot protect him from being influenced, to some degree by the religious ‘ethos’ of the school. A religious denomination is not obliged to change the general atmosphere of its school merely to accommodate a child of a different religious persuasion who wishes to attend that school.”*

### 3.11 Issues Arising

There are no Guidelines statutory or otherwise to define what is meant by “influenced, to some degree by the religious ‘ethos’ of the school”.

The Education Act 1998 does not oblige any school to deliver the curriculum in a neutral and objective manner and parents are left dealing with Boards of Management who have no connection to the ICCPR and who interpret human rights in their own manner.

The Supreme Court also spoke of parents choosing to send their children to a particular school and has never examined these issues in light of the fact that the majority of parents in the country have absolutely no choice where they send their children to school as over 90% of schools at primary level operate with a religious ethos. The majority of schools at second level also operate with a religious ethos.

### **3.12 It is Impossible to Opt Out of the Integrated Religious Curriculum**

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.

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. A recent letter to the Irish Times newspaper highlights the plight of parents trying to opt their children out of religion in Irish schools. (2)

It is impossible to opt out of religion that is integrated into the curriculum and the daily life of the school. This applies to all schools at both primary and second level. The state does not recognise that there is a positive obligation to respect the rights of atheist/secular parents and their children as the Irish Constitution obliges them to ensure the free practice of religion at the cost of the human rights of atheists/secularists.

### **3.13 Section 28 of the Education Act 1998 – Grievances and other Procedures**

Under the above section the Minister (following consultation) may from time to time prescribe procedures in accordance with which:

*(b) “grievances of students, or their parents, relating to the students’ school (other than those which may be dealt with under paragraph (a) or section 29), shall be heard and*

*(c) “appropriate remedial action shall, where necessary, be taken as a consequence of an appeal or in response to a grievance.”*

### **3.14 Section 29 of the Education Act 1998 – Appeals to Secretary General.**

Parents can only appeal to the Secretary General of the Dept of Education if a Board of Management”

- (a) permanently excludes a student from a school, or
- (b) suspends a student from attendance at a school.
- (c) refuses to enrol a student in a school.

### **3.15 Statement by Minister for Education**

In a recent reply in the Dail to a question on the involvement of the Minister for Education in grievances in schools the Minister stated that: (3)

*“The Deputy will be aware that under the Education Act 1998, legally, all schools are managed by school Boards of Management, on behalf of the school patrons or trustees.*

*Accordingly, whereas I provide funding and policy direction for schools, neither I nor the Department have legal powers to instruct schools to follow a particular course of direction with regards to individual complaint cases, or to investigate individual complaints except where the complaint involves a refused enrolment, expulsion or suspension, in accordance with Section 29 of the 1998 Education Act.*

*In dealing with parental complaints, my Department's role is to clarify for parents how their grievances and complaints against schools can be progressed. Where a parent feels that the school's board of management has failed to investigate or adequately investigate their complaint, they should contact the Ombudsman for Children.*

*The Office of the Ombudsman for Children may independently investigate complaints about schools recognised with the Department of Education and Skills, provided the parent has firstly and fully followed the school's complaints procedures. The key criterion for any intervention by the Ombudsman for Children is that the action of the school has had a negative affect on a child.*

Section 28 of the Education Act 1998 provides for grievance and appeal procedures in schools. It expresses a desirability of determining appeals and resolving grievances in the school concerned. Section 29 of the Act sets out a limited set of circumstances a parent can appeal administrative decisions of a school. These are confined to expulsions, suspensions or refusal to enroll. The Government has approved the drafting of the Admissions to School Bill 2014 in which the extent to which refusal to enroll will or will not be subject to a Section 29 appeal will be addressed.

*I am not satisfied with the current provisions of Section 28. I plan to revise it in order to provide in law for a Parent and Student Charter. Changing how schools engage with, listen and respond to parent concerns will be an important part of a Charter. Providing parents with the rationale for any decision is important. If schools help parents to understand the basis for a decision parents are more likely to accept the fairness of decisions."*

### **3.16 This Proposed Charter Does Not Protect ICCPR Rights**

The Minister clearly says that "neither I nor the Department have legal powers to instruct schools to follow a particular course of direction with regards to individual complaint cases..". The suggested Charter will thus not guarantee and protect the rights guaranteed under the ICCPR.

Atheist/secular parents are still left in the position that they have not got access to an effective remedy to vindicate their rights under the ICCPR.

In relation to Section 29 of the Education Act 1998, please see also Section 3.23 of this submission.

### **3.17 Statement by IHRC**

In their Report in 2011, Religion & Education; A Human Rights Perspective the Irish Human Rights Commission recommended that: (4)

*"Section 15 of the Ed Act should be amended to provide for modifications to the integrated curriculum to ensure that the rights of minority faith or non faith children are also recognised therein. In this regard, the State must take*

*sufficient care that information and knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner with the aim of enabling pupils to develop a critical mind with regard to religion in a calm atmosphere which is free of any misplaced proselytism."*

### **3.18 Forum on Patronage and Pluralism**

The Report from the Forum on Patronage and Pluralism recommended that: (5)

*"as a first step and in line with the general view expressed at the Forum, Rule 68 should be deleted as soon as possible."*

*"The Advisory Group recommends that the introduction to the Primary Curriculum should be revised to ensure that, while the general curriculum remains integrated, provision is made for denominational religious education/faith formation to be taught as a discrete subject."*

Parents are responsible for the supervision of their children if they opt them out of religious instruction classes and religious ceremonies in Irish schools. The state does not provide another course for students that are opted out of religion. In the main most students have no option but to sit at the back of the religious instruction class and also attend religious ceremonies if their parents cannot collect them from school.

### **3.19 Irish Government's Proposed Bill**

In their Reply to the List of Issues from the UN under the ICCPR the Government stated that:

*"In September 2013, the Minister for Education and Skills published a Draft General Scheme for an Education (Admission to Schools) Bill 2013, as well as Draft Regulations on the Content of Admission Policies and Draft Regulations on Admission Processes, for discussion ahead of enacting legislation. The aim is to improve the admissions process and to ensure that the way schools decide on applications is structured, fair and transparent. From the perspective of the parent, the framework makes clear that, inter alia, the enrolment policy will include a statement setting out the position of the school in relation to its arrangements for upholding the constitutional right of students not to attend religious instruction."*

### 3.20 This Bill Does Not Change the Situation

This Bill does nothing to change the situation on the ground and protect the human rights guaranteed under the ICCPR.

- It does not deal with the religious integrated curriculum, and only refers specifically to religious instruction.
- Nor does it deal with the practical application of the right to opt out of religious instruction classes.
- There is no proposal to ensure that the curriculum is delivered in a neutral and objective manner or to ensure that schools write down their ethos and inform parents exactly where they are integrating religion into secular subjects under the curriculum.
- Atheist/Secular parents cannot ensure that the education of their children is in conformity with their convictions.

### 3.21 Education about Religion and Beliefs

The Report from the Forum on Patronage and Pluralism also pointed out that: (6)

*“It is important to distinguish between Education about Religion and Beliefs (ERB), which promotes learning about religions and Denominational Religious Education which focuses on faith formation.*

*The current situation for children opting out of Denominational Religious Education in primary school is inappropriate and inadequate on human rights grounds.*

*It is unsatisfactory because some children are deprived of an educational opportunity to learn about religions and ethics. It is important that all children should be enabled, through an ERB programme, to develop knowledge, values and attitudes towards religions.*

*There is also a need for an Ethics course appropriate to life in a democratic society. As early as the 1830s there was concern about children losing out educationally because of the opt-out clause. The Rules of the time stated that “no child shall receive, or be present at, any religious instruction of which his parents or guardians disapprove.”*

*Furthermore, the Rules stated “the time for giving religious instruction shall be so fixed that no child shall be thereby, in effect, excluded, directly or indirectly, from the other advantages which the school affords.”*

### 3.22 The State Intends to Ignore the Human Rights of Secular Parents and our Children

Given the State Reply to the List of Issues from the UN, it seems clear that the State intends to ignore the human rights guaranteed under the ICCPR and argue that the Constitution protects secular parents and their children when it is clear that despite all the guarantees we still do not enjoy these rights.

To date the State has not given any notice of how it will comply with the findings of the European Court in the Louise O’Keeffe case. Parents are still obliged to send their children to schools where there is no effective remedy to engage the state under Article 2, Article 7, Article 18, Article 24 and Article 26 of the ICCPR.

### 3.23 Equal Status Act 2000

Section 7 3 (c) of the Equal Status Act 2000 gives an exemption to schools with a religious ethos to refuse access in order to uphold their ethos. (7)

As the majority of schools at both primary and second level have a religious ethos the children of atheists/secularists have not got a right of access, without religious discrimination, to the majority of schools in the country.

In schools under the patronage of the Catholic Church a baptismal certificate is required when seeking access. In many cases this is the only school in a particular area and this has resulted in parents feigning religious belief in order to gain access.

The proposed Education (Admission to Schools) Bill will not remove religious discrimination in access to schools. (8)

Atheists/Secular parents are legally obliged to send their children to schools that discriminate on religious grounds.

### 3.24 CERD Committee Concluding Observations

In their Concluding observations in 2011 the CERD Committee stated that:-

*“26. The Committee recalls its previous concluding observations (CERD/C/IRL/CO/2) and notes with concern that the education system in the State party is still largely denominational and is mainly dominated by the Catholic Church.*

*The Committee further notes that non-denominational or multi-denominational schools represent only a small percentage of the total and, regrets that, according to reports, there are not enough alternative schools, and students of the Catholic faith are favoured for enrolment into Catholic schools against students of other faiths in case of shortage of places. The Committee further expresses its regret that the provisions of the Equal Status Act give the power to schools to refuse to admit students to denominational schools on grounds of religion if it is deemed necessary to protect the ethos of the school (articles 2, 5(d)(vii) and 5(e)(v))*

***Recognising the ‘intersectionality’ between racial and religious discrimination, the Committee reiterates its previous concluding observations (CERD/C/IRL/CO/2) and recommends that the State party accelerates its efforts to establish alternative non-denominational or multi-denominational schools and to amend the existing legislation that inhibits students from enrolling into a school because of their faith or belief. The Committee further recommends to the State party to encourage diversity and tolerance of other faiths and beliefs in the education system by monitoring incidents of discrimination on the basis of belief.”***

### 3.25 The State Has Done Nothing to Amend The Equal Status Act

The state has done nothing and intends to do nothing to amend the Equal Status Act 2000 to forbid discrimination on the grounds of religion. It has not monitored incidents of discrimination on the basis of belief and consequently is failing in its obligations to guarantee and protect the rights under the ICCPR.

### 3.26 Employment Equality Act 1998

Section 37 (1) of the Employment Equality Act 1998 gives a religious, educational or medical institution that is under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values permission to discriminate on religious grounds. (9)

In order to train as a teacher and gain employment trainee teachers must take a Certificate in Religious studies (CRS). As the vast majority of schools in the state are religious it is nearly impossible to gain employment as a teacher without a CRS. This was the subject of an article in the Irish Times on 29th of April, “Trainee teachers are warned career prospects depend on religious faith”. (10)

The state supports this discrimination as the Constitution permits religious discrimination in order to buttress religion.

Section 37 of the Employment Equality Act grants exemptions to religious bodies at the expense of the right to freedom of conscience, freedom of expression and the right to private and family life of individuals.

### 3.27 “The General Programme of the School will be Considered a Form of Pre-Evangelisation”

The Joint Managerial Body AMCSS Secretariat’s ‘Guidelines on the Inclusion of Students of Other Faiths in Catholic Secondary Schools’ states that:

*“The general programme of the school will be considered as a form of **pre-evangelisation.**”*

Pre-evangelisation of pupils who are not Catholic does not constitute respect for the religious and philosophical convictions of minorities, and it is official policy in the majority of schools in the country.

Teachers would fall foul of Section 37 if they refused to pre-evangelise, as they would not be upholding the religious ethos of the school. In essence, in order to take up employment as a teacher, a person must be willing to undermine the human rights of minorities who have no option but to send their children to school.

### **3.28 Proposed Bill Will Not remove This Discrimination**

The proposed Bill (Bacik Bill) to amend Section 37 will not remove the ability of religious, educational or medical institutions to discriminate against atheists. The Equality Authority has recently made a Submission to Government to remove this discrimination.

### **3.29 The right to an Effective Remedy**

The Irish Constitution permits discrimination on the grounds of religion as it gives preference to religious beliefs over philosophical convictions.

The Irish State has provided exemptions in the European Convention on Human Rights Act 2003.

In Ireland you cannot hold the state responsible for the protection of human rights guaranteed under the European Convention as the European Convention on Human Rights Act 2003 only applies to 'organs of the state' and publicly funded schools are not considered 'organs of the state' within the meaning of the Act.

This means that the Irish state 'provides for' the education of the children of atheist/secularists in publicly funded private schools that are opted out of the European Convention.

The Irish State cedes control of the education system to private bodies, and has failed to adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations under the European Convention and the ICCPR.

The State is hardly likely to guarantee the rights under the Covenant when they have exempted the education system out of the European Convention on Human Rights Act 2003.

There is no legal framework to protect the rights guaranteed under the Covenant.

### **3.30 Statement by IHRC**

The Irish Human Rights Commission has highlighted this lack of effective remedy of Covenant rights in their Submission on the list of issues to the UN Human Rights Committee:

*"5. The IHRC wishes to highlight that despite the Committee's 2008 Concluding Observations, no clear steps have been taken to give effect to the ICCPR in domestic legislation or to provide an effective remedy to any person whose rights have been violated under the Covenant.*

*There has, to the IHRC's knowledge, been no public discussion initiated by the State on the need for such incorporation of international conventions into domestic law, not least in the Terms of Reference of the Constitutional Convention.*

*Accordingly, there has still been no comprehensive analysis on the wider question of the status of international treaties in Irish law.*

*The IHRC has consistently called upon the State to incorporate international human rights treaties into domestic law, as it considers that in the absence of such incorporation human rights protections contained in international treaties may not be fully realised in Irish law.*

*The IHRC has repeatedly set out the reasons as to why the Government's position regarding the dualist nature of the Irish legal system being an impediment to incorporation does not stand up to scrutiny. The IHRC notes with regret that at the UPR hearing, Ireland stated that it did not intend to 'alter current practice'."*

### **3.31 The Louise O'Keeffe Case**

The European Court of Human Rights found the Irish State responsible for the protection of the rights guaranteed under the Convention in the school that Louise O'Keeffe attended. They found Ireland in breach of Article 3 (protection from cruel and inhuman treatment) and Article 13 (the right to an effective remedy).

This was a publicly funded school under the patronage of the Catholic Church. The Irish State had argued that they were not responsible. To date nothing has changed on the ground to ensure that parents and children in Ireland can hold the state responsible for a violation of any their rights under the European Convention or the ICCPR.

### 3.32 What the European Court Stated

In the Louise O’Keeffe case at the European Court the court stated that: (11)

*“115. The Court recalls that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a “victim” for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (for example, Dalban v. Romania [GC], no. 28114/95, § 44, ECHR 1999-VI). Where rights of such fundamental importance as those protected under Article 3 are at stake and where an alleged failure by the authorities to protect persons from the acts of others is concerned,*

*Article 13 requires that there should be available to victims a mechanism for establishing any liability of State officials or bodies for acts or omissions involving the breach of their rights under the Convention and, furthermore, that compensation for the non-pecuniary damage flowing from the breach should in principle be part of the range of available remedies (Z and Others v. the United Kingdom, cited above, § 109). An applicant’s victim status may also depend on the level of compensation awarded at domestic level, having regard to the facts about which the applicant complains before the Court (see, inter alia, Gäfgen v. Germany [GC], no. 22978/05, § 115 and 118, ECHR 2010).*

*116. As to the case-law relied upon by the Government to argue that a remedy addressing State liability was not a pre-requisite to effectiveness, the Court notes as follows. The present case is substantively different from Costello-Roberts: the applicant in the latter case essentially challenged the application by a teacher of the law (allowing corporal punishment) whereas the present applicant challenged the State’s failure to legislate to provide an adequate legal framework of protection. Calvelli and Ciglio concerned medical negligence so that a civil negligence action against doctors (and, potentially, disciplinary proceedings) was considered adequate for the purposes of the procedural aspect of Article 2 of the Convention.*

*That the Government made concessions about domestic law in Z and Others does not change the Convention principles stated therein to the effect that, in a case such as the present, a remedy against the State was required.*

*117. However, the applicant has neither obtained acknowledgement of the Convention breach alleged nor adequate redress.*

*“151. Finally, the Government appeared to suggest that the State was released from its Convention obligations since the applicant chose to go to Dunderrow National School. However, the Court considers that the applicant had no “realistic and acceptable alternative” other than attendance, along with the vast majority of children of primary school-going age, at her local National School (Campbell and Cosans v. the United Kingdom, 25 February 1982, § 8, Series A no. 48). Primary education was obligatory (sections 4 and 17 of the School Attendance Act 1926), few parents had the resources to use the two other schooling options (home schooling or travelling to attend the rare fee-paying primary schools) whereas National Schools were free and the National School network was extensive.*

*There were four National Schools in the applicant’s parish and no information was submitted as to the distance to the nearest fee-paying school. In any event, the State cannot be released from its positive obligation to protect simply because a child selects one of the State-approved education options, whether a National School, a fee-paying school or, indeed, home schooling (Costello-Roberts, cited above, § 27).*

*152. In sum, the question for current purposes is therefore whether the State’s framework of laws, and notably its mechanisms of detection and reporting, provided effective protection for children attending a National School against the risk of sexual abuse, of which risk it could be said that the authorities had, or ought to have had, knowledge in 1973.”*

### 3.33 Cruel, Inhuman or Degrading Treatment

Article 7 of the ICCPR guarantees that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. General Comment 20 on Article 7 states that:

*“2. The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.”*

*5 “It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.”*

Taking into account that the state cedes control of the education system and the fact that there is still no effective remedy to vindicate Covenant rights how can any proposed complaints mechanism successfully ensure that Covenant rights are guaranteed to all parents and children?

### 3.34 Report by Ombudsman for Children

In a Report in 2012 on the actions of a private Catholic school who refused access to a pregnant teenage the Ombudsman for Children stated: (12)

*“2.1 The Ombudsman for Children’s Office provides an independent and impartial complaints handling service. The investigatory functions and powers of the Office are set out in Sections 8-16 of the Ombudsman for Children Act 2002. This provides that the Office may investigate the administrative actions of a public body, school or voluntary hospital where, having carried out a preliminary examination, it appears that the action has or may have adversely affected a child and where those actions come within the ambit of Sections 8 (b) or 9 (1) (ii) of the 2002 Act (as referred to in para 2.5 under). “*

*“2.5 The principal issues to be addressed through an investigation are:*

*whether the actions of the public body have, or may have had, an adverse effect on the child involved; and*

*whether those actions were or may have been:*

- taken without the proper authority;*
- taken on irrelevant grounds;*
- the result of negligence or carelessness;*
- based on erroneous or incomplete information;*
- improperly discriminatory”*

### 3.35 Ombudsman’s Power is Limited

Under the Ombudsman for Children’s Act 2002 the Ombudsman can only investigate the administrative actions of a school and whether the actions of the school were improperly discriminatory.

It is not improperly discriminatory to discriminate against atheist/secular parents in schools because the Irish Constitution permits this discrimination as it gives preference to religious beliefs.

The Ombudsman has not got the power to investigate complaints from parents regarding the failure of a school to protect their rights under the ICCPR.

### 3.36 Summary

Ireland fails to protect children 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.

To date the State has not put in place any effective remedy to vindicate the rights guaranteed under the Covenant and neither has it explained how it intends to give effect to the O’Keeffe case at the European Court.

### 3.37 Notes for this Section

(1) [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f3%2fADD.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f3%2fADD.1&Lang=en)

Information received from Ireland on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/IRL/CO/3). CCPR/C/IRL/CO/3/Add.1 Page 8

"Notes:

(a) Includes Gaelscoileanna (schools where the medium of instruction is through the Irish language), special schools, 1 hospital school and 5 Model schools where the Minister for Education and Science is Patron.

(b) Includes 4 Model schools where the Minister for Education and Science is Patron (the Church of Ireland is part of the Anglican Communion)."

(2) <http://www.irishtimes.com/debate/letters/national-schools-and-patronage-1.1798947>

(3) <http://www.kildarestreet.com/wrans/?id=2014-05-27a.624>

(4) <http://www.ihrc.ie/download/pdf/religionandeducationpdf.pdf>

(5) <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

(6) <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> p88

(7) <http://www.irishstatutebook.ie/2000/en/act/pub/0008/sec0007.html#sec7> "(c) where the establishment is a school providing primary or post-primary education to students and the objective of the school is to provide education in an environment which promotes certain religious values, it admits persons of a particular religious denomination in preference to others or it refuses to admit as a student a person who is not of that denomination and, in the case of a refusal, it is proved that the refusal is essential to maintain the ethos of the school,"

(8) <http://www.irishtimes.com/news/education/change-one-thing-school-admissions-overhaul-must-address-religious-discrimination-1.1788624> "The treatment of non-Catholic parents and children in our education system is an urgent human rights issue. To some extent, their predicament stems from the unusual preponderance of Catholic and denominational schools in Ireland. Indeed, currently there is a strong focus on the need for divestment of patronage in areas over-served by Catholic schools. But divestment will be

limited based on local demand, and so non-Catholics in many areas will continue to have little choice but to apply to Catholic schools. The overwhelming focus on divestment has distracted from the vital question of how parents in this position should be accommodated. While we cannot change the ownership and patronage of State-funded schools overnight, the rights of non-Catholic parents could be immeasurably improved through one simple legislative reform. We might look to France, which permits state funding of Catholic schools but only on condition they accord "complete respect" to liberty of conscience and admit pupils of any religion."

(9) <http://www.irishstatutebook.ie/1998/en/act/pub/0021/sec0037.html#sec37> "(a) it gives more favourable treatment, on the religion ground, to an employee or a prospective employee over that person where it is reasonable to do so in order to maintain the religious ethos of the institution, or (b) it takes action which is reasonable necessary to prevent an employee or a prospective employee from undermining the religious ethos of the institution."

(10) <http://www.irishtimes.com/news/education/trainee-teachers-are-warned-career-prospects-depend-on-religious-faith-1.1776620> "This sounds fine until you ask where these other schools might be. The unaltered fact is that the Catholic Church controls 90 per cent of primary schools and that more than half of those (1,700 out of 3,200) are in areas where there is no alternative school. Behind the nice words there is a threat: non-Catholic teachers should leave Catholic-controlled schools and try to find work in the tiny part of the system that is not church-managed. For all the diversity-speak, the church has kept an iron grip on the vast bulk of the system. And within that system, it is tightening up its insistence that teachers must not merely be orthodox Catholics but must instruct children in the faith. What's almost beyond belief, however, is that the State is openly advertising and supporting this discrimination. On the website of St Patrick's teacher training college in Dublin (a State-funded college validated by the State-funded Dublin City University), the "frequently asked questions" section deals with the matter quite bluntly. Question: "If I choose not to study for the CRS, are there any repercussions?" Answer: "As the vast majority of schools are under Catholic management, you will be limiting the number of schools where you can hold a teaching position. Also, although some people have secured employment in Catholic schools in the past without the cert, many such teachers have found that upon seeking promotion . . . they are ineligible to apply.""

(11) <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-140235>

(12) <http://www.oco.ie/wp-content/uploads/2014/03/OCOInvestintoSchoolA.pdf>

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## 4. Articles 17/18 Religious Oaths in the Irish Constitution and in Irish Laws



### 4.1 The Committee's Question

The Committee in the List of Issues on Ireland fourth periodic report asks:

*"25. Taking note of the information provided in paragraph 611 of the State party report, please provide updated information to amend the constitutional provision requiring a religious oath from judges to allow for a choice of a non-religious declaration, as recommended by the Committee in its previous concluding observations (CCPR/C/IRL/CO/3, para.21)."*

### 4.2 The Current Situation

The current situation is considerably worse than the Committee's question suggests. Under the Irish Constitution, not only judges but also the President and 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. To hold any of these offices, atheists must take a religious oath as they are by virtue of their office obliged to take up this position.

This addition to the generally recognised extent of the religious oath obligations became clear last year, when Tanaiste Eamon Gilmore was obliged to swear a religious oath to take his place on the Council of State, despite being publicly on record as not believing in a God.

### 4.3 Constitutional Convention

The recent Constitutional Convention did not recommend any change to religious oaths, and to date the State has not given any commitment to a referendum.

### 4.4 Article 17.1

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 the Testament in their hand and taking a religious oath.

### 4.5 Law Reform Commission

In 1990 the Law Reform Commission recommended abolishing the oath in its present format. (1) The state has done nothing to implement the Recommendations of the Law Reform Commission.

The Law Reform Commission Recommendations read as follows:-

*"1. The oath should be abolished for witnesses and jurors and for deponents submitting affidavits in all proceedings, civil and criminal.*

*2. Any juror or any other person who at present may be required to take an oath in judicial proceedings should be required instead, before giving evidence, whether viva voce or by deposition or affidavit, or before acting as a juror or in any other capacity in judicial proceedings, to make a solemn statutory affirmation in the form set out in the next recommendation, adapted where necessary.*

*3. The form of affirmation in the case of witnesses should be as follows:*

*"I, A.B., do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth. I am aware that if I knowingly give false evidence I may be prosecuted for perjury."*

4. Where any statute requires that an oath be taken for any purpose other than the giving of evidence or acting as a juror, it should be amended so as to provide for the making of an affirmation by the person concerned in the form set out above.”

#### 4.6 Current Wording of Oaths

The following are the format of words used in the taking of the oath in court and also in the Electoral Act 1992.

#### 4.7 The Juries Act 1976 states that: (3)

“17.1 When swearing a juror the registrar or other officer acting as registrar shall call out the juror's name and direct him to take the Testament in his hand and shall administer the oath to him in accordance with sections 18 and 19.”

“(3) Any juror who objects to be sworn in the ordinary manner shall make his objection immediately after his name is called out and before the administration of the oath to him has begun.”

“18. — (1) The ordinary manner of administering the oath shall be as follows:  
The juror to be sworn shall hold the Testament in his uplifted hand and the registrar or other officer shall say to the juror the words “I swear by Almighty God that....” followed by the appropriate form of oath provided by section 19 and the juror shall repeat after him the words so spoken by him.

(2) The Oaths Act, 1888 (which provides for the making of an affirmation instead of an oath) and also every Act for the time being in force authorising an oath to be taken in a court in any particular manner shall apply to the oaths required by this Act to be taken by jurors.

(3) A juror who states that he has a religious belief but that he is neither of the Christian nor of the Jewish faith may, if the judge so permits, be sworn in any manner that the juror states to be binding on him.

(4) The oath shall be administered to every juror in the ordinary manner without question unless the juror appears to be physically incapable of taking the oath in that manner or objects to taking the oath in that manner and satisfies the judge that he is entitled to take the oath in some other manner”.

#### 4.8 The Oaths Act 1909 states that: (4)

“2. — (1) Any oath may be administered and taken in the form and manner following:—

The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words “I swear by Almighty God that . . . .”, followed by the words of the oath prescribed by law.

(2) The officer shall (unless the person about to take the oath voluntarily objects thereto, or is physically incapable of so taking the oath) administer the oath in the form and manner aforesaid without question:

Provided that, in the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any manner which is now lawful.”

#### 4.9 The Electoral Act 1992 states that: (5)

111 – 2 (d) – the returning officer or presiding officer may, and if so required by a personation agent present in the polling station shall, administer to any person when he applies for a ballot paper, but not afterwards, an oath or (in the case of any person who objects to taking an oath on the ground that he has no religious belief or that the taking of an oath is contrary to his religious belief) an affirmation in the following form:

“I swear by Almighty God (or – do solemnly, sincerely and truly declare and affirm – as the case may be ) that I am the same person as the person whose name appears as AB on the register of Dail electors now in force for the constituency of... and that I have not already voted at this election, and that I had attained the age of eighteen years on... (date of coming into force of the register)”.

#### 4.10 Notes for this Section

(1) <http://www.irishstatutebook.ie/en/constitution/>

(2) [http://www.lawreform.ie/\\_fileupload/Reports/rOaths.htm](http://www.lawreform.ie/_fileupload/Reports/rOaths.htm)

(3) <http://www.irishstatutebook.ie/1976/en/act/pub/0004/print.html>

(4) <http://www.irishstatutebook.ie/1909/en/act/pub/0039/sec0002.html>

(5) <http://www.irishstatutebook.ie/1992/en/act/pub/0023/print.html>

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## 5. Article 18/19 The Irish Blasphemy Law



### 5.1 The Committee's Question

The Committee in the List of Issues on Ireland fourth periodic report asks:

*"27. Please provide updated information concerning the measures taken or envisaged to remove the offence of blasphemy from article 40.6.1(i) of the Constitution as well as section 36 of the Defamation Act 2009."*

### 5.2 The Current Situation

61% of the Constitutional Convention members rejected the reference to blasphemy in the Constitution. But we are concerned by some aspects of the outcome, and by the fact that no date has been set for a referendum.

We are concerned that 38% of the members voted to keep this Constitutional clause. We are also concerned that 49% want there to be a law against blasphemy in 21st century Ireland. This shows that we still have considerable work to do in removing the harmful impact of this clause internationally, where Islamic States have used the Irish blasphemy law at the United Nations to promote blasphemy laws around the world.

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.

### 5.3 New Clause Including Incitement to Religious Hatred?

We are concerned that 53% of the Convention want to replace the offence in the Constitution with a new general provision to include incitement to religious hatred. 38% wanted to remove it altogether, and 9% were undecided.

For a start, the word 'include' is ambiguous. But whatever it means, why should we again give undue privilege to religion?

If we were to include prohibition of incitement to hatred in our Constitution, we would be discriminating against many victims of other types of hatred by focusing only on religious hatred, as opposed to hatred on the ground of race, colour, nationality, ethnic or national origins, membership of the travelling community or sexual orientation.

### 5.4 Positive Clause Based on Freedom of Expression?

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.

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## 6. Articles 2/18/26 New Discrimination in the Civil Registration Amendment Act



### 6.1 Latest Direct Religious Discrimination

The Civil Registration Amendment Act 2012 is the latest piece of direct religious discrimination against atheists and secularists in Ireland. The purpose of the Act was to permit secular bodies to solemnise marriages. Up to this only religious bodies could legally solemnise marriages.

On 29th of October 2013 Atheist Ireland wrote to the Civil Registration Service complaining that this discrimination breached our rights under Article 2 and 26 of the ICCPR, but we did not receive any reply or any acknowledgement that this piece of legislation breaches our rights under the Covenant. (1)

### 6.2 Restrictions on Secular Bodies

This piece of legislation directly discriminates against atheists, as a body can only be a secular body for the purposes of the Act:

- If its principal objects are secular, ethical and humanist;
- Has not fewer than 50 members;
- It is a body that, on the date of its making of an application under section 54 or 57, has been in existence for 5 years;
- Maintains a register of its members;
- Does not promote a political cause.

### 6.3 No Restrictions on Religious Bodies

None of the above restrictions apply to religious bodies. The government just accepts that religions are ethical, but humanist groups have to prove that they are ethical, and atheist groups are not even given that option. We have tried unsuccessfully to find out why the State is discriminating in this manner and breaching Article 26. There are no Guidelines statutory or otherwise to define what is meant by ethical or political cause.

### 6.4 No Legitimate Aim or Proportionality

The Government claims that this discrimination has a legitimate aim, which is to ensure that the institution of marriage is protected, so we have tried to find out if there a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

What we have found is that this government has just brought in a new law that directly discriminates against the non-religious and undermines their human rights without any ratio of proportionality to their stated aim of protecting marriage.

Equality before the law without discrimination is a basic principle in the protection of human rights. It is a principle worth fighting for as inequality and discrimination undermine human rights.

### 6.5 Protecting Marriage from Elvis Impersonators

During the debate in the Dail on the Civil Registration Amendment Act (20 December 2012) Minister Joan Burton told the Dail that the reason for this discrimination was as follows:

*“to ensure the institution of marriage is protected by applying a rigorous set of rules regarding the type of body that can be deemed eligible. In this regard, it is important that the criteria should be robust so that the authority to solemnise marriage would be granted only to stable, long-standing and reputable organisations... we must be specific about the criteria because there are places in the United States where the criteria for solemnising are very broad and, as a result, an Elvis impersonator in Las Vegas can perform wedding ceremonies. None of us wants anything like that here. There is all-party agreement on that point.”*

## 6.6 The Government's Logic

So, in order to ensure that the institution of marriage is protected, the government have put in place criteria to ensure that secular bodies that wish to solemnise marriages are stable, long-standing and reputable. As Religious bodies are not subject to these robust criteria, the government obviously believes that the institution of marriage is more at risk from secular bodies and specifically those whose members dress up as Elvis.

It should be noted however, that despite the fear that discriminatory criteria was needed to protect marriage from Elvis impersonators, they would in fact not be regarded as a secular body for the purposes of the Act as they would presumably be considered a body that has the making of profit as one of its principal objects. This means that despite what the Minister stated the robust criteria cannot be based on any fear that Elvis impersonators would undermine marriage in the state.

Is the Government seriously suggesting that there are bodies of Elvis impersonators that would define themselves as secular, ethical and humanist? Even if there was such a body, how would forbidding them promoting a political cause protect marriage? Such a body could still be stable, long-standing and reputable notwithstanding the fact that they dress up as Elvis while performing ceremonies.

## 6.7 Refusal to Clarify Law

From January 2013, Atheist Ireland has repeatedly sought from the Registrar General information regarding the operation of the various aspects of the Civil Registration Act. The Registrar General did not acknowledge, or reply to our initial letters. We then sought the information under the Freedom of Information Act. We requested information under Section 7 and Section 16 of the FOI Act.

Under Section 7 the FOI Act we specifically requested information on any precedents in relation to decisions made to grant or refuse registration under the Act and information on any refusals that were appealed and the result of those appeals. We were refused this information on the following grounds: "it is the policy of this office under Section 26 (1) of the Freedom of information Act, 1997 not to publish information in relation to decisions made by this office."

Under Section 16 of the FOI Act, we asked for information regarding rules and practices in relation to certain decisions of public bodies, with regard to the implementation of the Civil Registration Act including its recent amendment. We were also refused this information.

## 6.8 Notes for this Section

(1) <http://www.atheist.ie/2014/02/rules-for-secular-marriage-the-crs-is-making-it-up-as-they-go-along/>

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## 7. Article 6 Abortion and Article 40.3.3 of the Irish Constitution



### **7.1 The Committee's Questions**

In 2008 the UN under the ICCPR raised this issue which the State ignored. They asked the State to bring its laws on abortion into line with the Covenant.

### **7.2 The Current Situation**

The Protection of Life During Pregnancy Act 2013 does not bring Ireland's abortion laws into line with the Covenant as Article 40.3.3. of the Irish Constitution is incompatible with Ireland's human rights obligations under the Covenant.

### **7.3 Atheist Ireland's Position**

Atheist Ireland supports the campaign to repeal Article 40.3.3 of the Irish Constitution, to enable our Parliament to legislate in accordance with Ireland's human rights obligations under the Covenant.

We are not elaborating in detail on this issue in this submission, as there are other Irish advocacy groups, who are more directly involved with this issue, who are making more comprehensive recommendations in separate submissions.