



Atheist Ireland Submission for UPR Ireland

Submission to the United Nations Universal Periodic Review (Twelfth Session of the Working Group on the UPR Human Rights Council, 6th October 2011)

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BACKGROUND AND FRAMEWORK

1.1 Atheist Ireland is an Irish advocacy group, formed in late 2008. We promote atheism and reason over superstition and supernaturalism, and we promote an ethical, secular society. We want a secular State for a pluralist people.

1.2 We campaign for a secular Irish Constitution and laws. You can read details of our policies on our website at <http://atheist.ie>. We also campaign for a secular Irish education system based on the right to be educated without being indoctrinated with religion, in line with international human rights law. We have made submissions on this issue to the Irish Human Rights Commission and the CERD. You can read these on our campaign website <http://teachdontpreach.ie>.

1.3 Atheist Ireland is a member of Atheist Alliance International, an umbrella organisation of atheist groups and individuals. We will be hosting a World Atheist Convention in Dublin on 3-5

June 2011. We are also participants in the religious and nonreligious dialogue process with the Presidents of the European Parliament, Commission and Council.

1.4 The key rights that we wish to focus on are the the rights to freedom of conscience, to freedom of expression, to equality before the law, to freedom from discrimination, to an effective remedy and the rights of the child. The key policy areas that we wish to focus on are the Irish Constitution and law (with particular reference to religious oaths, blasphemy and legalised religious discrimination), and the Irish education system (with particular reference to access to schools, the integrated curriculum, the opt-out clause and teacher training).

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

2 Cooperation with human rights mechanisms

2.1 Law

None of the UN treaties has been incorporated into Ireland's domestic legal framework. Because of this, although equality is protected under Article 40.1 of the Irish Constitution, the Irish Courts can interpret this right narrowly and not consistently with the principle of non-discrimination as set out in UN treaties.¹ The Irish State maintains that the rights afforded under the various UN Conventions are guaranteed under the Irish Constitution and the European Convention on Human Rights Act 2003. This is not the case. According to the Act every organ of the state must perform its functions in a manner compatible with the European Convention. However in order to seek an effective remedy under the Act, it is expected that a complainant should ask the courts to interpret statutes in a Convention compliant manner and, if that was not possible, to make a declaration of incompatibility. A declaration of incompatibility is not obligatory on the State. There is no legal aid for these matters and the prohibitive cost of legal action against the state is a major deterrent and consequently there is no effective remedy.

Recommendation: Incorporate all UN Treaties into Irish law, and amend Article 40.1 of the Irish Constitution to reflect a more expansive interpretation of equality.

2.2 Funding

The Irish Government cut the budgets of the Irish Human Rights Commission (32%), the Equality Authority (43%) and the National Consultative Committee on Racism and Interculturalism (100%). The work of the IHRC and EA has been undermined, and the NCCRI has now closed. The cuts imposed were disproportionate to those of other areas, and victims of discrimination and human rights abuse have nowhere else to take their complaints.

Recommendation: Restore the funding of the Equality Authority and the Irish Human Rights Commission, and ensure that the work of the NCCRI continues elsewhere.

2.3 Promotion

There is no human rights programme for public and civil servants. There is a need to promote human rights and fundamental freedoms in Irish schools and teacher training colleges. There is also a need to promote Human Rights in general throughout society.

Recommendation: Promote the understanding of human rights in the public and civil service, teacher training colleges and schools, and throughout society.

3 Implementation of Obligations: Constitution and Law

The Right to Freedom of Conscience

The Right to Equality before the law

The Right to be free from Discrimination

The Right to Freedom of Expression

3.1 Religious oaths for officeholders

Articles 12.8, 31.4 and 34.5 of the Irish Constitution require the President, Judges and members of the Council of State to swear religious oaths as a condition of taking office.

Recommendation: Amend Articles 12.8, 31.4 and 34.5 of the Irish Constitution, to replace the religious oaths with neutral declarations that do not refer to the religious or nonreligious philosophical beliefs of the officeholder, and from which no information can be inferred about the religious or nonreligious philosophical beliefs of the officeholder.

3.2 Religious oaths in Court

Defendants, witnesses and jurors in Irish Courts are asked by default to swear a religious oath on the Christian Bible. There is an option to swear a different religious oath or to make a secular declaration, but doing this forces the person to reveal information about their religious or nonreligious philosophical beliefs to the Court.

Recommendation: Replace all oaths in Courts with neutral declarations that do not refer to the religious or nonreligious philosophical beliefs of the person declaring, and from which no information can be inferred about the religious or nonreligious philosophical beliefs of the person declaring.

3.3 Blasphemy

Sections 36 and 37 of the Defamation Act 2009 establish a criminal offence which includes a prohibition of publishing or uttering blasphemous matter.ⁱⁱ The then Government argued that it had to pass this law because there is a reference to blasphemy in Article 40.6.1 of the Irish Constitution. However, even if that argument was valid, there was no requirement to enact this particular blasphemy law, which protects beliefs rather than individuals, protects the beliefs of religious citizens ahead of the beliefs of nonreligious citizens, incentivises religious outrage by making it a trigger for interpreting blasphemy, and is not necessary for the protection of public order.

Recommendation: Amend Article 40.6.1 of the Irish Constitution to remove the offence of blasphemy. Remove Sections 36 and 37 of the Defamation Act 2009.

3.4 Legalised religious discrimination

Section 7.3(c) of the Equal Status Act 2000 explicitly allows schools to discriminate on religious grounds.ⁱⁱⁱ Sections 12.4 and 37 of the Employment Equality Act 1998 explicitly allow teacher training colleges, schools and hospitals to discriminate on religious grounds.^{iv} Sections 3.1(c) and 3.4 of the Charities Act 2009 include the advancement of religion as a charitable purpose but does not include the advancement of nonreligious philosophical lifestances.^v

Recommendation: Remove Section 7.3(c) of the Equal Status Act and Sections 12.4 and 37.1 of the Employment Equality Act, which explicitly allow discrimination on the grounds of religion. Remove Sections 3.1(c) and 3.4 of the Charities Act 2009, which privileges the advancement of religion over the advancement of nonreligious philosophical lifestances.

4 Implementation of Obligations: Education System

The Right to Freedom of Conscience
The Right to Equality before the law
The Right to be free from Discrimination
The Right to an Effective Remedy
The Rights of the Child

4.1 In Ireland 97% of primary schools are private religious schools as under the Irish Constitution the state ‘provides for’ education as opposed to ‘provides education’. There is no parallel system of non-denominational state schools.

4.2 Irish schools are not considered ‘organs of the state’ within the meaning of the European Convention on Human Rights Act 2003.^{vi} Therefore the Irish courts are not obliged to interpret rights in a manner consistent with the Convention or any judgement at the European Court of Human Rights.^{vii} As the UN treaties are not incorporated into our domestic legal framework it is impossible to access the right to an effective remedy.

4.3 In Government submissions to the UN and Council of Europe over the years under the various Conventions, the Irish State inaccurately maintains that our education system protects the individual human rights of all parents and children when this is not the case. The Irish State does not accept any responsibility for protecting the human rights of all parents in the education system, as they have ceded control to the interests of Patron bodies and Boards of Management. The interests of 97% of Irish primary schools are to inculcate religious views and are therefore not the same as the rights guaranteed under the various UN Conventions.

4.4 Access to schools

Section 7.3(c) of the Equal Status Act 2000 denies the non-religious a guaranteed right of access without discrimination to 97% of schools in the state.^{viii} This allows private religious schools to protect their ethos by giving priority to co-religionists. Such schools operate two admissions policies, one for co-religionists and another for minorities who have no choice but to seek access to religious schools as 97% of the schools in the country are Christian. In practice, most parents do not have the option to educate their children at home, so they must choose between a religious education or no education at all. In areas where there is a shortage of places, Section 7–3(c) of the Equal Status Act causes children to be refused access to schools and coerces parents into getting their children baptised into the Catholic religion to gain access to the local school.^{ix}

Recommendation: Remove Section 7.3(c) of the Equal Status Act which permits discrimination on the grounds of religion.

4.5 The integrated curriculum

Section 15.2(b) of the Education Act 1998 obliges schools to uphold the religious ethos of the patron.^x As 97% of schools in the state are religious and Christian they are obliged by law to integrate religion into all subjects and into the general milieu of the school (prayers, religious services etc). There is sacramental preparation during the school day for Christian religious ceremonies.^{xi} The practice of the integrated curriculum in 97% of schools in the state cannot protect the right to freedom of conscience of religious minorities and non-religious parents who do not wish their children to be exposed to doctrinal religious formation that is integrated into the very fabric of the school.

Recommendation: Remove Section 15.2(b) of the Education Act 1998 and Rule 68 of the Rules for National Schools which obliges Boards of Management to integrate religion into all subjects.

4.6 The operation of the opt out clause

Most non-religious parents have no choice but to send their children to Christian schools. If they seek to opt their child out of religious formation, they are responsible for supervising their children during this time. This creates an impractical burden for parents and their children feel left out and isolated. Also, as religion is not just confined to the religious instruction class, but is integrated into all subjects and the daily life of the school, parents cannot exempt their child. The opt out clause is a theoretical illusion and not operable in practice.^{xii}

Recommendation: Establish non-Denominational state schools throughout the country and take responsibility for protecting the human rights of minorities in the education system.

4.7 Teacher training

There are five teacher-training colleges in Ireland and all of them are Christian. All students must learn and take exams in Christian doctrine in order to take up a position as a teacher. As 97% of the

schools in the country are denominational, minorities must attend one of the colleges if they wish to become a teacher. Section 37 of the Employment Equality Act provides for an exemption from equality law for religious, educational or medical institutions under the control of a religious body.^{xiii} The exemption permits a religious body to discriminate on grounds of religion regarding its employees and prospective employees. This legislation permits religious bodies to take any action which is “reasonably necessary” to prevent an employee from undermining its ethos. This part of the Act is wide-ranging and not limited to discrimination on the grounds of religion. It can be applied to a teacher who does not conduct his/her private life in accordance with the teaching of a particular religion.

Recommendation: Remove Sections 12.4 and 37.1 of the Employment Equality Act, which explicitly allow discrimination on the grounds of religion. Establish non-denominational teacher training colleges.

Appendix

ⁱ E/C. 12/1/Add.77 – 5th June 2002, para 16.

ⁱⁱ <http://www.irishstatutebook.ie/2009/en/act/pub/0031/index.html>

ⁱⁱⁱ <http://www.irishstatutebook.ie/2000/en/act/pub/0008/index.html>

^{iv} <http://www.irishstatutebook.ie/1998/en/act/pub/0021/index.html>

^v <http://www.irishstatutebook.ie/2009/en/act/pub/0006/index.html>

^{vi} <http://www.irishstatutebook.ie/2003/en/act/pub/0020/index.html>

^{vii} Mawhinney, Freedom of Religion in the Irish Primary school system: A failure to protect Human Rights? P. 398: “In the absence of constitutional and education legislative provisions guaranteeing freedom of thought, conscience and religion in the context of the integrated curriculum, it might be presumed that the recent European Convention on Human Rights Act 2003 (ECHRA) could be employed to offer protection for such a Convention right.⁷⁷ However, constitutional jurisprudence and recent disputes involving matters of ethos in schools suggest that this protection may not be forthcoming. First, the provisions of the Act are subject to the overriding authority of the Constitution, which remains the supreme law of the country. To date, denominational school bodies have been excluded from certain rights obligations found in the Constitution when the courts have considered it ‘necessary to make distinctions in order to give life and reality to the constitutional guarantee of the free profession and practice of religion’.⁷⁸ For instance, in *McGrath and O’Ruairc v Trustees of Maynooth College*,⁷⁹ it was held that the prohibition of discrimination under Art 44.2.3 of the Constitution was confined to the state and not extended to institutions receiving public funding. The autonomy of religious bodies is additionally safeguarded by Art 44.2.5 of the Constitution, which protects the right of denominations to control their own affairs, including the running of educational establishments and the enforcement of its own regulations.

80 A second reason to doubt the capacity of the ECHRA to protect the rights of minority-belief individuals in denominational schools lies in the applicability provision of the Act. The Act is applicable only to those bodies defined as ‘organs of the state’.

81 As yet, the courts have not been asked to consider this definition. For present purposes, the question arises as to whether privately owned and managed, state funded, denominational schools would be classified as ‘organs of the state’. In its initial report to the Economic, Social and Cultural Committee in 1997, the government stated that ‘Overall responsibility for education in Ireland lies with the Minister for Education who is a member of the Irish Government and responsible to the National Parliament’.”

^{viii} <http://www.irishstatutebook.ie/2000/en/act/pub/0008/index.html>

^{ix} CERD/C/IRL/CO/3-4 10th March 2011 para 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.”

^x <http://www.irishstatutebook.ie/1998/en/act/pub/0051/index.html>

^{xi} Mawhinney, Freedom of Religion in the Irish Primary school system: A failure to protect Human Rights? P. 391:

“Schools also reported that the ethos of the school was promoted through religious symbols on walls, altars in classrooms, grace before meals, prayers at the start and end of the day, visits to churches, visits from clergy and the staging of Nativity plays and carol singing at Christmas time. The majority of school policy documents, submitted with completed questionnaires, were explicit in stating the extent of the permeation of the school ethos in school life: a ‘Christian Spirit will inform all the activities of the school’; a ‘Christian environment is offered’ by the school; and, in explaining the extent of school links with local parishes, ‘this, for example, is shown by the fact that the pupils attend services in the local church and the Rector visits the school on a regular basis in his role as Chaplain’. These reports are in keeping with statements by religious authorities which have been consistent in explicitly asserting the importance of the school ethos to the life of their schools. For example, in February 2005, the Roman Catholic Archbishop of Dublin re-emphasised the need for a Catholic school to ‘have a defined ethos which should be verifiable in all its aspects’.

57 He noted that ‘a Catholic ethos must be the integrating factor for all aspects of the life of the Catholic school’ and that a Catholic school must ‘place at the centre of its mission the passing on of the message of Jesus Christ, his truth and his love, from generation to generation, as a factor of liberation, integration and hope in the young person’s life’. The parents interviewed confirmed that an integrated curriculum is practised throughout the school day: ‘It actually turned out in reality that religion is not a subject that they do for a half-hour. It’s constantly brought up again and again like prayers here and there, colouring in pictures, say of the nativity.’ ‘It was 24 /7!’”

^{xii} CCPR/C/IRL/CO/3 22nd July 2008 para 22.

^{xiii} <http://www.irishstatutebook.ie/1998/en/act/pub/0021/index.html>