

Submission to the UN Human Rights Council for the Universal Periodic Review of Ireland, 2015

Family & Life has prepared this submission to assist the members of the Human Rights Council in assessing Ireland's compliance with its Human Rights obligations as part of the Universal Periodic Review.

Family & Life is a well-established pro-life and pro-family organisation based in Dublin, with a large network of supporters throughout Ireland. It promotes respect for the value and dignity of human life from conception to natural death. Family & Life was granted ECOSOC special consultative status in 2013.

Family & Life has engaged with various of the UN Treaty Monitoring Bodies in its efforts to further the cause of human rights and to contribute to the effectiveness of the UN system.

Family & Life welcomes the opportunity to participate in the UPR process.

The Right to Life

Ireland can be proud that its Constitution protects, to a greater extent than many others, the rights of the most vulnerable. This includes the rights of unborn children since the decision of the Irish people in 1983 to insert Article 40.3.3 (the 8th Amendment) into the Constitution, giving explicit recognition to the equal right to life of expectant mothers and their unborn children.

Despite the fact that the Irish Constitution recognises the right to life of the unborn child, the Irish government has, since the last UPR, enacted legislation (the Protection of Human Life During Pregnancy Act, 2013) that disregards that right and which permits the direct and deliberate killing of an unborn child on the basis of an alleged threat of suicide on the part of the mother. This is at variance with previous medical practice (which made Ireland a world leader in maternal safety) and despite the absence of evidence that an abortion is ever an appropriate mental health response to a suicidal pregnant woman. (The government justified the legislation largely on the basis of the 1992 Supreme Court decision in the X Case, which was decided without the benefit of medical evidence).

The government has refused to release sufficient details to allow for an independent, informed, and objective assessment of how its abortion legislation is operating in practice.

Despite this, some details have emerged of one case highlighting serious problems with the Act. The case involves a previously healthy baby who was subjected to induced delivery at a stage of extreme prematurity. This was done by doctors acting in accordance with the Act but without any medical indication that such an intervention was beneficial to the pregnant woman or required to protect the unborn child. The consequences of delivery at such an early gestational age are potentially devastating for the child: if she survives, she will

likely suffer a life of severe disability as a consequence. Information about the physical condition of the baby has not been forthcoming.

The scenario in this case was foreseen by Family & Life (*Caring for Pregnant Women and Unborn Children in Ireland in the Light of the ABC Case: A Response to the Expert Group Report*, http://www.familyandlife.org/downloads/Family_And_Live_Response_to_the_Expert_Group_Report.pdf at p.53) in 2012, but that warning went unheeded.

As it stands, the 2013 Act allows two like-minded psychiatrists to sign away a baby's life as a way of dealing with suicidal ideation in pregnancy, despite there being no objective evidence that abortion is a legitimate form of mental health treatment for pregnant women experiencing suicidal thoughts.

There is a real danger that, if left in force, the 2013 Act will gradually undermine the culture of care for both mothers and babies in Irish medicine. Prior to the enactment of this legislation, pregnant women in Ireland could expect a higher standard of care and safety than women in many countries where abortion is accepted as a matter of routine.

Rights of Children Conceived by AHR

The practice of Assisted Human Reproduction (AHR) is currently unregulated in Ireland and the rights of children conceived using such techniques are frequently disregarded. This violates the commitment to provide protection for all children without discrimination on grounds of parentage or other conditions.

The government has indicated that legislation to regulate AHR is planned, and that this will likely permit and facilitate surrogacy.

The recently enacted Children and Family Relationships Act 2015 assumes that a genetic link between a parent and a child only counts if the adult wishes it to. The fact that a child has a genetic link to both a father and a mother, that may be of great significance to the child in later life, is ignored. There is reason for concern that the AHR legislation will similarly disregard for the rights of children.

Surrogacy and other forms of AHR disrespect the dignity of children by reducing them to commodities, to products subject to contract law and the desires and demands of the commissioning adults. Prospective parents choose what they consider to be the optimum embryo(s) from among a catalogue of alternatives and contract with a third party to have those embryos implanted in a womb.

Since embryonic children are treated as products rather than persons, a eugenic, "quality control", mindset naturally follows. In some countries where IVF and related technologies are permitted, "unfit" embryos are usually discarded, experimented upon, or aborted. Their rights are ignored.

Human embryos created for AHR are frequently frozen and stored for possible future use. They may spend years in “concentration cans” before being given the chance to be implanted in a womb and grow. Very often these frozen embryos will never even be given such a chance, and will end up being discarded and left to die.

Since the children are viewed as products, they are also seen as the object of adults’ desires. Hence both surrogacy and AHR operate on the faulty basis that if one can afford the relevant payment there is such a thing as a “right to have a child”, just as there is a “right” to have a car or holiday or any other “thing”.

At the heart of the Irish state’s approach to this issue, as manifested in the CFR Act, is an attitude that favours adult preferences over the best interests of the child. This is evident from the fact that it ignores a child’s right to a mother and father.

Freedom of Conscience

Freedom of conscience is a fundamental human right, and widely recognized as such. It is a matter of particular importance for those working in the field of medicine as they are regularly faced with life or death decisions which may involve ethical assessment and questions of conscience.

The 2013 abortion legislation is premised on the fiction that the only terminations of pregnancy that it permits are those medically necessary to save the life of the mother. On that basis the Act is highly restrictive of the freedom of healthcare professionals to object, on grounds of conscience, to participating in an abortion to which they may have a deep conscientious objection. The conscience rights of ancillary staff receive no protection whatsoever.

In general, freedom of conscience, although Constitutionally guaranteed, is given low priority by the Irish government. The refusal by the government parties to allow their own members to vote with their consciences on the abortion legislation is illustrative of this. In addition to passing legislation that will burden the consciences of certain citizens, the government also permits various statutory bodies to disregard rights of conscience.

The Irish Medical Council, a statutory body, permits only weak and limited conscience protection to doctors, requiring them to participate in procedures they conscientiously oppose by actively and directly referring patients to medical staff who will perform the procedures.

The Pharmaceutical Society of Ireland, also a statutory body, makes no provision for conscientious objection on the part of its members. This becomes a particular issue in the case of a pharmacist who may have a conscientious objection to dispensing drugs that may have an abortifacient effect. We note the recent

decision of the Spanish Constitutional Court vindicating the conscience rights of pharmacists in such situations.¹

Religious Freedom

Article 44 of the Irish Constitution guarantees “[f]reedom of conscience and the free profession and practice of religion”, subject to “public order and morality”. These rights are also protected under Article 18 of the Universal Declaration of Human Rights.

Section 37 of the Employment Equality Act, 1998, permits, for the time being, religiously affiliated entities such as religious schools to employ staff in accordance with their ethos.

Article 18(1) of the International Protocol on Civil and Political Rights, states that: “Everyone shall have the right to freedom of thought, conscience and religion”, which includes the right to manifest one’s religion or belief in “observance [and] practice.”

In vindicating the rights of individuals to religious freedom the state should be mindful that the exercise of these rights by individuals frequently requires the protection of the rights of institutions such as Churches. Religious practice needs institutions to flourish and be passed on to future generations. Religious freedom for individuals presupposes freedom for religious institutions.

The proposed Marriage Bill, to be enacted following the referendum to redefine marriage in the Irish Constitution as an institution which can be formed by two persons of the same sex, would provide only limited protection for religious freedom. It provides no protection for a religious solemnizer who, as a matter of religious faith and conscience, holds to the belief that marriage is a union of a man and a woman, if the religious body to which that solemnizer belongs has chosen to recognize a form of marriage ceremony involving two persons of the same sex.

There is no prospect of any statutory protection for a civil registrar who may have a religious or conscientious objection to participating in the registration of a marriage of two persons of the same sex, even where there are other registrars willing to register the union and immediately available to do so. Under the previous legislation providing for civil partnerships between two persons of the same sex, a civil registrar who declined, on the basis of religious belief, to perform a civil partnership ceremony, was liable to a sentence of imprisonment for six months, even if another registrar was available.

¹ Tribunal Constitucional de España, Pleno. Sentencia 145/2015, 25 June, 2015 (BOE núm. 182, 31 July, 2015).
<http://www.tribunalconstitucional.es/en/jurisprudencia/Pages/Sentencia.aspx?cod=21323>

Neither does Irish law provide any exemption based on religious belief in the provision of goods and services relating to same-sex marriages.

Freedom of Association

The International Covenant on Economic, Social, and Cultural Rights provides for the right of freedom of union association. The obvious corollary to this is the right to *disassociate* from a union to join another union or to decide to join no union at all.

Yet Irish university students are automatically made members of the students' union (SU) of their respective universities and have no way of disassociating from the SU. Consequently, they are forced to pay fees towards their university's SU.

This abuse of students' rights to freedom of association is particularly unjust when SUs campaign on controversial matters outside the field of education, alienating students who disagree with the political aims of the SU. In these instances the students' rights to freedom of conscience as well as to freedom of association are violated.

This rights violation occurs against a constitutional backdrop recognising the right to freedom of conscience and the right to disassociate from a union. The practice of forced SU membership is unconstitutional yet the Irish government does nothing to address it.

In order to protect the rights of Irish university students (under Article 8, CESCR, *inter alia*) it is imperative that:

- Universities and university SUs inform all students that it is possible to disassociate from the SU
- The SUs provide a clear pathway for a student to disassociate from the SU and clearly inform the student when his or her disassociation is complete
- Students who have disassociated from an SU are no longer held liable for SU fees and the SUs no longer keep records of the student's personal data.

Discrimination Against Certain Family Types

Ireland discriminates against children and families if one parent chooses to stay at home to care for the children, including providing pre-school care and education at home rather than in state-approved facilities.

The Irish state provides funding under the Early Childhood Care and Education Scheme which funds a year of pre-school education and childcare for children whose families choose to place them in playschools or daycare centres.

No comparable funding is provided for pre-school children whose families choose to care for them and educate them at home.

CESCR Article 10 recognises that “[t]he widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment *and while it is responsible for the care and education of dependent children.*” (emphasis added).

Families where only one parent is in paid employment also suffer unfavourable treatment in the Irish tax system (tax individualization) compared to families where two parents are in paid employment.

Parental Rights in Education

Reflecting the religious make-up of the Irish population, a large majority of Irish schools, particularly in the primary sector, are denominational, and the vast majority of these are Catholic. In recent years efforts have been made to expand the range of school patrons to ensure that parents who wish can send their children to a non-denominational school. Some of the Irish government’s policies in this respect however, pay insufficient regard to the rights of parents who *do* want a “religious and moral education [for] their children in conformity with their own convictions” where those convictions would lead them to choose a denominational school.

Specifically, Catholic parents who wish their children to receive a distinctively and authentically Catholic education have the right to do so, and the state has a duty to vindicate and support that right.

In seeking to promote inclusivity in the education system, the state has appeared to support proposals that would deny denominational schools the right to maintain their ethos, as they see fit. Denominational schools are already inclusive and welcoming of pupils from many diverse backgrounds (religious, social, and ethnic)². This inclusivity is achieved without diluting or undermining the characteristics that make denominational schools distinctive.

The CESCR recognises that denominational schools have a right to maintain a distinct and definite religious ethos.

The ethos of denominational schools that are not divested by their current patrons must be guaranteed and protected.

Christian schools, for example, should not be required to display non-Christian symbols, to celebrate non-Christian festivals, or to adapt hymns and prayers to accommodate non-Christian beliefs.

The government also proposes to repeal section 37 of the Employment Equality Act, 1998, which safeguards the right of denominational schools to protect their distinctive ethos. No evidence has been presented to suggest that section 37 is being abused or that schools rely upon it to engage in unjust discrimination.

² See e.g. <http://www.catholicschools.ie/wp-content/uploads/2015/03/CSP-Catholic-Primary-Schools-in-a-changing-Ireland.pdf>, p.7.

Rule 68 of the Rules for National Schools protects the denominational character of a school and underpins the legal right and responsibility of patrons to uphold and foster a characteristic spirit or ethos in accordance with the school's patronage. It also recognises the distinctive nature of religious education, which, in denominational schools, is privileged in the day-to-day life of the school.

The Minister for Education is considering amending Rule 68. This should be done in such a way as to avoid infringing on the rights of denominational schools and parents who wish to choose such schools for their children.

If a Catholic school cannot fulfil what the existing Rule 68 describes as the primary duty of an educator, it would cease to be a Catholic school in any meaningful sense.

A denominational school is entitled to proceed from a religious starting point, which from the state's point of view must be viewed as being equally as valid as that of the secularist. Otherwise, the state has already improperly adopted and is proceeding on the basis of a secularist truth-claim.

In addressing the legitimate needs and desires of parents who want a non-denominational education for their children, the Irish state needs to do more to safeguard the rights of parents who *do* want a denominational education and the rights of denominational schools to maintain their distinctive ethos.

Recommendations

During the periodic review, Family & Life urges the UN Human Rights Council to take account of the issues raised in this submission.

In particular, we urge the Council to recommend the Irish government to:

- Repeal section 9 of the Protection of Human Life During Pregnancy Act
- Introduce measures to protect human embryos created using AHR
- Recognize the right of children conceived using AHR to know and be cared for by both their genetic parents
- Instruct all relevant statutory bodies to respect rights of conscience
- Respect the religious freedom rights of individuals and religious institutions.