



## Humanist Association of Ireland Submission to the Human Rights Council

Third Universal Periodic Review of Ireland, 2021

### **Humanist Association of Ireland (HAI)**

The Humanist Association of Ireland (HAI) is a registered charity and a non-profit company, limited by guarantee and not having a share capital, the aim of which is to promote the ideals and values of Humanism.<sup>1</sup> The HAI is affiliated to the International Humanist and Ethical Union and the European Humanist Federation. It has particularly close relationships with similar organisations in Northern Ireland, England and Scotland.

The HAI believes in the separation of Church and State, and that legislation which privileges religious beliefs, or is likely to cause difficulties of hardship for the non-religious, has no place in a modern democratic republic.

Following the submission made to the UNPR in 2017, this submission outlines the up-to-date position on the key elements in the Constitution and legislation which continue to present difficulties for the non-religious members of society in Ireland.

Substantial and significant progress has been made in relation to abortion and blasphemy in the intervening period.

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<sup>1</sup> HAI Constitution: <https://www.humanism.ie/wp-content/uploads/2019/04/HAI-Constitution-Approved-AGM-2018.pdf> (accessed 22 March 2020)

## ▪ **Abortion**

Following the recommendation of the Citizens' Assembly in 2017, a referendum to repeal the Eighth Amendment of the Constitution was passed by a 66.4% majority. Legislation for the provision of abortion was enacted in 2018 with the passing of the Health (Regulation of Termination of Pregnancy) Act which permits abortion up to 12 weeks of pregnancy, and is provided free through the public health service. This is a very welcome development, and a victory for the liberalisation of laws which reflected a strong religious bias.

## ▪ **Blasphemy**

A referendum was held in 2018 to remove the reference to the offence of blasphemy from the Constitution, and this was passed by a substantial majority of 64.85% of the electorate.

## **1. EDUCATION**

Progress remains slow in relation to removing the privileged position of religion in the provision of State-funded education.

### **Provision of education by the State in schools under religious management**

In 2019, at State-funded primary school level, 90.0% of enrolments were in Catholic controlled schools, 2.9% of enrolments were in Church of Ireland (Protestant) schools, 0.3% in schools under the control of other religious faiths. Enrolments in multi-denominational schools accounted for 6.8% of the total, or 38,082 pupils.<sup>2</sup>

It is important to note that there are many parts of the country, particularly in rural areas, where no multi-denominational schools are available, as they are not evenly distributed throughout the country. Catholic and Church of Ireland schools, on the other hand, are traditionally to be found in parishes throughout the country, and are the only option for children in many of those areas.

In post-primary (secondary) schools, Catholic schools account for the largest number of pupils (187,774) although there has been a growth in multi-denominational schools which now number 169,180 pupils. Church of Ireland schools account for 11,669 pupils.

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<sup>2</sup> Statistical Bulletin Enrolments in primary and post-primary schools <https://www.gov.ie/en/press-release/5e8b64-preliminary-enrolments-in-primary-and-post-primary-schools-announced/> (Accessed 22 March 2022)

### **1.1 Divestment of schools from religious patronage**

There has been very little progress in the Government's commitment to 'divest' religious bodies of the patronage of schools since the previous report, with just one school being divested in 2020. Only 12 schools have been divested from religious management over a 7 year period. The Government's stated goal is to transfer management of up to 400 schools from religious management to multi-denominational school patrons by 2030, but it seems highly unlikely that this target will be achieved.

### **1.2 Models of school patronage**

The position also remains that for the few schools where the school patron is a State body, the school is characterised by a religious ethos, such as the Model schools which are under the patronage of the Minister for Education, and are described in the following terms: "Although originally established as non-denominational schools, in practice these schools have evolved to provide primary education within a Christian ethos." <sup>3</sup> Even more concerning, the new model of "Community National Schools", which is under the patronage of the State Vocational Education Committees, also retains a strong religious component, including the following commitment "In liaison with the local faith community, children are nurtured in living to the full in accordance with faith tradition practices and celebrations including the celebration of First Communion and Confirmation in the case of Roman Catholics"<sup>4</sup>

It is particularly concerning that State education policy should approve new models of school patronage with a strong religious ethos. There is only one approved model of school patronage, *Educate Together*, which provides for multi-denominational schools, and none which provides for fully secular or non-denominational schools.

### **1.3 Discrimination in School Enrolment**

Section 7 of the *Equal Status Act 2000* which allowed primary and post-primary schools to discriminate on religious grounds in their admissions policies has been amended to remove the right of schools to give priority to children of a particular religious denomination, unless they are schools of a minority faith (less than 10% of the population) in which case they may still give priority to children of the same faith.

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<sup>3</sup> <https://www.education.ie/en/Schools-Colleges/Information/Diversity-of-Patronage/Model-Schools-Ethos-Description.pdf>, accessed 22 March 2021

<sup>4</sup> *ibid*

Therefore, non-religious families now have access to schools of the religious majority, namely Catholic schools, on the same basis as Catholic families and must be treated in the same way as other families during the application process.

The barrier to accessing places in minority religion schools remains, and in some cases, such schools may be preferred by non-religious families, as doctrinal teaching is less emphasised than in Catholic religious majority schools.

However, the reality for many non-religious families is that there is a distinct lack of choice of school in their locality. While there is a small but growing number of multi-denominational schools, these are not evenly distributed throughout the country, and in many areas, particularly rural locations, the only schools are those which are associated with the local Catholic and Church of Ireland (Protestant) parishes. Many parents are effectively forced to send their children to Catholic schools whose ethos does not conform to their own. There is a clear issue regarding how to accommodate and respect children in a school where they do not belong to the ethos of the school patron.

At a minimum, the State which gives massive funding support to the denominational schools, should ensure that structures are put in place within these schools to protect the rights of children who do not belong to the denominations involved.

Underlying these arrangements is the basic flawed principle which permits State-funded education to support schools that inculcate particular religious beliefs. We believe that this principle serves to perpetuate segregation and division.

#### **1.4 Integration of religious teaching/ethos in curriculum**

As noted in the last submission, Rule 68 which stated that religious instruction is the most important of all parts of the school curriculum was rescinded in 2016.

However, *Section 15 (2) (b) of the Education Act 1998* which requires school boards to “uphold the characteristic spirit of the school as determined by the cultural, educational, moral, *religious*, social, linguistic and spiritual values and traditions which inform and are characteristic of the objectives and conduct of the school” remains in force and is used to justify the incorporation of religion throughout the school day.

Examples of such practices are prayers at start of school day, religious assemblies, religious services during the school day, religious icons etc.

It also remains unclear if the rescinding of Rule 68 has had any impact on the practices in schools, or the terms and conditions of teachers.

### **1.5 Discrimination in teacher training**

Despite Ireland's increasingly diverse society, in terms of religious or philosophical belief, the only route available in the State for an individual seeking qualification as a primary teacher is through a course taken at a college run by a religious denomination.

*Section 12 of the Employment Equality Act 1998* allows training colleges for primary teachers to discriminate in their admissions policy on religious grounds. The training colleges in question supply teachers for the entire primary school community including children of particular denominations, children of no religion in denominational schools (due to lack of choice) and children in multi-denominational schools. Accordingly, this permitted discrimination is an unacceptable departure from normal equality standards.

### **1.6 Discrimination in employment on religious grounds**

*Section 37 of the Employment Equality Act* was amended in 2015 to impose a more stringent test for schools and hospitals to be allowed to discriminate on religious grounds, but nevertheless the right of employers to discriminate on religious grounds remains if "the religion or belief of the employee or prospective employee constitutes a genuine, legitimate and justified occupational requirement having regard to the institution's ethos"<sup>5</sup>

Again, the difficulty is that such institutions, because of the lack of an alternative in the locality, are providing what, in many countries, would be normal state services to the whole community and not just to the members of a particular religious denomination. For this reason, taking account of current equality legislation, this section should be repealed.

This provision continues to discriminate against individuals from employment on religious grounds, which is a breach of UDHR Article 19.

### **Summary on education**

The HAI notes the repeated negative comments by UN human rights bodies on the scandalous lack of choice in the Irish educational system.

The HAI also notes particularly the observations of the UN Human Rights

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<sup>5</sup> Section 11 (b) (1A) (b)

<http://www.irishstatutebook.ie/eli/2015/act/43/section/11/enacted/en/html#sec11> (accessed 22 March, 2021)

Committee (UNHCR July 2008, July 2014) in relation to the International Covenant on Civil and Political Rights. The Committee observed that Ireland should increase its efforts to ensure that non-denominational primary education is widely available in all regions.

Governments have replied to this obvious discrimination by stating that any group of parents can set up a school and get generous State support.

However, it is extremely demanding of time, money and other resources for parents to set up a school on their own initiative and it is particularly difficult in areas of relatively low income.

Where else in the developed world is it left to the initiatives of parents to set up a school that reflects their beliefs or is at least neutral in this regard?

We submit that the most realistic and reasonable goal is to accelerate the divestment of State-funded schools from religious patronage, and to create schools which do not privilege children from any one background, but respect and accommodate children from all backgrounds and traditions. Such schools would not permit faith formation of any kind during the school day, and would not inculcate any religious ethos.

## **2. The Constitution of Ireland, 1937**

### **2.1 Preamble**

The position in regard to the religious nature of the Irish Constitution remains unchanged. The preamble reads:

‘In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred,’<sup>6</sup>

The HAI argues that the inclusion of this specific statement of Christian belief alienates those Irish citizens who do not share that belief.

### **2.2 Religious Oaths of Office**

The Constitution lays down that the President (Article 12,8), all judges (Article 34, 6.1) and members of the Council of State (Article 31, 4) must swear a religious oath (‘In the presence of Almighty God’) before taking office. Both the President and judges are also required to say ‘May God direct and sustain me.’ A judge who does not make the religious declaration within a prescribed time of being appointed ‘shall be deemed to have vacated his office.’ (Article 6, 4).

The UNHCR expressed concern about judges being required to take a religious oath in both 1993 and 2008. The Government told UNHCR that this question would be

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<sup>6</sup> Bunreacht na hÉireann/Constitution of Ireland 1937, Government Publications Office

considered by the Constitutional Convention. It was not.

Both the preamble and the religious oath are discriminatory and in breach of UDHR, Articles 18 and 19. In particular, the religious oath precludes those who do not subscribe to a monotheistic religion from taking important roles in the governance of the nation. It is submitted that this also violates the right to equality before the law protected by Article 7 UDHR.

### **3. Freedom to advocate for the rights of the non-religious**

Freedom to hold opinions and impart information and ideas is a right under UDHR, Article 19. The HAI has been a strong advocate for the rights of the non-religious since it was set up in 1993, but is constrained by legislation from actively pursuing this role.

Three pieces of legislation hamper the HAI's ability to campaign, and this problem came into sharp relief in 2017 in relation to the Electoral Act, 1997 which constrains the funding of organisations which have a "political cause". The following pieces of legislation all affect the HAI's freedom to advocate:

#### **3.1 Civil Registration (Amendment) Act 2012**

Under this Act, the HAI is permitted to conduct legal marriages, to fulfil its purpose of providing humanist ceremonies for the non-religious. To comply with the legal requirements, the HAI must be a secular body, a registered charity, and may not have a "political cause". This term is not defined in the Act, but it may be interpreted as prohibiting the HAI from campaigning for a change of law or an amendment of the Constitution. This is discriminatory, as the "political cause" clause does not apply to any religious body that has the right to solemnise marriages.

#### **3.2 Charities Act, 2009**

A charity is permitted to have a political cause if the promotion of that cause relates directly to the advancement of the charitable purpose of the body. But campaigning for equality for the non-religious, or other human rights issues, does not qualify as a charitable purpose under the Act. It is this anomaly which sets Irish charity legislation apart from its English, Welsh and Scottish legislative counterparts.

The Charities Act is so restrictive around charitable purposes that it does not appear to allow the HAI the objective of achieving equal rights for non-believers. A private member's Bill was brought forward in 2018 to amend the Charities Act to include the advancement of human rights as a charitable purpose, but it subsequently lapsed.

### 3.3 Electoral Act 1997

This Act helps to uphold the integrity of elections by limiting the size and sources of donations to political parties. It prohibits election candidates and political parties from accepting donations of more than €2,500 from one source. But this Act was amended in 2001 to prohibit funding any organisation for *political purposes*, the definition of which is *to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority; or otherwise to seek to influence the outcome of the election or a referendum or a campaign.*<sup>7</sup>

The widening of this Act to apply to funding for any change in Government policy, such as education policy, has the effect of stifling the legitimate work of human rights and advocacy organisations outside of election or referendum campaigns.

### Recommendations

- (i) *Religious Ethos of National Schools.* Remove the Integrated Curriculum from National Schools so that a particular faith no longer permeates all the activities of National Schools. Faith formation and preparation for church rites should not take place during normal school hours and teachers should not be required to participate in faith formation or religious activities against their own beliefs.
- (ii) *Employment Equality Act 1998, section 37* should be repealed so that discrimination on religious grounds is no longer permissible in the employment context.
- (iii) *Constitution.* Removal/replacement of the opening part of the preamble (5.1 above) and removal of the requirement for religious oaths for public office.
- (iv) *Freedom to Advocate for Human Rights.* Amend *Civil Registration (Amendment) Act 2012*, section 3 to remove the prohibition on a secular body having a “political cause” or amending it to specify that having a “political cause” does not intend to prohibit promotion of equality as a human right. Amend *Charities Act, 2009* to include the advancement of human rights as a charitable purpose. Amend *Electoral Act, 1997* to remove the limits on funding

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<sup>7</sup> Section 49 (b)(i)(iv) <http://www.irishstatutebook.ie/eli/2001/act/38/section/49/enacted/en/html>, accessed 22 March 2021



organisations which are legitimately advocating for change in government policy.

Humanist Association of Ireland  
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