



Atheist Ireland Submission to

United Nations Committee on

Economic, Social and Cultural Rights

for List of Issues regarding Ireland

55 Session

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1. Introduction

1.1 Atheist Ireland is an Irish advocacy group. We promote atheism and reason over superstition and supernaturalism, and we promote an ethical, secular society where the State does not support or finance or give special treatment to any religion. Since being formed in late 2008, we have campaigned for a secular Irish Constitution, parliament, laws, government, education and healthcare systems.

1.2 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.

1.3 You can read details of our policies on our website at <http://atheist.ie>.

1.4 This Submission, of items for the Committee to consider when preparing the List of Issues for Ireland, outlines the failure of the Irish State to protect the human rights of atheists and secularists in the Irish Education system, and with regard to employment in senior political and legal jobs, and with regard to discrimination against women under the right to health, and with regard to blasphemy laws under cultural rights, 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 and other groups under the ICESCR despite having ratified the treaty and agreeing to guarantee these rights to all within its territory.

2. Article 2 - Incorporation into Domestic Law and Non-Discrimination

2.1 In paragraph 12 of its 2002 Concluding Observations on Ireland, the Committee expressed concern that the Covenant had not been incorporated into domestic law. ⁱ

2.2 The ICESCR obliges the state to guarantee the rights enunciated in the Covenant without discrimination. Ireland does not protect atheists/secularists from religious discrimination as the Supreme Court elevated the constitutional free practice of religion guarantee over the non-discrimination guarantee.

2.3 The General Comment on the Right to Education under the ICESCR states that:-

“31. The prohibition against discrimination enshrined in article 2 (2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.”

2.4 In a recent Submission to the Minister for Justice Equality and Defence the Equality Authority (IHR & Equality Commission Designate) stated that:- ⁱⁱ

“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. “ⁱⁱⁱ

2.5 The Irish Constitution clearly does not protect atheists/secularists from religious discrimination. The Irish state provides exemptions in the Equal Status Act 2000, Education Act 1998, and Employment Equality Act 1998/2004 for bodies with a religious ethos to discriminate on religious grounds.

2.6 The Irish Human Rights Commission in their Report to the UN under the UPR, 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 to the UN Human Rights Committee under the ICCPR. ^{iv}

“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.”

2.7 Article 40.1 of the Constitution 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.”

2.8 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.”

2.9 The Constitutional Review Group Report 1995 also recommended Constitutional change to Article 40.1 to bring Ireland in line with international human rights instruments. ^v

2.10 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 ICESCR as it will continue to discriminate against atheists/secularists and fail to guarantee and protect their rights under the Covenant.

3. Article 2 & 13 - Non-Discrimination and Education

3.1 The Education Act 1998, Equal Status Act 2000 and Employment Equality Act provide exemptions on religious grounds and fail to protect atheists and secularists from religious discrimination because the State gives priority to religious beliefs. Atheists, secularists and religious minorities cannot ensure that the religious and moral education of their children is in conformity with their own convictions, as there is no access to a neutral education.

3.2 All recognised schools in Ireland are obliged by the Education Act 1998 to operate in accordance with legislation, policy and curriculum as determined by the Minister for Education & Skills (Section 9 – (b) Ed. Act 1998). The legislation, policy and curriculum oblige schools to promote the spiritual development of students (Section 9 – (d) Ed. Act 1998), while having regard to the Characteristic spirit (ethos) of the school. Section 15.2.b of the Education Act 1998 obliges school management boards to uphold and be accountable to the patron for upholding the characteristic spirit (ethos) of the school.

Section 30.2.e of the Education Act 1998 (the opt-out clause) does not provide non-discriminatory exemptions or alternatives that would accommodate the wishes of the parents referred to above.

3.3 The UN Human Rights Committee has told Ireland to stop breaching the human rights of atheists and minority faiths in the education system, reflecting concerns raised by Atheist Ireland at the questioning session in Geneva. The Committee concluded:

3.4 The Human Rights Committee is concerned about the slow progress in increasing access to secular education through the establishment of non-denominational schools, divestment of the patronage of schools and the phasing out of integrated religious curricula in schools accommodating minority faith or non-faith children.

3.5 Ireland should introduce legislation to prohibit discrimination in access to schools on the grounds of religion, belief or other status, and ensure that there are diverse school types and curriculum options available throughout the State party to meet the needs of minority faith or non-faith children.

3.6 But Irish law effectively prohibits non-denominational secular schools based on human rights. The Government did outline two requirements to the UN, that the Government seemingly doesn't consider to be obstacles. These are that there must be sufficient parental demand in an area for such a school, and that the requirements of being a Patron body must be met. In reality, there are four obstacles to establishing non-denominational secular schools based on human rights in Ireland.

3.7 The first obstacle is the parental demand requirement; the second obstacle is that the requirements of being a Patron are such that it would be impossible in practice to provide secular non-denominational education consistently with them; the third obstacle is that the very nature of our education system involves the State ceding the running of schools to private bodies; and the fourth obstacle is that, even if such schools were provided by a Patron body, the Patron body would still be a private body and not an organ of the State.

4. Education Act / Ethos / Primary School Curriculum

4.1 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.

4.2 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 (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. Parents are not aware from the Admissions Policy of any school how exactly the ethos of the school will operate on the ground and where exactly religion will be integrated into the state curriculum (Rule 68).

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

Religious integrated curriculum, religious instruction classes, prayers, religious ceremonies, religious symbols in classrooms and religious symbols on school uniforms and 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.

4.4 One of the key areas of the Primary School Curriculum is to promote the spiritual dimension of life. The concept of spirituality is not defined in the Education Act 1998 and in the Primary School Curriculum it is assumed that it based on a transcendent element within human experience. Spirituality is linked to religious education and developing spiritual and moral values and a knowledge of god.

4.5 The Primary School Curriculum states that: ^{vi}

“The spiritual dimension of life expresses itself in a search for truth and in the quest for a transcendent element within human experience. The importance that the curriculum attributes to the child’s spiritual development is expressed through the breadth of learning experiences the curriculum offers, through the inclusion of religious education as one of the areas of the curriculum, and through the child’s engagement with the aesthetic and affective domains of learning.”

(Introduction Primary School Curriculum, page 27)

“The spiritual dimension is a fundamental aspect of individual experience, and its religious and cultural expression is an inextricable part of Irish culture and history. Religious education specifically enables the child to develop spiritual and moral values and to come to a knowledge of God.”

(Primary School Curriculum Page 58)

4.6 In addition to the above Rule 68 of the Rules for National Schools reads: ^{vii}

“Of all parts of a school curriculum, Religious Instruction is by far the most important, as its subject matter, God’s honour and service, includes the proper use of all man’s faculties, and affords the most powerful inducements to their proper use. Religious Instruction is, therefore, a fundamental part of the school course, and a religious spirit should inform and vivify the whole work of the school.”

5. The opt-out from Religion

5.1 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.”

5.2 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 and consequently does not guarantee the right to a neutral education for minorities. The nature of the opt out provision in Irish schools is limited and does not guarantee respect for the philosophical convictions of atheist/secular families.

5.3 In the Supreme Court case Campaign to Separate Church and State, Barrington J stated: ^{viii}

“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.”

5.4 Despite the above comments of the Supreme Court 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 neutral and objective manner and parents are left dealing with Boards of Management who have no connection to the ICESCR and who interpret human rights according to their own ethos.

6. The right to a neutral education, outside of opt-out subjects

6.1 The UN Human Rights Committee questioned Ireland about the right to a neutral education for minorities, even in denominational schools, in the parts of the curriculum outside of the religious instruction classes from which you can opt out.

6.2 Question by Yuval Shany

My follow-up question goes to the issue of denominational education, and I note the statement on improvements that are planned in the transparency of school admission policies. My two follow up questions in this regard are: How does the Delegation explain the compatibility with the Covenant of a state of affairs that allows private schools, which have a near monopoly in

Ireland on a vital public service, to openly discriminate in admission policies between children on the basis of their parents' religious convictions?
I would appreciate, whether orally or in writing, the Delegation's theory on this point, on this legal point. And whether the State believes or not that it is required to ensure a neutral studying environment in those schools, in denominational schools, outside the confines of religious instruction classes that can be opted out from? ^{ix}

6.3 The state did not respond to this question, and the concluding observations included, on this particular issue:

The Human Rights Committee is concerned about the slow progress in increasing access to secular education through ... the phasing out of integrated religious curricula in schools accommodating minority faith or non-faith children. ... Ireland should introduce legislation to ... ensure that there are diverse school types and curriculum options available throughout the State party to meet the needs of minority faith or non-faith children.

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

6.5 Despite the above it is parents who 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 oblige schools to 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.

6.6 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 buttress religion at the cost of the human rights of atheists/secularists.

6.7 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. The reason why the state gives no practical application to the rights of atheists/secularists is that there is a conflict between competing constitutional rights, and the courts have interpreted this in a way that gives preference to religious over philosophical convictions.

7. Equal Status Act Section 7.3(c)

7.1 Section 7.3(c) of the Equal Status Act 2000 ^x gives an exemptions to schools with a religious ethos to refuse access in order to uphold their ethos. 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 to the majority of schools in the country.

7.2 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.

8. Proposed Admission to Schools Bill

8.1 The proposed Education (Admission to Schools) Bill ^{xi} will not remove religious discrimination in access to schools. Atheists/Secular parents are legally obliged to send their children to schools that discriminate on religious grounds. ^{xii}

8.2 In September 2013 the government published a Draft General Scheme for an Education (Admission to Schools) /Bill, as well as Draft Regulations. One of the intentions of the Bill is to ensure that enrolment policies will include a statement setting out the position of the school in relation to its arrangement for upholding the constitutional right of student not to attend religious instruction. There are no proposals to oblige schools to provide supervision for parents who opt out their children out of religious instruction.

8.3 This Bill does nothing to change the situation on the ground and protect the rights guaranteed under the ICESCR. It does not deal with the religious integrated curriculum, and only refers specifically to religious instruction. Neither 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.

8.4 The UNHRC under the ICCPR asked regarding this Bill:

Is it true that even under the new Draft general Scheme Bill, children of non-Christian families or atheist families may be discriminated against in admission to denominational schools if they do not fit with its ethos, provided a preference to the school's denomination children is stated explicitly in the admissions policy of that school?

8.5 And the Concluding Observations included:

Ireland should introduce legislation to prohibit discrimination in access to schools on the grounds of religion, belief or other status, and ensure that there are diverse school types and curriculum options available throughout the State party to meet the needs of minority faith or non-faith children.

8.6 General Comment on Article 13 states that:-

8.7 By way of illustration, violations of article 13 include: the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education; the failure to take measures which address de facto educational discrimination;

8.8 It seems clear that the State intends to ignore the human rights guaranteed under the ICESCR 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.

9. Articles 2 & 6 & 7 - Non-Discrimination and Employment

9.1 Under Article 6, the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

9.2 Irish law discriminates against workers who are, or who wish to be, employed by publicly funded institutions that have a religious ethos, such as schools and hospitals and training colleges, by allowing those institutions an explicit exemption from our equality laws to enable them to discriminate on the grounds of religion, in order to protect the religious ethos of the institutions.

9.3 The Irish Constitution discriminate against people who want to be President, a judge, Taoiseach, Tanaiste, chairperson of the Dail or Seanad, Attorney General by obliging them to swear a religious oath on taking office or on becoming a member of the Council of State.

9.4 Under Article 7, the States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

9.5 Irish law discriminates against workers who wish to be promoted in publicly funded institutions that have a religious ethos, such as schools and hospitals and training colleges, by allowing those institutions an explicit exemption from our equality laws to enable them to discriminate on the grounds of religion, in order to protect the religious ethos of the institutions.

9.6 The Irish Constitution discriminate against lawyers who want to be promoted to be a judge or Attorney General, and against politicians who want to be promoted to Taoiseach, Tanaiste, or chairperson of the Dail or Seanad by obliging them to swear a religious oath on taking office or on becoming a member of the Council of State.

10. Employment Equality Act 1998 and proposed Bill to amend it

10.1 Section 37 (1) of the Employment Equality Act 1998 ^{xiii} 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.

10.2 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*”. ^{xiv} The state supports this discrimination as the Constitution permits religious discrimination in order to buttress religion.

10.3 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.

Proposed Bill to Amend Section 37

10.4 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 made a Submission to Government to remove this discrimination. ^{xv}

10.5 The UN Human Rights Committee has told Ireland to stop breaching the human rights of atheists and minority faith teachers and health workers, reflecting concerns raised by Atheist Ireland at the questioning session in Geneva.

10.6 The Committee concluded:

The Human Rights Committee is concerned that under Section 37(1) of the Employment Equality Acts, religious-owned institutions, including in the fields of education and health, can discriminate against employees or prospective employees to protect the religious ethos of the institution (arts.2, 18, 25 and 27).

Ireland should amend Section 37(1) of the Employment Equality Acts in a way that bars all forms of discrimination in employment in the fields of education and health.

10.7 The Irish Government's position was:

One of the elements of our existing employment equality framework that has come in for criticism is section 37 of Employment Equality Act 1998. Section 37 is the provision that allows religious-owned institutions to discriminate against employees or prospective employees if that is

necessary to protect the religious ethos of the institution (i.e. a school or hospital). When this provision was introduced into our law in 1998, the Supreme Court had found, in an earlier judgment, that it represents a fair balance between the competing rights of freedom of religion and the right of employees to be protected from discrimination.

Experience subsequently has shown that the balance has not been a fair one in practice – the provision has been described as having a chilling effect on LGBT teachers in particular. We have a commitment in our Programme for Government to ensure that “people of non-faith or minority religious backgrounds and publically identified LGBT people should not be deterred from training or taking up employment as teachers in the State”.

Last year, the Government agreed to support a Private Members’ Bill that seeks to restore a fair balance to the equation. Given the constitutional implications, the Bill was of course examined very carefully by our Attorney General’s Office. Just last week, we completed that scrutiny process when the Government approved the Heads of a number of technical amendments to the Bill. These amendments will be published later in the year, with a view to the Bill being enacted before end-2014. The Bill as published is essentially sound and the amendments are largely technical in nature.

10.8 Yuval Shany of the UN Human Rights Committee responded:

I am grateful for the Minister’s reaction to the issue of Article 37 of the Employment Equality Act from 1998, and the concerns that it allows for discrimination in hiring of teachers to denominational schools, and I appreciate the Government’s interest in reforming the law in this regard. We in the Committee have not seen the draft Bill, and we would appreciate if the Delegation would provide us with a copy.

I would also appreciate if you could, in your response, address the concerns that have already been raised with respect to this new draft Bill, that it would protect the rights of some groups that are currently discriminated against, such as LGBTs, but would not deal with the question of discrimination on the basis of religious conviction, namely that it would not protect the rights of non-Christian teachers or atheist teachers.

11. Religious Oaths for Political and Legal Jobs and Promotion

11.1 Under the Irish Constitution the President, judges and members of the Council of State are required to swear a religious oath. This means that a conscientious atheist cannot aspire to hold any of these positions.

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

11.3 The inclusion of Council of State members among those who are required to swear a religious oath is significant, as holders of key high political and legal jobs are obliged to be members of the Council of State.

11.4 This includes 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. These are all ex-officio members of the Council of State.

11.5 This addition to the generally recognised extent of the religious oath obligations became clear when the then 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.

11.6 The UN Human Rights Committee has told Ireland to remove religious oaths for public office and to remove the law against blasphemy, reflecting concerns raised by Atheist Ireland at the questioning session in Geneva.

11.7 The Committee concluded:

The Human Rights Committee is concerned at the slow pace of progress in amending the Constitutional provisions that oblige individuals wishing to take up senior public office positions such as President, members of the Council of State and members of the judiciary to take religious oaths. Ireland should amend articles 12, 31 and 34 of the Constitution that require religious oaths to take up senior public office positions, taking into account the Committee's general comment No. 22 (1993) concerning the right not to be compelled to reveal one's thoughts or adherence to a religion or belief in public.

11.8 Here are the questions that the Committee asked Ireland about religious oaths, in the session in Geneva that led to the above recommendation.

Moving on to issue 25, dealing with religious oaths. Again, I appreciate the response provided by the State Party, and again I commend its willingness to take measures to implement the Committee's recommendations in this regard. Our concern, however, is with the pace of the change with respect to this issue. The issue of religious oaths was first raised in this Committee with Ireland during the very first Periodic Review of the reports of Ireland in 1993, namely, quite some time ago. And to the best of our understanding, the matter has yet to be fully addressed.

I have not seen anything on the Convention on the Constitution website that suggests that the matter of religious oaths is under active consideration. Neither have I seen any specific information that suggests that a referendum on this issue is pending. And I would be glad if the Delegation could enlighten the Committee in this respect, and please clarify whether any of the anticipated changes would include, in addition to judges, also other senior office holders in the Irish State including the President, the Attorney General, etc.

12. Article 15 - Blasphemy laws and artistic expression

12.1 In the Irish blasphemy law, the offence consists of uttering material "grossly abusive or insulting in relation to matters held sacred by any religion", when the intent and result is "outrage among a substantial number of the adherents of that religion".

12.2 A defence is permitted for work of "genuine literary, artistic, political, scientific, or academic value", but this defence is not formulated with sufficient precision, has a stifling effect, and leads to self-censorship, contrary to the concerns expressed by the UN Special Rapporteur in the field of Cultural Rights, Farida Shaheed, in her report to the UNCHR on artistic freedom.

12.3 This report is titled Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, on the right to freedom of artistic expression and creativity. ^{xvi}

12.4 In this report, the Special Rapporteur on Culture has said:

48. The Special Rapporteur recalls that "prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with [ICCPR], except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant." Blasphemy laws have a stifling impact on the enjoyment of freedom of religion or belief and impede a healthy dialogue and debate about religion.

87. In many cases, censorship is counterproductive in that it gives wider publicity to controversial artworks. However, the fear censorship generates in artists and art institutions often leads to self-censorship, which stifles art expression and impoverishes the public sphere. Artistic creativity demands an environment free from fear and insecurity.

89. The Special Rapporteur recommends that: (a) Artists and all those engaged in artistic activities should only be subject to general laws that apply to all people. Such laws shall be formulated with sufficient precision and in accordance with international human rights standards. They shall be made easily accessible to the public, and implemented with transparency, consistency and in a non-discriminatory manner.

12.5 The UN Human Rights Committee has recommended:

The Committee is concerned that that blasphemy continues to be an offence under article 40.6.1(i) of the Constitution and section 36 of the Defamation Act 2009 (art. 19). Ireland should consider removing the prohibition of blasphemy from the Constitution as recommended by the Constitutional Convention, and taking into account the Committee's general comment No. 34 (2011) concerning the incompatibility of blasphemy laws with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2 of the Covenant.

13. Article 12 - Women's health and the right to abortion

13.1 Ireland's abortion law limits women's and girls' enjoyment of the right to the highest attainable standard of physical and mental health as guaranteed under article 12(1) of the ICESCR.

13.2 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.

13.3 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.

Human rights are not subject to majority votes

13.4 Ireland's defence of this issue arose during the recent questioning of Ireland by the UNHRC under the ICCPR. While they were referring to obligations under the ICCPR, the underlying principles of human rights (while discussing Irish abortion law) not being subject to majority votes was discussed. ^{xvii}

13.5 The UN Human Rights Committee asked Ireland why it was in breach of the human right of pregnant women to an abortion in wider circumstances than allowed by Irish law. The Irish State replied that Irish abortion law reflects the will of the Irish people, as allowed under Article 25 of the International Covenant on Civil and Political Rights.

13.6 The UN Human Rights Committee said that that was a completely unacceptable reason for denying human rights, and that the very core of human rights law is a safeguard against the tyranny of the majority. After a break in the session, the Irish Justice Minister Frances FitzGerald formally withdrew the remark and accepted that "the majority will does not and can not derogate from human rights obligations."

13.7 Here are the relevant extracts from UNHRC questioning of Ireland:

13.8 Yuval Shany of the UN Human Rights Committee

I am however quite, well, very troubled, frankly, by the sweeping claim that has been made, that the free will of the Irish electorate may, by virtue of Article 25 of the Covenant, allow the Irish State to violate other provisions of the Covenant, including nonderogable provisions such as Articles 6 and 7 of the Covenant.

I find this argument to be completely unacceptable, I should say, and one that strikes at the very core of human rights law as a safeguard against the tyranny of the majority, and one that cuts against the very raison d'être of having an international regime of universal human rights protections.

And I call on the State Party to consider withdrawing that statement, on the ability of the Irish State to deviate from the Covenant at will, and to come up with some other explanations for why their laws and practices on abortion are compatible with the Covenant.

13.9 Yuji Iwasawa of the UN Human Rights Committee

Before I address issues 22 and 24, I would like to join my colleague Mr Shany in pointing out that human rights cannot be denied by a majority vote in the Parliament. Arguments to justify a deviation from the protection of human rights under the Covenant by invoking article 25 of the Covenant cannot be accepted.

13.10 Cornelis Flinterman of the UN Human Rights Committee

I would like to raise some follow-up questions on the very important issue of abortion. Let me first of all state that I share very much the concern expressed by my colleagues Mr Shany and Mr Iwasawa, of the reference by the Delegation to Article 25. There is no disagreement that a full and free discussion is crucial in any society, and that it is the cornerstone of any democratic and free society, as reflected also in our General Comment number 34 in which our former Irish member played such an important role, Michael Flaherty.

Yet the outcome of such a discussion, even if it is full and free and informed, the outcome of such a discussion in the form of a parliamentary majority decision can never be used as an argument to legitimise the violation of substantive rights under the Covenant. As has been said, such an argument would indeed undermine the essence of the human rights framework both domestically and internationally.

13.11 Irish Justice Minister Frances FitzGerald

On question 12, I would want to begin my comments in relation to this by referring to the comments of Mr Shany, Mr Iwasawa and Mr Flinterman. And I want to make it absolutely clear that the Government of Ireland recognises entirely the points made by the members of the Committee in relation to Article 25, that the majority will does not and can not derogate from human rights obligations, and I hope that's a very clear statement of our position.

13.12 Yuval Shany of the UN Human Rights Committee

I am very pleased to hear the Minister's unambiguous statement on Article 25 of the Covenant, and I appreciate the Delegation's immediate response to our concern in this regard.

13.13 Despite this commitment by the Irish state to not use majority will to derogate from human rights obligations on the specific issue of abortion, nothing has changed on the ground in Ireland.

Notes

ⁱ <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/ee8b667ff0cbef8141256bce004e06b7?OpenDocument>

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

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

^{iv} Para 17, page 9 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fFN%2fIRL%2f14924&Lang=en

^v Pages 194 – 219 <http://archive.constitution.ie/reports/crg.pdf>

^{vi} http://www.ncca.ie/uploadedfiles/Curriculum/Intro_Eng.pdf

^{vii} <http://www.rte.ie/news/special-reports/2012/0315/314761-schools/>

^{viii} Section 227-231, <http://www.ihrc.ie/enquiriesandlegal/religionandeduc.html>

^{ix} <http://atheist.ie/2014/08/un-asks-ireland-about-religious-discrimination-in-irish-schools-video-and-transcript/>

^x <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,”

^{xi} Bill <http://www.education.ie/en/The-Education-System/Legislation/Draft-General-Scheme-of-an-Education-Admission-to-Schools-Bill-2013.PDF>

^{xii} <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.”

xiii <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.”

xiv <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.””

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

xvi <http://ietm.org/news/un-report-right-freedom-artistic-expression-and-creativity>

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