

A Secular State Protects Religious Minorities



**Submission from Atheist Ireland
to UN Special Rapporteur on Minority Issues
on Categories of Minorities**

May 2020

Contents

1. Introduction to Atheist Ireland
2. Introduction to this Submission
3. Distinctions
4. Scope of Rights
 - 4.1 The Positive Right to Philosophical Beliefs
 - 4.2 UPR Ireland 2016
 - 4.3 ICCPR Pakistan 2017
5. New Minorities
6. Consultations and Laws
 - 6.1 Government Dialogue Process
 - 6.2 The Irish Constitution
 - 6.3 Religious Oaths in the Constitution
 - 6.4 The Irish Education System
 - 6.5 Equal Status Act
 - 6.6 Charities Act and Tax Law
 - 6.7 Civil Registration Act
 - 6.8 Hate Speech Consultation
7. Good Practices
8. Conclusion

1. Introduction to Atheist Ireland

Atheist Ireland is an Irish advocacy group. We promote atheism and reason over superstition and supernaturalism, and we promote an ethical, secular society where the State does not discriminate against or support or finance or give special treatment to any religion or belief.

Since being formed in late 2008, we have campaigned for a secular human rights based Irish Constitution, parliament, laws, and government, with particular emphasis on our education system which discriminates systemically on the ground of religion. We are part of the dialogue process between the Government and religious and nonreligious philosophical bodies.

We led a successful decade-long campaign to remove the crime of blasphemy from the Irish Constitution. The 37th Amendment to the Constitution Bill was brought to Dáil Éireann and the Irish public passed the amendment in a referendum in 2018. The Blasphemy (Abolition of Offences and Related Matters) Act was passed in 2019.

We base our policies on human rights standards. We have addressed the United Nations Human Rights Council and we take part in sessions of various UN Committees. We have successfully had human rights based recommendations made based on our submissions to these committees. We have also made submissions to the OSCE and the Council of Europe.

2. Introduction to this Submission

In this submission, we are focusing on three issues:

- Under the heading of religious minorities, the Irish State does not give equal status to people holding religious beliefs and people holding nonreligious philosophical convictions. This is reflected in our Constitution which obliges the State to respect and honour religion but does not explicitly say the same about nonreligious beliefs, and in our religious oaths for high offices, our charity law, our civil registration of marriages law, and our education system.
- There is sometimes an overlap between how religious and ethnic minorities are treated, with some people prejudicially conflating ethnic status with religious status. Atheist Ireland has an alliance on these and other secular issues with the Ahmadiyya Muslim Community of Ireland and the Evangelical Alliance of Ireland, as we are all discriminated against on the ground of religion. This can be a double problem for atheist ex-Muslims in the asylum process.
- There is also a distinction to be made with regard to freedom of expression. We should protect members of minorities as people from prejudice and crime, while retaining the ability to legally criticise harmful ideas and practices arising from religious and nonreligious beliefs. This is relevant because the State is currently engaging in a consultation process on hate crime laws.

3. Distinctions

Please provide information on the significance of and the distinction used for the four categories of minorities (national or ethnic, religious and linguistic) by your Government or Organisation. Please provide examples of national legislation or policies on the matter, if any.

We will focus here on religious minorities. The UN should continue to educate States that the right to freedom of thought, conscience, religion, and belief equally protects atheists and people with nonreligious philosophical convictions such as secularism.

Atheist Ireland promotes five principles to protect this right. These are consistent with various UN Conventions, the Charter of Fundamental Rights, and the European Convention. These principles do not discriminate for or against anybody on the basis of their beliefs.

1. The first duty of the State is to protect the rights of its citizens, in this case the unconditional right to freedom of thought, conscience, religion, and belief, and the conditional right to practice those beliefs as long as we don't infringe on the rights of others.
2. To do this, the State must remain neutral between religious and atheistic beliefs. This is the only principled and practical way that the State can protect these rights, equally and fairly, for every one of us. We need a secular State to protect a pluralist people.
3. People have rights, beliefs do not. The State must protect the right of every person to be respected and treated with dignity, but it must not protect the content of our beliefs from criticism, or insist that we respect beliefs that we consider to be irrational or harmful or unjust.
4. Individual people, not majorities, have human rights. Indeed, as the UN Human Rights Committee told Ireland, the whole point of human rights law is to protect individuals from the tyranny of the majority, and majority votes cannot be used to deny human rights.
5. The State must ensure that new laws respect everybody's rights and also remove legacy laws and practices that discriminate against atheists and people of minority faiths. In Ireland this includes our Constitution, religious oaths, education system, Equal Status Act, Charities Act and Tax Law, and the Civil Registration Act.

4. Scope of Rights

Please identify your understanding of the scope of rights of persons belonging to minorities from the four categories of beneficiaries under UN instruments, and particularly the scope and nature of rights each category can claim. Please, also provide any statement made to UN bodies or other information on how your Government or Organisation understands the United Nations' approach(es) to the four categories of minorities under the UN human rights system.

4.1 The Positive Right to Philosophical Beliefs

The test of whether a personal or collective conviction is to benefit from protection is that it must attain a certain level of cogency, seriousness, cohesion and importance. The UN has said in CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion) that:

"2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community."

"8. States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18."

"9. The fact that a religion is ... established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers."

"10. If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognised under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it."

The European Court has held that secularism is a belief protected by Article 9 of the Convention and that an aim to uphold democratic and secular values can be linked to the legitimate aim of the “protection of the rights and freedoms of others” within the meaning of Article 9.2 of the Convention. (para 35 Hamidovic v Bosnia and Herzegovina 5th Dec 2017)
<http://hudoc.echr.coe.int/eng?i=001-179219>

The state has both a negative obligation to refrain from interfering in our rights and freedoms under the Convention, and a positive obligation to secure to us those rights and freedoms.

- Under the state’s negative obligations, we have the right not to practice a religion or to reveal our beliefs, and the right not to act contrary to our conscience and convictions.
- Under the state’s positive obligations, we have the right to act in a way which is inspired, motivated or influenced by, and also intimately linked to, a religion or set of beliefs.

Our Constitution and law gives only minimum protection to the negative rights of atheists and secularists, and it does not at all protect the positive rights of atheists, humanists, freethinkers, and secularists, instead giving privilege to religious beliefs over nonreligious philosophical convictions. This not only discriminates on the ground of religion, but constitutes interference in religious freedom.

Under Article 44.2.3 of the Constitution, the State cannot discriminate between religious beliefs, but the courts have found that this applies only to religious beliefs and does not protect nonreligious philosophical convictions. The Constitution thus gives religion an extra layer of protection over and above any other category that is protected, for example sex or sexual orientation or race or disability.

Article 44 Irish Constitution

1 The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.

2 1° Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

2° The State guarantees not to endow any religion.

3° The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

The State can and does discriminate between religious beliefs and nonreligious philosophical convictions. It does this by conflating religion with moral function under Article 40.1.

Article 40.1 Irish Constitution

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.

We address this distinction further in section 6.2 of this submission.

4.2 UPR Ireland 2016

In 2016 Atheist Ireland made a submission to and addressed the United Nations Human Rights Council under Ireland’s Universal Periodic Review. Two of our priority issues have since been addressed. Ireland has removed our constitutional bans on abortion and blasphemy. But our third priority issue is still unresolved. There is still systemic religious discrimination in Irish schools.

Atheist Ireland pointed out in 2016 that nine different sets of United Nations and Council of Europe committee conclusions had told Ireland that religious discrimination was breaching the human rights of atheist and minority faith children, families and teachers in Irish schools.

We said that the State had passed or introduced new laws that claimed to tackle discrimination in schools admissions and employment of teachers, but that these laws retained the right of publicly-funded schools to discriminate on the ground of religion. That remains the case.

- You can read our submission to that session here:
<https://atheist.ie/2015/09/universal-periodic-review-of-ireland/>

4.3 ICCPR Pakistan 2017

Atheist Ireland, the Evangelical Alliance of Ireland, and the Ahmadiyya Muslim Community of Ireland are united in a campaign for secularism and human rights. Despite our different world views, we agree that each person should be treated with respect and equally before the law.

In 2017 we went as a joint delegation to the UN Human rights Committee to outline the failure of Pakistan to protect the human rights of Atheists, Christians, Ahmadiyya Muslims, Secularists and other minorities under the International Covenant on Civil and Political Rights.

- You can read our submission to that session here:
<https://atheist.ie/2017/06/pakistan-united-nations/>

5. New Minorities

Are “new” minorities or indigenous peoples considered in one of the four categories of minorities (national or ethnic, religious and linguistic) by your Government or Organisation? And if so, which ones?

We will focus here on two minorities: atheists and members of minority religions, and ethnic minorities which can have an overlap with these two groups.

- In practice, atheists can be considered a "new" minority insofar as we have not been actively organised for most of the history of the State, and many people still see our rights as invisible because they are conditioned to the status quo and think that it is a normal part of our culture for religions to have State privilege and for atheists to be discriminated against.
- The State is now starting to limit some of the privileges that the Catholic Church has traditionally held. However, in doing so, the State gives some minority faiths the right to discriminate against members of other minority faiths, particularly in the education system.
- Immigrants who are members of minority religions can face an overlap of ethnic and religious prejudice and discrimination. We are particularly aware of this with regard to our colleagues in the Ahmadiyya Muslim Community of Ireland and the Evangelical Alliance of Ireland.
- Atheist ex-Muslims in the asylum process face two particular problems. One, the State sometimes insists that they are still Muslims and that they would be safe being sent back to States where they would be in danger. And two, Muslims in the asylum process can be hostile towards ex-Muslims in the asylum process if they are not seen to be practising Islam.

6. Consultations and Laws

Please provide examples of consultations with minorities on their approach and views as to these distinctions in your country, as well as to the laws and policies that address their rights from the perspective of that distinction.

6.1 Government Dialogue Process

Atheist Ireland is part of the dialogue process between the Irish Government and religious and nonreligious philosophical bodies. At a plenary meeting of that process in 2019, the Government seemed to applying a different meaning of secularism than we use.

We do not argue that religious bodies should have no place in the public square. We simply argue that the State when exercising its functions should remain neutral between religious and atheistic beliefs, and should not discriminate for or against any people or groups on the basis of their beliefs (Article 26 ICCPR).

We suggest that some of the Irish government's policy decisions about secularism and pluralism conflate the role of the State and the role of society. We agree that society should be pluralist. Indeed, that is simply an observation of fact. We also agree that the State's policy should be to protect and support this pluralism.

However, we believe that the State itself must be secular, that is, neutral, precisely in order to protect and promote the pluralism of society, and as the only way to protect and promote equally everybody's right to freedom of conscience, religion, and belief.

You can read our submissions to this dialogue process here:

- <https://atheist.ie/2019/08/secular-state-part-1-overview/>
- <https://atheist.ie/2019/08/secular-state-part-2-dialogue/>
- <https://atheist.ie/2019/08/secular-state-part-3-communities/>
- <https://atheist.ie/2019/08/secular-state-part-4-education/>
- <https://atheist.ie/2019/08/secular-state-part-5-other-issues/>

6.2 The Irish Constitution

Article 44.1 says that the State shall respect and honour religion. In practice, this is used to justify discriminating in favour of religious beliefs against nonreligious ones. But Article 44.2.1 of the Constitution states that:

“Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.”

Article 44.2.1 means that the State must treat equally people with nonreligious philosophical convictions based on conscience, particularly given that we have signed up to international human rights treaties that give equal status under the law to both religious and nonreligious beliefs (Article 26 ICCPR).

This analysis is supported by the Report of The Constitutional Review Group 1995 and the Supreme Court case *Corway v. Independent Newspapers (Ireland) Limited* 1999.

In 1995 the Report of The Constitutional Review Group stated about Article 44.2.1:

“5. Whether amendment of Article 44.2.1 is required to protect conscientious beliefs which are not necessarily religiously inspired:

From the sole judicial dictum on this point, it seems that the guarantee of freedom of conscience is confined to the religious context: see the comments of Walsh J in *McGee v Attorney General* [1974] IR 284 where he said that the right simply means that a person is free:

‘...to profess and practise the religion of his choice in accordance with his conscience. Correlatively, he is free to have no religious beliefs or to abstain from the practice or profession of any religion.’

These comments by Walsh J did not form part of the ratio decidendi of the McGee case. The Review Group respectfully considers that these comments are unlikely to be followed in a future case. In ordinary speech, freedom of conscience is not synonymous with freedom of religion.

Because the drafters of the Constitution must be presumed to have intended that every word and phrase should carry a specific and separate meaning, 'freedom of conscience' must be taken to import something additional to the guarantee of free practice and profession of religion.

The Review Group considers that the guarantee probably also extends to philosophical beliefs such as humanism and may possibly also extend to other moral and ethical belief systems (for example vegetarianism).

If the views of the Review Group as to the meaning of the words 'freedom of conscience' in Article 44.2.1 are correct and if the Review Group's earlier recommendation concerning the addition of an extra sentence to this subsection modelled on Article 9(1) of the European Convention on Human Rights is followed, no further change in Article 44.2.1 is necessary."

This issue was settled in the Supreme Court case *Corway v. Independent Newspapers (Ireland) Limited* 1999, in which the judgment stated:

"34. The Constitution also introduced (in Article 40.1) a specific guarantee of equality before the law to all citizens as human persons. The effect of these various guarantees is that the State acknowledges that the homage of public worship is due to Almighty God. It promises to hold his name in reverence and to respect and honour religion.

At the same time it guarantees freedom of conscience, the free profession and practice of religion and equality before the law to all citizens, be they Roman Catholics, Protestants, Jews, Muslims, agnostics or atheists.

But Article 44.1 goes further and places the duty on the State to respect and honour religion as such. At the same time the State is not placed in the position of an arbiter of religious truth. Its only function is to protect public order and morality."

6.3 Religious Oaths in the Constitution

Atheist Ireland runs a 'One Oath For All' campaign, to enable conscientious atheists to hold the office of President, Judge, Taoiseach, or other members of the Council of State. All of these offices are out of reach of conscientious atheists.

This is because, in order to take office, we would have to swear a religious oath, the wording of which is in the Constitution, that would force us to deny our philosophical convictions, and breach our human right to freedom of conscience and belief. This also contradicts our right to freedom of conscience under Article 44.2.1 of the Constitution and effectively renders us second-class citizens.

If instead, in order to become President, the Constitution required that an elected candidate had to swear that there is no God, everybody would immediately realise that this would be a breach of their rights. But there is a blind spot when the discrimination is the other way around.

In 2014, after Atheist Ireland raised the issue with the UN Human Rights Committee in Geneva, the Committee told Ireland to replace the religious oaths for public office, and to remove the law against blasphemy. We have since removed the law against blasphemy, and we should now replace the religious oaths.

These public office-holders should instead make a single declaration of loyalty to the Irish Constitution, State, and people, that does not reveal anything about the person's religious or nonreligious beliefs.

6.4 The Irish Education System

The Irish education system is unique. It is mainly a publicly funded private system where the State funds schools and private Patron bodies (mainly religious) have legal control. There is a State curriculum but that can be delivered through the ethos of the Patron, which in most cases is the local Roman Catholic Bishop.

Most families do not have access to a public school and the publicly funded private schools do not comply with the Abidjan Principles.

Because of the influence of the Roman Catholic Church on the Irish Constitution the education system is a reflection of their aims in relation to the education of children. The Irish State 'provides for' the education of children in schools managed and run mainly by private bodies and institutions. These Patron bodies are put on a statutory footing in Section 8 of the Education Act 1998.

Section 15 – 2(b) of the Education Act 1998 obliges Boards of Management of all publicly funded schools at primary and second level to uphold the Characteristic Spirit of the Patron.

In the Irish Education system, the State has a duty to respect the rights of parents (but only parents who are married).

Article 42 Irish Constitution

1 The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

In the High Court case in 1996, Campaign to Separate Church and State v Minister for Education, Justice Costello cited the Rights guaranteed to parents under the European Convention and the United Nations. He said that the Constitution had developed the significance of these parental Rights and has imposed an obligation on the State in relation to them. He stated:

“The parties to the First protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms agreed that States when assuming functions in relation to education “shall respect the rights of parents to ensure such education and teaching in accordance with their own religious and philosophical convictions (Article 2). The Irish Constitution has developed the significance of these parental Rights and in addition has imposed obligations on the State in relation to them.”

Despite the recognition of the courts that the Constitution also protects parents with 'philosophical convictions' and that they also have positive rights, successive governments have refused to recognise that they have a positive obligation to protect them.

Our negative right is to not be indoctrinated in beliefs contrary to our own. The Constitution recognises the right of our children, without prejudice, to not attend religion classes in schools. But that right is often not vindicated in practice. And when it is, it is not vindicated without prejudice. The State leaves it up to each school to decide how to implement this right, without statutory guidelines or enforcement, which is contrary to the Abidjan Principles.

Our positive right is to the same active help that the state gives to parents of the majority religions. In practice, the State simply ignores this. The State discriminates between religious and philosophical convictions.

Most State-funded schools also discriminate against teachers who are not from the Roman Catholic or Church of Ireland religions, making it difficult for other religious minorities and atheists to access the teaching profession.

6.5 Equal Status Act

The Equal Status Act protects people from discrimination in the provision of services on a number of grounds, including the religion ground. But it defines the religion ground as “that one has a different religious belief from the other, or that one has a religious belief and the other has not.”

This means that you are covered if:

- Somebody with a religious belief discriminates against you because you have a different religious belief, or if
- Somebody with a religious belief discriminates against you because you do not have any religious belief.

However, on the face of it, you are not covered if:

- Somebody with a religious belief discriminates against you because you have a specific nonreligious belief (philosophical conviction), or if
- Somebody with a nonreligious belief discriminates against because you have a different nonreligious belief (philosophical conviction).

This is despite the analysis in section 6.1 of this submission of the Report of The Constitutional Review Group 1995, the High Court Case Campaign to Separate Church and State v Minister for Education 1996, and the Supreme Court case *Corway v. Independent Newspapers (Ireland) Limited* 1999.

6.6 Charities Act and Tax Law

The Irish charities Act and tax law discriminate against minorities with nonreligious philosophical convictions, by giving financial privileges to religious bodies only. For example, the advancement of religion is considered a charitable purpose, but the advancement of atheism is not.

Religious bodies are not taxed even on income that is not raised or used for genuine charitable purposes but for political purposes such as campaigning to maintain the ban on abortion.

6.7 Civil Registration Act

The Civil Registration Amendment Act is the most overtly discriminatory law that has been passed in Ireland since Atheist Ireland was founded. For arbitrary reasons, it applies different legal standards for religious and secular groups who can solemnise marriages.

Among these different legal standards are that a secular group that solemnises marriages must be a charity, must be established for five years, must have a minimum number of members, must be ethical, and may not promote a political cause.

These restrictions do not apply to religious groups that want to solemnise marriages. This places religious groups at a particular advantage over secular groups in the public sphere. In particular, despite the Catholic Church’s record on child abuse and its cover-up, it is not required to be ethical but secular groups are.

The Act also discriminates between different secular bodies, creating a three-level hierarchy of religious discrimination. This is because the original Bill was intended to facilitate specifically the Humanist Association of Ireland, rather than secular bodies generally.

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

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

6.8 Hate Speech Consultation

Atheist Ireland has made a submission to the Department of Justice's current consultation on hate crime and hate speech laws. We recommend that the State should:

- Tackle prejudice against groups through education,
- and tackle prejudice-motivated crime through the law,
- while protecting the right to freedom of expression,
- based on human rights principles and standards.

We argue that such a law should say 'Prejudice-Motivated Crime' not 'Hate Crime'. Laws should be accurate, understandable, and enforceable. Their words and definitions should be coherent, universal and inclusive, with clear and justified boundaries, and free from ideological assumptions.

A person should be able to know whether or not they are breaking the law. Laws based on ambiguous or emotive words cannot do this. 'Hate crime' laws are not about hate. They are fundamentally about prejudice and bias on the basis of being a member of a group with common characteristics.

Because religion is one of the characteristics that is protected under the law, there is a danger that this might evolve into becoming a blasphemy law by another name. The law should protect people from harm, but the law should not protect ideas or beliefs from criticism, including harsh or unreasonable criticism, or even ridicule. These principles also apply to ideas or beliefs related to other characteristics protected by the law. This balance can best be reached by basing the law on human rights standards.

Our submission on this includes the recommendations of David Kaye, the United Nations Special Rapporteur on the promotion and protection of the freedom of opinion and expression. You can read our submission here:

<https://atheist.ie/2019/12/prejudice-motivated-crime/>

7. Good Practices

Please provide (legal and non-legal) examples of good practices in the protection of the rights of persons belonging to minorities from these four categories of beneficiaries. Are these practices different for each category?

There are very few examples of good practice of the Irish State protecting the rights of nonreligious minorities, because when the State does move to limit the privilege of the Catholic Church it does so in ways that retain the Catholic Church's legal right to discriminate on some grounds, or that enables some minority religions to discriminate against smaller minority religions and atheists.

For example, when the Equality (Miscellaneous Provisions) Act 2015 stopped State-funded schools from discriminating against teachers on the ground of sexual orientation or family status, it retained the right to discriminate on the ground of religion.

And when the Education (Admissions to Schools) Act 2018 stopped State-funded schools from using religion as a criteria for admission, it explicitly allowed minority faith State-funded schools to continue to discriminate in this way. It also permitted schools to continue to discriminate within the school on the ground of religion.

The only clear example of good practice in recent years was the referendum to remove the blasphemy law. The Government was under political pressure to propose replacing the ban on blasphemy with a new clause outlawing hate speech, but instead it proposed a simple deletion of the ban from the Constitution. That proposal was passed by 65% to 35%.

8. Conclusion

We will conclude by repeating the points that we made in our introduction:

- Under the heading of religious minorities, the Irish State does not give equal status to people holding religious beliefs and people holding nonreligious philosophical convictions. This is reflected in our Constitution which obliges the State to respect and honour religion but does not explicitly say the same about nonreligious beliefs, and in our religious oaths for high offices, our charity law, our civil registration of marriages law, and our education system.
- There is sometimes an overlap between how religious and ethnic minorities are treated, with some people prejudicially conflating ethnic status with religious status. Atheist Ireland has an alliance on these and other secular issues with the Ahmadiyya Muslim Community of Ireland and the Evangelical Alliance of Ireland, as we are all discriminated against on the ground of religion. This can be a double problem for atheist ex-Muslims in the asylum process.
- There is also a distinction to be made with regard to freedom of expression. We should protect members of minorities as people from prejudice and crime, while retaining the ability to legally criticise harmful ideas and practices arising from religious and nonreligious beliefs. This is relevant because the State is currently engaging in a consultation process on hate crime laws.

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