

# Atheist Ireland



Submission to High Commissioner  
in response to call for inputs on  
combating intolerance against persons  
based on religion or belief

5 Oct 2022

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## **1. Background to Atheist Ireland**

Atheist Ireland is a voluntary advocacy group based in Ireland. We promote atheism, reason, and ethical secularism by political lobbying and human rights interventions including at the United Nations. We also work with atheist and secular advocacy groups in other countries.

When promoting secularism, we explicitly say that we would be as opposed to the state promoting atheism as we are to the state promoting religion. We campaign on secular issues in alliance with the Evangelical Alliance of Ireland and the Ahmadiyya Muslim Community of Ireland.

We have previously made submissions to, and have participated in, UN Human Rights sessions about Ireland under the UPR, ICCPR, ICESCR, CERD, CEDAW, and Rights of the Child, as well as to the Council of Europe and the OSCE.

When the UN was questioning Pakistan under the ICCPR in 2017, we made a joint submission and sent a joint delegation to Geneva, from Atheist Ireland, the Evangelical Alliance of Ireland, and the Ahmadiyya Muslim Community of Ireland.

## **2. Our recommendations**

(a) In order to remove discrimination based on 'religion or belief' from within the resolution itself, the Report should recommend that the the resolution be amended to always use the full phrase 'religion or belief' and not to simply use the words 'religion' or 'religious'. The same should apply to all UN documents addressing freedom of religion or belief, including the Report that this submission forms an input to.

(b) With regard to the right to freedom of religion or belief in schools, the Report should recommend that the Irish State in particular, as well as other States, should:

- Commit to ensuring that every child has the right to access a local publicly funded school without religious discrimination or being threatened with refusal of access if they don't uphold the schools ethos.
- Establish secular or non-denominational schools at primary and second level, and not merely denominational or multi-denominational schools.
- Provide statutory guidelines to ensure that publicly funded schools respect and vindicate (a) the positive rights of minorities to freedom of conscience and respect for their religious or nonreligious philosophical convictions; and (b) the rights of children who exercise their constitutional right to not attend religious instruction to physically leave the classroom and get supervision or an alternative curriculum subject.
- Provide a neutral studying environment, outside the confines of religious instruction classes that students can choose to not attend.

(c) With regard to the right to freedom of religion or belief in the workplace, the Report should recommend that the Irish State in particular, as well as other States, should:

- Amend the category of 'religion' under employment equality laws (and any other relevant Acts) to 'religion or belief', and clarify that beliefs include positive philosophical convictions that are not based on religion.
- Amend any laws that prevent conscientious atheists, secularists and religious minorities being employed in the teaching and healthcare professions. In Ireland, such minorities are effectively barred from accessing the teaching profession, because they cannot get a job teaching consistently with their religious or philosophical convictions.
- Remove religious oaths for people taking up high public office (which in Ireland includes Judges, the President, and members of the Council of State (which includes the Taoiseach, and Tanaiste). These public office-holders should 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.

(d) With regard to the balance between freedom of expression and of religion or belief, laws should be accurate, understandable, and enforceable. Laws based on ambiguous or emotive words such as 'hate' cannot do this. The Report should recommend that the Irish State in particular, as well as other States, 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.

### **3. The UN should use the phrase 'religion or belief' consistently**

The title of resolution 76/157 of 16 December 2021 acknowledges that the characteristic to be protected is unjust behaviour against persons based on 'religion or belief'.<sup>1</sup>

The 'belief' aspect of that phrase refers to nonreligious philosophical convictions worthy of respect in a democratic society, which includes atheism as a positive belief and not merely the absence of a religious belief.

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<sup>1</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/402/74/PDF/N2140274.pdf?OpenElement>

Atheist Ireland published an article last year outlining where this positive right is articulated in international human rights law. <sup>2</sup>

CCPR General Comment No. 22 on Article 18 states: <sup>3</sup>

“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...”

In the Venice Commission *Guidelines for Legislative Reviews of Laws Affecting Religion or Belief*, it states that:

“3. International standards do not speak of religion in an isolated sense, but of “religion or belief.” The “belief” aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus atheism and agnosticism, for example, are generally held to be equally entitled to protection to religious beliefs. It is very common for legislation not to protect adequately (or to not refer at all) to rights of non-believers. Although not all beliefs are entitled to equal protection, legislation should be reviewed for discrimination against non-believers.”

The title of resolution 76/157 acknowledges this. However, the paragraphs within the resolution do not follow through consistently on the purpose described in the title.

- The resolution includes only 29 references to ‘religion or belief’ but includes 46 references to ‘religion’ or ‘religious’ alone. <sup>4</sup>
- This imbalance is even stronger in paragraphs 7 and 8, which are the paragraphs calling for States to take specific actions.
- These action-focused paragraphs refer only twice to ‘religion or belief’ but refer twelve times to ‘religion’ or ‘religious’ alone.

In order to remove discrimination based on ‘religion or belief’ from within the resolution itself, the report should recommend that the resolution be amended to always use the full phrase ‘religion or belief’ and not to simply use the words ‘religion’ or ‘religious’ alone.

For example, paragraph 8, calling on States to take actions, should be amended to read:

“(a) To take effective measures to ensure that public functionaries, in the conduct of their public duties, do not discriminate against individuals on the basis of religion or belief;

(b) To foster [religious] freedom **of religion or belief** and pluralism by promoting the ability of members of all religious **or belief** communities to manifest their religion **or belief** and to contribute openly and on an equal footing to society;

(c) To encourage the representation and meaningful participation of individuals, irrespective of their religion **or belief**, in all sectors of society;

(d) To make a strong effort to counter [religious] profiling **based on religion or belief**, which is understood to be the invidious use of religion **or belief** as a criterion in conducting questionings, searches and other law enforcement investigative procedures.”

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<sup>2</sup> <https://atheist.ie/2021/03/the-human-right-to-be-atheist-and-secular/>

<sup>3</sup> <https://www.refworld.org/docid/453883fb22.html>

<sup>4</sup> This includes variants such as ‘religious tolerance’ or ‘religious communities’ or ‘religious hatred’ or ‘religious freedom’ or ‘manifest their religion’ or ‘irrespective of their religion’ or ‘religious profiling.’

The entire resolution should be similarly amended, as should all UN documents addressing freedom of religion or belief, including the Report that this submission forms an input to.

#### **4. The right to freedom of religion or belief in schools**

In the Report pursuant to General Assembly resolution 74/164, distributed in Sep 2020, the Irish State said the following: <sup>5</sup>

“65. Under the Education Act of 2018, a new framework was put in place to ensure greater transparency and equity in school enrolment, including a prohibition on the use of religion as a selection criterion in primary school admissions. The Act ensures that a child of a minority religion can access schools that provide religious instruction or religious education programmes consistent with his or her religious beliefs.”

This statement is selective and misleading. The Irish State discriminates against people with atheistic beliefs, and members of minority faiths, in the education system.

Atheist Ireland, the Evangelical Alliance of Ireland, and the Ahmadiyya Muslim Community of Ireland, made a joint submission about this to the Submission to UN Committee on Children’s Rights and met with the Committee during the recent pre-session for Ireland. <sup>6</sup> Here are our recommendations to the Committee from that submission:

- The State should commit to ensuring that every child has the right to access a local publicly funded school without religious discrimination or being threatened with refusal of access if they don’t uphold the schools ethos.
- The State should ensure that schools and patron bodies comply with Section 62(7)(n) of the Education (Admissions to schools) Act 2018 by actually writing the details of the arrangements into their admission policies, and not by saying parents have to meet with the school principal.
- The State should commit to establishing secular or non-denominational schools at primary and second level, and not merely multi-denominational schools.
- The State should legally and clearly define the terms denominational, multi-denominational, interdenominational, and non-denominational, as per the Irish Human Rights & Equality Commission Report ‘Religion & Education; A human Rights Perspective’.
- The State should provide statutory guidelines to ensure that publicly funded schools respect and vindicate (a) the positive rights of minorities to freedom of conscience and respect for their religious or nonreligious philosophical convictions; and (b) the rights of children who exercise their constitutional right to not attend religious instruction to physically leave the classroom and get supervision or an alternative curriculum subject.
- The State should provide a neutral studying environment, outside the confines of religious instruction classes that students can choose to not attend.

The Irish State leaves it up to Patron bodies, schools and teachers to interpret Constitutional and human rights according to their own ethos. This means that for minorities who have no choice but to attend the only publicly funded school in their area, their right to freedom of conscience is based on mainly private bodies understanding of these rights. This means that the application of these rights varies from one school to another and minority families are left dealing with individual schools, teachers and Patron bodies who have no understanding of human rights.

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<sup>5</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/252/31/PDF/N2025231.pdf?OpenElement>

<sup>6</sup> <https://atheist.ie/2022/10/united-nations-rights-of-children/>

The government has announced plans to discuss divesting more schools from Catholic to multi-denominational patrons in eight pilot areas. But even the maximum proposed divestments would not provide alternatives for secular and minority faith parents in the many areas where there is only one school which would remain Catholic. Also, the government plans only to divest to multi-denominational patrons, and not to secular or non-denominational patrons. There are no secular or non-denominational schools in Ireland.

The State referred, in its 2020 contribution quoted above, to the Education Act of 2018. This is more fully the Education (Admission to Schools) Act 2018. The changes in this Act are welcome but only a small step in the right direction.

The Act does not apply to Minority faith schools at primary level. These schools can still give preference to children that support their ethos and their religious education classes. Some Church of Ireland school admission policies actually seek evidence from parents that they wish their child to be part of the religious instruction or religious education class.

For minority Christian parents, other than COI families, such as Evangelicals, they are left in a position that in order to be given preference in access to a COI school they must agree to permit their child to take COI Religious Education classes, otherwise they are left fighting for a place with all the other parents from other minority religions or non religious backgrounds.

There are only two Muslim schools at Primary level and they are in Dublin, and they are Sunni Muslim schools. Sunni Muslims do not accept that Ahmadis are Muslims, and these schools can refuse access to Ahmadi Muslim children.

The Act does not apply at all to second level schools. Children go into second level at about twelve years of age. Also, there is little point in having easier access to schools that then discriminate against you once you get in.

Section 62.7(n) of this Act requires schools to include in their admission policy:

“details of the school’s arrangements in respect of any student, where the parent of that student, or in the case of a student who has reached the age of 18 years, the student, has requested that the student attend the school without attending religious instruction at the school (which arrangements shall not result in a reduction in the school day in respect of the student concerned).”

Atheist Ireland compiled a report in 2020, which we updated this year, about how schools are refusing to comply with this requirement. In that report we examined how 100 sample schools addressed (or failed to address) this requirement in their most recent Admission Policies. <sup>7</sup>

- Most denominational schools try to evade the requirement by stating that parents must seek a meeting with the Principal to discuss the arrangements.
- Most ETB schools try to evade the requirement by making a spurious distinction with no legal basis between religious instruction and religious education.
- Most schools do not address the right to not attend the class, i.e. the right to physically leave the classroom and be supervised or get another subject.
- Some schools unlawfully ask parents to give reasons for wanting their children to not attend religion classes thus breaching the right to privacy, GDPR, and the Convention.

## **5. The right to freedom of religion or belief in the workplace**

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<sup>7</sup> <https://atheist.ie/2020/11/schools-defy-new-law/>

In the Report pursuant to Human Rights Council resolution 25/34, distributed in Jan 2015, the Irish State said the following: <sup>8</sup>

“41. The law also provides for strong protection against discrimination on nine grounds, including religious belief, through the Employment Equality Acts, which cover discrimination in the workplace, and the Equal Status Acts, which provide for protection against discrimination in the provision of goods and services. The legislation is designed to promote equality, prohibit discrimination — direct, indirect and by association — and victimisation, and allows for positive action measures to ensure full equality. Irish legislation also provides for remedies for those who have suffered discrimination.”

This statement is selective and misleading. The Irish State discriminates against people with atheistic beliefs, and members of minority faiths, in the workplace.

Atheist Ireland made a submission last year to the Department of Justice’s consultation on the review of the Equality Acts. <sup>9</sup>

In that submission we recommended amending the category of ‘religion’ under the Equal Status Act and the Employment Equality Act (and any other relevant Acts) to ‘religion or belief’, and clarifying that beliefs include positive philosophical convictions that are not based on religion. Currently these Acts refer only to ‘religion’ and not to ‘religion or belief.’ The definitions include “... or one has a religious belief, background or outlook and the other has not.”

This discrimination undermines the right to freedom of conscience, as those of us with nonreligious beliefs or philosophical convictions are not treated equally. Those of us with beliefs or philosophical convictions are defined in relation to ‘religion,’ and specifically as not having a religion, which puts us in a subordinate position. We are deprived of an equal position and equal protection, as people with positive philosophical convictions of our own, alongside those in the category of ‘religion.’

Conscientious atheists, secularists and religious minorities are an under-represented group in the teaching profession. Indeed, they are effectively barred from accessing the teaching profession, because they cannot get a job teaching consistently with their religious or philosophical convictions. Many publicly funded hospitals have a religious ethos and staff are obliged to uphold that.

Section 37(1) of the Employment Equality Act 1998 gives a religious, educational or medical institutions 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.

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.

There is also discrimination on the ground of religion or belief for Judges, the President, and members of the Council of State (which includes the Taoiseach, Tanaiste, and other office holders). These people have to swear a religious oath in order to take up their offices. The wording of these oaths is in the Constitution.

If instead, any public office holder had to swear that there is no God, everybody would realise that this would be a breach of their rights. But there is a blind spot when the discrimination is the other way around.

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<sup>8</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/006/41/PDF/G1500641.pdf?OpenElement>

<sup>9</sup> <https://atheist.ie/2021/10/equality-acts/>

These public office-holders should 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.

The 1996 Constitution Review Group raised the difficulty of judges swearing alternative oaths. This would undermine the impartiality of the justice system, by creating the impression that Ireland had religious judges and non-religious judges.

Atheist Ireland has campaigned for a decade to end these discriminatory oaths, with the support of the United Nations Human Rights Committee. It is fundamental to democracy that all citizens are treated equally regardless of our religious or nonreligious beliefs.

## **6. The balance between freedom of expression and religion or belief**

In the Report pursuant to General Assembly resolution 74/164, distributed in Sep 2020, the Irish State said the following: <sup>10</sup>

“4. The constitutional and legislative provisions that had formerly made blasphemy a criminal offence were abolished following a referendum of October 2018 and the subsequent enactment of the Blasphemy Act of 2019.”

In the Report pursuant to Human Rights Council resolution 25/34, distributed in Jan 2015, the Irish State said the following: <sup>11</sup>

“41. Article 44 of the Irish Constitution specifically protects religious freedom and the right to freedom of expression of convictions and opinions.”

In the Report pursuant to General Assembly resolution 67/178, distributed in Oct 2013, the Irish State said the following: <sup>12</sup>

“37. Under the Prohibition of Incitement to Hatred Act, 1989, it is an offence, inter alia, to use words, publish or distribute written material or broadcast any visual images or sounds that are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred, including on account of religion.”

In 2019 Atheist Ireland made a submission to the Department of Justice's consultation on hate crime and hate speech laws. <sup>13</sup>

We recommended that the Irish State should do the following, and we now recommend that the current Report should encourage States to do the following:

- 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.

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 it.

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<sup>10</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/252/31/PDF/N2025231.pdf?OpenElement>

<sup>11</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/006/41/PDF/G1500641.pdf?OpenElement>

<sup>12</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/529/06/PDF/N1352906.pdf?OpenElement>

<sup>13</sup> <https://atheist.ie/2019/12/prejudice-motivated-crime/>

Laws based on ambiguous or emotive words such as 'hate' 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 supposed 'hate crime' laws might evolve into becoming a blasphemy law by another name.

Religion is different in essence to most other protected characteristics such as sex, sexual orientation, age, disability and race. These other characteristics are fixed, and do not depend on the internal beliefs of the person involved.

Religion, however, is based on beliefs that can be chosen or rejected. In many cases it can be difficult to change religious beliefs because of early childhood immersion, and it can be even harder to manifest a change of belief because of community pressure.

But it remains the case that unlike, say, race, religion involves beliefs that can be changed, and it is important that the law does not criminalise expressions of criticism of those beliefs.