

# Atheist Ireland

## Submission to the Joint Committee on Gender Equality on the Recommendations of The Citizens' Assembly on Gender Equality



4 March 2022

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## 1. Introduction to Atheist Ireland

1.1 Atheist Ireland promotes atheism, reason, and an ethical, secular society. Since being formed in late 2008, we have campaigned for a secular Irish constitution, parliament, laws, government, and education and healthcare systems.

1.2 We are partners in the dialogue process between the Government and religious and nonreligious bodies.

1.3 We have addressed various Oireachtas Committees, the Constitutional Convention, Citizens Assembly, United Nations Committees, the OSCE, Council of Europe bodies, and the Presidents of the European Union.

## 2. The Constitution, Equality and the Family

2.1 Atheist Ireland supports the Assembly's recommendations 1-3

1. Article 40.1 of the Constitution should be amended to refer explicitly to gender equality and non-discrimination.
2. Article 41 of the Constitution should be amended so that it would protect private and family life, with the protection afforded to the family not limited to the marital family.
3. Article 41.2 of the Constitution should be deleted and replaced with language that is not gender specific and obliges the State to take reasonable measures to support care within the home and wider community.

2.2 We believe there should be comprehensive constitutional change to fully reflect human rights law without discrimination based on sex, sexual orientation, gender, or marital status.

2.3 In addition to Articles 40 and 41 which the Assembly has highlighted, Article 42.1 about Education should also be amended to apply to all non-marital parents, provided they have appropriate family ties and connections with the child in question.

## 2.4 The Constitution Review Group of 1995 stated that: <sup>1</sup>

“Articles 41 and 42 of the constitution “were heavily influenced by Roman Catholic teaching and Papal encyclicals. They were clearly drafted with only one family in mind, namely, the family based on marriage.”

“The family recognised and protected in Articles 41 and 42 is the family based on marriage. In *The State (Nicolaou) v An Bord Uchtála Walsh J* in the Supreme Court judgment stated that it was quite clear “that the family referred to in [Article 41] is the family which is founded on the institution of marriage and, in the context of the Article, marriage means valid marriage under the laws for the time being in force in the State.”

## 2.5 The Constitution Review Group stated about Article 42.1, about whether the rights of parents in regard to education should be confined to married parents:

“A further consideration is that Article 42 as drafted envisages only what might be termed the straightforward case of a married couple and their children. Indeed, the reference to parents in Article 42.1 is confined to the family based on marriage: see, for example, *The State (Nicolaou) v An Bord Uchtála* [1996] IR 567. For all the reasons already set out in the discussion on Article 41 with regard to the position of non-marital parents, the Review Group is of the opinion that, consistently with these earlier recommendations, it is appropriate that the rights under Article 42 should apply to all non-marital parents, provided they have appropriate family ties and connections with the child in question.”

2.6 Article 42.1 is an important right with regard to parents and their children as it obliges the state to respect the rights of parents to provide for the religious and moral, intellectual, physical and social education of their children. The Supreme Court has said that Article 44.2.4 (the right to not attend religious instruction) must be read in the context of Article 42.1. The Supreme Court has also linked Article 42.1 with Article 40 and Article 41 (p191, Court of Appeal, Burke case 2021). <sup>2</sup>

2.7 Article 42.1 refers only to parents who are married. This means, taking into account Article 40.1, that unmarried parents are discriminated against in the education system on moral or social grounds.

2.8 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. <sup>3</sup> Human rights law does not discriminate against families on religious and moral grounds.

## 3. Online Harassment and Abusive Content

### 3.1 Atheist Ireland supports the Assembly’s recommendation 24(a)

24. Strengthen legislation, reporting and monitoring of press and social media by:  
(a) Holding technology and social media companies accountable for immediately removing online content that constitutes sexual harassment, bullying, stalking, sexually violent or abusive content that they have identified or about which they have been informed.

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<sup>1</sup> <https://web.archive.org/web/20110721123125/http://www.constitution.ie/reports/crg.pdf>

<sup>2</sup> [https://www.courts.ie/view/judgments/4a492524-b29b-4dc3-be10-ad483ee18ac6/038a55c4-d134-49d0-b933-890a0d8c67fb/2021\\_IECA\\_67%20\(Unapproved\).pdf/pdf](https://www.courts.ie/view/judgments/4a492524-b29b-4dc3-be10-ad483ee18ac6/038a55c4-d134-49d0-b933-890a0d8c67fb/2021_IECA_67%20(Unapproved).pdf/pdf)

<sup>3</sup> <https://www.teachdontpreach.ie/2019/10/campaign-to-separate-church-and-state-v-minister-for-education-1995/>

### 3.2 We elaborate here on recommendation 24(b)

24. Strengthen legislation, reporting and monitoring of press and social media by:
- (b) Penalising and eliminating hateful and abusive language, including on the basis of gender, with regular reviews to ensure legislation keeps pace with technological advances.

3.3 Atheist Ireland made a submission to the Department of Justice's consultation on hate crime and hate speech laws. We recommended 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.<sup>4</sup>

3.4 There is a distinction between the examples of behaviour in recommendation 24(a) and 24(b). The former examples (online content that constitutes sexual harassment, bullying, stalking, sexually violent or abusive content) can be more easily tackled by the law as criminal behaviour, while the latter examples (hateful and abusive language) are more difficult to criminalise consistently with human rights principles and standards.

3.5 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. Laws based on ambiguous or emotive terms such as 'hate speech' cannot do this.

3.6 In October 2019, David Kaye, the then United Nations Special Rapporteur on the promotion and protection of the freedom of opinion and expression, published a report to the United Nations General Assembly on the human rights law that applies to freedom of expression, with particular regard to online 'hate speech'. We suggest that you consider the analysis and recommendations in this report (link in footnote below).<sup>5</sup>

## 4. School Curriculum including RSE

### 4.1 Atheist Ireland supports the Assembly's recommendation 27

27. Curriculum review and development should:
- (a) Promote gender equality and diversity.
  - (b) Explicitly cover gender power dynamics, consent and domestic, sexual and gender-based violence – both online and offline – within the revised Relationships and Sexuality curriculum.

4.2 There should be mandatory provision of sexual and reproductive health education, for adolescent girls and boys, as recommended by the UN Committee on the Rights of the Child in 2016; and amending of Sections 9(d), 15(2)(b) and 30(2)(b) of the Education Act to ensure that it is delivered objectively without influence from religious ethos.

4.3 The State recognises that all adolescent boys and girls have a right to objective sex education, but it fails to protect that right because of religious discrimination. Religious bodies and Education and Training Boards interfere in access to this right, and the State does nothing to ensure that parents have an effective remedy to vindicate that right for their children. This means the State has failed to protect parents and children from religious discrimination.

4.4 In 2017 the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) recommended that Ireland should integrate objective compulsory sex education into the school curriculum, and should closely monitor and evaluate its delivery by schools. This was a

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<sup>4</sup> <https://atheist.ie/2019/12/prejudice-motivated-crime/>

<sup>5</sup> [https://www.ohchr.org/Documents/Issues/Opinion/A\\_74\\_486.pdf](https://www.ohchr.org/Documents/Issues/Opinion/A_74_486.pdf)

result of Atheist Ireland raising this issue with the CEDAW. It was the first time the UN examined sex education in Irish schools. The Recommendation from the UN Committee reads: <sup>6</sup>

“(c) Integrate compulsory and standardised age-appropriate education on sexual and reproductive health and rights into school curricula, including comprehensive sex education for adolescent girls and boys covering responsible sexual behaviours and focused on preventing early pregnancies; and ensure that it is scientifically objective and its delivery by schools is closely monitored and evaluated;”

4.5 Atheist Ireland recommends the following regarding the content of objective sex education:

- (a) mandatory provision of sexual and reproductive health education, for adolescent girls and boys, as recommended by the UN Committee on the Rights of the Child in 2016;
- (b) a single consistent curriculum for relationships and sexuality education, across all schools, as recommended by the Ombudsman for Children in 2016; and
- (c) scientifically objective, standardised, age-appropriate education on sexual and reproductive health and rights, as recommended by the UN Committee on the Elimination of Discrimination against Women in 2017.

4.6 Atheist Ireland recommends the following regarding the delivery of objective sex education:

- (d) the content must be delivered in an objective, critical and pluralistic manner, that avoids indoctrination, outside of optional religion classes, as recommended by the Irish Human Rights and Equality Commission in 2015; while
- (e) ensuring a neutral studying environment, including in denominational schools, outside of optional religious instruction classes, as raised with Ireland by the UN Human Rights Committee in 2014.
- (f) To do this, the Oireachtas must amend Sections 9(d), 15(2)(b) and 30(2)(b) of the Education Act, which have been identified as problems by the NCCA in 2017.

## 5. Domestic, Sexual and Gender-Based Violence

5.1 Atheist Ireland supports the Assembly’s comprehensive set of recommendations in 37 to 41

- 37-38. Preventing, countering, and eliminating tolerance of domestic, sexual and gender-based violence
- 39-40 Supporting justice and sufficient publicly funded resources for victims/survivors

5.2 We want to elaborate on one aspect of recommendation 41.

- 41. Recognise female genital mutilation (FGM) as a ground for seeking asylum, and provide culturally sensitive specialised services for victims/survivors.

5.3 In 2020, the United Nations Special Rapporteur on Freedom of Religion and Belief, Mr Ahmed Shaheed presented a report to the UN addressing gender-based violence and discrimination in the name of religion or belief. <sup>7</sup>

5.4 He stated that in a number of States worldwide religious precepts underlie laws and state-sanctioned practices that constitute violations of the right to non-discrimination of women, girls and lesbian, gay, bisexual and transgender (LGBT+) persons. In other States, claims of religious

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<sup>6</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2fCO%2f6-7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2fCO%2f6-7&Lang=en)

<sup>7</sup> [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A\\_HRC\\_43\\_48.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_48.docx)

freedom are being used to roll back and seek exemptions to laws that protect against gender-based violence and discrimination.

5.5 The Special Rapporteur provided cases of both phenomena and their impact on gender equality and freedom of religion or belief worldwide. He explored freedom of religion or belief and non-discrimination as two and mutually reinforcing rights and clarifies the existing international legal framework that governs their intersection. He concluded by emphasising the responsibility of States to creating enabling environments to advance the non-discrimination and freedom of religion or belief rights of women, girls and LGBT+ persons.

“48 The Special Rapporteur notes that while religious organisations are entitled to autonomy in the administration of their affairs, such deference should be extended within a holistic conception of human rights grounded in the universality, indivisibility, interdependence and inalienability of all human rights. For example, the Committee on Economic, Social and Cultural Rights has called on States to ensure that church-run institutions are not permitted to discriminate against non-ecclesiastical employees on grounds of religious belief, sexual orientation or gender identity.

49 He notes, however, that the principle of institutional autonomy does not extend to State deference to harmful discriminatory gender norms. Nor does it oblige States to defer from intervening to prevent harmful practices because said practices are informed by ‘religious ethos’; including discriminatory acts that have as their purpose or effect the nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.”

## **6.1 The Influence of the Catholic Church**

6.1 The issue of gender equality in Ireland should be viewed in the context that the Catholic Church opposes attempts to end discrimination against women, girls, and LGBT people.

6.2 As well as many well-known examples within Ireland, the Holy See stated in the case of the UN Special Rapporteur’s report cited above: <sup>8</sup>

“Particularly unacceptable and offensive are the numerous references that recommend that freedom of religion or belief and conscientious objection must be surrendered for the promotion of other so-called “human rights”, which certainly do not enjoy consensus, thus being a sort of “ideological colonisation” on the part of some States and international institutions.”

6.3 Given our history it is not surprising that our Constitution, laws and policy reflect Catholic Church teaching on Freedom of Religion and Belief and discrimination. But Catholic Church teaching on Freedom of Religion and Belief and Human Rights law are incompatible. We need a pluralist Constitution and laws that reflect and protect basic human rights.

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<sup>8</sup> <http://www.nuntiusge.org/images/STATEMENTS/20200302.pdf>