This document is a response to the ‘Replies of Ireland to the list of issues’ (27 February 2014). It supplements my original submission (August 2013) to the Human Rights Committee.

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Selected relevant publications

Issue as raised by UN Human Rights Committee (CCPR/C/IRL/Q/4)

25. Taking note of the information provided in paragraph 611 of the State party report, please provide updated information to amend the constitutional provision requiring a religious oath from judges to allow for a choice of a non-religious declaration, as recommended by the Committee in its previous concluding observations (CCPR/C/IRL/CO/3, para. 21).

Response of Ireland (CCPR/C/IRL/Q/4/Add.1)

161. This issue of the judicial oath has been considered in Ireland by an All-Party Oireachtas Committee on the Constitution in its Fourth Report, “The Courts and the Judiciary” (published 1999), and prior to that by the Review Group on the Constitution. The majority view of the Committee was that a judge should have a choice between a religious and non-religious declaration while the Review Group recommended just one non-secular oath.

162. A constitutional referendum would be required to amend the Constitutional provision in question and this issue has recently been considered by Government. In July 2012, Government approved consideration of an amendment to the constitution so as to provide for an alternative secular judicial declaration upon appointment to the judiciary. Further consideration of this issue will be required.

Commentary

1. The issue of obligatory Christian oath-taking is not confined to the judicial oath. Articles 12, 31 and 34 of the Constitution oblige individuals who wish to take up senior public office positions as President¹, members of the Council of State² and members of the judiciary³ to take Christian oaths.

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¹ Constitution of Ireland 1937, Article 12(8): The President shall enter upon his office by taking and subscribing publicly, in the presence of members of both Houses of the Oireachtas, of Judges of the Supreme Court and of the High Court, and other public personages, the following declaration: "In the presence of Almighty God I do solemnly and sincerely promise and declare that I will maintain the Constitution of Ireland and uphold its laws, that I will fulfil my duties faithfully and conscientiously in accordance with the Constitution and the law, and that I will dedicate my abilities to the service and welfare of the people of Ireland. May God direct and sustain me."

² Constitution of Ireland 1937, Article 31(4): Every member of the Council of State shall at the first meeting thereof which he attends as a member take and subscribe a declaration in the following form: "In the presence of Almighty God I do solemnly and sincerely promise and declare that I will faithfully and conscientiously fulfil my duties as a member of the Council of State."

³ Constitution of Ireland 1937, Article 34(5)(1): Every person appointed a judge under this Constitution shall make and subscribe the following declaration: "In the presence of Almighty God I do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me." Article 34 (5)(2) This declaration shall be made and subscribed by the Chief Justice in the presence of the President, and by each of the other judges of the Supreme Court, the judges of the High Court and the judges of every other Court in the presence of the Chief Justice or the senior available judge of the Supreme Court in open court. Article 34 (5)(3) The declaration shall be made and subscribed by every judge before entering upon his duties as such judge, and in any case not later than ten days after the date of his appointment or such later date as may be determined by the President. Article 34 (5)(4) Any judge who declines or neglects to make such declaration as aforesaid shall be deemed to have vacated his office.
Comments and recommendations of the Human Rights Committee should refer to each of these public offices.4

2. For over 20 years the Human Rights Committee has criticized Ireland for its exclusion of non-Christians from some of the most important public positions in the country. Each time Ireland has appeared before it, the Committee has held that constitutional requirement to take a religious oath is a violation of the right to freedom of religion or belief (Article 18).

3. In 1993, the UN HRC noted that ‘The Constitutional requirement that the President and judges must take a religious oath excludes some people from holding those offices’.5 In 2000, it recommended the ‘reform of constitutional provisions requiring judges to make a declaration with religious references’.6 In 2008, at Ireland’s third appearance, the Committee again highlighted its concerns and issued a Concluding Observation stating that it ‘continues to be concerned that judges are required to take a religious oath. The State party should amend the constitutional provision requiring a religious oath from judges to allow for a choice of a non-religious declaration’.

4. In July 2012, the Government Cabinet approved, in principle, proposals for a number of major reforms to the structure of the court system. This reform package would ultimately require a referendum on Article 34 of the Constitution. As part of this package the Government agreed to consider an amendment to the judicial oath: ‘consideration will be given to adding a secular oath as an optional alternative to the current form of judicial declaration contained in Article 34.5.’7 It may be noted that the Government did not make a commitment to amending Article 34(5).

4. In its Fourth Periodic Progress Report to the Human Rights Committee (July 2012), the Irish Government noted that the constitutional requirement on judges to take a religious oath would be considered by the newly established ‘Constitutional Convention’. It wrote: ‘[t]he establishment of a constitutional convention to examine a number of potential constitutional reforms is a specific part of the programme for Government. It is intended that this issue will be referred to the convention for further consideration’.8

5. The Constitutional Convention met for the first time in December 2012.9 Its Terms of Reference (as approved by the Parliament in July 2012) did not direct it to consider the question of obligatory Christian oath-taking in the Constitution.10 The Constitutional Convention completed its work in March 2014 without consideration of the issue.

6. The decision as to whether to offer a choice between an oath and an affirmation or, alternatively, solely to provide an affirmation rests on whether the matter is viewed as a discrimination issue or rather as a freedom of religion or belief concern. If the former, that is, a discrimination issue, then the solution would seem to be to provide for a choice of declarations.

However, if the concern is framed as a question of protecting the right to freedom of religion or belief, then the provision of choice is less satisfactory. The right to freedom of religion or belief includes the right not to be compelled to reveal one’s thoughts or adherence to a religion or belief in public. The Human Rights Committee’s General Comment 22 states that ‘In accordance with articles 18.2 and 17, 18.3, 18.4, 17.2, and 16.2, to the extent that it is compatible with the values and other protections set out in the Convention, the right to freedom of religion or belief also includes the right not to be compelled to reveal one’s thoughts or adherence to a religion or belief in public.

The role of the Council of State is ‘to aid and counsel the President on all matters on which the President may consult the said Council in relation to the exercise and performance by him of such of his powers and functions as are by this Constitution expressed to be exercisable and performable after consultation with the Council of State, and to exercise such other functions as are conferred on the said Council by this Constitution.’

5 A/48/40 Part 1 para 607
6 A/55/40, para 29(b)
8 CCPR/C/IRL/4, para 61
9 https://www.constitution.ie/AboutUs.aspx
10 https://www.constitution.ie/Convention.aspx
no one can be compelled to reveal his thoughts or adherence to a religion or belief.’ This aspect of the right to freedom of religion or belief was affirmed by the European Court of Human Rights in 2008 in Alexandridis v Greece\textsuperscript{11}, a case dealing with an obligation on lawyers to choose between an oath and affirmation. The Court held that the freedom to express one’s religious convictions includes the negative right not to be obliged to express them or to be obliged to act in a way that enables others to draw conclusions about them.\textsuperscript{12}

Therefore, any recommendation for reform of Articles 12(8), 31(4) and 34(5) should take into account whether the declaration is to be taken in public. Currently, the President must take the oath in public, the Chief Justice before the President, the other judges in open court, and members of the Council of State must do so at a meeting of the Council.

1. Given that the UN HRC has consistently held that obligatory Christian oath-taking for public office holders causes Ireland to be in breach of its international obligations under Article 18, why did the Government fail to direct the Constitutional Convention - an ideal forum for consideration of the issues - to take action on this point?

2. The question of obligatory Christian oath-taking should not be bundled into a complex and possibly very lengthy project to do with reform of the court structure. Rather, given that the issue concerns the protection of fundamental human rights standards, the issue of oath-taking should be dealt with separately from the process of court reform and, instead, should be considered alongside the need for reform of the oaths for the President and members of the Council of State. It should be noted that in relation to the issues considered by the Constitutional Convention, the Government has committed to holding three referendums: same sex marriage, lowering the voting age and reducing the age of candidacy presidential candidates.\textsuperscript{13} Why has the Government failed to make a similar commitment to the holding of a referendum on obligatory Christian oath-taking for public-office holders?

\textsuperscript{11}[2008] ECHR (No 19516/06). See, also, Dimitras & Ors v Greece [2010] ECHR (Nos 42837/06, 3237/07, 3269/07, 35793/07 and 6099/08) and Dimitras & Ors v Greece (No. 2) [2011] ECHR (Nos. 34207/08 and 6365/09). Dimitras & Ors v Greece (No. 3) 44077/09 HEJUD [2013] ECHR 18.

\textsuperscript{12}‘Or la Cour considère que la liberté de manifester ses convictions religieuses comporte aussi un aspect négatif, à savoir le droit pour l’individu de ne pas être obligé de faire état de sa confession ou de ses convictions religieuses et de ne pas être contraint d’adopter un comportement duquel on pourrait déduire qu’il a – ou n’a pas – de telles convictions. Il n’est pas loisible aux autorités établies de s’immiscer dans la liberté de conscience d’une personne en s’enquérant de ses convictions religieuses ou en l’obligeant à les manifester, et spécialement à le faire, notamment à l’occasion d’une prestation de serment, pour pouvoi exercer certaines fonctions’, para 38.

\textsuperscript{13}See further: https://www.constitution.ie/AttachmentDownload.ashx?mid=64bbfa68-89b9-e311-a7ce-005056a32ee4.
Issue as raised by UN Human Rights Committee (CCPR/C/IRL/Q/4)

26. Please provide information on steps being taken to ensure that the rights of children of minority religions or non-faith are also recognized in the Education Act 1998, and the number of non-denominational primary schools that have been established during the reporting period. Please also clarify whether there is an accessible and independent complaint handling mechanism to resolve disputes between parents and schools.

Response of Ireland (CCPR/C/IRL/Q/4/Add.1)

New primary schools

156 A New Schools Establishment Group was established in 2011 to advise on the patronage of new schools. The Group’s criteria place a particular emphasis on parental demand for plurality and diversity of patronage. 20 new primary schools are to be established by 2017. Between the academic years 2007/08 and 2011/12, 46 new primary schools were established, of which 34 were multi-denominational.

157 In September 2013, the Minister for Education and Skills published a Draft General Scheme for an Education (Admissions to Schools) Bill 2013, as well as Draft Regulations on the Content of Admission Policies and Draft Regulations on Admission Processes, for discussion ahead of enacting legislation. The aim is to improve the admissions process and to ensure that the way schools decide on applications is structured, fair and transparent.

Follow-up to the Forum on Patronage and Pluralism

158 From the perspective of the parent, the framework makes clear that, inter alia, the enrolment policy will include a statement setting out the position of the school in relation to its arrangements for upholding the constitutional right of students not to attend religious instruction.

Complaint handling mechanism

160 The Department’s existing procedure for parents who have a complaint against a school is published on its website. The Department has begun work on the development of a Parents’ Charter and this will continue in 2014.

Commentary

In 2008 the Human Rights Committee correctly identified the lack of non-religious schools in Ireland as leading to serious human rights concerns (CCPR/C/IRL/CO/3, para.22). Two areas may be highlighted.

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14 “The Committee notes with concern that the vast majority of Ireland’s primary schools are privately run denominational schools that have adopted a religious integrated curriculum thus depriving many parents and children who so wish to have access to secular primary education (arts 2, 18, 24, 26). The State Party should
1. **Admissions**

In Ireland school admission policies may discriminate on the ground of religion should a school wish to promote certain religious values, sometimes referred to as a ‘characteristic spirit’.

The Equal Status Act 2000, 7(3)(c), provides that religious discrimination is lawful in a situation when ‘…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’

In a context where the vast majority of schools are controlled by Christian churches, this form of discrimination is unreasonable and disproportionate. In discussions with the Irish delegation in 2008 Professor Amor noted that ‘clarification was needed on the reference in the report to the right of schools under the law to maintain their own distinctive “characteristic spirit”’. He failed to understand what precisely was meant by such a spirit and the extent to which the State could restrain that spirit if, for example, intolerance or discrimination was encouraged. He asked the delegation to respond to his concern that schools could invoke that provision in the law for sectarian purposes or to exclude certain children.”

The 2014 response of Ireland (see above) notes that a Draft General Scheme for an Education (Admissions to Schools) Bill was published in 2013 that aims ‘to improve the admissions process and to ensure that the way schools decide on applications is structured, fair and transparent’. However, the Explanatory Note to the Bill states that the purpose of the Bill is to ‘reinforce the principle of maximum accessibility to and inclusiveness in recognised schools but does not displace the existing exemptions provided to schools under Sections 7(3) (a) and 7(3) (c) of the Equal Status Act, 2000. Section 7(3) (a) provides that a single sex school may refuse admission to a pupil who is not of the gender concerned. Section 7(3) (c) provides that schools where the objective is to provide education in an environment that promotes certain religious values, can admit a student of a particular religious denomination in preference to other students or that such a school can refuse to admit a student who is not of that denomination, provided it can prove that this refusal is essential to maintain the ethos of the school. The Head provides that schools to which equality legislation exemptions apply will reflect those exemptions in their admission policy statement.”

Ireland also refers to the publication of the Draft Regulations on the Content of Admission Policies and Draft Regulations on Admission Processes. The Regulations notes that it will not be permissible for a school to request certain documentation prior to a decision on admission (for example, photographs, medical information etc). Notably, however, it does not forbid any request for the submission of a certificate of Christian baptism – a common practice in schools and one which, as noted by Mr Lallah in 2008, forces certain parents to baptise their children in order to gain admission to a school, any school. For example, if the local school is a Catholic school and there is no alternative school in the area (which is highly likely given that the vast majority of schools are Catholic) parents may feel pressurised into baptising their child to ensure s/he gains admission to the school.

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increase its efforts to ensure that non-denominational primary education is widely available in all regions of the State party, in view of the increasingly diverse and multi-ethnic composition of the population of the State party.”

15 CCPR/C/SR.2552, para 20
18 CCPR/C/SR.2552, para 14.
1. Given the lack of non-denominational schools in the State, why will schools continue to be permitted to discriminate against non-Christian children under the proposed *Education (Admission to Schools) Bill 2013*?

2. Given the lack of non-denominational schools in the State, why do the *Draft Regulations on the Content of Admission Policies and Draft Regulations on Admission Processes* permit the use of baptismal certificates in the admission decision-making process?

2. **Protection of freedom of religion and belief once in a school**

In 2008 the Human Rights Committee correctly noted that the practice of a ‘religious integrated curriculum’ in Irish primary schools deprived ‘many parents and children who so wish to have access to secular primary education’. Rule 68 of the *Rules for National Schools under the Department of Education* obliges all school to teach a religious integrated curriculum.\(^{19}\) When an integrated curriculum is taught to children opt-out provisions are not a potential remedy. Unlike timetabled doctrinal religious education classes, a child cannot be opted out of unscheduled and potentially continuous religious teaching which is woven into the very fabric of daily education.\(^{20}\) To protect freedom of religion or belief standards, the Human Rights Committee urged Ireland to ‘increase its efforts to ensure that non-denominational primary education is widely available in all regions of the State party’.

In response to the Committee’s concerns, the Irish Government clearly needed to ensure greater diversity in the Irish primary school system. It could achieve this through (a) establishing new non-Christian schools and/or (b) transferring existing Christian schools to state or other management.

(a) Establishing new non-Christian schools

Ireland states (see above) that during the reporting period 34 new multi-denominational primary schools were established. The vast majority of these schools were established on the initiative of parents coming together to set up new schools with the support of a non-governmental organization called *Educate Together*.\(^{21}\) The State pays the teachers and a series of grants to the school that partially covers the running costs. While state support for these schools is welcomed, financial considerations mean that such schools cannot be made available throughout the state. Instead, efforts should focus on transferring existing Christian schools to State or other management. Currently there are approximately 3,042 Christian schools and 127 non-Christian schools in the State.

(b) Transferring existing Christian schools to state or other management

During the reporting period, very little progress has been made in transferring control. While numbers are difficult to ascertain, it would seem that one school may have been transferred in the five year period and a very small number of schools are in the process of being transferred.

\(^{19}\) *Rules for National Schools under the Department of Education* (Dublin: The Stationery Office, 1965) r 68. In Ireland any primary school in receipt of state funding is officially known as a national school.

\(^{20}\) E.g., prayers at start and end of day, religious assemblies, religious services in churches during school time, altars in classrooms, preparation for religious sacraments at ages 7 and 11, teaching on homosexuality and abortion during social subjects, etc.

\(^{21}\) [http://www.educatetogether.ie/](http://www.educatetogether.ie/)
The process of transfer is not only unacceptably slow and lacking a sense of urgency, it is also deeply flawed. The approach is based on the recommendations of the ‘Forum on Patronage and Pluralism in the Primary Sector’, established by the Minister for Education in 2011. Its task was to recommend how the transfer of school management should take place. It reported in April 2012 and concluded that:

- In certain urban areas parents should be surveyed to determine the type of school they would like;
- In other areas (where currently 1,700 schools exist, that is, the majority of schools) transfer of management ‘is not an option’.

Two problems exist with this approach to transferring control of schools.

First, from a human rights perspective parental surveys of the type recommended are highly objectionable and cut across the essence of human rights law with its focus on the right of the individual. Under the survey approach, respect for your right to be protected from unwanted religious teachings and from discrimination comes to depend simply on whether there is a sufficient number of like-minded individuals living in your geographical area. Or, indeed, in some cases, whether, when the poll was carried out, there were a sufficient number of like-minded individuals in the area.

The second – and most fundamental - problem with the Government’s approach is that non-Christian parents and children living outside the selected urban areas will continue to be denied access to non-denominational education contrary to the Human Rights Committee’s recommendation. No change in management will be made to the 1,700 Christian schools in these areas. The Government has made it clear that for these schools transfer of management ‘is not an option’.

Questions for the Irish Government Delegation

1. Does the Government believe that the level of protection afforded to a human right – such as the right to freedom of religion – should depend on the preference of the majority in a particular area?

2. Does the Government believe that it is acceptable that individuals in one part of the country should have their rights protected while those living in another part of the country do not?

3. In the 5 years since the Human Rights Committee issued its recommendation in 2008, how many of the 3,000+ Christian schools have been transformed into secular/non-denominational schools?

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22 The Minister had earlier indicated that he anticipated transferring 50% of schools from Catholic ownership. The Catholic Church responded by saying that it anticipated less than 10% of its schools should be transferred. http://en.occa.mard.gov.vn/Crawl-Content/Catholic-school-transfers-%27cannot-be-rushed%27-Irish-Times/2011/4/6/44695.news
4. The initial survey work carried out in 44 urban areas shows that parents of more than 1394 children would choose a non-religious school for their children yet they will have to continue to send their children to a Christian school given that, following the completion of the survey, it was decided no alternative would be made available. How will their rights under the ICCPR be protected?

5. Why is the transfer of management of 1,700 non-urban Christian schools ‘not an option’?

6. Has the Government removed ‘Rule 68’ which requires the teaching of an ‘integrated curriculum’?

7. The Government notes that it will develop on policy on inclusivity and that schools will be asked to adopt a protocol of inclusiveness. However, it is very unclear how the application of such a protocol would fit with the ethos of a Christian denominational school. For example:

Will a Christian integrated curriculum continue to be taught?
Will religious education classes continue to be doctrinal in nature?
Will religious assemblies still be held?
Will prayers continue to be said before meals and classes?
Will sacrament preparation continue to take place within schools?
Will Catholic teaching on the sinfulness of abortion and homosexuality continue to be taught?

8. Primary schools in Ireland spend 2.5 hours a week teaching doctrinal religious education – double the amount compared to other OECD countries. In addition, Catholic schools carry out sacrament preparation. A recent survey conducted in March 2013 by the Irish National Teachers Organisation showed that more than 70 % of primary teachers spend more time preparing students for religious sacraments than officially allowed for in the curriculum. According to the survey, schools are going over this time allocation by anything from 30 minutes per week to nine hours per week.

Given the amount of time given to doctrinal religious education and sacrament preparation, how do schools ensure non-Christian children are not discriminated against, are not isolated or stigmatised, and that their right to freedom of religion and an effective education is protected?

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