

Submission to UN Committee on Children's Rights

Submitted by Atheist Ireland,
the Evangelical Alliance of Ireland,
and the Ahmadiyya Muslim
Community of Ireland

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Part 1 – Overview

1.1 Who we are

Atheist Ireland, the Evangelical Alliance of Ireland, and the Ahmadiyya Muslim Community of Ireland work together in a campaign for secularism and human rights. Despite our different world views, we agree that each person should be treated with respect, our right to hold our beliefs should be treated with respect, and States should treat us all equally before the law by remaining neutral between religious and nonreligious philosophical convictions.

As part of our work:

- We promote the fundamental human rights of freedom of conscience, religion and belief, equality before the law, and freedom from discrimination for all citizens.
- We promote these human rights within Irish society and political institutions, and at the United Nations and other international human rights regulatory bodies.

In support of these aims, we are making this Submission to outline the failure of Ireland to protect and respect the human rights of Atheists and secularists, Ahmadiyya Muslim and Evangelical Christians, and all minorities in the Irish education system. Our children are discriminated against on the grounds of religion and their rights under the Convention are not protected.

As you would expect, our groups can have different policies beyond the scope of this submission. For example, Atheist Ireland believes that state-funded schools with a religious ethos should provide arrangements for children whose parents do not want them to attend religious instruction, while the Evangelical Alliance of Ireland believes that religious schools should not have to make such arrangements if parents have the choice of an alternative school in their area that has a secular ethos.

However, this submission focuses on the areas on which our groups agree, regarding the rights of children, in accordance with the provisions of the Convention and the situation on the ground in Ireland. In practice, there are no secular schools in Ireland, so the question of alternatives to religious schools does not arise. What we are collectively trying to achieve in Ireland is 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.

Atheists, Ahmadi Muslims and Evangelicals are minorities in Ireland. These are the last census figures in 2016 under the category for Religion states

(figures in thousands):

Roman Catholic 3,729.1
No Religion 468.4
Church of Ireland 126.4
Not stated 125.3
Other 97.7
Muslim (Islamic) 63.4
Orthodox 62.2
Christian 37.4
Presbyterian 24.2
Hindu 14.3
Apostolic or Pentecostal 13.4

1.2 Our Recommendations

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. ¹

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'. ²

The State should provide statutory guidelines to ensure that publicly funded schools:

- Respect and vindicate the positive rights of minorities to freedom of conscience and respect for their religious or nonreligious philosophical convictions.
- Respect and vindicate the right of children who exercise their constitutional right to not attend religious instruction, and provide such children with 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.

¹ <https://www.irishstatutebook.ie/eli/2018/act/14/enacted/en/print.html>

² <https://www.ihrec.ie/documents/religion-and-education-a-human-rights-perspective/>

Part 2 – C. Civil rights and freedoms (Arts. 7, 8 and 13–17)

2.1 From the List of Issues

“14. Please provide information on any measures taken to:

Freedom of thought, conscience and religion

16. Please inform the Committee on the measures taken to ensure accessible options for children to opt out of religious classes and ensure access to appropriate alternatives to such classes, in accordance with the needs of children of minority faith or non-faith backgrounds.”

2.2 Response of the State party

“Freedom of thought, conscience and religion

Reply to paragraph 16

Responsibility for providing a programme of religious education rests with the patron bodies of individual primary schools, not the state. There are diverse patrons’ programmes within the primary school system. Some are denominational or religious, emphasising the place of children’s faith, spiritual and moral development in their lives. Others foster understanding of ethics and values.

The NCCA is consulting the public on a Draft Primary Curriculum Framework as Ireland seeks to move into a new educational era.

At post-primary level, the NCCA syllabuses are for students of all faith backgrounds and none. The content does not provide religious instruction and exposes students to a broad range of religious traditions and to the non-religious interpretation of life. Schools are not required to include the NCCA-developed Religious Education programme.

Where any school opts to teach religious instruction/faith formation programme rooted exclusively or almost exclusively in a particular religious tradition, parents must be advised, and the school must offer alternative subjects for those who do not want religious instruction.”

2.3 Our comments on the State Response

The Irish education system is unique in the world. We are not aware of any other country where the state ‘provides for’ education through mainly private religious institutions.

The 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.

When minorities complain to the Department of Education they are simply referred back to the school. The Department of Education on behalf of the state takes no responsibility for giving practical effect to the Constitutional and human rights of minorities even though they give lip service to these rights in theory.

It is very expensive for parents to take any case to the courts to challenge the state in relation to the right to not attending religious instruction. Not only are parents responsible for funding their own solicitors and lawyers but if they lose the case they must pay the costs of the state. Crowd funding is not legally permitted in Ireland.

Our equality laws give exemptions to religious institutions to uphold their religious ethos. The State 'provides for' education as opposed to providing education to all children. The state has decided to do this, the Constitution does not oblige the state to only provide funding to private bodies in the education system. Even the Education and Training Board schools which are referred to as public schools operate with agreements with the Catholic Church and according to their rules on the teaching of religion in schools.

The Irish State have no Statutory Guidelines in place in relation to not attending religious instruction classes in schools. Nor have they any Statutory Guidelines on how to protect minority students from the religious ethos of the school. That ethos is integrated into the general life of the school and also other curriculum subjects and is supported and protected by legislation (Section 15-2 (b) Education Act 1998).³

Given the influence of the Catholic Church in Ireland the right to freedom of conscience is based on the Churches understanding of that right in the education system. The Catholic Church has rejected the Toledo Guiding Principles and its understanding of the right of families in the education system is based on its mission to evangelise. That mission takes precedence over the rights of minorities in the education system to freedom of religion and belief. The Catholic Church has control and influence over the training of teachers.

The vast majority of schools at primary and second level have a religious ethos. There are no secular, non-denominational schools in Ireland.

There are two areas that impact on the rights of minorities to freedom of thought, conscience and religion in schools.

- One area is religion classes in schools and getting supervision outside that class or being offered another subject.
- The second is that schools are obliged to teach all of the contents of the State curriculum but they can deliver/teach that curriculum through their own ethos/characteristic spirit.

2.4 The right to not attend religious instruction in schools

The issue around not attending religious instruction in Irish schools is that there is a Constitutional right to not attend it and it is also a condition of state funding (Article 44.2.4).⁴

Because of the rights of parent under Article 42.1 of the Irish Constitution, they can in theory opt their children out of any subject that is against their conscience, or ensure that they do not participate. It is worth pointing out that because of our history the Irish Constitution was heavily influenced by the Catholic Church.

The rights of parents in the Constitution are absolute, this is a reflection of Catholic Church social policy on the education of children from Catholic backgrounds. When minorities seek these same rights and ask the state to protect them from those religious bodies that have power and control,

³ <https://www.irishstatutebook.ie/eli/1998/act/51/section/15/enacted/en/html>

⁴ Article 44.2.4 of the Irish Constitution "Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school."

we find that the state will do nothing and seeks to redefine Constitutional rights and particularly the right to not attend religious instruction.

The framers of our Constitution treated religious instruction differently. They singled it out for special protection as children have a right to 'not attend' under Article 44.2.4, it is a condition of state funding.

Section 30-2(e) of the Education Act 1998 states that: ⁵

“The Minister

shall not require any students to attend instruction in any subject which is contrary to the conscience of the parent of the student or in the case of a student who has reached the age of 18 years, the student.”

The Oireachtas (Irish Parliament) went a step further than what is required under the Irish Constitution and put in place legislation that says that students need not attend any subject that is against the conscience of the parent.

However, the Department of Education leaves it up to each school and Patron body to implement the right to not attend religious instruction and not attend any other subjects.

The vast majority of schools refuse to supervise children outside the religious instruction class and they are not offered another subject. School tell parents that they do not get enough funding from the Department of Education for supervision or for another subject.

The courts in Ireland have said that parents have inalienable Constitutional rights in relation to the religious and moral education and formation of their children. (Campaign to Separate Church and State v Minister for Education – Supreme Court 1998 –pages 25,26,27,28). ⁶

In a recent case at the Supreme Court that court said that the rights of parents in relation to the religious and moral formation of their children is a foundational pillar of the constitution (Article 42.4).

The Supreme Court has also said that the rights of parents under Article 42 in relation to religious education must be read in the context of Article 44.2.4.

The Constitution refers to 'not attending', it does not state 'opt out' or 'not participate' in religious instruction, it clearly says 'not attend'. Despite this no supervision is offered to students that exercise this right and no other subject is offered despite what the State party has claimed in their response to the List of Issues.

In recent years the Department of Education has started to redefine the Constitutional right to not attend religious instruction as not attending instruction according to the rites of a particular religion. You can see that redefining in their response under paragraph (4). The Irish State is not moving forward with protecting the rights of minorities in schools but moving backwards by defining the right to not attend religion classes as not attending religion classes according to the rites of a particular religion.

This is not in accordance with the Convention. In the Leirvag v Norway case in 2009, the Norwegian state had claimed that the CKREE subject was suitable for all despite the fact that it was not neutral and objective and that the opt out put a heavy burden on parents.

⁵ <https://www.irishstatutebook.ie/eli/1998/act/51/enacted/en/print#sec30>

⁶ <https://www.teachdontpreach.ie/2019/10/campaign-to-separate-church-and-state-v-minister-for-education-1995/>

In *Leirvag v Norway* in 2009 the Committee stated that: ⁷

“14.2 The main issue before the Committee is whether the compulsory instruction of the CKREE subject in Norwegian schools, with only limited possibility of exemption, violates the authors' right to freedom of thought, conscience and religion under article 18 and more specifically the right of parents to secure the religious and moral education of their children in conformity with their own convictions, pursuant to article 18, paragraph 4.

The scope of article 18 covers not only protection of traditional religions, but also philosophies of life, [FN12] such as those held by the authors. Instruction in religion and ethics may in the Committee's view be in compliance with article 18, if carried out under the terms expressed in the Committee's General Comment No. 22 on article 18: “[A]rticle 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way”, and “public education that includes instruction in a particular religion or belief is inconsistent with article 18, paragraph 4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents or guardians.”

The Committee also recalls its Views in *Hartikainen et al. v. Finland*, where it concluded that instruction in a religious context should respect the convictions of parents and guardians who do not believe in any religion. It is within this legal context that the Committee will examine the claim.”

Part of the issue is that the Catholic Church objects to students being offered another subject if they exercise their right to not attend religion classes because they believe it is unfair to the students that take the class. Church and State are afraid that if practicable application is given to the right to not attend religion classes there will be an avalanche of students exercising the right and that will undermine the position and control of the Catholic Church in our education system.

Children are enrolled by schools into religion classes and it is such an ordeal for parents to even try to exercise their right to not attend that they simply leave their children in the religion class.

Rights are not worth the paper they are written on if no practical effect is given to them on the ground. In theory all parents have inalienable rights under the Irish Constitution. The High Court in 1998 actually said that parents in Ireland had more rights under the Irish Constitution than they had under Human Rights law. ⁸In theory this is true but in practice we suffer from religious discrimination and our children attend schools that are seen as mission territory for the Catholic Church.

2.5 Types of Religion and ethical classes in schools

There are various types of religious and moral education in Irish schools. The state and every Patron body claim that their particular religious or ethical education is inclusive and suitable for all students. There are no state Guidelines in place that reflect the understanding of the right of students to access courses in religion and ethics that are neutral and objective. Parents are left with the burden of challenging a system of education that has no state guidelines and they must navigate different patron bodies, schools and teachers who all have their own policies, views and idea of what inclusion, diversity and pluralism mean. It is a huge burden for parents and children.

At primary level Patron bodies develop their own religion or ethical courses to reflect their ethos.

At second level the State has developed a Religious Education course that is an exam subject at Junior Certificate and Leaving Certificate level. They claim that this Religious Education Course is suitable for all religions and none. It is not an objective course about religions and beliefs and it

⁷ <https://archive.crin.org/en/library/legal-database/leirvag-and-ors-v-norway.html>

⁸ <https://www.teachdontpreach.ie/2019/10/campaign-to-separate-church-and-state-v-minister-for-education-1995/>

was never meant to be because the Catholic Church object to objective religion and belief courses. The Department of Education now claim that this syllabus Religious Education course is not protected under Article 44.2.4 of the Constitution.

One of the main aims of the state Religious Education course at second level is to develop knowledge, understanding, skills, attitudes and values to enable students to come to an understanding of religion and its relevance to life, relationships, society and the wider world and to become aware of different understandings of the Divine. Atheists do not believe in the divine.

All Students are just enrolled into the course in most schools and if they seek their Constitutional right to not attend they are informed that it is not religious instruction but religious education and therefore the constitutional right to not attend does not apply. Schools with a religious ethos integrate that ethos into the course and never inform parents that this is happening.

General Comment 22 on Article 18 of the ICCPR states that:-

“The Committee is of the view that article 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way.”

The vast majority of schools in Ireland are not even public schools. Even the schools that can be regarded as public schools, the Education & Training Board schools have agreements in place with the Catholic Church in relation to the teaching of religion and ethos.

2.6 What happens to students who do manage to not participate in religion classes

If students do manage to exercise their right, no other subject is offered and no supervision outside the class is given. Students are left sitting in the religion class and Catholic schools control what students read if they do not participate.

A list of what is referred to as suitable material is given to students that exercise their right to not attend religious instruction. Schools inform parents that the Department of Education does not provide enough funding for supervision notwithstanding the fact that the funding of the school is conditional on the right to not attend religious instruction (Article 44.2.4)

Students should be at least supervised outside the religion classes or offered another subject at primary and second level.

2.7 Religious ethos and academic subjects

In 1998 the Irish Supreme Court stated in the Campaign to separate Church and State v Minister for Education case that (page 26):⁹

“The Constitution therefore distinguishes between religious “education” and religious “instruction” – the former being the much wider term. A child who attends a school run by a religious denomination different from his own may have a constitutional right not to attend religious instruction at that school but the Constitution cannot protect him from being influenced, to some degree, by the religious “ethos” of the school. A religious denomination is not obliged to change the general atmosphere of its school merely to accommodate a child of a different religious persuasion who wishes to attend that school.”

The Irish Supreme Court has found that religious parents have a right not only to classes/ instruction/teaching in religious education for their children but they also have a right to have religion integrated into academic subjects and religion in the general atmosphere of the school.

⁹ <https://www.teachdontpreach.ie/2019/10/campaign-to-separate-church-and-state-v-minister-for-education-1995/>

This particular Supreme Court case was about the state funding of Catholic and Church of Ireland Chaplains in a type of second level school (ETBs). The schools are Community and Comprehensive schools at second level.

The Supreme Court said that these schools were open to all but were still denominational in nature. The court said that it wasn't practicable to combine religious and academic education the way that a religious order might have done in the past but parents have the same right to have religious education provided in the schools which their children attend, they were not obliged to settle merely for religious 'instruction'.¹⁰

In Ireland religious instruction is the timetabled class in religion. The vast majority of these schools are Catholic in nature. The State funds Catholic Chaplains in these schools to help Catholic parents with the religious education and religious formation of their children outside the religious instruction class.

The Irish Supreme Court in the Campaign case referred to above has recognised that minorities who choose to attend such schools will be influenced to 'some degree' by the religious ethos in the general atmosphere of the school outside of the religious instruction class that students have a right to not attend.

Dr Alison Mawhinney has done research on the issue of the integration of religion into academic subjects and the general atmosphere of the school at primary level.¹¹

The Department of Education has removed Rule 68 of the Rules for National Schools but nothing changed on the ground in schools because the Supreme Court has found that Catholic parents have a right to have religious education provided in the school outside of the religious instruction class.

The Community and Comprehensive schools that the Supreme Court case was about are referred to as multi-denominational by the State and are presented as the alternative to denominational schools. They are only at second level.

Schools at primary and second level are mainly denominational and the rest are either multi-denominational or interdenominational.

The Supreme Court has recognised that in denominational schools Catholic parents have a right to religious instruction classes for their children, to have religion combined to other academic subjects and to have religion in the general atmosphere of the school.

The majority of parents in Ireland do not have any choice where they send their children to school. It is a school with a catholic ethos or no education at all. Even the ethos of multi denominational schools is not neutral and objective. The terms, denominational, multi denominational and interdenominational are not legally defined in Ireland.

There are no state guidelines on what exactly was meant by the Supreme Court when they said that the ethos of schools, in the general atmosphere of the school will 'influencing to some degree' students who choose to attend these schools.

¹⁰ "In Community Schools it is no longer practicable to combine religious and academic education in the way that a religious order might have done in the past. Nevertheless parents have the same right to have religious education provided in the schools which their children attend. They are not obliged to settle merely for religious instruction."(page 27) Campaign to Separate Church & State v Minister for Education Supreme Court 1998 – justice Barrington <https://www.teachdontpreach.ie/2019/10/campaign-to-separate-church-and-state-v-minister-for-education-1995/>

¹¹ <https://www.teachdontpreach.ie/2013/07/the-irish-education-system-a-failure-to-protect-human-rights/>

In this Supreme Court case the courts said that in Community schools it was no longer practicable to combine religious and academic education in the way that a religious order might have done in the past. Since that Supreme Court case the Oireachtas (Parliament) legislated to ensure that all schools must uphold the ethos of the Patron body (Section 15-2(b) Education Act 1998).¹²

The Supreme Court also stated that:

“In Community Schools it is no longer practicable to combine religious and academic education in the way that a religious order might have done in the past. Nevertheless parents have the same right to have religious education provided in the schools which their children attend. They are not obliged to settle merely for religious instruction.” (page 27 - Justice Barrington - Supreme Court - Campaign to Separate Church and State in 1998)

Minority parents are not just dealing with trying to exercise the right to not attend religious instruction class, they are also dealing with religion that is part of what the Supreme Court said was in the general atmosphere of the school. The Supreme Court have recognised that this would influence children to some degree if they choose to attend the school.

In 1998 the Education Act was passed. Under Section 15 2- (b) of the Act, Boards of Management must uphold the ethos of the Patron of the School.

Section 15 -2(b) of the Education Act 1998 states that:¹³

A board shall perform the functions conferred on it and on a school by this Act and in carrying out its functions the board shall—

(b) uphold, and be accountable to the patron for so upholding, the characteristic spirit of the school as determined by the cultural, educational, moral, religious, social, linguistic and spiritual values and traditions which inform and are characteristic of the objectives and conduct of the school, and at all times act in accordance with any Act of the Oireachtas or instrument made thereunder, deed, charter, articles of management or other such instrument relating to the establishment or operation of the school”

(c) consult with and keep the patron informed of decisions and proposals of the board,

In 1998 the Employment Equality Act was passed and under Section 37 (1) teachers are obliged to uphold the ethos of schools and they can be fired if they undermine it. The Act States that:¹⁴

“A religious, educational or medical institution which 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 shall not be taken to discriminate against a person for the purposes of this Part or Part II if—

(a) It gives more favourable treatment, on the religion ground, to an employee or a prospective employee over that person where it is reasonable to do so in order to maintain the religious ethos of the institution, or

(b) It takes action which is reasonably necessary to prevent an employee or a prospective employee from undermining the religious ethos of the institution.”

¹² <https://www.irishstatutebook.ie/eli/1998/act/51/section/15/enacted/en/html>

¹³ <https://www.irishstatutebook.ie/eli/1998/act/51/section/15/enacted/en/html>

¹⁴ <https://www.irishstatutebook.ie/eli/1998/act/21/section/37/enacted/en/html>

2.8 The Framework for the Primary School Curriculum

In 1999 the Primary School curriculum was updated.¹⁵ The new Framework cemented the religious integrated curriculum in Primary Schools. The 1999 Primary School Framework supports integrating religion into all curriculum subjects. Parents are not informed that this is happening. It includes:

“General Objectives of education is to:

“Develop the capacity to make ethical judgements informed by the tradition and ethos of the school”

“Key issues in Primary Education:

“The curriculum takes cognisance of the affective, aesthetic, spiritual, moral and religious dimensions of the child’s experience and development. For most people in Ireland, the totality of the human condition cannot be understood or explained merely in terms of physical and social experience. This conviction comes from a shared perception that intimates a more profound explanation of being, from an awareness of the finiteness of life and from the sublime fulfilment that human existence sometimes affords.

The spiritual dimension of life expresses itself in a search for truth and in the quest for a transcendent element within human experience. The importance that the curriculum attributes to the child’s spiritual development is expressed through the breadth of learning experiences the curriculum offers, through the inclusion of religious education as one of the areas of the curriculum, and through the child’s engagement with the aesthetic and affective domains of learning.” (page 27)

“For the young child, the distinctions between subjects are not relevant: what is more important is that he or she experiences a coherent learning process that accommodates a variety of elements. It is important, therefore, to make connections between learning in different subjects. As they mature, integration gives children’s learning a broader and richer perspective, emphasises the interconnectedness of knowledge and ideas and reinforces the learning process. (page 16)

A guide to the structure of the curriculum

The curriculum is presented in seven curriculum areas, some of which are further subdivided into subjects. These are: Language: Gaeilge and English; Mathematics; Social, environmental and scientific education (SESE): history, geography and science; Arts education: visual arts, music and drama; physical education; and Social, personal and health education (SPHE).

The development of curriculum for Religious education remains the responsibility of the different church authorities. (page 40)

“Religious education

In seeking to develop the full potential of the individual, the curriculum takes into account the child’s affective, aesthetic, spiritual, moral and religious needs. The spiritual dimension is a fundamental aspect of individual experience, and its religious and cultural expression is an inextricable part of Irish culture and history. Religious education specifically enables the child to develop spiritual and moral values and to come to a knowledge of God.

Irish society recognises the right of the individual to choose the particular form of religious expression that reflects the spiritual aspirations and experience he or she seeks. It

¹⁵ <https://www.curriculumonline.ie/Primary/Curriculum/>

acknowledges, too, the importance of tolerance towards the practice, culture and life-style of a range of religious convictions and expressions, and aspires to develop in children a tolerance and understanding towards the beliefs of others.

Education, generally, seeks to reflect and cater for a variety of religious conviction and acknowledges the right of parents to arrange for their children's education in a school whose religious ethos coincides with their own religious belief. It is the responsibility of the school to provide a religious education that is consonant with its ethos and at the same time to be flexible in making alternative organisational arrangements for those who do not wish to avail of the particular religious education it offers. It is equally important that the beliefs and sensibilities of every child are respected.

Since the Department of Education and Science, in the context of the Education Act (1998), recognises the rights of the different church authorities to design curricula in religious education at primary level and to supervise their teaching and implementation, a religious education curriculum is not included in these curriculum documents.(page 57)"

2.9 What does all of this mean?

In Ireland, minority parents are trying to exercise their right to ensure their children do not attend religious instruction classes. In addition in order to access education for their children they must accept that their children will be influenced by the religious integrated curriculum and the ethos of schools. This influence can take place in the general atmosphere of the school or in curriculum subjects such as Relationship and sexuality education or other subjects. We do not have access to a neutral and objective education for our children.

A religious ethos in the general atmosphere of the schools influences children in the following way. Prayers can be said during school hours and students attend religious services at their local church. Specific Religious symbols are on school walls and in most classrooms. Some schools have religious symbols as part of their school uniform and students have no choice but to wear it.

Students are also prepared for religious sacraments during school hours. This takes up a huge amount of time outside of the two and a half hours given over to religion classes per week. This means that children from minority backgrounds lose out of precious school time and are taken to church services because no supervision is provided.

Our education system undermines the right to freedom of religion and belief of minorities. We are constantly told that schools are inclusive and promote diversity and pluralism. However, these terms mean different things to different Patron bodies and schools. Parents are left dealing to an education system that in theory protects their rights but in practice no practical effect is given to these rights on the ground. We have nowhere to go with our complaints because our Equality laws have religious exemptions and we would have to take a case on the basis of the Constitution and parental right to the courts.

The Catholic Church has put in place Guidelines for Schools in relation to the teaching of the State relationship and sexuality education and second level syllabus Religious Education. Teachers are legally obliged to comply with the policies of the Boards of Management of schools and Section 37 (1) of the Employment Equality Act means that teachers can be fired if they do not uphold the ethos of the school or the school can refuse to hire them. ¹⁶

At present the State is updating the Framework for a new Primary Curriculum. However, even if the state remove the Religious Integrated Curriculum from the Framework, schools can still deliver syllabus subjects according to their religious ethos because of Section 15-2 (b) of the Education Act 1998. ¹⁷

¹⁶ <https://www.irishstatutebook.ie/eli/1998/act/21/section/37/enacted/en/html>

¹⁷ <https://www.irishstatutebook.ie/eli/1998/act/51/section/15/enacted/en/html>

2.10 UN Human Rights Committee

In 2014 on the previous examination of Ireland the UN Human Rights Committee, Yuval Shany asked the state party whether it believes or not that it is required to ensure a neutral studying environment in those schools, in denominational schools, outside the confines of religious instruction classes that can be opted out from. The State delegation never replied to this question.

“My follow-up question goes to the issue of denominational education, and I note the statement on improvements that are planned in the transparency of school admission policies. My two follow up questions in this regard are:

How does the Delegation explain the compatibility with the Covenant of a state of affairs that allows private schools, which have a near monopoly in Ireland on a vital public service, to openly discriminate in admission policies between children on the basis of their parents religious convictions?

I would appreciate, whether orally or in writing, the Delegation’s theory on this point, on this legal point. And whether the State believes or not that it is required to ensure a neutral studying environment in those schools, in denominational schools, outside the confines of religious instruction classes that can be opted out from?”

Part 3 – G. Basic health and welfare (Arts. 6, 18 (3), 24, 26, 27 (1)–(3) and 33)

3.1 From the List of Issues

“(c) Ensure comprehensive, age-appropriate education on sexual and reproductive health and rights, including information on family planning, contraceptives and the risks related to early pregnancy, as well as on the prevention and treatment of sexually transmitted infections;”

3.2 Response of State Party

“Reply to paragraph 24(c)

Social, Personal and Health Education (SPHE) and Relationships and Sexuality Education (RSE) are important parts of the school curriculum.

In 2021 following a major review, work on updating or developing new specifications for SPHE/RSE commenced. Work will include engagement with key education stakeholders and further public consultation before any new curriculum specifications are finalised.”

3.3 Our comments on the State Response

Subjects such as curriculum Relationship and Sexuality Education (RSE) at Primary level and Social and Personal Education at second level (SPHE) are delivered to all students through the “Characteristic Spirit” or ethos of each particular school (Section 15 - 2 (b) Education Act 1998)

As the vast majority of schools have a religious ethos and mainly Catholic, it is Catholic education for students or no RSE/SPHE education at all.

Parents are never informed by the school that curriculum RSE/SPHE is delivered through a Catholic ethos.

While the State party has the intention of updating the content of the Relationship and Sexuality education and Social, personal and health education at primary and second level it has no intention of amending the Education Act 1998 so that teachers can teach the syllabus objectively and not through the ethos of the school. Under Article 42.1 of the Constitution and Section 30-2(e) of the Education Act 1998 students can still be exempted from sex education classes, however they will be left sitting in the class where this takes place.

Under Section 37 of the Employment Equality Act teachers are obliged to uphold the ethos their employer. They cannot challenge the ethos of the Patron and must comply with the policies of the Board of Management of the school which legally reflects the ethos of the Patron (Section 15-2(b) Education Act 1998).

The Catholic Church has their own published Guidelines on how curriculum RSE/SPHE is to be delivered/taught by teachers in schools with a catholic ethos.

It is also the policy of the Department of Education that schools should teach RSE and SPHE through their ethos.

In Circular Letter 0037/2010 issued by the Department of Education to all schools it says that schools should have a policy on RSE. The Circular says that children have a right under the European Social Charter to objective sex education but also advises that it should reflect the core

values and ethos of the school. The vast majority of schools at primary and second level are Catholic.

Circular Letter 0037/2010 stated that: ¹⁸

“Access to sexual and health education is an important right for students under the terms of the Article 11.2 of the European Social Charter. The Council of Europe European Committee of Social Rights, which examines complaints regarding breaches of the Charter, has indicated it regards this Article as requiring that health education “be provided throughout the entire period of schooling” and that sexual and reproductive health education is “objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception or different means on maintaining sexual and reproductive health.”

“The RSE policy should reflect the core values and ethos of the school as outlined in the school’s mission statement. Spiritual, moral and ethical issues may arise when teaching RSE. The school’s RSE policy should guide teachers in the treatment of such issues, in accordance with the ethos of the school.”

So parents are left in a position whereby the Department of Education recognises that objective sexual and health education is an important right for students but then tell schools that their RSE policy should reflect the ethos of the school. This is significant because Section 15-2(b) of the Education Act 1998 obliges Boards of Management to uphold the ethos/characteristic spirit of the Patron.

¹⁸ <https://circulars.gov.ie/pdf/circular/education/2010/37.pdf>

Part 4 – H. Education, leisure and cultural activities (Arts. 28–31)

4.1 From the List of Issues

“Education

(b) Assess the impact of the Education (Admission to Schools) Act in ensuring children’s right to education without discrimination, including in cases in which admission can be denied on religious grounds;

(c) Increase the availability of non-denominational and multi-denominational schools;

(e) Revise the content of sexual and reproductive health education to include material on non-discrimination, contraception, gender stereotypes, sexual orientation and gender identity;”

4.2 Response of State Party

“Reply to paragraph 27(b)

The Education (Admission to Schools) Act 2018 contains measures to improve the admissions process for parents and children. The Act creates an equitable and consistent approach to how school admissions policies operate for all primary and post-primary schools.

The Act ensures schools must admit all applicants if places are available. School admission policies must state they will not discriminate against applicants.

Reply to paragraph 27(c)

The government’s objective is to have 400 multi-denominational or non-denominational schools in the primary system by 2030.

In 2021, access to secular schools continued to improve, with 159 multi-denominational primary schools and 359 multi-denominational or non-denominational post-primary schools available, representing approximately 50% of post-primary schools and pupils.

Reply to paragraph 27(e)

The NCCA conducted a major review of instruction (2018) on these issues across all stages of education. The review considered issues of consent; contraception; healthy, positive, sexual expression and relationships; safe use of the internet; the role of the school ethos; and LGBTI+ matters. This will result in new specifications for SPHE/RSE being developed. Work will include engagement with key education stakeholders and further public consultation before any new curriculum specifications are finalised.

The SHCPP has developed information, resources and supports for children, young people and parents that complement the school curriculum.”

4.3 Our comments on the State Response to paragraph 27(b)

The Education (Admissions to Schools) Act 1998 has meant that for minorities, the majority of schools at primary level cannot discriminate on the grounds of religion by giving preference to children from Catholic families. The removal of this religious discrimination is welcomed and it is an area where we have sought change for some time.

The Act only applies to primary schools and not second level schools. Children go into second level at about twelve years of age.

Over half of second level schools are under religious patronage and operate with a religious ethos. Contrary to the State's response regarding an equitable approach at post-primary schools, these schools can and do give preference to co-religionists under this Act.

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.

At Primary Level the Church of Ireland are a Christian minority (Protestant) and they are Patron to 172 schools at Primary level. Other minority Christians prefer to send their children to Church of Ireland schools instead of schools with a Catholic ethos but still want exercise their right to not attend COI Religious education.

Section 7 of the Equal Status Act was amended so that parents when making an application to COI Schools may provide: ¹⁹

- (a) A statement confirming that the student in respect of whom the application relates is a member of a minority religion and that the applicant wishes the student to be educated in a school that provides a programme of religious instruction or religious education which is of the same religious ethos as, or a similar religious ethos to, the religious ethos of the minority religion of the student concerned, and
- (b) any evidence that the applicant wishes to include to support the statement that the student in respect of whom the application relates is a member of a minority religion.

We have examined some Church of Ireland Admission policies and they 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.

We have already pointed out that the Irish education system is unique in the world. Keeping a sectarian system going effectively means coercing other minorities into the dominant religions.

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.

Also, all Schools at primary and second level can still legally refuse access to a child if the child challenges their religious ethos. The Act states that: ²⁰

“11. The Equal Status Act 2000 is amended

(ii) by the insertion of the following paragraphs after paragraph (c):

(a) where the establishment is a school providing primary or post-primary education to students and the objective of the school is to provide education in an environment which promotes certain religious values, it refuses to admit as a student a person who is not of a particular religious denomination and it is proved that the refusal is essential to maintain the ethos of the school,”

¹⁹ <https://www.irishstatutebook.ie/eli/2000/act/8/section/7/enacted/en/html>

²⁰ <https://www.irishstatutebook.ie/eli/2018/act/14/section/11/enacted/en/html>

Despite the fact that this part of the Act has never been used, schools still put it in their Admission policies. Parents and children from minority backgrounds see their right to education as based on not being hostile to the dominant religious belief system in their community.

Many parents have objections to the grounds of conscience to the dominant belief system and the privilege that it attracts from the state and must pretend to support it to gain access for their child to the local publicly funded school.

Section 62(7)(n) of the Education (Admissions to schools) Act 2018 provides that where a school is providing religious instruction the school is required, in its admissions policy, to: ²¹

“provide 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 has compiled research on a sample hundred admission policies of schools, and we found that most schools are defying this requirement of the Act.

Some schools do not refer at all to this requirement. Of those that do refer to it:

- 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 not 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 of any description thus breaching the right to privacy.
- These evasions are coordinated, based on common templates from either the Catholic Church, the Edmund Rice Schools Trust, or the Education and Training Boards.

The Supreme Court has said that the rights of parents in relation to the religious and moral education (Article 42.1 and Article 42.2) of their children must be read in the context of Article 44.2.4 – the right to not attend religious instruction.

The Supreme Court also said recently that the rights of parents in relation to the religious and moral formation of their children accords with Article 41 and that this provision reflects a concern for upholding parental authority; a foundational pillar of the Constitution. (Para 4 Burke V Minister for Education January 2022)

4.4 Our comments on the State Response to paragraph 27(c)

The State’s response to this is simply false. There are no publicly funded secular or non-denominational schools in Ireland, and there are no plans to open any or to divest patronage to any. Multi denominational schools at just that, multi denominational, atheism is not a denominational and neither is humanism.

The Programme for Government states: ²²

²¹ <https://www.irishstatutebook.ie/eli/2018/act/14/enacted/en/print>

²² <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>

“The Government will continue to expand the plurality of our schools to reflect the full breadth of society. We will:

- Achieve the target of at least 400 multi-denominational primary schools by 2030, to improve parental choice.
- Expand and prioritise the transfer of viable schools to Community National Schools.”

Note that the government’s commitment is to provide at least 400 ‘multi-denominational’ schools, and not, as falsely stated to in its response to the Committee, 400 ‘multi-denominational or non-denominational’ schools.

The terms denominational, interdenominational or multi-denominational are not legally defined in Ireland and mean different things to different Patron bodies and the State. That has consequences for the questions asked by the Committee as many multi-denominational schools and interdenominational schools operate as Catholic schools with Catholic practices and ethos.

Publicly funded schools are categorised as follows on the Department of Education’s website. You will note that there are no non-denominational schools registered:

Primary Schools

Mainstream – 2760 Catholic – 172 Church of Ireland – 133 MultiDenominational – 17 InterDenominational – 16 Presbyterian – 2 Muslim – 1 Jewish – 1 Methodist – 1 Quaker – 3 Other/unknown
Special – 106 Catholic – 17 MultiDenominational – 1 InterDenominational – 9 Other/
Unknown

Second Level Schools

344 Catholic – 202 MultiDenominational – 150 InterDenominational – 22 Church of Ireland – 2 Quaker – 1 Jewish – 1 Methodist – 1 Presbyterian

Opening up more multi-denominational schools will not necessarily help minorities as many of these schools operate in practice as Catholic schools while claiming that they have a Christian ethos.

The State broadcaster RTE has recently revealed that Catholic Bishops lobbied the Government last June to change the law, so they could once again be allowed to discriminate against non-Catholic children in access to publicly funded primary schools.²³

The Catholic Bishops said their support for divesting a small number of publicly funded primary schools to multi-denominational patronage was dependent on this happening.

This is yet another example, as we have articulated for years, of why divesting some schools to different patron bodies cannot solve the injustices of our sectarian education system.

This is because multiple patronage and multiple ethos as the basis for policy is the underlying problem in Irish schools, not the solution. The Oireachtas Education Committee has already concluded that this brings about segregation of children and inequality.

Even with the maximum implementation of the proposed Government plan of 400 multi-denominational schools (and no non-denominational schools), that would still leave 85% of schools with a single denominational ethos.

²³ <https://www.rte.ie/news/2022/0609/1303940-catholic-schools/>

Also, most areas have standalone schools, so atheist or minority faith parents in those areas would have no choice other than to send their child to a school with an even stronger Catholic ethos.

The Supreme Court in the recent *Burke v Minister for Education* case in January this said it is a foundational pillar of the Constitution that the State, when funding schools, must have due regard for the rights of parents in relation to the religious and moral formation of their children.²⁴

That means all parents, not just those from the religious majorities in particular areas.

Under Article 42.4 of the Irish Constitution the state is not constitutionally obliged to fund only denominational and multi denominational schools. They have chosen to do so. One of the Constitutional conditions for that funding is that the state must have due regard for the rights of parents.

Recent research commissioned by the umbrella body for Education and Training Board schools (ETBs) presents a bleak picture on ETB schools and religion. Education and Training Board schools operate in the category multi-denominational and interdenominational and are presented as the alternative to denominational schools and are regarded as public schools.

The research is called 'That's how it works here: The place of religion in publicly managed second level schools in Ireland.' It states that:²⁵

"The religious dimension was always Catholic in nature. Bar a few exceptions, the role of religion within the life of the school remained largely unquestioned by school personnel. The article explores the findings in light of the legislative and historical contexts"

²⁴"It is clear that a right inures to the family under Article 42.1 of the Constitution to be the "primary and natural educator of the child" and the State is required "to respect the inalienable right and duty of parent to provide... for the religious and moral, intellectual, physical and social education of their children." Hence, under Article 42.2, the mother of Elijah Burke and Naomi Power were "free to provide this education in their homes or in private schools or in schools recognised or established by the State.

But, while under Article 42.3 the State may require, "as guardian of the Common good", that "children receive a certain minimum education, moral, intellectual and social" (physical is not mentioned, and the minimum standard required is currently set at school leaver-standard for a 16 year old), the State cannot "oblige parents in violation of their conscience and lawful preference to sent their children to schools established by the State, or to any particular type of school designated by the State."

Article 42.4, in requiring the State to provide for "free primary education", also places an endeavour, but only that, before the State "to supplement and give reasonable aid to private and corporate educational initiative" and "when the public good requires it" towards "other educational facilities or institutions".

An overall saver in the constitutional text is that the State, in providing for free primary education and in endeavouring to assist post-primary education in various forms, have "due regard"... for the rights of parents, especially in the matter of religious and moral formation," This provision reflects a concern for upholding parental authority; a foundational pillar of the Constitution that accords with Article 41 recognising the family as "the natural primary and fundamental unit group of" Irish society. Hence, society is build around the family."

<https://www.casemine.com/judgement/uk/62323ac0b50db9fc0c9263a4>

²⁵ https://www.researchgate.net/publication/328387541_%27That%27s_how_it_works_here%27_The_place_of_religion_in_publicly_managed_second-level_schools_in_Ireland

In their Report from 2011 'Religion and Education; A Human Rights Perspective,' the Irish Human Rights and Equality Commission stated in relation to some Education and Training Boards schools that are regarded as interdenominational or multi-denominational: ²⁶

“Although these schools were not intended to be denominational in the traditional sense, in practice, due to the manner in which they were established, and governed, they are.”

The Commission recommended that:

“Terms such as, denominational, multi-denominational, inter-denominational, nondenominational or other school should be clearly defined in primary legislation, Ministerial regulations, or be determined by reference to the recognition of such schools under the Education Act.”

²⁶ <https://www.ihrec.ie/documents/religion-and-education-a-human-rights-perspective/>