

Submission to the
United Nations Committee
on the Rights of the Child

From Atheist Ireland,
Evangelical Alliance of Ireland,
and Ahmadiyya Muslim
Community of Ireland

On the examination of Ireland
87th Pre-Sessional Working Group
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Introduction

Irish Atheists, Evangelicals and Ahmadiyya Muslims are united in a campaign for Secularism and Human Rights. While we have different world views, and different emphases in policies, we all agree that each person should be treated with respect, our right to hold our beliefs should be treated with respect, States should treat us all equally before the law by remaining neutral between religious and nonreligious beliefs.

Parts of our campaign are:

- We will promote the fundamental human rights of freedom of conscience, religion and belief, equality before the law, and freedom from discrimination for all.
- We will promote these human rights within Irish society and Irish 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 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.

Summary of Questions

Cluster 3. General Principles

Article 2 — Non-discrimination

Will the State part commit to amend Article 42.1 so that it applies to all parents and not just those based on marriage?

Article 12 — Respect for the views of the child

Will the State party amend Section 30-2(e) of the Education Act 1998 to ensure that the views of children are taken into consideration, taking account of their evolving capacities as they grow into adolescence?

Cluster 4. Civil Rights and Freedoms

Article 14 — Freedom of thought, conscience and religion

(a) Why are there no Guidelines for schools on how they should accommodate children who exercise their Constitutional Right to not attend any type of religious teaching on the grounds of conscience?

(b) Why are students who do not attend religious teaching, in accordance with their right, not offered another subject and will the State party give a commitment to ensure that students who do not attend religious teaching are offered another curriculum subject?

Article 37A — Cruel, Inhuman, or Degrading Treatment or Punishment

(a) Ask the state again the same question as was asked during the last session, about measures taken to ensure accountability for sexual abuse committed by religious leaders and/or organisations and their associated institutions, including with regards to the provision of compensation for such cases?

(b) Will the State give an update on the Report of the Commission of Investigation (Mother and Baby Homes and certain related Matters), the completion of which has again been delayed, with a new predicted completion date of 30 October, just after this session?

Cluster 6. Basic Health and Welfare

Article 24 — Relationship and Sexuality Education

Will the state party amend Section 15-2 (b) of the Education Act 1998 to ensure that all students have access to objective Relationship and Sexuality Education at primary level and Social, Personal and Health Education at second level?

This should be done consistently with the right under Article 42.1 of the Constitution and Section 30-2 (e) of the Education Act 1998 of a student to not attend instruction in any subject which is contrary to the conscience of the parent or an over-18 student.

Cluster 7. Education, Leisure and Cultural Activities

Article 28 — Right to Education

Article 29 — Aims of Education

1. Types of Schools

(a) Will the State clearly define the terms, denominational, multi-denominational, interdenominational, non denominational or other, and commit to legally defining those terms, as per the Recommendation of the Irish Human Rights & Equality Commission in their Report “Religion & Education; A human Rights Perspective”?

(b) Will the State establish public non-denominational schools at primary and second level?

2. Access to Education

Will the State ensure that every child has the right to access a local publicly funded school without religious discrimination?

3. Influence of Religious Ethos on Minorities in Schools

Given that in practice most atheist, secular, and minority faith families have no choice other than to send their children to a local school with a religious ethos:

(a) Does the State believe or not that it is required to ensure a neutral studying environment in publicly funded schools, outside the confines of religious instruction classes that can be opted out from or other classes that can be opted out from on the grounds of conscience?

(b) Will the State amend Section 15-2 (b) of the Education Act 1998 to ensure all children have access to a neutral studying environment, outside the confines of the above classes?

(c) Will the State Party provide guidelines to schools regarding “Characteristic spirit” or ethos to ensure that the rights of minorities to freedom of conscience and respect for their convictions is guaranteed?

(d) Will the State amend the aims of the State curriculum to ensure that it recognises the rights of atheist, humanists and secularists who do not believe it is the duty of the State to promote the spiritual and moral education of their children through religion?

Cluster 3. General Principles

Article 2 – Non-discrimination

Article 42.1 of the Irish constitution states that:-

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

According to the Constitution Review Group Report in 1995 this Article only applies to married parents, they recommended that it be amended. Given the influence that the Catholic church had on the Irish Constitution the understanding of the rights of parents is based on married parents.

The Constitution Review Group of 1995 stated that: ¹

“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 Uchtala 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.

Support for this view derives from Article 41.3.1 “The State pledges itself to guard with special care the institution of marriage, on which the family is founded, and to protect it against attack.” The effect of this definition is that neither a non-marital family nor its members are entitled to any of the protection or guarantees of Article 41. Likewise, they are probably not comprehended by the terms of Article 42: see *G v An Bord Uchtala*.”

Instead, “rights of an unmarried mother and of a child of unmarried parents, which some might consider as rights resulting from a family relationship, have been held to be personal rights which the State is obliged to protect under Article 40.3. An unmarried father has been held to have no personal rights under Article 40.3 in relation to his child (*The State (Nicolaou) v An Bord Uchtala*.”

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 Uchtala* [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.”

“Recommendation: Article 42.1 should be amended to apply to all non-marital parents, provided they have appropriate family ties and connections with the child in question.”

Question: Will the State part commit to amend Article 42.1 so that it applies to all parents and not just those based on marriage?

Article 12 – Respect for the views of the child

Since 2015 there is a new Article in the Irish Constitution regarding the rights of children. Article 42A of the Constitution provides as follows:

“1. The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights....”

This is consistent with the UN Committee on the Rights of the Child’s General comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child. ²

To date the Irish State has given no consideration to respect the views of the child or take the child’s evolving capacities into consideration in relation to not attending religious teaching or worship in schools. Section 30 - 2 (e) of the Education Act 1998. Section 30-2(e) only recognises the right of parents and (children over 18) to not attend any instruction that is against the conscience of the parent of the student.

Question: Will the State party amend Section 30-2(e) of the Education Act 1998 to ensure that the views of children are taken into consideration, taking account of their evolving capacities as they grow into adolescence?

Cluster 4. Civil Rights and Freedoms

Article 14 - Freedom of thought, conscience and religion

Nothing has changed on the ground since the last Concluding Observations of the Committee to ensure accessible options to children to opt out of religious classes and access appropriate alternatives to such classes.

There was an opportunity for the Minister for Education to accept an amendment in the Dail (Parliament) in the debate on the Education (Admissions to Schools) Bill to put in place guidelines on opting out of religion, he refused. He discussed the need for consultation (they are discussing this issue for years) but there really was no valid reason for not putting guidelines in place.

Religious Patron bodies don’t want students to have an option of another subject because they are afraid that all students will want to opt out. No consideration was given to the Concluding observations of the Committee in 2016. The debate in the Dail and the response of the Minister can be found here. ³

There is a Constitutional right under Article 44.2.4 of the Irish Constitution for children to attend publicly funded schools without attending religious teaching. In addition, under 44.2.4, not attending any religious teachings should not prejudicially affect their rights. In Ireland the vast majority of publicly funded schools at primary and second level are publicly funded private schools.

The Constitutional Right to not attend religious teaching is reflected in Section 30-2(e) of the Education Act 1998 which recognises that parents can opt their children out of anything that is against their conscience (this includes religious teaching). State funding and the recognition of schools is dependent on this right.

The Department of Education does not oblige any publicly funded school to teach religion or to have religious worship. Because of the control that religious patron bodies have over the education system most schools have religious teaching and worship and preparation for religious sacraments. It is part of their “Characteristic Spirit” or ethos which schools are legally obliged to uphold (Section 15 - 2 (b) Education Act 1998).

In addition one of the main aims of the Primary Schools curriculum is to teach spiritual and moral values through religious education. ⁴ Given the influence that the Catholic Church had on the Irish education system it reflects their nature and mission.

There are now different types of religious teaching in Irish schools. There is denominational religious teaching developed by various Patron bodies. The National Council for Curriculum and Assessment (state body) developed a course for Community National Schools at primary level which are under the patronage of various Education and Training Boards. There are elements of religious teaching in the course that are not neutral and objective.

At second level there is also a State Religious Education curriculum developed by the National Council for Curriculum and Assessment (NCCA) (a statutory body). It is an exam subject at Junior and Leaving Certificate level and its main aim is to teach children about the relevance of religion to their lives and to respect beliefs. It is taught in Education & Training Boards schools as well as schools under religious patronage. Many schools also deliver the State religion course according to their own ethos and the course was developed by the NCCA with this in mind.

Schools and teachers question students about their beliefs as it is part of the religion courses that many students are coerced to take. While students can of course voluntarily choose to discuss their beliefs, they have a right under freedom of conscience to not be forced to reveal them.

Schools and the Department of Education now claim that various religion courses are suitable for all religions and none. In addition because there are no formal guidelines on the right to opt out, students and their parents are put in a position that they must reveal their convictions or lack of religious conviction to the school community.

Because of Section 15-2(b) of the Education Act 1998 ⁵ there is no obligation on any school to deliver any part of the State curriculum in a neutral and objective manner. Because of the influence of the Catholic Church on the Irish Constitution and in particular education, many Irish schools reflect the nature and mission of the Catholic church.

The Holy See promotes and encourages the system of Catholic schools, which are not State institutions but nonetheless have a public function. The educational activities are carried out in accordance with the Catholic school's own authority and responsibility under canon law, and pursuant to the laws of the respective States in which they operate." (Holy See Report to the CRC 2012 p.12) ⁶

Under Article 44.1 of the Irish Constitution the State must respect and honour religion. This Article only applies to religious beliefs.

The Supreme Court in *Corway v Independent Newspapers* 1999 stated that Article 44.1 places a duty on the State to respect and honour religion as such. ⁷

This is significant because of how rights are balanced in the education system. The state believes that a course that teaches children the relevance of religion to their lives is suitable for children from atheist and humanist families notwithstanding the fact that atheists have freedom of conscience and equality before the law.

The majority of schools also deliver curriculum religion classes according to their own ethos, they can do this because of (Section 15 -2 (b) of the Education Act 1998. The State does not interfere with the "Characteristic Spirit" or ethos of schools. Schools can and do deliver curriculum religion according to their ethos and they are not obliged to tell parents that this is happening. The State funds the training of teachers to do this.

Under the Irish Constitution Parents and their children are supposed to have more rights than those guaranteed under the Universal Declaration of Human Rights and the European convention.

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 Universal Declaration of Human Rights. He said that the Constitution had developed the significance of these parental Rights and had imposed an obligation on the State in relation to them. ⁸

Despite this the Irish State has put no guidelines in place to ensure that not attending religious teaching in schools is given a practical application. This lack of guidelines has meant that the right to not attend religious teaching is being undermined. There is no legislative clarity regarding the opt out, it has come to mean whatever a Patron body or Department of Education personnel say it means.

Schools make up their own rules for students that exercise their right to not attend religious teaching. The vast majority of those made up rules are discriminatory and students are left sitting in the class where religion takes place. Schools with a Catholic ethos even control the reading material of students that opt out to decide whether it is suitable or not from their perspective. Students are also made to attend prayer and religious worship as no supervision is provided.

In 2018 the then Minister for Education, Richard Bruton stated in the Dail (Parliament) that he would oblige Education & Training Board schools at second level to offer students that do not attend religious teaching another subject.

He issued a Circular Letter (policy document)) on this in February 2018. ⁹ The offer of another subject was withdrawn in October 2018 with another Circular Letter (policy document) because of lobbying by the Catholic Church, Education & Training Boards Ireland, the Teachers Union of Ireland and the Religion Teachers Association. ¹⁰

Their objections to offering minorities another subject ranged from claiming that the course was suitable for students from all backgrounds including non religious, religion teachers would lose their jobs, no resources to offer another subject and that if another subject is offered all students would want to opt out.

No consideration was given by any of these bodies to the Concluding Observations of the Committee in 2016 that students be offered appropriate alternatives to religion classes. None of these bodies put the right to freedom of religion and belief of minorities before their own interests, the Department of Education capitulated to them and withdrew the policy to oblige ETB schools to offer students another subject.

Questions:

(a) Why are there no Guidelines for schools on how they should accommodate children who exercise their Constitutional Right to not attend any type of religious teaching on the grounds of conscience?

(b) Why are students who do not attend religious teaching, in accordance with their right, not offered another subject and will the State party give a commitment to ensure that students who do not attend religious teaching are offered another curriculum subject?

Article 37A – Cruel, Inhuman, or Degrading Treatment

During Ireland's last session, the Committee asked about measures taken to ensure accountability for sexual abuse committed by religious leaders and/or organisations and their associated institutions, including with regards to the provision of compensation for such cases.

There are still outstanding legacy issues with regard to clerical abuse of children in schools and other institutions where the State had responsibility to protect the human rights of children. These issues include failure or reluctance over:

- Prosecuting alleged perpetrators
- Prosecuting those enabling alleged perpetrators by failing to report them and/or moving them around where they endanger other children and
- Compensating victims adequately and without putting them under needless additional stress.
- Accepting State responsibility for protecting the human rights of children and others within these schools and institutions.

The Minister for Children and Youth Affairs, Dr Katherine Zappone, has just published the Seventh Interim Report from the Commission of Investigation into Mother and Baby Homes. Citing the Coronavirus, the Commission has requested a revision of the timeframe for submitting its final report until 30 October 2020. This will be after this CRC session.

Questions:

(a) Ask the state again the same question as was asked during the last session, about measures taken to ensure accountability for sexual abuse committed by religious leaders and/or organisations and their associated institutions, including with regards to the provision of compensation for such cases?

(b) Will the State give an update on the Report of the Commission of Investigation (Mother and Baby Homes and certain related Matters), the completion of which has again been delayed, with a new predicted completion date of 30 October, just after this session?

Cluster 6. Basic Health and Welfare

Article 24 – Relationship and Sexuality Education

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.

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.

Section 30 - 2 (e) of the Education Act 1998 gives parents the right to opt their children out of anything that is against their conscience and this includes RSE and SPHE.

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

In some schools, Catholic religious Charities such as Accord and Pure in Heart are invited into schools and paid with school funds to deliver sex education. These charities are registered with the Charities Regulator under the “advancement of religion”. By law, charity trustees must ensure their charity promotes its charitable purpose only and that it is of public benefit. It is not possible for parents to complain about these agencies delivering Catholic sex education as it is part of the ethos of schools.

The National Council for Curriculum and Assessment (A statutory body, Section 39 of the Education Act 1998) (NCCA), have recently examined curriculum RSE/SPHE at the request of the Minister for Education.

Their Report recommends comprehensive changes to curriculum RSE and SPHE. However they have not recommended any change to Section 15-2(b) of the Education Act 1998 which can only mean that curriculum RSE/SPHE can still be delivered according to the ethos of the Catholic Church. ¹¹

Under Section 37 of the Employment Equality Act ¹² teachers are obliged to uphold the ethos of 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 by teachers. It is clear that they will ensure that it is Catholic RSE/SPHE that is delivered in Irish schools. ¹³

Parents cannot challenge how a school implements its ethos through the Workplace Relations Commission (Equality). In a recent case over Homework passes for masses the WRC stated that:- A recent case at the WRC acknowledged that a school “is entitled to establish and adhere to its religious ethos.” ¹⁴

The Oireachtas Education Committee (Parliament) also examined this issue and their Report was issued in early 2019. The Committee Recommended that Section 15-2(b) of the Education Act 1998 is reviewed to ensure that it cannot be used as a barrier to teaching RSE and SPHE To date no legislative amendments have come before the Oireachtas Education Committee.

The Oireachtas Education Committee Report Recommended that: ¹⁵

“13.The Committee recommends that clarity and direction is given by the DES (Dept of Education & Skills) regarding how schools and colleges, under religious patronage, should implement a comprehensive RSE programme so that all children and young people are treated equally.

14.The Committee recommends that the Education Act 1998 be amended or at least reviewed, so that ethos can no longer be used as a barrier to the effective, objective and factual teaching of the RSE and SPHE curriculum to which every student is entitled.

15.The Committee recommends that the necessary legislative amendments required to remove the role of ethos as a barrier to the objective and factual delivery of the RSE and SPHE curriculums be made as soon as possible and at the latest by the end of 2019.”

If Section 15-2(b) of the Education Act 1998 is not amended then children will not be able to access objective Relationship and sexuality education at primary level and Social, Personal and Health Education at second level. Teachers are not going to risk their jobs (Section 37 Employment Equality Act) to challenge how RSE/SPHE is taught. They are trained in teacher training colleges on how to uphold the ethos of the Patron.

The UN Committee on the Elimination of Discrimination against Women has Recommended that the Irish State: ¹⁶

“(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;”

The Committee also stated that:

“The Committee further welcomes the introduction of a new short course in Social, Personal and Health Education (SPHE) for the junior cycle. Nevertheless, the Committee is concerned at:

(a) Reports of stereotypes and sexism in the field of education, and at the lack of concrete measures to curb this phenomenon;

(b) The gender-approach of the apprenticeship training programme, which effectively attracts few women and girls;

(c) The narrow approach towards the provision of sexuality education due to the fact the content of the Relationship and Sexuality Education (RSE) curriculum is left to institutions to deliver it according to the schools ethos and values and as a result it is often taught together with biology and religious courses.”

Question: Will the state party amend Section 15 -2 (b) of the Education Act 1998 to ensure that all students have access to objective Relationship and Sexuality Education at primary level and Social, Personal and Health Education at second level?

This should be done consistently with the right under Article 42.1 of the Constitution and Section 30-2 (e) of the Education Act 1998 of a student to not attend instruction in any subject which is contrary to the conscience of the parent or an over-18 student.

Cluster 7. Education, Leisure and Cultural Activities

Article 28 – Right to Education

Article 29 – Aims of Education

1. Types of Schools

Atheists, secularists, Ahmadi Muslims and Evangelical Christians are minorities in Ireland. The State does not direct education towards (Article 29 -c) developing respect for the child’s parents and (b) the development of respect for human rights. Because the State does not interfere in the “Characteristic Spirit” or ethos of schools and has provided no guidelines on how far a religious ethos can influence minorities, respect and human rights mean whatever a Patron body says it means.

The census figures in 2016 under the category for Religion states (figures in thousands):

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

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.

Opening up more multi-denominational schools will not necessarily help minorities as many of these schools operate in practice as Catholic schools. They may claim that they have a Christian ethos but that means Catholic in Ireland.

Publicly funded schools are categorised as follows on the Department of Education’s website:

Primary Schools ¹⁷

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

Secondary Schools ¹⁸

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

There are no publicly funded non-denominational schools in Ireland. Despite the Committee's Recommendation in the last round no non-denominational schools have been established. The majority of schools in Ireland are publicly funded private schools. While there is a state curriculum the State does not interfere at all in how the school implements its "Characteristic Spirit" or ethos. Parents and children are left dealing with private bodies who operate schools according to their own mission and aims of education.

All recognised schools have a Patron body. Patrons are legally defined under Section 8 of the Education Act 1998. ¹⁹ The vast majority of schools in Ireland have the Catholic Church as their Patron. The Catholic Church also has various agreements with another Patron body called Education & Training Boards (ETBs) regarding religion in schools under their patronage. ETB schools are regarded as state schools.

All publicly funded schools are defined by the Department of Education according to ethos and put in various categories such as denominational, interdenominational or multi-denominational.

Recent research commissioned by the umbrella body for Education & 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.

The research called is called "That's how it works here: The place of religion in publicly managed second level schools in Ireland" ²⁰ It states that:

"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."

In a case in 2017 the Workplace Relations Commission stated that a particular Education & Training Board school (multi denominational) which has no agreement with the Catholic Church can have a particular religious ethos because it has a history of having a Christian ethos. ²¹

The WRC stated that:

“It is clear that the Respondent has an established Christian ethos and it adduced evidence that the placement of the May altar is a long standing tradition which it practices every year in keeping with this ethos.

This practice is in keeping with the Respondent’s Christian ethos.

I am satisfied that the CTI has a Christian ethos and the teaching of religious education is a fundamental component of the curriculum in the school.

The Christian ethos of the school is clearly outlined in the CTI’s Religious Education Policy.”

The Central Technical Institute in Tipperary is described on the Department of Education’s website as multi-denominational but regardless their specific religious ethos is part of how they operate on the ground.

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 & Training Boards schools that are regarded as interdenominational or multi-denominational: ²²

“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,” “non-denominational” 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.”

Questions:

(a) Will the State clearly define the terms, denominational, multi-denominational, interdenominational, non denominational or other, and commit to legally defining those terms, as per the Recommendation of the Irish Human Rights & Equality Commission in their Report “Religion & Education; A human Rights Perspective”?

(b) Will the State establish public non-denominational schools at primary and second level?

2. Access to Schools

In Ireland we do not have publicly funded secular schools available to every child. This creates a situation where schools with a religious ethos are the only available option for many atheist and minority faith families.

New Education (Admissions to Schools) Act 1998 ²³ 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 the UN CRC Committee has sought change for some time. It only applies to Primary schools and not second level schools.

However schools can still legally refuse access to a child if the child challenges their religious ethos. The Act states that: ²⁴

“11. The Equal Status Act 2000 is amended

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

(ca) 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,”

In the debate on this Section of the Act the then Minister for Education, Richard Bruton stated: ²⁵

“This is a very high bar, and to my knowledge it has never been used. It would only be possible to invoke it if it was proven that an individual student was hostile to the ethos of a particular school.”

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.

Question:

Will the State ensure that every child has the right to access a local publicly funded school without religious discrimination?

3. Influence of Religious Ethos on Minorities

Section 15 2 (b) of the Education Act 1998 obliges Boards of Management of Schools to uphold the Characteristic Spirit (ethos) of the Patron of the school. The terms “Characteristic Spirit” or “ethos” are not defined in the Education Act 1998 or in equality legislation. There is no legislative clarity regarding to what degree a “Characteristic Spirit” or ethos can influence minorities who have no choice but to attend their nearest publicly funded school.

The Supreme Court has recognised that a religious ethos can influence children “to some degree” but that a school is not obliged to change its general atmosphere to accommodate a child from another religion. (Campaign to Separate Church and State v Minister for Education 1996).

The Supreme Court stated that: ²⁶

“The Constitution therefore distinguishes between “religious education” and “religious instruction” — the former being the more wider term. A child who attends a school run by a religious denomination other than its 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 “ethos” of the school. A religious denomination is not obliged to change its general atmosphere of its school merely to accommodate a child of a different religious persuasion who wishes to attend that school.”

The State has no guidelines on what influencing “to some degree” means. The result of this lack of legal clarity has meant that the right to freedom of conscience of minorities takes a back seat to the mission of schools as set out in their religious ethos. Most parents have no choice where they sent their children to school, it is a catholic school or no school at all.

In the vast majority of schools religion is integrated into the state curriculum and the daily life of the school. Schools are not obliged to inform parents where they integrate religion into the curriculum or the daily life of the school.

The State curriculum recognises that the spiritual dimension of life is expressed through all learning experiences and the inclusion of religious education as one of the areas of the curriculum. The spiritual dimension of life is based on a “transcendent element within human experience.”²⁷

The Primary school Curriculum does not recognise that many families in Ireland see themselves as atheists and are not searching for a transcendent element within human experience. One of the main aims of the state curriculum is to enable children to develop spiritual, moral and religious values. Moral education is always taught through religious education.

The Primary School Curriculum states that “Religious education specifically enables the child to develop spiritual and moral values and to come to a knowledge of God.”²⁸ The introduction to the State curriculum does not even recognise atheists, secularists, humanists and the non religious in general.

The Department of Education does not interfere in ethos at all. The State leaves it up to each Patron body to implement its ethos according to its own nature and mission which means that Patron bodies define freedom of religion and belief and respect for minority parents and children according to their own mission.

In 2014 the UN Human Rights Committee 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?”²⁹

Section 15 2(e) of the Education Act 1998 requires all Boards of Management to respect and promote respect for the diversity of values, beliefs and the ways of life in a democratic society. Again there are no state guidelines on what exactly “respecting” beliefs means, each Patron body decides for themselves what “respect” means according to their nature and mission.

There are no official State Guidelines on how schools and teachers should balance these rights and obligations.

However, Section 37 of the Employment Equality Act permits schools to give more favourable treatment on the religion ground to employees where it is reasonable to do so in order to maintain their religious ethos. A school can take action which is reasonably necessary to prevent an employee or a prospective employee from undermining the religious ethos of the institution. Again ethos is not defined in the Employment Equality Act and parents have no way of challenging it.

Section 37 has ensured that teachers uphold the ethos of the Patron over the rights of minorities and Section 15 - 2 (b) of the Education Act 1998 has ensured that Boards of Management of schools develop policies and practices that comply with the ethos of the Patron and their understanding of freedom of religion and belief and the rights of parents and their children.

The legal provisions in the Education Act 1998 are not sufficiently precise and were never meant to oblige Patron bodies and schools to interpret rights in accordance with the Convention. This has resulted in the law not providing safeguards against publicly funded private bodies whose nature and mission is interpreted according to their own values.

The point is that these Constitutional and Human rights are theoretically recognised by the State party but there is no practical application given to them. Successive governments have been reluctant to tackle this issue and that is why various UN bodies and COE bodies continuously criticise our education system as failing to meet human rights standards.

Parents and children have no effective remedy to challenge how a school implements its ethos. Parents cannot challenge a religious ethos through the Workplace Relations Commission or the Ombudsman for Children. The Ombudsman for Children's office will not examine parents complaints regarding the lack of alternative subjects if they opt out their child nor can it take complaints regarding the State curriculum. Parents cannot challenge what they see as discrimination on race and religion in the state curriculum. There is no effective complaints mechanism for parents and children to challenge the interpretation of ethos by schools that interferes with their rights.

Under Section 42 of the Irish Human Rights & Equality Commission Act ³⁰ public bodies must eliminate discrimination and protect human rights. Education & Training Board schools come under this category. Again there is no mechanism for parents and children to take a complaint that a particular ETB school is not complying with their legal obligation under Article 42 of the IHREC Act. In fact the umbrella body for the ETB the ETBI lobbied the Minister for Education to ensure that he removed the policy to offer students that opted out of religion another subject which was part of the last Concluding observations of the Committee.

Questions:

Given that in practice most atheist, secular, and minority faith families have no choice other than to send their children to a local school with a religious ethos:

(a) Does the State believe or not that it is required to ensure a neutral studying environment in publicly funded schools, outside the confines of religious instruction classes that can be opted out from or other classes that can be opted out from on the grounds of conscience?

(b) Will the State amend Section 15 - 2-(b) of the Education Act 1998 to ensure all children have access to a neutral studying environment, outside the confines of the above classes?

(c) Will the State Party provide guidelines to schools regarding "Characteristic spirit" or ethos to ensure that the rights of minorities to freedom of conscience and respect for their convictions is guaranteed?

(d) Will the State amend the aims of the State curriculum to ensure that it recognises the rights of atheist, humanists and secularists who do not believe it is the duty of the State to promote the spiritual and moral education of their children through religion?

References and Footnotes

- ¹ <https://web.archive.org/web/20110721123125/http://www.constitution.ie/reports/crg.pdf>
- ² <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsiQql8gX5Zxh0cQqSRzx6ZfAICbDzm5DUreYo1tIYOkZcPE%2BQh98dgWJaknr%2BF7jm9%2BkvHmi4ctJTvJ1CPTUqN7%2F4K3R8rTOQIXpWvhMbx0f>
- ³ <https://www.oireachtas.ie/en/debates/debate/dail/2018-05-30/33/>
- ⁴ https://www.curriculumonline.ie/getmedia/c4a88a62-7818-4bb2-bb18-4c4ad37bc255/PSEC_Introduction-to-Primary-Curriculum_Eng.pdf (page 58)
- ⁵ <http://www.irishstatutebook.ie/eli/1998/act/51/section/15/enacted/en/html#sec15>
- ⁶ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fVAT%2f2&Lang=en
- ⁷ <http://www.baillii.org/ie/cases/IESC/1999/5.html> “34. The Constitution also introduced (in Article 40.I) a specific guarantee of equality before the law to all citizens as human persons. The effect of these various guarantees is that the State acknowledges that the homage of public worship is due to Almighty God. It promises to hold his name in reverence and to respect and honour religion. At the same time it guarantees freedom of conscience, the free profession and practice of religion and equality before the law to all citizens, be they Roman Catholics, Protestants, Jews, Muslims, agnostics or atheists. But Article 44.I goes further and places the duty on the State to respect and honour religion as such. At the same time the State is not placed in the position of an arbiter of religious truth. Its only function is to protect public order and morality. (Corway v Independent Newspapers 1999)”
- ⁸ <https://www.teachdontpreach.ie/2019/10/campaign-to-separate-church-and-state-v-minister-for-education-1995/> “Article 42 Education — This Article (entitled Education) firstly contains an acknowledgement that the primary and natural educator of the child is the Family and a guarantee that the State will respect the “inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual physical and social education, of their children.” In making this acknowledgement and in recognising that the desire of parents to pass on their religious beliefs to their children is a right which is entitled to be legally protected the Irish Constitution is by no means unique. The state — parties to the U.N. Universal Declaration of Human Rights recognise (Article 10) that the Family (which is declared to be the natural and fundamental group unit of society) should be protected “particularly while it is responsible for the care and education of dependant children” and the State — parties undertake (Article 13) to respect the liberty of parents “to ensure the religious and moral education of their children is in accordance with their own convictions.” The parties to the First protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms agreed that States when assuming functions in relation to education “shall respect the rights of parents to ensure such education and teaching in accordance with their own religious and philosophical convictions (Article 2). The Irish Constitution has developed the significance of these parental Rights and in addition has imposed obligations on the State in relation to them.”
- ⁹ <https://circulars.gov.ie/pdf/circular/education/2018/62.pdf>
- ¹⁰ https://www.education.ie/en/Circulars-and-Forms/Active-Circulars/cl0062_2018.pdf
- ¹¹ <https://ncca.ie/en/resources/report-on-the-review-of-relationships-and-sexuality-education-in-primary-and-post-primary-school>
- ¹² <http://www.irishstatutebook.ie/eli/1998/act/21/section/37/enacted/en/html>
- ¹³ <https://www.religiouseducation.ie/wp-content/uploads/2016/05/RSE-Guidelines-Rofl-for-web.pdf>

¹⁴ “I note the Respondent, by maintaining it is appropriate to award a benefit to children to attend a religious ceremony, does not appreciate this action had an adverse effect on students who are not of a Catholic faith. As such it is in breach of its obligations under section 7 of the Act. Whilst it is not required to change the ethos of the school, nor is it in my power under the Acts to make such an order, it must operate in manner that it does not discriminate students who are of a different religious belief, or of no religion, in relation to the access of any benefit provided and in any term or condition of participation in the establishment by a student.”

¹⁵ https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_education_and_skills/reports/2019/2019-01-29_report-on-relationships-and-sexuality-education_en.pdf

¹⁶ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2fCO%2f6-7&Lang=en

¹⁷ <https://www.education.ie/en/Publications/Statistics/Data-on-Individual-Schools/primary/>

¹⁸ <https://www.education.ie/en/Publications/Statistics/Data-on-Individual-Schools/post-primary/>

¹⁹ <http://www.irishstatutebook.ie/eli/1998/act/51/section/8/enacted/en/html>

²⁰ <https://onlinelibrary.wiley.com/doi/abs/10.1002/berj.3490?af=R>

²¹ <https://www.workplacelrelations.ie/en/cases/2017/july/dec-e2017-057.html>

²² <https://www.ihrec.ie/app/uploads/download/pdf/religionandeducationpdf.pdf>

²³ <http://www.irishstatutebook.ie/eli/2018/act/14/enacted/en/html>

²⁴ <http://www.irishstatutebook.ie/eli/2018/act/14/section/11/enacted/en/html#sec11>

²⁵ <https://www.oireachtas.ie/en/debates/debate/seanad/2018-06-20/8/>

²⁶ <https://www.teachdontpreach.ie/wordpress/wp-content/uploads/2019/10/CampaigncaseSupreme-Court-JudgementBarrington-1-1.pdf>

²⁷ https://www.curriculumonline.ie/getmedia/c4a88a62-7818-4bb2-bb18-4c4ad37bc255/PSEC_Introduction-to-Primary-Curriculum_Eng.pdf “The curriculum takes cognisance of the affective, aesthetic, spiritual, moral and religious dimensions of the child’s experience and development. Foremost 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.”

²⁸ https://www.curriculumonline.ie/getmedia/c4a88a62-7818-4bb2-bb18-4c4ad37bc255/PSEC_Introduction-to-Primary-Curriculum_Eng.pdf page 58

²⁹ <https://www.youtube.com/watch?v=-Q4UjpG9mow>

³⁰ <http://www.irishstatutebook.ie/eli/2014/act/25/section/42/enacted/en/html>