

How State Schools Break The Rules



The Department of Education, ETBs, and NCCA
are Breaching Constitutional and Human Rights
and the IHREC Act in Religious Education

Atheist Ireland Briefing Document

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Recommendations

Immediate Recommendations

1. The Minister should issue a Circular Letter informing all schools that

- Under the Constitution and the Education Act and Human Rights law,
- Parents have the right to opt their children out of any Religion classes,
- Whether they are Patron's programme Religion classes, or NCCA curriculum Religion classes,
- And whether they are described as Religious Instruction or Religious Education or any other name,
- And that schools should actively inform parents and students about this.

2. The Minister should issue a Circular Letter informing all ETB schools that

- The original provisions of Circular Letter 0013/2018 will apply to the NCCA curriculum religion classes,
- In the same way as they apply to Religion classes that are based on the requirements of one religion,
- That is, that ETB schools must ask parents before the timetable is designed whether they want their children to attend any Religion classes,
- And if they choose not to attend they will be given an alternative timetabled curriculum subject.

Subsequent Recommendations

3. The Minister should ensure that the State Curriculum offers

- An optional subject teaching About Religions, Beliefs, and Ethics,
- That is designed and delivered in an objective, critical, and pluralistic manner, as should all subjects be,
- And that vindicates the Constitutional and Human Rights of all parents, students, and teachers, of all religions and beliefs.

4. The Minister should end all religious discrimination in the education system

- As recommended by nine sets of United Nations and Council of Europe Human Rights Recommendations,
- And encompassing the four areas covered by the Atheist Ireland Schools Equality PACT: Patronage, Access, Curriculum, and Teaching.

Relevant Law

Irish Constitution, Article 44.2.4

- *Reachtaíocht lena gcuirtear cúnamh Stáit ar fáil do scoileanna ní cead idirdhealú a dhéanamh inti idir scoileanna atá faoi bhainistí aicmí creidimh seachas a chéile ná í do dhéanamh dochair do cheart aon linbh chun scoil a gheibheann airgead poiblí a fhreastal gan teagasc creidimh sa scoil sin a fhreastal.*
- *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.*

Note: The Irish language version takes legal precedence. ‘Teagasc creidimh’ means teaching religion, not teaching in accordance with the requirements of one religion. So you have the right to not attend religion classes of any kind.

Education Act 1998, Section 30.2(e)

- *The Minister (e) shall not require any student 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.*

Note: Throughout the Education Act, the word ‘instruction’ is always used to mean simply the teaching of any subject on the curriculum. Again, you have the right to not attend religion classes of any kind.

Equal Status Act 2000, Section 7.2(b)

- *An educational establishment shall not discriminate in relation to (b) the access of any student to any course, facility or benefit provided by the establishment.*

European Convention, Article 2 of Protocol 1

- *No person shall be denied a right to an education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.*

1. Executive Summary

1.1 The State is responsible for protecting Human Rights in schools. This is the case regardless of whether the schools are run directly by the State or indirectly through private bodies. The European Court made this point in the Louise O’Keeffe case. The European Court also says in its Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights, the Right to Education, updated in December 2018, that ¹

“4. It cannot, however, be inferred that the State only has obligations to refrain from interference and no positive obligation to ensure respect for this right, as protected by Article 2 of Protocol No. 1. The provision certainly concerns a right with a certain substance and obligations arising from it. States cannot therefore deny the right to education for the educational institutions they have chosen to set up or authorise.”

“14. Furthermore, the State is responsible for public but also private schools (Kjeldsen, Busk Madsen and Pedersen v. Denmark). In addition, the State cannot delegate to private institutions or individuals its obligations to secure the right to education for all. Article 2 of Protocol No. 1 guarantees the right to open and run a private school, but the States do not have a positive obligation to subsidise a particular form of teaching (Verein Gemeinsam Lernen v. Austria (dec.)).... Lastly, the State has a positive obligation to protect pupils in both State and private schools from ill-treatment (O’Keeffe v. Ireland [GC], §§ 144-152).”

1.2 Most schools in Ireland are run by private religious Patron bodies. They breach fundamental Constitutional and Human Rights by discriminating on the ground of religion. Tackling this discrimination is complicated by the legal and political relationship between the State, which funds these schools, and the private religious Patron bodies that run them. Atheist Ireland will continue to challenge those breaches of the rights of parents, students, and teachers. We are optimistic that we will succeed.

1.3 Some schools in Ireland are run by State bodies called ETBs. These Education and Training Boards also breach fundamental Constitutional and Human Rights by discriminating on the ground of religion. Tackling religious discrimination in ETB schools should be more straightforward legally, because the ETBs are public bodies, and they have a Public Sector Duty to eliminate discrimination and protect the Human Rights of minorities, including the right to freedom of religion and belief. It should also be more straightforward politically, because the State established the ETBs as public bodies to manage the schools.

1.4 ETB schools break the rules at both primary and second level. At primary level the Community National Schools were set up as a State alternative to denominational schools. At second level ETB schools and colleges are seen as the alternative to denominational schools. But the Goodness Me Goodness You course in primary level Community National Schools, and the NCCA Religious Education course in second level ETB schools, are not objective, critical and pluralistic. Learning outcomes and objectives that require students to respect beliefs create a conflict between freedom of religion and freedom of expression, where none exists. The right to opt out from these courses is not respected.

1.5 The Department of Education and NCCA facilitate this behaviour. Both bodies remain heavily influenced by a culture of giving privilege to religion, and in particular to the Catholic Church, in our State education system. At the moment, some people within the Department of Education are trying to change this culture, particularly in ETB schools. Other people are trying to resist that change, both within the Department of Education and within the ETBs, the NCCA, the Catholic Church, the Religion Teachers' Association, and the Teachers Union of Ireland.

1.6 Change is starting, and the timing is crucial to shape that change. After years of pressure, the Government is finally realising that it has to take action on religious discrimination in the education system. Some people are pushing for a Human Rights based outcome, and others are resisting by defending nod-and-wink outcomes that will hide and reinforce religious discrimination that breaches Human Rights. So action taken now can help to shape the coming change, which will be easier than trying to fix that change after it has happened.

1.7 IHREC has an important role in shaping the coming change. The Irish Human Rights and Equality Commission recently published its Strategy Statement 2019 –2021. Strategic priority number 2 is to influence legislation, policy and practice, with a particular focus on the Public Sector Equality and Human Rights Duty under Section 42 of the Act. One of IHREC's four resource priorities is socio-economic rights, which includes the right to education. The arguments in this briefing document also reflects the Recommendations in the IHREC Report Religion & Education: A Human Rights Perspective.

Note on the Numbering of this Executive Summary

The rest of this executive summary is numbered in accordance with the sections of the main body of the document. So, for further details on any aspect of the summary, go to the relevant section number in the body of the document.

2 Constitutional and Human Rights Principles and Cases

2.1 Human Rights Protect People, Not Beliefs. The ETBs are undermining Human Rights by creating a conflict between freedom of religion and freedom of expression. This is reflected in quotes from Ahmed Shaheed, the current UN Special Rapporteur on Freedom of Religions and Belief, and from his predecessor Heiner Bielefeld, as well as from the Venice Commission Guidelines for Review of legislation pertaining to Religion or Belief, and the Council of Europe Factsheet on Freedom of expression and respect for religious beliefs: Striking the right balance.

2.2 The Right to Respect. The State is obliged to respect the right of parents to have their children educated in accordance with their convictions be they religious or philosophical. The right to education under the European Convention does not permit a distinction to be drawn between Religious Instruction and other subjects. The General Principles of the European Court which includes the absolute 'right to respect' are not reflected in the ETB schools at primary or second level. The State cannot absolve itself of this responsibility, as is clear from the Louise O'Keeffe case. In addition the right to privacy is simply ignored. If parents attempt to opt out their children from religion they are questioned by the school and are put in a position whereby they must reveal intimate details about their personal life.

Teacher training colleges do not train student teachers regarding the right to privacy of parents and their children.

2.3 The United Nations on the Right to Respect. The UN, in its document International Standards (13G) on the right of parents to ensure the religious and Moral Education of their children, has Stated that Religious Instruction in the public school system must always go hand in hand with specific safeguards on behalf of members of religious or belief minorities. The Human Rights Committee has also emphasised that instruction in a religious context should respect the convictions of parents and guardians who do not believe in any religion.

A minimum requirement would be that members of minorities have the possibility of “opting out” of a Religious Instruction that goes against their own convictions. Moreover, the possibility of opting out should not be linked to onerous bureaucratic procedures and must never carry with it de jure or de facto penalties. Finally, wherever possible, students not participating in Religious Instruction due to their different faith should have access to alternative courses provided by the school. The decision whether or not to opt out of Religious Instruction must be left to students or their parents or guardians who are the decisive rights holders in that respect.

2.4 The Right to Opt Out. At primary and second level in ETB schools the negative aspect of freedom of religion and belief is simply ignored. There is a right under the Constitution (Article 44.2.4) to opt out of “teagasc creidimh” which translates to religious teaching. This means any teaching of religion, not just faith formation or teaching in accordance with one religion. That right is reflected in the Education Act 1998, (S.30-2(e)). The Education Act refers to all the various subjects under the curriculum as ‘instruction’. The Venice Commission has Guidelines for legislative reviews of laws affecting religion or belief. The European Court has said that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (*Airey v Ireland* 1979, p.24).

The Department of Education is not being consistent and clear in its policies and responses in relating to the NCCA religion course and the right to opt out. They will not clearly state that there is a Constitutional and Human Right to opt out of the NCCA religion course regardless of what they claim it is. Stating that withdrawal does not arise is not the same thing as saying that parents have a Constitutional right to withdraw their children.

2.5 The Castletroy College Case on Opting Out. In a significant case in 2015, Castletroy Community College (ETB school) refused to permit a student to opt out of the NCCA Religious Education class. The Board of Management eventually relented after much media attention. Since this case, and the recent Circular Letters issued by the Department of Education in 2018, the situation in relation to the right to opt out from the NCCA Religious Education course has got worse.

2.6 Supreme Court Case of 1998 re Chaplains. Dr Conor O’Mahony from University College Cork has addressed the Constitutional and Human Rights issues raised by the Castletroy case. He covers both European Court cases and the Constitutional Case of 1998 regarding Chaplains. He concludes that the right to opt-out applies to the formal timetabled period of “Religious Instruction”, and would seem to capture whatever form that instruction might take. Thus, while the distinction between “Religious Instruction” and the overall school ethos or “Religious Education” is often pointed to as undermining the right to opt-

out in a primary school context, it might ironically serve to strengthen it in a secondary school setting.

He concludes that Article 44.2.4° appears stronger than the ECHR in giving a seemingly absolute right to opt-out of Religious Instruction, regardless of the character of that instruction. Moreover, it specifically uses the phrase “without attending Religious Instruction”. The use of the word “attending” (as opposed to “participating in”, or something similar) could reasonably form the basis of an argument that anything short of leaving the room fails to vindicate the right to opt-out.

2.7 European Court Principles. The IHREC Report Religion & Education: A Human Rights Perspective sets out the General Principles of the European Court in relation to the rights of parents and their children. The IHREC Report goes on to outline the Human Rights of parents and their children under the Convention on the Rights of the Child, Convention on the Elimination of all Forms of Racial Discrimination and the International Covenant on Civil and Political Rights.

2.8 European Court Cases. The European Court in *Grzelak v Poland* 2010 reiterates that freedom to manifest one's religious beliefs comprises also a negative aspect, namely the right of individuals not to be required to reveal their faith or religious beliefs and not to be compelled to assume a stance from which it may be inferred whether or not they have such beliefs. The European Court in *Mansur Yalcin & Others v Turkey* 2015 reiterates the positive obligation of the State, in so far as possible, to avoid a situation where pupils face a conflict between the Religious Instruction given by the school and the religious or philosophical convictions of their parents.

2.9 European Parliament. The European Parliament Directorate-General for Internal Policies has made a Recommendation in their Report on Religious practice and observance in the EU member States (2013), it says that the efficacy of both opt-out and opt-in systems requires schools to avoid exerting any direct or indirect pressure on pupils, to inform them of the possibilities they have, and to protect them from peer pressure. At the same time, public schools should do more to provide for objective, critical and pluralistic Religious Instruction. The Equal Status Act forbids discrimination in access to any course, S7-2(b).

2.10 UN Committee on the Rights of the Child. The UN Committee on the Rights of the Child has expressed concern that children are not ensured the right to effectively opt out of religious classes and access appropriate alternatives to such classes. The Committee recommends that the State party ensure accessible options for children to opt out of religious classes and access appropriate alternatives to such classes, in accordance with the needs of children of minority faith or non-faith backgrounds.

2.11 UN Human Rights Committee. The UN Human Rights Committee has expressed concern about the slow progress in increasing access to secular education through the establishment of non-denominational schools, divestment of the Patronage of schools and the phasing out of integrated religious curricula. It also asked the State about the requirement 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 never replied to this question.

2.12 Forum on Patronage and Pluralism. The Forum recognised that the opt out in Irish schools was not suitable on a Human Rights basis because schools did not provide another subject and children were left sitting in the class. They also stated that children had a right to receive education in ERB and ethics and the State had a responsibility to see that it was provided.

2.13 IHREC Grant to ETBI. IHREC has given a Grant to Education and Training Boards Ireland (a private organisation) to help promote the public sector duty amongst the ETBs. Despite this grant the ETBs have continued to ignore Constitutional and Human Rights and are failing to protect the Human Rights of those whom it provides services to.

3. ETB Schools at Primary Level

3.1 Community National Schools. These schools at primary level were set up in 2008. They are supposed to be an alternative to denominational schools. The ETBs have been in discussions with the Catholic Church in relation to the GMGY course and divestment. The Characteristic Spirit of the CNS is defined in their Ethos Statement. This is not an inclusive Ethos Statement that includes non religious convictions. Learning outcomes that require children to respect and demonstrate respect for beliefs are not based on Human Rights, they undermine them. They create a conflict between freedom of religion and belief and freedom of expression.

3.2 Goodness Me Goodness You Course. This course in Community National Schools was developed by the National Council for Curriculum and Assessment (a public body under S.42 of the IHREC Act). It is the Patron's (the ETBs) course. The ETBs, the NCCA and the Department of Education all claim that the GMGY course is open to all, promotes pluralism, diversity, respects all belief and is inclusive. But in reality it is multi-denominational Religious Education that is not objective, critical and pluralistic. It also puts parents in a position that they have to reveal intimate details of their personal beliefs, which is another breach of Human Rights.

3.3 Religious and Cultural Celebrations. The Guidelines for Religious and Cultural Celebrations in the Community National Schools state that: "The multi-belief nature of the CNS implies that significant belief occasions should be celebrated." The Toledo Guiding Principles states the very opposite to the CNS policy on celebrating belief occasions. They state that teachers "need to be careful to make the distinction between teaching about the holiday, and actually celebrating the holiday, or using it as an opportunity to proselytise or otherwise impose their personal beliefs."

3.4 GMGY Learning Outcomes. These learning outcomes are not objective, critical and pluralistic. They do not reflect the General principles of the European Court in relation to the right of all children to access education in an objective, critical and pluralistic manner. They require children to respect "codes of conduct, celebrations, beliefs, artefacts, special places, rites and ceremonies, special books and stories, special journeys, special people and symbols." They indicate "something more and other than the mere transmission of knowledge" (Folgero v Norway). They create a conflict of allegiance between children and those parents who seek secular education for their children based on Human Rights.

3.5 The Toledo Principles on Learning Outcomes. As referred to above in paragraph 3.3, the Toledo Principles don't endorse learning outcomes such as respecting codes of conduct, celebrations, beliefs, artefacts, special places, rites and ceremonies, special books and stories, special journeys, special people and symbols. ETB/CNS claim that they teach children about equality and Human Rights. Unfortunately it seems that they are making those Human Rights up as they go along.

4. ETB schools at Second Level

4.1 Some ETB Schools have a Christian Ethos. In a decision by the WRC in December 2017 it was found that an ETB non designated Community College had a Christian ethos. In reality many ETBs are not an alternative to denominational schools in Ireland but reflect a religious ethos. Religious Instruction, worship and formation are integrated throughout the school day.

4.2 Religious Education Course at Second Level. At second level the main aims of the NCCA Religious Education course are not objective, critical and pluralistic and undermine Human Rights. One of the main aims of the Religious Education course at second level is to contribute to the moral and spiritual development of all students through Religious Education. It only acknowledges the nonreligious interpretation of life. The Constitution does not say that Moral Education has to be delivered through Religious Education. Indeed, it says that students must receive a minimum level of Moral Education, and that students can opt out from Religious Education.

ETB schools do not provide another subject for students whose parents believe that those aims do not respect their philosophical convictions, and that the course would put their children in a position where they would face a conflict of allegiance between the school and their parents' convictions. Students are coerced into taking this course. ETB schools do not inform parents that they can opt out their children. If parents manage to opt out their children they are left sitting in the class and are not provided with another subject.

4.3 Department of Education Circular Letter 0013/2018. In 2018 the Department of Education issued two Circular Letters to ETB Second level schools to address the practicalities of students opting out of Religious Instruction based on Article 44.2.4 of the Constitution and Section 30 of the Education Act. The first Circular Letter (0013/2018) outlined new procedures to enable students who chose not to attend Religious Instruction to be given an alternative subject, something that Atheist Ireland had been lobbying for.

4.4 Department of Education Circular Letter 0062/2018. After lobbying from the Catholic Church, the ETBs, the Teachers Union of Ireland, the Religion Teachers' Association, and the NCCA, the Department issued a second Circular Letter (0062/2018) that reversed an important part of the first Circular. This Circular stated that it is "no longer necessary" for schools to consult parents or offer their children another subject if they opt out them of the NCCA Religious Education course. Which means that schools need not consult parents, who seek secular education for their children, about opting their children out of a course which seeks to develop their moral and spiritual education through religion.

4.5 The Circular Letters Have Caused Confusion. The Department has defended the existing NCCA Religious Education syllabus, and continues to defend the new 2019 NCCA Religious Education syllabus, on the basis that both are suitable if they are not mixed with

Patrons' programmes in line with one religious denomination. But this is not the case. Neither course meets Human Rights standards.

In the first Circular Letter, the Department acknowledged that some ETB schools (in our experience, the vast majority) combine Catholic faith formation with the NCCA Religious Education course. The second Circular Letter attempts to create a distinction between Religious Instruction (in accordance with one particular religion) and Religious Instruction (in accordance with the NCCA curriculum that is labelled Religious Education).

But there is no Constitutional or legal basis to make such a distinction. The NCCA curriculum does not cease to be Religious Instruction just because it is given the title of Religious Education. In legal terms, instruction is simply the word used for teaching any subject.

If you choose to exercise your Constitutional right to not be present at Religious Instruction (in accordance with the NCCA course) you should be treated the same as if you choose to exercise your right to not be present at Religious Instruction (in accordance with one religious denomination). The second circular letter does not contradict this analysis. It merely glides over it by predicting that, because of the content of the new NCCA Religious Education curriculum in 2019, the issue of withdrawing from the NCCA Religious Education Course will not arise.

It does point out that "schools have discretion to determine if they provide the subject at all or if it is to be mandatory or optional in any particular class group or year". The Department of Education accepts that schools can make the NCCA RE course mandatory. That is contrary to Article 44.2.4 of the Constitution and Section 30 of the Education Act. The Department of Education is actively undermining Constitutional and Human Rights.

4.6 Dail Questions to Minister for Education. In March 2019 the Minister for Education answered two Dail questions from Ruth Coppinger TD about whether students can opt out of the NCCA Religious Education syllabus. The Minister's answers simply added more confusion to the issue of opting out.

In the first answer, the Minister confined the answer to the NCCA Religious Education Syllabus at Leaving Certificate level. He simply did not address what happens at Junior Cycle. In the second answer, when asked specifically about Junior Cycle, he gave essentially the same reply.

Secondly, the Minister's answers say that, because it is an optional subject that students opt for, then the question of opting out on the grounds of conscience should not arise. But schools can and do make the course mandatory, and his phrase "should not arise" does not answer the question that was asked. The question was whether you can opt out, not whether or not it should arise that you want to opt out.

4.7 New Religious Education specification for 2019. The specification has since been published for the new NCCA Religious Education course being introduced in second level schools in September 2019. Like the existing NCCA syllabus, this new course does not meet Human Rights standards.

The new course continues to reflect the disrespect that the State has for non-religious parents and their children. It is not an Education about Religions, Beliefs and Ethics delivered in an objective, critical and pluralistic manner, but one that pursues an aim of indoctrination.

Parents who seek a secular education for their children could legitimately consider that this new course is liable to create a conflict of allegiance for their children between the school and their own values, as was found by the European Court in the case of *Mansur Yalcin & Others v Turkey* in 2015.

The NCCA's Religious Education Development Group is composed of representatives of mostly religious Patron bodies, teachers unions, and the Department of Education. The Title, Aim, and Rationale of the new course all treat religious beliefs differently to non-religious beliefs. A reference to "the Divine" is a late addition to the course specifications. It was not in the draft specification published in June of last year.

The new course has 31 learning outcomes, which apply to all students. Of the 31 learning outcomes in the course: 18 are related solely to religious world views; 12 are related to a combination of religious and non-religious world views; and only 1 is related solely to non-religious world views.

5. Other Related Issues

5.1 Impact of Circular Letters on Denominational Schools. These Circular Letters issued by the Department of Education also undermine the right of parents to opt their children out of religion classes in denominational schools. Denominational schools do not have two different religion classes; one the NCCA Religion course, and the other Catholic or Protestant Religious Education. That would simply not fit into the busy schedule for any school. What many of them are doing is misusing the Circular Letters to make religion classes mandatory by claiming that they are suitable for all religions and none.

5.2 Teacher Training at DCU / Mater Dei. Student Religious Education Teachers in DCU take specific modules to enable them to teach in Catholic and Protestant denominational schools at second level. The Incorporation Agreement between the Mater Dei Institute and DCU clearly states that the distinctive identity and values of teacher education in Roman Catholic and Church of Ireland are maintained on an ongoing basis. The Deeds of Trust for ETB Community Schools and the Model Agreement for designated Community Colleges as well as Circular Letter 79 give the relevant religious authority a veto over the hiring of religion teachers and chaplains in ETB schools.

5.3 The Right to Objective Sex Education. In January 2019 the Oireachtas Joint Committee on Education and Skills published a Report on Relationship and Sexuality Education. One of the Recommendations was that the Education Act 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. Some ETB schools and colleges deliver Sex Education according to their religious ethos which in most case reflects the teachings of the Catholic Church. The reason for this is that some ETB schools and colleges have a religious ethos. If ETB schools and colleges fulfilled their public sector duty under Section 42 of the IHREC Act, then all of their schools would deliver sex education in an objective manner.

2. Constitutional and Human Rights Principles and Cases

This section describes the Human Rights principles that the ETBs are legally obliged to protect. The ETBs and the NCCA have interpreted these general principles according to their own ideological position, and not based on the Constitution or Human Rights.

Teacher Training colleges also have a public sector duty. They fail to ensure that teachers are trained to eliminate discrimination and to protect the Human Rights of families who access the education system.

This section also includes Statements and Recommendations where the EU, the Venice Commission, the UN and the European Court have commented in relation to the Human Rights of parents and their children in the education system.

These Recommendations and case law reflect the Recommendations in the IHREC Report Religion & Education: A Human Rights Perspective.

2.1 Human Rights Protect People, Not Beliefs

The ETBs undermine Human Rights by creating a conflict between freedom of religion and freedom of expression.

In a recent Report to the UN Human Rights Council the UN Special Rapporteur on Freedom of Religion and Belief, Ahmed Shaheed stated that ²

“55. Freedom of religion or belief and freedom of expression are closely interrelated and mutually reinforcing rights when they are exercised in the legal framework established by international Human Rights law.

Both rights are fundamental to a democratic society and individual self-fulfilment and are foundational to the enjoyment of Human Rights. The Special Rapporteur asserts that the cases presented in the present report are illustrative of the fact that measures for addressing the challenges posed by expression involving religion or belief are open to abuse and can be counterproductive, oftentimes victimizing adherents of myriad religions and beliefs in their application.

International law compels States to pursue a restrained approach in addressing tensions between freedom of expression and freedom of religion or belief. Such an approach must rely on criteria for limitations which recognize the rights of all persons to the freedoms of expression and manifestation of religion or belief, regardless of the critical nature of the opinion, idea, doctrine or belief or whether that expression shocks, offends or disturbs others, so long as it does not cross the threshold of advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.”

“16. According to these opponents of widening the scope of limitations, attempts to shield religious dogma from criticism do not represent a clash between Human Rights,

but, rather, are indicative of the misapplication of Human Rights principles. Moreover, freedom of religion or belief does not bestow a right on believers to have their religion or belief itself protected from all adverse comment, but primarily confers on them a right to act peacefully in accordance with their beliefs (A/HRC/2/3, para. 37).

Manifestations of religion or belief, they note, must comply with the duty to respect the fundamental rights and freedoms of others and may be subject to limitations on those grounds. In that regard, States have an obligation to prohibit any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence (Covenant, art. 20 (2)).

Proponents of restrictions on the freedom of expression also argue that limits pose an inherent threat to the exercise of the right to freedom of religion or belief for all, since such restrictions regularly target minority religions or beliefs whose very existence may challenge the convictions of majority religious communities. This includes the beliefs of atheists and humanists that, by their very definition, constitute blasphemy in the eyes of various faith groups”.

The former UN Special Rapporteur on Freedom of Religions and Belief, Heiner Bielefeld stated ³

“Rights holders are human beings who may exercise these freedoms as individuals and in community with others. While this may sound like a truism in the context of Human Rights in general, the right to freedom of religion or belief has sometimes been misperceived as protecting religions or belief systems in themselves.

This misperception is the source of much confusion, as it obfuscates the nature of freedom of religion or belief as an empowering right. Ignoring that may lead to the wrong assumption of an antagonism between freedom of religion or belief and freedom of expression.

Thus, it may warrant highlighting that freedom of religion or belief protects believers rather than religions or beliefs.”

In his Report to the UN Human Rights Council in 2017 Ahmed Shaheed the UN Special Rapporteur on Freedom of Religion and Belief stated that ⁴

23. For the purposes of the present report, however, the Special Rapporteur wishes to highlight some of the most common misconceptions that exist regarding his mandate and also what the right to freedom of religion or belief encompasses (and does not encompass).

24. Individuals, not religions, convictions, belief systems or truth claims, are the right-holders of the right to freedom of religion or belief. More specifically, this right is not designed to protect beliefs as such (religious or otherwise), but rather believers and their freedom to possess and express their beliefs either individually or in community

with others in order to shape their lives in conformity with their own convictions (A/71/269, para.11).

From the Venice Commission – Guidelines for Review of legislation pertaining to Religion or Belief ⁵

77. It is also worth recalling that an insult to a principle or a dogma, or to a representative of a religion, does not necessarily amount to an insult to an individual who believes in that religion. The European Court of Human Rights has made clear that an attack on a representative of a church does not automatically discredit and disparage a sector of the population on account of their faith in the relevant religion³⁸ and that criticism of a doctrine does not necessarily contain attacks on religious beliefs as such. The difference between group libel and individual libel should be carefully taken into consideration.

The Council of Europe in their Factsheet on Freedom of expression and respect for religious beliefs: Striking the right balance stated that ⁶

“According to the European Court of Human Rights it must be possible, in a democratic society, to criticise religious ideas, even if such criticism may be perceived by some as hurtful to their religious feelings. Freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights covers not only information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that shock, offend or disturb. Religious groups must tolerate critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to incitement to religious hatred and does not constitute incitement to disturb the public peace or to discriminate against adherents of a particular religion.”

The former UN Special Rapporteur Heiner Bielefeld stated that ⁷

“the amalgamation of freedom of religion or belief with political projects of ‘interreligious harmony’ may marginalise the Human Rights of dissenters, critics or other people who might disturb a superficial harmony; and the specific features of non-discrimination can get lost out of sight when mixed with vague concepts of general humanitarian values”.

2.2 The Right to Respect

The State is obliged to respect the right of parents to have their children educated in accordance with their convictions be they religious or philosophical. The right to education under the European Convention does not permit a distinction to be drawn between Religious Instruction and other subjects.

The definition of this **right to Respect** under the European Convention is outlined in IHREC's Report Religion and Education; A Human Rights Perspective, (para. 254 page 81,82):

“The European Court in considering a policy of gradual removal of corporal punishment put forward by the UK Government, also considered what was meant by “respect” in the Article and found that it created an absolute right rather than one that had to be balanced against the rights of others or which could be gradually achieved”.

The Report goes on to elaborate:

“Whilst the adoption of the policy referred to clearly foreshadows a move in the direction of the position taken by the applicants, it does not amount to ‘respect’ for their convictions.

As is confirmed by the fact that, in the course of the drafting of Article 2 (P1-2), the words ‘have regard to’ were replaced by the word ‘respect’ (see documents CDH (67) 2, p. 163) the latter word means more than ‘acknowledge or ‘taken into account’; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State (see mutatis mutandis, the Marckx judgment of 13 June 1979, series A no. 31, p. 15, par. 31).

This being so, the duty to respect parental convictions in this sphere cannot be overridden by the alleged necessity of striking a balance between the conflicting views involved, nor is the Government’s policy to move gradually towards the abolition of corporal punishment in itself sufficient to comply with this duty.”

The General Principles of the European Court which includes the absolute ‘right to respect’ are not reflected in the ETB schools at primary or second level. The ETBs claim to ‘respect’ all parents’ convictions but unfortunately that claim is based on their interpretation of what ‘respect’ means and not on the principles of the European Court, the UN or the EU.

The Department of Education, the ETBs and the NCCA have refused to recognise that parents and children have a legal right to access education that is objective, critical and pluralistic, and that the basis of these Human Rights principles are reflected in case law at the European Court. They cannot absolve themselves of this responsibility. ETB schools are presented as the alternative to denominational schools.

*Case of Louise O’Keeffe v Ireland – 28th January 2014⁸
Application no. 35810/09)*

“151. Finally, the Government appeared to suggest that the State was released from its Convention obligations since the applicant chose to go to Dunderrow National School. However, the Court considers that the applicant had no “realistic and acceptable alternative” other than attendance, along with the vast majority of children of primary school-going age, at her local National School (Campbell and Cosans v. the United Kingdom, 25 February 1982, § 8, Series A no. 48).”

Article 42.1 of the Constitution also guarantees this inalienable right to respect and is also referred to in the same Report, on page 73.

In addition the right to privacy is simply ignored. If parents attempt to opt out their children from religion they are questioned by the school and are put in a position whereby they must reveal intimate details about their personal life. Teacher training colleges do not train student teachers regarding the right to privacy of parents and their children.

2.3 The United Nations on the Right to Respect

The UN, in its document International Standards 13G on the right of parents to ensure the religious and Moral Education of their children, has stated that ⁹

49. In many countries Religious Instruction in the above defined sense constitutes an integral part of public school teaching and maybe even of the mandatory school curriculum. Such practice may reflect the interests and demands of large parts of the population. Many parents may wish that their children be familiarised with the basic doctrines and rules of their own religion or belief and that the school take an active role in that endeavour. In the understanding of many parents, the development of knowledge and social skills of their children through school education would be incomplete unless it includes a sense of religious awareness and familiarity with their own religion or belief. Hence the provision of Religious Instruction in the public school system may be based on the explicit or implicit wishes of considerable currents within the country's population.

50. However, given the ambivalence of the school situation – including possible situations of particular vulnerability for some persons or groups – Religious Instruction in the public school system must always go hand in hand with specific safeguards on behalf of members of religious or belief minorities. The Human Rights Committee has also emphasised that instruction in a religious context should “respect the convictions of parents and guardians who do not believe in any religion” [See Human Rights Committee, communications No. 40/1978, Hartikainen v. Finland, Views adopted on 9 April 1981, para. 10.4, and Leirvåg v. Norway, para. 14.2].

A minimum requirement would be that members of minorities have the possibility of “opting out” of a Religious Instruction that goes against their own convictions. Such exemptions should also be available for persons adhering to the very same faith on which instruction is given, whenever they feel that their personal convictions – including maybe dissenting convictions – are not respected. Moreover, the possibility of opting out should not be linked to onerous bureaucratic procedures and must never carry with it de jure or de facto penalties. Finally, wherever possible, students not participating in Religious Instruction due to their different faith should have access to alternative courses provided by the school.

51. The decision whether or not to opt out of Religious Instruction must be left to students or their parents or guardians who are the decisive rights holders in that respect. With regard to article 18, paragraph 4, of the International Covenant on Civil and Political Rights, the Human Rights Committee has noted that “public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would

accommodate the wishes of parents and guardians”. [Human Rights Committee, general comment No. 22, para. 6. See also Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education, para. 28.]

Moreover, attention must be given to the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right to freedom of thought, conscience and religion in a manner consistent with the evolving capacities of the child. [Art. 14, para. 2, of the Convention on the Rights of the Child.] The concept of “evolving capacities” is crucial since it acknowledges that the child at some point “comes of age” and should be able to make personal choices in matters of religion or belief. Due weight should be given to the views of the child in accordance with his or her age and maturity, which need to be assessed on a case-by-case basis. [See Committee on the Rights of the Child, general comment No. 12 (2009) on the right of the child to be heard, para. 29. With regard to the concept of “evolving capacities” in the context of the child’s right to freedom of religion or belief see A/64/159, paras. 26-28.]

52. Unfortunately, however, reports from various countries indicate that the above mentioned principles – which constitute an integral part of freedom of religion or belief – are not always respected. In some countries students belonging to minorities allegedly experience formal or informal pressure to attend Religious Instruction given on the sole basis of the country’s dominant religious tradition. The same can happen to adherents of alternative interpretation of, or dissenting views on, the dominant religion on which school instruction is based. Even worse, incidents have been reported that in some schools members of minorities or persons with dissenting views have to express criticism of their own conviction as a precondition to take their school examinations. Exemptions for students adhering to religions or beliefs other than those instructed in school, if available at all, are sometimes linked to onerous application procedures or stigmatising practices, with the result that students and parents often refrain from making use of them.

53. In this context, it is worth emphasising that practices which forcibly expose students to Religious Instruction against their own will violate article 18, paragraph 2, of the International Covenant on Civil and Political Rights which states that “no one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice.”

2.4 The Right to Opt Out

At primary and second level in ETB schools the negative aspect of freedom of religion and belief is simply ignored. There is a right under the Constitution (Article 44.2.4) to opt out of “teagasc creidimh” which translates to religious teaching. This means any teaching of religion, not just faith formation or teaching in accordance with one religion. The Irish version of the Constitution takes precedence.

That right is reflected in the Education Act 1998, (S.30-2(e)). The Education Act refers to all the various subjects under the curriculum as ‘instruction’.

At time of writing this document, the Department of Education has defined the NCCA Religious Education course in the following manner:

“It is concerned with promoting personal growth and facilitating the spiritual development of students” (Dept of Education & Skills – Response Dail Question 57 reference 10866/19 to Ruth Coppinger – 6.3.19)

“The content prescribed in the syllabuses is intended to ensure that students are exposed to a broad range of religious traditions and to the non-religious interpretation of life.” (Circular Letter 0062/2018 – October - Dept of Education)

“This clear separation of Religious Instruction from the NCCA Religious Education syllabus has the effect of ensuring that withdrawal does not arise for students studying that subject where the school provides that subject as part of its normal range of subjects. The NCCA Religious Education syllabus is about learning about a range of religious beliefs and worldviews, regardless of backgrounds.” (Letter to TD from Department of Education January 2019)

The definition of spiritual education in the introduction to the primary school curriculum, page 27, says:

“The spiritual dimension of life expresses itself in a search for truth and in the quest for a transcendent element within human experience.”

This definition is not objective, critical, and pluralistic. Not all people associate the search for truth with a quest for a transcendent element within human experience.

The Department is not being consistent and clear in its policies and responses in relating to the NCCA religion course and the right to opt out. They will not clearly state that there is a Constitutional and Human Right to opt out of the NCCA religion course regardless of what they claim it is. Stating that withdrawal does not arise is not the same thing as saying that parents have a Constitutional right to withdraw their children.

The Venice Commission in their Guidelines for legislative reviews of laws affecting religion or belief stated that ¹⁰

“To be compatible with international Human Rights standards, public school instructions on religious subjects must be given in a neutral and objective way.

States must respect the rights of parents to ensure that school education and teaching is in conformity with their own religious and philosophical convictions, according to Article 2 of Protocol 1 of the ECHR (right to education).

The European Court of Human Rights has placed emphasis on the need to give a broad overview of ‘other religions and philosophies together’ – servicing the principle of pluralism and objectivity, embodied in Article 2 of Protocol No. 1.

The court has in this respect also warned against the option of having children exempted from certain parts of the curriculum as this could subject the parents concerned to a heavy burden with a risk of undue exposure of their private life, while the potential of conflict may be likely to deter them from making requests for exemption.”

Parents are not informed by ETB schools regarding the opt out and how it can be accessed and the practicalities on the ground. This puts parents in a position that in order to seek an opt out they may feel compelled to reveal to teachers intimate aspects of their religious or philosophical convictions (para 98 Folgero v Norway). Parents are also concerned that seeking an opt out will mean a conflict which they would rather avoid by not having to seek an opt out. In their Clarification Circular Letter the Department of Education has removed the obligation on schools to inform parents that they can opt out their children.

2.5 The Castletroy College Case on Opting Out

In 2015 a story broke in the media regarding the refusal of Castletroy Community College (an ETB school) to permit a student to opt out of the NCCA Religious Education class. The Board of Management eventually relented after much media attention and permitted the student to opt out. An article by Emma O’Kelly on the RTE website states that:

“This case has also highlighted what is at best a reticence and at worst a hostility towards parents exercising that right. That reticence is apparent at every level, from the Department of Education, through bodies like the Education and Training Boards and right on down to schools themselves.”

Despite their public sector duty under Section 42 of the IHREC Act the Board of Management of an ETB school had to meet to decide whether or not a student could access their Constitutional and Human Right to opt out of the NCCA Religious Education class. There is still no policy on Castletroy website ¹¹ that informs parents that they can opt out their children from the NCCA Religion Course. The school has religion as a core subject for Junior Certificate which means that all students must take it unless their parents raise an objection. No other subject is provided. Their Ethos Statement says:

*“To teach moral values, attitudes and behaviour patterns and thus engender an attitude of respect towards oneself, others and the environment.
5. To enable pupils to learn, preserve and respect their own religious beliefs and worship within their faith tradition.”*

There is no indication on their website when this learning of religious beliefs and worship within their faith tradition will happen and how other students can opt out of it.

Since this particular case, and the recent Circular Letters issued by the Department of Education in 2018, the situation in relation to the right to opt out from the NCCA Religious Education course has got worse. Most schools at second level including ETB schools are now either making the NCCA course compulsory, a core subject, or using coercion to force students to take the course.

Circular Letter 0062/2018 states that the purpose of the Circular letter is to “make clear” and “eliminate any ambiguity” in relation to Religious Education and Religious Instruction. This Circular Letter has done the opposite of what its stated purpose was, to “make clear”.

“The purpose of this circular is to make clear the different requirements for those students who are studying the NCCA Religious Education syllabus and those who elect to join Religious Instruction classes where the school they attend offers to provide Religious Instruction in accordance with the rites and practices of a particular religious denomination. This circular should be read in conjunction with Circular 0013/2018.”*

“The purpose of this circular is to eliminate any ambiguity about how Religious Education is delivered in schools and accordingly adjust the arrangements in the original circular where necessary.”

The Department of Education and Skills has gone way beyond its remit by even trying to define what it believes parents can opt their children out of. What right has the Department of Education to claim that “withdrawal does not arise” and that “schools have discretion to determine if they provide the subject at all or if it is to be mandatory or optional in any particular class group or year.” It seems to us that they are actively undermining the rights of parents and their children.

2.6 Constitutional Case of 1998 re Chaplains

Dr Conor O’Mahony from UCC wrote the following in relation to the incident in Castletroy Community College on the Constitutional and Human Right to opt out of the NCCA Religion class.

He addresses both European Court cases and the Constitutional Case of 1998 regarding Chaplains. ¹²

“Castletroy College initially sought to resist the request to opt-out on the basis that the subject being provided was multi-denominational rather than doctrinal instruction. Nonetheless, the view taken by the Supreme Court in the passage quoted above suggests that this distinction is irrelevant.”

“The right to opt-out applies to the formal timetabled period of “Religious Instruction”, and would seem to capture whatever form that instruction might take. Thus, while the distinction between “Religious Instruction” and the overall school ethos or “Religious Education” is often pointed to as undermining the right to opt-out in a primary school context, it might ironically serve to strengthen it in a secondary school setting.”

“Taken together, Kjeldsen and Folgerø establish that the ECHR does not always require an opt-out; but where the subject in question crosses the line from objective information to placing undue emphasis on one religion or world-view, an opt-out must be provided and it must be effective.”

Requiring children to remain in class potentially falls short of this requirement, although it may be argued that allowing the children to entirely disengage from the subject being taught and to pursue their own activities strikes an adequate balance.

Whether this latter position would satisfy the potentially more stringent requirements of the Irish Constitution is an open question. As noted above, Article 44.2.4° appears stronger than the ECHR in giving a seemingly absolute right to opt-out of Religious Instruction, regardless of the character of that instruction. Moreover, it specifically uses the phrase “without attending Religious Instruction”.

The use of the word “attending” (as opposed to “participating in”, or something similar) could reasonably form the basis of an argument that anything short of leaving the room fails to vindicate the right to opt-out.”

2.7 European Court Principles

The IHREC Report Religion & Education: A Human Rights Perspective sets out the General Principles of the European Court in relation to the rights of parents and their children.

On the basis of the jurisprudence of the European Court in cases such as Dogru, Kjeldsen, Folgero, Zengin and Lautsi, the following general principles apply:

- *The right to education under Article 2 of Protocol 1 is to be interpreted in light of Article 8 (respect for private and family life) and Article 9 (right to freedom of Conscience and religion);*
- *The freedom of teachers to manifest their religion in schools must be balanced with the rights of others to avoid suggestions of proselytism or indoctrination;*
- *The term “religious and philosophical Convictions” in the Second sentence of Article 2 of Protocol 1 refers not only to religious Convictions but also to the views of “the supporters of Secularism”*
- *The right of parents to respect for their religious and philosophical Convictions is grafted onto the fundamental right to education as set out in Article 2 of Protocol 1 ;*
- *The term “respect” in relation to the rights of parents referred to in the Article denotes not only a negative undertaking not to interfere with the right but also incorporates a positive obligation on the State to vindicate that right;*
- *States enjoy a wide “margin of appreciation” in determining the steps to be taken to ensure compliance with the ECHR with due regard to the needs and resources of the Community and of individuals. So for*

example, while parents have the primary responsibility for the education and teaching of their children, and in discharging this duty are entitled to require the State to respect their religious and philosophical convictions, Article 2 of Protocol 1 cannot be interpreted to mean that parents can require the State to provide a particular form of teaching, be that a form of religious or secular teaching. Rather, the decision is one for the State to take;

- *The setting and planning of the curriculum falls within the competence of the State. The State may thus impart through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind and parents may not object to the integration of such teaching or education in the school curriculum;*
- *However, this is not unlimited and to safeguard the possibility of pluralism in education, the State must take care that the information or knowledge included in the Curriculum is conveyed in an objective, critical and pluralistic manner, enabling pupils to develop a critical mind particularly with regard to religion in a calm atmosphere free of any proselytism. The State is thus forbidden to “pursue an aim of indoctrination” that might be Considered as not respecting parents’ religious and philosophical Convictions. The European Court has stated this is a limit that must not be exceeded;*
- *Exemption procedures must not pose a heavy burden on families of minority beliefs;*
- *Given the power of the modern State, it is above all through State teaching that the essential aim of pluralism in education must be realised. The State is thus the primary duty holder in this regard;*
- *Article 2 of Protocol 1 does not permit a distinction to be drawn between “Religious Instruction and other subjects”, and requires the State to respect parents’ convictions, be they religious or philosophical (such as secular views), throughout the entire State education programme.*

The IHREC Report goes on to outline the Human Rights of parents and their children under the Convention on the Rights of the Child, Convention on the Elimination of all Forms of Racial Discrimination and the International Covenant on Civil and Political Rights.

2.8 European Court Cases

The European Court in *Grzelak v Poland* 2010 (para 87) ¹³

87. The Court reiterates that freedom to manifest one's religious beliefs comprises also a negative aspect, namely the right of individuals not to be required to reveal their faith or religious beliefs and not to be compelled to assume a stance from which it may be inferred whether or not they have such beliefs (see, Alexandridis v. Greece, no. 19516/06, § 38, ECHR 2008-..., and, mutatis mutandis, Hasan and Eylem Zengin v. Turkey, no. 1448/04, § 76 in fine, ECHR 2007-XI).

The Court has accepted, as noted above, that Article 9 is also a precious asset for non-believers like the third applicant in the present case. It necessarily follows that there will be an interference with the negative aspect of this provision when the State brings about a situation in which individuals are obliged – directly or indirectly – to reveal that they are non-believers.

This is all the more important when such obligation occurs in the context of the provision of an important public service such as education”.

The right to not reveal religious or philosophical convictions in ETB schools is not recognised or respected. Part of the GMGY course is revealing convictions in order that the teacher can nurture the belief of the family. Also, the teacher training colleges are not respecting this Human Rights principle.

The European Court in *Mansur Yalcin & Others v Turkey* 2015 ¹⁴

71. That being said, the Court observes that it is clear from the case file (see paragraph 11 above) and from the Government's observations (see paragraph 66 above) that the syllabus for religious culture and ethics is structured around the fundamental concepts of Islam, such as the Koran and the Sunnah.

Admittedly, the fact that the syllabus gives greater prominence to Islam as practised and interpreted by the majority of the Turkish population than to the various minority interpretations of Islam and of other religions and philosophies cannot in itself be viewed as a departure from the principles of pluralism and objectivity amounting to indoctrination (see, mutatis mutandis, Folgerø and Others, cited above, § 89).

Nevertheless, in view of the particular features of the Alevi faith compared with the Sunni understanding of Islam (see Hasan and Eylem Zengin, cited above, § 66), and in view also of the applicants' submissions, which are borne out by several studies produced before the domestic courts (see paragraph 11 above) and before this Court (see paragraphs 19 to 21 above), the Court considers that the applicants could legitimately consider that the arrangements for teaching the subject in question are liable to create a conflict of allegiance for their children between their school and their own values, giving rise to a possible issue under Article 2 of Protocol No. 1 to the Convention (see, mutatis mutandis, Folgerø, cited above, § 94).

72. In this connection the Court reiterates the Contracting Parties' positive obligation under the second sentence of Article 2 of Protocol No. 1, which gives parents the right to demand from the State respect for their religious and philosophical convictions in the teaching of religion (see Hasan and Eylem Zengin, cited above, § 71).

Where a Contracting State includes Religious Instruction in the curriculum for study, it is then necessary, in so far as possible, to avoid a situation where pupils face a conflict between the Religious Instruction given by the school and the religious or philosophical convictions of their parents.

73. The question thus arises whether the Turkish education system provides appropriate means in order to ensure that parents' convictions are respected (see Hasan and Eylem Zengin, cited above, § 57).

2.9 European Parliament

The European Parliament – Directorate-General for Internal Policies – Policy Department has made a Recommendation in their Report on Religious practice and observance in the EU member states (2013) ¹⁵

“12. The ECtHR principle of non-indoctrination in the organisation of public Religious Education appears to be a suitable tool to make compatible State religious traditions with the rights of pupils and parents.

However, to assure State religious neutrality and the freedom of religion of non-believers, much attention should be paid to the opt-out systems in those EU States with compulsory Religious Education. Opt-in systems too call for close supervision in States with strong religious settings.

The efficacy of both systems requires schools to avoid exerting any direct or indirect pressure on pupils, to inform them of the possibilities they have, and to protect them from peer pressure. At the same time, public schools should do more to provide for objective, critical and pluralistic Religious Instruction.”

2.10 UN Committee on the Rights of the Child

Recommendation from the UN Committee on the Rights of the Child

Freedom of thought, conscience and religion

35. The Committee is concerned that children are not ensured the right to effectively opt out of religious classes and access appropriate alternatives to such classes.

36. The Committee recommends that the State party ensure accessible options for children to opt out of religious classes and access appropriate alternatives to such

classes, in accordance with the needs of children of minority faith or non-faith backgrounds.

2.11 UN Human Rights Committee

Recommendation from the UN Human Rights Committee in 2015

Freedom of religion

21. The Committee is concerned at the slow pace of progress in amending the provisions of the Constitution that oblige individuals wishing to take up senior public office positions, such as President, members of the Council of State and members of the judiciary, to take religious oaths.

It is also concerned about the slow progress in increasing access to secular education through the establishment of non-denominational schools, divestment of the Patronage of schools and the phasing out of integrated religious curricula in schools accommodating minority faith or non-faith children.

It expresses further concern that under section 37 (1) of the Employment Equality Acts, religious-owned institutions, including in the fields of education and health, can discriminate against employees or prospective employees to protect the religious ethos of the institution (arts. 2, 18, 25 and 27).

The State party should take concrete steps to amend articles 12, 31 and 34 of the Constitution that require religious oaths to take up senior public office positions, taking into account the Committee's general comment No. 22 (1993) on freedom of thought, conscience and religion, concerning the right not to be compelled to reveal one's thoughts or adherence to a religion or belief in public.

It should also introduce legislation to prohibit discrimination in access to schools on the grounds of religion, belief or other status, and ensure that there are diverse school types and curriculum options available throughout the State party to meet the needs of minority faith or non-faith children.

It should further amend section 37 (1) of the Employment Equality Act in a way that bars all forms of discrimination in employment in the fields of education and health.

The Human Rights Committee also asked the State delegation the following ¹⁶

"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?"

The State never replied to this question. All children have a right to a neutral studying environment in ETB schools and well as denominational schools.

2.12 Forum on Patronage and Pluralism

The Forum on Patronage and Pluralism recognised that the opt out in Irish schools was not suitable on a Human Rights basis because schools did not provide another subject and children were left sitting in the class (page 82). They also stated that children had a right to receive education in ERB and ethics and the State had a responsibility to see that it was provided.

“One school’s submission read as follows: The general practice for religion time is that the children of other faiths are present, sometimes engaging in an activity of their own and sometimes taking an active part in RE where conversation relates to non-religious elements. This seems to be a happy situation for teachers and also for the parents of the children of other faiths.”

“This perspective does not illustrate sufficient understanding of the Human Rights issues involved.”

“That the situation regarding the opt-out in many schools remains unsatisfactory was indicated in several written submissions to the Advisory Group, in the conversations with pupils, and in oral discussions the Group has had with various stakeholders. Hence, the Group considers that there is an urgent need for ‘opt-out’ arrangements to be more satisfactorily dealt with in schools. The next sub-section, 7.4, provides a number of suggestions.”

“The Advisory Group is of the view that all children have the right to receive education in ERB and Ethics and the State has the responsibility to ensure that this is provided (page 92).”

“Ethics Programme

While the formation of ethical behaviour forms part of Religious Education programmes, the Advisory Group is concerned that the rights of children, who do not participate in such programmes, to ethical education are also safeguarded. Learning about ethics is important for all but developing modes of ethical behaviour is of central importance to human development.

The teaching of ethics includes the formation in and the promotion of a personal commitment to the dignity and freedom of all human beings, the importance of Human Rights, the place of justice within society, and the service of the common good. These are all essential to education in citizenship and the proper functioning of democracy.”

2.13 IHREC Grant to ETBI

IHREC has given a Grant to Education and Training Boards Ireland (a private organisation) to help promote the public sector duty amongst the ETBs. Despite this grant the ETBs have continued to ignore Human Rights and are failing to protect the Human Rights of those whom it provides services to.

3. ETB Schools at Primary Level

This section outlines the problems in ETB schools at primary level.

3.1 Community National Schools

Community National Schools at primary level were set up in 2008. They are supposed to be an alternative to denominational schools. There are approximately eleven of them at present but the plan is that Catholic schools will divest to them.

There is nothing on the website of the Community National Schools that informs parents about opting out of the GMGY course and any ceremonies. No other subject is offered if parents opt out their children and no indication of what will happen to children if they are opted out. It is also clear that parents are put in a position whereby they must reveal their religious or philosophical convictions.

The ETBs have been in discussions with the Catholic Church in relation to the GMGY course and divestment. You can read about that here <https://www.teachdontpreach.ie/2019/01/community-national-schools-learning-outcomes-were-changed-from-understanding-religion-to-respecting-it/>

The website of the Community National Schools states that ¹⁷

“Community National Schools (CNS) are child-centred, multi-denominational, publicly-accountable schools which strive to provide high quality education for every child. They give equal opportunities to all children in the communities they serve. They were established in 2008 and are managed by the Education and Training Boards (ETBs)”

The Characteristic Spirit of the CNS is defined in their Ethos Statement. This Ethos Statement says that ¹⁸

“Respect for plurality of faiths is seen as integral to the daily routine of the school”

Respect for plurality of faiths does not include ‘philosophical convictions’ such as secularism or atheism. This is not an inclusive Ethos Statement that includes non religious convictions. The CNS states that

“In terms of ‘Equality-Based’, your child will:

- *Be treated with dignity and respect and learn how to live harmoniously in a diverse society*
- *Learn that every human being is equally important and that we have a right to be treated fairly and a responsibility to treat others fairly*
- *Learn about the values of the school, such as equality, Human Rights and citizenship*
- *Learn to challenge discrimination and prejudice”*

The ethos of the CNS which states that children will “Learn about the values of the school, such as equality, Human Rights and citizenship” and “Learn to challenge discrimination and prejudice”, cannot be achieved.

The CNS are teaching children about equality and Human Rights, to challenge discrimination and prejudice while the very basis of this teaching is based on a specific ideological position and not on Constitutional and Human Rights.

Learning outcomes that require children to respect and demonstrate respect for beliefs are not based on Human Rights, they undermine them. They create a conflict between freedom of religion and belief and freedom of expression (see Section 2.1 above).

Ethos Statements that outline respect for a ‘plurality of faiths’ and omit non religious convictions are not based on inclusion and diversity.

The Human Rights based Learning Outcomes outlined in the Toledo Guiding Principles on teaching about Religions and Beliefs do not refer to respecting beliefs. Instead they refer to the right of individuals to adhere to a particular religion or belief system. ¹⁹

“attitudes of tolerance and respect for the right of individuals to adhere to a particular religion or belief system. This includes the right not to believe in any religious or belief system;” (page 48 Toledo Guiding Principles)

3.2 Goodness Me Goodness You Course

The Goodness Me Goodness You Course in Community National Schools was developed by the National Council for Curriculum and Assessment (a public body under S.42 of the IHREC Act). It is the Patron’s (the ETBs) course.

The ETBs, the NCCA and the Department of Education all claim that the GMGY course is open to all, promotes pluralism, diversity, respects all belief and is inclusive. The CNS website states that:

“Goodness Me, Goodness You! (GMGY) is a multi-belief and values curriculum that has been developed for Community National Schools in collaboration with children, parents and teachers of the schools, the local Education and Training Boards, the Education and Training Board of Ireland, the Department of Education and Skills and assisted by the National Council for Curriculum and Assessment”.

“Goodness Me, Goodness You! is a multi-belief and values education curriculum. Using a multi-disciplinary framework, it enables children to encounter identity education, values education, philosophy and multi-denominational Religious Education. GMGY contributes to the holistic development of the child and as such aims to enable every child to realise their potential as a unique individual” ²⁰

The GMGY Curriculum states that it is a multi-belief and values education curriculum. However it also states that it enables children to encounter multi-denominational Religious

Education. In this context, multi-denominational is not inclusive of those with nonreligious philosophical convictions

3.3 Religious and Cultural Celebrations

The Guidelines for Religious and Cultural Celebrations in the Community National Schools state that:

“Marking the significant religious and cultural occasions by appropriate celebrations, as opposed to just talking about them, underpins a key principle in the CNS- understanding through celebrating so that together we are a living celebration of understanding.”

“The multi-belief nature of the CNS implies that significant belief occasions should be celebrated.”

The Toledo Guiding Principles state the very opposite to the CNS policy on celebrating belief occasion. They state that:

“For example, teachers can often take advantage of holiday periods to teach about religions in culturally sensitive ways. They need to be careful to make the distinction between teaching about the holiday, and actually celebrating the holiday, or using it as an opportunity to proselytise or otherwise impose their personal beliefs.”

3.4 GMGY Learning Outcomes

The learning outcomes of the Goodness Me Goodness You course in Community National Schools are not objective, critical and pluralistic. Those learning outcomes do not reflect the General principles of the European Court in relation to the right of all children to access education in an objective, critical and pluralistic manner²¹.

These learning outcomes put some children in a position where pupils face a conflict between the Religious Instruction given by the school and the religious or philosophical convictions of their parents.

The CNS will also integrate the GMGY course throughout the curriculum which puts parents in a position that they cannot even identify the areas to opt out their children. It would also require parents to reveal their religious or philosophical convictions to the school, which is a breach of Human Rights (see ECHR Grzelak v Poland 2010, para 87) (see section 2.8 above)

“Integration refers to cross-curricular connections. For the young child, the distinctions between subjects are not relevant. What is important is a consistent learning process that makes connections between subjects.”

An emphasis on the interconnectedness of knowledge and the transversal nature of skills gives children a broader and richer perspective and reinforces the learning process.

Opportunities for integration exist throughout all strands of the curriculum. Teachers can identify these opportunities when planning. Within the lesson samples, there are suggestions of some of the instances where integration might be established.”

The Learning outcomes require children to respect after a period of learning ‘codes of conduct, celebrations, beliefs, artefacts, special places, rites and ceremonies, special books and stories, special journeys, special people and symbols.’

These are some of the Learning Outcomes of the GMGY course:

- *“Develop respectful agreeing, disagreeing and questioning skills.*
- *Develop a sense of respect for and understanding of celebrations that are relevant in their own lives and the lives of others.*
- *Develop an understanding of rites and ceremonies that are important in their own lives and recognise and respect the rites and ceremonies of others.*
- *Recognise the difference between good choices and bad choices and examine examples of influences that affect the choices they make.*
- *Develop an understanding of places that are special to them and recognise and respect the special places of others.*
- *Develop an understanding of books and stories that are special to them and recognise and respect the special books and stories of others.*
- *Demonstrate an understanding of journeys that are special to them and recognise, respect and appreciate special journeys that belong to a range of belief traditions.*
- *Demonstrate an understanding of and respect for the connection between beliefs and lifestyle choices and examine how their beliefs affect the lifestyle choices they make.*
- *Demonstrate an understanding of and respect for the special people who are associated with a range of belief traditions and develop an understanding of special people in their own lives.*
- *Identify and discuss significant artefacts in their own lives and demonstrate an understanding of and respect for the religious artefacts that are associated with a range of beliefs traditions.*
- *Identify celebrations that are significant in their own lives and demonstrate an understating of and respect for celebrations that belong to a range of belief traditions.*

- *Identify and discuss examples of codes of conduct in their own lives and demonstrate an understanding of, and respect for, the codes of conduct that influence the way people live in a range of belief traditions.*
- *Identify and discuss significant symbols in their own lives and demonstrate an understanding of and respect for symbols from a range of belief traditions.”*

These learning outcomes indicate “something more and other than the mere transmission of knowledge” (para 93 Folgero v Norway 29.6.07). These learning outcomes create a conflict of allegiance between children and those parents who seek secular education for their children based on Human Rights. There is no basis under Human Rights for requiring all children to respect beliefs and codes of conduct that those beliefs are based on.

The Learning Outcomes of the GMGY course require all children to respect and demonstrate respect for ceremonies and well as celebrate them. What they are claiming is that students have to celebrate and respect a religious occasion in order to understand it. That is proselytising and imposing an ideological position that is not based on Human Rights. Another area where the ETBs and the NCCA are making up Human Rights to suit their own ideological position.

The NCCA defines ‘learning outcomes’ as follows:

“Learning outcomes are statements in curriculum specifications to describe the knowledge, understanding, skills and values students should be able to demonstrate after a period of learning” ²²

University College Galway on their website say the following about Learning Outcomes:

- *“Learning outcomes are sets of competences, expressing what the student will know, understand or be able to do after completion of a process of learning, long or short.”*
- *“Learning outcomes focus on **what the student has achieved** rather than merely focussing on the content of what has been taught.”*
- *“Learning outcomes focus on **what the student can demonstrate** at the end of a learning activity.”* ²³

3.5 Toledo Guiding Principles on Learning Outcomes

The Toledo Guiding Principles address Learning Outcomes (page 48). They don’t include respecting codes of conduct, celebrations, beliefs, artefacts, special places, rites and ceremonies, special books and stories, special journeys, special people and symbols. The CNS claim that they teach children about equality and Human Rights. Unfortunately it seems that they are making those Human Rights up as they go along.

The Toledo Guiding Principles state the following:

E. Learning Outcomes for Teaching about Religions and Beliefs

Learning outcomes associated with teaching about religions and beliefs should include the development of knowledge, attitudes, and competences. Whether one elects to use a more teacher-centred or student-centred approach to teaching about religions and beliefs, one would expect the following learning outcomes:

- attitudes of tolerance and respect for the right of individuals to adhere to a particular religion or belief system. This includes the right not to believe in any religious or belief system;*
- an ability to connect issues relating to religions and beliefs to wider Human Rights issues (such as freedom of religion and freedom of expression) and the promotion of peace (i.e. the capacity of religions and beliefs for solving and preventing conflicts);*
- a core knowledge about different religions and belief systems and knowledge of the variation that exists within all religions and beliefs, with reference both to the local/national context as well as to larger geographical areas;*
- an understanding that there are various legitimate ways to view history and historical developments (multi-perspectivity);*
- knowledge of the contexts associated with major historical events relating to different religions and belief systems; here, again, the specific attention to local/national circumstances should be combined with a broader geographical and cultural perspective;*
- an understanding of the importance of religious or philosophical beliefs in a person's life;*
- awareness of similarities and differences between different religions and beliefs;*
- the ability, based on sound knowledge, to recognize and to question existing negative stereotypes about religious communities and their members;*
- an historical and psychological understanding of how a lack of respect for religious differences has led to extreme violence in the past and, related to this, the importance of people taking an active role in protecting the rights of others (civic responsibility); and the ability to counteract, in a respectful and sensitive way, a climate of intolerance and discrimination, when it occurs.*

4. ETB Schools at Second Level

This section outlines the failure of ETB schools at second level to protect Constitutional and Human Rights.

4.1 Some ETB Schools have a Christian Ethos

Page 15, 16 (para 28) of the IHREC Report, Religion and Education; A Human Rights Perspective outlines the basis of the establishment of Community & Comprehensive schools under Deeds of Trust. The Report states that:

“What is significant in the present context is that these schools are run along denominational lines, and there is no significant difference in this regard with the traditional voluntary secondary schools directly under Church Patronage that preceded them.”

The above also applies to Designated Community Colleges, these ETB schools come under the Model Agreement. This is an agreement between the ETBs and usually a local Bishop.

In addition in a decision by the WRC in December 2017 it was found that an ETB non designated Community College had a Christian ethos. There is no involvement of a religious body in non designated Community Colleges but regardless the WRC stated that ²⁴

“5.10 I am satisfied that there are parallels between the Lautsi case and instant case. 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 means that ETB Community schools, ETB Designated Community Colleges, ETB non-Designated Community Colleges can and in some cases do operate along denominational lines. This is reflected in their religious ethos. In reality many ETBs are not an alternative to denominational schools in Ireland.

The WRC decided that there were parallels between the Lautsi case and the case to hand, the May altar was in keeping with the religious ethos of the school.

The fact of the matter is that there were no parallels between Lautsi and the case to hand because as IHREC has already pointed out in its Report (para 266 page 86):-

“The presence of crucifixes was not associated with compulsory teaching about Christianity; According to the indications provided by the Government, Italy opens up the school environment in parallel to other religions;

Alternative arrangements were possible to help schooling fit-in with non-majority religious practices;

The beginning and end of Ramadan were “often celebrated” in schools; and optional Religious Education could be organised in schools for “all recognised religious creeds;

Therefore the display of the crucifix did not denote a form of denominational or Religious Education, and the crucifix was not called on or referred to in the context of teaching of curriculum;”

But there was compulsory Religious Education in the CTI in Clonmel and their Religious Education policy reflected this. We do not understand how the WRC could have found that “were parallels” between the Lautsi case and the case to hand. This finding means that teachers in this non designated Community College are subject Section 37 of the Employment Equality Act.

The Religious Education policy of the CTI, about which the WRC made their decision, states that ²⁵

“At CTI, our Religious Education Policy permeates the life of the whole school community.”

“C.T.I. is a school under the auspices of Tipperary E.T.B. It is a multi –denominational school, which does not discriminate regarding student admission on the basis of religion, culture, gender, sexual orientation, race, political opinion and social or national origin. However, our school community is a part of the wider community primarily composed of Roman Catholics, and the majority of our students are Roman Catholic, and the ethos of the school reflects this.

Therefore Religious Education is a fundamental component of the curriculum in the school. Religious Education is not concerned with indoctrination or teaching a person a way of life. It focuses on enabling students to speak the language of religion; to comprehend and appreciate the place of religious and philosophical beliefs and practices in human life; to understand the need for dialogue among peoples of all faiths and none.”

This understanding of the NCCA Religious Education course is not based on Human Rights. The State pursues an aim of indoctrination by not respecting parents convictions. One of the main aims of the NCCA Religious Education course is to contribute to the moral and spiritual education of all students through Religious Education.

It only acknowledges the non religious interpretation of life. If the course contributed to the Moral Education of children through atheism, while only acknowledging the religious interpretation of life, everyone would immediately see that it was indoctrination.

“Religious Education is a compulsory subject in CTI. Regardless of religious belief, all students are obliged to follow the RE Programme in Coláiste Chluain Meala/ Gaelcholáiste Chéitinn because it is a fundamental component of the curriculum.”

“Our Mission Statement and our school ethos guide staff in their work in the school.

“Thus the cross-curricular support for Religious Education is enshrined as a fundamental tenet of the school ethos.”

“Chaplain: Assists in the faith development of students. Faith formation is governed by the majority religion, 90% of the students being Roman Catholic. Students are offered faith formation in addition to R.E. as a subject.”

“As a fundamental component of the curriculum, Religious Education is a core subject right through from 1st to 6th Year. Religious Education is taken as a non-examination subject. Junior Cycle Religious Education follows the RE syllabus, while the Transition year and Senior Cycle programme follow a programme that has been formulated in conjunction with the R.E. Department.

The Text book used at Junior Cycle is “Pathways to God 1& 2” by Kevin Mullally, (Gill & Macmillan). No formal text book is used in senior cycle but resource materials are provided by teachers. The following books are available “Inner Place” by Tom Gunning, (Veritas) “Into the Deep” by Tom Gunning, (Veritas) , “Challenge of God” by Anne & Niall Boyle, (Gill & Macmillan).”

“The DES RE syllabus allows for the study of a number of faiths in depth. In accordance with our aims all students are expected to study these faiths, regardless of their personal beliefs. Therefore, no student may opt out of formal RE classes.”

“However, C.T.I respects and acknowledges the rights of the parents who require that their son or daughter be excluded from Religious Education. The manner in which such an ‘opt out’ is facilitated is related to available resources within the school and complies with the school’s policies on curriculum, supervision and child safeguarding.

Three options that C.T.I. can provide for students when a request for ‘opt out’ from RE is made include:

- 1. Staying within the R.E. classroom following specific/ educationally appropriate work assigned by teacher.*
- 2. Parents /Guardians removing their son or daughter from the school premises for the duration of RE.*
- 3. Parents/ Guardians provide supervision within the school for their son or daughter during R.E classes.*

‘Opt out’ from RE may only occur when a parent/guardian has made a formal request in writing to the Principal.”

It is clear that CTI have not amended their Religious Education policy since the Department issued the Clarification Circular Letter in October. It is not just an exposure to a broad range of religious traditions but one that serves the religious requirements of the Catholic church. The Circular Letter has failed to clarify and remove ambiguity in relation to religion in ETB schools. It has enabled ETB schools to further undermine the rights of minorities.

This WRC decision has undermined the Human Rights of minorities in ETB schools. Parents are left in a position whereby ETB schools are being presented as an alternative to

denominational schools when in fact they operate just like denominational schools. Opting out without discrimination is impossible as no other subject is offered. The school does not indicate where exactly the Religious Education policy permeates the whole school and consequently parents cannot identify these areas and opt their children out of it.

4.2 Religious Education Course at Second Level

At second level the main aims of the Religious Education course are not objective, critical and pluralistic, and they undermine Human Rights. Again the NCCA, the ETBs and the Department of Education claim that this course is suitable for all religions and none. This again is an ideological position and not one based on Human Rights.

Section 7.2–(b) of the Equal Status Act requires that

(2) An educational establishment shall not discriminate in relation to—

(b) the access of any student to any course, facility or benefit provided by the establishment.

The State contributes to the Moral Education of all children through Religious Education. All children have a right to a basic Moral Education under the Constitution. The Constitution does not say that that Moral Education has to be delivered through Religious Education. It purposely leaves it out.

In order to access the NCCA Religious Education course parents that seek secular education for their children on the basis of conscience must in effect accept a form of Religious Education which offends their convictions. That is religious discrimination.

One of the main aims of the Religious Education course at second level is to promote the moral and spiritual development of all students through Religious Education.

ETB schools do not provide another subject for students whose parents believe that those aims do not respect their philosophical convictions and that the course would put their children in a position where they would face a conflict of allegiance between the school and their parents' convictions.

The Religious Education course at second level is not objective, critical and pluralistic and therefore does not respect the rights of parents who seek secular education based on Human Rights.

In some cases the course is made compulsory and in others students are coerced into taking this course. ETB schools do not inform parents that they can opt out their children. If parents manage to opt out their children they are left sitting in the class and are not provided with another subject.

The aims of the Religion Education Course, at Junior and Senior Cycle, are:

- *To foster an awareness that the human search for meaning is common to all peoples, of all ages and at all times.*

- *To explore how this search for meaning has found, and continues to find, expression in religion.*
- *To identify how understanding of God, religious traditions, and in particular the Christian tradition, have contributed to the culture in which we live, and continue to have an impact on personal life-style, inter-personal relationships and relationships between individuals and their communities and contexts.*
- *To appreciate the richness of religious traditions and to acknowledge the non-religious interpretation of life.*
- *To contribute to the spiritual and moral development of the student*

4.3 Department of Education Circular Letter 0013/2018

In 2018 the Department of Education issued two Circular Letters to ETB Second level schools to address the practicalities of students opting out of Religious Instruction based on Article 44.2.4 of the Constitution and Section 30 of the Education Act.

These rights are legally based on the right to not be present at (a) Religious Instruction in the case of the Constitution and (b) instruction in any subject contrary to conscience in the case of the Education Act (s.30).

The first Circular Letter (0013/2018) outlined new procedures to enable students who chose not to attend Religious Instruction to be given an alternative subject. ²⁶ Atheist Ireland had lobbied for this change.

“In future instead of waiting for a parent to request a withdrawal and then having to make alternative arrangements for the pupil for the class periods concerned a school must establish the wishes of parents in relation to opting out of religious worship or instruction and where the pupil is over 18 establish the pupil’s wishes.

Ascertaining parental/pupil choice in relation to Religious Instruction should be integrated with the school’s processes for establishing subject choices generally.

In future the school must offer an alternative subject(s) for those who do not want Religious Instruction. Parents must be made aware that such alternative tuition is available and be asked to choose between Religious Instruction and the alternative subject(s) offered by the school.”

With regard to the NCCA Religious Education Curriculum, Section 5 of the Letter stated:

“The NCCA developed curriculum for Religious Education currently also serves to meet the Religious Instruction requirements of the Catholic Church and schools can continue this arrangement for pupils whose parents elect for Catholic Religious Instruction or other parents who wish to follow the NCCA curriculum, and where that is the case it is important in the information provided to parents that they are made fully aware that the curriculum is not necessarily confined to learning about religions.”

4.4 Department of Education Circular Letter 0062/2018

After lobbying from the Catholic Church, the ETBs, Teachers Union of Ireland, Religion Teachers' Association, and the NCCA, the Department issued a second Circular Letter (0062/2018) that reversed (it said clarified) Section 5 of the first Circular. ²⁷

The key changes from the first Circular Letter were as follows:

“The NCCA-developed Religious Education Junior and Senior Cycle syllabuses, and the Religious Education specification for Junior Cycle, to be introduced in 2019, are intended for students of all faith backgrounds and none.

“The content prescribed in the syllabuses is intended to ensure that students are exposed to a broad range of religious traditions and to the non-religious interpretation of life. They do not provide Religious Instruction in any particular religious or faith tradition.”

“Where a school decides to offer Religious Instruction in line with the requirements of any particular individual religious denomination, it must not be associated with or integrated to any degree with the NCCA-developed Religion Education syllabus being provided in timetabled class periods.”

“This clear separation of Religious Instruction from the NCCA Religious Education syllabus has the effect of ensuring that withdrawal does not arise for students studying the NCCA Religious Education syllabus where the school provides the subject as part of its normal range of subjects.”

“Following on the clarification in Section 2 above ... the approach outlined in Section 4 of Circular 0013/2018 of parents seeking a withdrawal from the NCCA-developed Religious Education syllabus is no longer necessary.”

This Circular stated that it is “no longer necessary” for schools to consult parents or offer their children another subject if they opt out them of a curriculum subject which seeks to contribute to their moral and spiritual education through religion.

This policy by the Department of Education is a reflection of the disrespect they have for the Constitutional and Human Rights and for those parents who seek secular education based on Human Rights.

IHREC’s Observations on the Education (Admission to Schools) Bill 2015 (November 2015 para 28) states the following:

“28 The question of the conditions of participation and exemptions for students who are not of a school’s religion has been examined in a line of jurisprudence by the European Court of Human Rights.

As outlined above, the Court has held that the State must take care that the information or knowledge included in the State-prescribed curriculum is conveyed in

an objective, critical and pluralistic manner, enabling pupils to develop a critical mind particularly with regard to religion in a calm atmosphere free of any proselytism.

Specifically, the European Court of Human Rights has held that exemption procedures for minority and non-faith children to Religious Instruction must not be unduly onerous for the parents and for the children concerned.”

4.5 The Circular Letters Have Caused Confusion

The Department has defended the existing NCCA Religious Education syllabus, and continues to defend the new 2019 NCCA Religious Education syllabus, on the basis that both are suitable if they are not mixed with Patrons’ programmes in line with one religious denomination. But this is not the case. Neither course meets Human Rights standards.

In the first Circular Letter, the Department acknowledged that some ETB schools (in our experience, the vast majority) combine Catholic faith formation with the NCCA Religious Education course.

The second Circular Letter attempts to create a distinction between Religious Instruction (in accordance with one particular religion) and Religious Instruction (in accordance with the NCCA curriculum that is labelled Religious Education).

But there is no Constitutional or legal basis to make such a distinction. The NCCA curriculum does not cease to be Religious Instruction just because it is given the title of Religious Education. In legal terms, instruction is simply the word used for teaching any subject.

Putting aside the words ‘instruction’ and ‘education’, both Circular Letters create the impression that the Patrons programme is not objective, and the NCCA course is objective, which they describe as exposure to religions and beliefs. But that is not the case. None of the courses are objective.

Article 42.1 of the Constitution obliges the State to respect the right of parents to ensure that the teaching of their children is in conformity with their convictions. Under Article 44.2.4 of the Constitution parents can opt their children out of any religious teaching.

So if you choose to exercise your right to not be present at Religious Instruction (in accordance with the NCCA course) you should be treated the same as if you choose to exercise your right to not be present at Religious Instruction (in accordance with one religious denomination).

The second circular letter does not contradict this analysis. It merely glides over it by predicting that, because of the content of the new NCCA Religious Education curriculum due to start in September 2019, the issue of withdrawing from the NCCA Religious Education Course will not arise.

The Religious Education policy of the CTI in Tipperary is an example of how the Circular Letters have caused confusion and undermine the rights of minorities (see section 4.1).

In addition to what is going on in ETB schools, denominational schools are still combining the Guidelines for the Faith Formation and Development of Catholic students with the NCCA Religious Education syllabus and not informing parents that they are doing this. This practice undermines Constitutional and Human Rights, and the Department of Education ignores its positive obligation to protect the rights of these parents and their children.

4.6 Dail Questions to Minister for Education

In March 2019 the Minister for Education answered two Dail questions from Ruth Coppinger TD. The answers added more confusion to the issue. The first question was:

“To ask the Minister for Education and Skills if parents and students over 18 years of age can opt out of the NCCA Religious Education syllabus; and if he will make a statement on the matter.”

The key part of the answer was:

“The NCCA Religious Education (RE) Syllabus is an optional examinable subject at Leaving Certificate. Students opt for the RE syllabus as one of their subjects for the Leaving Certificate and the question of opting out on grounds of conscience should not therefore arise.”

In the first answer, the Minister confined the answer to the NCCA Religious Education Syllabus at Leaving Certificate level. He simply did not address what happens at Junior Cycle. In the second answer, when asked specifically about Junior Cycle, he gave essentially the same reply.

Secondly, the Minister’s answers say that, because it is an optional subject that students opt for, then the question of opting out on the grounds of conscience should not arise. But schools can and do make the course mandatory, and his phrase “should not arise” does not answer the question that was asked. The question was whether you can opt out, not whether or not it should arise that you want to opt out.

The first answer also said the following about the Leaving Certificate syllabus:

“The NCCA Leaving Certificate Religious Education syllabus is a broad course which seeks to develop the skills needed to engage in meaningful dialogue with those of other or of no religious traditions.

It is concerned with promoting personal growth and facilitating the spiritual development of students. Religious Education is well placed to provide students with opportunities for reflection on human experience, as well as for understanding and interpretation of that experience.

Such opportunities encourage the students’ participation in their own conscious and critical development. As part of their studies, students are exposed to a broad range of religious traditions and to the non-religious interpretation of life.”

For the reasons that we have outlined above, this is not a complete or accurate reflection of the NCCA Religious Education syllabus, from the perspective of parents who want their children to have secular education based on Human Rights.

In addition Circular Letter 0062/2018 states that schools can make the subject mandatory. The Circular states that

*“3. Schools discretion in relation to Religious Education
The Department does not require schools to include the NCCA-developed Religious Education syllabuses at Junior or Senior Cycle as mandatory subjects on their curriculum. Accordingly schools have discretion to determine if they provide the subject at all or if it is to be mandatory or optional in any particular class group or year”*

The course cannot be optional and mandatory at the same time.

4.7 New Religious Education Specification for 2019

The specification has since been published for the new Religious Education course being introduced in second level schools in September 2019. ²⁸

The Department has defended the existing NCCA Religious Education syllabus, and continues to defend the new 2019 NCCA Religious Education syllabus, on the basis that both are suitable if they are not mixed with Patrons’ programmes in line with one religious denomination. But this is not the case. Neither course meets Human Rights standards.

The new course continues to reflect the disrespect that the State has for non-religious parents and their children. It is not an Education about Religions, Beliefs and Ethics delivered in an objective, critical and pluralistic manner, but one that pursues an aim of indoctrination.

Parents who seek a secular education for their children could legitimately consider that this course is liable to create a conflict of allegiance for their children between the school and their own values, as was found by the European Court in the case of *Mansur Yalcin & Others v Turkey* in 2015.

The NCCA Course is Religious Instruction. The Department of Education is equating ‘Religious Instruction’ with classes that are in line with the requirements of any particular individual religious denomination, and is trying to move the new 2019 NCCA Religious Education syllabus out of that category because it only ‘exposes’ students to a broad range of religions and beliefs. But there is no basis to make this distinction in the Constitution or the Education Act. ‘Religious Instruction’ is just teaching about religion, in whatever way that is done.

Course Development Group: The NCCA’s Religious Education Development Group is composed of representatives of mostly religious Patron bodies, teachers unions, and the Department. These include the Council for Catechetics of the Irish Catholic Bishops’ Conference, Church of Ireland Board of Education, Methodist Board of Education, Joint Managerial Body of voluntary schools (mostly Catholic), ETBI (whose schools have a

religious influence), Association of Community and Comprehensive Schools, Religion Teachers' Association, Department of Education, State Exam Commission, TUI and ASTI.

The Group is chaired by Fr. Gareth Byrne, the Director and Head of Religious Education at the Mater Dei Centre for Catholic Education at DCU. He is also a member of the National Faith Development Team of the Irish Catholic Bishops' Conference, of the Episcopal Council for Pastoral Renewal and Adult Faith Development, of the Episcopal Council for Catechetics and of the National Training Authority for the Dublin Diocesan Board of Formation in Ministry.

Course Title: Even the title suggests that it is not an Education About Religions and Beliefs delivered in an objective, critical and pluralistic manner. It is called Religious Education, and not an Education ABOUT Religions and Beliefs.

This is significant because, at primary level, the NCCA recently tried to bring in a course called Education About Religions, Beliefs, and Ethics, but the Catholic Church prevented it from being implemented. This was the type of course recommended by the Forum on Patronage.

Course Aim: The first aim of the course is to

“develop knowledge, understanding, skills, attitudes and values to enable young people to come to an understanding of religion and its relevance to life, relationships, society and the wider world.”

That is an ideological position that treats religious beliefs differently than nonreligious beliefs. It is not based on Human Rights. It is a reflection of the influence of the Catholic Church in our education system.

Course Rationale: The Rationale of the course also treats religious beliefs differently to non-religious beliefs. It states that:

“Religious Education has a critical role to play in the curriculum in providing opportunities for them to consider the variety of religious beliefs found in Ireland and elsewhere, become aware of different understandings of the Divine, and examine other interpretations of life.”

So the course seeks to enable students to become aware of different understandings of “the Divine,” but it doesn't seek similarly to enable students to become aware of different understandings of atheism, or secularism, or any non-religious philosophical conviction.

This reference to “the Divine” is a late addition to the course specifications. It wasn't in the draft specification published in June of last year. It has been added in since. Why does the State believe that it is in order to teach the children from non religious or families different understanding of the Divine?

The Rationale also states that the course:

“encourages respect and understanding of different beliefs, perspectives and ways of living, including both the religious and non-religious response to human experience.”

This conflates two different things: students should respect other people's right to hold different beliefs, but they should not be encouraged to respect the beliefs themselves. Crossing that line breaches the Human Right to freedom of religion and belief.

It goes further than the description in Circular Letter 0062/2018 that the new course will merely "ensure that students are exposed to a broad range of religious traditions and to the non-religious interpretation of life."

Parents who seek secular education based on Human Rights teach their children to respect people, not their beliefs or how they express them.

Course Learning Outcomes: The new course has 31 learning outcomes, which apply to all students. Of the 31 learning outcomes in the course: 18 are related solely to religious world views; 12 are related to a combination of religious and non-religious world views; and only 1 is related solely to non-religious world views.

Summary: This new specification does not provide objective, critical, and pluralistic Religious Instruction. It pursues an aim of indoctrination, by not respecting the right of parents to ensure that their children's education is in conformity with their convictions. It disregards the duty to remain neutral with regard to religions and beliefs.

The Department of Education is equating 'Religious Instruction' with classes that are in line with the requirements of any particular individual religious denomination, and is trying to move the new 2019 NCCA Religious Education syllabus out of that category because it only 'exposes' students to a broad range of beliefs. But there is no basis to make this distinction in the Constitution or the Education Act. 'Religious Instruction' is just teaching about religion, in whatever way that is done.

5.1 Other Related Issues

This section addresses other related issues, including the impact of the Circular Letters on Denominational Schools, teacher training at DCU/ Mater Dei, and Sex Education classes.

5.1 Impact of the Circular Letters on Denominational Schools

These Circular Letters also undermine the right of parents to opt their children out of religious teaching in denominational schools. Denominational schools do not have two different religion classes; one the NCCA Religion course, and the other Catholic or Protestant Religious Education. That would simply not fit into the busy schedule for any school.

Denominational schools are not about to separate the NCCA Religion course and their own specific Religion course because of the Circular Letters issued by the Department of Education. What many of them are doing is misusing the Circular Letters to make Religion classes compulsory by claiming that they are the NCCA course and therefore suitable for all religions and none. This is what the CTI in Clonmel are doing (see section 4.1 above).

5.2 Teacher Training in DCU / Mater Dei

Student Religious Education Teachers in DCU take specific modules to enable them to teach in Catholic and Protestant denominational schools at second level.

The Incorporation Agreement between the Mater Dei Institute and DCU clearly states that the distinctive identity and values of teacher education in Roman Catholic and Church of Ireland are maintained on an ongoing basis.

There would be no need to safeguard the distinctive identity and values of Roman Catholic and Church of Ireland traditions in teacher education if the NCCA Religion course was objective and conformed to Constitutional and Human Rights principles and it was the only course that was taught in schools. ²⁹

“The core curriculum for teacher preparation will be denominationally neutral and common to all but will, as required, allow for the delivery of modules to prepare teachers appropriately for employment in denominational schools.”

“The Denominational Centres within the Institute of Education will have specific responsibility for delivering their respective denominational modules as well as engaging closely with their respective schools.”

“While the ethos and identity of each of the three incorporating institutions will be respected and safeguarded within the ‘new DCU’, these three institutions will cease to exist as autonomous, separate legal entities post incorporation.”

“in order to ensure that the distinctive identity and values of teacher education in both the Roman Catholic and Church of Ireland/Reformed Christian traditions are maintained on an ongoing basis, two Centres for Denominational Education shall be

established within the Institute (a Centre for Catholic Education and a Church of Ireland Centre).”

“Recognising the importance of respecting and supporting the distinctive ethos and traditions of the broad religious traditions involved, it is proposed that each Centre be appropriately supported by an Advisory Council, appointed by the relevant Archbishop/Church authorities.”

The Incorporation Agreement claims that DCU will maintain its secular context and facilitate and support the co-existence of different faith-based traditions, working collaboratively, generously and respectfully. That simply has not happened. What has happened is that DCU train student teachers in Religious Education that undermine Constitutional and Human Rights.

DCU has given no consideration to their public sector duty under Section 42 of the IHREC Act. That public sector duty obliges DCU to eliminate discrimination and protect Human Rights. The Catholic and Protestant centres have integrated their vision of Constitutional and Human Rights into teacher training in a secular University. That vision undermines the Constitutional and Human Rights of parents and their children in the education system by undermining the opt out and discriminating on religious grounds.

“While maintaining its secular context, the university will facilitate and support the co-existence of different faith-based traditions, working collaboratively, generously and respectfully.”

In a Submission to the National Council of Curriculum & Assessment, about ERB and Ethics, the Catholic Bishops said:

“2. Pluralism and freedom of religion

The principle of freedom of religion is part of the bedrock upon which western democracies are constructed. These approaches require teachers to adopt and promote a pluralist approach to religion. This is an approach to religion that goes against the philosophical basis of Catholic Religious Education. Such a contradiction would place teachers in a very difficult position where conflicting philosophical approaches to Religious Education would have the potential to create significant confusion.”

Archbishop Dermot Martin said about the incorporation that ³⁰

“For the first time candidates who aspire to teach in the various traditions of denominational education will be trained together and alongside those who aspire to a more secular vision,”

There is no secular vision of Religious Education at DCU because student teachers will have difficulty finding a job if they don't take the Certificate in Religious Studies at primary level, or the Catholic or Protestant Modules in the case of training Religion teachers at second level.

In addition the Deeds of Trust for ETB Community Schools, the Model Agreements for ETB designated Community Colleges, Circular Letter 73/74 and Circular Letter 79 are all still in place which means that teachers will need to take the specific Catholic or Protestant modules in order to get a teaching job in Religious Education in ETB schools.

In an article in the Irish Times in 2018 Sandra Cullen, Director of the Irish Centre for Religious Education at DCU's Institute of Education outlined how DCU misinterpret the Constitutional and Human Right to opt out of religion and what that entails. Dr Cullen stated that ³¹

"Faith Formation

Historically, the State provided for Religious Instruction, understood as formation, within a religious tradition. How this was taught was the responsibility of the faith communities and not accountable to the State. The Constitutional provision for the right of parents to withdraw their child from Religious Instruction underscores its religiously formative nature.

However, as noted by other commentators, Religious Education is an educational activity that is distinct from, though in some instances related to, Religious Instruction. The move toward a Religious Education that is not necessarily aligned with faith formation emerged after the Education Act of 1998 allowed for the development of a State curriculum for RE at post-primary level.

Since 2000, the development of a number of syllabi for RE that may be studied by second-level students of any faith or worldview marks the beginning of the shift from understanding the learning and teaching of religion as solely the task of the faith communities to appreciating it as a legitimate activity within the public domain, the implications of which have yet to be fully realised both by the faith communities and by the public."

"In a democracy that respects freedom of religion students and their parents must be supported in exercising their right to opt-out; the question is what do people think that they are opting out of?"

Whatever Ms. Cullen's opinion about whether some people historically understood the term Religious Instruction to mean faith formation, that is not the position of the Irish Constitution or the Irish Courts. The Irish version of the Constitution, which takes precedence over the English version, uses the phrase 'teagasc' for instruction, which simply means teaching not faith formation. The Education Act uses the word 'instruction' to refer to the teaching of any subject.

The Constitutional Right to opt out of religion is not confined to opting out of any one particular religion. The right guarantees opting out of any Religious Teaching and that was recognised by the Supreme Court in the Separate Church and State case v the Minister for Education in 1998. The Right to opt out of Religious Teaching/Instruction under Article 44.2.4 is not just related to religious formation.

If that right was recognised and supported by DCU then they would ensure that all student teachers understand and protect that right. Instead Religious Education teachers trained in DCU continue to undermine the Constitutional and Human Rights of parents and their children.

The NCCA, the Department of Education, the ETBs, DCU, and the Religion Teachers' Association have determined what they believe the conscience of some parents entails. It is simply not up to these bodies to determine whether there is a need to opt out or whether it is "no longer necessary" to seek an opt out. The very purpose of the right to Freedom of Religion and Belief is that it protects individuals. It is an empowering right. It starts with the word 'freedom'. That right is reflected in Article 44.2.4 of the Constitution (see section 2.3 above, paragraph 51).

5.3 The Right to Objective Sex Education

In January 2019 the Oireachtas Joint Committee on Education and Skills published a Report on Relationship and Sexuality Education ³²

One of the Recommendations was that the Education Act 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.

"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."

Some ETB schools and colleges deliver Sex Education according to their religious ethos which in most case reflects the teachings of the Catholic Church. The reason for this is that some ETB schools and colleges have a religious ethos.

This religious ethos is not just confined to Community Schools (see page 16, para 28, Religion & Education: A Human Rights Perspective) but also covers designated Community Colleges and also non designated Community colleges. These ETB schools also have a religious ethos which the WRC has recognised (see section 4.1 above).

If ETB schools and colleges fulfilled their public sector duty under Section 42 of the IHREC Act, then all of their schools would deliver Sex education in an objective manner. Unfortunately ETBs ignore their public sector duty in order to uphold their religious ethos thus undermining the right of all students to objective sex education.

6. Notes

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