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Submission to the Irish Human Rights Commission on  
Religion and Education from a Human Rights Perspective

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## **1. INTRODUCTION**

### **The Right not to be Indoctrinated**

- 1.1 Under international human rights treaties to which Ireland is party, the right not to be indoctrinated and the right to respect for the philosophical convictions of parents are the basis of the right for children not to receive an education that is contrary to the philosophical convictions of their parents. Also under international human rights treaties to which Ireland is party, the freedom to hold a certain belief is unlimited but the freedom of manifest beliefs can be limited in order to protect the fundamental rights and freedoms of others.
- 1.2 Atheist Ireland believes that society should be based on democracy, human rights and the rule of law. Public policy should be formed by applying reason to evidence. The state should be strictly neutral in matters of religion, favouring none and discriminating against none. State education should be secular, by which we mean that children should be taught in an objective, critical and pluralistic manner about the many varieties of religious belief that exist, with no religious instruction or faith formation in school hours. Children should be educated in critical thinking and the distinction between faith and reason as a guide to knowledge.
- 1.3 Many people mistakenly argue that secular education is the opposite of religious education: that religious education teaches belief in god and that secular education teaches the opposite. When the European Court of Human Rights told Italian schools to remove crucifixes from their classroom walls, as the crucifixes denied the human rights of nonreligious children, such people argued that removing the crucifixes would deny the human rights of religious children. But this is not the case. What would deny the human rights of religious children would be to put on classroom walls a sign saying 'There is no God'.
- 1.4 In practice, atheists are not looking for the state to fund atheistic schools that would teach children that there is no God. But in principle, it would take such a hypothetical school (and not an actual secular school) to be the opposite of a religious school. Religious schools teach that particular religious supernatural claims are true, hypothetical atheistic schools would teach that all religious supernatural claims are false, and secular schools take no position on the question of the truth or falsity of religious supernatural claims, leaving these questions for parents and churches to deal with outside of school hours.
- 1.5 This distinction means that secular schools are not the opposite of religious schools, but are schools that respect the human rights of freedom of conscience, religion and belief of all pupils and parents in the school, regardless of the many different beliefs about religion and the supernatural that they may hold. In fact, secular schools are the only way to enable any pupil to go to any school and have their rights respected.
- 1.6 In theory, it could be possible to respect everybody's rights by having different schools for parents and pupils of every denomination of every religion, plus schools for parents and pupils of no religion, and to have enough of each of these schools built and operating every part of the country to make it possible to vindicate the rights in practice. However, in reality, this is financially and logistically impossible. In a pluralist society, the only way for a state

education system to vindicate everybody's rights to freedom of conscience, religion and belief is for a state education system to be run on a secular basis.

## **2. THE ROLE OF RELIGION IN EDUCATION**

**2(a) In your opinion does religion have a role in the education of children?  
Yes/ No (Please explain your answer)**

2(a)1 The answer to that question depends on what the Commission means by 'religion in the education of children'. If the Commission means teaching children in an objective, critical and pluralistic manner about the many varieties of religious belief that exist, then our answer is yes. If the Commission means religious instruction or faith formation then our answer is **NO**, Atheist Ireland does not support any religious instruction or faith formation during school hours.

2(a)2 Atheist Ireland supports Recommendation 1720 of the Council of Europe on Religion and Democracy.

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/erec1720.htm>

2(a)3 Atheist Ireland also supports the Toledo Guiding Principles on teaching about Religions and beliefs in schools.

<http://www.osce.org/odihr/29154>

2(a)4 The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) have issued guidelines called the Toledo Guiding Principles that provide an overview of the human rights framework and legal issues to consider when developing curricula about religions in order to ensure that the freedom of thought, conscience and religion of all those touched by the process are respected.

2(a)5 Out of the 56 participating States in the OSCE the Vatican is the only one that has rejected the Toledo Guiding Principles. Two United Nations experts and one from the Council of Europe contributed to this project. <http://www.neurope.eu/articles/95548.php> No other Church has rejected these human rights guidelines on teaching ABOUT religions and beliefs. It is only a requirement of the Catholic Church that religious instruction/formation must be provided during school hours and they require this even in State schools. Confining religious instruction/formation to outside school hours does not in any way deny the human right to 'freedom of conscience'.

2(a)6 Atheist Ireland supports Article 26 of the Universal Declaration of Human Rights that "education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace."

2(a)7 Article 13 (1) of the International Covenant of Economic, Social and Cultural Rights adds to Article 26 of the Universal Declaration in three ways: "education shall be directed to the human personality's "sense of dignity", it shall "enable all persons to participate effectively in a free society", and it shall promote understanding among all "ethnic" groups, as well as nations and racial and religious groups. Of those educational objectives which are common to article 26 (2) of the Universal Declaration of Human Rights

and article 13 (1) of the Covenant, perhaps the most fundamental is that "education shall be directed to the full development of the human personality". Experiencing discrimination at an early age is not conducive to the aims of an education based on human rights.

2(a)8 There is an argument put forward by those that support religious instruction/formation during the school day that children are segregated all the time in the school system and therefore, segregating children on religious grounds will have no consequence. Segregating children on the grounds of religion can lead to religious discrimination. Putting forward an argument that the segregation of children on religious grounds will have no consequence as they are routinely segregated on other grounds is simply not an argument as there is no evidence that the other reasons for segregating children in the Irish education system cause discrimination.

2(a)9 Religion is one of the grounds on which discrimination can take place and unless the argument is being made that there is a certain status involved in taking various secular subjects then segregating children on the grounds of what subjects they take does not cause discrimination under any status. Consequently this view is a non-argument and cannot lend its support to segregating children on religious grounds.

2(a)10 The prohibition of discrimination under Article 2 of the International Covenant on Economic, Social and Cultural rights and under Article 2 of the International Covenant on Civil & Political Rights forbids discrimination under the following grounds:-  
"race, colour, sex, language, **religion**, political or other opinion, national or social origin, property, birth or other status".

2(a)11 The prohibition of discrimination under Article 14 of the European Convention on Human Rights states that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, **religion**, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

2(a)12 The Parliamentary Assembly of the Council of Europe in their Recommendation 1720 have forcefully reaffirmed that each person's religion, including the option of having no religion, is a strictly personal matter. However, this is not inconsistent with the view that a good general knowledge of religions and the resulting sense of tolerance are essential to the exercise of democratic citizenship.

2(a)13 It would be impossible to guarantee religious instruction/formation to every family in a given school given the range of religious diversity in the country. Therefore it can only be guaranteed to the majority or a very significant minority. Even the presence of religious instruction/formation that is non-compulsory subjects minorities to pressure to conform to the religious majority in a particular school. In *Lautsi v Italy* ECHR 3<sup>rd</sup> November 2009 the court acknowledged the particular vulnerability of children within the school system. Any religious instruction/formation during the school day can only put pressure on families to conform to the religious identity of the majority. Providing religious instruction/formation for the majority in a given school identifies the state with the majority view.

**2(b) If you agree that religion does have a role in the education of children, should the denominational character/ ethos of a school be confined to formal religious instruction**

**in the class room or should the denominational character of the school be reflected in all the activities of the school throughout the day?**

**Yes/No ( Please explain your answer)**

2(b)1 The only context in which religion should have any role in the education system is through teaching children in an objective, critical and pluralistic manner about the many varieties of religious belief that exist. There should be no formal religious instruction in the class room, and there should be no denominational character reflected in any of the activities of the school throughout the day.

### **3. THE PATRONAGE SYSTEM**

**The State remains formally neutral in matters between different religious denominations. The Education Act 1998 gives legislative status to school “patrons” to whom Boards of Management are accountable for upholding the ethos or “characteristic spirit” of schools. The majority of school patrons in the State are denominational (Roman Catholic). (See Discussion paper at paras 3-10).**

**3(a) Taking into account the fact that the majority of existing schools in the State are denominational in character, in your view, can the school patronage system meet the needs of those who seek denominational, multi denominational or alternatively non denominational education?**

**Yes/No ( Please explain your answer)**

3(a)1 **NO** Atheist Ireland does not believe that the patronage system can meet the needs of all those who seek denominational, multi denominational and non denominational education. It is impossible for the state to fund that need as they would have to provide for schools in every area throughout the country. Under the various Conventions that Ireland has ratified no state is obliged to fund a religious education for every family. They are obliged to respect the religious and philosophical convictions of all parents.

3(a)2 Atheist Ireland believes that the patronage system has failed to protect the human rights of non-religious parents and the human rights of their children. Under the patronage system, non-religious parents are obliged to send their children to schools where their basic human rights are not protected by the state. The Irish State absolves itself of its responsibility to protect the human rights of non-religious parents and children and delegates that responsibility to private bodies and institutions. Non-religious parents who seek secular education, based on human rights for their children, are dispersed throughout the country and therefore do not have the capacity to attract State funding under the patronage system.

3(a)3 Article (1) of the European Convention on Human Rights Act 2003 obliges the State to secure for everyone within its jurisdiction the rights and freedoms defined in Section 1 of the Convention. The Irish State cannot secure the rights and freedom defined in Section 1 of the European Convention under the Patronage system to all parents in the state. Because of the Patronage system the Irish State has failed to protect non-religious parents from discrimination under Article 14 of the Convention. The Irish State has also failed to protect their rights under Article II of Protocol 1 (The Right to Education), Articles 8 (The Right to Private and Family Life, Article 9 (Freedom of Conscience), Article 10 (Freedom of Expression), Article 13 (Right to an Effective Remedy) and Article 3 (Protection from Inhuman and Degrading Treatment).

3(a)4 Article II of Protocol 1 of the European Convention obliges the state to guarantee a right of access to educational instructions existing at a given time. Yet the Irish State has taken positive steps to discriminate and deny the non-religious a right of access without discrimination to 97% of the schools in the state while at the same time claiming the Irish education system is compatible with human rights. Section 7 – 3 (c) of the Equal Status Act 2000, denies non-religious parents a guaranteed right of access without discrimination to 97% of the schools in the state. Schools are permitted to discriminate in the event of a shortage of places in order to uphold their religious ethos.

3(a)5 Running an education system on the basis of the preference of a religious majority in a given area has resulted in the denial of the human rights of those parents that seek a secular education for their children. It is an illusion that the State remains formally neutral in matters between religious denominations as the fact of the matter is that on the ground the patronage system has ensured that the religious majority have access to a religious education for their children at the expense of the human rights of minorities. There is no doubt that every Catholic family in the country has access to a denominational education for their children but the same cannot be said about religious minorities. It is not a neutral position when a State funds a religious education for the religious majority as it creates a situation where minorities have no option but to attend denominational schools.

3(a)6 The patronage system lends its weight to identifying members of society by their religious affiliation. The patronage system coerces parents to identify with various groups in society especially when children can be refused access to the local school in the event of a shortage of places and in order to uphold a religious ethos. Human rights are guaranteed to individuals not to a majority group in a given area.

3(a)7 The Irish State does not recognise that non-religious parents have a right to an education which does not conflict with their beliefs and where their basic human rights are protected. Article 42.3 of the Irish Constitution states that “The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State.” Despite Article 42.3 of the Irish Constitution, parents seeking secular human rights based education for their children are obliged to send their children to schools in violation of their conscience and lawful preference.

3(a)8 It is simply not an option for the majority of parents to educate their children at home and they are left with a choice between a religious education for their children or no education at all. It is clear from the Government submissions to the UN and Council of Europe over the years under the various conventions that the Irish State inaccurately maintains that our education system protects the individual human rights of all parents and children when this is simply not the case.

3(a)9 The Committee on the UN Convention on Economic, Social and Cultural Rights has raised concern with regard to Article 40.1 of the Irish Constitution and equality before the law with the principle of non-discrimination. “The Committee regrets that the State party has not yet undertaken any measures with regard to the Committee’s 1999 recommendation concerning the inconsistency of article 40.1 of the Constitution on equality before the law with the principle of non-discrimination as set out in articles 2 and 3 of the Covenant.” Article 40.1 of the Irish Constitution does not guarantee the non-religious equality before the law without discrimination in the Education system as otherwise minorities could not be

refused access to their local school because they could not produce a Catholic Baptismal Certificate especially when they have nowhere else to go.

**3(b) If your answer is No, how could the State take measures to ensure the system meets other needs identified?**

3(b)1 Atheist Ireland would not be happy with the leaving the patronage system in place as it absolves the state from the responsibility of protecting the human rights of parents. The measures the state should take are to ensure that there is non-denominational secular human rights based education available to all children in the country. The State should also take responsibility for the protection of the human rights of all parents and children.

3(b)2 In 2008 the UN Human Rights Committee (UNHRC) stated this about Ireland: “The Committee notes with concern that the vast majority of Ireland’s primary schools are privately run denominational schools that have adopted a religious integrated curriculum thus depriving many parents and children who so wish to have access to secular primary education (arts. 2, 18, 24, 26). The State party should increase its efforts to ensure that non-denominational primary education is widely available in all regions of the State party, in view of the increasingly diverse and multi-ethnic composition of the population of the State party.”

3(b)3 The UNHRC stated this in their concluding observations under the International Covenant on Civil & Political Rights (CCPR.C.IRL.CO.3, para 22). The four Articles that the UNHRC cited are Article 2 (which concerns Freedom from Discrimination), Article 18 (Freedom of Conscience), Article 24 (Rights of the Child) and Article 26 (Equality before the Law). These basic human rights are denied to non-religious parents and their children as the Irish State has failed to protect those rights. The Irish State does not accept any responsibility for the protection of the human rights of all parents and children in the education system under the various Conventions that Ireland has ratified.

**3(c) Is the freedom of thought conscience and religion of teachers being upheld within the current patronage system taking into account the obligations of the Boards of Management to uphold the ethos of the school:  
Yes/ No ( Please explain your answer)**

3(c)1 **NO** the right to freedom of thought conscience and religion of teachers is not being upheld within the current patronage system.

3(c)2 There are five teacher-training colleges in Ireland and all of them are Christian. In these colleges all students have no choice but to learn and take exams in Christian doctrine in order to take up a position as a teacher. As 97% of the schools in the country are denominational, the non-religious simply have no choice but to attend one of the colleges if they wish to become a teacher. These colleges are funded by the State and are not classed as private. The reality for the non-religious is that they must pretend to be Christian and typically a Catholic in order to become a teacher.

3(c)3 There is an obligation on teachers to teach doctrinal religion when this may be contrary to their beliefs. If they don’t teach it they may not be appointed and may never be promoted. They are highly unlikely ever to be made a principal.

3(c)4 Section 37 of the Employment Equality Act provides for an exemption from equality for religious, educational or medical institutions under the control of a religious body. The exemption permits a religious body to discriminate on grounds of religion regarding its employees and prospective employees. This legislation permits religious bodies to take any action which is “reasonably necessary” to prevent an employee from undermining its ethos.

3(c)5 This part of the Act is wide-ranging and not limited to discrimination on the grounds of religion. This part of the Act can be applied to a teacher who does not conduct his/her private life in accordance with the teaching of a particular religion or as the Catholic Church put it: “6. Catholic schools are characterised by the institutional link they keep with the Church hierarchy, which guarantees that the instruction and education be grounded in the principles of the Catholic faith and imparted by teachers of right doctrine and probity of life (cf. c. 803 CIC; cc. 632 e 639 CCEO).” (Circular letter from the Vatican 2009)

3(c)6 What exactly does ‘probity of life’ mean to the patron body of over 90% of schools in the State? This section of the Employment Equality Legislation cannot be in conformity with Article 8 (the Right to Private and Family Life) of the European Convention on Human Rights nor the right to freedom of conscience under any Convention that Ireland has ratified. Non-religious parents are coerced by force of circumstance to send their children to schools that can legally discriminate against teachers and deny their human right to freedom of conscience when the very conscience of these parents objects on fundamental grounds to that discrimination.

**3(d) Any other comments you may have in relation to the patronage system:**

3(d)1 In December 2008 in the Supreme Court Case *Louise O’Keeffe v Leo Hickey, the Minister for Education and Science, Ireland and the Attorney General*, Mr. Justice Hardiman stated the following: “In my view the Constitution specifically envisages, not indeed a delegation but a ceding of the actual running of schools to the interests represented by the Patron and the Manager.”

3(d)2 The Irish State has put in place legislation that permits Patrons and Boards of Management who are private bodies to discriminate under Section 7 3 (c) of the Equal Status Act and Section 15 2 (b) of the Education Act in order to uphold their interests. These pieces of legislation deny non-religious parents access to a secular education, based on human rights for their children. Despite this legislation, in their response to a UN Report in August 2009 the Irish Government still maintain that all Irish Schools have traditionally welcomed students from all backgrounds, (CCPR.C.IRL.CO.3.Add.1 para 39).

3(d)3 The European Court of Human Rights has stated that “The Convention is intended to guarantee not rights which are theoretical or illusory but rights which are practical and effective” (*Airey v Ireland* 1979 – para 36 ECHR). Atheist Ireland does not believe that providing effective access to either denominational or secular education to families within the present patronage system will satisfy human rights concerns, as it will still mean that the Irish State will continue to absolve itself of the responsibility to educate and delegate that responsibility to private bodies and institutions. Non-religious parents cannot hold a Patron or Board of Management responsible for their failure to protect human rights, as these bodies did not ratify any human rights conventions.



3(d)4 The recent comments of the UN under the ICCPR and case law at the ECHR such as *Folgero v Norway* 29.06.07 support the right to not to receive an education contrary to the belief of parents. This shows that the Irish education system is failing to protect the fundamental human rights of non-religious parents under the various Conventions that Ireland has ratified.

3(d)5 Given the statutory power of Patrons and Boards of Management within the present system there is no guarantee for non-religious parents and children that these bodies would interpret human rights in a manner compatible with the European Convention on Human Rights and all the various conventions that Ireland has ratified. It is the duty of the State under the European Convention on Human Rights and the various UN Conventions that Ireland has ratified to protect human rights in the education system and to ensure that parents have an effective remedy to vindicate those rights. It is not permissible to delegate that responsibility to private bodies and institutions and permit them to deliver the curriculum in a manner that is not consistent with basic human rights when minorities have no option but to attend these schools.

3(d)6 The European Court of Human Rights has already found that a state cannot absolve itself of the responsibility to educate and cede that responsibility to private bodies and institutions but that is exactly what the Irish State does while at the same time claiming that this system guarantees the human rights of all parents.

3(d)7 In *Costello Roberts v UK* 1993, the European Court of Human Rights stated: "The Court has consistently held that the responsibility of a State is engaged if a violation of one of the rights and freedoms defined in the Convention is the result of non-observance by that State of its obligation under Article 1 (art. 1) to secure those rights and freedoms in its domestic law to everyone within its jurisdiction (see, *mutatis mutandis*, the *Young, James and Webster v. the United Kingdom* judgment of 13 August 1981, Series A no. 44, p. 20, para. 49). Secondly, in the United Kingdom, independent schools co-exist with a system of public education. The fundamental right of everyone to education is a right guaranteed equally to pupils in State and independent schools, no distinction being made between the two (see, *mutatis mutandis*, the above-mentioned *Kjeldsen, Busk Madsen and Pedersen* judgment, Series A no. 23, p. 24, para. 50). Thirdly, the Court agrees with the applicant that the State cannot absolve itself from responsibility by delegating its obligations to private bodies or individuals (see, *mutatis mutandis*, the *Van der Mussele v. Belgium* judgment of 23 November 1983, Series A no. 70, pp. 14-15, paras. 28-30)."

3(d)8 The patronage system ensures that pluralism and equality is interpreted in a manner consistent with the teachings of the Catholic Church in the majority of schools in the country. Given that the Catholic Church has rejected the Toledo Guiding Principles that interpretation is incompatible with human rights law. The system of accommodating minorities in schools operated by the religious majority can only be viewed as the State identifying with the views and aims of the religious majority.

#### **4. STATE FUNDING FOR SCHOOLS**

**On a formal basis the State provides funding to all recognised schools on an equitable basis irrespective of whether they are denominational in character or not.**

**4(a) Does the current system of funding schools meet the needs of those who seek denominational, multi denominational, or non denominational education for their children?**

**Yes/ No (Please explain your answer)**

4(a)1 **No** the current system of funding schools does not meet the needs of those who seek non-denominational secular human rights based education. Non-religious parents and their children do not enjoy the respect of the Irish State for their philosophical convictions. The Irish State does not recognise that non-religious parents have a right for their children to receive an education that is not contrary to their conscience and in accordance with the obligations deriving from the various conventions that Ireland has ratified. The Irish State does not accept that religious schools breach the fundamental human rights of those parents who seek secular education for their children. The current system of funding schools only meets the needs of those seeking a Catholic education for their children.

4(a)2 The patronage system cannot meet the needs of those parents that seek secular education based on human rights law as under this system the state absolves itself of the responsibility to educate and delegates that responsibility to private bodies and institutions. Those private bodies did not ratify any human rights convention and are not obliged to interpret human rights in a manner consistent with Ireland's international obligations. The European Court of Human Rights has stated: "(d) Article 2 of Protocol No. 1 constitutes a whole that is dominated by its first sentence. By binding themselves not to "deny the right to education", the Contracting States guarantee to anyone within their jurisdiction a right of access to educational institutions existing at a given time and the possibility of drawing, by official recognition of the studies which he has completed, profit from the education received (see Kjeldsen, Busk Madsen and Pedersen, cited above, pp. 25-26, § 52, and Belgian linguistic case (merits), judgment of 23 July 1968, Series A no. 6, pp. 31-32, § 4)."

4(a)3 The UN Committee on the International Covenant on Civil & Political Rights in their General Comment 18 on non-discrimination, 10.11.89 has stated that:-  
"the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions". (see Appendix 1)

4(a)4 Freedom from discrimination is part of the human right to education. The prohibition on discrimination is subject to neither progressive realisation nor the availability of resources. It is an absolute right. (United Nations General Comment on Article 13 para 31 of the ICESCR, The right to education (Art.13): 08/12/99. E/C.12/1999/10). (see Appendix 1)

**4(b) In allocating funding for new schools, should the State focus on demographic growth, or to any demand for denominational/ multi denominational or non denominational education? Should any such considerations vary depending on existing schools in the catchment area?**

**Yes/No ( Please explain your answer)**

4(b)1 **NO** none of the above considerations should be taken into account other than demographic growth that takes no account of religion. In allocating funding the state should focus on meeting the recommendation of the United Nations Human Rights Committee that

'The State party should increase its efforts to ensure that non-denominational primary education is widely available in all regions of the State party, in view of the increasingly diverse and multi-ethnic composition of the population of the State party.' This should be its guiding principle when allocating funding for new schools. The funding of the education system should take in account and guarantee the human rights of all parents, children and teachers within that system.

4(b)2 It is simply not feasible for the State to financially support the funding of various types of schools in every area. Delivering the education system through private bodies where the state funds education on the basis of a particular majority in a given area instead of protecting the rights of individuals can only result in discrimination and the denial of basic human rights. In this regard the intersectionality between religious and racial discrimination should be taken into account.

4(b)3 This is something that is not lost on the UN (CERD/C/IRL/CO/2) as in July 2005 when they stated the following:-

"18. The Committee, noting that almost all primary schools are run by Catholic groups and that non-denominational or multi-denominational schools represent less than 1% of the total number of primary educational facilities, is concerned that existing laws and practice would favour Catholic pupils in the admission to Catholic schools in case of shortage of places, particularly in the light of the limited alternatives available. (article 5(d)(vii) and 5(e)(v)) *The Committee, recognising the "intersectionality" of racial and religious discrimination, encourages the State party to promote the establishment of nondenominational or multi-denominational schools and to amend the existing legislative framework so that no discrimination may take place as far as the admission of pupils (of all religions) in schools is concerned.*"

4(b)4 The European Court of Human Rights has stated in Kjeldsen, Busk Madsen and Pedersen v Denmark 1976 – (50) (Application no. 5095/71; 5920/72; 5926/72) that: "the 'travaux préparatoires' of Article II of Protocol (1) aim in short at safeguarding the possibility of pluralism in education which possibility is essential for the preservation of the "democratic society" as conceived by the Convention. In view of the power of the modern State, it is above all through State teaching that this aim must be realized." (see Appendix 1)

4(b)5 The UN has stated that the principle of equality sometimes requires State parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant (ICCPR). The Irish State has done the opposite as they have put in place legislation that enables private bodies to discriminate and deny non-religious parents their human rights in the education system. (General Comment No. 18: Non-discrimination of 10/11/89 International Covenant on Civil & Political Rights States, para 10.)

4(b)6 Democracy does not mean that the views of the majority must always prevail but the Patronage system in Ireland has ensured that the Catholic majority has access to a religious education for their children at the expense of the human rights of minorities. The European Court of Human Rights is clear on this. They have stated that: "Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position" (Valsamis v Greece, p. 2324, § 27).

4(b)7 The patronage system is not a balanced system that ensures the fair and proper treatment of minorities. The Irish State has failed in its laws and policies to protect the fundamental rights of non-religious parents in the education system as they have failed to take positive action to protect those rights. In fact they have put in place legislation that denies non-religious parents a right of access without discrimination to 97% of schools in the country. Non-religious parent do not enjoy the liberty to ensure that their children enjoy their basic fundamental human rights as they are coerced by force of circumstances to send their children to schools where their basic human rights are disregarded. Despite the European Convention on Human Rights and the various UN Conventions that Ireland has ratified, the Irish State has failed to guarantee and protect these human rights.

## **5. THE CURRICULUM (Please see paras 11-18 Discussion Paper)**

**5(a) Should the State ensure that information and knowledge in the education curriculum, including religion is conveyed in an objective, critical and pluralistic manner in the classroom?**

**Yes/ No (Please explain your answer)**

5(a)1 **YES** the State should ensure that information and knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner in the classroom. The reason for this is to protect the fundamental human rights of all parents and children and to ensure pluralism. It would also protect the rights of children under Article 14 (1) of the Convention on the Rights of the Child. Appropriate teacher training is critical in achieving this objective.

**5(b) If religion is taught in an objective, critical and pluralist manner can this vindicate the right to freedom of thought, conscience and religion of parents who have a preference for either denominational or non-denominational education for their children?**

**Yes/ No ( Please explain your answer)**

5(b)1 **YES** ensuring that information and knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner would vindicate the right to freedom of thought, conscience and religion of communities and individuals who have a preference for both denominational and non-denominational education. The European Convention on Human Rights does not oblige any State to fund a religious education for children in the religious denomination of their parents and it would be quite impossible for any State to guarantee that right. The purpose of delivering the curriculum in an objective, critical and pluralistic manner is to protect the human rights of all parents and children and to ensure that pluralism is achieved.

5(b)2 The European Court of Human Rights in *Grzelak v Poland* (application no. 7710/02) – 15th June 2010 has stated the following: “Further, the Court reiterates that freedom of thought, conscience and religion, as enshrined in Article 9, is one of the foundations of a “democratic society” within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, inter alia, freedom to hold or not

to hold religious beliefs and to practise or not to practise a religion (see *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260A, and *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999I).”

5(b)3 Delivering the curriculum in an objective, critical and pluralistic manner which is a General Principle of the European Court of Human Rights would not deny the right to freedom of conscience or disrespect parents’ religious convictions as this principle is one of the foundations of a democratic society within the meaning of the Convention.

5(b)4 The UN has also raised concern that a religious integrated curriculum which fails to deliver the curriculum in a neutral and objective manner denies the right to freedom of conscience of those parents who seek a secular education for their children. The State should focus on its duty to not only respect parents’ religious convictions but also respect the philosophical convictions of non-religious parents and it should focus on protecting the rights of children. That cannot be done in denominational schools or any school that operates a religious integrated curriculum as it breaches the human rights of minorities.

5(b)5 Catholic Church teaching and human rights law are incompatible as it is Catholic Church teaching that religion must be integrated into all subjects even in state schools. It is also Catholic Church teaching that if religious education is limited to a presentation of the different religions, in a comparative and “neutral” way, it creates confusion or generates religious relativism or indifferentism. In 2009 the Vatican issued a Circular Letter to the Presidents of Bishops’ Conferences on Religious Education in Schools. The purpose of that letter was to recall some of the principles that are rooted in Catholic Church teaching. The Vatican stated: “It is clear that teaching the Catholic religion has its own specific nature vis-a-vis other school subjects” (Circular Letter from Congregation for Catholic Education, Vatican to the Presidents of Bishops’ Conferences on Religious Education in Schools 2009). See <http://bit.ly/3QCnF>

5(b)6 Because of this teaching, which is protected by legislation, Section 15(2) (b) of the Education Act 1998, non-religious parents cannot exempt their child from the elements of religion that is integrated into all the various subjects under the curriculum. Because of the integrated curriculum there are potential areas of all subjects that they could legitimately consider likely to give rise in their children to a conflict of allegiance between the school and their own values and therefore non-religious parents cannot guarantee that the education that their children receive is in conformity with their own convictions.

5(b)7 In *Grzelak v Poland* (application no. 7710/02) – 15th June 2010 the European Court of Human Rights has said that: “In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on freedom of thought, conscience and religion in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected (see *Kokkinakis*, cited above, § 33). The Court has frequently emphasised the State’s role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 107, ECHR 2005XI).”

5(b)8 Non-religious parents who seek secular education based on human rights law for their children need the protection of the State from a religious integrated curriculum in order to guarantee their human rights.

**5(c) Alternatively should the State be bound to respect parents' religious convictions by providing for education in the denomination/ non denomination of their choice?  
Yes/No ( Please explain your answer)**

5(c)1 **NO**, as no state could possibly afford to do this given the religious diversity in the country. Respecting parents' convictions is not dependent on providing an education in the religious denomination of the parent. Respecting parents religious and philosophical convictions can only be achieved by the state guaranteeing secular education based on human rights law. There is no right in human rights law to have your child educated in a particular belief system at the expense of the state. If parents wish for this type of education, then they should establish private schools funded totally by themselves.

5(c)2 Accommodating the non-religious in denominational schools has failed to protect the human rights of non-religious parents and the rights of their children. It has denied the right to 'freedom of conscience' of minorities and if we are to be realistic trying to accommodate those seeking secular education in denominational schools whose very purpose is to inculcate religious views is unrealistic and simply cannot be achieved.

5(c)3 Catholic Church teaching is totally against secular education and they have stated in a Circular Letter from the Vatican in 2009:-

"A form of education that ignores or marginalises the moral and religious dimension of the person is a hindrance to full education, because "children and young people have a right to be motivated to appraise moral values with a right conscience, to embrace them with a personal adherence, together with a deeper knowledge and love of God." That is why the Second Vatican Council asked and recommended "all those who hold a position of public authority or who are in charge of education to see to it that youth is never deprived of this sacred right" (Declaration Gravissimum educationis [GE ],1)."

"Therefore the Church esteems highly those civil authorities and societies which, bearing in mind the pluralism of contemporary society and respecting religious freedom, assist families so that the education of their children can be imparted in all schools according to the individual moral and religious principles of the families" (GE7)."

5(c)4 It is worth noting from the above document that the Catholic Church conflates the 'moral and religious dimension of a person' as if its morality is inextricably linked with religion. A secular education does not ignore or marginalise the moral dimension of a person. Religion and morality are two different things.

5(c)5 It is clear that Irish education system and Catholic Church teaching are one and the same. The pluralism that is on offer in denominational schools is pluralism through the eyes of the Catholic Church and not based on the ways of life in a democratic secular republic.

**5(d) If you agree that the State should be bound to respect the religious convictions of parents, what does that duty entail for children of a minority religion or no religion in**

**the existing system which at present has a high number of denominational schools?  
Please suggest any solutions or models which could be considered.**

5(d)1 For the reasons outlined above, we believe that the State should respect equally the religious and nonreligious convictions of all parents, and that this cannot be done within the existing system or by seeking to provide for education in every denomination/ non denomination of their choice. The only way that the State can respect equally the religious and nonreligious convictions of all parents is to ensure that children are taught in an objective, critical and pluralistic manner about the many varieties of religious and nonreligious beliefs that exist, with no religious instruction or faith formation in school hours.

## **6. REMEDIES**

**Section 30 of the Education Act 1998 states that the relevant Minister cannot oblige a student to attend a course of instruction contrary to his convictions or that of his parents. In addition the Minister may agree procedures for dealing with complaints against teachers or staff of a school (see discussion paper paras 19-27).**

**At present there is a complaints system which focuses on teacher interaction with the child but which may not address wider issues of the place of religion in the school.**

**6(a) Does the possibility of opting out of religious instruction in accordance with the Education Act 1998 vindicate the rights of those seeking multi denominational or non denominational education?**

**Yes/ No ( Please explain your answer)**

6(a)1 **NO** the possibility of opting out of religious instruction in accordance with the Education Act 1998 does not vindicate the rights of those seeking multi-denominational or non-denominational education. Parents that seek to opt their child out of religious instruction are responsible for the supervision of their children when the religious instruction class takes place. Religious instruction and formation is not just confined to the religious instruction class and is integrated into all subjects and into the daily life of the school. Consequently if parents sought to exempt their child out of the religious instruction class, the elements of religious formation that is integrated into all subjects and the daily life of the school then they would need to take up residence outside the school gates in order to remove their child from the elements of the various subjects that are contrary to their conscience. On top of this there is sacramental preparation during the school day for Catholic religious ceremonies which takes up a considerable amount of school time and non-religious parents are also responsible for the supervision of their children during this time.

6(a)2 There is a Constitutional right under Article 44.2.4 of the Constitution to opt out of religious instruction and under Article 42.1 the State acknowledges that the primary and natural educator of the child is the family. The Department of Education has provided no further guidance other than Section 30 – 2 (e) of the Education Act 1998 which states: “Without prejudice to the generality of subsection (1), the Minister – 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.”

6(a)3 Evidence shows that opt outs do not work in an environment such as the Irish education system. Parents are reluctant to use them as it would stigmatise their child and they are afraid that their child would suffer bullying if they are opted out. There are no meaningful

alternatives to taking religion and schools claim they have not got the teachers or classrooms to teach alternatives.

6(a)4 The UN in *Leirvag V Norway* CCPR/C/82/D/1155/2003, 23<sup>rd</sup> November 2004 the Human Rights Committee stated the following:-

“14.2 The main issue before the Committee is whether the compulsory instruction of the CKREE subject in Norwegian schools, with only limited possibility of exemption, violates the authors' right to freedom of thought, conscience and religion under article 18 and more specifically the right of parents to secure the religious and moral education of their children in conformity with their own convictions, pursuant to article 18, paragraph 4. The scope of article 18 covers not only protection of traditional religions, but also philosophies of life, such as those held by the authors. Instruction in religion and ethics may in the Committee's view be in compliance with article 18, if carried out under the terms expressed in the Committee's General Comment No. 22 on article 18: “[A]rticle 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way”, and “public education that includes instruction in a particular religion or belief is inconsistent with article 18, paragraph 4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents or guardians.” The Committee also recalls its Views in *Hartikainen et al. v. Finland*, where it concluded that instruction in a religious context should respect the convictions of parents and guardians who do not believe in any religion. “

6(a)5 Opt outs must satisfy the needs of parents and in Ireland schools are failing to meet this need. International Human Rights bodies are now examining very closely the workings of opt outs and it is highly unlikely that Irish practice would meet the requisite Standards. Legislation providing State aid for schools under Article 44.2.4 of the Irish Constitution is dependent on children opting out of religious instruction. It is clear that Section 30 – 2 (e) of the Education Act 1998 has failed to secure that right.

**6(b) Is the existing complaints mechanism sufficient to ensure that the rights of those that seek to opt out of religious instruction and/or education are protected? Please suggest any other procedures which could be considered.  
Yes/ No ( Please explain your answer)**

6(b)1 **NO** the existing complaints mechanism is not sufficient to ensure that the rights of those that seek to opt out of religious instruction and/or education are protected. The European Court of Human Rights has stated in *Kjeldsen, Busk Madsen and Pedersen v Denmark* 1976 – (54) (Application no. 5095/71; 5920/72; 5926/72) that: “Certainly, abuses can occur as to the manner in which the provisions in force are applied by a given school or teacher and the competent authorities have a duty to take the utmost care to see to it that parents' religious and philosophical convictions are not disregarded at this level by carelessness, lack of judgment or misplaced proselytism.”

6(b)2 The competent authorities in Ireland under the European Convention are the Minister and Department of Education who (under the Education Act 1998 and the present patronage system) absolve themselves of the responsibility to educate and cede control to private bodies and institutions.

6(b)3 There are no statutory guidelines in place to oblige Patrons and Boards of Management to interpret human rights law in a manner compatible with the European Convention on



Human Rights and most teachers receive their training in denominational institutions where there is no training in human rights. As there are no statutory guidelines, there are no time limits to deal with complaints. This complaints procedure under the Education Act subjects non-religious parents to a heavy burden and the necessity of disclosing details of their philosophical convictions in order to try to opt their children out of the elements of religious formation that are integrated into all subjects.

6(b)4 There are no appropriate provisions in the Irish education system to ensure that non-religious parents' philosophical convictions are respected. The internal complaints system in place under the Education Act 1998 does not and cannot protect the human rights of non-religious parents. Nothing obliges Patrons and Boards of Management to guarantee the human rights of parents seeking a secular education based on human rights law, as the State does not recognise that a religious integrated curriculum violates the conscience of non-religious parents and children. This can be seen because it obliges schools under the Rules for national Schools to integrate religion into all subjects.

6(b)5 There is a right to an effective remedy under Article 13 of the European Convention on Human Rights but as schools are not considered 'organs of the state' under the European Convention on Human Rights Act 2003, there is no means of holding the State responsible for failing to secure the rights guaranteed under the European Convention. Even if schools were 'organs of the state' within the meaning of the European Convention on Human Rights Act 2003, it is then expected that a parent should ask the courts to interpret statutes in a Convention compliant manner and, if that was not possible, to make a declaration of incompatibility. A declaration of incompatibility is not obligatory on the State. There is no legal aid for these matters and the prohibitive costs of legal action against the state are a deterrent to parents. By the time any parent would get through the process their child would be grown up and consequently there is no effective remedy in Ireland to enable non-religious parents to secure their rights under the European Convention.

6(b)6 There is a right to opt out of religion in denominational schools under Article 44.2.4 of the Irish Constitution. However the legal framework does not take into account the legitimate interests of non-religious parents and children nor is it in accordance with the obligations deriving from the European Convention.

6(b)7 The UN Human Rights Committee has stated in its General Comment No. 31 [80] Nature of the General Legal Obligations Imposed on States Parties to the Covenant: 26/05/2004. (ICCPR) CCPR/C/21/Rev.1/Add.13. (para 8.) that the State has an obligation to protect individuals not just against violations of Covenant rights by its agents, but also against acts committed by private person or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private person or entities. (see Appendix 2)

6(b)8 It is clear that the patronage system has failed to protect the fundamental human rights of the non-religious in the Irish Education system and the complaints procedure in place cannot and does not protect the human rights of parents within the present system. The Irish State must accept responsibility for the protection of the fundamental human rights of all parents and children in the education system. Statutory Guidelines that reflect human rights and the right to freedom from discrimination is the only means that would guarantee the right to opt out. Any Guidelines should show clear procedure and time limits for vindicating any human rights.

## **7. ANY OTHER COMMENTS**

### **7(a) Second Level Schools**

7(a)1 The issue that the Commission has raised in its Discussion Paper with regard to primary level such as access to an education that is objective, critical and pluralistic does not cease when children enter second level. In Ireland parents are obliged to send their children to school up to the age of sixteen. The majority of schools at second level are denominational. The remainder are usually referred to as multi-denominational but they can operate a specific religious integrated curriculum.

7(a)2 Despite this in 2007 the Government informed the Advisory Committee on the Framework Convention for the Protection of Nationals Minorities (Council of Europe) that: “Vocational Schools and Community Colleges provide education to approximately 30% of all second level students, and are administered by Vocational Education Committees (VEC), which are statutory bodies established under the Vocational Education Act, 1930, as amended. Consequently, schools administered by VECs are non-denominational.”

7(a)3 VEC Community schools and Community Colleges at second-level in Ireland are obliged to ensure that there is religious instruction available, Community Schools under the Deeds of Trust, Designated Community Colleges under the Model Agreement and Non-Designated Community Colleges under Circular Letter 73/74 issued by the Dept of Education in 1976. As at primary level, non-religious parents are responsible for the supervision of their children during religious instruction classes if they wish to opt out their child from this class.

### **7(b) Opting out of religious instruction**

7(b)1 The Joint Managerial Body/Association of Management of Catholic Secondary Schools (JMB/AMCSS) has issued guidelines on the inclusion of students of other faiths in Catholic Secondary Schools. <http://www.jmb.ie/home/307>

7(b)2 According to these guidelines, schools should make it clear that responsibility for supervision of the student who opts out of religion classes lies with the parents. They go on to state that it may not be possible for the school to provide for such supervision within the Department of Education’s staff allocation to the school. As at primary level, parents are responsible for the supervision of their children if they opt out of religious instruction classes during the school day.

7(b)3 The guidelines on the inclusion of students of other faiths in Catholic Secondary Schools seek to offer practical suggestions to Catholic school communities on how to welcome and facilitate all students, including those of different faiths, while remaining true to the characteristic spirit of their school and the Gospel values that motivate Catholic education. There are no practical suggestions on how to accommodate those parents who wish for a secular education based on human rights law for their children, as the Catholic Church does not approve of secular education:

7(b)4 “The suggestion that religious belief is not relevant to large areas of life is the essence of secularism. It may sound like a recipe for tolerance and harmony – let religion keep to its place and we will avoid a lot of divisive issues. The reality is that this amounts to a denial or at least a profound misrepresentation of God. A god who is irrelevant to some spheres or

aspects of the creation is not God at all! ”This quote is from ‘Catholic Primary Education in Contemporary Ireland, Facing New Horizons’, address by Bishop Donal Murray, Bishops’ Department of Catholic Education and Formation / Mary Immaculate College, University of Limerick 22nd May 2009. [http://www.kandle.ie/wp-content/uploads/2009/05/cath\\_educ\\_facing\\_new\\_horizons\\_murray.pdf](http://www.kandle.ie/wp-content/uploads/2009/05/cath_educ_facing_new_horizons_murray.pdf)

### **7(c) Religious Education Course 2000**

7(c)1 In 2000 a religious education course was introduced as part of the curriculum which is supposed to be suitable for all religions and none. Atheist Ireland has complained to the Department of Education and the National Council for Curriculum and Assessment (NCCA) with regard to this course and its failure to comply with basic human rights principles. This course disrespects the philosophical convictions of non-religious parents and breaches their human rights. It cannot be claimed that the religious education course is suitable for all students, as in order to access the course the children of non-religious parents must endure the disrespect of the State for their parent’s philosophical convictions.

7(c)2 From the complaints that Atheist Ireland receives it is clear that some schools are forcing the children of non-religious parents to take the course. The NCCA is an ‘organ of the state’ but it has failed in its functions to respect the philosophical convictions of non-religious parents. It is also in breach of its own Guidelines on Intercultural Education in Post-Primary Schools as these Guidelines state: “At its core, intercultural education....(is) education which promotes equality and human rights, challenges unfair discrimination and promotes the values upon which equality is built.”

[http://www.ncca.ie/uploadedfiles/publications/Interc%20Guide\\_Eng.pdf](http://www.ncca.ie/uploadedfiles/publications/Interc%20Guide_Eng.pdf)

7(c)3 There is a positive obligation on the State under Article 2 of Protocol 1 of the European Convention on Human Rights which gives parents the right to demand from the State respect for their philosophical convictions and respect for the dignity of all human beings in the teaching about religions and beliefs under the curriculum. There is also an obligation on the state to avoid a situation where pupils face a conflict between the course and the philosophical convictions of their parents.

7(c)4 The European Court of Human Rights has stated: “Nonetheless, where the Contracting States include the study of religion in the subjects on school curricula, and irrespective of the arrangements for exemption, pupils’ parents may legitimately expect that the subject will be taught in such a way as to meet the criteria of objectivity and pluralism, and with respect for their religious or philosophical convictions” (para 68, Hasan and Eylem Zengin v Turkey 9th October 2007 European Court of Human Rights).

7(c)5 One of the stated aims of the religious education course at second level is “To appreciate the richness of religious traditions and to acknowledge the non-religious interpretation of life”. Acknowledging the non-religious interpretation of life does not constitute respect for the philosophical convictions of non-religious parents under Article 2 of Protocol 1 (the right to education) of the European Convention on Human Rights.

7(c)6 The European Court of Human Rights has stated: “The verb “respect” means more than “acknowledge” or “take into account”. In addition to a primarily negative undertaking, it implies some positive obligation on the part of the State. The term “conviction”, taken on its own, is not synonymous with the words “opinions” and “ideas”. It denotes views that attain a

certain level of cogency, seriousness, cohesion and importance (see Valsamis, pp. 2323-24, & 25 and 27, and Campbell and Cosans, pp. 16-17, & 36-37)"(para 84-c – General Principles Folgero v Norway ECHR 29th June 2007).

7(c)7 The non-religious interpretation of life is merely acknowledged in passing in a section of the course alongside materialism and fundamentalism called 'Challenges to faith'. This course accepts as a truth the existence of a God and it is not neutral and objective. This course does not confine itself to the general history and ethics of religion. This subject gives priority to Christians and in particular Catholics over other religions and philosophies of life. It identifies with and supports students from a Christian and Catholic background.

7(c)8 As at primary level the Minister for Education has a largely supervisory role in relation to schools, and takes no direct role in relation to how each school is managed and in particular it is left to each school which particular ethos or character it wishes to adopt and how this is reflected in the way the school is run.

7(c)9 In their reply to Atheist Ireland's complaint about the religious education course under the curriculum as an 'organ of the state' the NCCA said:

"However, I should re-state the position that, even if Atheist Ireland thinks that it should be, the NCCA is not responsible for how schools organise and plan for their own curriculum and the range of subjects they offer. This principle applies not just in Religious Education, but across the full curriculum. These decisions remain a matter for the Board of Management of each school."

7(c)10 One of the decisions that remain a matter for the Board of Management of each school is whether or not to combine the religious education course under the curriculum with the Guidelines for the Faith Formation and Development of Catholic Students issued by the Irish Catholic Bishops' Conference. These Guidelines states: "The syllabus, intended for certification and assessment, drawn up by the National Council for Curriculum and Assessment, allows flexibility in regard to the actual presentation of its content according to particular Christian denominations and faith traditions."

7(c)11 The Guidelines on the Inclusion of Other Faiths in Catholic Secondary Schools state that: "However, denominational schools, with a particular characteristic spirit or ethos, should be and are entitled to teach the syllabus through the lens of their own religious tradition."

7(c)12 In practical terms, this would mean that in the section on Communities of Faith, for example, Catholic schools will invite their students to study their parish and Catholic community. This is not to say, however, that students from different faith traditions cannot be encouraged to study their own community and relate the exam questions to their own community of faith. There is no guidance on how the non-religious would fit into this section as they are not a faith community.

7(c)13 The religious education course under the curriculum has consequences in relation to the decision of the European Court of Human Rights in *Grzelak v Poland*, 15th June 2010 (application No 7710/02). The court has found that there will be an interference with the negative aspect of the right to freedom of conscience 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. How can non-religious parents not reveal they are non-believers if they wish to take a course that is supposed to be open to all. They would have to sit down with the teacher and explain in detail their philosophical convictions in order to attempt to opt out of the religious formation elements that are integrated into the course and the elements of disrespect for their philosophical convictions.

7(c)14 In 2009 the Vatican issued a Circular Letter from the Congregation for Catholic Education to the Presidents of Bishops' Conferences on Religious Education in schools which clearly states that: "Religious education in schools fits into the evangelising mission of the Church."

7(c)15 However the Guidelines issued by the JMB/AMCSS on the inclusion of other faiths in Catholic secondary schools state that if parents raise concern about the Christian content of the curriculum, they should be encouraged to see it as a civic education for their son or daughter to understand more about the history and heritage of Ireland, "there would never be any effort to 'convert' their son or daughter to Catholicism".

7(c)16 Atheist Ireland cannot understand how on the one hand religious education fits into the evangelising mission of the Catholic Church and on the other hand, it is not an effort to convert their children to Catholicism when that education is not delivered in an objective, critical and pluralistic manner and does not respect the philosophical convictions of non-religious parents.

7(c)17 The European Court of Human Rights has stated in *Lautsi v Italy* 2009: "The duty of neutrality and impartiality of the state is incompatible with any judgement on its part of the legitimacy of religious beliefs or ways of expressing them. In the context of education, neutrality should ensure pluralism (Folgerø, supra, § 84)."

#### **7(d) The Toledo Principles**

7(d)1 The Toledo Guiding Principles are designed to assist not only educators but also legislators, teachers and officials in education ministries, as well as administrators and educators in private or religious schools to ensure that teaching about different religions and beliefs is carried out in a fair and balanced manner.

7(d)2 These Guidelines state the following (page 76): "Teaching about religions and beliefs is most effective when combined with efforts to instill respect for the rights of others, even when there is disagreement about religions or beliefs. The right to freedom of religion or belief is a universal right and carries with it an obligation to respect the rights of others, including respect for the dignity of all human beings."

"An individual's personal religious (or non-religious) beliefs do not provide sufficient reason to exclude that person from teaching about religions and beliefs. The most important considerations in this regard relate to professional expertise, as well as to basic attitudes towards commitment to human rights in general and freedom of religion or belief in particular."

7(d)3 The Vatican (Holy See) did not ratify the European Convention on Human Rights. The forty-seven countries that have ratified the European Convention on Human Rights are also members of the OSCE and none of them has rejected the Toledo Guiding Principles. The Irish State has not rejected the Toledo Guiding Principles which are based on human rights

and the case law at the European Court of Human Rights. Despite all this, it is clear that the non-religious do not enjoy their basic fundamental human rights at second level.

7(d)4 The Parliamentary Assembly of the Council of Europe in their Recommendation 1720 – 2005 have stated that the aim of this type of education should be to make pupils discover the religions practised in their own and neighbouring countries, to make them perceive that everyone has the same right to believe that their religion is the “true faith” and that other people are not different human beings through having a different religion or not having a religion at all. They have also stated “by teaching children the history and philosophy of the main religions with restraint and objectivity and with respect for the values of the European Convention on Human Rights, it will effectively combat fanaticism”. Obviously the Council of Europe and the OSCE do not see religious education which is based on human rights principles as fitting into the evangelising mission of the Catholic Church.

#### **7(e) New VEC Community Schools**

7(e)1 In a Press Release on 13th December 2007, the then Minister for Education Mary Hanafin announced a new State Model of school called the Community National Schools. The Minister stated that:-

“ these schools would be responding to diverse needs of a changing society. The new State model of Community National school, under the patronage of County Dublin Vocational Education Committee (VEC), will be open to children of all religions and none. They will be interdenominational in character, aiming to provide for religious education and faith formation during the school day for each of the main faith groups represented. A general ethics programme will also be available for children whose parents opt for that and the schools will operate through an ethos of inclusiveness and respect for all beliefs, both religious and non-religious. The schools will operate under the management of an independent Board of Management. The VEC will be represented on the Board of Management, as Patron, and will provide practical management supports to the school.”

7(e)2 In 2009 the Government in their reply to the Concluding Observations of the UN under the International Covenant on Civil & Political Rights the Government stated that these new VEC Community schools will be interdenominational in nature (CCPR.C.IRL.CO.3.Add.1 para 50)

7(e)3 Interdenominational schools are known internationally as Christian Schools and are therefore religious schools. We cannot understand how more religious schools will cater for the wishes of non-religious parents seeking a secular education for their children based on human rights law.

7(e)4 It was reported in the *Irish Independent* on Thursday November 13th 2008 that a statement from the Catholic Bishops said that Mr O’Keeffe, the then Minister for Education, had reaffirmed the policy on religious education in these new VEC Community schools as announced by the previous Minister for Education Mary Hanafin on December 13, 2007. “This announcement stated that the new schools would be “aiming to provide for religious education and faith formation during the school day for each of the main faith groups represented”. “Minister O’Keeffe gave an assurance that the commitment to provide religious instruction and faith formation during the school day on a denominational basis for the pupils whose parents request it stands.”

7(e)5 “On a denominational basis” for the Catholic Church means integrating religion into all subjects and not delivering the curriculum in an objective, critical and pluralistic manner. The Vatican stated in a Circular letter in 2009 the following:

“The marginalization of religious education in schools is equivalent to assuming – at least in practice – an ideological position that can lead pupils into error or do them a disservice. Moreover, if religious education is limited to a presentation of the different religions, in a comparative and “neutral” way, it creates confusion or generates religious relativism or indifferentism. In this respect, Pope John Paul II explained: “The question of Catholic education includes [...] religious education in the more general milieu of school, whether it be Catholic or State-run. The families of believers have the right to such education; they must have the guarantee that the State school – precisely because it is open to all – not only will not put their children’s faith in peril, but will rather complete their integral formation with appropriate religious education. This principle must be included within the concept of religious freedom and of the truly democratic State, which as such – that is, in obedience to its deepest and truest nature – puts itself at the service of the citizens, of all citizens, in respect for their rights and their religious convictions” (Speech to the Cardinals and collaborators of the Roman Curia, 28 June 1984, unofficial translation).”

7(e)6 In his opening remarks to the Joint Oireachtas Committee on Education on 14th February 2008, Mr. Kevin McCarthy, Director, Department of Education & Science stated that the Minister had publicly announced her intention to devise a new model of primary school patronage which has the capacity to cater for the wishes of parents for denominational, multi-denominational and non-denominational education within the framework of a single patron model and a single board of management structure. See <http://bit.ly/icYqVO>

7(e)7 The question that remains to be answered by the Minister for Education and Skills is how she proposes to guarantee a secular human rights based education for parents and children who so wish in these VEC Primary Community Schools when the previous Minister Batt O’Keeffe has given an assurance to the Catholic Church to provide religious instruction and faith formation on a denominational basis for the pupils whose parents request it? In their concluding observation in 2008 the UN Human Rights Committee raised concerns that the integrated curriculum (ethos) denied parents and children who so wish access to secular primary education. They raised concerns Under Article 2 (Freedom from Discrimination), Article 18 (Freedom of Conscience), Article 24 (The Rights of the Child) and Article 26 (Equality before the Law). They recommended that the State should increase its efforts to ensure that non-denominational primary education is widely available in all regions of the State party, in view of the increasingly diverse and multi-ethnic composition of the population of the State party.

7(e)8 As it stands now there is nothing in place that will guarantee secular human rights based education for those parents and children who so wish in these new VEC Community Schools as the State has given a commitment to the Catholic Church that denominational education will be available. There is nothing in the proposed Education (Amendment) Bill that would explain how the Minister proposes to get over this dilemma. The only conclusion here is that the welcome on offer in these new VEC Community Schools is not based on the principles of human rights and is based on what the Catholic Church and the State consider constitutes a welcome for those parents that seek secular education based on human rights for their children.

- 7(e)9 In December 2008 in the Supreme Court Case, Louise O’Keeffe v Leo Hickey, the Minister for Education and Science, Ireland and the Attorney General, Mr. Justice Hardiman stated the following: “In my view the Constitution specifically envisages, not indeed a delegation but a ceding of the actual running of schools to the interests represented by the Patron and the Manager.”
- 7(e)10 The interests of the VECs do not mention human rights and in the case of County Dublin VEC they only aspire to develop an ethos characterised by equality, respect, justice and fair play for all. <http://www.codubvec.ie/en/index.cfm/do/charter>
- 7(e)11 Rule 68 of the Rules for National Schools is still in place and there is no intention of removing it so these schools will be obliged to integrate religion into all subjects. There are no new Statutory Guidelines planned with regard to opting out of Religious Instruction class despite the fact that even the Catholic Church acknowledge that this Constitutional right is not guaranteed in practice in the existing schools in the State.
- 7(e)12 In addition we are concerned about any multi-belief programme or ethics programme that is put in place in the new VEC Schools as it will not be based on the Toledo Guiding Principles on teaching about religions and beliefs in schools as the Holy See has rejected these principles. Teachers are trained in Christian teacher training colleges and reports in the media and in particular an RTE Prime Time programme on the subject have highlighted these issues. Not one person in the RTE programme on the subject guaranteed that the multi-belief course would be drawn up and delivered according to the General Principles of the European Convention on Human Rights and the UN Convention on the Rights of the Child.
- 7(e)13 It is Catholic Church teaching that any religious education course must be subject to the authority of the Church. “The Catholic religious instruction and education which are imparted in any schools whatsoever are subject to the authority of the Church [...]. It is for the conference of bishops to issue general norms about this field of action and for the diocesan bishop to regulate and watch over it” (c. 804 §1 CIC; cf. also, c. 636 CCEO).” (Circular letter from the Vatican 2009)
- 7(e)14 “The nature and role of religious education in schools has become the object of debate. In some cases, it is now the object of new civil regulations, which tend to replace religious education with teaching about the religious phenomenon in a multi-denominational sense, or about religious ethics and culture – even in a way that contrasts with the choices and educational aims that parents and the Church intend for the formation of young people.” (Circular letter from the Vatican 2009)
- 7(e)15 It is not clear what exactly this will mean for the multi-belief course in the new VEC Primary Schools. If the multi-belief course is subject to the approval of the Catholic Church then according to their teaching it cannot be delivered in an objective, critical and pluralistic manner.
- 7(e)16 Instead of opting into a human rights based education that is objective, critical and pluralistic the intention with these new schools is to have religious education and faith formation during the school day when 97% of the schools in the state operate in this manner and are not in compliance with human rights. The intention is to segregate children according to their religious denomination in an atmosphere where the teachers are trained in Christian colleges and human rights are of no consequence.



7(e)17 As long as the State fail to accept that non-religious parents and children have a right to a secular education based on human rights and are prepared to guarantee and protect that right then nothing will change on the ground. The policy of plurality of patronage as far as possible will never achieve basic fundamental human rights.

#### **7(f) Child Sexual Abuse**

7(f)1 The Irish State is responsible for the protection of children from abuse in day schools under Article 3 of the European Convention on Human Rights. There is a positive obligation under Article 3 of the European Convention on Human Rights that goes beyond imposing criminal sanctions for ill-treatment and requires States to take reasonable steps to prevent ill treatment of which the authorities had or ought to have knowledge.

7(f)2 The judgement in *Costello Roberts v UK* 1993 clearly shows that the State is responsible for the protection of children in all schools whether they are private or not and cannot absolve themselves of that responsibility. The European Court has stated that: "children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity." (*A.v United Kingdom* 1998) See <http://bit.ly/hR8LyC>

7(f)3 There is not and has never been effective deterrence against serious breaches of personal integrity in the education system in Ireland because the State has not taken reasonable steps to effectively manage the State's responsibilities under the European Convention that might have prevented or at least minimised the risk of damage suffered by children. The guidelines that are now in place in day schools for the protection of children are not statutory and no Patron Body or Board of Management can be removed for failure to implement those guidelines.

7(f)4 The Irish State delegates their responsibilities under Article 3 of the European Convention to Patron Bodies and Boards of Management who are not obliged to interpret these responsibilities in a Convention compliant manner and in fact failed to act effectively to limit the access to children by individuals against whom a credible complaint of child sex abuse was made. Given the history of the Catholic Church and child abuse and the failure of the State to protect children this cannot be regarded as 'reasonable steps' by the State to prevent ill treatment under Article 3 of the European Convention.

7(f)5 No Patron Body or Board of Management can be taken to the European Court of Human Rights for failure to protect the human rights of children under Article 3 of the Convention, as they have not ratified this Convention. It is clear from the *Louise O'Keeffe* case in the Supreme Court that there is no right to an effective remedy under Article 13 of the European Convention as the school that Louise attended was not considered an 'organ of the state' as the State had ceded control to in this particular case the Catholic Church. The State had ceded control to the interests of the Patron Body and those interests were not the protection of children from inhuman and degrading treatment. There is simply no right to an effective remedy under Article 13 of the European Convention. It is impossible to hold the State responsible for their failure to interpret the rights guaranteed under the Irish Constitution in a Convention compliant manner.

#### **7(g) Conclusion**

7(g)1 In the Discussion Paper at paras 53 and 54 the Irish Human Rights Commission 'suggest' that Ireland may be in breach of its international obligations. Atheist Ireland believes that there is no doubt that Ireland is in breach of its international obligations. There is no doubt either that parents and children who seek secular education based on human rights law are second-class citizens in Ireland.

7(g)2 Section 15 – 2 (e) of the Education Act 1998 obliges Boards of Management to have regard to the principles and requirements of a democratic society and have respect and promote respect for the diversity of values, beliefs, traditions, languages and ways of life in society. In Ireland the principles and requirement of a democratic society and a Republic do not stretch to respecting the philosophical convictions of non-religious parents and children in a manner compatible with the various Conventions that Ireland has ratified. Neither do these principles stretch as far as taking reasonable steps to protect children from inhuman or degrading treatment in line with the standards under Article 3 of the European Convention. It is not within Ireland's margin of appreciation to cede control of these matters to the interests of Patron Bodies and Boards of Management and to absolve themselves of any responsibility for the basic fundamental human rights of parents and children. The right to respect is an absolute right and not to be balanced against the rights of others or one which could be gradually achieved.

7(g)3 Legislation and Government policy interpret the Constitution in a manner compliant with Catholic Church teaching on education and not in a manner that is compatible with human rights. The State maintains that this interpretation is compliant with their human rights obligations but there simply is no evidence to support this assertion anymore as the case law, General Principles and Comments of the UN and Council of European show that this position has no basis in reality.

7(g)4 We are asking the Commission to make recommendations to Government under Section 8 (d) of the Human Rights Commission Act that will protect the human rights of parents and their children in the following areas:

1. The Right not to be Indoctrinated
2. Role of Religion in Education
3. The Patronage System
4. State Funding for Schools
5. The Curriculum
6. Remedies
- 7(a) Second Level Schools
- 7(b) Opting out of religious instruction
- 7(c) Religious Education Course 2000
- 7(d) The Toledo Principles
- 7(e) New VEC Community Schools
- 7(f) Child Sexual Abuse

## **Appendix 1**

The European Court of Human Rights in *Kjeldsen, Busk Madsen and Pedersen V Denmark* 1976 – (50) (Application no. 5095/71; 5920/72; 5926/72)

“The ‘travaux préparatoires’, which are without doubt of particular consequence in the case of a clause that gave rise to such lengthy and impassioned discussions, confirm the interpretation appearing from a first reading of Article 2 (P1-2). Whilst they indisputably demonstrate, as the Government recalled, the importance attached by many members of the Consultative Assembly and a number of governments to freedom of teaching, that is to say, freedom to establish private schools, the “travaux préparatoires” do not for all that reveal the intention to go no further than a guarantee of that freedom. Unlike some earlier versions, the text finally adopted does not expressly enounce that freedom; and numerous interventions and proposals, cited by the delegates of the Commission, show that sight was not lost of the need to ensure, in State teaching, respect for parents’ religious and philosophical convictions. The second sentence of Article 2 (P1-2) aims in short at safeguarding the possibility of pluralism in education which possibility is essential for the preservation of the “democratic society” as conceived by the Convention. In view of the power of the modern State, it is above all through State teaching that this aim must be realised.”

## **Appendix 2**

The United National in their General Comment on Article 13 of the ICESCR, The right to education (Art.13): 08/12/99. E/C.12/1999/10

Non-discrimination and equal treatment – 31. The prohibition against discrimination enshrined in article 2 (2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.

In their General Comment No. 18: Non-discrimination of 10/11/89 the UN Human Rights Committee under Article 2 of the International Covenant on Civil & Political Rights States.

“10. The Committee also wishes to point out that the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.

11. Both article 2, paragraph 1, and article 26 enumerate grounds of discrimination such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Committee has observed that in a number of constitutions and laws not all the grounds on which discrimination is prohibited, as cited in article 2, paragraph 1, are enumerated. The Committee would therefore like to receive information from States parties as to the significance of such omissions.”

12. While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.”

### **Appendix 3**

The UN Human Rights Committee General Comment No. 31 [80] Nature of the General Legal Obligations Imposed on States Parties to the Covenant: 26/05/2004. (ICCPR) CCPR/C/21/Rev.1/Add.13. (General Comments)

8. The article 2, paragraph 1, obligations are binding on States [Parties] and do not, as such, have direct horizontal effect as a matter of international law. The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3. The Covenant itself envisages in some articles certain areas where there are positive obligations on States Parties to address the activities of private persons or entities. For example, the privacy-related guarantees of article 17 must be protected by law. It is also implicit in article 7 that States Parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power. In fields affecting basic aspects of ordinary life such as work or housing, individuals are to be protected from discrimination within the meaning of Article 26.