

**Religion & Education:
A Human Rights Perspective**

May 2011

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PREFACE

On 27 November 2010 the Irish Human Rights Commission (“IHRC”) was delighted to partner with the School of Law, Trinity College Dublin to host a major conference “*Religion & Education: A Human Rights Perspective*”. The Conference attracted a high calibre of national and international speakers and, in spite of the snow, a large attendance throughout the day with much lively debate on the issues raised. At the Conference I addressed the question why the IHRC and the Law School in Trinity were hosting the event, and why we in the IHRC considered that the question of education and religion was so important that it merited a full day of discussion.

The purpose of the Conference was to open the debate on religion and education from a human rights perspective and to launch a consultation process. This process, it was stated, would culminate in the IHRC’s making recommendations to Government on the measures required for the State to meet its human rights obligations in this area. I said that the IHRC did not adopt any definitive stance and that its focus was to act as facilitator *vis-à-vis* these discussions. I believed – and still do – that, as Ireland’s National Human Rights Institution, the IHRC is uniquely placed to do this.

In November I stressed the fact that societies are ever evolving and dynamic; they do not stay still even if sometimes many of us would like them to. It is a truism that one generation succeeds the next and that migration and immigration bring constant change to the cultural landscape as it always has. Thus institutions shift in influence, technology makes the world of ideas a smaller place and in the middle of all this we try to make sense of what we mean by “society” and “community”. Sometimes change appears to happen almost overnight, while other changes occur incrementally over many years. I pointed out that the work of the IHRC involves constantly keeping pace with those changes in society that have implications for the State’s human rights obligations.

For this is the mandate of the IHRC: to monitor the State’s adherence to the human rights obligations to which it has freely committed itself. This is a statutory requirement under the terms of the Human Rights Commission Act 2000.

Throughout this report the IHRC employs the statutory definition of “human rights” as defined in its founding legislation, being:

- (a) *the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution, and*
- (b) *the rights, liberties or freedoms conferred on or guaranteed to, persons by any agreement, treaty or convention to which the State is a party.’*

This is a legal definition and very clearly grounds the IHRC's approach to its task in this consultation.

In November I spoke of recent legislative and policy developments such as the Civil Partnership Act and work on the recognition of the rights of transgender persons as striking examples of emerging human rights issues. Such developments were unimaginable possibly even ten years ago, but have resulted from a greater understanding of the human rights of the different communities that make up our society. I said that these changes reflect the maturity of the human rights debate in Ireland and a climate of greater tolerance and understanding of human difference.

The place of religion in education is not only an issue for Ireland; governments are grappling with the issue in every country throughout the world today. There is thus a commonality of issues across the globe. Some countries could be said to have approached the issue in the wrong way, whereas others have got it almost right and it could be argued that those are the countries in which human rights is used as the prism in balancing the competing rights at issue.

Since the Conference, the IHRC launched its consultation process. It received over 60 submissions from individuals and organisations which are set out in Chapter 2. I hope that most submissions can be published on our website shortly. The submissions varied depending on one's viewpoint, but one thing was clear when reviewing them: they were comprehensive and informative and represented a positive engagement with the consultation process. One heartening thing from the submissions was the recognition that there is a problem but also the sense that this is a problem which we can collectively resolve through communication, understanding and reaching out to the strongly held views of others.

In Ireland the Catholic Church, and to a lesser extent the Church of Ireland and other Protestant traditions, have played a very prominent role in the education of our children. This needs to be acknowledged and the voluntary contribution of so many recognised. Without this role, children in the State would not have received an adequate level of education when the State was not in a position to provide it. That said, the consultation process showed that we are now sufficiently mature as a nation State to ask whether the current model is still valid today and whether it reflect the needs of society taken as a whole. These are indeed questions which some in the Catholic Church, including at leadership level, have also been asking.

Another question arises in relation to religious minorities and those from a non-religious background. It should be recalled that Ireland has always had a number of religious minorities, and has never been completely homogenous in terms of religious affiliation. In a similar vein, the numbers of Irish people who identify with a humanist or secular viewpoint is increasing.

They too hold sincere philosophical convictions which need to be recognised and respected.

The timing of the launch of this report on the IHRC consultation on religion and education may be fortuitous insofar as the Minister for Education and Skills, Ruairí Quinn, T.D., has recently announced the establishment of a Forum on Primary School Patronage to be chaired by Professor John Coolahan. It is hoped that this report to Government will also inform the work of that Forum. However, it should be noted that there will be recommendations in this report which may fall outside the terms of reference of the Forum, for example, those recommendations which relate to second level schools, complaints mechanisms and teacher training.

Finally I take the opportunity to thank my fellow Commissioners, particularly Professor William Binchy, for their work on the matter, the Chief Executive Mr Éamonn Mac Aodha for taking this report forward and finally the staff in the Enquiries, Legal Services and Administration Division who organised the Conference, conducted much of the consultation and drafted the final report.

Maurice Manning

A handwritten signature in dark ink, appearing to read 'Maurice Manning', with a stylized flourish at the end.

President
24 May 2011

INTRODUCTION

1. On 27 November 2010 the IHRC, in association with the School of Law, Trinity College Dublin hosted a major conference titled "*Religion & Education: A Human Rights Perspective*".¹ Leading national and international academics, educationalists and stakeholders in the majority of religions evident in Ireland contributed to the discussion. The conference's main focus was the theme of "religion" as a component in the education system.
2. One of the reasons for the Conference was that it had become clear to the IHRC for some time through its casework functions and indeed from an awareness of the changing demographics of Irish society, that there are significant human rights principles to be considered in respect of this issue. The IHRC launched a Discussion Paper at the Conference which aimed to encourage debate on these complex issues and the balancing of the many competing rights involved.
3. The Discussion Paper gave an overview of existing law and practice in the area and set out both the constitutional and international human rights standards in the State in relation to religion and education in order to consider whether the State is fully meeting its human rights obligations. At the end of the Discussion Paper, the IHRC posed a number of questions to elicit responses from interested parties. To assist persons make submissions, the IHRC devised a short template form for responses although there was no obligation to use this format.
4. The launch of the IHRC's Discussion Paper culminated in a two month consultation process, (which was subsequently extended at the request of a number of respondents) in the course of which it received over 60 responses. Those who responded included concerned parents and grandparents, former pupils, national and international academics, primary school teachers, teachers' unions, members of the Christian Churches, think-tanks, members/former members of the Campaign to Separate Church and State and unaffiliated members of the public.
5. On the basis of the responses received, coupled with its own analysis of the relevant human rights standards, the IHRC is now in a position to make its recommendations to Government pursuant to Section 8(d) of the Human Rights Commission Act 2000 on the measures required for the State to meet its human rights obligations in this area. Indeed, the IHRC would like to reiterate its belief that, as Ireland's national

¹See <http://www.ihrc.ie/newsevents/pastevents/2010/11/27/ihrc-tcd-conference-on-religion-education-a-human>.

human rights institution, it feels that it is uniquely placed to do so. These recommendations will not be addressed to educational policy *per se*, but to the more discrete structural issues concerning the role of religion in education.

BACKGROUND

6. Ireland's demographics have changed significantly in the past 15 years. According to the most recent statistics, while the large majority of persons define themselves as belonging to the main Christian Churches (namely Roman Catholic or Church of Ireland), a significant number of persons also now define themselves as being of no belief or of being of Islamic, Jewish, Buddhist, Hindu or other belief.²
7. There are currently 3,295 primary schools (of which 3,165 are primary schools and 130 special schools) in Ireland, 97% of which have Roman Catholic or Church of Ireland ethos.³ Seventy per cent (70%) of primary schools are stated to have less than 200 pupils and to be located in rural areas.⁴ The patron of the vast majority of primary schools is thus often a Roman Catholic Bishop and there is Church representation on the Boards of Management of each school. Although all non-private primary schools in the State are referred to as

² Population was classified by religion in the 2006 Census as follows: The total population in 2006 was 4,239,828. 3, 681, 446 people classified themselves as Roman Catholic. 125,585 classified themselves as Church of Ireland (including Protestant). 23,546 were Presbyterian and 12,160 were Methodist. 1,930 were Jewish and 138,541 categorized themselves as belonging to "other stated religions". 186,318 considered themselves as belonging to no religion and 70,322 did not state which religion if any, they belonged to: see <http://census.cso.ie/Census/TableViewer/tableView.aspx>. One submission to the IHRC questioned whether the 2006 census was accurate in this regard insofar as it posed a question to the 'head of the household' only.

<http://census.cso.ie/Census/TableViewer/tableView.aspx>

³ Source: *Concluding observations of the Committee on the Elimination of Racial Discrimination: Ireland* 14/04/2005 CERD/C/IRL/CO/2. See also www.rte.ie/news/2010/0305/education.html and Educate Together website, www.educatetogether.ie. According to a recently produced report on the Department of Education and Skills website, the figure is 97%: see *Information on Areas for Possible Divesting of Primary Schools*, www.education.ie, accessed 13 April 2011. A Report published by the Department of Education on 3 August 2010, indicates the following break down for primary schools in Ireland in the 2009/2010 school year: Catholic: 2888 schools, 91.25% (% of total), Church Of Ireland: 181 schools 5.72%, Presbyterian: 14 schools 0.44%, Methodist 1 school 0.03%, Jewish 1 school 0.03%, Inter-Denominational 8 schools 0.25%, Muslim 2 schools 0.06%, Multi-Denominational 69 schools, 2.18%, Quaker 1 school 0.03% Total 3165 Schools. *Information on Areas for Possible Divesting of Patronage of Primary Schools*. See also www.education.ie/servlet/blobServlet/stat_web_stats_09_10.pdf, accessed 13 April 2011. According to the Catholic Primary School Management Association, 2,917 are Catholic primary schools; submission to IHRC Consultation.

⁴ Submission of the Catholic Primary School Management Association to the IHRC Consultation.

national schools, they are in the vast majority of cases owned and run by the Roman Catholic Church.⁵

8. The education system in Ireland can thus be seen as largely based on private Church initiatives supported by State funding. The limited number of wholly private primary and secondary schools that exist in the State can be considered the exception rather than the rule. Similarly there are in fact very few “State” schools in Ireland, that is, schools that are wholly owned and run by the State, it being noted that wholly private schools are neither recognised nor funded by the State and are accordingly not considered in this report.
9. The State has traditionally provided funding for primary schools, and prescribed a certain minimum curriculum to be followed. The State, in the form of the Department of Education and Skills (hereafter the “Department of Education”), takes no direct role in the management of such schools which are largely self governing. This *de facto* situation was only properly legislated for in 1998 and is set out in more detail in Chapter 1.
10. Therefore the distinction between the public education functions of the State and private educational provision is somewhat blurred. While the State provides core (Grant-in-Aid) funding and prescribes a minimum curriculum to be followed by students, the patrons and Boards of Management of schools are largely autonomous in the management of individual schools.
11. As the majority of primary and second level schools are under denominational patronage or management, this will in turn inform the ethos or characteristic spirit of the school.
12. This contextual background adds to the complexity of the issues to be addressed when considering the role of religion in schools from a human rights perspective. However, it would be wrong to overemphasise this issue. Ultimately the State bears responsibility to provide for the education of children, and therefore also bears an obligation to respect the human rights of those receiving such education and those of their parents, be they of religious or non-religious beliefs.
13. Before considering the human rights standards that are engaged when considering education and religion, it is important to first “set the stage” in relation to the domestic situation concerning the provision of education in Ireland. This is important for two reasons. First, to ensure that the human rights standards are properly

⁵ For a brief history of the Irish primary education system see; Á. Hyland, “The multi-denominational experience”, Irish Education Studies, Vol 8 No.1 p.1.

understood by reference to the domestic context and are not perceived as “foreign” to our national values as a State, including our religious and educational heritage. Secondly, to identify any disparity between the law and practice in the State on the one hand and the human rights standards on the other - within the meaning of Section 2 of the Human Rights Commission Act 2000. It is this disparity that informs the IHRC’s recommendations for reform as set out in the final section of this report.

14. This report will thus first consider the domestic situation concerning the provision of education in Ireland. It will next consider the content of the submissions received by the IHRC in its Consultation process. It will then provide an overview of the Constitutional provisions which apply before turning to international human rights standards. It will conclude with an analysis and recommendations to Government.

CHAPTER 1: LAW & PRACTICE IN THE STATE REGARDING EDUCATION & RELIGION

15. The law concerning education in the State rests on two main pillars: the Constitution and the Education Act 1998 ("the Education Act"). Prior to 1998, although the State was the main funder of education the relationship between the various partners in the education system was not codified in law and relied on largely contractual relationships and administrative arrangements.

Informality has been a singular characteristic of the Irish system of education since 1922.⁶

16. This succinct summation of the situation offered by one commentator denotes the very radical codification of law and practice relating to education represented by the Education Act. Prior to the Education Act there was clearly a reluctance on the part of the State to formalise its role in relation to education or to take on a more regulatory function in that regard.⁷ The Education Act brought with it provisions allowing for recognition (and withdrawal of recognition) of schools, the functions of a school, its funding, its patron, the functions of principals and teachers, the curriculum, grievance procedures and school inspectors.
17. The long title to the Education Act sets out in broad terms the objectives of the Act and includes:

To ensure that the education system is accountable to students, their parents and the State for the education provided, respects the diversity of values, beliefs, languages and traditions in Irish society and is conducted in a spirit of partnership between schools, patrons, students, parents, teachers, and other staff, the community served by the school and the State.

18. Perhaps surprisingly the Education Act gave the first statutory underpinning to the system of State funding for the State prescribed education programme for primary and second-level schools. The legislation clearly negotiates the historical divide between public

⁶ D. Glendenning, *Education and the Law* (Dublin: Butterworths, 1999), p.10.

⁷ In 1995 the Department of Education and Science published a White Paper on education entitled "Charting our Education Future" which sought to set out a coherent philosophy for education provision in Ireland and the role of the State and the various partners in the education system. This report was preceded and informed by the National Education Convention which took place in October 1993. These initiatives were followed by the publication of an Education Bill 1997 (not enacted) and the Education Act 1998.

education being provided by private bodies. This is seen in the generalised duties placed on school patrons and boards of management which minimise the interference of the State in the day-to-day running of schools. In particular it is left to each school to determine which particular ethos or character it wishes to adopt, and how this is reflected in the way the school is run. Specific provisions of the Education Act will be referred to in this report as relevant.

19. While it is beyond the scope of this report to examine in detail the historical development of the Irish education system, a brief description of how our primary school system developed and the establishment of second-level education in the State assists in understanding the evolution of our almost wholly denominational system of education and until relatively recently the scarcity of coherent legislation in the area.

HISTORICAL DEVELOPMENT OF PATRONAGE SYSTEM AND RECENT DEVELOPMENTS

Primary Schools

20. The primary (or national) school system as we now know it was first established in 1831.⁸ A Board was established; the Board of Commissioners of National Education ("the Board"), to administer the system on a non-statutory basis. This Board later became a corporate body with functions in relation to holding and leasing property and erecting and maintaining schools. The Board was ultimately succeeded by the Department of Education after the establishment of the Free State in 1922.⁹ From their inception, national schools were neither intended to be provided directly by the State, nor was the State required to employ teachers, rather this was to be organised at local level, with the State's role being to provide financial support.¹⁰
21. The position of the patron of schools was also created when national schools were first established in 1831. The patron was the person who initiated the establishment of a school at local level and then sought recognition for the school from the Board which in turn

⁸ The proposal for the national school system was set out in a letter (the Stanley letter) from the Chief Secretary for Ireland (Lord Stanley) to the Duke of Leinster on the formation of a Board of Commissioners for Education in Ireland. The said letter is reproduced in D. Glendenning, *Education and the Law* (Dublin: Butterworths, 1999), p. 571. For a detailed examination in relation to the development of the Irish education system, including primary education see: J. Coolahan, *Irish Education, its History and Structure* (Institute of Public Administration, 1981).

⁹ The Department of Education was established by the Ministers and Secretaries Act 1924.

¹⁰ This history of the national school system has been set out in a number of judgments of the High Court and Supreme Court. See further Chapter 3 of this report.

dispensed funding to support the school. The patron could delegate his functions to a manager, usually a clergyman. Taking advantage of the organisational structures of the main denominations within local communities, the patron was most often the ecclesiastical authority in the parish in which the school was situated, usually the Bishop of the Diocese in the case of a Catholic school.

22. It is noteworthy that the original conception of national/ primary schools was that they would cater for children from all religious backgrounds together, with separate “religious instruction” being provided in accordance with the denomination of the child. This was termed the “mixed education principle”.¹¹ Patrons agreed to abide by the mixed education principle in return for State aid in terms of building costs and teachers’ salaries.
23. In practice, national schools tended to cater for students of one faith or another, rather than catering for a number of denominations. In this way schools began to take on a denominational aspect and reflect the ethos of the patron and pupils they catered for:

*Gradually the balance of power moved towards the churches who achieved control over the two main pillars of the system, ownership of individual schools, and control of teacher education and training... In short, the de jure system of non-denominational education had become a de facto denominational system by the end of the nineteenth century.*¹²

Second-Level Education

24. In relation to second-level education, during the nineteenth century, religious teaching orders established a network of denominational schools. Direct State involvement in providing second-level education only arose in the 1960s:

*After Catholic Emancipation (1829), this system of education flourished and by the nineteenth century the religious teaching orders had established a network of denominational schools nationwide without the financial assistance of the State. These voluntary schools, which were owned and administered either by the religious orders or by the diocese in which the school was situated, made a pivotal contribution to Irish education which is well documented.*¹³

25. The independence of this sector in terms of funding largely insulated it from other State influence. This first public funding of these schools commenced under the Intermediate Education (Ireland) Act 1878,

¹¹ This “mixed education principle” was expressly provided for in the Stanley Letter. See *supra* fn 8.

¹² D. Glendenning, *Education and the Law* (Dublin: Butterworths, 1999), pp 20 -21.

¹³ *Ibid.* at p. 23.

where it was accepted by the State that these schools would be denominational in character. However the Act also stipulated that pupils would not be required to attend “religious instruction” against the wishes of their parents or guardians, and that “religious instruction” in the school would be fixed at a time that would not exclude pupils not attending such instruction from the benefits of receiving “secular education” in the school. These secondary schools continued to be the main providers of second-level education in the State up until the 1950s when the State began to take on a role in relation to funding school buildings and the payment of capital grants and then subsequently became an actor in providing such education itself.

Vocational Education Committees

26. The Vocation Education Act, 1930, saw the consolidation of the system of technical education that had emerged in the previous century. The Act was amended in 1936, 1944 and 1970 and a major overhaul of the Act was conducted in 2001 with the enactment of the Vocational Education (Amendment) Act 2001. Under this Act, the State owns the schools, which are administered by Vocational Education Committees (VECs). VECs are statutory education authorities which have responsibility for vocational educational training, youth work and a range of other statutory functions. Historically VEC schools provided a more limited form of education than the voluntary secondary schools. Although nominally designated as non-denominational, such schools include religion as part of the curriculum, and must employ teachers of religion approved by the relevant religious authority, who are paid by the State.¹⁴ In effect such schools have either a Roman Catholic or Church of Ireland ethos.

Comprehensive and Community Schools

27. In the 1960s the State took on a direct role in the establishment of second-level schools. These schools are called comprehensive schools and are wholly funded by the State, but are leased to trustees under a deed of trust for educational purposes and also have a board of management. Only a limited number of such schools were established.
28. The establishment of these schools was subsequently followed by the establishment of community schools in 1972. Community schools were proposed as an amalgamation of private denominational schools and the public vocational schools under VEC management. A number of such schools were also established on green field sites. In practice, such schools took on a denominational character, again as

¹⁴ *Ibid*, at p. 35.

they catered almost exclusively for a single denomination (Roman Catholic). Similar to the comprehensive schools, these schools are established under deeds of trust.¹⁵ The judgment of Costello P. in *Campaign to Separate Church and State v Minister for Education* provides an extensive examination of the legal basis underpinning the establishment of comprehensive and community schools and their management structures.¹⁶ What is significant in the present context is that these schools are run along denominational lines, and there is no significant difference in this regard with the traditional voluntary secondary schools directly under Church patronage that preceded them.

29. Taking into account the role of VECs in the delivery of second level education a number of new schools were also set up as community colleges under the management of VECs. It appears there was significant debate and negotiation as to how these schools would be legally established and the ethos they would adopt. This resulted in model deeds of trust being drawn up in the 1980s.¹⁷
30. As will be seen further below, the Constitution recognises the system of denominational patronage of publicly funded schools. Specifically section 8 of the Education Act prescribes who will be regarded as the patron of a recognised school. The section provides that the patron is the person (in the case of primary schools), or trustees, or board of governors, or owner of the school (in the case of second-level schools) so recognised by the Minister for Education and Skills (hereafter “the Minister for Education”) just before the section came into force, and in any other case after the commencement of the section the patron shall be the person who requested recognition of the school or their nominee. Schools run by VECs at the time of the passing of the Act were deemed patrons for the purpose of the Act. Thus all existing school patrons were automatically deemed to be patrons for the purpose of the Act, and new patrons are accepted where the school is recognised by the Minister for Education.¹⁸

¹⁵ See sample deed of trust at:

http://www.accs.ie/content/publish/ch1/1_2_The_Deed_of_Trust_for_Community_Schools.php, accessed 13 April 2011. For sample Endorsement of deed of trust for Comprehensive schools see:

http://www.accs.ie/content/uploads/1/ENDORSEMENT_OF_DEED_OF_TRUST.doc, accessed 13 April 2011.

¹⁶ *Campaign to Separate Church and State v Minister for Education* [1998] 3 I. R. at pp 326-334.

¹⁷ *Tagairt*, which is the Manual for Members of Boards of Management and Principals of Community and Comprehensive Schools, published by ACCS, provides guidance in relation to religious education and worship. The guidance suggests that community schools may be perceived as multi-denominational, but appears to acknowledge that such schools may have a denominational ethos. See further: www.accs.ie.

¹⁸ Recognition of schools is dealt with under section 10 of the Education Act 1998.

31. By far the greatest majority of patrons are drawn from church authorities. Reflective of the religious tradition in the State, the vast majority of those are Roman Catholic Bishops.

Recent Developments

32. More recently the profile of recognised primary schools has changed to some degree. Since 1978 there has been the development of the Educate Together Schools. These schools are multi-denominational and have no religious patron. The patron of each of these schools is a limited liability company with no share capital, and a board of directors. There are now 58 Educate Together Schools at primary level, a number that is likely to increase further over the coming years. There are also plans for Educate Together to start developing second-level school initiatives.
33. Gaelscoileanna are also an example of the diverse education models now available in the State. Such schools may either be under the direct patronage of the Bishop of the Diocese, or An Foras Pátrúnachta na Scoileanna. An Foras Pátrúnachta na Scoileanna is a limited company with no share capital established in 1993. There are currently 58 schools under the patronage of this body. It is stated that the patronage of this company is open to all schools, be they denominational, multi-denominational or interdenominational, although it appears that to date most such schools have a denominational ethos.
34. Most recently VECs have been charged by the Minister for Education to establish community national schools. There are now five such schools, which are another form of multi (or inter) denominational education. These schools offer faith formation or moral education within the school day, but in accordance with the individual religious or non-religious background of the child. The first such school was established in 2008 and it is also expected that the number of such schools may increase over the coming years.¹⁹ It is notable that these new schools have all been established in urban rather than rural areas.
35. In summary the patrons recognised under the Education Act to date are:

For primary schools:

- The Bishop of the Diocese, or other relevant religious authority (Church of Ireland schools, Islamic schools, Jewish schools, Quaker schools).

¹⁹ See www.cns.ie (accessed 13 April 2011).

- Gaelscoileanna: the Bishop of the Diocese or Foras Patrúnachta na Scoineanna Lán-Ghaeilge.
- Multi-denominational national schools: The board of the company limited by guarantee which established the school
- Model Schools: the State.

For second-level schools:

- The Board of Governors: the trustee body or the Diocesan nominee.
- Comprehensive and community schools: the Trustees under the Deed of Trust.
- VEC schools (secondary and community schools): the relevant Vocational Educational Committee.
- Privately owned schools: the owner of the school.

ETHOS OF SCHOOLS AND RECOGNITION AND FUNDING

36. The term ethos is not referred to in the Education Act.²⁰ However that Act is clearly a codification of the existing practice in relation to patronage of schools and can be understood to implicitly recognise and accept denominational patronage. Rather than referring to ethos, the Act refers to the “characteristic spirit” of the school. This is set out in section 15 (2) of the Education Act which details the functions of the boards of management of schools:

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

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

37. It is axiomatic that a denominational school will have a denominational ethos, and this will define the characteristic spirit of the school. This can in turn have implications for a school's admissions policy and also the value it places on religion within the school environment and the religious curriculum pursued. These issues will be considered separately below, however it is relevant to point out here that there is

²⁰ The term “ethos” is referred to in the Equal Status Acts 2000-2008, which will be considered further below.

both a Constitutional and legislative imprimatur for denominational education in Ireland.

38. One other issue that has arisen in relation to the ethos of a school is its possible impact on the personal circumstances of teachers, where their lifestyle might not be regarded as being in conformity with the ethos of the school.²¹

Recognition and Funding

39. A Commission on School Administration was established by the Minister for Education to report on criteria and procedures for the recognition of new primary schools. The report of the Technical Working Group established under the auspices of the Commission was published in 1998, and usefully sets out some of the historical arrangements around establishing, funding and ownership of national schools.²²

40. Having referred to the role of the patron the report goes on to state:

With the local clergyman as manager, the parish was required to provide:

- *The site of the school*
- *A contribution to the building cost. This contribution (known as the local contribution) was advanced to the Department before the construction began. Over the years the amount of the local contribution has changed. It is now standardised at 15% of the capital cost of the building, except in schools designated as disadvantaged where the rate is 5%*
- *A small continuing contribution, at present £10 per child.²³*

41. The report then sets out how the State protects its financial interest after a national school is established:

The lease is the legal mechanism for protecting state rights in a system of private ownership that is largely state funded. The lease ensures that the state has some control over the use of the property and gives some protection to the state's investment. The lease, which is normally of ninety-nine years' duration, is an agreement between three parties: the owner of the property, the Minister for Education and Science and the trustees. Under the terms of the lease, the trustees guarantee to the

²¹See paper given by Deirdre O'Connor INTO, at *Religion and Education: A Human Rights Perspective*, Conference, co-hosted by the IHRC and Trinity College Dublin, 27 November 2010.

²²Commission on School Accommodation, *Report of the Technical Working Group*, Government Publications, 1998.

²³*Ibid.* at p. 11.

*Minister that the property will be retained for educational use and, among other things, that the premises and contents are insured.*²⁴

42. The report, in commenting on how to create diversity of schooling provision²⁵ highlights the difficulties faced by communities and parents in doing so, particularly where they are not supported by a denominational church:

*At present, in the case of national schools generally, the patron or promoter must provide a site for a new school....Consequently the Department has limited legal rights to a disused school...Demographic changes and the growth in demand for all- Irish schools and multi-denominational schools have increased the need for interchangability in the use of school buildings. Multi-denominational national schools and all-Irish Primary schools are given initial recognition on a temporary basis for a number of years subsequent to their establishment. As a result of this, the promoters must provide temporary accommodation without the aid of capital grants during the period of temporary recognition...the requirement is seen as discriminatory against new school projects other than those promoted by the main religious denominations.*²⁶

43. The situation has now changed significantly in relation to recognition and funding new schools and this may be reflected in a new report of the Commission on School Accommodation due in 2011. At present the State may pay the full cost of the site for a new primary school, however the patron still has the choice of funding the site cost. If the State pays, then the State owns the school building and leases it to the patron under a lease or a deed of trust. If the patron pays, the patron owns the school. The most recent information available indicates that there is still a local or patron contribution to building costs. It is now limited to 5% of the total cost and capped at a certain sum.²⁷

44. Recognition is dealt with under section 10 of the Education Act which provides at Section 10(2):

The Minister may designate a school or a proposed school to be a school recognised for the purposes of this Act where the Minister, on a request being made for that purpose by the patron of a school or a proposed school, is satisfied that-

the number of students who are attending or are likely to attend the school is such or is likely to be such as to make the school viable, in

²⁴ *Ibid.* at p. 12.

²⁵ This need for diversity in schooling provision was documented in: *Charting our Education Future, White Paper on Education* published by the Department of Education and Science, 1995.

²⁶ *Ibid.* at p. 14.

²⁷ www.citizensinformation.ie (accessed 13 May 2011).

the case of a proposed school, and having regard to the desirability of diversity in the classes of school operating in the area likely to be served by the school, the needs of students attending or likely to attend the school cannot reasonably be met by existing schools, the patron undertakes that the school shall provide the curriculum as determined in accordance with section 30, the patron agrees to permit and co-operate with regular inspection and evaluation by the Inspectorate, the school complies, or in the case of a proposed school shall comply, with health, safety and building standards as are determined by law and any further such standards as are determined from time to time by the Minister, and the patron agrees that the school shall operate in accordance with such regulations as may be made by the Minister from time to time under section 33 and with this Act and with any other terms and conditions as may reasonably be attached to recognition by the Minister.

45. Recognition is important as it carries with it an entitlement to State funding, both in terms of capital costs and the day-to-day running of the school. It is noted that the Education Act appears to deal only with annual funding rather than capital grants.²⁸ While the second criterion for recognition refers to the desirability of diversity in schools operating in an area, the first criterion, namely, the number of students likely to attend the school that will make it viable, while ostensibly a reasonable requirement, may place an obstacle in the way of the establishment of new schools, which in turn may limit diversity in provision. This is because it may be difficult to predict enrolment until such time as the school is established and enrolment may only increase after the school has become accepted over time in the local community. The weighing of these criteria by the Department of Education is thus key.
46. Recently the Department of Education has adopted a number of policies in relation to the recognition of new schools. In 2010 it placed a cap on the number of new schools that would be recognised, and it appears that until recently in practice the Department has been more concerned with demographic needs rather than pursuing a dedicated objective of increasing diversity in provision. Also in 2010 the Department published information on areas for possible divesting of patronage of primary schools where demographic growth was stable. The rationale would appear to be that without demographic growth, it is not desirable to establish new schools and therefore diversity can only be achieved through a transfer of patronage. This focus may now alter in light of the recently announced Forum on Primary School Patronage.²⁹

²⁸ Section 12(3) Education Act 1998.

²⁹ Established by the Minister for Education and Science, Ruairi Quinn T.D. in March 2011 and to be chaired by Professor John Coolahan.

CURRICULUM AND RULES OF NATIONAL SCHOOLS

47. The Rules of National Schools were promulgated by the Department in 1965 and have been amended on a number of occasions since.³⁰ The Rules are comprehensive in dealing with all aspects of the running of national schools, but do not have a legislative basis. However, the Rules have been accepted as being binding by the Courts.³¹ As such they are adhered to by every State funded primary school in the country. In addition to the Education Act, the Rules deal with such matters as patronage and management, the physical structure of schools and equipment, the school year, staffing, inspectors and so on. Adherence to the Rules is required in order for each school to draw down funding to pay staff and teachers' salaries.³²

48. In the context of religious education it is noted that in the preface to the Rules the relevant provisions of the Constitution in relation to education are set out, and there is acknowledgment of the constitutional right of parents to withdraw their children from "religious instruction" in a particular school. The Rules provide that:

In pursuance of the provisions of these Articles the State provides for free primary education for children in national schools, and gives explicit recognition to the denominational character of these schools.

49. Also relevant in this regard is Rule 68 which states:

Of all the parts of a school curriculum Religious Instruction is by far the most important, as its subject-matter, God's honour and service, includes the proper use of all man's faculties and affords the most powerful inducements to their proper use. Religious Instruction is, therefore, a fundamental part of the school course, and a religious spirit should inform and vivify the whole work of the school. The teacher should constantly inculcate the practice of charity, justice, truth, parity, patience, temperance, obedience to lawful authority, and all the other moral virtues. In this way he will fulfil the primary duty of an educator, the moulding to perfect form of his pupils' character, habituating them to observe, in their relations with God and with their neighbour, the laws which God, both directly through the dictates of natural reason and through Revelation, and indirectly through the ordinance of lawful authority, imposes on mankind.

50. This rule with its exhortation for religion to vivify the whole work of the school may be, and indeed has been interpreted as allowing religious education to permeate the school day beyond formal religion

³⁰ A consolidated copy of the Rules of National Schools is not available.

³¹ See *O'Sheil & Ors v. The Minister for Education & Ors*, [1999] 2 IR 321, [1999] 2 ILRM 241.

³² See rules 15, 16 and 17 of the Rules of National Schools.

classes.³³ Rule 70 provides that the Minister may prescribe a programme of instruction in any subject of the curriculum for pupils of primary schools and he may, from time to time, alter the programme of instruction in any subject of the curriculum. This rule theoretically allows the Minister to alter the manner in which religious education classes ("RE classes) are to be provided, particularly in light of the human rights standards later considered in this report.

51. Finally section 121(5) of the Rules states "[t]eachers are required to study the subjects of the school curriculum and the methods of teaching them insofar as is necessary to make their teaching interesting, vital and effective..."
52. The integrated curriculum was promulgated in 1971 by the State for the first time. However, it has been noted that in fact Roman Catholic schools had in any event a tradition of integrating religious education with other subjects throughout the school day:

*In 1971, the State clearly sided with denominational interests when it gave official sanction to the integrated teaching of religious studies in the primary school curriculum for the first time. Although this measure was a significant achievement for church interests, it left State interests constitutionally vulnerable if educational legislation was enacted.*³⁴

53. Under the Education Act, the Minister for Education is charged with devising the curriculum for recognised schools at both primary and second-level:

The Minister may, from time to time, following such consultation with patrons of schools, national associations of parents, recognised school management organisations and recognised trade unions and staff associations representing teachers, as the Minister considers appropriate, prescribe the curriculum for recognised schools, namely—

- (a) the subjects to be offered in recognised schools,*
- (b) the syllabus of each subject,*
- (c) the amount of instruction time to be allotted to each subject, and*
- (d) the guidance and counselling provision to be offered in schools.*³⁵

54. The current Primary School Curriculum was developed by the National Council for Curriculum and Assessment ("NCCA") and launched in

³³ For an account of a study conducted in relation to the impact of the operation of the integrated curriculum on the ability of children/ parents to exercise their entitlement to opt out of religious "instruction" see *Freedom of religion in the Irish primary school system: a failure to protect human rights?*, A Mawhinney, Legal Studies, Vol.27 No.3, 2007, p.379-403.

³⁴ D Glendenning, *Education and the Law*, (Dublin: Butterworths, 1999), p. 23.

³⁵ Section 30(1) Education Act 1998.

1999. The curriculum was reviewed by the NCCA in 2003.³⁶ This curriculum provides guidance to schools in relation to the integration of learning across the curriculum:

The Integration of Learning:

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

55. The Primary School Curriculum also emphasises the importance of pluralism in schools:

Pluralism:

The curriculum has a particular responsibility in promoting tolerance and respect for diversity in both the school and the community. Children come from a diversity of cultural, religious, social, environmental and ethnic backgrounds, and these engender their own beliefs, values, and aspirations. The curriculum acknowledges the centrality of the Christian heritage and tradition in the Irish experience and the Christian identity shared by the majority of Irish people. It equally recognises the diversity of beliefs, values and aspirations of all religious and cultural groups in society.

56. Further the Curriculum refers to the “integration of learning” as mentioned above. The “integrated curriculum” allows the various elements of the curriculum to be taught harmoniously without creating rigid barriers between its various elements. The integration of the curriculum at primary school level clearly offers advantages and has been adopted to foster the best educational outcomes for children.³⁷ The integrated curriculum is also attractive from the perspective of a school with a denominational ethos, as it allows the religious aspect of that ethos to inform all aspects of the educational experience in the school. As will be seen below however, difficulties may arise where a parent seeks to excuse their child from formal RE classes, but may not

³⁶ The NCCA was established on a statutory basis in 2001. Before that, it was a non-statutory organisation for over 20 years. The NCCA provides advice the Minister for Education and Skills on curriculum and assessment for early childhood education and for primary and post-primary schools. See http://www.ncca.ie/en/About_Us/ accessed 13 April 2011.

³⁷ The Primary School Curriculum, 1999 states: “The curriculum is based on a philosophy and psychology of teaching and learning that incorporates the most advanced educational theory and practice”, p. 10.

be wholly able to avoid their child being influenced by the religious ethos of the school.

57. It is also noted that the Primary School Curriculum leaves it to each individual school to design and deliver its own religious curriculum in accordance with the requirement of the patron. A curriculum book (content statement) is provided by the Department of Education for each of the curriculum subjects, with accompanying teacher guidelines books. The teacher guidelines are designed as an aid and resource for teachers and schools. To assist teachers in the planning and implementation of the curriculum the NCCA suggests a time “framework” that allocates a minimum time to each of the curriculum areas. The NCCA includes religious education in this framework and suggests that national schools teach religious education for two hours and thirty minutes each week.³⁸
58. While the Rules of National Schools 1965 provide for the strict time tabling of religion classes within school hours, this requirement is not reproduced in the Education Act and does not appear to be adhered to in practice.
59. The Education Act, may also be regarded as providing indirect sanction to the integrated curriculum insofar as it makes Boards of Management accountable to the patron for upholding the characteristic spirit of the school. Section 15(2)(b) of the Education Act provides:

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

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

60. Section 9(d) also provides:

A recognised school shall provide education to students which is appropriate to their abilities and needs and, without prejudice to the generality of the foregoing, it shall use its available resources to—

³⁸ *Primary School Curriculum: An Introduction* (Dublin: Government of Ireland, 1999), p. 70, available at http://www.ncca.ie/uploadedfiles/Curriculum/Intro_Eng.pdf (accessed 13 April 2011).

promote the moral, spiritual, social and personal development of students and provide health education for them, in consultation with their parents, having regard to the characteristic spirit of the school.

Second-Level Curriculum

61. As noted above the development of the curriculum is a Ministerial function. Second-level schools, in contrast to primary schools, have a prescribed curriculum in religious education, which is an examinable subject at junior certificate and leaving certificate level. While the State syllabus does not appear to deal with faith formation, there are agreed guidelines between the Department of Education and the Irish Catholic Bishops' Conference in relation to the delivery of the syllabus in schools where there is Catholic patronage:

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. It is for this reason that the Irish Catholic Bishops' Conference sets out guiding principles for the implementation of the State syllabus with respect to the religious education of catholic students.³⁹

62. The guidelines have the stated objective of assisting in the faith formation of Catholic students in the junior cycle. It is noted, however, that the Junior Certificate Religious Education Syllabus is an optional subject for the Junior Certificate examination. At individual school level it may be possible to make the subject compulsory but this does not override the right of students to be exempted from such instruction in accordance with the Education Act (see further below). Schools may in addition have separate RE classes in addition to the Religious Education Syllabus, and it appears this happens most often at Senior Cycle level where far fewer students undertake the Religious Education Syllabus for the leaving certificate.

THE OPT OUT OR EXEMPTION CLAUSE

63. Article 44.2.4 of the Constitution states:

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

³⁹ *Guidelines for Faith Formation and development of Catholic Students, Junior Certificate Religious Education Syllabus*, The Irish Catholic Bishops' Conference, 1999, p. 5.

64. The corresponding provision in Section 30 of the Education Act states that a student shall not be required to attend instruction in any subject which is contrary to the conscience of the parent of the student.⁴⁰

[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.

65. While this section does not specifically refer to religion, it is common sense to assume that religion is the most likely subject to raise conscientious objection in the context of the school curriculum. This is an entitlement that every recognised school must legally adhere to; however, the modalities of how this is to be implemented are not addressed in the Act. For instance, should there be a specific time for formal religion classes to take place, and what happens during sacrament preparation?⁴¹ Who is responsible for the supervision of the child during RE classes if they opt not to attend, or is it permissible for a school to require a child to remain in the room during RE class but not participate? As will be seen in the submissions received by the IHRC, this was a significant concern of both parents and education providers.⁴² While there has been no case law to date in relation to the interpretation of this section, one would imagine that a court, approaching the matter from a practical point of view, would be concerned to ascertain that any arrangement made both respects parental choice and is not unfeasibly difficult to comply with for either the parent or the school.
66. The practical challenges posed by the exemption provision at primary school level have been noted by a number of commentators.⁴³ A representative of the INTO has stated:

⁴⁰ Section 30(2)(e) Education Act 1998. See also Chapter 3 of this report.

⁴¹ A difference of approach is evident between schools under Roman Catholic and Church of Ireland patronage. In relation to the latter, in a paper delivered at the *Religion and Education: A Human Rights Perspective* Conference, co-hosted by the IHRC and Trinity College Dublin, 27 November 2010, Dr Ann Lodge provided an overview of religious education in Church of Ireland schools: “.. the shared Religious education programme, *Follow Me*, focuses on development of broad moral and Christian values rather than having a specific focus on faith formation as that would serve to exclude rather than include. Faith formation (including preparation for sacraments and other specific teaching of doctrine) is done at parish level rather than in the schools. In the Church of Ireland, the practice is that young people make their own decision with regard to confirmation. They must opt in to voluntary classes organised at parish level and this generally happens when young people are in early adolescence but can happen later. In general young people receive communion once they have been confirmed as they are now recognised as adults in the church. See

http://www.ihrc.ie/download/pdf/church_of_ireland_paper_ihrc_conference_27th_no_v_2010.pdf

⁴² See Chapter 2.

⁴³ See supra fn 33.

In relation to the issue of accommodating diversity, segregation and opting out, anyone who is familiar with Primary schools knows that trying to organise and teach and give parity of esteem to many different faiths and those of no faith is a challenge. In denominational schools, difficulties exist in terms of resources, in supervising and providing alternatives to those who wish to opt out of denominational formal instruction.⁴⁴

67. In an attempt to obviate some of these problems the Joint Managerial Board/ Association of Management of Catholic Secondary Schools have issued guidelines which address, *inter alia*, some of the practical issue in regard to providing exemptions from religious education.⁴⁵ The guidelines are very clear that non-Catholic students should be encouraged to grow in their own personal faith and it also acknowledges that some students will come from a secular background or will only be nominally Catholic. In relation to RE class the guidelines state:

Withdrawing from RE class can present the school with considerable logistical and supervision dilemmas. In cases such as this, a school should make it clear that responsibility for supervision of the student at such times lies with the parents. This is because it may not be possible for the school to provide such supervision for their son or daughter within the Department of Education's staff allocation to the school.⁴⁶

68. The guidelines go on to suggest however that keeping students at the back of the class room during RE is not ideal and if there are alternative supervision possibilities these should be availed of. In addition, schools are encouraged, where there are sufficient numbers and it is practical to do so, to consider inviting Ministers or leaders of other faiths into the school to meet with non-Catholic students during RE class.
69. While the guidelines demonstrate the efforts that schools under Roman Catholic patronage make to be as inclusive as possible, they also illustrate the difficulty of having a particular religious ethos, while still trying to cater for students coming from a diversity of backgrounds.

Admission Policies and the Equal Status Acts

70. Under the Education Act each recognised school is obliged to establish and maintain an admissions policy which provides for

⁴⁴ See paper given by Deirdre O'Connor INTO, at *Religion and Education: A Human Rights Perspective*, Conference hosted by Trinity College Dublin, 27 November 2010, available at www.ihrc.ie accessed 13 April 2011.

⁴⁵ Guidelines on the Inclusion of Students of Other Faiths in Catholic Secondary Schools, JMB/ AMCSS Secretariat, April 2010.

⁴⁶ *Ibid.* at p. 11.

maximum accessibility to the school.⁴⁷ This is subject to section 15(2) of the Education Act wherein the Board of Management is accountable to the patron of the school for upholding the “characteristic spirit” of the school. Read together these sections allow schools flexibility in formulating an admissions policy to take account of the denominational ethos of the school.

71. The discretion left to schools in this regard is clarified further in the Equal Status Acts 2000-2008 (“the Equal Status Acts”). Those Acts prohibit discrimination, as defined under the Acts, across nine grounds including religion. Educational establishments in Ireland are subject to the provisions of the Equal Status Acts. Educational establishments in this context refers to preschools, primary, post-primary, an institution providing adult, continuing or further education, a university, third level or higher level institution whether or not they are publicly funded.⁴⁸
72. However, certain acts are not considered to be prohibited discrimination under the legislation. The Equal Status Acts allow primary and second-level schools which have a particular denominational ethos to give preference in admissions to students of a particular religious denomination over those of another denomination or none. In addition the Acts allow a school to refuse admission to a student not of the same denomination as the school, but only insofar as this is necessary to maintain the ethos of the school.⁴⁹
73. It may be noted that, other than in relation to admissions, schools are not permitted to discriminate against students on the religion ground in any other circumstances.
74. The difficulties that may arise for certain students of a minority religion or from a non faith background, if their only possibility is to apply for admission to a Roman Catholic school in their area, are obvious.

Complaints

75. Under section 14 of the Education Act, the Board of Management of a school is charged with the day-to-day running of the school. It is also the body which primarily deals with complaints concerning schools which, under existing complaints mechanisms, relate primarily to complaints against teachers rather than the wider issues canvassed in this report.
76. In Guidance issued on its website, the Department states that:

⁴⁷ Section 9(m) Education Act 1998.

⁴⁸ Section 7(1) Equal Status Acts 2000-2008.

⁴⁹ Section 7. To date it appears that there has been no decision by the Equality Tribunal interpreting this provision of the Acts.

Under the 1998 Education Act, the Minister for Education and Skills provides funding and policy direction for schools. Neither the Minister nor the Department have legal powers to either:

instruct schools to follow a particular course of direction with regards to individuals complaint cases, or

to investigate individual complaints

While the Department does not pass judgment on individual complaints it can clarify for parents and pupils how their grievances and complaints against schools can be progressed. If you require any further clarification please contact Parents' and Learners' Section, Schools' Division, Department of Education and Skills....⁵⁰

77. Under this Guidance document, a complaint can only be made against a teacher or other staff member of the child's school. The document states:

*The guidance provided on this page does **not** apply to complaints in relation to actions or decisions by schools on allegations of child protection, suspensions, permanent exclusions, refusals to enrol and those decisions which may discriminate against a child.*

78. In relation to these matters, the Guidance document states that child protection issues should be referred to the Health Service Executive and/ or Gardaí; that complaints concerning a Board of Management's decision to suspend, permanently exclude or refuse to enrol a child should be made to the Department under Section 29 of the Education Act, while discrimination complaints should be made to the Equality Tribunal. It will be noted that issues concerning "religious instruction" in schools are not dealt with in the foregoing except in relation to complaints against teachers or other staff members, or except in so far as they may come within the terms of the Equal Status Acts.
79. In terms of complaints brought by parents against teachers, the Guidance document appends two documents: the first is a procedure agreed between the Irish National Teachers' Organisation and the Catholic Primary School Managers' Association in 1993 and the second is a procedure (Code of Practice) agreed between the Association of Community and Comprehensive Schools and the Association of Secondary Teachers Ireland and the Teachers' Union of Ireland.

⁵⁰ *Brief Guidance for Parents who wish to make a Complaint about a Teacher or other staff members of at School*, available at www.education.ie/servlet/blobervlet/primary_complaints.doc (accessed 13 April 2011).

80. Complaints relating to schools are thus primarily determined at school level, with teachers' unions and some school management bodies agreeing to certain procedures which should apply when investigating and resolving complaints at a local level, and the Department only providing clarification through its Parents' and Learners' Section, Schools' Division, rather than taking any direct role in the resolution of such disputes.
81. In terms of general applicability, however, it will be observed that these complaints procedures do not cover all primary or second-level schools in the State. The situation pertaining in other schools not covered by these agreements is thus unclear.
82. The Guidance document also states that:
- [T]he Office of the Ombudsman for Children may independently investigate complaints about schools recognised with the Department of Education and Skills, **provided the parent has firstly and fully followed the school's complaints procedures.** The key criterion for any intervention by the Ombudsman for Children is that a child has, or may have been negatively affected by the action of a school. (emphasis retained)*
83. This would refer to the situation where a person who has made the complaint remains unhappy with the decision of the Board of Management and wishes to complain of mal-administration to the Ombudsman for Children.⁵¹
84. It will be noted in the following chapter of this report, which summarises submissions received during the consultation, that very few respondents were aware of the current complaints mechanisms and therefore it must be questioned how effective they are in practice. In their ambit, the existing complaints mechanism are not tailored to deal with concerns about education and religion and would in their current form be insufficient to deal with issues concerning fundamental human rights. A number of respondents pointed to section 29 of the Education Act as a possible avenue in this regard. However, it is noted that as matters currently stand, section 29 only deals with suspensions, exclusions and enrolment, although it is noted that the Minister could expand the class of decisions subject to appeal under section 29. One concern in this regard however, is the limitations on such appeals, as they may not encroach too far into the discretion afforded to schools under the Act.

⁵¹ The Office of the Ombudsman for Children is an independent statutory body established under the Ombudsman for Children Act 2002 charged with promoting the rights of children and young people.

TEACHER EDUCATION AND EMPLOYMENT

85. All teachers in schools recognised and funded by the Department of Education must have a recognised qualification.⁵² These qualifications differ between primary and second-level teaching.⁵³ The respective qualifications will be examined below, insofar as they are relevant to the subject matter of this report.
86. Dympna Glendenning, in her book, *Education and the Law*, outlines how teacher training in the State developed from State sponsored training colleges to become denominationally controlled training institutions.⁵⁴ She recites how, with the establishment of the national school system in 1831, it was also envisaged that a Central Training College would operate in Dublin with thirty two local model schools nationwide that would cater for student teachers. Between 1838 and 1867 up to twenty-five model schools were established. These were conducted on a strict mixed denominational principle.⁵⁵ However, Glendenning posits that the Catholic Church was apprehensive about the formative influence which mixed denominational education would have and that in 1863 Catholic student-teachers were forbidden by the Bishops to attend the model schools and the State Training College. In the meantime, pressure increased for State funding for denominational training colleges.⁵⁶ After considerable pressure from both the Church of Ireland and the Roman Catholic Church the State conceded in 1883 and agreed to give state support to denominational training colleges, which as will be seen below largely remains the situation today in respect of primary schools.

⁵² Section 24 (2) Education Act 1998, confers the function of determining the numbers and qualifications of teachers and other staff of a school, by the Minister for Education, where a school is receiving public funding.

⁵³ The Department of Education website provides information on the required teacher qualifications:

<http://www.education.ie/home/home.jsp?pcategory=10900&ecategory=19312&language=EN>.

⁵⁴ D. Glendenning, *Education and the Law* (Dublin: Butterworth, 1999), para. 2.28.

⁵⁵ See *supra* fn 11.

⁵⁶ The future of the model schools and the question of state support for denominational teacher training were central questions for investigation by the Royal Commission of Inquiry into Primary Education (Powis Commission) which was set up in 1868 and reported in 1870. The Powis Commission recommendations included fundamental readjustments in the national school system. The Report appeared to endorse the denominational trend, through easier recognition of denominational schools and accepting the idea of state aid for denominational teacher training. Further, the Report recommended the discontinuance of the model schools. In the 1870s the Catholic Archbishop of Dublin supported the establishment of two colleges for Catholic student-teachers, one for males under the Vincentian Fathers and one for females under the Sisters of Mercy.

Primary Schools

Training Providers and admission requirements

87. A Bachelor of Education (B.Ed) degree is the recognised qualification for primary teaching in Ireland. Alternatively, a Graduate Diploma in Education (Primary Teaching) may be undertaken by those who already have a third level degree and wish to qualify as a primary school teacher. Candidates must meet the eligibility criteria in order to apply and are then selected by way of competition.⁵⁷
88. Colleges offering the Graduate Diploma in Education and the B. Ed (Primary Teaching) are:⁵⁸
- St. Patrick's College, Dublin;⁵⁹
 - Mary Immaculate College, Limerick;⁶⁰
 - Froebel College of Education, Dublin;⁶¹
 - Coláiste Mhuire, Marino Institute of Education, Dublin.⁶²
89. In addition to the four colleges above the Church of Ireland College of Education in Dublin also offers the B.Ed degree course. Furthermore a distance learning course (Higher Diploma in Arts in Primary Education) is provided by Hibernia College.⁶³ Places are allocated in accordance with the CAO process, including the common points scale for the Leaving Certificate Examination.

⁵⁷See Department of Education and Skills:
<http://www.education.ie/home/home.jsp?maincat=&pcategory=10900&ecategory=19312§ionpage=12251&language=EN&link=link001&page=1&doc=51462>, accessed 13 April 2011.

⁵⁸ All these colleges have a Roman Catholic foundation but with a different ethos depending on which Religious Order founded them. Each of the Colleges is also academically partnered to other third level institutions.

⁵⁹ St Patricks College states: "The College is committed to creating a community of learning in which Catholic religious values are promoted including a respect for conscience, responsibility for social justice, care for the vulnerable, awareness of the sacred and a recognition of the call to worship God, in a climate which is inclusive and respectful of those from different denominations or religious or philosophical traditions. The College recognises its duty in preparing teachers to teach the Catholic faith in Catholic schools."
http://www.spd.dcu.ie/main/about/Mission_Statement_Elucidation.shtml.

⁶⁰ Mary Immaculate College states: "A Catholic foundation, Mary Immaculate College maintains an active Christian life where Christian values, freedom and personal responsibility are honoured."

⁶¹ Froebel College was established by the Dominicans.

⁶² Marino Institute of Education is a private charitable trust established by the Congregation of Christian Brothers.

⁶³ Hibernia College is a private commercial college.

90. The Church of Ireland College of Education has the stated purpose of providing teachers to schools under the management of the Church of Ireland and other Protestant denominations. Therefore available places at the Church of Ireland College of Education “are reserved for those who are members of recognised churches in the Protestant tradition, and who are aware of and willing to support the distinctive ethos of Protestant primary schools”.⁶⁴ The College only admits students from a Church of Ireland and other Protestant background, and has been granted a specific exemption under the Equal Status Acts to accommodate this.⁶⁵

The primary teaching degree curriculum

91. Curriculum religion is taught as an integral part of the B. Ed and Graduate Diploma programmes.⁶⁶ In the case of those Colleges of Education with a Roman Catholic foundation this is a Catholic curriculum and a Church of Ireland curriculum is taught in the Church

⁶⁴ http://www.cice.ie/files/bachelor_of_education_degree_prospectus.pdf, accessed 13 April 2011. Eligible candidates are required to attend and pass a qualifying interview for the course and College in order to be considered for places. Interviewers are interested in forming an opinion of candidates' views on education, their perception of the Church of Ireland College of Education, and their reasons for choosing primary teaching as a career and their attitudes to the teaching of religion.

⁶⁵ S. I. No. 251/2008 –Employment Equality Act 1998 (Section 12) (Church of Ireland College of Education) Order 2008 section 2 states that: “The Church of Ireland College of Education, Rathmines, in the city of Dublin, may reserve 32 places in its vocational education course leading to the degree of Bachelor of Education of the University of Dublin and commencing in the academic years 2008/2009, 2009/2010, 2010/2011, 2011/2012 and 2012/2013, being such number of places as seem reasonably necessary to the Minister for Education and Science to meet the purpose set out in section 12(4) of the Employment Equality Act 1998 (No. 21 of 1998). Section 12(4) of the Employment Equality Act 1998 states: “For the purpose of ensuring the availability of nurses to hospitals and teachers to primary schools which are under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values, and in order to maintain the religious ethos of the hospitals or primary schools, the prohibition of discrimination in *subsection (1)*, in so far as it relates to discrimination on the religion ground, shall not apply in respect of-...b) places in a vocational training course specified in an order made under subsection (5)(5) Where an educational or training body applies ...to the Minister for Education and Science, in the case of primary schools, for an order permitting the body concerned to reserve places in a vocational training course offered by the body, ...the Minister for Education and Science... with the consent of the Minister by order allow the body to reserve places such numbers as seem reasonably necessary to...the Minister for Education and Science...to, meet the purposes set out in *subsection (4)*.”

⁶⁶ For instance St. Patrick's College Course Guide 2010-2011 states; “2. CURRICULUM RELIGION: ▪ Religious Education is one of the 7 main curricular areas required by the State as part of your degree (B Ed). You will study content (about religion) AND methodology i.e. How to teach religion (curriculum religion).” See

http://www.spd.dcu.ie/main/academic/religious_studies/documents/CRSCourseGuidelines16.09.10.pdf

of Ireland College of Education. Religious studies is also integrated into those modules forming part of the Higher Diploma in Arts in Primary Education which is offered by Hibernia College as a distance learning degree.⁶⁷

92. Colleges of Education such as St. Patrick's College and Mary Immaculate College also offer a non-compulsory Certificate in Religious Studies which is taught alongside the B. Ed and Graduate Diploma in Education (Primary Teaching).⁶⁸
93. Recently, St. Patrick's College, Dublin at the request of the Department of Education and Skills, has started to offer an alternative curriculum Ethics and Education course for those who do not wish to take the Catholic curriculum course. This is stated to be a secular course based on human rights and civic society.
94. However, the aforementioned religious curriculum course is compulsory for those opting to take the voluntary Certificate in Religious Studies. In turn, the Certificate in Religious Studies appears to be a requirement for teaching posts in many primary schools managed by the Catholic Church, although this is a requirement at the discretion of individual patrons. Therefore, in practical terms it is difficult for student teachers to opt out of the curriculum religion. To do so means limiting a teacher's employment prospects in the State, because as previously noted 97% of Irish primary schools are under denominational patronage, with over 91% being under Roman Catholic patronage.

The teaching of religion in primary schools

95. In denominational primary schools RE class is generally taught by the class teacher. Teachers are required as part of their terms and conditions of employment to uphold the Rules for National Schools, which in turn means they are contractually obliged to teach the religious curriculum.⁶⁹

*According to Rule 68 the denominational ethos should inform and vivify the whole work of the school ... adherence to the Rule for National Schools is an explicit part of a teacher's contract of employment and so they are bound by those rules.*⁷⁰

⁶⁷ See <http://hiberniacollege.com/schoolofeducation/h-dip-in-arts-in-primaryeducation/syllabus/#Teaching> Foundations

⁶⁸ See for example http://www.spd.dcu.ie/main/academic/religious_studies/Full-timecourses.shtml, accessed 13 April 2011.

⁶⁹ *Teaching Religion in the Primary School: Issues and Challenge*, (INTO, Dublin).

⁷⁰ Speech given by Deirdre O'Connor INTO, at *Religion and Education: A Human Rights Perspective*, Conference hosted by Trinity College Dublin, 27 November 2010.

96. In addition under Section 121(5) of the Rules “[t]eachers are required to study the subjects of the school curriculum and the methods of teaching them insofar as is necessary to make their teaching interesting, vital and effective...”
97. In reality, teachers in the vast majority of primary schools are obliged to uphold the religious ethos of the school and teach the integrated curriculum including formal religion classes, irrespective of their own religious or philosophical convictions, although it has been noted that accommodations to avoid this may be worked out at local level.⁷¹

Teacher Education – Second-Level Schools

98. The Postgraduate Diploma in Education, the Graduate Diploma in Education or the Higher Diploma in Education (Secondary) are the recognised qualification for all teaching posts in secondary, community and comprehensive schools.⁷²
99. The Postgraduate Diploma in Education is offered by the four constituent universities of the National University of Ireland.⁷³ The Graduate Diploma in Education is offered by Dublin City University. The Higher Diploma in Education (Secondary) is offered by Trinity College Dublin. The Postgraduate Diploma in Education through Irish (Diplóma larchéime san Oideachas) is offered by University College Galway.
100. To be eligible to apply for the Post Graduate Diploma in Education, Graduate Diploma in Education or the Higher Diploma in Education (Secondary), candidates must have obtained a suitable Primary Degree.⁷⁴

⁷¹ *Ibid.*

⁷² See Department of Education and Skills

<http://www.education.ie/home/home.jsp?pcategory=27173&ecategory=27173&language=EN>, accessed 13 April 2011.

⁷³ University College Cork, University College Dublin, University College Galway, NUI Maynooth.

⁷⁴ A suitable Primary Degree is a degree or equivalent award from a State recognised university or similar third level college which is adequate to enable the holder to teach to the highest level (in the case of the majority of subjects, this is Leaving Certificate, higher level) in at least one subject on the post-primary school curriculum. The duration of such a degree programme must be at least three years of full-time study or equivalent. The applicant's degree must be deemed eligible by the Teaching Council for the purposes of secondary school teaching.

Religion Teachers

101. The Mater Dei Institute of Education, Dublin provides dedicated education for teachers of religion in second-level schools.⁷⁵ This college provides a full-time four year long course leading to a Bachelor of Religious education (B. Rel. Ed) degree. The Bachelor of Religious Education degree programme comprises Religious Studies, Education and an Arts subject (English, History or Music). Graduates of this course are recognised by the Department of Education for appointment as fully qualified teachers of Religion and the Arts subject.⁷⁶ Places are allocated in accordance with the CAO process, including the common points scale for results at the Leaving Certificate Examination.

Employment Equality Acts

102. The Employment Equality Acts 1998-2008 prohibit discrimination in relation to employment across nine grounds, including religion. Section 37 (1) of the Act, however creates a specific exemption in respect of religious institutions, such that they may favour a co-religionist in employment, where it is reasonable to do so, in order to maintain the religious ethos of the institution. In addition, certain religious, educational and medical institutions may take action, which is reasonably necessary to prevent an employee, or a prospective employee, from undermining the religious ethos of the institution.⁷⁷
103. In the recent case of *McKeever v Board of Management of Knocktemple National School*,⁷⁸ it was found that the complainant, who was appointed to a position with the Respondent school, had the position withdrawn when it was discovered by the school that she was a member of the Church of Ireland. Although the Respondent school was under Roman Catholic patronage, they did not argue section 37(1) in defence, but rather relied on a purported procedural mistake in making the appointment. On this basis it was found that the

⁷⁵ Mater Dei Institute of Education is a foundation of the Archdiocese of Dublin, a College of Dublin City University and a designated higher education institution under the Higher Education Authority. See www.materdei.ie (accessed 13 April 2011).

⁷⁶ Additionally, St. Patrick's College Thurles offers a Bachelor of Arts Degree in Education, Irish and Religious Studies, qualifying students to teach Irish and Religious Studies to Honours Leaving Certificate level. St. Angela's College Sligo also offers a B. Ed Home Economics and Religious Education degree course which qualifies students to teach those subjects at post primary level.

⁷⁷ For a more detailed analysis of the implications of these provisions see: Religion and Education- the Irish Constitution, paper delivered by Professor Gerry Whyte at the TCD/IHRC Conference on Religion and Education: A Human Rights Perspective, 27 November 2010. http://www.ihrc.ie/download/doc/gerry_whyte_paper_on_religion_and_education.doc, accessed 13 April 2011.

⁷⁸ *McKeever v the Board of Management of Knocktemple National School*, Dec E 2010-189, 1 October 2010.

complainant had been discriminated against on the religion ground contrary to the provisions of the Act.

The Teaching Council

104. The Teaching Council is the professional body for teachers, established on a statutory basis by the Teaching Council Act 2001.⁷⁹ Its stated role is to promote teaching as a profession at primary and post-primary levels, to promote the professional development of teachers and to regulate standards in the profession.⁸⁰
105. The Teaching Council is simply referred to in this report in light of its broad range of functions in relation to the teaching profession. These include the registration of teachers, a requirement for all teachers who wish to be employed in recognised schools under the Education Act.⁸¹ Teacher registration may be withdrawn for failure to comply with Codes of Practice drawn up by the Teaching Council. The Code of Practice is presently under review.⁸² Importantly under section 38 of the Teaching Council Act, the Teaching Council has the power to review and accredit programmes of teacher education and training for the purposes of registration.⁸³

⁷⁹ This Act was amended by the Teaching Council (Amendment) Act 2006.

⁸⁰ www.teachingcouncil.ie (accessed 13 April 2011).

⁸¹ Section 31 of the Teacher Council Act, 2001.

⁸² See *supra* fn 80.

⁸³ Under section 7(2)(h) of the Teaching Council Act, the Teaching Council is mandated to advise the Minister for Education in relation to the minimum standards of educational qualifications required for entry into programmes of teacher education and training and the professional development of teachers.

CHAPTER 2: RESPONSE TO THE IHRC DISCUSSION PAPER

106. At the conference entitled "*Religion & Education: A Human Rights Perspective*" held in Trinity College Dublin on 27 November 2010, the IHRC launched a Discussion Paper which aimed to encourage debate on these complex issues and the balancing of the many competing rights involved.
107. The Discussion Paper gave an overview of existing law and practice in the area and set out both the constitutional and international human rights standards in relation to religion and education in order to consider whether the State is fully meeting its human rights obligations. At the end of the Discussion Paper, the IHRC posed a number of questions to elicit responses from interested parties. To assist persons make submissions, the IHRC devised a short template form for responses although there was no obligation to use this format.
108. As stated, the IHRC received over 60 responses. Those who responded included parents and grandparents, former pupils, national and international academics, primary school teachers, teachers' unions, members of the Christian Churches, think-tanks, members/ former members of the Campaign to Separate Church and State and unaffiliated members of the public.

CRITICISMS OF THE DISCUSSION PAPER

109. The IHRC endeavoured to draft the Discussion Paper without adopting a definitive stance on the issues raised. However, the paper and the accompanying template response form did generate criticism from a number of respondents, primarily on definitions and the scope of the Discussion Paper.
110. In this regard, some respondents considered that the Discussion Paper was too legalistic in its approach in not addressing issues of philosophy, religion, pedagogy, or the practice of education. Thus the fact that the nature of religious freedom and the nature of education were not discussed was a concern to some respondents. Some respondents felt that the template response form appeared to focus disproportionately on the rights of those who want to "opt out" of denominational education rather than those who wish to "opt in". Others felt the paper spoke of religious freedom in the sense of "freedom from" rather than "freedom for" religion. Some respondents considered that the IHRC did not understand what a school ethos is and that some of the questions may have served a particular slanted

agenda. This was particularly so regarding the term “objective, critical and pluralistic” referred to in the template form and which, as will be set out below, is a term that has been adopted in human rights discourse.

111. Some respondents took issue with the reference in the template form to “religious instruction” rather than “religious education”, viewing this as a pejorative term. Others were concerned that the term “religious indoctrination” was implied in the Discussion Paper and that insufficient references were made to the benefits of teaching religion or that core principles such as the Toledo Guiding Principles on Teaching about Religions & Beliefs in Public Schools⁸⁴ were not addressed in the IHRC’s analysis. Some felt that the question for consideration was whether religion has a role in the building of a healthy society.
112. A common criticism of the Discussion Paper stemmed from the lack of agreed definitions of terms. It was felt that greater clarity and understanding would have been possible if the IHRC had defined common terms. It is noted however that there is no generally agreed legal definition of a religion or of a belief and it is argued that such terms cannot be defined in a legal sense because of the inherent ambiguity of the concept of religion.
113. Despite these criticisms, a majority of respondents welcomed the consultation process. Throughout the submissions there was general recognition that Irish education has historically benefitted from the provision of denominational education. Attention was drawn to the work of thousands of volunteer parents and local communities in primary and secondary schools in submissions. Most submissions recognised that there is a problem to be addressed concerning the rights of “minority children”, i.e. non faith or minority faith children. This recognition is significant as it allows stakeholders to address possible solutions with a common understanding of the problem.
114. However, it is when addressing solutions that agreement or consensus becomes difficult as evident from the range of views advanced in the submissions. That said, it is possible to construct solutions by employing human rights standards in an attempt to balance competing rights under a generally agreed framework.
115. In its recommendations to Government, the IHRC has taken note of both the criticisms of its Discussion Paper and common points of reference in the submissions to the consultation process, which criticisms have informed its approach to the issues arising. In the absence of internationally agreed definitions and the lack of

⁸⁴ The conclusions of the *Toledo Principles* are set out in Chapter 4.

commentary in legal journals and case law, the IHRC bases its terminology in this report on the commonly accepted terms used in human rights law, where possible, taking cognisance of the points raised by respondents to the consultation. Legal terms are derived from the definition of “human rights” under the Human Rights Commission Act 2000.

MAIN THEMES EMERGING FROM RESPONSES

The Question of School Patronage/ Ethos

116. What is at issue here is whether the system of patronage in primary and post-primary schools allows for the protection of human rights or whether a different structure is required. The reasons for the patronage system are largely historical.

The primary school system in the Republic of Ireland has two notable characteristics. There is a preponderance of denominational schools and there are a very large number of schools per head of population. These two facts are inter-related. 97% of schools are under the patronage and management of a religious denomination (89% are Catholic). There are approximately 3,300 primary schools for a population of 4.5 million people. This is an extraordinarily high ratio of schools per capita. As a result there is a preponderance of very small schools.

Submission of Catholic Schools Partnership

117. Of the some 3,300 primary schools, 2,917 are Catholic primary schools (the Catholic Primary School Management Association).
118. The Catholic Schools Partnership also make the point that 70% of primary schools have less than 200 pupils and may be located in rural areas. Addressing the perceived danger of removing patronage as a model, it points to the low cost of running schools, stating that this is evidenced from the large number of volunteers that assist in the running of schools.
119. In relation to second-level schools, a similar model of patronage exists. It should be noted that while there are denominational, inter-denominational and multi-denominational schools, the Department of Education has not designated any non-denominational schools. The meaning of these terms are unclear with definitions a source of much debate, for example one respondent suggested that insofar as each school has its own ethos “there is no such thing as a non-denominational school”. One submission suggested that Educate Together Schools are in fact non-denominational rather than multi-

denominational schools insofar as in that person's view, they do not espouse a particular denominational ethos.

The meaning of these terms is very unclear. Currently the Department of Education and Skills does not recognise the designation of non-denominational schooling. Consequently, there is a tendency to speak only of denominational and multi-denominational schools and to define the latter as more open and inclusive. Inevitably, this gives rise to negative representations of denominational schools as closed and sectarian. This is completely at odds with the experience in local communities throughout the country. In this context the Catholic Schools Partnership would welcome the establishment of clearly secular, non-denominational schools providing a non-religious alternative for parents. A non-denominational school would give expression to its own ethos but it would exclude, on clearly articulated philosophical grounds, all religious symbols, rituals and formation.

Submission of Catholic Schools Partnership

120. In the submissions, there was recognition that there is a current difficulty which the current patronage model may not be able to meet. As one respondent put it:

The issues on which the Commission is consulting may be stated in terms of a problem. The problem is that a significant number of people in this state find that the current arrangements in respect of the role and place of religion, and the role and place of religious organisations, in the governance, management and delivery of our educational services at primary and secondary level, impose unacceptable constraints on what they perceive to be their own civic, communal and human rights.

Submission of Dr Barney O'Reilly

121. This difficulty is located in the high number of primary and post primary schools under religious, primarily Roman Catholic patronage (understandable given the percentage of the population described as Roman Catholic) in circumstances where some parents feel their right and their children's right to freedom of religious or other beliefs is not being respected under the current system.

Children of non-religious people are required to send their children to school until the child is 16 years old. All the schools in Ireland teach religion and 92% carry out faith formation within school hours. Religion in schools is unfairly biased against the non-religious outlook on life. I am concerned almost all the schools in Ireland are religious and they all teach religion. There are no secular schools in Ireland.

122. On the other hand, a number of respondents felt that Roman Catholic schools were being unfairly targeted due to a problem located in Government: their view is that the lack of any non-denominational schools in the State is a matter the State should address.
123. Part of the difficulty is that the current practice of education provision is not in the hands of the State and thus it is not exclusively in the hands of the State to immediately address the difficulty without input from patrons.

The patronage system has favoured organised religions that have the resources to establish and run schools. It has resulted in a lack of alternative schooling for those individuals who do not wish for a doctrinal Christian education.

From the perspective of using religious organisations in public service provision, the history of Irish education yields a clear learning point. Religious bodies should not be placed in a monopoly position, either functionally or geographically, in providing a particular service. In the provision of a *local* service, such as education, the need to avoid a geographical dominance by a religious non-state service provider is of particular importance.

Submission of Dr Alison Mawhinney

124. A number of respondents quoted recent statements by the Roman Catholic Church that it was willing to divest itself of patronage of a number of mainly primary schools: in 2007, the Irish Bishops were quoted thus: "In new centres of population it is incumbent upon the State to plan for the provision of school sites and to ensure, in consultation with the various patron bodies, that there is a plurality of school provision reflecting the wishes of the parents in the area." (cited by the Catholic Schools Partnership).

The Catholic Church accepts that there should be choice and diversity within a national education system. The Catholic Bishops and CPSMA as early as 1997 called for and continue to call for additional models of patronage to reflect parents' rights. A Pluralist Society respects the rights of different religions and cultures to exist within the legal structures of the State. The idea of a "one size fits all" is not the answer to the needs of a pluralist Society. There is a place for Faith Communities to establish faith based schools so long as parents require faith based schools."

Submission of the Catholic Primary School Management Association

125. In order to inform any such process, a survey of parental and pupil choice was suggested by one respondent who also suggested “a needs based evaluation of the current system and a redesignation of some current denominational schools as the beginning of a State based system of patronage”. Another respondent suggested that “each demographic area needs to be studied and parents need to be encouraged to participate”.
126. The question that arises is whether the patronage model should be replaced and if so by what. Most respondents accepted there should be change. Respondents from a secular perspective largely placed emphasis on the State taking control and providing education rather than providing grant in aid monies for education. Many respondents from a religious perspective argued for the opposite and that denominational schools are an expression of a pluralist society. These respondents argued that the “primacy of parental responsibility and choice in education” meant that the State should ensure greater diversity in education provision.

We believe there should be greater diversity of provision in schooling than is currently available. While it is the duty of the State to provide this greater diversity, we believe that the Churches should do what is reasonable to accommodate such diversity. The freedom of conscience and religion of teachers can be better accommodated in the more diverse education system we support. At the same time, a more diverse system will give denominational schools greater freedom to be true to their ethos.

Submission of Iona Institute

127. Most respondents were supportive of the concept of parental choice, which according to one respondent is reflective of the situation in most democracies which provide protection for a plurality of education provision and school types with parental choice given primacy.⁸⁵

There is no national system, geographically distributed over the 26 counties, which offers an alternative form of schooling to parents/children of minority faith or non-religious groups, or indeed Catholics who do not wish to send their children to a Catholic school.

*Joint submission of Dr Patricia Kieran
and Dr Daniel O'Connell*

⁸⁵ The CPSMA quoted the 1998 report of the Steering Group of the Commission on School Accommodation (at p.9) where it noted “the continuing strong desire of parents for denominational education...”.

128. Thus both secular and religious respondents felt parental choice should be a defining criterion. However, some respondents felt there should be limits to parental choice. For example, the Catholic Schools Partnership suggested that:

In any reconfiguration there is a danger of much more streamlined social stratification as the evidence demonstrates that, given the choice, many parents will opt for a school which draws most of its pupils from the more upwardly mobile social classes... It must be noted that parents who have a choice sometimes opt for more socially exclusive schools.

Submission of Catholic Schools Partnership

129. One proponent of a religion-free school environment advocated the abolition of all management boards which could allow the school principal to run the school to best meet the wishes of the primary stakeholders, the parents/guardians and scholars. However, this leaves open the question of who would be accountable for the management of those schools and the voluntary hours put in by parents in the majority of schools in the State.
130. Some respondents expressed unease at any proposal to set up individual faith schools on the basis that children may be segregated by faith, with some respondents stating that separating children “on the grounds of religious or non-religious beliefs by faith” is morally wrong. Most respondents felt that schools were at present underfunded. Some stated this should not be compounded by setting up new schools for faith and non faith reasons, where otherwise there was no need to do so. Some respondents who associated themselves with Roman Catholic schools genuinely felt that there were great efforts made to accommodate minority faith or non faith children.
131. However, this view was not shared by respondents from a non faith viewpoint. The view that the current system does not respect the rights of minority children was set out in three respects: first, some respondents with an identified secular view expressed opposition on ideological grounds to denominational schools: they find offensive a denominational system where schools are separated by religion, believing this leads to segregation and a lack of understanding in children - whereas in their view the State should provide education. Other similar submissions suggested that the State should be neutral and not identify with the views and aims of the religious majority.
132. Second, some respondents with an identified secular view expressed opposition on the basis of their experience of having children in schools where they felt the accommodation offered was insufficient. Third, some respondents with an identified religious view considered that it was “illogical” or “unreasonable” to expect Catholic patrons to

provide a non-denominational ethos in schools or “to think that the religious ethos of a school can be confined to religious instruction in the classroom”, while others stated that “a religious patron will always have a difficulty meeting the expectations of a person with strong[ly] held contrary beliefs”.

133. A teacher in a denominational school who requested anonymity suggested that

... if religion is to be taught in schools in the manner I have seen and suggested, then the above should be included in inspectors' remit. This would be to ensure that children are exposed to different religious views, and also to ensure that any teacher is not just paying lip-service to the idea.

Submission of Teacher

134. A variety of provision repeatedly came up in submissions.

A variety of provision seems crucial in our changing context. The [Mater Dei Institute] is supportive of a plurality of patronage models. All models, irrespective of patronage and trusteeship, should be inclusive and respectful of diversity.

Submission of Mater Dei Institute

135. Most respondents call for reform of the patronage system which ought to include “*wide consultation and fairness*”.

136. The general theme among proponents of denominational education was that, pursuant to the integrated school curriculum, a school's ethos permeates the school day and the ethos includes religious symbols and other emanations of faith such as prayer. These respondents state that not only would it be an error but it is also impossible to sever the ethos of the school from the daily workings of the school and in the opinion of many respondents, to confine the ethos to religion class is to “misunderstand the nature of ethos!”

There is no such thing as a value neutral education. All schools, whether established by the State or by one or other voluntary groups, espouse a vision of the human person and give expression to a particular ethos. Some people argue that schools should adopt a neutral stance in relation to religion. The inference is that religious belief is purely a private matter and should have no role in the public sphere of education. However, those who would exclude religion from school also espouse their own ethos. They impart a worldview, a philosophy of life, just as much as the person of faith.

Submission of Catholic Schools Partnership

Any parent desiring non-denominational education will not find that in a denominational environment as the ethos/character spills into every aspect of school life.

Submission of a Diocesan Adviser

In a democracy, state schools, which are meant to provide free education to all children, should respect their basic human rights and therefore should not be denominational: the denominational character of a school amounts to the imposition of particular religious beliefs on the children in that school, especially given the fact that all religious patrons precisely insist that their religion should be reflected in all the activities of the school (and this would be the case even if religious instruction was effectively confined to the classroom).

Submission of Individual

137. One academic suggested:

Our reading of the human rights documents and legal rulings cited in the discussion paper lead us to conclude that the current patronage system, with its implications for the pervasive denominational ethos of *de facto* a monopoly of schools, is in clear breach of human rights standards in respect of parents and pupils of minority faiths or none. It follows that the state, guided by human rights standards, should take a proactive role in regulating and monitoring the ethos of state-funded schools.

Submission of Professor Brian Bocking

138. In other submissions the view was expressed that the only way for a State education system to vindicate everyone's rights to freedom of conscience, religion and belief is for the education system to be run on a secular basis.

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 within school hours.

Submission of Atheist Ireland

139. However, one respondent from a religious perspective was highly critical of any simplistic identification of "secular" education in schools with neutrality:

Thus in sum, any practice of education, even when it purports to avoid subjects known to be politically controversial or sensitive in a given time and place, necessarily implies substantive evaluation (i.e non-neutral) positions on (i) the human goods or purposes to which education is directed, (ii) the nature of the human person and of the development of the human person, and (iii) the moral desirability and hence authority of particular sets of cognitive and social values (i.e traditions). And these are three areas where it is reasonable to expect that different religious and secular traditions will have distinctive and conflicting views. Accordingly, any account of religious freedom in education which relies, expressly or by implication, on the possibility of a wholly neutral practice of education, such that the negative rights of religious freedom of any parent could never be reasonably considered to be interfered with, must be rejected as fundamentally misinformed.

Submission of Iona Institute

140. From the perspective of a number of respondent teachers who requested anonymity, there was a perception that the Catholic religion is more or less forced upon children and them as teachers.

Curriculum

Religion in the classroom or not?

141. In denominational primary schools, religion is usually taught as a 30 minute subject each day. Unlike other subjects, the religious curriculum is not prescribed by the State but rather left to the discretion of the individual school. Religious symbols and faith emanations such as prayer and sacrament preparation (for second and sixth class students) are present during the school day. This is because religion forms the “ethos” of the school and thus pervades the school day. For inter-denominational or multi-denominational schools there is some variation on the above, with more emphasis on RE classes in parallel classes at the start of, during or after the school day. Again, definitions of the ethos of particular schools are a contested area.

Ethos like religion cannot be viewed in isolation. It must colour the way we look at everything. Ethos presumes a vision of the person e.g. made in image of God, that spills into all the relationships of the school day.

Submission of Diocesan Advisor

Just imagine attempting to devise a value free mission statement for one's school. As for the idea of a value free ethics course—hard to imagine.

142. Opinions are divided on whether religion should be present in primary and second-level education and indeed if it is, how it should be taught.

On the one hand....

143. Most respondents believed that the question of religion in the school curriculum is a question of parental choice. Some respondents felt that this includes a positive right to have one's child educated and instructed in a particular religion.

Parents have a right to denominational education. Parents have a right to non-denominational education. Rather than a one-(objective, pluralist, critical) system-fits-all approach, we would like to see more choice.

*Joint submission of Dr Patricia Kieran
and Dr Daniel O'Connell*

144. Another respondent argued that “[s]ince religion is a significant global and national reality, it ought to be part of children’s education”.
145. The State operates an integrated curriculum at primary school level which applies to all subjects taught. The philosophy behind this was emphasised in submissions.

... the philosophical basis of such a curricular approach is not the desire to integrate religion into all other subjects but the pedagogical principle that subject specificities are irrelevant in early childhood learning. Thus children are introduced into an integrated world rather than one arbitrarily divided into discrete academic subjects.

Submission of Catholic Schools Partnership

The question more appropriately might be to what extent it is possible for a denominational school to separate its ethos from the total work of the school. Primary education includes the full and harmonious development of the child and the integrated curriculum provides for the education of the whole person. Learning in primary schools is not based on an individual subject approach, it is experiential learning and is based on forming links between the various components which make up the learning experience throughout the school day. The primary system is designed to nurture the child. The Curriculum takes account of all aspects of the child's life in developing an appreciation of how the different dimensions of life complement each other and in helping the child work co-operatively with others. It is an overall vision.

*Submission of the Catholic Primary School
Management Association*

146. Opinion was divided on whether providing religious education in an “objective, critical and pluralist manner” (the term used by the European Court of Human Rights) is in fact feasible or possible.

Religious education is based on a belief system. Religion cannot be taught in a pluralistic manner.

Submission of Ms Geraldine Costello

Religious education, like all education, is not an objective or neutral imparting of information but the promotion of a critical engagement between the learner and knowledge that is approached in a manner respectful and inclusive of diversity.

Submission of Director of Mater Dei Institute

The State should ensure that information and knowledge in the education curriculum, *with the exception of religion*, is conveyed in an objective, critical and pluralistic manner in the classroom. Religion, by its very nature, cannot be taught in this way. There are aspects of religion that transcend objective, critical and pluralistic boundaries. Religion is a very personal issue with elements such as spirituality, faith and mystery which cannot be reconciled with a purely academic structure of teaching and learning.

Submission of Teacher

A religious ethos that is confined to religious instruction alone is of no value in promoting the above important formation characteristics in young children. Religious instruction, in isolation, and without wider integration into school life, is no more than a history lesson.

Submission of Teacher

147. One respondent stated that “*the education of the spiritual dimension of children is a basic human right*” while another stated that “*Religious education should be and is recognised as a valid and indeed necessary element in a holistic understanding of the education of young people*”.
148. A number of respondents proffer the view that, given the fact that 93% of people in the State consider themselves Christian, it makes sense that religion is taught at school. They believe that religion enriches a person’s understanding of life.

149. One respondent stated that:

Faith development is a key aspect of the spiritual development (which is essential to the holistic development of the child/person).

Submission of Individual

150. Other proponents of maintaining the presence of religion in the classroom expressed the view that:

Secularism is not the same thing as pluralism; indeed many secularists adopt a position that is anything but pluralist when it comes to the free expression of religious belief in schools.

Submission of Catholic Schools' Partnership

On the other hand...

151. Persons from a more secular perspective also believed that education about different religions can make an invaluable contribution to the upbringing of a child. A strong theme emerges reflecting the sentiment that children should be taught about different religions and not provided with a class involving religious education on a single religion. These respondents distinguish education about different religions from the notion of specific instruction on a particular religion which they admonish.

... a knowledge of religion and the place of religion in history and in contemporary society is indispensable in the education of children to the extent that religion is an integral part of the world around us and an important aspect of the lives of many people ... But, religious instruction does not have a role to play in the education of children, [if what is meant here by education is school education].

Submission of Individual

152. Again, the issue of definitions can be seen to arise here with possible misunderstandings as to the term “religious instruction” arising.
153. Some respondents suggested that the teaching of religion in an “objective, critical and pluralist manner” could be achieved.

Teaching religion in an objective, critical and pluralist manner is non denominational by definition, and therefore respects parents who wish to educate their children in a non denominational manner. It also respects parents who wish to educate their children in a specific denomination as religious instruction can be facilitated after school hours, by any

“qualified” person employed by the parents or by the school and provided either by the parents or by the school.

Submission of Individual

154. Other respondents identifying with a secular view suggest that religion has no place in the classroom at all stating that it navigates the child away from important learning in science and the arts. One proponent of the abolition of religion in schools said that any “religious instruction” must take place outside the state curriculum time, and not on State owned property. Another stated that “[h]ow religion is taught is a matter for parents of the child, through their respective religious organisations”.
155. One parent touched on the frustration of some parents.

Children of non-religious people are required to send their children to school until the child is 16 years old. All the schools in Ireland teach religion and 92% carry out faith formation within school hours. Religion in schools is unfairly biased against the non-religious outlook on life. I am concerned almost all the schools in Ireland are religious and they all teach religion. There are no secular schools in Ireland. Therefore non-religious parents are obliged to send their children to a religious school, or if they are lucky to have one in their area, an Educate Together school (which caters for all religions and none).

Submission of Parent

156. Many respondents proffered the opinion that religious education, if required at all, ought to be provided after school hours, with a number of respondents citing the Educate Together model in this regard.

The practice of conducting sacrament preparation during school hours renders any exemption clause inoperable thereby violating human rights standards. The time given to sacrament preparation may endanger the right of a minority-belief student to an effective education.

Submission of Dr Alison Mawhinney

157. Such respondents believe that State education should be secular, by which they mean that children should be taught in an “objective, critical and pluralistic manner” about the many varieties of religious belief that exist, with no denominational religious education or faith formation in school hours.

The State should ensure that information and knowledge in the education curriculum, including religion is conveyed in an

objective, critical and pluralistic manner in the classroom. Such a step would ensure equality and respect in the treatment of all children. It would also ensure that all children learn about their own religion, whether they are of majority or minority faith. Finally, it would help children to learn about each other's religion, which in turn would foster tolerance among children. This would end the segregation of children of minority faith and none that is presently in place in denominational schools.

Submission of Individual

158. However, some respondents questioned the whole concept of whether secular education is in fact value-free.

There is nothing neutral or value free about secularism. Secularism is a legitimate and particular ideology among many ideologies.

Submission of Dr. Dermot Lane

Religious Education

159. There was some concern about the IHRC use of the terms "religious instruction" and "religious education" with some respondents finding the former term offensive. While the term "religious instruction" is drawn from Article 44.2.4 of the Constitution and Rule 68 of the 1965 Rules of National Schools, the distinction to be drawn between both terms is important.

In relation to both the IHRC discussion document and other debates in this area, we recommend that participants adopt a consistent approach to terminology, in the hope that improved clarity will extend to wider discussions of the topic in Ireland. In particular, we recommend that in discussing the schools context, Religious Instruction (RI) be systematically distinguished from Religious Education (RE) as follows:

Religious Instruction (RI) promotes a single form of religion from a denominational perspective. The overwhelming majority of religious traditions in the world are unthinkingly marginalised or 'othered' by a denominational RI approach (of any tradition). Typically, they are conceptually lumped together as 'other religions'.

Religious Education is an academic subject in the humanities/social sciences which studies objectively (according to the requirements of an examinable or non-examinable educational curriculum) a range of religions or worldviews. RE, in contrast to RI, is wholly educational; in practice it means an objective, open-minded, and appropriately academically rigorous programme of study. In the religiously

pluralistic real world, RE fosters a critical, questioning, evidence-based, pupil-centred approach, developing 'religious literacy'.

Consequently, we advise against using the term 'a religious education' (sec. 12) to refer to a pervasive religious ethos or mode of delivering education, since this usage is potentially confusing.

Submission of Professor Brian Bocking

160. In relation to religious education in second-level schools, one submission suggested that both the Junior Certificate and the Leaving Certificate Religious Education Syllabi provide "a clear framework for the subject in second-level schools, engaging with pupils of any religious faith or none" and that their key aims included "an awareness that the human search for meaning is common to all peoples, all ages and at all times" so that students can, *inter alia*, "appreciate the richness of religious traditions".

161. However, this contrasted with another respondent's view that:

The Religious Education course [Junior Cert] is not a general history of world religions and [does (sic)] not respect the non-religious outlook ... Changing the emphasis of this exam to a history of religion would be less discriminating to non-religious parents and pupils. Not making the exam compulsory by default would allow non-religious parents to keep their belief private if they so wished...

Submission of Parent

162. One respondent argued that religious education "is 'formative' and as such will include such aspects as prayer, morality, etc."

163. A number of respondents spoke of its value to children.

Religious education has a contribution to make to the development of all aspects of the child's education. Religion is part of culture and history, so everyone, including those of a secular conviction, can benefit from education about religion.

Submission of Mater Dei Institute

Accommodating Different Religious and Non-Religious Beliefs

164. Can there be accommodation of different religious or non-religious beliefs in schools? As noted above, some respondents felt that there must be accommodation on the basis that children of different faiths should not be segregated from each other.

It is ... essential that children of different faith are schooled together, and learn to respect each other's differences, by identifying and acknowledging these differences and by overcoming them in the knowledge that they can live together.

Submission of Individual

165. Some respondents felt there could be accommodation.

The [Organization for Security and Co-operation in Europe] explicitly addresses the *Toledo Guiding Principles* in the provision of, and approach to, religious education in public or common school context. Their application in the Irish context clearly requires reflective accommodation given the dominance of private faith based schools and the balance between denominational and multi-denomination second level schools.

Submission of Mater Dei Institute

166. Other respondents felt that great effort was made to accommodate different religious backgrounds in schools already.

Information and knowledge in the education curriculum is conveyed in an objective, critical and pluralistic manner in Catholic Primary schools in so far as this is humanly possible. To suggest otherwise belies a mindset which suggests that secularism alone can deliver objective, critical, pluralistic thinking.

Submission of the Catholic Primary School Management Association

167. Some responses from particular patrons pointed to the perceived accommodation afforded by intercultural schools such as the VECs and multi-cultural schools such as Educate Together.
168. However, throughout the submissions of non-religious parents there is a significant sense of grievance: these are parents who, perhaps due to geographical location in the State, have experienced hurt and dislocation as a result of having had to place their children in denominational and in some cases inter-denominational schools. Some became involved in disputes with the school as to how religion was being imparted. Others avoided conflict in an effort to "do the

right thing” for their children but were left with a feeling of exclusion and isolation.

169. This sense of exclusion and isolation was in turn recognised by some, although not all, respondents who identified themselves with support for denominational schools. Those respondents felt that it was the State which has the obligation to introduce non-religious schools in order to respect the human rights of those parents. Some of these respondents also made the point that this would allow denominational schools focus on their own ethos.
170. In any event clear communication and expectations was stressed by respondents.

If parents chose to send their child to a school that has an ethos that they do not subscribe to, it should be clearly agreed in advance between the parents and the Board of Management what the school can and cannot cater for.

*Submission of the Catholic Primary School
Management Association*

Exemptions

171. In its consultation template, the IHRC referred to what is commonly known as the “opt out” clause whereby a child may be excused from attending RE classes in a school. The IHRC asked whether the possibility of opting out of “religious instruction” vindicates the rights of those seeking multi denominational or non denominational education.
172. As noted earlier a number of respondents took issue with the term “instruction”, however it is used here only by reference to the terminology employed by the Education Act and the reference to “religious instruction” in the Constitution.⁸⁶
173. The right to be exempted from formal RE classes derives from the Constitution and is reflected in the Education Act, which provides that a parent or student over eighteen years may not be compelled to attend “instruction” in any subject which is contrary to their conscience. While the Act refers to instruction in any subject, in general this exemption from attendance is exercised in relation to attending RE classes. As noted earlier in relation to primary schools, religion classes usually take place for a half hour each day.

⁸⁶ Article 44.4 of the Constitution provides: “Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending **religious instruction** at that school.” (Emphasis added).

174. While the Education Act enshrines the right to be exempted from “religious instruction”, it gives no guidance, nor is it prescriptive as to how this exemption is to be adhered to.
175. The submissions received by the IHRC in relation to this issue had some common themes irrespective of the perspective that the respondent was coming from (either in support of denominational or inter/multi/non denominational education). There was a general consensus that the present exemption system was not adequate to meet the needs of minority faith or non faith students, and indeed imposed a level of difficulty on schools in complying with same. A minority of submissions suggested that the current opt out system was adequate. One respondent suggested that the current system could vindicate all rights without the need for an exemption provision, so long as a proper distinction was made between “religious instruction” on the one hand and religious education on the other. There was also an observation that the exemption provision could only vindicate human rights, where there was a plurality of school provision and parents could make a genuine choice.

In confessional and non-confessional schools, the opt out system for children should be respected, taken seriously and resourced in Ireland. This has huge resource implications. Having children, physically present in a room, reading a book etc. while religion is being taught to their class mates, is not a satisfactory solution. We like the Jewish School’s decision to stagger the start of the school day so that confessional RE begins first thing in the morning at 8.50 and those not taking RE arrive for school 30 minutes after at 9.20 to begin the school day.

*Joint submission of Dr Patricia Kieran
and Dr Daniel O’Connell*

176. Amongst those who considered that the current exemption system does not adequately vindicate human rights, three main reasons emerged.
177. First was a concern that children were still required to remain in the class anyway, perhaps being given other work to do, or sitting at the back of the class.
178. The second reason offered was the fact that the ethos of the school, which may permeate the school day, means that the opt-out is not adequate to fully exempt students from religious education:

The integrated curriculum ensures that religion permeates all aspects of school life. The opting out option is therefore not a realistic option

Submission of Individual

..while students ought to be able to opt out of a Religious Education class, they cannot opt out of the culture of the school, whether it is non-denominational, multi denominational or Catholic.

*Submission of Dr Patricia Kieran
& Dr Daniel O'Connell*

179. The third reason offered by respondents, was the constraints on the resources of the school, and the difficulty of providing alternative supervision arrangements for children who are withdrawn from RE classes or sacramental preparation.
180. A number of parents made submissions referring to their own experience of seeking to have their child exempted from RE class. One parent was dismayed to find that the religious ethos of the school nonetheless meant that their child was participating in communal prayers during the school day against their wishes, another referred to the fact that their child was initially expected to sit at the back of the class, and subsequently was moved to another classroom during RE class. Another parent was of the view that the fact her daughter had to remain in the class during religion and that her being exempted from participating was ineffective as she was naturally inclined to listen to what the teacher said, and that this was causing division within the home. A respondent also referred to the religious ethos of the school making the exemption system difficult to operate in practice and also referred to an unreasonable burden being placed on parents to remove their children from school during RE class and sacramental preparation, which can take up a considerable amount of time.

The right found in human rights law which instructs states to 'respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions' is a negative right.⁸⁷ That is, the State must ensure that children are *not* taught subject matter to which their parents object. The way this right is protected is through the provision of opt-out clauses. Hence, if the curriculum contains material to which parents object on religious or philosophical grounds then they have a right to opt their child out of this teaching. There is no right to receive state-funded teaching in the doctrines of a particular religion or belief.

Submission of Dr Alison Mawhinney

181. A teacher who responded to the consultation agreed that the current exemption system was not adequate and suggested that religion be taught at the end of the day, and be "openly optional", ensuring that

⁸⁷ For example, Article 2 Protocol 1 of the European Convention on Human Rights.

other options are also available at the same time, thereby not altering the actual length of the school day. Another respondent teacher expressed concern about the practice of having non-Catholic children in Catholic schools being required nonetheless to sit in class during religion, due to the lack of a more constructive alternative. From the submissions it was clear that there was confusion as to who was responsible for the care and supervision of a child where they were granted an exemption from attending RE class. Some understood that it was the responsibility of the school to provide alternative supervision for them, while some believed that parents were obliged to do so.

182. A number of respondents pointed out however that in response to this confusion the Joint Managerial Board of Voluntary Secondary Schools had produced a document entitled “Guidelines on the Inclusion of Other Faiths in Catholic Secondary Schools”.

[The Guidelines] highlighted the issues that arise in schools around the teaching of religion and offered a number of solutions that were school based....In any discussion of religion and education tensions between individual rights and those of the faith group may arise but it is to be hoped that they can be resolved on the basis of mutual respect.

Submission of Le Chéile Schools Trust

183. Taking a broader analysis of the exemption system, there were a number of respondents who criticised the mechanism and believed that it created a discriminatory atmosphere. One respondent suggested that there was a growing body of evidence that: “challenges the notion that opt-outs can sufficiently respect the religious liberty of minority belief individuals. Opting out sets students from a minority belief background apart from their peers during the school day; it can stigmatise a child and damage self-esteem.” The same submission also referred to practical problems regarding the exercise of the right to opt out, such as a lack of awareness of the possibility and the lack of clear policies from schools in that regard. In one academic submission it was suggested this created in-class ostracism and could not be a vindication of the child’s rights, particularly where a particular denominational ethos pervades the whole curriculum of the school.
184. One contributor argues that statutory guidelines that reflect human rights and the right to freedom from discrimination are the only means that would guarantee the right to opt out. It was suggested that any such guidelines should show clear procedure and time limits for vindicating any human rights.
185. Another respondent suggested that where children opt out of RE class, the school ought to provide them with tuition in other subjects

separately and for older children, those who opt out of RE class should be obliged to study philosophy (ethics from a non-theistic perspective).

186. Some argue that the right to be exempted from RE class should not be confined to pupils and that teachers should also have the right to opt out of teaching religious education in confessional RE, "as the current system might encourage duplicity for the sake of employment or job retention".
187. Finally the attention of the IHRC was drawn to an academic study of exemption from religious education conducted in Northern Ireland.⁸⁸ This study considered the experience of young people of minority beliefs in the education system, whether they sought to be exempted from religious education or not. While the findings and recommendations of the study will not be fully rehearsed here, two significant themes emerged. First was the fact that there appeared to be a lack of awareness of the legal right to be exempted from religion classes, both on the part of parents and of schools. Second was the finding that the current exemption system did not appear to go far enough to protect the freedom of thought, conscience and religion of minority faith children in that jurisdiction.

Complaint Mechanisms

188. The IHRC's Discussion Paper reviewed the current system for dealing with the complaints of parents in relation to schools.⁸⁹ It was noted that in fact existing complaints mechanisms appear only to deal with complaints against individual teachers rather than a more broad based complaints against the management of a school. It was noted that the Minister and Department of Education have no specific role in relation to dealing with complaints against schools, which are for the most part to be dealt with by the school's Board of Management. There is also the possibility of referring a complaint to the Ombudsman for Children to consider any issue of maladministration if a complaint is not resolved at local level.
189. The IHRC asked in its consultation template document whether the existing complaints mechanism was sufficient to protect the rights of those who seek to be exempted (opt out) of "religious instruction" and/or education. Thus in submissions there was an overlap between the issue of complaints and the exemption system. A number of those who did not accept that the right to be exempted from RE classes was sufficient to vindicate the rights of minority and non faith students,

⁸⁸ Mawhinney, Niens, Richardson & Chiba, *Opting Out of Religious Education*, Queens University Belfast, October 2010.

⁸⁹ Paras. 19-27.

were equally unhappy with the complaints mechanism as a means of vindicating such rights.

190. A considerable number of respondents stated that they were not even aware of the relevant complaints mechanisms as outlined in the Discussion Paper. It appeared that those parents who had concerns about exempting their child from RE classes did not engage in the formal complaints procedures as outlined, and the accommodation reached with the school was usually a process of trial and error in how to best meet the needs of parents and children seeking the exemption in the particular circumstances of a case. The parents of one child stated they were unhappy with the response of a school and ultimately withdrew their child from the school and stated they were considering the possibility of a complaint under the Equal Status Acts for discrimination. It was notable however that no other respondent suggested that remedies under the Equal Status Acts were a suitable alternative for resolving such complaints, although the reason for this was not clear.
191. A number of respondents drew the attention of the IHRC to section 29 of the Education Act, which allows for appeals from a Board of Management to the Minister for Education, in respect of certain decisions. However the IHRC had referred in its Discussion Paper to the limited circumstances in which section 29 can be invoked and that exemptions from RE class did not appear to be one of those issues that could be subject to appeal under section 29.
192. One respondent who made a specific observation on this issue was very clear in expressing the unsatisfactory nature of the complaints system, insofar as it was in its view an incursion into the right to privacy of parents.

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.

Submission of Atheist Ireland

193. Another respondent expressed the view that having to engage in a complaints process in relation to exemptions from RE classes was a breach of a child's rights. Two respondents suggested that legal sanctions would have to be introduced against schools in order to enforce the right to be exempted from religion classes:

There has to be a robust fine system to bring it home to patrons and teachers that the 'old ' way is totally unacceptable to non-believers.

Submission from Individual

194. However, coming from a different perspective, another respondent was concerned at the possible over-legalisation of relations between parents and schools and the administrative burden of a further expanded complaints mechanism. The same respondent did not, however, exclude the possibility of some independent oversight.

The current complaints procedure has served schools and parents well for over a decade and JMB would view the question of provisions for a level of adjudication beyond the Board of Management as potentially problematic at local school level, eroding the authority of school management and adding an unnecessary layer to the administration of schools and the resolution of difficulties. That said, JMB will be happy to participate, with the other partners, in an exploration of possibilities such as an ombudsman model for schools and education matters.

*Submission of the Joint Managerial Body
of Voluntary Secondary Schools*

195. This view was also supported in another submission and it was also suggested by a respondent that after the local complaint resolution mechanism was exhausted, that there be a statutory right of appeal to the Minister of Education, and thereafter if still not resolved to the Equality Tribunal.
196. The Mater Dei Institute felt that the adequacy of the current complaints mechanism had not been tested and it was premature to consider this question. One Teacher Union, the ASTI expressed a similar sentiment by stating that there needs to be publication of complaints and outcomes (excluding identifying material).
197. Overall from the submissions there appeared to be a lack of knowledge of the existence of complaints mechanisms or the scope of those mechanisms and knowledge of outcomes. No submission pointed to how the complaints system had served satisfactorily in a particular case.

Teacher Education & Employment – Issues of Freedom of Conscience, Religion & Belief of Teachers

198. The issue of the education and employment of teachers was not highlighted in the IHRC's Discussion Paper; however it was examined to some extent in the Conference that took place on 27 November

2010, and was also raised in the consultation template. The IHRC received a number of submissions from teacher education colleges, including academics from such institutions, as well as submissions from the Irish National Teachers' Organisation (INTO), the Association of Secondary Teachers Ireland (ASTI) and individual teachers raising this issue. These submissions provided a very helpful insight into the issues that arise for teachers and educators in the context of education and religion. The IHRC acknowledges that this is an important component in the discussion.

199. In the current context the question of teacher education arises in two ways. First the IHRC is mindful that teachers are undoubtedly one of the greatest influences on the development of children within the school environment. Therefore the personal belief system of a teacher is inevitably important in the way they convey values and understanding both formally through the curriculum and informally in their communications with their students throughout the day. Most submissions pointed out that no education could be value neutral, and this is undoubtedly the case. However, how a teacher is educated and the values reflected in that education are also very relevant to the way that teachers, as professionals, carry out their work. In this regard a large number of submissions highlighted the fact that teacher education, although funded by the State, is under the control of denominational bodies.
200. The second significant issue that arises is the potential to impact on teachers' right to freedom of thought, conscience and religion, both in terms of being obliged to teach a subject which may actually conflict with their own belief system, and also being required to uphold the ethos of the school in which they are employed, which may also conflict with their personal belief system and way of life. One respondent questioned whether this was a breach of the right to work, and another questioned how children growing up now in Ireland could seek a job as a teacher in the future if they are Buddhist, Sikh, Jewish or Atheist. That respondent also expressed the view that this was out of step with the reality of a multi cultural, multi ethnic and multi denominational Ireland. Two respondents who lecture in Religious Education considered that this issue is exacerbated "by the lack of choice or provision of a diversity of schools in Irish society" which in their view is a State responsibility.

Teacher Education

201. A number of the submissions received expressed concern about the dominance of religious bodies in providing teacher education and the content of that training. One submission described the current training system as follows:

The State funded colleges of education come under the governance of the Roman Catholic Church and in the case of the colleges in Rathmines, the Church of Ireland. Colleges such as St Patricks College Drumcondra and Mary Immaculate College, Limerick offer a voluntary certificate in religion...Curriculum religion is taught as an integral part of the of the B Ed. And Graduate Diploma Programmes.... The curriculum course in religion is a compulsory element of the initial teacher education programmes. In January 2011, St. Patrick's College at the behest of the Department of Education and Skills, has begun offering an alternative curriculum Ethics and Education course to facilitate those not of a Catholic or Christian faith and/or those who do not wish to take the Catholic curriculum course. This alternative course is a secular course based on Human Rights law and civic society. However the religious curriculum course is compulsory for those opting to take the Certificate in Religious Teaching. In turn this certificate is necessary to apply for a teaching post in any primary school under the control and management of the Catholic Church – the vast majority of primary schools in the Republic. Therefore it is exceptionally difficult for a student teacher to opt out of curriculum religion.

Submission of Dr Philomena Donnelly

202. Another submission expressed the view that State supports were inadequate.

All children have a right to education about religion and the state should ensure its availability. The NCCA devised syllabi for Religious Education is an attempt to devise syllabi capable of being used either for faith formation or for critical teaching. The weakness is that the supports to teachers and the professional training of teachers is virtually totally from the denominational tradition. Teachers experience insufficient support for the 'objective, critical and pluralist' teaching approaches.

Submission of Dr Barney O'Reilly

203. One submission highlighted the fact that teachers in primary schools must hold the certificate in religion before they will be employed in a Roman Catholic School.

Student teachers can now take a course on ethics instead of religion (which is accepted for Educate Together schools), but as educate together schools are less than 4% of schools in Ireland, what teacher is going to restrict their employment opportunities and forgo the learning of religious instruction.

Submission of Parent

204. However, another submission pointed out that Boards of Management have duties and expectations which they can expect teachers to uphold.

The Board has the right to expect that staff uphold the evolving characteristic spirit of the school. This does not require that a staff member be of the particular denomination or tradition of the school. However, the freedom of thought, conscience and religion of teachers is perhaps not best served by the lack of variety of school types.

Submission of Mater Dei Institute

Employment

205. One teacher expressed his belief that he had been discriminated against when teaching in a denominational school simply by being obliged to uphold the religious ethos of the school, which was not one he shared.

The freedom of thought, conscience and religion of teachers is not being upheld within the current patronage system considering the obligations of the Boards of Management to uphold the ethos of the school.... The current patronage system has to change immediately as many potentially brilliant teachers may be lost to the system because of their beliefs.

Submission of Teacher

206. Another teacher strongly expressed his concern about his current teaching position

As only 8% of schools are non-Catholic I found myself being forced into the situation of lying about my faith in interviews and cvs in order to pursue a career....Every day I am forced to teach Catholicism to a class against my wishes...

Submission of Teacher

207. However, other respondents who identified with the denominational system suggested that teachers are fully aware of a school's ethos when they apply for teaching positions.
208. Both Teacher Unions that made submissions (INTO and ASTI) drew the attention of the IHRC to their objections to section 37(1) of the Employment Equality Acts 1998-2008, insofar as same allows educational institutions under religious management to give more favourable treatment to an employee or prospective employee on the religion ground to maintain the religious ethos of that institution, and in

addition allows such an institution to take action to prevent an employee from undermining the ethos of the institution.

Whilst the scope of the discussion paper does not refer specifically to the rights of teachers, INTO's primary concern remains the exemption granted to religious run institutions under S.37.1 of the Employment Equality Act 1998-2007. INTO believes this exception is unnecessary and continues to campaign for its deletion.

Submission of INTO

209. In counterpoint to these submissions there was a strong rebuttal from a respondent working in one of the teacher training colleges.

Teachers are not discriminated against on the grounds of religion or faith perspective when applying for positions in denominational schools. Denominational schools encourage diversity and genuine difference amongst faculties and staff.

Submission of Dr Thomas Grenham

210. One teacher training college acknowledged the possible tension between the rights of some teachers and the dominance of denominational schools in Ireland, and this view was also reflected in other submissions received from academics working in another teacher training college.

... a more flexible approach to the movement of teachers between schools would be worth pursuing in an attempt to address the legitimate human rights concerns of some teachers.

Submission of Mater Dei Institute

211. The preponderance of submissions accepted that there was a possible conflict between the current patronage system and curriculum and the freedom of thought, conscience and religion of teachers themselves. While some considered that there was no discrimination against teachers of minority or non faith teachers, the views expressed in submissions received from individual teachers and the Teacher Unions did not appear to be in accordance with this view, with particular concern being expressed by the Unions in relation to gay and lesbian teachers. While the teacher training colleges themselves are developing initiatives to accommodate minority and non faith teachers in training, a number of submissions suggest that because the vast majority of schools have a Roman Catholic ethos it is almost impossible to pursue a career in teaching without studying the Catholic curriculum course, which may conflict with the individual beliefs of teachers.

CHAPTER 3: EDUCATION & RELIGION UNDER THE IRISH CONSTITUTION

212. The denominational nature of education provision in Ireland was well established by the time the State adopted its Constitution in 1937.⁹⁰ Discrete Articles of the Constitution address education and religion separately; however, the overlap between the two is also sought to be resolved within the Constitutional framework. The Constitution takes cognisance of the denominational character of the education system and seeks to support it while also acknowledging the right to individual freedom of thought, conscience and religion. In addition, the role of the family, and the primacy of parental choice concerning matters of education and religion, based on a view of society that is unquestionably moulded by religious values, are also given constitutional protection. As seen in the jurisprudence of the Irish courts, discussed further below, the various rights protected by the Constitution, being underpinned by different and at times conflicting viewpoints, do not necessarily co-exist harmoniously:

*The Constitution addresses the issue of education in two different Articles - Article 42 dealing with education generally and Article 44 dealing with religion. This arrangement is not without significance for the former Article is largely informed by Roman Catholic social teaching while the ideological ancestry of Article 44 lies in nineteenth century liberalism. Thus constitutional policy on education straddles an ideological fault line in the Irish Constitution.*⁹¹

213. In considering the role of the Constitution in facilitating change in the education sector one commentator stated:

*It is strongly arguable, however, that the chief constraint on change in Irish education is the Constitution itself as it enshrined the State's function in education as subsidiary. Because of this feature of constitutional law, prescriptive imposition of State educational policies through legislation is not generally available to the Irish State. Hence, the approach to educational change must necessarily advance along the path of consultation, negotiation and agreement between the key agencies in education.*⁹²

⁹⁰ Bunreacht na hÉireann 1937, was enacted by the people on 1 July 1937, and came into effect on 29 December 1937.

⁹¹ *Religion and Education- the Irish Constitution*, paper delivered by Professor Gerry Whyte at the TCD/IHRC Conference on Religion and Education: A Human Rights Perspective, 27 November 2010. See: http://www.ihrc.ie/download/doc/gerry_whyte_paper_on_religion_and_education.doc.

⁹² Glendenning, op. cit., at p. 166.

214. The IHRC will consider below the relevant constitutional provisions, noting that the fundamental rights protected under the Constitution are part of the IHRC's mandate under the Human Rights Commission Act 2000.

EDUCATION

215. Under the heading Education, Article 42 provides as follows:

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

2. Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.

3.1. The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.

3.2. The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.

4. The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

5. In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

216. This Article places parents at the apex of authority in relation to the education of their children, with the State largely obliged to play a subordinated role in providing "for" primary education.⁹³ In this regard, parents may choose to send their children to a State funded school or a private school, or may equally decide to educate their children at home. The limited authority given to the State by the Constitution in

⁹³ The authority of the family and parents is echoed and given further force in Article 41 of the Constitution which provides: "1.1°: The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law. 1.2°: The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State."

the area appears only to take precedence to the choice of parents in two respects, that is, first, the duty on the State to ensure each child receives a minimum level of education and second, where parents fail in their duty towards their children. Otherwise, matters of choice and preference as to the form of education are left to parents. However, even though parental preference is accepted as the dominant factor in the education of children, the extent to which the State is required to positively provide for such preferences is somewhat more controversial, as will be seen in the case law discussed below.

217. It has been established that the State is not obliged to establish and run schools itself.⁹⁴ However, it appears from Article 42.2.2 that there is no constitutional obstacle to the State doing so, and it has in fact established and managed some schools, as seen in Chapter 1.

RELIGION

218. As touched on previously, Article 44, which deals with religion, follows a more classic liberal approach. It provides that the State will not “endow” any religion, will not discriminate on the ground of religious profession, belief or status or interfere in the affairs of religious denominations.⁹⁵ Specifically addressing education, the Article provides that in funding education the State shall not discriminate between schools based on their denominational status, nor shall legislation in the area affect prejudicially the right of a child to attend any school receiving public money without attending “religious instruction” at that school.

The State acknowledges that the homage of public worship is due to Almighty God. It shall hold his name in reverence, and shall respect and honour religion.

2.1 Freedom of conscience and the free profession and practice of religion are, subject to public order and morality guaranteed to every citizen.

2.2°: The State guarantees not to endow any religion.

2.3°: The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

2.4°: Legislation providing State aid for schools shall not discriminate between schools under the management of different religious

⁹⁴ See for instance the judgment of Kenny J in *Crowley v Ireland*, [1980] 1 I.R. at p.126.

⁹⁵ In *Campaign to Separate Church and State v The Minister for Education*, Keane J offered the definition of endowment as follows “To enrich with property; to provide (by bequest or gift) a permanent income for (a person, society, or institution).” [1998] 3 I.R., at p. 361.

denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

2.5°: Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.

2.6°: The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.

219. This Article provides that there may not be discrimination between different denominations in the State and that children have the right to attend State aided schools without attending “religious instruction”. It also protects the right of individual denominations to manage their own affairs, and to own and dispose of property. In addition the right protects freedom of religion. The right to opt out of “religious instruction” in schools funded by the State is also provided for in Article 44.

CONSTITUTIONAL ENDORSEMENT OF DENOMINATIONAL EDUCATION

220. As a starting point it is useful to note that the Supreme Court has endorsed the constitutionality of denominational education in Ireland. The patronage of a church body in and of itself does not offend the constitutional right to education and is in any event expressly endorsed by Article 44.2.4. As will be seen below, however, recognition of denominational education cannot be equated with an absolute right to such an education in all circumstances enforceable against the State.
221. In *Crowley v Ireland*,⁹⁶ the Supreme Court considered that the Constitution was drafted and adopted in circumstances where denominational education was the norm, and indeed the preference of the populus:⁹⁷

...the State is under no obligation to educate. The history of Ireland in the 19th century shows how tenaciously the people resisted the idea of State schools. The Constitution must not be interpreted without reference to our history and to the conditions and intellectual climate of 1937 when almost all schools were under the control of a manager or of trustees who were not nominees of the State. That historical experience was one of the State providing financial assistance and

⁹⁶ *Crowley v Ireland* [1980] IR 102.

⁹⁷ See also, GW Hogan and GF Whyte, *JM Kelly: The Irish Constitution*, 4th Ed (Dublin: Butterworths, 2003), p. 1941.

prescribing courses to be followed at the schools; but the teachers, though paid by the State, were not employed by and could not be removed by it: this was the function of the manager of the school who was almost always a clergyman.

222. In delivering judgment on behalf of the Supreme Court, Kenny J went on to make the following observation:

Thus, the enormous power which the control of education gives was denied to the State: there was interposed between the State and the child, the manager or the committee or board of management.

223. While this statement has no specific legal significance, it is telling in how the Courts have interpreted the relationship between the Church and State in relation to the control of education.

224. The Courts have also considered the provisions of the Constitution relating to denominational education and have adopted a view that this recognition amounts to a form of protection for this form of education:

The State could not adopt a funding scheme for secondary teachers which had the effect of destroying the denominational nature of schools requiring funding. I believe that this particular view is warranted by a reading of Article 42 of the Constitution as a whole.⁹⁸

THE OPT OUT OR EXEMPTION CLAUSE

225. As was seen in the previous section, provision for children “opting out” of or being exempted from religious education has been addressed in a number of legislative and administrative measures since before the foundation of the State, and has most recently found expression in the Education Act.
226. The leading Irish case in relation to religious education in schools is the decision of the Supreme Court in *Campaign to Separate Church and State Ltd v The Minister for Education* [1998] 3 IR 321. The case concerned the constitutionality of the State providing funding for the employment of school chaplains in community schools. As will be recalled from the previous chapter, community schools, unlike other voluntary second level schools, were established on the basis of State initiative. Some of these schools were built on green field sites, while others involved an amalgamation of an existing denominational secondary school and schools under the management of VECs. As noted in Chapter 1, due to the tensions that arose concerning the role of the Church in relation to these new schools, where the Bishop would no longer be the patron, Deeds of Trust were drawn up which included Church representation and also provided for “religious

⁹⁸ *Greally v The Minister for Education* (No. 2). [1999] 1 IR 1, at p.10.

instruction” and worship to be provided in the school. Such Deeds of Trust are considered to be legally binding. Although these schools were not intended to be denominational in the traditional sense, in practice, due to the manner in which they were established and governed, they are. This context is important in understanding the manner in which the case was pursued.

227. The case was taken pursuant to Article 44.2.2 which prohibits the State from endowing any religion. It was contended by the plaintiffs, that the State in providing funding for the employment of chaplains in community schools was in effect benefiting the church and constituted endowment. Chaplains were employed distinct from the core teaching staff and in addition to religion teachers. In his judgment on behalf of the Supreme Court, Barrington J considered Article 42 to be important to an understanding of the prohibition on endowment, and made the following observation,⁹⁹ noting that the State had a positive obligation to assist parents through the education system with the religious and moral formation of their children:

Article 42.2 prescribes that the parents shall be free to provide ‘this education’ (i.e. religious, moral, intellectual, physical and social education) in their homes or in private schools or ‘in schools recognised or established by the State’. In other words the Constitution contemplates children receiving religious education in schools recognised or established by the State but in accordance with the wishes of the parents.

It is in this context that one must read Article 44.2.4 which prescribes that:-

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

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

⁹⁹ This statement of Barrington J, does not form part of the *ratio decidendi* of the case, but is instructive in understanding the limited nature of the exemption system that currently operates pursuant to section 30 of the Education Act 1998.

228. This analysis creates a distinction between “religious and moral formation” which is a broad and all encompassing concept, on the one hand, and “instruction” on the other which is a much narrower formulation. It will be recalled that it is “instruction” in a subject that forms the basis of exemptions under the Education Act, and appears to be limited to formal classes in any subject, including religion. This statement could be interpreted to endorse a form of integrated curriculum, however it arguably does not actually go that far, as the decision was made in the context of second-level education, whereas the integrated curriculum applies to primary schools.
229. Nonetheless, Barrington J's observation in relation to a child's being influenced by the religious ethos of a school raises a number of questions in the context of this consultation. The use of the phrase “to some degree” might suggest that a school may in fact have some obligation to avoid undue religious influence on a child not of the same religious persuasion as the school, but this is not absolute. In addition, the Court refers to a child who “chooses” to attend the school, and therefore the question arises as to whether this view might have been different if considered in the context of a child with no choice but to attend a denominational school where there is no other option reasonably available where they reside. The case did not explicitly consider the exercise of choice by parents who do not wish to have denominational education for their children, or would seek education in a denomination not available to them, which presumably must equally be protected by Article 42.¹⁰⁰
230. If Barrington J's judgment suggests that a child of a minority religion, or from a non faith background, with no choice but to attend a Roman Catholic school other than withdrawing from formal religion classes, must in effect accept a form of religious education which offends their convictions, then this would appear to elevate one form of parental choice over another, with the majority religion always dictating the outcome. This could hardly respect the rights conferred on all parents by virtue of Article 42 of the Constitution.
231. On the other hand, it has been suggested that the fact that Article 44.2.4 deals with a child attending a school receiving public money but at the same time exercising the right not to attend “religious instruction” means that the Constitution implicitly recognises that, despite the primacy of parental choice protected by Article 42, it will not be practically possible for all children to be accommodated in a

¹⁰⁰ For a criticism of the judgment see; GW Hogan & GF Whyte, *JM Kelly: The Irish Constitution*, 4th Ed (Dublin: Butterworths, 2004), p. 2057-2058. The authors suggest that the judgment may provide constitutional protection for the display of religious symbols in schools, and also the teaching of the “integrated curriculum” in primary schools.

school in accordance with their religious or philosophical convictions.¹⁰¹

PARENTAL CHOICE

232. The extent to which parental choice in the question of education must be accommodated by the State was considered in detail by the High Court in *O'Shiel & Ors v The Minister for Education & Ors*.¹⁰² The case concerned the establishment by a group of parents of a Steiner school in Co. Clare.¹⁰³ The school was initially set up and run as a private initiative with no State funding or regulation. However when the parents sought to have the school recognised for funding purposes, the Minister for Education refused to do so, as only one of the teachers in the school had qualifications recognised by the State, the others all having qualifications in the Steiner Waldorf method of education. The principal difficulty in this regard was a limited ability by those teachers to teach Irish as a subject. The Plaintiffs in the case were a number of infant children attending the school, with their parents, and the school itself was also named. Laffoy J summed up the issue to be decided as follows:

Essentially, the Plaintiffs claim is a claim for funding of Cooleenbridge School by the State on the same basis as other primary schools recognised by the State are funded. The core issue for determining whether that claim is sustainable is the extent of the State's liability under Article 42.4. The Plaintiffs claim based on Article 42 rests solely on the first limb of Article 42.4, which provides that the State shall provide for free primary education.

233. Later in her judgment, in noting that there were 15 denominational schools already funded and recognised in the East Clare area, Laffoy J posed the following question:

The question which the facts in the instant case raise is whether the State has discharged its obligation under Article 42.4 by

¹⁰¹ E. Daly, "The Constitution and the Protestant Schools Cuts Controversy", Vol. 1(1), Irish Journal of Legal Studies (2010) p. 84. The author of that article states: "There is no recognised "right" in Ireland for all individuals to attend a publicly funded school specifically attuned to their religious or other beliefs, as further considered below. The Education Act 1998 merely refers to the "need to reflect the diversity of educational services provided in the State," but also, to "*the effective and efficient use of resources*" as a criterion of school recognition. This reality, evidently acute in contemporary Ireland, is specifically foreseen in Article 44.2.4 of the Constitution, which envisages that some children will attend denominational schools as non-coreligionists, and makes provision for this scenario."

¹⁰² *O' Shiel v The Minister for Education and Science*, [1999] 2 I.R. 321.

¹⁰³ It was noted in the judgment that Steiner Schools are based on the ideology and pedagogy enunciated by Rudolph Steiner, the first such school being established in 1919 in Stuttgart, Germany. See further <http://steinerireland.org/faq/#1> (accessed 13 April 2011).

making arrangements for the provision of a form of free primary education which is at variance with the parent plaintiffs' lawful preference.

234. It was noted in the judgment that the Rules of National Schools dealt with eligibility for recognition as a teacher, which was subsequently decided by the Minister for Education in 1974 to be the Bachelor of Education degree. It was also noted at the time of the judgment that there were practically no unqualified teachers employed in national schools (other than substitute teachers on occasion).
235. The judge noted that Article 42 is a complex provision "and embodies a number of interlocking elements." She then went on to set out her understanding of the purport of the Article:

When one adopts a global approach to the interpretation of Article 42 the values enshrined in it become obvious. It is concerned with education in a broad sense- religious and moral, intellectual, physical and social. In its entirety it is imbued with the concept of parental freedom of choice. While parents do not have the choice not to educate their children, it recognises that all parents do not have the financial capacity to educate their children. It is in this overall context that the obligation is imposed on the State to 'provide for free primary education'. In my view it would pervert the clear intent of the Constitution to interpret that obligation as merely obliging the State to fund a single system of primary education which is on offer to parents on a "take it or leave it" basis. In the case of parents of limited means unable to afford, or to afford without hardship, fees charged by private schools, it would render worthless the guarantee of freedom of parental choice, which is the fundamental precept of the Constitution.

236. Ultimately the plaintiffs' case was rejected. Although it was accepted that parents have freedom in relation to the choice of education for their children, this could not override the State's prerogative under the Constitution to put in place arrangements for funding primary education out of the public purse that are rational. It was permissible for such arrangements to include measures in relation to the assessment of need and viability of schools and to ensure accountability.
237. A further issue that arose in the proceedings related to teacher qualifications:

The plaintiffs have a two-fold problem with the teacher training which is available in the State: it is denominational and operates under an ethos other than the ethos chosen by the parents for Cooleenbridge School; and the training is in a pedagogy which differs from the pedagogy used in Cooleenbridge School chosen by the parents.

238. While Laffoy J had some sympathy with the plaintiffs' arguments in this regard, nonetheless she considered that the resolution they were seeking was tantamount to stating that there should be no prescribed standard for teacher qualifications and this was not a reasonable stance. In conclusion she decided that the application of the National School Rules to the plaintiffs, insofar as they regulated teacher qualifications, was not a breach of their constitutional rights.
239. This judgment addresses a number of important issues in the context of this consultation report, without perhaps giving any straightforward answers to them. It obliges the State to have regard to parental choice in providing for primary education, but also places limits on that parental choice. In this case, it did not allow the parents to be granted funding to employ teachers whose qualifications did not meet the standard prescribed by the Minister. Significantly it was also decided that the Minister could not meet a constitutional claim in regard to the right to education and parental choice by relying on the provision of one form of educational provision, in this case the existing 15 recognised denominational schools within the catchment area. The fact that a failure to recognise the Cooleenbridge School in this case may have in practical terms resulted in the child plaintiffs being obliged to attend one of those denominational schools, in opposition to the choice of their parents, was not addressed directly, but it appears that this consideration would not have changed the ultimate outcome.

SUMMARY OF CONSTITUTIONAL RIGHTS ARISING FROM THE CASE LAW:

- There is a right to free primary education for every child in the State.
- The State is not constitutionally obliged to provide education, but must make arrangements for the provision of same.
- In making arrangement for the provision of such education the State must respect parental choice, but does not have to meet that choice in every aspect, and is entitled to adopt an education scheme or policy that is rational and reasonable. There is thus no absolute right to a denominational or non-denominational education that may be enforced against the State under the Constitution.
- Children have the right to attend publicly funded schools without attending formal RE classes, however a school is not required to wholly change its ethos to accommodate the religious or non-religious preference of the parents of the child.

- The State could not act in such a way as to destroy the system of denominational education, if this is contrary to the preference of parents.
- The State cannot favour any particular religious denomination, nor discriminate on the basis of religious profession or status.

CHAPTER 4: HUMAN RIGHTS STANDARDS

THE CONSTITUTION

240. As noted in the Introduction, the right to education is addressed in the Constitution. Article 42.1 states:

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

241. Article 42.4 further provides:

The State shall provide free primary education....with due regard, however for the rights of parents, especially in the manner of religious and moral formation.

242. While Article 44.2.4 states:

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

243. The management of primary schools along denominational lines has been found to be constitutionally valid, while not necessarily constitutionally required. There is also a constitutional right for parents to withdraw their children from “religious instruction” (as defined by the Supreme Court), and the State must not discriminate along religious grounds including in relation to funding in respect of schools under different denominational management.

244. This analysis suggests, however, that under the Constitution there is a distinction between “religious education and moral formation” which is a very broad all-encompassing term and the much narrower statutory formulation of “instruction” which is used as the basis of exemptions under the Education Act and appears to be limited to formal classes in any subject including religion.

EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

245. There are two provisions of the ECHR which are relevant. Article 9 of the Convention provides:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and

freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

246. Thus the ECHR clearly recognises the right to freedom of thought, conscience and religion, while freedom to manifest one's religion or beliefs may only be subject to proportionate limitations.

247. Article 2 of Protocol 1 of the ECHR provides:

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

248. This provision is more closely related to the issues raised in the current consultation although Article 9 has also been considered by the European Court of Human Rights ("the European Court") when considering the impact of religion in schools, primarily in relation to the wearing of headscarves.

249. Under Article 2 of Protocol 1 there is thus recognised in the ECHR the right of parents to ensure the education and teaching of their children is in conformity with their own religious and philosophical convictions, although this right is not unlimited as we will discuss below. Indeed throughout the case law of the European Court there is a common thread of respect for both religious and secular beliefs, with a large discretion ("margin of appreciation") being afforded to State Parties in framing whether the State is religious, neutral or secular.

Manifestation of Religious Belief

250. The Article 9 headscarf cases considered by the European Court were all considered in the context of the State in question, and may not have general applicability to every Member State of the Council of Europe. In these cases the European Court found that States may limit the freedom to manifest a religion in the form of wearing an Islamic headscarf, if the exercise of that freedom clashes with the aim of protecting the rights and freedoms of others, public order and public safety. Thus in the 2001 *Dahlab v Switzerland*¹⁰⁴ case, the Applicant,

¹⁰⁴ *Dahlab v. Switzerland* (Application No. 42393/98), Judgment of 15 February 2001, ECHR 2001-V.

a teacher, claimed that her Article 9 rights were breached when she was prevented from wearing her headscarf while teaching. Rejecting the claim, the European Court held that prohibiting the teacher from wearing her headscarf while teaching a class of young children was “necessary in a democratic society”, having regard, among other things, to the fact that secularism, which presupposes denominational neutrality in schools, was a principle laid down in the Constitution of the relevant canton of Geneva. The prohibition was thus intended to protect the religious beliefs of the pupils and their parents and to apply the principle of denominational neutrality in schools enshrined in domestic law. The Court stressed the “powerful external symbol” represented by wearing the headscarf and also considered the proselytising effect that it might have, also taking into account women’s rights.¹⁰⁵

251. In the 2005 case of *Sahin v Turkey*, the Applicant was a medical student who was denied access to a written examination and later lectures in the University she had attended for four years because she wore an Islamic headscarf.¹⁰⁶ She was also suspended for a period after taking part in an assembly demonstration against the ban. Finding no violation of Article 9, the Court took note of the fact that Turkey’s constitutional system was secular and attached prime importance to the protection of women’s rights. It identified the State’s secularism as being consistent with the values underpinning the ECHR insofar as the secular system in that State could be considered necessary to protect the democratic system in Turkey. In the 2006 admissibility decision case of *Köse and Others v. Turkey* the European Court found that pupils at a Turkish school who wore headscarves in clear breach of school rules that they and their parents had signed up to were not protected by Article 2 of Protocol 1 or Article 9.¹⁰⁷ The European Court found that the school rules in question were justified both by the principle of secularism enunciated in the Turkish Constitution and by the need to prevent any undermining of the principle of school neutrality in the State.

¹⁰⁵ Although concerning a kindergarten childcare assistant, see also the *Siebenhaar v. Germany* (Application no. 18136/02), Judgment of the European Court on 3 February 2011 (available in French only), in which the European Court found no violation of the Applicants rights under Article 9 of the ECHR after she was dismissed from her post on the basis of her religious activities. The European Court found that the domestic courts had weighed the competing rights correctly and that the Applicant had been, or should have been, aware from the moment of signing her employment contract that her activities for the Universal Church were incompatible with her work for the Protestant Church.

¹⁰⁶ *Sahin v Turkey* (Application No. 44774/98), Judgment of 10 November 2005, ECHR 2005-XI.

¹⁰⁷ *Köse & Ors v Turkey* (Application No. 26625/02), Decision on Admissibility 24 January 2006, ECHR 2006.

252. In its 2008 Judgment in *Dogru v France* the European Court held that the expulsion of a pupil from her school on grounds of her refusal to remove a headscarf further to a ban on pupils wearing headscarves during physical education and sports classes, while constituting a “restriction” on the exercise by the Applicant of her right to freedom of religion, did not result in a violation of Article 9.¹⁰⁸ The European Court noted that the purpose of that restriction on manifesting a religious conviction was to adhere to the requirements of secularism in French State schools. It found that the wearing of religious signs was not inherently incompatible with the principle of secularism in schools, but became so according to the conditions in which they were worn and the consequences that the wearing of a sign might have. Noting the constitutional importance attaching to the secular principle in French schools, the fairness of the disciplinary proceedings in the case and the need to afford States a wide “margin of appreciation” in such cases, the Court found that the interference in question was justified as a matter of principle and proportionate to the aim pursued.
253. In these cases the complainants were religious believers and the Judgments concerned the rights of teachers and pupils to manifest their faith under Article 9 of the ECHR. Although the Judgments of the European Court ostensibly support the bans imposed by those States on manifestation of religious beliefs, it will be observed from the Judgment of the European Court in *Lautsi v. Italy*¹⁰⁹ that in fact one of the primary rationales for the European Court was the secular constitutional frameworks in Switzerland, Turkey and France. The domestic constitutional framework afforded those States a “margin of appreciation” in their approach to the manifestation of religious faith in schools or universities. In the *Lautsi* case, the opposite was the case. The philosophical convictions of the Applicant were those of a secular nature and she objected to the exposure of her children to crucifixes in classrooms. In that case, the European Court afforded Italy a “margin of appreciation” having regard to the Christian traditions of the State and taking account of a number of safeguards the Court found present in the Italian system.

Respect for Parental Convictions

254. Turning to Article 2 of Protocol 1 and the right to education and teaching in conformity with one's own religious and philosophical convictions, in its 1979 Judgment in *Kjeldsen, Madsen and Pedersen v Denmark*¹¹⁰, the European Court found that this provision prohibited the State from pursuing an aim of indoctrination that might be

¹⁰⁸ *Dogru v France* (Application No. 27058/05), Judgment of 4 December 2008.

¹⁰⁹ *Lautsi v Italy*, (Application No. 30814/06) European Court Chamber Judgment of 3 November 2009 and Grand Chamber Judgment of 18 March 2011.

¹¹⁰ *Kjeldson & Ors v Denmark* (Application Nos. 5095/71; 5920/72; 5926/72) Judgment of 7 December 1976, 1 EHRR 711.

considered as not respecting parents' religious and philosophical convictions (although in that case it did not prohibit the State providing for compulsory sex education in schools). In *Campbell and Cosans v the United Kingdom*,¹¹¹ it was found that a parent's view on corporal punishment could amount to philosophical conviction for the purpose of the Article. The European Court, in considering a policy of gradual removal of corporal punishment put forward by the UK government, also considered what was meant by "respect" in the Article and found that it created an absolute right rather than one that had to be balanced against the rights of others or which could be gradually achieved:

*Whilst the adoption of the policy referred to clearly foreshadows a move in the direction of the position taken by the applicants, it does not amount to 'respect' for their convictions. As is confirmed by the fact that, in the course of the drafting of Article 2 (P1-2), the words 'have regard to' were replaced by the word 'respect' (see documents CDH (67) 2, p. 163) the latter word means more than 'acknowledge' or 'taken into account'; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State (see mutatis mutandis, the Marckx judgment of 13 June 1979, series A no. 31, p. 15, par. 31). This being so, the duty to respect parental convictions in this sphere cannot be overridden by the alleged necessity of striking a balance between the conflicting views involved, nor is the Government's policy to move gradually towards the abolition of corporal punishment in itself sufficient to comply with this duty.*¹¹²

Information and Knowledge to be Conveyed in an Objective, Critical and Pluralistic Manner

255. This is a key phrase repeated throughout the Court's case law. Its purpose is to enable pupils to develop a critical mind with regard to religion. In its 2007 Judgment *Folgerø v Norway*¹¹³ the European Court considered the right to education in relation to the curriculum of religious education (KRL) provided in schools in Norway. The particular curriculum adopted imparted knowledge of a wide range of religions but placed emphasis on the Lutheran religion which was the most common religion in the State, and also included an element of instruction in religious practice, over and above mere knowledge. Although parents were entitled to withdraw their children from any part of the curriculum that was contrary to their own conscience and convictions, the system of exemption was very onerous and complicated and involved the parents giving the school information about their personal religious and philosophical convictions, to justify

¹¹¹ *Campbell & Cosans v UK* (Application Nos. 7511/76; 7743/76) Judgment of 25 February 1982, 4 EHRR 293.

¹¹² *Ibid* at Para. 37.

¹¹³ *Folgero & Ors v Norway* (Application No. 15472/02) ECHR GC Judgment of 29 June 2007.

seeking an exemption. The European Court noted the place occupied by Christianity in the history and tradition of Norway and that the planning and setting of the curriculum came within the State's "margin of appreciation".¹¹⁴ However the discretion afforded to the State was not unlimited and the Court concluded that the State had failed to take "sufficient care that information and knowledge included in the curriculum be conveyed in an objective, critical and pluralistic manner for the purposes of Article 2 of Protocol No. 1" and accordingly the refusal to "grant the applicant parents full exemption from the [Christianity, Religion and Philosophy subject] KRL subject for their children gave rise to a violation of Article 2 of Protocol No. 1".¹¹⁵

256. The key phrase here is the requirement on the State to take "sufficient care that information and knowledge included in the curriculum be conveyed in an objective, critical and pluralistic manner for the purposes of Article 2 of Protocol No. 1". The meaning of the term "objective, critical and pluralistic" is repeated throughout the Court's case law. As stated, its purpose is to enable pupils to develop a critical mind with regard to religion in a calm atmosphere which is free of any misplaced proselytism.¹¹⁶

Exemption Procedures

257. The European Court has repeatedly held that the question of the setting and planning of the curriculum falls within the competence of the State. However, minority faith or non faith children must have their parents' religious or philosophical beliefs respected. In *Folgerø* what was at issue was a partial exemption procedure from religious education (KRL) which was not set within the parameters of fixed classes and therefore made it difficult for parents to track when religious education was being taught in order to seek an exemption. The Court found the refusal to grant the applicant parents full exemption from the KRL subject for their children gave rise to a violation of Article 2 of Protocol 1:

the system of partial exemption was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of their private life [the need to disclose to the authorities "intimate aspects of their own religious and philosophical convictions"] and that the potential for conflict was likely to deter them from making such requests. In certain instances, notably with regard to activities of a

¹¹⁴ In *Lautsi* the European Court recalled that in *Hasan and Eylem Zengin v. Turkey* (Application no. 1448/04), Judgment of 9 October 2007, it had reached a similar conclusion in the context of "religious culture and ethics" classes in Turkish schools, where the syllabus gave greater prominence to knowledge of Islam on the ground that, notwithstanding the State's secular nature, Islam was the majority religion practised in Turkey (see para. 63); cited at para 71 of *Lautsi*.

¹¹⁵ *Ibid* at para. 102.

¹¹⁶ Para. 52 of *Zengin*.

*religious character, the scope of a partial exemption might even be substantially reduced by differentiated teaching. This could hardly be considered consonant with the parents' right to respect for their convictions for the purposes of Article 2 of Protocol No. 1.*¹¹⁷

258. In the 2007 case of *Hasan and Eylem Zengin v Turkey*,¹¹⁸ which concerned the teaching of religion in a State school in Turkey, the Applicants, who were members of the Alevi faith, complained that the syllabus was taught entirely from a religious perspective and praised the Sunni interpretation of the Islamic faith and tradition. They argued that this, together with textbooks describing the traditional rites of Sunni Islam, clearly indicated that this instruction lacked objectivity, despite fifteen pages of the textbook being used to present some other religions, although not the Alevi faith. In the case the European Court noted the difficulties involved:

*In fact, it seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications. The same is true of religious affinities if one remembers the existence of religions forming a very broad dogmatic and moral entity which has or may have answers to every question of a philosophical, cosmological or moral nature ([Kjeldsen] § 53).*¹¹⁹

259. However, the Court reiterated that:

*it has always stressed that, in a pluralist democratic society, the State's duty of impartiality and neutrality towards various religions, faiths and beliefs is incompatible with any assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed.*¹²⁰

260. Thus the principles of pluralism and objectivity enshrined in Article 2 of Protocol 1 can be clearly met where the objectives of the syllabus is to educate people:

*...about the historical development of Judaism, Christianity, Hinduism and Buddhism, their main features and the content of their doctrine, and to be able to assess, using objective criteria, the position of Islam in relation to Judaism and Christianity.*¹²¹

261. In *Zengin* the Court held that although the syllabus for teaching in primary schools and the first cycle of secondary school gave:

¹¹⁷ Op. cit., at paras. 100-102.

¹¹⁸ *Hasan & Eylem Zengin v Turkey* (Application No. 1448/04), Judgment of 9 January 2008, ECHR, Final 9 January 2008.

¹¹⁹ *Zengin*, op. cit., at para 51.

¹²⁰ *Zengin*, op. cit., at para 54.

¹²¹ *Zengin*, op. cit., at paras. 58-59.

*...greater priority to knowledge of Islam than they do to that of other religions and philosophies" this in itself would not amount to indoctrination, having regard to the fact that, notwithstanding the State's secular nature, Islam is the majority religion practiced in Turkey.*¹²²

262. However, the Court concluded that the exemption procedure available to the children in the case was:

*...not an appropriate method and [did] not provide sufficient protection to those parents who could legitimately consider that the subject taught is likely to give rise in their children to a conflict of allegiance between the school and their own values. This is especially so where no possibility for an appropriate choice has been envisaged for the children of parents who have a religious or philosophical conviction other than that of Sunni Islam, where the procedure for exemption is likely to subject the latter to a heavy burden and to the necessity of disclosing their religious or philosophical convictions in order to have their children exempted from the lessons in religion.*¹²³

263. There was thus a violation of Article 2 of Protocol No. 1.

Religious Symbols

264. In March 2011 the Grand Chamber of the European Court delivered its Judgment in *Lautsi v. Italy*¹²⁴ and reversed the previous Chamber Judgment which had ruled that the display of crucifixes in Italian State schools violated the rights of the Applicants under Article 2 of Protocol No. 1. The Grand Chamber found that:

*There is no evidence before the Court that the display of a religious symbol on classroom walls may have an influence on pupils and so it cannot reasonably be asserted that it does or does not have an effect on young persons whose convictions are still in the process of being formed.*¹²⁵

265. The European Court placed emphasis on the "margin of appreciation" to be afforded the State: "the decision whether or not to perpetuate a tradition falls in principle within the margin of appreciation of the respondent State ... including the place they accord to religion, provided that those decisions do not lead to a form of indoctrination" and provided Article 2 of Protocol 1 rights are respected.¹²⁶ The Court found that one of the limitations to the "margin of appreciation" was not present insofar as there was "no European consensus on the

¹²² *Ibid* at para. 63.

¹²³ *Op. cit.*, at para. 76.

¹²⁴ *Lautsi v Italy*, (Application No. 30814/06) European Court Chamber Judgment of 3 November 2009 and Grand Chamber Judgment of 18 March 2011.

¹²⁵ *Ibid* at para. 66.

¹²⁶ *Ibid* at paras. 68-69.

question of the presence of religious symbols in State schools".¹²⁷ It also distinguished between "passive" and "active" symbols:

...a crucifix on a wall is an essentially passive symbol and this point is of importance in the Court's view, particularly having regard to the principle of neutrality (see paragraph 60 above). It cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities (see on these points Folgerø and Zengin, cited above, § 94 and § 64 respectively).¹²⁸

266. The European Court also took into account the following factors:

- The presence of crucifixes was not associated with compulsory teaching about Christianity;
- According to the indications provided by the Government, Italy opens up the school environment in parallel to other religions;
- It was not forbidden for pupils to wear Islamic headscarves or other symbols or apparel having a religious connotation;
- Alternative arrangements were possible to help schooling fit in with non-majority religious practices;
- The beginning and end of Ramadan were "often celebrated" in schools; and optional religious education could be organised in schools for "all recognised religious creeds";
- There was nothing to suggest that the authorities were intolerant of pupils who believed in other religions, were non-believers or who held non-religious philosophical convictions;
- The applicants did not assert that the presence of the crucifix in classrooms had encouraged the development of teaching practices with a proselytising tendency, or claim that the second and third applicants had ever experienced a tendentious reference to that presence by a teacher in the exercise of his or her functions;
- The first applicant retained in full her right as a parent to enlighten and advise her children, to exercise in their regard her natural functions as educator and to guide them on a path in line with her own philosophical convictions;
- Therefore the display of the crucifix did not denote a form of denominational or religious education, and the crucifix was not

¹²⁷ *Ibid* at para. 70.

¹²⁸ *Ibid* at para. 72.

called on or referred to in the context of teaching the curriculum.

General Principles

267. On the basis of the jurisprudence of the European Court in cases such as *Dogru*, *Kjeldsen*, *FolgerØ*, *Zengin* and *Lautsi*, the following general principles apply:¹²⁹

- The right to education under Article 2 of Protocol 1 is to be interpreted in light of Article 8 (respect for private and family life) and Article 9 (right to freedom of conscience and religion);
- The freedom of teachers to manifest their religion in schools must be balanced with the rights of others to avoid suggestions of proselytism or indoctrination;
- The term “religious and philosophical convictions” in the second sentence of Article 2 of Protocol 1 refers not only to religious convictions but also to the views of “the supporters of secularism”;¹³⁰
- The right of parents to respect for their religious and philosophical convictions is grafted onto the fundamental right to education as set out in Article 2 of Protocol 1;¹³¹
- The term “respect” in relation to the rights of parents referred to in the Article denotes not only a negative undertaking not to interfere with the right but also incorporates a positive obligation on the State to vindicate that right;
- States enjoy a wide “margin of appreciation” in determining the steps to be taken to ensure compliance with the ECHR with due regard to the needs and resources of the community and of individuals. So for example, while parents have the primary responsibility for the education and teaching of their children, and in discharging this duty are entitled to require the State to respect their religious and philosophical convictions, Article 2 of Protocol 1 cannot be interpreted to mean that parents can require the State to provide a particular form of teaching,¹³² be that a form of religious or secular teaching. Rather, the decision is one for the State to take;

¹²⁹ *Hasan and Eylem Zengin v Turkey*, (Application No.1448/04) Judgment of 9 October 2007, ECHR, Final 9 January 2008.

¹³⁰ See *Lautsi v Italy*, (Application No. 30814/06) Grand Chamber Judgment of 18 March 2011 at para 58.

¹³¹ *Zengin v Turkey*, op. cit., at para. 48.

¹³² *Lautsi*, op. cit., at para 61.

- The setting and planning of the curriculum falls within the competence of the State. The State may thus impart through teaching or education *information or knowledge* of a directly or indirectly religious or philosophical kind and parents may not object to the integration of such teaching or education in the school curriculum;
- However, this is not unlimited and to safeguard the possibility of pluralism in education, the State must take care that the information or knowledge included in the curriculum is *conveyed* in an *objective, critical and pluralistic manner*, enabling pupils to develop a critical mind particularly with regard to religion in a calm atmosphere free of any proselytism. The State is thus forbidden to “pursue an aim of indoctrination” that might be considered as not respecting parents’ religious and philosophical convictions.¹³³ The European Court has stated this is a limit that must not be exceeded;
- Exemption procedures must not pose a heavy burden on families of minority beliefs;
- Given the power of the modern State, it is above all through State teaching that the essential aim of pluralism in education must be realised.¹³⁴ The State is thus the primary duty holder in this regard;
- Article 2 of Protocol 1 does not permit a distinction to be drawn between “religious instruction and other subjects”, and requires the State to respect parents’ convictions, be they religious or philosophical (such as secular views), throughout the entire State education programme.¹³⁵

CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

268. Article 28 of the CRC recognises the right of the child to education providing that, on a progressive basis, primary education be compulsory, available and free to all. Article 29 states that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential including their development of respect for human rights and fundamental freedoms.¹³⁶ The Committee on the Rights of

¹³³ *Folgero*, op. cit., at para 84.

¹³⁴ *Kjeldsen*, op. cit., at para 50.

¹³⁵ *Kjeldsen*, op. cit., at para 51, *Folgero*, op. cit., at para. 84.

¹³⁶ Article 29 also provides that the education of the child shall be directed to development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his

the Child (the treaty body responsible for supervising the implementation of the Convention)¹³⁷ has stated that Article 29 underlines “*the importance of respect for parents, of the need to view rights within their broader ethical, moral, spiritual, cultural or social framework, and of the fact that most children’s rights, far from being externally imposed, are embedded within the values of local communities.*”¹³⁸ In its first General Comment on the aims of education, the Committee emphasised that “*children do not lose their human rights by virtue of passing through the school gates*” and highlighted the importance of schools respecting children’s participation rights.¹³⁹

269. Article 14(1) of the CRC addresses the child’s right to freedom of thought, conscience and religion and provides:

States Parties shall respect the right of the child to freedom of thought, conscience and religion.

States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

270. This right to freedom of thought, conscience and religion should be read with Article 3 (best interests of the child) and Article 12 (“the views of the child [to be] given due weight in accordance with the age and maturity of the child” and the right of the child to be heard). Thus the child’s views and voice should be heard in addition to their parents

or her own; the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin and the development of respect for the natural environment.

¹³⁷ See Article 43 of the Convention. As with other human rights convention supervisory bodies, Article 45(d) of the Convention empowers the Committee to make General Comments on the interpretation to be afforded to the provisions of the Convention. This accords with the purposive interpretation often afforded human rights treaties which permit “the applications of meanings which are consonant with the object and purpose of the treaty” in accordance with Article 31 of the 1969 Vienna Convention on the Law of Treaties, United Nations, *Treaty Series*, vol. 1155, p. 331 and secondly an evolutive interpretation; see *White and Ovey (Eds)*, *The European Convention on Human Rights*, 5th Edition (2010), pp 64-65 citing the Judgment of the European Court in *Saadi v United Kingdom* (Application No. 13229/03), Judgment of 29 January 2008, 47 EHRR 427.

¹³⁸ Committee on the Rights of the Child, General Comment 1, *The Aims of Education*, 2001, HRI/GEN/1/Rev.5; at para. 7.
General Comment 1, *The Aims of Education*, op. cit.; at para. 8.

for most post-primary students and arguably for some older primary school parents.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (CERD)

271. In its relevant part Article 5 of CERD provides:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

....

Other civil rights, in particular:

....

(vii) The right to freedom of thought, conscience and religion;

Economic, social and cultural rights, in particular:

.....

(v) The right to education and training;

272. In the Concluding Observations of the Committee on the Elimination of Racial Discrimination on Ireland issued in 2005 it was stated:

18. The Committee, noting that almost all primary schools are run by Catholic groups and that non-denominational or multid denominational schools represent less than 1 per cent of the total number of primary education 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 (art. 5 (d) (vii) and 5 (e) (v)).

The Committee, recognizing the 'intersectionality' of racial and religious discrimination, encourages the State party to promote the establishment of non-denominational 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) to schools is concerned.

273. In the Committee's Concluding Observations issued in March 2011 the Committee recalled its previous concluding observations and noted with concern that the education system in the State party

is still largely denominational and is mainly dominated by the Catholic Church. The Committee further notes that non-denominational or multi-denominational schools represent only a small percentage of the total and, regrets that, according to reports, there are not enough alternative schools, and students of the Catholic faith are favoured for enrolment into Catholic schools against students of other faiths in case of shortage of places. The Committee further expresses its regret that

the provisions of the Equal Status Act give the power to schools to refuse to admit students to denominational schools on grounds of religion if it is deemed necessary to protect the ethos of the school (articles 2, 5(d)(vii) and 5(e)(v)).

274. The Committee went on to again recall:

the ‘intersectionality’ between racial and religious discrimination [and] reiterate[d] its previous concluding observations (CERD/C/IRL/CO/2) and recommend[ed] that the State party accelerates its efforts to establish alternative non-denominational or multi-denominational schools and to amend the existing legislation that inhibits students from enrolling into a school because of their faith or belief. The Committee further recommends to the State party to encourage diversity and tolerance of other faiths and beliefs in the education system by monitoring incidents of discrimination on the basis of belief.

275. It should be recalled that the intersectionality between race and religion is a continued concern of both the CERD committee and the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance when addressing emerging human rights issues at the United Nations.¹⁴⁰

276. In his 2011 Report to the Human Rights Council, the UN Special Rapporteur on Freedom of Religion or Belief suggested that schools have a powerful role to play in promoting tolerance and understanding among children of different faiths:

*School education has a complex role to play in this endeavour. On the one hand, school education should provide fair information about different religions and beliefs. On the other hand, the school offers unique possibilities for face-to-face communication between members of different communities.*¹⁴¹

277. On the question of exemptions for minority children he stated that:

given the ambivalence of the school situation – including possible situations of particular vulnerability for some persons or groups – religious instruction in the public school system must always go hand in hand with specific safeguards on behalf of members of religious or belief minorities... the possibility of opting out should not be linked to onerous bureaucratic procedures and must never carry with it de jure or de facto penalties. Finally, wherever possible, students not

¹⁴⁰ See for example Statement by Special Rapporteur Githu Muigai at the Seminar “the fight against discrimination based on racial, ethnic, religious or other bias”, *Cooperation and common approaches in the combat of racism and racial discrimination and suggestions for possible improvements*, 10 January 2011, Ankara, Turkey.

¹⁴¹ *Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt*, Human Rights Council, Sixteenth session, Agenda item 3, A/HRC/16/53, General Assembly Distr.: General 15 December 2010; at para 30.

participating in religious instruction due to their different faith should have access to alternative courses provided by the school.

51. The decision whether or not to opt out of religious instruction must be left to students or their parents or guardians who are the decisive rights holders in that respect.¹⁴²

278. This reinforces the notion that exemption systems must not be burdensome to parents and must be the decision of parents or guardians.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

279. Article 18(1) of the ICCPR provides:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

280. The Human Rights Committee in its General Comment on this provision stated:

The Committee is of the view that Article 18(4) permits public school instruction in subjects such as general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure their children receive religious and moral education in conformity with their own convictions, set forth in Article 18(4), is related to the guarantees of the freedom to teach a religion or belief stated in Article 18(1). The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with Article 18(4) unless provision is made for non-

¹⁴² Op. cit., at paras. 50-51.

*discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.*¹⁴³

281. In the 2003 case of *Unn and Ben Leirvag et al v Norway*, a case concerning exemptions from religious classes similar to the later European Court Judgment in *Folgerø*, the Human Rights Committee found there was a breach of Article 18(4).¹⁴⁴ The Committee stated that Article 18 covered not only the protection of traditional religions but also philosophies of life. It was also stated that under Article 18(4) religious education was permissible in schools if “given in a neutral and objective way” and provided that non-discriminatory exemptions or alternatives that would accommodate the wishes of parents were made available. The Committee also found that having partial exemption arrangements did not satisfy the needs of the applicants. The CKREE (religious curriculum) framework was based on “compulsory religious instruction” and the partial exemption was impossible to implement in practice as, by having a subject that combined religious knowledge with the practicing of a particular religious belief, without a total exemption scheme, put a considerable burden on parents who wished to ensure that the religious and moral education of their children was in conformity with their own convictions. Thus:

*...the requirement to give reasons for exempting children from lessons focusing on imparting religious knowledge and the absence of clear indications as to what kind of reasons would be accepted creates a further obstacle for parents who seek to ensure that their children are not exposed to certain religious ideas.*¹⁴⁵

282. This case reinforces the European Court's Judgments in *Folgerø* and *Zengin* that any exemptions from religious education for children of a minority belief must not place an unreasonable burden on parents who wish to ensure that the religious and moral education of their children was in conformity with their own convictions.
283. In its 2008 Concluding Observations on Ireland the Human Rights Committee at paragraph 22 stated that:

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).

¹⁴³ Human Rights Committee, General Comment 22, 1993, HRI/GEN/1/Rev 5, p. 145.

¹⁴⁴ *Unn and Ben Leirvag et al v Norway*, Communication No. 1155/2003 [UN Doc. CCPR/C/82/D/1155/2003].

¹⁴⁵ Op. cit., at para. 14(6)

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.

TOLEDO GUIDING PRINCIPLES

284. In the 2006 Decision on Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding, the Organization for Security and Co-operation in Europe (OSCE) Ministerial Council called upon the participating States to “*address the root causes of intolerance and discrimination by encouraging the development of comprehensive domestic education policies and strategies*”.¹⁴⁶
285. The Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools (“the Toledo Principles”) were a response to that call.¹⁴⁷ Prepared by the Office for Democratic Institutions and Human Rights (“ODIHR”) in Toledo, Spain in 2007, the Toledo Principles are the work of a Panel of Experts on Freedom of Religion or Belief and its Advisory Panel, together with other leading experts and scholars from across the OSCE region. Members of international organisations including the United Nations Office of the Special Rapporteur on Freedom of Religion or Belief, and the Council of Europe also contributed to develop and create the Toledo Principles.
286. The rationale for the Toledo Principles was based on two core principles: first, that there is positive value in teaching that emphasises respect for everyone’s right to freedom of religion and belief, and second, that teaching about religions and beliefs can reduce harmful misunderstandings and stereotypes.¹⁴⁸
287. Whenever teaching about religions and beliefs in public schools is provided in OSCE participating States, the Toledo Principles provide the following for consideration:
- Teaching about religions and beliefs must be provided in ways that are fair, accurate and based on sound scholarship.
 - Those who teach about religions and beliefs should have a commitment to religious freedom that contributes to a school environment and practices that foster protection of the rights of

¹⁴⁶ Decision No.13/06 on Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding, para. 5, 14th OSCE Ministerial Council, Brussels, 4-5 December 2006.

¹⁴⁷ OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief, Guidelines for Review of Legislation Pertaining to Religion or Belief (Warsaw ODIHR, 2004).

¹⁴⁸ Executive Summary to Guiding Principles, op. cit.

others in a spirit of mutual respect and understanding among members of the school community.

- Teaching about religions and beliefs is a major responsibility of schools, but the manner in which this teaching takes place should not undermine or ignore the role of families and religious or belief organisations in transmitting values to successive generations.
- Efforts should be made to establish advisory bodies at different levels that take an inclusive approach to involving different stakeholders in the preparation and implementation of curricula and in the training of teachers.
- Where a compulsory programme involving teaching about religions and beliefs is not sufficiently objective, efforts should be made to revise it to make it more balanced and impartial, but where this is not possible, or cannot be accomplished immediately, recognizing opt-out rights may be a satisfactory solution for parents and pupils, provided that the opt-out arrangements are structured in a sensitive and non-discriminatory way.
- Those who teach about religions should be adequately educated to do so. Such teachers need to have the knowledge, attitude and skills to teach about religions and beliefs in a fair and balanced way. Teachers need not only subject-matter competence but pedagogical skills so that they can interact with students and help students interact with each other in sensitive and respectful ways.
- Preparation of curricula, textbooks and educational materials for teaching about religions and beliefs should take into account religious and non-religious views in a way that is inclusive, fair, and respectful.
- Curricula should be developed in accordance with recognized professional standards in order to ensure a balanced approach to study about religions and beliefs.
- Quality curricula in the area of teaching about religions and beliefs can only contribute effectively to the educational aims of the Toledo Guiding Principles if teachers are professionally trained to use the curricula and receive ongoing training to further develop their knowledge and competences regarding this subject matter. Any basic teacher preparation should be framed and developed according to democratic and human

rights principles and include insight into cultural and religious diversity in society.

- Curricula focusing on teaching about religions and beliefs should give attention to key historical and contemporary developments pertaining to religion and belief, and reflect global and local issues.

288. These principles were referred to by a number of respondents to the IHRC's Consultation.

CHAPTER 5: ANALYSIS AND CONCLUSIONS

THE PATRONAGE MODEL

287. Ireland effectively has a system of almost entirely denominational primary education. At primary level, there are denominational schools (the majority), some schools described as multidenominational (e.g. Educate Together) and more recently some pilot schools described as inter-denominational schools (VECs). While there is the appearance of more choice at post-primary level, in reality denominational patrons also comprise the majority of school patrons. There are no non-denominational schools at either primary or post-primary level.
288. For much of the history of the State this has been a largely unchallenged reality, grounded as it was in the particular circumstances of previous colonial rule and the suppression of Catholic schools and teaching for much of that period. Today almost all national schools in Ireland have a Roman Catholic or Church of Ireland ethos, with just over 2% of schools being inter-denominational or multi-denominational and none that are non-denominational. Primary schools are largely self governing, subject to compliance with the Education Act and the Equal Status Acts, which reinforces the right of individual schools to have their own characteristic spirit and objectives, including a denominational ethos. The Rules for National Schools and the Primary School Curriculum encourage integration of the curriculum and gives sanction for religion to “vivify” the whole day of the school.

WHETHER THE PATRONAGE MODEL SHOULD CHANGE

289. Many of the respondents in the Consultation recommend a diversity of school choice of patron to accommodate different religious and philosophical beliefs. It is argued that this will permit denominational schools with an ethos to fulfil that ethos and thereby uphold the right of parents to respect for their religious convictions. A wide “margin of appreciation” is to be afforded States under human rights law in formulating the framework for education in relation to the questions of a) who educates children whether this is to occur through State schools or through private patrons (or a mixture of both) and b) the syllabus and curriculum in schools.
290. Accordingly it is open to the State to continue with the current patronage model whereby the Minister recognises a school patron and legal responsibility is divested to the Board of Management and thence to the School Principal and so on, provided certain human

rights standards are respected (discussed below). At the other end of the spectrum it is also open to the State, subject to the Constitutional provisions set out in this report, to change the current patronage model and to replace it with a State run system, again, provided certain human rights standards are respected (discussed below) including the Constitutional requirement that State aid for schools does not discriminate between different religious denominations. Finally, it is possible for the State to opt for a mixture of both.

291. In relation to the first option (retaining the patronage model), the State may decide to continue with the status quo in terms of numbers of schools but seek to change the patron to a different denominational, multi or inter-denominational or a non-denominational patron (in consultation with the relevant Boards of Management of those schools). Alternatively it could decide to increase the number of recognised schools to increase diversity. In either of these options, the State could decide to itself become the patron of a school. The advantages of retaining the patronage model are that it allows the excellence built up in so many schools to continue with continuity. It also avoids some legal issues around property ownership of schools, including voluntary supports now available and any sense among parents, with a preference for denominational education, that their rights are not being fully respected. The disadvantages of retaining the patronage model is that without some modifications (see below), the model may not fully respect the rights of minority families. Other possible disadvantages include the lack of State “control” over what occurs in schools such as disagreements between the Department of Education and Skills and Boards of Management in relation to the resolution of complaints.
292. Pursuing the second option (to change the current patronage model and to replace it with a State-run system) would involve a complete structural overhaul of the school system. It could not be implemented immediately and would require detailed consideration and possible Constitutional amendment. Advantages of replacing the patronage model with a State-run system would be increased “control” by the State over what occurs in schools (which could meet concerns of minority families). Disadvantages would include legal issues around ownership of the physical school property, the fact that the State has never been an “educator” and has little experience in the field, possible loss of community support for local schools if located among parents with a preference for denominational education who perceive that their rights are not being fully respected. In this latter respect, under a State-run system, the human rights issues which may arise would be whether the rights of religious families are being properly accommodated by the State, noting however that there is no established right to denominational education enforceable against the State.

293. Given the confusion arising in relation to what constitutes a denominational, multi denominational, inter denominational, non denominational or other school, it is recommended that these terms be defined in primary legislation.
294. In line with the separate recommendations of the UN Committee on the Elimination of Racial Discrimination and the UN Human Rights Committee to Ireland, and also to secure compliance with the European Convention on Human Rights, the State should ensure that there is a diversity of provision of schools within educational catchment areas throughout the State. Diversity of provision will ensure the needs of faith (including minority faith) or non faith children in schools can be met. The IHRC notes that the need for diversity of school provision was an almost universal theme in the submissions received during the consultation process.

THE CURRICULUM

295. Human rights law confirms that the question of the setting and planning of the curriculum falls within the competence of the State. At the same time the State must take sufficient care that information and knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The aim here is to enable pupils to develop a critical mind with regard to religion in a calm atmosphere which is free of any misplaced proselytism. In submissions to the IHRC it was argued by respondents identifying with a denominational perspective that indoctrination and proselytism have no place in education, however, other submissions offered a different perception.
296. The State is the primary duty holder in relation to the right to education and insofar as the State takes on an educational function (in Ireland in the form of funding and setting the curriculum and general educational policy) it must do so in a manner that ensures the above - that information and knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State must ensure respect for parents' religious and philosophical convictions.
297. At primary school level the religious curriculum is the only element of the curriculum which is designed by individual schools, and thus is usually denominational in character. Section 15 of the Education Act should be amended to provide for modifications to the integrated curriculum to ensure that the rights of minority children are also recognised therein.
298. The Minister for Education and Skills should codify and review the Rules of National Schools, to ensure that the human rights standards set out in this paper are upheld. This can further be reviewed in the future in the context of increased diversity in school provision.

EXEMPTION PROCEDURES FOR MINORITY CHILDREN WHERE THERE ARE NO ALTERNATIVE SCHOOLS IN THE CATCHMENT AREA

299. Dealing with the current patronage system as it exists today, a very practical issue raised in the Consultation relates to access to multi or inter denominational schools particularly in rural areas where a child cannot access such schools if this is their parents' preference, but must attend a religious ethos school. For example, what exemption procedures are in place in schools for minority children where parents wish to ensure that the religious and moral education of their children is in conformity with their own convictions. Further, should this exemption procedure relate to religious education in the form of religion classes only, or should it also relate to other parts of the school day, for example, time dedicated to sacramental preparation in primary school (for second and sixth class students) or other manifestations of prayer and faith, and how can this be achieved in a practical sense?
300. As noted, there was general recognition in the Consultation by all stakeholders that there is a problem here which needs to be addressed. While many respondents in the Consultation recommend a diversity of school choice of patron to accommodate different religious and philosophical beliefs, that diversity of school choice does not exist today in many parts of the country. Thus the issue of exemption procedures from certain classes arises.
301. While provision is made in the Education Act for the right of parents to withdraw their children from attending any "instruction" that conflicts with their own convictions in recognition of their right to do so under Article 44.2.4 of the Constitution, this provision is not backed up by formal guidelines or by resources. Simply put, unless religion classes are moved outside of the school day, human rights standards suggest that it is necessary to put in place mechanisms to ensure supervision of children who wish to be exempted from religious classes. However, such arrangements may not accord equal respect to minority children, and, on that basis, alternative classes may need to be put in place to make exemptions from religion classes during the school day meaningful and to avoid any suggestion of ostracism. As noted, many submissions pointed out that the present inadequate funding available to schools acts as a barrier to this. There appears to be insufficient guidance for how exemptions should work or when it should occur (is it on request only, is it dependent on an alternative teacher being present?). One practical suggestion to obviate some of the difficulties experienced may be to move religious classes to the start or end of the school day. While not ideal in terms of separating children, this might provide immediate relief to parents of minority or non faith children seeking exemption. If sufficient numbers of students sought

the exemption, provision could be made for a parallel class in ethics and philosophy at the same time.

302. As noted, exemption from religion classes does not however entirely address the question of religion informally permeating the school day, particularly around sacramental preparation for second and sixth classes in Roman Catholic primary schools and around the religious education syllabus in second level schools. In the submissions to the IHRC it was made clear by groups identifying with denominational schools that the ethos of a denominational school envisages religion as permeating the school day. Thus any right to withdraw pupils from specific classes would not necessarily insulate such pupils from being influenced by the religious ethos of the school during the rest of the school day. It could be argued that such intrusion on other faith or non faith children could be minimised by organising alternative classes during sacramental preparation and by ensuring that the ethos of the school intrudes to the least extent possible on the philosophical beliefs of other faith or non faith children. Where a denominational school takes steps to guard against any indoctrination or proselytism of other faith or non faith children by teachers, they will be taking positive steps to uphold those childrens' human rights. However, opinions will undoubtedly vary as to whether manifestations of religion can be other than indoctrination depending on the views of particular parents. Certainly it would be far more satisfactory to have provision of a variety of schools within school catchment areas if informal religious ethos is to permeate the school day.

303. If the State is to continue with the current patronage model it should seek to ensure that all patrons strive to minimise the religious ethos of the school impacting in any negative sense on minority children in schools funded by the State. Guidelines and examples of good practice, together with the allocation of necessary resources to implement same could be developed in tandem with a dedicated complaints mechanism under which complaints could be swiftly considered and resolved without any victimisation of the child complainant.

MANIFESTATION OF RELIGIOUS BELIEF

304. Manifestation of religious beliefs did not arise to a significant degree in the Consultation although some minority parents did complain that their children were being taught prayers in denominational schools, (which practice could in any event be regarded as indoctrination). Human rights standards on the manifestation of beliefs often defer to the "margin of appreciation" to be afforded the domestic State. Thus the jurisprudence of the European Court in the headscarf cases may not be replicated in relation to any cases emanating from Ireland unless a difference of treatment in rules governing manifestation of

belief as between different religions could be demonstrated. In order to avoid human rights issues being triggered, the State should continue to seek to promote religious harmony and understanding between groups, including those of a secular viewpoint. Further, it should ensure that indoctrination and proselytism does not take place in State funded schools, possibly through reviewing the remit of Departmental inspectors to take account of issues concerning religion and education.

COMPLAINTS

305. In order to address complaints about the treatment of minority children in schools, the current complaints system under Sections 28 and 29 of the Education Act should be expanded. There should be a right of appeal to either a newly established Schools Ombudsman or to the Ombudsman for Children with an extended remit to include complaints concerning exemption procedures or any unwanted exposure to indoctrination or proselytism. The Ombudsman should have in particular the right to receive, consider, investigate, mediate, conciliate and/ or give directions on complaints received by him or her. Findings by the Ombudsman should have the force of law, with an appeals mechanism available to an aggrieved party.
306. In human rights law, independent complaints mechanisms are often accompanied by independent monitoring mechanisms. In the schools context, this refers to School Inspectors. It is recommended that the remit of Schools Inspectors include inspection of how religion classes are conducted in schools, regard being had to the effectiveness of exemption procedure being put in place by schools further to the recommendations in this report.

TEACHER EDUCATION AND EMPLOYMENT

307. As matters stand student teachers are attaining high levels of professionalism and expertise through the education they receive. However a number of respondents to the consultation expressed concern that the education for primary school teachers, being under the remit of the two main denominations in the State inevitably contains an element of religious education that may conflict with the personal right to freedom of thought, conscience and religion of teachers. This concern extended into the employment arena, where denominational schools may lawfully give preference in employment to a co-religionist where this is reasonable to uphold the ethos of the school, and such schools can take action to prevent an employee or prospective employee undermining the ethos of the school. In addition the contractual duties of a teacher may involve them in teaching the religious curriculum in the school or assisting with sacramental

preparation in circumstances where they do not share the religious ethos of the school.

308. Any improper encroachment on the right to freedom of thought, conscience and religion of teachers should be avoided. In this regard it should be ensured that the education of teachers does not include compulsory content that conflicts with the rights of such teachers. While it may be permissible for a school to specify certain qualifications on the part of a teacher (such as a qualification in relation to the teaching of curriculum religion) to uphold the religious ethos of the school, this should be the case only where there is a diversity of provision in schools, such that teachers are not limited to seeking employment in one form of denominational school. In order to ensure further diversity in school education, there will be a requirement for qualified teachers in those schools.
309. Further, in order to ensure teachers are not subject to discrimination, it is recommended that an appropriate amendment is made to Employment Equality Acts to ensure respect for the private life of teachers where their private life does not improperly encroach on the rights and freedoms of others.

CHAPTER 6: RECOMMENDATIONS

- The overarching recommendation of the IHRC, in order to achieve human rights compliance, is that the State should ensure that there is a diversity of provision of school type within educational catchment areas throughout the State which reflects the diversity of religious and non-religious convictions now represented in the State. Diversity of provision will ensure the needs of faith (including minority faith) or non faith children in schools can be met.
- A review of the experience gained in relation to diversity of school patronage from the introduction of VEC community national schools, and the development of Gaelscoileanna and Educate Together schools should also inform this process.
- While the State has a choice of models in education, if it chooses to retain the current patronage model with a majority of patrons being religious denominations, significant modifications will be required in order to meet human rights standards. To ensure this, suggested modifications to the current model are set out below.
- Terms such as “denominational”, “multi denominational”, “inter denominational”, “non denominational” or “other” school should be clearly defined in primary legislation, Ministerial regulations or be determined by reference to the recognition of such schools under the Education Act.
- Section 15 of the Education Act should be amended to provide for modifications to the integrated curriculum to ensure that the rights of minority faith or non faith children are also recognised therein. In this regard, the State must take sufficient care that information and knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner with the aim of enabling pupils to develop a critical mind with regard to religion in a calm atmosphere which is free of any misplaced proselytism.
- The Minister for Education and Skills should codify and review the Rules for National Schools, to ensure that the human rights standards set out in this paper are upheld. This can further be reviewed in the future in the context of increased diversity in school provision.

- Where diverse provision of education does not exist in a school's catchment area, consideration should be given to move formal religion classes to the start or end of the school day. While not ideal in terms of separating children, this might provide greater accommodation to parents of minority faith or non faith children seeking exemption. If sufficient numbers of students sought the exemption, provision could be made for a parallel class in ethics and philosophy, or other minority religions as demand dictates at the same time.
- The State should seek to ensure that all patrons in schools funded by the State are sensitive to the impact that manifestation of religious beliefs in the school may have on children of other faith or non faith backgrounds. In this regard those children should never experience exclusion or segregation in the school, or in any way be undermined in their own faith or other philosophical convictions. Guidelines and examples of good practice, together with the allocation of necessary resources to implement such good practice should be developed in tandem with the enhanced complaints mechanism being recommended to Government. For their part, those denominational schools who have other faith or non faith children as pupils should take steps to guard against any inadvertent indoctrination or proselytism of those children by teachers.
- The State should continue to seek to promote religious harmony and understanding between groups, including those of a secular viewpoint. Further, it should ensure that indoctrination and proselytism does not take place in State funded schools, possibly through reviewing the remit of Departmental Inspectors to take account of issues concerning religion and education.
- There should be an expanded Ombudsman body with a remit to consider complaints concerning exemption procedures or any unwanted exposure to indoctrination or proselytism. Further, it is recommended that the remit of Schools Inspectors should include inspection of how religion classes are conducted in schools, regard being had to the effectiveness of exemption procedure being put in place by schools further to the recommendations in this report.
- In ensuring the rights of school children in accordance with maturity, the views of most second-level students and arguably some older primary school students in relation to the exemption procedures or any perceived encroachment on their personal religious or philosophical convictions, should be taken into consideration, in addition to the views of their parents.

- It should be ensured that the education of teachers does not include compulsory content that conflicts with the rights of such teachers. Any improper encroachment on the right to freedom of thought, conscience and religion of teachers should thus be avoided.
- There should an appropriate amendment to the Employment Equality Acts to ensure respect for the private life of teachers where their private life does not improperly encroach on the rights and freedoms of others.