

Primary Curriculum Review and Redevelopment

Written submission template for organisations, groups and individuals responding to the *Draft Primary Curriculum Framework*

This template is intended to help you (and your colleagues) develop a written submission in response to the *Draft Primary Curriculum Framework*. Please e-mail your completed submission to PCRRsubmissions@ncca.ie

Individual submission details

Name	
Date	
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Do you consent to this submission being posted online including your name and organisation*?

Yes

No

Please provide some brief background information on your organisation (if applicable).

We are a group of individuals with a common concern for the protection of children and parents' religious freedom.

The remainder of the template includes two sections. Section 1 invites your overall comments and observations on the *Draft Primary Curriculum Framework*. Section 2 is structured according to the six key messages related to the framework. Each message is summarised as a support for working on the submission.

Please email your submission to PCRRsubmissions@ncca.ie

Section 1

1	Please outline your overall response to the <i>Draft Primary Curriculum Framework</i>.
	Please see section 1 of our submission The Need for Effective Opt-Out from Faith Formation: A Genuine Alternative (Appendix 1) and Key Question for the NCCA (Appendix 2)

Section 2

2	<p>Agency and flexibility in schools <i>The redeveloped curriculum:</i></p> <p>2.1 ■ Is for every child.</p> <p>2.2 ■ Recognises teachers’ and principals’ agency and professionalism to enact the curriculum in their individual school context.</p> <p>2.3 ■ Gives more flexibility to schools in terms of planning and timetabling to identify and respond to priorities and opportunities.</p> <p>2.4 ■ Connects with different school contexts in the education system.</p> <p>2.5 ■ Gives greater opportunities for flexibility and choice for children’s learning.</p>
	<p>The <i>Draft Primary Curriculum Framework</i> outlines important messages in relation to agency and flexibility in schools. Please give your overall feedback in relation to this key message.</p>
	<p>2.1 The draft Revised Primary Curriculum Framework is not currently 'for every child', as it fails to acknowledge or challenge the reality that many children face religious indoctrination in our system, due to the lack of an effective opt-out from religious formation ('Religious Education'). The case for this viewpoint is made throughout Appendix 1. The curriculum should make a clear statement on this matter, either insisting that the curriculum is inclusive or acknowledging the inability of many children to access their fundamental rights. In either case, the NCCA’s claims should be justified, as per the suggestions in the flow chart in Appendix 2.</p>
	<p>2.2 The ‘agency’ and ‘professionalism’ of both non-faith/minority faith teachers and principals is curtailed by this draft, as with the current curriculum. The lack of ethic/religious diversity in both categories is clear evidence of the latter. Please see the relevant section in Appendix 1.</p>
	<p>2.3 No comment</p>
	<p>2.4 The draft revised primary curriculum does not fully support a transition to Junior Cycle. Any influence of faith formation, via the integrated curriculum, on a secular subject, undermines that subject area, at Junior Cycle level. For example, if religious mythology is taught as part of History e.g. re. St Patrick’s ‘vision from God’, this makes more difficult the secondary teacher’s job. If retained, this problem should be acknowledged in the final draft.</p>

2.5	This claim cannot be substantiated, in terms of the patrons' programmes and should be acknowledged as a limitation if retained in the final draft.
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3	Curriculum connections between preschool, primary and post-primary schools	
	<i>The redeveloped curriculum:</i>	
	3.1	<ul style="list-style-type: none"> ▪ Provides a clear vision for children’s learning across the eight years of primary school.
	3.2	<ul style="list-style-type: none"> ▪ Links with learning experiences provided through the themes of the <i>Aistear: the Early Childhood Curriculum Framework</i> and connects with the subjects, key skills and statements of learning in the <i>Framework for Junior Cycle</i>.
	3.3	<ul style="list-style-type: none"> ▪ Supports educational transitions by connecting with what and how children learn at home, in pre-school and post-primary school.
	<p>The <i>Draft Primary Curriculum Framework</i> outlines important messages in relation to curriculum connections between preschool, primary and post-primary in schools. Please give your overall feedback in relation to this key message.</p>	
3.1	No comment	
3.2	This claim cannot be substantiated for Junior Cycle, for the reasons outlined in 2.4 and in Appendix 1. If retained, this limitation should be acknowledged in the final draft.	
3.3	This claim cannot be substantiated for either the patron programme, where what children learn at home may often be contradicted, or in the integrated curricular subjects, whose factual content is adapted for the purposes of evangelisation. If retained, this limitation should be acknowledged in the final draft.	

4	Emerging priorities for children’s learning	
	<i>The redeveloped curriculum:</i>	
	4.1	<ul style="list-style-type: none"> ▪ Embeds seven key competencies across children’s learning outcomes from Junior Infants to Sixth Class.
	4.2	<ul style="list-style-type: none"> ▪ Focuses on developing children’s skills, knowledge and also on dispositions, values and attitudes. The Learning Outcomes and the Key Competencies are broad in nature to describe this wider understanding of learning.
	4.3	<ul style="list-style-type: none"> ▪ Has increased emphasis on some existing areas such as PE and SPHE (Wellbeing) and digital learning, and has new aspects such as Modern Foreign Languages, Technology, Education about Religions and Beliefs (ERB) and Ethics, and a broader Arts Education.
<p>The <i>Draft Primary Curriculum Framework</i> outlines important messages in relation to emerging priorities for children’s learning. Please give your overall feedback in relation to this key message.</p>		

4.1	This claim cannot be sustained. Sitting at the back of the class, and being essentially shamed on a daily basis, mitigates against the ability of a student to access at least two competences: Being an Active citizen and Fostering Wellbeing . If the curriculum remains unchanged, the impact of these experiences, should be acknowledged as limiting factors for students, in the final draft. Otherwise, the wording of the curriculum will fail to acknowledge, and indeed serve to render invisible, the way the current curriculum hampers students' ability to develop these competences.
4.2	This claim cannot be substantiated for either the patron programme, where minority/non-faith children's values are often neither acknowledged nor validated in denominational religion classes, or in the integrated curricular subjects, whose factual content is adapted for the purposes of evangelisation. If retained, this limitation should be acknowledged in the final draft. Also, the Learning Outcomes cannot be claimed to be broad if all children are not taught about other belief systems.
4.3	Under this draft, SPHE remains compromised as a subject, due to the influence of school's ethos. This is outlined at length in Appendix 1. ERB or an equivalent should be a core curriculum. If the NCCA feel that this is prevented by legislation, they should say so in the final draft. The issue must be named, not ignored.

	<p>Changing how the curriculum is structured and presented</p> <p><i>The redeveloped curriculum:</i></p>
5	<p>5.1 ■ Is broad and balanced in purpose and content.</p> <p>5.2 ■ Is structured in five broad curriculum areas;</p> <ul style="list-style-type: none"> ○ Language ○ Mathematics, Science and Technology Education ○ Wellbeing ○ Social and Environmental Education ○ Arts Education <p>5.3 ■ These areas connect to the themes of <i>Aistear</i> and to the subject based work in Junior Cycle.</p> <p>5.4 ■ Provides for an integrated learning experience, with curriculum areas in Stages 1 and 2 (Junior Infants – Second Class) and subject based learning in Stages 3 and 4 (Third Class – Sixth Class).</p> <p>5.5 ■ Uses broad learning outcomes to describe the expected learning and development for children.</p> <p>5.6 ■ Incorporates the new <i>Primary Language Curriculum / Curaclam Teanga Bunscoile</i>.</p>
	<p>The Draft Primary Curriculum Framework outlines important messages in relation to changing how the curriculum is structured and presented. Please give your overall feedback in relation to this key message.</p>

	5.1	This claim cannot currently be substantiated in the final document. The curriculum is not broad if the students do not learn about multiple belief systems, nor if they learn about secular subject matter through religious filters. This is the primary focus of Appendix 1.
	5.2	ERB should be a core subject to ensure a broad curriculum. Should legislative obstacles be perceived to exist, options are provided in Appendix 2 to validate and affirm students' constitutional rights.
	5.3	No comment
	5.4	No comment
	5.5	No comment
	5.6	No comment

		<p>Supporting a variety of pedagogical approaches and strategies with assessment central to teaching and learning</p> <p><i>The redeveloped curriculum:</i></p>
6	6.1	<ul style="list-style-type: none"> ▪ Promotes high quality teaching, learning and assessment.
	6.2	<ul style="list-style-type: none"> ▪ Conceptualises assessment as an essential and critical part of teaching and learning.
	6.3	<ul style="list-style-type: none"> ▪ Highlights the importance of teachers' professional judgement in supporting progression in children's learning.
	6.4	<ul style="list-style-type: none"> ▪ Encourages teachers to make meaningful connections with children's interests and experiences.
	6.5	<ul style="list-style-type: none"> ▪ Recognises the significance of quality relationships and their impact on children's learning.
	6.6	<ul style="list-style-type: none"> ▪ Recognises the role and influence of parents and families in children's education.
		<p>The <i>Draft Primary Curriculum Framework</i> outlines important messages in relation to supporting a variety of pedagogical approaches and strategies with assessment central to teaching and learning. Please give your overall feedback in relation to this key message.</p>
	6.1	No comment
	6.2	No comment
	6.3	Please see 2.2 above and the relevant section of Appendix 1.
	6.4	This statement cannot be substantiated, where a teacher feels that they must perform religiosity, nor when a student feels that the basis of the relationship is founded on a denial of their identity i.e. 'the teacher makes me sit at the back of the class'. Again, this impact should be acknowledged in the final draft, if no changes are made.

6.5	Relationships are affected by daily shaming and exclusion and by the lack of minority/ non-faith background role models amongst teachers and school leaders.
6.6	This statement cannot be substantiated. The wishes of parents are often not sought, as in the case of RSE or indeed rejected in the case of the legal entitlements of minority/non-faith parents. This should be acknowledged- otherwise, the wording of the curriculum will fail to acknowledge, and indeed serve to render invisible, the inability of minor/non-faith parents, to exercise their constitutional rights in denominational schools.

7	<p>Building on the successes and strengths of the 1999 curriculum while recognising and responding to the challenges and changing needs and priorities.</p> <p><i>The 1999 curriculum:</i></p> <p>7.1 ▪ Enhanced children's enjoyment of learning.</p> <p>7.2 ▪ Increased the use of active methodologies for teaching and learning.</p> <p>7.3 ▪ Employed sustained support for children with additional needs.</p> <p>7.4 ▪ Improved attainment levels in reading, mathematics and science as evidenced in national and international assessments.</p> <p><i>The redeveloped curriculum will:</i></p> <p>7.5 ▪ Address curriculum overload at primary level.</p> <p>7.6 ▪ Take stock of strategies, initiatives and programmes and clarify priorities for children's learning.</p> <p>7.7 ▪ Link the publication of <i>Aistear</i> and <i>the Framework for Junior Cycle</i>.</p>	
	<p>The Draft Primary Curriculum Framework outlines important messages in relation to building on the successes and strengths of the 1999 curriculum while recognising and responding to challenges and changing needs and priorities. Please give your overall feedback in relation to this key message.</p>	
	7.1	Children cannot enjoy their learning, if they do not feel welcomed or visible.
	7.2	No comment
	7.3	No comment
	7.4	No comment
	7.5	Will sacramental preparation now be formally limited to the two patron programme hours? If so, will this limit be specified in the curriculum, so that 'balance' is maintained, and overload avoided?
	7.6	This form of reflective practice will be curtailed, if the power of the patron <i>apropos</i> the constitutional rights of children, is deemed to be such, that children's views can be ignored. If the curriculum is being written, based on the assumption that patron rights trump the constitutional rights of parents' and children, this statement should be made visible in the curriculum, along with the multiple scenarios in which harm is likelihood to be caused. Failure to acknowledge this reality would do a disservice to those parents and children and serve to hide their experiences.
	7.7	As in 2.4

Data Protection

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The Need for **Effective Opt-Out** from
Faith Formation:
A Response to the *Draft Primary
Curriculum Framework*

May 2021

Summary

There is much to commend in the Draft Primary Curriculum Framework including the aim to respect cultures and beliefs throughout the school experience (p.20). It is not, however, possible to fully achieve this in the current primary school context, as there is no effective opt-out from Catholic faith formation lessons for non-Catholics. The main points are as follows:

90% of Irish primary schools are Catholic

90% of Irish primary schools are state-funded but Catholic-run and so there is often no choice for non-Catholic parents but to send their children to these schools. Catholic primary schools engage in “faith formation”, that is, evangelising or indoctrination.

There is no effective opt-out from Catholic faith formation lessons

There is no effective opt-out from Catholic faith formation lessons for two reasons:

- i. Children who have opted out of faith formation lessons remain in the classroom during those lessons; and
- ii. There is an integrated curriculum whereby faith formation runs throughout all teaching. The new ‘**FLOURISH**’ Relationships and Sexuality Education programme is a clear example of this problem: ‘We are perfectly designed by God to procreate with him.’

This violates international law

The lack of effective opt-out is contrary to the European Convention on Human Rights, as well as numerous other international human rights instruments such as the UN Convention on the Rights of the Child. Opted-out children remaining in class is likely contrary to the Irish Constitution.

Genuine opt-out is required to meet the rights of non-Catholic families

In a pluralist democracy, religion in state-funded schools would happen outside of school hours. **At a minimum however, the following is needed** to meet parental rights and children’s rights:

- i. Children who have opted-out of Catholic faith formation lessons should receive **a genuine alternative** to faith formation lessons (for example, a subject whereby children learn facts about many religions and/or about citizenship).
- ii. Faith formation **should not run throughout all teaching** (i.e. it should be confined to a set period rather than run through the entire curriculum).

Signed by:

Emer Byrden, Teacher
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1 Background to the current situation

We welcome the **DRAFT REVISED PRIMARY CURRICULUM** and thank the **NATIONAL COUNCIL FOR CURRICULUM AND ASSESSMENT (NCCA)** for their work. In particular, we note the inclusive tone of the document, which is clearly both aware of and sensitive to the processes of demographic and cultural change. The draft curriculum also makes coherent, for the first time, the transition from primary school to Junior Cycle, which is to be commended. It is necessary, however, to address the current lack of opt-out from faith formation (i.e. religious indoctrination) to adequately address the rights of parents and children in Irish primary schools.

1.1 A genuine alternative for opt-out is needed

In principle, in a system where most families have no choice but for their child to attend a Catholic school, faith formation should take place outside the school day in a democratic society. Instead of Catholic faith formation lessons, children from all faiths and none should learn facts about different religions and beliefs. This would however be a significant change from the current system, and would thus require a broad societal debate, perhaps through the use of a **CONSTITUTIONAL CONVENTION** to consider a number of possible changes to the Constitution and make recommendations.

For this reason we restrict our request to the following principle: no child should be subject to indoctrination in any state-funded school against their wishes or those of their families.

To achieve this minimum standard and to protect religious freedom, the following two provisions must, in our view, be included in the new curriculum:

- i. Children who have opted-out of Catholic faith formation lessons should receive a genuine alternative e.g. the **EDUCATION ABOUT RELIGIONS AND BELIEFS (ERB) AND ETHICS CURRICULUM DESIGNED BY THE NCCA**.
- ii. Faith formation should not run throughout all teaching (i.e. it should be confined to a set period rather than run through the entire curriculum).

See further recommendations relating to this below. As things stand, the draft primary curriculum framework would result in a continuation of the following discriminatory practices:

1.2 There is no effective opt-out at present

As pointed-out by the **IRISH HUMAN RIGHTS AND EQUALITY COMMISSION**, the State bears the responsibility for the education of children, and therefore has the obligation to respect the human rights of parents and children whether they are of religious or non-religious beliefs.

Education in Ireland is largely a Church-State co-operative and faith formation is central to the patron programme in denominational schools in Ireland. Up until 1997, these classes were known as Religious Instruction. In the 1997 curriculum (which endorsed an integrated curriculum), the subject area was renamed Religious Education. While this has tempered the language involved, it has not changed the clear missionary intent in Catholic schools. While every family has the technical right to opt their children out of religious education classes, the reality is, that opting-out is not possible for the reasons outlined above. O'Mahony states that: 'The effect of the integrated curriculum is that it is impossible for a child to attend the vast majority of primary schools in Ireland without being exposed to and influenced by, Catholic teachings' (O'Mahony, 2012, 159).

The Admissions Act 2018 directs denominational schools to clearly outline how children who are opted-out will be accommodated in their school. The Catholic patron bodies instructed Boards of Management to ignore this direction, thus compounding the problem for minority/non-faith parents. Indeed almost all Catholic primary schools ask parents to organise a meeting in writing with the school principal to discuss the opting-out arrangement. This is intentionally obstructive and intimidating.

There are no standard rules for schools to accommodate children that have opted-out and the majority of children spend this time at the back of the classroom absorbing the content of the classes, e.g. prayers, sacramental preparation, symbology, and so on, due to the non-Catholic child remaining present in the room during faith formation lessons. Sitting at the back of the class presumably results in children feeling excluded and isolated (see more on children's view below).

The refusal of denominational schools to facilitate an effective opt-out, particularly where no local non-faith school exists, therefore constitutes (state-funded) coercion and indoctrination. Although the number of multidenominational schools are growing in Ireland they are still a tiny minority of what is available to families. For many minority/non-faith families, particularly those living in rural communities, this means there is no choice but to have their child educated in the local Catholic-run school contrary to their religious convictions.

The harm to non-Catholic families caused by the lack of effective opt-out are summed-up by parent and school principal Colm O' Connor:

Our baby daughter died in January 2011, which was a traumatic event for our family. As Humanists we not discuss her death with our other children in supernatural terms, nor do we promote the idea of her awaiting us in afterlife.

We live in a rural village, with a single denominational school and as we wanted our children to start school with their neighbours and friends, we enrolled them there, albeit apprehensively. We informed the school that we were not religious, and were told that no accommodation would be made, but that we could take them home if the class were going to the church.

We felt like we had no choice, if we wanted to remain connected to our village community. Our children were those kids sitting at the back of the class, feeling embarrassed and isolated. One was mocked for not believing in God, during the 'communion year'. He was also ridiculed in front of the teacher, during a 'secular' history class, when a student said that Adam and Eve were the 'first people' and not 'pre-historic' people, as my 7-year-old child had stated. This was the impact of the integrated curriculum. The school were so blind, that they did not see the priest's visits as religious events, nor did they see religious assemblies as religious events, from which we might need to withdraw. That said, we should not have had to withdraw them. We had virtually no religious rights in the school and this

Testimony from Colm O'Connor, April 2021

situation was protected by the Department's curriculum.

Worst of all, was that we could not stop them being exposed to ideas that were confusing to them, about 'where their sister was now'. This was harmful, so we had no choice but to choose between protecting their mental health and being part of the community. No parent or child should be put in this position. We had to move them to the nearest Educate Together school, about 25 mins drive away. This bookends my wife's day and affects which work she can do. She must drive for near 2 hrs a day unnecessarily also, despite the fact that they could walk to school, if our beliefs were in any way respected there. Our kids lost friends and were no longer invited to birthdays etc.

Most people just go along with the situation, but they shouldn't have to- they have rights. It's time that the curriculum, and thus the NCCA acknowledged and defended these children's rights.

1.3 The integrated curriculum means that faith formation runs through all teaching

Both the current primary curriculum and the draft revised curriculum emphasise that religion can permeate the teaching of secular subjects; therefore history or science teaching, for example, could include faith-based content. The lack of an opt-out becomes even more pressing in this context, as the student cannot withdraw from the whole day and the presentation of faith-based content cannot be foreseen by parents. For example, textbooks are normative towards Christianity: chapters of books treat religious stories as fact, e.g. stories relating to the miracles of St. Brigid and St. Patrick. There is also little religious diversity in the characters in textbooks, especially regarding non-Semitic faiths.

1.4 The Relationships and Sexuality Education curriculum now contains faith formation

Relationships and Sexuality Education is the prime example of how the integrated curriculum can impact negatively on education and be harmful to children. A striking example is the new 'Flourish' Relationships and Sexuality Education programme, produced for Catholic primaries.

First, 'Flourish' involves clear faith formation teaching on issues which many parents would legitimately expect to be based in fact and science, including the statement: 'Puberty is a gift from God. We are perfectly designed by God to procreate with him.' There are also concerns regarding child protection information, as a lesson on safety and protection advises senior infant children to say the "Angel of God" prayer. For many parents, this clearly would not be the advice that they would give to their children at times of risk. There are also issues around children or parents who may be lesbian, gay, bisexual, trans, queer, questioning and intersex (LGBTQQI+) feeling excluded or discriminated against under this curriculum (see more about this in section 3).

Given recent referenda it is no longer tenable that the views of most parents (Catholic and non-Catholic alike) are being represented by Catholic social teaching, as advanced by the patrons and Boards of Management. The NCCA and Department of Education must ensure that curricular developments reflect this reality, and not that of a previous era.

1.5 The rights of non-Catholic staff to freedom of religion

Staff in primary schools are also affected by the religious ethos of primary schools. Though amendments to legislation (made by the government in 2016) provided security on the grounds of ethos to LGBTQQI+ school staff, this amendment did not stretch to staff that do not share the religious values of their school. Teachers from minority and non-faiths are effectively forced to teach an integrated curriculum that can be in direct opposition to their own value system. For example, an Orthodox Jewish teacher working in a Catholic school would have to ensure he/she would promote

Jesus as a Messianic figure, a direct infringement on his/her religious beliefs. This is in spite of the fact that the Equal Status Act 2000 prohibits discrimination in employment or in the provision of goods and services under nine grounds, including religion.

There are no protections for staff that refuse to uphold a school's religious ethos and they can be disciplined for doing so. Given the integrated nature of the curriculum, it is impossible for a staff member to opt-out of providing faith formation during the school day. This situation undoubtedly acts as a barrier to teachers entering the profession from non-Catholic, migrant and other backgrounds. This is damaging for diversity, pluralism and democracy. Staff members must be able to opt-out of providing faith formation in line with their right to freedom of religion (see recommendation 7 below).

An alternative class based on world religions/citizenship should be available to children who opt-out of faith formation lessons (see recommendation 2 below), and these alternative lessons could be provided by non-Catholic teachers who themselves do not wish to engage in Catholic church teaching (see recommendation 9 below). As well as respecting the rights of non-Catholic families and staff, it is likely therefore that this change to an effective, alternative, opt-out to faith formation lessons would be cost-neutral.

2 The legal situation of religion in education

2.1 The Irish Constitution

2.1.1 The Constitution envisages freedom of religion for parents and children

The Constitution clearly envisages parents as having primary responsibility for the moral and spiritual education of their children. The current lack of an effective opt-out for non-Catholic children from faith formation interferes with the rights of parents as the primary moral educators of their children. Given these provisions and the primacy of the Constitution in Irish law, should the question be tested in court, a Constitutional right for non-Catholic families to have an effective opt-out is likely to be upheld.

As it stands, the current situation whereby almost all schools are Catholic, with children often present in class for religious instruction, would likely be found to be unconstitutional.

Article 44.2 guarantees freedom of conscience and the free profession and practice of religion to all citizens (which includes both parents and children) and by prohibiting the state from making any distinction or discrimination on religious grounds.

Article 42.4 states that when providing for free primary education, the State is obliged to have "due regard ... for the rights of parents, especially in the matter of religious and spiritual formation".

Article 42.1 of the Constitution gives parents clear rights over the religious education of their children. This provision protects the right of parents to provide for the religious, moral, intellectual, physical, and social education of their children.

2.1.2 It is unlikely that the state is Constitutionally obliged to provide faith formation lessons

Some argue that the state is Constitutionally obliged to provide faith formation lessons, but it is unlikely that this is so – it must be established authoritatively by the courts. This is separate however to the issue of respecting the rights of non-Catholic children to opt-out of faith formation.

In *Campaign to Separate Church and State v. The Minister for Education* [1998] 3 I.R. 321 Barrington J. in a Supreme Court decision commented that Art. 42.2 contemplates children receiving religious education in state-funded schools, but in accordance with the wishes of the parents. The judgment appears to imply that this included faith formation. However, as Glendenning points out, because of the anti-discrimination guarantee in Article 44.2.4°, this would mean that all religions will be entitled to have their teachers of religion remunerated out of public funds (Glendenning, 1999, p. 68).

O' Mahony states that for a number of reasons, including the fact that Barrington J. failed to specify which provision of the Constitution this supposed right of parents is based on, 'it is submitted that it would be better to interpret the Constitution as giving rise to no positive obligation which would require the State to provide or fund education in accordance with the religious convictions of parents' (O'Mahony, 2006, 121.) O'Mahony states that the Supreme Court is unlikely to establish that the state has such a positive obligation, not least because it would involve such an onerous financial burden.

In any case, even if it were authoritatively found that the state is obliged to fund faith formation in schools in Ireland, it is obvious that this should include an effective opt-out for non-Catholic children to protect the freedom of religion and other Constitutional rights of parents outlined above.

2.1.3 The Constitution now explicitly enshrines children's rights

Article 42A.1 of the Constitution states that: The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights. After the children's rights referendum, Article 42A created a freestanding right for children to be recognised separately and distinctly from the family. The purpose of Article 42A is to give children their own identifiable rights in addition to those that all citizens enjoy. This is another development which points to not only the need to ensure effective opt-out from faith formation for non-Catholic children. It also points to the need to consult children themselves on what the alternative lesson would entail (in line with the UN Convention on the Rights of the Child, see below).

2.1.4 Recent referenda demonstrate secularist change in Ireland

There have been significant developments in the past decade pointing to a clear shift towards secularism in Ireland. The marriage equality referendum in 2015 and the abortion referendum in 2018 demonstrated that Ireland is a liberal democracy in which citizens do not believe that the ethos of the

Catholic Church should shape our laws on moral and ethical matters to the extent that it once did. This shift should also be recognised in the primary curriculum. This involves at a minimum ensuring effective opt-out from faith formation for non-Catholic children. This should be explicitly recognised in any new curriculum for primary schools.

2.2 Regional and international human rights law

2.2.1 European Convention on Human Rights

Ireland has ratified the European Convention on Human Rights (ECHR). The European Court of Human Rights interprets the ECHR.

In Ireland, the European Convention on Human Rights Act 2003 requires that:

- s.2: Irish courts are to interpret and apply laws in a manner compatible with the ECHR
- s.3: Organs of the Irish State are to perform functions in a manner compatible with the ECHR

Some key elements of the jurisprudence of the European Court of Human Rights relevant to religion in schools include the following:

i. **The State is forbidden to pursue an aim of indoctrination**

Rights relevant to faith formation in Irish schools include:

Article 9 ECHR - right to freedom of thought, conscience and religion

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, and 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.

Article 2, Protocol 1 ECHR - right to education

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.

The European Court of Human Rights has also held that beliefs must be respected throughout the entire State education programme and in all functions taken on by State. Some teaching of religion is acceptable, as long as it is objective, as the state cannot engage in indoctrination:

“...the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded” (Folgero v Norway, 2007).

At present in Ireland as outlined above, faith formation classes happen with non-Catholic children in the same room, and the integrated curriculum means that it is not possible to opt out of religious indoctrination in 93% of Irish primary schools (that figure includes the 3% Church of Ireland-run schools).

The recent Flourish programme is a clear example of this. The lack of an effective opt-out means that non-Catholic children cannot avoid religious indoctrination, and this is in violation of the Convention under Article 9 (freedom of thought, conscience and religion) and Article 2 of Protocol 1 (the right to education).

ii. **People from minorities must enjoy fair treatment**

The European Court of Human Rights has stated that a balance must be achieved between the interests of the religious majority and those of minorities:

‘Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position...’ (Sahin v Turkey, 2005).

At present in Ireland, a fair balance is clearly not struck between the Catholic majority and non-Catholic minorities in Irish primary schools. A lack of effective opt-out from faith formation means that minority children are subject to indoctrination at present.

iii. **Rights must be effective, not theoretical and illusory**

The European Court of Human Rights has stated on many occasions that rights must be effective, not theoretical and illusory (Tyrer v UK, 1978).

In Ireland, although it is technically the patron of the school engaging faith formation/indoctrination rather than the state:

- The state effectively outsources education, 90% of the time to Catholic entities. The state has responsibility for primary education, and funds it.
- 93% of schools are religious-run, so in effect parents have no choice but to send their child to a religious-run school.
- The opt-out from faith formation is theoretical and illusory, for the reasons outlined above.

Therefore, the right of families to be free from religious indoctrination, guaranteed under Article 9 (freedom of thought, conscience and religion) and Article 2 of Protocol 1 (the right to education) of the European Convention on Human Rights, is theoretical and illusory in Ireland at present.

2.2.2 UN instruments

There are a variety of international instruments at UN level which provide parents and children with the right to education and the right to freedom of religion. The primary UN civil and political rights instrument, the International Covenant on Civil and Political Rights, provides at Article 18(4) that states must undertake to respect the liberty of parents 'to ensure the religious and moral education of their children in conformity with their own convictions'.

The UN Convention on the Rights of the Child (CRC) is the authoritative instrument for children's rights globally – almost every country in the world has ratified it, including Ireland. Under this instrument children have the right to be heard, the right of parents to help them exercise their rights in line with the evolving capacities, the right to education and the right to freedom of religion.

i. The right of children to freedom of religion

CRC Article 14 provides that 'States Parties shall respect the right of the child to freedom of thought, conscience and religion.' **KILKELLY STATES THAT** 'this stands out as a provision which gives expression to the right of religious freedom as an independent right of the child.' Younger children may need parental guidance in this area, and children with greater capacity will be able to exercise this right increasingly without parental direction. This again points to the need to consult children themselves in the delivery of classes regarding religion.

ii. The principal of the best interests of the child in religious education

Another crucial principle is set out in Article 3 of the CRC- that the best interests of the child must be a primary consideration in decision-making concerning the child. This points to the need for explicit consideration to be given to the interests of children in policy-making about religious education. While the draft curriculum certainly gives much consideration to children's well-being there is no evidence that the best interests of non-Catholic children have been considered in a context where an integrated curriculum means that there is no effective opt-out from faith formation.

iii. The right to equality in education

The UN Committee on the Rights of the Child is the international implementing body for this instrument. The right to education, enshrined in CRC Article 28(2), requires states to direct to: '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.' The General Comment (a document elaborating on a particular right) of the Committee on the Rights of the Child on the Aims of Education requires that: 'the school environment itself must thus reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin'. These educational aims cannot be met without adequate and effective opt-out for non-Catholic children from faith formation.

iv. The UN Committee on the Rights of the Child has criticised Ireland's lack of opt-out in Catholic schools

In its 2016 report on Ireland, the UN Committee on the Rights of the Child criticised Ireland's lack of opt-out from faith formation in Catholic schools and stated that non-Catholic children should have an adequate alternative (UN Committee on the Rights of the Child, 2016):

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

36. The Committee recommends that the State party ensure accessible options for children to opt-out of religious classes and access appropriate alternatives to such classes, in accordance with the needs of children of minority faith or non-faith backgrounds.

The evidence from the standards evident in UN bodies and instruments points to a conclusion that the lack of effective opt-out for non-Catholic children from faith formation violates regional and international human rights law.

3. Analysis of the Draft Primary Curriculum Framework

Positive principles and competencies in the draft curriculum

There is much to commend in the Draft Primary Curriculum Framework. The clear identification of eight teaching and learning principles (p. 6), seven key competencies (p. 7) and the attributes that underpin them (p. 10) provide a coherent frame on which to build a curriculum and a lens through which to evaluate it.

There is a sincere commitment to developing a curriculum that “aims to provide a strong foundation for every child to thrive and flourish” in their communities (p. 5). The wish to provide an integrated curriculum is informed by the laudable goal of learning in an integrated world and wanting to develop the adaptability of children and foster their ability to apply their knowledge and skills outside of school (p. 22).

It is also very positive that the principle of inclusive education and diversity is emphasised. So too are the principles of being an active citizen and fostering wellbeing so that children “feel respected, confident and safe” (p. 20). It is also recognised that children have “individual needs, views, cultures and beliefs” which should be respected throughout their school experience (p.20).

The curriculum in a context where 90% of primary schools are Catholic

The absence of an effective opt-out from faith formation, however, prevents attainment of these laudable principles. It therefore raises issues of compliance with national and international law as outlined above.

It also raises questions of how education should function in a pluralist democracy. To be true to the principles of inclusive education, diversity, active citizenship and evidence-based pedagogy, teaching should be expected to promote the same degree of respect and understanding for all philosophies and religions and none. At a minimum it should involve an effective opt-out with an alternative class about world religions/ citizenship.

3.1 The ‘Patron’s Programme’ and faith formation

3.1.1 Weighing position of patrons against those of non-Catholic families

Pressure on parents from non-Catholic families

The draft curriculum notes that school patrons have a legal right to design their own programme in accordance with the ethos of their school (p. 11). This legal right is not absolute, however. As with all legal rights it must be balanced with the rights of others and can have parameters placed on its legitimate

exercise.

As noted above, sitting at the back of the class is likely stigmatising for non-Catholic children. The views of children on this, and what their preferred alternative would be, should be established through consultation in line with Article 12 of the UN Convention on the rights of the child – the right of children to be heard in all matters affecting them. This should be examined through the **CHILDREN’S SCHOOL LIVES RESEARCH**, (if this is not already intended).

The system is also premised on the assumption that the majority of parents want the situation (with no effective opt-out) to continue, yet it is not clear that this is the case. There is significant pressure on parents not to opt their children out of faith formation as it is stigmatising to do so. It is likely that there are far more parents who wish for their children to avoid faith formation, but do not opt out due to stigma. Research should also be conducted in 2021 to establish the views of parents across Ireland on this (see recommendation 6 below).

The Education Act 1998

The Education Act 1998 refers to the rights of patrons to determine the ethos of the school. There are clear conflicts of interest in balancing the ethos of the Catholic Church with the interests of all children, such as those from families who do not wish to receive faith formation in the curriculum. Students are often aware of this contradiction, as evidenced in the Children’s Rights Alliance’s 2015 submission to the UN Committee on the Rights of the Child. One contributor commented that: ‘Our concerns over our future often seem ignored. Our education system needs to better meet our needs now and into the future. Especially with regard to the role of religion in our schools’ (at 3). The ‘Flourish’ RSE programme is a good example of this, as it does not represent what many would expect to constitute adequate RSE in modern Ireland. There also appears to be an assumption in the Education Act 1998 that patrons act on behalf of the parents. The interests of the two groups should not be equivocated- research should be conducted to establish the wishes of parents in 2021 in respect of religious education in state-funded schools, as well as what constitutes adequate RSE at primary level.

The lack of choice of school patronage in the system should be acknowledged

The Framework states that there is a diversity of patronage within the system (p. 4), but diversity in terms of size and location is not the same as diversity of options. In practical terms, when 90% of primary schools are under the patronage of the Catholic Church, it is difficult for those who do not belong to the Catholic faith-community to find schools outside of that patronage. This lack of choice has been recognised by the Department of Education in the Action Plan for Education 2016-2019 where they state the aim of establishing 400 multi and non-denominational schools by 2030 (2016: 61). Progress has been slow with only eight schools in total being transferred from either the Catholic Church or the Church of Ireland to a multi-denominational patron (Neville, 2021). This should be explicitly acknowledged in the curriculum so that plans can be made to avoid violating the rights of non-Catholic parents and children.

Scheduling an alternative timetable subject alongside faith formation

As noted above if faith formation is part of the school curriculum, in the spirit of the principle of inclusive education and diversity, it should be a requirement that schools demonstrate that a subject is timetabled as an alternative to faith formation in a synchronous way to facilitate opt-out students. Such a subject could explore topics like world religions, literature, history and music. It would complement the religious education being undertaken by students who are undertaking faith formation; allowing for the sharing of knowledge between students.

To comprehensively instil the principles of the draft curriculum in primary schooling, the NCCA should look to other jurisdictions/country contexts, for example Sweden, Denmark, Norway, Germany, Northern Ireland. Most publicly funded schools in the EU provide some **FORM OF CITIZENSHIP PROGRAMMES** to promote common norms and values through education. It would be important to examine how religious education and schooling is managed in the promotion of values such as respect, equality, diversity and inclusion in other EU countries (see recommendation 3).

If it is considered that this would be difficult in the current social or legal context, this should be explicitly outlined in the Draft Curriculum, so that the way in which to resolve the situation can be adequately considered. As outlined in Section 1.6 above however, we foresee that it could be done in a cost-neutral way whereby non-Catholic staff deliver the alternative lessons rather than be forced to deliver religious instruction which is what occurs at present.

The Department of Education should introduce guidelines on opt-out

The Department of Education should introduce guidelines for schools as to how they are expected to respond to students who wish to opt-out of religious study (see recommendation 8). Schools should be required to organise the school day in such a way that pupils who do not wish to take part in religious education are not at a disadvantage, either directly or indirectly, in their participation in the rest of the activities of the school and school authorities should be required to report on this aspect of their organisation to the Department of Education. Consideration should be given, for example, to how to balance the right of Catholic children to engage in religious cultural practices (e.g. prayers), with the rights of non-Catholic children not to engage in this during school hours.

3.2 Wellbeing

The competence of fostering wellbeing takes a wide understanding of wellbeing, understanding health as consisting of physical, social, emotional, and spiritual components (p. 8). The draft curriculum also sets out its support for “high quality teaching, learning and assessment that is inclusive and evidence based” (2020: 5). We have outlined above how faith-based teaching on issues such as sexuality and relationships does not achieve this (note the ‘Flourish’ programme).

There are distinct discrimination issues at play when faith-based doctrine enters the curriculum in this integrated way. In March 2021, the Congregation for the Doctrine of the Faith in the Vatican formally declared that Catholic clergy cannot bless LGBTQQI+ unions on the basis that sex is for procreative purposes and LGBTQQI+ people’s sex is “intrinsically disordered”. A position such as this is incompatible with the principles of respect, inclusivity and diversity (see recommendation 4). To adhere to the principles of respect, inclusivity and diversity, the expression of religious beliefs which run counter to Irish law and public policy and which discriminate against specific constituencies such as LGBTQQI+ students should not be permitted. It is also clear, as we have outlined above, that faith formation should be confined to specific lessons from which non-Catholic children can opt-out.

3.3 Active Citizenship

Part of the competency of wellbeing is to “value what it means to be an active citizen” (p. 13). We welcome the commitment in the framework to recognising students as active citizens in the here and now, who have capacities and whose prior learning, self-worth and identity are to be respected in the schooling environment. The Educate Together sector provides an ethical programme about religions and morals during the school day in accordance with the wishes of parents- a similar class should be introduced as an alternative to faith formation for non-Catholic children in Catholic schools. As noted above, international practice should also be considered in devising such a programme.

As part of this commitment to the citizenship of children, it is crucial to better involve children themselves in the development of the various aspects of the curriculum. It is only in one of the final sections of the document – the focus on assessment – that children are explicitly recognised as the central stakeholder (p. 25). The work that the NCCA has undertaken with the Schools Forum to develop the curriculum with teachers and principals is valuable, but further research involving children and their experiences can only enrich this process of improving the curriculum (see recommendation 5). It is also important for Ireland’s obligations under the UN Convention on the Rights of the Child which, as outlined above apply to states to hear children’s views on all matters affecting them.

Conclusion

It is of paramount importance that the new curriculum acknowledges the significant challenges for the rights of parents and students from non-Catholic backgrounds to be free from religious indoctrination, and reflects a diversity of non-religious educational material such as to realise and protect such student’s rights. The draft revised framework does not yet meet this minimum standard.

It is crucial that the draft curriculum is explicit about whether inclusion and equality is truly possible in the curriculum, in light of the lack of choice for most families about whether they send their child to a Catholic-run school, together with the lack of opt-out from faith formation. If the drafters feel that inclusion and equality is not truly possible, then this should be stated. This can then facilitate the

necessary dialogue and public discussion on how to achieve effective opt-out for non-Catholic families.

The lack of effective opt-out for non-Catholic families from faith formation would likely be found unconstitutional if a case was taken today which aimed to establish this (such a case could be taken by affected non-Catholic families). In any case there appears to be full agreement that non-Catholic families have a right to opt-out of faith formation. This is clear from the Constitution, and it is an obligation at regional and international level also.

The basic change that is needed is a genuine alternative to Catholic faith formation lessons (through lessons teaching facts about many religions, and/or citizenship), and an assurance that religious indoctrination will be excluded from other areas of the curriculum. We believe that these changes can be made without recourse to a referendum. However, if it is deemed that this is not the case, we request that the process of adopting a new primary school curriculum in Ireland is paused until an accurate views and wishes can be garnered from the people of Ireland. It would be a positive and progressive process to begin a dialogue with parents, children, teachers, and patrons about the possibilities for an effective opt-out from faith formation, and what alternative educational possibilities could fill this valuable class time. This will begin the process of Ireland meeting its international human rights obligations in this regard.

RECOMMENDATION 1

The Patron's Programme should be segregated from the rest of the curriculum in order to meet legal obligations and to respect the principle of inclusive education and diversity.

RECOMMENDATION 2

An effective alternative lesson should be provided on world religions and/or citizenship for children opting out of faith formation.

RECOMMENDATION 3

The systems in other countries should be examined to consider how best to balance Catholic faith formation with respect, equality, diversity and inclusion in Irish primary schools.

RECOMMENDATION 4

In keeping with recommendation 1, religious-informed beliefs should not inform the content of other aspects of the curriculum where they run counter to Irish law and public policy and are discriminatory.

RECOMMENDATION 5

The recognition that children are active citizens should inform the continued improvement of the curriculum, in line with the UN Convention on the Rights of the Child.

RECOMMENDATION 6

The views of children and parents on the current opt-out system, and what their preferred alternative would be should be established through consultation with both groups.

RECOMMENDATION 7

Staff members must be able to opt-out of providing faith formation in line with their right to freedom of religion under the Constitution and the European Convention on Human Rights.

RECOMMENDATION 8

The Department of Education should introduce guidelines for schools as to how they are expected to respond to students who wish to opt out of religious study.

RECOMMENDATION 9

Non-Catholic teachers could provide the alternative class, so it is likely that this change would be cost-neutral.

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