CHAPTER 10

RELIGION AND CULTURE IN PUBLIC EDUCATION IN SOUTH AFRICA

Tim Fish Hodgson
THE CONSTITUTION, RELIGION AND CULTURE

On a basic level, the equality clause of the Constitution outlaws all discrimination based on religion, conscience, belief and culture. This means that there is room for a wide range of beliefs, which is in keeping with the Preamble of the Constitution's clear statement that 'South Africa belongs to all who live in it, united in our diversity'. The Constitution therefore does not set any one religion as an official 'state religion'. This is important, because it means that even though most South Africans identify as Christian, according to the Constitution South Africa is not a 'Christian country'.

Table 10.1: Religious affiliation in South Africa (%).

<table>
<thead>
<tr>
<th>RELIGION</th>
<th>WC</th>
<th>EC</th>
<th>NC</th>
<th>FS</th>
<th>ZN</th>
<th>MM</th>
<th>CF</th>
<th>HP</th>
<th>LP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christianity</td>
<td>88.4</td>
<td>85.2</td>
<td>98.0</td>
<td>98.0</td>
<td>78.7</td>
<td>94.3</td>
<td>85.2</td>
<td>93.5</td>
<td>77.8</td>
</tr>
<tr>
<td>None</td>
<td>1.6</td>
<td>8.2</td>
<td>0.7</td>
<td>0.4</td>
<td>3.2</td>
<td>0.4</td>
<td>7.7</td>
<td>1.8</td>
<td>14.5</td>
</tr>
<tr>
<td>Traditional African*</td>
<td>1.5</td>
<td>51.5</td>
<td>0.4</td>
<td>0.1</td>
<td>11.1</td>
<td>2.4</td>
<td>3.1</td>
<td>3.7</td>
<td>7.2</td>
</tr>
<tr>
<td>Hindu</td>
<td>0.2</td>
<td>0.0</td>
<td>0.2</td>
<td>0.0</td>
<td>0.7</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Other</td>
<td>0.3</td>
<td>0.1</td>
<td>0.2</td>
<td>0.1</td>
<td>0.6</td>
<td>0.1</td>
<td>0.1</td>
<td>0.2</td>
<td>0.0</td>
</tr>
<tr>
<td>Jewish</td>
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<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
</tbody>
</table>

*Ancestral, tribal, animistic or other traditional religions

Despite this, South Africa is a country of many religions. For example, there are large communities of Muslim, Jewish and Hindu people throughout South Africa, and millions of people subscribing to traditional African religions. It is also important to remember that though religious belief is important to many people, nearly three million people (5.5% of the population) do not subscribe to any religion. This includes a large number of people who do not believe in any God at all. It is important to understand that the same cultures and religions are understood differently by different people and groups. Both culture and religion are dynamic, and change over time, depending on the social context and individual personality and practice.

In South Africa, as in many other places in the world, religion is an important part of culture to many people. Some people tie their personal identities very closely to faith in God or to religious practices. Other people, who place less emphasis on faith, still celebrate their cultures through performing religious ceremonies at important events in their lives, such as betrothal, initiation ceremonies into adulthood, weddings and funerals.

This chapter will focus mostly on religion – which has always been of significant cultural importance in South African schools, and in society more generally – although it will also discuss cultural practices. In part as a result of South Africa's history of colonialism and apartheid, different forms of Christianity are the dominant religion in South Africa, with over 85% of South Africans identifying as Christian.

On a basic level, the equality clause of the Constitution outlaws all discrimination based on religion, conscience, beliefs, values, attitudes, practices and identities. Culture is in the food we eat, the clothes we wear, the music we listen to, the way we dance. It describes human relationships and activities on an individual and societal level.
Natal and Others v Pillay

‘It tells us about this is that kinds of observance must be conducted:

• In accordance with the rules of “appropriate public authorities”.
• On an “equitable basis”.
• In a manner that ensures that attendance is “free and voluntary”.

Before we try to answer these and other questions about religion in schools, it is important to note that later in the Bill of Rights, the rights of religious and cultural communities are also protected (Section 31). These communities cannot be denied the right “to enjoy their culture[s]” and “practise their religion[s]” or to join and maintain religious and cultural groups and communities. Religious and cultural practices are frequently informed not only by faith but also by custom, while cultural beliefs do not develop in a vacuum and may be based on the community’s underlying religious or spiritual beliefs. Therefore, while it is impossible for a person to be a purely religious or purely cultural, it is equally possible for it to be both religious and cultural.”

MEC for Education v Ndlovu-Natal and Others v Play

**CULTURAL RIGHTS**

**RELIGIOUS & CULTURAL FORMATIONS**

The constitution extends to all people, and try to protect them. Although the state should promote all religions, it is required to do so without any favour for or prejudice against any particular religion or belief. It is particularly important for minority religions and cultures that have ‘deviant’ social norms and practices to be protected by the Constitution, provided that these norms and practices do not harm other people’s rights.

Unlike other Constitutions, ours specifically permits “religious observances” at state institutions such as hospitals, schools, and at official government events. In the specific context of schools, this raises many questions. What is a religious observance? What kinds of observances are allowed at schools? Do schools have to make sure that each and every religion’s observances are followed at every school? All the Constitution tells us about this is that kinds of observance must be conducted: • In accordance with the rules of “appropriate public authorities”.
• On an “equitable basis”.
• In a manner that ensures that attendance is “free and voluntary”.

**THE RIGHT TO ESTABLISH PRIVATE RELIGIOUS SCHOOLS**

The Interim Constitution explicitly stated the right “to establish, where practicable, educational institutions based on a common culture, language or religion”. Under the Interim Constitution, the Constitutional Court explained that this “right” was one that entitled communities to establish their own religious schools, but did not require the state to do so.

The Final Constitution (referred to as the Constitution (throughout this handbook) also includes for ‘everyone’ a ‘right to establish and maintain, at their own expense, independent educational institutions.’ It is important that unlike the Interim Constitution, the Final Constitution makes no mention of religion in this right. It simply requires that independent schools do not discriminate based on race, are registered, and ‘maintain standards that are not inferior to standards at comparable public educational institutions’.

The extent to which a private school can have a “religious ethos” and participate in religious instruction, observances and education is therefore not spelled out by the Constitution. The Constitutional Court has since indicated that a Christian private school, by and large, may “maintain a specific Christian ethos”. Although this will be discussed briefly in this chapter, the main focus of the chapter is the appropriate place of religion in public schools.

**RELIGION IN SCHOOLS AND OTHER RIGHTS IN THE BILL OF RIGHTS**

Discrimination based on religion or culture is prohibited specifically by Section 9 of the Constitution. The equality clause provides protection to religions and cultural beliefs, but also requires respect for other rights in the Bill of Rights, such as human dignity and equality of different genders, races and people with varying capabilities and disabilities in the practice of religion and culture. According to the Constitutional Court – as reflected in a case about corporal punishment in schools – although religious belief and practices are important and must be respected, other beliefs and practices of less significance, such as the right to religious instruction, are considered of lesser importance than the rights of learners themselves.

**THE CONSTITUTIONAL COURT ON RELIGIOUS & CULTURAL RIGHTS**

“The two rights may overlap, however, where the discrimination in question flows from an interference with a person’s religious or cultural practice.”

Without attempting to provide any form of definition, religion is ordinarily concerned with personal faith and belief, while culture generally relates to traditions and beliefs developed by a community. However, there will often be a great deal of overlap between the two; religious practices are frequently informed not only by faith but also by custom, while cultural beliefs do not develop in a vacuum and may be based on the community’s underlying religious or spiritual beliefs. Therefore, while it is possible for a person to be a purely religious or purely cultural, it is equally possible for it to be both religious and cultural.”

MEC for Education v Ndlovu-Natal and Others v Play

Christian Education South Africa, a voluntary association of 196 private Christian schools (representing around 14 500 learners around South Africa) challenged the Schools Act’s ban on corporal punishment, arguing that it violated their constutency’s constitutionally protected religious rights.

The Minister of Education argued that even at a private Christian School, and despite the fact that Christianity could be argued to support corporal punishment, allowing teachers to physically discipline children through corporal punishment violated learners’ rights to freedom of security of the person, and to dignity.

The Constitutional Court concluded that the School’s Act’s ban on corporal punishment, though limiting the right to freedom of religion of Christian parents, was reasonable and justified and complied with the Constitution, based on the reasons presented by the Minister. Christian Education South Africa v Minister of Education
Apart from the extensive constitutional protections for religion, other legislative and policy developments have an influence on culture and religion in education.

**LEGISLATIVE AND POLICY FRAMEWORK**

**SOUTH AFRICAN SCHOOLS ACT**
The South African Schools Act protects 'freedom of conscience and religion at public schools' by providing that religious observances may be conducted at public schools. It indicates that this must be done in accordance with rules issued by a school governing body, on an equitable basis, and where attendance by 'learners and members of staff is free and voluntary'. It also reminds us that these observances are subject to the requirements of provincial laws and the Constitution. The Schools Act also allows for the establishment of private schools. This is subject to the restated requirements of the Constitution and additional requirements, including those regarding age of admission of learners and registration of schools. Finally, the Schools Act requires school governing bodies to draw up a code of conduct for their learners, after consultation with the learners, parents and educators.

**CODE OF CONDUCT GUIDELINES**
As early as 1998, the national department of education published Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners. These guidelines indicate that they are subject to the Constitution, and must reflect 'constitutional democracy, human rights and transparency. In a section on 'principles and values', the guidelines explain that 'the freedom of expression includes the right to seek, hear, read and wear. The freedom of expression is extended to forms of outward expression, as seen in clothing selection and hairstyles'. The guidelines also emphasise the importance of learners developing their 'academic, occupational, social, sport, spiritual, art and cultural potential'. Schools should not forget the importance of the values, rights and freedoms detailed in the guidelines. Not only must these guidelines be followed in the drafting of a code of conduct, but even when this has not happened, a Court has determined that the provisions in the guidelines must still be used in interpreting and applying a code of conduct. The Court emphasised that guidelines should be interpreted generously and contextually, and not in a 'rigid manner'. Importantly for the purposes of this chapter, like the Schools Act, these guidelines also give schools and governing bodies guidance on offences that may lead to suspension and expulsion. The conditions outlined for suspension are broad – including, for example, 'immoral behaviour or profanity', 'disrespect', 'objectionable behaviour' and 'repeated violations of the school rules or Code of Conduct'. Schools and school governing bodies may mistakenly interpret these to include uniform and hairstyle violations that are motivated by religious and cultural practices. If they do not read the guidelines as a whole – including the rights, values and freedoms they detail. The High Court has warned that such violations of existing codes of conduct are 'a far cry from "serious misconduct"', which may warrant suspension. In doing so, it highlighted the fact that suspension is a potentially serious punishment that is 'a blot on [a] school career and may impact negatively on [a child’s] personality, dignity and self-esteem. It may, indeed, affect [a child’s] normal development into full maturity, and even have a seriously prejudicial effect on [the child’s] future career'.

**GUIDELINES ON SCHOOL UNIFORM**
In 2006, the Department of Basic Education produced the National Guidelines on School Uniform, in order to provide guidance to school governing bodies in developing their school uniform policies. The school uniform guidelines speak directly to the issue of religious and cultural diversity. They clearly and emphatically protect learners' rights to religious and cultural dress and hairstyles. Finally, the Department of Education published a policy directly on the subject in 2003, the National Policy on Religion in Education. This policy is contextualised and detailed below in the section on Religion in Education.
APARTHEID AND CHRISTIAN NATIONAL EDUCATION

The apartheid government adopted a policy on religion in education in South Africa called 'Christian National Education' (CNE). It was based on a particular understanding and form of Christianity that supported apartheid and racial discrimination. CNE was part of many aspects of the apartheid education system for all children, regardless of race, and deeply affected both the approaches of schools to religious education, and the entire school curriculum. The ultimate purpose of CNE was to indoctrinate children with a specific brand of Christianity, and attack and put down other religions in the process. It emphasised authority and a conservative Christian understanding of morality and the world, and discouraged individualism and difference. Schools were also used as places where children were encouraged to internalise racist and sexist views consistent with this worldview.

RELIGION IN EDUCATION

Against the constitutional background sketched above, and with this history in mind, South Africa began the long process of reforming the curriculum and the entire education system after its first democratic elections in 1994. A lengthy process led ultimately to the adoption of the National Policy on Religion in Education, in 2003. In 2001, even before the Policy was finalised, 'Religion Education' was introduced into schools to teach learners about religions and religious diversity. The Policy, which applies to all public schools in the country, distinguishes between three different ways in which religion could be relevant in schools: Religious Education, Religious Instruction, and Religious Observances.

The Policy contemplates major roles for schools in both religious observances and religious education, but describes religious instruction as 'inappropriate' for the school environment and schooling programme at public schools. The Policy also does include reference to religious ethos; it makes clear that 'no particular religious ethos should be dominant over and suppress others' in public schools. So although regional, local and community concerns and religious ethos must be considered and understood by all schools, only private schools may adopt an exclusive religious ethos or character.

RELIGIOUS EDUCATION

Knowledge about different religions and religious perspectives is taught to all children in all schools in the compulsory subject Life Orientation. This portion of the Life Orientation curriculum also includes compulsory content on human rights, democracy, and the Constitution. The constitutional background paints an important context within which learners can try to understand the full diversity of religious practices and beliefs in South Africa.

RELIGIOUS INSTRUCTION

Religious instruction cannot be part of the national curriculum or be taught in public schools, but should rather be pursued by parents, families and community religious organisations and institutions outside of school.

The only exceptions are that schools are encouraged to allow their facilities to be used by religious organisations after school and/or in a manner that does not interrupt schooling. Voluntary gatherings and meetings of learner run societies, associations and unions during break times and after school appear to be permitted by the Policy.

Some examples which may be contemplated by the Policy include:

- the use of the school for religious meetings or ceremonies after school hours, prayers for Muslim children on Fridays during school hours, and learner-run religious clubs and societies such as 'Christian Union' or 'Jehovah's Witness Club' during break times.

RELIGIOUS OBSERVANCES

Unlike religious instruction and religious education, the protection for religious observances in schools stems directly from the Constitution. The Policy seeks to give more clarity on what it means for observances to be 'free and voluntary', and ensure that they are conducted on an 'equitable basis'. The Policy is clear that religious observances 'are not part of the official educational function of a public school, and teachers, learners and parents must always remember this. The Policy deliberately does not try to deal with every possible religious observance and determine how schools will be able to comply. Instead, it sets out guidelines to be consulted if the school does choose to hold religious observances, and leaves the option open that the school may even decide to hold no religious observances at all.

Free and voluntary:
The Policy contemplates observances that are truly free and voluntary. This is a particularly difficult thing to achieve with children, who are subject to peer pressure and can easily be made to feel as though they are not ‘normal’ if they are in a religious minority. What is clear is that there is a strict requirement that all religious observances ‘must accommodate and reflect the multi-religious nature of the country in an appropriate manner’. The Policy also gives some examples of forms of observances that may be considered to be ‘appropriate’:

- Rotation of opportunities for observance between different religions
- Selected readings from various texts emanating from different religions
- The use of ‘universal prayers’ which do not refer to any particular God or stem from any specific religion
- A period of silence in which children may pray quietly, meditate, or simply think.

Children are allowed to opt out of religious observances, but the Policy notes that this might have the danger of making those learners feel ‘different’. Schools must consciously try to cancel out this effect.

FREE & VOLUNTARY

In the words of the Constitutional Court:

Compulsory attendance at school prayer would infringe freedom of religion. In the context of a school community and the pervasive peer pressure that is often present in such communities, voluntary school prayer could also amount to the coercion of pupils to participate in the prayers of the favoured religion. To guard against this, and at the same time to permit school prayers, Section 14(2) makes clear that there should be no such coercion.

S v Lawrence, S v Ngcelo, S v Salding

In the words of the Religious in Education Policy:

Other forms of equitable treatment may be developed which are consistent with this policy and applicable legislation. Where the segregation of pupils is contemplated, a school must consider and mitigate the impact of peer pressure on children, and its negative influence on the willingness of children to be identified as ‘different’.

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**EQUITABLE BASIS**

In the words of the Policy:

Since the state is not a religious organisation, theological body, or mono-faith forum, the state cannot allow unfair access to the use of its resources to propagate any particular religion or religions. The state must maintain parity of esteem with respect to religion, religious or secular beliefs in all of its public institutions, including its public schools.

In the words of the Constitutional Court:

The requirement of equity in the conception of freedom of religion as expressed in the interim Constitution is a rejection of our history, in which Christianity was given favoured status by government in many areas of life regardless of the wide range of religions observed in our society...

Accordingly, it is not sufficient for us to be satisfied in a particular case that there is no direct coercion of religious belief.

We will also have to be satisfied that there has been no inequitable or unfair privileging of any particular religion or religions. The state must not promote – or even accidentally result in promoting – one religion. This risk is particularly large when the religion is dominant nationally (as is Christianity) or in a particular community.

The requirement that religious observances be conducted on an ‘equitable basis’ probably does not require the school to have equal amounts of observances from all world or South African religions each time it wants to follow a particular religious observance. It most probably also does not mean that each school must rotate between this wide set of possible religious observances in a manner that allows an equal number of observances per year or per term to each religion. This would be an extremely difficult standard for schools to meet.

This standard requires that schools do not favour one particular religion. It also requires that a real and significant attempt is made to regularly include religious observances that are not those of the dominant religion in the school. Given the context of the Policy, these could include both other religions prevalent in South Africa and elsewhere in the world, and other religions observed by children belonging to minority religious communities at the school.

**CURRENT CHALLENGES FACED BY SCHOOLS**

In Sunali’s family the tradition involves a nose-piercing and ritual insertion when a child reaches physical maturity, accompanied by a prayer. When Sunali turned 16, this ritual would be replaced with a diamond stud by her grandmother. This, Sunali’s mother said, was all to be done as part of a religious ritual to honour and bless Sunali, and not for fashion purposes. Sunali challenged the school’s decision to discipline her for wearing the nose stud because it conflicted with its Code of Conduct, which prohibits most types of jewellery.

The Court criticised the school’s Code of Conduct, noting that ‘a properly drafted code which sets realistic boundaries and provides a procedure to be followed in applying for and the granting of exemptions, is the proper way to foster a spirit of reasonable accommodation in our schools and to avoid acrimonious disputes such as the present one’. The Court found that the school’s Code of Conduct failed to provide an exemption to Sunali to wear a religious item and that as a compromise, the child would be asked to wear a diamond stud, by her grandmother. This, Sunali’s mother said, was all to be done as part of a religious ritual to honour and bless Sunali, and not for fashion purposes. Sunali challenged the school’s decision to discipline her for wearing the nose stud because it conflicted with its Code of Conduct, which prohibits most types of jewellery.

The Court emphasised the importance of children’s voices and opinions being heard in the Court as well as in their schools.

**RELIGIOUS OBSERVANCES AND SCHOOL UNIFORM**

The Religion in Education Policy describes ‘dress as a religious observance and the National Guidelines on School Uniform provides learners’ rights to religious and cultural dress and hairyles.

A number of issues have arisen in the last few years about how religious and cultural beliefs requiring or encouraging certain observances may conflict with school uniform policies and codes of conduct.

**JEWELLERY: ISPHANDLA, BEADS AND NOSE STUDS**

Many schools have strict rules about what jewellery, accessories and make-up may be worn at schools. Jewellery, like hair and clothes, has an important place in cultural and religious practices.

A news report indicated that a child had a goaishan bracelet called an isphendla – given to him in a religious ritual, to protect him – confiscated by a teacher. The principal suggested that as a compromise, the child wear a long shirt that would cover up the isphendla. The Gauteng Department of Education spoke up in support of the child and the need for school policies to respect learners’ cultures, showing that using the media is one effective strategy for producing change.

Another principal in similar circumstances acted more rashly, cutting off a necklace of red and white beads from a learner’s neck and then instructing him to fetch a broom to sweep them up. In this boy’s culture, the beads are worn to ward off evil and disease, or after the death of a relative. In this case, the boy was wearing these beads to mourn the death of his grandmother.
Leseding Technical School and Others

that the school had discriminated

diversity.' He found that Lerato had a

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our people aware of the importance and

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Lerato, warning that 'religious intolerance

The judge in this case found in favour of

violated the school’s rules on hairstyles.

that Lerato could only attend school if

a seriously held belief. The school said

view that Lerato’s Rastafarianism was not

HAIRSTYLES

After a disciplinary hearing, the

students. He added that he would

suspension, implying that he would

Odwa for seven days. The SGB also

rules on hairstyles, which required

boys' hair to be short and unbraided.

PRACTICE

In 2011, Joe Slovo Engineering

and Jewish men also wear fezzes or

niqabs, hijabs and burkas. Some Muslim

Muslim women, who believe that they

of understanding and respect for the

Bulumko Secondary, displayed a lack

in mind – before deciding to prohibit

Governing Bodies should apply their

Department of Basic Education Guidelines and cannot violate

learners' religious rights. A common

Governing Bodies from ‘head to toe’ in accordance

Department of education supported

could not allow their children to take

told the school to phone her parents.

CASE STUDY

DISCIPLINE

HAIRSTYLES AND

CULTURE,

RELIGION,

HAIRSTYLES

Lerato is a Rastafarian, and has dreadlocks

because of her faith. She is a learner at

Leonding Technical School in Thaboeng,

in Witkom in the Free State. In 2013 she

was in Grade 8, and had been repeatedly

dragged out of class and humiliated by the

principal for her dreadlocks. The principal

even forced her to stay in the school staff

room, causing her to miss all her classes.

Her father contacted Equal Education Law

Centre (EELC), a non-profit organisation

working to protect learners’ rights, who

initiated urgent court proceedings in the

Free State High Court. When EELC

contacted the Free State Department of

Education, the department expressed the

view that Lerato’s Rastafarianism was not

a seriously held belief. The school said

that Lerato could only attend school if

she cut her dreadlocks, because they

violated the school’s rules on hairstyles.

The judge in this case found in favour of

Lerato, warning that ‘religious intolerance

can ruin the whole country’ and that ‘it

would appeal to the respondents and the

government that he educate and make

our people aware of the importance and

advantages of accepting our religious

diversity. He found that Lerato had a

right to basic education, which included

a right to be the form they choose and

that the school had discriminated against

Lerato based on her religious beliefs,

and violated her rights to freedom of

religion, belief, expression and culture.

Raudile and Others v Principal of

Leonding Technical School and Others

HAIRSTYLES: BEARDS

and DREADLOCKS

Schools commonly attempt to regulate

the hairstyles of learners through the

use of their uniform policies, which

should follow the Department of Basic

Education Guidelines and cannot violate

learners’ religious rights. A common

problem is that faced by Rastafarian

learners. Rastafarians are required to

grow their hair and wear it in dreadlocks,

in accordance with their religious

religion. This problem – which was raised

as early as 2001 in schools in the

Western Cape – continues, with media

reporting indicating that a school in

Khayelitsha was preventing Grade

8 Rastafarian learner Azania Stoffel

from attending the school wearing

dreadlocks, on the grounds of its

uniform policy. A teacher at his school,

Bulukmo Secondary, displayed a lack of

understanding and respect for the

Rastafarian religion, claiming that ‘if he

is not smoking ganja (dagga), he is going
to start selling ganja in the school.’

In 2011, Joe Slovo Engineering

High School in Khayelitsha suspended

15-year-old Grade 8 Rastafarian learner

Odwa Siyata from school because his

dreadlocks violated the school rules on

hairstyles, which required boys’ hair to be short and unbraided.

Odwa and his mother had both

told the school that according to that

school to that according to his religion, he was required to

grow his hair and dreadlock it.

After a disciplinary hearing, the

School Governing Body suspended

Odwa for seven days. The SGB also

advised him to cut his hair during the

suspension, implying that he would

not be allowed to return to school if

he did not do so. The Western Cape

Department of Education had known

about Odwa’s situation, but had done

nothing to intervene. After Equal

Education’s intervention, the school

allowed the learner to return to school.

In a similar set of circumstances

concerning a 15-year-old Rastafarian

girl, a judgment in the Western Cape

High Court in 2002 noted that School

 Governing Bodies should apply the

minds to their Codes of Conduct and

Uniform Rules – keeping the

constitutions in mind – before deciding to

prohibit dreadlocks. A failure to do so is

by itself grounds for unconstitutonality.

There are also reported cases of

Muslim boys being asked to shave beards

that they have grown as signs of faith, for

example, to show that they had learned

to recite the whole Koran off by heart.

CLOTHING: HEADSCARVES,

NIQABS AND FEZZES

Another common problem throughout

the world is the customary dress of

Muslim women, who believe that they

must cover their hair with a variety of

different forms of wear that are commonly

described as ‘headscarves’, including

najabs, hijabs and burkas. Some Muslim

and Jewish men also wear fezzes or

yarmulkes respectively on their heads,

as important symbols of their faith.

In 2011, 16-year-old Sakeenah

Dramat and her 13-year-old brother

Blal were kicked out of Kraaifontein

High School. Sakeenah had worn a

headscarf to school, and Blal were told

a fez. Their parents were called into the

school to fetch the children, because it

was ‘against the school’s code of

conduct for the children to wear the

Islamic headgear.’ When Sakeenah was

asked to remove her headscarf, she

told the school to phone her parents.

Their parents noted that they

could not allow their children to take

off their headgear, because it was part

of their Islamic faith. The provincial

department of education supported

Blal and Sakeenah, noting that the DBE’s

Guidelines on School Uniforms allowed

them to wear clothes that are part of

their religious customs and obligations.

Their parents complained to the South

African Human Rights Commission, who

investigated the matter.

In 2014, Rauhah began attending

Grade 8 at Paul Kraaifontein High School

in Semikey in the Free State. She wore a

headscarf and full hijab to school,

in line with her Muslim faith.

Several learners were told that they were not

allowed to wear a hijab to school.

After an unsuccessful meeting with

the school, her father approached the

Dao Islamic Services Centre, who

wrote a letter to the school explaining

that girls were required to cover their

bodies from ‘head to toe’ in accordance

with the Islamic faith. The school

contacted the SGB, who refused to

give the parents permission for their

children to wear hijabs, because they

would be violating the school’s dress

code. Though some learners caved in to

the school’s pressure, Rauhah continued to wear her hijab to school.

In 2014, a private German school

would not permit a Muslim girl to wear

a headscarf to school, indicating that

‘our feeling is, it should be a neutral

ground. It shouldn’t display one culture

for the other, and that’s prohibited.’

In the ‘Crescent Case’ in Germany, there

was a law that required the wearing of a

cross or crucifix on the wall of each

public school classroom. The German

Constitution, however, states that this

law was unconstitutional, because the

display of a cross in a classroom would

send a message to children about the

school’s identification with the Christian

faith. The Court also decided that this

amounted to pressure or coercion on

children to follow the Christian faith.

protest, in solidarity with the Muslim

girls, other children also started wearing

headscarves to school. After discussions

with learners and parents, the school

changed its rules to allow headscarves

and comply with the Constitution.

RELIGIOUS SYMBOLS: CROSSES,

STARS OF DAVID AND SIGNS

Muslim symbols are important to many

people, and the wearing of different

symbols can lead to conflict. Some of

them come in the form of clothing and

jewellery; others in the form of symbolic jewellery, such as crosses worn on necklaces or bracelets by Christians, or the Star of David worn by Jewish people.

Symbols can be put on posters or

attached to walls, doors and doorknobs.

The International Human Rights

Commission on religious expression should not

be underestimated. It is currently

relatively common for schools to have

visibly placed religious symbols.

Although there have been no

court cases about this in South

Africa, in other places in the world

this could result in a reduction of discipline and

result in a reduction of discipline and

result in a reduction of discipline and

result in a reduction of discipline and

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result in a reduction of discipline and
RECEIVED EDITION AT INSTRUCTION

A concerned group of parents from schools around the country formed a non-profit organisation called ‘Organisasie vir Godysende-Onderwys en Demokrasie’ (OGCOD). Raising concerns about the explicit and overwhelmingly Christian ethos and practices at their children’s schools, the parents of OGCOD approached the High Court in 2015, asking the Court to rule that these school’s practices were unlawful violations of the Department of Basic Education’s Policy on Religion in Education and the Constitution.

Although the circumstances at the schools varied, OGCOD complained about inappropriately provided religious instruction, a misunderstanding of the purpose of religious education, inequality in instruction, a misunderstanding of the right to require education to be focused on teaching learners about diverse religions – into the sphere of religious instruction, which the policy explicitly outlaws. They also assist in confirming the appearance that schools favour one religion, especially when this is seen in light of the background of the Christian ethos of the schools, and the regularity of Christian religious observances. These included:

- The hanging of exclusively Christian religious symbols, such as crosses, inside and outside classes
- Exclusively Christian prayers to start the day in assembly and registration classes led by teachers
- Exclusively Christian religious singing with closing prayers
- Exclusively Christian scripture readings.

The Council for the Advancement of the South African Constitution intervened in this case to assist OGCOD in arguing that practices that try to make public schools exclusively Christian violate children’s rights to religious freedom. The Council argued that the National Policy on Religion in Education is in line with the requirements of the Constitution.

The National Policy on Religion in Education says that even private schools ‘are required to achieve the minimum outcomes for Religion Education’, or education about religion, which would require adherence to its principles of voluntariness and equity in some manner.

RELIGIOUS INSTRUCTION

Tanja Wittmann attended a private German school in Cape Town. At this school she was forced to attend compulsory ‘religious instruction’ classes. These classes contained ‘purely Christian material’, in keeping with the explicitly Christian ethos of the school.

Tanja was refused exemption from these classes and Christian prayers. The school noted that though attendance was compulsory, it did not intend to force Christianity on anyone. When Tanja’s parents refused to comply, the school expelled her. Unsatisfied, Tanja’s parents went to the media and approached the High Court. The judge in this case distinguished between religious education and religious observance, and noted importantly that the Constitution has nothing to say about religious education and religious instruction.

The Court found that at private schools, even a ‘confessional’ form of religious instruction aimed at indoctrinating children with specific religious beliefs would be constitutionally permissible. This is because, according to the judge, the Wittmanns had chosen to enrol Tanja in the school with the full knowledge of its religious character and freedom of association entails the right with others to exclude non-conformists. It also includes the right to require those who join the association to conform with its principles and rules.

Because the Constitutional Court has yet to make a decision about the extent of the permissibility of religious instruction in private schools, the position is still not settled. Presently, some religious private schools require compulsory religious instruction and attendance of religious ceremonies, while others allow children who do not wish to participate to be exempted.

As Tanja Wittmann’s case shows, fears expressed by the Constitutional Court about ‘coercion’, ‘peer pressure’ and stigmatisation of learners of minority religions requesting exemptions from religious observances in public schools might apply equally to religious instruction in the private school setting.
The cases discussed above raise many important questions and discussions about the appropriate place of religion in schools in South Africa’s diverse constitutional democracy. Three issues will be emphasised further below to assist parents, teachers, learners, principals and School Governing Body members in the day-to-day affairs of schools and schooling.

### Avoiding the Endorsement of One Religion Over Another: Religious Ethos and Character

Courts in South Africa and around the world have explained clearly that it is not the place of a government to establish an official state religion. This so-called ‘separation of church and state’ does not mean that religion does not have an important role to play in our society, including in schools. The challenge for schools is finding a place for all religions, without favouring any one religion. In this process, national context and direct community context should always be considered. For instance, public schools in a majority-Muslim community must be extremely careful not to promote or endorse Islam. Generally, because the significant majority of South Africans identify as Christian, this threat is almost always relevant with regard to schools’ promotion of Christianity. When public schools declare a Christian religious ethos or religious character publicly, they undoubtedly risk creating the reasonable impression that the state endorses Christianity over other religions. This can be very alienating for learners of other religions.

### The Roles of the National, Provincial and Local Governments and SGBs: ‘Appropriate Public Authorities’

The chapters in this handbook dealing with education rights and governance structures in education deal broadly with the roles of different entities in the educational environment. In the context of religion in education there is a small complication, because when it comes to religious observances, the Constitution specifically gives authority to ‘appropriate public authorities’ to make rules for the governing of these observances. In the OECD case, discussed above, it is hotly contested by the parties what the ‘appropriate public authority’ is that can make these rules on religious observances. The学校的 argued that the national government is not an appropriate public authority to make rules about religious observances in schools, and therefore the National Religion Policy is unconstitutional. They argue that only SGBs can be appropriate public authorities. It would be surprising if the courts accepted this argument.

What is more likely is that the Court will rule that the national government has the power to make a policy on religious observances and create general norms and standards, which the provincial departments of education may be able to further specify through their own policies. Consistent with other cases, the role of SGBs would be to exercise discretion and make rules within these broad standards and the provisions of the Constitution. This would mean that although SGBs can make their own uniform policies, codes of conduct and policies on religion, these policies would have to comply with the standards set by the Constitution and the Department of Basic Education, in policies such as the National Policy on Religion in Education. Courts have made rulings that must be followed by SGBs in the formulation of their policies. The National Policy on Religion in Education must also be followed, unless a court rules it unconstitutional.

### Consultation with Children and Parents

In all cases where problems arise with regard to religion or policies on religion in schools, schools, SGBs and departments of education must try to consult meaningfully with and take seriously the views of children and their parents. This is especially so for children and parents who are not part of the majority religious group in the school, community and region. When making decisions about participation in religious education, observances or instruction in either public or private schools, the following guidance of the Constitutional Court in Pillay is helpful: ‘The more learners feel free to express their religions and cultures in school, the closer we will come to the society envisaged in the Constitution.’
CONCLUSION: WHAT ABOUT THE MAJORITY?

In the context of religion in schools, the Gauteng MEC for Education recently said he was ‘opening schools up to preachers’, because ‘85% of South Africans are Christian’ and ‘as I last understood the Constitution, it was the majority that won’. This is the same argument regularly made by schools and SGBs to deny learners the right to express their culture and religion in their clothing, jewellery and hair. It is also the argument made by the schools in the OGOD case discussed above.

Our government is constitutionally obliged to promote constitutional morality and constitutional values, and when state officials promote religion or religious activity they must do so even-handedly if MECs and other leaders want preachers to enter schools, they should invite Hindu, Muslim, Christian, Jewish, Jehovah’s Witness and Traditionalist preachers, and agnostics and atheists too.

Religious education in public schools that focuses on teaching about religions, in all their shapes and sizes – in the context of human rights, social justice and the importance of diversity – is the best place to start. Though religious observances that are equitable and voluntary also have a place in schools, religious instruction and the declaration of an explicit religious ethos are – rightly – strictly prohibited in public schools.

All of this must be undertaken in law, in policy and in classrooms around the country in the context of South Africa’s Constitutions, which acknowledges and celebrates South Africa’s full diversity of religious and cultural practices, while measuring them continuously and consistently against the constitutional rights of others.