

CHAPTER 11

RELIGION AND CULTURE IN SOUTH AFRICAN SCHOOLS



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This is an update of an earlier chapter by Tim Fish Hodgson

THE CONSTITUTIONAL COURT ON CULTURAL IDENTITY

The Constitutional Court has described cultural identity as:

one of the most important parts of a person's identity precisely because it flows from belonging to a community and not from personal choice or achievement. And belonging involves more than simple association; it includes participation and expression of the community's practices and traditions.

MEC for Education: KwaZulu-Natal and Others v Pillay

INTRODUCTION

All people have culture. Our cultures are all around us all of the time, and are a product of our knowledge, experience, 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.

A person's religion might be part of a communal cultural identity, or exist quite separately from it as a personally held belief. The Constitution recognises this by giving rights to persons belonging to cultural, religious and linguistic communities (in Sections 30 and 31) separately from the freedom of religion, belief and opinion (in Section 15).

FREEDOM OF RELIGION

A person's right to freedom of conscience, religion, thought, belief and opinion is expressed in the strongest terms in Section 15 of the Constitution. Inherent in this right is the constitutional recognition of a multiplicity of different religions, beliefs

and opinions in South Africa, each of which must be equally respected. 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 supreme being or beings, any spiritual existence or any afterlife. The table below from the national census in 2011 sets out the religions that South Africans identified themselves as belonging to.

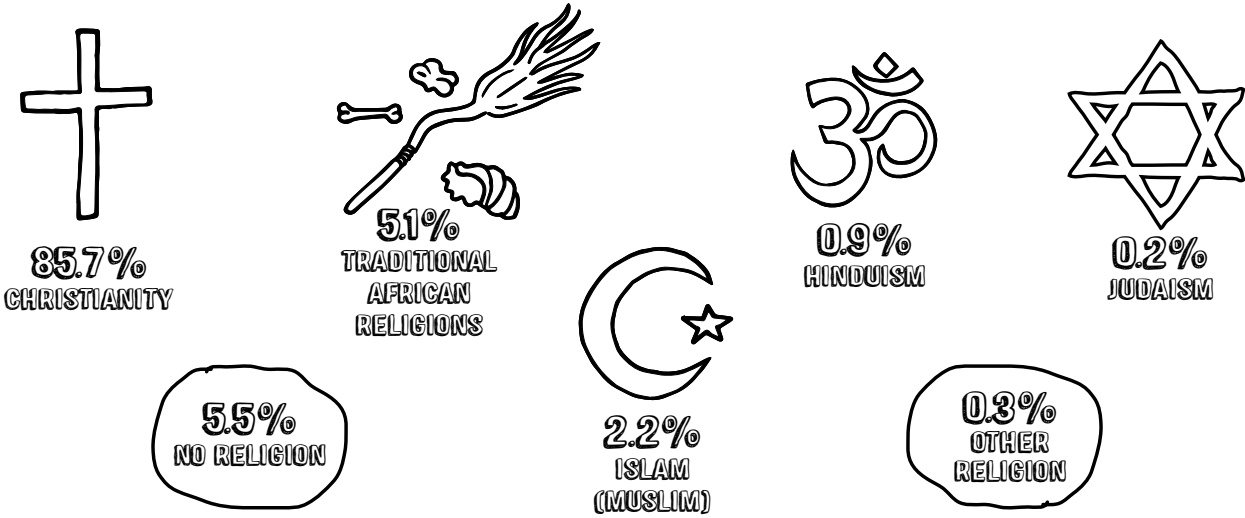


Table 10.1: Religious affiliation in South Africa (%).

RELIGION	SA average	WC	EC	NC	FS	KZN	NW	GP	MP	LP
Christian	85.7	88.4	85.2	98.0	98.0	78.7	94.3	85.2	93.5	77.8
None	5.5	1.6	8.2	0.7	0.4	3.2	2.6	7.7	1.8	14.5
Trad. African*	5.1	1.5	5.9	0.4	0.1	11.1	2.4	3.1	3.7	7.2
Muslim	2.2	7.4	0.4	0.7	0.4	2.6	0.5	2.7	0.8	0.3
Hindu	0.9	0.2	0.2	0	0	3.9	0.1	0.4	0.1	0
Other	0.3	0.5	0.1	0.2	0.1	0.4	0.1	0.4	0.1	0.2
Jewish	0.2	0.3	0	0	0.1	0.1	0	0.5	0	0

*Ancestral, tribal, animistic or other traditional religions

(Source: PEW research & Stats SA)

As the table on the left demonstrates, most people in South Africa self-identify as Christian. Within that category, however, are many different groups of people belonging to different churches or no churches at all, people who are Christian in their culture but not in faith, and people who believe very different things about what Christianity means. The same is true of all religions, even for people who are agnostic (i.e. those who do not believe it is possible to know whether a supreme being or beings exist)

or atheist (i.e. those who do not believe that a supreme being or beings exist). The Constitution tells us that each person's individual beliefs, no matter what they might be, must be respected equally. The equality clause of the Constitution also outlaws unfair discrimination based on religion, conscience, belief or culture. This is important, because – unlike some other countries – South Africa has not identified itself as having a particular 'official' religion or religions. As the preamble to the Constitution

makes clear: "South Africa belongs to all who live in it, united in our diversity."

Section 15 of the Constitution provides:

- (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Religious observances may be conducted at state or state-aided institutions, provided that –
 - (a) those observances follow rules made by the appropriate public authorities;
 - (b) they are conducted on an equitable basis; and
 - (c) attendance at them is free and voluntary.
- (3)(a) This section does not prevent legislation recognising –
 - (i) marriages concluded under any tradition, or system of religious, personal or family law; or
 - (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
- (b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

THE CONSTITUTIONAL COURT ON RELIGIOUS & CULTURAL RIGHTS

Sections 30 and 31 of the Constitution provide communal rights to culture and religion.

30. Language and culture

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

THE CONSTITUTIONAL COURT ON CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES

31. Cultural, religious and linguistic communities

(1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community –

- a. to enjoy their culture, practise their religion and use their language; and
- b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

RELIGIOUS AND CULTURAL RIGHTS

The rights to participate in cultural life, to enjoy one's culture and to practise one's culture or religion together with other people of the same culture or religion are constitutionally protected under Sections 30 and 31 of the Constitution.

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. This protection extends to both voluntary and mandatory practices. Just because a person chooses to participate in a cultural activity, as opposed to being compelled to participate by religious prescripts, their participation isn't any less protected.

Religious and cultural marriages, such as marriages conducted in terms of African Customary Law, Hindu Law, Jewish Law and Islamic Law, are also protected by the Constitution. This means that courts will protect **both** the right to marry and practices in marriage such as lobola and dowry.

However, these rights may not be exercised "in a manner inconsistent

with any other provision of the Bill of Rights". All rights in the Bill of Rights can be limited in certain circumstances, but the internal limitations in sections 30 and 31 mean that other rights in the Bill of Rights, like the right to equality, human dignity, freedom and security of the person and the right to basic education, will usually trump religious and cultural rights. This was first tested in the *Christian Education* case, where the use of corporal punishment as part of the right to freedom of religion was limited to give effect to the rights of children, and the rights to dignity and to freedom and security of the person. We discuss *Christian Education* in more detail later in this chapter.

Most recently, the High Court in Gauteng had to consider a limitation of the right to freedom of religion by



Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

the COVID-19 Lockdown Regulations in *Muhammed Bin Hassim Mohamed v President of the Republic of South Africa*. In this matter, the applicants asked the High Court to declare the regulation of gatherings under the COVID-19 lockdown to be unlawful to the extent that it prevented Muslim people from praying together during Ramadan. They argued that the prohibition on congregational gathering was so essential to their existence that it infringed not only their right to freedom of religion, but their right to life too. In response, the President argued that the COVID-19 Lockdown Regulations protect their right to life, to dignity, to access healthcare, and to an environment that is not harmful to their health or well-being. The High

Court found that the restrictions on congregational gatherings were reasonable and justifiable, and dismissed the application.

FREEDOM OF RELIGION VS. FREEDOM TO PRACTISE RELIGION

Of course, there is significant overlap between the right to believe something and the right to practise that belief, and to practise it with other people who believe the same thing. For some religions, communal practices are key expressions of belief. A decision to shut down all mosques, for example, would directly infringe the rights of cultural and religious communities; but it would also indirectly affect the right to freedom of religion.

IN THE WORDS OF THE CONSTITUTIONAL COURT

The two rights may overlap ... where the discrimination in question flows from an interference with a person's religious or cultural practices.

...

[R]eligious 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 belief or practice to be purely religious or purely cultural, it is equally possible for it to be both religious and cultural.

MEC for Education: KwaZulu-Natal v Pillay

SPARE THE ROD AND SPOIL THE CHILD?

One of the earliest Constitutional Court cases on the right to basic education, *Christian Education South Africa v Minister of Education* 2000 (4) SA 757, required the Court to balance the rights of children in schools with the rights of their parents to insist on the exercise of harmful Christian practices in schools.

The applicant in *Christian Education* was a voluntary association of 196 independent Christian schools who challenged the prohibition on corporal punishment in the South African Schools Act, 1996. The applicants argued that 'corporal correction' was an important part of their Christian faith and that a legislative ban on corporal punishment in schools violated their rights to practise their religion.

The Minister of Education argued that, even at an independent Christian school, and despite the fact that Christianity could be argued to support corporal punishment, allowing teachers to discipline children through corporal punishment violated the learners' right to freedom of security of the person and to dignity.

The Constitutional Court concluded that the Schools Act's ban on corporal punishment was reasonable and justifiable, despite limiting the right to freedom of religion of Christian parents.

More recently, the Constitutional Court confirmed that any use of physical force for corrective educational discipline, including by parents, would not be constitutional. In *Freedom of Religion SA v Minister of Justice and Constitutional Development*, the Court held that 'any form of violence, including reasonable and moderate chastisement' against a child constitutes the crime of assault.

RELIGION AND CULTURE IN SCHOOLS

As described above, the right to practise a religion may not be exercised in a way that interferes with any other right in the Bill of Rights, including the right to education.

Unfair discrimination based on religion or culture is also specifically prohibited by Section 9 of the Constitution (fair discrimination, it should be noted, is constitutionally permitted, but any discrimination on the basis of religion or culture is presumed to be unfair). The combination of these constitutional provisions is very important for schools in South Africa. While the practice of religious and cultural beliefs is protected, it must always be balanced against the rights to human dignity and equality of different genders, races and people with varying capabilities and disabilities. It also may not result in unfair discrimination against other religious or cultural groups.

THE POSITION IN INDEPENDENT SCHOOLS

Section 29(3) of the Constitution provides that:

Everyone has the right to establish and maintain, at their own expense, independent educational institutions that –

- (a) do not discriminate on the basis of race;
- (b) are registered with the state; and
- (c) maintain standards that are not inferior to standards at comparable public educational institutions.

Independent schools have relied on this provision of the Constitution, together with the rights in Sections 30 and 31, to justify adopting a single religious ethos. Many of these schools were established by religious communities (the majority

of which were Christian, but there were also Muslim, Jewish and other communities), and in many cases still provide compulsory religious instruction and require learners to attend and (at least to some degree) to participate in religious services.

In *Ex parte Gauteng Provincial Legislature*, the Constitutional Court considered the right to establish educational institutions based on a special culture, language or religion, which was explicitly provided for in the Interim Constitution of 1993. The Court considered the right to establish independent schools in the context of the 'Bantu education' system, which sought to bring all education of black children within state control in an attempt to provide an inferior education to black children that would perpetuate inequality and indoctrinate learners. One way in which Bantu education attempted to do this was by banning private educational institutions for black learners unless the school agreed to implement the Bantu education system. Prior to the enforcement of Bantu education, the majority of anti-apartheid activist leaders had been educated in independent church schools.

So, the closing of these schools was used as a weapon to stifle activism. This also meant that many anti-apartheid activists had an interest in protecting church schools when they became leaders in South Africa's new democratic government, and when it came to negotiating a new constitution. As stated by Archbishop Emeritus Desmond Tutu: "Many, many, many of us owe the fact of us having been educated at all to the indomitable men and women who blazed the trail to provide education for the Africans when the secular authorities were less than enthusiastic."

As can be seen from the text of Section 29(3) set out above, however, the text of the final Constitution (unlike the Interim Constitution) does not include an explicit allowance for single religion or cultural schools. One interpretation of this exclusion is that the final Constitution does not protect schools that discriminate on the basis of religion by adopting a single religion and requiring learners to participate in religious observances, even if such discrimination would otherwise be fair.

However, section 29(3) also explicitly provides that independent schools may not discriminate on the basis of **race**,

which may support an interpretation that discrimination is permitted on any other ground, including religion. It also appears that the Constitutional Court accepts that independent schools may adopt a single religion. In *Christian Education*, in the context of the final Constitution, the Constitutional Court singled out corporal punishment as an unlawful practice at independent Christian schools, and noted that "save for this one aspect, the appellant's schools are not prevented from maintaining their specific Christian ethos". The earlier Constitutional Court cases in the context of the Interim Constitution also made strong arguments in favour of permitting single-religion independent schools because they were seen as *contributing* to diversity.

There is nothing in national legislation regulating the part that religion can or can't play in independent schools. In some cases, though, these rules are found in provincial legislation. The table on the next two pages sets out which provinces explicitly regulate religion in independent schools. The constitutionality of some of these provincial laws is disputed, but they have not been challenged in court.

Table 10.2: Religious laws within independent schools

PROVINCE	APPLICABLE LAW	WHAT THE LAW SAYS ABOUT RELIGION IN INDEPENDENT SCHOOLS
Eastern Cape	Eastern Cape Schools Education Act 1 of 1999	<ul style="list-style-type: none">Independent schools can be established “based on common culture, language or religion, provided that there shall be no discrimination on the grounds of race” (Section 27).But every learner has the right not to attend religious education classes and religious practices at school, including in independent schools (Section 20).
Gauteng	Gauteng School Education Act 6 of 1995	At independent schools that receive state subsidies : <ul style="list-style-type: none">Learners have the right not to attend religious education classes and religious practices (or observances).Learners may not in any way be discouraged from choosing not to attend religious education classes or religious practices at school by employees of the school.Learners’ rights not to participate may be limited where such limitation is necessary “to preserve the religious character of the independent school concerned” (Section 22).
Limpopo	Northern Province School Education Act 9 of 1995	No employee of any school, including an independent school, may denigrate any religion. At independent schools that receive state subsidies : <ul style="list-style-type: none">Learners have the right not to attend religious education classes and religious practices (or observances)Learners may not in any way be discouraged from choosing not to attend religious education classes or religious practices at school by employees of the school (s. 20).
Mpumalanga	School Education Act (Mpumalanga) 8 of 1995	At independent schools that receive state subsidies : <ul style="list-style-type: none">Learners have the right not to attend religious education classes and religious practices (or observances)Learners may not in any way be discouraged from choosing not to attend religious education classes or religious practices at school by employees of the schoolLearners’ rights not to participate may be limited ‘where such limitation is necessary to preserve the religious character of the independent school concerned’ (s. 20).
Northern Cape	Northern Cape School Education Act 6 of 1996	At independent schools that receive state subsidies: <ul style="list-style-type: none">Learners have the right not to attend religious education classes and religious practices (or observances)Learners may not in any way be discouraged from choosing not to attend religious education classes or religious practices at school by employees of the school.Learners’ rights not to participate may be limited ‘where such limitation is necessary to preserve the religious character of the independent school concerned’ (s. 20).



PROVINCE	APPLICABLE LAW	WHAT THE LAW SAYS ABOUT RELIGION IN INDEPENDENT SCHOOLS
North West	North-West School Education Act 3 of 1998 Regulations Relating to the Registration and Withdrawal of Registration and Subsidies to Independent Schools in Terms of the South African Schools Act 84 of 1996	All learners, including those attending independent schools: <ul style="list-style-type: none">Have the right to learn, practice and attend to the religion of his or her choice without undue influence from the school or anyone in itShall not be unduly influenced to participate in any religion education classes or religious practices of the school (s. 10). In respect of applications for registration of independent schools: <ul style="list-style-type: none">They must be accompanied by a constitution for the school which includes a religion policy (reg. 3)They will be decided by the MEC taking into account whether the school meets the educational and cultural needs of a cultural or religious group, which needs are not adequately met by public schools (reg. 32).

As demonstrated in the table above, the extent to which the provincial education department may regulate independent schools sometimes depends on whether the department gives the schools subsidies. The rights of independent schools to enforce their rules and culture, and conversely, their obligations to respect and protect the rights of learners and the best interests of the children at their schools, is discussed in further detail in Chapter 22.

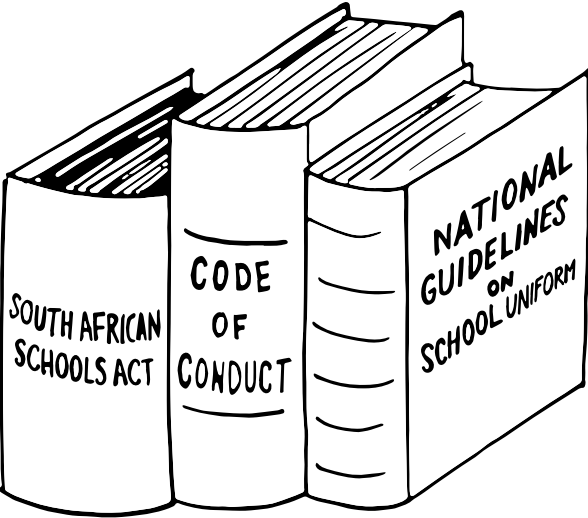
RELIGION IN SOUTH AFRICAN PUBLIC SCHOOLS

Unlike constitutions in other countries around the world, the South African Constitution 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 observance must be conducted:

- In accordance with the rules of ‘appropriate public authorities’;
- On an ‘equitable basis’; and
- In manner that ensures that attendance is ‘free and voluntary’.

The legislative and policy framework provides more insight to the meaning of this constitutional provision in the context of public schools.



LEGISLATIVE AND POLICY FRAMEWORK

SOUTH AFRICAN SCHOOLS ACT

The South African Schools Act protects ‘freedom of conscience and religion at public schools’ and provides in Section 7 that religious observances may be conducted at public schools. The Act 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 requirements of provincial laws and the Constitution.

PROVINCIAL LEGISLATION

Basic education is one of the key areas of ‘concurrent legislative competence’ between the national

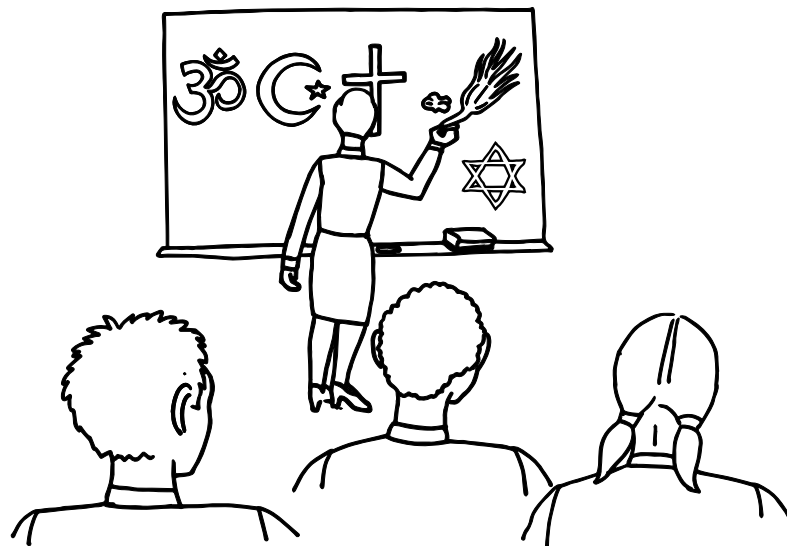
and provincial governments, as set out in schedule 4 to the Constitution. This means that both the national and provincial legislatures regulate basic education, and that within the national framework, each province can be regulated differently. When it comes to religion in public schools, each provincial statute has its own provisions.

Table 10.3: Religious laws within public schools

PROVINCE	APPLICABLE LAW	WHAT THE LAW SAYS ABOUT RELIGION IN PUBLIC SCHOOLS
Eastern Cape	Eastern Cape Schools Education Act 1 of 1999	<ul style="list-style-type: none">No person may be denied access or admission to any school on the grounds of religion (Section 45). <p>Religious policy:</p> <ul style="list-style-type: none">SGBs to determine the religious policies of schools after consultation with the provincial department, and subject to the approval of the MEC, considering the country’s diverse cultural and religious traditions and respecting freedom of conscience and religion (Section 19)The SGB may determine ‘the religious and general character’ of the school in consultation with the parent community (Section 49)The MEC may direct the SGB to reformulate the policy (Section 19). <p>Prohibited conduct:</p> <ul style="list-style-type: none">Indoctrinating learnersDenigrating any religionForcing a learner to attend religious education classes or religious practices (Section 20).
Free State	Free State School Education Act 2 of 2000	<ul style="list-style-type: none">Freedom of conscience and religion shall be respected in all public schoolsReligious observances are allowed if done in terms of rules made by the SGB if they are conducted on an equitable basis and attendance is free and voluntary (Section 18).
Gauteng	Gauteng School Education Act 6 of 1995	<p>Religious policy:</p> <ul style="list-style-type: none">SGBs to determine in consultation with the provincial department, considering the country’s diverse cultural and religious traditions and respecting freedom of conscience and religionThe policy to include matters relating to the amount, form and content of religious instruction and religious practices at the schoolSGBs to send a copy of the policy to the MEC within 90 days of the SGB taking officeMEC may direct the SGB to reformulate the policy (Section 21A) <p>Prohibited conduct:</p> <ul style="list-style-type: none">Indoctrinating learnersDenigrating any religionForcing a learner to attend religious education classes or religious practices; orDiscouraging a learner from choosing not to attend religious education classes or practices (Section 22).
KwaZulu-Natal	KwaZulu-Natal School Education Act 3 of 1996	<ul style="list-style-type: none">Provincial education policy needs to be determined in a way that religious observance by learners and staff is free and voluntary (Section 4)The MEC may, after consulting SGBs, determine the medium of instruction and the religious character of every public school (Section 62).

PROVINCE	APPLICABLE LAW	WHAT THE LAW SAYS ABOUT RELIGION IN PUBLIC SCHOOLS
Limpopo	Northern Province School Education Act 9 of 1995	<ul style="list-style-type: none"> Admission for public schools shall not discriminate on grounds of, among other things, religion, conscience, belief or culture (Section 8) Different syllabi, conditions for admission, contents of educational and training programmes, school calendars ... school religious holidays ... may be determined in different schools (Section 5). <p>Religious policy:</p> <ul style="list-style-type: none"> To be determined in consultation with the provincial department, considering the country's diverse cultural and religious traditions and respecting freedom of conscience and religion (Section 19) Includes matter relating to the amount, form and content of religious instruction classes offered at the school; and the religious practices which are conducted at the school Must be reformulated by an SGB if so directed by the MEC. <p>Prohibited conduct:</p> <ul style="list-style-type: none"> Indoctrinating learners Denigrating any religion Forcing a learner to attend religious education classes or religious practices; or Discouraging a learner from choosing not to attend religious education classes or practices (Section 19).
Mpumalanga	School Education Act (Mpumalanga) 8 of 1995 Regulations Relating to Governing Bodies for Ordinary Public Schools in Terms of the School Education (Mpumalanga) Act No. 8 of 1995	<ul style="list-style-type: none"> No person may be denied access or admission to a school on the grounds of religion, conscience, belief or culture (Section 9). Different syllabi, conditions for admission, contents of educational and training programmes, school calendars, school religious holidays etc. may be determined in different schools (Section 5). <p>Religious policy:</p> <ul style="list-style-type: none"> To be developed considering the country's diverse cultural and religious traditions and respecting freedom of conscience and religion (Section 18) Includes matter relating to the amount, form and content of religious instruction classes offered at the school; and the religious practices which are conducted at the school Must be reformulated by an SGB if so directed by the MEC Rules according to which religious observances may be conducted at the school must be issued by an SGB (Regulation 47). <p>Prohibited conduct:</p> <ul style="list-style-type: none"> Indoctrinating learners Denigrating any religion Forcing a learner to attend religious education classes or religious practices; or Discouraging a learner from choosing not to attend religious education classes or practices (Section 19). No learner or educator shall be unfairly discriminated against by the provincial department or a school on the grounds of, among other things, belief, conscience or culture (Regulation 3). Every learner and educator has the right to freedom of conscience, religion, thought, belief, opinion, speech and expression, and the education process shall promote a culture of tolerance (Regulation 3).

PROVINCE	APPLICABLE LAW	WHAT THE LAW SAYS ABOUT RELIGION IN PUBLIC SCHOOLS
Northern Cape	Northern Cape School Education Act 6 of 1996	<ul style="list-style-type: none"> No person may be denied access or admission to a school on the grounds of religion, conscience, belief or culture. Different syllabi, conditions for admission, contents of educational and training programmes, school calendars ... school religious holidays ... may be determined in different schools (Section 5(g)). <p>Religious policy:</p> <ul style="list-style-type: none"> To be determined in consultation with the provincial department, considering the country's diverse cultural and religious traditions and respecting freedom of conscience and religion Includes matter relating to the amount, form and content of religious instruction classes offered at the school; and the religious practices which are conducted at the school; Must be reformulated by an SGB if so directed by the MEC (Section 19) Observances shall be conducted on an equitable basis and attendance at them by learners and members of staff shall be free and voluntary. <p>Prohibited conduct:</p> <ul style="list-style-type: none"> Indoctrinating learners Denigrating any religion Forcing a learner to attend religious education classes or religious practices; or Discouraging a learner from choosing not to attend religious education classes or practices (Section 20).
North West	North West School Education Act 3 of 1998	<ul style="list-style-type: none"> An admission policy of a public school shall not unfairly discriminate in any way, including on grounds of religion (Section 2). <p>Religious policy:</p> <ul style="list-style-type: none"> To be determined by the SGB in consultation with the provincial department, and subject to the approval of the MEC, considering respect for the country's diverse cultural and religious traditions and respecting freedom of conscience, religion, thought, belief and opinion Includes matters relating to the amount, form and content of religious instruction classes offered at the school; the religious practices which are conducted at the school and the policy as defined by the South African Schools Act Observances may be conducted on an equitable basis provided that attendance is free and voluntary Must be reformulated by an SGB if so directed by the MEC (Section 9). <p>Prohibited conduct:</p> <ul style="list-style-type: none"> Attempting to indoctrinate Unduly influencing participation in religious education classes or religious practices (Section 10). All learners have the right to learn, practise and attend to the religion of their choice without undue influence from the school or anyone in it.
Western Cape	Western Cape Provincial School Education Act 12 of 1997	Religious observances to be determined by the SGB (Section 44).



In most provinces, therefore, SGBs are required to adopt religion policies for schools in consultation with the relevant provincial department. This is also provided in the national Schools Act, which requires further consultation with learners, parents and educators. The policies should then be approved by the MEC for Education in each province. In assessing a school's religion policy, the MEC should consider the National Policy on Religion in Education, 2003.

THE NATIONAL POLICY ON RELIGION IN EDUCATION, 2003

The National Policy on Religion in Education ('the Policy') distinguishes between three different ways in which religion could be relevant in schools: Religious Education, Religious Instruction and Religious Observances.

The basic differences between these three different concepts can be explained as follows:

- **Religious education** is education about different religions in South Africa and the rest of the world, aimed at creating understanding about diverse religions, strengthening tolerance

for these religions and promoting social justice and human rights.

- **Religious instruction** is teaching someone a particular religion with the purpose of getting that person to agree with, believe in or follow that particular religion.
- **Religious observances** include things such as prayer, singing, ceremonies, dress, dietary requirements, and perhaps also the placement of symbols on walls and doors.

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 includes 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 independent schools may adopt an exclusive religious ethos or character.

RELIGIOUS EDUCATION

Knowledge of different religions is taught to all children in all schools in the compulsory subject Life Orientation.

RELIGIOUS INSTRUCTION

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

The only exception to this is that schools are allowed to offer their facilities to religious organisations for use 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 to 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"; but it 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 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.

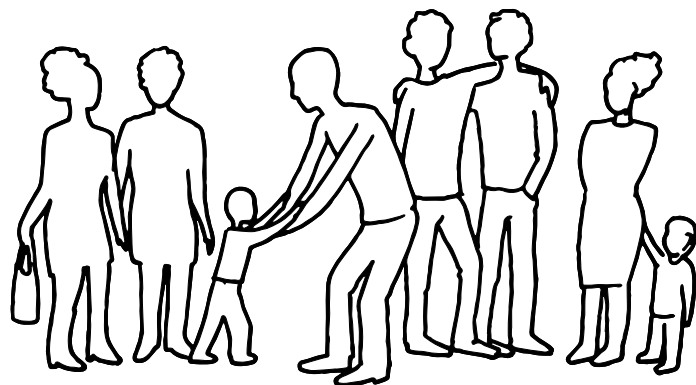
Free and voluntary

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 that they are not 'normal' if they are in a religious minority. The Policy permits

IN THE WORDS OF THE CONSTITUTIONAL COURT:

Compulsory attendance at school prayers 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 Negal, S v Solberg



schools to develop “[o]ther forms of equitable treatment ... which are consistent with this policy and applicable legislation” and states that “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’”.

It is clear from the Policy, however, 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 ‘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 deity or stem from any specific religion
- A period of silence in which children could pray quietly, meditate or simply think.

On an equitable basis

The Policy provides that: “Since the state is not a religious organisation, theological body, or inter-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.”

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 probably also does not mean that each school must rotate between the wide set of possible religious observances in a manner that allows an equal number of observances per year or 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 regularly to include religious observances that are not that of the dominant religion in the school.

Given the context of the Policy, these could include other religions prevalent in South Africa and elsewhere in the world, as well as other religions observed by children belonging to minority religious communities at the school.

It may also include, for example, following a variety of different religious observances from different sects or branches of the same religion, such as reform Judaism and orthodox Judaism, Sufi, Sunni or Shia Islam and Catholic, Protestant, Anglican and charismatic denominations of Christianity. The policy also specifically requires the accommodation and canvassing of non-religious moral and ethical views. These could include different ideas from moral philosophies from around the world, and different perspectives on morality, that stem from constitutional values such as human dignity and the achievement of equality.

Schools should pay consistent attention to children who form part of religious minorities and ensure that religious observances do not alienate them or make them the subject of bullying or teasing.

Schools can be guided by children of non-dominant religions and their parents on how best their beliefs, observances and practices could be equitably accommodated by schools.

CASE STUDY

THE ‘OGOD’ CASE

Neither the Constitution nor the Schools Act confers on a public school or SGB the right to adopt the ethos of one single religion to the exclusion of others. *Organisasie vir Godsdienste-Onderrig v Laerskool Randhart* at para 91

In 2014, an association of parents and teachers from public schools called the *Organisasie vir Godsdienste-Onderrig* (or OGO) brought an application against six schools and the national Department of Basic Education, among other respondents, in response to coercive religious practices at public schools. OGO’s primary complaint was that these public schools characterised themselves as single-religion Christian schools. While the schools technically allowed learners to opt out of prayers and other practices, OGO argued that this was not sufficient to fall within the constitutional and statutory requirements governing religious observances.

Examples of these practices included:

- Learners being required to take compulsory classes in Christian Bible study at two of the schools
- Hanging of exclusively Christian religious symbols, such as crosses, inside and outside of classes
- Exclusively Christian prayers to

start the day in assembly and registration classes led by teachers

- Exclusively Christian religious singing with closing prayers, and
- Exclusively Christian scripture readings.

The High Court found that it is unlawful for a public school to hold itself out as endorsing one particular religion to the exclusion of others, and that this would be true even if the feeder community of the school were all of that same religion. In this respect, the High Court stated: “[...] feeder communities continually evolve, and must be encouraged to evolve, given an unnatural residential demographic configuration that has resulted from historic laws that were racially skewed.”

In coming to this conclusion, the Court rejected the schools’ argument that they had freedom of religion as envisaged in Section 15 of the Constitution. The Court declared that it is in conflict with the Schools Act and unlawful for a public school to promote, or allow its staff to promote, that it adheres to only one or predominantly one religion to the exclusion of others, and to hold out that it promotes the interests of any one religion in favour of others.

**S V LAWRENCE,
S V NEGAL,
S V SOLBERG**

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 preference of one religion over others

RELIGIOUS OBSERVANCES AND SCHOOL UNIFORM

A school's decision not to allow any religious observances in school would also offend the Constitution if it limited a learner's right to freedom of religion in a way that was not acceptable in an open and democratic society based on human dignity, equality and freedom.

This can become quite complicated, however, especially when school rules about what children may wear and their grooming conflict with religious or cultural rules about how people should dress or look. SGBs are required to adopt codes of conduct for learners in schools, and most of these codes of conduct contain a like-minded group of people's ideas about what is neat, respectable and polite. As we know, this can be thrown into disarray when people from diverse backgrounds become governed by rules that sometimes do not make sense to them. To assist with this, SGBs are enjoined to rely on the Code of Conduct Guidelines when drafting and adopting their schools' codes of conduct.

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". 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 follow these guidelines in drafting a code of conduct. But even where this has not happened, according to the High Court in *A v Governing Body, The Settlers High School*, the guidelines should still be used in interpreting and applying a code of conduct. The High Court in *A* emphasised that the guidelines should be interpreted generously and contextually, and not in a "rigid manner". The details of this case are discussed in the section on hairstyles below.

Like the Schools Act, these guidelines

also give schools and governing bodies guidance on offences that may lead to suspension and expulsion. The conditions for suspension outlined are broad; including, for example, "immoral behaviour or profanity", "disrespect", "objectional 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 which 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 give 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.

The Religion in Education Policy describes 'dress' as a religious observance and the 'National Guidelines on School Uniform' protect learners' rights to religious and cultural dress and hairstyles.

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: ISIPHANDLA, BEADS AND NOSE STUDS

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

For example, the practices of some African cultures include wearing a goatskin bracelet (or *isiphandla*) to connect the person wearing *isiphandla* and their ancestors. *Isiphandla* is used for many cultural ceremonies, some of which include children. It may not be removed and must be worn until it falls off. However, wearing *isiphandla* often conflicts with both public and independent school rules about what jewellery learners may wear.

In 2020, a nine-year-old boy at an independent Christian school was told that he may not wear *isiphandla* because it contravened the school rules and contradicted the school's Christian ethos. The director of independent schools for the Gauteng Department of Education quickly intervened

THE NATIONAL GUIDELINES ON SCHOOL UNIFORM

Religious and Cultural Diversity

(1) A school uniform policy or dress code should take into account religious and cultural diversity within the community served by the school. Measures should be included to accommodate learners whose religious beliefs are compromised by a uniform requirement.

(2) If wearing particular attire, such as yarmulkes and headscarves, is part of the religious practice of learners or an obligation, schools should not, in terms of the Constitution, prohibit the wearing of such items. Male learners requesting to keep a beard as part of a religious practice may be required by the school to produce a letter from their religious teacher or organisation substantiating the validity of the request. The same substantiation is applicable to those who wish to wear particular attire.

CASE STUDY

JEWELLERY

Sunali, a girl of South Indian descent, attended Durban Girls High School. Sunali wore a small gold nose stud to school in compliance with a “time-honoured family tradition” that is also an almost-5 000-year-old South Indian tradition. In Sunali’s family the tradition involves a nose-piercing and stud insertion when a girl reaches physical maturity, accompanied by a prayer. This stud would be replaced with a diamond stud by her grandmother when she turned 16. 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 disallow her from wearing the nose stud, which 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 both the code itself and the school’s failure to provide an exemption to Sunali to violate Sunali’s rights to freedom of religion, culture, freedom of expression and equality.

MEC for Education: KwaZulu-Natal and Others v Pillay

after a news article was published about the matter, and ensured that the learner was able to continue at the school while wearing *isiphandla*. Nevertheless, the learner’s parents have taken the matter to the Equality Court, asking for an apology from the school, R300 000 in damages for infringement of their child’s dignity, and R10 000 to be donated to a charity.

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 it 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.

HAIRSTYLES: BEARDS AND DREADLOCKS

Schools often attempt to regulate the hairstyles of learners through the use of their uniform policies. These rules can conflict directly with the religion of some learners, such as Rastafarians, who are required to grow their hair and wear it in dreadlocks in accordance with their religion, or amaXhosa who

choose to grow dreadlocks in order to obey their ancestors (see, for example, *Department of Correctional Services v Popcru and Others*).

In *A v Governing Body, Settlers High School*, the Rastafarian learner ‘A’ was found guilty of serious misconduct and suspended from her school for wearing dreadlocks and a traditional Rastafarian cap that she had knitted to comply with the school’s colours. Although she and her mother had sought permission from the school on several occasions to grow her dreadlocks and wear her headgear, the school had refused to give such permission. Even though she had returned to school following her suspension, A applied to the Cape Town High Court to have the disciplinary findings set aside, as these would be a permanent stain on her record. The High Court found that the school had no basis on which to find her guilty of serious misconduct and set aside the finding. However, similar instances of schools punishing learners for wearing dreadlocks are still reported across the country.

There are also reported cases of Muslim boys being asked shave beards that they had grown as signs of faith, for example 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 what are commonly described as ‘headscarves’, including *niqabs*, *hijabs* and *burkas*. Also, some Muslim and Jewish men wear *fezzes* and *yarmulkes* respectively on their heads, as important symbols of their faith.

In 2013, 16-year-old Sakeenah Dramat and her 13-year-old brother Bilaal were expelled from Kraaifontein High School. Sakeenah wore a headscarf to school and Bilaal wore a fez. Their parents were called into the school to fetch their 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 Bilaal 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.

RELIGIOUS SYMBOLS: CROSSES, STARS OF DAVID AND SIGNS

For people of many different religions, religious symbols are often important. Some of them come in the form of clothing and jewellery, others in the form of symbolic jewellery, such as the crosses worn on necklaces or bracelets by Christians, or the Star of David worn by Jewish people.

Symbols can be put on posters and attached to walls, doors and doorposts.

Although there have been no court cases about this in South Africa, in other places in the world where such matters have reached the Court, judges have decided that placing religious symbols in classrooms and halls – especially if they are only of one particular religion – violates the rights of other learners, for two reasons.

First, the placement of religious symbols conveys a message that the school promotes or endorses that particular religion. Second, the placement of symbols of one religion – particularly if it is a dominant religion – makes learners of minority religious views feel ‘different’, ‘other’ and stigmatised.

CASE STUDY

HAIRSTYLES

Lerato is a Rastafarian and has dreadlocks because of her faith. In 2013 she was in grade 8 and had been repeatedly dragged out of class at her technical school in the Free State 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 off 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 “I would appeal to the respondents and the powers that be, to 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 in class. He also found that the school had discriminated against Lerato based on her religion and violated her rights to freedom of religion, belief, expression and culture.

Radebe and Others v Principal of Leseding Technical School and Others

CONCLUSION

As is clear from the case studies discussed in this chapter, allowing the practice of religion and culture in schools requires a delicate balance between the rights of everyone to freedom of religion and cultural rights, and the rights to equality, dignity and freedom and security of the person.

Public schools in particular must balance allowing individuals to practise their religion with ensuring that such practices do not infringe on other learners' rights *not* to practise them. Since the OGOD case, we know that this means that public schools cannot put themselves forward as belonging to only one religion, even if all the children enrolled at the school at

that particular time happen to belong to that religion. We also know from the cases about school uniforms, jewellery and hair policies that courts will protect the rights of those belonging to minority religions to practise their religions at schools, within the boundaries of the Bill of Rights.

Wherever problems arise with regard to religion or policies on

religion in schools, the schools, governing bodies and departments of education must meaningfully consult 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(s) 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."

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