

Legal and Civic Contestations over Tolerance in South Africa's National Policy on Religion and Education

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Abstract

It has been 10 years since the late Minister of Education, Kader Asmal introduced the National Policy on Religion and Education. Crafted to provide a framework for the regulation for teaching and learning about religion in public education, the policy has been widely criticized and condemned by groups who fear the erosion of religion education in public schools. Despite the sustained contestation and challenges to the policy, many believe that the policy created a space for a non-sectarian and non-confessional treatment of religion in the public domain. However the National Policy on Religion and Education's ambivalences about value of religion, and the limits of enforcement has left it vulnerable. In this article I propose to argue that it is precisely through its vulnerability we might find its most profound contribution to religion education in South Africa. I want to suggest that through a range of legal challenges to the policy framework and its proposed implementation of religion education in public schools, whether about a nose-stud or head covering, a goatskin bracelet, about meditation or the limits and liberties of School Governing Bodies, the policy has sparked vibrant and necessary public debates concerned with the effective teaching and learning about religion in public schools.

Keywords: Religion education, law, policy, religious freedom, tolerance

Since the late-Apartheid period the public school classroom in Southern Africa has been a site of contestation over the role and place of religion. The

advent of democracy marked not only the introduction of more equitable and inclusive social practices, but also significantly saw the removal of Apartheid practices and policies that privileged one worldview over another. These social and political changes marked a break with not only segregationist public education but also extended itself to more inclusive ways of teaching and learning about religion.

The 1976 student protests were punctuated with the assertion 'equal education for all' and this ideal was always underscored by the conviction that the classroom is a site of struggle (Kraak 1998: 2). Similarly, while in the post-Apartheid South Africa the obvious institutional obstacles to an equitable education have been removed, the nature of the classroom has remained much the same - a site of struggle - where many issues of difference, inclusion and identity have been thought out and worked out. Religion education has been one such contested subject. Parents, pupils and principals have variously been embroiled in legal and religious challenges anticipated by the *National Policy on Religion and Education*. These challenges have included expulsions, suspensions and withdrawals of learners from schools for issues ranging from wearing headscarves, or nose studs, religious assemblies to dreadlocks or a goatskin bracelet, to name a few. These have often ended up in court where either parents or the School Governing Body (SGB) sought an intervention from the court.

In this article I will consider the tensions between the policy and the practice of religion in public schools, and in particular I will consider recent challenges that have been posed by, and in opposition to, the *National Policy on Religion and Education*. To do this I will consider the various case law and recent public debates pertaining to religion in public education. I will illustrate how opponents and critics of the current multi-religion approach are using some of the ambivalence in the legislation to justify their reluctance or refusal to implement the above policy. Despite the opposition, it appears that challenges by various faith communities for broader inclusion indicate the success of the policy insofar as it reflects the emergence of a school culture where all religious and non-religious traditions are considered with equal regard. I will argue that increasingly diverse debates on the policy will ultimately validate the current policy as both constitutional and in the best interests of learners regardless of the religious, moral or cultural community that they are part of.

The contestation between supporters and critics of the *National Policy on Religion and Education* concerning its implementation, monitoring and enforcement seems quite significantly to be an issue of social contract. Enlightenment philosopher Jean-Jacques Rousseau asserted that legislation find its meaning and validity through civic participation. He argued that executive administration is flawed when it regarded itself as superior to those they manage and that it would result in inevitable conflicts of agendas and interests. In his book *The Social Contract* originally published in 1762, Rousseau explains that voluntary and willed consent is the foundation for people's obligation to obey legislation. He goes on to explain that

the people being subject to the laws, ought to be their author: the conditions of the society ought to be regulated solely by those who come together to form it (Rousseau 2005: 41).

Accordingly those entrusted with the executive power to uphold the *National Policy on Religion and Education* are facing challenges on based on the conviction that this policy does not represent civic interest, and supposedly fails, does not reflect the will of many people.

South African debates on religion education has varied from militant *denialist* assertions that Christian education must form the foundation of moral and civic education, to *secularist* demands that religion should be removed from the national curriculum for public schools altogether. Though some feared the retreat of religion from the public arena, what we have instead witnessed is the increased visibility of religion, through provisions in Section 15(1) of the Constitution which recognizes the 'right to freedom of conscience, religion, thought, belief and opinion'. Where previously, Christianity was privileged over other religions, the new multi-religion approach has for example made possible the mainstreaming of African indigenous traditions into learning and teaching about religion (Kwenda 1997) as well as a wider recognition and more equitable celebration of diversity in religious observances at public schools.

As a response to the tension raised by the national policy proponents and critics of the new policy have variously sought to utilize legislation as a way to promote their respective religious or non-religious interests. For example, there are those who fear that the new policy on religion and

education, together with the South African Schools Acts, and the Prevention of Discrimination and Promotion of Equality Act, amount to too much interference by the state in religious matters. Accordingly a coalition of interfaith leaders came together in 2008 to draft and promote the *South African Charter of Religious Rights and Freedoms*. Drafted by representatives from twenty-one Christian denominations, African Independent churches, as well as from Muslims and Jewish religious communities, and SA Tamil Federation, this Charter seeks to roll back what they perceive to be the erosion of religious rights under the then political administration. I mention the Charter because, despite the religious diversity of its promoters, a close reading of the Charter reveals a conservative fault line.

The Charter contains fifteen clauses that deal with the issue of religion and education, most of which stand in direct opposition to the current policy on religion education. Thus, like those who seek to use minority rights legislation to promote the practice of single faith schools, the coalition also asserted in its charter that:

... no person may be subjected to any form of force or indoctrination that may change or compromise their religion, belief or worldview (s 2.5).

... every person has the right to conduct single-faith religious observances, expressions and activities in state or state-aided institutions ... (s 4).

What this illustrates is that the role of religion in public education remains hotly contested despite the *National Policy on Religion and Education* being in effect for a decade. Interestingly, the 2010 Pew Research Forum on Religion and Public Life released a report, *Tolerance and Tension: Islam and Christianity in Sub-Saharan Africa*, which suggested that despite widespread adherence to religion, South Africa continue to suffer from a high rate of religious illiteracy. According to the report 76% of Christians in South African say that they don't know very much about Islam, and yet this does not preclude them from drawing conclusions about other religions. For example, 63% of Christians say that despite not knowing anything about

Islam, they believe Islam and Christianity to be different (Lugo 2010). This religious illiteracy together with the report finding that 66% of Christians in South Africa would like the Constitution to be replaced by the bible as the official law of the land (Lugo 2010), not only indicate that learning about religion in public schools are critical but also that it will continue to be highly contested terrain for some time to come.

Central to the South African Constitution is the principle for equality, and as such it allows for the celebration and recognition of all religions in South Africa, and the simultaneous protection of all citizens from religious coercion or discrimination. However, this provision essentially addresses the roles and responsibility of the state insofar as it concerns religion, and for our purposes religion education. South African law seeks to maintain a balance between promotion *of*, and protection *from* religion (Currie & De Waal 2005: 338). This approach to religion in the public domain is particularly evident from the state's simultaneous recognition of, and the limitation of the rights of Traditional Authorities in the post-apartheid era. The post Apartheid state raised the profile of indigenous belief and practices by granting it renewed and legitimate status. By the process of removing it from the charismatic realm and institutionalizing it with the establishment of the House of Traditional Leaders the state succeeded in limiting the political force of traditional authorities (Settler 2009).

But the state has not always been successful in containing the organic and charismatic forces of religion, because while it contained the volatile potential of African traditional religion through its *recognition* of traditional leadership practices and customary laws, it has not been so successful in allaying the anxieties of those linguistic, religious and cultural communities, who believe that the state's integrationist policies threatens to erode their religious and cultural values. For example, Afrikaners groups who feared the wave of political changes that came about after the end of Apartheid invoked Section 185 and 186 of the 1996 Constitution on the grounds that as a minority group they should be entitled to the protection of their language, religion and culture practices. As such, they argued that their religion, cultural and religious values needed to be given special consideration. For example, Constand Viljoen of the Freedom Front, as early as the late 1990s invoked minority rights legislation to argue for the need to make provision for single-medium schools for minorities who wanted them.

He went on to suggest that such schools would be staffed by teachers of the same cultural (religious) group, and that the school governing body (SGB) should be run by parents of the same religious, cultural and linguistic background (Viljoen 1997). Likewise, in the case of *Christian Education of South Africa vs Minister of Education* (2000), this association of 196 independent Christian schools felt that the South African Schools Act's prohibition of corporal punishment was a violation of their rights to freedom of religion. In his finding, Judge Albie Sachs argued that the Schools Act's prohibition did not interfere with the Christian character of the school and that parents were not being asked to choose between following the law and following their conscience, and as such the court felt that parents could not instruct teachers to inflict corporal punishment in the name of their religious conviction.

However, UN Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion and Belief a child may have access to education and to matters of religion and belief but it declared that a child may not be compelled to receive teaching in religion and belief which goes against the wishes of the parents or guardians (UN GA Res. 36/55). In a similar tone van der Vyver reminds us that the Constitutional court in *Christian Education South Africa vs Minister of Education* did recognise that

parents have a general interest in living their lives in a community setting according to their religious beliefs, and a more specific interest in directing the education of their children (Sachs 2000).

Despite the fact that it is widely recognized that in South Africa Christians constitute the majority and Muslims are a meaningful minority (Niehaus 2002: 121), in a 2010 blog discussion, on Pierre Vos' *Constitutionally Speaking* when he discussed 'do we have freedom of conscience and religion at public schools?' one commentator dismissively asserted that Muslims represented a small minority of the population, while another insisted that the new religion education policy created a situation 'where sensitive minorities land up dictating to the majority what they may or may not do'. However, the late Minister of Education, Kader Asmal argued that 'despite the wish of a majority of parents for different brands of

religious education' such a model would not likely be put in place because religious instruction or indoctrination has no place in public schools and should be addressed at home by parents or by religious bodies (Dickson & Von Vollenhoven 2002: 15). Nonetheless, Christian leaders, in a statement entitled 'Freedom of Religion in Education' and signed by fifteen of the country's leading Christian denominations criticized the policy on religion and education by arguing that, (1) a multi-religion approach discriminated against their belief insofar as learners will be expected to 'uphold values and beliefs that are in conflict' with their faith, for example the suggestion that all truth claims are equally valid; (2) that a multi-religion approach is not free of dogma because it promotes a state-driven secularism, a position they do not regard as not neutral; (3) that the policy is unconstitutional in that it sought to override and erode the rights of school governing bodies to decide a school's position on religious observances (Coertzen *et al.* 2009: 2).

While they argued that religion education can make 'a key contribution to the moral and spiritual maturity of a person' their primary objection was to 'a pure comparative multi-religious approach as the only option' for public schools. Although Christians were not the only ones to raise these objections to the policy, they remained the most vocal of all the faith communities. David Chidester (2006: 63) suggested that the anxieties of faith communities about the policy on religion education rest in the failure or refusal to recognize 'the difference between religious, theological or confessional interest, and the educational objectives of religion education'. Some scholars have argued that religion can act as a development asset but they distinguish between religious involvement in education and religiosity (Bosacki 2010). Such distinction rests on the conviction that while religious involvement in education can help young people choose healthy paths and make wise decisions, religious participation in faith communities may help to mitigate against undesirable behaviour.

In South Africa the debate is located at the intersection of official discourse and civil society concerns. In their article *Advancing Religion Studies in Southern Africa* Smit and Chetty (2009: 332) offered a critical discussion of Albie Sachs' five constitutional options which ranged from the theocratic to the secular, to demonstrate the salience of, and appetite for religion in both legal and civic domains. We must therefore ask whether these challenges should be regarded as crippling contradictions as some

critics of the policy might have us believe, or if these debates indicate a necessary and creative tension. Despite the fact that it is not a religious state, in terms of 'public education, South Africa remains favourably disposed towards promoting spiritual values in the minds of young people' (van der Vyver 2007: 94). For example, Section 7 of the South African Schools Act is consistent with Section 15 of the 1996 Constitution insofar as it makes provision for the religious observances to be conducted in schools, provided that they are voluntary and free, and finally, based on the principle of equality wherein no religion will dominate over others. South Africa's education reform sought to give recognition to those religions, languages and cultures that were previously marginalized, while at the same time offering safeguards to protect minority groups. This provision extends also to the white Afrikaner religious, linguistic and cultural minority despite the fact that such protection might be regarded as an entrenchment of white privilege (Mothatha & Lemmer 2002: 101). However, these debates have reflected not only the interests of Afrikaner minorities but also the interests of those who wished to school their children in religious, cultural and linguistic traditions which they feel are not given adequate provision in current public education. These include groups as diverse as the Freedom Front, the Hindu Association of the Western Cape and the Eastern Cape Council for Aborigines, amongst others (Mothatha & Lemmer 2002: 108). Such groups have variously sought recognition for a separate provision for their languages, religions and cultures in general and in public schools.

The 1992 National Education Policy Investigation's committee argued that any form of religious education that privileged one tradition above another was likely to lead to religious discrimination or coercion (Chidester 2006: 66). Elsewhere Chidester (2003) concluded that

religious opposition or support, however, cannot determine national policy for religion in public education. Instead, as the new policy insists, the role of religion in the schools must be consistent with constitutional provisions for freedom of religious and other beliefs and freedom from religious and other discrimination.

The underlying assumption underscoring the *National Policy on Religion and Education* is that the more we learn about one another, the more

likely we are to embrace difference. However, in a context wherein schools and educators have not only privileged Christianity, but also taught learners about African indigenous religions as animism, magic and superstition, religious tolerance would prove challenging for a long time. In her article *Children's Spirituality in a Social Context* Cornelia Roux argues that Christian national education 'alienated many South Africans from different religious and cultural groups' (Roux 2006). However, the challenge for South Africa was not simply to reverse alienation but to create a culture where learners can learn *about*, and *from* other religions.

As I have suggested, despite their embracing religious diversity, the leaders of various faith communities continued to advocate a multi-single tradition approach to religion education (Coertzen *et al.* 2009). This model operated on the assumption that faith traditions existed as separate entities or institutions and that religion education was only partly about learning about other religions. Historically, many teachers taught religion education in terms of the values and morals of a religious society where Christianity is privileged and other traditions are tolerated (Roux 2006: 152). Thus Christian leaders, in the early 1990s appealed to government that schools be offered a range of options to how the learning and teaching about religion should be conducted, so as to avoid animosity or antagonism towards other faith traditions (Kitshoff 1994: 320).

In considering the response of religious leaders to the new policy, I want to revisit the World Conference on Religion and Peace that was held in Cape Town in July 1992. At this meeting Muslims, Christians, Jews and Hindus negotiated a framework for the free exercise of religion in the new South Africa. Not only did they seek to define the role of faith communities in relation to the state, but they also explicitly outlined their position on religion education. In the *Draft Declaration on the Rights and Responsibilities of Religious People*, the conference took the following position on religion education:

- The objective of all religious education shall be to engender understanding, appreciation and tolerance of all religious traditions and to promote the national goals of a nonracial and nonsexist South African society.

- Children shall enjoy the right to education in religion or belief in accordance with the wishes of their parents or guardians and shall not be compelled to receive any such teaching against the wishes of their parents or guardians.

The conference reflected a clear preference for a multi-religion approach to teaching about religion. However, there remained a strong assertion that faith development should remain the responsibility of the home because the role of public education is the development of a better society. However, what is striking about the declaration is that delegates regarded themselves as partnered with the new state, in promoting 'the national goals'. Thus Kitshoff (1994: 321) concluded that for the delegates of the 1992 conference 'religion education must be geared to nation-building in general and not faith-building in particular'.

More recently, that mood of optimism and tolerance, previously enjoyed by faith communities has been replaced by practices and feelings of alienation. As I have suggested above, this is evident from the 2008 meeting of religious leaders who drafted the *Charter of Religious Rights and Freedoms*. This coalition consisted of all the main religious traditions but also representatives of minority groups not previously represented. The 'continuation committee' included among others Prof. Rassie Malherbe, a long-time conservative advocate for Christian education in public schools as well as Dr Nokuzola Mndende of the Icamagu Institute for African indigenous religions, who had previously campaigned for a multi-religion approach that included African religions. Despite the diverse religious and political interests of the coalition members, earlier ideals of a nation-building partnership with the State were now being replaced with assertions religious of independence. Their assertion of independence was evident in the framing of the document insofar as it sought the practice religion in schools free from the control of the state. Among the clauses within the coalition's Charter it states that:

- Every person has the right on the grounds of their conviction to refuse (a) to perform certain duties, or to participate or indirectly assist in certain activities, such as those of a military or *educational* nature (clause 2.3)

- Every person has the right to conduct single-faith religious observances, expressions and activities in state or state-aided institutions, as long as such observances, expressions and activities follow the rules made by the *appropriate public authorities* are conducted on an equitable basis and attendance at them is free and voluntary. (clause 4.4)

Apart from the evidently proselytizing intent of the above statement, which has some relevance to public education, the Coalition drafted a Clause 7 to specifically address their concerns about religion in public schools. The clause states that:

- Every person shall have the right to be educated or to educate their children, or have them educated, in accordance with their religious or philosophical convictions
- The state, including any public school, has the duty to respect this right and to inform and consult with parents on these matters. Parents may withdraw their children from school activities or programs inconsistent with their religious or philosophical convictions. (clause 7.1)
- Every institution may adopt a particular religious or other ethos, as long as it is observed in an equitable, free, voluntary and non-discriminatory way, and with due regard to the rights of minorities (clause 7.2)
- Every private educational institution established on the basis of a particular religion, philosophy or faith may impart its religious or other convictions to all children enrolled at that institution, and may refuse to promote, teach or practice any religious or other conviction other than its own. Children enrolled at that institution (or their parents) who do not subscribe to the religious or other convictions practiced at that institution waive their right to insist not to participate in the religious activities of the institution. (clause 7.3)

Now, despite the fact that this charter appears to stand in contradiction to the *National Policy on Religion and Education*, it also seeks to create a proselytizing culture within public schools. Interestingly, despite the divisive nature of the proposed charter, it was nonetheless signed by many who claim to be opposed to religious discrimination. Unlike the 1992 *Declaration on the Rights and Responsibilities of Religious People* which sought to align religious interest with nation-building interest, the 2009 *Charter of Religious Rights and Freedoms* clearly asserts the independence of religious interests from the programmes of the State. In particular, the Charter asserts the right of religious parents or their children to not participate in educational activities that are in opposition to their convictions, and yet the signatories to the Charter at the same time paradoxically wish to retain the right to proselytize or impose their religious views on others.

The drafters of the Charter invoked a statement from former constitutional court Judge, Albie Sachs as a motivation for them drafting the charter. In this statement, reminiscent of Rousseau's *Social Contract*, Sachs suggested that,

ideally in South Africa, all religious organisations and persons concerned with the study of religion would get together and draft a charter of religious rights and responsibilities ... it would be up to the participants themselves to define what they consider to be their fundamental rights (Sachs 1990: 46-47).

The drafters go on to suggest that in a democratic society it cannot be left to the state alone to determine the rights and limitations of religious communities, in matters that 'they have a direct interest and of which they have intimate knowledge (Coertzen *et al.*)'. This Charter has not been welcomed by all, and one observer who sees it as an essentially Christian initiative, remarked that 'no matter what we do or achieve the same matter will always appear. Christians will always try to force themselves on us' (Coertzen 2010).

Thus it would appear that, despite some continuity with the 1992 *Declaration on Rights and Responsibilities of Religious People*, faith communities have become skeptical about a nation-building partnership with

the state. Instead of seeing the *National Policy on Religion and Education* as the recognition of, and protection from religion, religious communities appear to regard the policy as the restriction of religious rights and as the State's the over-regulation of religion in public schools.

While the first post-apartheid religion education policy was focused on the departure from Christian dominance of religion education towards a multi-religion approach, the Revised National Curriculum Statement of 2002 was clear in its view of religion education as being of critical educational value, as opposed to religious value. It stated that:

Religion Education ... rests on a division of responsibilities between the state on the one hand and religious bodies and parents on the other. Religion Education, therefore, has a civic rather than a religious function, and promotes civic rights and responsibilities. In the context of the South African Constitution, Religion Education contributes to the wider framework of education by developing in every learner the knowledge, values, attitudes and skills necessary for diverse religions to co-exist in a multi-religious society. Individuals will realize that they are part of the broader community, and will learn to see their own identities in harmony with others (Department of Education 2002a; 2002b).

The earlier administration, under the direction of the first post-1994 Education, Minister Sibusiso Bengu (1994-1999), sought to forge a negotiated agreement on religion education with representatives of various faith communities, hoping that learning and teaching about religion would produce such social benefits as increased tolerance and understanding of diversity. Later, under the administration of the then minister of education, Kader Asmal, we saw the reconfiguring of religion education in terms of the human rights principle of equality. In shifting the focus towards human rights and constitutional values the minister achieved a decisive shift away from previous debates about religious education towards a focus on the educational benefits of learning about religion and traditions other than one's own.

Both the *Manifesto on Values, Education and Democracy* (2001) and the *National Policy on Religion and Education* (2003), developed under the Asmal administration, was met with significant opposition. The two key

issues that provoked concerns from faith communities, parents and educators related to the issue of religious observance in schools, and that of learning, and teaching about religion. At that time, it was widely held that religion remained a valued aspect of school life that contributed to the social and moral development of learners. In October 2003, the then Premier of the Western Cape, Martinus van Schalkwyk (2003), during a meeting with the Full Gospel Church of Southern Africa observed that:

Religion is becoming an increasingly important anchor in the lives of young people who live on communities under siege from drugs, prostitution and gangsterism. When we met recently with principals from schools across the Western Cape in formulating our response to the National Department of Education's initial proposals to eliminate religious observances in our schools, one principal after the other underlined the importance of the 20 minutes or half an hour of religious observances at school assemblies as anchors in the lives of our young people - especially in our most violent communities. We received the same message from learners, parents, community leaders and religious leaders from across the spectrum.

The Premier reported that principals found that the new policy was more disruptive than remedial, and that 'we shouldn't try to fix what is not broken ... but trust governing bodies at the schools to deal with this' (SAPA 2003). In his ministerial foreword to the policy, Kader Asmal was explicit in stating that in public schools no religious ethos should be dominant over, or suppress another. As if anticipating the concerns of the critics of religion in schools, the late minister stated clearly that 'we do not have a state religion. But our country is not a secular state' (Department of Education 2002: 2). The policy thus addressed religion education, religious instruction and religious observances as it relates to public schools.

It seems that an instrumentalist view of religion education predominated at this point. Despite the fact that critics of the current policy objected to the fact that as Mestry (2006: 61) argued 'religion education has a civic duty rather than a religious function, and promotes civic rights and responsibilities', they also sought to deploy religion or religion education in restoring a certain moral and ethical order, as was being suggested by former

Premier van Schalkwyk. Although many of critics of the state-led approach to religion education do not adhere to any form of religious tradition (Rousseau 2010), they do share, with the leaders of faith communities, a general anxiety that religion education might become a conduit or instrument of state-led agendas, thus undermining the interests of faith communities, and civil society in general.

But as the various stakeholders began to debate the merits of a single- or multi-faith tradition at a policy level, teachers, parents and school administrators sought to work out what this meant in practice. As such, I will highlight a number of court cases from the post-Apartheid era that illustrate the relative success and usefulness of the debates that have emerged as a result of the policy change. What these cases demonstrate is that the policy merely provided a prescriptive framework for learning and teaching about religion, and religious observances in schools, and as such it is the classroom that continues to be the site of struggle, the site where learners will learn to assert their voice and conviction, learn to listen and appreciate other ways of seeing the world, all the while learning to practice tolerance and equality.

In another debate on religion education prompted by Pierre de Vos' blog *Constitutionally Speaking* one contributor argues that 'religion does divide us' and he recalls an episode at Newcastle High School, in KwaZulu-Natal where the school governing body (SGB) succeeded in changing the school's Christian tradition of praise and worship at morning assemblies and proposed that it be replaced by a more inclusive moment of silence or a universal prayer. This provoked an angry response and in 2007 the Christian Parents Initiative took the SGB to Court. Despite the fact that the SGB won the case, the school continued to be plagued by factionalism. In a subsequent newspaper article Alec Hogg (2008), a former pupil from the school, suggested that the Christian-dominated school is being held to ransom by 'a relatively small group of Indian parents'.

In 2005 a KwaZulu-Natal parent sought relief from the court when her daughter, who was a learner at Durban Girls' High School was deemed to be in violation of the school's code of conduct for wearing a nose stud. The nose stud was in keeping with the family's cultural traditions and the family felt that the school's request amounted to a violation of her daughter's constitutional right to practice the religious tradition of her choice. The Durban Equality Court found in favour of the MEC for Education and the

school governing body (SGB), and the learner was instructed to adhere to the school's code of conduct and to remove the nose stud. However the Constitution court would eventually find in favour of the plaintiff citing the school failure to provide 'reasonable accommodation of religious and cultural deviation' (De Wall *et al.* 2011: 73).

The above cases dealt with the role and independence of school governing bodies, whether they seek to introduce a multi-religion approach, or whether to ensure uniformity in their practices as they relate to religious observances or conduct. Similar challenges are being worked out in South African schools on a daily basis. SGBs are tasked with developing a 'mission statement, as well as a code of conduct for the school, presumably including the particulars of religious worship, observances and exercises to be conducted within the school'. At one Johannesburg school Muslim learners had to deal with challenges to their right to wear a headscarf with their uniform (Ronganger & Govender 2004), while at another school another learner was instructed to remove his goatskin bracelet (*isiphandla*) because it was in violation of the school's jewellery code despite that fact that this is not how it was being worn (Monayi 2007). Though there are countless incidents of students having been suspended for expressing religious views or violating the school conduct as a result of wearing religion-specific attire, school governing bodies are wrestling with finding a balance between changing the culture of South African schools and the consistent application of an equitable policy on religious diversity. Following the Antonie case at Settlers High School in Cape Town, wherein the scholar sought relief from the court following a suspension from school for wearing dreadlocks, the court found that in favour of the scholar and asserted that

freedom of expression is more than freedom of speech. 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. However, students' rights to enjoy freedom of expression are not absolute (Van Zyl 2002).

Public schools not only bring together learners from different racial and economic backgrounds, but significantly also bring together learners from diverse religious and other households. Although van Vollenhoven and

Blignaut (2007: 5) identified these challenges as problems which they believe to be the result of a dichotomy between Western and Muslim rights discourses, it seems to me that it is precisely this diversity that has afforded South Africa the opportunity to work out a co-operative approach to religion education. In particular it makes possible the resolution of the tensions and ambivalence that have undermined the relative independence of School Governing Bodies to determine the culture and policies of the school, and which plagued the consistent implementation of the *National Policy on Religion and Education*.

Another major concern from critics of the *National Policy on Religion and Education* is that it infringes on the rights of parents to determine the kind of religious values and education their children should receive. This debate was in part reflected in the 2000 court case between Christian Education South Africa and the Minister of Education, a case which centred on the constitutionality of the South African Schools Act's prohibition of corporal punishment in independent Christian schools (South African Schools Acts 1996). Christian Education South Africa representing 196 independent Christian schools argued that the prohibition violated the right to self-determination afforded religious communities. The group argued that 'its member schools operated within an active Christian ethos and that corporal punishment was an important part of that ethos' (Mestry 2007: 60). However, the court found that the South Africa Schools Act did in fact credibly limit the schools right of freedom of religion. Thus the argument that corporal punishment as part of a Christian ethos could not be upheld whether at a public institution or at an independent Christian school. The court found that corporal punishment – motivated by a religious belief – violated a learner's right to human dignity because 'flogging children has been designated in South Africa, and elsewhere, as a cruel and inhuman (degrading) punishment' (Van der Vyver 2007:97). In ruling of constitutional court Judge, Sachs (2000) stated that:

Believers cannot claim an automatic right to be exempted by their beliefs from the laws of the land. At the same time, the state should, wherever possible seek to avoid putting believers to extremely painful and burdensome choices of either being true to their faith or else respectful of the law.

Not surprisingly, public schools currently assume a position of neutrality or expulsion of religion education, which the critics of the *National Policy on Religion and Education*, such as Malherbe (2004: 48), regarded as not neutral because it compels learners to look at matters of faith from a particular point of view. These critics held the opinion that such critical learning about religion(s), including their own, ultimately served the interests of the state and not that of personal salvation nor that of a confessional community. They believed that since the majority of South Africans are Christians, religion in public schools should reflect this demographic. In 2004, thirteen-year old Lamiah Khan was instructed by her principal at a Gauteng school to remove her headscarf because it was not part of the schools uniform. This echoed some of the peculiar reasoning advanced in 1989 when a learner at a German School in Pretoria sought the right not to attend religious observance, but the court – like Lamiah's school principal - found that she and her parent waived the right not to attend religious observances because by voluntarily enrolling at the school she subjected herself to its rules and regulations. However, despite that fact that the 2003 *National Policy on Religion and Education* were constrained in its prescription regarding religious character of independent religious schools, it requires that all teaching and learning of religions be measured by the same educational outcomes.

Notwithstanding, these cautionary provisions and limitations in the *Policy on Religion and Education*, the case history suggest the emergence of a worrying trend whereby the onus is put on learner to seek relief from the court in cases of overt discrimination or limitation of their rights. In most of the cases cited above it was the scholars or their parent/ guardian who sought the intervention of the court in opposing a School Governing Body policies and practices which tended to uncritically uphold protestant Christianity as the legal and social norm. More significantly, School Governing Bodies end up perceiving their role as maintaining the status quo rather than to create the educational environment, which is not always perceived as 'traditional character of the school' but an environment where a learners' dignity is upheld and he/ she is (for our purposes) protected from, or enacting religious discrimination and coercion.

In discussing *Beyond Policy Options* Chidester *et al.* recalls a lecture by Albie Sachs in which he suggests that the relation between state and

religion ultimately, can only be best managed through cooperation or a cooperative model, which he also advised for religion in public education. However, that was in 1994, and although the idea of a cooperative model characterises the current National Policy on Religion and Education through which the state seeks greater access to religious capital in the building of a moral and civil state, civil society – and faith communities in particular – appear to use religion education as a means to assert and guard its independence from the state. Of the cases and examples discussed above it would seem that the *National Policy on Religion and Education* has provoked a necessary and healthy debate, which should be viewed as an indication of a healthy democracy instead of seeing it as an internally coherent policy. Ultimately, the policy provides a broad framework that makes provision for religion education which is free from discrimination, or coercion, and it limits the infringement on the religious interests of different faith communities or those who hold non-religious beliefs and opinions. However, without the legal and civil society challenges to the policy, whether in support or opposition, religion in public education will become discretionary and likely to continue to serve implemented to serve the interests of hegemonic, and normative groups. Thus I conclude with a final word by Jean-Jacques Rousseau on civil religion:

If it is asked how in pagan times, where each State had its cult and its gods, there were no wars of religion, I answer that it was precisely because each State, having its own cult as well as its own government, made no distinction between its gods and its laws. Political war was also theological; the provinces of the gods were, so to speak, fixed by the boundaries of nations.

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