

Education and Religion in South Africa: Policy Analysis and Assessment against International law

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Abstract

In view of the educational and societal reconstruction and transformation South Africa had to undergo since it became a democracy in 1994, the relationship between religion and education is a contentious issue. Policy regarding this relationship has since been subjected to a complete renovation that developed into the National Policy on Religion and Education in 2003. This Policy is evaluated by using two yardsticks, namely (a) international developments concerning the religion-education relationship with special emphasis on international jurisprudence and (b) the South African Constitution as the supreme law in this country which explicitly guarantees everyone the right to freedom of conscience, religion, thought and belief. It was found that international experiences regarding contemporary policies on religion and education's problems with regard to guiding the youth in identity formation applies especially to the South African context as it, less than many other countries, can afford to squander the role of religion as building material of social capital. It moreover became apparent that the Policy places a substantial limitation on the religious practices of learners as it, inter alia, fails the test of tolerance for diverse religious beliefs as envisaged by the SA Bill of Rights

Keywords: education, identity, National Policy on Religion and Education, religion, religion-education relationship

1. Introduction

The relationship between religion and education is a contentious issue, in South Africa as much as in the rest of the world (Dreyer, 2007).

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In the wake of the post-1994 educational and societal reconstruction and transformation in South Africa, policy regarding the relationship between religion and education was subjected to a complete overhaul that commenced shortly after 1994 and developed into the National Policy on Religion and Education (hereafter referred to as the Policy; SA, 2003) in 2003. The particular situation in the South African context makes these reforms noteworthy beyond the borders of South Africa for the following reasons:

- The Constitution of the Republic of South Africa, Act 108 of 1996 (hereafter referred to as the SA Constitution) contains what is widely hailed as one of the most progressive Bills of Rights in existence in the world, providing the ground rules to transform the educational system by introducing fundamental rights in line with the best traditions found in developed democracies (Visser, 2005). Accordingly, the Policy regarding the religion-education relationship (SA, 2003) is structured to serve the interests of a democratic society such as South Africa best (par. 1), within the parameters of the SA Constitution and the Bill of Rights (108/1996: Chapter 2) contained in it.
- The democratization of South African education, as well as adherence to the principle of multicultural/intercultural education is part of worldwide trends.
- It is a theorem of Comparative Education that *transitologies*, i.e. the simultaneous collapse and reconstruction of state apparatus and educational system, have extraordinary potential to reveal education-societal interrelationships and denouement (Cowen, 2000). The publication of a special issue of the *International Journal of Educational Development* (2002), entirely devoted to development in South Africa, can be ascribed to recognition of this transitological effect. In it, the authors highlight the need for critical policy dialogue (Musson, 2006).

In line with the above, this paper evaluates the recent Policy (SA, 2003) on religion and education in South Africa using the following two yardsticks:

- International developments concerning the religion-education relationship with special emphasis on international jurisprudence.

- The societal imperative regarding the relationship between education and religion in South Africa as embedded in the Policy (SA, 2003) against the backdrop of the SA Constitution (section 1) which founded South Africa as a sovereign, democratic State based on the values of human dignity, the achievement of equality and the advancements of human rights and freedoms and which, as the highest law in the country (section 2), explicitly guarantees everyone the right to freedom of conscience, religion, thought and belief. By itself, religious freedom is a right bestowed on everyone, the non-religious and the religious (*Prince v President, Law Society of the Cape of Good Hope* 2002 (2) SA 794 (CC) at 270), as well as on juristic persons, such as public schools (Malherbe, 2006).

The rationale of policy analysis will be explained, followed by a literature survey of recent trends in religion-education internationally. The historical and contextual background of the relationship between religion and education in South Africa will then be outlined, followed by an analysis of the recent National Policy on Religion and Education in South Africa (SA, 2003) in order to establish whether this Policy is in line with international trends and whether it adheres to the right of learners at public schools to freedom of religion as guaranteed by the SA Constitution (sections 15 & 31).

2. Research Method: Policy Analysis and Comparative Study

Steyn (2001) defines education policy as a statement of intent concerning the way in which identified needs of a target population are to be served. According to Potgieter (2004), policy analysis is a form of specialized research aiming at undertaking a systematic comparison and evaluation of the alternatives available to public actors for solving societal problems and assisting in decision-making. Policy analysis, on the other hand (Potgieter, 2004), is also the study of the causes and consequences of government behavior (what governments do or do not do).

Jones (1977) defines the evaluation of policy based on policy analysis as a systematic endeavor to judge the merits of specific programs. What is of importance is to determine policy effectiveness and/or efficiency in providing policymakers with pragmatic recommendations taken from alternatives (McMillan & Schumacher, 2001). As mentioned above, the two yardsticks that will be employed in this study are those of international obligations and of societal imperatives.

Taking international perspectives in education into account is a widely acknowledged approach to educational issues (Steinberg, 1987) as it provides insight into, *inter alia*, the immediate situation affording escape from the inherent limitations of an inside-view. A Comparative Education method entails the interpretation of international tendencies within the national-domestic context, while taking into account the similarities and differences with respect to the societal shaping forces of educational systems operative in the various countries (Wolhuter, 2003). As such, a comparative method reveals universal factors and principles of educational systems, as well as of the interrelationship between education and society (Wolhuter, 1997).

The above-mentioned method is, moreover, supported by the SA Constitution (section 39(1)(b)) which provides that Courts *must consider international law* when interpreting its Bill of Rights.

As pointed out by Van der Merwe (2003), education systems are established to serve societies. It is therefore apt to turn to societal imperatives when assessing education systems and education policy. Judgment therefore needs to be passed as to how well a policy takes cognizance of the societal shaping forces.

3. Contemporary Trends in Religion-Education Policy Internationally

Since the early nineteenth century, the pendulum regarding public education based on religious ground rules has swung back to having a political basis. Nation states created national systems of primary school education (the so-called education for the people). The first of these were in Europe in the early decades of the nineteenth century. These educational systems had primarily political goals, although they were openly Christian in ethos.

Gradually, during the late nineteenth and the twentieth centuries, secularism gained ground, which means that faith and spiritual matters should be banned from the public realm (of which schools were part) to individuals' private lives (Fowler, 2002). The increasingly pluralist religious composition of the countries of Western Europe and North America during the second half of the twentieth century gave rise to a new swing in policy. The creed of multicultural education called on schools to strive towards the cultural enrichment of all learners, to introduce them to the cultural diversity of the world and to prepare them to live in such a world (Kelly, 1988). This had two implications for the relationship between religion and education.

Firstly, it put even more pressure on public schools as places where only a particular religion was taught, respected or adhered to (ethos) and from the point of view of learners acquiring that religion. Secondly, in terms of the tenets of multicultural education, schools were expected to introduce learners to the entire spectrum of religions prevalent in society, with the aim of becoming acquainted with those religions and acquiring an understanding and tolerance towards followers of all religions.

The report of the Swann Commission of Inquiry into the Education of Children from Ethnic Minority Groups in the United Kingdom, for example, devotes an entire chapter to this issue (Great Britain, 1984). The 1988 *Education Reform Act* in England (40/1988) effected such changes in policy on Religious Education at state schools (Rose, 2006). Another example of this trend can be found in Norway. Christian knowledge was taught as a compulsory subject in Norwegian state schools until 1997, after which it was replaced by a subject compulsory for all learners, comprising of various religious as well as secular world views on an equitable basis (Hagestaether & Sandsmark, 2006).

However, religious policies such as the above encountered legal problems (including defeat at the hand of litigation) in several countries. These policies were also subjected to various critiques centering around issues such as: the adolescent's task of identity formation, the dynamic nature of religion in the twenty-first century, the fact that spirituality as essential trait of religion is not treated on its merits in these policies, the denial or the underestimation of the role of religion in building social capital and studies surveying parents and learners' levels of satisfaction with the new policies, as well as those of the authorities at grass roots level who had to implement these policies.

In addition, these religious policies have to be evaluated against international human rights conventions. The United Nations Declaration on Human Rights (UN, 1948-1998: section 18), for example, declares freedom of thought, conscience and religion as fundamental human rights. This includes freedom to manifest one's religion or belief in education, while freedom of association is also guaranteed (section 20).

In addition, section 29 determines that, in exercising rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirement of morality, public order and the general welfare in a democratic society.

The United Nations Convention on Civil and Political Rights (UN, 1966) stipulates that parents have the liberty *to ensure the religious and moral education of their children in conformity with their own convictions* (section 81.4), while the United Nations Convention on the Rights of the Child (UN, 1989: section 29) calls for the development of respect for human rights and freedoms, as well as for the child's own cultural identity and values. The duty to respect all the fundamental rights of learners (UN, 1989: section 2) implies, as elucidated by Rosa and Dutschke (2006) that State Parties must not infringe on the rights of learners, while the duty to ensure learners' rights indicates that State Parties have to take positive action to realize these rights. The Convention on the Rights of the Child (UN, 1989) therefore commented that respect for fundamental rights alone is not sufficient. Accordingly it called for specific activities and positive steps to be taken to enable learners to enjoy all their rights fully.

Moreover, section 30 (UN, 1989) protects the ethnic, religious and linguistic rights of children of minority or indigenous groups. It provides that children shall not be denied their right to enjoy their own culture, profess or practise their own religion or use their own language in communicating with others of their own group.

The European Convention on Human Rights also contains stipulations in this regard (section 2). It was on these grounds that some Norwegian parents could successfully challenge the Norwegian education policy on religious education in state schools legally in November 2004 (Hagestaether & Sandsmark, 2006).

Psychologist Erik Erikson's model of human psycho-social development phases illustrates that the development of an identity is the main developmental task during the life-phase of puberty (Craig, 1983). According to Erikson, an acceptable, functional and stable self-concept must be developed in order for human beings to establish a sense of identity in contrast to a sense of confusion (Dworetzky, 1981). Attaining a sense of identity is complicated by an increasingly complex contemporary society in which children are exposed to many (potential) models that overwhelm them as they do not know with which to identify.

4. The Relationship between Religion and Education in South Africa: Historical and Contextual Background

Formal education in South Africa commenced with the Dutch East-Indian Company's founding of a refreshment station at the Cape in 1652.

The Dutch views on education were formed during the Netherlands War for Liberation against Spain (1568-1648) which, besides being a political war, was also a war with strong religious undertones (Spanish Roman Catholicism against Dutch Protestantism). In the created education system, the church gained a strong say, for example with regard to the drafting of curricula and the appointment of educators (Venter & Venter, 1986). This system was transported to the Cape, but in the course of time, the say of the church on educational matters became less and less, although state schools always had a Christian ethos.

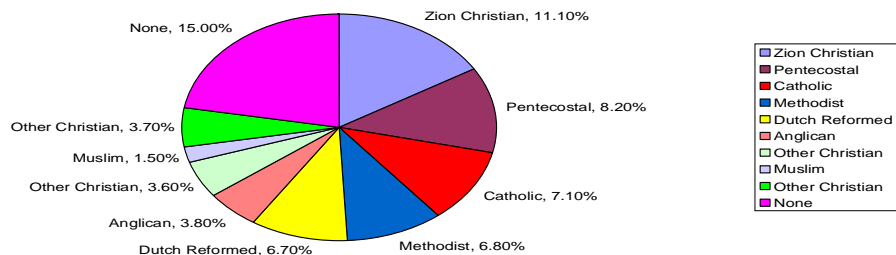
Formal education for Black children, on the other hand, was supplied mainly by missionaries. Since the end of the eighteenth century, missionaries emigrated to South Africa in large numbers, so much so that, according to Christie (1991), at the end of the eighteenth century there were probably more missionaries in South Africa than in any other place on earth. The objective of missionary education was to spread the Christian religion while educating learners to become literate enough to read the Bible (Fataar, 1997). Missionary education, however, entailed rudimentary education only. Christie (1991) cites a source on the 1862 inspection tour of Dr Langham, Superintendent-General of Education in the Cape, which is very illuminative. It was found that only 5% of all Black children had any useful knowledge of reading, writing and arithmetic, and that few educators themselves had progressed as far as Grade 6. Contemporary Black scholarship contend that missionary schools taught obedience (to God and to the church) and therefore an acceptance of and submission to a socio-political dispensation, rather than equipping learners with the instruments of free intellectual inquiry.

Given the history of the run-up to the new political order in South Africa, the cornerstones of the post-1994 education dispensation have been equal educational opportunities, democratization, desegregation and decentralization (Russo, Beckmann & Jansen, 2005).

According to Bray (2000), education was hit hardest by the harsh apartheid system in South Africa prior to 1994. Within the purview of the fundamental rights of learners enshrined in the SA Constitution, a human rights culture had to be created in South Africa. Subsequently, the State was obligated to develop policies as a basis for the creation of plausible conditions for the implementation of a new unified, inclusive system of education and training (Monyooe, 2005).

In order for South Africa to give effect to the fundamental human rights of all learners equally with specific reference to the right to freedom of religion, changes to existing policies and practices in the sphere of education became essential (Peel, 2005). It soon became evident that the educational system had to move from one of segregation and discrimination to a unified, centralized, national system (SA, 2001) which serves the needs and interests of all learners and upholds their fundamental rights and freedoms (National Education Policy Act, 27/1996: Preamble).

The above presents a special challenge to South Africa, characterized by religious pluralism as illustrated by the following graph based on Census Statistics gained in 2001:



Although the SA Constitution offers a vision of a better future for social justice (Bray, 2004), binding all organs of the State to the lawful exercise of their powers (section 8), South Africa has experienced a rising tide of immorality sweeping over the nation since 1996 (Swart, 2006). Onslaughts on value systems are continuously made by the mass media and the high level of crime and violence, leading to subsequent feelings of insecurity which are in direct conflict with the values of traditional cultures in South Africa (Jordaan, 2005).

It is difficult to deny that South Africa is currently experiencing a moral crisis. The corruption watchdog Transparency International gives South Africa a rating of 4.6 on its 10 point corruption scale (ranging from 10: least corrupt, to 1: most corrupt, 5 is regarded as the threshold for serious corruption) (October, 2006).

(In comparison, the ratings of a few other countries are: Sweden: 9.2, Switzerland: 9.1, Netherlands: 8.7, Equatorial Guinea: 2.1, Haiti: 1.8). In the ten years up to 2006, 24 000 people were murdered in South Africa (Pax, 2006). In 2005 there were 2 336 learner-pregnancies in Gauteng schools alone, double the 2005 total (Anon., 2007a). In the 2005/6 statistical year 54 926 cases of rape were reported, which constitutes 117.1 per population of 100 000 and a 22.7% increase in the incidence of ten years earlier (Anon., 2007b).

As a result, societal life in South Africa is characterized by distrust, greed, conflict, sensation, licentiousness, dishonesty and selfishness, with no interest in the welfare of the community. In this brave new world of the 21st century, an era typified by materialism and technological advance, children are continuously confronted with a quite disorderly diversity of values (Prinsloo, 2005).

In line with this, the moral confusion and uncertainty about values in education prevail (Prinsloo, 2005). Characteristics that educators would like to emphasize, such as honesty, integrity, charity, purity, fairness, compassion and problem-solving without conflict, are being totally underplayed (Sanchez, 1997).

The result is that South Africa currently has a number of, sometimes conflicting, contextual demands informing the relation between religion and education. This is the product of concepts such as equality and values being caught up in the dilemma of contesting meanings and their use within educational contexts. In light hereof, Nieuwenhuis (2004) postulates that the debate on values in education, and thus the religion-education relationship, will continue as educationalists and decision-makers struggle with, on the one hand, philosophical issues and on the other, an attempt to address issues of moral decay, youth culture, poor school discipline and a breakdown in the culture of teaching and training at schools.

In establishing an education and training system for the twenty-first century, the State carries a special responsibility to implement the values enshrined by the SA Constitution (section 1) and to ensure that all learners pursue their learning potential to the full (SA, 2001:11). In this regard, Rademeyer (2006) refers to Mbeki's (President of South Africa) view that the respect a society has for human rights and freedoms can be measured against the way in which such a society treats its most vulnerable members such as children.

5. Religion-Education in South Africa: Contemporary Policy and Recent Jurisprudence

The founding values of dignity, equality and freedom contained in the SA Constitution are regarded by Bray (2004) as portraying the ideals to which the community has committed itself. In line with the latter, the National Policy on Religion and Education (SA, 2003: Preamble) aims at influencing and shaping the relationship between education and religion consistent with constitutional values. In achieving this aim, the Policy (SA, 2003: pars. 7, 8 & 11) makes it clear that any relationship between education and religion must flow directly from these values. In addition, paragraph 14 provides that public schools have a calling to promote the core values (equity, tolerance, religious diversity, openness, accountability and social honor) of a democratic society through, *inter alia*, their curriculum and extra-curricular activities (pars. 7 & 14).

Sanchez (1997) points out that, since only human beings are responsible for the problems humanity faces, it is vital that people accept responsibility which renders them accountable for their actions. It is for this reason, as acclaimed by Beckmann and Prinsloo (2004), that founding values were included in the SA Constitution. Notwithstanding this, Bray (2004) and Küng (1998) deplore the fact that too few South Africans take up the responsibility of making the constitution work, although it is in everybody's interest that it should be done.

Section 7(2) of the SA Constitution provides for the State to respect, protect, promote and fulfill the rights embedded in the SA Constitution, while The Promotion of Administrative Justice Act (3/2000) aims at creating a culture of accountability, openness and transparency in the performance of a public function such as education.

As such, the State is required to respect human rights in a value-conscious way (Bray, 2004) and to acknowledge the value of religious diversity and pluralism (Currie & De Waal, 2006). In this regard, the South African Human Rights Commission (2003) points out that the State has a duty of conduct - and not to be merely a spectator (Visser, 1997) - which requires action calculated to realize the enjoyment of rights, while Beckmann and Prinsloo (2004) stress the fact that the State and, therefore, educational systems can accordingly be held accountable for failure to act.

The central question to be considered, then, is whether the Policy (SA, 2003) adheres to or violates the rights of learners at public schools to freedom of religion, as guaranteed by international convictions and the SA Constitution through sections 15 and 31.

The essence of the concept of freedom of religion, as embedded in section 15 was defined by the Canadian Judge Dickson in *R v Big M Drug Mart Ltd.* (1985 (18) DLR 321) as the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal and the right to manifest religious beliefs by worship and practice or by teaching and dissemination. Freedom of religion forthwith implies an absence of coercion or restraint. As such, the freedom of religion may be impaired by measures that force people to act or refrain from acting in a manner contrary to their religious beliefs. The latter definition was since repeatedly accepted by the South African Constitutional Court (*S v Lawrence*, *S v Negal*, *S v Solberg* 1997 (4) SA 1176 (CC) at 1208F-1209A, *Prince v President of the Cape of Good Hope and others* 2002 (2) SA 794 (CC) at 247 [38] at 812, and *Christian Education South Africa v Minister of Education* 2000 (10) BCLR 1051 (CC)). In this regard, Currie and De Waal (2006) clearly state that section 15 does not prevent the State from recognizing or supporting religion, but requires it to treat all religions equally.

In contrast with the above widely accepted definition of freedom of religion, the Policy (SA, 2003) accepts a definition of religion as describing *the comprehensive and fundamental orientation in the world*, thus basing religion on a worldview instead of on religious views.

The right to freedom of religion was regarded in the matter of *Prince v President, Law Society of the Cape of Good Hope* (2002 (2) SA 794 (CC) at 813) as probably one of the most important of all human rights. The right to believe or not to believe, the right to act according to one's beliefs or non-beliefs, is understood as one of the key ingredients of any person's dignity. For many believers, their relationship with their God is central to all their activities. Religion provides support and nurture and a framework for individual and social stability and growth. Religious belief, moreover, has the capacity to awaken concepts of self-worth and human dignity, which forms the cornerstone of human rights as elevated above all other right and values according to *S v Makwanyane* (1995 (3) SA 391 (CC)).

Suffice it to say, a learner's human dignity is harmed when he/she is ignored or his/her religious heritage based on religious values is demeaned to common values.

In addition to section 15, which provides everyone with an individual right to freedom of religion, section 31 of the SA Constitution, *inter alia*, guarantees that learners belonging to a religious community may not be denied the right to practice their religion with other members of that community (*Christian Education South Africa v Minister of Education* 2000 (10) BCLR 1051 (CC)). As such, section 31 protects the collective exercise of religious interests by entitling every learner to choose with whom he/she wants to associate (*Taylor v Kurtstag NO & Others* 2005 (7) BCLR 705 (W) at 728). Judge Chaskalson made it equally clear in the matter of *Christian Education South Africa v Minister of Education* (2000 (10) BCLR 1051 (CC)) that freedom of religion includes both the right to have a belief and the right to express such a belief in practice. The associational right of freedom of religion of section 31 is therefore a manifestation of the right of freedom of association guaranteed under section 18 of the SA Constitution (*Taylor v Kurtstag NO & Others* 2005 (7) BCLR 705 (W) at 706). As such, the right to freedom of religion has an individual and collective dimension.

The collective dimension was specifically included in the SA Constitution because of the concern over how community rights could be protected in a democracy based on universal suffrage, majority rule and individual rights. It is to serve the purpose that the diversity of religion should be acknowledged and protected and conditions for its promotion encouraged. Religious associations, such as religious observances, should thus be recognized and protected (*Christian Education South Africa v Minister of Education* 2000 (10) BCLR 1051 (CC) at 1061).

Both sections 15 and 31 protect all religions, large and small, irrespective of their creeds or doctrines. The Constitutional Court, in the matter of *Prince v President, Law Society of the Cape of Good Hope* (2002 (2) SA 794 (CC) at 270) showed that the interest protected by sections 15 and 31 is not a statistical one dependent on a counter-balancing of numbers, but a qualitative one based on respect for diversity. Neither section 15(1) nor section 31(1), however, creates the right to impose a specific religion on a religious community (*Taylor v Kurtstag NO*, 2005 (7) BCLR 705 (W) at 706 and *Nkosi and Another v Bührmann*, 2002 (6) BCLR 574 (SCA) at 586). To the contrary, section 31 firmly entrenches the right of individual learners to the free exercise of their religion.

When read together with the equality clause (section 9), section 15 prohibits the State, and thus the Department of Education, to discriminate against any particular religious group. In South Africa, the right to freedom of religion has a free exercise and equal treatment component (Curie & De Waal, 2006). Therefore neither the State nor schools are allowed to impose a set of multi-religious convictions on individual learners.

The State is rather required to comply with the right to equality (108/1996: section 9) when differentiating between learners on the ground of their religion and State action affecting protected conduct may not directly or indirectly have the effect of coercing learners to observe the practices of a particular religion, or of placing constraints on them in relation to the observance of their own religion or other convictions and beliefs (*S v Lawrence, S v Negal, S v Solberg* 1997 (4) SA 1176 (CC)).

In this context, it may be fair to say that a learner's constitutional right to freedom of religion will be denied if observances in terms of section 15(2) and section 7 of the South African Schools Act (84/1996) are not allowed at schools. The researchers agree with Malherbe (2004) that this is exactly what the Policy (SA, 2003) aims at, as it compels learners of different beliefs to observe a one-sided humanistic view of religion prescribed by the State. As such the researchers disagree with Mayson (2007) who is of the opinion that the Policy (SA, 2003) celebrates diversity by enriching unity and educating only core values to which all religions adhere.

Although the Policy (SA, 2003: par. 10) regards religious diversity as a wonderful national asset, diversity is constantly judged on the grounds of its contribution towards building a national unity and a common humanity (paras. 8, 10, 25, 68 & 70). So-called *core* (SA, 2003:par.14) or *common* (par.18) values, that all religions promote are determined solely by the State and based on a humanistic perspective (par. 23, 24, 26 & 27: *religion as a human activity to recognize a common humanity*) rather than on a religious perspective (Malherbe, 2006). This is underscored in paragraph 29, stating that Religion Education is about a *civic understanding* of religion. The Policy (SA, 2003) aims at mutual values *per se* – it does not explain how religious values can be studied or enjoyed on a neutral basis. Furthermore, Religion Education is only justified by its contribution to the promotion of social justice (common values) that can be served by this field of study within the school (SA, 2003:par.18).

The Policy (SA, 2003), moreover, provides that uniformity of Religion Education in a single faith cannot be established through separate programs for a prescribed set of faiths as it would not advance unity in diversity (par. 70). Although the Policy distinguishes between personal, moral and religious values (par. 31) it places emphasis on moral values which are not the monopoly of religions, much less the exclusive property of any one religion. It also emphasizes that everyone is required to be committed to goodwill (repeated in par.69) if moral degeneration is to be combated.

In this regard, the Court explicitly stated in *Taylor v Kurtstag* (2005 (7) BCLR 705 (W) at 728) that the protection of diversity is not effected by giving legal personality to groups *per se*. It is only achieved indirectly through the double mechanism of positively enabling individuals to join with other individuals of their community, and negatively enjoining the State not to deny them the right to profess and practice their religion collectively.

With regard to religious observances, School Governing Bodies are to determine their nature and contents (SA, 2003:par. 61). The fact that School Governing Bodies are allowed to determine that a policy of no religious observances may be followed is in direct contrast with section 15(2). The fact that religious observances must (prescriptive, although the Policy (SA, 2003) aims at only providing a framework: par. 2) accommodate and reflect the multi-religious nature of the country, also contradicts section 15(2) and section 7 of the South African Schools Act (84/1996).

This proposes a State-controlled ideology although the State is prohibited from being prescriptive. The latter is also not in line with the definition on religious observances provided by the Policy as *those activities and behaviors which recognize and express the views, beliefs and commitments of a particular religion*. As such the Policy prohibits single-belief practices and seeks to enforce a state-determined secular worldview upon learners.

Notwithstanding paragraphs 5, 8 and 71, requesting the State to maintain a constitutional impartiality² – which, according to Futrell (2008), does not demand equivalence in terms of acceptability and/or validity of religions, but rather acknowledges the reality of various convictions and ensures justice to all - in the formal activities of the school, there is no indication of a neutral or impartial approach throughout the Policy (SA, 2003). Religion is merely used as an instrument in the hands of the State. As such, the researchers agree with Malherbe (2006) that the Policy is unconstitutional. It does not respect religious beliefs, but impresses a secular State's worldview on the youth. In this regard, Mayson (2007) proclaims that the Policy focuses not on obtaining citizens who are persons of faith (Religious Education, which is the responsibility of the parents: pars. 1 & 8), but only on persons who are informed on the facts of all religious groupings (which is the responsibility of public schools: par. 8, 15 & 17 onwards) in South Africa. The latter is criticized by Schmidt (1999) who shows that if learners are not taught values at school but parents are relied on to teach them at home, learners raised under morally deprived circumstances will remain unreachable.

It could, however, have been foreseen that justifiable limitations may be placed on religious matters, as the right to freedom of religion needs to be balanced against other fundamental rights of the child, the best interests of the child principle (section 28(2)), and the right to education (section 29). However, such limitations would have to satisfy the provisions of section 36 of the SA Constitution (SAHRC, 2006).

² The Policy requires the State neither to advance nor inhibit any religion, but rather to assume a position of fairness, informed by parity of esteem for all religions (par. 5). The State is obliged to impartiality which carries a profound appreciation of religion in its manifestations on a fair and equal basis (Mayson, 2007; Malherbe, 2006). According to Strydom (2003), parity of esteem implies that a sincere attempt must be made to ensure that some religions do not dominate while others are neglected.

Bray (2004) maintains that, although some constitutional values may stand in polar opposition to one another, this signifies recognition of the diversity of values and interests in the modern State. Among these confrontational issues are:

- the tension between the need for political order and stability and the question of freedom and equality;
- the tension between individual freedom and social equality; and
- discrepancies between constitutional ideals and social reality.

Whenever the State or public schools thus limit the right of learners to freedom of religion, the question arises whether that infringement or limitation is reasonable and justified in terms of section 36 of the SA Constitution.

Strydom (2003) explains that the limitation of rights consists of a harmonizing process attempting to strike a balance between the accommodations of religious diversity on the one hand and concerns of national unity on the other. In this regard, Judge Howie in *Nkosi v Bührmann* (2002 (6) BCLR 574 (SCA) at 578), similarly declared that, if the right to freedom of religion contests with other rights, a balancing of rights must be warranted, which ultimately also involves assessment based on proportionality. In addition, Judge Sachs held in *Christian Education South Africa v Minister of Education* (2000 (10) BCLR 1051 (CC)) that the limitation clause does not call for the use of different levels of scrutiny by *expressly contemplating the use of a nuanced and context-sensitive form of balancing*.

Within the ambit of the above, the researchers could find no justification for limiting learners' freedom of religion in the way constituted by the Policy, although it is acknowledged that freedom of religion should be strictly controlled with regard to time allocated, equality, free and voluntary attendance, freedom of indoctrination and the adherence to section 31(2) of the SA Constitution which provides that the right to freedom of religion may not be exercised in a manner inconsistent with the provisions of the SA Bill of Rights. No evidence could, however, be found that the practical problems regarding adhering to the freedom of religion of learners cannot effectively be regulated by public School Governing Bodies.

If the approach proposed by the Policy (SA, 2003) is tolerated, learners' right to freedom of religion is brutally sullied to the point of becoming meaningless.

The result of the latter will be that South Africa will develop into a secular State ungrounded in any religion, conforming to a dull uniformity. The latter is already visibly reflected by the latest available figures on religious demography. A census held in 1996 found that approximately 13% of South Africans indicated that they belong to no particular religion. This has increased to 15.1% in 2001.

6. Conclusion

There can be no doubt that the Policy (SA, 2003) places a substantial limitation on the religious practices of learners.

The test of tolerance as envisaged by the SA Bill of Rights (108/1996: chapter 2) comes not in accepting what is familiar and easy to accommodate. If society is to be open and democratic in the fullest sense it needs to be tolerant and accepting of religious pluralism.

The international experience regarding contemporary policies on religion and education's problems with regard to guiding pupils in identity formation, with the dynamic nature of religion and with spirituality as essential trait of religious experience, applies to the South African context as much as abroad. South Africa can even less than many countries abroad afford to squander the role of religion as building material of social capital. Typically for a country going through a process of radical societal reconstruction, South Africa is currently in the grip of a wave of lawlessness and anti-social behavior.

When accepted that religious belief (or even the absence thereof) constitutes an important part of identity, then school's refraining from the role of inducing the child in a particular religion with the objective of acquiring that religion, but only introducing him to a large variety of religions, as contemporary education policy want it could only further the role confusion promoted by contemporary complex society.

Although the South African courts have generally been reluctant to interfere in matters of religion (*Ryland v Edros* 1997 (2) 690 (C), *Allsop v McCann* 2001 (2) SA 706 (C) and *Taylor v Kurstag NO* 2005 (7) BCLR 705 (W)), one can merely hope that the function of the Constitutional Court as arbiter will in future better reflect the different valid and reasonable views on education in South Africa and be more sensitive to the issue of education within a particular religious context.

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