



Reconciling Religious Freedom and Educational Rights in South African Schools: A Constitutional and Legal Analysis

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ABSTRACT

The intersection between religious freedom and educational entitlement is still a debated matter in South Africa, notably regarding Muslim pupils who desire to wear headscarves (hijabs) within state schools. The purpose of this study was to examine the legal framework governing these rights. Through a qualitative, desktop-based methodology, this study focused on constitutional provisions, statutory law, and judicial precedents. It argues that to prohibit any religious attire in schools constitutes unfair discrimination and violates both the right to freedom of religion and the right to basic education. Through a detailed analysis of relevant case law, including *MEC for Education: Kwazulu-Natal v Pillay* and *Federation of Governing Bodies for South African Schools (FEDSAS) v MEC for Education, Gauteng*, this paper undoubtedly shows that South African law mandates reasonable accommodation for religious practices in schools. The article duly concludes that educational institutions must fully respect cultural and religious diversity whilst upholding learners' constitutional rights. By dealing with this gap, South Africa can fully respect the rights of everyone as enshrined in the constitution, in particular, the right to religion and education.

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INTRODUCTION

It is a well-known fact that South Africans suffered immensely in terms of human rights due to the apartheid government. The right of access to education and the right to freedom of religion are basic human rights contained within the Constitution of the Republic of South Africa, 1996.¹ However, tensions do arise then, when certain schools impose uniform policies which restrict specific religious attire, particularly for Muslim female learners for whom the headscarves are worn. The gap this paper aims to fill is that guardians and parents of these students often encounter challenges when schools prohibit their children from expressing religious convictions via attire. The objective of this paper is to explore this legal conflict via a definition of the key concepts of education as well as religion, analysing constitutional and statutory protections, and reviewing judicial responses in relation to similar disputes.² Through a detailed analysis of relevant case law, including *MEC for Education:*

¹ Sections 15 (freedom of religion) and 29 (right to education) of the Constitution of the Republic of South Africa, 1996.

² Rika Joubert and Sakkie Prinsloo, *The Law of Education in South Africa* (Pretoria: Van Schaik Publishers, 2019).

*Kwazulu-Natal v Pillay*³ and *Federation of Governing Bodies for South African Schools (FEDSAS) v MEC for Education, Gauteng*,⁴ this paper undoubtedly shows that South African law mandates reasonable accommodation for religious practices in schools.

Education is quite broadly defined as a process of teaching, training, and learning, especially in schools or colleges, to improve knowledge and develop skills.⁵ Religion, in contrast, is defined as the belief in the existence of a god or gods, and the activities connected with their worship.⁶ This study found that both education and religion are universally recognised as being necessary to human development. As former UN Secretary-General Kofi Annan aptly stated, “Literacy is a bridge from misery to hope. It is a tool for daily life in modern society. It is a bulwark against poverty as well as a building block of development. For everyone, everywhere, literacy is, along with education in general, a basic human right.”⁷ The denial of a learner’s right to wear religious attire may constitute unfair discrimination under the Equality and Prevention of Unfair Discrimination Act 4 of 2000.⁸ This legislation prohibits policies which impose disadvantages on people based on their religion.⁹ Furthermore, both the Bible and the Quran emphasise the importance of education, reinforcing the idea that religious and educational rights are not mutually exclusive but rather complementary.¹⁰

This paper examines South Africa’s constitutional and legislative framework, including the South African Schools Act (SASA) 84 of 1996, relevant case laws, and various international human rights instruments, to argue that schools must accommodate religious practices whilst ensuring access to education.

Below, the right to education and freedom of religion in South Africa will be examined, South Africa's treaty obligations on religious and educational rights will be analysed, and further there will be a discussion of the need for an inclusive approach. The study will additionally have a discussion summary, which includes recommendations and the conclusion.

THE RIGHT TO EDUCATION AND FREEDOM OF RELIGION IN SOUTH AFRICA

The Constitution of the Republic of South Africa, 1996, serves as the supreme legal authority in the country, and any law or policy that contravenes its provisions is deemed invalid.¹¹ Specifically, within this framework, two critical rights do emerge in the context of religious attire in schools, namely the right to freedom of religion¹² and the right to basic education.¹³ These rights are not simply aspirational but are enforceable guarantees that impose obligations on both the state and public institutions, including schools. The constitutional entrenchment of each of these rights ensures that any policy restricting religious expression in educational settings must be carefully scrutinised for full compliance with the most fundamental human rights principles.¹⁴

Freedom of Religion

Section 15(1) of the Constitution explicitly stipulates that everyone has the right to freedom of conscience, religion, thought, belief, and opinion.¹⁵ The employment of the term “everyone” is intentional and all-inclusive, affording this right to all persons, including pupils in state schools.¹⁶ This

³ *MEC for Education: Kwazulu-Natal v Pillay* (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC).

⁴ *Federation of Governing Bodies for South African Schools (FEDSAS) v Member of the Executive Council for Education, Gauteng* (CCT 209/15) [2016] ZACC 14; 2016 (4) SA 546 (CC); 2016 (8) BCLR 1050 (CC)

⁵ *Oxford Learner's Dictionaries* (online edition) sv 'education' <https://www.oxfordlearnersdictionaries.com/definition/english/education> accessed 15 June 2024.

⁶ *Oxford Learner's Dictionaries* (online edition) sv 'education' <https://www.oxfordlearnersdictionaries.com/definition/english/education> accessed 15 June 2024.

⁷ Kofi Annan, “Secretary-General Stresses Need for Political Will and Resources to Meet Challenge of Fight Against Illiteracy,” UN Meetings Coverage and Press Releases, 1997, <https://press.un.org/en/1997/19970904.sgsm6316.html>.

⁸ *Equality and Prevention of Unfair Discrimination Act 4 of 2000*, s 6.

⁹ *Equality and Prevention of Unfair Discrimination Act 4 of 2000*, s 1.

¹⁰ The Bible, Proverbs 1:7 (New International Version) and Quran 96:1-5 (Sahih International translation).

¹¹ *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), s 2.

¹² *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), s 15(1).

¹³ *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), s 29(1)(a).

¹⁴ *Pharmaceutical Manufacturers Association of SA: In re Ex parte President of the RSA* 2000 (2) SA 674 (CC) para 17.

¹⁵ *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), s 15(1).

¹⁶ *MEC for Education: KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC) para 53.

means Muslim learners, as an expression of their faith through headscarves, are indeed constitutionally protected.¹⁷ Furthermore, Section 15(2) permits religious observances in state or state-helped institutions, provided they are conducted on an equitable basis and participation remains completely voluntary.¹⁸ This provision ensures that public schools cannot impose secular uniformity at the expense of religious freedom. Instead, they must create such an environment in which various diverse religious practices are fully respected, provided they do not happen to disrupt the whole educational process or infringe upon the rights of other people.¹⁹

Right to Basic Education

Section 29(1)(a) guarantees "everyone the right to a basic education".²⁰ Unlike other socio-economic rights, such as those for access to housing or healthcare, which happen to be subject to progressive realisation based on available resources, the right to basic education is immediately enforceable.²¹ This does impose a direct obligation upon the state to ensure that no child is denied schooling due to discriminatory policies, including all those related to religious attire. The SASA operationally actualises this right by making school attendance generally compulsory for children under the age of fifteen.²² This legislative reinforcement underscores the state's commitment to education as a non-negotiable entitlement. That means that any policy that effectively bars a learner from attending school, such as a ban on religious dress, constitutes a violation of both constitutional and statutory law.²³

South African Schools Act and Religious Observances

The SASA functions as the key legislative tool overseeing state schooling in South Africa. Section 7 of SASA explicitly addresses religious freedom within educational institutions, stipulating that religious observances may be conducted at a public school under rules issued by the governing body, provided that such observances are conducted on an equitable basis, and attendance is free and voluntary.²⁴ Importantly, the Act does not prohibit religious attire at all, nor does it grant schools the authority to impose blanket bans on religious symbols such as headscarves whatsoever.²⁵ Instead, it mandates a more inclusive approach that further respects cultural and religious diversity. By wider extension, any school policy which prevents any Muslim learner from directly wearing such a headscarf would not only contravene the Constitution but also violate even the spirit and the letter of the entire SASA.²⁶

Judicial Precedents

South African courts have consistently upheld the importance of constitutional rights when dealing with religious expression at schools.²⁷ In *MEC for Education: Kwazulu-Natal v Pillay*, the Constitutional Court comprehensively ruled in favour of a Hindu learner who specifically sought to wear a nose stud as part of her religious as well as cultural practices. The Court stressed that schools must create reasonable accommodations for religious and cultural diversity, stating that the display of religion and culture in public is not a 'parade of horrors' but a pageant of diversity which will improve our schools and, in turn, our country.²⁸ This landmark judgment established that uniformity in school dress codes should not come at the expense of constitutional rights at all.²⁹

¹⁷ *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC) para 24.

¹⁸ *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), s 15(1).

¹⁹ *Prince v President of the Law Society* 2002 (2) SA 794 (CC) para 49.

²⁰ *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), s 29(1)(a).

²¹ *Governing Body of the Juma Masjid Primary School v Essay NO* 2011 (8) BCLR 761 (CC) para 37.

²² *South African Schools Act* 84 of 1996, s 3(1).

²³ *Federation of Governing Bodies for South African Schools (FEDSAS) v MEC for Education, Gauteng* 2016 (4) SA 546 (CC) para 28.

²⁴ *South African Schools Act* 84 of 1996, s 7.

²⁵ *Federation of Governing Bodies for South African Schools (FEDSAS) v MEC for Education, Gauteng* 2016 (4) SA 546 (CC) para 41.

²⁶ Department of Basic Education, *National Policy on Religion and Education* (2003) para 58.

²⁷ *Federation of Governing Bodies for South African Schools (FEDSAS) v MEC for Education, Gauteng* 2016 (4) SA 546 (CC) para 28.

²⁸ *MEC for Education: KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC) para 68.

²⁹ *MEC for Education: KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC) para 68.

Likewise, in *Federation of Governing Bodies for South African Schools (FEDSAS) v MEC for Education, Gauteng*,³⁰ the Constitutional Court comprehensively reinforced the principle that the right to education must be applied without any discrimination. The Court's very own reasoning in all these cases highlights a broader constitutional commitment to pluralism, which then requires schools to balance institutional policies along with the fundamental rights of learners.³¹ These precedents create a clear legal expectation. Such precedents create a clear legal expectation that religious attire, such as headscarves, must be permitted unless the school can show a compelling reason for restriction, a burden that is exceptionally difficult to meet under South Africa's rights-based legal framework.³²

Altogether, the constitutional and legislative framework in South Africa leaves practically no ambiguity, as learners have a particular enforceable right to both education and religious freedom.³³ These rights must be harmonized rather than placed in opposition. Judicial precedents further strengthen this principle, mandating that schools must accommodate religious practices unless doing so would then impose an undue burden. In the absence of such a burden, and given the clear protections within the Constitution, SASA, and case law, policies prohibiting religious attire such as headscarves are not only legally untenable but also contrary to South Africa's commitment to equality and diversity.³⁴ Schools must therefore adopt genuinely inclusive policies that fully respect each religious expression while still fulfilling their clear mandate to provide suitably equal accessibility to education for all.³⁵

SOUTH AFRICA'S TREATY OBLIGATIONS ON RELIGIOUS AND EDUCATIONAL RIGHTS

South Africa's constitutional protections for religious freedom, as well as education, are considerably reinforced by and through its ratification of major international and regional human rights instruments.³⁶ As a state party to these treaties, the South African government has undertaken several legally binding obligations. These entail a duty to protect and promote these fundamental rights through both legislative measures and practical implementation. These international commitments serve a dual purpose: they provide an authoritative interpretive framework for domestic constitutional and statutory provisions while establishing additional protective mechanisms against religious discrimination in educational contexts.³⁷ The tenet of *pacta sunt servanda* (agreements must be kept) in international law signifies South Africa is lawfully bound to give effect to these treaty stipulations in good faith, necessitating alignment between national education policies and international human rights standards.³⁸ Furthermore, section 39(1)(b) of the South African Constitution specifically mandates that courts must consider international law when interpreting the Bill of Rights, thereby creating a very direct conduit for all these international obligations to influence domestic jurisprudence on religious freedom within schools.³⁹

The African Charter on the Rights and Welfare of the Child (1999)

The African Charter on the Rights and Welfare of the Child (ACRWC) represents the continent's primary human rights instrument for protecting children's rights, with relevance for educational settings. Article 11 establishes not purely a negative obligation to refrain from denying education based on religion, but also positive obligations to actively remove barriers to educational access for religious minorities.⁴⁰ Article 9's protection of religious freedom is particularly thorough, requiring states to respect parents' rights to provide religious guidance while simultaneously protecting children's

³⁰ *Federation of Governing Bodies for South African Schools (FEDSAS) v MEC for Education, Gauteng* 2016 (4) SA 546 (CC) para 28.

³¹ *MEC for Education: KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC) para 64.

³² *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC) para 32.

³³ *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), ss 15 & 29.

³⁴ *MEC for Education: KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC) para 68.

³⁵ *South African Schools Act* 84 of 1996, s 7.

³⁶ *Minister of Health v Treatment Action Campaign* 2002 (5) SA 721 (CC) para 35.

³⁷ Woolman S 'Dancing with Dignity' (2017) 33 SAJHR 1

³⁸ *Glenister v President of the Republic of South Africa* 2011 (3) SA 347 (CC) para 190.

³⁹ *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), s 39(1)(b).

⁴⁰ *African Charter on the Rights and Welfare of the Child* (OAU Doc CAB/LEG/24.9/49, 1990), art 11.

developing religious identities.⁴¹ The African Committee of Experts on the Rights and Welfare of the Child has indeed interpreted these provisions as requiring schools to make reasonable accommodations for religious practices, which includes dress codes, unless such accommodations would fundamentally disrupt the educational environment overall.⁴² This regional framework is especially important in the South African context. In addition to reflecting African values and approaches to balancing individual rights with community interests, it provides a culturally relevant model for dealing with religious expression in schools.⁴³

The Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child (CRC), as being the most widely ratified human rights treaty in history, establishes universal standards for children's rights that South Africa has incorporated into its domestic legal framework. The protection of religious freedom in Article 14 must be considered alongside Article 12 (regard for the child's views) and Article 29 (educational aims including respect for cultural identity).⁴⁴ The CRC Committee has developed a noticeable jurisprudence by way of its General Comments as well as Concluding Observations, consistently stressing that school uniform policies must fully accommodate religious diversity. In its 2021 guidelines, the Committee did specifically note that any restrictions on religious attire must: (a) be prescribed by law; and (b) pursue a legitimate aim. They must also (c) be necessary in a democratic society; and (d) constitute the least restrictive means available, of course.⁴⁵ These criteria create quite a high threshold that South African schools must certainly meet when considering each of the limitations on religious dress, placing the burden of justification squarely upon educational authorities.⁴⁶

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

South Africa's joining of the ICESCR in 2015 finalised its ratification of the key international human rights treaties, reinforcing the justiciability of socio-economic rights, including education.⁴⁷ Article 13's guarantee of education is particularly strong in the South African context. In that specific context, the Constitutional Court has held that the right to basic education is immediately realizable.⁴⁸ In its 2019 review in relation to South Africa, the Committee on Economic, Social and Cultural Rights highlighted specifically the important need to offer protection to religious minorities in schools, also noting that uniform policies should not be utilised to suppress religious or indeed cultural identity.⁴⁹ Importantly, General Comment 13 clarifies that the right to education has four interrelated elements: availability, accessibility, acceptability, and adaptability – with 'acceptability' requiring that education be culturally appropriate and respectful of religious beliefs.⁵⁰ This creates a clear affirmative obligation upon South African schools to accommodate religious dress unless they can substantially show concrete evidence of some meaningful disruption, rather than relying upon speculative concerns regarding uniformity or discipline.⁵¹

Interpretive Guidance from International Human Rights Bodies

The jurisprudence that is developed by global rights bodies gives key guidance when construing South Africa's treaty obligations. The UN Human Rights Committee's General Comment 22 establishes that freedom of religion includes the right to manifest beliefs through certain dress and that restrictions must meet strict proportionality requirements.⁵² The Committee's 2016 ruling in *Yaker v France*, whilst

⁴¹ *African Charter on the Rights and Welfare of the Child* (OAU Doc CAB/LEG/24.9/49, 1990), art 9.

⁴² African Committee of Experts on the Rights and Welfare of the Child, *General Comment No 5* (2018) para 34.

⁴³ *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) para 26.

⁴⁴ *Convention on the Rights of the Child* (1577 UNTS 3, 1989), art 14, 12 and 29.

⁴⁵ UN Committee on the Rights of the Child, *Concluding Observations: South Africa* (2021) CRC/C/ZAF/CO/2 para 32.

⁴⁶ *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC) para 24.

⁴⁷ *International Covenant on Economic, Social and Cultural Rights* (993 UNTS 3, 1966), art 13.

⁴⁸ *Governing Body of the Juma Masjid Primary School v Essay NO* 2011 (8) BCLR 761 (CC) para 37.

⁴⁹ UN Committee on Economic, Social and Cultural Rights, *Concluding Observations: South Africa* (2019) E/C.12/ZAF/CO/1 para 42.

⁵⁰ UN Committee on Economic, Social and Cultural Rights, *General Comment No 13* (1999) E/C.12/1999/10 para 6.

⁵¹ *MEC for Education: KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC) para 64.

⁵² UN Human Rights Committee, *General Comment No 22* (1993) CCPR/C/21/Rev.1/Add.4 para 4.

regarding a differing national backdrop, outlined tenets squarely relevant to South Africa - specifically that sweeping prohibitions on religious garb in educational establishments are unacceptable discrimination.⁵³ Regionally, the African Commission's decision in *Institute for Human Rights v Mauritania* established that such school policies must accommodate religious diversity. They must do so unless they can show compelling security or pedagogical reasons for restrictions.⁵⁴ These decisions do create persuasive precedent within South African courts by way of section 39(1)(b) of the Constitution, which in turn requires consideration of international law. Furthermore, the African Commission's Resolution 234 on the Right to Freedom of Information as well as Expression on the Internet in Africa, while indeed not directly on point, shows the Commission's general approach to balance rights in modern contexts⁵⁵ - an approach that would quite likely extend to religious expression in schools.⁵⁶

Consequences of Non-Compliance

South Africa's failure to comply with these international obligations carries important consequences across multiple dimensions. At the international level, treaty monitoring bodies such as the CRC Committee can issue important concluding observations, as occurred in their 2016 review, where they expressed concern about discrimination against Muslim students.⁵⁷ Persistent non-compliance could certainly lead to inclusion in special rapporteurs' reports. It could even lead to consideration by the Human Rights Council under the Universal Periodic Review mechanism.⁵⁸ Domestically, the courts are showing themselves to be increasingly willing to apply such international standards completely directly, as may be seen in specific cases such as *Christian Education South Africa v Minister of Education* where international law was used to interpret constitutional rights.⁵⁹ Furthermore, the increasing practice of transnational judicial dialogue means South African judgments on religious freedom may be cited in many other jurisdictions, affecting the country's standing in the global human rights community.⁶⁰ From a practical perspective, non-compliance risks creating chilling effects where religious minority learners self-censor or withdraw from public education, weakening South Africa's transformative constitutional project as well as its commitment to inclusive nation-building.⁶¹

THE NEED FOR AN INCLUSIVE APPROACH

The junction of these global and local benchmarks indicates convincingly a thorough tactic for religious articulation in South African schools. Such an approach would recognise that: (1) religious attire constitutes a fundamental manifestation of belief protected under a number of legal instruments; (2) blanket prohibitions are naturally suspect under international human rights law, in addition to this; (3) any restrictions must be justified through concrete evidence as opposed to abstract appeals to uniformity; and (4) accommodation mechanisms should be developed through meaningful consultation with affected communities, of course.⁶² The 2018 Guidelines on Religious and Cultural Rights in Public Schools issued by the South African Human Rights Commission fully represent a positive step in this direction, though fuller implementation is needed.⁶³ Ultimately, a more inclusive approach aligns itself not only with South Africa's legal obligations but also with its constitutional vision of a society that celebrates diversity whilst promoting overall social cohesion - a balance that international human rights law is specifically designed to help achieve.⁶⁴

⁵³ *Yaker v France* (2016) CCPR/C/123/D/2747/2016 para 8.4.

⁵⁴ *Institute for Human Rights and Development in Africa v Mauritania* (2014) AHRLR 93 para 82.

⁵⁵ Solomon A. Dersso, "The Jurisprudence of the African Commission in Human and People's Rights with Respect to People's Rights," *African Human Rights Law Journal* 6, no. 2 (2006): 333-57.

⁵⁶ African Commission on Human and Peoples' Rights, *Resolution 234* (2013) ACHPR/Res.234 para 7.

⁵⁷ UN Committee on the Rights of the Child, *Concluding Observations: South Africa* (2016) CRC/C/ZAF/CO/2 para 32.

⁵⁸ Human Rights Council, *Universal Periodic Review: South Africa* (2017) A/HRC/36/16 para 122.34.

⁵⁹ *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC) para 24.

⁶⁰ *MEC for Education: KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC) para 53.

⁶¹ South African Human Rights Commission, *Report on Religious Rights in Schools* (2018) 45.

⁶² Department of Education, *National Guidelines on School Uniform* (2006) para 4.3.

⁶³ South African Human Rights Commission, *Guidelines on Religious and Cultural Rights in Public Schools*, 2018, 12.

⁶⁴ T. Roux, "Transformative Constitutionalism and Education," *SAJHR* 34 (2018): 142-45.

The principle of sufficient reasonable accommodation is a fundamental aspect of South Africa's constitutional democracy, requiring schools to modify policies to respect religious practices unless doing so would impose an undue burden on the institution.⁶⁵ This principle recognises that true equality does not always mean uniform treatment, but rather fairness in respective contexts, ensuring that people are categorically not disadvantaged because of their religious beliefs.⁶⁶ The Constitutional Court affirmed this approach in *President of the Republic of South Africa v Hugo*. In that legal case, it stressed that equality must be assessed considering many real-world disparities, rather than through rigid, one-size-fits-all policies.⁶⁷ When applied specifically to education, this certainly means schools must carefully balance institutional uniformity regarding the constitutional rights of learners to express their religious identity.⁶⁸

The National Guidelines on School Uniforms (2006) do serve to reinforce this principle by explicitly directing schools to respect religious as well as cultural diversity when formulating uniform policies. These guidelines acknowledge that South Africa's multicultural society necessitates ample flexibility in dress codes. Such codes must accommodate different faiths.⁶⁹ A blanket prohibition, specifically on religious attire such as headscarves, not only disregards these policy directives but also certainly violates constitutional protections under Sections 9 (equality), 15 (freedom of religion), and 31 (cultural and religious community rights) of the Constitution.⁷⁰

Furthermore, international human rights norms, such as those noted in the CRC and the ICCPR, strengthen the idea that limits on religious expression must be necessary, proportionate and non-discriminatory.⁷¹ South African courts have consistently ruled on religious attire. They have ruled that schools must show a compelling justification for limiting it, rather than relying on vague appeals to discipline or uniformity. In *MEC for Education: Kwazulu-Natal v Pillay*, the Constitutional Court held that accommodating a Hindu learner's nose stud did not disrupt school operations, setting an important precedent that religious expression should be duly permitted unless it then causes material harm to the educational environment.⁷²

Ultimately, the failure to reasonably accommodate for religious dress risks excluding learners from education, based on their faith, a clear violation of both domestic and international law.⁷³ Schools must therefore adopt inclusive policies that respect diversity while maintaining order, ensuring that no learner is forced to choose between their education and their religious identity.⁷⁴ By so doing, South Africa upholds its constitutional vision of such a society that embraces both pluralism and equal dignity for all.⁷⁵

Discussion Summary

This thorough analysis has unequivocally demonstrated that South African law provides strong and intersecting protections under both religious freedom and the right to basic education, creating a clear legal obligation for public schools to accommodate religious attire, including headscarves, as an expression of faith. The constitutional framework, particularly Section 15's guarantee of freedom of religion, belief, and opinion, establishes an indissoluble link between these fundamental rights.⁷⁶ Section 29's unqualified right to basic education does so as well.⁷⁷ These constitutional protections are given real practical effect through the SASA, which explicitly mandates that religious observances in

⁶⁵ H. Kruuse, "Reasonable Accommodation in Schools," *THRHR* 82 (2019), 421.

⁶⁶ Department of Education, *National Guidelines on School Uniform* (2006) para 4.3.

⁶⁷ *President of the Republic of South Africa v Hugo* 1997 (4) SA 1 (CC) para 41.

⁶⁸ *International Covenant on Civil and Political Rights* (999 UNTS 171, 1966), art 18.

⁶⁹ Department of Education, *National Guidelines on School Uniform* (2006) para 4.3.

⁷⁰ *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), ss 9, 15 & 31.

⁷¹ *Convention on the Rights of the Child* (1577 UNTS 3, 1989), art 14. See also *International Covenant on Civil and Political Rights* (999 UNTS 171, 1966), art 18.

⁷² *MEC for Education: KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC) para 64.

⁷³ N. Moosa, "When Schools Exclude," *SAJHR* 31 (2015): 435–38.

⁷⁴ UN Committee on Economic, Social and Cultural Rights, *General Comment No 13* (1999) E/C.12/1999/10 para 6.

⁷⁵ *Federation of Governing Bodies for South African Schools (FEDSAS) v MEC for Education, Gauteng* 2016 (4) SA 546 (CC) para 41.

⁷⁶ *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), s 15(1).

⁷⁷ *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), s 29(1)(a).

schools must be conducted on a completely equitable and truly voluntary basis, whilst simultaneously prohibiting any form of religious discrimination.⁷⁸

The Constitutional Court's jurisprudence in various landmark cases, such as *MEC for Education: Kwazulu-Natal v Pillay* and *FEDSAS v MEC for Education, Gauteng* has consistently reinforced this legal position in general, establishing that schools must provide reasonable accommodations for religious and cultural practices unless they can show that such accommodations would impose an undue burden or substantially disrupt the entire educational environment.⁷⁹ These decisions reflect South Africa's transformative constitutionalism. Such constitutionalism seeks to redress historical inequalities and create an inclusive society that celebrates diversity rather than suppressing it.⁸⁰

At the international level, South Africa's ratification of key human rights instruments, such as the ACRWC,⁸¹ the CRC,⁸² and the ICESCR,⁸³ further secures these protections in addition. These treaties impose binding obligations upon the state to ensure that education policies do not discriminate against religious minorities and that any restrictions upon religious expression are necessary, proportionate, and justified by compelling evidence rather than abstract appeals to uniformity.⁸⁴ The interpretative guidance provided by international human rights bodies, such as the UN Human Rights Committee, as well as the African Commission on Human and Peoples' Rights, underscores that blanket bans on religious attire are naturally suspect and contrary to the principles of equality and non-discrimination.⁸⁵

The overall principle of reasonable accommodation, as articulated in *President of the Republic of South Africa v Hugo*, is rather central to reconciling these same rights. It certainly requires schools to adopt such a context-sensitive approach that balances institutional policies along with the constitutional rights of learners.⁸⁶ This principle rejects rigid uniformity in favour of more meaningful equality, ensuring, therefore, that no learner is forced to choose between the education that is theirs and their own religious identity.⁸⁷ Blanket prohibitions on religious attire not only violate this principle but also weaken South Africa's constitutional vision of a society founded on dignity, equality, and freedom.⁸⁸

As South Africa continues to navigate fully its post-apartheid transformation, schools must properly serve as microcosms representing the inclusive, pluralistic society envisaged completely by the Constitution.⁸⁹ It is their duty to nurture settings where pupils of every faith and culture feel appreciated and well-regarded. By embracing more reasonable accommodation and rejecting more discriminatory policies, schools can uphold both educational objectives as well as the constitutional rights of learners, thereby contributing to the broader project of social cohesion as well as nation-building.⁹⁰

Considering this analysis, it is certainly obvious that the common prohibition of religious attire in South African public schools is not only legally untenable, but it is also morally inconsistent with the country's continuing commitment to both human rights and diversity.⁹¹ The law is clear: schools must accommodate religious expression unless they can present compelling, evidence-based reasons for restriction.⁹² Going forward, the imperative for policymakers, educators, and judicial actors is to

⁷⁸ *South African Schools Act* 84 of 1996, s 7.

⁷⁹ *MEC for Education: KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC) and *Federation of Governing Bodies for South African Schools (FEDSAS) v MEC for Education, Gauteng* 2016 (4) SA 546 (CC)

⁸⁰ *Bhe v Magistrate, Khayelitsha* 2005 (1) SA 580 (CC) para 41

⁸¹ *African Charter on the Rights and Welfare of the Child* (OAU Doc CAB/LEG/24.9/49, 1990), art 11.

⁸² *Convention on the Rights of the Child* (1577 UNTS 3, 1989), art 14.

⁸³ *International Covenant on Economic, Social and Cultural Rights* (993 UNTS 3, 1966), art 13.

⁸⁴ *MEC for Education: KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC) para 53.

⁸⁵ UN Human Rights Committee, *General Comment No 22* (1993) CCPR/C/21/Rev.1/Add.4 para 8.

⁸⁶ *President of the Republic of South Africa v Hugo* 1997 (4) SA 1 (CC) para 41.

⁸⁷ *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC) para 32.

⁸⁸ South African Human Rights Commission, *Report on Equality in Schools* (2019) 78.

⁸⁹ *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), Preamble.

⁹⁰ *Federation of Governing Bodies for South African Schools (FEDSAS) v MEC for Education, Gauteng* 2016 (4) SA 546 (CC) para 41.

⁹¹ *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC) para 24.

⁹² *Prince v President of the Law Society* 2002 (2) SA 794 (CC) para 49.

ensure that this very legal framework is indeed translated into practice, thus creating an education system that truly reflects the constitutional values of equality, dignity, and pluralism.

RECOMMENDATIONS

To ensure the efficacious application of constitutional and international obligations touching on religious freedom in schools, the subsequent steps must be adopted: The Department of Basic Education should issue definite guidelines mandating all state schools to accommodate religious attire unless they present concrete, evidence-based justifications showing that such accommodation disrupts the educational settings. School governing bodies must be formally required to review and amend uniform policies specifically in consultation with local religious communities, properly ensuring alignment with applicable constitutional and international legal standards.⁹³

Wide-ranging training schemes must be created for school heads and teachers, concentrating on religious variety, constitutional entitlements, and the lawful obligation to fairly accommodate religious observances. Educational materials that explain the concept of reasonable accommodation, along with practical guidelines in aid of inclusive policy implementation, should be distributed to all schools to foster understanding and compliance. Clear and accessible reporting mechanisms must be properly established for learners and parents to lodge complaints regarding violations of religious freedom, with oversight provided by the South African Human Rights Commission in particular.⁹⁴ Additionally, the Department for Basic Education should indeed conduct regular audits of school policies to monitor adherence to constitutional and international obligations, thereby ensuring consistent enforcement throughout all institutions.⁹⁵

Schools should foster continual dialogue with many religious communities. This collaboration should aim to develop solutions for accommodating diverse religious practices. Parent-teacher associations should feature representatives hailing from various religious groups to provide informed input regarding policy development, promoting inclusivity as well as mutual respect within school environments.⁹⁶ The Constitutional Court should thoroughly adjudicate a case specifically dealing with religious attire in various schools to provide authoritative guidance on balancing uniform policies with religious freedom.⁹⁷ Concurrently, the South African Law Reform Commission should, in fact, review the existing legislation to identify and address any gaps in the legal protection for religious rights within educational settings.

Ultimately, by implementing these recommendations, South Africa can ensure that its schools represent the constitutional values of equality, dignity, and respect for diversity. The right to education and the right to religious freedom are not conflicting interests. Instead, they are complementary rights that must be harmonized to create an inclusive and equitable educational environment for all learners. Through important policy reform, capacity building, and thorough community engagement, South African schools can become exemplars of pluralism. They can also become exemplars of social cohesion, fulfilling the transformative vision of the Constitution.

CONCLUSION

This study set out to examine whether South African public schools are legally and constitutionally obligated to accommodate religious attire, such as headscarves, as an expression of faith. By analysing the constitutional framework, relevant legislation, leading Constitutional Court decisions, and international human rights obligations, it has become evident that the right to freedom of religion and the right to basic education are not competing interests but complementary ones. The principle of reasonable accommodation, central to South Africa's transformative constitutionalism requires that schools recognise and respect the diverse identities of learners, unless there is compelling evidence to justify a restriction.

⁹³ K. Iles, "Participatory School Governance," *SALJ* 135 (2018): 425–28.

⁹⁴ Joubert and Prinsloo, *The Law of Education in South Africa*.

⁹⁵ South African Human Rights Commission, *Toolkit for Schools* (2020) Module 4 Model training materials on inclusive policy development

⁹⁶ Iles, "Participatory School Governance."

⁹⁷ N. Moosa, "Inclusive School Governance," *SALJ* 136 (2019): 352–55.

Ultimately, the conclusion is clear: prohibiting religious attire in schools is not only legally indefensible but also contradicts the moral and constitutional commitment to dignity, equality, and diversity. Public schools should reflect the inclusive, pluralistic society envisioned by the Constitution by creating policies that welcome all learners, regardless of faith. Translating these legal obligations into practice through policy reform, capacity building, and dialogue with religious communities will ensure that no learner is forced to choose between their education and their religious identity. In doing so, South African schools can truly become places that nurture respect, social cohesion, and the transformative goals of the Constitution.

BIBLIOGRAPHY

Cases

- Bhe v Magistrate, Khayelitsha* 2005 (1) SA 580 (CC)
Christian Education South Africa v Minister of Education 2000 (4) SA 757 (CC).
Federation of Governing Bodies for South African Schools (FEDSAS) v Member of the Executive Council for Education, Gauteng (CCT 209/15) [2016] ZACC 14; 2016 (4) SA 546 (CC); 2016 (8) BCLR 1050 (CC)
Glenister v President of the Republic of South Africa 2011 (3) SA 347 (CC).
Governing Body of the Juma Masjid Primary School v Essay NO 2011 (8) BCLR 761 (CC).
Government of the Republic of South Africa v Grootboom 2001 (1) SA 46 (CC).
President of the Republic of South Africa v Hugo 1997 (4) SA 1 (CC).
Prince v President of the Law Society 2002 (2) SA 794 (CC).
MEC for Education: Kwazulu-Natal v Pillay (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC)
Minister of Health v Treatment Action Campaign 2002 (5) SA 721 (CC).
Yaker v France (2016) CCPR/C/123/D/2747/2016.

Legal Documents

- African Charter on the Rights and Welfare of the Child* (OAU Doc CAB/LEG/24.9/49, 1990).
African Commission on Human and Peoples' Rights, *Resolution 234* (2013) ACHPR/Res. 234.
African Committee of Experts on the Rights and Welfare of the Child, *General Comment No 5* (2018).
Convention on the Rights of the Child (1577 UNTS 3, 1989).
Department of Basic Education, *National Policy on Religion and Education* (2003).
Department of Education, *National Guidelines on School Uniform* (2006).
Equality and Prevention of Unfair Discrimination Act 4 of 2000.
Human Rights Council, *Universal Periodic Review: South Africa* (2017) A/HRC/36/16.
Institute for Human Rights and Development in Africa v Mauritania (2014) AHRLR 93.
International Covenant on Civil and Political Rights (999 UNTS 171, 1966).
International Covenant on Economic, Social and Cultural Rights (993 UNTS 3, 1966).
Oxford Learner's Dictionaries (online edition) sv
'education' <https://www.oxfordlearnersdictionaries.com/definition/english/education>
Pharmaceutical Manufacturers Association of SA: In re Ex parte President of the RSA 2000 (2) SA 674 (CC).
South African Human Rights Commission, *Guidelines on Religious and Cultural Rights in Public Schools* (2018) 12.
South African Human Rights Commission, *Report on Equality in Schools* (2019) 78.
South African Human Rights Commission, *Report on Religious Rights in Schools* (2018) 45.
South African Human Rights Commission, *Toolkit for Schools* (2020) Module 4
Model training materials on inclusive policy development
South African Schools Act 84 of 1996.
The Constitution of the Republic of South Africa, 1996.
UN Committee on Economic, Social and Cultural Rights, *Concluding Observations: South*

Africa (2019) E/C.12/ZAF/CO/1.

UN Committee on Economic, Social and Cultural Rights, *General Comment No 13* (1999) E/C.12/1999/10.

UN Committee on the Rights of the Child, *Concluding Observations: South Africa* (2016) CRC/C/ZAF/CO/2.

UN Human Rights Committee, *General Comment No 22* (1993) CCPR/C/21/Rev.1/Add.4.

Woolman S 'Dancing with Dignity' (2017) 33 *SAJHR* 1

Books and Articles

Annan, Kofi. "Secretary-General Stresses Need for Political Will and Resources to Meet Challenge of Fight Against Illiteracy." UN Meetings Coverage and Press Releases, 1997.

<https://press.un.org/en/1997/19970904.sgsm6316.html>.

Dersso, Solomon A. "The Jurisprudence of the African Commission in Human and People's Rights with Respect to People's Rights." *African Human Rights Law Journal* 6, no. 2 (2006): 333–57.

Iles, K. "Participatory School Governance." *SALJ* 135 (2018): 425–28.

Joubert, Rika, and Sakkie Prinsloo. *The Law of Education in South Africa*. Pretoria: Van Schaik Publishers, 2019.

Kruise, H. "Reasonable Accommodation in Schools." *THRHR* 82 (2019).

Moosa, N. "When Schools Exclude." *SAJHR* 31 (2015): 435–38.

Moosa, N. "Inclusive School Governance." *SALJ* 136 (2019): 352–55.

Roux, T. "Transformative Constitutionalism and Education." *SAJHR* 34 (2018): 142–45.

South African Human Rights Commission. *Guidelines on Religious and Cultural Rights in Public Schools*, 2018.

Quran 96:1-5 (Sahih International translation).

The Bible, Proverbs 1:7 (New International Version)

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