Religion and Human Rights Conference:

Brigham Young University

October 6-8 2013

Panel Contribution

Title: Religion and human rights education: a South African perspective

Dr. René Ferguson
University of the Witwatersrand: School of Education, Johannesburg, South Africa.
Rene.Ferguson@wits.ac.za

Abstract

The paper provides some insight into the challenges for human rights education when religious liberty intersects with various other human rights. The context is South Africa which since 1994, has shifted from being a "racist oligarchy" to an open, democratic society. The liberal Constitution, the cornerstone of our democracy, is however no guarantee that the religious and cultural rights of 'everyone' are realized in the educational and social spheres. Some issues will be presented and problematized for their consequences in the South African context.

Introduction

This paper is written from an educational perspective with an interest in the intersections between religion and human rights in educational contexts, public and private schools and tertiary institutions in particular. South Africa has shifted from being a "racist oligarchy" (Van der Vyver 2007: 77) to an open, democratic society, with a Constitution that enshrines various liberties, including religious liberty. The consequences for this political shift where religion and cultural identities are concerned are at once fascinating and complex and present many challenges in the educational sphere in a secular society.

Background to religion and human rights in the South African context

South Africa is home to many different religions including African Traditional Religions, Christianity in many forms including Roman Catholics, Eastern Orthodox (Greek, Russian. Ethiopian) and many Protestant denominations including Anglicans, Methodists, Presbyterians, the Dutch Reformed Church, Baptists, a strong evangelical Pentecostal movement, various African Christian churches and newer developments in Christianity including the Church of the Latter Day Saints, Jehovah's Witnesses, Christian Science; and other so-called "world religions", namely Judaism (Orthodox and Progressive), Islam (Sunni

and Sufi), Buddhism (Theravada and Mahayana Schools), Hinduism (in many forms), the Bahai Faith, Rastafari, Sikhism and many others. Evidence of the extent of the diverse religious presence in South Africa is in the numerous places of worship in the larger cities and smaller towns in South Africa, including churches, synagogues, mosques and temples. There are however thousands of African Christians in South Africa who do not worship in ornate establishments or institutions as one is likely to see in the Roman Catholic, Orthodox and Protestant churches, but are identifiable by the uniforms that they wear and the services that they hold in the open under trees, or on river banks. Situated as we are on the southern tip of Africa, with migrations of people southwards from other states ravaged by poverty and war, African Christianity and African Islam deepen the religious diversity of southern Africa and add to the complexity where human rights are concerned.

With this diversity of religions confined to a land area of about 1.2 million square kilometres and a population of 51.77 million people (in comparison to the USA which is 9.83 million square kms, with a population of about 316 million people) it is not difficult to see why there are bound to be tensions between religious groups and between religious and other human rights; this in spite of South Africa having one of the most progressive constitutions in the world. With a large indigenous population, an area in which conflict or tension often arises, is in the intersection of culture and freedom of expression, gender rights, sexual orientation, safety and security, and children's rights. The right to practice the culture or religion of one's choice may infringe on the freedom of choice (the South African constitution is pro-choice). Other than the workplace, the space in which these tensions tend to emerge, sometimes covertly, is in the education sector. Tensions occur when the dominant religion in a school provides the norms and the institutional rules and habits (Adams, 2007: 247; Young 1990: 41) to which all students should conform.

Before I continue to elaborate on these points, it is necessary to provide some background to the Constitution of South Africa which includes the Bill of Rights. The conceptualisation of Human rights in the South African context is linked specifically to the Bill of Rights, because it was constructed in response to South Africa's social-political history. However, other international human rights treaties and instruments are also taken into account. In the spirit of this Symposium I will refer specifically to religious liberty in the South Africa Bill of Rights.

Religious liberty in the Constitution of South Africa
The Constitution of SA emphasises equality for all in Section 9 (3) of the Bill of Rights, irrespective of "race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, **religion, conscience, belief**, culture, language and birth".

Section 15 (i) deals specifically with religious freedom – "Freedom of religion, belief and opinion: Everyone has the right to freedom of conscience, religion, thought, belief and opinion" (The Constitution of South Africa, Chapter 2, 1996).

Van der Vyver (2007: 77) describes the current South Africa Constitution "as far as religion and religious diversity are concerned, as one of profound toleration and accommodation". In addition "it guarantees the free exercise of religion; it sanctions freedom of assembly and freedom of association of "everyone"; it protects the right to self-determination of religious communities and makes provision for a *Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities*" (ibid: 77, 78).

I also need to mention Section 31 of the South Africa Constitution since this section emphasises the rights of cultural, religious and linguistic communities - it reads as follows:

> (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community:
> *(a)* to enjoy their culture, practise their religion and use their language; and
> *(b)* to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
> (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

Background to human rights in the South African context

Human rights for all was not something available to all South Africans prior to democracy in 1994. It is well known around the world that South Africa's apartheid system meant the discrimination and oppression of people on the grounds of race, gender, class and religion (Jeena 2005: 1). These discriminations led to inequalities in the education system that were addressed through curriculum reforms starting in 1994 and continuing until today.

Since the introduction of the new Constitution in South Africa in 1996, various policy documents on the place of religion in education have been introduced. The Constitution of South Africa says nothing about religion and education, or religion in education, however, our Constitution is very explicit about the role and recognition of religious liberty in society, as already noted in my reference to Section 15 in the South Africa Bill of Rights: *Everyone has the right to freedom of conscience, religion, thought, belief and opinion.* For this reason any ancillary policies need to reflect the spirit of the Constitution. *The National Policy on Religion and Education* (2003) is amongst these and various other institutional responses to the rights and freedoms set out in the Constitution of South Africa. An example of such an

institutional policy is a series on educational rights, which was part of what was known as the Education Rights Project (published in June 2005) put out by the former Education Policy Unit in my own university, (now known as the Centre for Researching Education and Labour).

These education policy booklets were funded in part by the Foundation for Human Rights in South Africa and Save the Children Sweden and compiled with the intention of providing guidelines on various rights issues to schools in an accessible way. There are 13 booklets in the series, but I will refer to only one, titled *Religion and Schools*, authored by Na'eem Jeenah (2005).

The Education Rights Project was initiated in response to Section 29(1a) of the South African Constitution that declares that "everyone has the right to basic education, including adult basic education". The EPU acted on this constitutional right because of the history of poverty and inequality in the education system in South Africa. The praxis of the ERP was not only concerned with rights **to** education, but also with 'Rights **in** education'. The booklet on *Religion and Schools*, was therefore written to address the issue of religious rights **in** education. This booklet is based on the *National Policy on Religion and Education* and made the policy more user friendly.

The National Policy on Religion and Education draws attention to four possible relationships between the state and religion:

- a theocratic model in which the state aligns with one particular religion.
- a repressionist model which is the complete opposite to a theocratic model: in which the state suppresses religion or eliminates it from public life;
- a separationist model in which the state does not suppress religion, but in accordance with the secularity of the state may completely divorce the religious and secular spheres of life.
- a co-operative model, also in keeping with the secularity of the state, identifies the separate areas of influence of religion and state but promotes co-operation between the two. Ideally it should promote co-operation between religious and cultural groups and the state.

The South African government rejects the first three and works within the framework of the co-operative model, which in principal gives considerable scope for religious self

determination and freedom of expression. As Jeenah noted, drawing strict separation between religion and the secular state would be very difficult to implement in practice in a country like South Africa, given the visibility of religious groups and since there is considerable evidence of interchange between religion and public life, as I have already pointed out in this paper. However, whilst the co-operative model suggests healthy interchange, in reality this has not always been the case, and various tensions surface on a daily basis between the right to freedom of religion or belief, the rights of citizens to enjoy their culture, practise their religion and therewith the right to self determination of religious and cultural communities (Van der Vyvyer 2007, 2012).

In public schools however, these rights are often silenced as the dominant religious ethos in the school takes precedence.

Given the time limitations, I will share a few examples that hopefully will provoke some discussion.

Issue 1

The first issue has to do with the teaching of religion in school. The *National Policy on Religion and Education* was constructed to deal with the matter of teaching religion in school (the substance of Jeena's *Religion and School* booklet), on the grounds that religion and culture play an important role in the lives of many South Africans. Prior to 1994 only one type of Calvinistic Christianity was taught and privileged in schools. Other Christian denominations as well as other religions were discriminated against, so the National Policy draws attention to the teaching of all religions to pay tribute to the religious diversity in South African society and also to ensure that the human right to freedom of religion or belief is honoured.

Problem:

The problem however is that many school principals and school governing bodies argue that in accordance with Sections 15 and 31 of the Bill of Rights, the majority religion of the school population will take precedence. This is their right. This means non-recognition of minority religious groups in the school and no reciprocity - that is, equal recognition of the right of minority groups in the school to practice and enjoy their religion.

In public schools, where either overtly or covertly, a particular religious or even secular ethos is adopted by the school, the wearing of religious symbols by different groups becomes problematic and often disallowed. The most common examples are the wearing of *hijab* (or

headscarf) by Muslim girls, beards by Muslim boys, the wearing of nose studs by some Hindu girls, dreadlocks and colours by Rastafari boys and girls. The policy on National Guidelines for wearing school uniforms makes it clear that schools should take into account that religious or cultural diversity of the students and permit the wearing of symbols in accordance with the right to freedom of expression (CRL 2012).

In 2012 leaders of the Rastafari community in South Africa approached the CRL Commission (CRL 2012) to intervene to address the discrimination and "scorn" which Rastafari leaders said they were experiencing. This intervention includes educating teachers and students about the Rasta way of life, and the reasons for their wearing their colours, dreadlocks and the smoking of *ganja*.

Issue 2

I have noted that South Africa, being an African State, has a predominantly indigenous African population. Many (South) Africans continue to practice traditional African customs, the right to which is accommodated in our Constitution. However, certain customs have reached the media spotlight on the grounds that these practices or rituals infringe on other rights (*cf.* The Child Act 2006).

These practices therefore are the second issue which I would like to draw attention to in this presentation. Just to point out, that the practice of these is related to education indirectly since they are usually practiced in the community contexts of those South Africans who continue to uphold indigenous practices or customs. I mention these customs since the practice of these have become issues for public debate and are customs that children and young people may talk about in the classroom, or even miss days from school to participate in. The two examples of such cultural practices or customs that have dominated in the South African and international media over the last few months, are virginity testing for girls (in the Zulu tradition in particular), and the circumcision of young men to mark their initiation into adulthood.

Problem:

Virginity testing is a practice associated with an annual Reed Ceremony, or *Umhlanga* in isiZulu. The custom of virginity testing had fallen into disuse a long time ago, but the practice made a comeback about a decade ago as an attempt by the Zulu king to stem the tide of HIV/AIDS. Various Bioethics and human rights activists have moved over the years to have the practice banned because it is seen to violate children's rights: their right to privacy, bodily integrity and dignity (IRIN 2005; Vincent 2006; Mahlangu 2013).

The Child Act of 2006 specifically prohibits social, cultural and religious practices that are detrimental to a child's well being. Virginity testing is mentioned specifically unless the child is over the age of 16 and consents to the test.

The same applies to the circumcision of boys. Boys under the age of 16 may not be circumcised. Boys over the age of 16 may only be circumcised if they have given consent.

The moves to prohibit the virginity inspections altogether have been slated by traditionalists on the grounds that prohibition encroaches on cultural rights. Gender activists argue that the tests exploit young women and allow older men to mark young girls based on their virginity (Mandlu ewn, 3 September; Hugo 2012). The practice has also been labelled as sexist because it targets girls only, and does little to discourage sexual activity among young men. Biologically, the inspections cannot always guarantee sexual purity, which means that young girls can be unfairly labelled as impure. This issue exposes the ideological clash between culture and human rights (IRIN , 2005; Hugo, 2012).

Similarly, the practice of male circumcision has been deemed an invasion of privacy and a challenge to the right to privacy and proper health care. Over a number of years, attendance at initiation schools in which circumcision is a key ritual, has resulted in the permanent maiming of the young men, or in their death. The SA government has brought the national health authorities into the picture to give assistance to traditional leaders to ensure that the young men receive proper health care post circumcision. The suggestion that boys should have the operation in a hospital or clinic is resisted in the strongest of terms. "Going to the mountain", as the initiation schools are often referred to, and experiencing the hardship of living in the bush for a number of weeks or even months is regarded as a necessary part of the ritual for the boys to become men.

In conclusion:

What I have included in this presentation is a snapshot of some of the tensions that exist in the South African context between different human rights. As an educationalist, knowing about and understanding the sources of such tensions is important to address the right to education for human rights in schools and other educational institutions (Osler 2012). A problem that remains unresolved is related to the support for religious or cultural relativism by certain institutions (schools) or by the young women and men who want to go through virginity testing or to be circumcised in the traditional way, in spite of the threats to their health (circumcision) and dignity (virginity testing). With regard to virginity testing, one 21

year old was cited in a media article as saying: "We are not forced to do it. We do it because it is our culture. We thank the king [the Zulu king] for reviving it. We abstain from sex to protect ourselves from diseases and unplanned pregnancies" (Mdletshe, 2012; Mahlangu, 2013). Let's open the issues for discussion.

References

Adams, M. (2007). Overview. Religious Oppression. In: M. Adams, LA. Bell, P. Griffin (eds.), *Teaching for diversity and social justice. Second Edition*: 247-254.

Hugo, N. (2012). Virginity testing and HIV/AIDS: Solution or human rights violation. [online]. http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=1066:virginity-testing-and-hivaids-solution-or-human-rights-violation-&catid=59:gender-issues-discussion-papers&Itemid=267. Retrieved 8th September, 2013.

IRIN. (2005). South Africa: Virginity testing – absence of a small tissue becomes big issue. *IRIN – Humanitarian news and analysis. UN Office for the coordination of humanitarian affairs.* [online]. http://www.irinnews.org/report/56222/south-africa-virginity-testing-absence-of-a-small-tissue-becomes-big-issue. Retrieved 8th September, 2013.

Jeenah, N. (2005). Religion and Schools. In: B. Ramadiro and S. Vally (eds.), *Education Rights Project. Education rights for learners, parents and educators. Book 5.* Wits Education Policy Unit.

Mahlangu, S. (2013). 'Virginity testing at Reed Dance'. *The New Age*, 12 June, 2013.

Mdletshe, C. (2012). "'Certified' virgins praise king for reviving testing". Sowetan Live. http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=1066:virginity-testing-and-hivaids-solution-or-human-rights-violation-&catid=59:gender-issues-discussion-papers&Itemid=267

Osler, A. (2012). Teaching for inclusive citizenship, peace and human rights. In: P. Cowan and H. Maitles (eds.), *Teaching Controversial Issues in the Classroom. Key issues and debates.* London: Continuum. (10 pages).

Van der Vyver, J.D. (2007). The contours of religious liberty in South Africa. *International Law Review*. Vol. 21 pp. 78-110. [online]. www.law.emory.edu/fileadmin/journals/eilr/21/21.1/van_der_Vyver.pdf. (retrieved 2 September, 2013).

Van der Vyver, J.D. (2012). The right to the self-determination of religious communities. In: John Witte, Jr. & M.C. Green, *Religion and Human Rights. An Introduction.* Oxford: Oxford University Press (pp: 236- 253).

Vincent, L. (2006). Virginity testing in South Africa: Re-traditioning the postcolony. *Culture, Health & Sexuality,* 8(1): 17-30.
Young, IM. (1990). Five Faces of Oppression. In, *Justice and the politics of difference.* Princeton, NJ: Princeton University Press (pp. 39-65).

References: Policies and Acts

Challenges faced by the Rastafari Community in South Africa. (2012). *Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights COmmission).*

Children's Act, No. 38 of 2005. Government Gazette, 19th June 2006.

The Constitution of the Republic of South Africa. No. 108 of 1996.

The National Policy on Religion and Education, Government Gazette, 12 September, 2003.