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ORGANISASIE VIR GODSDIENSTE-ONDERRIG EN DEMOKRASIE ('Applicant') v 6 public schools, Minister of Basic Education, Minister of Justice and Correctional Services (Cause for Justice and others intervening as amici curiae) ("Religion in Public Schools")

From 15 to 17 May a full-bench (three judges) of the Johannesburg High Court will hear oral arguments in the "Religion in Public Schools" case. Preparations for the court hearing is now in the home straight as this protracted court battle comes to a head.

Cause for Justice ('CFJ') is a "friend of the court" (amicus curiae party), joined to assist the court in the interpretation and application of the constitutional rights and values engaged in this matter. This is a watershed case for religious freedom in South Africa and is likely to end up in the Constitutional Court.

The Applicant, instituted legal proceedings against six public schools in September 2014 because of religious observances conducted at the schools. The Applicant is asking, in essence, for the court to order the removal and banning of almost all religious observances from these six schools. Rather significantly, the schools targeted by the Applicant all affirm a Christian ethos/value system as basis for achieving a flourishing school environment.

CFJ's main submissions in these proceedings are that:

1. religious teaching and the incorporation of certain religious practices is constitutionally sound;
2. religious expression in schools constitutes expression that is integral to human dignity rights;
3. tolerance for diversity is promoted when religious expression and teaching forms part of learners' experience in schools;
4. learners are prepared for engagement with fellow citizens who hold both the same and different religious views as their own if they are exposed to religious expression and teaching within the school system.

In making these submissions, **CFJ relies on the constitutional and statutory context, and foreign and international law.** It argues in favour of a system that tolerates diversity of religious practices and views, and against a system that is essentially secular, denying all but agnostic or atheistic views in the life of a school.

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The **freedom of religion right**, and the recognition that religious observances may be conducted at state or state-aided institutions, must be evaluated in the constitutional context as a whole. The South African constitutional structure allows for the state to support and promote a variety of religions and irreligious views fairly and equitably.

The **Schools Act** (section 7) provides that, subject to the Constitution, and applicable provincial laws, religious observances may be conducted at a public school under rules issued by the School Governing Body (SGB) if such observances are conducted on an equitable basis and attendance at them by learners and members of staff is voluntary. Under section 20(1)(b), the SGB must adopt a mission statement (including the school ethos) for the school in respect of which they serve. The **National Policy on Religion and Education**, 2003 concludes that it upholds the principles of a cooperative model for relations between religion and the state, by maintaining a constitutional impartiality in the formal activities of the school, but encouraging voluntary interaction outside of this.

In the present case, it cannot be ignored that SGBs adopt religious policies that are accepted by the relevant Department of Education, in accordance with the Schools Act and/or provincial legislation (where such legislation is in place). Unless the policies are challenged for non-compliance with the statutes under which they were issued, it is not for the Applicant to challenge the practices and observances directly.

In its submissions, CFJ also looks at **foreign law**, specifically Nigeria, Germany, Belgium and the Netherlands, **as well as at international law instruments** for authority. It is constitutionally appropriate to adopt a state neutrality in respect of religion that is similar to the situation prevailing in Belgium and The Netherlands, whereby the State may support all religions, as opposed to the State being precluded from supporting any religious expression. The golden thread that runs through the international law instruments is that allowance may be made for confessional religious instruction, as long as there are opt-out clauses or alternatives for dissenting learners.

The National Religion Policy affirms a co-operative model. It is therefore perfectly legitimate under the South African constitutional order for the state to support both schools where the SGBs adopt a secular ethos and those where some religious ethos is adopted. Given that SGBs, representing broadly the interests of the community that they serve, are legislatively empowered to determine religious policy and ethos, it would be inappropriate for the court to interfere in their policy decisions in the absence of a clear basis to do so.

CFJ upholds that the only basis upon which there ought to be interference with or limitation of religious practices ought to be if harm is caused to others.

CFJ further accepts that accommodating religion in schools in a manner that ensures that the dignity and beliefs of all involved is respected, may at times not be an easy task. But the answer is not to jettison religion - and along with it the enriching role that religious and non-religious belief and practice plays within the school environment.

[MEDIA BRIEFING ENDS]

To view CFJ's Heads of Argument, follow this link:

http://causeforjustice.org/newsitev2/wp-content/uploads/2017/02/28FEB2017_HOA_final.pdf

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