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# Teenage pregnancy and the South African Schools Act: is religion a justifiable reason for exclusion?

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## Abstract

Post-apartheid schooling has seen a proliferation in private, and specifically, religious-based schools. These schools, while constituted within the South African Schools Act of 1996, can present a challenging demand, in that the customary religious practices of certain private religious schools might be seen as incompatible with the procedural ramifications of the aforementioned Act. As an instance of this incompatibility, we commence this article by examining one of South African schools' greatest challenges – teenage pregnancy. Firstly, by specifically looking at how Muslim-based schools respond to teenage pregnancies, we raise the concern that the exclusion of teenage pregnant girls might not only bring the representatives of two different constituencies – namely Muslim-based schools and the SA Schools Act – into conflict with one another, but that it might also engender the possibility of exclusion of others. Secondly, by examining whether learners of a particular religious faith can be excluded from schooling on religious grounds, we argue that a plausible understanding of cosmopolitanism propels the expectation that all diverse learners should be recognised as legitimate participants in a school republic irrespective of their violation of religious sanctity. This claim is corroborated by the argument that internal inclusion can most appropriately be realised through an emphasis on the equalisation of voice that affords even the most vulnerable in schools (that is learners) an opportunity to stake their claim to inclusion based on invoking their legitimate voices in matters that affect them.

## The South African Schools Act and independent schools

The SA Schools Act (no. 84 of 1996) makes provision for the establishment of independent schools, which generally includes privately-run and religious-based schools. Subject to the Act, additional conditions attached to the registration of these schools, include: A head of department (HOD) must register an independent school if he or she is satisfied that:

- (a) The standards to be maintained by such a school will not be inferior to the standards in comparable public schools.
- (b) The admission policy of the school does not discriminate on the grounds of race.
- (c) The school complies with the grounds for registration contemplated in subsection (2), which states that “The Member of the Executive Council must, by notice in the Provincial Gazette, determine the grounds on which the registration of an independent school may be granted or withdrawn by the Head of Department” (Chapter 5, no.46)

Statistics released by the South African Institute of Race Relations (SAIRR), show that the number of independent schools is growing at a relatively rapid rate – to the extent that the number of learners attending independent schools between 2000 and 2010 increased in every province with the exception of the Free State. According to Hofmeyr and Lee (2004, p.143), while the dominant public perception of independent schools in 1990 was that of “white, affluent and exclusive”, the current reality is that the majority of learners at independent schools are black (to use the racial categories still employed by government), are religious and community-based, and charge average to low fees. The reasons for the establishment of these schools are as diverse as their religious and philosophical underpinnings. Central to the stated mission of many of these schools, however, is the contention that public schools cannot be trusted to cultivate and transmit the values and traditions at the core of respective religious beliefs.

While the South African Constitution recognises the importance of religion and religious symbols to the life of South African citizens, and therefore recognise that citizens have the right to believe in whatever religion they wish to, the Department of Basic Education’s (DoBE) policy on religion, as stipulated in the SA Schools Act, stipulates that state schools will provide only one type of education with respect to religion, and that is religion education: “Public educational institutions have a responsibility to provide Religion Education in a way that shows a ‘profound appreciation of spirituality’ but does not focus on any particular religion and does not aim to provide religious instruction” (Department of Education (DoE), 2003, p.459). Schools, therefore, explains Jeenah (2005), are expected to teach learners what religions are all about and, by doing so, increase understanding among citizens, build respect for diversity and value spirituality. Chidester (2002)

describes the approach by the Department of Education as one based on a principled distinction between the many religious interests, which are best served by the home, family, and religious community, and the national public interest in education about religion, religions, and religious diversity in South Africa. While the objective of the South African Board of Jewish Education (SABJE), for instance, is to promote and advance Jewish education in South Africa (SABJE, 1984), the mission of the Catholic Institute of Education is to enable Catholic schools to offer values-based, quality education to learners in an environment that nurtures moral, intellectual and spiritual development.

The establishment of religious-based schools, however, has not been without criticism, with Fataar (2005) contending that while the South African constitution allowed communities to establish independent institutions on condition that they did not explicitly exclude people on the basis of religion, race, or disability, the community-specific character of Muslim and other such schools, however, seemingly blocked access to groups outside of that community. Voicing a similar concern, specifically regarding Muslim-based schools, Tayob (2011) maintains that these schools appeared to propagate and preserve racial identities of apartheid South Africa, since they were overwhelmingly attended by coloured and Indian learners. Although these criticisms against independent schools seem valid one cannot deny that such schools conceived of their establishment as contributing to the enhancement of quality education in a democratic dispensation.

Inasmuch as the SA Schools Act has put in place directives to ensure that schools are free from discrimination, post-apartheid South Africa has witnessed numerous incidents of discrimination and exclusion on the basis of race, religion, language, ethnicity, teenage pregnancy, as well as the inability to pay school fees. The most recent example of religious-based discrimination involves the case of Sikhokele Diniso, a grade 10 learner from Siphamandla High School in Khayelitsha (Western Cape) who, in March 2013, was instructed to leave school and not to return until he had cut his hair. Diniso is a Rastafarian and growing his hair is considered by him as being a part of his faith. Only after the intervention of the NGO, Equal Education, was the learner allowed to return to school. In January 2013 siblings, Sakeenah and Bilal Dramat at Eben Dönges High in Kraaifontein, were instructed to remove their *hijāb* (head-scarf for females) and *fez* (head cover for males), respectively. While Bilal complied, Sakeenah refused, causing the school to contact their parents to fetch the children from school. Another example is that of Sunali Pillay, who, in 2010, was a learner at Durban Girls' High

School. As a Hindu, and as a religious and cultural expression of her physical maturity, she had her nose pierced and a gold stud inserted. In contravention of the school's regulation on the wearing of jewellery, her mother was requested to write a letter to the school explaining why Sunali had to wear a nose stud. After the school management refused to grant Sunali an exemption to wear the nose stud, her mother took the case to an equality court, which found in favour of the school, because Sunali's parent had signed an undertaking that their daughter would adhere to the school's code of conduct, which had clear stipulations about the wearing of jewellery. After the Equality court found in favour of the school, the Pillays successfully appealed to the Durban High Court (Du Plessis, 2009).

The first point we are trying to make is that while policies to prevent unfair discrimination are in place in the SA Schools Act, they do not preclude acts of exclusion from happening, as is perhaps, most evident in the acts of exclusion practised against pregnant school girls. These acts of exclusion are rapidly increasing for the disconcerting reason that teenage pregnancies appear to be on the increase. Our second point concerns the relationship between citizenship, religion and cosmopolitanism. While the SA Schools Act maintains clear guidelines that learners may not be excluded from schools on the basis of religious and cultural beliefs and practices, the authors of the Act, perhaps, did not foresee that the same beliefs which are protected under the Constitution and the Act would be used to exclude some learners from both public and religious-based schools. The existence of several private religious schools, which are constituted on the basis of very specific customary religious practices, presents a particular challenge to the SA Schools Act. Certainly, in the context of salient decisions pertaining to teenage pregnant girls, these schools might be seen as contravening the procedural stipulations of the Act. We shall now attend to a discussion of the latter.

## Teenage pregnancy and religious responses

Statistics South Africa's 'General Household Survey 2010: Focus on Schooling Report' estimated that up to 89 390 school girls were pregnant or had fallen pregnant between July 2009 and July 2010. Stated differently and perhaps to highlight the severity of the problem, particularly in a country where HIV prevalence is 18.8%, one in three girls has a baby by the age of twenty and 124 school girls fall pregnant every day. There are many and

diverse reasons South African classrooms are filled with pregnant girls and young mothers – while some are as a consequence of rape, coercion, prostitution, and drug abuse, others are consensual and undoubtedly related to teenage sexuality, and ill-informed decisions. In addressing the unacceptably high rate of teenage pregnancy, and sensitive to the impending marginalisation of the pregnant mother-to-be, the SA Schools Act makes provision for compulsory attendance of all children “until the last school day of the year in which such a learner reaches the age of fifteen years or the ninth grade, whichever occurs first” (No. 84 of 1996, Chapter 2, 3(1)) and dramatically curtails a school’s rights to expel learners. The only provision that exists to ‘permit’ pregnant learners or young parents (if they are under 16) to be away from school is if they get exemption from the relevant provincial HOD.

While the legal directive of the SA Schools Act is clear in terms of the rights of access to schooling of the pregnant girl, what the Act did not adequately address was the rights of the school. Consequently, and in direct response to the growing number of pregnant school girls being turned away from schools, and perhaps even in recognising the glaring gap between policy and practice, the DoBE, in accordance with the Constitution, the SA Schools Act, and the Promotion of Equality and Prevention of Unfair Discrimination Act (No. 4 of 2000) developed the ‘Measures for the prevention and management of learner pregnancy’ (2007), which states that the pregnant school girl shall not be unfairly discriminated against. The ‘Measures for the prevention and management of learner pregnancy’ document aims to clarify the position of the DoBE regarding learner pregnancies, and “to provide an environment in which learners are fully informed about reproductive matters and have the information that assists them in making responsible decisions” (2007, p.1). In recognition of the responsibility of education, the document points out that The National Curriculum Statement (NCS) provides for comprehensive Life Skills programmes in the Learning Area Life Orientation, which is compulsory from grades R to 12. The Life Skills programme deals with topics that affect each and every learner and educator – ranging from human sexuality, decision-making skills, to prevention of teenage pregnancy and sexually transmitted diseases (2007).

As Morrell, Bhana and Shefer (2012) note, until the publication of ‘Measures for the prevention and management of learner pregnancy’, schools had been expected to interpret the law as best they could. The 2007 document was designed to make explicit the rights and obligations of schools, teachers, and

learners, “by balancing the best interests of the individuals against those of other learners, educators, the school, and its community” (2007, p.4). However, the original policy regarding teenage pregnancy, as well as the ‘Measures’ document do not seem to take into account that pregnancy is essentially a gendered process, which means that any response to it is couched in gender. To this end, when a girl becomes pregnant, she is not only confronted with the responses (and judgements) of her peers but also by the rest of her community. On the one hand, state Morrell, *et al.* (2012), the ways in which pregnancy and parenting are responded to at schools generally reflect some of the dominant discourses about gender in the broader society. That is, patriarchy and male chauvinism continue to be considered as reasons why pregnant girls or unmarried mothers are subjected to more prejudice and even condemnation than unmarried fathers. On the other hand, because of the multiple ways that policy can be interpreted, and open to exclusion rather than inclusion, it has a limited capacity to change the experiences of learners who happen to be pregnant. For instance, the two-year time constraint for pregnant school girls does not necessarily inhibit or control teenage pregnancy other than limiting the girl’s return to school. Morrell, *et al.* (2012) contend that apart from policies and measures to manage teenage pregnancies, school managers, parents and other community members bring with them gendered identities and moralities (prejudices, inclinations) and practices (both at school and beyond).

Through our own project work on ‘Re-imagining citizenship’,<sup>1</sup> we are aware that many educators either do not feel comfortable in teaching about sexuality, sexual abuse, and abortion, or they refuse to do so on the basis that they cannot be expected to teach on topics, which perhaps compromises their own religious or moral beliefs. We are also aware of two pregnancies at two public high schools in the Western Cape, where the principals, upon being informed about the pregnancies, informed the girls to leave immediately and not to return until further notice. This decision, according to both principals, was based on preserving the ‘morality’ of the school. The principals contend that allowing pregnant girls to remain at the school would send a message that

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<sup>1</sup> The ‘Re-imagining citizenship’ project is currently being conducted at five high schools in the Western Cape. Through working with Life Orientation educators, and specifically developing a manual on the teaching of citizenship, the primary objectives of the project are: (1) to explore democratic citizenship education in consonance with local practices; (2) to explore how the concept of *Ubuntu* (human interdependence) can be intertwined with deliberative and compassionate engagement; and (3) to explore possible suggestions to deal with societal conflicts.

the school condoned their behaviour. Whether the behaviour being referred to was that of premarital sex, or getting pregnant, remains unclear. At one of the schools the principal reported that another girl, who had been instructed to leave the previous year due to her pregnancy, had attempted to return at the beginning of the new school year. While the school generally accepted the return of teenage mothers, the principal, in this instance refused the admission of the girl because she had been married by religious rites. A married woman, he maintained, should not be at school, as she no longer had anything in common with her peers.

In two other recent cases, which started in 2010, involving two Free State School Governing Bodies, the principals were accused by the provincial education HOD of acting unlawfully when they temporarily expelled girls from school, instructing them to return after their pregnancies (Constitutional Court of South Africa, 2013: CCT 103/12). The SGBs in both instances, it would seem, were merely enforcing the school's pregnancy policy in terms of its code of conduct and were, according to them, not acting unlawfully, since the contents of the actual policy had been communicated to the relevant provincial department of education, and had not been brought into contention. Faced with appeals for assistance from the parents of both pregnant girls, the provincial education HOD, in his capacity as the employer of the principals in terms of the Employment of Educators (Act 76 of 1998), issued instructions to the principals of both schools to immediately re-admit the girls on the basis that the two SGBs had not followed proper procedure, and that the fundamental rights of the girls to access to schooling was being prevented. Both SGBs objected on the basis that the department did not have the power to instruct principals to act against the adopted school policy, and, in making a successful application to the High Court, contended that the instruction of the provincial education HOD infringed on the powers of the SGB. It is important, however, to consider the majority judgement of Justice Khampepe in contrast to the more radical judgement of Justice Zondo. Justice Khampepe found that the schools' governing bodies were empowered to adopt pregnancy policies and that in addressing his concerns regarding the policies, the HOD was obliged to act in accordance with the Schools Act, which he did not. The HOD had acted unlawfully in issuing instructions to the principals that they readmit the pregnant students, contrary to their schools' pregnancy policies. In considering the unconstitutionality of the pregnancy policies, Justice Khampepe found that the pregnancy policies were discriminatory as they differentiate between students on the basis of pregnancy, which is disallowed under section 9(3) of the Constitution. The policies also limit pregnant

students' fundamental right to education, as protected by section 29 of the Constitution, by requiring students to repeat up to a year of schooling. In light of these findings, Justice Khampepe ordered that the appeal be dismissed and that the schools' governing bodies review their pregnancy policies in light of the judgment and furnish the Court with a copy of the revised policies. In contrast to the majority's findings on the exercise of public power, Justice Zondo found that the governing bodies did not have the power to make the pregnancy policies as they were inconsistent with provisions of the Schools Act and the Constitution. As such, he found that the HOD not only had the power to act as he did in instructing the principals not to carry out or implement the pregnancy policies which were in breach of the Schools Act and the Constitution, he was obliged to do so (Human Rights Law Centre). Emerging clearly from the majority and the minority judgements, is that the exclusion of the pregnant girls was inconsistent with the provisions of the SA Schools Act and the Constitution.

So, how are religious-based schools responding to the prevalence of teenage pregnancies, which, no doubt, is as much of a challenge at independent schools as it is at public schools? Data or reports on the exclusion of pregnant girls are not readily available, since they only come to light if the parents exercise their rights to report the matter to the relevant education department, or the Human Rights Commission. However, we are aware that within the Western Cape, it is not uncommon for Muslim-based schools to expel pregnant girls, as well as the boys, if they are the fathers, on the grounds that they have contravened the Shari'ah (Islamic law), which prohibits sexual intercourse outside of marriage. Since a Muslim-based school is constituted on a particular interpretation of the laws of Islam, acts and behaviour which run contrary to these laws are considered to be in violation of the faith and, so it seems, should not be tolerated. Parents in this regard would be reluctant to challenge the school on the basis of two reasons: Firstly, they had enrolled their children at a religious-based school with the intention of exposing their children to a specific religious ethos and environment, which, we are sure, they had hoped would have assisted their children in not indulging in premarital sexual activities. To therefore take the school to task for merely enforcing not only its policy on teenage pregnancy, but for also respecting the moral norms of its religious doctrine would seemingly for them be untenable; secondly, as stated earlier, when a girl becomes pregnant, she is not only confronted with the responses (and judgements) of her peers, and the rest of the school community, she is also brought into reckoning by the community of her 'situatedness'. Her parents, if they were to hold the school to account in

terms of the SA Schools Act or the Constitution, would face a precarious predicament within the ‘situatedness’ of their community. In other words, in disagreeing with the school for expelling their daughter or son on the grounds of a premarital pregnancy, they are bringing into disrepute their own connection and agreement with a community, who might stand in agreement not necessarily with the policy of a school, but certainly with a particular interpretation of Islamic law, which states that an unmarried pregnant girl has committed an adulterous act deserved of being punished. What emerges here is that the decision of a Muslim-based school to expel a pregnant girl might be seen as incompatible with the procedures of the SA Schools Act that not only brings the representatives of two different constituencies (Muslim community and democratic government) into conflict with one another but also engenders the possibility of exclusion of others – that is, pregnant learners.

Of course, we have to consider the school’s argument of a moral basis, as well as the rights of the school as opposed to the rights of the pregnant girl. But, does the preservation of morality necessarily have to translate into a notion of exclusion? Can the act of excluding pregnant girls from school be considered as an act of morality? And should schools be allowed to impose religious doctrines on learners simply because these schools enjoy the privilege of being private? The challenge that emerges is that the decision of a Muslim-based school to expel a pregnant girl might be seen as incompatible with the procedures of the SA Schools Act. And this incompatibility not only brings the representatives of two different constituencies (Muslim community and democratic government) into conflict with one another but also engenders the possibility of exclusion of others – that is, pregnant learners.

We are aware of a precedent for ‘acceptable discrimination’ in the case of *Wittman v Deutscher Schulverein*, Pretoria (1998(4) SA 423(T)), which recognised the right of private schools to determine admissions based on religion. In this matter the court had to decide, *inter alia*, whether the freedom of religion clause in the *Constitution of South Africa*, 200 of 1993 (the interim Constitution) afforded parents a right to exclude a scholar from attendance at religious instruction classes and observances at school. The court held that section 14(2) of the interim Constitution did not apply to the relationship between the parent and the school, as the latter is not a state aided institution or an organ. Du Plessis (2006) explains that the court argued that religious observance is an act of religious character, for example, the daily opening of a school by prayer, whilst religious education is not. Moreover, even if

religious instruction were a religious observance, the 1993 Constitution granted the rights to conduct religious observances at state and state-aided institutions and that right could not be nullified by those who had the right to abstain from them but chose not to. The religious instruction classes at the school were therefore not unconstitutional. However, the right to freedom of religion, thought, belief and opinion entailed that attendance of the religious instruction classes be voluntary. Also of particular interest in this case is that while the school is a private one, and received state funding, the court held that this did not mean that the state was in control of the school. The *Wittman v Deutscher Schulverein* is a key judgement that legitimised religious freedom in private schools in South Africa, and by so doing, endorsed the right to discriminate. But, can religious-based schools legitimately exclude learners from school on the basis of an alleged contravention of a religious code of ethics?

## Towards internal inclusion

In this section, we argue that the expulsion of learners under the aegis of conforming to religious doctrine together with imposing a community's desired forms of morality are incommensurable with the notion of internal inclusion. Firstly, to expel learners from school on the grounds that they have contravened a religious code of ethics is to be oblivious of the fact that all mainstream religious practices are very favourable to giving 'sinners' a second chance, that is, religions' advocacy for forgiveness and compassion. In fact, to act morally means that one has developed compassion and care for the other who has experienced a vulnerability and which he and she might even already regret. And to punish learners further by denying them access to schooling on the grounds of having dishonoured a rule is tantamount to acting immorally without being intrinsically connected to the norms and practices of internal inclusion.

Regarding inclusion, Young (2000) avers that any human being has a legitimate right to engage with others about important decisions that affect them – that is, every person has a right to decision making because they are affected by the decision-making processes and thus have a right to influence the outcome. However, learners who are expelled from school – in this instance for contravening a religious law, and the code of ethics of a school, do not engage in the formulation of the rule which excludes them. That is,

learners have simply been excluded on the basis of not having been considered matured enough by those in authority to deliberate the rule's implications. Moreover, if one considers that inclusion involves bringing into the sphere of deliberative activity those individuals who previously were not included (Biesta, 1999), it follows that denying learners access to schooling on the grounds that they have violated a rule is to exclude them from a fundamental requirement for inclusion, that is, to be unconditionally included. Unconditional inclusion means that a person cannot face stereotypical judgement on the grounds of having contravened a religious law but rather that every person deserves to be heard, and at least considered equally in deliberation. Biesta (1999) makes the distinction between two assumptions with regard to inclusion, namely internal inclusion, which refers to how we can make our practices even more inclusive, and external inclusion, which looks at bringing more people into a deliberative sphere of engagement. Whereas the first assumption is focused on making individuals even more attentive to dissimilarity, the second assumption demands of those who are in a deliberative space to bring more individuals into that sphere so that they may engage with reason and tolerance.

In our view, by denying learners access to school on the grounds that they have contravened a rule is not only to deny them the possibility of redemption by engaging with fellow learners and educators possibly on what can be done to build communities of trust and recognition of the other (irrespective of their acts of supposedly wrong doing). In fact, by internally including learners we might engender greater opportunities for learners and educators to become persuaded by the norms and practices of their religions rather than dismissing them prematurely from the sphere of engagement that schooling can and might offer. The educational potential for internal inclusion is to cultivate more opportunities for inclusivity that can possibly prevent contravening religious rules. The point about internal inclusion is that dissimilarity or to have acted out of consonance with the prescribed norms of the school and religion might just be the catalyst to rally a school community around the issue of morality they so deeply cherish and endeavour to uphold. And, following the art of deliberation, it does help to talk over and over again about matters of public, more specifically religious communities' concern. It does not make sense to exclude learners who merely become more vulnerable in society because of having already been victimised. Internal inclusion requires that we continue to engage them (and allow them access to schools) as to nurture relationships that can be informed by their voices in the deliberative sphere of an inclusive school. It is in this regard that the SA Schools Act

remains a tenable framework in terms of which internally included spheres of pedagogy and morality can be harnessed. So, it does not help to expel learners who are pregnant and married. This brings us to a discussion of cosmopolitanism and inclusion.

## On cosmopolitanism and inclusion

To Benhabib (2011), a conception of cosmopolitanism cannot be realised without contextualisation and articulation through self-governing entities. Based on this understanding, Benhabib contends that individuals are rights-bearing not only in virtue of their citizenship within states, but by virtue of their humanity in a global world. Consequently, posits Benhabib, “cosmopolitanism involves the recognition that human beings are moral persons equally entitled to legal protection in virtue of rights that accrue to them not as nationals, or members of an ethnic group, but as human beings as such” (2011, p.9). In their explanation of whether there are individuals or groups with whom cosmopolitanism is incommensurate, Merry and De Ruyter (2009) make two assertions. Firstly, that cosmopolitanism is not tantamount to secularism, and hence that it would be incorrect to assume that religious beliefs and cosmopolitanism are in discord. Secondly, they differentiate between what they term ‘religious people in general’ or ‘spiritual believers,’ and ‘deeply religious’ or ‘literalists’, which includes fundamentalist and orthodox individuals. The ‘deeply religious’ are defined as individuals who are strongly committed to a belief in a transcendent Being or Ultimate Reality, and who draw a clear division between those who are right and therefore on the inside, and those who are wrong and are therefore on the outside. The ‘religious people in general’ are also motivated by their beliefs, but rather than focusing on what is right and wrong, emphasis is placed on what is good. According to Merry and De Ruyter, the pragmatic approach of the latter group follows from a different moral obligation to that of the former. While the ‘religious people in general’ are often motivated by religious convictions as they aspire to realise cosmopolitan ideals, the ‘deeply religious’ do not generally demonstrate an empathic openness to learn or to respect others, and act on questionable motives, which leads Merry and De Ruyter (2009) to conclude that the ‘deeply religious’ fall short of being cosmopolitan.

Clearly, in any school environment – public or private – we will encounter educators, school managers, learners and community members who are either

‘religious people in general’ or ‘deeply religious’ – as was found during our project work when certain educators showed a reluctance to teach about sexuality, homosexuality, and abortion, on the basis that they cannot be expected to teach on topics, which perhaps compromises their own religious or moral beliefs. While any individual, in terms of the Constitution, has the right to practise his religious and cultural beliefs, these same beliefs cannot, however, infringe on the rights of others – and this includes the rights of learners to be taught about difference, and topics, which might not resonate with the beliefs or values of the educator. Similarly, while public schools have an obligation to teach about different religions, so that diversity is both recognised and respected, private religious-based schools have the right to promulgate a particular religious tradition, but within a clearly defined balance between the individual as a religious being, and the individual as a citizen – that is, without encroaching a person’s right to be human. This balance ought not to be seen as a separatist construction of identity, but rather as an acknowledgement and recognition of a multiplicity of identity. Schools, even when constituted on private principles of religion, or any other philosophical belief, have the responsibility that they are preparing learners for a public, heterogeneous and democratic space. Religion, therefore, cannot be used to preclude the learner from enacting his or her right of access as a public citizen. Given the prevalence of discrimination and exclusion at public and private schools, schools would seriously need to consider the promotion of inclusion in their schools – both via the curriculum, and policies, such as the Code of Conduct. Teaching about different religious beliefs, and cultural practices, or about homosexuality, or teenage pregnancy cannot be addressed in the absence of a clear articulation and understanding of inclusion. We are not arguing that educators need to accept, and therefore need to teach their learners to accept all forms of difference. But, learners, if they are to participate in a pluralist and democratic society do need to know how *not* to exclude those who are different to them.

Critical to our argument for an inclusive form of citizenship is that the same expectation that religious-based schools have in exercising their autonomy as privately run institutions, needs to be extended to learners as autonomous beings, and as autonomous citizens. Cosmopolitanism along the lines of hospitality to strangers will work as this will ensure the non-marginalisation of teenage pregnant girls. Likewise cosmopolitanism as hostility will also work as teenage girls can disrupt their exclusion. Meting out a system of judgement, which says that a pregnant school girl does not have the right to attend school, leads to exclusion not just of an individual, but places

religious-based schools on a trajectory, which runs contrary to the democratic agenda of a society of which these same schools are a part. This argument has been confirmed by the Constitutional case: *Head of Department, Department of Education Free State Province v Welkom High School and Another* (2013), in which it was found that the exclusion of the pregnant girls was inconsistent with the provisions of the SA Schools Act and the Constitution. On the one hand, then, these schools exist because of a pluralist and cosmopolitan understanding of citizenship – that individuals have the right and protection of the state to exercise their beliefs. And on the other hand, these schools use the same right to practise a form of discrimination. Surely, the right of these schools to exist, as constituted in the SA Schools Act, is constitutive of a conception of inclusive cosmopolitanism, which all religious-based schools, for the sake of their own existence, ought to protect and promote. To discriminate against learners on religious grounds undermines the spirit of inclusive cosmopolitanism that initially contributed to their existence. Thus, building a democratic school with an inclusive and cosmopolitan ethos does not necessarily restrict religion but does countenance the exclusive ways in which religions are and can be used to demoralise difference, in this instance, instigated by teenage pregnancy.

In this article, we have shown how the SA Schools Act has attempted to ensure that learners at schools are free from any form of discrimination, and in recognition of diverse beliefs – religious or otherwise – has also made provision for the existence of independent and religious-based schools. We have shown, through citing various examples, that regardless of the various policies, some learners have been and continue to be on the receiving end of various forms of exclusion. In turning to the central concern of this article, we highlighted the exclusion of pregnant school girls at Muslim-based schools, where the implementation of a particular interpretation of Islamic law has meant the barring and marginalisation of girls, who are pregnant outside of marriage. We have argued that this type of exclusion not only brings the representatives of two different constituencies (the SA Schools Act and religious-based schools) into conflict with one another but also engenders the possibility of exclusion of others. Moreover, we have argued that if one considers that inclusion involves bringing into the sphere of deliberative activity those individuals who previously were not included (Biesta, 1999), it follows that denying learners access to schooling on the grounds that they have violated a rule is to exclude them from a fundamental requirement for inclusion, that is, to be unconditionally included. Internal inclusion, we have argued, requires that we continue to engage them (and allow them access to

schools) as to nurture relationships that can be informed by their voices in the deliberative sphere of an inclusive school. Finally, the deliberative and constitutive value of the SA Schools Act is not only dependent on how well its current policies against discrimination are implemented, but how well they recognise and respect difference, and the extent to which all forms of being and beliefs are included, whether in public or independent schools, because, ultimately, what we teach and learn in schools, is what we become in society.

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