

**TYRON MARHGUY V. BOARD OF GOVERNORS ACHIMOTA SENIOR  
HIGH SCHOOL: A COMMENTARY**

Idowu A Akinloye<sup>1</sup> & Maruf Adeniyi Nasir<sup>2</sup>

**INTRODUCTION**

This comment is a reflection on the 2021 Ghanaian case of *Tyron Marhguy v. Board of Governors Achimota Senior High School and Anor*<sup>3</sup> (hereafter, *Marhguy*) and brings to the fore the Ghanaian judicial standpoint on the enforcement of the right to freedom of religion and belief. In the case, the Applicant successfully contested the violation of his fundamental human right to freedom of religion and belief. Jurisprudentially, *Marhguy* is phenomenal, being a *locus classicus* setting out the judicial approval to the constitutional protection of religious liberty in Ghana. More importantly, Ghana is a country with constitutional democracy and religious pluralism, and the effect of the case may ultimately shape religion-state relations in the country. Expectedly, given the religiosity of Ghanaians, the court decision elicited much public commentary and debate;<sup>4</sup> but as significant as the case, there has not been much legal and academic discourse on it.<sup>5</sup> The issues that resonated in the case touch on constitutionally guaranteed human rights, including the right to freedom of religion and belief, the right to education, and the right to human dignity. However, the focus of this commentary is limited to the issues concerning the right to freedom of religion. Thus, after a summary of the facts of the case and the decision of the court, this discussion primarily evaluates only the issues

---

<sup>1</sup> Senior Lecturer, Faculty of Law, Osun State University (Ifetedo Campus) Nigeria. Email: idakinloye@gmail.com.

<sup>2</sup> Ag Dean, Faculty of Law, Osun State University (Ifetedo Campus) Nigeria.

<sup>3</sup> (Suit No. HR/0055/2021) (2021) JELR 107192 (HC).

<sup>4</sup> See ‘Achimota: You Deny Rastafarians but Admit ‘White’ Students with Hair – Twitter Rants’ (Ghanaweb 23 March 2021) <<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Achimota-You-deny-Rastafarians-but-admit-white-students-with-hair-Twitter-rants-1212883>> 16 June 2022> accessed 12 November 2022; ‘Rastafarian Students Win Case Against Achimota School-Court Orders Admission’ <<https://avenuegh.com/rastafarian-students-win-case-against-achimota-school-court-orders-admission/>> accessed 12 November 2022.

<sup>5</sup> One of the few scholarship on the case is: C Prempeh, ‘Balancing Religious Freedoms and the Right to Education of Minorities in Ghana: A Focus on Access to Public Senior High Schools by Rastafarians’ in M.E. Addadzi-Koom, M. Addaney, L.A. Nkansah (eds) *Democratic Governance, Law, and Development in Africa* (Palgrave Macmillan, Cham. 2022) 193-222.

concerning the tenets of the right to freedom of religion and belief articulated in the case. Overall, the conclusion is that the judgement is a welcome development, and it is hoped that it will be a gateway to inspire people to contest the violation of their religious liberty in Ghana. The case may also encourage state institutions and organisations in the country to embrace religious tolerance and respect the rights of minority groups and new religious movements.

## **THE CASE**

### ***The Applicant's case***

The Applicant, a minor of 17 years, sued through his next friend — his father. The first Respondent is the Board that governs and directs the affairs of the Achimota Senior High School (hereafter, the School), a prominent public pre-tertiary institution in Ghana. The second Respondent is the Attorney General who represented the state in the case. The Applicant claimed that before he registered for the West African Examination Council to sit for the June 2020 Basic Education Certificate Examination (BECE), he was required to select a number of schools, among which is Achimota Senior High School, the 1<sup>st</sup> Respondent School. He contended further that the selection was for the purposes of the Computerised School Selection and Placement System (CSSPS). The CSSPS is described as an automated merit-based system for the selection of schools and placement of pupils or candidates in various senior high schools across Ghana based on their choices of schools and performance in the examination. The Applicant wrote the qualifying examination and passed. The CSSPS thereafter posted him to Achimota Senior High School. The Applicant, a Rastafarian by religion who kept dreadlock braids (long hair), proceeded to the School, obtained the prospectus, and purchased necessary items. On the date of resumption, the Applicant was isolated from other students in the queue undertaking the necessary procedures for admission and enrolment. He was not allowed to complete his registration on the grounds that he kept dreadlocks. By the regulation of the School, male students must keep their hair low. The Applicant maintained that the keeping of his hair is not for stylistic preference; rather, it is his religious' injunctions; yet the School refused him religious exemption. The Applicant subsequently instituted this suit at the Human Rights Division of the High Court in Accra. He claimed among other things: (i) a declaration that the failure and refusal of the 1<sup>st</sup> Respondent to admit and enroll him in the School on the basis of his Rastafarian

religious inclination, beliefs and culture characterised by his keeping of long hair is a violation of his fundamental human rights and freedoms guaranteed under the 1992 Constitution particularly Article 12 (1); 23; 21 (1)(b)(c); 26(1); 17(2) and (3); (ii) an order directed at the 1<sup>st</sup> Respondent to immediately admit or enroll him to continue with his education unhindered.<sup>6</sup>

### ***The Respondents' case***

The Respondents denied violating the Applicant's right to freedom of religion. They contended that the issue of freedom of religion is a private affair in which the Respondents will not interfere. The Respondents premised their response on the ground that the School has rules and regulations (Achimota School's Revised Rules and Regulations, 2019) and that the Applicant merely misrepresented the rules. The rules and regulations apply to all students without discrimination or reference to race, colour, or religion. According to the rules which have been applied for several years, all the male students are to keep their hair low and neatly trimmed irrespective of their religious inclinations and backgrounds. The rules are made to enforce discipline, foster academic excellence, morality and hygiene among the students. The Respondents contended that allowing only the Applicant to keep long hair would mean other students who had their religious inclinations but are not allowed to manifest them would be discriminated against. Moreover, the Applicant's religion would then be elevated over the religions of other students. In addition, exempting the Applicant to keep long hair following his religious belief might encourage other students to come up with different religious manifestations that may be incompatible with the school standards. To the Respondent, this may lead to a breakdown of the school structure and breed anarchy and indiscipline in the School. Thus, the Respondents canvassed that it is in the public interest that the School authorities maintain a high level of discipline and decorum by putting in place the rules and regulations. The Respondents further contended that the Applicant's claim cannot be justified because the Applicant accepted the offer by voluntarily completing the Admission Acceptance Form-2021 and signed same to affirm his "promise to abide by all regulations governing students in the school" and that if he disobeyed, "the school authorities reserved the right to apply the appropriate sanctions against him".<sup>7</sup>

---

<sup>6</sup> *Marhguy* (n 1) 2.

<sup>7</sup> *Marhguy* (n 1) 6.

### ***Court's Decision***

The presiding judge acknowledged Rastafarianism as a religion to which the Applicant subscribes, and which is protected in terms of the Constitution. She also acknowledged that rules and regulations are critical for effective governance and administration of the School. She, however, noted that human rights, including the right to freedom of religion and belief, are not absolute in terms of section 12(2) of the Constitution. These rights are usually subject to the public good and public interest. Similar to what is obtained in other jurisdictions and other human rights cases in Ghana,<sup>8</sup> the court went on a voyage of balancing the competing rights of the Applicant to freedom of religion and the Respondents' duty to protect public interest in the light of the provisions of the Constitution of the Republic of Ghana.<sup>9</sup> The court pointed out that "every rule, regulation, order or even a law can operate legitimately only if it conforms to the constitutional tenets...where a rule is made which rule frowns or seeks to restrict a person without any legitimate or justifiable basis from professing his religious faith, such a rule clearly will cease to be efficacious."<sup>10</sup> The primary question the court asked was what overriding or legitimate public interest is being achieved by requesting the Applicant to keep his hair low.

The judge held that the Respondents were unable to proof that the present state of hair of the Applicant will impact negatively on his educational good or those of the community of students, neither did they "weigh on the mind of the court to trump the constitutionally guaranteed right of the Applicant for the public good or interest of the community of students."<sup>11</sup> Based on the balancing of the competing rights, the court held that the limitation of the Applicant's right by the Respondents was not constitutionally justified and directed the Respondents to admit and register the Applicant in the School. The court noted:

"...as already pointed out, rules and regulations are essential to overriding discipline in schools, the rules must be consistent with the Constitution. Where the rules sin against the constitutional guarantee of a person to practice and manifest any religion

---

<sup>8</sup> See for instance, *Raphael Cubagee v. Michael Yeboah Asare and 2 Others* (Ref. No. 16/04/2017); *The Republic v. Eugene Baffoe-Bonnie and 4 Ors* (Ref. No. J1/06/2018).

<sup>9</sup> *Marhguy* (n 1) 13-16

<sup>10</sup> *Marhguy* (n 1) 15.

<sup>11</sup> *Marhguy* (n 1) 25.

without legitimate justification, then, in my respectful view, same is unconstitutional. To insist, that a person should suspend the manifestation of his religion by cutting his dreadlocks before being enrolled in your institution, in my view, is clearly unconstitutional and sins against the Constitution, 1992.”<sup>12</sup>

## ISSUES ARISING

A few salient themes geared towards the advancement of the right to freedom of religion resonate in the judgment of the court. Three of them are briefly discussed under the headings below.

### *Increased Human Rights Awareness*

Similar to other countries such as Nigeria, South Africa and the United States of America, Ghana is a religiously pluralistic country that practices constitutional democracy.<sup>13</sup> Chapter 5 of the Constitution of Ghana, 1992 provides the legal framework for the protection of fundamental human rights. The country has signed and ratified multiple international instruments, treaties and conventions that protect fundamental human rights, such as the African Charter on Human and Peoples Rights<sup>14</sup> and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.<sup>15</sup> It appears Ghanaians are already maximising the protections offered in these various legal instruments by contesting violations of their fundamental rights.<sup>16</sup> Justice Addo, the presiding judge in *Marhguy*, acknowledged that Ghanaian courts are fraught with cases between individuals and the state regarding the extent of the enjoyment of a particular right.<sup>17</sup>

There is no report known to the authors that presents empirical statistical data on the prevalence of religious discrimination in Ghanaian society, particularly

---

<sup>12</sup> *Marhguy* (n 1) 20.

<sup>13</sup> S Nkrumah-Pobi and S Owusu-Afriyie, ‘Religious Pluralism in Ghana: Using the Accommodative Nature of African Indigenous Religion (AIR) as a Source for Religious Tolerance and Peaceful Coexistence’ (2020) 3(1) *International Journal of Interreligious and Intercultural Studies* 73-82.

<sup>14</sup> African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986.

<sup>15</sup> Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly Resolution 36/55 of November 1981).

<sup>16</sup> Abena Ampofo Asare, *Truth Without Reconciliation: A Human Rights History of Ghana* (University of Pennsylvania Press, Philadelphia 2018) 1-15.

<sup>17</sup> *Marhguy* 1.

in schools. However, there have been increased media reports indicating that students and parents are becoming more aware of their rights including freedom of religion and are protesting against violations of these rights. For example, about a decade ago, some Muslim groups protested against religious discrimination in Ghanaian public schools. Bolaji recalled:

In the 2015 complaints, some Muslims stated that certain public schools' authorities were compelling Muslim students to attend compulsory Christian morning devotions and Sunday worship. In fact, in its submission to the National Peace Council (NPC) the Muslim Caucus in Parliament alleged that 58 educational institutions were culpable (Akweiteh 2015a). In addition, the Ghana Muslim Students' Association (GMSA) also complained that some public school authorities were not allowing Muslim students to observe their five daily prayers (Al-Alawa 2015). A related grievance was that female Muslim students/nurses were unable to wear the hijab (the Muslim headscarf) due to the restrictions imposed by their schools/workplaces. Consequently, these grievances culminated in a peaceful demonstration in the Western Region on 20 February 2015. This demonstration pitted students, parents, and politicians against educators and religious leaders, among others.<sup>18</sup>

Also, in December 2024, Wesley Girls' High School in Ghana was sued for religious discrimination and intolerance.<sup>19</sup> This prestigious Methodist mission school has a tradition of including Christian religious practices to its curriculum. The lawsuit challenges the school's policy that requires all students, regardless of their religious beliefs, to take part in Methodist religious activities, such as compulsory chapel services.<sup>20</sup> It is contended that the school's policy fails to acknowledge and respect the interests of students from other faiths, especially Muslims.

---

<sup>18</sup> M.H.A. Bolaji, 'Secularism and State Neutrality: The 2015 Muslim Protest of Discrimination in the Public Schools in Ghana' (2018) 48 *Journal of Religion in Africa* 65-104 at 67.

<sup>19</sup> Evans Effah 'Wesley Girls' High School Sued Over Compulsory Religious Practices' 3 *News* 24 December 2024, <<https://3news.com/news/education/wesley-girls-high-school-sued-over-compulsory-religious-practices/>> accessed on 19 January 2025.

<sup>20</sup> Ibid.

Article 21(2) of the Ghanaian Constitution guarantees the right to freedom of religion as well as to manifest the religion. It provides that “All persons shall have the right to freedom to practice any religion and to manifest such practice.” Section 17(2) also prohibits discrimination on the basis of religion. A number of scholars have explored the efficacy of these provisions protecting the right to freedom of religion and belief in Ghana, but they further acknowledged a limited judicial perspective to these provisions.<sup>21</sup> Only a handful of relevant cases touching on freedom of religion have ended before the Commission on Human Rights and Administrative Justice, an administrative quasi-judicial body.<sup>22</sup> The reason why Ghanaians hardly contest the violation of religious liberty is, however, outside the scope of this commentary.

*Marhguy* is thus a striking case, being the first time the Ghanaian court is coming up with the judicial perspective on these provisions. The presiding judge in *Marhguy* confirmed that the case is ‘novel’ in the Ghanaian jurisprudence.<sup>23</sup> The step taken by the Applicant in *Marhguy* by invoking the jurisdiction of the court to challenge the violation of his religious liberty may be viewed from two perspectives. First, it may be said to justify the aforementioned findings that there is an increasing citizens’ awareness and consciousness in challenging violation of their rights. Secondly, the case may be said to have broken the barriers that were limiting the citizens from contesting specifically the violation of their religious liberty, which have hitherto been less contested. Accordingly, *Marhguy* might become a gateway to encourage more Ghanaians to come out to challenge the violation of their right to freedom of religion. *Marhguy* perhaps prompted the aggrieved party to sue Wesley Girls’ High School,<sup>24</sup> and more similar cases may be expected. The

---

<sup>21</sup> Elom Dovlo, ‘Religion in the Public Sphere: Challenges and Opportunities in Ghanaian Lawmaking, 1989-2004’ (2005) Brigham Young University Law Review 629; C Y Nyinevi and E N Amasah, ‘The Separation of Church and State under Ghana’s Fourth Republic’ (2015) 8(4) Journal of Politics and Law 286; K Quashigah, ‘Religion and the Secular State in Ghana’ in J Martinez-Torrón, WC Durham Jr, and D Thayer (eds). *Religion and Secular State: National Reports* (Madrid: Servicio de Publicaciones de la Facultad de Derecho de la Universidad Complutense de Madrid, 2010) 331, 333: Quashigah, a Ghanaian, says: “There is not any case law that directly asserts the right to religious freedom.”

<sup>22</sup> See for instance, *Achene v Raji* (Casebook on the Rights of Women in Ghana, 1959-2005) 289; *Alhasuna Muslim Faith v. Regional Police Commander, Bolgatanga* 1994-2000] CHRAJ 191.

<sup>23</sup> *Marhguy* (n 1) 1.

<sup>24</sup> Evans Effah ‘Wesley Girls’ High School Sued Over Compulsory Religious Practices’.

case can also serve as a check to institutions and organisations that commonly violate the right to freedom of religion of Ghanaians.

The increasing number of human rights lawsuits related to the protection of religious liberty in Ghana appears to support the findings of Hackett,<sup>25</sup> an American professor, and Akinloye,<sup>26</sup> a Nigerian scholar, both of whom have conducted extensive research on human rights in Africa that there is an increased human right awareness and culture in Africa. For example, countries like Nigeria,<sup>27</sup> Kenya<sup>28</sup> and South Africa<sup>29</sup> are also seeing a rise in lawsuits challenging violations of the right to freedom of religion in schools. The recent decision by the Nigerian Supreme Court in *Lagos State Govt. and Ors v. Asiyat Abdulkareem*<sup>30</sup> perfectly illustrates this trend. In this case, two 12-year-old female Muslim students were prohibited from wearing *hijabs* to school (a public school). The school claimed it was not part of the school uniform policy. Despite appeals and interventions from various organisations, the school remained adamant in enforcing the ban on *hijabs*. The students, along with a non-governmental organisation, sued the school and the government, seeking a declaration that their rights to freedom of thought, conscience, religion and education had been violated. The Supreme Court upheld the Court of Appeal's ruling that the ban on *hijabs* in public schools was unconstitutional. The Court emphasised that the state cannot regulate the religious practices of students in a way that violates their constitutional rights. The court rejected arguments that allowing *hijabs* for Muslim girls would lead to discrimination and unrest among students of different faiths. It deemed these claims as unsubstantiated and speculative.

---

<sup>25</sup> R I J Hackett, 'Regulating Religious Freedom in Africa' (2011) 25 *Emory International Law Review* 853.

<sup>26</sup> Idowu A Akinloye, "The Right to Freedom of Religion or Belief: African Perspectives", in Ferrari S, Hill M, Jamal AA and Bottoni (eds). *Routledge Handbook of Freedom of Religion or Belief* (Abingdon and New York: Routledge, 2021) 189.

<sup>27</sup> *The Provost, Kwara State College of Education, Ilorin & 2 Ors vs. Bashirat Saliu & 2 Ors* (Appeal No. CA/IL/49/2006.); *Lagos State Govt. and Ors v. Asiyat Abdulkareem* (Suit No.: SC 910/2016).

<sup>28</sup> *Phillip Okoth and LSK v BOM, St Anne's Primary Ahero [2023]* (Civil Appeal No. 173 of 2020); *Seventh Day Adventist Church (East Africa) Limited v Minister for Education & 3 others* [2017] KECA 751 (KLR).

<sup>29</sup> *MEC for Education, KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC).

<sup>30</sup> *Lagos State Govt. and Ors v. Asiyat Abdulkareem* (Suit No.: SC 910/2016).



### ***Recognising Rastafarianism as a Religion and Rejecting Sameness of Religion***

The Applicant claimed to be a practicing Rastafarian. According to the *Macmillan English Dictionary*,<sup>31</sup> a Rastafarian is “a member of black religious group based in Jamaica that believes that West Indians will one day go back to Africa”. According to the Applicant, Rastafarianism is a religious movement that began in Jamaica in the 1930s and has spread to other parts of the world. The religion’s philosophy combines protestant Christianity, mysticism, and a pan-African political consciousness.<sup>32</sup> One of the key tenets of the religion is the wearing of dreadlocks. This is drawn from the Nazarite vow in the Old Testament of the Bible, specifically, Numbers 6:5 which states: “All the days of the vow of his separation there shall no razor come upon his head: until the days be fulfilled, in which he separateth himself unto the Lord, he shall be holy, and shall let the locks of the hair of his head grow.” A similar experience is also recorded concerning Samson in Judges 13:5. Wherein it was recorded after God visited Samson’s mother that: “For thou shall conceive, and bear a son; and no razor shall come on his head: for the child shall be a Nazarite unto God from the womb: and he shall begin to deliver Israel out of the hands of the Philistines.”

Arguably, given the time of its establishment, Rastafarianism can be described as a new religious movement. Its members, mostly a minority religious group in most of the countries where it is practiced, face a lot of discrimination. Sibanda observes that the religion is “stigmatized, misunderstood, demonized and criminalized minority movements located on the margin.”<sup>33</sup> Specifically in Africa, many Rastafarians have complained discriminations on the basis of religion. A number of them have successfully contested such discriminations in jurisdictions like Kenya,<sup>34</sup> South Africa,<sup>35</sup> and Zimbabwe,<sup>36</sup> among others.

---

<sup>31</sup> *Macmillan English Dictionary* (2<sup>nd</sup> ed. 2007) 1228.

<sup>32</sup> *Marhguy* (n 1) 3.

<sup>33</sup> See Fortune Sibanda, ‘Repositioning the Agency of Rastafari in the Context of Covid-19 Crisis in Zimbabwe’ in F. Sibanda, T Muyambo and E Chitando (eds) *Religion and the Covid-19 Pandemic in Southern Africa* (Abingdon and New York: Routledge 2022) 213.

<sup>34</sup> *JWM (Alias P) v. Board of Management High School & 2 Ors* (2019) EKLK.

<sup>35</sup> *Department of Correctional Services & Another v. Police and Prisons Civil Rights and 5 Ors* (2013) ZASCA 40.

<sup>36</sup> *Dzova v. Minister of Education, Sports and Culture and Ors* (2007) AHRLR 189; (ZWSC 2007).

With *Marhguy*, Ghana has joined the league of nations that recognise and protect Rastafarianism as a religion.

One of the arguments that the Respondents canvassed in *Marhguy* was that the students of the School came from different religious backgrounds, yet all of them are made to comply with the School's rules, irrespective of whether the rules align with the students' religious beliefs.<sup>37</sup> This argument has assumed that all the students would be able to practice their religion within the scope and context of the School rules. This can be described as an attempt to 'forcing a sameness of religion on the students', and it is at odds with the tenets of the right to freedom of religion that guarantee the autonomy, uniqueness, and *sui generis* of each religion. The Applicant in *Marhguy* challenged this existing *status quo* and rejected the School's attempt to make his religious beliefs equal to other religious tenets. The court also rejected the School's argument to force sameness of religion on all the students. This is the argument of the court when the judge averred that the construction of the right to freedom of religion must be contextualised and hinged on "treating equal persons equally and unequal person unequally".<sup>38</sup> This aligns with the precepts of the right to freedom of religion.

One possible effect of the *Marhguy* decision is that it has recognised the legal status and constitutional protection of minority religions and cultural groups. Ghana is a religiously pluralist state with several established and emerging minority religious and cultural groups. Some of these minority groups, which may have previously experienced systemic religious discrimination, can now use the *Marhguy* decision as a template to challenge violations of their religious liberty.

### ***Freedom of Religion versus School Regulations***

Religious intolerance in schools is a global issue,<sup>39</sup> including in Africa.<sup>40</sup> Thus, a number of scholarships in different jurisdictions have explored contests

---

<sup>37</sup> *Marhguy* (n 1) 8-9.

<sup>38</sup> *Marhguy* (n 1) 17.

<sup>39</sup> K Fosnacht and C Broderick, 'Religious Intolerance on Campus: A Multi-Institution Study' (2020) *Journal of College and Character*, 21(4), 244–262.

<sup>40</sup> W.C. Iheme, 'Religious Intolerance, Witchcraft, Superstition, and Underdevelopment in Africa' (2020) 25(2) *Skeptic* 22-24; Alfred L Matambo, 'Implications of Religious Intolerance on State Security in Africa: A Case Study Lilongwe in Malawi' (Thesis – University of Nairobi); J.L. Van der Walt, 'Religious Tolerance and Intolerance: 'Engravings' on the Soul' (2016) 50(1) *In die Skriflig* 1-8.

between school rules and regulations and the right to freedom of religion of the students.<sup>41</sup> It is customary for schools to prepare and adopt rules and regulations to maintain standards in the school. In many instances, the school rules do conflict with the students' manifestations of religions; accordingly, some students seek religious exemptions from the school rules. This issue also arose in *Marhguy*. The court asserted the Ghanaian' judicial standpoint in the case that schools cannot make rules to offend the letters and spirit of the constitutionally guaranteed rights. It is also decipherable from the tenor of the judgement that a school cannot rely on the student's 'waiver' of the right to offend the students' constitutional right. This is similar to the Nigerian court's decision in *Ariovi v Elemo*,<sup>42</sup> where it held that fundamental human rights cannot be waived:

The fundamental rights entrenched in our 1963 and 1979 constitutions are in my opinion out of the reach of the operation of the law of waiver. Our oath of office is to protect and defend the Constitution over all other laws to ensure that the right to life, right to personal liberty, right to *freedom of expression, thought, conscience and religion*, right to peaceful assembly and association which are vital to human existence and democracy in our nation, is preserved and thus cannot be waived.

What is further apparent from the judgment of *Marhguy* is that for a school to make rules to limit the rights of students, the school must be able to prove that the limitation of the constitutional rights will benefit the complainants and the general public, and that the non-restriction of such constitutional rights will be detrimental to both the complainants and the public for such restriction to be constitutional. This Ghanaian judicial stance aligns with the position of some other countries with religious pluralism. For instance, in the South African case of *MEC for Education, KwaZulu-Natal v Pillay*,<sup>43</sup> there is a good illustration

---

<sup>41</sup> Alison Mawhinney, 'The Opt-out Clause: Imperfect Protection for the Right to Freedom of Religion in Schools' (2006) *Education Law Journal* 102; Ilene Allgood, 'Faith and Freedom of Religion in U.S. Public Schools: Issues and Challenges Facing Teachers' (2016) 111(3) *Religious Education* 270-287; Leni Franken, 'The Freedom of Religion and the Freedom of Education in Twenty-First-Century Belgium: A Critical Approach' (2016) 38(3) *British Journal of Religious Education* 308-324.

<sup>42</sup> (1983) JELR 49375 (SC)

<sup>43</sup> 2008 (1) SA 474 (CC).

of this requirement. In the case, the claimant, an Indian student of Durban Girls' High School, pierced her nose and inserted a small gold stud in contravention of the school code. It was argued that, as a young Indian girl, wearing the nose stud was not for fashion, but part of a religious and cultural ritual to honour and bless her. In deciding that the claimant held a sincere belief that the nose stud was part of her culture and religion, the Constitutional Court evaluated the claimant's conduct when opposed by the school in order to stay true to her belief. The court was further influenced by the claimant's steadfastness in her belief despite facing a lot of "cold shoulder" from media publicity and her peers.<sup>44</sup>

Similarly, in the recent Kenyan case of *Phillip Okoth and LSK v BOM, St Anne's Primary Ahero*,<sup>45</sup> the applicants who are members of the Jehovah Witness denomination challenged mandatory Catholic Mass and attendance of non-class religious activities in their school (a public school) as a violation of their constitutionally guaranteed right to freedom of religion. The Court of Appeal, affirming that the school cannot compel students to forsake or compromise their religious beliefs held:

I have little difficulty finding that compelling the appellants to participate in interfaith activities, particularly the Friday Mass, contrary to their belief, was a violation of their fundamental right and freedom as envisaged in Article 32(4), and they were entitled to protection of the law...While I agree that Holy Mass is a very integral part of the life of a Catholic, one cannot, without violence to the right to freedom of religion, be compelled to attend it...Essentially therefore, I am of the view, as was admitted by parties herein, that the school would not have suffered any hardship by exempting the appellants from the 30-minutes Friday Mass.<sup>46</sup>

From the decided cases in *Marhguy* (Ghana), *Pillay* (South Africa), *Phillip Okoth* (Kenya) and *Abdulkareem* (Nigeria), the primary question the court needs to consider in determining if a practice or belief qualifies as a religion protected under the Constitution is the centrality of how important the belief or

---

<sup>44</sup> *MEC for Education, KwaZulu-Natal v Pillay* para 58.

<sup>45</sup> (Civil Appeal No. 173 of 2020).

<sup>46</sup> *Phillip Okoth and LSK v BOM, St Anne's Primary Ahero* pp. 21, 25-26.

practice is to the claimant's religious identity. In other words, does the claimant profess a sincere belief?

An issue which is not very clear in the judgment is to determine whether the same rule in *Marhuguy* will be applied to a privately owned school. The question is, would the court have arrived at the same decision if Achimota Senior High School is privately owned, probably by a religious organisation whose religious' inclination is against dreadlocks? We shall explore answers to these questions from two viewpoints. Firstly, if a faith-based school accepts funds from the state government, then the rule in *Marhuguy* would apply to it regardless of its religious standpoint. The basis is that by accepting and using public funds, which are taxpayers' money, the school has accepted to protect the constitutional rights of the tax payers, including their freedom of their freedom of religion. A school cannot accept people's money and reject their beliefs. The fact is, religious organisations may be influenced by the agenda of their funding source — the government. However, the concern here is that the government's financial support of religious organisations may erode the religious autonomy of these groups. Politicians and state officials who are religious bigots may use state funding of faith-based schools to further their own selfish ends. Therefore, it may be best for religious bodies to avoid state funding to run their schools. Van Coller, a South African legal scholar, warns:

“The more they [religious bodies] operate in the public sphere and are dependent on public funds, the greater the need for accountability and the potential loss of independence and vitality. If this is not taken seriously, it can lead to the erosion of the separation of church and state and to interference by the state in the internal organisation of religious organisations to pursue their own public policy agendas.”<sup>47</sup>

The second viewpoint is that as long as faith-based schools are not funded by the state, they can rely on their right to group or institutional religious freedom to reject practices that are inconsistent with their rites and faith. The point is

---

<sup>47</sup> H. Van Coller, ‘Church Polity and ‘Constitutionalism’’ in LJ Koffeman and J Smith (eds) *Protestant Church Polity in Changing Contexts II* (2014) Lit Verlag: Zurich.162; See also, K Quashigah, ‘Religion and the Republican State in Africa: The Need for a Distanced Relationship’ (2014) 14 *African Human Rights Law Journal* 78 at 80. Quashigah argues that “If the relationship between religions and the political authority is left unchecked, politically-hungry individuals or groups can manipulate religion to serve their political ends.”

that since no freedom is absolute, it should be enjoyed without violating the rights of others. Therefore, a pupil or student cannot impose his or her religious inclinations on another religious institution. This argument is based on the idea that the right to freedom of religious freedom guaranteed in the constitution protects both individual religious liberty and group religious freedom. Group religious freedom, commonly referred to as institutional or collective religious freedom, protects the religious autonomy of a religious group.<sup>48</sup>

It is noticeable from the judgment that the court expects institutions and authorities of government to embrace religious tolerance given the religiously pluralistic Ghanaian society. The court emphatically pointed out in the case: “Religious intolerance is undemocratic. Any state that fails to tolerate the practice and manifestation of the religions of its citizens and people with the state portends a serious anarchy in the state. Therefore, any attempt to project a rule or regulation to a character that expediently frowns upon the manifestation of a person’s religion without reasonable grounds, must be frowned upon in our democracy.”<sup>49</sup>

## CONCLUSION

*Marhguy* has successfully presented Ghanaian’s judicial viewpoint and readiness to affirm the right of citizens to enforce their right to religious liberty. The case presented a balancing of religious freedom in state schools, their rules about uniformity of hairstyles, and the rights of Rastafarian students to wear dreadlocks. The case is a gateway for minority religious and cultural groups whose rights are frequently violated to seek justice. We also believe that civil society organisations have a vital role to play in promoting social justice, progressive transformation, and awareness of human rights, including the right to freedom of religion. The invaluable contribution of civil society in promoting the protection of human rights is now well recognised.<sup>50</sup> They use tactics to hold states accountable for respecting, protecting and guaranteeing

---

<sup>48</sup> Idowu A Akinloye, ‘Legal Issues Involving Succession Disputes among South African Churches: Some Lessons’ (2021) 23(2) *Ecclesiastical Law Journal* (2021) 160-190; Idowu A Akinloye, ‘Acquisition and Protection of Church Property under Nigerian Law: Issues, Challenges and some Lessons for Churches’ (2021) 47(4) *Commonwealth Law Bulletin*, 741-761.

<sup>49</sup> *Marhguy* (n 1) 20.

<sup>50</sup> OV Vieira and AS Dupree, ‘Reflections on Civil Society and Human Rights’ (2004) 1 *Sur International Journal of Human Rights* 47-65; K Tsutui and CM Wotipka ‘Global Civil Society and International Human Rights’ (2004) 83 *Social Forces* 587-620

universal human rights, as required by international human rights law.’<sup>51</sup> Therefore, considering the stance of the Ghanaian judiciary on the promotion of the right to freedom of religion, civil society organisations such as religious ecumenical bodies need to raise awareness within Ghanaian society about the importance of religious tolerance, mutual understanding, and respect for all religious groups. This is because religious intolerance is dangerous as it leads to intolerance and disrespect. As a result, the antidote to religious intolerance is religious tolerance, which involves accepting or accommodating the opinions and practices of those with different or opposing beliefs. The Kenyan Court of Appeal emphasised this in *Phillip Okoth* when it held that ‘in compliance with the concept of reasonable accommodation, the school ought to have adjusted its rules to enable all students to practice their respective religions while still complying with the school rules and regulations...The school should have worked out a reasonable accommodation for the appellants, especially considering the fact that it was a public school, a school maintained or assisted out of public funds.’<sup>52</sup>

We also recommend the need for increased intra and inter-religious dialogue. Further, the benefits of religious tolerance and the dangers of religious intolerance should be taught from an early age in schools, rather than waiting until higher levels when religious intolerance has already been ingrained by religious bigots. Teaching toolkits and information technology through social media platforms could also be utilised to sensitise the populace in this regard.

## REFERENCES

‘Achimota: You Deny Rastafarians but Admit ‘White’ Students with Hair – Twitter Rants’ (Ghanaweb 23 March 2021) <<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Achimota-You-deny-Rastafarians-but-admit-white-students-with-hair-Twitter-rants-1212883> 16 June 2022> accessed 12 November 2022;

---

<sup>51</sup> Joseph Yaw Asomah, ‘Cultural Rights Versus Human Rights: A Critical Analysis of the *Trokosi* Practice in Ghana and the Role of Civil Society’ (2015) 15(1) *African Human Rights Law Journal*. 129, 141-143.

<sup>52</sup> *Phillip Okoth* pp. 27-28.

‘Rastafarian Students Win Case Against Achimota School-Court Orders Admission’ <<https://avenuegh.com/rastafarian-students-win-case-against-achimota-school-court-orders-admission/>> accessed 12 November 2022.

Abena Ampofoa Asare, *Truth Without Reconciliation: A Human Rights History of Ghana* (University of Pennsylvania Press, Philadelphia 2018) 1-15.

Alfred L Matambo, ‘Implications of Religious Intolerance on State Security in Africa: A Case Study Lilongwe in Malawi’ (Thesis – University of Nairobi).

Alison Mawhinney, ‘The Opt-out Clause: Imperfect Protection for the Right to Freedom of Religion in Schools’ (2006) *Education Law Journal* 102;

C Prempeh, ‘Balancing Religious Freedoms and the Right to Education of Minorities in Ghana: A Focus on Access to Public Senior High Schools by Rastafarians’ in M.E. Addadzi-Koom, M. Addaney, L.A. Nkansah (eds) *Democratic Governance, Law, and Development in Africa* (Palgrave Macmillan, Cham. 2022) 193-222.

C Y Nyinevi and E N Amasah, ‘The Separation of Church and State under Ghana’s Fourth Republic’ (2015) 8(4) *Journal of Politics and Law* 286;

Elom Dovlo, ‘Religion in the Public Sphere: Challenges and Opportunities in Ghanaian Law-making, 1989-2004’ (2005) *Brigham Young University Law Review* 629;

Evans Effah ‘Wesley Girls’ High School Sued Over Compulsory Religious Practices’ 3 *News* 24 December 2024, <<https://3news.com/news/education/wesley-girls-high-school-sued-over-compulsory-religious-practices/>> accessed on 19 January 2025.

Fortune Sibanda, ‘Repositioning the Agency of Rastafari in the Context of Covid-19 Crisis in Zimbabwe’ in F. Sibanda, T Muyambo and E Chitando (eds) *Religion and the Covid-19 Pandemic in Southern Africa* (Abingdon and New York: Routledge 2022) 213.

H. Van Coller, ‘Church Polity and ‘Constitutionalism’’ in LJ Koffeman and J Smith (eds) *Protestant Church Polity in Changing Contexts II* (2014) Lit Verlag: Zurich.162;

Idowu A Akinloye, ‘Acquisition and Protection of Church Property under Nigerian Law: Issues, Challenges and some Lessons for Churches’ (2021) 47(4) *Commonwealth Law Bulletin*, 741-761.



I.A. Akinloye, 'Legal Issues Involving Succession Disputes among South African Churches: Some Lessons' (2021) 23(2) *Ecclesiastical Law Journal* (2021) 160-190

Idowu A Akinloye, "The Right to Freedom of Religion or Belief: African Perspectives", in Ferrari S, Hill M, Jamal AA and Bottoni (eds). *Routledge Handbook of Freedom of Religion or Belief* (Abingdon and New York: Routledge, 2021) 189.

Ilene Allgood, 'Faith and Freedom of Religion in U.S. Public Schools: Issues and Challenges Facing Teachers (2016) 111(3) *Religious Education* 270-287

J.L. Van der Walt, 'Religious Tolerance and Intolerance: 'Engravings' on the Soul' (2016) 50(1) *In die Skriflig* 1-8.

Joseph Yaw Asomah, 'Cultural Rights Versus Human Rights: A Critical Analysis of the *Trokosi* Practice in Ghana and the Role of Civil Society' (2015) 15(1) *African Human Rights Law Journal* 129.

K Fosnacht and C Broderick, 'Religious Intolerance on Campus: A Multi-Institution Study' (2020) *Journal of College and Character*, 21(4), 244–262.

K Quashigah, 'Religion and the Republican State in Africa: The Need for a Distanced Relationship' (2014) 14 *African Human Rights Law Journal* 78.

K Quashigah, 'Religion and the Secular State in Ghana' in J Martinez-Torrón, WC Durham Jr, and D Thayer (eds). *Religion and Secular State: National Reports* (Madrid: Servicio de Publicaciones de la Facultad de Derecho de la Universidad Complutense de Madrid, 2010) 331, 333:

K Tsuitui and CM Wotipka 'Global Civil Society and International Human Rights' (2004) 83 *Social Forces* 587-620.

Leni Franken, 'The Freedom of Religion and the Freedom of Education in Twenty-First-Century Belgium: A Critical Approach' (2016) 38(3) *British Journal of Religious Education* 308-324.

M.H.A. Bolaji, 'Secularism and State Neutrality: The 2015 Muslim Protest of Discrimination in the Public Schools in Ghana' (2018) 48 *Journal of Religion in Africa* 65-104 at 67.

OV Vieira and AS Dupree, 'Reflections on Civil Society and Human Rights' (2004) 1 *Sur International Journal of Human Rights* 47-65;

R I J Hackett, 'Regulating Religious Freedom in Africa' (2011) 25 *Emory International Law Review* 853.

S Nkrumah-Pobi and S Owusu-Afriyie, 'Religious Pluralism in Ghana: Using the Accommodative Nature of African Indigenous Religion (AIR) as a Source for Religious Tolerance and Peaceful Coexistence' (2020) 3(1) *International Journal of Interreligious and Intercultural Studies* 73-82.

W.C. Iheme, 'Religious Intolerance, Witchcraft, Superstition, and Underdevelopment in Africa' (2020) 25(2) *Skeptic* 22-24.

## **STATUTES**

African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly Resolution 36/55 of November 1981).

## **CASE LAW**

Achene v Raji (Casebook on the Rights of Women in Ghana, 1959-2005) 289

Alhasuna Muslim Faith v. Regional Police Commander, Bolgatanga 1994-2000] CHRAJ 191.

Ariovi v Elemo (1983) JELR 49375 (SC)

Department of Correctional Services & Another v. Police and Prisons Civil Rights and 5 Ors (2013) ZASCA 40.

Dzova v. Minister of Education, Sports and Culture and Ors (2007) AHRLR 189; (ZWSC 2007).

JWM (Alias P) v. Board of Management High School & 2 Ors (2019) EKLR.

Lagos State Govt. and Ors v. Asiyat Abdulkareem (Suit No.: SC 910/2016).

Lagos State Govt. and Ors v. Asiyat Abdulkareem (Suit No.: SC 910/2016).

MEC for Education, KwaZulu-Natal v Pillay 2008 (1) SA 474 (CC).

MEC for Education, KwaZulu-Natal v Pillay para 58. (Civil Appeal No. 173 of 2020).

Phillip Okoth and LSK v BOM, St Anne's Primary Ahero [2023] (Civil Appeal No. 173 of 2020)

Phillip Okoth and LSK v BOM, St Anne's Primary Ahero pp. 21, 25-26.

Raphael Cubagee v. Michael Yeboah Asare and 2 Others (Ref. No. 16/04/2017)

Seventh Day Adventist Church (East Africa) Limited v Minister for Education & 3 others [2017] KECA 751 (KLR).

The Provost, Kwara State College of Education, Ilorin & 2 Ors vs. Bashirat Saliu & 2 Ors (Appeal No. CA/IL/49/2006.);

The Republic v. Eugene Baffoe-Bonnie and 4 Ors (Ref. No. J1/06/2018).

Tyron Marhguy v. Board of Governors Achimota Senior High School and Anor (Suit No. HR/0055/2021) (2021) JELR 107192 (HC).