**SACHS J ABRIDGED JUDGMENT (DISSENTING)**

*Prince v President of the Law Society of the Cape of Good Hope and Others*

*Introduction*

[145] Intolerance may come in many forms. At its most spectacular and destructive it involves the use of power to crush beliefs and practices considered alien and threatening. At its more benign it may operate through a set of rigid mainstream norms which do not permit the possibility of alternative forms of conduct. The case before us by no means raises questions of aggressive targeting. The laws criminalizing the use of dagga were not directed at the Rastafari nor were they intended expressly to interfere with their religious observance. Although they appear to be neutral statutes of general application they impact severely, though incidentally, on Rastafari religious practices. Their effect is accordingly said to be the same as if central Rastafari practices were singled out for prohibition. The Rastafari claim that as a religious community they are subject to suppression by the implacable reach of the measures, and as individual believers they are driven to a constitutionally intolerable choice between their faith and the law. Through a test case brought by Mr Prince, law graduate, aspirant attorney and appellant in this matter, a number of them approach this Court for relief.

[146] [ In *Christian Education* and *Prince 1* this Court underlined the importance of applying the principle of reasonable accommodation when balancing competing interests of the state and of religious communities. It was the search for such an accommodation that guided this Court when in *Prince 1* it referred the present matter back to the parties for further information relevant to the crafting of a possible exemption. The Court observed that in issue was the validity of statutes that served an important public interest, namely, the prevention of drug trafficking and drug abuse, so that a declaration of invalidity would have far-reaching consequences for the administration of justice. At the same time it reaffirmed that the constitutional right to practise one's religion asserted by the appellant was of fundamental importance in an open and democratic society; the constitutional right asserted by the appellant was beyond his own interest - it affected the Rastafari community. The Court added:

"The Rastafari community is not a powerful one. It is a vulnerable group. It deserves the protection of the law precisely because it is a vulnerable minority. The very fact that Rastafari use cannabis exposes them to social stigmatisation. They are perceived as associated with drug abuse and their community is perceived as providing a haven for drug abusers and gangsters. During argument it was submitted on behalf of the A-G that if a religious exemption in favour of the Rastafari were to be allowed this would lead to an influx of gangsters and other drug abusers into their community. The assumption which this submission makes demonstrates the vulnerability of this group. Our Constitution recognises that minority groups may hold their own religious views and enjoins us to tolerate and protect such views. However, the right to freedom of religion is not absolute. While members of a religious community may not determine for themselves which laws they will obey and which they will not, the State should, where it is reasonably possible, seek to avoid putting the believers to a choice between their faith and respect for the law."

[147] By concluding that the granting even of a limited exemption in favour of the Rastafari would interfere materially with the ability of the state to enforce anti-drug legislation, I believe that the majority judgment effectively, and in my view unnecessarily, subjects the Rastafari community to a choice between their faith and respect for the law. Exemptions from general laws always impose some cost on the state, yet practical inconvenience and disturbance of established majoritarian mind-sets are the price that constitutionalism exacts from government. In my view the majority judgment puts a thumb on the scales in favour of ease of law enforcement, and gives insufficient weight to the impact the measure will have, not only on the fundamental rights of the appellant and his religious community, but on the basic notion of tolerance and respect for diversity that our Constitution demands for and from all in our society.

[148] In my opinion, the judgment of Ngcobo J convincingly shows that appropriate balancing and application of the principle of reasonable accommodation would allow for protection to be given to core sacramental aspects of Rastafari belief and practice without unduly impacting upon the broader campaign against harmful drugs. The most useful approach would appear to involve developing an imaginary continuum, starting with easily-controllable and manifestly-religious use at the one end, and ending with difficult-to-police utilisation that is barely distinguishable from ordinary recreational use, at the other. The

example given by Ngcobo J of officially recognised Rastafari dignitaries receiving dagga from state officials for the burning of incense at tabernacles on sacramental occasions, would be at the easily-controllable and manifestly-religious starting point. Such a narrow and closely defined exemption would be subject to manageable state supervision, and would be understood publicly as being intensely and directly related to religious use. One step further along would be to allow designated priests to receive dagga for sacramental use, including smoking of a handed-round chalice, at designated places on designated occasions. This too could be easily supervised and be readily appreciated by the public as being analogous to religion as widely practised; indeed, I cannot imagine that any reasonable balancing of the respective interests of the Rastafari and of the state could provide for less. At the other end of the continuum would be the granting of everything that the appellant asks for, including the free use of dagga in the privacy of Rastafari homes. Such use would be extremely difficult to police and would completely blur the distinction in the public mind between smoking for purposes of religion and recreational smoking. It would be for Parliament to work out the best means of securing the operational exemption to which the Rastafari are constitutionally entitled. The result might fall far short of what the Rastafari initially claimed, but at least would cast a flicker of constitutional light into the murky moral catacombs in which they exist and secure to them a modest but meaningful measure of dignity and recognition. The fact that they cannot be given all that they ask for is not a reason for giving them nothing at all.

[149] As I see it, the real difference between the majority judgment and that of Ngcobo J relates to how much trouble each feels it is appropriate to expect the state to go to in order to accommodate the religious convictions and practices of what in this case is a rather small and not very popular religious community. I align myself with the position that where there are practices that might fall within a general legal prohibition, but that do not involve any violation of the Bill of Rights,[1] the Constitution obliges the state to walk the extra mile. I accordingly agree with the general approach adopted by Ngcobo J and wish merely to add some observations of a general kind to his meticulous and sensitive analysis of the issues.

[150] The first will deal with the broad historical South African context in which the proportionality exercise in the present case has to be undertaken. The second considers the special responsibility which I believe the courts have when responding to claims by marginalised and disempowered minorities for Bill of Rights protection. The third concerns

South Africa's obligations in the context of international conventions dealing with drugs. The fourth investigates the possibility of developing a notion of limited decriminalization as a half-way house between prohibition and legalization. Finally, I will refer to the special significance of the present matter for the constitutional values of tolerance, openness and respect for diversity.

*The South African context in which the balancing exercise must be undertaken*

[151] [ In *Christian Education*[1]and *Prince 1* this Court emphasised the importance of contextualising the balancing exercise required by section 36 of the Constitution. Such contextualisation reminds us that although notional and conceptual in character, the weighing of the respective interests at stake does not take place on weightless scales of pure logic pivoted on a friction-free fulcrum of abstract rationality. The balancing has always to be done in the context of a lived and experienced historical, sociological and imaginative reality. Even if for purposes of making its judgment the Court is obliged to classify issues in conceptual terms and abstract itself from such reality, it functions with materials drawn from that reality and has to take account of the impact of its judgments on persons living within that reality. Moreover, the Court itself is part of that reality and must engage in a complex process of simultaneously detaching itself from and engaging with it. I believe that in the present matter, history, imagination and mind-set play a particularly significant role, especially with regard to the weight to be given to the various factors in the scales. To begin with, the very problem that is under consideration has to be located in the vast experiential dimensions of faith. As this Court has stated :

"The right to believe or not to believe, and to act or not to act according to his or her beliefs or non-beliefs, is one of the key ingredients of any person's dignity. Yet freedom of religion goes beyond protecting the inviolability of the individual conscience. For many believers, their relationship with God or creation is central to all their activities. It concerns their capacity to relate in an intensely meaningful fashion to their sense of themselves, their community and their universe. For millions in all walks of life, religion provides support and nurture and a framework for individual and social stability and growth. Religious belief has the capacity to awake concepts of self-worth and human dignity which form the cornerstone of human rights. It affects the believer's view of society and founds the distinction between right and wrong. It expresses itself in the affirmation and continuity of powerful traditions

that frequently have an ancient character transcending historical epochs and national boundaries."

[152] The Rastafari faith is of relatively recent origin, but it transcends national boundaries and is deeply rooted in the experience of a vast African diaspora.Dagga is a herb that grew wild in Africa and was freely imbibed in the pre-colonial period. Its use in the diaspora today is seen as re-establishing a ruptured Afro-centred mystical communion with the universe.The papers before us indicate that:

"As the dominant culture tried to use the Bible to claim the black man was a 'beast of burden' so the Rasta expressed his place in Africa and that the use of the herb was grounded in biblical redemption and deliverance".

South African Rastafari find themselves in the peculiar position of being a diaspora of the diaspora, physically on African soil but as reliant as their brethren abroad on the use of dagga as the instrument for achieving an Afro-centred religious connection with creation. Prohibit the use of dagga, and the mystical connection is destroyed. The affidavit by Prof Yawney highlights the centrality of dagga-use to the practice of the Rastafari religion. She states that:

"For Rastafari, cannabis or *holy herbs*, commonly known in Jamaica as *ganja*, is a sacred God-given plant to be used for *healing of the nation*. Its consumption is central to Rastafari spiritual practice . . .
In keeping with the practice of knowing Jah! Rastafari as God directly for oneself, the ingestion of herbs encourages inspiration and insight through the process of sudden illumination. Sociologists would call this a visionary state characterized by the experience of oneness or interconnectedness."

The sense of African spiritual identity which pervades the whole Rastafari world view and is outwardly manifested by the growing of dreadlocks, and the associated sacramental communion achieved through the use of "the holy herb", is accordingly crushed by the total prohibition of dagga-use.

[153] Dagga is rooted both in South African soil and in indigenous South African social practice. In this respect it is significant that the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances expressly states that when State parties take measures to prevent illicit cultivation of plants containing narcotic or psychotropic substances:

"The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, . . . "[Article 14]

The historic evidence of traditional licit use in South Africa is abundant. This has been accepted over the years by our courts where it has been said that:

". . . [I]t is general knowledge that some sections of the [African] population have been accustomed for hundreds of years to the use of dagga, both as an intoxicant and in the belief that it has medicinal properties, and do not regard it with the same moral repugnance as do other sections of the population."

[154] For the purposes of balancing, some laws (or parts of laws) will of necessity be more equal than others. Thus, the problems the state might have in enforcing a general ban on heroin might be no different to those it has in interdicting dagga use. Yet in the balancing exercise the impact of the former on law enforcement will weigh by far the more heavily. A retreat on the tiny front of sacramental use by Rastafari of indigenous and long-used dagga might make little if any difference to prosecution of the major battles against cartels importing heroin, cocaine and mandrax. Indeed the "war on drugs" might be better served if instead of seeking out and apprehending Rastafari whose other-worldly use of dagga renders them particularly harmless rather than harmful or harmed, such resources were dedicated to the prohibition of manifestly harmful drugs.

*The role of the courts in securing reasonable accommodation*

[155] Limitations analysis under our Constitution is based not on formal or categorical reasoning but on processes of balancing and proportionality as required by section 36. This Court has accordingly rejected the view of the majority in the United States Supreme Court

that it is an inevitable outcome of democracy that in a multi-faith society minority religions may find themselves without remedy against burdens imposed upon them by formally neutral laws.[2][6] Equally, on the other hand, it would not accept as an inevitable outcome of constitutionalism that each and every statutory restriction on religious practice must be invalidated. On the contrary, limitations analysis under section 36 is antithetical to extreme positions which end up setting the irresistible force of democracy and general law enforcement, against the immovable object of constitutionalism and protection of fundamental rights. What it requires is the maximum harmonisation of all the competing considerations, on a principled yet nuanced and flexible case-by-case basis, located in South African reality yet guided by international experience, articulated with appropriate candour and accomplished without losing sight of the ultimate values highlighted by our Constitution. In achieving this balance, this Court may frequently find itself faced with complex problems as to what properly belongs to the discretionary sphere which the Constitution allocates to the legislature and the executive, and what falls squarely to be determined by the judiciary.

[156] The search for an appropriate accommodation in this frontier legal territory accordingly imposes a particularly heavy responsibility on the courts to be sensitive to considerations of institutional competence and the separation of powers. Undue judicial adventurism can be as damaging as excessive judicial timidity. On the one hand, there is the temptation to proffer an over-valiant lance in defence of an under-protected group without paying regard to the real difficulties facing law-enforcement agencies. On the other, there is the tendency somnambulistically to sustain the existing system of administration of justice and the mind-set that goes with it, simply because, like Everest, it is there; in the words of Burger CJ, it is necessary to be aware of "requirements of contemporary society exerting a hydraulic insistence on conformity to majoritarian standards." Both extremes need to be avoided.

[157] The hydraulic insistence on conformity could have a particularly negative impact on the Rastafari, who are easily identifiable, subject to prejudice and politically powerless, indeed, precisely the kind of discrete and insular minority whose interests courts abroad and in this country have come jealously to protect. As Ackermann J said in dealing with the analogous situation in which gays and lesbians found themselves:

"The impact of discrimination on [them] is rendered more serious and their vulnerability increased by the fact that they are a political minority not able on their own to use political

power to secure favorable legislation for themselves. They are accordingly almost exclusively reliant on the Bill of Rights for their protection."

In equal measure, because they are politically powerless and unable to secure their position by means of a legislative exemption, the Rastafari are compelled to litigate to invoke their constitutional rights. They experience life as a marginalised group seen to dress and behave strangely, living on the outer reaches rather than in the mainstream of public life. This Court has accepted that: "to understand the 'other' one must try, as far as is humanly possible, to place oneself in the position of the 'other'." The experience of 'other-ness' was expressed by one Rastafari in the following terms:

"A great deal of misinformation has been spread in order to turn the world against the blessed Rastas. The law criminalizes ganja, the preacher demonises it, politicians depopularise it, doctors give serious warning against it and the whole world is made to believe that ganja smoking is far worse than cigarette smoking.
Today we see numerous people dying from lung cancer because of cigarette smoking and the concomitant nicotine that is known to be deadly. Fights associated with drunkenness are so many they have become a normal way of living nowadays.
However, we never see people fussing and fighting when they burn ganja."

[158] The Rastafari are accordingly not an established religious group whose interests no legislature would dare ignore. One may compare their position to that of major faiths. Thus, in the period when the racist liquor laws forbade Africans generally to possess liquor, the power of the Christian Church was such that access to communion wine was granted to African congregants (just as in the USA even at the height of prohibition the use of communion wine was exempted). On the other hand, Africans who sought to brew beer as part of traditional religious supplication rites were prosecuted. The difference of treatment lay not in the nature of the activity or exemption, but in the status of the religious groups involved. One must conclude that in the area of claims freely to exercise religion, it is not familiarity, but unfamiliarity, that breeds contempt.

[159] The Rastafari are not unique as a religious group having had to fight against incomprehension and prejudice when seeking protected space for their religious practices in

South Africa. Chidester points to the difficulties that all the major non-Protestant religions have encountered :

"Religious traditions with sacred centres outside of the geographical boundaries of [S]outhern Africa have struggled to establish a place in the region . . . . [W]hether in Rome, Mecca, Benares or Jerusalem, these religious traditions recentered themselves in the South African context. However, their efforts to find a place in South Africa have often come into conflict with the laws of the land. An important part of the story of religious pluralism in South Africa, therefore, has been the history of legal conflicts in which religious pluralism has been suppressed by the force of law."

In some cases the new religions were deliberately combatted. In others, their implantation and development in South Africa were hindered by apparently neutral measures of general application said to be in the public interest. At times the conflict erupted into the streets. Chidester points out that religious conflict in Cape Town during the 19th century erupted over sanitation programmes, medical care and public health measures. Muslims refused to have their bodies punctured by vaccination or to be confined in an isolation hospital, cut off from family, visits by religious leaders, access to halaal foods or permission to perform Muslim burial rites. The ideology of sanitation came to pervade the imaginations of Cape Town Municipal authorities and the middle class in the 19th century, just as the vision of an orderly, dagga-free world in which the poorer sections of the community knew their place, began to dominate legislative thinking in the 20th.

[160] One cannot imagine in South Africa today any legislative authority passing or sustaining laws which suppressed central beliefs and practices of Christianity, Islam, Hinduism and Judaism. These are well-organized religions, capable of mounting strong lobbies and in a position materially to affect the outcome of elections. They are not driven to seek constitutional protection from the courts. A threat to the freedom of one would be seen as a threat to the freedom of all. The Rastafari, on the other hand, are not only in conflict with the public authorities, they are isolated from mainstream religious groups. Inter-denominational solidarity in relation to what would be seen as the distinctly odd practices of the provocative and non-recognised Rastafari religion, would be more likely to express itself as a commonality of opposition than as a concertation of support. Indeed, the Rastafari might

receive more tolerance from non-believers to whom all religions are equally strange, than from members of well-established confessions, who might have difficulty in taking the Rastafari belief system seriously as a religion at all.

[161] Part of the problem lies in the fact that, as has historically been the case with many non-conformist or dissident religions, Rastafari identify themselves by their withdrawal from and opposition to what they regard as the corrupt temporal and spiritual power of Babylon. If pressed to an extreme, no accommodation between the "allegedly corrupt" state and the "manifestly defiant" religious dissident would be possible. The balancing which our Constitution requires, however, avoids polarised positions and calls for a reasonable measure of give-and-take from all sides.

[162] In the present matter certain Rastafari, through the agency of Mr Prince, have approached the courts for relief. To that extent they have accommodated themselves to the institutions of the state. They have presented their arguments with dignity, if not always with consistency or precision. A feature of the relationship between themselves and the state is its arms-length and antagonistic character. The Rastafari have been disdainful of those whom they consider to be agents of Babylon. For its part, the state has adopted a position of generalised hostility towards a group who draw attention to themselves with their dreadlocks and dress, declare their intention to defy the law, and then complain when they are arrested. In answer to a question from the Bench, counsel for the Attorney General indicated that he was not aware of any attempt having been made to contact any Rastafari to see if a reasonable exemption could be worked out with them. I believe that the bringing of court proceedings to determine the constitutional rights of Rastafari represents an important step in the process of accommodation and mutual recognition.

[163] Whatever the views of individual Ministers might be, Parliament has not exercised a legislative discretion expressly and consciously to limit the constitutionally protected rights of the Rastafari by refusing them an exemption. To my mind, this factor, taken in conjunction with the vulnerability and powerlessness of the Rastafari and the degree of prejudice to which they are subject, coupled with the extreme impact the general prohibition has on their religious rights and freedoms, linked to the marginal effect a carefully managed exemption would have on the "war on drugs", and taking cognisance of the place that dagga has in the panoply of drugs designated as dangerous, imposes a clear duty on the courts to intervene so

as to guarantee the Rastafari a reasonable and manageable measure of space within which to exercise their individual and associational rights. For reasons which will follow I believe that such space can comfortably be achieved by a process of appropriately targeted exemption. In this respect it is necessary to look at the international conventions dealing with drugs.

*The international conventions and religious exemption*

[164] I accordingly turn to the contention that South Africa's adherence to international conventions obliges it to penalise the use of dagga even for religious purposes. My understanding of the conventions suggests just the opposite. I have already referred to the fact that Article 14 of the 1988 Convention states that when state parties take measures to prevent illicit cultivation of plants containing narcotic or psychotropic substances the measures adopted shall respect fundamental human rights and take due account of traditional licit uses. In its 1992 Report the International Narcotic Control Board (INCB) goes considerably further. Under the heading: "*Decriminalisation*" it points out that:

"15. *None of the* [*international*] *conventions* require[s] *illicit drug consumption per se to be established as a* [*criminal*] *offence.* Instead the conventions deal with illicit drug consumption indirectly in their provisions on activities such as the cultivation, purchase or possession of illicit drugs. In so far as these activities are engaged in for the purpose of non-medical personal consumption:
(a) *Parties* to the 1961 Convention and the 1971 Convention may take the view that they *are not required to establish such activities as criminal offences under law*. The basis for this view appears to be that, since obligations relating to penal provisions appear among articles relating to illicit traffic, the obligations only apply to cultivation, purchase or possession for the purpose of illicit trafficking;
(b) *Unless to do so would be contrary to the constitutional principles* and basic concepts of their legal systems, *only the 1988 Convention clearly requires parties to establish as criminal offences* under law the *possession*, purchase or cultivation of controlled drugs *for the purpose of non-medical personal consumption;*
(c) *None of the conventions requires a party to convict or punish drug abusers who commit such offences even when they have been established as punishable offences*. The party may choose to deal with drug abusers through alternative non-penal measures involving treatment, education, after-care, rehabilitation or social reintegration." [My emphasis.]

[165] It has been suggested that decriminalisation appears to have the best prospects of success in dealing with the general prohibition on the use of dagga in South Africa because it draws on the strengths and dilutes the weaknesses of the two extreme positions, namely, prohibition and legalisation. In the present case it is not necessary to consider whether or not decriminalisation should be applied generally to possession and use of small quantities of dagga for personal consumption. The only issue before us is whether a measure of limited decriminalisation in appropriately controlled circumstances could effectively balance the particular interests at stake, namely, sacramental use of dagga by the Rastafari and general enforcement of the prohibition against dagga by the state.

[166] Although the term decriminalisation was not used, the concept appears to have enabled the German courts to deal with the constitutionality of restrictions on the personal consumption of small amounts of marijuana. The German Constitutional Court held:

"Depending on the characteristics and effects of the drug, the amount involved in the specific case, the nature of the relevant infringement, and all the other relevant facts, the danger posed to the protected public interests may be so slight that the considerations of general prevention which justify a general threat of criminal penalties may lose their force. In such case, having due regard to the right of the affected individual to freedom, the individual guilt of the defendant and the related considerations of criminal policy which aim at the prevention in the case of the specific individual, the punishment constitutes a disproportionate and therefore unconstitutional sanction."

[167] The Court pointed out further that in the case of occasional personal use of a small amount of cannabis, the extent of individual culpability and the threat to other legal interests emanating from the individual act may be petty.

This means that the authorities responsible for enforcing the law, in particular the Public Prosecutors, who until the offender is charged have absolute control over the proceedings, must refrain from prosecuting the offences according to S 153 and 153(a) of the Criminal Procedure Act in light of the requirement of proportionality in the narrower sense. . . . [I]f the offence involves danger to third parties . . . and is likely to encourage others to imitate the offence, then there may be sufficient culpability and a public interest in prosecution. In this

respect, the provisions of the Narcotics Act provides sufficient opportunities to give due consideration to limited wrongfulness and culpability in individual cases.

[168] It was this reasoning which led the Federal Administrative Court to reject an appeal by a Rastafari against a refusal by the authorities to grant him a permit to grow marijuana for personal use. The Court held that the objective of getting the permit was to further the appellant's campaign to legalise possession and use of marijuana and not to protect his own personal use of the substance, which was already safeguarded by the Constitutional Court decision. The Court held that "the differentiating sanction possibilities of [the] criminal law provides a basis to comply with the reasonable requests of the applicant, as well as society's demands for protection."

[169] There would appear to be many ways in which decriminalisation of the possession and use of dagga in small quantities by Rastafari for sacramental purposes could be achieved in South Africa. They could include a legislative amendment of the substantive offence to create an express religious exemption; use of the powers under the Medicines Act to grant permits to Rastafari priests to possess and use dagga for sacramental purposes; or a legislatively authorized direction to prosecuting authorities to use their discretion not to prosecute the possession and use of dagga for sacramental purposes. The particular choice would fall appropriately within the discretion of Parliament, which would have the opportunity of receiving input from all the interested parties, including the Rastafari, in working out the terms of an operational exemption which would cure the overbreadth in the legislation as established in the judgment of Ngcobo J.

*Conclusion*

[170] In conclusion I wish to say that this case illustrates why the principle of reasonable accommodation is so important. The appellant has shown himself to be a person of principle, willing to sacrifice his career and material interests in pursuance of his beliefs. An inflexible application of the law that compels him to choose between his conscience and his career threatens to impoverish not only himself but all of South Africa and to dilute its burgeoning vision of an open democracy. Given our dictatorial past in which those in power sought incessantly to command the behaviour, beliefs and taste of all in society, it is no accident that the right to be different has emerged as one of the most treasured aspects of our new

constitutional order. Some problems might by their very nature contain intractable elements. Thus, no amount of formal constitutional analysis can in itself resolve the problem of balancing matters of faith against matters of public interest. Yet faith and public interest overlap and intertwine in the need to protect tolerance as a constitutional virtue and respect for diversity and openness as a constitutional principle. Religious tolerance is accordingly not only important to those individuals who are saved from having to make excruciating choices between their beliefs and the law. It is deeply meaningful to all of us because religion and belief matter, and because living in an open society matters.

[171] The central issue in this case has accordingly not been whether or not we approve or disapprove of the use of dagga, or whether we are believers or non-believers, or followers of this particular denomination or that. Indeed, in the present case the clarion call of tolerance could resonate with particular force for those of us who may in fact be quite puritan about the use of dagga and who, though respectful of all faiths, might not be adherents of any religion at all, let alone sympathetic to the tenets of Rastafari belief and practice. The call echoes for all who see reasonable accommodation of difference not simply as a matter of astute jurisprudential technique which facilitates settlement of disputes, but as a question of principle central to the whole constitutional enterprise. In *Christian Education* this Court held that a number of provisions in the Constitution affirmed

"[t]he right of people to be who they [were] without being forced to subordinate themselves to the cultural and religious norms of others, and highlight the importance of individuals and communities being able to enjoy what has been called the 'right to be different'. In each case, space [had] been found for members of communities to depart from a general norm. These provisions collectively and separately acknowledged the rich tapestry constituted by civil society, indicating in particular that language, culture and religion constitute a strong weave in the overall pattern."

The Court went on to say

"It might well be that in the envisaged pluralistic society members of large groups can more easily rely on the legislative process than can those belonging to smaller ones, so that the latter might be specially reliant on constitutional protection, particularly if they express their beliefs in a way that the majority regard as unusual, bizarre or even threatening. Nevertheless,

the interest protected by section 31 is not a statistical one dependent on a counter-balancing of numbers, but a qualitative one based on respect for diversity."

[172] The above passage is directly relevant to the situation in which the Rastafari find themselves. The test of tolerance as envisaged by the Bill of Rights comes not in accepting what is familiar and easily accommodated, but in giving reasonable space to what is "unusual, bizarre or even threatening".

[173] Subject to the above complementary observations, I record my concurrence with the judgment and order of Ngcobo J.