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# **Comments on the Working Draft of the Bill of Rights from a Christian Perspective**

A submission to the  
Constitutional Assembly  
by  
His People Christian Ministries

February 1996



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## **Introduction**

### **The Nature of this Report**

This report has been written from a Christian viewpoint, taking into account the way that laws similar to those in the Bill of Rights have been interpreted in other countries. Political leaders may be surprised to see how the original intent of rights written into law has been ignored in some cases and the meaning distorted in favour of certain special interest groups. Misinterpretation of the meaning of certain rights by overseas courts has resulted in the removal of important rights and freedoms in these countries. This is especially true in the United States. We believe that careful consideration of the Bible in assessing the validity of constitutional rights will greatly benefit our nation. This report is not a comprehensive examination of the Bill of Rights, but seeks primarily to highlight the moral issues in the Bill of Rights. Omission of comment on a specific issue in the Bill of Rights does not necessarily indicate approval of the present wording of a specific clause.

An earlier version of this report entitled 'Comments on the Interim Bill of Rights from a Christian Perspective' was submitted in March 1995. It has been revised to address the wording of the 'Working Draft of the New Constitution' published on 18 December 1995.

### **Information on His People Christian Ministries**

His People Christian Ministries is a large and rapidly expanding non-racial Christian movement working on and around the campuses and surrounding communities in South Africa, and in some other countries in Africa and Europe. The movement is operating on seven campuses in South Africa and has currently over one and a half thousand people enrolled at its part-time Bible Schools. The churches which have grown out of this ministry, initially consisted of university students, but now include people from all social backgrounds. The ministry seeks to be relevant on social issues, and was host to the 'God and Government: International Symposium for the Biblical Reconstruction of South Africa' in 1992 and 1993.

The positions put forward here are based on the teaching of the Bible and can therefore be seen as representative of the views of the much larger constituency of Christians in South Africa.

Postal Address: His People Ministries, Head Office, PO Box 275, Rondebosch, 7700.

### **The Teaching of the Bible on Constitutional Rights**

Although the Bible does not specifically refer to constitutional rights, the Mosaic laws and other teachings in Scripture lay a moral foundation and an understanding of the role of government, which are important bases for fundamental rights.

The Bible has specific teaching on a range of moral issues which relate to a Bill of

Rights. These are examined briefly, where relevant, in the following sections of this report.

It is recognised amongst constitutional lawyers that all constitutions are based on the mistrust of future political rulers: 'All constitutions are based on mistrust. If we could trust our rulers, our parties, ourselves, we would not need constitutions.'<sup>1</sup> This observation is in accordance with the Bible's teaching that all people are fallible (Rom 3:23). Thus there is a need for checks and balances to protect people from the abuse of political power. While the specific checks and balances may differ from constitution to constitution, the biblically based motivation remains the same. In most democratic constitutions, this has led for example to the division of power between the legislature, the executive and the judiciary (These three separate aspects of government are all mentioned as being subject to God in Isaiah 33:22). A Bill of Rights is intended to prevent the legislature from passing laws contrary to certain fundamental rights and freedoms, which we understand to originate in the Bible.

The Bible teaches that political rulers in government are servants of God (Romans 13:4), and that like everyone else, they must be subject to His law (Deuteronomy 17:18-20). The idea of a law governing rulers as well as individuals comes from the Bible.

The fact that God intended his moral laws to be obeyed by all nations and that the destiny of nations is determined by their response to his law is shown by his statement in Jeremiah 18:7-10 'If at any time I announce that a nation or kingdom is to be uprooted, torn down and destroyed, and if that nation I warned repents of its evil, then I will relent and not inflict on it the disaster I had planned. And if at another time I announce that a nation or kingdom is to be built up and planted, and if it does evil in my sight and does not obey me, then I will reconsider the good I had intended to do for it.' This last statement is a serious warning to South Africans not to take God's blessing for granted. Peace and prosperity in our country is dependent on God's merciful blessing and a morally unacceptable constitution will result in his judgement.

### **The Relation of Church and State**

In 1791, the writers of the American Constitution included in their constitution the statement 'CONGRESS SHALL MAKE NO LAW RESPECTING THE ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF...'<sup>2</sup>. 'Religion', in the language of the time meant 'denomination' in today's language. Thus the law was intended to prevent the government from showing favouritism to a particular form of

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<sup>1</sup> Prof Albie Sachs in *Empowerment and Accountability: Towards Administrative Justice in a Future South Africa*, Hugh Corder, 1991, SA Constitution Studies Centre, London-Cape Town, p(i).

<sup>2</sup>*The Constitution of the United States of America*, Amendment I [1791].

Christianity, such as the Anglican church in England or the Lutheran church in Germany. The amendment aimed to prevent the state from interfering in Church affairs.

The above mentioned clause was never in any way intended to limit the advancement of Christianity in state institutions or by state employees. The same people who wrote this clause also actively supported Christian education and proclaimed public holidays for the explicit purpose of prayer and fasting. The inaccurate interpretation of this clause by the American Supreme Court has promoted the idea that the state may promote the religion of secular humanism<sup>3</sup>, but not Christianity.

Any clause relating to religion must be worded carefully to avoid such a misinterpretation. We believe that the state should be based on Christian principles rather than secular philosophies and ideologies. The Church as an institution is and should remain structurally separate from the state, but the state (including state controlled media, education departments and the Constitutional Court) should recognise and submit to the rule of Almighty God. The Bible is politically relevant, in that it addresses moral issues, which must be considered in law making.

The idea that it is possible to have a religiously neutral state is erroneous. All law is based on moral values, which must in turn be derived from a standard. Since different religions and secular belief systems have conflicting ideas, a religiously neutral state is impossible. Christianity, with which the overwhelming majority of South Africans align themselves, is tolerant of other religions and thus there is no need to adopt a policy of secularism in order to guarantee the rights of people to worship as they choose to do so. By contrast, explicitly secular (such as China and the USA) or Islamic (such as Saudi Arabia, Mauritania and Iran) states are intolerant of Christian religious rights and freedoms.

The intended meaning of the American first amendment (1791): to protect the Church from interference in its internal affairs, is however relevant to South Africa. In 1862, the Dutch Reformed Church suspended one of its ministers for teaching things contrary to the Scriptures. The suspended minister appealed to the civil courts and was reinstated on the basis of the Church ordinance of 1843. The church's appeal to the privy council in England was rejected and it thus lost the power to exercise discipline over its own members.<sup>4</sup> It is submitted that no laws should be made which allow the civil courts to judge such internal affairs of the

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<sup>3</sup>Secular Humanism is a religion which believes in the ability of human beings to live their lives without assistance from a deity. Adherents of this religion include a variety of ancient and modern philosophers such as Aristotle, Plato, Voltaire, Rousseau, Kant and Nietzsche. Many modern ideologies are derived from the beliefs of this religion.

<sup>4</sup>*Andrew Murray: Apostle of abiding love*, Leona Choy Christian Literature Crusade, Fort Washington, Pennsylvania, 1978, p 97.

church.

### **The Source of Fundamental Human Rights**

To be enforced, every human right must have a corresponding duty. The Bible usually refers to fundamental rights in terms of their corresponding duties. For example, the sixth commandment 'You shall not murder' (Exodus 20:13) is another way of stating 'Everyone has the right to life'. Such rights, although not always explicitly stated in legal language in the form of human rights, may be derived from commands given by God in the Bible. The corresponding duty of the State is to refrain from acting or passing laws which violate these rights.

Rights which are granted by the state, and which require the state to actively provide something for the people, are of a different nature and should be distinguished from the fundamental God-given rights entrenched in the Constitution. Such rights weaken the Constitution, because the situation may arise when the state is unable to financially guarantee such rights. In the same way, if the state takes away these rights, then the impression may be created that the state has the right to also take away fundamental rights God has given. These 'state granted rights', commonly referred to as 'red rights', should not be included in the Constitution, which is for the protection of the people.

### **The Subjective Interpretation of Constitutional Rights**

For a government to function effectively and protect citizens of a country, the rights entrenched in the Constitution, ought to reflect the teaching of the Bible. We believe that the God of the Bible is inherently good (1 John 1:5) and obedience to his commands will result in prosperity and blessing on the country (Deuteronomy 30:16). An equally important point is that those interpreting the Constitution must do so according to the original intentions of its writers. Certain foreign courts have ignored this principle and brought in changes which would not have resulted from either democratic decision making or objective interpretation of existing laws. These changes are strongly opposed to Christian faith and morality.

In the sections of this report, mention is made of the 'subjective' decision making of foreign Constitutional Courts and the danger of judges making similar decisions in South Africa. In these cases, judges discussed cases in great detail and had hearings from many different parties. The word 'subjective' does not mean that the decisions were random or taken in haste. It means that the judges were able not only to judge the case, but also form the criteria on which the judgement was made. These criteria bore no relation to words in the Constitution as understood by the writers of the Constitution. The criteria were subjective and thus the judicial decisions made were also subjective (see for example the Roe v. Wade under the Right to Life, p12).

In speaking of the American Supreme Court constitutional lawyer, William Stanmeyer, states: 'The reality, even most law professors now grudgingly concede, is that the courts often have more will than judgement, are dangerous to

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democratic policy making, and are quite willing not only to read the Constitution but also, when it suits them, to read into it their own notions of wise policy'<sup>5</sup>. Straying from the wording in interpreting the American Constitution has been well documented by Judge Robert Bork in the book '*The Tempting of America: The Political Seduction of the Law*'<sup>6</sup>.

The American experience demonstrates the need to define in very specific terms the rights to be protected and to ensure that these rights are in accordance with the teaching of the Bible. If a 'liberal' interpretation policy was less of a danger today a shorter and more succinct Bill of Rights would be acceptable. The statements in this document regarding the dangers of possible misinterpretation of the Bill of Rights should not in any way be understood to be an assessment of the integrity of the judges chosen to sit on the South African Constitutional Court. The Bill must be written taking into account problems that may only arise in the generations to come.

Since the concept of a Bill of Rights is consistent with a Christian view of government and the nature of human beings, in general we support the approach being taken in the constitution. We do not however agree with all aspects of the Working Draft of the Constitution. To aid clarity, the evaluation of certain clauses in the Working Draft of the Bill of Rights below are divided into three parts: a discussion of the meaning and possible interpretations of the clause; an assessment of the clause from a Christian perspective; and a rating of the significance of the moral issues relating to the clause. Certain clauses of the Bill of Rights are examined below in the order they appear in the Working Draft.

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<sup>5</sup>'Christians vs. the Secular State', William Stanmeyer, *New Covenant*, March 1981.

<sup>6</sup>*The Tempting of America: The Political Seduction of the Law*, Robert H. Bork, Collier Macmillan Publishers, New York.



## Preamble

The Constitutional Assembly has not yet published the working draft of the Preamble and it does not strictly form part of the Bill of Rights. Nevertheless, we include comment here, because the preamble sets the Bill of Rights in context and we deem it extremely important that the new Preamble should acknowledge the supremacy of God. The preamble of the 1993 South African Interim Constitution began '*In humble submission to Almighty God, We the people of South Africa declare that:-...'*'.

We favour the retention of this statement and the inclusion of other similar statements which acknowledge God in the constitution. This would not inhibit individual religious freedom, but would affirm the obligation on the state to uphold Christian moral principles rather than secular value systems. The above references to God in the preamble will help to protect the people of South Africa from a Constitutional Court, which may wish to interpret the constitution within the legal context of a secular state.

### **Clause 8(3): Equality**

Clause 8(3) (3) *Neither the state nor any person may [unfairly] discriminate directly or indirectly against anyone on one or more grounds, including [but not limited to] race, gender, sex, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.*

The idea that everyone is equal before God (Acts 10:34-35; Rom 2:11) and therefore also before the law is Judeo-Christian in origin. The Bible also speaks against discrimination (or favouritism) both in the Church (James 2:1-10) and in the courts ('Do not pervert justice; do not show partiality to the poor or favouritism to the great, but judge your neighbour fairly' Leviticus 19:15). God also warned Israel against oppressing those of other races who lived among them (Exodus 23:9).

While the general purpose of this sub-clause supported, we have strong objections to the inclusion of the words '*sexual orientation*', which is aimed at giving a lifestyle of homosexuality/lesbianism constitutional recognition. Possible implications must be deduced from foreign case law. An examination of homosexual rights laws overseas (Canada, America, the Netherlands and Australia), which are usually phrased similarly to the above has shown that such special '*sexual orientation*' rights do not simply protect the rights of homosexuals, but are also used to actively promote homosexuality and to discriminate against citizens who do not agree with such behaviour.

For example, in New York State, all schools including Christian institutions are required to have 'anti-discriminatory' instruction materials to convince students to accept or be non-judgemental towards homosexuality, even if parents disapprove of the content. A 'Human Rights Commission' has the power to fine or jail citizens who display 'any form of public prejudice against gays'. A homosexual school is funded at taxpayers' expense, while the Bible is banned at all state schools<sup>7</sup>.

In Minneapolis, the welfare organisation 'Big Brothers' arranges for boys from single-parent families to be taken on outings with men who volunteer to do so. It had a policy of informing the boy's mother of all personal information relating to the volunteer taking the child on an outing. A homosexual volunteer sued the organisation, demanding that his sexual orientation should be kept confidential and that he deserved thousands of dollars damages; and that the organisation should have 'affirmative action' to recruit homosexual volunteers. He argued that information on 'sexual orientation' could lead to discrimination by the boy's mother. The human rights hearing officer found the welfare organisation guilty of discrimination. On appeal to a district court, the decision was reversed, but thousands of dollars had been wasted on legal fees and rather than risk another

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<sup>7</sup>*Are Gay Rights Right?*, Roger Magnuson, Multnomath Press, Portland, 1990, p70

court case, the organisation agreed to keep 'sexual orientation' confidential<sup>8</sup>. Such legal harassment is a common strategy of homosexual activists.

In South Australia an 'Equal Opportunity Tribunal' has the power to award unlimited amounts of money as damages in compensation to homosexuals who claim to have 'hurt feelings'. They list offences such as a hotel manager refusing to give two men a single room with a double bed and an employer refusing to consider a transvestite for a job intended for a woman<sup>9</sup>.

Other similar cases could be cited, but it is clear that the aims of homosexual activists extend much further than simply protecting their personal rights. Such laws infringe on a person's right to act in accordance with his or her conscience.

The Organisation for Lesbian and Gay Action (OLGA), which lobbied for the inclusion of the words '*sexual orientation*' in the Constitution, hopes that this clause will lead, amongst other things, to the following:

- To legalise consenting sodomy;
- To legalise homosexual marriages which will have the same insurance, pension, taxation, medical aid, housing and other social and economic benefits as other married couples;
- To allow homosexuals to adopt children;
- To include pro-homosexual sex education in the school curriculum even if parents object;
- To make teaching that homosexuality is wrong illegal;
- To allow homosexual school teachers to be open about their lifestyle;
- To make speaking against homosexuality in the media illegal;
- To make it illegal to excommunicate an unrepentant homosexual from a church or to exclude homosexuals from the ministry;
- To make it illegal to teach that homosexuality is sinful;
- To have special re-education of health workers, police and judges to encourage them to enforce pro-homosexual laws, and to have 'affirmative action' for homosexuals within the police and judiciary<sup>10</sup>.

Some may say that anything like this is unlikely to happen in South Africa, but in 1993 the University of Cape Town Students' Representative Council banned a pamphlet published by our organisation on homosexuality, which consisted almost exclusively of Bible verses. This event served as an important warning of the consequences of 'homosexual rights' for religious freedom in South Africa.

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<sup>8</sup>*Are Gay Rights Right?*, Roger Magnuson, Multnomath Press, Portland, 1990 ,p70

<sup>9</sup>*Sexual Choice and Equal Opportunities*, South Australian Equal Opportunity Commission.

<sup>10</sup>'Draft Lesbian and Gay Rights Charter' by OLGA in *Lesbian and Gay Rights*, Derrick Fine, UCT Institute of Criminology, Cape Town, 1992

The clause also serves as an educative basis for the morals of the country, in that disapproval of homosexuality will be equated with racism and other genuinely unfair practices of discrimination mentioned in clause 8(3). It is a common strategy of homosexual organisations to try to include their agenda in legislation aimed at combatting racial and gender discrimination. Both race and gender are characteristics we are born with, while sexual behaviour is a choice we make. No special 'right' should be created to constitutionally protect such sinful behaviour.

### **The Teaching of the Bible on Homosexuality**

The Bible teaches that homosexuality and lesbianism are sins which people voluntarily choose to commit and not 'sexual orientations' that they are born with: Romans 1:26-27 '... Even their women exchanged natural relations for unnatural ones. In the same way the men also abandoned natural relations with women and were inflamed with lust for one another. Men committed indecent acts with other men...' It also teaches that homosexuality does not have to be permanent, but like other sins, can be forgiven and overcome by repentance and faith in Jesus. 1 Corinthians 6:9-11 'Do you not know that the wicked will not inherit the kingdom of God? Do not be deceived: Neither the sexually immoral nor idolaters nor adulterers nor male prostitutes nor homosexual offenders nor thieves nor the greedy nor drunkards nor slanderers nor swindlers will inherit the kingdom of God. And that is what some of you were. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God.' God loves homosexuals, but cannot accept their sinful behaviour.

### **Assessment:**

The words '*sexual orientation*' should be removed from this clause.

### **Significance**

Very high

**Clause 9: Human Dignity**

*Everyone has inherent dignity and the right to have their dignity respected and protected.*

The specific application of this clause is not clear. It seems to have been motivated mainly by abhorrence of the apartheid legacy. The dignity of human beings is derived from the fact that they are all made in the image of God (See Genesis 1:27). The idea that individual rights should never be seen as separate from their corollary obligations (to allow others to exercise their rights) flows from this premise.

**Assessment**

The concept of the right to human dignity was used by the Canadian Supreme court to justify limitations on hard-core pornography in that country (see 'Freedom of Expression', p26). When combined with the right to equality, these clauses make a strong argument for limitation of pornography.

**Significance**

Medium

## Clause 10: Life

### *Option 1*

*Everyone has the right to life [and the death penalty is hereby abolished.]*

### *Option 2*

*Everyone has the right to life, and the right not to be deprived of life except by execution of a court sentence following conviction for a crime for which the death penalty is prescribed by an Act of Parliament.*

'Option 2', which upholds the death penalty is a significant improvement on the unclear wording of the Interim Bill of Rights.

'Option 1' has the detrimental effect of protecting criminals from just sentencing and fails to protect innocent human life.

Both options are, however, vague in that they fail to address other crucial issues relating to the right to life such as abortion, euthanasia and infanticide. These are left instead for the constitutional court to decide. This problem could be remedied by the addition of sub-clauses on these issues. As it stands, the clause is open to subjective secular humanist interpretation based on foreign case law (see Interpretation, clause 39(1), p41), which may fail to recognise the personhood of weak and defenceless individuals such as the unborn child.

The need to use explicit, detailed wording in defining the right to life has become more important as a result of the conflict between the Biblical and secular humanist social values. The Christian viewpoint is that people are made in the image of God and therefore their lives have value irrespective of whether they are in or out of the womb, healthy or unhealthy, useful or redundant to society, elderly or young; and that this right can not be used to protect criminals who are guilty from being executed after process of law (see Biblical quotations below).

Today, with the increase of secular humanist thinking, the Christian consensus, which protects the vulnerable members of society does not exist in the legal profession. In South African legal terms, an unborn child has certain legal rights, such as the right to inherit property. Custody of an unborn child may also be determined before birth<sup>11</sup>. The common law of both British and Roman-Dutch origin once protected the right to life of unborn children with severe punishment of abortionists. The South African Abortion and Sterilization Act of 1975, now permits abortion for a variety of reasons.

An important question, which would have to be decided by the Constitutional Court regarding the abortion issue, is whether the term '*Everyone*' includes unborn

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<sup>11</sup> *The South African Abortion Act - An Assault on the Image of God*. A.R.L Bertrand, 1981.

children and whether, in terms of Clause 37 (Enforcement of Rights) unborn children are included in the definition of '*persons*'. It was argued in the Roe v Wade court case that '... THE WORD "PERSON" AS USED IN THE FOURTEENTH AMENDMENT, DOES NOT INCLUDE THE UNBORN.'<sup>12</sup> We deem it important to have more explicit wording in the Bill so that interpretation according to secular humanist situational ethics can be prevented. We do not want court judgements such as Roe v. Wade to occur in South Africa.

Other clauses in the Bill of Rights, such as Clause 11(2), dealing with '**Freedom and Security of the Person**', may be of influence. Clause 8(3) which deals with **equality** may be interpreted to be relevant by a pro-abortion Constitutional Court. Clause 13, which deals with **privacy** may be similarly used. Arguments, which could be derived from clauses 8(3) and 13 were used by the US Supreme Court in deciding to legalise abortion in that country. Such arguments could not objectively be derived from the American Constitution, but indicate the dangers of subjective secular humanist constitutional interpretation. Problems concerning these other clauses are discussed in the relevant sections of this report.

If the vague, non-specific wording of either of the above two options is retained, the judges will be in a position to 'play God' on these crucial issues. If the Constitutional Court chose to legalise abortion, it would not be possible for parliament to change the decision of the judges without altering the Constitution, which could be extremely difficult.

It has been pointed out by the US Surgeon General C. Everett Koop that the reasons given by Justice Blackmun of the American Supreme court to legalise abortion (i.e. following the religions of ancient pre-Christian cultures) could equally be used in future to legalise infanticide, which could then lead to the legalisation of euthanasia<sup>13</sup>. Pro-infanticide groups have already attempted to pressurise the courts to legalise infanticide of handicapped children<sup>14</sup>.

'Euthanasia' or assisted suicide has now become legally condoned in the Netherlands and pro-euthanasia activists are campaigning for this to be legalised in many other countries, including South Africa. The issue will thus have to be decided by the Constitutional Court in the future and cannot simply be ignored. Interpreted within the Christian consensus, individuals do not have the right to kill themselves or renounce their own right to life. Every human life has value to God even if a person does not recognise the value of their own life or the life of another person, because people are made in the image of God (Genesis 1:27).

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<sup>12</sup>Roe v Wade, 1973 Court Judgement section IX

<sup>13</sup>'The Perils of a Convenient Society', C. Everett Koop, *New Covenant*, March 1981.

<sup>14</sup>*Whatever Happened to the Human Race?*, F.L. Schaeffer & C. Everett Koop, Marshall Morgan & Scott, p51

**The Teaching of the Bible on the Right to Life of the Unborn Child:**

The Bible teaches clearly and in many places that the unborn child is a human being in the same sense that a healthy adult is a human being. Clearly, God takes an interest in these children ('Psalm 139:13-16 'For you created my inmost being; you knit me together in my mother's womb. I praise you because I am fearfully and wonderfully made; your works are wonderful, I know that full well. My frame was not hidden from you when I was made in the secret place. When I was woven together in the depths of the earth, your eyes saw my unformed body. All the days ordained for me were written in your book before one of them came to be.' See also Jeremiah 1:5; Psalm 51:5; Luke 1:41-44. ) All human life is sacred, because people are made in the image of God 'Whoever sheds the blood of a man, by man shall his blood be shed; for in the image of God has God made man.' (Genesis 9:6). This command is repeated in Exodus 20:13 'You shall not murder'.

**The Teaching of the Bible on the Death Penalty:**

We must also remember that in God's eyes failure to execute murderers is an extremely serious matter. 'Do not accept a ransom for the life of a murderer, who deserves to die. He must surely be put to death... Do not pollute the land where you are. Bloodshed pollutes the land, and atonement cannot be made for the land on which blood has been shed, except by the blood of the one who shed it.' (Numbers 35:32-34). In the book of Genesis, we see that the verse, indicating the right to life, is the same verse requiring capital punishment of murderers. The 'right to life' cannot be enforced properly, and given to innocent members of society, without a mechanism to prevent others from violating it. 'Whoever sheds the blood of a man, by man shall his blood be shed; for in the image of God has God made man.' (Genesis 9:6).

**The Teaching of the Bible on Euthanasia**

Secular humanists try to blur human life issues by substituting different words for the type of murder they wish to legitimise. It should be borne in mind that 'abortion' 'infanticide' and 'euthanasia' are all euphemisms for the killing of innocent people that is, murder. The Bible teaches that assisting suicide is the same crime as murder (2 Samuel 1:6-16).

**The Teaching of the Bible on Infanticide**

The Old Testament contains numerous condemnations of the practice of infanticide, which at the time was commonly practised among pagan nations (Deuteronomy 12:31; 18:9-10, Leviticus 18:21; 20:2-5; 2 Kings 16:3; 2 Chronicles 28:3 etc).

**Assessment**

The clause should be rephrased to reflect explicit wording of the Christian position. Option two could be modified with the insertion of the words 'from conception to



natural death' after 'right to life'. It would then read as follows: *'Everyone has the right to life, and the right not to be deprived of life from conception to natural death, except by execution of a court sentence following conviction for a crime for which the death penalty is prescribed by an Act of Parliament.'*

It is suggested that the clause could also be made more explicit through the use of sub clauses phrased along the lines of the proposed American constitutional 'Human Life Amendment':

'SECTION 1: WITH RESPECT TO THE RIGHT TO LIFE, THE WORD "PERSON" AS USED IN THIS ARTICLE... APPLIES TO ALL HUMAN BEINGS IRRESPECTIVE OF AGE, HEALTH, FUNCTION, OR CONDITION OF DEPENDENCY, INCLUDING THEIR UNBORN OFFSPRING AT EVERY STAGE OF THEIR BIOLOGIC DEVELOPMENT.

SECTION 2: NO UNBORN PERSON SHALL BE DEPRIVED OF LIFE BY ANY PERSON; PROVIDED, HOWEVER, THAT NOTHING IN THIS ARTICLE SHALL PROHIBIT A LAW PERMITTING ONLY THOSE MEDICAL PROCEDURES REQUIRED TO PREVENT THE DEATH OF THE MOTHER.

SECTION 3: THE CONGRESS AND THE SEVERAL STATES SHALL HAVE POWER TO ENFORCE THIS ARTICLE BY APPROPRIATE LEGISLATION. <sup>15</sup>

Two points in regard to the above wording are important: Firstly the words 'TO PREVENT THE DEATH OF THE MOTHER' should be used rather than 'to protect the mothers life', since some overseas' courts have interpreted the word 'life' to apply to the mother's psychological health, physical health, emotional strain, social and employment status etc.<sup>16</sup> That the life of an unborn child can hang in the balance, dependent on a courts perception of the mother's reduced 'quality of life' is unacceptable. Careful thought and clear definition needs to be given to the word 'life'.

Secondly, wide ranging qualifications in the definition of 'person' are needed to prevent an elderly, senile, ill or handicapped person as being considered less than a person, an idea promoted by those in favour of euthanasia. Great detail is used in defining rights of other clauses within the constitution and we regard the present treatment of the right to life as inadequate to protect the rights of innocent people.

It is our submission that neither the Constitutional Assembly, the Constitutional Court nor Parliament has any right to make the final decision on the above mentioned issues. They simply have the duty to enforce the right to life as given by God in the Bible. These issues are too important to be exclusively handled by a small group of constitutional judges. If the Constitutional Assembly is unable to agree upon wording which reflects the teaching of the Bible, held in high regard by millions of South Africans then a referendum should be held to decide these issues. Our own monitoring of opinion polls shows that the overwhelming majority of

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<sup>15</sup>Wilke,J.C. 1985 *Abortion: Questions and Answers*, Hayes Publishing Company, Cincinnati, p27

<sup>16</sup>*Abortion: the crisis in morals and medicine*, NM de S Cameron & PF Simons, IVP

South Africans agree with the Christian viewpoint of respect for innocent human life<sup>17</sup>.

**Significance**

Very Very High

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<sup>17</sup> For example, the Human Sciences Research Council Poll taken in 1992; Readers Digest Poll taken in 1994; and the National Progressive Health Care Network Poll taken in 1994 on abortion.

## Clause 11(2): Freedom and Security of the Person

*(2) Everyone has the right to security of the person, [bodily and psychological integrity] including the right -*

*(a) to be free from all forms of violence; and*

*[(b) to be secure in, and control their own body.]*

The above clause does not appear to contain any serious moral problems, when looked at on face value. However, when interpreted in the context of secular humanist legal thinking, some very serious problems are apparent.

Sub-clause (2) includes the words [*bodily and psychological integrity*] and [*to be secure in, and control their own body*]. Interpreted from a Christian viewpoint, there is no problem relating a person's ability to '*control their own body*'. In the context of Christian legal interpretation, such a right would be limited at the point where one person's right to '*control their own body*' harmed another person or themselves. This right would be limited in the sense that it could not justify the killing of an unborn child within the mother's womb on the basis that the child's right to life was paramount over the mother's right to '*bodily and psychological integrity*' and to '*control their own body*'. Similarly, suicide, self mutilation, sado-masochism, drug abuse, all of which constitute harm to a person's own body would not be included in this right. In addition, when interpreted within the Christian consensus, this right would not allow a person to offer their body for sale as a commodity. The potential for this clause to affect legislation on prostitution has been raised<sup>18</sup> and the term '*control their own body*' has been used by the pro-prostitution lobby in an attempt to give it a women's rights slant.

The criteria of '*psychological integrity*' can be interpreted in an extremely broad manner. In England, this was introduced as a criterion for evaluating women seeking abortion by politicians who understood it to apply to those who would otherwise go insane. Courts have applied it instead to the normal emotional stress involved in child rearing, thus allowing no restriction on abortions. See the evaluation of clause 10 'The Right to Life', p12 for what God says on the abortion issue.

With the present opposition to Christian norms and values among many prominent members of the legal profession, Constitutional Court judges cannot be relied upon to interpret the above clause in the way in which the majority of South African's would like them to. Even if the wording sounds harmless, the wording of the clause is wide open to abuse on the crucial moral issues of abortion, prostitution, drug abuse and euthanasia.

The pro-abortion lobby has, since the 1960's used the term '*right to control their own body*' in an attempt to use innocuous words to describe the violent murder

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<sup>18</sup>Sunday Times, 4 February 1996

of unborn children. In the light of the similarity of clause 11(2)(b) to the common abortionist slogan '*Every woman has the right to control her own body*', it is evident that the wording was specifically inserted with the goal of undermining the right to life of the unborn child.

Any legitimate concern relating to a person's right to '*control their own body*' such as certain forms of physical violence would already be sufficiently addressed by clause 11(2)(a). It is thus suggested that this clause should be deleted since it gives no benefit and creates many serious problems. A qualifying clause would be unlikely to mitigate the above problems.

### **The Teaching of the Bible on Prostitution**

Leviticus 19:29 '*Do not degrade your daughter by making her a prostitute, or the land will turn to prostitution and be filled with wickedness*'

The above scripture makes several important points. Firstly, the work of a prostitute is degrading and thus harms the women involved. It is also degrading to women in general. Secondly, where prostitution is readily available in a country, the result will be that the '*land will turn to prostitution*'. This is contrary to the erroneous humanistic idea that the same people will use prostitutes whether it is legal or illegal. The erosion of moral values in a country will make it '*filled with wickedness*'. Where one type of crime is prevalent, other types of crime will also become prevalent. The practice of prostitution is often accompanied by other crimes such as assaults, rape and murder in addition to the direct consequences of venereal disease, destruction of families and degradation of human sexuality. Thirdly, the words '*making her a prostitute*' brings up a point often ignored by the secular human rights lobby. Women involved in prostitution were often initially coerced into it by other people such as pimps, gangsters and sometimes their own fathers. In most cases, the loss of dignity and worth, which later culminated in prostitution was the result of sexual abuse. Prostitution thus cannot be evaluated simply in terms of individual choice. Many other scriptures condemn prostitution in the context of both the individual buying sex and the individual selling it. (For example Leviticus 21:9; Prov 6:26; Prov 23:27; 1 Cor 6:15-18.)

### **The Teaching of the Bible on Drug Abuse**

The bible does not specifically mention the range of harmful chemicals which are currently available to the drug abuser, but it does lay down moral absolutes, which can be used to decide such issues. Firstly, there is the condemnation of drunkenness, because of the loss of self control and resultant sin Eph 5:18 '*Do not get drunk on wine, which leads to debauchery*'. Secondly, there is the problem that narcotics result in slavery to the habit, which is a limitation on an individual's freedom to choose to do good (see 1 Cor 7:23). Thirdly, the drug may harm the abusers' own body (see 1 Cor 6:18-20).

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### **The Teaching of the Bible on Abortion and Euthanasia**

See discussion under the 'Right to life' under clause 10, p12

#### **Assessment**

We support the deletion of the above bracketed terms from clause 11(2) on grounds that they could be interpreted in such a way as to invalidate legislation aimed at restricting the social evils of abortion, prostitution, drug abuse and euthanasia.

#### **Significance**

Very high

#### **Constitutional Point**

See comments under clause 27 (Children's Rights)

#### **Assessment**

There is nothing inherently wrong with clause 11(2) as drafted. However, the Constitutional Court could alter its meaning to water down the protection of clause 10 'Right to Life' p12. Similarly, the word 'prostitution' could be used against corporal punishment and other measures to address this issue (See clause 27 'Children's Rights')

#### **Significance**

High

### **Clause 11(3): Freedom and Security of the Person**

*(3) No one may be -*

*(a) tortured in any way;*

*(b) treated or punished in a cruel, inhuman or degrading way; or*

*(c) subjected to medical or scientific experiments without that person's consent.*

#### **Death Penalty**

At face value this sub-clause sounds commendable from a Christian point of view, but it must be remembered that recently, the High Court of Zimbabwe set aside the death sentences on the grounds that long periods on death row offend a similar clause in their constitution. Unless there is specific wording to the contrary, such as in option two of clause 10, capital punishment could be abolished on grounds of this clause if the Constitutional Court so decides<sup>19</sup>.

#### **Corporal Punishment**

See comments under clause 27 (Children's Rights), p37.

#### **Assessment**

There is nothing inherently wrong with clause 3(b), except that a humanist Constitutional Court could alter its meaning to outlaw the death penalty. The Constitution therefore needs to explicitly uphold the death penalty elsewhere. (See also clause 10: 'Right to Life', p12). Similarly, this and other statements in the Bill of Rights could be used against corporal punishment, and specific attention is needed to address this issue (See clause 27 'Children's Rights', 37).

#### **Significance**

High

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<sup>19</sup>Dodson & Keightley. 'Is this a new era for human rights?' Article in *Argus*, November 29, 1993.

### **Clause 13: Privacy**

*Everyone has the right to privacy, including the right not to have -*

*(a) their person or home searched;*

*(b) their property searched;*

*(c) their possessions seized; and*

*(d) the privacy of their communications violated.*

Although the term 'Right to Privacy' is not actually used in the United States Constitution, it was used as an argument in favour of legalising abortion in that country.

The liberal interpretation of the right to privacy was contrived by the Court in *Griswold v. Connecticut* (1965) and then extended to include abortion in *Roe v. Wade*<sup>20</sup>. It was argued that 'THE CONSTITUTION DOES NOT EXPLICITLY MENTION ANY RIGHT TO PRIVACY... THE RIGHT TO PRIVACY, WHETHER IT BE FOUNDED ON THE FOURTEENTH AMENDMENT'S CONCEPT OF PERSONAL LIBERTY AND RESTRICTIONS ON STATE ACTION, AS WE FEEL IT IS, OR AS THE DISTRICT COURT DETERMINED, IN THE NINTH AMENDMENT'S RESERVATION OF RIGHTS TO THE PEOPLE, IS BROAD ENOUGH TO ENCOMPASS A WOMAN'S DECISION WHETHER OR NOT TO TERMINATE HER PREGNANCY... ON THE BASIS OF ELEMENTS SUCH AS THESE, APPELLANT AND SOME AMICI ARGUE THAT THE WOMAN'S RIGHT IS ABSOLUTE AND THAT SHE IS ENTITLED TO TERMINATE HER PREGNANCY AT WHATEVER TIME, IN WHATEVER WAY, AND FOR WHATEVER REASON SHE ALONE CHOOSES... '<sup>21</sup>. The argument is that the decision to kill an unborn child is a private one that must be made by the child's mother, without the need to gain the consent of representatives of the state, the child's father, or a medical practitioner/psychologist etc. The above clause does not say anything that could be objectively interpreted to relate to abortion. It could nevertheless be used this way by a Constitutional Court as was the case in the United States.

#### **Assessment**

The wording must either be altered to explicitly preclude abortion, or else, abortion must be explicitly forbidden elsewhere in the Bill of Rights by specifically defining the word 'Everyone' to include the unborn in the 'Right to Life' (Clause 10, page 12).

#### **Significance**

High, but change not necessarily needed in this clause.

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<sup>20</sup>'Christians vs. the Secular State', William Stanmeyer, *New Covenant*, March 1981.

<sup>21</sup>*Roe v Wade*, 1973 section VII

## **Clause 14(2): Religion, Belief and Opinion**

*(2) Religious observances may be conducted at state or state-aided institutions provided that -*

*(a) those observances follow rules made by an appropriate authority;*

*(b) they are conducted on an equitable basis; and*

*(c) attendance at them is free and voluntary.*

On the surface, this clause sounds fair and beneficial to Christianity and religious freedom, but the way it is stated leaves it open to harmful abuse by an anti-Christian court.

### **The Context of Banning of Christianity in American State Schools**

It is necessary to examine the issue of religion and education in the context of the serious discrimination against Christianity in American State schools, which resulted from the misinterpretation of the American constitution by the Supreme Court in that country. The above clause seems to have been introduced mainly to prevent South Africa from adopting this strongly anti-Christian stance. While the intent is appreciated, the clause does not serve this purpose adequately.

The American Bill of Rights was drawn up with the explicit intention of entrenching Christian principles and values in American Society. Sadly, the Supreme Court has taken great liberties in interpreting this Bill of Rights, even to the extent of making laws in direct opposition to the original intentions of the Constitution<sup>22</sup>.

### **Prayer in American Schools Abolished**

The American Supreme Court has now interpreted the first amendment to mean that Christianity may not be promoted in government funded schools. Schools have even been told, for example, not to display the Ten Commandments on the classroom wall and Christian groups are not allowed to meet at schools during lunchtime. Atheism, Greek Philosophy, and some brands of New Age<sup>23</sup> teaching are not regarded as 'religion' and are thus allowed to be promoted. The results of this banning of the Bible was predictable: a drastic increase in violent crime and drug abuse in schools<sup>24</sup>. In effect the clause intended to prevent the creation of a state denomination has entrenched secular humanism in its various forms as the state religion of the USA. Study of the actions and statements of the writers of

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<sup>22</sup>John W.Whitehead, *The Freedom of Religious Expression in Public Universities and High Schools*, Rutherford Institute Report, Vol 1, 1985.

<sup>23</sup>The 'New Age' religion is a mixture of a wide variety of eastern religions and the and other spiritual teachings. Adherents have varying beliefs, but popular components of the religion include astrology, yoga, alternative medicine and the belief in invisible spiritual forces. 'New Agers' attempt to mix other religions, including Christianity together with their own and ascribe god-like status to the individual.

<sup>24</sup> *The Results of Banning Prayer and Bible*, Mrs R Grugg, WCTU, Pennsylvania.



the United States Constitution shows them to favour Christian Education strongly<sup>25</sup>.

### **Violation of Religious Freedom in the United States**

Recent examples of Christians being discriminated against in the United States include the following: 'TWO HIGH SCHOOL STUDENTS GAVE A FRIEND A FLIER ADVERTISING AN OFF CAMPUS MEETING OF THE FELLOWSHIP OF CHRISTIAN ATHLETES. THE TWO WERE ACCUSED OF POSSESSING CHRISTIAN MATERIAL. ONE STUDENT WAS SUSPENDED, THE OTHER WAS THREATENED WITH EXPULSION... A TEACHER IN COLORADO WAS REPRIMANDED FOR HAVING TWO CHRISTIAN BOOKS IN HIS CLASSROOM LIBRARY OF NEARLY 250 VOLUMES. A FEDERAL CIRCUIT COURT RULED AGAINST THE TEACHER AND THE SUPREME COURT REFUSED TO HEAR THE CASE.'<sup>26</sup> Christianity has been banned in American State schools since 1963, although a recent court case 'Mergens v. Westside Board of Education' (1990) has allowed Christian Clubs after hours use of school facilities.<sup>27</sup> The Bill of Rights must be carefully worded to uphold religious freedom in South Africa.

### **State Interference in Religious Activities**

The way that Clause 14(2) has been stated leaves it open to misuse. Legally, the term '*appropriate authority*' is void, because it is not properly defined. It is submitted that the only appropriate authority to make rules regarding worship in school are the parents and teachers of the children at the school. The Bible teaches that God places the responsibility for the upbringing of children on the child's parents rather than on the state (see Deuteronomy 4:9 & 6:7; Ephesians 6:4; Proverbs 22:6). Where teachers are delegated this authority by parents, they are accountable to the children's parents rather than to the state.

Parents have the right to remove their children from a particular school or to request their child's non-participation in specific activities they disapprove of. If the Constitutional Court were to rule that '*an appropriate authority*' is the state education department, then American-type infringements of religious freedoms could result.

The words '*state-aided*' could be interpreted to include almost all private schools in the country, since most receive state subsidies and these would then be required to submit to this '*appropriate authority*'.

### **Inter-Faith Religious Activities**

The phrase '*provided that such observances are conducted on an equitable basis*' could be interpreted to mean that state schools which have minorities of members

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<sup>25</sup> *Education and the Founding Fathers*. Video produced by Wallbuilders.

<sup>26</sup> *Charisma*, March 1993, p60

<sup>27</sup> *Charisma*, September 1993, p33

of non-Christian religions (eg Islam, Hinduism) will be compelled to have inter-faith services and that all school functions will have to be either 'inter-faith', secular or alternate devotions between different religions. Effectively, this could mean that school assemblies will have to include readings from the Quran as well as the Bible, and prayers to Allah, Krishna, the ancestors as well as to Jesus Christ. While we endorse freedom of religion, we strongly oppose the mixing of religious beliefs. It would not be acceptable if our children were being taught the values and doctrines and encouraged to participate in the activities of other religions (The Bible teaches strongly against the mixing of other religious beliefs with Christianity - 2 Kings 17:34-41).

### **Secularisation of Compulsory Functions**

Although the phrase '*and attendance at them is free and voluntary*' sounds reasonable, it could have negative implications nevertheless. If '*religious observances*' were interpreted to include all school functions with prayer or Bible reading, then those functions for which attendance is compulsory such as assemblies, prize giving etc. would be governed by this clause.

The Constitutional Court could then interpret '*free and voluntary*' in one of two ways: Either, compulsory functions would have to be secular, or alternatively, schools would have to make special provision for children whose parents objected to religious activity. This second interpretation would be more acceptable, since it is unlikely that many parents would wish their children to be deprived of Christian moral influence.

If '*religious observances*' ever were interpreted to include prayers, Bible reading or Christian based moral education taking place in normal classes, then more extreme limitations such as those which are presently in effect in America may be imposed. Such an interpretation by the Constitutional Court could possibly arise in several generations' time. In America, the Supreme court used a constitutional clause that was intended to protect the Church from state interference, and interpreted it many generations later to mean that Christian activities were not allowed in state schools.

### **The End of Christian State Education**

It seems that this clause will also effectively end the Christian centred 'Bible education' in schools and that it will be replaced by 'Religious studies'. Limitations may be placed on Christian teachers who share their faith in normal lessons.

### **Other State Institutions**

Similar limitations on Christian activities and forced mixing of religion in other '*state and state-aided institutions*', such as universities, hospitals, the prison service and military may also result.

### **Assessment**

In order to address the concerns expressed above, the following modification of the

wording of the clause is suggested:

Firstly, the words '*State-aided*' should be deleted to prevent private Christian schools, which receive state subsidies from having their worship or teaching controlled by a state body.

Secondly, the problematic subclauses:

*'(a) those observances follow rules made by an appropriate authority;*

*(b) they are conducted on an equitable basis; and*

*(c) attendance at them is free and voluntary.'*

should be deleted to prevent either secularisation or mixing of religion from being enforced by the Constitutional Court.

To replace this part of the wording, and to prevent the Clause from then forcing schools to allow unacceptable forms of religious observance, such as Satanism, the following could be added: '*under rules established by a local body in consultation with the community.*' Placing authority in the hands of a local body rather than national government would give parents more influence over the rules affecting their children and would allow for more variation in rules between different schools than would rules made by a central education authority. There may be value in dealing with state funded schools and other state institutions separately.

The Clause should thus simply read:

*(2) Without derogating from the generality of subsection (1), religious observances may be conducted at State institutions under rules established by a local body in consultation with the community.*

The retention of option 3 of clause 28 (Education) would to a limited extent mitigate some of the above problems by guaranteeing the right of specifically Christian schools to receive state financial assistance. The above changes would nevertheless be important to ensure that this funding does not grant the state the right to regulate the worship or teaching of these Christian schools.

### **Significance**

High

## **Clause 15: Freedom of Expression**

*(1) Everyone has the right to freedom of expression, including -*

*(a) freedom of the press and other media; and*

*(b) freedom to receive and impart information and ideas.*

*(2) The protection in subsection (1) does not extend to -*

*(a) propaganda for war;*

*(b) the incitement of imminent violence; or*

*[(c) advocacy of hatred based on race, ethnicity, gender or religion that constitutes incitement to discrimination.]*

*(3) Option 1*

*The state must regulate any media that it finances or controls to ensure that it is impartial and presents a diversity of opinion.*

*Option 2*

*The state must regulate any newspapers and electronic media that it finances or controls to ensure that they are impartial and represent broadly the views of society.*

### **Freedom Political and Religious Speech**

The right to freedom of political speech is one of the requirements of a democracy. As Christians we recognise the need for 'transparent' government and an informed electorate who are able to '*freely make political choices*' Clause 18(1). The rights to state information outlined out in Clauses 31 and 32 serve both to limit abuse of power by civil authorities and to assist citizens and authorities to make informed political decisions. For these reasons, we strongly support Clause 15(1)(a) + (b) and favour 'Option 1' of clause 15(3) in placing the emphasis of the right in the correct context.

The motivation behind the framing of the American First Amendment and other similar clauses in international documents was freedom of specifically political and religious expression. In South Africa we are emerging from a dispensation of restricted dissemination of information similar to that which the framers of the American Bill of Rights sought to guard against. Protecting political and religious speech has always been the starting point in interpreting rights to freedom of speech in every national constitution.

Internationally, freedom of expression clauses are not often problematic in the area of political speech. The early American and Canadian jurisprudence developed specifically in regard to political speech and are effective in this regard. The problems arise when the same tests are applied to certain other forms of information and non-political expression.

### **Pornography**

The treatment of pornography by many overseas' courts as 'speech' or 'art' (the selling of which is now regarded as a constitutional right) is of great concern to the

Christians and the general South African populace. Assuming that the South African Constitutional Court would follow such precedent set in some overseas countries, it seems that the governmental task group on pornography ignored the opinions of South Africans opposed to pornography in planning the Publications Control Bill<sup>28</sup>.

The reasoning behind the establishment of a right to freedom of speech, that is to secure the social good of an informed electorate and to ensure freedom of religious belief, can hardly be applied to pornography. This is essentially where the courts in other countries have erred. The kind of speech and expression protected has been widely defined, but the same justification, which should apply to the limited category of political speech is applied across the board.

In America the precedent case allowing the dissemination of hard-core pornography is *American Booksellers Association v Hudnut 771 F. 2d 323 (7th Cir 1985)*. The case overturned an Indianapolis ordinance which defined pornography as a practice that discriminates against women and was aimed exclusively at hard-core pornography involving mutilation, rape and women enjoying pain or humiliation. The judge, Easterbrook J recognised that 'Pornography is a systematic practice of exploitation and subordination based on sex which differentially harms women'. But, he says, we cannot say that these harms depicted are actually occurring. Thus the harm which is seen, not to mention the harms which it may motivate, are not as great as the harm that will be caused by allowing a statute to limit freedom of 'speech' even in this very circumscribed manner. His justification for this is that 'Governments who want stasis start by restricting speech' and 'Change in any complex system ultimately depends on the ability of outsiders to challenge accepted views and reigning institutions.' The judge thus uses the justification for open political debate as a means to legalise what he himself admits to being a systematic practice of exploitation of women. There is an obvious error in the logic of this argument. What social good, worthy of constitutional protection, is being promoted by supporting a practice which clearly discriminates against women?

Canadian courts have succeeded in outlawing the most extreme forms of hard-core pornography, but only because in these cases the court could detect a 'reasoned apprehension of harm'(R v Butler [1992] 1 DLR 452). Their decision was based on proportionality reasoning that the harm apprehended by the court is greater than the harm of silencing the expression. These cases must however conform with the definition of obscenity in the Criminal Code which leaves much of the pornography trade, including material which is generally regarded as hard core, outside it's ambit, despite the court's open acknowledgment that pornography harms women. Sadly, the freedom of expression has been promoted for its own sake rather than

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<sup>28</sup>'Buthelezi signals end of censorship', *The Argus*, 9 August 1994,p1 and 'Censorship law to be relaxed',*The Argus*, Wednesday December 7,p1

within the limits of other social values and fundamental rights.

The Canadian case of *R v Keegstra [1990] 3 SCR 697* included the anti-Semitic views of a history teacher under the definition of speech. The classroom situation is different to the political arena, since a class of school children (a captive audience of impressionable young minds) is not the same as civil society in the process of making political decisions. Our suggestion is that one should not set one standard for speech across the board.

In short the above rulings and the reasoning behind them leave much to be desired. It is clear to us that material which exploits members of a society violates the principle of equality behind our Constitution. It also goes directly against the right to human dignity in Clause 9.

In our earlier submission for the Interim Bill of Rights, we suggested that other forms of expression for which some form of limitation is also needed are public incitement to crime or violence, malicious slander, fraud, hate speech, blasphemy and the desecration of religious symbols. We suggested that as in Article 10 of the European Convention on Human Rights, our clause 15 should enumerate different types of expression which may be regulated without adversely affecting free speech in the political and religious sense. The advantage of this is that it will differentiate between the different types of expression on the basis of the constitutionally protected social good which they promote.

It is encouraging to see that moves in this direction have been taken in the new draft in clause 15(2). The possible introduction of a clause on hate speech is to be welcomed. However, this is a new area of constitutional jurisprudence, which is highly controversial internationally. Not only is the concept of 'hate speech' difficult to define but clause 15(2) links this with '*incitement to discriminate*'. If the emphasis in interpreting this clause is put on the latter section, it could serve as an invasive restriction on the passive expression of controversial opinions: political, religious or otherwise. On the other hand, the tendency in the USA, where the concept of hate speech originated, has been that the courts severely limit its application. O.W. Holmes of the Supreme Court has held that hate speech must create a 'clear and present danger'. Such a narrow interpretation would render the clause almost meaningless. Much of this interpretation would be up to the Constitutional Court. Thus we suggest that clause 15(2)(c) read: 'advocacy of hatred based on race, ethnicity, gender or religion' only.

As was suggested previously, we feel that it would be expedient to follow up the list of specifically unprotected speech with a 'catch all' along the lines of the European Convention on Human Rights which reads:

(2) THE EXERCISE OF THESE FREEDOMS, SINCE IT CARRIES WITH IT DUTIES AND RESPONSIBILITIES, MAY BE SUBJECT TO SUCH FORMALITIES, CONDITIONS, RESTRICTIONS OR PENALTIES AS ARE PRESCRIBED BY LAW AND ARE NECESSARY IN A DEMOCRATIC SOCIETY, IN

THE INTERESTS OF NATIONAL SECURITY, TERRITORIAL INTEGRITY OR PUBLIC SAFETY, FOR THE PREVENTION OF DISORDER OR CRIME, FOR THE PROTECTION OF HEALTH OR MORALS, FOR THE PROTECTION OF THE REPUTATION OR RIGHTS OF OTHERS, FOR PREVENTING THE DISCLOSURE OF INFORMATION RECEIVED IN CONFIDENCE, OR FOR MAINTAINING THE AUTHORITY AND IMPARTIALITY OF THE JUDICIARY.

It would also be beneficial to include pornography as one of the forms of expression for which the protection in subsection 15(1) does not extend as listed in 15(2). Freedom for freedom's sake should not be the guiding force behind the interpretation of our Bill of Rights.

### **The Teaching of the Bible on Pornography**

Jesus said: "You have heard that it was said, 'Do not commit adultery.' {Exodus 20:14} But I tell you that anyone who looks at a woman lustfully has already committed adultery with her in his heart. If your right eye causes you to sin, gouge it out and throw it away. It is better for you to lose one part of your body than for your whole body to be thrown into hell." Matthew 5:27-29. The point Jesus was making is that evil thoughts are sins in the same way that physical actions are sins. Pornographers profit by encouraging others to sin. Although the law cannot regulate a person's thoughts, it can help people by removing sources of temptation.

Pornography attacks people at two levels: Firstly, the person who buys it has his or her morality undermined and secondly, the people being portrayed (usually women) have their dignity undermined. Pornography promotes the degradation of women (essentially) as they are portrayed as sex objects. It is the responsibility of good governments to protect its citizens from these attacks. The dignity of human beings is derived from the fact that they are created in the image of God (Gen 1:27).

The Word of God teaches that sinful thoughts inside a person, if not stopped, will inevitably result in sinful action (James 1:15). In the case of pornography, these sinful actions bring serious harm to society: rape, child abuse, sexual harassment etc.<sup>29</sup>

Even for those who do not personally read pornographic magazines, obscene publications on newsstands or explicit advertising are offensive to innocent passers-by.

### **Assessment**

The inclusion of a right to freedom of speech is welcomed as it assists the Church in its role of preaching the gospel and providing a moral conscience, which we consider vital to the well being of society. Apart from its application for religious

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<sup>29</sup>Hawkins G. & Zimring F.E. *Pornography in a free society*, Cambridge University Press, 1988

freedom, the right found in Clause 15(3) is essentially a right to freedom of political speech which is closely connected to the right to information and 'transparent' government and should be interpreted as such. This motivation should be kept in mind by the legislature in the passing of censorship laws and provision of information to the public.

It is important that Clause 15 reflects the legislature's commitment to free political and religious speech, while not condoning socially harmful forms of expression, which undermine the rights to equality and human dignity purely for financial gain of a few. Clause 15(2) reflects a welcome development in that direction, but none of its sub-clauses are sufficient to protect the victims of pornography which may be disseminated through the media under Clause 15(1)(a). If our constitution takes the balance between freedom and equality seriously, it must limit the exploitation of workers in the pornography trade and the victims of the social harm it creates.

We suggest addition of a further sub-clause as follows: *'The exercise of these rights, since they carry with them duties and responsibilities, may be subject to restrictions or penalties as are prescribed by law, in the interests of the prevention of crime, for the protection of health or morals, for the protection of the reputation and rights of others or for maintaining the impartiality of the judiciary.'*

### **Significance**

Very high



## **Clause 21: Economic Activity**

### Option 1

No provision regarding a right to economic activity.

### Option 2

*(1) Everyone has the right to pursue a livelihood and engage in economic activity anywhere in the Republic.*

*(2) Subsection (1) does not preclude measures that are designed to promote the protection or the improvement of the quality of life, economic growth, human development, social justice, basic conditions of employment, fair labour practices, or equal opportunity for all, provided such measures are justifiable in an open and democratic society based on freedom and equality.*

### Option 3

*Everyone has the right to pursue the livelihood of their choice, including the right to choose freely their occupation or profession, their place of work and their place of training.*

An objection is not given to the inclusion of such a clause, but to the very uncircumscribed definition of such a right. Such wording could be used to legitimise morally harmful activities which the state has a duty to stop. The potential for this clause to relate to illegal activities such as prostitution has been raised by the chairman of the Constitutional Assembly and the wording of options 2 and 3 leaves good reason for such concern.

This problem could be remedied by the addition of qualifying sub-clauses, which would limit the right. Such limitations could be worded similarly to the European Community limitations on the right to freedom of expression discussed under clause 15, p26.

The teaching of the Bible on prostitution is discussed under Clause 11(2), p18

### **Assessment**

A sub-clause should be added to option 3 read along the following lines:

*Subsection (1) does not preclude measures that are designed to protect public health or morals.*

### **Significance**

High

## Clause 24: Property

### Option 1

*No property clause.*

### Option 2

*(1) No one may be deprived of property except in accordance with a law of general application.*

*(2) Property may be expropriated only in terms of a law of general application -*  
*(a) for a public purpose or in the public interest; and*

*(b) may be subject to the payment of compensation, within a time period and in a manner as agreed or decided by a court.*

*(3) When any court decides either the amount of compensation, or the period within or the manner by which payment must be made, the court must determine an equitable balance between the public interest and the interests of those affected, having regard to all relevant factors, including -*

*(a) the current use of the property;*

*(b) the history and value of its acquisition;*

*(c) its market value; and*

*(d) the ability of the state to pay.*

*(4) This section does not apply to or invalidate measures aimed at bringing about land reform.*

*(5) Every person and community dispossessed of land after 19 June 1913 as a result of discriminatory laws or practices has the right to restitution of that land, or equitable redress, subject to and in accordance with national legislation.*

*(6) Every person and community whose tenure is legally insecure as a result of discriminatory laws or practices has the right to obtain legally enforceable security of tenure or, where appropriate, alternative redress subject to and in accordance with national legislation.*

### Option 3

*(1) Property, including the right to acquire, hold and dispose of property, is guaranteed.*

*(2) No one may be arbitrarily deprived of property.*

*(3) Property may be expropriated only in accordance with a law of general application -*

*(a) for public purposes or in the public interest which includes land reform;*

*(b) subject to the payment of just and equitable compensation, the amount, the timing and manner of payment of which have been either agreed or decided by a court.*

*(4) When a court decides the amount, the timing and manner of payment of compensation it must equitably balance the public interest and the interests of those affected, considering all relevant factors including -*

*(a) the current use of the property;*

*(b) the history of its acquisition;*

*(c) its market value; and*

*(d) any beneficial improvements after acquisition.*

*(5) Every person and community dispossessed of land after 19 June 1913 as a result of a discriminatory law or practice has the right to claim restitution of the land or equitable redress subject to and in accordance with this section and a law of general application.*

*(6) In this section "discriminatory law or practice" means any law or practice that would have been inconsistent with section 8 had that section been in force at the time the law or practice dispossessed the person or community.*

#### New Option Recently Proposed

*1. The state shall respect property and foster conditions which enable people to gain access to property on an equitable basis.*

*2. The nature and content and limits of property shall be determined by law. No one may be deprived of property except in accordance with a law of general application (or, no one may be arbitrarily deprived of property).*

*3. Property may be expropriated only in terms of a law of general application -*

*(a) for public purposes or in the public interest which includes land reform,*

*(b) subject to the payment of compensation within a time period and in a manner as agreed or decided by a court.*

*4. When a court decides the amount of compensation, timing or manner by which payment must be made, the court must determine an equitable balance between the public interest and the interest of those affected, having regard to all relevant factors, including -*

*(a) the current use of the property*

*(b) the history of its acquisition*

*(c) its market value*

*(d) the ability of the state to pay*

*(e) the level of state and private investment in the property; and*

*(f) the purpose for expropriation.*

*5. This section shall not invalidate reasonable legislative and other measures that are designed to bring about land reform to redress the results of past discrimination.*

South Africa has an unfortunate history of state disregard for property rights, especially as a result of racial discrimination and the inclusion of such a clause is important to prevent similar abuse of power in the future.

'Option 1' (No property clause) is unacceptable, as it fails to recognise the God-given right for people to own property and for this property to be protected by law (see 'The Teaching of the Bible on Property Rights' below). It would mean that property ownership rights would be dependent on the changing policies of the state. All property would then be effectively owned by the state, with people simply becoming 'tenants', who pay rent to the state in the form of rates or other property taxes.

There is a serious problem with sub-clause 24(3)(d) of 'Option 2', which requires the court to take into account the ability of the state to pay for property which it

wishes to expropriate. The '*ability of the state to pay*' could be interpreted two ways: Interpreted one way, it relates to the total current and potential future income received by the state in the form of taxes, foreign loans and bonds. More likely it relates to the amount of money budgeted by the particular state department which wishes to expropriate the property. If interpreted in the first manner, the state will in every situation be able to pay, but the intention of the clause is probably more likely to be the second (ie the amount of money the state has budgeted for that purpose). This effectively annuls the property clause, because the state is then able to determine via it's budget the amount of money it is prepared to pay for property it wishes to expropriate.

There is no limit on the amount of property the state (or a particular department or municipality) is allowed to expropriate, but they can, through their budget determine the limit of how much they are prepared to pay. Thus the state would be permitted to expropriate land at below it's actual value. These objections also apply to sub-section 24(3)(d) of the 'New Option', which has identical wording.

Even more serious, is sub-section 24(4) of 'Option 2' '*This section does not apply to or invalidate measures aimed at bringing about land reform.*' This statement nullifies the whole clause, since the state would not be under any obligation to fairly compensate people from whom it expropriates land for the purpose of land reform.

Option 3 sub-clause 24(6) is useful, in that it attempts to define the meaning of '*discriminatory law or practice*'. It would help to prevent a situation arising as it has in Zimbabwe, that a future government could use property clauses aimed at past injustices to deprive present holders of their property in an inequitable manner.

### **The Teaching of the Bible on Property Rights**

Exodus 20:15 'You shall not steal'. This simple statement forms the basis of the Christian understanding of property rights. If the state (or anyone else) forcibly takes property from a person, without paying what it is worth, then the state is stealing that property or is stealing the difference between the actual value of the land and the value it pays.

Some have tried to use the example of the early church sharing their possessions as an invalidation of property rights. 'All the believers were together and had everything in common. Selling their possessions and goods, they gave to anyone as he had need' (Acts 2:44-45). 'There were no needy persons among them. For from time to time those who had land or houses sold them, brought the money from the sales and put it at the apostle's feet, and it was distributed to anyone as he had need.' (Acts 4:34).

A clear distinction must be made between people voluntarily giving property to help the poor (which the Bible strongly encourages - see 1 Tim 6:18; Prov 22:9) and the state forcibly taking property without just compensation to

use to help the poor. The book of Acts makes it clear that the early church did not force any of its members to give away their property. In the case of Ananias and Sapphira, who lied about the value of the property they had sold to give to the church, Peter said 'Didn't it belong to you before it was sold? And after it was sold, wasn't the money at your disposal?' Peter recognised their property rights, but objected to their lying about its value.

**Assessment**

'Option 1' is unacceptable. If 'Option 2' is chosen, then sub-clauses 24(3)(d) and 24(4) should be deleted. 'Option 3' gives more effective protection to property rights. If the 'New Option' is chosen, then 24(3)(d) should be deleted.

Clause 24(6) of option 3 is useful in defining 'discrimination'.

**Significance**

High

**Clause 26(1)(a): Health, food, water, and social security**

*(1) Everyone has the right to have access to -*

*(a) health care services, including reproductive health care, of the highest attainable standard;*

There are two dangers regarding the specific reference to '*reproductive health care*'. Firstly, '*reproductive health care*' could be interpreted to include abortion. The pro-abortion lobby has frequently used the term '*reproductive health*' as a euphemism for the killing of unborn children. This reason alone is sufficient to justify the deletion of this statement, as the term '*health care services*' earlier in the subsection would incorporate legitimate forms of health care.

Secondly, the clause could be interpreted to support irresponsible 'sex education' programmes and distribution of contraceptives amongst school children without parental consent. These have been a major source of moral decay in American schools and have not had any positive results in controlling the AIDS plague<sup>30</sup>.

Morally legitimate forms of '*reproductive health care*' are not at present under any threat and it is unclear why an explicit reference to it is necessary. There is therefore no need to include the statement '*reproductive health care*'.

**Assessment**

The words '*reproductive health care*' should be deleted.

**Significance**

High

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<sup>30</sup>'Aids and the Myth of Safe Sex', Dr J. Dobson in *Joy*, Oct/Nov 1992

## Clause 27: Children

(1) *Every child has the right -*

(a) *to a name and a nationality from birth;*

(b) *to family care, [parental care], or appropriate alternative care when removed from the family environment;*

(c) *to basic nutrition, shelter, basic health care services, and social services;*

(d) *to be protected from maltreatment, neglect, or abuse;*

(e) *to be protected from exploitative labour practices, and not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age, or that place at risk the child's well-being, education, physical or mental health, or spiritual, moral, or social development; and*

(f) *not to be detained except as a measure of last resort, in which case, in addition to the rights the child enjoys under sections 11 and 34, the child may be detained only for the shortest possible period of time and has the right to be\* -*

*\*[ Children: ANC concern that section may need to be revised in light of problems with detention of juveniles - flagged for 1996.]*

(i) *kept separately from other detained persons over the age of 18 years; and*

(ii) *treated in a manner, and kept in conditions, that take account of the child's age.*

(2) *The child's best interest is of paramount importance in every matter concerning the child.*

(3) *In this section, "child" means a person under the age of 18 years.*

### Corporal Punishment

There is a danger that subsection 27(1)(d) '*protection from maltreatment*' could be misinterpreted to motivate the banning of corporal punishment. The anti-corporal punishment lobby could also try to distort the meaning of other clauses such as clause 9 (Human Dignity) and clause 11(3)(b) (Freedom and Security of the Person). This would be a problem because the Bible teaches that moderate physical punishment for wrongs should be used as part of a child's moral education. The anti-corporal punishment lobby in the United States has been extremely active in undermining parental authority in that country. It's main strategy is to use state welfare services to prosecute parents, failing to differentiate between legitimate physical punishment and child abuse<sup>31</sup>. Children who are not properly disciplined often develop rebellious attitudes which persist into adulthood and result in crime, immorality and other socially unacceptable behaviour.

While we completely condemn physical abuse of children, the Bill of Rights needs

<sup>31</sup>John W.Whitehead. *Parent's Rights*, Crossway Books, Illinois.1995

to be clear that legitimate parental discipline is allowed. Parents also have a right to delegate this duty of punishment to other adults such as grandparents and school teachers who care for their children and act '*in loco parentis*'. School teachers who use moderate physical discipline with the consent of the offending child's parents should not be in danger of prosecution.

### **The Teaching of the Bible on Corporal Punishment**

'Do not withhold discipline from a child; if you punish him with the rod, he will not die. Punish him with the rod and save his soul from death.'  
(Proverbs 23:13-24)

### **Assessment**

A qualifying clause should be added either to this clause or to clause 11(3)(b) to confirm a parent's right and duty to use moderate physical punishment to discipline their children. This addition is to deal with the possibility of misinterpretation of clause 27(1)(d) and is not an objection to the intent of the wording.

### **Significance**

High



## **Clause 28: Education**

### Option 1

*(1) Everyone has the right -*

*(a) to a basic education, including adult basic education, in a state or state-aided institution;*

*(b) to further education, which the state must take reasonable and progressive legislative and other measures to make generally available and accessible; and*

*(c) to choose instruction in any language where instruction in that language can be reasonably provided at state or state-aided institutions.*

*(2) Everyone has the right to establish and maintain, at their own expense, private educational institutions that -*

*(a) do not discriminate on the basis of race;*

*(b) are registered with the state; and*

*(c) maintain standards that are not inferior to standards at comparable state-aided educational institutions.*

### Option 2

Subsections (1) and (2) above and the following:-

*(3) Everyone has the right to educational institutions based on a common culture, language, or religion, provided that there must be no discrimination on the ground of race and provided further that the state may not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it has been established on the basis of a common language, culture, or religion.*

Clause 28(2) is extremely important to us, since it supports the right to establish explicitly Christian schools (see clause on Religion, Belief and Opinion, p22).

Likewise, clause 28(3), goes further to enable Christian schools to receive state subsidies, thus giving the opportunity for economically disadvantaged parents to send their children to these schools. We thus strongly support 'Option 2', which includes this clause. It addresses many of concerns relating to religious freedom raised in our previous submission regarding the 'Interim Bill of Rights'.

### **Assessment**

Clauses 28(2) and 28(3) are important to maintaining religious freedom and should be retained.

### **Significance**

High

## **Clause 29: Academic Freedom**

### *Option 1*

*(1) Every institution of higher learning and everyone within these institutions has the right to academic freedom.*

*(2) Everyone has the right to freedom of artistic creativity and scientific research [activity].*

### *Option 2*

*The right should form part of the right to freedom of religion, belief and opinion (section 14) and it should only apply to individuals, not to institutions.*

### **Scientific Research**

The statement '*... freedom of artistic creativity and scientific research*' has the potential to create serious problems. Although there is no objection to the intent of the clause, anti-Christian interpretation could result in the use of the words '*scientific research*' to include ethically unacceptable practices.

For example, in the United States, there is much controversy over President Clinton's decision to legalise experiments on living unborn children. For example removing organs from living unborn children without anaesthetic and testing their response to painful stimuli<sup>32</sup>. Other similarly unacceptable experiments may also be legitimised by the above-mentioned phrase. There is therefore a need for laws to delineate the nature of permissible scientific research.

There are many other complex ethical issues relating to scientific research and it would be unfortunate if such guidelines in the form of specific legislation or rules of academic institutions could be undermined as a result of a very broadly defined constitutional right such as this.

### **Artistic Creativity**

There is a danger that pornographic publishers may try to have their sexually explicit material classified as '*artistic creativity*'. This was the main argument used by pornographic publishers to justify their existence to the former Publications Control Board. The primary issue here would be on the display or publication of such material.

### **Assessment**

Clause 29(1) and clause 15 (Freedom of Expression) are considered sufficient to address legitimate needs for academic freedom. Clause 29(2) could create many unintended problems and is thus not supported.

### **Significance**

Medium

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<sup>32</sup>Back to Baal', Dr J. Dobson in *Joy*, Oct/Nov 1993

### **Clause 39(1): Interpretation**

*(1) When interpreting the Bill of Rights, every court -*

*(a) must promote the values that underlie an open and democratic society based on freedom and equality;*

*(b) must consider international law; and*

*(c) may consider foreign law.*

This last underlined statement is sinister. It could give the Constitutional Court power to choose countries from which to derive interpretation for this Bill of Rights, even if this interpretation is far removed from the intent of the wording of the Bill.

The South African Working Draft of the Bill of Rights at present is most closely comparable with the Canadian and German Bills of Rights. Canada seems to have taken a markedly anti-Christian interpretation of their constitution and this case law could be used to influence South African law. The German courts have been more objective in their constitutional interpretation than the North American courts and are thus preferable for comparison, but the language barrier presents difficulties in the use of their case law. Examples of other countries from which interpretation could be drawn are: the Netherlands (strongly anti-Christian); Namibia (no death penalty); Ireland (more favourable to Christian values); New Zealand (abortion on demand). It is possible that the anti-Christian decisions of the American Supreme Court could also gain influence in South Africa through this clause.

### **Assessment**

Clause 39(1)(c) '*may consider foreign law*' should not be included in the Bill of Rights. The phrase enables subjective decision making, since the Court can decide which countries should be taken into account. Most Western countries using Bills of Rights have shifted off their Christian foundations; we do not want South Africa to follow their example. Since South Africa is unique in its identity and social context, we maintain that it requires the development of its own law stemming from the moral base of its people, the majority of whom accept Christian values.

### **Significance**

High

## The Mistake of a Middle Eastern Politician

The present political situation reminds one strongly of an event which occurred a few thousand years ago in the city of Babylon. The ruler of the Babylonian empire, Darius, was asked by his political advisers to pass a new law :'The royal administrators, prefects, satraps, advisers and governors have all agreed that the king should issue an edict and enforce the decree that anyone who prays to any god or man during the next thirty days, except to you, O king, shall be thrown into the lion's den. Now O king, issue the decree and put in writing so that it cannot be altered- in accordance with the laws of the Medes and Persians which cannot be repealed' Daniel 6:7-8.

With all of his advisers in agreement with the decree, King Darius was presumably under a lot of pressure to pass the law. Moreover, there did not seem to be all that much wrong with it from his point of view: 'So King Darius put the decree in writing. 'Daniel 6:9.

King Darius was unaware of the implications of decreeing the law. If he had been, he would have known that it was opposed to the commands of the God of the Bible (See Exodus 20:3). Darius had no intention of discriminating against believers in the Bible; in fact, he showed particular favour to Daniel, a Jew: 'Now Daniel so distinguished himself among the administrators and the satraps by his exceptional qualities that the king planned to set him over the whole kingdom. ' Daniel 6:3. Far from wanting to undermine Judeo-Christian influence in his country, he was wanting to increase it.

Contrary to the decreed law, Daniel continued to pray and those opposed to him informed the king, who was compelled to enforce the law he had passed: 'Then they said to the king, "Daniel, who is one of the exiles from Judah, pays no attention to you, O king, or to the decree you put in writing. He still prays three times a day. " When the king heard this he was greatly distressed; he was determined to rescue Daniel and made every effort until sundown to save him. Then the men went as a group to the king and said to him, "Remember, O king, that according to the law of the Medes and Persians no decree or edict that the king issues can be changed. '

Daniel was unable to obey the law of the king because it contravened the higher law of his God. As a result he ignored it and suffered the consequences. The king, when he realised what the implications of the law were, did his best to find legal ways of saving Daniel, but was unsuccessful.

The story of Darius' imprudent decision making is a lesson for South African politicians today. We urge you to recognise that acknowledging and using the value system of the largest religious group in South Africa, Christianity, is vital to the well being of the new South Africa. It is essentially Judeo-Christian values and principles, which maintain the moral fabric of our society. Without their influence, the people of South Africa will suffer.

When the final Constitution has been passed, it will not be easy to change it, even if the parliamentarians who passed it wish to do so. Perhaps many political leaders do not understand the implications that the final Constitution can have for the people of South Africa and Christian Church. As with the law in Daniel's day, there are aspects of the Interim Constitution, which are opposed to the teaching of the Bible, which Christians thus cannot support.

## Conclusions

The idea that rulers, like citizens, must be subject to a law above themselves is a concept derived from the Bible and forms the basis of constitutional law. We hold that a Bill of Rights for the protection of the nations citizens should be based on the moral teachings of the Word of God. The need for checks and balances, and division of authority in government, is derived from the Christian belief in the sinfulness of human beings. The Bible teaches that the state is subject to the authority of God, should rule according to godly (Christian) values, and should not interfere with the internal affairs of the Church.

The Bill of Rights invests enormous political power in the Constitutional Court; more power indeed than the political party controlling the country. Problems have arisen as a result of the subjective interpretation of foreign constitutions and the failure of the judiciary to acknowledge the Christian consensus. This means that there is a need for more detailed and specific definition of the meanings of the individual rights.

The idea that all people are equal and should be treated equally before the law is derived from the Bible. However, the position of the Bill of Rights on homosexuality is opposed to Christian values and paves the way for many ungodly actions to promote homosexuality. The phrase '*sexual orientation*' in clause 8(3) should be deleted. Specific sinful behaviour should not be given Constitutional legitimacy. Foreign case law indicates that this phrase could create serious problems for South African society. The phrase is unacceptable and the above problems cannot be remedied by a qualifying statement or other balancing Constitutional clauses.

The most important issue in the Bill of Rights, the right to life, has not been given due attention. Crucial issues of abortion, infanticide and euthanasia have been left to the decision of the small group of Constitutional Court judges. They are required to take into account '*comparable foreign law*' (clause 39(1)(c)), which is generally opposed to Christian standards on these issues. It is unacceptable that such important decisions regarding human rights in South Africa should be taken in this way. The Bible, the Word of God teaches that abortion, infanticide and assisted suicide are murder and should not be permitted. It also teaches that the death penalty is a necessary part of the law, to protect innocent law-abiding citizens. The Bill of Rights should reflect this teaching. In this regard, option two of clause 10 is preferred to option one, but does not adequately address other crucial issues of abortion, infanticide and euthanasia. If the Constitutional Assembly is unable to agree to a clause reflecting the teaching of the Bible on these subjects, then these issues should be decided by public referendum.

The 'Right to Human Dignity' could benefit from clarification. The right to 'Freedom and Security of the Person' contains some potentially harmful wording which could affect several moral issues such as abortion, prostitution and euthanasia and which should therefore be deleted. The 'Right to Privacy' could

create problems on the abortion issue, but these could be remedied under the 'Right to Life'.

On the subject of religion in state institutions such as state schools, hospitals, the prison service etc. Clause 14(2) aims to serve the beneficial purpose of avoiding the American situation where the Bible is banned in state schools. The way the clause is stated nevertheless could give rise to problems, such as mixed religion in school functions or the secularisation of compulsory school activities. The clause could also jeopardise those schools which wish to have the Bible as the sole basis of religious instruction. The modification of the subclause as outlined in the assessment would remedy these problems.

The 'Freedom of Expression' clause is welcomed for the purpose of political and religious speech, but does not sufficiently address the potential moral problems that may arise from the publication of obscenities. It is suggested that an additional clarifying subclause should be added similar to that used by the European Convention on Human Rights.

The 'Right to Economic Activity' needs some qualifying statement to limit its abuse to legitimise morally harmful economic activity such as prostitution.

The 'Right to Property' presently has several options, and it is important that the final wording should reflect biblical teaching upholding individual property ownership rights.

Clause 27 'Children's Rights' does not adequately deal with the issue of corporal punishment.

The right which allows for educational institutions based on a common culture, language, or religion to receive state financial assistance in option 2 of clause 28 is extremely important and should be retained.

Clause 26(1)(a) on 'Health, food, water and social security' contains a statement which could be interpreted to promote state funding of abortion and should thus be deleted. Option one of Clause 29(2) relating to freedom of artistic and scientific creativity is too wide ranging and open to abuse. Legitimate protection of these interests is sufficiently afforded by other clauses in the Constitution and it should therefore be not be included.

Statements in the Constitution which promote the acceptance of foreign case law, such as in clause 39(1)(c) are not welcomed from a Christian point of view, as currently in many countries, legal norms are secularised and are often antagonistic and inconsistent with the norms of Christianity. We suggest that South Africa develop its own law related to the local context rather than relying heavily on the decisions of overseas courts, especially since Christian beliefs and values are more generally accepted here.

Granted that the Bill of Rights may remain substantially unchanged for many generations, we urge that the issues raised in this report should be studied very carefully. Decisions relating to the Bill should not be taken in haste.







