

The need and progress of a Bill / Charter of Religious Rights for South Africa

During a Church State Conference that was held at the Faculty of Theology, University of Stellenbosch from 29 October 2007 to 1 November 2007, attention was paid to the relationship between churches and the Constitution of South Africa, 1996, more specifically churches and the Bill of Rights. From the viewpoint of churches and their church order/constitution, the question was asked what the impact of the Bill of Rights is on churches and their functioning.

More importantly, the Conference also considered the possibility of a Bill of Religious Rights for South Africa and as motivation for the adoption of such a Bill, the following was put forward:

1. Section 234 of the Constitution of the Republic of South Africa, 1996, provides that “in order to deepen the culture of democracy established by the Constitution, Parliament may adopt Charters of Rights consistent with the provisions of the Constitution”. These charters will then have the force of law. The Constitution envisages, in other words, that the rights in the Constitution may be further extended, supplemented and given content by way of such charters.
2. The room which section 234 creates for a charter of religious rights provides religious institutions with a golden opportunity to take the initiative in a matter that is crucially important to every religious person and institution. In an open, free and democratic society it cannot be left to the state alone to determine the content of our rights. Structures such as religious institutions should make a contribution in areas in which they have a direct interest and of which they have intimate knowledge. If religious institutions succeed in submitting to the state a consensus proposal regarding a charter of religious rights, the state will hardly be able to ignore it. Thus, religious institutions will be able to leave their own significant imprint on the content of the right to freedom of religion and on the evergreen question regarding the relationship between religion and the state.
3. The Constitution creates this room for additional charters of rights because most rights guaranteed in the Constitution are described in cryptic, vague and general terms. The intention is that society, and specifically the state by way of legislation and other measures, and the courts through their judgments, must over time give further content to these rights. For example, the right to freedom of religion is protected in so many words in section 15 of the Constitution, but section 15 provides nothing else about the content of the right.
4. In the case of several rights in the Constitution the state has already adopted separate acts of Parliament to further describe the content and application of the rights concerned. The following examples may be mentioned:
 - (a) Section 9 (the right to equality): the Promotion of Equality and Prevention of Unfair Discrimination Act, Act 4 of 2000
 - (b) Section 23 (labour rights): the Labour Relations Act, Act 66 of 1995
 - (c) Section 32 (the right to access to information): the Promotion of Access to Information Act, Act 2 of 2000
 - (d) Section 33 (the right to administrative justice): the Promotion of Administrative Justice Act, Act 3 of 2000Directly or indirectly, numerous other acts give effect to the rights in the Constitution as well, as in the case of health, housing, education, the environment, the rights of children, the right to vote, and the rights of accused persons and prisoners. In addition, section 234 creates yet another opportunity for such supplementary legislation.
5. There are a few reasons why a charter of religious rights may serve a useful purpose.

- 5.1 The right to freedom of religion as guaranteed in the Constitution is an important instrument regulating the relationship between religion and the state. As the supreme law of the Republic, the Constitution restricts in effect the powers of the state, because the state may not violate the rights in the Constitution without fulfilling the requirements of the Constitution. A charter of religious rights which further describes the content of the right, will outline even more clearly the relationship between religion and the state, and will secure the good relationship already existing between religion and the state. This relationship in terms of which freedom of religion and the autonomy of religious institutions are recognised, and religious institutions are accommodated positively and impartially in the state, should be stipulated unequivocally in a charter of religious rights.
- 5.2 By leaving the right to religious freedom undefined in the Constitution, one actually accepts that the content of the right will be determined through court decisions and other measures on an ad hoc basis, in other words, as issues and difficulties occur. This is a process over which religious institutions have little control. Section 234, on the contrary, creates the possibility to propose a charter of religious rights in which the content of the right is spelled out fully in a single charter.
- 5.3 Throughout history conflict between religion and the state occurred from time to time in most countries and there were even periods of large scale religious persecution. In our country, as well, issues sometimes occur over which religious institutions differ from the state or where the state take steps that limit or may limit religious freedom. By defining and stipulating clearly in an act this relationship, and what is allowed and what not, unnecessary state interference with religion which may occur in future can be prevented, and uncertainty, misunderstanding and unnecessary conflict between religion and the state can be eliminated.
- 5.4 A charter of religious rights can contribute to the spirit of tolerance prevailing between the various religions in South Africa. Comparing to many other countries, South Africa is particularly blessed in this respect, and insofar as a charter of religious rights can enhance this spirit, South Africans should do their utmost to maintain and strengthen the good relationship among the different religions.
6. There are interesting international examples to which one may refer in this regard. All the primary international bills of rights protect the right to freedom of religion, but not a single one elaborates on the content of the right. (see for example Article 18 of the Universal Declaration of Human Rights, Article 18 of the International Convention on Civil and Political Rights, Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 1 of the African Charter for Human and Peoples' Rights.) That is why the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, which spells out the content of the right to freedom of religion much more extensively, was adopted in 1981. (See also the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992.) Domestically as well as internationally there are in other words precedents for a charter of religious rights.

It is a very important matter for the whole of South Africa. Religious communities have a big responsibility to make a contribution to freedom of religion in South Africa through a Charter of Religious Rights. The discussion will thus seek to elaborate more on the need and progress of this Bill /Charter of Religious Rights in South Africa.