

**An assessment of the constitution of the Evangelical Lutheran Church in Southern Africa within
the Bill of Rights as enshrined in the South African Constitution Act 108/1996.**

By

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FOREWORD

The constitution of the Evangelical Lutheran Church of Southern Africa (ELCSA) was adopted in the constitutional assembly held on 15 to 19 December 1975 at Rustenburg, Tlhabane. The constitution of South Africa was adopted on 08 May 1996 and amended on 11 October 1996 by the constitutional assembly. It is obvious from this situation that the ELCSA constitution was put together and adopted during the rule of the National Party in consideration of the constitution of South Africa at the time. This suggests that the bill of rights was not taken into account when the constitution of ELCSA was written.

The church's top down management system of administration is questionable. The harmony of rights and the ELCSA constitution has to be tested. The labour relations requirements are not taken into consideration by the ELCSA constitution.

The ELCSA constitution will be critically evaluated for compliance. The areas of the South African Constitution that are omitted will be identified during the study. It is imperative though that the Church should not find her self-making concessions on issues that are contrary to Christian beliefs and norms that form the basis of the faith.

Dr Martin Luther's two kingdoms may provide guidance when the church is under pressure regarding certain issues that are required by the law of the country.

In this study areas that would require the church to mobilise and challenge the state will be elucidated.

The study is concluded by a discussion of areas that present conflict between the church and legal requirements, areas that the church is omitting to do and areas that the church has to take a stand. This discussion will include a modus operandi that the church has to undertake to address the legislation that is in conflict with the Christian faith.

The year 1994 was the beginning of the political emancipation. The foundation for a free and democratic society was established. This was marked by the democratic elections on the 27 April 1994.

The freedom of the people of South Africa was not complete without a constitution. On 08 October 1996 the constitution of the Republic of South Africa was adopted, and amended on 11 October 1996 by the Constitution Assembly.

Among other things the Bill of Rights was promulgated as part of the

constitution. In this work the church constitution of the Evangelical Lutheran Church in Southern Africa (ELCSA) will be critically assessed with special reference to the Bill of Rights as enshrined in the constitution of the Republic of South Africa. The purpose of this assessment is to evaluate and elucidate areas of non-compliance. This will further assist not only ELCSA but also all churches in South Africa to identify grey areas in their respective church orders or constitutions. This assessment will also enable the basis on which to provide reasons for the non-compliance. It is of significant importance that this assessment provides the areas that may lead to, or may cause legal conflict so as to avoid any legal recourse against the body of Christ i.e. the Church. South Africa has seen churches in and out of courts to resolve internal disputes. Questions arise from this situation such as: How far is the church constitution compliant? To what degree must the church comply? Will the compliance not present a situation where the church begins to submit to circular rule?

The supremacy of the constitution of South Africa creates the desire to assess and evaluate the legal standing of the church constitution in the court of law. It is important to note that the church constitution was adopted before the new dispensation came into use. Paragraph 28 of the ELCSA constitution provides that the interpretation of the constitution rests with the General Assembly. In the event of ambiguity arising out of translation, the English text will be decisive. This paragraph indicates the element of conflict with section 2 of the constitution. A question arises from the interpretation of the church constitution as to whether this paragraph prevents the court rule or not?

An example is where bishop calls for an extra ordinary synod and his council say that he has no right to convene a synod meeting because a bishop is a bishop in council. *Mahlangu v Molefe 4533/99 (unreported)* Justice Roos of the supreme court of South Africa disregarded paragraph 16.2.1 that provides that the bishop of the diocese in consultation with the diocesan council shall have the right to convene an extra ordinary synod meeting. The synod deposed the diocesan council that took the matter to court. The court overruled the resolution of the extra ordinary synod and ordered that the diocesan council must be reinstated.

In this situation it is evident that the court disregarded the church constitution. The synod resolution was defunct. The importance of the constitution was reduced when the verdict was given. In this case the law of the country was above the constitution and took precedence to resolve the dispute. Such areas need to be elucidated and avoided at all costs.

The next paragraph that is 16.2.2 further provides that the bishop shall announce to all parishes of the diocese the time, the place and the agenda not less than three weeks prior to the meeting.

These paragraphs give authority to the bishop to convene the synod. It is obvious that the church constitution has an omission. The constitution of the church does not explicitly give the bishop a right to convene the ordinary synod. The judge did not refer the matter to the general assembly to elicit interpretation. It cannot be over looked that such cases create precedence and may be used against the church in case of disputes in the future.

The application of rights as provided in the constitution of South Africa need to be examined against the church constitution. There are issues that need to be evaluated such as the right of say by those who are contributing money in the church. This poses a contrast to the verse that provides that “bring the full amount of tithe to the temple so that there will be plenty of food there. Put me to the test and you will see that I will open the windows of heaven and pour out on you in abundance of all kinds of good things”(Malachi 3:10)

The Bill of Rights is a new thing in South Africa and has a negative impact in the minds of people. The constitution of the country provides the rights that may be misconstrued or misinterpreted to the detriment of the church.

The church has employees that are defined as employees in terms of the labour relations act. The church constitution has to be assessed against such legislation to ascertain harmony between the church and secular rules. The ELCSA constitution that is a very important guiding document has had no chance to be assessed against the constitution of the country in view of the fact that it was adopted in 1975, years prior to the inclusion of human rights

The church’s top down management system is also questionable. This system is to some extent democratic given the clergy and laypeople representation in church governing organs. However the decisions are taken by the high structures of the church.

The dynamics of the impact of the Bill of Rights should however not blind the church to submit to laws which are in force but to the detriment of the Christian morals and ethics.

The confession of the Evangelical Christ’s kingdom is spiritual; it is the knowledge of God in the heart, the fear of God and faith, the beginning of eternal righteousness and eternal life. At the same time it lets us make outward use of the legitimate political ordinances of the nation in which we live, just as it lets us make use of medicine or architecture, food or drink or air. The Gospel does not introduce any new law about the civil estate, but commands us to obey the existing laws, whether

they were formulated by heathen or by others, and in this obedience to practice love. (Tappert 1983:222)

Lutheran Church explicitly indicates the distinction between issues of faith and the relation of Christians to political ordinances. Over and above the prevalent ambiguities in the constitution of ELCSA, the Lutheran book of concord require them to comply irrespective of who formulated the law. This will also be critically examined in this work.

1.1 SUPREMACY OF THE CONSTITUTION OF SOUTH AFRICA VERSUS THE CONSTITUTION OF ECLSA

Section 2 of Act 108 of 1996 provides that the constitution is the supreme law of the Republic of South Africa; law or conduct inconsistent with it is invalid, and obligation imposed by it must be fulfilled.

The provisions of the constitution are supreme and any legislation must be supportive to its requirements. Any law or conduct that does not comply with its requirements is invalid. It further emphasises the fact that the obligations imposed by the constitution must be fulfilled. In simple terms it is compulsory to adhere to the requirements of the constitution of the country. Any law or conduct must be tested against the constitution.

The above situation as provided by section two of the constitution of South Africa when compared to paragraph twenty-eight of the constitution of ELCSA, which provides that “the interpretation of this constitution rests with the General Assembly. In the event of any ambiguity arising out of translation, the English text will be decisive” is in conflict with Act 108 of 1996.

The two constitutions clearly present a contrast. The country’s constitution is the supreme law of the Republic while the church’s constitution reserves the right to interpretation. The two are in contrast because the court will not refer any ambiguity to the Church General Assembly for interpretation should there be any unclear matter from the church constitution. It suffices to say that the reservation of the right of interpretation is invalid.

A typical example of the reserved right of interpretation was arguable when the right of the bishop to call the synod meeting was overruled by Justice Roos. (*Mahlangu v Molefe* 4533/99 (unreported))

The synod in question had resolved to dissolve the Diocesan Council and established an interim Diocesan Council. The synod reacted to the action of the Diocesan Council that suspended the Bishop from office. Initially ELCSA advised that an extra ordinary synod be convened. The Supreme Court overruled the decision of the extra ordinary synod because the constitution was not clear enough as to who had authority to convene the extraordinary synod. When the constitution was drawn, it was not envisaged that conflict could arise among members of the Diocesan Council or part thereof. Hence the omission on the constitution.

It was held that the Bishop does not have unilateral powers to convene synod meetings. The Bishop must consult with the Diocesan Council whenever extra ordinary synod meetings are convened.

In addition to this, the Church constitution lacks the explicit scope and authority of church officers like the bishop. The prerogatives of senior Church officials are not clearly defined. That leaves much to be desired as to the authority of the bishop but he remains accountable for what happens in the diocese.

1.2 RIGHTS

The Bill of Rights is the foundation of democracy in South Africa. It enshrines the right to all people in our country and affirms the democratic value of human dignity, equality and freedom. The state must respect, protect, promote and fulfil the rights in the Bill of Rights. The rights in the Bill of Rights are subject to limitations contained or referred to in section 36 or elsewhere in the bill. (Act 108 of 1996)

The above is the contents of section seven of the Constitution of South Africa. This section is intended to protect human rights, and to promote human dignity. It cannot and should not be violated by entities such the church or any society. Taking the democratic role of congregants in the church as provided for in the constitution of ELCSA one cannot really say that the church is not allowing democracy to be exercised. However, the practice in the church does allow loopholes in some instances.

The Council of Nicaea decided that bishops should be elected by their own churches in the presence of one or more neighbouring bishops. This was also observed in the West and in the Latin churches, as Cyprian and Augustine testify. For Cyprian states in the fourth letter to Cornelius “ Wherefore you must diligently observe and practice, according to divine tradition and apostolic usage, what is observed by us and in almost all provinces, namely that for the proper celebration of ordinations the neighbouring bishop of the same province should assemble with the people for whom the head is to be ordained, and a bishop should be elected in the presence of the people who are thoroughly acquainted with the life each candidate. (As we have seen it done among you in the ordination of our colleague Sabinus) in order that by votes of all brethren and by the judgement of the bishops assembled in their presence, the episcopate might be conferred and hands imposed on him.” (Tappert 1983:322)

Tappert in the book of concord elucidates that originally the Council of Nicaea saw a need for elections to be conducted in the presence of neighbouring bishops. This would ensure a free and fair election. This concord provides the basis of Lutheran confessions and beliefs. It is therefore not surprising for the Lutheran churches to maintain the

elections as the means to involve stakeholder in identifying leaders. The election modus operandi applies to all levels of ELCSA.

Every member of the Church who is a communicant has privilege to participate in deliberations of the congregational affairs and use his/her vote when decisions are taken. (Paragraph 6.3.3; ELCSA constitution)

This is the starting point of normal rights in a democratic society and ELCSA exercised it from 1975 when Lutheran Churches merged to form ELCSA. Each member of the Church may appeal against a decision to the higher council. This entrust Church members with rights to challenge decision taken at the congregational level even in higher councils

The council of Nicaea decided that the bishop of Alexandria should administer the Churches in the East and the bishop of Rome should administer the suburban churches, that is, those that were in the Roman province in the West. Originally, therefore, the authority of the Roman bishop grew out of a decision of a council and is of human right, for if the bishop of Rome had his superiority by divine right, it would not have been lawful for the council to withdraw any right from him and transfer it to the bishop of Alexandria. In fact, all Eastern bishops should forever have sought ordination and confirmation from the Roman bishop. (Tappert 1983:322)

The decision of the council enabled the bishop of Alexandria to administer the churches in the East and the bishop of Rome should administer the suburban churches. Tappert clearly indicates the respect of right by the early church. The rights are fundamental as presented by Tappert in the Confession of the Evangelical Lutheran Church. The same position is evident in ELCSA constitution where the rights are fundamental in the Lutheran Church for Congregants, and The Book of Concord (Confession of the Evangelical Lutheran Church) is the basis for such beliefs in the Lutheran Church.

1.3 APPLICATION OF RIGHTS

Each congregation shall have a Congregational Council. Permanent members shall be the person in charge of the congregation and other full-time Church workers. Elected members shall be the elders who are elected for a period of six years and may be re-elected. Leaders of local associations/institutions may be co-opted to meetings of the congregational council. (Paragraph 8.1.1)

Paragraphs 8.1.1 to 8.1.8 provide the procedure for elections at congregational level. The procedure in question provides the method for such elections. This process provides the congregation the opportunity to exercise their democratic right to elect elders of their own choice. It

further makes all communicants eligible for the office of the elder.

The congregation shall elect members who shall hold office for six years. The elected elders participate in the elections at higher church levels as per stipulated representation requirements per congregation, parish, circuit, diocese and ELSA respectively. This process now complies with the Bill of Rights as enshrined in the constitution of South Africa.

In every circuit, the Dean shall call a circuit meeting once a year. It shall consist of the Dean who is ex-officio chairperson; all trained church workers and lay delegates from each parish, being the synod delegate(s) and one having been elected by the parish council for the annual meeting. (Paragraph 12.2.1 and 12.2.2 respectively)

The church is employing democratic rights for congregants to partake in this important process. The representation of lay people in councils is normally more than the clergy. Ten parishes constitute a typical example, in the Northern Diocese a Circuit in the name of Tshwane and each is lead by one pastor. When Tshwane Circuit is to hold a circuit meeting (circuit synod) all pastors should attend and two lay people from every parish. This means that when a circuit meeting is in session ten clergy and twenty lay people will constitute a full circuit meeting (circuit synod). It is clear that in ELCSA the decision making power rests with the lay people. The same system cascades up with structures of the church. The diocese shall have a synod once in two years.

One delegate from each parish of the diocese, as elected by the parish council; deputies are to be elected. Parishes with more than 2000 confirmed members shall have the right to elect an additional lay delegate. (Paragraph 16.1.2)

Comment [AM1]:

The situation at the synod is similar to the one at circuit level; it only changes because a wider area is covered that is the whole diocese. The only difference is that the bigger the number of congregants the more the representation becomes. At this level the synod shall elect its own chairperson and vice-chairperson for a period of six years who shall be known as president and vice-president of the synod respectively as provided by paragraph 16.2.5.

The bishops of the dioceses of the church, all members of the Church council and four ordained ministers and eight lay members from each diocese as elected by the diocesan synod from amongst its members. Each diocesan synod shall make provision for deputies. (Paragraph 20.1.1)

The above-referred paragraph provides the formation of the General Assembly of ELCSA. The representation of the lay people is still more

than the clergy. Sufficing to say that ELCSA does apply the democratic principles when it comes to representation in terms of lay people and the clergy. The principle of the will of the people known as democracy is maintained. Democracy prevails at all levels because the elected lay people are more in number than the clergy. This means that ordinary church members have more say than the clergy.

The diocesan synod has a right to elect the president of the synod and his deputy, and both are lay people in terms of paragraph 16.2.5. While the presiding bishop or his /her deputy shall be the chairperson of the General Assembly as provided by paragraph 20.2.5. It is only the diocese that can elect the president of the synod who is a layperson. All other levels of the Church where a meeting is to be held the clergy would be the chairpersons.

The loophole begins to surface at this level when comparing the five levels under consideration. i.e. the congregation, the parish, the circuit, the diocese and ELCSA

The circuit has the dean who is the ex-officio chairperson of the circuit meeting as provided for in paragraph 12.2.2. While the diocese elects the chairperson and his/her deputy who are lay people as provided for in paragraph 16.2.5.

A question of concern is that why does the parish not hold a parish meeting? If the parish was catered for in the ELCSA constitution would the parish pastor be the chairperson?
The second question is that why the pastor or the dean respectively chairs the other two meetings i.e. the Congregation and the Circuit.

Moving a step further that is ELCSA level which is the highest level of the Church. The same situation as in the circuit prevails at this level.

The presiding bishop chairs the General Assembly. The constitution does not require the president of the General Assembly who would be a layperson.

The consequence of this situation in a way advantages the clergy over the lay people. One cannot say that this situation is undemocratic. However it is inconsistent and further raises questions as to the reason thereof. The above inconsistency is brought about by the diocese only that is where a lay person is the chairperson of the synod other than that all meetings are chaired by the clergy. The purpose of the clergy chairing meetings is to ensure that the meetings are not misled theologically. It does not remove the rights of the people but merely to guide and direct issues during deliberations.

It cannot be left unchallenged that the inconsistencies in ELCSA constitution need to be reviewed. The reason for the diocesan synod to be chaired by a layperson need to be evaluated as to whether they do not prevail at Congregational, Circuit and ELCSA levels. The diocesan synod is segregated and treated differently from other meetings that leave much to be desired as to why be that?

Summary

The bishops of the dioceses of the church, all members of the Church council and four ordained ministers and eight lay members from each diocese as elected by the diocesan synod from amongst its members. Each diocesan synod shall make provision for deputies. (Paragraph 20.1.1)

It must be noted that when the ELCSA constitution is quoted it becomes difficult to understand a paragraph without seeing the heading. A typical example is the above paragraph where it seems as if there is no doing word to elucidate the purpose of the paragraph. There are missing words to complete the sense in the paragraph, and that is *shall form the General Assembly*. These words should have been fitted immediately after *amongst its member*. It tends to sound odd as if it makes no sense to the one who does not know or have a copy thereof. This is as a result of the way it was written leaving out clear explanations to illuminate the intention of a said clause. However not all paragraphs are indicative of this problem.

The supremacy of the constitution of the country is very clear and need to be taken into account when the ELCSA constitution is reviewed. This will close the loopholes identified in the matter between Rev. M. R. Mahlangu and Bishop C. M. Molefe.

It cannot be disputed that ELCSA constitution is to some extent compliant to the requirements of the Bill of Rights particularly to elections in terms of representation of laypersons and the clergy. However controversy comes into being when the meetings such as the Congregational, Circuit and the General Assembly are treated differently. The constitution only refers to the diocesan synod as the only one to be chaired by the layperson.

Chapter 2

Equality and biblical tone on equity

Section 9 of the constitution of South Africa as part of the Bill of Rights provides that every one is equal before the law and has the right to equal protection and benefits of the law. Equity includes the full and equal enjoyment of all rights and freedom. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic, or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection 3. National legislation must be enacted to prevent or prohibit unfair discrimination.

The constitution of South Africa in the Bill of Rights, section 9 provides clearly the tone of equality for all citizens of the country irrespective of any element that may be used as the bases for disparity. It also forbids any form of discrimination by any person.

The legal personality is defined as an entity that has the capacity to be sued or to sue.

An association of persons can also acquire legal personality by conducting itself as a legal person in compliance with certain requirements. In terms of section 30 of the Companies Act a company, association or partnership consisting of more than twenty persons, which is carrying any business and has as its objective the acquisition of gain by the company, association or partnership or by its individual members, shall only be permitted or formed if it is registered in terms of the Companies Act or formed in pursuance of some other law...From this it necessarily follows that an association of persons not pursuing the acquisition of gain is not affected by the provisions of section 30 or 31. It may, therefore consist of more than twenty persons and may, irrespective of the number of its members, acquire legal personality by conducting itself as a legal person. Legal personality may appear from the contents of the association's constitution, for example from provisions stipulating that all assets are the property of the association, that its liability are its own, that it can sue and be sued in its own name and that its continued existence will not be affected by any change in members. The legal personality may also appear from the dealings, nature, objective and activities of the association. (Cilliers et al 2001:7)

Cilliers and others are elucidating the basis from which legal personality is acquired. It obviously includes the church by virtue of assets own by the church. The element of the right to sue and be sued

further qualifies the church to be a legal person. Paragraph 8.4 of ELCSA constitution provides the guideline for the congregation to administer and own property. Sufficing therefore to say that the church is not exempted from requirements of section 9 of the constitution of South Africa. It is expected that the church shall not discriminate any person in its dealings.

Paragraph 6.3 of ELCSA constitution provides the privileges and rights of church members. Particularly paragraph 6.3.3 provides that every member of the Church who is a communicant has the privilege to participate in deliberations on congregational affairs and to use his/her vote when decisions are taken. Paragraphs 17.5.1 and 26.1 on diocese and ELCSA levels respectively carry the same sentiments as 6.3.3. These paragraphs are a clear indication of equality maintained by the constitution of ELCSA. It is important to note that ELCSA constitution makes a distinction between communicants and children who only become communicants when confirmed after the confirmation class.

ELCSA as a church acknowledges the requirement of treating all people equally. The church ordained Rev. Sophie Khorombi a female pastor in December 1981 following a resolution of Church Council minutes 27 to 30 November 1981. It is unfortunate that since the female ordinations started no female dean or bishop was elected. This is not as a result of the church rules or principles but it is due to the fact that the delegates who form the school of elections have not yet voted one lady in high-church positions. Under the circumstances one cannot subject this situation to discrimination. There are full time female pastors who are running parishes in the church. An example is Rev. N. J. Sekhwari who is a parish pastor of Kgapane Parish in Mphome Circuit, ELCSA Northern Diocese.

Equality in the church is to a greater extent observed. The spirit of the constitution of ELCSA has it that the bishop is the bishop in council and the dean is the dean in council. In other words the bishop must call a council for a decision to be taken. He/she cannot take a decision all by him/her self, the same with the dean and the presiding bishop. This is used to prevent the misuse of power. This is derived from paragraph 17.4.2 where it is provided that the Diocesan Council has the right, authority and power. The constitution of ELCSA does not make reference to the prerogative rights and powers of the bishop. However the bishop remain accountable for all things happening in the diocese. This situation seeks to maintain equality but is not in accord with the accountability he/she has given the fact that he/she is the bishop in council.

However the church needs to address the equity act requirements in terms of the Employment Equity Act 55 of 1998. This act complements the constitution of South Africa in terms of equity. This act seeks to

address the imbalances of the past. It is put in place to achieve equity in the work place. Pastors and other employees may charge the employer of any discrimination. However the church is not a designated employer. The church is called to identify clear disciplinary code and procedure to prevent inequalities that may arise due to inconsistencies. A typical example is paragraph 4.2.3 of the ELCSA constitution provides that: Before a person can be accepted into ministry, that person shall, during his/her time of training and probation, convince the church of his / her fitness and suitability for the office.

The above situation leaves much to be desired in terms paragraph 4.2.3 as provided by the church constitution. Questions arise from the word suitable. How suitable is suitable? Fitness as stipulated in ELCSA constitution, what fitness is this, psychologically or physically? Are guidelines in place for the assessment for one to measure convincingly the suitability referred to as provided for in the constitution of ELCSA?

The biblical tone on equality is clouded by the patriarch system that was the order of the day. This was clearly influenced by the Jewish culture in ancient times.

Although there is many positive remarks about women in the Old Testament, the Jews of the first century thought that the wife was inferior to her husband and that men were by nature women's superiors. A popular belief was that women had caused the fall of men; so they were regarded as craftier, more vain and more materialistic than men. Their mouth could speak folly and embarrass their husbands, with their legs they could seduce other men, and a wife who appears in public with loose hair was believed to challenge her husband's authority. The Mishna, a collection of Jewish verbal tradition and laws, which was compiled around the third century of the Christian era, forbids women to study the law with men. (Malina et al 1996:5)

The above clearly show the Jewish belief concerning women. This is an indication that women were discriminated against for the reasons that the fall came through a woman. It is clearly said that the study of the law by women with men was forbidden. The advanced reasons of how women seduce men are coupled with the discrimination. The fall is recorded in Genesis 3:4

The second creation story in Genesis account was inserted after the first, although it was written about four hundred years earlier. It is a completely separate account and gives a different version of creation. The first creation story is clearly emphasising the equality of man and woman. The second story appears more ambiguous. Adam was created first and Eve was created thereafter as a helpmate. The second creation emphasises the importance of marriage between a man and a woman. The woman appears to be in subservient position and indeed some

theologians have said that it is by the woman's sin that Adam is caused to sin. This reading has given a negative role to women down the centuries – but it is simplistic and largely untrue, as a careful reading of the story makes clear. Indeed the word *adam* is not even a name at all. (Vardy 1997:6)

The woman was accepted as a subordinate of a man. This is clearly misconstrued from Genesis 3:16. God said to the woman "I will greatly multiply your pain in childbearing; in pain you shall bring forth children yet your desire shall be for your husband, and *he shall rule over you*". The fact that God said he should rule over you was taken to mean that a woman is subservient to the man. It must be noted that initially man and woman were created as equals and only after a sin was committed was a woman said to be under the man's control.

The idea of God creating human beings together is echoed later in Genesis:

When God created a man (*adam-human being*), he made him in the likeness of God. Male and female he created them, and he blessed them and named them Man when they were created. (Genesis 5:1b-2)

It is important to notice that it is only human beings whom God *names*. The idea of "naming" is important –God gives to human beings the power to name animals, but in the case of human beings themselves it is God who gives them the generic name "Man" which covers both male and female. (Vardy 1997:6)

Vardy indicates an important thing of the meaning of the name *adam* is human being. The implication is that human beings were created equal. The element of one being subordinate to the other only comes into play after the fall.

In the second creation story adam (which is wrongly translated) is created from the dust of the ground that existed prior to the creation. In the second creation story, the human being or earth creature is the central focus of God's attention and every thing revolve around it. Adam is given power over all creatures, symbolized by all the creatures that were brought before him for naming. However this Adam (earth creature) did not have a companion. Vardy quotes Phyllis Tribble in her book *God and the Rhetoric of Sexuality* as having an unfortunate connotation in English that did not exist in original Hebrew. She points out that in English the word imply someone in a subservient position or an assistant. Tribble in Vardy continues saying that " to the contrary, in Hebrew Scriptures this word often describes God as the superior who creates and saves Israel. God is therefore described by the same word used to describe Adam's helper. The connotation therefore is far removed from someone who is inferior.

God creates a woman out of *adam*, the earth creature, and, as Tribble

points out, it is only *after* this creation that *adam* is described as male. The Hebrew word for woman is *issa* and it is only after the creation of woman that the earth creature is described as *is*, which means man. (Vardy 1997:7)

The argument of Tribble in Vardy simply suggests that the two creatures are equal. From the first creation story there is no suggestion of the male dominion or superiority over the female. The earlier verses of the first creation story clearly gave Adam dominion over all animals but not such dominion was given to male over the female.

In Genesis 3 the woman ate the fruit because she saw that it was desirable and it would make her wise, but God's punishment came on her and the man because of their disobedience. She offered the fruit to the man who also ate the same fruit that he was ordered not to touch. The two creatures were autonomous individuals who made their own decisions. This is also signified by the punishment which each of them received respectively on the basis of their individual disobedience. Both punishments were painful and everlasting following, which the couple was ejected from Eden.

Cahill in Vardy says that "...we find that supremacy and subordination, as distinct from difference and co-operation, are not part of the original creation but of the condition of sin ...man and woman have equal responsibility and dignity". In other words, the idea of male supremacy and female obedience is only introduced in the second account as a result of the disorder brought about by sin. (Vardy 1997:9)

Cahill in Vardy still emphasises the equality of male and female. The simple question and challenge of academics is whether the sentence has been ended. Was the woman paroled from the punishment to disqualify the statement that appears in Genesis 3:16 ...and shall rule over thee. Or are we like prisoners who are trying to break loose the steel protection bars from within the prison cell.

The Lord Jesus comes spontaneously to the equation that He was a man and not a woman. At the time it was not an issue whether He was a man or not. People simply accepted the fact that Jesus was a man. In fact still today many Christians do not have a problem with the fact that Jesus was a man. However since the 1980s the feminist movement, Christian feminism in particular has been asking questions in this regard. The questions are raised around the place of women in the Bible. It is important for the matter under discussion to visit this matter to elucidate equality biblically.

The Bible is a male book from cover to cover. Male figures determine the tone and pace of the contents. The most important figures in the Old Testament are the prophets, priests and kings; practically all of them

were man. There are exceptions here and there, like judge Deborah (Judges. 4:5).

Women were unquestionably discriminated against in the Bible. They had none of the basic rights that men had. In fact the Ten Commandments did not address women.

“Thou shalt not covet thy neighbour’s house, thou shalt not covet thy neighbour’s wife, nor his manservant, nor his maidservant, nor his ox, nor his ass, nor any thing that is thy neighbour’s” (Exodus20: 17)

The above commandment only refers to a man who may not covet a woman. The woman is listed with the rest of the man’s possessions. The woman is an asset like any other asset that the man owns. This is a clear deprivation of human rights as if the woman has no right to take her own decisions. The woman can also covet the neighbour’s husband.

There are many more events of the same nature as the one in the above commandments.

“and they called unto Lot, and said unto him, ”where are the men which came in to thee this night? Bring them out unto us, that we may know them.” And Lot went out at the door unto them and shut the door after him and said, “I pray you, brethren, do not so wickedly. Behold now, I have two daughters which have not known man; let me, I pray you bring them out unto you, and do ye to them as is good in your eyes” (Genesis 19:5-8)

The above passage is a gross violation of human right by Lot. Lot wants to protect visitors at the expense of his daughters. It goes without say that culture prevailed above any human right consideration.

The book of John 8:1-11 in New Testament, nobody asked where the man was who had been caught in the act of adultery with the woman. Even Jesus did not ask this question! It was simply their culture that woman were inferior and needed to be treated as such.

We still find some elements of discrimination in the church as they appear in the Bible. In ELCSA when a young lady fell pregnant she must attend penitent class before the baby is baptised. The male partner is considered only when he is an active member of the church. The young man who made the young lady pregnant nine out of ten goes scot-free. As much as a number of reasons are advanced I still believe that not much is done to bring the male participant on board. I recognise the urgency for the baby to be baptised however I feel the exercise can still be attempted to ensure the male figure undergo penitent class to make him realise how important it is to stick to principles and encourage child bearing inside the marriage.

Earlier we made mention of the fact that Jesus was a male person. Equality come to play again when questions such as if God really is a male and if Jesus had to be a male, what does this say to women? To what extent can a woman relate to a male God and Saviour?

There also is a fairly widespread belief that God is beyond gender – neither male nor female – and that this one – sided male character is due simply to the way the language works, so that one can refer to a person only using either male or female pronouns. This means that God, being a personal God, could not have spoken of in neutral pronouns like ‘it’. Again this means that in principle one could refer to God in either male or female terms and images only in exceptional cases. Examples of this are:

Of the Rock that begat thee thou art unmindful, and hast forgotten God that formed thee (Dt 32:18)

As one whom his mother comforteth, so will I comfort you; and ye shall be comforted in Jerusalem. (Isa 66:13)

In these instances, images from a woman’s relationship with her child are used to describe God. (König 2004:172)

There are many such instances especially where Israel and God’s relationship is referred. If one can use male as well as female images to portray God, one can say that God is beyond gender.

In all these arguments above inequality has been illuminated with special biblical references using the spirit of equality as provided in the constitution of South Africa. The yardstick has been domination of one sex over the other. The arguments of Christian feminists have been used to elucidate the biblical tone of equality. It will be unfair therefore to leave this debate where it is without viewing the cultural influences of the time when the Bible events took shape. This automatically brings the time into equation. The Jewish culture at the time prior to the development of latest political ideologies had an impact to the status quo in the Bible.

As a matter of fact the type of government came with changes that made it possible for people to begin to realise their human rights. The biblical times were still the times of monarchies and not governments of the people.

Without doubt, the most influential system of classification was that devised by Aristotle in the fourth century BC, which was based in his analysis of the 158 Greek city-states then in existence. This system dominated thinking on the subject for roughly the next 2500 years. Aristotle held that government could be categorised on the basis of two questions: Who rules? And who benefits from rule? Governments he believed could be placed in the hands of a single individual, a small

group, or the many. In each case, however, government could be conducted either in the selfish interests of the rulers or for the benefit of the entire community. (Heywood 1997:25)

Who rules?

		One person	The few	The many
Rulers		Tyranny	Oligarchy	Democracy
Who benefits	All	Monarchy	Aristocracy	Policy

The above figure by Heynwood 1997: 25

The above position as pointed out by Heywood clearly gives a picture of how government was at the time even before the birth of Christ. It is therefore not surprising that equality was not part of the equation. A monarchy would not consider equality rightfully so given the question Heywood is posing from the above figure as to who benefits from the rule. From the monarchy type of rule the culture developed and grew strong until democracy prevailed as the ideal type of government.

It goes without saying that not only the Jewish culture negatively impacted on the human rights. Our history is pregnant of gross human rights violation. This does not suggest that the history must be rewritten but to learn from the mistakes of the past. Human culture seriously contributed to the violation of human rights as was seen to be normal at the time. The limitation in human languages as indicated above clearly played a role in that metaphors were used to refer to God as Him for instance.

When Christ bears our burden of sin and intercedes for us with his righteousness, he does the work of a priest: mutual bearing of burdens and substitution in Christianity is also priestly activity. The church is founded on Christ's priesthood. Its inner structure is priesthood of Christians for each other. The priesthood of Christians flow from the priesthood of Christ. As Christ's brothers, Christians receive a share in his priestly office, namely through baptism, regeneration, and the anointing with the Holy Spirit. The priesthood means: We stand before God, pray for others, intercede with and sacrifice our selves to God and proclaim the word to one another. Luther never understands the priesthood of all believers merely in the "Protestant" sense of the Christian's freedom to stand in a direct relationship to God without a human mediator. Rather he constantly emphasised the Christian's evangelical authority to come before God on behalf of the brethren and also of the world. (Althaus 1981:314)

One will notice that Althaus came clean with a Lutheran belief that is without prejudice. The priesthood of all believers is explained without discriminating any Christian whether male or female. The above clearly states that women are also priests in terms of the Lutheran belief. This statement complements the ordination of women as stated above. Sufficing that Althaus' argument is highlighting the biblical tone of equality in terms of the New Testament.

Paul's letter to the Romans chapter ten verse eleven to twelve provides a distinctive biblical tone on equality. "For the Scripture saith, Whosoever believeth on him shall not be ashamed. For there is no difference between the Jew and the Greek: for the same Lord over all is rich unto all that call upon him.

Paul is highlighting the fact that faith brings salvation to all whether Jews or Greeks. This is a definitive biblical tone of equality of all before the Lord. All people are equal and have the right to salvation only if they have faith.

"This world" meant sinful existence under Satan; the ruler's law is needed to prevent total chaos. Consequently, God instituted political order to recognise and prevent massive sin (according to Paul and Augustine). Christians do not need the law, for they do voluntarily what the law requires, justice, civility, decency, etc. If all men were Christians, there would be no need for secular government. But when Luther was asked how to deal with good created order, such as marriage and property, he concluded that such order dates back to paradise rather than to the fall. Adam and Eve did not need the law because they were without sin. They lived by the law of God's good created order, expressed in marriage and economics. Consequently Luther distinguished between the realm of Satan, the realm of law (in the sense of good created order) and the realm of the gospel. (Gritsch and Jenson 1976:181)

Gritsch and Jenson pointed out Luther's position on the law and his perspective why we need the law. God instituted the fact that the political order for the good of the world. Christians do not need the order of the law to live but the Christian life in itself is an orderly life. What the law requires is happening spontaneously on the bases of faith. Justice, decency etc. is always within the community of believers. It is indeed the norm in Christian life to treat one another equally regardless the patriarchy of the Bible. Christians normally would not contest the domination because they understand the order as ordained by God.

2.1 Human dignity

The constitution of South Africa in section ten provides that: Every one has inherent dignity and the right to have their dignity respected and protected.

The literal meaning of the word “dignity” is true worth or honourable office. On the basis of the constitution of South Africa any person’s dignity must be respected and protected.

It is incumbent on every person to treat members with respect and dignity. I associate this matter of human dignity more with pastoral duties and responsibility to protect members by not divulging confessions and confidential matters. For an example one cannot stand before the congregation and name a person by name on the basis that the individual had not honoured members contributions to the church.

Reuben, thou art my firstborn my might, and the beginning of my strength, the excellency of dignity, and the excellency of power. (Genesis 49:3)

Jacob called his sons and cursed Reuben for the sin he made by sleeping with Bilhah. In this text we cannot ignore the dignity of Jewish men when they bear sons. That was the dignity of a man. The men were taking their sons along with them to the temple so as to teach them the law and debates that took place at the temple.

The ability of the well-known prophetesses of the god Apollo at Delphi to tell the future made them a big attraction in the ancient world. The first century Jewish historian, Flavius Josephus, who had been a Jewish general in the war against Rome before joining the Romans later on, made himself irreplaceable by prophesying that the head of the Roman army, Vespasian, would shortly become the new emperor. When his prophecy came true, the Roman general treated him with great esteem and allowed him to write the histories, which were famous even in his day. (Bruce et al 1996:87)

Dignity was earned in ancient time as Flavius earned the respect and dignity through his prophecy. This person earned himself big respect and coincidentally his words were fulfilled. From this prophecy he became honoured. The underlying tone is dignity though the researchers are using the word irreplaceable in the society.

They are terrible and dreadful: their judgment and their dignity shall proceed of themselves (Habakkuk 1:7)

From prophet Habakkuk in the above passage we identify one important aspect of dignity. Dignity shall proceed from other people because of one's conduct and not from one self. From dignity respect is commanded and not bad conduct.

However from the constitution of South Africa dignity discern humanity that is a human being shall be treated with respect and shall be protected from any harassment. This is to some extent coupled with the right to life.

This is more on the side of how one should be treated. This complements human need in legal terms in terms of accommodation, food and clothing as the basis of a dignified person. It further qualifies the need to treat others, as we would like to be treated. This qualifies the worth of all people before the law. The prestige of human beings is of utmost important and has to be protected and endows the respect one deserves on the grounds of humanity.

A human being may not be subjected to corporal punishment, persecution or slavery because no one can own another. The human rights protect the prestige and dignity of human rights.

...Presumptuous are they, self-willed, they are not afraid to speak evil of dignities. (2 Peter 2:10)

It is obvious that from dignities no evil can be spoken unless it is like in the case of Christ where they released a killer and wanted an innocent person to be crucified. It is significant to note the use of the word dignity in the above quotation. It confirms that dignity cannot be associated with evil. The church by virtue of its nature cannot find her self faced with legal problems unless false allegations can be levelled against one member who will in turn charge the church of attacking personal dignity.

In the South African Constitution, a number of important rights are guaranteed only for children; workers and employers; persons belonging to cultural, religious or linguistic community; and detained, arrested and accused persons. (Rautenbach and Malherbe 1997:294)

The above authors are arguing that when certain rights are accorded only to certain persons involved are also the bearers of all other rights. This means that there is no room for speculation that because provision is made, for example, for children's rights in the Bill of Rights, every other right should be considered separately to determine whether children can be bearers of rights. Children are the bearers of all rights in the Bill of Rights and when for instance, the right to political activity or freedom of expression are limited. The limitation must comply with

the requirements of the limitation clause. Their immaturity will be considered for the rights to apply.

This is an indication that children cannot claim the voting right in the congregation on the basis that they have to be trained on principles and teachings of the church and confirmed to become communicants in terms of paragraph 6.3.3. This clause is clearly a limitation clause that limits children from voting and be voted in church office.

The children cannot therefore claim violation of human dignity when prevented from exercising a vote right. This cannot be challenged as a violation of human rights on the basis of baptism. Limitation of rights is subject to certain requirements that are to be met prior to exercising the rights.

2.2 Freedom and Security of persons

The constitution of South Africa provides every citizen the right for freedom and security.

- 1 Section 12 provides that everyone has the right to freedom and security of the person, which includes the right –
 - A) not to be deprived of freedom arbitrarily or without just cause;
 - B) not to be detained without trial;
 - C) to be free from all forms of violence from either public or private sources;
 - D) not to be tortured in any way; and
 - E) not to be treated or punished in a cruel inhuman or degrading way.

- 2 Everyone has the right to bodily and psychological integrity, which includes the right -
 - a) to make decisions concerning reproduction;
 - b) to security in and control over their body; and
 - c) not to be subjected to medical or scientific experiments without their informed consent.

The provision of the constitution of South Africa ensures that the freedom and security of citizens is protected. On arbitration no one must be deprived of freedom or without just cause. This clause is provided for the protection of citizens not to be punished without cause or sentenced without cause. This prevents discrimination of people by any court or tribunal without proving the suspect guilty beyond reasonable doubt. The cause for judgement must be just prior to any verdict. It applies to all legal persons including the church.

ELCSA does not comply with item 4 of schedule 8 of the labour relations act 66 of 1995. The item provides that where the dismissal is

not automatically unfair, the employer must show that the reason for dismissal is a reason related to the employee's conduct or capacity, or is based on the operational requirements of the business. If the employer fails to do that, or fails to prove that the dismissal was effected in accordance with fair *procedure* the dismissal is unfair.

The above requirement is without doubt compelling the employer to identify a disciplinary code and procedure to ensure the freedom in question. The procedure will enable him to prove that a fair procedure was employed to dismiss an employee or to find an employee guilty of misconduct. It will further enable the employer to do things within the framework of the law. ELCSA does not have the disciplinary code and procedure that can be provided in case of disputes. ELCSA does not use a tribunal system as means for dispute resolution. Only counselling is used after the relevant council took a resolution of terminating the services of an employee. The constitution of ELCSA makes no reference to the disciplinary code and procedure.

The duty of the council shall be to deal with matters concerning doctrine, applications to ministry, examination and ordination of candidates for the ministry, as well as with matters of pastoral care. Furthermore, it shall be the duty of this council to counsel, admonish, reprimand and /or mediate in disciplinary matters. Cases, which demand further disciplinary action, shall be referred to the diocesan council. This council should also be responsible for arranging refresher courses for church workers. (Paragraph 18.2 of ELCSA constitution.

The above paragraph refers to the ministerial council as the body dealing with personnel matters. The paragraph in question does not constitute a disciplinary code and procedure. However it refers to disciplinary issues as being part of the duties of the ministerial council. The ministerial council is composed of one pastor representative from each circuit of the diocese, all deans in the diocese and the bishop of the diocese. The modus operandi is that the Ministerial Council will make recommendations to the Diocesan Council regarding a church worker's suspension or dismissal. The ministerial council also make recommendations for a candidate to undergo counselling with the bishop of the diocese. In some instances a church worker is discussed in absentia and a recommendation is processed. This deprives the employee a right to be listened to and to state his/ her case.

Scenario

A case between the Church and Reverend X where the pastor was faced with a divorce case. The bishop held discussions with the pastor involved. The bishop referred the matter to the Ministerial Council. The Ministerial Council interrogated the pastor to establish the cause of the problem. The Ministerial Council resolved to recommend termination

of service of the pastor concerned. The candidate appealed to Church Council and the Diocesan Council's resolution was upheld. Then the candidate charged the Church with unfair dismissal.

The above scenario obviously has an omission of the right to representation for which the church constitution does not make provision.

Section 12 read with section 35 (3) of the constitution of South Africa, act 108 of 1996. The sections in question protect the rights of an accused person to a fair trial. The audi alteram partem principle is the only remedy to ensure compliance with the fair trial requirement. One cannot judge a person without offering the accused an opportunity to give his/her side of the story or defend him or herself.

Section 12 includes the requirement that no person shall be detained without trial and to be free from all forms of violence from either public or private sources. This portion of the Bill of Rights is supportive to the principle of audi alteram partem. No person may be detained without trial. Sufficing to say that no person may be subjected to disciplinary measures without trial. This is the current modus operandi in the Lutheran Church. Councils would sit and view the case from which a resolution will be taken to suspend or dismiss an employee. At this point of time the ELCSA constitution makes no provision for disciplinary action. No guideline is in place to provide dismissible offences for church workers.

There are different forms of violence as provided for in the Bill of Rights. Intimidation is a form of violence that may be found in the church. The church constitution allows room for intimidation by virtue of the omission of disciplinary code. Individuals continuously intimidate the church because of the inadequacy of the church constitution. We have seen many labour relation cases where charges were levelled against the church.

The following are the example of labour relations cases levelled by church workers against the church:

- Appendix A, a case of a pastor disputing transfer.
- Appendix B where a pastor's services were terminated because of a divorce case between the church worker and the spouse.
- Appendix C where a pastor's services were terminated because of operational requirements.

The above cases are only examples to illustrate the inadequacy of the church constitution and unacceptable procedures that provides no satisfaction to dispute settlements. For the purpose of this work the above examples must not be read with due consideration of the contained dispute but to show the seriousness of the lacuna from the

time a dispute arise to the point of settlement. That there is a need for something else in between if the dispute is to be amicably resolved.

Section 12 includes the requirement that no person shall be tortured in any way, and treated or punished in a cruel, inhuman or degrading way. Torture and punishment are different in principle. Torture has an element of inhuman behaviour while punishment has the element of correcting behaviour. There are many forms of torture that can take place. ELCSA is a sending church. At this point in time there is no evidence pointing to torture, however the constitution does not have a mechanism to address the possibility of torture in the church. Punishment is not a normal thing in the church, however where people are employed there is always a possibility of disciplinary action. The constitution of the church has no reference to the effect that punitive measures must not exceed a certain limit. Also a clear indication as to what offences are dismissible is not in place.

The above-mentioned section makes reference to cruelty though referring to punishment; there is cruelty in ELCSA when coming to ordination of pastors. Church Council number 48 took a resolution that those applying for the self-supporting ministry must be between 35 and 55 years of age. (S-08.04.2002-C9 document on self-supporting ministry)

This cut off line leaves much to be desired in terms of private studies. Some candidates started on time to study but could not complete before the age of 55. Cruelty comes into play when such a candidate is refused ordination on the basis of age. I term this cruelty because the candidate spend money to pay for tuition, time to study and refused ordination because he/she is older than 55 by the time training is completed.

The office of the ordained ministry is the office of the means of grace as instituted by the Lord Himself according to Matthew 28:19-20 and John 20:22-23 to preach and to teach the word of God, to administer the holy sacrament and to shepherd His flock. (paragraph 4.2.1 of ELCSA constitution)

From the above paragraph it is clear that Christ Himself instituted the ministry. There is no indication that Christ did not want older people to preach the word and administer the holy sacrament. It is to the detriment of the mission to prevent people from exercising their call on the basis of age. It is, to be direct a cruel decision that was taken by the Church Council. The Church Council decision is in direct conflict with section 9 (3) read with subsection 4 of the constitution of South Africa.

The church as legal person may not unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of sub regulation (3). Section 9 Subsection (3) provides that the state may not

unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. This is a clear non-compliance on the part of ELCSA.

Clearly the church shall not discriminate people on the basis of age for permission to be ordained. This is a contravention of section 29 of the constitution of South Africa. Sufficing therefore to refuse a person ordination on the basis of his age is unscriptural. Ill health can be used as the reason for refusal of ordination and not age. The candidate should be allowed ordination even if he/she only works for one year before retirement or pension-able age.

Section 12 (2) provides the right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction, to security in and control over their body, and not to be subjected to medical or scientific experiments without their informed consent.

The above clause presents a problem when a pastor decides to divorce on the basis that his/her security is threatened in the marriage. Security can also be misconstrued when considered literally, but when one's safety is threatened within the marriage there is an element of security that can force a candidate to take a decision to divorce. The church cannot suspend or dismiss a church worker on the basis of the decision to divorce. Especially when the other party is not a church worker then the decision to suspend the employee becomes unfair. Suspension is punitive in all respects while the other party continues to work elsewhere. Here the right to take a decision is tampered with irrespective of the religion.

If, after one month of the assessor's being appointed in terms of paragraph 11 above, divorce proceedings have not been withdrawn, the Presbytery (or if it is not possible for the Presbytery to act timeously, its Moderator or Clerk) shall:

Declare that for 15 years the minister may not receive a call from or appointment to, the congregation he/she was serving at the time the divorce proceedings were instituted (Appendix C. 13 (iv) of the interim manual of law and procedure of the Uniting Presbyterian Church in Southern Africa)

The Uniting Presbyterian Church is rather extremely punitive on the matter for divorce of a pastor. This judgement is extra ordinary, which one can challenge on the basis that who on earth does not sin and has authority to impose such a harsh punishment. As a matter of fact marriage is a contract between two individuals. To punish the pastor for 15 years that he/she must not receive a call from the congregation he/she was serving at the time of divorce is unfair especially when the

spouse is employed elsewhere. What if the break down occurs as a result of the non-clergy partner?

Pressure from a breaking marriage can be very devastating and the church is the home of peace for one to run to. However it becomes problematic when the very church suspends the pastor so severely when the individual was subjected to humiliation and torture.

This in itself constitutes oppression when one cannot walk out of a marriage when he/she so wishes on the basis of being a pastor.

The church with its tendency to challenge divorce decisions is actually challenging the psychological integrity, that is the ability to take decisions. Which in itself also is to some extent a legal question that may lead to legal battles between the church and the affected individual.

Finance

Paragraph 11.3.9 of the ELCSA constitution provides that a standing committee on finance consisting of the parish pastor, the treasurer and two members elected by the parish council shall be responsible to the parish council for the proper keeping of books, for compiling the monthly returns of the income and expenditure at the end of the month, for preparing the annual estimates for the ensuing year and for auditing all the accounts of the congregations.

The ELCSA constitution is inconsistent because the above paragraph is nowhere applicable except at parish level. The circuit and the diocese do not have the same provision. Paragraph 17.4.7 provides that the diocesan council shall function as the finance committee of the diocese. The Northern Diocese took advantage of paragraph 17.4.5 that it has the right to appoint commissions subject to approval by the Church Council. The financial administration is not consistent throughout all church levels. The level of the diocese is where big amounts of money are handled, but there is no provision for the finance planning committee.

The above two paragraphs are a clear indication that money is being administered at different levels of the church but differently. One would then expect a clear documented procedure governing the church funds. The Northern Diocese adopted such procedures in 2003. The question from this situation is that: Can one say that the way that the church funds are administered is professional? The quoted paragraphs regarding money, auditing is a requirement as provided for by ELCSA constitution. However a number of councils at each level, that is circuit and Diocesan level give one a reason to question the effective finance planning with so many people.

Procedures that I refer to above are normally in place to facilitate transparency through public reports. When referring to public reports

one would expect a report made available to the church community. The report in question also should help the church to elucidate shortages of funds, which will make the community aware that more money is indeed needed. This is of course a right for the church community to know how and where the church money is used.

2.3 Slavery and biblical position

Section 13 of act 108 of 1996 provides that no one may be subjected to slavery, servitude or forced labour.

The above requirement on slavery is the position globally supported by the ideology of democracy.

Under the influence of the Roman law, a slave is usually considered to be a person (male or female) owned by another, without rights, and like any other form of personal property to be used and disposed of in whatever way the owner may wish. (Marshall et al 1996:1110)

The above is the definition of the word slave. In the ancient biblical times the slave could and did acquire various rights before the law or by custom. Their rights included ownership of property even slaves and the power to conduct business. This could happen while they were under the control of their master's control. Slavery was attested from the early times throughout the ancient Near East. Slavery owed its existence and perpetuation to economic factors. Slaves were mostly captives; especially prisoners of war were commonly reduced to slaves.

And the children of Israel took all the women of Mid'i-an, captives, and their little ones, and took the spoil of all their cattle, and all their flocks and all their goods. (Numbers 31:9)

From the above quoted verse it is obvious that the prisoners of war were made slaves. Slaves could also be purchased from other owners or general merchants. Genesis 17:12 confirm the slave trade, as was the case during the colonial age. Joseph was sold to an Egyptian high official reference Genesis 37:36

Children of slave parents that are born in the house of slaves-parents became "house born slaves" inherited slavery. This took place in patriarchal times reference Ecclesiastes 2:7

Exodus 22:3 refers: One could also become a slave because of the committed crime and if he/she could not pay the fine, slavery was the remedy. That is, the individual would be sold.

There are other ways that one could become a slave. One could sell him or her self voluntarily to become a slave. One could become a slave through abduction. That is one could be stolen and reduced to a slave.

The treatment accorded to slaves largely depended on the personality of their master. For instance the relationship of trust or of affection could be developed. The same goes for discipline that could be very harsh even fatal. However killing a slave was punishable. In some circumstances slaves were able to claim justice as stated in Job 31: 13.

Generally, a more humane spirit prevails through the old Testament laws and customs on slavery, as illustrated by the repeated injunction in God's name not to rule over a brother Israelite harshly as evident from Leviticus 25:43 and 46.

The New Testament attitude to slavery

The twelve disciples of Jesus apparently had no part in the system of slavery. They included neither slaves nor owners. Jesus repeatedly spoke of the relationship of the disciples to himself as that of servants to their lord. This is evident in Matthew 10:24 and John 13:16. However the disciples were emancipated, as it were, and admitted to higher privileges of intimacy. This is confirmed by John 15:15.

Outside Palestine, however, where the churches were often established on a household basis, the membership included both masters and servants. Slavery was one of human division that became meaningless in the new community in Christ (1 Corinthians 7:22; Gal 3:28). This apparently led to a desire for emancipation (Corinthian 7:20) and perhaps even to the active encouragement of it by some (Timothy 6:3-5) Paul was not opposed to manumission if the opportunity was offered (1 Corinthians 7:21) but studiously refrained from putting pressure on owners, even where personal sentiment might lead him to do so (Philemon. 8, 14). (Douglas et al 1996:1115)

Douglas et al clearly indicate that Paul would have wanted to see the total emancipation of slaves as he stated that he was not opposed to the freeing of slaves. However he was also not in the position to put pressure on owners. This would have inhibited his ministry in a way.

Summary

ELCSA is a legal persona obliged to comply with the constitution of South Africa and other laws of the country. This is as a result of the fact that ELCSA can sue and be sued.

The Constitution of ELCSA is inadequately protecting the church from legal suit especially on the matter of age limitation for ordination

candidates. The fact that one cannot be ordained on the basis of age is discriminatory. It is further unscriptural because Christ mentions no age restriction on the great commission in Matthew 28:19-20.

ELCSA is not a designated employer in terms of the labour relations act. However the church has to identify a disciplinary code and procedure to address the *audi alteram partem*. Any employee has to know the dismissible offences and or punishable offences. The disciplinary code and procedure enables the church to avoid transgression or inequalities and discrimination. Lack of such code opens a hole to some inconsistencies when cases of the same nature arise.

The lacuna cannot be overlooked where the bishop carries responsibility but is unable to take prerogative decisions. When failure occurs the bishop failed but the poor individual is unable to take decisions. Councils collectively take decisions but the blame is not collective. The constitution must be reviewed to include some degree of prerogative decision. Currently the bishop is accountable but has no power or authority.

The requirement for pregnant youth before marriage is that the individual will undergo penitent class. This is very lax for the male youth that impregnated the female party. This needs to be reviewed to maintain the principle across the board.

ELCSA does not comply with item 4 of schedule 8 of the labour relations act 66 of 1995. The above quoted legislation requires the employer to prove that dismissal was effected in accordance to fair procedures otherwise the dismissal is unfair. This is as a result of the dismissal rulings by the ministerial council where the accused gets no representative or at times a chance to defend him/her self. The judgment by the ministerial council can amount to torture when the individual was not present or even able to defend him or herself.

Equality cannot be disputed; it is a public knowledge and clearly covers all genders. Examples were cited elucidating the fact that God cannot be reduced to male or female. Therefore both male and female are equal before God.

The constitution of ELCSA is inconsistent because councils on different levels have different requirements for the financial management committees. Only the parish council can elect the financial committee. The circuit, the diocese and ELCSA itself does not have a finance planning committee. This is irregular because the higher you go with church levels the bigger the amounts handled. Such inconsistencies even inhibit the smooth running or proper finance planning by the church.

In the final analysis slavery was a traditional thing for those who had power to defeat the weak ones. It cannot be attributed to the will of God but to ancient tradition and rule, which eventually was misused for profit gain.

Kingship and political ideologies other than democracy did not have a problem with slavery. The kingship era basically enjoyed the system rather than condemning it. From the New Testament it is clear in Paul's letter to Philemon that Onesimus' slavery was in fact a problem to Paul. Paul says in the letter to Philemon that Onesimus is returning not now as a servant, but above a servant, a brother beloved, especially to him. He further says how much more is Onesimus a brother to Philemon both in the flesh and in the Lord? Paul is even prepared to pay the debt on behalf of Onesimus in order to free Onesimus from slavery. Paul calls Onesimus his son. We cannot forget that kingship was ordained by God with a right to rule. The authority led to formulation of monsters such as slavery.

The sacred Scriptures are the very word of God, as such carry with them the authority and truthfulness of God himself. Against the authority of papacy, church councils, reason and experience, even religious experience, Lutheran theology teaches that Scripture alone (sola Scriptura) is the source of all theology and the rule and norm for judging all teachers and teaching in the church. (Ferguson et al 1988:405)

ELCSA subscribe to the above theology of the word. This clearly signifies the authority of the Scripture in the Lutheran Church. Sufficing therefore to say that the ELCSA approves or condone no slavery.

3.1 Freedom of religion and expression

Sections 15 and 16 of Act 108 of 1996 provide the freedom of religion and expression respectively. Section 15 provides that every one has the right to freedom of conscience, religion, thought, belief and opinion.

Religious observances may be conducted at state or state aided institutions, provided that-

- Those observances follow rules made by the appropriate public authorities;
- They are conducted on an equitable basis; and
- Attendance at them is free and voluntary.

This section does not prevent legislation recognising-

- Marriage concluded under any tradition, or a system of religious, personal or family law; or
- Systems of personal and family law under any tradition or adhere to by persons professing a particular religion.

Freedom of religion sounds positive given the positively appraised national democratic struggle in which many clergy and churches engaged to eradicate apartheid and replacing it with organs of democratic governance. In the minds of many church leaders a quest for peace and freedom, including freedom of religion meant a form of support for the liberation forces in their struggle for the political emancipation of the people of South Africa.

As much as all people are happy with our freedom and democracy including churches with ELCSA being part of the Christian family, freedom of religion is welcomed as a package of democracy.

However there is a problem that emerges from paragraph 3.4 of the ELCSA constitution. The paragraph in question is part of the mission of the church and provides that the mission of the church is to glorify and praise the name of the triune God. It is realised by: ...Active supporting ecumenical movements and by being prepared to co-operate with other churches for the extension of the Kingdom of God, provided such co-operation does not violate the confessional basis of the Church.

The above situation is indicative of discrimination in terms of religions other than Christian. As a matter of fact state podiums where leaders of different religions render prayers, our church cannot participate. This is simply because of our confession.

The Moslem religion is not in line with Christian religion on the basis that they do not accept Jesus Christ as the messiah but as one prophet in the divine line of prophets. This is contrary to the theology of Lutherans

if not to the Christian family as a whole.

One of Luther's points is that faith unites the believers with Christ. This forms core of the Lutheran theology.

Luther in Mc Grath stated this principle clearly in his 1520 work, *The liberty of a Christian*, ...Faith is not assent to abstract set of doctrine, but is a union between Christ and the believer. It is the response of the whole person of the believer of God, which leads in turn to the real and personal presence of Christ in the believer. "To know Christ is to know his benefits," wrote Philip Melanchthon, Luther's colleague at Wittenberg. Faith makes both Christ and his benefits – such as forgiveness, justification, and hope – available to the believer. (Mc Grath 1977: 440)

Mc Grath illuminated the central point of the Christian religion as presented by Luther and his colleague Melanchthon. Jesus Christ is the pivotal point of the religion while the Islamic religion has Mohammed. Therefore there is a conflict that basically requires tolerance to be able to work together. Tolerance triggers questions such as; is Christianity to be compromised in the name of tolerance?

I have dealt with one aspect between the two religions that present a material difference. There are many more such as festivals and the calendar. These differences are too far apart to realise any form of unity.

There is a degree of closeness between the Jewish and Christian religions on the basis of the Torah. Still the fundamental difference is realised when coming to Jesus Christ. Jesus Christ as the Messiah is not recognised by the Jews to this day. The Jews are still waiting for the Messiah to come. The festivals are celebrated on different seasons. Our confession of faith is different. The Hindu faith and Buddhism have a vast difference to Christian religion, same as Islam. There cannot be unity on the basis of confession with the above quoted religions.

Izwi Labantu is the African religion that caters for the African traditions. It is recently regarded as a religion as a result of our young democracy. Ancestors play a big role in this religion. Spirituality is the guiding principle for this religion.

The church cannot accept this religion on the basis of their beliefs. I have mentioned few religions that are prevailing within our society and all have a right to profess.

I tend to think that the basic problem is the fact that it is extremely difficult for us as people of faith to keep the dialectical relations in creative balance between the concept and reality of a secular state such

as ours, under girded by a quest for a culture of human rights, on the one hand, and the practice and defence of (our) religion within the context of a freedom of religion on the other hand. It is as far as I am concerned, this complex fact of our existence, which causes the misunderstandings between Christians at the one end of the stick, and the force of political society at the other end of the interactive continuum. (Kritzinger 2002: 83)

It is also a problem to strike a balance between the reality of the freedom of religion as provided for by the constitution of South Africa and the practice and the defence of our religion. This is because the freedom of religion provides the Christians a freedom to practice and worship, while on the other hand the people of faith may encounter problems during the mission exercises when trying to challenge other religions. As a matter of fact there is but one God. This is clear as provided by Exodus 20: 3 that “you shall have no other gods before me” This in itself suggests that there is no room to accept other religions. The’ religion is Christian religion. In practice the direct challenge is fine, but it becomes a problem when people of other religions defend their faith legally or in court. In the eyes of our political society the challenge will be like provoking people of other religions and will come out as undemocratic.

The ELCSA constitution in paragraph 3.4 for instance clearly rejects the relationship with other religions with whom when relation or cooperation is undertaken would violate our confession. This can only be illuminated by employing the example of the apostle’s creed as one of our confession.

“I believe in Jesus Christ, his only Begotten Son.” This is posing a problem with Muslims because they do not accept Jesus Christ as the only Begotten Son but as one in the divine line of prophets. This is a major difference between Christianity and the Muslim religion. Let alone the baptismal process, if there is one it is obviously excluding Jesus Christ the one who pronounced the great commission.

Go ye therefore, and teach all nations, baptising them in the name of the Father, and of the Son, and of the Holy Ghost: teaching them to observe all things whatsoever I have commanded you: and lo, I am with you always, even unto the end of the world. Amen. (Matthew 28:19-20)

Now with these kinds of fundamental differences how on earth shall the two cooperate? Christ himself founded the church and how can his church cooperate with those who dispute him on the basis of the law.

Dr Kekana reveals the above problem in the book *No quick fixes* edited by Professor Dons Kritzinger. One immediate problem comes into being

when religious people, particularly Christians assume that freedom of religion, unproblematically, means the freedom of Christians to preach their religion without fetters of any kind, and convert people of other or no religion to the faith. On the one hand this view fits our Christian view of the Great Commission as decreed by Christ. On the other hand, it is a controversial view in the context of human rights ethos. People of other religions may and correctly so, understand the Bill of Rights as a protection against Christian domination. (Kritzinger 2002:83)

Kekana in Kritzinger poses a question that the state may tend to think that religion is in fact effectively irrelevant to its secular operations. His question is a great cause for concern especially when one looks at how religion is treated at school let alone at tertiary level. We cannot just preach the word at school without considering the freedom of religion. This means that children of other religions can walk out of the worship service. This cannot be challenged because those who walk out have a right to do that. The question is that those children who do not want to belong to any religion are they not part of the society that need to be shaped for the well being of our country.

Religion only becomes relevant when people are in prison for the correctional services to rehabilitate behaviour. The deputy president Zuma's moral regeneration programme is aimed at revitalising the moral values. This is obviously due to the wear and tear of our moral fabric of which our government is aware. Our National Government came to realise the need that these moral values are important for a nation to be able to differentiate between good and bad. How the government intends to implement the moral regeneration programme is not clear. The other question is whether all stakeholders are in fact on board.

On the 18 April 2002 the deputy president Mr Jacob Zuma in his opening address of the launching of the Moral Regeneration Movement at Waterkloof, Pretoria made reference to important aspects of the moral regeneration programme. Among other things he hinted that South Africans have high moral values and they are disgusted by the sporadic incidents of moral depravity that occur in our country. (SA Government information. www.gov.za. Speeches and statements)

He backed his statement by quoting chapter 2 of the constitution of South Africa as containing numerous indispensable values that directly address critical issues of morality including the democratic values of human dignity, equality, life, freedom and security.

In 2001 a working committee was appointed to promote the establishment of the Moral Regeneration Movement. It is supposed to facilitate, encourage and coordinate the programme of every sector of society in working towards restoring the moral fibre of our nation.

From the above quotation of the deputy president's opening address of the launching of the Moral Regeneration Movement at Waterkloof it is clear that the words that were used need explanation. The explanation will assist us to link the role that our faith can play, to be specific the role that Christians can play. This may even assist us to ponder with the objective of the state on this programme also examining the role players in helping that the set programme bear the fruits. Where possible illuminate the reason to charge negotiation or challenges that need to be made by the Church to save the situation given the effectiveness of the programme and the consequences of its failure.

Quite often there is some confusion with regard to the words "ethics" and "Morality". What is the difference between the two terms, or what do they have in common? Often they can be used alternatively, which means that if the one word is used it can quite well be replaced with the other word. But on a rather different level of speech we can find a rather clear distinction between the two words. "Ethics" often means the principles governing our way of acting, and also the fundamental teaching about these principles whereas the personal application of such principle is called "morality" or "morals". (Imberg 1995:42)

From the above further Imberg argues that from the two terms a difficulty emanates with regard to the two terms. He says that if an ethical way of acting in a certain sphere of life can be called "a moral way of acting", then, logically, the opposite way ought to be called "immoral". However with the word "immoral" in today's life the word is ascribed to certain bad modes of life, such as sexual matters. It is normal today when people avoid thoughts in the direction of sexual matters the word "un-ethical" is used to speak about the mode of life that does not meet the ethical standard.

It is however clear that different ethical judgement and principles are at work when the two terms in question are used. When judgement is brought into the equation, questions arise. How do these principles work? On what type of foundation do they rest?

From these questions different principles can be employed to measure what is ethically good.

Imberg 1995:43 provides the principles as follows: -
One principle reads: "What is useful to the individual is ethically good", or "What is useful for personal development is ethically good. A second principle reads: "What promotes true humanity is ethically good" or "what is in accordance with true human ideas is ethically good. Emotions can also be used as the yardstick to measure what is ethically good.

Imberg strongly elevates the fact that all these principles are indicative

of a need for a superior principle needed, that is if we need satisfactory order of ethical values. Sufficing to say that men take for granted that they could argue with themselves according to reason and thus find what is good and right.

It goes without saying that our authorities after establishing the Bill of Rights with freedom of religion actually realised that ethical values or moral regeneration is an essential thing, whether measured against the principle referred to by Imberg or not, hence the programme by the deputy president.

A question is what happens if the programme fails. What are the consequences of the failure of the programme? Those are challenges for the systematic theologians to ponder with.

In a way freedom of religion leaves the government with a problem of enticing all religions to actively and effectively participate in the Moral Regeneration Programme. While the differences dealt with earlier in this work present a problem because of fundamental differences.

The concept of freedom of religion needs unpacking. The concept does not simply mean a freedom to preach only one's own religion to the detriment of others. As a matter of fact the freedom of religion imply something more than what Christians think of the freedom of religion. This means even protecting people of other faiths against any form of domination or human right violation pertaining to religion. This means protection of Satanism as a religion except when crime or violation of the law is committed.

In other words, a solution begins to emerge when the problem of the relation between Religion and Human Rights is well –understood. It is therefore imperative in our context that the constitutional secular state be presupposed and demystified, so as to provide us with some guidelines as to how to unpack the conceptual terms and the attendant confusions. (Kritzinger 2002: 83)

This clearly suggests that the state provide us with guidelines to help us unpack the freedom of religion. ELCSA is not an exception to fall in the trap of accepting the freedom of religion as a blessing from above, given how the freedom of religion operates i.e. protecting even Satanists.

This is clearly displayed in section 15(1) where the right to freedom of conscience is explicitly guaranteed. This section safeguards the religious conviction that people holds. This by implication is recognition of the existence of other religions. In section 15(1) it is evident also that the right to profess, practice and propagate the religion of one's choice is not explicitly recognised.

This has far reaching consequences when one revisits the matter of the gays and lesbians. This only comes to the equation when a couple of the same sex advances the altar for solemnising of such a marriage. The freedom of conscience, religion, thought and opinion is challenging to ministers of the Christian religion when couples of the same sex want to marry in the church. The challenging question is, that should a minister refuse to marry lesbians for instance on theological grounds will that minister not be violating human rights of the two individuals who claim to be a couple on the basis of the freedom of conscience or belief. While his conscience fights with the pastor to marry two people of the same sex, this unwanted situation is brought about by section 9(3) below.

Which allows no one to directly or indirectly discriminate against any one on one or more grounds, including race, gender, sexual, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Looking at the above, especially the part of the sentence where discrimination on the basis of sexual orientation is forbidden. It leaves much to be questioned on the part of gays and lesbians to demand marriage in the church. As much as the situation may be met with strong criticism by the universal church, the matter will cause sweat and money to defy as being non-Christian. At the end of the day it is a challenge not only to ELCSA but also to the universal church as a whole. This would not be part of any church order at this point of time. Even if it is to be an addition to ensure that the church constitution is in line with the Bill of Rights, it creates a theological problem as far as the Lutheran dogma is concerned looking at the sola scriptura principle.

The question is, must the Church conform to secular rule or be guided by legislation of this world? As Christians our legislation comes from God. An ELCSA Northern Sotho hymn book hymn 247 verse 5 provides that “ Melao e bušang faseng e bewa ke dikgoši.,,: Ya rena ba re dumetšeng e tšwa go Mopološi.,,:

Translated the verse mean “the laws that govern the world are created by kings but ours who believe come from the Saviour.

As a matter of fact the Anglican Church is currently wrestling with a problem of the American Communion that consecrated a gay bishop.

When Gene Robinson, an openly gay Episcopal priest, was elected bishop of New Hampshire in 2003, his election sparked ongoing debate and potential schism in the Anglican Church, both in America and around the world. Bates, religious correspondent for the Guardian (U.K.) pens a thoughtful guide to the current controversy. Focussing on England (to a lesser extent) the U.S., Bates casts the current dispute in the context of the church’s grappling with social change since 1960 –

the ordination of women, the acknowledgement of divorce rates – and explores how different Anglicans interpret the Bible and come to divergent conclusions about homosexuality. (Editorial reviews from publishers weekly, Amazon Books. Internet October 2004)

The editor clearly elucidates current debates within the Anglican Church circles. Among others, the question of female priests ordination is being debated, and now the consecration of a gay bishop on 2 November 2003. He further gives Bates' view focussing on England and U.S. on issues that the church is wrestling with since 1960. From this we can see that the church is facing a situation where one has to check the degree of conformance by the church to secular needs of the age. Challenges like the one Anglicans are facing are universal problems facing all Christians irrespective of denominational affiliation.

Lubbe in Kritzinger argues that: The matter of missionary outreach is a very sensitive one, which, if not correctly handled, could affect the creation of an atmosphere of co-operation and inter action very negatively. In general, it should be said that religious freedom includes the freedom of religious groups to propagate their respective faiths. In fact, both Muslims and Christians regard it as inherently part of their religious obligations. On the other hand, our Hindu and Jewish neighbours hold the view that genuine respect for other faiths excludes all missionary efforts, since the latter implies that other faiths are regarded as inferior. (Kritzinger 2002: 68)

Professor Gerrie Lubbe made a very critical observation that is posing a challenge to the Christian family

Freedom of expression is also part of the Bill of Rights under section 16. Freedom of expression is applicable as an important aspect of the Bill of Rights. It allows people to challenge whom ever, using any available tool at their disposal. Any person can go to the media and challenge virtually any thing. This does not leave the church outside the scope. The church can also be challenged to do certain things. Congregants have a right to say anything about their church. ELCSA is actually faced with the problem that her congregations have a burning issue of a church that is frozen as in the times of the apartheid era. Congregants of ELCSA cannot work out the reason why the church is so silent even on matters of faith where a position of the church is need for guidance of her own membership.

Paragraphs 19.1.3.8 and 23.1.3of the ELCSA constitution provides that the Bishop shall act as the formal head and representative of the diocese in dealing with other churches, government and other public bodies in matters pertaining to his/her diocese. The Presiding Bishop shall also act as the formal head and the representative of the Church nationally.

The above-referred paragraphs of the ELCSA constitution are restricting the Bishops and the Presiding Bishop to only deal with other churches, government and public bodies in matters pertaining to the diocese and or ELCSA respectively. This leaves out the duty as public relations by virtue of the fact that it is specifically left out from the equation. However the bishop is the bishop in council and they can go public with statements only with the approval of the relevant council.

The process of approval by the council is a long protocol that defeats the object of the public statement nine out of ten. A normal process can be evaluated from the Faith and Order Commission that is commissioned to debate issues to come up with theological positions. The *modus operandi* is that the matter will be presented to the Diocesan Council that will refer to circuits for input. Thereafter the matter will be tabled for the second time before the Diocesan Council after three months normally. The matter will be referred back to the commission to collate the inputs made by the Circuits. This will be after three months if not six months that is normal for the commission to be reconvened and that also depends if the first meeting can finish the work. The time frame will be nine months before the matter is tabled before the Diocesan Council for final approval at the diocesan level. After approval the matter must be presented to the Church Council at ELCSA level. At this point the Church Council will traditionally refer the matter to other dioceses for input. On return the General Secretary will collate the inputs from diocese, presented to Church Council for approval that will refer to Episcopal Council for refining should there be areas of concern or approve and adopt the document. The whole process may take another year or longer before Church Council adopts it. The total time is about two years from the inception period until implementation.

The position at this point is known but the public statement cannot be made because the matter is very stale. In essence ELCSA will not be in a position to go public on a matter that takes so long to be accepted and approved. Once more the constitution is the stumbling block. Our German colleagues who were also architects of apartheid put this constitution together of course with our permission. They made an input that harnesses the church to succumb to the order of the day and in a way created an environment that made Lutherans scared of public challenges. The constitution does not clearly provide a vehicle for the church to respond on time on issues that need her view. The Church does not utilise her right to openly challenge issues publicly.

Congregants are yearning to hear their church's position on controversial issues such as the legalised abortion, advocating the use of condoms, gay / lesbian marriages etc. These are matters that the church has to openly say something about. Silence could indicate that the church is condoning wrong acts. The silence of the church and ignoring the outcry at synod meetings is detrimental to the church. The

congregants will challenge the church publicly if the church continues the silence. The current general secretary of the South African Council of Churches Dr Molefe Tsele in his address of the synod in September 2000 where I was present clearly told the synod meeting that the time of silence is over. The church has to come out of the cocoon and make statements where she is expected to.

3.2 Assembly, demonstration, picketing, petition and freedom of association

Section 17 of Act 108 of 1996 provides that every one has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

The freedom of assembly enables people to assemble with whom ever they wish at any time. From this provision congregants can assemble, can also demonstrate their feeling around a particular decision or matter that seem ignored by the church. ELCSA has the experience of this type of demonstration by pastors when members of LUMASA (Lutheran Ministers Association in Southern African) marched in Bonairopark to raise issues with the Church Council in 1990.

We recently saw the same on the 12 November 2004 when ministers from Devhula-Lebowa Circuit marched in the offices of ELCSA Northern Diocese carrying placards complaining about salaries, and demanding that the circuit should be allowed to pay their own pastors.

This is a democratic right to display feelings and opinions by a group of people. This right is a norm in different industries and it occurs within certain parameters. This is something that is not expected in the church by many church leaders. In work situations picketing and demonstrations occur frequently when disputes on payments arise.

Chapter two of the Labour Relations Act, number 66 of 1995 provides the freedom of association and general protections for employees.

- (1) Every employee has the right-
 - (a) to participate in forming a trade union or federation of trade unions; and
 - (b) to join a trade union, subject to its constitution.

This part of the legislation complements section 17 of the constitution of the South Africa in that it allows employees to participate in trade union activities.

By implication of paragraph 9.1 and 9.2 the church is an employer. Paragraph 9.1 provides the job description of the pastor as would be expected from him or her as a shepherd.

Other trained workers employed by the Church are evangelists, deaconesses, social workers, nurses and such others as may be employed

by the church. They shall be included by the parish pastor and are transferable to any place within the Church (paragraph 9.2 of the ELCSA constitution)

The heading of paragraph 9 reads *Church Workers in the Congregation*. By implication a pastor is a worker. The labour relations act uses the word “employee” and the Church Constitution uses the word “church worker”. The act is not providing definitions to enable a distinction between the two words. However the Oxford Dictionary provides a meaning for the word “worker”. A “worker” is an employee.

The conclusion I can come to is that the Church is an employer in her own right. This means that the employees of the church do have labour relation rights though not exercised. No wonder the CCMA does accept complains from Lutheran pastors.

There are two remedies to this situation: one is that the Church has to develop the condition of service that in turn enables the employees to organise themselves. Organising themselves should not be seen as a problem because workers who know what they want are better than those who do not know their wants. The second option is to amend the constitution of ELCSA to suit the Labour Court ruling that the priest is not an employee.

The Labour Court viewed the case (Anglican Church of Cape Town v/s Other) that when the priest obtained a licence to perform ministerial service, such an exercise does not amount to a legally enforceable employment contract. The process of obtaining the licence to act, as a priest is nothing more than a normal entry of a priest to the ministry to put his calling, which comes from God, into action. In other words, entering into the priesthood is a calling from God and not an employment relationship. With this in mind the church must be seen as providing space for those called upon by God to give effect to their calling. As a result, a priest’s response to a calling from God cannot amount to an employment relationship.

The relationship is a spiritual relationship and cannot be reduced to secular contract of employment.

The ELCSA situation tends to differ from the argument put forward by the Anglican Church because the above referred constitutional paragraphs provides the contrary.

Nevertheless the position taken by the Labour Court is still debatable when comparing this situation to other legislation such as the UIF act and the Tax act. The debate arise from the deductions that occur when a pastor receive the stipend. Logic tells us that non-employees cannot be affected by the legislation that affects the employees. The only time we

can say this matter is closed and sealed is when the Constitutional Court gives a ruling. This debate belongs elsewhere.

However it is once more obvious that the ELCSA Constitution has serious loopholes that warrant the rewriting of this important document. It is therefore not surprising to see pastors from a circuit using a mass action to induce the Church to accept their wish. This in itself is an indication that “Church Workers” slowly but surely are starting to understand their constitutional rights as long as the ELCSA Constitution name them workers

Freedom of association is the right to obtain membership of any association or organisation. Any person can join ELCSA as a congregant or as a pastor as long as the individual agree to operate as stipulated by the constitution.

Paragraph 6.2.2.3 of the ELCSA constitution provides that members are to observe the rules and regulations of the Church and to counsel all who profess themselves to be her members to do the same.

This paragraph is clearly indicating that the church accepts that those who do not observe the rules have to forfeit the membership. This is confirmed by paragraph 6.5.1 that provides members an opportunity to sever connection with the church shall submit a written statement or make a verbal declaration to the congregation council. This paragraph provides an exit to members that wish to do so.

Siaki in Kritzinger says that Just a quick word on the Lutheran Church. It accounts for roughly 2,5% of the Christian market share. While the Lutheran Church in Africa is growing (expanding 600% since 1960, and is considered one of the fastest growing denominational families on the continent-a growth that is considered due to continued strong efforts by Lutheran missionaries), it is not the case in South Africa. Here the Lutherans are not keeping pace with population growth, and are, in fact losing market share. (Kritzinger 2002: 35)

Siaki in Kritzinger looked into the work of Marjorise Froise who evaluated 1996 census statistics and obtained the status of Christians in South Africa. He provides his view in terms of this work. It is only the Lutherans Church that is losing the market share compared to the Dutch Reformed Church, the Roman Catholic Church, The Methodist Church of South Africa and the Church of the Province (Anglican). It is not within the parameters of this work to discuss the mission therefore the question as to where do members go when they leave the Lutheran Church remain to be answered by the Church her self. However it remains a fact that the Church is losing membership when looking at numbers. The existence of this Church needs to be evaluated as a matter of urgency for the coming fifty years. Something drastic must be done especially under

the prevailing Bill of Rights. One very important remark in concluding this denominational market share trends (total population – 1911-1996) is the decline of the mainline churches and the growth of the African Independent Churches and Pentecostal/Charismatic Churches. It suffices to say that there is an exodus from the mainline churches. Lutherans cannot really disregard this situation and continue as if all is well.

The freedom of association is an added problem, which presents an even more serious problem in terms of the prevailing exodus. The mainline churches used to emphasise the need of a remove letter (a letter that confirms the termination of membership with the other church) before membership can be registered with the new church. The African Independent Churches and Pentecostal/Charismatic Churches do not demand this letter but would accept any member to join them. Section 17 of the Bill of Rights protects people from this very requirement to submit letters when changing membership as if permission is requested prior to leaving a denomination to join the other.

3.3 Political rights and church elections

Every citizen is free to make political choices, which includes the right-

- (a) to form a political party
- (b) to participate in the activities of, or recruit members for, a political party; and
- (c) to campaign for a political party or cause.

Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.

Every adult citizen has the right-

- to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
- (b) to stand for public office and, if elected, to hold office.

Section 19 of act 108 of 1996 provides the political right for citizens to participate in the country's elections. This is a requirement in the ideology known as democracy. Political rights allow citizens to elect a political party of their choice. In this way governments are replaced through elections. For the ideology to remain in tact a constitution has to be identified which makes it difficult for one to refuse leaving the position. In democracy when division and disagreement exist within all communities, people may in practise be taken to mean the majority. In this case, democracy comes to mean the strict application of the principle of majority rule in which the will of the majority or numerically strongest overrides the will of the minority.

Franchise has not much practical sense if there are no regular and legitimate elections in which the electorate can indicate its preferences with regard to its representatives. Regular, free and fair elections is

therefore a key element of a democratic system which is regarded as so important that it is entrenched in the bill of right as a right of every citizen. (Rautenbach and Malherbe1996: 113)

Rautenbach and Malherbe are showing the significance of regular and legitimate elections. This is the only way in which masses can indicate preference in terms of the ideology to tell who should govern the country. The pivotal point for a country to be labelled a democratic country is the fact that elections are freely and fairly conducted. To ensure that free and fair elections are conducted independent electoral commissions are established not only by the country in question but other interested parties such as the United Nations, SADEC, etc.

Independent Electoral Commissions confirm the democratic election as whether elections were free and fair. From such commissions conclusions are drawn as to the democracy of a country. Countries with oligarchy type of governments also hold elections to cover up their autocracy and violation of human rights. The purpose of elections is to enable citizens to elect a government of their choice and not to give a false impression that there is democracy when there is none.

The Church Council shall not later than a period of five years and nine months from the date of the last election for members of any council or body within the Church in respect of which the period of tenure was six years, determine and announce a date for the holding of new election which shall be within a period of three months thereafter. All persons holding office, as members of such councils and / or bodies shall be deemed to have terminated, unless re-elected on the expiry of the period of six years after the holding of the previous election. (Byelaws to the constitution part II (8.2 and 8.3))

The Church Council shall within the sixth year of the term announce the date for holding of election. The election shall then be held through out ELCSA from the congregational level up to the General Assembly. Church members elect their leaders and as elections cascade higher proportional representation is used to ensure equal participation. An independent electoral commission to ensure free and fair election monitors the national elections. The Church elections are not monitored at all with the belief that in the church no rigging of election can take place. The other difference is that with national elections political parties conduct campaigns to convince the masses that they have a better plan to manage national challenges. When in the church there are no campaigns conducted. This does not mean that lobbying is absent from the church circles. Some leaders do lobby members of the Electoral College to vote for them. Other individuals on behalf of others may conduct this lobbying indirectly.

The question of lobbying renders some elections unfair to those who

wait to be elected based on the confidence people have in them. Once elected there will be no one disputing church elections and this is because of the faith that people have in the system.

The church elections as innocent as they seem leave much to be desired in terms of the direction the church is taking as far as growth and self-sustainability. With all due respect from 1975 to date the church has been receiving grants from abroad, which leads one to reason that one day the well will dry out. The leadership did not see this coming. Even if they did, no measures were taken to sustain the church financially. The social challenges that are facing the Christian family in our era need the type of leaders who will take them head on. Social challenges among other things include the freedom of religion, the feminist ideology, the gay and lesbian that are slowly receiving attention from governments. More than likely the gay or lesbian marriage may be legalised. The Christian communities need to come out to the open with their position and belief. The unemployment is rife in our country and needs the church to respond positively. The involvement of Christian education in our education system needs the church with the type of leadership that will take the challenge. The victims of HIV/aids are members of the church who need the church to comfort them and to physically provide assistance.

It is unfortunate that the church may even take the government head on, on some decisions in terms of the morality that may be democratic but unbiblical.

The church needs the type of leadership that will take a step ahead on some of the issues. As a matter of fact critical issues are debated in universities around the country but ELCSA is quiet on some of these debate. Let alone the view by Siaki in Kritzinger in terms of mission in South Africa that Lutherans are actually loosing the market share the church need to act drastically.

Bishop Sibiya openly challenged the synod of the Northern Diocese in September 2003 at Lobethal Church Centre where I was present that ELCSA needs the young blood elected as bishops to be able to take up the challenge the church is facing. The Church Constitution provides congregants the opportunity to elect their leaders. The election system does provide proportional representation that makes the election democratic maybe not enough in terms of decision-making but members in councils run the church. Considering the priestly church system and the prerogative right of bishops and council ELCSA allows her members to take decisions. This meets with the one very popular yardstick of democracy and that is the people shall govern. This is realised through the saying that the bishop is a bishop in council.

3.4 Labour relations

In the preceding portion of this work it became obvious that the church by implication is an employer in terms of paragraph 9.2. This situation is confirmed by the fact that the church has a UIF number for church workers. Church employees also pay tax like any other employee in the country.

Institutions that are labour intensive utilise the dedicated human resources department with special expertise to handle labour relation matters. The church is also labour intensive without a specially trained person to deal with HR issues. ELCSA Northern Diocese employs over 89 pastors excluding sisters, the treasure, the executive secretary and other diocesan office staff.

The Labour Relations Act 66 of 1995 (LRA) was promulgated to give effect to section 27 of the Constitution of South Africa so as to regulate the organisational rights of trade unions. There are more reasons why the Labour Relations Act was put together, among others to promote employee participation in decision making and to provide simple procedures for the resolution of labour disputes through statutory conciliation, mediation and arbitration.

As a matter of fact the exclusions are clearly stipulated in chapter 1 of the LRA where the Church is not mentioned. Only the National Defence Force, the National Intelligence Agency and South African Secret Service are not affected by the LRA.

Chapter two of the LRA provides the employees the freedom of association. Employees are at liberty to join any trade union, which is the case with ELCSA employees. The fact that they have not yet used their right does not automatically make them non-employees. On the 13 to 18 July 1987 an all ELCSA pastor's convention was held in Pietersmaritzburg. ELCSA church worker once organised themselves into a body called LUMASA (Lutheran Ministers Association of South Africa) and identified aims and objectives for this body. The organisation was raising serious labour issues as can be seen from the aims and objectives.

Aims and objectives of LUMASA

Basis: Scripture, United Nation Declaration of Human Rights, S.A. Labour Laws.

To unite all Church workers in all ministries of the church.

To promote brotherhood, sisterhood, fellowship and understanding among all church workers in the Lutheran Churches.

To foster closer unity among all church workers and to secure same understanding of decisions in and outside the church.

To mutually assist members in their lives and work.

To mediate and negotiate with and on behalf of members.

- To make available legal and joint assistance to members.
- To keep members well informed.
- To take joint action in case of need.
- To seek to resolve together in certain matters.
- To co-operate with other groups an organised group. e.g. partnerships

These objectives are copied word for word (also with errors) from the minutes of the Polokwane Branch launch held on 11 December 1991 at Seshego.

| The reference made to the Basic Condition of Employment Act 3 of 1983 as made on working document No.3 of LUMASA is a clear indication that there was an outcry for representation of employees. The LRA 66 of 1995 opens even more room for employee organisation. This in itself is a signal that at any time church workers can still be organised. The problem is who will be organising them then. Is it not best for the church to open a platform that can accommodate the plight of employees before union activists see the possibility to develop a new market for themselves? This is a word of caution.

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However the organisation was bashed slowly but surely and members were required to denounce their membership prior to be considered for election at a synod that was held at Chipisa, in Venda. It can be noted that the old order was still in place at the time. These rights will not lie down very long; therefore the church need to be ready to face them either by amending the constitution or by preparing the structure that will allow employees to participate in matters affecting their work. The right to organise cannot be evaded long but contingency arrangements must be made. I attached an appendix of a document that I prepared and presented to Church Council addressing the conditions of service for church workers. With it I presented the guidelines for a liaison body that will represent employees on matters of concern and participate when stipend issues are decided upon. The liaison body would provide representation when matters of dispute arise.

Any office bearer or official of a representative trade union is entitled to enter the employer's premises in order to recruit members or communicate with members or otherwise serve members' interest. This in itself suggests that any union official can recruit church workers to become members. There is no way one can prevent recruitment of members. Even then writing of a new constitution will not prevent employees from belonging to the union. Once a reasonable number of persons become members such that with their mass action can bring the normal day to day running of the institution to some degree of paralysis or total disablement for some time, then the institution is induced to negotiate. This cannot be prevented because of the nature of its impact to the system. We saw how the prison departments were invaded by South African Prisoner's Union.

Section 185 of the LRA, 66 of 1995 provides a right not to be dismissed. This part of the law is the major cause of the CCMA cases of Church Workers and the Church. This is because of the dispute resolution mechanism that is used in the Church. The system in the church does not allow representation with a view to comply with Section 200 of the LRA as such giving effect to section 33 of the Constitution of South Africa act 108 of 1996.

Section 33 of the Constitution of South Africa act 108 of 1996 is addressing the question of the procedure used when an employee is dismissed. This provision prescribes the *modus operandi* when a labour tribunal gives a decision. Again as in the previous chapter the audi alteram partem principle is the only remedy to ensure compliance with the fair trial requirement or a just administration. The process can only be called fair when the suspect has an opportunity to be represented.

Paragraph 18.2 of ELCSA constitution provides that the duty of the Ministerial Council shall be to deal with matters concerning doctrine, applications to the ministry, examination and ordination of candidates for the ministry, as well as with matters of pastoral care. Furthermore, it shall be the duty of this council to counsel, admonish, reprimand and / or mediate in disciplinary matters.

This is all that the ELCSA constitution is providing as a means to resolve disputes. There is no clearly documented procedure as to what the church worker's rights are. Nothing is said about representation nor is any thing said about what is a dismissible offence as far as the Church is concerned. This represents a very autocratic way of managing people. Speaking of autocracy one gets reminded of a relevant question as to who wrote the constitution. It is a product of German pastors trying to help ELCSA at its very early stage.

Today we recognise and deplore that:

Our virtues became our snare. The missionary impulse was often steeped in and overwhelmed by the white Europeans' feeling of superiority, by colonialism and racism.

To this day we often seem to act and conduct ourselves in a paternalistic manner because of such feelings of superiority and the urge towards self-realisation.

We confess:

Due to a lack of sensitivity towards African history and cultures we have often condemned customs, conduct and religious beliefs foreign to us. (Statement on the history of the Berlin Mission in South Africa 2000.5)

The above confession by the Berlin Mission is indicative of very serious

issues.

The above statement is so true because in our country there are German Lutheran Churches that have white members. The white churches to this day do not see a way of working towards a unified Lutheran Church. However the aim is not to discuss the discrimination that is portrayed by keeping black and white Lutheran Churches apart. Now the people who helped us to write the constitution confess such issues. Why can't we see the need to amend a constitution that is full of holes even if we hear and see the holes we still make as if there is no problem, because the German partners wrote it for us.

Summary

The presence of many faiths in South Africa tells a variety of stories. The stories mostly are indicative of arrogance and animosity, of isolation and indifferences of failure to relate to those who have a different view. It cannot be disputed that there are shared human challenges and a common responsibility to build our rainbow nation irrespective of religious affiliation. The essential fact that is real in our country behind our religious diversity is the one of human suffering and poverty. This really calls for collective effort by all religious groups and constant support of those who mostly need help. In simple terms people of different faiths must be blind to those things that divide them and see those that unite them as a people, though there is contrast in the government's approach to the moral regeneration program and some of the laws promulgated by the very government. A typical example is the law giving a right to abort while propagating moral regeneration needs people of faith to unite and challenge the government with a view to strike a balance and not to defy our own government.

The freedom of expression must be used to the advantage of our people who really need us to intervene on their behalf. This must not be the platform to tongue lash one another to prove which religion is better or superior to the other.

And Na'aman said, Shall there not then, I pray thee, be given to thy servant two mules' burden of earth? For thy servant will henceforth offer neither burnt offering nor sacrifice unto other gods but unto the Lord. In this thing the Lord pardon thy servant, that when my master goeth into the house of Rimmon to worship there, and he leaneth on my hand, and I bow myself in the house of Rimmon: when I bow down myself in the house of Rimmon, the Lord pardon thy servant in this thing. (II Kings 5:17-18)

Na'aman resolved to worship God amongst the pagans in their temple because his king would want him to go along to the pagan temple. At the time when they worship their pagan god he will worship God. Christians can take this position with respect to people of other religions for the

sake of issues of mutual concern and the common objectives that face all religions in our beloved country. All people are facing the same challenges irrespective of the existing religious diversity and prevailing differences of faith.

The constitution of ELCSA has very serious flaws that open the Church for challenges. The hope that church workers will behave humbly for ever must be done away with because the consequences of continuing with such a constitution are astronomic. It also has to be born in mind that any organisation can invade and organise church workers. I am sure that the state would not easily accept a union for prisoners but circumstances forced the government to succumb. What will make the church to win should any organisation invade the territory of the church? I suppose if the church act proactively to enable an environment conducive to lay reasonable ground rules would be better before somebody else comes and make it difficult for reasonableness. It must be stated that the protocol is so long that it makes it difficult for any press statement approval. As a matter of fact before a matter is completed two years has passed and the relevance of the matter is long forgotten. Positions for controversial issues are needed for clarity, that is the reason why they are made and it serve no reason to come with statements when the polemic matter has been cleared.

ELCSA is experienced on picketing and public demonstrations. The first march took place on 11 December 1990 at Bonairopark. I personally saw one on 12 November 2004 at the offices of ELCSA Northern Diocese by the pastor of Devhula Lebowa Circuit. These demonstrations must be viewed in the light of the people's plight. This is an indication of the need for the church to identify systems to address the human resources issues. Basic Condition of Service are needed to outline the rules governing each employee who is in the service of the church and the disciplinary code clearly indicating what is a dismissible offence etc. Suppressing unorganised employees is not the way to go especially within the new dispensation. The employee organisation must not be seen as an enemy but good relations with it creates a better platform to resolve disputes.

Church elections are in line with democratic principles. The proportional representation is also indicative of the element of fairness. However there is a need to review the process to identify mechanisms to ensure that people with credentials and vision are elected. To elect a body that is not able to see afar is not taking the church very far. The challenges that are facing the church in our time are very serious and need to be met as such.

Labour relation issues are of paramount importance the same as any other church matter. I am afraid ignorance leaves the church open and subjected to court cases that take the money out of the church. A typical

case that proves the fact is the one of Rev. Netshidavhini who had to be paid a big amount of money in terms of the court ruling. Such cases are bringing the church down. Proper systems are needed to address such issues.

Chapter 4

4.1 Environment and stewardship

In the Old Testament a steward is a man who is over a house (Genesis 43:19; 44:4; Isaiah 22:15, etc.) In the New Testament there are two words translated steward: *epitropos* (Matthew 20:8; Galatians 4:2), i.e. one to whose care or honour one has been entrusted, a curator or guardian and *oikonomos* (Luke 16:2-3; 1 Corinthians 4:1-2; Titus 1:7; 1 Peter 4:10), i.e. a manager, a superintendent-from *oikos* (“house”) and *memō* (“to dispense” or to “manage”). The word is used to describe the function of delegated responsibility, as in the parables of the labourers, and the unjust steward. (Marshall et al 1996: 1133)

It is obvious from the above that the stewardship is about care, managing with delegated responsibility. The responsibility that God vested on humanity to be stewards to one another and to the environment is the theme of all above quoted biblical texts.

And the Lord God took the man, and put him into the Garden of Eden to dress it and keep it. (Genesis 2:15)

Based on the scripture human beings have been given dominion over nature and that they are to use that dominion to serve nature and humanity. This is the will of the creator. The purpose is to preserve, enhance and glorify the creator. It is human nature to exercise dominion over creation as was delegated by the creator. This natural dominion is an indication of the stewardship responsibilities that God charged us with, however talents are important aspects of stewardship. The question of stewardship must be viewed in a broader sense.

The earth is the Lord’s, and the fullness thereof; the world, and they that dwell therein. For he hath founded it upon the seas, and established it upon the floods. (Psalm 24: 1-2)

It can then be said without doubt we are stewards of the earth and our master expects no less from us. God created the planet Earth and consequently owns it lock, stock and barrel. He is the owner of every thing that is on earth including human beings. He bestowed the management of everything into the hands of man. Unfortunately men is causing damage to the planet and the surroundings.

The foundation upon which the church stands is Jesus Christ, the Word of God as proclaimed in the canonical books of the Old and New Testament, which we believe to be correctly explained by the three ecumenical symbols, namely the Apostle’s Creed, the Nicene Creed and the Athanasian Creed and the writings of the Lutheran Reformation, especially the Catechisms of Dr Martin Luther and the Unaltered Augsburg Confession. (Paragraph 2.1 of ELCSA constitution)

The Church cannot disclaim the responsibility of all people as provided for by the Bible in terms of stewardship. The above part of the constitution seals the basis on which the Church ELCSA is founded and should be seen to operate as such. The Bible is the principal guide for the church as it provides the responsibility for stewardship. Having mentioned the Bible as the guide for the church it is almost compelling to refer to Leviticus 25:23.

The land shall not be sold forever: for the land is mine; for ye are strangers and sojourners with me.

This gift also should be cared for in such a ways that those that are helpless can benefit and in this exercise the Lord is glorified. This is often not spoken about in the church because it is generally accepted to be the government responsibility. Let alone speaking about it we are expected to care for the soil so that future generations can live on it.

Alongside the respect for sentient life in all forms the Torah also proposes duties to the ecosystem, which sustains life, represented in term of duties to the land itself. The relationship between Yahweh's ownership and gifting of the land and the calling of the Hebrews is a theme which runs throughout the Torah from the Exodus account of the formation of the people of Israel in the wilderness, to the arrangements for land-use commended in the post-exilic record of the law tradition. (Northcott 1996:187)

The emphasis from Northcott is based on the land as a gift to God's people. He further elucidates the fact that the Torah also provides the land-use commended in the records that give an account on postexilic law. The land is an object of care and is given to human society not to be harshly used and manipulated but to be tended and loved.

For six years you shall sow your land and gather in its yield; but the seventh year you shall let it "rest" and lie fallow, that the poor of your people may eat. (Exodus 23:10-11)

This text confirms what Northcott is saying around loving the land by letting it rest for one year. Then glorifying God comes into play when we consider the poor of our people that they too have to eat. This is what the word of God says about the environmental stewardship. We have the responsibility to manage the use of the soil that Yahweh has provided for us. Over and above this He ordered us to rule over fish, and over fowl of the air, and over the cattle, and over all earth, and over every creeping thing that creepeth upon the earth. This was the responsibility entrusted upon human beings.

Humanity having regard to the magnitude of damage caused by different types of activities as a result of industrial revolution has to take steps to prevent further damage. This is the responsibility of all people including the Church. It is irresponsible for an institution such as the Church to say that the environmental protection is the responsibility of government. The Church also benefited and still does from the industrial revolution. The Church benefited by way of satisfaction when people were fed, and from the ten percent that her members were afforded by the presence of industry to contribute as bad as their activities may seem.

The Lutheran theology teaches that Scripture alone (*sola Scriptura*) is the source of all theology and the rule and norm for judging all teachers and teaching in the church. (Ferguson at al 1988: 405)

This above teaching leaves no room for ELCSA to avoid the environmental stewardship. Be as it is stewardship is deeply rooted from Holy Scripture. It must however be noted with due respect that the church does teach stewardship though focussing on money as donations or contributions aimed at meeting the financial needs. It is a fact though that the church does not focus on the environmental stewardship as part of the church's programmes. The purpose of this work is to assess the constitution of ELCSA within the Bill of Rights as enshrined in the constitution of South Africa.

Section 24 of the constitution of South Africa provides that every one has the right-

- (a) to an environment that is not harmful to their health or well being;
and
- (b) to have the environment protected, for the benefit of present and future generation, through reasonable legislative and other measures that-
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

It is evident that there is no conflict between the above part of law and what the Bible calls for as far as the duty to manage the environment is concerned. There is also no conflict between the constitution of South Africa and the constitution of ELCSA. Much as there is to a degree some disregard by the church, to play the role of teaching in matters of protecting the earth from those who are working it. It is acceptable that they do it with good intentions to produce whatever product but environment is damaged in the process.

This cannot be prejudged as non-compliance to the constitution, and as such cannot be illegal if the church does not include such programmes in her teachings. However the church has a moral obligation to humanity as far as the protection, helping, and safeguarding against adversities that are challenging mankind.

One cannot underestimate the role of the church as far as programmes addressing the problem of HIV/Aids pandemic. It is vital and appreciated by all involved and affected. The same can be done on environmental stewardship. The church has a role to play in the struggle to protect planet earth from aspects and impacts that are polluting the environment.

The effects of a polluted environment affect the church as much as they do with governments globally. The extinction of certain species affects both the church and government. The problem of global warming is serious to all sectors including the church. Feeding the nation is as important to the church as it is to government.

When the ground is polluted to such an extent that no food can be produced from it and people die of hunger as a result thereof the church is directly affected. If rivers are polluted and people drink poisonous water the church is bound to lose members. The church is obliged to conduct funerals of victims. How can the church see herself as not responsible to take action to prevent such harm to the environment?

I earlier referred to the fact that the church does teach stewardship, however the focus is on wealth stewardship. The focus of stewardship is on tithing which is important to maintain the pastors and the financial needs of the church. The church would normally use texts such as 2 Corinthians 9:7 “ Every man according as he purposeth in his heart, so let him give; not grudgingly, or of necessity: for God loveth a cheerful giver. Verses such as this one tend to shake the heart of the believer quite adversely. The emphasis is on the ten percent contribution that members are to give.

From its inception, the early church obeyed Jesus’ commands concerning the grace of giving. First of all, the members’ gifts supported the church’s leaders such as the apostles, prophets, evangelists, and pastors. Paul advocated the validity of such support.

Or do only Barnabas and I not have a right to refrain from working? Who at any time serves as a soldier at his own expense? Who plants a vineyard and does not eat the fruit of it? Or who tends a flock and does not use the milk of the flock? I am not speaking these things according to human judgement, am I? Or does not the Law also say these things? For it is written in the Law of Moses, “You shall not muzzle the ox while he is threshing” God is not concerned about oxen, is He? Or is He

speaking altogether for our sake? Yes, for our sake it was written, because the plowman ought to plow in hope, and the thresher to thresh in hope of sharing the crop. If we sowed spiritual things in you, is it too much if we reap material things from you? (1 Corinthians. 9:6-11) Certain work, including that of ones who minister full-time in leading the church, inherently requires financial compensation. Therefore God commands us to give for the support of those whom He sends to serve us, teach us and lead us in the church (1 Corinthians. 9:14; Gal.6: 6; 1 Tim. 5:17)(Mac Arthur 2000:68)

Mac Arthur emphasises the Christian duty to support the word of God financially. He further supports his statement with biblical quotations from first Corinthians, Galatians and first Timothy. The church uses this point of view quite regularly to drive the financial point home. Mac Arthur brings forward apostle Paul's confirmation that the clergy shall eat from the altar table. One may think that financial emphasis of giving money prevails above grace, which is what the church stands to portray. The picture of the church is painted black because of the emphasis on the money stewardship. As a matter of fact pastors in some instances if not in general would not use discretion on some cases when it comes to burial of members who could not contribute financially.

Members of the Church are to bring regularly all contributions and offerings which have been decided upon by the Church, and to make every effort otherwise to support the church financially, provided that no member shall be liable for any debt of the church, save to the extent of his / her unpaid contributions. (Paragraph 6.2.2.5)

Paragraph 6.2 provides the duties of the Church members. It is in place to ensure that members support the Church financially. To some greater extent this paragraph in question enables pastors to emphasise the financial contribution. The controversy comes when the paragraph is read with paragraph 6.4.3.

Paragraph 6.4.3 provides the loss of privileges by members who have for two years not attended church services or has not partaken of holy communion, or has failed to bring regularly all contributions and offerings, loses the right to take active part in deliberations and hold any office of trust except when valid reasons approved by the congregational council can be shown.

This paragraph enables pastors to refuse to bury members who have not been contributing regularly towards the church in term of paragraph 6.2.2.5. This practice tends to send the wrong message across. It is as if the burial is sold. It even makes members to belong to the church for the sake of a decent burial rather than belief. It further leaves out the need for the church to exercise diakonia. The church needs to help the helpless and the destitute and not to cast out those who are not able to contribute.

This is not incorrect at all but balancing the needs on teaching is of vital importance. The question is how much is actually spent on mission since it is the paramount objective of the church.

Environmental aspects that are facing the world today in terms of pollution are equally important in the stewardship teaching and in the action plan of the church. Our environment is heavily polluted through different ways. Many pollutants are in fact naturally occurring substances, such as carbon dioxide, whose concentration in the atmosphere, water or lands of the earth have increased as a result of human activity.

The discovery of a hole in the thin protective layer of ozone in the upper atmosphere in 1985 set alarm bells ringing in the scientific community. The precise identification of the ozone hole over Antarctica by the British scientists testing the atmosphere gas level with instruments on a balloon, and its confirmation by satellite evidence, led to urgent scientific quest to identify the cause. ...The hole is caused by the increase in the amount of suspended chlorine in the upper atmosphere, which neutralises ozone. The existence of the hole locally reduces the greenhouse effect, which in turn results in the formation of ice clouds and ice particles, which enhances the ozone depletion. (Northcott 1996:8)

For many people around the globe the environmental crisis is a matter of survival for themselves and their children. The depletion of the ozone layer weakens the protection the atmosphere provides to human and none-human life from the damaging effects of too much ultraviolet light. The weakening results in an increase in human skin cancers and eye cataracts.

The single most pervasive and potentially cataclysmic factor in the ecological crisis is that of climate change. Local climate change is already a feature of life in many tropical and subtropical regions. Formerly forest areas converted to grassland, cash crop agriculture or concrete cities, undergo dramatic climate change as cooling effects of tree cover are removed. The tropical canopy acts as part of a micro climate which recycles and controls both precipitation and sunlight by a combination of warming and cooling mechanisms so as to maintain temperatures and soil fertility at levels suitable for the great diversity of life forms to which the tropical forest are home. (Northcott 1996:3)

Northcott confirms that climate change is actually influenced by a number of things people do to make life easier and in the process damage is caused. This confirms that once forests are removed the natural cooling effect of recycling moisture is disrupted, precipitation is reduced, and soil moisture is also reduced. The capacity of the tropical ecosystem to absorb and recycle precipitation diminishes. This

obviously affects the agricultural yields. Concrete buildings in tropical areas exacerbate heat.

The examples already mentioned above are nothing but the tip of the iceberg. The church has an important role to play within her members. It may help to highlight some examples where the church can make a difference. Where do back yard motor mechanics that are church members dispose off used oil if not in storm water drains and sewer drain systems? Many church members use fluorescent lights. Where are the redundant fluorescent tubes disposed? Both the used oil and the fluorescent tube cause serious pollution that needs to be prevented by disposing off in professional scientific manner.

It is important for the church to give environmental stewardship some attention. At least include environmental stewardship in the youth training programs and to the church as a whole. The ecumenical church is also ignorant of the stewardship responsibility to the environmental conservation.

The church also preaches stewardship in a particular manner, though the manner in which stewardship is taught tends to exclude the environmental stewardship. It mainly focuses on giving to the church. It is about the ten percent that is expected from the congregant.

The Christian Church in South Africa felt obliged to stand against apartheid and through ecumenical bodies pressure was applied to the government that perpetrated discrimination and separate development. The same ecumenical bodies can still be the vehicles to institute action towards the environmental protection and nature conservation that is so degraded by day. The above argument is clearly indicative of another very significant aspect that is excluded from the advocacy normally found in the church let alone non-inclusion from the church order as one of the church's objectives. This very important aspect is also excluded from the agenda of the South African Council of Churches. Religiously the extinction of species is equally important to the church as a whole in terms of protection of cruelty to animals as has been earlier indicated in terms of duty ordained by God to people. ELCSA has the capacity to take the matter up with the South African Council of Churches to ensure a program that the council can engage in.

4.2 Property and ownership including housing

Section 24 (1) of the constitution of South Africa provides that no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property. This section of the constitution of South Africa provides every citizen the right to own property. This is unambiguously including pastors as citizens of the country and congregations. Property includes movable

and immovable possessions. The constitution of ELCSA provides for the property of the Congregation.

Paragraph 8.4.1 of the ELCSA constitution provides the Congregational Council the power to collect and administer funds for the church purposes and, subject to the consent of the Diocesan Council, is empowered to acquire, own, sell or in any reasonable manner to deal with movable property.

This clause is very much unbalanced when it comes to power provided by the Diocesan Council to the Congregational Council. There is no procedure dealing with the grey area accepted as reasonable selling, acquiring and owning. The question is what can the congregation own, sell. What is the maximum value of what the Congregation can own.

Property in terms of the constitution of South Africa has in it specific determinations such as expropriation and compensation values. This is done in regard to all relevant circumstances, including the current property use, the history of acquisition, the market value of the property and the purpose of expropriation. Public interest plays a role in all this process.

Obviously funds are gathered by the church at congregational level to establish church buildings on stands originally purchased by the congregation from authorities.

Conflict begins when the church officials such as the Bishop, the executive secretary and the president of the synod sign the purchase documents at congregational level. Which gives the church the property ownership when the congregation cease to exist. At this point of time congregations tend to sign the papers of the transaction as at when property is purchased. Which is basically confirming the fact that the building belongs to the congregation more so the funds were collected from the congregation. A typical example is the information obtained from Rev. I. S. Mosoane during the interview he confirmed that the Parish Council representatives signed the transaction papers when the church site of extension 14, Witbank was purchased. This type of oversight creates problems for future litigations should they arise. One must note that the power of attorney was never signed to grant the parish authority for signing the purchase records.

As a matter of fact paragraph 8.4.3 of ELCSA constitution provides that: Subject to such bye-laws as may be promulgated from time to time, such documents as may be required for the purpose stated in sub-paragraph 8.4.1 shall be deemed to be duly executed when signed by any two of the following three officers of the diocese concerned: the bishop, the president of the diocesan synod and the executive secretary.

Under the circumstances prevalent in Witbank, which may not be the only one in the whole ELCSA, paragraph 8.4.3, means basically nil. Should a dispute arise between the church and the congregation ELCSA can forget about attempting to fight the case in the court of law.

Section 26 of the constitution of South Africa provides that

- 1) Every one has the right to have access to adequate housing.
- 2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- 3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

This section of the constitution of South Africa obviously protects the citizens of South Africa from deprivation of housing, or right to own a house. It further makes the state responsible to make appropriate legislation that will enable the realisation of the right to have the roof above the head of every South African. From this part of the law evictions are a no go zone without a court order.

Section 55(1) of the law on pastors provides that: remuneration is paid to the pastor with effect from the date determined by the certified calling.

(2) The remuneration consist of:

- a) basic salary
- b) free housing
- c) any such as the church may decide e.g. limited free water, telephone and electricity

Comparing the country's constitution and the church law on pastors we shall notice that the two have no material conflict as such. Free housing is and will be mostly welcomed by any employee as part of employment benefits. This is well and good for as long as the employee is still healthy and alive to continue with the contract of employment. The parish is responsible for the maintenance of the parsonage.

Section 30 of the Law on Pastors provides that

- (1) Pastors are obliged to reside at the official residence provided for by the parish. With the approval of the Parish Council and the Diocesan Council, exceptions may be granted if special circumstances can be shown to exist.
- (2) Pastors may only allow third parties to use portions of the official residence with the approval of the Parish Council. No one, not even a member of the pastor's family, may carry on a business or an occupation from the official residence without the approval of the council.
- (3) If the service relationship is changed or terminated the official residence shall be vacated with immediate effect.

The conflict comes into existence when we look at 30 (1) where the employee is obliged to reside at the official residence provided for by the parish. This deprives the employee the right to establish him/her self while able to work. Previously pastors worked for the church for many years and when they retire there is nowhere to go. While when still able they are not allowed to use their own residence as they wish. This clause tends to violate the right to reside at the residence of own choice. This rule has no harmony with the Bill of Rights as enshrined in the constitution of South Africa.

Summary

The popular characterisation of Christianity as an anti-ecological religion is often exemplified in the putative weakness of the Christian response to environmental crisis.

However, as I engage with parts of the enormous literature arising from Christian reflections on environmental issues in preparing this book, it became clear to me that, both in its early origins writing on environmental crisis of modern civilisation by evangelicals such as Francis Schaeffer and Basilea Schlink date back to the late sixties – and in its size and ecumenicity, the Christian response is at least as significant as that which characterises the response of humanists. (Northcott 1996:124)

Northcott confirms the significance of the church or the theologian's involvement in environmental issues and the role they play. The question is that: Is the church or theologians viewing the environmental degradation in a positive way as the precondition for the final eschatological event to take place? The Christian religion is not ignorant, as it seems. It is may be the oversight on the part of the church. It has been shown in terms of biblical references that humanity has been vested with the responsibilities to manage all resources responsibly. The significance of the environmental crisis is as important as any other church business, therefore the church has to review her position and engage in environmental conservation programmes. The human activities are in the process of creating disaster on earth, making it difficult for coming generations to survive. This has to be a collective effort by government, non-governmental organisations and the church.

Theologians will understand the sin of omission on the part of the church when talking about the environmental crisis prevalent in our generation. This will be clearly omitting to respond positively to the duties vested on humanity to manage the earth and resources. As a church we shall not playing a teaching role to the future church as far as the environmental conservation is concerned if we maintain the silence,

particularly the stewardship of environment as earlier indicated in this chapter.

Humanity is basically kept going by the toys that God had provided. Property is one of the toys that God made for his children to play with and look after. It is right in terms of the Bill of Rights as one of the fundamental principles of democracy for the pastor to own property. The church principle as recorded in the law of pastors that Pastors are obliged to reside at the official residence provided for by the parish is a violation of human rights. The provision with an obligation compelling the pastor to reside in the official residence provided by the church is as a matter of fact violating the pastor's human rights. No employer must make this type of rule a condition of employment.

The constitution further presents a problem when it compels people to use diocesan authorities to sign for the immovable property transactions. This is stated as subject to such bye-laws as may be promulgated from time to time, such documents as may be required for the purpose stated in sub-paragraph 8.4.3 shall be deemed to be duly executed when signed by any two of the following three officers of the diocese concerned: the bishop, the president of the diocesan synod and the executive secretary.

It further poses a legal question when the people who gather funds to purchase cannot sign for the deed of sale. However the point of departure remains and that is that the funds in question were collected in the name of the church. This needs to be reviewed before any group of people regarded as a congregation challenge this in the constitutional court, the one aggravating factor being the definition of church. That is where a group of people meet anywhere to worship God can be defined as church.

The question of housing sounds reasonable when accommodation is provided free of charge. However the individual should not be prevented to inhabit a house of his choice other than the one owned by the church. The pastor is rescued from a situation where on retirement he/she has to vacate the church house. Many pastors in the past had to leave parsonages because of retirement had had no roof above their head. Normally the pastor becomes stranded of accommodation for the whole family. This excludes a situation where the pastor is called to eternal rest: the pastor's wife has to vacate the parsonage within three months because the church wants to use the property for another church worker who has to occupy the vacant post of the late pastor. This sounds very inhuman while the pastor spent the rest of his working life as a respectable worker of the church and at the end he finds himself/herself stranded and without a home. The church has to review this situation and come up with an aiding scheme. There is no obvious loop hole versus the constitution of the country but there are areas that may not sink down well should what I term grey areas be tested in the

constitutional court on the basis of the human rights as enshrined in the constitution of the Republic of South Africa.

Chapter 5

5.1 Children rights and the church

Every child has the right-

- To a name and a nationality from birth;
- To family care or parental care, or to appropriate alternative care when removed from the family environment;
- To basic nutrition, shelter, basic health care services and social services;
- To be protected from maltreatment, neglect, abuse or degradation;
- To be protected from exploitative labour practices;
- Not to be required or permitted to perform work or provide services that
 - Are inappropriate for a person of that child age;
 - or
 - Place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
- Not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be-
 - Kept separately from detained persons over the age of 18 years; and
 - Treated in a manner, and kept in conditions, that take account of the child's age;
- To have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustices would otherwise result; and
- Not to be used directly in armed conflict, and to be protected in times of armed conflict.

A child's best interests are of paramount importance in every matter concerning the child.

In this section "child" means a person under the age of 18 years. (Section 28 of Act 108 of 1996)

The above-referred section of the constitution of South Africa has the total protection of the child from all forms of violence. It provides for the care, nutrition, shelter and social services. Among other things it prevents child labour and exposure to risk. Child detention is categorically prohibited except when it is the last resort. It further provides the guide line should detention be necessary. Children are not to be subjected to armed conflict. This includes the use of children as soldiers even during guerrilla warfare.

The children's right includes *inter alia* the right to a name and nationality from birth. The matter of a name is one very critical issue these days. The church in the olden days would give a convert a Christian name after baptism. It may have made sense at the time but discrimination was open to this practice where indigenous names given were not accepted. Christian names were accepted as western names only. This practice would create a serious legal problem. This would be presenting discrimination as it suggests that names such as Vusumuzi, Thokozile etc. would generally be accepted as heathen names. The missionaries would change such names and give a convert the name of David. This is contrary to the spirit of the constitution.

The above includes the corporal punishment of children that is forbidden at any stage where the child is to be punished. This corporal punishment is in fact according to the spirit of the bill of rights prohibited.

No person may administer corporal punishment at a school to a learner. Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence, which could be imposed for assault. (Section 10 of South African Schools Act 84 of 1996)

Legislation was promulgated to enhance the constitution of the Republic and the South African Schools Act is one of such legislation. The corporal punishment is clearly prohibited by the South African Schools Act. This does not mean that when a child has done wrong he/she must not be punished. Punishment can be in different forms as long as it is not physical for it to amount to assault. The child can be instructed to remain at school until late with a view to exercise punishment. The provisions from the Constitution of South Africa and the South African Schools Act both fully protect the child from abuse and corporal punishment. The law is successfully implemented and to some greater extent adhered to. There are more questions than answers when we evaluate the effects or consequences of this over protection of learners. Among other things their failure rate, lack of respect and deliberate avoidance of lessons. The learner cannot be induced to attend classes if he/she does not want. There is an attempt to involve parents to address this behaviour. This is done with a view to obtain the parental support in ensuring progress in the learning process. The question is how does this endeavour assist children whose parents are not educated, especially the black people who had no chance of attending school. The only time that they realise that there is a problem is when the child had failed.

He that spareth his rod hateth his son: but he that loveth him chasteneth him betimes. (Proverbs 13:24)

The verse in proverbs thirteen is in contrast with the South African Schools Act 84 of 1996. It provides words of wisdom when it comes to disciplining a child and it is indicative of love to the child. However

there is difference when the child is molested and not disciplined. Molestation of a child is forbidden even biblically. Molesting a child is pure abuse and not discipline. Chastening the child is done to correct incorrect behaviour at an early stage of the child's life. This in itself is implying that a child cannot be left alone to decide and will not always lead a good life in future when he or she is not called to order when incorrect things occur. The South African Schools Act forbids corporal punishment. It suffices therefore to say that this act strictly speaking allows children to take their own decisions and even if it is wrong no one can do a thing about it. Typically children would go out of a class if they so wish. It is his or her right and nobody is allowed to do something about it. When things really go nasty only then a parent is called and normally the damage is caused and irreversible. The question is where is our nation going to.

The church takes children very seriously as the future church. Paragraph 6.1.1 makes provision for the adults and children who have been received into the church through baptism as members of the church. One cannot therefore underestimate the upper hand through which the church accepts children. The children have their order specifically meant for the infant baptism. Children also have their service dedicated specifically for them. There is a league specifically for children called the children service or Sunday school. They are taught the word of God at an early age. ELCSA have a children's desk where specific programmes are run for children such as rallies and other activities throughout the church structures.

ELCSA allows any adult to baptise a child in case of emergency. Such baptismal shall later be confirmed by a pastor in the church should the child survive illness that needed emergency baptismal. Many churches challenge infant baptismal and it is replaced by what such churches term blessing of the baby. This leaves much to be desired when Christ himself refers to this in Matthew 28:19. The great commission does not specifically refer to age prior to baptismal. The blessing that some churches accept for children is found in Mark 10:13-14 and Matthew 19:13-15.

Go ye therefore, and teaching all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost: teaching them to observe all things whatsoever I have commanded you: and, lo, I am with you always, *even* unto the end of the world. Amen. (Matthew 28:19-20) The great commission does not segregate children. Baptismal is also the only entrance into the faith.

Paragraph 6.3.1 every member is entitled to the spiritual care and spiritual instruction, which is the duty of the church to give. This qualifies how important the church views the instructing of children. It is within the spirit of the church constitution that children must be

protected from all forms of violence. The church view children as the future church, hence the training and instruction on the religion is important.

Thou shalt not kill (Exodus 20:13)

This text is explicitly clear on the matter of killing. This goes for unborn babies too who must be protected from this cruel evil of abortion. ELCSA identifies with the defence of life from conception. Our country has legalised abortion for reasons accepted to mankind, however ELCSA does not align herself with those reasons because abortion is a way of ending an unborn child's life. ELCSA maintains that no one has a right to take life whether unborn or not for what ever reason.

The church provides the care like or on behalf of parents. Single parents bring up children and as a result such children only see female persons. They lack male role models to imitate or see as role models in their lives. These children that are brought up by single parents are offered an opportunity to be taught by people of the opposite sex at church. The Sunday School bridges the gap in such situations and enables children to work with male persons thus providing confidence that they can live like them if they are boys and vice versa. The church provides a support system for congregants by providing such parental roles.

In 1987, Nebraskans heard about Father Paul Margand, who molested two altar boys, including a twelve-year-old taking private religious instruction. Margand had ordered the boy to pray lying on his back, then mounted him while quizzing him about Moses. Two years later, Polish Catholics in Minnesota discovered a new – and frighteningly contradictory – side to one of their most beloved priests, Father Robert Kapoun. To them he was the guy with the collar who played the accordion in a local polka band, wrote a full polka Mass and recorded eighteen polka albums. But it turned out that in 1973, when a twelve-year-old altar boy confused about his sexual identity had sought his advice, the Polka Padre, as he was widely known, had allegedly helped the adolescent resolve his crisis – in the sacristy before Mass, at his parents' home, in his car and at a local catholic seminary. (Burkett and Brunl1993:32)

Child molestation is one human rights violation that the parent of the child cannot forget. It even becomes more problematic when pastors or priest commits it. The church is where the means of grace are offered. It causes bigger problems when the clergy cannot be trusted around children. I have used old examples from abroad to illuminate the problem. As much as we would want children to be taught the religion we have to guard against the evil. Children are a wonderful gift of God that is why Jesus held them and blessed them. We have not yet seen this

evil in ELCSA, but we need to monitor all church programmes to ensure that this does not happen. The church always wanted to handle such matters internally. Church leaders dedicated to the gospel of forgiveness have taken comfort in the priests' plea for a second chance, for the opportunity to use God's grace to overcome temptation.

5.2 Education, cultural, religious and linguistic communities

The freedom of religion has had a negative impact on children at schools. Churches were taking turns to preach at schools and to provide a moral support to pupils. Religious education was the backbone to instil Christian morals among children. Today religious education has been removed as a subject in schools. This was done to pave the way for the freedom of religion. However the move to stop religious education is counter productive to the government's moral regeneration programme. As a matter of fact today only Christian children would attend the prayer sessions and on a voluntary basis. Even those who are Christians have a choice not to attend if they so wish. Teachers cannot force children either to attend prayer meetings. This is a challenge to the universal church to bring this to the attention of government with a view to strike a balance to the objectives of the moral regeneration programme and the bill of rights. One cannot avoid the legal problem when the Christian religion challenges this situation because of the freedom of religion. However it leaves much to be desired as to the purpose of moral regeneration to adults and not to school children at an early stage.

The Lutheran church recognise the right to basic education. The typical example is Botshabelo next to Middleburg in Mpumalanga with her schools that produced some of the country's learned people. Botshabelo Training Institution is but one college in Botshabelo that produced teachers who left an indelible mark in our history of education in this country. The seminary that produced Lutheran evangelists was also at Botshabelo.

The fact that mission schools were taken over by the state does not still deprive churches to run private schools. It is only a matter of means available to run church owned schools. As a matter of fact Lutherans would be delighted to send their children to church owned schools. This will also enhance the Christian morals and education.

Church schools will instil the religious culture in the school, which will once more restore respect and Christian norms. The school would be in a better position to restore the culture of learning through church programs that form part of the school curriculum. This includes teaching the youth that sex is for married people. It is wise to wait until one is at a correct stage to indulge into such activities.

Children have a special place in the church of Christ. From childhood there is also a confirmation class through which children enter or obtain the status of being full members enabling them to partake in Holy Communion.

The Martin Luther catechism is used to teach children the Lutheran teachings and worship to enable them to express an enduring faith. The Ten Commandments form the foundation of the Christian faith. The commandments are clearly explained with the simplified meaning of the commandment. The Apostles creed follows the learning and understanding of the Ten Commandments. The articles of the creed are explained individually to bring the meaning equal to their age for easy understanding. The Lord's Prayer is taught with clear explanations of petitions contained there in. The sacraments form part of the curriculum where baptism and the Holy Communion are taught. The office of the keys i.e. the authority which Christ gave to his church to forgive the sins of those who repent and to declare to those who do not repent that their sins are not forgiven. (John 20:23) Finally confession is taught with special reference to sins that people commit. The completion of the class culminates with confirmation before the congregation at the Altar, and the celebration of the Holy Communion. The catechumens become full members of the congregation.

Let him that is taught in the word communicate unto him that teacheth in all good things. (Galatians 6:6) Education is not out of the blue but biblical in terms of the above text. The student must communicate with the teacher that teaches good things.

The apostle Paul in his letter to Galatians moves to another topic namely, the responsibility to meet the needs of Christian workers, while it is possible that Paul has in mind more than finances. The verb *share* (Greek *Koinoneo*) is used elsewhere by Paul to speak of financial contribution. (Carson et al 1994:1219)

The literal meaning of "teach" is fundamentally meant to give lessons at school, while the school is an institution for educating children or giving instruction. As matter of fact a nation is a nation by its children. For the nation to carry out tradition the young ones must be taught for continuity to be maintained. Any community is banking on the young ones to exist in the future. The word teaching in Galatians specifically refers to acquired knowledge, and that is in this context used as a burden for the one that is taught who should communicate with the teacher.

This referral is used specifically to elucidate the need for training sufficing that children are to be taught and the fact that they go to school is relevant. Therefore the church is inline with the bible when it emphasises their training.

“You shall honour your father and mother”

To fatherhood and motherhood God has given the special distinction, above all estates that are beneath it, that he commands us not simply to love our parents but also to honour them. Thus he distinguishes father and mother above all other persons on earth, and places them next to himself. For it is a much greater thing to honour than to love. (Tappert 1959:379)

Elderly people are normally without parents and children have parents. This is simple evidence that they (children) are to be taught to honour their parents. Though Tappert does not clearly say that but it is the spirit of the Martin Luther catechism, hence the teaching of the Ten Commandments.

In youth ministry this mode of God’s coming to people is important for more than one reason. First of all youth ministry is about people who, relatively speaking, have only “recently” joined the older people on the road of *Jahwe* with his people. Initiation into the way, guidance on it, wise choices for living on the way, is part of this congregational ministry to, with and through the youth. This is the central aspect of the *didache*: it is about a lifelong commitment to be a disciple (pupil) of Christ. Like other modes of ministry *didache* seldom if ever occurs in isolation. As such it emphasises the congregational *didache* becoming part of edification (*oikodomein*) and training (*katartidzein*) of the people of God to ably represent him, as his people, in this world. (Nel.2000: 91)

Malan provides the reason why teaching and training is of utmost importance for the Christian youth. He further says that teaching provides initiation and guidance on the way to committed discipleship. The reason is to enable the young Christians to represent Christ. ELCSA has a youth league that has a constitution specifically meant for young people. Programs are established for the Youth League that includes singing, bible studies, cultural days, drama etc. There are Sundays that are planned for the youth to run a full service i.e. preaching and administering the liturgy for that day.

The league conducts their fund rising activities. However the parishes do not include or make a special budget provisions for the Youth League to run. This may vary from parish to parish in terms of the financial strength of the parish.

The Christian culture is instilled during the above-mentioned Youth League program. As a matter of fact the good Christian culture went out through the window. The respect that was part of us in the olden days is now foreign to this coming up generation.

Little in Moila argues that; it is indeed difficult to define the term “African” because African is certainly not one homogeneous society. Africa is and always has been home to a variety of people with cultures that might share certain elements, yet can differ from each other significantly. While Kasenene in Moila points out that cultural groups basing their societal living on the construct of patriarchy and matriarchy respectively would evolve two different customary ethics (Moila 2002:37)

Moila obviously is indicating the diversity of cultural groups in South Africa. This indicates to us that the church in the process of Catechism lessons instils a culture of respect and Christian ethic to the children. He is quoting Kasene who further points out the differing backgrounds basing their cultural living on societal construct where ethics are formed by patriarchy and matriarchy and as a result two different customary ethics are developed for the two communities.

The church being a communion of saints regards the Christian fellowship as being an important aspect of faith. She does not deny entry because of language, however being a Christian is fundamental in the church therefore one must be converted. The church being a voluntary association one cannot claim that based on religion he/she was refused entry. Culture is basically ruled out because the church is not a cultural group. For one to be a member he / she must be prepared to live like a Christian. Every one is at liberty to leave the church and join a church of his choice as much as one can choose to remain a Lutheran for life. There is no obvious contravention as far as the bill of rights is concerned.

The constitution of South Africa provides that every one has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the bill of rights. ELCSA has all South African demographics represented in her congregations. This has caused the church to choose a language as a medium of instruction in senior council meetings and that is English. These are some of the issues that are challenging the church not only the Lutheran church but also the Christian movement in South Africa. South Africa has eleven languages that are all official in our country. The ELCSA position was adopted prior to the new dispensation in our country. This in itself requires some attention by the church. However the language problem is only prevalent in councils and it is not too much of a problem at congregational level.

ELCSA congregations use different languages depending on the language preferred by the majority of people in a locality. An example is the ELCSA Northern Diocese where there are many languages used. The far North congregations use Venda as a language in the church. The Tsonga area that is the former Gazankulu is using Shangan as a medium of instruction. The greater Sekhukhuni area is using Sepedi as a medium of instruction. Urban areas like Witbank are using both Sepedi and IsiZulu respectively. It also depends as to which language group is in majority. Hammanskraal, Warmbad this areas are using Setswana. IsiNdebele has not been introduced yet but the Diocesan Council took a resolution that ELCSAMO and the liturgy and hymnal commission must compile an Altar book. The Lutheran church follows the trend of the missionaries during their work in South Africa. ELCSA has hymn books ranging from isiZulu, Venda, Tswana, Northern Sotho, Afrikaans, English and a Tsonga hymnbook has just been completed. There is still some work to be done to cover other languages like Southern Sotho, isiSwazi, isiXhosa and isiNdebele.

5.3 Access to information and just administration

Sections 32 of the South African Constitution provides that:

Every one has the right of access to:

- Any information held by the state; and
- Any information that is held by another person and that is required for the exercise or protection of rights.

National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administration and financial burden on the state.

The constitutional right of access to information is based on the idea that people should have access to information that is in possession of the state that has an impact on them. This includes the information that is specifically about someone and, more generally, the information the state uses to make decisions affecting someone. At this level, freedom of information is closely connected to freedom of expression and the right to privacy. The second level on which freedom of information operates is political. (De Waal et al 2001:526)

Fundamentally it looks as if the access to information is more applicable to government level and political as de Waal and others are saying. Public access to information is basically aimed at encouraging transparency and accountability in the way government and public authorities operate. Companies have generally adopted this globally where public reports are generated to indicate compliance to safety and environment as well as financial performance to enhance external confidence.

By providing a right to freedom of information, the constitution has

recognised the importance of access to official information in the modern era. In addition, the Constitution provides a right of access to information in private, hands where that information relates to the exercise or protection of the rights of the information seeker. This provision recognises that information in the hands of such as employers, credit bureaus, insurance companies, banks and other financial institutions – can have considerable impact on the individual, who should be able to have access to that information in order to ensure its accuracy or challenge decisions made on the basis of the information. (De Waal et al 2001:527)

The above part to a greater extent gives leverage for people in any institution to be able to resort to the courts of law in cases of dispute of any form, should information be denied. The constitutional provision is directly supported by section 110 of the LRA where any one has access to information regarding any document in the registrar's office, as to who all unions' employer organisations etcetera are registered as at now. The right to information is inducing institutions to be transparent. The transparency, I am referring to includes any institution wherein one has vested interest. The church is not excluded because she is an employer based on the above statement by de Waal and others. This would among other things include an organisation where one contributes money even in the form of donation. This takes us to other forms of administration such as financial administration of institutions where people donate money like the church. This is however not limited to ordinary administration but include dispute mechanisms.

An employer must disclose to a trade union representative all relevant information that will allow the trade union representative to perform effectively the functions referred to in section 14(4). Whenever an employer is consulting or bargaining with a representative trade union, the employer must disclose to the representative trade union all relevant information that will allow the representative trade union to engage effectively in consultation or collective bargaining. (Section 16(2) and 16(3) of the LRA 66 of 1995 respectively)

The information required is for the trade union to be able to engage effectively in debates. Typically how can a trade union representative effectively bargain if the company withholds the information on profits made. Arguably it will only be the inflation rate, which can be used as a point of departure for the representative to use during increase debates. When profits can also be used as a reason for the trade union in substantiating the percentage demand for the increase.

Many institutions are producing public reports wherein performance is explicitly reported for the interested parties of the community. Figures are openly displayed indicating financial growth in the form of profits. Whether the information is correct or not it is another story. However

the trade union becomes able to factually debate and base reasons on the prevalent financial situation.

For the purpose of this work let us start with access to information. ELCSA has a hierarchical structure where decisions are taken. The feedback is provided through minutes of different structures or councils. The minutes are disseminated to pastors. The contents are not all communicated to the congregation. This practise is also induced by international best practice. It has slowly become a requirement for Trans-National companies to be able to sell their products in international markets. These public reports among other things cover the company's performance as far as environmental programs are concerned. The health and safety of people is also included to display that the products that are sold are free of blood of employees who work in the plants where products are manufactured.

The church does produce reports that are made available to members of the synod and councils within a diocese or ELCSA and the General assembly in the case of the whole church. Reports like the ones referred to above will assist church members to understand where the money is spent. Reports will motivate congregants to donate money without problems. Such reports must not be voluminous but very brief and precise. Voluminous reports make people not to want to read. Two or three-paged document will suffice. The reports in question must show trends to congregations. The church constitution makes no provision for the synod delegate to report on finances as used by the diocesan Council or church council respectively. Once again this omission is proof that the church constitution is outdated, and requires to be rewritten. The same applies at parish level, where no room is made for the synod delegate to report on the performance of the diocese.

The ELCSA constitution makes no provision for reports to be presented to the congregation or the parish. There is a huge constitutional gap regarding communication in the church. Information is communicated via circular documents. The circular system is nowhere mentioned in the constitution as a legal way of communication in the church. Congregants are not informed as to the growth of the church or performance in finances. The only part of the church that takes reporting seriously is the leagues of the church. All church leagues report in annual conferences where all members attend. Reports include finance, spiritual situation, membership etc. This is because the league membership is obtained by subscription.

Reporting to the general membership provides transparency to all. Today people have changed and want to know if there is progress. Where people donate money it is safe to provide reports to enable confidence to the system and managers of the system.

Section 33 of the South African Constitution provides that:

- Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- Every one whose right have been adversely affected by administrative action has the right to be given written reasons.
- National legislation must be enacted to give effect to these right, and must-
 - Provide for the review of administrative action by the court or, where appropriate, an independent and impartial tribunal;
 - Impose a duty on the state to give effect to the rights in subsection 1 and 2; and
 - Promote an efficient administration.

The entrenchment of fundamental principles of administrative law in the constitution of South Africa and the bill of rights should be seen as against the background of a long history of abuse of government power in South Africa. While the range and scope of discretionary powers of government officials was expanded by legislation, the courts' common law authority to review the exercise of that discretion was ruthlessly cut back by other clauses. In addition, the apartheid era courts were often unenthusiastic about exercising their remaining powers of review to constrain administrative power. The constitution seeks to prevent this history from being repeated by protecting the institution of judicial review of administrative power from legislative interference, while providing individuals with justiciable rights to claim relief from effects of unlawful administrative action. (De Waal et al 2001:489)

This is explicitly clear as to the purpose of the just administrative right. The aim of the principle is to prevent prerogative decisions by government officials. Looking into De Waal's argument one cannot ignore the fact that he is limiting the principle of just administration to section 8(1) in isolation to section 8(2) of Act 108 of 1996.

A provision of the bill of rights binds a natural or juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and nature of any duty imposed by the right. (Section 8(2) of Act 108 of 1996)

Given the above section of the constitution of South Africa, one cannot really exclude the church as a juristic person in terms of section 8(2). A typical example is the church's dispute resolution mechanism that is conducted through the ministerial council. The process in the church does not allow employee representation, which in turn deprives church workers of the right to representation. ELCSA as a juristic person contravenes section 33 of the bill of rights. This is evident when disputes arise between the church and the worker, whose case shall be adjudicated in the absence of the employee. In principle this deprives

the church worker of the right to be heard. Compliance to section 23 (1) of the constitution of South Africa is effected by schedule 7 part B of the Labour Relations Act 66 of 1995. The unfair labour practice as provided for in the schedule 7 is clearly defined to avoid any ambiguity.

For the purposed of this item, an unfair labour practice means any unfair act or omission that arise between an employer and an employee, involving –

- The unfair discrimination, either directly or indirectly, against an employee on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, material status or family responsibility;
- The unfair conduct of the employee relating to the promotion, demotion or training of an employee or relating to the provision of benefit to an employee
- The unfair suspension of an employee or any other disciplinary action short of dismissal in respect of an employee;
- The failure or refusal of an employer to reinstate or re-employ a former employee in terms of any agreement. (Part B 2 of schedule 7 of the LRA)

Given the above provisions one wonders as to how the ministerial council can be accepted as a tribunal for dismissal of church workers or even find anybody guilty for that matter. Paragraph 18.2 of ELCSA constitution provides the duties of the ministerial council where it is categorically explained that it shall further more be the duty of this council to counsel, admonish, reprimand, and /or mediate in disciplinary matters. Cases, which demand further disciplinary action, shall be referred to the diocesan council.

The ministerial council is composed of the bishop as the chairperson, the deans of the circuits and one pastor elected by the respective circuit conventions. The composition in itself is a crowd of men and not a panel suitable to hear a dispute. The fact of the matter is that when there is such a crowd of people discussing the case of one person in absentia how can that be regarded as fair. Yes in some cases the individual is called to account, but still without a representative fairness is omitted from the process. However the ministerial is a vehicle to institute discipline. From this council pastors are suspended or even dismissed. The recommendation thereof is referred to the diocesan council.

Given the above situation one cannot say that the dispute administration by the ministerial council amounts to just administration as provided by

the constitution of South Africa. The manner in which disputes are handled has to reflect absolute fairness to all including the defendant.

Normally, the employer should conduct an investigation to determine whether there are grounds of dismissal. This does not need to be a formal enquiry. The employer should notify the employee of the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegations. The employee should be entitled to a reasonable time to prepare the response and to the assistance of a trade union representative or fellow employee. After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with written notification of that decision. (Schedule 8(1) of the LRA)

The above-referred procedure provides some fairness when discipline is instituted against an employee. ELCSA does not apply such a procedure. The ministerial council that will make a recommendation to the diocesan council for a final decision discusses the employee. All in all there is no just administration in ELCSA for disputes to be resolved between the employer and the employee.

Every accused person has a right to a fair trial.

The word “fair trial” describes a comprehensive guarantee, the content of which is not limited to the rights described in the bill of rights. The following guarantees are expressly provided for:

- Sufficient detail of the charge;
- Adequate time and facility to prepare a defence;
- A public trial before an ordinary court;
- No unreasonable delay in respect of the beginning and conclusion of the trial
- To be present when tried;
- To choose and be represented by legal representative, or, if substantial injustice would otherwise result, to have a legal representative as assigned by the state and at state expense
- The presumption of innocence, the right to remain silent, and the right against self – incrimination;
- To adduce and challenge evidence;
- Not to be convicted for an act that was not an offence at the time it was committed;
- To be tried in a language that the accused person understands, or if that is not practicable, to have the proceedings interpreted;
- Not to be tried for an offence in respect of which the accused person has previously been acquitted or convicted; and the benefit of the least severe of prescribed punishment for the offence has been changed between the time the offence was committed and the sentencing;
- The right to appeal or review;

- To receive the information that must be supplied in a language that the person understands
- Evidence obtained in a manner that violates a right in the Bill of Rights must be excluded in the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice (Rautenbach and Malherbe 1997: 333)

Rautenbach and Malherbe are hereby elucidating the situation as per the court of law to comply with the fairness that the bill of rights is echoing. When we compare the procedure as laid down in schedule 8 of the LRA and the above points as shown by Rautenbach and Malherbe there is no material difference. As much as the ministerial council has duties allocated to it by ELCSA constitution one can see the right to appeal is provided though not in the constitution of the church. The same principle is carried in the Labour Relations Act.

It shall collect the income from the congregation and shall, together with the treasurer, be responsible for the same to the parish council. All income shall be added to the parish funds, which are administered by the parish council. The congregational council shall have the power to vote expenditure only within the limits defined by the parish council. Special collection and expenditure require special permission from the parish council. It shall see to it that the church buildings and the cemetery are maintained in a dignified manner and a good condition. (Paragraph 8.3.6 of ELCSA constitution)

The other part that is in the ambit of just administration is the administration of finances. The pastor is responsible to ensure that the funds are collected and submitted to the circuit as required in paragraph 8.3.6 but nowhere it is categorically saying that the pastor is responsible for the parish finances. When the target of the parish is not met the pastor gets no stipend. An example is parish A that is expected to collect R17 000.00 and submit to the circuit that will in turn submit to the diocese. The pastor will only receive plus minus R3 400. 00 after all deductions had been taken off. In real terms he/she only earns 20% to 28% of the total income. I do not think that this is fair to the pastor who works so hard in a parish. Should the pastor submit R16000.00 he receives no stipend. Only when he submits the balance will she / he receive his / her stipend. This is nowhere next to fair administration, while the senior officials at diocesan level receive salary every month.

Summary

The church has always played a pivotal role in shaping the moral values by teaching and training children the religion. She has produced very good results from the time when missionaries managed schools. The church also stands for the protection of children from all forms of maltreatment, neglect, abuse or degradation, exploitative labour

practices. The bill of rights is to a greater extent protecting the delicate rights of our children. There is no direct conflict constitutionally between the constitution of the country and the constitution of ELCSA. There is however an area of concern when it comes to religious education at school. It is obvious that the absence of religious education allow children to go to the labour market without this important knowledge. Then only the moral regeneration comes into play when they are adults.

The time that children will listen to the word of God is when parents are going to church. Some parents are actually forcing children to go to church. One wonders as to whether the parents are not in fact violating the child's right to choose religion and attend services where she/he wants. Will the child not be within his /her rights when she/he refuses to attend Christian church services.

The other area of concern is the prohibition of corporal punishment. Referring to Proverbs 13:24 the children must be punished for wrongdoing. Punishment is basically meant to be a rod. The constitution of South Africa is against spanking of children. One can evaluate the success of this right against the failure rate. We have to sometimes come to terms with the real situation in our country as far as the bill of rights is concerned.

ELCSA has all South African demographics in her. These were in a way delimitedated by the missionaries in terms of where each group worked. All languages are accommodated in ELCSA. However the medium of instruction is English when meetings are held in higher councils starting from the parish level. The children attend religious education through Sunday Schools, as such planting the Christian culture among our children. The culture that we had, went out of the window. The respect, conscience and fear of what the public will say which was in fact formed through Christian religion in our country is gone and forgotten. Our children are in need of parental guidance and discipline. One wonders as to where are we heading to.

Access to information is vital not only to prepare for litigation but also to enhance transparency to the Christian community within ELCSA. Public reports will assist to answer questions like what does the church do with money. This is also a good opportunity to show congregants the financial need of the church. When people know what the money is used for they will contribute more. The ELCSA constitution needs attention to address issues like how do we communicate and who is responsible to send such circulars. The constitution must have a clear line of command and all-inclusive as far as the communication is concerned. Communication must be spelt out in the constitution for all to know. At this point of time we see very little communication by higher councils. Particularly death announcements of the clergy are made through

circular documents. Theological issues are not filtered through, such as matters from faith and order commission to communicate ELCSA position on challenging theological questions. Issues such as marriage of people of the same sex are not communicated for the faith community to know the church position. The church position must be communicated regarding dual allegiance to ancestors and Christ. The church needs to communicate to all congregations to keep people conversant with the church position on controversial issues.

ELCSA's current administration of human resources needs to be reviewed to ensure compliance with human rights particularly the dispute resolving mechanism. The church cannot continue to try workers without representation. It is a costly exercise to resort to CCMA every time when a church worker's services are to be terminated. At this point of time ELCSA only realise that one is not satisfied when legal correspondence is delivered at the diocesan centre. The *audi alteram partem* principle must be considered before one can be dismissed. It goes with the principle of transparency to provide dismissible offences, so that every one knows what wrong can render him/her dismissed. One must know what offence warrants a written warning. ELCSA has to review her *modus operandi* in administering dispute cases. The ministerial council cannot in any way assist the church to comply to the procedure as provided for in schedule 8 of the LRA. Given the current situation one cannot overlook the oppression by the church to individuals that are found guilty, when the only revenue for them to exercise their right to be heard is the CCMA. This route also is indicative of elements of being unchristian. The church community view the defendant as being unchristian when resorting to the CCMA. In turn this becomes humiliating to the clergy when they are in fact exercising their right to be heard. This has a psychological effect on the basis of faith where most clergy leave the situation unchallenged.

The church has to review the system of payment because whether the target is met or not the pastor did work for the month. I believe that the pastor buried people, baptised and served Holy Communion. Therefore non-submission of synod funds cannot be used as a yardstick to measure the pastor's performance. The pastor is not in the parish to collect funds for the church. Therefore failure to submit must not result in none salary/stipend payment. This situation also has to be dealt with by the church with a view to ensure compliance to the bill of rights and the LRA.

Chapter 6

6.1 Limitation of rights and the rules of the church

Section 36 of the constitution of South Africa provides that:

- The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account all relevant factors, including-
 - The nature of the right;
 - The importance of the purpose of the limitation;
 - The nature and extent of the limitation;
 - The relation between the limitation and its purpose; and
 - Less restrictive means to achieve the purpose.
- Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

Limitation of rights is of paramount importance in any society where democracy is the order of the day. There can be no peace or order in any community when individual rights can be exercised without limits. This section makes provision government organs under specified circumstances to limit the rights for the protection of public interest. The bill of rights normally does not contain unqualified authority. It is fundamental that the rights of parliament must be limited.

When a bill of rights does not expressly provide for the limitation of rights (as is the case, for instance, with most rights in the American bill of rights and some rights in the German bill of rights) the courts have developed criteria for the limitation of rights. (Rautenbach and Malherbe1997: 309)

Rautenbach and Malherbe bring to the fore an important element that it is possible for rights not to provide limitation, and the courts normally deal with such rights as far as limitation of rights is concerned.

Example:

The Labour Court viewed the case (Anglican Church of Cape Town v Other C619/2000) that when the priest obtained a licence to perform ministerial service, such an exercise does not amount to a legally enforceable employment contract. The process of obtaining the licence to act as a priest, is nothing more than a normal entry of a priest to the ministry to put his calling, which comes from God, into action.

The above example provides us with a unique case of the Anglican Church of Cape Town versus a clergy. The court made a ruling in terms of the prevailing clauses of the Anglican Church Constitution or any other facts that prevailed at the time. This case does not make a hard and fast rule for all churches. As a matter of fact other factors may have been left out during litigation such as the provision made by the UIF act requirements.

The purpose of this Act is to establish an unemployment insurance fund to which employers and employees contribute and from which employees who become unemployed or their beneficiaries, as the case may be, are entitled to benefits and in so doing to alleviate the harmful economic and social effects of unemployment. (Section 2 of the Unemployment Insurance Act 63 of 2001)

It is evident that in terms of the Unemployment Insurance Act the church is an employer and the pastors are employees as referred to by paragraph 9 of the ELCSA constitution. It is therefore on this basis that the church is paying employee contributions to the fund. The fact that the church contributes to the UIF fund is in its self an indication that in general the pastor is an employee. It is incumbent upon the state to define or provide who all should contribute to such funds. Self employed persons are not covered by the UIF Act while pastors are in fact contributing. This situation qualifies them as employees in terms of the law. The exclusion of pastors from the employee category leaves much to be desired. It is therefore correct to say the matter still needs to be tried by the constitutional court for completeness.

The ministerial call does not in itself reduce the pastor to something else other than a legal subject entitled to human rights as enshrined in the Bill of Rights. The call is a matter of faith therefore no one shall be discriminated against on the basis of faith or conscience. The call to ministry is not in its self a limitation of rights. It is however understandable to see courts of law waving cases that involve the church and insisting that disputes be settled in the circles of the church in many instances. It is a moral issue for the judge or magistrate to adjudicate a church dispute. The magistrates and judges are also our congregants and they were taught moral values as Christians.

The organ of state that may impose the limitations, is mentioned. Legislatures, the courts, or some executive body may, for instance, be mentioned. Specific procedures that must be followed in limiting a right are described. Usually, the procedure for detaining and trying persons on criminal charges are described extensively in bills of rights. When a specific government body is charged with limitation of a right, the body has to act in accordance with the normal procedure prescribed by the Constitution or other laws. (Rautenbach and Malherbe2004: 316)

Rautenbach and Malherbe are indicating a very important aspect of the constitution of South Africa in terms of the limitation of rights. The fact that any limitation of right is governed by the relevant law irrespective of the body charged to execute the limitation. Procedures are laid down in black and white guiding the body vested with such duty. The procedure in question prevents such bodies to flout the constitution of the country and protect the violation of human rights. The procedures provide a framework within which the government body so charged can operate effectively and fairly.

There are other sections of constitution of South Africa that are portraying the limitation of rights such as section 37 of the Bill of Rights that provides the state of emergency. A state of emergency may not exceed 21 days.

The purpose for which the rights may be limited is defined. Normally the purpose is defined with reference to specific community interest for the protection of which a right may be limited, such as state security, public order, morality, public health, and the administration of justice. Section 36 of the South African Constitution does not refer to such community interests. (Rautenbach and Malherbe2004: 316)

Rautenbach and Malherbe bring forth the reason for which such limitations may be imposed. Section 36 does not provide all reasons or purposes for which limitation is possible. It is evident that limitations are instituted to achieve specific goals. Sufficing to say imprisonment is a limitation of rights with a purpose to correct behaviour. This is instituted procedurally to maintain the purpose and the individual to comply with the law. The limitation of rights as provided for in section 36 of the constitution of South Africa is making it possible for punishment.

Paragraph 6.4 of ELCSA constitution provides the limitation of rights as follows:

- A member shall lose his/her privileges only after the congregational council has first tried to win him /her according to Matthew 18:15-18.
- Everyone who is under church discipline and is suspended from Holy Communion loses the right and privileges as mentioned under 6.3.2, 3 and 4.
- Everyone who for two years has not attended church services or has not partaken of Holy Communion, or has failed to bring regularly all contributions and offerings, loses the right to take active part in deliberations and to hold any office of trust except when valid reasons approved by the congregational council can be shown.

The church applies this paragraph where a member has to be suspended for the reasons mentioned in paragraph 6.4 as limitation of rights for members. The church applies the first bullet when there are clashes among members. Should for instance one individual have a grievance levelled against a member then the congregational council shall first try to win the member according to Matthew 18:15-18. This process is aimed at correcting behaviour of a member that had behaved in a manner not approved by the church. From this process the church can discipline a member. Discipline includes excommunication of a member that is working towards the schism of the church for instance.

Penitential counselling should be understood as an opportunity of the penitent to be reconciled both with God and to the congregation. Time for such a counselling, should be determined by the counselling process itself. Penitence and absolution according to Luther should be institutionalised. (Article 1 paragraph 5 church practice and discipline)

The provision for penitent class/counselling is in adequate and literally does not provides guidance as the process. It provides no initiator and what constitutes a transgression for one to be subjected to counselling. The penitent counselling is not institutionalised, as it should in terms of Luther.

Excommunication as discipline literally means the individual may not partake Holy Communion during the period of such discipline. The individual will under normal circumstances be subjected to counselling following which the process will end with confession at the altar. Youth pregnancy is forbidden and as a result the involved youth will undergo penitent class and the process ends in front of the altar. However the penitent class is mostly possible with female members and Christians normally would not report or inform the pastor as to who the involved male. It is quite often that penitent class ends with the female party prior to the baby being baptised. This is also occurring with our male youth who find themselves in this predicament of impregnating a girl before marriage only if it is known or the parents report the matter to the pastor. Some parents keep quiet especially when the girl is from another denomination. Speaking of another denomination, the party that belong to another denomination is left out of the discipline and no penitent class can be administered to him or her.

On interviewing Rev. G. M. Madonsela of the St. Paul Apostolic Church of South Africa, he verbally confirmed that his church does not conduct penitent class. Should a member of the youth fall pregnant or impregnate a youth of another denomination he/she will be excommunicated for one year. After a year the individual will have a bath in water that was prayed for and blessed. This process welcomes the youth to the congregation after the predicament.

This is because the African Independent Churches do not have penitent class, should the other party belong to such churches. Local pastors' organisations do help in addressing such problems but it is mostly possible with the main line churches where two pastors from different denominations can come together and discuss such matters where we find discipline being exercised to both parties.

The discussion between two pastors from different denominations does pose a legal problem to day especially with the Bill of Rights. The right to privacy prevents pastors to discuss such issues as colleagues with a view to instil discipline. Section 14 (d) of the constitution of South Africa, provides that every one has the right to privacy, which includes the right not to have the privacy of their communications, infringed. Sufficing that the pastor cannot tell the other pastor without consent from his/her congregant.

This area of the right to privacy when we discuss the limitation of rights present a legal loophole especially when the confession is conducted in front of the altar in the presence of the congregation. The confidentiality is impaired because all in the congregation will know. At this point of time it does not present a problem but may at a later stage when one refuses to confess in the presence of the congregation, which will amount to private confession. While private confession is not a sin at all one may wish to go around the confidentiality problem. This is one of the thorns to Christian religion when all so heartily welcomed the freedom of religion as a package with the Bill of Rights. On face value one would have thought the freedom of religion to be in favour of the Christian faith, but it is not necessarily a bed of roses. It has been displayed here that the freedom of speech where a minister of one denomination cannot just engage a minister of another denomination on matters pertaining to an act of two people that present conflict with the norms and values of the faith.

The Bill of Rights as the offspring of democracy suggests the reasonable freedom of mankind, of which freedom in question hailed by the world as the answer for human suffering as it may be in the eyes of men. However one wonders about the impact of the very rights to the human being who is susceptible to sin and turning any good thing to evil. Some of the rights are indicative of creating a no go zone for the advancement of good norms and values. The above-mentioned anomaly of silencing the servants of God from talking to one another when things go wrong with a view to prevent a sin to pass unchallenged is not the way to go. When pastors keep quiet as our youth commit a sin that requires them to talk to one another to put things right, because of the right to privacy, have an adverse effect and lead the children of God astray. Where is our nation heading? Does the church have to succumb to the Bill of Rights to comply with circular rule even when our nation goes astray? How evil are the rights in question?

The church must not be blindfolded by the need to comply with some of the rights that are compromising our Christian values. The questions that come up are seeking to uncover the evil of some of the rights but more so an alarm is sounded for the church to dialogue with them to and identify a position. Dogmatic theologians have to deal with the evil hidden in some of the rights and how they negatively impact to some of our Christian practices. The rights have a tendency of creating a value crisis within the society where Christian values were regarded as important. Due to rights people are not shy to say that they do not identify themselves with the Christian religion.

This is another area that is not clearly spelt out in the ELCSA constitution where the limitation of rights is not categorically explained. This allows a degree of discretion, which makes one situation to be treated differently from two similar transgressions or omissions.

6.2 Enforcement of rights in voluntary associations and common law

The Constitution of South Africa has mechanisms to ensure the enforcement of rights. The constitution establishes certain institutions specifically designed to provide and support the envisaged system of democracy. The mechanisms in question are to ensure transparency of the government. The institutions are required to be independent. They are subject only to the constitution of the country and the law.

Section 181 of the constitution of South Africa provides that the following state institutions strengthen constitutional democracy in the Republic:

- The Public Protector
- The Human Rights Commission
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- The Commission for Gender Equality
- The Auditor General
- The Electoral Commission

It further provides that these institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

The constitution is designed with facilities to enhance the enforcement of the constitution to ensure that democracy is realised. The institutions that are provided by section 181 of the constitution are put in place to monitor compliance to the constitution of the country. Without these facilities democracy will not be strengthened.

The functions of the South African Human Rights Commission are to:

- Promote respect for human rights and culture of human rights;
- Promote the protection, development and attainment of human rights; and
- Monitor and assess the observance of human rights in the Republic

The South African Human Rights Commission has the power, as regulated by national legislation, necessary to perform its functions, including the power:

- To investigate and to report on observance of human rights
- To take steps to secure appropriate redress where human rights have been violated;
- To carry out research; and
- To educate.

Each year the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and environment. The South African Human Rights Commission has the additional powers and functions prescribed by national legislation. (Bekink 2003:360)

For the purpose of this work only the function of the Human Rights Commission are discussed to indicate the importance of the institutions as tabled in section 9 of the constitution of South Africa. The functions as enumerated by Bekink are the indicative power the commission has to monitor compliance to the requirements of democracy. It is therefore obvious that a constitution must have the enforcement clause to ensure compliance to the requirements. Section 167 is excluded from the institutions referred to in section 181. It is the authority to interpret the constitution. The Constitutional Court is the highest court in all-constitutional matters. It has the jurisdiction over the interpretation of the constitutional matters.

The most important is the right to freedom of association, which protects the right of individuals to form associations and join the, and afford association as such the right freely to determine and promote their goals. An association may also apply to court for enforcement of any right on behalf of members. Persons belonging to a cultural, religious or linguistic community have a right to jointly enjoy their culture, practise their religion and use their language. (Rautenbach and Malherbe 1997:297)

Voluntary associations are not in anyway exempted in as far as compliance is concerned. In general compliance is expected to all including the state. However they are juristic persons and are bearers of rights. This provides voluntary associations a collective action and the

joint protection and promotion of mutual interest. Where voluntary associations exist common law plays a role in terms of conduct, disciplinary action among members etcetera. However the constitution and the agreements interred into have a serious bearing on how certain issues are to be handled, for instance labour relations.

All human rights are founded on human dignity, which is one, indivisible, inalienable, and hence universal. This dignity lies in a person's subjectivity. A person must never be turned into an object and treated as such. But if human dignity lies in individual self determination, then the great collective power of disposal lose their force – the family, the church, tradition and, not least the biology of one's own body too. (Moltmann 1999:212)

The human rights are to a degree instilling the self-determination. When self-determination is reigning, then the great collective power loses force. The human right tend to eradicate the feeling of belonging to a group. Individualism is the greatest enemy of group control where we find the group discipline lose value. In South Africa we are slowly seeing the emerging tendency of human rights interfering with the need to marry when both parties in marriage are self-sufficient. The individualism has removed the need to belong to this important support system. The same is slowly moving into the church when one is under church discipline we see the exodus of congregants from one denomination to the other. When one is facing discipline he/she easily says I will enrol or register in another church. ELCSA is not the only church.

In the above situation we see that even the common law where one would need a transfer letter is no longer applicable. In the olden days one would need a transfer letter to go to another church and the other church would not welcome a new member without a transfer letter from the pastor of the church where the member used to affiliate.

Summary

The limitation of rights is an attribute of any constitution to instil discipline and control of members. Discipline in this instance is compliance to the said constitution.

The matter of the Anglican Church of Cape Town is not a definition of what a pastor is in terms of the Labour Relations Act. The Constitutional Court can rule such matters to give clarity as to the status of the pastor in terms of the LRA. However it is not easy for a pastor to challenge the church up to the Constitutional Court because of costs involved in such cases. The Unemployment Insurance Act is a simple example to indicate one aspect that makes a distinction of an employee. The call to ministry does not reduce the pastor to a non-citizen.

The church discipline of ELCSA needs to be reviewed to provide a dismissible offence for members who flout the constitution. In other words the church discipline document is inadequate since the defendant is not afforded an opportunity to defend. It allows a degree of discretion that will be different from one parish to another.

As much as the church needs to comply with the constitution she must not compromise the faith on matters where she should stand firm and provide guidance.

The right to privacy is a thorny one for the clergy when they take advantage of the ecumenical movements and the purpose for which they were meant. The church needs to evaluate such gaps and consult a legal practitioner for an opinion.

The voluntary associations are not exempted to comply with the Bill of Rights. The common law applies in associations in general but does not exempt the association of its employer obligations. The church is a juristic person and a bearer of rights.

Chapter 7

Conclusion

To conclude the assessment of the constitution of the Evangelical Lutheran Church in Southern Africa within the Bill of Rights as enshrined in the South African Constitution Act 108 of 1996 one cannot ignore the fact that the church constitution was born 21 years earlier. The constitution was born during the time of the apartheid regime. Therefore the new dispensation has some serious effects on the church constitution. At the time the Bill of Rights was not part of our life. The country is still grappling with the problem of understanding the meaning of the human rights. This suggests that the church constitution needs attention. Even the current copy of the church constitution was revised in December 1994, which still falls outside the new dispensation period.

It must be noted that when the ELCSA constitution is quoted it becomes difficult to understand a paragraph without seeing the heading. A typical example is the paragraph below where it seems as if there is no verb word to elucidate the purpose of the paragraph. There are missing words to complete the sense in the paragraph, and that is *shall form the General Assembly*. These words should have been fitted immediately after *amongst its member*. It tends to sound odd as if it makes no sense to the one who does not know or have a copy thereof. This is as a result of the way it was written leaving out clear explanations to illuminate the intention of a said clause. Meaning that the ELCSA constitution is inadequately written. This creates problems of understanding when the courts of justice are to adjudicate in a dispute. However not all paragraphs are indicative of this problem. The constitution of ELCSA is vague, incomplete and misleading.

“The bishops of the dioceses of the church, all members of the Church council and four ordained ministers and eight lay members from each diocese as elected by the diocesan synod from amongst its members. Each diocesan synod shall make provision for deputies. (Paragraph 20.1.1)”

The intention of the paragraph of the constitution must be easily ascertainable at first glance for any one to understand the document. The purpose is defeated when the framer only understands the intention. The document was intended for use by all church structures, and one can imagine the confusion that will arise from different interpretation and inconsistent application.

ELCSA Constitution Inadequacies

The supremacy of the constitution of South Africa in simple terms means that any law or situation that is challenging the human right must be tested against the constitution of the Republic. The provision of paragraph 28 of the ELCSA constitution has no legal force except within the Lutheran community in cases where there is a dispute on the interpretation of the clause. Hence the Supreme Court of South Africa disregarded a silent meaning in paragraph 16.2.1, where it provides that the bishop of the diocese in consultation with the diocesan council shall have the right to convene an extraordinary synod. The presiding bishop of the time understood the clause as providing a silent meaning that the bishop of the diocese has the power to convene an extraordinary synod in cases where the bishop of the diocese has a dispute with his council. The fact that according to paragraph 16.2.2 of the ELCSA constitution he/she shall announce to all parishes of the diocese the time, the place and the general agenda not less than four weeks prior to the meeting does not overrule the preceding paragraph i.e. 16.2.1. This presents a loophole in the church constitution should a dispute arise between the bishop of the diocese and the diocesan council. The ELCSA constitution has to spell out every thing and not leave grey areas that can be used technically against the church, given the above situation where the presiding bishop offered the advice that the bishop of the Northern Diocese must convene an extra ordinary synod. The constitution of ELCSA lacks clarity of authority regarding senior church officials when it comes to prerogative decisions.

Part II paragraph 8.2 of the byelaws of ELCSA constitution provides for the elections of the church. This part of the byelaws is supported by paragraph 8.1.1 and 8.1.8 that provides the procedure for elections at congregational level. On the basis of the above-referred clauses of ELCSA constitution the church complies with the principles of democracy as enshrined in the Bill of Rights particularly to elections in terms of representation of laypersons and the clergy through out all church structures.

The ELCSA constitution has an inconsistent structure from the congregation to the top. Only the diocesan synod is chaired by the layperson that is the president of the synod and has a deputy. The clergy including the general assembly that is chaired by the presiding bishop chairs all other structure's meetings. Why the clergy chairs the other levels? Another inconsistency is in paragraph 11.3.9 where a standing committee on finance consisting of the parish pastor, the treasurer and two members elected by the parish council shall be responsible to the parish. The constitution provides no such a committee on circuit level, the diocesan level or ELCSA herself. Finance planning committees are established at diocese and ELCSA level to supplement for the omission.

Such committees are governed loosely by each diocese and ELCSA as each level deems it fit with no documented guidelines. Accounting principles may be implemented but cannot be maintained in such a situation. The inconsistencies need to be rationalised for the above reasons to be evaluated and to enable some consistency.

The diocesan council collectively take decisions where the bishop carries responsibility as the head of the diocese. However he/she does not have authority to take prerogative decisions. The ELCSA constitution does not provide the bishop any power so as to be accountable when things go wrong.

The provision for penitent counselling is very much inadequate such that no guidance is provided from the paragraph. ELCSA has the capacity to give flesh to the provision. The offences that warrant penitent counselling are not provided at all. The internal manual of law and procedure of the Uniting Presbyterian Church in Southern Africa is a typical example when coming to matters of discipline. The Presbyterians have chapter 11 clearly stipulating the forms of discipline among others warning, rebuke, suspension etc. That is what is expected from a constitution avoiding any ambiguity.

The constitution of ELCSA is inadequate when it comes to communication systems. No procedures are clearly spelt out with responsibilities. Communication channels must be covered by the constitution to ensure that information flows across. The church has to establish a reporting system to all congregants or a document that will be circulated to all annually explaining the achievements and failures with plans to address failures.

The stewardship of the church is one side concentrating on giving only and ignoring the environmental degradation. The environmental crisis facing the world does not exclude the church in any way. The church benefited from the economical systems that caused the environmental crisis. Therefore the church must play her role in environmental crisis.

Non Compliances to the Constitution of South Africa

ELCSA is a legal person obliged to comply with the constitution of the Republic of South Africa and all other laws of the country. The church can sue or be sued and this makes the church a legal person.

According to the resolution (CC 48) those applying for this ministry must be between 35 and 55years. (S-08.04.2002-C9 document on self supporting pastors)

ELCSA is violating the constitution of the Republic, section 9 by discriminating against people who studied theology on the basis of age.

The age limit for ordination amounts to discrimination. This limitation appears nowhere in the constitution except for the document on self supporting pastors. The age appears nowhere in the great commission as provided in Matthew 28:19-20

Paragraph 9.2 of the ELCSA constitution makes provision for other church workers such as evangelists, deaconesses, social workers; nurses and such others as may be employed by the church. This part of the ELCSA constitution acknowledges the fact the church has other church workers than pastors. This is a fact because circuit offices have secretaries; diocesan offices have the executive secretary and the treasurer who are not necessarily pastors but other employees. These individuals are employees in the true sense of the LRA. Their status of being employees is not disputable in any way. They receive a salary and not a stipend and they are not treated the same as pastor i.e. their disputes are dealt with by the diocesan council or the circuit council respectively. They also have no representation when disputes arise. There is a difference in the way they are treated in case of a dispute. This category of employees is entitled to a trade union. The church has no recruitment policy for such employment. The church way of dealing with their dispute is a violation of the LRA while they may claim discrimination in terms of the Employment Equity Act 55 of 1998. While the church does comply with some degree to the equity act by ordaining female pastors, such as Sophie Khorombi, N. J. Sekhwari and many more.

Chapter IX section 200 of the Labour Relations Act 66 of 1995 provides that a registered trade union or employers' organisation may act in any one or more of the following capacities in *any dispute to which any of its member* is a party (a) in its interest (b) on behalf of any of its members (c) in the interest of its members. This section of the law ensures the *audi alteram partem* for employees. The church system currently disregards the right to be heard for employees in cases of disputes in terms of paragraph 18.2. of the ELCSA constitution. Every person charged for any wrong has to be afforded an opportunity to state his/her case. The church has to identify a disciplinary code and procedure that will explicitly explain the offences and the penalties thereof. There is no condition of service for one to know if he/she has bridged a condition and the punishment thereof.

ELCSA does not comply with item 4 of schedule 8 of the Labour Relations Act 66 of 1995. The schedule requires the employer to prove that dismissal was effected in accordance to fair procedure otherwise the dismissal is unfair. This is the result of the rulings of the ministerial council. Rulings by the ministerial council amount to unfair labour practice when the individual is not afforded an opportunity to put his/her case. In case of disputes every one has a right to be heard (*audi alteram partem*). The ELCSA constitution makes no provision for

disciplinary action, and has no guidelines for dismissible offences. This in itself is a contravention of section 33 of the Bill of Rights.

Paragraph 4.2.3 of ELCSA constitution provides that: Before a person can be accepted into ministry, that person shall, during his/her time of training and probation, convince the church of his/her fitness and suitability for the office.

The ELCSA constitution needs to include definitions to explain some of the terms that used to avoid ambiguities. When one looks at the above clause there are terms that are left unqualified. How suitable is suitable? What are the qualifications for one to convince the church of his fitness? Does it mean that individuals will be subjected to some psychological examination or reflex response what is it? Are there guidelines for the church to measure fitness? The words convince has a very wide end. What measurement is used for the church to can say that she is convinced? The constitution has grey areas where it sounds ambiguous.

Section 12 (2) provides the right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction, to security in and control over the body, and not to be subjected to medical or scientific experiments without informed consent.

I have associated the above clause with the divorce of a pastor where the church tends to suspend the pastor. When a pastor is engaged in the ministry the pastor's wife is insignificant until when the candidate is ordained. The pastor's wife becomes a chairperson of the women's league in the parish. When a pastor is faced with a divorce then he/she is suspended while the other party is happily employed. The fact that only the pastor enters into the contract with the church renders the exercise of suspension unfair and unconstitutional because of the right to make decisions concerning reproduction, security and control over of the body. Even the right to take a decision to divorce on the basis of subjective considerations. Suspension in its nature is punitive as a result it is as if the pastor is punished for divorcing. For the mere fact that paragraph 9 of ELCSA accepts the pastor as a worker "employee" marriage problems are personal and do not affect the status of the pastor as an employee. With all due respect of the sanctity of holy matrimony divorce is common these days. It takes two to make a couple. This does not mean that I condone divorce as such but suspension by implication means the pastor is wrong. It is wrong before the eyes of the church, which does not even know the intimate fact of the matter.

The signing of the transaction papers by the parish council representative without the power of attorney is in fact posing a legal problem. Paragraph 8.4.3 of the ELCSA constitution further presents a

problem when it compels people to use diocesan authorities to sign for the immovable property transactions. This is stated as subject to such bye-laws as may be promulgated from time to time, such documents as may be required for the purpose stated in sub-paragraph 8.4.1 shall be deemed to be duly executed when signed by any two of the following three officers of the diocese concerned: the bishop, the president of the diocesan synod and the executive secretary. It further poses a legal question when the people who gather funds to purchase cannot sign for the deed of sale. However the point of departure remains, that is the funds in question were collected in the name of the church. This needs to be reviewed before any group of people regarded as a congregation challenge this in the court, the one aggravating factor being the definition of church. That is where a group of people meet anywhere to worship God can be defined as church.

The provision of the house free of charge seems to be reasonable however the departure in ministry leave pastors stranded without accommodation. A transgression of section 26 of the constitution of South Africa is evident when a pastor's family is evicted from the parsonage. The worse part is when the pastor has passed away and the family has to vacate the house. The church makes no means to assist in obtaining a shelter. The church has to come up with a scheme to accommodate the widow after the pastor has passed away. The church has to review the above situation as a matter of urgency. Humanly speaking the situation is unwanted and cruel to people who served the church for a greater part of the family life.

Section 32 of the constitution of the Republic is not adequately complied with by the ELCSA given the lack of communication procedure. The practical area where this is inadequate is the reporting on finances. Reports are produced but they do not filter through to the congregation as such.

The church is contravening section 13 of the constitution of South Africa when a pastor's salary/stipend is withheld because the monthly financial submission did not meet the budget requirement. This actually is misuse of power because it seem as if the pastor need to submit the budgeted amount to prove that he/she is delivering. The church finances are not to be used to measure performance of pastor.

Recommendations

- That ELCSA assist church workers to establish a liaison committee to ensure compliance to the constitution on matters of discipline and representation when salaries are discussed.
- That the constitution be rewritten to close all loop holes where it is vague and ensure compliance in areas where it does not comply.
- That the church identify the disciplinary code and procedure that

will clearly indicate offences.

- That the church comes out clear on some issues such matters of equality when one reads commandment number nine “ thou shall not covet thy neighbours wife”. The argument is that the woman is listed with the rest of the man’s possessions. Does it mean she is the man’s property?
- That the church shortens the protocol for a position to be identified so as to enable response while the matter on the table is still fresh.
- That the church needs to engage in environmental protection programmes as on of her stewardship activities.
- That the current payment system of the church be reviewed.
- That the church employ a human resources specialist to advise the whole ELCSA

In general the ELCSA constitution has indicated a number of flaws in it when compared with the Bill of Rights as enshrined in the constitution of South Africa. The constitution of the church has also indicated a degree of ambiguity that leaves the church open to loose cases in the court of law. Therefore the constitution must be rewritten to address the prevailing legal loophole. The church under normal circumstances would not be evaluated for legal compliance unless there is a person challenging the legality of some of the action of the church. However the constitution of the church has to be structured in a way that the simple rule of the law is met.

Let every soul be subject unto the higher power, for there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. (Romans 13:1-2)

The text refers: to calls for obedience to governing authorities. This is because there is no government without God. The existing governments were ordained by God. He who is resisting, resist to what God has appointed. Those that resist will incur judgement. The same goes for the church in as far as obeying authorities is concerned. This basically means obeying the laws of the government. However the church must stand firm against evil even if the government commits the evil.

The constitution of ELCSA was adopted in the constitutional assembly held on 15 to 19 December 1975 at Rustenburg, Tlhabane. The constitution of South Africa was adopted on 08 May 1996 and amended on 11 October 1996 by the constitutional assembly. It is obvious from this situation that the ELCSA constitution was put together and adopted during the rule of the National Party in consideration of the constitution of South Africa at the time. This suggests that the bill of rights was not taken into account when the constitution of ELCSA was written.

The church's top down management system of administration is questionable. The harmony of rights and the ELCSA constitution was tested. The labour relations requirements are not taken into consideration by the ELCSA constitution given the procedures followed to add in addressing employee disputes.

The ELCSA constitution was critically evaluated for compliance. The areas of the South African Constitution that were not considered at the initial stage of the church constitution were identified during the study. It is imperative though that the Church should not find her self-making concessions on issues that are contrary to Christian beliefs and norms that form the basis of the faith.

Dr Martin Luther's two kingdoms provided some guidance when the church was under pressure regarding certain issues that are required by the law of the country. Particularly the church does not condone abortion.

In this study it was established that some areas require the church to mobilise and challenge the state.

The study is concluded by a discussion of areas that present conflict between the church and legal requirements, areas that the church is omitting to do and areas that the church has to take a stand on. This discussion included recommendations that the church has to consider ensuring that legislation is complied with and that there is no conflict with the church constitution.

BIBLIOGRAPHY

- Althaus, P 1981. *The theology of Martin Luther*, Philadelphia: USA
- Bekink, B 2003. *Principles of South African Constitutional Law*: Pretoria: RSA
- Berliner Missionswerk, 2000. *Statement on the History of the Berlin Mission in South Africa*, Berlin: Germany
- Burkett, E and F. Bruni 1993. *A Gospel of Shame*: Viking Penguin: USA
- By-laws to the constitution of ELCSA*, 1995 Bonaero Park: RSA
- Cilliers, H. S. et al 2001. *Corporate Law (3rd edition)*, Durban: RSA
- Constitution of the Evangelical Lutheran Church in Southern Africa*, 1994 Bonaero Park: RSA
- Constitution of the Republic of South Africa*, 1996(Act 108 of 1996), Government Printers: RSA
- Carson, D. A. 1994. *New bible commentary (21st century edition)* The Bath Press: UK
- De Waal, J. et al 2001. *The Bill of Rights Handbook (4th edition)*: Juta & Co.: Lansdowne
- Editorial reviews, Amazon Books. 19 April 2005 *A Church at war Anglican and homosexuality file*, Amazon.com: Books (www.amzon.com)
- Ferguson, S. B. 1988. *New Dictionary of theology*, Leicester: England
- Gritsch, E. W. and R. W. Jenson 1976 *Lutheranism*, Philadelphia: USA
- Heywood, A. 1997. *Politics*, London: Britain
- Imberg, J 1995. *Christian life*, Alvesta: Sweden
- Interim Manual of the Uniting Presbyterian Church in Southern Africa*: Lovedale Press: RSA, 2001.
- Köning, A 2004. *Jesus, Name above all names*, Cape Town: RSA
- Kritzinger, D 2002. *No quick fixes*, Pretoria: RSA
- Labour Relations Act (Act 66 of 1995)*, Government Printers: RSA
- Malina, B. S. Joubert and J van der Watt 1996 *A time travel to the world of Jesus*, Johannesburg: RSA
- Marshall, I. H., et al 1996. *New Bible Dictionary (3rd edition)*, Leicester: England
- Mac Arthur, J 2000. *Whose money is it anyway*, Word Publishing: USA
- Mc Grath, A. E. 1997. *Christian Theology (2nd edition)*, Oxford: UK
- Moila, M. P. 2002. *Challenging Issues in African Christianity*: Unisa:RSA
- Moltmann, J. 1999. *God for a secular society*: Fortress Press : Minneapolis
- Northcott, M. S. 1996. *The Environment and Christian Ethics*, University Press: Cambridge
- Nel, M. 2000. *Youth Ministry* Pretoria: RSA
- Rautenbach, I. M. and E. F. J. Malherbe 1997. *Constitutional law* (revised second edition), Johannesburg: RSA
- Rautenbach, I. M. and E. F. J. Malherbe 2004. *Constitutional law* (fourth edition), Johannesburg: RSA
- Tappert, T 1983. *The book of concord*, Philadelphia: USA
- Unemployment Insurance Act (Act 63 of 2001)*, Government Printers: RSA
- Vardy, P 1997. *The puzzle of sex*, London: Britain



Key terms

**ECLSA CONSTITUTION
ELCSA NON-COMPLIANCE
CHURCH AND CHILDRENS RIGHTS
CHURCH AND LABOUR RELATIONS ACT
CHURCH AND THE COURTS
CHURCH AND THE BILL OF RIGHTS
CHURCH AND FREEDOM OF INFORMATION
CHURCH AND APPLICATION OF RIGHTS
EQUALITY AND BIBLICAL TONE ON EQUITY
CHURCH AND THE FREEDOM OF ASSEMBLY AND DEMONSTRATION**



CONSTITUTION OF THE EVANGELICAL LUTHERAN CHURCH IN SOUTHERN AFRICA

AND BYELAWS

CONSTITUTION OF THE EVANGELICAL LUTHERAN CHURCH IN SOUTHERN AFRICA

PART ONE: GENERAL

Part: **THE NAME**

The name of the Church is the "Evangelical Lutheran Church in Southern Africa (ELCSA)", hereinafter referred to as the Church.

Par 2:

THE FAITH AND DOCTRINE OF THE CHURCH

- 2.1 The foundation upon which the Church stands is Jesus Christ, the Word of God as proclaimed in the canonical books of the Old and New Testaments, which we believe to be correctly explained by the three ecumenical symbols, namely the Apostles Creed, the Nicene Creed and the Athanasian Creed and the writings of the Lutheran Reformation, especially the Catechisms of Dr Martin Luther and the Unaltered Augsburg Confession.
- 2.2 In addition to the above the Church may be called upon to make doctrinal statements in order to witness to and to defend Biblical truth and Christian faith against anti-Christian forces in her environment and heresies within the Church.

Par 3 :-

THE MISSION OF THE CHURCH

The mission of the Church is to glorify and praise the name of the Triune God. it is realised by:

- 3.1 Bringing the Gospel to all people through preaching and teaching the Word of God and through administering the holy sacraments;
- 3.2 Being a witness of Jesus Christ as servant to the world by word and deed in faith and love and hope;
- 3.3 Working towards the realisation of the oneness of the Body of Christ;
- 3.4 Actively supporting ecumenical movements and by being prepared to co-operate with other Churches for the extension of the Kingdom of God, provided such co operation does not violate the confessional basis of the Church.

Par 4:

THE OFFICE OF THE MINISTRY

4.1 The General Ministry

- 4.1.1 The ministry of the Church by which it carries out its mission in the world is diverse.
- 4.1.2 Every member of the Church is called to participate in the ministry in his/her own life, household and neighbourhood (1 Peter 2:9)
- 4.1.3 Individual members may be given tasks within the Church in a specific area and for a certain period of time.
- 4.1.4 Members of the Church who have been trained for certain tasks in the Church (cf 9.2.1) can be received into the service of the Church and be employed either by the Church itself or by an affiliate institution.

4.2 The Office of the Ordained Ministry

- 4.2.1 The office of the ordained ministry is the office of the Means of Grace as instituted by the Lord Himself according to Matt. 28:19-20 and John 20:22-23 to preach and to teach the word of God, to administer the holy sacraments and to shepherd His flock.
- 4.2.2 This office shall be given to and be undertaken and performed only by the one who has received a regular call by the Church and who has been ordained.

- 4.2.3 Before a person can be accepted into the ministry, that person shall, during his/her time of training and probation, convince the Church of his/her fitness and suitability for the office.
- 4.2.4 Everyone who is accepted for this ministry shall be ordained according to the rules and regulations of the Church, and under his/her signature he/she shall bind himself/herself to observe the doctrine, laws and regulations of the Church.
- 4.2.5 When a minister has been assigned to a congregation or a special office, he/she shall be inducted into the congregation or special office according to the Altar Book.
- 4.2.6 The pastoral skills for which the minister is trained, especially preaching, teaching, pastoral care and counselling and the special ministry of the forgiveness of sins assigned to him/her in ordination must receive priority in his/her ministry.
- 4.2.7 Those serving in the ministry of the Church should admonish and reprove each other.

Par 5: **THE TRANSLATIONS OF THE HOLY BIBLE. THE ALTAR BOOKS AND HYMN BOOKS OF THE CHURCH**

In all regular services of her congregations, the Church shall use the translation of the Holy Bible, the altar books and hymn books as decided upon by the General Assembly. Each diocese may submit recommendations to the General Assembly.

Par 6: **THE MEMBERS OF THE CHURCH**

6.1 **Members of the Church are:**

- 6.1.1 All adults and children who have been received into the Church through Baptism.
- 6.1.2 All members of Lutheran churches transferred according to the regulations of the Church.
- 6.1.3 All persons baptized in the name of the Triune God and in the recognized manner who have been admitted from other denominations after having been instructed in the Lutheran doctrine and who have expressed their adherence thereto.

6.2 **The Duties of the Church Members**

- 6.2.1 The essence of church membership is the call, election and incorporation into the Body of Christ, effected by the Word and the holy sacraments. Therefore every member of the church must be a member of a congregation.
- 6.2.2 Members of the Church are:
- 6.2.2.1 To worship and adore God as their Lord, to abide faithfully in the Word of God, to make regular use of the sacraments and to embrace and profess the faith and doctrine of the church;
- 6.2.2.2 To lead a Christian life, to promote the true edification and growth of the Church and to lead non-believers to Him who is the Saviour of all;
- 6.2.2.3 To observe the rules and regulations of the Church and to counsel all who

profess themselves to be her members to do the same;

6.2.2.4 To bear one another's burdens and be prepared to sacrifice their own interest for the sake of the community;

6.2.2.5 To bring regularly all contributions and offerings which have been decided upon by the Church, and to make every effort otherwise to support the Church financially, provided that no member shall be liable for any debts of the church, save to the extent of his/her unpaid contributions.

6.2.2.6 To submit to the discipline of the Church in accordance with Matt 18:15-18

6.3 **The Privileges of the Church Members**

6.3.1 Every member is entitled to the spiritual care and spiritual instruction which it is the duty of the Church to give.

6.3.2 Confirmed members shall have the privilege of attending the holy communion

and may act as sponsors for children who are brought for baptism.

6.3.3 Every member of the Church who is a communicant has the privilege to participate in deliberations on congregational affairs and to use his/her vote when decisions are taken.

6.3.4 Members who have the right to vote and who are known to take an active interest in congregational affairs may be entrusted with honorary tasks within the congregation.

6.3.5 Appeal by an individual church member against the decision of any council in terms of this Constitution in disciplinary cases shall be made to the next higher office.

6.4 **Loss of Privileges**

6.4.1 A member shall lose his/her privileges only after the congregational council has first tried to win him/her according to Matt. 18:15-18.

6.4.2 Everyone who is undergoing church discipline and is suspended from holy communion loses the rights and privileges as mentioned under 6.3.2, 3 and 4.

6.4.3 Everyone who for two years has not attended church services or has not partaken of holy communion, or has failed to bring regularly all contributions and offerings, loses the right to take active part in deliberations and to hold any office of trust except when valid reasons approved by the congregational council can be shown.

6.5 **Termination of Church Membership**

6.5.1 Any person wishing to sever connections with the Church shall submit a written statement or make a verbal declaration to the congregational council.

- 6.5.2 Membership may be terminated by the bishop after careful consideration by the congregational, the parish, the circuit and the diocesan councils.
- 6.5.3 Any person who has for any reason whatsoever ceased to be a member of the Church shall forfeit the right of membership and any right and claim to any property of the Church and/or any congregation of the Church, as well as any claim for refund, in whole or in part, of any contribution, subscription or other dues paid by such person prior to the cessation of membership.
- 6.5.4 Neither the heirs nor the executor nor the administrator of the estate of a deceased member shall have any claim whatsoever against the Church or any of her congregations for refund of any contributions or subscriptions or other dues paid by or on behalf of such deceased member.

PART II: THE CONGREGATION

Par 7: THE CONGREGATION

- 7.1 A congregation is the communion of saints in a certain locality, where the Word of God is regularly taught and the sacraments are administered. The establishment of a congregation needs approval of the Diocesan Council.
- 7.2 In every congregation there shall be a person commissioned to proclaim the Word of God. The responsibility for shepherding and administering the affairs of the congregation shall rest with the pastor, except otherwise defined by the paragraph 10.3.
- 7.3 A place where the Means of Grace are regularly offered, but where a congregation has not been established, shall be known as a preaching place.
- 7.4 In every congregation a congregational meeting shall be convened at least once a year. The congregational meeting consists of all members of the congregation who are entitled to vote. The pastor or his/her representative shall be chairperson of the congregational meeting. In case of a demand by the congregational council or by the majority of members the pastor must call a congregational meeting. If he/she fails to comply with the demand, the congregational council may appeal to the pastor-in-charge / dean, the pastor to be informed accordingly. The congregational meeting receives and discusses reports on the work of the pastor and the elders, and on the finances and property of the church within the congregational council.

Par 8: THE CONGREGATIONAL COUNCIL

- 8.1 **The Members of the Congregational Council**
- 8.1.1 Each congregation shall have a congregational council. Permanent members shall be the person in charge of the congregation and other full-time Church workers. Elected members shall be the elders who are elected for a period of six years and may be re-elected. Leaders of local associations/institutions may be co-opted to meetings of the congregational council.
- 8.1.2 The number of elders shall be determined by the Parish Council in accordance with the needs of each congregation.
- 8.1.3 All communicants of the congregation are eligible for the office of elders.

- 8.1.4 A list of nominations shall be compiled by the congregational council after receiving proposals from the congregation. The list of nominations shall be approved by the Parish Council and shall, if possible, contain at least twice as many names as there are positions to be filled.
- 8.1.5 On two successive Sundays preceding the election, the day, time and place of the election as well as the names of the nominees shall be announced publicly to the congregation.
- 8.1.6 The election may be made by ballot or in such a manner as shall be decided by the Parish Council. The results shall be announced to the congregation s immediately thereafter, intercession then being made for the elected.
- 8.1.7 The induction of the elders shall be performed according to the form prescribed in the Church Altar Book.
- 8.1.8 Should any member of the congregational council cease during his/her period of office to hold the necessary qualifications, or should he/she manifestly neglect his/her office, or act contrary to resolutions of the congregational or the parish council or the diocesan synod or council, and show himself/herself unworthy in any way to hold office, he/she ceases to be a member of the congregational council, final action to be taken by the parish council. An announcement to that effect shall be made by the pastor-in-charge or his/her deputy.
- 8.1.9 Should any member of the congregational council resign or die during his/her term of office, or should he/she be suspended from office, the congregational council shall have the power to elect a substitute for him/her for the remainder of his/her period of office. He/she, too, shall be inducted according to the Altar Book.

8.2 The Meetings of the Congregational Council

- 8.2.1 The pastor, evangelist or helper in charge of a congregation shall be convenor and chairperson of the Congregational Council.
- 8.2.2 Meetings shall be held at least once a quarter.
- 8.2.3 It shall elect a vice chairperson, secretary, assistant secretary and treasurer from amongst its members.
- 8.2.4 The secretary shall be responsible for recording the minutes of each meeting. A copy of the minutes shall be sent to the parish pastor for the parish council.
- 8.2.5 The treasurer shall administer the funds of the congregation under the guidance of the congregational council.
- 8.2.6 The leader, treasurer and a member of the congregational council shall form a standing committee on finance.
- 8.2.7 To form a quorum at least half the number of members including the chairperson, or in his/her absence the vice chairperson, or in his/her absence the secretary shall be present. In the event of none of the aforementioned office bearers being present, no meeting shall be held.
- 8.2.8 All resolutions shall be passed by a majority of votes except for those relating to the amendment of the constitution. In case of a tie, the chairperson shall have a casting vote.

8.3 **The Functions of the Congregational Council**

- 8.3.1 The Congregational Council shall assist the person in charge of the congregation in administering the congregation.
- 8.3.2 It shall strive to stimulate congregational life and shall be alert to guard against unchristian practices and beliefs penetrating the congregation, and against the influence of sectarian activities.
- 8.3.3 It shall assist in arranging for locality and times for children and youth league work, prayer worn en's league and any other organisation or association of the Church.
- 8.3.4 It shall mediate in cases of discord, dispute and schism, which may arise among the members of the congregation. In its responsibility to God and in strict impartiality it shall strive to effect reconciliation and discourage the parties from resorting to courts of law.
- 8.3.5 It shall ensure that the regulations of the Church and the decisions of the higher councils are implemented in the congregation.
- 8.3.6 It shall collect all income from the congregation and shall, together with the treasurer, be responsible for the same to the Parish Council. All income shall be added to the parish funds which are administered by the Parish Council. The Congregational Council shall have the power to vote expenditure only within the limits defined by the Parish Council. Special collections and expenditure require special permission from the Parish Council. It shall see to it that the church buildings and the cemetery are maintained in a dignified manner and a good condition.

8.4 **The Property of the Congregation**

- 8.4.1 The Congregational Council is empowered to collect and administer funds for church purposes and, subject to the consent of the Diocesan Council, is empowered to acquire, own, sell or in any reasonable manner to deal with movable property.
- 8.4.2 Such funds as may be collected and such movable property as may be acquired will be owned by the congregation in perpetual succession and no individual member shall have any rights thereto by reason only of his/her membership of the church.
- 8.4.3 Subject to such bye-laws as may be promulgated from time to time, such documents as may be required for the purposes stated in sub-paragraph 8.4.1 shall be deemed to be duly executed when signed by any two of the following three officers of the diocese concerned: the bishop, the president of the diocesan synod and the executive secretary.
- 8.4.4 Any immovable property already acquired by or for any congregation and any immovable property which may hereinafter be acquired by or for any congregation and all bonds and other securities in favour of any congregation may be transferred to and registered in the name of the congregation.
- 8.4.5 Any power of attorney, consent or other document required for the purposes stated in sub-par. 8.4.4. shall be deemed to be duly executed when signed by any two of the following three officers of the diocese concerned: the bishop, the president of the diocesan synod and the executive secretary.
- 8.4.6 Any property of any congregation shall become the property of the diocese when

such a congregation ceases to exist or has terminated its association with the church.

8.5 **The Constitution of the Congregation**

The provision of Part II of this Constitution shall be deemed to be the Constitution of a congregation.

Par.9 **CHURCH WORKERS IN THE CONGREGATION**

9.1 **The Pastor**

9.1.1 When a pastor, called and ordained according to par. 4, has been entrusted with the care of the congregation, he/she shall be inducted by the dean of the circuit and is in duty bound to observe the rules and regulations of the church. He/she shall be transferable to any place within the area of the church in accordance with par. 17.4.4.1.

9.1.2 The duties of the pastor are:

9.1.2.1 To preach and teach the Word of God to Christians and non-Christians and to administer the holy sacraments in accordance with the confessions of the Church.

9.1.2.2 To lead his/her fellow Christians in the Christian way of life, himself/herself setting an example.

9.1.2.3 To visit and call regularly on all members of his/her congregation, especially the sick, the depressed, the poor and needy, and to give them pastoral care.

9.1.2.4 To comfort, instruct, admonish and warn both publicly and privately the members of his/her congregation as the Word of God directs.

9.1.2.5 To hear public and private confession, absolve and discipline according to the word of God. He/she shall not reveal to anybody what has been entrusted to him/her in private confession or pastoral counseling.

9.1.2.6 To devote himself/herself to the teaching and nurturing of young people.

9.1.2.7 To be ever mindful of his/her calling to bring men to Christ.

9.1.2.8 To guide the life of the congregation in co-operation with the Congregational Council.

9.1.2.9 To be the chairperson of the Congregational Council and the Congregational Meeting.

9.1.2.10 To keep clear and accurate records and make annual and other reports as required.

9.2 **Other Church Workers**

9.2.1 Other trained workers employed by the Church are evangelists, deaconesses, social workers, nurses and such others as may be employed by the Church. They shall be inducted by the parish pastor and are transferable to any place within the Church.

9.2.2.1 The evangelist is an assistant to the pastor in congregational work, especially in

the teaching ministry and the missionary outreach.

9.2.2.2 The deaconess shall assist the pastor in work among children and women, in the visiting of the sick, and such other duties as may be assigned by the Parish Council.

9.2.2.3 Other offices shall be regulated in bye-laws.

9.2.3 The pastor shall meet with these workers regularly to help them in carrying out their duties and to plan the work in the congregation with them.

9.3 **Honorary Workers**

Members of the church who have accepted the call for a special lay office in the congregation (par. 4.1.3) serve the Church in an honorary capacity. They shall do their work in close co-operation with the trained workers of the church. The Church shall endeavour to offer them guidance and to invite them for training and refresher courses.

Par. 10 **PART III - THE PARISH**

10.1 A parish is a congregation or a group of congregations within a defined area. The boundaries of the parish shall be defined by the Diocesan Council upon recommendation of the Circuit Council.

10.2 Regulations in respect of transfer of church membership from one parish to another shall be laid down by the Diocesan Council from time to time.

10.3 The parish shall be headed by an ordained minister. Where there are several

pastors working in one parish, the Diocesan Council upon recommendation of the Circuit Council shall define their duties and appoint one as parish pastor. The parish pastor is an ex-officio member of all congregational councils and committees in the parish.

10.4 The parish pastor shall send two copies of his/her annual report to the dean of the circuit and the dean in turn sends a copy to the bishop with his/her comments.

10.5 A parish rally shall be called at least once a year for edification, devotion and strengthening the sense of fellowship in Christ. Where parishes are too big, separate meetings should be held at different centres within the parish.

Par. 11 **THE PARISH COUNCIL**

11.1 **The members of the Parish Council**

11.1.1 The parish council is composed of permanent and elected members. Permanent members are all full-time workers viz. pastors, evangelists and sisters in that parish and other persons who are in charge of the congregations. Elected members are elders delegated by the congregational councils for a period of six years. The number of members shall be determined by the Circuit Council in accordance with the needs of each parish. Representatives of church associations within the parish may be co-opted but without voting rights.

11.1.2 Other persons may be invited to a meeting but shall have no vote.

11.1.3 Should any member of the Parish Council cease during his/her period of office to hold the necessary qualifications or should he/she manifestly neglect his/her

office or act contrary to resolutions of the Parish Council or the Diocesan Synod or Council and show himself/herself unworthy in any way to hold office, he/she ceases to be a member of the Parish Council. An announcement to that effect shall be made by the pastor-in-charge.

11.2 **The Meetings of the Parish Council**

- 11.2.1 The parish pastor is the convenor and chairperson of the parish council and is responsible for the orderly conduct of meetings and for the implementation of the decisions.
- 11.2.2 It shall elect a vice-chairperson, secretary, assistant secretary and treasurer from amongst its members.
- 11.2.3 It shall meet regularly once in every three months. Extra-ordinary meetings may be convened by the chairperson. The chairperson shall call a meeting when requested by one third of the voting members of the council or by the dean of the circuit.
- 11.2.4 To form a quorum, at least half the number of members including the chairperson, or in his/her absence the vice-chairperson, or in his/her absence the secretary, shall be present. In the event of none of the aforementioned office bearers being present, no meeting shall be held.
- 11.2.5 All resolutions shall be passed by a majority of votes except for those relating to the amendment of the constitution. In case of a tie, the chairperson shall have a casting vote.
- 11.2.6 Minutes of the meetings shall be recorded by the secretary and signed by the chairperson and secretary. The chairperson shall have custody of the minutes book. A copy of the minutes is to be sent to the dean for the Circuit Council.
- 11.2.7 It shall have an Executive Committee consisting of the chairperson, the vice-chairperson, the synod delegate(s), the secretary and the treasurer. The executive committee shall decide on matters which need immediate attention and cannot wait for the next meeting of the parish council.

11.3 **Functions of the Parish Council**

- 11.3.1 The parish council shall faithfully assist all congregational councils and church workers in the parish in congregational and evangelistic work. It shall take care of all activities in the parish. It shall also promote and supervise the meetings and rallies of all associations organised in the parish.
- 11.3.2 It shall act upon matters referred to it by the congregational councils.
- 11.3.3 It shall, within its area, put into effect the resolutions of the Circuit Council, the Diocesan Council and Synod, and the Church Council and General Assembly.
- 11.3.4 Any matter which it wishes to refer to the synod must be sent through the Circuit Council.
- 11.3.5 Difficult questions which are beyond its powers shall be submitted to the Circuit Council for consideration.
- 11.3.6 Under the supervision of the Diocesan Council it shall administer church funds and property within the parish. It shall also supervise the erection and maintenance of all church buildings in the parish.

- 11.3.7 The treasurer shall keep the parish accounts, receive and disburse, invest and withdraw money as ordered by the Parish Council.
- 11.3.8 The treasurer shall immediately submit the monthly returns of income and expenditure together with an assessed amount of the income as decided upon by the General Assembly
- 11.3.9 A standing committee on finance consisting of the parish pastor, the treasurer and two members elected by the parish council shall be responsible to the parish council for the proper keeping of the books, for compiling the monthly returns of income and expenditure at the end of each month, for preparing the annual estimates for the ensuing year and for auditing all accounts of the congregations. The standing committee on finance shall elect its own chairperson. The members of the committee shall serve for a period of six years and may be re-elected.
- 11.4 **The Property of the Parish**
- 11.4.1 The parish council is empowered to collect and administer funds for church purposes and, subject to the consent of the Diocesan Council, is empowered to acquire, own, sell or in any reasonable manner to deal with movable property.
- 11.4.2 Such funds as may be collected and such movable property as may be acquired will be owned by the parish in perpetual succession and no individual member shall have any rights thereto by reason only of his/her membership of the Church.
- 11.4.3 Subject to such bye-laws as may be promulgated from time to time, such documents as may be required for the purposes stated in sub-par. 11.4.1. shall be acquired by or for any parish and all bonds and other securities in favour of any parish may be transferred to and registered in the name of the parish.
- 11.4.4 Any immovable property already acquired by or for any parish and any immovable property which may hereinafter be acquired by or for any parish and all bonds and other securities in favour of any parish may be transferred to and registered in the name of the parish.
- 11.4.5 Any power of attorney, consent or other document required for the purposes stated in sub-par. 11.4.4. shall be deemed to be duly executed when signed by any two of the following three officers of the diocese concerned: the bishop, the president of the diocesan synod and the executive secretary.
- 11.4.6 Any property of any parish shall become the property of the diocese when such parish ceases to exist or has terminated its association with the Church.
- 11.5 **The Constitution of a Parish**
- The provision of Part III of this Constitution shall be deemed to be the constitution of a parish.

PART IV: THE CIRCUIT

Par. 12 The Circuit

- 12.1 The parishes of a diocese shall be grouped into circuits on a geographical basis, this grouping to be done by the Diocesan Council on recommendation by the Circuit Council or councils concerned subject to ratification by the Church Council. The leader of a circuit shall be a dean.

12.2 Circuit Meeting

- 12.2.1 In every circuit a circuit meeting shall be called by the Dean once a year.
- 12.2.2 It shall consist of the dean who is ex-officio chairperson, all trained church workers (par. 9.2.) and lay delegates from each parish, being the synod delegate(s) and one having been elected by the parish council for the annual meeting.
- 12.2.3 The circuit meeting shall elect its own secretary and assistant who shall be responsible for recording proceedings at each meeting. A copy of the minutes shall be sent to the bishop of the diocese.
- 12.2.4 To form a quorum at least half the number of members, including the dean, or in his/her absence the deans's deputy, or in his/her absence the secretary shall be present. In the event of none of the aforementioned office bearers being present no meeting shall be held.
- 12.2.5 All resolutions shall be passed by a majority of votes. In case of a tie, the chairperson shall have a casting vote.
- 12.2.6 The circuit meeting shall during its session receive a report from the dean on the work in the circuit. It shall discuss and make suggestions and recommendations to the circuit council on tasks and problems in the parishes and/or in the circuit. It shall also make recommendations on implementation of decisions of the Church.

12.3 Circuit Convention

- 12.3.1 In every circuit there shall be a circuit convention called by the dean at least once a year.
- 12.3.2 It shall consist of the dean who is ex-officio chairperson, his/her deputy and all ordained and unordained church workers within the circuit.
- 12.3.3 The circuit convention shall elect a secretary and assistant secretary from its members. They shall be responsible for the recording proceedings of the convention. Minutes shall be submitted to the circuit council, the bishop of the diocese, all parish councils and to pastors within the circuit.
- 12.3.4 It shall elect ordained and unordained workers to the diocesan synod in accordance with par. 16.1.3.
- 12.3.5 The purpose of the circuit convention is to foster theological studies and the discussion of practical problems and ways of co-operation and to make proposals to the Diocesan Council through the circuit council.

Par.13 THE CIRCUIT COUNCIL

13.1 The Members of the Circuit Council

- 13.1.1 The circuit council is composed of the dean, who is ex-officio chairperson, his/her deputy, two full-time church workers and three lay-members elected by the circuit meeting for a period of six years. They may be re-elected.

13.1.2 Should any member of the circuit council cease during his/her period of office to hold the necessary qualifications, or should he/she manifestly neglect his/her office or act contrary to resolutions of the circuit or diocesan council or synod and show himself/herself unworthy in any way to hold office, he/she ceases to be a member of the circuit council. An announcement to that effect shall be made by the dean.

13.2 **The Meetings of the Circuit Council**

13.2.1 The circuit council shall be convened by the dean of the circuit at least twice a year. Extra-ordinary meetings may be convened.

13.2.2 The circuit council shall elect a secretary and assistant secretary from amongst its members. Minutes of the meetings shall be submitted to the bishop of the diocese and to all parish councils and pastors within the circuit.

13.2.3 To form a quorum at least half the number of members including the dean, or in his/her absence the dean's deputy, or in his/her absence the secretary shall be present. In the event of none of the aforementioned office bearers being present, no meeting shall be held.

13.2.4 All resolutions shall be passed by a majority of votes. In case of a tie, the chairperson shall have a casting vote.

13.3 **The Functions of the Circuit Council**

13.3.1 It shall be responsible to the Diocesan Council and to the Circuit Meeting.

13.3.2 It shall be responsible for carrying out the resolutions of the Church in the parishes of the Circuit.

13.3.3 It shall faithfully assist the dean in the carrying out of his/her duties, especially in his/her service of visiting the parishes and congregations.

13.3.4 It shall examine the estimates of the parishes and place them before the Diocesan Council. It shall further appoint auditors to audit all parish accounts at least once a year and report on the audit to the Diocesan Council.

13.3.5 The Executive Committee of the Circuit Council shall consist of three members being: the dean, one full-time church worker, and one lay member elected by the Circuit Council from its own members for a period of six years.

Par. 14 **THE DEAN**

14.1 The dean of the circuit shall be an ordained pastor. After nominations have been received from all pastors of the diocese and the parish councils of the circuit concerned the dean shall be elected by the Diocesan Synod.

14.2 The dean shall be elected for a period of six years and may be re-elected. He/she shall be inducted by the bishop of the diocese.

14.3 **The Duties of the Dean**

- 14.3.1 He/she shall be the spiritual leader of the circuit and as such shall visit the congregations at least once in every three years, so that he/she may be fully acquainted with the life and work of the congregations in his/her circuit. He/she shall encourage, comfort, give advice and reprimand with the Word of God and also help and give spiritual care to the pastors and other church workers.
- 14.3.2 He/she shall ordinarily assist at the ordination of pastors and shall induct the pastors in his/her circuit.
- 14.3.3 He/she shall from time to time hold Church rallies for the edification of the Body of Christ and for mutual strengthening of the faith and Christian endeavour amongst members for the various parishes of the circuit.
- 14.3.4 He/she shall call and conduct circuit meetings, circuit council meetings, circuit conventions, other conferences and retreats for pastors and other Church workers within the circuit.
- 14.3.5 He/she shall in consultation with the circuit council recommend transfers and appointments of workers to the Diocesan Council and shall meet applicants and scrutinize all applications for theological and other training of the Church.
- 14.3.6 He/she shall submit to the bishop and diocesan council an annual report of the work in his/her circuit.
- 14.3.7 He/she shall be ex-officio chairperson of the circuit council and the circuit meeting and a member of all parish councils and circuit committees.
- 14.4 **The Dean's Deputy**
- The dean's deputy shall be elected for a period of six years by the diocesan council according to the bye-laws. The dean's deputy acts on behalf of the dean in case of absence or illness or in any matter delegated to him/her by the dean. In case of death he/she shall act until a new dean has been elected.

Par. 15 **PART V-THE DIOCESE**

The diocese shall be a group of circuits on a geographical basis. The delimitation of the diocese shall be effected by the Church Council in consultation with the Diocesan Council or councils concerned, subject to confirmation by the General Assembly. Each diocese shall be headed by a bishop.

Par. 16 **THE DIOCESAN SYNOD**

- 16.1 Delegates to the Diocesan Synod shall be:
- 16.1.1 The bishop, the deans of the circuits, all members of the Diocesan Council and all members of the General Assembly in the diocese.
- 16.1.2 One layperson from each parish of the diocese, as elected by the parish council; deputies are to be elected. Parishes with more than 2,000 confirmed members shall have the right to elect an additional lay delegate.
- 16.1.3 Ordained and unordained church workers selected by a convention in terms of par. 12.3.4 of the respective circuits, their number not to exceed half of that of lay delegates of that respective circuit.

- 16.1.4 Non-voting members shall be one representative for each institution (e.g. seminary, hospital) and association (e.g. youth league, men's league, women's league) within the diocese, as appointed by the governing body of the respective institution or association. These members are entitled to take part in the discussion and shall be heard when the body represented by them is under discussion.
- 16.1.5 The elected members of the Diocesan Synod shall hold office for six years and may be re-elected
- 16.2 **Meeting of the Diocesan Synod**
- 16.2.1 The diocesan synod shall meet every second year. The bishop of the diocese, in consultation with the diocesan council, shall have the right to convene an extra-ordinary meeting.
- 16.2.2 The bishop shall announce to all parishes of the diocese the time, the place and the general agenda not less than four weeks prior to the meeting
- 16.2.3 To form a quorum, at least half the number of members including the president of the synod, or in his/her absence the vice-president, or in his/her absence the bishop shall be present. In the event of none of the aforementioned office bearers being present, no meeting shall be held.
- 16.2.4 The standing agenda shall contain the following items:
- 16.2.4.1 The matters arising from the minutes of the previous synod.
- 16.2.4.2 The report of the bishop.
- 16.2.4.3 The reports of the deans.
- 16.2.4.4 Matters submitted by the Diocesan Council.
- 16.2.4.5 Reports from the institutions and associations which serve the diocese.
- 16.2.4.6 Financial report and budget of the diocese.
- 16.2.4.7 Matters submitted by the parishes as referred by the Diocesan Council through the circuit councils.
- 16.2.4.8 Bible studies and lectures on important matters.
- 16.2.4.9 Election of office bearers.
- 16.2.5 The diocesan synod shall elect its own chairperson and vice-chairperson for a period of six years who shall be known as president and vice-president of the synod respectively.
- 16.2.6 The diocesan synod shall elect a secretary who shall be responsible for keeping the minutes of the meeting. All proceedings shall be entered in a minute book. Before the meeting disperses the minutes must be read. They shall be signed by the chairperson and the secretary, duplicated and sent to all parish councils and pastors, to all voting and non-voting delegates of the synod, and to all bishops, deans and office bearers of the other dioceses of the church, not later than four weeks after the closing of the synod meeting.

- 16.2.7 Resolutions, except those relating to the amendments of the constitution (cf par. 29.2), shall be adopted by a majority of votes. In case of a tie, the chairperson shall have a casting vote.
- 16.2.8 Holy communion shall be celebrated at the meeting. The meeting shall be opened and closed by a divine service, and there shall be darkly readings of God's Word and prayer.
- 16.3 **The Functions of the Diocesan Synod**
- The diocesan synod shall have the duty:
- 16.3.1 To ensure that the mission of the church is carried out within the ambit of the diocese;
- 16.3.2 To give advice and counsel and help in matters concerning the congregations of the diocese;
- 16.3.3 To elect the bishop, deans and members of the diocesan council;
- 16.3.4 To pass resolutions in regard to financial assistance to the congregations, to prepare the budget of the diocese and to authorise collections for special purposes;
- 16.3.5 To supervise the work of the institutions and associations (of men, women, youth, teachers, and the like) within the diocese;
- 16.3.6 To appoint, if it deems it necessary, commissions to study certain aspects of the work and to advise the church authorities.
- Par. 17 **THE DIOCESAN COUNCIL**
- 17.1 The Diocesan Council shall consist of the bishop of the diocese, who is ex-officio chairperson, the deans of the diocese, the executive secretary and the treasurer of the diocese, the president of the diocesan synod and as many lay members as there are circuits in the diocese, and two pastors to be elected by the diocesan synod for a period of six years from its delegates. Deputies if required are called from those who gained the next highest vote at the election.
- 17.1.1 To form a quorum at least half the number of members including the bishop, or in his/her absence the bishop's deputy, shall be present. In the event of none of the aforementioned office bearers being present, no meeting shall be held.
- 17.1.2 Should any member of the Diocesan Council cease during his/her period of office to hold the necessary qualifications, or he/she manifestly neglect his/her office, or act contrary to resolutions of the Diocesan Council or synod and show himself/herself unworthy in any way to hold office, he/she ceases to be a , member of the diocesan council. An announcement to that effect shall be made by the bishop.
- 17.2 The Diocesan Council shall be convened by the bishop whenever necessary but not less than twice a year.
- 17.3 The Diocesan Council shall appoint a recording secretary for each meeting.
- 17.3.1 All resolutions shall be passed by a majority of votes. In case of a tie, the chairperson shall have a casting vote.

- 17.4 **Functions of the Diocesan Council**
- 17.4.1 The Diocesan Council functions on behalf of the diocesan synod when the latter is not in session and shall be responsible to it.
- 17.4.2 The Diocesan Council has the right, authority and power.
- 17.4.2.1 To do or cause to be done whatever may be deemed necessary to carry out the object of the Church and the decisions of the Diocesan synod.
- 17.4.2.2 To manage and direct the business and affairs of the diocese.
- 17.4.3 It shall prepare in advance the agenda for the meeting of the diocesan synod.
- 17.4.4.1 It shall call, appoint, transfer, suspend and terminate services of church workers assigned to the diocese by the Church Council.
- 17.4.4.2 In disciplinary matters as referred to it by the Ministerial Council the diocesan council shall take appropriate action. Workers involved shall have the right to appeal against the decision of the diocesan council within one year. The decision of the Church Council shall be final.
- 17.4.4.3 in matters involving pastors, evangelists and other full-time church workers the following procedure shall be followed: The parish pastor will try to admonish the worker and rectify the matter. If he/she fails, the matter will be referred to the Dean. If the Dean is unable to resolve the matter he/she will refer it to the bishop who will try to help the worker. If the bishop fails he/she will then refer the matter to the Ministerial Council and the procedure as outlined above shall apply.
- 17.4.5 It has the right to appoint commissions subject to approval by the Church Council
- 17.4.6 It shall regularly call ministers' and other Church workers' conferences. Proposals on matter relating to faith and doctrine shall be referred for finalisation to the church council.
- 17.4.7 It functions as the finance committee of the diocese. All income received from the parishes and from the central treasury shall be deposited to the diocesan account from which payments shall be made. The diocesan account shall transfer an assessed amount of its income from the parishes to the central treasury, from time to time as defined by the General Assembly. The diocesan council shall appoint auditors and shall submit an audited financial statement to the church council annually.
- 17.4.8 It shall have an executive consisting of the bishop or his/her deputy, the executive secretary and treasurer of the diocese and one lay-member from the diocesan council elected by it. The function of this committee shall be laid down in the bye-laws.
- 17.5 **The Property of the Diocese**
- 17.5.1 The diocesan council is empowered to collect and administer funds for Church purposes and subject to a two-thirds majority of members present and voting at a meeting of the diocesan council, to acquire, own, sell or in any reasonable manner to deal with movable property.

- 17.5.2 Such funds as may be collected and such movable property as may be acquired will be owned by the diocese in perpetual succession and no individual member shall have any right thereto by reason only of his/her membership of the church.
- 17.5.3 Any immovable property already acquired by or for any diocese and any immovable property which may hereinafter be acquired by or for any diocese and all bonds and other securities in favour of any diocese, shall be made out in, or transferred to and registered in the name of the diocese established for the area into which such immovable properties or bonds or securities fall.
- 17.5.4 Any power of attorney, consent or other document required for the purposes
17.4.4.1 It shall call, appoint, transfer, suspend and terminate services of church workers assigned to the diocese by the Church Council.
- 17.4.4.2 In disciplinary matters as referred to it by the Ministerial Council the diocesan council shall take appropriate action. Workers involved shall have the right to appeal against the decision of the diocesan council within one year. The decision of the Church Council shall be final.
- 17.4.4.3 in matters involving pastors, evangelists and other full-time church workers the following procedure shall be followed: The parish pastor will try to admonish the worker and rectify the matter. If he/she fails, the matter will be referred to the Dean. If the Dean is unable to resolve the matter he/she will refer it to the bishop who will try to help the worker. If the bishop fails he/she will then refer the matter to the Ministerial Council and the procedure as outlined above shall apply.
- 17.4.5 It has the right to appoint commissions subject to approval by the Church Council
- 17.4.6 It shall regularly call ministers' and other Church workers' conferences. Proposals on matter relating to faith and doctrine shall be referred for finalisation to the church council.
- 17.4.7 It functions as the finance committee of the diocese. All income received from the parishes and from the central treasury shall be deposited to the diocesan account from which payments shall be made. The diocesan account shall transfer an assessed amount of its income from the parishes to the central treasury, from time to time as defined by the General Assembly. The diocesan council shall appoint auditors and shall submit an audited financial statement to the church council annually.
- 17.4.8 It shall have an executive consisting of the bishop or his/her deputy, the executive secretary and treasurer of the diocese and one lay-member from the diocesan council elected by it. The function of this committee shall be laid down in the bye-laws.
- 17.5 **The Property of the Diocese**
- 17.5.1 The diocesan council is empowered to collect and administer funds for Church purposes and subject to a two-thirds majority of members present and voting at a meeting of the diocesan council, to acquire, own, sell or in any reasonable manner to deal with movable property.
- 17.5.2 Such funds as may be collected and such movable property as may be acquired will be owned by the diocese in perpetual succession and no individual member shall have any right thereto by reason only of his/her membership of the church.
- 17.5.3 Any immovable property already acquired by or for any diocese and any

immovable property which may hereinafter be acquired by or for any diocese and all bonds and other securities in favour of any diocese, shall be made out in, or transferred to and registered in the name of the diocese established for the area into which such immovable properties or bonds or securities fall.

- 17.5.4 Any power of attorney, consent or other document required for the purposes stated in par.17.5.3 or any power of attorney required for instituting, conducting or defending any action or other proceedings brought by or against a diocese, circuit, parish or congregation and/or by or against officiating members of any diocesan council, circuit council, parish council or congregational council in their official capacities, shall be deemed to be duly executed when witnessed in accordance with law and signed by any two of the following three officers of the diocese concerned: the bishop, the president of the diocesan synod and the executive secretary. Proof as to who the members of the Diocesan Council are, when required, shall be furnished by way of a copy of the minutes recording their election and/or appointment duly certified as correct under the hand of any two of the following three officers of the diocese concerned: the bishop, the president of the diocesan synod and the executive secretary.

17.6 **The Constitution of the Diocese**

The provisions of Part V of this constitution shall be deemed to be the constitution of the diocese.

Par. 18 **THE MINISTERIAL COUNCIL**

- 18.1 The Ministerial Council shall consist of the bishop as chairperson, the deans of the circuits and one pastor elected by the respective Circuit Conventions. The Ministerial Council shall have the power to co-opt experts from each circuit.

- 18.1.1 To form a quorum at least half the number of members including the chairperson, or in his/her absence the vice-chairperson shall be present. In the event of none of the aforementioned office bearers being present, no meeting shall be held.

- 18.2 The duty of the council shall be to deal with matters concerning doctrine, applications to the ministry, examination and ordination of candidates for the ministry, as well as with matter of pastoral care. Furthermore it shall be the duty of this council to counsel, admonish, reprimand and/or mediate in disciplinary matters. Cases which demand further disciplinary action shall be referred to the diocesan council. This council should also be responsible for arranging refresher courses for church workers.

- 18.3 Matters of faith and doctrine must not be decided by a majority vote but after serious theological study. Matters requiring the decision of the General Assembly must be referred to the Episcopal Council.

- 18.4 The Ministerial Council shall elect a secretary from amongst its members.

- 18.4.1 All decisions of this council must be reported to and reviewed by the Diocesan Council.

Par.19 **THE OFFICERS OF THE DIOCESE**

19.1 **The Bishop**

- 19.1.1 The bishop shall be an ordained minister. Three months before the diocesan synod, which is to elect the bishop the general secretary of the church will send the clergy roster of all the pastors in the church to all pastors, who shall nominate one candidate on this roster and send it by registered post to the chairperson of the Church Council marked "Nomination Vote". The Church Council will open these nomination votes at a Church

Council meeting and the names of the ten candidates receiving the highest number of votes will be given to the diocesan council concerned. The diocesan synod shall elect the bishop by ballot from among the ten candidates. After each ballot the candidate receiving the lowest number of votes will drop out, unless at any ballot one candidate receives a two-thirds majority of all votes cast. If at the end of the 9th ballot no candidate has received a two-third majority, the bishop will be elected on the last ballot with a simple majority.

19.1.2 The bishop shall be consecrated by the presiding bishop assisted by other bishops as determined by the Church Council. He/she shall hold office until he/she reaches retirement age. He/she may, however, lay down his/her office on his/her own. He/she may be suspended or dismissed from office because of false teaching or conduct in his/her life or deed unbecoming his/her high office.

19.1.3 **The Duties of the Bishop**

19.1.3.1 He/she is a preacher of the Word of Salvation together with all other pastors, bound with them in ordination by the confessional writings of the Church to be obedient to the Word of God.

19.1.3.2 He/she is the spiritual leader of the diocese. He/she shall encourage, comfort, give advice and reprimand the Church workers by the Word of God.

19.1.3.3 He/she shall ordain pastors on recommendation of the diocesan council and induct the deans.

19.1.3.4 He/she shall call and conduct yearly conventions for pastors/their spouses and/or other church workers and shall accept motions and proposals of such conventions and submit them to the diocesan council.

19.1.3.5 He/she shall dedicate church buildings and lay cornerstones.

19.1.3.6 He/she shall carry out visitations to the parishes and congregations of the diocese.

19.1.3.7 He/she shall be an ex-officio member of all councils in the diocese.

19.1.3.8 He/she shall act as the formal head and representative of the diocese in dealing with other churches, government and other public bodies in matters pertaining to his/her diocese.

19.1.3.9 He/she shall ensure that the decisions of the diocesan synod and council, as well as those of the General Assembly and Church Council, are carried out.

19.1.3.10 If he/she feels that theological questions are involved which need further study before the final decision can be taken, or if he/she considers that they are in conflict with decisions of the General Assembly, he/she may delay such decisions of the diocesan synod until the next session of the synod, provided that he/she refers the matter to the Ministerial Council.

19.1.3.11 He/she shall draw up an annual report of the work in the diocese which shall be sent to all parishes and pastors of the diocese and to the church council.

19.1.3.12 If for any reason he/she is unable to carry out his/her duties, the bishop's deputy shall take over his/her functions.

19.2 **The Bishop's Deputy**

The bishop's deputy shall be elected by the diocesan synod from among the deans of the

diocese. He/she shall be elected by simple majority for six years and shall serve as the vice-chairperson of the diocesan council and take over duties in the absence of the bishop from the diocese and duties assigned to him/her by the bishop.

19.3 **The Executive Secretary**

19.3.1 He/she shall be appointed by the Diocesan Council and shall be responsible to the bishop and the diocesan council. He/she must be a Lutheran communicant

19.3.2 He/she shall be the head of the administrative office of the diocese.

19.3.3 He/she shall inform the parishes of all decisions taken by the diocesan synod and council, and shall ensure that such decisions are carried out.

19.3.4 He/she shall inform the parishes of all decisions taken by the General Assembly and Church Council.

19.3.5 He/she shall be responsible for administrative matters of the diocese.

19.3.6 He/she is ex-officio member of the Diocesan Council without the right to vote.

19.4 **The Diocesan Treasurer**

19.4.1 He/she shall be appointed by the diocesan council and shall be a Lutheran communicant

19.4.2 He/she shall receive and keep safely all moneys entrusted to him/her by the Church and use such moneys in accordance with the directives of the diocesan council.

19.4.3 He/she shall keep accurate accounts of income and expenditure and submit reports to the diocesan council and the office of the general treasurer whenever required and has the right to be heard when matters affecting his/her work are discussed.

19.4.4 His/her books shall be audited in terms of par 17.4.7.

19.4.5 He/she is ex-officio member of the diocesan council without the right to vote.

PART VI: THE CHURCH

Par.20 **THE GENERAL ASSEMBLY**

20.1 Delegates to the General Assembly shall be:

20.1.1 The bishops of the dioceses of the Church, all members of the Church Council and four ordained ministers and eight lay members from each diocese as elected by the diocesan synod from amongst its members. Each diocesan synod shall make provision for deputies.

20.1.2 Non-voting members shall be the executive secretaries and treasurers of the dioceses, the rectors/principals of theological colleges and representatives of institutions and associations of the Church, as appointed by the Church Council and respective governing boards.

20.1.3 The elected members of the General Assembly shall hold office for six years and may be re-elected.

- 20.2 **The Meeting of the General Assembly**
- 20.2.1 The general assembly shall meet every second year. The presiding bishop, in agreement with the Church Council, shall have the right to convene an extra ordinary meeting.
- 20.2.2 For ordinary meetings the presiding bishop shall announce to all dioceses the time, place and the general agenda not less than three months prior to the meeting.
- 20.2.3 To form a quorum, at least half the number of members, including the presiding bishop, or in his/her absence the presiding bishop's deputy, shall be present. In the event of none of the aforementioned office bearers being present, no meeting shall be held.
- 20.2.4 The standing agenda shall contain the following:
- 20.2.4.1 The report of the presiding bishop.
- 20.2.4.2 The reports of the bishops.
- 20.2.4.3 The report of the general secretary.
- 20.2.4.4 Reports from institutions and associations.
- 20.2.4.5 Financial report and budget of the church.
- 20.2.4.6 Matters submitted by the church council.
- 20.2.4.7 Matters submitted by the diocesan councils and processed through the church council.
- 20.2.4.8 Bible studies and lectures on important matters.
- 20.2.4.9 Election of office bearers.
- 20.2.5 The presiding bishop or his/her deputy shall be the chairperson on the General Assembly. The Assembly shall elect secretaries who shall be responsible for keeping the minutes. Before the meeting disperses the minutes must be read. They shall be signed by the chairperson and the secretaries, duplicated and sent to all diocesan councils, to all voting and non-voting delegates of the assembly and to all pastors of the church not later than four weeks after the closing of the assembly.
- 20.2.6 Resolutions, except those relating to amendments of the constitution (par 29.2), shall be passed by a majority of votes. In case of a tie, the chairperson shall have a casting vote.
- 20.2.7 **Holy communion shall be celebrated at the meeting. The meeting shall be opened and closed by a divine service, and there shall be daily readings of God's Word and prayer.**
- 20.3 **The Functions of the General Assembly**
- The general assembly shall have the duty:**
- 20.3.1 **To ensure that the mission of the Church is carried out within the ambit of the Church;**

- 20.3.2 **To participate in the world mission responsibility of the Church universal;**
- 20.3.3 **To elect the presiding bishop and his/her deputy and to commission the Church Council;**
- 20.3.4 **To establish to which ecumenical bodies the Church will relate to and be a member of;**
- 20.3.5 **To be responsible for laying down conditions of service for church workers especially with regard to:**
 - 20.3.5.1 proper training of church workers.
 - 20.3.5.2 establishment of salary scales.
 - 20.3.5.3 emolument of church workers,
- 20.3.6 **To lay down the principles of inter-diocesan aid.**
- 20.3.7 **To decide the budget of the Church and to make provisions for the proper administration of the funds of the Church**
- 20.3.8 **To approve the agenda submitted by the Church Council and to receive motions;**
- 20.3.9 **To provide for standing orders for visitations by bishops and deans;**
- 20.3.'10 **To approve the bye-laws of the Church.**
- 20.3.11 **To finalise all matters that normally fall within the ambit and power of the general assembly.**

Par.21 **THE CHURCH COUNCIL**

- 21.1 **The Church Council shall consist of the presiding bishop who is ex-officio chairperson, the bishops of the dioceses, and one ordained member and two lay members from each diocese as elected by the diocesan councils for a period of six years. Each diocesan council shall make provision for alternates.**
- 21.1.1 **To form a quorum, at least half the number of members, including the presiding bishop, or in his/her absence the presiding bishop's deputy, shall be present. In the event of none of the aforementioned office bearers being present, no meeting shall be held.**
- 21.1.2 All resolutions shall be passed by a majority of votes. In case of a tie, the chairperson shall have a casting vote.
- 21.2 It shall be convened by the presiding bishop whenever necessary, as a rule, four times a year.
- 21.3 The general secretary and the general treasurer shall be non-voting members of the Church Council, the former to be responsible for the minutes.
- 21.4 **Functions of the Church Council**
- 21.4.1 It functions on behalf of the General Assembly when this is not in session and is responsible to it.

- 21.4.2 It shall provide the channel through which each of the dioceses can assist and support the others.
- 21.4.3 It shall appoint representatives/delegates to ecumenical bodies.
- 21.4.4 It has the right, authority and power:
- 21.4.4.1 To do or cause to be done whatever may be deemed necessary to carry out the object of the Church and the decisions of the general assembly when the latter is not in session.
- 21.4.4.2 To manage and direct the business and affairs of the Church.
- 21.4.5 It shall be responsible for payment of salaries to Church workers and to take the final decision on the dismissal of Church workers on recommendations of the diocesan council.
- 21.4.6 It shall receive and disburse funds donated to the church and an assessed amount from the income of each diocese, as may be decided upon by the general assembly from time to time.
- 21.4.7 It shall give a financial report to each general assembly.
- 21.4.8 It shall prepare the agenda for the meeting of the general assembly.
- 21.4.9 It shall be responsible for the assignment and cross transfers of church workers to the dioceses in consultation with the diocesan councils.
- 21.4.10 It shall have an executive committee consisting of the presiding bishop or his/her deputy, the general secretary, general treasurer and two lay members from the Church Council elected by it. The functions of this committee shall be laid down in the Bye-laws.
- Par.22 **THE EPISCOPAL COUNCIL**
- 22.1 There shall be an Episcopal Council presided over by the presiding bishop, consisting of the bishops of the diocese and one ordained member from each diocese appointed by the diocesan council. It shall have the power to co-opt.
- 22.1.1 To form a quorum, at least half the number of members, including the presiding bishop or in his/her absence the deputy, shall be present.
- 22.2 The Council shall meet at least once a year.
- 22.3 The Episcopal Council shall have the duty to advise and admonish the church as a whole and all councils of the church.
- 22.4 One of the outstanding duties shall be to take care that the unity of the church is always manifested at its life.
- 22.5 If it considers that decisions may tend to be harmful or contradictory to the teaching of the Word of God or to the doctrine of the Church, it may defer such decisions of either the General Assembly or the Church Council until the next meeting of the respective bodies.
- Par.23 **THE OFFICERS OF THE CHURCH**
- 23.1 **The Presiding Bishop**

- 23.1.1 He/she and his/her deputy shall be elected by the General Assembly from amongst the bishops of the dioceses. They shall hold office for a period of six years and may be re-elected.
- 23.1.2 He/she shall preside over the meetings of the General Assembly and the Church Council.
- 23.1.3 He/she shall act as the formal head and representative of the Church in dealing with other Churches, government and other public bodies in matters concerning the whole Church or more than one diocese.
- 23.1.4 He/she is an ex-officio member of all diocesan synods and has the right to attend meetings of the diocesan councils.
- 23.1.5 Should the presiding bishop be unable to carry out his/her duties, the deputy shall act until the next meeting of the General Assembly.
- 23.1.6 He/she shall call and conduct conventions for pastors/their spouses and other Church workers on ELCSA level and shall accept motions and proposals of such conventions and submit them to the Church Council.
- 23.2 **The Presiding Bishop's Deputy**
- 23.2.1 He/she shall carry out duties in the absence of the presiding bishop and/or as assigned to him/her.
- 23.2.2 Should the presiding bishop be unable to carry out his/her duties the deputy shall act until the next meeting of the General Assembly.
- 23.3 **The General Secretary**
- 23.3.1 He/she shall be appointed by the Church Council and be responsible to it as well as to the presiding bishop. He/she must be a Lutheran communicant. .
- 23.3.2 He/she shall be responsible for the administration of the head office of the Church and work in close co-operation with the presiding bishop.
- 23.3.3 He/she shall inform all dioceses of the decisions taken by the General Assembly and the Church Council.
- 23.3.4 He/she shall be responsible for organisational and administrative matters of the Church as instructed.
- 23.3.5 He/she is an ex-officio member without the right to vote at the General Assembly, the Church Council and all diocesan synods and has the right to attend meetings of diocesan councils.
- 23.4. **The General Treasurer**
- 23.4.1 He/she shall be appointed by the Church Council and shall be a Lutheran communicant.
- 23.4.2 He/she shall receive and keep safely all moneys entrusted to him/her by the Church, and use such moneys in accordance with the directives of the Church Council.
- 23.4.3 He/she shall keep accurate accounts of income and expenditure and submit

reports to the Church Council whenever required and has the right to be heard when matters affecting his/her work are being discussed.

- 23.4.4 His/her books must be audited by a chartered accountant at the end of every financial year.
- 23.4.5 He/she is an ex-officio member without the right to vote at the General Assembly, the Church Council and all diocesan synods and has the right to attend meetings of diocesan councils.

Par.24 **RULES OF PROCEDURE**

All councils, synods and the assembly shall draw up their own rules of procedure.

Par.25 **ACCEPTANCE OF OTHER MEMBERS**

Other Churches or synods and dioceses or other congregations may become members of this church by presenting a written application which indicates their agreement with the constitution and bye-laws of this Church. Acceptance of these applicants requires a two-thirds vote of the General Assembly of the Church.

Par.26 **THE PROPERTY OF THE CHURCH**

- 26.1 Subject to the approval of the church council or the diocesan council concerned, the Evangelical Lutheran Church in Southern Africa and every congregation, parish and diocese incorporated in or associated under the church shall respectively be entitled to acquire and own movable and immovable property.
- 26.2 Any immovable property which may have already been acquired or which may hereinafter be acquired by or for the Church and which is not registered in the name of any individual congregation, parish or diocese, and all other bonds and other securities in favour of the Church shall be made out in, transferred to, and registered in the name of the church.
- 26.3 The Church, acting only with the consent of a two-thirds majority of members present and voting at a meeting of the Church Council, as also any individual congregation or parish or diocese acting only with the consent of a two-thirds majority of members present and voting at a meeting of the congregational council or parish council or diocesan council, shall have the full right, power and authority to manage and control, to purchase, exchange, accept as a gift or otherwise lawfully acquire, to lease, invest, hire, alienate, sell or otherwise dispose of, to mortgage, pledge, hypothecate or otherwise encumber, or in any other manner deal with all or any of their respective immovable property and assets, and to cancel, vary and cede bonds or other securities provided always that the said diocesan council shall not exercise its powers under this paragraph insofar as concerns the property of any individual congregation or parish without the concurrence of the officiating congregational council or parish council, a certificate of that effect under the hand of chairperson of such council to be accepted as sufficient prima facie proof of concurrence.
- 26.4 Any power of attorney, consent or other document required for the purpose of transfer or mortgage or in connection with any deed of transfer or mortgage bond, or any power of attorney required for instituting, conducting or defending any action or other proceedings brought by or against the church and/or by or against the officiating members of the Church Council in their official capacities, shall be deemed to be duly executed when signed by the presiding bishop or his/her deputy and the general secretary or the general treasurer and witnessed in accordance with law. Any power of attorney required for instituting, conducting or defending any action or other proceedings brought by or against

a diocese, parish or congregation and/or by or against the officiating members of such diocese, parish or congregation in their capacities, shall be deemed to be duly executed when signed by any two of the following three officers of the diocese concerned: the bishop, the president of the diocesan synod and the executive secretary. Proof of who the members of the church council or of a diocesan council, are, when required, shall be furnished by way of a copy of the minute recording their election and/or appointment duly certified as correct under the hand of the presiding bishop or his/her deputy and the general secretary or the general treasurer, or under the hand of any two of the following three officers of the diocese concerned: the bishop, the president of the diocesan synod and the executive secretary, as the case may be.

Par.27. BYE-LAWS OF THIS CONSTITUTION

- 27.1 All questions and details not covered, either in whole or in part, by this constitution shall be regulated by the bye-laws of the church.
- 27.2 Bye-laws of the church shall be adopted and/or amended by a two-thirds majority of votes of voting members present in an ordinary called meeting of the General Assembly.

Par.28 INTERPRETATION OF THIS CONSTITUTION

The interpretation of this constitution rests with the General Assembly. In the event of ambiguity arising out of translation, the English text will be decisive.

Par.29 AMENDMENTS TO THIS CONSTITUTION

This constitution may be amended in the following manner:

- 29.1 A proposed amendment to this constitution shall be submitted through a diocesan council to the Church Council in writing at least eight weeks before the meeting of the General Assembly and shall be sent to all members of **the General Assembly together with the agenda.**
- 29.2 **The proposed amendment must be approved by a two-thirds majority of the voting members present at an ordinary meeting of the General Assembly at two readings which shall not be held on the same day.**

THE AMENDED TEXT AS PASSED BY THE NINETH GENERAL ASSEMBLY OF 12-16 DECEMBER 1994.

THIS TEXT SUPERSEDES ALL PREVIOUS ONES.

TH. MBULI
GENERAL SECRETARY

9 FEBRUARY 1995

BYE-LAWS TO THE CONSTITUTION OF THE EVANGELICAL LUTHERAN CHURCH IN SOUTHERN AFRICA

PART I

RELATING THE ORGANIZATION OF THE CHURCH

1 The Congregation (par. 7)

1.1 *For organizational and operational purposes a congregation shall be deemed to be a unit composed of at least 20 communicants in a given place of worship together with their spiritual leader who may be a pastor, evangelist or helper who is assisted in matters of administration by the constitutionally elected congregational council.*

1.2 *The pastor or any other church worker who has been placed to lead the congregation shall remain answerable for all that takes place in the congregation. It shall always be assumed that all activities in the congregation are initiated with his knowledge or under his guidance.*

1.3 *The congregational council is delegated with the task of deliberating on and settling organizational matters which are of interest to the spiritual life of the congregation. Matters which it cannot settle and which are beyond its constitutional powers shall be referred to the parish council through, the resolution extracted from its minutes. Neither the congregation nor the congregational council shall have authority to refer any matter to a higher body or council of the church except through the channel of the parish council,*

1.4 *The numbers of the members of the congregational council shall depend on the needs of each congregation with the approval of the parish council.*

1.5 *Congregational meetings (par. 7.4) shall be held formally at least once a year for the purpose of receiving and discussing annual reports of the pastor as well as the congregational council. It shall not be the normal practice to convene congregational day to day functioning of the congregation. This shall be a task delegated to a smaller body Which is the congregational council.*

2. The Parish (Par 1.1)

2.1 *Elected members of the Parish Council shall be composed of delegates from each congregational council according to the numerical size of the respective congregations. The apportionment of congregational representation shall be worked out by the circuit council for each parish, preferably according to the following ratio.*

2.1.1 *One delegate from each congregation with less than 100 members*

2.1.2 *Two delegates from each congregation with between 100 and 500 confirmed members.*

- 2.1.3 *Three delegates from each congregation with between 500 and 1000 confirmed members.*
- 2.1.4 *Four delegates with members from each congregation with over 1000 members.*
- 2.2 *The ideal shall be for each parish to solve local problems locally. Matters which are difficult and beyond the constitutional power of the parish council shall be referred to the circuit council.*
- 2.3 *The decision of the parish council on matters within its powers shall be binding on all congregational councils and congregations.*
- 2.4 *The Executive of the Parish Council*
- 2.4.1 *It shall act on matter whose extreme urgency makes it impossible for action to be deferred to the next regular Parish Council*
- 2.4.2 *Action of the Executive shall be reported to the Parish Council for ratification,*
- 2.4.3 *It shall also deal with any other matter expressly delegated to it by the Parish Council from time to time.*
- 2.4.4 *Apart from the above, it shall not have any other standing function.*
3. ***The Circuit (par. 12)***
- 3.1 *Parish resolutions and requests shall reach the Diocesan Council only after they have been dealt with and referred to it by the Circuit Council.*
- 3.2 ***The Executive Committee of the Circuit Council***
- 3.2.1 *It shall act on matters whose extreme urgency make it impossible for action to be deferred to the next regular Circuit Council Meeting.*
- 3.2.2 *Action of the executive shall be reported to the next circuit council for ratification.*
- 3.2.3 *It shall also deal with any other expressly delegated to it by the circuit council from time to time.*
- 3.2.4 *Apart from the above, it shall not have any other standing /function.*
4. ***The Diocese***
- 4.1 ***The Diocesan Synod***
All other church workers and members may attend as observers at their own expense.
- 4-2 ***The Diocesan Council***
- 4-2.1 *In matters within its constitutional powers the Diocesan Council shall make decisions which are binding to all councils, congregations and circuits within the diocese (par. 1 7.4-2)*
- 4.3 ***The Executive of the Diocesan Council***
- 4.3.1 *It shall act on matters whose extreme urgency makes it impossible for the action to be referred to the next regular Diocesan Council*
- 4.3.2 *Actions of the Executive shall be reported to the Diocesan Council for ratification.*
- 4.3.3 *It shall also deal with am other matter expressly delegated to it by the Diocesan Council*

from time to time.

4.3.4 *Apart from the above it shall not have any other standing function.*

5. The Church

5.1 *The General Assembly (par. 20)*

5.1.1 *All other church workers and member may attend as observers at their own expenses.*

5.2 *The Church Council (par.21)*

5.2.1 *In matters within its constitutional powers, the church council shall make decisions which are binding to all councils, dioceses, circuits, parishes and congregations of the church. No other council or unit of the church, shall cause an} decision to be made³⁴ if such decision directly or indirectly contradicts what the church council has already decided.*

5.2.2 *Only accredited deputies of the members of the church council can substitute for a member or members who are unable to attend. Under no circumstances shall members of the Diocesan Office staff serve as deputies.*

5.3 *The Church Council Executive (par. 21.4.10}*

5.3.1 *It shall act on matters whose extreme urgency makes it impossible for the action to be deferred until the next regular Church Council.*

5.3.2 *It shall also deal with an} other matter expressly delegated to it by the Church Council.*

5.3.3 *Apart from the above the Executive of the Church Council shall have no other standing functions.*

5.4 *Church Council's Other Committees*

5.4.1 *Any specialized committee set up by the Church Council shall act only within the terms of reference drawn by the Church Council*

5.4.2 *No member of an office staff of the church shall be appointed to a voting membership status of any committee. Office staff employees may serve only in an advisory capacity whenever it is necessary.*

5.4.3 *The minutes of the committees shall be circulated among committee members as well as among members of the Church Council.*

5.4.4 *The items of the agendas of the committees shall be drawn from the minutes of the Church Council or from their express mandate.*

PART II

RELATING TO CHURCH OFFICERS

6.1 **The Pastor** (par.4.2..4)

At ordination the Pastor shall be made to sign a document to the effect that in his conduct and work he will 'abide by the teachings and the constitution of the church as carried out through the decisions of the church.

The retirement age for pastors as well as other church workers shall be 65 years. After retirement church workers may serve on an annual basis until he reaches the age of 70.

6.2 **The Dean**

6.2.1 *Election of the Dean* (par. 14.1)

6.2.1.1 Nomination : *The Diocesan Council through the Executive Secretary shall send a copy of the clergy roster to every pastor of the diocese and to the parish councils of the circuit concerned, with a letter explaining the time and procedure of the nomination. This shall be done within a period of not less than a month before the date of nomination. Each pastor of the diocese as well as each parish council in the circuit shall have 1 vote. The nomination of the parish council shall take place in the absence of pastors. An acting-chairman for the parish nomination shall be elected.*

Each vote shall be placed in an envelope marked "Nomination vote for the Dean of the Circuit" This envelope shall be placed in another envelope which shall be addressed to the chairman of the Diocesan Council per registered post. Nomination votes shall be opened by the Diocesan Council in session and the five pastors who have received the highest number of votes shall be declared nominated. In case of an equal number of votes the Diocesan Council shall decide accordingly.

6.2.1.2 Election : *The Diocesan synod shall elect the Dean from among the five nominees. The election will be simple majority.*

6.2.2 *Election of Dean's Deputy:*

6.2.2.1 Nomination: *The circuit council through its secretary shall send a list of all active pastors in the circuit to all pastors of the circuit and to all the parish councils of the circuit. Each pastor and each parish council shall have one vote. The nominations of the parish council shall take place in the absence of the pastors. An acting chairman for the parish nomination shall be elected. Ballots shall be sent per registered post to the chairman of the circuit council in session and the three pastors who have received the highest votes shall be declared nominated.*

6.2.2.2 Election : *The result of the nomination shall be sent to the chairman of the Diocesan Council, which council shall elect the Dean's deputy. The election will be by simple majority.*

7. Procedures for Appeals

- 7.1 *The worker having been notified by the DC of its decision in terms of the Constitution 17.4.4. shall within one year submit his/her appeal to the chairman of the Church Council in writing and forward a copy to the chairman of the relevant Diocesan Council.*
- 7.2 *The chairman of the Church Council shall submit the appeal of the worker to the regular session of the Church Council.*
- 7.3 *The appellant and the chairman of the Diocesan Council shall have the right to put their case in person before the Church Council.*

PART II

RELATING TO ELECTIONS

General on Elections

- 8.1 *All elections shall be for a period of six years as laid down in the constitution and that any election within this period shall be only for the remaining part of the six year period, (see resolution of Third General Assembly minutes 1982)*
- 8.2 *The Church Council shall not later than a period of five years and nine months from the date of the last election for members of any council or body within the church in respect of which the period of tenure was six years determine and announce a date for the holding of new election which shall be within a period of three months thereafter.*
- 8.3 *All persons previously holding office as members of such councils and/or bodies shall be deemed to have terminated, unless re-elected on the expiry of the period of six years after the holding of the previous election.*
- 8.4 *The electoral officer in regard to the election in respect of any council or body shall be the chairman of the council or body then in office, and in his absence, the vice-chairman, and in his absence, the secretary.*
- 8.5 *No person other than a person who is at least a member of a congregational council shall be eligible for election as a member of any other council or body of the church.*

This amendment text which supersedes all previous ones was passed by the Ninth General Assembly of 12-16 December 1994

THMBLULI
GNLSECRETARY
09 02 1995

LAW ON PASTORS

CHAPTER ONE

Basic Provisions

Relationship of Service and Trust

- Sect. 1 (1) The Pastor's ministry is determined and circumscribed by the Commission which the Church has received from its Lord and is regulated on a day to day service by the church. (Par. 9)
- (2) The service relationship with the Pastor is regulated by the Church and is based on service in and loyalty towards the ELCSA. The contract will be entered into between the Church and the Pastor.
- (3) The provision on hours of work and overtime with respect to the Basic Conditions of Employment Act of RSA (Act No. 75 of 1997) shall not apply to ordained workers.

Binding on Gospel. Confession and Church Laws

- Sect.2 (1) The Pastor is bound by his/her ordination to teach the Gospel, as revealed in the Holy Scriptures and testified to in the Evangelical Lutheran Confessions, in exclusive obedience to God and to administer the sacraments according to the Gospel. (Par. 2.1)
- (2) The Pastor bears particular responsibility for the unity within the congregations and the Church in doctrine and in life and promotes the cohesion and co-operation between the members of the Church and its ministries.
- (3) All regulations of the Church are binding on him/her. (Par. 9.1.1)
- (4) The Pastor is obliged to prove himself/herself worthy of the office of the church through his/her lifestyle. He/she shall also fulfill his/her duties as member of the congregation conscientiously.
- (5) A pastor is obliged to do home visitations and be visited and supervised by his/her senior. (Par 9.1.1)
- (6) He/she shall professionally avail himself/herself to be visited by all members of his/her parish for spiritual care.

Right to Protection and Care

- Sect. 3 Because the relationship is based on service and loyalty, the Pastor is entitled to protection in his/her service and in his/her position as Pastor and also has the right to social security for himself/herself and his/her family.

CHAPTER TWO

Prerequisites for the establishment of service relationship

Application

- Sect. 4 A person, who has qualified to be employed as a fulltime Pastor and who has been ordained, may be called into service as Pastor.
- Sect. 5 (1) Applicants, who are bonafide members of ELCSA, qualify to be employed if they,
- (a) are at least twenty-five years old;
 - (b) are free from illness and afflictions which severely hamper them in the execution of their duties
 - (c) lead a life befitting a servant in the office of the Church ;
 - (d) have received and successfully completed the prescribed academic and practical training to qualify for employment as Pastor.
 - (e) academic and practical training to qualify for employment as Pastor.

Conferring, qualifications for employment

- Sect.6 (1) Qualifications for employment in terms of sections five are conferred by the Church Council. Church Council's decision on this matter shall be final.
- (2) . If an applicant was not commissioned according to section 9(3) at the time of his/her ordination, such commissioning shall be done later. It must be assessed whether or not Theologians who have been transferred from another confession need to be ordained.

- Sect. 7 The fact that a person has acquired the qualification to be employed as a Pastor does not convey the right to be employed as such.

Loss of qualification for employment

- Sect. 8 (1) The qualification for employment is lost when a candidate withdraws his/her candidacy, is dismissed or has been removed from the list of candidates for ordination.

- (2) Once he/she is readmitted to the list of candidates, he/she may again be employed as Pastor.

Ordination

- Sect. 9 (1) *The right and duty to public preaching and administration of the sacrament is conferred simultaneously with the ordination. The ordination presupposes that an employment as Pastor is to be established.*
- (2) *Prior to the ordination the Bishop shall discuss the significance of the ordination and prerequisites for the assumption of the office of the church with the person to be ordained.*
 - (3) *The person to be ordained commits himself/herself in writing to the contents and the standard of his/her preaching and teaching being the gospel of Jesus Christ as revealed in the Holy Scriptures of Old and New Testament and testified to in the Evangelical Lutheran Confessions.*
 - (4) *The ordination is performed in accordance with the relevant and accepted order of service of ELCSA.*
 - (5) *The ordained person receives a certificate of ordination.*

Loss of Rights conferred by Ordination

- Sect 10 (1) *The right to public preaching and to administer the sacraments is lost;*
- (a) *when the service relationship of the Pastor with the Church is terminated in accordance with sections 99 to 102;*
 - (b) *when the pastor leaves the service as a result of a breach of his/her official duties (section 94);or*
 - (c) *when the Pastor waives this right.*
- (2) *The Ministerial Council shall confer with the affected person about the loss of the right to public preaching and to administering the sacraments. The affected person is entitled to be assisted by an ordained confidant from within ELCSA and to a fair and proper disciplinary hearing.*
- (3) *The certificate of ordination and church vestments is to be handed back.*

Re-conferring right to public preaching and administration of Sacraments

- Sect. 11 (1) *The Church Council may re-confer the right to public preaching and to the administration of sacraments.*

- (2) *The certificate of ordination may be reissued and the order of service of public reinstatement shall be held, (see Altar Book)*

CHAPTER THREE

Establishment of Service Relationship

Nature of the Service Relationship

- Sect. 12 (1) The service relationship of Pastor is of a specific nature and is based on the employment agreement with the Church and the calling as Pastor, which is embodied in the agreement.
- (2) The appointment shall be for an initial period of at least 6 years. Six months before end of the six years the pastor may apply for a new indefinite period agreement. The rights of Pastors who will have commenced their service prior to 1 October 2004 remain unaffected by this provision, and may thereafter be extended for an indefinite period.
- (3) The assignment of a parish to him/her or the assignment of a general church task to him/her are matters that are dealt with when the Pastor receives his calling.
- Sect. 13 A Pastor who has been employed is inducted into his/her post during a regular service. He/she takes over the full management of the parish immediately after the service. It shall be his/her duty to demand whatever information records and equipment that he/she deems necessary for his/her task. If he/she feels that such is withheld, he/she shall inform the dean accordingly in writing. The Diocesan Council may indicate a date of taking over the management which may be earlier than the actual date or Sunday of induction. In that event the day indicated in the letter from the Executive Secretary is the official starting day.

Calling to the Post

- Sect. 14 (1) The calling as Pastor comes into effect with the handing over of the certificate of calling on the date mentioned therein. As a rule the certificate is handed over during the induction.
- (2) The certificate shall record the calling as Pastor and shall also record the parish or the general church task he/she has been assigned to.

The appointment

- Sect. 15 During the establishment of the service relationship an agreement between the Pastor and the Church is entered into, in which the

Pastor is committed to the conscientious adherence to all ELCSA Regulations and fulfillment of his/her obligations. If the appointment is restricted to a particular time period, then this is to be recorded as well.

Revocation of Appointment

- Sect. 16(1) The appointment may be revoked if it has been brought about by deception or in any other dishonest manner. The right to take disciplinary action remains unaffected.
- (2) The revocation must be confirmed within six months of the reason for the revocation becoming known.
 - (3) Prior to the revocation the pastor may be temporarily prohibited from carrying out his/her duties; this provision is not subject to an appeal according to Section 53.
 - (4) The revocation has the effect of nullifying the service relationship from the inception. The reimbursement of remuneration already paid may be waived.
- Sect. 17(1) Together with the revocation of the appointment, it may also be decided to revoke the right to public preaching and the administration of sacraments.
- (2) The revocation does in no way affect the validity of the official functions performed by the Pastor concerned.

CHAPTER FOUR

The Ministry of the Pastor

Within the Congregation

- Sect. 18 It is the duty of the Pastor, to whom a parish has been entrusted, to preach the gospel publicly and to administer the sacraments within that Parish. He/she shall operate under the supervision of the dean and the Dean shall be his/her immediate superior.
- Sect. 19(1) This assignment obliges the Pastor, to lead worship services, to perform occasional services and to provide religious instruction and pastoral care. (Par. 9) The assignment also comprises those duties which flow from structured joint action between this congregation, the circuit and the diocese.
- (2) The Pastor together with the congregation shall endeavour to discover talents within it, to encourage and equip congregation members to become co-workers, so that their services may develop freely in cooperation with congregational councilors and other co-workers for the advancement of life and growth within the congregation.

- (3) Jointly they shall ensure that the will to perform mission work and to accept ecumenical responsibility is awakened, that charity and Christian housekeeping as well as church agencies are advanced.

Sect.20 The Pastor shall conscientiously carry out the tasks entrusted to him/her in the administration, the management of the parish, the keeping of church registers and in property and financial matters. He/she shall draw a quarterly working plan a copy of which shall be sent to the Dean. The Pastor shall adhere to that plan. In addition he/she shall draw a detailed monthly plan a copy of which shall be displayed at the church notice board stating when he/she is available in the office. At least two days a week he/she shall be available in the Parish Office. Failure to comply will constitute an offence.

Sect. 21 (1) If there are several pastors' posts in a congregation the Diocesan Council will define the duties of each pastor but both shall have equal status as far as public preaching and administration of the sacraments is concerned.

- (2) They shall perform their duties in brotherly and sisterly co-operation and ensure that the solidarity within the congregation is sustained and strengthened.

Sect 22 (1) The ministry to all members of his/her congregation is entrusted to the Pastor.

- (2) A Pastor may only perform official duties in another parish only after the Dean has consented to.
- (3) Services and the performance of official duties in other parishes are only to be performed after consultation with the Pastor of that parish.
- (4) In emergencies, especially in the face of death, neighbouring Pastors must be ready to render immediate service when called upon. The Dean of the Circuit takes immediate charge of the parish.

In General Church Post

Sect. 23 (1) Pastors, to whom general church tasks have been assigned, discharge the duty of public preaching and administration of the sacraments within the ambit of these tasks.

- (2) Where general church tasks have been assigned to him/her, the Pastor shall perform these tasks to achieve both, the growth of the Church as well as that of *the individual congregation*.
- (3) *A Pastor may be given the task of conducting services within a specific congregation.*

- (4) *In all other cases concerning devotional services and official duties the provisions of section 22 apply.*

The Conduct of the Pastor
Within the fellowship of ordained ministers

- Sect. 24 (1) Pastors are in fellowship with those to whom the office of the church has been entrusted through the ordination.
- (2) They shall foster this fellowship. In teaching, in the ministry and in life they shall be prepared to counsel and admonish one another and also to receive same.
- (3) Pastors are obliged to attend regular Pastors' Conventions or similar institutions and to participate in activities which promote in-service theological and practical training.
- (4) Pastors are obliged to continually improve their knowledge especially by theological work in the Pastors' Conventions, or anticipation in training courses and through study at home. For this purpose the Pastor's superior may grant him/her leave of absence of two weeks (maximum) per year. If more time is needed a formal request shall be made through the Dean-in-circuit Council to the Diocesan Council. The decision of the Diocesan Council shall be final on this matter.

Within the Parish and the Diocese

- Sect. 25 The Pastor is dependent on the intercession by and advice and assistance from the congregation.
- Sect. 26 (1) The Pastor is obliged to maintain the secrecy of confession unswervingly against everyone.
- (2) The Pastor shall maintain silence on all matters entrusted to him/her *in* his capacity as spiritual counsellor. If she/he is released from the bond of secrecy by him/her who sought his/her counsel in cases which did not result in a confession or the desire for absolution, the Pastor shall nevertheless consider carefully whether and to what extent he/she can justify statements or communication on such matters.
- (3) Pastors must be prepared to take upon themselves disadvantages which may arise from the secrecy of confession and the bond of secrecy according to section (1) and (2) above.
- Sect. 27 The Pastor is bound to secrecy on all matters he/she otherwise becomes aware of during the exercise of his/her duties which are confidential by nature or as a result of special instructions, except where the Diocesan Council has released him/her from the bond of

secrecy. This also applies where an employment relationship no longer exists.

Sect. 28 Pastors shall carry out all instructions and directives pertaining to their ministry issued to them by the leaders and supervisors of the church

acting within the ambit of their duties. Failure to comply will be understood to be a breach of contract and within two weeks of the offence the Pastor shall be informed in writing the nature of the offence.

Sect. 29 (1) Pastors ought to assume special tasks which accord with their educational background and calling.

(2) Pastors are obliged to deputize for other pastors, even if it is outside his/her area of ministry, particularly where the latter is ill or on leave. This also applies where a congregation or parish is vacant.

Sect. 30 (1) Pastors are obliged to reside at the official residence provided for by the Parish. With the approval of the Parish Council and the Diocesan Council, exceptions may be granted if special circumstances can be shown to exist.

(2) Pastors may only allow third parties to use portions of the official residence with the approval of the Parish Council. No one, not even a member of the Pastor's family, may carry on a business or an occupation from the official residence without the approval of the parish council.

(3) If the service relationship is changed or terminated the official residence shall be vacated with immediate effect.

Sect. 31 Pastors are obliged to remain within their area of ministry. Sections 62 and 66 of this law provide for occasions, other than leave, on which Pastors may absent themselves from their area of ministry.

Sect. 32 If a Pastor is absent without leave, he may be declared to have forfeited his right to emoluments for the duration of his absence. The right to institute disciplinary proceedings remains unaffected.

Sect. 33 If the service relationship is amended or terminated the Pastor shall hand over all official documents and objects of whatever nature which may be in his/her possession and shall account for the administration of any assets entrusted to him/her. If a Pastor dies, his alternate or successor shall cause these records to be handed over to him/her. The questionnaire for official handing over and inventory shall be completed.

Sect. 34 (1) The Pastor shall preserve the dignity of office at all times.

- (2) As a rule the Pastor shall wear the prescribed clerical vestments (see Blue Book - CC 6:4.1) of office during service and at official functions. This also applies to special occasions if this is customary, or if he/she „t has been instructed to do so by the Bishop.

Sect. 35 The independence of the Pastor and the reputation of the office may not be compromised by the acceptance of gifts. It is therefore advised for a Pastor to avoid accepting gifts for himself/herself. Would be donors/givers shall be advised to give to the common fund or for accepted projects. This excludes periodical functions organised in his/her favour by the Parish Council for the purpose of encouragement.

In marriage and Family

Sect. 36 A Pastor's life in marriage and family must correspond with his/her calling.

- Sect. 37 The Pastor shall notify the Dean forthwith of his/her intended marriage.
- Sect. 38 If there are reservations against the marriage of a Pastor based on the lack of regard for his/her calling or his/her congregation, then with his/her agreement his/her service is to be arranged in such a way that it agrees with his/her calling and is acceptable.
- Sect. 39 (1) If the Pastor or his/her spouse deems the institution of divorce proceedings as inevitable, he/she is obliged to inform the Dean forthwith. The latter, or someone delegated thereto by him, shall endeavour to reconcile the spouses.
- (2) If divorce proceedings are instituted, the Pastor must report this forthwith to the Dean. In as far as it may be relevant to establish how this will affect the execution of his/her duties further information and documents may be called for; the pastor is obliged to consent to this, to give explanations himself/herself as well as to produce, on demand, documents in his/her possession. While this goes on the Dean will have the services of the Pastor temporarily suspended.
- (3) With effect from the day that the divorce becomes final, the Diocesan Council may terminate the employment relationship.
- (4) During the divorce proceedings and until the divorce becomes final in accordance with paragraph (3) the Pastor may temporarily be divested of all or part of his duties. Another, appropriate duty may be assigned to him/her during this period. The Pastor is entitled to be heard. A review in terms of section 54 does not suspend these provisions.
- Sect. 40 If application is made to declare the marriage null and void the provisions of Section 53 apply mutatis mutandis.
- Sect.41 (1) Pastors may accept an additional engagement outside of their official duties only if it is consistent with their calling and the conscientious performance their official duties.
- (2) The acceptance of such an engagement, whether honorary or against payment or on the basis of profit sharing, requires the prior consent of the Diocesan Council which may be withdrawn at any time. This provision includes the acceptance of guardianship, or trusteeship or executorship.
- (3) This applies equally to taking over honorary positions in corporate bodies, institutions, societies or clubs whose objects are to serve church, welfare, cultural or occupational purposes. The Pastor is, however, obliged to notify the Dean of having taken over such functions. The continuation of such

activities may be denied, wholly or in part, if they detrimentally affect the ministry.

- Sect 42 Pastors may not support an organization or institution if this were to conflict with their calling or if the support would materially affect the performance of their duties.
- Sect. 43 (1) A Pastor's political activities shall also correspond with his/her calling; he/she shall serve each congregation member equally irrespective of his/her political -persuasions. He/she needs to recognize the limitations which the above may have on the nature and extent of his/her political activities.
- (2) Pastors must recognize that in their utterances on matters of public interest they shall show consideration for the Parish they are linked to and the entire Church, as in the mind of the public a person and his office are inseparable.
- (3) Pastors shall refrain from all party political activities. Should they nevertheless assume party political positions or mandates, they will be relieved of their duties for that period or/and be advised to join the self-supporting ministry.

Visitation and Supervision

Visitation

- Sect. 44 (1) Pastors are obliged to subject themselves to visitations. They have a right to assistance from the visitations,
- (2) Through the visitations the Church, by means of its incumbent leaders and supervisors, provides a special service to the Pastors and the congregation, the manner in which the Pastor and the congregational council perform their duties and how they conduct themselves. The visitation is intended to promote the spiritual life or" the congregation, to advise and motivate the Pastors, to preserve good order in the church and to strengthen its unity.
- (3) Each diocese would be at liberty to draw a visitation programme.

Employment Supervision

- Sect. 45 The aim and purpose of the supervision are to motivate a Pastor in the performances of his/her duties, to counsel him/her, to instruct, admonish and, if necessary, to discipline him/her. This is done by his/her immediate superior.

Sect. 46 A Pastor may be suspended for a maximum of three months without forfeiture of emoluments if it appears from such supervision and on cogent grounds that for the sake of the office, such action is necessary. He/she may be prohibited partially or totally from performing their duties. Pastors have a right to be heard. A review in terms of section 53 does not suspend the provisions of these sections.

Sect. 47 If Pastors, in performing their duties, culpably inflicts damage on the Church, or one of its units/institutions, which they serve, they shall compensate them for any damages that may arise. If several Pastors cause damage jointly, they are jointly liable.

Violation of Doctrine

- Sect. 48 (1) The ordination into the office of the church obliges the Pastor to preach the Gospel in its purity and to administer the sacraments according to the Gospel.
- (2) The doctrine is violated where a Pastor's public utterances or his/her writings on the presentation of Christian teaching or his/her performances of the worship services are in conflict in material respects with the Confession of the Evangelical Lutheran Church (Sections 2(1) and 9(3))

Misconduct

- Sect. 49 (1) Obligations concerning the duties and conduct of the Pastor arise from the office of the church and the employment relationship.
- (2) The Pastor is guilty of misconduct if he/she neglects the duties which arise from his/her calling to preach the Gospel and to administer the sacraments, or if the rules and instructions concerning his/her conduct and his/her administrative tasks are not adhered to, or if he/she violates the commitment to lead a life conforming to the office.

Consequences of violation of doctrine and misconduct

Sect. 50 (1) A committee appointed by the Diocesan Council shall decide upon whether the doctrine is violated or misconduct exists and what the legal consequences thereof shall be. An appeal against the decision of this committee may be made to the Diocesan Council. The Diocesan Council shall appoint a committee to decide the appeal. Subject to the provisions of Section 93s, the decision reached in this way is final.

- (2) The procedure of the committees shall include a fair and proper hearing of the Pastor. He/she is entitled to be assisted by an ordained confidant from within the diocese.

CHAPTER FIVE

Protection and Social Security

Protection against attacks

- Sect. 51 The Diocesan Council shall protect the Pastor against acts which may impede his/her duties and against unjustifiable attacks against his/her person.

Personnel records

- Sect. 52 (1) Personnel records are to be established for every Pastor. They are administered by the Diocesan Office. They are classified as confidential and must be protected against unauthorized use,
- (2) All documents concerning the Pastor in so far as they deal with his/her employment relationship shall also form part of the records.
- (3) Personnel records may be used only for personnel management.
- (4) A Pastor shall be informed in writing of any appraisals, accusations and complaints before they are taken up in the personnel records. Any comments thereon by the Pastor shall also form part of the records.
- (4) Pastors have the right to inspect their own personnel record.

Appeal against administrative decisions

- Sect. 53(1) Pastors may have administrative decisions affecting their legal standing reviewed.
- (2) The review is dealt with by a committee appointed by the Diocesan Council.

Remuneration and Support

Remuneration

- Sect. 54 (1) Pastors have the right to appropriate support for themselves and their families, in particular by way of remuneration and provision of social

security. (2) The remuneration is paid by the Church as employer.

Sect. 55 (1) Remuneration is paid to the Pastor with effect from the date
^; determined by the certificate of calling.

- (2) The remuneration consists of:
 - (a) basic salary
 - (b) free housing
 - (c) any such as the church may decide e.g. limited free water, telephone and electricity
- (3) The Deans receive an official allowance for the duration of their terms of office.

Sect. 56 (1) The official residence shall be provided for in the parsonage or if that is not available, in a similar type building of the Church, or it shall be rented.

- (2) The Parish is responsible for the maintenance of the official residence and bears the costs of all charges levied against the property.
- (3) The Parish maintains the parsonage.
- (4) Pastors are obliged to look after the dwelling with due regard to the purpose for which it is intended.

Sect.57 The official residence shall conform to the needs of the office of the Pastor, whose services consists of preaching, pastoral care and teaching and as these are largely of intellectual nature, they require tranquil surroundings. Apart from the locality, the family circumstances of the Pastor are to be taken into account. Minimum specification of the parsonage shall be 3 bedrooms, bathroom, living room, and kitchen. A garage and Office may be added if for the latter is not provided for elsewhere. Members shall be encouraged to meet the pastor in the office and where possible during office times, which have been mutually set. (Section 20)

Sect.58 (1) The Parish provides the official residence with basic furnishings.

These may include:

- (a) complete furnishing of the office, including bookshelves, steel safe, computer, modem and printer or typewriter.
 - (b) lights, stove and kitchen cupboards.
- (2) In cases where the Pastor has been called for a specific period of time the

basic furnishings include appropriate furniture including a refrigerator, cutlery, bedding and curtains.

- (3) The following are deemed to be accessories to the official residence:
- (a) the supply of water and electricity
 - (b) a telephone (the Pastor is allowed a maximum amount which Church Council may specify from time to time).

Social Security

Sect. 59 The provision of social security to the Pastor embraces Old Age Pension. -

Sect. 60 The claim to "old age pension is met by the ELC-S.A Pension Fund. Pastors are obliged to become members of the ELCSA Pension fund. In the case of seconded Pastors different arrangements may be made.

Leave

General Provisions

Sect. 61 Pastors are granted the following types of leave of absence from their normal duties:

- (a) absence on official duties
- (b) sick leave; .
- (c) annual leave;
- (d) absence for personal reasons;
- (e) maternity leave;
- (f) long leave within a six year cycle (maximum 90 days, see Sect. 62).

Sect. 62 (1) Leave is only granted on application and should not be taken before six months after commencing work. In his/her application the applicant must specify how the duties will be performed during his/her leave.

(2) The Dean shall decide on applications for leave by Pastors in his/her circuit and the Bishop decides on applications for leave by the deans and Pastors who serve in general church tasks.

(3) The deans report all applications for leave to the bishop and advise him what their decisions were.

(4) In the case of a transfer the Pastor will, on application/ receive a total of ten days before moving and ten days after. This leave shall not be, recorded as annual leave. ,

(5) Ordinarily, the Pastor be entitled to:

- (a) one, during the weekday, off (preferably Monday)

- (b) one long weekend i.e. Friday, Saturday, Sunday and Monday off each quarter, provided this is reflected on the plan (Section 20), the Dean knows about it and adequate arrangements have been made to keep the life of the Parish going on.

Absence on official duty

- Sect. 63 (1) Where the absence on official duty does not exceed three days, the Pastor merely informs his immediate superior in accordance with section 62(2).
- (2) Where the absence on official duty exceeds three days, the Pastor must make application for leave to his immediate superior. If the application is refused, the applicant may appeal to the Diocesan Council for a decision.

Sick Leave

- Sect. 64 (1) The Pastor is entitled to sick leave of up to 120 days during a sick leave cycle of three years on full pay and thereafter for another 120 days at half pay.
- (2) If sick leave referred to in section 64(1) exceeds three days the Pastor's sick leave application must be accompanied by a medical certificate.

Annual Leave

- Sect. 65 (1) Annual leave with full pay will be granted on the following basis:
- (a) up to the 40th birthday: 32 calendar days;
 - (b) thereafter up to the 50th birthday: 36 calendar days;
 - (c) after the 50th birthday: 42 days
- (2) Annual leave shall, where possible, be taken consecutively. Leave shall not be taken during high festive seasons.
- (3) The annual leave cycle is the calendar year. Annual leave, not taken during a particular year, cannot be transferred to the next year.
- (4) If the employment relationship begins or ends during the course of a year, pro rata leave will be granted. Annual leave may not be taken during the first six months of the employment.
- (5) As a rule, a Pastor will retire at the end of the month in which he/she turns 65. The Dean may request the person to continue until the end of the current year. Any request to continue will be on yearly basis and shall be initiated by the church. For each year a doctor's certificate on fitness shall be produced.

Absence for personal reasons

- Sect.66 (1) Where absence for personal reasons does not exceed three days, the Pastor merely notifies his immediate superior thereof. This will be referred to as family responsibility leave in terms of the Basic Conditions of Employment Act.
- (2) If the absence is to last longer, application for leave must be made and it shall be recorded as annual leave
- (3) In cases of repeated absence for personal reason for 10 days in total, these shall not be recorded as annual leave.

Maternity Leave

- Sect. 67 (1) A Female Pastor is entitled to maternity leave of three months with full
- (2) All rights arising from the service agreement remain unaffected.
- (3) If the Pastor concerned is entitled to benefits from any other source, the payments by the Church shall be reduced by that amount.
- (4) The Diocesan Council shall *arrange* who will deputize for the Pastor for the duration of her maternity leave [Section 39(2)].
- (5) The Pastor shall inform the Dean well in advance. No annual leave may be taken in addition thereto.

Long Leave

- Sect. 68 (1) After each completed cycle of six years service the Diocesan Council shall grant long leave on full pay for three months, including one month annual leave. Section 65(1) shall therefore not apply for that year.
- (2) The Pastor is entitled to also take this leave in South Africa or any other country. •*
- (3) In principle ELCSA does not accept additional financial responsibility for this leave. Only the normal salary will be paid.
- (4) Exceptions to this rule are decided upon by the Diocesan Council.
- (5) Female Pastors may not take this leave subsequent to the provision of Sect. 67. At least 12 months shall lapse after maternity leave before the Diocesan Council would consider granting her the long leave.

CHAPTER SIX

Changes to the Service Relationship

Transfer to another post or duty

- Sect. 69 (1) The incumbent of a Pastor's post may only be transferred in terms of the provisions of this chapter. He/she can be transferred to another post or general church task:
- (a) if he/she applies for a transfer in accordance with the relevant provisions;
 - (b) if he/she agrees to a transfer;
 - (c) if he/she is transferred to another position in terms of Sections 71 and 73.
- (2) As a rule the period of service of a Pastor in one congregation shall be a minimum period of six years. In case of a subsequent change a period of notice of two months shall be adhered to. Where the Pastor has already served eight years in the same Parish, an official discussion about the continuation of his service shall take place.
- (3) Pastors who have been given a general church task may be transferred in terms of Section 76. " -
- (4) The period served as pastor-coll may be added to the minimum period referred to under subsection 2, if this was served in the same parish.

Transfer on application or with consent

Sect. 70 If the Pastor has been transferred to another post on his/her request or with his/her consent, then the provisions of Section 14 and 15, concerning the calling to a post apply. As a rule an induction during a service is not required where the Pastor has been transferred to another post within the same congregation.

- Sect. 71 (1) (a) A Pastor may be transferred without his application and without his consent if;
- (i) he/she has been at the same congregation for at least eight years , has not reached the age of 60 and the congregational council agrees to the transfer;
 - (ii) if the tenure of a supervisory post attached to the congregation comes to an end;
 - (iii) (iii). was served in the same parish.

Sect. 72 (1) A transfer in terms of Section 71 shall only be finalized if the Pastor has first received an opportunity to apply for another post within a . . .

given period of time or another post has been arranged for him/her.

- (2) A Pastor shall be transferred if he/she neglects to make such an application or if it cannot be finalized within the given period of time. A general church task may also be assigned to him/her.
- (3) If a Pastor refuses to be transferred, his/her services may be terminated. (Par 17.4.4.1)

Transfer as a result of ineffectual endeavours

- Sect. 73 (1) The Pastor may be transferred without his/her application and without his/her consent if beneficial endeavours from his/her side in the existing post or supervisory office attaching to the post can no longer be assured. This need not be the Pastor's fault.
- (2) If a transfer is intended, the Pastor shall be given a fair and proper hearing. The Parish Council and the relevant dean shall be consulted.
 - (3) In the event of a transfer the Pastor's personal circumstances shall be taken into account.
 - (4) The Diocesan Council shall be responsible for transfer costs.
- Sect. 74 (1) In cases where Section 73 applies, the necessary investigations shall be carried out to ascertain the facts. Investigations in terms of section 83(3) may also be instituted.
- (2) If, after consulting with the people involved, the investigations reveal that the conditions prescribed by Section 73 apply, the Pastor is to be furnished with a written notice giving reasons for the necessity of a transfer.
 - (3) After the procedures have been instituted and if circumstances demand this, the Pastor may be suspended from duty, either wholly or partially. He/she is to be notified in writing, giving reasons therefore. The Pastor may receive an appropriate assignment during this period, is not subject to review in terms of Section 54.
 - (4) If the conduct of the Pastor forms the basis of the proceedings in terms of Section 73 the right to institute proceeding for breach of official duties remain unaffected.
- Sect. 75 (1) The Pastor will be suspended from duty temporarily with effect from the time that the notice in terms of section 74(2) comes into force. His/her previous emoluments will be paid for up to six months.

- (2) The Diocesan Council shall endeavour to ensure that the Pastor is transferred to another post within this period.
- (3) If it can be assumed that effective work cannot be expected in another congregation or a conceivable general church either the service agreement may be terminated.

Transfer of a pastor in post with general church duties.

- Sect. 76 (1) Pastors, who have been assigned a general church task, may be given another task of a similar nature or a vacant post should this be in the interest of the Church. Before the Pastor is transferred, he shall be consulted.
- (2) The right of a Pastor to apply for a post remains unaffected.

Delegation and Secondment

- Sect. 77 (1) The Pastor may be seconded to other Lutheran Churches without loss of his/her accrued rights.
- (2) The delegation requires the Pastor's agreement if it exceeds six months duration. In any event, if the Pastor is serving a congregation, the Parish Council shall first be consulted.
 - (3) The relevant churches shall agree on the details of the secondment and to what extent the church from whom the Pastor is being seconded shall contribute to the social security of the Pastor.

Release from duty in the interest of the church

- Sect. 78 (1) Pastors may apply, or consent, to be released from their normal duties to assume another church task, or tasks which are in the interest of the Church. The period for which the release is sought may be limited or unlimited.
- (2) Simultaneously with the release of the Pastor a decision shall be taken on whether or not such Pastor will lose or retain his/her emolument for the said period. All rights and obligations accrued prior to the release shall be retained.
 - (3) When the Pastor returns he/she will, wherever possible, be placed in positions which are similar to their erstwhile activities. The period of service during the said period will be added to his service period for purposes of calculating his/her emoluments and social benefits.
 - (4) Unless otherwise agreed, the Pastor shall, notwithstanding his/her

new position, be subject to the teachings of the Church, the official duties and its regulations.

Release from duty for personal reasons

- Sect. 79 (1) A Pastor may apply to be released from his duties for a period of three years if:
- (a) he/she shares a communal life with 1 child under the age of 6 years or at least 2 children under the age of 10 years and actually cares for them
 - (b) other pressing family reasons exist,
 - (c) other personal reasons require this.

The post as well as the emoluments are lost for that period. The release may be extended on application provided that such application is made six months before the original period expires. Prior to the release the pastor is to be made aware of the consequences referred to in subsection (2) and (3) below.

- (2) A Pastor who is released in terms of this section is obliged to apply for a posting to a congregation or general church task well in advance of the end of the period. Should his/her application have failed to be successful by the time the period expires then he/she may officially be transferred to a parish post or a general church task. Should he/she fail to apply or if he/she does not take up the assigned post, his/her services are terminated with effect from the end of the period. Sect. 92 applies mutatis mutandis.
- (3) If there is no vacant post for him/her the leave of absence is extended until he/she can be transferred to a post.
- (4) The obligations referred to in Section 24(4) are not affected by this leave of absence.

Retirement

General

- Sect 80 Pastors may only be retired under circumstances contemplated by the laws of the church.
- Sect. 81 (1) The retirement is preceded by a written notice setting out the date on which the retirement shall come into effect; this date may not be earlier than the date of delivery of the notice.
- (2) The Pastor shall add 'retired' (ret.) or 'emeritus (em) to his/her previous designation

- Sect. 82 (1) The Pastor shall retire with effect from the end of the month in which he/she turns 65 years of age.
- (2) The Church shall initiate using a retired Pastor on condition that the Pastor produces a letter from a Registered Medical Doctor on his health for each year. At 70 years no pastor will be allowed to serve. (Section 65.5)

Retirement due to incapacity

- Sect.83 (1) A Pastor shall be retired upon his application, or officially, if he has become permanently incapable of fulfilling his official duties as a result of physical disabilities or as a result of physical and mental weakness or if, in the opinion of the Diocesan Council, his/her effective performances in a parish has become impossible.
- (2) A Pastor may be declared permanently incapable of fulfilling his/her official duties if during a period of six months he has been ill for more than three months without having been able to perform any duties, and there appear to be no prospects of him/her becoming fully fit to resume such duties within a further six months.
- (3) If there are doubts about a Pastor's incapacity he/she is obliged by the Dean of his/her Circuit to carry out instructions to undergo medical examinations and observations and to release the doctors from the bond of secrecy. The Diocese ordering examination, shall bear the costs.
- Sect. 84 (1) If a Pastor is to be retired inn terms of Section 83, he/she shall be given notice to this effect and shall be called upon to lodge objections within a period of not less than four weeks.
- (2) If no objections are lodged within the time stipulated, the Pastor shall be retired. If objections are lodged within the period stipulated, the relevant conclusions are determined through a process by which a medical certificate is obtained and the pastor is given an opportunity to present his case. The Parish Council as well as the responsible Dean is to be consulted.
- (3) If it appears that the Pastor is unable to exercise his rights due to physical or mental disabilities he shall be given assistance -preferably with the consent of his/her family - provided that no legal curator or guardian has been appointed.
- (4) The Pastor may be prohibited from carrying out his duties, wholly or partially, for the duration of the investigation if this is deemed essential for the sake of the office. This provision is not subject to review in terms of Section 53.
- (5) If the capacity of the Pastor to perform duties is confirmed, the investigation

is to be terminated. If the investigation results in the retirement of the Pastor within a period of three months from the end of the period referred to in paragraph (1) above, then the retirement commences at the end of the 3-month period.

- (6) The decision to retire a Pastor is taken by the Diocesan Council.

Retirement and the service relationship

- Sect. 85 (1) Upon retiring a Pastor is released from his/her official duties. The rights and duties bestowed by ordination remain. Therefore, he/she remains under the jurisdiction of the church in this respect. (Sect. 48-50).
- (2) Restrictions on the exercise of the right to preach and to administer the sacraments may be imposed on a retired Pastor if considerations for office and congregations necessitate this.
- (3) The retired Pastor receives a pension in accordance with the provisions of the ELCSA Pension fund.
- (4) The Pastor shall be entitled to reasonable relocation costs within ELCSA. If he/she relocates to beyond such areas, the Diocese shall reimburse him the relocation costs up to the end of such areas.
- (5) If a Pastor regains the ability to perform his duties before he reaches the age of 65 he may apply to be posted to a parish or a general church task. In this case he/she shall be reimbursed for the relocation costs.

CHAPTER SEVEN

Termination of the Service

relationship

General

- Sect. 86 During his lifetime the service relationship of a Pastor is terminated by;
- (a) release from service,
 - (b) resignation from service;
 - (c) removal from service;
 - (d) termination of the agreement (Section 12)

Release from service

- Sect. 87 (1) A Pastor may apply to be released from service. He/she must supply reasons therefor. The application is to be in writing addressed to the Diocesan Council
- (2) The application shall be granted subject to the provisions of section 101. The release shall come into effect only when all official duties have been handed over according to the rules of the Church.
 - (3) The Pastor's release shall be confirmed to him in writing. The release shall become effective on the date mentioned in the notification*
 - (4) The Pastor may withdraw the application for release provided the notification in terms of paragraph (3) has not come into force.
- Sect. 88 (1) Where a Pastor applies for his release in order to assume duties in a parish or general church task within ELCSA or in order to assume duties in another Lutheran Church and does not thereby abandon the commission given him/her at his/her ordination, then he may retain the right to public preaching and to administer the sacraments.
- (2) During or after his release the Pastor may waive his right to public preaching and to the administration of the sacraments. He/she shall advise the Church Council writing of the waiver. It shall be confirmed.
- Sect. 89 In cases where Section 88 applies the Pastor loses all rights to and qualifications for any emoluments or pension benefits which arose from the previous service relationship, unless Rules of the ELCSA Pension Fund provide differently, or unless other arrangements can be made.
- Sect. 90 (1) If a Pastor applies for release from service in order to abandon his office and commission, he loses the right to public preaching and to administer the sacraments as well as the right to use the clerical title or any other titles bestowed by the church and the right to wear the robes of office.
- (2) The Pastor loses all rights to and future interests in any emoluments or pension benefits unless the rule of the ELCSA Pension Fund.
- Sect. 91 (1) Church Council may release a Pastor if it can be shown to be essential for reasons based on operational requirements of the
- Church. The provisions of Section 87(2) second sentence and (3) apply mutatis mutandis.
- (2) In regard to the subsection (1) above the Church Council may decide not to withdraw the right to public preaching and administering of the sacrament, or the right wear the robes of office, or the right to use clerical titles or titles bestowed by the church.

Resignation

- Sect. 92 (1) The Pastor resigns from service;
- (a) if he declares to have resigned from the ELCSA or has converted to another religious community.
 - (b) If he/she waives the right to public preaching and administering of sacraments in terms of Section 88(2).
 - (c) When he/she leaves the service under circumstances which indicate that he/she is not likely to return.
- (2) When the Pastor resigns from service according to paragraph (1) he/she loses the right to public preaching and administering of sacraments. He/he also loses the right to use clerical titles or title bestowed by the Church, the right to wear the robes of office and all rights to and qualifications for emoluments or pension benefits for himself/herself dependants, unless the rules of the ELCSA Pension Fund provide differently.
- (3) The resignation is to be recorded in writing specifying reasons. The date of resignation is to be recorded therein and it shall refer to the legal consequences of paragraph (2) hereof. The notification is to be delivered to him/her.

Removal from Office

- Sect. 93 (1) The Diocesan Council may remove a Pastor from service if the committee established by the Diocesan Council under Section 50 have decided on this course of action provided the matter has gone through the Ministerial Council.
- (2) The removal from office can only be affected if it concerns the conduct or the lack of suitability of the Pastor. The decision is taken by Diocesan Council on recommendation of the Ministerial Council. Section 100 (2) shall apply mutatis mutandis.

Expiry of Agreement

- Sect. 94 (1) If the service agreement is not renewed (section 13 (2)) the agreement terminates with effect from the date on which the contract ends.
- (2) The decision not to renew the agreement can only be taken if it concerns the conduct of or the lack of suitability of the pastor or if operational requirements of the Church exist. The decision not to renew is taken by the Diocesan Council on the advice of the Ministerial Council. Section 91 (2) shall apply mutatis mutandis.

CHAPTER EIGHT

Final Provisions

Right to approach SA Labour Courts

- Sect. 95 (1) The right to approach the labour courts of the country can only be exercised if the remedies under this law have been exhausted.
- (2) The Labour Relations Act 66 of 1995 and the Basic Conditions of Employment Act 75 of 1997 apply to this Law.

CHAPTER NINE

On the Establishment of a mediation council

A Mediation Council for ELCSA is hereby constituted in terms of sections 49(2) and 53(2) of the Law on Pastors.

I Composition

- Sect.93 (1) A meditation council may come into action to achieve an amicable solution to a dispute when
1. all possibilities of resolving a dispute in terms of the Laws of the Church have been exhausted, and the dispute still persists; and
 2. the parties declare their desire to accept the establishment of a mediation council;
 - or
 3. this is dictated by Church Law. ;.
- (2) The mediation council consists of the chairperson and up to 4 members.
- (3) The chairperson is elected by secret ballot by the Pastors' Convention for a period of 2 years. A deputy chairman shall be elected, who will participate in the hearings in an advisory capacity. An alternate shall also be elected.
- (4) Up to half the council members shall be appointed by the parties to the dispute. Where 3 or more parties are involved, each party shall elect one member and the number of members of the council is increased accordingly.
- (5) The seat of the council shall be the official offices of the Diocese and in order to discharge its duties, it shall be entitled to make use of the Church's employees. The chairman determines the venue of the sittings.
- (7) Members of the council shall maintain secrecy on all matters of a personal nature they may have been told in confidence, unless the duty to secrecy has specifically been lifted by agreement of the parties.

II. Duties

- Sect.94 The areas of jurisdiction of the mediation council shall encompass:
1. A resolution of differences of opinion between a pastor and the Church;
 2. Facilitating in cases of differences between pastors;
 3. Mediating in disputes between the Church and circuits or congregations, as well as between circuits or congregations among each other;
 4. Other disputes between a church agency and members of the Church.

III. Procedure

- Sect.95 The council shall be convened by the chairperson at the written request of Synod, the Diocesan Council, the Bishop, a Dean or an aggrieved member of the Church.
- Sect. 96 (1) Whenever the chairperson declares himself to be biased in a particular matter, his deputy shall assume office. If he too is related to a party to the dispute, or if he is biased as a result of any other reason, the alternate shall assume office. Each party to a dispute may once at the beginning of the proceedings, reject the chairperson on the grounds of bias, provided that sufficient reason exists to doubt the chairperson's impartiality.
- (2) The bias shall be determined by the remaining members of the council by a majority vote. If the number of votes is equal, the chairperson shall be declared to be biased.
- Sect. 97 (1) If the Church Council is not party to a dispute, it shall be given copies of all documents, minutes and decisions. Prior to a decision being taken, it is to be given opportunity of commenting on the matter.
- Sect. 98 (1) The mediation council shall, officially or upon request, join third parties if the decision of the council in the present case may have legal implications on such persons. (2) The council has the right to call witnesses.
- Sect.99 (1) Parties to the dispute may be represented by members of the Church. Church bodies may be represented by a member of the body it represents.
- (2) The authority to act on behalf of a party shall be given in writing. It may be handed in within a period of time stipulated by the chairperson. If a representative has been appointed all documents are to be served on him/her.
- Sect. 100 The parties to a dispute have the right to inspect the records and to have extracts and copies made at their own expense. Drafts of decisions and preparatory notes do not fall within this right.
- Sect. 101 The proceedings of the council are not public. The chairperson appoints the secretary. All documents are to be lodged at the seat of the council or with the chairperson. Delivery and service of documents shall be done.
- Sect. 102 Until a decision is made "fell motions, complaints or other legal actions may

be withdrawn upon an explanation thereof being given to the council.

- Sect. 103 (1) The mediation council shall endeavour to arrive at an amicable resolution between the parties.
- (2) If an amicable resolution cannot be arrived at, the council shall make a decision according to its own conviction. Any decision shall include reasons which led to the decision.
- (3) The mediation council shall take its decision by consensus in secret deliberation. If consensus is impossible to achieve, the majority shall decide. The parties are to be advised of the decision immediately

IV. Consequences of the decision

- Sect.104 (1) In regard to Sect.50 of the Law on Pastors, a decision by the council forms the basis for a decision under section 93(1) of the Law «n Pastors. In all other cases the decision is binding on all parties, except where the church Council is compelled to change the decision if it is in the general interest of the Church.
- (2) An appeal against decision in personnel matters, section 53 Law on Pastors, may be lodged with the Church Council of the ELCSA, which decision shall be final. The right to approach ordinary courts of f not affected.

V. Costs

- Sect. 105 No fees are payable for proceedings before the mediation council. Each party bears its own costs



LUTHERAN MINISTERS ASSOCIATION IN SOUTHERN AFRICA - LUMASA

POLOKWANE BRANCH LAUNCH: 11.12.1991 IN SESHEGO

1. BACKGROUND

- (a) Many classmate fellowship^s started and continued to operate separately from 1957 to date. These were groups of graduates from Oscarsberg - Umpumulo Theological Seminary. Other fellowships were by students who graduated from Marang Theological S^eminary.
- (b) German Missionaries always had "The Lutheran Brotherhood" in South Africa. From the early 1960s this brotherhood selectively invited some black pastors' families to join. This brotherhood became strong, influential and rich. It was recognised by ELCT. It rebuilt Masealama Evangelists school to make it its Retreat House. Prominent members were Rev. & Mrs S.E. Serote, Rev. & Mrs. P.M. Masekela, Rev. & Mrs H.N. Seloane, Rev. & Mrs. M.C. Mminele, Rev & Mrs H.M. Nchabeleng, Rev & Mrs E.M. Mutshekwane, Rev & Mrs R. Schiele, Rev & Mrs Peter Sändner, Rev & Mrs G. Wahl who all became Deans and bishops later as well as all younger German Missionaries.
- (c) All Deaconesses completing Theological Courses at Didibeng Bible School grouped themselves into a recognised Sisterhood in the ELCSA ND and are still recognised today as an extra-constitutional sisterhood.
- (d) Church Workers Wives Convention, made up of pastors and and evangelists' wives as well as deaconesses was as it is now a recognised extra-constitutional association in its own right in ELCSA - N.D.
- (e) With ELCSA having come into being in 1975, two more associations came into being . i.e.
 - 1) ELCSA Bishops' Convention and Council
 - 2) ELCSA Deans Council and Convention.
- (f) Lutheran Teachers' Fellowship.

This is a Union of all ELCSA members employed in the teaching profession of the S.A. Government.

- (g) All ELCSA Pastors' Convention was called by ELCSA on 15th & 18th July 1987 where a strong feeling of unity among all ELCSA Pastors was created and openly and expressly declared in a National Convention in Pietermaritzburg.

This strong feeling of unity among participants at the University of Natal in Pietermaritzburg made the seven discussion groups to come up with a strong urgent request for an Extra-Constitutional Church Workers' "Union" and six Pietermaritzburg resolutions were adopted for presentation to the church Council at Mbabane in Swaziland.

The Church Council meeting in Mbabane accepted the 6 resolutions and the formation of a "Church Workers Conference in principle.



The six resolutions adopted by the All ELCSA Pastors' Convention were presented in the form of a petition to the ELCSA Assembly of 1990 at the ELCSA Church Centre in Bonaero Park on the 11th December 1990 and were all accepted with one exception i.e. the doing away with the office of Deans in ELCSA. See ELCSA General Assembly Minutes on pages 263 to 266. All opposition to the existence of LUMASA is now expected to stop.

2. FOLLOW - UP

All the fore going groups and fellowships were all independent. Proper follow-up and co-ordination of the work and activities of the above large number of associations brotherhoods, Sisterhoods and fellowships was practically impossible.

- (a) In ELCSA Northern Diocese, three pastors who felt themselves persecuted came together to take the initiative to start an association of all church employees of all Lutheran Churches in Southern Africa. These were Pastor Abel L. Kgasane, who together with Padtor Silas M. Theledi came to Pastor Mokhuloane H.M. Nchabeleng to convince him to join them in the struggle. These three pastors are infact the founders of LUMASA in Southern Africa.

As Rev. M.H. Nchabeleng had just defeated his persecutors in legal proceedings in June 1987 and because he was legally insured against all legal cases by Legal Wise Insurance Company, Only him and his name were made known. All others were kept top secret for fear of victimization by opponents of unity among the ministers of our Lutheran Churches in Southern Africa.

- (b) In the ELCSA Central Diocese and Western Diocese, a well organised group of concerned pastors also grouped together to form a "LIVING WAGE CAMPAIGN" and operated underground. LUMASA traced them and at Bronkhorspruit on 4-10-1990 this group joined LUMASA. The LUMASA petition which was already drawn by the living wage campaigners was accepted as a project of LUMASA.

At a report back meeting at Lobethal, the petition was endorsed by the LUMASA - Northern Branch which however, decided not to take part in the march to present the petition to the General Assembly on 11.12.1990 only because it was written by the living wage campaign group before it joined LUMASA. LUMASA however took the over the petition and accepted the responsibility for it.

3. AFTER THE ELCSA GENERAL ASSEMBLY 11.12.1990

After the presentation of the LUMASA Petition on the 11.12.1990 to the ELCSA General Assembly at Bonaero Park where recognition by ELCSA was sought and granted as reflected in the minutes which have now been made available, see G. Assembly minutes pages 263 to 266, LUMASA National Conference was held on 26th March 1991 at St. Alban's Cathedral in Pretoria to elect members of the National Executive Committee (LUMASA - NEC). The following were elected:

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the following were elected:

- a) 1. President. Rev. S.M. Tholeli.
Deputy : Rev. R. Loate
2. Secretary: Rev. J. Ntsipe
Assistant: Rev. T.A. Mokuchwane
3. Treasurer: Rev. E.M. Mmobe
4. Co-ordinator: Rev. H.M. Nchabeleng
5. Regional Organisers: Rev. S. Molefe (Botswana)
Rev. N. Brandt (COD), Rev. O. Dieta (W.D)
Rev. T. Mabale (C.D), Rev. K.W. Setati (N.D)
Rev. D. Mhlongo (E.D), Rev. W. Khumalo (SED)
- b) Media Liaison Committee:
Rev. M. Morena, Rev. A. Mphephu, Rev. T. Mokuchwane,
and Rev. J. Ntsipe.
- c) Delegation to the Constitutional Comm. Meeting of ELCSA:
Rev. A. Mphephu deputy: Rev. J. Ntsipe, Rev. H.M. Nchabeleng.
deputy. Rev. J.S. Mminele.

4. THE NORTHERN REGIONAL BRANCH CONFERENCE

The following LUMASA Northern (Diocesan) Branch Executive Committee was elected at Lobethal Conference Centre on 30th October 1991.

1. President: Rev. K.W. Setati Vice: Rev. P.M. Mamogobo
2. Secretary: Rev. H.M. Nchabeleng. Ass: Rev. L.A. Kgashane
3. Treasurer : Rev. M. Mokoete
4. Members: (1) Rev. T.M. Chere
(2) Rev. E. Matsenene
(3) Rev. J.J. Adams
(4) Rev. A.M. Nchabeleng

5. AIMS AND OBJECTIVES

Basis: Scriptures, UN. Declaration of Human Rights, S.A. Labour Laws,

See Constitution of LUMASA.

Aims and Objectives - See Constitution of LUMASA

1. To unite all Church workers in all ministries of the church .
2. To promote brotherhood, sisterhood, fellowship understanding among all church workers in the Lutheran Churches.
3. To foster closer unity among all church workers and to secure same understanding of decisions in and outside the church.
4. To mutually assist members in their lives and work.
5. To mediate and negotiate with and on behalf of members.
6. To make available legal and joint assistance to members.
7. To keep members well informed.
8. To take joint action in case of need.
9. To seek to resolve together in certain matters.
10. To co-operate with other groups as an organised group - e.g. partnerships.

INVITATION TO ALL CONCERNED

LUMASA invites all interested or concerned to forward any (1) comment, (2) Advice (3) criticism etc. so long as it is based on the teaching of scriptures, Human Rights and the Labour laws of our country. Criticism based on personal feelings of individuals are useless.



CALL TO YOU ALL TO JOIN HANDS IN LUMASA

We call on you all who are employed by the Lutheran Churches in Southern Africa to join hands with us all in the Lutheran Church ministries for joint purposes and mission to the glory of him who has called us into His service.

We appeal to you all to join your association,--The Lutheran Ministers' Association in Southern Africa. Surely there can be no doubt that the "past" is gone for ever and everything has become new. There are talks now about "The new South Africa" which will bring about its new challenges. These new challenges will need new thinking and new answers from us all who are entrusted with the prophetic ministry in our communities.

The Lutheran Ministers' Association is a child born at the time of change in society and church and is better equipped to face up to the winds of change. Come and think together with others. Do not stand alone as if you are different from others because you are not different from anyone as yourself know very well. So please come, join us now.

The Lutheran Ministers' Association has now been provisionally recognised by the General Assembly of ELCSA at Bonaero Park on 11th December 1990. See G.A. minutes pages 263 - 266. There is surely no one employed by ELCSA who can be against the resolutions of ELCSA General Assembly.

The LUMASA is founded on the bases of :-

1. The teaching of scriptures and Lutheran doctrine,
2. The United Nations Declaration of Human Rights,
3. The Labour Laws of the Republic of South Africa. We welcome all opposition, criticisms, advice and comment if and only if these have the above bases as their point of departure. Personal baseless objections are considered useless, unhelpful and undesirable.

Join your branch in your Circuit with R20.00 and be where your brothers and sisters are.

We thank all church workers, especially our deans for assisting and facilitating the formation of LUMASA Branches in their Circuits.

Yours faithfully

Pastor H.M. NCHABELENG

S E C R E T A R Y



WORKING DOCUMENT No. 3

THE LUTHERAN MINISTER'S ASSOCIATION IN SOUTHERN AFRICA - LUMASA

This association of all Lutheran church employees and all serving in or being connected with any of the diverse ministries of the church HAS THE BACKING AND SUPPORT of the Scriptures, The Church Constitution and Doctrine as well as The PROTECTION OF THE LAW OF THE STATE as shown below.

1. The SCRIPTURES AND DOCTRINE

The whole Bible and Doctrinal books show the Church as a Christian community made up of "Fellowships of believers every where.

2. ELCSA CHURCH CONSTITUTION

The following paragraphs suggest and anticipate the existence of various Associations, Leagues, Fellowships and the like: Examples:

Par. 4.2.7. "Those serving in the ministry of the church should admonish and reprove each other" in their own groups or Association.

Par. 16.3.5. The function of the Diocesan synod shall be "To supervise the work of the Institutions and Associations of men, women Youth, Teachers or ministers and the like within the Diocese."

Par. 16.3.6. "To appoint, if it seems it necessary, commissions to study certain aspects of the work and to ADVISE the Church Authorities!"

Par. 22.4. "One of the outstanding duties (of the Episcopal Council) shall be to take care that the UNITY of the Church is always manifested in its life." (Please note that Bishops are pastors or church workers)

3. UNITED NATIONS' DECLARATION ON HUMAN RIGHTS

(ELCSA HUMAN RIGHTS AND SOCIAL AFFAIRS - N.SOTHO VERSION)

1. Article 19:

"Motho yo mongwe le yo mongwe o nale tokelo ya go ba le dikgopolo tša gagwe e bile o nale tokelo ya go di bolela ka ntle le go šitišwa.
A ka šomiša mokgwa ofe goba ofe go botša ba bangwe dikgopolo tša gagwe."

2. Article 23:

2.1. "Mang le mang o na le tokelo ya go šoma le ya go ikgethela mošomo wo a o ratago. Mošomi o nale tokelo ya go šireletšwa mošomong le gore a swarwe gabotse mošomong. Batho ba swanetše go humanelwa mešomo ge ba e hloka.

2.2. "Bašomi ba swanetše go lefiwa ka go lekana ge ba dira mošomo wa go swana."

2.3. "Ka moka bao ba šomago ba swanetše go lefiwa tšhelete yeo e kago kgona go thekga malapa a bona ka mokgwa wo o swanetšego gomme le mmušo o ba fe tšhireletšo."

2.4. "Mang le mang o nale tokelo ya go itirela lekgotla la bašomi goba go ba leloko la makgotla a bašomi (Union)

4. THE LAW IN SOUTH AFRICA

The Basic Conditions of Employment Act No. 3 of 1983, Gazette No. 8550 of 23 February 1983, The Basic Conditions of Employment Amendment act Act No. 27 Of 1984 - Gazette No.9125 dated 14th March 1984 and the Summary of the above acts, kept in all offices of all Employees as required by Section 21 of the principal Act.

Section 15(1) of Act No. 3 of 1983. "An employer shall upon termination of a contract of employment furnish the employee with a certificate of service giving the full names of the employer and the employee, the occupation of the employee, the date of commencement and the date of termination of the contract and the wage of the employee as at the date of such



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such termination.

Section 18. "No employer shall dismiss an employee, or reduce the rate of his remuneration, or alter the terms or conditions of his employment to terms or conditions less favourable to him, or alter his position relatively to other employees employed by that employer to his disadvantage, by reason of the fact, or because he suspects or believes, whether or not the suspicion or belief is justified or correct, that that employee :-

- (b) has refused or omitted to do any act which the employer required or permitted him to do contrary to a provision of section 19 or
- (c) belongs or has belonged to any trade union or any other organisation of employees the object of which is or was to protect or further the interests of employees in relation to their employers, or takes or has taken part outside his working hours, or with the consent of the employer, during his working hours, in formation or lawful activities of any such union or organisation".

Section 19. "No employer shall:-

- (b) do any act or permit any act to be done as a direct or indirect result of which an employee is deprived of the benefit or of any portion of the benefit of any remuneration so payable or paid".
- (c) "require or permit an employee to give a receipt for or otherwise to represent that he received, more than he actually received by way of remuneration;
- (d) levy a fine against an employee for any act or omission committed by such employee in the course of his employment;
- (e) deduct from an employee's remuneration an amount except :-
 - (i) in accordance with a written authority given to him by such employee;
 - (ii) in accordance with an order of court or a provision of any law.

Amendment Act No. 27 of 1984.

Section 6. "Section 19 of the principal Act is hereby amended by the addition of the following sub-sections the existing section becoming subsection (1)

"An employer shall not later than the day agreed upon between him and the employee for the payment of the employee's wage, pay such employee his wage in the prescribed manner."

Section 21 of Act No. 3 of 1983.

"An employer shall keep such summaries of or extracts from the provisions of this act as may be prescribed available on his premises and shall at the request of an employee make such summaries or extracts available to him for perusal."

**EVANGELICAL LUTHERAN CHURCH IN SOUTHERN AFRICA
CONDITION OF SERVICE
DRAFT DOCUMENT**

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introduction

The provisions of these conditions of service have effect from

These conditions of service and such amendments and additions as the church (ELCSA) may make from time to time shall be applicable to all employees including ordained ministers unless specifically agreed to in writing. When a person enters the service of the church (ELCSA), he/she shall be deemed and agrees to have accepted the conditions of service herein after set out.

In the event of any question arising with regard to the interpretation of these conditions of service, the interpretation of the Church (ELCSA) will be final

Definitions

"Church" Evangelical Lutheran Church in Southern Africa, which shall include all structures from the congregational council to ELCSA.

"Employee" Any person who is in the service of or undertakes work for the church including the ordained ministers evangelists and sisters, and who receive a stipend or salary.

Any reference to the male shall include the female gender and vice versa.

"Part time employee" Any person who shall have been offered such services by a duly constituted council in writing for a period as stated on the appointment letter.

"Pastor" mean any ordained church worker including Deans and Bishops.

Paragraph 1

Employment

1.1 Appointment

Unless otherwise agreed to at the time of employment and so stated in the letter of appointment all employees shall be appointed on a permanent basis.

1.2 Acceptance in writing

All employees shall accept in writing after negotiations to level the plane. Henceforth candidates shall sign prior to ordination. Employees who are to serve for a period shall have a written contract for the period the employee has to serve. E.g. the Deans

1.3 Medical Examination

The church reserves the right to subjects candidates for medical examination (Psychiatric Examinations Including entry and exit medical examination for other employees) should the need arise.

The church may at anytime during the time of employment require an employee to under go a medical examination in which the case the church will arrange for this and bear the expenses thereof. The employee may not unreasonably refuse to attend such an examination.

Any employee other than the pastors shall be subjected to a medical fitness test. This will also apply on resignation or retirement. This will enable identification of any occupational disease that may be contracted in the cause of employment.

1.4 Diligence to duty

The employee agrees to abide by the ethics policy of the church.

1.5 Change of condition of service

The church may change the conditions of employment and notice thereof will be affected by the circulating an official circular to all employees in ELCSA or directly to the employees concerned.

1.6 Hours of work

the normal hours of work are 43 hours per week or 37,5 hours per week as shall be determined by the council at which the employee operates. However ordained ministers are not bound by this clause basically because of their call to ministry and their job needs.

Paragraph 2

Remuneration

2.1 Commencement of duty

The wages/salary or stipend of the employees is payable from the date duties commenced and shall be termed date of engagement.

2.2 Date of payment

The wages/salary or stipend of the employees shall be calculated and paid monthly in arrears, and the published pay date for the respective pay-rolls and deposited into a bank account nominated by the employee. ***(Self supporting ministers to be considered for an allowance for the service they render)***

2.3 Cessions

The employee shall not cede or assign his wages or earnings in whole or in part to any third party without the written consent of the church.

2.4 Service Increments

Ordained ministers, evangelists and sisters may receive service increments on Diocesan level. Such an increment shall be determined by the Diocesan council and shall be reviewed annually.

The Diocesan council shall also review service increments of other employees on an annual basis e.g. secretaries, typists etc.

2.5 Educational assistance

The church workers are entitled to financial educational assistance that shall be payable to the institution only after proof of registration has been submitted. The candidate is responsible to produce results. Failure to produce such results at the end of the term for which studying was enrolled the church will deduct the total amount in terms until the total sum is paid. When the qualifications are obtained the Diocesan Council shall determine educational increases. ***(It must be noted that the church shall only pay that amount which will be affordable to the church in terms of the budget and that shall be determined by the Diocesan Council)***

2.6 Allowances

2.6.1 Acting Allowances

An employee may receive an allowance only if he/she acts in a senior position for one month (30 calendar days).

2.6.2 Deans Allowance

The dean shall receive an allowance from the date he/she assumes the deans duties irrespective of the induction ceremony.

2.6.3 Pastor allowance

The parish pastor is eligible for an allowance payable by the parish depending on whether the parish can meet the target. The Church (ELCSA) shall not be held liable should a parish not afford to pay the said allowance. *These should be fruits of love when all requirements are met.*

2.6.4 Service allowance

The employee may receive a service allowance as determined by the diocesan Council. This allowance is only applicable to employees other than ordained ministers, Evangelist or sisters. Employees with five years unbroken service are eligible for the service allowance

2.7 Bonuses

Employees other than ordained ministers may receive the 13th cheque payable on the day the employee assumes annual leave. Pastors may only receive bonuses as determined by the Diocesan/Circuit Council. The Diocesan/Circuit Council shall be liable to the bonuses of the ordained personnel within her jurisdiction.

2.8 Overtime payments

No overtime shall be payable to church workers unless the contract so states. Employees bound by such contract shall have their time recorded properly to enable professional time keeping.

2.9 Public holidays

Public holidays will be those days provided for in the Public Holidays Act. Employees other than ordained ministers shall not officially work on public holidays. Any employees working on public holiday shall have a day off after the holiday to pay back the day on which he/she provided service to the church. Ordained ministers shall work as per their call if a need arise for such personnel to work on public holidays.

2.10 Travelling claims

Any employee using his or her transport shall claim the travelling costs payable per kilometre as determined by Diocesan Council. The church reserves the right to question the authenticity of the kilometres as claimed by employees. Any such quire may amount to dishonesty and theft. Toll gate fees shall form part of the travelling claim and receipt of toll gate payment shall be appended to the claim.

2.11 Authorised deductions

Church employees shall agree to join and conform to the rules and regulations of the pension fund.

The employer shall be entitled to deduct from salary/ stipend/ wages of the employee any amount of money due by the employee to the church and the contribution due to the pension fund. (*The church to consider the Funeral benefit*

scheme, ELCSA church workers forum subscription and sick pay for which the deduction shall be included in this paragraph)

The church shall be entitled to deduct from salary/stipend/wages of the employee payments made by way of advances, loans or financial assistance, provided that should the employee's service with the church terminate, the church shall have the right to deduct all monies owing to the church.

Paragraph 3

Fringe benefits

3.1 Pension fund

All church employees excluding self supporting pastor shall be required to become members ELCSA Pension fund. The church shall be responsible to provide employees with the rules regarding membership, contribution, benefits and other provisions provided by the fund.

Only full time employees shall be members of the pension fund. On termination of service membership shall cease to exist on the last day of work. (*refer to fund rules*)

3.2 Funeral scheme

(Death benefits and beneficiary nominations must be added in this paragraph when the Church Council has taken a resolution.)

3.2 Compensation for injuries and diseases

All employees are covered by the provisions of the Compensation for Occupational Injuries and Diseases act 130 of 1993 which provides cover against loss of earnings resulting from disablement or death caused by an accident at work or the effects of an industrial disease contracted at work via the office of the commissioner. On commencement of employment with the church, the employee waives any other right to claim compensation from the church for any injury sustained, including temporary or permanent disability, other than his/ her rights to claim compensation in terms of the Compensation for Occupational Injuries and Disease act or any amendment or replacement thereof.

3.3 Unemployment insurance

Subject to a statutory ceiling in terms of annual income, employees are required by law to contribute a percentage of their basic monthly salary/ wages/stipend to their Unemployment Insurance Fund. This act provides certain benefits should the employee become unemployed or ill and only receive less than one third of his normal earnings.

3.4 Housing

Housing is provided free of charge for ordained pastors, evangelists and sister. The church shall not be obliged to provide free housing for other categories of employees that are not referred to above but shall not be limited to the above employees which shall appear in the contract of employment.

The church shall provide the official residence with the basic furnishings that will include:

- (i) Complete furnishing of the office, including book shelves, steel safe, computer, modem and printer or typewriter.
- (ii) Lights, stove and kitchen cupboards.

In case where the pastor has been called for a specific period of time the basic furnishing include appropriate furniture including a refrigerator, cutlery, bedding and curtains.

The following are the basic requirements of an official residence.

- (a) Supply of water and electricity
- (b) Telephone (the pastor is allowed a maximum amount which the Church Council may determine from time to time)

The pastor may not unreasonably demand the above in areas that are under developed, such as demanding electricity in rural areas where no one else has power supply.

NB. Official residents shall only be provided for while the employee is in the employ of the church that shall cease on termination of services.

The church at the level where the employee operates shall carry the responsibility of maintaining the buildings where employees are to reside, and bear the costs of all charges levied against the property. The employee shall be obliged to look after the dwelling with due regard to the purpose for which it is intended.

3.5 Sick pay fund

(The church council shall consider Sick pay fund)

Paragraph 4

Leave

4.1 Annual leave

Annual leave with full pay will be granted for pastor, evangelist and sister on the following basis:-

- (i) Employees from one year of service shall be entitled to thirty days (30days) leave.
- (ii) The employee shall qualify for 2 accumulative leave days after 5 years of service,
- (ii) Annual leave shall, where possible be taken consecutively. Leave shall not be taken during festive seasons except in the case of employees other than pastors, evangelist or sister.
- (iii) The annual leave cycle is the calendar year. Annual leave, not taken during a particular year shall not be transferred to the next year.
- (iv) If the employment relationship begins or ends during the course of a year, pro rata leave will be granted. Upon completion of twelve months of qualifying service shall employees be entitled to take annual leave
- (v) As a rule, employees will retire at the end of the month in which he/she turns 65 or 55 respectively which ever is the case in terms of the contract of employment. Employees other than the pastor, evangelist or the sister shall be entitled to take early retirement at the age of 55. The Dean may request the pastor to continue until the end of the year during which the retirement age was reached. Any request to continue will be submitted on annual basis should an individual wish to extend the period of service after the retirement age was reached. For each year a doctor's certificate of fitness shall accompany the request. Employees other than pastors, evangelist or sisters may not exceed the age of retirement.

4.2 Absence on official duty

Where the absence on official duty does not exceed three days, the pastor shall do so in agreement with his/her immediate supervisor.

Where the absence on official duty exceeds three days, the pastor must make application for leave to his immediate supervisor. If the application is refused, the applicant may appeal to the Diocesan Council for a decision.

4.3 Sick leave

Employees shall be entitled to 30 days sick per annum. The sick leave shall not be accumulative for all employees including pastors, evangelist and sisters. All employees shall be obliged to submit a medical certificate to their respective supervisor should the sick leave exceed three days.

Employees with less than six months service will be granted pro rata paid sick leave, but should the service be terminated prior to the expiry of the six months period (plus the period spent on sick leave), the period on sick leave will be converted to period of unpaid leave and recovered from final payments

All application for sick leave shall be supported by a certificate from the registered medical practitioner, stating the cause and duration of absence. The church may at any time require an employee on sick leave, or who has applied for sick leave, to submit him/her self for medical examination by a medical practitioner nominated by the church. Sick leave may not be granted for a period exceeding 30 days except at the discretion of the diocesan council and only if it is supported by a recommendation from the medical practitioner.

4.4 Leave during transfer

- (i) The pastor, evangelist and sisters shall be entitled to a one day off and the day off shall be taken on Monday if circumstances permit.
- (ii) The pastor, evangelist and sisters shall be entitled to a one long week end i.e. Friday, Saturday, Sunday and Monday of each three months. The long week ends must reflect on the plan. The dean shall be informed forthwith when such off days are planned.
- (iii) Employees other than pastors, evangelist and sisters shall only work five days per week unless the contract of employment states otherwise. (Ref. paragraph 1.6)

4.5 Absence for personal reasons

Where absence for personal reasons does not exceed three days the employee shall in agreement with the immediate supervisor proceed with such leave.

4.6 Maternity leave

Female employees shall be entitled to the following benefits provided for in this paragraph when such employee is unable to continue employment due to pregnancy:

- (i) The employee shall be entitled to a maximum period of three months unpaid maternity leave.
- (ii) The employee and the church shall enter into a written agreement specifying:
 - (a) the agreed date of return to work;
 - (b) that should the employee wish to return earlier than the date referred to in (i). The employee must give the church at least two weeks notice of the earlier return;
 - (c) the benefits the employee is entitled to, for example UIF, Sick Pay (if arranged) etc. The church shall provide the employee with claim forms for the benefits due to the employee (UIF and Sick Pay Fund maternity benefits) and shall assist the employee to complete the claim(s) prior to the date of proceeding on unpaid maternity leave.
 - (d) the thirteenth cheque may be paid out pro rata on request by the employee prior to proceeding on maternity leave.
- (iii) On return to work, the employee shall:
 - (a) be treated as having unbroken service.
 - (b) not suffer prejudice for the purposes of promotion in the case of other employees.
 - (c) be entitled to any increase which came into operation during absence
 - (d) not suffer any decrease in status in relation to other employees as a result of the absence.
- (iv) The diocesan /circuit council shall arrange who will deputise the employee during the maternity leave.
- (v) The pastor shall inform the relevant official / direct supervisor well in advance to enable replacement arrangement.
- (vi) No annual leave may be taken in addition thereto.

4.7 Long leave

- (i) After each completed cycle of six years of service the Diocesan Council shall grant long leave with full pay for the period of three months, including one month annual leave to the clergy only. Paragraph 4.1 shall therefore not apply for the calendar year in which the long leave was applied for.
- (ii) ELCSA shall only pay the normal salary on monthly bases when payment is due. i.e. the salary may not be paid pro rata when the candidate proceed on leave.
- (iii) Female employees may not take this leave subsequent to the maternity leave. At least 12 months shall laps after maternity leave before the Diocesan Council can consider granting the leave

4.8 Leave requirements

Any person who is newly employed shall only qualify for leave after twelve months of service.

4.9 Study leave

A study leave shall only be granted to employees who have submitted proof of registration. Upon receipt of the examination roster the leave form shall be accompanied by same and submitted to the immediate supervisor or representative of the employer at the level where the employee operates

Paragraph 5

Discipline and grievances

The current situation as per the constitution of the church shall remain unchanged until the Church Worker's Forum has been established and operative. The principle of audi alteram partem applies for dispute resolution.

Paragraph 6

Transfer to another post or duty

- 6.1 The employee may from time to time be transferred from one parish or congregation (work area for other employees) to another provided there shall be no reduction in the basic conditions of service as set out in this booklet, unless by mutual consent of both the employee and the church.

- 6.2** All employees are transferable when a need arise subject to the following provisions:
- A) If an employee applies for transfer
 - b) If the employee is transferred in term of 6.3
 - c) If an employee is transferred without consent.
- 6.3** As a rule the period of service of a pastor in one parish or congregation shall be a minimum period of eight years. A notice of two months shall be provided to the incumbent prior to any institution of transfer. Where a period longer than eight years has been served by a pastor in the same parish or congregation an official discussion about continuation of service shall be conducted and terms of reference shall be tabled as to how long the incumbent will continue to serve.
- 6.4** A notice of two month shall be provided to other employees when transfer is to be instituted. There is no time frame within which other employees have to serve in the same area except on request for transfer or the individual's services are required else where by the church.
- 6.5** An employee may be transferred without his /she consent if:
- (I) The incumbent has been serving the same parish or congregation for eight years and has not reached the age of 60
 - (II) If the term of office has expired for supervisory posts. E.g. Deans
 - (III) If the post is dissolved.
 - (IV) If the incumbent's marriage is dissolved by law, or when the husband and wife live separately for more than three month and all revenues for reconciliation have been exhausted.
 - (V) If there is a dispute or the incumbent's culpabilities are questioned warranting a transfer where a fair and fully constituted hearing was conducted. In which case the results of the investigation in terms of paragraph 1.3 shall be available for perusal during the enquiry to enable an informed decision. (*ref. disciplinary code and procedure when instituted*)
- 6.6** In the event of a transfer the personal circumstances of the candidate shall be considered such as children at school etcetera.
- 6.7** The candidate's costs for transfer shall be reimbursed, alternatively the church shall provide for the relocation.
- 6.8** The affected candidate shall be consulted prior to instituting a transfer.
- 6.9** The Diocesan Council shall be responsible for transfers.

Paragraph 7

Safety and Security

- 7.1 Occupational health and safety of employees in the premises of the church rest with the level of the church at which they operate.
- 7.2 Other employees may be exposed to occupational hazards depending on the type of work they perform. Such divisions of the church shall ensure that the provisions of the Occupational Health and Safety act 85 of 1993 are complied with. The Pastor, the Dean, the Bishop or the Presiding Bishop shall be the CEO at that level where this act is applicable in terms of section 16(1) and he /she shall ensure compliance to the act and regulations.
- 7.3 The compensation commissioner registration number shall be provided in all Dioceses *(as per the agreement of Church Council)*
- 7.3.1 All employees are required to report injuries within the same day that they occurred either by phone or by fax even verbally if they are in close proximity to their immediate supervisor.
- 7.4 The security of the church worker's family and his private property rest with the level where the worker operates. The installation of alarms and burglar proofs is the responsibility of that level. The insurance of personal property rest with the church worker and the church property shall be insured by the level that owns the property

Paragraph 8

Termination of service

Release from duty in the interest of the church

- 8.1 Employees of the church may be released on application from duty in the interest of the church to assume another church task. The period for which the release is sought may be limited or unlimited.
- 8.2 Simultaneously with the release of the church worker a decision shall be taken on whether such employee will lose or retain his /her emolument for the said period. All rights and obligation accrued prior to the release shall be

retained for the clergy only. While other employees will only retain the years of service only and further obtain benefits of the new post only. i.e. pastors will still be accepted to perform pastoral duties over and above the new acquired duties.

8.3 When the pastor returns he /she will, where possible be placed in positions which are similar to their erstwhile activities. The period of service during the said time of release will be added to the service prior to the release for the purpose of calculating emoluments for that individual.

8.4 Unless otherwise agreed in writing, the employee shall, notwithstanding his /her new position, be subject to the teaching of the church, the official duties and its regulations

Secondment

8.5 Church workers may be seconded to other Lutheran Churches or ecumenical bodies for the duration that will be determined by the church.

8.5.1 The secondment may occur without loss of accrued rights.

8.5.2 The secondment may only take place when a mutual agreement between the church and the employee has been reached.

Release from duty for personal reasons

8.6 The clergy employees may apply to be release from duty for a period of three years if:

- i) If the employee shares a communal life with 1 child under the age of 6 years or at least 2 children under the age of 10 years and actually cares for them.
- ii) Other pressing family reasons.

8.7 The post as well as the emoluments is lost for that period. The release may be extended on application provided that such application is made six months before the original period expires.

8.8 Prior to the release the employee is to be made aware of the consequences referred to in 8.9 below.

8.9 The employee who is released in terms of personal reasons is obliged to apply for posting to a parish or congregation or any general church task well in advance of the end of the period. Should the application not to be successful by the time the period expires the employee may transferred to a parish or congregation. Should the employee fail to apply or if the

employee does not take the assigned post, the service of such employee will be terminated with effect from the end of the period initially applied for.

8.10 Should there be no post at the time when the application is received the leave of absence will be extended.

8.11 The release in question only apply to clergy employees.

Retirement

8.12 Church employees other than the clergy may retire as per the rules of the pension fund.

8.13 The clergy may only retire under circumstance contemplated by the laws of the church.

8.14 Church workers who are pastors shall retire from the end of the month in which they turn 65.

8.15 The retirement is preceded by a written notice setting out the date on which the retirement shall come into effect; The notice shall not be submitted after the date of retirement.

8.16 A retired pastor may apply for extension of service three before the date of retirement and the application shall be accompanied by a certificate of fitness supplied by the registered medical practitioner.

8.17 At the age of seventy no pastor shall be allowed to serve.

Retirement due to incapacity

8.18 A pastor shall retire after submitting an official notification if he /she has become permanently unable to fulfil his duties as a result of physical disabilities or as a result of mental weaknesses or in the opinion of the Diocesan Council his /her effective performance in a parish has become impossible.

8.19 A pastor may be declared permanently unfit if during a period of six months has been ill to such a degree that he /she could not execute any of the duties of a pastor and there appears no prospect of full recovery.

8.20 Should a doubt arise concerning a pastor's mental health the circuit dean shall instruct such an individual to submit himself or herself to medical doctor examination and observation and submit a certificate of fitness to the dean. The Diocese ordering the examination shall bear the costs. Such pastor shall not refuse such an instruction.

- 8.21** If a pastor is to retire in term of 8.20, above he /she shall be notified in writing to this effect. He /she shall be called to lodge an objection within the period of less than four weeks.
- 8.22** If no objection is lodged within the said period, the pastor shall be retired. If objection is lodged within the period as stipulated in 8.21 above, relevant conclusions are determined through a process by which a medical certificate is tabled to prove the contrary and the pastor is afforded an opportunity to present his case. The Parish Council and the responsible dean are to be consulted.
- 8.23** If it appears that the pastor is unable to exercise his rights due to physical or mental unfitness, he /she shall be offered assistance preferably with the consent of the family – provided that no legal curator has been appointed.
- 8.24** The pastor may be prohibited from carrying out his duties, wholly or partially, for the duration of the investigation if this is deemed essential for the sake of the office.
- 8.25** If the capacity of the pastor to perform duties is confirmed, the investigation is to be terminated. If the investigation results in the retirement of the pastor within a period of three months from the end of the period referred to in 8.21 above, then the retirement commences at end of three months period.
- 8.26** The decision to retire a pastor is taken by the Diocesan Council.

Retirement and the service relationship

- 8.27** Upon retirement the pastor is released from his /her official duties. The rights and duties bestowed by ordination remain. Therefore he /she remain under the jurisdiction of the church in this respect. This provision only applies to clergy church workers.
- 8.28** Restrictions on the exercise of the right to preach and to administer the sacraments may be imposed on a retired pastor if considerations for office and congregations necessitate this.
- 8.29** The retired pastor receives a pension in accordance with the provisions of the ELCSA Pension Fund.
- 8.30** The pastor shall be entitled to reasonable relocation costs within ELCSA. If he /she relocate beyond ELCSA boundaries, the Diocese shall reimburse the candidate's relocation costs.
- 8.31** If the pastor regains the ability to perform his / her duties before reaching the age of 65 he / she may apply to be posted to a parish or general church task. In this case he /she shall be reimbursed of the relocation costs.

Dismissal

- 8.40** The employment contract between the Church and the employee is subject to termination at any time by either party providing the other with 24 hours notice in the case of employees other than ordained personnel.

Evangelists, ministers and sisters shall provide a 30 day notice to the church prior to the termination of service, stating the reason for termination in writing. The termination document shall be completed for the notice to take effect.

- 8.41 The church shall have the right, however, to dismiss any employee for misconduct as will be stipulated by the disciplinary quote and procedure. However the church reserves the right apply the disciplinary quote subsequent to the counselling process.

Paragraph 9

ETHICS POLICY

The standards laid down in this policy shall apply equally to all employees and their involvement to outside business and other activities that are not part of their contract of employment.

Private interest

The Church requires that her employees will not engage in practices or pursue private interest which in conflict with the call to ministry. The conflict of interest in this sense is the one that could result in financial scandals or any act that might bring the image of the church in disrepute. A conflict of interest exist when employees have direct or indirect personal interests or derived benefits from transactions or potential transactions to which the Church is a party. A conflict could also arise where an employee, a member of an employee's family or business with which the employee or family is associated, obtain gain, advantage or profit by virtue of the employee's position with the Church or knowledge gained through the position. Employees must not use their position or knowledge gained through their employment within the Church for private or personal advantage or in such a manner that conflict or an appearance of conflict arise between the Church's interest and their personal interest. Such situations must be avoided and prevented at all times in the interest of honest and bona fide objective and practises. The onus rests on the employees to disclose all potentially conflicting interests and as the employee will not always be aware of the possibility of such conflict, it is preferable that all interests should be disclosed on the following lines described below.

Outside activities, employment and directorship

All appointments of employees as directors of public organisations, private organisations and public bodies should be submitted in advance through the

office of the diocesan executive secretary for consideration by the Diocesan Council. This stipulation does not apply to the acceptance of office on club committees, local ecumenical bodies, etc.

Employees should, however, avoid acquiring any business interest or participating in any activity outside the Church which would create or appear to create an excessive demand upon their time, attention and energy which would deprive the Church of their best effort on the work. Employees shall not undertake any other work for remuneration without informing the Church via the Executive Secretary of the Diocese.

Disclosure

All interest to which this policy is applicable and which will result in an employee and / or his family earning additional income as well as all business interest which will take up a material portion of the employee's time, must be reported and disclosed via the office of the Diocesan Executive Secretary to enable him or her to act as follows:

- (a) record the interest concerned in a register to be kept for this purpose, and
- (b) inform the Diocesan Council of the details. The Diocesan council will decide whether the interest concerned conflicts or contain elements which conflict with basic expectations of employment

All existing outside interest of employees in the Church which have already been established before the issue of this policy document must be disclosed and declared immediately in accordance with the foregoing procedure.

Secrecy of information

From the common law point of view, all employees have a particular relationship of trust with the Church and the following principle applies in this regard:

Employees are required not to divulge any confidential information about the Church finances or any information obtained during counselling.

Extra ordinary gifts and advertisement

Extra ordinary gifts such as a car the house etc. shall be declared with the Diocesan Council. The church shall under no circumstances be used to advertise any business that seeks to make profit.

Theft

Theft of Church property or the property of other employees is prohibited and will lead to serious disciplinary which could include dismissal. Cases if warranted, and at the Church's discretion may be referred to the South African Police Services.

Environmental Responsibility

Every employee is responsible to ensure that the environment where he/she or the family resides is kept acceptably clean. This include reminding the relevant council or authority to provide for the maintenance of the church parsonage and the church hall.

Church funds

There Church has internal controls to safeguard its assets and standards to prevent fraud and dishonesty. All employees and elected officials who have access to church funds in any form must at all times follow prescribed procedures for recording, handling and protecting such funds.

Media relations

On occasion, the Church may be asked to express her view to the media on certain issues. As a general rule the Diocese may use the Bishop as the spokes person on public matters e.g. matters of faith such as the church position on gay and lesbian marriage. At ELCSA level the presiding Bishop shall be the spokes person. Employees approached by the media should immediately contact the bishop's office to deal with the media.

Contravention of the policy

The Church regards any contravention of this policy as a serious matter. At the same time any suspected or alleged contravention under investigation must be treated with utmost confidentiality

Where violation or contravention of the provisions of this policy comes to the attention of the Church such individuals will be subjected to disciplinary enquiry. Serious breaches of this policy and malpractice may be dismissible offences.

Church auditors and other investigating officials who may be appointed for the purpose will have specific instructions to carry out periodic investigations in all levels of the Church in order to expose any malpractice or dishonesty.

Paragraph 10 General

The Church recognises the right of employees to form an employee association as provided for in terms of the Labour Relations Act. The Church being the body of Christ encouraged employees are not to join circular world employee representative bodies but to form an association in line with the basic call to ministry.

The Church will make arrangements for stop order deductions with the association to enable the association to operate.

A disciplinary code and procedure will be identified by the church that will enable a mechanism to resolve disputes between the employer and the employee. Annual negotiations will be arranged to discuss proposals on wages and conditions of service. The frequency of meetings is subject to negotiations when the employee association is established.

Transfer of patent and copyright

The employee hereby cedes, assign and transfer unto and in favour of the Church the copyright and / or patent in all work created or invented by the employee and all the employee's right, title and in and to the copyright and / or patent in all works created or invented by the employee jointly with another or other as co-authors or inventors thereof in the course of employment with the church.

Briefing system

The Church operates a two pronged communication system to disseminate information to whichever level of occupation it is considered necessary. That is Circular or personal letter. Employees are expected to read and familiarise themselves with the content of such communiqué. Where clarity is necessary, employees shall have the right to solicit more explanation.



Appendix A

CCRA Form 7.11
Section 13B
Labour Relations Act 1995

PART A

REFERRING A DISPUTE TO THE
CCMA FOR CONCILIATION



READ THIS FIRST



PROVINCIAL OFFICES OF THE CCMA

CCMA EASTERN CAPE
107 Govan Mbeki Street
2nd floor, Old Garlicks Building
PORT ELIZABETH
Private Bag X22500, PORT ELIZABETH, 6000
Tel: (041) 608-4488
Fax: (041) 686-4885/8
Email: PE@ccma.org.za

CCMA NORTH WEST PROVINCE
47-51 Siddie Street,
KLERKSDORP
Private Bag X5004, KLERKSDORP, 2571
Tel: (018) 482-3137
Fax: (018) 482-4126
Email: KGR@ccma.org.za

CCMA FREE STATE
NBS Building, cnr Elizabeth & Westburger Street
BLOEMFONTEIN
Private Bag X20705, BLOEMFONTEIN, 9300
Tel: (051) 449-3660
Fax: (051) 449-4488/6
Email: BLM@ccma.org.za

CCMA NORTHERN CAPE
1A Bean Street
KIMBERLEY
Private Bag X3100, KIMBERLEY, 8300
Tel: (053) 831-8790
Fax: (053) 831-9947/8
Email: KMR@ccma.org.za

CCMA GAUTENG
CCMA House, 20 Anderson Street,
JOHANNESBURG
Private Bag X94, MARSHALLTOWN, 2107
Tel: (011) 377-8800
Fax: (011) 834-7331
Email: GAUTENG@ccma.org.za

CCMA NORTHERN PROVINCE
104 Hans van Rensburg Street,
PIETERSBURG
Private Bag X8812, PIETERSBURG, 0700
Tel: (015) 297-5010
Fax: (015) 297-0017
Email: PIB@ccma.org.za

CCMA KWAZULU NATAL
Garlicks Chambers, 375 West Street,
DURBAN
Private Bag X24383, Durban, 4000
Tel: (031) 308-6464
Fax: (031) 308-5407/4
Email: KN@ccma.org.za

CCMA WESTERN CAPE
78 Darling Street
CAPE TOWN
Private Bag X0167, CAPE TOWN, 8000
Tel: (021) 469-0111
Fax: (021) 48-7197
Email: CTN@ccma.org.za

CCMA MPUMALANGA
CCMA House, Eagle Street
WITBANK
Private Bag X7290, WITBANK, 1036
Tel: (013) 866-2800
Fax: (013) 866-2886/6
Email: WITB@ccma.org.za

VISIT THE CCMA WEBSITE AT:
[Http://www.ccma.org.za](http://www.ccma.org.za)

WHAT IS THE PURPOSE OF THIS FORM?

This form enables a person or organisation to refer a dispute to the CCMA for conciliation.

WHO FILLS IN THIS FORM?

Employee, employer, union or employers' organisation.

WHERE DOES THIS FORM GO?

To the other party and to the CCMA office in the province where the dispute arose.

WHAT WILL HAPPEN WHEN THIS FORM IS SUBMITTED?

When you refer the dispute to the CCMA, it will appoint a commissioner who must attempt to resolve the dispute through conciliation within 30 days.

OTHER INSTITUTIONS

Please note that if you are covered by a bargaining council, a statutory council or an accredited agency you may have to take the dispute to that council or agency. Some bargaining councils are required by law to deal with certain disputes and parties must then refer disputes there, rather than to the CCMA. You may also need to deal with the dispute in terms of private procedure if one applies.

YOUR CHECKLIST (please tick):

I have completed this form fully and correctly.

I have attached proof (fax slip / registered mail slip / signature of the other party) that this form has been served on the other party (see page 5)

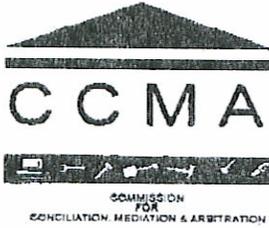
To my knowledge, this dispute is not covered by Bargaining Council, Statutory Council, Private Agency or private procedure.

Yes
Yes
Yes



20/08 00 TUE 08:00 FAX 015 2971040 C.C.M.A.

001/001



Private Bag X9512
PIETERSBURG
0700

Tel: (0152) 297-5010
Fax: (0152) 297-5017

To: Mubudziseni Wilson Denga
P O Box 987
Thohoyandou
0950

Tel:
Fax:

To: Evalengican Lutheran Church - C M' Molefe
P O Box 1186
Pietersburg
0700

Tel: 015 223 7071
Fax: 015 223 7073

Dear Sir/Madam

19 June, 2000

Case Reference NP13814
Matter between Mubudziseni Wilson Denga
and Evalengican Lutheran Church - C M' Molefe
Dispute Sch 7, Item 3(1) - Unfair Labour Practice

You are required to attend:

Date 25 July 2000
Time 11:30am
Venue CCMA - HEARING ROOM 1
 104 Hans van Rensburg Street
 PIETERSBURG

Process Conciliation
Commissioner/s Samuel Negota
Interpreter/s
Language/s English

If you have any queries, please contact the undersigned.

Yours sincerely,


Sannah Setladi
CCMA Case Management
Ref: NP13814

confca



2-DEC-2004 11:06 FROM: FCSAND

0152237013

LABOUR RELATIONS ACT (section 135) FORM 7.11
Referring a Dispute to the CCMA for Conciliation
Page 3

READ THIS FIRST



Tick the relevant box

If the dispute concerns dismissal complete Part B (see page 2)

This section must be completed.

3. NATURE OF THE DISPUTE

What is the dispute about (tick only one box)?

- Unfair dismissal
- Organizational Rights
- Unilateral change to terms and conditions of employment
- Interpretation/Breach of employee rights
- Other (please describe)
- Unfair Labour Practice
- Mutual Interest
- Severance pay
- Interpretation/Breach of Collective Agreement
- Refusal to Bargain
- Non-renewal of contract
- Unfair Discrimination

Summarise the facts of the dispute you are referring:

ON THE 13TH JANUARY 01, I WAS ARBITRARILY AND UNFAIRLY TRANSFERRED FROM ONE PARISH TO ANOTHER. THIS HAPPENED DESPITE MY REPRESENTATIONS WHICH WERE COMPLETELY IGNORED.

The dispute arose on: 13 JANUARY 2001
(give the date, day, month and year)

PROVINCE RAMOKGOPA AREA - NORTHERN
The dispute arose when: (give the City/Town in which the dispute arose)

4. DETAILS OF DISPUTE PROCEDURES FOLLOWED

Have you followed all internal grievance / disciplinary procedures before coming to the CCMA?

<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
---	-----------------------------

Describe the procedures followed:

MADE AN APPEAL AGAINST THE DECISION COMPLAINED OF BUT TO NO AVAIL.

5. RESULT OF CONCILIATION

What outcome do you require?

RESTORATION OF THE POSITION WHICH OBTAINED BEFORE 13 JANUARY 2001

6. INDUSTRY

Indicate the sector or service in which the dispute arose:

- Retail sector
- Distribution
- Wholesale
- Domestic
- Private Security
- Food & Beverage
- Building & Construction
- Other (please describe)
- Public Service
- Agriculture
- Contract Cleaning
- RELIGIOUS/CHURCH

9/8 2004

24:59:5510

LEN1802 21 8. (AND) 07. 03.11.04



6mi

Appendix B

LRA Form 7.11
Section 135
Labour Relations Act, 1995

READ THIS FIRST



WHAT IS THE PURPOSE
OF THIS FORM?

This form assists a person or organisation refer a dispute to the CCMA for conciliation.

WHO FILLS IN
THIS FORM?

Employer, employee, union, or employers' organisation.

WHERE DOES THIS
FORM GO?

To the CCMA office in your province.

OTHER INSTRUCTIONS

When you refer the dispute to the CCMA, it will appoint a commissioner who must attempt to resolve the dispute through conciliation within 30 days.

Please note that if you are covered by a bargaining council, a statutory council or an accredited agency you may have to take the dispute to that council or agency. Some councils and agencies are required by law to deal with certain disputes and parties must then refer disputes there, rather than to the CCMA. You may also need to deal with the dispute in terms of a private procedure if one applies.

REFERRING A DISPUTE TO THE CCMA FOR CONCILIATION



PROVINCIAL OFFICES OF
THE CCMA

CCMA MPUMALANGA
Registrar
Foschini Centre
Eade Street
Witbank
Private Bag X7290
Witbank
1035
Tel: (0135) 656-2800
Fax: (0135) 656-2885/6

CCMA EASTERN CAPE

Registrar
107 Main Street
Port Elizabeth

Private Bag X22500
Port Elizabeth
6000
Tel: (041) 56-4466
Fax: (041) 56-4585

CCMA FREE STATE

Registrar
NBS Building
Cnr Elizabeth & Westburger Street
Bloemfontein

Private Bag X20705
Bloemfontein
9300
Tel: (051) 448-3650
Fax: (051) 448-4468/9

CCMA GAUTENG

Registrar
20 Anderson Street
Johannesburg

Private Bag X94
Marshalltown
2107
Tel: (011) 377-6600
Fax: (011) 834-7331

CCMA KWAZULU/NATAL

Registrar
Garlicks Chambers
375 West Street
Durban

Private Bag X54363
Durban
4000
Tel: (031) 306-5454
Fax: (031) 306-5401

CCMA NORTH WEST

Registrar
47-51 Saddle Street
Klerksdorp

Private Bag X5004
Klerksdorp
2571
Tel: (018) 462-3137
Fax: (018) 462-4126

CCMA NORTHERN CAPE

Registrar
1A Bean Street
Kimberley

Private Bag X6100
Kimberley
8300
Tel: (0531) 81-6780
Fax: (0531) 81-5947/8

CCMA NORTHERN PROVINCE

Registrar
104 Hans van Rensburg Street
Pietersburg

Private Bag X9512
Pietersburg
0700
Tel: (0152) 297-5010
Fax: (0152) 297-5017

CCMA WESTERN CAPE

Registrar
78 Darling Street
Cape Town

Private Bag X9167
Cape Town
8000
Tel: (021) 45-7000
Fax: (021) 45-7193/4

G.P.-S.

... please turn over →

LRA Form 7.11
Section 135
Referring a dispute to the CCMA for conciliation
Page 2 of 8

READ THIS FIRST

1) DETAILS OF PARTY REFERRING THE DISPUTE

Tick the box

As the referring party are you:

- an employee a union official or representative
- an employer an employers organisations' official or representative

If you are an employee fill in (a) below and if you are a union official or representative, an employer or an employers organisations' official or representative fill in (b).

a) If the referring party is an employee

Your name: RATHAQA, JONATHAN, MATHENQWE
 Address: P. O. BOX 1429
 MUTHALE 0956
 Tel: _____ Fax: _____

If a union or employers' organisation is helping you with the dispute give their details too.

Alternative contact details of employee (eg a relative or a friend):
 Name: DEPT OF LABOUR, THOHAYANDOU
 Address: P. 1888, 2, 5025
 THOHAYANDOU 0950
 Tel: 015 962 4395 Fax: 015 962 4360

If more than one party is referring the dispute, write their details on a separate page and staple it to this form.

b) If the referring party is an employer, an employers' organisation or union

Your contact details
 Name: N/A
 Address: N/A
 N/A
 Tel: N/A Fax: N/A
 Contact person: N/A

CCMA Ref. No. NA 3801

... please turn over →

READ THIS FIRST



2) DETAILS OF OTHER PARTY (THE OPPOSITE PARTY)

Tick the box

The other party is:

- an employee a union official or representative
- an employer an employers organisations' official or representative

If more than one other party is involved in the dispute, write their details on a separate page and staple it to this form.

Name: VEREENIGING LUTHERSE KERKE IN SUID-AFRIKA NORTHERN DIOCESE

Address: P.O. Box 1186
PIETERSBURG 0700

Tel: 015 2237071/2 Fax: 015 2237073

Name of person dealing with the matter and other party's reference number (if known): BISHOP C.M. MOLEFE

3) NATURE OF THE DISPUTE

Describe the issues involved. The list on page 7 should help you. Your description will assist the CCMA in dealing with the matter. It is not meant to bind you.

a) The dispute is about: UNFAIR DISMISSAL BY MY EMPLOYER ON THE 07 NOVEMBER 1997

NB REFER TO CASE NO NP3801 AND ANNEXURE "A" AND ALSO ANNEXURE "B" WHICH ARE THE MINUTES OF THE CHURCH COUNCIL NO: 91 WITH SPECIFIC REFERENCE TO PARAGRAPH NO 23

... please turn over →



READ THIS FIRST



Look at the list of disputes and their corresponding sections on page 7. If you are unsure which is the appropriate section you may leave 3b blank.

I AM NOT SATISFIED WITH THAT
PHRASE AND I FEEL THAT MY
DISPUTE WAS NOT RESOLVED

b) The dispute relates to section 191(1) of the Labour Relations Act, 1995.

4) SPECIAL FEATURES (IF ANY)

Special features might be the complexity of a matter, the large number of people involved, important legal or labour issues etc

I/we would like to bring the following special features of this dispute to the attention of the Commission:

REASON OF THE EMPLOYER:
MY SERVICE WAS TERMINATED BECAUSE
MY WIFE DESERTED ME AND WANTS TO
STAY WITH ANOTHER MAN (TRAFFIC OFFICER)
IN PIETERSBURG

Delete the box below if inapplicable:

Dispute about unilateral change to terms and conditions of employment (s 64(4))
I/we require that the employer party not implement unilaterally the proposed changes that led to this dispute for 30 days, or that it restore the terms and conditions of employment that applied before the change.
Signed: ...N/A... (party referring the dispute)

5) DATE OF DISPUTE

The dispute arose on: 07 - 11 - 1997
(give the date, or approximate date)

... please turn over →



ANNEXURE "A"

001

30/06 '98 TLE 10:14 FAX 01522975010

CCMA A. PROVINCE

Case No.: NP3801

AGREEMENT

between

RATHOGWA JONATHAN NETHENGWE
(hereinafter referred to as "Employee Party")

and

EVANGELICAL LUTHERAN CHURCH
(hereinafter referred to as "Employer Party")

The parties hereby agree as follows:

1. The employee shall withdraw his complaint against the employer.
2. The employee shall pursue this matter further in accordance with the prescribed procedures laid down in the policies and codes of the employer (church)
3. The employee reserves his right to re-open this matter in case he perceives any unfairness after the procedures indicated in clause 2 above have been exhausted.

SIGNED at Pietersburg on this 07th day of May 1998

Employee: R.J. Nethengwe

As witnesses
1. _____
2. _____

SIGNED at Pietersburg on this 07th day of May 1998.

Employer: _____

As witnesses
1. _____
2. _____

Commissioner: R.G.Sadiki

Mr Mkhawane
1. _____



LRA Form 7.11
Section 135
Labour Relations Act, 1995

REFERRING A DISPUTE TO THE CCMA FOR CONCILIATION

Appendix C

READ THIS FIRST



WHAT IS THE PURPOSE OF THIS FORM?

This form assists a person or organisation refer a dispute to the CCMA for conciliation.

WHO FILLS IN THIS FORM?

Employer, employee, union, or employers' organisation.

WHERE DOES THIS FORM GO?

To the CCMA office in your province.

OTHER INSTRUCTIONS

When you refer the dispute to the CCMA, it will appoint a commissioner who must attempt to resolve the dispute through conciliation within 30 days.

Please note that if you are covered by a bargaining council, a statutory council or an accredited agency you may have to take the dispute to that council or agency. Some councils and agencies are required by law to deal with certain disputes and parties must then refer disputes there, rather than to the CCMA. You may also need to deal with the dispute in terms of a private procedure if one applies.

PROVINCIAL OFFICES OF THE CCMA

CCMA EASTERN CAPE

Registrar
107 Main Street
Port Elizabeth
Private Bag X22500
Port Elizabeth
6000
Tel: (041) 56-4466
Fax: (041) 56-4585

CCMA FREE STATE

Registrar
NBS Building
Cnr Elizabeth & Westburgor Street
Bloemfontein
Private Bag X20705
Bloemfontein
9300
Tel: (051) 448-3650
Fax: (051) 448-4468/9

CCMA GAUTENG

Registrar
20 Anderson Street
Johannesburg
Private Bag X94
Marshalltown
2107
Tel: (011) 377-6600
Fax: (011) 894-7331

CCMA KWAZULU/NATAL

Registrar
Garlicks Chambers
375 West Street
Durban
Private Bag X54363
Durban
4000
Tel: (031) 306-5454
Fax: (031) 306-5401

CCMA MPUMALANGA

Registrar
Foschini Centre
Eade Street
Witbank
Private Bag X7290
Witbank
1035
Tel: (0135) 656-2800
Fax: (0135) 656-2885/6

CCMA NORTH WEST

Registrar
47-51 Siddle Street
Klerksdorp
Private Bag X5004
Klerksdorp
2571
Tel: (018) 462-3137
Fax: (018) 462-4126

CCMA NORTHERN CAPE

Registrar
1A Bean Street
Kimberley
Private Bag X6100
Kimberley
8300
Tel: (0531) 81-6780
Fax: (0531) 81-5947/8

CCMA NORTHERN PROVINCE

Registrar
104 Hans van Rensburg Street
Pietersburg
Private Bag X9512
Pietersburg
0700
Tel: (0152) 297-5010
Fax: (0152) 297-5017

CCMA WESTERN CAPE

Registrar
78 Darling Street
Cape Town
Private Bag X9167
Cape Town
8000
Tel: (021) 45-7000
Fax: (021) 45-7193/4

... please turn over ->



Private Bag X9512
PIETERSBURG
0700

Tel: (015) 297-5010
Fax: (015) 297-1649

To: Meodi, Petrus Mehlape
22 Palm street
Flora Park
Pietersburg
0699

Tel:
Fax:

To: The Council of the Lutheran Church - CM Molefe
P.O. Box 1186
Pietersburg
0700

Tel: 015-223-7071
Fax: 015-223-7073

8 March 2002

Dear Sir or Madam

Case Reference NP1199-01
Matter between Meodi, Petrus Mehlape
and The Council of the Lutheran Church - CM Molefe
Dispute 191(1), [191(5)(a)] - Unfair Dismissal Disputes

You are required to attend:

Date 27 March 2002
Time 12:00pm
Venue CCMA REPORT AT THE FRONT DESK
104 Hans Van Rensburg Street
Pietersburg

Process Conciliation
Commissioner/s Anthony Meki
Interpreter/s
Language/s North Sotho, English

If you have any queries, please contact the undersigned.

Yours sincerely,

Lungway Ndlovu
CCMA Case Management

Telephone

ConfPa



**CERTIFICATE OF OUTCOME OF
DISPUTE REFERRED TO CONCILIATION C O M A**

CASE NUMBER: NP 1199-01

I Certify that the dispute between
Meosi, Petrus and The Council of The
Mehlape (referring party) and Lutheran Church (other party/parties)

Referred to conciliation on:

22 June 2001
(give date)

Alleged Unfair Dismissal Concerning Operational Requirement

was resolved on the _____ or remains unresolved as at 27/03/2002
(give date) (give date)

Condonation:

Granted Not applicable

If this dispute remains unresolved, it can be referred to:

Arbitration Labour Court Strike / Lockout None

ANTHONY MAKI
Name of Commissioner

[Signature]
Signature of Commissioner

27 March 2002