

# Religion, law and human rights in Zimbabwe

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## Summary

*This article is an audit of the interplay between religion, law and human rights in Zimbabwe. It examines key issues such as the legal framework in place for the protection of freedom of conscience, including court jurisprudence, the religious demography of Zimbabwe, and the place of religion in politics, education and the Zimbabwean lifestyle. It also scrutinises the co-existence of ideologically antagonistic practices, such as Pentecostal Christianity versus indigenous beliefs and practices. The article argues that the subject of religion is not a sensitive one in Zimbabwe, hence it does not easily occur in political or general debates. Drawing from his own experiences, the author concludes that, apart from looking after spiritual needs, churches play a significant role in subsidising the state's obligations in the provision of socio-economic rights such as health, education and food. For this reason, churches have an important place in national politics as partners in development. The article concludes by citing problematic areas involving religion and politics, such as child marriages practised in certain religious groupings. The author also notes the harassment of church leaders who express their alarm about the political and economic melt-down of the country. This is another problem bedevilling a somewhat previously tranquil relationship between the state and religion.*

## 1 Introduction

Men may believe in what they cannot prove. They may not be put to proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet, the fact that they be

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beyond the ken of mortals does not mean that they can be made suspect before the law.<sup>1</sup>

In view of the above quotation, organisers of the Center for the Study of Law and Religion at Emory Law School's Durban conference on law, religion and human rights in Africa should be commended for identifying the very contentious but critical subject of religious freedom as the focus of this dialogue. This paper is an audit of Zimbabwe. It seeks to address, among other things, contemporary issues in Zimbabwe in relation to religion, law and human rights. With a practical approach in mind, a course is adopted by way of which readers are introduced to a clear portrait of the nature and scope of applicable religious laws, beliefs, rituals and practices germane to the scope of the conference theme. The paper identifies potential problems in the thematic areas of law, religion and human rights in a bid to determine the potential impact of these problems. It also recommends certain measures to be taken to avert anticipated consequences.

This paper is made up of three distinct sections. Section one introduces the discussion and provides some preliminary remarks and statistics. Section two deals with the legislative framework within which religion is practised in Zimbabwe, beginning with its formulation as a fundamental freedom in the Constitution of Zimbabwe, and other jurisprudence relating to the relationship between religion, law and human rights.<sup>2</sup> It is an argument of this paper that law is the grand factor from which all other issues affecting the exercise of freedom of religion flow, but that there exists the potential for future problems. Finally, section three is devoted to concluding remarks and targeted recommendations.

## 2 Definition of terms: Religion, law and human rights

It is important to define concepts before engaging in the current dialogue. Whilst definitions of concepts such as law and human rights might be free from controversy, defining religion has an inherent difficulty. Law is loosely defined in lay terms as the set of rules and regulations that govern human conduct. This definition does not take into account the various categories of law, which would require a much lengthier analysis. For our purposes, it suffices to adopt this conventional and all-encompassing definition. Human rights have been defined in various ways; however, the golden thread in those definitions is the proposition that rights are privileges and liberties conferred

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<sup>1</sup> *United States v Ballard* 322 US 78 (1944) 86-7 (quoting Justice Douglas).

<sup>2</sup> Constitution of Zimbabwe 1980, as amended by 18 Constitutional Amendment Acts of Parliament.

upon individuals by virtue of their nature of being human.<sup>3</sup> They are not conferred on individuals by any political system, constitution or international human rights instruments. These simply confirm in writing (and sometimes unwritten without writing) the fact that human beings have such fundamental rights and liberties. They further provide a mechanism to assert or challenge their violation before institutions established to cater for that process.

Religion ought to be defined in terms of its relationship with law and human rights. As already noted, its definition is not free from controversy. Horton summarises three prominent definitions of religion.<sup>4</sup> One defines religion as 'covering an area of human activity which lacks sharply delineated boundaries', the second refers to religion as 'a class of metaphorical statements and actions obliquely denoting social relationships and claims to social status', whilst the third definition is 'the belief in the supernatural'.<sup>5</sup> However, despite the ingenuity of these definitions, Horton concludes that they are not satisfactory.

The definition of religion in Zimbabwe, as held by the Supreme Court of Zimbabwe in *Dzvova v Minister of Education and Culture and Others*,<sup>6</sup> is as follows:

The New English Dictionary on Historical Principles, VIII, gives the following definition of religion:

- 1 a state of life bound by monastic vows;
- 2 a particular monastic or religious order or rule;
- 3 action or conduct indicating a belief in, reverence for, and desire to please a divine ruling power, the exercise or practice of rites or observances implying this;
- 4 a particular system of faith and worship;
- 5 recognition on the part of man of some higher or unseen power as having control of his destiny, and as being entitled to obedience, reverence and worship; the general mental and moral attitude resulting from this belief, with reference to its effect upon the individual or the community; personal or general acceptance of the feeling as a standard of spiritual and practical life.
- 6 devotion to some principle, strict fidelity or faithfulness, conscientiousness; pious affection or attachment.

I have adopted the above definition as the working definition for auditing Zimbabwe for purposes of the current dialogue. All references to religion and religious groups, rituals, practice and observance should be understood in the above context as guidelines rather than exhaustive or authoritative definitions of 'religion, law and human rights'.

<sup>3</sup> F Viljoen *International human rights law in Africa* (2007) 4-5.

<sup>4</sup> R Horton 'A definition of religion, and its uses' (1960) 90 *Journal of the Royal Anthropological Institute of Great Britain and Ireland* 201.

<sup>5</sup> As above.

<sup>6</sup> Case SC 26/07 (2007) ZNSC. This case will be fully discussed in the coming paragraphs in relation to the relationship between law, religion and human rights.

### 3 Religious demography in Zimbabwe

A country considered worst affected by outward migration due to the economic melt-down, often referred to as the 'brain-drain', Zimbabwe has a population of about 13 million, with a substantial portion thereof being of Malawian and Zambian origin.<sup>7</sup> Of the 13 million, at least three million have permanently left or are living outside of Zimbabwe, whether by choice or due to the socio-economic and political environment in Zimbabwe.<sup>8</sup> Outward migration has a place in the current discourse, as it adversely affects the accuracy and credibility of religious demographic statistics in Zimbabwe. As shall be demonstrated below, the voluntary repatriation of persons of Malawian origin back to Malawi and other countries has a direct effect on demography, the religion they believed in, practised and propagated a distinct indigenous religious practice whilst resident in Zimbabwe.

In light of the fluidity of the religious demography in Zimbabwe, no recent reports have been published which accurately depict the demographic distribution in matters of religion. Furthermore, with regard to the status of respect for religious freedom in Zimbabwe, research organisations have labelled Zimbabwe as 'generally free'.<sup>9</sup> I will hasten to note with concern that some of these reports do not elaborate on the research methodology that was implemented. This, in my view, is a serious indictment on the credibility of such reports. However, those organisations that claim to have undertaken quantitative research on religious statistics and general census in Zimbabwe have come up with generally consistent reports. For instance, the *World fact book* reported that Zimbabweans of African descent constitute 98% of the population whilst Asians and whites constitute 2% collectively.<sup>10</sup> Of the

<sup>7</sup> The population make-up has its history in the colonial period when there used to be the Federation of Rhodesia and Nyasaland, also known as the Central Africa Federation (CAF) (1953-1963), which encompassed Northern Rhodesia (Zambia), Southern Rhodesia (Zimbabwe) and Nyasaland (Malawi). With Southern Rhodesia being the economic hub, manpower for mines and farms was drawn from throughout the Federation, hence a substantial portion of people with Malawian and/or Zambian origin. The Federation crumbled in 1963 when Northern Rhodesia and Nyasaland became independent. See R Blake *A history of Rhodesia* (1977); P Mason *Year of decision: Rhodesia and Nyasaland in 1960* (1961); R Dorien *Venturing to Rhodesia and Nyasaland* (1962); CH Thompson *Economic development in Rhodesia and Nyasaland* (1954); LH Gann *Central Africa: The former British states* (1971); RA Sowelem *Toward financial independence in a developing economy: An analysis of the monetary experience of the Federation of Rhodesia and Nyasaland, 1952-63* (1967).

<sup>8</sup> 'So where are Zimbabweans going?' <http://news.bbc.co.uk/1/hi/world/africa/4416820.stm> (accessed 30 September 2008). The article puts together and analyses statistics from different organisations and comes to a conclusion that, though exact numbers are not known, the most probable figure is three million.

<sup>9</sup> 'Freedom in the world 2008: Zimbabwe' [http://www.freedomhouse.org/uploads/press\\_release/Zimbabwe\\_FIW\\_08.pdf](http://www.freedomhouse.org/uploads/press_release/Zimbabwe_FIW_08.pdf) (accessed 30 September 2008).

<sup>10</sup> <https://www.cia.gov/library/publications/the-world-factbook/print/zi.html> (accessed 3 March 2008).

98% Africans, 82% are Shona, 14% Ndebele, whilst the other groups constitute 2%.<sup>11</sup> According to the report, about 50% of the population believe in both Christianity and traditional religion.<sup>12</sup> These have been termed 'syncretic'. Pure Christians have been put at 25% and the followers of pure traditional religion are at 24%. Muslims and the rest occupy an undisputed 1%.<sup>13</sup> In stark contrast, the US State Department reported in 2007 that between 70% and 80% of the whole population belonged to 'mainstream denominations such as Roman Catholic, Anglican, Methodist churches'.<sup>14</sup>

The proposition that mainstream Christians constitute about 80% of the population can no longer stand. In proof thereof, the same US Department of State's 2007 Report correctly states that 'a variety of indigenous churches and groups have emerged from these mainstream denominations'.<sup>15</sup> This development has occurred on such a massive scale that it is very unlikely that the mainstream Christian population still stands at between 70% and 80%. In most cases, it is the young people who are 'floor-crossing' to join the Protestant churches, a term virtually unused in Zimbabwe. In the place of 'Protestant', preference is given to the use of the term 'Pentecostal' to depict 'radical Christianity'. Mainstream Christianity is associated with elderly people for the reason that it allows syncretism. Pentecostal Christians, who tend to reflect a younger membership, believe that such conduct amounts to a compromise of faith, thereby diluting the level of sanctity expected from Pentecostal Christians.

Perhaps the most important reason for this huge population in mainstream churches is the fact that many educational institutions in Zimbabwe, especially secondary schools, are church-run. Due to sufficient funding, these schools are well-equipped with essential facilities, hence they have become so popular that every family strives to send at least one child to such a school.<sup>16</sup> Without understating the effect of exposing pupils to mainstream religious groups in schools, it does not

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<sup>11</sup> As above.

<sup>12</sup> These demographic figures have been confirmed as accurate as at 17 April 2007 by Indexmundi Co <http://www.indexmundi.com/zimbabwe/religions.html> (accessed 2 March 2008).

<sup>13</sup> For the Jewish community in Zimbabwe, see <http://www.zjc.org.il/showpage.php> (accessed 30 September 2008).

<sup>14</sup> US Department of State *International Religious Freedom Report, Zimbabwe, 2007*, released by the Bureau of Democracy, Human Rights and Labour.

<sup>15</sup> As above.

<sup>16</sup> In Masvingo Province, a provincial area believed to produce Zimbabwe's largest and finest academics and leaders, almost all the first-ranked secondary schools are church-run and, therefore, commonly called 'mission schools'. These include Gokomere (Catholic), St Anthons Mission (Catholic), Chibi Mission (Catholic), Berejena Mission (Catholic), Holy Cross (Catholic), Dewure (Catholic), Zimuto Mission (Catholic), Silveira Mission (Catholic), Mukaro Girls High (Catholic), and Gutu Mission (Catholic).

necessarily follow that, once introduced to religion in school; pupils cannot practise another religion, or no religion, after school.

In view of the above concerns about the accuracy of the religious demographic figures, it is suggested that this is an area that needs specialised research in order to fully appreciate the dynamics of religion in Zimbabwe. Further, it is extremely difficult to put Zimbabweans of African descent into categories of religious affiliation given the relativity of religion and beliefs as depicted in the guiding definitions quoted above. Whereas people might claim to belong to a particular religion or belief, the centrality of that religion or belief to peoples' lives might be different. The practical knowledge of the writer of Zimbabwean society is that for every two persons, one believes in both God and indigenous beliefs and practises both (syncretism). Similarly, for every two persons, one entertains certain beliefs or none at all. The writer's own knowledge of the Zimbabwean religious dynamics is that out of every two believers, one is syncretic, that is, believing in both God and indigenous traditions. However, in respect of the general population, out of every two people, one is likely to profess no belief at all.

#### 4 Legal framework and practice of religion

For reasons unclear to this writer, there is not much legislation dealing with the practice of religion and human rights in Zimbabwe. The most elaborate legislative text on religion in the Zimbabwean legal system is the Constitution that conceptualises the practice of religion. Section 19 of the Constitution is hereby quoted *verbatim*. It provides as follows:<sup>17</sup>

Protection of freedom of conscience

- (1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of conscience, that is to say, freedom of thought and of religion, freedom to change his religion or belief, and freedom, whether alone or in community with others, and whether in public or in private, to manifest and propagate his religion or belief through worship, teaching, practice and observance.
- (2) Except with his own consent or, if he is a minor, the consent of his parent or guardian, no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.
- (3) No religious community shall be prevented from making provision for the giving by persons lawfully in Zimbabwe of religious instruction to persons of that community in the course of any education provided

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<sup>17</sup> Sec 19 of the Constitution of Zimbabwe, 1980.

- by that community, whether or not that community is in receipt of any subsidy, grant or other form of financial assistance from the state.
- (4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.
  - (5) Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1) or (3) to the extent that the law in question makes provision —
    - (a) in the interests of defence, public safety, public order, public morality or public health;
    - (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of persons professing any other religion or belief; or
    - (c) with respect to standards or qualifications to be required in relation to places of education, including any instruction, not being religious instruction, given at such places; except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.
  - (6) References in this section to a religion shall be construed as including references to a religious denomination and cognate expressions shall be construed accordingly.

Before considering other issues relative to freedom of conscience in Zimbabwe, it is important to discuss issues emanating from this provision in its implementation through the legislation enabled by the Constitution.

#### 4.1 Freedom to belong to or to change one's faith

Germane to the theme of the Durban conference is the prescription that children are also regarded as bearers of freedom of conscience, which can only be limited by consent or through parental discipline. Furthermore, the law clearly protects one's freedom to choose a religion, as well as the freedom to change such religion or belief.<sup>18</sup> This has been necessitated by the practice of the state to allow people freely to choose their lifestyles. As already stated, in Zimbabwe, religion, politics and culture are always kept separate from the law; hence there is minimal regulation. The other reason has to do with the basis of these religions. For instance, Christians maintain a fundamental doctrine to the effect that no one should be forced to be a follower of Christianity. The basis of this doctrinal teaching is that a call to this faith or absence of it should be entirely an individual's informed choice, rather than the result of coercive recruitment tactics. The textual background of this line of teaching is in the Holy Bible, the primary text establishing and regulating the Christian faith.<sup>19</sup>

<sup>18</sup> As above.

<sup>19</sup> Isaiah 1:18 provides: 'Come let us reason together says your God. Even if your sins are as red as scarlet, I will cleanse them as white as snow' (the King James version). On this basis, Christians maintain that the call of God is one of negotiation rather than sanction of punishment, hence one ought to have effective control over when to join or to leave the faith.

## 4.2 Freedom of religion in educational institutions

It is important to note that section 19(2) of the Constitution regulates religion in educational facilities such as schools and institutions of tertiary education. This has diverse consequences. In Zimbabwe, religious instruction is given in schools as a standard for discipline, but not necessarily as a legal requirement. Notwithstanding that, religion is not a legal requirement; it is, however, part and parcel of the school curriculum, especially of church-run and public schools from primary level to tertiary education where degrees in theology are offered. It is not entirely correct to say that schools are allowed to include religious instruction in the curriculum.<sup>20</sup> My view is that they are in fact required to do so because a primary school examination module known as Content requires pupils to master various humanities and social science-oriented concepts, including religion. One of the components of this module is called Religious and Moral Education, which is predominantly Christian instruction but with reference to basic concepts of Muslim, Judaism and Hinduism as well as traditional and other faiths. In secondary schools, the module is known as Bible Knowledge, and Divinity in advanced secondary schools.

At the level of secondary and advanced secondary school, the content of the curriculum is strictly Christian, without reference to other religions. Zimbabwe practises a centralised examination system such that all senior primary school pupils and secondary school learners in Zimbabwe are required to sit for these exams in order to be eligible to proceed to the next level. Consequently, unless a particular school is expressly exempted, perhaps because it is a Jewish or Muslim school, it should teach Religious and Moral Education, Bible Knowledge and Divinity, and students are expected to sit for these exams.<sup>21</sup> Notwithstanding the universality of Christian instruction in schools from the secondary level, the module is sometimes taught as an elective, especially in schools that were established and funded by a particular religious formation such as Roman Catholicism or where a school lacks facilities or personnel to instruct on the subject. This gives pupils a chance to pursue a knowledge of their own religions.

Whilst there is no state religion in Zimbabwe, there is a bias towards Christianity. For instance, virtually all Christian ceremonies are public holidays, although no one is required by law to directly observe a

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<sup>20</sup> See US Department of State (n 14 above).

<sup>21</sup> The author personally went through all these stages in the Zimbabwean education system, both as a student and teacher, and studied all the variations of religious instructions. Therefore he has first hand appreciation of the content of the curriculum and the effect it has on the personality of the recipient of such instruction. Unfortunately, efforts to secure a source of these modules proved futile.

particular day or do any rituals pertaining to a particular religion.<sup>22</sup> Sunday is a not a business day. Christians attend church services on this day, whilst other Christian denominations, such as the Seventh Day Adventist and some African Apostolic churches, attend church services on Saturday. Saturday is also designated as a non-business day, especially in the public service domain, even though the private sector regards it as a half-working day. The school calendar has nothing much to do with religious holidays, except those designated as public holidays by the state, for instance, Easter and Christmas. To that end, pupils who belong to certain faiths that observe protracted pilgrimage holidays might lose out in school should the pilgrimage take place during the school calendar, unless they are learners at a specialised school.

Perhaps this inexplicable devout national observance of Christianity dates back to the arrival of missionaries in Zimbabwe over a century ago. The missionaries' mission was to propagate and recruit followers. They are the ones who introduced the Christian faith and its values, built schools and hospitals as well as other social centres to serve people in the remote parts of ancient Zimbabwe.<sup>23</sup> It is a matter of record that most political leaders also owe allegiance to missionary schools, which were the only schools that accepted non-white students on bursaries during colonial and post-colonial Zimbabwe. Furthermore, '[i]n the last 50 years Christian mission schools have exercised much influence in the country, and most of the members of the first Cabinet of independent Zimbabwe were graduates of these schools'.<sup>24</sup> Perhaps the closest Zimbabwe came to being a Christian state was during the national referendum in 2000, where Pentecostal churches launched an unsuccessful campaign to make Zimbabwe a Christian state during the constitution-making process.<sup>25</sup> The consequences of the campaign, should it have succeeded, are still unknown to this day, but the writer is of the view that it could have been the

<sup>22</sup> Easter Friday, Sunday and Monday and Christmas Day (25 December) are public holidays, whilst usually no work is done on a Sunday. However, it is not an offence to carry out work on this day. The requirement is that, should workers come to work on a Sunday, employers must pay double the daily rate as they do on public holidays (Labour Act, ch 28; 01 <http://www.parlzim.gov.zw>).

<sup>23</sup> See generally I Linden *The Catholic Church and the struggle for Zimbabwe* (1980).

<sup>24</sup> See 'Zimbabwe religions' <http://www.britannica.com/eb/article-44150/Zimbabwe> (accessed 30 September 2008). It is also on record that the former President of Zimbabwe, Robert Mugabe, received education at Kutama Catholic Mission, a secondary school close to his home area, and so did many other elderly politicians and other leaders in society. Missionary schools simply command a majority in the Zimbabwe education system.

<sup>25</sup> The proposal was rejected by the Commission tasked to collect views from the people regarding what they wanted to be included in the new Constitution. Whilst it is unlikely that the Draft Constitution was rejected on this basis only, many believe that it was the concentration of political power that led to its rejection by the electorate, who were largely influenced by those against centralisation of political power.

beginning of intertwining religion and politics, a situation that might easily develop into a closed system where followers of a particular religion might find it difficult to change or practise any religion other than Christianity.

### 4.3 Court jurisprudence around the right to practise religion

Of all fundamental liberties protected in the Constitution, freedom of religion remains one of the least litigated areas in the Zimbabwean constitutional jurisprudence. The reason for this state of affairs is the practice of separating religion from law and politics, which is well accepted as consistent with the values of a free and democratic society. In Zimbabwe, religion and culture are not established or constituted by law. In fact, the law simply requires that those who practise religion and culture should do so with utmost consideration of other peoples' right to practise or not to practise any religion or culture. Had it not been for judicial jurisprudence, the law did not even seek to define what amounted to religion or which beliefs and practices qualify for protection under section 19 of the Constitution or any other law. As shall be demonstrated below, courts do not easily involve themselves in defining religion. It suffices for their purposes to determine whether a particular practice is indeed central to one's religion in order to qualify for constitutional protection.<sup>26</sup>

The Supreme Court of Zimbabwe sits both as an appeal court and a constitutional court.<sup>27</sup> It has heard and adjudicated two landmark cases relating to freedom of conscience or religion. The first case was the 1995 case of *In Re Chikweche*.<sup>28</sup> The facts were briefly that the applicant, a qualified lawyer, sought to be admitted to the Zimbabwean Bar, co-ordinated by the Law Society of Zimbabwe. His application for admission was opposed on the basis that the applicant did not satisfy the requirement in terms of the Legal Practitioners Act,<sup>29</sup> which provides that one needs to be a 'proper and fit' person to join the 'honourable profession'. The basis of the opposition was that, as a Rastafarian, the dreadlocks worn by the applicant were inconsistent with the etiquette of the legal profession.

<sup>26</sup> In the case of *Christian Education SA v Minister of Education* 1998 12 BCLR 951 (CC), the South African Constitutional Court quoted with approval the findings of Gubbay CJ (as then he was) in the Zimbabwean case of *In Re Chikweche* 1995 4 SA 284 (ZSC), where the Supreme Court of Zimbabwe held in paragraph 538F: 'This Court is not concerned with the validity or attraction of the Rastafarian faith or beliefs; only with their sincerity.'

<sup>27</sup> In terms of sec 24(3) of the Constitution, complaints regarding the violation of the Bill of Rights shall be referred to the Supreme Court, which in that case sits as a Constitutional Court made up of five judges.

<sup>28</sup> *Chikweche* (n 26 above).

<sup>29</sup> Legal Practitioners Act, ch 27:07.

The applicant filed a constitutional challenge against the decision to reject his application for admission to the Bar. He argued in the Constitutional Court that, as a Rastafarian, wearing dreadlocks constituted a universal and central practice critical to the full enjoyment of his faith. He further argued that the decision to reject his application for registration as legal practitioner was, accordingly, both discriminatory and a violation of his freedom of conscience protected by section 19 of the Constitution. The Court, having followed the applicant's meticulous narration of the origins of Rastafarianism, concluded that Rastafarianism was indeed a protected religion under section 19 of the Constitution.<sup>30</sup> The decision to reject the applicant's application for admission as an 'unfit and improper' person was reversed.

The second case, also dealing with the freedom of Rastafarians to wear dreadlocks, was the case of *Dzvova v Minister of Education and Culture and Others*.<sup>31</sup> In that case, the complainant was a primary school pupil who had been sent away from school by the school authorities for wearing dreadlocks to school. This prohibition against wearing long hair was provided for in the school's code of conduct. The regulations did not take into account the possibility that certain pupils might be required by their religion or culture to wear their hair long. Accordingly, the applicant challenged the constitutionality of the regulations on the basis that, by failing to provide reasonable accommodation to Rastafarians, the regulations infringed upon the freedom to enjoy and practise religion in public. In what this writer regards as the worst reasoned human rights judgment, despite its favourable conclusion, the Court, after making a rushed superficial definition of religion, concluded that Rastafarianism was a religion. The Court inevitably found the regulations to be in violation of section 19 of the Constitution.

The above case law demonstrates that, whilst it is generally acknowledged that individuals should enjoy freedom of religion and culture, there are certain limitations that are inadvertently imposed on individuals by the authorities in the course of their duties. If individuals do not take action to seek judicial review of those limitations, they might suffer

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<sup>30</sup> Concurring with the judgment of the full court, Justice McNally dissented in part, expressing his reservations about the notion that Rastafarianism was a religion. He, however, agreed with the full bench that, notwithstanding the lack of clarity as to whether it was a religion, it qualified for protection under sec 19 for the reason that the provision is wide enough to protect such philosophical and cultural expressions as are strongly binding on individuals. The same approach of endorsing Rastafarianism as a religion was taken by the Constitutional Court of South Africa in the case of *Prince v President of Law Society of the Cape & Others* 2000 7 BCLR 823 (CC). In that case the Court quoted with approval the findings of the Supreme Court of Zimbabwe in the *Chikweche* case to the effect that Rastafarianism was a religion and therefore protected as such under the relevant constitutional provisions. The Court further observed that, despite the fact that possessing and smoking *cannabis* is illegal; the illegality did not deprive the practice of its status as a central practice in the Rastafarian religion.

<sup>31</sup> n 6 above.

unjustified limitations upon their freedoms. However, the state does not easily interfere with the practice of religion and culture, as culture and traditional values are deemed the pillars of society. For this reason, there exists a Ministry of Education and Culture tasked with developing policy and promoting the practice of religion and culture in schools. Save for the Witchcraft Suppression Act,<sup>32</sup> a colonial statute that has since been amended, traditional beliefs are always given, but not at the expense of other forms of belief. The state does not interfere with church administration, unless the leaders involved are using the church as a political tool to influence public political opinion, particularly by propagating political ideologies regarded as anti-government.<sup>33</sup>

## 5 The state and spiritual values and practices of indigenous African peoples

Zimbabwe is a society where the belief and practice of traditional customs are fast disappearing, so that secular and syncretistic tendencies have practically taken over in virtually all spheres of life. This is so despite the government's efforts to keep traditional beliefs and values alive in society. The secular-oriented lifestyle is reflected in the way the state regulates the exercise of freedom of conscience. The state has left the belief and practice of religion to spiritual leaders, as well as individuals, as the ultimate determiners of how religion ought to be consummated. Traditional practices which are embodied in customary law are not regulated to the extent that they do not conflict with general law.

With regard to marriage, Zimbabwe maintains three types of marriage, namely, civil marriage,<sup>34</sup> registered customary law marriage<sup>35</sup> and unregistered customary law union. The civil marriage is a typical monogamy where a party is barred with a criminal sanction from entering into another marriage as long as the civil marriage persists.<sup>36</sup>

<sup>32</sup> Ch 9:19. This Act of Parliament was enacted during colonialism. Its effect was to punish any person who accused another of the act of witchcraft, a practice ordinarily regarded by society as evil, given that the belief is that followers of that practice are involved in killing other people through spells and bad omens.

<sup>33</sup> In March 2007, the opposition political party Movement for Democratic Change organised a prayer for Zimbabwe, a gathering the government interpreted as an attempt to rally people behind the opposition and influence political opinions in view of the approaching general elections in March 2008. The state violently disrupted these meetings, arresting and assaulting opposition leaders in the process. One might read the event not as a violation of freedom of religion because the credibility of the prayer was questionable, but as one of attempting to hide behind religion whilst pushing a political agenda.

<sup>34</sup> Administered through the Marriages Act, ch 5:11.

<sup>35</sup> This marriage is regulated by the Customary Marriages Act, ch 5:07.

<sup>36</sup> Bigamy is a common law offence that is imposed on a party to a civil marriage who contracts another marriage whilst the first civil marriage is still valid.

Perhaps by coincidence, most Christian churches have the competence to solemnise this kind of marriage within the church structures. Such a marriage solemnised by a minister of religion is endowed with rights and privileges similar to the one solemnised by a magistrate in a court of law, and it can only be annulled by an order of the High Court or any other superior court. This, in my view, does not necessarily extend an unfair advantage to Christians over followers of other religions. My view is that it is a mere coincidence that the state confers a civil marriage similar to the one recognised by Christianity. This suggestion should be assessed in view of the fact that catholic Christianity has since times immemorial influenced the type of marriage Christians should contract.

Two other forms of marriage envisage the possibility of polygamy, which is not an offence and is only directly discouraged by activists who think that it is a vehicle for the spread of HIV/AIDS. The only limitation on civil marriage is that it cannot develop into a polygamous marriage. If any other religion confers recognition on a different type of marriage, this is not recognised by the Zimbabwean legal system; hence parties thereto cannot enjoy the rights and privileges inherent or conferred to parties in a legally recognised marriage.

As to traditional practices, female genital mutilation, tribal initiation rituals and compulsory virginity testing are some of the practices that are almost or totally extinct. Their existence is more rooted in oral tradition, rather than as a practice still in force. Proof of the existence of ritual and/or honour killings is difficult to come by. However, the main area of concern is child marriages on the basis of poverty and some religious beliefs. Poor families often 'sell off' girl children in consideration of generous payment in the form of *lobola* or any other payment in kind. This customary practice is called *kuzvarira*.<sup>37</sup> More disturbing is the solemnisation of marriage between minor girls and elderly men, especially in the African Apostolic churches, which also practise polygamy. This practice is so synonymous with the lifestyle of followers of this sect that civil society organisations have voiced their concerns,

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<sup>37</sup> There is yet a customary practice with similar consequences of marrying off girl children to another family as a way of appeasing the dead from the marrying family. This normally occurs where a member of the marrying-off family killed a member of the marrying family. This practice is called *kuripa ngozi* (appeasing the dead). In its concluding observations on the Zimbabwe report, the United Committee on the Rights of the Child (Concluding observations of the Committee on the Rights of the Child: Zimbabwe CRC/C/15/Add.55 [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/514a5359399c3a\\_88c12563610049128c?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/514a5359399c3a_88c12563610049128c?Opendocument)) expressed its disappointment regarding the prevalence of this practice in some sectors of the Zimbabwean society. It accordingly recommended that Zimbabwe should ensure that the practice is terminated forthwith through legal reform as the practice had adverse effects on girls and unduly diminished their choice of the kind of life they would want to lead.

arguing that the practice amounts to statutory rape,<sup>38</sup> but nothing much has been done by the state to eradicate the practice, especially because the majority of such cases go unreported to the responsible government authorities. Moreover, an offer to marry a victim by a suspect in a statutory rape case is almost always regarded as conferring immunity from prosecution on the suspect.

## 6 The state and conflicts between religions, proselytism and religious expression within public schools or at government functions

Indigenous traditions have always been regarded as directly antagonistic to the foundational doctrines of radical or Pentecostal Christianity. This has been the main source of tension between these religions. Coincidentally, or perhaps as a calculated compromise, many mainstream Christian churches accept the possibility of what we call 'dual worship' or syncretism, in which one is allowed to practise both traditional and mainstream Christian values. For instance, the Catholic faith allows its followers to take alcohol and worship spirit mediums (*vadzimu*) alongside Christian rituals.<sup>39</sup> This is unheard of in the Pentecostal Christian faith; either one is a Christian or not. There is no middle-of-the-road approach. Scholars have illustrated syncretism in the Zimbabwean context as follows:<sup>40</sup>

An African Christian theology is in the making in the faith and practice of the African Christian. There is always the tendency, not uniquely to African peoples, to understand the new faith in terms of what one already knows. It is not unusual to hear African Christians refer to Jesus as universal *mudzimu*, as *Mudzimu Mukuru* (the great ancestral spirit). He becomes incarnated within African culture and in that way people can understand His role and participation in all aspects of life, rather than being confined to ecclesiastical or to spiritual matters.

However, despite the distinction between Christians and indigenous traditions set out above, the ensuing tension has not yet taken a confrontational dimension, and is very unlikely to do so in future. One of the reasons for this is that, unlike Christian churches and congregations, the practice of traditional rituals lacks the order and structure of administration. An individual or a family unit is sufficient to do a ritual. In such circumstances, it would be extremely difficult to mobilise people

<sup>38</sup> In terms of sec 5(1)(a) of the Sexual Offences Act, ch 9:21, a male adult who has sexual intercourse (even consensual) with a girl under the age of 16 years commits the offence of rape.

<sup>39</sup> H Arntsen *The battle of the mind: International new media elements of the new religious political right in Zimbabwe* (1997) 47-145 <http://www.scholars.nus.edu.sg/landow/post/zimbabwe/religion/zreligionov.html> (accessed 30 September 2008).

<sup>40</sup> C Hallencreutz & A Moyo *Church and state in Zimbabwe* (1988) 202.

to rise against another form of religion such as that which obtains between Christians and Muslims in some countries represented in this conference.

Consequently, confrontational or violent conflicts between religions are a practice that never entered the realm of religion in Zimbabwe. It is unheard of that religious congregations would differ on matters of religion to the extent that state intervention becomes necessary in order to broker peace. Accordingly, issues regarding conversion into or out of the faith, access to religious sites and pilgrimage routes do not arise. Perhaps this is attributable to the nature of religions dominant in Zimbabwe, as well as to its religious demography. People are free to proselytise by organising public or open meetings where potential converts are invited to participate and ultimately join the religion. Door-to-door methods are also used, in which followers of particular religions visit potential converts in their homes and attempt to persuade them to join their fellowship. It is uncommon to hear that nefarious methods of proselytism have been utilised.

Zimbabwe follows a quasi-secular lifestyle such that it is one's freedom of conscience to belong or not to belong to a religious group. Despite the dominance of Christianity and traditional beliefs, it cannot be imagined that persons of certain religious opinions would impose their beliefs and practices on other people who are least involved in that form of religion. This obtains in all spheres of life including, but not limited to, dressing, social interaction, marriage, career and education. Dictates enforcing dress codes or lifestyles emanate from the church doctrines of each and every religion as opposed to a universal regime. Such precepts are binding only on followers of that religion with sanctions for non-compliance being internally administered.<sup>41</sup>

If we were to make a comparison based on dress codes, the following would be the situation in a group of ten Zimbabweans: Pentecostal Christians would dress modestly; no tight clothing, clothes should cover intimate parts of the body as much as possible, women dressed in fairly long and loose skirts or trousers, women's hair plaited or flowing with modern artificial extensions, and so on. No particular limitations exist for men in Pentecostal Christian churches.<sup>42</sup> African Apostolic faith followers require that women wear a headscarf and unprinted fabric. With regard to marriage, African Apostolic followers strongly believe in polygamy; whereas Pentecostals regard polygamy as adultery. Muslims would expect the flock to be in flowing clothes, with women's bodies completely covered to the feet. Rastafarians have long hair and

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<sup>41</sup> The media regularly publishes stories of religious leaders who have been excommunicated by their congregations for failing to abide by the dictates of Christian values, such as financial mismanagement, sexual immorality, abuse of office, and so on.

<sup>42</sup> This is a cause of concern that might pose a future problem, since some churches, especially the African Apostolic churches, still perpetuate the oppression of women, thereby countering all efforts directed towards equality and emancipation.

often gather to smoke *cannabis* in fellowship. Zimbabwean traditional leaders, such as chiefs and headmen, who are the default custodians of the traditional beliefs and lifestyle, would expect people to dress in no particular regalia, but one that exudes the decency expected of a person duly instructed according to African customs. It is in the above context that Zimbabwean society ought to be understood. It will be practically impossible to attempt to impose religion on peoples' lifestyles, especially where the state is not involved, because, as already noted, religion and governance have been kept separate.

It is, however, important to note that religious expression in public meetings or government functions has been consistent, in the sense that the business of the day usually begins with a prayer, often with a flavour of Christian doctrine, though this is not a legal requirement. Holders of public office are sworn in holding the Bible; parliamentary business starts with a prayer; school parades start not only with recitation of the Lord's Prayer,<sup>43</sup> but a short sermon.<sup>44</sup> High profile government functions, such as Independence Day celebrations on 18 April and the burial of national heroes, start with prayer before political speeches.<sup>45</sup> Radio and television broadcasts begin with Christian sermons at five o'clock in the morning. The dominance of Christianity has ostensibly inculcated a sub-consciously held belief that, in whatever people do, they should reverence God, namely the Christian God. The government has tactfully excluded itself from sharing sentiments regarding the determination of the so-called correct way of worshipping God, which is the main source of division even *within* religions and congregations. This approach has worked very well in terms of ensuring that

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<sup>43</sup> The Bible records that Jesus Christ gave a prayer outline to his disciples that largely covers the main areas of one's life, such as sufficient provision for the day, deliverance from temptation and evil, as well as forgiveness. This prayer is almost like a national anthem. It is recited in many schools, both private and public, but for the reason that it is not a legal requirement and is not recorded, one might not easily find the origin of this practice.

<sup>44</sup> Most government and church-run schools require students to purchase hymn books and/or prayer pamphlets, eg Victoria High School in Masvingo Province, which is a government-run school, requires all students to own and bring a hymn book to the chapel where a minister of religion preaches a short sermon relevant to the age group and expectations of students.

<sup>45</sup> The reason why the church is given reverence by political leaders might be ascribed to the role played by the missionary churches and leaders during the liberation struggle. A number of authors have written widely on this subject wherein they attempted to expose the role played by churches and traditional leaders. See generally C Banana *The church in the struggle* (1996); AJ Dachs & W Rea *The Catholic Church and Zimbabwe* (1979); Hallencreutz & Moyo (n 40 above); D Lan *Guns and rain: Guerrillas and spirit mediums in Zimbabwe* (1985); Linden (n 23 above); DJ Maxwell 'The church and democratisation in Africa: The case of Zimbabwe' in P Gifford (ed) *The Christian churches and the democratisation of Africa* (1995) 108; RH Randolph *Dawn in Zimbabwe: The Catholic Church in the new order: A report on the activities of the Catholic Church in Zimbabwe for the five years (1977-1981)* (1985).

competition for membership is the province of religions themselves and the state regards all religions as equally important.

## 7 Prospective problems

### 7.1 Freedom of religion versus politics: A boiling pot?

Three issues regarding religion and politics are particularly problematic. First, many reports on religious freedom in Zimbabwe have found it extremely difficult to find information on the direct violation of religious freedom by the government and ended on political harassment of religious leaders who have deliberately ventured into politics.<sup>46</sup> Second, in an attempt to cast a 'prophetic eye' into the future and to attempt to expose possible problem areas in the interaction of religion, law and human rights, I would argue that, despite differing opinions on whether the harassment of church leaders violates freedom of religion, such harassment does take on a pernicious character when it adversely affects the general populace in the provision of social amenities, given the fact that churches and humanitarian organisations have literally taken over the responsibility of providing basic amenities to the general populace. Third, African indigenous churches still perpetuate discrimination and the oppression of women within their congregations, thereby defeating the efforts of many civil society organisations trying to eradicate inequality and to emancipate women. Children are also affected, especially girls, because it is considered unnecessary to send a girl to school given that she will get married upon reaching puberty. I will deal with these two points separately.

With regard to the first issue, it might be argued that, as a matter of interpretation, the mere fact that church leaders are politically harassed as a consequence of 'diversifying' their role in society by venturing into politics should not easily be interpreted as a violation of freedom of religion.<sup>47</sup> The reason is that involvement in politics cannot be defined as a belief or an aspect of any religion, such that its limitation would amount to a violation of freedom of religion. A church leader who gets involved in politics should be regarded as a person exercising his freedom of assembly and expression, or participation in the political affairs of his country through electing public officials or assuming candidature for such office. To that end, the activity is outside the parameters of constitutional protection. The normative content of freedom of religion or conscience may be drawn from the African Charter on Human and

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<sup>46</sup> nn 10-14 above.

<sup>47</sup> In this case we hereby confirm reference to reports by the US Department of State 2007 on Zimbabwe, who have attempted to include the allegations of harassment of church leaders as a violation of religious freedom. There are diverging views regarding this interpretation when inspiration is drawn from international human rights instruments in defining the normative content of the right or freedom of religion.

Peoples' Rights (African Charter),<sup>48</sup> as well as the International Covenant on Civil and Political Rights (CCPR), both of which are part of domestic law of Zimbabwe. Article 18 of CCPR provides as follows:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Article 8 of the African Charter provides that '[f]reedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.' Taken together, the authorities cited above have one thing in common; namely, that they restrict the practice, observation and teaching of religion to activities related to religious beliefs as opposed to an endless list of activities. Therefore, the mere fact that a religious figure undertakes an activity does not necessarily make it a religious activity protected by the Constitution. These may be some of the reasons for the lack of clarity in the way religious freedom is reported in Zimbabwe.

However, another school of thought would insist that the above sentiments should not ignore the indisputable role played by churches in the broader functioning of civil society organisations in their quest to influence social transformation.<sup>49</sup> Perhaps the reason why Zimbabwe's public service delivery system is still functioning is because of the subsidy by faith-based organisation through humanitarian relief programmes. One could also conclude that the role of churches in society entitles them to have a say in the governance of the country, as they equally share the burden with the state. It is also widely acknowledged that conventional Christianity does not separate religion and politics. In fact, research has shown that religions, especially Christianity, have so much to do in the democratisation process.<sup>50</sup> To that end, harassing church leaders on the basis of their political affiliation ought to be regarded as an unjustified limitation to freedom of religion. Furthermore, assembly is very critical to the exercise of freedom of religion. The requirement by

<sup>48</sup> Adopted at Nairobi, Kenya in June 1981 and entered into force in October 1986. A copy is available in C Heyns & M Killander (eds) *Compendium of key human rights documents of the African Union* (2007).

<sup>49</sup> In fact, the leading case law on the issue of delay in execution of condemned inmates as constituting cruel, inhuman and degrading treatment or punishment were filed by a charity church-run organisation known as the Catholic Commission on Justice and Peace (CCJP). This was in the case of *Catholic Commission on Justice and Peace v Attorney-General & Others* 1993 1 ZLR 242 (S). Furthermore, with the economic melt-down in Zimbabwe, food security of the majority of the population is ensured by church-run relief organisations such as the Catholic Relief Service, World Vision Christian Care, and so on. As already mentioned above, most schools in Zimbabwe are church-run. The church is also supporting the health system of the whole nation by building and running mission hospitals as well as clinics.

<sup>50</sup> See generally Maxwell (n 45 above).

Public Order Security Act<sup>51</sup> for police clearance to organise a gathering has been construed as a violation of freedom of assembly in countries with similar legislation.<sup>52</sup> Since freedom of assembly is a cornerstone of freedom of religion, the violation of freedom of assembly translates into a violation of freedom of religion. These are some of the reasons for maintaining that the harassment of church leaders violates freedom of conscience.

As to the second issue, I take harassment of churches as a future problem, given the eagerness of the government to haphazardly enact oppressive laws in order to quell dissent from certain sectors of society, especially civil society.<sup>53</sup> If the problem gets to the extent where legislation is enacted to oust churches from politics, then society is bound to suffer in various ways, particularly with respect to the provision of social amenities. The church was involved right from the beginning during the liberation struggle. As such, it should be allowed to participate effectively in the governance of the country. That is its rightful place in the true democracy purported in the Constitution. The harassment of church leaders, therefore, is not just an individual case issue, but a human rights issue, to the extent that church congregations as members or citizens of Zimbabwe share their grievances through established structures, namely the church. Despite representing a substantial part of the population, religion is not specifically represented in parliament, unlike other sectors of society such as women and traditional leaders.<sup>54</sup>

## 8 Conclusion

I have already mentioned that the subject of religion or religious freedom does not easily feature in either lay or intellectual discussions in Zimbabwe. Despite the population being generally religious, there have been no outstanding issues on this subject so as to elevate it to the status of heated issues. Consequently, political parties do not ordinarily engage in debates on religion in parliament or even mention it in their respective manifestos around the time of general elections. Among the explanations for this is the clear evidence of the dominance

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<sup>51</sup> Public Order and Security Act, ch 11:17 requires police clearance for anyone who wishes to convene in a meeting of more than 10 people. This law has been applied in respect of church gatherings as well, especially in urban areas.

<sup>52</sup> See *New Patriotic Front v Inspector-General of Police* (2001) AHRLR 138 (GhSC 1993).

<sup>53</sup> In 2004, the Parliament of Zimbabwe enacted the Non-Governmental Organisation Act, which sought to confer powers on the government to regulate and control the manner in which civil society manages its business, especially by scrutinising financial books. However, the author could not locate an authoritative copy of same.

<sup>54</sup> Ten of the senate seats are reserved for traditional leaders, who are hand-picked by the President to represent traditional leadership and as preservation of traditional values, especially in the laws enacted by parliament.

of Christianity and traditional beliefs over all other forms of religion in Zimbabwe. Unfair advantages are directly or ostensibly extended to majority religions. For instance, Christianity dominates public gatherings and schools, whilst traditional or indigenous beliefs are safeguarded by nominating representatives to sit in parliament. This advantage is not extended to Muslims, Jews and Buddhists who, by virtue of being religious minorities, need protection. The issue of the political harassment of religious leaders is one of the problematic areas that needs to be addressed as soon as possible before it gets out of hand. The consequences that will ensue if the situation is not closely monitored is a total denial of the church's role in a democracy, namely, that although they are faith-based organisations, churches form part and parcel of civil society and are therefore entitled to participate in democratic debates. Disregarding churches effectively means depriving their members of a chance to be represented in debates of national importance, in flagrant violation of the fundamental pillars of representative democracy. Solutions will certainly be found in the ongoing discourse on the relationship between law, religion and human rights.