

AFRICA CHRISTIAN ACTION

Glosderry

31 May 1996

OBJECTION TO THE CERTIFICATION OF THE NEW CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA BY THE CONSTITUTIONAL COURT

Africa Christian Action, as a Christian grassroots movement concerned with upholding Biblical norms in moral values, hereby objects to the certification of the New Constitution on the following grounds:

1. Constitutional Principle I states: ‘ provide ... a democratic system of government’.

ACA objects to omission of the sub-section: ‘In submission to Almighty God’ from the preamble to the Constitution in lights of the above Constitutional Principle. Over 20,000 people personally petitioned the Constitutional Assembly on 30 May 1995 to acknowledge Almighty God in the constitution, 10,000 people in Cape Town on 3 May 1996 marched to Parliament to call for submission to God to be written into the Constitution. Over 230,000 people have signed the ‘Christianity and Religious Freedom’ document which stated in point 3: ‘We require that those who will formulate the new laws of the land will acknowledge the Triune God in the Constitution of our country’. There has been no similar expression of mass support for the removal of God from the Constitution. If this government is truly democratic, it will listen to the voice of the people as evidenced above.

ACA therefore recommends that ‘In humble submission to Almighty God’ be included in the Preamble of the New Constitution.

2. Constitutional Principles V states: ‘... equality of all before the law and an equitable legal process..’

This conflicts with Section 9: Equality (5) ‘Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair’.

In section 9 the person accused of discrimination is guilty until he proves his innocence. This is against the principles of all civilized law where one is innocent until proven guilty. We recommend that this sub-section be removed.

3. Section II(2): ‘Everyone has the right to bodily and psychological integrity, which includes the right - (a) to make decisions concerning reproduction’.

This is true until those decisions concerning reproduction affect another life, that of the unborn living inside of the mother, co-existing with the mother, but not part of the mother’s body. This section could imply that the mother has the sole right to decide to abort/kill her unborn baby. This conflicts with Constitutional Principle II ‘Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties’. Surely the

most fundamental right of all is life. And the unborn baby should enjoy the legal protection of that right.

And it conflicts with Constitution Principle III ‘The Constitution shall prohibit ... all other forms of discrimination..’. With abortion the baby suffers a fatal form of discrimination on the basis of his age.

It also conflicts with Constitutional Principle I: ‘..a democratic system of government..’. To have unlimited right to make decisions concerning your reproduction where it also affects the life of another human being, violates the rights of other citizens to continue to enjoy their life (the unborn baby). Also in all the latest surveys, South Africans have overwhelmingly opposed abortion on demand and if the government proceeds with the proposed legislation they will have shown themselves to be undemocratic.

Constitution Principle V ensures the: ‘...equality of all before the law’ , surely this includes all South African, irrespective of their age, development or geographical situation?

We recommend that the unborn baby receive constitutional protection by the addition of the clause ‘irrespective of their degrees of awareness, health or development’, into Section 10 of the New Constitution so that it reads ‘Everyone irrespective of their degrees of awareness, health or development, has the right to life’.

4. Constitutional Principles II states: ‘Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties..’

ACA objects to the omission from Section 12 of the following sub-section: ‘All law abiding citizens have the right to obtain, own, carry and use licensed firearms to defend life, liberty and property and to prevent violent crime. The right of self defence shall not be infringed upon.’

We recommend that the above sub-section be included in the Constitution to ensure the right of law abiding citizens to continue to enjoy the fundamental rights, freedoms and civil liberties as mentioned in Principle II. We recognise that it is impossible for the police force to guarantee the safety of every citizen so no hindrances should be placed upon the right of law abiding citizens to obtain and use firearms for self defence.

5. Constitutional Principle III states: ‘The Constitution shall prohibit racial, gender and all other forms of discrimination ...’.

ACA objects to the omission of the following sub-section in Section 16(2), needed in order to protect women against the gender discrimination mentioned above.

Section 16(2) should read: ‘The right in subsection (1) does not extend to -’. (d) obscene or pornographic expressions; defamatory, blasphemous or profane expressions.’ We recommend that the above sub-section be included in the Constitution.

6. Constitutional Principle II states: ‘Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties ...’. However, the New Constitution does not directly provide for the right of protection of family and marriage. This is a universally protected right and needs to be included. This right is universally protected as evidenced by *inter alia* the following documents:

- a) Section 12 of the Universal Declaration of Rights of the UN (1948).
- b) Article 10 of the International Covenant on Economic, Social and Cultural Rights (1966)
- c) Article 23(1) of the International Covenant on Civil and Political Rights (1966)
- d) Articles 8(1) and 12 of the European Convention on Human Rights (1950)
- e) Article 5(d)(iv) of the International Covenant on the Elimination of All Forms of Racial Discrimination (1965)
- f) Part I(16) of the European Social Charter (1961)
- g) Article 18 of the Banjul Charter on Human and People’s Rights (1981) (The African Charter of Human Rights)
- h) Article 6 of the German Basic Law (1949)
- i) Article 41 of the Irish Constitution (1937)

We therefore recommend that the new Constitution must be amended to include a right on the protection of the family and of marriage.

7. Section 26 of the New Constitution guarantees: ‘the right to have access to adequate housing’. The fundamental right of ‘equality’ and ‘a democratic system’ as defined in Constitutional Principles I and V are jeopardised because one needs to violate someone else’s right to property to extract revenue from them to enable the government to pay for the benefit of someone else.

Members of Africa Christian Action would welcome the opportunity to present oral submissions to the Court.