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## The Uniting Reformed Church in Southern Africa's enactment on church judicial and legal issues

### ABSTRACT

In this article, I explore the enactment of the Uniting Reformed Church in Southern Africa on church judicial and legal issues. Part I of this article recounts the history of the Uniting Reformed Church in Southern Africa. The second part of the article focuses on the legal framework and sources of the Uniting Reformed Church in Southern Africa, the legal Status of the Uniting Reformed Church in Southern Africa, the fundamental rights of the major and minor assemblies of the Uniting Reformed Church in Southern Africa, Judicial procedures with regard to discipline, the scope of the application of Labour Law in Uniting Reformed Church in Southern Africa, The Uniting Reformed Church in Southern Africa and the protection of individual, the Uniting Reformed Church in Southern Africa and financing. The third part of the article focuses on the Uniting Reformed Church in Southern Africa enactment in the public discourse. Part IV presents two implications of my analysis, namely as a general rule that a church should dissolved properly by taking the steps required by their respective church orders or constitution. Secondly, that provision should be made in the Church Order of the Uniting Reformed Church in Southern Africa on the application of Labour Law on employment relations in the Uniting Reformed Church in Southern Africa.

### 1. HISTORICAL BACKGROUND OF THE UNITING REFORMED CHURCH IN SOUTHERN AFRICA

The meaning and implications of the Uniting Reformed Church in Southern Africa's (URCSA) engagement in legal matters cannot be fully appreciated without an insight in and due consideration of the country's past history. Until the end of the eighteenth century converts from indigenous people, slaves and members of the Dutch Reformed Church (DRC) jointly attended services and their collectively received the sacraments (Kriel 1963:54; *Nederduitse Gereformeerde Kerk Acta* 1829:79, VI, 6). On 12<sup>th</sup> November 1880, the Synod of the DRC decided to establish a separate Nederduitsche Reformed Zendingkerk for people of mixed decent (*NGK Acta* 1880:57). The DRC Synod 1881 adopted a set of regulations to govern the mission church for people of mixed decent (*Acta NGK* 1880: 54-57). The *Dutch Reformed Mission Church* was constituted in 1881 in Wellington as the first of these churches (*Acta NGSK* 1881:6). Consequently the Dutch Reformed Mission Church (DRMC), the Dutch Reformed Church in Africa (DRCA) and the Reformed Church in Africa (RCA) emerged during the 19<sup>th</sup> century and 20<sup>th</sup> as an effort by Dutch Reformed Church (DRC) to develop churches along the racial lines. On the 9<sup>th</sup> March 1910 the Dutch Reformed Zendingkerk in Orange Free State for black people was established (*Acta Gereformeerde Zendingkerk in the Orange Rivier Kolonie* 1910:3). Shortly afterwards a racial segregated churches for blacks was constituted in Transvaal, Natal and in the Cape Province. It was later followed during 1968 with the constitution of a racial

segregated reformed church for Indians, namely, the Reformed Church of Africa (RCA) (*Acta NGK OVS* 1906:94; *Acta Indian Reformed Church* 1968:21). On the 7<sup>th</sup> May 1963 at Kroonstad, the Dutch Reformed Mission Church in Orange Free State, the Dutch Reformed Mission Church in Transvaal, the Dutch Reformed Bantoekeerk of South Africa and the Reformed Mission Church in Natal unified and consequently the Dutch Reformed Church in Africa (DRCA) was constituted. The autonomy of these mission churches was not acknowledged by the DRC. Since their inception these mission churches strived to full church judicial autonomy which found its culmination in the constitution of the Uniting Reformed Church in Southern Africa (URCSA) during 1994 (Plaatjies Van Huffel 2008:252). The General Synod of the DRCA (1974) decided to work towards the re unification of the DRC, DRMC and the RCA (*Skema NGKA* 1974:253). Both the DRMC and the RCA made similar decisions during the seventies. The RCA Synod (1976) decided as follows: "The family of NG Churches should become one Reformed Church Synod empowers the Synodical Committee to initiate discussions towards church union with other churches of the NG Family and that the church councils should be informed accordingly" (*Acta RCA* 1976:76-77 en 172). On the 14<sup>th</sup> April 1994, union between the DRMC and the DRCA was consummated and the Uniting Reformed Church in Southern Africa (URCSA) was constituted (*Acta General Synod URCSA* 1994:282). The URCSA represents over 500 000 church members in South-Africa, Lesotho and Namibia the URCSA consists of one General Synod, 7 regional synods, 85 Presbyteries and 763 congregations.

## 2. LEGAL FRAMEWORK AND SOURCES OF THE UNITING REFORMED CHURCH IN SOUTHERN AFRICA

The legal sources in URCSA consist of the confessional basis and the *Church Order*. Amendments to the *Church Order* and the confessional basis of URCSA, which are the Belgic Confession of Faith, the Heidelberg Catechism, the Canons of the Synod of Dort and the Confession of Belhar, can only be made upon adoption by the General Synod at a stated meeting, with recommendation to the regional synods and church councils for approval. During 1986 the DRMC accept the Confession of Belhar as critique on the theological justification of apartheid. The Belhar Confession became part of the confessional basis of the URCSA. Amendments to the confessional basis should be proposed by the General Synod of URCSA to the regional synods and must be approved by two-thirds of all those voting in the regional synods. The General Synod would only be able to ratify the vote at its next meeting (*Church Order General Synod URCSA* 2011 art.11). The amendment of the Church Order or the confessional basis of the URCSA can take place by the enactment of a General Synod upon overtures from two-thirds of the delegates at General Synod. The *Church Order of URCSA* does not address every situation of the church. Nor does it presume to be exhaustive or to cover everything. Ordinarily, however, when something is not mentioned in the *Church Order of URCSA* the omission is deliberate and intentional.

## 3. LEGAL STATUS OF THE UNITING REFORMED CHURCH IN SOUTHERN AFRICA

The Constitution of the Republic of South Africa Act 108 of 1996 guarantees everyone the right to freedom of association. South Africa's legal framework for civil society organizations enables URCSA to establish them as legal structure. URCSA is a voluntary association with legal personality (*universitas*). The URCSA is an autonomy body and has its own constitution. In order for a voluntary association to have body corporate status, the founding document must provide that it: *firstly*, has perpetual succession, *secondly*, the capacity to acquire certain rights

apart from the rights of the members forming it and no member has any rights by reason of his membership to the property of the association, and *thirdly*, the right to hold property in its own name. The URCSA generally meet the three requirements to be deemed as a *universitas*:

- α. It is structured to continue as an entity notwithstanding a change in membership;
- β. It is able to hold property distinct from its members; and
- γ. No member can have any rights, based on membership, to the property of the association (Geldenhuys 195:340-368).

Once a church has been established it is presumed to continue as an entity notwithstanding a change in membership. The URCSA is perpetual. The URCSA is governed by the common law which requires that the URCSA's objectives must be lawful and not primarily for gain or profit for its members.

### **3.1 Fundamental rights of the major and minor assemblies in URCSA**

The URCSA has a Presbyterian-Synodical system of church governance. According to Van Drimmelen (2007:41). The Presbyterian-Synodical system of church governance is anti-hierarchical, anti-Episcopal, anti-independent as well as anti-congregational. URCSA is against a hierarchical church governance system and affirms that the church authority is vested not in individuals but is rather vested in representative assemblies. The Church Order of the URCSA provides for four grades of administrative courts, namely, the Church Council, which governs the congregation; the Presbytery, which governs a number of congregations in a demarcated area; the regional synods, which governs the congregations within approved region; and a General Synod (*Acta General Synod URCSA 1994:290*). These assemblies exercise all ecclesiastical functions in accordance with the *Church Order of URCSA*. There are stated responsibilities for each governing body in URCSA. These assemblies transact ecclesiastical matters only and deal with them in an ecclesiastical manner. The above mentioned assemblies exercise judicial as well as legislative powers. The assemblies may delegate to committees the execution of their decisions or the preparation of reports for future consideration. They give every committee a well-defined mandate and require of them regular and complete reports of their work. The report of a Committee, when received or accepted by the minor or major assembly, is the property of the said assembly, and should be handed to the clerk, with all accompanying- papers (Stephens 1907:137). Each assembly exercises, in keeping with its own character and domain, the ecclesiastical authority entrusted to the church by Christ. The Church is a theocracy, of which Christ is the Head. The only King and Head of the Church is the Lord Jesus Christ. All the power which Christ has bestowed upon His Church is conferred upon the local congregation. It resides not in the offices alone (*General Synod Church Order 2011 art.1*).

A major assembly of URCSA deals only with those matters which concern it commonly or which could not be finished in the minor assemblies. The major assemblies are composed of office bearers who are delegated by their constituent minor assemblies. Voting rights are limited to the delegates. The minor assemblies provide their delegates with proper credentials which authorize them to deliberate and vote on matters brought before the major assemblies. A delegate cannot vote on any matter in which the delegate or the church of which the delegate is a member is particularly involved (*Regional Synod Church Order 2011 art.103.3*; Stephens 1907:139). Members ought not, without weighty reasons, to decline voting, as this practice might leave the decision of issues to a small proportion of the judicatory. Silent members,

unless excused from voting, must be considered as acquiescing with the majority (Stephens 1907:130).

The Church Council is a permanent, continuing body which functions between stated sessions through commissions. The authority of church councils is original and that of major assemblies are delegated. In every congregation of URCSA there should be a council composed of the minister(s), the elders and the deacons. Those tasks which belong to the common administration of the church, such as the calling of a pastor, the approval of nominations for church office, mutual censure et cetera are the responsibility of the Church Council (*Regional Synod Church Order 2011 art.44*). The pastor has power to convene the Church Council. The pastor of the congregation shall always be the chair person of the Church Council except when, it may appear advisable that some other minister in the resort of the presbytery should be invited to preside (Stephens 1907:32). When a church is vacant, the presbytery appoints one of its ministers to act as chairperson of the Church Council of the vacant congregation (*Regional Synod Church Order 2011 art 28*; Stephens 1907:33).

The presbytery is an assembly and judicatory consisting of all the ministers and the Church Council delegates who represent all the congregations within its bounds. There is a balance between the discretion of the Church Council and the authority of the presbytery. The presbytery has the same authority over the Church Council as the Synod has over the presbytery. The presbytery exercises a general superintendence over the church councils and over the interests and concerns of the congregations within its bounds. There are many areas in which the presbytery has stated responsibilities for being involved in the life of the local congregation —call of minister, preaching. The Church Council of each congregation should delegate a minister and a church council member to the presbytery. If a church is without a minister, or the minister is prevented from attending, due to church discipline two church council members shall be delegated (*Regional Synod Church Order 2011 art.49.3*). Voting rights are limited to the delegates. The presbytery functions between stated sessions through commissions,

The presbytery has power to enforce the rulings of the major assemblies, to receive, hear, resolve, and decide references, appeals, and complaints according to church order procedures or discipline, to advise and to adjudicate on matters from church councils, to unite, divide, organize, and dissolve congregations (*Regional Synod Church Order 2011 art.50*). The presbytery refers all questions of doctrine to the General Synod. The Presbytery exercises appellate supervisory power over the acts, proceedings and decisions of the church councils in its resort. The presbytery has also the authority to ordain, install, suspend, declare demitted and declare retired ministers (*Regional Synod Church Order 2011 art.136*). According to Stephens (1907:77-79) the Presbytery has power to remove ministers. By removing ministers is meant "releasing them from the charge of a church. This may be done (1) at the pastor's request; (2) on the petition of the congregation Stephens 1907:79). The presbytery also approves the disbanding or dissolution of a congregation. When two or more congregations decide to merge, the approval of Presbytery is required.

The regional synods of URCSA is judicatories consisting of ministers and elders delegated by each of the local congregation within the bounds determined for it by the General Synod. Voting rights in the Regional Synod is limited to the delegates. The regional synods of URCSA functions between stated sessions through commissions. The regional synods determines the boundaries of the presbyteries (*General Synod Church Order 2011 art.10*). The regional synods

exercises an appellate supervisory power over the acts, proceedings, and decisions of its several presbyteries. Therefore the presbyteries cannot unilaterally decide to change their boundaries, unify with other reformed churches or dissolve. The decisions of the assemblies of URCSA are considered settled and binding; unless it is proved that they conflict with the Word of God or the Church Order. Assemblies and church members may appeal to the assembly next in order if they believe that injustice has been done or that a decision conflicts with the Word of God or the Church Order (*Regional Synod Church Order* 2011 art.38.7). A request for revision of a decision shall be submitted to the assembly which made the decision. The regional synods of URCSA receive and issue all appeals, complaints and references that affect decisions of the minor assemblies in their resort. The grounds of appeal may be irregularity in the proceedings of an inferior judicatory; refusal to entertain an appeal or a complaint; refusal of reasonable indulgence to a party on trial; receiving improper or declining to receive important testimony; hastening to a decision before the testimony is fully taken; manifestation of prejudice in the conduct of the case; and mistake or injustice in the decision (Bittinger 1888:72).

A complaint is a written statement alleging that an action or a decision of an assembly or officer of the church has violated or failed to comply with the Church Order of the URCSA. An appeal is the transfer to a higher judicatory of a complaint, a charge, or an appeal on which judgment has been rendered in a lower judicatory. The right of appeal belongs to either of the original parties in a case. That right may be exercised when a party considers itself to be aggrieved or injured by a judgment of a judicatory. The grounds of appeal include: irregularity in the proceedings of the lower judicatory; bias or prejudice in the case and manifest injustice in the judgment. All proceedings of the Church Council, the Presbytery, and the Synods of URCSA are subject to review by, and may be taken to, a superior judicatory, by general review and control, reference, complaint or appeal Church Council (*Regional Synod Church Order* 2011 art.38.1; Stephens 1907:3) The judicatory may confirm or reverse, in whole or in part, the decision of the lower judicatory or assembly, or remand the case to it with instructions. Persons who have voted on the matter in a lower judicatory or assembly, or who have a conflict of interest, shall not vote upon the appeal in a higher judicatory.

The representatives of regional synods, consisting of the four members of the Moderamen of each regional synod and one minister of the Word and one church council member from every presbytery within the boundaries of each Regional Synod, meets as General Synod. The General Synod of the URCSA constitutes the bond of union, and correspondence among minor and major assemblies of URCSA. The General Synod is the highest judicatory of the URCSA. The General Synod has authority over all matters pertaining to doctrine and denominational polity. The General Synod determines the denominational policy of URCSA (*Church Order General Synod* 2011 art.4). To the General Synod belongs the power of bearing testimony against error in doctrine in the URCSA. The General Synod has no right to refer the final decision of any matter affecting the doctrine of the Church to an inferior judicatory. The General Synod's judicial decisions are final and obligatory in all similar cases. The General Synod of URCSA determines on submission by the relevant regional synods the boundaries of the said regional synod. The General Synod assists the regional synods in the fulfilment of their tasks provided that such assistance does not infringe upon the authority of the regional synods. To the General Synod belongs the power of erecting new synods when it may be judged necessary. The General Synod is the legal custodian of the funds, devises, bequests and other property which is given, devised, or bequeathed directly to the General Synod of the URCSA. The General Synod of URCSA, however, does not have the authority to exercise an appellate supervisory power over the acts, proceedings, and decisions of the lower

assemblies. Any member of URCSA has the right to redress against any act or decision of a minor or major assembly by appeal or complaint. The General Synod receives and issues all appeals, complaints, and references that affect the doctrine or Church Order of the URCSA. To the General Synod belongs the power of corresponding with foreign Churches, on such terms as may be agreed upon by the General Synod and the corresponding body (*General Synod Church Order* 2011 art.12). The General Synod functions between stated sessions through various commissions and ministries.

### **3.2 Judicial procedures with regard to discipline**

In disciplinary matters, the *URCSA's Church Order provisions* in effect at the time of the alleged offense are authoritative. This principle ensures that a person accused of an offense is not tried on the basis of statutes approved subsequent to the time of the alleged offense. Therefore matters referred by minor assemblies to major assemblies with regard to discipline should be presented in harmony with the procedure entailed in the *Church Order of URCSA*. The exercise of discipline in URCSA may take the form of admonition, rebuke, and suspension from the privileges of membership in the church or from office, deposition from office, or excommunication. Admonition and rebuke are pastoral in nature and are exercised by an assembly in the ordinary course of its proceedings. All further steps of discipline – suspension, deposition and excommunication – are judicial in nature and require the formal presentation of charges to a judicatory. The trial must be conducted in a fair and impartial manner. A member who has been suspended or excommunicated may be restored to the privileges of membership in the church upon repentance expressed before the judicatory which suspended or excommunicated the member. Public notice of the verdict of the major assembly shall be given the congregation (*Regional Synod Church Order* 2011 art.129). The purpose of admonition and discipline is to restore those who err to faithful obedience to God and full fellowship with the congregation, to maintain the holiness of the church, and thus to uphold God's honour (Bittinger 1888:25). The suspension of a minister of the Word is imposed by a major assembly. The deposition of a minister shall not be effected without the approval of major assembly (*Regional Synod Church Order* 2011 art. 127). A person who has been suspended or deposed from office may be restored to office upon repentance and renewal of vows before the curatorium, provided that the major assembly is satisfied that the honour of the office will not be impaired and that the welfare of the church will be served by such a restoration. Restoration after deposition includes re ordination to office.

Both the appellant and the respondent have the right to appeal the decision of Presbytery to synod (Bittinger 1888:62). A complaint is a written representation by one or more persons, subject and submitting to the jurisdiction of an inferior judicatory, to the next superior judicatory against a particular delinquency, action, or decision of such inferior judicatory in a non-judicial or administrative case." (Bittinger 1888:63). An appeal is the removal of a judicial case, by a written representation, from an inferior to a superior judicatory (*Regional Synod Church Order* 2011 art.134; Bittinger 1888:64). When the judgment directs admonition or rebuke, notice of appeal shall suspend all further proceedings; but in other cases the judgments shall be in force until the appeal is decided. When a person is restored after suspension from the church by a Presbytery, the notice of appeal by the appellant continues the person under suspension until the appeal is issued which means until the next meeting of the regional synod or synodical commission. The appellant and the respondent do not have the right to be present during the presentation of the case at synod. Appeals of decisions of assemblies of the church and such other matters requiring formal adjudication is referred

to the Judicial Committee. The Judicial Committee provides the synod appropriate written advice on procedure for handling the matter. The synod may dispose of a judicial matter in one of the following ways: by deciding the matter; by deferring it to one of its committees for settlement or reconciliation; by remanding it with advice to the appropriate assembly (*Regional Synod Church Order* 2011 art.135). The members of the Judicial Committee are entitled, notwithstanding their performance of digesting and arranging all the papers, and prescribing the whole order of proceedings to sit and vote in the cause, as members of the judicatory (Stephens 1907:133).

### **3.3 Scope of the application of Labour Law in URCSA**

The period in South Africa since 1994 has been characterized by policy and legislative reforms. Literally hundreds of policies and laws were developed since 1994. *The Employment Equity Act 1998* constitutes one of the interventions government has made to redress the imbalances of the past. The *Employment Equity Act 1998* contains a number of provisions providing for affirmative action and protection against, amongst other things, unfair discrimination and sexual harassment. The Act provides for the elimination of unfair discrimination by requiring that every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice. Employment policy or practice refers to recruitment, job classification, remuneration, employment benefits and terms and conditions, promotion and dismissal. The General Synod of URCSA 2005 called upon all church members who can be defined according to the *Employment Equity Act 1998* as designated employers to take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice, to ensure the implementation of employment equity to redress the effects of discrimination in order to achieve a diverse workforce broadly representative of the population. The URCSA emphasizes the elimination of unfair discrimination in employment. The URCSA urges local congregation as well as church members, who are designated employers, to adhere to this act.

The URCSA thus far did not align the *Church Order of URCSA* with the Labour Law. Currently ministers in URCSA forfeit their status when they avail themselves as candidates for political election for example rev CAT Smith, rev H Mbatha, Dr SK Mbambo, dr AA Boesak et cetera. Due to the acceptance of the ambassadorship to Russia on behalf of the Namibian government rev Dr SK Mbambo forfeited his status as a minister in the church. During March 2004 rev Mbatha, the scribe of the General Synod availed himself as a candidate for political election as premier candidate for the ACDP in Kwa-Zulu Natal (*Agenda General Synod* 2005:26). Dr AA Boesak forfeited his status during 2009 due to the fact that he availed himself as political candidate for COPE. In all above cases rule 3.1 Rule 3.2 of the Regulations regarding the Status of Ministers of the Word was implemented. It reads as follows:

3.1. In the following events a minister of the Word or a legitimated candidate or somebody who received status as candidate for the ministry shall forfeit his/her status and the secretary of the Judicial Commission of the General Synod will give notice through the official communication channels of the church: 3.2 If he/she serves on a political governing body or if he/she makes him-/herself available as candidate in a nomination or election contest.

The General Synodical Commission 2003 mandated the Permanent Judicial Commission to table a report on the nature of the relationship between a minister/evangelist and a church

council (and the implications of this for the functioning of the URCSA) in terms of the Labour Legislation (*Agenda General Synod URCSA 2005;36*). This report was never tabled.

### **3.4 The URCSA and the protection of the individual**

No decisions concerning the protection of privacy, freedom to marry, the Religious Family Law, freedom of expression, professional secrecy, medical deontology, culture religious freedom, individual religious, freedom collective, religious freedom, organizational religious freedom had been made by URCSA thus far. The URCSA will table the endorsement of the South African Charter of Religious Rights and Freedoms only at the upcoming General Synod 2011. The URCSA embraces a diversity of languages and cultures and strives to overcome inequalities in terms of generation, 'race', class and gender. At the first General Synod 1994 URCSA accepted a gender policy (*General Synod URCSA 1994:15*). However at the General Synod 2008 recommendations that the same ethical directives that apply for heterosexual living in all its facets should also apply for homosexual living were not approved. At this point of time confessing homosexual members of URCSA have not access to all the offices of the church (*Agenda General Synod URCSA 2008:115*).

### **3.5 URCSA and financing**

The URCSA is a large property holder. Ecclesiastical property of URCSA is held by minor or major assemblies in trust, explicit or implied, for ecclesiastical uses. The legal title to property of the minor and major assemblies of the URCSA vested in the respective assemblies who have power to assign them, to bring a suit for their recovery if lost and to prosecute in case of theft. The congregation, Presbytery or synod accepts and executes deeds for the furtherance of the purposes of the congregation, Presbytery or synod. Presbyteries or synods may buy, sell, lease or mortgage property. The church councils of URCSA hold the ecclesiastical property subjected to denominational uses. The church councils have the authority to bargain, sell, convey, mortgage, lease, or release any real estate belonging to the congregation; to erect and repair church buildings, parsonages and other buildings for the direct and legitimate use of the congregation. However, no purchase, sale or conveyance, mortgage, lease, can occur unless the affirmative vote of a majority of the members of the church shall be first obtained (*Regional Synod Church Order 2011 Regulation 8.6.4*). The members of a local congregation of the URCSA have a voice in the acquisition, management and disposal of ecclesiastical property. No sale, mortgage, or transportation shall be made which would be inconsistent with the express terms or plain intent of the grant, donation, gift, transportation or bequest.

On 14<sup>th</sup> April 1994 and the ensuing foundation synod, the DRMC and the DRCA dissolved and the two churches consolidated to form one church organization with full corporate power. Decisions were taken on DRCA Synod 1991 and the foundation synod on ecclesiastical property. At the foundation synod it was decided that the DRMC and the DRCA ceased to exist and *inter alia* that all the regional synods, presbyteries, congregations of the DRCA and the DRMC ceded with the implementation of the Church order of the URCSA all its assets, liabilities, privileges, properties, rights and obligations, nothing excluded, to the regional synods, presbyteries, congregations of the URCSA (*Agenda General Synod 1994:39; Acta NGKA 1991:393*). The established URCSA stepped in as the successor in right and title of the dissolved regional synods, presbyteries, congregations of the DRCA and the DRMC and took control of all the ecclesiastical property of both churches. The Synod decided that the management of the ecclesiastical property shall be vested in the respective General Synod, regional synods,



Presbyteries and/or congregations of the URCSA. The URCSA was granted authority to take all legal actions to give effect to the cession and transfer of property (*Agenda General Synod* 1994:42, 131, 3340, 341, 313).

However, these decisions led ultimately to church schism and court cases between the regional synods of the DRCA in the Orange Free State and the DRCA Phororo on the one hand and the URCSA on the other hand. These court cases had a horrendous impact on URCSA's cash strapped budget. On the 27<sup>th</sup> November 1998, after a lengthy court case, the Highest Court of Appeal ruled that decisions of the General Synod of the DRCA 1990 to amend the *Church Order* of the DRCA as *ultra vires*. Amongst other, the General Synod of the DRCA had no right to transfer of property rights of the congregations and regional synods of the DRCA to the new judicial entity named the URCSA (*Acta General Synod* 2001:134; Nederduitse Gereformeerde Kerk (OVS), Nederduitse Gereformeerde Kerk in Afrika (Phororo) en die Verenigende Gereformeerde Kerk in Suider-Afrika 536/96:11). No provision was made in the constitutions of the respective two churches for the proper dissolution of their constituencies and the transfer of assets to the new church organization. No dissolution decisions was made according to appeal judge Vivier by the regional synods of the DRCA in the Orange Free State and the DRCA Phororo (*supra* 536/96:11). The verdict of the Supreme Court in 1998 affirmed that the DRCA as a legal corporate entity remains.

No provision is made in the *Church Order* of the URCSA that if members of a congregation do not comply with the *Church Order* procedures, then those members should forfeit all its right, title, and interest in and to its property to the Presbytery within which it is located. No provision is also made when a congregation becomes so reduced in its membership and strength as to be unable to maintain the ordinances of religious worship, or when for other reasons the interests of the members in particular and of the Church in general would be, in the judgment of the Presbytery, best served by dissolving the congregation, the Presbytery shall formally declare it dissolved, and shall direct the scribe of the Presbytery to issue certificates of transfer for the remaining members to other congregations in the resort of the Presbytery.

#### 4. URCSA AND POLITICS

The URCSA did not thus far express their opposition to legislation and policy affecting what some will see as Judeo-Christian ethos for example the National Gambling Act 1996, The Lotteries Act 1997, The Film and Publications Act, 1996, Capital Punishment and the Criminal Law Amendment Act, 1997, Choice of termination of pregnancy Act, 1996, Education Laws Amendment Act, 1999, South African Schools Act, 1996, Broadcasting Act, 1999. The URCSA made no official comments on the legal position of religious marriages and/or popular culture thus far. The URCSA sees herself as part of a society, in which, as an institution among other institutions and social structures such as the state, the school, industry and others, it lives and works. In as far as the reigning legal order of society does not conflict with the Word of God, the URCSA lives accordingly (*Church Order URCSA General Synod* 2011 art.12). The URCSA works with the presumption that it is necessary to abide by the laws of the state. In that sense, the state confines the operation of the church. The state and its laws do not define what the church is, however, or what it believes to be its calling in Jesus Christ. At the same time the URCSA demands recognition by the governing authorities of its inalienable right to freedom of ministry, worship and the organization of its institution by virtue of its own profession. The URCSA sees it as its task to pray and intercede for the government and society and to intervene

on behalf of the suffering, the poor, the wronged and the oppressed within this society, also by way of organized service. (*Church Order General Synod URCSA 2011 art.12*).

URCSA prophetically criticises economic injustices and works towards the building of a just, participatory and sustainable global political-economic systems that serve life for all. Therefore they embarked jointly with the Evangelical Reformed Church in Germany (ERC) on a project on globalization. The objective of the project was to interrogate the issues emanating from the Accra Confession 2004, share their experiences from within their different historical, social, economic, political and theological contexts and to seek common understanding of the complexities of the challenges confronting the church and society. (*Dreaming of a different world 2010:41*).

The URCSA identifies herself with the poor and encourage church members to make and implement pro-poor commitments and explain to church members why pro-poor commitments are important (*Acta UCRSA General Synod 2005:149*). The URCSA emphasizes, amongst others, that the congregation's service to humankind and the world. The congregation therefore serves God, who in a particular way is the God of the suffering, the poor and those who are wronged (victimised), by supporting people in whatever form of suffering and need they may experience, by witnessing and fighting against all forms of injustice; by calling upon the government and the authorities to serve all the inhabitants of the country by allowing justice to prevail and by fighting against injustice (*Church Order General Synod URCSA 2011 art.3, Confession of Belhar 1986 art.4*). The congregation serves God by witnessing against the state and the powerful in the society at large. During 2009 the URCSA called on all its members to strengthen the democratic gains made over the past 17 years; to promote of human security - such as access to basic services - as means toward just and peaceful society; to secure economic justice in order to eradicate poverty and inequality; to advance a culture of moral and spiritual transformation based on care and dignity. The following challenges in post apartheid South Africa had been addressed by the General Synods of URCSA, namely:

### ***Xenophobia***

The URCSA encourages the protection of religious freedom and promotes religious tolerance for all groups and individuals. The General synod of URCSA 2005 noted the resurgence of incidents of xenophobia and tribalism; the growing exploitation of immigrants for cheap labour; and the conflicts that arise between unemployed nationals and immigrants who compete for scarce resources and job opportunities. The URCSA affirmed to render pastoral care and support to the refugees and foreign nationals (*Acta General Synod URCSA 2005:106*).

### ***HIV/AIDS pandemic including orphans and vulnerable children***

The General Synodical Commission of URCSA 2003 accepted the principle of creating facilities for the debriefing or counselling for the care-givers who in the process of caring for the HIV/AIDS infected and affected people suffer from post traumatic stress disorder such as depression and burn-out. The URCSA welcomes the roll out of the anti-retroviral medication and urges the Department of Health to accelerate the process within the context of proper treatment (*General Synod Agenda 2005:105*). The URCSA noted the disastrous reality of women's death rate because of lack of healthcare and prenatal care calls us to work for government policies that acknowledge women's sexual and reproductive health and rights. Policies should confirm women's bodily integrity and autonomy and assure access to healthcare for girls and women, and transform state hospitals and clinics into spaces that uphold women's human rights (*Dreaming of a different world 2010:68*).

## **Domestic violence**

The URCSA noted the recurrence of domestic violence requested the government to transform the criminal justice systems in order to protect the rights of women and children. The URCSA also noted the horror of human trafficking and human slavery and called members to seek governmental action to criminalize human trafficking and to enforce criminal codes which make slavery a crime (*Dreaming of a different world* 2010:67).

## **Genetically modified products and the bio-safety protocol**

The General Synod 2005 urged government to see to it that genetically modified products (GM) reaching the market has been adequately tested and that these products are being monitored to ensure safety and to identify problems as soon as they emerge. The General Synod also requested government to comply with the Bio-safety Protocol and bring its bio-safety legislation in line at a minimum, with the international safety standards established by the Bio-safety Protocol and implement its Precautionary Principle. The General Synod appealed to the government to radically restrict the experimentation with GM organisms (GMO) until the ecological and social viability of these experiments have been proven beyond all doubt. In this approach the cautionary principle must be upheld at all times. The URCSA demanded that all foodstuffs and other organic matter exposed to these GMO experiments be prominently labelled so that the public can decide if they want to utilize the products. The URCSA adopted the precautionary principle and proposed the prohibition of the introduction of GMO until their safety for future generations is certain, emphasize that the monopolistic control of seed reproduction and distribution by trans-national biotech companies should be prevented (*General Synod Agenda* 2005:106).

## **Climate change**

The General Synod 2008 accepted a resolution on climate change (*General Synod Acts* 2008:100) Amongst other they called upon the government to introduce regulatory legislation that will sufficiently reduce CO<sup>2</sup> emissions to ensure that global warming remains below a 2° C rise; to end all subsidies to fossil fuel and nuclear energy generation; to subsidize and promote at all levels – community, city, provincial and national – the development and building of renewable energy generation.

## **Economic justice**

The General Synod approved the publishing of a booklet with an easily accessible content on economic policies and practices for the purpose of educating and training the members, church councils and ministers as well as presbyteries of URCSA on these matters. The booklet should also address the problem of consumerism and encourage members to lead simple lifestyle. The General Synod 2005 encouraged its ministers and members to actively join and participate in community and development structures in their fight against poverty or any other form of economic injustice. The General Synod 2005 mandated the executive to engage with government on social justice issues through the National Religious Leaders Forum and/or other relevant structures which strive for the creation of a caring society and alternative economic policies which is compassionate towards the poor. The General Synod 2005 called on regional synods and the URCSA congregations to, in addition to their attention to the ACCRA declaration on the economic order, also reflect on John Calvin's focus on the poor, the

marginalized and the downtrodden in society (Agenda General Synod 2005 decision 8).

## 5. CONCLUSION

This interaction between URCSA and the state on a political and legal level in post-apartheid South Africa needs to be understood in terms of URCSA's history. Part I of this article recounts the troubled background of the formation of the URCSA. The article emphasized that the legal framework of the URCSA consists of the *Church Order* and the confessions, All members as well as the major and minor assemblies of the URCSA should adhere to the Church Order and the confessions. URCSA is a voluntary association with legal personality (*universitas*). The major and minor assemblies of the URCSA exercise both judicial and legislative powers. Ample provision is made in the Church Order of URCSA with regard to judicial procedures in order to exercise discipline in URCSA on an equitable and fair basis, With regard to the scope of the application of Labour Law in URCSA it seems as if the URCSA thus far did not align the *Church Order* of URCSA with the Labour Law. The URCSA does not make ample provision for the protection of individual, The URCSA, at large, are legally organized to be capable of holding property in any form. Since their inception the URCSA demonstrated a deep commitment to social justice issues. I deduce two implications of my analysis of the URCSA's engagement in, namely as a general rule that a church should dissolved properly by taking the steps required by their respective church orders or constitution. Secondly, that provision should be made in the Church Order of the URCSA on the application of Labour Law on employment relations in the URCSA.

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#### **KEY WORDS**

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#### **TREFWOORDE**

Kerkeenheid  
Kerkregering  
Sosiale geregtigheid  
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