



CRRF

**THE SOUTH AFRICAN CHARTER OF
RELIGIOUS RIGHTS AND FREE-
DOMS**

AND

**THE SOUTH AFRICAN COUNCIL
FOR THE PROTECTION AND PRO-
MOTION OF RELIGIOUS RIGHTS
AND FREEDOMS**

“Ideally in South Africa, all religious organisations and persons concerned with the study of religion would get together and draft a charter of religious rights and responsibilities . . . it would be up to the participants themselves to define what they consider to be their fundamental rights”.

- Albie Sachs, 1990 -
Protecting Human Rights in a New South Africa.
Contemporary South African Debates. Oxford University Press, Cape Town

THE SOUTH AFRICAN CHARTER OF RELIGIOUS RIGHTS AND FREEDOMS

AND

THE SOUTH AFRICAN COUNCIL FOR THE PROTECTION AND PROMOTION OF RELIGIOUS RIGHTS AND FREEDOMS

BACKGROUND INFORMATION

The **South African Charter of Religious Rights and Freedoms** (SACRRF) is a Religious-legal document that defines the freedoms, rights, responsibilities and relationship between the “State” of South Africa and her citizens concerning religious belief. Chapter 2 of the Constitution of South Africa, the Bill of Rights, recognizes that everyone has the right to freedom of religion. Section 234 of the same constitution makes allowance for charters of rights to be drawn up by civil organizations, which may then be enacted by parliament. The SACRRF is the first such charter developed in South Africa.

The Charter expresses what freedom of religion means to those of religious belief and religious organizations within a South African context and the daily rights, responsibilities and freedoms that are associated with this right. These include the right to gather to observe religious belief, freedom of expression regarding religion, the right of citizens to make choices according to their convictions, the right to change their faith, the right to be educated in their religion, the right to educate their children in accordance with their philosophical and religious convictions and the right to refuse to perform certain duties or assist in activities that violate their religious beliefs.

The SACRRF was drafted over a period of several years by a *Continuation Committee* of academics, religious scholars, religious leaders, government commissioners and international legal experts

and members, the appointment, conditions of employment and dismissal of employees and volunteers, and membership requirements.

9.2 Every religious institution is recognised and protected as an institution that has authority over its own affairs, and towards which the state, through its governing institutions, is responsible for just, constructive and impartial government in the interest of everybody.

9.3 The state, including the judiciary, must respect the authority of every religious institution over its own affairs, and may not regulate or prescribe matters of doctrine and ordinances.

9.4 The confidentiality of the internal affairs and communications of a religious institution must be respected. The privileged nature of any religious communication that has been made with an expectation of confidentiality must be respected insofar as the interest of justice permits.

9.5 Every religious institution is subject to the law of the land. A religious institution must be able to justify any non-observance of a law resulting from the exercise of the rights in this Charter.

10. The state may allow tax, charitable and other benefits to any religious institution that qualifies as a juristic person.

11. Every person has the right, for religious purposes and in furthering their objectives, to solicit, receive, manage, allocate and spend voluntary financial and other forms of support and contributions. The confidentiality of such support and contributions must be respected.

12. Every person has the right on religious or other grounds, and in accordance with their ethos, and irrespective of whether they receive state-aid, and whether they serve persons with different convictions, to conduct relief, upliftment, social justice, developmental, charity and welfare work in the community, establish, maintain and contribute to charity and welfare associations, and solicit, manage, distribute and spend funds for this purpose.

6.4 Every person has the right to religious dignity, which includes not to be victimised, ridiculed or slandered on the ground of their faith, religion, convictions or religious activities. No person may advocate hatred that is based on religion, and that constitutes incitement to violence or to cause physical harm.

7. Every person has the right to be educated or to educate their children, or have them educated, in accordance with their religious or philosophical convictions.

7.1 The state, including any public school, has the duty to respect this right and to inform and consult with parents on these matters. Parents may withdraw their children from school activities or programs inconsistent with their religious or philosophical convictions.

7.2 Every educational institution may adopt a particular religious or other ethos, as long as it is observed in an equitable, free, voluntary and non-discriminatory way, and with due regard to the rights of minorities.

7.3 Every private educational institution established on the basis of a particular religion, philosophy or faith may impart its religious or other convictions to all children enrolled in that institution, and may refuse to promote, teach or practice any religious or other conviction other than its own. Children enrolled in that institution (or their parents) who do not subscribe to the religious or other convictions practised in that institution waive their right to insist not to participate in the religious activities of the institution.

8. Every person has the right to receive and provide religious education, training and instruction. The state may subsidise such education, training and instruction.

9. Every religious institution has the right to institutional freedom of religion.

9.1 Every religious institution has the right (a) to determine its own confessions, doctrines and ordinances, (b) to decide for itself in all matters regarding its doctrines and ordinances, and (c) in accordance with the principles of tolerance, fairness, openness and accountability to regulate its own internal affairs, including organisational structures and procedures, the ordination, conditions of service, discipline and dismissal of office-bearers and

consultation with all major religions, human rights groups and media bodies in South Africa. It was first signed at a public ceremony in Johannesburg on the 21st of October 2010 and signatories continue to be added to the open document. Signatories include religious groups and organisations, human rights organisations, legal and academic entities and media bodies. It was signed by all major religions in South Africa and has, thus far, been translated into six of South Africa's official languages as well as one European language..

CRRF: Executive Chairperson: Prof P Coertzen (Dutch Reformed Church)

Deputy Chairperson: Dr Nokuzola Mndende (African Traditional Religion)

Secretary: Mr Shawn Boshoff (LDS Church)

Treasurer: Mr Marius Oosthuizen (Rhema Ministries SA)

Members: Dr MA Plaatjies; FM Esau; M Ntlha; Adv R Willis; K Padayachy and Rev A Knoetze

Advisors: Proff Rassie Malherbe and Iain Benson and Mr Vic van Vuuren

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After the public signing of the SACRRF, a *Council for the Protection and Promotion of Religious Rights and Freedoms* was established to oversee the process of the Charter being formally enacted into South African law. The passing of the SACRRF into law will mean that religious believers have legal impartiality and protection to practice all elements of religious belief under the constitution.

The *South African Charter of Religious Rights and Freedoms* is the first public charter to be developed under section 234 of the Constitution of South Africa. The constitution states that "*In order to deepen the culture of democracy established by the Constitution, Parliament may adopt Charters of Rights consistent with the provisions of the Constitution.*" The SACRRF outlines what the legal and civil manifestations of the right to freedom of religion are for individuals, groups and official organizations, within a South African context.

The right to freedom of religion is guaranteed in the South African Constitution and its Bill of Rights. Mention of religion in our Constitution is first found in the affirmation of religious belief contained in the concluding words of the preamble to the constitution “*May God protect our people. God bless South Africa*”. Section 9, the equality clause, prohibits unfair discrimination on various grounds, including religion. Section 15 explicitly allows for the right to freedom of religion, religious observances in state and state-aided institutions and also creates the possibility for the recognition of religious legal systems and marriages that are not inconsistent with the constitution. Section 31 protects the right of persons belonging to a religious community to practice their religion together with other members of that community and form voluntary religious associations.

Various other provisions of the constitution relate to religion and religious freedom. Sections 185 and 186 provide for a commission for the promotion and protection of the rights of cultural, religious and linguistic communities. In addition, human rights such as the right to human dignity, the right to freedom of expression, and the right to freedom of association, relate indirectly to the protection of religious freedom.

If passed into law, the charter will ensure that the rights of religious believers are clearly defined and protected under the law of South Africa. The charter may be used as a legal instrument even as the current climate of understanding and tolerance between government and religion may alter.

The Charter was officially adopted on 21 October 2010 at a Public Endorsement Ceremony in the Council Chamber of the Johannesburg University in the presence of the Honourable Mr Dikgang Mosekene (Deputy Chief Justice) and signatories. It has been made available in six of South Africa's official languages in order to make it more accessible to the people of South Africa. Further translation is currently in process to make it accessible in all eleven South African languages and several European languages. Thus far it is available as:

4.1 Every person has the right to private access to sacred places and burial sites relevant to their convictions. Such access, and the preservation of such places and sites, must be regulated within the law and with due regard for property rights.

4.2 Every person has the right to associate with others, and to form, join and maintain religious and other associations, institutions and denominations, organise religious meetings and other collective activities, and establish and maintain places of religious practice, the sanctity of which shall be respected.

4.3 Every person has the right to communicate within the country and internationally with individuals and institutions, and to travel, visit, meet and enter into relationships or association with them.

4.4 Every person has the right to conduct single-faith religious observances, expression and activities in state or state-aided institutions, as long as such observances, expression and activities follow rules made by the appropriate public authorities, are conducted on an equitable basis, and attendance at them is free and voluntary.

5. Every person has the right to maintain traditions and systems of religious personal, matrimonial and family law that are consistent with the Constitution. Legislation that is consistent with the Constitution may be made to recognise marriages concluded under any tradition, or a system of religious, personal or family law, or to recognise systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.

6. Every person has the right to freedom of expression in respect of religion.

6.1 Every person has the right (a) to make public statements and participate in public debate on religious grounds, (b) to produce, publish and disseminate religious publications and other religious material, and (c) to conduct scholarly research and related activities in accordance with their convictions.

6.2 Every person has the right to share their convictions with another consenting person.

6.3 Every religious institution has the right to have access to public media which access must be regulated fairly.

Now therefore the following South African Charter of Religious Rights and Freedoms is hereby enacted:

1. Every person has the right to believe according to their own religious or philosophical beliefs or conviction (hereinafter convictions) and to choose which faith, worldview, religion or religious institution to subscribe to, affiliate with or belong to.
2. No person may be forced to believe, what to believe or what not to believe, or to act against their convictions.
 - 2.1 Every person has the right to change their faith, religion, convictions or religious institution, or to form a new religious community or religious institution.
 - 2.2 Every person has the right to have their convictions reasonably accommodated.
 - 2.3 Every person has the right on the ground of their convictions to refuse (a) to perform certain duties, or to participate or indirectly to assist in, certain activities, such as of a military or educational nature, or (b) to deliver, or to refer for, certain services, including medical or related (including pharmaceutical) services or procedures.
 - 2.4 Every person has the right to have their convictions taken into account in receiving or withholding medical treatment.
 - 2.5 No person may be subjected to any form of force or indoctrination that may destroy, change or compromise their religion, beliefs or worldview.
3. Every person has the right to the impartiality and protection of the state in respect of religion.
 - 3.1 The state must create a positive and safe environment for the exercise of religious freedom, but may not promote, favour or prejudice a particular faith, religion or conviction, and may not indoctrinate anyone in respect of religion. In approving a plan for the development of land, the state must consider religious needs.
 - 3.2 No person may be unfairly discriminated against on the ground of their faith, religion, or religious affiliation.
4. Subject to the duty of reasonable accommodation and the need to provide essential services, every person has the right to the private or public, and individual or joint, observance or exercise of their convictions, which may include but are not limited to reading and discussion of sacred texts, confession, proclamation, worship, prayer, witness, arrangements, attire, appearance, diet, customs, rituals and pilgrimages, and the observance of religious and other sacred days of rest, festivals and ceremonies.

South African Languages

- South African Charter of Religious Rights and Freedoms (English)
- Suid-Afrikaanse Handves van Godsdiensregte en –vryhede (Afrikaans)
- Iphepha Lasemzantsi Afrika Lamalungelo Enkolelo Nawenkululeko (isiXhosa)
- Umthetho Sisekelo Wase Ningizimu Afrika Welungelo Ningenkoko Kanye Nenkululeko (isiZulu)
- Tshatara ya Tokologo ya Bodumedi Afrika Borwa (Sepeidi)
- Tumalano Ya Afrika Borwa Ya Ditshwanelo Tsa Bodumedi Le Kgololo (Tswana)

Other Languages

- Grundsatzklärung zur Religionsfreiheit in Süd-Afrika (German)

Drafting the Charter

The Charter was drafted by a Continuation Committee drawn from academics, legal scholars and legal practitioners, theologians, government commissioners and international legal experts. This was done in discussion and consultation with religious, human rights and media groups in South Africa.

The need to draft a charter that would make clear what the freedom of religion entails for the people of South Africa, by the people of South Africa, was established after conferences on the relationship between "Religion and State" and "Freedom of Religion" at the University of Stellenbosch. In 1990, Judge Albie Sachs had already proposed that "*Ideally in South Africa, all religious organizations and persons concerned with the study of religion would get together and draft a charter of religious rights and responsibilities. ...it would be up to the participants themselves to define what they consider to be their fundamental rights.*"

The first draft of the charter was officially unveiled at a gathering of religious groups on the 14th of February 2008. Amongst those present were Christian denominations, African independent churches, those of

Jewish and Islamic religion, the SA Tamil Federation and representatives from academic institutions and statutory bodies. The Continuation Committee, to complete the process of finalizing the charter, was also appointed at this gathering by those present. The committee made amendments to the document and it was developed through suggestions and input from the wide community of leaders and groups among which it was circulated until its time of adoption.

Council for the Protection and Promotion of Religious Rights and Freedoms

Prof Pieter Coertzen (Dutch Reformed Church; University of Stellenbosch)

Dr Nokuzola MnDende (African Traditional Religion)

Shawn Boshoff (Church of Jesus Christ of the Latter Day Saints)
Marius Oosthuizen (Rhema Ministries)

Dr Mary-Anne Plaattjes van Huffel (Uniting Reformed Church)

F Matthew Esau (Anglican Church of Southern Africa)

Moss Ntla (The Evangelical Alliance of Southern Africa)

Reg Willis (Christian Lawyers Association)

K Padayachy (SA Tamil Federation)

Anton Knoetze (Commission for the Promotion and Protection of Cultural, Religious and Linguistic Communities)

Advisors Appointed to the Committee

Prof. Iain Benson (Global Centre for Pluralism; University of the Free State; Miller Thomson LLP)

Victor Van Vuuren

Prof. Erasmus Malherbe (University of Johannesburg (retired)
Vishoek)

Endorsement of the Charter

The Charter has thus far been signed by ninety-one leaders representing churches, religious bodies, academic, legal, human rights and media organizations in South Africa and by two international advisers. The total of practicing religious believers represented by the signatories is estimated to be approximately 10.5 million, more or less a quarter of the total South African population.

SOUTH AFRICAN CHARTER OF RELIGIOUS RIGHTS AND FREEDOMS

(As endorsed on 21 October 2010)

PREAMBLE

1. WHEREAS human beings have inherent dignity, and a capacity and need to believe and organise their beliefs in accordance with their foundational documents, tenets of faith or traditions; and
2. WHEREAS this capacity and need determine their lives and are worthy of protection; and
3. WHEREAS religious belief embraces all of life, including the state, and the constitutional recognition and protection of the right to freedom of religion is an important mechanism for the equitable regulation of the relationship between the state and religious institutions; and
4. WHEREAS religious institutions are entitled to enjoy recognition, protection and co-operation in a constitutional state as institutions that function with jurisdictional independence; and
5. WHEREAS it is recognised that rights impose the corresponding duty on everyone in society to respect the rights of others; and
6. WHEREAS the state through its governing institutions has the responsibility to govern justly, constructively and impartially in the interest of everybody in society; and
7. WHEREAS religious belief may deepen our understanding of justice, love, compassion, cultural diversity, democracy, human dignity, equality, freedom, rights and obligations, as well as our understanding of the importance of community and relationships in our lives and in society, and may therefore contribute to the common good; and
8. WHEREAS the recognition and effective protection of the rights of religious communities and institutions will contribute to a spirit of mutual respect and tolerance among the people of South Africa,

Thank you for your attention and kind regards

P Coertzen

Chairperson SA Council for the Protection and Promotion of Religious Rights and Freedoms

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Stellenbosch

Recently FEDUSA, NACTU, BUSA, SOLIDARITEIT, DIE SA AKADEMIE, VIR WETENSKAP EN KUNS, DIE FAK, DIE AFRIKAANSE TAALRAAD, and the INTERNATIONA LABOUR ORGANISATION have all become friends of the charter and are currently discussing the charter amongst their various chapters.

In recent discussion with COSATO and BUSA great attention has been given to the Charter and the need for it within South Africa at this point in time. Further discussions with these two bodies are planned in future.

The charter has come to the attention of President Jacob Zuma and he has asked the head of the ANC religious desk to write a report on the charter.

During the months of April 2013 up until today (11/9/2013) meetings with political parties have taken place and a meeting with the Chairperson of the Interfaith Committee of Parliament will be held shortly to discuss the road ahead.

In April 2012, the Council submitted an application for official recognition with the Commission for the Promotion and Protection of the Rights of Culture, Religious and Linguistic Freedoms.

The Council has also opened a bank account and signatories to the account are Pieter Coertzen, Marius Oosthuizen and Shawn Boshoff

The Charter continues to gain strength and more and more organizations are endorsing the charter.

Signatories include such diverse groups as:

The Ishmaili Community

The Hindu Coordinating Council

The Icamagu Institute (Eastern Cape)The Coptic Orthodox Church

Pentecostal Churches

Reformed Churches

The Open Doors Ministry

The Baptist Union of Southern Africa

The Christian Network
 The Elected School of the Amadlozi
 The Jesuit Institute South Africa
 The South African Tamil Federation
 Trans World Radio-SA
 Triple M Productions - Media Production House
 Interdenominational African Ministries Association
 The International Institute for Religious Freedom
 The Sri Sathya Sai Baba Council
 The Seventh Day Adventist
 The Roman Catholic Church
 The Bahá'í Faith
 The Commission for Cultural, Religious and Language Rights
 The Islamic Judicial Council
 The Christian Lawyers' Association
 The Church of Jesus Christ of the Latter Day Saints
 The Church of England in South Africa
 The Office of the Chief Rabbi (South African Jewish Community)
 The Arya Samay SA
 The Faculty of Theology of the Free State
 The Griekwa Independent Church
 Evangelical Lutheran Church in South Africa
 The Anglican Church of Southern Africa
 Charismatic Churches
 The National House of Traditional Leaders
 The Jami'atul 'Ulamâ (Council of Muslim Theologians)
 The Executive of the National Religious Leaders Forum
 The South African Broadcasting Corporation

The official address of the Council is:

The South African Council for the Protection and Promotion of Religious Rights and Freedoms

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Our request to all who reads this letter is:

- a) to consider to endorse the Charter and in so doing become a member of the SA Council for the Protection and Promotion of Religious Rights and Freedoms.
- b) If membership is not possible we would like to invite you to become a Friend of the Charter. This will mean that you support the effort to bring the Charter before Parliament. You will also be indicated in our registers as a Friend of the Charter. We will greatly appreciate it if you as a Friend of the Charter will consider to make a donation to further the cause of the Charter.
- c) We also want to strongly suggest to churches and religions, in fact to all bodies that work with religion, like schools and school councils and other bodies from civil society, to adopt the Charter as part of their official documentation. By doing this any court that has to judge you is obliged to take into account that the Charter of Religious Rights and Freedoms is part of your official documents. Please inform us if you decide to make the Charter part of your official documents and send us a copy of your decision. We will keep it on record.