

A SOUTH AFRICAN CHARTER OF RELIGIOUS RIGHTS AND FREEDOMS

A Powerful Tool for Peace and Harmony

1. Freedom of religion is seen as the most fundamental human right that exists. It is also the most precious right and privilege that a person can have. Throughout the ages many people have paid with their life because the right to freedom of religion was not granted to them.
2. Religion and religious convictions guide the life of a person from the day of their birth to the day of their death. Religion in this sense refers to the relationship of a human being to an “other” bigger than him- or herself which they worship. Sometimes it is an idea, or a philosophy that determines the “religion” of a person. Religion determines people’s view of life and death and what happens to a person after death. Religion also determines how a person sees this world and the whole of the universe. Religion plays a role in the choices that a person makes with regard to a marriage partner and the way in which they raise and educate their children; religion plays a very strong role in a person’s social relationships; their values in life, how they see society and in what way they contribute to society; their view of other people; what are their sources of comfort in trying times, how they live life and approach death.
3. The Constitution of South Africa (1996) determines in section 15 that every person in South Africa has the right to freedom of religion. Section 7(2) of the Constitution determines that “the state must respect, protect, promote and fulfil the rights in the Bill of Rights – this includes the right to freedom of conscience, religion, thought, belief and opinion. This means that the State of South Africa does not merely take note of the religious diversity in the country – it has a specific task with regard to religious freedom. The authorities have a duty to respect, protect, promote and fulfil religious freedom. South Africa is not a country where religion can be taken lightly. Religion and Freedom of religion are very important for the people and the state of South Africa.
4. A problem is that many citizens and also the authorities do not always understand what the meaning of freedom of religion is. The South African Constitution itself actually says very little about freedom of religion in section 15. It just says that everybody has the right to freedom of religion. Article 31 determines that every person in South Africa, has the right to exercise his/her religion together with other people who feel and believe like they do, they also have the right to form and sustain a religious community. Section 9(3) of the Constitution determines that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds including religion, race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, conscience, belief, culture, language and birth. This is about all that is said in the Constitution about religion.

5. Because the South African Constitution says very little more about religion and what religious freedom means a few academics from various academic disciplines, legal practitioners, religious and community leaders began reflecting on what religious freedom really means. Use was made of National and International documents, historical and other sources were researched, more than one academic conference was held and eventually a *South African Charter of Religious Rights and Freedoms* was drafted. The first concept formulation was widely circulated to all known religions, churches and religious communities in South Africa, theologians, jurists, state jurists, philosophers, religious- and community organisations and individuals. All the comments that were received was taken seriously and considered. Eventually the South African Charter of Religious Rights and Freedoms was endorsed by 91 leaders of religions and religious organisations in the Council Chamber of the University of Johannesburg on 20 October 2010. The signatories came from the Jewish Community, various Christian Denominations in South Africa (Coptic, Anglican, Roman Catholic, The Baptist Community, the Ismaili Community, The Church of Jesus Christ of the Latter Day Saints, the Church of England, The Evangelical Lutheran Church, The Griqua Independent Church, The Dutch Reformed Churches (NG Kerk), the Dutch Reformed Church in Africa, Uniting Reformed Church of Southern Africa, The Reformed Churches, the Reformed (Hervormde) Church in Africa, the Renish Church, the Joshua Generation Church, African Independent Churches (Ethiopian, Pentacostal, Zionist and Apostles), The Hindu Co-ordinating Council, the South African Tamil Federation, The Sri Sathya Sai Baba Council, the Arya Samay SA, The Jami'atul 'Ulamâ (Council of Muslim Theologians), African Traditional Religions, The National House of Traditional Leaders, The United Christian Student Association etc., etc. In total these bodies and others not mentioned here but who also endorsed the Charter represent about 15 to 20 million believers in SA. After the endorsement ceremony a *South African Council for Religious Rights and Freedoms* was formed and a Steering Committee elected. It is the Task of the Council to keep the Charter in trust for all the believers who endorsed the Charter and they also work to increase the number of signatories of the Charter. Another important task of the Council is to chart a route to bring the Charter officially before Parliament asking Parliament to approve of the following:

"In compliance with the encouragement for public involvement in legislation and of article 234 of the Constitution (which allows for additional Charters of Rights to be accepted by Parliament) the SA Council for Religious Rights and Freedoms, representing between 15 to 20 million believers from many religions, in South Africa, humbly but firmly request Parliament to "officially" receive and take note of the South African Charter of Religious Rights and Freedoms as a document endorsed by the religions of the country and

explicating what they understand their religious rights and freedoms are, which is guaranteed for everyone in South Africa by article 15 of the Constitution (1996) of the Republic of South Africa.”

This task is well underway and we hope to bring it to a conclusion soon.

6. The Charter spells out in greater detail what religious freedom means for the religious people and religious bodies in South Africa, put in other words: what are the religious rights and freedoms that can be claimed in South Africa. It is about:
 - 6.1 The right to belief and the right to what you may believe or not believe (art 1).
 - 6.2 The right not to be forced about your belief (art. 2).
 - 6.3 The right to impartiality and protection of the state in respect of religion (art 3).
 - 6.4 Every person's right to private or public, individual or joint observance or exercise of their religion (art 4).
 - 6.5 The right of persons to maintain traditions and systems of religious personal, matrimonial and family law that is not inconsistent with the Constitution (art. 5).
 - 6.6 The right of every person to freedom of expression in respect of religion (art 6).
 - 6.7 The right of every person to be educated or to educate their children or have them educated in accordance with religious or philosophical convictions (art. 7).
 - 6.8 The right of every person to receive and provide religious education, training and instruction. The state may subsidise such education, training and instruction (art 8).
 - 6.9 The right to institutional freedom – the right of every religion to determine its own confessions, doctrines and ordinances and to regulate its own affairs (art 9). 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 the Charter (art 9).
 - 6.10 The right of all religions in South Africa who qualifies as a juristic person to receive tax, charitable and other benefits from the state (art 10).
 - 6.11 The right of every religious person 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 (art 11).
 - 6.12 Every religious person has the right to conduct relief, upliftment, social justice, developmental, charity and welfare work in the community and also to establish, maintain and contribute to charity and welfare associations, and solicit, manage, distribute and spend funds for this purpose (art 12).

7. In August 2015 Explanatory notes on the Charter was approved of as an aid to understand the Charter and its implications.
8. The South African Charter of Religious Rights and Freedoms is of little avail for those who do not endorse it. In that case the courts of the land will merely apply the existing laws should a religious body come before it. If a religious body in South Africa who has endorsed the Charter come before the courts, the courts will have to take the Charter into account as being endorsed by the specific religious body.
9. The South African Charter of Religious Rights and Freedoms is a necessary document for religious bodies in South Africa to understand what their religious rights and freedoms are; it is also useful for the authorities to understand what religions themselves perceive to be their rights and freedoms. As Justice Albie Sachs wrote in 1990 “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.” (Sachs, Albie, 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 is a powerful toll to create and sustain peace and harmony in South Africa and we believe it can also be of help to other countries and religions.

P Coertzen

Stellenbosch

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