

# SOUTH AFRICAN CHARTER OF RELIGIOUS RIGHTS AND FREEDOMS

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## DRAFT SOUTH AFRICAN CHARTER OF RELIGIOUS RIGHTS AND FREEDOMS HOW IT CAME ABOUT AND WHERE ARE WE (Version 6.0)

6 April 2010

Dear Colleagues and Friends

A few lines about the proposed South African Charter of Religious Rights and Freedoms.

- Round about the beginning of the new millennium a few conferences on the relationship between religion and the state and freedom of religion took place at the Faculty of Theology of the University of Stellenbosch. Through the conferences it became clear that we need to think on what freedom of religion entails for the people of South Africa
- A few individuals started drafting a Charter of Religious Rights and Freedoms for South Africa. The Charter was officially presented and discussed on 14 February 2008 at a meeting of various religious groups in South Africa. Twenty one Christian denominations were present, also representatives from various local congregations and African Independent churches (including the ZCC); There were also representatives from the Jewish and Muslim religions and the SA Tamil Federation as well as representatives from various academic institutions and statutory bodies. The draft Charter was thoroughly discussed and then referred to a Continuation Committee that was appointed by those present. The Continuation Committee consisted of Prof Pieter Coertzen (chairperson and theologian), Prof. Rassie Malherbe (Constitutional jurist University of Johannesburg; dr Chris Landman and dr Willem Langeveldt (then Commissioners of the Commission for Cultural, Religious and Language Rights); Sheik Achmat Sedick, Rabbi Green; Elder Eric Jackson of the Church of the Latterday Saints and Mr Iain Benson (Constitutional lawyer and Professor Extraordinary of Law, University of the Free State, and Miller Thomson LLP, Canada). Dr Nokuzola Mndende (African Traditional Religion) was later co-opted as member of the Continuation Committee. At the moment the same people are still members of the Continuation Committee while the Rev Anton Knoetze (Commissioner of the CRL-Commission) has also been co-opted as a member. Elder Eric Jackson has been assigned another responsibility in the Church of the Latter Day Saints. He will be replaced by Elder Don Erekson. Rabbi Green is replaced by Rabbi Fox when the Continuation Committee meets in the north of the country.
- On 29<sup>th</sup> May 2008 the Continuation Committee met in Stellenbosch to discuss comments and suggestions received since 14<sup>th</sup> February. Some amendments were made and in the beginning of June the amended document was circulated very widely amongst religious communities and other involved groups calling for further comments and also asking that, if possible, religious communities approve of the document, even if only in principle.
- In addition to the circulation of the document members of the Continuation Committee have embarked on a program of meetings with various groups and organizations. Thus far (6 April 2010) we have discussed the document with representatives of –
  - The African traditional religions
  - The Human Rights Commission
  - The National House of Traditional Leaders
  - The Buddhist religion
  - The Rastafarians
  - The Anglican Church
  - The Roman Catholic Church
  - The Bahá'í Faith
  - The Dutch Reformed Church
  - The Hatfield Christian Network (representing some 100 churches across the country)
  - The Black Evangelical Leadership
  - The Jami'atul 'Ulamâ (Council of Muslim Theologians)
  - The Religious Editorial Board of the SABC.

- the Executive of the National Religious Leaders' Forum
  - The General Secretary of the South African Council of Churches.
  - The Chairperson and members of the CRL-Commission
  - Members of the Reformed Churches in South Africa
  - Members the Nederduitsch Hervormde Kerk in Afrika
  - The Muslim Judicial Council
  - The Chief Rabbi of the Jewish Religion in South Africa
  - The Apostolic Faith Mission
  - Women's organisations
  - Youth movements
  - The Church of Jesus Christ of the Latter Day Saints
  - Many of the above mentioned groups have already indicated that they are willing to publically endorse the Charter on 21 October 2010
- The Charter is currently available in five South African languages – Afrikaans, English, Zulu, Xhosa, and Northern Sotho. We are also working on the translation of the document into Tswana
  - We have also formulated the Charter in terms of proposed legislation
  - After a discussion of comments and proposals which were received the Charter was again circulated. In April 2009 it was also circulated amongst the members of the International Consortium for the Study of Law and Religion – valuable comments were received.
  - On 6 August 2009 all the comments and proposals received were discussed. The revised document was circulated again during October 2009 and will again be circulated during April 2010. This is the document which persons and religious communities will be asked to endorse at the public conference of 21 October 2010.
  - The Continuation Committee is planning further meetings with church and religious leaders in the next few months, after which a conference will be called where the leaders of Religious communities in South Africa will be called upon to publically endorse the South African Charter of Religious Rights and Freedoms.
  - We also propose that a representative **Council for the Promotion and Protection of Religious Rights and Freedoms** (Constitution s185(1)(c)) be established at the conference of 21 October to take the Charter forward and bring it before Parliament. This Council will also be responsible to attend to any further comments and proposals from bodies and individuals that have endorsed the Charter by 21 October 2010.
  - We understand that each religious community has its unique decision-making processes, which sometimes may be time consuming. We ask for your co-operation to bring the process to a conclusion as soon as possible. We think South Africa is in dire need of a Charter of this nature.
  - The Draft Charter can also be found on the following webpage [www.sun.ac.za/theology/nuus\\_gebeure.htm](http://www.sun.ac.za/theology/nuus_gebeure.htm) .

Thank you for your attention. I end with a quotation from Judge (retired) Albie Sachs:

*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.*

(Albie Sachs, 1990, **Protecting Human Rights in a New South Africa. Contemporary South African Debates.** Oxford University Press, Cape Town. (pp 46-47).

Kind regards

Pieter Coertzen  
(On behalf of the Continuation Committee)  
Version 6.0 ©

## Document 2

### South African Charter of Religious Rights and Freedoms

26 February 2010  
Stellenbosch

Dear Friends

The Continuation Committee for the South African Charter of Religious Rights and Freedoms wishes to bring the following very important matters to your attention.

1. We are holding a public conference on Thursday 21 October 2010. The venue will be made known. It will be in the vicinity of the Oliver Tambo Airport.
2. We hereby ask your religious community or religious body to appoint a representative to endorse the **Proposed South African Charter of Religious Rights and Freedoms** (see attachment) on behalf of your religious community or religious body at this conference. We suggest that the endorsement should read as follows:

***“Through our signature we hereby endorse the proposed South African Charter of Religious Rights and Freedoms as submitted to the conference of 21 October 2010. We see it as an important development and necessity for South Africa and hope to see it form part of our Constitutional framework through section 234 of the Constitution.***

Please inform us at the latest by 30 June 2010 at the following address [pc@sun.ac.za](mailto:pc@sun.ac.za) who the representative of your religious community or religious body will be at the conference:

***Name of Religious Community /Religious Body:***

***Name of representative:***

***Office:***

***Contact information of representative:***

### **3. Endorsement of the Charter by mail**

Although we would prefer that the public endorsement of the Charter takes place at the conference of 21 October, so that as many of us as possible can publically demonstrate our support for the Charter, we realise that some of you may not be able to attend the Conference. We therefore would like to offer you the opportunity to show your support for the Charter through your signature of the endorsement below. If you have to follow this route please mail your signed endorsement to the address below not later than 30 June 2010.

4. We also propose that a **South African Council for the Promotion and Protection of Religious Rights and Freedoms** (SA Constitution s185(1)(c), as formulated and signed in the Charter of 15 April 2010 be established, based on:

- 4.1 S 234 of the Constitution (1996) which allows for additional charters of rights, and based on
- 4.2 S 185 (1)(c) which recommends the establishment of councils for the purpose to preserve, promote and develop religious rights [ Act 19 of 2002, s 38(1)(a)] and that
- 4.3 The signatories of the Charter on Religious Rights form the Council in principle and are bound by the Charter; and that
- 4.4 A steering committee be appointed to formally launch the Council by way of a Constitution at an appropriate time;
- 4.5 That the Steering Committee apply in terms of 37 (1) of Act 2002 to the Commission for the Promotion and the Protection of Community Rights for formal recognition.

5. We need to add an urgent request please. So far the Continuation Committee steered this project on behalf of the conference of 14 February 2008. All costs that were incurred in this regard were paid out of our personal finances. We have however reached the point where we can not take the project further without the financial sponsorship from the supporters of this project. Thank you for those of you who have already pledged and given support. We confidently hope and expect that you as religious communities and individuals will now help us to shoulder the rest of the burden. In order to present the upcoming conference we urgently need your financial contributions. Our request is that you or your institution pay into our

account any amount of money that you feel is appropriate for this cause. The account number is:

**Bank: Standard Bank**  
**Account name: Stellenbosch University**  
**Account number: 073006955**  
**Branch code: 050610**  
**Reference: Cost Centre-Charter-Theology-US.**

- **Please mark your payment as “Donation University of Stellenbosch Charter of Religious Rights Project”**
- **Please supply us with your name and address so that the University can send you a receipt for tax purposes. You can send your name and address by way of email to the address below.**

Thank you for your attention, support and co-operation

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**Document 3**

**SOUTH AFRICAN CHARTER OF RELIGIOUS RIGHTS  
AND FREEDOMS  
(As amended 6<sup>th</sup> August and 1<sup>st</sup> October 2009)**

**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,

**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 convictions (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.
- 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.
- 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 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.

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 of 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.