

Charter of Religious Rights and Freedoms for South Africa

Draft August 2009 and the way forward

Dear Colleagues,

1. Please find attached the latest Draft Charter of Religious Rights and Freedoms for South Africa.

This version of the Charter was amended at a meeting of the Continuation Committee on 6 August 2009 where all the comments on the previous Charter that had been received, were carefully considered and certain amendments made. Thank you for everybody who submitted comments. After 6 August some of us had further discussions with lawyers who also made comments that were also very carefully considered. Some of their advice is incorporated in the accompanying latest Charter.

2. We see the road ahead as follows

2.1 During the remaining months of 2009 and the first months of 2010 we intend to meet with various role players to personally seek their endorsement of the Charter. If your church or religious group would like to discuss the Charter with us please contact me so that we can arrange a meeting.

2.2 After the meetings we would like to convene a public conference on the Charter. At the conference we would like church and religious leaders in South Africa to show their commitment by publicly signing the Charter.

2.3 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 to take the Charter forward and bring it before Parliament.

2.4 Our request is that you will please bring the above to the attention of the leaders of your church and religious community so that somebody in your community can be appointed:

- to sign the Charter on behalf of your community, and
- to represent your community in the establishment of the Council for the Promotion and Protection of Religious Rights and Freedoms.

Please inform me who the signatory will be.

3. We foresee that the way leading up to the conference and the conference itself is going to cost us in the order of R100 000 – according to a conservative estimate that we made. May we please call on all the bodies who receive this letter to help

us to cover these costs. If all the bodies who were present at the conference on 14 February 2008 are prepared to help us with a minimum contribution of R5 000 each it should give us a good start. All income and spending will be reported fully. We will really appreciate your financial support for this much needed charter in our society. All contributions can be paid into **Bank:** Standard Bank; **Name of Account:** US Deposito; **Account number:** 07 300 6955;; **Branch Code:** 05 06 10. **Branch** 050610. Please send proof of payment to wriek@sun.ac.za and teologiefees@sun.ac.za

Thank you for your attention and support.

A handwritten signature in black ink, appearing to read 'P. Coertzen', with a long horizontal line extending from the end of the signature.

Pieter Coertzen (Chair Continuation Committee)
13 October 2009

SOUTH AFRICAN CHARTER OF RELIGIOUS RIGHTS AND FREEDOMS

(As amended 6th August and 1st 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.

- 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 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.

MOTIVATION FOR A CHARTER OF RELIGIOUS RIGHTS AND FREEDOMS

1. Section 234 of the Constitution of the Republic of South Africa, 1996, provides 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”. Any such charter of rights will then have the force of law. The Constitution envisages, in other words, that the rights in the Constitution may be further extended, supplemented and given content by way of such additional charters.
2. The space created by section 234 for a charter of religious rights and freedoms provides religious institutions with a golden opportunity to take the initiative in a matter that is crucially important to every religious person and institution. In an open, free and democratic society it cannot be left to the state alone to determine the content of our rights, and civil structures such as religious institutions should make a contribution in areas in which they have a direct interest and of which they have intimate knowledge. If, through a process of consultation and negotiation, religious institutions succeed in submitting to the state a consensus proposal for a charter of religious rights and freedoms, the state will hardly be able to ignore it or impose its own views instead. Thus, religious institutions will be able to leave their own significant imprint on the content of the right to freedom of religion and on the evergreen question regarding the relationship between religion and the state.
3. The Constitution creates this space for additional charters of rights because most rights guaranteed in the Constitution are described in cryptic, vague and general terms. The intention is that society, including the state by way of legislation and other measures, and the courts through their judgments, should over time give further content to these rights. For example, the right to freedom of religion is protected in so many words in section 15 of the Constitution, but it provides very little else about the content of the right.
4. In the case of several rights in the Constitution the state has already adopted separate acts of Parliament to further describe the content and application of the rights concerned. The following examples may be mentioned:
 - (a) Section 9 (the right to equality): the Promotion of Equality and Prevention of Unfair Discrimination Act, Act 4 of 2000
 - (b) Section 23 (labour rights): the Labour Relations Act, Act 66 of 1995
 - (c) Section 32 (the right to access to information): the Promotion of Access to Information Act, Act 2 of 2000
 - (d) Section 33 (the right to administrative justice): the Promotion of Administrative Justice Act, Act 3 of 2000Directly or indirectly, numerous other acts give effect to the rights in the Constitution as well, as in the case of health, housing, education, the environment, the rights of children, the right to vote, and the rights of arrested and accused

persons and prisoners. Section 234 creates yet another opportunity for such supplementary legislation.

5. In addition to the importance of religion in the lives of the majority of individuals and communities in South Africa, there are a few reasons why a charter of religious rights and freedoms may serve a useful purpose.
 - 5.1 The right to freedom of religion as guaranteed in the Constitution is an important instrument regulating the relationship between religion and the state. As the supreme law of the Republic, the Constitution in effect restricts the powers of the state, because the state may not violate the rights in the Constitution without fulfilling the requirements of the Constitution. By providing more particulars about the content of the right to religious freedom, a charter of religious rights and freedoms will outline even more clearly the relationship between religion and the state, and will secure the relatively good relationship already existing between religion and the state. This relationship in terms of which freedom of religion and the jurisdictional independence of religious institutions over religious matters are recognised, and religion and religious institutions are protected constructively and impartially in the state, should be stipulated unequivocally in a charter of religious rights and freedoms.
 - 5.2 By leaving the right to religious freedom undefined in the Constitution, one actually accepts that the content of the right will be determined through court decisions and other measures on an *ad hoc* basis, in other words, as questions, issues and difficulties occur. This is a piecemeal process over which religious institutions have little control. Section 234, on the contrary, creates the possibility to propose a charter of religious rights and freedoms in which the content of the right is spelled out more fully in a single act of Parliament.
 - 5.3 Throughout history conflict between religion and the state occurred from time to time in most countries and there were even periods of large scale religious persecution. In our country, as well, issues sometimes occur over which religious institutions differ from the state or where the state take steps that limit or may limit religious freedom. By defining and stipulating this relationship clearly in an act of Parliament, unnecessary state interference with religion which may occur now or in future can be prevented, and uncertainty, misunderstanding and unnecessary conflict between religion and the state can be eliminated.
 - 5.4 A charter of religious rights and freedoms can contribute to the spirit of tolerance prevailing between the various religions in South Africa. Comparing to many other countries, South Africa is particularly blessed in this respect, and insofar as a charter of religious rights and freedoms can enhance this spirit, South Africans should do their utmost to maintain and

strengthen the cordial relationship among the different religions. Moreover, it is our belief that a charter of religious rights and freedoms will deepen our understanding of basic values of justice, love, compassion, human dignity, democracy, rights and responsibilities, as well as the importance in our lives and in society of community and relationships with others.

6. There are useful international examples of additional protection for religious freedom. All the primary international bills of rights protect the right to freedom of religion, but not a single one elaborates on the content of the right. (See for example Article 18 of the Universal Declaration of Human Rights, Article 18 of the International Convention on Civil and Political Rights, Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 1 of the *African Charter for Human and Peoples' Rights*.) That is why the *Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*, which spells out the content of the right to freedom of religion much more extensively, was adopted in 1981. Moreover, in 1992 the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* was adopted. Domestically as well as internationally there are in other words precedents for a charter of religious rights and freedoms.
7. The objection is sometimes heard that conferring rights on people may lead to abuse and that a charter of religious rights and freedoms may open the door to various undesirable beliefs and practices. It is, for example, popular to state that the South African Bill of Rights protects only the criminals and not the victims. If understood and applied properly, that is not the result of a bill or charter of rights and freedoms. First, every right has a responsibility, because when exercising one's right, everyone has the responsibility to respect that same right as exercised by another. That is why rights never apply without limitations – the rights of others impose obvious limitations on the rights of everyone else. Simply put, one person's right to freedom of movement is limited by another person's freedom of movement. If rights prove not to be protected effectively, it is therefore not so much the bill of rights itself that is at fault, but rather its ineffective enforcement. Second, as is the case with any other right, everyone exercises the rights in the proposed charter within the framework of the law of the land. The charter does not legalise or even open the door to any belief or practice that may involve or give rise to criminal activities or other objectionable actions prohibited by law.
8. In the same breath people from one religion may frown upon the charter in apprehension that it opens the door to those from another religion to exercise their beliefs freely. The charter is indeed an impartial document that does not favour one religion over another. But in doing so it simply recognises the reality that South Africa is a multi-religious nation. The various religions cannot wish one another away. As a matter of fact, what is required from all of us is to respect the beliefs of others in recognition of one another's human dignity and in a spirit of tolerance. That is the only way in which religious communities will be able to co-

exist in peace and harmony, and in which one will earn respect for one's own religion.

9. It should be noted that the proposed charter is not a final document. It is a proposal by an interested group of people and everyone is welcome to contribute to its content. Any comments, suggestions and amendments are therefore invited and keenly expected. The more religious communities contribute to the shaping of the document, and eventually endorse or support it, the stronger they will be able to canvass its eventual enactment.

10. It should further be emphasised that religious communities should take ownership of this initiative in order to implement it successfully. This should not be the initiative of a particular religion, community or committee. If religious communities are prepared to accept the charter as their own, join hands in taking it forward, and interact with the government with one voice, this charter of religious rights and freedoms will prove to be a milestone in the protection of religious rights and freedoms and in securing a stable, constructive and co-operative relationship between religion and the state.

Continuation Committee:
Charter of Religious Rights and Freedoms

BILL

To enact the South African Charter of Religious Rights and Freedoms into law; and to provide for incidental matters.

PREAMBLE

WHEREAS the Constitution provides for the protection of –

- the right to freedom of religion and conscience as an inherent and fundamental right of all people; and
- the right of members of religious communities to practise their religion jointly, and to form, join and maintain religious associations; and
- every person’s equality before the law and right to the equal protection and benefit of the law, which includes a prohibition of unfair discrimination on the ground of religion; and

WHEREAS for the effective protection of these rights and freedoms within the framework of the Constitution it is necessary to describe in more detail their content, including the conduct and interests protected, and the duties imposed, by them; and

WHEREAS, in order to deepen the culture of democracy established by the Constitution, section 234 of the Constitution provides for the adoption by Parliament of additional charters of rights that are consistent with the Constitution,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:–

Definitions

1. In this Act, unless the context otherwise indicates –

“**Charter**” means the South African Charter of Religious Rights and Freedoms set out in the Schedule;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**this Act**” includes the Charter.

“**person**” includes a juristic person.

Enactment of Charter

2. The Charter has the force of law in the Republic.

Application, interpretation and limitation

3. (1) In order to deepen the culture of democracy established by the Constitution, this Act gives effect to the religious rights and freedoms that are guaranteed in the Constitution.

(2) This Act shall not be construed to restrict any right or freedom in the Constitution and must be interpreted to promote the role of religion and conscience in South Africa.

(3) In the interpretation of any law, a court, tribunal or forum must take into account the beliefs and values of all sectors of society, including the religious sector.

(4) Any limitation of a right or freedom in this Act must comply with section 36 of the Constitution in order to be valid.

Short title

4. This Act is called the South African Charter of Religious Rights and Freedoms Act, 2009.