



Reports

Rassie Malherbe and Christof Sauer (eds.)

Religious Freedom Charter and Codes of Conduct: Documents and Explorations from South Africa

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International Institute
for Religious Freedom



International Institute
for Religious Freedom

**Internationales Institut für Religionsfreiheit
Institut International pour la Liberté Religieuse
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The International Institute for Religious Freedom (IIRF) was founded in 2007 with the mission to promote religious freedom for all faiths from an academic perspective. The IIRF aspires to be an authoritative voice on religious freedom. We provide reliable and unbiased data on religious freedom—beyond anecdotal evidence—to strengthen academic research on the topic and to inform public policy at all levels. Our research results are disseminated through the *International Journal for Religious Freedom* and other publications. A particular emphasis of the IIRF is to encourage the study of religious freedom in university institutions through its inclusion in educational curricula and by supporting postgraduate students with research projects.

The IIRF has a global presence with academic and advocacy partners on all continents. We perform original research and in collaboration with our partners. The IIRF is also a “meeting place” for all scholars that take an interest in religious freedom.

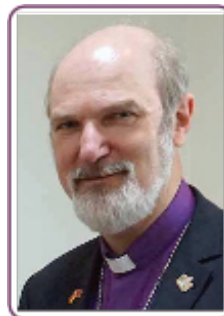
We understand Freedom of Religion and Belief (FoRB) as a fundamental and interdependent human right as described in Article 18 of the Universal Declaration on Human Rights. In line with CCPR General Comment No. 22, we view FoRB as a broad and multidimensional concept that needs to be protected for all faiths in all spheres of society.



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3

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CONTENTS

1. Introduction (Rassie Malherbe and Christof Sauer).....	5
2. South African Charter of Religious Rights and Freedoms & Explanatory Notes (Synopsis).....	7
Preamble: General Framework Concepts for the Charter.....	8
Article 1: The Right to Believe	9
Article 2: No Coercion in Belief	9
Article 3: State Protection of Religion	11
Article 4: Right to the Exercise of Religious Beliefs and Limits on Religious Exercise	12
Article 5: Right to Traditions of Matrimonial and Family Law	15
Article 6: The Right to the Freedom of Religious Expression.....	15
Article 7: Right to Educate Children in Accord with the Religion and Philosophy of the Parents	16
Article 8: Right to Receive and Provide State Subsidized Religious Education	18
Article 9: Freedom of Religion is Institutional as well as Individual and Public as well as Private.....	18
Article 10: State may allow Tax and Charitable Benefits to Religions.....	20
Article 11: Religious Right to Raise Funds and Voluntary Support	21
Article 12: Religious Right to Perform Works of Upliftment for Members or Others and to Solicit Funds in Relation to Same	21
3. Code of Conduct for Religions in South Africa	22
Preamble	22
Code of Conduct	23
Editorial note regarding The Alberton Declaration.....	25
The Alberton Declaration	26
4. The history and context of the Charter and the Code of Conduct (Rassie Malherbe).....	27
5. Annotated Bibliography	33
Appendices	35
Editorial comment.....	35
Proposal relating to a Code of Ethical Conduct for and by the religious sector (Thom Thamaga).....	36
Addendum to submissions: Recognition of existing religious freedom frameworks in South Africa / Recognition of existing self-regulatory frameworks within the religious sector (Thom Thamaga).....	41

1. Introduction

In the South African context several grassroots documents pertaining to freedom of religion or belief have emerged that deserve both international attention and broader endorsement and implementation in the country itself.¹ Therefore, they are made easily accessible in this issue of IIRF Reports, along with an explanatory essay and an annotated bibliography.

The *South African Charter of Religious Rights and Freedoms* adopted in 2010 is an authentic self-expression on how a very broad spectrum of South Africans understand religious freedom in line with constitutional provisions. It actually provides a broad, albeit non-exhaustive, synthesis of numerous rights defined in international human rights norms. Therefore, it could possibly serve as a model for similar projects in other countries.

This Charter has been expounded with *Explanatory Notes* in 2019 that go into more detail. This issue of IIRF Reports for the first time offers the Explanatory Notes in a synopsis with the Charter for easy reference.

Also in 2019 and in response to societal developments,² a *Code of Conduct for Religions in South Africa* has been developed and endorsed by the same South African Council for the Protection and Promotion of Religious Rights and Freedoms (CRRF) that promotes the Charter, to give further expression to their rights, responsibilities and role within society. This seeks to express common standards regarding unacceptable conduct occurring in religious communities, condemning any abusive, harmful or illegal activities taking place in the name of religion.

The core substance of this Code was also integrated into *The Alberton Declaration* by the independent Christian Anti-Regulation Group in 2019, and the relationship between the two documents will be explained in the respective section.

For better contextual understanding an interpretative essay on *The history and context of the Charter and the Code of Conduct* by an author who has been intimately involved with the drafting of all three documents of the CRRF is added.³

¹ The South African Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission) is one of the earliest signatories of the Charter on 21 October 2010, through CRL chairperson Rev. Wesley Madonda Mabuza. The CRL explicitly referred to the Charter in all its official Annual Reports during the Commissions term of office 2015 to 2020, quoting five of the SACRRF articles in the section presenting additional "policy mandates". In the 2020/21 Annual Report this reference was replaced by general reference to regional and international covenants and charters (such as the ICCPR). From the 2021/22 Annual Report onward, references to any additional policy mandates were dropped, solely focusing on the constitutional and legislative mandates. More visible and continued endorsement of both Charter and Code of Conduct and adherence to the contents of the Charter by the CRL might go a long way in promoting these among religious communities in South Africa.

² Cf. Christof Sauer and Georgia du Plessis. "Safeguarding freedom of religion or belief: Assessing the recommendations of the CRL Rights Commission in light of international human rights standards." *Alternation Special Edition [Abuse of Religion, and Gullibility of the Public in South(ern) Africa]* 38 (2021) 378–411, DOI <https://doi.org/10.29086/2519-5476/2021/sp38a16>; republished in: IIRF Reports 14 (2025) no. 23. <https://iirf.global/?p=6626>.

³ An edited version of this essay under different title has previously appeared as: Rassie Malherbe. "The South African Charter of Religious Rights and Freedoms", *The Review of Faith & International Affairs*, 22 (2024), 93–104, <https://doi.org/10.1080/15570274.2024.2414567>.

In addition, scholars might appreciate the *Annotated Bibliography* supplied to facilitate further study.

Finally, the Appendices illustrate that the Charter and Code of Conduct have been adopted widely, enjoy a fair amount of support and consensus and should form the basis for further action. A most recent “*Proposal relating to a code of ethical conduct for and by the religious sector*” by a third party could possibly inspire internationally in contexts where such codes of conduct do not yet exist, as well as domestically regarding a framework for further development and practical implementation among religious communities and churches.

The complementary “*Addendum to submissions: Recognition of existing ... frameworks*” from the same source calls for the recognition and strengthening of existing frameworks in form of the Charter and Codes of Conduct, and for building on these in all further related endeavours.

The International Institute for Religious Freedom (IIRF) both as an international entity and with its South African branch has been involved in the drafting phase of the Charter, its dissemination through the International Journal for Religious Freedom, and the hosting of a conference at which the accompanying essay has originally been presented. The IIRF is therefore proud to make available this resource to academia and civil society to study and defend freedom of religion or belief both in South Africa and globally.⁴

The editors wish to dedicate this publication to the late Prof. Pieter Coertzen (1943-2026), former Chairperson of the Council for the Protection and Promotion of Religious Rights and Freedoms in South Africa, and the driving force behind the South African Charter of Religious Rights and Freedoms.⁵

Rassie Malherbe and Christof Sauer (editors)

Postscript

Any South African entity that desires to endorse and subscribe to both the Charter and/or the Code of Conduct, as well as any party seeking to correspond with the South African Council for the Protection and Promotion of Religious Rights and Freedoms may contact Prof. Dr. Rassie Malherbe at r.malherbe@gmail.com.



⁴ On the most recent involvement of IIRF in South Africa, cf. IIRF Cape Town. Foundations for the Protection of the Autonomy of Religious Associations: A Response to Regulatory Ambitions in South Africa. IIRF Reports 15 (2026) no. 11, <https://iirf.global/?p=7091>.

⁵ Christof Sauer and Thomas Schirrmacher. “The IIRF mourns the recent passing of Prof. Pieter Coertzen”, International Institute for Religious Freedom (press release). <https://iirf.global/?p=7055>.

2. South African Charter of Religious Rights and Freedoms & Explanatory Notes

Charter	Explanatory Notes
SOUTH AFRICAN CHARTER OF RELIGIOUS RIGHTS AND FREEDOMS (2010)	SOUTH AFRICAN CHARTER OF RELIGIOUS RIGHTS AND FREEDOMS EXPLANATORY NOTES⁶ (29 August 2016)
	It is explained elsewhere that the South African Charter of Religious Rights and <i>Freedom</i> product of a long process of research, reflection, consultation, drafting and redrafting. It is the combined outcome of the best efforts of many enthusiastic and committed participants. The Charter contains the main elements of the right to religious freedom, and related freedoms (such as the rights of equality and association) as they are accepted internationally. The Charter, therefore, relates to and relies on several other rights guaranteed in the South African <i>Constitution</i>. To a very large extent one may say that the Charter does not make new law, it rather compiles existing law in a coherent and intelligible way. In that way the Charter unlocks and explains the law in respect of the right to religious freedom and related freedoms. The Charter is based on the recognition of two paramount principles underlying the right to religious freedom: namely the right to have religious beliefs individually and in association (or not to have religious beliefs), and the right to manifest, teach and disseminate those beliefs and convictions as they are expressed in several areas of life. Religion is also an equality right as it is listed within the Constitution's equality provision (Section 9 (3)). Because religion is itself an equality right, it is incorrect to view certain kinds of conflicts as "between religion and equality" (as the conflicts are often inaccurately described). Moreover, there is no hierarchy of rights in South Africa – all rights protected by the Constitution are equal and formally no right carries more weight than another right. This means that when two rights do come into conflict, one right will not necessarily always trump the other right. When disputes arise between rights (also between equality rights, for example, the right not to be subjected to unfair discrimination on the basis of one's religious convictions and the right not to be subjected to unfair discrimination on the basis of one's sexual orientation), the proper approach to reconciliation is to take into account <i>the context of the conflict between these rights</i> and to determine the outcome on the basis of the facts and circumstances of each case. Based on these two important aspects, the right to hold religious beliefs and the right to manifest them individually and in <i>association</i> with others, the Charter unpacks the right to freedom of religion in some detail. The Charter can be divided into several broad parts, namely – - the introduction - the preamble, - the right to believe and to act upon those beliefs, - the state's role of protection, - the right to manifest or observe one's beliefs in different settings, - freedom of expression in respect of religion, - religious freedom in education, and - the freedom of religion of institutions. What follows are explanations of the provisions of the Charter one by one:

⁶ These notes are not intended to be a complete explanation of the principles set out in the Charter but to offer some assistance in understanding the principles in the context of frequently raised questions.

Charter	Explanatory Notes
INTRODUCTION	Introduction
The South African Charter or Religious Rights and Freedoms is subject to the Constitution of the Republic of South Africa, 1996. The Charter builds upon and relies on several provisions of the Bill of Rights as entrenched in the Constitution. Pursuant to section 234 of the Constitution, which provides for additional charters of rights consistent with the Constitution, the Charter, although endorsed by civil society and not formally adopted by Parliament, describes in more detail Section 15(1) of the Bill of rights, which reads: “Everyone has the right to freedom of conscience, religion, thought, belief and opinion.” ⁷	In this introduction it is clearly stated that the South African Charter of Religious Rights and Freedoms is subject to the Constitution of the Republic of South Africa, 1996. The Charter builds upon and relies on several of the provisions of the Bill of rights as entrenched in the Constitution. The Charter describes in more detail what the rights are that religious people see they can claim in the light of the Constitution.
PREAMBLE	Preamble: General Framework Concepts for the Charter
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	By stating certain points of departure, the preamble serves as an introduction to the Charter. It recognises the importance of belief, thought, conscience and opinion in society, and the need for the legal protection of religious freedom as a basic human right. It recognises the relationship between religion and the state and the positive role the Charter can play in shaping and informing that relationship in a healthy and constructive way. It recognises the rights and responsibilities of all concerned, including religious institutions and the state. Finally, it recognises the role religion can play in deepening our understanding of and contributions to the common good, as well as that the effective protection of religious freedom can foster a spirit of mutual respect and tolerance throughout society within communities and between them. Rights in the Constitution are not rank-ordered where one is given greater priority than others. Where there are conflicts between rights, therefore, the proper approach for courts or politicians is to engage in a searching evaluation of the context of the disputes in question so as to preserve appropriate diversity. This set of explanatory notes seeks to set out some principles for better understanding the context where religious freedom is concerned.
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	

⁷ [Editors’ note: This “Introduction” was a later addition to the Charter at the time when the “Explanatory Notes” were issued. In recent times, this introduction was omitted again, to let the pure Charter and Code stand as adopted. It is left as part of the record, as it provides contextual information. The South African Council for the Protection and Promotion of Religious Rights and Freedoms asserts that no other amendments have ever been made to the Charter and the Code.]

Charter	Explanatory Notes
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.	Article 1: The Right to Believe To have religious beliefs or to choose not to have religious beliefs is an integral and intimate part of being human. By respecting this capacity of every person we respect their dignity as human beings, a principle that is highly regarded by the Constitution. Belief, conscience, convictions and opinion direct people's lives. These determine our views about life and death and right and wrong. These beliefs influence or determine our choices in relation to ethics and morality, marriage, work, children, relationships and our place in society. Denying the role of belief, conscience and opinion in people's lives has led to much persecution throughout history. Recognising and protecting the right to religious freedom is an important step we take in modern states to respect human dignity and prevent such persecution. Article 1 confirms therefore the first main pillar of religious freedom, namely the right to believe according to one's convictions and to make choices with regard to one's convictions and religious affiliation. One may, in other words, choose one's faith, worldview or religion, and may join the religion or religious institution of one's choice. In addition to the positive right, the right includes the ability not to have religious beliefs, and not to join any religion or religious institution and to be free from religious coercion. It does not include the right to be free from the incidental effects of religion when they are exercised appropriately in private or in public.
2. No person may be forced to believe, what to believe or what not to believe, or to act against their convictions.	Article 2: No Coercion in Belief This Article builds logically on Article 1 and provides that no-one may be forced to believe or not to believe, or to act against their beliefs. If one is free to believe, one should also be free from being forced or coerced in any way with regard to beliefs or 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.	Article 2.1 Right to Change Faith or Institution This Article emphasises that everyone has the right to change their beliefs, which is again a logical consequence of one's freedom in respect of religion.

Charter	Explanatory Notes
2.2. Every person has the right to have their convictions reasonably accommodated.	Article 2.2 Right to Reasonable Accommodation This Article contains an important principle for living together in society – when living together we should exercise our beliefs in such a way that others or society in general are not affected negatively – in other words, we should exercise our right in a reasonable way. We do not have an absolute right to freedom of religion if that can hurt others. So, we may therefore only claim for our beliefs or convictions to be <i>reasonably accommodated</i> in society and, the corollary of this, that religious groups owe a duty of reasonable accommodation to those who may disagree with their practices. In the <i>Pillay</i> case, the court held that it was reasonable for a learner to be allowed to wear a nose stud for religious reasons, and that the dress code of the school should be amended to accommodate that. So, the principle implies that private as well as public institutions have a duty to create the scope within which we may exercise our religious freedoms in a reasonable way. An example would be that as a factory worker I may not insist on taking such a long break for religious observances every day that it affects the business of the factory negatively, but I am entitled to a reasonable break that is not disruptive of the activities of the business. Or I should not necessarily be able to take the day off every time my religion celebrates a holy day, but I may be entitled to a reasonable break on that day. Providers of essential services (such as medical facilities, security services, and municipalities) may also not allow the exercise of the right in such a way that those services are disrupted though a reasonable duty of accommodation applies. Many more examples may be mentioned but suffice it to say that what would be a reasonable accommodation of one's right has to be determined on the particular facts and contexts of each case. (See also the discussion of Article 4.)
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.	Article 2.3: The Right to Dissent The right not to be forced in any way in respect of religious matters means that a person may, on religious grounds, refuse to perform certain duties or to participate in certain activities. In the private sphere this is accepted, although even there one will not be allowed to insist on one's rights if the interests of others are endangered. In the public sphere this poses difficulties, though. A well-known example is to refuse to do military service involving combat. Usually a person is then accommodated in non-combat services. In public health services, doctors, nurses and pharmacists are obliged to perform certain duties and if they refuse, disciplinary action may be taken against them but reasonable accommodation is required in relation to them. The Charter takes the view that it is un-Constitutional to expect from anyone working in the private or public sphere to perform duties or provide services contrary to their religious and conscience convictions. If they are challenged, they may call on section 7(2) of the <i>Constitution</i> which provides that the state must respect, protect, promote and fulfil the rights in the Bill of Rights, including the religious rights; they may also call on section 9 (equality) and section 15 (religious freedom) of the <i>Constitution</i> as well as the Charter of Religious Rights and Freedoms. Finally, it is for the Courts to adjudicate the matter on these grounds. Religious people should claim their right to have their religious convictions acknowledged and, within reason, to be allowed to live according to them. In general, it is our view that as is the case with all rights in the <i>Constitution</i>, no right applies absolutely and that all rights may be limited when it is reasonable and justifiable (section 36 of the <i>Constitution</i>). As explained, the Charter acknowledges this reasonable approach by stating in Article 2.2 (see also Article 4) that every person has the right to have their convictions reasonably accommodated. That means that one's convictions have to be respected but that it may not necessarily prevail in all circumstances. To be practical, a doctor or nurse should on religious grounds be allowed to refuse to do abortions or refer for them (Article 2.3 "indirectly to assist in"). On occasion the duty of accommodation may well require that health care associations (medical or pharmaceutical) bear the responsibility to provide for the protection of establishing protocols that protect conscientious objectors as well as the rights of patients by setting up, for example, access to services that do not implicate those opposed

Charter	Explanatory Notes
	on religious or conscientious belief grounds. Provision of contact numbers of those who do not object to certain procedures, or a number any patient may call to receive such a list, may be the duty of health associations if there are concerns about access to certain controversial services. Keep in mind that two sets of rights are at issue in many contemporary ethical disputes: those who provide medical services as well as those who request them and reconciling both sets of rights as far as possible should be the goal rather than subordinating one to the other. Obviously, using an ethical dispute as a proxy to work out anti-religious prejudices is completely unacceptable.
2.4. Every person has the right to have their convictions taken into account in receiving or withholding medical treatment.	Article 2.4: Medical Treatment and Belief Receiving or withholding medical treatment is a sensitive issue and is often related to people's religious convictions. The Charter confirms the legal position by stating that one's convictions should be taken into account in these matters, although it may not always determine the outcome. For example, an adult able to take such a decision may be allowed to refuse medical treatment on religious grounds, but when a child's life is threatened, parents should not be allowed such refusal purely on religious grounds. It seems the Constitutional principle that in every case "the best interest of the child" is paramount (section 28(2) of the Constitution) will prevail in such a case and will trump the views of the parents if there is no other way to protect the child's interest.
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.	Article 2.5: Freedom from Coercion Freedom of religion also means that one's freedom to believe and what to believe should not be undermined by indoctrination from anyone (the state or a private person or institution), if it may destroy, change or compromise one's religion or convictions. In the context used here, indoctrination means to teach someone in a systematic and coercive way to accept something uncritically. This removes the freedom of the individual to determine for themselves what to believe or not to believe, and may indeed destroy, change or compromise their beliefs or convictions.
3. Every person has the right to the impartiality and protection of the state in respect of religion.	Article 3: State Protection of Religion This provision deals with the impartial protection the state owes those who exercise their religious freedom. Section 7(2) of the <i>Constitution</i> provides that the state must respect, protect, promote and fulfil the rights guaranteed in the <i>Constitution</i>. The state must refrain from violating the rights (unless there is good reason under section 36 to limit the rights), it must protect the rights from violation by others, it must take steps to enable people to exercise their rights effectively (for example, to put the mechanisms in place for people to be able to exercise their right to vote, or as mentioned above, exercise religious beliefs in state-run medical institutions), and it must create a positive and safe environment and atmosphere in which everyone is free to exercise their rights. This duty on the state applies to all rights, including the right to religious freedom. Article 3 gives effect to these duties on the state. It expressly provides that the state must be impartial, and may not promote, favour or prejudice a particular faith, religion or worldview, or indoctrinate anyone in respect of religion. The state may also not discriminate unfairly against anyone on the grounds of their faith, religion, religious affiliation, or convictions. (Article 3.2).
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	Article 3.1: The State Should Create Positive Conditions for Religion and not Promote one Religion over Others Giving effect to section 7(2) of the <i>Constitution</i>, this provision states clearly that the state must create a positive and safe environment for the exercise of religious freedom. Where necessary, the state must take specific steps to ensure this. When it comes to religious freedom, this approach followed in the South African <i>Constitution</i> is something quite different from what is sometimes popularly understood to be the proper role of the state. In some countries there is, in theory, a more or less complete separation between religion and

Charter	Explanatory Notes
a plan for the development of land, the state must consider religious needs.	the state. The state, even if it attempts to act impartially, may not take any step assisting the effective exercise of the right to religious freedom or to promote or fulfil the right. The state, so it is argued in such countries, must take a “neutral” stand in respect of all religion and religious matters. In practice this means the state has to maintain a “hands-off” attitude in all religious matters under the guise of any positions it takes (expressly or by default) being free of moral viewpoints. In some countries this has led to a situation where, for example, no religious observances are allowed in public institutions such as schools. In certain cases it has even led to hostility against religion – anything offending religion is permissible in the public sphere, but religion itself is not. This is not the approach in South Africa. In South Africa a more evolved approach is applied; one that recognizes that religious beliefs, like all beliefs, have a place in the public sphere and that the state should try and make clear its moral viewpoints. The more evolved approach, that of the “co-operation” of religion and state is the approach taken in South Africa. We do not follow a secularistic “complete separation of religion and state” nor a “view from nowhere” in relation to public moral positions (however difficult it may be to articulate these within a pluralistic society). This South African approach recognizes a jurisdictional distinction between religion and state yet at the same time it allows for <i>co-operation</i> (and financial support in certain instances) between state and religions. The <i>Constitution</i> expects the state to take steps to protect the right to religious freedom, and it expects the state to take action to create a positive and safe environment for the exercise of religious freedom. This is the opposite of a “hands-off” attitude which leaves those exercising their religious freedom unprotected. The state has to be engaged in order to level the playing field for everybody and ensure, amongst other things, that the principles of accommodation are present and effective. The only condition is therefore that when the state does act, it must act impartially and not favour any religion or discriminate against any other. Schools and Health Care are good examples of areas in which this co-operative approach is applied practically – this is discussed below in more detail under Article 4.4.
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.	Article 4: Right to the Exercise of Religious Beliefs and Limits on Religious Exercise This provision deals with the second main pillar upon which the right to religious freedom rests. The right to believe always goes hand in hand with the right to manifest and practice those beliefs. This means that one has the right to the private or public, and the individual or joint, observance and exercise of one’s religious or other convictions. As Article 4.4 shows, observing one’s beliefs may take many different forms. This pillar emphasises that religion, beliefs and convictions are not only a private matter, but as they go to the heart of a person’s deepest beliefs and convictions, to their very dignity as a person, they cannot but have an impact upon people’s opinions, actions and relationships to the outside. And according to the Charter this is a good thing. First, everyone should be free to carry their deepest beliefs, conscience and convictions into the public sphere as they serve to form their opinions and actions in respect of public matters. Should we ban people’s religious beliefs, consciences and convictions from the public domain, we act unfairly because in reality we will necessarily allow other beliefs to be dominant – those, perhaps, not explicitly formed by religious convictions. This form of exclusion and preference is an unacceptable interference with the public aspects of religion and also serves to cloak, inaccurately, the “beliefs” of, say, atheists and agnostics which may then come to dominate the public sphere. The exclusion of religious but not non-religious beliefs readily becomes prescriptive and tends to deny the essence of religious freedom while it fails to identify atheism and agnosticism for what they are: belief systems.

Charter	Explanatory Notes
	Second, to develop understanding, respect and tolerance, we should each be able to express and observe our beliefs and convictions, even if they differ. By not sharing and not allowing the free expression and observance of our convictions, we can never reach a stage where we can tell one another we understand and therefore we tolerate even where we continue to disagree. Should we ban beliefs and convictions from the public domain, we rob ourselves of opportunities to understand one another and to develop the ability to live together peacefully with agreement or disagreement and to make our moral agreements and disagreements visible as belief differences. So, this aspect of religious freedom as formulated in Article 4.4 ensures that the right to religious freedom is not relegated and confined to the private sphere, as has happened to different degrees in certain countries, mainly because of a misunderstanding or a rejection or mischaracterization of the role and nature of beliefs and convictions in people's lives and in society. In South Africa, therefore, religious freedom does not mean freedom <i>from</i> religion, but freedom <i>of</i> religion and, as set out above, freedom from religious <i>coercion</i> and not simply from the incidental results of religious practices in the public and private spheres. Society is not shielded from religion, rather the scope and atmosphere are created for people to express and observe their religious or other convictions freely. It means we have the right to manifest our beliefs in public, and even in public institutions. Of course, the principle of reasonable accommodation applies, and even if one may not have an absolute right to observe one's religion, one does have the right to have one's beliefs reasonably accommodated in such institutions and to have one's conscience, formed by religion, respected in the private and public spheres. An example is that an employee⁸ in a public institution should be allowed to wear religious attire, unless it is incompatible with the uniform the employee is supposed to wear in an institution such as the police services or the defence force or if it hampers proper functioning on the job (such as face veils might in an educational environment or where facial recognition is deemed essential). Even here, however, as may be seen in certain other countries, uniforms may be changed to accommodate the wearing of certain kinds of religious garments (such as turbans, head scarves or yarmulkes) and the context and facts of each case are essential with maximal respect being the keynote. The free exercise of religion, as with other rights, is not unlimited. Any manifestation of a religion is always subject to the laws of the land in general as well as constitutional limits. Religious practices that are dangerous or coercive, such as making followers eat grass, drink petrol, eat snakes or performing other acts that would be likely to constitute coercion or assaults, can be restricted by law. In addition to restrictions in laws of general application, religions are also answerable to their own governing rules and regulations and breaches of such rules may well be justiciable before the courts (subject to the concern about judicial interference with doctrines discussed below in Article 9.1). (See also the notes on Article 9.5)
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.	Article 4.1: Access to Sacred Places and Burial Sites This provision enables visits to sacred places and burial sites situated on private land, as long as property rights and other legal considerations are observed. This means, for example, that any visit to such sites has to be arranged with the landowner and may not put an unreasonable burden on the landowner or cause damage of any kind to the property. Mutual respect and consideration is the tone anticipated here. Regulation of access for purposes of historic site protection or peaceful and orderly access would be consistent with the recognition of access rights.

⁸ [Editor's note: The original Explanatory Notes erroneously used the word "employer". This also applies to the second reference to "employee" below.]

Charter	Explanatory Notes
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.	Article 4.2: Freedom of Religious Association and Establishment of Places of Worship The right to freely associate with others is already guaranteed in the Constitution (section 18), and in this provision of the Charter this right is confirmed for religious purposes. It enables us to form associations and act jointly in pursuing common objectives. The rights of religious institutions formed in this way are discussed under Article 9.
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.	Article 4.3 Freedom of Religious Communication National and International This provision builds upon Article 4.2 and confirms that religious freedom transcends all national boundaries. One may therefore communicate with others, nationally or internationally and may travel, visit and meet for religious purposes, and may enter into relationship or association with others irrespective of location. Restriction on movement and associations has long been a method used by closed societies to restrict the freedoms that should exist for citizens in free and open societies.
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.	Article 4.4: Right to Single Faith Practices in State-aided Institutions and the Importance and Validity of “Opt-out” Provisions This article is based on section 15(2) of the <i>Constitution</i> which provides that religious observances may be conducted in state or state-aided institutions, such as hospitals, schools and prisons. This confirms what is already in section 15(1), namely that one has the right to believe and to manifest those beliefs and what is set out above about the possibility of the state having a co-operative relationship with religions and religious communities. This is also stated in Articles 1 and 4 of the Charter. What section 15(2) and Article 4.4 actually do is to emphasise in state and state-aided institutions what is already provided for. Private institutions have the right to conduct religious observances in accordance with their religious ethos. In respect of public schools, the <i>South African Schools Act</i> and Policies in relation to Religion and Schools, confirm this provision and allow a school governing body to decide on the ethos of a public school (section 7). According to the <i>Constitution</i>, certain conditions apply to religious observances in a public school. These conditions apply in order to ensure fairness. The Charter confirms this and provides, firstly, that the appropriate public authorities (according to the <i>Schools Act</i> this is the school governing body) must determine the rules for religious observances – it is not for any individual, be it a teacher or any other person, to conduct religious observances as they wish. It is the task of the school governing body to determine what religious observances may be conducted, in what way these may be conducted and who are allowed to lead them. The religious observances must also be conducted on an equitable basis which means that reasonable and equitable provision must be made for other religions in a school to conduct religious observances and for the principles of accommodation to be followed for those who do not wish to be a part of religious observances; and the attendance of any religious observances must be free and voluntary – nobody may be forced to attend specific religious observances or to believe in a certain way. The purpose of this provision is, first, to allow religious observances in public institutions, to ensure fairness in the way they are conducted, and to ensure that no-one is forced in any way to participate or not to participate. This is the way in which a spirit of respect and tolerance can be cultivated in a diverse, plural and multi-religious society. It is also clear from this provision, and as discussed above, that the <i>Constitution</i> and the Charter do not accept the approach in certain other countries where religious observances are virtually banned from public institutions; on the contrary, these are expressly allowed, as long as the conditions are fulfilled. A final point. School policy in respect of religion should neither be syncretistic nor relativistic. It should allow for religions to be taught from

Charter	Explanatory Notes
	their own religious perspective as long it is equitable, free and voluntary and as long as it allows for the equitable use of buildings etc. by all religions and that they provide for the accommodation including “opting out” of religious exercises for those who do not wish their children to be in such exercises. As long as “opting-out” is accommodated with a spirit of respect and tolerance it should not be seen as stigmatising or unduly exclusionary – rather, it is the proper accommodational response to diversity. Rejecting, as some countries have, “opt-outs” on the grounds that they “stigmatise” those opting out, can lead to the exclusion of activities for others, a result that is unfair and can lead to a unfriendly rather than an encouraging environment for the exercise of religion.
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.	Article 5: Right to Traditions of Matrimonial and Family Law This article recognises the diverse nature of the South African society and repeats section 15(3) of the <i>Constitution</i>, recognising religious traditions and legal systems alongside the South African legal system. The <i>Constitution</i> is supreme, though, and where the state is concerned, religions and the exercise of religious beliefs must function alongside constitutional principles. The law, however, also has limits and it is important to recognize that part of an open society is the recognition of the role and limits of law itself.
6. Every person has the right to freedom of expression in respect of religion.	Article 6: The Right to the Freedom of Religious Expression This article emphasises another aspect of religious freedom, namely the right to freedom of expression. It follows more or less logically for religious freedom to include that one should be able to express one’s beliefs and convictions.
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.	Article 6.1: The Right to the Freedom of Religious Expression confirms this by stating that every person (which includes an institution) may make public statements and participate in public debate on religious grounds. This is yet another manifestation of the approach in the Charter that religious beliefs and other convictions should not be confined only to the private sphere, and must be allowed to be expressed and heard in the public domain. In a diverse society this implies that one may state opinions with which others disagree, or hear opinions with which we may disagree, but that is the room we allow one another in a mature diverse society. It is actually ironic that in certain countries in which freedom of expression is held in the highest esteem, this logical consequence of freedom of expression in respect of religion is denied. In contrast, the open and accommodating approach we follow in South Africa is the proper way to cultivate the mutual respect and tolerance upon which a healthy and peaceful society is built. As in the case of the general right to freedom of expression guaranteed in section 16 of the <i>Constitution</i>, the right does not apply absolutely, though, as is explained below under Article 6.4. One may also conduct scholarly research in accordance with one’s convictions and may publish and distribute religious publications.
6.2. Every person has the right to share their convictions with another consenting person.	Article 6.2: The Right to Share Religious Convictions In the spirit of freedom of religion promoted by the Charter, it follows that one may freely share one’s beliefs and convictions with others. Giving effect to the right not to be forced in any way to believe or what to believe (Article 2), the only condition is that others must consent to one’s sharing one’s beliefs or convictions with them and that, therefore, when a person requests that such sharing cease, this be respected.

Charter	Explanatory Notes
	Article 6.3: Right of Religious Access to Public Media The duty on the state to be impartial in religious matters and to create a positive and safe environment for the exercise of religious freedom includes that religious institutions and communities should have access to the public media, such as television and radio. This access includes the establishment of radio stations and so on. Of course, it is a practical reality that access has to be regulated, and the condition is that it must be regulated on a fair basis. Fairness here would relate, in part, to the numeric representation of a religious belief in society as measured by reliable empirical data. The recognition of a role for public media in relation to religion follows from a recognition of the public dimension of the freedom of religion itself.
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.	Article 6.4: Right to Religious Dignity and Freedom from Ridicule and Hatred As with all rights, the right to freedom of expression in respect of religion does not apply absolutely; there is a limit. The right to religious dignity is also part of religious freedom, and we should not victimise, ridicule or slander others on the basis of their beliefs or convictions. The provision states specifically that no person may advocate hatred that is based on religion and that constitutes incitement to violence or to cause physical harm. What does all of this mean? It simply means that freedom of expression allows us to state views on religious, moral and other public issues that may disagree with other views and may even be seen as critical of other views or conduct and that may produce strong reactions from those criticized or that may “hurt the feelings” or another. That is what freedom of expression is all about – the open and robust exchange of ideas and views. We cannot learn to understand one another and build a mature and tolerant society without such exchange of ideas. So, where is the limit? We aim to live together peacefully and to build unity among us, despite our differences. The <i>Constitution</i> echoes this by stating that we are united in our diversity, that we want to heal the divisions of the past, and that we want to build a united South Africa (Preamble). So, when someone threatens the peace by their statements which advocate incitement to violence or physical harm, the limit is reached. But hatred should not be equated with agreement or “hurt feelings”. As difficult as it may be, part of personal and social maturity is the recognition that the freedom to express opinions includes the fact that these may on occasion upset others. In some parts of the world attempts are made to stop any disagreement and criticism by alleging that insult or “hurt feelings” amount to hatred. This is not the South African approach. An example of conduct that should not be tolerated here would be when, on religious grounds, someone condemns certain behaviour (which would be in order) but does not stop there and threatens those who behave that way with violence or physical harm or encourages others to act violently or cause physical harm to those who behave that way. Respect does not mean “agreement” and disagreement, sometimes vehement, is important in a free and open and mature society. Over-extending the concept of “hatred” and limiting dissent and disagreement, might well lead to a backlash greater than the harm such overly broad exclusions seek to avoid.
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.	Article 7: Right to Educate Children in Accord with the Religion and Philosophy of the Parents This article deals with education and states that 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. Implicitly, parents have the right to choose the form of education for their children and schools are delegated the parental authority when they take on the task of education. The state has no “prior right” to educate the young.
7.1. The state, including any public school, has the duty to re-	Article 7.1 Right of Parents to be Consulted and to Withdraw Children The State, including any public school, must respect religious rights and freedoms and must inform and consult with parents on these

Charter	Explanatory Notes
spect 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.	termine and monitor religious observances and instruction taking place in school, and to liaise with parents on all matters relating to religion in school. Parents may withdraw their children from school activities or programs inconsistent with their religious or philosophical convictions. An example would be a compulsory dietary programme that is inconsistent with the religious convictions of certain parents. Although this right does not appear in these exact terms in some well-known international human rights documents, it is internationally accepted that this is one of the necessary implications that the right to freedom of religion has for education. Still, the right is indeed formulated in these explicit terms in Article 2 of Protocol 1 of the <i>European Convention on Human Rights and Fundamental Freedoms</i> (1950) as well as article 5(2) of the U.N. <i>Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief</i> (1981). The right of parents to withdraw their children from programs or activities inconsistent with their beliefs or convictions regularly leads to court cases in the USA and Europe, for example in the case of sex education or, in Canada, mandatory courses on ethics and religious culture. The trend in these countries is to decide such cases on the basis of what is in the best interest of the child which, due to the fact that the courts may have a different worldview from that of the parents, may lead to decisions rejecting the wishes of parents. In other words, the view of the state about this is being substituted more and more for the view of parents. Signatories to the Charter believe that the right of parents in this regard requires greater respect than what is being allowed generally by court judgments, and the Charter hopes to activate and promote this approach through Article 7. Consideration should be given, as well, to allowing different <i>means</i> (for example parental education in relation to controversial subjects) towards objectively justifiable state <i>ends</i>. Such a more nuanced approach seeks to reconcile differing viewpoints (parental and state) rather than trumping one with the other. As with accommodation in health care the proper approach may well involve a more understanding and nuanced approach from state authorities and courts in relation to the goals of the state and the particular concerns of objecting parents. The onus should be on the state to show why alternative means fail to satisfy the state's goals and not on the parents to prove that harm will result to their children. Note that the approach of the Charter is to promote interaction between education authorities and parents and is therefore more balanced and tolerant within a multi-religious society. For example, parents should have the right and freedom to ask that all viewpoints on, for instance, controversial matters like evolution and sex education be brought to the attention of their children and not only one viewpoint. With this approach the Charter is a more advanced document advocating a more mature treatment of religion in society than the all or nothing, black and white approach we find in some countries, where religious convictions are simply swept off the table as unacceptable or invalid when it comes to everyday issues. The result of this all or nothing approach is that only one view is allowed, which is simply inconsistent with the reality that every society reflects many different views. This is a recipe for conflict, because the question then becomes, who determines which views are the valid ones? Whose viewpoints will be taught in school? And what happens to all those whose views are “disallowed”? Instead, the Charter advocates a broad and inclusive approach, acknowledging the plural, multi-religious nature of society, and promoting tolerance, flexibility and reasonable accommodation of all views and convictions so as to minimise tension and maximise respect for difference. We believe that this reconciliatory approach best contributes to the realization of mutual respect, equality, democratic principles, social justice, human rights, and national unity. The Charter is not an outdated, reactionary or narrow-minded document: it is a sophisticated attempt, based on accepted international and national legal principles, and the legal experience in a variety of countries, to support the objectives of the <i>Constitution</i> and advance the cause of human rights in a diverse society giving maximal respect to diversity as a ground for human (not just religious) freedom.

Charter	Explanatory Notes
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.	Article 7.2: Right and Limits to Particular Religious Ethos in Education It follows from the fact that we carry our convictions with us, also into public places such as schools, that a public school may reflect a particular religious or other ethos. (Also note Article 4.4, providing for religious observances in public places such as schools.) Logically, this ethos will reflect the beliefs or convictions of the majority in the school. However, this ethos must be practised in an equitable, free, voluntary and non-discriminatory way. The rights of minorities must be respected and no-one in school may be victimised or discriminated against because their beliefs or convictions differ from those of the majority. The Charter, alongside the Constitution, challenges schools to develop mechanisms and processes to ensure that these conditions are met. Because of certain court decisions in other countries there may be a suggestion that allowing a learner to “opt-out” of religious exercises somehow attacks the “dignity” or respect for the learner. As discussed above, in Article 4.4 we reject this approach as failing to properly understand a conciliatory approach balancing the rights of association and religious beliefs with the principles of accommodation.
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.	Article 7.3: Private Religious Education Rights and More on the Importance of Opting Out This provision recognises the right to establish private educational institutions on the basis of a particular religion, philosophy or faith, and the right to observe and impart religious convictions. Such a private institution may refuse to promote, teach or practice other beliefs or convictions. Parents apply to and contract with such an institution on a voluntary basis, and it should be accepted that they cannot then object on behalf of their children to the religious activities of the institution. To allow an objector to change a school effectively subordinates religious rights in association to individual rights. The right of “exit” exists and is preferable as a last resort should accommodation be impractical or impossible. There is no right to obliterate the belief frameworks of a single ethos school because a learner may object to the religious or philosophical viewpoint of the school. We view alternative approaches that misapply appropriate accommodation as a misunderstanding of how the principles of reconciling different beliefs should operate properly alongside respect for diversity and accommodation.
8. Every person has the right to receive and provide religious education, training and instruction. The state may subsidise such education, training and instruction.	Article 8: Right to Receive and Provide State Subsidized Religious Education Freedom of religion includes the principle that every person has the right to receive and provide religious education, training and instruction. As in the case of all education, the state may choose to subsidise such education. This is another example of the approach in South Africa in terms of which the state is not prohibited from involvement in religious matters, but indeed has a positive duty to promote and facilitate the exercise of the right to religious freedom (section 7(2) of the <i>Constitution</i>). The only condition is that when the state does engage with religion, for example to subsidise religious education or training, it has to act impartially, and may not favour anyone or discriminate against anyone. It would make sense for the state to maximally consult with the religions themselves both to ensure credibility of programs and to minimise any fears of religious communities. Care should also be given to the principles of accommodation and alternative delivery so that diverse <i>means</i> are not confused with the <i>ends</i> the state wishes to achieve. (see notes on Article 7.1 above)
9. Every religious institution has the right to institutional freedom of religion.	Article 9: Freedom of Religion is Institutional as well as Individual and Public as well as Private As in the case of several other rights in the <i>Constitution</i>, not only individuals are entitled to the right to religious freedom. The <i>Constitution</i> expressly provides that a body or institution (juristic person) is entitled to the rights in the <i>Bill of Rights</i> to the extent required by the nature of the right and the nature of the juristic person (section 8(4)).

Charter	Explanatory Notes
	Religious bodies and institutions are therefore also entitled to religious freedom. Article 9 of the Charter reflects this. Having regard to what happened in certain other countries two errors should be avoided: religious freedom must not be <i>individualized</i> at the expense of its collective dimensions nor should religious beliefs be <i>privatised</i> or <i>marginalised</i> at the expense of validly public dimensions.
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.	Article 9.1: Religions Free to Determine Confessions, Doctrines and Order, and Role and Limits of Law in Relation to These This provision explains what the religious freedom of religious bodies and institutions means. In the same way individuals may determine for themselves if and what they believe, every religious institution has the right to determine for itself what it believes, as expressed in its confessions, doctrines, ordinances and other documentation, and how to apply them. Religious bodies and institutions also have the right to regulate their own internal affairs. This includes the right to regulate their – • organisational structures and procedures, • the ordination, conditions of service, discipline and dismissal of office-bearers, • the appointment, conditions of employment and dismissal of employees and volunteers, and • membership requirements. Of course, we cannot live together in peace and harmony if institutions in society, such as religious institutions, take decisions on these matters without regard to the society around them. Religious institutions should be held accountable in terms of principles of tolerance, fairness, openness and accountability. We often see office-bearers or employees taking religious institutions to court because they believe they were treated unfairly or inconsistently with proper procedures. The actions of a religious institution may be tested on the basis of principles applicable throughout society that embody standards of procedural fairness and natural justice that we believe should apply in all situations.
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.	Article 9.2: Independence of Religious Associations Elsewhere we explain that the state has a duty to respect, protect, promote and facilitate the right to religious freedom (Article 3). This provision confirms that this duty on the state also applies in the case of religious institutions. The state must recognise the authority of religious institutions over their own affairs, and the state must govern justly, constructively and impartially in the interest of everybody. Recognition of a legal presumption in favour of diversity and the limits of law in relation to internal matters of religion alongside generally applicable principles of procedural fairness and natural justice, are important to achieve justice, fairness and respect for difference within a constitutional order such as South Africa. Developing legal recognition of how these principles interact is an aspect of the evolution of both legal and societal maturity and a rejection of the domination of the past.
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.	Article 9.3: Internal Religion Matters Free from State and Judicial Interference This Article emphasises an important consequence of the independence of religious associations, in that the state, including the courts, may not regulate or prescribe matters concerning religious confessions, doctrines and ordinances. This actually reflects a long-standing principle in our law that the state should not make laws on religious matters, and courts should not decide cases on the basis of religious confessions, doctrines and ordinances. This is because the matters of religious doctrine, confessions and ordinances are not matters over which courts may rightly claim jurisdiction as they have no expertise in relation to religion's revelations. In addition, should courts delve into this area, they would diminish the independence that religious associations need to stand outside the state and would entangle the courts in the internal aspects of religious dogma – something beyond the proper purview of the law.

Charter	Explanatory Notes
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.	Article 9.4: The Right to Confidentiality of Internal Religious Matters This provision flows from the religious freedom of institutions and reflects the existing legal position in South Africa. The right to privacy (section 14 of the <i>Constitution</i>) dictates that the internal affairs and communications of a religious institution are confidential and must be respected accordingly. So, the point of departure is that religious communication is privileged, and its confidentiality must be respected. However, the interests of justice always prevail and, when necessary to dispense justice, a court of law may order that the confidentiality of religious communication be lifted though this needs to be understood as exceptional as it always risks interfering with the pastoral dimension of religious practices and that trust that guarantees of confidentiality bring.
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.	Article 9.5: Religious Institutions Subject to Laws of General Applicability The Charter accepts the reality that religious institutions exist and function within society, are therefore part of society, and that in principle they are therefore subject to the law. As a matter of fact, a religious institution carries a particular responsibility to teach its members good citizenship and the importance of observing the law in the interest of society as a whole (the “common good”). A religious institution may also not act in a way that is blatantly illegal, for example to force its members to perform acts or rituals that are physically harmful or may damage or destroy the property of others, or to force minors to marry. (See also the last paragraph of article 4.) However, if a religious institution, while exercising the rights guaranteed in the Charter in a lawful way, feels it cannot in good conscience observe a particular law, it must be able to justify itself on the ground that it is inconsistent with its beliefs and convictions which it may adhere to in terms of the Charter. Sometimes a law may even contain exemptions on religious grounds, precisely to accommodate those who disagree on the basis of their beliefs or convictions. An example is the Civil Union Act, which provides that religious marriage officers are not compelled to solemnise marriages between persons of the same sex. This is as it should be. Note again that the approach followed in this provision does not imply that a religious institution, or its leaders, may break the law. The right not to observe a particular law with which one disagrees, is not a licence for illegal behaviour. Similarly, it is necessary to recall that diversity depends upon difference being respected and that law should not be used as a means of homogenizing society. There are those (“civic totalists”) who wish everyone to believe as they do on matters where we should allow differences of opinion. Maintaining a space for difference of beliefs, sometimes on matters that are deeply held by those who believe otherwise, particularly in relation to political issues of the day such as sexual orientation, gender rights or religious beliefs, however, is one of the marks of a mature and respectful society and a recognition of law understood within its proper bounds. Due to the importance of diversity in relation to freedom of persons, associations and society itself, the onus should be on those who wish to challenge the presumption of diversity to show why some greater good obtains that requires legal regulation and restriction. The hurdle for such a rebuttal should be significant since the dignity and freedom of difference is what is at stake.
10. The state may allow tax, charitable and other benefits to any religious institution that qualifies as a juristic person.	Article 10: State may allow Tax and Charitable Benefits to Religions As part of its duty to create a positive and safe environment for the effective exercise of religious freedom (Article 3.1), the state may allow tax, charitable and other benefits to religious institutions. Again, the condition is that the state must act impartially, and may not allow such benefits for one religion or religious institution and not another. Nothing prevents the state from allowing such benefits to other institutions as well.

Charter	Explanatory Notes
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.	Article 11: Religious Right to Raise Funds and Voluntary Support Like all voluntary associations, a religious institution has the right to perform different actions to further its objectives, and to receive, manage and spend money for that purpose. Of course, we expect from religious institutions as responsible bodies to govern themselves in financially sound and responsible ways and to act in the best interest of their members.
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.	Article 12: Religious Right to Perform Works of Upliftment for Members or Others and to Solicit Funds in Relation to Same It is in the nature of religious institutions to conduct relief, upliftment, social justice, developmental, charity and welfare work in society. This provision recognises this as a right and provides specifically that religious institutions may conduct these kinds of activities in accordance with their ethos, beliefs and convictions, irrespective of whether they receive state-aid, or whether they serve people with other convictions. Religions often perform “outreach” to those who are not within their own religion and it would be a significant truncation of religious action to attempt to limit them to only serving their own adherents. This follows on Article 3 which provides that the state must act impartially, may not force anyone to act in a certain way, and may not discriminate against anyone on the basis of their beliefs or convictions. This provision therefore prevents the state from forcing a religious institution to act inconsistently with its beliefs and convictions, or to refrain from acting in accordance with its beliefs and convictions, for example by setting conditions for its financial aid to the institution’s activities.
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3. Code of Conduct for Religions in South Africa

Preamble

WHEREAS we affirm the fundamental right to freedom of conscience, religion, thought, belief and opinion protected by section 15 and related provisions of the Constitution of the Republic of South Africa; and

WHEREAS we affirm the expression in the South African Charter of Religious Rights and Freedoms of what freedom of religion and belief means within the South African context; and

WHEREAS we accept and appreciate the truth that the right to freedom of religion and belief carries corresponding duties and responsibilities that we pledge to fulfil to the best of our abilities; and

WHEREAS the right to freedom of religion and belief is an important mechanism for the equitable regulation of the relationship between religions and the state, providing that religious institutions enjoy recognition, protection and cooperation in a constitutional state as institutions with a specific sphere of responsibility; and

WHEREAS the state has the duty to govern justly and impartially in the interest of everybody, to respect, protect and accommodate diverse belief systems and regulate relationships equitably, and not to deny diversity by imposing a uniform standard to the exclusion of differing beliefs or convictions, but instead pursue the full enjoyment of freedom of religion and belief by all; and

WHEREAS we, while true to our beliefs and convictions, undertake to act in the best interest of the society of which we are privileged to be a part, as well as the best interest of our members and participants; and

WHEREAS we, as religious communities, although unique in nature, accept that we function as a part of and within society, and are subject to the law of the land; and

WHEREAS we acknowledge with sadness and regret the unacceptable conduct occurring in religious communities, and condemn any abusive, harmful or illegal activities taking place in the name of religion; and

WHEREAS we believe that we as religious communities should act decisively among ourselves to address such conduct, and develop clear standards to guide our actions and prevent abuse and exploitation in religion and contribute to human dignity and a spirit of mutual respect and tolerance among the people of South Africa; and

NOW, THEREFORE, while acknowledging similar codes and documents that may already apply in particular religious communities and institutions, we subscribe to the following code of conduct to give further expression to our rights, responsibilities and role within society – within the framework of, and subject to, section 15 of the Constitution and related rights, and the South African Charter of Religious Rights and Freedoms:

Code of Conduct

1. We pledge to promote and enhance the well-being of people and of society as a whole in accordance with our beliefs and convictions, and to refrain from conduct that undermines the constructive role that religions should play in society.
2. As religion is meant to assist and enhance, and not obstruct human life, we respect, protect and preserve life, and shall do nothing to devalue, dehumanise or destroy life.
3. As human beings have inherent dignity, we respect and uphold the dignity of every person and shall not abuse or exploit people, or do anything to violate or degrade human dignity.
4. We respect the inherent dignity of children, and pledge to act in their best interest, protect them from maltreatment, neglect, abuse, degradation or exploitation, and promote their physical, spiritual, moral and social well-being and development, particularly when they are under our care.
5. We respect the rights of others as set out in the Constitution, including the right of every person to believe in accordance with their convictions, and to choose their own faith, worldview or religion.
6. We respect the right of every person not to be coerced, indoctrinated, bullied, harassed, intimidated, manipulated or victimised in relation to their religion and belief, to be coerced to act against their beliefs, or to participate in behaviour or perform acts that are inconsistent with their beliefs.
7. We respect the right of every person to change their convictions, beliefs, faith, religion or religious affiliation, or to form a new religious community or religious institution.
8. We respect the right of every person to the private or public, and individual or collective, observance or exercise of their convictions in the lawful and constructive ways contemplated by the Constitution and the South African Charter of Religious Rights and Freedoms.
9. Whenever we maintain traditions and systems of, and follow practices in terms of, religious personal, matrimonial and family law, we shall ensure, as required by the Constitution, that those traditions, systems and practices are consistent with the Constitution (see section 15(3) of the Constitution and clause 5 of the South African Charter of Religious Rights and Freedoms).
10. Mindful of the respective responsibilities of religions and the state, we acknowledge the duty of the state to respect, protect, promote and fulfil the constitutional right to freedom of religion and belief, and shall encourage co-operation between religions and the state for that purpose whenever appropriate.
11. Functioning within and as a part of a democratic society in which the rule of law applies, we shall respect the Constitution and the law of our country, we shall observe the law in all our endeavours, and we shall inform and educate ourselves and our members and participants in respect of good citizenship and observance of the law (see clauses 9.4 and 9.5 of the South African Charter of Religious Rights and Freedoms).

- 11.1 We shall not perform acts or allow or encourage behaviour, or expect from our members and participants the performance of acts, that are unlawful or may cause physical harm or damage to property.
 - 11.2 Whenever, in the exercise of our rights, we cannot in good conscience observe a particular law, we shall engage peacefully with the state explaining the grounds for our actions in terms of our beliefs and convictions, while emphasising the respect for differences of opinion required in a diverse society, and that law should not be an instrument for imposing a uniform worldview on society (see clauses 9.4 and 9.5 of the South African Charter of Religious Rights and Freedoms).
 - 11.3 Where we have a legal duty to report any criminal activity that we are aware of, we shall do so, and shall cooperate with the authorities in the investigation of such matters and the enforcement of the law against offenders.
12. When exercising our freedom of expression and when sharing our convictions with other consenting persons, we shall act prudently and truthfully. We shall respect the dignity of others, we shall not victimise, ridicule or slander others on the ground of their convictions, beliefs, faith, religion or religious affiliation, and we shall also not advocate hatred based on religion that constitutes incitement to imminent violence or to cause physical harm. Difference of convictions should not too easily be labelled as “hatred”, thereby unduly restricting the necessary freedoms of expression and association essential in a diverse, free and open society.
13. We respect the education rights of every person, and encourage every person and institution in the education environment to exercise their religious freedom and develop their ethos in accordance with the rules made by the appropriate authorities and in a way that is equitable, free, voluntary and non-discriminatory, and with due regard to the rights of minorities.
14. In the exercise of our rights to regulate our own affairs, we shall act lawfully and ethically in accordance with the principles of tolerance, fairness, openness and accountability. In our internal affairs, we undertake, specifically, to follow the rules of natural justice insofar as they are applicable.
15. We shall not abuse the confidentiality and privileged nature of our internal affairs and communications, and shall act in the interest of justice in this regard.
16. We shall put in place appropriate leadership, management and control mechanisms and processes to ensure our internal operations are carried out and resources used in a lawful and responsible manner.
17. We shall act with honesty, integrity, due diligence and transparency in respect of our finances and financial management.
 - 17.1 We shall refrain from unlawful, corrupt, manipulative or misleading conduct when soliciting contributions or securing funds from members, external donors or other sources.
 - 17.2 We shall respect the interests and well-being of givers and not pressurise them in any way into giving beyond their means. We shall not minister to anyone in a financially manipulative or exploitative manner.

- 17.3 We shall not misappropriate funds, and shall honour and use gifts and contributions only for the purpose for which they were received, and shall communicate regularly with givers to acknowledge and confirm such contributions and expenditures.
- 17.4 We shall avoid conflicts of interest and shall declare personal interests where appropriate.
- 17.5 We shall keep accurate financial statements in accordance with accepted financial practices. We shall subject our financial statements to independent audit at least annually.
- 17.6 We shall act transparently and, while maintaining confidentiality in respect of support and contributions, shall make our financial affairs openly available to our members or supporters in whatever way appropriate.
- 17.7 We shall make ourselves accountable to our members or supporters in respect of management and finances in whatever way appropriate.
- 17.8 Except insofar as we are entitled to reasonable remuneration, compensation or other income, we shall refrain from enriching ourselves in any way out of the funds of our institution. We shall refrain from acting corruptly and fraudulently.
- 17.9 Where applicable, we shall make full disclosure to the authorities of taxable income, and make diligent payment of taxes due.

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Editorial note regarding The Alberton Declaration

The Alberton Declaration is the Code of Conduct of the Anti Regulation of Religion Summit.⁹ It provides evidence of the wide support of the “Code of Conduct for Religions in South Africa”, in this case specifically within the Christian community. The 17 points above under the sub-heading “Code of Conduct” within the “Code of Conduct for Religions in South Africa” were adopted verbatim into the “The Alberton Declaration” by the “Anti-Regulation Group”, a gathering of more than 1000 pastors on South African Human Rights Day, 21 March 2019. This group added two further points at the end of the Alberton Declaration:¹⁰

“17.10 We consider the above covenant to be our commitment to the preservation, protection and promotion of the integrity of the Body of Christ

18. Beyond this covenant, we subscribe to no form or attempt at regulating, controlling and managing the church by the state, any state institution or any state-instigated programme, as we believe that there are enough

⁹ The Anti Regulation of Religion Summit is chaired by Pastor Shimmy Kotu who can be contacted at info@antiregulation.org or shimmykotu@gmail.com. It is an informal movement with minimal structure. To date the facebook site of the Summit cannot be accessed.

¹⁰ In preparing for its 7th anniversary The Alberton Declaration was posted here on 2 January 2026 as the “Anti Regulation of Religion Summit’s Code of Conduct”. What is point 18 above is numbered 17.11 there: <https://facebook.com/photo?fbid=25878433155102430>

laws and law enforcement agencies to bring criminal elements within any societal sphere [to account]”¹¹

In addition, the “Preamble” of the “Code of Conduct for Religions in South Africa” has been replaced by a “Preface” and some introductory phrases, which read as follows:

Preface

“On the 21st of March 2019, hundreds of Pastors gathered together with other church leaders and concerned Christians at the ‘One On One Ministries’ in Alberton to express their fierce opposition to an attempt to Regulate Religion by the CRL Rights Commission.

This Commission which was established to protect Religious Rights - uncharacteristically decided to overreach and attempt the unconstitutional drive to Regulate Religion.

We are aware of some of the Shenanigans that led to such calls by some in society, but we are convinced regulation is not a reasonable solution.

The problem in RSA is not Religion but lack of Law and Order. Institutions established to deal with Human Rights violations, financial abuses and criminal activities must be activated against anyone who breaks the Law, whether they are in Religion, Sports or any other Sector.

We are an organized movement, an Organic Movement; which, like the Wind, will blow wherever it wants. We are a Move whose time has come. Let the Church UNITE with one Voice ... We reject Regulation.

The Alberton Summit gave birth to The Alberton Declaration. If you align yourself with these sentiments, we are on the same Team ...

No to Regulating Our Faith!”

The Alberton Declaration

2019 March 21

Human Rights Day

Hear Ye! Hear Ye! Hear Ye!

Let it be known that we, Members of the Body of Christ, met on the on 21st March 2019, The Human Rights Day, in Alberton, The Republic of South Africa at One On One Ministries and made this Declaration for all to that –

IN THE SPIRIT OF OUR ELECTION BY FATHER GOD, OUR UNITY IN CHRIST AND THE FELLOWSHIP OF HIS HOLY SPIRIT, WE COVENANT ON THE FOLLOWING VALUES, ETHOS AND MORAL STANDARDS –

[thereafter follow points 1–17 of the “Code of Conduct for Religions in South Africa” (the editors)]

¹¹ This sentence appears to be incomplete both in the original document as well as in the posting in 2026, and a suggested completion has been inserted by the editors. This has been confirmed as correct by Dr. Shimmy Kotu.

4. The history and context of the Charter and the Code of Conduct¹²

Rassie Malherbe¹³

Abstract

This contribution relates the history of the South African Charter of Religious Rights and Freedoms, summarises its content and highlights a few challenges facing the Charter, and comments on the future of the Charter as an expression by civil society of the content of the right to freedom of religion and belief. Inevitably, the Charter also speaks to its context, namely the diverse South African society within which it came into being.

Background to the Charter

The South African Charter of Religious Rights and Freedoms is a document composed by representatives of diverse religious communities who came together to spell out what we understood under the right to freedom of religion and belief guaranteed in section 15 of the ground-breaking Constitution of the Republic of South Africa of 1996.

Acknowledging the prominence of religion in South Africa, Justice Albie Sachs, who later became a member of the first South African Constitutional Court, was the first person to suggest the making of such a Charter in 1990. Then, section 234 of the democratic Constitution of 1996 opened the door by providing for the possibility of additional charters of rights to supplement the Bill of Rights. In those formative years of the South African democracy there were also several academic contributions describing and analysing the right to freedom of religion and belief in section 15. But only in 2007, at one of Prof Coertzen's annual Religion and State conferences at Stellenbosch University, did the penny drop when another academic, Dr Christo Landman, urged the conference that it was high time for the drafting of such a document.

We realised that ordinary legislation gives effect to many rights in the Bill of Rights, for example in the case of administrative justice, the equality rights, the right of access to information, the rights in respect of housing, education, labour, health and welfare, children's rights, political rights (such as the right to vote, to form political parties and to stand for election) and, recently, the right to privacy. *But there was no law explaining and giving effect to the right to freedom of religion and belief in section 15.* Support for the idea of a Charter quickly developed among us and at the end of the conference a task team was formed, led by Prof

¹² Originally published as: Rassie Malherbe (2024). The South African Charter of Religious Rights and Freedoms. The Review of Faith & International Affairs, 22(4), 93–104. <https://doi.org/10.1080/15570274.2024.2414567>. This version is based on the original submission, not on the edited form. It is based on a paper read at the Conference on Religious Freedom held on 11 and 12 April 2024 in Johannesburg, South Africa.

¹³ Rassie Malherbe is Emeritus Professor of Public Law, Faculty of Law, and former Head of the Department of Public Law at the University of Johannesburg, South Africa and Acting Convenor of the South African Council for Religious Rights and Freedoms. His research interests include constitutional development and change, constitutional systems, intergovernmental relations, parliamentary procedures, the protection of human rights, in particular religious and education rights, and the right to academic freedom.

Coertzen, to commence the drafting of a Charter. We sincerely believed that, within the framework of the Constitution, a detailed Charter of Religious Rights and Freedoms which were more or less based on universally accepted norms, would remove uncertainty about the scope and content of religious freedom, would ensure the relationship between religion and the state stayed on an even keel, and would contribute to building our fledgling democracy and uniting our rainbow nation.

To generate as much support as possible, we saw the process and the outcome as equally important. It would remain a mere academic exercise if people didn't buy in. So, throughout the drafting process over the next two years, we regularly consulted with and received inputs from all major religious communities (Christian, Muslim, Hindu, the African religions, and the Jewish religion), human rights groups, legal experts, and members of the public. Through this extensive consulting process, spearheaded and driven by Prof Coertzen, the idea and proposed content of the Charter built up such momentum that on 21st October 2010 representatives of numerous religious communities gathered in Johannesburg to adopt and sign the Charter at a formal ceremony where former Deputy Chief Justice Dikgang Moseneke delivered the keynote address. A Council representative of religious communities, with Prof Coertzen as convenor, was formed to oversee the process of promoting the Charter and taking it to Parliament for enactment. In subsequent years, we added to the Charter an extensive, and rather authoritative, Explanatory Note. The Charter was also translated into six official languages. Mind that we always saw the Charter as a draft that could be amended as we gained new insights based on inputs we received. Support for the Charter continued to grow, and at one time it was estimated that purely on the basis of the institutions that signed or later endorsed it, the Charter enjoyed the formal support of more than 20 million South Africans from across the diverse nation.

As we consulted with religious communities, public figures, and representatives of political parties, we began to realise that putting the Charter before Parliament would not necessarily have the desired result – namely an Act of Parliament spelling out the content of the right to freedom of religion and belief *exactly as we formulated it*. Why in the first place an act of Parliament, you may ask? Well, the Constitutional Court is on record that an act of Parliament giving effect to a constitutional right is the primary, the go-to, legal instrument to enforce that right in a particular case, as it reflects the view of Parliament, as the national legislature, on the matter. The downside is that as a bill before Parliament, the Charter would become the property as it were of Parliament, who, with the input of others not necessarily as favourably disposed as ourselves, would be able to chop and change the Charter until very little of what we had in mind remained. Finally, we made the call that in the changing political climate the risk of a totally watered-down end-product was too big. We let go of that part of the dream, and decided not to submit the Charter to Parliament but rather keep it in the hands of civil society.

That is not insignificant, though. From the beginning, the Council took the important stance that, besides keeping copyright, it was not the owner of the Charter who had to take care of it and promote it *all by itself*. We saw ourselves as mere representatives, or caretakers on behalf, of the religious communities, and even broader civil society, who should be the real owners of the Charter. Our vision was for religious communities and institutions to adopt the Charter, take owner-

ship of it, include it in their doctrinal statements, and run with it – and, of course, based on the Charter, speak with a strong voice when they interact with state authorities on matters affecting them. Some but not all institutions did exactly that and were successful in promoting the Charter among their members and the broader society.

Content of the Charter

Space does not permit an in-depth explanation of the Charter, save for some general observations.¹⁴

From its Preamble it is evident that the Charter is based on the fundamental point of departure that religion and belief embrace all of life. The Charter rejects the false and illogical dichotomy that religion and belief is a private affair only with no place in the public square. The Charter rejects the distorted view of the so-called separation between religion and state that developed for example in the United States during the 20th century and that must seemingly be allowed to seep relentlessly into other jurisdictions. The Charter assumes that the reality of religion and belief should be acknowledged and accommodated fairly and impartially in an open and democratic society, just like any other philosophical conviction or worldview, and that the state has a duty to protect the space for the right to freedom of religion and belief to thrive, as in the case of all other rights.

We saw freedom of religion and belief as comprising two main elements, first, the right of every person to believe, what to believe, or not to believe at all, and second, the right to manifest those beliefs in a reasonable way through individual or joint religious observances and other activities. In addition, the right has an institutional component, namely the right of religious institutions to regulate their own affairs within the legal framework of the land. We also realised that the right to freedom of religion and belief relates to several other constitutional rights for its proper exercise. I refer to rights such as freedom of association, freedom of expression, the right to privacy, and education rights. All of this is reflected in the Charter in the context of religious freedom. Finally, the Charter acknowledges the constitutional duty of the state to act impartially and create, and protect, a positive and safe environment for the free and uncoerced exercise of religious rights.

A point deserving of emphasis is that we have always remained acutely aware of the reality within which the Charter existed, namely the diverse South African society with its many political, economic, cultural and religious divisions. No doubt we see the Charter not only as an important guideline for the effective protection of religious freedom; we most definitely also view the Charter as crossing those barriers and purporting to contribute in bringing together diverse segments of society behind shared principles and convictions. The Preamble to the Charter speaks directly into this when it states: “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” (item 7), and

¹⁴ See above for the full text of the Charter and the Explanatory Notes. For a fuller exposition see R. Malherbe “The Background and Contents of the Proposed South African Charter of Religious Rights and Freedoms” *Brigham Young University Law Review* 2011/3 613-635.

again, “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” (item 7). I daresay that with the public support of at least 20 million South Africans across the nation, the Charter has indeed become a significant instrument in our quest for mutual respect, peaceful accommodation and nation building based on shared convictions and goals.

In 2018 (to come back to the history of the Charter), in response to proposals for the state regulation of religion by the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (a state institution established by section 185 of the Constitution), we also proposed a voluntary code of conduct as the flip-side to the Charter – in the Charter we have our rights relating to the freedom of religion and belief and in the Code of Conduct we would have our responsibilities.¹⁵ We proceeded in the same way the Charter came about. With input from religious communities, legal experts and members of the public, we drafted and consulted as widely as we could. We received a good measure of support, but also surprising resistance. We discovered that people were much more interested in their rights than in their responsibilities. Some even seemed to fear they would lose their freedoms if they acknowledged their responsibilities! Overall, I can say we are grateful for the support the Code of Conduct generated, but that it has not found the same traction as the Charter. I remain convinced it is a valid, necessary, and potentially effective form of self-regulation and I encourage religious institutions to consider its adoption very seriously.

Subsequent challenges

Admittedly, the landscape has changed significantly since the adoption of the Charter in 2010. An unprecedented anti-religion ideological tsunami hit the Western world over the last decade. I wish to comment on this phenomenon from the point of view of the Charter. I refer to only three aspects of the Charter that directly challenge what is happening in South Africa and beyond.

The conscientious objection clause

Under the right to believe or not to believe, and not to be coerced in this respect, clause 2.2 of the Charter provides that every person has the right to have their convictions reasonably accommodated. Clause 2.3 then provides that every person has the right, on the ground of their convictions, to refuse –

to perform certain duties, or to participate or indirectly assist in certain activities, such as of a military or educational nature; or

to deliver, or refer for, certain services, including medical or related (including pharmaceutical) services or procedures.

Real or potential issues such as the comprehensive sex education programs rolled out in schools, the enforcement of transgender ideology, and obligations on medical professionals to perform, assist in or refer for abortion, euthanasia or assisted suicide immediately come to mind. The Charter unequivocally protects people from being forced to deliver services or participate in activities inconsis-

¹⁵ See above for the full text of the Code of Conduct.

tent with their convictions. Conscientious objection clauses are not new, and to interfere with them is not a step towards greater freedom and equality as advocated; invariably, stifling difference of opinion is a step towards oppression.

Freedom of expression

Clause 6 of the Charter provides that every person has the right to freedom of expression in respect of religion. Clause 6.2 then provides that every person has the right –

1. to make public statements and participate in public debate based on their religious beliefs or convictions;
2. to produce, publish and disseminate religious publications and other religious material; and
3. to conduct scholarly research and related activities in accordance with their convictions.

To manifest one's beliefs and convictions, the second major leg of the right to freedom of religion and belief, one must be able to talk about it! However, more and more we see people being prevented by the state from and even prosecuted for voicing opinions and making statements based on their religious beliefs or convictions. Instead of a mere social norm, so-called political correctness is becoming a legally enforced rule. Note that the restriction built into the right to freedom of expression in section 16 of the Constitution in respect of hate speech applies here, and is reflected word for word in clause 6.4 of the Charter. In other words, like our democratic Constitution, the Charter unequivocally rejects hate speech that constitutes incitement to violence or to cause physical harm. However, when the state redefines hate speech beyond this standard, it stifles healthy debate, and actually undermines the very foundations of an open and democratic society, because it allows only speech acceptable to the state.

Parental rights

Clause 7 of the Charter provides that 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. Clause 7.1 then expressly states that 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.

No doubt these provisions are contentious in today's climate with its imperceptible move towards minimising and even eliminating the role of parents in their children's education. Nevertheless, I strongly believe that the education of a child remains a three-way responsibility between the child, the parent and the school. Any other way, and we open the door to totalitarian state education and brain-washing. The sad history of the 20th century bears witness to the disastrous track record of this approach.

The future of the Charter

In a time when more and more inroads are being made into the domain protected by religious freedom, and when policies and measures are being proposed almost daily that would seriously undermine freedom of religion and belief, the South African Charter of Religious Rights and Freedoms and the Code of Conduct for Religions in South Africa remain as relevant as always. Religious communities and institutions should again take up these freely available and potentially effective instruments for the protection of religious freedom. The Charter and Code of Conduct represent a meaningful contribution towards our understanding of the right to freedom of religion and belief in an open and democratic society and, on behalf of a significant segment of civil society, suggest a firm foundation for a healthy relationship between religion and the state. As such, they provide valuable guidance in the current sensitive time for religious freedom, not only in South Africa, but internationally as well.

The Charter and Code of Conduct are available for anybody to adopt or endorse and show state authorities that as serious as we are about our rights, we are equally willing to accept our duties as responsible members of an open and democratic society. The reader is invited to get hold of them and make them their own!

Dedication

This contribution is dedicated to Prof Pieter Coertzen, former Chairperson of the Council for the Protection and Promotion of Religious Rights and Freedoms in South Africa, and the driving force behind the South African Charter of Religious Rights and Freedoms. He sadly fell ill some years ago and had to withdraw from public involvement until his death in 2026. Whatever we achieved with the Charter is by the grace of God and Prof Coertzen's drive. Always courteous, gracious and patient, he passionately believed in what we did and relentlessly travelled across the country, sat down with people and institutions in meeting after meeting, and built the widest possible support for the Charter. His humility, leadership and buoyant optimism and energy are sorely missed.

5. Annotated Bibliography¹⁶

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- Rassie Malherbe, “The Background and Contents of the Proposed South African Charter of Religious Rights and Freedoms,” *Brigham Young University Law Review*, 3(2011), 613–635. <https://digitalcommons.law.byu.edu/lawreview/vol2011/iss3/3>. This is the first publication of the adopted Charter itself (October 2009) in an independent journal, with background commentary provided by the other principal drafter. The term “proposed” in the title alludes to the fact that the committee responsible still contemplated at that stage to submit the Charter to Parliament for adoption.
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- Rassie Malherbe, “The South African Charter of Religious Rights and Freedoms”, *The Review of Faith & International Affairs*, Vol. 22, (2024), 93–104. <https://doi.org/10.1080/15570274.2024.2414567>. This article includes the latest developments regarding Charter and the corresponding Code of Conduct, embedding it in the South African legal and political context. Abstract: This essay relates the history of the South African Charter of Religious Rights and Freedoms. It summarizes its content, highlights a few challenges facing the Charter, and comments on the future of the Charter

¹⁶ The editors thank Prof. Dr. Shaun de Freitas, Bloemfontein, for the compilation of the bibliography. Christof Sauer is responsible for the annotations.

as an expression by civil society of the content of the right to freedom of religion and belief. Inevitably, the Charter also speaks to its context, namely the diverse South African society within which it came into being.

Shaun de Freitas, “Liberty of Association and a Charter for Religious Rights and Freedoms”, *Journal of Church and State*, Vol. 67, 4(2025), 1–10. <https://doi.org/10.1093/jcs/csaf049>. This highly philosophical contribution is helpful on the concepts of “spheres of influence” and “subsidiarity”. It focuses on the autonomy of religious association to determine the position and future of the Charter.

Appendices

Editorial comment

The following appendices illustrate that the Charter and Code of Conduct have been adopted widely, enjoy a fair amount of support and consensus and should form the basis for further action. These are two of many submission from the Christian community in South Africa to a Parliamentary Portfolio Committee that has been commissioned by the Speaker of Parliament to attend to the plethora of complaints and the loudly voiced dissatisfaction among religious communities about wide ranging regulatory proposals and rhetoric advanced by a state entity and a process it put in motion. The documents must be read in a context where South African Parliament had recommended in 2018 for religious communities themselves to develop a code of ethical conduct and where this recommendation is again being pursued since 2025 as if above codes of conduct had not emerged and been widely adopted in the meantime. The documents are a response to a call by said Parliamentary Committee to comment on the 2025 proposal to develop a code of conduct for the Christian sector in South Africa and a related “Draft Framework”.

The “Proposal relating to a code of ethical conduct for and by the religious sector” (28 May 2026) has been included for its added value to above documents. The criteria for codes of conduct listed in the “Foundational Principles” could serve in contexts where no such codes have yet been developed, or for comparing above codes with others advanced or proposed.

It also clearly expresses “Matters that should be avoided”, which is an application of the principles of the Charter.

The “Recommended Practical Measures” for future development echo some suggestions long voiced by proponents of Charter and Code of Conduct.¹⁷ Their importance lies in the fact that beyond the mere existence of a Code of Conduct, it needs to be widely endorsed, regularly remembered and practically and consistently implemented to have the desired helpful impact.

The “Addendum to submissions: Recognition of existing ... frameworks” (31 May 2026) from the same source is important for understanding that the above “Proposal” does in fact not call for the development of any new code of conduct for the South African context to replace what already exists.¹⁸ It rather calls for the recognition and strengthening of existing frameworks in form of the Charter

¹⁷ Cf. Freedom of Religion South Africa (FOR SA). Alternative solutions to state regulation of religion: A position paper for consideration by faith communities and the CRL Rights Commission. Updated November 2025. https://static.pmg.org.za/260211Alternative_Solutions_to_State_Regulation_of_Religion.pdf

¹⁸ The author of both documents has emphasised in correspondence to the editors that any proposed Code of Ethical Conduct is not intended to replace, supersede, or override the existing governance structures of churches and religious bodies. Many churches already have well-established systems of accountability through their Church Orders, Constitutions, Books of Discipline, Statements of Faith, or other internal governance frameworks. Churches and religious bodies which already have such structures should remain free to regulate themselves according to those frameworks. The proposed Code of Ethical Conduct could instead serve as a voluntary framework that may be adopted or adapted by churches, ministries, or religious organisations that do not already have their own established ethical and governance mechanisms. This would strengthen the principle of religious freedom, respect the diversity

and Codes of Conduct, and for building on these in all further related endeavours. The introduction of this Addendum and the section on “Why these frameworks should be recognised” are therefore also reproduced.

Proposal relating to a Code of Ethical Conduct for and by the religious sector

Submitted by Bishop Thom Thamaga

On behalf of WITHOUT WALLS, CRL MATTER and LIPCCI

28 May 2026

Introduction

This proposal is respectfully submitted as a constructive contribution toward discussions concerning the development of a Code of Ethical Conduct for and by the religious sector in South Africa.

We believe that ethical leadership, accountability, integrity, safeguarding, and responsible conduct within faith communities are essential and necessary. Religious institutions carry enormous spiritual, social, emotional, and moral influence within society and therefore must operate with integrity, responsibility, and respect for human dignity.

At the same time, we strongly affirm that any Code of Ethical Conduct must remain:

- Voluntary
- Constitutionally compliant
- Non-coercive
- Non-discriminatory
- Decentralised
- Respectful of religious freedom and doctrinal diversity

The purpose of a code should not be to create systems of indirect state control, licensing, certification, gatekeeping, or institutional dependence, but rather to encourage ethical best practice, responsible leadership, and the protection of vulnerable persons within faith communities.

Foundational Principles

Any future Code of Ethical Conduct should be guided by the following foundational principles:

1. Constitutional Supremacy

The Constitution of the Republic of South Africa remains the highest legal authority governing all citizens and institutions, including faith communities.

of traditions within the religious sector, and encourage ethical accountability without undermining the autonomy of religious communities.

2. Protection of Religious Freedom

The Code must fully respect Sections 15 and 31 of the Constitution protecting freedom of religion, conscience, belief, and association.

3. Voluntary Participation

Participation in any ethical framework must remain voluntary and may never become a direct or indirect requirement for lawful religious practice.

4. Equality Among Faith Communities

No church, ministry, denomination, or faith organisation should receive superior public legitimacy or recognition over others based upon participation or non-participation in any structure.

5. Respect for Doctrinal Diversity

South Africa's religious landscape is diverse. Ethical standards should focus on conduct, safeguarding, and integrity rather than theological conformity.

Proposed Ethical Principles

1. Human Dignity and Respect

Religious leaders and organisations should uphold the dignity, equality, safety, and constitutional rights of all persons.

Faith communities should reject:

- Abuse
- Exploitation
- Humiliation
- Violence
- Coercion
- Hate speech
- Discrimination inconsistent with constitutional protections

2. Protection of Vulnerable Persons

Faith communities should take reasonable measures to protect:

- Children
- Women
- Elderly persons
- Persons living with disabilities
- Vulnerable congregants

Churches and ministries should be encouraged to develop:

- Child protection policies
- Safeguarding protocols
- Safe reporting systems
- Internal accountability processes

3. Financial Integrity and Stewardship

Religious institutions should strive for responsible stewardship and transparency regarding finances and donations.

This may include:

- Proper record keeping
- Financial accountability structures
- Responsible handling of public donations
- Compliance with existing tax and financial laws

Financial integrity should be encouraged without imposing excessive compliance burdens upon small churches and township ministries.

4. Ethical Leadership

Religious leaders should conduct themselves with integrity, honesty, accountability, and moral responsibility.

Leaders should avoid:

- Fraud
- Manipulation
- Exploitation
- Intimidation
- Abuse of authority
- Misuse of church funds
- Criminal conduct

5. Voluntary Accountability Networks

Faith communities should remain free to voluntarily associate with:

- Denominations
- Fellowships
- Councils
- Apostolic networks
- Accountability structures

However, no centralised body should possess exclusive authority to determine religious legitimacy within South Africa.

6. Compliance with Existing Laws

The Code should affirm that all religious organisations remain subject to the laws of the Republic of South Africa concerning:

- Criminal conduct
- Fraud
- Assault
- Human trafficking
- Gender-based violence
- Child abuse
- Financial crimes

No religious structure or office should place individuals above the law.

Recommended Practical Measures

We propose that the following practical support measures be prioritised instead of overregulation:

1. Leadership Development Programmes

Provide voluntary training opportunities concerning:

- Governance
- Safeguarding
- Financial management
- Conflict resolution
- Ethical leadership

2. Safeguarding Awareness Campaigns

Encourage awareness and education around:

- Child protection
- Abuse prevention
- Reporting mechanisms
- Victim support systems

3. Support for Small Churches

Recognise the realities facing township, rural, migrant, and informal churches by avoiding:

- Excessive bureaucracy
- Expensive compliance requirements
- Unnecessary registration systems
- Administrative burdens beyond their capacity

4. Encouraging Mediation and Internal Resolution

Where appropriate and lawful, churches should be encouraged to develop peaceful internal dispute resolution and mediation processes while respecting the rights of complainants and victims.

Matters that should be avoided

We strongly caution against the following:

- Mandatory certification systems
- “Seals of Good Standing” linked to legitimacy
- Soft licensing frameworks
- Centralised gatekeeping structures
- Public ranking systems for churches
- State-dependent recognition systems
- Excessive bureaucracy
- Financially burdensome compliance models
- Any process that indirectly pressures churches into participation

Conclusion

The religious sector in South Africa continues to play a critical role in nation-building, social support, moral leadership, poverty relief, counselling, reconciliation, youth mentorship, and community development.

Any future ethical framework must therefore strengthen accountability without undermining constitutional freedoms.

We respectfully submit that the best path forward is one that promotes:

- Ethical responsibility without coercion • Accountability without control
- Integrity without gatekeeping
- Safeguarding without overregulation
- Partnership without dependency
- Religious freedom that remains practical, protected, and real

The future relationship between the State and the religious sector must be built upon:

- Trust
- Constitutional respect
- Voluntary cooperation
- Transparency
- Genuine consultation

South Africa must protect both accountability and freedom together.

Respectfully submitted

Bishop Thom Thamaga

For and on behalf of WITHOUT WALLS, CRL MATTER and LIPCCI

Without Walls International Church Khayelitsha, Cape Town South Africa

**Addendum to submissions: Recognition of existing religious freedom frameworks in South Africa /
Recognition of existing self-regulatory frameworks within the religious sector**

[31 May 2026]

We respectfully submit that any discussion regarding accountability, governance, ethical conduct, self-regulation, or the relationship between the State and religious institutions must acknowledge that South Africa already possesses well-developed frameworks that address these concerns.

Far from operating without accountability, significant portions of the religious sector have, over many years, voluntarily developed, adopted, and promoted comprehensive frameworks that provide both ethical standards and mechanisms for responsible self-governance while fully respecting the Constitution of the Republic of South Africa.

These frameworks include:

1. The South African Charter of Religious Rights and Freedoms;
2. The Code of Conduct for Religions in South Africa; and
3. The Alberton Declaration.

Collectively, these instruments provide a comprehensive framework addressing religious freedom, ethical conduct, accountability, financial integrity, constitutional compliance, human dignity, child protection, transparency, leadership responsibility, cooperation with lawful authorities, and the preservation of institutional independence.

Rather than creating new structures of oversight or regulation, Parliament and the Department of Cooperative Governance and Traditional Affairs (COGTA) should first recognise, strengthen, and build upon these existing sector-developed frameworks which already enjoy substantial support across the religious community.

[...]

Why these frameworks should be recognised

The existence of the Charter, the Code of Conduct, and the Alberton Declaration demonstrates several important realities.

Firstly, the religious sector has never argued against accountability. Rather, it has consistently argued for accountability that is constitutional, voluntary, faith-sensitive, and respectful of religious autonomy.

Secondly, these frameworks demonstrate that the religious sector is capable of self-regulation through mechanisms developed by religious communities themselves rather than through direct state intervention.

Thirdly, these instruments already address many of the concerns that have historically been cited as justification for increased state oversight, including abuse, exploitation, financial misconduct, leadership accountability, child protection, ethical conduct, and cooperation with law enforcement.

Fourthly, these frameworks enjoy legitimacy because they were developed through broad consultation among faith communities themselves rather than being imposed externally.

Fifthly, the Alberton Declaration, with more than 1,000 signatories, demonstrates that there already exists a substantial body of church leaders and ministries committed to ethical governance, transparency, and accountability within the Church.

Finally, these frameworks represent a practical expression of cooperative constitutionalism, preserving both accountability and religious freedom while maintaining the jurisdictional independence of religious institutions recognised by the Constitution and the Charter itself.

[...]

We further submit that before considering any future regulatory proposals affecting the religious sector, Parliament should undertake a formal assessment of these existing frameworks and consider how they may be strengthened, promoted, and expanded rather than replaced.

Respectfully submitted,

Pastor Thom Thamaga

Without Walls International Church

On behalf of the CRL MATTER and supporting churches, ministries, networks, organisations, and faith leaders committed to the protection of religious freedom, constitutional governance, ethical leadership, and responsible self-regulation.



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