



# Reports

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*IIRF Cape Town*

## Foundations for the Protection of the Autonomy of Religious Associations

A Response to Regulatory Ambitions  
in South Africa

2026 / 11

International Institute  
for Religious Freedom



International Institute  
for Religious Freedom

**Internationales Institut für Religionsfreiheit**  
**Institut International pour la Liberté Religieuse**  
**Instituto Internacional para la Libertad Religiosa**

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.

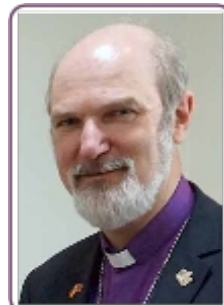
We understand Freedom of Religion and Belief (FoRB) as a fundamental and interdependent human right as described in Article 18 of the Universal Declaration on Human Rights. In line with CCPR General Comment No. 22, we view FoRB as a broad and multidimensional concept that needs to be protected for all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



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## **Foundations for the Protection of the Autonomy of Religious Associations**

A Response to Regulatory Ambitions in South Africa

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## Editorial preface

The South African branch of the International Institute for Religious Freedom opposes the proposal to regulate religion in South Africa through a legislative framework. The Cape Town based branch engaged in the regulatory debate with a submission anchored in the philosophical foundations of freedom of association and religion.

Following highly mediatised cases of abuse within religious communities, the South African Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL) since 2015 pursues state facilitated regulation of religious organisations and practitioners as a purported remedy shortcomings observed. After a five year lull, these plans have been recast as “self-regulation” by said Commission since early 2025, while pursuing a legislated framework to be enacted by parliament.<sup>1</sup> Based on an earlier report of the CRL, pentecostal and charismatic churches are framed as a national security threat in the South African National Security Strategy published in 2025.<sup>2</sup>

To pursue the regulation agenda, an intermediary ad-hoc committee of Christian leaders has been created, that is to nationally consult Christian communities in all nine provinces from April 2026 on a “Draft Self-Regulatory Framework for the Christian Sector in the Republic of South Africa”. This framework promotes instruments such as a “code of conduct” and a “Christian Practice Council for Ethics and Accountability” awarding a “Seal of Good Standing” to participating organisations, complaints investigations, dispute resolution and sanctions, which can ultimately lead to deregistration and public notification.<sup>3</sup>

This project has led to fierce opposition and a national debate arguing over which institutional design counts as “self-regulation” when religious freedom must be maintained alongside accountability.

In this context the IIRF presents an academically reflected voice with its submission. It opposes legislated regulation of religion, religious institutions or religious practitioners.

IIRF Cape Town is a multidisciplinary network of academics studying religious freedom. The statement has been drafted by a professor of constitutional law and edited by a professor of religious studies.

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<sup>1</sup> Cf. official website and facebook page of the CRL Rights Commission: <https://crlcommission.org.za>; <https://facebook.com/profile.php?id=100061688587753>.

<sup>2</sup> State Security – National Intelligence Coordinating Committee, Republic of South Africa: National Security Strategy 2024–2028. Released 15 July 2025 (redacted). [https://www.gov.za/sites/default/files/gcis\\_document/202507/redacted-national-security-strategy2024-2028.pdf](https://www.gov.za/sites/default/files/gcis_document/202507/redacted-national-security-strategy2024-2028.pdf)

<sup>3</sup> Section 22 Ad Hoc Committee for the Christian Sector: Draft Self-Regulatory Framework for the Christian Sector in the Republic of South Africa. Draft V2, December 2025. [https://crlcommission.org.za/wp-content/uploads/2025/12/Final-Draft-Christian-Sector-Self-Regulatory-Framework-in-RSA\\_.pdf](https://crlcommission.org.za/wp-content/uploads/2025/12/Final-Draft-Christian-Sector-Self-Regulatory-Framework-in-RSA_.pdf).

IIRF Cape Town has recently co-hosted the 2nd Conference on Religious Freedom in South Africa with the theme, “The Regulation of Religion and the Limits of Law” held in January 2026 at the University of the Free State in Bloemfontein.<sup>4</sup>

The IIRF had multiple engagements in the past with the CRL Rights Commission and South African Parliament Commission Hearings on regulation of religion.<sup>5</sup> IIRF members and affiliates have published multiple scholarly articles on the matter which are referenced in the current statement.<sup>6</sup>

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<sup>4</sup> Africa held conference ... (27 February 2026). <https://iirf.global/?p=6914>.

<sup>5</sup> Most recently: IIRF presents to South African Parliament ... (24 February 2026). <https://iirf.global/?p=6901>.

<sup>6</sup> See reference in below statement.



17 April 2026

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## **Foundations for the Protection of the Autonomy of Religious Associations: Submission in Response to Section 22 Consultation Process**

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Dear Chairperson,

The *International Institute for Religious Freedom* (Cape Town) (IIRF-Cape Town) submits this response in relation to the Section 22 Committee's engagement with church advocacy groups as part of Phase 1 of its consultations on a proposed legislative framework for regulating religion, religious institutions and religious practitioners. IIRF-Cape Town is an advocacy group comprising academics from multiple disciplines.

The IIRF-Cape Town respectfully opposes the section 22 Committee's proposal for a legislative framework for the regulation of religion, religious institutions or religious practitioners. In this regard, the IIRF-Cape Town's argument relates to the following main themes: (1) That there needs to be full recognition and support of the authorities that define and expound religious freedom in South Africa; (2) That the autonomy of the internal law of associations has rational foundations that merit respect; (3) That association-specific government regulation would be unreasonable; (4) That the autonomy of religious associations militates against external regulation of religion; (5) That the example of the commitment by the judiciary in protecting the autonomy of religious associations should be followed by government; and (6) That a framework for the regulation of religion undermines religious freedom.

## 1. The authorities that define and expound religious freedom in South Africa need to be fully recognised and upheld

The Constitution of the Republic of South Africa (the Constitution) in Section 15 affords protection of the right to freedom of religion, while Section 31 of the Constitution provides protection of religious practices in an associative or group context. There are also prominent international and regional human rights instruments that support the protection of the right to religious freedom, also in an associative context.<sup>1</sup> The right to freedom of religion has been hailed by South Africa's apex court, namely the Constitutional Court, as arguably one of the most important human rights<sup>2</sup> and the intimate relationship between the advancement of freedom of religion and of diversity has been recognised,<sup>3</sup> also bearing in mind South Africa being popularly perceived as a nation celebrating diversity.

The reality of South African society having a vibrant and significant religious component is also evident in the many faith communities and other sectors of civil society that are signatories to the *South African Charter of Religious Rights and Freedoms* (the *Charter*) finalised in 2010, the *CRL Rights Commission* also being a signatory. It has been estimated that over 20 million South Africans are currently represented by the signatories to the *Charter*.<sup>4</sup> The *Charter*, in Article 9.2, aligns itself with Section 31 (alluded to earlier) of the Constitution and implies that government has a duty to respect, protect, promote and facilitate the right to religious freedom of religious associations such as churches. Article 9.3 of the *Charter* supports the avoidance of judicial and governmental intrusion into matters related to the internal affairs of religious associations (which includes doctrinal tenets). Section 9.5 of the *Charter* implies that a religious association may not participate in illegal acts, in other words, acts that constitute crimes as stipulated in the relevant general legislation.

<sup>1</sup> See *Universal Declaration of Human Rights* (1948) arts. 18 & 20; *International Covenant on Civil and Political Rights* (1966) arts. 18 & 22; *African Charter on Human and Peoples' Rights* (1981) arts. 8 & 10; *European Convention on Human Rights* (1950) arts. 9 & 11; *American Convention on Human Rights* (1969) arts. 12 & 16; and the *UN Declaration on the Elimination of all Forms of Intolerance and Discrimination based on Religion or Belief* (1981) arts. 1.1, 1.2, 2.1, 2.2, 4.1, 4.2 and 6. For an application of these see: 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]*, Vol. 38, (2021), 378-411; republished as *IIRF Reports* 14 (2025) no. 23.

<sup>2</sup> See *Prince v President, Cape Law Society* [2002] 2 SA 794 (CC), paras. 48–49. Also see *Minister of Home Affairs v Fourie* [2006] 1 SA 524 (CC), para. 89.

<sup>3</sup> *S v Lawrence*; *S v Negal*; *S v Solberg* [1997] 4 SA 1176 (CC), paras. 146–147; *Christian Education South Africa v Minister of Education* [2000] 4 SA 757 (CC), paras. 24–25; *Prince v President, Cape Law Society* [2002] 2 SA 794 (CC), paras. 49, 79, 147 & 170; and *MEC for Education, KZN and Others v Pillay* [2008] 1 SA 474 (CC), para. 65, 75–76, 104 & 107.

<sup>4</sup> Rassie Malherbe, "The South African Charter of Religious Rights and Freedoms", *The Review of Faith & International Affairs*, Vol. 22, (2024), 94.

## 2. The autonomy of the internal law of associations has rational foundations that need to be respected

Society is inherently comprised of groups of persons who share the same fundamental interests as well as purposes. Examples of such groups are families, marriages, churches, activist groups, private schools, tribes, friendship groups, civil rights and liberation movements, businesses, sporting clubs, women's groups, labour unions, colleges and universities. Even charters expressly aimed at advancing specific rights denote an associative structure that includes the sharing of significant interests and purposes, of which the *South African Charter of Religious Rights and Freedoms* serves as a prime example!<sup>5</sup>

It is therefore evident that the formation and functioning of these groups are representative of the nature of being human; societies attest to the reality or the factuality of these various associative structures. It is this associative dimension that is crucial to the cultivation, maintenance, protection and advancement of shared interests as well as purposes and which is essential to the flourishing of meaning that is deeply held by those affiliated to a certain association. Deeply held meaning does not only relate to that which is scientific and market driven; meaning is also experienced through associational membership, and this is especially relevant to churches where members exercise their shared sense of reason, love, friendship, solidarity and freedom (as well as the interplay between these). It is not government that establishes these various associational entities; rather, the establishment of these entities results from the natural inclination on the part of humans towards the associative. Nor is it the Constitution that has given rise to myriads of associational entities; the existence of these entities long preceded the Constitution.

Religious associations, as is the case with other associative structures, have their own laws by which they function and which is interwoven with the shared interests and purposes unique to such an association. The family for example, is governed by a multitude of verbalised rules which is similar to legislation. In this regard, what is to be meant by 'laws' requires a broader and consequently, more inclusive or generous understanding, hereby qualifying the sanctity of

<sup>5</sup> Pieter Coertzen, "Grappling with Religious Differences in South Africa: A Draft for a Charter of Religious Rights", *Brigham Young University Law Review*, 3(2008), 779–806; 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; Iain T. Benson, "South African Charter of Religious Rights and Freedoms: Constitutional framework, formation and challenges", *International Journal of Religious Freedom*, Vol. 4, 1(2011), 125–134; Iain T. Benson, "Religious Interfaith Work in Canada and South Africa with Particular Focus on the Drafting of a South African Charter of Religious Rights and Freedoms," *HTS Teologiese Studies/Theological Studies*, Vol. 69, 1(2013), 1–13; Pieter Coertzen, "Constitution, Charter and Religions in South Africa," *African Human Rights Law Journal*, Vol. 14, (2014), 126–141; Iain T. Benson, "Subsidiarity: Origins and Contemporary Aspects", in N. Aroney & I. Leigh (Eds), *Christianity and Constitutionalism*, (Oxford: Oxford University Press, 2022), 432–454; Rassie Malherbe, "The South African Charter of Religious Rights and Freedoms", *The Review of Faith & International Affairs*, Vol. 22, (2024), 93–104; and 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.

smaller legal systems within associative structures. The same applies to for example, the associative dimension related to friendship.

### **3. Association-specific government regulation would be unreasonable**

Governmental regulation of religion, religious institutions or religious practitioners would be akin to governmental regulation of associative entities in society such as families and friendships. Although there are state laws that deal with matters related to families (for example, grounds for divorce) and friendships (for example, if you steal your neighbour's car then you will be charged with the crime of theft), there are no laws emanating from the legislature setting out structures and rules to regulate families and friendships. If government were to introduce measures to regulate families and friendships, then this would signify gross abuse of power. The same applies to the government's regulation of religion, religious institutions and religious practitioners. This should also be understood against the background of there already being existing laws to deal with abuses, harm and criminal conduct that may take place within religious associations, examples being: Fraud, abuse, exploitation, gender-based violence, harm to children and vulnerable persons, financial misconduct and sexual offences. Laws related to these are aligned with the Constitution and are neutral regarding any religious affiliation. Therefore, the focus should rather be placed on the enforcement of the laws of the land.

In addition to this, the 'voluntary self-regulation' as set out by the *South African Council for the Protection and Promotion of Religious Rights and Freedoms's* "Code of Conduct"<sup>6</sup> (established through the 2019 consultative process) is supported, but here it needs to be emphasised that any attempt to formalise it through legislation is strongly opposed.<sup>7</sup>

### **4. The autonomy of religious associations militates against external regulation of religion**

Therefore, members of religious associations should have the freedom to enjoy the authority of their own laws, such authority being voluntarily exercised on a continuous basis. Authority and its accompanying laws therefore do not only originate from government. Religious associations have their own forms of authority which is aligned with their own unique laws applicable to their members who voluntarily adhere to such laws. Consequently, government needs to caution against an excessive application of its authority over religious associations as this will seriously limit the enjoyment of the laws (which includes moral views and doctrinal tenets) staunchly held by those affiliated to such associations.

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<sup>6</sup> Code of Conduct: [https://static.pmg.org.za/260211CRRF\\_Letter\\_to\\_COGTA\\_Feb\\_2026\\_redacted.pdf](https://static.pmg.org.za/260211CRRF_Letter_to_COGTA_Feb_2026_redacted.pdf); Introduction: <https://christianhub.com/?p=11917>.

<sup>7</sup> 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.

It is therefore expected of government not to introduce legislative (and other) measures aimed at the regulation of religion. If government were to proceed with the regulation of religion through specific laws, government would be using its coercive power to violate other naturally legitimate areas of meaning, purpose, enjoyment and responsibilities. This in effect would result in not only violating deeply held convictions on the part of members of religious associations but also promote the homogenising of law applicable to a society, which in turn weakens the thriving of diversity.

## 5. The example of the Judiciary in staunchly protecting the autonomy of religious associations should be followed by civil authorities

For reasons given above, it therefore is sensible that the South African judiciary is staunchly supportive of the protection of the autonomy of religious associations (referred to as the ‘doctrine of entanglement’). The Constitutional Court and the Supreme Court of Appeal have proven to avoid meddling in the internal affairs of a religious association save in serious instances for example, where there has been a gross violation of a human right or where there exists a serious threat regarding the violation of a human right. Having said this, there is judicial precedent allowing its involvement in matters where for example, a religious association has not properly adhered to its own rules when disciplining a member or where it has acted beyond its stipulated authority (*ultra vires*) or where a member of a church was not given a reasonable opportunity to prepare his or her defence regarding a disciplinary hearing. Then there is also the intervention by the judiciary where the law pertaining to civil and criminal matters become relevant. Consequently, this general avoidance by the judiciary in matters related to a religious association are indicative of respecting the autonomy of religious associations. It is therefore also sensible to expect the same approach, which is taken by the judiciary, to also be taken by the civil authorities regarding an avoidance of meddling in matters pertaining to religion, religious institutions or religious practitioners by establishing legislative (or other) measures regarding the regulation of these.<sup>8</sup>

<sup>8</sup> For an emphasis by the South African judiciary regarding the autonomy of religious associations see: *MEC for Education, KZN and Others v Pillay* [2008] 1 SA 474 (CC), para. 145; *De Lange v Presiding Bishop, Methodist Church of Southern Africa* [2014] 1 (SCA) 106, paras. 33-38; *Mohamed v Jassiem* [1996] 1 (SCA) 673, page 714D; and *Kievits Kroon Country Estate v Mmoledi*, [2013] 1 (SCA) 189, para. 27. The following is a selection of scholarly articles that focus on the autonomous nature of religious (and other) associations: Patrick Lenta, “Taking Diversity Seriously: Religious Associations and Work-Related Discrimination”, *South African Law Journal*, Vol. 126, (2009), 827–860; Iain T. Benson, “Foreword: The limits of law and the liberty of religious associations”, *Supreme Court Law Review* Vol. 79, in IT Benson & BW Bussey (eds.), *Religion, liberty and the jurisdictional limits of law*, (Toronto: LexisNexis, 2017), xxi–xl; Shaun de Freitas, “Whose Equality? Freedom of Religious Associations and *Gaum v Van Rensburg*”, *Journal of Law and Religion (JLR)*, Cambridge University Press, Vol. 38, 2(2023), 1–16; and 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.

## **6. A framework for the regulation of religion undermines religious freedom**

It should therefore be clear from the aforementioned that proposals aimed at a legislative (or other) framework for the regulation of religion, religious institutions or religious practitioners is not conducive towards the protection of the right to freedom of religion in South Africa. Consequently, the IIRF-Cape Town is opposed to any proposal in support of any controlling or compulsory form of governmental or other external regulation of religion, religious institutions or religious practitioners, beyond general law (even if they are implemented indirectly).<sup>9</sup>

## **7. IIRF-Cape Town is committed to constructive engagement in protecting and promoting religious freedom**

Although this submission is made without prejudice and with the intention that the IIRF-Cape Town's participation in this process must not be construed as: acceptance of the lawfulness or legitimacy of the Section 22 Committee, agreement with its mandate, composition or processes and endorsement of any proposed legislative or regulatory outcomes, the IIRF-Cape Town is committed to constructive engagement in protecting and promoting religious freedom also bearing in mind the IIRF-Cape Town's full endorsement of the *Charter*.

For constraints of time, this submission only touches on the most foundational issues of the proposed "Draft Framework ..." of the CRL's Section 22 Committee for the Christian Sector. IIRF-Cape Town reserves the right to make further complementary submissions on related matters at a later stage.

Kind Regards



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<sup>9</sup> This follows from the critique of the earlier recommendations of the CRL Rights Commission: Georgia Du Plessis, "The Constitutionality of the Regulation of Religion in South Africa – Untoward Restrictions of the Right to Religious Freedom?", *South African Law Journal*, Vol. 136, 1 (2019), 131–164.

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