

9-1-2008

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Recommended Citation

Pieter Coertzen, *Grappling with Religious Differences in South Africa: A Draft for a Charter of Religious Rights*, 2008 BYU L. Rev. 779 (2008).

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Grappling with Religious Differences in South Africa: A Draft for a Charter of Religious Rights

Pieter Coertzen*

I. INTRODUCTION

Prior to the end of apartheid in 1994 and the adoption of its new constitution in 1996, South Africa lacked any constitutional guarantee of religious freedom.¹ Not surprisingly, South Africa's history is replete with examples of state interference in religious matters.² The 1996 Constitution was the first in South Africa's long history to address the problem of religious freedom and, specifically, state interference in religion. It provides an explicit guarantee of freedom of religion.³ Nevertheless, this new constitutional right is not well-defined. This article argues that religious organizations in South African civil society should take advantage of a provision in South Africa's 1996 Constitution allowing for Parliament to adopt Charters of Rights which are consistent with the Constitution, by proposing a Charter of Religious Rights for South Africa.⁴ Adopting such a Charter would ensure that South Africa does not repeat its history in allowing its government to define the meaning and scope of fundamental rights such as religious freedom.

Part II of this Article recounts the history of religious freedom in South Africa, with a special focus on how the state has involved itself in defining and limiting that right. Part III focuses on religious freedom and church-state relations following the official end of apartheid in 1994. The current state of religious freedom and church-state relations is discussed in Part IV, and then Part V

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1. Pieter Coertzen, *The Position of Churches in South Africa Under a New Constitution*, in LEGAL POSITION OF CHURCHES AND CHURCH AUTONOMY 35 (Hildegard Wamink ed., 2001).

2. See *infra* Part II.

3. S. AFR. CONST. 1996 § 15(1) ("Everyone has the right to freedom of conscience, religion, thought, belief and opinion.").

4. A proposed first draft of such a charter is included as an addendum to this article.

discusses a proposed Charter for Religious Freedom and makes the case for the charter's adoption. The Charter is attached as an addendum to this Article. Finally, Part VI offers a brief conclusion.

II. CHURCH AND STATE IN SOUTH AFRICA: RELIGIOUS RIGHTS BEFORE 1994

In 1652, the Cape—which is now Cape Town—was established as a refreshment post by the Dutch East Indian Company.⁵ It remained as such until 1795 when the Cape was taken into custody by the British. In 1806 it became a British colony. In 1910, self-government was given to the country,⁶ and in 1960 South Africa became a Republic under the government of the National Party. In 1994, after the dismantling of apartheid, South Africa became a democratic constitutional state with a constitution that guaranteed freedom of religion for the first time.⁷

A. Church-State Relations in South Africa: 1652–1795

When the Dutch East India Company established a refreshment post in South Africa in 1652, they brought with them the reformed faith of the Dutch Reformed Church,⁸ which was a public, state-controlled church in the Netherlands.⁹ Those who brought the Dutch Reformed Church to South Africa brought with it a Constantinian, or Erastian, view of the relationship between church and state. The Constantinian model for the relationship between church and state is positive about the role that religion should play in society. It takes the view that society should serve the Triune God and that Christianity should provide direction to society. As John Hiemstra argues:

The basic structure proposed by the Constantinian model is that political authorities are understood to be dominant over church authorities. Firstly, this means political authorities often assist, influence, and sometimes fully control church authority. Secondly,

5. PETER WALSH, *CHURCH VERSUS STATE IN SOUTH AFRICA* 1 (1983).

6. HERMANN GILIOEMEE, *THE AFRIKANERS, BIOGRAPHY OF A PEOPLE* 276–77 (2003).

7. S. AFR. CONST. 1996 § 15.

8. P.B. VAN DER WATT, *DIE NEDERDUITSE GEREFORMEERDE KERK 1652–1825 [THE DUTCH REFORMED CHURCH 1652–1825]* 3–7 (1976) (S. Afr.).

9. KAREL BLEI, *THE NETHERLANDS REFORMED CHURCH 1571–2005*, at 23–26 (Allan J. Janssen trans., 2006).

the state's role includes advancing and supporting 'true religion' through the use of its coercive power.¹⁰

The Constantinian perspective has been very strong in the Reformed Churches of the Netherlands since the sixteenth century and has also played a very strong role in England since the time of Henry VIII. As far as the Reformed Churches are concerned, the Constantinian model of church-state relations found expression in the old wordings of the *Confessio Belgica* (The Dutch Confession of Faith):

And the government's task is not limited to caring for and watching over the public domain but extends also to upholding the sacred ministry, with a view to removing and destroying all idolatry and false worship of the Antichrist; to promoting the Kingdom of Jesus Christ; and to furthering the preaching of the gospel everywhere; to the end that God May be honored and served by everyone, as he requires in His Word.¹¹

Churches understood this passage to mean that the government had a responsibility to protect them and allow them space to be a church. The government, however, saw it as an opportunity to control churches.

In South Africa between 1652 and 1795, the church at the Cape was controlled by the Political Council. Even after the Cape got its first permanent minister and church council in 1665,¹² and was given control over ecclesiastical matters and the spiritual care of its members, the church council was required to submit all its decisions to the Political Council before the decisions could be implemented.¹³ The Political Council also retained control over the election of elders and deacons—albeit from a list of names that the church council submitted to them. Political Commissioners represented the Political Council at all the meetings of the different church councils. Documents of the period provide ample evidence of the authority

10. John L. Hiemstra, *Church, State and the Kingdom of God, an Overview*, 5.2 REC FOCUS 3, 28 (2005).

11. Belgic Confession, art. 36 (1619 ed.), available at <http://www.reformed.org/documents/index.html>.

12. VAN DER WATT, *supra* note 8, at 8.

13. J.D. VORSTER, *DIE KERKREGTELIKE ONTWIKKELING VAN DIE KAAPSE KERK ONDER DIE KOMPAJIE 1652–1792* [THE CHURCH ORDERLY DEVELOPMENT OF THE CAPE CHURCH UNDER THE COMPANY 1652–1792] 39 (1956) (S. Afr.).

that the Political Council retained in church matters.¹⁴ For example, the Political Council appointed sick comforters and readers, placed ministers and church wardens, decided on the baptism of heathen children, the time and place of worship services, the care for widows and orphans, the founding of congregations, and the building of churches.¹⁵

The Political Council's influence in church matters even extended to controlling the geographical and organizational expansion of the church. In 1689 the Political Council used its influence in church matters to prevent French refugees from establishing their own Church Council in Drakenstein.¹⁶ In 1759, the authorities even refused the churches at the Cape permission to continue meeting in a local major assembly, thus delaying the ecclesiastical development of the church in South Africa for many years.¹⁷ It was not until 1824 that the church was allowed to gather in a synod¹⁸ and only after the synod could the church meet in presbyteries. About the relationship between church and state in South Africa during the eighteenth century, McCall Theal writes: "The Church was in one sense merely an engine of the State, and was always and in every sense subordinate to the Council of Polity."¹⁹

All of the above attests to the fact that between the years 1652–1795 the political government took a Constantinian approach toward the church in South Africa: it not only protected the church but also sought to control it.

B. Church-State Relations in South Africa: 1795–1948

In 1795 the British took over the Cape for the first time.²⁰ Their occupation lasted until 1803.²¹ The Official Act of Surrender stated

14. *Id.*

15. *Id.*

16. Resolusies van die Politieke Raad, 1681–1707 [Resolutions of the Political Council, 1681–1707], November 28, 1689 (S. Afr.), available at <http://databases.tanap.net/cgh/>.

17. See VORSTER, *supra* note 13.

18. See Rodney Davenport, *Settlement, Conquest, and Theological Controversy: The Churches of Nineteenth-century European Immigrants*, in CHRISTIANITY IN SOUTH AFRICA: A POLITICAL, SOCIAL & CULTURAL HISTORY 51 (Richard Elphick & Rodney Davenport eds., 1997).

19. VORSTER, *supra* note 13.

20. LEONARD THOMPSON, A HISTORY OF SOUTH AFRICA 51 (2001).

that the colonists would retain their existing privileges, including those pertaining to religion.²² Soon after the Act was signed, however, it became clear that the British authorities intended to continue government involvement in the Cape's religious affairs. The political commissioner maintained his position in church meetings, the counsel continued to elect elders and deacons, and the authorities asserted that they had a legal right to remove a minister from a congregation without consulting the church counsel.²³ The British even quartered troops in a church building in Graaf-Reinet while they engaged in military actions in the region in 1802.²⁴

In February of 1803, the British authorities left and turned the Cape over to the Netherlands, then known as the Batavian Republic.²⁵ During Batavian Rule at the Cape, which lasted from 1804–1806, the ideas of equality and tolerance were very prominent.²⁶ J.A. de Mist, who had been appointed Commissioner General, even proposed a separation of church and state, which would mean that there would no longer be a privileged church.²⁷

Despite the rhetoric from Batavian leaders, in practice the government still controlled the church during this period. Government officials appointed ministers in congregations, moved ministers to other congregations, paid ministers' salaries, and required that the election of elders and deacons were subject to the approval of the authorities. In new congregations, the magistrate appointed the new church council. The salary of ministers was determined by the government as were baptismal, membership, marriage, and burial fees. The financial statements of a congregation also had to be approved by the magistrate. In some cases the government even determined the time of worship services. While there was no longer an established or public church in South Africa, churches had in fact become little more than a department of government.²⁸

21. RODNEY DAVENPORT & CHRISTOPHER SAUNDERS, *SOUTH AFRICA: A MODERN HISTORY* 41 (2000).

22. GEORGE MCCALL THEAL, *HISTORY OF SOUTH AFRICA: 1691–1795*, at 359 (1888).

23. VAN DER WATT, *supra* note 8, at 69.

24. *Id.*

25. DAVENPORT & SAUNDERS, *supra* note 21, at 41.

26. *Id.* at 42.

27. *See* Coertzen, *supra* note 1, at 37.

28. VAN DER WATT, *supra* note 8, at 70; *see also* Coertzen, *supra* note 1, at 38 ("The Effects of 'De Mist's Church Order' in the end was the total subjection of the church to the

In 1806, the British once again occupied the Cape.²⁹ And again, the new government guaranteed that there would be no exceptional changes in church-state relations. The British authorities assured the citizens of the Cape that the Church Ordinance of de Mist would be maintained and that their government was determined to apply it. During this second period of British occupation, the church was again controlled by the state in multiple ways.³⁰ The Political Commissioner continued to take a seat in the church council of the Cape Town congregation, and in 1814, the practice was expanded to include all the congregations of the Dutch Reformed Church. The names of chosen elders and deacons still had to be submitted to the government for approval—at one point the governor himself chose the deacons from a list of two names that he had required be submitted to him. The official functions of a church minister were completely controlled by the government, and the government appointed, placed, dismissed, and in some cases even disciplined ministers.³¹ The British government, under the rule of Lord Charles Somerset, appointed ministers from Scotland in an attempt to anglicize the Dutch Reformed Church.³²

In 1843, the Church Ordinance of De Mist was replaced by the Ordinance No. 7 of 1843 (the “Ordinance”). The Ordinance appeared to give the church more freedom from government control. For example, the Ordinance specified that Political Commissioners would no longer have seats in church meetings,³³ and provided the church with the authority to regulate its own internal affairs.³⁴ In practice, however, even though the Ordinance was presented under the heading of “The Separation of Church and State Petition,” the church remained subject to government control since the government retained control over the power of the purse

state. He wanted to separate church and state but he did it in such a way that the Church came under the total governance of the state.”).

29. VAN DER WATT, *supra* note 8, at 70–71.

30. Coertzen, *supra* note 1, at 38.

31. See Jonathan N. Gerstner, *A Christian Monopoly: The Reformed Church and Colonial Society Under Dutch Rule*, in CHRISTIANITY IN SOUTH AFRICA: A POLITICAL, SOCIAL & CULTURAL HISTORY 20 (Richard Elphick & Rodney Davenport eds., 1997).

32. VAN DER WATT, *supra* note 8, at 70–71.

33. E.P.J. KLEYNHANS, DIE KERKREGTELIKE ONTWIKKELING VAN DIE NEDERDUITSE GEREFORMEERDE KERK IN SUID-AFRIKA [THE CHURCH ORDERLY DEVELOPMENT OF THE DUTCH REFORMED CHURCH IN SOUTH AFRICA] 80–84 (1973) (S. Afr.).

34. Coertzen, *supra* note 1, at 39.

and the privilege of presenting ministers to congregations. Furthermore, the Ordinance restricted the church with regard to its faith character, organization, competence, and geographical limits.³⁵

Despite its favorable title and small reforms, it is generally accepted that the Ordinance continued the tradition of severely restricting freedom of religion. Indeed, the burdens the Ordinance imposed on religion were so severe that, in 1957, the Dutch Reformed Church (in the Cape Province) asked the government to revoke it:

The Dutch Reformed Church in South Africa declares and confirms its historical view that this Church as an organized body had an independent existence in own competence even though always subjected to the articles of law applicable to the church. Since the existence of the church is not dependent on the articles of law, Synod, given the legal advice which was obtained, mandates the Moderature to approach the authorities to revoke Ordinance nr 7 of 1843.³⁶

C. Church-State Relations in South Africa: 1948–1994

The next event of primary significance in the history of church-state relations in South Africa occurred in 1948, when the Nationalist Party came to power and began to enforce its policy of “apartheid” on the entire country—including the churches in South Africa. Although there was a limited degree of tolerance of different faith convictions in South Africa during apartheid, the government continued to exert control over churches. In many cases, Afrikaans-speaking churches not only subscribed to government policies but also encouraged them. For example, churches put their support behind each of the following measures: Act 55 of 1949 (which prohibited marriages between couples from different race groups);³⁷ the Immorality Act of 1950;³⁸ the 1957 Consolidation Act on

35. KLEYNHANS, *supra* note 33, at 80–84.

36. *Id.* at 95; Coertzen, *supra* note 1, at 39 (citing P.B. VAN DER WATT, *DIE LOEDOFF-SAAK EN DIE NEDERMITSE GEREFORMEERDE KERK 1862–1962: 'N KERKHISTORIES-KERKREGTELIKE STUDIE* [The Loedolff Case and the Dutch Reformed Church 1862–1962] 160–61 (1973) (S. Afr.)).

37. See Cornel W. du Toit, *Religious Freedom and Human Rights in South Africa After 1996: Responses and Challenges*, 2006 *BYU L. REV.* 677, 678 n.3; see also Tamara Rice Lave, *A Nation at Prayer, A Nation in Hate: Apartheid in South Africa*, 30 *STAN. J. INT'L. L.* 483, 501–02 n.98 (1994).

38. See du Toit, *supra* note 37, at 678 n.3.

Immorality;³⁹ and the 1957 Amendment Act on Native Affairs with the so called “church-article” that prohibited non-whites from attending church services in white areas.⁴⁰ Yet again, despite an official government policy of toleration, religion and elements of freedom of religion were controlled by the policies of the government during the early years of apartheid.

The extent of government toleration of religious dissent was tested in December of 1960 when the Cottesloe deliberation took place between delegates from different churches in South Africa as well as members of the World Council of Churches. The Dutch Reformed Church was part of the deliberation. The deliberations produced a statement that some viewed as contentious. The most contentious parts of the statement regarded the following four issues. First, all race groups in South Africa are seen as living permanently in the country, sharing in all privileges and responsibilities of citizenship. Second, the natural diversity among people is not eradicated by the unity of the body of Christ—yet the unity must also be expressed; this meant that nobody could be excluded from a church on the grounds of race or color. Third, there are no Scriptural grounds to prohibit mixed marriages. Fourth, it is the responsibility of the authorities to look after matters such as insufficient salaries, job reservation, the negative effects of migratory labor on families, the planning of urban areas for people of color in which ownership was taken into account, and the poor standard of communication between the different race groups and their leaders in the country.⁴¹ These declarations were directly contrary to some of the basic principles of apartheid and the theology that had been used to justify it.

The Cottesloe Declaration provoked an immediate response. After the delegates of the Netherlands Reformed Church in Africa, one of the three Afrikaans-speaking churches in South Africa, issued

39. See *id.* at 679; see also Deborah Zalesne, *Sexual Harassment Law in the United States and South Africa: Facilitating the Transition from Legal Standards to Social Norms*, 25 HARV. WOMEN'S L.J. 143, 212–13 (2002) (noting that South Africa's legal code, including the Immorality Act of 1957, was rooted in Afrikaner Christianity).

40. Later it was explained that the intention was not to prohibit bona fide church meetings as long as these meetings were not used to disturb the public order. P.B. VAN DER WATT, *DIE NEDERDUITSE GEREFORMEERDE KERK 1905–1975* [The Dutch Reformed Church 1905–1975] 84–86 (1987) (S. Afr.).

41. See The Cottesloe Declaration (1960), available at <http://www.ngkerk.org.za/abid/dokumente/ampTelikkesrukke/Cottesloe%20declaration%201960.pdf>.

a statement in which they rejected any form of integration in South Africa, the delegates of the Dutch Reformed Church also issued a statement in which they confirmed that the policy of differentiation was the only realistic solution for the problems of the country.⁴² The Dutch Reformed Church also stated, however, that it was the task of the church to be the conscience of the government. In other words, it was the task of the church to test the whole of reality against the principles of Scripture.⁴³

Prime Minister Dr. H. F. Verwoerd reacted very negatively to the Cottesloe Declaration in his annual New Years' radio address, stating that the decisions were not the official viewpoint of the Dutch Reformed Church.⁴⁴ Ultimately, the official viewpoint would be stated by the church Synods. There were heated reactions to the deliberations both in the press and in different congregations of the Dutch Reformed Church. In 1961, the Federal Council of Dutch Reformed Churches, the Synodical Commission of the Orange Free State, as well as the synod meetings of Natal, South West Africa, the Transvaal, and the Cape rejected the decisions of Cottesloe.⁴⁵

Although the Dutch Reformed Church delegates to Cottesloe made it clear that they saw it as the task of the church to be the conscience of the government and to measure the whole of life against the principles of Scripture, the fact remains that the church, in its major assemblies, made a roundabout turn when it became clear that the decisions of Cottesloe criticized the policy of the government. Once again, the government had succeeded in controlling the church; once again, a Constantinian relationship between church and state prevailed.

From 1652 until 1994, church-state relations in South Africa followed the Constantinian model to a greater or lesser degree. This meant that the church was subjected, nearly always with its own consent, to control by the government authorities. After 1948, the government control was largely inspired by the political policies of the National Party. One cannot say that churches and religions in South Africa had real freedom of religion between 1652 and 1994—they were kept under the control of the government during this

42. P.B. VAN DER WATT, *DIE NEDERDUITSE GEREFORMEERDE KERK 1905-1975* [The Dutch Reformed Church 1905-1975] 105-12 (1987) (S. Afr.).

43. *Id.*

44. *Id.*

45. *Id.*

time. Although the government showed a limited toleration of different denominations and doctrines, it was a toleration that went just as far as the policy of the government in power. The examples from history just cited, as well as many others, serve as witnesses of this fact.

III. THE NEW CONSTITUTION AND RELIGIOUS FREEDOM

Apartheid officially ended in 1994 with the free elections that placed the African National Congress in political power. An interim constitution was also adopted in 1994 (it was finalized in 1996), and for the first time in the history of South Africa freedom of religion was guaranteed.⁴⁶ With the adoption of the new Constitution, a new era with regard to freedom of religion came into existence in South Africa. Freedom of religion became a constitutionally guaranteed right. But as was evidenced by Ordinance No. 7 of 1843 and countless other examples throughout South Africa's history, a government commitment to freedom of religion on paper does not guarantee freedom of religion in fact. Now, the important question is what does the constitutional guarantee mean and how is freedom of religion to be understood and managed in the "new" South Africa?

The 1996 Constitution makes the South African state a constitutional state—meaning that the state makes use of a written constitution and a bill of rights to obtain unity among the diversity of legal groups and legal interests in the country. The South African Constitution is the highest authority in the country.⁴⁷ It also distinguishes between organs of the state and organs of civil society.⁴⁸

There are several provisions of the Constitution that deal with religious freedom. According to the Constitution, persons who speak a certain language or come from a certain cultural or religious group cannot be prevented from enjoying their culture, speaking their language, or practicing their religion.⁴⁹ The Constitution provides for the right of citizens to create and join any cultural, linguistic,

46. See S. AFR. (Interim) CONST. 1994 § 14.

47. S. AFR. CONST. 1996, pmb1.

48. See *id.* § 31(b) (noting right to join organizations of civil society).

49. *Id.* § 31(a).

religious, or other civil society organization.⁵⁰ The Constitution also guarantees “the right to freedom of conscience, religion, thought, belief and opinion.”⁵¹ Under certain conditions religion may also be practiced at certain state or state-aided institutions while marriages may, *inter alia*, be conducted according to a religious system as long as it can exist in accordance with other articles of the Constitution.⁵² The Bill of Rights in the Constitution is prescriptive for the State and organs of the State as well as for natural and legal persons, such as churches and religious communities.⁵³

Article 36 of the Constitution makes it possible for the State as well as for organs of civil society to limit certain rights under the Bill of Rights. The State can limit rights either by way of an internal limitation within an article or by means of an external law which is acceptable within the context of a just, democratic society. Institutions of civil society can use the limitations clause of the Constitution⁵⁴ to limit certain articles of the Bill of Rights in their own internal constitutions and regulations, given the provisions and conditions made for such a limitation in article 36.⁵⁵ Most importantly for the purposes of this paper, however, the Constitution also allows for the adoption of Charters of Rights that are consistent with the Constitution’s other provisions.⁵⁶ Although the list of rights set out in South Africa’s new Constitution is impressive, for the most part it remains to be seen how well it can manage the religious diversity present in South Africa today.

Although the South African Constitution has only existed for a relatively short time period, the Constitutional Court has addressed the issue of religious freedom on several occasions. In a case decided in 2000, an educational association brought suit claiming that parochial schools had the right to inflict corporal punishment on

50. *Id.* § 31(b).

51. *Id.* § 15.

52. *Id.* §§ 15(2)–(3).

53. *Id.* §§ 8(1)–(2).

54. *Id.* § 36.

55. LANDMAN, *DIE MENSLIKE SAMELEWINGSLEER AS KONTEKS VIR GESONDE KERK-STAATS-VERHOUDINGE* [THE TEACHING ON HUMAN SOCIETY AS CONTEXT FOR SOUND CHURCH-STATE RELATIONS] 6–8 (2005) (S. Afr.).

56. S. AFR. CONST. 1996 § 234 (“In order to deepen the culture of democracy established by the Constitution, Parliament may adopt Charters of Rights consistent with the provisions of the Constitution.”). For a more detailed discussion of this provision, see *infra* Part V.

children.⁵⁷ The association supported its claim with an appeal to Biblical text advocating corporal punishment.⁵⁸ The Court ruled against the association, finding that the text in the Bible referred to parental infliction of corporal punishment, rather than punishment administered by teachers.⁵⁹ This finding is significant because it indicates the Court's willingness to interpret the Bible. The finding further demonstrates that the Court is willing to put certain restraints on religious groups and ideals insofar as the rights to self-determination "may not be exercised in a manner inconsistent with any provision of the Bill of Rights."⁶⁰

The first Constitutional Court case to address the religion clause was a 1997 case involving the sale of alcohol on Sunday.⁶¹ The defendant in the case claimed that a prohibition of the sale of alcohol on Sunday "induce[d] submission to [or alternatively, compelled the observance of] a sectarian Christian conception of the proper observance of the Christian sabbath and Christian holidays."⁶² In holding that this claim failed, the Court found that the defendant had not been coerced into observing another faith.⁶³ However, an opinion written for the case argued that state endorsement of religion could be considered a violation of religious freedom.⁶⁴ While the Court did not rule on the issue of state endorsement of religious practices in this case, there was much discussion and disagreement between the judges on the issue.⁶⁵ This issue, and other religion clause issues, will surely come before the Constitutional Court again if they are not first addressed by a religious charter.

57. *Christian Education S. Afr. v Minister of Education* 2000 (1) SA 1 (CC) ¶ 2 (S. Afr.).

58. *Id.* ¶ 4.

59. *See id.* ¶ 51.

60. *See id.* ¶ 7.

61. *S v Solberg* 1997 (10) BCLR 1348 (CC) (S. Afr.).

62. *Id.* at 83.

63. *Id.* at 92.

64. *See id.* at 112, 120.

65. Richard Cameron Blake & Lonn Litchfield, *Religious Freedom in South Africa: The Developing Jurisprudence*, 1998 BYU L. REV. 515, 556.

IV. THE CURRENT RELIGIOUS SCENE IN SOUTH AFRICA

A. Current Religious Percentages

According to the latest census (2001), a 79.8% majority of South Africa's approximately 45 million inhabitants associate themselves with Christian churches. While this does not necessarily mean that all within this group are committed Christians who attend church regularly or live their lives according to Christian values, they nevertheless self-identify as Christian.⁶⁶ The remainder of the population identified themselves as either "Other Faiths" (3.8%) or "No religion/faith" (16.4%).⁶⁷

According to these statistics, Christianity is the majority religion in South Africa. However, within the Christian religion there is no majority denomination—all are minority denominations.⁶⁸ At the same time none of the other religions in South Africa can claim to be a majority religion—rather to the contrary. With regard to religions and religious denominations there are no majorities in South Africa—all are minorities.

South Africa, like many other countries in the world, not only has a wide variety of Christian denominations but also a variety of religions that exist within the boundaries of one state. A plurality of

66. Of the total of Christian Churches, the Mainline Churches make up 39.9% (i.e. Reformed 7.2%; Anglican 3.8%; Methodists 7.4%; Lutheran 2.5%; Presbyterian 1.9%; Congregational 1.4%; Catholic 8.9%; Orthodox 0.0%; and Baptist Churches 0.8%); the Pentecostal/Charismatic Churches make up 7.3% (i.e. International Fellowship of Christian Churches (Rhema etc.) 0.2%; Apostolic Faith Mission of SA 0.5%; Pinkster Protestantse Kerk 0.1%; Full Gospel Church of God in Southern Africa 0.7%; Pentecostal Churches 0.1%; New Apostolic Church 0.0%; Assemblies of God of SA 1.0%; International Pentecost Church 0.5%; Other Pentecostal Churches 1.7%; Other Assemblies 0.4%; Christian Centres 0.6%; and other Charismatic Churches 0.0%); other Churches make up 12% (i.e. Church of Jesus Christ of Latter-day Saints 0.0%; Salvation Army United Church 0.1%; Seventh-day Adventist Church 0.4%; other Christian Churches 1.4%; Other Orthodox Churches 0.1%; Other (Seventh-day) Adventist Churches 0.2%; Other Evangelical Churches 2.3%; and Church of the Nazarene 0.0%); and the Africa Independent Churches make up 40.8% (i.e. Engenas Zion Christian Church 0.1%; Zion Christian Church 11.0%; Banda Lama Nazareth 0.6%; St John's Apostolic Church 1.2%; Other African Independent Churches 1.5%; Other Baptist Churches 0.8%; Other African Apostolic Churches 0.1%; Other Zionist Churches 4.2%; Ethiopian Type Churches 1.7%; Ethnic Churches 0.3%; and Other Apostolic Churches 14.1%). South African Christian Handbook, 2005–2006, at 28–34; see also J.H. Hendriks, *Religion in South Africa: The 2001 Population Census Data*, 121 JOURNAL OF THEOLOGY FOR S. AFR. 88, 91 (2005).

67. South African Christian Handbook 2005–2006, at 28–34; see also Hendriks, *supra* note 66, at 91.

68. See *supra* note 66 and accompanying text.

complementary, overlapping and mutually dependent institutions and associations make up the social face of South Africa. One can say all of this is rooted in God's creation and is a part of the Kingdom of God. They are all called to live *coram Deo* and to respond to the calling of God's rule over them. All of these institutions, directions, and contexts will in the end be responsible to God for the ways in which they discern their task and do their work.

The principle of *complementary responsibilities* suggests that faithful living in each area of society must be determined by discerning, in the light of the Bible and creation, the nature and calling of each social area. This breaks with the classic liberal idea that autonomous individuals determine how institutions should function in society, including the state. Classic liberals want to limit the state with the *external* constraint of 'consent', later understood as popular sovereignty functioning through the majority mechanism. The principle of complementary responsibilities limits societal institutions and the state in two ways: by calling them to be faithful to their God-given calling and by asking them to respect and serve other societal institutions which each have their own callings.⁶⁹

The fact that the plurality of institutions and associations are mutually interdependent means that "no institution or association is autonomous—a law unto itself—since they [all] exist [or should exist] to enable humanity to achieve its [true] unifying purpose: to love God and neighbour."⁷⁰

Apart from the plurality of institutions and associations in the Kingdom of God, a plurality of directions is also a reality that has to be reckoned with. "The full reality of institutional plurality in society can be unfolded in many religious and ideological directions."⁷¹ The fact that many of the ideological and religious directions of institutions and associations in society cannot be accepted by Christians does not mean that they should not be respected and tolerated. Disagreement does not make them less real or diminish the calling of both church and state to deal with the plurality of directions in society—each, of course, in its own way. "The state must respect and tolerate the convictions and conscience of its neighbors in a plurality of institutions within society while vigilantly

69. Hiemstra, *supra* note 10, at 21.

70. *Id.* at 22–23.

71. *Id.* at 46.

executing its limited task of public justice.⁷² The church must also respect the convictions of its neighbors in a society with a plurality of other directional individuals, institutions and associations. This does not mean that the church and Christians must approve of all the different directions in society—it does mean that the church and Christians cannot deny their existence. The church must also never forget that it has the undeniable task of proclaiming through word and deed the Gospel of the Kingdom of God—calling all people, institutions and associations of whatever direction they may be to obedience to the Triune God.

B. Current Religious Toleration in South Africa

With the downfall of apartheid came hopes for a new era of toleration and freedom in South Africa for all races and creeds. While the Constitution of 1996 focused on making this hope a reality, there have been difficulties in ensuring that religious freedom and toleration are effectively institutionalized. Many of the difficulties arise from the passage of acts that purport to protect freedom but sometimes miss the mark. For example, the South African Schools Act of 1996 makes it difficult for religious schools to educate students in line with the school's religious principles.⁷³ Additionally, parents who educate their children at home for religious reasons have been given unreliable and subjective assessment requirements by the government. As a result, the difficulty of complying with the standards has made home schooling for religious purposes a complicated task for parents to accomplish.⁷⁴ Another controversial act, established in 2000, is the Prevention of Discrimination and Promotion of Equality Act. By its title, one would say that the Act aims directly at eliminating religious discrimination in South Africa. One provision in the Act, however, makes it illegal to deny homosexuals membership in private clubs and institutions.⁷⁵ This provision may include churches, which could seriously infringe on the churches ability to limit church membership to individuals who live according to the church's beliefs.

72. *Id.* at 47.

73. See Religious Freedoms at Risk in South Africa, Frontline Fellowship, available at http://www.frontline.org.za/articles/religious_freedoms_at_risk.htm (last visited July 16, 2008).

74. *Id.*

75. *Id.*

Human rights provisions also present difficult issues regarding religious freedom. The human rights provisions of the 1996 Constitution raise questions about human rights that are adopted at the cost of losing certain religious freedoms. The Constitution adopts universal human rights, many of which have been borrowed from Western countries.⁷⁶ Because much of the substance of these provisions has been borrowed, there are concerns that the provisions do not meet the unique religious needs of South African society. Many are worried that this use of universal values in the Constitution “advocates the adoption of a particular worldview which does not necessarily reflect the views of individuals in some religious cultures.”⁷⁷ Furthermore, it is questionable whether South Africa really wants to strictly follow western models such as the United States where treatment of indigenous and minority groups has been far from equal in the past.⁷⁸

C. Potential Problems

In response to the oppressive legacy left by apartheid, the 1996 Constitution goes to great lengths to ensure individual freedoms. While this is certainly a noble aspiration, it could ultimately threaten religious freedom. The Bill of Rights stipulates that “[t]he state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including . . . ethnic or social origin, . . . religion, conscience, belief, culture, [or] language.”⁷⁹ While this section does prohibit religious discrimination, further provisions prohibit “unfair” discrimination. At first glance these prohibitions seem complementary, yet it is foreseeable that they could come into conflict with each other. For example, if the “unfair” provision were found to apply to religious institutions, a court might rule that churches are unable to discriminate against ordaining priests based on gender because it would be “unfair” to do so.⁸⁰

76. du Toit, *supra* note 37, at 686.

77. *Id.* at 687 (quoting Malcolm D. Evans, *Religion, Law and Human Rights: Locating the Debate*, in *LAW AND RELIGION IN CONTEMPORARY SOCIETY: COMMUNITIES, INDIVIDUALISM AND THE STATE* 177, 183 (Peter W. Edge & Graham Harvey eds., 2000)).

78. Erin E. Goodsell, *Constitution, Custom and Creed, Balancing Human Rights Concerns with Cultural and Religious Freedom in Today's South Africa*, 21 *BYU J. PUB. L.* 109, 131 (2007).

79. S. AFR. CONST. 1996 § 9(3).

80. Goodsell, *supra* note 78, at 126.

Because of the wide variety of religions in South Africa, the government must institute measures to ensure that these denominations and religions co-exist in an atmosphere of religious freedom. Section 234 of the South African Constitution allows for the adoption of charters of rights: "In order to deepen the culture of democracy established by the Constitution, Parliament may adopt Charters of Rights consistent with the provisions of the Constitution."⁸¹ Currently a Charter of Religious Rights for South Africa is being written with the conviction that it will help to create a mutually beneficial relationship between church and state. The Charter of Religious Rights for South Africa will allow the government, religions, and society to resolve religious differences without infringing—and even enhancing—the fundamental right of religious freedom.

V. A CHARTER OF RELIGIOUS RIGHTS TO COPE WITH RELIGIOUS DIFFERENCES IN SOUTH AFRICA

A clear distinction must be made between the freedom of religion that every human being possesses as a quality of life and freedom of religion as something guaranteed by the constitution of a country.

A fundamental tenet of Christianity is the belief that God created man in His image with the capacity to choose for himself and serve God of his own free will. It is Christian belief that man lost this freedom when he chose to follow the way of evil instead of the way of God. Through Jesus Christ, the freedom of those who believe in and serve God was restored. This freedom is independent of any constitutional guarantee or secular regulation. The independence of Christian belief from secular regulation is one reason why Christianity has been able to endure centuries of oppressive regimes in the absence of constitutionally-guaranteed rights to freedom of religion.

Though the above examination explains the origin of religious freedom from a Christian perspective, it is merely illustrative of the type of religious freedom that exists in each individual, independent of governments, constitutions, charters, and laws. This inborn, inalienable freedom exists regardless of faith, practice, or creed. The existence of a constitutional guarantee of freedom of religion

81. S. AFR. CONST. § 234.

enhances the freedom that Christians have in Christ, and offers Christians the opportunity to proclaim their faith publicly without any fear of prosecution or discrimination, and the same holds true for other religions as well.

While human beings are born with a natural right of religious freedom, governments have typically been slow to recognize this in practice. Although there are examples in history of efforts by governments to give citizens a certain amount of freedom to practice their religion—consider, for example, the Edict of Milan (313), the *Magna Carta* (1215), the Edict of Turda (1568) and the Edict of Nantes (1598)—it was not until after the Second World War that international charters of rights were promulgated for the purpose of protecting freedom of religion.

There are several influential international human rights instruments that speak to religious issues. The most influential of these include article 18 of the Universal Declaration of Human Rights,⁸² article 18 of the International Covenant of Civil and Political Rights,⁸³ and article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁸⁴ Furthermore, there is also the African Charter on Human and Peoples' Rights,⁸⁵ the Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief,⁸⁶ and the Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities.⁸⁷ These instruments undertake to ensure that freedom of religion is protected by all governments for all people.

However, defining the governmentally guaranteed right of freedom of religion is a difficult task. The Universal Declaration of

82. Universal Declaration of Human Rights, G.A. Res. 217A (III), at 74, U.N. Doc. A/810 (Dec. 10, 1948).

83. United Nations International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), at 178, U.N. Doc. A/6316 (Mar. 23, 1976).

84. European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol 11 (Nov. 1, 1998).

85. African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/68/3 (June 27, 1981).

86. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, G.A. Res. 36/55, U.N. Doc. A/RES/36/55 (Nov. 25, 1981) [hereinafter Declaration on the Elimination of all Forms of Intolerance].

87. Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities, G.A. Res. 47/135, U.N. Doc. A/RES/47/135 (Dec. 18, 1992).

Human Rights, for instance, states that “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”⁸⁸

At first glance, this seems to be a fairly specific outline of what freedom of religion includes. The European Convention for the Protection of Human Rights and Fundamental Freedoms expands on this, stating:

Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.⁸⁹

Other human rights instruments state the same basic rights in similar terms.⁹⁰ However, in spite of such descriptions of what freedom of religion entails, it is still difficult from the perspective of a national constitution to define how freedom of religion should be implemented in South Africa. That is, as a constitutional right, freedom of religion is difficult to define. One problem is that freedom of religion interacts in local, national, and constitutional contexts in a dynamic way that will continue to develop long into the future. At present, the South African Constitution describes freedom of religion in rather vague terms. It says, simply, that “[e]veryone has the right to freedom of conscience, religion, thought, belief and opinion.”⁹¹ It also states certain conditions under which “religious observances” may be conducted at state or state-aided institutions.” It further provides for “marriages concluded under any tradition, or a system of religious, personal or family law.”⁹² The Constitution also states that members of religious communities may not be denied the right to practice their religion or to form legally recognized religious associations.⁹³

88. Universal Declaration of Human Rights, *supra* note 82.

89. European Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 84.

90. See, e.g., Universal Declaration of Human Rights, *supra* note 82; U.N. International Covenant on Civil and Political Rights, *supra* note 83.

91. S. AFR. CONST. 1996 § 15(1).

92. *Id.* § 15(3).

93. *Id.* § 31(1).

The South African Constitution says nothing else regarding or defining freedom of religion. Compared to the European Convention⁹⁴ and the Universal Declaration of Human Rights,⁹⁵ the Constitution is surprisingly vague. For instance, it makes no mention of the right to change religion, the right to practice privately, or the right to manifest publicly one's religious beliefs. These are key religious freedoms, and their absence from the current Constitution makes it incumbent on religious groups in South Africa to identify their religious rights against a backdrop of South African law. That is, religious communities must identify their rights in a way consistent with their own religious identity and within the limits proscribed by the Constitution and the laws of the land. If religions and religious people of South Africa do not accept this task, the government, the courts, and non-religious parts of society will likely step in and define the bounds of religious freedom in a way that may not in fact further citizens' religious rights.

The threat of government intervention is by no means idle. As one considers the Bill of Rights in the second chapter of the Constitution, one sees very clearly that the South African Parliament has a history of passing measures defining and restricting these rights. Section 9 of the Constitution, for example, states that everyone "is equal before the law and has the right to equal protection and benefit of the law."⁹⁶ In 2000, the legislature undertook to clarify this section through the Promotion of Equality and Prevention of Unfair Discrimination Act.⁹⁷ Similarly, the legislature passed the Promotion of Access to Information Act in 2000 to clarify a section of the Constitution granting all people the right to information held by the state where such information is necessary to protect his or her individual rights.⁹⁸ The Promotion of Administrative Justice Act, also passed in 2000, clarifies Article 33 of the Constitution, which provides a right to lawful, reasonable, and procedurally fair administrative justice.⁹⁹

94. European Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 84, at 9.

95. Universal Declaration of Human Rights, *supra* note 82.

96. S. AFR. CONST. 1996 § 9(1).

97. Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

98. See Promotion of Access to Information Act 2 of 2000.

99. S. AFR. CONST. 1996 § 33(1); Promotion of Administrative Justice Act 3 of 2000.

There are many other examples of the South African legislature intervening to specify, limit, and clarify the rights specified in the Constitution. Rights that have been the subject of defining legislation include those related to health,¹⁰⁰ housing,¹⁰¹ education,¹⁰² the environment,¹⁰³ the rights of children,¹⁰⁴ the right to vote,¹⁰⁵ and the rights of accused persons and prisoners.¹⁰⁶

While it is unquestionably the proper role of government to regulate and clarify the way in which constitutional rights apply to citizens, there exists a special danger with regard to the freedom of religion. Since the right to freedom of religion is a basic and essential human right—one that exists independently of government promises—if the government undertakes defining what this right entails, it is entirely possible that the government definition may be inconsistent with the true essence of freedom of religion as seen by religious communities. South Africa's history, discussed above, suggests that government cannot always be counted on to fairly define the right to religious freedom, even when it is mandated by law.¹⁰⁷

For this reason, religious communities should make an effort to define their positions regarding the rights in the Constitution and laws regulating religious rights. They must also consider to what extent they desire to take advantage of the Constitution's provision for limiting rights by seeking exemptions for their organizations.

Article 36 of the Constitution is known as the "Limitation of Rights" clause, as it enables the state and other civil society institutions to limit certain provisions found in the Bill of Rights.¹⁰⁸ The limitation, however, must conform to several specific requirements of the Constitution. For instance, such limitations must be effected through legal means and must take into account human dignity, equality, and freedom.¹⁰⁹ Furthermore, the limitation

100. See, e.g., National Health Act 61 of 2003.

101. See, e.g., Housing Act 107 of 1997.

102. See, e.g., National Education Policy Act 27 of 1996 s. 4.

103. See, e.g., National Environmental Management Act 107 of 1998 s. 2.

104. See, e.g., Children's Act 38 of 2005.

105. See, e.g., Electoral Amendment Act 20 of 1997 s. 5.

106. E.F.J. Malherbe, *Motivation for a Charter of Religious Rights for South Africa*, art. 4 (2007).

107. See *supra* Part II.

108. S. AFR. CONST. 1996 § 36(1).

109. *Id.*

must balance the nature of the right with the importance of the limitation, must be related to the purpose of the limitation, and must be the least restrictive means of achieving that purpose.¹¹⁰ Bylaws, orders, stipulations and regulations within religious institutions, then, may be used to proscribe certain rights otherwise promised in the Constitution. Churches may reinterpret the Bill of Rights regarding church members, setting each right in the context of the religious organization's own mission, rules, and procedures. This allows for churches to balance their faith identity as expressed in their creeds and documents of order against the Bill of Rights, provided of course that any limitations it makes be in harmony with the requirements of the Constitution, especially with Article 36.¹¹¹

Article 36, then, serves as an escape mechanism for religions in the event that religious freedom is given too broad an interpretation. It cannot help them, however, if religious freedom is interpreted too narrowly. Therefore, it is still important for churches to clarify their individual understandings of which rights must be included under religious freedom and then to seek exemptions for their organizations if necessary.

As previously noted, a Charter of Religious Rights for South Africa is in the development process.¹¹² The current Charter includes the following rights:

The right to believe or not to believe.¹¹³

The obligations of the state with regard to religious rights.¹¹⁴

The right to observe and exercise one's religion.¹¹⁵

The right to education consistent with one's religious convictions.¹¹⁶

The right to maintain particular matrimonial, family and personal legal traditions.¹¹⁷

110. *Id.*

111. L.M. DU PLESSIS, *INLEIDING TOT DIE REG* [Introduction to the Study of Law] 204-06 (1999) (S. Afr.); Pieter Coertzen, *Kerke en transformasie in Suid-Afrika* [Churches and Transformation in South Africa], in *NEDERDUITSE GEREFORMEERDE TEOLOGIESE TYDSKRIF*, Sept.-Dec. 2006, at 363.

112. A recent version of the Charter is reproduced in full as an addendum to this article.

113. *See infra* Charter of Religious Rights for South Africa, add. §§ 1-2.

114. *Id.* §§ 3, 9.

115. *Id.* § 4.

116. *Id.* §§ 7-8.

The right to institutional freedom.¹¹⁸

The rights and obligations of religion with regard to the laws of the land.¹¹⁹

The right of religion to freedom of expression.¹²⁰

The right of religion to freedom of association.¹²¹

The right of religion to freedom of propagation.¹²²

The right to religious dignity.¹²³

The right of religion to solicit, receive, manage, and spend voluntary financial and other forms of support and contributions.¹²⁴

The right of religion to conduct upliftment and charity work in the community and to establish, maintain, and contribute to charity and welfare associations, and solicit, manage, distribute, and spend funds for this purpose.¹²⁵

While the proposed Charter is an attempt to codify many important religious rights, the present draft can still be incomplete and inadequate. The mere fact that a right is not included in the Charter does not necessarily mean that the right does not exist. However, the greater extent to which rights are codified into law, the easier it will be for religious organizations to call upon them. Before the final Charter is adopted, churches are in a unique position to lobby for a more complete and effective final version. Now is the time for religious organizations across the land to evaluate which rights they hold to be important and press the government to adopt a more effective Charter.

117. *Id.* § 5.

118. *Id.* § 9.

119. *Id.* §§ 9-10.

120. *Id.* § 6.

121. *Id.* §§ 1-2.

122. *Id.* § 6.

123. *Id.*

124. *Id.* § 11.

125. *Id.* § 12.

VI. CONCLUSION

South Africa is a sovereign democratic state founded on the values of human dignity, the achievement of equality, and the advancement of human rights and freedoms. The Constitution of the country is the supreme law of the land and the rule of law is highly regarded.¹²⁶ As such, any law or conduct inconsistent with the Constitution is invalid and the obligations imposed by the Constitution must be fulfilled.¹²⁷ This applies both to the government of South Africa and to the people.¹²⁸

With regard to its people, South Africa is a nation of pluralities. It is not only a plurality of ethnic groups but also a plurality of individuals and religious institutions. Each religious institution exhibits its own unique religious direction, and while the majority of the population practices Christianity, the Christian faith is itself in fact a plurality of denominations.¹²⁹

South Africa's history is replete with examples of problematic state interference with religion. Even in the new South Africa, the country's religious pluralities could create difficulties in managing the relationships between its government, citizens, and religions. In order to meet the requirements of the Constitution and to prevent problems in the relationship between the state and religions, and relations between religions themselves, clarity regarding rights and responsibilities is of vital importance. The Charter of Religious Rights for South Africa is a positive step toward clearly specifying and agreeing upon universally accepted rights.

As such, the Charter has the potential to go a long way toward resolving issues of church-state relations, as well as giving legal recourse to individuals who feel their religious freedoms have been violated. However, in order for the Charter to achieve these positive social aims, the government needs the participation of all religious groups within South Africa. Church and State need to work together to ensure that the interests of all are protected. This will assist the country and its people in managing domestic religious differences.

126. S. AFR. CONST. 1996 §§ 1-2.

127. *Id.* § 2.

128. *Id.* § 8.

129. Hiemstra, *supra* note 10, at 23-24 (discussing institutional and directional plurality).

ADDENDUM

Draft of Charter of Religious Rights for South Africa (October 2007)

WHEREAS every human being has an ability and need, that determine their lives and are worthy of protection, to believe and to organize their beliefs; and

WHEREAS the Constitution provides for the protection of—

the right to freedom of religion and conscience as an inherent and fundamental right of all people; and

the right of members of religious communities to practice their religion jointly, and to form, join and maintain religious institutions; and

every person's equality before the law and right to the equal protection and benefit of the law, which includes a prohibition of unfair discrimination on the ground of religion; and

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

WHEREAS 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 religion; and

WHEREAS religious institutions deserve recognition and protection in an open and democratic society as independent non-statal institutions towards which the state should maintain a positive impartial and accommodating attitude; and

WHEREAS the state has the responsibility to govern justly in the interest of everybody in society; and

WHEREAS section 234 of the Constitution provides for the adoption of additional charters of rights that are consistent with the Constitution;

THEREFORE THE FOLLOWING Charter of Religious Rights is hereby proposed for the Republic of South Africa:

1. Every person (where applicable in this Charter "person" includes a religious institution) has the right to believe according to their

own religious or philosophical convictions, and to choose which faith, worldview, religion, or religious institution to subscribe to, affiliate with or belong to.

2. Nobody may be coerced to believe, what to believe or not to believe, or to act accordingly.

Every person has the right to change their faith, religion, convictions or religious institution, or to form a new religious community or religious institution.

Every person may on the ground of their religious or other convictions refuse to participate in certain activities, for example of a military or educational nature, or receive certain medical treatment, or perform certain duties or deliver certain services, including medical services or procedures.

3. Every person has the right to the impartiality and protection of the state in respect of religion.

The state must create a positive and safe environment for the exercise of religious freedom, but may not as the state promote or unlawfully favor or prejudice a particular faith, religion or conviction, and may not indoctrinate anyone in respect of religion.

No person may be unfairly discriminated against on the ground of their faith, religion, or religious affiliation.

4. Every person has the right to the private or public, and individual or joint, observance or exercise of their religious convictions, which may include scripture reading, confession, proclamation, worship, prayer, order, attire, appearance, diet, customs, rituals and pilgrimages.

Every person has the right to observe religious and other holy days, festivals and ceremonies.

Persons of the same conviction have the right to associate with one another, form, join and maintain religious and other associations, institutions and denominations, organize religious meetings and other collective activities, and establish and maintain places of worship.

Every person has the right to communicate nationally and internationally with individuals and institutions on religious and other matters and enter into relationship or association with them.

Every person has the right to religious observances in state or state-aided, in other words, public, institutions, as regulated by the

relevant institution, and as long as it is conducted on an equitable and free and voluntary basis.

5. Every person, religious community or religious institution has the right to maintain particular matrimonial, family and personal legal traditions. Systems of religious personal, matrimonial and family law that are consistent with the Constitution may be recognized by law.

6. Every person has the right to freedom of expression in respect of religion.

Every person has the right to make public statements and participate in public debate on religious grounds, and the right to produce and disseminate religious publications and other material.

Every person has the right to propagate their religious convictions and to attract or convert other persons on a voluntary basis to a particular faith, religion, worldview, or religious institution.

Every person has the right to religious dignity, which includes not to be victimized, slandered or insulted on the ground of their faith, religion, convictions or religious actions. Hate speech on the ground of faith, religion, convictions or religious affiliation is not allowed.

7. Every person has the right to educate their children in accordance with their religious or philosophical convictions, and may also expect the school to do so. Parents may withdraw their children from school activities or programs that are inconsistent with their religious convictions, as long as it is in the interest of the child.

8. Every person has the right on a voluntary basis to receive and provide religious education, training and instruction. The state may subsidize such education, training and instruction.

9. Every religious institution has the right to institutional freedom of religion.

Every religious institution has the autonomy to determine its own confessions, doctrines and church ordinances, decide for itself in all matters regarding its doctrines and church ordinances, and regulate its own internal affairs, including organizational structures and procedures, the appointment, conditions of employment and dismissal of office-bearers, and membership requirements.

Every religious institution is recognized and protected as an independent non-statal institution towards which the state maintains a positive impartial and accommodating attitude.

The state must respect the autonomy of every religious institution, and may not regulate matters of doctrine and church ordinances, or prescribe in this regard to any religious institution. This includes that the courts do not deliver judgment in matters of doctrine or church ordinances.

Every religious institution subjects itself to the law of the land, and must justify its autonomous action on the basis of its religious convictions or doctrines and within the framework of the law of the land.

10. Every religious institution as juristic person has the right to participate in legal matters, for example by concluding contracts, acquiring, maintaining and disposal of property, and access the courts. The state may offer equitable tax and other benefits to religious institutions.

11. Every person has the right for religious purposes to solicit, receive, manage and spend voluntary financial and other forms of support and contributions.

12. Every person has the right on religious or other grounds to conduct relief, upliftment and charity work in the community, establish, maintain and contribute to charity and welfare associations, and solicit, manage, distribute and spend funds for this purpose.

This Charter gives effect to the religious rights that are guaranteed in the Constitution and are not construed to restrict the rights in the Constitution. This Charter has the force of law, and prevails over any legal rule, except the Constitution, that is inconsistent with it.

In order to be valid, any limitation that is imposed on the rights in this Charter of Rights must comply with the requirements of section 36 of the Constitution.