

RELIGIOUS FREEDOM

A Guide to Your Rights

SOUTH AFRICA



“Everyone 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.”

—Universal Declaration of Human Rights, Article 18

FREEDOM OF RELIGION AND WORSHIP IN SOUTH AFRICA

1. What is the right to freedom of religion and worship?

This is the fundamental right to act in accordance with your own beliefs and feelings. This right protects people from being subjected to unjust demands or prohibitions in the development of their personal religious life. As a complement to freedom of religion, South Africa also safeguards freedom of worship, which is a person's right to perform ceremonies, rites or acts in accordance with his or her religious convictions, and includes the right not to be compelled to practice any specific religion, or to be punished or pressured for deciding not to participate in practices other than the person's own religious tradition.

2. What is the right to freedom of conscience?

This is the fundamental right to follow personal reasoning and convictions, and not to be subject to actions that are against a person's deeply held judgement of right and wrong.

3. What are the laws that protect religious freedom?

The South African Constitution is the supreme law of the land. It contains many provisions which defend and protect religious freedom. These are limited only under specific situations specified in Section 36 of the Constitution. Other laws implement many of the rights granted by the Constitution - Section 15 of the Constitution specifically establishes and protects freedom of religion, belief and opinion. Sections 9(3), 31, 185, and 186 are also directly relevant. - Other constitutional rights that reinforce religious freedom include freedom of expression under Section 16, freedom of association under Section 18, freedom of movement under Section 21, and human rights such as the right to human

dignity in Section 10. - Section 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act. (We note that Section 8 of this act restricts certain religious practices which impair the dignity of women or impair the wellbeing of female children.) - The Employment Equity Act. - The African Charter on Human and People's Rights, also known as the Banjul Charter.

4. What is the official religion of South Africa?

There is no official religion of South Africa. The Constitution states "Everyone has the right to freedom of conscience, religion, thought, belief and opinion." Additionally, the Constitution provides for freedom of religion and worship, and prohibits discrimination based on religion. The Constitution further allows that religious observances may be conducted at institutions established or aided by the state, provided such observances are conducted equitably and individuals may choose whether to attend and participate.

5. What can I do when my right to freedom of religion and worship is violated?

The right to freedom of religion and worship is assured by Section 15 of the Constitution, with Section 34 providing protection of your rights in Court. Depending on the nature of your case, a legal action may be brought in either a magistrate's court or in a High Court to obtain relief. All Court decisions should be respected and followed, even if the decision is not in your favor. Unfavorable Court decisions can be appealed to a higher Court, with the Constitutional Court of South Africa being the highest Court in the Country. Peaceful methods of resolving religious freedom conflicts should always be pursued, as no one has the right to take the law into his or her own hands. When judicial intervention is not possible or desirable, another option for conflict resolution is to involve religious, tribal, or community leaders. Through a third party, these leaders may communicate and suggest solutions to a religious freedom conflict.

RELIGION IN THE PUBLIC SQUARE

6. Can I express my religious views in public?

Yes. The Constitution allows all South Africans to have their own religious beliefs or to have no religious belief. Included in that right is the right to change those beliefs. The Constitution allows a person to share their beliefs individually or in association with other individuals. This right should not be affected by prior or subsequent interference of public authorities or other persons who profess different religions. The exercise of this right may be limited by rules that maintain public order, as these norms are essential for the existence, conservation, and development of society.

7. Can I share or preach my beliefs to others?

Yes. Along with the right to disclose one's religious beliefs, there is also the freedom to express and share information or ideas (Section 16(1) of the Constitution), which includes your religious belief. This right allows people to direct their lives and decide how they wish to participate in their community.

The freedom to express a creed or belief implies the possibility of making its doctrine and teachings known to others. People may share beliefs peacefully with others to gain adherents to their faith. This right also includes the expressions of atheist groups, heterodox religious groups, or associations that partially promote religious aspects of its members. When believing, professing, and preaching their religion, all people have the duty to submit to the rules of conduct which have been established for the purpose of promoting justice, peace, good manners, and other values that must be preserved in the society.

8. Can I be part of a religious entity or organization?

Yes. People have the right to associate and participate in religious activities as communities, which includes the right to establish places of worship or gathering for religious purposes, to freely exercise their own ministry, to establish their own hierarchy, and to provide religious instruction in places of education maintained wholly by the community or denomination. These rights may not be exercised in a manner inconsistent with the Bill of Rights (Chapter 2 of the Constitution). For example, membership in religious places of education may not be restricted by race and such establishments must be registered with the state.

9. What are the government authorities that regulate religious entities?

While one government agency does not oversee all religious matters in South Africa, several agencies interact with religious organizations. For example, a religious group must register with the Department of Home Affairs to be able to perform legally recognized marriages. Registration with other agencies may be required before building places of worship, opening bank accounts, receiving tax exemptions, or signing contracts. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission) and the South African Human Rights Commission (SAHRC) are independent, Chapter 9 institutions drawing their mandates from the South African Constitution. These commissions actively protect and promote human rights including religious freedom.

RELIGIOUS FREEDOM IN THE WORKPLACE

10. What influence does freedom of religion have in the relationship between an employer and an employee?

The Employment Equity Act regulates the employment relationship between employers and employees and prohibits unfair discrimination on various grounds including religion (Section 6(1)). Additionally, the Constitution prohibits discrimination based on religion (Section 9(3)). Therefore, an employer should not impose religious obligations on its employees nor force an employee to act in a way that is contrary to the employee's religious beliefs. Furthermore, there should be no difference in wages due to an employee's religion.

11. What is the relationship between religious freedom and working hours?

According to the Basic Conditions of Employment Act, workers are entitled to a weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include Sunday. Religious public holidays include Good Friday and Christmas Day. Employees should note that heavy workloads and employer expectations can lead to working beyond the hours and days set forth in employment contracts, potentially impacting observance of religious worship and/or prayer. Employees should discuss these situations with their employers, and employers should work to accommodate religious beliefs and the expression of these beliefs where possible.

12. Can I wear religious clothing to work or refuse to wear part of a uniform because of my religious beliefs?

While these actions are not specifically protected by law, the Constitution provides for freedom of religion and prohibits religious-based discrimination. Employees should notify their employers in a timely manner of any needs or special circumstances that arise due to religious beliefs or practices. If an employee needs to wear religious clothing or cannot comply with the required attire or uniform established by his or her employer, then the employee should discuss this at the beginning of employment. This allows the employer to become aware of such circumstances and honor the religious freedom of employees more adequately.

RELIGIOUS FREEDOM IN SCHOOLS

13. Can there be religion classes in public schools?

Yes. The National Policy on Religion and Education provides for Religion Education to be incorporated into the standard curriculum. This is required to be education about diverse religions and should not promote any particular religion.

14. Is it mandatory for students to attend religious education or religious observances in their schools?

No. The Constitution (Section 15(2)) provides that religious observances may be conducted at state or state-aided institutions if attendance is free and voluntary. Although religion education is part of the public-school curriculum of South Africa, it is different than religious instruction, and cannot promote one religion over another. Public schools may not identify themselves as associated with or following the ethos of a particular religion. Private schools can determine their own religious instruction and observance.

15. Can students refrain from attending school or scheduled school activities because of their religious beliefs?

School-aged children must be enrolled in school and attend school, regardless of religious beliefs. No student may be absent from school during a school day without permission. However, according to the National Policy on Religion and Education, just as all children have the equal right to be at school, children have the right to have their religious view recognized and respected. Schools should be respectful of students who, because of their religious beliefs, do not participate in activities scheduled for Saturday, Sunday, or any other day established by their religion in which they refrain from performing certain activities. Parents or the interested parties should communicate with school leaders to discuss any religious reasons for not participating in school activities.

16. Can students adjust school uniforms because of their religious beliefs?

Yes. The Department of Basic Education's National Guidelines on School Uniform adopted in 2006 states that a school's uniform policy or dress code should take into account religious and cultural diversity. Measures should be included to accommodate learners whose religious beliefs are compromised by a uniform requirement. If particular attire, such as yarmulkes or headscarves, is a part of religious practice, schools should not prohibit the wearing of such items. Students may be required to produce a letter from their religious teacher or organization substantiating the validity of the request.

MILITARY AND PUBLIC SERVICE

17. Is there mandatory military or public service, and if so, are there any religious exemptions?

There is no current mandatory military service and no conscription in South Africa.

RELIGION AND JUSTICE

18. Can I refrain from taking an oath in legal proceedings because of my religious beliefs?

The laws governing both civil and criminal proceedings allow a person to make an affirmation in lieu of an oath for religious reasons.

19. Can judges make decisions based on their religious beliefs?

No. According to Section 7 of the Judicial Service Commission Act, judges must avoid and dissociate him or herself from conduct that manifests discrimination in violation with the equality guaranteed by the Constitution which includes religious discrimination. Judges are required to refrain from being biased or prejudiced in the performance of their judicial duties.

20. Is there any protection for statements made in confidence to religious leaders?

There is no special, general protection or clergy privilege provided for statements made in confidence to religious leaders. Even so, religion generally remains largely unregulated in South Africa in order to preserve the Constitutional right of religious freedom. Every religious organization has the right to determine its doctrines, ordinances, and regulate its own affairs, including statements made in confidence to religious leaders. As such, internal religious matters generally remain separate and free from state and judicial interference. Although not law, there is a general principle in South Africa that courts should not decide cases on the basis of the religious confessions, teachings or rites of the litigants. Whether religious leaders must share the information is ultimately decided by the Court, and the decision may be affected by other laws designed to protect public safety, order, health, or morals.

RELIGIOUS FREEDOM IN INTERNATIONAL LAW

In addition to local protections for religious freedom in individual countries, there are also different international instruments or legal documents that protect this right. In 1948, the right to freedom of religion and conscience was introduced by the Universal Declaration of Human Rights. Since then, there have been different covenants and conventions that establish and develop this right at the international level.

What protections do I receive under international law?

International instruments establish that all people are equal before the law, regardless of their religion. These laws also state that no one may be discriminated against on the basis of religion. This is an offense against human dignity and is condemned as a violation of human rights and fundamental freedoms.

What freedoms do these international instruments include?

- **Freedom of thought, conscience, and religion.**

This freedom includes freedom of thought on all matters, freedom to hold beliefs, freedom of commitment to religion or belief, and freedom of personal conviction. It does not allow any limitations on the freedom to have or adopt a religion or belief of one's choice. No one can be compelled to reveal his or her thoughts or adherence to a religion or belief.

- **Freedom to change religion or beliefs.**

All people have the right to leave their own religion or belief and to adopt another, or to remain without any belief at all. The use of physical force, penal sanctions, policies, or practices to force a person to adopt, change, or maintain a certain religion or belief is prohibited.

- **The freedom to manifest and profess your own religion or beliefs, individually and collectively, both publicly and privately.**

Everyone enjoys the right to peacefully manifest and share one's religion or belief with others without being subject to the approval of the state of another religious community. This right is not limited to members of registered religious communities. Moreover, registration should not be compulsory for religious communities or organizations in order to enjoy their rights.

- **The freedom to manifest your religion through teaching, practice, worship, and observance.**

The freedom to manifest religion or belief in worship, observance, practice, and teaching includes a broad range of acts:

- Worship and observance extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest.
- Practice and teaching of religion or belief include acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests, and teachers; the freedom to establish seminaries or religious schools; and the freedom to prepare and distribute religious texts or publications.

- **The freedom of parents and guardians to have their children or pupils receive religious or moral education that is in accordance with their own convictions.**

Children enjoy the right to have access to religious education in accordance with the wishes, religious beliefs, or convictions of their parents or guardians. Likewise, children should not be forced to receive religious instruction that is contrary to the wishes of their parents or guardians. In accordance with the principle of the best interests of the child, the State should encourage an atmosphere of religious tolerance in schools and promote respect for pluralism and religious diversity.

Are there any limitations to these freedoms?

Yes. There are some limitations that are given by law, and their purpose is to protect public safety, order, health, morals, and the fundamental rights and freedoms of others. However, restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.

FINDING COMMON GROUND

As people, we have the freedom to choose, share, and live what we believe. We generally hold our religious freedoms and beliefs dear as guiding principles in our lives. Just as we value our own religion and beliefs, we should highly value all people's rights to religious freedom and belief. Knowing the importance of these freedoms, how can we share the principles of freedom of religion in our communities? Is there a way to find common ground when we interact with people holding different beliefs?

The following strategies may allow you to find common ground in your community:

BECOME INFORMED

Before you can protect the religious beliefs of yourself or others, it is important to be informed and understand the rights and basic principles of freedom of religion. This brochure contains some relevant information with regards to your rights and the basics of freedom of religion. Seek to stay aware of changes in religious freedoms by watching developments that affect these freedoms in the news.

LISTEN TO ALL SIDES

Listen and show concern for other people's religions and sincere beliefs. Even if you disagree with the beliefs, or convictions of another, seek to understand and to be respectful of his or her perspective. People's words, beliefs and actions are influenced by many factors. You should be sensitive to the feelings of others as you explain and pursue your positions, and you should ask that others not be offended by your sincere religious beliefs.

PRACTICE CIVILITY

In order to live as a community with differences of opinion and beliefs, it is critical to know how to debate and not just what to debate. Your communications on controversial topics should not be contentious. All people should treat one another with civility and respect while striving to be accurate and fair. When your positions do not prevail, you should accept unfavorable results graciously and civilly. Remember to reject persecution of any kind, including persecution based on race, ethnicity, religious belief or nonbelief, and differences in sexual orientation.

PROMOTE TOLERANCE

People must be able to peaceably live together while having differences. To live peaceably does not mean you need to abandon your positions; rather, it means you should strive to live peacefully with others who do not share your values or accept the teachings upon which they are based. Strive to teach values and standards of behavior to those around you without having them distance themselves or show disrespect to any who are different.

BUILD TRUSTED RELATIONSHIPS

Build trusted relationships in your community among people of diverse opinions. You will be better able to protect the rights of others in a way that benefits everyone as you get to know more people and as those people come to understand each other's beliefs. Concentrate on what you have in common with your neighbors and fellow citizens. Then, as you work together, speak out for religion and the importance of religious freedom.

