

SOUTH AFRICA 2021 INTERNATIONAL RELIGIOUS FREEDOM REPORT

Executive Summary

The constitution provides for freedom of religion and belief and prohibits discrimination on the basis of religion. The government does not require religious groups to register; however, registered groups receive tax-exempt status. Over the course of the year, the government adjusted the regulations placed on religious gatherings as it adjusted the level of lockdown to control the COVID-19 pandemic. At year's end, religious gatherings were permitted but were limited to 750 persons indoors (with social distancing of five feet) and 2,000 persons outdoors. Some religious groups and religious advocacy organizations protested government-imposed COVID-19 restrictions on houses of worship and said police response to complaints about violations of COVID-19 restrictions resulted in occasional clashes with worshippers and arrests of church leaders. In September, the South African National Christian Forum (SANCF) approached the Constitutional Court to urgently interdict the government from declaring the COVID-19 vaccination mandatory. In court papers, SANCF argued the government had the obligation to protect the constitutional rights of all citizens regardless of their decision to take or not take the vaccine. On November 28, President Cyril Ramaphosa announced the appointment of a task team to “undertake broad consultations on making vaccination mandatory for specific activities and locations.” At year's end, however, there was no vaccine mandate in place. In August, the Al Jamah-ah Party submitted a Private Members Bill, the so-called Nikah Act, calling for registration of Muslim marriages, to the Speaker of Parliament. In August, the draft Prevention and Combating of Hate Crimes and Hate Speech Bill, first introduced in 2018, was released for public comment. Movement on the draft legislation occurred after the Constitutional Court handed down a unanimous judgment in July in the decade-old case, *John Qwelane versus the SA Human Rights Commission*. Opponents of the measure, including religious figures, stated the bill's definition of hate crimes and speech was too vague and could potentially restrict freedom of religion and speech. Media outlets and the South African Jewish Board of Deputies (SAJBD) drew attention to what they described the Judicial Services Commission's (JSC) unfair treatment and questioning of two Jewish candidates for senior judicial positions relating to their views on the Israel-Palestinian conflict, levels of religious observance, and relationship with the SAJBD in April. The Council for the Advancement of the South African Constitution launched a successful challenge in the High Court, which directed the JSC to reinterview the candidates. Although the JSC did not select the candidates

after reinterviewing them in October, the SAJBD stated it considered it a “victory” because of the role it and other members of civil society played in mounting pressure on the JSC to conduct a second round of interviews. Throughout the year, the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities (CRL) examined allegations of sexual abuse, cult-like practices, and financial malfeasance against leaders of various religious organizations in what it said was a continued effort to protect congregants from abuse and fraud. In January, a spokesperson from the military said the South African National Defense Force (SANDF) had updated dress regulations to allow Muslim women to wear headscarves.

The SAJBD recorded 65 antisemitic incidents during the year, similar to the 69 in the previous year. Numerous individuals made antisemitic comments verbally, by mail, and across social media throughout the year. More than half of these incidents occurred in May, during and after hostilities erupted between Israel and Hamas.

U.S. embassy officials met with the CRL to discuss its role as a Chapter 9 institution established by the constitution to safeguard freedom of religion and belief. Embassy officials met with religious groups and nongovernmental organizations (NGOs), including Muslim, Hindu, Christian, Jewish, and humanist representatives, to gauge and discuss issues of religious freedom, including cases of antisemitism and anti-Muslim sentiment. In June, the Charge d’Affaires met with the SAJBD to hear its concerns about anti-Jewish rhetoric. The Charge heard from a diverse gathering of religious advocates who called for faith leaders to condemn hate crimes against members of the lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) community.

Section I. Religious Demography

The U.S. government estimates the total population at 57 million (midyear 2021). According to a 2010 Pew Research Center report, 81 percent of the population is Christian. Approximately 15 percent of the population adheres to no particular religion or declined to indicate an affiliation; some of these individuals likely adhere to indigenous beliefs. Muslims constitute 1.7 percent of the population, of whom the great majority are Sunni. Shia religious leaders estimate that not more than 3 percent of the Muslim population is Shia. Hindus, Jews, Buddhists, and adherents of traditional indigenous beliefs together constitute less than 4 percent of the population. Many indigenous persons adhere to a belief system combining

Christian and indigenous religious practices. The Church of Scientology estimates it has approximately 100,000 members.

The Pew Research Center estimates 84 percent of the Christian population is Protestant, 11 percent Roman Catholic, and 5 percent other denominations (as of 2010, the latest figures available). African Independent Churches constitute the largest group of Christian churches, including the Zion Christian Church (approximately 11 percent of the population), the Apostolic Church (approximately 10 percent), and charismatic groups. Other Christian groups include Methodists, Anglicans, Baptists, Lutherans, Presbyterians, Seventh-day Adventists, and members of the Greek Orthodox, Dutch Reformed, The Church of Jesus Christ of Latter-day Saints, Assemblies of God, and Congregational Churches.

Persons of Indian or other Asian heritage account for 2.5 percent of the total population. Approximately half of the ethnic Indian population is Hindu, and the majority reside in KwaZulu-Natal Province. The Muslim community includes Cape Malays of Malayan-Indonesian descent, individuals of Indian or Pakistani descent, and approximately 70,000 Somali nationals and refugees.

According to a 2020 study published by the Isaac and Jessie Kaplan Centre for Jewish Studies at the University of Cape Town and the UK-based Institute for Jewish Policy Research, the country's Jewish population stands at 52,300, with the majority living in Cape Town and Johannesburg. The study found that the Jewish population declined over the past 20 years primarily because of emigration.

Section II. Status of Government Respect for Religious Freedom

Legal Framework

The constitution provides for freedom of religion and belief, including the right to form, join, and maintain religious associations. It prohibits religious discrimination and specifies freedom of expression does not extend to the advocacy of hatred based on religion. The constitution permits legislation recognizing systems of personal and family law to which persons professing a particular religion adhere. It also allows religious observances in state or state-supported institutions, provided they are voluntary and are conducted on an equitable basis. These rights may be limited for reasons that are “reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom” and take account of “all relevant factors.” Cases of discrimination against persons on the grounds of religion may be taken to equality courts, the

South African Human Rights Commission, and the Constitutional Court. The constitution also provides for the promotion and respect of languages used for religious purposes, including, but not limited to, Arabic, Hebrew, and Sanskrit.

The constitution establishes and governs the operation of the CRL, which has the mission of fostering the rights of communities to freely observe and practice their cultures, religions, and language. The CRL is an independent national government institution whose chair is appointed by the President and whose commissioners include members of the clergy, scholars, and politicians, among others.

The law does not require religious groups to register; however, registered religious and other nonprofit groups may qualify as public benefit organizations, allowing them to open bank accounts and exempting them from paying income tax. To register as a public benefit organization, groups must submit a nonprofit organization application, including their constitution, contact information, list of officers, and documentation stating they meet a number of prescribed requirements that largely ensure accounting and tax compliance, to the provincial social development office. A group registers once with the local office and its status then applies nationwide. Once registered, the group must submit annual reports on any changes to this information, important achievements and meetings, and financial information, as well as an accountant's report.

The government allows but does not require religious education in public schools but prohibits advocating the tenets of a particular religion.

The law recognizes civil, customary, and same-sex unions but does not recognize religious marriages, although the Law Reform Commission has proposed the "Single Marriage Act." Civil marriages do not allow polygamy. The law allows for polygamous marriages to be conducted under customary law; however, it applies only to "those customs and usages traditionally observed among the indigenous African people."

The constitution grants detained persons visitation rights with their chosen religious counselor.

The country is a party to the International Covenant on Civil and Political Rights.

Government Practices

The government adjusted the various levels of lockdown in response to the COVID-19 pandemic, which included bans and size restrictions on religious gatherings. In March, President Ramaphosa relaxed a total ban on religious gatherings in place since January, allowing 100 persons indoors and 250 outdoors. In June, the President tightened restrictions again as the country experienced a rising number of cases, reducing religious gatherings to 50 persons indoors and 100 outdoors. Some organizations, including the South African Council of Churches, appealed to the government to reconsider regulations on church gatherings, while the advocacy organization Freedom of Religion South Africa (FORSA) maintained its position that selective restrictions on gatherings were limiting the fundamental rights of citizens. FORSA expressed appreciation for the introduction of a Private Members draft bill in parliament that would provide greater legislative oversight over the Department of Cooperative Governance and Traditional Affairs' Disaster Management Act; the draft required parliamentary approval after more than one extension. The High Court heard FORSA's case challenging the lockdown regulations on November 22-24; at year's end, the court's decision remained pending. In July, a newly formed church lobby group, Pastors Against Church Closure, accused the government of criminalizing worship and appealed for an urgent revision of the lockdown regulations.

In February, police used rubber bullets and stun grenades to disperse a group of approximately 250 individuals who had gathered for a church service in Sebokeng, Gauteng Province. Police arrested two church leaders for contravening lockdown regulations that did not allow in-person church services. In March, police arrested a pastor in the township of Soweto and several of his congregants after they attacked police responding to a public complaint about noise emanating from the church. Police said the church contravened lockdown restrictions and had more than 2,000 persons in attendance.

In September, the SANCF approached the Constitutional Court to urgently interdict the government from declaring COVID-19 vaccination mandatory. In its court papers, SANCF argued that government had the obligation to protect the constitutional rights of all citizens regardless of the decision to take or not take the vaccine.

In August, the Al Jamah-ah Party submitted a Private Members bill, the so-called Nikah Act, calling for interim registration of Muslim marriages, to the Speaker of Parliament. Party leader Ganief Hendricks said, "The bill is a minimalist piece of legislation, aimed at just registering a *nikah*, which is a marriage performed by an

imam, with consequences including proprietary benefits, in terms of the Islamic tenets/rulings on marriage.”

In August, the Constitutional Court heard arguments regarding whether the state was constitutionally obligated to enact legislation that recognized and regulated Muslim marriages. The Constitutional Court, however, did not issue a ruling. At year’s end, the government was in the process of drafting a new marriage act to recognize all marriages regardless of religion or sex and published an exploratory “green” paper (a government policy discussion paper) in this regard.

According to Muslim leaders, the COVID-19 pandemic brought attention to the plight of Muslims whose religious marriages were not recognized by the state. During the year, the Muslim Marriages Bill continued to stall in parliament despite its introduction in 2010. As the state did not recognize religious marriages that were not subsequently “solemnized” in a civil office, the law particularly impacted Muslims who did not undertake civil marriages because of the prohibition against polygamy in civil unions. Some individuals said Home Affairs Minister Aaron Motsoaledi’s 2020 declaration that he could not legally recognize Islamic religious marriages meant that death certificates issued for decedents married under Islamic religious rites listed them as “never married,” which they said caused both insult as well as hardship to survivors regarding their benefits and inheritance.

Following Motsoaledi’s remarks, the Supreme Court of Appeal in December 2020 upheld a 2018 ruling of the Western Cape High Court that declared unconstitutional the nonrecognition of Muslim marriages. The court said the nonrecognition violated women and children’s constitutional rights, and it gave the government 24 months (until December 2022) from its ruling to either enact new legislation or amend the existing legislation to ensure recognition of Muslim marriages as valid marriages. The court also provided interim relief that was to be applicable in the 24-month period, during which time the state must enact new legislation or amend the existing legislation. The interim relief aimed at ensuring that Muslim women whose marriages were still valid at the time of the court order could approach a court to obtain a divorce in terms of the Divorce Act. Since the Supreme Court of Appeal had declared the Marriages Act, the Divorce Act, and the common law definition of marriage to be unconstitutional, this decision had to proceed to the Constitutional Court for confirmation.

In January, a spokesperson from the military said the SANDF had updated dress regulations to allow Muslim women to wear headscarves. In January 2020, the SANDF withdrew charges against Major Fatima Isaacs, who in 2018 was charged

with disobeying a lawful instruction for refusing to remove the hijab she had worn under her military beret for more than a decade. Isaacs remained on active duty.

Several groups, including the Southern Africa Catholic Bishops' Conference, the nonprofit Christian organization Freedom of Religion South Africa, and the International Institute for Religious Freedom, stated their continued opposition to a 2016 CRL legislative proposal requiring religious groups to register, on the grounds that it would restrict their religious freedom. The proposal would require religious groups to register formally with the government and would create a peer review council, consisting of representatives from various religious groups, which would grant organizations and individual religious leaders' permission to operate. The proposal remained with the parliamentary Portfolio Committee on Cooperative Governance and Traditional Affairs at year's end.

Throughout the year, the CRL examined allegations of sexual abuse, cult-like practices, and financial malfeasance against leaders of various religious organizations in what it stated was a continued effort to protect congregants from abuse and fraud. In 2020, the Johannesburg High Court dismissed an application by Bishop Stephen Zondo of the Rivers of Living Waters Church to stop the CRL from holding public hearings on allegations of sexual abuse against him. In January, the CRL held public hearings on allegations of abuses alleged to have taken place at the Inter Heaven Fellowship Church led by popular Bishop Stephen Zondo. In November, Zondo appeared in court on numerous charges of rape. Although the court did not use as evidence the representations made during CRL hearings, the CRL's hearings brought to public attention abuses it stated were taking place in churches. FORSA argued that all of the abuses that the CRL reported on were already crimes under the country's statutes and could be addressed under existing laws without regulating religious practice.

In August, the draft Prevention and Combating of Hate Crimes and Hate Speech Bill, first introduced in 2018, was released for public comment. Movement on the draft legislation occurred after the Constitutional Court handed down a unanimous judgment in July in the decade-old case, *John Qwelane versus the SA Human Rights Commission*. The court, the country's highest, ruled that Qwelane's statements against the LGBTQI+ community amounted to hate speech as defined in a 2000 law because they were harmful, incited harm, and propagated hatred. The court said, however, the 2000 law was vague and inconsistent with the freedom of expression provision in the constitution and gave parliament 24 months to remedy the law. The court further upheld the appeal by the South African Human Rights Commission and concluded that the publication in question

authored by John Qwelane constituted hate speech. The hate speech bill would criminalize any action or statement motivated by bias or hatred towards an individual based upon a number of categories, including ethnicity, nationality, religion, sexual and gender identity, health status, employment status or type, or physical ability. The bill would provide law enforcement officials and courts increased authority to arrest and punish offenders, and it would mandate prison sentences of up to three years for first-time offenses. Opponents of the bill, including the African Christian Democratic Party led by Reverend Kenneth Meshoe, media representatives, civil society groups, and NGOs, stated the bill's definition of hate crimes and speech was too vague and could potentially restrict freedom of religion and speech. FORSA stated it appreciated the religious exemption clause in the draft bill but said it did not go far enough, protecting speech only from the pulpit, not among worshipers.

Media outlets and the SAJBD drew attention to what they said was the unfair treatment and questioning of two Jewish candidates for senior judicial positions by the JSC in April. Judge David Unterhalter and Advocate Lawrence Lever were subjected to what the SAJBD described as aggressive questions relating to their views on the Israeli-Palestinian conflict, levels of religious observance, and their relationship with the SAJBD. The Council for the Advancement of the South African Constitution launched a successful challenge in the High Court, which directed the JSC to reinterview the candidates. JSC officials reinterviewed the candidates on October 4-8. Although the JSC did not select the two candidates, a SAJBD representative said it was a "victory" that JCS yielded to the pressure of the religious community and civil society to conduct a second round of interviews.

Section III. Status of Societal Respect for Religious Freedom

In September, a famous mural in Cape Town of Archbishop Desmond Tutu was defaced with racial slurs. The artist restored the mural in time for Tutu's 90th birthday in October, and at year's end, the matter remained under investigation by the city of Cape Town.

The SAJBD recorded 65 antisemitic incidents during the year. Numerous individuals made antisemitic comments verbally, by mail, and across social media throughout the year. The SAJBD reported, "The rhetoric both in online forums and at public gatherings was more threatening and inflammatory; there was a pronounced rise in instances of intimidation, 'cancel culture' tactics against those (usually but not always Jews) who stepped out of line, and the most widespread and sustained series of anti-Jewish boycott initiatives to have been attempted in the

country for over half a century.” More than half of the incidents occurred in May during and after hostilities erupted between Israel and Hamas. A number of cases of threats, intimidation, and physical and verbal assault against Jewish South Africans were reported to the South African Police Services in May.

After a series of unprecedented violent attacks across various provinces on mosques and congregants in 2018 and the burning of a Durban mosque in February 2019, there were no published reports of anti-Muslim incidents during the year, unlike in previous years. A press spokesperson for a political party said that she was unaware of any violence targeting Muslims or mosques in Western Cape Province during the year, unlike in previous years.

Twin brothers Brandon Lee Thulsie and Tony Lee Thulsie continued to await trial scheduled for early 2022 on charges of contravening the Protection of Constitutional Democracy Against Terror and Related Activities law. The brothers, along with two others who were alleged to have links to ISIS, were arrested in 2016 for allegedly planning to set off explosives at the U.S. embassy in Pretoria and at Jewish and Shia institutions in the country. In October, the Supreme Court of Appeal again denied their request for bail.

Section IV. U.S. Government Policy and Engagement

In February, embassy officials met with the CRL to discuss its role as a Chapter 9 institution established by the constitution to safeguard freedom of religion and belief – broadly, Chapter 9 institutions refer to a group of organizations established under terms of Chapter 9 of the constitution to safeguard democracy. During the meeting, embassy officials underscored the U.S. commitment to religious tolerance and diversity.

Embassy representatives engaged with religious leaders and NGOs, including individuals from the Roman Catholic Church, Anglican Church, Muslim Judicial Council, Islamic Council of South Africa, Inner Circle (a Muslim LGBTQI+ organization), Hindu Maha Sabha, Christian Coalition, Christian Social Services, American Jewish Committee, SAJBD, South African Secular Society, Freedom of Religion South Africa, and Atheist Movement of South Africa to discuss the environment for religious freedom and concern about cases of antisemitism and anti-Muslim sentiment. Other topics of discussion included pending draft bills that remained stalled in committees at year’s end, including the Prevention and Combating of Hate Crimes and Hate Speech Bill, the Muslim Marriages Bill, and a proposed CRL draft bill that would require religious institutions to register with the

government in order to operate. The Consulate General in Cape Town awarded \$79,840 of embassy cultural preservation funding to the oldest synagogue in the country for repairs and maintenance.

In June, the Charge d’Affaires met with the SAJBD to hear its concerns about anti-Jewish rhetoric.

The Charge heard from a diverse gathering of religious advocates who called for faith leaders to condemn hate crimes against members of the LGBTQI+ community.

An embassy official met with the Apostolic Nuncio from the Holy See and various Jesuits engaged in humanitarian and refugee work that included creating a safe space for Catholic LGBTQI+ refugees and students in Johannesburg. An embassy official collaborated with the Johannesburg Holocaust and Genocide Centre on various events, including a webinar.