

Concerns and Objections to CRL Recommendation to License Religion in South Africa

HRWF (11.07.2017) - On Tuesday 11 July, the *Commission for the Promotion and the Protection of the Rights of Cultural, Religious and Linguistic Communities* (CRL) will present its Final Report on the "*Commercialisation of Religion and Abuse of People's Belief Systems*" to the Media at a Press Conference.

A number of organizations in South Africa - such as the International Institute for Religious Freedom in Cape Town, the inter-religious *Council for the Promotion and Protection of Religious Rights and Freedoms* (CRRF) and *Freedom of Religion South Africa* (FOR SA) - have expressed great concerns that state control of religion is on the cards in South Africa, if current plans go unhindered.

FOR SA publicized a letter saying:

It has come to our attention that the CRL Rights Commission (CRL) plans to present its Final Report on the "*Commercialisation of Religion and Abuse of People's Belief Systems*" to the Media at a Press Conference on Tuesday, 11th July 2017.

We believe that it is VERY IMPORTANT that the media are aware that there are serious concerns and objections shared by the vast majority of the religious community of South Africa, who consider the proposals by the CRL to establish an extensive national structure to license (and thereby control) every "religious practitioner" and "place of worship" to be unnecessary, unworkable and unconstitutional. Their proposal effectively amounts to "State capture of religion".

While there is widespread support for the concerns that the CRL has highlighted (such as people being forced to drink petrol etc.), the CRL has ignored every submission detailing the alternative, viable and well supported solutions to every issue they have identified.

CONCERNS WITH CRL's PROPOSALS

1. The process followed by the CRL is deeply flawed and therefore unconstitutional

The process followed by the CRL in their investigation was fundamentally flawed in several respects and is open to judicial review. Importantly, their proposals are not supported by a sound or convincing scientific investigation: only a "random sampling" of 85 religious practitioners and institutions were summonsed and interviewed - a completely inadequate sample size in view of the far-reaching proposals and recommendations in the CRL's report. The sample they use was not at all representative of the multitude of religious communities in South Africa, all of which will be affected by their proposals.

2. The CRL is an institution of the State, so this proposal amounts to State control of religion

The CRL is defined in the Constitution as a State institution, and its Commissioners are appointed by the President. Its mandate is '*to promote and protect the ... religious rights of communities*' and it was never intended, either in terms of the Constitution or the CRL Act, to license and control them.

The CRL's proposal will bring about a complete reversal of the historic relationship between government and the religious sector. It is also a clear overreach of the powers and prerogatives of the CRL as a Chapter 9 institution. The CRL has not been granted executive powers by the Constitution and their attempt to assume this function through an amendment of the CRL Act, is misguided, unconstitutional and amounts to State capture of religion.

3. **The "Peer Review Committee" will advise the CRL on how to regulate and license each religion – this is NOT self-regulation**

The CRL proposes that each religion has its own Peer Review Committee [EG] there will be a single Committee for the entire Christian religion. The CRL claims that this is self-regulation, but the Peer Review Committee is defined as "*an advisory body to the CRL Rights Commission*". [Page 47 CRL Report]

The CRL will be represented on the Peer Review Committee and will effectively run and finance it by the provision of "*research, legal support, secretariat and other necessary services*." This Committee is therefore subservient to (and dependent upon) the CRL, referring matters to it and advising it on all resolutions it has taken regarding complaints. [Page 48 CRL Report]

The Report clearly states that "*the final decision powers shall lie with the CRL Rights Commission*", so it is evident that control of all religion will vest in the CRL. [Page 47 CRL Report]

4. **Umbrella Organisations will be evaluated on whether (or not) their doctrine and practices are "acceptable", which is a violation of Freedom of Religion**

The primary task of the Peer Review Committee is to establish and license Umbrella Organisations, whose function is to provide specialist support, advice, oversight, governance and capacity building to churches. According to the CRL Report, the Peer Review Committee, in licensing an Umbrella Organisation applying for recognition, must take into account *inter alia* whether it has "*set minimum standards of good governance, ethics and acceptable religious practices as per their religious doctrine*" and whether the spiritual leaders of the Umbrella Organisation are able "*to ensure that [a member of this Umbrella Organisation] remains on a good spiritual path*".

It is therefore inevitable that the CRL will ultimately take decisions regarding the acceptability of doctrinal belief and expression, and this is fundamentally opposed to the Constitutional right to Freedom of Religion. [Page 46 CRL Report]

5. **The CRL's proposal is a violation of Freedom of Association**

The CRL's proposal insists that all religious practitioners and associated places of worship MUST belong to an Umbrella Organisation. This association is compulsory and without exception and is therefore a violation of the right to Freedom of Association, since freedom to associate must include the right to choose not to associate.

6. **The CRL will fund this structure by charging license fees, which will likely exceed one Billion Rand annual income**

Given Parliament's historic reluctance to increase the CRL's budget, it is highly unlikely that it will be granted the funds necessary to fund this proposed regulatory structure out of the national fiscus. This leaves the religious community itself as the only likely source

to fund this elaborate structure through payment to the CRL of license fees that will be required from every religious practitioner and place of worship. This revenue stream is estimated to exceed a billion Rand annually.

7. **The CRL has ignored submissions and alternative solutions proposed by the majority of the faith community in South Africa**

The CRL has failed to take into account the serious concerns and objections submitted by faith communities in South Africa. Its proposal for compulsory licensing of all religious practitioners and places of worship is a complete overkill and does not even provide a viable solution for the issues and problems which their Report identified. The truth is that there are existing ways to address and resolve these issues, without eroding the important rights to freedom of religion and freedom of association.

ALTERNATIVE SOLUTIONS TO CRL's PROPOSAL

1. **The CRL can (and should) refer complaints of abuses to the relevant authorities, so that the relevant laws can be enforced**

FOR SA and many other churches and denominations have argued that there are existing laws already in place to deal with every "abuse" that the CRL has identified and these simply need to be enforced.

[EG] The "Prophet of Doom" was interdicted using existing law, and prohibited from spraying poisonous substances on people (or any similar action) or face time in jail.

The problem is the non-enforcement of existing laws, hence FOR SA's recommendation for the CRL to set up a "rapid response unit" to alert the relevant authorities whenever it receives a complaint. There is also nothing prohibiting the CRL from reporting abuses to the relevant authorities, or going to court themselves.

2. **The CRL can (and should) play a leading role in ensuring that religious leaders and their organisations understand their legal obligations**

Many of the issues identified in the CRL's Report derive from a lack of compliance fueled by ignorance. The reality is that some religious practitioners simply do not know or understand the various aspects of the existing legal framework they need to comply with. A critical role of the CRL is therefore to educate, inform and indeed encourage, religious communities and institutions towards lawful and accountable behaviour.

The CRL can therefore play a valuable role in ensuring there is an improvement in the education and capacity building of the religious community. There are currently well-developed, practical and scalable initiatives that have broad support within the religious sector, that will put in place capacity building and training mechanisms for the religious community.

3. **The CRL can (and should) assist in the necessary consultation process needed to develop a "Code of Ethics"**

FOR SA and other religious organisations have recommended a broad-based process of consultation with the aim of developing a "Code of Ethics" to identify and govern the behaviour, standards and processes that should be expected from a *bona fide* religious practitioner or religious organisation. Although subscription to this Code would be voluntary, it would define the benchmarks and certify individuals or organisations as being in compliance, which would be an endorsement of their adherence to these standards. *The*

South African Charter for Religious Rights and Freedoms (SACRRF), which is supported by over 22 million people from across the religious spectrum, already provides a foundation from which to develop such a "Code of Ethics".

CONCLUSION

FOR SA is fully persuaded that the South African religious community is well able to self-regulate and to make the necessary adjustments to address the valid concerns expressed by the CRL's Report. Our concern is that although the CRL's proposal may seem benign, it clearly amounts to a power grab by the CRL to capture the religious community and bring it under the control of the State. As such, it will almost certainly turn cancerous at some point and it is widely condemned and opposed by the religious community.

For more information:

Michael Swain

Executive Director, *Freedom of Religion South Africa (FOR SA)*

Cell: 072 270 1217

Email: michael.swain@forsa.org.za

- View [FOR SA's Open Letter to the CRL](#) (attached) for greater detail of our concerns/objections.
- [FOR SA's YouTube video outlining our concerns about the CRL's Report.](#)
- Visit the FOR SA website (www.forsa.org.za)