Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE

Submission

to the

Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

on the

PRELIMINARY REPORT ON THE COMMERCIALISATION OF RELIGION AND OF PEOPLE'S BELIEF SYSTEMS

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'Participating in Public Policy'

Introduction

1. This submission is being made on behalf of the Southern African Catholic Bishops' Conference (SACBC) by the Catholic Parliamentary Liaison Office (CPLO). The CPLO is an office of the SACBC, tasked with liaising between the Church and Parliament/Government, commenting on issues of public policy, and making submissions on legislation. CPLO also communicates on behalf of the SACBC with statutory bodies such as the CRL Commission.

2. We note that the report is a preliminary one, and we approach it therefore with the understanding that its findings and recommendations are open for further discussion and refinement. We reiterate that the Catholic Church is ready and willing to co-operate with the Commission in addressing any issues of concern regarding harmful or unlawful practices carried out in the name of religion.

3. In this submission we will be concerned mostly with the summary of findings, the recommendations and their proposed implementation, and the proposed new Act. Before dealing with these points, however, we wish to cover two other aspects.

The Existence of the Problem

4. The Catholic Church acknowledges that there have been incidents in our country where people have been assaulted, sprayed with poison, made to drink petrol, and so on, by various pastors and so-called religious practitioners. We also do not doubt that certain unscrupulous or crooked individuals are exploiting the religious feelings and sensibilities of people for financial gain.

5. We make this point because, when we explain our opposition to the Commission's recommendations, and to the proposed Act, we do not wish to be misunderstood as denying the fact that there is a problem. We simply differ with regard to the appropriate measures that should be taken to address the problem.

The Scope of the Problem

6. In the introduction to the report (page 3) the Commission states that

> "… the recent controversial news reports and articles in the media about pastors instructing their congregants to eat grass and snakes, to allegedly drink petrol or to part with considerable sums of money in order to be guaranteed a miracle or blessing has [*sic*] left a large portion of society questioning whether religion has become a commercial institution or commodity to enrich a few. Some communities have also started asking whether the government should leave the developments as they are or should something be done about the perceived commercialisation of religion."

There is no indication of who or what comprises the "large portion of society" that is supposedly questioning what religion has become; neither are we told which communities are "asking whether the government" should do something about the problem.

7. We are all aware of the disturbing news reports that the Commission refers to, but nothing in the report indicates how widespread the problem is. The anecdotal evidence provided in section 12 of the report – which we do not dispute – does not establish the scope of the problem. Every week, millions of South Africans attend religious services in tens of thousands of churches, mosques, and temples without in any way being harmed, duped or exploited.

8. This point has important ramifications when it comes to the question of enacting legislation. Are we facing a serious crisis that affects our society as a whole, or at least a significantly large number of people, or are we merely dealing with a few exceptional and undesirable incidents? If it turns out that only a tiny minority of pastors are guilty of these acts, should the sector as a whole be subject to an onerous and intrusive regulatory regime?

9. We submit that, before the Commission pursues the idea of legislation, it should do more to quantify the scope of the problem.

Summary of Findings of the Report

10. It would have been useful if the Commission had graded its findings in some way, perhaps under headings of 'criminal', 'illegal', 'undesirable' and 'questionable'. As it stands, section 14 of the report mixes all the findings together as if they were all equally problematic, and describes all of them as somehow undermining or abusing the right to religious freedom.

10.1. For instance, in 14.1. dealing with commercialisation of religion, the first four examples all involve people having to pay for blessings, or for blessed items, or merely for ordinary items said to bring good luck. Such behavior is clearly undesirable, and may be fraudulent depending on whether promises are made about the efficacy of such blessings or items. But the final item in 14.1. – the use of bank speed point devices to enable congregants to donate money during ceremonies – is at worst questionable, and may indeed be quite sensible. Many churches prefer not to deal with cash, due to the dangers and expenses involved in doing so.

10.2. In 14.3, dealing with governance issues, it is noted that some institutions have no codes of conduct or leadership succession plans. It is not explained why this is wrong; it is certainly neither criminal nor illegal.

10.3. In 14.8 it is stated that "it has become very easy to establish churches in the country, unlike in other African countries." Again, it is not explained why this is necessarily a problem.

10.4. On the other hand, some findings clearly disclose criminal activities, such as currency irregularities, failure to disclose income to SARS, and the extraction of money from gullible congregants under false pretences.

11. It is noticeable that many of the illegal and/or criminal activities listed in section 14 are already covered by existing legislation. The common law crimes of fraud, *crimen iniuria* and assault are all available to deal with pastors who do harmful things to their followers, while the whole panoply of tax, NPO, currency, racketeering and immigration legislation is geared to address precisely the kinds of abuses highlighted in section 14. We question, therefore, what the true purpose would be of any new legislation specifically designed to regulate religious institutions and practice.

12. Finding 14.12 refers to horrific practices, in the name of religion, of the snake/petrol variety. This paragraph is under the rubric of "Lack of Religious Peer Review Mechanism", but it is difficult to understand such positioning: how would peer review prevent such abuses when, according to the report, there are sects which dispute the authority of the CRL to discuss, never mind examine, their belief and practices? It is very unlikely that such entities would submit themselves to review by their peers. Only those who are naturally compliant, and who have nothing to hide, would do so.

13. In summary, regarding the chief findings of the report, we submit that proper distinctions should be drawn between what is clearly illegal and what is merely questionable or undesirable. The former must be dealt with by law, with recourse being had to existing legal remedies which, we suggest, are adequate to the task. For the rest, an educative – rather than legislative – approach would be fitting.

Recommendations of the Report

14. There are a total of 14 recommendations, numbered 15(i) to 15(xiv). Our response to these recommendations is as follows:

14.1. We agree with, and support, recommendations

15(i), relating to the need to protect religious freedom without state regulation;

15(ii), except that it should be noted that home-schooling of children is legal provided certain conditions are met;

15(iii);

15(iv), inasmuch as it is aimed at assisting religious organisations, but not regulating them;

15(v);

15(vi);

15(vii); and

15(xiv), which calls for the separation of religious activity from business activity.

14.2. We do not agree with the following recommendations:

15(viii), regarding 'schisms' and disputes that arise for, or are accompanied by, financial reasons. Splits and internal disputes in religious organisations are often complex matters; it is best to leave their resolution to the organisations concerned and to avoid outside interference.

15(ix), regarding religious organisations and leaders of 'foreign origin'. It is by no means established in the report that such foreigners 'display a propensity for amassing money' or that they do so more than local religious figures. To draw attention to this unsubstantiated allegation seems to us to be inadvisable given the recent climate of xenophobia in South Africa.

15(x) – (xii), all regarding internal operational and leadership arrangements of religious organisations. These recommendations fail to respect the wide variety of such arrangements, some of them established many centuries ago, and some of them flowing from deep theological understandings of the different roles and responsibilities of members of the organisation.

15(xiii), regarding ownership of property. Once again, the recommendation fails to respect the fact that, in some religious denominations, property is registered in the name of the competent ecclesiastical authority, for example, the bishop of a diocese. There is no need, in such cases, for investigations and 'corrective measures'.

Regulation of the Religious Sector

15. Section 15 of the report begins with the words, "The investigative study highlighted the need to protect religious freedom without attempting to regulate it from the side of the state." It is difficult to reconcile this approach with what is contained in section 17: "The CRL Commission is of the view that there are several reasons for the Religious Sector to be regulated." It may be argued that the apparent contradiction can be explained by virtue of the fact that the report speaks about 'self-regulation', but in reality the report calls for much more than self-regulation. It proposes a system of 'Peer Review Councils' and 'Peer Review Committees', along with 'Umbrella Organisations'.

Ultimately, these Councils, Committees and Umbrella Organisations will have the power to give accreditation to religious organisations and leaders/practitioners; to give them permission to operate; to license institutions; to receive complaints; and to discipline institutions and practitioners.

We submit that these provisions have nothing to do with self-regulation, which is by its nature voluntary. Indeed, the report goes on to propose that these far-reaching provisions be enshrined in legislation which will enforce the regulatory scheme.

These proposals constitute a massive limitation of the right to freedom of religion, and we have no doubt that – in the unlikely event that they should ever find their way onto the statute book – they will be found to be unconstitutional.

The purposes which the report seeks to achieve may be laudable in some respects, but it surely cannot be claimed that they are so important as to warrant the wholesale violation of religious freedom rights that would be involved. As noted, the issue of religion being commercialized, while real, has not been shown to be particularly widespread, or to constitute the kind of major social problem that might justify the effective suspension of a fundamental constitutional right.

In any event, the CRL Commission admits that there are other, less restrictive means to address the problem. There are already various laws, statutory and common, and numerous State institutions, from SAPS to SARS, that can deal effectively with the kind of corruption, crookery and exploitation that the Commission is worried about. It is simply not necessary to bring new legislation into being, and it is certainly not necessary to do so in a manner that eviscerates freedom of religion and freedom of association.

We therefore respectfully request the CRL Commission to withdraw its proposals regarding the regulation of the religious sector.

16. The Proposed Act

Since the proposed Act is intended to give effect to the perceived need for regulation of the religious sector, what we have said in the preceding paragraphs applies equally to the provisions of the Act. However, we would add the following:

16.1. The 'requirements for a religion to qualify as a religion' are arbitrary and capricious.

- Why should a religion have a text, and why should that text be of a certain origin? (In passing, the text requirement would rule out numerous traditional religions of aboriginal peoples who never developed written language.)
- What constitutes a 'significant number of followers', and who decides this? (At one time, the Christian religion arguably had a following of 12, one of whom subsequently deserted it.)
- Why should a religion have a set of rules that 'orders the lives of followers in a specific and particular way that benefits' them? Who is to decide if the rules are beneficial?
- Who is to 'deem' religious practices or rules as 'harmful'?

16.2. Section 18.2 provides that the Peer Review Council can withhold a license to a religious institution if its doctrine 'is deemed potentially harmful, physically and mentally, to those who practise it, or if such doctrine is not found in the tenants [*sic*] of the religion and which bring the religion into disrepute.' Who does the 'deeming' in this provision? What is the difference between the doctrines of a religion and its tenets? Who decides whether a religion's doctrines 'bring it into disrepute'? How can, for example, Christians decide whether a given doctrine of Islam brings the latter into disrepute?

16.3. We do not intend to critique in detail the provisions regarding the Peer Review Council and the Peer Review Committees, since we have no doubt that they are an unconstitutional limitation on the right to freedom of religion. We reject these provisions in their entirety.

16.4. We likewise reject the provisions relating to the licensing of 'worship centres' and 'general religious practitioners' as equally constitutionally untenable.

17. Conclusion

As stated earlier in this submission, we do not deny that there are problems of commercialisation and exploitation associated with the purported practice of religion in our country. We suggest, though, that these problems can readily be addressed by the proper use of statutory and regulatory mechanisms at the disposal of the relevant authorities; there is no need for further regulation of religious organisations, and neither is there a need for legislation of the kind proposed in the report.

In our view, the CRL Commission is trying to crack a small nut with a large sledgehammer. If these proposals should find their way into law, they would do immense damage to the many thousands of legitimate religious communities, pastors and congregants who work selflessly for the spiritual health of the nation. Fortunately, we are confident that the Commission itself will reconsider its proposals, and failing that, that Parliament will not enact legislation that is so manifestly unconstitutional.

We wish the Commission well in its further deliberations, and we are ready to answer any queries regarding our submission, or to assist the Commission in any way we can.

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