



Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE



Submission

to the

**Portfolio Committee on Co-operative
Governance and Traditional Affairs**

on the

**CRL COMMISSION'S FINAL REPORT ON THE
COMMERCIALISATION OF RELIGION AND
ABUSE OF PEOPLE'S BELIEF SYSTEMS**

August 2017

Introduction

1. This submission is 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. As we noted in our initial response to the CRL Commission's preliminary report on this matter, the Catholic Church is ready and willing to co-operate with the Commission in addressing any issues of concern regarding harmful or unlawful practices performed in the name of religion. We are also ready and willing to work with Parliament to find the most effective ways of combatting exploitation or abuse carried out in the name of religion.

3. In this submission we will be concerned mostly with the summary of findings (section 15), the recommendations (section 16) and their proposed implementation, and the proposed structure and processes (section 19). Before dealing with these points, however, we wish to deal with a fundamental aspect of the enquiry.

The Existence and Scope of the Problem

4. The Catholic Church acknowledges that there have been some disgraceful and disturbing 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 naïveté and sensibilities of people for financial gain.

5. We make this point because, when we explain our opposition to most of the Commission's recommendations, and to the proposed Act and regulation structure, 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.

6. In the introduction to the report (page 6) the Commission refers to

“... recent controversial news reports and articles in the media about pastors instructing their congregants to eat grass, snakes, drink petrol or part with considerable sums of money to be guaranteed a miracle or blessing, [that] have 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 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.

Many of the Commission's recommendations and proposals are far-reaching and would constitute severe limitations on the right to freedom of religion and belief. (We deal with these below.) Such drastic interventions should not be based on vague references to the apparent concerns of “a large portion of society” or “some communities”.

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 sections 4 (pages 9 – 10) and 12 (pages 19 – 20) of the report does not establish the scope of the problem. To reiterate, we do not deny that abuses take place. However, there is a fundamental difference between a small number of isolated incidents that happen to make the headlines, on the one hand, and a serious social problem on the other. Every week, many 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 Parliament pursues the idea of amending existing legislation, and before any further attention is given to the regulatory structure proposed by the Commission, much more work needs to be done to quantify the scope of the problem.

Summary of Findings of the Report

10. For ease of reference we list the Commission’s findings (15.1 – 15.12) below, with our comments in *italics*.

15.1 There is a prima facie evidence of commercialisation of religion

We heard of many examples where:

- People are expected to pay substantial amounts of money before blessings and prayers could be said over them.
- Blessed water and oils are sold to congregants at a high marked-up price.
- Access to the spiritual leader or traditional healer is only guaranteed by payment of a fixed amount of money.
- T-shirts, towels, and Vaseline are sold to congregants for good luck.
- Bank speed points are used for people to swipe their bank cards during ceremonies.

Comment: *The first four of these points are clearly undesirable and may well constitute fraud. Individual cases should be reported to the police for investigation. The last point does not necessarily constitute a problem. Many churches prefer not to deal with cash for reasons of safety.*

15.2 Compliance with the existing laws

- Some churches are not registered with the Department of Social Development either as NPOs or with SARS as public benefit organisations (PBOs).
- Some religious organisations or institutions operate freely without registration or a licensing certificate.
- Some that are registered with Department of Social Development do not even report to the Department annually, as required by law.
- Some do not even disclose to SARS the amount of money they make per year and thus avoid paying tax.

Comment: *If a church claims the benefits of an NPO/PBO but is not registered as such it is breaking the law and the appropriate authorities should act against it. Similarly, if they are registered with the Department, but are not reporting as required, or if they are not disclosing the necessary information to SARS, they can be prosecuted under existing laws.*

As for the point that some religious organisations operate freely without registration or a licensing certificate, there is no legal requirement for them to register or obtain a license, unless they wish to enjoy PBO status.

15.3 Lack of good governance structures

- Some Institutions have no Codes of Conduct.
- Lack of oversight structures, such as a Church Council, Disciplinary Committee, etc.
- In some instances, institutions are controlled and owned by one person.
- In some cases, the finance committee and other church committees constitute the spiritual leader, his wife, and some of his friends.
- Lack of leadership succession plans, which eventually lead to conflict, division and litigation.

Comment: *It should be up to each religious organization to decide whether or not it needs a code of conduct, or what kinds of oversight structures and succession plans it requires. It is not the business of the state (even through a body such as the CRL Commission) to require such things from a religious organization. If it did, it would be a violation of the right to freedom of religion.*

We understand that, where a religious institution or church is controlled by one person, or by a family, it is easier for abuses to occur, especially in financial

matters. However, if such abuses do occur there are laws available to deal with them.

15.4 Misuse of the visa application systems

- Some pastors apply for a different type of visa, like a visitor's visa or temporary visa, and yet once inside the country, they demand a permanent or residence visa.
- Some foreign religious leaders misuse the South African Visa Application processes.

Comment: *The Department of Home Affairs has both legislation and investigative capacity at its disposal to deal with such abuses of the visa system.*

15.5 Flouting of banking rules

- In some cases, money collected from the members is never banked with any commercial bank.
- In other cases, instead of banking with the institution's account, the money is banked into the spiritual leader's account, whereby the pastor also becomes the treasurer.
- Lack of fiduciary committees, such as finance, internal audit and financial management.

Comment: *Nothing in this section amounts to 'flouting of banking rules'. There is no legal requirement that money collected from church members should be deposited with a commercial bank. The Commission does not explain why this should be a requirement. If the 'pastor' is putting institutional money into his personal account this may constitute theft, and can be dealt with by existing laws. It should be up to each religious organization to decide what kinds of finance committees/audit procedures/financial management it will have. As long as it complies with the law relating to PBOs and tax – as mentioned above – there is no need for outside interference in its affairs.*

15.6 Avoidance to pay tax to SARS

- Most institutions are registered as NPOs, but their annual turnover is way beyond the NPO limit, and yet they do not declare this to SARS.

Comment: *We have already noted that SARS is able to act against such unlawful activity.*

15.7 Uncontrolled movement of cash in and out of the country

- Some religious institutions tell their congregants that money has to be paid to their head office and most of these head offices are based outside the country.
- Some religious leaders do not apply to the Reserve Bank before money is repatriated out of the country.

***Comment:** It may well be that the 'head offices' of religious institutions are outside the country, and that money is sent to them. There is nothing wrong or unlawful about that. If legal requirements are not being met regarding such transfers, the Reserve Bank has powers to act and should do so.*

15.8 Mushrooming of religious institutions

- Unlike in other African countries, it has become very easy to establish churches in South Africa.

***Comment:** It is not clear why the Commission regards this as a problem, or why it thinks that it should not be easy to establish a church in South Africa.*

15.9 Illegal and unethical advertising of religious and traditional healing services

- Newspaper adverts, posters, and leaflets are used to advertise and promise people healing, enrichment, jobs, luck, or to solve problems, for example, a woman who was struggling to have children had to part with more or less R250 000.00 with a promise of getting a child.

15.10 Property bought with the communities' money

- In some cases, the title deeds of these religious properties end up being inappropriately registered, for example, registered in the Spiritual leaders' name.
- This encourages the building of a family empire while using public money.

15.11 Operation of religious institutions as a business

- Lack of clear separation between religious activity and business activity.

***Comment:** The abuses mentioned in 15.9 - 15.11 can all be dealt with under existing legislation.*

15.12 Lack of religious peer-review mechanisms

- This has led to some people in the sector doing whatever they like with no accountability to anyone.
- No one can order people to undertake questionable religious practices like feeding them grass, snakes, rats, drinking petrol, locking them in a deep freezer, driving over people, etc.

Comment: *Questions of accountability within religious organizations should be left to the organization and its members. Various different models exist. If an organization wishes to subject itself to peer-review it is free to do so, but it would be a violation of the right to freedom of religion to require it to do so. Ordering people to eat snakes or drink petrol, and all similar abuses, constitutes assault and should be referred to the police and other competent authorities.*

11. In summary, regarding the chief findings of the report (Section 15) we submit that proper distinctions should be drawn between what is clearly illegal; what is merely questionable or undesirable; and what is normal and acceptable. The first must be dealt with by law, with recourse being had to existing legal remedies which, we suggest, are adequate to the task. The second should be dealt with through an educative – rather than legislative – approach. The last should be left alone.

Recommendations of the Report

12. There are a total of 14 recommendations set out in Section 16 of the report, but unfortunately not numbered. (We note that the recommendations listed on page 36 of the report are repeated word for word on page 37.)

Once again, for ease of reference we list the Commission's recommendations with our comments in *italics*.

- The investigative study highlighted the need to protect religious freedom without attempting to regulate it from the side of the State. However, as specific current practices in the religious sector infringe on constitutional rights of congregants and violate existing legislation, we recommend religious communities to regulate themselves more diligently to be in line with the Constitution and the law. Communities should exercise their religious freedom with due regard to their legal, ethical and community responsibilities.

Comment: *We agree that religious communities should exercise their freedoms with due regard to legal, ethical and community responsibilities. We also agree that religious freedom should be protected without regulation by the State. However, we believe that much of what the Commission proposes does in fact constitute regulation by the State.*

- The Constitution leaves scope for all kinds of beliefs and opinions. Even views which some may regard as extreme, are allowed and should not be regulated. However, when views lead to the abuse of human rights (for example, hate speech as indicated in article 16(2)), or to the violation of the law, there is cause for concern. For example, when religious freedom is taken to the level where children are prevented from attending school, it is a violation of the Constitution and existing law.

Comment: *We agree that, if religious views lead to an abuse of human rights or to violations of the law, there is cause for concern. We note that the law makes provision for home schooling, and that – subject to the law – it is the prerogative of parents to determine the best schooling options for their children.*

- Existing legislation affecting the various aspects of religious organisations (training/ education, employment, registration, immigration legislation, etc.) needs

to be enforced with due diligence because the hearings showed that many loopholes exist and create opportunities for abuse. For example, where a religious organization is registered as a PBO but in fact operates as a business making a profit over and above the threshold allowed for PBOs, SARS has the power and responsibility to deal with the matter. Or if they are registered as an NPO and fail to comply with the requirements of the NPO Act (to have a Constitution; keep proper accounting records and regularly submit financial statements; regularly submit narrative reports of the organization's activities and office-bearers, etc.). The Department of Social Development may cancel the church's registration as an NPO and, in certain circumstances, even refer the matter for criminal investigation. However, the hearings showed that this does not happen. Under the Immigration Act, foreign pastors who do not have the necessary visas to reside or work in the country may be arrested, deported, fined, imprisoned, etc. Numerous examples were also given where this does not happen.

Comment: *We agree that, where religious organizations are breaking the law or failing to comply with legal requirement such as those listed above, action should be taken against them by the proper authorities. Religious organizations are as subject to the laws of the land as any other juristic person.*

- Although religious organisations exist as voluntary organisations, the CRL Rights Commission should provide essential assistance in helping them to get their house in order and to ensure compliance with existing legislation and proposed new legislation. The current disregard of fiduciary responsibilities is a serious concern.

Comment: *We are confident that the assistance of the CRL Commission will be welcomed by those religious organizations which may have difficulties in complying with legislation, and which may request such assistance.*

- Religious organisations need to understand their responsibility in connecting Religious Freedom and recourse to ethical and community responsibility.

Comment: *This appears to be a repeat of the last sentence of the first recommendation.*

- Religious organisations which are guilty of fraud, or misappropriation of funds, should be prosecuted and held liable regarding the law. Of serious concern is that this does not happen.

Comment: *We agree with this recommendation.*

- There is a definite need to refer specific cases, where organisations do not comply with the law, to the relevant authorities (e.g. the National Prosecution Authority).

Comment: *We agree with this recommendation.*

- Schisms and disputes within religious organisations, which are often accompanied by or for financial reasons, could be avoided for the mutual benefit of the organisations and community.
Religious organisations must get their house in order, among other things by proper training and put proper internal rules in place.

Comment: *It may be that 'schisms' are sometimes related to financial considerations (although there is no evidence of this in the report). However, a true schism is a split caused by a doctrinal dispute or a difference in belief. This is not something in which the State needs to involve itself. Again, as long as they are not breaking the laws of the land, the internal rules of a religious organization are a matter for that organization, not for the State. (In this context we regard the CRL Commission as an organ of the State.)*

- There is an established and exponential increase in religious organisations and leaders of foreign origin. There is an appreciation for bona fide foreigners serving the South African nation, but the evidence has shown that in some cases they display a propensity for amassing money.
The Department of Home Affairs should play a crucial role in curbing this abuse when considering visa applications.

Comment: *The report contains no evidence, beyond a few anecdotes, that there has been 'an exponential increase' in foreign religious organizations and leaders in South Africa. Even if there has been, it is not explained why this should be cause for concern. Likewise, the report contains no evidence that they 'display a propensity for amassing money'. This allegation borders on the xenophobic.*

We agree that, if abuses occur in visa applications, the Department of Home Affairs should take action.

- Each institution must have a finance committee, chaired by a duly elected member of the institution. The Treasurer must also be duly elected, while the religious leader should become an ex-officio member, if necessary.

Comment: *It happens that the Catholic Church requires each of its parish congregations and dioceses to have a finance committee. However, we do not believe that it is for the State to dictate to religious organizations how they should manage their finances internally.*

- To solve the leadership succession challenges, each Religious institution should elect its leadership as per the provisions of its own constitution.

Comment: *It is not clear what is meant by 'leadership succession challenges', but we do not believe that such matters are any business of the State.*

- Religious Institutions should elect their own oversight structures to manage the financial and internal affairs of the institution.

Comment: *Some religious organizations may choose to elect their oversight structures; others have them appointed by higher structures. In other cases a religious organization may choose not to have an oversight structure. Once again, as long as no law is being broken, these are not matters for interference by the State.*

- An anomaly exists where religious leaders buy property with the communities' money and later own that property, proper investigations must be conducted first to establish this allegation. Where the fact is established, a report must be tabled to the congregation and the religious leader must take corrective measures.

Comment: *If it is alleged that such property purchases constitute a form of theft or fraud then they should indeed be investigated by the police. However, in some religious organizations property is registered in the name of the relevant leader – for example, the bishop for the time being of a diocese. He or she 'owns' the property on behalf of the organization during his or her term of office as bishop.*

- Clear separation between business activity and religious activity should always be maintained. While the Religious institutions are free to start businesses in their own business space, businesses should be registered in the normal course.

Comment: *We agree with this recommendation, subject to the understanding that many religious organisations operate income-generating non-profit businesses as a means of raising funds.*

13. Section 17 of the report is headed “Proposed Implementation of Recommendations” but it appears simply to contain a further recommendation. It reads as follows:

Religious organisations as they enjoy various benefits when it comes to taxation should be organized and registered in some ways, either as non-profit companies, NPOs or as PBOs. Failure of some institutions to comply with the requirements of their registration should see institutions deregistered and licenses revoked.

Comment: *As we understand it, any organization wishing to enjoy tax benefits must comply with the relevant laws. If they fail to do so they will be breaking the law and must take the consequences. It is not clear in this context what the Commission means by “should see institutions deregistered and licenses revoked.”*

Motivation for New Amendment

14. Section 18 of the report is, with respect, confusing. It states that “the Commission is of the view that there are several reasons for the Religious Sector to be self-regulated.”

These are:

- The Religious Sector needs the powers to self-regulate itself with the aim of bringing their various religions the respect they deserve.
- The traditional structured religions along with religious institutions that have structured systems in place should be able to articulate and thus be accredited to act as “umbrella organisations” or associations.
- While religious institutions will all be expected to fall under an umbrella organisation, freedom of association should be paramount in affiliation to umbrella organisations.

It is almost impossible to understand what the Commission is trying to say. Firstly, It appears to be arguing that the religious sector ‘needs powers to self-regulate’. We submit that the sector is already self-regulating, and has always been so. It does not require anyone’s agreement or any ‘powers’ in order to self-regulate.

Secondly, it is contradictory to say that religious organizations “will all be expected” to fall under an umbrella organization, but that “freedom of association should be paramount”. To the extent that an organization is expected (by law) to join an umbrella organization, it is deprived of its freedom of association. We are left wondering what would happen if a religious organization refused to “fall under” an umbrella organization.

We submit that this short section of the report reveals the true intention of the Commission. It is not about self-regulation (as noted, religious organizations are already self-regulating) but about the imposition of regulation from outside.

Proposed Structure and Processes

15. Section 19 of the report refers to “an amendment to the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act 19 of 2002 (CRL Act)”. However, no text of the proposed amendment(s) has been provided, only a rough idea of some of the main issues that the CRL Commission would like the amendment(s) to deal with.

16. The Commission’s preliminary report, released towards the end of 2016, did contain some details of a proposed Act (see section 18 of the preliminary report), but it is not clear if that is what the Commission now wishes to see incorporated into Act 19 of 2002. It is difficult, under the circumstances, to comment with the necessary specificity on what the Commission is proposing by way of legislative amendments. We trust that, if and when the Commission approaches Parliament with a formal draft Bill, we will be given a further opportunity to comment on it.

17. Nevertheless, there are a number of points in Section 19 of the Commission’s final report that are of concern to us, and on which we would like to comment.

Section 19.1: The Commission says that its proposed amendment to Act 19 of 2002 will “assist all religious institutions to create an environment where they, and not the State, can effectively regulate themselves, and hold people who bring religion into disrepute accountable...”

Comment: *Firstly, there is already an environment where religious institutions regulate themselves. There is no need for any legislative amendments to “create” such an environment. Secondly, it is not clear why religious institutions should “hold people who bring religion into disrepute accountable.” This is not something that religious institutions have asked for.*

Section 19.1: The Commission refers to the establishment of a “mechanism for registering religious leaders’ places of worship and umbrella organizations through the recommendations of umbrella bodies on behalf of their constituencies.”

Comment: *Nowhere is it explained why the Commission thinks it is necessary to register places of worship. Not even in the apartheid era was it required that places of worship should be registered. The second part of this sentence is impossible to understand: is there a difference between ‘umbrella organizations’ and ‘umbrella bodies’? If there is, what is the difference? If not, how can a body recommend to itself that it be registered?*

Section 19.1: The Commission believes that the “registration mechanism [for religious leaders] will also help to professionalise the religious sector...”

Comment: *There is no explanation as to why registration is necessary, what purpose it would serve, why it is necessary to ‘professionalise’ the religious sector, who would grant such registration, or the grounds on which it might be refused. We submit that compulsory registration of religious leaders would violate the right to freedom of religion.*

Section 19.1: “the CRL Rights Commission believes that the issuing of registration certificates would be done by itself... and not by the State or Government.”

Comment: *It seems that the CRL Commission is under the misapprehension that it is not a State body. This is not the case. Section 181(1) of the Constitution makes it quite clear that the Commission is a “State Institution Supporting Constitutional Democracy”. Therefore, if the CRL Commission takes it upon itself to issue registration certificates, it is as a State body that it does so. Once again, we submit that any law that gives a State body the right to grant or withhold registration certificates for ‘religious leaders’ or ‘places of worship’ would be unconstitutional.*

Section 19.1: “the registration of a religious institution to operate or not would be determined by the relevant Peer-Review Committee members...”

Comment: *Nowhere is it explained why a ‘Peer-Review Committee’ should have authority to decide whether or not a religious institution may operate. To subject a religious organization’s right to operate to the decision of such a committee would be a flagrant violation of the right to religious freedom and the right to freedom of association.*

Section 19.1: The CRL Commission proposes a structure “under which every religious organisation should fall and which they should adopt.”

Comment: *The essence of freedom of association is that the individual entity may choose whether to ‘fall under’ or ‘adopt’ a structure or not to do so. This provision robs religious organizations of that freedom.*

Section 19.2.3: Section 5(1) of the CRL Act states that “the Commission may do all that is necessary or expedient to achieve its objects”.

Comment: *This does not mean that whatever the Commission chooses to do is automatically legal and constitutional. We submit that many of the steps it proposes would be unconstitutional infringements of the right to freedom of religion; such infringements cannot be justified simply by relying on the enabling provision in s 5(1) of the Act.*

Section 19.3.1.1: The CRL Act provides that the Commission may maintain a database of cultural, religious and linguistic community organisations.

Comment: *The Commission is free to develop such a database. However, it is not empowered, either by its own Act or by the Constitution, to require that religious*

practitioners or institutions register with it in order to facilitate the development of a database.

Section 19.3.1.1: The Register of religious practitioners will be useful when there is a need to consult with the religious sector. It will also “ensure that religious leaders are compliant with the laws of the country and safeguard bringing certain religions into disrepute.”

Comment: *It is perfectly possible to consult with the religious sector without forcing every religious practitioner to register as such. It is not explained how mere registration would ensure compliance with the laws of the country or prevent religions being brought into disrepute. Even in professions where some form of registration is required, individuals still violate laws and bring their professions into disrepute.*

Section 19.3.1.2: Every religious leader should have a location (‘Worship Centre’) where he or she conducts religious ceremonies.

Comment: *It is not explained why this should be necessary. Many religious leaders and practitioners move from place to place. Some of the greatest religious leaders of history – including the founder of the world’s largest religion, Jesus Christ – had no ‘worship centre’. This proposed requirement would be a serious infringement of the right to freedom of religion.*

Section 19.3.1.2: ‘Worship centres’ shall include “... mountains, ... open fields, next to rivers and the ocean, tents...”

Comment: *With respect, this provision amounts to an absurdity. It also seriously infringes the right to freedom of religion. How would it be possible to register as a worship centre a tent, or a place ‘next to the ocean’? And what would happen if the place ‘next to the ocean’ or an ‘open field’ was no longer suitable for worship? Or if the worshippers simply decided to move their worship to another field or to another*

mountainside? According to the Commission, they would have to go through a registration process every time. This provision constitutes a massive restriction of the right to freedom of religion and the Commission has provided no explanation as to why it considers such a restriction justified.

Section 19.3.1.3: Each Worship Centre would freely choose which umbrella organisation they want to belong to. The ultimate aim is to ensure that every Worship Centre and religious practitioner is attached to a broader organization that will support and guide them.

Comment: *The Commission makes it sound as if ‘religious practitioners’ and ‘worship centres’ will have a free choice, but in fact they will be forced to join an umbrella organization. This is clear from the Commission’s ‘ultimate aim’ of making sure that every centre and practitioner ‘is attached to a broader organization’. What happens if a ‘religious practitioner’ does not want to be ‘attached’ to a broader organization? To force such an attachment would be an infringement of the rights to freedom of religion and freedom of association.*

Section 19.3.1.3: “However, traditional churches remain independent umbrella organizations of their own.”

Comment: *What is a traditional church? Who decides if a church – or religious organisation – is traditional or not? Why should only so-called traditional churches be entitled to form ‘independent umbrella bodies’?*

Section 19.3.1.4: The Peer-Review Committee

Comment: *Section 31(1) of the Constitution gives people the right to practise their religion and to join religious associations, if they wish to do so. The Commission completely misconstrues this right to mean that people can be forced to join – and*

subject themselves to – peer-review committees. This is the antithesis of freedom of religion.

Section 19.3.1.4: “The Peer-Review Committees will each cover a particular religion, for example, one for Christians, one for African Religion, one for Muslims, Jews, Hindus, Rastafaris.”

Comment: *The Christian religion consists of at least three major streams (Catholic, Orthodox and Protestant) with many other smaller streams. Likewise, Islam has two major streams (Shia and Sunni) and a number of smaller streams. Judaism can be Orthodox, Conservative or Reform. How does the Commission envisage that one committee will be able to ‘cover’ such widely diverse (and, sadly, sometimes deeply divided) streams within each religion?*

Section 19.3.1.4: “Each Peer-Review Committee will be the final mediator of disputes within their own religion.”

Comment: *One of the basic pillars of freedom of religion is that one religion does not interfere in the affairs (decisions, teachings, practices) of another. Likewise, one denomination within a given religion does not interfere in the affairs of another. Catholics do not decide how Anglicans should deal with women priests; Methodists do not decide how Catholics should deal with divorce. Each respects the doctrinal and ecclesiological competence of the others, and none of them tries to impose its views on the others. The Peer-Review Committee would effectively do just that – impose a ‘final’ decision on a denomination that might run counter to that denomination’s beliefs. Once again, this would be the antithesis of freedom of religion.*

Section 19.4: “The Commission... is allowing the democratic participation of the religious sector in all matters affecting it.”

Comment: *With respect, this statement is extremely patronising. It is not the function of the Commission to ‘allow’ the religious sector to participate in matters that affect it. The religious sector is not in any way dependent on or beholden to the Commission. The religious sector already participates actively in matters that affect it. If the assistance of the Commission is required, it can be requested.*

18. As we have noted (paragraph 16 above) in the absence of a clear legislative proposal, such as a draft amendment Bill, it is difficult to comment with certainty on the Commission’s structural and procedural ideas. However, if we rely on the draft legislation set out in the Commission’s preliminary report, 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. On the contrary, 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.

Conclusion

19. 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 the kind of invasive and unconstitutional regulation of religious organisations proposed in this 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 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 Committee well in its further deliberations, and we would appreciate the opportunity to address the Committee orally on the matters raised in our submission.

For further information please contact:

Adv Mike Pothier
Research Co-ordinator
Catholic Parliamentary Liaison Office
mike@cpllo.org.za
083 309 3512