



International Institute for Religious Freedom
Internationales Institut für Religionsfreiheit
Institut international pour la liberté religieuse

of the World Evangelical Alliance

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9 October 2017

TO: The COGTA Portfolio Committee

For attention:

Shereen Cassiem (Secretariat) scassiem@parliament.gov.za

Mzameni Mdakane (Chairperson) mmdakane@parliament.gov.za

**RE: A Request for oral presentation regarding the CRL Rights
Commission's Final Report on the "commercialisation" of religion and
abuse of people's belief systems**

FROM:

Organisation: International Institute for Religious Freedom
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DATE: 09 / 10 / 2017

The *International Institute for Religious Freedom* (IIRF) is a network of professors, researchers, academics, specialists and university institutions from all continents which work on reliable data on the violation of religious freedom worldwide.

The IIRF would hereby like to request the opportunity for oral representations expressing some concerns regarding the CRL Rights Commission's Final Report on the "commercialisation" of religion and abuse of people's belief systems. The oral representation of IIRF aims to present an international perspective regarding the envisioned measures of the CRL and whether these measures are in line with international laws and policies.

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At the same time we recognise that there are isolate incidents of excess and abuse taking place in the name of “religion”, and share the concerns of the CRL Rights Commission (“CRL”) in this regard. However, concern still remains regarding the Report (as discussed within the written presentations listed below).

Your due consideration of our written and oral presentations will be greatly appreciated.

Yours sincerely,



Prof. Dr. Christof Sauer

Dr. Georgia du Plessis

On behalf of

International Institute for Religious Freedom



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17 October 2017

TO: The COGTA Portfolio Committee

For attention:

Shereen Cassiem (Secretariat) scassiem@parliament.gov.za

Mzameni Mdakane (Chairperson) mmdakane@parliament.gov.za

**RE: Freedom of religion or belief in the international human rights framework:
Assessing the CRL Rights Commission's Final Report on the
“commercialisation” of religion and abuse of people's belief systems**

FROM:

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DATE: 09 / 10 / 2017 revised 17/11/2017

INTRODUCTION

The *International Institute for Religious Freedom* (IIRF) is a network of professors, researchers, academics, specialists and university institutions from all continents which work on reliable data on the violation of religious freedom worldwide. The IIRF is an international organisation situated in Bonn, Brussels, Geneva, Cape Town, Colombo and Brasilia.

1. We recognise that there are isolated incidents of abuse taking place in the name of “religion”, and hence share these concerns with the CRL Rights Commission (CRL).
2. At the same time we share the following concerns with regards to the CRL Report as expressed

by other organisations and individuals – namely:

- (a) That the proposed licensing of all religious practitioners and places of worship in South Africa would bring about a reversal in the co-operative relationship between religion and State.
- (b) That the proposed licensing will hence violate the right to religious freedom and freedom of association as maintained in sections 15 and 18 of the Constitution of the Republic of South Africa, 1996 (hereinafter “the Constitution), respectively.
- (c) That providing “final decision powers” (p47 of Report) to Umbrella Organisations will result in the infringement of the right to religious freedom (s15) as well as doctrinal entanglement with religion by the State.
- (d) That Chapter 9 of the Constitution of the Republic of South Africa, 1996, does not grant the CRL the executive powers aimed for in the amendment of the CRL Act.
- (e) That the “Peer Review Committee” will be under the control of the CRL and hence provide the State with unconstitutional control of religion and religious doctrine and regulation.

3. In addition, the IIRF would like to raise the following concerns regarding the CRL Report from an international human rights and broader framework.

4. Article 18 of the *Universal Declaration of Human Rights* (December 10, 1948) clearly provides that “everyone has the right to freedom of thought, conscience and religion”. This right includes the freedom to change a religion and to manifest a religion or belief in teaching, practice, worship and observance. This can be done as individuals and in community. This right is repeated in article 18 of the *International Covenant on Civil and Political Rights* (ICCPR). Furthermore, article 18, subsection 3 states that this freedom may only be limited if prescribed by law and which is necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

5. The question that should be asked is whether the isolated instances of the “commercialisation” of religion as mentioned by the CRL warrants the creation of umbrella organisations that will regulate religions and in effect limit the right to religious freedom and the right for communities to practice their religion freely? Did the isolated instances of “commercialisation” result in a threat to public safety, order, health, or morals or the fundamental rights and freedoms of others?

6. It is first argued that the envisioned regulation will definitely place a restriction or limitation on the free worship and religious practices of communities as provided for in the mentioned international instruments:

- (a) Individual religious leaders will first have to be given permission to operate by the “Peer Review Council”. This immediately curtails their right and the right of communities to practice their religion freely.
- (b) Furthermore, criteria and procedures will be established in order to determine whether a religion qualifies as a “recognised religion”. By setting up umbrella organisations for each religion, it is implied that every religion will have to be registered and adhere to some formal criteria. This is a clear entanglement with the doctrines of different religions and usurpation of power by the state where it claims for itself the power to determine whether a system of values can be recognised as a “religion” and hence protected under section 15 of the Constitution of the Republic of South Africa, 1996. No one has to justify the existence or exercise of his or her religious beliefs. The Constitution provides for a broad protection of all religions and beliefs and does not envision to set about determining which of these will be sufficiently recognised for protection and which one’s not. This will immediately exclude minority religions who are not sufficiently organised under umbrella organisations. At the same time, non-religious belief systems will not be subjected to the same strict organisation and will be less restricted than religious belief systems (which is contrary to the equality and non-discrimination clause in section 9 of the Constitution). By stating that only religions with sufficient followers, a religious text and other criteria can be registered, minority and other beliefs are excluded from the full protection of section 15 of the Constitution (18.1 of the CRL Rights Commission’s report of the hearings on commercialisation of Religion). Given the broad and inclusive framing of section 15, this will be completely out of line with section 15 and therefore a severe and unjustified limitation of section 15.

7. The question remains whether this restriction or limitation of an international human right is warranted and whether the isolated instances of the abuse of religion amounts to a “threat to public safety, order, health, or morals or the fundamental rights and freedoms of others”? The need to respect the autonomy of religious communities precludes the State from merely prohibiting internal religious practices because they do not coincide with current perceptions of human rights – this will be doctrinal entanglement (<https://www.humanrights.gov.au/permmissible-limitations-freedom-manifest-religion-or-belief>). Many times also, governments refer to the broad and unspecified

limitations of “security”, “order” or “morality” in order to discriminate against minorities and tighten control over independent religious communities (par. 16. A/71/269). The burden of justifying any limitation on the right to religious freedom falls on those who deem the limitation necessary (par. 17. A/71/269) and the CRL has not proven, according to the IIRF, that such limitation is justified. Furthermore, in paragraph 8 of general comment No. 22, the Human Rights Committee insists “that paragraph 3 of article 18 is to be strictly interpreted.” For limitations to be justifiable, they must meet all of the criteria set out in article 18 (3) of the International Covenant on Civil and Political Rights and other relevant norms of international human rights law. The limitations must be necessary to pursue a legitimate aim: the protection of “public safety, order, health, or morals or the fundamental rights and freedoms of others”. Therefore, there must be an element of proportionality. Will the limitation achieve public safety, order and health and are the means chosen to achieve not too restrictive? The occurrence of isolated events of human rights abuse by certain religious organisations are hardly a threat to public order and safety. There are also already less restrictive means (to religious freedom in general) by which these instances can be dealt with. The South African legal system already has sufficient criminal procedures and laws to deal with human rights violations, criminal and fraudulent activities – indiscriminate of the religious position of that person.

8. Former UN Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, stated that the scope of the right to freedom of religion or belief is often underestimated, with negative implications for its conceptualization and implementation. Some governments focus intensely on the individual aspects of religious freedom and not on the community aspects. Others focus intensely on community aspects but not on individual freedoms. Furthermore, some governments privilege one religion or belief above others (par. 10, A/71/269). It is argued that the type of regulation proposed by the CRL Report will, for reasons stated above, substantially favour some religious or non-religious beliefs. At the same time, stringent application of regulation will affect the individual’s freedom to worship as he or she wants for the sake of community regulation of religion. Yet, the Special Rapporteur clearly reminded that the focus of the right to religious freedom should be the believer (the human being) and not the beliefs. The main reason for this is that beliefs and religions are often irreconcilably so different in their messages and normative requirements and interpretations of what matters religiously differ widely between religious and belief communities. Hence, there is no common denominator upon which to “regulate” belief structures under umbrella organisations. “...the only common denominator identifiable within such vast diversity seems to be the human being, who is the one professing and practising his or her

religion or belief, as an individual and/or in community with others. Accordingly, human rights can only do justice to the existing and emerging diversity by empowering human beings, who indeed are the right-holders of freedom of religion or belief.” (Par. 11, A/71/269). The organisation of religions or beliefs into groups or communities of groups seek to find a common denominator between religious organisations that cannot be found. It seeks to place religious organisations within boundaries that do not exist and tries to find consensus that does not exist nor is necessarily profitable. The right to religious freedom “cannot be confined to particular lists of religious or belief-related “options” predefined by States, within which people are supposed to remain” (par. 12, A/71/269).

9. The indirect result of “religious accreditation” by way of setting up umbrella organisations per religion in itself deserves special mention. The organisation of religion within umbrella organisations and peer review committees renders religion and belief static and artificial. In paragraph 2 of its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, the Human Rights Committee confirmed an open and inclusive understanding by clarifying that article 18 of the International Covenant on Civil and Political Rights protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief, and that the terms “belief” and “religion” are to be broadly construed. The Human Rights Committee also stressed that article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The regulation of religion, the packaging of religious beliefs and the artificial structuring of religion as proposed by the CRL Report (static umbrella organisations and peer review committees) will only recognise religions and beliefs with certain institutional characteristics and exclude the fluid and flexible nature of religion and belief as such.

10. Special Rapporteur Heiner Bielefeldt also stated that “Legislation and jurisdiction in many States do not adequately reflect the full scope of this human right by often restricting its application to predefined types of religions while excluding non-traditional beliefs and practices. Limiting the enjoyment of freedom of religion or belief to members of “recognized” religions is also in violation of the spirit and letter of universal human rights” (A/71/269). The practice of religious freedom emanates from the fact that human beings carry with them human dignity which is closely attached and dependent on their beliefs and religions, not because it is recognised or not by the state. As mentioned in the points above, the IIRF fears that the type of regulations proposed in the CRL Report would restrict freedom of religion or belief.

While registration thus can have beneficial effects for those communities wishing to obtain such a status, it is highly problematic if the Government renders registration compulsory by turning it into a sine qua non of any communitarian enjoyment of freedom of religion or belief (see A/HRC/28/66/Add.1). It cannot be reiterated enough that freedom of religion or belief, qua its nature as a universal human right, inheres in all human beings prior to any process of administrative approval. It thus must be possible for individuals and groups of individuals to also practise their religion or belief independently from any official status, if they prefer not to obtain any such status or if their application for registration has been unsuccessful. (par. 49. A/71/269).

11. Furthermore, how will beliefs of a non-religious nature be regulated? Beliefs (non-religious) and religious beliefs are equally protected under section 15 of the Constitution. If religious beliefs are to be subjected to more stringent regulation than non-religious ones, this is a clear violation of the right to equality in section 9 of the Constitution and the equal protection of the right to freedom of religion and beliefs (section 15). At the same time, attempting to define what amounts to a “religion” is a task that various disciplines have not been able to master. It is doubtful that the CRL will be able to have clear cut answers as to when a belief structure will amount to a religion or not for purposes of its envisioned “regulation”.

12. Summary

- (1) Freedom of thought, conscience, religion or belief is a fundamental and protected human right. Its public manifestation may only be limited under very narrowly defined circumstances and the state bears the burden of proof.
- (2) The instances of so called “commercialisation” of religion are isolated. They do not warrant the creation of umbrella organisations to regulate religion.
- (3) The regulations proposed by the CRL report would definitively place a a severe and unjustified restriction on free worship and religious practice.
- (4) In addition they would negatively discriminate religious groups compared to non-religious and other societal groups. They would also discriminate minority and less organized religious groups compared to majority and better organized religious groups. They would in effect substantially favour some religious or non-religious beliefs.
- (5) The CRL has not proven that the isolated cases of “commercialization” of religion constitute a general threat to public safety, order, health, or morals or the fundamental rights and freedoms of others. Therefore the proposed limitations of manifestation of religion are

unjustified. In addition the measures proposed are not proportionate, they are too restrictive, and there are less restrictive means available to engage the problem.

- (6) Furthermore the confining by the state of the exercise of religion or belief to a predetermined list of options acceptable to the state is an illegitimate restriction of freedom of religion or belief in itself.
- (7) Even if all that were not the case, the proposed measures would still not be practical and feasible as they are based on the flawed assumption that there would be a common denominator between religious organisations that would allow grouping them in umbrella organisations. This ignores the fluid and flexible nature of religion and belief as such.
- (8) In summary the proposed regulations severely restrict the enjoyment of freedom of thought, conscience, religion or belief and violate fundamental human rights. They are unjustified, unwarranted, illegitimate, discriminatory in many respects, disproportionate, unnecessary, based on flawed assumptions, unpractical and unfeasible.

13. Recommendations

- (1) The simple recommendation is that the COGTA Committee reject the recommendations of CRL Commission outright on the grounds given above.
- (2) The Committee may want to engage within its authority with other appropriate entities to ensure that regarding the original problems named existing laws are applied and enforced, without infringing on freedom of religion or belief.
- (3) Should the COGTA however choose to follow any of the recommendations of the CRL Commission, it must ensure that it meets all the standard of the international human rights framework, particularly with regards to freedom of religion or belief, including the “Recommendations on How not to Regulate Registration” as well as the “Recommendations on How to Devise Any Procedures for the Acquisition of Legal Status”.

References:

- Bielefeld, Heiner: Freedom of Religion or Belief: Thematic Reports of the UN Special Rapporteur 2010–2016. Religious Freedom Series Vol 3. Bonn/ Cape Town, 2017.
- Freedom of Religion or Belief: An International Law Commentary. Heiner Bielefeldt, Nazila Ghanea, Michael Wiener. Oxford University Press, 2016.
- Pew Research Center, April 11, 2017, “Global Restrictions on Religion Rise Modestly in 2015, Reversing Downward Trend”. <http://www.pewforum.org/2017/04/11/global-restrictions-on-religion-rise-modestly-in-2015-reversing-downward-trend/>
- US Department of State, Bureau of Democracy, Human Rights and Labor: International Religious Freedom Report for 2016. South Africa. <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2016&dliid=268696>

APPENDICES

1. Excerpt from

Freedom of Religion or Belief: An International Law Commentary. Heiner Bielefeldt, Nazila Ghanea, Michael Wiener. Oxford University Press, 2016, (Chapter 1.3.8 Registration)

I. International Standards

Commission of Human Rights resolution 2005/40 (paragraphs 4(c) and 4 (e) and Human Rights Council resolution 6/37 (paragraphs 12(e) and 12(h).

Urges States ,to review, whenever relevant, existing registration practices in order to ensure the right of all persons to manifest their religion or belief, alone or in community with others and in public or in private’.

Urges States ‘to ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom for all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected’.

IV 1. Pervasive Nature of Registration Issues

Special Rapporteur Bielefeldt flagged that, as a result of undue obstacles to have a religious community registered, their members typically encounter various practical problems when trying to organize the community life in a stable environment and with a long-term perspective. These problems may adversely affect virtually the whole catalogue of manifestations of religion or belief protected under the non-exhaustive list in article 6 of the 1981 Declaration:

SUMMARY:

The list deals with the various freedoms a religious community ought to have in order to function: the freedom to establish and maintain places of worship, charitable or humanitarian institutions, the freedom to write, issue and disseminate publications, the freedom to teach, solicit and receive financial or other contributions, the freedom to train leaders, celebrate religious holidays and to set up radio or TV stations, etc.

2. Recommendations on How not to Regulate Registration

A list of ‘do’s and don’ts’ for the formulation of registration laws and practices can be derived from the thematic and mission reports as well as communications of Special Rapporteurs Amor, Jahangir, Bielefeldt, Izsak, and Kiai (as mandate-holders on freedom of religion or belief, minority issues, and freedom of peaceful assembly and association, respectively), who also referred to pertinent guidelines and jurisprudence at the regional level. Thus the following set of derived recommendations explains further what legislators and administrations should refrain from doing in order to respect freedom of religion or belief and freedom of association:

- Registration should not be made compulsory, i.e. having the status as a registered religious entity should not be a precondition for practising one’s religion, but only for the acquisition of a legal personality and related benefits;
- Registration should not depend on criteria such as ownership of a building used for worship or reviews of the substantive content of the belief, the structure of the community, the number, citizenship, methods of appointment, and education of clergy, etc.;
- Registration should neither depend on extensive formal requirements in terms of the number and citizenship of members at the national or local levels nor on the time a particular religious

group has existed in the country concerned;

- There should be no threshold of a maximum percentage of minority religious organizations in relation to those belonging to the predominant religion;
- Registration should not be denied based only on the argument that the applying religious community belongs to a confession that had been made illegal in any other country;
- No religious community should be empowered – either de jure or de facto – to decide upon, influence, or veto the registration of another religious community;
- Registration should not be denied merely because the applying religious community shares (part of) the name of an already registered religious organization or is a denomination of a larger religion;
- Registration should neither favour a particular leader or specific organs of a divided religious community nor should it seek to compel the community or part of it to place itself, against its will, under a single leadership;
- Registration should not be used to prevent missionary activities or voluntary financial and other contributions from individuals and institutions from abroad;
- Registration should not be denied to religious communities on the grounds that some of the founding members of the community in question are foreigners or non-citizens, or that its headquarters are located abroad;
- The geographic scope of registration should not be confined to certain territorial boundaries within the country only;
- Registration should neither be granted conditionally for a ‘probationary period’ nor linked to the religious community’s future non-cooperation with international organizations;
- Applications for registration should not be required to be signed by all members of the religious organization, e.g. together with their full names, dates of birth or places of residence;
- Registration provisions should neither be vague nor give excessive discretion to the administration in granting or rejecting registrations; and
- Members of religious communities who cannot or do not wish to register should still be able to individually and collectively manifest their religion or belief.

3. Recommendations on How to Devise Any Procedures for the Acquisition of Legal Status

With regards to registration procedures for the acquisition of a legal personality and related benefits, the following set of recommendations can be derived from the Special Rapporteurs’ reports:

- Registration procedures should be specified by law, objective, reasonable and non-discriminatory, since any limitation to manifest one’s religion or belief must be prescribed by law and necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others;
- Registration procedures must be accessible – on the basis of fairness, inclusiveness, and non-discrimination – to all those who wish to achieve legal personality status for their communities;
- States must ensure that gaining access to legal personality is not more difficult for religious or belief communities than it is for other types of groups or communities;
- While the applicants may be required to substantiate their request with relevant documents, all registration procedures should be facilitative, quick, easy to follow, and not unduly burdensome;
- If certain registration-related official documents are required, these documents should be

promptly issued by the authorities;

- Registration procedures should be transparent, including with regard to the time frame of the whole process;
- Registration procedures should be non-onerous or even free of charge for the religious communities involved and the State should effectively prevent and address any practices of corruption or demands of bribes by local officials;
- Re-registration requirements that operate retroactively or fail to protect vested interests should be avoided and at least an adequate transition period should be envisaged concerning the application of any new registration rules;
- Registration decisions must be based on clearly defined formal elements of law and must be in full conformity with international law;
- The suspension of a registration and the involuntary dissolution of a religious community should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law, and if the decision is strictly proportional to the legitimate aim pursued and used only when less restrictive measures would be insufficient;
- In the case of refusal or suspension of registration, the relevant institutions have an obligation to formally transmit to the religious community concerned the exact and well-founded reasons; and
- Government should also ensure that religious communities whose registration was refused, arbitrarily delayed, or suspended have unimpeded access to remedies, including informal conflict management and formal legal measures before independent courts for a judicial review of the refusal, arbitrary delay, or suspension.

