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Submission by the International Institute for Religious Freedom to

THE COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS (COGTA) PORTFOLIO COMMITTEE INDDABA AND COLLOQUIM WITH THE RELIGIOUS SECTOR ON HARMFUL PRACTICES

9 March 2019

1. Introduction

1.1. Understanding the COGTA Committee's intentions

According to a press release on 19 February 2020 by the COGTA Committee, the purpose of engaging in an Indaba and Colloquium with "the religious sector", is clearly "to consider and review the proposals contained in the [CRL] report" which CRL urged COGTA to reconsider in December 2019. The aim is "seeking the appropriate ways to eliminate abuses in the practice of religion in South Africa" or in other words "the regulation of harmful religious practices." In doing so, the stated caution of the chairperson is to "ensure that we do not sacrifice the right to religious freedom for the sake of a few isolated religious practitioners". As COGTA communicates, it has already heard alternative proposals by FORSA and their concerns regarding the CRL proposals and now wants to hear the stakeholders in religious communities on this.

1.2. The International Institute for Religious Freedom and its engagement with the issues

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.

We trust that by its scholarly and international nature, while deeply rooted in South Africa, the IIRF is in a position to make a contribution that is complementary to those of religious leaders in South Africa.

We aim to present an international perspective regarding the questions tabled, the proposed solutions pending and possible alternatives and whether these measures are in line with international law, policies and best practice.

The IIRF has frequently engaged with the issues raised over the past years, including a written submission (see attachment) and a verbal presentation at the hearings of the COGTA Portfolio Committee on 17/18 October 2017 regarding the CRL Rights Commission Report: Commercialisation of Religion & Abuse of People's Belief Systems. We enjoyed engaging with the Committee in the ensuing discussions. We have also participated in later meetings of religious communities on the matter, as well as the CRL NCC in 2019. In addition, we have spoken publicly at scholarly conferences and public events and written several scholarly articles on the matters at hand, two of which are attached to this submission.

In responding to the COGTA Committee's invitation, first we identify the questions posed, then provide some initial clarifications on problems, terminology, narratives and presuppositions, before seeking to answer the questions themselves.

Where due to the shortness of time available the answers are only given in bullet points, we refer to our prior submission to COGTA in 2017 and to the articles submitted.

2. Questions

COGTA has supplied religious communities with a number of questions:

2.1. Invitations

The invitations issued to religious role players have a very broad topic: "Social ills and moral decay in communities". The objective is engagement with what is called "the religious sector". The threefold development consists of one topic statement and two questions elaborating on that:

1. The role of churches adressing social ills and moral decay in our society;
2. What is the religious sector doing to adress these social ills?
3. Why is the church no longer seemingly at the forefront of upholding moral integrity in society?

Note, that the last question entails a presupposition and foregone conclusion about the situation of "the church", which in itself is questionable.

Also, the entities addressed are each time named in a different way:

- "Churches" in plural (in statement #1), which entails distinct and separate Christian entities.
- "The church" as a collective Christian entity (in question 3).
- "The religious sector" which should be understood as all religious bodies and entities, far beyond Christian entities.

2.2. "Draft Two Concept Note"

In *Draft Two Concept Note* (which this respondent and possibly others did not receive from COGTA directly) "the main objective of these meetings" is elaborated in the following questions:

1. What ideal role should State organs, including Parliament and the CRL Rights Commission, play towards the minimisation of harmful religious practices?
2. What can religious bodies do to guide individuals and organisations perpetrating harmful practices in the name of religion?
3. What is the international best practice with regard to the minimisation of harmful religious practices?

These questions appear much more focused, and the role players are clearly named and distinguished: "State organs" on the one hand and "religious bodies" on the other hand, both within South Africa; with the third questions seeking helpful examples on both roles from outside South Africa.

2.3. "Additional Points for presentation and submission"

The *Additional points for presentation and submission* supplied by COGTA, following the personalized invitation, request responses from what is called "the Christian Sector", and focus again on "harmful religious practices" in line with the *Concept Note*. The questions are fivefold:

1. What is in the view of your organisation considered to be harmful religious practices?
2. What can your religious body do to sanction individuals and organisations perpetrating harmful practices in the name of religion?
3. Is a voluntary non-binding Code of Conduct for religious sector feasible and practical? What are the strengths and pitfalls?
4. Should the conduct of the religious practitioners be regulated? If so would such regulation not amount to violation of the rights of the practitioners to exercise their freedom of religion without inhibitions?

5. What is the international religious best practices with regard to effectively addressing harmful religious practices?

2.4. Analysis

Looking at those three bundles of a total of 11 points or questions raised, IIRF considers that those contained in the *Concept Note* and the *Additional Points* are more suitable to help COGTA to make a determination whether it needs to take any action regarding the perceived ills in religious practices and if yes, what these should be. In contrast, the framing of the invitation to deal with "social ills and moral decay in communities" is considered overly broad, and its questions are therefore only considered in as far as they contribute to assessing the matter at hand.

The following questions fall into the ambit of competence of the IIRF.

1. *What should be considered as **harmful religious practices**?*
2. What can **religious bodies** do to guide individuals and organisations perpetrating harmful practices in the name of religion? (What can religious bodies do to **sanction** individuals and organisations perpetrating harmful practices in the name of religion?)
3. *Is a voluntary non-binding **Code of Conduct** for the conduct of religious entities and practitioners feasible and practical? What are the strengths and pitfalls?*
4. What ideal **role** should **State organs**, including Parliament and the CRL Rights Commission, play towards the minimisation of harmful religious practices?
5. *Should the conduct of the **religious practitioners** be regulated? If so, would such **regulation** not amount to violation of the rights of the practitioners to exercise their freedom of religion without inhibitions?*
6. What is the **international best practice** with regard to the minimisation of harmful religious practices?

Before we do this, it is necessary to clarify the problems which are raised, the terminology used, and the narratives created including the presuppositions contained therein.

3. Clarifications

3.1. Problems identified

The IIRF recommends to clearly distinguish different types of problems and to avoid throwing them all into the same pot and brushing them with the same brush.
The problems identified in the CRL report have been brilliantly classified into four categories by Advocate Daniela Ellerbeck of FORSA, according to their different nature in terms of law, which also imply very different responses.

1. Criminal or illegal acts
2. Fantastical claims or promises
3. Strange things that are neither harmful nor unlawful
4. Lack of good governance

3.1.1. Criminal or illegal acts that are already criminal or otherwise illegal in terms of existing law[1]

These include the vast majority of abuses or malpractices identified by the CRL Commission and comprise assault, intimidation, administering poison, eating live animals, collectively disturbing the public's peace and security, telling people to stop taking medicine with fatal results, keeping children from school, human trafficking, rape, sexual assault, abuse, commercial crimes such as money laundering, failure to pay income tax or companies' tax if not registered as Public Benefit Organization, contraventions of the Immigration Act. For all of these matters, well-developed general laws exist, which also cover crimes or otherwise illegal acts committed in the name of religion.

3.1.2. Fantastical claims or promises amounting to advertisement[2]

These include making false promises, often in exchange for large sums of money, such as regarding the effect of prayers or blessings, selling tickets to Heaven, promising marriage, wealth or healing. While selling "faith products" is not necessarily illegal or unlawful, false, misleading or deceptive representations in advertisement and fraud are. There are well developed and suitable remedies in the Code of Good Advertising Practice, the Consumer Protection Act, 2008, and the common law, which must be applied to religious practitioners too.

3.1.3. Strange things that are neither harmful nor unlawful[3]

These include any beliefs that are "bizarre, illogical or irrational", such as eating grass or flowers. But they are protected by Freedom of Religion or Belief as long as these beliefs and practices are not unlawful, potentially dangerous and/or harmful. However, when such acts amount to extremely indecent behaviour that spark the public's moral outrage, they might be dealt with under the crime of public indecency.

3.1.4. Lack of good governance[4]

This includes lack of proper corporate governance and/or financial management. However, it does not include operation without a registration, as all registration types offered are voluntary. But legitimate problems include a lack of an internal code of conduct, lack of oversight structures, lack of splitting of fiduciary duties, lack of bank accounts, or properties being registered in the name of the leader of the religious organization. Many of these instances are the result of ignorance and not ill will and they are best solved through education and empowerment.

3.2. Terminology

It is observed that there is a lot of confusion created by the use of inadequate or misleading terminology. There is competition for the sovereignty of interpretation and for naming things. In addition, the same terminology is used for different things by different actors, such as the term "self-regulation". Furthermore, there is often a tendency to use religiously non-inclusive language, and using terminology for the dominant religious group, when actually generally speaking of all religious groups.
For the sake of unambiguous communication, we desire to clarify how we use certain terms, and what our assessment is of frequently used terminology in this discourse. We first assess

[1] https://forsa.org.za/when-a-pastor-commits-criminal-or-illegal-acts-in-the-name-of-religion/
[2] https://forsa.org.za/when-a-pastor-makes-fantastical-and-false-claims-or-promises/
[3] https://forsa.org.za/when-a-pastor-does-strange-but-not-harmful-or-unlawful-things/
[4] https://forsa.org.za/when-a-church-lacks-good-governance/

terminology for the problems at hand, then terminology for the role players involved, and finally terminology for the solutions proposed.
In general, the IIRF recommends the use of clearly defined, inclusive, unemotional and factual terminology when discussing the said problems and to avoid any dramatization, or unsuitable or imposed terminology.

3.2.1. Terminology for problems

- "Harmful religious practices" – The term might be suitable for some practices that are at the same time both harmful and deeply motivated by religion. However, in engaging with the question posed, we will note that not all the issues raised by the CRL Rights Commission are indeed "harmful" or "religious" practices, and furthermore that their definition and declaration is contentious and fraught with pitfalls.
- "Abuse of religion" – The term might be suitable for some of the practices described by CRL Rights Commission, but it only covers a fraction thereof and its use is open to generalizations falsely including bona fide religious entities and practitioners into the accusation of abuse.
- "Commercialization of religion" seems to be an overly broad generalization, over against the more prudent speaking of "some religious practitioners abusing religion for personal financial gain".

3.2.2. Terminology for role players

The terminology used should be appropriate, inclusive, and not use a part to signify the whole. The language should also respect difference and not unduly generalize.

- So rather than talking about "the Church", speak about "churches", when referring to Christian entities.
- But do not use "church" or "churches", when actually wanting to address all "religious organizations or communities".
- In the same vein, say "Religious practitioner" instead of "pastor".
- We discourage the use of the term "the religious sector" as religions and world views permeate South African society, and because religion is not a sector that the state could regulate such as industry, trade, or the medical sector.

3.2.3. Terminology for solutions

The same recommendations for clarity and inclusiveness as above apply.

- "Self-regulation" – This term is understood very differently by many religious communities as opposed to the understanding of the CRL Rights Commission. CRL speaks of „self-regulation" for packaging a proposed elaborate system of state-backed regulation of religious communities and practitioners, whereas many religious communities insist on a true „self-regulation" without imposed control structures and true self determination.
- When proposing "Minister's fraternals" as solutions, remember that this term only covers Christian religious practitioners. In order to cover all religious communities, one might better talk of "local religious practitioners' networks".

3.3. Narratives and presuppositions

The IIRF recommends not to simply buy into the narratives delivered and their underlying presuppositions, e.g. in the CRL and its reports, by the media, or other interested role

players, but to critically assess whether they are a true and differentiated depiction of the facts (as laid out above).
Also avoid narratives that are prone to trigger fears among religious communities, and rather carefully emphasise what is suitable for rebuilding trust of religious communities into certain organs of the state which has been badly damaged.
As such narratives abound, we explicitly name a few that we recommend discarding.

- Do not buy into narratives that reduce the problems to one or two issues and the solution to one grand regulatory scheme that allegedly would solve all the problems.
- Do not believe that new laws or regulations would solve problems for which applicable existing legislation has not been enforced.
- Do not say "The church has failed", when actually the state and its organs have failed to enforce existing laws.
- Do not pretend that "The state must protect the church from falling into disrepute", as this is not the task of the State.
- Do not say "the poor and vulnerable have to be protected", when referring to entities to which also the rich and powerful (including Members of Parliament) flock to get richer and more powerful.
- Do not confuse rights with privileges. Do not confuse fundamental and unalienable rights such as Freedom of Religion or Belief that the state needs to respect, protect and further, with privileges that the state may grant or withhold (such as driver's licences).
- Do not compare the work of religious practitioners which are in exercise of a fundamental right and are mostly based on a calling with professions that can be regulated by the state and are exclusively acquired by formal training.
- Do not play out human dignity against freedom of religion or belief.
- Do not hold religious communities in general or "the Church" hostage for the isolated cases of abuse by individuals outside their control.
- Do not hold one religious community responsible for disciplining others outside their fold.
- Do not buy into the narrative that "the church is no longer at the forefront of upholding moral integrity in society", but remember who has been at the forefront of denouncing corruption and self-enrichment in politics, and who has been working relentlessly behind the scenes to help terminate a deeply corrupted presidency.

4. On harmful religious practices

The question posed is: "What should be considered as harmful religious practices?"

Among some ancient but brutal religious practices,[5] we will probably agree that the following should not only be considered as harmful but also are or should be generally banned such as human sacrifice and female genital mutilation. They cause ultimate or long lasting harm, and do so to others. However, regarding religious practices that are harmful to self only, such as self-flagellation, piercing oneself with sharp objects, finger amputation and firewalking, it is already more difficult to find consensus. Should these be disadvised only and warned against, or should they be banned?

As already noted, the term "harmful religious practices" might be suitable for some practices that are at the same time both harmful and deeply motivated by religion. However, not all the issues raised by the CRL Rights Commission are indeed either "harmful" or "religious"

[5] https://www.dnaindia.com/lifestyle/report-7-brutal-religious-and-cultural-practices-that-exist-even-today-1998217

practices, or both at the same time. Furthermore, international experience shows that the definition of harm and declaring something as harmful is contentious and fraught with pitfalls.

4.1. Defining and measuring harm

The „*harm principle*“[6] refers to a theory of crime that an action can only be banned if it causes harm to someone. The principle says that harmful actions are the only ones that can be banned. The harm principle simply sets a minimal standard for what sorts of actions a liberal can justifiably prohibit.

There are different *classifications* of types of harm and they include: psychological harm, physical harm, legal harm, social harm, and economic harm. Classifications of harm for specific vulnerable groups such as minors or institutionalized or elderly are more detailed and specific, but these cannot be generalized.

There are also different *scales of severity* of harm used for specific tasks and contexts, such as for medical assessment and these cut across different types of harm. Again, these are often too narrow to be applied to the issue of so called “harmful religious practices”.

No classification or scales of harm were found in the short time span available that could be readily applied to the issue of harmful religious practices at hand.[7]

We thus focus on assessing the issues identified by the CRL Rights Commission.

4.2. Classifying the issues tabled by CRL Rights Commission

Looking at the earlier distinctions made when examining the problems, the four categories identified are now assessed in view of their actual or potential harmfulness.

4.2.1. Criminal or illegal acts that are already criminal or otherwise illegal in terms of existing law[8]

- Harm to life: telling people to stop taking medicine with fatal results
- Harm to liberty: human trafficking
- Harm to health or physical integrity: assault, rape, sexual assault, abuse, administering poison, etc.
- Psychological harm: rape, sexual assault, abuse, intimidation
- Harm to personal development: keeping children from school (only when not at the same time supplying home schooling)
- Harm to public peace: collectively disturbing the public’s peace and security
- Harm to animals: eating live animals
- Economic harm to society: commercial crimes such as money laundering, failure to pay income tax or companies’ tax if not registered as Public Benefit Organization
- It was difficult deduct major direct harm from contraventions of the Immigration Act.

[6] Based on: https://definitions.uslegal.com/h/harm-principle/

[7] However, it is noted that the South African Department of Justice and Constitutional Development has issued a brochure in 2014 with the slogan “Harmful religious practise is a crime” which circumscribes the phenomenon as “any form of religious practice or belief which seeks to hurt, harm, destroy”. When becoming specific, the brochure mainly addresses students in school / young people and focuses on black magic. However, its recommendations to the general public under the heading “Factors to remember when you feel or are forced to participate” regarding religious practices, are empowering and broadly applicable.

[8] https://forsa.org.za/when-a-pastor-commits-criminal-or-illegal-acts-in-the-name-of-religion/

4.2.2. Fantastical claims or promises amounting to advertisement[9]

- Psychological harm: possibly caused by false, misleading or deceptive representations in advertisement and fraud
- Economic harm: fraud and false promises in exchange for money
- Harm to public peace: possibly caused by fake resurrections

Fantastical claims and promises do not necessarily lead to harm to life, liberty, health or physical integrity. If they do, they definitely fall in the first category of "Criminal or illegal acts".

4.2.3. Strange things that are neither harmful nor unlawful[10]

- Beliefs that are "bizarre, illogical or irrational", such as eating grass or flowers are not necessarily harmful.
- There is an overlap with practices that are unlawful, potentially dangerous and/or harmful.
- Harm to public peace: extremely indecent behaviour that spark the public's moral outrage such as going on rampage

4.2.4. Lack of good governance[11]

- Generally, this falls outside "harmful religious practices".
- Economic harm: financial exploitation and mismanagement of collective funds may cause harm to the members individually and collectively.

4.2.5. Conclusions

The conclusions from this analysis:

- Not all the issues raised by the CRL Rights Commission are
    - actually or potentially harmful;
    - "religious" practices by their nature;
    - harmful religious practices.
- Some of the practices are not harmful in general but only under specific circumstances.
- For those that are indeed harmful, the type of harm and the severity of harm varies broadly.
- There is a large overlap between criminal practices and harmful practices. Many of the practices that have already been found to be criminal are at the same time harmful.
- However, not all practices that are in some way or potentially harmful, are at the same time criminal or in some other way illegal, such as most types of harm to self.
- Thus, not all that is found to be potentially or actually harmful, can or should necessarily be banned (or otherwise regulated).
- There are different responses required to different types of harmful religious practices: What is criminal is already under legal regulation. What is ill advised requires warning and education.
- Thus, criminality or illegality of practices are more suitable indicators for application and enforcement of the law in matters of religion than the concept of harmfulness.

[9] https://forsa.org.za/when-a-pastor-makes-fantastical-and-false-claims-or-promises/
[10] https://forsa.org.za/when-a-pastor-does-strange-but-not-harmful-or-unlawful-things/
[11] https://forsa.org.za/when-a-church-lacks-good-governance/

4.2.6. Harm and limitations of freedom or religion or belief – international perspectives

The classic source and still enlightening reading on the "harm principle" is John Stuart Mill, 1859.[12]

As recommended at the previous hearing, a lot can be learned from Lori Beaman, *Defining Harm: Religious Freedom and the limits of the law*, 2008, who undertakes a socio-critical analysis of the complex legal case of a minor Jehova's Witness in Canada who refused (on account of her belief) but was forced to accept blood transfusions in the course of her cancer treatment.

She rightly asks: "Where should we set the boundaries of religious freedom? On what basis? Who should decide?" We must distinguish actual harm and risk of harm. There is a strong influence of several factors on the determination of harm. Power relations determine who defines harm and has the power to make this the dominating interpretation. In a climate of risk and fear, harm is defined from a vantage point of risk and fear. In Canada and elsewhere risk of harm has become an important tool in the abrogation of rights. The idea that risk can be measured, assessed, controlled for, and minimized has entered legal discourse with a vengeance, so much so that the determination of what constitutes a reasonable limitation of rights and freedoms "in a free and democratic society" increasingly relies on actuaries of fear in multiple contexts. (7)

Religious minorities are especially vulnerable to being characterized as engaging in behaviour that is either excessive or that diminishes agency and the ability of an individual to consent.

Risk of harm is itself a fluid concept, … it acts as a legal joker card, to be played by anyone at the legal gaming table. (12)

Definitions of excess and moderation are socially constructed.

Consent or agency: In the context of religious freedom and especially religious minorities, issues of agency frequently translate as implications or outright assertions that the group or adherents in question engages in practices that limit believers' agency.

There are assumptions about the boundaries of normal behaviour, decisions that are risky, and the parameters within which choice is possible.

There is a danger in making the practice of the mainstream religious expression a determinative factor in definitions of religious freedom.

For decision makers new and minority faith are often unknown. Worse yet, decision makers may share quite negative views of such groups that became hegemonic through negative media coverage. "Thus, newer groups are not only strangers, they are feared strangers, requiring normative interventions by those decision makers. Messages must be sent that the alleged behaviours and beliefs of such groups are not acceptable in normal society." (James Richardson 2001:152)

5. On the role of religious bodies

The questions asked were:

- What can **religious bodies** do to **guide** individuals and organisations perpetrating harmful practices in the name of religion?
- What can religious bodies do to **sanction** individuals and organisations perpetrating harmful practices in the name of religion?

[12] Source not available at time of writing due to load shedding.

So, it is a matter of responsibilities, powers and the potential input of religious bodies.

It is important to distinguish what the state may do and what religious bodies may do. There are very clear limits and distinctions for both. These limits and distinctions have been very much blurred in earlier discussion.

We maintain:

- Religious bodies are mainly responsible for themselves.
- Religious bodies can discipline those in their own ranks.
- Religious bodies (can) offer religious practitioners‘ networks (eg. ministers‘ fraternals) which contribute to local and mutual accountability. This also provides courage and standing to denounce abuse by others outside. It also provides a place for the community to go to, in order to report abuse.
- Religious bodies must report criminal acts to the respective authorities of the state. It is the state’s responsibility to sanction crimes.

6. On codes of conduct

The question asked: „Is a voluntary non-binding Code of Conduct for the conduct of religious entities and practitioners feasible and practical? What are the strengths and pitfalls?”

- Codes of Conduct for religious communities must be voluntary and emanate from the respective communities due to the nature of freedom of religion or belief.
- Such a code cannot be imposed by the state or any of its organs.
- The development of such a Code by an organ of the state can already be regarded as an imposition and an overreach of the state.
- Its adoption may be recommended and encouraged by government and its arms, but such codes of conduct must always remain voluntary and must never be enforced by law.

6.1. Regarding the “Code of Conduct for Religions in South Africa” by SACRRF

The IIRF supports the finalization and subsequent voluntary adoption of the “Code of Conduct for Religions in South Africa” by the South African Council for the Protection and Promotion of Religious Rights and Freedoms (SACRRF) because this will:

- reflect the responsibilities corresponding to the rights in the SA Charter for Religious Rights and Freedoms, already adopted by +/- 22 million people from the religious community.
- provide an agreed benchmark and a standard for the ethics and conduct of the religious community.

In our opinion the existing 3rd Draft of a “Code of Conduct for Religions in South Africa” currently circulated by SACRRF is best fit for purpose as it emerges from among the religious communities themselves, uses terminology understood among them and attempts to cover all relevant issues.

6.2. Regarding the CRL’s “Code of best practice for Religious Organizations”

There are competing approaches to the development of a Code of Conduct, and the CRL Rights Commission had insisted to develop their own, despite the SACRRF Code of Conduct at that time already being quite advanced. The attempt of the CRL to get their own Code accepted by the religious communities has so far been unsuccessful.
The following is a critical analysis of the proposed document and its usefulness.

6.2.1. Elements

Statement of values within which religious freedom is practiced (21 points)
A. Why a Code of Best Practice is needed (3 points)
B. Intention (of "this document") (8 points)
("Principles" - No heading – 16 points on 4.5 pages = half the document)
C. Conclusion
D. Acknowledgements

6.2.2. Content

The statement of **values** (3.5 pages) seems best understood as an explanation of the CRLs understanding of religious freedom.

It does not seem to add any value beyond the South African Charter of Religious Rights and Freedoms to which it refers.

The **rationale** for the Code seems to be to enhance "self-regulation" of religious organizations. The argument is cladded in technocratic management language that escapes the ordinary person.

The section "**Intentions**" reveals important aspects about the intended status of the document.

The "**Principles**" of corporate governance expounded focus solely on governance issues and hardly address the role of religious leaders. They are solely formulated on within a governance/management framework.

This section would be best named "*Principles of best practice in the governance of religious organizations*". As such it could form the philosophical backbone of a more practical and intelligible "How to guide" for leading religious organizations. This would be well befitting of the mandate of the CRL Rights Commission.

6.2.3. Conclusions

Where this document falls short, is that it does not speak common and intelligible language accessible to the simple religious practitioner.

It falls short of having any convincing ethical basis emanating from within the religious community.

It is basically a technocratic framework imported or imposed from the outside, emanating from the world of business and political governance.

While the principles might have reasonable content, they do not resonate with religious leaders, at least in the language in which they are framed.

6.2.4. Recommendations

It would be best if CRL sticks to what it can do best and is mandated to do: educate and advise. But they should leave the drafting of a code of conduct to the religious community itself. Particularly as the religious community has already drawn up its own code in a mandated and participatory manner. This ensures ownership and better compliance.

7. On the role of State organs

The question asked is: „What ideal role should State organs, including Parliament and the CRL Rights Commission, play towards the minimisation of harmful religious practices?" Thus, we distinguish State organs in general, Parliament, and the CRL Rights Commission.

7.1. State in general

- Uphold rule of law. Enforce laws.
- Respect, protect and further freedom or religion or belief of all.
- No mandatory reporting of religious organizations in general to the state.
- Positive neutrality and objectivity.
- No predefined and particularly accepted religious groups.

7.2. Parliament

- Only make new laws and regulations after assessing the function and enforcement of existing laws and regulations.
- Watch over CRL Rights Commission that it properly fulfils its mandate.

7.3. CRL Rights Commission

- Train and empower religious organizations and their leaders.
- CRL Act emerged in a context of protection of minorities. CRL Rights Commission is not a suitable instrument to defend freedom of religion or belief for all, due to its limited mandate.

8. On regulation of religious practitioners

The question asked is: „Should the conduct of the religious practitioners be regulated? If so would such regulation not amount to violation of the rights of the practitioners to exercise their freedom of religion without inhibitions?“

- We have to distinguish registration, regulation and reporting.
- No regulation of religious practitioners by the state, as this would amount to a violation of the state's role and the rights of the practitioners.
- No compulsory reporting beyond existing obligations (e.g. of NPO's).
- Negative view of regulating and restricting religious entities in international community.
- See „Does and don'ts when registering religious entities“ in the appendix of IIRF's submission to the previous COGTA Committee.

9. On international best practice

The question posed is: „What is the international best practice with regard to the minimisation of harmful religious practices?“

- Despite querying 10 international experts, there was little input, due to the lateness oft he query.
- There are however many negative examples, how not to do it, eg. in Rwanda and Angola.
- Ensure that what is resolved remains within the international human rights frame work and the detailed interpretation developed within the the United Nations.
- South Africa has to develop its responses within this framework.

10. Alternative solutions

See the appendix for alternative solutions other than those proposed by the CRL Rights Commission.

11. Appendices

1. Pro-Forma of "Alternative Solutions" to the Recommendations contained in the CRL Rights Commission's Report on the Commercialisation of Religion and the Abuse of People's Belief Systems proposing a system of state-backed peer review mechanisms
2. Submission of IIRF to the COGTA Committee hearing in 2017 *(separate file)*
3. Scholarly article by Christof Sauer on "Safeguarding Freedom of Religion or Belief – Assessing the Recommendations of the CRL Rights Commission in Light of International Human Rights Standards" presented at a conference on "*Abuse of Religion and Gullibility of the Public in the Democratic South Africa*" of the Unisa College of Human Sciences in Pretoria 6-7 March 2019 *(separate file)*
4. Scholarly article by Georgia DuPlessis on „The constitutionality of the regulation of religion in South Africa – Untoward restrictions of the right to religious freedom? *(separate file)*

11.1. Appendix 1:

PRO-FORMA OF "ALTERNATIVE SOLUTIONS"

TO THE RECOMMENDATIONS CONTAINED IN THE CRL'S REPORT ON THE *COMMERCIALISATION OF RELIGION AND THE ABUSE OF PEOPLE'S BELIEF SYSTEMS* PROPOSING A SYSTEM OF STATE-BACKED PEER REVIEW MECHANISMS

To Whom it May Concern:

Following an invitation to participate in the process of developing and presenting solutions to bring a greater level of voluntary accountability to the religious communities of South Africa, we, the undersigned, have duly considered the below alternative solutions to those proposed in the CRL Rights Commissions' Report on the *Commercialisation of Religion and the Abuse of People's Belief Systems*. We believe these alternative solutions will bring greater levels of accountability to the religious communities, without the need for the State to intervene in the form of further legislation, as well as help to identify where "problem areas" may exist so that existing laws can be enforced and/or education and training opportunities be presented to remedy areas where there may be a lack of compliance.

Solution #1: We support the establishment of networks of religious practitioners (e.g. "ministers' fraternals") on a purely voluntary basis because this will:

- help ensure greater local and mutual accountability by religious practitioners.
- encourage churches within the fraternal to identify directly (or indirectly if reports are received from community members) incidents of "abuse" in their community and (if valid) to report criminal activity being perpetrated in the name of religion to the relevant authorities.
- provide opportunity for education on issues such as legal compliance and other relevant areas.
- give the potential for intervention in the event of evident leadership failure in a member organization/entity.
- improve communication and relationship among otherwise "independent" but similar religious entities.

Solution #2: We support the development (and subsequent voluntary adoption) of a "Code of Conduct for Religions in South Africa" by the South African Council for the

Protection and Promotion of Religious Rights and Freedoms (SACRRF) because this will:

- o reflect the responsibilities corresponding to the rights in the SA Charter for Religious Rights and Freedoms, already adopted by +/- 22 million people from the religious community.
- o provide an agreed benchmark and a standard for the ethics and conduct of the religious community.

In our opinion the existing 3rd Draft of a "Code of Conduct for Religions in South Africa" currently circulated by SACRRF is best fit for purpose as it emerges from among the religious communities themselves, uses terminology understood among them and attempts to cover all relevant issues.

Its adoption may be recommended and encouraged by government and its arms, but such codes of conduct must always remain voluntary and must never be enforced by law.

<u>Solution #3:</u> We encourage (on a voluntary basis) greater levels of training and education (both in religious reflection and practical management skills) for religious practitioners to support their calling. To this end, we note that:

- o being a religious practitioner is primarily an issue of calling/vocation. It is not constituted as the result of an academic qualification (although training and education are certainly to be encouraged if they support such a calling).
- o training and education will counter ignorance of legal requirements, which is more often a root of non-compliance than willful lawlessness.
- o religious practitioners need access to and/or education in the relevant information and knowledge so that they are empowered to run their religious entities properly.
- o the CRL has a key educational role to play in the above since the CRL Act, 2002 already gives the CRL the power to:
  - conduct programmes to promote respect for and further the protection of the rights of …. religious communities (section 5(1)(b));
  - assist in the development of strategies that facilitate the full and active participation of cultural, religious and linguistic communities in nation-building in South Africa (section 5(1)(c));
  - educate, lobby, advise and report on any issue concerning the rights of cultural, religious and linguistic communities (section 5(1)(e));

<u>Solution #4:</u> We urge the CRL to improve its capacity to investigate possible "abuses" and to recommend appropriate remedial action. To this end, we note that:

- o the CRL Act already gives the CRL the power to:
  - monitor, investigate and research any issue concerning the rights of cultural, religious and linguistic communities (section 5(1)(e));
  - bring any relevant matter to the attention of the appropriate authority or organ of state, and, where appropriate, make recommendations to such authority or organ of state in dealing with such a matter (section 5(1)(k)).

<u>Solution #5:</u> We support the activation/implementation of section 5(1)(j) of the CRL Act, which empowers the CRL to register (NOT regulate!) religious practitioners and organisations. To this end, we note that:

- o keeping a register does not in any way empower the CRL (or any other body) to examine doctrine or religious practice (assuming there is no infringement of law).
- o information that could legitimately be required by the CRL in terms of its Act has the potential to reveal where there may be compliance issues (or even illegalities) taking place which may require further investigation, the engagement of law enforcement authorities or further education

  [e.g. leaders of a church handling large sums of money without a bank account and proper accountability]
- o the CRL Act already gives the CRL the power to:
  - "establish and maintain databases of …. religious organisations and institutions and experts…" (section 5(1)(e));

- keeping a database of religious organisations and institutions (with the senior official of such organization as the point of contact) would enable the CRL to communicate and address effectively and efficiently any issue which may arise.

Signed at Cape Town on this 9th day of 2020 for and on behalf of the International Institute for Religious Freedom

Christof Sauer

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Prof. Dr. Christof Sauer, Director