To: THE CRL RIGHTS COMMISSION  
For attention: Mr Brian Maketata  
Per e-mail: info@crlcommission.org.za  

Re: COMMENTS ON THE CRL RIGHTS COMMISSION’S REPORT ON THE “COMMERCIALISATION” OF RELIGION  
(Deadline for Comments: 28 February 2017)  

Submitted by: FREEDOM OF RELIGION SOUTH AFRICA (FOR SA)  
and the  
SOUTH AFRICAN COUNCIL FOR THE PROTECTION AND PROMOTION OF RELIGIOUS RIGHTS AND FREEDOMS (SACRRF)  
on behalf of  
VARIOUS (INCLUDING MANY OF THE MAJOR) CHURCHES, DENOMINATIONS AND FAITH GROUPS IN SOUTH AFRICA  

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EXECUTIVE SUMMARY

1. Freedom of Religion South Africa (FOR SA) and the South African Council for the Protection and Promotion of Religious Rights and Freedoms (“the Council”), representing a large number (including many of the major) churches, denominations and faith groups in South Africa who have endorsed this Submission, recognise that there are incidents of excess and abuse taking place in the name of faith, and share the concerns of the CRL Rights Commission (“CRL”) in this regard.

2. We refer to our meeting with the CRL on 8 November 2016, and reiterate our commitment to working with the Commission, who we regard as a friend of religious communities in South Africa, in finding solutions for the problems identified in the Report. We submit our comments in a spirit of partnership and mutual co-operation, and with a view to assisting the CRL in putting forward recommendations that address the issues in a way that respects, protects, promotes and fulfils the constitutional right to religious freedom and the rights of religious communities.

3. We commend the CRL for what we believe to be a bona fide effort to prevent and combat the “commercialisation” of religion and abuse of people’s belief systems.

4. We are concerned however that the Report, particularly the proposed regulation of religion in South Africa, if implemented, would violate the constitutional rights of freedom of religion, belief and opinion (s 15) as well as freedom of association (s 18).

5. We would specifically point out that, contrary to what the Report seems to suggest, the proposed regulation of religion is not congruent with the SA Charter of Religious Rights and Freedoms (“the Charter”), to which the CRL is a signatory.

6. Procedurally, while we accept the CRL’s good intentions in adopting a “random sampling method” to select the religious institutions summonsed to appear before the Commission, we are concerned that the investigation and the findings pursuant thereto are not representative of the broad spectrum of religious communities in South Africa. Furthermore, there is a disconnect between the (restricted scope of) the Summons issued to religious institutions and the matters covered during the hearings, and the far-reaching regulation of religion subsequently proposed in the Report. As a result of this shortcoming, the Report is likely to be open to challenge on judicial review.
7. Substantively, the various problems identified by the CRL in its Report can be categorised under the following headings:

a. **Practices that are unusual, but not harmful or unlawful**: In this regard, it is important to note that our Constitutional Court has already (in the case of *Prince v President of the Cape Law Society*) held that people must be free to believe, even if their beliefs (or the expression thereof by way of practice) seem “bizarre, illogical or irrational”;

b. **Practices that are potentially harmful / dangerous or unethical**: It is submitted that these problems should be dealt with in terms of the existing civil and criminal law. It is not correct that the CRL can only intervene if prompted to do so by the victims (who in many instances, are willing participants);

c. **The “commercialisation” of religion**: It is submitted that while one may (justifiably) feel a sense of moral outrage at “charlatans” and “con-artists” who exploit the poor and vulnerable in society, unless such “commercialisation” also amounts to harmful or unlawful activity, there is no legal justification for intervention;

d. **Non-compliance with the law**: It is submitted that the obvious solution for this “problem” identified by the CRL in its Report, is effective implementation and enforcement of the existing laws;

e. **Non-enforcement of the law**: It is submitted that the obvious solution for this “problem” identified by the CRL in its Report, is more effective implementation and enforcement of the law by the State; and

f. **Lack of good governance**: It is submitted that the CRL has a very important role to play in educating religious institutions, practitioners and communities among all religions, in this regard – for example, by providing sample or model constitutions, memorandums of incorporation, board resolutions, etc. Ideally, the CRL would function as a “one stop shop” to empower and assist religious institutions and practitioners.
8. The CRL’s proposed solution to the above problems, is the broad-scale regulation of religion in South Africa. This, in terms of the Report, seems to take two forms:

a. **Amending existing legislation**, so as to legally compel all religious institutions to register as a non-profit organisation (NPO), a non-profit company (NPC) or a public benefit organisation (PBO); and

b. **Additionally, creating new legislation** that would a) establish criteria for the recognition of a religion as such; and b) create a number of regulatory bodies responsible for the issuing and revoking of operating licences to all religious institutions and practitioners (depending on their doctrine), and c) playing a broad policing (monitoring / supervisory) role over them.

**Amending Existing Legislation:**

9. To the extent that the Report seems to recommend the amending of existing legislation so as to legally compel all religious institutions to register as a NPO, NPC or PBO, this recommendation, if implemented, would establish a form of State regulation of religious institutions. In each instance, an organ or functionary of State would have the ultimate power to decide whether or not to register a particular religious institution, without which it seems an institution would not be allowed to operate.

10. It is argued in this document that State regulation is not the solution to the problems identified in the Report. Moreover, there is no guarantee that compulsory registration will be effective in preventing and combating the problems identified by the CRL in its Report, and it will probably not stop people from meeting for religious purposes and expressing their religious convictions and beliefs as they choose. There is a strong likelihood of non-compliance with compulsory registration, which will further undermine the rule of law.

**Additionally, creating new legislation:**

11. Although the Report seems to encourage “self-regulation”, the regulatory bodies being proposed will be State-appointed, State-funded and State-controlled. As a result, the proposed legislation effectively amounts to State regulation of religion.

12. Compulsory registration and licencing of religious institutions and practitioners will replace the co-operative model of religion / State relations that has been in place in
South Africa for decades with a State regulatory model, with severe implications for religious freedom and religious communities in South Africa.

13. The proposed regulation of religion is also not practical. For example: how could a multi-faith Peer Review Council sit as “judge” over a dispute within a particular religion; and how would a single faith Peer Review Committee “judge” a dispute between churches or denominations holding to a significantly different interpretation of the same Scripture?

14. In so far as the proposed umbrella organisations are concerned, the requirement that every religious institution and/or practitioner be legally compelled to belong to an umbrella organisation, is a violation of the right to freedom of association which guarantees an individual, a group of individuals or an organisation the right to choose their associates. The right to associate includes the right not to associate, and the CRL thus cannot compel any religious institution or practitioner, against their will, to “belong” somewhere.

15. The argument has been advanced that if doctors and lawyers are regulated, there is no reason why the “religious profession” (religious institutions and practitioners) should not be regulated either. However, religious practitioners are not the same as lawyers or doctors. While it is obvious that, in the case of lawyers or doctors, objective criteria exists against which legal or medical opinions or practices can be measured, the same is not true of religious beliefs and practices which are constitutionally protected even if they are “bizarre, illogical or irrational” (*Prince v President of the Cape Law Society*). In a country that has a constitutionally protected right to religious freedom, it would not pass constitutional muster that the State would lay down so-called objective criteria against which religious convictions and beliefs will be measured.

16. From a constitutional perspective, the proposed regulation of religion in South Africa, if implemented, will violate the constitutional right to freedom of religion, as defined and given effect by the SA Charter of Religious Rights and Freedoms.

17. While s 36 of the Constitution allows for the limitation of fundamental rights in certain circumstances, the proposed recommendations do not satisfy these criteria. In particular, it is pointed out that the CRL Report itself acknowledges that there are various laws in place that govern religious communities, and that these laws should be applied more effectively. In the circumstances, there are less restrictive means available to achieve the same purpose, and this fact seriously undermines the
necessity for new legislation that will have a far-reaching impact on the right to religious freedom.

18. It is respectfully proposed that, rather than creating a new law which would place an additional burden on the already strained resources of government, the Police and the courts, government should focus its energy and resources on enforcing the existing laws to address the problems identified in the Report.

19. We propose that the CRL holds back the referral of its recommendations to Parliament, until such time as a broad consultative process with the religious sector has taken place to discuss the way forward.

20. A possible outcome of such a process could be the adoption of a “Code of Ethics” to which religious institutions and practitioners would be encouraged (but not legally compelled) to subscribe. In the spirit of self-regulation, religious communities would commit themselves in terms of such a “Code of Ethics” to the elimination of the abuses, conduct and practices mentioned in the Report, and to the diligent observance of the highest ethical and good governance standards. The SA Charter of Religious Rights and Freedoms provides a foundation from which to develop such a “Code of Ethics”, which could make a valuable contribution to the constitutional exercise of the right to religious freedom, and the rights of religious communities, in South Africa.

21. FOR SA and the Council are committed to working with the CRL (who we regard as a co-worker and partner in ensuring that the rights and freedoms of religious communities in South Africa are respected, protected, promoted and fulfilled) to find solutions that are practical, constitutional and congruent with the Constitution and the SA Charter of Religious Rights and Freedoms.
OUR CONSTITUENCY

1. **Freedom of Religion South Africa (FOR SA)** is a non-profit organisation that serves, in co-operation with other institutions, to protect and preserve the constitutional right to freedom of religion, belief and opinion (section 15 of the Constitution) in South Africa ([www.forsa.org.za](http://www.forsa.org.za)).

2. The leadership of FOR SA is as follows:

   2.1. Andrew Selley (Senior Pastor of Joshua Generation Church, and Lead Apostle of the Four12 apostolic partnership of churches) *(Founder and CEO of FOR SA)*;
   2.2. Michael Swain (Pastor with His People / Every Nation) *(Executive Director of FOR SA)*;
   2.3. Adv Nadene Badenhorst *(Legal Counsel of FOR SA)*;
   2.4. Rev. Moss Ntlha (Gen. Secr. of The Evangelical Alliance of Churches (TEASA)); and
   2.5. Michael Cassidy (Founder, African Enterprises).

3. FOR SA represents the views of **over 5 million South Africans** from a cross-spectrum of (including many of the major) churches, denominations and faith groups, who have authorised FOR SA to speak as a united voice on behalf of religious groups in South Africa on issues affecting their religious rights and freedoms, including the CRL Rights Commission's Report on the “Commercialisation” of Religion, first published on its website on 25 October 2016, and a revised Report published on 26 October 2016 (“the Report”).

4. **The South African Council for the Protection and Promotion of Religious Rights and Freedoms** (“the Council”) was established to oversee the SA Charter of Religious Rights and Freedoms, a religious-legal document defining the freedoms, rights and responsibilities and relationship between the “State” of South Africa and her citizens concerning religious belief, developed under s 234 of the Constitution.

5. The leadership of the Council is as follows:

   5.1. *Executive Chairperson*: Prof Pieter Coertzen (Dutch Reformed Church; University of Stellenbosch);
   5.2. *Deputy Chairperson*: Dr Mary-Anne Plaatjies van Huffel (Uniting Reformed Church);
   5.3. *Secretary*: Shawn Boshoff (Church of Jesus Christ of the Latter Day Saints);
   5.4. *Treasurer*: Marius Oosthuizen (Rhema Ministries);
5.5. **Members:** F Matthew Esau (Anglican Church of Southern Africa); Rev Moss Ntlha (The Evangelical Alliance of South Africa (TEASA); Adv Reg Willis (Christian Lawyers Association); K Padayachy (SA Tamil Federation); and Rev Anton Knoetze (CRL Rights Commission); and

5.6. **Advisors:** Prof Rassie Malherbe; Prof Iain Benson; Vic van Vuuren; Denise Woods; Rev Senamo Molisiswa; and Renier Schoeman.

6. The diverse signatories to the SA Charter of Religious Rights and Freedoms represent approximately **25 million practicing religious believers**, i.e. more or less half of the total South African population, including (but not limited to) the signatories mentioned in Annexure “A2” hereto. The Charter has also been signed by the CRL itself.

7. In particular, we mention that this Submission has been prepared pursuant to, and represents the broad consensus of:

7.1. Consultative meetings (in Cape Town, Johannesburg, Bloemfontein, Durban, Port Elizabeth, East London and Pietermaritzburg) and correspondence with senior leaders, and in-house legal counsel, of various (including many of the major) churches, denominations and faith groups in South Africa. (The names of the churches, denominations and faith groups to whom FOR SA and the Council have distributed this Submission, and who have requested to be included in the current Submission to the CRL, appear on Annexure “A2” hereto);

7.2. Correspondence with all the signed-up members (organisations, as well as individuals) of FOR SA, specifically in relation to this issue;

7.3. Correspondence with the representatives of the Council, specifically in relation to this issue;

7.4. Consultative meetings and correspondence with various Members of Parliament;

7.5. Consultative meetings and correspondence with various legal experts in constitutional and administrative law, and particularly in the area of religious rights and freedoms, as well as other professional experts, in South Africa and abroad; and

7.6. Consultative meetings and correspondence with various other non-profit organisations who work in the field, in South Africa and abroad.
8. The Submission also follows various meetings and correspondence between the CRL and FOR SA’s leadership between November 2015 and December 2016 in relation to the issue, and (at a meeting at the CRL’s office on 8 November 2016) including also representatives of the Council, to discuss the concerns of the religious community regarding the proposed regulation of religion.

INTRODUCTORY REMARKS

9. We have carefully studied:

9.1. The Gauteng Pilot Study conducted by UNISA’s Bureau of Market Research (August 2016), which involved a small sample surveyed through electronic means, complimented by two focus groups and six “experts”. (We will not, in this Submission, be commenting on this Pilot Study, save to say that the sample size and chosen methodology are insufficient given the nuanced, complex and varied nature of the religious sector);


9.3. Various news articles and media interviews (also with the CRL) with regard to this issue.

10. At the outset, we want to make it clear that we recognise and deeply regret that there are incidents of excess and abuse taking place in the name of faith.

11. Moreover, as (representatives of) religious communities in South Africa, we share the CRL’s concerns in this regard, and reconcile ourselves with the stated objective of the CRL to “create a positive and safe environment for the exercise of religious freedom”¹. In fact, while our position is to ensure that freedom of religion and the autonomy of religious institutions to govern their own affairs remain protected, we want to make it clear that persons committing harmful and/or unlawful acts in the name of religion, cannot do so in the name of “religious freedom” and are indeed abusing religious freedom.

¹ Report, p 24 at para 13
12. We have further been requested by the Christian churches and denominations represented herein, to explicitly state that they do not in any way associate with (and should not be lumped together with) these “charlatan” preachers and “con-artists”, whose reported actions are completely contrary to Biblical teaching and practice. While the Bible teaches that the Lord Jesus Christ healed people of all manner of diseases and ailments during His earthly ministry, He always did so in a way that protected their dignity as human beings made in the image of God. On no occasion did He act in a way that caused physical harm to people or further endangered their health.

13. In this regard, we refer to the “Joint Statement Repudiating Unlawful Acts Carried Out in the Name of Religion” issued by 101 (including many of the major) churches, denominations and faith groups on 25 November 2016 (and copied to the CRL). In the Statement, religious leaders unanimously and publicly condemned the claims and actions of the “Prophet of Doom”, and called upon the victims of these (and similar) acts to withdraw their support from those whose practices and teachings in no way reflect true Biblical Christianity. (A copy of the Joint Statement is annexed hereto and marked Annexure “A3”).

14. Against the above background, we appreciate the CRL’s efforts in investigating this issue and commend the CRL for what we believe to be a bona fide effort to prevent and combat the “commercialisation” of religion and abuse of people’s belief systems. In considering the appropriate action to be taken, we believe that the extent of such abuses, amongst other things, should be taken into account.

15. We are concerned however that the Report, particularly the proposed regulation of religion in South Africa, if implemented, would violate other constitutional rights, including particularly freedom of religion, belief and opinion (section 15 of the Constitution) and freedom of association (section 18 of the Constitution).

16. The purpose of this document is to explain why we do not believe the regulation of religion as recommended by the Report, is a workable and appropriate answer to the (very real and legitimate) problems identified by the CRL in its Report, and to offer alternative solutions that we believe to be both constitutionally permissible and practicable.

17. As repeatedly stated in the past, we regard the CRL as a friend of FOR SA and the Council. We share a common mandate as advocates for and protectors of the rights of religious communities. As such, our objective is not in any way to ‘attack’ the CRL or the good that

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2 Report, pp 31 - 39
it is trying to achieve, but to work alongside the CRL in finding (legal and practical) solutions that will serve religious communities and protect their right to religious freedom.

18. We recognise the very important role the CRL has to play in ensuring that the constitutional right to religious freedom, and the rights of religious communities in South Africa, are respected, protected, promoted and fulfilled, as contemplated by s 7 of the Constitution. It can greatly assist in creating an environment wherein religious communities can flourish and religious believers can give expression to their deepest convictions and beliefs within the rule of law. As such, the CRL’s role should be not to control, but instead to enable and enhance believers’ exercising of their religious rights.

THE CONSTITUTIONAL FRAMEWORK

19. At the outset, and with a view to placing the CRL’s investigation and Report in its proper (legal) context, we mention the constitutional framework within which the fundamental right to religious freedom finds expression. This important constitutional right can only be limited where permitted by this framework.

20. In South Africa, the relationship between religion and the State corresponds to a co-operative model. Freedom of religion is acknowledged and constitutionally guaranteed granting individuals, religious institutions and communities maximum freedom to teach, preach and practise their religious convictions and beliefs, and also to operate religious institutions, within the law of the land; while placing a duty on the State to create a safe environment for religion and religious freedom to thrive. As stated previously, s 7 of the Constitution places a duty on the State to “respect, protect, promote and fulfill the rights in the Bill of Rights”, including therefore the right to religious freedom (s 15) and the rights of religious communities (s 31).

21. While there is currently no Act that specifically gives expression to the fundamental right to freedom of religion (as in the case of the fundamental right to equality for example), case law as well as the SA Charter of Religious Rights and Freedoms guide our understanding of the meaning of freedom of religion in a South African context.

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3 Section 15 of the Constitution
4 Section 9 of the Constitution. See the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (“the Equality Act”).
22. Firstly, from a case law point of view, it is important to take note of the following:

22.1. In the pre-Constitutional era and under the common law, our Courts approached the religious domain with great sensitivity and respect, restraining themselves to an investigation of procedural matters, and leaving doctrinal content (including the expression thereof through practice) to the judgment of the relevant church tribunal. As such, judicial review was limited to a review of the procedures followed by a church tribunal in a particular matter, and the Courts adopted a “hands off” approach with regard to the merits of the decision. A century of case law holds that courts will (should) get involved, on a case by case basis, only where civil, pecuniary, temporal or proprietary rights are affected or violated;

22.2. Post-Constitution, our Constitutional Court has on various occasions affirmed the importance of the right to freedom of religion in our society, and given content to this fundamental right as follows:

22.2.1. In S v Lawrence; S v Negal; S v Solberg, the Constitutional Court defined “freedom to believe” as “the right to entertain such beliefs as a person chooses, the right to declare religious beliefs openly and without fear or hindrance or reprisal, and the right to manifest religious beliefs by worship and practice or by teaching and dissemination.”5;

22.2.2. Thereafter, in Prince v President of the Law Society of the Cape of Good Hope, the Constitutional Court stated that people must be free to believe, even if the belief is “bizarre, illogical or irrational”6;

22.2.3. In Christian Education South Africa v Minister of Education, the Honourable Justice Sachs stated that “freedom of religion goes beyond protecting the inviolability of the individual conscience. For many believers, their relationship with God or creation is central to all their activities. It concerns their capacity to relate in an intensely meaningful fashion to their sense of themselves, their community and their universe. For millions in all walks of life, religion provides support and nurture and a framework for individual and social

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5 (CCT38/96, CCT39/96, CCT40/96) [1997] ZACC 11; 1997 (10) BCLR 1348; 1997 (4) SA 1176 (6 October 1997) at para [92]
6 (CCT36/00) [2002] ZACC 1; 2002 (2) SA 794; 2002 (3) BCLR 231 (25 January 2002) at para [42]
stability and growth. Religious belief has the capacity to awaken concepts of self-worth and human dignity which form the cornerstone of human rights. It affects the believer’s view of society and founds the distinction between right and wrong. It expresses itself in the affirmation and continuity of powerful traditions that frequently have an ancient character transcending historical epochs and national boundaries’;

22.2.4. In *MEC for Education: Kwa-Zulu Natal & Others v Pillay*⁷, the Constitutional Court held that “it is accepted both in South Africa and abroad that, in order to determine if a practice or belief qualifies as religious, a court should ask only whether the claimant professes a sincere belief⁹. The Court held further that both voluntary and mandatory religious practices are constitutionally protected¹⁰; and

22.2.5. Most recently, in the case of *De Lange v Presiding Bishop of the Methodist Church of Southern Africa for the time being and Another*, the Constitutional Court was requested to test the Methodist Church’s Biblical position on “marriage” (which was alleged to be unfairly discriminatory against homosexual people) against the Constitution. In that case, the Court upheld the “doctrine of entanglement” and refused to entertain the merits of the matter, as “it would not be appropriate for this Court to interfere … especially considering that the line is close to the Church’s doctrines and values”¹¹.

23. As an institution of State, the CRL has a constitutional obligation to “respect, protect, promote and fulfil”¹² both the Constitution and the rights protected by the Constitution, including:

23.1. the freedom of individuals to choose for themselves what they believe and how they choose to manifest those beliefs (by teaching and practice), even if that belief (or practice, as an expression of the belief) seems “bizarre, illogical or irrational”. There is no such thing as a “wrong” belief and indeed our

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⁷ 2000 (1) BCLR 1051 (CC) at para [36]
⁸ (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) (5 October 2007)
⁹ At para [52]
¹⁰ At paras [66] – [67]
¹¹ (CCT223/14) [2015] ZACC 35; 2016 (1) BCLR 1 (CC); 2016 (2) SA 1 (CC) (24 November 2015) at para [45]
¹² S 7 of the Constitution
Constitution, recognising that we live in a pluralistic society where people hold very diverse convictions and beliefs, calls for a sensitive and accommodative (rather than a suppressive or controlling) approach towards people’s differing beliefs. Of course, where belief manifests in a practice that is harmful or unlawful, the State (including the CRL as an institution of State) has a right and a responsibility to intervene in that particular situation; and

23.2. the institutional freedom of religious institutions to govern their own affairs free from interference by the State or indeed by anyone else (including another religious organisation or body). Again, interference should be limited to protecting vulnerable members of society from readily discernible, serious harm and then only to the extent permitted by s 36 of the Constitution.

24. While no fundamental right (including the right to religious freedom) is unlimited, s 36 of the Constitution provides that any limitation must meet the following requirements:

“(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:
(a) The nature of the right;
(b) The importance of the purpose of the limitation;
(c) The nature and extent of the limitation;
(d) The relation between the limitation and its purpose; and
(e) Less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.”

(We will provide an analysis of the CRL’s proposed recommendations for the regulation of religion against this constitutional yardstick for the limitation of rights at a later point in this submission).

25. The right to freedom of religion is also expounded and contextualised in the SA Charter of Religious Rights and Freedoms, which the CRL has signed and endorsed. In this regard, we respectfully point out (and will later elaborate in greater detail) that, although the Report seems to suggest that the findings and recommendations are supportive of and congruent
with the Charter\textsuperscript{13}, the Report is in our opinion NOT congruent with the contents of the Charter.

26. Against this background, we now turn to deal with, and comment on, the CRL’s investigation into the “commercialisation” of religion and abuse of people’s belief systems, and its resulting Report, examining both the procedural aspects informing the Report and the substantive issues arising from the Report.

**PROCEDURAL ASPECTS OF THE INVESTIGATION AND REPORT**

27. The following sections of the CRL Report, in particular, relate to the procedural aspects of its investigation:

27.1. Section 5: Resolution of Appointment\textsuperscript{14}
27.2. Section 7: Methodology\textsuperscript{15}
27.3. Section 8: Process and Procedures\textsuperscript{16}
27.4. Section 9: Managing the Process\textsuperscript{17}
27.5. Section 10: Investigation / Research Questions\textsuperscript{18}
27.6. Section 11: Challenges and Obstacles in the Process\textsuperscript{19}
27.7. Section 21: Annexures\textsuperscript{20}

28. The CRL’s investigation followed complaints concerning suspicious or untoward practices being undertaken by various pastors and “churches”.\textsuperscript{21} Instead of investigating and dealing with those complaints only, the CRL decided to launch a comprehensive investigation into the “commercialisation” of religion and the abuse of people’s belief systems.

29. According to the CRL Report, a “random sampling method” was used “to select random religious institutions / organisations and then summon them, as per the provision of the

\textsuperscript{13} Report, p 6 at para 3; p 24 at para 13; p 38 at para 19(iii)
\textsuperscript{14} Report, pp 8 - 9
\textsuperscript{15} Report, pp 11 - 12
\textsuperscript{16} Report, pp 12 - 13
\textsuperscript{17} Report, pp 13 – 15
\textsuperscript{18} Report, pp 15 - 16
\textsuperscript{19} Report, pp 16 - 18
\textsuperscript{20} Report, pp 41 - 46
\textsuperscript{21} It is unfortunate that the Report fails to give any specific information about the complaints allegedly lodged with the Commission, including the number of complaints lodged, by whom they were lodged, the nature of the complaints, etc.
CRL Rights Act, 19 of 2002, to appear before the Commission"²². According to the Report, this "random sampling" included representation “from big institutions to very small institutions, from main line or traditional churches to charismatic, Pentecostal, Islamic, Judaism, Hinduism, non-Christian religions, African Independent churches, African Traditional religion. All in all a total of over 85 religious and traditional healers leaders were interviewed"²³.

30. While we accept the CRL’s good intentions in adopting a “random sampling method” to select the religious institutions / organisations summoned to appear before the CRL as part of its investigation, our concerns are as follows:

30.1. Firstly, the investigation and the findings pursuant thereto do not seem to be representative of the broad spectrum of religious communities in South Africa. For example:

30.1.1. While 28 “religious / traditional institutions” were interviewed in Gauteng and 14 in Kwa-Zulu/Natal, 7 or even fewer “religious / traditional institutions” were interviewed in each of the other provinces. In the Western Cape, for example, 6 interviews only took place, of which 3 only were churches²⁴; and

30.1.2. Of the 85 “religious / traditional institutions” interviewed, 68 (i.e. 80%) were Christian churches (of which 47, i.e. more than half, were charismatic / pentecostal churches). Leaders from 6 other religions only were interviewed, and 7 leaders representing “African Traditional Healing and Spirituality” only²⁵; and

30.2. Secondly, while a “random sampling method” may have been adequate if the purpose of the investigation was simply to “investigate and understand” (i.e. get a sense of) the current “religious state of affairs” in South Africa²⁶, such method / level of consultation is inadequate and unacceptable if the rationale or outcome of such investigation was intended to inform recommendations to Parliament to implement the broad-scale regulation of religion in South Africa. Such regulation

²² Report, p 8
²³ Report, p 11 read with pp 41 - 46
²⁴ Report, pp 41 - 46
²⁵ Report, pp 41 - 46
²⁶ Report, p 3 read with pp 9 - 10
clearly has major implications for each and every religious institution and practitioner in the country. In this regard specifically, we mention that:

30.2.1. When regard is had to the Summons issued to religious institutions called to appear before the CRL\textsuperscript{27}, the purpose of the CRL’s investigation (and the issue with regard to which religious institutions were called to appear and testify) was simply put as “the CRL Rights Commission is currently conducting investigative study hearings regarding the Commercialisation of Religion and the Abuse of People’s Believe Systems among Religious Institutions.” Nowhere in the Summons did it mention that the outcome of the investigation would be the legislative regulation of religion in South Africa, and neither did such regulation come up for discussion in the hearings before the CRL. This is evident from the specific scope of matters covered during the hearings, as identified in the Summons, as well as from the specific “investigation / research questions” posed during the hearings, as mentioned in the Report\textsuperscript{28}. As such, the restricted scope of the Summons does not support the far-reaching recommendations for regulation of religion contained in the Report. As a result of these (and other) procedural shortcomings, the Report may well be open to challenge on judicial review; and

30.2.2. As a result, we feel that the broad religious community in South Africa has not been consulted adequately or at all, with regard to the CRL’s proposed regulation of religion in South Africa. This is unfortunate, given the impact that the proposed regulation would have on all religious institutions and practitioners in South Africa.

**SUBSTANTIVE ISSUES AND FINDINGS**

31. The following sections of the CRL Report, in particular, relate to the substantive issues and findings contained in the Report, and are commented on next:

31.1. Section 4: Background\textsuperscript{29}

\textsuperscript{27} Report, pp 47 - 49
\textsuperscript{28} Report, pp 15 - 16
\textsuperscript{29} Report, pp 6 - 8
32. Although the specific focus of the CRL’s investigation was the “commercialisation” of religion and abuse of people’s belief systems, these terms have not been defined anywhere in either the Summons or the Report. The Report mentions a few examples of “commercialisation” of religion, but this is insufficient for the purpose of explaining and qualifying the particular kind of conduct / practices that would amount to “commercialisation” of religion.

33. In its discussion of the substantive issues that surfaced during the hearings and the problems identified by the CRL, the Report is rather general and vague. For example:

33.1. In the introduction to its Report, the Commission states that “the recent controversial reports and articles in the media … left a large portion of society questioning whether religion has become a commercial institution or commodity to enrich the few. Some communities have also started asking whether the government should leave the developments as they are or should something be done about the perceived commercialisation of religion.” However, no indication is given of who or what comprises “the large portion of society”; neither is it stated which communities exactly are “asking whether the government” should do something about the problem; and

33.2. Throughout the “Summary of Findings”, it is stated that “some” churches, institutions, pastors or in “some” cases, certain practices occurred. However, the “some” are also undefined. Was it 2, 20 or 60 of the 85 religious / traditional institutions interviewed?

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30 Report, pp 9 - 10
31 Report, pp 18 - 24
32 Report, pp 25 - 28
33 Report, pp 28 - 30
34 Report, p 25 at para 14.1
35 Report, p 3 at para 1
36 Report, pp 25 - 27
34. We agree that there are real and valid problems, and that we should be concerned, but the Report does not indicate how widespread these problems are. News headlines about congregants being made to drink petrol or being sprayed with Doom in certain “churches” are clearly of concern, but these incidents should be contrasted against the fact that every week millions of South Africans routinely attend religious services and play their part in the activities of their churches, mosques, temples, etc. without being duped or exploited in any way.

35. The various problems identified by the CRL in its Report\(^{37}\) can essentially be categorised under the following headings:

35.1. Practices that are unusual, but not harmful or unlawful;

35.2. Practices that are potentially harmful / dangerous or unethical;

35.3. The “commercialisation” of religion;

35.4. Non-compliance with the law;

35.5. Non-enforcement of the law; and

35.6. Lack of good governance.

**Practices that are unusual, but not harmful / unlawful:**

36. A typical example of a practice that is unusual (or “questionable”\(^ {38}\)) but not harmful or unlawful, is “pastors instructing their congregants to eat grass”\(^ {39}\) (which reportedly turns to chocolate or flowers in the congregants’ mouths).

37. When it comes to practices such as these, the Constitutional Court’s statement in *Prince v President of the Law Society of the Cape of Good Hope* to the effect that people should be free to believe (and give expression to their belief by way of practice) even if the belief is “bizarre, illogical or irrational”\(^ {40}\), is instructive.

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\(^{37}\) Report, pp 25 - 27

\(^{38}\) Report, p 28 at para 14.12(ii)

\(^{39}\) Report, p 3; p 28 at para 14.12(ii)

\(^{40}\) (CCT36/00) [2002] ZACC 1; 2002 (2) SA 794; 2002 (3) BCLR 231 (25 January 2002) at para [42]
38. While there may be many beliefs or practices which the CRL (and indeed the government or public at large) may not understand, like or agree with, people nevertheless have a constitutional right to believe and/or practise their beliefs without interference or punishment, as long as it is not potentially harmful / dangerous or unlawful.

39. For example, we may not agree with (and even be offended by) practices “descending from the sublime to the ridiculous”\(^{41}\), including:

39.1. pastors feeding people (dead) snakes or rats\(^{42}\). (Clearly, if live snakes or rats were fed, as suggested by the Report\(^{43}\), that is potentially dangerous or harmful, in which case different rules would apply);

39.2. some religious institutions “using TV slots as a way to advertise themselves or their faith”\(^{44}\) and placing “advertisements of religious activities in public spaces, making fantastic and mythical promises …”\(^{45}\);

39.3. “deification and hero-worship of church leaders by members of their churches”\(^{46}\); or

39.4. ministries believing themselves to be “angels from heaven”, receiving instructions from God (“extremists”)\(^{47}\);

39.5. the “mushrooming of religious institutions” in South Africa\(^{48}\); and

39.6. the “unprecedented increase of religious organisations / leaders from outside South Africa”\(^{49}\).

However, as long as what is being preached or practised, is not potentially harmful / dangerous or unlawful, we have a constitutional responsibility to accommodate and tolerate different religions and beliefs.

\(^{41}\) Report, p 20 at the top
\(^{42}\) Report, p 28 at para 14.12(ii)
\(^{43}\) Report, p 6 at para 4
\(^{44}\) Report, p 19 at para 12(iv)
\(^{45}\) Report, p 7 at para (a)
\(^{46}\) Report, p 19 at para 12(vi)
\(^{47}\) Report, pp 20 – 21 at para 12.2
\(^{48}\) Report, pp 27 at para 14.8
\(^{49}\) Report, p 7 at para (b)
40. In terms of its Act, it is the duty of the CRL to protect the freedom of religion and religious rights of all religious communities in South Africa, impartially and without favour or prejudice\(^\text{50}\) (towards one religious community’s convictions and beliefs, or another).

41. Therefore, and taking into account the role of the CRL as set out in paragraphs 17 - 18 above, while we appreciate the CRL’s expressed concern that the name of Christianity is being tarnished by these “charlatans” and “con-artists” who claim to act in the name of Jesus Christ, we respectfully submit that it is not the Commission’s role, as an institution of State, to determine what is and what is not Biblical, or what is and is not good for Christianity. That is the responsibility of the Church (unless, of course, those practices are potentially harmful / dangerous or unlawful, in which case the State has a right and responsibility to intervene).

42. From a Christian point of view, it is respectfully pointed out that “charlatans” have always existed. Throughout the Bible (Old and New Testament), there are examples of false teachers and prophets claiming to speak in the name of the Lord, and therefore it should be no surprise that they are active also in our own day and in our own communities:

42.1. The Bible warns against false prophets and teachers in Scriptures such as 2 Peter 1:1-3\(^\text{51}\) and 2 Timothy 4:1-4\(^\text{52}\), and even tells Christians not to be surprised when they (the false prophets and teachers) attract a large following. Christians understand this and appreciate that their Biblical responsibility, not only as leaders but as every person who calls themselves a follower of Christ, is to test and discern those claiming to speak for the Lord\(^\text{53}\). Pastors, however, have the additional responsibility of making every effort to ensure that those under their care, know the Word of God and are able to discern between good and bad doctrine, what is of God and what is not. They do this by “good

\(^{50}\) Section 3(c) of the the CRL Act, 2002

\(^{51}\) “But there were also false prophets in Israel, just as there will be false teachers among you. They will cleverly teach destructive heresies … Many will follow their evil teaching and shameful immorality. Because of these teachers, the way of truth will be slandered. In their greed, they will make up clever lies to get hold of your money. But God condemned them long ago, and their destruction will not be delayed.”

\(^{52}\) “I solemnly urge you in the presence of God and Christ Jesus, who will solemnly judge the living and the dead when He appears to set up His Kingdom: Preach the word of God. Be prepared, whether the time is favourable or not. Patiently correct, rebuke, and encourage your people with good teaching. For a time is coming when people will no longer listen to sound and wholesome teaching. They will follow their own desires and look for teachers who will tell them whatever their itching ears want to hear. They will reject the truth and chase after myths.”

\(^{53}\) 1 Corinthians 5:12; Revelations 2:2. In this regard also, see http://forsa.org.za/why-we-cannot-regulate-religion-part-3/
teaching” (as Paul encouraged Timothy to do, in 2 Timothy 4:1-4), but also by encouraging those under their care to study and know the Word of God for themselves;

42.2. Scripturally and following the example of the early apostles further, Christians believe the Church not only has a responsibility to “judge” (test), but also to expose error and specifically name the teachings or practices that have been judged against the Word of God and found wanting. This is exactly what the “Joint Statement against the Prophet of Doom” (Annexure “A3”) referred to above, sought to achieve; and

42.3. To a greater or lesser extent, the same applies to other religions.

43. Ultimately however, it is for people to make up their own minds before God, who will judge each according to their own, as to what they believe and do not believe - and it is not for the State (including the CRL as an institution of State), or indeed anyone else, to force them to believe otherwise.

Practices that are potentially harmful / dangerous or unethical:

44. The Report references a number of practices that are potentially harmful / dangerous, including:

44.1. “Subjecting members to practices and rituals that evoke questions of human rights and ethics,” e.g. stamping on congregants;

44.2. “Recommending / prescribing untested diagnosis / prognosis in health matters,” and

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54 As, for e.g., we see the apostle Paul exposing Demas (2 Timothy 4:10); Hymenaeus and Alexander (1 Timothy 1:18-20); Hymenaeus and Philetus (2 Timothy 2:15-18); and Alexander the coppersmith (2 Timothy 4:14-15). Paul even rebuked Peter publicly, because of his belief in an unscriptural practice (Galatians 2:11-14). Other examples include John’s naming of Diotrephus (3 John 9-11); and Peter, John and Jude all exposing the error of Balaam (2 Peter 2:15, Revelation 2:14 and Jude 1:1).

55 Annexure “A1”

56 Report, p 19 at para 12(vii).

57 Report, p 7 at para (i)

58 Report, p 19 at para 12(ix)
44.3. “Questionable religious practices like ... feeding people (live) snakes, rats, drinking petrol, locking people in the deep freezer, driving over people, etc”\textsuperscript{59}.

45. Other subsequent examples of potentially harmful practices appearing in the news include a pastor who sprayed his congregants with insecticide (claiming that it would heal them of sickness of disease), and another pastor who gave congregants engine cleaning fluid to drink (claiming that it too has healing properties).

46. The answer to all these potentially harmful / dangerous practices identified by the CRL in its Report is to deal with these in terms of the existing civil and criminal law. The CRL also refers to this avenue, but seems not to be convinced of its effectiveness. However, we feel this avenue should be considered more thoroughly. For example:

46.1. In instances where a practice potentially amounts to an abuse of human rights, there is no reason why the CRL cannot investigate the complaint itself\textsuperscript{60} (where appropriate) and/or refer same to the South African Human Rights Commission (SAHRC), the Commission for Gender Equality (the CGE), the Equality and/or High Courts\textsuperscript{61};

46.2. Where appropriate, the CRL may also refer a matter to the Financial Intelligence Centre (FIC), SARS or the Police, who will then be tasked with the criminal investigation and prosecution on grounds of, for example:

46.2.1. \textit{Crimen iniuria} (willful injury to dignity) where for example hands / objects are laid on a person’s private parts in order to make them more fruitful. (This could also be a public decency offence);

46.2.2. (Attempted) assault where for example people are sprayed with Doom, made to drink engine fluid or eat live snakes/rats;

46.2.3. Indecent assault (same example as above under \textit{crimen iniuria});

46.2.4. Culpable homicide where for example a pastor negligently, and without advising the sick person to first consult with his/her medical doctor to verify

\textsuperscript{59} Report, p 28 at para 14.12(ii)
\textsuperscript{60} S 5(1)(e) of the CRL Act, 2002
\textsuperscript{61} S 5(2)(g) of the CRL Act, 2002
whether he/she has been healed, tells someone to stop taking his/her medication because he/she has been healed and the person then dies\textsuperscript{62};

46.2.5. Crimes against property (e.g. theft, and fraud);

46.2.6. Financial crimes under the Financial Intelligence Centre Act, 2001 (e.g. money laundering, tax evasion, terrorism financing activities);

46.2.7. Organised crime offences;

46.2.8. Substance abuse offences, etc;

46.3. In this regard, we respectfully point out that it is not correct, as stated by the CRL in news reports, that the CRL can only intervene if prompted to do so by the victims (who in many instances, are willing participants)\textsuperscript{63} and that without a (willing) complainant, there is nothing that can be done. In this regard, the following:

46.3.1. The question of whether or not there is a complainant, is immaterial to the question of whether a crime will / should, or will not / should not, be prosecuted. For example: in the case of murder, the victim is dead and cannot complain or lay a charge with the Police. This does not however prevent, or excuse, the Police from investigating and prosecuting the suspect of the crime. Likewise, in a case of domestic assault, for example, the victim may not (want to) bring a complaint or charge against the family member who is assaulting him/her, but this does not prevent or excuse the investigation and prosecution of the crime;

46.3.2. With regard to the issue of consent, persons are theoretically free to waive their legal rights if they choose. Thus, in the case of a delict (a “civil wrong”), if it is shown that a victim has of his/her own free will consented to (the risk of) suffering the harm involved, the wrongdoer may be excused for his/her harmful conduct. The principle that applies, is that of \textit{volenti non fit injuria} which means “an injury is not done to one who consents”. (Incidentally, this is not the case when a constitutional right has been infringed, as the limitation has to be

\textsuperscript{62} Compare for e.g. culpable homicide charges against medical doctors, arising from lack of proper medical treatment.

\textsuperscript{63} See, for e.g. http://ewn.co.za/2016/11/21/crl-rights-commission-calls-for-a-regulatory-body-of-churches, or http://m.ewn.co.za/2016/11/22/doom-pastor-i-am-already-arrested-in-christ
tested in terms of the limitations clause, section 36 of the Constitution. Consent, or waiver, does not prevail over the application of section 36;)

46.3.3. A typical example would be where a participant in lawful sport consents to, or voluntarily assumes, the risk of bodily injuries normally occurred in the course of the game, while the game is being played according to the (express or implied) rules. Thus a rugby player would not ordinarily be sued or prosecuted for an injury inflicted on another player during a tackle as this is part of the normal, anticipated and accepted risks of the game. However, if one player were to intentionally assault another player during the game, the wrongdoer would not be able to hide behind consent;

46.3.4. However, the principle of *volenti non fit injuria* applies to a limited extent in the criminal law. The reason for this is that a crime is not simply the harm sustained by the victim, but is viewed as harm against the community as a whole. Thus the perpetrator of a criminal offence is not generally excused because the victim has given his/her consent to the crime;

46.3.5. South African case law (pre-Constitution) has already established that consent will excuse (or legalise) aggressions for religious, customary and superstitious practices only where minor injury results, or is likely to result, unless the practice seriously offends public policy. Thus:

46.3.5.1. In *R v Njikelana*[^64] where X rubbed a powder, believed to be an aphrodisiac on Y’s private parts causing her some pain, Y’s consent relieved X of liability for indecent assault;

46.3.5.2. In *R v Sikunyana*[^65] where X burned Y’s head and body with live coals in order to exorcise an evil spirit, it was held that “a dangerous practice superstitiously designed to secure the exorcism of an evil spirit cannot be rendered lawful by the consent of the afflicted person”; and

46.3.5.3. Consent likewise failed in *R v Phiri*[^66], in which a witchdoctor inflicted “serious and long-lasting injuries” with a razor blade on a whole family in order to make them strong and rich and to heal a sick child. The

[^64]: 1925 EDL 204 [81]
[^65]: 1961 (3) SA 549 (E) [82]
[^66]: 1963 R&N 395 (SR)
sick child was too young to consent, and the Court was not prepared to recognise its parents’ consent;

46.3.6. In addition to the consent being recognised in law as described above, for the defence to succeed, real consent must have been given by a person capable of consenting (i.e. able to understand the nature of the act to which he/she is alleged to have consented). With regard to consent further, it is established law that:

46.3.6.1. Although consent may be implied by conduct as well as express, mere submission is not enough; active consent is required;

46.3.6.2. “Consent” induced by coercion, force or threats is not real consent for purposes of the criminal law, and will not excuse criminal conduct. Likewise, fraud (whether active or in the form of fraudulent non-disclosure) may nullify consent; and

46.3.6.3. A pre-requisite for the defence of consent further is that the consent covered the harm that is the subject-matter of the charge. A person cannot consent to run a risk of which he/she is unaware;

46.4. The recent court interdict obtained against the “Prophet of Doom” by the Limpopo Department of Health in the complete High Court, is proof that there are existing legal remedies in place to prohibit potentially harmful / dangerous practices in the name of religion, and prevent it from re-occurring. It is clear that the enforcement of laws against such “harmful” practices, is ultimately a matter of political will; and

46.5. In fact, we respectfully submit that if the State does not step in in instances where people are exposed to danger or harm, the State is remiss in its legal obligations as protector of its citizens and could potentially be held legally liable.

47. In addition to practices that are potentially harmful / dangerous, the CRL has identified practices that are potentially “unethical”, including:

47.1. “Advertisements of religious activities in public spaces, making fantastic and mythical promises, soliciting gifts / offerings / donations in cash or kind”\(^{67}\); and

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\(^{67}\) Report, p 7 at para (a)
47.2. “Abuse of media privileges, such as using TV slots as a way to advertise themselves or their faith or holy products and claims of healing powers of a wide range of illnesses and socio-economic challenges. Advertising products without complying with the ASA legislation.”

48. In an instance of false advertising, the CRL can simply refer the matter to the Advertising Standards Authority (ASA) to whom reference is made in the Report. However, as previously mentioned in this document, care needs to be taken not to label certain claims made in the name of religion as “false” just because they appear “bizarre, illogical or irrational”.

49. Again, from a Christian point of view:

49.1. The Bible records many instances where Jesus, and also his disciples, had prayed for people and they were miraculously healed. These are matters of faith, of religious conviction and belief, which (as already explained above) is not for the State or any institution of State to judge;

49.2. Even within Christianity itself, not all Scriptures are interpreted in exactly the same way. For example, the Bible commands Christians to lay hands on the sick and pray for healing. Some believe, according to their interpretation of the Scriptures, that God’s will is always to heal now, while others believe that it is ultimately up to God whether a person will be healed this side of eternity. People must be free to believe according to their conscience and their interpretation of the Bible – it is a matter between them and God. (As mentioned earlier also, in the Pillay case, the Constitutional Court held that it is irrelevant whether a particular religious practice is mandatory or voluntary. Both are constitutionally protected); and

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68 Report, p 19 at para 12(iv)
69 Report, p 6 at para 4 and p 19 at para 12(iv)
70 Prince v President of the Law Society of the Cape of Good Hope (CCT36/00) [2002] ZACC 1; 2002 (2) SA 794; 2002 (3) BCLR 231 (25 January 2002) at para [42]
71 For e.g. Mark 16:18; James 5:14
72 MEC for Education: Kwazulu-Natal and Others v Pillay (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) (5 October 2007)
49.3. In the circumstances, even the notion of having a superior (religious) body who
will decide which beliefs and practices are acceptable or not, is unbiblical and
unacceptable.

50. However, where promises of miracles are made conditional on payment of money\(^73\), this
may well fall within the scope of the “commercialisation” of religion (in which case the
comments made below would apply).

**The “commercialisation” of religion:**

51. The Report does not define “commercialisation” of religion, but cites five examples of what
the CRL perceives to be the “commercialisation” of religion\(^74\).

52. There has always been an economic dimension to religious belief and practice. For
example, it is well-known that the Catholic Church is one of the largest land owners in the
world. Whatever definition of “commercialisation” of religion is intended in the Report,
presumably it does not go so far as to include activities such as these in its scope.

53. The SA Charter of Religious Rights and Freedoms specifically includes and guarantees
that “every person has the right, for religious purposes and in furthering their objectives,
to solicit, receive, manage, allocate and spend voluntary financial and other forms of
support and contributions. The confidentiality of such support and contributions must be
respected”\(^75\).

54. In so far as the examples cited in the Report are concerned, and particularly the use of
“bank speed points … for people to swipe their bank cards during ceremonies”\(^76\), we do
not agree that this necessarily and in all instances amounts to the “commercialisation” of
religion (in the sense of the word meant by the CRL which, presumably, contains an
element of manipulation for personal gain, often at the expense of the poor and
vulnerable). In many churches, speed points are used as a purely functional and
convenient way of collecting tithes and offerings from those congregation members who
choose to make payment this way. Also, because churches are a known target for (armed)
robberies, they are forced to use speed points (rather than collecting cash) as a safety and
security measure.

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\(^73\) See for e.g. Report, p 3; p 7 at para (a); and p 27 at para 14.9
\(^74\) Report, p 25 at para 14.1
\(^75\) S 11 of the SACRRF
\(^76\) Report, p 25 at para 14.1(v)
55. In so far as the other examples are concerned, we reiterate that people are free to believe whatever they want to believe. In this regard, we submit that CRL can and should play a major role in educating and assisting religious institutions with regard to their legal and ethical obligations towards their members, as well as educating and informing the people of their rights (to human dignity, to accountable and transparent governance, etc).

56. The State (including the CRL) should intervene when people are being harmed or unlawful activity takes place. However, if this is not the case, even where the State (and indeed the public at large) may (justifiably) feel a sense of moral outrage at these “charlatans” and “con-artists”, there is no (legal) justification whatsoever for intervention.

**Non-compliance with the law:**

57. The Report cites various examples of non-compliance with the law, including:

57.1. “Advertising products without complying with the ASA legislation”\(^{77}\);

57.2. “Forbidding children to attend school”\(^{78}\) (in breach of the Schools Act, 1996);

57.3. “The assertion and justification of registering as private companies and earning funds as entertainers and not as religious practitioners”\(^{79}\) (in breach of SA company laws);

57.4. “Refusal to use banking facilities and keeping money collected in safes in the institutions”\(^{80}\) and “the use of personal bank accounts as the institution’s account”\(^{81}\) (which could, depending on the circumstances, be in breach of tax and/or banking laws);

57.5. Under the heading “Compliance with the Existing Laws”\(^{82}\):

57.5.1. “Some churches are not registered either with the Department of Social Development (DSD) as either non-profit organisations (NPOs) or with the South African Revenue Service (SARS) as public benefit organisations (PBOs)”;

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\(^{77}\) Report, p 19 at para 12(iv)  
\(^{78}\) Report, p 19 at para 12(viii); p 21 at para 12.2; and p 28 at para 15(ii)  
\(^{79}\) Report, p 19 at para 12(xi)  
\(^{80}\) Report, p 19 at para 12(viii)  
\(^{81}\) Report, p 19 at para 12(x)  
\(^{82}\) Report, p 25 at para 14.2
57.5.2. “Some religious organisations or institutions freely operate freely without registration or licencing certificate”;

57.5.3. “Some that are registered with DSD do not even report yearly to the Department as required by law”;

57.5.4. “Some do not even disclose to SARS the amount of money they make per year and thus avoid paying tax”;

57.6. Under the heading “Misuse of the Visa Application Systems”:

57.6.1. “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 visa or residence visa.”; and

57.6.2. Some foreign religious leaders misuse the SA visa application processes”;

57.7. Under the heading “Flouting of Banking Rules”:

57.7.1. “In some cases, money collected from the members is never banked with any commercial bank.”;

57.7.2. In some cases, where banking is happening, the money is banked not into the institution’s account but the spiritual leader’s account, thereby becoming both the pastor and treasurer.”;

57.7.3. “Lack of fiduciary committees such as finance, internal audit and financial management.”

57.8. Under the heading “Avoidance to Pay Tax to SARS”:

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

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83 Report, p 26 at para 14.4. See also p 30 at para 15(ix)
84 Report, p 26 at para 14.5
85 Report, p 26 at para 14.6
57.9. Under the heading “Uncontrolled Movement of Cash in and out of the Country”\(^{86}\):

57.9.1. “Some churches tell their congregants that money has to be paid to their headquarters, and most of these headquarters are based out of the country.”

57.9.2. “No permission is sought from the Reserve Bank before the money is taken out of the country”.

57.10. Under the heading “Property bought with the Communities money”\(^{87}\):

57.10.1. “In some cases, the title deeds of these religious properties ends up being in inappropriately registered, for e.g., registered in the Spiritual leader’s name.”;

57.10.2. “This encourages the building of family empire with using public money.”

57.11. Under the heading “Operation of Religious Institutions as Business”\(^{88}\):

57.11.1. “Lack of clear separation between religious activity and business activity”;

57.12. “Some religious organisations are alleged to front as faith-based organisations, but there were some allegations made about money laundering, syndicates and other illegal ways of raising funds and siphoning money out of the country. SARS, SAPS, Department of Social Development and National Treasury should ensure that these allegations are investigated.”\(^{89}\)

58. The Report rightly identifies these problems as “non-compliance with the law”, implying that there are existing laws in place to deal with those issues. The answer to these problems, is then, in the first instance, the effective enforcement of the existing laws and regulations, including but not limited to:

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\(^{86}\) Report, p 26 at para 14.7
\(^{87}\) Report, p 27 at para 14.10; p 30 at para 15(viii)
\(^{88}\) Report, p 27 at para 14.11; p 30 at para 15(xiv)
\(^{89}\) 1\(^{st}\) Report, p 31 at para 16.2 (left out of revised Report)
58.1. The Advertising Standards Authority (ASA) legislation;
58.2. The Schools Act, 1996;
58.3. The Companies Act, 2008;
58.4. The Non-Profit Organisations Act, 1997 (“the NPO Act”);
58.5. The Immigration Act, 2002;
58.6. The Banks Act, 1990;
58.7. The Income Tax Act, 1962;
58.8. The SA Reserve Bank Act, 1989;
58.9. The Animals Protection Act, 1962;
58.10. The Deeds Registries Act, 1937 (relating to registration of immovable property);
58.11. The Prevention and Combatting of Corrupt Activities Act, 2004;
58.13. The Financial Intelligence Centre Act, 2001 (“FICA”); and
58.14. The criminal law, including the common law offences of theft, fraud, etc.

59. The Report points out that allegations relating to non-compliance with the above laws, can be “referred to the relevant state institutions”90, and states that “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)”91, who will then have the task of investigating and dealing with the matter in accordance with the relevant legislation. The CRL is the most appropriate body to do so.

60. Referring again to the court interdict obtained against the “Prophet of Doom”, the CRL can also obtain an interdict or take any other legal action (in terms of the civil, or criminal law) against any religious institution or practitioner that is legally non-compliant92.

61. It is respectfully submitted that, rather than creating new laws that will place additional burdens on the already strained capacity of the government, the Police and the courts, resources should first and foremost be directed at enforcing existing laws more effectively.

62. In relation to the issues mentioned under the heading “Compliance with the Existing Laws”93 specifically, we comment as follows:

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90 1st Report, p 31 at para 16.3 (left out of revised Report)
91 Report, p 29 at para 15(vii); p 30 at para 15(ix)
92 S 5(2)(g) of the CRL Act
93 Report, p 25 at para 14.2
62.1. The Non-Profit Organisations Act, 1997 ("NPO Act") does not oblige religious institutions to register as non-profit organisations (NPOs) with the Department of Social Development (DSD)

94. The fact that “some churches” are therefore not registered with DSD, does not make them non-compliant with the law, as the Report seems to suggest. However, those who have chosen to register with DSD have a legal obligation in terms of the NPO Act to report annually to the Department

95. The Act also provides for the legal mechanisms and penalties in the event of non-compliance. As a result, the answer to this problem, again, is effective enforcement of the existing law.;

62.2. Although religious institutions generally register with SARS as public benefit organisations (PBOs), the Income Tax Act, 1962 does not oblige them to do so. Again therefore, this is not necessarily an issue of non-compliance with the law. However, it is correct that all persons / organisations have a legal obligation in terms of the Income Tax Act to disclose their annual income to SARS

96. The Act also provides for the legal mechanisms and penalties in the event of non-compliance. Again, effective enforcement of the existing law holds the answer.;

62.3. In so far as the Report seems to suggest that religious institutions may not (currently) “operate freely without registration or licencing certificate”

97, this is incorrect, as the law does not oblige religious institutions to register or to have a licencing certificate to operate. In this regard, we elaborate as follows:

62.3.1. The fundamental right to freedom of association

98 gives persons the right to associate and form organisations in whichever way they choose. This right is a correlative right, making good the promise of a variety of other rights and freedoms (including the constitutional right to religious freedom, and the rights of religious communities);

62.3.2. In terms of (current) South African law, religious institutions normally associate or organise themselves in one of three ways:

94 Report, p 25 at para 14.2(i)
95 Report, p 25 at para 14.2(iii)
96 Report, p 25 at para 14.2(iv)
97 Report, p 25 at para 14.2(ii)
98 Section 18 of the Constitution
62.3.2.1. A voluntary association (VA), in terms of the common law. No registration is required to form a VA - only an agreement between three or more people to achieve a common object, primarily other than the making of profit. The powers of the VA are determined by agreement (normally by way of a constitution) and the principles of common law. If a party exceeds his/her agreed powers, an interested party can apply for relief to the High Court. Religious institutions in particular operate in accordance with their own founding documents, creeds and orders;

62.3.2.2. A living trust, registered with the Master of the Court in terms of the Trust Property Control Act, 1988. Trusts are subject to strict governance to ensure that the trustees act in accordance with the trust deed drawn up by the founder during his/her lifetime, and remain focused on achieving the stated public benefit objectives. The Act provides for the removal of trustees by the Master or the Court, in the event of a trustee’s failure to perform his/her duties; and

62.3.2.3. A non-profit company (NPC), registered with the Companies and Intellectual Properties Commission (CIPC) in terms of the Companies Act, 2008. NPCs, likewise, are subject to strict governance to ensure that members and directors do not benefit from NPC income or surpluses, and remain focused on achieving the stated public benefit objective. The Act also provides for criminal sanctions, and possible personal liability, in the event of non-compliance with the Act;

62.3.3. All of the above legal entities can (but are not obliged to) register as a NPO with DSD in terms of the NPO Act. The reason why many religious institutions do register is because NPO registration is a requirement for most donor and funding agencies, and association with a government agency lends credibility to an organisation. The NPO Act already has very specific requirements for religious organisations desiring to register as NPOs, including the submission of a constitution; keeping accounting records; regular submission of financial statements, and narrative reports of the organisation’s activities and office bearers. In the event of non-compliance, DSD may cancel the NPO’s registration and, in certain circumstances, refer the NPO to the Police for criminal investigation. The NPO register is open to the public, and all documentation lodged, is available for public inspection; and
62.3.4. An organisation can also (but is not legally obliged to) register as a public benefit organisation (PBO) with SARS in terms of the Income Tax Act, 1962. The reason why many organisations do this is for the purpose of enjoying tax benefits (under s 30 and/or 18A of the Act). However, in this regard it is important to note that the Income Tax Act allows a certain threshold profit for PBOs. It is not correct that they are not allowed to make any profit at all. Where no tax is paid, or a PBO operates as a business making profit over and above the allowable threshold, SARS has the power and responsibility to take action; and

62.3.5. It is important to note that registration as a PBO is completely separate from registration as a NPO. It is also no longer a requirement that an organisation register under the NPO Act in order to qualify for PBO approval. However, if an organisation commits an offence under the NPO Act, SARS may withdraw the organisation’s PBO approval.

63. It is clear that there are already numerous laws in place that regulate and govern religious institutions and practitioners. Where they fail to comply with the existing laws, the solution is more effective implementation and enforcement of those very laws.

64. Religious institutions in South Africa must comply with a variety of other laws, including (in addition to the above) labour laws; health and safety laws; Protection of Personal Information Act, 2013 (POPI); the Promotion of Access to Information Act, 2000 (PAIA) etc. Compliance with all of the laws and regulations that apply to religious institutions in South Africa is already a significant cost burden. The CRL’s proposal to legally compel religious institutions and practitioners to register and obtain a licence before they will be allowed to practice will undoubtedly involve the payment of fees for the obtaining of (and renewal) of that licence, which will place an additional financial strain on religious institutions. These religious institutions are non-profit organisations and almost entirely reliant on the goodwill of their members to give voluntary donations on a regular basis from which operation costs etc are paid. Such additional operational costs may well make it impossible for religious institutions and practitioners, particularly in the poorer areas, to (continue to) operate.

65. We therefore strongly appeal to the CRL to carefully consider whether it is appropriate to propose additional legislation for the regulation of religion that may well inhibit and even prevent religious organisations from operating legitimately.
66. If current laws are indeed not sufficient, we respectfully submit that it would be prudent, from a government resource and capacity point of view, to consider improving and strengthening these existing laws rather than to create new ones.

**Non-enforcement of the law**

67. Some of the issues identified by the CRL in its Report, cannot of course be laid at the door of religious communities, including:

67.1. “Loopholes in legislation which is enhanced by lack of enforcement”\(^99\);

67.2. “The unavailability of the police to come to the rescue of the Commission …”\(^100\); and

67.3. “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 Prosecuting Authority)”\(^101\).

68. To reiterate, the answer to non-enforcement of the law is stricter enforcement of the existing laws rather than creating a new law that regulates the entire religious sector. Locking people in deep freezers or driving over them\(^102\), are surely matters that need to be reported to the Police (even by the CRL), and be followed up by the Police.

69. But on behalf of the South African public, we would say that the fact that the State is not fulfilling its responsibilities (whether for reasons related to lack of capacity, competence or political will etc.) does not justify the shifting of responsibility onto the public. Ineffective law enforcement is never a justification for adding further burdens on the public (including religious communities).

70. Also, if the State (including DSD, the Department of Immigration, SARS, the Police and courts etc.) are already failing to keep up with the implementation or enforcement of existing laws, it is fair to ask how it will cope with an additional law creating an additional burden (in terms of finance, capacity, resource, etc) on our already strained government departments and criminal justice system.

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\(^{99}\) Report, p 19 at para 12(iii); p 28, para 15(iii); p 29 at para 15(vi)

\(^{100}\) Report, p 19 at para 12(v)

\(^{101}\) Report, p 29 at para 15(vii)

\(^{102}\) Report, p 28 at para 14.12(ii)
Lack of good governance:

71. The Report identifies various instances that could be grouped together under a “lack of good governance”. These are practices that are not necessarily unlawful, but are not ideal for purposes of establishing good, transparent and accountable administration and governance of religious institutions' affairs, for example:

71.1. “Serious but not necessarily deliberate organizational and administrative deficiencies. This includes failure to register as NPOs and maintain of financial records.” (Note that the NPO Act does not oblige religious institutions to register with DSD);

71.2. Lack of “commitment to responsible financial management and accounting” (which could, depending on the circumstances, be a case of “lack of good governance” rather than “non-compliance with the law”);

71.3. “Refusal to use banking facilities and keeping money collected in safes in the institutions” and “the use of personal bank accounts as the institution’s account” (which could, depending on the circumstances, be a case of “lack of good governance” rather than “non-compliance with the law”);

71.4. Under the heading “Flouting of Banking Rules”:

71.4.1. “Lack of fiduciary committees such as finance, internal audit and financial management”.

71.5. Under the heading “Lack of Good Governance Structures”:

71.5.1. “Some institutions have no Codes of Conduct”;

71.5.2. “Lack of oversight structures such as Church Council, Disciplinary Committee, etc”;

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103 Report, p 19 at para 12(i)
104 Report, p 19 at para 12(ii)
105 Report, p 19 at para 12(viii)
106 Report, p 19 at para 12(x)
107 Report, p 26 at para 14.5(iii)
108 Report, p 25 at para 14.3
71.5.3. “In some instances, institutions are controlled and owned by one person”;

71.5.4. “In some cases, the finance committee and other church committees are made up of the spiritual leader, his wife, and some of his friends”;

71.5.5. “Lack of leadership successive plans which eventually leads to conflict, division and litigation".

71.6. Under the heading “Lack of Religious Peer Review Mechanism”

71.6.1. “This has led to some people in the sector doing whatever they like with no accountability to anyone”.

71.7. “Schisms and disputes within religious organisations, often accompanied by or for financial reasons, could be avoided for the mutual benefit of the organisation and community. Religious organisations are encouraged to get their house in order, among other things by proper training and putting proper internal rules in place”.

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

71.9. “To solve the leadership succession challenges, each religious institution should elect its leadership as per the provisions of its own Constitution”.

71.10. “Religious institutions should elect their own oversight structures to manage the financial and internal affairs of the institution.”

71.11. “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.”

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109 Report, p 27 at para 14.12(i)
110 Report, p 29 at para 15(viii)
111 Report, p 30 at para 15(x)
112 Report, p 30 at para 15(xi)
113 Report, p 30 at para 15(xii)
114 Report, p 30 at para 15(xiv)
72. In addition to restrictions in laws of general application, religious institutions and practitioners are answerable to their own governing rules and regulations (including their own creeds and orders), and breaches of such rules may well be justiciable before the courts, as already explained.

73. We fully agree with and welcome the Report’s suggestion that “although religious organisations exist as voluntary organisations, the CRL Rights Commission should provide essential assistance in helping organisations to get their house in order and to ensure compliance with existing legislation …”.115

74. We believe that the CRL has a very important role to play in educating religious institutions, practitioners and communities amongst all religions, with regard to the various laws that apply to them. Such assistance could include providing guidelines for good governance and legislative compliance, for example by making available sample or model constitutions and memorandums of incorporations, helping them to apply for marriage licences in terms of the Marriage Act, 1961 and/or the Civil Union Act, 2006 etc. The CRL can also encourage (but not force) religious leaders to undergo theological training and even point them to different accredited institutions for this purpose.

75. The CRL has the opportunity to function as a “one stop shop” to empower and assist religious institutions and practitioners. To this end, we would support any proposals to government for further resources and funding that will further empower the CRL to serve religious communities in South Africa in this way.

THE CRL’S PROPOSED RECOMMENDATIONS

76. The following sections of the CRL Report, in particular, relate to the CRL’s proposed recommendations:

76.1. Section 16: Proposed Implementation of Recommendations116
76.2. Section 17: Motivation for a New Regulation117
76.3. Section 18: The Proposed Act and its Processes118

115 Report, p 29 at para 15(iv)
116 Report, p 31 at para 16
117 Report, p 31 at para 17
118 Report, p 32 at para 18
77. According to our understanding, the Report effectively recommends the broad-scale regulation of religion in South Africa, by:

77.1. Amending existing legislation to oblige all religious institutions to register as a NPO, NPC or PBO (and in the event of non-compliance with the requirements of registration, they will be de-registered and their licences revoked)\(^\text{119}\); as well as

77.2. Creating new legislation\(^\text{120}\) for the broad-scale regulation of religion in South Africa, including the establishing of a number of statutory (religious) bodies which will decide whether a particular religious institution or practitioners may operate in the first place (and issue / revoke “operating licences”), and will have ultimate oversight over religious institutions and practitioners.

78. The notion of a statutory body with the power to grant and withdraw licenses for religious institutions and practitioners and of religious practice being subjected to licensing at all, is unprecedented in South Africa.

79. Again, while we understand the CRL’s desire to curb the “commercialisation” of religion and abuse of people’s belief systems, which unfortunately is a reality, the reality also is that the vast majority of religious institutions and practitioners in South Africa do not perpetrate such abuses and are fully compliant with the law. We feel that the abuses that have been identified, do not warrant the comprehensive regulation of all religious institutions in South Africa represented by the CRL’s recommendations.

80. Of course, whatever regulation is proposed, cannot apply to religious institutions (or indeed, the Christian faith) only - but must, in terms of s 36(1) of the Constitution, apply equally to all other faiths as well as to African traditional healing / spirituality.

81. The argument has been advanced that if doctors and lawyers are regulated, there is no reason why the “religious profession” (religious institutions and practitioners) should not be regulated either. In this regard, the Chairlady is reported to have said: “Everybody has a self-peer review mechanism. If you do anything out of the ordinary, your peers, not the

\(^{119}\) Report, p 30 at para 16(i) read with p 19, para 12(i) and p 25, para 14.2(i) and (ii)
\(^{120}\) Report, p 32 at para 18
State [must take action] - people who can say this is normal, this is not.\textsuperscript{121} We comment hereon as follows:

81.1. This statement seems to indicate that what the CRL is proposing, comes down to regulating \textit{doctrine}. This, we respectfully submit, whether or not it is statutory regulation by the State or by peers, would be inconsistent with the right to freedom of religion, and the contents of the SA Charter of Religious Rights and Freedoms; and

81.2. Religious practitioners are not the same as lawyers or doctors. In the case of lawyers or doctors, objective criteria exists against which legal or medical opinions or practices can be measured, but there are no such objective criteria for religious beliefs and practices which are constitutionally protected - even if they are \textit{“bizarre, illogical or irrational”}\textsuperscript{122}. In a country that has a constitutionally protected right to religious freedom, it is not possible for the State to lay down objective criteria against which religious convictions and beliefs will be measured.

\textbf{The proposed amendment of existing legislation}

82. To the extent that the Report seems to recommend the amendment of existing legislation so as to legally compel all religious institutions to register as a NPO, NPC or PBO\textsuperscript{123}, we reiterate that this would go against and would disrupt decades of established (statutory and case) law as well as long-standing practice.

83. The greatest problem with this recommendation, however, is that the \textit{compulsory} registration of religious institutions with DSD, CIPC (or with the Master of the Court, in the case of a living trust), would amount to \textit{State} regulation of religious institutions. The Report takes great pains to point out that what is being proposed, is \textit{“self-regulation”} by the religious sector itself. However, the proposal that the NPO Act (and other applicable legislation) be amended to make registration with DSD (and other functionaries or organs of State, as applicable) obligatory, clearly amounts to control and regulation of religion by

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\textsuperscript{121} Penwell Dlamini, “We need peer review mechanism for churches: CRL”, 11 October 2016 at \url{http://www.timeslive.co.za/local/article1870799.ece}
\textsuperscript{122} \textit{Prince v President of the Law Society of the Cape of Good Hope} (CCT36/00) [2002] ZACC 1; 2002 (2) SA 794; 2002 (3) BCLR 231 (25 January 2002) at para [42]
\textsuperscript{123} Report, p 30 at para 16(i) read with p 19, para 12(i) and p 25, para 14.2(i) and (ii)
\end{flushleft}
the State. In each instance, DSD, CIPC (or the Master of the Court), all being organs or functionaries of State, would have the ultimate power to decide whether (or not) to register a particular religious institution, without which an institution would not have the freedom to operate.

84. The proposed compulsory registration of religious institutions in terms of the NPO Act, 1997 is further complicated (and, we feel, rendered unworkable) by the definition of “non-profit organisation” in the Act. The Act defines a “non-profit organisation” as, and limits the application of the Act to, “a trust, company or other association of persons (a) established for a public purpose; and (b) the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered”124.

85. By implication, itinerant “one-man” ministries (e.g. an itinerant worship, prophetic, teaching, or evangelism ministry), for example, do not qualify as NPOs in terms of the Act, and are excluded from the application of the Act. The reality however, is that there are many (legitimate) itinerant “one-man” ministries in South Africa, who would then either operate outside the NPO Act, alternatively not be allowed to operate at all. It is thus not as simple as simply replacing the “may” in s 12(1) of the Act (providing that “any non-profit organisation … may apply … for registration”), with a “must”.

86. Further and as previously mentioned, the NPO Act has rather onerous requirements for registration125 and indeed, the ability to keep on operating as a NPO126. (The same holds true for NPCs registering under the Companies Act, and living trusts registering under the Trust Property Control Act). Should all religious institutions be compelled, by law, to register in terms of the NPO Act (or other applicable legislation), it would make it very difficult, if not impossible, for smaller (or poorer) religious institutions who do not have the capacity, resource and/or financial means to comply with the statutory requirements, to register as such in the first place, and/or to keep on operating as religious institutions.

87. Many people in South Africa are part of so-called “home churches”, i.e. a few individuals meeting in a home to worship and pray together, and minister to one another. In this context, generally no money is collected and there is thus no risk of financial impropriety, lack of governance, etc. To place such onerous requirements for registration on these individuals, seems to be unreasonable.

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124 See s 1(1)(x) of the Act
125 See s 12 of the Act
126 See ss 17 – 18 of the Act
88. There is no guarantee that compulsory registration will in any event be effective in preventing and combating the problems identified in the Report. In this regard, the following:

88.1. Even if DSD were to be satisfied with what a religious institution or practitioner has submitted on paper, there is no guarantee that the institution or practitioner will not perpetrate the problems identified by the CRL in its Report. The NPO Act further does not grant DSD the power to cancel the institution’s registration for any reason other than non-compliance with the Act\(^{127}\) and in the circumstances, and where religious practices are conducted in a manner that is harmful and/or unlawful, the answer remains effective enforcement of the relevant, existing laws;

88.2. Experience in countries where religious institutions are compelled by law to register, has shown that regulation of religion is not actually effective in stopping religious institutions from operating, but instead drives those religious institutions “underground”; and

88.3. The time, effort and cost involved in compulsory registration will probably not stop people from meeting for religious purposes and expressing their religious convictions and beliefs as they choose. There is a strong likelihood of non-compliance with the proposed regulation of religion, which will further undermine the rule of law.

**The proposed adoption of new legislation**

89. The Report recommends the adoption of new legislation ("the proposed Act")\(^{128}\), that will:

\(^{127}\) In the event of non-compliance with the Act, s 20 of the NPO Act allows for the Director to send a compliance notice to the registered NPO, notifying the organisations of the steps it is required to take in order to comply; and if satisfied that any non-compliance (with the provisions of the specific Act) may constitute an offence, the Director may refer the NPO to the SAPS for criminal investigation. In terms of s 21, if the NPO fails to comply with the compliance notice, the Director must cancel its certificate of registration.

\(^{128}\) Report, p 33 at para 18.1
89.1. “Establish the criteria, and procedures, required for a religion to qualify and be recognised as a religion”\textsuperscript{129} (referred to in the Report as “Religion Accreditation”);

89.2. Make it compulsory for religious institutions (or any subsidiary bodies) and religious practitioners\textsuperscript{130} to apply for an operating licence, before they will be allowed “to operate in the public space, and to collect and utilize public funds”\textsuperscript{131}. To this end, the “proposed Act” establishes a number of regulatory bodies\textsuperscript{132}, responsible for (recommending) the issuing / withdrawing of such operating licences, with the CRL being the “final appeal”\textsuperscript{133}. This regulatory framework, the CRL believes, will ultimately serve as “an effective and efficient peer review mechanism”\textsuperscript{134} for religious institutions; and

89.3. If a religious institution is going to operate a “worship centre”, the “worship centre” needs to be registered and a licence needs to be obtained in terms of the Act\textsuperscript{135}.

Religion Accreditation:

90. The CRL proposes that the requirements for a religion to be recognised as such by the (multi-faith) Peer Review Council\textsuperscript{136}, should include the following:

90.1. “Religion must have a Religious Text that has a defined origin or an origin proved so ancient that no one alive can remember the true origin.

90.2. The founding documents of each religion should be significantly different.

90.3. The religion should have a significant number of followers that believe in and that adhere to the tenets of the faith.

\textsuperscript{129} Report, p 33 at para 18.1
\textsuperscript{130} A “general religious practitioner” is defined as “a person that imparts knowledge of the tenets of the faith to a gathering of worshipers” (Report, p 37 at para 18.7)
\textsuperscript{131} Report, p 33 at para 18.2
\textsuperscript{132} Report, p 33 (see diagram)
\textsuperscript{133} Report, p 35 at para 18.4(iii)
\textsuperscript{134} Report, p 37 at para 18.8
\textsuperscript{135} Report, p 36 at para 18.6
\textsuperscript{136} Report, p 34 at para 18.2
90.4. The religion should have a set of rules and practices that order the lives of followers in a specific and particular way that benefit the followers. No practice should be allowed if deemed to have a harmful effect on the physical or mental well-being of its followers, or if deemed exploitive of those that practice it.

90.5. The rules and practices of the religion should not exploit society in general for the benefit of the religion and at the expense of the religious freedoms of others"137.

91. It is uncertain why these particular requirements were chosen. For example, why is a "text" required? Why should the "founding documents" (whatever these may be) be "significantly different"? What constitutes a "significant number of followers"? Who will "deem" a religious practice to be "harmful" or "exploitative" and how will this be determined? It is not clear what is to be understood by "doctrine", or what the difference is between the "doctrines" and "the tenets of the faith".

92. The notion of a multi-faith Peer Review Council sitting as "judge" over the beliefs and practices of a particular religion, with the power to decide whether or not it should be recognised as a religion in the first place, seems to be inconsistent with the constitutional right to freedom of religion, and freedom of association.

93. For example, in terms of the criteria proposed by the CRL, a known religion such as Scientology which has a fairly large following, would probably not be able to operate in South Africa by reason of it not being "ancient" enough. Atheism and humanism (both of which are "religions" in a sense, despite the absence of a "religious text") would be outlawed. So would Satanism, which contains elements that could potentially be "deemed harmful".

94. Experience has shown that the concept of "harmful" is extremely subjective and fluid (changing over time), with the result that it is open to multiple interpretations and even abuse. As a result, the question of whether or not the beliefs and practices of a particular religion (or religious institution) are "deemed harmful" (and whether or not they should be recognised as a religion or religious institution in the first place), is entirely dependent on the subjective religious convictions and beliefs of the members of the Peer Review Council.

137 Report, p 33 at para 18.1
95. In other words, the application of these criteria (in terms of which it will be decided whether a religion will be recognised as such in the first place), will be subjective and therefore inconsistent with the right to religious freedom.

**The proposed regulatory bodies**

96. The Report recommends the broad-scale regulation of religion through various regulatory bodies. A question is the estimated costs of setting up, running and monitoring these regulatory structures. Given the national implementation of these laws and the scope and scale of their application, it will require a fairly large bureaucracy that is likely to cost millions of Rands per annum. Is this a responsible cost to add to the State *fiscus*? And if it is to be paid for by religious institutions, is this an appropriate cost for them to bear? Is such an additional State-imposed cost even legal (constitutional), given that it may prevent religious institutions from operating at all?

97. We now turn to an analysis of each of these regulatory bodies (their composition, powers and responsibilities) in order to show why what is being proposed by the Report, is not in fact “self-regulation” and why we believe this broad-scale regulation of religion would not be constitutional.

**THE CRL:**

98. In terms of the Report, the CRL shall be “*the final appeal before the court on any inter- and intra religious matters*”\(^{138}\). This would effectively put a State institution at the top of all religious institutions and practitioners - something unheard of in a constitutional state in which religious freedom is valued.

99. It is respectfully submitted that this would fundamentally change the role of the CRL as a Chapter 9 institution. This would require a rather controversial constitutional amendment:

99.1. Section 185 of the Constitution and indeed the CRL Act, 2002 suggest that the CRL is first and foremost an *advisory* body. Neither the Constitution, nor the

\(^{138}\) Report, p 35 at para 18.4(iii)
Act, gives the CRL the competence to act as an appeal body on matters related to religion.\(^{139}\);

99.2. While the primary concern and focus of the CRL, in terms of the Constitution and its Act, is the rights of religious communities (in addition to cultural and linguistic communities), the CRL remains a State institution. Should the CRL be appointed as the final arbiter in matters of religion, the established and healthy boundary between State and religion in South Africa would be obliterated; and

99.3. From a Christian point of view specifically, the Bible commands Christians to, in the event of a dispute with one another, resolve it between themselves and not before secular institutions\(^{140}\). As such, the CRL’s recommendation that it acts as “final appeal” on any intra-religious matters, would violate the freedom of conscience, religion and belief of Christians in South Africa, who may be forced to submit their disputes to an institution of State.

THE PEER REVIEW COUNCIL:

100. The Report explains the composition and functions of this Council as follows:

100.1. The Council will consist of peers / representatives of each religion\(^{141}\) (one representative per religion\(^{142}\)), i.e. be a multi-faith body;

100.2. The powers and responsibilities of the Council will be to:

100.2.1. Decide if a (new) religion should be recognised and issued with an operating licence or not\(^{143}\);

\(^{139}\) In terms of s 5(1)(g) of the CRL Act, the Commission does have the power to “facilitate the resolution of friction between and within cultural, religious and linguistic communities or between any such community and an organ of state where the cultural, religious or linguistic rights of a community are affected.” The “facilitation of the resolution of friction” is a far cry however from assuming an adjudicative function as is inherent in an “appeal”.

\(^{140}\) 1 Corinthians 6:1 (NIV)

\(^{141}\) Report, p 31 at para 17; p 34 at para 18.3(i)

\(^{142}\) Report, p 31 at para 17 (the Chairperson of each Peer Review Committee will be a member of the Council i.e. one representative per religion)

\(^{143}\) Report, p 34 at para 18.2
100.2.2. On recommendation / application of the umbrella organisations\(^{144}\), issue / revoke operating licences to religious institutions\(^{145}\), and individual religious practitioners\(^{146}\). The Council may refuse to issue a licence if the institution’s “\textit{doctrine is deemed potentially harmful, physically and mentally to those who practice it, or if such doctrine is not found in the tenets of the religion and which bring the religion into disrepute}”\(^{147}\);

100.2.3. “\textit{Act as an appeal board to mediate in any matter concerning the registration of religion, or any disputes that may arise through the different religious committees that cannot be resolved by the specific religious peer review committee}”\(^{148}\);

100.2.4. \textit{Act as a mediator between the different religions, with the CRL being the final appeal (before the matter goes to court) on any inter- and intra-religious matters}\(^{149}\); and

100.2.5. \textit{Act as a mediator in matters between the State and the religious sector}.

101. Firstly, the notion of a multi-faith Peer Review Council who sits as “judge” over any particular religious institution and/or practitioner, and is given the statutory power to decide whether the particular institution’s or practitioner’s doctrines, beliefs and/or practices are acceptable in order to obtain an “operating licence”, would be (for the same reasons mentioned above under the heading of “Religion Accreditation”) inconsistent with religious freedom and freedom of association.

102. Further, the same comments that apply in respect of the CRL’s appointment as “\textit{final appeal}” in religious disputes, apply with regard to the resolution of disputes by the Peer Review Council: \textit{For example}: in an appeal from the “Christian Peer Review Committee” regarding a dispute between two Christian churches, how could a multi-faith Peer Review Council (with one Christian on the Council only, the rest of the Council being made up of representatives of other faiths) possibly sit as “judge” over a

\(^{144}\) Report, p 32 at para 17
\(^{145}\) Report, p 34 at para 18.2
\(^{146}\) Report, p 31 at para 17
\(^{147}\) Report, p 34 at para 18.2
\(^{148}\) Report, p 34 at para 18.3(ii)
\(^{149}\) Report, p 35 at para 18.4(iii)
\(^{150}\) Report, p 35 at para 18.4(iv)
distinctly “Christian” dispute? That would clearly be inconsistent with the right to religious freedom.

103. It is in any event unthinkable that the major denominations and faith groups would submit themselves to a (multi-faith) oversight body. In fact, the reason why there are so many different / smaller denominations, is because they have broken away from bodies or structures that they could not see themselves submitting to.

REGISTERED\textsuperscript{151} PEER REVIEW COMMITTEES:

104. The Report explains the composition and functions of these Committees as follows:

104.1. There will be Committees for each religion (e.g. Christian Peer Review Committee, Muslim Peer Review Committee, Jewish Peer Review Committee, etc) who’s Chairperson will be a member of the Council.\textsuperscript{152} (By implication, each religion will have one (1) representative on the Council);

104.2. Each Committee must represent the whole religious community, and not just a portion of the religion\textsuperscript{153};

104.3. The powers and responsibilities of the Committees will be to:

104.3.1. "Establish a ‘code of good conduct’ that does not impede doctrinal difference, but that ensure that the religion complies with s 15, 18, 31 and 33 of the Constitution that ensures sound financial governance that is accountable to the followers of the religion and that ensures that abuses do not occur within the religion";\textsuperscript{154}

104.3.2. Hear and resolve disputes (incl. appeals from the Umbrella Organisations\textsuperscript{155}) within the particular religion\textsuperscript{156} in terms of a dispute resolution mechanism which they will establish themselves\textsuperscript{157}; and

\textsuperscript{151} Report, p 35 at para 18.4
\textsuperscript{152} Report, p 31 at para 17
\textsuperscript{153} Report, p 35 at paras 18.4(i) and 18.5(i)
\textsuperscript{154} Report, p 36 at para 18.5(iii)
\textsuperscript{155} Report, p 32 at para 17
\textsuperscript{156} Report, p 34 at para 18.3(ii)
\textsuperscript{157} Report, p 32 at para 17 and p 36, para 18.5(iv) and (vi)
104.3.3. Registration / licencing of “worship centres”\textsuperscript{158}.

105. The recommendation that a Peer Review Committee sits as “appeal” over disputes within a particular religion, is questionable. Even within one particular religion, for example Christianity, churches and denominations hold to very different interpretations of the same Scriptures and the application of these vary in practice. The Center for the Study of Global Christianity at Gordon-Conwell Theological Seminary estimated 34,000 denominations in 2000, rising to an estimated 43,000 in 2012.

106. In terms of the recommendations, the Peer Review Committee could notionally be called upon to judge a dispute between the Anglican Church and a Charismatic Church; or between the Dutch Reformed Church and a Pentecostal Church; or between the Catholic Church and the Seventh Day Adventists.

107. It is, with respect, difficult to see how a single regulatory committee could truly be representative of all the different doctrinal streams within, for example, Christianity - i.e. cover the entire spectrum from those who hold to a very literal interpretation of the Scriptures, to those who subscribe to a very liberal view of the Scriptures. The composition of such a Committee would either be so numerous as to make its meeting and decision making process unworkable. \textit{For example}: according to Statistics South Africa, South Africa currently has a population of about 56 million people, of which 79.7\% is Christian (i.e. almost 45 million people). How can one Peer Review Committee hold 45 million people accountable? In addition, there would always be the risk that one group over time would take control of the Committee and rule that beliefs and practices that do not align with their own be outlawed.

108. The same holds true for the Muslim faith, who likewise, have different doctrinal streams. Leaders of the Muslim Judicial Council (MJC) have already voiced their concern that persons belonging to the one stream and holding to one interpretation of the Koran, could potentially sit as “judge” over a dispute involving persons belonging to the other and holding to a different interpretation. Clearly, this is not workable.

ACCREDITED UMBRELLA ORGANISATIONS:

109. The Report explains the composition and functions of these umbrella organisations as follows:

\textsuperscript{158} Report, p 37 at para 18.6
109.1. Each religion will have accredited umbrella organisations\textsuperscript{159}. “The traditional structured religions, along with religious institutions that have structured systems in place, should be able to articulate them and thus be accredited to act as “umbrella organisations” or associations\textsuperscript{160};

109.2. While all religious institutions must belong to an umbrella organisation, they will be free to choose which umbrella organisation they belong to, thereby upholding freedom of association\textsuperscript{161};

109.3. The umbrella organisations’ powers and responsibilities would include:

109.3.1. Recommending the issuing of operating licences, and applying for the withdrawal of licences, to the Peer Review Council\textsuperscript{162}. (By implication therefore, the Peer Review Council has a discretion whether or not to grant the licences, and the last say in this regard);

109.3.2. Communities and individuals will be able to lodge complaints about religious institutions / practitioners to the umbrellas they belong to, who would then conduct the disciplinary procedures. (From there, an appeal lies to the Peer Review Committees, and ultimately to the Council as the “final arbiters” before the matter goes to Court)\textsuperscript{163};

109.3.3. Registration / licencing of “worship centres”\textsuperscript{164}.

110. It appears that umbrella organisations will essentially play a broad policing role over religious institutions and practitioners. This would be problematic for the following reasons:

110.1. In terms of the CRL’s recommendations, umbrella organisations will have the power and responsibility to recommend the issuing or revoking of licences to the Peer Review Council, who will make the ultimate decision depending on the doctrine of the particular institution or practitioner. The implication is that, already at the umbrella level, the doctrinal beliefs and practices of a particular

\textsuperscript{159} Report, p 32 at para 17
\textsuperscript{160} Report, p 31 at para 17(ii)
\textsuperscript{161} Report, p 31 at para 17(iii)
\textsuperscript{162} Report, p 32 at p 17
\textsuperscript{163} Report, p 32 at para 17
\textsuperscript{164} Report, p 37 at para 18.6
religious institution and/or practitioner will be “judged” by a superior regulatory body, on the basis of which it will then make its recommendation to the Peer Review Council. This is inconsistent with religious freedom;

110.2. The requirement that every religious institution and/or practitioner be compelled, by law, to belong to an umbrella organisation, is also inconsistent with the right to freedom of association\textsuperscript{165} which guarantees an individual, a group of individuals or an organization the right to choose their associates\textsuperscript{166}. The right to associate includes the right not to associate\textsuperscript{167}, and no religious institution or practitioner can, against their will, be compelled to “belong” somewhere;

110.3. In \textit{Taylor v Kurtstad}\textsuperscript{168} and \textit{Wittmann v Deutsche Schulverein, Pretoria}\textsuperscript{169}, in which the right to freedom of association was considered specifically in the context of religious associations. Both these cases recognise that to belong to a religious association is to have one’s identity and life shaped in a manner that does not readily permit the alteration of either belief or action. Further, to be a member of a liberal society means to live in a State that does not readily dictate the ends of its citizens. This is not to say that the State cannot intervene in the affairs of a religious institution – only that it must have regard for the unique character of such associations and for the fairly high threshold for such intervention\textsuperscript{170}. 

“WORSHIP CENTRES”:

111. The Report also suggests that, where “worship centres (churches, Masjids, synagogues, etc)” are operated, additional registration / licencing with the relevant Umbrella organisation and Peer Review Committee\textsuperscript{171}, is required. In order to qualify for a licence, \textit{inter alia}, the following is required:

\textsuperscript{165} S 18 of the Constitution
\textsuperscript{166} \textit{Taylor v Kurtstag} 2005 (1) SA 363 (W) at para [37]
\textsuperscript{167} Currie & De Waal, \textit{The Bill of Rights Handbook} (6\textsuperscript{th} edition), Juta, pp 400 – 401. See for e.g. \textit{Chassagnou v France} (2000) 29 EHRR 615, where the European Court of Human Rights held that the right to associate included the right not to belong to an association and that the State could not compel a person to join an association fundamentally at odds with that person’s convictions.
\textsuperscript{168} 2005 (1) SA 363 (W)
\textsuperscript{169} 1998 (4) SA 423 (T)
\textsuperscript{170} Currie & De Waal (supra) at p 417
\textsuperscript{171} Report, p 37 at para 8.6
111.1. Compliance with local government regulations;

111.2. The “worship centre” must be a member of an Umbrella Organisation, duly registered with the Peer Review Committee;

111.3. It must have a constitution that promotes good governance, ethics, transparency and accountability;

111.4. All religious leaders in charge of, or working in, such centre permanently or temporarily, must be duly registered and licensed by the Peer Review Council;

111.5. Where the centre occupies a permanent or temporary structure for the primary purpose of religious practices, the centre must supply the following:

111.5.1. A compliance certificate from the local council, confirming that all by-laws and ordinances were followed in the establishment of the structure; and

111.5.2. The assurance that the “worship centre” has enough congregants to maintain it on a donation basis, or proof that there is a source of income that can maintain it.\(^{172}\)

112. Firstly, “worship centre” is not defined in the Report and should probably be defined. If, for example, people meet in a tent, a home, hotel or a hut to worship or pray – would that be considered a “worship centre” for which a licence has to be obtained? Is a cinema a “worship centre” if a religious film is shown in it; does a sport stadium become a “worship centre” if a mass prayer rally is held there; is a cemetery a “worship centre” when a religious funeral is held there, or the beach when a local municipality gives permission for a wedding or sunrise service to be held there?

113. Secondly, one cannot expect from Peer Review Committees or umbrella organisations (who will effectively be made up of religious leaders) to have intimate knowledge of local government regulations and by-laws, or the necessary legal knowledge relating to constitutions and other governance matters which will be required in order for them to approve and issue licences to “worship centres”.

114. A number of other terms are also undefined, including “religious leaders in charge of, or working in such centre, permanently or temporarily”. What does “in charge of”,

\(^{172}\) Report, p 37 at para 18.6
“working in”, “permanently” or “temporarily” mean? Who does and does it not include? Does it for example mean that those in charge of or involved with children’s, youth or worship ministry (even if they are volunteers) must also be registered in order to fulfil these functions?

115. The requirement that proof has to be submitted that there are “enough congregants to maintain [the worship centre] on donation basis, or proof that there is a source of income that can maintain it”, is vague. How many is “enough congregants”, and how specifically would it be determined whether the religious institution has enough finances at its disposal to maintain “the worship centre”? Will the CRL have to employ financial experts to assess the commercial viability of religions? Would the institution be required to put up bank statements, a bank guarantee, a surety – and how long a period would this “proof” need to cover?

THE CONSTITUTIONALITY OF THE PROPOSED REGULATION OF RELIGION

116. Although the Report encourages “self-regulation”173, the proposals amount to something different.

117. Currently, a co-operative model exists between religion and State in South Africa. Should legislation compel religious institutions and practitioners to be registered and licensed by regulatory bodies created in terms of such legislation, it would amount to the adoption of a completely different model for regulating the relationship between religion and State. It would also affect the constitutional right to freedom of religion to such an extent that the constitutionality, and thus, the validity of the legislation itself, will be in question.

118. Firstly, such legislation represents a major shift from the co-operative model of religion-state relations that has been practised in South Africa for decades, to a State regulatory model in terms of which religious institutions and practitioners must first be recognised and licensed, effectively, by the State in order to be able to operate and function. In whatever “self-regulatory” terms this is couched (as the regulatory bodies to be created, will be composed of representatives of different religions), these regulatory bodies will be State-appointed, State-funded and State-controlled. Moreover, legislation will set the criteria required for a religion to even be recognised as such. The conclusion is that the proposed legislation will amount to State regulation of

173 Report, p 28 at para 15(i); p 31 at para para 17(i)
religion and will over-turn the traditional co-operative relationship between religion and the State in South Africa.

119. Secondly, such legislation seems to be inconsistent with the constitutional right to freedom of religion. Freedom of religion refers to an area of life in which the State is supposed to interfere as little as possible. Several areas of life are being protected by the Bill of Rights in this way – for example, freedom and security of the person (s 12), freedom of expression (s 16), freedom of association (s 18), freedom to make political choices (s 19), freedom of movement (s 21), and freedom to choose an occupation (s 22).

120. The duty of the State in respect of these rights is to create the space and atmosphere for individuals and associations to enjoy these rights to the fullest, with as little State regulation as possible. When the State for whatever reason does step in, it amounts to the limitation of these rights which must be justified in terms of section 36 of the Constitution. This means the State must provide very good reasons for such limitation (see below).

**Limitation of the right to Freedom of Religion**

121. The question of whether the recommendations in the Report amount to a limitation (violation) of the constitutional right to freedom of religion can be answered with reference to the SA Charter of Religious Rights and Freedoms, which breaks down the right into several components. We deal only with those critical components that will be affected by the proposed legislation.

122. **The right to believe and to choose which faith, worldview, religion or religious institution to subscribe to, affiliate with or belong to**. When the State creates regulatory bodies (irrespective of the fact that they will consist of representatives of different religions and religious communities) for the recognition and licensing of religious institutions and practitioners, it limits this right because the individual is not free to believe and, accordingly, to choose which religious institution or community to belong to. One is indirectly forced to belong only to religious institutions or communities recognised and licensed by State-created bodies (and, by implication, to adjust one’s beliefs accordingly). This affects the position of so-called individual religious practitioners as well. They will be licensed only if they join an institution already

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174 S 1 of the Charter
recognised and licensed\textsuperscript{175}, and will not have the freedom to join an institution (which may be unlicensed) in accordance with their convictions. Moreover, some religious institutions will be excluded right from the start, because the Report states that so-called “traditional” structured religions and institutions should be accredited to act as “umbrella organisation or association”\textsuperscript{176}. By implication, more recent institutions will presumably not enjoy this recognition and their members or followers will not have the opportunity to join the institution of their choice.

123. **The right not to be forced to believe**, and the right to change one’s beliefs or to form new religious communities\textsuperscript{177}. Similar to the previous point, the proposed legislation will limit this right, because one may not freely form new religious communities and any such community must be recognised and licenced by the regulatory bodies created in terms of the proposed legislation.

124. **The right to the impartiality and protection of the State**; specifically the duty on the State not to promote, favour or prejudice a particular faith, religion or conviction, and the right not to be unfairly discriminated against on the basis of one’s religion or religious affiliation\textsuperscript{178}. When the regulatory bodies created in terms of the proposed legislation recognise and license some religious communities and not others – and it could even be on the basis of doctrinal issues\textsuperscript{179} – it does not act impartially. It prejudices those not recognised or licensed, and it discriminates against those not recognised or licensed. This is typically the result of State regulation of religion. Those who do not comply with the State-imposed requirements are either banned or do not enjoy the benefits that may be conferred by the State. This would be unfair discrimination based upon religious conviction.

125. **The right to manifest one’s beliefs by way of religious observances and other actions**, specifically the right to associate with others, to form and join religious associations and institutions, to organise religious meetings and other collective activities, and to establish and maintain places of religious practice\textsuperscript{180}. Legislation compelling registration and licensing of religious communities and religious practitioners limits all these rights. Individual believers or followers will not be free to

\textsuperscript{175} Report, p 35 at para 18.4
\textsuperscript{176} Report, p 31 at para 17(iii)
\textsuperscript{177} S 2 and 2.1 of the Charter
\textsuperscript{178} S 3, 3.1 and 3.2 of the Charter
\textsuperscript{179} Report, p 34
\textsuperscript{180} S 4 and 4.2 of the Charter
manifest and observe their beliefs in these ways as they deem fit, as they will be allowed only to do it in and through recognised and licensed institutions and practitioners. The licensing of places of worship ("worship centres") also limits this right\textsuperscript{181}. One will probably not be allowed to worship at a place of one’s choice, but only at a licensed worship centre. This may even affect informal gatherings in homes or in open spaces.

126. **Every religious institution has the right to institutional freedom of religion**, specifically to determine their own doctrines, and to regulate their own internal affairs, including their own organisational structures and procedures. Every religious institution is recognised and protected as having authority over its own affairs, and the State (including the judiciary) must respect the authority of every religious institution over its own affairs, and may not regulate matters of doctrine and ordinances\textsuperscript{182}. Having regard to the functions and powers of the various State bodies envisaged by the proposed legislation, the State will be deeply involved in the internal affairs of religious institutions. The State will approve the internal documentation (constitution, codes of conduct, etc) of a religious community in order to establish a so-called Peer Review Committee\textsuperscript{183}. The criteria with which a religious institution must comply in order to be recognised and licensed\textsuperscript{184}, are inconsistent with the right to institutional freedom of religion. Since a religious institution will have to show acceptable historical and doctrinal documentation, significant member numbers, etc., the State will step boldly into the internal affairs of religious institutions when these criteria are applied. Moreover, the State-appointed bodies created by the proposed legislation will license individual religious practitioners\textsuperscript{185}, and will be responsible for disciplinary matters, appeals, etc\textsuperscript{186} - all matters relating to the internal affairs of religious institutions.

127. The conclusion is that several components of the right to freedom of religion will be limited by the proposed legislation. This is probably an unintentional, but nonetheless unconstitutional, consequence of the proposals in the Report.

\textsuperscript{181} Report, p 36 at para 18.6
\textsuperscript{182} S 9, 9.1, 9.2 and 9.3 of the Charter
\textsuperscript{183} Report, p 35 at para 18.5
\textsuperscript{184} Report, p 33
\textsuperscript{185} Report, p 37 at para 18.7
\textsuperscript{186} Report, pp 31 and 35
128. The next question is whether these limitations on the right to freedom of religion imposed by the proposed legislation comply with section 36 of the Constitution. If it does not comply, the legislation will be unconstitutional.

**Justifiability of the limitation on Freedom of Religion**

129. While we accept that it may be necessary and appropriate in certain instances to limit the religious freedom of those who abuse their freedom at the expense of the poor and vulnerable, we respectfully submit that the recommendations do not pass constitutional muster.

130. Section 36 of the Constitution requires that a limitation on a constitutional right must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. This requires that there must be a balance between a limitation and its purpose – not any kind of balance, but the balance one would expect in an open and democratic society, not in a closed and undemocratic society. To determine whether such a balance exists, section 36 provides five factors to be taken into account by a court of law.

130.1. **The nature of the right**\(^{187}\), in other words, how important are the conduct and interests being protected by this right? As pointed out earlier, the Constitutional Court has confirmed on more than one occasion that freedom of religion is regarded in South Africa as an extremely important fundamental right with which the State should not readily interfere. This factor puts pressure on the importance of the purpose of the limitation, and any limitation on the right should be considered carefully.

130.2. **The importance of the purpose of the limitation**\(^ {188}\). It must be a legitimate and lawful purpose and it must be sufficiently important to outweigh the importance of the right being limited. In this case, the purpose that can be inferred from the Report is to protect individuals from abuses, malpractices and unlawful conduct by some religious institutions. This is a legitimate and lawful purpose, although it must be considered how widespread this phenomenon is and what benefit the limitation will bring for affected individuals. In this case, it

\(^{187}\) S 36(1)(a)

\(^{188}\) S 36(1)(b)
is a question whether such a sweeping limitation on religious freedom which affects all religious institutions and practitioners across the board will reap sufficient benefit to justify the limitation. Here, an important consideration is the fact that the vast majority of religious institutions and practitioners are law-abiding and do not make themselves guilty of harmful and/or unlawful practices. (See the other factors to be considered below.)

130.3. **The nature and extent of the limitation**\(^{189}\). What method is used to limit the right to freedom of religion and how deeply does the limitation affect the conduct and interests protected by the right? Moreover, in considering this factor, the Constitutional Court stated in *S v Bhulwana; S v Gwadiso*: “The more substantial the inroad into fundamental rights, the more persuasive the grounds for justification must be.”\(^{190}\) At this point, serious doubt begins to emerge about the constitutionality of the proposed legislation. As shown above, several critical components of the right to freedom of religion will be limited by the legislation. The legislation will be sweeping by nature. All religious institutions and communities will have to observe it, with no exceptions. No doubt, some religious institutions, even some already in existence, will not be able to comply with the prescribed criteria and will be disqualified. This will completely negate the relevant aspects of their religious freedom. So, the limitation imposed by the legislation is very far-reaching and severely restricts the right to freedom of religion.

130.4. **The relation between the limitation and its purpose**\(^{191}\). Does the limitation protect or promote the purpose, and to what extent? This factor also refers to what the Constitutional Court calls the “rational relationship test” – is there a rational relationship between the limitation and its purpose? This helps to answer the question whether the importance of the limitation outweighs the sweeping and far-reaching inroads which the limitation causes into the important right to freedom of religion. When the limitation goes too far – irrespective of whether it does promote the purpose to a particular degree – it is overbroad or over-inclusive and fails the test of constitutionality. It is submitted that the limitation imposed by the proposed legislation is indeed overbroad. As shown above, it will limit various critical aspects of freedom of

\(^{189}\) S 36(1)(c)
\(^{190}\) 1996 (1) SA 388 (CC); 1995 (2) SACR 748
\(^{191}\) S 36(1)(d)
religion to such an extent that there will be no rational relationship between the limitation and its purpose. At the same time, it is fair to ask whether the legislation will indeed solve the problem of abuse and malpractice, which essentially comes down to effective policing and law-enforcement. A State-regulatory regime as proposed by the legislation does not necessarily address the issue of effective law-enforcement. Whenever it is uncertain whether a limitation will indeed achieve the purpose, there is not a rational relationship between the limitation and its purpose.

130.5. **Less restrictive means to achieve the purpose**\(^\text{192}\). Here, the question asked by the courts is whether the purpose of the limitation can be achieved more or less equally effectively by less restrictive means. The proposed legislation is sweeping and far-reaching and limits several components of the right to freedom of religion quite severely.

130.6. It is therefore a fair question to ask whether less restrictive means are available? In this regard, the Report itself refers to several legislative measures already on the statute book that apply to religious communities but which some religious institutions do not comply with and which should be enforced more effectively. These laws are much less restrictive than the broad-scale regulation of religion proposed by the Report, as it will only restrict the religious freedom of those who make themselves guilty of transgression of the law (rather than restrict the religious freedom of the innocent and the guilty alike). The obvious question is whether the proposed legislation will be at all necessary if existing legislation is being enforced more effectively. As pointed out, it is clear that less restrictive means are available in the form of the effective enforcement of existing legislation to achieve the same purpose. This fact seriously undermines the necessity for new legislation with the sweeping impact on the freedom of religion explained above. It is further submitted that, rather than creating a new law which would place an additional burden on the already strained resources of government, SARS, FIC, the Police and the courts, government should focus its energy and resource on enforcing the existing laws.

\(^{192}\) S 36(1)(e)
131. *When the above five factors are taken together, the conclusion is inevitable that the proposed legislation does not pass constitutional muster.* The impact on religious freedom is severe, there is no rational relationship between the alleged purpose of the legislation and the severe limitation it will impose on religious freedom, and there are less restrictive means available to achieve the purpose. Accordingly, the limitation is not reasonable and justifiable in an open and democratic society, it does not comply with section 36, and the legislation will be unconstitutional if adopted.

**ALTERNATIVE RECOMMENDATIONS**

132. For the reasons mentioned in this document, the recommendations for the legislative regulation of religion proposed in the Report, cannot be supported. The proposed regulation is inconsistent with the right to religious freedom and unconstitutional when tested in terms of s 36.

133. The proposed regulation is further unnecessary, as the problems identified in the Report, can be addressed through the enforcement of existing legislation. (Further, as explained, even if religion were to be regulated as proposed, there is no guarantee that the problems identified in the Report will no longer occur. The reality is that one cannot anticipate or prevent every situation, and must therefore deal with situations remedially as they arise – through the enforcement of existing legislation). In this regard, the following:

133.1. The Constitutional Court has made it very clear that a “hands off” approach applies in respect of the doctrines (i.e. religious convictions, beliefs and practices as an expression of those beliefs) of religious institutions. In other words, there is no legal ground for regulation of, or interference with, doctrinal matters – unless those beliefs and practices are clearly harmful or unlawful, in which case existing laws need to be implemented and enforced;

133.2. Where religious organisations are registered as a NPC, a living trust, a NPO, and/or a PBO in terms of the applicable legislation, and fail to comply with that legislation, the bodies responsible for the oversight of that legislation should enforce the existing legislation against non-compliant religious organisations;

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193 *De Lange v Presiding Bishop of the Methodist Church of Southern Africa for the time being and Another* (CCT223/14) [2015] ZACC 35; 2016 (1) BCLR 1 (CC); 2016 (2) SA 1 (CC) (24 November 2015)
133.3. As an influential constitutional body, we submit the CRL can (and should) play a critical role in encouraging other State bodies to effectively enforce the relevant legislation. We have already explained that there is no reason why the CRL itself cannot refer specific cases to the relevant authority, including laying charges with the SAPS.

133.4. In this regard, we suggest the establishment of a special Ombudsman office within the CRL, to investigate and possibly prosecute (with the help of the Police, SARS, FIC or other relevant authorities) genuine abuses. Over time, this will result in case law being developed whereby particular cases will be tested and constitute legislative standards without cumbersome regulation;

133.5. Given that a critical role of the CRL is to educate, inform and indeed encourage, religious communities and institutions towards lawful and accountable behavior, it is proposed that the Commission focuses its efforts in this respect on canvassing the co-operation of the religious sector for this purpose. The CRL may want to consider putting in place a capacity building and training mechanism, which raises the standard of awareness of regulation that does apply such as in the case of financial reporting and tax compliance, the nature and implications of the human rights framework and culture, etc.); and

133.6. The CRL Commission can play an important role to educate and inform religious communities, particularly in the poorer and more remote areas of South Africa where people are potentially more vulnerable to exploitation and abuse, of their legal rights, for example, as members of a voluntary association and constitutional rights, for example to human dignity, physical integrity etc, and the legal remedies at their disposal in the event of harmful or unlawful practices by religious institutions or practitioners.

134. In so far as governance is concerned, as a starting point, all religious institutions should not be expected to register as NPOs. The CRL can (and should) however play an invaluable role in:

134.1. Educating and informing religious institutions and their members of the various ways in which religious organisations in South Africa, are legally organised (namely as a voluntary association, a living trust, or a NPC) and what the legal requirements and implications are of each of these; and, likewise, the procedures and implications involved in registering as a NPO, and/or a PBO;
134.2. Educating and informing religious institutions with regard to the various other laws applying to them as religious institutions and practitioners for example (e.g. requirements for marriage officers in terms of the Marriage Act and/or Civil Union Act; banking laws; immigration and visa laws; labour laws; health and safety laws, etc), and the implications of non-compliance;

134.3. Educating and equipping religious organisations and practitioners with regard to governance matters in general, e.g. calling and running a meeting; taking minutes; recording board resolutions; appointing and removing office-bearers; and putting governance structures in place; the keeping of financial records; running a bank account; splitting personal and business activities; etc; and

134.4. Assisting religious organisations and practitioners in this regard, by making available sample or model constitutions; memorandums of incorporation; rules for convening and conducting meetings; board resolutions; minutes, etc.

135. It is respectfully submitted that, given the fact that the hearings with "a random sample" of religious and traditional leaders did not specifically include the notion of regulation of religion as now proposed in the Report, and in good faith towards religious communities in South Africa, it would be prudent to hold back the referral of the recommendations for the regulation of religion in South Africa to Parliament until such time as a broad consultative process with the religious sector has taken place to discuss the way forward. In this regard, we propose as follows:

135.1. That the CRL do its utmost to create and facilitate an environment conducive to respecting, protecting, promoting and fulfilling the constitutional right to religious freedom, and the rights of religious communities;

135.2. The CRL could approach the religious sector with the proposal that a Task Team (including senior religious leaders, but also legal and other professional expertise) be appointed by the sector itself to arrange such platform for consultation, and to drive the process;

135.3. A possible outcome of such a process could be the adoption of a “Code of Ethics" to which religious institutions and practitioners would be encouraged (but not legally compelled) to subscribe. In the spirit of self-regulation, religious
communities would commit themselves in terms of such a “Code of Ethics” to the elimination of the abuses, conduct and practices mentioned in the Report, and to the diligent observance of the highest ethical and good governance standards; and

135.4. The SA Charter for Religious Rights and Freedoms provides a foundation from which to develop such a “Code of Ethics”, which could make a valuable contribution to the constitutional exercise of the right to religious freedom, and the rights of religious communities, in South Africa.

CONCLUSION

136. In conclusion, we emphasise that we share the CRL’s concerns regarding the “commercialisation” of religion and abuse of people’s belief systems, and are grateful for what we understand to be a bona fide effort on the part of the Commission to protect religious communities against “charlatans” and “con-artists” who manipulate the poor and vulnerable for selfish gain.

137. The examples of “commercialisation” and abuse mentioned in the Report, do not however justify the far-reaching recommendations proposed in the Report – particularly when various laws and legal mechanisms are already in place to address the problems identified in its Report.

138. The recommendations for the regulation of religion in South Africa are also not congruent with the objectives and provisions of the SA Charter of Religious Rights and Freedoms, as agreed to by signatories representing 25 million people in South Africa (and which the CRL itself has signed and endorsed).

139. In the circumstances, we appeal to the CRL to reconsider the recommendations made in its Report, and we affirm our commitment to work with the CRL in finding solutions that are both practical and constitutionally sound.
GLOSSARY:

ASA: Advertising Standards Authority

CIPC: The Companies and Intellectual Property Commission

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

DSD: The Department of Social Development

FIC: The Financial Intelligence Centre, established in terms of the Financial Intelligence Centre Act, 2001

FOR SA: Freedom of Religion South Africa NPC

NPC: Non-profit company, registered with CIPC in terms of the Companies Act, 2008

NPO: Non-profit organisation, registered with DSD in terms of the NPO Act, 1997

NPO Act: Non-Profit Organisation Act, 1997

PBO: Public benefit organisation, registered with SARS in terms of the Income Tax Act, 1962

SAHRC: The South African Human Rights Commission

SAPS: The South African Police Service

SARS: The South African Revenue Service

VA: Voluntary Association, established in terms of the common law (not registered)
LIST OF CHURCHES, DENOMINATIONS AND FAITH GROUPS:

1. Signatories to the SA Charter of Religious Rights and Freedoms, including (but not limited to):
   1.1. The Ishmaili Community
   1.2. The Hindu Coordinating Council
   1.3. The Icamagu Institute (Eastern Cape)
   1.4. African Traditional Religion
   1.5. The Coptic Orthodox Church
   1.6. Pentecostal Churches
   1.7. Reformed Churches in South Africa
   1.8. The Open Doors Ministry
   1.9. The Baptist Union of Southern Africa
   1.10. The Christian Network
   1.11. The Elected School of the Amadlozi
   1.12. The Jesuit Institute South Africa
   1.13. The South African Tamil Federation
   1.14. Trans World Radio-SA
   1.15. Triple M Productions – Media Production House
   1.16. Interdenominational African Ministries Association
   1.17. The International Institute for Religious Freedom
   1.18. The Sri Sathya Sai Baba Council
   1.19. The Seventh Day Adventist
   1.20. The Roman Catholic Church
   1.21. The Bahá’í Faith
   1.22. The CRL Rights Commission
   1.23. The Islamic Judicial Council
   1.24. The Christian Lawyers' Association
   1.25. The Church of Jesus Christ and the Latter Day Saints
   1.26. The Church of England in South Africa
   1.27. The Office of the Chief Rabbi (South African Jewish Community)
   1.28. The Arya Samay SA
   1.29. The Faculty of Theology of the Free State
   1.30. The Griqua Independent Church
   1.31. Evangelical Lutheran Church in South Africa
1.32. The Anglican Church of Southern Africa  
1.33. Charismatic Churches  
1.34. The National House of Traditional Leaders  
1.35. The Jami'atul 'Ulamâ (Council of Muslim Theologians)  
1.36. The Executive of the National Religious Leaders Forum  
1.37. The South African Broadcasting Corporation  
1.38. The Dutch Reformed Church  
1.39. The Nederduitsch Hervormde Kerk in Afrika  
1.40. The Griqua National Council  
1.41. The Coptic Orthodox Church  
1.42. The Dutch Reformed Circuit of Evander  
1.43. Radio Kansel  
1.44. The Dutch Reformed Church in Africa  
1.45. The Uniting Reformed Church of Southern Africa  
1.46. The Rhenish Church  
1.47. The Evangelical Alliance of South Africa  
1.48. The Youth Desk of the Dutch Reformed Church  
1.49. The Dutch Reformed Church Highveld  
1.50. The Joshua Generation Church  
1.51. The Bastion of Truth  
1.52. New Living Ministry  
1.53. African Independent Churches (Ethiopian, Pentecostal, Zionist and Apostles)  
1.54. Individual members  
1.55. Friends of the Charter are: Fedusa, Nactu, Busa, Solidariteit, SA Akademie vir Wetenskap en Kuns, Die FAK, Die Afrikaanse Taalraad, The International Labour Organisation.

2. 4Ways United Church, Fourways  
3. The Abundant Life Centre, Richards Bay  
4. Abundant Life Outreach International, Klerksdorp  
5. Accurate Building Concepts Ministries, Phoenix  
6. Active for Jesus Media Mission, Krugersdorp  
7. Acts Fire Global, Durban  
8. The Apostolic Faith Mission (AFM) South Africa  
9. Apostolic Faith Mission (AFM), Hatfield  
10. Apostolic Faith Mission (AFM), Leratong Assembly  
11. Africa Christian Action, Cape Town  
12. African Christian Union (ACU)
13. African Church of Christ, Mtubatuba
14. African Enterprise (AE), Pietermaritzburg
15. Afrikaanse Protestantse Akademie, Sunnyside
16. Alliance of Pentecostal and Charismatic Churches SA
17. Alpha & Omega Christian Fellowship, Cape Town
18. Amazing Grace Christian Centre, Plumstead
19. Amazing Grace Seventh Day Adventist (SDA) Church, Johannesburg
20. Anglican Diocese of Port Elizabeth
21. Anchor of Hope Ministries, Bloemfontein
22. Assemblies of Christ Federal, Kraaifontein
23. Assemblies of God (AOG) South Africa
24. Association of Christian Media (ACM);
25. Association of Christian Religious Practitioners (ACRP)
26. Association of Christian Schools International (ACSI), Roodepoort
27. The Association of Vineyard Churches SA
28. Back to Basics, Kago Leswa
29. The Baptist Union of Southern Africa
30. Barberton Christian Church, Barberton
31. The Bay Community Church, Cape Town
32. Be Blessed Church (AFM), Benoni
33. Beit Jezreel Fellowship, Lakeside
34. Breakthrouh Ministries SA, Edendale
35. Bridge Church, Newcastle
36. Builders in the Spirit Ministries, Mitchell's Plain
37. Calvary Baptist Church, Pretoria
38. Campus Crusade for Christ
39. Catholic Community Service of the Diocese of Bethlehem, Bethlehem
40. Celebrate Faith Family Church International, Mandalay
41. Celebration Church, Cape Town
42. CFCl Bethlehem, Bethlehem
43. Charis Covenant Centre, Durban
44. Christ Church, Alexandria
45. Christ Church, Blairgowrie
46. Christ Church, Tygerberg
47. Christ Church, Welkom
48. Christ Embassy
49. Christ for Africa Ministries, Harrismith
50. Christ Unlimited, Robinvale
51. Christian Family Church International (CFCI), & all the CFC churches
52. Christian Heritage Church, Krugersdorp
53. Christian Lawyers Association (CLA)
54. Christian Life Centre, Carletonville
55. Christian Life Ministries, Edgemead
56. The Christian Network
57. Christian Revival Church (CRC), Bloemfontein & all the CRC churches
58. Chrystal Clear Ministries International, Gauteng
59. Church of Bloemfontein, Bloemfontein
60. Church of the Nations, Port Elizabeth
61. Church on the Hill, Simon’s Town
62. The Church Unity Commission
63. Church Unlimited in Christ, Nelspruit
64. City of Hope Christian Church, Kimberley
65. Coffee on the Rock, Kempton Park
66. The Commissioned Church, Randburg
67. Common Ground Churches
68. Concerned Youth of South Africa (CYPSA)
69. Connect Church, Meadowridge / Muizenberg
70. Connected Life Church Ministries International
71. Conquering Through Prayer
72. The Consultation of Christian Churches
73. Cornwall Hill College, Tshwane
74. Corpus Christi, Grabouw
75. The Council of the Charismatic Churches (COCC), on behalf of 800+ charismatic ministers and 5 million+ congregations in SA
76. Covenant of Peace Ministries, Durban
77. Crossroads Christian Fellowship, Port Elizabeth
78. C3 Church Southern Africa
79. Dabar Life Tabernacle, Ekurhuleni
80. Dayspring Ministries and Fellowship, Empangeni
81. Damascus Road Ministries, Pretoria
82. Despatch Baptist Church, Eastern Cape
83. Die Pinkster Protestante Kerk
84. Disciples Family Church, Atlantis
85. Dominion Ministries SA, Port Elizabeth
86. Durban Central Ministers Fraternal
87. Durban Christian Centre, Durban
88. Durbanville Presbyterian Church
89. Dutch Reformed Church of South Africa
90. Eagle’s Nest
91. Eastern Province Baptist Association
92. Elcana Revival Ministry, Gauteng
93. El-Shaddai (Missionary and Agricultural) Projects, Cullinan
94. Emmaus Mission, Kensington (Gauteng)
95. Ennerdale United Congregational Church, Ennerdale
96. Evangelies-Gereformeerde Kerk, Upington
97. The Evangelical Alliance of South Africa (TEASA)
98. Evangelical Bible Church of South Africa (EBCOSA)
99. The Evangelical Community Churches of South Africa, Cape Town
100. Every Nation Churches and Ministries, South Africa
101. Faith Word Fellowship, Sebokeng
102. Fellowship of Christian Churches in Africa International, Pretoria
103. Filadelfia (NGO), Filadelfia
104. Filadelfia Ministries, Filadelfia
105. Following Jesus Church, Johannesburg
106. Forward in Faith Church, Olifantsfontein
107. Foundation of Truth Ministries, Mogale City
108. Fountain Vineyard Christian Fellowship, Port Elizabeth
109. Four12 partnership of churches, South Africa
110. Free Reformed Church, Pretoria
111. Free State Pro-Life Network
112. Full Gospel Church, Kensington (Cape Town)
113. Galilee International Ministries (SA)
114. The General Assembly of the Uniting Presbyterian Church in Southern Africa (UPCSA)
115. Gilgal East Ministries, Benoni
116. Glad tidings Fellowship, Chatsworth
117. Global Hope International Ministries, Vredenburg
118. God Adventure Church, East London
119. God at Work, Ottery
120. God for Blessings Ministries, North Beach (KZN)
121. God Onbeperk Aanbiddings Gemeente, Vanderbijlpark
122. God’s Sanctuary Ministries, Vryheid
123. God’s Tabernacle Christian Family Church, Polokwane
124. Good News Community Church, Port Elizabeth
125. Grace Christian Fellowship, Pretoria
126. Grace City Church, Durban
127. Grace Ministries, Mitchell’s Plain
128. Grace Presbyterian Church, Monte Vista
129. H2O Ministries International, Johannesburg
130. Haima Christou Ministries, Pretoria
131. Hanover Anglican Church, Hanover
132. Harvest Celebrations Church, Bloemfontein
133. Harvest Christian Church, Port Elizabeth
134. Harvest Time Christian Fellowship, Walmer
135. Hatfield Christian Church (HCC), Pretoria East
136. Hatfield Christian Church (HCC) North, Pretoria North
137. Hephzibah Ministries, Welkom
138. His Church, Pinetown
139. His Fellowship Ministries, Pretoria
140. His Hands and Feet Trust, Port Elizabeth
141. His People / Every Nation Baxter, Rondebosch
142. His People / Every Nation South, Retreat
143. His Voice Potter’s House Ministries International
144. Holy Ghost Generation Bible Church, Aliwal North
145. Holy Resurrection Parish, Robertson
146. Honeyridge Baptist Church, Randburg
147. Hoopstad Christian Group, Hoopstad
148. Hope and Trust Ministries, Petersfield
149. Hope Restoration Ministries, Kempton Park
150. House of Glory Bible Church, Mangaung
151. Human Life International South Africa, Kensington (Cape Town)
152. The i-Foundation, an Intercape initiative
153. In the Service of Jesus Christ in His Ecclesia, Somerset West
154. International Apostolic Church of God, Kempton Park
155. International Christian Discipleship Church, Vanderbijlpark
156. Iron Sharpening Iron, Eastern Cape
157. Jericho Walls
158. Jesus Christ Apostolic and Prophetic Ministries, Germiston
159. Joshua Generation Church, Western and Southern Cape
160. Jubilate Assembly, Bloemfontein Central
161. Kairos Gemeente, Bloemfontein
162. KCA, Pretoria
163. KCF Church, Bezuidenhout Valley
164. Kingdom Advancement Ministries Network, Cape Town
165. Kingdom Faithlife Church, Cape Town
166. Kingdom Fellowship Sanctuary, East London
167. Kingdom Life Centurion, Centurion
168. Kingdom Riches, Johannesburg
169. The Kingdom’s Gospel Ministries, Fairland
170. King of Kings Baptist Church, Sun Valley
171. Kingsgate Fellowship, Cape Town
172. Kingsway Family Church, Polokwane
173. Klerksdorp Christian Academy, Klerksdorp
174. KZN Church Leaders Council
175. Kwalanga Baptist Church, Uitenhage
176. Last Trumpet Ministries, Mamelodi East
177. Lentegeur Bible Baptist Church, Mitchell’s Plain
178. Lewende Woord, Bloemfontein
179. Life Christian Centre, Alexandria
180. Light the Fire Ministries, Klerksdorp
181. Lighthouse Christian Centre, Parow
182. Link FM, East London
183. Little Brak Fellowship, Little Brak River
184. Living Church of God, Harrismith
185. Living Hope Baptist Church, Port Elizabeth
186. Lofdal, Kempton Park
187. Love Reaching Communities, Boksburg
188. Maranatha Community Church, Kempton Park
189. Marketplace Mentors, Strand
190. Matzikama Family Christian Church, Klawer
191. Men’s League, Johannesburg
192. Messiah Baptist Church, Kirkwood
193. Miracle Worship Centre, Bloemfontein
194. Mount Calvary Church, Johannesburg
195. The Muslim Judicial Council (MJC)
196. National Baptist Church, Cape Town
197. New Beginnings Baptist Church, Port Elizabeth
198. New Birth Kingdom Connection, Midrand
199. New Destiny Christian Church, Claremont
200. New Hope Church SA, Retreat
201. New Life Church, Durban
202. New Life Vineyard Christian Fellowship, Cape Town
203. NG Kerk, Bloemvallei
204. NG Kerk, Lindenpark
205. Northcliff Union Church, Johannesburg
206. Nuwe Lewe, Tygerberg
207. The Old Apostolic Church (South Africa)
208. Operation Mobilisation (OM) South Africa
209. Openhands Family Outreach
210. Oscar Music Ministries
211. Our Fathers Home, Bloemfontein
212. Our Mother of Perpetual Help, Port Elizabeth
213. Outreach to Men, George
214. Oxygen Life Church, Port Elizabeth
215. Patria, Mossel Bay
216. The Paul Project, Port Elizabeth
217. Port Elizabeth Churchnet
218. Peniel Chapel, Florida Park
219. Peniel Ministries South Africa, Roodepoort
220. Peniel Mustard Seed Foundation, Flordia Park
221. Pentecostal Centre, Heilbron
222. Pinetown Presbyterian Church, Pinetown
223. Prayer Center, Cape Town
224. The Presbytery of the Western Cape of the Uniting Presbyterian Church in Southern Africa (UPCSA)
225. Protea Valley Church, Cape Town
226. Raising Hope Ministries Church, Midrand
227. Raising Hope Ministries Church, Alexander
228. REACH SA
229. Reconciliation Church of Christ in Zion, Bethlehem
230. Redhouse Christian Fellowship, Port Elizabeth
231. Reformed Church of SA, Marble Hall (Limpopo)
232. Rehoboth Community Church, Rehoboth
233. Restoration of Hope Bible Church, Empangeni
234. Restore-A-Nation (RAN) Ministry
235. Rhema Jesus is Ministries, Potchefstroom
236. The River, Robertson
237. Rivers of Revival Church, Lotus Gardens
238. Royal Diadem Ministries, Johannesburg
239. SA Evangelistic Mission (SAEM), Durban
240. Scripture Union South Africa
241. The Seventh-Day Adventist Church
242. SFB United, St Francis Bay
243. Shalom Family Church, Ladismith
244. Shekinah Blaze Outreach International, Kuruman
245. Shofar Christian Church, Bloemfontein
246. Shofar Christian Church, Worcester
247. Sondagsriviervallei Gemeente, Kirkwood
248. South African Theological Seminary (SATS)
249. Spoken Word Bible Church, Harrismith
250. St Barnabas & St Philip
251. St James, Summerstrand, Port Elizabeth
252. St John’s Church, Kenilworth
253. St Mary the Virgin, Woodstock
254. St Matthews Church, Table View
255. The Stand, Bloemfontein
256. Strand Renewal Ministries, Strand
257. Suffer the Children, Tshwane
258. Synod of the Dutch Reformed Church in the Eastern Cape
259. Tehilla Singers
260. The YW Christian Residences for Young Women, Bloemfontein
261. Thy Will Be Done Ministries, Viljoenskroon
262. Thueros Gemeente, Bloemfontein
263. Trinity Ablaze Ministries International, Sundowner
264. Trinity Baptist Church, Port Elizabeth
265. Truevine Family of Churches
266. Truth-And-Science Forum, Paarl
267. TTN Ministries, Pretoria
268. Upon the Rock Centre, Thulamela
269. Village Church, Lonehill
270. Vineyard Churches of South Africa
271. Volle Evangelie Kerk, Springbok
272. The Wesleyan Church, Pretoria
273. The Wesleyan Church, Trans-Natal District
274. Wesmoot A.P. Kerk, Pretoria
275. Westend Baptist Church, Port Elizabeth
276. Without Walls Christian Fellowship, East London
277. Wooma.net Radio
278. Word of Faith CC, Port Elizabeth
279. Word of Life Network (AFM), Boksburg
280. World Christian Network, Johannesburg
281. World Harvest Christian International, Cape Town
282. World Mission Centre, Paarl
283. Worship and Word Cathedral, Johannesburg
284. Yahweh’s House International Ministries, Soweto
285. Zayin Bible Church, Germiston
JOINT STATEMENT REPUDIATING UNLAWFUL ACTS
CARRIED OUT IN THE NAME OF RELIGION

We, the undersigned churches and denominations, repudiate in the strongest possible terms both the claims and the unlawful actions of self-styled Prophet Lethebo Rabalago of the Mount Zion General Assembly in Limpopo.

While we believe that the Bible teaches that the Lord Jesus Christ healed people of all manner of diseases and ailments during His earthly ministry, He always did so in a way that protected their dignity as human beings made in the image of God. On no occasion did He act in a way that caused physical harm to people or further endangered their health. As such, these reported actions are completely contrary to both biblical teaching and practice.

Furthermore, spraying a known toxic liquid over another person, and thereby causing them physical harm, is both unlawful and illegal. We therefore call upon the Government to exercise its powers to ensure that this action is reported to the appropriate law enforcement authorities, to ensure that its perpetrator is prosecuted to the full extent of the law.

We also call upon the victims of these (and similar) acts to withdraw their support from those whose practices and teachings are in no way a reflection of true biblical Christianity.

Signed by the Denominations and Churches listed below:

1. African Independent Churches’ Development Programmedu (AICDPedu), representing Counsel of African Instituted Churches (CAIC)
2. Apostolic Faith Mission of SA (AFM)
3. AFM, Calvinia
4. The Alliance of Pentecostal and Charismatic Churches in South Africa, with its 1000 member Churches (APCCSA)
5. Assemblies of God (AOG)
6. Assemblies of God, Kwa Thema
7. Baptist Convention of South Africa
8. Baptist Union of Southern Africa
9. Bethelites Apostolic Church
10. Bloemfontein Ministers Fraternal BMF
11. The Brook Tabernacle
12. Builders in the Spirit Ministries
13. Cape Synod, Uniting Reformed Church in Southern Africa (URCSA)
14. Cedar Branch Church, Port Elizabeth
15. Central Community Fellowship
16. The Centre for Public Witness
17. Christ Church Tygerberg
18. Christian Family Church, Pretoria East
19. Christian Life Ministries, Edgemead
20. Christian Revival Church (CRC)
21. Church of England in South Africa (REACH SA)
22. The Church of Pentecost, SA
23. Church of the Nations
24. Church on the Way AOG, Summerstrand
25. Common Ground Church
26. Cornerstone Church, Johannesburg
27. Cornerstone Community Church, Durban
28. Damascus Road Ministries
29. Doxa Deo
30. The Dutch Reformed Church
31. Dutch Reformed Church in the Eastern Cape
32. El Bethel Ministry
33. Evangelical Bible Church, Ennerdale
34. Evangelical Bible Church, Florida
35. Evangelical Bible Church of Southern Africa (Greenhaven) and Evangelical Bible College
36. Evangelical Bible Church of Southern Africa (EBCOSA), Port Elizabeth
37. Evangelical Bible Church of Southern Africa, Woodlands, Pietermaritzburg Congregation
38. Evangelical Bible College, Strandfontein
39. Everynation Churches in SA
40. Fellowship of Community Churches
41. Forward in Faith Church in RSA
42. Fountain Scroll Ministry
43. Fountain Vineyard Christian Fellowship, Port Elizabeth
44. Freedom of Religion South Africa (FOR SA)
45. GFL Ministries, Roodepoort
46. The Global Reconciliation Church, Bloemfontein
47. Glory Life Church
48. God’s Tabernacle Christian Family Church
49. Grace Evangelical Bible Church, Lotus River
50. Grahamstown Christian Centre
51. Great Commission Ministers Network
52. Hatfield Christian Church North
53. Haenertsburg Christian Church
54. Harvest Celebrations Church, Bloemfontein
55. Harvest Christian Church, Port Elizabeth
56. Hebron Community Church, Port Elizabeth
57. Heron Bridge Community Church
58. Higher Life Centre
59. International Ministers Fellowship (SA Chapter)
60. Iron Sharpening Iron Ministry
61. Jesus Calls Worship Centre, Randburg
62. Joshua Generation Church
63. Kairos cfci Kyalami
64. Karoo Community Church, Graaff-Reinet
65. KCF Church
66. Kingdom Citizenship Agency
67. Kingdom House of Dominion
68. KZN Church Leaders Council
69. Lighthouse Ministries
70. Light the Fire Ministries
71. Limpopo Pastors Forum
72. Living Waters Church, Sabie
73. Maranatha Community Church
74. The Methodist Church of Southern Africa
75. Midrand Eastrand Ministerial Forum
76. Montrose Park Bible Church
77. Nederduitsch Hervormde Kerk van Afrika (NHKA)
78. New Covenant Church Midvaal
79. Nico Claassen Global Outreach
80. Northcliff Union Church
81. Oasis in Christ Ministries
82. Peniel Outreach International
83. The Pentecostal Protestant Church
84. Pillars of Fire Ministries
85. Port Alfred Baptist Church
86. Povertybreaker Prayer Academy
87. The River Church, East London
88. Restore-A-Nation
89. The SA Council for the Protection and Promotion of Religious Rights and Freedoms (CRRF)
90. Sedgefield Christian Church
91. Sola 5
92. St Francis Xavier Anglican Church, Kabega Park
93. St Katharines Anglican Church
94. Truevine Family of Churches
95. Turn2God Ministries
96. Uniting Presbyterian Church in Southern Africa, Central Cape Presbytery
97. Valley of Miracles Ministry International
98. Victory Ministries International
99. Vineyard Churches SA
100. Word Center Ministries
101. Word Center Ministry, De Deur
102. Word Centre Ministries, Ekurhuleni
103. Zoe Bible Church
104. J. Sarangarajan, Senior Pastor Life in Abundance Christian Church, Port Elizabeth
105. The Christian Network (TCN)

(*The above list reflects the names of signatories as at 12 January 2017)