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### **PRESS RELEASE**

The Dutch Reformed Church has taken note of the Report by the CRL Commission on the commercialisation of religion and abuse of people's belief systems, and has no choice but to distance itself from the main proposals in the Report. We have studied the proposals from the point of view of the South African Charter of Religious Rights and Freedoms, which has been endorsed and is supported by most Christian denominations and churches, members of the Jewish community, the Muslim community, the Hindu community and many African traditional religions, and believe that the proposals cannot be reconciled with the philosophy behind and the provisions of the Charter.

### **FUNDAMENTAL SHIFT IN RELIGION/STATE RELATIONS AND VIOLATION OF RELIGIOUS FREEDOM**

Our main objection, which is explained in a comprehensive response distributed to our members and signatories and submitted to Parliament, is that the proposals amount to state regulation and state control of religion, which will have the following severe consequences:

- (a) It will, firstly, cause a fundamental shift from the existing cooperative relationship between religion and the state to one of state control of religion by law.
- (b) Secondly, state regulation and state control of religion will violate the right to freedom of religion as guaranteed in section 15 of the Constitution.

In terms of the proposals, all religious institutions, worship centres and religious practitioners will be compelled by law to register with state appointed bodies and comply with state determined requirements. Non-compliance may cause one's registration to be revoked. Various so-called umbrella and peer review bodies representative of religions, specific religions and denominations will be state appointed and state controlled, and will operate in terms of law determining their powers and functions. The CRL Rights Commission will be the final authority on all religious matters. This amounts to a system of state regulation and state control of religion, which overturns the cooperative model of religion/state relations, and which violates the right to religious freedom as guaranteed in section 15 of the Constitution in an unconstitutional way.

### **THE DUTCH REFORMED CHURCH REGRETS AND DEPLORES ABUSES**

According to the Report, the proposals originate from newspaper reports and complaints to the CRL Rights Commission, and the subsequent investigation by the Commission into abuses taking place in certain religious institutions. The Church deeply regrets and deplors any

incidents of abuse in the name of religion. Any person or institution committing harmful or unlawful acts in the name of religion is abusing religious freedom and does not act under the protection of the Charter.

The Church stands with the CRL Rights Commission in condemning such abuses and in seeking appropriate ways in which to eliminate it from the practice of religion in South Africa. In addition, where religious institutions do not comply with accepted legal requirements and norms, religious institutions need to be educated as to their civil responsibilities, and ways and means need to be found to enforce the law more effectively.

#### STATE REGULATION AND STATE CONTROL IS NOT THE ANSWER

However, we emphasise that as reprehensible as abuses by some religious practitioners discovered by the Commission may be, they can be dealt with effectively by the range of remedies available in terms of the well-developed, established and respected South African legal system. State regulation and state control of religion is not the appropriate way to combat such abuses. The right to freedom of religion is a fundamental and cherished right in an open and democratic society which may not be sacrificed for the sake of action against the abuses committed by what seems to be a small minority of religious practitioners. That would destroy religious freedom, the very thing which the Commission claims to protect by these proposals.

#### THE EXISTING LEGAL FRAMEWORK IS SUFFICIENT

In justification of the proposals for new legislation to regulate religion, the Report argues that either existing legislation does not address the issues effectively, or religious institutions do not comply with the applicable law, or existing legislation is not enforced properly. This contention is incorrect, and is based on a misunderstanding of the law. The existing legal framework is indeed sufficient to address the issue effectively. The activities of religious institutions are already subject to numerous laws, which just need to be enforced diligently whenever necessary. New legislation to address these alleged shortcomings that will have the effect of controlling religion and of violating religious freedom in an unconstitutional way is not the appropriate vehicle for combating the abuses mentioned in the Report. Then the recognition of a fundamental human right depends on the state's ability or willingness to fulfil its legal duties.

#### INCONSISTENCY WITH SECTION 185 OF THE CONSTITUTION

Our second objection is that the proposals depend on the conferral of vast enforcement powers on the CRL Rights Commission as the so-called final authority on all religious matters. However, under section 185 of the Constitution the Commission is an advisory body in respect of the rights of cultural, religious and linguistic communities. Nowhere in section 185 is the Commission empowered to be a regulatory or enforcing body. Section 185 does not allow for the fundamental shift in the Commission's status and powers implied by the proposals. The governing Act of the Commission, Act 19 of 2002, is subject to section 185, and cannot be amended lawfully to confer powers of enforcement on the Commission without affecting the Constitution. Conferring on the Commission these powers would therefore require an amendment to Act 19 of 2002, as well as section 185 (at the very least). Such an amendment would either remove the CRL Rights Commission from the cadre of Chapter 9 institutions, or it would imply that a Chapter 9 institution assumes executive power, which would be inconsistent with the established nature of the Commission as an advisory body. Conferring on the CRL

Rights Commission the deciding and final authority in respect of religious issues conflicts with the Constitution, and would be unconstitutional and invalid if implemented. On this ground too, the proposals by the CRL Rights Commission must fail.

## CONCLUSION

Mandatory registration of religious institutions, worship centres and religious practitioners, prescribing religious organisations and other bodies to which religious institutions will be obliged to belong and which will advise the CRL Rights Commission on religious matters, and a state commission as final authority on all religious issues are clearly in conflict with the established approach to religion and state relations in South Africa. Moreover, it flies in the face of the right to religious freedom guaranteed in section 15 of the Constitution, which includes the right to believe and to manifest those beliefs, to choose to join and affiliate with religious institutions, and freely to establish and organise religious institutions with independent jurisdiction over doctrine and internal affairs. Religious freedom does not mean that religious institutions are above the law – like all organs of civil society they function within the just and equitable parameters set by law. However, the state has the responsibility to create an environment conducive to the free exercise of the right to religious freedom and not to regulate or burden religion unnecessarily. The proposals of the CRL Commission will not only burden religion unnecessarily, also financially; it will restrict the free exercise of religion to an intolerable degree.

As a constitutional body the CRL Rights Commission has an influential role to play in protecting and advancing the rights of religious communities. However, the role envisaged by the Constitution is to assist, support, educate and advise the religious sector and not to control religion. From the side of the CRRF, we look forward to a mutually beneficial relationship with the Commission on the basis of the role contemplated by the Constitution. For this reason, the Report of the Commission should not go forward.



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