

Pagan Conference on Religion and Regulation

freedom of belief
RELIGION
state regulation

Hosted by the South African Pagan Rights Alliance
Co-hosted by the South African Pagan Council

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Date: 21 March 2019 Human Rights Day

Time: 1pm to 4pm

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0. Introduction

According to the 2016 preliminary report of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities' (CRL Rights Commission), following the hearings on 'Commercialization of Religion and abuse of people's belief systems', the Commission has proposed that all religion and religious organizations in South Africa should be regulated by legislation.

In summary, section 18 of the report recommends:

- *The 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.*
- *The Religion should have a significant number of followers that believe in and that adhere to the tenets of the faith.*
- *Religious peer review committees must represent the whole religious community and not just a portion of the religion.*
- *A General Religious Practitioner, being a person that imparts knowledge of the tenets of the faith to a gathering of worshipers, shall be required to obtain a license to operate. [1]*

It is important to note that legislation to regulate religion in South Africa is not currently being considered by Parliament.

The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities' (CRL Rights Commission) proposals, at this stage, are merely recommendations. The Commission does not have any authority to pass laws, and its recommendations will have to be accepted by the Parliamentary Portfolio Committee on Co-operative Governance and Traditional Affairs (COGTA), which oversees the work of the Commission.

To date, COGTA has not endorsed the recommendations made by the CRL Rights Commission. COGTA has instead recommended that the Commission allow faith communities to regulate themselves by drafting a 'code of conduct'. COGTA has undertaken to consider the final drafted code for possible draft legislation in the future.

1. CRL Rights Commission's constitutional mandate

The Commission was established in terms of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act 19 of 2002,

4(a) to promote respect for and further the protection of the rights of cultural, religious and linguistic communities;

(b) to promote and develop peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association;

(c) to foster mutual respect among cultural, religious and linguistic communities;

(d) to promote the right of communities to develop their historically diminished heritage; and

(e) to recommend the establishment or recognition of community councils in heritage; and accordance with section 36 or 37. [2]

In terms of s5.(1) of Act 19 of 2002, the Commission may do all that is necessary or expedient to achieve its objects, including to:

(a) conduct information and education programmes to promote public understanding of the objects, role and activities of the Commission;

(b) conduct programmes to promote respect for and further the protection of the rights of cultural, religious and linguistic communities;

(c) assist in the development of strategies that facilitate the full and active participation of cultural, religious and linguistic communities in nation building in South Africa;

(d) promote awareness among the youth of South Africa of the diversity of cultural, religious and linguistic communities and their rights;

(e) monitor, investigate and research any issue concerning the rights of cultural, religious and linguistic communities;

(f) educate, lobby, advise and report on any issue concerning the rights of cultural, religious and linguistic communities;

(g) 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;

(h) receive and deal with requests related to the rights of cultural, religious and linguistic communities;

(i) make recommendations to the appropriate organ of state regarding legislation that impacts, or may impact, on the rights of cultural, religious and linguistic communities;

(j) establish and maintain databases of cultural, religious and linguistic community organisations and institutions and experts on these communities; and

(k) bring any relevant matter to the attention of the appropriate authority or organ of state, and where appropriate, make recommendations to such authority or organ of state in dealing with such a matter. [3]

Relevant provisions of Chapter 2 of The Constitution of the Republic of South Africa

s9 Equality

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.*
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.*
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.*
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.*
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.*

s10 Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

s15 Freedom of religion, belief and opinion

- (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.*
- (2) Religious observances may be conducted at state or state-aided institutions, provided that-*
- (a) those observances follow rules made by the appropriate public authorities;*
 - (b) they are conducted on an equitable basis; and*
 - (c) attendance at them is free and voluntary.*
- (3) (a) This section does not prevent legislation recognising-*
- (i) marriages concluded under any tradition, or a system of religious, personal or family law;*
 - or*
 - (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.*
- (b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.*

s18 Freedom of association

Everyone has the right to freedom of association.

s31 Cultural, religious and linguistic communities

(1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community-

(a) to enjoy their culture, practise their religion and use their language; and

(b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

s36 Limitation of Rights

(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. [3]

2. Commission's Report on Regulation of Religion

The followings recommendations were made by the CRL Rights Commission.

s15. i. *The investigative study highlighted the need to protect religious freedom without attempting to regulate it from the side of the state. However, as specific current practices in the religious sector infringe on constitutional rights of congregants and violate existing legislation, we recommend religious communities to regulate themselves more diligently to be in line with the Constitution and the law. Communities should exercise their religious freedom with due regard to their legal, ethical and community responsibilities.*

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

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

iv. Although religious organizations 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 and propose new legislation. The current disregard of fiduciary responsibilities is a serious concern.

v. Religious Organisations need to understand their responsibility in connecting Religious Freedom and recourse to ethical and community responsibility.

vi. Religious organisations guilty of fraud, or misappropriation of funds, should be prosecuted and be held liable regarding the law. It is a serious concern that this does not happen.

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

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

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

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

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

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

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

xiv. 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. [4]

In section 17 of the Preliminary Report, the Commission proposes the drafting of the following legislation to regulate religious institutions, churches and religious leaders.

The CRL Rights Commission is of the view that there are several reasons for the Religious Sector to be regulated:

- 17. i. The Religious Sector needs the powers to regulate itself with the aim of bringing their various religions the respect they deserve.*
- ii. 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.*
- iii. While religious institutions will all be expected to fall under an umbrella Organisation, freedom of association should be paramount in affiliation to umbrella Organisations.*

The Fundamentals of the proposed legal framework should be the following:

- There must be a Peer Review Council, which will consist of peers from each Religion that will give permission to operate to individual religious leaders.

- There must also be Committees of each religion, e.g. Christian Peer Review Committee whose Chairperson will be a member of the Council.

- Each Religious Committee will have a dispute resolution mechanism which they will establish themselves.

- Each religion would then have accredited umbrella organisations that are associations, which will be given powers to recommend the licensing of institutions and individual practitioners. They will also apply to the Peer Review Council for the withdrawal of licenses of institutions and religious practitioners.

- Communities and individuals will be able to lodge complaints about religious institutions and individual practitioners to the umbrella organisations (Association) the institutions or practitioners belong to. The disciplinary procedures would be conducted by the umbrella organisations. The communities or individuals that have complained and institutions or practitioners accused can appeal to their Religious Committee and then to the Peer Review Council if they are not satisfied with the decisions taken by it. The Peer Review Council will be the final arbiters before the matter goes to Court. [5]

Section 18 (1-7) of the Preliminary Report deals with religious accreditation, licensing of a Religion, the creation of a Peer Review Council and Peer Review Committees, the regulation of Worship Centres, and the licensing of General Religious Practitioners.

s18.1. Religion Accreditation

The proposed Act must establish the criteria and procedures required for a religion to qualify to be recognized as a religion. The proposed Act should identify the requirements for a religion to qualify as a religion such as that:

- i. The 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.*

- ii. The founding documents of each religion should be significantly different.*

- iii. The Religion should have a significant number of followers that believe in and that adhere to the tenants of the faith.*

- iv. 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.*

- v. The rules and practices of religion should not exploit society in general for the benefit of the religion and at the expense of the religious freedoms of others.*

18.2 Licensing of a Religion

For a religion to be recognized, they would need to adhere to the prescripts of the proposed Act.

That the Peer Review Council shall only issue such an operating license once the religious institutions comply with the requirements as stipulated in the proposed Act.

That no license may be withheld on the grounds of doctrine unless such doctrine is deemed potentially harmful, physically and mentally to those who practice it or if such doctrine is not found in the tenants of the religion and which bring the religion into disrepute.

18.3. Peer Review Council

i. This Council will be made up of representatives of all religions.

ii. It shall 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.

iii. The procedure will be outlined in the proposed act on how a complainant will lodge their appeal with the board.

18. 4. Religious Peer Review Committee

The proposed Act should establish and recognize a peer review committee for each religion; it should define what a peer review committee is, how it is registered, and what its powers and mandate are.

i. Each religion will register a peer review committee with the Peer Review Council ensuring that it is fully representative of the religion as a whole to promote unity and harmony.

ii. Should it be found that a significant portion of the religion is not represented, that the Peer Review Council, on request of those not represented, can ensure their inclusion in the religious committee.

iii. The Peer Review Council will act as a mediator between the different religions with the CRL Rights Commission being the final appeal before the court on any inter-and intra-religious matters.

iv. The Peer Review Council will act as a mediator in matters between the state and the religious Sector.

18. 5. Structure of a Peer Review Committee

The proposed Act should indicate the Structure of a peer review committee and it should have the following characteristics:

i. That religious peers review committee must represent the whole religious community and not just a portion of the religion.

ii. That a peer review committee shall have a constitution that encourages participation, transparency, and accountability to the religion's members.

iii. That a peer review committee needs to establish a "code of good conduct" that does not impede doctrinal differences, but that ensures that the religion complies with section 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.

iv. That a peer review committee needs to establish a dispute resolution procedure that will hear disputes within the religion.

v. That a peer review committee outlines what procedure should be followed when it comes to meetings etc

vi. That a peer review committee should outline what procedures should be followed when dealing with disputes within their specific religion.

18.6. Worship Centres

The Act will also look at the establishment of "worship centres" (churches, Masjids, Synagogues, etc.). It should give an indication as to what is required to register a Worship Centre, such as that to operate a worship centre it needs to obtain a licence as outlined in the proposed Act and that part of the requirements for a Licence shall be:

i. That the minimum requirement for a Worship Centre shall be to be registered as outlined in the proposed Act;

ii. That the Worship Centre has complied with the regulations of the Local Government that they operate in;

iii. That it must be a member of a duly registered Association registered with the Peer Review Committee;

iv. That it must have a constitution that promotes good governance, ethics, transparency, and accountability;

v. That all religious leaders in charge of or working in such centre permanently or temporarily are duly registered and licensed as per the proposed Act.

That should the centre occupy a permanent or temporary structure for the primary purpose of religious practises that the Centre as part of registration with the relevant Association and the Peer Review Committee supply the following:

a) A Compliance certificate from the local council confirming that all by-laws and ordinances were followed in the establishment of the structure.

b) The assurance that the Worship Centre has enough congregants to maintain the Worship Centre on a donation basis or proof that there is a source of income that can maintain the Worship Centre.

18.7 General Religious Practitioners

A General Religious Practitioner, being a person that imparts knowledge of the tenants of the faith to a gathering of worshipers, shall be required to obtain a license to operate. [6]

3. SAPRA objection to regulation

In principle, the South African Pagan Rights Alliance supports and encourages lawful action, sound and ethical financial management, and social accountability.

To this extent, this Alliance does not object to the recommendations made by the CRL Rights Commission in section 15 of the Preliminary Report, to "*exercise religious freedom with due regard to legal, ethical and community responsibilities*".

The South African Pagan Rights Alliance is legally compliant, practices sound and ethical financial management, and remains accountable to the religious communities we serve, in full compliance with our constitutional aims and objectives.

SAPRA does however object to the content of sections 17 and 18 of the Commission's Preliminary Report.

1) The 'right of association' provided for in Chapter 2 s18 of the Constitution, must and does include the right 'not to associate'.

Paganism is not and has never been a homogeneous religion, nor a single community of believers. Paganism in South Africa is a collection of several distinctly different religions, some of whom are larger and more publicly visible than others. These religions, broadly, based on public visibility, include Wicca, non-Wicca Witchcraft, Druidry, Asatru, Heathenism, Kemeticism, Classical Roman and Greek religion, and Shamanism.

Despite evidence of insular inter-faith activities, friendships, and syncretism between members of these different Pagan religions, Pagans collectively have no common religious text, no singularly defining religious tradition or culture common to all of these Pagan religions, and no common religious hierarchy or leadership.

The Commission proposes the creation of Peer Review Committees for all religions, consisting of peers from each religion. A representative from this Peer Review Committee will be appointed to sit on a Peer Review Council, administered by the CRL Rights Committee.

The proposed Peer Review Council will be empowered to:

(a) give, withhold and withdraw "permission to operate" to individual religions;

(b) give, withhold and withdraw "licences to operate" to individual religious institutions (including organisations, covens, groves, hearths, groups etc),

(c) give, withhold and withdraw "licences to operate" to religious leaders and general religious practitioners; and

(d) establish and enforce a dispute resolution mechanism in order to hear and judge complaints about religious institutions and individual practitioners. [7]

2) s31 of the Constitution expressly provides that persons belonging to a religious community may not be denied the right, with other members of that community (a) to practise their religion, and (b) to form, join and maintain religious associations.

Empowering a Peer Review Committee or Council to withhold or withdraw (a) a Constitutional right for 'a religion' to exist, and (b) the right of individuals to operate as general religious practitioners of that religion, constitutes an unreasonable and unjustifiable limitation of sections 9, 10, 15, 18 and 31 of the Constitution.

Several polls conducted on social media in response to the report indicate that South African Pagans generally oppose the idea that Pagan religions should be regulated by law.

In *Prince v President of the Law Society of the Cape of Good Hope (CC) 2002*, the Constitutional Court held:

"[38] This Court has on two occasions considered the contents of the right to freedom of religion. 4[4] On each occasion, it has accepted that the right to freedom of religion at least comprehends: (a) the right to entertain the religious beliefs that one chooses to entertain; (b) the right to announce one's religious beliefs publicly and without fear of reprisal; and (c) the right to manifest such beliefs by worship and practice, teaching and dissemination.4[5] Implicit in the right to freedom of religion is the "absence of coercion or restraint." Thus "freedom of religion may be impaired by measures that force people to act or refrain from acting in a manner contrary to their religious beliefs."4[6] " and "[42] In the absence of credible evidence to the contrary, the allegations made by the appellant which have not been disputed must be accepted. Apart from this, as a general matter, the Court should not be concerned with questions whether, as a matter of religious doctrine, a particular practice is central to the religion. Religion is a matter of faith and belief. The beliefs that believers hold

sacred and thus central to their religious faith may strike non-believers as bizarre, illogical or irrational. Human beings may freely believe in what they cannot prove. Yet, that their beliefs are bizarre, illogical or irrational to others or are incapable of scientific proof, does not detract from the fact that these are religious beliefs for the purposes of enjoying the protection guaranteed by the right to freedom of religion. The believers should not be put to the proof of their beliefs or faith. For this reason, it is undesirable for courts to enter into the debate whether a particular practice is central to a religion unless there is a genuine dispute as to the centrality of the practice.” [8]

The Constitutional Court has demonstrated that the right to religion may only be limited in so far as religious acts may be illegal (in the case of Prince, the use of cannabis), but the Constitutional Court has said nothing about whether legislative regulation of religion in general would be constitutional or not.

Certainly, no legislation could reasonably deny the right to any citizen to identify what he/she believes is his/her 'religion', even if it did not meet the *criteria suggested by the CRL Commission. To deny any person the right to define their own religious beliefs or religious identity would be inconsistent with the Constitutional Court's collective decisions on the question of what constitutes religion, religious identity or religious belief (Prince v President above).

SAPRA would argue that government has no place regulating religion! Sufficient legislation exists with which to deal with the most important issues raised by the CRL Commission, including regulations pertaining to the registration of Non-Profit 'Public Benefit' Status, tax and criminal law. The fact that some churches interviewed by the Commission have failed to obey these laws is not sufficient reason for new law, but rather reason to enforce existing laws more strictly.

SAPRA therefore opposes the CRL Commission's proposal to regulate religion, religious organizations and religious practitioners. SAPRA further encourages all South African Pagans to ensure that in their practice of their faith, they observe the laws of the land and act responsibly and ethically towards other citizens.

Pagan organisations, including the South African Pagan Council and SAPRA, who requested access to the National Consultative Conference (NCC) in Pretoria on 25 – 26 February 2019, were denied access by the CRL Rights Commission. See page 18 of this report for the complaint submitted to the Parliamentary Portfolio Committee on Co-operative Governance and Traditional Affairs, by SAPRA, on behalf of both the SAPRA and the South African Pagan Council.

4. SAPC objection to regulation

The South African Pagan Council's Objection to Regulation of Religion by the State (26 February 2017)

The SAPC is against the regulation of religion by the State as proposed by the CRL Commission. The Council guarantees the autonomy of every independent member as well as the affiliated groups and encourages its members to obey the laws of our country, irrespective of the religious or spiritual persuasion of the Pagans within its ranks.

The SAPC advocate that disregard for basic human rights and proven criminal actions should be addressed by enforcing the existing laws, in a more thorough and strict manner and that all Members of the Council should be encouraged to continue being law abiding citizens, who are respectful towards all our country's citizens, from within their respective, personal spiritual and religious walks.

The SAPC firmly believes that no Department or Commission has the right to regulate a person's belief or spirituality of choice, as this would provide loopholes for prejudicial treatment and lead to the violation of the individual's right to choose his own belief and live it with freedom and spontaneity. Spirituality, devotion, faith and religious behaviour cannot be dictated.

Furthermore, the suggestion that a group's numerical representation is to be pivotal in deciding the legitimacy of the religion, notwithstanding the existence of an ancient (not modern) religious text or its absence, we would find minority religions and spiritualities suddenly being declared numerically inadequate, and the violation of those citizens' right to freedom of religion, self-identification and expression of spirituality or faith, would be at stake.

We would be taking a step back in the evolution of freedoms in our Land. Religious Organisations, as entities, as well as the individuals in their religious communities should all be held accountable for their actions, especially when these contravene the Laws of our Country. No further regulation is necessary, other than the strict application of the Common Law where a crime has been investigated and proven. [9]

See SAPC press release: **CRL Commission Ignores Religious Minorities** dated June 2017.

5. COGTA's Report on Commission's proposal

The Parliamentary Portfolio Committee on Co-operative Governance and Traditional Affairs (COGTA), which oversees the work of the Commission, stated the following in its report, dated 14 February 2018, entitled 'Report of the PC on COGTA on the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission) on the Commercialisation of Religion and Abuse of Peoples Beliefs':

s1. Introduction

The Report of the hearings on the commercialisation of religion and abuse of peoples' belief system of the Commission on the promotion and protection of the rights of Cultural, Religious and Linguistic communities (CRL Rights Commission, herewith known as the Commission) was referred to the PC on Cogta for consideration and report and to the SC on Finance, PC on Trade and Industry, PC on Home Affairs and PC on Social Development for consideration.

The PC on Cogta organised a workshop to discuss the report on 27 June 2017, and invited the other committees the report was referred to including the PC on Women in the Presidency.

The Commission made presentation to the workshop and invited some of the participants of the hearings to attend the workshop.

s5. Committees observations

The Committee noted that most of the organisation raised the following issues:

- The Commission did not do sufficient public participation as only 85 denominations was invited to the hearings;*
- There was disagreement over Constitutionality of recommendations of the CRL;*
- The religion should not be commercialised;*
- Denominations have been self-regulated and this have been working well for them;*

- *The commercialisation is an infringement on the Constitutional right of people;*
- *The CRL Rights Commission is not the body that should be regulating the sector.*

s6. Recommendations

The Committee notes that across the sector there is agreement that there is abuse in the religious sector and thus recommends the following:

- *A National Consultative Conference (NCC) (including the linguistic and cultural communities) should be convened to give a platform to discuss challenges in the religious sector;*
- *Arising from the NCC the following should be established:*
 - o *A charter for self-regulation;*
 - o *Code of conduct for the sector which should be recognised by legislation.*
- *Strengthening the mandate of Independent Communications Authority of South Africa (ICASA) and other such bodies to penalise misleading media claims;*
- *Strengthening legislation like the Non-Profit Organisation Act and the Income Tax Act to ensure registration of religious institutions. [10]*

6. National Religious Summit (National Religious Leaders Council)

A National Religious Summit of religious and church leaders was convened by pastor Ray McCauley (in his capacity as Chair of the National Religious Leaders Council) at Rhema (Hans Schoeman Street, Randburg) on 13 February.

McCauley claimed the summit would be inclusive to all religious organisations and would focus on six main areas:

legal/constitutional framework;

developing a code of conduct;

developing a system of accountability;

developing healthy relationships with the CRL Rights Commission;

developing core values for a multi-faith society; and

a working partnership with Parliament, the Department of Home Affairs, the SA Police Services and the SA Revenue Service.

It should be noted that no Pagan representation was present at this summit, despite requests by the South African Pagan Rights Alliance to attend. [11]

7. CRL Commission's National Consultative Conference

Pagan organisations, including the South African Pagan Council and SAPRA, who requested access to the National Consultative Conference (NCC) in Pretoria on 25 – 26 February 2019, were denied access by the CRL Rights Commission.

The following complaint was submitted to the Parliamentary Portfolio Committee on Co-operative Governance and Traditional Affairs, by SAPRA, on behalf of both the SAPRA and the South African Pagan Council.

SAPRA lodges complaint against CRL Rights Commission with COGTA (February 25, 2019)

*The Honourable Mr Richard Mzameni Mdakane
Parliamentary Portfolio Committee on Co-operative Governance and Traditional Affairs
Parliament of Republic of South Africa*

Formal Complaint against The 'Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities' – Commissioner Thoko Mkhwanazi-Xaluva.

Denial of access to participation of religious minorities on consultations concerning the CRL Rights Commission's proposal to regulate religion in South Africa.

In 2015 the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (the CRL Rights Commission) launched its investigative study into the commercialisation of religion and abuse of people's belief systems.

The CRL Rights Commission proposed that all religion and religious organizations in South Africa should be regulated by legislation. According to section 18 of the Commission's report:

“• The 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.

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

- *Religious peer review committees must represent the whole religious community and not just a portion of the religion.*

- *A General Religious Practitioner, being a person that imparts knowledge of the tenets of the faith to a gathering of worshipers, shall be required to obtain a license to operate.”*

On behalf of Pagan religious leaders, this Alliance wrote to the CRL Rights Commission in February 2016, requesting to be recognised as an interested and affected party to all future discussions, relating to the Commission’s investigation into the commercialisation of religion and abuse of people’s belief systems, and its proposal to license religious leaders and regulate religion in South Africa.

It must be noted that submissions in objection to the CRL Rights Commission’s proposal to regulate religions and religious leaders were submitted to the Commission in October 2017 by both the South African Pagan Rights Alliance, and the South African Pagan Council.

Receipt of these submissions were not acknowledged by the Commission, our organisations were ignored, and Pagan religious leaders were not canvassed for our opinions on the proposal.

On 14 July 2017 an article entitled ‘Pagans and Christians oppose CRL commission’s ‘state capture’ of religion’ published by Christina Pitt, elicited response from the CRL Rights Commission chairperson Thoko Mkhwanazi-Xaluva, on why Pagan religious leaders were not included in consultations on this important process.

The Commissioner is reported in the article to have stated: “The participants in the hearings were part of a random sample. Only religions which were broadly represented at a percentage above 3% were part of the hearings. So in this case, size did matter,” she said. “Their views were already canvassed,” said Mkhwanazi-Xaluva.”

Note that at no time has the Commissioner ever spoken directly with this Alliance on this matter, and the CRL Rights Commission has never canvassed the opinion of The South African Pagan Rights Alliance (SAPRA), or any Pagan religious leaders, on the proposed regulation of religion before it!

This Alliance has consistently been denied access to the democratic process, and was not informed of, nor invited to participate in the Religious Leader’s Summit hosted by Rhema Church on February 13.

The South African Pagan Rights Alliance, and the South African Pagan Council, have also been expressly denied access to attend the National Consultative Conference on February 25 and 26, 2019.

This Alliance is disappointed by Commissioner Mkhwanazi-Xaluva's stated decision in July 2017 to ignore minority religions in this important consultation process.

Minority faiths will, after all, also be affected by the proposal to obligate all religious leaders and religions to submit to state regulation. Pagans have a constitutional right to equality and to equal representation in matters which affect us and our religious communities.

The CRL Commission must protect, promote and defend the right to equality for all religions, not just those who have a majority. Indeed, our Constitution expressly seeks to protect and promote the rights of minorities.

The Commissioner must be seen to be performing the functions of her office in good faith and without prejudice.

The Commissioner has instead voluntarily chosen to dismiss participation by religious minorities who opposed her recommendation to regulate religion in South Africa.

At no time has the CRL Rights Commission acknowledged the right of Pagan religious leaders to participation, and the Commission has repeatedly decided that we are not relevant to ongoing discussions on this matter.

The CRL Rights Commissioner has failed in her statutory obligation to uphold sections 4(a) to (c) and 15(1)(a) of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act.

The Commissioner has demonstrated clear bias through her intention to deny religious minorities the right to be heard on this matter.

As a consequence of this denial of equal access to a religious minority to (1) participate in a democratic process of consultation on matters which will affect its right to exist, and (2) published grievous misrepresentation of the facts on this matter, this Alliance herewith submits a formal request to Parliament to investigate the Commission's actions on this matter, and to remove the current Commissioner from her position.

This Alliance wishes to reiterate that it seeks to participate in good faith in any and all consultations and negotiations concerning the CRL Rights Commission's proposal to regulate religions in South Africa.

This Alliance reserves its right to equal access to the democratic process. [12]

We must view the denial of access to Pagan religious leaders from the South African Pagan Rights Alliance and the South African Pagan Council to participate in discussions on the CRL Rights Commission's proposal to regulate religion, as an indication of what might very well happen, should or when, Pagans attempt to license our religion/s, register our places of worship, or obtain licenses as general religious practitioners.

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South African Pagan Rights Alliance (NPC)

The South African Pagan Rights Alliance is a voluntary association, formed in 2004, as a human rights activist alliance. SAPRA is currently a *paralegal advocacy non-profit organisation.

SAPRA offers free, practical assistance on basic legal issues, including social welfare, employment disputes, infringement of and discrimination against personal legal and constitutional rights, and provides referrals to formal legal representation where necessary.

SAPRA will negotiate and mediate inter-communal conflict, organize community development initiatives aimed at restoring justice, advocate for religious equality and equity, and promote human rights education.

SAPRA:

- is registered with the Companies and Intellectual Property Commission as a non-profit company (2018/620182/08).
- was designated in 2008 as a religious organisation in terms of section 5 of the Civil Union Act (Act 17 of 2006), and its religious marriage officers may solemnise both same-sex and heterosexual marriages.
- is an Executive Member of the South African Pagan Council (SAPC) and Chair of the SAPC Law Reform Committee.
- is a Member of the Witchcraft and Human Rights Information Network (WHRIN).

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