

OVERVIEW OF (AND RESPONSES TO) THE PRIMARY ARGUMENTS FOR STATE REGULATION OF RELIGION

Introduction:

The CRL Rights Commission, led by Ms. Thoko Mkhwanazi-Xaluva, is pushing for legislation that would impose state regulation on religion in South Africa. The proposal includes establishing state-appointed peer review committees to license religious practitioners and oversee churches, with the power to suspend or dismiss leaders found guilty of misconduct.

This initiative revives concerns outlined in the CRL's 2015 report on the "commercialisation" of religion and related abuses, particularly in certain "fringe" Christian communities. Similar trends have emerged in other Sub-Saharan African nations, raising concerns about governments seeking to control religious institutions that hold moral authority and can influence public discourse.

State regulation treats religious freedom as a privilege rather than a constitutional right, contradicting Section 15 of the South African Constitution, which guarantees freedom of belief and expression without qualification. Such measures could undermine democracy by restricting religious leaders' ability to hold the government accountable and to preach freely from the pulpit.

Reasons given by the CRL to support their call for State regulation of religion

1. Criminals are hiding behind religious freedom

The CRL Rights Commission justifies its call for state regulation of religion by highlighting extreme cases of abuse, such as fraud, fake miracles, and even dangerous practices like spraying insecticide on congregants. They argue that such incidents could have been prevented through state oversight.

However, this approach takes isolated cases and applies them to unfairly tarnish the entire faith community, which plays a vital role in society.

Response:

- Criminal acts remain crimes, regardless of religious affiliation, and should be prosecuted under existing laws.
- The State already has the responsibility to enforce these laws and enact new ones if necessary.

- Legal analysis by FOR SA confirms that every abuse cited by the CRL is already illegal under South African law.
- The real issue is enforcement—not the need for additional regulation, which would not solve the problem.

2. Lawyers and accountants are regulated, so why not religious practitioners and organisations?

The CRL Chair argues that religious practitioners should be regulated like lawyers, doctors, and teachers, requiring licensing and peer review. However, this comparison is flawed because faith is deeply personal and varies widely, with no universal standard for doctrine or practice.

With an estimated 40,000 Christian denominations worldwide, no single authority can define a "correct" interpretation of faith. Unlike other professions, religious practitioners are guided by a sense of divine calling rather than an academic qualification.

Response:

- Religious organisations are already subject to national laws governing property ownership, banking, employment, and other legal obligations.
- Non-compliance is often due to a lack of knowledge rather than intentional wrongdoing. Instead of imposing unnecessary regulation, the CRL should focus on educating and equipping religious practitioners with the legal information they need to operate responsibly within the existing legal framework.

3. Peer Review Committees are intended to stamp out charlatans and misguided theology. Is this not a good thing?

The CRL Chair plans to form a committee of religious leaders to push for legislation that would regulate religious practitioners and organisations. To gain support, the CRL claims this system will uphold doctrinal orthodoxy. However, it is not—and should never be—the role of the State to interfere in religious doctrine.

Previously, the CRL Chair sought legislation to:

- License all religious practitioners, organisations, and places of worship
- Act as the “final arbiter of religion”
- Hold the “final decision powers” in religious disputes

Response:

- History shows that when the State enforces religious orthodoxy, it leads to exclusion and oppression. Religious freedom must remain voluntary and unrestricted within the rule of law.

- South African law recognises the Doctrine of Entanglement, meaning courts avoid ruling on religious doctrine or internal disputes. The State should do the same and only intervene when actual laws are broken.
- Allowing a State-appointed “Peer Review” mechanism to control who can be a religious practitioner or run a religious organisation effectively places religion under government control.
- President Ramaphosa has warned against excessive regulation, stating it could be unconstitutional.

4. Some people use religion to manipulate vulnerable people to give money. Will the CRLs system prevent fraud and corruption?

The CRL’s report, Commercialisation of Religion, highlights financial abuses within religious organisations, alleging that some leaders deceive followers for personal gain. However, any cases of fraud or criminal activity should be handled by law enforcement, not through special regulations targeting religion.

Response:

- Religious organisations receive funds through voluntary giving and sales, and like any entity, they must follow proper accounting practices and pay applicable taxes. Singling them out for special treatment could amount to unfair discrimination.
- This raises a broader question: Should the State protect people from the consequences of their own financial choices? Some argue that giving money to religion is misguided, while others believe faith justifies sacrificial giving, as seen in the biblical story of the Widow’s Mite.
- Unlike credit and consumer protection laws, regulating religious donations is complex—unless fraud or broken contractual promises are involved, in which case existing legal remedies should be enforced.
- If the State aims to protect the financially vulnerable, it should first address other high-risk financial activities, such as gambling—starting with banning casinos and State-run lotteries.

5. What are the implications of this proposal for the faith communities of South Africa?

State regulation of religion is an existential threat to religious freedom. When the State controls who can (or cannot) teach, preach or form a religious organisation, any meaningful right to religious freedom has been lost.

International examples

- The consequences can be seen in Rwanda, where it was reported in August, 2024 that over 9,800 “prayer houses” and 7,000 “illegal churches” have already been shut down.
- in Angola, *the government passed legislation whereby only pastors who have a theological degree will be recognised as religious practitioners. There is a 60,000 membership threshold for churches before they can be registered legally – at a cost of +/- R8 million. It is reported that over 2,000 have been shut down.*

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