

Freedom by Regulation: A Legal Assessment of the CRL Commission's Report on the Commercialisation of Religion and Abuse of People's Belief Systems

Research Article

Cosmo Mapitsa | ORCID: 0000-0002-5492-6509

Researcher, City of Johannesburg Metropolitan Municipality, Johannesburg, South Africa

Research Affiliate, Research Programme on Religious Communities and Sustainable Development, Humboldt-Universität zu Berlin, Berlin, Germany
cosmo.mapitsa@hu-berlin.de

Abstract

The South African Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities is one of the key institutions established by the Constitution of the country to strengthen its constitutional democracy. The Commission conducted investigations and released a report in 2017 related to suspicions that there are abuses of beliefs taking place in religious communities. The report was subjected to a number of challenges from academia, especially with regards to the constitutionality of some of the findings and recommendations of the Commission. In this article, it is argued that one of the contributing factors to the main shortcomings of the report emanates from a lack of nuance in the approach of the Commission. Considering the complex nature of religious beliefs, it is argued that the investigations by the CRL Rights Commission would have offered an opportunity for better conversation if the Commission had taken a human rights approach. In the main it is argued that a clear differentiation between the right to freedom of religion which vests on individuals, and the right of freedom of religious practice which vests on individuals in their capacity as members of religious communities, would have created a discourse that would better grapple with the complexity of ensuring maximum freedom of religion while creating safety for communal interests beyond specific beliefs.

Keywords

regulation of religion – abuse of religious beliefs – freedom of religion – human rights – commercialisation of religion – limitation of rights – communal rights – individual rights – protection of religious communities

1 Introduction

Following a number of media reports about “unusual” practices by some churches in South Africa, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission), a body created in terms of section 181(1)(c) of the Constitution of the Republic of South Africa, 1996, conducted a number of hearings with religious leaders and organisations across South Africa. Subsequent to these hearings, a report containing findings and recommendations was published which proposed certain regulations of religious institutions. The report and its recommendations have received significant academic criticism (such as Kgatle 2017, Henrico 2019 and Du Plessis 2019).

Commentary on the report focused on the legality and constitutionality of recommendations of the Commission on the one hand, and on the need for regulation of religious organisations to protect communities on the other. This article argues that in taking a legalistic and regulatory approach, the CRL Rights Commission missed an opportunity for a discussion that could enhance protection of the freedom of religion in South Africa. While a regulatory approach may be a natural response to the extreme nature of the alleged abuses of some congregants by their leadership, it still remains important to broaden the discussion of religious freedom in a multicultural context.

Some of the activities that led to the investigations by the Commission are a cause for real concern. However, by recommending the regulation of religious organisations as the CRL Rights Commission did, there were potential long-term effects on the promotion of freedom of religion which were overlooked. There was not a nuanced discussion of the different rights involved and how those rights were being balanced by the Commission. The constitutional imperative for the protection of human rights necessitates a nuanced approach to the relationship between religion and law, which was not fully embraced by the CRL Rights Commission during the investigations into the commercialisation of religion and the abuse of people’s belief systems.

To better understand these issues, this article begins with a general discussion of freedom of religion and legal regulation within the South African

constitutional framework. Thereafter, the role of the CRL Rights Commission is defined, in light of the imperative to protect freedom of religion. In the fourth section, the discussion focuses specifically on the CRL Rights Commission's *Report of the Hearings on the Commercialisation of Religion and Abuse of People's Belief Systems* (2017). In the fifth section, the recommendations of the Commission are dealt with in more detail, focusing on their legality and how they impact the right to freedom of religion. The sixth section considers nuances that could have been added to the process to reframe certain core issues around religious regulation.

2 Freedom of Religion and Legal Regulation

The South African Constitution protects freedom of religion primarily through two human rights enshrined in the Bill of Rights. First, everyone has a right to freedom of conscience, religion, thought and opinion (The Constitution of the Republic of South Africa 1996, section 15(1)). This is in line with the liberal foundations which guarantee freedom of religion as an individual freedom. In line with this approach, the right to religious freedom allows an individual to choose their own religion, free from coercion (Eisenberg 2017, 65). This concerns an individual's deeply held views, and therefore does not directly affect other people.

Secondly, the Constitution protects religious communities and their members by protecting a person's right to belong to a religious community, practise their religion, and form associations (section 31(1)). People are protected against the censoring of religious practices or exclusion of members of religious communities from religious practice. Both individuals and the communities to which they belong are protected. This approach is akin to the treatment of religion as identity (Eisenberg 2017, 65). The right to practise religion and to form and maintain religious associations, however, is qualified. It may not be exercised in a manner that is inconsistent with any provision of the Bill of Rights (Constitution 1996, section 31(2)). This means in instances where the right of persons belonging to a religious group to practise their religion or to form religious associations conflicts with any other right, the other right takes precedence.

Although the ideal is for the state to not regulate religion, in reality the state often becomes involved in religious matters, for example through the recognised adjudicatory role of courts on non-doctrinal and procedural aspects of religious organisations (du Plessis 2019, 140). The constitutional provision for religious freedom takes into account the consideration of other rights. In

exceptional circumstances, such as instances where religious activities are harmful to a population, international law allows states to intervene to the extent of preventing the harm, being otherwise intolerant of states assessing the legitimacy of religious beliefs or how they are practised (Taylor 2018, 316). All rights in the South African Bill of Rights are subject to a general limitation clause (South African Constitution, section 36). However, the rights of religious practice also have an internal limitation clause (South African Constitution, section 31(2)), which means any religious practice that is contrary to the provisions of the Bill of Rights will be excluded from protection in terms of section 31(1) (Johannessen 1997, 139).

The complexity of state regulation of religion considers the extent to which the state interferes with religious convictions and practices, as well as the extent to which the state may endorse specific religions. The South African state is constitutionally permitted to support religion, provided that such support does not work against provisions of equality and does not amount to interference with freedom of religion (Heyns & Brand 2000, 705, 749). Due to its personal nature, religion is inherently complex to regulate within the legal and political spheres. However, since religious practice is so omnipresent in society, public interest often requires that the state and the law have to grapple with dogmatic aspects of religion, even in democratic countries. For example, “prosperity-tinged Pentecostalism” in sub-Saharan Africa is growing faster than other religious groups (Phiri & Maxwell 2007, 23), and has ignited discussions around implications of these phenomena on theories of state and religion, and especially around the regulation of religious practices by the state.

In South Africa, publicised instances of congregations eating grass and drinking petrol have reignited debates on whether or not the state needs to be more active in regulating religious activity. Those who are in favour of more stringent regulation question whether some of the reported activities are authentic religious practice (Resane 2017, 6). In doing so, congregants are not seen as able to give valid consent to some of the activities, and therefore “fall prey” in search of spiritual deliverance (Kgatle 2017, 3). Some practices are seen as undermining the dignity of participant congregants, and often pose real risk to the lives and health of the participants (Resane 2017, 7). As indicated above, in instances where religious practice is inconsistent with any right protected in the Bill of Rights, the other right(s) would supersede the right of freedom to religious practice. However, this provision is clearly more useful in instances that are continuous and are being subjected to some form of litigation or dispute resolution. In that case, the arbiter would need to give precedence to the other rights. What the provision does not suitably deal with is the prevention of instances that are one-offs or may potentially infringe on human rights. The

need to consider the prevention of potential harm informed the approach that the CRL Rights Commission took when seeking to deal with alleged abuses of people's belief systems.

3 The CRL Rights Commission and Freedom of Religion

South Africa is a pluralistic society, with diverse religious beliefs and practices. While some argue that it would be inaccurate to regard the South African state as a secular state, opting rather to use the phrase “religiously neutral state” (Henrico 2019, 15), it is important to note that all religions within South Africa are legally protected by the Constitution. Religion is one of the listed grounds under section 9(3), meaning no one may be discriminated against on that ground. Any discrimination on the basis of a listed ground is presumed to be unfair unless proven otherwise.

In spite of a past characterised by discriminatory laws prior to adoption of a democratic constitution, “in the history of South Africa there has never been a statutory (regulatory) body that has granted religious bodies licences to operate or practice their beliefs” (Henrico 2019, 15). However, the apartheid government’s approach to religion cannot be described as secular. Various Christian theologies, and aspects of African traditional religions when convenient, were used to justify discrimination (Amien & Leatt 2014, 506). In acknowledgement of this past, and in an effort to ensure that the protection of religious freedom is entrenched in the South African legal system, South African courts have demonstrated deference on matters of religion. In the few instances that the courts have been called upon to decide on matters relating to religion, they have recognised religious diversity as promoted by the Constitution.

The approach of South African courts demonstrates a point of departure that views religion through the eyes of the believer, and therefore should not be assessed based on what any other person might consider to be sensible (*Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC)). For courts to decide on points of doctrine would be inappropriate (*Ryland v Edros* 1997 (2) SA 690 (C), 703). This notwithstanding, courts acknowledge that they have a duty to step in and effectively set a limit on the expression of beliefs (*Christian Education South Africa* 2000). This is the case when religious practice undermines other rights guaranteed in the Bill of Rights. While courts can mitigate limitations on the freedom of religion, the constitutional provisions discussed above envisage a situation where freedom of religion is not only legally protected, but one where it is also promoted.

4 The CRL Rights Commission's Report on Commercialisation of Religion

The CRL Rights Commission was created in terms of section 181(1)(c) of the Constitution of South Africa as one of the institutions designed to strengthen democracy. It is an independent body that must be impartial and exercise its powers without fear, favour or prejudice, subject only to the Constitution and the law (Constitution of the Republic of South Africa 1996). The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act 19 of 2002 provides for the composition and additional functions of the Commission.

The constitutional and legislative bases of the CRL Rights Commission demonstrate that the Commission is tasked with the complex duty of promoting the religious, cultural and linguistic interests of groups, while not overlooking the individual rights of members of society. Unlike courts, the Commission is not an arbiter (Du Plessis 2019, 137). Rather, the Commission is intended to side with religious communities should their interests be under threat, and to promote their well-being. The Commission should promote peace, humanity and tolerance among different religious communities (Constitution, section 185(1)(b)). It also has responsibilities towards ensuring the attainment of constitutional objectives and ideals, and the fulfilment of the rights in the Bill of Rights (Constitution, section 7(2)).

The rights that apply to the mandate of the CRL Rights Commission relate mostly to collective rights that are to be enjoyed by communities. Essentially, the CRL Rights Commission is mandated with ensuring that an environment exists that promotes the recognition of religious diversity within the country, a clear separation between religion and the state in order to ensure that some religions are not unfairly favoured over others, and the creation and promotion of equal opportunities for all religions in societal life (Koopman 2002, 237). Although it is impossible to draw a strict line of difference between the individual internal aspects of belief and community practice of religion, the CRL Rights Commission ought to focus on the protection of communities.

Around 2016, there were a number of incidents reported in South African and international media of what has been described as “recent unusual practices within some Neo-Pentecostal churches in South Africa” (Kgatle 2017, 2). These included reports that some religious leaders instructed congregants to eat snakes and grass, to drink petrol, and “part with considerable sums of money to be guaranteed a miracle or blessing” (CRL Rights Commission Report 2017, 6). This is what triggered the CRL Rights Commission to conduct

an investigative study through which they would, among other things, “investigate and understand further issues surrounding the commercialisation of religion and traditional healing; identify the causes underlying the commercialisation of religion and traditional healing; understand the deep societal thinking that makes some members of our society vulnerable and gullible on views expressed and actions during religious ceremonies; and realise what form of legal framework regulates the religious and traditional sectors currently” (CRL Rights Commission Report 2017, 6).

The Commission had to balance perceptions of intrusion into practices that are sacred on the one hand, while at the same time demonstrating presence as a constitutional body tasked with ensuring the promotion and protection of religion when these organisations are in the news for the wrong reasons. The CRL Rights Commission reported that during their investigations there were a number of issues raised by religious leaders, including the fear of state control, perceptions that the investigation was a form of attack on religious organisations, concerns that there were attempts to abolish home schooling, and concerns that the investigation was unnecessary given that “the incidents are few and isolated, and there is no need to act aggressively” (CRL Rights Commission Report 2017, 27–30).

The findings of the CRL Rights Commission report received criticism for recommending strict regulation of religious institutions (Du Plessis 2019, 134) by proposing regulations which limit the freedom of religion (Henrico 2019, 16) and for dealing with religious bodies in manners which create a negative impression about religious communities (Banda 2019, 5). The parliamentary portfolio committee reviewing the report felt that most of the issues raised by the report were already addressed by other laws (Parliamentary Portfolio Committee on Cooperative Governance and Traditional Affairs, 27 June 2017).

There are a number of constitutional criticisms that can be levelled against the report of the CRL Rights Commission on the commercialisation of religion. For instance, the Commission reports that there is *prima facie* evidence of the commercialisation of religion because of cases of people being expected to pay “substantial amounts of money before blessings and prayers could be said over them” (CRL Rights Commission Report 2017, 31). This finding lacks specificity. The Commission needed to go beyond stating that there is a commercialisation of religion, and actually delineate what commercialisation of religion means for the purposes of the report. Indeed, as du Plessis (2019, 139) points out, the report does not offer a definition of what commercialisation of religion is in the context of the investigation and report.

Defining “commercialisation of religion” differentiates between instances that consist of such commercialisation, which could require legal sanction,

and other instances that do not amount to commercialisation. Without a definition, there is a vagueness about which practices should be considered commercialisation. In *Affordable Medicines Trust and Others v Minister of Health*, the Constitutional Court states that “The doctrine of vagueness is founded on the rule of law, which ... is a foundational value of our democracy. It requires that laws must be written in a clear and accessible manner. What is required is reasonable certainty and not perfect lucidity” (2006, 288–289). Without a definition, religious practitioners have no way of knowing if they may be engaging in practices that could fall under the Commission’s definition of commercialisation.

Considering the sensitive nature of issues related to religion, extra caution should be made to allay fears on the part of some religious communities that the CRL Rights Commission might target them, against its requirement for even-handedness. Some of the practices found by the CRL Rights Commission to illustrate the commercialisation of religion include blessed water and oils being sold to congregants for marked-up prices, and the use of bank card payment machines during ceremonies (CRL Rights Commission Report 2017, 31). There should be more said by the Commission about how practices are determined to demonstrate commercialisation and why this is undesirable.

The Commission reports that some churches were found not to be in compliance with laws. For instance, some religious organisations failed to register as non-profit organisations (NPOs) with the Department of Social Development, and some of those that were registered did not report and declare revenues as required by law (CRL Rights Commission Report 2017, 31). The Non-profit Organisations Act (71 of 1997) is aimed at creating an environment in which NPOs can flourish by, among other things, providing an administrative and regulatory framework within which NPOs can conduct their affairs and encouraging NPOs to maintain standards of good governance (NPO Act 71, 1997, section 2a–c).

The provisions of this Act that relate to registration are permissive (section 12(1) provides that an NPO *may* apply to the Directorate for registration; section 11 provides that the Minister *may* prescribe benefits and allowances applicable to *registered* NPOs; and 13(1) provides for the format in which an NPO *may* apply for registration). It does not require NPOs be registered in terms of the Act. Section 16(1) of the Act provides that a certificate of registration for an NPO is proof that such organisation has met all requirements of registration. When the Commission’s report states that some organisations are not compliant in that they are not registered as NPOs, this seems to be based on an interpretation that the NPO Act makes it a requirement for NPOs to be registered. However, the language used by the Act is clearly one that is

permissive of registration, and not one that makes such registration compulsory. Although there may be advantages to being registered as an NPO in terms of the Act, the law does not make it a requirement for non-profit organisations to be registered.

While the CRL Rights Commission has a duty to “determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of non-profit organisations to perform their functions” (section 3 of NPO Act), as required of every organ of state in terms of the Act, the provision states that the duty is to occur within limits prescribed by law. This duty would not apply in this case because an interpretation of the Act in a way that makes registration compulsory would be an expansion of the intended application of the Act, which is outside the powers of the CRL Rights Commission, and therefore unconstitutional.

There are a number of other findings by the Commission that are concerning. One finding that seems out of place is where the Commission holds that there are instances of a “misuse of visa application systems” by pastors who apply for certain categories of visas, and then “demand a permanent or residence visa” once they are in the country. Although the specific instances of such “abuses” are not outlined by the Commission, questions of migration, particularly from other African countries given a context of xenophobia, need to be dealt with in a manner that is in line with the founding constitutional values of equality, freedom and dignity, including ubuntu. The report would have benefitted from more detail to support the finding. As a constitutional body, the Commission needs to ensure the protection of human rights, as this is a requirement for the promotion of democracy.

When pressing issues are not within the mandate of the CRL Rights Commission, it might be better for the Commission to defer the issues to other constitutional bodies. Without suggesting that the CRL Rights Commission must concern itself strictly with religious matters to the exclusion of other human rights issues, it needs to be clear that the primary mandate of the Commission is the protection of the rights of religious, cultural and linguistic communities. Therefore, matters relating to suspected wrongdoings should be referred to other constitutional bodies. The powers of the Commission in terms of section 5(1)(k) of the CRL Rights Commission Act to bring any relevant matter to the attention of an appropriate authority or organ of state is crucial in this case. Investigating matters that are directly within the mandate of another constitutional body would amount to unconstitutional expansion of its own mandate.

5 Regulating Freedoms: Proposals for Dealing with “Abuses” in Religious Organisations

Emanating from the problems identified, the CRL Rights Commission made a number of recommendations in its 2017 report. First, the Commission recommended that since it is important to protect religious freedom without an attempt for the state to regulate, religious communities should regulate themselves more diligently to be in line with the Constitution and the law (CRL Rights Commission Report 2017, 34). Further proposals for regulation by peer review tend to operate against the Commission’s principle that religion needs to be protected from regulation (Freedom of Religion South Africa 2017, 55). By recommending that peer-review committees will account to the CRL Rights Commission while those committees are branded as self-regulating, the Commission seeks to essentially regulate religious organisations on the one hand and distance itself from such regulation on the other (Henrico 2019, 17).

The Commission’s recommendation about existing legislation affecting religious organisations (CRL Rights Commission Report 2017, 35) is not particularly clear. The recommendation is that existing laws need to be enforced. There is no question that laws that exist must be enforced. But while the Commission reports that there are “numerous examples” given to demonstrate gaps in enforcement (CRL Rights Commission Report 2017, 35), the report does not address the extent of the problems identified, even among the religious organisations that were investigated (Banda 2019, 6).

The fourth recommendation is that the Commission should provide “essential assistance in helping [religious organisations] get their house in order and to ensure compliance with existing legislation and propose new legislation. The current disregard of fiduciary responsibility is a serious concern” (CRL Rights Commission Report 2017, 35). Henrico has criticised this recommendation as being too wide, and possibly impossible to implement (Henrico 2019, 16).

According to the Commission, one of the ways religious organisations can “get their house in order” is by receiving “proper training” (CRL Rights Commission Report 2017, 36). It is not clear what training is required, or how this should be determined. This recommendation does not reflect the diversity of religious communities existing in South Africa, and their varied practices and capacities. The recommendation for training is preceded by an observation of “schisms and disputes within religious organisations”. Again, the Commission does not detail the prevalence of this problem within the religious communities that were part of the investigation.

Also concerning is a finding that “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*” [own emphasis] (CRL Rights Commission Report 2017, 36). However, the report provides no data on the prevalence of the problem. As stated above, given the prevalence of xenophobia and the potential accompanying violence, there are clear negative implications of a constitutional institution making these remarks. A commission created to protect the rights of religious, linguistic and cultural groups is surely going against the spirit of its core mandate by making observations that can be perceived as prejudicial.

As discussed above, there are a number of technical, legal and procedural problems with the Commission’s report into the commercialisation of religion and the abuse of people’s belief systems. However, the overarching concern relates to the proposed regulation of religious organisations. While there is some support for regulation, the proposals in the report were received with overwhelming opposition. The Commission’s approach to the investigation and subsequent report was a missed opportunity for discussions of the nature of the right to freedom of religion, and how those rights ought to balance with other human rights.

6 The CRL Rights Commission and Protecting Communities from Abuses by Religious Leaders

The events that led to the CRL Rights Commission’s investigation into the commercialisation of religion are serious, and often took place in a context of intersecting vulnerabilities. While the Commission’s report may have a number of shortcomings, the issues raised remain serious. Some activities that occurred during church services, such as drinking petrol as part of worship, directly threatened people’s lives. As a constitutional body tasked with strengthening democracy by promoting and protecting the rights of cultural, religious and linguistic communities, the Commission’s approach to the issues raised should have the Constitution, and especially the protection of human rights, at the centre of all investigations and reporting. While the rights of religious, linguistic and cultural communities must serve as the starting point, the Commission is expected to deal with all the other rights affected. The Commission does not need to adjudicate on those rights, but rather to point out the complexities that exist in balancing rights.

The Constitution provides for the right to freedom of religion, belief and opinion (section 15) separately from the rights of cultural, religious and linguistic communities (section 31). While the two rights are closely related, they are separate rights. The constitutional mandate of the CRL Rights Commission is around the latter right (South African Constitution, section 185). Under the rationale for the study, and in a number of other occasions in the report, the Commission seems to conflate issues of belief with those of practice (CRL Rights Commission, 11). Section 15(1) of the Constitution protects the rights of a person to “(a) entertain the religious beliefs that one chooses to entertain and; (b) the right to announce one’s religious beliefs publicly and without fear of reprisal” (*Prince v President, Cape Law Society* 2002, 812). Strictly speaking, the Commission is not mandated to deal with this right. Although it is complementary to the section 31 right, they are treated separately by the Constitution. A clear acknowledgement by the Commission that the main focus of their investigation is on *practices* and not on beliefs would have dealt with some of the criticism that has been levelled against the report.

Henrico (2019, 13) states that South African case law reflects a judicial view that is deferent to adjudicating the doctrinal content of people’s beliefs and religion, because religion consists of deeply held personal beliefs. A person’s beliefs are not legally required to be in accordance with any measure of reasonableness. Further, he states that South African courts have endorsed a right to freedom of religion, and by implication expression thereof, even if such religion might be viewed by some as bizarre, illogical or irrational. What Henrico’s interpretation overlooks is the internal limitation in provisions of section 31(2). If the expression of religion amounts to actions that are contrary to any right in the Bill of Rights, these expressions of belief can be limited. An approach that delineates the distinction between the right to believe and to practise would be relevant to the point made by the Commission around a religious community that prohibits education of their children as part of their beliefs. In terms of section 29(1)(a) of the Constitution, everyone has the right to a basic education. Therefore, no religion may function in a manner that deprives anyone of that right. The limitation is not on the doctrine, but on the practice. Section 28(2) of the Constitution further places the best interests of a child above any other consideration in any matter that concerns the child.

The limitation of a practice informed by a person’s beliefs is not the same as limiting the right of a person to have and hold beliefs and convictions. As discussed earlier, the right to hold specific beliefs primarily considers the individual and is a requirement to ensure the freedom of individuals within democratic societies. What individuals, and even communities, believe is beyond

the mandate of state regulation. However, the right to freedom of religion does not mean that one is allowed to claim the freedom to do harm to other people because of one's religious beliefs. A person may not use religion as an excuse for breaking the general laws of a country (Richmond 2017, 5). An approach that takes into account these differences in detail would make it clear that the Commission is not seeking to regulate what people believe.

For instance, the CRL Rights Commission's approach could have been anchored by clarifying two significant factors. First, that while people might perpetrate harm or illegality in the name of religion, the constitutional order does not protect such claims, and therefore those actions cannot be conducted in the name of freedom of religion. Secondly, that it is in the interest of the collective dignity of religious communities that actions that infringe on human rights and that are illegal should not seek refuge under the umbrella of religious freedom. This informs not only the legitimacy, but necessity of investigating behaviours that threaten the legally protected rights of religious communities.

An opportunity existed for the CRL Rights Commission to demonstrate that a discussion of limiting the right to freedom of religious practice is not a controversial matter and would happen in such a way that avoids interference with religious doctrine (Du Plessis 2019, 132). The involvement of the state in religious practice has legal implications; this is not unique to South Africa. For instance, in the United Kingdom, the Counter-Terrorism and Security Act of 2015 provides for specified authorities to prevent people from being radicalised and drawn into terrorism (section 26(1)). Although this provision has been criticised for being vague about what amounts to being radicalised (Richmond 2017, 9), this legislation still serves a legitimate purpose. While such provisions call for caution on the part of arbiters, there are circumstances in which the limitation is justified in a democratic society. Therefore, concerns by the Commission emanating from suspicions of abuse of human rights could be couched in terms of section 31(2) of the Constitution.

7 Conclusion

Protection of the freedom of religion is one of the rights enshrined in the South African Constitution, and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities plays an important role in the protection of this right. Using the Commission's investigations and report into the commercialisation of religion and abuse of people's belief systems as a focal point, the article argues that the complexity that comes with

ensuring the protection of freedom of religion requires clear definitions of a range of complex concepts, and nuanced approaches to how they are applied in law.

The investigation by the Commission took place due to incidents that are concerning to South African society. At the same time, the report which the Commission developed was met with legitimate criticism. This demonstrates the ongoing need to have a nuanced discussion about how rights relate to one another, and how they can best be protected. While the procedural and legal challenges to the Commission's report have a sound constitutional basis, limiting the discussion to those factors still does not address the lived experiences of members of religious communities. Supporting regulation as a means of dealing with problems identified by the Commission downplays the impact that such regulation could have on the legal protection of the right to freedom of religion.

The protection of freedom of religion, and addressing potential abuses within religious communities, is a nuanced human rights and legal issue. To understand it, and develop an appropriate response, it is critical to distinguish between individual rights to hold a belief, and community rights to carry out religious practices. The individual right to a belief and conviction is inviolable, while the communal right to practise one's religion is limited by other rights in the Bill of Rights. As such, in instances where religious practice takes place in a manner that is inconsistent with any other right enshrined in the Bill of Rights, the other rights would have precedence over the right to religious practice.

References

- Ahda, R., ed. 2018. *Research Handbook on Law and Religion*. Cheltenham: Edward Elgar.
- Amien, W. and A. Leatt. 2014. "Legislating Religious Freedom: An Example of Muslim Marriages in South Africa." *Maryland Journal of International Law* 29: 505.
- Banda, C. 2019. "Redefining Religion? A Critical Christian Reflection on CRL Rights Commission's Proposal to Regulate Religion in South Africa." *Verbum et Ecclesia* 40: 1.
- Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, The. 2017. *Report on the Hearings on the Commercialisation of Religion and Abuse of People's Belief Systems*. Johannesburg: CRL Rights Commission.
- Eisenberg, A. 2017. "Three Approaches to the Protection of Religious Freedom: Choice, Interest, Identity." In *Personal Autonomy in Plural Societies: A Principle and its Paradoxes*, edited by M. Foblets, M. Graziadei and A.D. Renteln. New York: Routledge.

- Freedom of Religion South Africa. 27 February 2017. "Comments on the CRL Rights Commission's Report on the 'Commercialisation' of Religion."
- Henrico, Radley. 2019. "Proselytising the Regulation of Religious Bodies in South Africa: Suppressing Religious Freedom?" *Potchefstroom Electronic Law Journal* 22.
- Heyns, Christof and Danie Brand. 2000. "The Constitutional Protection of Religious Human Rights in Southern Africa." *Emory International Law Review* 14(2): 699.
- Johannessen, Lene. 1997. "A Critical View of the Constitutional Hate Speech Provision." *SAJHR* 135.
- Kgatle, Mookgo S. 2017. "The Unusual Practices within Some Neo-Pentecostal Churches in South Africa: Reflections and Recommendations." *HTS Teologiese Studies* 73(2).
- Koopman, N. 2002. "Freedom of Religion and the Prophetic Role of the Church." *Dutch Reformed Theological Journal* 43: 237.
- Phiri, I. and J. Maxwell. 2007. "Africa's Rapid Embrace of Prosperity Pentecostalism Provokes Concern – and Hope." *Christianity Today* 22.
- Resane, K.T. 2017. "And They Shall Make You Eat Grass Like Oxen' (Daniel 4: 24): Reflections on Recent Practices in Some New Charismatic Churches." *Pharos Journal of Theology* 98: 1.
- Richmond, Baroness Hale of. 2017. "Freedom of Religion and Freedom from Religion." *Ecclesiastical Law Journal* 19(1): 3.
- Tusaleam, Rollin F. 2015. "State Regulation of Religion and the Quality of Governance." *Politics & Policy* 43(1): 94.

Legislation

- The South African Constitution, 1996.
- Income Tax Act 58, of 1962.
- Non-profit Organisations Act 71, 1997.
- Counter-Terrorism and Security Act 2015 (United Kingdom).

Court Cases

- Affordable Medicines Trust and Others v Minister of Health* 2006 (3) SA 247 (CC).
- Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC).
- Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC).
- Prince v President, Cape Law Society, and Others* 2002 (2) SA 794 (CC).
- Ryland v Edros* 1997 (2) SA 690 (C).

Online Resources

- Parliamentary Portfolio Committee on Cooperative Governance and Traditional Affairs, Meeting of 27 June 2017, <https://pmg.org.za> (accessed September 15, 2020).