



t +27 21 556 5502
a P.O. Box 50110
West Beach
Cape Town 7441
e info@forsa.org.za
www.forsa.org.za

To: The Speaker of the National Assembly
For attention: Honourable Ms TR Modise

Per e-mail: speaker@parliament.gov.za

And to: Ms Lynette Sait
Per e-mail: lsait@parliament.gov.za

And to: Ms Shereen Cassiem
Secretary to the COGTA Portfolio Committee
Per e-mail: scassiem@parliament.gov.za

Re: PETITION from religious community regarding Government's actions and response to COVID-19

From: Advocate N L Badenhorst
Legal Counsel, *Freedom of Religion South Africa (FOR SA)*
Per e-mail: legal@forsa.org.za

Date: Wednesday, 20 May 2020

Dear Honourable Speaker,

In response to Parliament's call for comments on Government's actions and response to COVID-19 (as published on the PMG website on 8 April 2020), a wide range of religious leaders and organisations representing +/- 18.5 million people of the faith community from across the denominational and faith spectrum (including +/- 10 million from the African Indigenous and Spirituality churches) met online to discuss the impact of the regulations issued by Government, on their members and organisations.

The names and organisations represented, appear at the bottom of this petition. The vast majority of these structures do not form part of, and/or their views on this matter are not currently represented by, the South African Council of Churches (SACC).

PART A: EXECUTIVE SUMMARY

While thanking and commending the President and many others in multiple Government departments for their leadership at this time, the Signatories to the submission are writing to express our concern that Government is overlooking or underrating the essential and unique contribution of the religious community at a “grass roots” level.

We further note that the practical and valuable contribution of the faith community to the COVID-crisis has largely been neutralised by the current regulations and restrictions on movement and gatherings, and is not properly considered in the phased economic recovery plan (with Levels 1 – 5) outlined by the Minister.

We therefore ask and call upon Government to:

- Respond to a series of questions for clarification already submitted to the Committee on 25 April 2020 and included below, with a view to obtaining clarity on some specific issues and challenges that religious leaders are currently facing;
- Give due consideration to the proposed revisions to the respective lockdown measures (as set out in our submission and the annexures thereto), which will allow the religious community the opportunity to fulfil its important role while at the same time fully respecting and integrating the social distancing, sanitation, hygiene and health safety measures;
- Meet with a senior level representation of the religious community herein represented – at the earliest opportunity – to engage with and discuss these matters further.

We respectfully urge you to - in line with your constitutional obligation to facilitate public participation - give attention and careful consideration to the questions and proposals in our submission for the engagement of the religious community at the different levels of easing the lockdown and returning to “normality”.

Kindly let us have a written response by no later than 5pm on Friday, 8 May 2020, so that we can revert to our constituencies.

PART B: COMPREHENSIVE SUBMISSION

The Signatories wish to firstly convey their support to the Government's fight against the spread of the COVID-19 pandemic. We thank and commend the President and many others in multiple Government departments for their leadership at this time, including particularly the concerted effort to curb the spread of the virus as well as the financial and social relief measures put in place to assist the poor and vulnerable. We want to assure Government of our continued and unfettered support in helping to fight (the spreading of) this virus – and also to mitigate the (potentially) devastating impact thereof - in our communities.

The religious community has a vital role to play in this time, not least in influencing behavioural changes needed to “*flatten the curve*”, and assisting in food distribution and care for the most vulnerable - and has devotedly and effectively done so in similar challenging times in the past. For example, when xenophobic violence spread throughout our country in 2008, the religious community helped to serve, feed, accommodate, support and reintegrate people displaced by xenophobia across the nation.

Significantly, the World Health Organisation (WHO) defines “*health*” as “*a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political, belief, economic or social condition.*” (<https://www.who.int/about/who-we-are/constitution>) As such, the current health crisis should not be viewed solely in terms of the impact of the COVID-19 virus on the physical wellbeing of the people of our country, but also their mental (including psychological, emotional, and spiritual) and social wellbeing – and this is where the religious community has a pivotal role to play.

Returning to Government's response to the current crisis, the initial “Level 5” lockdown has been broadly supported by the religious community as a proportionate and appropriate response to the COVID-19 threat. This was particularly because the severity and characteristics of the virus were not known at the outset of the pandemic. Although sections 15, 17, 18 and 31 of the Constitution guarantee the rights of religious organisations to practise

their faith corporately, it was accepted that these could be legitimately limited in terms of section 36 of the Constitution. Exceptional times require exceptional interventions.

However, even during a state of national disaster such as we presently find ourselves in, such limitations or restrictions must at all times remain reasonable, justifiable, rational and proportional (as per section 36 of our Constitution). They must also remain open to continual review to ensure that they meet the constitutional limitations test, especially as more knowledge becomes available about the disease itself and the very real impact it is having on our society as a whole.

The reality is that Regulations have severely affected the ministry and operations of religious organisations, and indeed the members they serve, in many ways. The effect of this crisis will only become broader as the health and economic impact bites, and the need for (in person) spiritual care and counselling increases. In addition, various religious organisations have a number of employees to take care of. As a result of the current restrictions however, many organisations have found their financial income dropped drastically to the extent that many churches will struggle to meet their financial obligations (including paying their religious workers and other employees).

Our concern:

Although we are encouraged by Government's recognition that specific sectors will require exemptions and/or additional directions that were not initially foreseen, we are concerned that it is overlooking or underrating the essential and unique contribution of the religious community.

Throughout history, the religious community has typically been at the forefront of the response to the ravages of disease. Apart from our fervent and continual prayers for the Government and those suffering in our communities, we also offer our practical service, spiritual support and counsel. These actions include the feeding and clothing of the poor, the elderly and otherwise vulnerable people as well as comforting, counselling, encouraging, caring for and supporting those impacted. There is also the significant contribution the religious community can make in calming an already restless society.

Our response during this pandemic should be no different. Today, many people are isolated, lonely and scared of what the future will bring. Some have lost loved ones already, many more face the possibility of unemployment, while others are already devastated by it. Others need basic assistance with things as simple as shopping for groceries or pharmacy items. In some cases, religious communities are their only lifeline. Other challenges include depression (and possible suicides), heart attacks and even rising levels of domestic and gender-based violence, which is triggered by stress and the enormous debt burden that is already being experienced by thousands.

Leaders of congregations know exactly which families need help and where they live. In many cases, those attending churches, mosques, synagogues and temples also meet in smaller groups at “grassroots” level, throughout the community. The religious community is thus well placed to implement targeted interventions which meet both practical and spiritual needs. Importantly, if any member of such a group becomes infected, it is easy to identify and quarantine those who may have been exposed.

Our response to the COVID-19 pandemic is therefore based upon the unique characteristic and contribution of the religious community, which we believe needs to be more clearly recognised, acknowledged and adequately considered by Government. Religious communities and their activities cannot be merely fitted into a generic sector like “social gatherings”. It is not possible to consider the profound significance of the role of religious communities as outlined and then place it in the same category as pubs, restaurants, sporting events and other “social gatherings” , which do not have their rights to gather enshrined and entrenched in the Constitution.

In this call on Government to reassess the pivotal role of the religious community, we recognise the important value of precautionary measures. We support sensible social distancing policies, tracking and testing policies, health protocols (face masks, sanitation and general hygiene), the isolation of older and more vulnerable people, the prevention of larger gatherings of people in close confines, and the keeping of attendance registers. However, we equally believe that it is possible to have religious gatherings which will not result in the uncontrolled spreading of the virus - if not at Level 4, then thereafter. (As is apparent from the annexures, we are proposing a staggered opening up of the religious sector / religious activities at each of the Levels, in line with Government’s approach to other sectors). There

are scores of religious communities that have gatherings much smaller than the number of people allowed in grocery stores or taxis, or in the mines which have now been opened up, or at the food distribution points where thousands of people recently congregated and stood in lines in Centurion, as was widely publicised on social media platforms.

Although most religious leaders agree that large public gatherings in a confined space at this time could be counter-productive, counter-intuitive and if prescribed measures are not in place as recommended herein, could even could be disastrous, it is possible for even larger religious organisations to re-convene safely by strictly observing a formula of allowing 1 person per 1.5 (as permitted in the mining sector) or 2 square meters with due regard also to the capacity of the building, as well as observing other sanitation, hygiene and health safety measures. The reality is that while many religious organisations currently are using digital platforms to reach their members, many South Africans have limited, or no, access to internet or data and cannot be reached in this way. These people are deprived of their right to much needed spiritual, emotional, psychological and even material care that the religious community daily provides.

We also point out that many pastors and religious workers have given their lives and sacrificed greatly to serve (spiritually but also in very practical ways) and love the flock under their care, but also as a practical outworking of their faith, the communities around them – and in particular, poor and vulnerable communities. Should the regulations not be amended so as to allow for religious activity at the different levels, many of these pastors and religious workers will be left without any income to provide for their own families, as these communities do not have access to data to stream religious services.

In a nutshell, we are concerned that the practical and valuable contribution of the faith community to the COVID-crisis has largely been neutralised by the current regulations and restrictions on movement and gatherings, which have understated and underestimated the role of, and the responsible persons who, mostly make up this community. We are understandably concerned that the phased economic recovery plan (with Levels 1 – 5) outlined by the Minister does not seem to allow room for appropriate levels of functionality for the religious community, and those in the employ of various religious organisations.

Need for clarity on certain aspects of the current regulations:

In this regard, we have already on 25 April 2020 (in response to the invitation for comments on the Draft Framework by 27 April 2020) submitted a number of questions to the Minister, and indeed also to the COGTA Parliamentary Portfolio Committee, with a view to obtaining clarity on some specific issues and challenges that religious leaders are facing, and with a view to enabling them to positively and effectively fulfil their role and mandate during this pandemic crisis.

In light thereof that we have not yet received a response to these questions, some of which remain pertinent following the publication of the Lockdown Regulations for Level 4 on 29 April 2020, we reiterate same here and would value your earliest response:

- 1) Religious organisations that are registered with CIPC as non-profit companies (NPCs) are able to apply for **permits via CIPC's Bizportal website**.
 - How do legally permitted, but voluntary associations with a Constitution that are not registered as a NPC with CIPC (but many of whom are registered as a non-profit organisation (NPO) with the Department of Social Development (DSD), and/or a public benefit organisation (PBO) with SARS), apply for permits to perform “essential services” such as providing social distress relief?
 - What provision of the lockdown regulations can they rely on to apply for such permits? More specifically, does Part P.4 of Table 1 (Alert Level 4) of the regulations which permit “*all social work, counselling, services supporting gender based violence, care and relief activities*” include religious workers and/or organisations as “permitted services” at Level 4?
 - More specifically, does this mean that religious organisations / pastors can apply under this regulation, for a permit for:
 - Food distribution to vulnerable communities / persons under their care (i.e. “*social work*” and “*relief activities*”) – particularly in view of Government’s proposed centralisation of food distribution, as recently reported in the media;
 - The purpose of doing pastoral visits (i.e. “*counselling*” and “*care*”) of persons in need of spiritual / grief counselling; obviously while taking care to observe the sanitisation, health and physical distancing guidelines that are already in place?

- More specifically, can the Police issue such permits to religious workers and/or organisations, or to whom should application be made?
 - What documents should religious organisations' employees take with them when applying for such a permit (e.g. the Church's Constitution; a letter confirming employment, what type of essential service will be performed, where to whom and on which days, what times)?
 - Is there a limit on the number of permits per employer?
- 2) The regulations restrict the number of persons at **funerals** to fifty (50) people, but do not place any restrictions on the place where the funeral service is to be held.
- Is there any reason why the service cannot be held at a church building, subject to the sanitisation, health and physical distancing guidelines that are already in place?
 - And if not, why not?
- 3) **Financial relief** measures in the form of payment holidays, wage support, funding or tax relief, etc. are currently offered to enterprises, businesses and companies.
- Is (all of) this relief also available to religious organisations, irrespective of their legal registration and/or registration with regulatory bodies?
 - If yes, what are the requirements? And if not, why not?
 - If the relief is available to religious organisations, are there any specific requirements that need to be satisfied? (e.g. be in good standing with SARS TEU, or DSD; providing annual financial statements, bank and/or payroll records for the last 6 months; etc.?)
 - Can religious organisation staff, who are foreign nationals who contribute to UIF, claim under UIF COVID-19 TERS?

Financial relief is an absolute necessity for churches who serve poorer communities.

- 4) It is legally possible for people to get married before a religious marriage officer. However, the marriage officer has a legal obligation to, in person, register the marriage with the Department of Home Affairs (DHA) within three days of the **solemnisation of the marriage**.

- How will the registration of marriages be given effect to in the immediate and foreseeable future? (We note that at Level 4, the DHA is permitted to issue birth and death certificates, and replace I.D. documents. The regulations do not however allow for the registration of marriages at this stage).
- If it is impossible for the marriage officer to register the marriage, what is the recourse for SA citizens to get married during the various levels of Lockdown?
- ALSO – is it possible (as is similar for funerals) for weddings to take place in a private home and with a limited number of close relatives present, with agreed social distancing and other preventative health measures strictly observed?

5) The **administrative functions of religious organisations** largely include financial administration and compliance and need to be able to resume at all levels, being on local assembly, regional/provincial and national level. The administrative function, albeit linked to the religious community, is separate from the “church program” (including religious gatherings) and should be regarded as such.

- The permit issuing system on CIPC’s Bizportal website, issues permits on the basis of what the “business” does, rather than the activities in which the actual individuals (employees) are engaged. In this regard also, Table 1: Alert Level 4 to the Regulations issued on 30 April 2020, states that “persons in the following list of industries and activities” are able to return to work at Level 4.
- In view of the foregoing, at what level will religious organisations’ employees be able to resume their administrative (including financial and compliance) functions from the office, e.g. employees involved in the payment of salaries; essential I.T. support; co-ordination of feedings schemes; essential building maintenance; etc? (Thus, although certain persons in the employ of religious organisations perform what would qualify as “permitted services” under Level 4, because the religious sector as such is not included in Table 1: Alert Level 4, those employees cannot return to work under the current Regulations).
- Should religious organisations only be permitted to resume their administrative functions at a certain level, would employees be permitted to enter the office before such level is reached (provided that no one else is there), to effect a short duty – e.g. restarting the servers or resetting the alarm?

6) Various religious organisations have a number of bookstores in their organisation, where they sell religious education books and resources.

- It is not clear whether “*educational books*” (the sale of which is permitted under Part E.17 of Table 1: Alert Level 4 of the Regulations) would include these books and resources.

7) Many religious organisations and faiths have switched their regular “meetings” to a digital format. This has significant logistical complications in the process of preparing the components of the **online sermons / content**, with everyone isolated remotely. Typically, no more than 10 (ten) people would be needed at any one time to fulfil this purpose, but the benefit to the faith community to be able to see/hear from their leaders will be great. In this regard:

- In this regard, we reiterate what has been said in point 5) above with regard to employees of religious organisations who perform “permitted services” at Level 4 (including, for example, “*online services*” and “*broadcasting*” as per Part G.1 and G.3 of Table 1: Alert Level 4 respectively; and “*broadcasting services*” as permitted in terms of the directions issued by the Acting Minister of Communications and Digital Technologies on 3 May 2020).
- Can the media team meet at, for example, the church venue to record and prepare for broadcasting these events, which could (and ideally should) include educating its members on the importance of proper sanitisation, social distancing, etc.

Note: This in itself can be done in full compliance to health protocols, particularly social distancing and sanitation, with different elements of these meetings (musicians, speaker etc.) being able to be recorded at separate times.

Proposals for permission of various religious activities at Levels 5 – 1:

Finally, it is well understood that the current regulations are considered necessary by the NCCC Task Team to reduce infections, which typically occur via social contact. However, as these restrictions are incrementally lifted – and as our society begins to move towards a return to “normality” - it is critically important that any restriction on the faith community must be appropriate and proportional to achieve its intended, health-related purpose, particularly in view of the constitutionally entrenched rights of the religious community.

It is, for this reason, we propose the following staggered, or calibrated, course of action regarding the work of religious communities and organisations (in this regard, see Annexures “A” and “B” hereto). By creating a framework for religious activity along the same suggested lines contained in the phased economic recovery plan, we believe religious groups can, and should be given the opportunity to, implement a responsible phasing in of activities by giving them much-needed guidelines whereby transmission risks can be effectively managed.

Most importantly and urgently, we ask that religious workers be permitted to - subject to the observance of the health protocols regarding sanitisation, physical distancing, etc. - attend to their members for purposes of spiritual “counselling” and “care” (not unlike, for example, psychologists who are able to apply for permits under the current Regulations).

We respectfully urge you to give attention and careful consideration to the proposals below for the engagement of the religious community at the different levels of easing the lockdown and returning to “normality”. One of the strengths of our constitutional dispensation is that Parliament regularly, and in keeping with its constitutional obligation to facilitate public participation, consults with those who are affected by the laws and policies that come before it. These consultations, when seriously carried out, help to ensure that such laws and policies – and in this case, the Regulations issued in response to the current health crisis – effectively address their stated objectives, and do not end up being found to be unreasonable, irrational or otherwise unconstitutional.

As such, we look forward to receiving clarity to our questions, as also the opportunity to engage with you in person regarding our proposals in so far as religious activity at Levels 5 to 1 is concerned, by no later than 5pm on Friday, 8 May 2020 so that we can revert to our constituencies.

During this critical time in our nation’s history, we are glad to be able to engage with the Committee and to contribute to these important discussions.

Your sincerely,

Adv Nadene L. Badenhorst
FOR SA Legal Counsel

E-mail: legal@forsa.org.za

SIGNATORIES TO THE LETTER:

1. Rev Johan Schütte, Director of Church Administration, **Afrikaanse Protestantse Kerk (APK)**, representing approx. 29 626 members in 206 congregations across the RSA.
2. Bishop Lazarus Selahle on behalf of **All Africa Bishops Council**, representing approx. 50 000 people across the RSA.
3. Bishop Samuel Ndlovu on behalf of the **Alliance of Pentecostal and Charismatic Churches**, representing approx. 2 000 churches across the RSA.
4. Dr Shimmy Chi Aobakwe Kotu, President of the **Anti-Regulation of Religion Summit**, representing approximately 1 million Christians and in excess of 4000 Preachers across the RSA.
5. Dr Henri Weideman, General Secretary of the **Apostolic Faith Mission of South Africa (AFM of SA)**, representing approx. 1,4 million people across the RSA.
6. Dr Peter Watt on behalf of the **Assemblies of God** representing approx. 1 million people across the RSA.
7. Archbishop Benson M. Uwha, National Chairman of the **Christian Association of Nigeria South Africa (CANSAF)**, representing approx. 2 million people across the RSA.
8. Dr Johnny Slabbert, Chief Operations Officer of the **Christian Family Churches International**, representing approx. 100,000 congregants from across the RSA.
9. Bishop Masilo Monyai, President of the **Christian Judicial Council**, representing approx. 42 fraternals and 80 independent ministries across the RSA.

10. Apostle Julius Moloji on behalf of the **Christian Ministers Council of South Africa**, representing approx. 1 800 churches across the RSA.
11. Bishop B Mchunu on behalf of **Church Leaders Council of SA**.
12. John Scholtz and Louis Els, Apostolic Leaders of **Church of the Nations South Africa**, representing approx. 15 000 congregants from 70 churches across the RSA.
13. Pastor Barry Isaacs on behalf of **Concerned Clergy of the Western Cape**.
14. Rabbi Larry Matlala on behalf of the **Council of Charismatic Churches**, representing approx. 420 churches across the RSA.
15. Ps Gareth Stead, **Every Nation Churches South Africa**, representing approx. 60 churches in the RSA.
16. Dr JR Crompton on behalf of **Faith Fellowship of Churches**, representing approx. 19 churches with an average attendance of 4 250 congregants across the RSA.
17. Ps Morgan Pillay, Chairman of **Fellowship of Community Churches**, representing approx. 13 churches and 3 000 people across the RSA.
18. Ps Andrew Selley on behalf of the **Four12 Global** apostolic partnership of churches, including 55 congregations across the RSA.
19. Michael Swain, Executive Director of **Freedom of Religion South Africa (FOR SA)**, a legal advocacy group working to protect and promote religious freedom in South Africa.
20. Dr Stafford Petersen, Moderator of the **Full Gospel Church of God in Southern Africa**, representing approximately 800 000 congregants from 1400 congregations across the RSA
21. Siseko Ngaka, Apostle & Founder of **God's Family Ministries**, representing approx. 200 congregants.

22. Mark Scholtz, Senior Pastor of the **Harvest Christian Church** representing approx. 3000 people across the RSA.
23. Thembi Tulwana, Executive Spokesperson of **Inkululeko Yeziswe Association (IYA)**, representing approx. 10 million people from 65 African Indigenous and Spirituality denominations and structures across the RSA under the leadership of Dr. Prophet uZwilezwe Radebe.
24. Bishop KE Khomo on behalf of **Interdenominational African Ministers Association of SA (IDAMASA)**.
25. Ps Andrew Selley on behalf of **Joshua Generation Church**, representing approx. 3000 congregants across 26 congregations in the RSA.
26. Ps Tim Malan, Chief Secretary of **Members in Christ Church**, representing approx. 30 000 congregants from 150 congregations across the RSA.
27. Apostle Robert Worship on behalf of **New Apostolic Church South Africa**, representing approx. 420 000 members and 1 155 congregations across the RSA.
28. Advocate Werner Badenhorst, Legal Representative of **New Covenant Ministries International (NCMI)**, representing approx. 25 000 people across the RSA.
29. Apostle Scholtz on behalf of the **Old Apostolic Church South Africa**, representing approx. 1.16 million people and 2 000 congregations across the RSA.
30. Neville Sewlall, Chairperson of **Pietermaritzburg for Jesus**, representing approx. 10 forums and fraternals in Pietermaritzburg, networking with over 100 pastors in Pietermaritzburg and a partnerships with networks in Durban, Isipingo, Chatsworth, Tongaat.
31. Bishop Glenn Lyons on behalf of **REACHSA**, representing approx. 50 000 members and 150 churches across the RSA.

32. Shaun Richard Lewarne, Chief Operations Officer, **Rivers Church**, representing approx. 25 000 congregants across the RSA.
33. Andrew du Preez on behalf of **Seventh-day Adventist Church**, representing approx. 200 000 members across the RSA.
34. Bishop Selven Govender, President of the **South African Religious Forum (SARF)**, representing over 13 000 people across the RSA.
35. Pastor Siphon Mahlangu, President of the **Soweto Ministers Fraternal**, representing approx. 25 000 people across the RSA.
36. Bishop Nathi Zondi on behalf of **Truevine Family of Churches**.
37. Dave Pedersen, National Director of **Vineyard Churches South Africa**, representing approx. 25 000 people across the RSA.
38. Dr JR Crompton, Senior Pastor of **Word of Faith Christian Centre**, representing approx. 3 000 members in the Port Elizabeth branch, and representing 20 branch churches with approximately 3 000 congregants each across the RSA.