



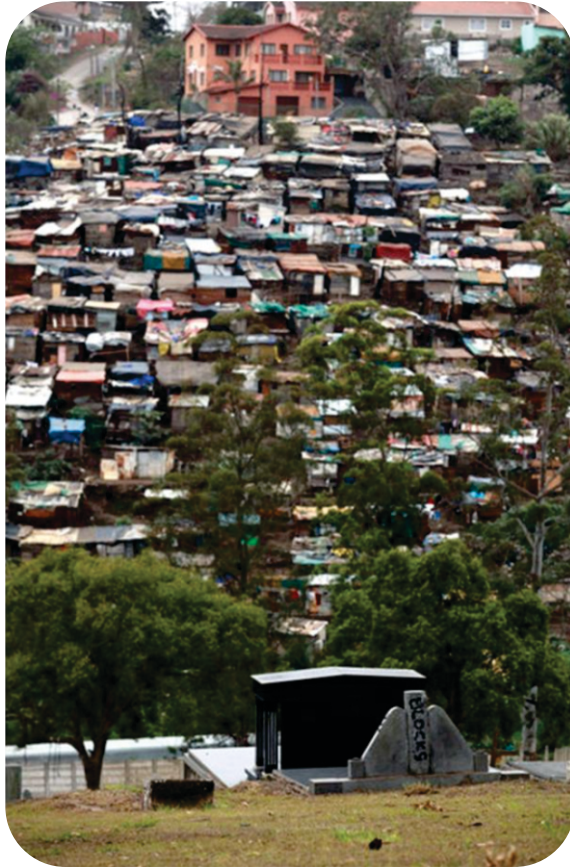
Forum IV Braampark, 33 Hoofd Street
Braamfontein, Johannesburg
Private Bag X90000
Houghton 2041
Tel: 011 358 9100

www.crlcommission.org.za

REUSE OF GRAVES BY LOCAL GOVERNMENTS: A SOLUTION OR VIOLATION OF CULTURAL AND RELIGIOUS RIGHTS OF COMMUNITIES

Report Compiled by :

COMMISSION FOR THE PROMOTION AND PROTECTION OF THE
CULTURAL, RELIGIOUS AND LINGUISTIC RIGHTS OF COMMUNITIES



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TABLE OF CONTENTS

A. INTRODUCTION

1. Foreword
2. Acknowledgements

B. WHAT DO GRAVES SIGNIFY AND MEAN TO MOST AFRICANS

3. The Meaning of Death and Ancestors
4. Meaning of Graves for African People
 - 4.1 Professor Tinyiko Maluleke, from the University of Pretoria, Theology Department
 - 4.2 Prof. Jabulani Maphalala, a former history professor at the University of Zululand,
 - 4.3 Prof. Neluvhelani Matshikiri and the Venda Stakeholders forum
 - 4.4 Ms. Lwasi Ntombela, a community organizer who has actively campaigned against grave recycling in KZN
 - 4.5 The Nazareth Baptist Church
 - 4.6 Prof. David Coplan from Wits University Department of Anthropology
 - 4.7 Dr. Nokuzola Mndende: Director and Founder of Iqamacu Heritage Institute

C. LEGISLATIVE FRAMEWORK

8. The Constitution of the Republic of South Africa 1996
9. The National Heritage Resources Act of 1999
10. The National Health Act 61 of 2003
11. The KwaZulu-Natal Cemeteries and Crematoria Act no. 12 of 1996
12. The National Environmental Management Act no 107 of 1998

D. THE MANDATE OF THE CRL RIGHTS COMMISSION

E. CASE STUDIES/COMPLAINTS RECEIVED BY THE CRL RIGHTS COMMISSION

F. LOCAL GOVERNMENTS VIEW ABOUT GRAVES AND CEMETRIES IN THE COUNTRY

13. Challenges faced by Local Government with regard to burial spaces
14. Solutions Proposed by Local Government

G. CONCLUSION

H. RECOMMENDATIONS

I. BIBLIOGRAPHY

A. INTRODUCTION

1. Foreword

The Commission for the Promotion and Protection of the Cultural, Religious and Linguistic Rights of Communities (CRL Rights Commission) embarked upon a study on the reuse of graves after receiving a number of complaints from the public, particularly from the eThekweni Metro Municipality area. When visiting the graves of their deceased family members, they were shocked to find that either someone they did not know was buried in the same grave, or someone else's tombstone was erected on the grave. They also found the grave of their family member half dug up, and on asking what was going on, were told that someone else was going to be buried in that specific tomb.

Culturally and religiously, this act of reusing graves haunts people's belief and cultural system, as many believe that a burial place is not only sacred, but also a place with which one should not tamper. What most people find very appalling, is the fact that their family member would just be stacked away with someone else, whom they do not even know, or for which they have not given consent. This, some African Religion specialists argue, goes against the sacredness and power attributed to the deceased ancestor. One person remarked, "Imagine you discovering that your ancestor, who is sacred and important to your family, is buried with a criminal, or paedophile or a rapist".

Most religions, like the African religion, strongly argue that for them, cemeteries are more than just burial places. They are places of spiritual and cultural reverence. The deceased person, is not just looked upon as a dead person or body, but as an ancestor in one's family who should be venerated and never forgotten. The ancestor is believed to be living with God and playing a very prominent intercessory role in the life of a particular family. Consequently, the deceased person's bones and sanctified burial place becomes very important, and therefore should not be disturbed by anyone. Thus it is very important for each deceased person to have his or her own separate grave.

Interviews

1. Prof. David Coplan from Wits University in Johannesburg. Prof. Coplan is an Anthropologist.
2. Prof. Nelevhulani Matshikiri and a group of advisors to the Chiefs in Venda Limpopo called Vhembe Stakeholders Forum. Prof. Neluvhelani is a Cultural Expert.
3. The City of Cape Town's Department of Cemeteries and Parks. We looked at their practice model when coming to the recycling of graves.
4. Prof. Tinyiko Maluleke from the University of Pretoria. Prof Maluleke is a Cultural and Religious expert.
5. Dr. Nokuzola Mdende, Director and Founder of Iqamacu Institute in Ducewa in the Eastern Cape.
6. Mrs. Pumla Madiba, a heritage specialist.
7. Prof. Jabulani Maphalala, a former history professor at the University of Zululand.
8. Ms. Lwasi Ntombela, a community organizer, who has actively campaigned against grave recycling in KZN.
9. Ms. Lindiwe Mthembu, a traditional healer from KZN.
10. A community in Southwell in the Eastern Cape Province.
11. Twenty affected families based in Aliwal North, Dukathole, Eastern Cape Province.
12. Mr. Xolile Mahanjana from Durban.
13. Ms. Thembisile Mkhwananzi from Clairewood, in Durban.
14. Gogo Blose from Folweni in Durban.
15. Ms. Lindiwe Mhlongo from Makhutha under the Umkhanyakude district Municipality.
16. Ms. Loraine Bruigom, genealogist from Margate KZN.

Picture

We Thank AFP/Gatty Images for the use of their picture in this booklet

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Local governments' disregard for these principles regarding religious and cultural rights of most communities, have led them to feel that the alternatives to burial, such as the reuse of graves without their consent, is a violation of their religious and cultural rights. We have to remember that community rights are far more important and should be addressed with great sensitivity and respect.

The subject on the reuse of graves is very fundamental to the belief systems of many communities in the country, and cannot be ignored, even in the quest to find solution to other things. Thus, merely ignoring this and hoping it will go away does not help the competitive needs. The promotion and protection of the religious and cultural rights of communities must be guarded and defended at all times.

Local governments argue that the reality is that open spaces or suitable land, where new graves or cemeteries could be erected, is fast becoming depleted. Before a place can be declared a cemetery, there is a number of environmental impact assessment issues which first needs to be considered. The argument is that not all pieces of land are suitable to be declared a grave yard or cemetery. This is said, comes from the background of local governments' challenges regarding competing interests. Often this means that local governments, in their quest to provide housing, infrastructure, and implement economic growth in their area, have to sit and decide which interest they are going to implement first. They argue that they are trying very hard to introduce alternative burial methods such as cremation, building a Mausoleum and reuse graves, as a way of addressing the challenge.

The CRL Rights Commission, whose mandate is to promote and protect the cultural and religious rights of communities with this report, aims to call for the promotion, protection and respect of communities' cultural and religious customs at all times. Again it calls for the promulgation of a national legislation on the reuse of graves.

2. Acknowledgements

The Commission for the Protection and Promotion of the Rights of Cultural, Religious and Linguistic Communities (henceforth CRL Rights Commission) is indebted to all the individuals, communities and stake holders who participated in both the hearings and the research on *the Reuse of Graves by Local Governments : A Solution or Violation of Cultural and Religious Rights of Communities*. We are particularly grateful to the individuals who are directly affected by this issues.

The CRL Rights Commission also wish to extend due acknowledgement for support and guidance received during the hearings and research to the following individuals and institutions: Professors' Tinyiko Maluleke from University of Pretoria, David Coplan from Wits University, emeritus Jabulani Maphalala from University of Zululand, emeritus Neluvhelani Matshikiri from University of Venda. Our thanks also goes to Dr. Nokuzola Mndende : Director and Founder of Iqamacu Heritage Institute, Ms. Lwasi Ntombela from KZN, the Nazareth Baptist Church, the Vhembe Stakeholders Forum, the South African Local Government (SALGA), Ethekwini Municipality, the IOL news website and AFP/Getty Images for the cover picture.

Finally, special appreciation is accorded to the Chairperson of the CRL Rights Commission, the Research and Policy Development Committee and all other CRL Rights Commissions' Commissioners.

The reuse of graves remains a disrespectful way of trying to solve the problem. Unfortunately, this will generally harm the poorer members of our communities, as this practice not only interferes with their identity, but also their spiritual, economical, and traditional values and core being.

H. RECOMMENDATIONS

1. A national legislation that deals with the issue of the reuse of graves must be promulgated by parliament with immediate effect.
2. Local governments should stop this practice of reusing graves.
3. In cases where there is a plan to reuse a grave, local governments should ask all affected family members to decide which members should be buried together in one grave.
4. Local governments should appropriately and effectively engage in discussions with all affected communities before closing down cemeteries or reusing graves in their areas.

G. CONCLUSION

In African culture, the graves are places of the living and not of the deceased. The concept of the living also includes the place where the ancestors are buried. For an African person, the reason for living and the reason why one is alive are much more important phenomena which affect his or her cultural and religious life. Everything that a living person does culturally and religiously, gives meaning to his or her existence. Hence, good living for an African does not end with death but supersedes death. Those who have lived good lives are venerated as ancestors and have a great task of protecting and looking after those who are still physically alive. Those who are physically alive emulate those who have gone ahead of them and protect everything about them. Thus, the idea of a grave being shared with someone else who is foreign to a particular family, or whose way of living his physical life is seen as an abomination in the African culture and religion.

African religion calls for one grave per person in case a family member should be instructed in a dream to perform a particular ritual on a particular grave. Then there won't be any confusion about who is buried in whose tomb. Many families fear that the reuse of graves can lead to this confusion, especially in instances when the family has not chosen who should be buried where. Again, they believe that tampering with their ancestors' place of rest or their bones could lead to a misfortune befalling the country.

However, we do agree that the local governments' problem of a lack of burial space has grown over a period of time, because of competing needs, such as agriculture and infrastructure development. Again, we do agree that this problem is also compounded by the fact that most cemeteries are fully occupied and the country needs to find alternatives with regard to the burial dilemma of its population. However, we see this issue necessitating the speedy redistribution of land in this country. Unless we highlight the issue of land distribution, we will always be finding ourselves with compounding problems and blaming other things, as there is enough land for everyone in this country. One can never quantify peoples' cultures and traditions, hence, the issue of land shortage has to be dealt with altogether

B.WHAT DO GRAVES SIGNIFY AND MEAN TO MOST AFRICANS

3.The Meaning of Death and Ancestors

Gregory Schmidt says that according to an African way of life, there is a very close relation between the visible and the invisible world. They are so closely connected that one can describe the African world view as mono-sectional. African religion believes that the deceased don't leave the living, but are always present, whether this is for good or for bad. Death is interpreted as a rite of passage to the ancestral level.

There are many ways of interaction. The ancestors are guardians of the tradition and intermediaries between God and the community. They bless and protect. If the community or individuals break the moral law, ancestors are said to punish them by reminding them of their living duties.

Ancestors, Schmidt continues, who have recently died are called the *living-dead*. They visit the community/family in dreams and visions and give specific orders. Naming of children is a common reason why the *living-dead* speak to a family member. The names of the deceased contain their good character, which will be passed on to the next generation. Incorrect naming causes sickness or even death. Without naming, the child is not part of the community/family; and is not considered a human being. To become a *living-dead* and an ancestor, one must have been a role model in the community.

On the African continent, there are also evil forces – people who did not live good lives, committed suicide, or those who were inappropriately buried. The belief is that these evil ancestral spirits, who are found anywhere in nature or around their graves, haunt the living. When unpleasant or bad things happen to people, such as an accident or illness that cannot be explained, the belief is this could be the work of an evil ancestral spirit. In African communities, traditional healers are the spiritual leaders who can disclose the reasons behind a misfortune. They are also able to put things straight in an orderly and pleasant manner.

According to African religion, life does not end with death, but continues in another realm. The concepts of 'life' and 'death' are not mutually exclusive concepts, and there are no clear dividing lines between them. Human existence is a dynamic process involving the increase or decrease of 'power' or 'life force', of 'living' and 'dying', and there are different levels of life and death.

Many African languages express the fact that things are not going well, such as when there is sickness, in the words. 'we are living a little', meaning that the level of life is very low. The African religion's scholar, Placida Temples, describes every misfortune that Africans encounter as "a diminution of vital force." Illness and death are the result of an outside agent, a person, thing, or circumstance that weakens people, because the agent contains a greater life force. Death does not alter or end the life or the personality of an individual, but only causes a change in condition. This is expressed in the concept of 'ancestors', people who have died but who continue to 'live' in the community and communicate with their families.

For most communities, a family member's spirit is believed to be still with them, although buried. Thus, graves and other public objects and places of commemoration form an important part of South Africa's heritage, and are conserved for future generations and sustainability. As historical artefacts, they reveal ways in which the people of South Africa have sought to comprehend and to mark the loss and sacrifice of casualties of wars/liberation struggle and conflicts. Thus, graves as sacred places are taken care of and preserved. Communities make sure that these burial grounds are respected, honoured, remembered, and are befitting to commemorate the lost lives. They are also tangible, symbolic reminders of individual, family and community memoirs of bereavement. For most communities, graves of their loved ones are not just places of the dead, but sacred places where they often visit to venerate, pray and maintain that spiritual link with their ancestors. Municipalities plan to reuse the graves or simply destroy them for future development, therefore, causes a serious violation of a religious and cultural right for many members of our society.

A traditional healer from KwaZulu-Natal (KZN), Ms. Lindiwe Mthembu, while speaking about the meaning of death and ancestors, had the following to say:

"The belief in ancestors is rooted in the need or desire to preserve the memory of known past generations and known or unknown lineages. The emphasis of acknowledging the excluded is the foundation of the cure for various ailments, like bodily discomfort, spiritual discord or common need to wade off misfortune or a curse that will be seen to be projected by malevolent spirits. The good spirits are acknowledged and given gratitude through ceremonies or cleansing rituals. For example, a person will consult a traditional healer who will facilitate the session of finding a solution or a root cause of the trouble. This is often done through throwing the bones in order to constellate the wider family picture".

The other challenge identified with regards to establishing more cemeteries was the fact that not all land is suitable for burials. Before a cemetery can be established it is important to carry out the environmental assessment impact study to ensure the suitability of the land. Once a piece of land has been used for burial purposes it can never be used for any other purpose, which could have a negative impact on the infrastructure development for future generations

14. Solutions Proposed by Local Government

The South African Local Government Association, in their February 2015 draft Cemeteries Strategic Framework, proposed the following alternatives to conventional burial including cremation, sea burials, grave recycling, mausoleums and alkaline hydrolysis (where human remains are dissolved):

- Above-ground burial' means when a structure is employed for the interment of a body and such a structure is located above normal ground level;
- Ash grave' means a grave for the burial of cremated remains, with such a grave covered by a memorial plaque or slab;
- Multiple burials' means subsequent interments in the remaining depth of the grave;
- Niche' means a compartment in a columbarium or garden of remembrance for the placing of ashes;
- Private cemetery' is land which is used as a cemetery but not owned by the Council;
- Private crematorium' is a building where deceased persons are cremated but is not owned or managed by the Council;
- Public grave' is a grave in which a second burial of any member of the public may take place after a period of five years and on which the erection of a headstone is not permitted for either the first or second burial;
- Reduction burial' refers to the making of a grave available for a subsequent interment after a specific period.

This issue of challenges faced by local governments in finding space for cemeteries and burial grounds was concisely articulated by the Mayor of eThekweni, Cllr James Nxumalo, while speaking at the two-day South African Cemeteries Association Conference held in Durban, 2013. He said that *“dealing with the issue of cemetery space was difficult because cemeteries are competing with developments such as housing, agriculture and infrastructure. It is really a competition between the dead and the living. As Government we have a responsibility to provide housing and other development infrastructure for our people to ensure that we have a sustainable City. On the other hand we have to meet the demand for cemeteries, as we are finding that some of our communities are still sceptical about alternative burial methods that have been identified.”*

Cllr. Nxumalo said that possible solutions suggest the establishment of cost-effective and environmentally-friendly cemeteries and burials, cremations, and the use of bio-degradable coffins, which should be regulated. Education of communities about the challenges municipalities are currently facing as well as the benefits of reusing graves and employing a variety of cost-effective methods as alternatives to traditional burial, were also mentioned.

13.Challenges Faced by Local Government with regard to Burial Spaces

Local governments argue that finding suitable land for burials has become a very serious challenge. Examples are made of the eThekweni Metro Municipality, where years ago they began to run out of burial space despite having 65 cemeteries. The 2013 statistic registers from the Department of Home Affairs showed that there were 89 000 deaths in the Durban area alone. Figures from the eThekweni Metro Municipality showed that less than 10 000 bodies were buried, and about 2 500 were cremated. Cemeteries in the Ekurhuleni Metro Municipality are occupied and only 19 of its 63 cemeteries are in use. Only three of the 12 cemeteries in Mangaung Metro Municipality still have burial space in Bloemfontein and Botshabelo, while cemeteries in Thaba Nchu will be filled within five years. Johannesburg Metro Municipality is establishing a new cemetery in Olifantsvlei to create burial space for the next 45 years.

4.Meaning of Graves for African People

4.1 Professor Tinyiko Maluleke from the University of Pretoria, Theology Department

Professor Tinyiko Maluleke, mentions that in townships, a grave is seen and referred to as a last home of the deceased person. Since the deceased are seen to be living in their final home, some are buried with blankets and utensils because it is believed they might need these in their new 'life'. Thus, death is seen as the beginning of a new life, and graves are the places of the living and not of the dead as we know them.

He says that in African Cosmology, we speak about three worlds, these are the world of the unborn, the world after birth, and the world of the *living dead*. He says that these three worlds are connected and there is a special ritual for each one of them. What is important to remember, is the fact that in African spirituality, when one speaks of the living, one does not only talk about the living whom we see every day, but all three worlds as described above.

The living not only includes humans, but also trees, mountains, animals and rivers.

Prof. Maluleke says that had it not been for missionaries who condemned and referred to the African belief system as Animism, the whole African Cosmology and Totem system would have saved our ecology today. He is of the opinion that reusing graves is a very disrespectful way of trying to solve the problem. He emphasises that it is very blasphemous to mess with the graves of the deceased, especially those of the poor, as it seems that the poor are always easy targets and not much respect is accorded to them. He believes that this reuse of graves will hurt the poor economically and spiritually, as searching for the graves or 'homes' of their family members will become difficult and is costly. He says, “not to have one's grave is a curse on its own”. He concluded by saying that “fiddling with peoples graves without their consent, is fiddling with their values and core identity”.

4.2 Prof. Jabulani Maphalala a former history professor at the University of Zululand

Prof. Jabulani Maphalala described the grave reuse plan as disturbing, saying it goes against the cultural beliefs of many. Prof. Maphalala, said a grave had to be respected. Burying someone over another's grave shows no respect and discriminates against the cultural beliefs of people.

He said, "Many Zulu people still believe in tradition and part of that is we still speak to those who have left us because we don't believe that they die, but find comfort in (the fact) that they are resting", explaining that this was done where the person had died and at the grave. "If someone is buried over [sic] your relative, how are you going to speak to them? It will be a major disaster in terms of cultural beliefs. In fact, this is wrong and takes away people's rights to practise their tradition freely", he said.

For people to have to pay a lease to ensure that no one is buried on top of their loved ones is sad, Prof. Maphalala said. "Can you imagine the stress this causes, because you begin to wonder for how long people will have to pay? Why can't the dead be left alone? There is more than enough land to bury people. People should not be deprived of a right to be left in peace when they die."

Prof. Maphalala said the municipality needed to look at how people would be affected by the plan, especially those who believe in their ancestors. "No one has the right to take that away from anyone. They must find land because I also know that many African people don't believe in cremation," he said.

4.3 Prof. Neluvhelani Matshikiri and the Venda Stakeholders forum

Prof. Neluvhelani Matshikiri, from Venda, says that for Africans, death does not mean the end of a person's life, as he is convinced that the ancestors still influence the living and the deceased. He, therefore, deduces that places of burial are holy and should be respected. He says interference with holy places means that whoever touches the grave for whatever purpose, that person has made a fateful mistake. He contends that the reuse of graves should be negotiated with the family concerned and the ancestors before anything is done.

Gogo Blose from Folweni in Durban also complained that her husband was buried at the Wentworth cemetery. In 2014, the family decided to erect a tombstone for her late husband, and she alleges that eThekweni Metro Municipality refused the family permission to do so on the grounds that the grave was going to be reused for someone else.

Ms. Lindiwe Mhlongo from Makhutha, under the Umkhanyakude District Municipality, complained that they only discovered in 2000 that their father's grave was reused to bury someone else; he was buried in 1987.

Ms. Loraine Bruigom, a genealogist from Margate, visited a family plot in the oThongathi (Tongaath) cemetery in Durban, where some of her relatives were buried. Ms Bruigom could not hide her emotion when she saw the headstone of her great grandfather, Mr. Gabriel Johannes Ellse, a prisoner of war who was born in 1885, and alongside him, his wife, Mrs. Hester Maria Susanna Ellse, and two of their children. Next to them were two graves without headstones and no way of tracing who they were. Ms. Bruigom said neither she nor other family members saw the notice.. "Cemeteries are supposed to have record books of the graves and family contacts; no one sent us letters. These graves are of historical importance, the municipality can't just reuse them without notifying family members".

F. LOCAL GOVERNMENTS' VIEWS ON THE REUSE OF GRAVES IN SOUTH AFRICA

Local governments argue that land is scarce, and most municipalities have to prioritize agriculture and housing for their city's booming population, as the demand to accommodate a growing population will take a priority over burying people. This is because a many people migrate to cities and towns in the country, resulting in an ever increasing number of deaths, forcing local governments to build and make use of as many cemeteries to bury the deceased. However, local governments soon realised that the demand far outweighed the supply, as the land for building new cemeteries became difficult to find.

Overall, the role of the Commission, in fulfilling its mandate, is to assist communities in safeguarding the integrity of their cultural and religious practices. Furthermore, the Commission should help them recover the diminished meanings, symbolisms, values and heritage that guided and informed the importance of graves over the centuries.

E. CASE STUDIES OF COMPLIANTS RECEIVED BY THE CRL RIGHTS COMMISSION ABOUT THE REUSE OF GRAVES

- A community in Southwell in the Eastern Cape Province complained to the CRL Rights Commission about an owner of a farm, who allegedly, demolished the graves of their ancestors to make way for agricultural fields. The community regards this as an infringement of its right to spiritual and religious beliefs and dignity.
- The CRL Rights Commission received another complaint from 20 affected families based in Aliwal North, Dukathole, Eastern Cape Province. They alleged that in 2007, the local municipality and the Department of Arts and Culture had buried thirty (30) soldiers on top of their ancestors' graves without consulting them or getting their consent.
- Mr. Xolile Mahanjana from Durban arranged to have his mother buried at Umlazi cemetery. He says when they showed up at the cemetery for the burial, they discovered that the grave wasn't deep enough. So they started digging deeper, and then came across the remains of an unknown person. They were shocked, because they weren't told that they were getting a recycled grave. Faced with the situation, the family decided to go ahead and bury their mother in the allocated grave. They threw dirt on top of the skeleton and laid his mother's coffin on top of that unknown person.
- Ms. Thembisile Mkhwananzi from Clairewood, in Durban complained that on visiting their parents' tombs a year after they had been buried in 1997, they discovered that both tombs were reused, as they had other people's names on them. They admit that they never took up the matter with eThekweni municipality as to the reasons why.

The Vhembe Stakeholders Forum that advises the chiefs of the Venda area about issues in their region, says no one on earth is older than a grave. The grave represents creation, because the grave says to them, I was once created and I live on mother earth. This reminds the living that they will also end up in the grave one day. They claim that they do not accept the argument of the shortage of soil for new graves, as in their view, South Africa has vast pieces of land in the hands of few. Instead of saying there is no land or soil to build new graves, the government must speed up the process of land distribution, especially among the poor. Hence the expression in Tshivhenda that the soil never gets full. They argued that they will never accept recycling of graves and are convinced that no single African will accept this 'modernisation' of the recycling of graves because according to them, God did not create a person to go into extinction. They strongly believe that no one can be reduced to nothingness, as man is created to exist eternally and into posterity.

4.4 Ms. Lwasi Ntombela, a community organizer who has actively campaigned against grave recycling in KZN

Ms. Lwasi Ntombela, who has actively campaigned against grave recycling, says tampering with the dead is taboo in the Zulu culture. "For us, the grave is a very sacred place", Ms. Ntombela says. "We believe ... that the people who are dead are the people who are angels for us, who communicate with the Almighty".

4.5 The Nazareth Baptist Church

The Nazareth Baptist Church in KZN, opposes both cremation and grave recycling on religious grounds. The members say their faith informs the way they see the dead. "If we put our parents into a grave, that's their house", they say. "They are not dead, they are alive; it's just that we do not see them".

4.6 Prof. David Coplan from Wits University Department of Anthropology

Prof. Coplan says that in history, both before colonialism and right up to the 20th century, various political groupings moved from their home territories to new settlements due to political conflict, population expansion, new alliances or incorporations, environmental problems and so on. Former homes and graves became abandoned ruins and were not revisited. But this does not mean they were forgotten. African people remembered well their former abodes, and the presence of ancestors graves and spirits there was important to preserving these historical memories.

Prof. Coplan says that before the arrival of missionaries, African people used to bury their deceased family in their yards. Men would normally be buried in the kraal, while women and children would be buried in the back yard. This was done to ensure that the graves of their family members are close by and their ancestors' spirit still within the household. People lived very well with this.

He thinks that the problem of graves started when the Neo-Christians started adopting the idea of a tombstone and again when people started migrating to the urban areas for work. Some people felt the need to take soil from their parents' graves along with them to the urban areas. This necessitated the urge to find spaces where they could put the soil of their parents or relatives graves. This led to some churches encouraging their people to make use of remembrance walls. These are walls built in church yards with pigeon holes where people can buy a space to put the cremated ashes of their loved ones or the soil from their loved ones' graves. Other people saw a great need of erecting a tombstone for their loved ones after their burials. This necessitated land space.

Prof. Coplan is aware of the socio-economic changes that municipalities have to deal with. He cited an example in Bosmont near Melville, where the City of Johannesburg has decided to build a cemetery underneath the electricity power lines, as no development can be done there. He cited another example of the Wespark cemetery, where one could buy or book a burial space in advance if you would like to be buried there, but this too is costly.

Cognisant of the fact that the government and town planners are strategically trying to bridge a gap between the formerly urban areas and townships, Prof Coplan thinks that municipalities have no choice but to think of building cemeteries at least 30 kilometres away from the cities. While acknowledging the fact that this would mean people having to travel far to visit their ancestral graves, he thinks this might be a solution to avoid the recycling of graves as done by some municipalities because of a lack of new burial space.

Prof. Coplan suggests a balance between religious rights and values and the public good as mandated to municipalities. Authorities must strive to achieve this balance by proper consultation, but such respectful consultation must not amount to an absolute right of veto on the part of descendants over the lawful promotion of public interest by municipalities. The CRL can be most helpful in educating all concerned about the need for and ways of achieving such a balance.

12. The National Environmental Management Act no.107 of 1998

According to the regulations 363 of the Act, section 15 states that burial sites must be located outside the:

- 100 yards flood plain
- At least 350 meters from ground water sources used for drinking
- At least 500 meters from the nearest habitable building
- At least 2.5 meters deep from the water table
- All burials must be registered with the local authorities.

Section 16 of the Act talks about cremation which should only be done in an authorised crematorium. This states that a crematorium/cremation:

- Must be registered
- Should have a limited negative effect on the ambience of the air
- May only be performed when a cremation certificate has been issued.

D. THE MANDATE OF THE CRL RIGHTS COMMISSION

The CRL Rights Commission is one of the institutions established by the Constitution of the Republic of South Africa to strengthen Constitutional democracy in the country. This came into effect through the CRL Right Act 19 of 2002 by which the Commission is mandated to, *inter alia*:

1. promote respect for and further the protection of the rights of cultural, religious and linguistic communities;
2. promote and develop peace, friendship, humanity, tolerance, national unity among and within cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association;
3. foster mutual respect among cultural, religious and linguistic communities;
4. promote the right of communities to develop their historically diminished heritage.

The CRL Rights Commission is charged by the Constitution of the Republic of South Africa to assist communities in promoting and protecting their cultures, religions, languages and recovering their diminished heritage.

There is an urgent need for the Commission, charged with the responsibility of protecting and promoting the rights of communities; to assist in addressing the problems faced by cultural and religious communities, with particular reference to the protection of the spiritual significance of graves to communities.

11. The KwaZulu-Natal Cemeteries and Crematoria Act no.12 of 1996

S19(1) states that the land on which a cemetery or a crematorium has been established shall not, without prior approval of the minister, be used for any purpose other than a cemetery, crematorium or memorial for deceased persons.

S19(2)(a)(i) states an approval contemplated in subsection (1) shall not be granted until in a case of a cemetery or portion of a cemetery, all human remains contained in the graves comprising such cemetery or portion of such cemetery have been exhumed and re-interred elsewhere.

S20(1) states no grave shall be disturbed or excavated and no human remains shall be removed from any grave without the prior written approval of the minister.

S20(3) states that an application for approval contemplated in subsection (1) shall be made by or with the written consent of the next of kin of the deceased person whose human remains are sought to be exhumed, except in circumstances where such consent is not readily obtainable or it is in the public interest and the consent of the next of kin is unreasonably withheld.

S22(a) states that the grave shall be excavated to a depth not lower than that which will ensure that the human remains previously buried in that graves are not disturbed, and (b) the person or body who has the right to inter human remains in such grave has consented to such interring of further human remains.

S.23 stipulates the following conditions to be met before any reuse of any grave:

- ➔ The next of kin of the deceased person whose human remains were the most recent interment in that grave indicates in writing that he or she does not object to such excavation and reuse.
- ➔ Where the next of kin cannot be traced, the operator has to wait ten years before doing anything.
- ➔ The operator must advertise, as per the regulations, of its intention to re-open and re-use such grave.
- ➔ There should be no objection received from the next of kin.
- ➔ Persons involved should be told that they have a right to appeal to the Minister.

4.7 Dr. Nokuzola Mndende: Director and Founder of Iqamacu Heritage Institute

Dr. Mndende says that for African religion, death means the physical separation of the body from the Spirit. Death is not destruction but a continuation of a journey which one started from conception. The person who dies is seen as having gone to join those people who have departed before him or her.

She says that according to African religion, it is very important to know where the bones of the departed soul are buried, because there is life in them. Their belief is that the bones of the departed person should not be disturbed as these might bring trouble upon those people who are still alive. Thus, African religion encourages a very strong respect for the bones of the deceased person. In African religion, it is believed that the exhumation of the bones can only happen when the deceased appears to the living asking to be relocated somewhere else. Only then can the grave be opened and the bones of the deceased person be touched and moved. This action of exhumation of the bones is also done following a particular ritual, because a grave where one is buried is seen as a sacred place. The grave is viewed as the resting place of the deceased person and that resting place should never be disturbed. Thus, families are encouraged to visit graves of their departed ancestors, as at those graves they have an opportunity to talk and have a dialogue with the departed person.

She says that putting people together in one grave is not a respectful burial. Each person should have his or her own grave, even in a case of a husband and a wife, because they both belong to a different clan. She says that each ancestor needs his or her own grave, whereby should they reveal themselves to their grandchildren, these children will be able to carry out a proper ritual at a respectable grave.

She strongly believes that if the practice of the reuse of graves is continued, this will only bring chaos in the country, as the ancestors would not be happy with the tampering of their places of rest and their bones. She thinks this practice is against African culture and very disrespectful to the ancestors and should not be encouraged, since according to African religion, life exists in the buried bones of the departed.

C. LEGISLATIVE FRAMEWORK

8. The Constitution of the Republic of South Africa 1996

The Constitution of the Republic of South Africa states that:

- S9(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of s9(3) ... religion, belief, culture.
- S15(1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- S31(1a) Persons belonging to a cultural, religious or linguistic community may not be denied the right to enjoy their culture, practice their religion and use their language.

The above quoted clauses guarantee equal religious rights and freedom of all religions in South Africa. Thus, every religion is granted protection by the law of the country.

9. The National Heritage Resources Act of 1999

The National Heritage Resources Act of 1999 (NHRA) has established the South African Heritage Resources Agency (SAHRA) that is charged with protecting the graves and heritage assets of poor communities (especially those who are voiceless in the rural areas). The NHRA defines a burial ground as a place of interment including the contents, headstones or other markers or any other structure associated with the grave (s2) (xiii) and as such views the burial ground in its scope as a heritage resource.

Section 36 (5) of NHRA states that SAHRA or a provincial heritage resources authority may not issue a permit for any activity under subsection 3(b) unless satisfied that the applicant has, in accordance with regulations made by the responsible heritage resources authority– (a) made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground and (b) reached agreements with such communities and individuals regarding the future of such grave or burial ground. The former section stipulates that subject to the provision of any other law, any person who in the course of development or any other activity discovers the location of a grave, the existence of which was previously unknown, must immediately cease such activity and report the discovery to the responsible heritage resources authority.

In terms of S23 of the NHRA Act of 1999, the Member of the executive council (MEC) is empowered to establish the provincial heritage resource authority whose mandate is to ensure management and preservation of heritage resources generally and burial grounds and graves in particular. This section gives powers to regulate the treatment of graves and burial grounds by setting out conditions for the destructions, damage, exhumation, etc. of graves. The CRL Rights Commission in its interaction with other Provincial Heritage Resource Authorities, has noticed a lack of capacity and implementation of their powers.

The issues affecting graves are not only impacting on the rights of the deceased in their own right, but are also interlinked and interface with the rights of communities relating to culture, religion and spirituality. From the above can be noted that in the African philosophy, the spiritual realm does not exist in a vacuum and that those departed, continue to maintain a coercive relationship by sharing their rites and rights. In light of this deeper understanding and appreciation of the African and other beliefs, the Constitution protects the rights of communities regarding cultural, religious and linguistic beliefs and practice.

10. The National Health Act 61 of 2003 – Regulations Relating to the Management of Human Remains

S27(1) states that the following exhumation requirements for the burial of a body are to be obeyed:

- a. The officer-in-charge must inform the Provincial Commissioner of the South African Police Services.
- b. A member of the South African Police Services must always be there present during the exhumation.
- c. An exhumation must not take place when the cemetery is open to the public and must take place under the supervision of the officer-in-charge.
- d. An Environmental Health Practitioner must monitor the exhumation process to ensure that no health nuisance or hazard is caused.