

South African government must prohibit corporal punishment in home, says SAHRC

Media statement

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The Children's Institute, University of Cape Town welcomes the release of the Investigative Report by the South African Human Rights Commission (SAHRC) which requests the South African government to introduce amendments to the Children's Act within the next 12 months to prohibit the use of corporal punishment in the home. Such legislation is necessary to comply with international human rights obligations and to ensure that children in South Africa enjoy protection of their constitutional rights.

On 22 January 2016, the SAHRC released an Investigative Report in response to the case *Mostert and others vs Joshua Generation Church*. This case was filed before the Commission in March 2013. The complainants submitted that the Joshua Generation Church was violating children's constitutional right to be protected from maltreatment, neglect, abuse and degradation because the Church approves of and provides guidance on the use of corporal punishment for children, thereby promoting corporal punishment as an appropriate and acceptable means of disciplining children. The Church claimed that the form of corporal punishment promoted by their Church is different from maltreatment and abuse and that the practice of corporal punishment is protected by their right to religious freedom.

Upon review of international, regional and domestic law, the SAHRC found that all forms of corporal punishment violate the 'best interest of the child' principle protected under the South African Constitution. Corporal punishment furthermore violates children's right to be free from maltreatment, neglect, abuse and degradation, their right to freedom and security of the person, their right to dignity and their right to equal protection by the law. The SAHRC highlighted that the right to religion allows religious communities to practice their religion in a manner that is **consistent** with the Constitution; it does however not allow religious communities to violate other individuals' constitutional rights.

The SAHRC furthermore noted that there is 'no meaningful distinction between unlawful practices in an institutional setting versus those within a domestic or home setting'. It is therefore unreasonable that South Africa enacted legislation that outlaws the use of corporal punishment in institutional settings such as schools and youth detention centres but has so far not passed legislation that protects children in the home. The failure to enact legislation that protects children from corporal punishment in private settings violates regional and international law.

As a result, the SAHRC did not only request the Joshua Generation Church to stop advocating corporal punishment as a means of disciplining children and that their pastors participate in parenting courses on non-violent forms of discipline. The Commission also requested the South African government to act. The report requires Cabinet to initiate legislative amendments to give effect to the prohibition of corporal punishment in the private sphere. At present, corporal punishment is only prohibited in institutional settings such as schools and centres of detention. According to the Commission, there is 'no meaningful distinction between unlawful practices in an institutional setting versus those within a domestic or home setting'.

These are encouraging developments, according to Stefanie Rohrs, a Senior Researcher at the Children's Institute: 'While it is concerning that the Commission took almost three years to finalise its response to the matter, the Investigative Report provides a thorough legal analysis of how corporal punishment violates children's constitutional and international human rights'. Agreeing with the SAHRC, Rohrs adds, 'South Africa has chosen to make itself subject to guidance from international human rights law by ratifying the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The failure to prohibit corporal punishment in all settings is a violation of these treaties. Government therefore needs to act.'

For these reasons, Rohrs says the Children's Institute supports the SAHRC in its call for government to fulfil its constitutional and international obligations by enacting legislation that prohibits corporal punishment of children in the private sphere. She points out that the upcoming reform of the Children's Act provides the perfect opportunity to do so.

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For more about the pending Children's Act reform process:

See http://www.ci.org.za/index.php?option=com_content&view=article&id=886&Itemid=192