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MEDIA RELEASE:

State telling SA parents how to raise their children

For Immediate Release

Parents who lovingly spank their children as a means of correcting them, are acting against the Constitution and must be stopped. So says the South African Human Rights Commission (SAHRC) in a controversial Report issued on Friday, 22 January.

According to the SAHRC's Report, parental chastisement amounts to "*abuse*" of and "*violence*" towards children – even when such chastisement causes no injury, is reasonable and moderate, and is solely for the purpose of educating and correcting.

The SAHRC recommends to Parliament that the Children's Act be amended so as to criminalise all spanking in the home, and to provide for appropriate penalties where parents are found guilty of the "crime" of spanking. This could take the form of the parent being fined or even going to jail; an order removing the child from the parent and placing him/her in alternative care; and/or an order that the parent be trained in "*non-violent parenting*" (otherwise known as "sensitisation training").

Why the Report is concerning

The SAHRC's Report is very concerning and a gross interference with 1) parental authority, and 2) religious freedom.

This finding by the SAHRC flies in the face of what has been the common law position and currently still is the legal position in SA, in circumstances where "reasonable and moderate chastisement" in the home has not been abolished either by Parliament or the courts (who have been given the sole mandate to "develop" the common law in line with the Constitution).

The SAHRC's finding that there is no difference between "*disciplinary spanking*" (a physically non-injurious act, motivated by love and concern, and intending to educate and correct), and "*abuse*" or "*violence*" (physical assault, motivated by anger and malice, intending to injure or abuse, and in fact causing injury), is extraordinary. Any reasonable person would agree that there is a fundamental and obvious difference.

According to media reports immediately following the issuing of the SAHRC's Report, the SAHRC has said that one of the main reasons for prohibiting disciplinary spanking in all spaces, is the body of research that "*has established unequivocally that even the 'loving little smacks' result in a host of negative impacts*" on the development of the child.

It is firstly not true that social science studies have unequivocally established that disciplinary spanking is harmful. In fact, there is a large body of evidence and learning that suggests the opposite, namely that loving corporal punishment by parents is beneficial and in the interest of

children. The SAHRC knows this, as Joshua Generation Church (the Respondent in the complaint) submitted comprehensive peer-reviewed research in this regard to the Commission and for the SAHRC to now suggest otherwise, is disingenuous. What is more, in its Report the SAHRC admitted that it *"is not best placed to evaluate"* the social science studies submitted by the parties. In the circumstances, the SAHRC is out of line to now make such evaluative comments to the media.

Contrary to what the Report suggests, SA law already firmly protects children against domestic violence and abuse (including disciplinary spanking that exceeds the legal boundaries). Creating another law that bans spanking in the home, will do little more than misdirect taxpayers' money and government's resources into court cases and "sensitisation trainings" involving potentially responsible parents and families that are not at risk. Surely, government should direct their energy and our money towards those families and communities that have already been identified as truly vulnerable and in need of intervention, instead!

Of particular concern however, is the paternalistic interference with private and family life. Parents, not the State, have the primary responsibility for the upbringing and development of their children. The State has a duty to respect parents' autonomy in this regard, and should not be allowed to ride roughshod over parents' rights to raise their children as they deem fit. Of course, where disciplinary spanking exceeds the legal boundaries, the State has a legal right and responsibility to intervene. Such intervention should however take place on a case-by-case basis where there is actual *"abuse"* or *"violence"*, rather than giving the State unbridled access to the home and blanket permission to interfere with private and family life.

According to Advocate Nadene Badenhorst, Legal Counsel of Freedom of Religion South Africa (FOR SA), the Report also threatens the sacred right of religious freedom. She explains that *"while some parents have no moral or religious convictions on the issue of child correction, for many South African parents it is a deeply moral and religious issue. Millions of parents (Christian, Muslim, Jewish etc) believe, according to their interpretation of the holy texts, that it is their parental duty to provide appropriate guidance to their children (including, at times, to spank them within the bounds of the law) for their education and benefit. For them, it is a central tenet of their faith. The State's duty is to respect and protect their religious beliefs, not criminalise it"*.

Background to the Report

The SAHRC's Report follows a complaint made by Adriaan Mostert ("Mostert") against Joshua Generation Church ("the Church") in 2013. Mostert, who is not a member of the Church, complained that *"the Church's religious doctrine requires the use of corporal punishment"*. Importantly, the complaint was not based on any actual incident of corporal punishment in the Church.

Two years later, the SAHRC has now issued a Report in terms of which it found corporal punishment in the home ("spanking") to breach a number of human rights, and therefore unconstitutional. The Report recommended that:

- The Church furnish the SAHRC with a written undertaking that it will desist from advocating corporal punishment as a means of disciplining children;
- The Church remove all references to physical punishment / chastisement or correction from its teaching materials; and

- The Church's trainers and pastors involved in presenting its parenting course, take a course in alternative forms of non-violent discipline of children, arranged and facilitated by the SAHRC.

In its response to the SAHRC's (Preliminary) Report, the Church commented as follows: *"A fundamental principle of the Protestant faith, is the right and duty of all Christians to read and interpret the Bible for themselves, and each to act according to their conviction. In the result, the Church cannot and does not dictate to members what to believe and not to believe with regard to this issue, or how to give practical effect to their Biblical convictions and beliefs, as this is ultimately between them and God. Accordingly, the Church as such, has no formal doctrinal stance on child correction. Some members believe that the Scriptures command reasonable and appropriate chastisement; other members interpret those Scriptures differently."*

The Church also pointed out to the SAHRC that it is not correct that its religious doctrine "requires" the use of corporal punishment. *"Our Church does not make any such requirements of its parents. To do so, would offend against the Church's view that the primary responsibility and authority to raise children vests in their parents, not the Church. Parents have exclusive parental authority to decide what is best for their children, in accordance with their own moral and religious convictions. Accordingly, the Church, as such, is not 'advocating corporal punishment' as a means of child correction, and does not intend doing so in future",* it said.

With regard to the "course notes" giving rise to the complaint in the first place, the Church explained to the SAHRC that the notes were authored by a married couple in one of its congregations, who were asked by some of the Church's members to teach a course on raising children. The course was completely voluntary for members and was not closed to the public. According to the Church, *"in the seventeen years history of the Church to date, this was the first time that any parenting course was presented, none has been presented since and the Church is not planning to run any such course in the foreseeable future. The couples who authored and taught the course notes, has also left the employ of the Church."*

In media reports immediately following the issuing of the Report, the SAHRC said that the Church notes *"used 4 out of its 39 pages to describe the length and the thickness of the rod which parents should use in training up children"*. According to FOR SA's Legal Counsel however, *"this is a lie. Only a few paragraphs in the notes related to child correction. The bulk of the notes dealt with Biblical perspectives on topics such as parental authority, love, respect and marriage."*

In their Comments on the (Preliminary) Report further, the Church pointed out what they believe to be material legal errors in the Report. For example, it is not correct that international treaties prohibit spanking and/or that South Africa (as a State party to those treaties) is obliged to prohibit spanking in domestic law. The suggestion further that there is *"no meaningful distinction"* between corporal punishment in institutional settings (already abolished) and parental spanking, is also incorrect and incongruent with the Constitutional Court's statement (in **Christian Education**) that the institutional setting is *"quite different"* to the home setting.

The Church also criticized the Report for not taking into account the various fundamental rights guaranteed to the Church / believers by the Bill of Rights, including the right to religious freedom and freedom of expression. It is noteworthy that in its initial response to the SAHRC, the Church

represented religious (Christian, Jewish and Muslim) leaders representing 12 million people in South Africa who hold a similar conviction that each parent has the right to decide for him-/herself, according to his/her religious convictions, on the issue of child correction.

In his letter of support to the Church, Rev. Moss Ntlha (on behalf of The Evangelical Alliance of South Africa (TEASA), currently having a membership of over 4 million Evangelical Christians in South Africa), stated that "*as a central tenet to our belief is the concept of training up a child in the ways of God.*"

ENDS.

Issued by **Freedom of Religion South Africa** (FOR SA) (www.forsa.org.za), acting as the appointed spokesperson of Joshua Generation Church with regard to this matter.

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