

# South Africa

## Government Policies and Programs to Eliminate the Worst Forms of Child Labor

The Government of South Africa has been a member of ILO-IPEC since 1997.<sup>3313</sup> In 1998, in response to a request from the South African Department of Labor (SADOL), ILO-IPEC began a program to support SADOL and Statistics South Africa with funding from USDOL to implement a comprehensive national survey on the nature and extent of child labor in South Africa.<sup>3314</sup> In 1999, the survey was conducted with technical assistance from ILO-IPEC's SIMPOC.<sup>3315</sup> ILO-IPEC, with USDOL funding, is also supporting government efforts to raise awareness on the issue of child labor and draft a policy paper to combat exploitative child labor.<sup>3316</sup>

In 1998, SADOL facilitated the establishment of a national stakeholder forum known as the Child Labor Intersectoral Group (CLIG) that includes participation from the government, NGOs, trade unions, employers organizations, and international agencies. The CLIG coordinates services provided by the government and NGOs, raises awareness about child labor and the enforcement of child labor laws, and trains labor inspectors.<sup>3317</sup> The CLIG adopted the South African Child Labor Action Program, which was developed in February 1998<sup>3318</sup> and calls for the withdrawal of children from child labor and their integration into formal education.<sup>3319</sup> The Department of Welfare is a member of the CLIG and administers social safety net programs that help prevent children from entering the workforce.<sup>3320</sup> The Minister of Welfare also set up a task force to

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<sup>3313</sup> ILO-IPEC, *All About IPEC: Programme Countries*, [cited October 28, 2002]; available from [http://www.ilo.org/public/english/standards/ipecc/about/countries/t\\_country.htm](http://www.ilo.org/public/english/standards/ipecc/about/countries/t_country.htm).

<sup>3314</sup> U.S. Consulate- Johannesburg, *unclassified telegram no. 0655*, June 2000. See also ILO-IPEC, *Reporting on the State of the Nation's Working Children: A Statistical Programme for Advocacy on the Elimination of Child Labour and the Protection of Working Children in the Republic of South Africa*, project document, ILO-IPEC, Geneva, July 1998.

<sup>3315</sup> Statistics South Africa, *Child Labor in South Africa: Surveys of Activities of Young People 1999 (Draft)*, 2000, tables, 1.

<sup>3316</sup> ILO-IPEC, *National Program to Eliminate Child Labor in South Africa*, project document, Geneva, 2000.

<sup>3317</sup> Before and after promulgating the Basic Conditions of Employment Act, the government coordinated ad hoc meetings with stakeholders involved in child labor issues. The CLIG formally developed from these ad hoc meetings. See Government of South Africa, *Implementation of the Convention on the Rights of the Child: South Africa's Supplement to the Initial Country Report*, January 2000, 56-57. SADOL convenes the CLIG, and there are 10 CLIG offices located in the provinces. See Fatima Bayat, South Africa Director of Minimum Standards, interview with USDOL official, July 26, 2000.

<sup>3318</sup> South Africa Department of Social Services and Population Development, *Network Against Child Labour (NACL): Background (Documents to be discussed at the Meeting of 17 January 2000)* (Johannesburg: 2000).

<sup>3319</sup> U.S. Consulate- Johannesburg, *unclassified telegram no. 0655*.

<sup>3320</sup> South Africa Department of Social Services and Population Development, "Discussion Document in Relation to Child Labor in South Africa," in *Network Against Child Labour (NACL): Background (Documents to be discussed at the Meeting of 17 January 2000)* Johannesburg, 2000, 4-6.

develop a plan of action against the sexual exploitation of children,<sup>3321</sup> and the Government of South Africa created training for the police and judiciary on the commercial sexual exploitation of children.<sup>3322</sup> The Department of Labor has also included modules on child labor as part of its training initiatives for labor inspectors.<sup>3323</sup> In 2001, South Africa's border police incorporated within their strategic plan the protection of women and children from trafficking.<sup>3324</sup> A special Trafficking Unit also has been established at the Johannesburg airport.<sup>3325</sup>

The Network Against Child Labor (NACL) was established with the aim of ending the economic labor exploitation of children through awareness raising, advocacy, policymaking, research, networking, and legal and intersectoral interventions.<sup>3326</sup> Other NGOs work with specialized child protection units of the police to remove children from the streets and provide them with a safe, nonexploitative environment.<sup>3327</sup>

The Government of South Africa has sought to address issues of inequity in its educational system by allocating more resources to the most deprived schools in its provinces and to predominantly black schools.<sup>3328</sup> The National Curriculum 2005 Framework helps to bridge the gap in educational opportunities between privileged and underprivileged children by providing learning support materials to schools in a more equitable fashion, and by standardizing the content of training courses for teachers in all districts.<sup>3329</sup>

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<sup>3321</sup> U.S. Consulate- Johannesburg, *unclassified telegram no. 0655*.

<sup>3322</sup> U.S. Department of State, *Country Reports on Human Rights Practices- 2001: South Africa*, Washington, D.C., March 4, 2002, 625-29, Section 6d [cited December 17, 2002]; available from <http://www.state.gov/g/drl/rls/hrrpt/2001/af/8404.htm>.

<sup>3323</sup> In his speech, the Minister of Labor also noted that in addition to the Department of Labor, South Africa's Departments of Education, Social Development, Justice, the South Africa Police Service, and the Office of the Rights of the Child in the Presidency, play roles in addressing child labor in the country. The Honorable Minister of Labour Mr. M.M. Mdladlana, Speech at the Launch of the International Labour Organization's Third Global Report on a Future Without Child Labour, May 6, 2002, [cited September 17, 2002]; available from [http://www.labour.gov.za/docs/sp/2002/may/06\\_mdladlana.htm](http://www.labour.gov.za/docs/sp/2002/may/06_mdladlana.htm).

<sup>3324</sup> U.S. Department of State, *Country Reports- 2001: South Africa*, 625-29, Section 6f.

<sup>3325</sup> U.S. Department of State official, electronic communication to USDOL official, January 29, 2003.

<sup>3326</sup> South Africa Department of Social Services and Population Development, *Network Against Child Labour*.

<sup>3327</sup> U.S. Consulate- Johannesburg, *unclassified telegram no. 0655*.

<sup>3328</sup> In 1998, the government announced new funding directives to further these goals. These included new guidelines that required education departments to dedicate 60 percent of non-personnel and non-capital recurrent expenditures to the 40 percent of schools in their provinces that were in greatest need. In 1999-2000, the estimated total expenditure totaled approximately 21 percent of the government's total budget and 6.6 percent of GDP. See Government of South Africa- Department of Education, *Education for All: The South African Assessment Report*, Pretoria, March 2000, 26, 27, 32. See also U.S. Department of State, *Country Reports- 2001: South Africa*, 618-25, Section 5.

<sup>3329</sup> Government of South Africa, *Implementation of the Convention on the Rights of the Child*, 45.

## Incidence and Nature of Child Labor

In 1999, a child labor survey conducted by the South Africa Statistical Agency, in cooperation with ILO-IPEC, estimated that 36 percent of children ages 5 to 17 years in South Africa were working.<sup>3330</sup> Child labor occurs most often in the rural agricultural sector and the informal economy. Children work in commercial agriculture and on subsistence farms, as well as on small farms planting and harvesting vegetables, picking and packing fruit, and cutting flowers.<sup>3331</sup> Children are also found working as domestic servants in rural areas, especially on farms. Many of these children come from migrant populations.<sup>3332</sup> In urban areas, children work as street hawkers, especially around taxi stands and where public transportation is used.<sup>3333</sup> There are reports that commercial sexual exploitation of children is growing.<sup>3334</sup> As South Africa becomes an increasingly popular tourist destination, it has been reported that cities like Cape Town and Durban are becoming destinations for tourists seeking sex with minors.<sup>3335</sup> South Africa is a destination country for trafficking in children for the purposes of prostitution.<sup>3336</sup>

The Constitution states that every child has a right to access basic education and may not be discriminated against on the basis of race.<sup>3337</sup> The South African Schools Act of 1996 makes school compulsory for children ages 6 to 14 and prohibits public schools from refusing admission to any child on the grounds of disability, language, learning difficulty or pregnancy.<sup>3338</sup> There are

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<sup>3330</sup> This statistic includes children who work at least three hours per week in economic activities (gathering wood and/or water; performing unpaid domestic work; or performing economic activities for pay, profit, or family gain), five hours per week in school labor (performing school maintenance, cleaning, or performing school improvement activities), and seven hours for household chores (working in the family home where the child's parent, grandparent, or spouse is present). The most common economic activity in which children are engaged is fetching wood and/or water from outside the home. See "Key Findings: The Definitions and Extent of Child Labor," in *Surveys of Activities of Young People 1999*.

<sup>3331</sup> U.S. Consulate- Johannesburg, *unclassified telegram no. 0655*.

<sup>3332</sup> *Ibid.*

<sup>3333</sup> *Ibid.*

<sup>3334</sup> U.S. Department of State, *Country Reports- 2001: South Africa*, 618-25, Section 5.

<sup>3335</sup> South Africa National Council for Child and Family Welfare, *Report on the Commercial Sexual Exploitation of Children in South Africa*, June 9, 2000, 11. Children are also allegedly exploited sexually in return for the liquidation of family debts or to raise income for the family. See Swedish International Development Agency, *Looking Back, Thinking Forward: The Fourth Report on the Implementation of the Agenda for Action Adopted at the First World Congress against Commercial Sexual Exploitation of Children in Stockholm, Sweden, 28 August 1996*, ECPAT International, Bangkok, 2000, Section 3.4.

<sup>3336</sup> U.S. Department of State, *Country Reports- 2001: South Africa*, 625-29, Section 6f. See also Protection Project, "South Africa," in *Human Rights Report on Trafficking of Persons, Especially Women and Children*, March 2002, 490 [cited December 17, 2002]; available from <http://www.protectionproject.org>.

<sup>3337</sup> See *Constitution of the Republic of South Africa, Act 200 of 1993, (January 25, 1994), Section 29(1)(a)*. From 1948 until the abolition of apartheid and resulting change in government policy (including the passage of a new Constitution), a succession of apartheid-driven policies resulted in social inequalities along racial lines, and black South Africans particularly were deprived of opportunities to access basic social services, including education. See Government of South Africa- Department of Education, *Education for All: South Africa*, 6.

<sup>3338</sup> Government of South Africa- Department of Education, *Education for All: South Africa*, 8-9.

additional costs, however, such as school fees,<sup>3339</sup> transportation and school uniforms that prevent some children from attending school.<sup>3340</sup>

In 1997, the gross primary school enrollment rate was 96.5 percent, and the net primary enrollment rate was 87.1 percent.<sup>3341</sup> The gross enrollment rate was higher for boys (98.3 percent) than for girls (86.3 percent), while the net enrollment rates for boys and girls was more even (87.9 percent and 86.3 percent, respectively).<sup>3342</sup> Primary school attendance rates are unavailable for South Africa. While enrollment rates indicate a level of commitment to education, they do not always reflect children's participation in school.<sup>3343</sup>

## Child Labor Laws and Enforcement

The Constitution provides the right of every child, defined as a person under 18 years of age, to be protected from exploitative labor practices. It also prohibits children from performing work or providing services that are inappropriate for a child's age or that put at risk a child's well-being.<sup>3344</sup> The Basic Conditions of Employment Act (BCEA) sets the minimum age of work at 15 years and prohibits employment of children who are under legal minimum school-leaving age if that is 15 years or older.<sup>3345</sup> For children over age 15 and no longer subject to compulsory schooling, the BCEA allows for the Minister of Labor to set additional prohibitions or conditions on their employment.<sup>3346</sup> The maximum penalty for illegally employing a child, according to the BCEA, is three years of imprisonment.<sup>3347</sup> The Constitution and the BCEA prohibit all forms of forced

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<sup>3339</sup> U.S. Department of State official, electronic communication, January 29, 2003.

<sup>3340</sup> U.S. Consulate- Johannesburg, *unclassified telegram no. 1245*, October 2001. Many schools also continue to face significant infrastructure and other problems that have a negative impact on the quality of education. See Government of South Africa- Department of Education, *Education for All: South Africa*, 38-39.

<sup>3341</sup> UNESCO, *Education for All: Year 2000 Assessment* [CD-ROM], Paris, 2000.

<sup>3342</sup> *Ibid.*

<sup>3343</sup> For a more detailed discussion on the relationship between education statistics and work, see the preface to this report.

<sup>3344</sup> *Constitution of the Republic of South Africa*, Section 28(1)(e), 28(1)(f), 28(1)(k).

<sup>3345</sup> Republic of South Africa, "Basic Conditions of Employment Act, Act No. 75," *Republic of South Africa Government Gazette* (Capetown), 1997, Sections 43(1)(a)(b), 43(3), 93. See also Statement at the Launch of the International Labour Organization's Third Global Report. The Child Care Act also prohibits the employment of children under 15 years of age. See Government of the Republic of South Africa, *Child Care Act 74 of 1983*, Section 52A(5), (June 15, 1983). See also ILO-IPEC, *Green Paper on a National Child Labour Action Program (Draft)*, Geneva, October 20, 2000, 12-14.

<sup>3346</sup> Republic of South Africa, "Basic Conditions of Employment Act," Section 44(1 and 2).

<sup>3347</sup> *Ibid.*, Sections 43(1)(a)(b), 43(3), 44(2), 93.

labor.<sup>3348</sup> The Constitution also prohibits the use of children under the age of 18 in armed conflicts.<sup>3349</sup>

Sexual Offences Act No. 23 of 1957 establishes prostitution as a criminal offense.<sup>3350</sup> In 1999, the Government of South Africa amended the Child Care Bill to include a more comprehensive prohibition on the commercial sexual exploitation of children than provided for under the Sexual Offences Act of 1957. The bill sets a penalty of up to 10 years imprisonment for the commercial sexual exploitation of a child.<sup>3351</sup> Trafficking is not specifically prohibited by law.<sup>3352</sup>

The BCEA establishes SADOL as the primary government entity responsible for monitoring compliance with and enforcing South Africa's labor laws, including provisions on child labor. SADOL effectively enforces the minimum age law in the formal nonagricultural sector but less effectively in other sectors.<sup>3353</sup> Enforcement of laws against child sexual exploitation is reported to be lax, and there are problems in investigating, charging, and sentencing offenders.<sup>3354</sup>

The Government of South Africa ratified ILO Convention 138 on March 30, 2000, and ILO Convention 182 on June 7, 2000.<sup>3355</sup>

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<sup>3348</sup> *Constitution of the Republic of South Africa*, Section 28(1)(e), 28(1)(f), 28(1)(k). Republic of South Africa, "Basic Conditions of Employment Act." In general, the BCEA does not apply to informal work unless it constitutes forced labor. See ILO-IPEC, *Green Paper*, 13. See also *Constitution of the Republic of South Africa*, Section 13.

<sup>3349</sup> *Constitution of the Republic of South Africa*, Section 28(1)(k), 28(3).

<sup>3350</sup> According to the Sexual Offences Act No. 23 of 1957, prostitution is an illegal activity for a person of any age, and as such, children can be arrested for prostitution under the act despite being victims of commercial sexual exploitation. Such cases, however, are generally referred by the Office of the National Director of Public Prosecutions to children's courts where a determination is made regarding a child's need for care and the prosecution of persons exploiting children may be pursued. See ILO-IPEC, *Green Paper*, 15.

<sup>3351</sup> *Child Care Amendment Bill (B 14-99)*, Section 50A.

<sup>3352</sup> U.S. Department of State, *Trafficking in Persons Report- 2002: South Africa*, Washington, D.C., June 5, 2002, 94 [cited December 17, 2002]; available from <http://www.state.gov/g/tip/rls/tiprpt/2002/10682.htm>.

<sup>3353</sup> U.S. Department of State, *Country Reports- 2001: South Africa*, 625-29, Section 6d. See U.S. Consulate-Johannesburg, *unclassified telegram no. 1245*.

<sup>3354</sup> Swedish International Development Agency, *Looking Back, Thinking Forward*, Section 3.4.

<sup>3355</sup> ILO, *Ratifications by Country*, in ILOLEX, [database online] [cited October 21, 2002]; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>.