

# 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>4036</sup> In 1999, the South African Department of Labor (SADOL) and Statistics South Africa, with funding from USDOL and technical assistance from ILO-IPEC's SIMPOC, conducted a comprehensive national survey on the nature and extent of child labor in South Africa.<sup>4037</sup> The South African Department of Labor, in cooperation with ILO-IPEC, has drafted a Child Labor Action Program, which calls for the removal of children from the labor force and their integration into formal education.<sup>4038</sup>

In 1998, the South African Department of Labor facilitated the establishment of a national stakeholder forum known as the Child Labor Intersectoral Group that includes participation from the government, NGOs, trade unions, employers organizations, and international agencies. The Child Labor Intersectoral Group coordinates services provided by the government and NGOs, and raises awareness about child labor and the enforcement of child labor laws.<sup>4039</sup> The Department of Welfare is a member of the Child Labor Intersectoral Group and administers social safety net programs that help prevent children from entering the workforce.<sup>4040</sup> South African Department of Labor has included modules on child labor as part of its training initiatives for labor inspectors.<sup>4041</sup> The Government of South Africa created a task force and training courses for the police and judiciary on the commercial sexual exploitation of children.<sup>4042</sup> South Africa's border police set up a special Trafficking Unit at the Johannesburg airport.<sup>4043</sup>

The Network Against Child Labor, a group of organizations and concerned individuals, was established in 1991 and focuses on ending the economic labor exploitation of children through awareness raising, advocacy, policymaking, research, networking, and legal and intersectoral interventions.<sup>4044</sup> Several NGOs work with police child protection units to provide street children with a safe, non-exploitative environment.<sup>4045</sup>

<sup>4036</sup> ILO-IPEC, *All About IPEC: Programme Countries*, [cited August 27, 2003]; available from [http://www.ilo.org/public/english/standards/ipec/about/countries/t\\_country.htm](http://www.ilo.org/public/english/standards/ipec/about/countries/t_country.htm).

<sup>4037</sup> ILO-IPEC initiated the program in response to a request from the SADOL. See U.S. Consulate- Johannesburg, *unclassified telegram no. 0655*, June 2000. See also Statistics South Africa 2000, *Child Labor in South Africa: Tables, Surveys of Activities of Young People 1999*; available from <http://www.ilo.org/public/english/standards/ipec/simpoc/southafrica/report/indexpr.htm>.

<sup>4038</sup> SADOL conducted a series of nationwide consultations on the Child Labor Action Program (CLAP) in 2003. As of early 2004, the financial implications of CLAP are being analyzed by the Treasury Department. It is expected that CLAP will be submitted to the cabinet for final approval later in 2004. See U.S. Embassy- Johannesburg Labor Attaché, electronic communication to USDOL official, February 24, 2004.

<sup>4039</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. SADOL convenes the CLIG, and there are 10 CLIG offices located in the provinces. See Fatima Bhyat, *Meeting Notes*, prepared by USDOL official, July 26, 2000.

<sup>4040</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, 5-6.

<sup>4041</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. See 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; 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>4042</sup> U.S. Department of State, *Country Reports on Human Rights Practices- 2002: South Africa*, Washington, D.C., March 31, 2003, Section 6d; available from <http://www.state.gov/g/drl/rls/hrrpt/2002/c8695.htm>.

<sup>4043</sup> *Ibid.*, Section 6f.

<sup>4044</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). See also Child Rights Information Network, *Organizations: Network Against Child Labour*, 2001 [cited August 27, 2003]; available from <http://www.crin.org/organisations/viewOrg.asp?ID=715>.

<sup>4045</sup> U.S. Consulate- Johannesburg, *unclassified telegram no. 0655*.

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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>4046</sup> In 2003, the Department of Education established an action plan to improve access to free and quality basic education.<sup>4047</sup> The National Curriculum 2005 Framework helps to bridge the gap in educational opportunities between privileged and underprivileged children by providing learning materials to schools in a more equitable fashion, and by standardizing the content of training courses for teachers in all districts.<sup>4048</sup>

## Incidence and Nature of Child Labor

In 1999, a child labor survey conducted by the Statistics South Africa, in cooperation with ILO-IPEC, estimated that 36 percent of children ages 5 to 17 years in South Africa were working.<sup>4049</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>4050</sup> Children are also found working as domestic servants in rural areas, especially on farms. Many of these children come from migrant populations.<sup>4051</sup> In urban areas, children work as street hawkers, especially around taxi stands and where public transportation is used,<sup>4052</sup> and as car guards.<sup>4053</sup> There are reports that child prostitution<sup>4054</sup> and sex tourism<sup>4055</sup> are increasing. As South Africa becomes an increasingly popular tourist destination, it has been reported that cities such as Cape Town and Durban are becoming destinations for tourists seek-

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<sup>4046</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- 2002: South Africa*, Section 5.

<sup>4047</sup> Government of South Africa- Department of Education, *Plan of Action: Improving access to free and quality basic education for all*, June 14, 2003.

<sup>4048</sup> Government of South Africa, *Implementation of the Convention on the Rights of the Child*, 45.

<sup>4049</sup> This statistic uses a broad definition of child work that 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*; available from <http://www.ilo.org/public/english/standards/ipec/simpoc/southafrica/report/page9.htm>.

<sup>4050</sup> U.S. Consulate- Johannesburg, *unclassified telegram no. 0655*.

<sup>4051</sup> *Ibid.*

<sup>4052</sup> *Ibid.*

<sup>4053</sup> ILO-IPEC, *HIV/AIDS and Child Labour in South Africa: A rapid assessment*, Paper No. 4, March 2003.

<sup>4054</sup> U.S. Department of State, *Country Reports- 2002: South Africa*, Sections 5, 6f. See also Bhyat, *Meeting Notes, July 26, 2000*.

<sup>4055</sup> U.S. Department of State, *Trafficking in Persons Report- 2003: South Africa*, Washington, D.C., June 11, 2003; available from <http://www.state.gov/g/tip/rls/tiprpt/2003/21273.htm>.

<sup>4056</sup> 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. Children are also allegedly exploited sexually in return for the liquidation of family debts or to raise income for the family. See South Africa National Council for Child and Family Welfare, *Report on the Commercial Sexual Exploitation of Children in South Africa*, June 9, 2000, 11.

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ing sex with minors.<sup>4056</sup> South Africa is a destination country and transit point for trafficking in children for the purpose of prostitution.<sup>4057</sup> Children orphaned by HIV/AIDS and children heading households are especially vulnerable to exploitative work and find it difficult to remain in school.<sup>4058</sup>

The Constitution states that every child has a right to access basic education.<sup>4059</sup> The South African Schools Act of 1996 makes school compulsory for children ages 7 to 15 and prohibits public schools from refusing admission to any child on the grounds of language, learning difficulty, or race.<sup>4060</sup> Costs such as school fees, transportation, and school uniforms prevent some children from attending school.<sup>4061</sup> However, public schools may not refuse admission to students who have not or are unable to pay school fees.<sup>4062</sup>

In 2000, the gross primary school enrollment rate was 111.5 percent, and the net primary enrollment rate was 88.9 percent.<sup>4063</sup> The gross enrollment rate was higher for boys (114.6 percent) than for girls (108.3 percent), while the net enrollment rates for boys and girls was more even (89.6 percent and 88.2 percent, respectively).<sup>4064</sup> In 1999, 64.5 percent of children enrolled in primary school reached grade 5.<sup>4065</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>4066</sup>

## Child Labor Laws and Enforcement

The Basic Conditions of Employment Act sets the minimum age for employment at 15 years, and prohibits employment of children who are under the legal minimum school leaving age of 15 years.<sup>4067</sup> For children over age 15 and no longer subject to compulsory schooling, the Employment Act allows for the Minister of Labor to set ad-

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<sup>4057</sup> U.S. Department of State, *Trafficking in Persons Report- 2003: South Africa*. See also The Protection Project, "South Africa," in *Human Rights Report on Trafficking in Persons, Especially Women and Children: A Country-by-Country Report on a Contemporary Form of Slavery*, March 2002; available from <http://209.190.246.239/ver2/cr/saf.pdf>.

<sup>4058</sup> School fees and harassment served as barriers to accessing education. See ILO-IPEC, *Combating Child Labour and HIV/AIDS in Sub-Saharan Africa*, Paper No. 1, July 2002, 24, 26.

<sup>4059</sup> *Constitution of the Republic of South Africa*, (December 10, 1996), Chapter 2, Section 29(1)(a); available from <http://www.polity.org.za/html/govdocs/constitution/saconst.html?rebookmark=1>. 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>4060</sup> *South African Schools Act, No. 84 of 1996, (November 15, 1996), Chapter 2, Sections 3(1), 5, 6.*

<sup>4061</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. However, the 2003 plan of action focuses on the poorest 40% of students and seeks to remove barriers to school access in a three year span. See Government of South Africa- Department of Education, *Plan of Action: Improving access to free and quality basic education for all*, 2.

<sup>4062</sup> *South African Schools Act*, Chapter 2, Section 5(3)(a).

<sup>4063</sup> World Bank, *World Development Indicators 2003* [CD-ROM], Washington, D.C., 2003.

<sup>4064</sup> *Ibid.*

<sup>4065</sup> *Ibid.*

<sup>4066</sup> For a more detailed discussion on the relationship between education statistics and work, see the preface to this report.

<sup>4067</sup> Republic of South Africa, *Basic Conditions of Employment Act 75 of 1997*, (November 26, 1997), Sections 43(1)(a)(b), 43(3), 93; available from [http://www.workinfo.com/free/Sub\\_for\\_legres/data/bcea1998.htm](http://www.workinfo.com/free/Sub_for_legres/data/bcea1998.htm). See also Mdladlana Statement: Launch of the International Labour Organization's Third Global Report, 2002. 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).

<sup>4068</sup> *Basic Conditions of Employment Act*, Sections 44(1), 44(2).

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ditional prohibitions or conditions on their employment.<sup>4068</sup> The maximum penalty for illegally employing a child, according to the Employment Act, is 3 years imprisonment.<sup>4069</sup> The Employment Act and the Constitution prohibit all forms of forced labor.<sup>4070</sup> The Constitution also provides for 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>4071</sup> The Constitution also prohibits the use of children under the age of 18 in armed conflicts.<sup>4072</sup>

Sexual Offences Act No. 23 of 1957 establishes prostitution as a criminal offence.<sup>4073</sup> In 1999, the Government of South Africa amended the Child Care Act of 1983 to include a more comprehensive prohibition on the commercial sexual exploitation of children than provided for under the Sexual Offences Act of 1957. The Child Care Amendment Act sets a penalty of up to 10 years imprisonment for the commercial sexual exploitation of a child.<sup>4074</sup> The Child Welfare Act was amended to include an anti-child trafficking provision.<sup>4075</sup>

The Employment Act 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 non-agricultural sector but less effectively in other sectors.<sup>4076</sup> Child labor laws are enforced more effectively in the formal non-agricultural sector than in other sectors.<sup>4077</sup>

The Government of South Africa ratified ILO Convention 138 on March 30, 2000, and ratified ILO Convention 182 on June 7, 2000.<sup>4078</sup>

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<sup>4069</sup> Ibid., Sections 43(1)(a)(b), 43(3), 44(2), 93.

<sup>4070</sup> Ibid., Section 48(1). In general, the Employment Act does not apply to informal work unless it constitutes forced labor. See *Constitution of the Republic of South Africa*, Chapter 2, Section 13.

<sup>4071</sup> *Constitution of the Republic of South Africa*, Chapter 2, Sections 28(3), 28(1)(e) and (f).

<sup>4072</sup> Ibid., Chapter 2, Section 28(1)(i), 28(3).

<sup>4073</sup> According to Section 14 of the Sexual Offences Act No. 23 of 1957, any person who commits or attempts to commit a sexual offense against a child under 16 years is in violation of the law unless the child is a prostitute. Sexual Offences Act, as cited in Interpol, *Legislation of Interpol Member States on Sexual Offences Against Children: South Africa*, [cited September 11, 2003]; available from <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaSouthAfrica.asp>. 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 Dawie Bosch & Associates for the Department of Labour, *White Paper on a National Child Labour Action Programme for South Africa (Draft)*, Draft 3.1, ILO-IPEC, July 2003, 9.

<sup>4074</sup> *Child Care Amendment Act*, (1999), Section 50A.

<sup>4075</sup> U.S. Department of State, *Trafficking in Persons Report- 2003: South Africa*.

<sup>4076</sup> U.S. Department of State, *Country Reports- 2002: South Africa*, Section 6d.

<sup>4077</sup> U.S. Consulate- Johannesburg, *unclassified telegram no. 1245*.

<sup>4078</sup> ILO, *Ratifications by Country*, in ILOLEX, [database online]; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>.