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# **Towards a National Child Labour Action Programme for South Africa**

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***Discussion Document***

**October 2002**

***Discussion document***

**Prepared for the Department of Labour  
by Dawie Bosch & Associates**

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for use in the consultative process towards a national child labour programme  
for South Africa.

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# Executive Summary

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The **Constitution** provides that children under 18 years should be protected against exploitative labour practices and work that is hazardous or harmful to their education, health or well-being, physical or mental health or spiritual, moral or social development.

The task of coordinating an inter-departmental programme to address such labour practices and work has been delegated to the Department of Labour.

Since 1995 the Department has taken a number of steps to achieve this aim, including a national survey of work-related activities of children. The survey helps our understanding of many of the different kinds of work activities that children engage in, and the possible hazards that they face in that respect.

This discussion document is intended as **an analysis of the situation of working children** in South Africa, based on the survey and a wide range of qualitative research. It does not represent the official view of the Department of Labour or of the government, but is circulated for debate and to assist in the process towards drafting a final government policy paper, including a *South African National Child Labour Action Programme*.

The public in general, and a wide range of stakeholders in particular, will be **consulted** about this analysis with the aim, among others:

- To establish what kinds of work-related activities of children place them at risk;
- To assess the seriousness of that risk in different circumstances, including which forms of work are the most hazardous and should be stopped as a matter of priority;
- To identify the extent and causes of these different forms of child work and child labour in South Africa;
- To formulate a programme of action, identifying the most appropriate ways of addressing the detrimental forms of child work and labour.

This consultation process will culminate in a policy paper, incorporating a Programme of Action to address detrimental forms of child work and labour. After a final stage of consultation, the Government will consider adopting the policy paper in this regard as Government policy.

The term 'child labour' is reserved for child work that harms a child or poses a serious risk of harm. The discussion document does not identify or discuss in detail the kinds of policy measures that should be used to address detrimental child work. This can be done only once there is sufficient consensus on what forms of work place children at risk. This will be done during the consultation process that will include the generation and discussion of policy options to address these forms.

The discussion document therefore uses the term 'child work'. Once national clarity is achieved regarding what kinds of work are harmful or pose serious risk of harm for children, such work will be referred to as 'child labour'.

## 1. Overview of the structure of the discussion document

The structure of the discussion document is as follows:

- International instruments on elements of child labour are discussed in Chapter 3. They set the international standards regarding aspects of child labour. Most of them have been ratified by South Africa.
- Existing policy measures that relate more or less directly to children's work in South Africa are discussed in Chapter 4. This provides the background against which a child labour action programme should be developed.
- The extent of children's work in South Africa is discussed in Chapter 5. It summarises the main findings of the recent Survey of Activities of Young People, summarises the findings of similar surveys in four other countries and includes a description of the available information on the most important work-related activities of children and the worst forms of child labour.

- In Chapter 6 the factors indicating that work may be harmful to children are discussed. It includes an overview of work-related factors that increase the risk of harm, the circumstances or characteristics that increase the likelihood of harm, factors of health and safety at work and the reasons why children do harmful work. It also proposes a method that can be used to prioritise different kinds of child labour.
- Key principles that should inform the design of a child labour action programme are proposed in Chapter 7. It also highlights issues that need to be debated and the key elements that should be included in a programme of action

## 2. International standards

Various international standards apply to aspects of child labour. Most of them have been ratified by South Africa. The most important international instruments are:

- The ILO Minimum Age Convention of 1973 provides that children should not engage in economic work before they are 15 years old, unless then are over 12 and the work is light and unlikely to be harmful to their health, development or schooling. The minimum age for work likely to jeopardise the health, safety or morals should be 18 years.
- The African Charter on the Rights and Welfare of the Child of 1990 provides that children should be protected from economic exploitation, but also says that children have responsibilities towards their families and the international community.
- The ILO Worst Forms of Child Labour Convention, 1999, requires of ratifying governments to take measures to effect the immediate abolition of the ‘worst forms of child labour’. The worst forms of child labour include slavery, child prostitution, using a child for illegal activities, and work which by its nature or the circumstances is likely to harm the health, safety or morals of children (‘hazardous work’). What is hazardous work in a specific country should be determined in consultation with organisations of employers and workers.

## 3. Policy measures

The policy measures developed in South Africa to date on issues that relate more or less directly to children’s work include the following:

- *A legal prohibitions on employment* of children under 15 years or who is under the minimum school leaving age, and of children between 15 and 18 years, if the employment is inappropriate for the age of the child or if the work places at risk the child’s well-being, education, physical or mental health, or spiritual, moral or social development or has been prohibited by the Minister of Labour through regulations.
- The laws on *health and safety at work* apply to child workers in the same way as they apply to adults.
- Policy measures regarding *child welfare* include provision of social services, the statutory measures and powers of the Child Care Act and the Prevention of Family Violence Act and social security grants.
- The South African Schools Act makes *schooling* compulsory for children between the ages of 7 to 15 or until they have completed grade nine. Children may not be refused admission to public schools because their parents are unable to pay the fees, although many most poor families are not aware of their right to apply for exemption.
- In terms of the Sexual Offences Act prostitution is illegal and both the prostitute and her client commits an offence. This Act is currently under review to address more clearly and more appropriately *commercial sexual exploitation* of children.
- Policy measures addressing *work-related activities constituting serious crimes*, including drug trafficking and the use of children by housebreaking syndicates, form part of the Department of Justice’s general strategies in dealing with children involved in criminal activities.

## 4. Key findings of the SAYP and qualitative research

Findings of the detailed household-based Survey of Activities of Young People (SAYP), conducted during 1999, are summarised and analysed in the discussion document. Key findings include that -

- **36%** (4,8 million) of South Africa's 13,4 million children were doing at least *three hours* of 'economic' work a week, and/or five hours or more per week of school-related work, and/or seven hours or more of household chores;
- With an even higher cut-off of *12 hours* of economic activities per week, 14 hours of household chores and 12 hours of school labour, **12,5%** (1,7 million) of children in South Africa were doing work.
- Of the children engaged in economic activities for three hours per week or more, 59% said they were working because they had a **duty to help their family**, and a further 15% said they worked to **assist the family with money**.
- Of those in agriculture, many were working in **subsistence agriculture**, on family farms, rather than as paid employees.
- Children aged 5-14 years who appear to be **working in contravention of the law** account for 30% plus of the working children concerned.
- Of the children engaged in narrowly-defined 'economic' work for three hours or more, a full 61% said they were exposed to **hazardous conditions**, 2% said that they had suffered **illness** related to their work, and 4% said they had been **injured** at work.
- If **all the hours worked** by a child per week are taken into consideration – thus adding time spent on economic activities to that on non-economic work activities – children working 16 hours or more a week were more likely to have missed school days than those working less.

### 4.1 Most common types of work

The discussion document describes in some detail the most common types of work that children do:

- Long hours **collecting wood or other fuel or fetching water** constitute the main reason for children doing economic activities. Initiatives to provide safe water and electricity at or near homes have improved the situation for children. However, many households are still without easy access to water. Sufficient levels of grid electricity are also not available in many areas
- **Agriculture** (commercial plus subsistence agriculture) accounted for over half (59%) of all children engaged in economic activities for over three hours a week. With the higher cut-off of twelve hours per week, agriculture still accounted for 55% of all children engaged in economic activities. Younger children were more likely than older, once working, to be found in agriculture.
  - Of all children working in agriculture for three hours per week or more, 18% (117 000) were working in the **commercial farming** sector. Nearly half (47%) of these children were working for someone else and the other half in their family's agricultural business. Agriculture is consistently found to be one of the most hazardous industrial sectors in international studies in respect of occupational health and safety.
  - **Subsistence agriculture** accounts for at least 48% of all children engaged in economic activities (excluding unpaid domestic work and fetching fuel or water) for over three hours a week. The majority of them live in deep rural areas. Families engage in subsistence farming to produce food that relieves the effects of poverty. Much of the land in rural poor areas is seriously degraded.
- The industry with the second highest number of working children, whether a three hour per week cut-off or a 12 hour per week cut-off is taken, is the **retail and wholesale** industry. Half of them were working in a family business, such as a spaza shop, without pay. About one third worked for themselves and the remainder for someone else.
- More children are involved in helping **unpaid in family businesses**, excluding subsistence agriculture, than in other work for pay in kind or cash. If we focus on children aged 7-14 years who appear to be working in contravention of the BCEA, work in family business accounts for at least 70% of the children concerned.

- One in every ten children between the ages of 5 and 17 years was engaged in school-related cleaning and maintenance work activities for five hours or more per week.
- 1,4% (183 000) said they had been involved in **paid domestic work** for three or more hours a week. The higher the hour-based cut-offs, the fewer younger children do such work. It is likely that domestic work performed by children outside their own households was undercounted in the SAYP. Some children are held captive where they work, and some are reportedly subject to sexual violence.
- 3 % (432 000) of all children aged 5-17 years were engaged in unpaid **household chores** for at least fourteen hours per week. Girls were one and a half times more likely than boys to be doing this work. While most cultures consider some household chores appropriate, most also agree that children should not do chores to the point where it harms their health or schooling.
- A small number of children said that they engaged in **begging** for money or food in public for three hours a week or more: 19 000 (about 0.1%). Only 15% of them were living with both parents, whereas 61% were living with neither parent. Children living on the streets are excluded from these figures, because the survey focused on children who formed part of households, but many such children engage in begging for food or money.

## 4.2 The worst forms of child labour

The Worst Forms of Child Labour Convention of 1999 identifies the following types of child labour as its worst forms. It requires that they be dealt with as a priority by ratifying states:

- All forms of slavery or **practices similar to slavery** including trafficking and bonded labour. There have been a few reports of trafficking of children from neighbouring states, in particular from Mozambique. It is more common that children are taken from the rural areas of South Africa to work in urban areas, often in domestic service. Turning to *bonded labour*, children of tenants are sometimes forced to work for the landowner for little or no wages in return for the family occupying land or accommodation.
- The SAYP could not identify the number of children involved in child prostitution and other forms of **commercial sexual exploitation**. The most common forms of commercial sexual exploitation involve family members and community members where the children stay.
- Some children are involved in the illegal conveyance of drugs for adult drug dealers or other **illegal activities** where they work for or help others. South Africa's jails housed over 12 500 children under 18 awaiting trial and about 10 000 sentenced children.
- Forms of **hazardous work** must be determined in consultation with organisations of employers and workers. 61% (2,1 million) of children said they were exposed to some hazardous condition while doing an economic activity for personal or family gain. From these, at some time in the previous year:
  - 589 000 children worked for long hours;
  - 395 000 children did night work;
  - 137 000 children worked with or close to *dangerous machinery* or tools;
  - 53 000 children were *injured* by a fall or something falling;
  - 58 000 of children suffered illness related to their work.

## 4.3 Circumstances in which there is a higher incidence of child work

- There is a higher incidence in the **former homeland areas** when compared with commercial farming and formal and informal urban areas. As working hours per week increase, the proportion of children in all industries, other than commercial agriculture, who reside in deep rural areas also increase.
- Statistical analysis reveals that, for economic work in particular, there was a sharp increase in incidence with increasing **age**.
- For all types of work, the participation rates of **African** children were relatively high when compared to those for other population groups. While only 9% of white children reported being engaged in work activities with the cut-off of three hours for economic, 41% of African children were so engaged.

- Children who lived in households that *collected fuel and water* were also more likely than others to engage in all types of work.
- Further, while children who lived in households **with their mother** were *less* likely than others to engage in all forms of work, children in **single-parent families** were *more* likely than those living with both parents to be working.
- Overall, working did not seem to prevent South African children from **attending school**. However, 35% of children were not attending school when the hours worked in economic activities per week rose to between 43 and 49.

#### 4.4 How does SAYP compare with surveys in other countries?

Four countries were chosen to reflect different parts of the spectrum: *Zimbabwe* and *Zambia* in Southern Africa, and *Portugal* and the *United States of America (US)* as developed countries. The brief country descriptions reveal the difficulties of comparing child work and labour situations in different countries. There are significant differences in how the figures for each country were arrived at. The South African study seems to have been unusual in that detailed prompts attempted to ensure that the answers corresponded to the full international definitions of work. These detailed prompts would, overall, increase the South African figures compared to those of other countries.

The figures show that a large number of children in all these countries are involved in work-related activities. While numbers in Zimbabwe and Zambia appear to be lower than in South Africa, this can be ascribed to differences in methodologies. The US case study indicates that, while the problems are different in developing and developed countries, significant numbers of children work in developed countries.

### 5. What work activities are harmful to children?

South Africa's policy makers need to identify what activities harm or potentially harm children, and then identify whether and what interventions are required, and who is to be responsible for them. Work in and of itself is not necessarily harmful to a child. It will, in fact, often be beneficial in many ways.

The 1998 South African Child Labour Action Programme defines child labour as '*work* by children under 18 which is exploitative, hazardous or otherwise inappropriate for their age, detrimental to their schooling, or social, physical, mental, spiritual or moral development.'

The SAYP shows that *ordinary employment* is *not the most common* kind of work-related activity that children engage in. Children also do paid and unpaid domestic work in both their own and other people's homes, fetching water and fuel, unpaid work in the family business or on the family subsistence plot, and maintenance, cleaning and similar work at their schools.

Various factors affect children's work. In some sectors it is relatively easy to address children's work, in others more difficult. To understand these factors it is useful to consider *segmented labour market theory*. This shows that the most common forms of work occurs where regulation is weak, not easily enforced, and based on childcare legislation rather than labour law, while the work itself is relatively labour-intensive.

A range of work-related *factors cause or increase the risk of harm*. These factors, such as the nature of the work, the effect on schooling, the attitude of adults where the child work and long hours, are discussed in chapter 6.

Forms of *adult work* that *encourage hidden* forms of child work include piece work, task work, home work and subcontracting work.

In addition to the nature of the work, particular *circumstances and characteristics* can make certain children more vulnerable than others doing similar work. This includes:

- Age;
- Gender;
- Children affected by HIV/AIDS;
- Children working on the streets;
- Refugee and immigrant children;
- Out-of-school children; and
- Violence and isolation are also indicators of vulnerability.

**Health** in the sense of physical and mental well-being is clearly an area which needs to be considered when defining ‘harm’. Children are often particularly vulnerable to a number of hazards by virtue of their biological status and behavioural patterns. However, there is very little knowledge regarding the hazards of non-market work.

The limited data in the SAYP suggests that in economic work, exposures relate mainly to temperature, hours of work, and dust. Almost all hazards were reported slightly more frequently by boys than girls and more often by older children (15-17). Specific industries expose children to some clear and occupational hazards. For example, retail work often involves long hours and nightwork.

Both international instruments and common sense dictate that initiatives should focus first on those examples of child labour that are most serious. In determining the seriousness of a particular form of child labour, we need to consider both the degree of harm and the number of children involved. The discussion document proposes the use of a **matrix of prioritisation** to assist in the process. This matrix has seven broad categories of prioritisation to be used to prioritise different forms of child labour or categories of children at risk of child labour – for discussion by the stakeholders.

## 6. Principles and discussion points

There is a range of **issues that should be debated** during the consultation phase that will follow the publication of this report, to inform the drafting of a programme of action. These include:

- When is work detrimental to children’s development?
- What is the role for cultural values in assessing whether work is detrimental or not?
- How should types of children’s work and labour be identified for prioritisation of action?
- What is the appropriate approach to prohibition?
- Should the emphasis be on protection or on enhancement of rights?
- What is the range of policy strategies or tools available?

**Principles** of a child labour action programme could include:

- There is a need for social dialogue to identify forms of child work and labour that should be eliminated or addressed.
- Where possible, children must be given an opportunity to give input before decisions are taken about their work and life.
- When deciding what kind of action to take, the child’s best interests is always the most important
- There is a need to prioritise to ensure that resources are used in a focused way to address the worst forms of child labour that can be addressed.
- We need to develop an indigenous programme, borrowing appropriately the best practices from other countries.
- A programme of action can work only if the necessary resources are committed.
- The programme of action should specify the responsibilities of all relevant government departments and

also identify the areas of responsibility and tasks of other stakeholders

- Prevention is better than cure, while keeping in mind that children presently exposed to detrimental work should also be helped.
- Existing initiatives that will aid the fight against the priority forms of child labour should be supported, avoiding duplicating effort.
- Available knowledge should be used.
- The programme of action, once adopted, must be communicated effectively

Taking into consideration the above principles and issues for debate, various **key elements** should be addressed in a child labour action programme. These include identification of forms of child labour or the key problems that should be addressed and of appropriate interventions to address these problems; prioritisation; responsibilities of all actors; targets and indicators of success; and identification of the required human and financial resources.

# Chapter 1: Introduction

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This discussion document is partly based on the Survey of Activities of Young People (SAYP), a survey commissioned by the Department of Labour and conducted by Statistics SA in 1999 to determine the nature and extent of child labour. It relies both on analysis conducted by Statistics SA and on further analysis of the raw data from the survey.

In addition, further reviews of literature and other research were undertaken. These included a desk review of international approaches to child labour, and a review of local and some international research. Information about practical experience in addressing child labour locally was obtained from a survey involving officials and others who participated in a training programme on the enforcement of child labour provisions organised by the Department of Labour during 1999. The Green paper also draws on input papers prepared for and discussed at a workshop of sectoral experts. Lastly, the paper is informed by international best practice in addressing child labour in other parts of the world.

## 1.1 What has already been done about child labour?

The government as a whole and the Department of Labour have already started taking action to identify what needs to be done on the issue of child labour. In doing so, the government built on actions that had already occurred. The following were key steps in the direction of an integrated but focused approach to address the issue:

- The 1993 Interim Constitution provided for the protection of children against exploitative labour practices and work that is hazardous or harmful to their education, health or well-being.
- The United Nations (UN) Convention on the Rights of the Child was ratified by South Africa in 1994. This Convention sets the framework for action to protect and develop children.
- In 1996, the Department signed a Memorandum of Understanding with the International Labour Organisation. This was aimed at ensuring that South Africa will benefit from international experience and assistance in addressing child labour in our country, subject to the views of South Africans as to what should be considered as child labour, and how the issue should be addressed.
- In 1997, the Department of Labour assumed formal overarching responsibility for child labour, at least in an employment context, when the Basic Conditions of Employment Act was adopted. This Act prohibits certain forms of work by children.
- The Department wanted more accurate information on the incidence and other aspects of children's work-related activities. After discussions with the International Labour Organisation (ILO), a special mission visited the country in 1996 and met with a range of stakeholders. Subsequent to the visit, the ILO agreed to provide funds as well as technical expertise for a survey. The Department then commissioned Statistics South Africa (Stats SA) to conduct the Survey of Activities of Young People (SAYP), which was done in 1999.
- In 1997, the Department facilitated the formation of the Child Labour Intersectoral Group (CLIG), a body consisting of representatives of key government departments, non-governmental organisations (NGOs) and employers' and employees' organisation. This body coordinates work on child labour, and is the subcommittee of the National Programme of Action on the Rights of the Child (NPA) responsible for this area of work.
- In 1998, the Department facilitated the formulation and adoption of a provisional Child Labour Action Programme. The policy identified five primary areas of action: employment law, educational policy; social security, job creation and social mobilisation and information.
- The Department facilitated the ratification of key international conventions regarding child labour, namely the ILO Minimum Age Convention of 1973 and the Worst Forms of Child Labour Convention, 1999.

The current policy process is an initiative of the Department of Labour, with financial assistance provided by the International Labour Organisation.

## **1.2 The way forward**

### **1.2.1 Publication for public comment**

This discussion document is the product of the first phase of this project. It is now being published for public comment. The paper will also be circulated directly to interest groups known to the Department of Labour, and will serve as the bases for the stakeholder consultations during phase two. It is hoped that the process of public comment and consultation will enhance the visibility of child labour and its related issues, leading to the greater mobilisation of public opinion and concern on the issue of child labour.

### **1.2.2 Consultative workshops**

The Department of Labour will also be holding a number of consultative workshops with stakeholders so that the policy can benefit from their experiences, views and expertise. For future implementation it is crucial to obtain stakeholders' input on how problems of child labour could be addressed within their sectors.

Workshop agendas will include the following:

- Presentation of the findings of the SAYP relevant to the specific workshop;
- Presentation of the analysis of the discussion document on the child labour problems faced in South Africa;
- Debate and discussion on what work activities cause harm and groups which are vulnerable;
- Prioritisation of foci and activities;
- Workshopping proposals as to how the most important areas of child work can be addressed by way of policy.

In addition, any comment received from the public will be considered.

### **1.2.3 Children's participation**

A policy on child labour will obviously directly affect children. It is appropriate that the opinions of children also be heard as is indeed prescribed by Article 12 of the UN Convention on the Rights of the Child.

In addition to the consultation described above, there will be a modest set of additional activities focussed on talking to children. Given limited resources and time, the focus will be on those areas where there is most likely to be some level of disagreement rather than on the worst forms of child labour which government has already committed itself to outlawing.

The consultation with children will therefore occur through focus group discussion with children who work in family businesses, perform paid work in non-family businesses outside of school hours, do subsistence agricultural work, do cleaning and similar work in schools, fetch fuel or water, and do other unpaid household work in their own households. The focus groups will occur in different geographical areas to get a range of opinions. Participants will be screened to ensure that all are engaged in at least some work.

### **1.2.4 Drafting and adoption of a government policy paper**

Based on the above mentioned processes, a government policy paper will be developed which will reflect the comprehensive policy approach of the government towards child work and child labour. It will include a National Programme of Action.

The policy process is an initiative of the Department of Labour, with financial assistance provided by the International Labour Organisation.

## Chapter 2: International instruments affecting child labour

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A range of international instruments addressing aspects of child labour has been adopted over the past eighty years. The most important of these are summarised below, in chronological order.

### 2.1 ILO Minimum Age Convention, 1973

This Convention, which was ratified by South Africa in 2000, requires that ratifying states:

*should pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons [Art 1].*

It provides that children should not engage in economic work before they have reached the age of completion of compulsory schooling. They should also not do economic work before they are 15 years old. The convention says that the minimum age for work likely to jeopardise the health, safety or morals should be at least 18 years. This can be lowered to 16 years if the young persons are fully protected.

This convention states that laws may permit employment of children 13 to 15 years of age in *light work* that is unlikely to be harmful to their health or development and that will not prejudice their benefiting from school or vocational programmes. Work done in schools or as part of a certified programme of education or training is allowed provided certain safeguards are in place. Individual exemptions may be granted for such purposes as artistic performances, after consultation with organisations of the employers and employees concerned, and provided certain safeguards are in place.

### 2.2 The UN Convention on the Rights of the Child (CRC), 1989

This Convention was ratified by South Africa in 1994. It provides that every child has a right to be 'protected from economic exploitation and from any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development' [Art 32.1].

The Convention does not set a minimum age, but cross-refers to other international instruments. The convention says that the best interests of the child must be a primary consideration in all actions affecting children, whether undertaken by government or private actors.

### 2.3 The African Charter on the Rights and Welfare of the Child, 1990

This Charter was ratified by South Africa in 2000. It adds to other instruments by saying that governments should promote dissemination of information about the hazards of child labour. It also states explicitly that it applies to both the formal and informal sectors of the economy.

The Charter notes that children have responsibilities towards their families, society, communities and government and the international community. In particular, a child 'shall have the duty ... to work for the cohesion of the family, to respect his (sic) parents, superiors and elders at all times and to assist them in case of need' [Art 31].

## 2.4 ILO Declaration on Fundamental Principles and Rights at Work, June 1998

The Declaration states that effective abolition of child labour is a fundamental principle and right at work. It says that eliminating child labour is critical for ensuring that the economic growth fuelled by growing international economic integration leads to more equity, social justice and less poverty. It requires a four-yearly global report on child labour (the first one due in 2002), which will be translated into a programme of technical assistance to countries.

## 2.5 The ILO Worst Forms of Child Labour Convention, 1999

This convention, which was unanimously adopted in 1999 by the Conference of the ILO and ratified by South Africa in 2000, requires ratifying governments to take measures to effect the immediate abolition of the 'worst forms of child labour'. It defines the worst forms as:

- all forms of slavery or practices similar to slavery;
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- the use, procuring or offering of a child for illicit activities, especially for drug production and trafficking;
- work which by its nature or the circumstances is likely to harm the health, safety or morals of children ('hazardous work').

In respect of the last category, the convention notes that the circumstances should be determined in consultation with organisations of employers and workers. The *Worst Forms of Child Labour Recommendation* No 190 provides that, in determining the types of work, consideration should be given, as a minimum, to

- work which exposes children to physical, psychological or sexual abuse;
- work underground, under water, at dangerous heights or in confined spaces;
- work with dangerous machinery, equipment and tools, or which involves manual handling or transport of heavy loads;
- work in an unhealthy environment;
- work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

The Recommendation also provides that programmes of action should give specific attention to younger children, the girl child, hidden work situation in which girls are at special risk, and other groups of children with special vulnerabilities or needs.

## 2.6 Protocols

The UN has adopted a number of optional protocols on the CRC and other instruments that are relevant to the issue of child labour.

The *Optional Protocol on the Involvement of Children in Armed Conflict* was adopted by the UN General Assembly in May 2000. It calls on ratifying governments to do everything feasible to ensure that members of their armed forces who are under 18 years of age do not take part in hostilities. Governments should also ensure that children under 18 years are not recruited compulsorily into the armed forces.

Two other protocols of relevance are an optional protocol to the CRC on the sale of children, child prostitution and child pornography, and a protocol to prevent, suppress and punish trafficking in persons, especially women and children, which supplements the United Nations *Convention against Transnational Organised Crime*.

## Chapter 3: Existing policy measures affecting children's work in South Africa

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This section describes the policy approach developed in South Africa to date on issues that relate more or less directly to children's work. It excludes aspects of policy that may indirectly affect children's work-related activities, some of which are discussed under specific kinds of children's work affected by it, in Chapter 5.

The information here serves as the backdrop against which the description of child work, which follows later, should be read. It also provides a point of departure from which more detailed sectoral policies, addressing different forms of children's work, can be developed during the consultation and the drafting of the final government policy paper. The latter steps form the second and third phase of the process of developing a child labour action programme for South Africa.

### 3.1 Legal provisions on child labour

Provisions prohibiting work by children in South Africa were initially applicable only to white children. In 1981 the Basic Conditions of Employment Act extended the prohibition on employing children under 15 to all population groups. However this Act excluded farm and domestic workers until the early 1990s.

In 1991 a prohibition on employment of children under 15 was inserted in the Child Care Act, administered by the then Department of Welfare. Because this Act applies to all children, those in the agricultural and domestic sectors were now included in the prohibition. However, the Department of Welfare did not have the infrastructure to enforce provisions and thus little enforcement and follow-up occurred.

The Interim Constitution of 1993 contained clauses related to child labour, which was expanded upon by the final Constitution of 1996. Section 28 of the final Constitution states that every child, defined as a person under 18 years of age, has the right:

- to be protected from maltreatment, neglect, abuse or degradation;
- to be protected from exploitative labour practices;
- not to be required or permitted to perform work or provide services that —;
  - ↑ are inappropriate for a person of that child's age; or
  - ↑ place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development.

Section 28 also states that a child's best interests are of paramount importance in every matter concerning the child.

Some other provisions of the Constitution that do not appear, at first glance, to relate to children's work-related activities, may nevertheless impact on one or more of the categories of child work discussed below. An example is the right to basic nutrition, shelter, and social services. The constitutional rights in respect of children are not subject to the state's available resources and must therefore be realised immediately.

In March 1998 the child labour provisions of the new Basic Conditions of Employment Act of 1997 took effect. These and other legal provisions that can be used to address child labour are summarised in Annexure A to this discussion document.

The *Basic Conditions of Employment Act* (BCEA) is the most important act dealing explicitly with child work. It prohibits employment of a child

- who is under 15 years old;

- who is under the minimum school leaving age (where this age is 15 years or older);
- who is over 15 years but under 18 years old, if the employment –
  - ↑ is inappropriate for the age of the child or if the work places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development;
  - ↑ has been prohibited by the Minister of Labour through regulations.

A person is considered an *employee* if that person –

- works for another person and receives any remuneration; or
- in any manner assists in carrying on or conducting the business of an employer;
- AND is not an independent contractor.

In terms of section 83A a person is presumed in certain circumstances to be an employee unless the contrary is proved. This should extend protection to children where their status as employees is disputed.

The Act is enforced primarily through Department of Labour inspectors.

Section 52A of the Child Care Act (CCA) contains a similar prohibition, namely that 'no person may employ or provide work to any child under the age of 15 years'. The clause has wider application than the BCEA. It does not outlaw only employment of such children, but also provision of work. It is, for example, therefore likely that this section prohibits giving work to a child who works as an independent contractor. It is likely that Section 52A will be deleted, to remove the duplication.

Section 46 of the BCEA provides that it is a criminal offence to assist an employer to employ a child in contravention of the Act, and to discriminate against a person who refuses to permit a child to be employed.

Regulations issued in terms of section 44 are intended to clarify what kinds of work are considered inappropriate. Section 45 allows the Minister, after consultation with the ECC, to make regulations in respect of medical examination of working children. No regulations in terms of either of these sections have been published as yet.

The Minister of Labour may vary the child work provisions for any categories of employers, but only for advertising, sports, and artistic or cultural activities. The Minister may grant a specific determination, applicable to an individual employer, only after agreement of the union if one exists at the workplace, or after informing all employees. The Minister must also first consult with the Minister of Social Development.

Section 83 gives the Minister of Labour the power to deem any category of persons to be employees for purposes of the Act. This power can be used to widen the scope of work considered unlawful.

The laws on *health and safety at work* apply to child workers in the same way as they apply to adults. In terms of the Occupational Health and Safety Act, employers must ensure that working conditions are safe and healthy and must do everything reasonable to reduce and avoid dangers. Department of Labour inspectors also inspect workplaces to ensure compliance. One difficulty with regulations regarding safety and health at work is that much of them assume that the workforce is male and adult. They may therefore not adequately address the vulnerabilities of children.

Health and safety representatives must be appointed in a workplace only if 20 or more workers are employed there. This is unlikely to be of much assistance to many working children because most employed children work in workplaces where fewer than 20 people are employed.

A child who gets injured at work can apply for compensation in terms of the Compensation for Occupational Injuries and Diseases Act.

The Department of Labour is coordinating a *skills development programme*, governed by the Skills Development Act. This includes learnerships. There is no minimum age for learnerships, but since children up

to the age of 15 are subject to compulsory schooling, learnerships are likely to start from age 15 onwards. The Act provides an institutional framework for a national strategy to develop and improve the skills of the South African workforce. This should benefit older children, since the youth will be an important target for such skills plans.

### 3.2 Child welfare

Policy measures regarding child welfare include provision of social services, the statutory measures and powers of the Child Care Act and the Prevention of Family Violence Act and social security grants. Measures to address the sexual exploitation of children are discussed in the section following this one.

The national and provincial legislatures have concurrent jurisdiction for the provision of welfare services. Welfare services include those of social workers, adoption and placement of children and foster care.

The *Child Care Act*, among others, sets out processes whereby children in need of care and protection are identified and dealt with. These provisions can be used when children need to be removed from adults keeping them in dangerous circumstances, also where this is related to work that the child is required to do. It also includes provisions on child abuse, which are wide enough to cover a range of harmful labour-related activities that may fall outside the provisions of labour laws – such as excessive use of children to work in a family's subsistence agricultural activities or household chores.

The SA Law Commission is presently reviewing the Act. One of the aspects that it is considering is harmonising *reporting procedures* relating to abuse or neglect of children, since there are presently differing measures in the Child Care Act and the Prevention of Family Violence Act. It is relevant in a discussion of child labour in as far as their work involves abuse.

*Financial assistance* for households with children can be provided in the form of grants. This includes the child support grant and the foster care grant. In addition, research has shown that old age pensions are often used to support children. The provincial departments responsible for welfare administer these grants and pensions.

The child support grant is available for the primary caregivers of children under seven years of age who pass a means test. The grant is small, at R110 a month as from July 2001 and R100 before that date. The effectiveness is limited by the absence of regular inflation-linked increases, the low age limit, low take-up rate and administrative problems in accessing the grant. There has, however, been some improvement recently in the take-up rate.

The age cut-off is particularly important in respect of child work as the evidence points to the increasing likelihood that a child will work as it gets older, often in relation to the households' level of poverty. The child support grant replaced a child maintenance grant that was available to children up to the age of 18 years. In focus group discussions commissioned by the Department of Social Development, some child maintenance grant recipients reported that their children had recently had to find part-time work because of the phased reduction in the amount of the grant.

The foster grant is paid in respect of children placed legally, through a children's court enquiry, in the care of foster parent(s). The amount of the grant is currently R390 (which increases to R400 in July 2001) – more than three times that of the child support grant. This would serve as a disincentive to parents to care for their own children. Meanwhile the lack of support for those who formally adopt children serves as an incentive for fostering to be chosen above adoption, while the latter option should be used for permanent placement.

Neither the child support grant nor the foster care grant is accessible to child-headed households and children living on the streets, as they are not paid to people under 18 years.

Government has established a Committee of Inquiry into a comprehensive social security system. The

Committee is due to table a draft report in mid-2001. One of the seven identified gaps that prompted its establishment was the lack of child benefits for children older than seven years, and under school-leaving age.

### **3.3 Schooling**

The South African Schools Act makes schooling compulsory for children between the ages of 7 to 15 or until they have completed grade nine. The Act does not refer explicitly to child work, whether at the school or elsewhere. However, parents or guardians who do not ensure that their children are at school, and any other person keeping a child who is subject to compulsory schooling out of school, for example because the child must work, commits an offence in terms of the Act.

South Africa has high rates of school enrolment compared to many other developing countries. In 1994, enrolment stood at 97% for 10-14 year olds. While there is no right to free education in South Africa, the Act provides that the State must fund public schools from public funds on an equitable basis to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education provision.

Public schools are entitled to charge school fees, provided that a majority at a general parents meeting approved them. Children may not be refused admission to public schools because their parents are unable to pay the fees. Parents may apply for exemption from school fees. In reality, however, most poor families are required to pay school fees since they are not informed of their right to apply for exemption. Also, most families are required to meet the cost of uniforms and the cost of transport to school and many to provide their children's stationary. Hence, one of the reasons why children might work is to earn money to pay for their education.

Families who need the additional income their children can earn or, if they engage in subsistence agriculture, the food children can help grow, also lose what the children could have earned during school hours. This is the reason why a small proportion of parents keep their children from school.

Governing bodies are required by law to encourage parents and learners to render voluntary services to the school.

### **3.4 Sexual exploitation of children**

Sexual exploitation of children includes prostitution of children and exploiting children for purposes of pornography. The measures aimed at addressing these abuses of children include the Sexual Offences Act, a provision of the Child Care Act and the Films and Publication Act.

The Sexual Offences Act makes prostitution an offence. Children who are victims of commercial sexual exploitation can, therefore, be arrested for prostitution. However, the approach of the office of National Director of Public Prosecutions is to refer such matters for a children's court inquiry to determine whether the child is in need of care. Persons exploiting children sexually can be prosecuted under the Act. Where prosecution may place the entire family at risk, the prosecution prefers to ask for the assistance of other departments such as those responsible for social development and health. For cases involving children working in brothels, the National Director is developing a strategy to cease the assets of brothel owners, through the asset forfeiture unit.

There are presently many shortcomings in the Sexual Offences Act. For example, while a person having sexual intercourse with a girl under 16 years old with her consent commits statutory rape and can be prosecuted, it is not an offence if the girl was a prostitute and the perpetrator was under 21 and was charged for the first time with this offence. These shortcomings are likely to be addressed through a new Sexual Offences Act, currently being drafted by the South African Law Commission. The Commission initially recommended that this act focuses only on offences related to commercial sexual exploitation of children. However, it is now likely that it will also address adult prostitution. Because of this, and divergent views regarding the possible

legalisation of adult prostitution, the draft bill is unlikely to be ready to be tabled in parliament before late 2002.

The Commission recommends a complete prohibition on the commercial sexual exploitation of children. It defines commercial sexual exploitation to include child prostitution, child pornography, and trafficking in children. The Commission deals with the commercially sexually exploited child as a victim and not an offender and she or he would thus not be liable to prosecution in terms of the new law.

To cover the period during which the Sexual Offences Act is being redrafted, a provision was included in the Child Care Act in 1999 to the effect that any person who is involved, indirectly or indirectly, in the commercial sexual exploitation of children is guilty of an offence. Further, any person who is an occupier or owner of a property on which the sexual exploitation occurs, who knows about it and fails to report it, is guilty of an offence.

The Law Commission is also currently working on a discussion paper on procedural matters relating to sexual offences.

Child pornography is prohibited in terms of the Films and Publication Act. With effect from April 2000 the definition of child pornography was widened to include the electronic media. The Act includes age restrictions and protection for children, in particular, against exploitation or degradation in publications, films and on the Internet. It is an offence for a person to create, produce, import or possess a publication of children pornography or to create, distribute, produce or possess such a film, document or thing.

While the legal framework for addressing child prostitution and pornography is receiving current attention, concern has been expressed that measures for and resources dedicated to combating these activities are inadequate.

Many sexual exploitation activists are adamant – and have argued this point explicitly with the ILO - that this activity is not 'labour', but sexual exploitation.

### **3.5 Children involved in illegal work-related activities**

Work-related activities of children that constitute potentially serious crimes include drug trafficking and the use of children by housebreaking syndicates. Children's involvement in prostitution and in pornography has already been discussed above.

Most of the policy measures addressing such illegal work-related activities forms part of the Department of Justice's general strategies in dealing with children involved in criminal activities. This includes distinguishing between activities where children are victims (such as most cases of prostitution) and those where they have been perpetrators needing rehabilitative measures. It also includes finding alternatives to the jailing of children.

Where children *deal in drugs*, or are found in possession of larger quantities of drugs - where dealing is suspected - this is considered serious offences. Such child suspects can be held in prison when awaiting trial and, if found guilty, can be sentenced to imprisonment. However, the policy of the Director of Public Prosecutions, if it is clear that the child is a user rather than a dealer, is to divert him or her to drug counselling programmes rather than prosecution.

The SA Law Commission has recently released a draft Child Justice Bill, which suggests a change to the way in which drug dealing can be dealt with. It emphasises the need to target the syndicates and adults who are usually behind the children's drug-dealing activities. Still, children working with syndicates are more likely to be held in custody while awaiting trial, even if they are likely to act as state witnesses. Where children sell drugs for survival or because of dependency on drugs themselves, the court will be able convert the trial to a children's court inquiry at any time before sentencing, even after a conviction.

Secondly, policy and related statutory measures have been formulated to reduce the number of child offenders in jail. These alternatives are referred to as *diversion*. Diversion involves 'diverting' the child away from prison, and includes community service. Such steps are intended to rehabilitate offenders by ensuring that they remain in society but serve it in some constructive way.

*Community service*, which involves a sentence requiring the offending child to perform specified community work for a given number of hours over a set period, is currently only available in case of offenders of 15 years old or older. This matches aspects of BCEA provisions regarding child work. Therefore a reform school sentence is often the available sentence in case of serious offences by young children. The SA Law Commission has proposed reducing this age limit to 10 years for all forms of diversion, subject to minimum standards designed to prevent exploitation of children. These standards require that the sentences do not interfere with schooling and that tasks are proportionate to the child's age and physical and emotional maturity.

In respect of *children in prison*, the policy of the Department of Correctional Services is that prisoners under the age of 18 years are not required to do manual labour. They are required only to participate in the cleaning of their own living areas. Children in prison often experience boredom. Whilst some correctional facilities have educational and vocational training courses, most have no programmes at all. The situation is often even worse for children imprisoned while awaiting trial.

*Children in reform schools* do sometimes perform work, such as making and selling pottery. This is seen as an adjunct to their learning. Since they are usually able to keep the proceeds of their work, they are usually happy to be engaged in such activities.

## Chapter 4: Description of children's work in South Africa

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### 4.1 The Survey of Activities of Young People, 1999

The discussion document process follows on a detailed household-based Survey of Activities of Young People (SAYP) that was conducted during 1999. The survey was conducted in all nine provinces of the country, and in all types of settlement areas. The methodology involved two phases. In the first phase, 26 081 selected households in 900 primary sampling units were visited to establish whether or not the household contained at least one child between 5 and 17 years of age who was involved in some type of child work. For the second phase, a sub-sample of all households containing at least one working child was selected. More detailed questions were asked of all children in 4 494 selected households as to the types of activities they engaged in.

For those wanting more detail on the results of the survey, various reports and documents regarding this survey (including the raw data for further analysis) can be obtained from the Department of Labour (contact details in front of this document) and are available or will soon be available at the following web-sites:

- <http://www.labour.gov.za>
- <http://www.ilo.org/public/english/standards/ipecc/simpoc/southafrica/index.htm>

#### 4.1.1 Definitions and working of survey

The name of the survey, and the use of the word 'activities' rather than 'labour' was deliberate. Those responsible for designing the survey were aware that the definition of 'child labour' is not a simple exercise, but rather one that needs to emerge out of a national discussion. The survey thus attempted to describe the activities of children **without passing judgement as to what was work, labour or other activity, or what was good or bad for the child**. It was hoped that using the word 'activities' would minimise the likelihood that respondents who feared to be judged guilty of allowing child labour would bias their responses or refuse to allow their children to participate.

In order to leave the scope for definition as wide as possible, the survey attempted to pick up as wide a range of work-like activities as possible. In doing so, it followed international experience and advice as to what different players considered to be work. It also drew on local and international experience in designing the phrasing of questions so as to avoid bias due to different perceptions as to what constituted work.

One set of key questions asked whether the child had performed one or more of a range of prompted activities in the past seven days or 12 months for pay, profit or economic family gain. The prompted activities were:

- Running any kind of business, big or small, for the child him/herself;
- Helping unpaid in a family business;
- Helping in farming activities on the family plot, food garden, cattle post or kraal;
- Catching or gathering any fish, prawns, shellfish, wild animals or any other food, for sale or for family consumption;
- Doing any work for a wage, salary or any payment in kind;
- Or begging for money or food in public.

Aside from begging, these are the standard prompts currently used for employment in other Stats SA survey. In addition, however, the SAYP also asked whether the child had been engaged in:

- Housekeeping and family care activities within their households (referred to as 'household chores');
- Fetching fuel or water; or
- Helping in cleaning and improvements at school unrelated to studies (referred to as 'school-related work' or 'school labour').

Affirmative responses to the standard questions regarding pay, profit or economic family gain, to the prompts on fetching fuel or water, and to the prompts on housework where the child was not living with at least one

parent, grandparent or spouse, were all considered 'economic' work, in line with international convention.

#### 4.1.2 Key findings

At the time of the survey, there were an estimated **13,4 million children** in South Africa between the ages of 5 and 17 years. Taking different cut-offs of the number of hours worked by a child per week, the following proportions of children engaged different work-related activities:

- **45% (6,0 million)** were doing at least *one hour* of 'economic' work a week, and/or five hours or more per week of school-related work, and/or seven hours or more of household chores;
- With a slightly higher cut-off point for 'economic' work of *three hours* per week and the same cut-offs for other types of work, **36% (4,8 million)** of children in this age group were engaged in work.
- With an even higher cut-off of *12 hours* of economic activities per week, 14 hours of household chores and 12 hours of school labour, **12,5% (1,7 million)** of children in South Africa were doing work. Long hours fetching fuel or water is the main reason for children being included in this last category.

As noted, fetching fuel or water was classified as an 'economic' activity in the SAYP. It was, in fact, the most common economic activity in that **33% (4,5 million)** of all children between 5 and 17 years spent one hour or more per week **fetching fuel or water**. Many people would find this classification contrary to how they think about economic work.

If we exclude those whose only economic work was fetching fuel and water or unpaid domestic work, **one in every seven (2,0 million)** children in the age group did economic work for one hour or more a week, about **one in every 12 (9%, or 1,1 million)** did this work for three hours or more per week, and about **one in every 31 (3%, or 0,4 million)** did so for twelve or more hours. Boys were more likely than girls to be doing economic work – there were 615 000 boys and 520 000 girls who reported doing (narrowly defined) economic work for three hours or more.

Of the children engaged in economic activities for three hours per week or more, 59% (625 000) said they were working because they had a **duty to help their family**, and a further 15% (155 000) said they worked to **assist the family with money**. The only other significant reason – accounting for 16% (164 000) of working children – was for pocket money. When the responsible adult was asked why the child was engaged in economic activities, 55% said it was because of a duty to help the family, 16% that it was to assist the family with money, and 14% that the child worked to earn pocket money for own use.

As expected, older children were more likely than younger to do economic work. Of those working –

- Three hours a week or more, 5% (261 000) of 5-9 year olds and 9% (467 000) of 10-14 year olds reported economic work activities. Of those aged 15-17 and legally allowed to work, 15% (408 000) reported economic work activities.
- 12 hours a week or more, 2% (81 000) of 5-9 year olds, 4% (185 000) of 10-14 year olds, and 6% (159 000) of 15-17 year olds reported economic work activities.

Children in **deep rural** (mostly ex-homeland) areas were the most likely to do economic work for three hours or more per week (12%), closely followed by those in **commercial farming** areas (11%). The incidence was about half these levels for urban informal (6%) and urban formal (5%) settlements. When taking a 12-hour cut-off per week, the proportions drop to 5% in deep rural areas, 4% in commercial farming areas, and 2% each in urban informal and urban formal settlements

Most children who engage in economic activity do so unpaid in family enterprises, mostly in agriculture and trade, which are like to be mostly micro enterprises. Of the children doing three hours or more, 59% worked in **agriculture** and 32% in **trade**. Of those in agriculture, many were working in **subsistence agriculture**, on family farms, rather than as paid employees. So, for example, only 12% of children working in agriculture were in commercial farming areas while 77% were in other rural areas. Similarly, in trade many were working in family businesses rather than as paid employees.

Turning to the younger age group of children, namely those 5-14 years old, the industry breakdown for economic activities (excluding fetching fuel and water and unpaid domestic work) for children working at least three hours per week is as follows: 390 000 children work in subsistence agriculture, 225 000 in the wholesale and retail trade, 67 000 in commercial agriculture, 15 000 in manufacturing and construction and 13 000 in private households (see Table 1).

**Table 1: Children aged 5-14 years working 3 hours a week or more in economic activities by industry**

Industry	Number of children spending 3 h/w + on economy. Activities	Proportion of these children who live in deep rural areas	Number of children working 3 h/w + as proportion of all children aged 5-14
Subsistence agriculture	390 000	83%	3.7%
Wholesale and retail trade	225 000	58%	2.1%
Commercial agriculture	67 000	61%	0.6%
Manufacturing and construction	15 000	93%	0.1%
Private households	13 000	31%	0.1%
Total	728 000	44%	6.8%

Of the same younger age group of 5-14 years, taking 12 hours per week or more as the cut off, 129 000 children work in subsistence agriculture, 86 000 in the wholesale and retail trade, 29 000 in commercial agriculture, 12 000 in manufacturing and construction and 8 000 in private households (see Table 2).

**Table 2: Children aged 5-14 years working 12 hours/week or more in economic activities by industry**

Industry	Number of children spending 12 h/w + on economic activities	Proportion of these children who live in deep rural areas	Number of children working 12 h/w + as proportion of all children aged 5-14
Subsistence agriculture	129 000	91%	1.2%
Wholesale and retail trade	86 000	63%	0.8%
Commercial agriculture	29 000	52%	0.3%
Manufacturing and construction	12 000	100%	0.1%
Private households	8 000	50%	0.1%
<b>Total:</b>	<b>266 000</b>	<b>77%</b>	<b>2.5%</b>

Tables 1 and 2 reveal that, of children engaged in practically all kinds of economic activities, whether for three hours or for twelve hours or more per week, the majority reside in deep rural areas. The only exception is children employed in private households who are working for three hours a week or more. As working hours per week increase, the proportion of children in all industries, other than commercial agriculture, who reside in deep rural areas also increase. This is probably related to the high levels of poverty in the deep rural areas, and indicates that these areas should be emphasised in a programme of action.

For all industries, the majority of children worked between three and seven hours a week. This time category accounted for 55% of children working in agriculture, 48% of trade and 47% of other industries.

**Children from poorer households** are more likely than others to be engaged in all forms of work. Thus while children in households with annual incomes of R4 200 or less account for 21% of all children, they account for 26% of children engaged in only economic activities for three hours a week or more, 28% of those engaged only in school labour, 25% of those engaged in both economic and school labour, and 27% of those engaged in economic, household and school labour. The R18 001+ category, on the other hand, accounts for 29% of all the children, yet only 18% of those doing economic, household and school labour.

In South Africa in general, 39% of children were **living** in households **with both their parents**, while only

25% of children collecting fuel were living in such households. 70% of children engaged in such activities were living with their mother only or with neither parent. Of the small number of children begging that were captured in the survey, only 15% were living with both parents, whereas 61% were living with neither parent.

There are also differences between children from different population groups. For example, while only 9% of white children reported being engaged in work activities with the cut-off of three hours for economic, **41% of African children** were so engaged.

Children aged 5-14 years who appear to be **working in contravention of the law** account for 30% plus of the working children concerned. This holds across all hour-based categories where there are sufficient observations for reliable disaggregation, with the proportion of illegal work increasing with the number of hours worked. Of those children working illegally, more than 70% work in **family businesses**. While such children are assisting their family in 'carrying on' a business – and as such are technically employed – it will often be very difficult to prove since both the family and the child are likely to deny this.

Of the children engaged in narrowly-defined 'economic' work for three hours or more, a full 61% (2,1 million) said they were exposed to **hazardous conditions**, 2% (58 000) said that they had suffered **illness** related to their work, and 4% (153 000) said they had been **injured** at work.

If **all the hours worked** by a child per week are taken into consideration older children were more likely to work longer hours than younger children. The average workload per child increases by approximately half an hour per week for each extra year. Children living outside the formal urban areas are also likely to do more work than children living in the formal urban areas. The average child in a formal urban area does approximately 8 hours of work a week compared to 11 hours a week for children outside formal urban areas. There are no significant differences between informal urban, other rural areas and commercial farms. African and coloured children in formal urban areas tend to work longer hours than their white counterparts.

## 4.2 Activities of children at work in South Africa

This section describes in more detail the situation in respect of each of the common forms of child work found in South Africa. The description draws on the SAYP and other sources for a brief indication of the extent of the different types of potentially harmful activities. The discussion also points to current policy issues and challenges in respect of each form of work. The incidence of the worst forms of child labour is not discussed here, but in the section that follows immediately hereafter.

### 4.2.1 Collecting fuel or fetching water

Collecting wood or other fuel or fetching water is by far the most common form of child work in South Africa. Nearly one quarter (23%) of children aged 5-17 years in the country spends at least three hour per week on this task. The percentage is as high as 42% in former homeland areas. Over one in eight children in these areas spend 12 hours or more per week on this task. Girls are more likely than boys to undertake this work.

Older children were more likely than younger to be fetching fuel and water. Thus 9% (243 000) of the 15-17 year olds spent 12 hours per week or more on this activity, 7% of 10-14 year olds and 4% (209 000) of 5-9 year olds.

One of the reasons for this high incidence is that only 45% of all households have a tap inside their dwelling with a further 17% with a tap on site. The rest must collect water from further afield – with 12% of these collecting from a source one kilometre or further away. Similarly, only 48% of South African households use electricity as the main energy source for cooking, with 23% relying on wood. About half of all households relying on fuel other than electricity (44%) had to collect it from a source one kilometre or further away (OHS, 1999).

Apart from the time that children spend on fetching fuel, carrying heavy loads over long distances may result in significant injury to developing ligaments.

The government is endeavouring to provide a safe source of water within easy walking distance of each household, as well as to improve levels of electrification. These initiatives have had some success but there are still many households without easy access, and there have been problems, in particular, with maintenance and with payment for services in some areas. Government's new policy that all municipalities should provide a basic minimum amount free will help with payment, but may not solve all access problems.

Sufficient levels of grid electricity are not available in many areas. The October Household Survey of 1999 found that electricity was the main source of energy for cooking for only just over one-fifth of households in non-urban areas, compared to close on three-quarters of all urban households. However, nearly half of all households in rural areas and five sixths in urban areas use electricity for lighting. This discrepancy is mainly due to the fact that much of electricity provision as part of the rollout of the last few years is at the level of 8 Amp, at least for the off-grid electrification provided in rural areas, which is insufficient for cooking or heating (Collecting fuel & water - Dept of Constitutional Development: 1998; Hassen: 2000, 9).

Further, as with water, many poor households experience a problem of finding the money to pay even when electricity is available. Therefore very fewer households with a lower joint income had access even to electricity for lighting than did those with a higher income (Poverty - Stats SA: 2000, 70).

#### **4.2.2 Agriculture**

Agriculture (commercial plus subsistence agriculture) accounted for over half (59%) of all children engaged in economic activities for over three hours a week. With the higher cut-off of twelve hours per week, agriculture still accounted for 55% of all children engaged in economic activities. Younger children were more likely than older, once working, to be found in agriculture. Thus 65% of the 5-9 year olds doing 12 hours or more of economic work were in agriculture, 57% of the 10-14 year olds and 48% of the 15-17 year olds.

Less than one percent (0.6%, or 67 000) of 5-14 year olds worked for three hours a week in the commercial farming sector. Of these children 28% (19 000) were living in ex-white commercial farming areas and 62% (41 000) in deep rural areas. Nearly half of those living in ex-white commercial farming areas (31%, or 9 000) worked for 12 hours per week or more, and 37% (15 000) of those living in deep rural areas worked for such long hours. Only 17% of children 5-14 working 12 hours or more worked in urban areas.

A total of 43 000 children aged 5-17 years worked in the commercial agricultural industry for 12 hours a week or more per week: 42% of them in commercial farming areas, 37% in deep rural areas and the rest in urban areas. By far the majority of children (94%) working for such long hours in commercial agriculture in deep rural areas were in the 5-14 year age group, while just more than half of children working that that sector but living elsewhere fell in the younger group.

##### *(a) Commercial agriculture*

Of all children working in agriculture for three hours per week or more, 18% (117 000) were working in the commercial farming sector. Nearly half (47%) of these children were working for someone else and the other half in their family's agricultural business. Boys were slightly more likely than girls to be working in commercial agriculture. 81% of children working with animals were boys, while 61% of children working with crops were girls. Nearly half of the children were working for someone else and the other half were helping unpaid in their family's agricultural business.

Legal provisions on child work have covered commercial agriculture only since the early 1990s. However, most farm workers live isolated from inspectors and police, making the discovery and enforcement of child work provisions difficult. Unions complain about lack of enforcement due, among others, to lack of human and other resources.

In some cases children are directly employed by farmers (regularly or seasonally) and in others they are not employed as independent individuals, but rather work for the farmer as a part of family teams. There is evidence that some children also work as a condition for their family having access to housing on the farm. While the incidence of farm workers living on farms is decreasing, there are still significant numbers of families in this position.

The situation is aggravated by the fact that farm workers' children still do not have easy access to education, especially at the secondary level (Gordon: 2000).

Agriculture is consistently found to be one of the most hazardous industrial sectors in international studies in respect of occupational health and safety. The sector is also associated with long and atypical hours of work, and seasonal demand for intensive labour. Particular hazards found in agriculture include hazardous farm machinery; ergonomic stresses; hazardous chemicals; climatic hazards such as cold, rain and heat; electrical hazards, and biological hazards arising from farm animals.

Many of these factors may interact with each other, increasing vulnerability. Other socio-economic factors may aggravate the hazard of these exposures. Poor nutritional status amongst the children may reduce their resistance to infection or ability to cope with heavy loads, and poor sanitation and water facilities will reduce their ability to wash and prevent pesticide exposure. In addition, in rural farming areas facilities such as health care are usually thinly distributed.

#### *(b) Subsistence agriculture*

Subsistence agriculture accounts for at least 48% (550 000) of all children engaged in economic activities (excluding unpaid domestic work and fetching fuel or water) for over three hours a week. The majority (83%) of children working in subsistence agriculture live in deep rural areas. The activity is a male-dominated one, with three boys for every two girls. However, it must be remembered that many of the girls not helping in subsistence agriculture are engaged in household chores.

This work is not covered by labour law. In extreme cases it may be subject to measures to deal with child abuse, but it is unlikely that this would be monitored or enforced.

Children engaged in subsistence farming would be exposed to many of the same occupational hazards as those on commercial farms, with the exception of hazards related to more expensive technology. On the other hand, children in subsistence farming are likely to have poorer health and poorer access to basic amenities, and this would increase susceptibility to hazards.

Subsistence farming in South Africa is generally on a very small scale, on a very small plot, and with very limited technology. Families engage in subsistence farming to produce food that relieves the effects of poverty and their dependence on cash. Few families, however, produce enough to cover their food needs. It is estimated that 20% of land in rural poor areas is seriously degraded and a further 40% moderately degraded. While just over a quarter of African rural households have access to a plot of land for cultivation, the average size is only 2,2 hectares with poorer households having smaller amounts. Only 18% of rural African households own agricultural equipment (Agriculture - May et al, 1998: 232).

#### **4.2.3 Retail and wholesale**

The industry with the second highest number of working children, whether a three-hour per week cut-off or a 12 hours per week cut-off is taken, is the retail and wholesale industry – see Table 1 and Table 2 on page 20 above. Thus 26% of children aged 5-9, 33% of those aged 10-14 years and 35% of those aged 15-17 years who were engaged in economic work (excluding unpaid domestic work and fetching fuel or water) for over three hours a week, were in the wholesale or retail trade industry. 45% of working girls and 27% of working boys were in wholesale and retail trade.

Most of these children were working in informal rather than formal situations. Half of them were working in a family business, such as a spaza shop, without pay. About one third worked for themselves and the remainder for someone else.

#### **4.2.4 Family business**

More children are involved in helping unpaid in family businesses, excluding subsistence agriculture, than in other work for pay in kind or cash. A total of 276 000 children between the ages of 5 and 17, and 182 000 between the ages of 5 and 14, were found to have been doing such work for three hours a week or more. The 276 000 represents 2,1% of all children in this age group. Some 107 000 children (less than 1% of all children) did this work for more than 12 hours per week. Girls were more likely than boys to be doing this work. If we focus on children aged 7-14 years who appear to be working in contravention of the BCEA, work in family business accounts for at least 70% of the children concerned.

Work in a family business is formally subject to labour regulation. However, enforcing a legal ban on child work in family enterprises is difficult for the same reasons as doing so in respect of subsistence work.

#### **4.2.5 School-related work**

The SAYP found that one in every ten children (1,4 million) between the ages of 5 and 17 years was engaged in school-related work activities for five hours or more per week. This work includes activities such as cleaning and maintenance of school buildings, facilities and surroundings, not directly related to study. About one in fifty (263 000) reported at least twelve hours of school-related work activities per week. The likelihood of children doing school-related work was highest for the middle-age group. Thus 6% of children aged 5-9 years, 14% of those aged 10-14 years and 11% of those aged 15-17 years reported at least five hours of school-related work. As with most other forms of work, the incidence was highest in former homeland areas. Girls are somewhat more likely than boys to be engaged in this work.

Reasonable levels of school-related work, subject to clear limitations, are unlikely to harm children's education and may even enhance it. However, where these activities are excessive or involve potentially dangerous activities, policy intervention is probably required. Where work is age appropriate and related to the school curriculum, it should not cause concern.

One important cause of this type of work is the lack of support staff in historically African schools. In the segregated systems established under apartheid white and, to a lesser degree, Coloured and Indian schools had cleaners, security personnel and secretarial staff. In contrast, African schools, particularly in the homeland areas, had virtually none. Thus 96% of children who work five hours or more a week in school-related work are African, and two thirds live in rural areas other than commercial farming areas.

The ongoing government process of ensuring that staff is spread equitably between schools has not affected support staff. At the same time, the introduction of fees and school governing bodies means that richer schools can afford to hire more staff. This situation has perpetuated inequalities. To equalise the ratio of teachers to support staff between provinces would require the creation of 30 000 unskilled and semi-skilled positions in the schools.

A second factor influencing the extent of school-based work is the services available to the school. The Norms and Standards for School Funding introduced in 1998 for public schools could have an impact in terms of facilities at schools, and so, indirectly, on the need for children to do school-related work. The Norms and Standards provide for funding to be allocated for three categories of expenditure – maintenance of school buildings, municipal services and utilities, and learner support materials. The document proposes factors to be considered in determining how much each school gets, but leaves it up to each province to develop its own formula. The formulae of all provinces for measuring the physical condition of the school include an element on access to basic services such as water and electricity. This could result in increased assistance – and thus less need for school-related work – for poorly serviced schools in the medium- to longer-term.

#### **4.2.6 Paid domestic work**

Paid domestic work should have been captured in the SAYP in response to the question as to whether the child had done any work for a wage, salary or any payment in kind. Overall, 1,8% of children aged 5-17 years – or 247 000 – said they had done such work, and 1,4% - 183 000 - said they had done so for three or more hours a week. A total of 49 000 children were doing paid work in private households for three hours or more per week, and 63% of them for 12 hours per week or more. The higher the hour-based cut-offs, the fewer younger children do such work. For example, of the children working 12 hours or more per week 10% are 5-9 years old, 32% 10-14 and 61% 15-17.

It is likely that domestic work performed by children outside their own households was undercounted in the SAYP. Where the child lived on the premises of the household, they might – despite prompting – have gone unreported by the respondent. Alternatively, they might have been included as family members, in which case their work could have been reported under the category ‘unpaid domestic work’ described above.

Anecdotal evidence suggests that some of the worst instances of children’s domestic work occur where children are taken from rural households to work in urban areas, often for no payment other than board and lodging. Some children are even reportedly held captive where they work, and some are reportedly subject to sexual violence. Where this is the case and employers and children are worried about the illegality, there would have been under-reporting.

Also, the survey did not record work outside the household where the respondent perceived there to be no form of payment, whether in kind or in cash. Relatively common forms of such work may be domestic work for the landowner, extended family or due to traditional customs.

Paid domestic work has been covered by labour legislation since the mid-1990s. Legislation is, however, difficult to enforce because of the isolated nature of the work and the fact that it takes place in private homes.

#### **4.2.7 Other household chores**

The SAYP found 12% (1,7 million) of all children aged 5-17 years to be engaged in unpaid household chores for at least seven hours per week. With a higher cut-off of 14 hours per week, the overall percentage falls to 3% (432 000) of all 5-17 year olds, with girls one and a half times more likely than boys to be doing this work. Older children were also more likely than younger to be doing household chores in that 7% of 5-9 year olds, 15% of 10-14 year olds and 19% of 15-17 year olds reported doing unpaid household chores for at least seven hours per week.

In examining unpaid household chores, the SAYP analysis distinguished between children living in households in which at least one parent, grandparent or the child’s spouse was living, and children living in households without any of these close relations. Where the latter performed household chores it was classified as ‘unpaid domestic work’ rather than as domestic chores. The analysis distinguished in this way on the advice of the ILO, because it was felt that children without close relatives in their home might be at greater risk of abuse than others, although they, too, could be subject to abuse. Four percent of all girls and 2% of boys were found to be doing unpaid domestic work according to this definition for at least three hours per week.

Approximately 8% of children reported that they were engaged in activities relating to the care of other children. The 8% is probably an undercount as, internationally, time use studies have shown that people often do not see childcare as an ‘activity’ worth reporting. Where young children are required to take care of their even younger siblings or other young children it may place high levels of stress on the care-giving children. The children who are being cared for may also be at risk since these young care-givers may not be capable of adequately fulfilling such tasks.

The SAYP data suggest that children work long hours at household chores in part because a parent is absent or employed. Children also probably do more household chores when the household income is low as better-off families can bring in relatives or hire people to help out.

Most cultures consider some household chores appropriate in socialising children into the family and learning skills necessary for later life. But most agree that children should not work on chores to the point where it harms their health or schooling. Typically, girls are expected to sacrifice more free time to household chores than boys, just as women generally perform a greater proportion of these tasks than men.

One factor to consider here is that, in terms of the Marriage Act, girls can enter into marriage from the age of 15 years with her parents' consent. While this has not been identified as a major problem in South Africa, girls may be forced into marriage with the effect that the household chores that she has to do in her husband's house may be a form of forced labour.

The SAYP was not able to pick up the impact of HIV/AIDS on children's work, for example in the area of unpaid domestic chores. It is likely that as the numbers of parents who become ill with HIV/AIDS increases, the length of time that children may be involved in unpaid household chores will also increase. Dealing with death at an early age and becoming an orphan also exact a psychological toll on children.

#### **4.2.8 Begging**

A small number of children said that they engaged in begging for money or food in public for three hours a week or more: 19 000 (about 0.1%). More than half of them (57%) spent 12 hours or more per week on this activity. Apart from the length of time taken up by begging, and the effect that this may have on a child's education, it could also reduce the child's sense of self-worth.

Nearly two thirds of children begging (61%) were in households where both of the children's parents were absent. Where both were present children were much more likely not to be engaged in begging.

Children living on the streets are excluded from these figures, because the survey focused on children who formed part of households. Qualitative research shows that many children living on the streets engage in begging for food or money.

#### **4.2.9 Children in the performing arts industry**

In terms of the BCEA, children are allowed to work in advertising, sports, artistic or cultural activities. This is because such work is seen as potentially contributing to children's learning, provided that safety measures are in place. It is also not possible to replace adults with children in this regard. Work of this nature could, however, still be harmful, and the Department of Labour is therefore working on a sectoral determination to protect such children, such as limiting the length and timing of hours so worked.

There are no reliable figures on the number of children doing such work, but it is believed that it is relatively low.

### **4.3 The worst forms of child labour**

The ILO Worst Forms of Child Labour Convention of 1999 identifies the following types of child labour as its worst forms. It requires that they be dealt with as a priority by ratifying states:

- all forms of slavery or practices similar to slavery;
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of

drugs;

- work which by its nature or the circumstances is likely to harm the health, safety or morals of children ('hazardous work').

#### **4.3.1 Slavery and similar practices**

The Convention identifies the following types of practices as being similar to slavery: trafficking of children, debt bondage and compulsory labour and forced recruitment of children for use in armed conflict.

No clear figures are available on the trafficking of children in South Africa. There have been a few reports of trafficking of children from neighbouring states, in particular from Mozambique. However, anecdotal evidence suggests that it is more common that children are taken from the rural areas of South Africa to work in urban areas, often in domestic service. A recent report by the NGO Molo Songololo suggests that the incidence of trafficking in the country is on the increase (Commercial sexual exploitation - Barnes-September, 2000).

There are no figures available of children subjected to *bonded labour* in South Africa. However, there is anecdotal evidence that children of tenants are sometimes forced to work for the landowner for little or no wages in return for the family occupying land or accommodation. This is most often raised in the context of farm workers' children in the commercial farming sector.

In the SAYP all children engaged in economic activities were asked what the main reason was for working. Very few working children, too small a figure to quote, gave as the main reason for working debt bondage or compulsion by the landowner. This could be because very few children in South Africa are subject to forced labour, or because children do not rank such reasons first and rather choose as the main reason one such as 'duty to family'. There are, however, many other reasons why children feel a duty to help the family. So, the proportion of children who gave duty to family as their reason for working is therefore not useful for establishing whether they were forced to work or not.

In terms of *forced recruitment of children for use in armed conflict*, no armed conflict of a significant scale occurs in South Africa at present. There are, however, gang-related armed activities such as those related to taxi violence and occurring in anti-gang vigilante groupings such as Pagad. There is anecdotal evidence of children being involved in some of these. These activities are illegal and are therefore covered by the discussion of children involved in illegal activities below.

There is no conscription into the South African National Defence Force at present and the forced conscription of children therefore does not arise.

#### **4.3.2 Commercial sexual exploitation**

The SAYP could not identify the number of children involved in child prostitution and other forms of commercial sexual exploitation. The current embargo on crime statistics means that official statistics will only be available later in the year.

Prostitution and other forms of commercial sexual exploitation such as use in pornography have also proved difficult to research through anything more than small, unrepresentative, qualitative studies because of their hidden and illegal nature. The researchers often resort to 'snowball' methods to obtain informants because of the difficulty of finding more representative samples. Newspapers carry articles from time to time, but these generally consist of case studies rather than providing more broad-based information. The activities occur mainly in the private domain and in isolated places.

The available evidence suggests that the most common forms of commercial sexual exploitation involve:

- families, where this is the only source of income for the family;

- community members in exchange for food, clothing, money, or luxury items;
- peers at school in exchange for lunch or small amounts of cash;
- gangs who exploit children at weekends, in school holidays or after schools in exchange for money, food, or debts owed by the family.

#### 4.3.3 Drug trade and other illegal work-related activities

Some children are involved in the illegal conveyance of drugs for adult drug dealers or other illegal activities where they work for or help others. As was expected, the SAYP did not pick up such activities since children are unlikely to admit to them. Official statistics on these activities are also covered by the current embargo on crime statistics.

One indication of the extent of children who have been arrested for engaging in illegal activities is that South Africa's jails housed over 12 500 children under 18 who were awaiting trial and about 10 000 who had been sentenced (1999).

#### 4.3.4 Hazardous work

In respect of hazardous work, the Worst Forms of Child Labour Convention notes that the circumstances that would indicate that work is hazardous and should be considered one of the worst forms of child labour, should be determined in consultation with organisations of employers and workers.

Regarding the different categories of work listed in the recommendation accompanying the Convention (listed in Chapter 3), the following emerges:

- *Sexual abuse*: The situation of children subjected to commercial sexual exploitation is discussed above. Child domestic workers probably also face high risks of sexual abuse, especially if they do not have regular contact with their families. However, such abuse could occur in any working situation.
- *Working underground*: No children were found, in the SAYP, to have been working in the mining industry.
- *Working at dangerous heights*: 53 000 children [less than 1% of all children] reported being injured in the 12 months before the survey was conducted by a fall or something falling. No further information is available about children working at dangerous heights.
- *Work with dangerous machinery, equipment and tools*: 137 000 children (1% of all children) worked with or close to dangerous machinery or tools. Four-fifths of these children were in the deep rural areas and two-thirds of them boys. The older a child, the more likely it was that they would be exposed to this hazard: a child 15-17 years old was nearly three times more likely to be so exposed than a child 5-9 years old. While only 59% of children worked in agriculture, 79% of children exposed to this hazard worked in this industry.
- *Manual handling or transport of heavy loads*: 128 000 children did heavy physical work often or regularly, 56% of them boys. 44% of these children were 15-17 years old and 50% 10-14. This kind of hazard is also more prevalent in agriculture than in other sectors.
- *Work for long hours*: 589 000 children (4%) reported that they worked 'for long hours'. It was left for the children themselves to decide whether they considered their hours long. Three-quarters of them were in deep rural areas, while less than half (47%) of the total population of children 5-17 years old live in such areas.
- *Night work*: 395 000 children reported that they had engaged in economic activities at night at some time during the previous 12 months, 75 000 of them in the 5-9 year age group.
- *Work in an unhealthy environment*: 2% (58 000) of children said that they had suffered illness related to their work. 61% (2,1 million) of children said they were exposed to some hazardous condition, such as those reported above or an environment that was too hot, cold, dusty or noisy, had bad light or exposure to dangerous substances or dangerous animals, or work where they feared that someone might hurt them. All of these conditions were not defined for the child respondents, so it is difficult to assess whether an affirmative answer to any of these conditions indicate a significant hazard. For example, a child who said that they

worked in an environment that was too hot may have referred to days when the sun was hot while they were helping their family in subsistence agriculture.

- No information is available regarding prevalence of the following kinds of work: Work in *confined spaces or underwater* or work where the child is unreasonably *confined to the premises of the employer*.

Overall, these figures suggest that, while the percentages are small, the absolute number of children reporting potentially hazardous situations is significant. However, the questions used in the SAYP are insufficiently focused to determine the degree of real hazard.

#### **4.4 Circumstances in which there is a higher incidence of child work**

The SAYP shows that children from communities that were discriminated against during apartheid, and particularly African children, are more likely than others to engage in both economic and non-economic forms of labour. There is a higher incidence in the former homeland areas when compared with commercial farming and formal and informal urban areas. Lack of access to services such as electricity and piped water increases the likelihood not only of fetching water and fuel, but also of other forms of child work. Lack of access to services is a proxy measure of poverty. The importance of poverty as a factor encouraging child work is confirmed by the responses of many children that their reason for working is to contribute to the family.

It is clear that a wide range of factors will influence the incidence of child work in a particular family or community, and that these factors will differ for the different types of work. Overall, the following was found in the SAYP:

Statistical analysis reveals that, for economic work in particular, there was a sharp increase in incidence with increasing *age*. For all types of work, the participation rates of *African* children were relatively high when compared to those for other population groups. Children who lived in households that *collected fuel and water* were also more likely than others to engage in all types of work. Further, while children who lived in households *with their mother* were *less* likely than others to engage in all forms of work, children in *single-parent families* were *more* likely than those living with both parents to be working.

Overall, working did not seem to prevent South African children from *attending school*. However, 35% of children were not attending school when the hours worked in economic activities per week rose to between 43 and 49. These are, however, mainly older children who are working full-time.

Work might, nevertheless, be affecting the performance of school-going children and so contributing to poor outcomes of education. Thus children engaged in some form of work experienced lack of time to study and difficulties in catching up more than children not involved in any work activity. A larger percentage of children engaged in all three activities (economic, household chores and school labour) complained of difficulties in catching up with lessons than children engaged in any other combination of labour activities.

#### **4.5 How does SAYP compare with surveys in other countries?**

How does the situation in South Africa with regard to working children compare to that in other countries? The question is not a simple one to answer. Firstly, there is the issue as to which countries would serve as the best comparators. Secondly, there is the definition of child work and labour and how these were operationalised in surveys.

The discussion below provides comparative information from four countries – Zimbabwe, Zambia, Portugal and the United States of America. South Africa is a particularly difficult country to find a single comparator for. It is a middle-income country that contains both very poor communities, similar to those found in many other developing countries, and communities whose life style compares favourably with the middle class of very developed, industrialised countries.

The four countries are chosen so as to reflect different parts of the spectrum. *Zimbabwe* and *Zambia* are Southern African countries, both of which conducted in-depth child labour surveys in 1999. *Portugal* was the first European country to respond, in 1998, to the ILO's suggestion that countries conduct a full-scale investigation into child labour. Portugal is also interesting in that it is less developed than most other European countries, and has only fairly recently been able to provide quality schooling to most school-aged children in the country. The *United States of America (US)* has not conducted a dedicated child labour investigation. It does, however, have data from some other surveys that provide some information on the topic. Further, it serves as an example of the wealthiest end of the country spectrum internationally.

For each country, the discussion provides some pointers as to the extent and patterns of child work, as well as differences in the way child work and labour are described and the methods used to measure them.

#### 4.5.1 Zimbabwe

The Zimbabwe survey was implemented as an add-on to the June 1999 Indicator Monitoring Labour Force Survey (IM-LFS). Zimbabwe's total population is a little under 9 million, of whom an estimated 4,67 million are between the ages of 5 and 17 years. The information on this survey is based on a report produced by the Ministry of Public Service, Labour & Social Welfare, Central Statistical Office and International Labour Organisation entitled *Zimbabwe 1999: National Child Labour Survey Country Report*.

The Zimbabwe survey adopted the ILO definition of employment. A person is considered employed if he or she spends at least one hour a week on any activity for pay, profit and/or family gain. Such activities are also referred to as 'economic activities'. However, to measure child work, three variations were introduced:

- a cut-off of 3 hours or more per day for economic activities;
- provision to allow for involvement of children aged 15 years and older in some activities; and
- a cut-off of five hours or more per day for housekeeping.

The main estimates reported are based on activity in the past seven days. This contrasts with the South African survey report, whose figures reflect children who have been engaged in economic activity at any time over the preceding twelve months.

The Zimbabwe survey found, with no time-based cut-off, 26% of all children 5-17 years old were involved in some economic activity. Of these, the majority (88%) worked as unpaid family workers or assisted their parents. With a three-hour per day cut-off, the percentage of children involved in economic activity dropped to 14%.

Of all working children in paid employment, 57% were in agriculture and 36% doing private domestic work. Agriculture also accounted for the majority (63%) of own account workers. Of unpaid family workers, 96% were in agriculture.

Economic activity increased in inverse proportion to household income. Economic activity was also more likely among children from large households. Nearly half (57%) of working children were doing so to supplement household income and more than one third (37%) to help a household enterprise.

Zimbabwe reports on household chores mainly in terms of those who do five hours or more per day – amounting to 4% of children, of whom 60% are female. The Zimbabwe survey did not ask any questions about children's work at schools.

The report's definition of work is almost identical to that used in South Africa, i.e. activities for pay, profit and/or family gain. It also refers to other economic activities, which it defines as fetching fuel or water, or doing domestic work in households without parent or grandparent. The questionnaire, however, does not make these definitions clear nor prompt for all activities as the South African questionnaire did.

Over three-quarters (79%) of all children in the survey were reported to be currently attending school, with minimal differences between girls and boys. The main reasons for not attending school was that the child was too young (35%) or could not afford schooling (26%). Between 1980 and 1990, the Zimbabwean government introduced free education for all children of school-going age. Since 1990, the government has introduced school fees in urban areas while in rural areas parents pay development levies. Previously schooling was mostly free. Of those who did not attend school, 26% said that money was a problem. Non-attendance at school was higher in urban than rural areas by seven percentage points.

About three-quarters (74%) of working children were said to have suffered some injury at work. The report raises the issue of AIDS orphans, and states that these children will become even more vulnerable as government assistance is being scaled down.

#### **4.5.2 Zambia**

Zambia's child labour survey was conducted in 1999 as one of the eighteen modules of the Zambian Central Statistical Organisation's Multi-Indicator Cluster Survey. There were also separate, focused studies of child prostitutes and street children. Zambia is slightly bigger than Zimbabwe population-wise, with a 1999 population estimate of 10,2 million, 62% of whom live in rural areas and 37% of whom are 5-17 years old. The information on this survey comes from a CSO draft report entitled *The 1999 Child Labour Survey in Zambia*.

The Zambian pre-test of the survey questionnaire revealed that many people saw unpaid child work in the family as 'assisting adults' rather than 'work'. The questions on economic activity of children were changed to include explicitly children regarded as assisting with work.

The survey recorded 16% of children aged 5-17 years as being 'usually economically active' over the last 12 months. Boys and girls were equally likely to be working. A full 84% of working children were in agriculture (encompassing commercial as well as subsistence agriculture). Trading and personal services accounted for over 70% of working children in urban areas. Four-fifths of working children were unpaid family workers. The next biggest category was self-employed.

In terms of household work, children who spend more than six hours on housekeeping duties each day are seen as working. The report notes that household work is defined to include fetching and chopping firewood, drawing water and harvesting food crops, although this does not seem to be clear in the questionnaire.

The tabulations on household work in the report refer only to children who were also doing 'economic work' and show that more than three-quarters (78%) of the working children also did some housekeeping. Of those who did housework, 72% did so for 1-3 hours, 13% for 4-6 hours and 3,2% for seven or more hours per day.

Close on half (46%) of working children in Zambia said the main reason for doing so was to support the household. The table on reasons says that this question was 'not applicable' for a further 33%.

The report notes that more than a third of children combined studies with working. Most of these children were from rural areas. Similar to Zimbabwe, in Zambia the removal of subsidies and introduction of school fees has made schooling inaccessible to some poor children. The positive correlation between school attendance and socio-economic group is seen in the fact that 95% of children from large-scale farms attend school, 92% from urban high cost residential areas, but only 78-9% from rural small and medium scale farming households.

Overall, 11% of the working children were injured at work and 8% fell ill due to the work. Between 12% and 30% worked in bad environments – too cold or too hot, too dusty, with dangerous machinery or with chemicals.

### 4.5.3 Portugal

The Portuguese survey was carried out in October 1998 and was administered to children between the ages of six and 15 years and the adults responsible for them. Portugal's population contains just over 1 million children aged between 6 and 15. As in Zimbabwe, the main estimates reported are based on activity in the past seven days. The information of this survey was obtained from the Ministry of Labour and Solidarity report entitled *Child Labour in Portugal: Social characterisation of school age children and their families* (2001).

There was a marked difference in reported activity of children when the children were asked, compared to when the adults responsible for them were asked. According to the adults 2% of the children were doing economic work, while 4% of the children reported that they were working. The reported discrepancies for domestic tasks went in the other direction, in that 8% of children reported that they were doing these, while adults said that 10% did. The report suggests a gender bias in this discrepancy when it notes that in family farming there is a 'symbiosis between working the farm and the family', which tends to classify the work performed by girls as domestic rather than economic.

Of the children engaged in economic activity, 79% were in family enterprise or farms. Over half (55%) worked less than four hours a day. However, over a quarter (26%) worked six days a week. The majority (56%) of children worked in agriculture.

Of the children engaged in economic activity, about two-thirds (78%) attended school and a further 13% had completed their compulsory schooling. Non-attenders generally did not give their work as a reason for not attending.

As in Zimbabwe and Zambia, children from poorer backgrounds were more likely to engage in economic activity.

### 4.5.4 United States of America

The US has not conducted a dedicated child labour survey. Some information is, however, available from the National Longitudinal Survey of Youth (NLSY) as well as the Current Populations Surveys (CPS). The NLSY has a smaller sample than CPS but, firstly, provides longitudinal data about individuals, and, secondly, covers children under the 15 year minimum of the CPS. The information on these sources were obtained from P Dorman's working paper, produced for ILO's International Programme for the Elimination of Child Labour, entitled *Child labour in developed economies* (January 2001).

While reports of other countries distinguish between paid and unpaid work, the NLSY distinguishes between 'employee' and 'freelance' jobs. The former are those where there is a formal employment relationship. The latter are less structured jobs such as babysitting, although usually paid. At age 14, a full 43% of US children reported doing freelance work while 24% had employee jobs. Because some children did both, total participation was 57%. By age 15, 40% of children were doing freelance, 38% employee, with a 64% total. Dorman reports very few figures for children younger than 14, but notes that nearly half of all 12-year-olds reported some work, mainly freelance. For 14 and 15-year-olds, construction was the most common industry.

Unlike the three countries reported above, the US data suggest that children from wealthier families are more likely than others to engage in economic activity. The report notes that this could mean that economic pressure, or poverty, is not the main motivation for work. On the other hand, it could be that poorer children do not have the same networks to get jobs as wealthier children.

A comparison of CPS and NLSY data with federal and state regulations suggests that, in an average week, approximately 7.5% of children under 18 years work illegally. As they come from official surveys, they almost certainly understate the extent of illegal work.

Most work by children for family-owned business is legal in the US. The law states only that non-agricultural

family businesses must protect children from hazardous activities. Dorman quotes President Clinton's pronouncement on Convention 182 to the effect: 'The United States understands that Article 3(d) of Convention 182 does not encompass situations in which children are employed by a parent or by a person standing in the place of a parent on a farm owned or operated by such parent or person'. This is unlikely to reflect the views of the ILO.

#### **4.5.5 What does this say about the South African figures?**

The brief country descriptions above reveal the difficulties of comparing child work and labour situations in different countries. While children are working in each of the countries, there are significant differences in how the figures for each were arrived at.

In particular, the South African study seems to have been unusual in terms of the detailed prompts used to ensure that the answers corresponded to international definitions of the full ambit of what constitutes work and the different sub-divisions of work. These detailed prompts would, overall, increase the South African figures compared to those of other countries. Secondly, the South African figures on economic activities include children who had engaged in such activities at any time in the previous 12 months. In contrast, the figures for Zimbabwe and Portugal, and probably also the United States cover only children who engaged in such activities in the week preceding the survey interviews.

Different countries have not even, in theory, followed the same definitions. They differ, for example, in terms of what is classified as 'economic' work. They differ in terms of whether particular activities such as fetching fuel or water or school-related work are included. They differ in the choice of the time-based cut-off at which 'work' becomes unacceptable and must therefore be regarded as 'child labour'.

Finally, the US case study suggests that, while the problems are different in developing and developed countries, there can be significant numbers of working children in developed countries.

## Chapter 5: Which work activities are harmful to children?

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As noted at the outset, South Africa's policy makers need to decide what the country regards as child 'labour'. Work in and of itself is not necessarily harmful to a child. It will, in fact, often be beneficial in many ways. Thus an ILO document acknowledges that 'the absence of work ... can condemn the child to a variety of social, moral and health risks' (1998:14). In addition, when identifying kinds of work that may be considered beneficial for the child's development, it is necessary to consider the role of cultural views, which differ from community to community.

For these reasons, where it still needs to be debated whether specific work harms a child this discussion document uses the term 'child work'. The term 'child labour' is reserved for child work that harms a child or poses a serious risk of harm.

The need to protect children against exploitative and abusive work was established in the Constitution. It provides that children under 18 years should be protected against exploitative labour practices and work that is hazardous or harmful to their education, health or well-being, physical or mental health or spiritual, moral or social development. These provisions are discussed in more detail under paragraph 3.1.

The 1998 South African Child Labour Action Programme formulated the definition of 'child labour' as follows:

*'work by children under 18 which is exploitative, hazardous or otherwise inappropriate for their age, detrimental to their schooling, or social, physical, mental, spiritual or moral development.'*

It states that the term 'work' is not limited to work for economic gain but includes chores or household activities in the household of the child's care-giver, where such work falls within the definition of child labour set out in the paragraph above. It excludes appropriate activities related to skills training from the definition of child labour.

We need to identify what activities harm or potentially harm children. This is a complex issue because of the different views on what is bad for children, and the different cultural approaches to the issue. There are also divergent views on the extent to which child labour problems can be addressed directly, or mainly through economic and social development. This chapter proposes mechanisms that can be used to establish maximum common ground on this issue.

It is proposed that we first try and establish a shared view on what harms children. It is more important to establish this and take action against activities that harm children, to try to categorise whether a particular activity is work or labour.

Once we have achieved a shared view of what harms children, we can identify whether and what interventions are required, and who is to be responsible for them. We then need to prioritise action in respect of children who are most at risk. We need to do so because those children who are most at risk need urgent protection. This section discusses how we might identify harmful activities that thus can be regarded as child labour. A later section looks at prioritisation.

### 5.1 Children's activities and the labour market

When first thinking about child work and child labour, many people may think first of children working in formal work situations, for example in shops and factories. Next they may think about the children working in informal situations – selling things at street corners, washing cars, and so on.

The SAYP expanded on these categories by looking at children doing paid and unpaid domestic work in both their own and other people's homes, at children fetching water and fuel, at children doing unpaid work in the

family business or on the family subsistence plot, and at children doing maintenance, cleaning and similar work at their schools. The SAYP – because it was a household survey – was less able to pick up on forms of labour such as commercial sex work, other illegal activities, and work undertaken by children not located in households. This includes children living on the streets. Some of the activities that were not captured by the SAYP are among those identified internationally as constituting the worst forms of child labour. This was partly because a survey, even a large one, misses relatively small forms of work. However, even if few children are involved in such work it is still important to address because of the high levels of hazards that they face.

Some of the types of work identified in the SAYP and elsewhere are part of the market economy. Others are part of the non-market, usually household, economy. Yet each of the types fits the definition of ‘work’ and will – if harmful – also fit the definition of ‘labour’. When we define child labour, we therefore need to consider all the forms of work discussed above.

The factors affecting children’s work, as well as the relative ease or difficulty of addressing the different types, and which forms of intervention are most likely to succeed, can be understood better if considered in the context of segmented labour market theory. Table 3 delineates major segments in the South African labour market, and the implications of these divisions for child work and labour.

**Table 3: Locating child work in the segmented labour market**

	<b>Formal: primary labour market</b>	<b>Formal: secondary labour market</b>	<b>Less protected labour market</b>	<b>Paid informal sector</b>	<b>Unpaid informal and non-market labour</b>
<b>Examples</b>	Management and highly skilled employment in formal companies & government	Semi-skilled and manual work in formal companies	Commercial agriculture; paid domestic labour	Paid labour in the informal sector – mostly services and sales	Family labour, in the household, collecting water and fuel, and in informal family businesses; subsistence agriculture.
<b>Typical technology</b>	Capital intensive	Capital intensive	Relatively capital intensive	Labour intensive	Labour intensive
<b>Applicability of labour regulation</b>	High	High	Historically weak; now standardised, but rarely properly enforced	Weak	Technically, yes, re work in family business but unlikely to be enforced. For rest, non-existent.
<b>Laws on child work</b>	Yes. No, re indirect labour, such as a child helping a parent to do work for an employer.	Yes. No, re indirect labour.	Yes, but more difficult to enforce. No, re indirect labour.	Usually, but poorly enforced. No, re indirect labour.	Yes, re work in family business excluding indirect labour (unlikely to be enforced). For rest, only around abuse, not on labour.

The table illustrates the fact that the most prevalent form of children’s work in South Africa – household chores, gathering water and fuel, and school labour – is non-market labour. In these segments, regulation is generally weak, not easily enforced, and based on childcare legislation rather than labour law, while the work itself is relatively labour-intensive. The available laws relate largely to abuse. The first problem here arises in relation to defining abuse. The second problem relates to willingness to intervene in the ‘private’ family.

Governments are generally reluctant to intervene in the household economy, which is the predominant form in the informal and non-market sectors. Its wariness has two grounds. First, historically, limitations placed on the state to protect individual freedom blocked it from intervening in family affairs. Measures to change family

relationships must always balance the benefits to the individuals concerned against the right to privacy. In addition, it is difficult for the state to act to protect a family member without undesirable repercussions. For instance, fining a family to prevent child labour could make poor households even poorer, harming the child. That does not mean that government cannot intervene. But welfare, developmental and other relatively flexible types of intervention and regulation may be more appropriate than legal sanctions.

## 5.2 Work-related factors causing or increasing risk of harm

To establish what child work is harmful and would constitute child labour requires a clearer understanding of when it has negative effects. Table 4 provides a framework for providing guidelines as to the potential harm and benefit to be derived from children's work. The broad categories of factors are: where there is a risk of physical harm; educational opportunity is threatened; and where there is a risk of exploitation.

**Table 4: Work-related activities – Factors that cause or increase real or potential harm**

Factor	Factors that cause or increase risk of harm
Number of hours per day / week	<b>Long hours</b>
Time of day / night	Night work
Wages	Lower wages Piece work and task work
Nature of work	Dangerous circumstances, tools, chemicals and other dangerous exposures
	Commercial sexual exploitation, including expose to illnesses.
	High strain or exhausting. Heavy loads, especially when carried over long distances.
	Illegal work.
	Work that is ergonomically unsuited.
	Excessive responsibility
	No stimulation; repetitive
Schooling	Work detrimental to schooling
Psychological effect	Work that is degrading and that reduces the child's sense of self-worth.
Recreation and rest	Work reducing significantly time for recreation and rest
	Inadequate meal and rest breaks
Attitude of adults where child work	Using coercion or intimidation Restricting child's movement unreasonably. Where no caring adult present.
Where work is performed:	On the streets. Work that is hidden or isolated and not easily monitored

### **5.3 Potentially harmful forms of hidden employment**

Some forms of work falling outside a narrow definition of employment may lead to indirect forms of exploitation by a person who, without being their legally recognised employer, gives them orders, determines their working conditions and draws a profit from their work. This includes, in particular, children helping their parents or other adults and so benefiting the parent's employer (by increasing productivity) and, possibly, their parents.

The following kinds of adult work encourage hidden forms of child work:

- piece work — where employees are paid per piece of work done (for example, per basket of tomatoes picked);
- task work — where payment is for a specific task done (for example, per field harvested);
- home work — where work is contracted out to people working in their own homes;
- subcontracting work — where the person benefiting from the work does not carry the legal responsibility to comply with labour laws.

All of these forms of work encourage adults, including parents, to use the services of children to increase output and therefore income.

Lastly, where there is inadequate child care facilities or capacity in the household to care for younger children adults often have to take their children to work. This potentially exposes the children to occupational hazards, and sometimes encourage those that are older to assist with the adults' work.

### **5.4 Circumstances or characteristics that increase the likelihood of harm**

In addition to the nature of the work, particular circumstances and characteristics can make certain children more vulnerable than others doing similar work. Policy needs to pay special attention to children facing specific vulnerabilities. The discussion below describes categories of children that can be expected to render them particularly vulnerable and will need special consideration in child labour policy.

#### **5.4.1 Age**

Children who are younger will in most circumstances be more at risk than older children. The correct policy for a child of five or six would, for example, be very different to that for a young teenager or a child nearing adulthood. More generally, policy needs to take into account the mental and physical capabilities and needs of individual children. So, for example, there might need to be special provisions for children with different forms of disability.

#### **5.4.2 Gender**

Gender, more specifically, 'being female' is often considered a factor increasing vulnerability. This is clearly true in some circumstances, for example in relation to sexual exploitation, and particular physical hazards. Nevertheless, the concept of 'the girl child' as intrinsically weak and vulnerable is sometimes used too glibly. For policy purposes, we need to examine, in each case, what the gender patterns are, whether boys or girls are particularly at risk, and in what way. Further, gender must be examined in conjunction with other variables – in our context including race, type of area and so on.

#### **5.4.3 Children affected by HIV/AIDS**

It was estimated that six million people in South Africa were HIV positive at the end of 2000. It is further projected that by 2010 there will be between 3,6 million and 4,8 million orphans or vulnerable children due to aids in South Africa. International research suggests that when orphans in the developing world constitute up

to 2% of the child population the children are generally absorbed into the extended family and community. In South Africa the percentage of orphans is between 2-5% at present, but is expected to rise to between 9-12% of the child population by 2015. Where they are taken into homes in the community, they may also be required to work for excessive hours, or to do other work inappropriate for their age within the household.

HIV/AIDS will result in an increase in child-headed households, which are already found in many parts of the country. The children in these households will need to get income from somewhere, and many will engage in work unless there are other forms of assistance. At present the main forms of assistance are coming from over-stretched communities and NGOs. Such households also cannot access the child support grant, as discussed above.

In households where there are adults, but where some of them are ill, we can expect an increase in the incidence of children having to care for terminally ill people, and in having to earn an income because breadwinners are ill or have died. This reduces their ability to further their education. It may also expose them to serious risks, such as where they are forced by circumstance to work on the streets or sell sexual favours.

#### **5.4.4 Children working on the streets**

What is usually referred to as street children comprise two distinct groups: children 'of the street' (i.e. living there), and children 'on the street' (i.e. working there but not living there). The former are not members of households and would therefore have been missed by the SAYP, while the latter should have been captured in the survey. The available evidence suggests that there are more boys than girls living on the street.

The number of street children in the country, based on guesstimates from Cape Town and Johannesburg, is placed at 9 000 between the ages of 7 and 18, with the majority aged 13-16. Of these one third are 'of the street', while the rest are 'on the street' i.e. working but not living there. Only a small proportion of these children are formally orphans or homeless, but many are functionally homeless because of cruel and disinterested parents or step-parents, alcoholism, cruelty, eviction.

Homeless children – both girls and boys – are vulnerable to rape and to being forced into survival sex for money or protection. They are also used by drug dealers to 'carry' drugs. Many of their other income-earning activities are very marginal. Among Cape Town street people - both adults and children – recycling and casual jobs together account for 44% of the total means of survival.

#### **5.4.5 Refugee and immigrant children**

Another type of work that needs particular attention is the work performed by children refugees and immigrants. Available evidence suggests that it is boys more than girls, particularly insofar unaccompanied minors are involved.

The Refugees Act says that refugee children should first go to the Child Commissioner who should arrange asylum with Home Affairs. At this stage even sympathetic Commissioners seem unaware of this Act and deal with children under the Child Care Act. Home Affairs officials are also unaware of the provisions and there are reports from refugee reception offices that unaccompanied minors are told that they cannot be helped because they are unaccompanied. Many less fortunate children are routed through prison rather than through the Commissioners or Home Affairs.

For refugee children who manage to remain in the country, there are further problems in relation to schooling. For example, some schools are resistant to accepting refugee children pleading lack of resources to deal with non-English speakers.

The impact of refugee status can be long-lasting. For example, many of the children working on farms in Mpumalanga and Northern Province are the children of former Mozambican refugees, who have been without formal status in the country since they arrived in the mid-eighties.

#### 5.4.6 Out-of-school children

South Africa has high rates of enrolment in school, although these high figures mask sometimes-worrying levels of non-attendance. In the SAYP the majority of children who were not attending school cited poverty or the inability to afford school as the reason. However, of these only 6% of boys and 1% of girls aged 5-17 said that work kept them out of school. Also, it appears as though parents do not often discriminate against girl children regarding access to education, in that both the proportion and absolute number of girl children who attend school is marginally higher than the case of boys.

A more widespread area for concern in South Africa is that of over-age children in school. It is estimated that 26% of all children are 'over-age' for their grade. The percentage increases to 56% in the higher grades of secondary schooling. These children are most likely to be 'pushouts' from the education system, and will often seek work under circumstances where they have few skills to offer and very limited bargaining power. Research commissioned by the Gauteng Department of Education suggests that out-of-school children generally come from even poorer households than those with an average level of income.

Once a child has dropped out of school, whether for work, pregnancy, imprisonment or other reasons, it is often very difficult for them to return.

#### 5.4.7 Other circumstances increasing vulnerability

Violence and isolation are also indicators of vulnerability. Violence in and of itself constitutes harm. Where work is done in conditions of isolation, as for example with sexual exploitation and some forms of domestic work, we need to make extra efforts to see that the children concerned are heard and seen.

### 5.5 Health and safety at work

Health in the sense of physical and mental well-being is clearly an area which needs to be considered when defining 'harm'. Unfortunately, much of the literature and most of the initiatives in respect of occupational health focus on the formal sector, or at best market work. There is very little knowledge in respect of non-market work although, where activities are similar, it is likely that children doing such work would face health hazards that are similar to those doing economic activities of a comparable nature.

The limited data in the SAYP suggests that in economic work, exposures relate mainly to temperature, hours of work, and dust. Almost all hazards were reported slightly more frequently by boys than girls and more often by older children (15-17). Nonetheless, over 20% of working children under ten years reported high temperatures, although natural climatic conditions do not necessarily constitute a hazardous working environment if the child is well insulated against cold weather or well protected against the heat and is well hydrated. Areas highlighted in other past research include exposure to pesticides and physical trauma (farm workers), petrol fumes and lead (newspaper vendors and backyard battery recycling).

#### 5.5.1 Hazards related to particular occupations and industries

Internationally, there are some areas where occupational hazards to children are well recognised:

- Children involved in the *manufacturing sector* are usually concentrated in small-scale workshops where enforcement is poor. Where manufacturing work is sub-contracted to workshops or home production, the possibility of controlling exposures through regulatory processes is further reduced.
- In *retail* work, young people may be required to work with hot grease, slicing machines and electrical equipment. Retail work often involves long hours and nightwork. For shift workers there are dangers related to transport and physical safety when travelling to and from work at unsociable hours.
- The *construction* sector is notorious for its high injury and mortality rate for adult workers. Heavy physical work, awkward posture and repetitious movements were found to be common in children working in the

construction industry in Brazil.

- *Agriculture* is one of the most hazardous industrial sectors, associated with long and atypical hours of work, and seasonal demand for intensive labour. Hazards include farm machinery; ergonomic stresses; hazardous chemicals; climatic hazards such as cold, rain and heat; electrical hazards, and biological hazards arising from farm animals. Many of these are present also in subsistence agriculture, although certain technological hazards will be less because subsistence farmers have fewer resources than their commercial colleagues.
- Children involved in *commercial sex* work face violence, the risks of sexually transmitted and other diseases, as well as psychological and emotional trauma.
- Children in paid *domestic service* are often subject to long hours, night work, physical and emotional isolation and psychosocial stresses. Children in these vulnerable positions may also be subject to sexual exploitation.
- *Children working on the streets* will be exposed to street violence, adverse climatic conditions, traffic injuries and physical and sexual abuse.
- Children who *scavenge* waste dumps will be exposed to dust, infective agents, injuries from rusty or sharp objects and ergonomic hazards.

### 5.5.2 Children's particular vulnerability to occupational hazards

Children may be particularly vulnerable to a number of hazards by virtue of their biological status and behavioural patterns. Very young children have higher body surface areas to mass ratio, which will increase the likelihood of absorption for skin-permeable chemicals. Childhood organ development may also be incomplete, resulting in children metabolising or excreting chemicals differently to adults.

The effect of chemicals that affect hormones can be particularly dangerous because of the stage of their neurological and reproductive development. Children may have increased risk for cancer from certain exposures because rapidly dividing cells are more vulnerable to carcinogenic impacts.

Machinery and work equipment, including protective equipment, are usually not designed for young people. Ergonomic hazards such as repetitive movements and awkward postures may result in significant injury to developing ligaments and bone-growth plates.

Children are also thought to be more sensitive to psychological abuse, and more likely to suffer long-term consequences. Young girl workers may have particular biological and social vulnerabilities.

## 5.6 Why do children do work that is harmful?

In order to design effective policy, we need to understand why children engage in work that is harmful, and why adults and the children involved sometimes condone this work.

The first critical question is whether the family can survive if the child does not work. We would expect more children to work

- doing unpaid work where a family need more labour because it has little household infrastructure (especially running water or electricity), many children, its own productive activities, and all the adults engaged in long hours of work or unable to work because ill, and
- doing paid work where the adults in a family are unemployed or earn little.

A further factor affecting family decisions is the availability of and attitudes towards education. If children have access to education and if those with power in the family believe that education will give them better careers and lives, families will often sacrifice to keep them in school.

Decisions about child work are also heavily influenced by the perspectives of both the family and community on:

- the importance of work in educating and socialising children. Sometimes views may differ in respect of girl and boy children; and
- the kind of work and pay that is appropriate for children.

These perspectives sometimes reflect economic realities, but also result from long-standing practices and beliefs.

Strategies addressing child labour need to take into account the main reasons why children engage in a specific form of child labour. For example, children sometimes work despite high levels of adult unemployment. This indicates that the reason for such children working is not related to a shortage of labour.

## 5.7 A need to prioritise

Both international instruments and common sense dictate that initiatives should focus first on those examples of child labour that are most serious. In determining the seriousness of a particular form of child labour, we need to consider both the degree of harm and the number of children involved.

The following matrix of prioritisation (Table 5) may assist in prioritising areas for action. It suggests seven broad categories of and children involved to be considered.

**Table 5: Prioritisation matrix**

PRIORITISATION MATRIX		
Level of Harm	Many children	Few children
Very harmful	A	B
Moderately harmful	C	D
Low level harm	E	F
Not likely to be harmful	G	

Priority Level A in the Prioritisation Matrix is the very harmful labour in which many children are involved, and Priority Level B is very harmful labour in which fewer children are involved. Both of these – but particularly A – need the most urgent attention and the greatest allocation of resources.

Priority Levels C and D comprise those forms of child work or activity in which respectively many and few children are involved, and which expose children to a moderate level of harm. Priority Level C needs to be addressed with more vigour than Priority Level D, but should not consume resources at the expense of Priority Levels A and B.

Priority Levels E and F are those forms of child work or activity in which respectively many and few children are involved, and which are not likely to be very harmful. These are the lowest priority for action. Again, E is at a higher level than F, but not at the expense of Levels A to D.

Priority Level G are those forms of child work or activity that are not likely to be harmful. No action is necessary here, apart from surveillance to ensure that, in fact, these activities are not or do not become harmful.

This matrix is somewhat simplistic. For example, different agencies are usually responsible for different actions and areas and they would obviously decide on prioritisation within their own area of activity. For this and other reasons,

addressing a 'lower' level of priority need not mean taking resources away from a 'higher' level. However, the matrix should assist in focussing resources in a context where resources are limited.

## Chapter 6: Principles and discussion points

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In this section we first explore some of the critical issues that need to be debated during the consultation phase that will follow the publication of this report, including which forms of child labour are the most hazardous and detrimental in South Africa. Then we discuss the proposed principles in designing a child labour action programme. These provide a point of departure. Lastly, we list the key elements that should be addressed in the action programme.

### 6.1 Some of the issues for debate

The following issues should be included in those to be debated during the consultation phase that will follow the publication of this report.

#### 6.1.1 When is work detrimental to children's development?

Work in and of itself is not necessarily harmful to a child. Discussion is necessary on what activities harm or potentially harm children, and should be addressed in a child labour action programme.

#### 6.1.2 What role for cultural values in assessing child work?

In the SAYP most children gave their main reason for working as needing to assist their families. This indicates an expectation on and by children to contribute to the household. This expectation reflects cultural values as well as levels of poverty in communities where children live and work.

This expectation is echoed in the provisions in the African Charter on the Rights and Welfare of the Child, which places various responsibilities upon children. The extent of children's responsibilities towards their families and communities, and the role of work in socialising children and skilling them for future work, should be debated.

#### 6.1.3 How to prioritise?

The best way to prioritise the different forms of child work that are harmful or potentially harmful should be debated. The method or prioritisation proposed in Chapter 6 could be used as a point of departure, with the different forms categorised both in terms of the level of harm and the number of children affected.

#### 6.1.4 What is the appropriate approach to prohibition?

Prohibition of certain work-related activities by children will form part of a child labour policy. However, there are different views on which kinds of activities should be prohibited. It is also clear from the analysis of child work in South Africa that the most widespread forms of child work, such as helping in subsistence farming, cannot be addressed effectively through statutory prohibitions.

Two main approaches have been followed elsewhere in addressing child work:

- prohibition of all forms of work which may possibly harm children. This is imposed without any option of allowing work by children falling in these categories where there are no indications that it will harm them; and
- a more nuanced approach through prohibition of the forms of work that pose high risk to the children involved, combined with regulation of other work by children and more developmental interventions.

Proponents of a total prohibition argue that harmful or potentially harmful work by children is wrong in principle. They add that it is better to send a clear message that such work is wrong. In addition, because of limits in enforcement capacity, a simple rule makes enforcement easier for labour inspectors and others.

The main arguments of those in favour of a more nuanced approach are that this will avoid such work being driven underground as soon as effective enforcement starts, that it allows the identification and addressing of forms of child work that are truly harmful, exploitative or oppressive, and that it recognises that there are some forms of work that, even if not always acceptable, are at least functional and sometimes even beneficial to the children and families directly involved given the socio-economic circumstances of the community in question.

### **6.1.5 Should the emphasis be on protection or on enhancement of rights?**

Linked to the above debate is the issue of whether the emphasis should be on protection (often linked to prohibition), or on the enhancement of children's rights. Traditionally, the approach regarding work by children has been protection. In some areas, however, the move is towards enhancing rights.

Some children want to do certain kinds of work or will be worse off if not working. There is a view that these children should have some choice and control as to whether they work and what the limitations on their work should be, or the extent to which they should be protected within that work, for example through minimum standards for working conditions.

Others argue that many children simply do not have the power to exercise rights in the place where they work, whether within the families or households where decisions are made or elsewhere where they perform the work. Further, some forms of work are so obviously harmful that virtually everybody would agree to try to protect children from any engagement in them.

### **6.1.6 What is the range of policy strategies or tools available?**

A whole range of policy strategies and tools need to be considered when seeking the most appropriate ones to address the problem of work that is likely to be detrimental to children. Such strategies will be identified and workshopped during the consultation that will follow the publication of this green paper.

Tools or options may include:

- Welfare services and grants
- Policies on school attendance
- Educational work with parents on the dangers of detrimental forms of child work
- Regulation of school labour
- Measures to improve the position of adult women
- Extension of infrastructure at a level that reduces the need for fuel and water gathering
- Subsidies for electric and paraffin stoves, and for paraffin
- Training of health personnel to recognise occupational diseases/damage in children
- Improving reporting mechanisms
- Leveraging of community support, e.g. through teachers, nurses, churches
- Improved provision of rural credit, possibly linked to conditions such as school attendance by children of beneficiaries.
- Establishment of community dispute settlement mechanisms to help children facing oppressive levels of family labour.

This list is obviously not exhaustive, but may assist interested parties in starting to think about and assess the range of policy options.

## **6.2 Principles of a child labour action programme**

### **6.2.1 A need for social dialogue**

Policy development must start with social dialogue on when work is harmful or abusive. Most people will agree that the activities defined by the ILO as ‘the worst forms of child labour’ are harmful. However, there are differing views as to whether certain other work-related activities are harmful. Some argue that some work can be beneficial and sometimes even essential, for a child’s development.

Furthermore, dialogue is the preferred route in South Africa for drawing up a programme of action and related policy and legislation. However, one should keep in mind during debates that dialogue is difficult where, as is the case with child work, many of those most directly involved have limited voice and power in those debates.

### **6.2.2 Input by children**

Children, as those most affected by the issue, need to be involved in the policy process. This is necessary both so that their situation, as experienced by themselves, is taken into account. The South African government gained some experience in consulting children during the policy processes on the child care law coordinated by the South African Law Commission.

Beyond broad policy, the children directly affected by particular issues must be consulted before steps are taken. This consultation refers to times when particular children need to be asked about their own, personal situation. This is therefore a different imperative to consulting children, as a group, about policy – as discussed above. Policies must, for example, recognise children’s own coping strategies in the face of difficulties and build on their resourcefulness while at the same time developing programmes and interventions aimed at providing proper protection and provision of services. In this regard, the CRC and the African Charter state that children who are capable of forming their views should be asked their own feelings regarding matters affecting them.

### **6.2.3 Act in child’s best interests**

Care should be taken that, in case of any action related to child labour, the child’s best interests are given topmost priority, as provided for in the Constitution and international instruments.

Children should be protected from harmful work. However, they may sometimes be worse off if they are not allowed to do some work, especially if no viable alternatives are available. This is especially so in very poor households, where children’s contribution to income or to subsistence farming may be important. Furthermore certain kinds of work may be beneficial for children in as far as they may give them skills for later life, provided that certain safeguards are in place.

These kinds of factors should be taken into account when deciding what action to take regarding individual children. After considering the circumstances of the child and its family and the kind of work involved, the most appropriate form of action should be identified.

### **6.2.4 Need for prioritisation**

The programme of action needs to address all forms of work by children that are likely to harm the health, safety or morals of children, or are detrimental to their education. South Africa has already committed itself, by its ratification of the Conventions on the Worst Forms of Child Labour, to prioritise the specified worst forms of child labour for action. It is also essential that the programme of action identify the other forms of child work that should be prioritised as, with limited resources, the country needs to take action first, and urgently, on the very worst forms.

### **6.2.5 Learn from others where appropriate**

South Africa needs to develop an indigenous programme that suits the local context, but that borrows appropriately the best practices from other countries.

### **6.2.6 Commitment of the necessary resources**

It will be very difficult to address key areas of child labour without adequate resources being committed and political commitment at a high level of government to the programme of action. It is therefore an underlying principle of such a programme that the necessary resources will be committed once key areas have been identified.

### **6.2.7 A programme of action for all stakeholders**

While the programme of action should specify the responsibilities of all relevant government departments in addressing child labour, it should also identify the areas of responsibility and tasks of other stakeholders. This should include employer and employee organisations, NGOs and grassroots organisations and individuals. The key actors are those in the child's environment, such as parents, teachers and health workers. In specifying the roles, the programme should draw on the existing strengths inherent in our society.

The government alone has the capability to exert a sufficiently powerful influence on national values and opinion and to mobilise the financial resources and institutional instruments to make an impact on the child labour problem. It is therefore appropriate that the government leads the programme of action on child labour. Which part of government coordinates activity will depend on the nature of the interventions decided upon.

### **6.2.8 Prevention is better than cure**

Prevention is better than cure. The programme of action on child labour should therefore emphasise measures to ensure that children do not start doing harmful work-related activities, where they are not yet involved in such activities. However, it remains essential for the programme of action to address instances where children are detrimentally affected by their work.

### **6.2.9 Support existing initiatives rather than duplicating effort**

In drafting a child labour action programme, care should be taken that existing initiatives which will aid the fight against the priority forms of child labour be supported. Unnecessary duplication should be avoided. At the same time it must be ensured that existing programmes that may impact positively on child labour are sensitive to the problem. There are, for example, many policy initiatives that may impact on it, such as those regarding social security, justice, education and so on. The potential effect of such policies on child labour is often not considered.

### **6.2.10 Need for intersectoral approach**

Child labour cannot be addressed by different government departments and other stakeholders in isolation from each other. It requires an intersectoral approach, and effective coordination between different government departments and between different spheres of government. For example, a child labour complaint investigated by the Department of Labour may also require the intervention of the department responsible for welfare in a province, and of the local school.

### **6.2.11 The need for ongoing learning**

While the SAYP has given much insight into the extent and nature of children's work in South Africa, many issues are still unclear. However, we already know enough about the dangers of certain kinds of work to take

immediate steps. We need simultaneously to engage in more research to improve our knowledge and understanding. We will also learn through the process of implementing initiatives.

### **6.2.12 The programme of action must be communicated effectively**

The programme of action must include measures to ensure effective communication of its key elements. As societal values are important in determining whether parents and others condone child labour, the communication programme will need to extend beyond government and policy makers. The communication programme should be linked into broader campaigns regarding the rights of children. Messages need to be focussed and targeted so as to reach specific audiences.

## **6.3 Key elements of a programme of action**

Taking into consideration the above principles and issues for debate, the following key elements should be addressed in a child labour action programme:

- Establishing what kinds of work-related activities of children place them at risk and should be regarded as child labour. This should include looking at the characteristics of children that make them more vulnerable, such as:
  - ↑ Age, especially very young children working long hours under hazardous conditions;
  - ↑ Girls, especially where the work is hidden and they suffer from detrimental cultural practices; and
  - ↑ Children without adult care givers, such as those living on the streets or child-headed households (e.g. where adults are seriously ill or have died due to AIDS).
- To assess the seriousness of that risk in different circumstances, including which forms of work are the most hazardous and should be stopped as a matter of priority;
- To identify the extent and causes of these different forms of child work and child labour in South Africa.

AND THEN TO identify appropriate interventions to address these problems:

- How can the most hazardous forms of child labour be eradicated immediately?
- How to prevent children from doing work that is detrimental, e.g. if bad for education?
- How to control and monitor the participation of children potentially at risk?
- How can circumstances be improved for children spending excessive time fetching fuel and/or water, or carrying heavy weights in the process?
- How to rehabilitate children who have been removed from detrimental child labour?
- How can one prevent strategies from driving child labour 'underground' or to other areas where it is just as or even more hazardous or exploitative?

AND LASTLY to consider the following:

- Prioritisation of the different forms of action.
- What are the responsibilities of all actors, including coordination?
- What are the targets and indicators of success?
- What are the required human and financial resources?
- How should the actions programme be communicated to the public in general and children in particular?

Table 6: Laws available to address elements of child work and government departments responsible

Annexure A

LAWS ( & Department responsible)	The listed statutes regulate aspects of child work to the extent indicated in the following circumstances:					
	Child working as employee (e.g. for pay in cash / kind, help in family business)		Child working as independent contractor or child providing services (e.g. washing cars) — i.e. not working as an employee	Child doing sex work or posing for pornography	Child engaged in other illegal activities that could be considered 'work'	Child doing excessive chores at home (incl. activities sometimes considered economic, e.g. fetch wood/water, working on family's plot; collecting food), where within definition of 'child labour'.
<b>Basic Conditions of Employment Act (DOL)</b>	Prohibits employment of children in circumstances described above. Over 15 — prohibited work to be further specified through regulations		Not covered (unless it constitutes 'forced labour')	Generally not covered by BCEA. Covered if the child works as an employee; or where work constitutes 'forced labour'.		Not covered (unless it constitutes 'forced labour')
<b>Child Care Act (DOW)</b>	Temporarily available (until repeal of s 52A). Enforcement mechanisms weaker than BCEA.	S 52A does not cover children over 15.	Enforcement through SAPS.	Can constitute ill-treatment (s 50)..	Remedial action — where work constitutes ill-treatment (s 50)	Where this constitutes ill-treatment (s 50)
<b>SA Schools Act (DOE)</b>	If child cannot go to school because he / she is kept at work — person keeping child from school can be prosecuted.	Not covered by compulsory schooling (covered if not yet completed 9 <sup>th</sup> grade or turned 15 in that year)	If a child, who is subject to the compulsory schooling provisions, does not attend school steps can be taken. This can include the prosecution of the child's parents. It is also a criminal offence for any person to prevent such a child, without just cause) from attending school (e.g. because he / she is required to be at work during school hours).			
<b>Films and Publications Act (DOJ &amp; DOSS)</b>	Involvement in pornography, as employee (difficult to enforce)		Involvement as independent contractor.	Pornography: Offence (s 27(1)) - not so easy to enforce.	-	-
<b>Sexual Offences Act (DOJ &amp; DOSS)</b>	Prostitution; statutory rape (sexual intercourse with a girl under 16 years old, even with her consent).			For prosecution of brothel owners etc. Not easy to use. Excludes some sexual exploitation.	-	-
<b>Compensation for Occupational Injuries and Diseases Act (DOL)</b>	Where child is an employee, and is injured in an accident arising out of and in the course of his employment, or contracts an occupational disease.		Not covered	Where child is an employee, and is injured in an accident arising out of and in the course of his employment, or contracts an occupational disease.		Not covered.
<b>Occupational Health and Safety Act (DOL)</b>	Health and Safety at work (if work / circumstances are covered by the Act.)					Not covered
<b>Unemployment Insurance Act (DOL)</b>	Where child is unemployed, on maternity or died, after working (if child fell within the definition of a 'contributor')		Not covered	Where child is unemployed, on maternity or died, after working (if child fell within the definition of a 'contributor')		Not covered
<b>Prevention of Family Violence Act (DOJ &amp; DOSS)</b>	Compulsory reporting to a police officer, social worker or commissioner of child welfare, where the child has been ill-treated or suffers from an injury that appears to have been inflicted deliberately.					
<b>Other provisions in Criminal law (DOL &amp; DOSS)</b>	Applicable whenever a criminal offence is committed, either by the child him / herself or by another person using the child.				For prosecution	-
<b>Constitution</b>	If the other laws do not protect the child's constitutional rights effectively: one can use the Constitution's own enforcement mechanisms (see s 8(3), read with s 38).					

- DOL = Department of Labour
- DOE = Departments responsible for Education (national & provincial).
- DOJ = Department of Justice
- DOSS = National Department of Safety & Security
- DOW = Departments responsible for Welfare (national & provincial).

# Literature Survey

By Debbie Budlender and Dawie Bosch

References of documents drawn upon in drafting the discussion document, or than may assist in the consultation process and drafting of a policy paper on Child Labour. A copy of the literature survey with summaries on most of the publications is available on request.

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