

# South Africa

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

The Government of South Africa has been a member of ILO-IPEC since 1998.<sup>2322</sup> In 1996, in response to a request from the South African Department of Labor (SADOL), ILO-IPEC began a program supporting SADOL and Statistics South Africa with funding from USDOL to implement a comprehensive national survey on the nature and extent of child labor in South Africa.<sup>2323</sup> In 1999, the survey was conducted with technical assistance from ILO-IPEC's SIMPOC.<sup>2324</sup> USDOL is also funding a national program to eliminate child labor in South Africa.<sup>2325</sup>

In 1997, the government established a national stakeholders forum, the Child Labor Intersectoral Group (CLIG), which coordinates and monitors services provided by the government and NGOs, raises awareness about child labor and the enforcement of child labor laws, and trains labor inspectors.<sup>2326</sup> The CLIG adopted the South African Child Labor Action Program, which was developed in February 1998 and calls for the withdrawal of children from child labor and their integration into formal education.<sup>2327</sup> Other ministries and NGOs have taken an active role in child labor initiatives as well.<sup>2328</sup> The Department of Welfare is a member of the CLIG and administers

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<sup>2322</sup> See *Implementation of the Convention on the Rights of the Child: South Africa's Supplement to the Initial Country Report* (Pretoria: Office of the President, 2000) [hereinafter *Implementation of the Convention*], 56.

<sup>2323</sup> U.S. Embassy–Johannesburg, unclassified telegram no. 655, June 2000 [hereinafter unclassified telegram 0655].

<sup>2324</sup> Statistics South Africa, *Child Labor in South Africa: Surveys of Activities of Young People 1999* (Draft), tables [hereinafter *Surveys of Activities of Young People 1999*], at <http://www.ilo.org/public/english/standards/ipecc/simpoc/southafrica/report/index.htm> on 12/18/01.

<sup>2325</sup> ILO-IPEC Programme, *National Program to Eliminate Child Labor in South Africa*, project document (Geneva: ILO, 2000).

<sup>2326</sup> Before and after promulgating the BCEA, the government coordinated ad hoc meetings with stakeholders involved in child labor issues. The CLIG formally developed from these ad hoc meetings. SADOL convenes the CLIG, and there are 10 CLIG offices located in the provinces. See *Implementation of the Convention*, 56. See also Network Against Child Labor, *Documents to be Discussed at the Meeting of 17 January 2000* (Johannesburg: Department of Social Services and Population Development, 2000) [hereinafter Network Against Child Labor], and Fatima Bhyat, Director of Minimum Standards, South Africa Department of Labor, interview with USDOL official, July 26, 2000 [hereinafter Bhyat interview].

<sup>2327</sup> “Background Section” in Network Against Child Labor. See also unclassified telegram 655 and Bhyat interview.

<sup>2328</sup> The government has developed a close working relationship with several NGOs to address the problem of child labor. The Network Against Child Labor (NACL) is made up of about 50 member organizations and was established to feed into structures set up by the CLIG. The aim of the NACL is to end the economic exploitation of children through their labor by awareness raising, advocacy, policymaking, research, networking, and legal and intersectoral interventions. Other NGOs work with specialized child protection units of the police to remove children from the streets and provide them with a safe, nonexploitative environment. See “Network Against Child Labour (NACL): Background” in Network Against Child Labor. See also unclassified telegram 655.

social safety net programs that help prevent children from entering the workforce.<sup>2329</sup> The Minister of Welfare also set up a task force to develop a plan of action against the sexual exploitation of children,<sup>2330</sup> and the Government of South Africa created training for the police and judiciary on the commercial sexual exploitation of children.<sup>2331</sup>

Since the transition to a democratically elected government in 1994, South Africa has engaged in fundamental reforms designed to increase access to and the quality of education by reforming expenditure patterns and reallocating funds to poorer provinces and to predominantly black schools.<sup>2332</sup> The National Curriculum 2005 Framework helps to bridge the gap in educational opportunities between privileged and underprivileged children by providing learning support materials to schools in a more equitable fashion, and by standardizing the content of training courses for teachers in all districts.<sup>2333</sup>

## **Incidence and Nature of Child Labor**

In 1999, a child labor survey conducted by the South Africa Statistical Agency, in cooperation with ILO-IPEC, estimated that 36 percent of children between the ages of 5 and 17 in South Africa were working.<sup>2334</sup> Child labor occurs most often in the rural agricultural sector and the informal economy. Children work in commercial agriculture and on subsistence farms,<sup>2335</sup> as

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<sup>2329</sup> “Submission to the Departmental Committee on Developmental Social Services” in Network Against Child Labor at 3.

<sup>2330</sup> Unclassified telegram 655.

<sup>2331</sup> *Country Reports on Human Rights Practices for 2000—South Africa* (Washington, D.C.: U.S. Department of State, 2001) [hereinafter *Country Reports 2000*], Section 6d, at <http://www.state.gov/g/drl/rls/hrrpt/2000/af/index.cfm?docid=788>.

<sup>2332</sup> In 1998, the government announced new funding norms to further these goals. The new procedures require education departments to direct 60 percent of their non-personnel and non-capital recurrent expenditures toward the most deprived 40 percent of schools in their provinces. From 1991 to 1996, the government increased its expenditures on education by 89 percent. After 1996, government expenditures on education continued to increase but at a much lower rate. In 1995-1996, the total expenditure on education was 21.7 percent of the total government budget and 6.7 percent of GDP. The estimated total expenditure in 1999-2000 was 21.3 percent of the total government budget and 6.6 percent of GDP. See Government of South Africa, Department of Education, *Education for All: The South African Assessment Report* (Pretoria, 2000) [hereinafter *The South African Assessment Report*], 26, 27, 32. See also *Country Reports 2000* at Section 5.

<sup>2333</sup> *Implementation of the Convention* at 45.

<sup>2334</sup> This statistic includes children who work at least 3 hours per week in economic activities (gathering wood and/or water; performing unpaid domestic work; or performing economic activities for pay, profit, or family gain), 5 hours per week in school labor (performing school maintenance, cleaning, or performing school improvement activities), and 7 hours for household chores (working in the family home where the child’s parent, grandparent, or spouse is present). See “Key Findings: The definitions and extent of child labor” in *Surveys of Activities of Young People 1999*.

<sup>2335</sup> Unclassified telegram 655.

well as on small farms planting and harvesting vegetables, picking and packing fruit, and cutting flowers.<sup>2336</sup> Children are also found working as domestic servants in rural areas, especially on farms. Many of these children come from migrant populations.<sup>2337</sup> In urban areas, children work as street hawkers, especially around taxi stands and where public transportation is used.<sup>2338</sup> There are reports that commercial sexual exploitation of children is growing. As South Africa becomes an increasingly popular tourist destination, cities like Cape Town and Durban are becoming destinations for tourists seeking sex with minors.<sup>2339</sup> South Africa is a destination country for trafficking in children for the purposes of prostitution.<sup>2340</sup>

The Constitution states that every person has a right to basic education.<sup>2341</sup> The South African Schools Act of 1996 asserts that everyone has a right to access basic and quality education and may not be discriminated against on the basis of race. The Act makes school compulsory for children between the ages of 7 and 15, or a total of nine years,<sup>2342</sup> and prohibits public schools from refusing admission to any child on the grounds that the parent is unable to pay or has not paid school fees.<sup>2343</sup> The National Education Policy Act of 1996 also prohibits schools from denying admission or discriminating against a student for not paying school fees.<sup>2344</sup> There are additional costs, however, such as for transportation and school uniforms that prevent many children from

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<sup>2336</sup> Ibid.

<sup>2337</sup> Ibid.

<sup>2338</sup> Ibid.

<sup>2339</sup> Child prostitutes are particularly sought after because they are believed to be free of disease or because of the belief that having sex with a virgin cures diseases such as HIV/AIDS. Children are also allegedly exploited sexually in return for the liquidation of family debts or to raise income for the family. See Swedish International Development Agency, *Looking Back, Thinking Forward: The Fourth Report on the Implementation of the Agenda for Action Adopted at the First World Congress against Commercial Sexual Exploitation of Children in Stockholm, Sweden, on 28 August 1996: 1999-2000* (Bangkok: ECPAT International, 2000) [hereinafter *Looking Back, Thinking Forward*], Section 3.4. See also *Country Reports 2000* at Sections 5, 6c, and South Africa National Council for Child and Family Welfare, *Report on the Commercial Sexual Exploitation of Children in South Africa*, June 9, 2000, 11.

<sup>2340</sup> *Country Reports 2001* at Section 6f.

<sup>2341</sup> From 1948 until the abolition of apartheid and resulting change in government policy (including the passage of a new Constitution), a succession of apartheid-driven policies resulted in social inequalities along racial lines, and black South Africans particularly were deprived of opportunities to access basic social services, including education. See Government of the Republic of South Africa, Constitution of the Republic of South Africa, Act 200 of 1993 [hereinafter *Constitution of the Republic of South Africa*], Section 29(1)(a), January 25, 1994. See also *The South African Assessment Report* at 6-10.

<sup>2342</sup> Government of the Republic of South Africa, South African Schools Act 84 of 1996, Section 3(1), November 6, 1996.

<sup>2343</sup> Ibid. at Section 5(3)(a).

<sup>2344</sup> Many schools continue to face significant infrastructure and other problems that have a negative impact on the quality of education. See *Government Gazette* 19377, "Admission Policy for Ordinary Public Schools," National Education Policy Act 27 of 1996, as promulgated by General Notice 2432 of October 19, 1998, Section 10.

attending school.<sup>2345</sup> In 1997, the gross primary school enrollment rate was 96.5 percent, and the net primary enrollment rate was 87.1 percent.<sup>2346</sup> The gross enrollment rate was higher for boys (98.3 percent) than for girls (86.3 percent), and the net enrollment rate was relatively equal between boys and girls (87.9 percent and 86.3 percent, respectively).<sup>2347</sup> Primary school attendance rates are unavailable for South Africa. While enrollment rates indicate a level of commitment to education, they do not always reflect children's participation in school.<sup>2348</sup>

## Child Labor Laws and Enforcement

The BCEA sets the minimum age of work at 15 years.<sup>2349</sup> For children over age 15 and no longer subject to compulsory schooling, the BCEA allows for the Minister of Labor to set additional prohibitions or conditions on their employment.<sup>2350</sup> It also prohibits people from employing a child in work that is "inappropriate" for the child's age or that places at risk the child's well-being; education, physical, or mental health; or spiritual, moral, or social development.<sup>2351</sup> The Constitution and the BCEA prohibit all forms of forced labor.<sup>2352</sup> The Constitution provides that every child, defined as a person under 18 years of age, has the right to be protected from exploitative labor practices. It also protects children from performing work or providing services that are inappropriate for that child's age or risk the child's well-being. Additionally, it prohibits the use of children under the age of 18 in armed conflicts.<sup>2353</sup> The Child Care Act and the South Africa Schools Act make it an offence to prevent a child under 15 years of age from attending school in order to work, and both may be used to enforce minimum age laws among children who are engaged in employment in the informal sector.<sup>2354</sup>

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<sup>2345</sup> U.S. Embassy–Johannesburg, unclassified telegram no. 1245, October 2001 [hereinafter unclassified telegram 1245].

<sup>2346</sup> UNESCO, *Education for All: Year 2000 Assessment* (Paris, 2000) [CD-ROM].

<sup>2347</sup> *Ibid.*

<sup>2348</sup> For a more detailed discussion on the relationship between education statistics and work, see *Introduction* to this report.

<sup>2349</sup> Republic of South Africa, Basic Conditions of Employment Act, Act No. 75 (Cape Town: Creda Communications for the Government Printer, December 1997) [hereinafter Basic Conditions of Employment Act], Sections 43(1)(a)(b), 43(3), 44(2), 93.

<sup>2350</sup> *Ibid.* at Section 44(1).

<sup>2351</sup> *Ibid.* at Section 43(2)(a)(b).

<sup>2352</sup> In general, the BCEA does not apply to informal work unless it constitutes forced labor. See *Ibid.* at Section 48. See also Constitution of the Republic of South Africa at Section 13.

<sup>2353</sup> Constitution of the Republic of South Africa at Section 28(1)(e)(f)(k).

<sup>2354</sup> Government of the Republic of South Africa, Child Care Act 74 of 1983 [hereinafter Child Care Act 74 of 1983], Section 52A(5), June 15, 1983, 12, 14. See also ILO-IPEC, "Green Paper on a National Child Labour Action Program" (Draft) (Geneva, October 20, 2000).

Sexual Offences Act No. 23 of 1957 makes prostitution a criminal offense.<sup>2355</sup> However, in 1999, the government passed legislation to amend the Child Care Bill and prohibit the commercial sexual exploitation of children in a more comprehensive manner than the Sexual Offences Act of 1957.<sup>2356</sup> Trafficking is not specifically prohibited by law.<sup>2357</sup>

The passage of the BCEA made SADOL the primary government entity responsible for monitoring compliance with and enforcing South Africa's labor laws, including provisions on child labor. SADOL effectively enforces the minimum age law in the formal nonagricultural sector but less effectively in other sectors.<sup>2358</sup> The maximum penalty for illegally employing a child, according to the BCEA, is three years of imprisonment.<sup>2359</sup> Enforcement of laws against child sexual exploitation appears lax, and there are problems in investigating, charging, and sentencing offenders.<sup>2360</sup> South Africa ratified ILO Convention 138 on March 30, 2000, and ILO Convention 182 on June 7, 2000.<sup>2361</sup>

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<sup>2355</sup> Because the Sexual Offences Act No. 23 of 1957 makes prostitution an offense regardless of age, children who are victims of commercial sexual exploitation can be arrested for prostitution. The approach of the Office of the National Director of Public Prosecutions, however, is to refer such matters to a children's court to determine whether the child is in need of care and to pursue the prosecution of persons exploiting children. In addition, the South African Law Commission project committee on sexual offenses is drafting a new Sexual Offences Act, which reportedly recommends a complete prohibition on the commercial sexual exploitation of children. *See* Child Care Act 74 of 1983 at 15.

<sup>2356</sup> Government of the Republic of South Africa, Child Care Amendment Bill (B 14-99), Section 50A.

<sup>2357</sup> U.S. Department of State, *Trafficking in Persons Report*, July 2001, South Africa [hereinafter *Trafficking in Persons Report*], 68.

<sup>2358</sup> There are approximately 450 labor inspectors for the entire country. According to an SADOL report, there have been few child labor cases. *See* unclassified telegram 1245; *Country Reports 2000* at Section 6d; and South Africa Department of Labor, "Integrated Labour Inspection Checklist," August 2000.

<sup>2359</sup> Basic Conditions of Employment Act at Sections 43(1)(a)(b), 43(3), 44(2), 93.

<sup>2360</sup> *Looking Back, Thinking Forward* at Section 3.4.

<sup>2361</sup> ILO, ILOLEX database: South Africa, at <http://ilolex.ilo.ch:1567/english/newratframeE.htm> on 11/19/01.

*NOTE: Hard copies of all Web citations are on file.*