

THE NETWORK AGAINST CHILD LABOUR

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Dear Mr. Fukula,

Re: Parliamentary Hearings on the Children's Bill

The Network Against Child Labour (NACL) is a not for profit organisation, it was established in 1990. It consists of organisations actively working to eliminate child labour in South Africa. We believe that children must be free to learn and play to develop to their full potential. Please find below a detailed submission on the Children's Bill. We would also like to request an oral slot to present our submission to the Portfolio Committee on the 12th of August 2004.

Child Labour is work by persons under eighteen years, which is exploitative, hazardous or otherwise inappropriate for their age, or detrimental to their schooling or their social, physical or moral development. It includes chores in the home or work for the family if these are excessive or unsuitable. Poverty plays a crucial role in driving children into exploitative labour.

The South African Law Reform Commission (SALRC) Draft Children's Bill was welcomed by the NACL as a progressive piece of legislation in that it not only outlawed child labour (like the Basic Conditions of Employment Act, 1998) but also made real provisions for assisting children engaged in child labour and preventing such children from becoming involved in exploitative labour.

The Bill was intended to strengthen existing child labour legislation in various ways. The Bill originally not only gave children the right not to be exploited, it made provision for assisting children to become free of child labour by offering economic alternatives (social security), access to basic education and services, shelter and rehabilitation. Government and other stakeholders would be committed to ending child labour through a national policy framework and an integrated departmental strategy. The full extent of the problem would be known and monitored by conducting annual surveys. Local authorities and schools would assist in monitoring vulnerable children and linking them to the necessary services.

A big step was linking children to much needed social security and alleviating poverty. The absence of social security can be regarded as the most significant cause of exploitative child labour practices.

Yet the provisions on Social Security have since been removed from the current Children's Bill. Another crucial factor to consider is that the number of children involved in child labour and the number of children living on the street is expected to increase dramatically due to the death of parents or caregivers as a result of HIV/AIDS.

With reference to the issue of child labour the Children's Bill has undergone major changes from the original SALRC draft to the current Department of Social Development draft. The most important changes in brief are the removal of the following from the original Bill: access to comprehensive social security, including the right to education and basic health care; a national policy framework; protective and rehabilitative measures for child labourers; obligation on the part of schools and local authorities to identify and assist children at risk and tools to measure and monitor the extent of child labour.

These changes are quite simply unacceptable and will render the Bill meaningless and incapable of assisting children subject to exploitative labour. The existing draft Bill explains what constitutes child labour and prohibits the worst forms of child labour but removes any real commitment to providing the necessary resources both financial and human needed to deal with the problem.

We hope that the submission of the Network Against Child Labour will highlight the extent of the problem of child labour and the need for proactive and immediate steps to be taken in order to combat the growing problem in our country. Such steps were originally contained in the SALRC Draft of the Children's Bill after lengthy but valuable consultation with civil society and we ask that they be returned.

Thank you,

Yours Sincerely,

Karen Allan
NACL Co-ordinator

Mr. Phiroshaw Camay
NACL Chairperson

Causes and Extent of Child Labour

The South African Context: the extent of Poverty

Huge inequalities presently persist in South Africa between the rich and the poor originally created by a system of Apartheid. South Africa is plagued by a high level of poverty amongst the majority of its people. According to the latest United Nations Development Programme (UNDP) Report (2003)¹ on South Africa, 48.5% of the population or 21.9 million people are living in absolute poverty measured in terms of a monthly income of R354. Poverty particularly impedes the care, protection and development of children. Many poor children are forced onto the street to live and work for their survival. Here they become vulnerable to abuse and exploitation. These children often stop going to school and as a result give up their hope for a better future and so continue the vicious cycle of poverty. The number of children involved in child labour and the number of children living on the street is increasing dramatically due to the death of parents or caregivers as a result of HIV/AIDS.

Extent of Child Labour in South Africa

The scale of child labour was not known in South Africa. Estimates ranged from 100 000 to 1 million. Then, in 1997 the ILO commissioned Stats SA to conduct a national household survey to provide a broad overview of the child labour situation in South Africa. A technical advisory committee (TAC) was set up and consisted of representatives from government departments, the NGO sector, the ILO and UNICEF. The Network Against Child Labour (NACL) played an active role in the work of this committee. The study was called the "Survey of Activities of Young People" (SAYP).

The following is an outline of the main findings of the survey² conducted in 1998.

The total South African population is estimated at 43 million. There are about 14.4 million children age 5-17 living in South Africa. At least 3.3 million working children are split across the different economic activities in the following manner:

<u>Industry</u>	<u>Number of working children</u>
Commercial Agriculture	188 000
Subsistence farming	2 294 000
Manufacturing	48 000
Construction	3 000
Trade	718 000
Transport	9 000
Informal finance	15 000
Services	103 000
Total	<u>3 378 000</u>

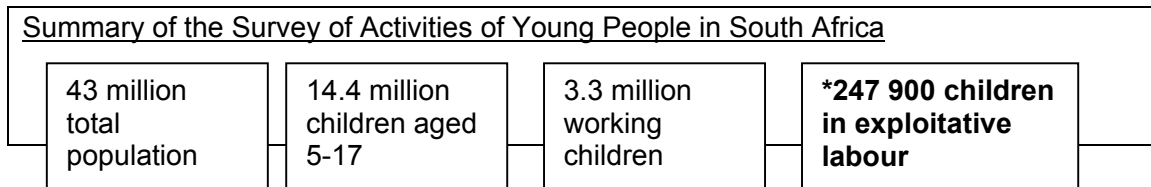
¹ South African Human Development Report 2003: The Challenge of Sustainable Development in South Africa: Unlocking People's Creativity. <http://www.csir.co.za/akani/2004/jul/02.html>.

² Department of Labour Press Release November 2000.

6 % of boys and 1% of girls that were working in 1999 – i.e. 17 353 children aged 5-17 said that the work they do actually keeps them out of school.

The child engaged in work, in the sense that he/she spends more than three hours a week working, is likely to be African and lives in a rural part of the country.

1.85 % of children aged 5-17 years, or 247 900 children age 5-17, were engaged in exploitative child labour in mid 1999.



*NB: This figure is considered to be a gross underestimation of the actual amount of children presently engaged in exploitative labour. This is because the Survey of Activities of Young People concentrated only on children within households, this excludes a large amount of child labourers who live and work on the streets and are engaged in the worst forms of child labour like commercial sexual exploitation. The survey is also already 5 years old and does not reflect the growing number of children forced into labour due to the death of parents or caregivers as a result of HIV/AIDS.

Key differences between the South African Law Reform Commission Draft and the subsequent Department of Social Development Drafts of the Children’s Bill

Child Labour specific issues in the Bill

Child Labour issues were originally covered in depth in Chapter 16 "Children in especially difficult circumstances" in the South African Law Reform Commission Draft. In subsequent drafts Chapter 16 was deleted. The Child Labour issues were then incorporated under Chapter 8 "Protection of Children" Section 155 later became Section 141 'Worst Forms of Child Labour prohibited' Section 141. The only child labour specific clauses in the current Bill re-introduced as a section 75 Bill (dated January 2004) are found in Chapter 1, Chapter 3 "Children’s Rights" and Chapter 10 "Child in need of protection". What remains in the first section (75) of the Bill concerning child labour is a definition of exploitation which includes forced labour or services and the worst forms of child labour, the right of children to be protected from exploitative labour practices which are age inappropriate, pose a threat to the child’s well-being or education, physical, mental, spiritual moral or social development. Finally children living or working on the streets begging for a living or children who have been subject to exploitation are identified as children in need of care and protection.

Suggested Amendments

The definitional provision on child labour was moved from section 242 of the SALRC draft (Child Labour defined) was moved to the definitions Chapter (1) but has subsequently removed.

The **definition** of child labour should be returned as follows:

“child labour” means the provision of labour by a child in exchange for payment and includes –

- a) any situation where the child provides labour but somebody else receives remuneration on the child’s behalf;
- b) any situation where the child provides labour as an assistant to somebody else and his or her labour is deemed to be the labour of that other person for the purposes of payment;
- c) any situation where the child’s labour is used for gain by any individual or institution whether or not the child benefits directly or indirectly; and
- d) any situation where there is in existence a contract for services where the party providing the services is a child whether the person using the services does so directly or by agent.

Worst forms of child labour prohibited

Previously Chapter 8, Section 141, which became 155. (Departmental Draft, August 2003) should read as follows:

(1) No person may -

- (a) employ a child who is under the age of 15 years **or under the minimum school leaving age where it is 15 years or older;**
- (b) use procure, offer or employ a child for purposes of commercial sexual exploitation;
- (c) use, procure, offer or employ a child for illicit activities, including drug production and trafficking;
- (d) force a child to perform labour for that or any other person, whether for reward or not; or
- (e) encourage, induce or force a child, or allow a child, to perform labour that -
 - (i) by its nature or the circumstance is likely to harm the health, safety or morals of a child;
 - (ii) is inappropriate for the age of the child;**
 - (iii) places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development'
 - (iv) has been prohibited by the Minister of Labour through regulations.**

Note:	The amendments suggested would bring this Bill into line with the provisions of the Basic Conditions of Employment Act.
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(2) Subsection (1) (a) does not prevent the performance of labour by a child, whether for reward or not –

- (a) subject to the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), in an advertisement, in sport or in an artistic or cultural event, provided that such an engagement does not place the child’s well-being, education, physical or mental health or spiritual, moral or social development at risk; or
 - (b) in work which is carried out within the framework of a programme registered in terms of the Non Profit Organisations Act, 1997 (Act No. 71 of 1997), and that is designed to promote personal development and vocational training.
- (3) The Minister must take all reasonable steps to assist in ensuring the enforcement of the prohibition on the worst forms of child labour, including steps providing for the confiscation in terms of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), of assets acquired through the use of such child labour.

Children's Rights

Chapter 3 on "Children's Rights" has been significantly changed. The right of children to be protected from exploitative labour practices that are age inappropriate and detrimental to the child's well-being, education, physical, mental, spiritual moral or social development remains. An important change is that children's rights to social security and education have been removed. The NACL believes that these rights are closely linked, so without adequate access to social security and education children will not be protected from exploitative labour. Education is key to breaking the cycle of poverty that forces children into child labour.

National Policy Framework

Previously Chapter 16 "Children in especially difficult circumstances" calls for strategies concerning these children (which includes child labourers) to be included in a national policy framework. A national policy framework is a policy that binds all Government Departments whether local, provincial or national, and in this case all child protection organisations and NGOs or CBOs involved in government programmes. The aim was to secure the protection and well-being of children. In the case of child labour different stakeholders like the Department of Labour, the Department of Social Development, the Department of Education, the SAPS, NGOs and CBOs would be obliged by the law to work together to ensure that child labourers are identified, assisted and rehabilitated. The current Children's Bill has deleted references to a National Policy Framework.

Departmental strategic plan

In the Department of Social Developments version dated the 19th of June 2003 strategies concerning children at risk of immediate harm (including child labourers) were 'to be included in the departmental strategic plan, which must contain an inter-sectoral mechanism for planning, development and implementation of child protection services'. These strategies were outlined in detail in section 117 and included provisions for combating exploitative labour practices; rehabilitating child labourers and preventing them from leaving home to live and work on the streets, this entire section has been deleted.

The current Children's Bill has deleted references to a departmental strategic plan.

Municipal monitoring and support of children in especially difficult circumstances

In the original SALC draft (chapter 16: section 235), there was a call for each metropolitan and local municipality to play a monitoring role regarding child labourers and other children in especially difficult circumstances. This would entail keeping statistics, monitoring their socio-economic conditions, compiling needs analysis every 3 years and using the statistics and needs analysis as a guide to develop a budget for providing services like shelter, health care, nutrition and social services. This section has been removed.

Schools to assist in identifying certain children in especially difficult circumstances

In the SALC draft (chapter 16: section 236) schools, teachers and principals are obliged to identify children who are regularly absent from school and investigate the cause and try to assist such children to return to school and report children in need to the Department of Social Development. This section has been removed.

Provincial monitoring of children subject to exploitative labour practices

Systems for provincial monitoring including an annual survey, plans and resource allocation to remove children from exploitative labour situations (SALC draft section 241, Dept. of Social Development 19 August draft section 156) have been deleted.

Social Security

Chapter 23 of the SALC draft on Funding, Grants and Subsidies was removed from subsequent Department of Social Services drafts.

1. Basic Principles to combat Child Labour

- i) Enforcement of existing child labour legislation and awareness raising.
- ii) Enforcement of children's rights, including the right not to be exploited and the right to basic education, health and services.
- iii) Access to Social Security, grants and subsidies.
- iv) A national policy framework / interdepartmental strategic plan and necessary resource allocation.
- v) Mechanisms to research and monitor the extent of the problem.
- vi) Periodic monitoring of identified culprit sectors such as agriculture to ensure that they desist from flouting the laws.

2. What is needed from the Children's Bill to reflect the basic principles to combat Child Labour

The definition of child labour should be re-inserted. The section outlining the worst forms of child labour must be kept in the Bill. Return all the rights of children originally outlined in the SALC draft especially the right to social security, education, support services and medical care after being exploited or maltreated. Return the Chapter on Social Security, grants and subsidies. Return the section on Child protection strategies to be included in a national policy framework or departmental strategic plan. Return the section on provincial monitoring as well as the sections concerning monitoring undertaken by schools and local municipalities contained in the SALC draft.

3. Arguments in favour of keeping valuable Child Labour specific clauses in the Children's Bill.

The NACL feels that existing legislation provides adequately for the prohibition of child labour. What is lacking in the current legislation is practical measures to assist child labourers and measures to combat and prevent child labour generally. The Children's Bill has the potential to achieve this. It will however not be possible without providing children with access to social security. It is important to keep all the issues related to children in the Children's Act to avoid fragmentation and confusion. A person should be able to refer to a comprehensive Children's Act for all issues relating to children. We want the legal provisions on Child Labour to be closely linked to access to social security. Unless children subject to exploitative labour practices are offered economic alternatives the "Children's Act" will not impact their lives significantly. For example child headed households must have access to grants to prevent them being forced into exploitative labour.

A national policy framework is required to bind departments in a way that the National Plan of Action for children is often unable to do because it lacks legislative authority and is seen as a monitoring body. In terms of a National Policy Framework each stakeholder's responsibility would be clearly defined from the local level to provincial and national Departments. At the very least there is a need for an inter-sectoral mechanism to ensure Government departments work together and with all stakeholders. Another possibility would be a Children's Ministry. Adequate and timely subsidies must be made available from Government to non governmental organisations that undertake to care for and protect children (in terms of the Constitution the state is obliged to do this).