

**ELIMINATING CHILD LABOUR IN SOUTH AFRICA:
LEGISLATION, EDUCATION AND NON
GOVERNMENTAL ORGANISATION STRATEGIES.**

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This work is dedicated to my husband and family for their support and motivation to finish this study.

NOMFUNDO NTLOKO
02/ 1998

DECLARATION

I the undersigned, Nomfundo Ntloko, declare that this mini Dissertation is my own work. It is being submitted for the degree of Master of Laws at the University of Cape Town. I further testify that it has not been submitted for any other degree or at any other University or institution of higher learning.

Signature:

Abbreviations

ANC	-	African National Congress
CBO	-	Community Based Organisation
COSATU	-	Congress of South African Trade Unions
CSEC	-	Congress Against the Sexual Exploitation of Children
GATT	-	General Agreement on Trade and Tariffs
ILO	-	International Labour Organisation
IPEC	-	International Programme on the Elimination of Child Labour
NACL	-	Network Against Child Labour
NCESS	-	National Committee for Education Support Service
NGO	-	Non governmental organisation
NPA	-	National Programme of Action
NSCNET	-	National Commission on Special Needs in Education and Training
OAU	-	Organisation of African Unity
ROAD	-	Rural organization and the assistance for Development
RSA	-	Republic of South Africa
SAAPAWU	-	South African Agricultural Plantation and Allied Workers Union
UN	-	United Nations
UNICEF	-	United Nations International Children's Fund
UNCRC	-	United Nations Convention on the Rights of the Child

ABSTRACT

The interest and concern around the issue of child labour has been growing in the past few years through out the world. With all that has happened in South Africa , with the transition to a democratically elected government, there is a need for us to focus on all the issues affecting our country in order to make the democracy real for the person in the street.

With the present government focusing on improving the conditions under which children live, there is a responsibility on every body. The government is presently changing and introducing new legislation. The focus of the legislation is based on the constitution which is the superior law that governs the country.

The government hence has an obligation to change those laws which discriminated against any of the South African children and introduce legislation which is in line with the constitution governing the country.

The President has put the right of children as one of his Presidential Lead projects and part of the Reconstruction and Development Programme.

The role of the Ngo and Cbos is pivotal in working towards a better society for the children of South Africa.

However the information on child labour in South Africa is very inadequate, the very few studies available have been conducted mostly in the agricultural sector.

Thus it is important that more energy be put into conducting research to establish which forms of child labour exist and in which areas it is escalating. Once this has been established it will become easier for the relevant role players to implement measures to counter the increase of child labour

This study will then analyze the status of child labour in South Africa, what has been done in the past by legislation and other role players and what the government is at present doing in order for them to meet the standards set out for them in the international documents especially the United Nations Convention on the Right of the Child, bearing in mind that South Africa ratified the convention on the 16 June 1995.

This would also be in line with the National Programme of Action which sets out the programme that the country has set itself towards improving the total being of the South African child.

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Eliminating Child Labour in South Africa: Legislation, Education, Non governmental organisation strategies.

1. INTRODUCTION.

Child labour is a world wide phenomenon and as such South Africa is no exception. However very little attention in the past has been paid to this issue. Arguably because South Africans were engrossed in their own war for and against apartheid. In certain instances the children also became the victims in the process. Now that we have a democracy which has a constitution guaranteeing the rights of all the people in our country affirming the right to life, human dignity, equality and freedom. The children are further protected by section 28 of the Constitution. We have a responsibility and an obligation to see to it that these rights are fully applied.

Children need to be protected by the government because of their mental and physical state, their level of growth they are often unable to make important decisions on their own. Some times even the adults whether they are parents or guardians are not always there to look after the best interests of the child. Hence the adoption of the United Nations Convention on the Rights of the Child and other international documents.

The object of this paper is to look at how South African legislation has dealt and will deal with the issue of child labour. This is particularly relevant in that government is presently introducing new legislation in all areas of children's rights, for example the redrafting of the Child Care Act, the creation of a comprehensive "juvenile justice" legislation which will encompass the new found values of our democracy.

We need to see the process of transforming and protecting the children of South Africa in a very holistic way. We have to address all issues relating to the rights of children so that we are able to achieve the goals that we have set for ourselves as a nation. These goals are those set out in the National Programme of Action (NPA), a framework to carry these commitments to the children of South Africa. The NPA “is an integration of all the policies and plans developed by government and non governmental organisations to promote the well being of children”¹

The exploitation of children is a universal problem, although it manifests in different forms in different societies. It occurs because of the vulnerability of children. The issue of child labour is very difficult and controversial especially because children do not just work illegally but their work involves a lot of exploitation and abuse of power by adults.

The exploitation usually results in the breaches of several fundamental rights, the most common being the unlawful interference with family life and the right to education, health, and leisure, all of which are equally essential for the healthy development and survival of the child. These problems are often the manifestation of existing economic, social, and cultural patterns.²

The global estimation of working children vary, according to the International Labour Organisation (ILO) there are 52 million working children, and according to Anti - Slavery International there are 100 million, and the United Nations gives the estimates of 145 million working children between the ages of 10 and 14 years.

¹National Programme of Action in South Africa : Framework, National Programme of action Steering Committee, Pretoria South Africa, 3 May 1996.

²Geraldine Van Bueren “The International Law on the Rights of the Child”*International Studies in Human Rights volume 35 p 262.*

This paper will also define child labour as covering all economic activities carried out by the children regardless of their occupational status. This will include formal and the informal labour both paid and un- paid.

The Internationally accepted general definition of child labour is “ all persons of either sex who furnish the supply of labour for the production of economic goods and services as defined by the United Nations Systems of national accounts and balances.”³

According to some analysts this definition is both too broad, as it includes both harmless and hazardous work, harmless in the sense that it relates to children working after school or during school holidays for pocket money. They also argue that it is too narrow as it excludes full time unpaid work for family maintenance such as housework and child care which can occupy the child’s full day. ⁴

“Although the fight against child labour will not be won solely through legislation, it can certainly not be won without it. Child labour laws are essential to deal with the worst forms of child work where they exist and to provide minimum levels of protection where child labour is unavoidable. Such laws can play a catalytic and supportive role in efforts to establish a more humane order and in a prodding society to give the child the best that it has to offer. That is why national governments and indeed the ILO attaches so much importance to the setting and implementation of international and national standards on the work and employment of children”. ⁵

³For further discussion see Acker, Richard and Barge Sandhya (eds) “ Economics of the demands of Child Labour”(New Delhi, ILO, forthcoming).

⁴Richard Acker and Helina Melkas “ Economic incentives for children and families to eliminate or reduce child labour” ILO Geneva, 1996 p 3.

⁵Child labour: Law and Practice Conditions of Work Digest volume 10 1/1991 ILO Geneva p.3.

The initial point of entry is to acknowledge that child labour in itself is a result of poverty but at the same time causes poverty. That is why it is urgent that we see fewer children being sucked into the vicious cycle of poverty through child labour. These children are usually forced into child labour by the family circumstances. They are forced to work in order to increase their family's total income.

At the same time children may drop out of school because their parents can not afford to continue sending them there. Parents often find it difficult to buy books, school uniform and pay school fees. These children drop out of school and are forced to look for alternatives, and usually in that situation the only available alternative is work.

Child labour is one of the factors that contributes and accounts for the reproduction of existing trends in society: it encourages illiteracy, lack of adequate training, impacts on health and the further development of the child and the society in which he or she lives in.⁶ Children who work while they are young will be disadvantaged in relation to their capacity to develop the necessary skills for better conditions of employment as they will not have had the opportunity to acquire the necessary skills. This becomes even more apparent because of the modern age of technology we are living in which requires skilled labour.

1.2 The impact of Globalization on Child Labour.

Globalization can be broadly identified as a general process of opening up of national boundaries through free trade, and the flow of capital, labour, technology and information. The increasing permeation of national economic boundaries is driven by policies market liberalization privatisation, trade liberalisation and incentives to foreign direct investment, and by the revolutionary jump in the world use off macro-

⁶L Piccard: Introduction ILO Convention 138 concerning the minimum Age for Admission to Employment. p 1.

electronics.

Specific evaluations of the precise impact of the process of globalization on child labour have yet to be made. However, selected few dimensions of globalization which have a direct bearing on child labour can be mentioned. These are the export led growth, voluntary labelling programmes and structural adjustment programmes.

The large scale manufacturing export industries in East Asia do not necessarily rely on direct child labour use. However, there are backward linkages to these industries through sub contracting to labour intensive segments for the production of some of these exports. For example garments, rattan furniture and precious stones in Thailand, the Philippines and Indonesia could involve indirect child labour at the low wage end of the production scale.

The International Programme on the Elimination of Child labour (IPEC) activities have in Brazil addressed car manufacturing assemblies which have a strong backward link to suppliers of components using child labour. Attention has also been drawn to direct use of child labour in shoes or orange juice industries and the sugar plantations. All these industries trade internationally.

1.3 The Social Clause.

The need for a social clause to be a link between the labour standards and trade law has been debated for a long time.

The social clause is defined by Van Liemt as aimed at improving labour conditions in exporting countries by allowing sanctions to be applied against exporters who fail to observe minimum standards.⁷

There is evidence that low labour costs, and very often child labour in developing countries provide them with a competitive edge in international trade. The

⁷Van Liemt, G “The Multilateral Social Clause in 1994”Brussels, p1

competitiveness is sometimes based on exploitation of workers or forced or bonded labour. Children become the most likely victims in this environment as they are the most vulnerable.

The question of the Social clause is relevant to the debate on child labour in that, very often the employment of children is as a result of the pressure between competitors in trade. Hence the whole debate on creating minimum labour standards in order to protect the work force from exploitation. We need to have standards that can be enforceable and be attached to some form of sanctions. These standards have to be internationally recognised and have to apply to all the players in the market including both the developed industrialized and the developing countries.

The question that then arises is which organisation will be able to take this vision further. The social clause issue encompasses both the human rights as well as economic trade issues.

The whole question of labour standards was discussed as far back as after the first World War when the Peace Treaty of Versailles was signed in 1919.

The Peace Conference set up a Commission on International Labour legislation, the commission drafted a document which through the Peace Treaty of Versailles provided for the creation of International Labour Organisation, with the task of promoting workers rights across the world.⁸

After the Second World War the link between labour standards and trade was again discussed.

⁸Article 23 (a) of the Peace Treaty states that “ members will endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organization.”

In 1946, the ILO became the first specialized institution of the United Nations (UN). A few years later in 1948 the Havana Charter of 1948, which lay the foundation for the General Agreement on Tariffs and Trade (GATT), discussed clauses on workers rights.⁹

There has been great debate and opposition around the issues of the social clause, hence it was not included in the final work of the World Trade Organisation (WTO). Even the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) was signed without an agreement on the issue of the social clause.

The social clause on labour standards was again discussed at the Singapore Summit of December 1996, and the summit concluded that the ILO is the competent body to deal with these labour standards.

In terms of the General Agreement on Tariffs and Trade (GATT)¹⁰ states are able to apply the anti dumping clause when another state exports goods into another country at a price lower than the price of similar goods being sold in the ordinary course of trade in that exporting country for consumption there. The GATT provides certain procedures which the complainant country can use to apply for an order against the accused. The complainant must prove that there will be material injury in the industry concerned and that there is a causal link between the alleged unfair trade practice and

⁹The Havana Charter stated that : the members recognise that all countries have a common interest in the fulfilment and maintenance of fair working standards in relation to productivity and thus in the improvement of wages and working conditions as far as productivity allows. The members recognise that unfair labour conditions, particularly production for export create difficulties in International Trade and that every member therefore take appropriate and realistic measures to abolish such conditions with in its territory.

¹⁰The General Agreement on Trade 1994 which follows the 1947 agreement which was annexed to the final act at the conclusion of the Second session of the Preparatory Committee of the United Nations Conference on Trade and Employment.

the alleged material injury (Article 5 and 16).

The World Trade organisation working with the ILO can adopt a similar condition within the GATT providing a channel by which a particular country can use when the other country has committed a violation of the international minimum standards. This clause would have to be governed by the WTO but with the assistance of the ILO. The only problem that would be encountered would be the fact that not all countries are signatory to the GATT nor to the ILO. These countries that are not signatory to these instruments are not bound by these policies.

2.1 The use and practice of child labour internationally.

To eliminate child labour we have to commit ourselves to the adoption and application of policies that enforce these fair labour practices and principles.

Despite the fact that many countries in the world have laws limiting the extent to which children can be used as part of a labour force, child labour is a wide spread international problem. This is especially so in developing countries such as ours, this does not exclude the developed countries because they too practise child labour. “ In Southern Europe, there has always been relatively large numbers of children working for pay, in particular in seasonal activities, street trades, small workshops or in the home setting”¹¹ The ILO report also states that the United States had an increase in child labour. This has been attributed to the growth of the service sector the rapid increase in the number of part- time jobs and the search for a more flexible work force has contributed to the expansion of the work force.

According to statistics given by Kebebew Ashagrie, “Statistics on child labour” which was a survey using a questionnaire conducted by the ILO in 1992-1993, on the basis of which 91 countries or territories were questioned, it was recorded that up to

¹¹World of Work: Stop Child Labour@ The Magazine of the ILO no.16
June/July 1996 p 12.

78, 500 000 children under the age of 15 were estimated to be working in 1990. However we have to take note that because of the secrecy of child labour it is very difficult for such surveys to be performed. That is why these figures are considered only as estimates of the reality of child labour. The survey further stated that about 99% of the child labourers are found in the developing countries.

In 1995 the ILO estimated that more than 73 million children in the age group 10 - 14 years were economically active. This figure represented 13.2% of all the children around the world. According to the report the greatest numbers were found in Asia with 44.6 million representing 13 %. The second continent being Africa with 23.6 million, representing the highest percentage, 26.3%, followed by Latin America at 5.1 million representing 9.8 %.

According to the ILO report, no reliable figures are available on workers under 10 years.¹²

2.2. The various forms of Child Labour.

As already stated there are different forms of child labour and different levels throughout the world. The level and the intensity of child labour in each country will depend very much on a combination of demand and supply needs within the country and also the poverty line.¹³

As already stated it is very difficult to get the accurate calculation of the exact numbers of working children in the world. Generally the kind of work that children do e.g. whether the child works in a factory or on the farm or at home might determine whether he or she will be counted when a survey of this nature is conducted. It is highly unlikely that those children who work in the informal sector get counted and even more difficult for those who are exploited by adults in illegal dealings like

¹²Ibid 12.

¹³Van Beuren(n 2) p 262.

prostitution and drugs.

Geraldine Van Bueren states that in some places there is a fear that child labour might become institutionalised as it is regarded as 'significant factor' in the national economy. She gives an example of Pakistan which has a very good reputation internationally on producing carpets, in fact it has become the fourth highest producer of carpets in the world. Most of the work is done by child labourers. This forms a generational chain, as the exploited children grow up to be illiterate adults who will have to send their own children to work in the same industry to be able to help support their families.

Children who do work are involved in all forms of employment. They could be working for exporting or domestic and even family consumption. They might be employed for paid or unpaid labour in the formal or informal sector. They might also be working on a family business under great exploitation.

However as set out by the international law the focus is not just generally on child labour but especially on the exploitative forms of child work, especially in the instances where work below a certain age has been banned. It is also to ensure that children are not employed in any place that might be hazardous to their health and development even if they are working within the permitted age group. An example would be a 16 year old boy working on a farm using insecticides that are obviously dangerous to his or her health and development.

UNICEF has attempted to define the essential elements of exploitation in relation to child labour these include "beginning full time work at a very early age, working hours that are too long, inadequate remuneration, work which causes excessive physical, psychological and social strain, work and life on the streets; excessive responsibility at too early an age; work which hampers the psychological and social development of the child; and work which inhibits the child's self esteem"¹⁴.

¹⁴Geraldine Van Beuren p 265 about the UNICEF " Exploitation of the Working and Street Children", Executive Board Paper, 19986.

Children who work are generally subjected to excessively long hours and, to subtle and very often illegal forms of control, such as bondage. For the employer child labour is more often than not the most stable form of labour as the children do not strike or disrupt the labour force thus disrupting production. They are also the easiest to remove once the employer feels that they are not needed or in times of economic difficulties or when profits have gone down. These children do not resist because of their physical and emotional vulnerability. Furthermore the pressure that often comes from the family for the child to provide food adds on to the vulnerability. They will do anything to survive.

2.3 SLAVERY AND BONDED LABOUR

This forms of exploitation can happen both to adults and children. This form of labour has been prohibited in both adults and children. Article 4 of the Universal Declaration of Human Rights states that “no one shall be held in slavery or servitude: slavery and slave trade shall be prohibited in all their forms”. Article 4 and 8 of the International Covenant on Civil and Political Rights state clearly that every individual has a right that can not be compromised against slavery and servitude.

Bonded labour can be regarded as very similar to slavery. This is often found in instances where the individual has to work for a specific employer for an undefined period because he or she owes money to his employer. This situation happens when the employer in the first place is not paying the employee a reasonable salary which he or she can use to sustain oneself. As a result the employee because of poverty and other circumstances, has to apply for a loan from the employer. The employer will then make sure that the employee gets tied down to paying off his debt often for life. If he dies before he has paid the debt his children might also be forced to continue

paying and servicing the debt. The likelihood is that in the process that child because of circumstances beyond his control will also request for a loan from the same employer thus creating further problems for himself and the next generation. The employer is usually not very worried about the money that is owed to him, as the return he gets from having generation after generation continuing to work for him at very low costs bring in more value that he would have received had he received his money back.

In South Africa we have Debt bondage particularly in the farming community, this will be discussed further below.

2.4 The different views about the elimination of child labour.

Although there is general agreement that child labour should be abolished there is less agreement on how that can and should be achieved.

The question is whether to limit child labour by immediate abolition or by gradual progressive raising of the minimum age for admission to work or employment combined with protective measures for those children who continue to work.¹⁵

The ILO's view on the issue is set out in the Resolution adopted in the International Labour Conference 1979, which called for social and legislative action to progressively eliminate child labour and that during the transitional period until the elimination to regulate.¹⁶ This view is also enforced by the view taken by the IPEC (as previously mentioned) which states that is it acutely aware that child labour can not be eliminated immediately or overnight, but is building capacity to eradicate immediately the most exploitative forms of child labour.

There is a school of those who believe in active strategies against child labour, Assefa Bequela divides these into three categories. The Marxist radical school, secondly those who believe and advocate for the immediate abolition of child labour and those who believe in an evolutionary approach to the problem.

¹⁵Conditions of Employment Digest " Child labour : Practice and Law"
volume 10/1 1991.

¹⁶Ibid

The Marxists see “child labour as a manifestation and a result of the exploitation and inequality in incomes and wealth that is characteristic of the capitalist system, in which the exploitation of labour including child labour is essential for the survival and profitability of profit maximizing enterprises”¹⁷

According to these scholars as long as this attitude by the Capitalists exist any attempts and efforts whether by the government or any other interested parties will not succeed.

The argument against this theory is that despite the fact that it is true to say that child labour is a result of the inequality of wages and income, exploitation does not take just the form of low income, but the children are also subjected to long hours, illegal forms of control and bondage. They are the first to be retrenched when there is a crisis. Their emotional, spiritual and physical vulnerability makes it very easy for them to be exploited and abused.

A case scenario is that of the leather tanning industry in Cairo, where the employers were asked what their reaction would be to the total ban on child labour. It is not surprising that 72% of them said that they would continue to employ the children despite the ban. 78% of them said they would hire the children even if their income was raised to the level equal to that of adults working in the same field.¹⁸ So the issue is that the employment of children is not just about cheap labour but also about, what the employer thinks he/she can get from the child which he/she will not get from an adult employee. Maybe they are attracted to their vulnerability which might result in desperation and loyalty in order for them to keep the job. Asseffa Beuqula says that maybe they are attracted by the docility of the children and thus the fundamental source of exploitation.¹⁹

Child labour is not found only in big businesses with advance technology, but is also found in the small enterprises in the unorganised sector and within the family businesses. The Marxist view has not been in the fore front recently, especially because of the dissolution of communism in Russia.

¹⁷Ibid

¹⁸Work digest (n 5) p 9.

¹⁹Ibid

The second view presented is the 'abolish it now' School. This group is very impatient with the work that is done by many children's rights groups, NGOs and the international organisations. These scholars often consist of those lawyers who insist on strict interpretation of the law or the constitution, which in most cases guarantees the protection of children and prohibits their employment below a certain age. They might be radical activists within the NGOs, employers in large or medium based enterprises who feel threatened by competition from enterprises operating in an unregulated labour market and employing child workers. They also include workers in the industrialized countries who fear job losses as a result of the shift of industry to countries which supply cheap labour including child labour.²⁰ This group would to an extent oppose the provision of protection measure under the assumption that if it did it would be perpetuating to legitimise child labour.

Thus because of their stand they can be instrumental in hindering many practical programmes that might be of value to the child workers because the government officials would not authorise these programmes based on the fact that child labour is illegal.

The starting premise for the evolutionary approach is that "child labour is a result of mass poverty and under development, and more specifically that children work because their parents are poor."²¹

In some cases the child might be the sole breadwinner in the household or he or she might be working to contribute in raising the level of income within the household. The problem of poverty within the family aggravates the situation because the child is not able to go to school because the parents can not afford it, he or she is then forced to work. Their argument is that child labour can not be abolished as long as there is still poverty. Legislation abolishing it is likely to lead to clandestine employment of these children and result in even more exploitation.²² The best that can be done is for the state to legalise child employment and to ensure that the child workers are

²⁰Work digest (n 5) p 10.

²¹Ibid

²²Ibid

protected by the necessary labour laws.

The questions raised by this school of thought are as follows, “is poverty sufficient explanation for the employment of children?” Or maybe the question that should be asked is why are some poor families still continuing to send their children to school despite their poverty. Here are some of the other questions raised in the debate “going beyond the household level, is the absence or inadequate provision of compulsory universal schooling simply a result of under development and poverty or the direct reflection of misplaced national priorities and policies? At what point is a country considered rich enough to initiate action against child labour and to prohibit the employment of children. Why is it that budgetary constraints are not invoked in respect of certain other items such a military expenditure? In other words is it not possible to provide basic protection in the form of compulsory education and income security even at low levels of economic development?”²³

The governments need to give the issues of child labour priority. It should be taken as one of the immediate task that have to be tackled head on. If the government does not see the issue of child labour as urgent it will be very difficult for any meaningful progress to be made. That is why we as South African need to take advantage of the fact that the present government has taken the issue of children rights as priority. We need to set up viable projects which will be backed by government towards eliminating child labour before the government decides to tackle other important issues of state. It is also true that the elimination of child labour requires meaningful growth in the economy in order for the creation of more jobs for adults and for the state to be able to dedicate more money to free compulsory primary education.

The evolutionist view seems to be more practical than the other views as it acknowledge the different problems facing different countries, such as poverty therefore making it impossible for immediate ban on child labour. The approach taken by both the ILO and IPEC is in line with this view, and most of the research that has been done on child labour is focused on progressive elimination of child labour. Making sure that the children who are removed from the work environment are rehabilitated and sent back to society where they are presented with alternatives and they are allowed to function as other children in their age group. Any other way would

²³Ibid

have the potential of creating a dangerous covert operation which would be detrimental to the fight against child labour.

However, the most fundamental issue to be considered in the debate is the children's fundamental rights to dignity, the protection of the children from exploitation and dangerous working conditions as defined by the UNCRC. The universally accepted basic human rights and values have to be respected. Article 27 of the UNCRC states that every child has a right to adequate standard of living, best for his/ her physical, mental, spiritual moral and social development.

3. THE INTERNATIONAL DOCUMENTS.

3.1 The United Nations Convention on the Rights of the Child.

Children of the world are protected by the **United Nations Convention on the Rights of the Child.**²⁴ The convention recognises that the child by reason of his/ her physical and mental immaturity needs special safeguards and care, including appropriate legal protection, before as well as after birth.²⁵

A child is considered to be anybody below the age of 18 years, unless under the law applicable to the child majority is applicable at an earlier age.

Article 6, states that every child has the inherent right to life, therefore all the parties to the convention have an obligation to ensure, to the maximum extent possible, the survival and development of the child.

Article 19 also states that parties shall take appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or

²⁴The United Nations Convention on the Rights of the Child 1990.

²⁵The Preamble of the United Nations Convention on the Rights of the child.

mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of the parents, legal guardian or any other person who has the care of the child.

Article 12 states that the child not only has a right to express an opinion but also to have the opinion taken into account in matters that affect him or her. It is very important the child's view be listen to especially in this area of child labour. The child is very often forced by circumstances or even parents to go and work despite the fact that he actually wanted to go to school. The family will often fail to take the child's opinion into consideration when a decision is being made about whether he or she stays in school or goes to work. For example according to African Customary law the rights of the family or the household are usually more important than those of an individual within the household including the child.

Article 27 states that the child has a right to an adequate standard of living, best for his or her physical, mental, spiritual, moral and social development. In order for these rights to be real the child needs the assistance of both the parents and the state. The parents have the primary responsibility to look after the interest of their child, to the best of their abilities. The state in accordance with national policy will have to take appropriate measures to assist parents and others who are responsible for the welfare of the child to make sure that these rights are enforced.

Article 31 recognises "the right of the child to rest leisure, to engage in play and recreational activities appropriate to the age of the child and for the child to participate freely in arts and culture". Children who are involved in child labour do not have time to be children as they cannot play because they always have to behave like adults, keeping to strict schedules.

Article 32 specially focuses on the exploitation of child workers. Children should be protected from economic exploitation and work which might be detrimental to their normal growing up as children, or if the employment or activity is hazardous to their

health or physical or mental, spiritual moral or social development or even the child's education. The UN has taken precautions to ensure the protection of children in this regard. Member states are required to take legislative, administrative, social and educational measures to ensure the implementation of this article.

Article 39 places an obligation on the State to promote adequate treatment and social reintegration for children harmed physically or psychologically as a result of the violation of their right to protection against any form of neglect, exploitation, or abuse or any other form of cruel, inhumane or degrading punishment; or armed conflict. The recovery and the treatment of the child will take place in an environment which fosters the health, self respect and dignity of the child.

Countries that have practised child labour have an obligation to see to it that those children are rehabilitated and are offered a better life in a safe environment where they will be allowed to grow up as children. Facilities have to be made available by both the community and the government.

South Africa is a signatory to this convention.²⁶ As such, we have an obligation to abide by the standards set out by the convention. Member states are also required to prepare reports which have to be submitted to the United Nations through the General- Secretary giving an account on whether the convention has been honoured and what progress has been achieved to alleviate the plight of children in that state. (Article 44). The member state initially has to submit a report within 2 years of entry into force of the Convention for that member state. There after submission has to be made every 5 years.

Since South Africa ratified the Convention in 1995, the government and the non governmental organisations have been busy preparing their respective reports which have to be submitted by the end of the year 1997.

There are other International instruments which provide for the minimum ages for admission to employment, regulating hours and conditions under which children can be employed and provide for appropriate sanctions which ensure the effective

²⁶South Africa rectified the Convention on the Rights of the Child on the 16 June 1995.

enforcement of laws. These other international instruments will be discussed in more detail below.

3.2 The Charter on the Rights and Welfare of the African Child.

The Charter on the Rights and Welfare of the African Child which was established by the Organisation of African Unity in 1990 focuses on the rights of the African child. The African states and governments met in 1979 and decided that because the Charter of the Organisation of African Unity recognises Human Rights as paramount, they also noted their concern on the critical situation of many of the African children. The conditions they found themselves in as a result of the inadequate social conditions, natural disasters, armed conflict, economic deprivation, exploitation, hunger, disability and that the child by reason of physical and mental immaturity, needs special safeguard and care.²⁷ We recognise the Charter because we are part of Africa despite the fact that it was not ratified

The Charter does not set out minimum the age with regard to employment, but it does is make reference to the relevant ILO instruments, which provide for the right of every child to be protected from economic exploitation and form any work that is likely to be hazardous or likely to interfere with the child's education or to be harmful to the child's health or physical, mental spiritual, moral or social development. It further states that member states to the Charter should in particular promote the dissemination of information on the hazards of child labour to all sectors in the community (article XV)

²⁷ The Preamble to the Charter on the Rights and Welfare of the African Child (1990).

The rights of the child in the this document are placed in a cultural perspective in that it seeks to protect the child against harmful social and cultural practices that will affect the child's welfare and dignity. The Charter calls for the appropriate measures to be taken towards the elimination of those customs and practices that are not conducive to the child's health of life.(Article XX1).

Most of the rights espoused by the Charter are to be found in the United Nations Convention on the Rights of the Child.

3.3 The International Labour Convention no. 138 concerning the Minimum Age for Admission to Employment.

The main international standards which govern the issue of child labour are those that were formulated by the International Labour Organisation (ILO) which was formed on 11 April 1919²⁸. The establishment of the International Labour Organisation meant that an effective frame work was created to promote and monitor the situation of labour and industry in all member states.

In 1973 the ILO Conference re-examined the problem of employment of work by children or young persons. The conference decided to lay down new comprehensive standards aimed at the protection of working children and the progressive elimination of child labour. A new convention on child labour was adopted replacing the 10 previous conventions which had dealt with different elements of child labour.

The new **ILO Convention no. 138 concerning the Minimum Age for the Admission to Employment** stated that every State party to the convention should undertake to progressively raise the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of the young person.²⁹

²⁸Victor -Yves Ghebali: "The International Labour Organisation: A case study on the Evolution of the U.N Specialised Agencies". p 9

²⁹ILO Convention no.138 Concerning the Minimum Age for Admission to employment 1973. Article 1.

The paramount interest of the ILO for introducing the Minimum age Convention was to fight against the exploitation of children in the work place. The main objective of the convention is to work towards the abolition of child labour. The ILO believes that this can be done if international standards are set for the different countries to abide by. Each member state undertakes to pursue policies in its jurisdiction which will promote the convention towards its goal of eliminating child labour.

This is even more important in our day and age especially when one considers the effects of globalization on national markets. Technology and the free trade has forced especially the developing countries into serious pressure and comparativeness. As a result of the free trade it has become very easy for large companies from industrialized developed countries to set up their satellite companies within the developing countries. Furthermore exports for developing countries are often the main source of income, as a result the companies will use the cheapest available form of labour to achieve their goals. The cheap labour force is more often than not the children. It is much easier for these companies to employ children because they cause fewer problems, they are not unionised and can be paid even a third of the wages that is earned by adults working in the same positions.

The acceptance of this convention by member state highlights the acknowledgement by the member states, of the need for a minimum age for employment which would be universally recognised.

3.3.1 Defining child labour.

As already stated in the Convention on the Rights of the Child, a child is described as a person who is below the age of 18 years unless under the law of that country majority is reached at an earlier age.³⁰ The issue of age might differ depending on the

³⁰Article 1 of the U N Convention on the Rights of the Child.

different culture and their beliefs of when a child attains majority.

However International Labour Conventions (ILO) make a distinction between 2 categories of persons up to the age of 18. The first category being that of children of up to the age of 15 years, these are referred to as children. The second category being that of 15 to 18 years and are referred to as young persons.³¹ However, the division between the two categories is not rigid. It shifts depending on the view taken by each country.

According to the ILO convention in Article 2(3) children who are below the age of compulsory schooling and not less than 15 should not be employed, although there are exceptions allowed.

Each state that ratifies the convention must specify in its declaration by attaching to its application a declaration stating that the member state undertakes that no child under the age of 15 shall be employed. This will be subject to whether the member state has agreed to the age of 15 as the minimum age.

Each member which specifies 14 as the minimum age shall have to include in its declaration a report as required by Article 22 of the Constitution of the International Labour Organisation. The state shall be required to give a statement that there are valid reason for the minimum age of 14. This is so because the convention is flexible and does take into consideration the economy and educational facilities within each country. article 2 (4).

If not, the member state will have to declare the age mentioned in the declaration and in terms of Article 4 to article 8 of the Convention. As a result of the declaration made by the member state no persons under that age set out in the declaration shall be employable except in social situations which will be made clear by legislation and policy of the member state.

In instances where the work is hazardous by nature and likely to jeopardise the health and safety, or morals of young persons, no young person under the age of 18 shall be

³¹(n 2) p 2.

employed. The type of employment described by this article will have to be defined by the national laws of each country.

3.3.2. The kind of work considered.

The convention does not apply in relation to the employment of children or young persons during school holidays or as part of vocational or technical training. They also do not consider the situation where the child or young person works several hours a week to earn pocket money or helping out in the store at home as part of the prohibited employment set out by the ILO.

According to Article 7 of the ILO convention, the national laws and regulations of the country may decide to allow the employment of children between the ages of 13 and 15 provided that the work that they do will be light and suitable for their age. The employer has to take into consideration that the work should not be harmful to the health and development of the child and that such work will not prejudice the child's attendance at school or his/her participation in any other relevant programme.

3.3.3. Exceptions.

The convention provides for member states who feel that their economic and educational facilities are insufficiently developed to, specify the initial minimum age as 14 years, but after consultation with the organisations for employers and workers concerned.³² These member states would be given an allowance because of the lack of resources. This does not mean that they are exempted but merely given an opportunity to set up the relevant infrastructure and resources which will enable fewer employment of children.

³²Article 2 of the ILO Convention Concerning the Minimum Age for Admission to Employment (1973)

Another exception allowed is for those countries whose economies and administrative facilities are insufficiently developed. They are allowed to initially limit their scope of the application of the Convention to seven sectors of activity these being mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communications and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small scale holdings producing for local consumption and not regularly employing hired workers. (Article 5 (1) and (3). However it has to be noted that a very high number of incidents of exploitation happen at home and in the small business providing just for local consumption.

There will be certain circumstances which will require the presence of a child, for example the advertising and television industry in this instance individual authorisations may be obtained. However this has to be done after consultation with both the employee and workers organisation. The person who is granted the permits will have to limit the number of working hours and also clearly set out the conditions under which those children will be allowed to work. (Article 8 (2))

Under no circumstance may member state employ a child under the age of 18 years to work in any conditions which may affect his health safety or morals.³³ Each state has a responsibility to introduce law within the country to ensure the protection of children. Employment or work which is by its nature is likely to jeopardise the health, safety or morals of the young person shall not be done by any child, who is under the age of 18 years.

3.3.4 CONDITIONS OF EMPLOYMENT.

³³Article 3 of the ILO Convention Concerning the Minimum Age for Admission to Employment (1973)

The Minimum Age Convention does not have any specific provisions that relate specifically to the conditions of employment of children. The only conditions of employment are those set out in relation to the light work that can be done by the children.

However the working children are protected by most international labour conventions because they are also applicable to them as they are to the adult workers. They guarantee protection to those children who are earning salaries the same protection afforded to adult workers regardless of gender or age.

There are however certain recommendations made by the ILO which deal with the conditions of employment of children.³⁴

The recommendations made were that the conditions under which children below that age of 18 years work should be supervised very closely in order to maintain certain standards. Hence measures should be taken to safeguard and supervise even the conditions under which the children work as a form of vocational and technical training towards their education.

Guidelines and standards have to be formulated for their own protection and development, this has to be done in order to minimise the abuse of these exceptions when it comes to using children as a labour force. There have been instances where employers have taken advantage of the vocational training of the children for their own personal benefits.

The child has a right to earn fair remuneration equal to the amount that an adult in the same position having done the same amount of work is paid.

The number of hours under which these children work has to be strictly limited and overtime should be prohibited in order to give the children enough time for rest, playing and the time for education.

The children are also entitled to paid leave, to be part of the social security schemes available including employment injury, medical care and sickness benefit schemes.

³⁴These are the ILO Recommendation 146 on the Minimum Age for Admission to Employment Minimum Age Recommendations adopted on the 26 June 1973.

(Article 12 and 13)

3.3.5. The implementation.

The implementations of these conventions are very important. As the implementation is the only process that will ensure that the laws and procedures set out by the ILO convention through the national laws of member states are adhered to. If there is no effective implementation, we might be faced with the same problem that India has. They have very good national Laws dealing with the issues of child labour but have not been able to effectively use those laws to help eliminate child labour in India.

The effectiveness of the convention first and for most depends on its ratification by States.

Article 9 of the Minimum Age convention states that “ all necessary measures, including the provisions of appropriate penalties shall be taken by the competent authorities to ensure the effective enforcement of the provisions of this convention.”³⁵

The member state shall have an obligation to have laws and regulations that define the people that will be given the competency to deal with effective compliance to the convention. These authorities will be able to request or demand that employers keep registers containing the names, ages and date of births, duly certified which from time to time will be made available to the authorities as a way of monitoring how many children under 18 are employed.

There is a need for a strong labour inspection force, which has been trained to detect the abuse and exploitation of children in the work place. These inspectors have to be both monitors and suppliers of information in terms of how the employer should treat child workers, when and where they can legally employ children as part of the work force. It is very important that the inspectors be well informed of the laws of the State

³⁵Article 9 of the ILO Convention 138 concerning the Minimum Age for the Admission to employment.

in relation to child labour as this will also assist in making the public in general aware of the law and what penalties are available towards enforcing the law. The inspectors should form part of a multi disciplinary team coming from labour, education, welfare departments in order to ensure the greatest economic efficiency.³⁶

In pursuit of their inspection work the inspectors will have to establish the correct ages of the children they come across in the different work forces, Article 16 of the Recommendation states that the public authorities should maintain an effective system of birth registration, which should involve the issuing of birth certificates. The employer would then be required to keep this information which he or she would make available whenever requested to do so by the competent authorities.

The problem is that most third world and developing countries including South Africa have a major problem about the registration of births. In South Africa the government has set this as one of its priorities because of the high numbers of unregistered births. For example as part of the recommendations made by the Lund commission on welfare grants one of the recommendations made was that in order to increase the registration of births especially in the rural areas the in order for a child to be able to receive such welfare grants from the state the parents or the legal guardian of the child will have to see to it that the child has been registered and also immunised³⁷. However it is important to mention that this strategy has been criticised by a number of NGOs who feel that there should be no such condition to the child's right to assistance and security by the state.

4. The International Programme on the Elimination of Child Labour known as IPEC.

³⁶Article 14 of the ILO Recommendation 146 on the minimum Age for Admission to Employment 26 June 1973.

³⁷Report by the Lund Committee on Child and Family Support, August 1996.

This organisation was established in 1992 as a new impetus in the long-standing fight against child labour. IPEC came into operation in 1992 and 6 countries signed the memorandum of understanding with the ILO. They were Brazil, India, Indonesia, Kenya, Thailand and Turkey. The organisation is now operational on three continents and 20 different countries. "The main objective of the IPEC is to fight for the phased elimination of child labour by strengthening the capability of countries to deal with the problem by promoting a world-wide movement to combat child labour".³⁸

Its primary objective is to give priority to the eradication of the hazardous and most exploitative forms of child labour, by building up a permanent capacity that will be able to tackle the problem.

The organisation has confirmed that child labour will not be eradicated overnight that is why their focus is firstly on the most drastic forms of child labour. They have established three priority target groups:

- children working under forced labour conditions and in bondage.
- children in hazardous working conditions and occupations.
- the very young children working (children under 12 years). Within this group special attention is given to working girls, who are particularly vulnerable to exploitation and abuse.

The organisation believes that the most effective means of eliminating child labour is to root the fight within that societies own culture and the community's aspiration and beliefs. Thus, the family and the children themselves are the first line of defence against child labour. That is why a lot of effort is directed at empowering them through awareness, participation and organisation.

In all the ILO, IPEC countries the ministries of labour are actively involved in the programmes setup. In other countries there has also been cooperation by other ministries like education and welfare. The employers are also crucial role players.

³⁸The World of Work ILO Magazine no.16 June/ July 1996 p.21

The IPEC is also assisted by active Workers organisations which have become active partners. The workers organisations play a very important role because they are part of the work force and as a result are able to raise awareness amongst their members and are able to bring abuse to light.

The IPEC also works with a variety of non governmental organisation. The NGO's are very often used as bases to establish projects and activities which meet the needs and activities of working children.

5. SOUTH AFRICAN PERSPECTIVES

5.1 Child Labour in South Africa

It has already been stated that in fact there is no up to date data on child labour in South Africa. The past government did not consider the issue of children's rights and that of child labour as priority. Up to now our source of information in relation to child labour has been the individual instances reported by the media from time to time. These reports have at least raised some form of awareness of the issue.

I myself had the privilege to speak to a few children who had been convicted of offences against the state. In one of the prison visits made to Brandvlei prison in Woeester, in the Western Cape there was quite a high number of children who prior to their arrest had been working on farms on the surrounding communities. They had been staying on the farms with their families.³⁹

³⁹The visits were made in relation to child labour, but were on Juvenile Justice and the conditions under which the children and young persons live, South African prisons their background and the kinds of crimes they had committed. This was a project which had been commissioned by UNICEF Conducted by the Community Law Centre at the University of the Western Cape in Cape Town (not yet published). However it was very interesting to note that in the farming areas quite a number of the children found in the prison came from within the farms. Most of them had dropped out of school

One boy interviewed in a Port Elizabeth prison was 14 years old and had been arrested for assault with the intention to do grievous bodily harm. Prior to his arrest he was working on a potato farm in a small town outside Port Elizabeth. He claimed that he had been earning R 75 a week. His parents had passed away, but he was staying with his elder brother and his wife. The brother also works on the farm and his wife works on the farm as a domestic worker. He said that he stopped attending school because he did not have shoes to wear to school and his brother did not have money to buy him the shoes. As a result of the poverty in his family he had to drop out of school.

Poverty in South Africa is very strongly related to the levels of unemployment. The unemployment levels of the poor stand at 50% compared to only 4% of the richest 20% people in South Africa.

In South Africa about, 95% of the poor are African, 5% are coloured and less than 1% are Indian and White. The Africans have the nearly twice the unemployment rate at (38%) of coloureds at (21%), more than three times the unemployment rate of Indians at (11%), and nearly ten times the unemployment rate of Whites at (4%).⁴⁰

The poverty in South Africa has a strong rural dimension, with 75% of poor living in the rural areas and concentrated in the former homelands. The rural poor suffer from higher unemployment levels and achieve very low educational levels and have lower access to services such as water and almost no electricity.

The poorest Provinces in the country are the Eastern Cape Province with 24%, KwaZulu Natal with (21%) and the Northern Province with (18%).⁴¹

to work at a very young age, their parents also worked on the farms.

⁴⁰Reconstruction and Development Programme: Key Indicators of Poverty in South Africa, an analysis prepared for the office of the Reconstruction and Development Programme (RDP) by the South African Labour and Development Research Unit (SALDRU) at the University of Cape Town p 3.

⁴¹Ibid 47.

According to the South Africa October, Household Survey of 1994⁴², as many as 200 000 children of between 10 and 14 years of age actually work in our country. This means that 4% of children in the country in that age group actually work.

According to D. Bosch and A Gordon, these figures are likely to be an underestimation of the full extent of the numbers of the children working in South Africa. Especially because the children under the age of 10 years were not included in the survey estimate. They allege that the figures for the under 10 year old child worker is at about 37 000 children or 3.7% of all the under 10 year old children in South Africa.

Despite all the laws available we are still not able to protect our children against exploitative child labour. Up until now South African children have not been protected by government against child labour. According to Dawie Bosch and Adele Gordon⁴³ the departments of Labour and Welfare, which have been responsible for this area of law over the past decade, actually have no record of any prosecution of any employer for having contravened the law. Furthermore the department that has the task of dealing with this issue does not have inspectors anywhere in the Country to deal with the problem.⁴⁴

⁴²The October Household Survey 1994, was one of the first Presidential lead Projects of President Nelson Mandela toward gathering information for the Government of National Unity for the Reconstruction and Development Program (RDP). This survey involved 30 279 households and recorded details of 132 409 individuals within these households. This survey can be regarded as more reliable than those provided in the past, as the new government was able to get through to the communities involved. In the past it was very difficult for the government to do any kind of survey especially within the black majority population as the government was regarded as hostile.

⁴³D Bosch and A Gordonn Eliminating Child Labour in South African Commercial Agriculture: Education and Legal Action, p 4.

⁴⁴In 1996 the department of Welfare was given the responsibility to deal with the issues of child labour however in 1997 the responsibility was handed

It is stated that in the last three years when the Minister of Welfare has had the responsibility of the child labour issues only 2 applications were made to the minister requesting exemption. Neither do the police keep statistics of any arrests that they may have done as a result of the violation of the law against child labour and they too cannot confirm that any arrest ever took place.

This illustrates the lack of awareness around the issues of child labour in South Africa. Employers who continue to employ children especially in exploitative circumstances continue to do it without fear of any retribution or arrested.

5.2 Child Labour in the Commercial Farming in South Africa

The most common form of child labour in South Africa is found in the agricultural sector. The work appears to be invisible because there is an assumption that the children are with their families and therefore even if they work they work under the protection of their families. Although farm work is often considered to be better than other forms of child labour it is very often very dangerous and demanding and there is also the use of insecticides which are sometimes given to the children to spray or apply to the plants or fields.

Children are also very useful to farmers especially during harvest time as they can be employed seasonally and be paid minimal wages.

Since 1981 the law that provided protection for children at work was the Basic Conditions of Employment Act of 1981.

However, the Act excluded farm and domestic workers until 1993. I believe that this was part of the Apartheid strategy to continue to enhance the master servant relationship between the whites and the black especially in the agricultural and mining sector. This was also re enforced by the Pass Laws which prevented blacks from occupying or staying in an area that had been allocated for the whites population unless such black people were in the employ of some the person or back to the department of labour.

company.

The exclusion of the farm and domestic workers from the provisions of the Basic Conditions of Employment Act meant that their children were also not protected and the Law discriminated against the children of farm workers and domestics.

There was no prohibition or limitation on child labour.⁴⁵ Because these children were not protected by the Basic Conditions of Employment Act, the farmers could work them for long hours, as there were no maximum weekly working hours nor minimum provisions for annual leave.

There was also no discussion on the minimum wages as the Wage Act 5 of 1957 did not apply to agriculture.

Prior to 1991 farmers were allowed to employ children without any fear of prosecution by the state as there were no laws against the employment of children. Until in 1991 an amendment to the Child Care Act included the restriction that no child below the age of 15 years could be employed.

As already stated very little research has been conducted in South Africa about child labour and the impact that it has had on our country. However research has been done on commercial agriculture as we have a large number of children working within the sector.

According to Bosch child labour in farming started as far back as the 17th and 18th centuries when slaves were being imported from Madagascar, the East Indies and other parts of Africa to the Cape. It is said that the use of children on farms continued to grow despite the abolition of slavery.

The 1931 Land Act which diminished the areas in which blacks could own land and farm in their own rights created even further problems. In 1948 the Nationalist government intervened to protect the white farmers and to continue to enforce the

⁴⁵The protection of farm workers were only included in the limitation and prohibition of child labour in 1991.

master servant relation that was in existence. By 1980, 87% of the land in South Africa was wholly owned by whites. This meant that even those few blacks who had been farmers were forced to move out of the so-called white areas into those areas which were demarcated for blacks. This situation forced a number of black people who had previously been farm owners to look for work with the white farmers and other areas. The farmers had control of the lives of their labourers as they knew that their livelihood and that of their entire families depended on them.

The state of poverty the families were in meant that the children also had no alternative but to stay on the farm with the parents. As a result they too became part of the work force.

The Child Care Act encompasses the rights of the children including child labour. Therefore as soon as the amendment of the child Care Act was introduced, all children under 15 years including those in farming and domestic sectors were protected.

According to the Central Statistics Service Agricultural Survey of 1992 there were 1.05 million farm workers working on commercial farms in South Africa, together with their dependants they numbered about 7 million people living on these farms, which means that about 20 % of South Africa's population live on the farm.

“The internal contradictions which have characterised much of commercial agriculture's approach to the issue of child labour are illustrated by the statement of a spokesperson” who said:

“The Agricultural employer's Union does not say that children should be a supplementary source of income and labour for farmers, but it should also not be a criminal offence for a farmer to employ children”.⁴⁶

⁴⁶(n 43) Pearlie Joubert, This comment was quoted in the Vrye Weekblad 91-03-08, by Kobus Kleinhans, the then Deputy Director (General Service) SAAU (authors translation from Afrikaans to English)

According to the Household Survey 1 in every 3 child workers in South Africa live in commercial farming areas outside town and cities. Not all these children who work directly work on the farm, some work in other businesses linked to farming. Others work in the manufacturing areas within the farm for example packing the goods for transportation.

The agricultural sector employs over 60 000 children between the ages of 10 and 14 years, and 63 000 children between the ages of 15 and 17 years. This means that 11% of the South African 10 to 14 year old are employed in the farming industry and as high as 21.2% of those that are between 15 to 17 years.

South Africa consists of 9 provinces. According to the 1994 House hold Survey these are the numbers of **working** children found in each province :

PROVINCE	NO. 10 - 14 YEARS	NO 15- 17 YEARS
North - West Province	15 000	12 000
KwaZulu Natal	14 500	14 000
Eastern Cape	8 800	6 000
Western Cape	7 200	9 000
Mpumalanga	6 200	5 000

Free State	2 900	8 000
Gauteng	2 200	2 500
Northern Cape	2 000	2 500
Northern Province	900	2 000

According to the table above it seems to be no correlation to the numbers of children working in each Province and the agricultural production of that Province.

According to the RSA Agricultural production Information Directorate, 1996 the contribution to agricultural production by provinces in 1993, in terms of Rand value :

- Western Cape produced 21.94%
- Free State province produced 15.08%
- KwaZulu Natal produced 14.69%
- Mpumalanga produced 12.56%
- North West province 11.18%
- Gauteng province 7.48%
- Eastern Cape 7.03%
- Northern Province 5.74%
- Northern Cape 4%

According to these tables the **North West** province has the highest number of working children in both the 10 to 14 years and the 15 to 17 years, despite the fact that its production in 1993 was the 5th highest with 11.18%.

The **Western Cape Province** had production levels of 21.94% whilst according to

the table has the 4th largest numbers of child labourers in the country.

These children often work very long hours, the average being up to 40- 49 hours a week for both boys and girls. More boys than girls tend to work over the 50 hour week, as some boys worked 50 to 59 hour week. About 11% of the children in the agricultural sector work less than 10 hours a week. Girls often have to work long and very odd hours throughout the day. They have to do domestic work including looking after the siblings while the adults are on the farm working.

It is very difficult to establish how much these children earn for the work they do and the hours they work. This is also confirmed by D Bosch and A Gordon when they state that in their research the data provided for the amount of remuneration that the children receive was not very reliable as a result they were not able to reflect it in their work. It is obviously difficult to get any type of information in this area because one would have to rely on the employer to provide the correct information. However, employers are very reluctant to disclose these figures. Even the children themselves are often reluctant to disclose the information.

The economic backgrounds and conditions under which these children live makes it very difficult for them to complain about their remuneration. There might be instances where the child understands the dangers of the environment he or she is working in but poverty forces them to continue working in drastic conditions as long as they are able to provide something to help feed their families.

Some of these children working on these farms can be classified as bonded labourers. These children are working on the farms because their grand parents worked on the same farm for years. The farmers provide accommodation for the entire family. For the family to keep their house they have to make sure that all the able bodied people work on the farm. Once the initial generation is old and tired and can not continue to work the second generation has to step in otherwise the entire family will be evicted from the farm by the employer. In South Africa this phenomena has

been happening for a long time. The government has now under taken to introduce a new land tenure bill which will protect the employees against eviction form the property based on the number of years they have resided on the land. However in anticipation of the new law the farmers have started to evict the farm workers from their properties. In the past year alone we have had quite a number of incidents published in the news paper about families found siting on the grass next to the road with no where to go. According to the South African Broadcasting Co operation television news in KwaZulu Natal alone there have been 450 evictions.

Most farm unions in South Africa support a total ban on child labour as a result some of them have even formulated their own polices in this regard. For example the South Africa Agricultural plantation and Allied Workers Union (SAAPAWU) an affiliate of Congress of South Africa Trade Unions (COSATU) agrees that child labour has a negative effect on the economy and also contributes to the low productivity in agriculture as a whole. The emphasis of its programmes lies on achieving higher wages for adult farm workers so as to avoid dependency of families on child labour as a supplement for adult income.⁴⁷

However the fact that farms are isolated in areas outside town and with very long distances between each farm, has caused the unions not to be strong and supportive of each other as they could as we see happening with the factory unions within the urban areas.

Furthermore, the unionised farmers stand a greater risk of losing not only their jobs but their accommodation, if they are considered as a threat by their employers. The farm workers were not protected by the Labour Relations Act until very late in the 1980s.

This year, as part of the debate on the Basic Condition of Employment draft Bill COSATU has been advocating for the minimum age of employment to be set at 16 years. This opportunity should be used by both government and the non governmental

⁴⁷SAAPAWU *News*, October 1995, p 5.

organisations to launch awareness campaigns as COSATU has a very large constituency .

5.3. CHILDREN IN THE INFORMAL SECTOR.

The children working in the informal sector are the most vulnerable because more often than not, they are not seen. They are often not acknowledged as part of the problem of child labour and might even not be included in the statistics on child workers.

Some of these children are the street children who we find in all the cities and towns of South Africa. Whether they are selling vegetables, sweets, washing and directing cars or just begging on the pavements.

Children working within the Taxi industry is another unique form of child labour existing in South Africa. Taxi ranks are usually situated in strategic areas where there is easy access to their commuters. They are often situated outside town or cities and near the railway stations.⁴⁸ The taxi industry has become the biggest source of transport for the large majority of our people living in the townships. Most of the people living within these communities are employed outside their communities and the distance between the city or town and the township makes the taxi industry very lucrative.

The taxi ranks are usually full of taxis all day and there is a lot of competition that exists within the industry. The taxis need to be washed so that they are able to attract the commuters and this is where the children come in. "The duty of washing and cleaning the vehicle is done exclusively by young black boys as the taxi industry is regarded as a man's world". However, this does not mean that girls are not part of the system as they are often found around the taxi ranks selling fruit, vegetable and other goods. According to the research presented, it also became apparent that there were

⁴⁸W Schurink, C Molope and S Tshabalala, *A Exploring some of the dimensions of Child labour in South Africa*@ p 27.

also other girls who frequented the taxi rank after school. They spend their afternoons driving around with the taxi drivers on their short trips. The researchers confirmed that some of these girls were having sexual relations with the drivers. The some of the employees in the taxi industry are involved in organised child prostitution, they actually act as the organisers and the procures for the clients.⁴⁹

The boys that work within the taxi industry do not just wash and clean the cars they are often used by the taxi drivers as conductors. Their responsibilities are to ride in the mini buses with the driver, collecting money from the passengers and ensuring that the amount received reconciles with the number of passengers.

A parent in a township called Khayelitsha in Cape Town, said that she often worries about her young boys who attend school in the township while she is at work. What sometimes happens is that the parents think that the children have gone to school, only to be told by neighbours that they had been seen fairing passengers in taxis. The children do this in order to get quick pocket money.⁵⁰

The boys that join the taxi industry usually come from poor and unstable background, and look up to the taxi driver who also entered the taxi industry as young boys. These boys have dreams and expectations that they too one day will drive and finally own taxis.

One boy interviewed said that he probably started working in the industry between the ages of 10 and 11, he learned how to drive and latter on acquired a licence and now is a taxi driver. He believes that he will soon be a taxi owner.

⁴⁹Neville Chainee A Child Prostitution in South Africa: The problem Areas and the Protection Legislation p 24.

⁵⁰Personal conversation with the mother.

According to the research the taxi cleaners day starts at 8H00 and ends at 19H00. The boys are required to wash the taxi's between trips. Generally, during the month the children usually have enough time to wash the taxi. During this time of the month they are able to wash a least three to four taxis a day and earns R 15 for each taxi washed. The problem arises during peak time which is during weekends and month ends. During this time the taxis are quite busy trying to make as many trips as possible. The boys have to work very quickly or they might not have a taxi to wash. Whether they receive their earnings after the day's work largely depends on the taxi driver concerned. If he does not want to pay the child worker he can simply walk away without the fear of reprisal.

The taxi industry is an informal industry, the government has decided to regulate it so that there is better control. In certain areas there might be organisation offices where the general public can report complaints or seek assistance. Generally the public an not get any assistance for the taxi industry.

It is well known that the taxi industry is very dangerous as it is common to find the taxi drivers and sometimes the owners themselves fighting against each other for territory and routes. It is very unlikely that a child who has not been paid will pursue the matter any further. The violence is often so intense that police and soldier are called in to defuse the situation. It is obvious that the children as the most vulnerable within the group will be caught in the cross fire.

These children should not be allowed to continue to work in an environment that is so unstable and as this is detrimental to their development. The taxi organisations need to be informed of the dangers of child labour and why it is necessary for those children not to continue to work in the industry. However, we can not just remove the children form their "jobs" without giving them alternatives. Otherwise the likelihood is that sooner or later they will come back or will look for employment elsewhere.

5.4. CHILD SEXUAL EXPLOITATION.

Child labour can also be found in the marginal or illegal work conducted by adults. These children are used by adults to commit a number of crimes ranging from drug trafficking, pornography, child prostitution and any other forms of crimes that these adults are involved in.

Child prostitution is usually a result of the socio economic conditions that these children find themselves in. To force these children into prostitution the adults use their vulnerability. They are deceived, threatened with acts of violence by adults in order to force them into a life of prostitution. The involvement of children in prostitution prevents the children realising their full developmental potential to become productive citizens, who will become useful members of society in the future.

The quantification of the extent of the problem is not known because of the minimal research that has been done in the area. However, there are articles based on **punctual** observation available.

Child prostitution in South Africa is on the increase and is manifested in a number of areas.

The former migrant labour system which was used in the past by the government to obtain cheap labour for the mining industry, agriculture and other areas of white business had an impact. The migrant workers were men who would for example join "TEBA"⁵¹ and other organisations to get work in the mining areas like Johannesburg.

⁵¹Teba is a representative office which was usually found in the former Homeland, this is where the labourers who wanted to work at the mines would register. Once they had registered they would be given a date of departure for the mines and on that date they would be

These labourers had to migrate on their own leaving their families behind. Even today these men are still found housed in single sex hostels. They are able to visit their families once or twice a year. This abnormal existence and isolation has created a market for prostitution. Punctual research conducted by the Network Against Child Labour (NACL) has shown that hostels are frequently “serviced” by school girls, that is in Soweto and Nashville.⁵²

Child prostitution is also found around the South Africa trucking business, this is well illustrate by the discovery of 300 children in an organised prostitution system in Pretoria and Maravesstad area.⁵³

Tourism in South Africa is rapidly growing, and with the rapid growth of tourists comes the problem of sex tourists. If we go by the examples of places like Brazil and Thailand, where they have very high numbers of sex tourists it can be expected that South Africa is

also going to be faced with the same problem. The government has the responsibility to introduce laws that will deal with sex tourism before it becomes uncontrollable. According to Neville Chainee, during the police raids in the red light district of Johannesburg in 1995, children were found in acts of sex with tourists.

In Durban children are often prostituted from rooms in cheap hotels and tenant blocks with the is the involvement of third parties whether pimps or madams who

taken on a bus to their destinations.

⁵²Chainee (n 49) p 24.

⁵³Ibid.

interact with potential clients. Most of the time these children are run away or street children who are forced to stay with the madam for financial security. The madams or pimps mostly use children that are between the ages of 8 and 14 years.⁵⁴

The police have also reported a growing number of children who are involved in street prostitution, they are between the ages of 12 and 16 years.

However as noted by the African delegates to the First World Congress against Commercial Sexual Exploitation of Children (CSEC) sexual exploitation of children in all forms, whether “commercial” or “in kind” should be prevented and combatted”.⁵⁵

However not all sex involving children is commercial, some of it is paid in kind. The CSEC’s use of the word “commercial sex” can be seen as limiting or excluding other forms of sexual exploitation that are not by definition commercial transactions.

Sex is can used by adults as trade for subsistence or survival. Children who are often forced into survival sex are in the majority black and coloured children who live on the streets or in the townships. Survival sex occurs not only as a result of poverty but also as a result of violence within the community or the family. Statistics from the South Africa Police Service established that the number of reported rape cases of children under 18 years increased from under 5 000 in 1993 to 10 037 in 1995 and in the first month of 1996 the were 2321 reported child rape cases.⁵⁶

The sex industry exposes children to dangerous health hazards that will have long

⁵⁴J O’Connell Davidson and J Sanchez Taylor “ Child Prostitution in South Africa” ECPAT International 1996 p 11.

⁵⁵Report of the World Congress Against Commercial Sexual Exploitation of Children Stockholm, Sweden, 27 - 31 August 1996 p 232.

⁵⁶Connell (n 54) p 11.

term effects on them. There are risks of sexually transmitted diseases including HIV/AIDS, the threat of girls getting pregnant at a very early age thus subjecting the newborn child and herself to even worse conditions of poverty.

In South Africa there is a belief within the communities that if you have been infected by the HIV you can get healed by having sexual intercourse with a very young girl. This has increased the number of incidents of sexual abuse of children by adult offenders. Furthermore there is a general perception that you will be less exposed to HIV if your partners are very young.

The government needs to introduce legislation which is going to deal with this problem. Such policy must give priority to the prevention and resolution of the problem. There must also be involvement of the NGOs who have worked with these sexually exploited children and they should involve awareness campaigns as a way of reaching out to the children and their families.

The Sexual Offences Act of 1957 contains provisions for prostitution and sexual abuse. It prohibits any form of sex work for reward. In terms of the Sexual Offences Act sexual exploitation of all persons is prohibited. The law defines the age of consent as 16 years for boys and 19 years for girls.

The issue paper on Sexual Offences commissioned by the Law Commission is set to develop legislation and guidelines to protect children from sexual exploitation. In their initial issue paper they have set out principles for the management of sexual offences against children, these principles should underline all legislative reforms. Their paramount objective is the best interest of the child.

Furthermore, the child who has suffered the abuse and trauma should not be forced into secondary trauma, because of the way the system handles the abuse.

The persons who have committed the sexual offence against the child should be encouraged to accept the responsibility for his or her behaviour and to “develop the

insight into the impact of such behaviour on the child and family”. The sanction should fit the sexual offence committed and should be applied to ensure security of the child, family and the community.⁵⁷

In South Africa there is no criminal offence labelled “ child abuse ; child sexual abuse”. The Sexual Offences Act, 1957 covers some specific aspects of forms of sexual abuse like prostitution, procurement and the abduction of children for sexual purposes. Section 14 of the Act also states that the age of consent is 16 years for females and 19 years for males. The discrepancies between the ages has created a lot of controversy and debate about unfair discrimination between the male and female victims. This is further complicated by the Child Care Act which states that parents can be found unfit if they expose their children under 18 years to sexual activity.

“ The Act does not address the problem such as ‘sex tourism’ which is growing in South Africa” and thus is considered to be defective in the protection it affords children.⁵⁸

In November 1997 prostitution was decriminalised, this action will in a way assist in rehabilitation programmes for the young sex workers. If the child prostitutes are not arrested for prostitution it will become easier for the non governmental organisation and other role player to rehabilitate the children and also arrest those who have broken the law by having sexual relationships with minors.

5.5. DOMESTIC WORK

Children are also exploited as domestic workers, whether in their own homes, businesses owned by the family or by a relative. Many of the children especially the

⁵⁷ South African Law Commission Sexual Offences Against Children Issue paper 10 project 108 p 13.

⁵⁸ South African Law Commission (n 57) p 17.

girl child find themselves in the informal sector doing domestic work, which is so demanding that it denies the child the right to education because of lack of time. Children working in agriculture and domestic work whether in their own homes or in other households constitute the majority of children who are not attending school or who are not performing to standard.

It is a known fact that this form of child labour exists in South Africa. However very little research and information is available, we can only guess at the extent of the problem. This kind of practise is common within the black communities especially in the townships. Take for an example of a person who is a teacher and a mother of two children and at the same time studying at a tertiary institution nearby. This teacher does not have a helper or so called domestic servant to look after her children while she is away . To remedy the situation she takes a family relative's 14-year old child from her parents in the rural area to come and stay with her with her family in the township. This child has the responsibility of looking after the teacher's children everyday when she comes back from school until the mother returns home. She has to see to it that they have been fed, changed and well looked after, she also has to look after the house and cook supper for the entire family. The only reward the child gets for this kind of work is being able to move away from the rural area to be in a better school in the township.

The argument that is often made in favour of children working at home is that children need to be taught skill so that they are able to apply themselves when they become adults.

Yes, children need to be taught skills on how to survive on their own or to how in the assist the household at an early age. They have a responsibility to assist in the running of the household as they will benefit from a reasonable level of involvement. Because there is so much exploitation a line needs to be drawn between what is considered as part of the child's proper upbringing and when the parents, guardians

have over stepped the mark to abusing the children. They force them to work long hours with no opportunity for them to relax or play with children their own age.

There have been reports of various kinds of abuses on children inflicted by their own close family members. These can include physical, sexual, or verbal abuse. It then makes sense that exploitation of children can be conducted under the disguise or pretence of the child's development.

The Sunday Times Newspaper, reported a story of a 10 year old girl who had been attacked by her grandmother with a razor blade. She was being punished for refusing to wake up in the morning to fetch water for the family she was saved by the neighbours who heard her crying.⁵⁹

Children are also found working with in the brickyards of individual employers. According to the research the children interviewed were very young and worked at the brickyard the entire day.

The owner of one of the brickyards visited said he did not see himself as exploiting the children but merely providing them with much needed source of income. He also strongly believed that what he was doing was keeping them off the streets and away from crime⁶⁰.

Some of the children interviewed mentioned that they earned R 100 per fortnight, and to earn this amount he had to make sure that he loads 400 bricks a day on to a truck.

The owner of the brickyard own told the researcher that he should first ask the government to provide recreational facilities for these children so that they do not go roaming the street and end up involved in illegal activities, before coming to him and telling him about child labour.

⁵⁹Sunday Times September 1997.

⁶⁰ Schurink (n 48) p 35.

The youngest child worker in the group interviewed was a child of 7 years.

The owner of the brickyard informed the researcher that even some of his sons worked in the yard they were working there because they did not want to go to school, he feared that they would be an embarrassment to him in the community and in order to avoid this he decided to employ them in the yard, they are paid just like all the other children ⁶¹

6. Constitution and Legislation in South Africa.

6.1 The Constitution.

The most fundamental legal instrument in relation to the rights of children is the Constitution of the Republic of South Africa.⁶² In line with the current trends in the development of human rights law, and paying special attention to the needs of the children, the constitution is one of the legal instruments that are available to protect children against abuse and exploitation including child labour.

The children are protected by the Constitution under the Bill of Rights as all the citizens of the country, they have access to all the rights and freedoms that are enshrined in the constitution. They have the right to life, to human dignity, freedom and security of persons and the right not to be subjected to slavery, servitude or forced labour and a host of other fundamental right not mentioned. ⁶³

⁶¹Section 29 of the Constitution of the Republic of South Africa.

⁶²The Constitution of the Republic of South Africa, Act 108 of 1996 which was adopted by the Constitutional Assembly on the 11 October 1996.

⁶³Chapter 2 encompassing the Bill of Rights.

According to the Constitution a child is considered to be a person under the age of 18 years and therefore in line with other international documents.⁶⁴

However when extending these rights and freedoms to children we must be guided by the specific section 28 in order not to violate, contradict or exclude special protection and privileges accorded to them because of their special circumstances as children.

Section 28 clearly states that children have a right:

- (d) “to be protected form maltreatment, neglect, abuse or degradation
- (e) to be protected from exploitative labour practices
- (f) not to be required or permitted to perform work or provide services that:
 - (i) are inappropriate for a person of that age ; or
 - (ii) place at risk that child’s well being, education, physical or mental health; spiritual moral or social development”.

These sections in the Constitution specifically deal with the issue of child labour, clearly spelling out that children should not be required or even permitted to work. Employers are not to provide services that are in appropriate for that child’s age, or which places the well being of the child at risk, including the child’s mental spiritual and moral being . The work that the child does will have to be one that does not conflict with or inhibit the child’s education. Especially because section 29 of the constitution states that everyone has a right to education.

Most countries have accepted in principle that there is a need for the protection of children in the work force and one way to deal with this issue is the provision by national law of a basic minimum age for the admission to employment. However

⁶⁴Section 28 (3) of the United Nations Convention on the Rights of the Child.

different countries have used different approaches when dealing with this issue. The relationship between the minimum age set for employment and the compulsory age set for schooling is very important. These two have to co ordinate. Problems can occur if the age of admission to employment is not linked to the age of completion of compulsory education. This has to be done in order to avoid a situation where there might be a gap created between the time a child has to go to school and when he or she is allowed to work.

6.2 Legislation.

The Schools Act 84 of 1996 provides that there should be compulsory attendance of school for all children between the age of 7 and 15 years.⁶⁵ Hence it is the obligation of the state, the parents or guardians and community in which these children reside in to ensure that the children under the age of 15 years do not get employed except in exceptional circumstances or when they perform light work for example after school, as they by law should be in school. Technically what their parents or legal guardians think or say about their education is irrelevant. However one understands that the issue of child labour is more dynamic than that, as there are various reasons why children are sometimes forced to work.

The Child Care Act encompasses the rights of South African children, therefore as soon as the amendment was made to the legislation all the children under 15 years including those of the farming and domestic workers, who had been previously excluded were protected⁶⁶.

⁶⁵Schools Act 84 of 1996 section 3 (1)

⁶⁶The Amendment of section 52A of the Child Care Act 74 of 1983, by

The amendment was made base on a recommendation of the National Manpower Commission which had been appointed to investigate the extension of labour laws to the agricultural sector.⁶⁷

The amendment had been inserted in the Child Care Act to counter the abuse of children under the age of 15 years in the labour market. As children were and are frequently employed for very minimal amounts to undertake a wide variety of tasks.⁶⁸ The Child Care Act in section 52 A prohibits the employment of children below the age of 15 years.⁶⁹ Children below the age of 15 years who will be allowed to work will be those who have been granted the exemption by the minister and such exemption has to be published in the government gazette. The minister has to issue to the particular employer a certificate of exemption in which the name of the child and the employer and the conditions of employment are clearly stipulated for the employer to follow.

The minister may at any time amend or withdraw any certificate of exemption granted by him.

The was a problem in introducing the amendment into the Child Care Act as it falls under the department of Welfare. The problem was that the department did not have inspectors to enforce the laws. They also did not have any resources to employ these inspectors.

section 19 Act 86 of 1991.Government Gazette vol. 360 no.16510.

⁶⁷D Bosch (43) p 20.

⁶⁸HM Bosman -Swanepoel P J Wessels A A Practical Approach to the Child Care Act@.

⁶⁹Child Care Act 74 of 1983

The 1995 Amendment of the Child Care Act also suggested the removal or the exclusion of the minister's general discretion to grant exemptions except for the entertainment industry. Even within the entertainment and advertising industry the minister would have to deal with the individual applications from the employers.

The proposal suggested very clear regulatory conditions under which these children could be employed.⁷⁰ The draft amendment gave specific criteria and conditions under which a child under the age of 15 could work within the entertainment industry.

However, there continued to be disagreement about whether the minister should continue to have the general discretion to deal with all the applications for exemptions. As a result of the disagreement the limitation of the exemption powers that the minister could have was removed in a recent draft version of the Basic Condition of Employment Bill Amendment Bill, which will be discuss further below. The only limitation that was not removed was that the exemption may only be granted only on recommendation by the child labour Advisory Board⁷¹

A further proposal for amendment was made so as to include the allowance of employment of children “ in connection with the household and business or farming of a parent or legal guardian, household activities in an institution or place where a child finds him or herself, and also activities of school, youth organisations or children's shelters, subject to prescribed inspection and monitoring”⁷²

The Draft Act also proposes an Advisory Board or Commission as already mentioned above. The role of this Board would be the responsibility of all the activities relation to children and their work. These would include appointing inspectors, monitoring the

⁷⁰Draft Regulations regarding Child Work, Government Gazette no. 16590 of 30 June 1995 pp 57 -61.

⁷¹Bosch (n 43) p 21.

⁷²Draft Regulations (n 70) section 1A.

entire activities, including looking at the publication and awareness campaign on child labour.

The Advisory Board or commission would consist of a multi disciplinary team of people from different departments within the government, trade unions, major organisations and NGOs involved in the issue of labour.

The role that would be played by the Advisory Board would have to be seriously considered so that it does not duplicate or overlap with that of the minister. As the question is who will have ultimate control to enforce the law will it be the Minister or the Advisory Board.

After the entire process discussed above regarding, the draft Bill the National Programme of Action (NPA) made recommendation that the responsibility of the enforcement of the law should be handed back to the Department of labour. The NPA is the instrument by which the South Africa government undertakes to carry forward the process of the implementation of children's rights. It is a mechanism for identifying all plans for children developed by government departments, non governmental organisations and other child relate structures. This framework ensures that all the provisions set out in the Convention on the Rights of the Child, the goals of the 1990 World Summit for Children and the Reconstruction and Development Programme are put into practice.⁷³

Within the government an inter ministerial core group has been established by Cabinet to oversees the process of the National Programme of Action for Children.

The ministries involved are the department of Health, Education, Welfare, Water affairs and Forestry, Justice.⁷⁴

⁷³National Programme of Action in South Africa :Framework 31 May 1996.

⁷⁴Ibid p 2.

The Basic Conditions of Employment Act 3 of 1983 prohibits the employment of children below the age of 15 years and again reiterates the prohibition already mentioned above.⁷⁵ The Act also provided for the appointment of inspectors subject to the control of the Director General⁷⁶.

The new government has proposed a new bill, the Basic Conditions of Employment Bill⁷⁷. The draft bill was advertised and published in the government gazette for comments from the public especially those people involved with labour issues.

It was agreed that the department of Welfare does not have the necessary infrastructure or staff to deal with the problem of child labour, despite the fact that all other related issues are found in the department of Welfare. Thus it was recommended that the responsibility be given back to the department of Labour. The proposal is that Child Labour will be regulated in the department of Labour and that this department should have the principal role of enforcement. However the minister of Labour would have the power to delegate inspection and other enforcement responsibilities to officials from other government departments.⁷⁸

This draft Bill has caused a lot of debate between the unions, the employer's organisations and the government. Some of the issues of contention have been the working hours per week, months paid for maternity leave and workers demanding

⁷⁵Section 17 (a) of the Basic Conditions of Employment Act 3 of 1983.

⁷⁶Section 22 of the Basic Conditions of Employment Act 3 of 1983.

⁷⁷Basic Conditions of Employment Bill, 1997, published in the government Gazette no.17945 of 1997.

⁷⁸ Employment Standards Statute: Policy Proposals Notice 156 of 1996, Government Gazette vol. 368 no. 17002 of 1996.

that the minimum age of employment should be raised to 16 years whilst according to the draft Bill the government is arguing for a minimum of 15 years.

I believe that it would make sense for that government at the present moment to leave the minimum age at 15 years so that this ties in with their Schools Act which stated that there is compulsory education for children between the ages of 7 and 15 years. This will give a clear indication that only those children going for their 16th birthday will be allowed to start work.

We have to avoid creating a gap between the two legislations as both are working towards the same goal.

According to an article published in the Argus the business sector is not very happy with the provisions of the Bill especially in regard to the 45 hour working week, the 4 months maternity leave and the minimum age of employment of 15 years. They feel that this Bill is too advanced for a developing country like ours and that the terms and conditions set in the document are in fact suitable for a first world country.⁷⁹

The Draft Bill proposes in section 44 the prohibition of employment of children and also prohibits forced labour. For those children over the age of 15, it clearly states that no person may employ a child in conditions of employment that are inappropriate for a person his age or conditions that may place the child's well being education, physical or mental health, or spiritual moral or social development at risk. Section 49 of the Bill prohibits forced labour.

The Draft Bill does deal with the same issues discussed in the Constitution and other legislation previously discussed. However the Bill seems to be quite clear that the bottom line is no children under the age of 15 should be employed. It does not say anything about allowing the employment of children in relation to light work.

The only exemptions that are there are those that will be granted by the Minister after

⁷⁹ Cape Town Argus News paper, 19 November 1997.

consultation with the commission may make regulation to prohibit or place conditions on the employment of children who are at least 12 years of age and those no longer to compulsory schooling in terms of any law.

The draft Bill moves away from the existing general provisions that the minister has to grant exemption, which are often difficult to control. The proposal is that the minister of Labour will have to deal with individual applications for exemptions. In that way it will make the employers who apply for such exemptions aware of the conditions they are required to adhere to. This will make the work of the inspectors much easier when monitoring as they will be able to refer specifically to the file of such an employer in terms of the application for exemption made by such an employer.

The Bill does give the Minister very wide discretion for the exemptions. Furthermore it states that the conditions in relation to the employment of children will only be made at a latter stage as regulations by the minister in conjunction with the commission. I am of the view that it would have been more relevant and effective for the conditions to be clearly spelt out within the act itself so as to minimise this discretion that the Minister has over the employment of children.

The Bill states that in any proceeding relating to this act and where there is a question of the determination of age of a child who is found to be employed. The onus will be on the person alleging that the person was lawfully employed. That after having reasonably investigated the child's background he or she had drawn the conclusion that he was not violating any laws relation to child labour as stated in section 44.

The contravention of the provision in the Bill remain a criminal offence. The recommendation has also been made that the parents or guardians of the child and the child should have the option of a civil action against the employer who has violated any part of the proposed Bill.

Section 47 states that there can not be any discrimination against any employer who refuses to employ a child in contravention of this Act.

On the 6 of November 1997 the Basic Conditions of Employment Bill was passed by parliament and became the Basic Conditions of Employment Act 75 of 1997.

7. THE PREVENTION, REMOVAL AND REHABILITATION.

7.1. THE ROLE OF EDUCATION IN THE ELIMINATION OF CHILD LABOUR

Education is essential for children because it helps them realise their full potential. Compulsory, universal and free primary education is one of the most important initiatives that can be adopted towards the total elimination of child labour. Article 26(1) of the Universal Declaration of Human Rights provides that education should be free at least in the basic stages.

Article 13 of the International Convention on the Economic, Social and Cultural Rights also states that in order to realise the full right to education, States should make primary education compulsory and free for all.

Education is a right enshrined in the United Nations Convention on the Rights of the Child⁸⁰ as well as the Constitution of the Republic of South Africa. “Education is also an enabling right that allows children and adults to exercise many of their other rights through their lifetimes”.⁸¹

⁸⁰Article 28 of the United Nations Convention on the Rights of the child.

⁸¹Relationship between Education and Child labour Issue Paper: International Conference on Child labour Oslo, 27 - 30 October 1997.UNICEF New York p 1.

“Although the right to education extends to both adults and children, the principle of compulsory education is only applicable to children. It is a principle that implies that it is in the best interest of the child that children are not entitled to refuse education below a specific level. Although there is a duty on the State to provide education up to a specific level, there is not any corresponding enforceable international duty on the child to receive the education”.⁸²

Children tend to be more available for child labour where there is no or very little education available. When education is more available in terms of access, affordability, quality and relevance it tends to prevent children going the route of child labour. It is also able to provide alternatives for those children who have already been drawn into the field of work .

For a member state to implement its duty to provide compulsory education effectively, it will have to introduce legislation which will include a framework on how this compulsory education will be implemented. There should be consideration for issues of transport, food and the availability of schools within certain communities especially those in the rural areas. South Africa is at the moment introducing new legislation regarding education within the country.

The Issue paper prepared for the Regional consultation as a build up to the International Conference in October 1997 in Oslo, states that education for all in less industrialised countries is not impossible.⁸³ Yes, it will not be easy but if there is a political will and resources are then channelled towards it, it becomes an achievable

⁸² Van Bueren (2) p 237.

⁸³Report Africa Regional Consultative Conference on Child Labour, held in Pretoria 1- 3 September 1997.

goal. Examples of countries that have taken that route include Botswana, China and Mauritius.

According to the Report the major reason for the non involvement of children in education is because of their commitments at work. The long working hours and the difficult conditions under which these children work under often creates an almost impossible climate for any kind of education for that child. The children who do work and go to school at the same time are not very productive and lack concentration. There is acknowledgement from all spheres that in order for each state to deal with child labour, basic primary education has to be made available to everybody without discrimination. The more numbers of children there are have in schools the less numbers there will be in employment.

South Africa at present has the political will to legislate for free compulsory primary education. The government in this regard has paid a lot of attention to the needs and rights of the child. The rights of the child in South Africa have been taken as one of the priority goals by the Government. That is why the ANC lead government in 1995 ratified the United Nations Convention on the Rights of the Child, which articulates all these rights relating to the needs of the child including the protection against abuse and exploitation by employers in the work place.⁸⁴

However for education to play an effective role in the elimination of child labour it has to be effective and of good standard. Fundamental changes in the way education is perceived and presented have to be effected, so that education will be able to cater for those children who are already victims of intolerable forms of child labour. The Issue paper states that the education system needs to be more diverse by being

⁸⁴The United Nations Convention on the Rights of the Child in Article 32 provides children with the right to be protected from economic exploitation.

flexible, inclusive and of a higher quality.

The education system must be flexible enough to be able to deal with the needs of the working children. This means ensuring that despite the fact that these children work they can continue receiving effective education by adapting to their needs and schedules. Determining how children can actively participate in their own education.

The issue paper further discusses the fact that the present education is characterised by regional, gender and ethnical disparities. In some countries we find that boys are likely to be sent to school than girls. The girl child is more likely to end up being tied up to performing domestic chores and other activities like looking after the house and the younger children while the adults have gone to work. They argue that the children who are engaged in the informal sector, children working in agriculture, and girls involved in domestic work in their own homes as well as other people's homes, constitute the majority of children who are not attending school or not performing well in their education. "Because of the lack of attention to "invisible" child labour there is very little reliable data regarding its extent and even less about the impact on the lives of the children⁸⁵."

In the past education was used by the government to manipulate the majority of the South Africa children. The educational policies were formulated to support the Apartheid system, it also supported white farmers who were seen as part of the system. The system made sure that farmers and other white business interests, had ready access to school pupils for labour. The education provided for black people prepared the children for little else other than working as unskilled labourers.

The setting up of different education departments governed by separate pieces of legislation under the apartheid system reinforced the division and inequality within the education system. The white and coloured children were getting better education

⁸⁵Bosch (n 43) p 3.

based on the fact that they would ultimately have to be skilled workers in whatever field they choose. While on the black children were taught inferior education base on the fact that they were going to end up as labourers working for the white people.

The reform of the education system in South Africa started as early as 1990. This was in anticipation of the changes that were inevitable. The minister of Education announced the development of 'Education renewal' for South Africa. The government acknowledge the inequalities that had been created by the past legislation and the need to change it in order to redress the imbalances.⁸⁶

The Universal Declaration of Human Rights and the Convention on the Rights of the Child provides education as basic right for all persons.

The ANC's policy document also mentioned the need for the transformation of the education system in acknowledgement of the extent and the nature of the disparities and inequalities in the existing education system.

As already mentioned the new constitution recognises the right of every child to basic education. as a fundamental right.⁸⁷

The right to education in the constitution is extended further by other provisions within the constitution. For example the right to equality in section 9 reinforces the fact that everybody has the right to access equal education without exception. All learners whatever their need, have a right to the same education that is available to all the other citizens. Even the children who find themselves involved in child work have a right to the same care and standard of education that is afforded the child who is in

⁸⁶Education for all : from "Special needs and Support" to developing quality education for all learners. A public discussion document. Published by the NCSNET and NCESS August 1997.

⁸⁷The constitution in section 29 states that "everyone has the right to basic education, including adult basic education and to further education which the state, through reasonable measures, must make progressively available and accessible".

an environment that is conducive to his or her learning.

The different provinces within the country are entitled to make laws regarding education within their provinces, but those laws made by the provinces can be overruled by national law. The legislation passed by provinces must be in accordance with the standards set by the National Schools Act 8 of 1996.

The white Paper on Education and Training provides a comprehensive framework on the transformation process that has to take place in order to change the education to redress the inequalities created in the past and also to be able to meet the needs of all learners.

The White paper notes 4 key areas of concern which inform the vision:

- “ that the goal of an education and training policy should be to ensure that all learners, children and adult, have access to a life long learning process.
- a recognition that in South Africa massive inequalities existed in the past in the provision of education. In this regard the need to redress educational inequalities is central to policy development and planning.
- all state resources must be provided according to the principle of equity so that all learners have access to equal education opportunities
- the need to ensure the provision of education which is of good quality. In this respect attention needs to be paid to improving the quality of education and training services in South Africa.”⁸⁸

The South African schools Act of 1996 embodies the principles in the Constitution and the white paper on education and training.

Section 5 (1) states that all public schools have the duty to accommodate all learners and serve all their educational requirements without discrimination in any way. This

⁸⁸Special needs (n 86) p 27.

section is further reinforced by section 12 (4) which states that the members of the executive council where reasonably practicable provide the learners with special educational needs at ordinary schools but provide the relevant educational support services for such learners.

These two sections are very relevant for circumstances of a child who finds himself already in the working environment. The public schools have an obligation to meet the needs of these children, as they too are children need of special education.

The act in section 3(1) states that “ every parent must cause every learner for whom he or she is responsible to attend a school from the first school day of the year in which the learner reaches the age of seven years until the last school day of the year the learner reaches the age of fifteen years or the ninth grade, whichever occurs first”. The section does not say that it is optional to go to school, in fact it is clearly indicated as compulsory.

The parents themselves have an obligation to see to it that their children attend school in terms of the requirements of the act.

If a child who is within the compulsory years of education is not registered as required the head of department has a responsibility to find out the reasons why the child is not registered. He is required to give written notice to the parents of the child informing them to take the child to school if they fail to do so without reasonable and just cause after the written notice, they shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months, section 3 (5) of the act.

The application of this Act by the Department of Education will be effective through the use of inspectors who will have access to all schools to determine the attendance. Secondly the school governing body has to be aware of the compulsory requirements of the Act so that they are able to inform the parents and their communities in order to monitor each other.

However if the government does not improve on the number of children registered at birth it will become very difficult to enforce this Act. The difficulty will be the determination of the correct age of the child. As is happening at the moment, with juvenile offenders who either lower or increase their ages to suite their needs. The government is not able to determine their age because they were never registered. So if they do not want to go to school they can simply claim that they are over 15 years of age.

The government has set up a National Commission on Special Needs in Education and Training (NSCNET) and the National Committee for Education Support Services. They have been appointed by the department of Education to investigate and make recommendations on all aspects of special needs and support services in education and training in South Africa.

The two bodies merged soon after their conception, when it became evident that their investigations were closely linked and would overlap.⁸⁹

This has been done in order for the government to be able to be more responsive and to provide for the many diverse cultures of our population.

According to the Commission the term : “Special Needs” and “Support Services” in education and training “refers to needs or priorities which the individual person or the system may have, which must be addressed in order to enable the system to respond to differences (diversity) in the learner population, remove barriers to learning, and promote effective learning among all learners”⁹⁰. According to their public discussion document “Special Needs” with regard to who experiences and what constitute barrier to learning the following learners are included:

⁸⁹(n 86) p.8

⁹⁰Ibid p 6.

- learners with disability who may need to use special equipment or assistive devices in order to learn.
- learners who experience some form of learning breakdown as a result of particular barriers to learning.
- learners who are at risk for personal and social reasons. In this category the Examples given are learners who are abused at home, miss school and drop out as result, or learner who has HIV/AIDS.

The commission has focused very largely on the issue of the learner with disability at the expense of the other “Special needs” cases which too need to be urgently addressed. The main focus of the commission so far has become whether children with disabilities should be accommodated in ordinary public schools or whether they should continue to have separate educational facilities. I acknowledge that this is a very important issue which should not be played down. However we must not lose sight of what the purpose of the commission was set up to do.⁹¹

The plight of exploited child labourers needs to be highlighted by this commission and be considered as one of the urgent issue that fall within the category of learners who are at risk for personal and social reasons. Child labour falls squarely within this category, especially if one considers that child labour can be exploitative and hazardous to the child’s physical, spiritual, mental, moral and educational needs of the child. We also have to take into consideration the fact that if the socio economic conditions under which the child lived ordinary these child workers ought to be in school preparing for their adulthood.

The other aspects of the system include the development of educators so that they are

⁹¹Even the presentation of the discussion document itself tends to focus more on the issue of learners with disability. The debates around the commission has focused too much on this issue even when public workshops were conducted.(I attended one of their workshops in Cape town - August 1997).

able to meet the needs of all learners. These educators have to be trained in order to understand the dynamics of child labour and be able to deal with those children in a flexible manner, and be able to provide alternatives .

Commission also states that there is a need for Education Support Services, which would include all human and other resources that help develop and support the education system so that it is responsive to the different educational needs of the learners in the system.⁹² This talks to the need of support systems which will ensure a productive environment conducive to learning. According to the commission Support required by learners or the system includes: teaching support, general and career guidance and counselling, various forms of therapeutic support, nutritional programmes, social interventions, teacher development and support, whole school development and curriculum development.⁹³

These are very pertinent issues in the fight against exploitation and the abuse of children in child labour. If the schools in which these children attend (those child workers who do attend school) gives these children the necessary attention, giving them counselling and guidance and other support programmes there would be fewer drop outs, therefore the over all quality of the education provided is very important.

The school feeding Scheme programme was one of the first presidential lead projects in 1994. The feeding schemes that have been provided by the government play a very important role towards the elimination of child labour. This is so because some of the children who end up in labour do so because they do not have food and have to fend for themselves and their families. Therefore a feeding scheme creates an incentive for them to come to school. Even the parents are then forced to consider the option of sending their children to school because it means that as long as they continue to go to school they will be fed at least once a day.

⁹²(n 49) p 7.

⁹³Special needs (n 74) p 47.

The learning environment also needs the support of the communities in which these children live. There needs to be awareness about the consequences of child labour and why the community need to fight against it. This can be done through the assistance of the parents, community workers, community based organisations, non governmental organisation and traditional leaders.

The work of this Commission can be used as a forum to highlight the plight of child workers within their different environments by ensuring that they are part of the discussions in issues relating to education as all the children have a right to basic education, without the discrimination of any group on any basis.

8. OTHER PROJECTS TOWARD ELIMINATING CHILD LABOUR.

There is general acknowledgement that legislation alone will not be able to solve the problem of child labour, but with education and other socio- economic programmes the is a better chance.

Separate innovative pilot project can help toward the elimination of child labour, but education will be the only lasting solution to the problem. So other programmes implemented whether by government or NGO have to work parallel to effective education.

“ it is also becoming accepted that because of the wide spread poverty and formidable array of institutional constraints facing governments, the immediate abolition of child labour will not be possible. These obstacles we have seen have led to the reassessment of the traditional approach to child labour and brought about a striking in public policy, which goes beyond exclusive reliance on legislation and enforcement and encompasses short- and long term measures in such areas as the provision of service, protection and advocacy. This shift in attitude and approach is not confined to government. Indeed another crucial development is the increasingly important role played by non governmental organisations in the campaign against child labour and in

the protection of working children”⁹⁴.

In South Africa we are fortunate in the fact that we have a very large number of active non governmental organisations who have been very vocal against the gross human rights violations committed by the past government. The time has come for the same organisations who were vocal against apartheid to stand up and advocate for the rights of the children being abused and exploited as part of a labour force. As already stated above there have been numerous countries adopting stringent laws against child labour, but because they did not have public support and understanding nothing much has come out of those efforts.

The introduction of legislation on child labour acts as a catalyst in clearing the way for programmes to be formed to provide alternatives and protection for the child workers. The legislation should be flexible enough to allow both government as well as NGOs and CBO to play their role towards the total elimination of child labour within our society.

- The is a link between child labour and general employment standards, the government needs to provide schemes that will generate the enhancement of the employment and income of adult workers

Dealing with the socio economic factors in the country having bearing on child labour, for example intensifying of employment and income generating incentives in areas with high incidents of child labour.

Any programme that is to be adopted by the non government organisations has to be considered very carefully according to Assefa Bequela and Jo Boyden certain principles and guidelines need to be adopted

⁹⁴Assefa Bequela and Jo Boyden “ Combatting Child Labour” 1st edition, Geneva International Labour Organisation 198, p 9.

1. The objective should be to promote the children's integrated physical, mental and social development. The programmes that will be provided for these children should be adapted to their conditions and situation. The programmes should intend to deal with the whole development of the child and not react only to those immediate needs that crop up as a result of the conditions that they find themselves in. The intervention must focus at dealing with both short term and long term solution to the developmental needs of the child.

This might then involve not just one non governmental organisation, but a team of organisations, each with a specific focus on developing the child and his or her needs.

2. The need to provide protective legislation and policy for working children that will ensure that fewer children who are despondent and marginalised will end up in the streets for their livelihood. For example programmes for street children which prevent the breakdown of family structures and provide alternative protected employment for those poor children will serve as a force to strengthen the family and community ties. This then demands early intervention before the children are already in the streets and involved in illegal activities which will ultimately make them hardened criminals. Hence our focus has to be early intervention rather than having to deal with rehabilitation of the children at a much later stage.

3. Work can be made into a creative and educational experience in the development and life of a child. Especially because many children work because their economic circumstances demand it. "it is important that this desire or need be recognised"⁹⁵. In Brazil non government organisations have accepted and respected this need. They have tried to provide work for these children in a protected environment, the work is also integrated with personal development.

⁹⁵Ibid p 9.

These non governmental organisations work in such a way that they provide not only income but personal development to these children. An example of such an organisation was one visited by a South African delegation in Brazil. Where the children were being taught how to make fabric, how to sew garments, once they had mastered their trade they would be able to sell their garments in a boutique which is run by the same non governmental organisations. They also have formal education scheduled to fit into their daily programmes. Those who have homes are allowed to go home but those who are destitute and do not have any family are accommodated by the organisation.

4. Schooling should be adapted to the learning and practical problems facing these poor working children. As already stated there is an urgent need for the government to provide efficient but flexible education which will fall within the schedule of the working children.

5. Children should be encouraged to understand that they are not merely objects of these programmes, but subjects who will participate fully both in the planning and carrying out of the entire process. This will encourage the children and make them understand in their own way why there is a need for these programmes. This is also in line with the principles espoused by the United Nations Convention on the Rights of the Child.

An example of a community based project is that of the Philippines. According to official estimate there are about 2.2 million working children between the ages of 10 and 17 years in the Philippines. It has been established that about 2 million of school going age children do not attend school. It has also been established that at least 20% of Philippine children work in hazardous conditions. Some of them risk shark attacks or even drowning while in the deep sea fishing industry, and about 60 000 children work as prostitutes.

Their government in an effort to combat child labour introduced legislation, however despite the available legislation there continued to be serious violation and there was a problem of enforcement they did not have enough inspectors to monitor the entire country.

Until in response to the crisis the task of identifying children at risk and determining the most appropriate action for them was initiated by the NGOs, churches and community groups.⁹⁶

An example of the civil society initiative can be illustrated through the initiative started against prostitution in the resort town of Pagsanjan . “This town became the centre of community activism in the 1980s when the towns’ people rallied against the large influx of foreign paedophiles who had cause the child protection industry to burgoen in the area”.⁹⁷

The Rural Organisation and the Assistance for Development (ROAD), an NGO operating within the community mobilised support from the community. They organised television series productions and news paper articles about child prostitution and the activities of these Paedophiles within their communities.

The result was that the report caused a public stare not only in the Philippines but also in the countries that were homes to some of these paedophiles. The advocacy and awareness campaigns played a very important role in mobilising the community, and the general public to be aware and to be pro active in their approach when confronted with a violation.

The organisations also focused on changing the attitudes of the parents who often perceived the paedophiles as economic benefactors because of the large sums of

⁹⁶Jo Boyden and William Meyers A Exploring alternative approaches to combating Child Labour@ case study from Developing countries, Innocenti Occasional Papers child Rights Series no. 8, 1995 p.11.

⁹⁷Ibid 68.

money they paid the children. These parents often knew very little about what would actually take place between their child and the person who has paid generously for his services. Awareness campaign on health, sexuality and drug abuse were conducted . These efforts were instrumental in drastically reducing the problem.

The focus of these civil actions is decentralization away from government. Instead the focus is on the non governmental organisations working hand in hand with the affected communities, building capacity within the communities so that they are able to deal with their own problems. Although the initiative is driven by the NGO sector they work in collaboration with the government. These form of projects are considered to advantages in that the is self monitoring at community level which allows the community to deal with any incidents of child exploitation that they become aware of. Secondly the emphasis on communities recognises that child labour is the product of families and communities unable to support their children adequately and thus high levels of community participation are necessary to address the crucial issue that directly affect the communities through the children.

Community lead initiatives usually have more energy than initiatives taken by governments, there is usually a sense of ownership by the community thus creating a sense of responsibility. In order for these communities to have ownership they have to learn to understand what the initiative is about thus creating general awareness. The community workers generally have better access to the relevant people in the community and are able to get first hand information about communities that they are well acquainted to. It also becomes easier for the victims of the abuse and exploitation to report, as they can talk to somebody they know and can relate to within their communities. They can also make the communities aware of the difference between work that is not harmful to the child and child labour.

8.1. Economic incentive based programmes.

Some non governmental organisations use income replacement and substitution activities as a way of removing children from the labour force. These incentives are a new way which has been adopted by a few countries for example Tanzania, Kenya , India Peru and Nepal.⁹⁸ According to a survey conducted by the ILO in collaboration with the International Save the Children Alliance, the International Working Group on Child Labour and UNICEF.⁹⁹ The survey was conducted in order to get an initial view of how these projects work and how effective they were in their pursuit.

These organisation were mostly funded by international organisations and some were also assisted by the governments.

The focus of the research was to establish the types of income replacement, and the substituting activities that are being implemented. The kind of child labour practices that these were focused on were agriculture, domestic work, industrial work or manufacturing. These programmes were focused especially on the very young child labourer, children under 10 years of age. However this did not exclude the older children as the programmes tended to vary according to the different age groups. For example the apprenticeship programmes were more focused on the 14 to 15 year old children.

The types of income replacement and substitute activities mentioned were as follows:

- income generating activities for families or the communities.
- income generating activities for children (safe work), apprenticeships, school work combinations.
- increased school attendance by providing food, cash stipends, clothing, books and other forms of assistance including the waiver of school fees.

⁹⁸Acker (n 6) p 13.

⁹⁹Ibid.

- income to children or families with the specific purpose of eliminating or reduce child labour.
- non formal education, recreation camps and other related programmes that will break the cycle of child labour.
- other community development programmes for example awareness programmes.

Payment in kind was reported as the most common form of payment used. The children would be paid in kind by being provided with school uniform, books and other necessities. This could also include some form of housing or transportation for the child to attend school. According to the research done payment in kind generally would cost about 75 US dollars per year for each child.¹⁰⁰

Cash payments were also given by some organisation and their average annual cost per child was 211 US dollars, almost 3 times the in- kind payments. When cash was paid most of the organisations said that they preferred to give the payment to the child. The cash given to the children represented an average of about 24% of the family income, however the report from Brazil was that the income usually represented 50% of the family income.

The majority of the organisations said that once they had started subsidising the child or the family they would do it for a minimum of 2 years. A few others said that they gave benefits through out primary school.

The organisations gave examples of two criteria they used to determine need and the size of the benefits they would provide to the child or family:

1. They would look at the family size, (for example the homes that are headed by single parents and also the large sized families) and structure of the family or even the economic situation within that household.

¹⁰⁰Ibid

2. They would look at the actual cost of the payments they needed to make for example payments toward school fees, books etc.
3. The willingness of the child to participate in also very important.

A joint non governmental seminar on child labour in Asia, recommended the establishment of legal aid clinics which would be accessible and available to the whole community to provide advice on issues of child labour.¹⁰¹ In South Africa we already have legal aid clinics which look after the general rights of citizens especially those who can not afford to provide for their own legal services. These legal Aid clinics should have their mandate broadened, and have a separate wing which will deal with the violations of all children's rights and within that context have a special focus on child labour. This will assist in creating access. The more people are aware of the remedies and access to those the easier it becomes for them to report violations occurring in their families and within their communities.

This branch of the legal Aid clinic would have to work hand in hand with the inspectors as defined by the Basic Conditions of employment Act 75 of 1997. This would create more efficiency and speedy attention would be taken against such violations by both offices. The first example of the application of the law must be efficient and expedient in order for legislation to have impact on the communities it is meant to assist. So that the ordinary person on the street can have confidence in the system. If there is no confidence we will continue to have unreported cases, because the people within those communities will feel that not much can be done to remedy the situation.

Other important role players are those countries that import the goods produced through child labour. These countries have an obligation to eliminate child labour. Campaigns have been conducted for countries not to buy goods that are known to

¹⁰¹Van Beuren p 274 discussed generally in LAWASIA and DCI Report of a seminar on the Exploitation of Child Workers, 1988.

have been produced by children.

For example preservation of the export market has served as an effective incentive to the carpet and garment producers in Pakistan and Bangladesh to rectify the problem of child labour within their markets and country. As a result of the pressure they are getting from the international community and children's advocacy groups they now actively support the IPEC action programmes to withdraw and rehabilitate child workers engaged in these industries.

There have been important campaigns to fight against child labour one of such campaigns is the **Voluntary labelling campaign** this campaign covers the following issues:

- the relative effectiveness of labelling for child labour individual products as compared to certification issued to the enterprise or retailer for the entire stock of the product.
 - the credibility of the labels (this requires the monitoring and inspection of machinery and products regularly.
 - whether retailers are exploiting it as a marketing tool.
 - consumer choice of identical goods with or without labelling
 - channelling all levies realised from labelling to finance viable alternatives to children.
 - relative assessment of its potentialities as well as its limits in eradicating child labour
- consumer sensitization.¹⁰²

¹⁰²International Programme on the Elimination of Child Labour (IPEC)
webinfo@ilo.org

8.2. THE MAINTENANCE GRANTS PROVIDED BY THE STATE

The government can assist the children who come from very poor families by providing grants to those families. Section 27 (1) (c) of the Constitution gives everyone “ the right to have access to social security, including if they are unable to support themselves and their dependants, appropriate social assistance”.

In South Africa the system which was used in the past discriminated against the majority of the poorest population in the country, the Africans and also did not apply to people living in the former home lands. At present the maintenance of poor families is prescribed by the Social Assistance Act no. 59 of 1992. The maintenance consist of a maximum parent allowance of R 430 and a child allowance of R 135 per child under 18 years limited to 2 children.

In terms of the proposed new maintenance grant payments will be made only to children and not their parents. The proposal is for a flat rate child support benefit which would be paid via the “primary care giver”, to all children who qualify in terms of a means test.

The benefit is aimed at protecting the poorest children in their most vulnerable years¹⁰³ The government is making an attempt to achieve greater equity in the distribution numbers of beneficiaries to the grant. The likelihood therefore is that the will be more families getting the grants but will be receiving lower payment that in the past.

The department intends to phase out the old system of grants by placing a monotorium on all new applications and to reduce the level of the grants that is receive by the existing beneficiaries by an amount of about 20% over the next 5 year period. While this is being phased out the new grant will be phased in over a 5 year period. The grant is aimed at initially reaching the children between the 0 to 6

¹⁰³Report of the Lund Committee on Child and Family Support, August 1996.

years.¹⁰⁴

There has been great debate on the issue of the social security proposed by the government.

Some organisations and advocates are of the view that the new policy proposed by the government and adopted by parliament on 5 March 1997 does not cater for the children who need it most.

Bearing in mind that nearly 95% of the poor in South Africa are black and the female headed household have a 50% poverty rate higher than the male headed household. It is stated that 2.3 Million South Africans are not getting the required nutrition including 87% of all black children under 12 years of age.¹⁰⁵

The government in its White Paper for Social Welfare states that Social Security and assistance play a significant role in alleviating poverty and is a "vital element in providing food and general security".¹⁰⁶ In the White Paper on Welfare and Development the government commits itself to providing support to those who live below the minimum acceptable standards.

The Lund Committee was formed in February 1996 with the mandate to investigate reform of the old social security system as the old Social Security Act 59 of 1992 would not be affordable, as it will not be able to cater for the entire population that need state assistance.

The 1992 Act was designed to support poor parents who were effectively the sole supporters of their children. The benefit was divided into two the first being the parents allowance and the other the child's allowance. The maximum payable each

¹⁰⁴Department of Welfare briefing Document 14 March 1997. paragraph 7.2 to 7.3.

¹⁰⁵ World Bank & the South African Labour Development Research Unit Key indicators of Poverty in South Africa p 3.

¹⁰⁶ Department of Welfare, White Paper for Social Security February 1997 Chapter 7 p. 6.

month for each family was R 450 for the parent and R 135 per child. This system was fairly distributed and it is estimated that there are at present 349 692 recipients of the grant.¹⁰⁷ The Coloured and, Indian children being in the majority.

The grants were not available in some of the black areas, however at present although legal parity exists very few black people apply for the grant because they are not aware of its existence.

The new social assistance proposed by the Lund Commission seeks to widen the net of children who will receive social assistance, but at the same time lower the amount to be received because of the government financial constraints. It is not possible to equalise the grant by raising it to the standard that presently exists.

As a result the Lund Committee proposed to equalise down, that is to distribute the amount that already exists to a wide number of recipients than in the past. Thus down grading the amount which was received by the grant holders in the past.

The proposal is to introduce the new strategy gradually over a 5 year period and at the same time phase out the 1992 Act within the same time frame of 5 years.

The new system will be based on a flat rate, which would be awarded to the child only, no parent allowances will be given. The money would be handed over to the “primary care giver” of the child. (The word ‘primary care giver’ has created a lot of debate, I will discuss this issue below).

The committee has also recommended reforms to the private maintenance system, so that fewer people will have to depend on the state for assistance. The judicial private maintenance system functions so poorly that the families are forced to apply for state assistance.

¹⁰⁷ The Department of Welfare briefing document for the Portfolio committee on Welfare p.1.

A wide range of organisations and civil society reacted to the report presented by the Lund Committee to the government. The most vocal being the groups on NGOs, academics and the general public. Submissions were made to the Portfolio Committee on Welfare, the basis of some of the criticisms was as follows:

The flat rate of R 75 per month which has been approved by government, for children between the ages of 0 to 6 years would only be targeted to 30% of the population of that age. This means that 70% of the 0 to 6 year old children will automatically be excluded based on a means test.

Questions were raised as how the committee had come to the R 75 figure which they claim “ is slightly above the household subsistence level for food and clothing , developed by researchers at the University of Port Elizabeth”.¹⁰⁸

They provided no further detailed research or recommendation on what constitutes an appropriate and realist figure for child support in the context of the large scale of poverty in South Africa and especially bearing in mind the very different case scenarios in each province depending on the provinces socio economic standing. The is a view that the in a need for further research to determination the exact amount, to be conducted in close consultation with the affected communities and organisations.

The consultation process prior to the presentation of the report by the committee was highly criticised. It was felt that not enough effort was made to consult the relevant role players and the public, before the final decision was made. The committee itself acknowledged this. “The committee acknowledged in the report that it worked as a technical committee and could not engage in a consultative process within six months. We were convinced that this issue is of fundamental importance to the political and constitutional values of our new democracy and should be opened up to a process of public consultations before any final decision were made.”¹⁰⁹

¹⁰⁸Department briefing document for the Portfolio Committee on Welfare on the Lund Report 14 March 1997.

¹⁰⁹Representations by S Liebenberg to the minister of Welfare regarding the report of the Lund Commission 6 December 1996 p 4.

The concept of the “primary care giver” challenges the traditional assumptions regarding the parental roles. However the concern is, how is the ‘primary care giver’ to be identified, especially in situations where the care giver is not the child’s parent or guardian. The balance that needs to be struck in this regard is ensuring that the grant reaches the children which it was intended to reach regardless of the arrangements made by anybody including their parents for their care . While at the same time ensuring that it does not lead to abuse or the undermining of the parental rights.

Finally the question that arises is whether human resources and the capacity has been thought and set out, so that we are able to implement the grant and for it to reach where it is needed most.

As a result of submissions and representations made by the different organisation and the wide criticism of the Lund report, the minister of Welfare was forced to reconsider her stand. Prior to this she had been adamant that the department of Welfare would not budge because of the criticisms and that they would apply to recommendations made by the Lund Report. Her argument was based on the fact that the government was simply spreading the cake wider and yes there were going to be casualties in the process.

However opposition to the implementation of the grant increased to such a level that the minister was forced to compromise on the issues. The opposition was supported by the Portfolio committee on Welfare. They too were calling for an increase in the amount that was to be paid monthly. Pressure for change was also mounting from within the ANC, COSATU and church groups.¹¹⁰

The ANC executive committee met and on the 11 -13 July 1997 where after a statement was issued making recommendation “ that the level of the benefit be based on an objective measure ‘ which is itself based on changing prices and changes in the

¹¹⁰Financial Mail News paper 6 June 1997.

cost of living'. It suggested an increase in the level of the grant to R 100 per child per month in the age group 0- 6 years".¹¹¹

Following this meeting by the ANC the minister announced that she would be recommending the increase and that the target group would be approximately 3 million children between the age of 0- 7. In addition, a 3 year phase out period of the 1992 Act would be recommended instead of the prior 5 year period previously approved. The government anticipates to introduce the new measures in 1998.¹¹²

S. Leibenberg states that the surprise preliminary results of the 1996 census regarding a lower population estimate influenced the minister's decision to recommend an increase in the level of the grant. Furthermore funds would be made available by reducing the phasing out period of the 1992 Act over a shorter period of 3 years.

9. CONCLUSION

As already stated child labour is a world wide phenomenon and South Africa is no exception. As we have seen children are employed in different work situations throughout the country. We acknowledge that the exploitation of children through employment usually results in the breach of several fundamental rights, the most common being the unlawful interference with the family life and the right to education, health , leisure which are equally essential for the healthy development and survival of these children.

The South African Constitution which is the highest law of the land demand that

¹¹¹S Liebenberg Equalization at what cost ?A case study on the new child support benefit p 7.

¹¹²A statement made by the Minster of Welfare Population and Development " the child support benefit - an update following recent announcements in the media " July 1997.

children be protected against any form of abuse and exploitation including child labour. The Constitution is in line with the international instruments which deal with children's rights. Therefore legislation which is in line with what the Constitution needs to be introduced so that it gives regulations and guidelines.

Once the Basic Condition for Employment Act is in place the government has to deal with the immediate elimination of the most hazardous and exploitative forms of child labour. There should be strict compliance in this area without any exceptions in any industry. These can include the exploitative domestic work done by children whether within their homes or otherwise; the prohibition of bonded labour in any form and the prohibition of working children within the taxi industry, pending proper regulation of the industry. Children should not be allowed to work in such a volatile industry, where there is a threat on their lives on a daily basis; focus on the street children who work and live in the street and as a result are exposed to all the forces associated with street life in the urban areas.

As already indicated by the Basic Conditions of employment Act 75 of 1997 very young children should not be allowed to work.

For all these provisions to work we need to urgently attend to the monitoring of the process by the child inspectors. The object being to promote the children's integrated physical, mental and social development. There has to be effective enforcement in dealing with those employers who employ children in hazardous environment.

The government needs to put resources behind their policies in order for them to have the desired effect.

Education is the most fundamental source which will be able to pull the children away from child labour. Therefore the enforcement and implementation of the Schools Act 84 of 1996 is paramount. The Act makes education compulsory for all children between the ages of 7 and 15 years. The Education Department will have to work together with the Department of Labour as the department of Education will

also have to have inspectors monitoring that the children between the ages of 7 and 15 are indeed in school.

The education department needs to build more schools especially in the rural areas in order to be able to implement the Act as most of the poor families are found within these areas.

Hopefully the research by the Special needs and Support commission will be able to assist government in providing quality education that will have a holistic, and flexible approach to the child and his or her needs.

The international documents provide the background or basis for legislation to be adopted by each member state when dealing with child labour. The United Nations Convention on the Rights of the Child and the International Labour Organisation Minimum age of Employment convention and the other international instruments mentioned in this paper set the framework for the adoption of legislation and policy that will be effective at reducing child labour and ultimately eradicating it.

The South African non governmental organisations need to come together and continue to give pressure from outside the government. The government has to support the NGOs as they are able to put the law to into effect by setting up community based projects which will have awareness campaigns and other pilot projects that will ensure that the intention of legislation filter through to their communities.

With the introduction of an effective child maintenance grant as recommended by government we will be able to alleviate the plight of the poor children of South Africa and in a way force fewer children and their families to opt for their children into the work environment. However the monitoring of the legislation is crucial therefore government needs to put resources behind their policies in order have the desired effect.

There is a need for the government to come up with a viable strategy, which will increase the number of registered births. So that they are able to assess the need in terms of providing health, education social security needed by the children for their development..

Monitoring of the Multinational corporations and pushing for the enforcement standard and a code of conduct when it comes to dealing with child labour.

However the first call for South Africa is to immediately work on the eliminate of the most intolerable forms of child labour from our society.

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