

Monitoring the worst forms of child labour, trafficking and child commercial sexual exploitation

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Introduction

South Africa has one of the world's most comprehensive pieces of legislation that addresses the interlinked problems of harmful child labour (including use of children in the drug trade), trafficking of children (including organ trafficking and illegal adoption), and child commercial sexual exploitation (CCSE) (including involvement in the production of child pornography). The Children's Act (No. 38 of 2005), and the Children's Amendment Bill (No. 19 of 2006) create an unprecedented opportunity to develop systems both for monitoring these problems, and for the provision of relevant services.

The task is a daunting one, not least because these abusive practices are distinguished by their illegality and taboo nature. Victims and perpetrators are detached from the administrative, community and research frameworks which facilitate effective data collection.

Similarly, and because of their illicit nature, counting the numbers of children involved in these activities has proven to be extraordinarily difficult. As Ennew et al. (1996) have noted, claims as to the numbers of children in the industry are more often than not 'guesstimates'. The situation is no less true in South Africa where there is no reliable prevalence information on children exposed to the activities that are the subject of this chapter.

In spite of the challenges, if we are to develop interventions for prevention and rehabilitation of affected children, nationally accepted systems are required that can provide reasonable estimates of the numbers of children involved in these practices, where the problems are most acute and the conditions that place children most at risk. Optimally, for planning services, data are necessary at a small-area level (this may be particularly relevant in, for example, identifying urban concentrations of child prostitution or begging). Furthermore, as a signatory to the Convention on the Rights of the Child (CRC – see Appendix 1 in this volume) (UNICEF, 1989) and International Labour Organisation (ILO) Convention 182, the South African government has an obligation to collect and report the most accurate data possible on these forms of child exploitation.

That said, international experience tells us that given the nature of these problems, it will simply not be possible to generate accurate figures on the numbers of children



involved. Efforts will probably be better spent in understanding the social conditions that generate the problems and taking steps to reduce them, while being vigilant to the situation of children in such high-risk conditions.

The purpose of this chapter is to propose a set of indicators and sources of data for monitoring patterns of harmful labour, trafficking and commercial sexual exploitation of children. Clearly, these areas must also be understood as existing within the broader framework of child abuse (see Chapter 14 in this volume). Of related relevance are also chapters 3, 4, 12 and 16.

In developing indicators, we have attempted to incorporate those recommended by a range of relevant international organisations, such as the ILO, the United Nations Children's Fund (UNICEF), and Save the Children, in addition to South African organisations promoting children's rights. We have also drawn on lessons learned in other countries with experience in monitoring these problems, such as Thailand and the UK (Ennew et al., 1996). We have prioritised indicators for which data are currently available in existing administrative systems and national surveys, or that can be disaggregated from available data.

We begin with an outline of the definitions of harmful child labour, child trafficking, and child commercial exploitation, in line with the Children's Act (No. 38 of 2005), and the Children's Amendment Bill (No. 19 of 2006). We briefly explore the distinctions and commonalities between the problems grouped together in this chapter with reference to a conceptual framework. The subsequent sections outline current knowledge of the South African situation, underlying risk factors and existing service responses, all of which inform the design of a monitoring system specific to the nature of these problems in South Africa. The chapter continues by discussing international attempts to monitor incidence and patterns, and the challenges that lie therein. Thereafter we examine the relevant legislation (both international and national) within a child rights framework, focusing especially on the new provisions found in the Children's Act and the associated Bill. Finally, we recommend a set of indicators that are aligned with the CRC, the South African Constitution, the Children's Act and Bill and other relevant legislation.

Definitions

For the purposes of the problems described in this chapter, a child is defined as a person under the age of 18 in accordance with the relevant international conventions, the South African Bill of Rights (Section 28(3) – see Appendix 2 in this volume), the Children's Act and the Children's Amendment Bill.

Where commercial sexual exploitation of children is concerned, we follow both the international and national legislation which defines all forms of such exploitation as a form of child abuse, and maintains the under-18 definition of childhood regardless of whether homosexual or heterosexual practices are involved.

There are a number of available definitions of child exposure to hazardous labour, commercial sexual exploitation of children, and child trafficking. Examples include the ILO, UNICEF and Human Rights Watch definitions. However, the primary

source for South Africa regarding definitions must be the Children's Act and relevant provisions in the Bill. For the purposes of this chapter we shall be using the Act and the latest draft of the Children's Amendment Bill, with the presumption that the Bill will be passed into law within the next two years.

Child labour

Following a recent consultative process towards forming the state's Child Labour Action Programme (CLAP), the following definition of child labour has been agreed on by government and other stakeholders:

Work by children under 18 which is exploitative, hazardous or otherwise inappropriate for their age, detrimental to their schooling, or their social, physical, mental, spiritual or moral development. The term 'work' is not limited to work for gain but includes chores or household activities in the child's household, where such work is exploitative, hazardous or otherwise inappropriate for their age or detrimental to their development. (DoL, 2003, p. 5)

Chapter 1 of the Children's Act defines 'child labour' as work by a child that:

- (a) is exploitative, hazardous or otherwise inappropriate for a person of that age; and
- (b) places at risk the child's well-being, education, physical or mental health, or spiritual, moral, emotional or social development.

For the purposes of this chapter, and in order to distinguish these types of child labour from the wider category of non-harmful child labour, we shall use the terms 'harmful', 'hazardous' or 'exploitative' in addition to 'child labour'.

The wider definition of 'child exploitation' in the Act includes various labour practices, as well as the removal of body parts for sale (or 'organ trafficking'). 'Exploitation' in relation to a child includes:

- (a) All forms of slavery or practices similar to slavery, including debt bondage or forced marriage;
- (b) sexual exploitation;
- (c) servitude;
- (d) forced labour or services;
- (e) child labour prohibited in terms of section 141; and
- (f) the removal of body parts.

Distinctions as to what constitutes unacceptable child labour are normally based on judgements as to the age appropriateness of the activity, and are therefore open to qualification.

ILO protocols state that each country should determine age cut-offs for particular work activities. At present, South Africa's Basic Conditions of Employment Act (BCEA) (No. 75 of 1997) and the BCEA Amendment Act (No. 11 of 2002) prohibit the employment of anyone under 15 years (the minimum school-leaving age). An employee is defined as someone who works for another person and is remunerated, or who assists in carrying on or conducting the business of an employer. Interestingly, the scope of this Act is widened by the fact that it gives the Minister of Labour the power to deem any category of persons to be employees for the purposes of the Act.

The BCEA further prohibits the employment of anyone over 15 years but under 18 years of age if the employment is either inappropriate for the age of the child, or if the work places the child's well-being and development at risk, or if it has been prohibited by the Minister of Labour through regulations.

The Department of Labour (DoL) has identified the definition of acceptable working hours and conditions for children aged 15–17 years as a key priority within the CLAP (DoL, 2003). As far as we were able to establish at the time of writing, South Africa has not yet made this determination.

Child commercial sexual exploitation (including involvement in pornography)

The Children's Act includes in the definition of commercial sexual exploitation both the procurement of children for use in pornography, and trafficking of children for use in sexual activities. This recognises that, for some children, these experiences will overlap (and this will be reflected in the indicators presented in Part 2 of this volume). In Article 1(1), 'commercial sexual exploitation' in relation to a child means:

- (a) the procurement of a child to perform sexual activities for financial or other reward, including acts of prostitution or pornography, irrespective of whether that reward is claimed by, payable to or shared with the procurer, the child, the parent or caregiver of the child, or any other person; or
- (b) trafficking in a child for use in sexual activities, including prostitution or pornography.

Notably, the definition of commercial sexual exploitation does not include commercial sex work by children who have not been 'procured'. This is addressed under the broader category of 'sexual abuse' in Article 1(1), where 'sexual abuse' is defined as:

- (a) sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted;
- (b) encouraging, inducing or forcing a child to be used for the sexual gratification of another person;
- (c) using a child in or deliberately exposing a child to sexual activities or pornography; or
- (d) procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial sexual exploitation of a child.

Child trafficking

Trafficking is a practice and a process and, crucially, the Children's Act definition of child trafficking includes all stages in the trafficking process. The definition also includes trafficking through the more subtle means of deceit, and the more commonly known process of abduction (abduction is addressed through the ratification of the Hague Convention on abduction). The Act is aligned with the UN Protocol to Prevent Trafficking in Persons and the UN Convention against Transnational Organised Crime (UN, 2001a, 2001b).

In Chapter 1 of the Children's Act, 'trafficking':

- (a) means the recruitment, sale, supply, transportation, transfer, harbouring or receipt of children, within or across the borders of the Republic –
 - (i) by any means, including the use of threat, force or other forms of coercion, abduction, fraud, deception, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control of a child; or
 - (ii) due to a position of vulnerability, for the purpose of exploitation; and
- (b) includes the adoption of a child facilitated or secured through illegal means.

Trafficking includes illegal adoption, which is further defined in Section 249 as follows. No person may:

- (a) give or receive, or agree to give or receive, any consideration, in cash or in kind, for the adoption of a child in terms of Chapter 15 or Chapter 16; or
- (b) induce a person to give up a child for adoption in terms of Chapter 15 or Chapter 16.

Conceptual framework

How are child labour, trafficking, and commercial sexual exploitation linked and how are they different?

The South African government and the ILO make a careful distinction between problematic child labour and the forms of child work that most South African children engage in. The latter include assisting with domestic tasks and care in the home environment, fetching fuel and water, and cleaning schools (further details are given later in the chapter). When undertaken in moderation and under the right conditions, these activities are found to be non-harmful and even beneficial in terms of social responsibility and inclusion (Cigno et al., 2003). Children often consider them an important part of their role in, and contribution to, the household and community (Bray, 2003a; Clacherty & Budlender, 2003).

This chapter does not address the majority of child work (both domestic and non-domestic) which is within the ILO definitions of unproblematic labour. The focus is on harmful and exploitative child labour only. This includes both excessive domestic or school-based labour, and labour for economic gain. Essentially, child work is perceived as problematic when it:

- Begins to erode time available for children to develop their skills and capacities, for example through attending school and completing homework tasks (Dachi & Garrett, 2003);
- Involves hazardous conditions (such as carrying very heavy loads over long distances, working at night, operating heavy machinery or being exposed to pesticides);
- Is one of the ILO Convention 182-defined worst forms of child labour (given above, and including CCSE, trafficking, slavery and harmful labour). These are considered unacceptable forms of labour, regardless of hours or working conditions involved.

An area that we have not considered up to this point is the use of children by adults or other children to commit crime. For children living in extreme situations, such as

on the streets, this may be one way of surviving. It is not a new practice in South Africa or elsewhere (as those familiar with Dickens's *Oliver Twist* will know).

However, the use of children in the drug trade is a particularly harmful form of labour. We address it specifically due to growing concerns about the practice in South Africa. Notably, this is both another form of exploitative labour, and a method used by those exploiting children to maintain their co-operation in other forms of exploitation (such as sexual exploitation).

It is important to understand how this set of problems is interlinked and where they diverge. The definitions given in the Children's Act recognise both the conceptual overlap (for example, sexual exploitation is a form of harmful child labour and can also be an outcome of trafficking), and the unique attributes of these practices (for example, illegal adoption is part of trafficking, but not part of harmful labour).

There is also overlap and distinction between these problems in the experiences of individual children. For example, some children are trafficked for use in CCSE and some for domestic labour. They share the experience of being unwillingly removed to a new environment for the commercial gain of adults, yet their experiences will differ markedly in terms of the nature of the abuse.

Trafficking must also be understood as both an abuse in itself (through the exploitative action of removing and commodifying a child) and as a vector for recruiting and maintaining children in exploitative labour practices such as CCSE, domestic labour and the drug trade. The ILO highlights the necessity for a nuanced understanding and measurement of 'trafficking':

Trafficking as a distinct, discrete act does not really exist. It is, in fact, a combination or series of events that occur at places of origin, transit points and destinations, involving potentially both legal and illegal acts. (ILO & IPEC, 2004, p. 11)

Trafficking of children should not be confused with migration of children. It must be accepted that children do migrate without adult supervision and without being trafficked, both within and across borders. Such migration is always due to the dire circumstances in which they find themselves, for example poverty and political conflict. In southern Africa children migrate from their homes to the streets for a number of reasons (see Chapter 12 in this volume). In the context of the HIV/AIDS pandemic, children whose caregivers have died and who have no source of economic support are also at risk for migration to places where they believe their chances of support and survival will be greater.

Child trafficking, on the other hand, is the act of removing a child for the purpose of exploitation, and this can be for a range of purposes including domestic slavery, economic labour, CCSE, pornography, illegal adoption and the organ trade. Some of these purposes fall under the remit of 'harmful labour', whilst others (such as illegal adoption) do not.¹

Potential risk factors

Certain high-risk conditions can result in trafficking children into exploitive and harmful activities. However, while these conditions increase the risk of trafficking,

the practice is driven by much more than the unfortunate consequences of household poverty. The vast majority of very poor and vulnerable children are of course not trafficked. Trafficking is the result of the purposive actions of adults bolstered by entrenched power relations that include male authority over women and adult command of children's lives, all of which operate at local, regional and, at times, international, levels.

As we have already mentioned, the embedded, illicit and often illegal nature of these relations makes tracking and policing very difficult. It also poses challenges in knowing how best to support children who have been drawn into harmful work and/or illegal activities. There is a real risk of doubly exploiting children through inappropriate responses that further isolate or stigmatise them, or place them in economic positions where they are forced to earn by whatever means possible.

But what do we know about the risk factors? There is in fact little reliable research on pathways to victimisation in harmful labour, commercial sexual exploitation and especially trafficking. However, certain groups of children are more likely to be at risk of these abuses, and some groups of children may face increased risks in the future.

CHRONIC POVERTY

Research suggests that chronic poverty in the form of lack of basic income underlies a large proportion of harmful work done by South African children (Edmonds, 2006). Survey data show that most children engaged in these forms of work live in deep rural areas where historical and structural factors have led to very limited access to land, employment, education, credit and grants (Dachi & Garrett, 2003).

The very limited evidence on patterns of child trafficking into work suggests the recruitment of children from rural areas with low levels of education, both in South Africa and in neighbouring states (UNICEF, 2003b). Poverty that stimulates harmful child work may also be due to shorter-term factors such as loss of an adult job in the household or HIV-related illness or death (see below). A more detailed explanation of the ways in which economic and social inequalities contribute to child poverty and vulnerability is found in Chapter 3 in this volume.

In light of the links between chronic rural poverty and exploitive child labour, the South African government puts the reduction of poverty at the forefront of its strategy to address child labour (DoL, 2003). Components of this strategy that stand to impact on child work include the elimination of illiteracy through free access to quality education and employment creation through public works programmes and national economic policies.

ACUTE VULNERABILITY

A proportion of children who are growing up facing aspects of structural poverty also have to contend with circumstances that make them even more vulnerable. These include living and working in isolation from families or supportive community members (as street children do), or in conditions of family or community violence.

The work that children do in these circumstances is likely to remain hidden because children are not in close contact with supportive adult spokespersons and the nature of their work may be illicit or illegal (such as CCSE). For example, extreme household poverty alongside a lack of other money-earning opportunities for children can result in children selling sex in order to ensure survival (Barnes-September et al., 2000).

International evidence shows that children who have been sexually abused, or who have run away from sexually abusive home circumstances, may be at particular risk of engaging in CCSE, as are children who have left institutional care and who may also have been connected with abusive circumstances prior to entering care (Donovan, 1994; Bundle, 2001). Small-scale studies and pilot projects in South Africa suggest triggers to children's movement into CCSE, including acute poverty, domestic violence, substance abuse and more general child abuse and neglect (Barnes-September et al., 2000; Molo Songololo, 2005). Child advocacy groups suggest that children who have learning difficulties or those who have been sexually abused might be at greater risk of being trafficked. These children are also at heightened risk for contracting sexually transmitted infections, including HIV/AIDS.

Particular attention to the intensification of poverty characterised by these risk factors is therefore appropriate within a child labour monitoring framework.

HIV/AIDS AS AN INTENSIFIER OF RISK

The HIV/AIDS epidemic can be seen as an intensifier of risk in many of these areas (Richter, 2004). Risk factors include evidence of greater poverty amongst affected families and communities (Booyesen & Bachman, 2002), increased dependency ratios, and children with limited or no parental protection (International Labour Office, 2002).

It is also important to be aware of the increased risk of excessive domestic work for children in households where guardians are unwell or deceased, whether through HIV-related or other forms of illness (Richter, Manegold et al., 2004).

There is also emerging evidence of increased domestic and economic workloads on orphaned children in foster homes (Giese et al., 2001; ACCESS, 2002). Children in child-headed households are likely to be undertaking much of the domestic and economic labour which would otherwise be done by adults in the household (Foster, 1997). Furthermore, children acting as young carers to HIV-affected and other unwell household members are at risk of both reduced time available for education (Ansell & Young, 2004), and potentially to hazards associated with opportunistic infections (Van Dyk, 2001).

For some children, orphanhood results in living or working on the streets or in institutions, where children are at higher risk of CCSE, involvement in the drug trade and harmful labour. It is plausible that the movement of children between relatives as a response to the HIV/AIDS epidemic may place some at risk for trafficking, but we have no supporting evidence. Although numbers are small at this point,² it is worth noting that children living in child-headed households may be at increased risk as victims of trafficking and CCSE (Fitzgibbon, 2003). The proportion of South African children affected by and orphaned by AIDS is rising (Bradshaw

et al., 2002; ASSA, 2005), indicating a potential future increase in the forms of exploitation addressed in this chapter.

As will be evident, it is important to track these risks as early warning indicators. This form of indicator points to the probability of a growing risk to children in the future, and suggests steps to be taken in the short term in order to avert a major problem later.

Risk indicators in regard to child labour, CCSE, trafficking and involvement in drug-related crime are dealt with in some detail in chapters 3, 4 and 12 in this volume.

Suffice to say at this point that a monitoring system for the problems that are the focus of this chapter should include geographic areas in which children are living in long-term (chronic) poverty (both rural and urban).

Rural areas are likely to include children at risk for agricultural labour and trafficking; urban areas are likely sources of children being involved in crime by adults and also commercial sexual exploitation.

Areas within which both chronic, deep poverty and high levels of adult HIV/AIDS infection and illness-related mortality prevail, present risks for children: having to undertake excessive domestic tasks, including caring for infected adults, being orphaned and having to fend for siblings (see also chapters 3, 4 and 17 in this volume).

Current knowledge, service responses and their implications for monitoring

The purpose of this section is to provide a brief overview of what is currently known about the nature of these problems in South Africa and to draw attention to the main features of current or proposed government responses in terms of tracking the problem and service provision. These specificities inform the design of a monitoring system appropriate to the national context, as do the underlying factors that make children vulnerable to these forms of work and abuse (described above).

The nature and extent of child work in South Africa

The 1999 Survey of Activities of Young People (SAYP) provides information on the types of work activities that children perform and the age, gender and residential profiles of children most heavily engaged in these. Importantly, the SAYP data show that the vast majority of child work takes place in the family and community context (domestic chores in the home, cleaning schools, helping run family farms or businesses), rather than for external employers. For example, only 12 per cent of children working in agriculture were in commercial farming areas whereas 77 per cent live in deep rural areas.

It is also important to recognise that work is but one part of most South African children's everyday lives, and is therefore usually compatible with attending school. Just over one-third (36%) of South Africa's children are engaged in work activities for less than an hour a day, whereas only 12.5 per cent are doing more than 12 hours of economic activities per week (DoL, 2003, p. 12).

It is both sobering and instructive to note that of those children who engage in economic activities (and whose work therefore has the potential to impinge on their well-being), the majority live in deep rural areas defined as ‘homelands’ under the apartheid government. Amongst the smaller number of children working in urban areas, black and coloured children tend to work longer hours than their white counterparts. These findings point clearly to the major underlying cause of child work (of both an unproblematic and a harmful nature), namely high levels of chronic, structural poverty.

Older children are more likely than younger ones to engage in economic activities, and boys more likely to do so than girls (DoL, 2003). At the same time, because the definition of ‘economic activity’ does not encompass household work when core family members are present, there is a risk of overlooking the long hours girls spend on unpaid domestic work in their family homes and its implications for well-being (Bray, 2003a; Budlender & Bosch, 2002). The fact that most child work is orientated around the needs of the household means that the particular composition and financial position of the household will influence what children are expected to do at a certain point in time. For example, the SAYP found that of the children who regularly collect fuel, 70 per cent live with their mother only or neither parent, as compared to 25 per cent who live with both parents (DoL, 2003, p. 13).

Work defined as exploitative or harmful child labour

The South African DoL, in conjunction with the ILO, has recently completed a consultation process to identify priorities for action based on a consensus around which forms of child work are currently or potentially harmful to children (see DoL, 2003). This is reasonably straightforward where child work clearly involves exploitation (as laid out in the ILO definition of the worst forms of child labour [WFCL]), but becomes more complex when one tries to include work that compromises the safety, health, development and morals of children. Factors that cause or increase the risk of harm fall into three broad categories, namely:

- Those that endanger children physically;
- Those that threaten educational opportunity; and
- Those in which a child is at risk of being exploited.

With the exception of work activities that fall under the ‘worst forms of child labour’ and/or that are illegal (such as children’s involvement in the drug trade, described below), it is both pointless and misleading to present a list of children’s work activities that deserve monitoring, owing to the fact that it is the conditions under which children work, rather than the type of work per se, that determine their status as ‘harmful’ and therefore deserving of government action. Nonetheless, it is helpful to draw attention to features of the most prevalent forms of harmful or potentially harmful child work in South Africa that have a bearing on the task of monitoring.

Data gathered in 1999 and 2000 show that a small proportion of South Africa’s children (less than 10 000) engage in paid domestic work in which working conditions put their health or development at risk, whereas many more (85 000) do unpaid domestic work under similar conditions (Budlender & Bosch, 2002, p. ix).

The harmful conditions include night work, long hours, the presence of people whom children fear may hurt them and an increased likelihood of injuries at work.

If the definition of 'domestic work' is expanded to include the collection of fuel and water (an activity that many rural children are engaged in), then the numbers increase substantially to 605 000. Reasons to do so include the physical harm to children who have to carry heavy loads over long distances and interference with school or homework time.

The potential for the intensity of children's work to move from benign to harmful levels in response to broader social and economic trends requires that patterns of work be tracked over time. Current opportunities for doing so, and the challenges therein, are outlined at a later point.

In conjunction with the ILO and a range of government stakeholders, the DoL has identified an action programme to address child labour, termed the CLAP. The monitoring and evaluation component of the programme relating to harmful labour specifies three actions:

- Continued tracking of changes in the situation of children's work (through the SAYP or other sources);
- The development of indicators of success; and
- The amendment of existing departmental management information systems.

The purpose of all three is to allow the DoL to monitor progress in identifying areas of concern and targeted actions to address these, as well as to track children removed from child labour (DoL, 2003).

In terms of responses to address specific types of harmful work, the DoL identifies a comprehensive range of actions, many of which relate to broader development and poverty reduction. These include:

- Regular inspection of domestic employment agencies;
- Improved physical infrastructure and increased land redistribution in deep rural areas (where children carry water and fuel over long distances);
- Improving access to schools through more flexible hours; and
- Enforcing minimum wages for adults.

While we recognise the importance of an integrated response to the problem of child labour, the purpose of our proposed monitoring framework is to identify core indicators of incidence and response, rather than attempt a comprehensive overview (which is, in any case, well documented in the department's CLAP document).

USE OF CHILDREN IN THE DRUG TRADE

We briefly draw attention to child work in the drug trade because qualitative research has identified the targeting of children by drug traders as both sellers and carriers, partly due to a perception of greater legal leniency towards children (Clacherty & Budlender, 2003). Yet, as is the case for other criminal involvements of children,³ we have little reliable evidence regarding the extent of this problem.

Research with children living and working on the streets has found that they are at increased risk of being used in the drug trade. Small-scale studies and anecdotal evidence in South Africa have found that addiction is used to ensure compliance by

children involved in CCSE (Molo Songololo, 2005). Consequently, services addressing the problem of children used in the drug trade must in many cases also address accompanying problems of addiction.

Research conducted elsewhere suggests strong links between the narcotics industry, trafficking and commercial sexual exploitation (UNICEF Innocenti Research Centre, 2003).

CHILD COMMERCIAL SEXUAL EXPLOITATION, INCLUDING PORNOGRAPHY

Ennew et al. (1996) highlight the poor evidence base for much numerical data regarding CCSE, as well as the frequent confusion in data between CCSE and adult commercial sexual exploitation, and between child prostitution and CCSE.⁴

One estimate given for numbers of children working as prostitutes in South Africa has been around 28 000. This figure appears often in media (including the ECPAT – End Child Prostitution in Asian Tourism – website). There is no way of knowing the validity of this claim. The source is never stated and it cannot be considered reliable. Similarly, there are no data on sex tourism to South Africa for which children are procured.

There is no systematic research on the use of children in pornography in South Africa. The rise in Internet-based pornography has further complicated the identification of perpetrators and sites, and is facilitated by advanced encryption methods to limit detection (Carr, 2002). However, international evidence and anecdotal South African evidence suggest strong links between child commercial sex work and child pornography (Petit, 2005).

In spite of the challenges, indicators for CCSE must attempt to provide data on how many children are involved and where they are located (Ennew, 2004). This is important if we are to attempt to respond to this form of abuse. Whereas we can hope to capture information on the broader area of child labour through survey data (see above), the illicit and taboo nature of CCSE renders this unrealistic. We will propose a set of interlinking indicators – including the use of the Child Protection Register (CPR) as a monitoring tool, police and child helpline data – in order to attempt to capture its extent (see the indicator tables for this chapter in Part 2 of the volume).

It is also important to monitor responses to CCSE as detailed in the Children's Amendment Bill which, in Section 141(3), outlines the state's responsibility to enforce prohibition of the worst forms of child labour, including CCSE. Thus, a set of indicators focusing on the prosecution of child pornographers, pimps and users of exploited children is needed. This is an attempt to dissuade and thus reduce the 'demand' side of the business of CCSE.

Finally, indicators are needed to measure service access and quality for those children already involved in CCSE. This ranges from the inclusion of CCSE as a category on the CPR, to access to mainstream services such as health and contraceptive care, through to a limited but vital tier of intensive, specialised and integrated rehabilitative services. Education of staff in key services – such as police, health and social services – and the provision of helplines are indicators reflecting the need for improvement in the response of current services.

Service provision for children experiencing CCSE in South Africa is reported by child advocacy agencies to be poor (Barnes-September et al., 2000). A current⁵ situation analysis by the Community Agency for Social Enquiry and the ILO focuses on future areas of service provision. International evidence regarding the combating of CCSE focuses on the three key areas of:

- Reducing the supply of children;
- Deterring perpetrators through legal processes; and
- Providing rehabilitation services to children experiencing CCSE.

We further recommend the development of resources and expertise amongst law enforcement agencies (Petit, 2005) and partnerships with the private sector regarding child pornography, especially internet service providers (ISPs) and credit card companies (Carr, 2002). Given that pornography is now downloadable to videophones, other productive linkages would include those with cellular phone companies (pers. comm. Film and Publications Board of South Africa, 16 November 2005).

Further recommendations include provision of specialised services aimed at rehabilitating victims of CCSE. These should address the multiple interlinked needs of victims, such as accommodation, psychosocial support, education, vocational training, legal services and drug rehabilitation services (Barnes-September et al., 2000; Molo Songololo, 2005).

CHILD TRAFFICKING

UN reports on the global trafficking trade (largely in women and children) place it as the third most profitable trade, after drugs and guns, for organised criminal enterprises. The estimated worldwide turnover is \$7 billion per year. Reports by the International Organisation on Migration (IOM, 2003) and UNICEF (UNICEF Innocenti Research Centre, 2003) identified South Africa as a destination, transit and origin country for trafficking of women and children, with victims transported to and from a range of African and non-African states. Regional research has identified trafficking of children within South Africa (Higson-Smith & Richter, 2004).

Research identifies particular dimensions to child trafficking. This includes the use of various means to entrap victims, including threats, persuasion, deception, coercion and debt bondage (ILO & IPEC, 2004). Perpetrators include recruiters, intermediaries, transporters, employers, brothel operators, corrupt migration police, and customs officials, and families and friends. Children can be sold and resold (UNICEF, 2003b).

Particular forms of trafficking recorded worldwide include the use of children for domestic and non-domestic work, begging (Frankel, 2001), commercial sex work, and the selling of children, through pornographic Internet sites, to paedophiles or paedophile rings (UNESCO, 2005). Research in South Africa suggests evidence of internal and cross-national trafficking of children for domestic labour (Budlender, 2003), commercial sex work, as personal sex slaves (IOM, 2003), or into forced marriages (South African Law Reform Commission, 2005).

Little is known about the extent of trade in children's organs, although some reports suggest their use for medical purposes or as 'muti' (McGibbon, 1992), and trade

between Mozambique and South Africa (Gastrow & Mosse, 2002). The trade in illegal adoption is, again, distinguished by a lack of research (South African Law Reform Commission, 2005). Anecdotal reports from international social services and child welfare societies suggest possible trafficking of children and street children for this purpose.

The core indicators we recommend in Part 2 of this volume for child trafficking share many aspects with those of CCSE. Again, the CPR, child helplines and official data, such as immigration data, are combined to attempt an understanding of the extent of the problem. In addressing the need (stressed in the new Children's Act and the Amendment Bill) for more stringent legal responses to trafficking, we propose indicators around bilateral extradition agreements and prosecution of corrupt officials as well as those involved in all stages of trafficking.

Again, education and awareness may reduce the susceptibility of vulnerable groups to trickery and deceit used by traffickers. Services aiming at intercepting the trafficking process include use of the CPR and awareness raising amongst staff in key services. It is important to keep in mind that trafficked children will also need to access services that address the types of labour (such as CCSE and domestic slavery) into which they have been trafficked.

Service provision in South Africa to combat child trafficking has been identified as minimal (Molo Songololo, 2005). Reported international approaches, guided by the CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, include public information and awareness raising for communities at risk (for example in Benin), and strengthening of multilateral and regional co-operation to fight the trafficking trade (for example in Côte d'Ivoire, Mali, Benin and Togo) (ILO & IPEC, 2004).

Further responses include identifying locations where trafficked children are working (UNICEF, 2003b), awareness raising amongst officials (for example, India's National Action Plan), and increased criminal punishment of perpetrators (US Department of State, 2004). Services for victims of trafficking are crucial, such as reception and safe transit facilities, education and vocational training as established in Mali (UNICEF, 2004a), as are services for communities at risk of targeting by traffickers, such as income-generating projects for families whose children have been trafficked or for victims of trafficking (for example in Togo).

Legislation and policy

South African Constitution

Section 28 of the Constitution identifies entitlements of children in South Africa to be protected from abuse, and stipulates that persons under 18 years of age have a right to be protected from work that is exploitative, detrimental to their schooling, or detrimental to their social, physical, mental, spiritual or moral development.

Further constitutional rights relevant to harmful labour, commercial sexual exploitation and trafficking, include the right to shelter, basic healthcare services

and social services (Section 28(1)(c)), including rehabilitation following exploitation and trafficking. Section 29 provides the right to basic education and Section 28(1)(d) the right to protection.

Section 28(1)(b) gives every child the right to family care, parental care or appropriate alternative care when removed from the family environment. This is important given that loss of family support is a risk factor for trafficking and exploitive labour. The state has an obligation to see that appropriate alternative care is provided to children who are particularly at risk following loss of family care, or when children leave the family as a result, for example, of abuse, violence and severe neglect. Given that poverty is a major driver of children's involvement in exploitive labour and related practices, poverty alleviation and family support are particularly important preventive interventions (see sections 26 and 27 of the Constitution).

Section 39(1)(b) of the Constitution requires that when interpreting the Bill of Rights, international law 'must be considered'. A number of international instruments to which South Africa is signatory apply to the subject under discussion.

International obligations

The CRC and the African Charter on the Rights and Welfare of the Child (AC – see Appendix 3 in this volume) place harmful labour, trafficking and commercial sexual exploitation within the broader definition of abuse (for a detailed examination of the international and national legislation pertinent to child abuse, see Chapter 14 in this volume). Relevant articles of the CRC and the AC are listed below.

- CRC articles 3, 6, 19, 23, 24, 26, 27, 34, 36; AC articles 4, 5, 13, 14, 16, 27: Ensuring the survival, health and development of the child; provision of an adequate standard of living; protection from violence, abuse, neglect and exploitation detrimental to the child's welfare.
- CRC Article 28; AC Article 11: Right to an education, and state responsibility to encourage attendance and reduce dropout. AC Article 12: Right to rest, leisure, play, and participate in cultural life.
- CRC Article 32; AC Article 15: States to protect children from 'all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development' (in both formal and informal sectors). The AC specifically highlights the ILO instruments to be followed regarding minimum ages for employment, regulation of hours and working conditions, and penalties and sanctions for their enforcement. Further, under the AC, states are required to 'promote the dissemination of information on the hazards of child labour to all sectors of the community'.
- CRC Article 19; AC Article 16: States to protect against 'torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse'.
- CRC articles 7, 9; AC Article 19: Right to parental care and protection and, where possible, to live with parents. CRC Article 18 and AC Article 20 state that parents have the primary responsibility for the care of their children. The state must render appropriate assistance to families that are stressed – a measure that

- reduces the risk of children being exploited.
- CRC articles 10, 22; AC Article 23: (relevant to children trafficked to South Africa from other states) Unaccompanied refugee children or children internally displaced to be reunited with families or, where no parents, to be afforded state protection. CRC Article 20; AC Article 25: Children deprived of their family environment to be afforded special protection.
- CRC Article 21; AC Article 24: Adoption to take place only when legal, and inter-country adoption only when no suitable care is available in the country of origin. Specifically, that inter-country adoption 'does not result in trafficking or improper financial gain', and that bilateral or multilateral agreements regarding trafficking are sought.
- CRC Article 34; AC Article 27: States to take measures against i) the inducement, coercion or encouragement of a child to engage in sexual activity, ii) the use of children in prostitution or other sexual practices, and iii) the use of children in pornography.
- CRC Article 33; AC Article 28: States to prevent the use of children in the production or trafficking of drugs.
- CRC Article 35; AC Article 29: States to prevent the abduction, trafficking or sale of children by any persons (including their parents), and the use of children in begging.

South Africa has also ratified a number of international conventions that bear on exploitation and child labour. ILO Convention 182 on the WFCL was ratified in 1999, and requires the country to take time-bound measures to eliminate the worst forms of child labour. The four pre-defined worst forms of child labour are:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Specific state responsibilities include (Article 7): the prevention of the engagement of children in the worst forms of labour, to remove and rehabilitate, and to provide children removed from these labour circumstances with education.

The South African government also ratified a number of earlier ILO conventions providing an essential foundation to policy designed to comply with Convention 182. They include:

- Convention No. 105 (of 1957) concerning the Abolition of Forced Labour, which was ratified in March 1997;
- Convention No. 29 (of 1930) concerning Forced or Compulsory Labour (it was also ratified in March 1997); and
- Convention No. 138 (1973) concerning Minimum Age for Admission to Employment was ratified in March 2000, and the minimum age was set at 15 years.

It is of course noteworthy that South Africa only recently ratified these treaties which had been in the international arena for many years. The apartheid state obviously ignored them.

COMMERCIAL SEXUAL EXPLOITATION AND TRAFFICKING

Ratifications in this regard include:

- The UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography of 2000 (ratified in June 2003);
- The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime of 2000 (ratified in February 2004); and
- The UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949, ratified in October 1951).

Section 281 of the Children's Act (No. 38 of 2005) ratifies the UN Protocol to Prevent Trafficking in Persons, the Hague Convention on International Child Abduction (articles 274–275), and Article 256(1) ratifies the Hague Convention on Inter-Country Adoption.

South African legislation

Children's constitutional rights and obligations in relation to international law are reflected in a range of progressive legislation, including:

- The BCEA (No. 75 of 1997) and the BCEA Amendment Act (No. 11 of 2002), which prohibit the employment of anyone under 15 years (the minimum school-leaving age) or who is over 15 years but under 18 years of age if the employment is either inappropriate for the age of the child, or if the work places the child's well-being and development at risk, or if it has been prohibited by the Minister of Labour through regulations.
- The Prevention of Organised Crime Act (No. 121 of 1998) implicates adults who facilitate the access of others to a child for sexual activity of any nature. Activities specified include rape, kidnapping, indecent assault, unlawful carnal intercourse with a girl or boy under a specified age, and soliciting or enticing a girl or boy to the commission of an immoral or indecent act.
- Common Law identifies the illegality of sexual assault of children, including statutory rape.
- The Sexual Offences Act (No. 23 of 1957) proscribes the abduction of those under 18 years for sexual acts.
- 2004 amendments to the Films and Publication Act (No. 65 of 1996) make illegal the possession, creation, production, distribution, importing, accessing, advertising or promotion of child pornography images, with a maximum penalty of 30 years. ISPs are legally required to block access to child pornography sites. Photography shops, those repairing computers and members of the public are required to report incidence of child pornography. South African citizens who commit child pornography offences whilst abroad can be prosecuted on their return home.

- Under the Drugs and Drug Trafficking Act (No. 140(3) of 1992) all supply of scheduled substances is criminalised, although the Act does not specify children's involvement.

THE CHILDREN'S ACT AND THE CHILDREN'S AMENDMENT BILL

The Children's Act (No. 38 of 2005) and the Children's Amendment Bill (No. 19 of 2006) provide an extensive legal framework for addressing harmful child labour, commercial sexual exploitation (including pornography), and trafficking of children (including illegal adoption). They explicitly address areas (specifically CCSE and trafficking) that have been neglected, or scattered, in existing legislation. The reader is referred to the relevant Act and Bill, which are available online.⁶

Recommended indicators for harmful child labour, CCSE and child trafficking

Challenges

There are a number of challenges associated with the collection of data on these problems. Firstly, there is a lack of clarity as to whether or not national surveys will be able to provide regular data on children's work. A draft module to be used in follow-up surveys to the SAYP was developed with the intention of collecting data every three to four years, a timetable considered appropriate in the context of the HIV/AIDS pandemic (DoL, 2003). As yet, this has not been used and repeats of the SAYP or particular modules seem unlikely at this point.

A further challenge in the use of survey data lies in the fact that the methodologies are vulnerable to significantly undercounting children's participation in potentially harmful work activities. For example, children who completed the 2000 Time Use Survey reported much longer hours of paid and unpaid domestic work than respondents in the SAYP (Budlender & Bosch, 2002). This difference in figures flags one of the challenges in measuring children's work participation and forming an accurate picture of the problem one is trying to address.

As we have already noted, data on illegal, taboo and underground activities are notable for their unreliability. This is not a problem unique to South Africa – a recent review of literature on child prostitution and trafficking noted trends of poor quality research and the reification of numerical 'guesstimates' as facts:

The overwhelming majority of publications...are characterized by muddled, low-level or misunderstood theories, badly thought-out and applied research methods, poor data and inadequate analysis. (Ennew et al., 1996)

Further measurement difficulties include the inevitable under-representation of the problem through any form of report-driven data collection, comparable to data on incidence of rape and incest. This can lead to a 'catch-22' situation whereby increased investigation into the incidence of harmful labour, CCSE and trafficking will result in more identification of cases, and an apparent rise in the problem (as has been the case with child sexual abuse in the US – see Chapter 14 in this volume).

We will not attain reliable numbers or proportions of children experiencing harmful labour, commercial sexual exploitation and trafficking. However, we can find out more than we currently know, through the disaggregation of existing administrative data and by conducting a realistic set of commissioned studies. We can also increase our understanding of geographical areas at high risk for recruitment of children into these practices, and areas with a high density of children undergoing such work. We can develop services to assist and prevent these abuses of children, and use indicators to monitor the accessibility and quality of those services.

Because mandatory reporting of these forms of child abuse is required by the Children's Act (No. 38 of 2005), the CPR system (see Chapter 14) could prove to be an effective resource for monitoring of all forms of child abuse including harmful labour, CCSE, involvement in pornography and the various forms of trafficking as defined by the Act. However, at present the CPR does not make provision for inclusion of these forms of child maltreatment. Of course, the quality of the data on the register will depend fundamentally on inputs as well as resource factors. In at least one province, the Western Cape, the Register is not operating as intended, with numerous problems in data collection, entry and validation (Dawes, Willenberg et al., 2006).

Recommendations for recording incidence

Reporting systems such as South African Police Services data and CPR data will inevitably only capture those cases which come to the attention of state services. Whilst we will never be able to capture all incidences, a useful supplement to this data could be telephone-call data from welfare agencies and services such as ChildLine. However, these data must be used with caution as cases cannot be validated.

As noted above, the DoL has suggested that policy implementation should be focused on very poor, deep rural areas such as former 'homelands' (DoL, 2003). Site-specific studies to monitor changes in child work should therefore be located in these areas. We have noted that chronically poor urban areas should also be monitored for risks to children's involvement in crime by adults.

Chapter 14 in this volume outlines comprehensive requirements for the provision of a national CPR. In addition to the basic information which is to be collected in the CPR, information that captures child labour, child commercial exploitation and child trafficking should be included as indicated below.

RECOMMENDATIONS FOR THE COLLECTION OF BASIC INCIDENCE DATA ON THE CPR

Is there evidence of one of the following specific types of abuse?

- Exploitative/harmful child labour:
 - Domestic labour;
 - Non-domestic labour;
 - Use of children in the drug trade.
- Child commercial sexual exploitation:
 - Use of children as commercial sex workers;
 - Use of children as domestic sex slaves;
 - Use of children in pornography.

- Trafficking of children:
 - For use in domestic/non-domestic labour;
 - For use in CCSE (including pornography);
 - For use in the organ trade;
 - For illegal adoption.

In line with the incidence data on child abuse and neglect, rates of child exposure to harmful labour, commercial sexual exploitation and trafficking for a particular period that are reported at national and provincial level should be expressed as rates per 100 000 children, stratified by age and gender for each type of abuse.

The following age stratifications would be appropriate for annualised reporting and are based on the labour legislation and associated documents such as the CLAP:

- All children under 18 years of age, disaggregated by gender; and
- Children from 0–14 years (children under 15 may not be employed) and 15–17 (inclusive).

Where possible, data on small geographic areas are required to provide a sense of those in which children are particularly vulnerable, which services require support, and to inform staffing levels. All chapters in the child protection section of this volume address staffing levels as a key indicator of service quality (for example social worker–child ratios). We have not supplied specific recommendations in this regard in this chapter and suggest that the ratios provided for child protective services staff in Chapter 15 be considered. Trafficked and exploited children should enter social services and related services and will therefore be covered by the same norms that apply to other maltreated children.

For child protective services, those using the register should also be aware of the overlapping nature of some of these problems, and recognise that inclusion on one category of the register (i.e. commercial sexual exploitation) may suggest the need to investigate further regarding other categories such as trafficking.

Existence of and access to services

A key element of the indicator system is the monitoring of both provision and quality of services aimed at preventing and responding to harmful labour, CCSE, and child trafficking. These exploitative practices must be addressed at both the ‘supply’ and ‘demand’ sides (for example, reduce ‘supply’ of children at risk for trafficking by improving education around trafficking in rural areas, and reduce ‘demand’ for trafficked children by enforcing the Children’s Act through the courts). Finally, the need for rehabilitative services is outlined. Indicators that measure the phenomena discussed above are presented in Part 2 of this volume.

Conclusion

Core indicators are presented in Part 2. Note that in this instance, more than 20 core indicators are included due to the fact that several phenomena are monitored here. It must be stressed once more that due to the illicit and hidden nature of the phenomena, data availability is likely to be extremely poor. The approach taken in this chapter is to focus on strengthening (currently very inadequate) information systems and improving services to affected children.

It is important to note that these indicators are not to be used in isolation and are intended to complement those indicators and guidelines presented in chapters 4, 12, 14, 15 and 17 in particular. Whilst those chapters address some of the background drivers for harmful child labour, CCSE and child trafficking, this chapter attempts to define the indicators which are unique and specific to these 'worst forms' of child exploitation.

As we have suggested, chronic poverty coupled with high rates of HIV infection and mortality are likely to constitute particular risks for their exposure to these forms of child abuse and exploitation. We therefore need to be particularly vigilant of situations where children are living in highly affected households and communities, both in the countryside and the cities. Such conditions are likely to be useful early warning indicators for the abuses we have discussed here.

We have not provided a table of additional indicators. A central reason is that there is so little data in this area as to render the effort relatively pointless at this time. Our view is that specific research studies are required to tease out the more complex aspects of the problems we have discussed in this chapter. We suggest that such studies focus on populations of children at risk (such as those on the streets and children affected by HIV), and geographic areas affected by high HIV prevalence, orphaning and poverty. Another site for research in trafficking and commercial sexual exploitation, for example, would be border crossings, truck stops and areas that local informants know to be areas where children are particularly at risk.

NOTES

See Chapter 2 and Part 2 in this volume for an explanation of the five indicator types used for indicator design.

- 1 The inclusion of illegal adoption and the organ trade as categories within 'trafficking' identifies the common factors of the use of children for adults' commercial gain.
- 2 General Household Survey (Stats SA, 2004b) data suggest that 0.6 per cent of children (orphaned or otherwise) in South Africa were living in child-headed households in June 2004. This figure equates to roughly 107 000 children, but should be treated with extreme caution considering the very small sample of child-headed households recorded in the survey. The 2001 Census suggests a similar proportion but, given some problems with the data on child heads of household recorded by enumerators, should also be treated with caution.
- 3 Further information on the use of children in criminal activities and organised crime is provided in Chapter 16 in this volume.
- 4 Notably, all incidence figures presented for the following sections must be interpreted as estimates only (and in some cases 'guesstimates').
- 5 This is an ongoing initiative and no findings had been released at the time of writing (2006).
- 6 See <<http://www.welfare.gov.za/>>.

