

**White Paper (draft)
on a National**

**Child Labour
Action Programme**

for South Africa

*Draft for consideration by government departments and
other stakeholders*

Draft 3.1, July 2003

This draft incorporates comment received from key stakeholders on earlier drafts. However, this version has not yet been approved formally. It is circulated for comment.

Comment on the analysis in this document, or proposals for policy, should be received by the Department of Labour by 31 July 2003. Please send it:

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This and other related documents and links are available or should be available soon at
<http://www.labour.gov.za>

(then follow the links to 'Child labour documents')

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Abbreviations used

AgriSA	Agri South Africa	ECC	Employments Conditions Commission
BCEA	Basic Conditions of Employment Act	ILO	International Labour Organisation
CLAP	Child Labour Action Programme	LG	Local government
CSE	Child commercial sexual exploitation of children	NDPP	National Directorate of Public Prosecutions
CSG	Child Support Grant	NEDLAC	National Economic, Development and Labour Council
DA	Department of Agriculture	NGOs	Non-governmental organisations
DC	Department of Communications	NPA	National Programme of Action for Children in South Africa, coordinated from the President's Offices
DCS	Department of Correctional Services	NT	National Treasury
DE	Department of Education	PDLA	Provincial departments responsible for local government
DFA	Department of Foreign Affairs	PPO	Provincial Premiers' Offices
DH	Department of Health	RI	Research institutions
DHA	Department of Home Affairs	SALRC	South African Law Reform Commission
DJ	Department of Justice & Constitutional Development	SAPS	SA Police Service / Department of Safety & Security
DL	Department of Labour	SARS	South African Revenue Services
DLA	Department of Land Affairs	SAYP	Survey of Activities of Young People
DME	Department of Minerals and Energy	SOCA	Sexual Offences and Community Affairs Unit of the National Directorate of Public Prosecutions
DPLG	Department of Provincial and Local Government	StatsSA	Statistics South Africa
DPW	Department of Public Works	SWEAT	Sex Workers Education Advocacy Task Force
DrA*	Departments responsible for agriculture (national and provincial)	TBP	Time-Bound Programme (see 2.4)
DrE*	Departments responsible for education (national and provincial)	TU	Trade union
DrSD*	Departments responsible for social services to children (national and provincial)	WFCL	Worst Forms of Child Labour
DSD	Department of Social Development		
DT	Department of Transport		
DTI	Department of Trade and Industry		
DWAF	Department of Water Affairs and Forestry		

* 'Departments responsible for' in the above list means national and provincial departments sharing the responsibility for the relevant line function. These are usually where the Constitution specifies that the given function is a concurrent one between national and provincial government.

Chapter 1: Introduction

1.1 The need for a White Paper on a Child Labour Action Programme

Children are the future of any country. There are various factors hindering the welfare and development of children in South Africa. One such factor is the involvement of children in the worst forms of child labour. Other factors include children engaged in other forms of work that are likely to be bad for their development. This draft White Paper proposes ways of ensuring that children do not become involved in the worst forms of labour and other forms that might be detrimental.

The Government of South Africa has embarked on a process of formulating appropriate policies and a national action programme to combat child labour. The Department of Labour is the Lead institution.

This document briefly discusses the areas of work that children do, identifies the areas needing the most concerted attention, and recommends a range of actions to be included in a Child Labour Action Programme (CLAP).

The following are fundamental policy directives that require that South Africa take steps to avoid children engaging in work that is detrimental to them

1.1.1 The Constitutional imperative

The Constitution (s 28) provides that children under 18 have a right to be protected from work that is –

- ❑ exploitative, hazardous or otherwise inappropriate for their age,
- ❑ detrimental to their schooling, or
- ❑ detrimental to their social, physical, mental, spiritual or moral development.

The term 'work' is not limited to work in so-called economic activities (e.g. employment). It therefore includes other forms of work such as chores or household activities in the child's household (eg collecting wood or water), where this is exploitative, hazardous, inappropriate for their age or detrimental to their development. The term 'child labour' as used in this document includes all detrimental forms of child work.

1.1.2 International obligations

South Africa has ratified various international instruments on child labour, indicating the country's commitment to improve the situation of its working children. These include –

- ❑ The ILO *Worst Forms of Child Labour Convention* (1999). South Africa, as a member of the International Labour Organisation (ILO), assisted in its drafting and has ratified the convention. South Africa consequently undertook to take *time-bound measures to eliminate the worst forms of child labour* (WFCL).
- ❑ The WFCL includes four pre-defined worst forms:

- bonded labour;
 - commercial sexual exploitation, including the prostituting of children;
 - trafficking of children, meaning the recruitment of children to work in jobs far away from home and from the care of their families;
 - use of children by others in illegal activities, including drug trafficking.
- The WFCL also includes a last category of worst form, to be defined by each country itself through a process of social engagement:
- *work which by its nature or the circumstances is likely to harm the health, safety or morals of children* ('hazardous work').
- The ILO *Minimum Age for Admission to Employment Convention* of 1973. This Convention, ratified by South Africa in 2000, requires that ratifying states pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

1.2 Process followed in preparing this draft White Paper

1.2.1 Obtaining baseline information

(a) Statistical information

The first step in this process was to develop a reliable and credible database on child labour in the country. An investigation was done in 1996 to determine which tool would be the most appropriate. A national household-based survey was recommended. Therefore, in 1999 Statistics South Africa conducted the first national survey of child work, entitled the *Survey of Activities of Young People* (SAYP). This survey and the policy development process that followed were conducted with financial and other support procured by the International Labour Organisation.

The official reports were released in October 2002. The survey results provide a national quantitative picture of child labour in the country and give an appreciation of the different categories of working children who are most in need or who are at the greatest risk. Copies of various reports on the findings of the SAYP are available on the website of the Department of Labour at www.labour.gov.za (then follow the link on the home page to 'Child labour documents').

(b) Qualitative research

All known qualitative research conducted within South Africa on areas relevant to this policy was reviewed. The research reports that were available by early 2001 are listed in the *Discussion document* referred to.

Following the above processes of gathering information, the government of South Africa began formulating appropriate policies and a national action programme to combat child labour. The different elements of this process are described below.

1.2.2 Analysis of existing situation

First the situation of children's work in South Africa was analysed and policy implications were identified. This was done in the *Discussion document*, released in December 2002.

1.2.3 Consultation with the South African public (adults)

A detailed consultation process was run to obtain input on the analysis and formulation of policy from the public in general, and a wide range of stakeholders with particular interests in the issue, including a range of government agencies. Their comments were elicited during workshops in each province and seven national issues-based workshops. These consultations were run from January 2003 to April 2003.

The consultations were to:

- Establish what kinds of work-related activities of children place them at risk;
- Assess the seriousness of that risk in different circumstances, including which forms of work are the most hazardous and should be stopped as a matter of priority;
- Identify the extent and causes of these different forms of child work and child labour;
- Formulate a programme of action that identifies the most appropriate ways to address detrimental forms of child work and labour.

1.2.4 Consultation with children

In a parallel process, children's views were gathered. As those most affected by the issue, children need to be involved in the policy process. The aim was to ensure that the White Paper recognised children's coping strategies in the face of difficulties, built on their resourcefulness while at the same time developing programmes and interventions to provide adequate prevention, protection and provision of services.

Copies of the report on this process, entitled *When I finish my work it is after six. My heart is so sore because I have not played – Report on Children's Participation Process Towards a South African Child Labour Programme* and funded by Save the Children Sweden, can be obtained from the Department of Labour.

In addition, children's views were gathered through exercises conducted in Grade 7 classes in schools throughout South Africa. A report on this project will also be available at www.labour.gov.za by end July 2003. Annexure D contains a list of schools that participated in this process.

1.2.5 Engaging key stakeholders on action steps

A team involving the Department of Labour, experts on child labour in South Africa and the International Labour Organisation then engaged with key stakeholders, including government departments, on action steps proposed in the above processes. This was aimed at achieving the following:

- Stakeholders' indication whether they supported the proposed action steps affecting them, and adjustment of areas of action where appropriate;
- Updating information from stakeholders on:
 - established areas of policy within their line functions that already potentially address aspects of child labour;
 - current processes aimed at producing policies complementary to the child labour policy;
- A process of seeking:
 - commitment of both financial and human resources to action steps agreed to by stakeholders from existing budgets or to be motivated for as additions to the budget;

- identification of action steps where urgent action is needed and for which resources must quickly be found;
- identification of distinct areas of action for which donor funding was required .

1.3 Finalisation of the policy process

This White Paper was developed based on the steps described above. This process will be finalised through the steps outlined below.

- The draft White Paper will be considered as follows:
 - Meeting of the Child Labour Intersectoral Group, including the National Programme of Action structures: 24 July 2003.
 - Making the draft White Paper available for public comment.
 - In parallel, workshops with focus groups, comprising children affected by the proposed policy, to obtain their input and comment.
- The revised document will be circulated for comment by the last week of August.
 - This draft will be considered at a national workshop with the major stakeholders (provisionally planned for 4 September 2003) to obtain final comments and to agree on necessary adjustments.
 - Final deadline for comment on draft: 11 September 2003.
- Where necessary, final meetings with relevant proposed implementing departments / organisations may be required: 11 to 30 September.
- On 6 October, the final draft White Paper submitted to the Minister of Labour for his consideration and final adjustment (if required), and for submission to Cabinet.

1.4 Existing policy measures affecting children's work in South Africa

This section describes the policy approach developed in South Africa to date on issues that relate more or less directly to children's work. It excludes aspects of policy that may *indirectly* affect children's work-related activities, such as measures to alleviate poverty or the provision of basic water and energy services (indirectly addressing the fetching of wood and water). The latter are discussed elsewhere in this paper.

1.4.1 Legal provisions on child labour

The prohibition of employment of children applied initially only to white children. In 1981 the Basic Conditions of Employment Act extended the prohibition on employing children under 15 to all population groups. However this Act excluded farm and domestic workers until the early 1990s. In 1991 a prohibition on employment of children under 15 was inserted into the Child Care Act, administered by the then Department of Welfare. Because this Act applies to all children, those in the agricultural and domestic sectors were now included in the prohibition. However, the Department of Welfare did not have adequate infrastructure and little enforcement and follow-up occurred.

(a) *The Constitution*

The Interim Constitution of 1993 contained clauses related to child labour. Section 28 of the final Constitution of 1996 states that a child's best interests are of paramount importance in every matter concerning the child. It also says that every child, defined as a person under 18 years of age, has the

right:

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

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

(b) The Basic Conditions of Employment Act

In March 1998 the child labour provisions of the new Basic Conditions of Employment Act (BCEA) of 1997 took effect. This is the most important act dealing explicitly with child work. It prohibits employment of a child:

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

Section 83 gives the Minister of Labour the power to deem any category of persons to be employees for purposes of the Act. This power can be used to widen the scope of work considered unlawful. A person is considered an *employee* if that person:

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

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

The Child Care Act (CCA, Section 52A) contains a similar prohibition, namely that 'no person may employ or provide work to any child under the age of 15 years'. The clause has wider application than the BCEA. It outlaws both employment of such children, and provision of work. It is therefore likely that this section prohibits giving work to a child who works as an independent contractor. It is likely that Section 52A will be deleted, to remove the elements of duplication.

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

employed.

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

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

A child who gets injured at work can apply for compensation in terms of the Compensation for Occupational Injuries and Diseases Act. The laws on *health and safety at work* apply to child workers in the same way as they apply to adults.

(c) *Occupational Health and Safety*

In terms of the Occupational Health and Safety Act, employers must ensure that working conditions are safe and healthy and must do everything reasonable to reduce and avoid dangers. Health and safety representatives must be appointed in a workplace if 20 or more workers are employed there. This is not of much assistance to many working children because most work where fewer than 20 people are employed. Department of Labour inspectors also inspect workplaces to ensure compliance. One difficulty with regulations regarding safety and health at work is that much of the regulations assume the workforce to be male and adult. They may therefore not adequately address the vulnerabilities of children.

(d) *Skills development*

The Department of Labour is coordinating a *skills development programme*, governed by the Skills Development Act. This includes learnerships. There is no minimum age for learnerships, but since children up to the age of 15 are subject to compulsory schooling, learnerships are likely to start from age 15 onwards. The Act provides an institutional framework for a national strategy to develop and improve the skills of the South African workforce. This should benefit older children, since the youth will be an important target for such skills plans.

1.4.2 Child welfare

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

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

(a) *Child Care Act*

The *Child Care Act*, among others, sets out processes whereby children in need of care and protection are identified and dealt with. These provisions can be used when children need to be removed from

adults keeping them in dangerous circumstances, and where this involves work the child is required to do. The Act also includes provisions on child abuse, which are wide enough to cover a range of harmful labour-related activities that may fall outside the provisions of labour laws – such as excessive use of children in a family's subsistence agricultural activities or household chores.

The SA Law Reform Commission has recently reviewed the Act and produced a draft Children's Bill. The Department of Social Development is now responsible for taking this bill through the parliamentary process.

(b) Grants

Financial assistance for some households with children is provided in the form of grants. These include the child support grant and the foster care grant. In addition, research has shown that old age grants are often used to support children. The provincial departments responsible for welfare administer these grants.

The child support grant is available for the primary caregivers of children under a given age who pass a means test. The age cut-off was previously six years, but has been extended and by 2005 the grant will be available to children up to 13 years old (under 14 years). The grant is small, at R160 a month as from July 2003. The effectiveness is limited by the low age limit, low take-up rate when compared to the old age grant, and administrative problems in accessing the grant. There has, however, been some improvement recently in the take-up rate.

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

The foster grant is paid in respect of children placed legally, through a children's court enquiry, in the care of foster parent(s). The amount of the grant is R500 since April 2003 – more than three times that of the child support grant. This could serve as a disincentive to parents to care for their own children. Meanwhile the lack of support for those who formally adopt children serves as an incentive for fostering to be chosen above adoption.

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

1.4.3 Schooling

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

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

education provision. Through its recently released *Plan of Action: Improving access to free and quality basic education for all*, Department of Education hopes to focus on the 40% of poorest schools to ensure that no child is prevented by school fees, distance or other barriers from attending school.

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

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

1.4.4 Sexual exploitation of children

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

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

There are presently many shortcomings in the Sexual Offences Act. For example, while a person having sexual intercourse with a girl under 16 years old with her consent commits statutory rape and can be prosecuted, it is not an offence if the girl was a prostitute and the perpetrator was under 21 and was charged for the first time with this offence. These shortcomings will probably be addressed through a new Sexual Offences Bill, to be tabled in Parliament during 2003.

The Sexual Offences Bill deals with prostitution of children, rape, and indecent acts against children. It treats the child as a victim and not an offender and would thus not be liable to prosecution in terms of the new law.

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

Child pornography is prohibited in terms of the Films and Publication Act falling under the jurisdiction of the Department of Home Affairs. With effect from April 2000 the definition of child pornography was widened to include the electronic media. The Act includes age restrictions and protection for children, in particular, against exploitation or degradation in publications, films and on the Internet. It

is an offence for a person to create, produce, import or possess a publication of children pornography or to create, distribute, produce or possess such a film, document or thing.

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

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

1.4.5 Children involved in illegal work-related activities

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

Most policy measures addressing illegal work-related activities form part of the Department of Justice and Constitutional Development’s general strategy to deal with children involved in criminal activities. This includes distinguishing between activities where children are victims (such as most cases of prostitution) and activities where children are perpetrators needing rehabilitation. It also includes finding alternatives to jailing children.

It is considered a serious offence when children *deal in drugs*, or are found in possession of larger quantities of drugs and where dealing is suspected. . These child suspects can be held in prison when awaiting trial and, if found guilty, can be sentenced to imprisonment. However if the child is clearly a user rather than a dealer, the Director of Public Prosecutions’ policy is to divert the child to drug counselling programmes rather than prosecution.

The SA Law Reform Commission investigated the issue of child justice, and a Child Justice Bill was introduced into Parliament in 2002. It is hoped that the Bill will be adopted during 2003. The Bill suggests a change to the way in which drug dealing can be dealt with. It emphasises the need to target the syndicates and adults who are usually behind the children’s drug-dealing activities.

Still, children working with syndicates are more likely to be held in custody while awaiting trial, even if they may act as state witnesses. Where children sell drugs for survival or because of dependency on drugs themselves, the court will convert the trial to a children’s court inquiry at any time before sentencing, even after a conviction.

Policy and related statutory measures in the Bill have been formulated to reduce the number of child offenders in jail. These alternatives are referred to as *diversion*- ‘diverting’ the child away from prison, and activities include community service. Such steps are intended to rehabilitate offenders by keeping them in society but serving it in some constructive way.

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

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

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

1.5 Format for policy steps discussed in this paper

Each type of work and other factors needing policy attention are discussed later in this paper.

Specific action steps appear in BOXES throughout this paper. Action steps are numbered sequentially throughout the text to facilitate easy reference.

The institutions proposed to be responsible are then noted. The institutions that have already agreed to fulfil the noted role are marked with an asterisk *. The abbreviations used for different institutions are given on page 3. Finally, the action steps for each institution are summarised in Annexure A.

It is assumed that the institution responsible for a given action step is aware of the relevant policy environment. Therefore, the relevant policy environment or the content of a policy referred to is not discussed in any detail.

Historically, legislation has often been seen as the primary instrument for addressing child labour. More recent experience suggests that legislation is not the only – or even the best – weapon, particularly when we consider the common forms of child labour in South Africa. A key approach in the Child Labour Action Programme is that the *best* policy measure to address key problem areas should be emphasised, that is, measures most likely to improve the situation of working children *and* most likely to be implemented given capacity, resources, attitude, and competing priorities.

Further, it is clear that a primary focus of the child labour strategy must be awareness raising. In the research leading up to this White Paper it was striking that only a few of the many initiatives dealing with children's concerns had considered the issue of child labour.

Chapter 2: What the Child Labour Action Programme must address

The CLAP had to address South Africa's obligation under international law, consider the different types of work that children do, and specifically address the worst forms of child labour that should be eliminated through time-bound programme. Its drafting was guided by principles set out in this chapter.

2.1 International instruments affecting child labour

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

2.1.1 ILO Minimum Age Convention, 1973

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

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

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

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

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

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

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

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

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

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

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

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

2.1.5 The ILO Worst Forms of Child Labour Convention, 1999

This convention, which was unanimously adopted in 1999 by the Conference of the ILO and ratified by South Africa in 2000, requires ratifying governments to effect the immediate abolition of the 'worst forms of child labour'. The categories used to define the worst forms are described at 1.1.2.

2.1.6 Protocols

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

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

Two other protocols of relevance are an optional protocol to the CRC on the sale of children, child prostitution and child pornography, and the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which supplements the United Nations *Convention against Trans-national Organised Crime*.

2.2 Types of work

In developing this Child Labour Action Programme it was important to determine what, within the South African context, should be regarded as child 'labour'. Work in and of itself is not necessarily harmful to a child. It will, in fact, often be beneficial in many ways. Thus an ILO document acknowledges that 'the absence of work ... can condemn the child to a variety of social, moral and health risks' (1998:14). In addition, when identifying kinds of work that may be considered beneficial or harmful for the child's development it is important to consider the role of cultural views, which differ from community to community.

The need to protect children against exploitative and abusive work was established in the Constitution. It provides that children under 18 years should be protected against exploitative labour practices and work that is hazardous or harmful to their education, health or well-being, physical or mental health or spiritual, moral or social development. These provisions are discussed in more detail in paragraph 1.4.1.

In a 1998 draft South African Child Labour Action Programme the concept ‘child labour’ was defined as follows, as drawn from the Constitution:

‘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, inappropriate for their age or detrimental to their development’.

This definition was supported by most participants in the national consultative process on the Child Labour Action Programme. This process examined the types of work that participants considered to be detrimental or harmful to children. This definition of child labour is now accepted by the government and other stakeholders and is used in this policy. Note that it excludes appropriate activities related to skills training.

Work activities that are harmful or potentially harmful for children need to be identified. This is a complex issue because of the different views on what is harmful for children, and the different cultural views on the issue. There are also divergent views on the extent to which child labour problems can be addressed directly, or indirectly through economic and social development.

To establish what child work is harmful and would therefore constitute child labour requires a clearer understanding of when it has negative effects. Factors causing or increasing the risk of harm include a risk of physical harm; where educational opportunity is threatened; and a risk of exploitation.

Key issues in assessing the potential harm to children are discussed below:

(a) Table 1 provides an overview of work activities cause or increase potential harm to children.

Table 1: Work-related activities – Factors that cause or increase real or potential harm

Factor	Factors that cause or increase risk of harm
Number of hours per day / week	Long hours
Time of day / night	Night work
Wages	Lower wages Piece work and task work
Nature of work	Dangerous circumstances, tools, chemicals and other dangerous exposures
	Commercial sexual exploitation, including expose to illnesses.
	High strain or exhausting. Heavy loads, especially when carried over long distances.
	Illegal work.

	Work that is ergonomically unsuited.
	Excessive responsibility
	No stimulation; repetitive
Schooling	Work detrimental to schooling
Psychological effect	Work that is degrading and that reduces the child's sense of self-worth.
Recreation and rest	Work reducing significantly time for recreation and rest
	Inadequate meal and rest breaks
Attitude of adults where child work	Using coercion or intimidation
	Restricting child's movement unreasonably.
	Where no caring adult present.
Where work is performed:	On the streets.
	Work that is hidden or isolated and not easily monitored

- (b) This policy addresses some forms of work-related activity considered detrimental for children's development, such as **fetching fuel or water** for many hours or over long distances and **excessive chores** at home. These activities potentially fall within the definition of *child labour* above. However, the policy does not refer to it as child labour. This is because such forms of work are often a result of family circumstances, or are related to cultural practices. There will probably not be political support for labelling these activities 'child labour'. Consequently it may be more appropriate to call such forms of work 'detrimental forms of child work'.
- (c) During the consultation process stakeholders also expressed the view that **commercial sexual exploitation** of children (CSE) should not be named as a form of child labour, as this term could be interpreted as sanitising what is, in fact, a crime. See 4.1
- (d) Some forms of work-related activity are appropriate and beneficial (some argued even essential) for a child's development and socialisation. An example is participation by the child in **appropriate domestic chores** in their own homes for reasonable periods, all of which **falls outside the scope of this policy**.
- (e) Some forms of work falling outside a narrow definition of employment may lead to **indirect forms of exploitation** by a person who, without being their legally recognised employer, gives them orders, determines their working conditions and draws a profit from their work. These are discussed at 6.2.
- (f) Lastly, where there is **inadequate child care facilities** or capacity in the household to care for younger children adults often have to take their children to work. This may expose the children to occupational hazards, or sometimes encourage children that are older are sometimes persuaded to assist with the adults' work. See 3.10.
- (g) In addition to the nature of the work, particular **circumstances and characteristics** can **make certain children more vulnerable** than others doing similar work. It is not possible or desirable to single out specific circumstances or characteristics that may render some children more vulnerable and therefore increase the likelihood of harm. However, the policy is sensitive, where possible, to the following circumstances and characteristics:

Age: Young children will in most circumstances be more at risk than older children. The correct policy for a child of five or six would, for example, be very different to policy covering young teenagers or those nearing adulthood. Generally, policy needs to take into account the mental and physical capabilities and needs of individual children. So, for example, there might need to be special provisions for children with different forms of disability.

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

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

2.3 Worst forms of child labour

The ILO Worst Forms of Child Labour Convention of 1999 was ratified by South Africa in 2000. Accordingly South Africa has to take measures to effect the immediate abolition of the 'worst forms of child labour'. The Convention's definition of the worst forms is given at 1.1.2. In respect of the last category, namely work **which by its nature or the circumstances is likely to harm the health, safety or morals of children** the convention recommends that the circumstances should be determined in consultation with organisations of employers and workers within a specific country – see 5.2 . The Convention recommended that programmes of action should attend specifically to younger children, the girl child, hidden work situation in which girls are at special risk, and other groups of children with special vulnerabilities or needs.

2.4 Time Bound Programme

By ratifying the ILO Worst Forms of Child Labour Convention (see 2.3) South Africa committed itself to prohibit and eliminate the worst forms of child labour as a matter of urgency through time-bound measures. The ILO has developed the concept of the *Time Bound Programme* (TBP) as a tool to assist member states to fulfil their obligations in terms of the Convention within a defined period of time.

Specific tasks or programmes identified in this policy document for inclusion in a possible Time-Bound Programme for South Africa are marked with the abbreviation **TBP**.

A Time Bound Programme aims to ensure sustainability in preventing the engagement of children in the worst forms of child labour; withdrawal and rehabilitation of those already in intolerable work situations; and protection of working children of legal working age from hazardous activities.

It usually provides that the withdrawal of children from intolerable work situations is accompanied by measures to offer them and their families appropriate education, income and employment alternatives, as well as measures to prevent other children from getting involved.

The Time-Bound concept combines sectoral, thematic, and area-based approaches, linking action against child labour to national development policy, macro-economic trends and strategies, and

demographic and labour market processes and outcomes.

Usual elements of a Time Bound Programme are:

- ❑ Creating an enabling environment and identifying worst forms of child labour and its causes.
- ❑ Identifying other types of child work that may not fit the definition of worst forms of child labour, but need priority attention.
- ❑ Identifying target groups, estimating the number of children within target groups (if possible) and indicating geographical focus areas for the TBP.
- ❑ Incorporating crosscutting issues, e.g. gender, HIV/AIDS and regional forms of child labour (such as trafficking).
- ❑ Developing strategies and action steps for prevention, protection, removal and rehabilitation.
- ❑ Building the capacity of the government, social partners, and other key stakeholder to sustain child labour action, and to monitor child labour on an ongoing basis.
- ❑ Identifying responsibility for implementation and developing programme management and institutional arrangements.
- ❑ Budgeting for implementation.
- ❑ Monitoring and evaluation of programme implementation and impact and developing systems for knowledge and information management.
- ❑ Developing systems for gathering new information on causes of child labour, its extent, hazards in particular sectors, and other knowledge essential for guiding services, as well as the sharing and management of this information among agencies active in this field.

2.5 Principles of a Child Labour Action Programme

The action steps below are the outcome of research and an extensive consultative process. The consultative process was guided by the following principles:

- ❑ *Consultation of children:* Children directly affected by or involved in forms of child labour / work were consulted.
- ❑ *Child's best interest* should be the top priority in any action related to child labour, as provided for in the Constitution and international instruments.
- ❑ *Need for prioritisation:* The country has limited resources and needs to take action first, and urgently, on the very worst forms of child work.
- ❑ *Learn from others where appropriate:* South Africa had to develop an indigenous programme that suits the local context, but that borrows appropriately the best practices from other countries.
- ❑ *The need for ongoing learning:* While the SAYP has given much insight into the extent and nature of children's work in South Africa, many issues are still unclear. However, enough is already known about the dangers of certain kinds of work to take immediate steps. More research should simultaneously be done to improve the knowledge and understanding of the risks/hazards associated with other kinds of work.
- ❑ *Commitment of the necessary resources:* The necessary resources must be commitment once key areas of action have been identified. Areas of action where external resources are to be used are identified, with due attention to sustainability.
- ❑ *Prevention is better than cure:* The programme should emphasise measures to ensure that children

do not start doing harmful work-related activities.

- ❑ *The programme of action must be as realistic as possible* in terms of the resources and capacity of those responsible for its implementation.

Involving stakeholders and the community

- ❑ *A programme of action for all stakeholders:* While the programme of action specifies the responsibilities of all relevant government departments in addressing child labour, it also identifies areas of responsibility and tasks of other stakeholders.
- ❑ *Support existing initiatives rather than duplicating effort:* In drafting the Child Labour Action Programme, care was taken to identify and encourage support for existing initiatives which will aid the fight against the priority forms of child labour. Unnecessary duplication should be avoided.
- ❑ *Need for inter sectoral approach:* Child labour requires an inter-sectoral approach, effective coordination between different government departments and between different spheres of government. Proposed actions are supported by guidelines for which departments should collaborate and coordinate.
- ❑ *The programme of action must be communicated effectively:* As societal values are important in determining whether parents and others condone child labour, the communication programme must extend beyond government and policy makers and should be linked into broader campaigns around children's rights. Messages need to be focussed and targeted so as to reach specific audiences.

Chapter 3: General issues regarding proposed action

3.1 Addressing poverty and impoverishment

Poverty in the form of lack of basic income is a significant cause of child labour. Extreme poverty means that children are prepared to engage in more harmful and detrimental forms of child labour than would otherwise be the case, and that their families condone or encourage such work.

Structural factors may underlie long-term, chronic poverty, for example race, gender, location and a range of inequalities in access to land, education and other resources.

In South Africa, many of these inequalities represent the ongoing legacy of apartheid. For example, the higher incidence of child labour in ex-homeland areas is a result of the deprivation of these areas under apartheid. Poverty may also be due to more conjunctural and shorter-term factors such as loss of a job or HIV infection and subsequent death of breadwinners. This is sometimes referred to as 'impoverishment'.

Both long-term poverty and impoverishment must be addressed, as both encourage child labour. Further, both sets of factors interact, and those in chronic poverty are more vulnerable to conjunctural shocks.

Structural factors underlying chronic poverty are generally addressed in broad national strategies on development and poverty reduction. In South Africa, grants, public works programmes, income-generating programmes, and job creation are among government's strategies to address income poverty.

Grants are widely recognised as one of South Africa's most effective poverty-reduction strategies. They were mentioned in many workshops as a partial solution to problem of child labour caused by either poverty or impoverishment. Grants are discussed at 3.7.

Public works programmes are a viable strategy for addressing poverty and have been publicly favoured by the President, other government spokespersons, non-government players and the recent Growth and Development Summit. Government has also been more effective and efficient in implementing public works programmes than income-generating projects, although to date not on a large enough scale. Proposals are discussed in chapter 4 and 6.

. Public works programmes to establish infrastructure within previously disadvantaged areas simultaneously provide opportunities for poverty alleviation as well as substantial reduction in child labour. Projects such as building roads, providing access to water and electricity facilities are labour-intensive and provide job opportunities during the construction and maintenance phases. The provision of this infrastructure can also reduce child labour activities such as collecting water and fuel far from their homes, see 4.5.

Some participants attending consultative workshops suggested **income-generating projects** to address poverty. Given the poor performance of government with income-generating projects to date, and their

lack of sustainability, they are not included as part of the proposed Child Labour Action Programme. Individual NGOs and community groups may institute them, but they will never be widespread or effective enough to be regarded as a national strategy. The following is proposed in this regard:

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| (1) It may be possible to run effective income-generating projects for adults in very targeted areas where many children are involved in the worst forms of child labour. However, only sustainable projects should be supported. <i>Lead institution: NGOs. TBP.</i> |
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Job creation for adults: The biggest opportunities for income-earning opportunities are the public works programmes. Income-generating projects could make a small contribution. The BCEA's blanket prohibition on employment of children should also encourage jobs for adults – see 6.2. Apart from these policy measures, the following is proposed:

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| (2) The government's job-creation policy should be assessed to ensure that the jobs created go to adults and not children. <i>Lead institution: DTI; secondary institution: DL.</i> |
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3.2 Impact of HIV/AIDS on child labour

The HIV/AIDS pandemic has made children's situations ever more precarious, and is therefore a major influence on child labour. Children whose parents become infected and later become ill and eventually die, are affected in many ways. Educational opportunities are compromised as children are withdrawn from school to care for ill family members, to care for siblings and to help with household chores where adults cannot do so any more, or to work to supplement family income. These issues are elaborated at 4.7 and 5.1.

The statistics on child work on which this document and the *Discussion* document rely are sourced primarily from a survey conducted in 1999. The prevalence of HIV/AIDS has increased significantly since that time and has almost certainly increased the incidence of many forms of child work and labour.

In addition, HIV/AIDS brings other substantial hazards to already hazardous forms of exploitation of children, such as commercial sexual exploitation (see 4.1).

3.3 Focus required on ex-'homeland' areas

An analysis of the incidence of work-related activity by children shows that most forms are concentrated in the ex-homeland areas. Children in these areas, more than children in any other type of area, generally have to engage in many different types of work-related activity simultaneously.

For example, 12% of children in these areas did economic work for three hours or more per week, compared to 11% in commercial farming areas, and 5-6% in urban areas. A further 32% of children in ex-homeland areas collected fuel or water for three hours or more per week, compared to 18% in commercial farming areas, 11% in urban informal areas and 3% in urban formal areas.

These patterns suggest that implementation of most of the policy measures proposed in this document should be focussed in the ex-homeland areas.

3.4 Prevention of child labour

Preventing child labour is far better than remedying the problem, and prevention strategies form the key element of the policy. They include the following:

- (a) Poverty alleviation programmes summarised at 3.1 and elaborated as follows: income-generation at 3.1; grants at 3.7; public works at 4.5.
- (b) Provision of infrastructure, see 4.5.
- (c) Prevention of types of work that encourages child labour, see 6.2.
- (d) Enhancing education opportunities, see 5.1

3.5 Considering child labour in other policies

This document makes it clear that a large range of policies is, or should be, implicated in addressing child labour. The proposal in this regard is as follows:

- (3) The Department of Labour should, at regular intervals (for example, every three years), **assess all relevant public sector policies and programmes for their impact on child labour** and the contribution they could make to the elimination of child labour. This assessment should be done so as to coincide with the report on the results of the child labour module to be run by StatsSA as part of the Labour Force Survey. *Lead institution: DL; Secondary institution: StatsSA (statistical module).*

3.6 General measures required from the Department of Labour

- (4) The **provisions of the BCEA on child labour are too narrowly defined**. The wording of section 43(1) should be changed to ensure that all children who are given work (excluding acceptable levels of domestic chores, work directly related to study, and similar activities) are covered, similar to the provisions of section 52A of the Child Care Act. *Lead institution: DL*
- (5) **Regulations** in respect of children aged 15-17 should be drafted as soon as possible, **to give guidance as to what kind of work is acceptable and what not**. The technical workshop should consider this issue and propose a list of activities to be prohibited. *Lead institution: DL*
- (6) Payment of lower wages to child workers may sometimes be the reason for the use of child labour. The law should require **child workers** (in as far as the practice is allowed) **be paid at the same rate as adults** for time worked. *Lead institution: DL*
- (7) In areas where the practice is most prevalent, **child labour inspectors** with child labour as a primary responsibility should be appointed. *Lead institution: DL*
- (8) While an enforcement policy on child labour is in place, it lacks a clear allocation of **resources for enforcement** activities to ensure that it can be implemented. The allocation of resources needs urgent attention. *Lead institution: DL*

- (9) **This document should be submitted to NEDLAC for discussion** by the partners and comment. *DL, NEDLAC.*

3.7 Social welfare grants

3.7.1 Child Support Grant

The proposals in this regard are as follows:

- (10) The **most appropriate child-related grant** regarding children affected by HIV/Aids is an extended **Child Support Grant (CSG)**. *Lead institution: DSD.*
- (11) The **extension of the grant to children up to the age of 14 years needs to be accelerated** rather than achieved over three years since, otherwise, many children will be forced to work because of lack of money. *Lead institution: DSD. Secondary institution: NT.*
- (12) The **final age cut-off is not suitable if we want to end child labour**. Children are subject to compulsory schooling at least until the end of the year in which they turn 15, and should not be required to work for the family income. *Lead institution: DSD. Secondary institution: NT.*
- (13) The **medium term the grant should be extended to those aged 16 and 17 years** to encourage children to remain in school. *Lead institution: DSD. Secondary institution: NT.*
- (14) The Childrens' Bill recommends that the **CSG become a universal grant**, which implies the means test be abolished. This is supported. *Lead institution: DSD. Secondary institution: NT.*
- (15) In the medium term **the introduction of a Basic Income Grant for adults should be considered**, while ensuring that this does not detract from a child-focussed CSG. *Lead institution: DSD. Secondary institution: NT.*
- (16) The **emphasis for a child-related grant** in the context of the adult care-giver being infected by HIV/AIDS should be the **Child Support Grant**. *Lead institutions: DSD.*
- (17) A serious problem with the CSG is that **birth certificates and ID documents** are required to access the grant. Ways urgently need to be found around this problem, as it is children and their caregivers in rural and poorer areas who usually lack this documentation. *Lead institutions: DHA. Secondary institution: DrSD.*
- (18) Areas where there is a **concentration of children working long hours in subsistence agriculture** or other priority kinds of child labour, should be one of the criteria for **targeting poverty alleviation initiatives**, including rollout of grants. This should not be interpreted as a criterion for access to the grants, but rather as how to target information campaigns and registration blitzes. *Lead institution: DrSD. Secondary institutions: NT, NPA, DTI.*

3.7.2 Foster care grant

- (19) While the Child Support Grant is a smaller grant than the **foster care grant**, it is better in other ways, at least for children affected by HIV/AIDS. Also, the foster care grant takes an inordinate amount of state officials' time to approve and administer. At present it tends to go to the less poor. *Lead institution: DSD.*

3.8 Identification of children needing assistance

A statistical survey provides broad indications of where different forms of child work and labour are found. For effective implementation of policy, the individual children who are vulnerable and affected need to be identified. Proposals are as follows:

- (20) As South Africa has a high rate of school enrolment, **schools are probably best place to identify children needing assistance**, both with regard to access to grants for their families and exposure to excessive and detrimental forms of child work. See also 5.1(98). *Lead institution: DrE. TBP:* investigate how this can be done in view of a range of other demands placed on the education system, possibly through piloting.
- (21) The Children's Bill suggests that **municipalities will act as monitoring agents** for different types of children in especially difficult circumstances. The efficacy of this proposal should be investigated. If necessary, other forms of monitoring child labour, especially at the micro-level, may need to be designed. *Lead institution: LG*
- (22) The requirements for reporting in existing law should be assessed to ensure that **government agencies servicing children must report potentially serious cases of child labour**, including trafficking, to the appropriate institution. This should be coupled with training of officials in these agencies on what to look out for. *Lead institution: DL; affected departments: DH, DrSD, DrE, DHA*

3.9 Public awareness-raising

Public awareness-raising is widely seen as an important strategy for addressing child labour in general and specific types of child labour and detrimental forms of child work in particular.

- (23) A **national public awareness campaign** on child labour should be designed and implemented. *Lead institution: DL; secondary institutions: NPA, CLIG, DC, NGOs. TBP*

Different ways of raising awareness on a range of issues are identified as action steps throughout this paper.

3.10 Provision of childcare facilities

Where there are inadequate childcare facilities or a lack of capacity in the household to care for younger children, adults sometimes have to rely on a child to take care of younger siblings. This practice usually impacts negatively on the caregiving child's education. Younger siblings cared for by a child may also be exposed to hazards because of the youth of the carer.

In some cases, because they lack alternatives, adults are forced, to take a child with them to work. If adequate facilities for the child are not available at the workplace, the child can suffer from lack of proper care and exposure to occupational hazards. The provision of childcare facilities will help to address these problems. It will also provide more opportunities for mothers to seek employment, thus relieving poverty.

- (24) Appropriate strategies should be found for **provision of childcare facilities**, especially in sectors and areas where children often have to look after their younger siblings. The Early Childhood

Development Programme of the Department of Education aims to provide such facilities for Grade 0/R children for the last year before school. However, effective provincial implementation of this programme must be speeded up and supported financially. Workplace-based child-care facilities should be encouraged. *Lead institution: DrSD; secondary institutions: DrE (grade 0/R), DL (workplace-based provision).*

3.11 Monitoring and evaluation of actions taken

The implementation of existing policy and further proposed policy steps must be monitored and evaluated on an ongoing basis to assess whether they are effective, and to measure the impact in relation to key indicators. Possible changes in the incidence of child labour in general should also be measured.

The Survey of Activities of Young People (SAYP) conducted by Statistics South Africa (StatsSA), was the first survey of this kind in South Africa. When the survey was conducted in 1999, the plan was to continue collecting data periodically every three or four years on the level, character, patterns, determinants and consequences of children's work as part of a monitoring strategy. A draft module to be used in a follow-up survey was developed to assist in this regard. Four years have now passed without a follow-up survey.

Proposals around monitoring and evaluation are:

- (25) Install a **simple information management system** to record all steps taken in key areas of a child labour policy (e.g. details regarding child labour inspections, steps taken by departments responsible for social development of children, etc). This system would allow the DL to **monitor progress** in identifying areas of concern and evaluating targeted programmes or actions. Where such systems do not exist, the first step is the design of such a system. *Lead institutions: DL (labour steps and overall coordination); DrSD (welfare steps); DrE (education-related steps).*
TBP
- (26) **Indicators of success** of the Child Labour Action Programme should be developed. *Lead institution: DL; Secondary institution: NPA.* **TBP**
- (27) A **follow-up to the SAYP** should be done as soon as possible, to assess the changed situation, especially in the context of the HIV/AIDS pandemic, and to assist with monitoring and evaluation. The SAYP should subsequently be conducted on a two or three-yearly basis as an add-on module to the existing labour force survey. *Lead institution: StatsSA; Secondary institution: DL.* **TBP**

Chapter 4: Proposed action – by type of work

4.1 Commercial sexual exploitation

Sexual exploitation of children includes prostitution and exploiting children for purposes of pornography. The measures aimed at addressing these crimes against children include the Sexual Offences Act, a provision of the Child Care Act and the Films and Publication Act – all three of which are currently under review.

Commercial Sexual Exploitation of children (CSE) is defined as one of the Worst Forms of Child Labour in the relevant ILO Convention. It was suggested during consultation with various South African stakeholders that CSE of children, as with the involvement of children in other illegal activities, should not be referred to as a form of child labour, but as a crime committed against children. This does not change the fact that children involved in CSE need protection and assistance.

CSE of children is a matter that requires priority attention, especially in the context of the HIV/AIDS pandemic and recent reports such as those of the International Organisation on Migration suggesting that trafficking of children and adults for sex is on the increase in South Africa and the region more broadly.

The government has engaged in some activity in the area of CSE and other illegal activities. There has been a range of activities on the legal front, especially by the South African Law Reform Commission.

- ❑ Child prostitution is dealt with in the South African Law Reform Commission (SALRC) Report on Sexual Offences that will culminate in the new Sexual Offences Bill – see 1.4.4. The thrust of the report's recommendations is to decriminalise the child, viewing the child as a victim in need of care and protection in terms of the Children's Bill, while all others involved in child prostitution, including perpetrators and complicit parents, are criminalized. This is a major departure from the current Sexual Offences Act, in terms of which child victims of CSE can be arrested for prostitution. Other important recommendations of the report are that living off or benefiting from the earnings of child prostitution should be penalised and sex tourism should be criminalized.
- ❑ The Children's Bill has been tabled in Parliament after a delay of some months, and is now the responsibility of the Department of Social Development (DSD). An important element of the Bill is the shift from an exclusive focus on supporting children who have suffered abuse and neglect, to inclusion of provisions that aim to prevent abuse and neglect, and supporting families to care for their children. Once the Act is passed, the Minister of Social Development must oversee the drafting of a National Policy Framework to give effect to the many provisions of the Act. This process calls for further consultation, which means added delays in effective implementation.
- ❑ The Films and Publications Act prohibits child pornography and includes protection of children, in particular against exploitation or degradation in publications, films and on the Internet – see 1.4.4. The Department of Home Affairs (DHA) has spoken for some years about strengthening the Films and Publications Act, for example in respect of possession. However, the Act has not been amended yet. The SALRC is also involved in a review of this Act, but has moved slowly, awaiting guidance from the DHA. In the SALRC Report on the Review of the Child Care Act, reference is

made to child pornography on the Internet. The onus is placed on Internet Service Providers (ISPs) in South Africa to take all reasonable steps to block access to child pornography sites through their servers. .

Action steps proposed to address CSE of children include the following:

- (28) As a matter of priority, DSD should facilitate a process to **assign responsibility for leading on CSE to a national government department**. Within DSD, a senior staff member should be assigned to coordinate all CSE-related activities of concerned departments and institutions. In view of the importance of this measure, a deadline of end 2003 is proposed. *Lead institution: DSD. Secondary institutions: SAPS; DJ.*
- (29) The **passage through Parliament** of the Children's Bill, the Sexual Offences Bill and amendments to the Films and Publications Act **should be sped up**. *Lead institutions: DSD (Children's Bill); DJ (Sexual Offences Bill); DHA (Films & Publications Act amendments).*
- (30) Once the Act is passed, a **National Policy Framework** should be drawn up to give effect to the many provisions of the Act. *Lead institution: DSD.*
- (31) The DSD must **fast-track particularly urgent elements of the National Policy Framework** to give effect to the provisions of the Bill/Act, specifically on CSE. *Lead institution: DSD.*
- (32) A mechanism to **enforce the legislative framework** must be put in place. *Lead institution: DJ.*
- (33) Delays in passing the Children's Bill should not prevent **addressing CSE and other important steps immediately**. *Lead institution: DSD.*
- (34) **Prioritise the non-legislative action steps to address CSE** as proposed by the SALRC (see Annexure B), and reach agreement on responsibilities, actions and timeframes for implementation and monitoring arrangements. Some of these actions steps could be taken forward even before new legislation is promulgated. *Lead institution: DJ*. Secondary institutions: SAPS, DSD, NDPP, DH, DCS, DE, Judicial Service Commission, Magistrates' Commission, Lower Court Judiciary, NGOs, SALRC (advising other institutions regarding its recommendations).*

Elements of a comprehensive strategy to address CSE that could be addressed, fast-tracked or supported by external resources include the following:

- (35) Developing **training materials** and operational modules on child labour, including CSE and trafficking, for organisations operating **help lines**. *Lead institution: DSD. Secondary institutions: DL, NGOs. TBP.*
- (36) **Raising public awareness that people should immediately report to the police any illegal activity** related to CSE or other forms of exploitation of children, such as carrying of drugs and children's involvement in the making and selling of liquor. *Lead institution: SAPS; secondary institution: GCIS.*
- (37) Developing a **more reliable database on CSE** of children in South Africa. The SAYP could not identify the number of children involved in child prostitution and other forms of CSE. The current embargo in crime statistics is not helping the situation. Prostitution and other forms of CSE are notoriously difficult to research, but more reliable information is needed if CSE,

including trafficking of children with the purpose of prostituting them, is to be addressed in a meaningful way. *Lead institution: DSD. Secondary institutions: SAPS, NGOs . TBP.*

- (38) Designing **pilot programmes to address CSE of children**, based on the experiences of other countries within the ILO-IPEC programme. Differences between countries and replicability would need to be borne in mind, as well as the sustainability of programmes once external assistance ended. *Lead institution: DSD. Secondary institutions: SAPS, DJ. TBP.*

The Child Labour Action Programme does not seek to duplicate or contradict the approach adopted in other ongoing processes such as those related to the Sexual Offences Bill and the Childrens' Bill. Instead, it is hoped that the actions would help to take these other processes forward.

4.2 Forced labour and servitude

Bonded labour and servitude, practices similar to slavery, are defined as some of the worst forms of child labour. Forced labour, sometimes referred to as bonded labour, is where people do not work voluntarily, but where their services are exacted under threat of a penalty. The penalty could be eviction from the dwelling they stay in or calling in a loan.

There are no figures available for children subjected to *bonded labour* in South Africa. However, there is anecdotal evidence that children of tenants are sometimes forced to work for the landowner for little or no wages in return for the family occupying land or accommodation. The penalty when the child does not provide services is eviction of the whole household. This is most often raised in the context of *farm workers' children* in the commercial farming sector.

There is some concern regarding possible forms of forced child labour practiced around *labour tenancy*. A labour tenant is a person living on a farm who has, or has had the right to use cropping or grazing land on the farm in return for providing labour to the owner. In terms of the Land Reform (Labour Tenants Act) a labour tenant may nominate another person to work (for example where the labour tenant is not able to work him- or herself) to secure the family's right to use and live on the land. If he or she nominates a minor child of the household, the work falls under this threat of a penalty, namely the termination of the labour tenancy if the child does not work.

Forced labour includes the *forced recruitment of children for use in armed conflict*. No armed conflict of a significant scale occurs in South Africa at present and there currently is no conscription into the South African National Defence Force. There are, however, gang-related armed activities such as those related to taxi violence and occurring in anti-gang vigilante groupings. There is anecdotal evidence of children being involved in some of these. These activities are illegal and are therefore covered by the discussion of children involved in illegal activities below.

The BCEA already provides the following:

- ❑ Forced labour is prohibited, subject to the Constitution (section 48(1)).
- ❑ No person may for their own benefit or for the benefit of someone else, cause, demand or impose forced labour (section 48(2)).
- ❑ No person may discriminate against a person who refuses to permit a child to be employed in contravention of the BCEA (section 46(b)). Therefore, if a parent refuses to allow a child to work for someone else and is discriminated against for that reason, the person who discriminates commits a criminal offence.

The following are proposals for dealing with cases of bonded labour found to exist in South Africa:

- (39) **Highlight the provisions of the BCEA in the public awareness campaign** following the adoption of the Child Labour Action Programme. The campaign should clarify the broader meaning of the term 'forced labour'. *Lead institution: DL. TBP*
- (40) Amend legislation to **ensure that labour tenants can not nominate minor children** to work in their place for a landowner, and to prohibit landowners from demanding that labour tenants nominate their minor children. *Lead institution: DLA.*
- (41) **Prioritise providing independent tenure security to labour tenants and other farm dwellers** so that these vulnerable groups are not forced to make their children available for work to the land owner / farmer in return for their homes and production. *Lead institution: DLA.*

4.3 Trafficking of children

Trafficking involves recruiting a child from his/her home to work in another place for commercial sexual exploitation, an exploitative labour practice or the removal of body parts. It can occur in various sectors including paid domestic work and commercial agriculture, where such practice is exploitative. The most vulnerable children appear to be those already in or potentially in disadvantageous situations – with trafficking usually aggravating the situation. Trafficking is defined as one of the worst forms of child labour.

No conclusive figures are available on trafficking of children in South Africa. Recent research by the International Organisation on Migration suggests that South Africa serves as a source, destination and conduit for trafficked children involved in CSE and domestic work. The report focuses on cross-border trafficking, but previous research and anecdotal evidence suggests that it is more common that children are taken from the rural areas of South Africa to work in urban areas, often in domestic work. A recent report by the NGO Molo Songololo suggests that the incidence of trafficking in the country is on the increase (Commercial sexual exploitation - Barnes-September, 2000).

The Children's Bill deals with child trafficking in terms of the UN Protocol to Prevent Trafficking in Persons, and covers the following:

- Identification of a national department responsible for trafficking;
- Defining the crime of trafficking, aligned with international standards;
- Facilitating the return and acceptance of South African children who have been victims of cross-border trafficking, with due regard to their safety;
- Prohibiting the trafficking of children for purposes of CSE, exploitative labour practices or the removal of body parts;
- Suspending parental rights of parents, caregivers or any other persons who have parental rights in respect of a child should they be found to have trafficked a child;
- Ensuring that definitions of trafficking reflect the need for special safeguards and care for children, including appropriate legal protection;
- Ensuring that trafficked persons are not punished for any offences or activities related to them having been trafficked, such as prostitution and immigration violations;
- Ensuring that victims of trafficking are protected from summary deportation or return where there are reasonable grounds to suspect that such return would represent a significant security risk to the

trafficked person or their family;

- ❑ Considering temporary or permanent residence in countries of transit or destination for trafficking victims in exchange for testimony against alleged traffickers, or on humanitarian and compassionate grounds;
- ❑ Providing for proportional criminal penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by State officials; and
- ❑ Provide for the confiscation of the instruments and proceeds of trafficking, and related offences, to be used for the benefit of trafficked persons.

The SALRC is also looking at this topic more broadly, and publication of an Issue Paper on trafficking of children for labour is imminent. Again, there are likely to be delays in implementation.

A national register of missing or lost children is available at www.missingkids.co.za, as a state-sponsored service for parents and caregivers to search for lost, runaway or abducted children.

In the interim, the following actions should be taken in respect of trafficking (across borders and within South Africa):

- (42) A directive should be issued to all **prosecutors that trafficking and other worst forms of child labour should be viewed seriously**, prosecuted vigorously and added to the existing list of serious crimes. *Lead institution: NDPP.*
- (43) The Department of Labour should ensure that that **organisations running existing help lines are informed fully about child labour issues, including trafficking**, through the development of a labour (e-governance line) call centre and provision of appropriate training materials and operations manuals. **TBP** *Lead institution: DL. Secondary institutions: Organisations running help lines.*
- (44) The JCPS cluster should take responsibility for dealing with trafficking until legislation on trafficking is promulgated. The cluster includes DJ, HA, SAPS and SANDF. *Lead institution: DJ.*
- (45) South Africa should sign, ratify, and implement the United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. *Lead institution: DFA. Secondary institutions: DL, SAPS, DJ.*
- (46) SAPS should develop guidelines and procedures to enable the **rapid and accurate identification** of trafficked persons and children. *Lead institution: SAPS Secondary institution: DHA*.*
- (47) **Improving the quality and content of training on the prevention of trafficking**, prosecution of traffickers and protecting the rights of victims, including and especially child victims for law enforcement personnel, immigration and customs officials, prosecutors and judges, as well as other relevant **officials and non-governmental stakeholders**. *Lead institution: DSD. Secondary institutions: DJ, DNP, SAPS, DHA, DSD (by addressing trafficking and child labour more generally in their training materials programmes).* **TBP**.

- (48) **A public awareness campaign** on trafficking and child labour could be run for a range of audiences, including children, parents, teachers, perpetrators and intermediaries involved in trafficking, and the general public. *Lead institution: DSD. Secondary institutions: BSA, DC, DE, DSD, DL and SAPS.* **TBP.**
- (49) DL should assume responsibility for **monitoring and inspecting instances of work-related trafficking**. They should collaborate with the DHA and SAPS (specifically National Evaluation Services Division and Crime Intelligence Division) in this regard. *Lead institution: DL. Secondary institutions: DHA and SAPS*
- (50) NDPP should take primary responsibility to ensure that **trafficking offenders are prosecuted effectively**. *Lead institution: NDPP*
- (51) The DFA, together with SAPS (through SARPP where SADC police counterparts discuss issues of mutual operational concern) and the Victim Empowerment Programme of the DSD and NDPP (SOCA), should use existing mechanisms that provide **regular contact with relevant stakeholders in other countries in the region** is to deal with trafficking operations and victim assistance. *Lead institution: DFA. Secondary institutions: SAPS, DSD, NDPP.*
- (52) DSD should take responsibility for introducing **standard procedures within the region for the extradition of traffickers for prosecution**. *Lead institution: DSD. Secondary institutions: SAPS, DJ, DHA and DFA.*
- (53) DHA should be responsible for ensuring the adoption of **regional and bi-lateral agreements aimed at preventing trafficking**, and protecting the rights and dignity of trafficked persons, and addressing other appropriate policy recommendations.. *Lead institution: DHA. Secondary institutions: DFA.*
- (54) DSD should be responsible for a **strategy on repatriation of victims** of trafficking, including appropriate reception and care centres. Special provision should be made for **places of safety where child victims of trafficking can be safely accommodated** and provided with the necessary services while other processes described in this policy are dealt with. Provision of shelter and assistance should not be contingent on the willingness of victims to give evidence in criminal proceedings. *Lead institution: DSD. Secondary institutions: SAPS, DFA, DHA, NDPP, relevant NGOs.*
- (55) DL should be responsible for putting a system into place requiring **permission – before the child leaves home – for the recruitment of children between 15 and 17** for work far away from home. *Lead institution: DL.*

Elements of a comprehensive strategy to address trafficking that could be addressed, fast-tracked or supported by external resources such as a **TBP** include the following:

- Primary research into Trafficking in Persons to inform SALRC in drafting law in respect of trafficking.
- Developing guidelines and procedures to enable the rapid and accurate identification of trafficked persons and children by SAPS and HA officials.
- Reviewing relevant departments and institutions' training materials and programmes to ensure that trafficking and child labour are incorporated more generally into these materials and programmes.
- Conceptualising and implementing a public awareness campaign on child labour, including

trafficking.

- ❑ Investigating appropriate mechanisms and processes for monitoring child trafficking at a community level.
- ❑ Building illegal immigrant reception centres' capacity to attend to the needs and rights of victims.
- ❑ Developing regional and bi-lateral agreements aimed at preventing trafficking and to protect the rights and dignity of trafficked persons.
- ❑ Around specific trafficking cases, verifying whether countries of origin of trafficked persons have services and facilities covering investigation, rehabilitation, and diversion. If such services or facilities exist, establishing direct channels of communication to investigators, law enforcement agencies, regional and intergovernmental agencies.

4.4 Drug trade and other illegal activities

Illegal activities referred to here are those other than CSE and pornography. These work-related activities of children often constitute potentially serious crimes, for example, drug trafficking and the use of children by housebreaking syndicates. As with CSE of children, these activities should be regarded first as crimes rather than child labour. Again, this does not distract from the importance of protecting and supporting children involved in these activities.

There is little data available on children working in illegal activities. The illegal nature of these activities means they are unlikely to be reported in surveys, and the current embargo on crime statistics in South Africa contributes to the lack of information. The scale of the problem is evident in figures showing that in 1999 South Africa's jails housed over 12 500 children who were awaiting trial and 10 000 who had been sentenced.

Most policy measures addressing illegal work-related activities are part of the Department of Justice's general strategies for dealing with children involved in criminal activities. These include distinguishing between activities where children are victims (such as most cases of prostitution and trafficking) and those where they have been perpetrators or intermediaries. Where children are the perpetrators, a programme of diversion is being put in place (that is, finding alternatives to the jailing of children; community service is one example).

Some suggested actions for addressing CSE are equally applicable to other illegal activities and should be considered for both situations. They are not repeated here.

South Africa has developed a Child Justice Act that is progressive in its approach to children in trouble with the law. The recommendations below echo the approach in this Act.

- (56) The focus of action should be on **finding and prosecuting the adults who traffic drugs**. **Diversion**, meaning the diversion of child offenders away from prison (including community service) **should always be the preferred option for children**. Where appropriate, prosecution of a child should be **converted to a children's court inquiry**, after conviction. The DSD and the NDPP's involvement in the Drug Master Plan for South Africa makes them the obvious choice to lead this initiative. The process should take account of existing policies and provisions, e.g. the Constitution, Interim Protocols for the Management of Children Awaiting Trial (adopted by the Departments of Justice, Social Development, Correctional Services and SAPS in June 2001), as well as other relevant departmental policies and orders. Lead institution: DSD, NDP. Secondary institutions: NDPP, SAPS and DCS

- (57) **Vocational training should be offered to all children whose sentence involves deprivation of liberty**, and while awaiting trial. There is no legal impediment to children in custodial settings working, and it is preferable to children being bored and feeling useless. But if children deprived of their liberty are to work, it should be for remuneration and must be in line with national and international protective laws for child labour. Lead institution: DCS. Secondary institutions: DoE, DSD.
- (58) When investigating crimes, **law enforcement agencies should be sensitive to the possibility of children working in illegal activities**. Law enforcement agencies must highlight these issues in all training materials and programmes. Lead institution: SAPS. Secondary institutions: DJ. **TBP**

4.5 Collecting fuel and water

Collecting wood or other fuel or fetching water are by far the most common forms of child work in South Africa. Addressing this kind of work should be regarded as a priority, given its prevalence and associated hazards.

In 1999, a total of 206 000 children spent more than 24 hours per week fetching wood and water, 93% of whom were in ex-homeland areas. Over one in eight children in these areas spend 12 hours or more per week on this task. Girls were more likely than boys to undertake this work.

If the time collecting fuel is reported separately from the time collecting water the following emerges:

- Many more children collected water than fuel.
- However, those collecting fuel spent nearly twice as long per day on that activity than those collecting water do on collecting water. According to the Time Use Survey of 2000, which captured such household chores more accurately than the SAYP, more than 250 000 children 10-17 years old spent more than 22 hours per week (3,25 hours per day) collecting fuel.

Qualitative research funded by UNICEF confirmed that this type of work can be detrimental to schooling – it found that many children get to school late, or do not go at all, because they have to collect fuel and water.

Apart from the time children spend fetching fuel, carrying heavy loads over long distances may cause significant injury to developing ligaments. Children may also injure themselves when lifting heavy loads. Girl children, in particular, may also be in danger of abuse while out collecting.

This situation is because so many South African households still have limited access to water and electricity. Only 45% of all households have a tap inside their dwelling, and a further 17% have a tap on site. This means that 38% of households collect water from further afield – with 12% of these collecting from a source one kilometre or more away. Similarly, only 48% of South African households use electricity as the main energy source for cooking, with 23% relying on wood. About half of all households rely on fuel other than electricity (44%) and collect it from a source one kilometre or further away (OHS, 1999).

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

4.5.1 Introduction to the provision of basic municipal infrastructure and services

Local government must ensure the provision of services to communities in a sustainable manner (S157, Constitution), and is therefore in the frontline of efforts to provide basic household infrastructure and services. Since the mid-1990s, government has introduced several capital investment programmes as conditional grants to extend access to basic services and infrastructure. Together, these programmes have made significant changes in the lives of some previously marginalised people.

Presently, government only provides funding for infrastructure development if the projects is within the municipality's Integrated Development Plans (IDPs). The IDP process is intended to ensure that development is planned in an integrated and coordinated fashion, with locally identified priorities. However, many municipalities, particularly those in rural areas, struggle to draw up these IDP plans and link them to budgets as required. And these are precisely the areas where children are most likely to be collecting fuel and water. However these problems are being addressed by Department of Provincial and Local Government (DPLG) programmes to capacitate local government.

The DPLG is rationalising most government infrastructure grants through the *Municipal Infrastructure Grant* (MIG), which was approved by Cabinet in March 2003. The MIG will be phased in over a three-year period, starting in 2003/04. Rationalised grants include those for water services, community based public works, sports and recreation facilities and urban transport facilities. Electrification funding (managed through the Department of Minerals and Energy) will be incorporated once the framework for restructuring the electricity distribution industry is finalised. Individual national line departments will continue to lead the monitoring and support of implementation in their specific functions and priorities.

The MIG has an overall target of removing the backlog with regard to access to basic municipal services by 2013, over a 10-year period.

The government gives municipalities an *equitable share* to fund maintenance costs that cannot be covered by the users: the amount per municipality is based on a formula that takes account of the number of unserved households. Decisions on what services the municipality will prioritised is left to the local decision-making process, and there are no specific guidelines to encourage prioritising areas where large numbers of households source water and fuel over long distances.

The national Integrated Sustainable Rural Development Programme and Urban Renewal Programme identified 21 rural and urban development nodes across the country for fast-track development. The majority of the 350 flagship projects in the nodes are infrastructure-related, but not all relate to water and energy. These nodes were chosen for reasons not related to child labour and may therefore not be appropriate for this kind of focus.

The following are proposed as additional action steps on the provision of basic infrastructure:

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| <p>(59) DPLG and sector departments should help local governments with insufficient capacity to draft IDPs that prioritise basic infrastructure services for areas where the most dire need is felt. <i>Lead institution: DPLG. Secondary institutions: LG (implementation); DWAF* (basic water services); DME (basic energy services).</i></p> <p>(60) Training, manuals and guidelines on the IDP process should encourage the prioritised provision of basic water and energy services to households facing the biggest difficulties. These documents could also highlight the problems faced by households furthest away from such resources and time taken by household members (including children) in fetching them. <i>Lead</i></p> |
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institution: DPLG. Secondary institutions: LG (implementation); DWAF (basic water services); DME (basic energy services). TBP*

- (61) DPLG should run a **pilot project** to see how local authorities could identify and take account of long distances travelled to sources of water or fuel when planning and implementing the provision of basic services. *Lead institution: DPLG. Secondary institutions: LG (implementation); DWAF* (basic water services); DME (basic energy services). TBP.*
- (62) Where basic infrastructure will not otherwise be provided, **public works programmes** should be considered. However, the maintenance and related activities regarding infrastructure should be done as part of standard municipal services, possibly with increased resources through municipal service partnerships. *Lead institution: LG. Secondary institutions: DPLG; DPW.*

4.5.2 Provision of water services

By 2002 the government had provided basic water supply infrastructure for seven million people and in the process provided temporary job opportunities for many. This is likely to have improved the situation of children who previously had to fetch water over long distances, although much of the provision was in urban areas where distances to sources of water were relatively short.

However, provision of piped water to households will not serve its purpose unless people can pay for it. The Department of Water Affairs and Forestry launched the Free Basic Water Programme in 2000, aimed at supplying at least 6000 litres per household per month for free. The Department of Water Affairs and Forestry estimates that during 2002 three-quarters of municipalities provided at least the first 6kl of water free.

This programme was not implemented in a major way in rural areas and is unlikely to have significantly reduced the time children spend fetching water. In urban areas, the 6 kl free water may have made a modest contribution to reducing time children spend working to earn money to pay for water, or to fetch it from free or cheaper sources.

However, in some municipalities there is a steep increase in tariffs immediately after the free 6 kl. This limits cross-subsidisation between rich and poor consumers. It could also contribute to substantial arrears in poor households, again creating an incentive to fetch water from other sources, a task often allocated to children.

DWAF's target is that all people in SA will have basic water services within 200 m of their household by 2008.

- (63) The programme to provide a **minimum of 6 kl per month free water** per household should be **implemented in municipalities where this is not yet in place**. *Lead institution: DPLG. Secondary institutions: LG, DWAF.*
- (64) DPLG could provide municipalities with **national guidelines to encourage a more gradual increase in tariffs after the free 6 kl**. *Lead institutions: DPLG. Secondary institutions: LG, DWAF.*

4.5.3 Basic energy services

The government, through the Integrated National Electricity Programme, aims to achieve universal household access to basic electricity by 2013. A total of 3,8 million homes were electrified between

1994 and 2002, an average of over 423 000 homes per annum. Still, at end 2002 there was a national backlog of around 31% of households without electricity. The biggest backlogs are in rural areas, where about half of the households still have no electricity.

Electricity is currently supplied to poor households at reduced level (10Amps]. This level can sustain only a single hot plate for cooking. Tariff subsidies do not support cooking – they would only provide longer service. Solar power, where it is installed, also does not add enough power to support cooking. In all instances children may still have to spend time fetching wood or other combustibles. In areas where service is provided at 10 Amps, it can usually be upgraded to 20 Amps (sufficient for cooking equipment) if there is a demand.

In 2000, government announced an Electricity Basic Support Service Tariff (EBSST), in terms of which low-income consumers were given free 50 kWh a month. This is sufficient for basic lighting, running a TV, a small radio, doing some ironing and boiling an electric kettle, but not enough for cooking on an electric stove. The government that consumers not linked to the grid would get 50kWh electricity generated through solar panels. Again, this would be sufficient for basic lighting, running a small black and white TV and a small radio, but not sufficient for cooking or even boiling water. A subsidy of R40 per month per household would be paid to the provider – the household having to bear the difference between the subsidy and the actual cost. Local government is responsible for implementation of the EBSST with the aid of guidelines and policies from national government.

The programme was piloted and then cabinet had to decide on the details for implementation. This programme started roll out on 1 July 2003 with a first allocation of R300 million flowing to municipalities via DPLG as part of the equitable share subsidy.

Households that cannot afford to cook with electricity or do not have access to it, need to use alternative fuels, such as paraffin, LP, gas or wood. There are no government subsidies for these fuels, although since April 2001 paraffin has been zero-rated for value added tax. The fact that children were found to spend so much time collecting fuel indicates that many families, certainly in ex-homeland areas, use very little paraffin or other purchased sources of energy for cooking. This is either because there is no supply close by or they do not have sufficient funds to buy it.

In a single national maximum retail price for paraffin was introduced. DME and NT are assessing the efficacy of these interventions in reaching the intended beneficiaries. The DME has also initiated a study to determine whether it will be viable to regulate the price of LP gas at the wholesale and/or retail level.

The following action outlined here would help to reduce the amount of child work involved in households' access to energy for daily livings:

(65) Government should **expand the provision of energy shops**. If they are located close to households in remote areas, these shops could sell paraffin, gas, wood, solar cooking equipment, or other sources of energy. People can then choose the form of energy most suitable to them, in many cases relieving the pressure on children to fetch fuel from far away. *Lead institution: DME. Secondary institution: LG.*

4.6 Paid domestic work

Paid domestic work should have been captured in the SAYP in response to the question as to whether the child had done any work for a wage, salary or any payment in kind. Overall, 1,8% of children aged

5-17 years – or 247 000 children – said they had done such work, and 1,4% – or 183 000 children – said they had done so for three or more hours a week. A total of 49 000 children were doing paid work in private households for three hours or more per week, and 63% of them for 12 hours per week or more.

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

Anecdotal evidence suggests that some of the worst instances of children’s domestic work occurs where children are taken from rural households to work in urban areas, often for no payment other than board and lodging. There are reports of some children being held captive where they work, and of children being subject to sexual violence. There would be under-reporting in these cases, particularly where employers and children are worried about legalities.

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

Child domestic work is classified as one of the Worst Forms of Child Labour under the relevant ILO Convention. It was seen as a priority in three of the nine provincial workshops, and ranked fourth alongside subsistence agriculture. Domestic work poses the danger of isolation from normal family life and peers which can affect psychological development. It also holds the potential for sexual and other exploitation in situations where outsiders do not regularly observe the child. Domestic work is also an area where trafficking has been reported, in that children are recruited to work in a place away from that home. Typically, young rural girls are so recruited for work in distant urban areas.

During 2002, the government promulgated a sectoral determination for domestic workers that, for the first time, set minimum wages for this sector. Other conditions were regulated from 1993 through the Basic Conditions of Employment Act (BCEA). Legislation covering domestic work is difficult to enforce because the work is isolated in private homes. The issuing of sectoral determination was accompanied by widespread publicity that raised awareness about domestic worker rights. The campaign did not focus on child domestic workers but renewed interest in the area provides an opportunity to address children’s involvement.

- At 5.2.5 some forms of domestic work are recommended to be defined as worst forms of child labour. The following action steps are proposed for domestic work more generally:

- (66) The Department of Labour should **provide labour inspectors with special training** to enable them to work and be effective in the different environment. The DL should also ensure **regular inspections and monitoring** to make the sectoral determination and other forms of protection meaningful for the adults and children working in the sector. *Lead institution: DL.*
- (67) Organisations running existing **toll-free help lines** should be fully informed about child labour issues, and trafficking in particular. Such help-lines should be advertised well. *Lead institution: DL; secondary institutions: NGOs, DrSD.*
- (68) The Department of Labour needs, as part of its **monitoring of employment agencies**, to check when and where **trafficked** children are provided for domestic work and other occupations and take appropriate action. *Lead institution: DL*

- (69) A number of the proposals in the section on trafficking are relevant in situations where children are victims of trafficking for domestic work.

4.7 Household chores

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

In examining unpaid household chores, the SAYP analysis distinguished between children living in households with a parent, grandparent and/or their spouse, and children living in households without any of these close relations. Where there were no close relations, household chores were classified as 'unpaid domestic work' rather than as domestic chores. The ILO advised these separate categories, because children without close relatives in their home might be at greater risk of abuse than others. Four percent of all girls and 2% of boys were found to be doing unpaid domestic work for at least three hours per week according to this definition.

Approximately 8% of children reported being engaged in activities relating to the care of other children. The 8% is probably an undercount as, internationally, time-use studies show that people often do not see childcare as an 'activity' worth reporting. Where young children are required to take care of younger siblings or other young children, it may place high levels of stress on the care-giving children. The children being cared for may also be at risk since their young caregivers may not be capable of adequately fulfilling such tasks. The HIV/AIDS pandemic has almost certainly increased the number of children doing this form of work, as well as the number of children caring for adults who are ill.

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

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

In respect of household chores, the following steps are proposed:

- (70) The DL should set **guidelines for acceptable kinds of household chores, and reasonable amounts of time** children should spend on them. Guidelines should make it clear that children learn and benefit from a moderate amount of chores, provided the tasks are age appropriate and fairly distributed between household members. This approach is in line with the African Charter's provision stating that children have responsibilities towards their families. *Lead institution: DL. Secondary institutions: DrSD, NPA.*
- (71) The DSD should **review the laws on child protection**, including those provided for in the Children's Bill to see whether **the definition of abuse provides adequately for excessive domestic labour**. *Lead institution: DSD; secondary institution: SALRC.*
- (72) **More equal sharing of household work between boys and girls** should be promoted by the life

skills curriculum so as to lessen the burden for girls and perhaps convert some labour into work.
Lead institution: DrE.

4.8 Commercial agriculture

Commercial agriculture ranks third highest, after subsistence agriculture and retail, as an industry employing children. Around 117 000 of all working children work in commercial agriculture, comprising 8% of all working children. Half of these children work as unpaid labour on a family farm, the other half are employed by someone else. Boys were slightly more likely than girls to be working in commercial agriculture: 81% of children working with animals were boys, while 61% of children working with crops were girls.

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

In some cases children are directly employed by farmers (regularly or seasonally) and in others they work for the farmer as a part of family teams doing piecework. The situation is aggravated by the fact that farm workers' children still do not have easy access to education, especially at the secondary level.

One of the worst forms of child labour is where children are forced to work as a condition of their family having access to housing on the farm. While the incidence of farm workers living on farms is decreasing, a significant number of families still depend on farmers for their homes.

International studies on occupational health and safety consistently find that agriculture is one of the most hazardous industrial sectors. The sector is also associated with long and atypical hours of work, and seasonal demand for intensive labour. Particular hazards found in agriculture include farm machinery; ergonomic stress; dangerous chemicals; climatic hazards such as cold, rain and heat; long hours; work before sunrise and after sunset; electrical hazards, and biological hazards arising from farm animals.

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

People participating in the consultative process on children's work in agriculture considered work in commercial agriculture more detrimental than work activities in subsistence agriculture for the following reasons:

- Children are often employees in commercial agriculture, while this is uncommon in subsistence agriculture.
- Dangerous tools and powered machinery are used to a much greater extent.
- More processing and preservation of agricultural produce occurs, involving higher degree of hazardous work.
- Dangerous chemicals are used to a much greater extent.
- In some cases, bonded labour is found.

The following is proposed to address work in commercial agriculture:

- (73) The DL should **vigorously prohibit the employment of children under 15 years old**, because of the many dangers facing working children in this sector. *Lead institution: DL.*
- (74) **State-funded boarding houses or subsidised boarding with households in town** should be provided for children from far-flung areas, especially those in high-school. This will facilitate access to education and reduce the likelihood of children being withdrawn during the school term to work in commercial agriculture. *Lead institution: DrE.*
- (75) **Schools should be more flexible about school times**, without compromising number of school hours required, to allow children aged 15-17 to work in high season when there are opportunities to earn income. This could contribute to funding their education and other needs. *Lead institution: DrE. TBP*
- (76) The DL should **vigorously enforce minimum wages for adults in commercial agriculture** to ensure that farm worker families' income is sufficient to reduce the poverty imperative for their children to work. Specific care should be taken to enforce the minimum wage in favour of children aged 15-17 to reduce the possibility of unfair exploitation. *Lead institution: DL.*
- (77) The DL should facilitate **greater police cooperation and buy-in by farmers' organisations** to address problems with access for inspectors and social service workers. *Lead institution: DL. Secondary institutions: SAPS, AgriSA.*
- (78) **Full and regular access to commercial farms** in close collaboration with the inspectors and social service agencies would ensure appropriate referral and follow-up in cases of child labour. Agreements with the farmers' organisations may be one way to facilitate this monitoring. *Lead institution: DL. Secondary institutions: AgriSA, DrSD.*
- (79) For related proposals see section 4.3 on trafficking above.

4.9 Subsistence agriculture

Subsistence agriculture and work on family plots account for at least 48% (550 000) of all children engaged in economic activities (excluding unpaid domestic work and fetching fuel or water) for over three hours a week. Most of these children (82%) live in ex-homeland areas; about 7% live in formal urban areas, 7% in commercial farming areas and 2% in informal urban areas. The activities are male-dominated, with three boys for every two girls. However, many of the girls not helping in subsistence agriculture are engaged in household chores.

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

During consultations, work in subsistence agriculture emerged as a priority, especially in provinces with ex-homeland areas, where most of this work occurs.

There are a number of similarities between commercial and subsistence agriculture. This indicates that policy measures relevant to commercial agriculture (see 4.8) may also be applicable in subsistence agriculture. The similarities include:

- Children often work long hours.
- Some of the work is detrimental to schooling.
- There is a seasonal demand for more work, e.g. during harvesting.
- Work often involves carrying of heavy loads and other heavy manual labour.
- Parents working in subsistence agriculture often spend large parts of the day away from the home, and older children have to look after their younger siblings.

It appears that subsistence agriculture is less hazardous than commercial agriculture in a number of respects, discussed above (see 4.8). On the other hand, children in subsistence farming are likely to have poorer health and poorer access to basic amenities, increasing their susceptibility to hazards.

Work in subsistence agriculture represents direct assistance to the family and also teaches children valuable skills. However, it is very difficult to monitor subsistence agriculture because work occurs within the household and is therefore more hidden.

Proposals for addressing excessive work of children in subsistence agriculture include the following:

- (80) **Subsistence agriculture should be one of Child Labour Action Programme 's priority areas** because of the high number of children working in this sector, and because of the very long hours that they work. *Lead institution: DL. Secondary institution: DrA, NPA.*
- (81) **School times should be more flexible**, without compromising the number of school hours required, to allow children to work in high season when there is a demand children's families cannot meet in other ways. Without such measures schooling may be affected detrimentally or children will be unable to assist their families with necessary tasks, especially during busy seasons – this means the families will be poorer, and the children further deprived. *Lead institution: DrE. TBP.*
- (82) **Facilities for boarding**, discussed at 4.8(74), would also assist children from deep rural areas. However, children at boarding school would not be available to work in busy seasons or harvest times. This would particularly affect families dependent on subsistence agriculture. *Lead institution: DrE. TBP:* [Investigating the feasibility to implement such a policy, and the potential effect of such a policy on the ability of families to run subsistence farming operations.]
- (83) Long-term solutions for child labour in subsistence agriculture require **increased land redistribution, including to the poorest households, improved productivity** and access to markets to sell products so as to provide an adequate income and reduce the need to rely on child labour. *Lead institution: DLA. Secondary institution: DrA.*
- (84) Areas where children spend **long hours in subsistence agriculture** should be one of the criteria for **targeting poverty alleviation initiatives**, including rollout of grants. This should not be interpreted as a criterion for access to the grants, but rather how to target information campaigns and registration blitzes. *Lead institution: DrSD. Secondary institutions: NPA, DTI.*
- (85) Short-term solutions include developing **a detailed definition of which kinds of farm work are appropriate for children**, which not, what potential hazards exist in the work and which can be

removed through proper safety education and protective gear. This could be achieved through an awareness campaign aimed at subsistence farmers. *Lead institution: DA. Secondary institutions: DrSD; Trade Unions.*

4.10 Retail and related

The retail and related sector includes accommodation establishments and fixing of motor vehicles. In the sectoral discussions, provision of services such as washing and guarding of cars, and services in the taxi industry were also included. For the sake of simplicity, all these activities are referred to as 'retail'.

According to the SAYP, the retail industry has the second highest number of working children, regardless of the hour cut-off used. Thus 45% of working girls and 27% of working boys were in the wholesale and retail trade.

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

Retail work was prioritised by only two of the nine provinces during consultation workshops. The sectoral workshop on the retail sector was also poorly attended. Work in retail and services is, however, clearly something that needs attention if the BCEA is to be taken seriously.

A number of areas of specific concern emerged during workshops. These areas are discussed separately below, together with the proposed steps to be taken to address them.

4.10.1 Work in retail establishments, including informal

The sectoral determination for the retail sector is meant to cover all retail establishments, big or small, formal or informal. In theory, coverage should include informal stalls and spaza shops. The Department of Labour is responsible for monitoring and policing the sectoral determination.

(86) The Department needs to make special efforts in respect of child labour regarding **enforcement of the retail sectoral determination**. Strategies should include a widespread publicity campaign. *Lead institution: DL.*

4.10.2 Work in shebeens and liquor outlets

This is an area where particularly strong measures should be taken to stop such children under 18 years old from working. It exposes them to liquor and to potential abuse by patrons.

(87) Provincial departments responsible for drafting provincial liquor policies should introduce measures ensuring that **owners and operators of liquor outlets are prohibited from having children under 18 years old working in any capacity in liquor outlets**. Action could include regular inspections; a requirement that applicants for liquor licences sign an undertaking that they will not allow children to work in their establishments; and revoking licences where children are found to be working. *Lead institution: PPO. TBP*

(88) The **national awareness campaign** on child labour should encourage the eradication of practices where children are involved **in making or selling liquor**, or work in establishments

where they are exposed to liquor or clients buying liquor. *Lead institution: DL; secondary institution: SAPS.*

4.10.3 'Self employment' as parking attendants or car washers:

This area will not be easy to address, as many of the children who are self-employed in this work are doing the tasks completely independently.

(89) Often parking attendants or car washers are employed, or given licences to work by private enterprises such as shops or owners of parking spaces, or by municipalities. These bodies should be alerted on the need to avoid child labour. **No licences should be awarded to children under the age of 15 years.** *Lead institution: Business; secondary institution: LG.*

(90) See also proposals at 6.3.

4.10.4 Work in the taxi industry

Children work in the taxi industry as taxi washers, assistants and in related service occupations. As taxi assistants they often travel with taxis, handling payment. They sometimes also shout the taxi's destination when passing potential clients.

Strong action should be taken to stop children working as taxi assistants as this often leads to their missing school. They are continuously exposed to the risk of accidents, sporadic high levels of violence in the taxi industry and selling drugs.

Vehicle washers and assistants are often 'employed' by taxi drivers, who are themselves employees of taxi owners. The Minister of Labour is planning to introduce a sectoral determination for the taxi industry during 2003.

(91) The draft sectoral determination for the taxi industry should outlaw the use of children in this industry. It **should deem the taxi owners and taxi drivers to be the co-employers of children working in the industry.** *Lead institution: ECC; Secondary institution: DL.*

(92) The DL and provincial Departments of Transport responsible for registering taxi owners should **encourage taxi associations to urge their members not to use children in the industry,** and to encourage drivers not to employ children as car washers and in assistants. *Lead institution: DL; Secondary institution: DT.*

4.11 Scavenging and recycling rubbish

Little is known about the extent of child work in scavenging, recycling of rubbish and associated practices. This activity was not captured in the SAYP and is not discussed in the *Discussion Document*. There is, however, anecdotal evidence of children scavenging in rubbish bins or rubbish dumps in search for scraps of food. Children also salvage items they can sell for recycling, or make into things to sell. Some of these are street children, others live with their families.

Scavenging and recycling is dangerous because the environment is very unhygienic and children often suffer cuts and bruises, which can lead to digestive disorders, food poisoning and skin diseases. There is also outright exploitation where adults act as intermediaries, controlling the sale of items for recycling, and paying the children very low rates.

Scavenging emerged as an area for priority action in the consultative workshops in the Western Cape:

- (93) Research should be done regarding children involved in scavenging and recycling to **determine the extent of the problem and possible solutions or good practices models**. *Lead institution: DSD; Secondary institutions: RI, DL, NGOs. TBP*
- (94) The **questionnaire** used for the next SAYP module should be able to **identify scavenging and recycling activities**. *Lead institution: StatsSA; Secondary institution: DL.*
- (95) **Municipalities**, which are responsible for rubbish collection, **should look into ways of alleviating the problem** while ensuring that the needs of these children are addressed (e.g. lack of food). *Lead institution: LG*

4.12 Begging

The SAYP reported that about one in a thousand children claimed to engage in begging for money or food in public for three hours a week or more. Over half of them (57%) said they spent 12 hours or more per week on this activity. Apart from the length of time taken up by begging, and the effect that this may have on a child's education, it could also reduce the child's sense of self-worth.

Nearly two thirds of children begging (61%) were in households where both parents were absent. Where both parents were present, children were much more unlikely to be engaged in begging. Children living on the streets were not covered by the SAYP. Qualitative research shows that many children living on the streets engage in begging for food or money.

Begging was seen as a priority in six of the nine provincial workshops, on par with HIV/AIDS.

Begging by street children should be addressed as part of the action steps on street children (see 6.3). However, no clear guidance or consensus on what to do emerged during the consultations. Some of the suggestions made were extremely punitive, which seems inappropriate.

- (96) **Consultation aimed at identifying appropriate action** should be held with urban local authorities, with organisations working with street children and others. *Lead institution: DrSD; Secondary institution: DPLG, LG.*

4.13 Performing arts

In terms of the BCEA, children are allowed to work in advertising, sports, artistic or cultural activities under specified conditions. This work can potentially contribute to children's learning, provided safety measures are in place. In addition, it is often not possible for adults to take the place of children in this activity. The work can be detrimental if it takes place in uncontrolled conditions.

There are no reliable figures on the number of children doing such work, but it is believed to be relatively low. This type of work was not seen as a priority in any of the nine provincial workshops.

Employment Conditions Commission (ECC) is taking account of children in performing arts as it finalises a recommendation on sectoral determination. This determination should set a sufficient regulatory framework. Keeping records of licences issued should also provide a more solid base of information on this area of child work.

(97) The Department of Labour must **ensure the determination is implemented**. Implementation measures should include establishing direct links for regular communication between inspectors and DL officials dealing with applications for permission for such work. This will ensure that permissions are informed by what inspectors find on the ground, including whether conditions for past permissions have been complied with. *Lead institution: DL.*

Chapter 5: Proposed action – by forms of harm

5.1 Work detrimental to schooling

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

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

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

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

In the SAYP the majority of children who were not attending school cited poverty or the inability to afford school as the reason. Of these, only 6% of boys and 1% of girls aged 5-17 said that work kept them out of school. It appears that – unlike in many other countries – parents do not often discriminate against girl children regarding access to education, in that both the proportion and absolute number of girl children who attend school is marginally higher than the case of boys. However, HIV/AIDS could be changing the picture, as girls are more likely than boys to be kept at home to look after ill relatives.

It is estimated that 26% of all children at school are 'over-age' for their grade. The percentage increases to 56% in the higher grades of secondary schooling. These children are most likely to be 'push outs' from the education system, and will often seek work under circumstances where they have few skills to offer and very limited bargaining power. Research commissioned by the Gauteng Department of Education suggests that out-of-school children generally come from even poorer households than those with an average level of income. Once a child has dropped out of school, whether for work, pregnancy, imprisonment or other reasons, it is often very difficult for them to return.

- Work can also be done at school. The SAYP found that one in every ten children (1,4 million) between the ages of 5 and 17 years engaged in school-related work activities for five hours or more per week. This work was not directly related to study and included cleaning and maintenance of

school buildings, facilities and surroundings,. About one in fifty (263 000) reported at least twelve hours of school-related work activities per week. Girls are somewhat more likely than boys to be involved in this work. School maintenance work was seen as an area for priority action in two of the nine provincial workshops.

Reasonable levels of school-related work, subject to clear limitations, are unlikely to harm children's education and may even enhance it. However, where these activities are excessive or involve potentially dangerous activities, intervention is required.

One important cause of this type of work is the lack of support staff in historically African schools, particularly in ex-homeland areas. In the segregated systems established under apartheid white and, to a lesser degree, Coloured and Indian schools had cleaners, security personnel and secretarial staff. In contrast, African schools, particularly in the homeland areas, had virtually none. Thus 96% of children who work five hours or more a week in school-related work are African, and two thirds live in ex-homeland areas. The ongoing government process of ensuring that staff is spread equitably between schools has not yet significantly affected support staff.

- ❑ A second factor influencing the extent of school-based work is the services available to the school. The Norms and Standards for School Funding introduced in 1998 for public schools could have an impact in terms of facilities at schools, and so, indirectly, on the need for children to do school-related work. The Norms and Standards provide for funding for three categories of expenditure – maintenance of school buildings, municipal services and utilities, and learner support materials. The provincial formulae for measuring the physical condition of the school include an element on access to basic services such as water and electricity. This could result in increased assistance – and thus less need for school-related work – for poorly serviced schools in the medium- to longer-term.
- ❑ The Department of Education's recently published *Plan of Action: Improving access to free and quality basic education for all* should help to address some of the factors which encourage child work and labour. The Plan focuses on the 40% of poorest schools, and hopes to ensure that no child is prevented by school fees, distance, or other barriers from attending school. The School Funding Norms will be amended to cover routine maintenance and cleaning materials. The Department hopes to implement the Plan over the next three years. By the end of three-years, the Department hopes that no poor school will need to charge school fees. The formula used in determining exemptions will take into account part of the cost of school uniforms and 'hidden' fees.

Proposals for action in this regard are listed below:

- (98) The Childrens' Bill requires that the principal of a school must identify children who are frequently absent from school and in need of care and protection, assist them in returning to school, and give their names and addresses to the provincial head of social development. This Bill is not yet law. This does not, however, prevent the **development of a clearer policy and better implementation of monitoring of absenteeism as a way of addressing child labour**. *Lead institution: DrE; Secondary institution: DrSD. TBP* (see 3.8(20)).
- (99) Standard monitoring approaches regarding school attendance such as **registers should be supplemented by research to establish which groups are at particular risk**. Mechanisms should be established to share this information with the relevant agencies. *Lead institution: DrE.*
- (100) Some children work because their families would not otherwise be able to afford school fees. There is thus a need for **awareness raising and enforcement of the national school fee policy** in respect of exemptions for poorer families and children who are fostered. This will be especially important in the three years before the Plan of Action on improving access is fully implemented. *Lead institution: DrE; Secondary institution: NGOs.*

- (101) **Policy** should be developed to ensure that **children engage in school-related labour only to the extent required to build a sense of responsibility and collectivity**. Such work should never be done in school time and should be limited in duration. *Lead institution: DrE.*
- (102) The slow implementation of the Thuba Makote conditional grant for rural school building hampers elimination of excessive school-related labour. The DrE needs to ensure that the **grant is used effectively and speedily**. *Lead institution: DrE.*
- (103) Learners **should not be permitted to clean teachers and principals' houses**. *Lead institution: DrE.*
- (104) Research commissioned by UNICEF has revealed that some children arrive late at school and are punished, or do not arrive at all, because they need to do work tasks at home. **Flexibility in school hours** is needed to accommodate children who need to do reasonable early morning and afternoon tasks, especially where the children have to travel long distances to school. *Lead institution: DrE.*
- (105) Where children have left school to work and are over-age, it may be difficult for them to return to school even if they stop working. Programmes need to be established that provide for the rehabilitation of children involved in child labour through **special education centres or classes within the regular school setting**. *Lead institution: DrE.* **TBP:** [investigate how this can be done, possibly through piloting.]
- (106) The Education department's programmes for providing **public schools within reasonable distance from the homes of children** should be vigorously promoted. *Lead institution: DrE.*
- (107) **Any policy that results in the closure of schools, for example on farms, should be seriously reconsidered**. *Lead institution: DrE.* As an alternative step (108) should be implemented.
- (108) **Adequate and safe transport should be provided** for children living further away from schools. This issue forms part of the newly-published Plan of Action on access to schooling. Special attention should be given to the **provision of both primary and secondary schools in rural, and particularly commercial farming, areas**. Alternative means of transport, such as the provision of bicycles, needs to be investigated. This could be achieved with the cooperation of the private sector. *Lead institution: DrE; Secondary institution: DT.*
- (109) Information on the specific needs and problems of children who are working and the relevant elements of a Child Labour Action Programme and the applicable legislation should be introduced in the **training of teachers, included in the school curriculum (life skills) and disseminated to managers** of schools, teachers and governing bodies. *Lead institution: DrE; Secondary institutions: NGOs, Trade Unions.*
- (110) **The tax exemptions in respect of donations to primary schools should be targeted better**. At present they provide hidden subsidisation of schools attended by children of wealthier parents, while reducing the amount of money in the government 'pot' available to provide for other children. Methods should be identified to ensure that exemption is available only for donations to schools with inadequate facilities. *Lead institution: DrE; Secondary institutions: NT, SARS.*

5.2 Hazardous work and health and safety

5.2.1 Introduction

In this section the following are discussed:

- ❑ hazards children face at work;
- ❑ information on how many children are involved in hazardous work;
- ❑ general action steps to address hazardous work.

In the last part the kinds of **hazards that are so serious** that they should be seen as a **worst form** of child labour are discussed.

5.2.2 The hazards children face at work

Children may be particularly vulnerable to a number of hazards by virtue of their biological status and behavioural patterns, for example:

- ❑ Very young children have higher body surface areas to mass ratio, which will increase the likelihood of absorption for skin-permeable chemicals. Childhood organ development may also be incomplete, resulting in children metabolising or excreting chemicals differently to adults.
- ❑ Chemicals that affect hormones can be particularly dangerous during children's neurological and reproductive development. Children may have increased risk for cancer from certain exposures because rapidly dividing cells are more vulnerable to carcinogenic impacts.
- ❑ Machinery and work equipment, including protective equipment, are usually not designed for young people. Ergonomic hazards such as repetitive movements and awkward postures may result in significant injury to developing ligaments and bone-growth plates.
- ❑ Children are also thought to be more sensitive to psychological abuse, and more likely to suffer long-term consequences. Young girl workers may have particular biological and social vulnerabilities.

Much of the literature and most of the initiatives in occupational health focus on the formal sector, or at best economic work. There is very little knowledge about health and safety in informal work or non-market work, which are areas where children and especially very young children are generally involved. Non-market work, such as fetching wood or water, or other household chores, may also expose a child to hazards.

Internationally, occupational hazards to children have been recognised in the following sectors:

- ❑ Children involved in the *manufacturing sector* are usually concentrated in small-scale workshops where enforcement is poor. Where manufacturing work is sub-contracted to workshops or home production, the possibility of controlling exposures through regulatory processes is further reduced.
- ❑ In *retail* work, young people may be required to work with hot grease, slicing machines and electrical equipment. Retail work often involves long hours and night work. For shift workers there are dangers related to transport and physical safety when travelling to and from work at unsociable hours.
- ❑ The *construction* sector is notorious for its high injury and mortality rate for adult workers.
- ❑ *Agriculture* is one of the most hazardous industrial sectors, associated with long and atypical hours of work, and seasonal demand for intensive labour. Hazards include farm machinery; ergonomic

stresses; hazardous chemicals; climatic hazards such as cold, rain and heat; electrical hazards, and biological hazards arising from farm animals. Many of these are present also in subsistence agriculture, although certain technological hazards will be less because subsistence farmers have fewer resources than their commercial colleagues.

- ❑ Children involved in *commercial sex* work face violence, the risks of sexually transmitted and other diseases, as well as psychological and emotional trauma. Their moral development is also compromised.
- ❑ Children in paid *domestic service* are often subject to long hours, night work, physical and emotional isolation and psychosocial stresses. Children in these vulnerable positions may also be subject to sexual exploitation.
- ❑ *Children working on the streets* will be exposed to street violence, adverse climatic conditions, traffic injuries and physical and sexual abuse.
- ❑ Children who *scavenge* waste dumps will be exposed to dust, infective agents, and injuries from rusty or sharp objects and ergonomic hazards.

5.2.3 How many children exposed to hazards while working?

Data on children involved in South Africa hazardous work in South Africa is scarce. The SAYP suggests that, while the percentages of children reportedly involved in hazardous work are small, the absolute number of children reportedly working in hazardous or potentially hazardous situations could be significant. For example:

- ❑ *Working at dangerous heights*: 53 000 children (less than 1% of all children) reported being injured by a fall or something falling in the 12 months before the survey was conducted.
- ❑ Work with *dangerous machinery, equipment and tools*: 137 000 children (1% of all children) worked with or close to dangerous machinery or tools. 79% of the children exposed to dangerous machinery and tools worked in this industry.
- ❑ *Manual handling or transport of heavy loads*: 128 000 children reportedly did heavy physical work often or regularly, of which 56% were boys. This kind of hazard is also more prevalent in agriculture than in other sectors.
- ❑ Work for *long hours*: 589 000 children (4%) reported that they worked 'for long hours'. It was left for the children themselves to decide whether they felt they worked long hours. Three-quarters of them were in deep rural areas, while less than half (47%) of the total population of children 5-17 years old live in such areas.
- ❑ *Night work*: 395 000 children reported that they had engaged in economic activities at night at some time during the previous 12 months, about 20% (75 000) of whom were in the 5-9 year age group.
- ❑ Work in an *unhealthy environment*: 2% (58 000) of children said that they had suffered illness related to their work. 61% (2,1 million) of children said they were exposed to some hazardous condition, such as those reported above or an environment that was too hot, cold, dusty or noisy, had bad light or exposure to dangerous substances or dangerous animals, or work where they feared that someone might hurt them. All of these conditions were not defined for the child respondents, so it is difficult to assess whether an affirmative answer to any of these conditions indicate a significant hazard. For example, a child who said that they worked in an environment that was too hot may have referred to days when the sun was hot while they were helping their family in subsistence agriculture.
- ❑ *Working underground*: No children were found, in the SAYP, to have been working in the mining industry. No information is available regarding in prevalence of work in *confined spaces* or

underwater or work where the child is unreasonably *confined to the premises of the employer*.

In South Africa, the hazards that children encounter in the workplace that would be considered among the worst forms of child labour have not been agreed. This is an important area for further discussion and investigation.

5.2.4 General action steps to address hazardous work

The following steps, many of which are discussed in more detail elsewhere, are proposed:

(a) *General prevention measures*

(111) Parents, children, teachers, employers and potential employers **should be educated as to the hazards associated with** different sectors so that they are better able to consider whether a particular job is appropriate for young people, and if so, at what age. According to ILO Convention 138 and 182, it is not permissible to employ a person under 18 if hazards are present. *Lead institution: DL; Secondary institutions: DE, DSD, DH and NGOs.*

(b) *Primary prevention*

Proposed measures for which the DL is primary responsible (drawing on the support of trade unions and Employers Associations where necessary and appropriate) are as follows:

(112) **Restricting children's participation in certain kinds of jobs and work activities that pose risks to their health, or prohibited if they are younger than 15.** For young people between 15 and 17 years of age, measures should be taken to remove hazards. Safety education is important for all. *Lead institution: DL.*

(113) Identifying work activities that **could be allowed for young people of working age where appropriate safety measures** are available, as well as identifying safety measures that should be provided. *Lead institution: DL.*

(114) Conducting a **careful audit of acceptable and unacceptable jobs and activities**, taking account of children's age and gender. *Lead institution: DL.*

(115) Putting **adequate control measures** in place to **remove hazards** where young people 15-17 are in **jobs that may present risk**. Provision of protective clothing, while important, should not be the first or only safety measure applied. *Lead institution: DL.*

(116) **Training** children, trade unions and employers on occupational safety and health, including rights and resources available, and aimed at raising awareness. *Lead institution: DL.*

(117) **Identifying hazards potentially affecting children 15-17 that are present only at certain times**, then identify the periods during which such children must leave the relevant areas. *Lead institution: DL. Secondary institutions: TUs, Business, DrSD.*

(c) *Secondary Prevention*

This involves the early detection of abnormal health states so as to implement early and more effective treatment. It is critical for early detection that primary health care services for children are accessible. Primary care providers need training to be aware of, to diagnose and to manage work-related and

psychosocial problems associated with child labour.

Secondary preventative measures for which DL will be responsible, drawing on the support of especially the DH and in selected circumstances departments responsible for Social Development, include the following:

- (118) **Removing children from hazardous work and providing counselling and skills training to facilitate reintegration in family life** and make alternative productive employment possible in the long term. While DL can identify instances where children need to be removed from work situations, departments responsible for Social Development would handle the actual removal and facilitate reintegration of the child into family life. *Lead institution: DL. Secondary institutions: DSD.*
- (119) Providing for **mandatory medical check-ups** as part of any contract involving child workers. *Lead institution: DL.*
- (120) **Identifying work-related diseases and workplace factors causing illness and injury**, drawing specifically on the support and advice of DH. *Lead institution: DL.*
- (121) Making certain that Health and Safety legislation ensures that piecework, task work and subcontracting **does not leave children vulnerable to exploitation or exposure to unacceptable risk**. *Lead institution: DL.*

(d) *Tertiary Prevention*

It is the primary responsibility of the DL to ensure that:

- (122) **Work-related diseases**, or injuries of young people, or identifying of factors in the workplace which have the potential to cause harm **are correctly diagnosed and treated by health workers**. Health services need to be accessible, not only in terms of geography and hours of operation, but also in terms of social accessibility – language, attitudes, etc. This will require close collaboration with the DH. *Lead institution: DL. Secondary institution: DH*
- (123) The **compensation system in South Africa caters adequately** for occupational disease and injury of children, as well as their special needs for rehabilitation. *Lead institution: DL.*

(e) *Further strategies for addressing the above*

- (124) Health and safety legislation should ensure that **piecework, task work, and sub-contracting** does not leave children vulnerable by ensuring that **similar obligations fall to the person benefiting** from the work of the child to be the child's employer, where such a person is reasonably able to take steps to avoid the use of children. See in this regard 6.2(142)(141) for a similar proposal regarding the BCEA. *Lead institution: DL.*
- (125) **Right of access legislation** is needed to ensure that the small enterprises, and family-based farms and establishments can be adequately monitored. *Lead institution: DL. Secondary institutions: DJ, SAPS.*

- (126) **Government contracts and support for small and medium enterprises** could be made contingent on meeting standards that address child labour within the national policy. *Lead institution: DL. Secondary institutions: Business South Africa, TUs.*
- (127) Drawing on **international research, do research, formulate regulations, develop training materials**, address issues of inspections and develop alternative employment options for 15-17 year olds. *Lead institution: DL. Secondary institutions: DrSD. TBP*

5.2.5 Worst forms hazards

Some forms of child work exposes a child to hazards potentially so harmful that they should be seen as a worst form of child labour, and be eliminated within a defined period of time. The last category of worst form defined in the Worst Forms of Child Labour Convention (see 2.3) is therefore work that by its nature or the surrounding circumstances is likely to harm the health, safety or morals of children. The Worst Forms of Child Labour Recommendation No 190 provides that, in determining the types of work, consideration should be given, as a minimum, to –

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

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

Taking this recommendation as a guideline, work involving the hazards listed in the box below should be seen as worst forms of child labour, in addition to those identified by definition as a worst form (see 1.1.2).

It should be borne in mind that certain kinds of work, such as fetching fuel or water for very many hours or over long distances should not be referred to here as a worst form of child labour but rather as *detrimental forms of child work to be dealt with as a priority*, analogous to the discussion under 2.2(b). Where the circumstances described below are present during such activities, they are listed to indicate that it should be addressed as a priority.

Hazardous work to be considered worst forms of child labour

Note: Other than the industries defined under 5.2.4(e)(a), the other activities listed are not necessarily hazardous as such, and must be seen as a worst form of child labour only where the defined hazard is present. On the other hand, by listing a specific type of activity here as a worst form, the intention is not to sanction work falling outside of the parameters described. For example, by proposing that work after 18:00 for a 13 year old is a worst form, it does not imply that work before 18:00 should necessarily be allowed. The latter forms of work may still be prohibited (see the recommendations elsewhere in this document), but will not be prioritised as a worst form.

Hazardous work to be considered worst forms of child labour

- (a) All activities in the following **industries** are recommended to be prohibited for children under 18:
- Mining
 - Quarrying
 - Construction
- (b) Work involving exposure to various **chemicals**, substances or composites (including dust and fibres) that are toxic, corrosive, poisonous, noxious, explosive or flammable or involve other dangerous chemicals such as pharmaceuticals. This includes the following:
- All painting with toxic paints
 - All bleaching, dyeing and finishing of textiles using chemicals
 - Use of chemical pesticides and fertilizers
- (c) Work that may **prejudice the morals** of children, including the following:
- Work in shebeens or bars, including working as cleaner or cashier
- (d) Work involving the operation of, or working close to, **power or explosion driven machines and tools**, including the following:
- Sawing and woodworking machines
 - Tractors and agricultural machinery
 - Power drills, jackhammers etc
- (e) Work involving substantial **accident hazards**, such as falling from a height, working in excavations or with stacks that may collapse, being struck by objects, being caught in or between objects, being cut or burned, such as:
- Cleaning branches of standing timber
 - Tall buildings: exterior window cleaning or painting
 - Warehousing, where products are stacked high, with the risk of collapse
 - Some brick making
 - Scavenging
 - Assistant to taxi drivers
- (f) Work involving **substantial physical strain** on the body, such as:
- Some collecting fuel & water (not worst form of child labour, but *detrimental forms of child work to be dealt with as a priority*)
- (g) Work involving exposure to **extreme levels of noise, vibration, heat, cold**, high or low pressures, including the following:
- Working in furnaces and kilns
- (h) Work involving exposure to **biological hazards** (bacteria, viruses, parasites etc), including:
- Scavenging
- (i) **Night work**, defined as follows:
- Children aged 12-14: Work before 06:00 or after 18:00
 - Children aged 15-17: Work before 05:00 or after 22:00

Hazardous work to be considered worst forms of child labour

- (j) Work where the child can be **called on at any time, day or night**, to perform services, such as:
- Some forms of domestic work
- (k) Work requiring a child under 15 years old to be **away from family** and loved ones **for a long period of time**, such as:
- Some forms of domestic work
 - Some forms of seasonal work in commercial agriculture
- (l) Work where the child is **unreasonably confined to the premises of the employer**, such as:
- Some forms of domestic work
- (m) Activities, occupations or working in situations that have been found to be highly **stressful psychologically**, and where the child is subjected to physical, sexual or verbal abuse such as:
- Some forms of domestic work
 - Work in shebeens and bars
 - Some forms of working in the streets

The following steps should be taken regarding the above list of hazards that would indicate a worst form of child labour:

- (128) **Labour inspectors** tasked with occupational health and safety inspections **should review this list**. They should also identify, in view of the types of work children do in South Africa, and from international literature, what further research is necessary to fully understand potential hazards that may potentially be defined as a worst form of child labour. *Lead institution: DL.*
TBP
- (129) **Bodies involved with research into occupational hazards**, such as trade unions, NGOs and community medicine departments of universities **should review this list**. *Lead institution: RI.*
Secondary institutions: TUs, Business, NGOs.
- (130) **A technical workshop** should be convened where the people and bodies referred to in (128) and (129) could consider and develop the above list, consider the action steps proposed regarding the given type of work as expanded upon elsewhere in this document and a timetable for implementing such steps. *Lead institution: DL. Secondary institutions: ILO.* **TBP**
- (131) **Consultation** of organisations representing **business and trade unions regarding list of hazardous work to be defined as worst forms of child labour**. *Lead institution: DL.*
Secondary institutions: Business; TUs.
- (132) The **early detection of abnormal health states** caused through work so as to implement early and more effective treatment. *Lead institution: DH. Secondary institutions: DL.*

Chapter 6: Proposed action – by circumstances increasing likelihood of harm

6.1 HIV/AIDS

It was estimated that six million people in South Africa were HIV positive at the end of 2000. It is further projected that by 2010 there will be between 3,6 million and 4,8 million orphans or vulnerable children due to AIDS in South Africa. International research suggests that when orphans in the developing world constitute up to 2% of the child population, the children are generally absorbed into the extended family and community. In South Africa the percentage of orphans is expected to increase to between 9-12% of the child population by 2015. Where these children are taken into homes in the community, they may also be required to work for excessive hours, or to do other work inappropriate for their age within the household.

HIV/AIDS will result in an increase in the number of child-headed households. The children in these households need income, and many will work unless there are other forms of assistance. At present the main forms of assistance come from over-stretched communities and NGOs. Current policy prevents such households from accessing the child support and other grants.

Children affected by HIV/AIDS are likely to become more vulnerable over time, and it is likely that their vulnerabilities will be exploited by some in the community, sometimes under the guise of helping them.

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

To aggravate matters, the existing formula for allocating equitable share funds to provinces is based partly on the number of children within the age range in which children are expected to complete compulsory education. Many children may start school late or interrupt their schooling because of HIV/AIDS. This means the state will not pay a full contribution towards their first nine years of education. Schools require that children falling outside the age of compulsory education pay full fees, because the prohibition against excluding children from school due to non-payment of fees applies only to those still subject to compulsory education.

HIV/AIDS, and children infected and affected by the pandemic, were raised as priority issues at six of the provincial consultative workshops. The Children's Bill includes provisions in respect of HIV/AIDS. In particular, it aims to encourage orphaned, abandoned or impoverished children affected by HIV/AIDS to remain in their homes and communities, with the understanding that they will receive appropriate care and assistance, including education.

The national Department of Social Development has developed detailed National Guidelines for Social

Services to Children Infected and Affected by HIV/AIDS. Unfortunately, the document contains little, if anything, on child labour or child work.

During the consultative workshops, some participants proposed income-generating and income-earning activities (including public works programmes) as a way of addressing HIV/AIDS. These are probably not the most effective way of addressing HIV/AIDS needs. See the discussions in paragraph 3.1.

Proposals are as follows:

- (133) The **most appropriate child-related grant** regarding children affected by HIV/AIDS is an extended **Child Support Grant** (CSG). *Lead institution: DrSD*
- (134) The growing number of home-based care programmes could play a role in terms of children affected by HIV/AIDS. **Fieldworkers for all home-based care programmes need to be trained to recognise the problems children face** in HIV/AIDS-affected households, and link them up with the necessary assistance services. Government must find ways to work together with and support – financially and otherwise – the full range of home-based programmes. *Lead institution: DrSD; Secondary institutions: DPLG, LG, DH, NGOs.*
- (135) The government has expressed a commitment to providing **anti-retrovirals beyond mother-to-child-prevention** and has recently completed a costing study. Provision of anti-retrovirals to adults to promote adult well-being and longer life would reduce the number of HIV/AIDS orphans, and prolong the period during which caregivers were healthy and could earn income and prevent children needing to work. The implementation of an extended programme around provision of anti-retrovirals thus needs to be speeded up as much as possible. *Lead institution: DH.*
- (136) **Reconsider the education component of the equitable share formula** for provinces and the age-related provisions for exemption from school fees. *Lead institution: NT; Secondary institution: DrE.*

6.2 Types of adult work that encourages child labour

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

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

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

All of these forms of work encourage adults, including parents, to use the services of children to increase output and therefore income. These forms of work are relatively common in sectors such as

commercial agriculture and manufacturing of clothing.

It was recommended that the following be done regarding these types of work:

- (137) The BCEA's **blanket prohibition of employment of any child under the age of 15 years should be maintained**, even where such work is not necessarily detrimental to the development to such child. The high level of unemployment in South Africa justifies the prohibition in the latter cases. Jobs need to be reserved for adults, thereby improving household income. *Lead institution: DL*
- (138) The disadvantages and dangers of such **forms of adult work should be publicised**. *Lead institution: DL. Secondary institution: DTI*
- (139) **Adult work that encourages child labour should be regulated**. This should be taken into account when ECC is making recommendations to the Minister of Labour in respect of particular sectors or groups of workers. *Lead institution: DL. Secondary institution: ECC.*
- (140) **Businesses using child labour should be assisted to change such work practices**. Assistance should be stopped if such practices do not change in businesses receiving financial and other assistance from government. There should be a mandatory requirement to supply employee age information in all application forms and reports from these businesses. *Lead institution: DTI.*
- (141) A provision [in the BCEA?] to the following effect should be considered: '**An employer may not pay less favourable remuneration per unit of time, or offer less favourable conditions of employment, to workers doing piece work than is received by other employees of the employer performing similar or comparable work.**' *Lead institution: DL.*
- (142) The Minister of Labour should in terms of section 83 of the BCEA **deem the person benefiting from the work of the child to be the child's employer**, where such a person is reasonably able to take steps to avoid the use of children. This deeming provision should stand alongside the responsibility as employer of the person directly using the child, such as the child's parent. *Lead institution: DL.*

6.3 Children working on the streets

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

It is estimated that about one third of 'street children' are 'of the street', while the rest are 'on the street' i.e. working there but not living there. Only a small proportion of these children are formally orphans or homeless, but many are functionally homeless because of cruel and disinterested parents or step-parents, alcoholism, cruelty, and eviction.

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

Rehabilitation of children living on the street involves long-term work. This can only begin when a child is in a secure environment with stable and loving caregivers. The work currently being undertaken by the non-governmental sector in terms of street shelters is a first step but remains constrained by serious lack of resources and /or the development of minimum standards of intervention. Efforts are being made in the direction of building capacity of personnel in shelters but unless these shelters can access greater resources they are not likely to keep highly qualified staff to provide rehabilitation services or to plan for long term interventions. In addition there is a need for greater public awareness about children living and working on the streets to stem the tide of negative public opinion.

Appropriate measures to address the situation of such children include:

- (143) **Facilitating the return of children living in the street to their families** or extended families, provided that circumstances would be caring. *Lead institution: DrSD. Secondary institution: LG*
- (144) **Rehabilitation through shelters and homes, with increased state support to such shelters.** *Lead institution: DrSD. Secondary institution: NGOs.*
- (145) **Giving support while the child is on the street**, including the provision of at least basic education to ensure minimum-level literacy and skills, possibly through halfway houses where children could be phased gradually into or back to the education system. *Lead institution: DrE. Secondary institution: NGOs.*
- (146) Children working on the streets are also exposed to much higher levels of risk, ranging from violence against them, traffic accidents, exposure to drugs etc. **Street children should therefore be prioritised for action.** *Lead institution: DrSD. Secondary institution: DL.*

6.4 Refugee and immigrant children

The work performed by child refugees and immigrants needs particular attention. Available evidence suggests that more boys than girls are vulnerable, particularly insofar as unaccompanied minors are involved.

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

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

Also refer to 4.3.

Appropriate measures to address the situation of such children include:

- (147) The rights of children are not limited to citizens of this country, and should extend to refugee and immigrant children. If children are not repatriated they need access to all facilities, such as

education, and should not be treated as 'alien illegals'. If they are to be repatriated, their rights must be respected, including provision of caring services while they wait for repatriation.

Officials of the Departments of Home Affairs should be trained and sensitised regarding children's rights and needs, even if the children are illegal immigrants. *Lead institution: DHA.*

TBP

- (148) A plan should be drafted **for effective cooperation between DHA, SAPS, DH and the education departments**, to ensure that these children are not arrested unnecessarily, are handled in accordance with existing laws and regulations, and not denied access to school and health care services. **The solution will need somewhat different approaches for those children who come with their parents and those who come unaccompanied.** *Lead institution: DHA. Secondary institutions: SAPS, DrE, DH. TBP*

Annexure A: Action Steps Listed per Institution

In this annexure the action steps discussed throughout this Paper are reorganized per institution. The sequence of action steps in this Annexure is as it appears in the White Paper. Since similar issues are sometimes discussed under different headings in the White Paper, there may be some duplication in the action steps listed under a given institution. The number of the action step (appearing in brackets before the text of each action step) is the same as the relevant action step as listed in the White Paper. Refer to such listing for a discussion of the background and the motivation of the action steps.

1. Business / employers

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (48) **A public awareness campaign** on trafficking and child labour could be run for a range of audiences, including children, parents, teachers, perpetrators and intermediaries involved in trafficking, and the general public. *Lead institution: DSD. Secondary institutions: BSA, DC, DE, DSD, DL and SAPS. TBP.*
- (89) Often parking attendants or car washers are employed, or given licences to work by private enterprises such as shops or owners of parking spaces, or by municipalities. These bodies should be alerted on the need to avoid child labour. **No licences should be awarded to children under the age of 15 years.** *Lead institution: Business; secondary institution: LG.*
- (117) **Identifying hazards potentially affecting children 15-17 that are present only at certain times**, then identify the periods during which such children must leave the relevant areas. *Lead institution: DL. Secondary institutions: TUs, Business, DrSD.*

2. Department of Agriculture and Department of Land Affairs (DA / DLA)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (40) Amend legislation to **ensure that labour tenants can not nominate minor children** to work in their place for a landowner, and to prohibit landowners from demanding that labour tenants nominate their minor children. *Lead institution: DLA.*
- (41) **Prioritise providing independent tenure security to labour tenants and other farm dwellers** so that these vulnerable groups are not forced to make their children available for work to the land owner / farmer in return for their homes and production. *Lead institution: DLA.*
- (80) **Subsistence agriculture should be one of Child Labour Action Programme 's priority areas** because of the high number of children working in this sector, and because of the very long hours that they work. *Lead institution: DL. Secondary institution: DrA, NPA.*
- (83) Long-term solutions for child labour in subsistence agriculture require **increased land redistribution, including to the poorest households, improved productivity** and access to markets to sell products so as to provide an adequate income and reduce the need to rely on child labour. *Lead institution: DLA. Secondary institution: DrA.*
- (85) Short-term solutions include developing **a detailed definition of which kinds of farm work are appropriate for children**, which not, what potential hazards exist in the work and which can be removed through proper safety education and protective gear. This could be achieved through an awareness campaign aimed at subsistence farmers. *Lead institution: DA. Secondary institutions: DrSD; Trade Unions.*

3. Department of Communications (DC)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (23) A **national public awareness campaign** on child labour should be designed and implemented. *Lead institution: DL; secondary institutions: NPA, CLIG, DC, NGOs. TBP*

- (48) A **public awareness campaign** on trafficking and child labour could be run for a range of audiences, including children, parents, teachers, perpetrators and intermediaries involved in trafficking, and the general public. *Lead institution: DSD. Secondary institutions: BSA, DC, DE, DSD, DL and SAPS. TBP.*

4. Department of Correctional Services (DCS)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (34) **Prioritise the non-legislative action steps to address CSE** as proposed by the SALRC (see Annexure B), and reach agreement on responsibilities, actions and timeframes for implementation and monitoring arrangements. Some of these actions steps could be taken forward even before new legislation is promulgated. *Lead institution: DJ*. Secondary institutions: SAPS, DSD, NDPP, DH, DCS, DE, Judicial Service Commission, Magistrates' Commission, Lower Court Judiciary, NGOs, SALRC (advising other institutions regarding its recommendations).*

See par 36 in Annexure B.

- (56) The focus of action should be on **finding and prosecuting the adults who traffic drugs. Diversion**, meaning the diversion of child offenders away for prison (including community service) **should always be the preferred option for children**. Where appropriate, prosecution of a child should be **converted to a children's court inquiry**, after conviction. The DSD and the NDPP's involvement in the Drug Master Plan for South Africa makes them the obvious choice to lead this initiative. The process should take account of existing policies and provisions, e.g. the Constitution, Interim Protocols for the Management of Children Awaiting Trial (adopted by the Departments of Justice, Social Development, Correctional Services and SAPS in June 2001), as well as other relevant departmental policies and orders. *Lead institution: DSD, NDP. Secondary institutions: NDPP, SAPS and DCS*
- (57) **Vocational training should be offered to all children whose sentence involves deprivation of liberty**, and while awaiting trial. There is no legal impediment to children in custodial settings working, and it is preferable to children being bored and feeling useless. But if children deprived of their liberty are to work, it should be for remuneration and must be in line with national and international protective laws for child labour. *Lead institution: DCS. Secondary institutions: DoE, DSD.*

5. Department of Education & provincial departments responsible for education (DrE)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (20) As South Africa has a high rate of school enrolment, **schools are probably best place to identify children needing assistance**, both with regard to access to grants for their families and exposure to excessive and detrimental forms of child work. See also 5.1(98). *Lead institution: DrE. TBP: investigate how this can be done in view of a range of other demands placed on the education system, possibly through piloting.*
- (22) The requirements for reporting in existing law should be assessed to ensure that **government agencies servicing children must report potentially serious cases of child labour**, including trafficking, to the appropriate institution. This should be coupled with training of officials in these agencies on what to look out for. *Lead institution: DL; affected departments: DH, DrSD, DrE, DHA*
- (24) Appropriate strategies should be found for **provision of childcare facilities**, especially in sectors and areas where children often have to look after their younger siblings. The Early Childhood Development Programme of the Department of Education aims to provide such facilities for Grade 0/R children for the last year before school. However, effective provincial implementation of this programme must be speeded up and supported financially. Workplace-based child-care facilities should be encouraged. *Lead institution: DrSD; secondary institutions: DrE (grade 0/R), DL (workplace-based provision).*
- (25) Install a **simple information management system** to record all steps taken in key areas of a child labour policy (e.g. details regarding child labour inspections, steps taken by departments responsible for social development of children, etc). This system would allow the DL to **monitor progress** in identifying areas of concern and evaluating targeted programmes or actions. Where such systems do not exist, the first step is the design of such a system. *Lead institutions: DL (labour steps and overall coordination); DrSD (welfare steps); DrE (education-related steps). TBP*
- (34) **Prioritise the non-legislative action steps to address CSE** as proposed by the SALRC (see Annexure B), and reach agreement on responsibilities, actions and timeframes for implementation and monitoring arrangements.

Some of these actions steps could be taken forward even before new legislation is promulgated. *Lead institution: DJ*.* *Secondary institutions: SAPS, DSD, NDPP, DH, DCS, DE, Judicial Service Commission, Magistrates' Commission, Lower Court Judiciary, NGOs, SALRC (advising other institutions regarding its recommendations).*

See par 37 in Annexure B.

- (48) **A public awareness campaign** on trafficking and child labour could be run for a range of audiences, including children, parents, teachers, perpetrators and intermediaries involved in trafficking, and the general public. *Lead institution: DSD.* *Secondary institutions: BSA, DC, DE, DSD, DL and SAPS.* **TBP.**
- (57) **Vocational training should be offered to all children whose sentence involves deprivation of liberty**, and while awaiting trial. There is no legal impediment to children in custodial settings working, and it is preferable to children being bored and feeling useless. But if children deprived of their liberty are to work, it should be for remuneration and must be in line with national and international protective laws for child labour. *Lead institution: DCS.* *Secondary institutions: DoE, DSD.*
- (72) **More equal sharing of household work between boys and girls** should be promoted by the life skills curriculum so as to lessen the burden for girls and perhaps convert some labour into work. *Lead institution: DrE.*
- (74) **State-funded boarding houses or subsidised boarding with households in town** should be provided for children from far-flung areas, especially those in high-school. This will facilitate access to education and reduce the likelihood of children being withdrawn during the school term to work in commercial agriculture. *Lead institution: DrE.*
- (75) **Schools should be more flexible about school times**, without compromising number of school hours required, to allow children aged 15-17 to work in high season when there are opportunities to earn income. This could contribute to funding their education and other needs. *Lead institution: DrE.* **TBP**
- (81) **School times should be more flexible**, without compromising the number of school hours required, to allow children to work in high season when there is a demand children's families cannot meet in other ways. Without such measures schooling may be affected detrimentally or children will be unable to assist their families with necessary tasks, especially during busy seasons – this means the families will be poorer, and the children further deprived. *Lead institution: DrE.* **TBP**.
- (82) **Facilities for boarding**, discussed at 4.8(74), would also assist children from deep rural areas. However, children at boarding school would not be available to work in busy seasons or harvest times. This would particularly affect families dependent on subsistence agriculture. *Lead institution: DrE.* **TBP:** [Investigating the feasibility to implement such a policy, and the potential effect of such a policy on the ability of families to run subsistence farming operations.]
- (98) The Childrens' Bill requires that the principal of a school must identify children who are frequently absent from school and in need of care and protection, assist them in returning to school, and give their names and addresses to the provincial head of social development. This Bill is not yet law. This does not, however, prevent the **development of a clearer policy and better implementation of monitoring of absenteeism as a way of addressing child labour.** *Lead institution: DrE; Secondary institution: DrSD.* **TBP** (see 3.8(20)).
- (99) Standard monitoring approaches regarding school attendance such as **registers should be supplemented by research to establish which groups are at particular risk.** Mechanisms should be established to share this information with the relevant agencies. *Lead institution: DrE.*
- (100) Some children work because their families would not otherwise be able to afford school fees. There is thus a need for **awareness raising and enforcement of the national school fee policy** in respect of exemptions for poorer families and children who are fostered. This will be especially important in the three years before the Plan of Action on improving access is fully implemented. *Lead institution: DrE; Secondary institution: NGOs.*
- (101) **Policy** should be developed to ensure that **children engage in school-related labour only to the extent required to build a sense of responsibility and collectivity.** Such work should never be done in school time and should be limited in duration. *Lead institution: DrE.*
- (102) The slow implementation of the Thuba Makote conditional grant for rural school building hampers elimination of excessive school-related labour. The DrE needs to ensure that the **grant is used effectively and speedily.** *Lead institution: DrE.*
- (103) Learners **should not be permitted to clean teachers and principals' houses.** *Lead institution: DrE.*
- (104) Research commissioned by UNICEF has revealed that some children arrive late at school and are punished, or do not arrive at all, because they need to do work tasks at home. **Flexibility in school hours** is needed to accommodate children who need to do reasonable early morning and afternoon tasks, especially where the children have to travel long distances to school. *Lead institution: DrE.*

- (105) Where children have left school to work and are over-age, it may be difficult for them to return to school even if they stop working. Programmes need to be established that provide for the rehabilitation of children involved in child labour through **special education centres or classes within the regular school setting**. *Lead institution: DrE. TBP:* [investigate how this can be done, possibly through piloting.]
- (107) **Any policy that results in the closure of schools, for example on farms, should be seriously reconsidered.** *Lead institution: DrE.*
- (108) **Adequate and safe transport should be provided** for children living further away from schools. This issue forms part of the newly-published Plan of Action on access to schooling. Special attention should be given to the **provision of both primary and secondary schools in rural, and particularly commercial farming, areas**. Alternative means of transport, such as the provision of bicycles, needs to be investigated. This could be achieved with the cooperation of the private sector. *Lead institution: DrE; Secondary institution: DT.*
- (109) Information on the specific needs and problems of children who are working and the relevant elements of a Child Labour Action Programme and the applicable legislation should be introduced in the **training of teachers, included in the school curriculum (life skills) and disseminated to managers** of schools, teachers and governing bodies. *Lead institution: DrE; Secondary institutions: NGOs, Trade Unions.*
- (111) Parents, children, teachers, employers and potential employers **should be educated as to the hazards associated with** different sectors so that they are better able to consider whether a particular job is appropriate for young people, and if so, at what age. According to ILO Convention 138 and 182, it is not permissible to employ a person under 18 if hazards are present. *Lead institution: DL; Secondary institutions: DE, DSD, DH and NGOs.*
- (136) **Reconsider the education component of the equitable share formula** for provinces and the age-related provisions for exemption from school fees. *Lead institution: NT; Secondary institution: DrE.*
- (145) **Giving support while the child is on the street**, including the provision of at least basic education to ensure minimum-level literacy and skills, possibly through halfway houses where children could be phased gradually into or back to the education system. *Lead institution: DrE. Secondary institution: NGOs*
- (148) A plan should be drafted **for effective cooperation between DHA, SAPS, DH and the education departments**, to ensure that these children are not arrested unnecessarily, are handled in accordance with existing laws and regulations, and not denied access to school and health care services. **The solution will need somewhat different approaches for those children who come with their parents and those who come unaccompanied.** *Lead institution: DHA. Secondary institutions: SAPS, DrE, DH. TBP*

6. Department of Foreign Affairs (DFA)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (51) The DFA, together with SAPS (through SARPP where SADC police counterparts discuss issues of mutual operational concern) and the Victim Empowerment Programme of the DSD and NDPP (SOCA), should use existing mechanisms that provide **regular contact with relevant stakeholders in other countries in the region** is to deal with trafficking operations and victim assistance. *Lead institution: DFA. Secondary institutions: SAPS, DSD, NDPP.*
- (52) DSD should take responsibility for introducing **standard procedures within the region for the extradition of traffickers for prosecution**. *Lead institution: DSD. Secondary institutions: SAPS, DJ, DHA and DFA.*
- (54) DSD should be responsible for a **strategy on repatriation of victims** of trafficking, including appropriate reception and care centres. Special provision should be made for **places of safety where child victims of trafficking can be safely accommodated** and provided with the necessary services while other processes described in this policy are dealt with. Provision of shelter and assistance should not be contingent on the willingness of victims to give evidence in criminal proceedings. *Lead institution: DSD. Secondary institutions: SAPS, DFA, DHA, NDPP, relevant NGOs.* 4.3(52)DSD should take responsibility for introducing **standard procedures within the region for the extradition of traffickers for prosecution**. *Lead institution: DSD. Secondary institutions: SAPS, DJ, DHA and DFA.*
- (45) South Africa should sign, ratify, and implement the United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. *Lead institution: DFA. Secondary institutions: DL, SAPS, DJ.*
- (51) The DFA, together with SAPS (through SARPP where SADC police counterparts discuss issues of mutual operational concern) and the Victim Empowerment Programme of the DSD and NDPP (SOCA), should use

existing mechanisms that provide **regular contact with relevant stakeholders in other countries in the region** is to deal with trafficking operations and victim assistance. *Lead institution: DFA. Secondary institutions: SAPS, DSD, NDPP.*

7. Department of Health (DH)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (22) The requirements for reporting in existing law should be assessed to ensure that **government agencies servicing children must report potentially serious cases of child labour**, including trafficking, to the appropriate institution. This should be coupled with training of officials in these agencies on what to look out for. *Lead institution: DL; affected departments: DH, DrSD, DrE, DHA*
- (111) Parents, children, teachers, employers and potential employers **should be educated as to the hazards associated with different sectors** so that they are better able to consider whether a particular job is appropriate for young people, and if so, at what age. According to ILO Convention 138 and 182, it is not permissible to employ a person under 18 if hazards are present. *Lead institution: DL; Secondary institutions: DE, DSD, DH and NGOs.*
- (120) **Identifying work-related diseases and workplace factors causing illness and injury**, drawing specifically on the support and advice of DH. *Lead institution: DL.*
- (122) **Work-related diseases**, or injuries of young people, or identifying of factors in the workplace which have the potential to cause harm **are correctly diagnosed and treated by health workers**. Health services need to be accessible, not only in terms of geography and hours of operation, but also in terms of social accessibility – language, attitudes, etc. This will require close collaboration with the DH. *Lead institution: DL. Secondary institution: DH*
- (34) **Prioritise the non-legislative action steps to address CSE** as proposed by the SALRC (see Annexure B), and reach agreement on responsibilities, actions and timeframes for implementation and monitoring arrangements. Some of these actions steps could be taken forward even before new legislation is promulgated. *Lead institution: DJ*. Secondary institutions: SAPS, DSD, NDPP, DH, DCS, DE, Judicial Service Commission, Magistrates' Commission, Lower Court Judiciary, NGOs, SALRC (advising other institutions regarding its recommendations).*
- See par 34 in Annexure B.
- (44) The JCPS cluster should take responsibility for dealing with trafficking until legislation on trafficking is promulgated. The cluster includes DJ, HA, SAPS and SANDF. *Lead institution: DJ.*
- (134) The growing number of home-based care programmes could play a role in terms of children affected by HIV/AIDS. **Fieldworkers for all home-based care programmes need to be trained to recognise the problems children face** in HIV/AIDS-affected households, and link them up with the necessary assistance services. Government must find ways to work together with and support – financially and otherwise – the full range of home-based programmes. *Lead institution: DrSD; Secondary institutions: DPLG, LG, DH, NGOs.*
- (135) The government has expressed a commitment to providing **anti-retrovirals beyond mother-to-child-prevention** and has recently completed a costing study. Provision of anti-retrovirals to adults to promote adult well-being and longer life would reduce the number of HIV/AIDS orphans, and prolong the period during which caregivers were healthy and could earn income and prevent children needing to work. The implementation of an extended programme around provision of anti-retrovirals thus needs to be speeded up as much as possible. *Lead institution: DH.*
- (148) A plan should be drafted **for effective cooperation between DHA, SAPS, DH and the education departments**, to ensure that these children are not arrested unnecessarily, are handled in accordance with existing laws and regulations, and not denied access to school and health care services. **The solution will need somewhat different approaches for those children who come with their parents and those who come unaccompanied.** *Lead institution: DHA. Secondary institutions: SAPS, DrE, DH. TBP*

8. Department of Home Affairs (DHA)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (17) A serious problem with the CSG is that **birth certificates and ID documents** are required to access the grant. Ways urgently need to be found around this problem, as it is children and their caregivers in rural and poorer areas who usually lack this documentation. *Lead institutions: DHA. Secondary institution: DrSD.*

- (22) The requirements for reporting in existing law should be assessed to ensure that **government agencies servicing children must report potentially serious cases of child labour**, including trafficking, to the appropriate institution. This should be coupled with training of officials in these agencies on what to look out for. *Lead institution: DL; affected departments: DH, DrSD, DrE, DHA*
- (29) The **passage through Parliament** of the Children's Bill, the Sexual Offences Bill and amendments to the Films and Publications Act **should be sped up**. *Lead institutions: DSD (Children's Bill); DJ (Sexual Offences Bill); DHA (Films & Publications Act amendments)*.
- (44) The JCPS cluster should take responsibility for dealing with trafficking until legislation on trafficking is promulgated. The cluster includes DJ, HA, SAPS and SANDF. *Lead institution: DJ*.
- (46) SAPS should develop guidelines and procedures to enable the **rapid and accurate identification** of trafficked persons and children. *Lead institution: SAPS Secondary institution: DHA**.
- (47) **Improving the quality and content of training on the prevention of trafficking**, prosecution of traffickers and protecting the rights of victims, including and especially child victims for law enforcement personnel, immigration and customs officials, prosecutors and judges, as well as other relevant **officials and non-governmental stakeholders**. *Lead institution: DSD. Secondary institutions: DJ, DNP, SAPS, DHA, DSD (by addressing trafficking and child labour more generally in their training materials programmes). TBP*.
- (49) DL should assume responsibility for **monitoring and inspecting instances of work-related trafficking**. They should collaborate with the DHA and SAPS (specifically National Evaluation Services Division and Crime Intelligence Division) in this regard. *Lead institution: DL. Secondary institutions: DHA and SAPS*
- (52) DSD should take responsibility for introducing **standard procedures within the region for the extradition of traffickers for prosecution**. *Lead institution: DSD. Secondary institutions: SAPS, DJ, DHA and DFA*.
- (54) DSD should be responsible for a **strategy on repatriation of victims** of trafficking, including appropriate reception and care centres. Special provision should be made for **places of safety where child victims of trafficking can be safely accommodated** and provided with the necessary services while other processes described in this policy are dealt with. Provision of shelter and assistance should not be contingent on the willingness of victims to give evidence in criminal proceedings. *Lead institution: DSD. Secondary institutions: SAPS, DFA, DHA, NDPP, relevant NGOs*.
- (147) The rights of children are not limited to citizens of this country, and should extend to refugee and immigrant children. If children are not repatriated they need access to all facilities, such as education, and should not be treated as 'alien illegals'. If they are to be repatriated, their rights must be respected, including provision of caring services while they wait for repatriation. **Officials of the Departments of Home Affairs should be trained and sensitised regarding children's rights and needs**, even if the children are illegal immigrants. *Lead institution: DHA. TBP*
- (148) A plan should be drafted **for effective cooperation between DHA, SAPS, DH and the education departments**, to ensure that these children are not arrested unnecessarily, are handled in accordance with existing laws and regulations, and not denied access to school and health care services. **The solution will need somewhat different approaches for those children who come with their parents and those who come unaccompanied**. *Lead institution: DHA. Secondary institutions: SAPS, DrE, DH. TBP*

9. Department of Justice & Constitutional Development (DJ)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (28) As a matter of priority, DSD should facilitate a process to **assign responsibility for leading on CSE to a national government department**. Within DSD, a senior staff member should be assigned to coordinate all CSE-related activities of concerned departments and institutions. In view of the importance of this measure, a deadline of end 2003 is proposed. *Lead institution: DSD. Secondary institutions: SAPS; DJ*.
- (29) The **passage through Parliament** of the Children's Bill, the Sexual Offences Bill and amendments to the Films and Publications Act **should be sped up**. *Lead institutions: DSD (Children's Bill); DJ (Sexual Offences Bill); DHA (Films & Publications Act amendments)*.
- (32) A mechanism to **enforce the legislative framework** must be put in place. *Lead institution: DJ*.
- (34) **Prioritise the non-legislative action steps to address CSE** as proposed by the SALRC (see Annexure B), and reach agreement on responsibilities, actions and timeframes for implementation and monitoring arrangements. Some of these actions steps could be taken forward even before new legislation is promulgated. *Lead institution:*

DJ. Secondary institutions: SAPS, DSD, NDPP, DH, DCS, DE, Judicial Service Commission, Magistrates' Commission, Lower Court Judiciary, NGOs, SALRC (advising other institutions regarding its recommendations).*

See par 35 in Annexure B.

- (38) Designing **pilot programmes to address CSE of children**, based on the experiences of other countries within the ILO-IPEC programme. Differences between countries and replicability would need to be borne in mind, as well as the sustainability of programmes once external assistance ended. *Lead institution: DSD. Secondary institutions: SAPS, DJ. TBP.*
- (44) The JCPS cluster should take responsibility for dealing with trafficking until legislation on trafficking is promulgated. The cluster includes DJ, HA, SAPS and SANDF. *Lead institution: DJ.*
- (45) South Africa should sign, ratify, and implement the United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. *Lead institution: DFA. Secondary institutions: DL, SAPS, DJ.*
- (47) **Improving the quality and content of training on the prevention of trafficking**, prosecution of traffickers and protecting the rights of victims, including and especially child victims for law enforcement personnel, immigration and customs officials, prosecutors and judges, as well as other relevant **officials and non-governmental stakeholders**. *Lead institution: DSD. Secondary institutions: DJ, DNP, SAPS, DHA, DSD (by addressing trafficking and child labour more generally in their training materials programmes). TBP.*
- (52) DSD should take responsibility for introducing **standard procedures within the region for the extradition of traffickers for prosecution**. *Lead institution: DSD. Secondary institutions: SAPS, DJ, DHA and DFA.*
- (56) The focus of action should be on **finding and prosecuting the adults who traffic drugs. Diversion**, meaning the diversion of child offenders away from prison (including community service) **should always be the preferred option for children**. Where appropriate, prosecution of a child should be **converted to a children's court inquiry**, after conviction. The DSD and the NDPP's involvement in the Drug Master Plan for South Africa makes them the obvious choice to lead this initiative. The process should take account of existing policies and provisions, e.g. the Constitution, Interim Protocols for the Management of Children Awaiting Trial (adopted by the Departments of Justice, Social Development, Correctional Services and SAPS in June 2001), as well as other relevant departmental policies and orders. *Lead institution: DSD, NDP. Secondary institutions: NDPP, SAPS and DCS*
- (58) When investigating crimes, law **enforcement agencies should be sensitive to the possibility of children working in illegal activities**. Law enforcement agencies must highlight these issues in all training materials and programmes. *Lead institution: SAPS. Secondary institutions: DJ. TBP*

10. Department of Labour (DL)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (2) The government's job-creation policy should be assessed to ensure that the **jobs created go to adults and not children**. *Lead institution: DTI; secondary institution: DL.*
- (3) The Department of Labour should, at regular intervals (for example, every three years), **assess all relevant public sector policies and programmes for their impact on child labour** and the contribution they could make to the elimination of child labour. This assessment should be done so as to coincide with the report on the results of the child labour module to be run by StatsSA as part of the Labour Force Survey. *Lead institution: DL; Secondary institution: StatsSA (statistical module).*
- (4) The **provisions of the BCEA on child labour are too narrowly defined**. The wording of section 43(1) should be changed to ensure that all children who are given work (excluding acceptable levels of domestic chores, work directly related to study, and similar activities) are covered, similar to the provisions of section 52A of the Child Care Act. *Lead institution: DL*
- (5) **Regulations** in respect of children aged 15-17 should be drafted as soon as possible, **to give guidance as to what kind of work is acceptable and what not**. The technical workshop should consider this issue and propose a list of activities to be prohibited. *Lead institution: DL*
- (6) Payment of lower wages to child workers may sometimes be the reason for the use of child labour. The law should require **child workers** (in as far as the practice is allowed) **be paid at the same rate as adults** for time worked. *Lead institution: DL*
- (7) In areas where the practice is most prevalent, **child labour inspectors** with child labour as a primary

- responsibility should be appointed. *Lead institution: DL*
- (8) While an enforcement policy on child labour is in place, it lacks a clear allocation of **resources for enforcement** activities to ensure that it can be implemented. The allocation of resources needs urgent attention. *Lead institution: DL*
- (22) The requirements for reporting in existing law should be assessed to ensure that **government agencies servicing children must report potentially serious cases of child labour**, including trafficking, to the appropriate institution. This should be coupled with training of officials in these agencies on what to look out for. *Lead institution: DL; affected departments: DH, DrSD, DrE, DHA*
- (23) A **national public awareness campaign** on child labour should be designed and implemented. *Lead institution: DL; secondary institutions: NPA, CLIG, DC, NGOs. TBP*
- (24) Appropriate strategies should be found for **provision of childcare facilities**, especially in sectors and areas where children often have to look after their younger siblings. The Early Childhood Development Programme of the Department of Education aims to provide such facilities for Grade 0/R children for the last year before school. However, effective provincial implementation of this programme must be speeded up and supported financially. Workplace-based child-care facilities should be encouraged. *Lead institution: DrSD; secondary institutions: DrE (grade 0/R), DL (workplace-based provision).*
- (25) Install a **simple information management system** to record all steps taken in key areas of a child labour policy (e.g. details regarding child labour inspections, steps taken by departments responsible for social development of children, etc). This system would allow the DL to **monitor progress** in identifying areas of concern and evaluating targeted programmes or actions. Where such systems do not exist, the first step is the design of such a system. *Lead institutions: DL (labour steps and overall coordination); DrSD (welfare steps); DrE (education-related steps). TBP*
- (26) **Indicators of success** of the Child Labour Action Programme should be developed. *Lead institution: DL; Secondary institution: NPA. TBP*
- (27) A **follow-up to the SAYP** should be done as soon as possible, to assess the changed situation, especially in the context of the HIV/AIDS pandemic, and to assist with monitoring and evaluation. The SAYP should subsequently be conducted on a two or three-yearly basis as an add-on module to the existing labour force survey. *Lead institution: StatsSA; Secondary institution: DL. TBP*
- (35) Developing **training materials** and operational modules on child labour, including CSE and trafficking, for organisations operating **help lines**. *Lead institution: DSD. Secondary institutions: DL, NGOs. TBP.*
- (39) **Highlight the provisions of the BCEA in the public awareness campaign** following the adoption of the Child Labour Action Programme. The campaign should clarify the broader meaning of the term 'forced labour'. *Lead institution: DL. TBP*
- (43) The Department of Labour should ensure that that **organisations running existing help lines are informed fully about child labour issues, including trafficking**, through the development of a labour (e-governance line) call centre and provision of appropriate training materials and operations manuals. *TBP Lead institution: DL. Secondary institutions: Organisations running help lines.*
- (45) South Africa should sign, ratify, and implement the United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. *Lead institution: DFA. Secondary institutions: DL, SAPS, DJ.*
- (48) A **public awareness campaign** on trafficking and child labour could be run for a range of audiences, including children, parents, teachers, perpetrators and intermediaries involved in trafficking, and the general public. *Lead institution: DSD. Secondary institutions: BSA, DC, DE, DSD, DL and SAPS. TBP.*
- (49) DL should assume responsibility for **monitoring and inspecting instances of work-related trafficking**. They should collaborate with the DHA and SAPS (specifically National Evaluation Services Division and Crime Intelligence Division) in this regard. *Lead institution: DL. Secondary institutions: DHA and SAPS*
- (55) DL should be responsible for putting a system into place requiring **permission – before the child leaves home – for the recruitment of children between 15 and 17** for work far away from home. *Lead institution: DL.*
- (66) The Department of Labour should **provide labour inspectors with special training** to enable them to work and be effective in the different environment. The DL should also ensure **regular inspections and monitoring** to make the sectoral determination and other forms of protection meaningful for the adults and children working in the sector. *Lead institution: DL.*
- (67) Organisations running existing **toll-free help lines** should be fully informed about child labour issues, and

- trafficking in particular. Such help-lines should be advertised well. *Lead institution: DL; secondary institutions: NGOs, DrSD.*
- (68) The Department of Labour needs, as part of its **monitoring of employment agencies**, to check when and where **trafficked** children are provided for domestic work and other occupations and take appropriate action. *Lead institution: DL*
- (70) The DL should set **guidelines for acceptable kinds of household chores, and reasonable amounts of time** children should spend on them. Guidelines should make it clear that children learn and benefit from a moderate amount of chores, provided the tasks are age appropriate and fairly distributed between household members. This approach is in line with the African Charter's provision stating that children have responsibilities towards their families. *Lead institution: DL. Secondary institutions: DrSD, NPA.*
- (73) The DL should **vigorously prohibit the employment of children under 15 years old**, because of the many dangers facing working children in this sector. *Lead institution: DL.*
- (76) The DL should **vigorously enforce minimum wages for adults in commercial agriculture** to ensure that farm worker families' income is sufficient to reduce the poverty imperative for their children to work. Specific care should be taken to enforce the minimum wage in favour of children aged 15-17 to reduce the possibility of unfair exploitation. *Lead institution: DL.*
- (77) The DL should facilitate **greater police cooperation and buy-in by farmers' organisations** to address problems with access for inspectors and social service workers. *Lead institution: DL. Secondary institutions: SAPS, AgriSA.*
- (78) **Full and regular access to commercial farms** in close collaboration with the inspectors and social service agencies would ensure appropriate referral and follow-up in cases of child labour. Agreements with the farmers' organisations may be one way to facilitate this monitoring. *Lead institution: DL. Secondary institutions: AgriSA, DrSD.*
- (86) The Department needs to make special efforts in respect of child labour regarding **enforcement of the retail sectoral determination**. Strategies should include a widespread publicity campaign. *Lead institution: DL.*
- (88) The **national awareness campaign** on child labour should encourage the eradication of practices where children are involved in **making or selling liquor**, or work in establishments where they are exposed to liquor or clients buying liquor. *Lead institution: DL; secondary institution: SAPS.*
- (91) The draft sectoral determination for the taxi industry should outlaw the use of children in this industry. It **should deem the taxi owners and taxi drivers to be the co-employers of children working in the industry**. *Lead institution: ECC; Secondary institution: DL.*
- (92) The DL and provincial Departments of Transport responsible for registering taxi owners should **encourage taxi associations to urge their members not to use children in the industry**, and to encourage drivers not to employ children as car washers and in assistants. *Lead institution: DL; Secondary institution: DT.*
- (93) Research should be done regarding children involved in scavenging and recycling to **determine the extent of the problem and possible solutions or good practices models**. *Lead institution: DSD; Secondary institutions: RI, DL, NGOs. TBP*
- (94) The **questionnaire** used for the next SAYP module should be able to **identify scavenging and recycling activities**. *Lead institution: StatsSA; Secondary institution: DL.*
- (97) The Department of Labour must **ensure the determination is implemented**. Implementation measures should include establishing direct links for regular communication between inspectors and DL officials dealing with applications for permission for such work. This will ensure that permissions are informed by what inspectors find on the ground, including whether conditions for past permissions have been complied with. *Lead institution: DL.*
- (111) Parents, children, teachers, employers and potential employers **should be educated as to the hazards associated with different sectors** so that they are better able to consider whether a particular job is appropriate for young people, and if so, at what age. According to ILO Convention 138 and 182, it is not permissible to employ a person under 18 if hazards are present. *Lead institution: DL; Secondary institutions: DE, DSD, DH and NGOs.*
- (112) **Restricting children's participation in certain kinds of jobs and work activities that pose risks to their health, or prohibited if they are younger than 15**. For young people between 15 and 17 years of age, measures should be taken to remove hazards. Safety education is important for all. *Lead institution: DL.*
- (113) Identifying work activities that **could be allowed for young people of working age where appropriate safety measures** are available, as well as identifying safety measures that should be provided. *Lead institution: DL.*
- (114) Conducting a **careful audit of acceptable and unacceptable jobs and activities**, taking account of children's age and gender. *Lead institution: DL.*

- (115) Putting **adequate control measures** in place to **remove hazards** where young people 15-17 are in **jobs that may present risk**. Provision of protective clothing, while important, should not be the first or only safety measure applied. *Lead institution: DL..*
- (116) **Training** children, trade unions and employers on occupational safety and health, including rights and resources available, and aimed at raising awareness. *Lead institution: DL.*
- (117) **Identifying hazards potentially affecting children 15-17 that are present only at certain times**, then identify the periods during which such children must leave the relevant areas. *Lead institution: DL. Secondary institutions: TUs, Business, DrSD.*
- (118) **Removing children from hazardous work and providing counselling and skills training to facilitate reintegration in family life** and make alternative productive employment possible in the long term. While DL can identify instances where children need to be removed from work situations, departments responsible for Social Development would handle the actual removal and facilitate reintegration of the child into family life. *Lead institution: DL. Secondary institutions: DSD.*
- (119) Providing for **mandatory medical check-ups** as part of any contract involving child workers. *Lead institution: DL..*
- (120) **Identifying work-related diseases and workplace factors causing illness and injury**, drawing specifically on the support and advice of DH. *Lead institution: DL.*
- (121) Making certain that Health and Safety legislation ensures that piecework, task work and subcontracting **does not leave children vulnerable to exploitation or exposure to unacceptable risk**. *Lead institution: DL.*
- (122) **Work-related diseases**, or injuries of young people, or identifying of factors in the workplace which have the potential to cause harm **are correctly diagnosed and treated by health workers**. Health services need to be accessible, not only in terms of geography and hours of operation, but also in terms of social accessibility – language, attitudes, etc. This will require close collaboration with the DH. *Lead institution: DL. Secondary institution: DH*
- (123) The **compensation system in South Africa caters adequately** for occupational disease and injury of children, as well as their special needs for rehabilitation. *Lead institution: DL.*
- (137) The BCEA's **blanket prohibition of employment of any child under the age of 15 years should be maintained**, even where such work is not necessarily detrimental to the development to such child. The high level of unemployment in South Africa justifies the prohibition in the latter cases. Jobs need to be reserved for adults, thereby improving household income. *Lead institution: DL*
- (138) The disadvantages and dangers of such **forms of adult work should be publicised**. *Lead institution: DL. Secondary institution: DTI*
- (139) **Adult work that encourages child labour should be regulated**. This should be taken into account when ECC is making recommendations to the Minister of Labour in respect of particular sectors or groups of workers. *Lead institution: DL. Secondary institution: ECC.*
- (141) A provision [in the BCEA?] to the following effect should be considered: '**An employer may not pay less favourable remuneration per unit of time, or offer less favourable conditions of employment, to workers doing piece work than is received by other employees of the employer performing similar or comparable work.**' *Lead institution: DL.*
- (142) The Minister of Labour should in terms of section 83 of the BCEA **deem the person benefiting from the work of the child to be the child's employer**, where such a person is reasonably able to take steps to avoid the use of children. This deeming provision should stand alongside the responsibility as employer of the person directly using the child, such as the child's parent. *Lead institution: DL.*
- (146) Children working on the streets are also exposed to much higher levels of risk, ranging from violence against them, traffic accidents, exposure to drugs etc. **Street children should therefore be prioritised for action**. *Lead institution: DrSD. Secondary institution: DL.*

11. Department of Minerals & Energy (DME)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (59) DPLG and sector departments should **help local governments with insufficient capacity to draft IDPs that**

prioritise basic infrastructure services for areas where the most dire need is felt. *Lead institution: DPLG. Secondary institutions: LG (implementation); DWAF* (basic water services); DME (basic energy services).*

- (60) *Training, manuals and guidelines on the IDP process should **encourage the prioritised provision of basic water and energy services to households facing the biggest difficulties.** These documents could also highlight the problems faced by households furthest away from such resources and time taken by household members (including children) in fetching them. *Lead institution: DPLG. Secondary institutions: LG (implementation); DWAF* (basic water services); DME (basic energy services).* **TBP***
- (61) *DPLG should run a **pilot project** to see how local authorities could identify and take account of long distances travelled to sources of water or fuel when planning and implementing the provision of basic services. *Lead institution: DPLG. Secondary institutions: LG (implementation); DWAF* (basic water services); DME (basic energy services).* **TBP.***
- (65) Government should **expand the provision of energy shops.** If they are located close to households in remote areas, these shops could sell paraffin, gas, wood, solar cooking equipment, or other sources of energy. People can then choose the form of energy most suitable to them, in many cases relieving the pressure on children to fetch fuel from far away. *Lead institution: DME. Secondary institution: LG.*

12. Department of Provincial & Local Government (DPLG)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (59) DPLG and sector departments should **help local governments with insufficient capacity to draft IDPs** that prioritise basic infrastructure services for areas where the most dire need is felt. *Lead institution: DPLG. Secondary institutions: LG (implementation); DWAF* (basic water services); DME (basic energy services).*
- (60) *Training, manuals and guidelines on the IDP process should **encourage the prioritised provision of basic water and energy services to households facing the biggest difficulties.** These documents could also highlight the problems faced by households furthest away from such resources and time taken by household members (including children) in fetching them. *Lead institution: DPLG. Secondary institutions: LG (implementation); DWAF* (basic water services); DME (basic energy services).* **TBP***
- (61) *DPLG should run a **pilot project** to see how local authorities could identify and take account of long distances travelled to sources of water or fuel when planning and implementing the provision of basic services. *Lead institution: DPLG. Secondary institutions: LG (implementation); DWAF* (basic water services); DME (basic energy services).* **TBP.***
- (62) Where basic infrastructure will not otherwise be provided, **public works programmes** should be considered. However, the maintenance and related activities regarding infrastructure should be done as part of standard municipal services, possibly with increased resources through municipal service partnerships. *Lead institution: LG. Secondary institutions: DPLG; DPW.*
- (63) The programme to provide a **minimum of 6 kl per month free water** per household should be **implemented in municipalities where this is not yet in place.** *Lead institution: DPLG. Secondary institutions: LG, DWAF.*
- (64) DPLG could provide municipalities with **national guidelines to encourage a more gradual increase in tariffs after the free 6 kl.** *Lead institutions: DPLG. Secondary institutions: LG, DWAF.*
- (96) **Consultation aimed at identifying appropriate action** should be held with urban local authorities, with organisations working with street children and others. *Lead institution: DrSD; Secondary institution: DPLG, LG.*
- (134) The growing number of home-based care programmes could play a role in terms of children affected by HIV/AIDS. **Fieldworkers for all home-based care programmes need to be trained to recognise the problems children face** in HIV/AIDS-affected households, and link them up with the necessary assistance services. Government must find ways to work together with and support – financially and otherwise – the full range of home-based programmes. *Lead institution: DrSD; Secondary institutions: DPLG, LG, DH, NGOs.*

13. Department of Public Works (DPW)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (62) Where basic infrastructure will not otherwise be provided, **public works programmes** should be considered. However, the maintenance and related activities regarding infrastructure should be done as part of standard

municipal services, possibly with increased resources through municipal service partnerships. *Lead institution: LG. Secondary institutions: DPLG; DPW.*

14. Department of Social Development & provincial departments

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background. DSD refers to the National Department of Social Development. DrSD is the abbreviation used for departments responsible for social development.

- (10) The **most appropriate child-related grant** regarding children affected by HIV/Aids is an extended **Child Support Grant (CSG)**. *Lead institution: DSD.*
- (11) The **extension of the grant to children up to the age of 14 years needs to be accelerated** rather than achieved over three years since, otherwise, many children will be forced to work because of lack of money. *Lead institution: DSD. Secondary institution: NT.*
- (12) The **final age cut-off is not suitable if we want to end child labour**. Children are subject to compulsory schooling at least until the end of the year in which they turn 15, and should not be required to work for the family income.
- (13) The **medium term the grant should be extended to those aged 16 and 17 years** to encourage children to remain in school.
- (14) The Children's Bill recommends that the **CSG become a universal grant**, which implies the means test be abolished. This is supported. *Lead institution: DSD. Secondary institution: NT*
- (15) In the medium term **the introduction of a Basic Income Grant for adults should be considered**, while ensuring that this does not detract from a child-focussed CSG. *Lead institution: DSD. Secondary institution: NT*
- (16) The **emphasis for a child-related grant** in the context of the adult care-giver being infected by HIV/AIDS should be the **Child Support Grant**. *Lead institutions: DSD*
- (17) A serious problem with the CSG is that **birth certificates and ID documents** are required to access the grant. Ways urgently need to be found around this problem, as it is children and their caregivers in rural and poorer areas who usually lack this documentation. *Lead institutions: DHA. Secondary institution: DrSD.*
- (18) Areas where there is a **concentration of children working long hours in subsistence agriculture** or other priority kinds of child labour, should be one of the criteria for **targeting poverty alleviation initiatives**, including rollout of grants. This should not be interpreted as a criterion for access to the grants, but rather as how to target information campaigns and registration blitzes. *Lead institution: DrSD. Secondary institutions: NT, NPA, DTI.*
- (19) While the Child Support Grant is a smaller grant than the **foster care grant**, it is better in other ways, at least for children affected by HIV/AIDS. Also, the foster care grant takes an inordinate amount of state officials' time to approve and administer. At present it tends to go to the less poor. *Lead institution: DSD.*
- (22) The requirements for reporting in existing law should be assessed to ensure that **government agencies servicing children must report potentially serious cases of child labour**, including trafficking, to the appropriate institution. This should be coupled with training of officials in these agencies on what to look out for. *Lead institution: DL; affected departments: DH, DrSD, DrE, DHA*
- (24) Appropriate strategies should be found for **provision of childcare facilities**, especially in sectors and areas where children often have to look after their younger siblings. The Early Childhood Development Programme of the Department of Education aims to provide such facilities for Grade 0/R children for the last year before school. However, effective provincial implementation of this programme must be speeded up and supported financially. Workplace-based child-care facilities should be encouraged. *Lead institution: DrSD; secondary institutions: DrE (grade 0/R), DL (workplace-based provision).*
- (25) Install a **simple information management system** to record all steps taken in key areas of a child labour policy (e.g. details regarding child labour inspections, steps taken by departments responsible for social development of children, etc). This system would allow the DL to **monitor progress** in identifying areas of concern and evaluating targeted programmes or actions. Where such systems do not exist, the first step is the design of such a system. *Lead institutions: DL (labour steps and overall coordination); DrSD (welfare steps); DrE (education-related steps).* **TBP**
- (28) As a matter of priority, DSD should facilitate a process to **assign responsibility for leading on CSE to a national government department**. Within DSD, a senior staff member should be assigned to coordinate all

CSE-related activities of concerned departments and institutions. In view of the importance of this measure, a deadline of end 2003 is proposed. *Lead institution: DSD. Secondary institutions: SAPS; DJ.*

- (29) The **passage through Parliament** of the Children's Bill, the Sexual Offences Bill and amendments to the Films and Publications Act **should be sped up**. *Lead institutions: DSD (Children's Bill); DJ (Sexual Offences Bill); DHA (Films & Publications Act amendments).*
- (30) Once the Act is passed, a **National Policy Framework** should be drawn up to give effect to the many provisions of the Act. *Lead institution: DSD.*
- (31) The DSD must **fast-track particularly urgent elements of the National Policy Framework** to give effect to the provisions of the Bill/Act, specifically on CSE. *Lead institution: DSD.*
- (33) Delays in passing the Children's Bill should not prevent **addressing CSE and other important steps immediately**. *Lead institution: DSD.*
- (34) **Prioritise the non-legislative action steps to address CSE** as proposed by the SALRC (see Annexure B), and reach agreement on responsibilities, actions and timeframes for implementation and monitoring arrangements. Some of these actions could be taken forward even before new legislation is promulgated. *Lead institution: DJ*. Secondary institutions: SAPS, DSD, NDPP, DH, DCS, DE, Judicial Service Commission, Magistrates' Commission, Lower Court Judiciary, NGOs, SALRC (advising other institutions regarding its recommendations).*

See par 38 in Annexure B.

- (35) Developing **training materials** and operational modules on child labour, including CSE and trafficking, for organisations operating **help lines**. *Lead institution: DSD. Secondary institutions: DL, NGOs. TBP.*
- (37) Developing a **more reliable database on CSE** of children in South Africa. The SAYP could not identify the number of children involved in child prostitution and other forms of CSE. The current embargo in crime statistics is not helping the situation. Prostitution and other forms of CSE are notoriously difficult to research, but more reliable information is needed if CSE, including trafficking of children with the purpose of prostituting them, is to be addressed in a meaningful way. *Lead institution: DSD. Secondary institutions: SAPS, NGOs. TBP.*
- (38) Designing **pilot programmes to address CSE of children**, based on the experiences of other countries within the ILO-IPEC programme. Differences between countries and replicability would need to be borne in mind, as well as the sustainability of programmes once external assistance ended. *Lead institution: DSD. Secondary institutions: SAPS, DJ. TBP.*
- (47) **Improving the quality and content of training on the prevention of trafficking**, prosecution of traffickers and protecting the rights of victims, including and especially child victims for law enforcement personnel, immigration and customs officials, prosecutors and judges, as well as other relevant **officials and non-governmental stakeholders**. *Lead institution: DSD. Secondary institutions: DJ, DNP, SAPS, DHA, DSD (by addressing trafficking and child labour more generally in their training materials programmes). TBP.*
- (48) A **public awareness campaign** on trafficking and child labour could be run for a range of audiences, including children, parents, teachers, perpetrators and intermediaries involved in trafficking, and the general public. *Lead institution: DSD. Secondary institutions: BSA, DC, DE, DSD, DL and SAPS. TBP.*
- (51) The DFA, together with SAPS (through SARPP where SADC police counterparts discuss issues of mutual operational concern) and the Victim Empowerment Programme of the DSD and NDPP (SOCA), should use existing mechanisms that provide **regular contact with relevant stakeholders in other countries in the region** to deal with trafficking operations and victim assistance. *Lead institution: DFA. Secondary institutions: SAPS, DSD, NDPP.*
- (52) DSD should take responsibility for introducing **standard procedures within the region for the extradition of traffickers for prosecution**. *Lead institution: DSD. Secondary institutions: SAPS, DJ, DHA and DFA.*
- (54) DSD should be responsible for a **strategy on repatriation of victims** of trafficking, including appropriate reception and care centres. Special provision should be made for **places of safety where child victims of trafficking can be safely accommodated** and provided with the necessary services while other processes described in this policy are dealt with. Provision of shelter and assistance should not be contingent on the willingness of victims to give evidence in criminal proceedings. *Lead institution: DSD. Secondary institutions: SAPS, DFA, DHA, NDPP, relevant NGOs.*
- (56) The focus of action should be on **finding and prosecuting the adults who traffic drugs**. **Diversion**, meaning the diversion of child offenders away from prison (including community service) **should always be the preferred option for children**. Where appropriate, prosecution of a child should be **converted to a children's court inquiry**, after conviction. The DSD and the NDPP's involvement in the Drug Master Plan for South Africa makes them the obvious choice to lead this initiative. The process should take account of existing policies and

- provisions, e.g. the Constitution, Interim Protocols for the Management of Children Awaiting Trial (adopted by the Departments of Justice, Social Development, Correctional Services and SAPS in June 2001), as well as other relevant departmental policies and orders. *Lead institution: DSD, NDP. Secondary institutions: NDPP, SAPS and DCS*
- (57) **Vocational training should be offered to all children whose sentence involves deprivation of liberty**, and while awaiting trial. There is no legal impediment to children in custodial settings working, and it is preferable to children being bored and feeling useless. But if children deprived of their liberty are to work, it should be for remuneration and must be in line with national and international protective laws for child labour. *Lead institution: DCS. Secondary institutions: DoE, DSD.*
- (67) Organisations running existing **toll-free help lines** should be fully informed about child labour issues, and trafficking in particular. Such help-lines should be advertised well. *Lead institution: DL; secondary institutions: NGOs, DrSD.*
- (70) The DL should set **guidelines for acceptable kinds of household chores, and reasonable amounts of time** children should spend on them. Guidelines should make it clear that children learn and benefit from a moderate amount of chores, provided the tasks are age appropriate and fairly distributed between household members. This approach is in line with the African Charter's provision stating that children have responsibilities towards their families. *Lead institution: DL. Secondary institutions: DrSD, NPA.*
- (71) The DSD should **review the laws on child protection**, including those provided for in the Children's Bill to see whether **the definition of abuse provides adequately for excessive domestic labour**. *Lead institution: DSD; secondary institution: SALRC.*
- (78) **Full and regular access to commercial farms** in close collaboration with the inspectors and social service agencies would ensure appropriate referral and follow-up in cases of child labour. Agreements with the farmers' organisations may be one way to facilitate this monitoring. *Lead institution: DL. Secondary institutions: AgriSA, DrSD.*
- (84) Areas where children spend **long hours in subsistence agriculture** should be one of the criteria for **targeting poverty alleviation initiatives**, including rollout of grants. This should not be interpreted as a criterion for access to the grants, but rather how to target information campaigns and registration blitzes. *Lead institution: DrSD. Secondary institutions: NPA, DTI.*
- (85) Short-term solutions include developing a **detailed definition of which kinds of farm work are appropriate for children**, which not, what potential hazards exist in the work and which can be removed through proper safety education and protective gear. This could be achieved through an awareness campaign aimed at subsistence farmers. *Lead institution: DA. Secondary institutions: DrSD; Trade Unions.*
- (93) Research should be done regarding children involved in scavenging and recycling to **determine the extent of the problem and possible solutions or good practices models**. *Lead institution: DSD; Secondary institutions: RI, DL, NGOs. TBP*
- (96) **Consultation aimed at identifying appropriate action** should be held with urban local authorities, with organisations working with street children and others. *Lead institution: DrSD; Secondary institution: DPLG, LG.*
- (98) The Children's Bill requires that the principal of a school must identify children who are frequently absent from school and in need of care and protection, assist them in returning to school, and give their names and addresses to the provincial head of social development. This Bill is not yet law. This does not, however, prevent the **development of a clearer policy and better implementation of monitoring of absenteeism as a way of addressing child labour**. *Lead institution: DrE; Secondary institution: DrSD. TBP* (see 3.8(20)).
- (111) Parents, children, teachers, employers and potential employers **should be educated as to the hazards associated with** different sectors so that they are better able to consider whether a particular job is appropriate for young people, and if so, at what age. According to ILO Convention 138 and 182, it is not permissible to employ a person under 18 if hazards are present. *Lead institution: DL; Secondary institutions: DE, DSD, DH and NGOs.*
- (117) **Identifying hazards potentially affecting children 15-17 that are present only at certain times**, then identify the periods during which such children must leave the relevant areas. *Lead institution: DL. Secondary institutions: TUs, Business, DrSD.*
- (118) **Removing children from hazardous work and providing counselling and skills training to facilitate reintegration in family life** and make alternative productive employment possible in the long term. While DL can identify instances where children need to be removed from work situations, departments responsible for Social Development would handle the actual removal and facilitate reintegration of the child into family life. *Lead institution: DL. Secondary institutions: DSD.*

- (134) The growing number of home-based care programmes could play a role in terms of children affected by HIV/AIDS. **Fieldworkers for all home-based care programmes need to be trained to recognise the problems children face** in HIV/AIDS-affected households, and link them up with the necessary assistance services. Government must find ways to work together with and support – financially and otherwise – the full range of home-based programmes. *Lead institution: DrSD; Secondary institutions: DPLG, LG, DH, NGOs.*
- (143) **Facilitating the return of children living in the street to their families** or extended families, provided that circumstances would be caring. *Lead institution: DrSD. Secondary institution: LG*
- (144) **Rehabilitation through shelters and homes, with increased state support to such shelters.** *Lead institution: DrSD. Secondary institution: NGOs.*
- (146) Children working on the streets are also exposed to much higher levels of risk, ranging from violence against them, traffic accidents, exposure to drugs etc. **Street children should therefore be prioritised for action.** *Lead institution: DrSD. Secondary institution: DL.*

15. Department Trade and Industry (DTI)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (2) The government's job-creation policy should be assessed to ensure that the **jobs created go to adults and not children.** *Lead institution: DTI; secondary institution: DL.*
- (84) Areas where children spend **long hours in subsistence agriculture** should be one of the criteria for **targeting poverty alleviation initiatives**, including rollout of grants. This should not be interpreted as a criterion for access to the grants, but rather how to target information campaigns and registration blitzes. *Lead institution: DrSD. Secondary institutions: NPA, DTI.*
- (138) *The* disadvantages and dangers of such **forms of adult work should be publicised.** *Lead institution: DL. Secondary institution: DTI*
- (140) **Businesses using child labour should be assisted to change such work practices.** Assistance should be stopped if such practices do not change in businesses receiving financial and other assistance from government. There should be a mandatory requirement to supply employee age information in all application forms and reports from these businesses. *Lead institution: DTI.*

16. Department of Transport (DT)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (92) The DL and provincial Departments of Transport responsible for registering taxi owners should **encourage taxi associations to urge their members not to use children in the industry**, and to encourage drivers not to employ children as car washers and in assistants. *Lead institution: DL; Secondary institution: DT.*
- (108) **Adequate and safe transport should be provided** for children living further away from schools. This issue forms part of the newly-published Plan of Action on access to schooling. Special attention should be given to the **provision of both primary and secondary schools in rural, and particularly commercial farming, areas.** Alternative means of transport, such as the provision of bicycles, needs to be investigated. This could be achieved with the cooperation of the private sector. *Lead institution: DrE; Secondary institution: DT.*

17. Department of Water Affairs and Forestry (DWAF)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (59) DPLG and sector departments should **help local governments with insufficient capacity to draft IDPs** that prioritise basic infrastructure services for areas where the most dire need is felt. *Lead institution: DPLG. Secondary institutions: LG (implementation); DWAF* (basic water services); DME (basic energy services).*
- (60) *Training, manuals and guidelines on the IDP process should encourage the prioritised provision of basic water and energy services to households facing the biggest difficulties.* These documents could also highlight the problems faced by households furthest away from such resources and time taken by household members (including children) in fetching them. *Lead institution: DPLG. Secondary institutions: LG (implementation);*

DWAF* (basic water services); DME (basic energy services). **TBP**

- (61) DPLG should run a **pilot project** to see how local authorities could identify and take account of long distances travelled to sources of water or fuel when planning and implementing the provision of basic services. *Lead institution: DPLG. Secondary institutions: LG (implementation); DWAF* (basic water services); DME (basic energy services).* **TBP.**
- (63) The programme to provide a **minimum of 6 kl per month free water** per household should be **implemented in municipalities where this is not yet in place.** *Lead institution: DPLG. Secondary institutions: LG, DWAF.*
- (64) DPLG could provide municipalities with **national guidelines to encourage a more gradual increase in tariffs after the free 6 kl.** *Lead institutions: DPLG. Secondary institutions: LG, DWAF.*

18. Employment Conditions Commission (ECC)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (91) The draft sectoral determination for the taxi industry should outlaw the use of children in this industry. It **should deem the taxi owners and taxi drivers to be the co-employers of children working in the industry.** *Lead institution: ECC; Secondary institution: DL.*
- (139) **Adult work that encourages child labour should be regulated.** This should be taken into account when ECC is making recommendations to the Minister of Labour in respect of particular sectors or groups of workers. *Lead institution: DL. Secondary institution: ECC.*

19. Local Government (LG) & Prov. Depts. responsible for LG (DPLG)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (59) DPLG and sector departments should **help local governments with insufficient capacity to draft IDPs** that prioritise basic infrastructure services for areas where the most dire need is felt. *Lead institution: DPLG. Secondary institutions: LG (implementation); DWAF* (basic water services); DME (basic energy services).*
- (60) **Training, manuals and guidelines on the IDP process should encourage the prioritised provision of basic water and energy services to households facing the biggest difficulties.** These documents could also highlight the problems faced by households furthest away from such resources and time taken by household members (including children) in fetching them. *Lead institution: DPLG. Secondary institutions: LG (implementation); DWAF* (basic water services); DME (basic energy services).* **TBP**
- (61) DPLG should run a **pilot project** to see how local authorities could identify and take account of long distances travelled to sources of water or fuel when planning and implementing the provision of basic services. *Lead institution: DPLG. Secondary institutions: LG (implementation); DWAF* (basic water services); DME (basic energy services).* **TBP.**
- (62) Where basic infrastructure will not otherwise be provided, **public works programmes** should be considered. However, the maintenance and related activities regarding infrastructure should be done as part of standard municipal services, possibly with increased resources through municipal service partnerships. *Lead institution: LG. Secondary institutions: DPLG; DPW.*
- (63) The programme to provide a **minimum of 6 kl per month free water** per household should be **implemented in municipalities where this is not yet in place.** *Lead institution: DPLG. Secondary institutions: LG, DWAF.*
- (64) DPLG could provide municipalities with **national guidelines to encourage a more gradual increase in tariffs after the free 6 kl.** *Lead institutions: DPLG. Secondary institutions: LG, DWAF.*
- (65) Government should **expand the provision of energy shops.** If they are located close to households in remote areas, these shops could sell paraffin, gas, wood, solar cooking equipment, or other sources of energy. People can then choose the form of energy most suitable to them, in many cases relieving the pressure on children to fetch fuel from far away. *Lead institution: DME. Secondary institution: LG.*
- (89) Often parking attendants or car washers are employed, or given licences to work by private enterprises such as shops or owners of parking spaces, or by municipalities. These bodies should be alerted on the need to avoid child labour. **No licences should be awarded to children under the age of 15 years.** *Lead institution: Business; secondary institution: LG.*

- (95) **Municipalities**, which are responsible for rubbish collection, **should look into ways of alleviating the problem** while ensuring that the needs of these children are addressed (e.g. lack of food). *Lead institution: LG*
- (96) **Consultation aimed at identifying appropriate action** should be held with urban local authorities, with organisations working with street children and others. *Lead institution: DrSD; Secondary institution: DPLG, LG.*
- (98) The Childrens' Bill requires that the principal of a school must identify children who are frequently absent from school and in need of care and protection, assist them in returning to school, and give their names and addresses to the provincial head of social development. This Bill is not yet law. This does not, however, prevent the **development of a clearer policy and better implementation of monitoring of absenteeism as a way of addressing child labour**. *Lead institution: DrE; Secondary institution: DrSD. TBP* (see 3.8(20)).
- (134) The growing number of home-based care programmes could play a role in terms of children affected by HIV/AIDS. **Fieldworkers for all home-based care programmes need to be trained to recognise the problems children face** in HIV/AIDS-affected households, and link them up with the necessary assistance services. Government must find ways to work together with and support – financially and otherwise – the full range of home-based programmes. *Lead institution: DrSD; Secondary institutions: DPLG, LG, DH, NGOs.*
- (143) **Facilitating the return of children living in the street to their families** or extended families, provided that circumstances would be caring. *Lead institution: DrSD. Secondary institution: LG*

20. National Directorate of Public Prosecutions (NDPP)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (34) **Prioritise the non-legislative action steps to address CSE** as proposed by the SALRC (see Annexure B), and reach agreement on responsibilities, actions and timeframes for implementation and monitoring arrangements. Some of these actions steps could be taken forward even before new legislation is promulgated. *Lead institution: DJ*. Secondary institutions: SAPS, DSD, NDPP, DH, DCS, DE, Judicial Service Commission, Magistrates' Commission, Lower Court Judiciary, NGOs, SALRC (advising other institutions regarding its recommendations).*
- See par 35 in Annexure B.
- (42) A directive should be issued to all **prosecutors that trafficking and other worst forms of child labour should be viewed seriously**, prosecuted vigorously and added to the existing list of serious crimes. *Lead institution: NDPP.*
- (47) **Improving the quality and content of training on the prevention of trafficking**, prosecution of traffickers and protecting the rights of victims, including and especially child victims for law enforcement personnel, immigration and customs officials, prosecutors and judges, as well as other relevant **officials and non-governmental stakeholders**. *Lead institution: DSD. Secondary institutions: DJ, DNP, SAPS, DHA, DSD* (by addressing trafficking and child labour more generally in their training materials programmes). **TBP**.
- (50) NDPP should take primary responsibility to ensure that **trafficking offenders are prosecuted effectively**. *Lead institution: NDPP*
- (51) The DFA, together with SAPS (through SARPP where SADC police counterparts discuss issues of mutual operational concern) and the Victim Empowerment Programme of the DSD and NDPP (SOCA), should use existing mechanisms that provide **regular contact with relevant stakeholders in other countries in the region** is to deal with trafficking operations and victim assistance. *Lead institution: DFA. Secondary institutions: SAPS, DSD, NDPP.*
- (54) DSD should be responsible for a **strategy on repatriation of victims** of trafficking, including appropriate reception and care centres. Special provision should be made for **places of safety where child victims of trafficking can be safely accommodated** and provided with the necessary services while other processes described in this policy are dealt with. Provision of shelter and assistance should not be contingent on the willingness of victims to give evidence in criminal proceedings. *Lead institution: DSD. Secondary institutions: SAPS, DFA, DHA, NDPP, relevant NGOs.*
- (56) The focus of action should be on **finding and prosecuting the adults who traffic drugs. Diversion**, meaning the diversion of child offenders away for prison (including community service) **should always be the preferred option for children**. Where appropriate, prosecution of a child should be **converted to a children's court inquiry**, after conviction. The DSD and the NDPP's involvement in the Drug Master Plan for South Africa makes them the obvious choice to lead this initiative. The process should take account of existing policies and provisions, e.g. the Constitution, Interim Protocols for the Management of Children Awaiting Trial (adopted by the Departments of Justice, Social Development, Correctional Services and SAPS in June 2001), as well as other relevant departmental policies and orders. *Lead institution: DSD, NDP. Secondary institutions: NDPP, SAPS and DCS*

21. National Economic, Development and Labour Council (NEDLAC)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (9) **This document should be submitted to NEDLAC for discussion** by the partners and comment. *DL, NEDLAC.*

22. National Programme of Action for Children in South Africa (NPA)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (18) Areas where there is a **concentration of children working long hours in subsistence agriculture** or other priority kinds of child labour, should be one of the criteria for **targeting poverty alleviation initiatives**, including rollout of grants. This should not be interpreted as a criterion for access to the grants, but rather as how to target information campaigns and registration blitzes. *Lead institution: DrSD. Secondary institutions: NT, NPA, DTI.*
- (23) A national public awareness campaign on child labour should be designed and implemented. *Lead institution: DL; secondary institutions: NPA, CLIG, DC, NGOs. TBP.*
- (26) Indicators of success of the Child Labour Action Programme should be developed. *Lead institution: DL; Secondary institution: NPA. TBP.*
- (70) The DL should set **guidelines for acceptable kinds of household chores, and reasonable amounts of time** children should spend on them. Guidelines should make it clear that children learn and benefit from a moderate amount of chores, provided the tasks are age appropriate and fairly distributed between household members. This approach is in line with the African Charter's provision stating that children have responsibilities towards their families. *Lead institution: DL. Secondary institutions: DrSD, NPA.*
- (80) **Subsistence agriculture should be one of Child Labour Action Programme 's priority areas** because of the high number of children working in this sector, and because of the very long hours that they work. *Lead institution: DL. Secondary institution: DrA, NPA.*

23. National Treasury (NT)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (11) The **extension of the grant to children up to the age of 14 years needs to be accelerated** rather than achieved over three years since, otherwise, many children will be forced to work because of lack of money. *Lead institution: DSD. Secondary institution: NT.*
- (12) The **final age cut-off is not suitable if we want to end child labour**. Children are subject to compulsory schooling at least until the end of the year in which they turn 15, and should not be required to work for the family income.
- (13) The **medium term the grant should be extended to those aged 16 and 17 years** to encourage children to remain in school.
- (14) The Children's Bill recommends that the **CSG become a universal grant**, which implies the means test be abolished. This is supported. *Lead institution: DSD. Secondary institution: NT*
- (15) In the medium term **the introduction of a Basic Income Grant for adults should be considered**, while ensuring that this does not detract from a child-focussed CSG. *Lead institution: DSD. Secondary institution: NT*
- (18) Areas where there is a **concentration of children working long hours in subsistence agriculture** or other priority kinds of child labour, should be one of the criteria for **targeting poverty alleviation initiatives**, including rollout of grants. This should not be interpreted as a criterion for access to the grants, but rather as how to target information campaigns and registration blitzes. *Lead institution: DrSD. Secondary institutions: NT, NPA, DTI.*
- (110) **The tax exemptions in respect of donations to primary schools should be targeted better**. At present they provide hidden subsidisation of schools attended by children of wealthier parents, while reducing the amount of money in the government 'pot' available to provide for other children. Methods should be identified to ensure that exemption is available only for donations to schools with inadequate facilities. *Lead institution: DrE; Secondary institutions: NT, SARS.*

(136) **Reconsider the education component of the equitable share formula** for provinces and the age-related provisions for exemption from school fees. *Lead institution: NT; Secondary institution: DrE.*

24. NGO's & Other

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (1) It may be possible to run **effective income-generating projects for adults** in very targeted areas where many children are involved in the worst forms of child labour. However, only sustainable projects should be supported. *Lead institution: NGOs. TBP.*
- (23) A **national public awareness campaign** on child labour should be designed and implemented. *Lead institution: DL; secondary institutions: NPA, CLIG, DC, NGOs. TBP*
- (34) **Prioritise the non-legislative action steps to address CSE** as proposed by the SALRC (see Annexure B), and reach agreement on responsibilities, actions and timeframes for implementation and monitoring arrangements. Some of these actions steps could be taken forward even before new legislation is promulgated. *Lead institution: DJ*. Secondary institutions: SAPS, DSD, NDPP, DH, DCS, DE, Judicial Service Commission, Magistrates' Commission, Lower Court Judiciary, NGOs, SALRC (advising other institutions regarding its recommendations).*
- See par 38 in Annexure B.
- (35) Developing **training materials** and operational modules on child labour, including CSE and trafficking, for organisations operating **help lines**. *Lead institution: DSD. Secondary institutions: DL, NGOs. TBP.*
- (36) **Raising public awareness that people should immediately report to the police any illegal activity** related to CSE or other forms of exploitation of children, such as carrying of drugs and children's involvement in the making and selling of liquor. *Lead institution: SAPS; secondary institution: GCIS.*
- (37) Developing a **more reliable database on CSE** of children in South Africa. The SAYP could not identify the number of children involved in child prostitution and other forms of CSE. The current embargo in crime statistics is not helping the situation. Prostitution and other forms of CSE are notoriously difficult to research, but more reliable information is needed if CSE, including trafficking of children with the purpose of prostituting them, is to be addressed in a meaningful way. *Lead institution: DSD. Secondary institutions: SAPS, NGOs. TBP.*
- (43) The Department of Labour should ensure that that **organisations running existing help lines are informed fully about child labour issues, including trafficking**, through the development of a labour (e-governance line) call centre and provision of appropriate training materials and operations manuals. *TBP Lead institution: DL. Secondary institutions: Organisations running help lines.*
- (44) The JCPS cluster should take responsibility for dealing with trafficking until legislation on trafficking is promulgated. The cluster includes DJ, HA, SAPS and SANDF. *Lead institution: DJ.*
- (54) DSD should be responsible for a **strategy on repatriation of victims** of trafficking, including appropriate reception and care centres. Special provision should be made for **places of safety where child victims of trafficking can be safely accommodated** and provided with the necessary services while other processes described in this policy are dealt with. Provision of shelter and assistance should not be contingent on the willingness of victims to give evidence in criminal proceedings. *Lead institution: DSD. Secondary institutions: SAPS, DFA, DHA, NDPP, relevant NGOs.*
- (67) Organisations running existing **toll-free help lines** should be fully informed about child labour issues, and trafficking in particular. Such help-lines should be advertised well. *Lead institution: DL; secondary institutions: NGOs, DrSD.*
- (77) The DL should facilitate **greater police cooperation and buy-in by farmers' organisations** to address problems with access for inspectors and social service workers. *Lead institution: DL. Secondary institutions: SAPS, AgriSA.*
- (78) **Full and regular access to commercial farms** in close collaboration with the inspectors and social service agencies would ensure appropriate referral and follow-up in cases of child labour. Agreements with the farmers' organisations may be one way to facilitate this monitoring. *Lead institution: DL. Secondary institutions: AgriSA, DrSD.*
- (93) Research should be done regarding children involved in scavenging and recycling to **determine the extent of the problem and possible solutions or good practices models**. *Lead institution: DSD; Secondary institutions: RI, DL, NGOs. TBP*
- (100) Some children work because their families would not otherwise be able to afford school fees. There is thus a

need for **awareness raising and enforcement of the national school fee policy** in respect of exemptions for poorer families and children who are fostered. This will be especially important in the three years before the Plan of Action on improving access is fully implemented. *Lead institution: DrE; Secondary institution: NGOs.*

(109) Information on the specific needs and problems of children who are working and the relevant elements of a Child Labour Action Programme and the applicable legislation should be introduced in the **training of teachers, included in the school curriculum (life skills) and disseminated to managers** of schools, teachers and governing bodies. *Lead institution: DrE; Secondary institutions: NGOs, Trade Unions.*

(111) Parents, children, teachers, employers and potential employers **should be educated as to the hazards associated with** different sectors so that they are better able to consider whether a particular job is appropriate for young people, and if so, at what age. According to ILO Convention 138 and 182, it is not permissible to employ a person under 18 if hazards are present. *Lead institution: DL; Secondary institutions: DE, DSD, DH and NGOs.*

(134) The growing number of home-based care programmes could play a role in terms of children affected by HIV/AIDS. **Fieldworkers for all home-based care programmes need to be trained to recognise the problems children face** in HIV/AIDS-affected households, and link them up with the necessary assistance services. Government must find ways to work together with and support – financially and otherwise – the full range of home-based programmes. *Lead institution: DrSD; Secondary institutions: DPLG, LG, DH, NGOs.*

(144) **Rehabilitation through shelters and homes, with increased state support to such shelters.** *Lead institution: DrSD. Secondary institution: NGOs.*

(145) **Giving support while the child is on the street**, including the provision of at least basic education to ensure minimum-level literacy and skills, possibly through halfway houses where children could be phased gradually into or back to the education system. *Lead institution: DrE. Secondary institution: NGOs*

25. Provincial Premier's Offices (PPO)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

(87) Provincial departments responsible for drafting provincial liquor policies should introduce measures ensuring that **owners and operators of liquor outlets are prohibited from having children under 18 years old working in any capacity in liquor outlets.** Action could include regular inspections; a requirement that applicants for liquor licences sign an undertaking that they will not allow children to work in their establishments; and revoking licences where children are found to be working. *Lead institution: PPO. TBP*

26. Research Institutions (RI)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

(93) Research should be done regarding children involved in scavenging and recycling to **determine the extent of the problem and possible solutions or good practices models.** *Lead institution: DSD; Secondary institutions: RI, DL, NGOs. TBP*

27. South African Law Reform Commission (SALRC)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

(34) **Prioritise the non-legislative action steps to address CSE** as proposed by the SALRC (see Annexure B), and reach agreement on responsibilities, actions and timeframes for implementation and monitoring arrangements. Some of these actions steps could be taken forward even before new legislation is promulgated. *Lead institution: DJ*. Secondary institutions: SAPS, DSD, NDPP, DH, DCS, DE, Judicial Service Commission, Magistrates' Commission, Lower Court Judiciary, NGOs, SALRC (advising other institutions regarding its recommendations).*

(71) The DSD should **review the laws on child protection**, including those provided for in the Children's Bill to see whether **the definition of abuse provides adequately for excessive domestic labour.** *Lead institution: DSD; secondary institution: SALRC.*

28. South African Police Services (SAPS)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (28) As a matter of priority, DSD should facilitate a process to **assign responsibility for leading on CSE to a national government department**. Within DSD, a senior staff member should be assigned to coordinate all CSE-related activities of concerned departments and institutions. In view of the importance of this measure, a deadline of end 2003 is proposed. *Lead institution: DSD. Secondary institutions: SAPS; DJ.*
- (34) **Prioritise the non-legislative action steps to address CSE** as proposed by the SALRC (see Annexure B), and reach agreement on responsibilities, actions and timeframes for implementation and monitoring arrangements. Some of these actions steps could be taken forward even before new legislation is promulgated. *Lead institution: DJ*. Secondary institutions: SAPS, DSD, NDPP, DH, DCS, DE, Judicial Service Commission, Magistrates' Commission, Lower Court Judiciary, NGOs, SALRC (advising other institutions regarding its recommendations).*
- See par 33 in Annexure B.
- (36) **Raising public awareness that people should immediately report to the police any illegal activity** related to CSE or other forms of exploitation of children, such as carrying of drugs and children's involvement in the making and selling of liquor. *Lead institution: SAPS; secondary institution: GCIS.*
- (37) Developing a **more reliable database on CSE** of children in South Africa. The SAYP could not identify the number of children involved in child prostitution and other forms of CSE. The current embargo in crime statistics is not helping the situation. Prostitution and other forms of CSE are notoriously difficult to research, but more reliable information is needed if CSE, including trafficking of children with the purpose of prostituting them, is to be addressed in a meaningful way. *Lead institution: DSD. Secondary institutions: SAPS, NGOs. TBP.*
- (38) Designing **pilot programmes to address CSE of children**, based on the experiences of other countries within the ILO-IPEC programme. Differences between countries and replicability would need to be borne in mind, as well as the sustainability of programmes once external assistance ended. *Lead institution: DSD. Secondary institutions: SAPS, DJ. TBP.*
- (44) The JCPS cluster should take responsibility for dealing with trafficking until legislation on trafficking is promulgated. The cluster includes DJ, HA, SAPS and SANDF. *Lead institution: DJ.*
- (45) South Africa should sign, ratify, and implement the United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. *Lead institution: DFA. Secondary institutions: DL, SAPS, DJ.*
- (46) SAPS should develop guidelines and procedures to enable the **rapid and accurate identification** of trafficked persons and children. *Lead institution: SAPS. Secondary institution: DHA*.*
- (47) **Improving the quality and content of training on the prevention of trafficking**, prosecution of traffickers and protecting the rights of victims, including and especially child victims for law enforcement personnel, immigration and customs officials, prosecutors and judges, as well as other relevant **officials and non-governmental stakeholders**. *Lead institution: DSD. Secondary institutions: DJ, DNP, SAPS, DHA, DSD (by addressing trafficking and child labour more generally in their training materials programmes). TBP.*
- (48) **A public awareness campaign** on trafficking and child labour could be run for a range of audiences, including children, parents, teachers, perpetrators and intermediaries involved in trafficking, and the general public. *Lead institution: DSD. Secondary institutions: BSA, DC, DE, DSD, DL and SAPS. TBP.*
- (49) DL should assume responsibility for **monitoring and inspecting instances of work-related trafficking**. They should collaborate with the DHA and SAPS (specifically National Evaluation Services Division and Crime Intelligence Division) in this regard. *Lead institution: DL. Secondary institutions: DHA and SAPS*
- (51) The DFA, together with SAPS (through SARPP where SADC police counterparts discuss issues of mutual operational concern) and the Victim Empowerment Programme of the DSD and NDPP (SOCA), should use existing mechanisms that provide **regular contact with relevant stakeholders in other countries in the region** is to deal with trafficking operations and victim assistance. *Lead institution: DFA. Secondary institutions: SAPS, DSD, NDPP.*
- (52) DSD should take responsibility for introducing **standard procedures within the region for the extradition of traffickers for prosecution**. *Lead institution: DSD. Secondary institutions: SAPS, DJ, DHA and DFA.*
- (54) DSD should be responsible for a **strategy on repatriation of victims** of trafficking, including appropriate reception and care centres. Special provision should be made for **places of safety where child victims of trafficking can be safely accommodated** and provided with the necessary services while other processes

described in this policy are dealt with. Provision of shelter and assistance should not be contingent on the willingness of victims to give evidence in criminal proceedings. *Lead institution: DSD. Secondary institutions: SAPS, DFA, DHA, NDPP, relevant NGOs.*

- (56) The focus of action should be on **finding and prosecuting the adults who traffic drugs. Diversion, meaning the diversion of child offenders away from prison (including community service) should always be the preferred option for children.** Where appropriate, prosecution of a child should be **converted to a children's court inquiry**, after conviction. The DSD and the NDPP's involvement in the Drug Master Plan for South Africa makes them the obvious choice to lead this initiative. The process should take account of existing policies and provisions, e.g. the Constitution, Interim Protocols for the Management of Children Awaiting Trial (adopted by the Departments of Justice, Social Development, Correctional Services and SAPS in June 2001), as well as other relevant departmental policies and orders. *Lead institution: DSD, NDP. Secondary institutions: NDPP, SAPS and DCS*
- (58) When investigating crimes, law **enforcement agencies should be sensitive to the possibility of children working in illegal activities.** Law enforcement agencies must highlight these issues in all training materials and programmes. *Lead institution: SAPS. Secondary institutions: DJ. TBP*
- (77) The DL should facilitate **greater police cooperation and buy-in by farmers' organisations** to address problems with access for inspectors and social service workers. *Lead institution: DL. Secondary institutions: SAPS, AgriSA.*
- (88) The **national awareness campaign** on child labour should encourage the eradication of practices where children are involved in **making or selling liquor**, or work in establishments where they are exposed to liquor or clients buying liquor. *Lead institution: DL; secondary institution: SAPS.*
- (148) A plan should be drafted for **effective cooperation between DHA, SAPS, DH and the education departments**, to ensure that these children are not arrested unnecessarily, are handled in accordance with existing laws and regulations, and not denied access to school and health care services. **The solution will need somewhat different approaches for those children who come with their parents and those who come unaccompanied.** *Lead institution: DHA. Secondary institutions: SAPS, DrE, DH. TBP*

29. South African Revenue Services (SARS)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (110) **The tax exemptions in respect of donations to primary schools should be targeted better.** At present they provide hidden subsidisation of schools attended by children of wealthier parents, while reducing the amount of money in the government 'pot' available to provide for other children. Methods should be identified to ensure that exemption is available only for donations to schools with inadequate facilities. *Lead institution: DrE; Secondary institutions: NT, SARS.*

30. Statistics SA (StatsSA)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (3) The Department of Labour should, at regular intervals (for example, every three years), **assess all relevant public sector policies and programmes for their impact on child labour** and the contribution they could make to the elimination of child labour. This assessment should be done so as to coincide with the report on the results of the child labour module to be run by StatsSA as part of the Labour Force Survey. *Lead institution: DL; Secondary institution: StatsSA (statistical module).*
- (27) A **follow-up to the SAYP** should be done as soon as possible, to assess the changed situation, especially in the context of the HIV/AIDS pandemic, and to assist with monitoring and evaluation. The SAYP should subsequently be conducted on a two or three-yearly basis as an add-on module to the existing labour force survey. *Lead institution: StatsSA; Secondary institution: DL. TBP*
- (94) The **questionnaire** used for the next SAYP module should be able to **identify scavenging and recycling activities.** *Lead institution: StatsSA; Secondary institution: DL.*

31. Trade unions (TU)

Policy measures requiring the attention of the above institution, as provided for in the White Paper, are collated

below. Cross-refer to the number of the action step in the main text for a discussion of the background.

- (85) Short-term solutions include developing a **detailed definition of which kinds of farm work are appropriate for children**, which not, what potential hazards exist in the work and which can be removed through proper safety education and protective gear. This could be achieved through an awareness campaign aimed at subsistence farmers. *Lead institution: DA. Secondary institutions: DrSD; Trade Unions.*
- (117) **Identifying hazards potentially affecting children 15-17 that are present only at certain times**, then identify the periods during which such children must leave the relevant areas. *Lead institution: DL. Secondary institutions: TUs, Business, DrSD.*
- (109) Information on the specific needs and problems of children who are working and the relevant elements of a Child Labour Action Programme and the applicable legislation should be introduced in the **training of teachers, included in the school curriculum (life skills) and disseminated to managers** of schools, teachers and governing bodies. *Lead institution: DrE; Secondary institutions: NGOs, Trade Unions..*

Annexure B: Proposed Steps regarding Sexual Offences

This annexure contains extracts from the report of the South African Law Reform Commission's Project 107 on Sexual Offences, December 2002, regarding steps to be taken. Most of these steps are applicable to commercial sexual exploitation although they are formulated to address sexual offences in general. However, most of them will Footnotes to these extracts are not reproduced here.

The full report is available at www.law.wits.ac.za/SALRC/SALRC.html.

32. Proposed statutory provisions on child prostitution

12. (1) Any person who, in relation to a child, for financial or other reward, favour or compensation to such child or to any other person, intentionally -

- (a) commits an indecent act or an act which causes penetration with such child;
- (b) invites, persuades or induces such child to allow him or her or any other person to commit an indecent act or an act which causes penetration with that child;
- (c) makes available, offers or engages such child for purposes of the commission of indecent acts or acts which cause penetration with that child by any person;
- (d) supplies, recruits, transports, transfers, harbours or receives such child, within or across the borders of the Republic of South Africa, for purposes of the commission of indecent acts or acts which cause penetration with that child by any person;
- (e) allows or knowingly permits the commission of indecent acts or acts which cause penetration by any person with such child while being a primary care-giver as defined in section 1 of the Social Assistance Act, 1992 (Act No. 59 of 1992), parent or guardian of that child;
- (f) owns, leases, rents, manages, occupies or has control of any movable or immovable property used for purposes of the commission of indecent acts or acts which cause penetration with such child by any person;
- (g) detains such child, whether under threat, coercion, deception, abuse of power or force for purposes of the commission of indecent acts or acts which cause penetration with such child by any person; or
- (h) participates in, is involved in, promotes, encourages or facilitates the commission of indecent acts or acts which cause penetration with such child by any person,

is, in addition to any other offence of which he or she may be convicted, guilty of the offence of being involved in child prostitution and is liable, upon conviction, to imprisonment for a period not exceeding 20 years with or without a fine.

(2) Any person who intentionally receives any financial or other reward, favour or compensation from the commission of indecent acts or acts of sexual penetration with a child by another person is guilty of the offence of benefiting from child prostitution and is liable, upon conviction, to imprisonment for a period not exceeding 20 years with or without a fine.

(3) Any person who intentionally lives wholly or in part on rewards, favours or compensation for the commission of indecent acts or acts of sexual penetration with a child by another person is guilty of the offence of living from the earnings of child prostitution and is liable, upon conviction, to imprisonment for a period not exceeding 20 years with or without a fine.

(4) Any person, including a juristic person, who-

- (a) makes or organises any travel arrangements for or on behalf of any other person, whether that other person is resident within or outside the borders of the Republic of South Africa, with the intention of

facilitating the commission of any sexual offence against a child, irrespective of whether that offence is committed; or

- (b) prints or publishes, in any manner, any information that is intended to promote or facilitate conduct that would constitute a sexual offence against a child,

is guilty of the offence of promoting child sex tours and is liable, upon conviction, to a fine or to imprisonment for a period not exceeding 20 years.

(5) A person may not be convicted of an offence in terms of subsections (2) and (3) if that person is -

- (a) a child; and
- (b) not a person contemplated in paragraphs (a) to (h) of subsection (1).

33. Steps by Department of Safety and Security

Investigation of alleged sexual offences and amendment of National Instructions

Police members should have no discretion in accepting a charge of sexual assault.

No sworn statement should be taken immediately from the victim.

All complaints must be taken seriously and all complainants should be treated with respect and dignity.

No inference regarding the incident should be drawn from the complainants dress or reputation.

The case should immediately be allocated to a specially trained investigating officer from a Family Violence, Child Protection and Sexual Offence (FCS) unit who has the responsibility of explaining the various procedures to the victim and who must ensure that the medical examination is completed.

The investigating officer should be obliged to keep the victim informed of all developments regarding the case.

The specialised investigation of sexual offence cases must be enhanced by the obligatory facilitation of contact, information sharing and collection of evidence for the purposes of trial between the investigating officer and the prosecuting authority prior to the advent of the trial.

Police training and protocols should acknowledge the reality that disclosure for victims of sexual abuse is likely to be a process which will take place over a period of time and sometimes even years after the event.

The police should review procedures for recording and following up 'unfounded' cases and cases where the victim wishes to withdraw the matter.

The SAPS National Instruction on Sexual Offences should clearly spell out that all sexual offence cases must be investigated fully, that charges may not be withdrawn at police station level even when requested to do so by the victim or the victim's family, and that any decision not to proceed with a police investigation falls with the relevant prosecuting authority.

The SAPS National Instruction 22 / 1998 on Sexual Offences be

amended to provide specifically that police investigators should not infer from the reaction of the complainant that he or she is unaffected by the sexual assault or is lying.

An investigating officer must inform the victim of the right to ask the Director of Public Prosecutions to review any decision not to initiate or proceed with an investigation into an alleged sexual offence allegedly committed against that victim.

Guidelines on the charging of victims of sexual offences for laying false charges, making false statements, obstructing the course of justice and perjury be developed.

Before a complainant in a sexual offence case can be charged with any of the offences related to laying false charges, authorisation must be obtained from the relevant Unit or Station Commander.

Docket monitoring

A docket monitoring system be introduced at station level with regard to reports of sexual offences. Until such time as the information contained in the docket is captured electronically, it is recommended that critical documents be filed in duplicate.

Provision of information

To provide for a better flow of information to victims, the Commission proposes the following action:

- a) a statement of duties of individual police officers in relation to the provision of information to victims should be formulated and incorporated into a police code of good practice;
- b) a docket monitoring system should be established together with a system which ensures that duplicate copies of all important information contained in the docket are kept in safe keeping;
- c) information should be supplied routinely to victims at the time of reporting the crime, prior to the first appearance of the accused, and again following the date set down for trial. This could include pamphlets which provide basic information about victim rights at all stages of the process;
- d) responsibility for distributing information pamphlets should lie with the organisation that has the primary responsibility for the case, i.e. at the reporting and investigation stage, information sheets should be distributed by the police; prior to and following the first appearance of the accused in court, information sheets should be distributed by the office of the Director of Public Prosecutions.

The medical examination

The decision whether to take the victim for a medical examination immediately or to proceed with another critical aspect of the investigation is dependent on circumstances which are unique to each sexual offence investigation. No recommendation is made in this regard, save that the SAPS must give priority to having a medical examination done in order to ameliorate the anxiety experienced by victims prior to the examination.

Support person

In addition to the provisions contained in the National Instruction regarding support persons, it should expressly be stated that a witness is also entitled to be accompanied by a support person during the medical examination and that this be provided for in the above National Instruction. The Commission cautions that a support person must, however, be informed that his or her role is solely to support the witness and that he or she may in no way interfere with the witness during the holding of the identity parade.

Identity parades

The envisaged new National Instruction on identity parades should spell out clearly that it is not appropriate for any victim or witness to have to physically touch a suspect in order to identify a suspect, whether it be a sexual offence case or not.

Complaint procedure

An acceptable procedure should be developed for reporting instances where police fail to accept and register a complaint of a sexual nature.

Bail

The complainant must be informed of an application for bail by the accused.

The complainant must be informed that he or she has the right to attend the bail proceedings.

The investigating officer must obtain relevant information from the complainant in order to oppose a bail application and/or the imposing of conditions of the accused, should he be released on bail.

Where the complainant reports a breach of the bail conditions by the accused, to immediately take a statement from the complainant or other witnesses detailing the breach of the bail conditions; approach the prosecutor with the aim of an application to have the accused's bail revoked; and where necessary, take steps to ensure the safety of the complainant.

Inform the complainant of the bail conditions imposed on the accused should he be released on bail and of the procedure to be followed if the accused breaches the bail conditions.

Selection, training and debriefing of SAPS members re: sexual offences

More sophisticated and appropriate obligatory mechanisms relating to the screening, selection, training and debriefing of SAPS members serving in or wanting to serve in specialised units dealing with sexual offences must be established. In addition to having received training on how to deal with a victim of a sexual offence, all inexperienced police members should receive 'on-the-job' training by being assigned to an experienced colleague for a set period of time and should receive specific training on how to deal with sexual offenders.

A culture enforcing the need for regular debriefing in the SAPS must be encouraged. Police members should have the freedom of electing whether to be debriefed by professionals either retained in-house or externally, but not from within their own unit.

The role of SAPS forensic social workers must be clarified and formalised as a matter of urgency.

SAPS must develop and administer a program to train all medical personnel involved with the collection of forensic medical evidence in the correct use and application of the appropriate crime evidence collection kits.

Members who are commissioned to specifically investigate sexual offences should not be allowed to remain at these units for a period exceeding three years, unless regular debriefing sessions are attended by such member(s).

Amendment of forms

The SAPS should amend the SAP 69 form to include details of the offence which may be required to make an informed decision regarding the rehabilitation programme made available to the offender.

The existing police practice rules and forms (especially Form SAP 329) should be revised, be codified in a National Instruction on identity parades, and that such a National Instruction be operationalised as soon as possible.

The witness statement form should be amended as is portrayed in the Annexure to this document.

Education

Awareness campaigns for adult victims (both male and female) of sexual violence should be conducted by the Departments of Safety and Security and Justice and Constitutional Development to instil confidence in a responsive authoritative protection system in order to make it easier for such victims to report incidents of sexual violence.

34. Department of Health

Forensic medical examination

In the first consultation all appropriately trained medical personnel should conduct a proper medical examination of and treat or refer the victim of sexual violence for specialised treatment or counselling, where appropriate.

Medical personnel should link up with the investigating team to share information on the crime scene, the evidence collected or to be collected

from the victim and/or the alleged offender and the injuries sustained during the attack. Medical personnel should also advise the investigating team on what other possible evidence could be collected.

All medical personnel involved with the collection of forensic medical evidence must receive training from SAPS in the correct use and application of the appropriate crime evidence collection kits.

The victim, or the caregiver of the victim in the case of a young child or mentally disabled person, should be given information regarding the reason for the examination and what it entails, information on possible pregnancy as a result of the attack, an explanation of any medication given and possible side-effects, the results or outcome of the medical examination and information about HIV.

At the very least victims should be tested and counselled for HIV or referred to an organisation or hospital which deals with the issue. Referrals from district surgeons or medical personnel may include referrals for follow-up medical care, for HIV or STI testing, or for counselling and advice.

The victim should always be provided with medical treatment by the same person collecting the forensic evidence and the victim should not be referred to another practitioner or facility.

Identifying information, for example contact details and personal particulars not relevant to the case, should not be disclosed.

The complainant must be informed of the results of the investigation and or the disciplinary hearing.

If a victim of sexual assault is ambulatory, she/he must be referred to a designated health care facility. If the victim cannot be transferred then a health care practitioner must attend the patient in the casualty ward.

An investigating officer should only be present during the physical examination if the patient requests the presence of the officer and where the officer is of the same sex.

Adult victims should be given the option of undergoing the full forensic examination, including the collection of medical evidence, and having it kept at the health care facility for a period of up to 90 days to enable the victim to decide whether or not he or she will report the incident.

The medical practitioner should be placed under obligation to refer the victim to appropriate counselling.

Training, debriefing and related matters

Mechanisms must be developed to ensure that the national and provincial Departments of Health and the various controlling bodies in the medical field co-operate with the SAPS in training programmes as it pertains to the medical aspects of evidence collection.

Reporting mechanisms must be made available to victims where an examining practitioner has conducted the examination in an inappropriate fashion.

Provision should be made for support mechanisms such as debriefing or counselling of medical practitioners as they, similar to all other persons who regularly work with victims of sexual violence, are not left unscathed by the continuous exposure to human depravity.

All medical personnel, whether in private practice or not, should be specifically trained to deal with cases of sexual abuse. The training should extend to the performance of medico-legal examinations, the correct use of the crime kit and the significance thereof, the completion of the required forms (such as the J88), police procedure and the legal aspects surrounding the presentation of such evidence in court.

Medical practitioners and other categories of health care practitioners such as nurses should be empowered to examine victims of sexual assault, provide the necessary medical treatment and give expert evidence in court.

All health care practitioners, including medical doctors, should first receive the necessary training and ongoing support in order to enable them to fulfil this function.

The Health Professions Council of South Africa (the former Medical and Dental Council) should develop the necessary training manuals and oversee the training.

Protocols

The Department of Health, in consultation with other sectors, should develop and implement binding protocols for medical practitioners and health care professionals as to the appropriate steps to be taken when

victims of rape present themselves for treatment.

Such protocols should provide that:

- (a) appropriate measures be taken to protect the privacy and dignity of victims presenting themselves at a medical facility following a sexual offence and that measures be taken to expedite the proceedings;
- (b) all victims of rape must be examined and assessed as to the risk of HIV-infection by a district surgeon, medical practitioner or health care professional immediately after reporting the assault to the police. Victims who do not report the sexual assault to the police but present at a medical facility must be examined and assessed by a medical practitioner or health care professional immediately after presenting;
- (c) all victims of rape who present at a medical facility (including those who are examined by a district surgeon) must be informed by the medical practitioner or health care professional of the risk of being HIV-infected as a result of the sexual assault;
- (d) all victims of rape must be individually assessed and counselled as to the risk of HIV-infection, taking into consideration –
 - (i) available information on the HIV status of the perpetrator;
 - (ii) the type of exposure;
 - (iii) the nature of the physical injuries; andthe number of times that the victim was sexually assaulted.
- (e) all victims of rape must be informed after assessment of the risk of HIV-infection and a recommendation must be made to them whether PEP treatment is appropriate. Regardless of the recommendation of the medical practitioner or health care professional, the choice of whether to take PEP or not remains that of the victim;
- (f) all victims of a rape must be counseled around and informed of –
 - (i) the existence of PEP drugs;
 - (ii) the purpose of the drugs;
 - (iii) the possible side effects of the drugs;the consequences of not taking the drugs; and where it can be obtained.

(g) PEP drugs ought to be available at all medical facilities. Should the drugs not be available at the medical facility where the victim presents, the victim must be assisted by the medical facility, the attending medical practitioner or the health care professional in obtaining the drugs.

The Department of Health should establish a national system of accreditation for health care practitioners in the management of sexual offences.

Health care practitioners who have been trained and accredited through this process, be given the designation “Sexual Assault Care Practitioner”.

Until sexual assault care practitioners are accredited, health care practitioners should be bound by an examination and treatment protocol.

Minimum standards of care should be developed which include the following principles:

- (a) the physical, emotional and psychological safety, health and well being of a survivor of sexual assault is given precedence over other matters;
- (b) standardised evidence collection and injury documentation procedures must be developed nationally and used in all sexual assault cases;
- (c) survivors of sexual assault must receive the same quality of assistance and treatment regardless of where the assault occurs;
- (d) the health care practitioner must have the ability to recognize, document and appropriately interpret injuries, or the lack thereof;
- (e) the health care practitioner must have the ability to collect and package the appropriate forensic specimens as per the new Sexual Assault Examination Collection Kit.

The continued medical education of health care practitioners must be monitored and evaluated.

Where a private medical practitioner has not been trained to undertake a forensic examination on sexual assault victims, the practitioner must refer the victim to a designated health care facility or to a practitioner who is qualified to do so.

Under-graduate medical training should include gender based and gender violence training.

Training should include exposure to appropriate social context training relating to the nature of sexual violence.

A complaints mechanism must be established whereby victims of sexual offences can report state officials and other health practitioners who do not comply with designated duties, or act inappropriately towards the victim.

The superintendent or doctor in charge of a medical facility must ensure that adequate complaints mechanisms exist.

Where complaints are lodged the superintendent or doctor in charge must ensure that the complaint is registered, the matter is investigated and dealt with in the established internal disciplinary structure.

Health care facilities

One stop centres should be officially endorsed and implemented nationally so as to enhance the preliminary stages of the investigation. The Commission is of the opinion that the criminal investigation would be considerably aided by the availability of all the role-players within walking distance of one another.

The appropriate health instructions address the role of medical staff on duty in a casualty ward when attending to a victim of a sexual offence. Further that these instructions should also oblige such medical staff, when requested to do so, to conduct medical examinations on victims and alleged offenders in sexual offence cases and to regulate the manner in which medical evidence is to be collected and treated.

35. Department of Justice and Constitutional Development

Case Management

Sexual offence cases must be prioritised.

Case-flow management techniques which are flexible enough to be adapted to the needs of individual sexual offence cases, but have the overall purpose of reducing delay and increasing efficiency be introduced.

A case-flow management strategy, including time-frames, must be developed inter-sectorally and initiatives such as the 'e-justice' programme should be incorporated in order to reduce delays in the criminal procedure process.

Non-compliance with the case-flow management strategy (including time-limits) should be met with sanction. Further that an investigation be undertaken to determine the viability of introducing a system of costs in criminal proceeding.

Non-compliance with the case-flow management strategy should neither affect the manner in which the case is heard nor result in the case being dismissed or charges withdrawn.

Public prosecutors and amendments to the NDPP Policy Directives

The NDPP Policy Directives must be revisited and reviewed, ideally with input from the SAPS, the Department of Social Development, health care professionals and victim support groups. In this context the Commission stated that consistency was essential: A situation where one agency is issued with *instructions* and another agency with mere *guidelines* was found to be untenable, especially when the aim is to ensure greater co-operation and interaction between those agencies. The Commission recommends that it was equally important to ensure that whatever was agreed upon, be it instructions, guidelines or directives, that they carry the same legal force to ensure that non-compliance can be addressed uniformly.

The Office of the Director of Public Prosecutions should formally assume responsibility, from the first appearance of the accused onwards, for directly communicating relevant information to the victim, rather than this being done through members of the police. The Commission suggests that an office of designated Victim Liaison Officer be established and attached to the office of the Director of Public Prosecutions.

Specialised courts

The Commission fully supports the roll-out of specialised sexual offences courts, with the proviso that the new courts have to be sustainable both as far as human and financial resources and commitment are concerned.

The roll-out of specialised sexual offences courts must be accompanied by intensive training programmes of all court officials involved, including magistrates. The Commission notes that certain shortcomings have been identified in the "Wynberg Sexual Offences Court-model" and therefore cautioned that these shortcomings should be addressed in the roll-out of the new courts in order to prevent the replication of inadequacies already identified.

Education

Information strategies including pamphlets should be developed and distributed. It is suggested that the responsibility for distributing information pamphlets should lie with the organisation that has the primary responsibility for the case, i.e. at the reporting and investigation stage, information sheets should be distributed by the police; prior to and following the first appearance of the accused in court, information sheets should be distributed by the office of the Director of Public Prosecutions.

Bail proceedings

Victims and other state witnesses should be informed of and participate in bail applications if they should choose to as the Commission found that the adoption of a system which allows for the victim to be informed of and participate in all stages of the proceedings (including a bail application by the accused) may address some of the concerns.

Where a witness is the complainant in the matter or a person below the age of 18 years and such witness is called to or wishes to participate in the bail application, such witness must be declared a vulnerable witness and be afforded such protective measures as the court may deem necessary. Where any other witness appearing at the bail application is likely to be vulnerable on account of age, intellectual impairment, trauma or cultural differences, or the possibility of intimidation or is likely to suffer severe trauma, an application for declaration as a vulnerable witness must be made. The declaration of vulnerable status as well as the finding in relation to the appropriate protective measures will remain in place unless the trial court should find otherwise.

Experts may be called to establish the vulnerability of the second category of witnesses and the need for specific protective measures for both categories where necessary. However, the role of expert witnesses should not be restricted to determining vulnerability of witnesses. Expert witnesses should also be called to lead evidence as to the risk that the accused might pose to the complainant and/or society, if released.

As knowledge surrounding a bail application is often integral to the ability of the victim to prevent being re-victimised, this aspect be included in the Policy Guidelines for the National Director of Public Prosecutions.

Training and guidance be given to all officials dealing with bail applications so as to enhance the implementation of the existing legislation regulating bail (which the Commission deems to be adequate).

Prosecutors must take immediate action against accused who allegedly contravene the conditions of bail or who harass, threaten, injure or intimidate the complainant or other witnesses in sexual offence matters.

Pre-trial processes

The discretion of whether to embark on a pre-trial process should be shouldered by the responsible prosecutor and he or she should be obliged to note the reasons for exercising this discretion in favour of convening a case management consultation as well as the results of the consultation. The procedure to be followed should be contained in the relevant sexual offence management protocol.

In relation to case management consultations linked to diversion the Commission recommend that this option should be followed only in exceptional cases. In those exceptional cases the Commission recommends that:

The consultation should be convened by the prosecutor. However the Commission refrains from being prescriptive regarding the constitution of the consultation, bar that trained personnel who have assessed the participants must be involved. An expert assessment of the participants during the consultation and the need for expert guidance of the

consultation is imperative to its success.

The prosecutor be tasked to draw up the diversion contract. Guidance for the drafting of such contracts should be contained in the protocols. For example, a contract could contain a provision which separates the offender from a child victim or other prospective victims during the period of diversion. It should be a standard pre-requisite that the offender must be willing to submit him or herself to a sex offence specific rehabilitation programme or treatment.

Diversion contracts must clearly deal with changes of address to ensure that the offender does not escape the conditions of the diversion contract.

Plea bargaining

Prosecutors handling sexual offence cases should receive training on plea bargaining and innovative sentencing options aimed at community protection.

Provision should be made in the plea bargaining process to consult the complainant, or in the case of a child, the child complainant and his or her parent, guardian or *person in loco parentis*.

A victim must be consulted immediately after the prosecution is made aware that the accused wishes to negotiate a plea and sentence agreement (even though these situations might be rare in sexual offences matters).

The process and reasons as to why a plea and sentence agreement is being considered should be explained to the victim, and the victim's views and objections on the agreement should be obtained and considered.

Disclosure

The Policy Guidelines of the NDPP should be amended to ensure that full disclosure has been made by the police, thereby ensuring that the prosecution is able to make full disclosure to the defence. In order to counter-balance this provision, a provision which assures the police that personal material will not be disclosed to the defence without prior consultation must also be included.

Personal particulars which do not adversely affect the accused's right to a fair trial should not be divulged to the defence by way of a witness's statement and testimony.

The age of the witness, if he or she is under 18 years of age, be reflected on the front of any statement. This will dictate to the prosecutor whether provision for protective measures for a child witness should be made.

The provisions contained in section 153 of the Criminal Procedure Act be invoked more often in order to protect witnesses, especially victims of sexual offences, where a real possibility exists for revictimisation or recurring violence.

Identifying information, for example, contact details and personal particulars not relevant to the case, should not be disclosed.

Waiver of the right to confidentiality regarding disclosure of personal records by the person who made the confidential communication be acknowledged.

Information acquired by a registered medical practitioner by physical examination (including communications made during the examination) in relation to the commission or alleged commission of the sexual offence or a communication made, or the contents of a document prepared, may be adduced for the purpose of a legal proceeding arising from the commission or alleged commission of the sexual offence.

Training

The Department of Justice and Constitutional Development should develop and establish a training programme to be attended by prosecutors and presiding officers to ensure proper training in regard to witness notification. In this context the term 'presiding officers' refers to both magistrates and judges.

Specialised training on sexual offence matters should include an understanding of a child's educational needs and the effect of the offence on the child's functioning at school.

Training must be developed and implemented on the use of closed-circuit television in sexual offence matters.

Education

The Department of Justice and Constitutional Development should task

its communication section in consultation with the Department of Social Development to launch a victim empowerment programme to inform witnesses, possibly by way of pamphlet, of the protective measures (including the use of an intermediary) that may be requested.

Protective measures

The National Director of Public Prosecutions should develop guidelines which place a duty on prosecutors to notify witnesses of the protective measures that they may request, failure of which will lead to a disciplinary inquiry.

In camera proceedings

The movement of both court officials and private persons, in and out of the court whilst a vulnerable witness is testifying should be strictly monitored. This provision should be enforced and adhered to by requiring that all courts hearing sexual offence cases shall, when the matter is being held *in camera*, have a notice to that effect on the public doors to the court.

The movement of court officials whose presence is necessary for the trial should be limited to that which is necessary and a duty placed on court officials to limit their movement in and out of court when such a hearing is taking place. These recommendations should be enforced administratively by the Department of Justice: Courts Division.

The National Prosecuting Authority should focus on prosecuting recalcitrant publishers for publishing prohibited information;

a court which finds any person guilty of publishing information in contravention of the provisions of sections 154 or 335A of the Criminal Procedure Act, may make a compensatory financial order after a finding of guilt in terms of section 154(5) of the Criminal Procedure Act and that such an order should be in favour of the complainant or the accused (provided that the latter has not been identified or charged); and presiding officers must be directed to issue an order declaring the court closed for the duration of the testimony delivered by a vulnerable witness, which order must be enforced by the court orderly or similar official.

Closed-circuit television

If a court is of the opinion that a witness should give evidence by way of closed-circuit television and there are no closed-circuit television equipment or facilities available at that court, that court should make every effort to have the necessary equipment transferred to it from another court or should transfer the criminal proceedings in question to another court with the required facilities. Such a transfer should be done in consultation with the court to which the case is to be transferred. In making an order for a transfer to a court with closed-circuit television facilities, the court should take into account the need to protect the person who is to give evidence by means of closed-circuit television or similar electronic media from traumatising; the wishes of the person who is to give evidence by means of closed-circuit television or similar electronic media; the wishes of other persons who are to give evidence in the proceedings; the costs of having the proceedings transferred; inconvenience to the complainant in the proceedings; and unreasonable delay that would be brought about by such transfer.

Interviewing skills

Resources should be allocated to improving basic skills such as effectiveness of specialist interview procedures, general interviewing skills and innovative questioning techniques rather than to video technology when basic skills still need to be developed or improved on. The subject of videotaping of evidence should be an investigation on its own with extensive consultation on the development of a memorandum to guide interviewers.

Urgent steps should be taken to ensure that the protective measures already provided for in the Criminal Procedure Act are properly and professionally implemented.

Intermediaries

The current fee structure for intermediaries should be revised.

All magistrate courts be furnished with facilities for intermediaries.

The intermediary system be formalised rather than amend the current regulations and that this recommendation receive the attention of the secondary legislation section in the Department of Justice and

Constitutional Development.

An assessment of persons who are competent to assist the child witness to give evidence in court should be done.

The competence of a person to be appointed as an intermediary should be assessed through a process prior to appointment to a specific case, but after the person has satisfied the requirement of falling within one of the categories determined by the Minister for Justice and Constitutional Development, by way of regulation, of who may be appointed as intermediaries in terms of section 170A(4)(a); alternatively, after going through an accreditation process. This option implies establishing cross sectoral selection, a process of selection and possibly registration as an intermediary. If this approach is followed it will not be necessary for the court to assess competence as prior selection and registration will guarantee competence. This option has the advantage of avoiding delays in court.

The following criteria be used to establish competence of an intermediary who is to act as such in criminal proceedings involving a sexual offence:

- (a) the training and qualifications of such person;
- (b) the duration of such person's experience in working with children;
- (c) the extent of such person's experience in working with children of the same age group and cultural background as the witness;
- (d) if such person is retired, the extent to which such person has retained the skills to work with children;
- (e) factors that may disqualify such person from being appointed as an intermediary, including the fact that such person has been-
 - (i) convicted of a sexual offence involving children;
 - (ii) the subject of a domestic violence protection order;
 - (iii) the subject of disciplinary action taken during the course of such person's career;

Where necessary an intermediary (not the same person to be used in the trial) should be available to assist the prosecutor to establish rapport with the child witness prior to the trial and to improve both the prosecutor's and the child's understanding of what they are communicating to each other.

The Departments of Justice and Constitutional Development and Social Development should be tasked to ensure the availability of intermediaries to all courts hearing sexual offence cases, as soon as is practicably possible. Such implementation must take into account adequate training for intermediaries if there is a lack of expertise or experience. In addition, the said Departments should develop a timetable for selection, training and appointment of intermediaries on a permanent basis.

The Minister for Justice and Constitutional Development should report annually to Parliament on the level of implementation until such time as the intermediary system is fully in place.

Anatomically correct dolls

In relation to the use of anatomically correct dolls an inter-sectoral project be established, to be housed in the Department of Justice and Constitutional Development, that is tasked with undertaking a consultation process with all role-players to assess:

- their training needs in the use of anatomically correct dolls;
- whether there is a need for standardised dolls to be used as there is potentially substantial variation in the types of anatomically correct dolls that are used;
- whether there is a need for guidelines to be developed for effective use of anatomically correct dolls to be set forth in a written protocol;
- which role players should be involved in the drafting of such a protocol;
- if such a protocol is necessary, whether it should be reviewed to ensure that training is kept current; and
- anatomical dolls which are racially and culturally representative should be made available to prosecutors.

Support persons

The State should bear transport costs, in the form of a transport allowance, for one support person per witness who is giving evidence in court in sexual offence cases.

Rules of evidence

As a ground rule, all relevant evidence should be admitted in sexual offence cases. Further that the presiding officer should consider all such evidence and must use his or her judicial discretion as to the proper weighting to be given to such evidence.

The prosecution should be allowed to raise an accused's previous convictions and acquittals at trial, provided that the probative value of such evidence outweighs the prejudicial effect thereof.

The proposed Sentencing Council, contained in the Report on Sentencing, should facilitate and establish a programme of judicial education on sentencing and recommends that judicial officers receive appropriate training and information on the potential impact of sexual crimes on victims generally.

Judicial officers should assess and take into account the offender's knowledge, use and manipulation of the particular victim's vulnerability for the purpose of sentencing.

Victim Impact Statements

Uncontested victim impact statements should be admissible evidence on production thereof. If the contents of a victim impact statement are disputed, the author and / or the victim must unfortunately be called as a witness.

A court allow a victim to make recommendations regarding an appropriate sentence to the presiding officer, provided that it is well understood that the presiding officer is under no obligation to follow this recommendation.

In terms of responsibility for the preparation of the victim impact statement, it is proposed that the prosecution should have the ultimate duty to ensure that such evidence or statement is available for submission in court.

In compiling a victim impact statement, the services of a child psychologist should be made available to assist in explaining and describing the impact of the harm and emotional trauma suffered by the child as a result of the offence.

Offender treatment

As part of the original sentence of the court, all sexual offenders should be required to undergo treatment in an accredited treatment programme, preferably in a community setting, when released on parole or under correctional supervision.

More extensive use be made of section 274(1) of the Criminal Procedure Act, 51 of 1977 and expert opinion should be canvassed by the court when determining the appropriate treatment programme.

The offender should, as far as possible, be liable for the costs of the treatment. If the offender does not have the means, then the State should bear the responsibility for the cost of treatment as a way of ensuring long-term community protection.

Provision be made for the monitoring of the sentencing magistrate's treatment order. At present the sentencing magistrate may order rehabilitation as part of a prison sentence, but this may not be followed through by the prison staff, due sometimes to the lack of resources in the prison to which the offender is admitted, or the lack of insight of the prison staff as to the need for rehabilitation of the sexual offender.

Treatment and rehabilitation programmes should be made available to all sexual offenders.

As rehabilitation of sexual offenders is a long term strategy, the period of correctional service should be extended from three years to five years.

Dedicated judiciary

The concept of a dedicated judiciary should receive the attention of the Judicial Services Commission and the Magistrates Commission.

This could include the option of only allowing judges and magistrates who are certified to preside in sexual offence matters to do so.

Court records

Any order made in relation to a child victim in either the sexual offences court or children's court should be noted in each of their respective records.

36. Department of Correctional Services

Parole and victim involvement

Where a victim initially elects not to have his or her particulars recorded for purposes of being notified of the parole hearing, the Commission recommends that a mechanism should be put in place whereby the victim may have his or her details recorded at a later time.

Evidence from victims should be used to assist both the Correctional Supervision and Parole Board in determining the conditions of parole, rather than determining parole itself.

Evidence from victims on parole may be given via closed-circuit television and / or with the assistance of an intermediary.

Evidence from significant others working or interacting with the victim and his or her family must be available to the Correctional Supervision and Parole Board where it is available and appropriate.

Parole conditions should take into account the safety and well-being of the victim and family.

The victim, or the next of kin of a deceased victim, should be kept informed by the Department of Correctional Services of decisions made in relation to both parole itself as well as the conditions of parole.

The victim, or the next of kin of a deceased victim, should be given information about where, and the process of how to inform a parole officer should the offender violate parole conditions. Local police stations should be informed by Correctional Services of all released parolees in their area. The local police station should serve as the reporting body where reporting is a condition of parole and the place of reporting if a released offender violates his or her parole conditions. The latter service should be available 24 hours a day.

Parole guidelines specifically relating to sexual offenders must be compiled.

Amendment of the National Guidelines

The Correctional Services National Guidelines should be amended to provide that a sexual offender should not be allowed access to a copy of this report or the disclosure of the victims' particulars.

Rehabilitation programmes

Warrants of committal to prison do not contain details of the specific offence committed by the offender. These details are crucial to assess the

suitability of offenders for rehabilitation programmes and for purposes of parole. It is recommended that the SAPS amend the SAP 69 form to include details of the offence which may be required to make an informed decision regarding the rehabilitation programme made available to the offender. It is important that this and any other relevant information must be conveyed from the Departments of Justice and Safety and Security to the Department of Correctional Services in a confidential manner.

The Guidelines be amended to place an obligation on the Department of Correctional Services to inform victims of sexual offences of the programmes which the offender has attended or is involved in.

The Department of Correctional Services should, as a matter of priority, introduce and administer treatment and rehabilitation programmes for sexual offenders in particular. Staff providing assessment and treatment services in the Correctional Services environment should be adequately trained and supported in this specialised field of work.

Bail hostels

The concept of bail hostels should be investigated and if feasible be established.

37. Department of Education

Awareness campaigns should be conducted by schools and local government structures to make it comfortable and acceptable for children to speak out with confidence in a responsive child protection system.

Ongoing life skills programmes should also be introduced as part of the fixed syllabus in schools.

Awareness, information and education programmes should be launched and conducted by the appropriate government department(s) for all levels of civil society about what to do and where to go when a person discloses sexual abuse.

38. Social Welfare Agencies, NGOs Counselling and Advocacy Services

All persons who work in the field of servicing victims of sexual offences and NGOs who wish to assist sexual offence victims or offenders should undergo an accredited training course.

Standards or codes of good practice must be developed in order to ensure quality service.

Training and guidance on the preparation and compilation of reports for submission to court must be included in the accredited training course.

Annexure C: Institutions consulted

The institutions listed below have been consulted in the process of drafting this White Paper. Codes used in the list denote the following:

- 1 Draft policy circulated to institution for comment
- 2 Institution requested to provide written policy input, through Network Against Child Labour
- 3 Representative of institution attended consultative workshop(s)
- 4 Meetings held with senior representatives of institution
- 5 Institution forms part of Steering Committee of the CLAP policy process

In addition, Draft 2 of the paper was supplied to the Network Against Child Labour for circulation to its affiliates.

1. National Government

Department of Agriculture, 1, 3
Department of Correctional Services, 1
Department of Education, 1, 3, 4, 5
Department of Foreign Affairs, 1
Department of Home Affairs, 1, 3, 4
Department of Justice and Constitutional Development, 1, 3, 4, 5. Also provincial offices: N Cape, 3; North West, 3; W Cape, 3
Department of Labour, 1, 3, 4, 5. Also provincial offices: Eastern Cape, 1, 3; Free State, 2; Gauteng, 1, 3; KZN, 2; Mpumalanga, 2, 3; N Cape, 1, 2, 3; North West, 3; W Cape, 3
Department of Land Affairs, 1, 3, 4
Department of Mineral and Energy Affairs, 1, 3, 4. Also provincial offices: Mpumalanga, 1, 3; N Cape, 1, 3
Department of Provincial and Local Government, 1, 3, 4, 5
Department of Public Works, 1, 3, 4
Department of Social Development, 1, 3, 4, 5
Department of Trade and Industry, 1, 3, 4
Department of Transport, 1
Department of Water Affairs & Forestry, 1, 3, 4
National Directorate of Public Prosecutions, 1, 3
National Treasury, 1, 3
NPA Office of the Right of the Child, 1, 3, 4, 5
South African Police Service (SAPS), 1, 3, 4, 5. Other offices: CPU Eastern Cape, 3; CPU Free State, 3; CPU N Cape, 3; CPU North West, 3; CPU Soweto, 3; FCS Unit Carletonville, 2; FCS Unit, PMB, 3
South African Revenue Services, 1
Statistics SA, 1, 3, 4
The Presidency, 1

2. Provincial Government

Commissioner of Child Welfare North West, 3
Crime Stop Misdaad N Cape, 1, 3
Department of Sport Recreation Arts and Culture Mpumalanga, 3
Department responsible for Agriculture E Cape, 1; Free State, 1; Gauteng, 1; KZN, 1; Limpopo, 1; Mpumalanga, 1, 3; N Cape, 1, 3; N West, 1; W Cape, 1, 3
Department responsible for Education E Cape, 1, 3; Free State, 1, 3; Gauteng, 1, 2, 3; KZN, 1, 3; Limpopo, 1, 3; Mpumalanga, 1, 3; N Cape, 1, 2, 3; N West, 1; W Cape, 1, 3
Department responsible for Health Free State, 2
Department responsible for Local Government Limpopo, 1; E Cape, 1; Free State, 1; Gauteng, 1; KZN, 1; Mpumalanga, 1; N Cape, 1; N West, 1; W Cape, 1
Department responsible for Social Services E Cape, 1; Free State, 1, 3; Gauteng, 1, 2, 3; KZN, 1, 3; Limpopo, 1; Mpumalanga, 1, 3; N

Cape, 1, 3; W Cape, 1, 3; North West, 1, 3
Education Support Services N Cape, 1, 3
Office of the Premier Gauteng, 1, 3
Office of the Premier Mpumalanga, 1, 3
Office of the Rights of Children in Office of Premier (Eastern Cape), 1, 3
Office of the Status of Women – Premier’s Office (Free State), 1, 3
Office on the Rights of Children in Premier’s Office Limpopo, 3
Project Bua Department of Health, 2
Provincial Legislature Limpopo, 1, 3
Provincial Youth Commission N Cape, 1, 3

3. Parliament

Portfolio Committee: Agriculture & Land Affairs, 1
Portfolio Committee: Health, 1
Portfolio Committee: Home Affairs, 1
Portfolio Committee: Improvement of Quality of Life and Status of Children, Youth and Disabled, 1
Portfolio Committee: Justice and Constitutional Development, 1
Portfolio Committee: Labour, 1, 3
Portfolio Committee: Mineral and Energy Affairs, 1
Portfolio Committee: Provincial & Local Government, 1
Portfolio Committee: Safety & Security, 1
Portfolio Committee: Social Development, 1
Portfolio Committee: Water Affairs & Forestry, 1

4. Local Government

Capricorn District Municipality, 1, 3
City of Cape Town, 1, 3
City of Tswane Metro Municipality, 1, 3
City Policy - Cape Town, 3
Mafikeng District Office, 3
Mangaung Local Municipality, 1, 3
Merafong City Municipality, 2
Seme Municipality, 1, 3
Sol Plaatje Municipality, 3

5. Trade Unions / Employer Organisations / Business

Agriculture South Africa, 1, 3
Business South Africa, 1, 3, 4, 5
Congress of SA Trade Unions (COSATU), 1, 3, 4, 5
Deciduous Fruit Producers Trust, 1, 3
Federation of Unions of South Africa (FEDUSA), 1, 3, 4, 5
Food and Allied Workers Union, 3
NACTU, 1, 3, 4

NAPTOSA, 3
National Congress of Trade Unions (NACTU), 1, 3, 4, 5
NEHAWU, 3
North West Employers Organisation, 3
SAAPAWU, 3
SACCAWU, 1, 3
SACOB, 1, 3, 4
SADTU, 1, 3
South African Independent and Allied Workers Union, 1, 3
United Private Sector Workers Union, 3
UTATU, 3

6. NGOs and similar

Abuse & Disable Victim Support Group, 3
Action Group for Children in Distress, 1, 3
Adullam Community Project, 1, 3
Adventist Development and Relief Agency (ADRA), 2
Advocacy on Child Labour, 3
African Child Development Trust, 2
Afrikaner Christelike Vroue Vereniging (ACVV), 2
Aganans Bana Community Project (ABCP), 2
Alexandra Catholic Young Adult Group, 2
Algoa Bay Charitable Trust, 2
Amari Skool, 2
Angels Brigade Organisation, 2
Anti Discrimination Task Team, 1, 3
ARISE, 1, 3
Artists and Activists Networking to End the Exploitation of Child Domestic Workers, 1, 3
Association for Community and Rural Advancement, 2
Association for Rural Advancement (AFRA), 1, 3
Association for Persons with Disabilities, 3
Befrienders, 2
Black Sash, 1, 3
Bloodriver Advice Office, 2
Bonteheuwel Multi Purpose Centre, 3
Cape Flats Development Association, 2
Cape Town Child Welfare Society, 2
Care Community Research and Development Centre, 2
Careers Research and Information Centre (CRIC), 2
Catholic Justice and Peace (South African Catholic Bishop's Conference), 2
Cathulani Child and Family Welfare Society, 2
Centre for Community Law and Development, 2
Centre for Human Rights, Community Advice and Development, 2
CETEC, Local Skills Development Forum, Badirammogo, 2
Change for Better, 2
Charity and Help Ministry, 2
Child & Youth Research & Training Unit Programme, 1, 3
Child and Family Welfare Potchefstroom, 2
Child and Family Welfare Society Bloemfontein, 2
Child and Family Welfare Society of Pietermaritzburg, 2
Child Link Alberton, 2
Child Welfare (Orkney, Stilfontein, Alabama), 2
Child Welfare Pinetown, 2
Childline Free State, 2
Childline KZN, 2
Communities Outreach Forum Victims of Child Abuse, 1, 3
Community Chest Port Elizabeth, 2
Concerned People Against Abuse, 2
Custoda Trust, 2
Deketso E Seng Depuo Community Development Trust (DEDI), 2
Durban Children's Home, 2
Durban Children's Society, 2
Early Child Development (ECD), 2
Eastern Cape Community Based Paralegal Association, 2
Fair Trade in Tourism South Africa / The World Conservation Union, 2
FAMSA, 2
Fathogang Community Empowerment Programme, 2
Ficksburg Education and Advice Centre, 2
Free State Anti Poverty Social Society, 2
Gang Prevention, 1, 3
Gauteng Children's Rights Issues, 1, 3
Gauteng Hawkers Association – Eloff Street, 3
Goldfields Family Advice Organisation, 2
Grassroots Adult Education and Training Trust, 2
Greater Benoni Child Welfare Society, 2
Greater Germiston Society for Child and Family Welfare, 2
Gun Free South Africa, 1, 3
Helping Hands, 2
Hope Now Prison Ministry, 1, 3
Human Resource and Social Information Centre, 2
Johannesburg Children's Home, 2
Kempton Park Child and Family Welfare Society, 2
Kidz Care Trust: Ikaheng Shelter, 1, 3
Kimberley Childcare, 2, 3
KwaMashu Child and Family Welfare, 2
KZN Land Legal Cluster, 1, 3
Lawyers for Human Rights, 1, 3
Lawyers for Human Rights Gauteng, 2
Legal Resources Centre, 1, 2, 3
Lehlabile Community Development & Empowerment Services, 1, 3
Lerato House - Pretoria Community Ministries, 2
Lesedi Counselling and Care Centre (LCCC), 2
Lesedi Educare Association, 2
Lifeline Klerksdorp, 2
Lifeline Mafikeng, 3
Lifeline Nelspruit and Childline Mpumalanga, 2
Lowveld Alcohol and Drug Help Centre, 2
Masego Advice Centre Bloemfontein, 2
Masisukumeni Women Crisis Centre, 2
Masonwabisane Women's Support Centre, 3
Matete Matches Secure Care Centre Kroonstad, 2
Mental Health Society P.E., 2
Messina Legal Advice, 3
Molo Songololo, 1, 3
Molotech, 2
Natal Blind and Deaf Society, 2
National Children's Rights Committee, 1, 3
National Community-Based Paralegal Association (Northern Cape), 2
Nazareth House, 2
Nelspruit Justice Centre, 2
Neo Birth Pregnancy Crisis Centre Lighthouse Children's Shelter, 2
Network Against Child Labour, 1, 2, 3
New Women's Movement, 3
NICRO, 1, 2, 3
Nkomazi Advice Office, 2
Nkunzi Development Association, 3
North West Child Helpline Centre for Community and Law Development, 2
Northern Cape Children's Rights Committee, 2
Northern Cape Educare Trust, 2
O Lerato Health Care, 2
One-Stop-Child Justice Centre, 1, 3
OR Tambo Community Active Trust, 2
Phoenix Child & Family Welfare Society, 2
Port Elizabeth Childline and Family Centre, 2
Port Elizabeth. Mental Health, 2
Project for Conflict Resolution and Development, 2
Project for the Establishment of Pre-primary and Primary School (PEPPS), 2
RAPCAN, 1, 3
Re A Kgona Special Needs Care Centre and Disabled Children Action Group, 2
Reratile Development Institution, 2
Rhema New Life Church, 2
Rural Women's Movement, 3
SA National Council for Child and Family Welfare KZN, 2
SA National Council for Child and Family Welfare Port Shepstone, 2
SA National Council for Child Family Welfare Bethlehem, 2
SA National Council for Child Welfare, 1, 3
SALESIANS / Youth Unlimited, 1, 3
SANCA, 1, 3

SANGOCO, 1, 3
School of Family and Public Health Medicine (Natal University), 1, 3
Sexual Harassment Education Project, 3
Sinethemba Children's Centre, 1, 3
Sisthabile Child & Youth Centre, 1, 2, 3
Social Services Protocol c/o Saartjie Baartman Centre, 3
Society for the Prevention of Cruelty to Prisoners, 3
South African Council of Churches Youth Forum, 2
South African National Council for Alcoholics and Drug Dependence
SANCA, 2
South African National Council for Child and Family Welfare, 2
South African National Council for Child and Family Welfare Port
Elizabeth, 2
Southern Free State Mental Health, 2
Southern Natal Welfare Forum, 2
Springs Child Welfare Society, 2
St. Francis ALC, 2
St. Joseph's Home for Children, 2
Street-Wise Pretoria, 3
Street-Wise South Africa, 1, 3
SWEAT, 1, 3
Tenure Security Co-ordinating Committee, 1, 3
Thabiso, 2
Thiba Botlokotsebe Crime Prevention Programme, 2
Thusano, 2
Tongaat Child and Family Welfare, 2
Tshireletsong Place of Safety and Children's Home, 2
Twilight Children, 2
Umzinto & District Child and Family Welfare Society, 2
United Sanctuary Against Abuse, 1, 3
Verulam Child & Family Welfare Society, 2

Women's Health and Information Services, 2
Zwide Community Active Trust 2

7. Other

AIDS Law Project WITS University, 1, 3
Campus Law Clinic (Natal University), 1, 3
Commission on Gender Equality, 1, 3
Community Law Centre UWC, 1, 3
CONTRALESA, 1, 3
Dedi Community Development Trust, 1, 3
Employment Conditions Commission, 1
International Labour Organisation, 1, 2, 3, 5 (observer)
Mahatma Gandhi District Surgeon's Office, 2
Masamane Primary School, 1, 3
Muslim Judicial Council, 1, 3
NAFCOC, 1, 3
National Research Foundation, 1, 3
NEDLAC, 1, 3
NEDLAC Community Constituency, 1, 4, 5
PPA for Children, 1, 3
SA Human Rights Commission, 1, 3
SA Law Commission, 1, 3, 4
SANGOCO Mpumalanga, 2
South African Communist Party, 2
South African Human Rights Commission, 1, 3; Free State office, 2
Top Six Taxi, 3
UNICEF, 1, 3
UNW Law Clinic, 3

Annexure D: List of Schools that participated in the policy process

About 44 schools *per province* (a total of 400 schools), all offering Grade 7, were chosen randomly and invited to participate in the policy process. This annexure contains the list of schools that submitted policy reports after running the exercises described in paragraph 1.2.4.

Eastern Cape Province Cala Community Dordrecht High Yellowwoods Preparatory Indwe High Gamtoos Vallei Laerskool	Mpumalanga Laerskool Grootvlei Laerskool Badplaas Merlin Park Primary Victory Park Combined The King's School White River School not identified in report 1 School not identified in report 2	Northern Cape Emthanjeni Primary Laerskool CRSwart Laerskool Keurtjiekloof Laerskool Groblershoop Laerskool Eureka Kimberley Junior School Laerskool Tweeriviere Laerskool Du Toitspan JJ Lambert Laerskool Laerskool Keidebees Hoërskool Nuweru Laerskool Aggeneys Hoërskool Barkley-Wes Hoërskool Victoria-Wes
Limpopo Province Laerskool Duiwelskloof Little Bedfordview Primary Raphela Primary David Nkoana Primary School School not identified in report 1 School not identified in report 2	Gauteng Daxina Primary Newclare Primary Rosebank Primary Sir Edmund Hillary Primary Florida Primary Laerskool Betsie Verwoerd School not identified in report 1	
Kwazulu-Natal Province Naidoo Memorial Primary Soul Primary Ays Memorial Primary North Crest Primary Scottburgh Primary Victoria Primary Cordwalles School Panorama Primary	Free State Hoërskool Retief Bethlehem Gekombineerde Skool Graanveld Primary Laerskool Willem Postma Senzile Primary Jim Fouché Sentraal Primary	Western Cape Aristea Primary Mfuleni Primary Towerkop Primêr Holy Cross Convent De Vrij Zee Primary Pinelands Primary Laerskool Edward Elsiesrivier Primêre Skool Holy Trinity Primary School Matroosfontein Laerskool Hillside School not identified 1
North West Province Potchefstroom Central School Zeerust Primary Laerskool Wolmaranstad Laerskool Meiringspark Thornhill Primary DP Kgotleng School	Prov & school unknown School not identified in report	
