



Children's Amendment Bill: changes required to address issues related to child labour

August 2006

Department of Labour



REPUBLIC OF SOUTH AFRICA



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Programme *Towards the Elimination of the worst forms of
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SUBMISSION OF THE DEPARTMENT OF LABOUR TO THE DEPARTMENT OF SOCIAL DEVELOPMENT REGARDING PROPOSED TEXT FOR THE CHILDREN'S AMENDMENT BILL

Amendments required to address issues related to child labour in the Children's Amendment Bill

Urgent amendments required to address issues related to child labour and Worst Forms of Child Labour in the Children's Amendment Bill

30 August 2006 (A)

1 INTRODUCTION

For the majority of South African children, childhood is characterised by a range of factors which exacerbate their vulnerability to abuses of various kinds. High levels of sexual, interpersonal and community violence, the deep poverty in which many of them live, their lack of access to the basics of human survival – including adequate housing, health care, nutrition and education, the HIV pandemic, and a generally poor understanding of children as the holders of rights in their own right are literally creating a situation of childhood in crisis. The roots of these problems lie in our colonial and apartheid history, and in the deeply patriarchal nature of our society in all its manifestations.

Among the array of consequences for children in the short-, medium- and long term is an increased vulnerability to being drawn into child labour in general and the worst forms in particular. According to Nicolaou and Durieux¹, poverty and the resultant lack of access to the basics for survival are "... a significant cause of child labour since children are prepared to engage in more harmful and detrimental forms of child labour than would otherwise be the case in order to assist and alleviate the hardships their families face". These researchers found that when parents live in poverty, they tend to condone or encourage such work.

Addressing these problems fully requires a holistic and integrated approach which addresses also the broader issues in South African society: the rigid social construction of masculinity and femininity and the backlogs inherited from centuries of colonialism and apartheid. Much of this is beyond the scope of this Bill and this submission. However, the incoming legislation must ensure that childhood is restructured to a significant extent for South African children in general, and those that are vulnerable in particular. In the light of our commitments to protecting the rights of children, articulated by our ratification of a range of international human rights instruments¹, and our own Constitution, it is incumbent on the South African Government to address these vulnerabilities via appropriate child-rights-focused law and policy.

This submission will consider several aspects of the Draft Children's Amendment Bill (07 April 2006) with regard to prevention, early intervention and tertiary intervention in cases of children found to be at risk of, or already drawn into, child labour.

2 HOW MANY CHILDREN ARE WORKING IN SOUTH AFRICA?

The household-based "Survey of Activities of Young People" (SAYP) commissioned by the Department of Labour in 1999 found that 45% of children were undertaking at least one hour of 'economic' work a week, and/or five or more hours of school-related work and/or seven or more hours of household chores. Around 1.7 million children (12.5%) were involved in 12 hours of

¹ In this regard, the key conventions related to child labour are the Minimum Age Convention of 1973 and the Worst Forms of Child Labour Convention of 1999.

economic activities a week, and/or 12 hours of school labour, and/or 14 hours of household chores (excluding fetching of fuel and water, which is deemed to be an economic activity, which is also the most common economic activity in which children are involved). Excluding the fetching of fuel and water and unpaid domestic work from the economic activities, 2,5% of children worked for more than 12 hours a week. It is likely that the labour of such children is interfering with their schooling. It is also quite possible that the development of even some of the children working less than 12 hours a week are detrimentally affected by the work, or that they may be exploited..

With regard to the economic activities in which children are engaged for more than 12 hours per week, the SAYP established the following breakdown by industry:

Industry	Number of children spending 12 h/w + on economic activities
Subsistence agriculture	129 000
Wholesale and retail trade	86 000
Commercial agriculture	29 000
Manufacturing and construction	12 000
Private households	8 000
Total:	266 000

This is probably an underestimation of the numbers of children engaged in exploitative labour. The Survey concentrated only on children within households, thus excluding working children who live and work on the streets. Because respondents would also have been less likely to report work related to involvement in crime and prostitution, these data are not reflected in the SAYP Report. Official statistics for children involved in some of the worst forms of child labour are virtually non-existent while indications are that significant levels of such forms of child labour are found in South Africa.

In addition, the Survey is now more than 6 years old and does not reflect the growing number of children forced into labour due to the death of parents or caregivers as a result of HIV/AIDS. Stats SA's Labour Force Survey of March 2006 included questions on child labour, but the results are expected only later this year.

Information on child labour from other quarters includes the following:

- Social workers and the Child Protection Unit of the South African Police Service estimate that 28,000 children **work in the sex industry** in South Africa².
- There are no reliable statistics available with regard to **trafficking** in children, either for purposes of sexual exploitation, or for domestic or agricultural labour.
- A study conducted by the Children's Institute at the University of Cape Town indicated that many children working on farms are under-nourished and exposed to a variety of hazards such as pesticide poisoning and injuries related to farming equipment. Children living on farms are also at risk of drowning in unfenced dams and the majority are victims of, or at risk of developing, Foetal Alcohol Syndrome.³
- With regard to **children used by adults to commit crime** (CUBAC), recent research undertaken in support of the Child Labour Programme of Action (CLPA) concluded "... that, at all levels – national, provincial and local – no statistical or biographical information on the prevalence of CUBAC exists."⁴ The study found that as many as one third of children arrested for crime may have been involved in CUBAC. In one study, from the one site from which

data were available to answer the question about the numbers of children engaged in CUBAC, of the 983 arrested children at the centre, 109 were co-accused with adults. It was concluded that between 9% and 13% of the children in that district in the Eastern Cape are co-accused with adults. The co-accused children tend to be involved in more serious offences (94% were co-accused for property offences and for offences against the person).⁵

3 ISSUES OF CONCERN TO THE CHILD LABOUR PROGRAMME OF ACTION

The Child Labour Programme of Action (CLPA) was adopted by key government departments and institutions and other stakeholders in 2003. The implementation of this programme is overseen by an intergovernmental Implementation Committee (IC), whose membership includes the Department of Social Development, the Department of Justice and Constitutional Development, the National Prosecuting Authority, the South African Police Service and the Department of Education.

While the Department of Labour acts as the chair and the lead institution in the implementation of the CLPA, the CLPA and the IC recognise that many of the circumstances that lead to child labour, and most of the Worst Forms of Child Labour fall outside of the usual ambit of this Department. For example, issues related to social development are of key importance. In addition, many of the legal provisions needed to address such worst forms of child labour relate to inter-governmental functions that cannot be addressed effectively through labour law.

For that reason, the IC of the CPLA has welcomed the development of new legislation governing the dispensation for children in South Africa. It expressed the need that the Children's Act, once finalised in its entirety, should address the various situations in which children are working in as far as this cannot be addressed in labour law. This is so particularly regarding the worst forms of child labour that are prevalent in South Africa: commercial sexual exploitation of children and child trafficking, children used as water carriers by households situated far from safe water sources, and children used by adults and other children in the commission of offences.

The text suggested in the table attached to this submission relates mainly to ways of addressing vulnerability to becoming drawn into child labour on all three of the levels – primary prevention, early intervention and children in need of care and protection. Some of them, however, relate to the harmonisation of domestic law and international conventions. This has necessitated some suggested amendments to the s75 portion of the Act. Suggested text for already drafted and new clauses is given in the Department of Social Development matrix in section 4 below, with a motivation for proposed amendments or insertions given in the right hand column.

3.1 General concerns

Resourcing of services is of concern. Currently, where prevention and early intervention services are available, they are mostly delivered by NGOs and CBOs – which too often lack resources and are as a result not well-represented in rural areas. While it is clear that such services could continue to be delivered by civil society organisations, they need significant government support to do so. Where no services exist, it will be necessary to establish them. Naturally, there are concerns about the costs of these services and universal access to these – and they will be costly. This concern must be weighed against the costs of *failing to prevent* abuse and neglect – which exceed those of prevention many times over.⁶

An appropriate balance between prevention and early intervention services and formal child protection services needs to be ensured. The Children's Amendment Bill, like the present Child Care Act, relies disproportionately on the formal child protection system, which operates in large measure through the country's overstretched children's courts and its shrinking pool of social workers. This system is urgently in need of upgrading to enable it to be more effective in dealing with cases of active maltreatment of children. However, even if that was achieved, it cannot

effectively address the mass-based problems facing the hundreds of thousands of orphans and vulnerable children in our country whose problems arise from poverty in combination with HIV/AIDS and other pervasive hazards. The needs of these children can only be met through a more significant focus on primary prevention and early intervention.

Also of concern is the need for ***interdepartmental co-operation and co-ordination***. Service delivery to vulnerable children in South Africa continues to be bedevilled by a lack of co-operation and co-ordination across various sectors⁷. It is fragmented and not holistic in dealing with vulnerable children – giving rise frequently to unnecessary expenses, high levels of frustration and hopelessness, and further trauma. Under these conditions, it lacks impact and effectiveness. It is essential that a national plan for prevention and early intervention is developed in consultation with ALL role-players, including civil society. It is especially important that the Departments of Education and Social Development work closely together.

3.2 Addressing vulnerability

- At the level of ***primary prevention***:
 - it must be a purpose of this level of intervention to prevent child labour, and provision must be made for activities related specifically to do so, particularly within child-headed households;
 - designated child protection services must also provide for the prevention of child labour, especially the worst forms.
- Regarding ***early intervention***:
 - those responsible for bringing to the notice of the authorities that children are being abused or neglected must also be under obligation to do so when they conclude that a child is being subjected to a worst form of child labour;
 - designated child protection services must also provide for the investigation of children engaged in child labour;
 - ensuring that child labour is dealt with sooner rather than later.
- In terms of ***children in need of care and protection***:
 - using children for the WFCL must be made an offence;
 - children who have been subject to child labour must be identified as in need of care and protection;
 - provision must be made for residential programmes which ensure that children are not exploited or required to perform labour.

3.3 The role of schools

In a context in which significant numbers of children are subject to vulnerabilities, some of which can lead to exploitative child labour, the role of schools in primary prevention and early intervention should be emphasised. Compulsory education is a critical component of prevention and early intervention in its own right. Then, the fact that children are at school and in the class of the same teacher each day provides a unique opportunity for the early identification of vulnerable children – and a chance to do something while prevention or early intervention is still a realistic option, i.e. before the problem becomes such that a tertiary-level intervention is required. Clearly neither the Department of Social Development nor the Department of Education can implement effective prevention and early intervention programmes without an involvement of both departments at all levels – from decision-making, policy and budgeting, through to management.

4 SUGGESTED TEXT FOR CLAUSES

Existing wording of Children's Act 38 of 2005, or of draft Amendment Bill of 30 June 2006	Recommended amendments	Motivation	Amend clauses already adopted?
Interpretation 1.(1) In this Act, unless the context indicates otherwise— “abuse”, in relation to a child, means any form of harm or ill-treatment deliberately inflicted on a child, and includes— (a) assaulting a child or inflicting any other form of deliberate injury to a child; (b) sexually abusing a child or allowing a child to be sexually abused; (c) bullying by another child; (d) a labour practice that exploits a child; or (e) exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally;	Interpretation 1.(1) In this Act, unless the context indicates otherwise— “abuse”, in relation to a child, means any form of harm or ill-treatment deliberately inflicted on a child, and includes— (a) assaulting a child or inflicting any other form of deliberate injury to a child; (b) sexually abusing a child or allowing a child to be sexually abused; (c) bullying by another child; (d) a labour practice that exploits a child labour; or (e) exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally;	This recommendation is aimed at using a consistent term throughout this act, namely 'child labour', rather than sometimes using the term 'child labour' and other times 'a labour practice that exploits a child' harmonising the definition of child labour both within this Bill and with other pieces of legislation and international conventions.	Yes
Interpretation 1.(1) In this Act, unless the context indicates otherwise— “child labour” means work by a child which— (a) is exploitative, hazardous or otherwise inappropriate for a person of that age; and (b) places at risk the child's well-	Interpretation 1.(1) In this Act, unless the context indicates otherwise— “child labour” means work by a child which— (a) is exploitative, hazardous or otherwise inappropriate for a person of that age that child is prohibited from performing in terms of this Act.	This proposal allows for “child labour” to be defined with greater precision by including within its ambit all forms of work that are prohibited by legislation for children. It clarifies that it includes worst forms of child labour (as defined) and then brings in the qualitative test on what is considered child labour in the Constitution (s 28(1)(f)) and at international law. This will make the	Yes

Existing wording of Children's Act 38 of 2005, or of draft Amendment Bill of 30 June 2006	Recommended amendments	Motivation	Amend clauses already adopted?
being, education, physical or mental health, or spiritual, moral, emotional or social development;	<u>the Basic Conditions of Employment Act (Act No 75 of 1997) or any other law;</u> <u>(b) is a worst form of child labour; And any other work that is exploitative, hazardous or otherwise inappropriate for a child of that age, or</u> places at risk the child's well-being, education, physical or mental health, or spiritual, moral, emotional or social development;	evaluation of what constitutes "child labour" more objective and assist with the implementation of this Act. It will also harmonise its application with related legislation and applicable international conventions.	
Interpretation 1.(1) In this Act, unless the context indicates otherwise— "exploitation", in relation to a child, includes— (a) all forms of slavery or practices similar to slavery, including debt bondage or forced marriage; (b) sexual exploitation; (c) servitude; (d) forced labour or services; (e) child labour prohibited in terms of section 141; and (f) the removal of body parts;	Interpretation 1.(1) In this Act, unless the context indicates otherwise— "exploitation", in relation to a child, includes— (a) all forms of slavery or practices similar to slavery, including debt bondage or forced marriage; (b) sexual exploitation; (c) servitude; (d) forced labour or services; (e) child labour prohibited in terms of section 141; and (f) (e) removal of body parts;	This amendment is consistent with above proposal in respect of the definition of the "child labour" and ensures that the Act's protection mechanism can be applied in respect of children who are required to perform, or at risk of performing, any form of prohibited child labour and any forced labour.	Yes
Interpretation Insert the following definition of "worst form of child labour"	Interpretation 1.(1) In this Act, unless the context indicates otherwise— <u>"worst form of child labour" in relation to a child is –</u> <u>(a) slavery or practices similar to slavery with respect to a child including but not limited to –</u>	The proposed new definition of "worst forms of child labour" defines this concept in a manner that is consistent with the International Labour Organisation's Worst Forms of Child Labour Convention which South Africa has ratified and with which all legislation dealing with child labour must comply.	No

Existing wording of Children's Act 38 of 2005, or of draft Amendment Bill of 30 June 2006	Recommended amendments	Motivation	Amend clauses already adopted?
	<u>(i) the sale or trafficking of a child,</u> <u>(ii) debt bondage and serfdom;</u> <u>(iii) forced or compulsory labour,</u> <u>including but not limited to, forced or compulsory recruitment of a child for use in armed conflict;</u> <u>(b) using, recruiting, procuring or offering a child for the commission of any offence listed in Schedule 1 or Schedule 2 of the Criminal Procedure Act, 1977;</u> <u>(c) using, recruiting, procuring or offering a child for the purposes of commercial sexual exploitation or for the production of pornography;</u> <u>(d) any form of child labour listed as a worst form of labour in regulations made in terms of the Basic Conditions of Employment Act, No 75 of 1997;</u>		
Child in need of care and protection 150. (1) A child is in need of care and protection if, the child — (a) has been abandoned or orphaned and is without any visible means of support; (b) displays behaviour which cannot be controlled by the parent or care-giver; (c) lives or works on the streets or begs for a living; (d) is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency;	Child in need of care and protection 150. (1) A child is in need of care and protection if, the child — (a) has been abandoned or orphaned and is without any visible means of support; (b) displays behaviour which cannot be controlled by the parent or care-giver; (c) lives or works on the streets or begs for a living; (d) is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency; <u>(e) has been exploited or subjected to child labour or lives in circumstances that expose the child to exploitation or child labour;</u> (f) lives in or is exposed to circumstances	This recommendation clarifies that the statutory intervention mechanisms for the protection of children can be applied in respect of all children who are performing, or are at risk of performing, any form of prohibited child labour. It will allow for early intervention and access to appropriate services in cases where child are subjected to, or at risk of, child labour.	Yes

Existing wording of Children's Act 38 of 2005, or of draft Amendment Bill of 30 June 2006	Recommended amendments	Motivation	Amend clauses already adopted?
(e) has been exploited or lives in circumstances that expose the child to exploitation; (f) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being; (g) may be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child; (h) is in a state of physical or mental neglect; or (i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person under whose control the child is. (2) A child found in the following circumstances may be a child in need of care and protection and must be referred for investigation by a designated social worker in terms of section 155(2): (a) a child who is a victim of child labour; (b) an unaccompanied foreign child; (c) a child who is a victim of	which may seriously harm that child's physical, mental or social well-being; (g) may be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child; (h) is in a state of physical or mental neglect; or (i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person under whose control the child is. (2) A child found in the following circumstances may be a child in need of care and protection and must be referred for investigation by a designated social worker in terms of section 155(2): (a) a child who is a victim of child labour; (b) an unaccompanied foreign child; (c) a child who is a victim of trafficking; (e) a street child; and (f) a child in a child-headed household.		

Existing wording of Children's Act 38 of 2005, or of draft Amendment Bill of 30 June 2006	Recommended amendments	Motivation	Amend clauses already adopted?
trafficking; (e) a street child; and (f) a child in a child-headed household. Insert a subsection (3)	<u>(3) If after investigation, a social worker finds that a child is or is likely to be a victim of child labour, the social worker must advise a labour inspector.</u>	The proposed 150(3) requires that social workers refer instances of prohibited child labour that they may encounter to the Department of Labour. That department will then be in a position to investigate further and, if necessary, take further steps such as the institution of prosecutions in terms of applicable labour laws. It will then also enable the recordal of instances of child labour that have been found.	No
Reporting of child in need of care and protection 105. (1) Any teacher, medical practitioner, psychologist, dentist, registered nurse, physiotherapist, speech therapist, occupational therapist, traditional health practitioner, legal practitioner, social worker, social service professional, minister of religion, religious leader, member of staff at a partial care facility, shelter, drop-in centre or child and youth care centre, labour inspector or police official who on personal observation concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, must report that conclusion to the	Reporting of child in need of care and protection 105. (1) Any teacher, medical practitioner, psychologist, dentist, registered nurse, physiotherapist, speech therapist, occupational therapist, traditional health practitioner, legal practitioner, social worker, social service professional, minister of religion, religious leader, member of staff at a partial care facility, shelter, drop-in centre or child and youth care centre, labour inspector or police official who on personal observation concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, <u>or subjected to a worst form of child labour</u> must report that conclusion to the provincial department of social development, a designated child protection organisation, police official or clerk	This recommendation extends the statutory reporting duty placed on a range of professionals and other responsible persons to cases involving a suspected worst form of child labour. This will improve the provision of early intervention and protection services to these children.	No

Existing wording of Children's Act 38 of 2005, or of draft Amendment Bill of 30 June 2006	Recommended amendments	Motivation	Amend clauses already adopted?
provincial department of social development, a designated child protection organisation, police official or clerk of the children's court.	of the children's court.		
Provision of designated child protection services 106. (4) Designated child protection services include – (a) services aimed at supporting – (i) the performance by clerks of children's courts; and (ii) the proceedings of court orders; (b) services relating to – (i) early intervention services ordered by the court; (ii) the reunification of children in alternative care with their families; (iii) the integration of children into alternative care arrangements; (iv) the placement of children in alternative care; and (v) the adoption of children, including inter-country adoptions; (c) the carrying out of investigations and the making of assessments, in cases of suspected abuse, neglect or abandonment of children; (d) intervention and removal of	Provision of designated child protection services 106. (4) Designated child protection services include – (a) services aimed at supporting – (i) the performance by clerks of the children's court of their functions; (ii) the proceedings of children's courts; and (iii) the implementation of court orders; (b) services relating to – (i) early intervention services ordered by the court; (ii) the reunification of children in alternative care with their families; (iii) the integration of children into alternative care arrangements; (iv) the placement of children in alternative care; and (v) the adoption of children, including inter-country adoptions; <u>(vi) the investigation and prevention of child labour, including worst forms of child labour;</u> (c) the carrying out of investigations and the making of assessments, in cases of suspected abuse, neglect or abandonment of children <u>or of children who have been subjected to child labour;</u>	These recommendations ensures that designated child protection services are made available to children who have been subjected to, or at risk of, prohibited child labour, including the worst forms of child labour.	No.

Existing wording of Children's Act 38 of 2005, or of draft Amendment Bill of 30 June 2006	Recommended amendments	Motivation	Amend clauses already adopted?
(d) subject a child to child labour; (e) employ a child contrary to the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997); (f) use, procure, offer or employ a child for purposes of commercial sexual exploitation; (g) use, procure, offer or employ a child for illicit activities, including drug production and trafficking; (h) force a child to perform labour; (2) Subsection (1)(a) does not prevent the performance of labour by a child, whether for reward or not – (a) subject to the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), in an advertisement, in sport or in an artistic or cultural event, provided that such engagement does not place the child's well-being, education, physical or mental health or spiritual, moral or social development at risk; or (b) in work which is carried out within the framework of a programme registered in terms of the Non Profit Organisations Act, 1997 (Act No. 71 of 1997) and that is designed to promote personal development and vocational training.	<u>not be interpreted as permitting any work by a child that is prohibited in terms of the Basic Conditions of Employment Act or any other law.</u> <u>(3) If a person is convicted of a offence in terms of sub-section 1(a) the court on convicting that person and determining a sentence must take into account that –</u> <u>(a) that South Africa has ratified the International Labour Organisation's Worst Forms of Child Labour Convention, 1999;</u> <u>(b) that the offence constitutes a worst form of child labour in terms of that Convention.</u>	Child Labour Convention which South Africa has ratified and which all legislation dealing with child labour must comply with. Likewise sexual abuse is criminalised	
Purposes of prevention and early	Purposes of prevention and early		No

Existing wording of Children's Act 38 of 2005, or of draft Amendment Bill of 30 June 2006	Recommended amendments	Motivation	Amend clauses already adopted?
intervention services or programmes 144. (1) Prevention and early intervention services or programmes must focus on: (a) Preserving a child's family structure; (b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children; (c) establishing appropriate interpersonal relationships within the family; (d) promoting the well-being of children and the realisation of their full potential; (e) preventing the neglect, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children's needs; (f) preventing the recurrence of problems in the family environment that may harm children or adversely affect their development; (g) diverting children away from the child and youth care system and the criminal justice system; and (h) avoiding the removal of a child from the family environment.	intervention services or programmes 144. (1) Prevention and early intervention services or programmes must focus on: (a) Preserving a child's family structure; (b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children; (c) establishing appropriate interpersonal relationships within the family; (d) promoting the well-being of children and the realisation of their full potential; (e) preventing the neglect, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children's needs; (f) preventing the recurrence of problems in the family environment that may harm children or adversely affect their development; (g) diverting children away from the child and youth care system and the criminal justice system; and (h) avoiding the removal of a child from the family environment; and <u>(i) preventing children from being subject to exploitation or child labour.</u>	This recommendation is made to ensure that the purpose of prevention and early intervention services and programmes includes the prevention of or early intervention in situations on which children are vulnerable to being drawn into child labour.	
	Insert the following new section after	This is an amended version of clause 236 in the original SA Law Commission Draft	No

Existing wording of Children's Act 38 of 2005, or of draft Amendment Bill of 30 June 2006	Recommended amendments	Motivation	Amend clauses already adopted?
	section 147 148 Responsibilities of school principal <u>The principal of a public or private school must on a confidential basis –</u> <u>(a) identify children who are frequently absent from school as a result of performing child labour or excessive household responsibilities, or as a result of a lack of appropriate family care;</u> <u>(b) take all reasonable steps to assist children contemplated in sub-paragraph (a) to return to school and to discourage them from leaving school;</u> <u>(c) submit the names and addresses of those children to an appropriate prevention or early intervention programme or alternative support service, or to the nearest office of the Department of Social Development for assistance; and</u> <u>(d) submit the names and addresses of those children to the provincial head of Social Development, for purposes of data-gathering and planning.</u>	Bill. It recognises the school as a vital context for identifying children who are in the beginning stages of falling onto the social margins due to poverty and/or the death or illness of caregivers, and/or of being caught up in child labour including worst forms such as prostitution, and/or of moving onto the streets. There is no other context which has the same potential for prevention and early intervention, and there is no possibility of an effective and comprehensive approach to prevention and early intervention which does not utilise schools as focal points. In response to any argument that such a function is not within the ambit of the Children's Bill, it could be pointed out that the Minister of Education and the education sector are already required to perform a number of functions in terms of the Bill, and also of the present Child Care Act. Areas of responsibility include certain categories of child and youth care centre as well early childhood development. All teachers are also mandatory reporters of child abuse in terms of clause 105.	
Child and youth care centre 191. (3) A child and youth care centre may in addition to its residential care programmes, offer— (a) the provision of appropriate	Child and youth care centre 191. (3) A child and youth care centre may in addition to its residential care programmes, offer— (a) the provision of appropriate care and	This recommendation is made to ensure that programmes and services offered by child and youth care centres may include programmes	No

Existing wording of Children's Act 38 of 2005, or of draft Amendment Bill of 30 June 2006	Recommended amendments	Motivation	Amend clauses already adopted?
care and development of children with physical or mental disabilities or chronic illnesses; (b) the treatment of children for addiction to dependence-producing substances; or (c) any other service that may be prescribed by regulation.	development of children with physical or mental disabilities or chronic illnesses; (b) the treatment of children for addiction to dependence-producing substances; or (c) programmes to ensure that children are not exploited or permitted, required, or encouraged to perform child labour; or (d) any other service that may be prescribed by regulation.	discouraging or protecting children from being drawn into child labour.	
Offences	Amendment of section 305 of Act 38 of 2005 Section 305 of the Principal Act is hereby amended by the insertion of "142(1)" after "133(1) in section 305(1)(b).	This is an amendment consequential on the proposed new section 141 and is necessary to ensure that worst form of child labour and sexual abuse are criminal offences.	No

¹ Nicolaou, K and Duriex, M. 2005. *Addressing Child Rights and Child Labour – A Poverty Strategy for South Africa?*

Presented at an IDASA Seminar on research priorities in the area of interface between child well-being and unemployment in South Africa, on 14 October 2005.

² Farrell, S. 2000. *South Africa's Sick Trade in Young Girls*. In: Molo Songololo. 2000. *The Trafficking of Children for Purposes of Sexual Exploitation – South Africa*. Cape Town, Molo Songololo.

³ Berry, L and Guthrie, T. 2003. *The Situation of Children in South Africa*. Child Poverty Programme, Children's Institute, University of Cape Town

⁴ Gallinetti, J, Kassar, D and Sloth-Nielsen, J. 2006. *Children Used by Adults to Commit Crime - Situation Analysis and Pilot Design*. Children's Rights Project, Community Law Centre, University of the Western Cape, research conducted for the Department of labour and the programme Towards the Elimination of the worst forms of Child Labour.

⁵ Muntingh, L (ed). 2003. *Children in conflict with the law: A compendium of child justice statistics 1995-2001*. Children's Rights Project, Community Law Centre, University of the Western Cape.

⁶ According to a study undertaken by the Michigan State University, the cost of preventing child abuse and neglect is 19 times less than the cost of non-prevention. Factors considered included the impacts of child maltreatment on health, development and social adjustment including juvenile and adult criminality, and the resultant costs of provision for special education, protective services, foster care, social services and the criminal justice system. The most expensive long-term consequences of child abuse and neglect are related to criminality. This has been estimated to be over US\$55 billion per annum. An Australian study found the long-term costs of child abuse and neglect to be in the order of Aus\$1,3 billion per annum. Also costly is the loss of productivity to society from adult survivors of child abuse, who are disproportionately affected by unemployment, substance abuse and many other problems – estimated in the USA to be \$656 million per annum. A New Zealand study found that the loss of earnings, extra health bills, and unmet

potential of adult survivors was costing NZ\$2.4 billion per year. Although we as yet do not have equivalent estimates for the South African context, the costs of failure to address the needs of our children are undoubtedly extremely high. Child abuse and neglect damage our human capital and are serious threats to our nation's developmental agenda.

⁷ Berry, L and Guthrie, T. 2003. *The Situation of Children in South Africa*. Child Poverty Programme, Children's Institute, University of Cape Town.