

Rights in Brief

Children's Right to Maximum Survival and Development

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1. Introduction

This rights brief is a joint production of the Child Health Services and Child Rights Programmes of the Children's Institute, University of Cape Town. The purpose of the rights brief is to analyse child survival from a human rights perspective by drawing on the relevant national and international human rights laws. An analysis of this nature will enable the identification of the rights, duties, rights-holders and duty-bearers that exist in relation to children's right to maximum survival and development – a right guaranteed in the United Nations Convention on the Rights of the Child (UNCRC) and in the African Charter on the Rights and Welfare of the Child (ACRWC) [1][2]. The overall aim of the rights brief is to contribute to existing initiatives and expand on debates related to child survival by addressing this from a rights perspective.

Child survival is inextricably linked to child development. The right to maximum survival and development speaks to a continuum that begins at maximum survival and progresses to an endpoint represented by the optimum development of the child. Children therefore have the right to survive under conditions that enable them to develop to their full potential. Although the focus of this brief is primarily on the survival element of the survival-development continuum, child survival must be understood and approached within the broader context of children's overall development.

Child survival is generally subjected to a narrow interpretation. Firstly, child survival initiatives of the World Health Organisation (WHO), the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the World Bank and other international agencies focus mainly on children under-five years. Secondly, child survival is predominantly understood within a biomedical framework in terms of mortality (deaths and related causes of death) and morbidity (diseases and disease patterns) of children under-five years. This means that child survival initiatives are dominated by the key burden of disease categories, namely communicable diseases, non-communicable diseases and childhood trauma and injuries. Child survival initiatives therefore generally focus on sick, dying and deceased children younger than five years old.

However, there have been more recent attempts to consider other contributory factors impacting on child deaths, such as those involving the mother (for example, the mother's health and

breastfeeding) and the child's surrounding environment (for example, access to water and sanitation services) [3]. From a child rights perspective, this restricted focus on the biomedical framework alone is not sufficient to give full effect to the child's right to maximum survival and development.

The right to survival and development is a general principle of the UNCRC and therefore informs the interpretation of all the articles in the Convention. This means that a wide variety of rights and obligations in the UNCRC is related to the issue of survival – not just the articles relating to the right to the highest attainable standard of health. As the UNCRC defines 'children' as all persons under the age of 18, this signifies that all children younger than 18 have a right to maximum survival and development.

The worst possible outcome of the non-realisation of a child's right to survival and development is death. The mortality of children is a complex issue as death is usually the result of several contributory factors. Lack of access to basic services, such as water and sanitation, health services, and high levels of trauma and violence aggravate the severity of the problem. A rights-based approach to child survival needs to take into account these factors and conditions, which not only affect the right of the child to survival, but also impact on the right to development. The complexity of the issue and the variety of causes contributing to child deaths means that a range of state departments have a duty to take positive action to help realise this right.

Various mechanisms have documented the extent and causes of child deaths in South Africa. However, information on children's deaths is not adequately monitored or tracked by the different information-gathering systems that exist. These monitoring and tracking systems are also not adequately co-ordinated or integrated across the different government departments or research agencies. Information on child deaths is often inaccessible or inadequate. In addition, inconsistencies can appear between several data sources because the different agencies do not use a uniform method of data collection and analysis. Improving the relevant information systems and structures as well as the quality of data will provide a meaningful contribution towards and a comprehensive understanding of enhancing child survival [4].

According to the *Demographic and Health Survey 1998*, the infant mortality rate (IMR) was 45 per 1,000 live births and the under-five

mortality (U5MR) was 59 per 1,000 live births [5]. The South African National Burden of Disease Study calculated the estimated rates for the year 2000 at 60 per 1,000 live births for the IMR and 95 per 1,000 live births for the U5MR [6]. These statistics indicate that child deaths are increasing and that more than 100,000 children die annually. National estimates show that child deaths are likely to continue to rise as a consequence of HIV/AIDS, diseases of poverty, and trauma.

UNICEF's *The State of the World's Children 2006* report ranked South Africa's child survival rates in the bottom third of all countries in the world. Furthermore, the report noted that South Africa was one of seven countries in Africa that had regressed since 1990 in terms of its child survival outcomes [7]. In other words, deaths of children under-five years have escalated. This reveals the urgent need for proactive planning by the government and all other duty-bearers on child rights to ensure that the country's commitment to child survival is met. It is for these reasons that the Children's Institute established the *Child Survival Project*.

2. The Child Survival Project

This fact sheet is a product of the *Child Survival Project* – an ongoing research and advocacy project at the Children's Institute. The project uses research evidence to raise awareness on the current state of child survival in the country, and it also advocates for integrated and co-ordinated responses to improve child survival outcomes. The vision of this project is to promote and contribute towards the development of an integrated plan for child survival, including targeted interventions designed to decrease the high number of avoidable child deaths in South Africa in the era of HIV/AIDS. The implementation of an integrated plan would affirm the country's commitment to enhance child survival prospects, a commitment stipulated in the National Programme of Action for Children drafted shortly after the country's ratification of the UNCRC. A key recommendation of the project is that Parliament initiates an annual inquiry into child survival to drive an integrated and co-ordinated government response to child mortality [8].

However, an appropriate body of evidence is needed to enable effective advocacy for enhanced child survival prospects in the country. Furthermore, the project works from a human

rights perspective and this rights brief therefore locates the child's right to survival in human rights terms, with the aim of enabling advocacy from a human rights perspective.

What is a human rights perspective?

Human rights are inherent entitlements that every person has because she or he is human. Every human right has corresponding obligations. The State and other duty-bearers are required by law to fulfil the human rights obligations contained in the UNCRC and ACRWC treaties. The obligations are diverse: at times the State is simply required not to do something; in other cases the State is required actively to do something; and in yet further situations the State is required to stop powerful people or companies from doing something that offends the human rights of less powerful and vulnerable people.

Why the Child Survival Project works from a human rights perspective

Two major human rights treaties provide strong protection to children: the UNCRC and the ACRWC. South Africa has accepted the obligations stipulated in both these treaties. South Africa also has a Constitution that vigorously protects human rights in the Bill of

Rights and affords special protection to children under section 28 of the Constitution.

Analysing child survival from a human rights perspective facilitates an understanding of who the duty-bearers are and what their obligations are in terms of children's right to survival and development. A rights perspective permits the identification of what different state departments and other role players have to do to give effect to children's right to life, survival and development. Such a perspective expands on existing work by:

- Identifying all the duty-bearers: Traditionally, the issue of child survival has been considered from a disease focus. The duty-bearers, other than those working within the field of child health, have not been identified.
- Including issues of child survival for children of all ages: The WHO, UNICEF, and other agencies have generally focused on child survival as pertaining to children under the age of five years. Legally, however, all persons under the age of 18 are recognised as children. This project therefore aims to expand the focus of previous work by broadening the scope of attention to include issues of child survival for children of all ages (that is, all children under the age of 18 years).

3. The relevant rights in the Constitution, the UNCRC and the ACRWC

This section seeks to illuminate the key rights that exist in national and international instruments that are relevant to a debate on child survival. The right to survival and development is a general principle of international law and therefore has a bearing on the interpretation of all the rights in the UNCRC and the ACRWC. **Diagram 1** displays the fundamental provisions of international law so far as these are incorporated in the UNCRC and the ACRWC.

The two treaties are presented alongside each other. The **Green Boxes** represent the provisions contained in the UNCRC; the **Orange Boxes** represent the provisions of the ACRWC. Both treaties have the same general principles (one of which is the right to maximum survival and development) and these are arranged in separate boxes on the left of the diagram. The central section of the diagram circles the corresponding articles of each treaty that relate to various aspects of children's rights (the right to social security, education, health, and so on). The **Blue Boxes** to the right of the diagram list the provisions that are found in both treaties. One difference that should be noted is the

Diagram 1: Fundamental provisions of international law incorporated in the UNCRC and the ACRWC

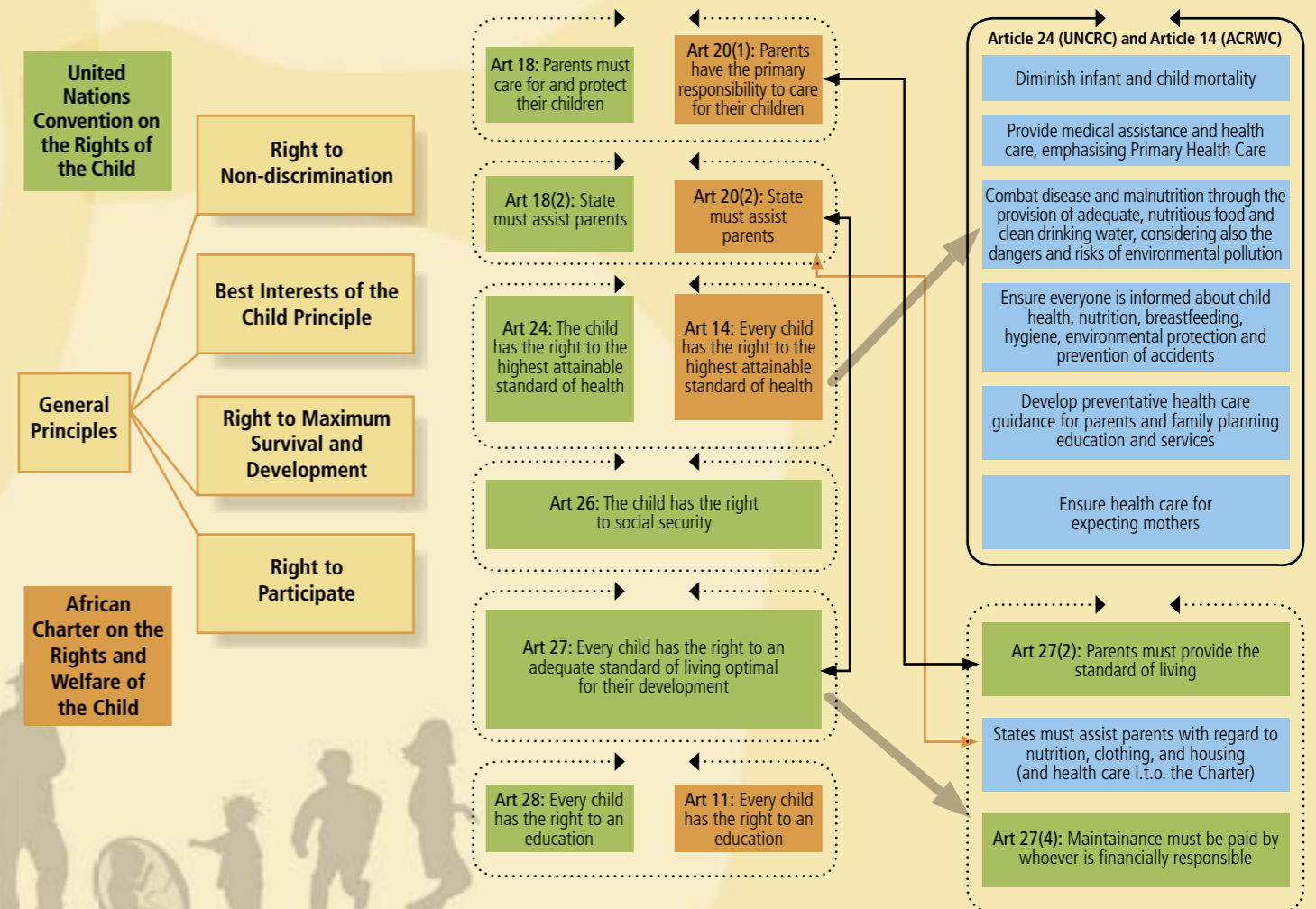
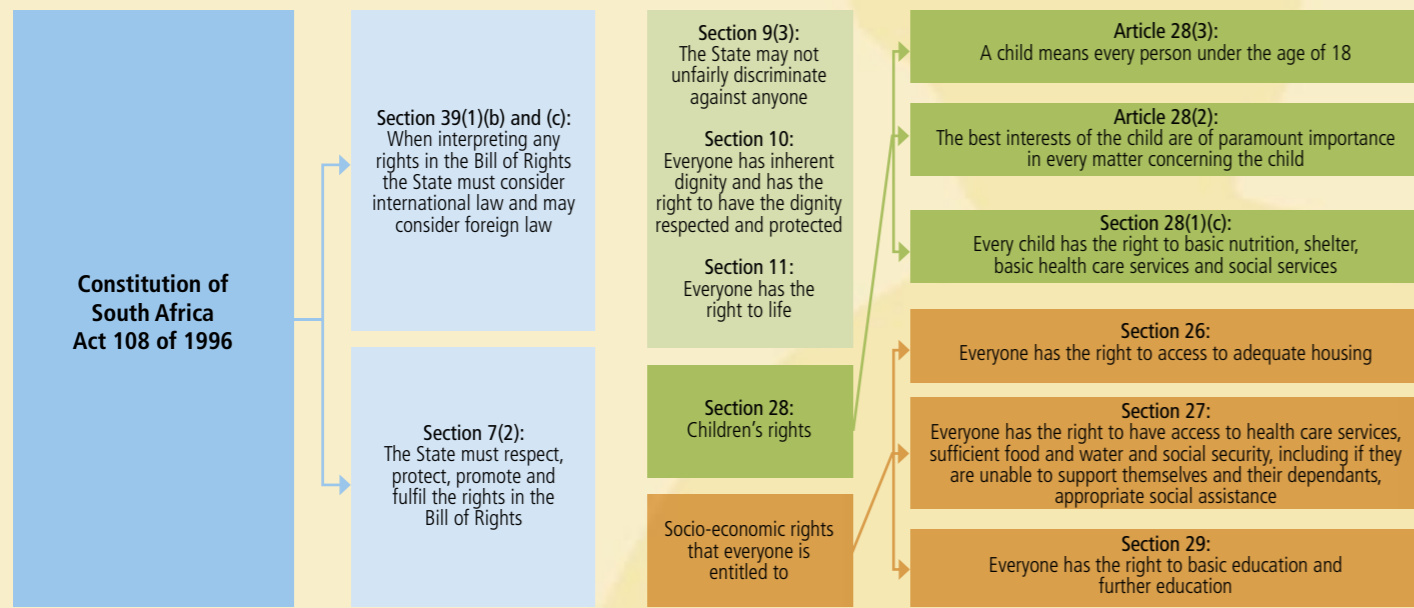


Diagram 2: Summary of children's right to survival and development in the South African Constitution



ACRWC's omission of the child's right to an adequate standard of living, something which is present in the UNCRC. The duty imposed on the State to provide material assistance to parents is incorporated through Article 20(2) of the Charter, as the arrows on the diagram indicate.

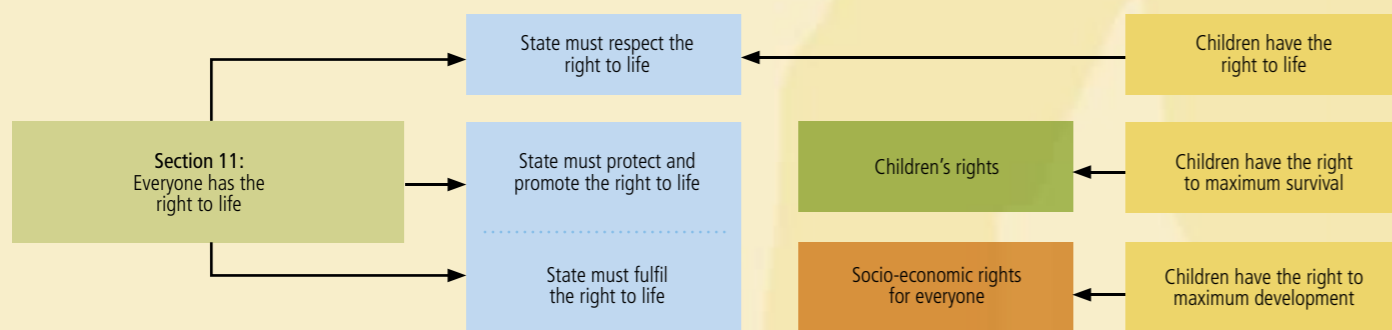
Diagram 2 provides summary evidence of the child survival rights contained in the Constitution of South Africa. Section 39 of the Constitution is relevant because it states that international law must be considered when a right in the Bill of Rights is interpreted. This means that all the rights that appear in Diagram 1 must be considered when interpreting the rights in the Bill of Rights. Secondly, Section 7 of the Constitution is important because it binds the State to discharge its responsibilities at several levels, requiring the State to respect,

protect, promote and fulfil the rights in the Bill of Rights. This means that, besides the negative duty not to take the lives of children, the State is also obliged to act in a positive manner to give effect to the rights listed in the far-right column of Diagram 2. This diagram highlights the constitutional rights to **non-discrimination** (Section 9), **dignity** (Section 10), and **life** (Section 11) as relevant to the issue of child survival. The Constitution also contains **children's rights** (Section 28), some of which are **basic socio-economic rights**. In addition, an expanded list covering a range of **socio-economic rights** (Sections 26, 27 and 29) that apply to everyone, including children, is included in the Constitution. All these rights are relevant to the right of the child to maximum survival and development.

The right of the child to maximum survival and development is not explicitly included in the Constitution of South Africa; however, its inclusion is implied through an interpretation of other rights. Diagram 3 illustrates how the right to maximum survival and development is incorporated in the Constitution.

Section 11 of the Constitution states that everyone has the right to life. The State has a duty to respect, protect, promote and fulfil the right to life in terms of the Constitution. Under international law, the child has the right to life and to maximum survival and development. The State's duty to respect the right to life in the Constitution reflects the right to life of the child as found in international law. The duty to protect and promote the right to life corresponds with the duty to ensure the right to maximum

Diagram 3: Incorporating the right to maximum survival and development from international law in the South African Constitution



survival of the child. This is reinforced in the Constitution via the specific children's rights outlined in Diagram 2. The right to maximum development corresponds with the duty to fulfil the right to life and this is reinforced by the constitutional provision of socio-economic rights that are applicable to everyone. These were also illustrated in Diagram 2. The right of the child to maximum survival and development is therefore incorporated into the Constitution through the duty to respect, protect, promote and fulfil the right to life via the children's rights clause and by way of the socio-economic rights applicable to everyone.

4. Case study: Constitutional rights violations

The purpose of this case study is to draw attention to the constitutional rights that come into play when there is an issue regarding children's right to life, survival and development.

The case study also reveals the variety of duty-bearers that have responsibilities in relation to children's right to survival. Lastly, the case study indicates what duty-bearers could do to improve the child's chances of survival and development in a manner that goes beyond the traditional focus on health issues alone.

Dali, aged 13 months, lives with his paternal grandmother in an informal settlement, together with two siblings and five other relatives. When Dali was six months old, his mother died from a long-standing illness, most probably tuberculosis (TB). Dali is small for his age and has not reached many of the appropriate developmental milestones expected of a child his age. In fact, Dali has been a rather sickly child who has suffered from repeated episodes of diarrhoea and periods of hospitalisation. The doctors and nurses at the hospital keep telling Dali's grandmother to give him water solutions and nutritious

food. However, life is hard for Dali's grandmother; the winter is coming and with it comes all the rain and more coughing. The family has just survived the fires that destroyed other shacks during the summer. The tap outside the house is leaking – a facility that they have to share with eight other families. They also have to share the toilet, which has been blocked for a long time, causing the water to run and to form a muddy pool where all the children play, including Dali.

Table 1 below draws on the main facts of the case study to illustrate the rights violations that took place. In addition, the key duty-bearers as well as their respective duties to give effect to the violated rights are identified.

The different colours reflect the different layers of obligations in both the tables: **Green** speaks to the duty to **RESPECT**, **Orange** speaks to the duty to **PROTECT**, and **Yellow** speaks to the duty to **FULFIL**.

Table 1: Identification of rights violations, duty-bearers and duties

Facts	Rights violation	Duty-bearer	Duties
Death of Dali's mother	Right to have access to health care services [Section 27(1)]	<ul style="list-style-type: none"> Department of Health 	Health care system; treating illnesses and preventing death
Poverty of Dali's family	Right to have access to social security [Section 27(1)(c)]	<ul style="list-style-type: none"> Department of Social Development South African Social Security Agency Treasury 	Cash grants would help grandmother buy food, clothing and essential commodities for Dali
Dali's repeated diarrhoea	Right to basic health care services [Section 28(1)(c)] Right to have access to sufficient water [Section 27(1)(b)]	<ul style="list-style-type: none"> Department of Health Department of Water Affairs and Forestry Department of Provincial and Local Government Treasury 	Provide Dali with oral rehydration solution and other essential treatment Ensure access to clean, uncontaminated drinking water
Shack fires	Right to have access to adequate housing [Section 26(1)] Right of children to shelter [Section 28(1)(c)]	<ul style="list-style-type: none"> Department of Housing Department of Education Department of Provincial and Local Government 	Provision of safe building materials Teaching about fires and how to prevent them Delivery of electricity
Blocked toilet	Right to have access to adequate housing [Section 26(1)] Right to have access to sufficient water [Section 27(1)(b)]	<ul style="list-style-type: none"> Department of Housing Department of Water Affairs and Forestry Department of Provincial and Local Government 	Ensure access to adequate housing, water and sanitation facilities, and basic services
Children play in muddy, contaminated water	Right to have access to adequate housing (adequacy includes areas where children can play in order to develop) Right to an environment which is not harmful to the health [Section 24(1)]	<ul style="list-style-type: none"> Department of Housing Department of Land Affairs Department of Public Works Department of Local and Provincial Government Department of Sport and Recreation 	Ensure that all neighbourhoods have areas where children can play safely

Section 10: Everyone has inherent dignity and the right to have their dignity respected and protected.
Section 11: Everyone has the right to life.
Section 28(2): The child's best interests shall be of paramount consideration in every matter affecting the child.

Table 2: Child survival provisions on state agencies

Constitution 'Everyone has the right to life'	International law	Duty	State duty-bearers
Duty to respect the right to life	Universal Declaration of Human Rights Article 3: 'Everyone has the right to life.' Covenant on Civil Political Rights Article 6: 'Every human being has the inherent right to life.' ACRWC Article 5(1) and UNCRC Article 6(1): 'Every child has the inherent right to life.'	The State may not take someone's life. The right is 'inherent' and 'non-derogable'. It is the basis of all other human rights because all the other rights depend on the right to life [9].	Department of Justice: Must enforce the laws that prevent and punish State actors who kill people. Department of Safety and Security: Police officers and members of the armed services are not allowed to arbitrarily/unlawfully kill people. Department of Correctional Services: Must ensure that people do not get killed while in detention.
Duty to protect and promote the right to life	UNCRC Article 6(2) and ACRWC Article 5(2): States must ensure to the maximum extent possible the survival and development of the child.*	The State must take positive measures to avoid preventable deaths [10]. The State must ensure that people don't take other people's lives.	Department of Agriculture: Must ensure food production to avoid starvation. Department of Health: Must take measures to avoid death, remediate/cure illness/disease/injury. Must conduct post-mortem and follow up on child deaths. Department of Home Affairs: Is responsible for the registration of births and deaths. Police Services: Must prevent crime (especially child abuse and domestic violence). Statistics South Africa: Must collect disaggregated data on child deaths. Department of Social Development: Is responsible for the payment of grants and delivery of social services. Department of Transport: Must prevent road accidents. Presidency, Office on the Rights of the Child: Monitoring and evaluation of delivery on the Children's Rights Constitutional Mandate. Departments of Water Affairs and Forestry; Local Government: Must ensure access to clean water and sanitation.
Duty to fulfil the right to life	UNCRC Article 6(2) and ACRWC Article 5(2): States must ensure to the maximum extent possible the survival and development of the child.*	Parents are primarily responsible for ensuring their children's development. The State must assist parents to access housing, nutrition, health care and education.	Department of Housing: Must ensure healthy and safe living conditions. Department of Education: Must provide syllabuses for child and adult education; teaching people to ensure survival and development. Department of Environmental Affairs: Must ensure environment suitable for healthy development. Department of Health: Must provide public health care and access to full range of health services to ensure survival and development. Department of Social Development: Is responsible for the payment of grants and delivery of social services. Local Government: Is responsible for the provision of basic services (water, sanitation, refuse removal, electricity).

* Note that only children and not adults have the right to maximum survival and development. Everyone, children and adults however, have the right to life.

5. Rights, duties and duty-bearers

As mentioned earlier, the Constitution does not explicitly deal with the right to survival and development. It does, however, contain the right to life (Section 11) and the concept of survival and development is incorporated via the inclusion of a range of socio-economic rights (Sections 26, 27, 28 and 29). Section 7(2)

of the Constitution obliges the State to respect, protect, promote and fulfil all rights, including the right to life. These obligations are used to identify the corresponding international law and duty-bearers to demonstrate the fact that child survival is a cross-cutting, multi-sectoral issue; one that requires the involvement of several role players, including non-state actors.

Table 2 above summarises the impact of the child survival provisions contained in the Constitution and under international law upon various state agencies. However, it is important to note that although the table and this rights brief focus on the State's role in safeguarding and improving child survival and development, it does not mean that the State is the only duty-bearer towards child survival.

6. Conclusion

This rights brief demonstrates that child survival and development is a cross-cutting and multi-disciplinary affair that affects a number of different rights in both the Constitution and international law. The responses to enhance child survival therefore also have to be cross-cutting and multi-disciplinary in terms of law and policy, programme implementation, service delivery and research. Finally, there are several duty-bearers who are responsible for different duties in relation to children's right to survival and development. The responses of these various duty-bearers must be co-ordinated and integrated and must filter through all levels of government and civil society. An annual parliamentary inquiry into child survival would be but one way of harnessing individual efforts into a combined (and concerted) attempt to address child survival in the country.

7. Recommendations

All government departments must be aware of what their roles are in helping to realise the rights of children, especially the right to maximum survival and development. This would require government departments to apply the general principles of the UNCRC in their decision-making processes at all times.

The principle of best interests of children is found in the Constitution (Section 28(2)); it is also a general principle of the UNCRC, together with children's rights to participate, to non-discrimination and to maximum survival and development. All government departments are bound by the 'best interests' standard and by the other general principles of the UNCRC.

The 'best interests' standard is an implementation tool for the UNCRC. It requires states to conduct child impact assessments. In other words, the standard requires states to measure and assess the impact of their actions, or indeed in-action, upon the rights of children. Action may take the form of budgets, policies, laws, or any other form of decision-making that may impact upon children. The 'best interests' standard means that, out of all the options that are available, the one that protects the best interests of children should be chosen [11].

Diagram 4 below illustrates how the general principles of the UNCRC can be practically applied to give effect to the child's right to maximum survival and development when important decisions are being made. For example, local governments, together with the Department of Water and Forestry, can use this diagram to guide their decision-making process on where to lay a water pipe.

Terminology

- **Child:** All persons under the age of 18.
- **Human rights:** Entitlements that every person has.
- **Obligations/duties:** The State and other duty-bearers have to take action to fulfil human rights.
- **Duty-bearers:** The State, institutions and civil society all have some role to play in realising human rights. Whoever has a duty is a duty-bearer.
- **Rights violations:** Failure to comply with the duties and obligations to ensure the fulfilment of human rights.
- **Treaties:** International agreements between different States (e.g., the United Nations Convention on the Right of the Child). If a State has ratified a treaty, it binds itself to the terms of the treaty. This means that the State agrees to fulfil the duties contained in the treaty and not to commit any rights violations.
- **Constitution and the Bill of Rights:** The Bill of Rights in the Constitution is a list of legally enforceable human rights applying to all South Africans. The Constitution is the highest law of the land, governing all state departments, companies, businesses and civil society.

Diagram 4: Applying the General Principles of the UNCRC in decision-making affecting children's right to maximum survival and development

Non-discrimination: Children most vulnerable to death or disease due to contaminated and unclean water (such as children with HIV/AIDS) have the right to higher protection than children less vulnerable. Also, vulnerable groups of children, such as those with disabilities and/or without adult caregivers, must be granted higher protection.

Participation: Children and their caregivers have a right to have their views heard and considered in relation to, for instance, where and how a water pipe should be laid.

Best interests of the child: The pipe must be laid where it services the interests of children the best. Children's interests, as opposed to the interests of businesses or powerful lobbying groups, are paramount.

Actively applying the principles gives effect to the right to maximum survival and development



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The *Child Survival Project* uses research evidence to raise awareness of the current state of child survival in the country with the aim of promoting and contributing towards the development of an integrated plan for child survival.

The project works from a human rights perspective and this rights brief locates the child's right to survival and development in human rights terms, with the aim of defining duty-bearers and their corresponding obligations towards children's survival from a rights-based perspective.

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