Children’s Right to Maximum Survival and Development

Mira Dutschke and Kashifa Abrahams

AUGUST 2006

Children’s Institute, University of Cape Town
1. Introduction

This rights brief is a joint production of the Child Health Services Program 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. This analysis is restricted focus on the biomedical framework alone is not sufficient to give full effect to the child’s right to maximum survival and development. 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 develop. 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.

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 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 coordinated 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 interentions 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.

The objectives of this project is that Parliament initiates an annual inquiry into child survival to drive an integrated and coordinated government response to child mortality. Furthermore, 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 ensuring advocacy from a human rights perspective.

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 is not found in 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, as far as these are incorporated in both treaties.

The two treaties are presented alongside each other. The boxes represent the provisions contained in the UNCRC, the ACRWC and both treaties. Both treaties have the same general principles (one of which is the right to 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, development, and health, and so on). The diagram is designed to provide an overview of 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

| Article 24 (UNCRC) and Article 14 (ACRWC) | Ensure child’s right to survival and development and social protection (and health care (i.e. the Charter) under section 28 of the Constitution. Analyzing 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. Such a perspective expands on existing work by: identifying all the duty-bearers. Traditionally, the issue of child survival has been considered from a child rights perspective. 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 (i.e. the UNHCR 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 recognized 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). The right to survival as a human rights obligation contains the 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, as far as these are incorporated in both treaties. The two treaties are presented alongside each other. The boxes represent the provisions contained in the UNCRC, the ACRWC and both treaties. Both treaties have the same general principles (one of which is the right to 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, development, and health, and so on). The diagram is designed to provide an overview of 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

| Article 24 (UNCRC) and Article 14 (ACRWC) | Ensure child’s right to survival and development and social protection (and health care (i.e. the Charter) under section 28 of the Constitution. Analyzing 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. Such a perspective expands on existing work by: identifying all the duty-bearers. Traditionally, the issue of child survival has been considered from a child rights perspective. 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 (i.e. the UNHCR 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 recognized 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). The right to survival as a human rights obligation contains the 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, as far as these are incorporated in both treaties. The two treaties are presented alongside each other. The boxes represent the provisions contained in the UNCRC, the ACRWC and both treaties. Both treaties have the same general principles (one of which is the right to 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, development, and health, and so on). The diagram is designed to provide an overview of the provisions that are found in both treaties. One difference that should be noted is the
Diagram 2: Summary of children’s right to survival and development in the South African Constitution

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

Diagram 4: Incorporating the right to maximum survival and development from international law

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 survival and protection. Firstly, 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 3 months, lives with his paternal grandmother in an informal settlement, together with his four younger 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 the expected weight for his age. He 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 cold and 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.
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.

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. This would require government departments to apply the general principles of the UNCRC in their decision-making processes at all times.

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 fulfill 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. References

This rights brief is a joint initiative of the Child Health Services Programme and the Child Rights Programme, both based at the Children’s Institute, University of Cape Town.

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.