

## JUSTICE: IMPROVED PROTECTION SERVICES TO CHILDREN AND WOMEN

### VITAL STATISTICS

- 55,796 ..... Number of children reported physically abused (excluding sexually), 2005
- 1,100:..... The monthly number of children awaiting trial, 2005
- 55,000 ..... Approximate number of rapes reported annually in South Africa
- 27,315..... Approximate number of rapes committed against children

### PRESENT POLICY AND LEGAL FRAMEWORK

- The Constitution of South Africa (1996).
- Domestic Violence Act (1998).
- Criminal Procedures Amendment Act (1997).
- 365 Days of Activism against Violence against Women and Children.
- Natural Fathers of Children Born out of Wedlock Act (1997).
- National Prosecuting Authority Act (1998).
- Divorce Amendment Act (1996).
- Anti-rape Strategy.



#### KEY POLICIES AND LEGISLATION THAT SHOULD BE PASSED OR REVIEWED

The following Bills need to be adopted, as their implementation will greatly improve and transform systems and services related to the protection of children and women.

##### **Sexual Offences Bill**

The following issues should be looked at:

- The definition of rape, i.e. expanding the present definition to include all forms of sexual assault and sexual violation without consent, irrespective of gender;
- Criminalizing certain sexual acts and non-consensual exposure to sexual acts and pornography, which are most commonly endured by vulnerable children;
- Comprehensive provisions dealing with the inclusion of sexual offences against children and mentally disabled persons, which were previously not covered in law, thus providing extra measures to protect the most vulnerable.
- Comprehensive provisions dealing with the provision of certain services to victims of sexual offences, including the right of the victim to apply for the alleged perpetrator to be tested for his/her HIV status, as well as the right to receive PEP in certain circumstances.
- The current Bill has excluded the provision of support for child victims of sexual crimes in court and this provision should to be reinstated.

##### **Child Justice Bill**

The following issues should be specifically looked at:

- Assessment for placement, treatment and/or sentencing of all children arrested.
- Monitoring and placement of children awaiting trial.
- Provision and availability of Secure Care Centres.
- Regular, and at times long, extension of court cases. This indicates that cases involving children are not prioritised.

- Alternative community-based sentencing/diversion and other social development programmes.

#### **Child Trafficking Legislation**

Although this proposed legislation is still in discussion and has not been tabled at parliament, it is important that parliamentarians should advocate for better services to victims of trafficking, who are primarily women and children. Services such as counselling, shelter and reintegration should be considered. Focus should also be placed on the prevention of trafficking through provision of guidelines for professionals to report trafficking. The protection of victims of trafficking, in cases where traffickers are being prosecuted, is important.

#### **BUDGET ANALYSIS**

The budget for Justice and Constitutional Development was increased from R5,46 billion in 2005/06 to R6,27 billion in this financial year. The largest share of the budget (66%) goes to Court Services and the Prosecuting Authority. The Department of Justice and Constitutional Development indicates in its 2006 Estimates to National Expenditure that it is committed to delivering on the following three key strategic areas, ensuring access to justice for all South Africans, modernising justice services, and transforming justice.

#### **Child Protection**

While special allocation has been made to what is referred to as "social sector employment programmes" which include home-based community care, ECD, care of child-headed households and management of children in conflict with the law, the issues of child protection specifically are not clearly addressed. There is little or no response to the fact that there is a continuous upward trend of violence against children, and a financial commitment is required to address the issue.

#### **Crime prevention and Infrastructure development.**

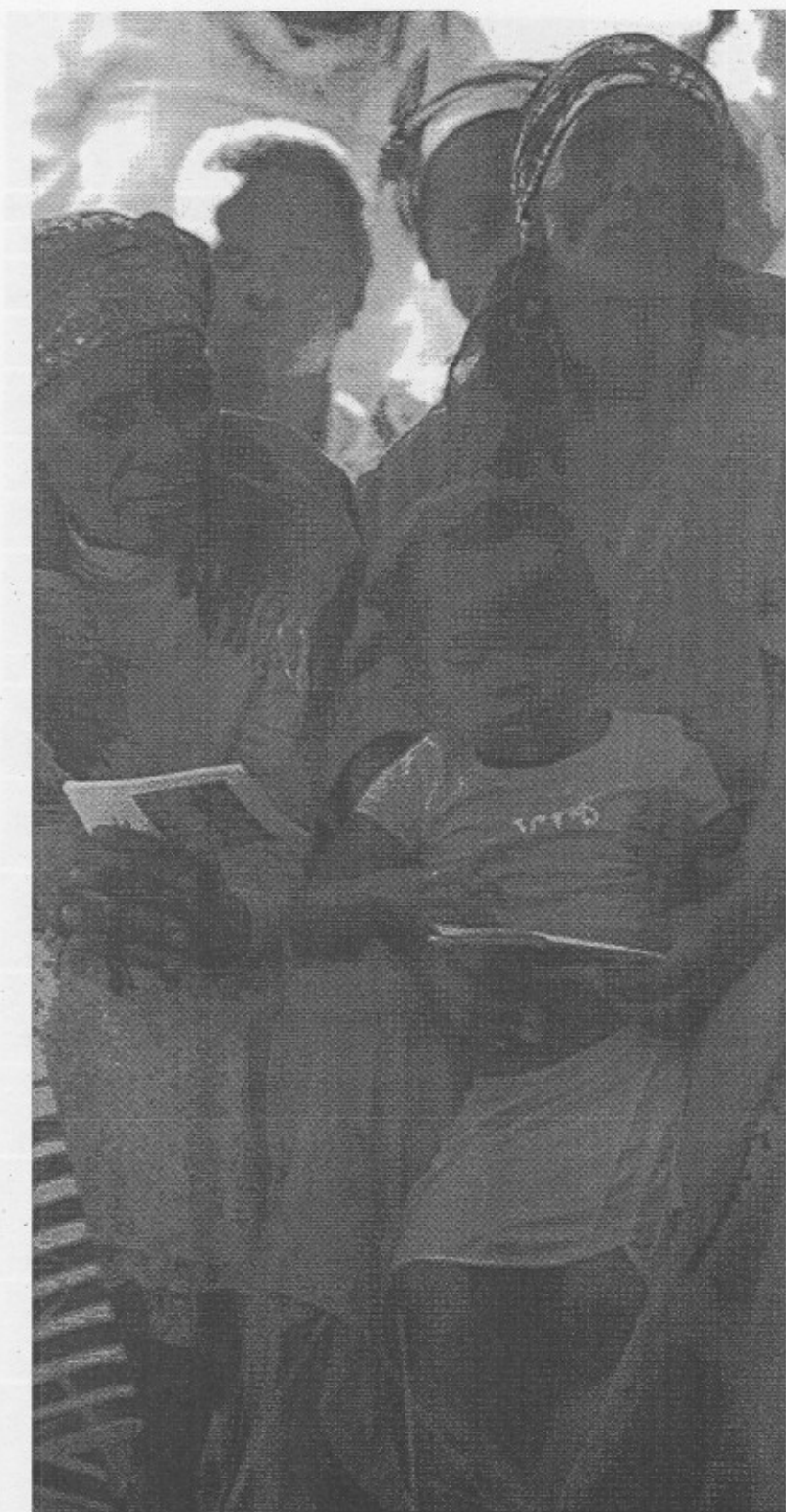
There is very little reference to crime prevention. The focus still seems to be on reacting.

The bulk of the budget is geared towards infrastructural development, policing, defence and improving courts but little has been earmarked for skills development in the child protection area. For example, the country has a severe shortage of social workers, who are the core cadre for protection services. If not addressed, this may have serious consequences for the effective implementation of the Children's Bill.

**POSSIBLE AREAS WHICH PORTFOLIO COMMITTEES COULD OVERSEE**

- Support the implementation of the National Action Plan to end violence against women and children, specifically the roll out of the Thuthuzela Multi-purpose Centres. At present, there are 12 Thuthuzela Centres in the country. The imperative is to increase this number by six more by the end of 2006 and to have at least 80 centres by 2010.
- Monitor the large number of children in conflict with the law, especially those awaiting trial in prisons and police cells.
- Advocate for increased funding to NGO's for improved social crime prevention measures, including diversion and other alternative sentencing options.





## ANNEXURE 1: VITAL STATISTICS

INDICATORS	DEFINITION	
<b>GENERAL DEMOGRAPHIC AND ECONOMIC INDICATORS</b>		
Total population		
Child population	Number of persons aged 0-19	
Children in age group birth to 4 years	Percentage children in age group birth to 4 years	
GNI per capita	Gross National Income divided by mid-year population	
Total adult literacy rate	Percentage of persons aged 15 years and over who can read and write	
Life expectancy at birth	The number of years newborn children would live if subject to the mortality risks prevailing for the cross-section of population at the time of their birth	
<b>HEALTH AND NUTRITION</b>		
Under-five mortality rate - total	Probability of dying between birth and exactly five years of age, per 1,000 live births	
Infant mortality rate - total	Probability of dying between birth and exactly one year of age, per 1,000 live births	
Maternal mortality ratio	Number of deaths of women from pregnancy related causes, when pregnant or within 42 days of termination of pregnancy, per 100,000 live births	
Child mortality rate	Probability of dying between birth and 18 years of age, per 1,000 live births	
Children with vaccination cards	Percentage children 12-23 months with vaccination cards	
Stunting - moderate and severe	Proportion of under-fives who fall below minus 2 (moderate and severe) standard deviations from median height for age of NCHS/WHO reference population	
Wasting prevalence - moderate and severe	Proportion of under-fives who fall below minus 2 (moderate and severe) from median weight for height of NCHS/WHO reference population	

	VALUE	YEAR	SOURCE
	47,390,900	2006	Stats SA Mid-year Population Estimates, 2006
	20,204,400	2006	Stats SA Mid-year Population Estimates, 2006
	10.9% (5,164,500)	2006	Stats SA Mid-year Population Estimates, 2006
	US\$ 2,6 00	2002	World Bank (SOWCR 2004)
	85	2000	UNESCO (SOWCR 2004)
	49	2002	United Nations Population Division (SOWCR 2004)
	58	2003	DoH – South African Demographic and Health Survey 2003
	43	2003	DoH – South African Demographic and Health Survey 2003
	175	2005	DoH – Confidential Enquiry on maternal mortality
	16	2003	DHS – South African Demographic and Health Survey 2003
	68	2005	DoH – South African Demographic and Health Survey 2003
	24.9	1999	National Food Consumption Survey (NFCS) and additional analysis (WHO database), age-group: 12-59 months
	3.4	1999	National Food Consumption Survey (NFCS) and additional analysis (WHO database), age-group: 12-59 months



INDICATORS	DEFINITION	
Contraceptive prevalence rate	Proportion of currently married women aged 15-49 who are using (or whose partner is using) a contraceptive method (either modern or traditional)	
Prenatal care	Proportion of women aged 15-49 attended at least once during pregnancy by skilled health personnel (doctor, nurse or midwife)	
Skilled attendant at birth	Proportion of births attended by skilled health personnel (doctor, nurse or midwife)	
Low birth-weight	Proportion of live births that weigh below 2,500 grams	
Iodized salt consumption - entire country	Proportion of households consuming adequately iodized salt	
Exclusive breast-feeding rate (<4 months)	Proportion of infants less than 4 months (120 days) of age who are exclusively breast-fed	
Number of facilities designated baby friendly	Number of hospitals and maternity facilities which are designated as baby-friendly according to global BFHI criteria	
Use of oral rehydration salts (ORT)	Proportion of children 0-59 months of age who had diarrhoea in the last two weeks who were treated with ORT or an appropriate household solution	
Under fives with acute respiratory infections (ARI)	Proportion of children 0-59 months of age who had ARI in the last two weeks	
<b>HIV AND AIDS (HEALTH RELATED)</b>		
HIV prevalence among antenatal clinic attendees	% of pregnant women attending selected public sector ante-natal clinics who are HIV-positive.	
Population infected by HIV	Number of HIV infected individuals 15-49 years.	
Babies infected by HIV	Number of children < 1 infected by HIV	
Prevention of Mother to Child Transmission	Number of Public Health Facilities providing PMTCT	
Children in need of ART	Number of HIV infected children with a CD4 count of less than 200	
Children receiving ART	Number of HIV infected children with a CD4 count less than 200 actually receiving ART	



	VALUE	YEAR	SOURCE
	56.3	1998	DHS 1998, Final Report, p. 50
	94.2	1998	DHS 1998, Final Report, p. 115
	84.4	1998	DHS 1998, Final Report, p. 115
	15.1	1998	DHS 1998, Final Report, p. 117 [Method: based on numerical BW only (DK excluded) with 24% adjustment]
	62.4	1998	National Survey of the Iodine Concentration of Household Salt in South Africa [Type: C, PPM: (>15ppm)]
	10.4	1998	DHS 1998, Final Report, p. 134
	178	2005	Report from Department of Health on BFHI
	81	1998	DHS Final Report
	19.3	1998	DHS 1998, Final Report, p. 130
	29.5	2004	National HIV and Syphilis Antenatal Sero-Prevalence Survey of 2004, Department of Health
	6.57 million	2004	National HIV and Syphilis Antenatal Sero-Prevalence Survey of 2004, Department of Health
	110,134	2004	National HIV and Syphilis Antenatal Sero-Prevalence Survey of 2004, Department of Health
	77%	2005	Department of Health 2006 Strategic Plan
	55,000 to 80,000	2005	UNICEF Health section estimates (no official source)
	5,000	2005	Review of the status of the Operational Plan for Comprehensive HIV and AIDS Care, Management and Treatment

INDICATORS	DEFINITION	
<b>EDUCATION</b>		
Children reaching grade 5 (Administrative data)	Proportion of children entering first grade of primary school who eventually reach grade 5	
Net primary school enrolment ratio - total	Number of children enrolled in primary school who belong in the relevant age group, expressed as a percentage of the total number in that age group	
Children aged 7 attending an educational institution	Number of 7 year old children, attending an educational institution expressed as a percentage of the total number in that age group	
Persons with a matric (Grade 12) certificate or higher	Percentage of population with Grade 12 or higher Note: Increased from 2.39% in 1996	
GPI - Gender Parity Index	GER for females divided by the GER for males - used to indicate the level of access for females compared to males	
Children in Reception Year (Grade R)	Total number of children in the Reception Year across the Country	
<b>CHILD PROTECTION</b>		
Child-headed households	Number of child-headed households	
Orphans due to AIDS	Number of orphans who have lost one or both parents due to AIDS	
Children living in poverty with access to child support grants	Number of children that receive child support grants	
<b>HOUSEHOLD ACCESS TO SERVICES AND FACILITIES</b>		
Use of improved drinking water sources - total	Proportion of population who use any of the following types of water supply for drinking: piped water; public tap; borehole/pump; protected well; protected spring; rainwater	
Piped water	Percentage of households whose main source of water was from a tap Note: Improved from 66.1% in 2002	
Use of improved sanitation facilities - total	Percentage of households who relied on bucket toilets or had no toilet facility	
Public Electricity	Percentage of households that were connected to the MAINS electricity Note: Improved from 76.1% in 2002	

	VALUE	YEAR	SOURCE
	64.5	1999	UNESCO, Institute for Statistics database
	88.9	2000	UNESCO, Institute for Statistics database
	96%	2005	General Household Survey, July 2005
	3.08	2001	A Nation in the making: A discussion document on the social trends in South Africa. Policy Co-ordination and Advisory Services (PCAS), The Presidency
	0.96	2004	Education Statistics (Department of Education - 2004)
	356,487	2004	Department of Education
	40,983	2003	Department of Social Development, Report on Home Community Based Care
	1.2 million	2003	UNAIDS and UNICEF (2004). Children on the Brink 2004.
	7.2 million	2006	South African Social Security Agency Reports
	86	2000	UNICEF/WHO joint global database
	68.4%	2005	General Household Survey, July 2005
	10.2%	2005	General Household Survey, July 2005
	80.1%	2005	General Household Survey, July 2005



## **ANNEXURE 2: POLICIES AND LEGISLATION THAT AFFECT CHILDREN**

### **GENERAL**

- Constitution of South Africa (Act 108 of 1996) and Bill of Rights

### **HEALTH**

- National Health Act No 61 (2003)
- Mental Health Care Act. 17 (2002)
- Regulations on Mandatory Fortification of Maize Meal and Wheat Flour (April 2003)
- The Traditional Health Practitioners Act No 35 (2004)
- Strategic Priorities for the National Health System, a five-year plan (2004). Priority health programmes include: Healthy Lifestyles, TB Crisis Plan and Accelerated HIV Prevention
- A National Human Resources Plan for Health (2006)
- District Health System (2000)
- Managing the impact of HIV and Aids in SADC (August 2000)
- The Primary Health Care Package for South Africa. a set of norms and standards (March 2000)
- HIV and Aids/STD Strategic Plan for South Africa 2000-2005 (2000)
- The Comprehensive HIV and AIDS Care, Management and Treatment Plan

### **EDUCATION**

- The South African Schools Act (1996)
- The National Education Policy Act (1996)
- White Paper Number 6 on Inclusive Education (2001), which focuses on children with special needs including orphans and vulnerable children and other vulnerable groups
- White Paper No 6 on ECD (2000)
- The 2005 Education Amendment Bill became law in January 2006 but it takes legal effect, in regard to no-fee schools, in 2007
- The Adult Basic Education and Training Act (2000)



#### **SOCIAL DEVELOPMENT**

- The White Paper for Social Welfare (1997)
- White Paper on Population Policy for South Africa (1998)
- Child Care Act, (1983)
- Social Assistance Act (1992)
- Social Assistance Act (2004)
- Probation Services Act (1991)
- Fund-raising Act, (1978)
- Prevention and Treatment of Drug Dependency Act (1992)
- South African Social Security Act (2004)
- Non-Profit Organisations Act (1997)
- National Development Agency Act (1998)
- Social Service Professions Act (1978)
- Aged Person Act (1967)
- Policy Framework for Orphans and Other Children Made Vulnerable by HIV and AIDS (2005)
- Policy Framework for Community Based Care and Support Programme (1999)
- National Guidelines on ECD
- Policy on Financial Awards to Service Providers

#### **JUSTICE**

- The Constitution of South African (1996).
- Domestic Violence Act (1998)
- Public Protector Act (1994)
- Human's Rights Commission Act (1994)
- Hague Convention on the Civil Aspects of International Child Abduction Act (1996)
- Abolition of Corporal Punishment Act (1997)
- Criminal Procedures Amendment Act (1997)
- Natural Fathers of Children Born out of Wedlock Act (1997)
- National Prosecuting Authority Act (1998)
- Divorce Amendment Act (1996)

## **ANNEXURE 3: INTERNATIONAL INSTRUMENTS SIGNED AND/OR RATIFIED BY SOUTH AFRICA**

### **UNITED NATIONS (UN) INSTRUMENTS**

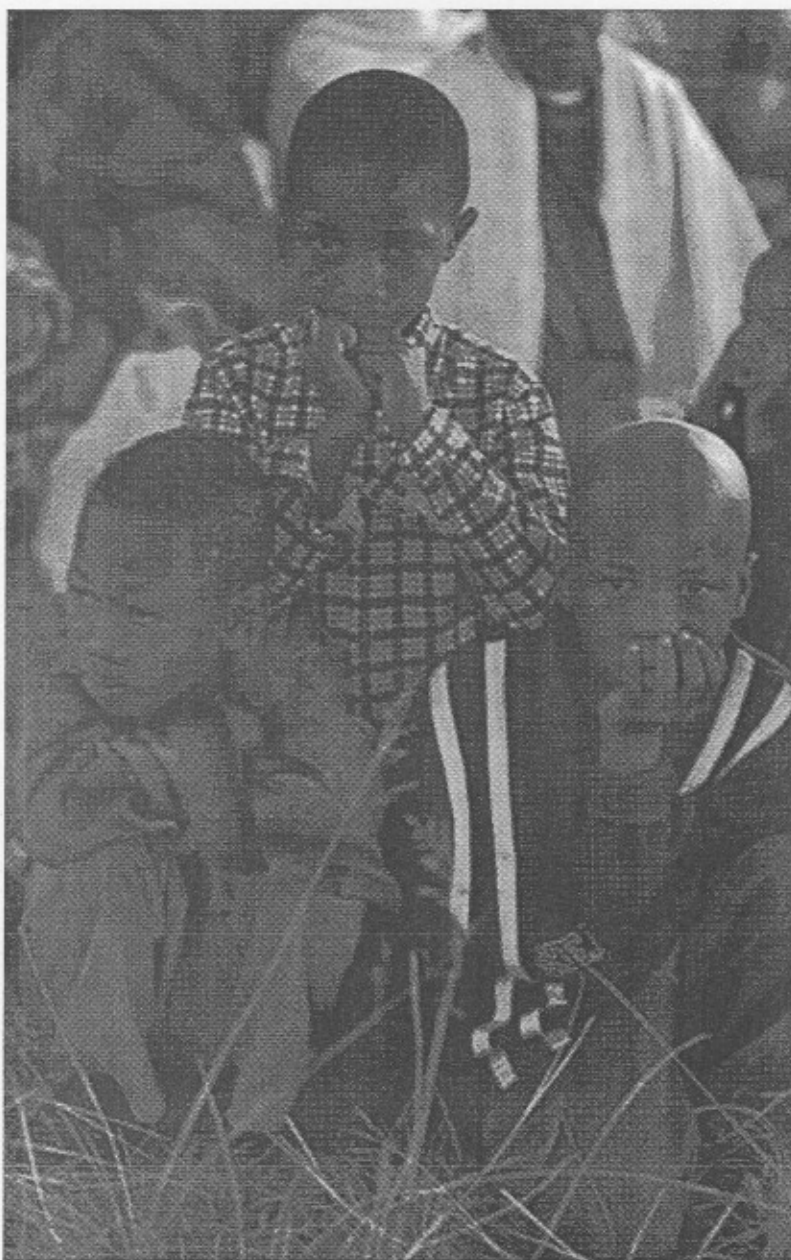
- UN Convention relating to the Status of Refugees
- UN Protocol relating to the Status of Refugees
- Convention on the Elimination of All Forms of Discrimination Against Women
- Convention on the Rights of the Child
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
- The four Geneva Conventions of 12 August 1949, and Instruments of Accession (relating to the two Additional Protocols of 10 June 1977 to the Geneva Conventions of 12 August 1949)
- Convention for the Suppression of the Traffic in Women and Children
- Convention for the Suppression of the Traffic in Women of Full Age
- Protocol to amend the Convention for the Suppression to Traffic in Women and Children of 1921 and the Convention for the Traffic of Women of Full Age of 1933
- Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, plus Final Protocol
- Hague Convention on the Civil Aspects of International Child Abduction

### **ORGANISATION OF AFRICAN UNITY (OAU) INSTRUMENTS**

- OAU Convention Governing Specific Aspects of Refugee Problems in Africa
- African Charter on Human and People's Rights
- African Charter on the Rights and Welfare of the Child
- Civil and political rights
- Articles 2 and 3 of the African Charter

#### **Article 2:**

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, reli-



gion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3:

- Every individual shall be equal before the law.
- Every individual shall be entitled to equal protection of the law.

#### GLOSSARY

- **Child-friendly schools.** A child-friendly school provides care and support for learning, growth and development. It ensures that children learn and play in healthy spaces, and provides clean water and sanitation. It is also gender-sensitive, has strong links to surrounding communities and provides outreach services for orphans and other vulnerable children.
- **HAART (Highly Active Antiretroviral Treatment).** The current standard of care for people with HIV indicated for treatment. A combination of three or more antiretroviral drugs taken everyday for life.
- **Portfolio Committees.** National Assembly committees responsible for oversight of government departments and consideration of legislation produced by and relating to those departments.
- **Select Committees.** National Council of Provinces committees responsible for oversight of government departments and consideration of legislation produced by and relating to those departments.
- **Guideline.** A set of statements, directions, or principles presenting current or future rules or policy.
- **Policy.** A course of action decided upon by a government - or by any organization, group or individual.
- **Plan.** A course of action intended to influence and determine decisions, actions, and other matters.
- **White Paper.** An authoritative government report on a major issue, which provides information or highlights the significance of a planned service. If a white paper is passed, it becomes a Bill.
- **Framework.** A set of assumptions, concepts, values, and practices.
- **Bill.** A legislative proposal for enactment of a law. Once the bill is passed and signed, it becomes a law and is no longer referred to as a bill.
- **Act.** A statutory plan passed by legislature, which is a Bill until it is enacted and becomes law.
- **Home Community Based Care (HCBC).** The provision of comprehensive services, including health and social services, by formal and informal caregivers, run under the EPWP as a critical component of the effort to deliver holistic HIV and AIDS and TB-related services. The programme aims to put in place the foundations for the roll out of the Community Health and Development Worker (CH&DW) Programme by



equipping thousands of unemployed people with foundation skills and experience to care for sick members of their communities.

#### **THE CONVENTION ON THE RIGHTS OF THE CHILD:**

Every child has the right to a standard of living adequate for his or her physical, mental, spiritual, moral and social development. The parents or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. State Parties must take measures to assist parents and others responsible for the child to implement this right and shall provide material assistance and support programmes particularly with regard to nutrition, clothing and housing in cases of need. (27:1,2)

Every child has the right to benefit from social security, including social insurance. (26:1,2).

A mentally or physically disabled child should enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance and facilitate the child's active participation in the community. (23:1)

The disabled child has the right to special care and State Parties must provide assistance to the child and those responsible for his or her care to ensure this special care. (23.2)

Children have a right to participate in decisions affecting them.

#### **THE SOUTH AFRICAN CONSTITUTION**

Everyone has the right to have access to social security and to social assistance if they are unable to support themselves or their dependants. The state is required to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

Section 27(1)(c). Children have the right to shelter, basic nutrition, basic health care services and social services.

Section 28(1)(c). Children have the right to be protected from maltreatment, neglect, abuse or degradation.

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