

**Legal and Policy  
Frameworks  
to Protect  
the Rights Of  
Vulnerable  
Children in  
Southern Africa**

# Contents

Acknowledgements . . . . .	v
List of Tables . . . . .	v
Abbreviations and Acronyms . . . . .	vi
Executive Summary . . . . .	1
1. Introduction . . . . .	1
2. The Situation of Children’s Rights in Southern Africa . . . . .	1
3. Key Concerns for Vulnerable Children in the Region . . . . .	2
4. Conclusions and Recommendations . . . . .	4
I. Introduction. . . . .	6
Definitions . . . . .	6
Methodology of the Review . . . . .	7
2. The Situation of Children’s Rights in Southern Africa . . . . .	8
Role of Law in the Protection and Fulfillment of Children’s Rights . . . . .	8
Legal Frameworks for Children’s Rights in Southern Africa . . . . .	9
Traditional and Customary Laws . . . . .	12
Policies and Legislation directed towards orphans and vulnerable children affected by HIV/AIDS . . . . .	12
3 Key Concerns for Vulnerable Children Across the Region . . . . .	16
3.1 Birth Registration . . . . .	17
3.2 Inheritance . . . . .	20
3.3 Social Security . . . . .	23
3.4 Physical and Sexual Abuse . . . . .	28
3.5 Early Marriage . . . . .	33
3.6 Moving Across National Borders. . . . .	39
3.7 Education . . . . .	42
II Conclusion and Summary of Recommendations . . . . .	49
Appendix I Plans and Policies for Orphans and Vulnerable Children . . . . .	53
Select Bibliography . . . . .	59

Save the Children has made every effort to verify the accuracy of information. However, since this study has been conducted over a period of 12 months, it is possible that some information may be out of date by the time this report goes to print, due to the ongoing nature of policy and law-making processes.

Save the Children UK South Africa Programme  
For more information please visit [www.savethechildren.org.uk](http://www.savethechildren.org.uk)  
Or send your enquiries to [info@savethechildren.org.za](mailto:info@savethechildren.org.za)

© Save the Children UK 2006

This publication is copyright, but may be reproduced by any method without fee or prior permission for teaching purposes, but not for resale. For copying in any other circumstances, prior written permission must be obtained from the publisher, and a fee may be payable.

Faimos Communications CC & Mango Freelance Design CC

Printed in South Africa

# Acknowledgements

This work was funded by Irish Aid. The following people gave oversight and significant inputs to the report;

Bill Bell	Head of Social Protection, Save the Children UK, London
Lynette Mudekunye	Senior Advisor, OVC, Save the Children UK, South Africa
Fiona Napier	Programme Director, Save the Children UK, South Africa
Rodwell Shamu	Regional OVC Co-ordinator, Save the Children UK, Southern Africa
Ulrika Soneson	Programme Advisor, Save the Children Sweden, Southern Africa
Dr. Itumeleng Kimane	Senior Lecturer in Sociology, National University of Lesotho, Chairperson of Child Law Reform Committee, Lesotho
Sian Long	Previously Regional HIV/AIDS Advisor, Save the Children UK, Southern Africa

The AIDS and Human Rights Research Unit at the University of Pretoria, South Africa was commissioned to carry out this review. Louise Davis finally edited the report.

## List of Tables

- Table 1: Key statistics for children by country
- Table 2: Status of Ratification of Selected International Human Rights Instruments
- Table 3: Legal Frameworks and Policies for Orphans and Vulnerable Children
- Table 4: Birth Registrations by country
- Table 5: Social Protection Laws and Policies
- Table 6: Women aged 20 – 24 years married by age 18
- Table 7: Minimum Age of Marriages and Age of Sexual Consent by country
- Table 8: Primary School Enrolment, Attendance and Completion Rates
- Table 9: Education Laws and Policy

# Abbreviations and Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immune Deficiency Syndrome
CBO	Community-based Organisation
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	United Nations Convention on the Rights of the Child
FBO	Faith-based Organisation
GEM	Girls' Education Movement
HIV	Human Immunodeficiency Virus
ILO	International Labour Organization
NGO	Non-governmental organisation
OVC	Orphans and Vulnerable Children
RAAAP	Rapid Country Assessment, Analysis and Action Planning Initiative
SADC	Southern Africa Development Community
STI	Sexually Transmitted Infection

# Executive Summary

## I. Introduction

As the impact of the HIV/AIDS epidemic continues to be experienced most severely in Southern Africa, 14% of children are now orphans and 48% of these children have been orphaned due to AIDS. These children are often uninformed about their rights and have difficulty accessing the support to which they are entitled, particularly if they do not have the support of a parent or caregiver. This report reviews legal and policy frameworks to protect the rights of vulnerable children, particularly those affected or infected by HIV/AIDS in 10 Southern African countries. The countries included are: Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe. It aims to inform civil society organisations working to secure the rights of vulnerable children and to highlight gaps in policy development and implementation for policy-makers.

## 2. The Situation of Children's Rights in Southern Africa

The number of children that will be orphaned or made vulnerable due to AIDS is predicted to rise, increasing the vulnerabilities already experienced by children due to increasing poverty, food insecurity and poor service provision in vital areas such as health and education. This will further increase the burden upon extended families and communities, that are already overstretched by caring for orphans and other vulnerable children.

Law and legal reform have a key role in protecting and ensuring the fulfillment of the rights of orphans and vulnerable children. Children's rights in Southern Africa are protected by both the UN Convention on the Rights of the Child (CRC) and the African Charter for the Rights and Welfare of the Child (ACRWC). All countries have signed both charters and are also

parties to other international human rights instruments, such as the Convention on the Elimination of Discrimination Against Women, the Optional Protocols to the CRC and the ILO Convention on the Worst Forms of Child Labour. Ensuring that all domestic legislation is fully compatible with these conventions and accordingly takes into account the special provisions that need to be made to address the needs of vulnerable children is fundamental to achieving change.

This process of law reform is key to addressing the discrepancies between formal laws and customary or traditional laws. Although the CRC states that local or customary laws should be brought into compliance with the CRC, a dual system operates in many countries in Southern Africa which recognises both formal and customary laws, creating difficulties for women and children who are often treated as having a lesser status under customary laws. This inequality before the law increases the vulnerability of children, especially those affected or infected by HIV/AIDS, in a number of important areas including their ability to access property rights.

Most countries now have a National Policy on Orphans and Vulnerable Children and a National Plan of Action. These are itemised in Appendix I, with details of National HIV/AIDS policies and frameworks and other supporting policy instruments which support the care of orphans and vulnerable children. The process of developing these national frameworks for orphans and vulnerable children was accelerated by the Rapid Assessment, Analysis and Action Planning Process led by UNICEF in 2005, which aimed to scale up and improve the quality of the response to orphans and vulnerable children at national level and to fulfill commitments made by national governments through the UN Declaration of Commitment on HIV/

AIDS. The process was able to note achievements as well as highlighting key gaps in enforcing child protection and human rights laws, making orphans and vulnerable children more susceptible to poverty, stigma and discrimination. Governments attributed lack of enforcement of laws to shortages of funding and lack of trained staff.

### 3. Key Concerns for Vulnerable Children in the Region

The research carried out by the review team at country level identified a number of areas where legal and policy frameworks are either inadequate or not enforced, creating widespread problems for children across the region. These are summarised below. Some issues raised are not discussed within this report as they are addressed by Save the Children in more depth in other documents. Children's rights to health, including access to anti-retroviral treatment, is an emerging issue of importance and will be addressed by Save the Children separately.

#### Birth Registration

Although the right to citizenship and birth registration is a fundamental right, allowing children to access key services and support, rates of birth registration are low across the region. Legal frameworks are in place in all countries to ensure mandatory registration yet lack of awareness of legal requirements, lack of registration of parents, lengthy bureaucratic processes, high costs and difficulties of access, particularly in rural areas, prevent many people from registering children's births. Without accurate information on birth registration, governments and other actors are inhibited in their efforts to monitor the situation of vulnerable children and to plan effectively to support them.

#### Key recommendations:

- Governments should work with civil society organisations to identify and remove barriers which prevent parents and caregivers from registering births - such as simplifying requirements and forms to be completed, training staff to assist par-

ents and caregivers, waiving fees for registration and providing outreach services in rural areas.

- Governments, in collaboration with civil society organisations should carry out awareness raising campaigns for parents and community leaders on the significance of birth registration and their responsibilities.

#### Inheritance

Traditional laws on inheritance usually take precedence in practice over formal laws in Southern Africa and these usually relegate women and children to a lower status than men. This allows the widespread practice of property grabbing after the death of an adult to continue. Women and children are frequently left destitute with little hope of recourse, thus increasing their vulnerability. Children born out of wedlock can also face greater difficulties in accessing rights to inheritance. Where legislation is in place to protect women and children's rights to inheritance, in practice it may not be enforced – women and children may be unaware of their legal rights or lack the resources, skills and confidence to challenge the accepted custom.

#### Key recommendations:

- Governments should ensure that national legislation protects the rights of women and children to inherit, including children born out of wedlock, and resolve differences with customary law.
- Governments, working with international agencies and civil society organisations should ensure effective dissemination of laws surrounding inheritance to all levels of the population, including children, and carry out awareness-raising and training on the laws with government staff and community leaders to enable them to provide accurate information and advice.

#### Social Security

Social security provisions vary considerably across the region with a relatively well developed system in South Africa but very minimal interventions in some other countries. Where

social security schemes exist, children and their caregivers are often hindered in applying for them because they lack identity documents to prove eligibility or information on the benefits available, have to travel long distances to make an application or face long bureaucratic delays. Children without adult caregivers to apply on their behalf may not be able to access benefits.

#### Key Recommendations

- Governments should aim to address gaps in social security provision for vulnerable children progressively and set targets to bring legislation and practice on social security in line with international and regional obligations
- Governments should ensure that existing social protection schemes are adequately resourced and managed to ensure that all children and their caregivers who are entitled to receive benefits receive them.

#### Physical and Sexual Abuse

Laws to protect children from violence and abuse co-exist alongside traditional laws and norms in Southern Africa which permit behaviour that is in contravention of international standards such as the CRC and ACRWC. Corporal punishment, sexual abuse in violent or exploitative circumstances and accusations of witchcraft were particularly highlighted in the country level research as issues of concern for children. Children living in precarious situations have increased vulnerability to abuse and girls face increased risks of sexual exploitation. However, there is frequently a reluctance to intervene in family matters and formal laws to protect children are often weak, allowing perpetrators of abuse to escape conviction.

#### Key Recommendations

- Governments should promote the implementation of international and regional standards for preventing and protecting children from abuse by abolishing any laws which condone the use of violence against children, ensuring that all forms of violence and abuse against children are prohibited by law and ensuring that

structures are in place to implement provisions that protect children.

- Governments should work with international agencies, civil society organisations to spread awareness of laws to protect children from violence and abuse.
- Civil society organisations should work with communities to ensure that children are aware of their rights and treated as holders of rights and that all violence against them, including sexual abuse, is recognised as a breach of their human rights, no matter where it takes place.

#### Early Marriage

Despite laws setting the age of marriage between 18 and 21 years, girls are often married at much younger ages in Southern Africa. Early marriages occur more frequently amongst the poorest sections of society, thus involving the most vulnerable children. Early marriage increases the likelihood of early pregnancy, which has increased risks for girls, and the likelihood of girls failing to complete their education. Some traditional cultural practices relating to marriage and sexuality can involve forced intercourse and result in early pregnancies for girls.

#### Key Recommendations

- Governments should bring national legislation into line with international and regional standards and ensure a uniform approach on the age of majority and age of sexual consent for girls and boys.
- Governments should ensure that girls' access to education is actively promoted and ensure that there are substantive skills-enhancing programmes and opportunities for girls between the onset of puberty and the time of marriage.
- International agencies working with civil society organisations and teachers should engage in public awareness campaigns on gender issues, including on harmful traditional practices and promoting positive male and female role models.

## Moving Across National Borders

Many children moving across international borders within the region are not accorded refugee status and are treated as illegal immigrants in the countries in which they arrive. Foreign unaccompanied children are rarely accorded the protections that should be due to them as children first and foremost. The SADC Protocol on Facilitation of Movement of Persons offers the opportunity to guarantee the proper care of foreign unaccompanied children but in its current draft form does not include any explicit mention of children.

### Key Recommendations

- Governments should give special attention to ensure that increased vulnerability of migrant children is recognised and ensure that existing legislation is enforced to protect undocumented foreign children from exploitation, in accordance with the CRC and ACRWC. Where there are laws and policies in place, as is the case in South Africa, they should be implemented effectively.
- Governments should review the SADC Protocol on Facilitation of Movement of Persons and clarify whether the definition of citizen within this protocol includes people under the age of 18. Governments should then ensure that there is specific provision within the protocol addressing the treatment of non-national children, including unaccompanied children and those without documents.

## Education

Enrolment rates in primary education range between 60 – 89% in the 10 countries, with attendance and completion rates falling below these levels. Despite government attempts to increase the provision of free education in a number of countries across the region, the costs associated with schooling are still high and prohibitive for the most vulnerable children. The dire situation points to a need for more effective measures to ensure that vulnerable children are able to enrol in school, receive a quality education without risks of violence or

abuse in school and can sustain their attendance until completion.

### Key recommendations:

- Governments should harmonise legislation on children's education to ensure that it complies with the CRC and ACRWC.
- Governments and civil society should recognise the special needs of orphans and most vulnerable children in accessing education and ensure that flexible provisions are made to support their attendance at school. Special provisions should be made where necessary to encourage girls' enrolment and sustained attendance.

## 4. Conclusions and Recommendations

Progress has been made in the region towards supporting and sustaining national responses to enable children orphaned and made vulnerable by HIV and AIDS to realise their rights through the RAAAP process, but a more comprehensive process of legislative reform is required to ensure that vulnerable children's rights are systematically addressed in national laws and policies and there is coherent consolidated children's legislation. This process has been initiated in South Africa, Botswana and Lesotho, but in other countries it is either very slow or yet to begin.

Where there is adequate legislation and policy in place, there remains a clear gap between this and implementation on the ground. Greater attention needs to be paid to resolving the tensions between customary and formal laws as they relate to violence and ill-treatment of children and to ensuring that the need for new approaches is understood at community level to remove barriers which prevent children realising their rights. This includes addressing entrenched attitudes towards gender roles and treatment of women.

Many of the concerns raised highlight the need for allocation of resources and establishing

structures and procedures to ensure that legislation can be enforced, including advocacy and awareness raising on children's rights and the provisions for their protection under the law, with public officials as well as with children's caregivers and the community.

### Concluding Recommendations:

- Governments, in conjunction with civil society, should conduct a review of legislation in all areas that impact on vulnerable children to ensure that legislation is in harmony with international and regional conventions and that differences with customary laws are resolved.
- Governments should improve awareness of legal provisions and policies for the protection of orphans and vulnerable children and focus efforts on making services more accessible by : training staff and community leaders, providing outreach services in rural areas, simplifying bureaucratic processes, removing fees for services such as birth registration, health and education.
- Governments must allocate budgetary support to ensure the implementation and enforcement of legislation to protect vulnerable children.
- International agencies should advocate for long-term predictable donor funding to support the provision of essential services such as education and social security in countries with less resources.
- International agencies and civil society organisations should work with children to ensure that government has a correct understanding of the situation of orphans and vulnerable children and work with government to address gaps in legislation.
- International agencies and civil society organisations should monitor service delivery to orphans and vulnerable children and advocate with government for gaps in policy and service provision to be addressed.
- Governments, international agencies and civil society organisations should ensure that communities, including children, are informed of legal provisions to support them to realise their rights.

- Lawyers and legal bodies should ensure children's rights and the legal provisions to protect them are given due recognition and upheld in legal processes by undertaking litigation to enforce laws to protect vulnerable children.

# I. Introduction

In 7 out of the 10 countries in Southern Africa covered by this report, children under 18 make up more than 50% of the population<sup>1</sup>. Yet children are often uninformed about their rights and have difficulty accessing the support they are entitled to, a situation which is exacerbated if they lose the support of parents or caregivers. As the impact of the HIV/AIDS epidemic continues to be experienced most severely in Southern Africa, 14% of children are now orphans. Of those, some 3.2 million, or 48% of orphans, have been orphaned due to AIDS<sup>2</sup>.

The purpose of this report is to review the legal and policy frameworks that exist, or are under development, to protect the rights of vulnerable children in Southern Africa including those affected or infected by HIV/AIDS. Countries included in this review are:

Angola	Namibia
Botswana	South Africa
Lesotho	Swaziland
Malawi	Zambia
Mozambique	Zimbabwe

This review is aimed at civil society organisations in Southern Africa who are working to secure the rights of vulnerable children, to provide an overview of the national policy environment and to enable civil society organisations to influence governments to fulfil obligations under the laws put in place. It is also intended to inform Southern African governments of the gaps that are occurring in policy development and implementation. It will highlight selected key areas of concern for children.

## Definitions

Definitions of “orphan” and “vulnerable children” vary according to country and are not viewed uniformly across the region.

### Orphan

For the purposes of this report, the term ‘orphan’ will refer to any child under the age of 18 who has lost one or both parents.

### Vulnerable Children

There are varying definitions of vulnerable children in use. Most narrowly, children made vulnerable by HIV/AIDS are defined as:

- having a chronically ill parent
- living in a household with an ill adult
- living in a household in which there has been the death of an adult in the last 12 months
- living outside of family care – in an institution or on the streets<sup>3</sup>

Other broader definitions include:

- de facto child-headed and grandparent headed families, where parents are away for extended periods of employment
- children experiencing discrimination as a result of a family member’s HIV status or who have HIV themselves
- children in households that have taken in orphans<sup>4</sup>

However, definitions of vulnerability vary between countries in the region and can include children from poor families, those who lack adequate care and protection, children with dis-

abilities and those who have unfulfilled rights<sup>5</sup>. Increasing food insecurity, exploitation, conflict and civil strife are also contributory factors regionally that further intensify the vulnerability of children. It is now generally accepted that interventions should not seek to discriminate between causes of vulnerability - singling out children as “affected or infected by HIV/AIDS” can cause further stigma and resentment. Therefore in recognition of these factors, in this review, the term ‘vulnerable children’ will include all vulnerable children, not just those affected or infected by HIV/AIDS.

## Methodology of the Review

The AIDS and Human Rights Research Unit at the University of Pretoria, South Africa was commissioned to carry out this review. Researchers were commissioned in each of the 10 selected countries to undertake a desk-based review and conduct key informant interviews, based on a questionnaire developed by the AIDS and Human Rights Research Unit. The researchers were supported by Save the Children offices in country (in the countries where Save the Children is working) and a Research Steering Committee, consisting of practitioners and experts within the region. The report was updated and finalized by Save the Children UK

<sup>1</sup> Based on statistics for 2003 in UNICEF, State of the World’s Children [www.unicef.org](http://www.unicef.org).

<sup>2</sup> 2001 figures, in UNICEF, Africa’s Orphaned Generations, 2003

<sup>3</sup> developed for monitoring and surveillance during RAAAP process, UNICEF, Second Phase of Rapid Assessment, Analysis and Action Planning Process (RAAAP) for Orphans and Vulnerable Children, Full Workshop Report, Kenya, June 2005

<sup>4</sup> UNICEF, Children on the Brink, 2004

<sup>5</sup> UNICEF, The RAAAP process for Orphans and other Children Made Vulnerable by HIV/AIDS, Report of an Interim Independent Review of Country Plans, ESARO, 2004

## 2. The Situation of Children's Rights in Southern Africa

Table 1 – Key statistics for children in countries under review

	Total Population, 2004, thousands	All children (0-17 years), 2003*, thousands	Orphans, Children (0-17 years) orphaned by AIDS, 2003, estimate, thousands	Orphans, Children (0-17 years) orphaned due to all causes, 2003, estimate, thousands	HIV Prevalence: Adult prevalence rate (15-49 years), end 2003, estimate	GNI per capita (US\$) 2004	Total adult literacy rate (2000-2004*)	Net primary school enrolment/attendance (%) (1996-2004)	Under-5 mortality rate 2004
Angola	15490	7,000	110	1000	3.9	1030	67	58	260
Botswana	1769	800	120	160	37.3	4340	79	84	116
Lesotho	1798	1,000	100	180	28.9	740	81	65	82
Malawi	12608	7,000	500	1000	14.2	170	64	76	175
Mozambique	19424	10,000	470	1500	12.2	250	46	60	152
Namibia	2009	1,000	57	120	21.3	2370	85	78	63
South Africa	47208	17,000	1100	2200	21.5	3630	82	89	67
Swaziland	1034	600	65	100	38.8	1660	79	72	156
Zambia	11479	6,000	630	1100	16.5	450	68	68	182
Zimbabwe	12936	7,000	980	1300	24.6	480	90	79	129
	125755	57,400	4132	8660					

all statistics from UNICEF, State of the World's Children, 2006 except \* from Children on The Brink, 2004

The predicted increase in the number of children that will be orphaned or made vulnerable by HIV and AIDS in the countries under review exacerbates a situation where increasing poverty, food insecurity and poor service provision in vital areas such as health and education are already limiting children's abilities to enjoy basic rights.

The burden of care for orphaned and vulnerable children has been largely taken up by extended families and at community level. These traditional support systems are under severe pressure and in danger of becoming overwhelmed. There is a great need for external support and protective safety nets, based upon recognition of children's rights and their fulfillment.

### Role of Law in the Protection and Fulfillment of Children's Rights

Children's rights are protected by the UN Convention on the Rights of the Child (CRC). It is the most 'complete' human rights treaty in that it covers virtually all the civil, political, social and cultural rights of children. It emphasises that children are holders of rights, and their rights cover all aspects of their lives. It applies to all human beings under the age of 18. Four of the rights set out in the CRC have been identified as general principles that are to be considered in the implementation of every article of the CRC and in all situations concerning children,

these are:

- Non-discrimination (article 2)
- Best interests of the child (article 3)
- Rights to life, survival and development (article 6)
- Right to be heard (article 12)

Children's rights are also protected by the African Charter on the Rights and Welfare of the Child (ACRWC). Ensuring that all domestic legislation is fully compatible with the CRC and the ACRWC and that the principles and provisions they set out can be directly applied and appropriately enforced is fundamental. At national level, states must see their role as fulfilling clear legal obligations to each and every child for which they can be held to account. Legislative measures are key to the successful implementation of the CRC and the full enjoyment of all rights in the Convention by all children<sup>6</sup>. Additional measures may be required to ensure that children are able to exercise their rights - existing constitutional guarantees of rights for 'everyone' may not be sufficient to ensure respect for the rights of children.

The recent Study on the Impact of the Implementation of the Convention of the CRC (2004) highlights the mounting evidence globally of the link between law reform and improvements in the access to and quality of programmes providing essential services to children and their families. These links appear to be most widespread in the health and education sectors. Although law reform is a complex and long-term process, it is widely recognised that the process constitutes a catalyst for profound cultural changes concerning the role of children in society. The Study also emphasises the need for law reform to be linked with institutional restructuring, co-ordination of efforts of government and other actors, resource allocation as well as research, monitoring, capacity building and community outreach. Individual countries take different approaches to law reform, such as enacting comprehensive new laws relating to children (for

example, the Children's Bill in South Africa and the Children's Protection and Welfare Bill in Lesotho), more gradual reform of existing legislation concerning children, or adopting decrees and regulations. In some countries, efforts have focused more directly upon the design and implementation of programmes for children, rather than law reform. All of these approaches have merit, although the need to incorporate into law all aspects of children's needs has to be addressed alongside practical efforts to deliver appropriate programmes.<sup>7</sup>

### Legal Frameworks for Children's Rights in Southern Africa

In the 10 Southern African countries under review, most have existing policy instruments and legislation that relate to the rights, protection, care and support of children. The process of reviewing and revising these to reflect the CRC, current international standards and address the challenges posed by HIV/AIDS, increasing poverty and food insecurity, with regard to vulnerable children, is at varying stages.

All the countries included in this review have ratified the UN Convention on the Rights of the Child, the Convention on the Elimination of Discrimination Against Women and the ILO Convention 182 on Child Labour. All but 2 (who have signed the treaty) have ratified the African Charter on the Rights and Welfare of the Child. Seven countries have signed the Optional Protocols to the CRC on the Sale of Children, Child Prostitution and Child Pornography and on the Involvement of Children in Armed Conflicts (see table 2).

All countries have signed the UN Declaration of Commitment on HIV/AIDS (2001) which emphasises that the vulnerable must be prioritised in the response to the epidemic and that empowering women is essential to reduce vul-

6 Committee on the Rights of the Child, General Comment No. 5, General Measures on the Convention of the Rights of the Child (arts. 4, 42 and 44, para 6) November 2003.

7 UNICEF, Summary Report: Study on the Impact of the Implementation of the Convention on the Rights of the Child, Innocenti Research Centre, Italy, 2004

Table 2 Status of ratification of selected international human rights instruments

	Convention on the Rights of the Child (CRC)	African Charter on the Rights and Welfare of the Child (ACRWC)		Convention on the Elimination of Discrimination Against Women (CEDAW)		Optional Protocol to the CRC Sale of Children, Child Prostitution and Child Pornography	Optional Protocol to the CRC Involvement of Children in Armed Conflicts	ILO Convention 182 Worst Forms of Child Labour
		Signature	Ratification	Signature	Ratification			
	Adopted 1989, entered into force 1990	Adopted 1990, entered in to force 1999	Adopted 1979, entered into force 1981	Adopted 2000, entered into force 2002	Adopted 2000, entered into force 2002	Adopted 1999, entered into force 2000		
Angola	1990	1992	1986	signed 2005		ratified 2001		
Botswana	1995	2001	1996	acceded 2003	ratified 2004	ratified 2000		
Lesotho	1992	1999	1995	ratified 2003	ratified 2003	ratified 2001		
Malawi	1991	1999	1987	signed 2000	signed 2000	ratified 1999		
Mozambique	1990	1998	1997	acceded 2003	acceded 2004	ratified 2003		
Namibia	1990	2004	1992	ratified 2002	ratified 2002	ratified 2000		
South Africa	1993	2000	1995	acceded 2003	signed 2002	ratified 2000		
Swaziland	1990		2004			ratified 2002		
Zambia	1990	1992	1985			ratified 2001		
Zimbabwe	1990	1995	1991			ratified 2000		

nerability. There are 3 specific articles addressing the needs of orphans and other children made vulnerable by HIV and AIDS.

At a regional level, all the countries included here have also signed the SADC Declaration on HIV/AIDS in which commits them to regional collaboration and support in tackling HIV and AIDS epidemic, although it does not explicitly mention support for orphans and vulnerable children.

At a national level, the State Parties to these treaties are obliged to give effect to these rights in their national laws and practices. While most states have legislation in place that deals with the rights of children, a number have elevated some rights to the constitutional level. The Constitutions of all the countries included in this study have justifiable Bills of Rights<sup>8</sup>. Increasingly, national Constitutions also include specific guarantees of children's rights, such as in Swaziland's new Constitution. Of the countries with justifiable Bills of Rights, only those of Botswana and Zimbabwe make no reference to children's rights. The Constitution of Lesotho provides for "the protection of children and young persons" under the "Principles of State Policy", which are constitutional policy statements and not rights as such. In the other six states, at least some children's rights are guaranteed. However, these provisions do not consistently cover everyone under the age of 18, in line with the UN CRC. The 1994 Malawi Constitution defines a child as someone under the age of 16;<sup>9</sup> the 1991 Zambian Constitution protects "young persons" under the age of 15 against exploitation.<sup>10</sup> Under the 1996 South African Constitution, section 28 grants extensive protection to children - defined as anyone under 18. In the 1975 Angolan Constitution

and in article 47 of the 2004 Constitution of Mozambique, (children and young people) is used without defining these terms.<sup>11</sup>

The rights of children are also more directly protected in domestic laws and statutes. Domestic legislation may take the form of child-focused laws (such as the "Children's" or "Juveniles" Acts of Botswana, Mozambique, Namibia, South Africa, Zambia and Zimbabwe), or may deal with specific aspects that are of particular relevance to children such as legislation on birth registration (in most of the countries), on child labour (in most countries, as part of the general labour legislation), and on adoption (as in the Zambian "Adoption Act"). In Botswana, Lesotho, Swaziland and Zambia, legislation dealing with children is currently under review. In South Africa, a new Children's Bill is currently at Parliament

### Review of legislation focused on children: the case of Botswana and South Africa<sup>12</sup>

In Botswana, the Ministry of Social Services has instigated a review of the Children's Act of 1981, with assistance from UNICEF, in order to bring it into line with the country's vision 2016 and to meet the principles of the CRC. Two multi-sectoral reference groups were established: one from governmental organisations, non-governmental organisations and development partners, including UNICEF; and a Children's Reference Group made up of children from primary, community and senior secondary schools, out-of-school youth, children with disabilities, children living with HIV and AIDS and orphans. The review is currently ongoing.

8 Swaziland is in the process of implementing its new Constitution which was signed into law in July 2005 and due to be implemented in January 2006. A number of issues relating to orphans and vulnerable children are provided for. The rights of the child are covered in para. 30, including children's rights to protection from abuse and harmful work, inheritance, non-discrimination on the basis of whether born in or out of wedlock, education and alternative care in the place of parents. The rights to citizenship of illegitimate children, orphans and children born posthumously after the death of their father are also protected.

9 Sec 23 of the 1994 Malawi Constitution.

10 Sec 24 of the 1991 Zambian Constitution.

11 Sec 30 and 31

12 This information is from the Country Researchers. For more information on the draft Children's Bill in South Africa, also see <http://www.uct.ac.za/depts/ci>

In South Africa, the call for a new Children's Bill came from civil society organisations with expertise in working with children, who mounted an in-depth advocacy campaign on the need for legislation that monitored the affairs of children. In response, the South African Law Commission undertook a process of research and consultation including both government and civil society representatives to draft the bill which took six years, from 1997 to 2002. In 2003, the Law Commission submitted the draft bill to the Department of Social Development, which in turn consulted with other government departments. The result was a new version of the bill that removed a number of chapters and provisions and which remains in Parliament awaiting approval.

## Traditional and Customary Laws

The Committee on the Rights of the Child states that the CRC will prevail in situations where there is a conflict with domestic legislation or common practice<sup>13</sup> and that local or customary laws should be brought into compliance with the CRC. However, at a national level this recommendation has often either not yet been effected, or although formally adopted, is not enforced in practice. This is a particular concern in relation to inheritance rights of women and children and in traditional practices relating to early marriage and abusive or exploitative behaviour towards children. For example, in Zimbabwe, customary laws of inheritance exclude children from being appointed heirs intestate. Marital and non-marital children are treated differently in relation to custody and access to inheritance. The Zimbabwean Constitution under section 23 contains a general prohibition against discrimination yet allows for

13 Committee on the Rights of the Child, General Comment No. 5, General Measures on the Convention of the Rights of the Child (arts. 4, 42 and 44, para 6) November 2003

14 UNICEF, Children and Women's Rights in Zimbabwe – a critical analysis in relation to women and children's conventions, 2004, p10

15 International Save the Children Alliance, Gender Equity Policy

16 Facing the Future Together: Report of the Secretary General's Task Force on Women, Girls and HIV/AIDS in Southern Africa, 2004, p8

17 Rose Smart, Policies for Orphans and Vulnerable Children: A Framework for Moving Ahead, Policy Project, 2003

discrimination in matters of customary law and does not specifically prohibit discrimination in the private sphere<sup>14</sup>.

Ingrained social and cultural norms relegate women to a lower social and economic status in Southern Africa. Women are treated as legal minors in some countries, barred from owning property and unable to make independent financial decisions. This increases their vulnerability to poverty, exploitation, violence and ultimately, HIV infection. HIV infection rates are higher in women than men in Southern Africa (the only region in the world where this is the case). Children's options are closely associated with the wellbeing and social position of women – women take primary responsibility for raising and caring for children and research has shown that the material condition, health and nutrition of children are positively associated with the skills, education and income of women<sup>15</sup>. In a region where more than 34% of households are female-headed, this lack of legal protection has a critical impact upon women's ability to protect their children<sup>16</sup>.

## Policies and Legislation directed towards orphans and vulnerable children affected by HIV/AIDS

Policies and legislation to protect orphans and vulnerable children should be supported within a wider national framework of laws protecting the rights of all children and national HIV/AIDS strategies and policies<sup>17</sup>. In the countries under review, some have National HIV/AIDS strategies and policies which incorporate an explicit focus on orphans and vulnerable children, such as Botswana, Malawi, South Africa and Zimbabwe. In others it is implied within the concept of care and support for those affected and in-

Table 3 Legal Frameworks and Policies For Orphans and Vulnerable Children (summary of Appendix 1 Plans and Policies for Orphans and Vulnerable Children)

	Angola	Botswana	Lesotho	Malawi	Mozambique	Namibia	South Africa	Swaziland	Zambia	Zimbabwe
National Policy on OVC	yes*			yes	under development	yes	yes		draft National Child Policy	National Orphan Care Policy
National Plan of Action on OVC		Short Term PoA 1999 - 2003	yes		yes	yes*	yes	yes		yes
Responsible Body			Lesotho AIDS Program Co-ordination Authority LAPCA (oversight only)	Ministry of Gender and Community Services	Ministry of Women and Social Welfare		National Action Committee for Children Affected by HIV/AIDS (NACCA)	National Emergency Response Council (NERCHA)	National OVC Steering Committee	NPOVC: National AIDS Council NPOA: Working Party of Officials both operating under Ministry of Public Service, Labour and Social Welfare
National HIV Policy includes OVCs			yes	yes				orphans but not vulnerable children		yes
National HIV/AIDS strategic framework/ plan of action includes OVCs		yes	yes	orphans but not vulnerable children explicitly	no	no	yes			yes
Other supporting policies	National Policy for Separated Children, Family Code		National Social Welfare Policy 2003, Child Protection and Welfare Bill, 2004			National Policy on Social Affairs, Namibian HIV/AIDS Charter of Rights	Children's Bill National Plan for Comprehensive HIV and AIDS Care and Treatment		Juveniles Act	National Strategy on Children in Difficult Circumstances, National ART Roll Out Policy, National PMTCT Plan

ected as opposed to being explicitly stated. Objectives targeting children and young people as recipients for information to prevent the spread of the disease also have the potential to improve the situation of orphans and vulnerable children.

Most countries now have or are developing a National Policy on orphans and vulnerable children or a Children's Policy that incorporates orphans and vulnerable children. These policies and strategies are in some cases supported by additional legislation protecting orphans and vulnerable children, such as the draft Children's Bill in South Africa. Table 4 summarises the legal frameworks and policies developed specifically to protect orphans and vulnerable children and other related policies and legal instruments. Fuller details of the policies and legal frameworks by country are included in Appendix I.

### **An Enabling Environment: The Legislative Framework<sup>18</sup>**

Legislation that supports the care and protection of orphans and vulnerable children includes:

- Prohibiting discrimination in health care, schools, employment or other areas based on actual or presumed HIV status
- Providing placement and guardianship for children who lack adequate adult care
- Ensuring women's rights to own property and hold jobs
- Protecting the inheritance rights of orphans and widows
- Protecting children against abuse, neglect and sexual contact with adults
- Eliminating the worst forms of child labour
- Eliminating barriers that keep poorest children from attending school or accessing health care
- Protecting children who live on the streets
- Developing policies that encourage and support family-based placements for

children without adequate family care

- Establishing specific standards for alternative care of children without family support, including steps to prevent separation of siblings; first preference for family-based placements; use of institutional placements as a last resort and a temporary measure; and the involvement of children in decisions regarding their placements

The findings of the first phase of the Rapid Assessment, Analysis and Action Planning process (RAAAP) (see box overleaf) represent the first attempt to analyse the scope, coverage and quality of national responses to HIV/AIDS and, although noting achievements, also point to significant gaps in governments' abilities to bring into force legislation to protect the welfare of vulnerable children.

### **Rapid Country Assessment, Analysis, and Action Planning (RAAAP) Initiative on behalf of Orphans and Other Vulnerable Children in Sub-Saharan Africa**

In October 2003, UNICEF convened the First Global OVC Partners Forum where an agreement was reached to scale up and improve the quality of the response to OVC at national level and fulfil the obligations within the UN Declaration of Commitment on HIV/AIDS through mounting a process of Rapid Assessment, Analysis and Action Planning (RAAAP) of national responses to orphans and other children made vulnerable by HIV/AIDS. The RAAAP process targeted 17 countries in sub-Saharan Africa including Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe. The process consisted of an analysis of the situation of OVC according to the 5 strategies of the Framework and the development of National Action Plans for OVC that would scale up the national multi-sectoral response.

The RAAAP process was guided by the Framework for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV and AIDS which was endorsed by UNICEF, UNAIDS and a broad range of donor and government agencies and other organisations in 2004<sup>19</sup>. The Framework represents a common agenda of 5 strategies to influence policies, programmes and resources directed to orphans and vulnerable children. The fourth and fifth strategies are of most relevance to this review:

- ensuring that governments protect the most vulnerable children through improved policy and legislation and by channeling resources to communities:
- raising awareness at all levels through advocacy and social mobilisation to create a supportive environment for children and families affected by HIV/AIDS

The concluding findings of the first phase were that governments lagged behind in enforcing child protection and human rights laws, making orphans and vulnerable children and their caregivers more susceptible to poverty and to stigma and discrimination, including being barred from accessing public benefits for orphans and vulnerable children. The lack of enforcement of women's and children's rights threatens the well-being of orphans and caregivers, particularly in relation to inheritance rights. Although, governments were signatories to international agreements such as the CRC, ACRWC and CEDAW, there were glaring gaps in the enforcement of laws that governments attributed to funding shortages and lack of trained staff. This lack of enforcement severely inhibits government and donor efforts to channel resources to communities, particularly to women and girls who provide the majority of care for orphans and vulnerable children. The low levels of awareness raising and advocacy for the public on issues of orphans and vulnerable children

can be linked to the limited number of policies for orphans and vulnerable children completed by governments.

As a result of the RAAAP process, all of the 8 Southern African countries participating now have National Plans of Action on Orphans and Vulnerable Children, which have been costed and countries are mobilising resources to implement them. Getting government ownership of the plans has been difficult in some cases and there is now a drive to integrate these national plans into existing structures and longer term development agendas including poverty reduction strategies (PRSPs).<sup>20</sup> Of the two countries that did not participate in the first round of the RAAAP, Botswana is now reviewing its existing Short Term Plan of Action for the Care of Orphans and Angola is participating in the second phase of the RAAAP which is nearing completion.

<sup>18</sup> A Framework for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV and AIDS, UNICEF, May 2004

<sup>19</sup> The Framework is supported by UNICEF, WHO, UNESCO, FAO, WFP, UNAIDS, DFID, USAID, Netherlands Ministry of Foreign Affairs, DANIDA, Global Fund for AIDS, TB and Malaria, Bernard Van Leer Foundation, Save the Children – Pan African Children's Fund, The Association Francois-Xavier Bagnoud, Global AIDS Alliance, Save the Children UK, World Vision, Hope for the African Child Initiative, Care, Family Health International, Columbia University School of Public Health, Yale University Centre for International Research on AIDS, Centre for the Study of AIDS

<sup>20</sup> D Webb et al, Supporting and Sustaining National Responses to Children Orphaned and Made Vulnerable by HIV/AIDS – experience from the RAAAP Exercise in Sub-Saharan Africa, UNICEF, ESARO, 2006

### 3. Key Concerns for Vulnerable Children Across the Region

The country level research that forms the basis of this review identified 11 areas of concern, where legal and policy frameworks are either inadequate or not enforced, creating widespread problems for children in all countries across the region. They are:

**Birth Registration, Education, Inheritance, Social Security, Health care, Physical and Sexual Abuse, Family Care, Early Marriage, Nutrition and Food Security, Child Labour and Moving Across National Borders.**

From Save the Children’s earlier work in Southern Africa, it has been observed that many programmes for orphans and vulnerable children focus on the material needs of children, and less upon the non-material needs such as psycho-social support and protection. There has also been rigorous analysis of some of these areas, particularly food security and nutrition, carried out by Save the Children and other agencies. Although family care is a key element of a community-based response to the situation of orphans and vulnerable children and a protection issue, it overlaps with other areas that will be covered and has been written about elsewhere, thus will not be covered again here. Children’s right to health, including access to anti-retrovirals and treatment, is an emerging issue of importance and will be addressed by Save the Children separately.

This review will therefore concentrate upon the protection issues and education, in recognition of the limited attention paid to non-material needs and growing consensus that education has a pivotal role in improving the lives and future prospects of vulnerable children. The following topics will be covered in Section 3:

- Birth Registration
- Inheritance
- Social Security

- Physical and Sexual Abuse
- Early Marriage
- Moving Across National Borders
- Access to education

In Section 3, the legal provisions for each area of concern are outlined, followed by discussion of the specific issues of concern that have been raised, examples of approaches that have been used in the countries under review to tackle the concerns and recommendations for government, international agencies and civil society for further improvement.

### 3.1. Birth registration

Every child is entitled to a formal identity. Registering a child after birth is an obligation usually placed on parents and caregivers in order to provide that child with a name, nationality and identity and related citizenship rights. Birth registration allows a child to access a birth certificate. This is necessary to access most services such as securing a place in school, accessing health care and social assistance, obtaining an Identity Document (ID), being able to vote and getting a driver’s license or a passport and obtaining access to finance and opening a bank account. In countries that have gone through periods of conflict and breakdown of government (for example, Angola and Mozambique), lack of documentation complicates the process of reuniting families that have become separated. Lack of birth registration also impacts on the ability of a country to keep accurate statistics on births, making it more difficult to monitor the situation of vulnerable children and plan effective programmes to support them.

#### International Framework

Birth registration is recognised as a right in article 7 of the CRC and article 6 of the ACRWC.<sup>21</sup>

#### Why is birth registration an issue?

In recognition of the importance of birth registration, all countries in the region have put in place legal frameworks to ensure mandatory registration of children. In the case of Malawi, this has only recently happened during 2003<sup>22</sup>.

Despite the regulatory framework, the low rate of birth registration has been identified as a concern in all the countries under review. Rates of registration range from as low as 10%

in Zambia and 29% in Angola to 58% in Botswana and 71% in Namibia.

Table 4: Birth Registrations in the Selected Countries<sup>23</sup>

Country	% of children whose births were registered, total (1999-2001)	% of children whose births were registered, urban (1999-2001)	% of children whose births were registered, rural (1999-2001)
Angola	29	34	19
Botswana	58	66	52
Lesotho	51	41	53
Malawi	-	-	-
Mozambique	-	-	-
Namibia	72	81	64
South Africa <sup>24</sup>	-	-	-
Swaziland	53	72	50
Zambia	10	16	6
Zimbabwe	40	54	33

Reasons have been identified for poor levels of birth registration including:

- Lack of awareness of laws for birth registration and lack of effective policies and strategies for implementation of laws
- General lack of awareness of the importance of registration by parents or caregivers;
- Time consuming, bureaucratic processes, lengthy delays
- Lack of assistance, inaccessible staff and complicated forms,
- High costs involved
- Inaccessibility of registration offices for those living in rural areas

21 Art 6(2) of the African Children’s Charter provides explicitly that “[e]very child shall be registered immediately after birth”.

22 Rapid Country Response Analysis: Malawi, Policy Project/The Futures Group

23 According to <http://www.unicef.org/infobycountry/index.html>.

24 Birth registrations statistics for South Africa are available from [www.statssa.gov.za](http://www.statssa.gov.za)

Children in rural areas are less likely to be registered than those in urban areas. Children whose parents are ill, away searching for work or working may not be able to register their children. Although most countries make provision for registration of refugee and children of foreign nationals, parents who are not documented in a country may be reluctant to have contact with the authorities. Parents who themselves were not registered and do not have IDs find it more difficult to register their children. There can be particular difficulties in registering children born out of wedlock. In Zimbabwe, for example, the father's name cannot be included on the birth certificate unless he has given consent. Yet, in practice, it is mandatory for the father's identity document to be produced to register a child, thus leaving many children unable to be registered<sup>25</sup>.

In some cases, the process of naming a child may take time and cause difficulties with birth registration systems which require a child to be registered immediately after birth with a name. In Swaziland, allowance is made for this and a child's birth can be registered without a name and the birth certificate later amended when the child is named<sup>26</sup>. In most countries, it usually becomes more difficult over time for children to be registered with more stringent requirements to prove the child's identity and increased costs to deter late registration. Due to the costs and difficulties involved, parents in Angola often delay registering their children until they need proof of legal identity to access social services such as school. Children under 6 months are 5 times less likely to be registered than those aged 4 to 5 years<sup>27</sup>.

Birth registration is a concern in Angola, Mozambique and Zimbabwe, where children have become separated from parents due to civil strife, conflict, or external migration. Without records reunification becomes more difficult, placing such children in even more precarious situations. The same is true for street chil-

dren, those working in exploitative situations, and those involved in commercial sex work. In South Africa, the issue of birth certificates for children has been highlighted with respect to access to grants: without documents for the children and for the caregiver, it is not possible to access grants to which children are entitled.

### Approaches to improving rates of birth registration

Governments have instituted programmes to make birth registration easier, less expensive and more accessible as well as ensuring that people are aware of the need to register their children's births. Countries such as Angola, Mozambique, South Africa and Zimbabwe have undertaken massive registration campaigns, including mobile units to reach rural, and often most needy, areas of the country. Although improvements have been achieved, the scale of the problem has caused difficulties in sustaining efforts.

### Campaign for free birth registration in Angola<sup>28</sup>

Low rates of birth registration in Angola are attributed to the absence of a predictable and accessible system, exacerbated by massive population displacement during the war, negative cultural attitudes minimising the need for registration, illiteracy and lack of information. In 2001, the Angolan government, with UNICEF's assistance, embarked on a birth registration campaign. The campaign was a multi-sectoral collaboration between different government departments, NGOs and churches, led by the Department of Justice. A simplified administrative process was designed and easier access facilitated by extending outreach services and abolishing the fee for registration. NGOs and churches raised awareness and provided information. By April 2003, 2.2 million children between the ages of 0 – 17 had been registered.

### Making equipment available for registration in rural areas<sup>29</sup>

In rural areas of South Africa, such as Thabo Mofutsanyana District where Save the Children is working, around half the population does not have identification documents that would enable them to claim pensions and child support grants from the state. Unemployment in these areas runs at around 60%, meaning that many people move to look for work, leaving children in the care of grandparents. The local office of the Department of Home Affairs in Harrismith lacked computer equipment and photocopying equipment to process birth registrations on the spot – resulting in delays. A small donation from Save the Children of computers and a photocopier has helped to speed up registration of births by connecting the office to the National Registration database and enabling birth certificates to be printed without delay. As a result, more vulnerable children have been able to claim child support grants.

### Recommendations

Due attention must be given to the fundamental importance of birth registration for children, particularly those who are orphaned or otherwise vulnerable, and an increased effort made to ensure the large numbers of children who are currently unregistered are able to register and access benefits and entitlements through:

- Governments should eliminate any remaining areas of potential discrimination in national legislation on birth registration.
- Governments, supported by donors where necessary, should ensure that equipment and resources, including budgetary support, are allocated to facilitate birth registration, especially in rural areas.
- Governments, in collaboration with civil

society organisations, should carry out awareness-raising registration drives, to ensure children, parents and community leaders recognise the significance of birth registration and their responsibilities.

- Governments, working in collaboration with civil society organisations, should identify and remove barriers which prevent parents and caregivers from registering births – such as simplifying requirements and forms to be completed, training staff to assist parents and caregivers in completing forms, waiving fees for registration and providing regular outreach services.
- Governments and civil society should research options to improve services for registration in rural areas particularly – such as providing registration facilities at hospitals, clinics or schools, or devolving functions to local government.
- Civil society organisations should engage in advocacy to ensure governments implement laws in place for birth registration and monitor their progress.

25 UNICEF, Children and Women's Rights in Zimbabwe, Theory and Practice, 2004 p120

26 Committee on the Rights of the Child, Initial Report of States party: Swaziland, 2006, p31

27 Committee on the Rights of the Child, Initial Report of States party: Angola, 2004

28 Decree 3 of 1998 already provided for the free registration of children.

29 Save the Children, How a computer donation can change people's lives – report to Woodward Charitable Trust for Registration Equipment – South Africa, March 2005

## 3.2. Inheritance

Inheritance is a critical issue for orphans and vulnerable children, as the common practice of property grabbing after the death of an adult means widows, widowers and children can be thrown out of the family home by relatives of the deceased, and are frequently left destitute. Women's difficulties in accessing their inheritance rights, due to the traditional perceptions of their lower status (in some cases reinforced by discriminatory laws) has a direct impact upon the welfare of their children and increases their vulnerability. Addressing inheritance issues for children in a context of high HIV prevalence is critical, as AIDS is more likely than other causes of death to create double orphans (children who have lost both parents)<sup>30</sup>. If children are not able to inherit property from their parents, they will be less able to look after themselves and their siblings, increasing the likelihood of dropping out of school and becoming involved in exploitative and hazardous labour, transactional sex or petty crime to survive.

### International Frameworks

The CRC and the ACRWC do not mention a right to inherit although the principle of non-discrimination ensures the right to be treated equally.<sup>31</sup> Similarly, CEDAW condemns discrimination against women and girls and requires State Parties to the treaty to establish legal protection for the rights of women. The Protocol to the African Charter on Human and Peoples' Rights, on the Rights of Women in Africa, adopted in 2003, under article 21 includes the right of men and women to inherit equally from their parents and protects the rights of widows to share the inheritance of property from their

husbands and to live in the matrimonial home. All countries under review except Angola and Botswana are signatories to this Protocol or have ratified it.

### Why is inheritance an issue?

Traditionally, in many Southern African societies, property was distributed after the death of the husband or father in a way that would ensure ongoing protection and support for the wife and children by the father's relatives. This ensured that children were accepted and kept within the clan and there were checks and balances to ensure children were provided for. These practices often included the traditions of sexual "cleansing" of the widow by a male relative of the husband and "widow inheritance" where the widow is obliged to marry one of her husband's male relatives in order to retain her link with the clan and her claim to the property<sup>32</sup>. With increasing urbanisation, greater emphasis on material possessions and deeper poverty, the checks and balances have been eroded and traditional practices allow the father's relatives to gain access to property and other possessions without accepting responsibility for the care of the deceased's dependents.

In matters of inheritance, the practice is that traditional laws on inheritance usually take precedence over formal laws, and these generally relegate women to a lower status. Girls and children born out of wedlock typically experience greater difficulties in realizing rights to inheritance<sup>33</sup>. For example, in Zimbabwe, women are treated as minors under the law and therefore are not allowed to inherit property. Although

formal law in Zimbabwe would permit women to inherit, the Supreme Court has refused to accept that African women can acquire new rights that they did not have under customary law<sup>34</sup>. In Botswana, married women are also regarded as minors and have no rights to inherit land, wealth or property when their husbands die. Until the introduction of the new Constitution in Swaziland, girls could not inherit nor could children born out of wedlock. In Lesotho, although according to customary practices girls and boys as well as children born out of wedlock can inherit according to what is "appropriate" and how much that person has contributed<sup>35</sup>, the practice of property grabbing is rife. The forthcoming Children's Protection and Welfare Bill includes measures to protect orphans and vulnerable children's rights to inherit.

Other countries in the region such as Malawi, South Africa and Zambia have legislation that provides children with a portion of the deceased's estate in the case of intestacy<sup>36</sup>, however in practice, many women and children are not aware of their legal rights or lack the resources, skills and confidence to challenge accepted custom. In South Africa, children need an adult to represent them in the contractual dealings related to owning property, but when children become orphaned, it is necessary to apply to the High Court for relatives to become guardians to protect children's rights to property legally. The expense and difficulties of bringing such issues to the High Court means that many children are unable to protect their property rights<sup>37</sup>.

## Approaches to securing inheritance rights for children

### Wills and Inheritance Act, Malawi<sup>38</sup>

In Malawi, the Wills and Inheritance Act was amended in 1998 to criminalise property grabbing and to provide better protection for orphans, vulnerable children and widows. There are now provisions for children to inherit from the estates of their deceased parents, whether born in or out of wedlock and in cases where a child or dependent is left out of an existing will, an application can be made to the courts to apply a portion of the deceased's estate to those left out.

### The Justice for Widows and Orphans Project in Zambia<sup>39</sup>

Despite the existence of legislation governing inheritance, discriminatory practices related to property dispossession are allowed to continue in Zambia. The Constitution of Zambia, in section 23(4)(c) and (d) arguably allows for the traditional practice of property dispossession to continue, in the provision it makes for the continuation of traditional practices related to adoption, marriage, divorce, burial, devolution of property on death and other matters of personal law. As a result, women and children are being left destitute after being removed from the marital home with no household goods. The traditional practice that allowed for a man's family to inherit and take over the wife and children to protect them is no longer working as originally intended.

The Justice for Widows and Orphans Project (JWOP) was established to assist women and

30 UNICEF, Children on the Brink, 2004

31 See [http://www.achpr.org/english/\\_info/women\\_en.html](http://www.achpr.org/english/_info/women_en.html).

32 Facing the Future Together: Report of the Secretary General's Task Force on Women, Girls and HIV/AIDS in Southern Africa, 2004, p21

33 In Zambia, for example, there is legislation governing inheritance. However, discriminatory practices on related to property dispossession are allowed to continue, however, as the Constitution of Zambia, in section 23(4)(c) and (d) arguably allows for the traditional practice of property dispossession to continue, providing that traditional practices related to adoption, marriage, divorce, burial, devolution of property on death and other matters of personal law will be allowed to continue.

34 UNICEF, Children and Women's Rights in Zimbabwe: a critical analysis in relation to the women and children's conventions, 2004

35 Committee on the Rights of the Child, Initial Report of State Party: Lesotho, 1998

36 Intestacy is a situation whereby a person dies without leaving a will, which would outline how his/her estate is to be distributed.

37 M. Jacobs, M Shung-King and C Smith, eds. South African Child Gauge, 2005, p17, Children's Institute, University of Cape Town,

38 This information is from the Country Researcher

39 From interview with Executive Director of Justice for Widows and Orphans Project and various JWOP Newsletters that were provided.

orphans to get their property returned, to raise awareness and sensitise communities about property grabbing and rights of women and children. The project conducts training, raises awareness at grassroots level in rural areas, and takes matters to the courts when required. The Project is a network of six organisations that work to secure widows' and orphans rights in Zambia.

## Recommendations

The following recommendations are made to ensure that children are not dispossessed of property after the death of a parent:

- Governments should ensure that national legislation and policies protect the rights of women and children to inherit, including children born out of wedlock and resolve differences with customary law.
- Governments should improve implementation and monitoring of laws on intestacy, if they exist, or develop laws that will ensure equitable distribution of property.
- Governments, working with international agencies and civil society organisations, should ensure effective dissemination of laws surrounding inheritance for all levels of the population, including children, and carry out awareness-raising and training on the laws with community leaders and government staff, especially those working at community level, to enable them to provide accurate information and support.
- International agencies and civil society organisations should engage in advocacy with governments to raise the importance of addressing inheritance issues for orphans and vulnerable children and monitor progress in developing and implementing laws and policy.
- Traditional and community leaders should be aware of the correct legal provisions for inheritance and ensure equitable

distribution of property upon the death of a parent, giving due attention to all claimants, including children born out of wedlock.

- Lawyers and legal bodies should ensure that criminal charges are pursued in cases of property grabbing.

## 3.3. Social security

Social assistance or social security are approaches to social protection or “safety nets” to protect the most vulnerable in society. Direct transfers in cash or in kind to vulnerable households can work very quickly and effectively to reduce household vulnerability to a number of external shocks. Such measures can take the form of pensions, family allowances or child benefits, health or education fee waivers, school feeding, health insurance and food or cash for work programmes. Generally, there are strict criteria to qualify for benefits, related to poverty, chronic illness, disability and age.

### International Frameworks

The CRC recognises a child's right to benefit from social security in Article 26. It is not expressly included in the ACRWC but it is implicit within article 5, the right to survival and development and the state's role in ensuring this to the maximum extent possible.

At national level, the Constitutions of governments, such as South Africa and Zimbabwe, guarantee rights to social security. South Africa has the most extensive network of social security legislation and benefits in the region. The social security system, enforced by the Social Security Act,<sup>40</sup> provides various grants to children in need of assistance including the child support grant (CSG), foster care grant (FCG) or care dependency grant (CDG).<sup>41</sup> Yet there are still gaps in the provisions, as the CSG cannot be claimed for children over the age of 14. In the other countries, social assistance programmes which provide benefits to orphans and vulnerable children are in place, although with much smaller levels of benefits and less coverage.

### Why is social security an issue?

In Southern Africa, there are a range of social assistance schemes which make cash transfers to people in need, some of which have been developed with the specific intention of reaching orphans and children made vulnerable by HIV/AIDS. Others, for example, old age pensions, are not intended to benefit orphans or vulnerable children specifically, but do so unintentionally, as many recipients of old age pensions are now caring for grandchildren. According to the Report of the Taylor Committee on social security systems in South Africa (2002), old age pensions make up 50% of rural income, and so make a significant increase in the amount of cash available to households which are also caring for orphans and vulnerable children. Some social security schemes have been specifically designed to reach the most vulnerable children – for example the Kalomo pilot scheme described below – and have been successful in doing so, but the coverage is limited. Overall, across the region, the result is a ‘patchwork quilt’ approach to the provision of social security and protection which excludes large numbers of vulnerable children and does not meet many social protection needs<sup>42</sup>.

Where provisions for social security are in place, children are facing difficulties in accessing the support available. The reasons for this include:

- lack of identity documents, including birth certificates, to prove eligibility of caregivers and children for grants
- lack of information on entitlements and how to apply
- civil servants lacking information on benefits available
- long distances to travel to apply for ben-

<sup>40</sup> Act 13 of 2004.

<sup>41</sup> Art 6 of the Social Assistance Act 2004

<sup>42</sup> Help Age International, Institute of Development Studies and Save the Children, Making Cash Count: lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households, 2005, p52

- efits and repeated journeys required
- requirement that adult caregivers make applications on behalf of the child, excluding children in child-headed households and children whose caregiver does not have identity documents
- backlogs in processing applications

The systems employed to ensure children's rights to social security are failing to reach a large proportion of the most vulnerable children. In South Africa, only 67% of children eligible to claim the CSG are actually receiving it.<sup>43</sup>

Details of social security provisions in place in the region are detailed in Table 5. Old age pensions are not included as they are not specifically intended to benefit children, although there is evidence that vulnerable children do benefit indirectly in the countries where they are in place – South Africa, Lesotho, Namibia and Botswana.<sup>44</sup>

### Approaches to improving access to social security

#### Litigation to hold government responsible for backlogs: KwaZulu-Natal, South Africa<sup>45</sup>

In South Africa, a total of around 6.5 million people receive social grants, including the old age pension, which has 1.9 million beneficiaries. The present social security system plays a vital role in alleviating poverty, keeping an estimated 430,000 households above the poverty line.

However, delays in processing welfare payments are constraining the effectiveness of the system. In the province of KwaZuluNatal, citizens, frustrated with the long delays to receive welfare payments, took their case to

the High Court. The Judge ruled on 8 March 2005 that the Social Welfare Minister would have four and a half months to sort out the backlog of 34,500 applications and appeals for welfare grants, and he would personally have to pay the legal costs of more than R100 000, recognising that the grants and pensions were the "lifblood of the poorest of the poor ... If you deprive people of them, then you have to accept that they will go hungry."

#### Trialing pilot approaches

In both Zambia and Mozambique, pilot programmes providing cash transfers to households worst affected by HIV/AIDS have proved successful and plans are in progress to extend their reach beyond the original pilot areas. In both cases the amounts of cash involved are very small, but in Mozambique, this is able to be fully funded by the state budget.

In Mozambique, the INAS Food Subsidy Programme has stringent requirements (see below) for eligibility but INAS officials will assist applicants to obtain identity documents and birth certificates to prove eligibility. Payments are made on the same day each month and pay points are located no further than 30 minutes walk from a beneficiary's home. Some beneficiaries reported using the money received to finance petty trading or placing the funds in local savings schemes when they had sufficient food during harvest time, thus giving themselves a resource to fall back upon.

In Zambia, the Kalomo District Pilot Social Cash Transfer Scheme was implemented by the Department of Welfare's Public Welfare Assistance Scheme with bilateral donor

support. It aimed to provide a single top-up payment for HIV-affected, incapacitated and destitute households. Households with children all receive the same amount, regardless of numbers of children in order to simplify management of the scheme and targeting. The cost of the pilot scheme was relatively modest and thought to be fiscally affordable and sustainable by international donors. The cash transfers made were also found to have secondary beneficial impacts on poverty reduction beyond the household receiving the payment, as these households tended to buy additional food with the money from neighbours and local shops and traders. Many of these households were also poor so this boost contributed generally reducing poverty in the community. The pilot study concluded that although the transfer does not lift the beneficiary households out of poverty, it does lift them out of life-threatening food poverty.

### Recommendations

Based on the research in the region, the following recommendations are made:

- Governments should address gaps in social security provision for vulnerable children progressively and set targets to bring legislation and practice on social

security in line with international and regional legal obligations. Donors should support governments in this.

- Governments should ensure that existing social protection schemes are adequately resourced and managed to ensure that all children who are entitled to receive benefits receive them by:
  - carrying out public information campaigns to ensure that potential claimants are aware of their eligibility for assistance.
  - providing assistance to claimants to obtain necessary ID documentation and to make claims.
  - using existing infrastructure such as clinics for registration and distribution of payments to reduce distances travelled by claimants.
- International agencies and civil society organisations should work with government to identify priority gaps in current legal frameworks and social assistance schemes
- Governments should take a holistic approach to planning for social protection – as well as supporting incomes of orphans and vulnerable children, steps should be taken also to reduce their expenditure requirements by waiving health and education fees.

Table 5: Social Security Laws and Policies<sup>46</sup>

Country	Law/Policy	Provisions for orphans and vulnerable children
Angola	National Programme for Tracing and Family Reunification, Foster Mothers project	This targets infants up to 2 years old who have been placed in institutions, abandoned, without parents or other family member to act as a guardian by placing them with foster mothers who receive a small amount of assistance including a food basket <sup>47</sup> .
Botswana	Social Benefits Payment and Reconciliation System (SOBERS)	Orphans are registered by locality with names of caregivers and are eligible to receive monthly food baskets and an allowance of P200 (US\$40). In some cases they also receive free school uniforms, housing, clothing and a waiver of school fees <sup>48</sup> .
	Revised National Policy on Destitute Persons	Targets the poor and vulnerable, including people with less than 4 livestock units or earning less than P120 per month, those unable to work due to disability, any under 18 without parental support not receiving orphan support, people affected by natural disaster or temporary emergency. Beneficiaries receive cash support of P90 per month <sup>49</sup> .
	Affiliation and Proceedings Act	Provides P100 to children born out of wedlock <sup>50</sup>

43 South African Child Gauge, Children's Institute, University of Cape Town 2005, p55.

44 Help Age International, Institute of Development Studies and Save the Children, Making Cash Count: lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households, 2005.

45 Transforming the Present – Protecting the Future, Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa, March 2002, Department of Social Welfare, p.58 ('The Taylor Committee').

Economic Policy Research Institute, The Social and Economic Impact of South Africa's Social Security System, September 2004, p31.

The Mercury, 09 March 2003, Sort it Out, Judge orders Minister. See also Legal Resources Centre website at www.lrc.org.za.

46 From the country questionnaires.

47 Committee on the Rights of the Child, Initial Report of the States Parties: Angola, 2004

48 Rapid Country Response Analysis: Botswana, Policy Project/Futures Group, 2004

49 Help Age International, Institute of Development Studies and Save the Children, Making Cash Count: lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households, 2005.

50 Rapid Country Response Analysis: Botswana, Policy Project/Futures Group, 2004

Country	Law/Policy	Provisions for orphans and vulnerable children
Lesotho	Department of Social Welfare – Public Assistance programme <sup>51</sup>	'Destitute' and 'disabled' citizens can claim M100 per month
	Children's Protection and Welfare Bill, 2004	Allows exemptions for orphans for fees incurred for health and nutrition services
	Department of Social Welfare in collaboration with the Office of the First Lady	Assistance to CBOs providing shelter to orphans and vulnerable children by supplying breast milk substitutes, kitchen kits, gardening equipment and toys
Malawi	Public Assistance Fund	Small cash grants transferred 3 times a year to individuals, including orphans and vulnerable children, available until 2009, in response to requests from individuals. NB by 2005 this programme had a very limited outreach of just 650 individuals. <sup>52</sup>
	National Safety Nets Strategy, 2002	Social Safety Nets programme will provide block grants to districts, which will in turn target vulnerable households. This will be in place in 6 districts by 2006 and will be extended to 28 districts by 2009 <sup>53</sup> .
Mozambique	National Institute for Social Action (INAS), Food Subsidy Programme, under the Ministry of Women and Social Action	Monthly cash transfer as a food subsidy of MT70,000 – 140,000 (3 – 6 US\$) per household, where household head is unable to work, the head is an older woman (55+) or older man (60+), physically handicapped over 18 years old or chronically sick over 18. Malnourished pregnant women are also targeted. Initial focus on urban areas is being expanded to peri-urban areas and district towns with expansion to rural villages recently approved.
Namibia	Foster Parent Grant	Targets households fostering up to 7 children. Households receive N\$200 for the first child fostered and an additional N\$100 for each additional child, to a maximum of N\$800. Foster parents must submit birth certificates and other documentation to social workers to obtain payments
	Child Maintenance Grant	For households on low incomes with one to three children, the monthly value is N\$200 rising by N\$100 for each additional child up to N\$400. NB both the foster parent grant and child maintenance grants have very low coverage <sup>54</sup> .
South Africa	Social Assistance Act, 2004 <sup>55</sup> <ul style="list-style-type: none"> <li>• Child Support Grant</li> <li>• Care Dependency Grant</li> <li>• Foster Care Grant</li> </ul>	<ul style="list-style-type: none"> <li>• Targetted at low income households, monthly payment of R180 per child up to 6 children. Applicants must be the primary caregivers of children under 14 years of age, eligibility is determined by means testing with different rates set for rural and urban areas and types of accommodation. Proof of income, ID documents and children's birth certificates are required to process applications.</li> <li>• Targetted at households caring for children up to 18 years of age with severe disabilities in need of full-time care, monthly payment of R780 per month. Applicants must be the primary caregivers and provide ID documents, birth certificate for the child and a medical assessment report. Eligibility is means tested.</li> <li>• Targetted at caregivers of foster children, although they must apply to the Children's Court to become the legal foster parent. Caregivers must pass a means test and provide ID documents and the child's birth certificate. The monthly payment is R560 per month.</li> </ul>
Swaziland	Neighbourhood Care Points <sup>56</sup>	System established by UNICEF and NGOs to provide social assistance to children with critical needs
Zambia	Social Protection Strategy, 2005, Ministry of Community Development and Social Services	Aims to co-ordinate new and existing initiatives, strongly focussing on vulnerable children
	Public Welfare Assistance Scheme (PWAS), Department of Social Welfare	Targets poorest 2% of the population
	Kalomo District Pilot Cash Transfer scheme, implemented by Department of Social Welfare, PWAS (with support from GTZ)	Targets poorest 10% of households including those most affected by HIV/AIDS, focusing on those with older household heads and households caring for orphans and other vulnerable children. Monthly cash transfers of ZmK 30,000 – 40,000 (6 – 8 US\$) for food purchase. <sup>57</sup>

51 Help Age International, Institute of Development Studies and Save the Children, Making Cash Count: lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households, 2005.

52 Help Age International, Institute of Development Studies and Save the Children, Making Cash Count: lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households, 2005, p52

53 as above

54 Help Age International, Institute of Development Studies and Save the Children, Making Cash Count: lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households, 2005.

55 www.services.gov.za

56 Help Age International, Institute of Development Studies and Save the Children, Making Cash Count: lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households, 2005.

57 Help Age International, Institute of Development Studies and Save the Children, Making Cash Count: lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households, 2005.

Country	Law/Policy	Provisions for orphans and vulnerable children
Zimbabwe	National Social Assistance Security Act [Chapter 17:04]	National insurance scheme for employees – only pays benefits to those who are in employment and their beneficiaries <sup>58</sup>
	Social Welfare Assistance Act, 1988 (Chapter 17:06 Public Assistance Programme)	Cash grant for chronically poor, defined as those without known family to support them, those unable to work, those over the age of 65, children in especially difficult circumstances, those with disabilities or chronically ill. Recipients also receive a medical card and school and exam fees for dependent children (although school fees are largely administered under the Basic Education Assistance Module (BEAM)). In urban areas, payments may be made for rent, electricity and water costs. Benefits are set low and require several journeys to District Social Welfare office to obtain them <sup>59</sup> .

58 UNICEF, 2004 Children and Women's Rights in Zimbabwe, Theory and Practice

59 as above

## 3.4. Physical and sexual abuse

My stepmother would beat me in the afternoon, after I get home from school. She said I did something, but I didn't do it. She would blame me. She would beat me with a stick, on my legs, and here (She touches her cheek). With a long stick. The skin would get cut, and I would bleed. I was still in my school uniform. As soon as I got home, she would beat me. I used to cry. I asked her to stop. I would apologise. I said I was sorry I did those things. But I hadn't done anything. I told my father I was getting beaten. He said he would talk to my stepmother. I don't know if he did." (8-year-old girl, Swaziland)<sup>60</sup>

A wide range of issues are incorporated by the term physical and sexual abuse, and therefore this section will focus upon particular issues raised during the country level research, rather than attempting to deal with all issues of physical and sexual abuse of children occurring in Southern Africa. Three main issues were highlighted:

- corporal punishment,
- sexual abuse in violent or exploitative circumstances
- accusations of child witchcraft

Corporal punishment is widely used in Southern Africa as a method of disciplining children in school, at home and in care institutions. Humiliating and degrading treatment are also often used for disciplinary purposes.

In the countries reviewed, little baseline research has been carried out on the prevalence of sexual abuse of children, but reports persist that indicate that it is a widespread problem, which orphans and vulnerable children are par-

ticularly affected by. For example, an ILO study carried out in Zambia in 2002 found that the majority of street children that were involved in sex work were orphans<sup>61</sup>.

Accusations of child witchcraft is a phenomenon in the region – for example, in Angola, where children accused of witchcraft are the target of ill-treatment, torture and rejection by their families and communities<sup>62</sup>. Some harmful traditional practices related to marriage and sexuality are also closely linked to witchcraft and these are dealt with in section 3.5.

### International Frameworks

Children's rights to be free from violence, abuse and neglect are stated broadly in article 19 of the CRC and in more detail in Articles 33 – 37. The wording of article 19 makes it clear that the state parties to the convention are required to do much more than enact laws to protect children from violence and abuse – they must ensure a holistic and substantive system is in place to prevent abuse and ensure support and assistance for children who are victims of abuse. The right to protection from violence, abuse and neglect are also protected by article 16 of the ACRWC. The issue of violence against children has been the subject of much scrutiny and various initiatives at international and regional level leading to the recommendation by the Committee on the Rights of the Child that a global study be undertaken. The United Nations' Secretary General has accordingly commissioned a global study on violence against children, which is due to present a major report in late 2006, drawing together existing research and relevant information on forms, causes, and impact of violence affecting

children and young people up to the age of 18 years. Recommendations will also be made to the UN General Assembly<sup>63</sup>.

At national level, the majority of countries reviewed have provisions within the Constitution and in other legal instruments that offer children protection from abuse. Usually, it is part of the penal code, normally creating an offence that is punishable by law if a child is sexually or physically abused by someone such as a parent or guardian who is required to care for him or her. In South Africa the Domestic Violence Act of 1998 covers domestic violence, sexual abuse, economic abuse and emotional and psychological abuse in the home and provides for child abuse to be reported immediately to the police by care workers or teachers working with children and for protection orders to be issued to stop the abuse of a children<sup>64</sup>. Children in South Africa will also be further protected by the Children's Bill once it is enacted.

However, this legislation does not offer comprehensive protection from abuse – for example, corporal punishment by parents is allowable in all countries in Southern Africa. The protection offered by the legislation to children who are more vulnerable, for AIDS-related or other reasons is limited.

Although all the countries have legislation on sexual offences which outlaw rape and sexual abuse of children, these are in reality difficult to enforce, due to weaknesses in the wording of the law, ambiguities over the age of sexual consent and a reluctance to intervene in the family environment, where most sexual abuse of children occurs. There are also problems with definition – for example, in South Africa, rape of boys is not recognised. Most states have also proposed a system of institutions to protect children who are found to be in need of care outside of the family, but in fact lack resources to establish such institutions and to monitor and regulate effectively. The gap is filled by private organisations

that set up so-called safe places which are poorly monitored and regulated, leaving children at risk of further abuse and violence.

### Why is physical and sexual abuse an issue?

As part of the UN Study on Violence, an initial desk review was carried out assessing violence against children in East and Southern Africa. One of its key observations was that whilst the full impact of the HIV/AIDS pandemic has yet to be seen in the region, HIV/AIDS is already increasing vulnerability of children to exploitation and violence with an increase in child-headed households, children on the streets and children undertaking exploitative labour in order to make a living<sup>65</sup>.

Children's rights to be protected from abuse can be a difficult and emotive issue to discuss and address as many people are not able to separate "disciplining" from "abuse." The need to discipline children has been regarded traditionally as a right of parents and caregivers, even if that discipline involves physical violence. In some countries in the region, the use of corporal punishment is authorised in schools and other situations, with regulations setting out how it is to be administered and by whom. Studies by Save the Children Sweden carried out in South Africa, Swaziland and Zambia highlight the prevalence of corporal punishment, with children reporting high frequencies of beatings and other physical punishments both at home and at school. There is also evidence indicating that corporal punishment is more common in lower income households.

Sexual exploitation of children is also difficult to address due to its "invisible" nature as it often occurs at home and is frequently unreported. The increased likelihood of children in AIDS affected families being sent out of the family environment, raises the chances that they will be subject to abuse, exploitation and

60 From Inyandza Leyo! Testimonies from Abuse Survivors, J Hall, 3 February 2003, Swaziland.

61 Rapid Country Response Analysis: Zambia, Policy Project/Futures Group, 2004

62 Committee on the Rights of the Child, Initial Report of the States parties due in 1993: Angola, 2004

63 For further details on the UN Study on Violence, see [www.violencestudy.org](http://www.violencestudy.org)

64 Farhani, Zuberi, Assessment of Violence Against Children in the East and Southern Africa Region, Results of and Initial Desk Review for the UN Secretary General's Study on Violence Against Children, 2005, [www.violencestudy.org](http://www.violencestudy.org)

65 Farhani, Zuberi, Assessment of Violence Against Children in the East and Southern Africa Region, Results of and Initial Desk Review for the UN Secretary General's Study on Violence Against Children, 2005, [www.violencestudy.org](http://www.violencestudy.org) p13

violence, due to the limited options and means of protection available to them. In several of the Country Rapid Response Analysis reports undertaken as part of the RAAAP process, the lack of baseline data on child sexual abuse is noted and in recognition of the increased susceptibility of vulnerable children to such abuse, recommendations are made to carry out research into this area.

While all children are subject to abuse, girls are more vulnerable to sexual exploitation. For children who are already living in precarious situations, abuse further exacerbates their vulnerability. Children who are abused at home may run away to live on the streets where they are prey to violence and exploitation - girls may be forced to engage in commercial sex work in order to survive. Children who suffer corporal punishment or sexual exploitation at school may drop-out of schooling.

Physical and sexual abuse is within the sphere of traditional practice and customary law, particularly with regard to the age of sexual consent. Customary practice can dictate that girls are ready for marriage or participation in traditional sexual practices from the age of puberty onwards. Where there are inconsistencies between customary law and formal law, it is difficult to uphold formal laws over traditional practice as social workers, police forces and judiciary systems are not adequately resourced to do this. Even where there are adequate provisions of law criminalising and censuring these traditional practices, traditional attitudes cannot be changed overnight and require intensive legal education to change practices. In Zimbabwe, where legal provisions are in place, courts are inundated with cases of rape, incest and indecent assault of young girls and even babies, which have their origins in traditional culture and witchcraft beliefs.<sup>66</sup>

There are also problems of secondary abuse, such as within the judicial system. Processes do not take into account the need for special provisions for children, such as ensuring separation from adults of children held in custody and child-friendly court proceedings.

In some cases, the laws are weak and “lack teeth” resulting in perpetrators of abuse escaping conviction. This impunity increases distrust in the legal system and can discourage victims from reporting cases of abuse. In cases where the family or the victim is willing to break the silence and report cases of abuse, the family is often coerced or coaxed to use customary means to settle the matter, and withdraw the case from the courts.

### **Approaches to protecting children from physical and sexual abuse**

Recognising the seriousness of issues of physical and sexual abuse against vulnerable children, various initiatives have been instigated across the region to improve children’s protection:

#### **Amending the National Constitution of Mozambique**

In Mozambique the Constitution was amended in 2004 to strengthen the provision for vulnerable children’s as requirement for protection from abuse. Section 121(2) now states:

“Children, particularly the orphans, the disabled and the abandoned, have the family, society and State protection against any form of discrimination, ill treatment and abusive exercise of authority within the family and in the different institutions.”

#### **Training for customary Chiefs in Malawi<sup>67</sup>**

The Malawi Social Action Fund (MASAF), a governmental rural development programme, has provided training for customary Chiefs on how to protect orphans and vulnerable children against abuse, how to intervene when parents/guardians are abusing children and how to handle cases of property grabbing. To date, it has held six training workshops targeting a total of 360 chiefs.

#### **Places of Safety**

In South Africa, there are “places of safety” for children who are removed from their families due to neglect or abuse. In other countries, such as Lesotho, Namibia and Zambia special units have been established in the police services to deal with issues relating to the abuse of children and women. People working in these units have been trained how to sensitively handle issues of abuse and exploitation. Child-friendly courts and police units have been established to protect children who are to give testimony in court.

#### **Strategy against burning of “child-witches” in Angola<sup>68</sup>**

To be a witch (Ndoki in Kikongo) does not only mean that he or she has committed perverse acts, but also that he or she will permanently be a serious danger to others. A child identified as a witch is, by definition, thought to be a serious danger to their relatives and is treated accordingly. As such the most extreme solution may be to kill the child to legitimize the accusation.

In Angola, there has been a worrying increase in the identification and burning of “child-witches”. Although witchcraft is a widely held

belief, the stigmatisation of children as witches seems to be a recent phenomenon. Some observers have interpreted this as reaction by overstretched families to the burdens placed on extended families and households, leading to a reinterpretation of traditional practices in the context of poverty.

Recognising the deeply entrenched role of the supernatural in society, the Christian Children’s Fund and others engaged with members of the community in a critical self-assessment of their tradition. Members of the community were asked to reflect on the historical tradition of witchcraft, asking themselves if there are any precedents for “child-witches”. With the assistance of traditional healers, the community were able to reach the conclusion that child witches were not part of the traditional understanding of witchcraft. Using psychosocial techniques, members of the community were asked to think back and relive their own childhoods. By being reminded of their own youth, the adults compared their own experience with that of the children accused of being “witches” and came to realise that the children’s conduct was similar to their own and thus not to be “punished” as “witchcraft”. As a result of process, the communities involved were able to take up a stance against the identification and burning of “child-witches”, without sacrificing their respect for the supernatural.

### **Recommendations**

The following recommendations are made to address abuse against children:

- More research is needed to establish the nature and scope of child abuse in the region, and strategies developed out of this research to work with communities to protect children from child abuse.
- Governments should promote the imple-

66 Children and Women’s Rights in Zimbabwe, Theory and Practice, UNICEF 2004, p45

67 Information from UNICEF Country Office in Malawi

68 INAC and SCN, September 2003, “Children in need of special protection – An anthropological study on children accused of using witchcraft in Mbanza, Congo, Uige and Luanda” p 2-3 (as quoted in the Supplementary Report by NGOs on the Implementation of the Convention on the Rights of the Child (February 2004), Inter-Ecclesiastic Committee for Peace in Angola and Child Network. Available at: [http://www.crin.org/docs/resources/treaties/crc.37/Angola\\_ngo\\_report.doc](http://www.crin.org/docs/resources/treaties/crc.37/Angola_ngo_report.doc)

mentation of international and regional standards for preventing and protecting children from abuse by abolishing any laws which condone the use of violence against children and ensuring that all forms of violence and abuse against children are prohibited by law.

- Governments should work with international agencies and civil society organisations to improve systems for detection of abuse, reporting and prosecution of cases of child abuse to ensure that perpetrators of abuse are held accountable, to ensure that the judicial processes take into account the best interests of the child and to provide support to survivors of abuse.
- Governments must ensure that adequate budgets are allocated to support the implementation of laws.
- Civil society organisations should work with communities to ensure that children are aware of their rights and treated as holders of rights and that all violence against them, including sexual abuse, is recognised as a breach of their human rights, no matter where it takes place.
- Governments should work with civil society organisations to ensure that support is available for all children who are survivors of violence, including legal assistance, alternative care, medical and psycho-social care.
- Government, international agencies, civil society organisations, lawyers and legal bodies should work together to address issues of gender discrimination and promote the empowerment of women and girls, to reduce the incidence of child sexual abuse and promote positive role models, at every level from household level upwards.
- Lawyers and legal institutions should ensure that criminal charges are pursued in cases of violence and abuse of children, in a manner that recognises the best interests of the child, and should pursue test litigation to bring about law reform where needed.

## 3.5. Early Marriage

Traditionally, girls in Southern Africa are prepared for marriage from puberty onwards. The age of marriage can therefore vary between 14 and 17 years according to the rate of the girl's development, although girls as young as 10 are known to participate in the initiation rites that prepare a girl for marriage.

In all of the countries under review, early marriages have traditionally been and still are frequent. According to available statistics, high percentages of girls are married before they are 18 – 57% in Mozambique; 47 % in Malawi; 42 % in Zambia; 10 % in Botswana; 10 % in Namibia and 8 % in South Africa.<sup>69</sup> It is not known what percentage of these early marriages contained an element of coercion.

Table 6: Percentage of Women aged 20 – 24 years married by age 18<sup>70</sup>

Country	Year	total by country	urban areas	rural areas
Angola		-	-	-
Botswana	*	10	13	9
Lesotho		-	-	-
Malawi	2000	47	32	50
Mozambique	1997	57	47	60
Namibia	2000	10	9	10
South Africa	1998	8	5	12
Swaziland		-	-	-
Zambia	2002	42	32	49
Zimbabwe	1999	29	21	36

\*statistics given for latest available year between 1999 – 2004

### International Frameworks

The CRC does not specifically address the issue of child marriage but in its direct links with other rights, such as the right to freedom of expression (article 12), the right to protection from all forms of abuse (article 19), the right to survival and development (article 6) and consideration of the child's best interests (article 3), child marriage can be determined to be in contravention of the CRC. In recognition of this, it is frequently addressed by the Committee of the Rights of the Child in its comments on States Parties reports. The ACRWC explicitly prohibits harmful social and cultural practices including child marriage (article 21) specifying a minimum age of marriage of 18 years. CEDAW also states that marriage or betrothal of children should not have legal effect. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa sets a minimum age for marriage of 18 and ensures that marriage is entered into consensually by both parties in article 6.

As can be seen in table 6, all the countries under review have formal laws that set the minimum age of marriage at between 18 and 21 years. However, with parental consent, the minimum age can be reduced to 15 or 16 years, and as low as 14 in Mozambique. The age of sexual consent is set usually around 16 years, although the extenuating circumstances related to this are sometimes worded in such a way that would allow a perpetrator to escape from conviction. In Malawi, the Penal Code makes it a criminal offence to have sexual intercourse with a girl of 13 or boy of 12 but does not further specify an age of consent. Although such legislation is in place, customary laws and practice are also given weight. For example, in Zimbabwe,

69 [www.unicef.org/infobycountry/index.html](http://www.unicef.org/infobycountry/index.html)

70 [www.unicef.org/infobycountry/index.html](http://www.unicef.org/infobycountry/index.html)

the legal system operates a dual system, recognising both formal codified law and customary law. Thus customary practices prevail throughout the region, especially in rural areas. The low rates of birth registration also increase the difficulties of monitoring age of marriage.

### Why is early marriage an issue?

Early marriages occur more frequently in the poorest 20% of society, thus involving the most vulnerable children<sup>71</sup>. Parents seek to “marry off” their girls in order to relieve the household of the burden of supporting them, or in exchange for money or goods (such as cattle or goats). Early marriage is sometimes seen by parents as a way of protecting the girl from HIV infection and men often seek younger wives as a means of avoiding infection. Although early marriage has its precedents in tradition, it is also a coping strategy for families under stress due to war, poverty or HIV. Early marriage also increases the vulnerability of children.

Girls who are married early are often forced to withdraw from school thus denying them an education and increasing the likelihood of perpetuating the cycle of childhood deprivation – children of young, illiterate mothers tend to face the same disadvantages as their mothers. Being able to get even primary education has been shown to have a preventative effect upon rates of early marriage<sup>72</sup>.

Early marriage increases the likelihood of early pregnancy, with increased risks for the mother – pregnancy-related deaths are the leading cause of mortality for 15 – 19 year old girls world wide. Mothers in this age group face a 20 to 200 % greater chance of dying in pregnancy than women aged 20 – 24. The risks for girls under 15 are even higher<sup>73</sup>. The younger a woman is when she first gives birth, the longer her total child-bearing period and the more children she is likely to have. This also increases

the risks to the life and health of both mothers and children.<sup>74</sup>

Girls who marry early are more likely to marry men older than them, with unequal power relationships within the marriage and increased likelihood of domestic violence including rape. Girls who marry early are less likely to be aware of how to protect themselves against sexually transmitted diseases including HIV/AIDS<sup>75</sup>.

### Other harmful traditional practices

There are a number of other customary practices in the region relating to marriage and sexuality that are (or are purported to be) based on custom or tradition which put children at risk. Many of these are closely linked to witchcraft beliefs. The popular belief that sexual intercourse with young girls or virgins will cure a person of HIV infection also has linkages with some of the practices. In many cases there is considerable ambiguity in the definitions of the terms used, making it more difficult to clarify the links with potential child abuse. However, it is clear that abuse of children can occur as a result of different cultural interpretations of such practices and vulnerable children are more at risk of being subjected to these practices. Practices include:

In Malawi - *fisi* - allows for forced sexual intercourse with young women who are coming of age.

In Swaziland - *kutekwa*, is practiced in rural areas. As a sign of establishing a Swazi customary marriage, the woman’s body is smeared with red ochre, regardless of whether the woman has consented to the marriage. The practice has been upheld in court as an essential part of Swazi custom, and young girls can be subject to the practice.<sup>76</sup>

In Zimbabwe – *ngozi* allows a young girl to be handed over as compensation to an injured family or to neutralise a curse upon her family, inflicted as a result of the family committing a serious crime. *Chikwambo* – involves visible or invisible objects having sex with children and has been used by HIV-infected adults who believe the practice will cure them of the disease or, alternatively, is a spirit purchased by a person to bring good fortune. The *chikwambo* will require maintenance in return for good fortune,

which can include sexual relations with a wife or daughter. In instances where a girl has been abused and the perpetrator has not been clearly identified, this is sometimes blamed upon a *chikwambo*<sup>77</sup>.

The practices of widow-cleansing and widow inheritance mentioned under the Inheritance section should also be considered as harmful traditional practices.

Table 7: Minimum Age of Marriages and Age of Sexual Consent

Country	Minimum age of marriage	Age of Sexual Consent
<b>Angola</b> <sup>78</sup>	18 (Family Code, art. 24) Exceptions: Boys may marry at 16 and girls at 15 with consent of parents/guardian; or when, after a review of the circumstances, the marriage seems the best solution taking into account the minor’s interests	17 (boys), 16 (girls) Under criminal law, a person cannot be punished for sex with a minor who is 17 (boy) or between 16 -18 (if girl and not a virgin) (Articles 391-398 of Criminal Code)
<b>Botswana</b> <sup>79</sup>	21 (Marriage Act Cap 29:01) Person below 21 requires consent of parents to marry (only father’s consent is required if person’s parents are married) unless he/she is a minor widow/widower. No male below 16 and female below 14 can marry (Section 17). An amendment to make the age common at 18 is being considered by Parliament.	16 (girls) No explicit age given for boys but indecent assault of a boy under 14 is a crime under the Penal Code (section 166). Defilement is defined as an offence in section 147 of the Penal Code as sexual intercourse with a girl below 16 years of age. The accused is allowed the defense of reasonable cause to believe that the girl was over the age of 16 or was his wife. There is also a crime of indecently assaulting a boy under 14.
<b>Lesotho</b> <sup>80</sup>	18 (The Marriage Act, No 10 of 1974) Consent in respect of marriage of a minor shall be given by the parents or guardian of the minor. A minor shall be considered as anyone less than 18 years. The Marriage Act provides that no boy under the age of 18 years shall be capable of contracting a valid marriage, except with the written permission of the Minister. Customary marriages are recognised alongside civil marriages under the 1974 Marriage Act. Customary marriages are regulated by the Laws of Lerotoli and allow children, especially girls, to marry at very young ages <sup>81</sup> .	Women and Girls’ Protection Proclamation No. 14, 1949 prohibits sexual relationships with girls under the age of 16 years. Sexual Offences Act, 2003 aims to modernise, consolidate and simplify existing legislation governing sexual relations between people and to protect the vulnerable, particularly children, people with disabilities and the elderly. It makes it unlawful not to report a case of child sexual abuse <sup>82</sup> .

71 UNICEF, Early Marriage - a harmful traditional practice: a statistical exploration, 2005  
72 as above  
73 UNICEF, Early Marriage – Child Spouses, Innocenti Digest no.7 2001  
74 [www.unicef.org/pn95/fami0009.html](http://www.unicef.org/pn95/fami0009.html)  
75 UNICEF, Early Marriage - a harmful traditional practice: a statistical exploration, 2005  
76 Information from Country Researcher.

77 UNICEF, Children and Women’s Rights in Zimbabwe, Theory and Practice, 2004 p45 and information from Save the Children staff in Zimbabwe.  
78 From Initial State Party Report to the CRC Committee, CRC/C/3/Add.66 (June 2004) paras 81-83 Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/15ed9115b9f75d9c1256f1e00302e60?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/15ed9115b9f75d9c1256f1e00302e60?Opendocument)  
79 Initial State Party Report to the CRC Committee, CRC/C/51/Add.9 (January 2003) paras 85 and 87. Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/78477663cba73281c1256ea1004afd25?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/78477663cba73281c1256ea1004afd25?Opendocument)  
80 Initial State Party Report to the CRC Committee, CRC/C/11/Add.20 (April 1998) paras 29-33 and 38 Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/739266a4d55f1969802566e2003f7b92?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/739266a4d55f1969802566e2003f7b92?Opendocument)  
81 verbal communication, Dr Itumeleng Kimane, June 2006.  
82 Farhani, Zuberi, Assessment of Violence Against Children in the East and Southern Africa Region, Results of and Initial Desk Review for the UN Secretary General’s Study on Violence Against Children, 2005, [www.violencestudy.org](http://www.violencestudy.org)

Country	Minimum age of marriage	Age of Sexual Consent
<b>Malawi</b> <sup>83</sup>	18 (The Constitution, section 22). The Constitution does not prohibit marriages for under 18s, but merely states that the government should discourage marriages below age 18) Between the ages of 15 to 18, consent is required from parents/guardians (Constitution). In practice, girls in the Southern and Central regions enter into marriage from age 15 due to customary practices. The Government of Malawi is leading efforts to reform the legal age of marriage to 16 <sup>84</sup> .	Defilement is defined as a criminal offence in section 138 of the Penal Code as sexual intercourse with a girl below 13 years of age, even with her consent; For boys, the age of consent is 12.
<b>Mozambique</b> <sup>85</sup>	18 Boys at age of 16 or girls at 14 can marry with consent of parents/guardian or upon "emancipation", the situation whereby legal rights are accorded to minors by parents/guardians.	Article 391, the Penal Code establishes sex with a child under 16 as a criminal offence, with more severe punishments for seduction leading to the deflowering of a virgin girl aged between 12 and 18 and for the rape of a child less than 12 years of age set out in articles 392 and 394.
<b>Namibia</b> <sup>86</sup>	21 (Marriage Act, No 25 of 1961) A minor (a child under the age of 21) requires parental consent in order to marry. In addition, no boy under the age of 18 years and no girl under the age of 15 years may contract a civil marriage without the permission of a designated government official (sect. 26). Under common law, a minor boy becomes a major upon marriage, regardless of his age, while a minor girl who marries falls under the guardianship of her husband until she reaches the age of majority.	Consent to sexual intercourse is covered both by common law and statute (Combating Immoral Practices Act, 1980). In common law, a child 12 years or older can give consent to sexual acts. However, under the statute, it is an offence for a male to have or attempt to have intercourse or to commit or attempt to commit an immoral or indecent act with a girl under the age of 16. The offender can escape conviction if he is a first offender under the age of 21 and the girl is a prostitute, or if he is under 16 and the girl deceived him into believing that she was over 16 years of age. Combating of Rape Act, 2000 has stiff penalties for the rape of children and does not allow marriage or other family relationships as a defence to a charge of rape <sup>87</sup> .
<b>South Africa</b> <sup>88</sup>	21 Minors under the age of 21 require parental permission to marry. Where parents refuse consent, an application may be made to the High Court (as guardian of all minors). Further, if a boy below the age of 18 years, or a girl below the age of 15 years wishes to marry, not only parental consent, but also the permission of the Minister of Home Affairs must be obtained, unless the High Court has already given its consent. No girl below the age of 12 or boy below the age of 14 may marry.	It is a criminal offence to have sexual intercourse with a girl below the age of 16 with her consent, although the court may consider certain mitigating factors [Sexual Offences Act (1957)]. The Roman law principle that a girl under 12 is presumed incapable of consenting to sexual intercourse applies in South Africa. It also makes it a criminal offence for any person to be involved in the commercial sexual exploitation of children <sup>89</sup> . Different age criteria apply, however, where boy children are concerned. A boy is presumed to be incapable of consent to sexual intercourse below the age of 14. The statutory provision regarding criminalisation of sexual activity with a boy (even with consent) is 19 years.

83 Initial State Party Report to the CRC Committee, CRC/C/8/Add.43 (August 2000) paras 57, 64-66. Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/5d8d0ba03794f630c1256adb0034ae1?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/5d8d0ba03794f630c1256adb0034ae1?Opendocument)

84 Rapid Country Response Analysis: Malawi, 2004

85 Initial State Party Report to the CRC Committee, CRC/C/42/Add.11 (June 2000) para 63 and 624 Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/56cc902f2dfa9c8ec1256b19004eddf1?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/56cc902f2dfa9c8ec1256b19004eddf1?Opendocument)

86 Initial State Party Report to the CRC Committee, CRC/C/3/Add.12 (December 1992) paras 39, 44 -45 Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/9bc83a1dcd9feb59412561510039d4ba?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9bc83a1dcd9feb59412561510039d4ba?Opendocument)

87 Farhani, Zuberi, Assessment of Violence Against Children in the East and Southern Africa Region, Results of and Initial Desk Review for the UN Secretary General's Study on Violence Against Children, 2005, [www.violencestudy.org](http://www.violencestudy.org)

88 Initial State Party Report to the CRC Committee, CRC/C/51/Add.2 (1999) paras 57 and 71-72 Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d2c94c67c4df8870802567ef0035d7c8?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d2c94c67c4df8870802567ef0035d7c8?Opendocument)

89 Farhani, Zuberi, Assessment of Violence Against Children in the East and Southern Africa Region, Results of and Initial Desk Review for the UN Secretary General's Study on Violence Against Children, 2005, [www.violencestudy.org](http://www.violencestudy.org)

Country	Minimum age of marriage	Age of Sexual Consent
<b>Swaziland</b> <sup>90</sup>	16 (girls), 18 (boys) Marriage Act 1964 Parental consent required for all marriages under age of 21. If the girl is under 16, permission can be sought from the Deputy Prime Minister.	16 (girls) Girls' and Women's Protection Act (1920) Under common law, the age of consent for girls is 12. Also under common law, a boy under the age of fourteen (14) years is deemed incapable of committing rape, but can be charged for indecent assault.
<b>Zambia</b> <sup>91</sup>	21 (Marriages Act, Chapter 50) Anyone below 21 must obtain written consent of a parent or guardian before the marriage can be entered into. However, the Act does not cover marriages contracted under customary law. The latter permits child marriages and thus circumvents the protective provisions of the Marriage Act.	There is no express provision for age of sexual consent. However, section 138 of the Penal Code, chapter 87, prohibits defilement of a girl below the age of 16 years, with or without her consent.
<b>Zimbabwe</b> <sup>92</sup>	18 for boys, 16 for girls (Marriages Act Chap:37, section 23) For anyone below these ages (18 boys, 16 girls) to marry, the Minister of Justice, Legal and Parliamentary Affairs must give approval in terms of section 23 [Chap. 37] of the Marriages Act and the parents must consent to the marriage. Under common law, boys can marry at 14 and girls at 12. Section 11 of the Customary Marriages Act [Chap. 238] forbids pledging of girls and women. 3 types of marriages are recognised in Zimbabwe – namely, civil marriages, registered customary marriage and unregistered customary marriage. <sup>93</sup>	The Criminal Law Amendment Act forbids sexual intercourse with girls below the age of 16, but there is not a provision for boys, who must rely on the common law. This is to be replaced by the Sexual Offences Bill, which is in the last stages of debate in Parliament, and contains provisions dealing with sexual offences committed against young persons. Importantly, it applies equally to boys and to girls.

## Recommendations

The following recommendations are made to begin to address the issue of child marriages:

- Governments should bring national legislation into line with international and regional standards and ensure a uniform approach to the age of majority and age of sexual consent for girls and boys.
- Governments should work with civil society to ensure that law enforcement officials, social workers and others working with children, such as teachers, are trained and able to identify those at risk, and able to make appropriate referrals.
- Governments should ensure that girls' access to education is actively promoted and ensure that there are substantive skills-enhancing programmes and opportunities for girls between the onset of pu-

berty and the time of marriage.

- Governments should work with local education authorities to ensure that girls can attend schools while pregnant or return to school after giving birth
- Governments should ensure girls already in marriages or relationships are able to access reproductive and sexual health care, including contraception and support for survivors of domestic violence.
- International agencies and civil society organisations should advocate for governments to develop and implement legislation recognising international and regional standards on marriage and age of consent and to monitor their progress in implementation.
- International agencies working with Civil society organisations and teachers should engage in public awareness campaigns on

90 Information on Interpol members states on sexual offences against children. Available at: [www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaSwaziland.asp](http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaSwaziland.asp)

91 Initial State Party Report to the CRC Committee, CRC/C/11/Add.25 (November 2001) paras 91-92 Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/763ba8615d7ea9dac1256d1600373680?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/763ba8615d7ea9dac1256d1600373680?Opendocument)

92 Initial State Party Report to the CRC Committee, CRC/C/3/Add.35 (October 1995) paras 48-49 Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/b82db9a977eea080412562e600392abc?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/b82db9a977eea080412562e600392abc?Opendocument)

93 UNICEF, Children and Women's Rights in Zimbabwe, Theory and Practice, 2004

gender issues, including harmful traditional practices and promoting positive male and female role models.

- Lawyers and legal bodies should ensure that criminal charges are enforced in cases of forced early marriage and ensure that the best interests of the child are observed during any legal proceedings.
- Lawyers should engage in litigation to ensure law reform on ages of marriage and sexual consent and the enforcement of laws.

## 3.6. Moving Across National Borders

There has always been a significant movement of people within and between countries in Southern Africa. Those fleeing conflict in Angola, Mozambique and Namibia have sought shelter in stable neighbouring countries, such as Botswana, Malawi and Zambia. Migration for work is also an economic necessity and tradition in the region with South Africa host to many non-nationals who come looking for work, some of whom are children. With the ongoing economic challenges in Zimbabwe, large numbers of Zimbabwean children are moving illegally across borders to Botswana and South Africa and in smaller numbers, to Mozambique, in search of livelihood opportunities.

### International Frameworks

Both the CRC and the ARCWC require states to take all “appropriate measures” to ensure that refugee children or those seeking refugee status receive “appropriate protection and humanitarian assistance”.<sup>94</sup> Both documents also add that, when a child’s parents or relatives cannot be found, that child must be accorded “the same protection as any other child permanently or temporarily deprived of his family environment for any reason”.<sup>95</sup> Neither convention has provisions for children who are in a foreign country and who are not accorded refugee status, but other provisions within both charters should afford migrant children protection from violence, abuse, and exploitation as well as ensuring access to health care and essential services.

The Protocol on Facilitation of Movement of Persons in the South African Development Community (SADC) was adopted in August 2005 by SADC. This Protocol aims to contrib-

ute to the progressive elimination of barriers to the free movement of people within the SADC region by facilitating entry for all citizens into another member state (up to a period of 3 months), residence in the territory of another member state and allowing a citizen to establish themselves there and to work. Persons wishing to enter another country must seek entry through an official border post, possess a travel document and have the means to support themselves during their stay. Children are not mentioned in the document in its current form, which is not yet ratified by all national parliaments.

At national level, the countries under review all have provisions in their Constitutions or separate legislation addressing refugee issues. All countries have ratified the Convention on Refugees (1951), although legal provisions at national level do not cover all aspects of the Convention in all countries. Provisions for non-registered, undocumented foreign children are less clear. In South Africa, provision is made in Child Care Act of 1983 that foreign, unaccompanied children should be cared for by a social worker, placed in a place of safety and returned to parents or found a foster care alternative in South Africa. However, law enforcement officials in practice view these children as illegal minors to be deported as soon as possible.

### Why is moving across national borders an issue?

The movement of unaccompanied children across international borders in search of livelihoods opportunities is an increasing phenomenon in Southern Africa. It appears that increasing numbers of unaccompanied children

<sup>94</sup> Art 22(1) of the CRC, and art 23(1) of the African Children’s Charter.

<sup>95</sup> Art 22(2) of the CRC, and art 23(3) of the African Children’s Charter.

are arriving in South Africa from Zimbabwe and from elsewhere in Africa. In the process of gaining entry, usually through unofficial channels, they are often abused and exploited. This pattern continues as they seek to find work and avoid deportation. Many children moving across international borders within the region are not accorded refugee status and are treated as illegal immigrants in the countries in which they arrive.

Whilst refugee children are able to obtain a recognised status, there are few protections available to migrant children. The border guards and police who threaten them with deportation are largely unaware of children having any rights to protection or decent treatment. Similarly, the lack of clearly defined legislation means they are denied access to medical, social and other forms of assistance. They also face xenophobic attitudes from officials and the public in South Africa, increasing their vulnerability to abuse, exploitation and neglect. Research carried out by Save the Children in Musina Municipality in Limpopo Province, close to the border with Zimbabwe, indicates that the death of caregivers and assuming responsibilities to provide for younger siblings is a significant factor prompting children to travel to South Africa to look for the work<sup>96</sup>.

Migrant children in South Africa struggle to obtain recognition as children in need of care and are unable to access the Children's Court, due to their undocumented status and the lack of awareness by the authorities of the support that they should receive. Very little work has been done for migrant children in South Africa<sup>97</sup>. The Children's Bill has a section dealing with unaccompanied minors and it is hoped that the Bill will expedite or lead to the development of a clear legislative framework for the treatment of migrant children.

Save the Children has recently conducted a

preliminary study into the risks and vulnerabilities of Zimbabwean children entering Mozambique illegally. Economic and social insecurity, combined with drought and the impact of HIV/AIDS are causing Zimbabwean children to travel to Mozambique to look for work. Once there, they face difficulties such as labour exploitation, lack of protection, limited access to schools and health services, coercion of girls into the sex industry, discrimination and harassment - all related to their illegal status. Many of these children are not registered in Zimbabwe and do not have ID documents, thus increasing their vulnerability to exploitative labour practices<sup>98</sup>.

### **Approaches to addressing the rights of unaccompanied foreign children in South Africa**

In South Africa a recent case involving unaccompanied foreign children is the focus of test litigation being brought against the Department of Home Affairs by The Centre for Child Law and Lawyers for Human Rights. 80 undocumented foreign children were rounded up and held together with adults at a detention centre before being deported and left at the nearest police station on the other side of the border post. Although the children had entered the country illegally, this treatment was not in accordance with the provisions in place for children in need of care under the Child Care Act and they should have been placed in a place of safety.<sup>99</sup> The Centre for Child Law and Lawyers for Human Rights succeeded in obtaining an interdict preventing the deportation of the children. However, the Department of Social Welfare has refused to take up the responsibilities entailed by this court ruling, leading to a further court order being sought.<sup>100</sup> In the face of continued failure to act on this issue, the judge supported the stance taken by the

Centre for Child Law and Lawyers for Human Rights and criticised the government's apathy in translating the ideals of the South African Constitution into action.<sup>101</sup>

### **Recommendations**

- Governments should give special attention to ensure that increased vulnerability of migrant children is recognised and ensure that existing legislation is enforced to protect undocumented foreign children from exploitation, in accordance with the CRC and ACRWC. Where there are laws and policies in place, as is the case in South Africa, they should be implemented effectively.
- Governments should review the SADC Protocol on Facilitation of Movement of Persons and clarify whether the definition of citizen within this protocol includes people under the age of 18. Governments should then ensure that there is specific provision within the protocol addressing the treatment of non-national children, including unaccompanied children and those without documents.
- International agencies should work with civil society organisations to ensure that government has an adequate understanding of the issues that face unaccompanied migrant children, conducting research if necessary.
- International agencies should advocate for the examination of the causes of migration in the region (e.g. the push and pull factors) and to address these issues at a regional and international level.
- Government should work with civil society groups to ensure greater awareness of the protections in place for unaccompanied migrant children, particularly with border officials, at community level and amongst farmers likely to employ casual labour.

- Governments must allocate budgets for the care of unaccompanied foreign minors.
- Local civil society groups should work with local education and health authorities to identify foreign undocumented children and ensure that they are able to access services.
- Lawyers should engage in litigation to ensure the enforcement of laws to protect unaccompanied minors.

96 Glynis Clacherty, "Poverty made this decision for me" Children in Musina: their experiences and needs" 2003

97 Jesuit Refugee Services, the Centre for Child Law, Lawyers for Human Rights and the Suitcase Project offer legal, welfare and psycho-social support for non-national children in South Africa.

98 Save the Children UK, Visitors from Mozambique – a preliminary study outlining the risks and vulnerabilities facing Zimbabwean children who have crossed illegally into Mozambique. 2006

99 See De Lange, I, "SA's policy on kids 'shameful'" 14 September 2004 The Citizen.

100 Sec 28(1)(h) of Act 108 of 1996.

101 Centre for Child Law and Ellis NO v Minister of Home Affairs and Others, TPA, see also "SA's policy on kids shameful" The Citizen 14 September 2004.

## 3.7. Education

“Every day is a struggle to go through. You wake up, go to school, get chased away and you are never sure of whether you’ll eat before you sleep.”

“The other problem is children who go to school on an empty stomach. I do not think they hear teachers when they talk.”

“In January it is most difficult when others have to go to school, the uniform is torn, they don’t have shoes, school fees. There is no money.”

“Another problem is exercise books. Teachers at school would want them. Then when a child goes to school without it he’ll be sent back home because they do not have it.”

Orphans aged between 9 and 18, Ingwavuma<sup>102</sup>

Getting an education can leverage significant improvement in the lives of orphans and vulnerable children. As well as academic learning, education can also reduce children’s risk of HIV infection by increasing knowledge, awareness, skills and opportunities, enabling them to earn livelihoods and care for themselves (and siblings) better. Having an education reduces the risks of engaging in risky or exploitative work. For girls, it lessens the chances of premature marriage or pregnancy. Schools can also provide a supportive environment for orphans and vulnerable children, helping them to learn so-

cial skills and develop social networks. Teachers can be trained to identify vulnerable children and provide support and counselling.

### International Frameworks

The CRC recognises the right of a child to education and governments are obliged to realise this right progressively on a basis of equal opportunity to ensure that primary education is compulsory and available free to all (Article 28). Education is a key component of the right to survival and development stated in Article 6. Under article 23, the rights of children with disabilities to an education are ensured. The provisions of the CRC are included in the ACRWC under article 11 which also directs governments to promote the child’s development through education in terms of their own personality and as a responsible member of a wider African society and to take special measures to ensure equal access for all sections of the community including girls and disadvantaged children.<sup>103</sup> In addition to the commitments set out in these international conventions, all UN member states have pledged to achieve universal primary education by 2015 as one of the 8 Millennium Development Goals.<sup>104</sup>

At national level, the Constitutions of Angola, Lesotho, Malawi, Mozambique, Namibia, and South Africa include the right of children to education, although not always confirming that it should be both free and compulsory<sup>105</sup>. In

Botswana, Zambia and Zimbabwe, there are policies at national level providing for children’s rights to education which make primary education compulsory or free. Swaziland is in the process of implementing a new Constitution which includes free primary education for all children within 3 years<sup>106</sup>. The countries which include education in their constitutions also have supporting legislation which states policy intentions to provide education which is either free or compulsory – only in Lesotho is the stated intention to make education free as well as compulsory. In South Africa, education is compulsory and fee exemptions are available to those on lower incomes. The government has approved an amendment that will remove fees in the poorest two-fifths of schools from 2006.

Several countries have additional policy documents promoting HIV/AIDS prevention and awareness strategies within the education sector, which address issues of stigma and discrimination and in one or two cases, include training teachers to ensure counselling support for vulnerable children affected/infected by HIV/AIDS. In Namibia, the National Policy of HIV/AIDS for the Education Sector includes a range of support services for orphans and vulnerable children (see table 9).

Provisions for orphans and vulnerable children to access education are also included under social protection legislation and caregivers can apply for fee waivers or grants to support children’s attendance at school in Botswana, South Africa and Zimbabwe (see Table 5 Social Security). In reality, the process for applications for this support can be lengthy and difficult for over-stretched caregivers with limited literacy, compounded by lack of official birth and identity documents.

Despite the stated policies, in most cases, families are required to pay for books, school materials, uniforms and transport, creating a financial burden that is difficult for caregivers of orphans

and the most vulnerable children to meet. In addition, there are international pressures for indebted governments to charge cost recovery fees for education. Botswana is currently considering introducing fees for access to state education systems. Structural adjustment programmes that came into force in the late 1980s and early 1990s in many countries in sub-Saharan Africa – precisely the time when HIV/AIDS was becoming an issue – insisted on user fees for health and education. The structural adjustment programmes have made access to education more difficult for the poor and vulnerable.

### Why is education an issue?

Net enrolment rate for primary level education in the countries under discussion ranges from 60 - 89 % in the countries selected, with actual rates of attendance and completion falling below that. This falls far short of universal primary education.

Reasons that orphans and vulnerable children, especially those affected and infected by HIV/AIDS, are struggling to access their right to education include:

- inability to afford fees and school-related costs such as school books, materials, uniforms or shoes;
- parents or caregivers who do not value or understand the importance of education, particularly for girls;
- corporal punishment and abusive treatment, (including sexual exploitation of girls, students) discourages children from attending schools;
- early and forced marriages and teenage pregnancy force girls to leave school early;
- lack of trained teachers and overcrowding in schools giving a poor quality of education
- long distances to schools
- lack of birth certificates to prove age and eligibility for schooling
- children needed to work to support their

<sup>102</sup> Clacherty & Associates. 2001. The role of stigma & discrimination in increasing the vulnerability of children & youth infected with and affected by HIV/AIDS. Report on Participatory Workshops. Save the Children South Africa Programme.

<sup>103</sup> Art 11(3) provides that “States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular: (a) provide free and compulsory basic education; ... (d) take measures to encourage regular attendance at schools and the reduction of drop-out rates; (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

<sup>104</sup> The target linked to goal 2 (the achievement of universal primary education) is to ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.

<sup>105</sup> The right is provided clearly in a number of Constitutions, in the terms that “all persons are entitled to education” (sec 25(1) of the Malawi Constitution) and that “everyone has the right to a basic education” (sec 29(1)(a) of the South African Constitution), or that “primary education shall be compulsory” (sec 20(2) of the Namibian Constitution). These provisions are not always unequivocal. Art 49 of the Constitution of Angola: “The state shall promote access to education ...”; Art 91 of the Mozambican Constitution provides: “In ... Mozambique education shall be a right and duty of all citizens”. The Constitutions of Botswana, Swaziland, Zambia and Zimbabwe do not include provisions on the right to education. Education is included as a principle of state policy under the Constitution of Lesotho.

<sup>106</sup> for text of constitution see [www.constitution.org.sz](http://www.constitution.org.sz), for progress update see [www.cia.gov/cia/publications/factbook/field/2063.html](http://www.cia.gov/cia/publications/factbook/field/2063.html)

Table 8 : Primary School Enrolment, Attendance and Completion Rates<sup>107</sup>

	Net primary school enrolment/attendance (%) (1996-2004*)	Primary school enrolment ratio (2000-2004*)	Primary school enrolment ratio (2000-2004*), net, female	Primary school attendance ratio (1996-2004*), net, male	Primary school attendance ratio (1996-2004*), net, female	% of pupils starting grade 1 reaching grade 5* (1999/2000)
Angola	58	66	57	57	59	-
Botswana	84	79	83	83	86	89.5
Lesotho	65	83	89	62	69	66.8
Malawi	76	-	-	74	77	53.06
Mozambique	60	58	53	63	57	51.9
Namibia	78	76	81	78	78	94.2
South Africa	89	89	89	93	94	64.8
Swaziland	72	75	75	72	71	73.9
Zambia	68	69	68	68	68	76.7
Zimbabwe	79	79	80	85	86	-

\* source UNESCO, www.millenniumindicators.un.org

All other statistics from UNICEF, The State of the World's Children, 2006

- families and younger siblings; or take care of sick relatives;
- lack of awareness of the fee exemption regulations and how to access the exemptions;
  - experience of stigma and discriminatory attitudes in relation to HIV/AIDS, gender, disabilities and poverty discouraging attendance
  - poor performance related to lack of support in the home environment;
  - Lack of adequate nutrition affecting children's ability of children to concentrate in class.

Effective measures need to be taken to ensure that vulnerable children are able to enroll in school, and that they are able to sustain their attendance until completion.

### Approaches to realising children's rights to education

#### Community schools in Zambia<sup>108</sup>

Community Schools in Zambia began in the late 1990s as an alternative to government schools which were far away from many communities, expensive and had

age restrictions preventing older children attending. Declining funding, deteriorating facilities and dissatisfied teachers were also contributing to a low standard of education in government schools.

Communities, with the support of churches, FBOs, local NGOs and international NGOs, started to establish their own schools to offer education to children who would otherwise not have access. Fees are either not required or were minimal. Uniforms and other materials are not required and usually a school feeding scheme is provided for the children. In addition, while they follow the national school curricula, they also provide children with flexible and relevant teaching, such as life skills education focusing on sexual and reproductive health, and flexible hours for older children who must work and take care of younger siblings or sick relatives. Schools are housed within an existing structure or a building constructed by the community for this purpose. Teachers are selected by the community.

The government has recognised the importance of such schools and supports the initiative. Through the Zambian Community

School Secretariat, the Ministry of Education provides:

- Trained teachers through secondment. Approximately 5 % of the total 3000 community school teachers are Ministry of Education employees;
- In-service teacher training programs for community school teachers;
- Approximately US\$4,136,600 (about K20billion) in grants to 2,545 community schools between 2001 and 2004 for school requisites. Approximately US\$417,000 (about K2 billion) of Highly Indebted Poor Country (HIPC) Funds will be channeled to community schools in 2005; and
- Exercise books and other teaching materials to community schools.

Enrolment in community schools has increased since their inception and there is general consensus that community schools provide an important contribution to education.

#### Girls' Education Movement<sup>109</sup>

The Girls' Education Movement (GEM), is a grassroots effort to empower girls that is being supported by UNICEF and its partners in Angola, South Africa, and Zambia and other African countries. It is not a single organisation but consists of children and young people in schools and communities who work in different ways to bring about positive changes in the lives of African girls through education and encourages girls to actively participate. The Girls' Education Movement seeks to ensure equal access to education for girls, ensure gender – responsive curricula and provide life-skills training to empower girls against sexual abuse, exploitation and HIV/AIDS and to ensure safe learning environments for girls in

schools. Clubs are established in schools to provide training and support to girl students. The Girls' Education Movement has proved a successful approach in South Africa to increasing girls' participation in education.

### Recommendations

The following recommendations are made to ensure that the maximum numbers of children are able to access education:

- Governments should harmonise legislation on children's education to ensure that it complies with the CRC and ACRWC.
- Primary and secondary education should be free to all children, including the associated costs of books, materials, uniforms and transport
- Donors should provide predictable long term funding to support universal primary education
- Governments should ensure adequate funding reaches schools to ensure quality of education, including training and development programmes for teachers
- Governments and civil society should recognise the special needs of orphans and most vulnerable children in accessing education and ensure that flexible provisions are made to support their attendance at school. Special provisions should be made where necessary to encourage girls' enrolment and sustained attendance.
- Schools should be sources of support for vulnerable children - governments and civil society groups should ensure that teachers are trained to identify vulnerable children, provide appropriate counselling and support, and to refer them to appropriate services providers.
- Governments and civil society groups should ensure that teachers are trained to be aware and sensitive to the needs

107 UNICEF, The State of the World's Children (2005): Childhood Under Threat.

108 From Country Researcher and Dr. Cornelius Chipoma, Community Participation and the Attainment of EFA Goals in Zambia, Powerpoint Presentation for USAID.

109 www.gem.gov.za www.unicef.org/girlseducation/index\_regionalperspectives.html

of learners, and not to stigmatise and discriminate against them.

- Traditional and community leaders should be aware of the value of education to a

child's survival and development opportunities and support children, especially girls, to complete their education before marriage or having children.

Table 9: Education Laws and Policies<sup>110</sup>

Country	Law/Policy	Provisions affecting <sup>111</sup> orphans and vulnerable children
Angola	Education Reform Act 2001	<ul style="list-style-type: none"> <li>• aims to achieve universal primary education by 2015</li> <li>• accords priority to the most vulnerable groups</li> </ul>
	Basic Education Act	<ul style="list-style-type: none"> <li>• provides for free primary education – this includes enrolment fees and school materials (although in practice, school materials are in short supply)</li> <li>• primary education is compulsory for children aged 6 - 11</li> </ul>
Botswana	Revised National Policy on Education, 1994 <sup>112</sup>	<ul style="list-style-type: none"> <li>• Basic education is free but not compulsory at primary and secondary school levels.</li> <li>• provides for seven years of primary education, three years of Junior Secondary School two years of Senior Secondary,</li> <li>• non-Batswana children have to pay fees</li> <li>• cost recovery measures for all children under consideration</li> <li>• children with disabilities included in mainstream education as far as possible.</li> </ul>
	Policy of HIV/AIDS Education, 1998 Ministry of Education,	<ul style="list-style-type: none"> <li>• provides for compulsory HIV/AIDS education at levels of education, includes training for staff on HIV/AIDS awareness and counselling for AIDS prevention and AIDS related social problems, promotes non-discrimination of all teachers and students affected or infected by HIV/AIDS</li> <li>• no specific provisions for orphans or vulnerable children</li> </ul>
Lesotho	Children's Protection and Welfare Bill, 2004	<ul style="list-style-type: none"> <li>• makes primary education free and compulsory for all children<sup>113</sup>.</li> </ul>
	Education Act 1995.	Free primary education introduced in 2000 for years 1 – 7. In practice it is not available to all and children have to pay additional costs for uniform, text books etc.
Malawi	Free Primary Education programme <sup>114</sup>	<ul style="list-style-type: none"> <li>• free primary education from grade 1 – 8, covering tuition fees and related costs, abolition of school uniform requirement</li> <li>• in practice, parents/caregivers contribute to school fund, water costs etc</li> <li>• fees charged for secondary school attendance</li> </ul>
Mozambique	National Education System, 1992 <sup>115</sup>	<ul style="list-style-type: none"> <li>• establishes right to education</li> <li>• includes provision for School Fund to support needy children to purchase textbooks and other materials</li> </ul> <p>policy under development by Ministry of Education to exempt orphans from paying school registration fees<sup>116</sup></p>
	Ministry of Education, Strategic Plan for the Fight against HIV/AIDS, 2003 -2005	<ul style="list-style-type: none"> <li>• focuses on ensuring HIV awareness and prevention mechanisms are in place</li> <li>• does not address orphans and vulnerable children specifically but includes strategy and objectives to address sexual abuse and violence in schools, support to pregnant girls, conduct towards and care for people living with HIV/AIDS in the education system.</li> </ul>

110 This information is from the country questionnaires.

111 Committee on the Rights of the Child, Initial Report of States Party, Angola, 2004 para 473 - 484,

112 Committee on the Rights of the Child, Initial Report of States Party, Botswana, 2003, 275, 287

113 verbal communication, Dr Itumuleng Kimane

114 CRC report confirms free primary ed to year 4. not able to further confirm more up to date details on revision of Education Act etc

115 Committee on the Rights of the Child, Initial Report of the States Party, Mozambique, 2000 para 373 - 4

116 Country Response Analysis: Mozambique, Policy Project/Futures Group, 2004

Country	Law/Policy	Provisions affecting <sup>111</sup> orphans and vulnerable children
Namibia	National Education Act, 1980 <sup>117</sup>	free and compulsory education for children aged 6 – 16 years.
	National Policy of HIV/AIDS for the Education Sector, 2003 Ministry of Basic Education, Sport and Culture and Ministry of Higher Education, Training and Employment Creation	<ul style="list-style-type: none"> <li>• covers HIV prevention and awareness in schools and non-discrimination towards HIV affected/infected learners and staff</li> <li>• includes section on orphans and vulnerable children stating school heads and caregivers should be provided with information on allowable exemptions of fees for those who are unable to pay; that no learner is excluded as a result of inability to pay fees or purchase a uniform; support to children transferring schools after death of parent or caregiver, sensitisation of staff to special needs of learners affected/infected or orphaned by HIV/AIDS, ensuring adequate flexibility in scheduling and rules for such children; priority allocation of hostel accommodation to the most vulnerable students and learners; establishing networks of support for orphans and vulnerable children at each school</li> </ul>
South Africa	Education Laws Amendment Bill, 2005	<ul style="list-style-type: none"> <li>• sets a no fee threshold, based on a national index of poverty of the communities served by the schools. Schools that fall below the threshold will no longer charge fees.</li> <li>• aimed at abolishing school fees in the poorest two-fifths of schools</li> <li>• being introduced from 2006</li> <li>• Abolishes all other additional fees and charges for registration, administration, curricular or extra-mural activities.</li> </ul>
	South African Schools Act, 1996	<ul style="list-style-type: none"> <li>• school attendance compulsory for children between 7 and 15 years</li> <li>• includes provision that no learner should be excluded on the basis of non-payment of fee</li> <li>• fee exemptions can be obtained for parents earning less than 10 x the annual school fee per learner and for foster parents</li> </ul>
	Plan of Action – Improving Access to Free and Quality Basic Education for All, 2003 Department of Education	<ul style="list-style-type: none"> <li>• Focuses on ensuring access to quality education for the poorest 40% of learners</li> <li>• Aims to progressively realise by 2006 the goal of ensuring that no poor school needs to charge school fees due to inadequate public funding</li> <li>• More transparent fee-setting process for schools that charge fees</li> <li>• Closing of loopholes in 1998 Exemption of Parents from School Fees Regulations</li> <li>• Numbers of children attending school per family now to be taken into account when calculating exemption entitlements</li> </ul>
	National Policy on HIV and AIDS for Learners and Educators in Public Schools, and Students and Educators in Further Education and Training Institutions, 1999	<ul style="list-style-type: none"> <li>• emphasises vulnerability of young people to HIV infection and seeks to minimise social, economic and developmental consequences of HIV and AIDS for the education system.</li> <li>• provides guidelines for the management of HIV and AIDS in schools and provides support to learners and educators living with or affected by HIV and AIDS</li> </ul>
Swaziland <sup>118</sup>	Constitution, draft 2005	<ul style="list-style-type: none"> <li>• provides for the right to education for all children in public schools up to the end of primary school within 3 years of the commencement of the Constitution.</li> </ul>
	Education Act 1981	<ul style="list-style-type: none"> <li>• does not provide for free or compulsory basic education</li> </ul>
	Guidance and Counselling Programme	<ul style="list-style-type: none"> <li>• designed to assist children to cope with emerging socio-psychological factors affecting their education, timetabled classes each week in all levels of education system</li> <li>• including HIV/AIDS prevention and care for students</li> <li>• involving parents in discussions of school based HIV/Aids and STD education</li> <li>• education on reproductive health</li> <li>• integrating gender education and children's rights</li> <li>• lifeskills education</li> </ul>

117 Committee on the Rights of the Child, Initial Report of States Parties, Namibia 1992 para 344

118 Committee on the Rights of the Child, Initial Report of States Parties, Swaziland 2004 para 390 - 393

Country	Law/Policy	Provisions affecting <sup>111</sup> orphans and vulnerable children
Zambia	National Policy on Education <sup>119</sup> 1996	<ul style="list-style-type: none"> <li>no user charges for education but parents pay for uniforms, transport and PTA fees</li> <li>education is not compulsory but once enrolled parents/guardians are obliged to ensure attendance</li> <li>girls attendance encouraged through the Programme for the Advancement of Girls' Education (PAGE) by: <ul style="list-style-type: none"> <li>creating girl-friendly schools</li> <li>sensitising the community and parents</li> <li>creating single sex classes for girls</li> <li>involving parents and guardians in the education of girls</li> <li>improving teaching methodology</li> </ul> </li> </ul>
	HIV/AIDS Education Strategic Plan 2001 – 2005, Ministry of Education	<ul style="list-style-type: none"> <li>focuses on priorities of ensuring materials and training are in place for teachers and educators to carry out HIV/AIDS prevention and awareness education; ensuring a non-discriminatory environment for learners affected or infected by HIV/AIDS and a workplace policy for all staff</li> <li>special provisions for orphans and vulnerable children not explicit, but implied in ensuring non-discriminatory environment etc.</li> </ul>
Zimbabwe <sup>120</sup>	Education Act [Chapter 25:04]	<ul style="list-style-type: none"> <li>ensures the right of every child to education on a non-discriminatory basis</li> <li>education compulsory for all children and obliges parents to ensure that children of school age are educated</li> <li>states that tuition fees should be kept at lowest possible levels</li> <li>Basic Education Assistance Module (BEAM) introduced in 2001, to support poor children unable to pay fees.</li> </ul>
	Strategic Plan 2000 – 2006, Ministry of Education	<ul style="list-style-type: none"> <li>6 key priorities including: <ul style="list-style-type: none"> <li>mitigating the impact of HIV/AIDS - ensuring that orphans will be able to have a decent education – Ministry of Education will look at ways to support this in collaboration with National Aids Council, Department of Social Welfare and other interested partners and stakeholders.</li> </ul> </li> </ul>

## 4. Conclusion and summary of recommendations

It is clear that all ten countries in the SADC region have turned attention to the issues of vulnerable children, recognising that this will become an increasingly important problem in the future. Most countries have attempted to put in place legislation and policies that cover the important human rights violations that vulnerable children face, such as access to education, health care and family care. In some countries, efforts are now being made to consolidate laws into coherent children's legislation in line with the principles of child rights, such as in South Africa and Lesotho, but in other countries this process is either very slow or yet to begin. Progress has been made under the RAAAP process towards supporting and sustaining national responses for children orphaned and made vulnerable by HIV and AIDS, but the more comprehensive process of legislative reform that is required to ensure that the current realities of these children are addressed systematically in national laws and policies, is not yet underway in most countries.

Even where there is adequate legislation and policy provision, there remains a clear gap between this and implementation on the ground. There still is a tendency to relegate matters pertaining to children to the private sphere of the family, and not make these matters part of public debate. This approach is linked to the strategy of enacting policies (which constitute "soft" law), rather than legislation, in respect of orphans and vulnerable children.

This ambivalence to tackle children's issues is exacerbated by the dual system of customary or traditional laws, which often cast women and children as lesser citizens alongside formal codified laws, which give equality and rights to women and children. Greater attention needs to be paid to resolving the tensions between customary and formal laws as they relate to violence and ill-treatment against children and ensuring that new approaches are understood

by leaders and others at community level so that children are able to fulfil their rights. Ensuring that civil society organisations and those working at community level have the knowledge and experience to be able to support orphans and vulnerable children is of utmost importance, as this is where the burden of care is being borne. The study illustrates some examples of improvements brought about by community level action invoking rights (in the form of legislative or constitutional provisions).

Many of the problematic areas also highlight the need for the allocating resources and putting structures and procedures in place to ensure that legislation can be enforced. Even where resources are limited, children's rights must be given due priority. Advocacy and awareness raising on children's rights and provisions for the protection of their rights under the law is also a key area. Public officials need to be better informed about their responsibilities and children and their caregivers must be aware of their entitlements and how to claim them.

### Overall Recommendations

- Governments, in conjunction with civil society, should conduct a review of legislation in all areas that impact on vulnerable children to ensure that legislation is in harmony with international and regional conventions and that differences with customary laws are resolved.
- Governments should improve awareness of legal provisions and policies for the protection of orphans and vulnerable children and focus efforts on making services more accessible by: training staff and community leaders, providing outreach services in rural areas, simplifying bureaucratic processes, removing fees for services such as birth registration,

<sup>119</sup> Committee on the Rights of the Child, Initial Report of States Parties, Zambia 2001 para 354, 362

<sup>120</sup> Children and Women's Rights in Zimbabwe: Theory and Practice, 2004

education and health.

- Governments must allocate budgetary support to ensure the implementation and enforcement of legislation to protect vulnerable children.
- International agencies should advocate for long-term predictable donor funding to support provision of essential services such as education and social security in countries with insufficient resources.
- International agencies and civil society organisations should work with children to ensure that government has a correct understanding of the situation of orphans and vulnerable children and work with government to address gaps in legislation.
- International agencies and civil society organisations should monitor service delivery to orphans and vulnerable children and advocate with government for gaps in policy and service provision to be addressed.
- Governments, international agencies and civil society organisations should ensure that communities, including children, are informed of legal provisions to support them to realise their rights.
- Lawyers and legal bodies should ensure children's rights and the legal provisions to protect them are given due recognition and upheld in legal processes by undertaking litigation to enforce laws to protect vulnerable children.

### Birth Registration

- Governments, in collaboration with civil society organisations should carry out awareness-raising registration drives, to ensure children, parents and community leaders recognise the significance of birth registration and their responsibilities.
- Governments should eliminate any remaining areas of potential discrimination in national legislation on birth registration.
- Governments, working in collaboration with civil society organisations, should identify and remove barriers which prevent parents and caregivers registering births – such as simplifying requirements and forms to be completed, training staff to

assist parents and caregivers in completing forms, waiving fees for registration and providing regular outreach services in rural areas.

- Governments and civil society should research options to improve services for registration in rural areas particularly – such as providing registration facilities at hospitals or clinics, devolving functions to local government.
- Governments, supported by donors where necessary, should ensure that equipment and resources, including budgetary support, are allocated to facilitate birth registration, including rural areas.

### Inheritance

- Governments should ensure that national legislation and policies protect the rights of women and children to inherit, including children born out of wedlock, and resolve differences with customary law.
- Governments should improve implementation and monitoring of laws on intestacy, if they exist, or develop laws that will ensure equitable distribution of property.
- Governments, working with international agencies and civil society organisations should ensure effective dissemination of laws surrounding inheritance for all levels of the population, including children, and carry out awareness-raising and training on the laws with government staff and community leaders to enable them to provide accurate information.
- Traditional and community leaders should be aware of the correct legal provisions for inheritance and ensure equitable distribution of property upon the death of a parent, giving due attention to all claimants (including children born out of wedlock)

### Social Security

- Governments should aim to address gaps in social security provision for vulnerable children progressively and set targets to bring legislation and practice on social

security in line with international and regional obligations.

- Governments should ensure that existing social protection schemes are adequately resourced and managed to ensure that all children who are entitled to receive benefits receive them by:
  - carrying out public information campaigns to ensure that potential claimants are aware of their eligibility for assistance.
  - providing assistance to claimants to obtain necessary ID documentation and to make claims.
  - using existing infrastructure such as clinics for registration and distribution of payments to reduce distances travelled by claimants
- International agencies and civil society organisations should work with government to identify priority gaps in current legal frameworks and social assistance schemes
- Governments should take a holistic approach to planning for social protection – as well as supporting incomes of orphans and vulnerable children, steps should be taken also to reduce their expenditure requirements by waiving health and education fees.

### Physical and Sexual Abuse

- Governments should promote the implementation of international and regional standards for preventing and protecting children from abuse by abolishing any laws which condone the use of violence against children and ensuring that all forms of violence and abuse against children are prohibited by law,
- Governments should work with international agencies and civil society organisations to spread awareness of laws to protect children.
- Governments should work with international agencies and civil society organisations to improve systems for detection of abuse, reporting and prosecution of cases of child abuse to ensure that perpetrators of abuse are held accountable, that the judicial processes takes into account

the best interests of the child and provision of support to survivors of abuse.

- Civil society organisations should work with communities to ensure that children are aware of their rights and treated as holders of rights and that all violence against them, including sexual abuse, is recognised as a breach of their human rights, no matter where it takes place.
- Governments should work with civil society organisations to ensure that support is available for all children who are survivors of violence, including legal assistance, alternative care, medical and psycho-social care.
- Government, international agencies, civil society organisations, lawyers and legal bodies should work together to address issues of gender discrimination and promote the empowerment of women and girls, to reduce the incidence of child sexual abuse and promote positive role models, at every level from household level upwards.

### Early Marriage

- Governments should bring national legislation into line with international and regional standards and ensure a uniform approach on the age of majority and age of sexual consent for girls and boys.
- Governments should work with civil society to ensure that law enforcement officials, social workers and others working with children are trained and able to identify those at risk, and able to make appropriate referrals.
- Governments should ensure that girls' access to education is actively promoted and ensure that there are substantive skills-enhancing programmes and opportunities for girls between the onset of puberty and the time of marriage.
- Governments should work with local education authorities to ensure that girls can attend schools while pregnant or return to school after giving birth
- Governments should ensure girls already in marriages or relationships are able to access reproductive and sexual health

care, including contraception and support for survivors of domestic violence.

- International agencies working with civil society organisations and teachers should engage in public awareness campaigns on gender issues, including on harmful traditional practices and promoting positive male and female role models.

### Moving Across National Borders

- Governments should give special attention to ensure that increased vulnerability of migrant children is recognised and ensure that existing legislation is enforced to protect undocumented foreign children from exploitation, in accordance with the CRC and ACRWC. Where there are laws and policies in place, as is the case in South Africa, they should be implemented effectively.
- Governments should review the SADC Protocol on Facilitation of Movement of Persons and clarify whether the definition of citizen within this protocol includes people under the age of 18. Governments should then ensure that there is specific provision within the protocol addressing the treatment of non-national children, including unaccompanied children and those without documents.
- International agencies should work with civil society organisations to ensure that government has an adequate understanding of the issues that face unaccompanied migrant children, conducting research if necessary.
- International agencies should advocate for the examination of the causes of migration in the region (e.g. the push and pull factors) and to address these issues at a regional and international level.
- Government should work with civil society groups to ensure greater awareness of the protections in place for unaccompanied migrant children, particularly with border officials, at community level and amongst farmers likely to employ casual labour.
- Governments must allocate budgets for the care of unaccompanied foreign minors.
- Local civil society groups should work with

local education and health authorities to identify foreign undocumented children and ensure that they are able to access services.

### Education

- Governments should harmonise legislation on children's education to ensure that it complies with the CRC and ACRWC.
- Primary and secondary education should be free to all children, including meeting associated costs of books, materials, uniforms and transport
- Donors should provide predictable long term funding to support universal primary education in countries with less resources
- Governments should ensure adequate funding reaches schools to ensure quality of education, including training and development programmes for teachers
- Governments and civil society should recognise the special needs of orphans and most vulnerable children in accessing education and ensure that flexible provisions are made to support their attendance at school. Special provisions should be made where necessary to encourage girls' enrolment and sustained attendance.
- Schools should be sources of support for vulnerable children - governments and civil society groups should ensure that teachers are trained to identify vulnerable children, provide appropriate counselling and support, and to refer them on to appropriate services providers.
- Governments and civil society groups should ensure that teachers are trained to be aware of and sensitive to the needs of learners, and not to stigmatise and discriminate against them.
- Traditional and community leaders should be aware of the value of education to a child's survival and development opportunities and support children, especially girls, to complete their education before marriage or having children.

## Appendix I Plans and Policies for Orphans and Vulnerable Children

Country	Status of Policy	What areas are covered?
Angola	National Policy for Orphans and Vulnerable Children <sup>121</sup>	Effort to develop the policy commenced at the East and Southern Africa Regional OVC workshop organised by UNICEF in 2002, and an action plan drawn up at a conference in Zimbabwe in 2003. No details on the policy available.
	Other policies: National Policy for Separated Children that deals with issues pertaining to OVC.	A large proportion of orphans and abandoned children are due to war-related reasons. Government efforts have focussed upon dealing with the emergency situation and children's vulnerability due to war <sup>122</sup> . Issues for all orphans and vulnerable children are dealt with under the Separated Children Policy, which stipulates social interventions that should be provided for vulnerable children without children or in difficult conditions and conditions and support for sheltering children in adoptive families, including access to education, health care and food.
	Family Code, 1988	This law covers key values recognised in the Convention on the Rights of the Child including: <ul style="list-style-type: none"> <li>• the total equality of men and women</li> <li>• the importance of the family</li> <li>• marriage as a voluntary union</li> <li>• equality of children and the obligation to protect them</li> <li>• protection of children, integration of children into society and guarantee for minors to exercise their rights as fundamental principles of the duty of the family, State and social institutions<sup>123</sup></li> </ul>
Botswana	National HIV/AIDS Strategic Framework 2003 – 2009 <sup>124</sup>	OVC issues are incorporated under Goal 4 Psycho-social and Economic Impact Mitigation, key objectives are: <ul style="list-style-type: none"> <li>• expansion of family care services to address basic needs of orphans and affected families</li> <li>• research to identify specific sub-populations living in poverty (including PWLHA, single, female-headed households, orphans, elderly and others and which specific life circumstances contribute to vulnerability to HIV/AIDS</li> <li>• integration of poverty and HIV/AIDS issues in to the annual HIV/AIDS action plans of key stakeholders to support the implementation of a National Poverty Alleviation Strategy</li> </ul> Orphans are also identified within the Framework as a "Key Thematic Issue", with the following priorities identified: <ul style="list-style-type: none"> <li>• provision of psychosocial support services</li> <li>• rapid expansion of services through CBOs and FBOs</li> <li>• orphan rights</li> </ul>
	Short-Term Plan of Action for the Care of Orphans 1999-2003 (Now under Review) <sup>125</sup> Social Welfare Division of the Ministry of Local Government	Identifies six priority areas of intervention. These are: <ul style="list-style-type: none"> <li>• Policy development – creating an enabling environment;</li> <li>• Institutional capacity building and strengthening;</li> <li>• Delivery of social welfare and other essential orphan support services;</li> <li>• Support for community based initiatives;</li> <li>• Coordination and management; and</li> <li>• Monitoring and evaluation.</li> </ul>

121 Birth registrations statistics for South Africa are available from [www.statssa.gov.za](http://www.statssa.gov.za)

122 Committee on the Rights of the Child, Initial Report of the States Parties: Angola, 2004

123 Rapid Country Response Analysis: Botswana, Policy Project/Futures Group, 2004

124 Help Age International, Institute of Development Studies and Save the Children, Making Cash Count: lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households, 2005.

125 Rapid Country Response Analysis: Botswana, Policy Project/Futures Group, 2004

<b>Lesotho</b>	National Plan of Action on Orphans and Vulnerable Children (awaiting adoption by Cabinet) <sup>126</sup>	includes costings for the Plan of Action, a Monitoring and Evaluation Plan for the Plan of Action and the establishment of a National Co-ordinating Committee.
	Child Protection and Welfare Bill, drafted 2004 and awaiting enactment by Parliament <sup>127</sup>	Replaces outdated Child Protection Act of 1980. Orphaned and vulnerable children's rights will be protected and promoted within the Bill: provision for establishment of independent Children's Commission to monitor and report violations of children's rights <ul style="list-style-type: none"> <li>• provision for birth registration of orphaned children</li> <li>• safeguards protecting property and inheritance rights for orphans and children born out of wedlock</li> <li>• comprehensive system for foster care and adoption ensuring that the best interests of the child are paramount during the process (sections 51 – 69)</li> <li>• clarification of appointment of guardians of orphaned children and responsibilities</li> <li>• reiteration of children's rights to education, health services, adequate diet, clothing, shelter, medical attention, social services and any other services required for child's development and survival</li> <li>• measures to protect children from exploitative labour, torture, degrading treatment or punishment</li> <li>• measures to discourage institutionalisation of children (supported by guidelines and standards for residential care of orphaned and vulnerable children<sup>128</sup>)</li> </ul>
	National HIV/AIDS Strategic Plan <sup>129</sup>	<ul style="list-style-type: none"> <li>• Includes issues for orphans and vulnerable children</li> <li>• Covers issues relating to herdboys, streetchildren, child commercial sex workers as well as other groups of vulnerable children.</li> <li>• Promotes formal teaching on HIV/AIDS in schools, life skills education, youth-friendly health services</li> </ul>
	Policy Framework on HIV/AIDS Prevention, Control and Management, 2000 <sup>130</sup>	Aims to mitigate impact of HIV/AIDS through comprehensive health care and support for people with HIV/AIDS and their families. It acknowledges the difficulties faced by orphans, the need for them to receive love, care and education and ensures non-discrimination and access to same facilities as other orphans and pledges to establish and maintain proper caring facilities for orphans.
<b>Malawi</b>	National Policy and Orphans and Other Vulnerable Children, 2004 Ministry of Gender and Community Services <sup>131</sup>	<p>The NPOVC aims to "ensure that the provision of care and support to orphans and other vulnerable children is in the best way possible in line with the Convention of the Rights of the Child"</p> <p>Emphasis is placed upon keeping children in family or community environments, with institutional care in an orphanage as a last resort. The goals of the NPOVC include:</p> <ul style="list-style-type: none"> <li>• increased community participation in developing community-based orphan care</li> <li>• strengthening family and community capacity to care for and cope with OVC needs, including awareness of legal protections for OVCs</li> <li>• expanding and promoting formal and informal foster care</li> <li>• provision of economic and psychosocial support to children most at risk</li> <li>• income generation training and support for older orphans and guardians</li> <li>• setting standards and guidelines for various stakeholders</li> <li>• registration of orphans, street children, disabled children and other vulnerable children to allow tracking and monitoring</li> </ul>
	National HIV/AIDS Policy, A Call for Renewed Action, 2003, National AIDS Commission, Office of the President and Cabinet	<p>Under Chapter 5, 'Protection, Participation and Empowerment of Vulnerable Populations', policy statements to protect orphans are included, covering</p> <ul style="list-style-type: none"> <li>• assistance and empowerment of communities and extended families to care for orphans</li> <li>• ensuring access to primary education for orphans</li> <li>• registration of births and deaths at local level</li> <li>• ensuring that child-headed households are supported</li> <li>• protection of inherited property for orphans until they reach the age of majority</li> </ul> <p>The chapter also outlines policies to protect other vulnerable groups including:</p> <ul style="list-style-type: none"> <li>• women and girls</li> <li>• children and young people</li> <li>• poor people</li> <li>• people with disabilities</li> </ul>
	National HIV/AIDS Strategic Framework 2000 – 2004	Guiding principles include reference to laws to protect, mitigate suffering and economic deprivation of PLWAs, widowers, widows and orphans and to enforce statutes to protect children and youth at all levels of society as a basis for creating a healthy, educated and responsible generation.

126 Help Age International, Institute of Development Studies and Save the Children, Making Cash Count: lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households, 2005.

127 as above pg 52

128 as above

129 Help Age International, Institute of Development Studies and Save the Children, Making Cash Count: lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households, 2005.

130 www.services.gov.za

131 Help Age International, Institute of Development Studies and Save the Children, Making Cash Count: lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households, 2005.

<b>Mozambique</b>	National OVC Policy : under development <sup>132</sup>	Process led by Multisectoral Nucleus, created in 2001, including Ministries of the Interior, Justice, Education and Agriculture. Supported by the Technical Group established within Ministry of Women and Co-ordination of Social Action (MMCAS)
	Plan of Action for Orphaned and Vulnerable Children for 2005 – 2010 <sup>133</sup>	<p>Two areas of action defined: strengthening of national capacities and direct support to the most vulnerable children. Four key strategic areas:</p> <ul style="list-style-type: none"> <li>• creating a protective environment to reduce the impact of HIV and AIDS on orphaned and vulnerable children</li> <li>• building institutional capacity in the government to respond to the crisis of orphaned and vulnerable children</li> <li>• strengthening the capacity of families and communities to find local solutions for the protection and care of orphans and other children made vulnerable by HIV/AIDS</li> <li>• establishing and strengthening systems to gather, monitor and evaluate data</li> </ul> <p>Vulnerable children are defined as including children affected or infected by HIV/AIDS, children in households headed by children, youth, women or elderly persons, street children, children in institutions, children with disabilities, internally displaced or refugee children, etc.</p>
	Other policies: National Policy on Social Affairs (Política da Acção Social) <sup>134</sup> includes orphans and vulnerable children in the group of children in difficult situations	Children in difficult situations are regarded as in need of special attention of material, educative and affection support, towards social reintegration.
<b>Namibia</b>	National Policy on Orphans and Vulnerable Children, December 2003 Ministry of Women's Affairs and Child Welfare <sup>135</sup>	The policy is based on national and international legal policy frameworks including the Constitution, the CRC, and National Strategic Plan on HIV/AIDS. It includes provision for psychosocial issues for OVC and outlines mechanisms for co-ordination and collaboration from the community level to the national level involving ministries, NGOs, CBOs, FBOs and private sector engaging in the national response for OVC.
	Namibian HIV/AIDS Charter of Rights, 2000	<p>established after consultative process with government, NGOs, AIDS service organizations trade unions, representatives of commerce and industry, medical profession, PWLHA etc</p> <p>includes the right to a supportive and enabling environment for those infected/affected by HIV/AIDS and recognises the rights of children orphaned by AIDS to a supportive nurturing environment, non-discrimination, information on services and support available and training for those working with HIV affected children, including foster and adoptive carers.</p>

132 Policy Project/Futures Group, Country Response Analysis: Mozambique, draft 2004

133 www.unicef.org/mozambique/hiv\_aids\_2580.html

134 Resolução n.º 12/98 de 9 de Abril, do Conselho de Ministros.

135 Policy Project/Futures Group, Country Response Analysis: Namibia, draft 2004,

<b>South Africa</b>	National Action Plan for Orphans and other Children made Vulnerable by HIV and AIDS, South Africa 2006 – 2008 <sup>136</sup>	Covers 6 strategic areas: <ol style="list-style-type: none"> <li>1. Strengthening and supporting the capacity of families to protect and care for orphans and other children made vulnerable by HIV and AIDS</li> <li>2. Mobilising and strengthening community-based responses for care, support and protection of OVC</li> <li>3. Ensuring that legislation, policy, strategies are in place to protect the most vulnerable children</li> <li>4. Ensuring access for orphans and other children made vulnerable by HIV/AIDS to essential services</li> <li>5. Raising awareness and advocacy to create supportive environment for orphans and other children made vulnerable by HIV/AIDS</li> <li>6. Engaging the business community to play an active role in supporting the plight of OVC</li> </ol> <p>The proposed co-ordination structure at national, provincial and district/municipality levels aims to ensure co-ordination between all stakeholders, share information on OVC issues, promote active collaboration between stakeholders, identify capacity constraints, build capacity and to ensure that pertinent research is carried out and disseminated.</p>
	National Policy Framework for Orphans and other children made vulnerable by HIV/AIDS (OVC), 2005 <sup>137</sup>	framework for protection and provision of comprehensive and integrated developmental services for OVC ensuring: <ul style="list-style-type: none"> <li>• co-ordination at national, provincial, district and local level to realise the rights of orphans and other children made vulnerable by HIV/AIDS, their caregivers, families and communities</li> <li>• legal, policy and institutional frameworks for the protection and promotion of the rights of affected children are implemented at all levels</li> <li>• provision of an overarching framework to support stakeholders in the development of comprehensive, age appropriate, integrated and quality responses to orphans and other children made vulnerable by HIV/AIDS.</li> </ul>
	Operational Plan for Comprehensive HIV and AIDS Care and Treatment for South Africa	includes care and treatment for children as part of the continuum of care to be provided. Also includes social support and home and community based services. Life skills and HIV/AIDS education are a key prevention strategy.
	National HIV/AIDS Strategic Plan, 2000 – 2005 <sup>138</sup>	The National HIV/AIDS Strategic Plan is implemented by the National HIV/AIDS programme. Key objectives are: <ul style="list-style-type: none"> <li>• reduction of the number of new HIV infections, especially among youth</li> <li>• reduction of the impact of HIV/AIDS upon individuals, families and communities</li> </ul> <p>Goal 9 outlines objectives for developing and expanding care to children and orphans including</p> <ul style="list-style-type: none"> <li>• promoting advocacy on issues relevant to children</li> <li>• mobilising financial and material resources for orphans and child-headed households</li> <li>• providing social welfare, legal and human rights support to protect educational and constitutional rights</li> <li>• implementing measures to facilitate the adoption of orphans, including use of welfare benefits and subsidising adoption of AIDS orphans</li> </ul>
	National Integrated Plan (NIP) for Children Infected and Affected by HIV/AIDS 2002 <sup>139</sup>	The NIP co-ordinates efforts of government departments of Education, Health and Social Development to focus upon expanding access to: <ul style="list-style-type: none"> <li>• Life Skills Education</li> <li>• Home/Community-based Care and Support</li> <li>• Voluntary Counselling and Testing</li> <li>• Poverty Relief</li> </ul>
	Other policies/legal frameworks: Children's Bill, 2005, under review by Parliament <sup>140</sup>	Upgrading of existing Child Care Act to give effect to constitutional rights to protection, social services and family care, covering <ul style="list-style-type: none"> <li>• cultural, social and religious practices</li> <li>• parental responsibilities and rights</li> <li>• National Child Protection Register</li> <li>• children in need of care and protection, including children with disabilities and regulation of adoption and inter-country adoption</li> <li>• strengthening of social grant system for all children, kinship care and for people with disabilities and chronic illness</li> <li>• co-ordination between government departments to deliver services to children in an integrated, co-ordinated and uniform manner.</li> </ul>
	National Guidelines for Social Services to Children Infected and Affected by HIV/AIDS (2002)	Defines categories of vulnerable children, outlines framework for action, describes preferred models of care and support, defines functions of various players and agencies, specifies assessment, reporting and monitoring tools and mechanisms <sup>141</sup>

136 www.welfare.gov.za/documents/2005/ovc

137 see above

138 Policy Project/The Futures Group, Rapid Country Analysis: South Africa, June 2004

139 Policy Project/The Futures Group, Rapid Country Analysis, June 2004

140 Children's Institute, University of Cape Town, Children's Bill Progress Update, 13 March 2006, also Southern Africa Child Gauge 2005

141 Rose Smart, Policies for Orphans and Vulnerable Children: a framework for moving ahead, July 2003, Policy Project/USAID

<b>Swaziland</b>	National Plan of Action on Orphans and Vulnerable Children 2006 <sup>142</sup>	addresses health and education needs of OVC and co-ordinates efforts of NGOs and government agencies
	Draft National Policy on Children including Vulnerable Children, 2004 <sup>143</sup>	Key objectives: <ul style="list-style-type: none"> <li>• protection of children from violations of their rights and all forms of abuse and exploitation</li> <li>• guarantee children's survival and development</li> <li>• access to primary and more advanced education</li> <li>• provision of psychosocial support</li> <li>• strengthening capacity of family and service providers to care for and protect children, including OVC</li> <li>• strengthening socio-economic situation of OVC through support for income-generation activities, access to credit and agricultural inputs</li> <li>• creating monitoring and evaluation mechanisms to improve co-ordination of children-focused programmes and interventions</li> </ul>
	Policy Document on HIV/AIDS prevention and control, 1998	recognises difficulties faced by children orphaned by HIV/AIDS and supports access to facilities, support and non-discrimination.
<b>Zambia</b>	Draft National Child Policy <sup>144</sup> .	The draft child policy is comprehensive and aims to ensure that children live to the full potential where their rights and responsibilities are fulfilled. The Policy provides long term guidance and framework for the development and implementation of the required child development and welfare interventions through a well coordinated and multi-sectoral approach to improve the quality of life of the Zambian Child.
	Ministry of Sport, Youth and Child Development	This will replace the 1994 National Child Policy.  The National OVC Steering Committee was established in March 2001 to oversee and manage the OVC arena. It is chaired by the Director of Child Affairs and works closely with the Ministry of Sport, Youth and Child Development. It co-ordinates activities across the ministries of Sport, Youth and Child Development, Community Development and Social Services, Education, Health and Justice, with the participation of NGOs <sup>145</sup> . Six priority areas have been identified where the Committee must make the greatest impact on the lives of OVC: <ol style="list-style-type: none"> <li>1. Establishing of an effective national coordination and management body,</li> <li>2. Improving access of OVC to basic social services,</li> <li>3. OVC information generation, storage and dissemination,</li> <li>4. Strengthening the legal and policy environment for OVC,</li> <li>5. Monitoring evaluation and research for improved interventions and</li> <li>6. Scaling up interventions for greater coverage.</li> </ol>

142 IRINnews, 'Swaziland: Comprehensive OVC policy unveiled', 19 April 2006, www.irinnews.org

143 Policy Project/The Futures Group, Rapid Country Analysis: Swaziland, draft 2004

144 Policy Project/The Futures Group, Rapid Country Response Analysis: Zambia, undated draft

145 Situation Analysis of OVCs in Zambia, available at [http://www.sarpn.org.za/documents/d0001199/OVC\\_Sitan\\_Zambia\\_2004\\_no-cover.pdf](http://www.sarpn.org.za/documents/d0001199/OVC_Sitan_Zambia_2004_no-cover.pdf) – does not confirm details of strategic areas.

<b>Zimbabwe</b>	National Orphan Care Policy, 1999 Social Welfare Department under the Ministry of Public Service, Labour and Social Welfare	Ensures access to a package of basic care and protection measures for all children, with special reference to orphans because of their particular vulnerability. Elements include: <ul style="list-style-type: none"> <li>• Family and community based care,</li> <li>• Adoption and foster care,</li> <li>• Institutional care as a final and temporary resort</li> <li>• Basic care and protection,</li> <li>• Health care, nutrition and food security,</li> <li>• Education,</li> <li>• Legal rights of orphans<sup>146</sup></li> </ul>
	National Plan of Action for Orphans and other Vulnerable Children, 2004 <sup>147</sup>	The NPA for OVC will be co-ordinated by a National Secretariat for the NPA for OVC, working with provincial and district secretariats and child protection committees. Emphasis will be placed on education and awareness on existing policies and legislation that protect the best interests of the child, strengthening community based initiatives and social safety nets and strengthening a rights based approach to programming. It has an initial time frame of 3 – 5 years. Key objectives: <ul style="list-style-type: none"> <li>• strengthen existing co-ordination structures for OVC programmes and increase resource mobilisation by December 2005</li> <li>• Increase the percentage of OVC with birth certificates by at least 25 percent by December 2005;</li> <li>• Increase child participation as appropriate in all issues that concern them from community to national level, considering their evolving capacities;</li> <li>• Increase new school enrolment of OVC by at least 25 percent by December 2005, while ensuring retention of OVC in primary and secondary schools;</li> <li>• Increase access to food, health services and water and sanitation for all OVC by December 2005;</li> <li>• Increase education on nutrition, health, and hygiene for all OVC by December 2005; and</li> <li>• Reduce the number of children who live outside of a family environment by at least 25 percent by December 2005 (this includes children living without adult guidance, children living on the streets and in institutions).</li> </ul>
	National HIV/AIDS Policy, 1999	Section 6.5 outlines 3 guiding principles with respect to children and young people: rights of children and young people with, or affected by, HIV/AIDS must be protected and respected children orphaned as a result of HIV/AIDS should not be discriminated against and communities and extended family encouraged to share responsibility for care and support of orphans rights of children to receive information and protect themselves from HIV/AIDS should be supported through provision of information through families, health service providers and education and positive role models.
	Zimbabwe National Strategy on Children in Difficult Circumstances, 2001	The Zimbabwe National Strategy on Children in Difficult Circumstances aimed to strengthen communities' and local authorities' capacity to respond to the needs of children who are vulnerable as a result of the socio-economic situation and the AIDS pandemic. The strategy was implemented at the local level through Child Welfare Forums. These have now been replaced with Child Protection Committees in line the Children's Protection and Adoption Act. This strategy has now been expanded or overtaken by the National Plan of Action.
	National ART Rollout Strategy, 2004	Developed by the Ministry of Health and Children's Welfare, this is a 5 year plan developed in line with the Millennium Development Goals and the WHO 3 x 5 Strategy
	National PMTCT Plan	awaiting details from Christine. Ministry of Health and Children's Welfare.

146 Source: SAFAIDS Resource Centre, 17 Bevendge Avenue, Avondale, Harare, Zimbabwe  
147 available at <http://www.zimrelief.info/files/attachments/doclib/NPA%20for%20OVC.pdf>

## Select Bibliography

Clacherty, Glynis "Poverty made this decision for me" *Children in Musina: their experiences and needs*, Save the Children South Africa, 2003

Committee on the Rights of the Child, Reports of State Parties and Concluding Remarks of the Committee, various dates, available from [www.ohchr.org](http://www.ohchr.org)

Committee on the Rights of the Child, *General Comment No. 8 The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*. 2006

*The Framework For the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV and AIDS*, July 2004, UNICEF

Help Age International, Institute of Development Studies and Save the Children, *Making Cash Count: lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households*, 2005.

International Save the Children Alliance, Global Submission to the UN Study on Violence Against Children, *10 Essential Learning Points: Listen and Speak Out against Sexual Abuse of Girls and Boys*, Save the Children Norway 2005

Jacobs, M et al, *South African Child Gauge 2005*, Children's Institute, University of Cape Town

Policy Project, *Executive Summary – OVC RAAAP Initiative Final Report*, 2005 [www.policyproject.com/pubs/countryreports/AFR\\_OVC\\_RAAAP.pdf](http://www.policyproject.com/pubs/countryreports/AFR_OVC_RAAAP.pdf)

Policy Project/Futures Group with International Institute for Educational Planning (IIEP) and UNESCO HIV/AIDS Impact on Education Clearing House, *A Collection of National and Education Sector HIV/AIDS Policies*

*and Strategies*, [www.policyproject/pubs/policyplan/IIEP\\_policy.pdf](http://www.policyproject/pubs/policyplan/IIEP_policy.pdf)

Save the Children Sweden, *Ending Corporal Punishment of Children in Zambia*, 2005

Save the Children Sweden, *Ending Corporal Punishment of Children in Swaziland*, 2005

Save the Children UK, *Visitors from Zimbabwe – a preliminary study outlining the risks and vulnerabilities facing Zimbabwean Children who have crossed illegally into Mozambique*, 2006

Smart, Rose *Policies for Orphans and Vulnerable Children: A Framework for Moving Ahead*, Policy Project, July 2003

UNAIDS, The Global Coalition on Women and AIDS, *Facing the Future Together: Report of the Secretary General's Task Force on Women, Girls and HIV/AIDS in Southern Africa*, 2004

UN Committee on the Rights of the Child, *General Comment No.5 General measures of implementation of the Convention of the Rights of the Child (arts. 4, 42 and 44, para. 6)*, 2003

UNICEF, *Africa's Orphaned Generations*, 2003

UNICEF, *Children and Women's Rights in Zimbabwe – Theory and Practice: a critical analysis in relation to the women and children's conventions*, 2004

UNICEF, *Children on the Brink – A Joint Report of New Orphan Estimates and a Framework for Action*, 2004

UNICEF, *Early Marriage - A Harmful Traditional Practice: a statistical exploration*, 2005

UNICEF, *Summary Report – Study on the Impact of the Implementation of the Convention on the Rights of the Child*, 2004

UNICEF, *The Rapid Assessment, Analysis and*

*Action Planning Process for Orphans and Other Children Made Vulnerable by HIV/AIDS, UNICEF ESARO, 2004*

Webb, D et al, *Supporting and Sustaining National Responses to Children Orphaned and made Vulnerable by HIV and AIDS – Experience from the RAAAP Exercise in Sub-Saharan Africa,*

forthcoming in *Vulnerable Children and Youth Studies* 1,1

Zuberi, Farhana *Assessment of Violence Against Children in the East and Southern Africa Region – Results of and Initial Desk Review for the UN Secretary General’s Study on Violence Against Children, UNICEF, 2005* [www.violencestudy.org](http://www.violencestudy.org)