HEALTHCARE FOR CHILDREN: DOES SOUTH AFRICA’S LEGISLATION COMPLY WITH THE COUNTRY’S RESPONSIBILITIES IN TERMS OF THE CONVENTION OF THE CHILD AND THE CONSTITUTION?

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SUMMARY

Included in the Convention on the Rights of the Child, 1989 (UN Children’s Convention) is the right of children to the highest attainable standard of health. In terms of article 4 of the UN Children’s Convention, in implementing the UN Children’s Convention state parties must "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention".

South Africa showed its commitment to protecting and promoting children’s health when it ratified the UN Children’s Convention and subsequently adopted the Constitution of the Republic of South Africa, 1996, which includes provisions guaranteeing the health rights of children. South Africa also showed commitment to giving legislative effect to the protection and promotion of children’s health by promulgating the National Health Act 61 of 2003, the Children’s Act 38 of 2005 and the Mental Health Care Act 17 of 2002.

The article evaluates existing policy and legislation affecting child health in order to assess how well South African legislation addresses the issue of children’s healthcare rights and whether or not it complies with its international law and constitutional obligations in this regard. The article concludes that although much legislation exists, none provides comprehensively for children’s healthcare rights, and there are many gaps in existing legislation. Most importantly, there is no reference to the core minimum requirements for the state in providing for the health of children, particularly in the way

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of healthcare services and nutrition. Further, there is a complete lack of legislation which protects the health needs of children with disabilities. In order to ensure that the health rights of children are protected and promoted, we propose more comprehensive legislative protection.

**KEYWORDS:** Children; basic healthcare; *UN Children's Convention; Convention on the Rights of the Child; South African legislation; responsibilities; socio-economic rights; section 28 of the Constitution*