The UN Convention on the Rights of the Child (UNCRC), adopted 20 years ago and ratified by all but two countries, outlines a child’s rights to survival and development. It obliges states to do everything they can to protect children from dying. Yet many countries lack a legal framework that promotes child survival, and those that do often fail to implement it. Pushing for laws where they don’t exist, and putting pressure on governments to enforce existing laws, can play an important role in helping to reduce the annual toll of almost 9 million preventable child deaths.

What’s the problem?

Every year 8.8 million children, 99% of them in developing countries, die before their fifth birthday. This is not inevitable. The life chances of children are heavily influenced by policy choices made by governments – from decisions about essential services such as healthcare and nutrition, to policies that shape the wider economic and social context in which children grow and develop. States have a binding obligation, enshrined in international law, to respect, protect and realise children’s right to survival. But in practice governments often violate this right.

In many cases, countries fail to translate international obligations into national law. In many others, countries are failing to implement existing laws.

Save the Children, working in partnership with the international law firm Freshfields, recently conducted research into the legal framework for child survival in 13 countries with the highest child-mortality rates in the world.¹ This research found significant gaps in legal protection, but also highlighted some inspiring examples of how legal reform can make a real difference to children’s chances of survival.
Children's right to survival cannot simply be legislated into existence, and child mortality is affected by many factors beyond the scope of this briefing. However, the legal recommendations set out here could help to close the gap between children’s rights and the realities of daily life for millions of the world’s poorest and most vulnerable children.

**How the law can help**

**Laws both reflect and generate political will to act.** Our research found a clear link between legislation and demonstrated political commitment on child survival. In Niger and Afghanistan, two countries that have no legislation to tackle the intermediate causes of child mortality, governments lacked any clear strategy to stop children dying. Meanwhile Brazil and Egypt, which are both on track to reach Millennium Development Goal 4 – a two-thirds reduction in under-five mortality by 2015 – have used legal reform to underpin their efforts.

Laws that promote child survival can also help to lock in progressive policy despite changes of government, and give civil society a crucial tool with which to hold governments to account and demand change.

**Non-discrimination**

A child’s chance of survival is shaped by the circumstances (poverty, ethnicity, geographical location, etc) in which he or she is born. Our research shows that while legislative frameworks do not set out intentionally to widen that gap, they rarely set out to bridge it. In some cases, this might be because national laws fail to reflect large regional disparities in child survival. A gap in legal protection can also arise when constitutional guarantees for non-discrimination exist but only apply to citizens of that country, or for people with official documentation. This is particularly problematic in countries with large numbers of migrants and refugees, or where birth-registration systems are weak. South Africa’s laws on equity for every resident, regardless of status, provide a good model for other states to follow.

Other jurisdictions not only fail to outlaw discrimination but actually provide a framework that perpetuates it. In Kenya the Nubian minority are not recognised as Kenyan citizens and so do not enjoy certain basic rights. This is particularly a problem for Nubian children, who are discriminated against in terms of education, social services, housing and healthcare. Many Nubians live in informal settlements – they make up 20% of the population of the Kibera slum in Nairobi – and face additional barriers to basic services as a result. The government deems Kibera illegal and therefore systematically refuses to provide clean water, sanitation or healthcare to residents, many of them children.

In China, the Hukou residency registration system similarly creates two social classes. Every Chinese citizen is supposed to be registered at birth in their parents’ place of registration and is designated as a rural or urban citizen, eligible only for social services provided in that location. This means that children living in urban
areas can still be classified as rural residents and are not entitled to the same rights and benefits that urban citizens enjoy. In Beijing alone, about half of the 460,000 children born in the city over the past three years were not eligible for a Hukou registration in the city. As a result, they were denied proper access to education.7

**Healthcare**

Healthcare is pivotal to helping children survive. But while many countries afford their citizens rights to healthcare in their constitutions8 or through legislation,9 child and infant healthcare is rarely prioritised. China’s law on Maternal and Infant Care, which specifically targets the health of mothers and young children, is a notable exception and is believed to have a positive effect on child survival rates.10 Similarly Vietnam’s Child Protection, Care and Education law provides free healthcare for children under six. The Vietnamese law is not yet implemented nationwide, but has the potential to transform child survival rates in the country.

Some countries’ laws contain rights that guarantee children’s to access health services.11 Yet even where laws do prioritise maternal and infant healthcare, there may be no requirement for it to be free of charge, and fees have been shown to exclude poor people from services. In practice, such laws are not addressing cost-related barriers to access, which can significantly contribute to child mortality.12

Studies from Eritrea, Kenya, Nigeria, Uganda, India, Pakistan, Bangladesh, Nepal and Indonesia show that many people select private practitioners to treat illnesses.13 This can mean that poor people use traditional and unqualified ‘healers’, either by preference or because they are cheaper than state medical facilities. Traditional healers are associated with many harmful and misguided practices and are not qualified to recognise and treat genuine health threats. In many countries, the upper and middle income groups choose to use private healthcare providers rather than the underfunded state system. The private sector providers use staff trained by the state and prefer simpler and more profitable cases.14 Our study shows that national legislation and policies in most countries do not provide the legal frameworks to regulate these practitioners.

In seven of the countries reviewed, community health workers (CHWs) are not authorised to diagnose pneumonia or prescribe antibiotics to treat it.15 In effect this automatically bars them from recognising and managing pneumonia, even in countries where the ministry of health has stated that CHWs should be trained to do so. In some countries, the law explicitly states that CHWs are not licensed health practitioners, despite the potentially important role they can play in helping to reduce child mortality, especially in rural areas.

**Nutrition**

Under-nutrition contributes to approximately 35% of all child deaths.16 Every state is obliged to ensure that all of their citizens have access to minimum essential food,17 yet in many of the countries we reviewed, this is not codified in national law.18 In
addition, very few countries have legislation dealing specifically with child nutrition; some exceptions include food safety laws in Vietnam and China, and regulations on food support to vulnerable citizens in Mozambique. Significantly, countries that have legally recognised the right to food are more likely to implement programmes tackling child nutrition; examples include free school meal programmes in India and South Africa. Most countries, however, have failed to address adequately the many causes of under-nutrition, such as micronutrient deficiencies, poor infant and young child feeding practices, weak healthcare, and inadequate water, hygiene and sanitation.

Water and sanitation
In developing countries, one in five children do not have access to safe water and roughly half are without adequate sanitation. Inadequate access to water and sanitation, and poor hygiene and feeding practices, contribute to an estimated 2 million children dying of diarrhoea each year. Yet many of the countries we reviewed did not have a legal framework for providing these necessities.19 Of the constitutions we reviewed, only South Africa’s contains an express right to water and sanitation services for all.

Education
Children of illiterate mothers are more than twice as likely to die or be malnourished as children whose mothers have had secondary or higher education.20 While some of the statutes we reviewed identified some provision for education of girls and women, this was not prioritised by any of the country legislation we reviewed. If they are to tackle child mortality, states need to prioritise gender equality in general and female literacy in particular. Countries with strong education laws, such as India21 and South Africa22 have also pioneered some of the most progressive programmes in maternal literacy.

Sexual and reproductive health
A child born less than two years after the next oldest sibling is more than twice as likely to die as one born three years after.23 Women have a right to control their own fertility, but contraception is often a taboo subject and many countries have failed to take legislative steps to encourage access to, and education about, family planning.24 In countries such as Vietnam and China, laws have been used to actively discourage its use. There are exceptions, particularly in HIV/AIDS-affected countries such as Niger, South Africa, Mozambique and Kenya, where laws have been passed to increase access to contraception. South Africa is a model example in terms of sexual and reproductive health, with recent laws and policies giving the right of access to contraception to all children over 12.

What needs to be done?
Save the Children is calling for the right of all children to survive and develop to be enshrined in legislation, and for relevant laws to be implemented. Specifically, we make the following recommendations:
The UNCRC Committee

- publish a general comment on UNCRC Article 6 – the right to life – setting out the legal obligations of governments to ensure child survival
- encourage states to do more to combat discrimination
- give clear guidance to state parties on the implementation measures required to realise the right to survive

National governments

- develop a unified ‘child law’ drawing together all aspects of child welfare law that clearly defines the content and enforceability of those rights; creates a solid framework that sets the agenda for national and local programmes and provides for a monitoring and reporting system to deliver against targets
- adopt incentive-based legislation to tackle causes of child mortality
- establish national human rights institutions to monitor the implementation of rights and the effectiveness of national programmes tackling the issue of child survival
- incorporate child rights provisions into constitutions where possible
- undertake reviews of all legislation to identify gaps in legal protection and possibilities for reform, keeping the best interests of the child paramount at all times

Donors

- fund research into the causal links between legislative frameworks and reductions in child mortality
- provide aid for legal reform programmes and capacity building of legal systems, particularly in countries with high child mortality rates

Civil society

- recognise legislative reform as a key strategy for tackling child survival
- consider the use of strategic litigation to catalyse action on the part of states failing to meet their legal requirements
- present child mortality as a rights violation in child rights and human rights reporting

UNICEF

- endorse legislative reform as a key programmatic component of its child survival focus.
References

1 China, India, Nigeria, Sierra Leone, Afghanistan, Angola, Kenya, Mozambique, Niger, South Africa, Tanzania, Vietnam, Zimbabwe and Brazil
2 This includes governance, conflict and economic growth
3 Egypt and Brazil are both middle-income countries with stronger institutional capacity than Niger and Afghanistan, but legal reform has nonetheless played an important part in catalysing changes in policy and practice
4 Local counsel raised this point in China, Vietnam, Nigeria and Tanzania, Legislative Frameworks for Child Survival, Freshfields, 2009
5 This is the case in India, China, Sierra Leone, Angola and Mozambique
6 Nubian Minors v Kenya before the African Committee of Experts on the Rights and Welfare of the Child on this point. See http://www.africaninstitute.org/ for details
8 India, Brazil, Niger, Mozambique and South Africa
9 Angola, Mozambique, Brazil, Vietnam and China
10 Legislative Frameworks for Child Survival, Freshfields, 2009, p 28
11 South Africa, Kenya, China and Vietnam
15 Angola, Brazil, Egypt, Kenya, South Africa, Tanzania and Zimbabwe
17 General Comment no12 to the International Covenant on Economic, Social and Cultural Rights (CESCR) www.crin.org
18 This was particularly noted in the Indian constitution
20 Save the Children Newborn and Child Survival Policy Brief 2009, p 1
21 National Literacy Mission in India targeting female literacy as a mean of achieving female empowerment http://www.nlm.nic.in/
22 Adult Basic Education and Training program tackling adult literacy in South Africa http://www.abet.co.za/
24 This was particularly noted by local counsel in Nigeria, Afghanistan and Sierra Leone