



# **The Right to Early Childhood Development**

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# EXECUTIVE SUMMARY

## Introduction

1. The legal sub-committee of the Real Reform for ECD (RR4ECD) Campaign sought assistance in developing an advocacy brief on the right to early childhood development (ECD) that focuses on what the state's obligations should be and what the public entitlements are in relation to this right. RR4ECD is a broad-based alliance supported by over 200 organisations, working towards securing and strengthening the Right to ECD for millions of young children in South Africa. The Equality Collective, one of the founding members of RR4ECD and a member of its elected Steering Committee, asked OPBP to develop a comparative report on legal and policy developments of the right to ECD, and the nature and extent of State obligations in ensuring access to it, in Botswana, Ghana, Kenya and Zambia. This report supplements a previous report that was developed by OPBP, focusing on international human rights law – as applied in South Africa – and on legal developments in Brazil, Finland, India and the United Kingdom.<sup>1</sup> Both reports will serve as a resource in developing RR4ECD's advocacy brief, which will form the foundation of their advocacy campaign around the right to ECD and inform any new legislation that may come out of the campaign.
2. This report adopts an expansive understanding of the right to ECD in seeking to understand the scope of the state duties to protect, promote and fulfil the right. It does so following the flexible and expansive understanding in international law of early childhood development, which was also adopted in the first report on the right to ECD.<sup>2</sup> It recognises that, in order for the needs of the child as a rights holder to be met, dimensions of the right to ECD need to “be holistic – including not just early learning opportunities, but access to adequate nutrition and health services, space and time for play and an expansive environment for learning.”<sup>3</sup> Therefore, while most of the jurisdictions analysed in this report focus primarily – and sometimes almost exclusively – on the right to pre-school education, the report also expounds on other integral components of the right to ECD in domestic jurisdictions, such as the right to healthcare, and the right to food and nutrition.
3. The jurisdictions explored in the report were selected in conjunction with The Equality Collective to understand the legal framework governing early childhood development in the African continent. The following jurisdictional sections are arranged based on three questions:
  - **Question 1:** What is the extent to which early childhood development is recognised in state legislation? Is there express recognition of the right to ECD? If not, is there advocacy towards securing recognition of the right to ECD?

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<sup>1</sup>Oxford Pro Bono Publico (OPBP), *The Right to Early Childhood Development* (2023) <<https://www.law.ox.ac.uk/content/news/opbp-report-right-early-childhood-development>> accessed 3 July 2023.

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*, para 2.

- **Question 2:** What is the extent of state duties in relation to ECD? Both in cases where the right to ECD is expressly recognised and in cases where, though not expressly recognised, it is implicit in other obligations.
- **Question 3:** What is the relationship between private and public sector involvement in ECD?

### **Question 1: The Right to Early Childhood Development (ECD) in Domestic Legislation**

4. Each jurisdiction uses different concepts to refer to different aspects of the right to early childhood development (ECD). At a regional level, the African Union uses the concept of the right to early childhood education and development (ECED); Kenya recognises the right to early childhood development and education (ECDE); Zambia relies on the concept of the right to early childhood care, development and education (ECCDE); Ghana uses the concept early childhood care and development (ECCD); and Botswana uses interchangeably the terminology of early childhood care and education and ECD. However, the content of these concepts is largely the same, with a particular focus on education at pre-school stages.

#### **A. Early childhood development (EC) in national constitutions**

5. None of the constitutions reviewed explicitly recognises the right to ECD, and neither does the African Charter on the Rights and Welfare of the Child (ACRWC). However, some constitutions do contain certain provisions and foundations for this right. Section 53 of the Kenyan Constitution provides that every child has the right to a name and nationality from birth; to access free and compulsory basic education; to basic nutrition, shelter and health care; protection from abuse, neglect and harmful practices; and the right to parental care and protection.<sup>4</sup> The Ghanaian Constitution establishes that facilities shall be provided for the care of children below school-going age.<sup>5</sup> Moreover, it contains a clause specifically focusing on children's rights, recognising children's right to not be deprived of medical treatment, education or any other social or economic benefits by reasons only of religious or other beliefs.<sup>6</sup> It tasks parliament with enacting legislation to ensure that every child has access to "the same measure of special care, assistance and maintenance as is necessary for their development from [their] natural parents"; and establishes an obligation for parents to care, maintain and upbringing their children.<sup>7</sup>
6. Botswana and Zambia do not contain constitutional provisions relevant for the right to ECD, including on general socio-economic rights. Yet, in Zambia, there has been a recent attempt to protect socio-

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<sup>4</sup> Constitution (2010), s 53 (Kenya).

<sup>5</sup> Constitution (1992, rev. 1996) s. 27 (Ghana).

<sup>6</sup> *ibid.*, s. 28.

<sup>7</sup> *ibid.*

economic rights at a constitutional level through an unsuccessful constitutional amendment. The proposed amendment would have included the protection of socio-economic rights of children, such as parental care, free primary education, survival and development, adequate nutrition, shelter, basic health care services, social protection and social services, and a standard of living adequate for the child's physical, mental, spiritual, moral and social development.<sup>8</sup> It would have also expressly recognised the State's duty to guarantee special protections related to the well-being of parents and children.<sup>9</sup>

## **B. The right to ECD in sub-constitutional legislation**

7. All the jurisdictions reviewed have relevant sub-constitutional legislation on different aspects of the right to ECD. They have laws generally addressing the rights of children, and some have enacted legislation focusing on more specific aspects of the right to ECD, notably education. There are also other laws that do not solely focus on children but that contain relevant obligations for the right to ECD, such as legislation on food and nutrition, or on healthcare. However, most of the countries reviewed do not explicitly recognise a general right to ECD even at the level of sub-constitutional legislation.
8. Ghana has a policy – but not a law – on Early Childhood Care and Development (ECCD) which promotes “the survival, growth and development of all children (0-8 years),”<sup>10</sup> and understands ECCD as “the holistic development of children including physical, cognitive, language, social and emotional development from conception to age of eight.”<sup>11</sup> However, Ghana does have relevant legislation related to children's rights in general, as well as particularly on the right to education. It enshrines the right to education and well-being, which includes “immunisation, adequate diet, clothing, shelter, medical attention or any other thing required for his development,”<sup>12</sup> as well as the right to have a name from birth, and the right to acquire a nationality.<sup>13</sup> On the other hand, Zambia expressly provides for “early childhood care, development, and education,”<sup>14</sup> but it is as part of the Education Act, and thus is mostly focused on the education aspect of the right. However, in Zambia, other elements of the right to ECD

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<sup>8</sup> See section on Zambia below.

<sup>9</sup> *ibid.*

<sup>10</sup> Ministry of Gender, Children and Social Protection, Republic of Ghana, Early Childhood Care and Development Standard (0-3), (2018) 15, <<https://www.unicef.org/ghana/media/2031/file/Early%20Childhood%20Care%20and%20Development%20Standards.pdf>> accessed on 3 July 2023

<sup>11</sup> *ibid.*, 18.

<sup>12</sup> Constitution of Ghana (n 5) s 8.

<sup>13</sup> *ibid.* s 4.

<sup>14</sup> Education Act 2011, s 14(1)(a) (Zambia).

are captured in the Children Code Act 2022, which guarantees all children rights to survival and development,<sup>15</sup> education,<sup>16</sup> health and medical care,<sup>17</sup> social protection,<sup>18</sup> and play.<sup>19</sup>

9. Botswana's Children's Act<sup>20</sup> confers the rights to health, education, leisure, play and recreation, alongside other rights, on all children.<sup>21</sup> While there is no explicit protection within the Act of a right to ECD, there is a policy focusing on early childhood development.<sup>22</sup> Kenya has enacted a law on the right to early childhood development and education (the ECDE Act) which aims to "provide a framework for the establishment of a comprehensive early childhood development and education system by the county governments,"<sup>23</sup> and states that "every child has the right to free and compulsory early childhood education in a public education centre."<sup>24</sup> Kenya also has a law on general children's rights,<sup>25</sup> with provisions that are relevant to the right to ECD, such as the right to parental care,<sup>26</sup> the right to leisure, recreation and play,<sup>27</sup> and the right to healthcare.<sup>28</sup>
  
10. The ACRWC does not explicitly mention a right to ECD, yet it enshrines an array of rights that protect the constituent elements of the right to ECD, including:
  - a) the right of every child to have a name, to be registered immediately after birth, and to acquire a nationality;<sup>29</sup>
  - b) the right to education;<sup>30</sup>
  - c) the right to survival and development;<sup>31</sup>
  - d) the right to rest and leisure;<sup>32</sup>
  - e) the right to health;<sup>33</sup> and
  - f) the right to reside with their parents.<sup>34</sup>

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<sup>15</sup> *ibid* s 5.

<sup>16</sup> *ibid* s 10.

<sup>17</sup> *ibid* s 11.

<sup>18</sup> *ibid* s 12.

<sup>19</sup> *ibid* s 21.

<sup>20</sup> Children's Act, No. 8 of 2009 (Botswana).

<sup>21</sup> *ibid*, s 15, 18 and 19.

<sup>22</sup> See section on Botswana below.

<sup>23</sup> Early Childhood Education Act 2021 (ECEA 2021), art 6 (Kenya)

<sup>24</sup> *ibid*, s5(1)

<sup>25</sup> Act No. 19 of 2022

<sup>26</sup> *ibid* art 11.

<sup>27</sup> *ibid* art 14.

<sup>28</sup> *ibid* art 16.

<sup>29</sup> Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, CAB/LEG/24.9/49 (1990), art 6 <https://www.refworld.org/docid/3ae6b38c18.html> (ACRWC)

<sup>30</sup> *ibid* art 11.

<sup>31</sup> *ibid* art 5(2).

<sup>32</sup> *ibid* art 12.

<sup>33</sup> *ibid* art 14.

<sup>34</sup> *ibid* art 19.



11. While the ACRWC does not explicitly protect a right to ECD, it is protected as a central objective of numerous initiatives of the African Union, including the initiative on Continental Education Strategy for Africa (CESA), which created a specific cluster on early childhood education and development (ECED) that is responsible for improving the access to quality ECED programmes and services in the region.<sup>35</sup>

### C. Age of access to ECD

12. The countries examined provide access to the right to ECD to different age ranges, usually extending until children reach the age of primary education. Ghana's policy on Early Childhood Care and Development covers the most extensive age group as it focuses on children from zero (0) to eight (8) years old (following UNICEF's understanding of early childhood development).<sup>36</sup> Zambia provides access to early childhood care, development and education to children from birth to seven (7) years old -the prescribed school entry age.<sup>37</sup> Botswana's Early Childhood Care and Education Policy applies for children aged zero (0) to six (6) years old. Finally, Kenya has a most limited time-frame of access to some aspects of the right to ECD. The ECDE Act only applies to children of four (4) to five (5) years old, as these are the years at which pre-primary educational programmes are imparted.<sup>38</sup> Though ages might vary for learners with special needs and disabilities,<sup>39</sup> the explicit provision is generally limited to the two years before a child commences primary school.

### Question 2: State Duties in Relation to ECD

13. The ACRWC establishes that it is a state's duty to ensure, to the maximum extent possible, the realisation of the different rights related to the ECD, including by adopting legislation or other measures to give effect to the rights.<sup>40</sup> Domestically, legislation regarding ECD focuses on the duties of the State to facilitate, protect and provide for some aspects of the right to ECD through legislation and policy. While the most robust obligations on the jurisdictions reviewed focus on State duties related to the right to education, there are some, such as Ghana and Zambia, that establish obligations with respect to other aspects of the right to ECD, such as healthcare, food and nutrition.

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<sup>35</sup> See section on the Regional Human Rights Framework below.

<sup>36</sup> Ministry of Gender, Children and Social Protection, Republic of Ghana, Early Childhood Care and Development Standard (0-3), (2018) 15, <https://www.unicef.org/ghana/media/2031/file/Early%20Childhood%20Care%20and%20Development%20Standards.pdf> accessed 3 July 2023

<sup>37</sup> *ibid* s 2.

<sup>38</sup> Basic Education Act No 14 of 2013, s 2 (Kenya).

<sup>39</sup> Ministry of Education, 'National Pre-Primary Education Policy Standard Guidelines' (2018), 3 (Kenya) <[https://planipolis.iiep.unesco.org/sites/default/files/ressources/pre-primary\\_policy\\_guidelines\\_11\\_1.pdf](https://planipolis.iiep.unesco.org/sites/default/files/ressources/pre-primary_policy_guidelines_11_1.pdf)> accessed 3 July 2023.

<sup>40</sup> ACRWC (n 29) art 1.

14. In Botswana, pre-school education is not state-provided, and this responsibility “lies largely with private and civil society sectors, rather than with the government.”<sup>41</sup> The government is, however, required to provide an “enabling environment,”<sup>42</sup> by setting national standards for those providing ECCE services;<sup>43</sup> registering pre-schools;<sup>44</sup> monitoring and evaluating ECCE programmes; training teachers to teach 0-6 year olds;<sup>45</sup> developing the curriculum;<sup>46</sup> and coordinating and advising the Ministry on the development of the ECCE programme.
15. A similar obligation is established in Kenya, where legislation provides that the state has a duty to facilitate, promote, and provide for ECE legislation and policy.<sup>47</sup> Zambia established the Department of Child Development with responsibility for advancing the rights and development of children including through ensuring compliance with child rights standards and designing and formulating policies on child development activities.<sup>48</sup> Also, the *Zambian Education Act 2011*, while subjecting the right to education to progressive realisation, does provide specific duties for the state, such as determining the curriculum, books and resources to be used at educational institutions (including at the preschool level), and permitting the establishment of facilities for the provision of early childhood care, education and development.
16. Some of the jurisdictions studied also contain duties regarding other aspects of the right to ECD. In Zambia, the *Food and Nutrition Act 2020* requires the country’s Food and Nutrition Commission to make particular guidelines for addressing the food and nutrition needs of vulnerable groups,<sup>49</sup> which includes children under the age of five (5) years old.<sup>50</sup> In Ghana, the *Education Act 2006* obliges the minister responsible for social welfare, in collaboration with Education Services and Health Services, to provide for regular medical examination of children.<sup>51</sup>
17. The provision of state duties in relation to education is sometimes conferred to sub-statal entities. For example, in Botswana, the Village Child Protection Committees are required to educate their respective communities about abuse of children and to monitor children’s welfare;<sup>52</sup> the Children’s Consultative

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<sup>41</sup> Tapologo Maundeni, ‘Early Childhood Care and Education in Botswana: A Necessity That Is Accessible to Few Children’ (2013) 04 *Creative Education* 54.

<sup>42</sup> *ibid.*

<sup>43</sup> ECCE Policy (2001), Heading B ‘Standards’ (Botswana).

<sup>44</sup> *ibid.*, Heading B ‘Authority and Registration’.

<sup>45</sup> Under Heading D ‘Training’ of the ECCE Policy, 2001, the Minister of Education must introduce ECCE training at Colleges of Education; recruit experts with sufficient knowledge and experience in ECCE to develop and implement the training programme; and requires caregivers to undergo formal training in child-care to carry out professional duties of a baby-care service.

<sup>46</sup> ECCE Policy (n 43), Heading C ‘Curriculum and Learning Framework’.

<sup>47</sup> See Constitution of Kenya 2010, Schedule 4, Part 2, para 9; *Early Childhood Education* (n X), s 68.

<sup>48</sup> *Children’s Code Act 2022* s 29.

<sup>49</sup> *Food and Nutrition Act 2020*, s 39(2)(a).

<sup>50</sup> *ibid* s 2.

<sup>51</sup> *ibid* s 6.

<sup>52</sup> *Children’s Act (Botswana)*(n 20), s 33.

Forum is required to discuss issues affecting the education, health, safety and general well-being of children and make recommendations to the National Children’s Council;<sup>53</sup> and the Botswana National Children’s Council is required to advocate for a child-centred approach to legislation, policies, strategies and programmes, and advocate for a substantive share of national resources to be allocated to child-related initiatives and activities.<sup>54</sup> In Ghana, the Minister of Education is responsible for establishing measures for the effective decentralization of the provision and management of basic education by District Assemblies. Finally, in Kenya the responsibility to provide pre-primary education and childcare services has been conferred to county governments.<sup>55</sup> County governments are obligated to ensure that the right to ECDE is given full effect and enjoyed by children without discrimination, and have responsibility to provide free and compulsory early childhood education services in public education centres.<sup>56</sup>

### Question 3: Collaboration between Private and Public Sector

18. Private and public sectors have complementary roles in relation to the fulfilment of the different components of the right to ECD. The African Committee of Experts on the Rights and Welfare of the Child (the Committee) encourages states to collaborate with the private sector, civil society organisations (CSOs) and community-based organisations (CBOs) in the fulfilment of children’s rights.<sup>57</sup> However, it is important to note that the primary responsibility for the fulfilment of the right to ECD relies on the state.
  
19. In Botswana, private educational institutions, including religious schooling, <sup>58</sup> collaborate with public sector in providing the right to early childhood education. The state is responsible for enabling a regulatory environment for the provision of ECD programmes by private persons, communities, and non-governmental organisations.<sup>59</sup> These are required to follow the national curriculum.<sup>60</sup> In Kenya, the government provides more stringent regulations for private education, by requiring that religious schools and private educational institutions ensure that teachers hold the necessary qualifications, and that the curriculum administered adheres to the early childhood education policy.<sup>61</sup> Providers are also

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<sup>53</sup> *ibid* s 34.

<sup>54</sup> *ibid* s 35.

<sup>55</sup> Constitution of Kenya ( n 4) schedule 4, part 2, para 9.

<sup>56</sup> *ibid*, s 6.

<sup>57</sup> African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *General Comment No 5 on “State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection,”* (2018), 47, < [http://www.acerwc.africa/sites/default/files/2022-09/GENERAL\\_COMMENT\\_ON\\_STATE\\_PARTY\\_OBLIGATIONS\\_UNDER\\_ACRWC\\_%28ARTICLE%201\\_%29\\_%26\\_SYSTEMS\\_STRENGTHENING\\_FOR\\_CHILD\\_PROTECTION\\_0.pdf](http://www.acerwc.africa/sites/default/files/2022-09/GENERAL_COMMENT_ON_STATE_PARTY_OBLIGATIONS_UNDER_ACRWC_%28ARTICLE%201_%29_%26_SYSTEMS_STRENGTHENING_FOR_CHILD_PROTECTION_0.pdf)> (General Comment No 5).

<sup>58</sup> The Education Act defines aided schools as

<sup>59</sup> The ECCE Policy, 2001 provides that “supporting care and education services [for children aged 2 ½-6 years] are provided by private individuals, communities, companies and volunteers” (p. 6).

<sup>60</sup> Education Act, CAP 58:01, No 49 of 1966 (Botswana).

<sup>61</sup> See section on Kenya below-

obliged to maintain the premises in a manner that ensures that it meets the requirements of occupational health, safety regulations and building standards.<sup>62</sup> Similarly, health institutions also have obligations regarding children, as they need to provide appropriate treatment, care and necessary hospital accommodation for children.<sup>63</sup>

### ***Employers' obligations***

20. Employment can also have an impact on the realisation of the right to ECD. The most consistent way that employers' obligations can be seen in this context is the entitlement of maternity (and parental) leave, with some jurisdictions also providing protections for female employees to nurse their children. In Botswana, female employees are permitted to take six (6) weeks' of maternity leave, with at least 50% of their basic pay for the duration of that leave,<sup>64</sup> and can nurse their children during the first six (6) months of their return to work.<sup>65</sup> In Ghana, female employees are entitled to at least twelve (12) weeks of maternity leave with full pay, and to one hour of nursing during work hours.<sup>66</sup> Kenyan Employment Act entitles female employees to three (3) months of maternity leave, with full pay, and male employees to two (2) weeks.<sup>67</sup> Finally, in Zambia, female employees are entitled to twelve (12) weeks full pay maternity leave, but only if they have completed at least two (2) years of continuous service with the employer.<sup>68</sup> It is a criminal offence for employers to not pay employees their maternity leave entitlements.<sup>69</sup>

### ***Parental obligations***

21. While not usually understood as constituting the 'private sector', the legislation in all countries reviewed creates legal obligations for parents, including the right to parental care. The state is required to ensure that parents are able to comply with this obligation. Parents are recognised as the primary care providers of children by law, and this creates both rights and responsibilities, which in turn meaningfully shape how the child enjoys their right to ECD. The government, and sub-state entities, such as community leaders, are required to offer support for parents to meet their rights and duties.

22. In Botswana, the Children's Act imposes a general duty on parents (not only for ECD) to do all things "necessary to ensure the good health, safety, educational development and general well-being of the child,"<sup>70</sup> and requires public health workers to support parents by rendering "health and child

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<sup>62</sup>ECEA (n 23) s 22.

<sup>63</sup> Children's Act (Kenya).

<sup>64</sup> *ibid* s113.

<sup>65</sup> *ibid* s 118.

<sup>66</sup> Labour Act, No 651 of 2003, s 57 (Ghana)

<sup>67</sup> Employment Act 2007, Cap 226 (rev 2012), s 29 (Kenya)

<sup>68</sup>Zambian Employment Act, s. 15A.

<sup>69</sup> *ibid*, s 15 A(4).

<sup>70</sup> Children's Act (n 20) s 27(1)(j).

development advice to adolescents and parents.”<sup>71</sup> In Kenya, parents (or guardians) are responsible for maintaining their children and providing them with basic nutrition, shelter, water and sanitation facilities, clothing, medical care (including immunisation), basic education, and general guidance.<sup>72</sup> They also have the duty if they “know or have reason to believe” that their child is suffering from a venereal disease, to “cause such child to be treated for such disease by a medical practitioner until such child is cured or free from such disease in a communicable form.”<sup>73</sup> In Ghana, parents are obliged to provide for their children’s welfare, and to protect children “from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression,” and “provide good guidance, care, assistance and maintenance for the child and assurance of the child's survival and development.”<sup>74</sup>

## REGIONAL HUMAN RIGHTS FRAMEWORK

### QUESTION 1: WHAT IS THE EXTENT TO WHICH EARLY CHILDHOOD DEVELOPMENT IS RECOGNISED IN STATE LEGISLATION? IS THERE EXPRESS RECOGNITION OF THE RIGHT TO ECD? IF NOT, IS THERE ADVOCACY TOWARDS SECURING RECOGNITION OF THE RIGHT TO ECD?

23. The African Charter on the Rights and Welfare of the Child (ACRWC) was adopted in July 1990, and entered into force on 29 November 1999<sup>75</sup>. All the countries examined in this report have ratified the ACRWC.<sup>76</sup> While the text of this ACRWC does not explicitly mention the right to ECD, it enshrines several rights that are relevant to ECD. The ACRWC recognises:

- a) The right of every child to have a name, to be registered immediately after birth, and to acquire a nationality – including avoiding statelessness at the time of birth.<sup>77</sup>
- b) The right to education, which has to be directed to the promotion and development of the personality, talents and mental and physical abilities to their fullest potential.<sup>78</sup>
- c) The right to survival and development.<sup>79</sup>
- d) The right to rest and leisure, to engage in play and recreational activities appropriate to their age.<sup>80</sup>
- e) The right to health.<sup>81</sup>

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<sup>71</sup> *ibid* s 32(5).

<sup>72</sup> See section on Kenya below.

<sup>73</sup> Public Health Act, Cap 242 (rev 2012), s 46 (Kenya)

<sup>74</sup> Children’s Act, No 560 of 1998, s 6 (Ghana).

<sup>75</sup> All the countries studied in this project have ratified the ACRWC without any reservations. See ACERWC, Overview of the African Charter on the Rights and Welfare of the Child, <https://www.acerwc.africa/en/page/about-the-charter#:~:text=To%20date%2050%20AU%20Member,Egypt%2C%20Mauritania%2C%20and%20Sudan.>

Accessed 3 July 2023.

<sup>76</sup>*ibid*.

<sup>77</sup> ACRWC, art 6 (n 29).

<sup>78</sup> *ibid* art 11.

<sup>79</sup> *ibid* art 5(2).

<sup>80</sup> *ibid* art 12.

<sup>81</sup> *ibid* art 14.

- f) The right to reside with their parents.<sup>82</sup>
24. Despite not having an explicit mention to the right to ECD, activities within the African Union have used a similar term for their initiatives – early childhood education and development (ECED). For example, in 2018 the Africa Union launched, within the Continental Education Strategy for Africa (CESA), the Early Childhood Education and Development Cluster. This was created because the CESA already identified pre-primary education as a neglected sub-sector in the region. The Cluster identifies ECED as a pillar for future learning,<sup>83</sup> and within its work plan relies on the intensification of action to improve equitable access to quality ECED programmes and services.<sup>84</sup>

**QUESTION 2: WHAT IS THE EXTENT OF STATE DUTIES IN RELATION TO ECD? BOTH IN CASES WHERE THE RIGHT TO ECD IS EXPRESSLY RECOGNISED AND IN CASES WHERE, THOUGH NOT EXPRESSLY RECOGNISED, IT IS IMPLICIT IN OTHER OBLIGATIONS.**

25. The ACRWC establishes a series of duties for states in relation to the rights related to ECD. States have a duty to ensure, to the maximum extent possible, the realisation of these rights, including by recognising them constitutionally, in statute or through other measures to give effect to the rights.<sup>85</sup> In fact, the ACRWC particularly notes that State should “undertake necessary steps in accordance with Constitutional processes”, and including an array of children rights in national constitution has become a continental best practice.<sup>86</sup>
26. In interpreting the duties of states in the ACRWC, the Committee has emphasised that states are required to exercise their due diligence to the human rights obligations under the ACRWC, and this implies the prevention of human rights violations, investigation of violations, prosecution of perpetrators and ensuring punishment of perpetrators.<sup>87</sup> This due diligence creates an obligation of results, “meaning that the compliance of a State party is assessed against the backdrop of the efficacy and adequacy of the implementation measures it has undertaken to enforce laws and administrative and other measures.”<sup>88</sup>

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<sup>82</sup> *ibid* art 19.

<sup>83</sup> AU, Launch of CESA Early Childhood Education and Development Cluster (4 September 2018), <https://au.int/en/pressreleases/20180904/launch-cesa-early-childhood-education-and-development-cluster> accessed 3 July 2023.

<sup>84</sup> *ibid*.

<sup>85</sup> ACRWC (n 29), art 1(1).

<sup>86</sup> ACERWC , General Comment No. 5 (n 57), Section 5.2.

<sup>87</sup> Decision on the communication submitted by Minority Rights Group International and SOS-Eslaves on behalf of Said Ould Salem and Yarg Ould Salem Against the Government of the Republic of Mauritania (Decision 003/2017 par 52.

<sup>88</sup> ACERWC , General Comment No. 5 (n 57).

27. The ACRWC establishes four key principles for the effective implementation of all the rights recognised therein:
- a) **Non-discrimination**, which requires states to actively identify children or groups of children in respect to whom the recognition and realisation for their rights demands special measures.<sup>89</sup>
  - b) **The best interest of the child**, which requires actions to be undertaken by any person or authority with the best interest of the child as the primacy consideration.<sup>90</sup> This principle applies to private and public sector institutions, and it is the responsibility of the state “to ensure to the maximum extent possible that private actors, including parents, institutions, business entities and various non-state actors engaged with children’s rights and services, are aware of and apply the best interests of the child in all of their endeavours.”<sup>91</sup>
  - c) **The right to survival and development and protection**, which obliges states that all measures should be aimed at achieving the “optimal development for all children, including the child’s physical, mental, spiritual, moral, psychological and social development”.<sup>92</sup>
  - d) **Participation**, where children are active participants in the promotion, protection and monitoring of their rights.
28. The ACRWC also provides for specific responsibilities of states with respect to the different rights enshrined. Regarding the right of every child to have a name and nationality, the ACRWC obliges states to ensure that their constitutional legislation avoids statelessness, and ensures to children born in the state’s territory a nationality, if it is not granted by another state in accordance with its laws.<sup>93</sup> The Committee has adopted a general comment focusing on the right to birth registration, name and nationality.<sup>94</sup> Among other obligations specific to this right, the Committee calls states to adopt civil registration laws, to implement them or to make any amendment necessary to ensure that they align with the requirements of the ACRWC.<sup>95</sup> States are responsible to issue a copy of a birth certificate, free of charge, immediately after the registration of the birth,<sup>96</sup> and this right should be enjoyed without discrimination. States are directed to take into account the special needs to children of imprisoned mothers,<sup>97</sup> indigenous parents,<sup>98</sup> children born to refugees, internally displaced persons or asylum

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<sup>89</sup>ACRWC (n 29) art 3. See also ACERWC , General Comment No. 5 (n 57).

<sup>90</sup> ACRWC (n 29) art 4.

<sup>91</sup>ACERWC , General Comment No. 5 (n 57), section 4.2.

<sup>92</sup>ibid section 4.3.

<sup>93</sup> ACRWC (n 29), art 6(4)

<sup>94</sup> ACERWC, General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child: “Right to Birth, Registration, Name and Nationality.”

<sup>95</sup> ibid, para 5-6.

<sup>96</sup> ibid, para 46.

<sup>97</sup> ibid paras 70- 71,

<sup>98</sup> ibid paras 67-69

seekers,<sup>99</sup> and children born of undocumented parents,<sup>100</sup> all of whom have the right to be registered at birth without discrimination.

29. The ACRWC obliges states to take all appropriate measures to ensure the full realization of the right to education. In particular, and of most relevance to the realization of the right to ECD, are the obligations of States to provide free and compulsory basic education,<sup>101</sup> encouraging regular attendance to school, and taking special measures “in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.”<sup>102</sup> States shall respect the rights and duties of parents (or legal guardians) to choose the children’s schools and ensure their religious and moral education.<sup>103</sup> Finally, States need to take measures to ensure that children subjected to school or parental discipline are treated with humanity and with respect for their dignity.<sup>104</sup>
30. Regarding the right to leisure, recreation and cultural activities, the ACRWC obliges states to respect and promote the protection of this right, including by encouraging the provisions of appropriate and equal opportunities for cultural, artistic and recreation and leisure activity. <sup>105</sup> With respect to the right to survival and development of the child, States are obliged to ensure, to the maximum extent possible, the survival, protection and development of the child.<sup>106</sup>
31. Regarding the right to parental care and protection, the State is responsible for not separating children from their parents against their will, except when a “judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.”<sup>107</sup> Similarly, States are responsible for providing parents with “material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing;”<sup>108</sup> assisting them in the performance of child-reading duties; ensuring the development of institutions responsible for providing care of children; and ensuring that children with working parents are provided with care services and facilities.<sup>109</sup>
32. The ACRWC does not only provide obligations for the State, but also for the parents and children. In particular, it recognises the primary responsibility that parents have in ensuring good upbringing and development for children, including by requiring that parents:
  - a) ensure that the protection of the best interest of the child are their basic concern at all times;

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<sup>99</sup> *ibid* paras 57-63.

<sup>100</sup> *ibid* paras 64-66.

<sup>101</sup> ACRWC (n 29), art 11(3) (a).

<sup>102</sup> *ibid* art 11(3) (e).

<sup>103</sup> *ibid* art 11 (4).

<sup>104</sup> *ibid* art 11(5).

<sup>105</sup> *ibid* art 12(3).

<sup>106</sup> *ibid* art 5.

<sup>107</sup> *ibid* art 19.

<sup>108</sup> *ibid* art 20.

<sup>109</sup> *ibid*.



- b) secure and provide for the needs of the child's development; and
- c) ensure that 'discipline' is administered with humanity and in a manner consistent with the protection of the child's dignity.<sup>110</sup>

**QUESTION 3: WHAT ARE THE OBLIGATIONS OF THE STATE VIS-À-VIS THE PRIVATE SECTOR IN RELATION TO THE RIGHT TO EARLY CHILDHOOD DEVELOPMENT?**

33. The ACRWC does not contain any references to the obligations of the State regarding the private sector in the fulfilment of children's rights. Yet, the Committee encourages States to collaborate with the private sector, civil society organisations (CSOs) and community-based organisations (CBOs) in the fulfilment of the rights enshrined in the ACRWC. It has also suggested that States involve the private sector in the development and implementation of policies, laws and other measure related to children's rights.<sup>111</sup>
34. However, the Committee is cautious on the extent of this collaboration, as it has warned States not to abdicate the duties to fulfil children's rights to the private sector. In particular, it has raised concerns of the possible inequalities that the privatization of certain services might have regarding children rights, and the importance of regulating the delivery of certain services by private actors, including religious groups.<sup>112</sup> Similarly, it has cautioned of the consequences of leaving the private sector to entirely self-regulate, and has recommended States to devise systems where business operators are held accountable.<sup>113</sup> For this reason, while collaboration is important, States must monitor private sector actors to ensure that children's rights are protected, promoted and fulfilled.

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<sup>110</sup> *ibid.*

<sup>111</sup> Concluding observations South Africa (2015) par 13.

<sup>112</sup> ACERWC , General Comment No. 5 (n 57), section 6.7.

<sup>113</sup> *Ibid.* See also Concluding Observations Kenya (2015) para 46.

## BOTSWANA

### QUESTION 1: WHAT IS THE EXTENT TO WHICH EARLY CHILDHOOD DEVELOPMENT IS RECOGNISED IN STATE LEGISLATION? IS THERE EXPRESS RECOGNITION OF THE RIGHT TO ECD? IF NOT, IS THERE ADVOCACY TOWARDS SECURING RECOGNITION OF THE RIGHT TO ECD?

35. In Botswana, components of ECD are recognised in state legislation and policy, but there is no express right to ECD. The Constitution of Botswana, 1966 (as amended) sets out several fundamental rights,<sup>114</sup> but none confers rights specifically on children. There is also no constitutional right to education, health, or other rights that may be seen together to support ECD, as in the South African Constitution.
36. However, Botswana's Children's Act<sup>115</sup> sets out a 'Bill of Child Rights', and requires that the best interests of the child be paramount (akin to the South African Constitution).<sup>116</sup> The Bill of Child Rights does not explicitly mention ECD, but confers rights to health, education, leisure, play and recreation, amongst other things, on all children (under 18 years old).<sup>117</sup> The Children's Act seeks to promote "physical, emotional, intellectual and social development" of children; imposes a duty on parents to do all things "necessary to ensure the good health, safety, educational development and general well-being of the child";<sup>118</sup> and requires public health workers to support parents by rendering "health and child development advice to adolescents and parents".<sup>119</sup> However, it does not refer specifically to *early* childhood development, or impose obligations on the state or any private institutions to promote ECD.
37. The Children's Act also establishes: (a) Village Child Protection Committees, which are required to educate their respective communities about abuse of children, and monitor children's welfare;<sup>120</sup> (b) the Children's Consultative Forum, which is required to discuss issues affecting the education, health, safety and general well-being of children and make recommendations to the National Children's Council;<sup>121</sup> and (c) the Botswana National Children's Council, which is required to advocate for a child-centred approach to legislation, policies, strategies and programmes, and advocate for a substantive share of national resources to be allocated to child-related initiatives and activities.<sup>122</sup>

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<sup>114</sup> Chapter II.

<sup>115</sup> Children's Act (Botswana) (n 20).

<sup>116</sup> See section 5 of the Children's Act and section 28(2) of the Constitution of the Republic of South Africa, 1996 ('South African Constitution').

<sup>117</sup> Children's Act (Botswana) (n 20), Sections 15, 18 and 19.

<sup>118</sup> *ibid* section 27(1)(j).

<sup>119</sup> *ibid* section 32(5).

<sup>120</sup> First Schedule (section 33).

<sup>121</sup> Second Schedule (section 34).

<sup>122</sup> Third Schedule (section 35).

38. There is some advocacy for a rights-based approach to early childhood development in Botswana,<sup>123</sup> but the focus of ECD advocacy appears to be improved and coordinated policies, increased state involvement and resources, improved training of teachers, and equitable access to ECD programmes in practice.<sup>124</sup>

***The focus of ECD policy on regulating education***

39. It is worth noting that policies and academic research dealing with ECD in Botswana, while referring on occasion to ECD as such, primarily use the terminology of “Early Childhood Care and Education” (ECCE), and address pre-school and early primary school education. These policies and research claim to address ECD holistically. For example, the ECCE Policy 2001 (which was preceded by the National Day-Care Centre Policy 1980, and applies to children aged 0-6 years old) claims to establish a “comprehensive approach that lays emphasis on the overall development needs of the child”. However, the sharp focus on education, albeit a significant component of ECD, may narrow the scope of legal and policy measures to address ECD more broadly in Botswana.
40. This is not to say that other facets of ECD have not been developed at all. As discussed, all children have legislative rights beyond education, including access to health, shelter, play, and parental care.<sup>125</sup> There are also some legal protections particular to children, like protection from the imposition of the death penalty or life-imprisonment (although corporal punishment by parents and in the educational system remains accepted);<sup>126</sup> prohibition of marriage of anyone under eighteen (18) years old (even with parental consent);<sup>127</sup> and prohibition of refusal by a parent to immunise their child against childhood diseases.<sup>128</sup> There are also various programmes and policies seeking to fulfil children’s rights without reference to education, some of which are specifically directed at the survival and development of young children. For example, the Accelerated Child Survival and Development Strategy (2009/10-2015/16) focuses primarily on illnesses causing under-five mortality, and has introduced new vaccines, vitamin supplements, and health monitoring systems for children under five.<sup>129</sup>

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<sup>123</sup> See, for example, Christina Mwaipopo, ‘Challenges in the Provision of Early Childhood Care and Education Services in Rural Areas of Botswana’ (2021) 9 African Educational Research Journal 753, 754; Langtone Maunganidze and Marea Tsamaase, ‘Early Childhood Education in Botswana: A Case of Fragmented “Fits”’ (2014) 7 International Education Studies p1, 5; Christina Mwaipopo, ‘Challenges in the Provision of Early Childhood Care and Education Services in Rural Areas of Botswana’ (University of Botswana 2016) 28.

<sup>124</sup> See Maundeni, (n 41) 54, 58; Mwaipopo, ‘Challenges in the Provision of Early Childhood Care and Education Services in Rural Areas of Botswana’ (n 10) 754; Maunganidze and Tsamaase (n 10).

<sup>125</sup> Children’s Act (n 1150).

<sup>126</sup> ‘Combined Second and Third Reports Submitted by Botswana under Article 44 of the Convention, Due in 2017’ (United Nations Committee on the Rights of the Child 2018) CRC/C/BWA/2-3. See also section 27(5) of the Children’s Act (n 1150), which provides that corporal punishment in line with existing law is not prohibited.

<sup>127</sup> Marriage Act No. 18 of 2001.

<sup>128</sup> Public Health (Prevention of Immunizable Childhood Diseases) Regulations, Statutory Instrument 45, 2005.

<sup>129</sup> ‘Combined Second and Third Reports Submitted by Botswana under Article 44 of the Convention, Due in 2017’ (n 13) 23.

41. However, it is noteworthy that the Botswanan government appears to use the terms ECD and ECCE interchangeably,<sup>130</sup> and that policies specifically regulating ECD focus primarily on education (with other facets of ECD, like nutrition, health, and play being regulated and promoted primarily in pre-school and primary school contexts).<sup>131</sup> This focus on ECD through the lens of education is further reflected in the composition of the National Children’s Council, which comprises the Ministers of Education, Labour and Home Affairs, and Local Government.<sup>132</sup> It is unlikely that health, housing, or other important factors contributing to ECD would feature as prominently as education in a council with this composition, even if the Children’s Act purports to regulate childhood development holistically. This focus on education in promoting ECD is reinforced by the UN Committee on the Rights of the Child, who refer only to the ECCE Policy and early childhood education in their report of ECD in Botswana.<sup>133</sup>
42. In sum, laws, policies and programmes that address ECD (including both education of young children, and other components of their development) do so primarily through the lens of regulating education programmes.

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<sup>130</sup> See *ibid* 29.

<sup>131</sup> For example, the ECCE Policy requires education centres to ensure appropriate development, safety and health of children; prohibits punishment that threatens the health of children; requires parents to provide proof that their child doesn’t have communicable or contagious diseases; regulates health and sanitation at education centres; and provides that health professionals may be members of the Pre-School Development Committee.

<sup>132</sup> Third Schedule to Children’s Act (n 1150).

<sup>133</sup> United Nations Committee on the Rights of the Child, ‘Concluding Observations on the Combined Second and Third Reports of Botswana’ (2019) Concluding observations CRC/C/BWA/CO/2-3 12.

**QUESTION 2: WHAT IS THE EXTENT OF STATE DUTIES IN RELATION TO ECD? BOTH IN CASES WHERE THE RIGHT TO ECD IS EXPRESSLY RECOGNISED AND IN CASES WHERE, THOUGH NOT EXPRESSLY RECOGNISED, IT IS IMPLICIT IN OTHER OBLIGATIONS.**

43. Government-funded primary education in Botswana generally begins when children are six (6) years old.<sup>134</sup> Until then, children may attend pre-schools, which are generally not government-provided. The responsibility to provide ECCE programmes “lies largely with private and civil society sectors, rather than with the government”.<sup>135</sup> The government is required only to provide an “enabling environment”,<sup>136</sup> by setting national standards for those providing ECCE services;<sup>137</sup> registering pre-schools;<sup>138</sup> monitoring and evaluating ECCE programmes; training teachers to teach 0-6 year olds;<sup>139</sup> developing the curriculum;<sup>140</sup> and coordinating and advising the Ministry on the development of the ECCE programme through the Pre-School Development Committee (to which the Ministry of Education (MOE) is required to provide an annual budget and a permanent secretariat).
44. Under the ECCE Policy 2001, the Ministry of Local Government (MLC) and the MOE are required to work together to establish guidelines and standards, and local councils are responsible for the registration, supervision and inspection of day-care, baby care, and other educational centres. Local councils are also required to use the ‘recommended standards’ to develop or review existing by-laws. The MLC and MOE are required to ensure that these councils develop the necessary capacity to fulfil their responsibilities.<sup>141</sup>

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<sup>134</sup> Section 18 of the Children’s Act provides:

“(1) Every child has a right to free basic education.

(2) A parent, other relative or guardian who, without reasonable excuse, denies a child the opportunity of going to school shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000, but not more than P10 000.”

According to the United Nations Committee on the Rights of the Child, primary school education in Botswana is free and compulsory (ibid 11.). However, Botswana’s ‘Education for All’ 2015 National Review emphasises that the government aims for free and compulsory education, but also states that education in Botswana is currently free, but not compulsory (‘National Education for All (EFA 2015) Review Report: Botswana; 2015’ 3.)

<sup>135</sup> Maundeni (n 41) 54.

<sup>136</sup> *ibid.*

<sup>137</sup> ECCE Policy (n 43) Heading B ‘Standards’.

<sup>138</sup> *Ibid* Heading B ‘Authority and Registration’.

<sup>139</sup> Under Heading D ‘Training’ of the ECCE Policy, 2001, the Minister of Education must introduce ECCE training at Colleges of Education; recruit experts with sufficient knowledge and experience in ECCE to develop and implement the training programme; and requires caregivers to undergo formal training in child-care to carry out professional duties of a baby-care service.

<sup>140</sup> ECCE Policy (n 43), Heading C ‘Curriculum and Learning Framework’.

<sup>141</sup> ECCE Policy (n 43), Heading E ‘Management and Supervision’.

45. Since the ECCE Policy 2001 was published, an early childhood curriculum and teacher training programme has been developed by the government.<sup>142</sup> However, the ECCE policy framework remains ‘minimalist’, and thus fails to support under-resourced ECCE providers or ensure sufficient consistency in the nature and quality of programmes.<sup>143</sup> The United Nations Committee on the Rights of the Child has recommended that the government “allocate sufficient financial resources for the development and expansion of early childhood education, based on a comprehensive and holistic policy of early childhood care and development, with a view to ensuring access for all children to early childhood education, and that [Botswana] seek technical assistance from UNICEF in that regard”.<sup>144</sup> The government has since committed to greater investment in ECD, both in education and other spheres of ECD.<sup>145</sup>

### **QUESTION 3: WHAT IS THE RELATIONSHIP BETWEEN PRIVATE AND PUBLIC SECTOR INVOLVEMENT IN ECD?**

46. The private and public sectors have complementary roles in relation to ECD. The government’s role is primarily to create an ‘enabling’ regulatory environment, to facilitate actual provision of ECCE programmes by private persons, communities, and non-governmental organisations.<sup>146</sup> Some ECCE institutions are also owned by town councils, municipalities and village development communities.<sup>147</sup> While no person or organisation is *required* to provide ECD/ECCE programmes, anyone that chooses to do so is required to comply with the regulatory framework, by registering their institutions, offering the prescribed curriculum and meeting various other standards.<sup>148</sup> This approach is encapsulated in a recent speech by the Vice President of Botswana, who described ECD as a “national priority” and a “private sector imperative”.<sup>149</sup>

47. While no person or organisation is *required* to provide ECD/ECCE programmes, anyone that chooses to do so is required to comply with the regulatory framework, by applying to the Council to register their institutions (giving details about their premises, capacity, staff, a programme that will promote children’s developmental needs, and equipment), offering the prescribed curriculum, and meeting various other standards.<sup>150</sup> The “minimum standards” prescribed for a centre to “give quality services”

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<sup>142</sup> United Nations Committee on the Rights of the Child, ‘Concluding Observations on the Combined Second and Third Reports of Botswana’ (2019) Concluding observations CRC/C/BWA/CO/2-3 12.

<sup>143</sup> Bar-On (n 19) 72.

<sup>144</sup> United Nations Committee on the Rights of the Child (n 133) 12.

<sup>145</sup> ‘Government of Botswana Commits to Increase Investment in ECD | UNICEF Botswana’ <<https://www.unicef.org/botswana/stories/government-botswana-commits-increase-investment-eed>> accessed 30 March 2023. According to UNICEF Botswana, a new ECD policy was signed in 2020. However, we have not been able to confirm this, or access this policy.

<sup>146</sup> The ECCE Policy, 2001 provides that “supporting care and education services [for children aged 2 ½-6 years] are provided by private individuals, communities, companies and volunteers” (p. 6).

<sup>147</sup> Maunganidze and Tsamaase (n 10) 4.

<sup>148</sup> See ECCE Policy, 2001, read with guidelines published by the MOE in compliance with its requirements.

<sup>149</sup> ‘Government of Botswana Commits to Increase Investment in ECD | UNICEF Botswana’ (n 30).

<sup>150</sup> See ECCE Policy, 2001 (n 43) , read with guidelines published by the MOE in compliance with its requirements.

are “acceptable hygienic conditions, acceptable physical structures, acceptable quality of the environment, acceptable quality of food, and adequate education and development material”.<sup>151</sup> Any ‘service provider’ (i.e. Any provider of day-care/nursery, pre-primary, and baby-care services) is required to employ people with expertise and training in teaching or caregiving, and the person heading the centre must have such expertise.<sup>152</sup> The ECCE Policy also incorporates specific requirements about equal treatment of children that are admitted, and requires centres to engage with parents to ensure that children attending the centre are clothed and do not have infectious diseases.<sup>153</sup> Centres and parents are required to jointly manage any special needs of children.<sup>154</sup>

48. The government’s reliance on private ECCE providers is widely critiqued, as many ECCE providers operate as businesses for profit, thus charging high fees and excluding children from low-income families.<sup>155</sup> The system is therefore largely reliant on voluntary organisations, including churches, the Red Cross, and UNICEF (who has partnered with the government in Botswana to assist with ECD)<sup>156</sup> for the provision of ECCE programmes to children from low-income families,<sup>157</sup> and in rural areas, which are notably underserved.<sup>158</sup> Since 2014, the government in Botswana began providing some funding for pre-schools for children above five years old, but programmes for children below this age remain reliant on parents paying fees, or on voluntary organisations with limited funds.<sup>159</sup> To illustrate the concern, in 2014, only 22% of children of preschool-going ages in Botswana were enrolled in ECCE programmes.<sup>160</sup> Further, despite attempts to regulate the sector, the lack of a coherent and strictly enforced regulatory framework has resulted in ECCE programmes being fragmented and inconsistent throughout Botswana in practice.<sup>161</sup>
49. Under the Children’s Act (which deals with all children under 18 years old, and is thus not limited to younger children), private persons interact with the state to the extent that parents have certain rights and duties (alluded to under the first heading), and community leaders, and the central government are required to offer “support to parents”.<sup>162</sup> Some parental duties include providing for the physical, emotional, educational, and material needs of the child; refraining from punishment that violates the child’s dignity or adversely affects their well-being; and providing direction and guidance to the child

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<sup>151</sup> ECCE Policy (n 43), Heading B ‘Standards’.

<sup>152</sup> *ibid* Chapter III.

<sup>153</sup> *Ibid*.

<sup>154</sup> *Ibid*.

<sup>155</sup> Maundeni (n 41).

<sup>156</sup> ‘Education | UNICEF Botswana’ <<https://www.unicef.org/botswana/education>> accessed 28 March 2023.

<sup>157</sup> Maundeni (n 41) 55.

<sup>158</sup> Mwaipopo, ‘Challenges in the Provision of Early Childhood Care and Education Services in Rural Areas of Botswana’ (n 10).

<sup>159</sup> *ibid* 754.

<sup>160</sup> *ibid*.

<sup>161</sup> Maunganidze and Tsamaase (n 10) 5.

<sup>162</sup> Children’s Act (n 20), s 27-33.

in accordance with their age, maturity and level of understanding.<sup>163</sup> Community leaders are required to receive and discuss, in community gatherings, matters that may affect the common well-being of children in their community, and the Minister is required to put in place and ensure implementation of policies and programmes for children's well-being.<sup>164</sup> Further, although the primary duty to care for and maintain a child rests on their biological parents,<sup>165</sup> the state is required to provide support in some instances where parents cannot. For example, when "parents, other relatives or guardian of a child are unable, due to financial constraints, physical disability, ill health or other reasonable cause" to ensure the fulfilment of the child's right to health, the state must take steps necessary to ensure the child's fulfilment of that right.<sup>166</sup> However, an equivalent obligation is not imposed on the state to step in and fulfil many other children's rights, including the right to shelter.

50. Finally, the Employment Amendment Act<sup>167</sup> requires employers to allow female employees six weeks' maternity leave, with at least 50% of their basic pay for the duration of that leave,<sup>168</sup> and to allow female employees to nurse their children during the first six months of their return to work.<sup>169</sup> However, there do not appear to be any other significant legislative obligations on employers to support parents, or allow them other flexibility.

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<sup>163</sup> *ibid* s 27.

<sup>164</sup> *ibid* s 30-31.

<sup>165</sup> *ibid* 27(1).

<sup>166</sup> *ibid* s 15(2).

<sup>167</sup> Act No. 10 of 2010.

<sup>168</sup> *ibid* s 113.

<sup>169</sup> *ibid* s 118.



# GHANA

## QUESTION 1: WHAT IS THE EXTENT TO WHICH EARLY CHILDHOOD DEVELOPMENT IS RECOGNISED IN STATE LEGISLATION? IS THERE EXPRESS RECOGNITION OF THE RIGHT TO ECD? IF NOT, IS THERE ADVOCACY TOWARDS SECURING RECOGNITION OF THE RIGHT TO ECD?

52. The Constitution of Ghana does not protect the right to ECD explicitly; rather, it contains provisions that are relevant for this right, namely Articles 25 and 28. Article 28, which recognises children's rights, provides that Parliament must enact legislation to secure the same measures of care, assistance and maintenance for every child. In parallel to this right, it establishes the duty of parents to care, maintain and upbring their children. Finally, Article 28 also protects all children from engaging in work that puts their health at risk; from cruel human and degrading treatment or punishment, and from being arbitrarily deprived of medical treatment.<sup>170</sup> Meanwhile, Article 25 recognises the right to educational opportunities and facilities. Particularly, section 1(a) establishes that basic education 'shall be free, compulsory and available to all.'<sup>171</sup>
53. At a sub-constitutional level, Ghana has extensive legislation that recognizes several aspects of the right to ECD, as illustrated by the Children's (Amendment) Act, 2016 (Act 937). The Act outlines the rights of children, including rights to a name and nationality,<sup>172</sup> to grow up with parents,<sup>173</sup> to education and well-being,<sup>174</sup> to social activity<sup>175</sup>, as well as protection from child labour, torture, and degrading treatment. Notably, Article 8 establishes the prohibition of depriving a child from having access to 'education, immunisation, adequate diet, clothing, shelter, medical attention or any other thing required for his development.'<sup>176</sup> While Article 9 establishes the prohibition of depriving a child from leisure activities, as well as art, culture or sports.<sup>177</sup>
54. In 2008 the Ghanaian Government introduced the Education Act 2008, which aimed to establish a free, inclusive and robust educational system that is compulsory for all children. This Act divides education into three progressive levels: basic education, second cycle education, and tertiary education.<sup>178</sup> As part of the basic level of education, the Act recognises two years of kindergarten education.<sup>179</sup> In particular,

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<sup>170</sup> Constitution of Ghana (n 5) Article 28 (1)(2)(3)(4).

<sup>171</sup> Constitution of Ghana (n 5) Article 25 (1)(a).

<sup>172</sup> Constitution of Ghana (n 5) 4

<sup>173</sup> *ibid* s 5.

<sup>174</sup> *ibid* s 8.

<sup>175</sup> *ibid* s 9

<sup>176</sup> The Children's Act 1998 (Act 560) Article 8 (1).

<sup>177</sup> *ibid* Article 9.

<sup>178</sup> Education Act 2008, s 1 (Ghana).

<sup>179</sup> *ibid*.

Article 2 establishes the duty of District Assemblies to provide the facilities for basic education to take place. Notably, Article 2 also provides for scenarios where parents cannot afford to provide basic education. In these cases, the District Assembly may provide additional support.<sup>180</sup> Finally, the Act provides that the Health and Education services must collaborate to ensure that children receive regular medical examination, as well as screening when they are admitted to school.<sup>181</sup>

55. Ghana has an Early Childhood Care and Development (ECCD) Policy (2004) that governs the care and development of children eight years and below. It aims to “promote the survival, growth and development of all children (0-8 years).”<sup>182</sup> This policy follows the definition of early childhood provided by UNICEF, as the period below the age of 8 years.<sup>183</sup> It also understands ECCD as “the holistic development of children including physical, cognitive, language, social and emotional development from conception to age of eight”.<sup>184</sup>
56. In addition, the government of Ghana has adopted policies that tackle specific aspects of early childhood development, namely early education, healthcare and nutrition. Firstly, there is strong parliamentary support for the advancement of early childhood education. This support is illustrated by the Ghana’s National Education Strategic Plan 2018-2030, which works to advance the 2030 Sustainable Development Goal 4.2.4: ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education (Ghana Education Services, 2023).
57. Secondly, the Child Health Standards and Strategy (2017-2025) outlines the direction that interventions by the Ministry of Health must follow to support the health of children of less than 10 years of age.<sup>185</sup> The policy observes that the greatest proportion of deaths among children occurs from 0 to 5 years of age. Hence, it prioritises interventions for this age group.<sup>186</sup> The policy establishes three main goals: 1) facilitating the provision of neonatal and child services; 2) strengthening the delivery of neonatal and child health programmes, and 3) increasing the quality of new born and child health services.<sup>187</sup> The policy suggests seven strategies to attain these goals: strengthening primary health care; increasing human resources across the health sector; enabling families and communities to participate in health interventions; advocacy to raise awareness on new born and child mortality; strengthening health

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<sup>180</sup> Education Act 2008 s 2 (Ghana).

<sup>181</sup> *ibid* s 6 (Ghana).

<sup>182</sup> Ministry of Gender, Children and Social Protection, Republic of Ghana, Early Childhood Care and Development Standard (0-3), (2018) 15, <<https://www.unicef.org/ghana/media/2031/file/Early%20Childhood%20Care%20and%20Development%20Standards.pdf>> accessed 3 July 2023

<sup>183</sup> *ibid*.

<sup>184</sup> *ibid*, 18.

<sup>185</sup> Child Health Standards and Strategy (2017-2025), P 13. <[https://ghs.gov.gh/wp-content/uploads/2022/10/Child-Health-Policy\\_.pdf](https://ghs.gov.gh/wp-content/uploads/2022/10/Child-Health-Policy_.pdf)> accessed 16 September 2023.

<sup>186</sup> *ibid* at 16.

<sup>187</sup> *ibid* at 51.

interventions by improving the planning, implementation and use of data; mobilising resources, and establishing partnerships with the private sector.<sup>188</sup>

58. To complement the guidelines set out in the Child Health Standards and Strategy (2017-2025) the Ministry of Health published the Standards for Newborn Health Services (2020).<sup>189</sup> The policy develops twenty standards that all health workers must follow to ensure quality services for new-borns. These standards include, among others, respectful care; responsive communication; respect for the right to information; prohibition of unnecessary or harmful practices in the treatment of babies; infection prevention and control, and birth registration.<sup>190</sup>
59. Finally, the Ministry of Gender, Children and Social Protection has developed a National School Feeding Policy. The policy developed as a result of the Ghana School Feeding Program, which sought to reduce hunger and malnutrition in line with the UN Millenium Development Goals. Among other aims, the Programme intends to increase school enrolment and mitigate malnutrition amongst kindergarten and primary school children. Accordingly, the programme targets public primary schools and kindergartens.<sup>191</sup>

## **QUESTION 2: WHAT IS THE EXTENT OF STATE DUTIES IN RELATION TO ECD? BOTH IN CASES WHERE THE RIGHT TO ECD IS EXPRESSLY RECOGNISED AND IN CASES WHERE, THOUGH NOT EXPRESSLY RECOGNISED, IT IS IMPLICIT IN OTHER OBLIGATIONS**

60. As mentioned above, even though the right to ECD is not expressly recognised in the law, several statutes establish duties for public authorities that are closely related to ECD. For example, sections 2, 3 and 6 of the Education Act 2008 establish important government duties from the perspective of early childhood development. Section 3 of the Education Act 2008 outlines the Government's responsibility to decentralize the provision and management of basic education to District Assemblies. Meanwhile, section 2 hold District Assemblies responsible for providing "the necessary infrastructural needs and any other facilities for the education of the population" in their area.<sup>192</sup> The Assemblies need to ensure that schools are designed in a user-friendly manner for children with special needs, as well as provide additional facilities where necessary.<sup>193</sup> Finally, section 6 of the Education Act 2008 establishes the Government's duty to advance ECD through health care. It establishes that the Health and Education

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<sup>188</sup> *ibid* at 52.

<sup>189</sup> Ministry of Health, Standards for New Born Health Services in Ghana, June 2020, iii <<https://ghs.gov.gh/wp-content/uploads/2022/10/Newborn-Standards-of-Care.pdf> > accessed 16 September 2023.

<sup>190</sup> *ibid* at 2.

<sup>191</sup> Ministry of Gender, Children and Social Protection, Republic of Ghana, Ghana School Feeding Programme Secretariat, <<https://www.mogcsp.gov.gh/ghana-school-feeding-programme-gsfp/>> accessed 18 September 2023.

<sup>192</sup> Education Act 2008 (n 174) s 2.

<sup>193</sup> *ibid* s 5.

services must collaborate to screen children when they are first admitted to school and to undertake regular examination of the children.<sup>194</sup>

61. Additionally, the Government's Education Service has developed indicators in order for teachers, practitioners and policy-makers to monitor and evaluate early learning of children in kindergarten.<sup>195</sup> It comprehends indicators of development across eight areas: health and physical development; social and emotional development; creativity; language and literacy; logic and reasoning; mathematics; science, and religious and moral development.<sup>196</sup>
62. Another example can be found in the Children's Act, 1998. According to section 16 District Assemblies have the duty to protect the welfare and rights of all children.<sup>197</sup> Section 121 establishes the duty of District Assemblies to collaborate with its District Health Department to register births.<sup>198</sup> If the Social Welfare authorities within the District Assembly have reason to believe that a child needs protection, they have the duty to direct a social worker to investigate further and, if necessary, act to protect the child.<sup>199</sup> In these scenarios the duties of social workers consist in advise the child's family, take reasonable steps to ensure the child's safety, and hold reviews of the child's situation.<sup>200</sup> Children are in need of protection, according to the Act, if they are neglected, ill-treated, or deserted, among others.<sup>201</sup>
63. The Ministry for Gender, Children and Social Protection developed the Child and Family Welfare Policy to develop the duties set out in the Children's Act 1998 and provide guidance for public officials on their role in Ghana's welfare services.<sup>202</sup> The Policy establishes roles for government Ministries that are relevant for implementing the right to ECD. Among them, the following roles are particularly important because they secure aspects of the right that pertain to the child's basic needs and medical attention:
  - a) The Ministry of Gender, Children and Social Protection is expected to ensure prevention and response services to mitigate child neglect, maltreatment and vulnerability.<sup>203</sup> In particular, the

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<sup>194</sup> Education Act 2008 (n 174) s 6.

<sup>195</sup> Ghana Education Service, National Early Learning and Development Standards (ELDS) for Children in Kindergarten 1 and 2 (2016), at ii, iii <<https://www.unicef.org/ghana/media/1456/file/National%20Early%20Learning%20and%20Development%20Standards.pdf>> accessed 16 September 2023.

<sup>196</sup> *ibid* at 2-22.

<sup>197</sup> The Children's Act 1998 (n 176) S 16.

<sup>198</sup> *ibid*, S 121.

<sup>199</sup> *ibid*, S 19.

<sup>200</sup> *ibid*, S 22.

<sup>201</sup> *ibid*, S 18.

<sup>202</sup> Minister for Gender, Children and Social Protection, Child and Family Welfare Policy (February 2015) at vii <<https://www.mogcsp.gov.gh/policies/>>

<sup>203</sup> *ibid*, 17.

Ministry's Department of Children is expected to implement programmes for the survival, protection and development of the child.<sup>204</sup>

- b) The Ministry of Local Government and Rural Development is expected to facilitate resources at the local level and to supervise Community Development Departments in the delivery of child welfare services.<sup>205</sup>
- c) The Ministry of Health is expected to ensure that all children that have been subjected to neglect or maltreatment receive medical attention.<sup>206</sup>
- d) The Ministry of Education is expected to help schools to put in place measures and train teachers to prevent and address maltreatment or neglect.<sup>207</sup>
- e) The Ministry of Finance and Economic Planning is expected to ensure that the necessary budget is made available for the implementation of the policy.<sup>208</sup>
- f) The Ministry of Chieftancy and Traditional Affairs should provide support to traditional authorities in providing child welfare.<sup>209</sup>

### **QUESTION 3: WHAT IS THE RELATIONSHIP BETWEEN PRIVATE AND PUBLIC SECTOR INVOLVEMENT IN ECD?**

- 64. There are a variety of projects involving collaboration between the private and public sector, primarily in the advancement of health amongst children. Moreover, according to the Special Programme for Research and Training in Tropical Diseases (TDR) (2022), about 42% of the private sector contributes to health service delivery. The use of private health care is high amongst both the poor and rich. For example, according to the TDR (2022), “49% of the wealthiest child caregivers use the private sector”.
- 65. For example, the Ajinomoto Foundation, Sysmex Corporation (“Sysmex”) and NEC Corporation, are working together to improve the health and nutrition of mothers and children in Ghana (NEC, 2023). In collaboration with the Ghana Health Service (GHS), the companies provide a variety of services

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<sup>204</sup> Ministry of Gender, Children and Social Protection, ‘Departments’ <<https://www.mogcsp.gov.gh/about/departments/>> .

<sup>205</sup> Minister for Gender, Children and Social Protection, Child and Family Welfare Policy (n 202) at 17-18.

<sup>206</sup> *ibid*, 18.

<sup>207</sup> *ibid*, 19.

<sup>208</sup> *ibid*.

<sup>209</sup> *ibid*.

including training for staff, improving testing and access to medical devices that test for malaria, and tech and ICT training at health centers (NEC, 2023).

66. Specifically, the Ajinomoto Foundation has worked alongside the GHS to improve child nutrition. These activities included training nurses to monitor and record children's nutritional status, and educational initiatives to encourage mothers to use complementary food supplements such as "KOKO Plus". From 2018 to 2019, these efforts helped 47, 000 children (Nutrition for Growth, 2023).

### ***Employers***

67. The Labour Act, 2003 (Act 651) recognises maternity leave to female workers for at least twelve weeks, in addition to any period of annual leave she is entitled to.<sup>210</sup> During this period, they are entitled to full pay and any other benefits they are entitled to. The maternity leave period may be extended at least two additional weeks "where the confinement is abnormal or where in the course of the same confinement two or more babies are born."<sup>211</sup> The Act protects mothers while nursing, by entitling them to one hour during their working hours to nurse their baby. This period should be treated as working hours and paid accordingly.<sup>212</sup> Finally, the Act prohibits employers from dismissing women because of her absence from work on maternity leave.<sup>213</sup>

### ***Parental responsibilities***

68. Section 6 in the Children's (Amendment) Act 2016 stipulates several obligations for parents towards their children, such as the obligation of not depriving them of their welfare. Parents also have an obligation to protect children "from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression;" and to "provide good guidance, care, assistance and maintenance for the child and assurance of the child's survival and development."<sup>214</sup>
69. In addition, the Public Health Act 2012 enables the Minister of Health to order compulsory vaccination in specific districts or areas, or direct the order to particular groups of persons.<sup>215</sup> If the order applies to the parents of a child, section 24 establishes a duty to vaccinate the child at the place and date stipulated by public vaccinators.<sup>216</sup>
70. Moreover, section 2 of the Education Act 2008 stipulates that in cases where a child does not receive basic education the child's parent must appear before the district's welfare authorities to reach an

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<sup>210</sup> Ghanaian Labour Act, 2003 (Act 651), s 57 (1)

<sup>211</sup> Ibid, s 57 (1)-(3).

<sup>212</sup> Ibid, s.57 (6)- (7)

<sup>213</sup> Ibid, s.57(8).

<sup>214</sup> Children's (Amendment) Act, No 937 of 2016, s 6.

<sup>215</sup> Public Health Act, 2012 (Act 851) section 22.

<sup>216</sup> *ibid*, section 24.

agreement on the proper course of action. A failure of compliance with the agreed plan constitutes an offence that may result in a fine or in community service.<sup>217</sup>

71. The last point to observe about parental responsibilities is that the Early Childhood Care and Development standards sets out the role that different non-state parties are expected to play in a child's early development. Parents, for instance, are expected to provide for the basic needs, safety and social development. Other family members or care givers are expected to take responsibility for assisting parents in caring duties and help the child learn social and cultural norms. Notably, the community is expected to play a role in ensuring that children have access to an adequate cultural and social environment, as well as clean health facilities.<sup>218</sup>
72. The government does not provide many programs to support parents in their obligations to contribute to ECD. However, one example includes the Government of Ghana's Livelihood Empowerment Against Poverty (LEAP) program. The LEAP program provides cash transfers to poor and vulnerable households, including those with orphaned and vulnerable children (Government of Ghana, 2023). Nevertheless, a review of the Government of Ghana's 2022 Budget displayed little investments in supporting parents care for their children.

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<sup>217</sup> Education Act, 2008 (n 174) section 2 (1)(4)(5).

<sup>218</sup> Ministry of Gender, Children and Social Protection, Early Childhood Care and Development Standards (0-13 years) (March 2018) at 13-14 <<https://www.unicef.org/ghana/media/2031/file/Early%20Childhood%20Care%20and%20Development%20Standards.pdf>> accessed 3 July 2023.

# KENYA

## QUESTION 1: WHAT IS THE EXTENT TO WHICH EARLY CHILDHOOD DEVELOPMENT IS RECOGNISED IN STATE LEGISLATION? IS THERE EXPRESS RECOGNITION OF THE RIGHT TO ECD? IF NOT, IS THERE ADVOCACY TOWARDS SECURING RECOGNITION OF THE RIGHT TO ECD?

73. Kenya recognises the right to early childhood development and education (ECDE) in principle and has taken affirmative steps toward giving meaningful effect to the right. This positive attitude toward ECDE provision has been consistent at least since the country ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1990,<sup>219</sup> and the ACRWC in 2000.<sup>220</sup> Hence, as far back as 2005, the Section for Early Childhood and Inclusive Education at the United Nations Educational, Scientific and Cultural Organisation (UNESCO) noted that Kenya had made “considerable achievements in ECD provision”, relative to other Sub-Saharan African nations.<sup>221</sup>
74. Article 53 of the 2010 Constitution provides a foundation for the rights of children to ECDE, as it refers to the right to “free and compulsory education”, to “basic nutrition, shelter and health care”, and to “[protection] from abuse ...”.<sup>222</sup> The Early Childhood Education Act 2021 (ECEA 2021) aims to “provide a framework for the establishment of a comprehensive early childhood development and education system by the county governments.”<sup>223</sup> Furthermore, the right to Early Childhood Education (ECE) finds explicit recognition in section 5, which states that “every child has the right to free and compulsory early childhood education in a public education centre.”<sup>224</sup>
75. Prior to this Act, Kenya enacted legislation and promulgated policy which sought to give effect to Article 53 of the Constitution by obliging the government to provide for ECDE. For instance, subsection 28(2)(a) of the Basic Education Act of 2013 (BEA 2013) states that the Cabinet Secretary, in consultation with the relevant authorities, shall provide for the establishment of pre-primary education centres, “within a reasonably accessible distance within a county”.<sup>225</sup> The Basic Education Curriculum Framework of 2017 (BEDF 2017) states that “[a]ll learners are expected to begin their

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<sup>219</sup> UN, Status : Convention on the Rights of the Child <[https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4) > accessed 3 July 2023

<sup>220</sup> ACERWC, Ratifications <<https://www.acerwc.africa/en/member-states/ratifications> > accessed 3 July 2023

<sup>221</sup> Section for Early Childhood and Inclusive Education, ‘Policy Review Report: Early Childhood Care and Education in Kenya’ (2005), UNESCO Education Sector, p 13. <https://unesdoc.unesco.org/ark:/48223/pf0000139026> accessed 3 July 2023

<sup>222</sup> Constitution of Kenya (n 5) art 53.

<sup>223</sup> ECEA (n 23) ss3(a).

<sup>224</sup> Ibid, s5(1).

<sup>225</sup> Basic Education Act No 14 of 2013, s28.



education at [the pre-primary] level”.<sup>226</sup> The pre-primary level is expected to cover learners aged between 4 and 5 years old.

76. Additionally, the ECDE structure of the country relies on cooperation between the Central Government and the devolved bodies of local county government. As stated by Article 6(2) of the Constitution, “the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.”<sup>227</sup> In 2016, the World Bank reported that this devolution of power and functions has been beneficial, insofar as ECDE enrolment increased after the 2010 devolution process. They also noted that “the decentralized function has created a space for counties to allocate more resources to ECDE and explore innovative ideas, such as engaging with private providers and establishing model ECDE centres.”<sup>228</sup>

### ***Successes***

77. Due to these efforts, the ECDE landscape in Kenya has been generally characterised by growing investment in ECDE resources and rising enrolment figures. As reported by the Kenyan Parliament’s Standing Committee on Education, the county governments have invested significantly in the development of ECDE centres, which has led to the number of public ECDE centres increasing by 14.5% between 2013 and 2019.<sup>229</sup> In 2016, the World Bank remarked that “Kenya [had] achieved relatively high ECDE enrolment over time”, and that net enrolment in pre-primary education increased from 33% in 2005 to 72% in 2014, “one of the highest enrolment rates in Sub-Saharan Africa.”<sup>230</sup>

### ***Problems***

78. However, the State has run into problems relating to structural imbalance, ineffective implementation, and lack of resources. These problems have created practical obstacles to the full realisation of the right to early childhood development. For instance, the Standing Committee on Education reviewed the effect of ECEA 2021 after a year and concluded that there have been mixed results between counties, with some counties experiencing huge declines in the number of ECDE centres, enrolment figures, and in staff numbers.<sup>231</sup>

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<sup>226</sup> Basic Education Curriculum Framework 2017, 30. <https://kicd.ac.ke/wp-content/uploads/2017/10/CURRICULUMFRAMEWORK.pdf> accessed 3 July 2023

<sup>227</sup> Constitution of Kenya (n 5) art 6(2).

<sup>228</sup> World Bank, ‘Scaling up preschool in Kenya : costs, constraints, and opportunities’, Policy brief (Washington D.C., 2016), 4 <https://documents1.worldbank.org/curated/en/762961482316633811/pdf/111215-BRI-ELPPolicyBriefKenya-PUBLIC.pdf> accessed 3 July 2023

<sup>229</sup> Standing Committee on Education, ‘Report on the Inquiry Into the Early Childhood Development Education (ECDE) Landscape in the Country’ (Twelfth Parliament (Sixth Session), 2022), 51.

<sup>230</sup> World Bank, n (195) 1.

<sup>231</sup> Standing Committee on Education (n 196) 50.

79. Similarly, Dr Michael Karanja wrote in 2022 that, while there has been rapid growth in ECE in Kenya, some children are still left behind due to various social, cultural and environmental reasons.<sup>232</sup> Poor families struggle to afford ECDE services for their children, and some of the public centres in the country still charge some money, thus making it difficult for poorer families to access the ECDE structure. Dr Karanja further notes that 47% of the urban population live in informal high-density settlements and “slum” areas.<sup>233</sup> ECE centres in these regions encounter problems relating to lack of government funding, inability of parents to pay school fees, and inadequate teaching and learning materials.<sup>234</sup>
80. Additionally, Dr Bulinda of the University of Nairobi carried out a study in 2022 which investigated the effect that access to teaching and learning resources influences enrolment of ECE centres in Shinyalu Sub-County in the Kakamega County of Western Kenya. The study showed that most of the ECE centres in the region did not have adequate teaching and learning resources.<sup>235</sup> It was also found that parents were the main suppliers of teaching and learning materials in the region, and NGO’s were partly involved, thus showing the lack of government support in these aspects of ECDE provision in the region.<sup>236</sup>
81. In 2018, the Kenya National Commission on Human Rights recommended that the Government should aim to make ECDE free and that they should consider employing ECDE teachers through the Teacher Services Commission (TSC).<sup>237</sup> The way ECDE provision has been devolved and decentralised has also created complications. For instance, the World Bank reported that devolution meant that there is less central responsibility for ECDE on the part of the central government, which has created the possibility of inequitable outcomes among regions, since counties with smaller tax bases have fewer resources of their own to scale up ECDE provision.<sup>238</sup> Likewise, the Standing Committee on Education concluded that “[t]he governance and institutional arrangements between the two levels of government are not clear.”<sup>239</sup>
82. It has also been commented that the experiences of children with special needs and disabilities must also be taken into account. The Standing Committee for Education observed that the lack of teachers trained in special needs learning, along with the limited allocation for special needs learning in ECDE,

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<sup>232</sup> M Karanja, ‘ECE in Kenya: Opportunities for Enhancement in the Different Environments’ (Open Journal of Learning and Development, Vol. 1 No. 1 (2022): Educational Services), p 3.

<sup>233</sup> Ibid, p 3.

<sup>234</sup> Ibid p 4.

<sup>235</sup> D Bulinda, ‘Adequacy of Teaching and Learning Resources on Enrolment of Early Childhood Education Learners in Shinyalu Sub-County, Kakamega County, Kenya’, *Journal of Pedagogy, Adragony and Heutagogy in Academic Practice (JPAHAP)* Vol 3, No 3 (2022) 88-99, p 95.

<sup>236</sup> Ibid, p 96

<sup>237</sup> Kenya National Commission on Human Rights, ‘Leaving No One Behind: Covering The Base: Making Universal Primary Education a Reality for Children in Kenya’, Laikipia University (2018), p 103.

<sup>238</sup> World Bank, n (195) p 4 .

<sup>239</sup> Standing Committee on Education, (n 196) 57.

inaccessible infrastructure, and limited access to appropriate medical care has “hampered” ECDE provision for special needs and learners with disability.<sup>240</sup> The British charity, Inclusive Futures, reported in 2022 that a substantial proportion of the children in ECDE services in Kenya have functional difficulties. For instance, the prevalence of functional difficulty among children in the Home Bay peri-urban area was 22.5%.<sup>241</sup> They argue that this provides strong motivation for ensuring that a disability-inclusive approach to scaling up ECDE is taken in Kenya.<sup>242</sup>

83. Finally, it is noted that remuneration of ECE teachers has also been problematic. As noted by the Standing Committee on Education, the “low ... and irregular remuneration” of ECDE teachers has “adversely [affected] their morale.”<sup>243</sup>

## Summary

84. The recognition of the right to ECDE, which has been expressed through the positive efforts made by the Kenyan State to give effect to the right, has yielded significant improvements in provision of ECDE services in the country, such that Kenya has made considerable progress, relative to other Sub-Saharan states. However, this positive approach has been undermined by certain implementation issues. A lack of resources and government funds has affected enrolment to ECE centres, as well as the quality of ECDE provision. The cooperative approach between the Central Government and devolved county governments has given rise to inequity on a national scale, with some regions experiencing declining, or even collapsing ECDE structures<sup>244</sup>. Considering these problems, the Standing Committee on Education has recommended that the Kenyan Government ensure the full and proper implementation of the provisions of the ECE Act, and that the attendant regulations should be expeditiously drafted.<sup>245</sup>

### *The right to early childhood development outside of education*

85. As noted by the Standing Committee for Education, Kenyan ECDE policy gives the Government Ministry of Education, Science and Technology (MOEST) the responsibility for ECDE<sup>246</sup>. However, provision of ECDE services extend beyond the education sector. The Children Act 2021 sets out more broadly and comprehensively the status of children’s rights in Kenya. Under section 3 of the Act, it is

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<sup>240</sup> *ibid*, p 56

<sup>241</sup> Inclusive Futures, ‘Promoting Inclusive Early Childhood Development in Kenya: Impact Evaluation Baseline Report Findings’ (November 2022), 5. <https://research.sightsavers.org/wp-content/uploads/2023/01/Sightsavers-promoting-inclusive-early-childhood-development-in-kenya-baseline-report-2022.pdf> accessed 3 July 2023.

<sup>242</sup> *ibid*, 7.

<sup>243</sup> Standing Committee on Education, (n 196) 53.

<sup>244</sup> D Bulinda, ‘Adequacy of Teaching and Learning Resources on Enrolment of Early Childhood Education Learners in Shinyalu Sub-County, Kakamega County, Kenya’, *Journal of Pedagogy, Andragogy and Heutagogy in Academic Practice (JPAHAP)* Vol 3, No 3 (2022) 88-99, 90. <http://uonjournals.uonbi.ac.ke/ojs/index.php/pedagogy> accessed 3 July 2023.

<sup>245</sup> Standing Committee on Education, (n 196), 10.

<sup>246</sup> *Ibid*, 14-15.

stated that the objectives of the Act include “[giving] effect to the provisions of Articles 27, 47, 48, 49, 50, 51 and 53 of the Constitution on matters relating to children”<sup>247</sup>. A central theme in the Act is the concept of the “best interests” of the child. The meaning of this phrase is elaborated in section 2, which states that it means “the principles that prime the child’s right to survival, protection, participation and development above other considerations and includes the rights contemplated under Article 53 (1) of the Constitution and section 8 of this Act”<sup>248</sup>. Accordingly, section 8(1)(b) states that the best interests of the child shall include but shall not be limited to the considerations set out in the First Schedule<sup>249</sup>. Schedule 1 provides a list of the kind of considerations that should come into play when determining the “best interests” of the child. These include the child’s age, stage of development, gender, special needs arising from chronic disability, and other aspects of the child’s identity and environment which might affect the child’s physical and psychological well-being, either directly or indirectly<sup>250</sup>.

86. The concept of “best interests” essentially ties this Act to ECDE provision as a subset of a more general right to broader childhood development for any Kenyan who is below the age of 18. Section 8(2) stipulates the following:

“All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—

- (a) safeguard and promote the rights and welfare of the child;
- (b) conserve and promote the welfare of the child; and
- (c) secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.”<sup>251</sup>

87. According to the Kenya National Commission for Human Rights, this section “capitalizes on the consideration of the best interests of the child in every decision undertaken on behalf of the child being the right to survival, protection, participation and development.”<sup>252</sup>

88. Part 2 of the 2022 Act lists a number of rights enjoyed by children under Kenyan law, including the right to non-discrimination (section 9), the right to parental care and protection (section 11), and the right to free and compulsory basic education in accordance with section 53(1)(b) of the Constitution

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<sup>247</sup> Children Act, No 29 of 2022, s3.

<sup>248</sup> Ibid, s 2.

<sup>249</sup> Ibid, s8(1)(b).

<sup>250</sup> Ibid, Schedule 1.

<sup>251</sup> Ibid s8(2).

<sup>252</sup> Kenyan National Commission on Human Rights, Reforms and Accountability Department: Child Focal Point Initiative, ‘Unpacking The Children’s Act, No 29 of 2022’, p10. <https://www.knchr.org/Portals/0/KNCHR%20work%20on%20children%20rights%20and%20Children%20Act%202022-final.pdf> accessed 3 July 2023

(section 13). Part 3 of the Act establishes parental responsibilities and duties, which will be discussed in greater detail in section 2.A below. Part 4 provides for the administration of children’s services. Section 37 establishes the Office of the Secretary of Children Services,<sup>253</sup> whose functions include “[maintaining] up-to-date records and data on management of children services including access to welfare amenities for children.”<sup>254</sup>

89. The right to ECDE is also supported by the Kenyan National Human Rights and Equality Commission (KNCHR), established under Article 59 of the Kenyan Constitution. Under section 8 of the Kenya National Commission on Human Rights Act 2011, the Commission is empowered to, inter alia, “monitor, investigate and report on the observance of human rights in all spheres of life in the Republic”;<sup>255</sup> and to “receive and investigate complaints about alleged abuses of human rights, [...] and take steps to secure appropriate redress where human rights have been violated”.<sup>256</sup> Thus, the Commission has the capacity to actively secure and promote the rights of children that would fall under ECDE, via their investigative functions. The Commission claims that “[b]etween August 2015 and August 2022, the commission secured justice for more than 720 children matters ...” The KNCHR give the example of *LNW v Attorney General & 3 Others (2016)*, for which the KNCHR was an amicus curiae. The case led to the finding by the Kenyan High Court that section 12 of the Registration of Births and Deaths Act was unconstitutional, because it was effectively discriminatory against children born out of wedlock, thus breaching the prohibition against discrimination in Article 27 of the Constitution.
90. The case of *Baby ‘A’ and Another v Attorney General & Others (2014)*, in which the KNCHR joined as an interested party, also related to an aspect of children’s rights which engages the right to ECDE. The case concerned an intersex baby who was alleged to have suffered a lack of legal recognition due to their intersex status vis-à-vis the lack of a third category of sex capturing intersex persons within the Kenyan legal framework.<sup>257</sup> The court directed the State to come up with appropriate legal framework governing issues related to intersex children based on internationally accepted guidelines. Eight years after this case, section 21 of the Children Act guarantees a right for intersex children to be treated with dignity, and to be accorded appropriate medical treatment, special care, education, training and consideration as a special need category in social protection services.<sup>258</sup>

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<sup>253</sup> Children Act (n 214) s 37.

<sup>254</sup> Ibid, s 38

<sup>255</sup> Kenya National Commission on Human Rights Act, No 14 of 2011, s8(c). <https://www.knchr.org/Portals/0/Articles/KenyaNationalCommissiononHumanRightsActNo14of2011.pdf?ver=2016-08-01-132051-907> accessed 3 July 2023

<sup>256</sup> Ibid, s8(d)

<sup>257</sup> *Baby ‘A’ (Suing through the Mother E A) & another v Attorney General & 6 others* [2014] eKLR. <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1071&context=scr> accessed 3 July 2023.

<sup>258</sup> Children Act (n 214) s21.

91. Significantly, the Children Act of 2022 does not distinguish ECDE children from other children. A child is simply defined as “an individual who has not attained the age of eighteen years”<sup>259</sup>. It does not address ECDE directly. However, as demonstrated in the above cases, this broader protection of children is still capable of indirectly addressing ECDE issues.

**QUESTION 2: WHAT IS THE EXTENT OF STATE DUTIES IN RELATION TO ECD? BOTH IN CASES WHERE THE RIGHT TO ECD IS EXPRESSLY RECOGNISED AND IN CASES WHERE, THOUGH NOT EXPRESSLY RECOGNISED, IT IS IMPLICIT IN OTHER OBLIGATIONS.**

92. Kenyan legislation establishes that the State has a duty to facilitate, promote, and provide for ECE legislation and policy. Following the promulgation of the 2010 Constitution, the responsibility to provide pre-primary education and childcare services has been conferred to county governments.<sup>260</sup> Under section 68 of the ECEA 2021, the Cabinet Secretary, in consultation with the Council of County Governors, *may* make regulations generally for the better carrying out of the provisions of the Act, and *shall* prescribe minimum standards relating to schemes of service for early childhood teachers within one year of enactment of the Act.<sup>261</sup>

93. Section 5 of the ECEA 2021 states that county governments “shall” ensure that the right to ECDE is given effect to and can be “enjoyed” by ECDE children.<sup>262</sup> Section 6 imposes an obligation on county governments to promote the right, for example, by providing free and compulsory ECE services in public education centres within the country.<sup>263</sup>

94. It is also shown above (under Question 1) that, where the ECEA 2021 is inapplicable, the right to ECDE remains implicitly recognised through section 53 of the 2010 Constitution.

95. Although Kenyan legislation and policy imposes a duty on the State to provide for ECDE, it does not hold that the State must be the exclusive provider of ECDE. Kenyan policy and legislation relating to the right to ECDE assumes that the full realisation of the right to early childhood development will require a wider form of social cooperation, which extends beyond the responsibilities of the State. Hence, subsection 4(b) of the ECEA states that a guiding principle of the Act is “public participation in the implementation, monitoring and evaluation of policies and plans related to the implementation of early childhood development and education in the country”.<sup>264</sup> Subsection 4(e) recognises that both

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<sup>259</sup> Ibid, s2

<sup>260</sup> Constitution of Kenya ( n 4) Schedule 4, Part 2, Paragraph 9.

<sup>261</sup> ECEA (n 23) s 68.

<sup>262</sup> Ibid, s5

<sup>263</sup> Ibid, s 6

<sup>264</sup> Ibid, ss 4(b)

the parents of the child, as the primary caregivers, as well as the broader community must also cooperate in providing “an environment that ensures the realisation of the right to early childhood education and development”.<sup>265</sup> Thus, subsection 7 ECEA imposes a duty on parents and guardians to present their child for admission to an education centre, or to cause that child to be admitted.<sup>266</sup>

96. It should be noted that the designation of ECD provision as a matter of educational provision under the Ministry of Education presents a limitation on the scope of the States duties, such that the aspects of ECD that extend beyond pre-primary education are not addressed. For example, in 2018, the Kenya National Commission for Human Rights said that a head teacher reported to them that the County Government claimed that its jurisdiction for support was limited to Early Childhood Development Education and therefore should not be asked to provide for other amenities such as water. Some centres, they report, have therefore relied on NGOs and private organisations to help in the matters that the State deems to be outside of the scope of their duties.<sup>267</sup>

### ***Duties on parents***

97. Section 11 of the Children Act 2022 guarantees a right to parental care<sup>268</sup>. Section 31 provides for a “duty of parental responsibility”, which includes a duty to maintain the child and to provide her with basic nutrition, shelter, water and sanitation facilities, clothing, medical care (including immunisation), basic education, and general guidance.<sup>269</sup> Under section 32, both parents have joint parental responsibility, regardless of whether the child was born within or outside of wedlock.<sup>270</sup>
98. However, the Act does not clearly set out how parents are to be assisted in fulfilling this statutory duty, and there is no indication that the government will provide financial support to parents to aide in the fulfilment of their duties under the Act. However, Part 6 of the Act imposes duties and responsibilities onto county governments. Specifically, section 61 requires every county government to provide or facilitate the provision of (a) primary education, and (b) childcare facilities.<sup>271</sup> Therefore, the duty to provide childcare facilities and basic education is not exclusively imposed on parents, which corresponds with the position in the ECDE system under MOEST and the ECEA.

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<sup>265</sup> *ibid* ss 4(e).

<sup>266</sup> *Ibid*, s7

<sup>267</sup> Kenya National Commission on Human Rights, ‘Leaving No One Behind: Covering The Base: Making Universal Primary Education a Reality for Children in Kenya’, Laikipia University (2018), 58. [https://www.knchr.org/Portals/0/EcosocReports/Leaving%20no%20one%20behind\\_Making%20Universal%20Primary%20Education%20a%20Reality%20for%20Children%20in%20Kenya.pdf?ver=2019-04-23-130635-897](https://www.knchr.org/Portals/0/EcosocReports/Leaving%20no%20one%20behind_Making%20Universal%20Primary%20Education%20a%20Reality%20for%20Children%20in%20Kenya.pdf?ver=2019-04-23-130635-897) accessed 3 July 2023.

<sup>268</sup> Children Act, ( n 214) s11.

<sup>269</sup> *Ibid*, s 31(2)(a).

<sup>270</sup> *Ibid*, s 32.

<sup>271</sup> *Ibid*, s 61(1).

### *Age of access to the right to ECD*

99. As noted above, the ECE Act explicitly recognises the right to early childhood education through section 5 of the Act. Section 2 states that early childhood education means “the pre-primary educational programmes imparted to a child in an education centre”.<sup>272</sup> Section 2 of the BEA 2013 states that pre-primary education means “education offered to a child of four or five years before joining level one in a primary school”.<sup>273</sup> The explicit provision for the right to ECD is thus generally limited to these two years. However, ages might vary for learners with special needs and disabilities.<sup>274</sup>
100. While there is a service structure for pre-primary education for children over three years old, there is no such structure for children below this age. Thus, in 2005, UNESCO noted that the care and education of young children under three in Kenya is largely in the hands of older siblings, grandparents, and house help, if they are available.<sup>275</sup>
101. No information has been found as to whether there are any legislative plans to provide for a policy of State ECD provision for children under this age, nor whether this is being campaigned for.

### **QUESTION 3: WHAT IS THE RELATIONSHIP BETWEEN PRIVATE AND PUBLIC SECTOR INVOLVEMENT IN ECD?**

102. Private sector actors are involved in the provision of ECDE services through independent institutions, and also through co-operation with the government. Private sector actors include private education centres, religious schools and non-governmental organisations (NGO’s) and charities.
103. The private sector plays an important supportive and supplementary role in the Kenyan ECDE system. As early as 2005, the UNESCO reported that the private sector (e.g., religious organisations, private companies, NGOs and CBOs, individuals) are among the main sources of ECD finance and support, alongside the government and parents.<sup>276</sup> More recently, Dr Karanja noted in 2022 that while teachers’ salaries are paid by the government in public ECDs, some non-state actors such as UNICEF do provide assistance in some of the centres.<sup>277</sup>

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<sup>272</sup>ECEA (n 23) s 2.

<sup>273</sup> Basic Education Act No 14 of 2013, s 2.

<sup>274</sup> Ministry of Education, ‘National Pre-Primary Education Policy Standard Guidelines’ (2018), 3. [https://planipolis.iiep.unesco.org/sites/default/files/ressources/pre-primary\\_policy\\_guidelines\\_11\\_1.pdf](https://planipolis.iiep.unesco.org/sites/default/files/ressources/pre-primary_policy_guidelines_11_1.pdf) accessed 3 July 2023

<sup>275</sup> The Section for Early Childhood and Inclusive Education, ‘Policy Review Report: Early Childhood Care and Education in Kenya’ (2005), UNESCO Education Sector, 14. <https://unesdoc.unesco.org/ark:/48223/pf0000139026> accessed 3 July 2023

<sup>276</sup> Ibid, p 12

<sup>277</sup> M Karanja, ‘ECE in Kenya: Opportunities for Enhancement in the Different Environments’ (Open Journal of Learning and Development, Vol. 1 No. 1 (2022): Educational Services), 4. <http://ojld.org/index.php/education/article/view/4/5>



### ***Private education centres***

104. Section 22 of the ECE Act sets out the obligations of private education centres. They are obliged to establish themselves in compliance with the framework provided by the statute. They must ensure that teachers hold the necessary qualifications from the Teachers Service Commission, and that the curriculum administered adheres to the early childhood education policy of the Act. They are also obliged to maintain the premises in a manner that meets the requirements of occupational health, safety regulations and building standards.<sup>278</sup>

105. The World Bank observes that private ECDE centres provide a significant proportion of ECDE services. However, “many are unregistered and operate informally, and anecdotal evidence suggests that quality ... varies.”<sup>279</sup> The balance between public and private centres seems to vary between counties. For instance, public centres dominate in the counties of Kirinyaga, Nyamira and Nyeri, while private sector centres dominate in Nairobi.<sup>280</sup> The trend in Nairobi noted by the World Bank is comparable to Dr Karanja’s discussion of ECDE centres in “slum areas”. He considers a 2013 study by Innovation for Poverty Action, which found that 94% of preschool students in the Mukuru “slum” in Nairobi were attending private schools, and that this was partly because public centres were lacking.<sup>281</sup> This suggests that private centres may serve as an alternative to public centres, where the latter provides inadequate services, or where the latter is unavailable and inaccessible. This is supported by Dr Bulinda’s research, as it was revealed during an interview with the Sub-County Quality Assurance and Standards Officer of Shinyalu that some parents had removed their children from public centres and sent them to private centres, out of frustration with the lack of ECE teachers and other instructional materials in the public centres.<sup>282</sup>

106. A significant problem is the weakness in quality assurance between ECDE institutions, both private and public. The World Bank suggested that this is a consequence of the manner of devolution. Previously, the central government provided trained quality assurance officers, but since devolution, many officers are being given a chance to either join the Teachers Services Commission as a classroom teacher or to continue doing ECD quality assurance work under the county payroll, without the salary and benefits of a TSC teacher. Hence, the structure is less adept at ensuring that minimum standards are being met, and this has led to the low quality of some centres going unchecked.<sup>283</sup>

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<sup>278</sup> Early Childhood Education Act No 3 of 2021, s 22.

<sup>279</sup> World Bank, n (195) p 7.

<sup>280</sup> Ibid, p 3

<sup>281</sup> Innovation for Poverty Action, ‘Exploring Early Education Programs in Peri-Urban Settings in Africa: Nairobi, Kenya’, 2013: <https://poverty-action.org/node/7616/pdf> ; M Karanja, ‘ECE in Kenya: Opportunities for Enhancement in the Different Environments’ (Open Journal of Learning and Development, Vol. 1 No. 1 (2022): Educational Services), p 4. <http://ojld.org/index.php/education/article/view/4/5>

<sup>282</sup> D Bulinda, ‘Adequacy of Teaching and Learning Resources on Enrolment of Early Childhood Education Learners in Shinyalu Sub-County, Kakamega County, Kenya’, Journal of Pedagogy, Adragony and Heutagogy in Academic Practice (JPAHAP) Vol 3, No 3 (2022) 88-99, p 97. <http://uonjournals.uonbi.ac.ke/ojs/index.php/pedagogy>

<sup>283</sup> World Bank, n (195) p 4.

### ***Religious schools and NGOs***

107. Religious schooling plays an important role in the ECDE system. Dr Karanja writes that there are about 1000 madrassas (informal educational institutes where Islamic studies are imparted to the pupils) spread across the country.<sup>284</sup> Faith-based NGOs and Christian missionaries are also heavily involved with early childhood education, medical care and community-wide events.<sup>285</sup>
108. Although private centres are obliged to “administer a curriculum that adheres to the early childhood education policy”,<sup>286</sup> Dr Karanja suggests that the government have failed to regulate the curriculums administered by religious centres. He writes that the government’s “failure ... to have a unified Islamic madrasa studies curriculum has left opportunities open for extremist clerics to indoctrinate children”. He therefore suggests that a more unified curriculum, consistent across religious boundaries, would better ensure quality ECDE provision<sup>287</sup>.
109. Some religious centres are provided by faith-based NGOs. The Aga Khan Foundation is one such organisation, which has been running Madrasa pre-schools since October 1986.<sup>288</sup>

### ***Healthcare institutions***

110. Section 16 of the Children Act guarantees a right to “the highest attainable standard of healthcare services, in accordance with Article 43 of the Constitution”.<sup>289</sup> As noted above, one of the duties of parental responsibility is to provide the child with “medical care, including immunisation”.<sup>290</sup> Under Part 12 of the Act, special provision is made for “children in need of care and protection”. Particularly, section 146 provides that “[i]f it appears to an authorised officer exercising powers under section 144 that a child is in need of healthcare, the officer shall forthwith take the child to a registered health institution, and the health institution shall provide the appropriate treatment, care and necessary hospital accommodation for the child.”
111. The Public Health Act contains measures that aim to protect children. Section 46 imposes a duty on parents or guardians, who “know or have reason to believe” that their child is suffering from a venereal disease, to “cause such child to be treated for such disease by a medical practitioner until such child is

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<sup>284</sup> M Karanja, (n 244) 5.

<sup>285</sup> 28 Too Many, *Country Profile: FGM in Kenya*, May 2013, p 18: <https://www.refworld.org/docid/54bcdfd4.html>

<sup>286</sup> Early Childhood Education Act No 3 of 2021, s 22.

<sup>287</sup> M Karanja, (n 244) 5.

<sup>288</sup> Aga Khan Development Network, ‘The Madrasa Early Childhood Programme: 25 Years of Experience’ (Aga Khan Foundation, 2012), 18: [https://static.the.akdn/53832/1641850542-2008\\_12-akf-the\\_madrasa\\_early\\_childhood\\_programme-high\\_res.pdf](https://static.the.akdn/53832/1641850542-2008_12-akf-the_madrasa_early_childhood_programme-high_res.pdf) accessed 3 July 2023

<sup>289</sup> Children Act, No 29 of 2022, s16.

<sup>290</sup> *ibid* s31(2)(a)(v).

cured or free from such disease in a communicable form”<sup>291</sup>. Breach of this statutory duty will attract a fine or possible imprisonment under subsection 46(2)<sup>292</sup>. Furthermore, under section 47, it is an offence to accept or continue in employment in any organisation that would entail caring for children, when they are suffering from any venereal disease in a “communicable” form, unless they can prove that they did not know or suspect, or had not reasonable means of knowing or suspecting, that they were so suffering<sup>293</sup>. Subsection 2 creates an offence where an employer employs someone suffering from a “communicable” venereal disease, unless that employer can prove that they did not know or suspect, and had no reasonable means of knowing or suspecting, that the person so employed by them was suffering from that disease<sup>294</sup>.

112. Section 104 of the Public Health Act provides that parents and guardians shall cause their child to be successfully vaccinated by a public vaccinator, unless that child is unfit to be vaccinated or is insusceptible.<sup>295</sup>

### ***Employers***

113. Part 4 of the Employment Act guarantees certain safeguards for children. Section 53 prohibits employing children in “any activity which constitute worst form of child labour”.<sup>296</sup> This term, “worst form of child labour” has a particular meaning under the interpretation provision of section 2, which states that the term denotes the employment of children in activity comprising of all forms of slavery, prostitution, drug trafficking, and other activities that are likely to harm the health, safety or morals of the child”.<sup>297</sup> Although the Act specifically regulates employment contracts with children between the ages of thirteen and sixteen, the term “child” is to be interpreted under section 2 as meaning anyone under the age of eighteen, including ECDE children.<sup>298</sup>

114. Section 29 of the Employment Act recognises parental and maternal leave. Female employees are entitled to three months maternity leave with full pay. After this period, the female employee is entitled to “return to the job which she held immediately prior to her maternity leave, or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave.”<sup>299</sup> Male employees are entitled to two weeks of paternity leave with full pay.<sup>300</sup>

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<sup>291</sup> Public Health Act, , CAP 242 (Rev 2012) s 46.

<sup>292</sup> Ibid, s46(2).

<sup>293</sup> Ibid, s47(1).

<sup>294</sup> Ibid, s47(2).

<sup>295</sup> Ibid, s104.

<sup>296</sup> Employment Act, Revised Edition of 2012, Chapter 226, s53.

<sup>297</sup> Ibid.

<sup>298</sup> Ibid, s2.

<sup>299</sup> Ibid, s29 (2).

<sup>300</sup> Ibid, s29 (8).

# ZAMBIA

**QUESTION 1: WHAT IS THE EXTENT TO WHICH EARLY CHILDHOOD DEVELOPMENT IS RECOGNISED IN STATE LEGISLATION? IS THERE EXPRESS RECOGNITION OF THE RIGHT TO ECD? IF NOT, IS THERE ADVOCACY TOWARDS SECURING RECOGNITION OF THE RIGHT TO ECD?**

## *Express Statutory Recognition of the Right*

115. The *Zambian Education Act 2011* expressly provides for the right to “early childhood care, development, and education.”<sup>301</sup> Early childhood care, development, and education is defined in the Act as starting from birth and extending until the child attains the prescribed school-going age (age of compulsory school attendance).<sup>302</sup> The age of compulsory entry into primary school in Zambia is 7 years, thus the right guaranteed in the Education Act covers children from birth to 6 years old.<sup>303</sup> The child’s right to education in Zambia is aimed at the developing their “personality, talents, skills, and mental and physical abilities to [their] fullest potential”.<sup>304</sup>

116. Beyond education, other specific elements of the right to early childhood development are captured through guarantees contained in the *Children Code Act 2022*. The Children’s Code was enacted to give domestic effect to Zambia’s international obligations as contained in several international children’s rights treaties that the country has ratified, including the Convention on the Rights of the Child and the ACRWC. It guarantees all children rights to survival and development,<sup>305</sup> education,<sup>306</sup> health and medical care,<sup>307</sup> social protection,<sup>308</sup> and play.<sup>309</sup> The following principles, as outlined in section 4 of the Act, guide the interpretation of the protected rights:<sup>310</sup>

- (a) devotion to the best interests of a child;
- (b) the observance of the right to life, survival and development of a child;

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<sup>301</sup> Education Act 2011, s 14(1)(a) (Zambia)

<sup>302</sup> *ibid*, s 2.

<sup>303</sup> “Directorate of Early Childhood Education” (Ministry of Education Website). Retrieved 1 April 2023 from [https://www.edu.gov.zm/?page\\_id=975](https://www.edu.gov.zm/?page_id=975)

<sup>304</sup> Children’s Code Act 2022, s 10(2) (Zambia).

<sup>305</sup> *ibid* s 5.

<sup>306</sup> *ibid* s 10.

<sup>307</sup> *ibid* s 11.

<sup>308</sup> *ibid* s 12.

<sup>309</sup> *ibid* s 21.

<sup>310</sup> *ibid* s 4.

- (c) the observance of children’s rights as an integral part of attaining equity and equality among children in all spheres of life;
- (d) non-discrimination of children; and
- (e) child participation and respect for the views of a child in all spheres of life.

### ***Movements towards constitutional recognition***

117. The Zambian constitution does not expressly recognise a right to early childhood development, nor does it expressly recognise any socio-economic rights, such as education or health, which are connected to early childhood development. However, the constitution does include an explicit recognition of the State’s interest in protecting young persons. Article 24(2) states that “[a]ll young persons shall be protected against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation.” It may be argued that protection against ill-treatment and neglect implies an obligation to ensure children’s developmental needs, including those of early childhood, are met.

118. Zambia recently sought to constitutionally protect socio-economic rights, including those specific to children, through a constitutional amendment of its bill of rights. However, this attempt at constitutional reform was ultimately unsuccessful.<sup>311</sup> The bill of rights amendment was initiated as a part of a broader constitutional reform project. While most other revisions to the constitution were secured through parliament, the proposed changes to the bill of rights could only be effected through a referendum in which at least 50% of all eligible voters (half of all Zambians above 18) must participate.<sup>312</sup> When the required referendum was held alongside general elections in 2016, this participation threshold was not met, and thus the amendment failed. The failure of the referendum is attributed to a combination of factors, including low voter education on the issues, the high statutory participation requirement, the technical structure of the referendum question (which combined the bill of rights issue with the issue of altering the constitution’s amendment clause), and the holding of the referendum alongside the general elections which resulted in a highly partisan process.<sup>313</sup>

119. The proposed constitutional amendment recognised special human rights guarantees for children. Section 61(5) of the proposed amendment aimed to protect several social and economic rights of children which are linked to their overall well-being and development. These included rights to:

- a) parental care or, where the child is separated from its parents, to appropriate alternative care;
- b) free primary and secondary education;
- c) survival and development;

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<sup>311</sup> Tinashe Kondo, “Constitutionalising Socio-Economic Rights in SADC: An Impact Assessment on Judicial Enforcement in South Africa, Zimbabwe, Botswana, Lesotho and Zambia” 2020 (34) Spec Juris 35, 44-45.

<sup>312</sup> *ibid.*

<sup>313</sup> *ibid.*

- d) adequate nutrition, shelter, basic health care services, social protection and social services; and
- e) a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

120. The proposed constitutional amendment would have also expressly recognised, at section 60(3), that the State has a duty to guarantee special protections related to the well-being of parents and children. This provision, which is particularly relevant to early childhood care, stated that:

The State shall –

- (a) ensure the right of women to adequate maternity leave;
- (b) ensure the availability of adequate paternity leave;
- (c) ensure the availability of maternal health care and child health care; and
- (d) promote the establishment of childcare facilities.

121. More generally, the proposed constitutional amendment guaranteed economic and social rights to every person, including rights to healthcare,<sup>314</sup> housing,<sup>315</sup> food,<sup>316</sup> water,<sup>317</sup> sanitation,<sup>318</sup> social protection,<sup>319</sup> and education.<sup>320</sup>

122. Further, the proposed amendment provided that the best interest of children shall be the primary consideration in all actions and decisions concerning them.<sup>321</sup>

123. In February 2023, the Government of Zambia signalled its intention to hold another referendum to facilitate constitutional protection of socio-economic rights.<sup>322</sup> However, it is clear that before another referendum is held, more effort is needed to raise awareness among the population on its content and implications.

## **QUESTION 2: WHAT IS THE EXTENT OF STATE DUTIES IN RELATION TO ECD?**

### ***Duties subject to Progressive Realisation***

124. The right to early childhood care, development and education in the Education Act 2011 is subject to a standard of progressive realisation.<sup>323</sup> Thus, while the State is not bound to fulfil the right for all persons immediately, it must take progressive steps towards achieving this goal. In this regard, the

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<sup>314</sup> Constitution Amendment Bill 37 of 2016, s 52 (1)(a).

<sup>315</sup> s 52 (1)(b).

<sup>316</sup> s 52 (1)(c).

<sup>317</sup> s 52 (1)(d).

<sup>318</sup> s 52 (1)(e).

<sup>319</sup> s 52 (1)(f).

<sup>320</sup> s 52 (1)(g).

<sup>321</sup> s 61 (2).

<sup>322</sup> Daily Nation News Zambia “Govt Plans To Hold Referendum To Amend Bill Of Rights” ( 1 Feb 2023) <https://dailynationzambia.com/2023/02/govt-plans-to-hold-referendum-to-amend-bill-of-rights/>.

<sup>323</sup> s 14(2).

Zambian government outlined its commitment towards increasing access and quality of early childhood care, development and education and set both quantitative and qualitative targets pertaining to early childhood development access and quality. These targets were related to:

*“Expanding Access -*

- Establishing low-cost community and alternative-based ECE centres
- Strengthening PPP [public-private partnership] in ECE provision
- Constructing model ECE centres

*Improving Quality –*

- Providing suitable play and learning materials
- Implementing school readiness assessment
- Implementing child developmental milestones assessments
- Internal quality assurance of ECE education delivery
- Collaborating with communities to provide caregivers

*Improving Equity –*

- Sensitizing the public on community and private-driven establishment of ECE centres;
- Conducting advocacy programmes at all levels on the concepts and benefits of ECE;
- Strengthening PPP in the provision of ECE; and
- Sensitizing the communities on the integration of children with special educational needs in ECE.”<sup>324</sup>

125.ECD has been integrated into sector plans, programmes, and services under the government's multisectoral strategy.<sup>325</sup> The Ministry of Health, which focuses on the developmental life stage from conception to three years of age, and the Ministry of Education, which focuses on early learning and school readiness from three to six years of age, are two key line ministries that have already started integrating ECD into sector programmes.<sup>326</sup> The WHO/UNICEF Nurturing Care Framework (NCF) has recently become influential on Zambia's ECD programming, motivated by the government's political commitment to assisting and empowering parents, families, other carers, and communities in providing young children with appropriate holistic care and safeguarding them from harm.<sup>327</sup> The

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<sup>324</sup> Zambia Ministry of General Education and Ministry of Higher Education, Education and Skills Sector Plan 2017-2021, 155 <[https://planipolis.iiep.unesco.org/sites/default/files/ressources/zambia\\_-\\_education-and-skills-sector-plan-2017-2021.pdf](https://planipolis.iiep.unesco.org/sites/default/files/ressources/zambia_-_education-and-skills-sector-plan-2017-2021.pdf)> accessed 31 March 155

<sup>325</sup> UNICEF, The 2021 Situation Analysis of the Status and Well-Being of Children in Zambia ( October 2021) <https://www.unicef.org/zambia/media/2591/file/Zambia-situation-analysis-2021-revised.pdf> accessed 1 April 2023 36.

<sup>326</sup> *ibid.*

<sup>327</sup> *ibid.*

Ministry of Community Development and Social Services (MCDSS), which currently oversees the Child Development Department established under the Children’s Code Act,<sup>328</sup> is actively participating in the discussion of ECD policy, and is a member of the National ECD Multisectoral Technical Committee.<sup>329</sup>

126. In its Education and Skills Sector Plan 2017-2021, the government outlined several persisting issues related to early childhood education provision that it aimed to address, including improving access to ECE facilities in rural areas, provision of adequate equipment and infrastructure in existing ECE facilities, making provision for early learners with special needs, acquiring and training sufficient human resources, implementing progress evaluation and monitoring systems, and implementing mechanisms for transition to primary school.<sup>330</sup>

127. However, there is still significant room for improvement. Just 35% of children currently have access to ECE, and access remains particularly difficult in remote regions.<sup>331</sup> Moreover, just 27.8% and 5.8%, respectively, of children in the age range of zero to five years had attended ECE in urban and rural areas, according to the 2018 Zambia Demographic and Health Survey.<sup>332</sup> Additionally, only a very small percentage children with disabilities have access ECE, and they continue to be undocumented.<sup>333</sup>

### ***Duty to Provide State-administered ECD Facilities***

128. The Education Act 2011 provides that public educational institutions may be established for the provision of early childhood care, education and development.<sup>334</sup> This is stated as a discretionary obligation as opposed to a mandatory one. However, recognising that the lack of access to quality early childhood education facilities has impeded the right to early childhood development for many Zambian children, the government of Zambia has made efforts to provide public facilities and resources for early childhood learners.

129. In 2015, the Directorate for Early Childhood Education was established to coordinate and manage the provision of early childhood education services at all levels.<sup>335</sup> ECE centres were first established in 2012 by the Ministry of General Education (now the Ministry of Education), primarily by annexing

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<sup>328</sup> John Chiluwe, “Child Development” (Ministry of Community Development and Social Services website, 2021) <[https://www.mcdss.gov.zm/?page\\_id=2128](https://www.mcdss.gov.zm/?page_id=2128)> accessed 5 April 2023

<sup>329</sup> UNICEF (n 292) 3.

<sup>330</sup> “Education and Skills Sector Plan 2017-2021” (Zambia Ministry of General Education and Ministry of Higher Education) 53.

<sup>331</sup> UNICEF (n 292) 40.

<sup>332</sup> *ibid.*

<sup>333</sup> *ibid.*

<sup>334</sup> s 35(a)(i).

<sup>335</sup> “Directorate of Early Childhood Education” (Ministry of Education Website) <[https://www.edu.gov.zm/?page\\_id=975](https://www.edu.gov.zm/?page_id=975)> accessed 1 April 2023



them to pre-existing elementary schools.<sup>336</sup> However, the issue of insufficient and improper infrastructure is a problem for ECE annex centres as often these primary school classrooms have not been modified to serve their purpose.<sup>337</sup>

130. The government has also subsequently developed standalone centres and hub-satellite centres.<sup>338</sup> The ECE centre functions independently under the direct supervision of the District Education Office in the standalone model. The hub-satellite model calls for the establishment of satellite centres at the local level, with the local primary school serving as a hub to assist quality assurance and development. The hub-satellite approach has proven that it is feasible to increase access to ECE through focused interventions, such as early learning and stimulation, health, nutrition, safety, and security, and through solid relationships across numerous sectors.<sup>339</sup>

131. Notably, early childhood education, which targets children in the 3-6 age group, has received more attention than early childhood care and development for children in the 0-2 age group.<sup>340</sup> This is despite the recognition in the Education Act that early childhood care, development and education begins from birth. However, the Government, in collaboration with UNICEF, has made some efforts to provide public care facilities and resources for children in the 0-2 age group through the development of Early Childhood Development Hubs (known as Mphalas) in several districts.<sup>341</sup> These Mphalas are coordinated by the Health, Education and Community Development Ministries and provide a variety of services including but not limited to “early stimulation rooms for children 0-3 years of age and their caregivers, learning through play opportunities in ECE classrooms and playgrounds for children 3-6 years, a health office for growth monitoring, immunization and vitamin A supplementation for children 0-5 years, a multipurpose area for parenting counselling, adult literacy classes and community meetings, [and] a kitchen area and garden for nutrition promotion, and cooking demonstration.”<sup>342</sup>

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<sup>336</sup> Education and Skills Sector Plan 2017-2021, 91

<sup>337</sup> *ibid.*

<sup>338</sup> Zambia Ministry of General Education and Ministry of Higher Education “Education and Skills Sector Plan 2017-2021” ( 40 < [https://planipolis.iiep.unesco.org/sites/default/files/ressources/zambia\\_-\\_education-and-skills-sector-plan-2017-2021.pdf](https://planipolis.iiep.unesco.org/sites/default/files/ressources/zambia_-_education-and-skills-sector-plan-2017-2021.pdf) > accessed 31 March 2023

<sup>339</sup> *ibid.*

<sup>340</sup> Policy Monitoring and Research Centre, “The Status of Early Childhood Care, Development and Education in Zambia” ( 2017) < <https://www.pmrzambia.com/wp-content/uploads/2017/12/The-Status-of-Early-Childhood-Care-Development-and-Education-in-Zambia-PMRC-Analysis.pdf> > accessed 4 April 2023

<sup>341</sup> UNICEF, “UNICEF launches four integrated Early Childhood Development Hubs” (25 January 2023) <https://www.unicef.org/zambia/press-releases/unicef-launches-four-integrated-early-childhood-development-hubsmphalas-chipata#:~:text=The%20newly%20launched%20ECD%20hubs,International%20as%20the%20implementing%20partner>> accessed 3 April 2023

<sup>342</sup> *ibid.*

### ***Duty to Provide Free ECE***

132. The Education Act 2011 also provides that a child has the right to free basic education.<sup>343</sup> Basic education is defined in the Act as including early childhood education.<sup>344</sup> Early childhood care, development and education applies to children from birth to the prescribed school entry age.<sup>345</sup>

133. In 2022, the government extended its free education policy beyond primary education to include secondary education and early childhood education. It is hoped that this will increase the enrolment levels of children at the early childhood level, particularly for children in vulnerable situations.<sup>346</sup> However, abolishing school fees means that schools are completely reliant on the government to meet their key financial needs. Additionally, the share of the budget allocation to early childhood education that was actually spent has been very low in the past, suggesting implementation gaps in that sector.<sup>347</sup> Thus, as UNICEF has outlined, in order to ensure effectiveness and sustainability of the free education policy, the Government must commit to timely and regular disbursements of grants to early childhood centres and to establishing effective financial management systems.<sup>348</sup>

### ***Duty to Develop a Curriculum for ECE***

134. The Education Act 2011 also provides that the Minister must specify the curriculum, books and resources to be used at educational institutions, including at the preschool level, which the Act refers to as the foundation stage.<sup>349</sup> The curriculum for learners at the foundation stage must specify the attainment targets, programmes of study, and assessment arrangements. Moreover, it must cover the following core areas of learning:<sup>350</sup>

- (i) personal, social, spiritual, cultural and emotional;
- (ii) communication, language and literacy;
- (iii) mathematical and scientific development;
- (iv) knowledge and understanding of the world;
- (v) physical education and development; and
- (vi) creative development;

### ***Duty to Ensure Early Childhood Health, Nutrition and Care***

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<sup>343</sup> Education Act 2011, s 15.

<sup>344</sup> *ibid* s 2.

<sup>345</sup> *ibid* s 2.

<sup>346</sup> UNICEF, “Zambia Education Budget Brief” (2022) <  
<https://www.unicef.org/zambia/media/3156/file/UNICEF%20Zambia%20Budget%20Brief%20Education.pdf>>  
accessed 1 April 2023.

<sup>347</sup> *ibid*.

<sup>348</sup> *ibid*.

<sup>349</sup> Education Act 2011, s 95.

<sup>350</sup> *ibid* s 96(1)(a).

135. Additionally, the *Zambian Food and Nutrition Act 2020*, which provides for the implementation of a national food and nutrition programme, requires the country's Food and Nutrition Commission to make particular guidelines for addressing the food and nutrition needs of vulnerable groups,<sup>351</sup> which the Act defines as including children under the age of 5 years old.<sup>352</sup> The Act also provides that the National Food and Nutrition Commission shall develop and implement a nutrition surveillance system to monitor the food and nutrition situation of vulnerable groups.<sup>353</sup>
136. The *School Health and Nutrition Policy 2006* aims "to promote and provide quality and cost-effective health and nutrition services to all learners."<sup>354</sup> Given that early childhood education has been recognized in the *Education Act* as part of the formal school system,<sup>355</sup> this policy mandate now extends to early childhood learners. As outlined in the 2006 policy, the government's provision of health and nutrition in schools aims to be multidimensional, including aspects such as provision of meals and micronutrient supplements, vaccination, clean and safe water, and sanitary facilities.<sup>356</sup>
137. In its *National Strategic Health Plan (2022-2026)*, the Ministry of Health identified its key strategies that have led to progress in the area of neonatal and child health and development. These include: the Expanded Programme on Immunization (EPI), the Nutrition Programme; Early Childhood Development (ECD) and the Integrated Management of Neonatal and Childhood Illnesses (IMNCI).<sup>357</sup> It is noted that ECD Implementation, which include programmes and services that support nurturing care, including health, nutrition, water, sanitation and hygiene (WASH), play, gender, learning and protection has over the years been taking a central role and is a critical component of the Ministry of Health's programming for children.<sup>358</sup>
138. Furthermore, in order to promote family well-being and healthy child development, the government of Zambia introduced the *ECD Lancet Series* in 2017 and later modified the *Child's Healthy Growth and Development* package to teach key care practices to frontline workers.<sup>359</sup> Subsequently, in 2018,

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<sup>351</sup> *Food and Nutrition Act 2020*, s 39(2)(a).

<sup>352</sup> *ibid* s 2.

<sup>353</sup> *ibid* s 5(1)(f)

<sup>354</sup> Zambia Ministry of Education, *School Health And Nutrition Policy*, (March 2006) para 3.1 <<https://extranet.who.int/nutrition/gina/sites/default/filesstore/ZMB%202006%20School%20Health%20and%20Nutrition%20Policy%20%202006.pdf>> accessed 1 April 2023.

<sup>355</sup> *Education Act 2011*, s 12.

<sup>356</sup> Ministry of Education, (n 321) [3.3.1] – [3.3.2]

<sup>357</sup> *Zambia National Strategic Health Plan (2022-2026)*, 35 <<https://www.moh.gov.zm/wp-content/uploads/2023/02/National-Health-Strategic-Plan-for-Zambia-2022-to-2026-revised-February-2023-lower-resolution.pdf>> accessed 1 May 2023.

<sup>358</sup> *ibid*.

<sup>359</sup> UNICEF (n 292) 36.

the Government committed to scaling up Nurturing Care for ECD and accepted the WHO/UNICEF Nurturing Care Framework (NCF) for ECD.<sup>360</sup> Care for Child Development, which serves as the foundation for the Playful Parenting campaign, was then introduced in 2021.<sup>361</sup> The National Playful Parenting Campaign has been established to encourage responsive and constructive parenting, caring for caregivers, and early learning opportunities for children.<sup>362</sup>

### ***Duty to Promote and Monitor ECD***

139. The Children’s Code Act 2022 provides for the establishment of a Child Development Department with responsibility for advancing the rights and development of children including through ensuring compliance with child rights standards and designing and formulating policies on child development activities.<sup>363</sup> The Department of Child development currently operates under the Ministry of Community Development and Social Services and serves to monitor and coordinate activities pertaining to ECD across sectors.

### **QUESTION 3: WHAT IS THE RELATIONSHIP BETWEEN PRIVATE AND PUBLIC SECTOR INVOLVEMENT IN ECD?**

140. Historically, early childhood care, development and education was mainly a private venture. In colonial times, ECE was available for one year and comprised teaching children how to write the alphabet's letters on the ground.<sup>364</sup> The colonial administration later created the **Day Nurseries Act 1957**. This Act, which is still in effect currently, provides for the local government authority’s regulation, registration and inspection of early childhood care facilities established by private persons. It allows for the local authorities to impose conditions related to health, safety, sanitation, nutrition and the promotion of children’s general welfare in such establishments.<sup>365</sup> Immediately post-independence, the Zambian Ministry of Local Government and Housing set up nurseries and preschools, which were mainly found in welfare halls. Nonetheless, participation remained modest, and by the mid-1980s, this provision had lost its appeal.<sup>366</sup>

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<sup>360</sup> *ibid.*

<sup>361</sup> *ibid.*

<sup>362</sup> *ibid.*

<sup>363</sup> s 29.

<sup>364</sup> Bibi Kalinde, “The history of early childhood education in Zambia” in *Laying a foundation for optimal outcomes in Early Childhood Education* (Ministry of Education, June 2020) 3

<sup>365</sup> Day Nurseries Act 1957, s 7.

<sup>366</sup> Miwa Okajima, “Non-State Actors in Education: Zambia” (UNESCO, 2021) <https://education-profiles.org/sub-saharan-africa/zambia/~non-state-actors-in-education#Quality%20of%20teaching%20and%20learning> accessed

141. In 2004, the Ministry of Education took over the early childhood education mandate from the Ministry of Local Government.<sup>367</sup> Since then, via coordination and collaboration with line ministries and other stakeholders, the Ministry of Education has launched a number of policies and initiatives to promote early childhood programming in the education sector and the nation at large.<sup>368</sup>

142. The National Education Policy (“Educating Our Future”) 1996, which has been criticised as outdated,<sup>369</sup> still remains the guiding policy framework for early childhood education. The National Education Policy states that the responsibility for providing and funding early childhood education rests on local councils, communities, NGOs, private individuals and families, with the Ministry only serving to “encourage and facilitate” the establishment of early childhood education facilities through training teachers, developing curriculum materials and monitoring standards.<sup>370</sup> However, this does not fully align with the subsequent legislative developments in the Education Act<sup>371</sup> and the Children’s Code Act,<sup>372</sup> both of which explicitly place the responsibility for guaranteeing the right to ECD on the State (though the Children’s Code Act expresses this responsibility as one shared between the State and the child’s family). Nevertheless, it is evident that since the legislative protection of the right to early childhood education in the Education Act, the State has taken on a much greater role in the provision of early childhood development services.

143. Currently, for children aged 3-6, there are free, publicly administered early childhood development programmes which aim to meet their learning, care and nutrition needs. However, these government programmes have been insufficient to meet the demand for ECD services and are still in large part supplemented by private and community institutions.<sup>373</sup> Moreover, early childhood care for children aged 0-2 remains largely facilitated through local authorities, local communities, faith-based organisations, NGOs, and individuals.

144. The government role in relation to these private ECD institutions is one of oversight. With respect to early childhood learning, private institutions which provide early childhood education for 3-6 year olds are mandated to follow the ECE curriculum and resource guidelines set by the State.<sup>374</sup> Additionally,

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<sup>367</sup> Zambia Ministry of Education, Directorate of Early Childhood Education ([https://www.edu.gov.zm/?page\\_id=975](https://www.edu.gov.zm/?page_id=975)) accessed 5 April 2023

<sup>368</sup> *ibid.*

<sup>369</sup> UNICEF (n 292) 41.

<sup>370</sup> Zambia Ministry of Education “Educating Our Future: National Policy on Education” (1996) 7 <<http://155.0.32.9:8080/jspui/bitstream/123456789/20/1/Educating%20Our%20Future%20-%20National%20Policy%20on%20Education.pdf>>

<sup>371</sup> s 14(2).

<sup>372</sup> s 10(3).

<sup>373</sup> Edwards, Okitsu, and Mwanza, “Low-fee private schools, the state, and globalization: A market analysis within the political sociology of education and development” (2019) 27(133) *Education Policy Analysis Archives*, 28.

<sup>374</sup> “The Status of Early Childhood Care, Development and Education in Zambia (Policy Monitoring and Research Centre 2017) Retrieved 3 April 2023 from [The-Status-of-Early-Childhood-Care-Development-and-Education-in-Zambia-PMRC-Analysis.pdf](https://www.pmrzambia.com/) (pmrczambia.com), 18.

like public ECE centres, grant-aided institutions and community schools providing ECE are not permitted to charge students an admission or tuition fee.<sup>375</sup> The State oversees all other private ECD institutions through the Day Nurseries Act and by instituting regulations such as the 'Minimum Standards of Care for Childcare Facilities' (which applies to day care centres).<sup>376</sup> The Minimum Standards of Care regulation outlines the minimum credentials, screening practices, orientation, record-keeping, training, and health requirements for employees working in child care facilities.<sup>377</sup> It also sets out environmental standards for play areas, restrooms, general sanitation, and safety, as well as standards related children's participation, education, health care, and nourishment.<sup>378</sup>

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<sup>375</sup> Education Act, s.119(2).

<sup>376</sup>Zambia Ministry of Community Development, Mother and Child Health, Minimum Standards of Care For Child Care Facilities ( July 2014) < <https://bettercarenetwork.org/sites/default/files/attachments/Minimum%20Standard%20of%20Care%20for%20Child%20Care%20Facilities%20Zambia.pdf> > accessed 1 April 2023

<sup>377</sup> *ibid.*

<sup>378</sup> *ibid.*