

An enabling policy environment

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The National Development Plan (NDP) sets out the long-term vision for the country and envisages that children will have universal access to early childhood development (ECD) by 2030. The long-term goal of the National Integrated Early Childhood Development Policy (NIECD Policy) is in concert with the NDP's goal of universal access to early childhood development for all children, which would contribute to the NDP goals of eradicating poverty and reducing inequality. The NDP makes numerous proposals on early childhood development, among these are a focus on nutrition for pregnant women and children, and the transfer of the ECD function from the Department of Social Development (DSD) to the Department of Basic Education (DBE).¹

A key development was the adoption of the NIECD Policy by the Cabinet in 2015.² The Policy covers the period from conception until children enter formal schooling. It also addresses critical gaps in order to ensure the provision of comprehensive, universally available and equitable ECD services. As such, the NIECD Policy signalled a shift away from a narrow conceptual understanding of early childhood development, as mainly school and centre-based early learning programmes (ELPs) by outlining a comprehensive package of services to support the holistic development of a young child from health and nutrition to social protection, early learning, parent support and food security.

Government recognised that the provision of ECD services does not fall neatly under one government department, sphere of government or sector. Policy and legislative coherence would be required to enable coordination and collaboration across departments and spheres of government as well as with civil society. This includes significant reform to increase access to services across the age range and improve the quality of services across the areas of health, education and social protection.

What is an enabling policy environment for early childhood development?

For children to thrive in life, an enabling environment needs to be created that ensures that the full range of quality ECD services are accessible to all families. This entails having a continuum

of complementary policies that enable different role players to support communities and families' efforts to provide young children with good health, adequate nutrition, opportunities for early stimulation, responsive caregiving, and safety and security as outlined in the global Nurturing Care Framework.³

Creating an enabling policy environment for children begins with ensuring universal health coverage for pregnant mothers, infants and young children, and providing essential healthcare services for their health and well-being. To complement good health, integrated food security and nutrition policies are necessary to ensure adequate nutrition for pregnant mothers, infants and young children, promoting brain development and healthy growth. Social protection policies safeguard families and children from economic and social adversity and empower families to access nutrition. Labour or employment policies can support responsive caregiving by allowing caregivers time off work or providing on-site facilities to feed and care for infants. Education and childcare policies contribute to stimulating environments in which children receive early care, nutrition and stimulation while enabling caregivers to return to work. Policies around birth registration are required to unlock families' ability to access many government services. Inclusive policies are crucial for meeting the unique needs of children and families. Lastly, policies that allow for coordination of service provision at the local level could ensure that a comprehensive package of ECD services reaches children in the most vulnerable circumstances.

What laws and policies are currently in place?

The basic right to a comprehensive package of ECD services for all children has its foundation in the Constitution of the Republic of South Africa. Section 28 of the Constitution, in the Bill of Rights, declares that "every child has the right (a) to a name and a nationality from birth; (b) to family care, or parental care, or appropriate alternative care, when removed from the family environment; (c) to basic nutrition, shelter, basic health care services, and social services; (d) to be protected from maltreatment, neglect, abuse or degradation".⁴ Section 29 (1)(a) of the Constitution further declares that "everyone has a right to a basic education". Read together, it is safe to

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say that children in South Africa should have access to quality health services, early learning, basic nutrition, shelter, care and protection.

Since 1994, the legislative and policy framework and plans have been developed to enable the realisation of these rights. Table 26 below highlights the legislation, policies and plans that have been introduced since 1994 to regulate the provision of a comprehensive package of services for young children. Together these govern the many different dimensions of early childhood development. An example of this is the regulatory framework for ECD programmes in chapters five and six of the Children's Act (No 38 of 2005) and the associated regulations, norms and standards. These provisions also intersect with other laws which fall under the responsibility of various government departments.

The NIECD Policy establishes the government's responsibility to provide comprehensive ECD services in South Africa. Its goal is to transform service delivery by addressing gaps and ensuring universal and equitable access. The Policy defines a range of services necessary to fulfil the constitutional rights of young children, including:

- free birth registration;
- parenting and family support;
- essential health care for pregnant women and children;
- food and nutritional support for pregnant women and children;
- social protection;
- protection from abuse and neglect;
- psychosocial services for pregnant women, children and mothers;
- early childcare and early learning;
- information on the value of early childhood development and how these services may be accessed;
- subsidised and affordable water, sanitation and energy services;
- access to safe housing; and
- access to play, recreational and cultural amenities.²

It also has a strong emphasis on early identification and intervention for children with disabilities and developmental delays, demonstrating government's commitment to inclusivity and upholding all children's rights to early childhood development.

The Policy's comprehensive and integrated approach has the potential to serve as a foundation to align other policies and create a coherent policy environment that enables the delivery of comprehensive services to families and children. While many of the programmes were already in place, the NIECD Policy

presented an opportunity to reframe and reform the delivery of comprehensive and integrated services for children at the local level. Yet despite this clear policy intent, the dominant narrative continues to focus on ELPs, and while there has been some progress in terms of increasing access to services, it has been far too slow.

Yet, policy and legislative developments to date have taken place quite disparately across different government departments and political administrations, with no overall strategic vision to ensure that the different laws and policies are coherent and complement each other. This is partly due to early childhood development being narrowly understood as centre-based early learning programmes, and partly due to the way in which government departments tend to operate in silos.

Primary legislation (e.g. Acts) and secondary legislation (e.g. regulations) governing early childhood development frequently overlap, causing unnecessary complications and contradictions. For example, health and safety in ECD programmes is currently regulated by different government departments and spheres of government. The norms and standards of the Children's Act (No. 38 of 2005) specify health and safety norms and standards for partial care facilities (including ECD centres). In addition, ECD centres must comply with local by-laws that incorporate the National Environmental Health Norms and Standards which fall under the National Health Act (No. 60 of 2003). This means that under the current system, ECD centres are effectively assessed twice for health and safety compliance – first by an environmental health practitioner from local government, and then by a provincial education official. The draft Children's Amendment Bill of 2023 therefore aims to address these tensions and streamline the registration process for ECD programmes.

In addition, it is important to consider whether the health and safety norms and standards are appropriate in a developing country such as South Africa, as many centres in rural and informal settlements struggle to comply. It may therefore be more appropriate to set a minimum safety threshold that would enhance access to quality early learning and childcare, and to then drive further improvements through a quality assurance process, provided this does not compromise children's safety.

What is working well and what needs to change to create a more enabling environment?

There have been three key successes in developing an enabling policy framework for early childhood development over the past 15 years:

Table 26: Legislation, policies and plans for early childhood development in South Africa

		Components of Nurturing Care Framework				
		Early learning	Nutrition	Health	Responsive caregiving	Safety & protection
Legislation	Constitution of the Republic of South Africa No. 108 of 1996	x	x	x	x	x
	Births and Deaths Registration Act No. 52 of 1992		x	x	x	x
	National Health Act No. 60 of 2003		x	x		
	National Health Insurance Act No. 20 of 2023		x	x		
	Social Assistance Act No.13 of 2004		x	x	x	x
	South African Social Security Agency Act No. 9 of 2004		x	x	x	x
	Unemployment Insurance Fund Act No. 63 of 2001				x	x
	South African Schools Act No. 84 of 1996	x				
	Basic Education Laws Amendment Bill [B2D-2022]	x			x	
	Domestic Violence Act No. 116 of 1998					x
	Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007					x
	Children's Act No. 38 of 2005	x	x		x	x
	Children's Amendment Draft Bill 2023	x			x	x
Policies	White Paper on Education and Training (1995)	x				
	White Paper on a New Housing Policy and Strategy for South Africa (1995)					x
	White Paper on Social Welfare (1997)					x
	White Paper for the Transformation of the Health System in South Africa (1997)		x	x		
	White Paper 5 on Early Childhood Development (2001)	x			x	
	White Paper 6 on Inclusive Education (2001)	x				
	Free Basic Water Policy (2000) and Free Basic Water Implementation Strategy (2001)					x
	White Paper on Basic Household Sanitation (2001)					x
	National Integrated Early Learning and Development Standards (2009)	x				
	Revised White Paper on Families in South Africa (2021)				x	
	The South African National Curriculum Framework for Children from Birth to Four (2014)	x				
	Policy Framework and Strategy for Ward Based Primary Healthcare Outreach Teams (2017)		x	x		
Maternal, Perinatal and Neonatal Health Policy (2021)		x	x			
Plans	National Plan of Action for Children in South Africa 4 [2019 – 2024]	x	x	x	x	x
	National Food and Nutrition Security Plan for South Africa 2018 – 2023		x			
	National Integrated Plan for Early Childhood Development 2005 – 2010	x	x	x	x	x
	National Development Plan (2012)	x	x	x	x	x
	Maternal, Newborn, Child and Women's Health and Nutrition Strategic Plan (2012)		x	x		
	2030 Strategy on ECD Programmes (2024)	x			x	

A clear vision

The first success has been the clear vision and broad definition set out for early childhood development in the NDP and the progress made to achieve these goals. The NIECD Policy gave effect to this broad definition of early childhood development by introducing a comprehensive package of services and in 2022 the overarching responsibility for the national integrated early childhood development programme and policy shifted from the DSD to the DBE.

In addition, universal access to two years of preschool education could be achieved in the medium-term as proposed in the NDP. Access to Grade R has been above 95% over the past 10 years and the Basic Education Laws Amendment Bill will make Grade R compulsory; while roughly two-thirds of the age group one year below Grade R are already accessing some form of early learning programme.⁵

The standardisation of guidelines, norms and standards for ECD programmes is also achievable, thanks to the work of the Presidency's Red Tape Reduction Team who are revising the National Environmental Health Norms and Standards and drafting model local government by-laws for ECD programmes, and recent amendments to the Children's Act which aim to streamline the registration of ECD programmes (see page 22).

A comprehensive and integrated policy

The second success has been the introduction of the NIECD Policy in 2015. Although ambitious in its vision, the Policy defined the comprehensive package of services required to ensure the holistic development of children and allocated the responsibility for delivering the various services to specific government departments. The Policy, therefore, has the potential to provide a framework to enhance coherence across different policies and pieces of legislation that pertain to ECD services.

One example of this is the clarification of the role of local government in "municipal planning and spatial development, including providing and regulating land used for childcare facilities and safe and adequate play and recreation facilities".² The role of local government in the provision of childcare facilities is included in Schedule 4 Part B of the Constitution, however, since "childcare facilities" are undefined, there is arguably an overlap between this definition and the definitions of "partial care" and "ECD programmes" in the Children's Act. The Policy, therefore, provides a platform from which the Children's Act can be amended to clarify the definition of "childcare facilities" and the role of local government.

A strategy to enhance the delivery of community-based health services

The final success has been the introduction of the Wards Based Primary Health Care Outreach Teams Policy Framework and Strategy in 2018 which provides a framework for improved implementation of the Community Health Worker (CHW) Programme. CHWs play a critical role in providing primary health care and information on early childhood development to pregnant mothers, new mothers and children. CHWs are therefore one of the main mechanisms through which the government can provide children and families with a comprehensive package of services during the first 1,000 days of a child's life. The policy aims to bring health care closer to families and communities and envisages strengthening intersectoral collaboration at the community level with a specific focus on rural and under-served areas. If implemented well, working in synergy with the maternal and child health services provided by primary health care clinics, the policy and strategy could enhance maternal and child health and nutrition outcomes, and enable children to thrive.

Which challenges remain?

Since the adoption of the NIECD Policy, progress has been sluggish. The National Planning Commission's Review of the NDP⁶ attributes the slow progress to poor leadership within and across the departments of DSD, DBE, and Health. This is supported by the Bureau of Economic Research's 2020 Assessment Report,⁷ which showed no increase in the proportion of four-year-olds attending early learning programmes between 2012 and 2019.

To address these challenges, the DBE should draw lessons from other successful policy interventions. Lund, in her reflection on the implementation of the Child Support Grant (CSG), states that poor implementation of policy intent often results from a lack of necessary technical and administrative capacity.⁸ The initial success of the CSG implementation was largely due to the fact that there was an implementation machinery in place across the provinces which paid the state maintenance grant to those who qualified. Furthermore, according to Lund, the Minister and Director General of the Department of Welfare (now the DSD) provided political will, institutional support, and administrative or technical assistance.⁹ While the design and delivery of ECD services is more complex, these factors remain pertinent.

Key policy questions that need to be addressed in order to enhance early learning outcomes, include efforts to increase the value of the ECD subsidy and ensure that it reaches the majority of children under-five (who currently do not benefit from the

subsidy). These efforts to enhance access need to be coupled with interventions to improve the quality of programmes.

The ECD conditional grant was introduced in 2017/18 to improve the maintenance of infrastructure and increase the number of children benefitting from the ECD subsidy. This resulted in an injection of an additional R1,8 billion into ELPs between 2017/18 and 2021/22. However, the South African Public Expenditure and Institutional Review showed that the proportion of children who accessed ELPs did not increase during the period from 2014 to 2019.⁹ This is of concern as it may point to provinces deciding to reduce the amount they allocate from the provincial equitable share to ECD. This is likely to deepen inequalities in access to ELPs as families in poor communities cannot afford to pay fees.⁹

The National DBE should therefore ensure that its attempts to increase access and quality of ECD services are backed up by increased budget allocations through the provincial equitable share in addition to the ECD conditional grant. Provincial DBEs and Treasuries should guard against ECD budgets being redistributed to other service areas. While all services within the provincial equitable share are being squeezed due to austerity measures being implemented, children's services should be protected.

It was also explicitly stated in the Concluding Observations of the UN Committee on the Rights of the Child that children's rights and access to services should not be adversely affected by budget cuts.¹⁰

Another key challenge that remains is DBE's leadership role in the ECD sector. The DBE 2030 Strategy for ECD clarifies the department's role in respect of its mandate to deliver ELPs, but does not address its broader leadership role sufficiently.²

What are the potential solutions?

The ECD function shift has brought new momentum to the ECD sector and allowed for three changes to strengthen the implementation of the NIECD Policy.

An update of the NIECD Policy

The first is the opportunity to update the NIECD Policy to reflect recent developments in the ECD sector, such as the ECD function shift. The update is also an opportunity to strengthen the implementation of the NIECD Policy's vision of enhancing access and quality of ECD services. While DBE has historically focused on centre-based ELPs, the DBE should broaden its approach and develop an overarching strategy to increase access and improve the quality of all ECD services across the life course – from health and nutrition to care, protection and development. While the DBE is the lead department for ECD,

the Presidency should play a support role as envisaged in the NIECD Policy. Each department has its mandate, however there are overlaps in service provision, such as parent support, that require collaboration between departments. It is also the responsibility of the lead department to engage with other departments to identify systemic challenges and develop consensus on solutions.

The DBE is conducting an implementation evaluation of the NIECD Policy to ensure the update of the Policy is evidence-based. The DBE should also involve other departments fully in this process, as anecdotal evidence suggests that the DSD fell short in doing so during the initial development of the NIECD Policy. This process of improving the Policy should also be used to develop a common vision for the well-being of children, which all different roleplayers are invested in. The 2012 ECD Diagnostic Review acknowledged existing ECD programmes but highlighted notable gaps in caregiver and parent support. The DBE should build upon these findings.¹¹

The Children's Amendment Bill

The second potential for improvement in the regulatory framework governing early childhood development is the draft Children's Amendment Bill of 2023 which aims to streamline the registration requirements for ECD programmes. It introduces a differentiated approach to regulating different kinds of ECD programmes (such as ECD centres, playgroups and home-visiting programmes), and provides for the collection of administrative data in ECD programmes and the funding of ECD programmes.

The Bill further intends to clarify the roles and responsibilities of the different spheres of government, especially the role of local government in the provision of ECD facilities and implementation of health and safety standards. These measures are intended to enhance access and quality, and the Minister of Basic Education should therefore prioritise the processing of the Bill in the legislative programme of the seventh Parliament.

The possibility of an ECD Act

The DBE acknowledges the necessity for extensive legislative reform in order to realise the comprehensive package of services outlined in the NIECD Policy. The DBE is therefore conducting a scoping study to determine whether existing legislation should be further enhanced or if a new ECD statute aligned with the NIECD Policy's vision is needed. The scoping study aims to initiate dialogue among government departments and the ECD sector in order to create a more collaborative and enabling environment for integrated ECD delivery.

Conclusion

The NIECD Policy in South Africa provides a coherent and complementary framework to guide the development of policies and legislation across government departments and spheres of government. Through the ongoing review process led by the

DBE, there is an opportunity for departments responsible for ECD services to improve services that fall within their mandate and take full ownership of their responsibilities outlined in the Policy, leading to more effective implementation and improved child well-being.

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