



Model Legislation for Early Childhood Systems: A Framework for Drafters

A rights-grounded template for early childhood legislation, with commentary and guidance for drafters, law reformers and advocates

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Abstract

This framework offers legislative drafters, law reform commissions, parliamentary counsel and advocates a model for early childhood legislation, grounded in the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and General Comment No. 7. It is organized as a model Act in eight Parts, presenting statutory text for the provisions that most determine whether an early childhood law functions, accompanied by commentary explaining the intent of each provision, the choices open to drafters and the failure modes each formulation is designed to avoid. The framework is a template, not a statute; every provision requires adaptation to the constitutional order, drafting conventions and institutional realities of the enacting state.

How to use this framework

Model statutory text appears in shaded blocks with a colored rule. Square brackets mark choices the drafter must make, such as the name of the Minister responsible or a number to be fixed nationally. The commentary that follows each provision is not part of the model text and should not be enacted; it explains the reasoning and flags adaptation points. The framework assumes a common-law drafting tradition, and drafters in civil-law systems will need to restructure accordingly. Above all, drafters should resist enacting the whole framework mechanically. The strongest early childhood laws on the continent are short, clear and enforced; the weakest are comprehensive and ignored.

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Introduction for drafters

Most African states already regulate fragments of early childhood: a pre-primary chapter in an education act, day-care provisions in a children's statute, hygiene rules in public health law. Few have legislation that treats the young child's entitlement, the services they use, the people who staff them, the money that funds them and the remedies available to her as one system. This framework exists to close that gap. It can be enacted as a stand-alone Early Childhood Act, or its Parts can be carved into amendments to existing education and children's legislation; the commentary indicates which provisions must travel together if the drafter takes the amendment route.

Every duty has a named duty-bearer, because obligations assigned to no one are performed by no one. Every entitlement has a remedy, because a right without redress is advice. And operational detail is pushed to regulations, because standards, fees and forms must change more often than Parliaments sit. Drafters should also read this framework alongside CECJ's Practitioner's Guide to Early Childhood Development Regulatory Frameworks, which addresses the administrative design choices that the statutory skeleton in Part IV presupposes.

Part I - Preliminary provisions

Section 1. Purpose

The purpose of this Act is to give effect to the rights of every young child under the Constitution, the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, by establishing entitlements, services, institutions, financing arrangements and remedies for early childhood care and education.

Commentary. A purpose clause earns its place at interpretation time. Courts and tribunals resolving ambiguity later in the Act will reach for this section, so it should name the constitutional and treaty anchors expressly. Where the constitution contains a dedicated children's rights provision, cite it by article number.

Section 2. Definitions

In this Act: “young child” means a child from birth until the age of eight years; “early childhood service” means any service, whether public, private, community-based, faith-based or home-based, and whether or not operated for profit, that provides care, development or education to young children on a regular basis, other than care by a parent or guardian in the child's own home; “provider” means a person or entity operating an early childhood service; “the Authority” means the authority designated under section 10; “register” means the national register established under section 12.

Commentary. The definition of “early childhood service” is the single most consequential drafting choice in the Act, because it fixes the outer boundary of regulation. The formulation above deliberately captures informal and home-based provision, which is where most poor children sit, while excluding parental care. Drafters tempted to narrow the definition to registered or formal services should understand that they are writing most children out of the Act. The 0 to 8 definition follows General Comment No. 7; states whose education law fixes school entry at six may prefer to

apply Parts IV and V only up to school entry age, and the commentary to Part IV addresses that split.

Section 3. Guiding principles

- (1) In every action concerning a young child under this Act, the best interests of the child shall be primary consideration.
- (2) Every young child shall enjoy the rights and entitlements under this Act without discrimination of any kind, including on grounds of disability, refugee or migration status, or the marital status of the child's parents.
- (3) A young child capable of forming views has the right to express them in matters affecting the child, and those views shall be given due weight in accordance with the age and maturity of the child.

Commentary. These principles restate CRC Articles 3, 2 and 12 in enforceable domestic form. The express reference to refugee and migration status matters in practice; young children in displacement are routinely excluded from services by administrative requirements the principal Act never contemplated.

Part II - Entitlements of the young child

Part II converts policy aspiration into individual entitlement. It is the heart of the Act, and the part most often omitted; many existing laws regulate providers exhaustively while giving the child nothing they can claim.

Section 4. Entitlement to early childhood care and education

- (1) Every young child is entitled to early childhood care and education appropriate to the child's age and development.
- (2) Every child is entitled to not less than [one] year of free pre-primary education in a registered early childhood service before entering primary school.
- (3) The State shall progressively extend the entitlement in subsection (2), and the Minister shall report to Parliament every [two] years on the measures taken.

Commentary. Subsection (2) is the provision advocates will litigate, and finance ministries will resist, and it should be drafted with that contest in mind. A defined, dated, justiciable minimum, one free year, is worth more than an undated aspiration to universal provision. Subsection (3) imports the progressive realization logic of international law while keeping Parliament in the loop; the periodic report is what prevents “progressively” from meaning “never”.

Section 5. Protection from violence

- (1) Every young child has the right to be free from all forms of physical or psychological violence, injury, abuse, neglect and degrading treatment in every setting, including the home.
- (2) Corporal punishment of a young child is prohibited in every early childhood service and in every setting.
- (3) A provider shall establish child protection procedures in the form prescribed by regulation and shall report suspected abuse of a child to [the designated authority] within [24 hours].

Commentary. Full prohibition in all settings, the home included, is still a minority position in African legislation, and subsection (2) as drafted takes the settings question head on. Where full prohibition is politically unattainable in the current cycle, drafters should at minimum secure the prohibition within services, with the offence and licensing consequences in Parts IV and VII attached to it and leave the bracketed language as the marker for the next reform.

Section 6. Identity and access

- (1) The birth of every child shall be registered in accordance with [the civil registration law], and registration shall be free of charge.
- (2) No early childhood service, health facility or public authority shall deny a young child access to a service under this Act on the grounds that the child's birth is unregistered or that documentation is lacking but shall provide the service and refer the child for registration.

Commentary. Subsection (2) is the provision that changes lives. Documentation requirements have quietly become a mechanism of exclusion across the region, striking hardest at refugee, displaced and rural children. The drafting reverses the burden: lack of papers triggers a referral duty, never a refusal.

Part III - Institutional arrangements

Section 10. The responsible Authority

- (1) The [Minister responsible for education] is responsible for the administration of this Act.
- (2) There is established within the Ministry an Early Childhood Authority responsible for registration, standard-setting, inspection, enforcement, workforce recognition and the register, with the functions and powers set out in Parts IV, V and VII.
- (3) The Authority shall exercise its registration and enforcement functions independently, in accordance with this Act and published criteria, and no person shall direct the Authority in respect of a particular provider.

Commentary. Two models compete here: a regulatory unit inside the ministry, as drafted, or a statutory agency outside it. The unit is cheaper and integrates with sector planning; the agency resists capture and survives ministerial turnover. The non-direction clause in subsection (3) imports the agency's core virtue into the cheaper model, and drafters should defend it in exactly those terms. Whichever ministry leads, subsection (1) forces the fragmentation question into the open and answers it in law rather than in a memorandum.

Section 11. Coordination and devolved functions

- (1) A National Early Childhood Coordination Committee is established comprising the ministries responsible for education, health, gender and social development, local government and finance, and representatives of providers, parents and civil society, to coordinate policy and monitor implementation of this Act.
- (2) A local government shall, within its area: (a) receive and process applications for registration; (b) conduct inspections under the direction of the Authority; and (c) maintain the local record of the register.
- (3) The national Authority is responsible for standards, for quality assurance of the exercise of devolved functions, and for the register.

Commentary. Subsection (2) reflects how inspection reaches a village: through local government officers, not a national inspectorate. Subsection (3) prevents devolution from dissolving the system into as many regimes as there are districts. In federal and devolved constitutions, this section must be reconciled with the schedule of functions and may need to take the form of a framework provision that county or state law completes.

Part IV - Registration and regulation of early childhood services

Section 12. Duty to register and the national register

- (1) No person shall operate an early childhood service unless the service is registered under this Act.
- (2) The Authority shall maintain a national register of early childhood services, which shall be public, searchable and current, and shall record for each service its registration status and category, the outcome of its most recent inspection, and any enforcement action in force.
- (3) Operating an unregistered early childhood service after the expiry of the transitional period in section 30 is an offence.

Section 13. Graduated registration

- (1) The Authority shall grant provisional registration to an applicant that meets the essential safety criteria prescribed by regulation, within [30 days] of application.
- (2) A provisionally registered service shall attain full registration within [three years], and the Authority shall support the service toward compliance during that period.
- (3) Registration shall be valid for [five years] and renewable, and fees shall be prescribed by regulation and shall not exceed an amount that the Minister is satisfied with the average community-based provider can afford.

Section 14. Standards, inspection and enforcement

- (1) The Minister shall, by regulation, prescribe minimum standards for early childhood services, which shall distinguish essential safety requirements applicable to every service from graduated quality standards applicable by registration category.
- (2) The Authority shall inspect every registered service against a published instrument, at a frequency determined by risk, and shall leave a written record of every inspection with the provider.
- (3) Where a service fails to meet a standard, the Authority may, in ascending order and subject to section 25: issue a written improvement notice; impose conditions on registration; suspend registration; or cancel registration and may close a service summarily only where there is an imminent and serious risk to children.
- (4) Before suspending or cancelling registration, the Authority shall consider the arrangements available for the continued care of the children enrolled.

Commentary. Part IV compresses the full regulatory architecture into three sections by pushing the operational detail to regulation, which is where it belongs. The drafting choices embedded here are deliberate: the floor-and-ladder distinction in section 14(1), the graduated entry route in section 13, which is what brings the informal sector inside the law, the affordability constraint on fees, which makes exclusion-by-fee unlawful rather than merely unwise, and the duty in section 14(4) to ask where the children go before closing a centre. Section 12(3) creates the offence, but section 30's

transitional period suspends it, so that criminalization begins only after providers have had a genuine opportunity to register. Drafters who take the amendment route must move sections 12 to 14 together with section 25 (appeals); enforcement powers without an appeal route fail on first contact with judicial review.

Part V - The early childhood workforce

Section 17. Qualifications, vetting and ratios

(1) The Minister shall by regulation prescribe minimum qualifications for defined roles in early childhood services and shall provide pathways by which experience and non-formal training may be recognized toward those qualifications.

(2) A provider shall not permit a person to have regular access to young children unless that person has been vetted in the manner prescribed, including verification against [the criminal records system] and any register of persons found unsuitable to work with children.

(3) The Minister shall by regulation prescribe maximum ratios of young children to adults by age band, and shall, in doing so, have regard to the cost of compliance for providers and publish a schedule for the progressive improvement of the ratios.

Commentary. *Subsection (1)'s recognition pathway is what separates professionalization from a purge; the existing workforce is experienced and largely uncertificated, and a qualifications rule without an equivalence route simply renders it unlawful. Subsection (3) writes honesty into ratio-setting: ratios the sector can meet now, with a dated path to better ones, enacted as a duty on the Minister so the path cannot quietly lapse.*

Part VI - Financing

Section 20. Financing of early childhood services

(1) There shall be appropriated annually, under a distinct vote or programme, funds for the implementation of this Act, including the entitlement under section 4(2), the regulatory functions of the Authority, and support to providers under section 13(2).

(2) The Minister responsible for finance shall report annually to Parliament the total public expenditure on young children under this Act, in a form that permits comparison across years.

(3) The Minister may, by regulation, establish a grant scheme for registered providers, and registration under this Act shall be a condition of any public grant, subsidy or capitation payment to an early childhood service.

Commentary. *A statute cannot appropriate money, and drafters should distrust any model law that pretends otherwise; what it can do is create the structural conditions under which financing becomes visible and contestable. The distinct vote in subsection (1) makes the allocation findable, the report in subsection (2) makes it trackable by Parliament and civil society, and subsection (3) converts registration from a burden into the gateway to public money, which does more for coverage than any enforcement campaign. Where the political moment allows, drafters may add a minimum percentage allocation; where it does not, subsections (1) and (2) are the provisions to hold.*

Part VII - Information, accountability and redress

Section 24. Complaints

(1) Any person, including a parent, guardian, member of staff or child, may complain to the Authority, free of charge, concerning early childhood service or the exercise of functions under this Act.

(2) The Authority shall acknowledge a complaint within [7 days], investigate, and communicate a reasoned decision within [60 days], and shall protect a complainant or staff member from victimization.

(3) Complaints received, and their outcomes, shall inform the risk assessment under section 14(2) and shall be reported in aggregate in the Authority's annual report.

Section 25. Appeals and enforcement of entitlements

(1) A provider aggrieved by a decision of the Authority under Part IV may appeal to [the tribunal or court designated], which may confirm, vary or set aside the decision.

(2) A young child, or a parent, guardian or organization acting in the interest of a young child or of young children generally, may apply to [the designated court] for the enforcement of an entitlement under Part II, and no application shall be dismissed for want of standing on the part of the child.

(3) The [national human rights institution] shall monitor the implementation of this Act and may receive complaints, conduct inquiries and refer matters under subsection (2).

***Commentary.** Section 25(2) is the framework's answer to the structural problem that young children cannot litigate: it opens standing to parents, guardians and public-interest organizations expressly, including for systemic claims on behalf of young children generally. Paired with the entitlements in Part II, it converts the Act from a regulatory statute into a rights statute. The bracketed forum choice matters; an accessible tribunal with simple procedure will be used, and a superior court with formal pleadings will not, except by the well-resourced.*

Part VIII - General provisions

Section 29. Regulations and review

(1) The Minister may make regulations for the better carrying into effect of this Act, and shall, before making regulations under sections 14, 17 and 20, publish a draft and consider representations, including from providers and parents.

(2) The Minister shall cause this Act and the regulations made under it to be reviewed within [five years] of commencement and every [five years] thereafter and shall lay the review report before Parliament.

Section 30. Transition

(1) A person operating an early childhood service at the commencement of this Act may continue to operate for [24 months] and shall apply for registration within [12 months] of commencement.

(2) The offence in section 12(3) does not apply during the period in subsection (1).

***Commentary.** The transition clause determines whether the Act's first years are spent registering the sector or criminalizing it. The periods should be set against a realistic estimate of administrative capacity: a transitional window shorter than the Authority's processing capacity manufactures illegality. The mandatory review in section 29(2) is the mechanism through which the bracketed numbers throughout this framework, ratios, fees, the free-year entitlement, get raised over time by evidence rather than by crisis.*

Annex: Drafter's adaptation checklist

Before a Bill goes to drafting instructions, the following questions should have answers.

Area	Question to resolve
Constitutional fit	Which constitutional provisions anchor the Act, and does the allocation of functions respect the devolution schedule?
Legislative route	Stand-alone Act, or amendments to education and children's legislation? If amendments, do sections 12 to 14 and 25 travel together?
Scope	Does the definition of early childhood service capture informal and home-based provision, and where does the Act hand over to school law?
Duty-bearers	Is every duty in the Bill assigned to a named Minister, Authority or provider?
Entitlement	Is the free pre-primary entitlement defined, dated and justiciable, with the progressive-extension report retained?
Institutional home	Ministry unit or statutory agency, and is the non-direction clause intact either way?
Numbers	Have the bracketed periods, fees and ratios been set against costed administrative capacity and provider revenue?
Remedies	Is there an accessible appeal forum for providers and an enforcement route with open standing for children's entitlements?
Financing visibility	Does the Bill create a distinct vote and an annual expenditure report to Parliament?
Transition	Is the transitional window long enough that the offence provision does not criminalize the existing sector?

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