CHAPTER 3

TOO LITTLE, TOO LATE? THE CRPD AS A STANDARD TO EVALUATE SOUTH AFRICAN LEGISLATION AND POLICIES FOR EARLY CHILDHOOD DEVELOPMENT

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Summary

In the light of growing recognition of the importance of early childhood development in South Africa and internationally, the CRPD provides important pointers regarding the rights of young children with disabilities. A critique of selected South African legislation and policies is provided through the lens of the CRPD, identifying key gaps and inconsistencies. The article concludes by making recommendations as to how the 'transformative potential' of the CRPD could be tapped with respect to advancing the rights of children with disabilities to early childhood development services.

1 Introduction

There has been growing awareness of the importance of early childhood development (ECD) on the well-being of young children and its far-reaching impact on later stages of their lifespan.[1] Inclusion of ECD as a priority in the National Development Plan of the South African government reflects the (political) importance being placed on services for children in the early years.[2] But given the on-going challenges with access and quality of services for young children with disabilities (as documented in a recent national situation analysis),[3] there is reason to seek instruments by which to evaluate current South African legislation and policy on ECD with respect to rights of children with disabilities. One such instrument is

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1 See for example UNESCO 'Rights from the start: Early childhood care and education' (2012) Global Campaign for Education Paris: UNESCO, WHO & UNICEF 'Early childhood development and disability: A discussion paper' (2012).

2 National Planning Commission National Development Plan: Vision for 2030 (2011).

3 Department of Social Development, Department of Women, Children and People with Disabilities & UNICEF 'Children with disabilities in South Africa: A situation analysis 2001-2011' (2012).

the Convention on the Rights of Persons with Disabilities (CRPD)[4] a human rights treaty ratified by the South African government in 2008.

The CRPD provides a valuable tool and standard for critique for several reasons. First, it is an international rights treaty specifically addressing disability, taking cognisance of the unique circumstances of adults and children with disabilities. Secondly, the rights-based approach on which it is based emphasises respect, support and celebration of diversity by creating conditions that allow meaningful participation by a wide range of people, including those with disabilities. Thirdly, each of the broad categories of rights contained in the CRPD can be related to elements of ECD: there are rights relating to protection against the abuse of power, rights intended to nurture the capacities of persons with disabilities towards participation as equals in society, and rights that empower them to take up opportunities emerging from a strategy of equality.[5] Finally, because the South African government is a state party to the CRPD, it is under an obligation to promote the realisation of human rights for all persons with disabilities in various ways, including 'legislative, administrative and other measures'. A critique made using the framework of the CRPD thus directly informs government obligations with respect to the rights of children with disabilities.

But even beyond its status as a human rights treaty, the CRPD has been acknowledged as being a developmental tool[6] insofar as it affirms the inherent dignity of every person, regardless of disability or difference, placing on society the obligation to support individual freedom and equality, including providing support to those who need it.[7] The CRPD thus provides 'a moral compass for change as well as legal benchmarks against which to measure that change'.[8] However, Quinn has observed that the extent to which the CRPD can contribute to such change depends on whether states acknowledge 'the contradiction between [our] universal human rights and [our] practice on disability,[9] and embrace its 'domestic institutional architecture for change'.[10]

This brings us to the focus of this paper – to evaluate current South African law and policy on ECD in light of the letter, spirit and emerging

4 UN General Assembly, Convention on the Rights of Persons with Disabilities: Resolution adopted by the General Assembly, 24 January 2007, A/RES/61/106.
5 G Quinn 'The United Nations Convention on the Rights of Persons with Disabilities: Toward a new international politics of disability' (2009) 15 *Texas Journal on Civil Liberties and Civil Rights* 33.
6 M Schulze *Understanding the UN Convention on the Rights of Persons with Disabilities: A handbook on the human rights of persons with disabilities* (2010).
7 AS Kanter 'The promise and challenge of the United Nations Convention on the Rights of Persons with Disabilities' (2006-2007) 34 *Syracuse Journal of International Law and Commerce* 287.
8 Quinn (n 5 above) 34.
9 Quinn (n 5 above) 39.
10 Quinn (n 5 above) 50.

interpretations of the CRPD. But before viewing ECD-related legislation and policies through the lens of the CRPD, it is necessary to delineate what these services encompass and establish their particular importance for children with disabilities.

2 Nature and scope of ECD services and their significance for children with disabilities

2.1 Nature and scope of ECD services

Early childhood has been defined by UNESCO as covering the period from birth to school-going age,[11] while other definitions also include the period of gestation.[12] In South Africa, it is recognised that children born into situations of poverty are more likely to be exposed to conditions that are adverse for development (such as nutritional deficiencies and preventable diseases), and services to support the development of young vulnerable children have been identified as an 'essential package' comprising five components.[13]

2.1.1 Nutrition

From the last months of gestation until the age of two, the child's brain is undergoing a period of accelerated growth, especially of the central nervous system. This process requires higher amounts of energy than any other stage in the child's lifespan, and therefore sufficient amounts of nutrients are required for optimal growth of the foetus and young child. Support for young children includes maternal education on the importance of breastfeeding as well as provision of vitamins, supplements (such as vitamin A and folate) and micronutrients to improve the nutritional status of mothers and young children,[14] particularly for children who fail to thrive, namely gain weight as expected.

2.1.2 Health services

Mothers and young children require health services during the periods of pregnancy, childbirth and early childhood. Services for pregnant women include antenatal and obstetric care which aims to ensure optimal health for both mother and newborn. Preventive health care for children under

11 UNESCO 'Strong foundations: Early childhood care and education' (2007).
12 UN General Assembly 'Status of the Convention on the Rights of the Child: Promotion and protection of the rights of children' (2010); WHO & UNICEF (n 1 above).
13 L Berry et al 'Getting the basics right: An essential package of services and support for ECD' in L Berry et al *South African child gauge* (2013).
14 See for example M Hendricks et al 'Promoting healthy growth: Strengthening nutritional support for mothers, infants and children' in Berry et al (n 13 above).

the age of five includes immunisations, while curative services address common childhood illnesses such as diarrhoea and pneumonia. During routine clinic visits children are also to be screened for developmental delays.

2.1.3 Social services

Social services are another component of the 'essential package' and include both social security and child protection services. Beginning with birth registration, children born to poor families may access social grants, intended to mitigate the effects of severe poverty by improving household food security, and reducing child malnutrition and its negative impact on the developing brain.[15] Those subject to child abuse and neglect need to be provided with a responsive child protection system in which investigations are conducted and concluded timeously and victims provided with the necessary support.

2.1.4 Caregiver support

Fourthly, affectionate and responsive care-giving is a key factor required for the well-being of children and for healthy brain development,[16] and it is during the period of early childhood that young children need to form strong emotional attachments to their parents and/or primary caregivers. Support for caregivers includes both information on parenting as well as psycho-social support. The latter is important as many caregivers living in situations of poverty carry a significant burden of care. Where a caregiver is suffering from depression or other psychological distress, his or her ability to provide a safe and nurturing environment is reduced, with research showing an association between caregiver depression and child malnutrition,[17] disturbed mother-infant interactions and poor parenting and safety practices.[18] Psycho-social support is thus important to promote the well-being of caregivers and reduce the risk of poor care-giving.

2.1.5 Opportunities for early learning

Finally, all young children need opportunities for early learning, which includes opportunities to develop physical, socio-emotional, communication and language and cognitive skills. Research indicates that the

15 JM Agüero et al 'The impact of unconditional cash transfers on nutrition: The South African Child Support Grant' (2010).

16 A Schore 'Effects of a secure attachment relationship on right brain development, affect regulation and infant mental health' (2001) 22 *Infant Mental Health Journal* 7.

17 MJ Rotheram-Borus et al 'Philani Plus (+): A Mentor Mother community health worker home visiting program to improve maternal and infants' outcomes' (2011) 12 *Prevention Science* 372.

18 T Field 'Postpartum depression effects on early interactions, parenting and safety practices: A review' (2010) 33 *Infant Behaviour and Development* 1.

'architecture' of the developing brain and the process of skill formation are shaped by the influences of both genetics and experience.[19] Thus the environmental conditions to which young children are exposed – including the quality of relationships and the language environment – are instrumental in 'sculpting' the developing brain.[20] For children growing up in poor families, access to quality early learning opportunities prior to formal schooling has been shown to enhance their capacity to benefit from schooling, reduce their rate of dropout and increase the chances that they will be employed as adults.[21] Support for early learning of young children may be provided through formal, centre-based services, as well as through outreach programmes such as home visiting, community playgroups and toy libraries. Outreach programmes are based on the premise that supporting parents with additional knowledge and skills about parenting will strengthen their ability to provide a nurturing and stimulating environment for their child.[22]

2.2 Significance of ECD for children with disabilities

ECD services are significant for all young children, because the impact of interventions at this level by and large cannot be replicated later in life. But particularly for children with disabilities, they provide the opportunity for early intervention. Early intervention services are based on the premise that it is possible to improve outcomes such as cognitive, emotional and social skills of young children, and thus reduce or eliminate the impact of risk factors. For children with disabilities, early intervention has the potential to prevent or minimise further delays or secondary complications.[23] They comprise a range of strategies to promote children's personal development and resilience, strengthen families and facilitate social inclusion of children with disabilities.[24]

19 P Adamson 'The child care transition: A league table of early childhood education and care in economically advanced countries' (2008).

20 A Siddiqi et al 'Total environment assessment model for early child development' Evidence report prepared for the WHO's Commission on the Social Determinants of Health (June 2007) 3.

21 M Nores & SW Barnett 'Benefits of early childhood education interventions across the world: (Under) investing in the very young' (2010) 29 *Economics of Education Review* 271.

22 S Walker et al 'Inequality in early childhood: Risk and protective factors for early child development' (2011) 378 *The Lancet* 1325.

23 MJ Guralnick & G Albertini 'Early intervention in an international perspective' (2006) 3 *Journal of Policy and Practice in Intellectual Disabilities* 1. For example, research has shown that the decline in intellectual development that occurs after the first 12 to 18 months for children with Down Syndrome can be prevented almost entirely through early intervention. MJ Guralnick 'Effectiveness of early intervention for vulnerable children: A developmental perspective' (1998) 102 *American Journal on Mental Retardation* 319.

24 MB Bruder 'Early childhood intervention: A promise to children and families for their future' (2010) 76 *Exceptional Children* 339. EE Werner 'Protective factors and individual resilience' in J Shonkoff & S Meisels (eds) *Handbook of early childhood intervention* 2 ed (2000) 115. WHO & UNICEF (n 1 above).

> Model early childhood programs that deliver carefully designed interventions with well-defined objectives and that include well-designed evaluations have been shown to influence the developmental trajectories of children whose life course is threatened by socioeconomic disadvantage, family disruption, and diagnosed disabilities. Programs that combined child-focused educational activities with explicit attention to parent-child patterns and relationship building appear to have the greatest impacts.[25]

On an economic level, early intervention is a sound investment, with research showing that appropriate interventions for young, highly vulnerable children produce better outcomes and cost less than later remediation.[26] Thus investment in early childhood has been described as a situation of 'pay now or pay more later'.[27]

ECD services also provide an opportunity for social inclusion, with pre-school programmes for young children referred to as 'fertile ground for high quality inclusive education'.[28] Indeed, there is a unique opportunity for inclusion at this level because young children mature at varying rates, and differences in skills are expected and accommodated within the curriculum. In addition, early childhood teaching practices encourage child-initiated learning and active engagement of children with the environment and with each other.

> Early childhood inclusion embodies the values, policies and practices that support the right of every infant and young child and his or her family, regardless of ability, to participate in a broad range of activities and contexts as full members of families, communities and society. The desired results of inclusive experiences for children with and without disabilities include a sense of belonging and membership, positive social relationships and friendships, and development and learning to reach their full potential.[29]

Conversely, failure to adopt inclusive practices within early childhood services is likely to have adverse consequences on development of children with disabilities 'including limiting the full range of stimulation that children can experience, restricting social and educational learning opportunities and perhaps creating low expectations for achievement'.[30]

25 J Shonkoff & D Philips (eds) *From neurons to neighbourhoods: The science of early childhood development* (2000) 11.

26 JJ Heckman 'The economics of inequality: The value of early childhood education' (Spring 2011) *American Educator* 31.

27 J Lally 'School readiness begins in infancy: Social interactions during the first two years of life provide the foundation for learning' (2010) 92 *Phi Delta Kappan* 17.

28 CC Mogharreban & DA Bruns 'Moving to inclusive pre-kindergarten classrooms: Lessons from the field' (2009) 36 *Early Childhood Educational Journal* 407.

29 DEC/NAEYC 'Early childhood inclusion: A joint position statement of the Division for Early Childhood (DEC) and the National Association for the Education of Young Children (NAEYC)' (2009).

30 M Guralnick 'A developmental systems model for early intervention' (2001) 14 *Infants and Young Children* 1.

Finally, ECD has the potential to reduce inequalities because (regardless of underlying factors) interventions can compensate for vulnerability and disadvantage.[31] It is thus not inevitable that children with disabilities will be trapped in an inter-generational cycle of poverty and exclusion. The Commission on the Social Determinants of Health found comprehensive ECD services to influence subsequent life chances and health of children, reducing the risk of obesity, malnutrition, mental health problems, heart disease and criminality.[32] Referring to ECD as 'a powerful equalizer' this report concluded that investment in young children provides one of the greatest opportunities to reduce health inequalities within a generation.

3 Evaluative framework provided by the CRPD

The CRPD provides an evaluative framework by which to assess state action both by virtue of the general obligations which it places on the state, as well as through specific substantive articles.

3.1 General obligations of the state under the CRPD

3.1.1 Legislative, administrative and other measures

Under the CRPD, the state must adopt legislation where necessary, repeal inconsistent legislation, and mainstream disability into policy formulation and programming towards realising the rights of persons with disabilities.[33] This implies that all policies and programmes relating to ECD need to take cognisance of children with disabilities and how their rights can be ensured and promoted.

The CRPD sets out the general obligations of the state, which are closely linked to its general principles.[34] Respect for dignity, non-discrimination, inclusion, participation and accessibility are to be the basis for legislative, administrative and other measures of implementation.

Equality and non-discrimination

The principle of equality and non-discrimination in the CRPD reflects 'substantive equality' '[which] does not mean treating everyone in exactly

31 UNESCO (n 11 above). UNICEF 'Inequities in early childhood development – What the data say: Evidence from the Multiple Indicator Cluster Surveys' (2012).
32 Commission on the Social Determinants of Health 'Closing the gap in a generation: Health equity through action on the social determinants of health' (2008).
33 This is reflected in the Preamble of the CRPD, para (g): 'emphasising the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development'.
34 Arts 4 and 3 respectively.

the same way. Indeed, accommodating people's differences is the essence of substantive equality, and ... key to eliminating discrimination against people with disabilities'.[35] This stance is based on the Standard Rules for the Equalisation of Opportunities for Persons with Disabilities which refer to the principle of equal rights as implying that

> … the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation.[36]

The CRPD requires states to prohibit all forms of discrimination against persons with disabilities 'by any person, organisation or public enterprise'. Denial of reasonable accommodation is viewed as a form of disability discrimination and thus the CRPD requires states to prohibit such denials and to do so immediately, because it is not a right to which the principle of progressive realisation applies.[37] And as the focus of reasonable accommodation is on the individual, interventions to remove barriers must be uniquely tailored to their situation. These may necessitate changes to practices, the physical environment or the provision of additional equipment or support. The obligation to provide reasonable accommodation is subject to 'disproportionate or undue burden', thus requiring consideration of the impact of making the relevant changes on the entity concerned.

Inclusion and participation

The CRPD adopts a two-pronged approach towards ensuring that children with disabilities are included and able to participate in society. First, there is a need to remove general societal barriers, enabling them to have access to mainstream services and facilities.[38] Indeed, the right to access is enshrined in article 9 and, as a general principle, it applies to all areas of implementation.[39] This means that (under article 19(c)) states must ensure that 'community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs'. States are required to take steps to ensure that people with disabilities are able to access the physical environment, which includes 'buildings, roads, transportation and other indoor and outdoor facilities,

35 Statement by Ambassador Normandin to the General Assembly on the Convention on the Rights of Persons with Disabilities, as deputy permanent representative of Canada to the United Nations, at the 61st Session of the United Nations General Assembly (2006).
36 Standard Rules (1994) para 25.
37 A Lawson 'The United Nations Convention on the Rights of Persons with Disabilities: New era or false dawn?' (2006-2007) 34 *Syracuse Journal of International Law & Commerce* 563.
38 As above.
39 Standard Rules (n 36 above). Rule 5 relates to accessibility.

including schools, housing, medical facilities …'[40] In working towards this, it is necessary to develop and implement minimum standards for accessibility of public facilities.

The CRPD also provides for disability-focused services that facilitate participation and inclusion. For example, article 26 defines habilitation and rehabilitation as a means of enabling people with disabilities to 'attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life'. These are not limited to medical and health-related services, but are to be provided in the areas of health, education, social services and life skills.

The CRPD also makes it clear that realising the rights of persons with disabilities is not limited to the provision of disability-related services, but includes the adoption of measures to change attitudes and practices that stigmatise and marginalise people with disabilities. The state is to take action to eliminate discriminatory practices against persons with disabilities on the part of any person, organisation or private enterprise.[41] There needs to be mechanisms in place to guard against discrimination on the basis of disability within services targeting young children, including those run by the private sector.

It is also necessary to put in place legislation and policies that remove barriers to the exercising of rights, and provide programmes, awareness and social support to change the way society operates, in order to give adults and children with disabilities opportunities to participate fully.[42] States have the responsibility to take positive steps to promote the development and availability of universal design and assistive technology. Principles of universal design should be incorporated in ECD services, such that they are able to cater for the diversity of children. Indeed, the early childhood sector lends itself to inclusive practices based on the principles of universal design. The state also has an obligation to promote research and development of assistive technology, giving priority to technology that is affordable. This includes assistive technology and simple adaptations that could be made to support learning and development of young children with disabilities.

40 Art 9 (1)(a) of the CRPD.

41 Schulze sees this as including the adoption of measures to ensure that privatisation of the health sector does not undermine the availability, accessibility, acceptability and quality of health facilities, goods and services. Schulze (n 6 above).

42 United Nations Office of the High Commissioner for Human Rights 'Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for human rights monitors' (2010).

3.1.2 Progressive realisation to the maximum of available resources

A major challenge facing adults and children with disability is the fact that enjoyment of sectoral rights is often dependent upon resource allocations. Indeed, changing the social, political and legal environments so that people with disabilities will get more resources has been a major objective of the disability rights movement.[43] As with other human rights instruments, the CRPD sets out the principle of progressive realisation for economic, social and cultural rights to the maximum of the states available resources.[44]

> The notion of progressive realisation genuflects to an inescapable reality that resources are finite and some change take time. Yet this nod towards reality in the Convention does not rob the concept of some core meaning. There needs to be some positive dynamic in place – it must be measurable and it should lead to positive results within a reasonable time frame.[45]

Even in a situation of economic recession, progressive realisation must maintain a minimum level of provision to ensure human dignity and autonomy, and avoid the tendency to cut back first against the weakest.[46] States must therefore take positive action to reduce structural disadvantages, giving 'appropriate preferential treatment' to adults and children with disabilities, towards their full participation and equality.[47]

3.1.3 Monitoring implementation

The CRPD[48] describes the monitoring and reporting process required of states parties. Schulze notes that the challenge associated with respect to monitoring the rights of persons with disabilities is 'who gets to define the factors or statistical indicators for collecting data', adding that the risk of inaccuracy is high, depending on whether the definition of disability is wide or narrow. Accuracy is also compromised by societal attitudes which may make parents reluctant to identify their child as being disabled.[49]

States must collect statistics and data collection in order to formulate and implement policies which give effect to the CRPD. Such information is to be disaggregated as appropriate and used to assess progress in implementation, as well as identify and address barriers faced by persons with disabilities in the exercising of their rights. These statistics must be

43 B Abramson 'Article 2: The right of non-discrimination' in A Alen et al (eds) *A commentary on the United Nations Convention on the Rights of the Child* (2008).
44 Art 4(2).
45 Quinn (n 5 above) 44.
46 Quinn (n 5 above).
47 UN Committee on Economic, Social and Cultural Rights 'General Comment No 5: Persons with disabilities' (1994) E/1995/22 para 9.
48 Arts 31-36.
49 Schulze (n 6 above) 172.

disseminated and accessible to persons with disabilities and their representative organisations.

3.1.4 Consultation with persons with disabilities and their representative organisations

The CRPD emphasises the need to recognise the contributions that disabled adults and children have made (and will make) to society, and affirms that promotion of their rights towards full participation will lead not only to a sense of belonging but also to development of society and the eradication of poverty.[50] There is an obligation on states to actively consult persons with disabilities and their representative organisations, and to establish mechanisms involving them in monitoring compliance with the provisions of the CRPD.[51] This involvement is not seen as an optional extra, but as a 'key tool to achieve conformity with the Convention'.[52] This obligation is supplemented by the duty (imposed on states by Article 8) to raise awareness of the contribution and potential of disabled people, counter negative stereotypes and promote positive images of disability.[53] In the context of young children with disabilities, engaging with parents of children with disabilities and their representative organisations is critical for the development of effective policies and programmes.

3.1.5 International co-operation

The CRPD also provides for international co-operation to support implementation, through capacity-building and exchange and sharing of information, experiences, training programmes and best practices.[54] International organisations such as Inclusion International, UNESCO and Save the Children have been very active in promoting inclusive education, and tools and resources have been developed around the Sustainable Development Goals and the Education for All initiative. There is a need to extend these into the arena of ECD for young children with disabilities. The documentation and analysis of examples of good practice would assist states to identify practices that could be replicated and scaled up, as well as

50 CRPD Preamble (m).
51 Article 4(3) obliges states to 'closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations' in the implementation of the CRPD and other policies impacting on adults and children with disabilities. Article 33(3) provides for persons with disabilities to be involved in monitoring implementation.
52 Schulze (n 6 above). See also Committee on the Rights of the Child 'General Comment No 12: The right of the child to be heard' (2009) CRC/C/CG/12.
53 Lawson (n 37 above).
54 Art 32(1)(b) of the CRPD.

providing a framework to guide planning in the most effective use of available resources.[55]

3.2 Specific substantive rights relating to ECD services

In addition to the general obligations placed on states under the CRPD, there are a number of specific substantive rights which provide a benchmark against which to assess ECD interventions provided by the state. These include the article relating to children and articles that correspond to elements of the 'essential package' of ECD services.

3.2.1 Obligations of the state to children with disabilities

The precursor to the article on children (Art 7) is found in the Preamble (r) of the CRPD which provides that 'children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by states parties to the Convention on the Rights of the Child' (CRC). Indeed, the text of this article contains phrases almost identical to those of the CRC.[56] Because of the close alignment between these treaties, tools developed for interpretation of the CRC[57] give valuable insights into interpreting the rights of children with disabilities under the CRPD.

3.2.2 Obligations of the state with respect to ECD-related services

There are also provisions of the CRPD which correspond to components of the 'essential package' of services for young children.

Health

Under Article 25, adults and children with disabilities have the right to 'the enjoyment of the highest attainable standard of health without discrimination on the basis of disability'. Children with disabilities are to be provided with access to health services which are available to all children, such as immunisation and growth monitoring. Further, health services are to include 'early identification and intervention … and services designed to minimize and prevent further disabilities' (Art 25(b)).

55 Examples of good practice are documented in: Save the Children 'Addressing exclusion and invisibility in early childhood years: Report on promising practices in working with young children in South Africa' (2010).

56 The provision in the CRPD (art 7(2)) is almost identical to that in the CRC (art 3(3)).

57 For example UN Committee on the Rights of the Child 'General Comment No 7: Implementing child rights in early childhood' (2005) CRC/C/GC/7; and UN Committee on the Rights of the Child 'General Comment No 9: The rights of children with disabilities' (2007) CRC/C/GC/9.

> For children with disabilities, early intervention involving stimulation and interaction with parents soon after birth is essential to development… Early identification can also be promoted through the preparation of all family members, especially parents, to monitor their child's developmental progress through the use of simple instruments, strengthened with a basic understanding of children's capacities at different stages.[58]

Under the CRPD, there are a number of features required of health services.[59] Services need to be available (of sufficient quantity within the state party) and include measures that address underlying determinants of health.[60] They also need to be accessible to everyone without discrimination, acceptable, scientifically and medically appropriate and of good quality.

With regard to disability-focused services that facilitate participation and inclusion, the CRPD places an obligation on states to 'organise, strengthen and extend' habilitation and rehabilitation services, which must begin at the earliest possible stage and support persons with disabilities to be independent and to participate in all aspects of society. Indeed, without the benefit of such interventions, it is likely that children with disabilities would not be able to realise the rights to accessibility and education.[61] Habilitation and rehabilitation services should be offered at no cost, where possible, within a service that is efficient and with minimal delays.[62] The state is responsible for ensuring that services are available in local communities, including rural areas.[63]

Adequate standard of living and social protection

The CRPD provides for an adequate standard of living and social protection, which includes adequate food, clothing and housing and the continuous improvement of living conditions. Under article 28, state parties must acknowledge the link between disability and poverty and respond by ensuring access to social protection and poverty reduction programmes. Particular mention is made of families living in conditions of poverty, obliging states parties to assist with 'disability-related expenses'

58 UNICEF 'Promoting the rights of children with disabilities' (2007) 13 *Innocenti Digest* 22.

59 In interpreting the right to health in the CRPD, Schulze cites the UN CESCR'General Comment No 14: The right to the highest attainable standard of health' (Art 12 of the Covenant) (2000) E/C.12/2000/4 para 11; Schulze (n 6 above).

60 This includes safe and potable drinking water, adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel and essential drugs.

61 UNHCHR 'From exclusion to equality: Realizing the rights of persons with disabilities: A handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol' (2007) UN Doc HR/PUB/07/6.

62 General Comment No 9 (n 57 above).

63 This has been understood as referring to community-based rehabilitation, as defined in the joint position paper issued by ILO, WHO and UNESCO. WHO 'Towards community-based inclusive development' (2010).

which include training, counselling, financial assistance and respite care.[64] States are required to realise this right through a number of different measures including access to clean water, appropriate and affordable services and housing. The CRPD[65] also places on states the obligation to prevent exploitation, violence and abuse by providing age-appropriate assistance and support as well as protection services that are age- and disability sensitive. States must put in place child-focused legislation and policies to ensure that perpetrators of exploitation, violence and abuse of children with disabilities are identified, investigated and where found guilty, prosecuted.

Caregiver support

The CRPD recognises that 'the family is the natural and fundamental group unit of society, and is entitled to protection by society and the state and that persons with disabilities and their family members should receive the necessary protection and assistance to enable family members to contribute to the full and equal enjoyment of rights …' (Preamble(x)). It provides for equal rights for children with disabilities with respect to family life.[66]

Article 16 requires that service providers acknowledge the processes by which children with disabilities mature, and offer guidance and support as necessary. Parents and other caregivers need particular support to ensure that children with disabilities are not over-protected or treated as babies, thus preventing them from acquiring the necessary competencies for increasing autonomy. In order to reduce the risk of the abandonment or hiding of disabled children, states have an obligation to 'provide early and comprehensive information, services and support to children with disabilities and their families'.[67] In line with the twin-track approach, community services that are provided for the general population are to be made available for children with disabilities, and disability-specific support services are to be provided to facilitate the inclusion of disabled adults and children and prevent their isolation.[68]

Education

Educational provisions in the CRPD are based on the view that inclusion is the most effective means of combating discriminatory attitudes and achieving education for all.[69] It places on the state an obligation to develop

64 Art 28(2)(c).
65 CRPD, art 16: Freedom from exploitation, violence and abuse.
66 CRPD, art 23: Respect for home and the family.
67 CRPD, art 23(3).
68 CRPD, art 19(1)(b).
69 Schulze (n 6 above).

an inclusive education system, specifically education that is provided for all children within the regular education system.[70] UNESCO's Guidelines for Inclusion stress that the earlier this is done the better.[71]

Article 24(1) focuses on the *purpose* of education, which is to be directed towards 'the full development of human potential and sense of dignity and self-worth …' as well as development of individual 'personality, talents and creativity' and 'mental and physical abilities to the fullest potential'. Although it does not make reference to pre-school education, the CRDP provides for an inclusive education system 'at all levels' with the necessary support within the general education system. Under the CRPD, the obligation of the state is to provide non-discriminatory access, reasonable accommodation and individualised support such that each child is able to develop to their full potential.

The premise that inclusive education nurtures a society in which children with disabilities are accepted and embraced and not stereotyped is reflected in article 8(2)(b) on awareness-raising, in which the state is to undertake measures to foster 'at all levels of the education system, including all children from an early age, an attitude of respect for the rights of children with disabilities'.

4 Evaluation of selected ECD-related legislation and policy using the CRPD

As indicated above, the CRPD provides a useful standard with which to review legislation and policies providing for social services, social security, health and nutrition and education for young children with disabilities.

4.1 Social services

As the primary legal framework in South Africa that gives effect to children's rights to social services, the Children's Act 38 of 2005 prohibits discrimination on the basis of disability, and adopts the social model of disability in addressing factors which limit the ability of children with disabilities to participate in different spheres of life.[72] Indeed, extensive disability-related provisions have led to recognition of the Act as placing children with disabilities on 'centre stage'.[73] Section 11 (entitled 'children

70 This is the definition contained in the Salamanca Declaration, adopted at the World Conference on Special Needs Education. The Declaration calls on states to ensure that children with 'special educational needs' must have access to regular schooling.
71 UNESCO 'Guidelines for Inclusion: Ensuring access to education for all' (2005).
72 H Combrinck *The Children's Act and disability* (2011).
73 L Jamieson & P Proudlock 'From sidelines to centre stage: The inclusion of children with disabilities in the Children's Act' Children's Institute Case Study 4, University of Cape Town (October 2009).

with disability or chronic illness') has the most direct provisions of the Act in relation to disability, and as one of the general principles, is to guide all proceedings, actions and decisions involving children with disabilities. It has been argued that this section contains all the elements of ECD for children with disabilities viz being treated with dignity, enabling their participation in community life and having support for primary carergivers.[74]

ECD has been defined in the Children's Act as 'the process of emotional, cognitive, sensory, spiritual, moral, physical, social and communication development of the child from birth to school-going age'.[75] Although this definition is very broad, provisions of the Act relate almost exclusively to early learning and focus on services provided in centres. Little consideration is given as to what is needed at the level of the home or community to support parenting and the nutrition, learning and protection of the young child. The bias of the Act towards centre-based services is of particular concern with respect to children with disabilities, because parent education programmes, toy libraries and other similar outreach programmes provide important learning opportunities and parental support for children who are not able to access centres.

Under the Children's Act, government has the responsibility to develop a national strategy towards providing a properly resourced, co-ordinated and managed ECD system, with an appropriate spread of services throughout the province and country, giving 'due consideration' to children with disabilities.[76] This is an important provision for parents and organisations concerned with service delivery, especially organisations seeking funding and registration. Further, the information included in the records, strategies and profile required by the Act (in section 92) may be used to monitor government's fulfilment of its obligations under the Act.[77] Such monitoring is important to ensure timeous implementation, with clear time frames and budgets for service delivery. However, while the Act targets particular groups, its strategy omits civil society structures, such as parent organisations and disability-related NGOs. These groups have an important role to play and the relationship between the state and such organisations is of critical importance. Promoting the participation of such groups is one of the obligations of government under the CRPD if programmes are to be fully inclusive of children with disabilities.[78]

74 S Philpott 'Realising the right of children with disabilities to early childhood development in South Africa' unpublished PhD thesis, University of the Western Cape, 2013.
75 Sec 92(1).
76 Sec 92(1).
77 C du Toit & B Mbambo 'Early childhood development' in CJ Davel & A Skelton (eds) *Commentary on the Children's Act* (2010) 8. Sec 99(3) of the Children's Act.
78 Art 4(3) of the CRPD reflects the state's obligation to 'closely consult with' and 'actively involve' persons with disabilities, including children, through their representative organisations.

In funding ECD services, the Act states that priority must be given to poor communities and making services accessible to children with disabilities.[79] Although it theoretically enables the MEC for Social Development to prioritise funding of ECD on this basis, the Act gives the MEC the discretionary power to provide and fund ECD services.[80] Further, this limited directive to fund refers only to early learning services, not ECD more broadly. It thus reflects the limitation of the Children's Act in defining ECD widely, but only regulating early learning facilities with no regulation of other ECD services.[81] In addition, there is as yet no national strategy in place to promote their access to ECD services, a problem which is exacerbated by the funding model being used by the Department of Social Development which is not responsive to the needs of children with disabilities. And because information systems do not disaggregate data on children with disabilities it is not possible to measure targeted spending.[82] Lack of adequate data collection systems for monitoring and planning services for children with disabilities constitutes a violation of the States obligations under the CRPD.[83]

4.2 Social security

The Social Assistance Act 13 of 2004 gives effect to the constitutional right of access to social security for people who are unable to support themselves and their dependents, and to children's right to social services.[84] Recognising the extra care required and costs incurred as a result of disability, the Act provides for social assistance for children with disabilities in the form of the Care Dependency Grant (CDG). This is a non-contributory monthly cash transfer, payable to a caregiver of a child who 'requires and receives permanent care or support services due to his or her physical or mental disability'.[85] To qualify for the grant, the child is required to undergo a medical assessment and the parent must pass a means test. As of May 2014, the value of the CDG is R1 350 per month. Research has shown that the CDG contributes to improving the standard of living of children with disabilities by enabling caregivers to purchase better quality food, pay costs of transport to health facilities, purchase medicines and improve housing.[86] Although (in the absence of accurate disability prevalence rates) it is not possible to calculate the take-up rate, it

79 Sec 93(4).
80 Sec 93(1).
81 L Richter et al 'Diagnostic review of the ECD sector' Report commissioned by the Department of Performance Monitoring and Evaluation and the Inter-Departmental Steering Committee on Early Childhood Development (2012).
82 Situation analysis (n 3 above).
83 Art 31(2).
84 Secs 27(1)(c) and 28(1)(c) of the Constitution of the Republic of South Africa, 1996.
85 Sec 7(a) of the Social Assistance Act.
86 C de Koker et al *A profile of social security beneficiaries in South Africa (*2006).

is estimated that the CDG is reaching only a quarter of children with severe disabilities.[87]

Using the CRPD as a standard, two particular areas of concern emerge in relation to the Social Assistance Act and children with disabilities. The first is that the assessment process for the CDG is based primarily on the medical model of disability, determining the severity of the child's health condition or impairment by means of an assessment by a medical practitioner. There is failure to take cognisance of factors other than the impairment in the determination of disability. This leads directly to the second concern viz the tendency to view social assistance only as a means of improving the standard of living of children with disabilities. Given the high levels of poverty in the country, this is laudable, but it does not go far enough. Instead, in line with the CRPD, access to social security should be promoted in tandem with strategies to equalise opportunities and create environments in which children with disabilities can thrive. In summary, social security should be viewed as one element of the 'essential package' of services that enables children with disabilities to be included and benefit from all other elements, including opportunities for early learning, towards developing to their full potential.

4.3 Health and nutrition

Since promulgating the National Health Act 61 of 2003, the Department of Health has undertaken a process of 're-engineering primary health care'.[88] This is one of several initiatives to improve health services,[89] and has three prongs, viz strengthening of the district health system, greater emphasis on delivery of community-based services and a focus on the social determinants of health.[90] It includes three programmes, viz primary health care outreach teams,[91] school health teams, and district clinical specialist teams (DCSTs).[92] It is anticipated that a renewed focus on

87 P Martin et al 'The rights of children with disabilities to social assistance: A review of South Africa's care dependency grant' in P Proudlock (ed) *South Africa's progress in realizing children's rights: A law review* (2014).

88 Department of Health 'Re-engineering Primary Health Care in South Africa: A discussion document' (2010). This was adopted by the National Health Council in January 2011.

89 The others are implementation of the National Health Insurance as a means of financing universal coverage of health services and renewed focus on quality assurance and improvement. Dept of Health Strategic Plan 2010/11-2012/13 21.

90 N Schaay et al 'Overview of health sector reforms in South Africa' Report commissioned by the UK Department for International Development (2011).

91 Each team comprises of four primary health care nurses and six community health workers. Each community health worker is responsible for 250 households and their responsibilities include health promotion and prevention as well as screening and referral. LJ Bamford 'Extending child survival gains: The policy context' in CR Stephen & LJ Bamford (eds) *Saving children 2010-2011: A seventh survey of child health care in South Africa* (2013) 35.

92 There is one team in each district, focusing on improving maternal and child health, chronic illnesses and HIV/AIDS. They comprise: an obstetrician and gyneacologist, a paediatrician, a family physician and an anaesthetist as well as a midwife, a paediatric

primary health care (PHC) will improve access to health services and address persisting inequalities in the health sector, especially in rural areas. It will also be a means of strengthening referral systems to manage patients at regional and district levels.

There are two provisions of the Re-engineering Strategy which are of particular importance for health services for children with disabilities. First, the Integrated Management of Childhood Illness (IMCI)[93] – referred to by the Minister of Health as 'the cornerstone of child health service provision at PHC level'[94] – is a principal strategy to improve child health, especially in poor communities.[95] As an intervention in response to the crisis of high maternal and child deaths in the country, the primary focus of IMCI is prevention and curative treatment of common illnesses of childhood (such as diarrhoea, pneumonia and HIV). However, there is no clear directive given when 'cure' is not effective and a child develops a permanent impairment (such as hearing loss). The IMCI protocol contains a section on 'special risk factors' (which include the mother's death, prematurity or low birth weight, a teenage mother, or a birth defect), but there is very little guidance on how to deal with them.[96] There is no mention of therapists as a possible option for referral, although they are included on the Chart of Developmental Milestones in the Road to Health Booklet. Having been effective in reducing child mortality, it is now anticipated that the 'Care for Development' component of the IMCI at community level, will be expanded as a potential early intervention tool.[97] This would be in line with the state obligations under the CRPD.

Secondly, the Re-engineering of PHC details community-based services to support people with non-communicable diseases. This includes conducting household visits to identify those with chronic diseases and disabilities, oral health or visual or hearing impairments. There is also identification and management of common health problems and the provision of basic stroke support and rehabilitation services. Community-based services are to include identification of at-risk households and individuals and promoting of information and support on appropriate home care, such as infant and young child feeding. Significantly, services focusing on chronic diseases do not make reference to the disabling effects of different conditions, nor do they refer to specific conditions affecting children. Although consideration is given to psycho-social support in the management of common health problems, there is no reference to

nurse, and a primary healthcare nurse. Bamford (n 91 above).

93 Department of Health & WHO 'Integrated Management of Childhood Illness' (2011).

94 A Motsoaledi 'A vision for child health in South Africa' in M Kibel et al (eds) S*outh African child gauge* (2010) 91.

95 It has been promoted by WHO and UNICEF since the mid-1990s.

96 The options given are to refer to a social worker, to an appropriate support group, and/or for a child support grant.

97 WHO & UNICEF 'Care for child development: Improving the care for young children' (2012). L Jacklin 'The future is in our hands' in Stephen & Bamford (eds) (n 91 above) 46.

rehabilitation in the process. Similarly, services in response to violence and injuries do not include rehabilitation. Despite this, it is anticipated that the work of the DCSTs will ensure better management of primary health facilities thereby improving quality of services and referral, as required by the CRPD.

As part of the PHC package, the Department of Health has established the Integrated Nutrition Programme,[98] which has a major focus on breastfeeding and the reduction of under-weight, stunting and wasting amongst children under five years of age. While the programme targets young children, no particular consideration is given to the nutritional needs of children with disabilities. One of the aims of the Infant and Child Feeding Policy[99] is to improve the nutritional status of children, with an objective 'to provide guidance on feeding children in exceptionally difficult circumstances'. This includes 'children with mothers who have physical or mental disabilities'. The policy thus does not take cognisance of risk factors related to the *child's* disability, such as cerebral palsy, which may result in difficulties with chewing or swallowing, heightening risk of under-nutrition or malnutrition.[100]

Rehabilitation services rendered by the Department of Health are guided by the National Rehabilitation Policy[101] and aim to help adults and children with disabilities to attain maximum independence and full inclusion in all aspects of life. Rehabilitation is viewed as a means of achieving equalisation of opportunities and protecting the rights of adults and children with disabilities. The goal of the policy is to improve access to rehabilitation services, thereby ensuring the right of all citizens of access to health services. Community-based rehabilitation (CBR) is affirmed as the 'philosophy or strategy' on which rehabilitation services are based, and therefore CBR principles are applicable at all levels, towards promoting accessible, affordable and appropriate services. The Policy identifies a number of different components of rehabilitation (including prevention of disability, identification and diagnosis of different conditions, medical and educational rehabilitation), which involve various government departments working collaboratively. Provision of assistive devices is also part of rehabilitation and constitutes a key mechanism to ensure that disabled adults and children can participate as equals in society.

98 Department of Health 'The primary health care package for South Africa – A set of norms and standards' (2000) 67. Its vision is 'optimum nutrition for all South Africa'. It is recognised that nutrition is multi-sectoral and complex. Nutrition status is improved through a mix of direct and indirect nutrition interventions implemented at various points of service delivery such as clinics, hospitals and communities and aimed at specific target groups.

99 Department of Health 'Infant and young child feeding policy' (2007).

100 E Bostock 'Dysphagia: The silent killer' Poster presented at the Conference of South Africa Doctors (RuDASA) Rhodes: Eastern Cape (2011).

101 Department of Health 'Rehabilitation for all: National rehabilitation policy' (2000) 2.

Although the Strategy for re-engineering of PHC identifies rehabilitation as one of its components (with goals for CBR articulated at the levels of community, clinics and community health centres, where it is envisaged that therapists will be deployed)[102] there is currently no national strategy for CBR. A policy response to the country's shortage and inequitable distribution of rehabilitation professionals by the Department of Health has been the introduction of community service therapists.[103] However, ongoing challenges include high turnover of staff, lack of continuity of services, and inadequate supervision and support in rural areas. Further the 'transient nature' of these therapists and their lack of accountability have contributed to a breakdown of trust between them and the families that they serve.[104]

In summary, the legislation and policies of the Department of Health have gone some way to improving access to health services for children with disabilities. Great emphasis has been placed on improving maternal and child health through servicing of immediate medical needs and the reduction of mortality.[105] Although the re-engineering of PHC is recognised as an opportunity for fulfilling the rights of children with disabilities, the Department of Health is yet to prioritise early intervention, habilitation and rehabilitation (particularly CBR) as part of health services. Current legislative, policy and strategy provisions do not provide adequately for routine and/or early screening for disabilities such as hearing loss[106] and the District Health System is not adequately equipped to deal with children who are at high risk for impairment and disability. As a result, the rights to early identification and intervention (as part of the right to health in the CRPD) and habilitation and rehabilitation for young children with disabilities are not being realised.

4.4 Education

The South African Schools Act 84 of 1996 is the principal legislation governing the education system in the country. Because the legislature has interpreted 'basic education' as including one year of pre-school (for six year olds) and up to Grade 9, this Act is outside the scope of this paper.

Two education-related policy provisions are considered with respect to early learning of children with disabilities. First, White Paper 5 on 'Early Childhood Development' focuses primarily on the establishment of the

102 Department of Health (n 88 above).
103 This is the requirement that newly qualified therapists work in a disadvantaged area for one year.
104 Jacklin (n 97 above).
105 M Chopra et al 'Achieving the health Millennium Development Goals for South Africa: Challenges and priorities' (2009) 374 *The Lancet* 1023.
106 C Storbeck & S Moodley 'ECD policies in South Africa – What about children with disabilities?' (2011) 3 *Journal of African Studies and Development* 1.

Reception Year (Grade R) as an additional year of compulsory schooling. However, it does not address the needs of young children (viz those below the age of 4) for early stimulation and opportunities for learning.

Secondly, Education White Paper 6 on inclusive education is based on respect for diversity in learning abilities, acknowledging that all children can learn if they have the necessary support.[107] It has been described as 'a discourse driven by the substantive equality imperative of recognising as well as responding affirmatively to diversity'.[108] The ultimate goal of inclusive education is the provision of an education system which maximises the capacities of all learners and enables their participation.[109] White Paper 6 contains a 20-year timeframe to progressively realise this goal, steadily increasing the number of full-service and special schools until there is adequate provision for all learners. It was used as a basis on which to advocate for equal financial provision in *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa*.[110] However, the focus of this policy is the primary level of education, and there is a lack of acknowledgement of the pre-school years and the importance of early learning for young children with disabilities. Indeed, ECD is largely absent from White Paper 6.[111] This is indefensible in light of the substantial input and direction given by the Commission that informed its development.[112] This policy therefore does not comply with the requirements of the CRPD that states parties 'shall ensure an inclusive education system at all levels'.[113]

5 Conclusion and recommendations for tapping the 'transformative potential' of the CRPD

As indicated in the foregoing discussion, the CRPD provides a standard by which to identify gaps and limitations with respect to legislation and policies on ECD for children with disabilities. It indicates that currently

107 Department of Education 'Education White Paper 6: Special Needs Education: Building an inclusive education and training system' (2001).

108 C Ngwena & L Pretorius 'Substantive equality for disabled learners in state provision of basic education: A commentary on *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa*' (2012) 28 *South African Journal on Human Rights* 81 103.

109 Ngwena & Pretorius (n 108 above).

110 2011 (5) SA 87 (WCC).

111 In one of the few references made to early childhood, White Paper 6 states that district support teams are to include 'early childhood and adult basic education centres' (sec 4.3.3.1).

112 This Commission argued that 'the foundation for inclusive education should be formed in the ECD band' (118). It recommended a preventative and developmental approach to support, with early identification and intervention taking place specifically at the ECD level. Department of Education 'Quality education for all: Overcoming barriers to learning and development' (1997) Report of the National Commission on Special Needs in Education and Training and National Committee on Education Support Services.

113 Art 24(1).

what the South African government is doing is 'too little' (with respect to health and social services) and 'too late' (with respect to inclusive education). But the CRPD is more than just a standard against which to evaluate legislative measures which have been taken, it also provides directives towards making ECD-related rights a reality for children with disabilities in South Africa,[114] and it is towards these that we now turn our attention.

5.1 A mechanism for accountability

Under the CRPD, the state is responsible for monitoring and reporting on its implementation. However, this is a task in which civil society – particularly organisations of disabled people and parents of disabled children – can play an important role. Using the framework of the CRDP, compilation of shadow or alternate reports provides an opportunity to systematically and periodically report on the experiences of children with disabilities and the extent to which their capacities have been nurtured so that they are able to participate as equals in society, and whether they have been able to take advantage of opportunities emerging from a strategy of equality.[115] Such critique of state action need not be driven only by the demands of the Committee on the Rights of Persons with Disabilities, but the CRPD-related processes provide a potential framework for local activists and policy makers in the disability sector.

5.2 Guiding interpretation of rights by courts

Secondly, the CRPD can contribute to advancing the rights of young children with disabilities through its use and interpretation by the Courts. Indeed, the Constitution of South Africa requires courts to consider international law in their deliberations,[116] as was done in *Western Cape Forum*[117] where the CRPD was used to expose the shortcomings of the Department of Basic Education in realising the right of children with severe and profound intellectual disabilities to education. That such a case came to court is commendable, as is the action being taken as a result of the court interdict issued.[118] This case demonstrates the potential of international law to shape courts' interpretation of the state's obligations and identify where a breach has occurred. The CRPD thus has the potential to be used in respect of other rights of young children with disabilities, such as the right to health and social security.

114 Philpott (n 74 above).
115 See Quinn (n 5 above).
116 Sec 231(4) of the Constitution.
117 *Western Cape Forum* (n 110 above).
118 The Western Cape Department of Education has set up multi-disciplinary teams to support the Day Care Centres that provide for children with severe and profound intellectual disabilities.

5.3 Providing the basis for advocacy coalitions

As was demonstrated in *Western Cape Forum,* organisations of civil society, together with academics and legal experts collaborated in bringing a case against the state in breach of the rights of children with severe and profound disabilities to education. Similarly, in the ECD sector, there exists the potential for coalitions to be established between organisations of parents of children with disabilities, NGOs, and child rights advocates, working together to ensure that the state fulfils its obligations with respect to access to the range of services contained in the 'essential package'.

5.4 Supporting innovative programming

Finally, while legal interventions are important, human rights practice needs to extend beyond these, for 'transformation takes place not only through processes of domestic law and policy change, but more broadly through innovative programming and through the processes of socialization and acculturation'.[119]

In addressing the question 'Early childhood development: What are the next steps?' Albino & Berry identify actions that can be taken to strengthen service delivery for ECD in the areas of nutrition, health, caregiver support, parenting and early learning.[120] The CRPD offers an important tool which could be used to shape these 'next steps' such that they provide children with disabilities opportunities to develop to their full potential. This requires that innovative programming at all levels and in all sectors is based on the principle of equality and non-discrimination, with considerations for reasonable accommodations to ensure that strategies are targeted to the unique needs of the individual child. Full and effective participation of children with disabilities in ECD services requires removal of barriers that prevent access to services provided generally for young children, as well as strengthening of disability-specific services such as early intervention and (re)habilitation.

The rollout of ECD services (including nutrition, health care, social protection and education) is recognised as being critical to the successful achievement of the National Development Plan, which reflects the government's vision for the country up to 2030.[121] It is not as yet too late for the CRPD to be used to guide development of services that are inclusive of children with disabilities, and a benchmark by which to assess progress.

119 J Lord & MA Stein 'The domestic incorporation of human rights law and the United Nations Convention on the Rights of Persons with Disabilities' (2008) 83 *Washington University Law Review* 467.

120 N Albino & L Berry 'Early childhood development in South Africa: What are the next steps?' (2013) in L Berry et al (eds) (n 13 above).

121 National Planning Commission (n 2 above). B Dlamini 'Reflections on early childhood development' in L Berry et al (eds) (n 13 above)