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The focus of this article is access to early childhood development and education (ECDE) by children with disabilities in Kenya. In general, ECDE has received minimal protection, if any, under international human rights law, including in the UN Convention on the Rights of Persons with Disabilities. The article argues that despite the gap in the international human rights framework on the rights of children with disabilities to access ECDE, domestically the Basic Education Act of 2013 provides an enabling framework to safeguard this right. To this end, the article argues that equality and non-discrimination, which underlie basic education law, provide a stronghold for advocating and implementing ECDE for children with disabilities in Kenya.

1 Introduction

Education is an empowerment and multiplier right. Access to quality education enables one to profit from other rights and is a prerequisite for individuals to have control over their lives.¹ It is through education that individuals develop their human potential, sense of dignity and self-worth as well as their mental and physical abilities.² Education builds a pathway for one to claim and advocate one's rights. For instance, it facilitates the acquisition and enhancement of skills for one to enjoy one's right to work.

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1 F Coomans 'Clarifying the core elements of the right to education' <http://aihr-resourcescenter.org/administrator/upload/documents/core.pdf> (accessed 11 November 2016).

2 Arts 24(1)(a), (b) & (c) Convention on the Rights of Persons with Disabilities (CRPD).

M Nthenge 'The Basic Education Act of 2013 as a tool for advancing early childhood development and education for children with disabilities in Kenya' (2017) 5 *African Disability Rights Yearbook* 3-24 <http://doi.org/10.29053/2413-7138/2017/v5n1a1>

Education also facilitates effective participation in political life. Furthermore, it broadens an understanding of proceedings of day-to-day activities, including information on leisure activities and norms governing society. Formal education is a systematic process where transition from one level is preceded by another. The significance of these levels is justified by skills gained at preceding stages as tools for advancing to the next level. The article focuses on one of the levels – early childhood development and education (ECDE). This level plays a crucial role in laying a foundation in education. However, the protection of early childhood development and education under both domestic and international human rights law remains uncertain.³

The article focuses on access to early childhood education by children with disabilities in Kenya. The central argument of the article is that, although early childhood education is not strongly protected in the normative international human rights framework, the Basic Education Act of 2013 provides a framework for advancing ECDE for children with disabilities in Kenya. Against this backdrop, the article attempts to answer the following questions: to what extent the Basic Education Act of 2013 provides a framework for safeguarding and promoting access to early childhood education for children with disabilities in Kenya; and what opportunities exist in Kenya's framework, and specifically in its blue print plan Vision 2030, to make access to early childhood education by children with disabilities a living reality. The structure of the article builds on these questions, and is divided into four sections. Section one begins by operationalising key terms used in the article and providing an overview of the general normative framework on the right to education. Section two introduces the education system in Kenya and legal tools on the right to education for children with disabilities in general. The section closes with an overview of treaty bodies' comments to Kenya on access to ECDE. Section three narrows down to the Basic Education Act of 2013. An in-depth analysis of relevant provisions on ECDE is conducted. In light of this, the section examines the way in which the relevant provisions of the law may be utilised to seek judicial remedy and to advocate access to ECDE by children with disabilities. The section goes further to examine opportunities for implementation, with a specific focus on one of the flagship projects on education under the Medium Term Plan (2013-2017).⁴ Section four provides a conclusion and highlights challenges that could be resolved in future research.

3 KD Bieter *The protection of the right to education by international law, including a systematic analysis of article 13 of ICESCR* (2006) 137.

4 Kenya Vision 2030 2007 http://www.vision2030.go.ke/?page_id=3319 (accessed 23 August 2015).

2 Operationalisation of terms and overview of the normative framework on the right to education - International and regional

The United Nations (UN) Educational, Scientific and Cultural Organisation (UNESCO) defines early childhood care and education as the period from birth to eight years of age.⁵ The UN Committee on Rights of the Child (CRC Committee) adopts a similar definition. General Comment 7 on implementing child rights in early childhood⁶ defines early childhood as ‘all young children at birth throughout infancy, during the preschool years as well as during the transition to school’.⁷ However, in its reference to ECDE as the term used in Kenya’s policies, the article narrows down to pre-primary education. The Basic Education Act of 2013 (Act) defines pre-primary school as ‘education imparted to a child of four to five years before joining level one in primary school’.⁸

Additionally, for clarity in understanding, the article draws a distinction between inclusive education, integrated education and special education. The CRC Committee defines inclusive education as ‘a set of values, principles and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students’.⁹ General Comment 4 of the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) on the right to inclusive education adopts a similar definition with additional elements.¹⁰ The CRPD Committee recognises partnership, support to teachers and monitoring as essential to inclusive education. The General Comment further defines segregated or special education as ‘provision of education in separate environments designed to respond to a particular or various impairments, in isolation from students without disabilities’.¹¹ Integrated education is defined as ‘a process of placing persons with disabilities in existing mainstream educational institutions, and requiring them to adapt and accommodate to a pre-determined environment’.¹² A common practice in integrated education includes isolated units for persons with

5 <http://www.unesco.org/new/en/education/themes/strengthening-education-systems/early-childhood/> (accessed 23 August 2015).

6 CRC Committee General Comment 7 (2005): Implementing child rights in early childhood, 20 September 2006, CRC/C/GC/7/Rev.1

7 As above.

8 Sec 2 Basic Education Act 2013.

9 CRC Committee General Comment 9 (2006): The rights of children with disabilities, 27 February 2007, CRC/C/GC/9.

10 CRPD Committee General Comment 4 (2016) art 24: Right to inclusive education, 2 September 2016, CRPD/C/GC/4; see also R Riser *Implementing inclusive education: A commonwealth guide to implementing article 24 of the UN Convention on the Rights of Persons with Disabilities* (2012) 47.

11 CRPD Committee (n 10 above) para 11.

12 As above.

disabilities in the mainstream school environment who transition after a certain period, depending on how they can cope with the mainstream environment.

2.1 Role of early childhood development and education

ECDE has been described as the foundation for subsequent learning. It is the period of remarkable physical and cognitive development and to 'children with disabilities it is key in enabling them to be in an inclusive environment'.¹³ Evidence demonstrates that experiences during the first years of growth enhance or inhibit the realisation of an individual's potential in future life. The CRC Committee corroborates this argument. It underscores the implementation of children's rights in early childhood as an effective way to help prevent personal, social and educational difficulties during middle childhood and adolescence.¹⁴

At the national level, the national early childhood development policy framework normatively acknowledges the benefits of investing in early childhood education for children with disabilities. The policy recognises that such investment allows early identification and intervention, and therefore ensures that children with disabilities maximise their talents.¹⁵ Early assessment coupled with intervention provide relevant information to families and teachers, especially about the support needs of the child that will optimise his or her learning potential.¹⁶

Access to quality ECDE by children with disabilities enhances their potential. At pre-school level, children are granted opportunities to learn to co-operate, develop fine motor skills, develop languages and opportunities to take responsibility and make choices.¹⁷ Teachers are expected to support children's sense of self-worth and encourage creativity. Inclusive ECDE for children with disabilities, therefore, will demand a recognition of differences and embrace diversity, hence the need to provide necessary accommodations and modifications to promote inclusion. This includes early training in orientation, mobility skills and alternative communications.

Stimulating early childhood education also enhances placement, retention and academic performance for children with disabilities. Bryant

13 UNESCO (n 5 above); Salamanca Statement and Framework for Action on Special Needs Education (1994), para 6; CRC Committee (n 6 above).

14 CRC Committee (n 6 above) para 8.

15 Ministry of Education *National early childhood development policy framework* (2006) sec 1.4(a).

16 UNESCO Policy Brief on Early Childhood Inclusion of Children with Disabilities: The early childhood imperatives N 46/ April-June 2009/REV; S Philpott 'Too little, too late? The CRPD as a standard to evaluate South African legislation and policies for early childhood development' (2014) 2 *African Disability Rights Yearbook* 51.

17 Ministry of Education *Early childhood development service standard guidelines* (2006).

and Maxwell argue that children with disabilities who have been placed in inclusive early intervention groups are less often placed in special education and retained in a grade compared to those who have not.¹⁸ The Inclusive Early Childhood Service System Project (IECSS) argues that ECDE is more effective than schools at connecting family support, community development, and child development as integrated and equally important outcomes of inclusive practice.¹⁹ Early intervention, therefore, remains a prerequisite to inclusive education for persons with disabilities. The Convention on the Rights of Persons with Disabilities (CRPD) underscores inclusive education,²⁰ as does the Salamanca Statement and the Framework for Action on Special Needs Education (1994).²¹

Flipping the coin to the economic side, the benefits of early intervention are immeasurable. Heckman argues that early intervention for children with disabilities not only helps to reduce the achievement gaps and the need for special education, but also promotes economic efficiency.²² An analysis of global experience of children with disabilities in schools indicates that key challenges facing inclusive education include a lack of accessibility, stereotyping, un-adapted curriculums and a lack of reasonable accommodation.²³

The inclusion of children with disabilities right from the beginning of the education system minimises some of these challenges. Having all children learning together teaches children to value diversity, builds social capital and lays the foundation for inclusive communities.²⁴ With regard to planning and availing necessary tools for education, schools are more likely to avail an inclusive environment at the onset. States, therefore, have to choose between providing adequate interventions in early stages or paying more in the future when phasing out segregated education in line with the standards set by the CRPD.²⁵

18 D Bryant & K Maxwell 'The effectiveness of early intervention for disadvantaged children' in M Guralnick (ed) *The effectiveness of early intervention* (1997) 23-46.

19 Inclusive Early Childhood Service Project 'Policy Brief No 2: A submission to the Day of General Discussion on the Right to Education for Persons with Disabilities' March 2015 <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGDontherighttoeducationforpersonswithdisabilities.aspx> (accessed 27 August 2015).

20 Art 24(1) CRPD.

21 Sec 2.

22 JJ Heckman 'The economics of inequality: The value of early childhood education' (2011) 35 *American Educator* 31.

23 See Concluding Observations to initial reports of States Parties to the CRPD http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5 (accessed 27 August 2015).

24 Inclusion International 'Submission to the Committee on the Rights of Persons with Disabilities: Article 24: Implications of the implementation for the people with intellectual disabilities' (2015) <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx> (accessed 17 September 2016).

25 CRPD (n 2 above).

2.2 Normative frameworks on the right to education – International and regional

The right to education is safeguarded in different international human rights instruments, namely, the Universal Declaration of Human Rights (Universal Declaration);²⁶ the International Covenant on Economic, Social and Cultural Rights (ICESCR);²⁷ the UN Convention on the Rights of the Child (CRC);²⁸ and the CRPD.²⁹ Regionally, the African Charter on Human and Peoples' Rights (African Charter),³⁰ the African Charter on the Rights and Welfare of the Child (African Children's Charter),³¹ the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol)³² and the African Youth Charter³³ safeguard the rights to education of persons with disabilities.

Specific emphasis on persons with disabilities is laid in articles 11(3) and 13 of the African Children's Charter. Article 13 of the Children's Charter obliges state parties to take special measures to ensure that gifted, female and disadvantaged children have equal access to education. This is further elaborated on in the guidelines on implementation of economic, social and cultural rights in the African Charter which calls for inclusive free and compulsory education for children with disabilities.³⁴ More recently, the African Commission on Human and Peoples' Rights (African Commission) published the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Draft Disability Protocol).³⁵ Article 12 of the Draft Disability Protocol explicitly refers to the rights to education of persons with disabilities, emphasising that persons with disabilities should not be considered uneducable or untrainable.

A running thread in all these instruments is the right to free and compulsory primary education. However, an explicit reference to early childhood education as an early intervention measure is missing, including in the CRPD. The drafters of the CRPD overlooked this particular issue,

26 Art 26 Universal Declaration.

27 Art 13 ICESCR.

28 Art 28 CRC.

29 Art 24 CRPD.

30 Art 17 African Charter.

31 Art 11 African Children's Charter.

32 Art 12 African Women's Protocol.

33 Art 13 African Youth Charter.

34 African Commission on Human and Peoples' Rights 'Guidelines on implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights' http://www.achpr.org/files/instruments/economic-social-cultural/achpr_instr_guide_draft_esc_rights_eng.pdf (accessed 5 September 2015).

35 African Commission on Human and Peoples' Rights Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities, http://www.achpr.org/files/news/2016/04/d216/disability_protocol.pdf (accessed 11 June 2016).

specifically in article 24, despite proposals during the negotiations to explicitly include early childhood and pre-school education.³⁶ It is to be noted that the CRPD does emphasise early intervention in relation to the right to rehabilitation and the right to health.³⁷ The recommendations to state parties by the CRPD Committee also lack explicit guidance regarding early intervention under article 24. Instead, the Committee adopts a more general approach of recommending inclusive education at all levels. In cases where recommendations are targeting specific levels, the CRPD Committee explicitly makes reference to primary, secondary and tertiary education.³⁸ Specific recommendations are only notable in the Concluding Observations of state parties such as Austria, where the CRPD Committee urges the state party to ensure inclusive education from kindergarten to secondary education.³⁹

Nonetheless, recent developments by the CRPD Committee reflect a positive shift. In its General Comment 4 on article 24,⁴⁰ the Committee underscores early detection, identification and access to services for pre-school children, together with the provision of support and training to parents and caregivers of young children with disabilities.⁴¹ The CRPD Committee, thus, encourages state parties to invest in inclusive pre-school education in light of the clear evidence of the benefits to children as well as the enhanced likelihood that attendance at pre-school results in greater acceptance into local community schools.⁴²

At the regional level, the African Commission guidelines to state parties on the implementation of economic, social and cultural rights clearly interpret the right to education to include access to pre-primary education.⁴³ However, the guidelines in subsequent paragraphs fail to elaborate on pre-school.

Contrary to the aforementioned instruments, the Standard Rules on Equalisation of Opportunities for Persons with Disabilities (Standard Rules)⁴⁴ explicitly make reference to pre-primary education. Rule 6 reminds states to give special attention to very young children with disabilities and pre-school children with disabilities.⁴⁵ While they remain

36 UN Enable 'Chairs Draft Elements of a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities' (2004) <http://www.un.org/disabilities/default.asp?id=1423> (accessed 11 June 2016).

37 Arts 25(b) & 26 CRPD.

38 CRPD Committee Concluding Observations, Mexico CRPD/C/MEX/CO/1; CRPD Committee Concluding Observations, China CRPD/CHN/CO/1.

39 CRPD Committee Concluding Observations, Austria, CRPD/C/AUT/CO/1 para 40.

40 CRPD Committee (n 2 above) para 67.

41 Para 67.

42 As above.

43 African Commission (n 34 above) para 71.

44 UN General Assembly 'Standard Rules on the Equalisation of Opportunities for Persons with Disabilities' 85th Plenary Meeting 20 December 1993, A/RES/48/96.

45 Standard rules (n 44 above) paras 5(a) & (b).

non-binding, the Standard Rules have arguably become a norm of *jus cogens*.⁴⁶ Therefore, Rule 6 read together with article 24 of the CRPD remains key in the promotion of access to early childhood education by learners with disabilities. One can also argue that article 26 of the CRPD on habilitation and rehabilitation to some extent addresses early intervention in school for children with disabilities. It obligates state parties to the CRPD:⁴⁷

to take appropriate measures to enable persons with disabilities to attain and maintain maximum independence ... and full inclusion and participation in all aspects of life, specifically in the areas of ... education and social services, in such a way that these services and programmes begin at the earliest possible stage and are based on the multidisciplinary assessment of individual needs and strengths.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)⁴⁸ also reminds state parties to ensure equality of access by men and women to all levels of education, including pre-primary. Article 10(a) provides:

States shall take measures to ensure ... the same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training.

Early intervention is recognised in other declarations, including the Salamanca Statement on Access to Special Education (1994),⁴⁹ which called on states to invest greater effort in early identification and intervention strategies.⁵⁰ The Dakar Framework for Action 2000 also recognises the need to expand and improve comprehensive ECDE, especially for the most vulnerable and disadvantaged children.⁵¹ Globally, ECDE is becoming an integral strand of discussions on the right to education. In the current 2030 Agenda for sustainable development,⁵² state parties commit to provide inclusive and equitable quality education

46 Preamble para (f) CRPD.

47 Art 26(1) CRPD.

48 Art 10(a) CEDAW.

49 United Nations Educational, Scientific and Cultural Organisation 'The Salamanca statement on framework for action on special needs education' (adopted by the World Conference on Special Needs Education: Access and quality, Salamanca, Spain, 7-10 June 1994).

50 Standard rules (n 44 above) sec 3(6).

51 Dakar Framework for Action: Education for All: Meeting our Collective Commitment (adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000).

52 UN General Assembly 70/1 Transforming our world: The 2030 Agenda for Sustainable Development (Resolution adopted by the General Assembly on 25 September 2015)A/RES/70/1 <https://sustainabledevelopment.un.org/index.php?menu=1300> (accessed 9 February 2016).

at all levels, including early childhood education.⁵³ Hence, while ECDE does not enjoy adequate protection in binding international norms, the correlation between early intervention, inclusive education and being included in the community⁵⁴ remains unequivocal. The obligation to fulfil this right, therefore, remains inexcusable for state parties.

It is essential to note that Kenya is party to the aforementioned instruments⁵⁵ and has endorsed international declarations on education, as discussed in this section. These treaties, therefore, form part of the laws of Kenya in line with article 2(6) of the Constitution of Kenya⁵⁶ and can be used before court when seeking judicial remedy.⁵⁷

3 Background information on persons with disabilities, the education system and general legislative framework on the right to education in Kenya

According to the World Disability Report 2011, persons with disabilities constitute 15 per cent of the general population.⁵⁸ In Kenya, statistics indicate that persons with disabilities constitute 4,6 per cent of the general population, which translates to 1,7 million.⁵⁹

Kenya has an 8-4-4 education system, which translates to eight years for primary school level, four years for secondary school level and four years for higher education.⁶⁰ Domestically, the rights to education of persons with disabilities are embodied in both mainstream and disability-specific legislation. The Persons with Disabilities Act (PDA) safeguards the right to education and prohibits the denial of admission of a person with a disability to any course of study on the basis of a disability.⁶¹ The right to education is also recognised as a constitutional right in article 53(1)(b) of the Constitution of Kenya, which entitles every child to free and

53 As above.

54 Arts 19, 24 & 26 CRPD; T Chataika et al 'Access to education in Africa: Responding to the United Nations Convention on the Rights of Persons with Disabilities' (2012) 27 *Disability and Society* 385 398.

55 See list of treaties ratified by Kenya http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KEN&Lang=EN (accessed 22 August 2015).

56 Art 2(6) of the Constitution of Kenya provides that '[a]ny treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution'.

57 <http://kenyalaw.org/caselaw/> (accessed 22 August 2015).

58 World Health Organization (WHO) & World Bank *World report on disability* (2011).

59 National Co-ordinating Agency for Population and Development 'Kenya national survey for persons with disabilities: Preliminary report' (2008) <http://www.african.org/CBR%20Information/KNSPWD%20Prelim%20Report%20-%20Revised.pdf> (accessed 22 August 2015).

60 Ministry of Education 'Education for all: End of decade assessment (2001-2010)' http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Nairobi/EFA_EDA_Report_2012_Web_Version_1_.pdf (accessed 22 August 2015).

61 Secs 18 & 19 Persons with Disabilities Act 4 of 2003.

compulsory basic education. The Basic Education Act of 2013, which gives effect to article 53(1)(b) of the Constitution, explicitly provides for the rights to education of children with disabilities. An in-depth analysis of the Act is provided in the next section.

While the PDA seems to remain unclear on inclusive education⁶² and has been critiqued for promoting segregated education, the Constitution, the supreme law in Kenya, provides a framework that may be used to promote inclusive education. It does so, first, by prohibiting indirect or direct discrimination on the basis of disability.⁶³ Second, it provides that persons with disabilities have a right to access educational institutions integrated in the society that are compatible to their interests.⁶⁴ Third, it recognises the need for substantive equality by providing affirmative measures in education to redress historical disadvantages.⁶⁵ In summary, the general framework on the rights to education of persons with disabilities in Kenya draws its strength from the robust equality and non-discrimination provisions in the Constitution of Kenya, 2010.

The actual practice, however, has little to be desired. In 2002, Kenya introduced a free primary education policy and later, in 2008, introduced free day-secondary school education.⁶⁶ One of the gains of the policy is the affirmative action for children with disabilities who get extra allocation to the standard capitation for non-disabled children.⁶⁷ However, this has not adequately advanced access to inclusive education by the majority of children with disabilities. In its report on access to education by children with disabilities, the Kenya National Commission on Human Rights recommended a review of the free primary education programme to meet the needs of children with disabilities. The National Commission on Human Rights reiterated:⁶⁸

For these children, Free Primary Education (FPE) goes beyond the provision of desks, books and chalk to include boarding, transportation, health and specialised equipment and teaching-aids necessary to educate them effectively.

Additionally, due to existing stereotypes⁶⁹ and an overemphasis on literacy and numeracy as a form of testing academic competence⁷⁰ in

62 Sec 19 PDA (n 61 above).

63 Art 27(4) Constitution of Kenya.

64 Sec 54(1)(b) PDA.

65 Sec 56(b) PDA.

66 Ministry of Education (n 58 above).

67 Every child is allocated Kshs 1020 (the equivalent of \$12), and a child with a disability gets an extra Kshs 2000 (\$23) to cater for tuition and other school requirements.

68 Kenya National Commission on Human Rights *Objects of pity or individuals with rights: The right to education for children with disabilities* (2007).

69 Kenya National Commission on Human Rights *From norm to practice: A status report on implementation of rights of persons with disabilities* (2014).

70 Equal Rights Trust & Kenya Human Rights Commission *In the spirit of harambee: Addressing discrimination and inequality in Kenya* (2012) 131.

mainstream schools, children with disabilities have been forced to go to special boarding schools.⁷¹ Statistics indicate that in total Kenya has 1 882 primary and secondary special needs schools.⁷² The majority of these schools are located far away from the childrens' homes, and parents are forced to pay a boarding fee.⁷³ These extra costs have raised concerns at the treaty level with the CRC Committee, who requested Kenya to provide details of the hidden costs of education of children with disabilities.⁷⁴

These challenges are further confirmed by statistics provided in Kenya's state report to the CRPD Committee. According to the state report, only 67 per cent of persons with disabilities were reported to have achieved primary education, while only 19 per cent had secondary education, with most attending special schools at pre-school and primary level. Only 39 per cent attended regular pre-school, and 37 per cent attended regular primary school respectively.⁷⁵ From these statistics it is clear that most children with disabilities lay their foundation in a segregated environment. In addition, the statistics clearly indicate that, despite affirmative action, children with disabilities are not accessing education equally to their non-disabled peers. Unequal access to services has been interpreted as indirect discrimination.

In *Autism Europe v France*,⁷⁶ the European Committee of Social Rights observed:⁷⁷

Indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantage that are open to all are genuinely accessible by and all.

Subsequently, the Committee held that the fact that the proportion of children with autism being educated in either general or specialist schools was much lower than in the case of other children constituted a violation of article 15(1) of the European Social Charter on taking necessary

71 CRPD Committee Concluding Observations in relation to the initial report of Kenya 4 September 2015, CRPD/C/KEN/CO/1 <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx> (accessed 17 September 2016).

72 CRPD Committee Consideration of reports submitted by state parties under article 35 of the Convention: Initial reports of state parties due in 2010, Kenya 28 July 2014, CRPD/C/KEN/1 <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx> (accessed 17 September 2016); Republic of Kenya 'Combined 8th-11th periodic report on the African Charter on Human and Peoples' Rights, November 2014 <http://www.achpr.org/search/?c=7&q=kenya> (accessed 17 September 2016).

73 Kenya National Commission on Human Rights (n 68 above).

74 CRC Committee List of issues in relation to the combined 3rd to 5th periodic reports of Kenya, 15 July 2015, CRC/C/KEN/Q/3-5; CRC Committee Concluding Observations to Kenya on 3rd, 4th and 5th periodic reports of Kenya, 2 February 2016, CRC/C/KEN/CO/3-5 <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx> (accessed 17 September 2016).

75 CRPD Committee para 176.

76 (1996) ECSR.

77 Complaint 13/2002, *Autism Europe v France* (n 76 above).

measures to provide education for children with disabilities. The Committee also held that there was a violation of section 17(1) of the European Social Charter regarding the provision of sufficient and adequate services, whether alone or read in combination with article E on non-discrimination of the revised European Social Charter.

Similarly, the CRPD Committee raised concern over unequal access to services. In its review of the initial state report of Denmark, for example, the Committee raised its concern over unequal access to the complaints system of children with disabilities receiving different hours of support. The CRPD Committee reiterated:⁷⁸

The Committee is concerned at reports that children in need of more than 9 hours of special education per week may submit a complaint to the Special Education Board, unlike children in need of fewer than 9 hours of special education per week who cannot submit a complaint to an independent authority regarding a lack of adequate educational support.

The CRPD Committee recommended amending the legislation to ensure that all children with disabilities can submit a complaint to an independent authority if they do not receive adequate educational support.⁷⁹

The central argument of the article paper is that normatively, the principle of equality and non-discrimination, as embodied in both mainstream and disability-specific laws, including in the Basic Education Act, can be utilised to effectively safeguard access to early childhood education. This argument is further analysed in the next section, where the article discusses the extent to which the Act can promote access to ECDE by children with disabilities in Kenya.

3.1 Treaty bodies on access to early childhood education in Kenya

In its interaction with various treaty bodies, both at the regional and international level, Kenya has received various recommendations with regard to its commitment to guarantee access to early childhood education.

In considering Kenya's initial report, the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) lauded Kenya for constantly increasing its budget allocation

78 CRPD Committee Concluding Observations, Denmark, CRPD/C/DEN/CO/1 para 54.

79 Kenya National Commission on Human Rights (n 68 above) para 55.

for early childhood education.⁸⁰ Nonetheless, the Children's Committee expressed concern over the low number of children accessing early childhood education, highlighting that 65 per cent of children aged between three and six years had no access to pre-primary school facilities.

At the international level, an analysis of the CRPD Committee's Concluding Observations to state parties indicates a lack of explicit and conclusive guidance on access to early childhood education by children with disabilities.⁸¹ Conversely, the CRC Committee has expressed its concern on this issue. In its Concluding Observations, the CRC Committee urged Kenya to improve and strengthen early detection and treatment services.⁸² The CRC Committee further encouraged the inclusion of children with disabilities into the regular educational system and their inclusion in society.⁸³ It urged Kenya to increase the financial allocation given to children with disabilities in schools, taking into account the specific needs of every child.

Specifically on ECDE, the CRC Committee urged Kenya to re-examine the best way of implementing the free primary education policy, due to its effect on enrolment in ECDE.⁸⁴ The Committee further called for an increased budget allocation, particularly in pre-primary, primary and secondary education.⁸⁵ In its most recent list of issues, the CRC Committee requested Kenya to provide data on the number of children benefiting from the early childhood development programmes.⁸⁶ Ultimately, the fact that availability, affordability and accessibility of ECDE services have raised concerns clearly indicates the crucial role played by ECDE towards inclusive education.

The next section examines how the Basic Education Act of 2013 provides a framework of enhancing access to ECDE as an early intervention approach to inclusive education.

80 African Committee of Experts on the Rights and Welfare of the Child 'Recommendations and observations to the government of Kenya by the African Committee of Experts on the Rights of the Child concerning the initial report on the implementation of the African Charter on the Rights and Welfare of the Child' SA 2590, art 11, Education.

81 CRPD Committee Concluding Observations to state parties http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5 (accessed 5 September 2015).

82 CRC Committee Consideration of reports submitted by state parties under Article 44 of the Convention: Concluding Observations: Kenya, 44th session, 19 June 2007, CRC/C/KEN/CO/2 http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KEN&Lang=EN (accessed 5 September 2015).

83 As above.

84 As above.

85 As above.

86 As above.

4 Basic Education Act of 2013 – A new dawn?

The Basic Education Act of 2013 gives effect to article 53(1)(b) of the Constitution on free and compulsory basic education.⁸⁷ Critics of the Act have described it as ‘one step forward and two steps back’, especially due to its emphasis on segregated education as opposed to inclusive education.⁸⁸ However, it is to be noted, specifically with regard to access to education by persons with disabilities, that the Act is the first education statute to explicitly refer to ECDE, including access to ECDE by persons with disabilities.⁸⁹ Against this background, the next section examines how the Act can facilitate access to pre-primary school by children with disabilities. It does so by examining the following main issues: definitional aspects; equality and non-discrimination as a guiding principle; implementation of the Act; and prohibition of inhumane treatment of children with disabilities in educational settings.

4.1 Definitional aspects

The legal interpretation of terms remains of prime importance in the construction of obligations and entitlements. For instance, in its review of state party reports, the CRPD Committee has consistently called upon states to review their definition of discrimination to include reasonable accommodation and a shift from the medical model definition of disability to the social model.⁹⁰ The emphasis of a broad definition is to ensure the legal recognition of denial of reasonable accommodation as a form of discrimination on the basis of disability, hence the right to a remedy.

With regard to the interpretation of terms, the Act adopts a broad definition of basic education to include pre-primary education and adult education. It defines basic education as ‘educational programmes offered and imparted to a person in an institution and includes adult basic education and education offered in pre-primary educational institutions and centres’.⁹¹ It further defines pre-primary education as ‘education imparted to a child of four or five years before joining level one in primary school’.⁹² Primary school is defined as ‘education imparted to a child who

87 Preamble Basic Education Act 2013.

88 W Aseka & AS Kanter ‘The Basic Education Act of 2013: Why it is one step forward and two steps back for children with disabilities in Kenya’ (2014) 2 *African Disability Rights Yearbook* 50.

89 Kenya National Commission on Human Rights (n 66 above)15.

90 CRPD Committee Concluding Observations to Cook Island CRPD/C/COK/CO/1, paras 5 & 7; CRPD Committee Concluding Observations to Czech Republic CRPD/C/CZE/CO/1 para 7; CRPD Committee Concluding Observations to Ecuador, CRPD/C/CE/CO/1 para 8.

91 Sec 2 Basic Education Act 2013.

92 As above.

has completed pre-primary school'.⁹³ Article 53(1)(b) of the Constitution accords to every child the right to free and compulsory basic education.

Two issues arise from the above definitions: first, the question of whether pre-primary school is now free.⁹⁴ The second question is whether pre-primary education is compulsory as seen in the definitions of basic education. With regard to these two issues (whether pre-primary school is now free and compulsory), the County Early Childhood Education Bill 2014 clarifies that 'every child has a right to free and compulsory early childhood education'.⁹⁵ If enacted, the Early Childhood Education Bill, read together with the Act, will provide a framework for furthering access to early childhood education at the county level. Scholars corroborate this argument. To illustrate, in his article Murunga interprets the inclusion of pre-primary education in the definition of basic education as an opportunity to influence the implementation of ECDE at county level.⁹⁶

In practice, specifically relating to the two issues flagged out, an observation is made in Kenya's report to the African Commission. Kenya reports:⁹⁷

The government recognises the significant social and economic payoffs derived from investment in Early Childhood Development and Education (ECDE) including overcoming children educational disadvantages for poor children, supporting parents ... Previously investment in this area has been left mostly to the household, private sector and religious organisations. Since 2012, the processing of capitation grants to support ECDE with a budget of Kshs 1.6 billion to about 19 000 public ECDE centres with 1.4 million children commenced.

Hence, the government is taking concrete steps towards realising free and compulsory education at pre-primary level. Although not conclusively, one can argue that the government's shift of commitment to ECDE is predicated by an interpretation of basic education as it is provided for in the law.

93 As above.

94 Ministry of Education 'Education for All End of Decade Assessment' (2001-2010) http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Nairobi/EFA_EDA_Report_2012_Web_Version_1_.pdf (accessed 9 September 2015).

95 County Early Childhood Education Bill 2014 <http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2014/CountyEarlyChildhoodEducationBill2014.pdf> (accessed 17 September 2016).

96 J Murunga 'Devolving early childhood development education in Kenya: Policy challenges and opportunities' (2015) 3 *International Journal of Education and Research* 611.

97 CRC Committee Consideration of reports submitted by state parties under article 44 of the Convention: Combined 3rd, 4th and 5th periodic report of state parties due in 2012, Kenya 30 March 2015, CRC/C/KEN/3-5 http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KEN&Lang=EN (accessed 9 September 2015).

4.2 Equality and non-discrimination as a guiding principle

The second issue to be examined is the guiding principles. Section 4 of the Act provides for the guiding principles, which are fundamental in interpreting the substantive provisions of the Act. The Act, among other principles, is anchored in free and compulsory basic education for every child, equality and non-discrimination, and equality of education standards, including the medium of instruction to every child in public school. Other principles include the encouragement and protection of the marginalised, persons with disabilities and those with special needs and, finally, the provision of appropriate human resources, funds, equipment, infrastructure and related resources to meet the needs of every child in basic education.⁹⁸

Incontrovertibly, the principles under section 4 of the Act are centred on equality and non-discrimination. The Act, however, does not explicitly refer to reasonable accommodation. The Basic Education Regulations 2015 resolve this dilemma. It obliges all basic education institutions⁹⁹ to provide reasonable accommodation¹⁰⁰ to children with disabilities.¹⁰¹ These principles are indispensable when assessing the quality of pre-school education for children with disabilities.

From one perspective, it is about the application of the law across the board, regardless of the service provider, as long as services are open to the general public.¹⁰² In the case of ECDE for children with disabilities, therefore, it is an evaluation of whether children with disabilities equally access quality services in both public and private schools. A specific element to consider in examining whether children with disabilities equally access quality education services is to assess the provision of reasonable accommodation, which requires immediate realisation.¹⁰³ The CRC Committee draws the attention of states to potential discrimination in access to quality services for young children, especially where health,

98 Secs 4(a), (b), (f), (g), (s) & (u) Basic Education Act 2013.

99 The institution of Basic Education and Training is defined to include pre-primary school, primary or secondary school, an adult education institution and a middle-level college.

100 Although the Basic Education Regulations 2015 do not define reasonable accommodation, the CRPD, which forms part of Kenya's law, in line with art 2(6) defines reasonable accommodation. Kenya has also been urged to define reasonable accommodation in its legislation. Concluding Observations of Kenya, CRPD/C/KEN/CO/1 para 10(b).

101 Basic Education Regulations 2015, sec 25(a).

102 Art 4(1)(e) CRPD.

103 JE Lord & R Brown 'The role of reasonable accommodation in securing substantive equality for persons with disabilities' doi: 10.2139/ssrn.1618903 (accessed 12 September 2015); Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) 'Thematic study on the rights of persons with disabilities to education' 18 December 2013, A/HRC/25/29; CRPD Committee Consideration of reports submitted by state parties under article 35 of the Convention on the Rights of Persons with Disabilities, Spain, 19 October 2011, CRPD/C/ESP/CO/1 para 44.

education, welfare and other services are not universally available and are provided through a combination of state, private and charitable organisations.¹⁰⁴ The provision of ECDE in Kenya is a combination of efforts by the state and the private sector. Research indicates that in the past most ECDE providers have not taken into consideration the needs of children with disabilities.¹⁰⁵ Kenya should adopt a holistic approach in the operationalisation of equal access to ECDE by children with disabilities. This should encompass a monitoring mechanism, funding, data disaggregation of the number of children with disabilities accessing ECDE in both the private and public sector and an awareness campaign to combat stereotypes and prejudices.

4.3 Implementation

In accordance with the Fourth Schedule of the Constitution of Kenya, Part III of the Act devolves pre-primary education.¹⁰⁶ The County Education Board, together with the county government, is obliged to oversee the operation and management of pre-primary education.¹⁰⁷ In addition, the county government is obliged to report annually to the Cabinet secretary on the progress of education.¹⁰⁸ Part IV of the Basic Education Act obligates the Cabinet secretary to implement free and compulsory basic education, including establishing pre-primary, primary and secondary schools within a reasonably accessible distance within a county.¹⁰⁹ The use of 'shall' in both clauses places a mandatory obligation on government to provide free and compulsory education.¹¹⁰

Part IV further prohibits the charging of tuition fees; the denial of admission to school on different grounds, including disability; places a mandatory responsibility on parents to cause admission to a child; and criminalises the failure to fulfil this duty.¹¹¹ Part VI on special needs education obligates the Cabinet secretary to establish and maintain public special schools, including pre-primary, primary and secondary schools.¹¹²

From these legislative provisions, four main observations may be made in relation to access to pre-primary education, both in special and inclusive environment. The first observation is that the Basic Education Act encourages the community-based service provision approach, which

104 CRC Committee para 12.

105 Ministry of Education 'Task force on the re-alignment of the education sector to the Constitution of Kenya 2010, towards a globally competitive quality education for sustainable development' Task force report (2012).

106 Ch 11 Constitution of Kenya.

107 Sec 18(a) Basic Education Act 2013.

108 Sec 18(k) Basic Education Act 2013.

109 Secs 28(1) & (2) Basic Education Act 2013.

110 As above.

111 Secs 29, 30 & 34 Basic Education Act 2013.

112 Sec 44 Basic Education Act 2013.

promotes social inclusion.¹¹³ This is a very positive step compared to past experiences. Kamundia observes that the lack of accessible schools in the community has forced children with disabilities to opt for boarding schools far away and being separated from their families at a tender age.¹¹⁴

The second observation is that the Basic Education Act safeguards choice; the law prohibits the denial of admission to any school on the basis of disability. The non-rejection clause reinforces the provisions of the CRPD¹¹⁵ to which Kenya is a party. The Office of High Commissioner for Human Rights (OHCHR) observes that non-rejection clauses require immediate realisation and are applicable on an individual basis and should not be subjected to reasonability tests.¹¹⁶ Further, the OHCHR calls for an end to the rejection of students in mainstream schools and urges states instead to provide appropriate support to facilitate their inclusion.¹¹⁷ In its review of Sweden, for instance, the CRPD Committee raised its concern over the refusal of admission to certain pupils with disabilities on the grounds of organisational and economic hardship.¹¹⁸ The Committee urged Sweden to guarantee the inclusion of all children with disabilities in the mainstream education system and to provide the necessary support.¹¹⁹ Similarly, in its recommendation to Kenya, the CRPD Committee urged Kenya to 'immediately adopt a non-rejection policy for children with disabilities enrolling in regular schools and to provide reasonable accommodation'.¹²⁰

The third observation is that the Basic Education Act creates a mandatory responsibility on the Cabinet secretary, in consultation with the County government, to establish pre-primary schools. This responsibility is broadly interpreted to include all the resources that ensure the efficient and effective running of a learning institution. It is to be noted, however, that these responsibilities exist in a new system of devolved government which, as alluded to earlier, has the primary responsibility of the implementation of pre-primary education. As a new regime of governance, devolution is under test. While some counties have set up structures and are effectively running, others are still struggling.¹²¹ With regard to the implementation of ECDE, the National Education Sector Plan recognises

113 Art 19(c) CRPD.

114 E Kamundia 'Choice, support and inclusion: Implementing article 19 of the CRPD in Kenya' unpublished LLM dissertation, National University of Galway-Ireland, 2010 88.

115 Art 24(2)(a) CRPD.

116 OHCHR (n 103 above).

117 As above.

118 CRPD Committee Concluding Observation to Sweden CRPD/C/SWE/CO/1, para 47.

119 CRPD Committee Concluding Observation to Sweden (n 118 above) para 48.

120 CRPD Committee Concluding Observation to Kenya, CRPD/C/KEN/CO/1 para 44 (b).

121 M Laibuta 'Implementing devolution in Kenya: Challenges and opportunities two months on' <http://www.constitutionnet.org/news/implementing-devolution-kenya-challenges-and-opportunities-two-months> (accessed 11 November 2016).

that regional inequalities have negatively impacted on universal access to ECDE with some counties, specifically those from the northern region of Kenya recording the lowest percentage.¹²² To close existing gaps, the National Education Sector Plan calls on counties to expand the budget allocation for ECDE, and to train parents and teachers on enhancing care and education for younger children.¹²³ To ensure accountability and compliance, the development of a partnership with parents, civil society, in particular representative organisations of persons with disabilities and oversight authorities such as human rights institutions, is an indispensable element.

The CRPD obligates states to involve and consult persons with disabilities and representative organisations in the development and implementation of legislation and policies related to their issues.¹²⁴ Joint efforts between counties and representative organisations of persons with disabilities will be necessary to support the setting up of inclusive pre-primary schools. The independent monitoring framework, which includes the National Gender and Equality Commission and the Kenya National Commission on Human Rights, should also monitor the extent to which counties are complying with this obligation and identifying areas for harmonisation with universal education standards.¹²⁵

The fourth observation is that the Basic Education Act creates a mandatory responsibility of parents to ensure the admission of children to schools and criminalises the failure to fulfil this duty. For many children with disabilities, this is a shield – a shield to protect them from prejudices and stereotypes propagated within the family. These stereotypes have been used to justify denying children with disabilities the right to education.¹²⁶

Teachers recounted instances where they had to literally go to find children locked away by parents who saw no value in educating a child with disability. Many parents viewed such children as unproductive members of society or as ‘victims’ to be hidden.

The Act further puts a monitoring measure as a reinforcement mechanism to the mandatory responsibility of enrolling children with disabilities in school. It obligates the Cabinet secretary and the county Board on education to ensure completion and retention of children in school. It further calls for submissions of an annual report by the county

122 Ministry of Education, Science and Technology ‘National Education Sector Plan, Volume one: Basic Education, programme rationale and approach 2013/2014-2017/2018, para 18 <http://www.globalpartnership.org/fr/download/file/45908> (accessed 15 June 2016).

123 Ministry of Education, Science and Technology (n 122 above) para 19.

124 Art 4(3) CRPD.

125 Arts 33(2) & (3) CRPD. See also Draft Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities <http://www.achpr.org/news/2016/04/d216/> (accessed 15 June 2016).

126 Kenya National Commission on Human Rights (n 66 above) 37.

governments to the national government on achievements of each academic year. The monitoring mechanism coupled with the parental responsibility to ensure admission of children with disabilities is a safeguard to keep up-to-date information on the extent to which children with disabilities are accessing education.

4.4 Prohibition of inhumane treatment of children with disabilities in education settings

The final observation is the prohibition and criminalisation of acts of torture, cruel, inhuman or degrading treatment, whether physical or psychological of children with disabilities in education settings.¹²⁷ Research indicates that children with autism are disproportionately subjected to practices that deprive them of their liberty in schools. This is usually conducted on the account of dangerousness to oneself or others.¹²⁸ Reports indicate that children with autism are locked in cages or in isolation rooms during episodic moments. Prolonged restraint amounts to torture. This provision, therefore, may be interpreted as a safeguard to protect children with disabilities from being subjected to inhumane practices. It also provides a ground for parents as equal participants in education to question any measure taken against their children, which does not reflect the best interests of the child.

Finally, the Basic Education Act obligates the County Education Board to commission education-related research. This is paramount especially in relation to pre-primary education. Education assessment and resource centres play a critical role of assessing children and placing them in schools. For a very long time, these centres have remained understaffed and underfunded, and there is little information on how to improve their efficiency.¹²⁹ This includes adopting a multifaceted approach of assessing children's needs for support to be in an inclusive environment as opposed to the traditional medical model of identification to be placed in a special school. Research, therefore, constitutes one of the elements towards effective and efficient education assessment centres.

5 Opportunities for implementation

In 2008, Kenya adopted a blue print plan¹³⁰ as a strategy towards the implementation of the Millennium Development Goals (MDGs) under

¹²⁷ Sec 36(1) Basic Education Act 2013.

¹²⁸ E Macdonald 'Cage for autistic child at Canberra School: A shocking wake-up call' <http://www.watoday.com.au/comment/cage-for-autistic-child-at-canberra-school-a-shocking-wakeup-call-20150909-gjictu.html> (accessed 9 September 2015).

¹²⁹ Kenya National Commission on Human Rights (n 60 above.)

¹³⁰ Kenya's Vision 2030 <http://www.usaid.gov/sites/default/files/documents/1860/3%29%20Vision%202030%20Abridged%20version.pdf> (accessed 9 September 2015).

three main pillars: the political pillar, the social pillar and the economic pillar. Education falls under the social pillar. Under the current medium term programme (MTP2), the mainstreaming of ECDE is under the flagship projects for implementation.¹³¹ The goals include a review of the ECDE policy framework; the establishment of ECDE resource centres in 47 counties; and the provision of capitation grants with adjustments for children with disabilities enrolled in public ECDE centres.¹³² Further, the Sustainable Development Goals (SDGs) represent an opportunity for implementation of inclusive ECDE for children with disabilities. The SDG message to leave no one behind seeks to ensure that the targets are met for all peoples and segments of society, including persons with disabilities. Kenya, therefore, will be required to put in place measures to ensure inclusive and equitable early childhood education.

6 Proposals for future research and conclusion

Finally, the article poses two challenges for future research: First, the Act provides that pre-primary education is education provided for children between the ages of four and five years. The standard period of early childhood development and education according to UNESCO is birth to eight years. The question of what happens to children with disabilities before four years poses the challenge of whether the age of four to five is enough for early intervention in relation to the education of children with disabilities. Of specific concern here is birth registration and how this affects subsequent stages of learning, especially because of the primacy of documentation in registering in the education system. This begs the question of what possible ways the government can use to ensure that children between the ages of birth to four are not left out in early interventions as the success of the intervention between ages four and five depends on prior interventions.

Second, how free is free education for children with disabilities at all levels? The Basic Education Act provides that no tuition fee shall be charged to any pupil. Access to education requires a multi-dimensional approach. Availability as a core element of education is a broad aspect more than just affordability and, for learners with disabilities, especially persons with high support needs, this requires taking a step further to the provision of necessary support such as assistive devices, dietary provisions and health checks, especially for children of tender age. The challenge here for pre-primary education, as enshrined in the Act, is how proper dietary provisions and early intervention measures such as rehabilitation will be

131 Ministry of Devolution and Planning 'Second medium term plan 2013-2017: Transforming Kenya pathway to devolution, socio-economic development, equity and national unity' (2013) <http://www.usaid.gov/sites/default/files/documents/1860/1%29%20Second%20Medium%20Term%20Plan%202013%20-%202017.pdf> (accessed 9 September 2015).

132 As above.

achieved at school and family level, given the indirect relationship between poverty and persons with disabilities. Should the government enhance social protection programmes to families of children with disabilities?

In conclusion, the article argues that the Basic Education Act does provide a legal pathway of promoting pre-primary school for children with disabilities in Kenya. The Act and the SDGs¹³³ reinforce one another. The Act can offer guidance for the implementation of pre-primary education for children with disabilities, while the SDGs can contribute to the realisation of this right. Moving from paper to practice, therefore, requires adequate funding which should be earmarked at county budgeting, keeping up-to-date statistics which will assist in planning and adopting universal design as a way of dealing with accessibility challenges. The effective development and implementation of ECDE will also require effective participation and the involvement of disabled persons' organisations and representative organisations of children with disabilities, hence the need for partnership between civil society and parents. Additionally, the monitoring framework under article 33(2) of the CRPD should monitor the extent to which counties are promoting access to ECDE by children with disabilities.

133 See Goal 4 on education.